Mexico should be considered international tribunals, but do not necessarily make binding decisions.

Under this view, a mass claims panel that makes recommendations to a deciding body (such as the panels of commissioners at the UNCC) or a human rights commission that makes recommendations to states (such as the Inter-American or European human rights commission) is considered an international tribunal. Finally, many arbitral tribunals are not covered by the nineteen chapters, such as tribunals that conduct arbitration under the auspices of the American Arbitration Association’s International Centre for Dispute Resolution, the International Chamber of Commerce, and the London Court of International Arbitration. These institutions too should be considered international tribunals.10 It is commonplace but true to note the mushrooming growth of international courts and tribunals and of cases brought before them.

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9 See Convention to Avoid the Difficulties Occasioned by Reason of the Changes Which Take Place in the Beds of the Rio Grande and Colorado River, Art. VIII, Mar. 1, 1889, 26 Stat. 1512 (under which a decision is considered binding unless one of the two parties disapproves it). More information on the International Boundary and Water Commission is available online at http://www.ibwc.state.gov/home.html.


* The reader may wish to take into account that the author of this review has had personal involvement with the ICJ, the PCA, the Iran-U.S. Claims Tribunal, ICSID tribunals, NAFTA tribunals, the UNCC, and the CRT, and has had personal associations with Murphy, Stewart, Menaker, Thornton, Feighery, and Sharpe, authors of chapters in the book under review.


Within the Soviet international law academia, Grigorii I. Tunkin was a unique and towering figure. Outside of the Union of Soviet Socialist Republics (USSR), he was the only one who was accepted as an equal by the best in the West. The founder of the Soviet Association of International Law in 1957 and its president until his death in 1993, he was also a member of the International Law Commission and belonged to the Institut de droit international, ending up as an honorary member, thereby combining a preeminence in Soviet academia with acceptance and respect in the West. How did he manage to combine these almost incompatible qualities? Although Tunkin’s prominence abroad as well as his books and articles, which had considerably more references (and not always critical) to Western colleagues than to the founding fathers of Marxism, brought him problems at home and although his support and justification of Soviet foreign policy created frictions with his Western colleagues, he more or less successfully managed to combine these seemingly mismatched segments due to a blend of his talent, hard work, self-discipline, and luck.

While luck often plays an important part in the lives of most people, particularly in such a closed society like the USSR, the role of this particular factor may have been even more significant. Had he not supervised me at Moscow University, I would not have been able to read the books and journals by Western authors that I used to borrow from his personal library, including the American Journal of International Law, since most of these sources were unavailable elsewhere in Moscow. Equally, I would not have been able to work on my PhD in the library of the Hague Academy of International Law had he—a member of the Curatorium of the Academy—not pulled a carte blanche

1 Tunkin’s focus on Western, rather than Marxist, sources is apparent in the four lectures that are included in the book under review.
invitation out of his pocket and wrote my name on it. And certainly I would have had a much narrower vision of the world without the large personality of this small man. Later, often sitting next to him during various meetings where aspiring scholars used to proudly report that this or that discovery was made for the first time in Soviet scholarship, I heard him mumbling, almost inaudibly: “It is not important whether it is done for the first time in the Soviet Union; what matters is whether this is done for the first time in the world.”

While still a young man who had already worked as a forester in his home village in the far north of Russia, Tunkin came to Moscow to study law. Able, hard-working, and with an impeccable working-class background, he finished his studies at the end of the terrible purges of the 1930s when the People’s Commissariat for Foreign Affairs had sustained heavy losses. Had he come earlier, he may well have found himself in Siberia or even worse; had he arrived later, it would have been more difficult, even for such an extraordinary person, to start a successful career in diplomacy. Although his timing and luck helped, the rest was his own doing.

Tunkin’s diary, transcribed by his son Vladimir, currently a professor of physics at Moscow University, and translated by William Butler, a professor of law and international affairs at the Dickinson School of Law, Pennsylvania State University, reveals a man of many interests besides international law, especially the arts, literature, and foreign languages. Almost every other diary entry contains a reference to his visits to museums, and, judging by these entries, the Louvre’s *Venus de Milo* may have been even dearer to him than international law. Not only was he fluent in English, French, and German, he also wrote many of his articles and lectures in English or French and, as he confided in his diary, even thought in those languages while abroad. In his diary, Tunkin often mentions books that he bought during his numerous foreign trips, including Maurice Druon’s *Les rois maudits*, which later he gave me to read and then, during one of our walks in the park next to his home, used to check the fluency of my French.

Tunkin’s postgraduate dissertation “Parliamentary Reform of 1832 in England” is somewhat indicative of his future academic career. His choice of the topic shows his obvious interest in history as well as in foreign languages and countries. However, I do not think that I am extrapolating from my own experience and reflections—my first undergraduate thesis at Moscow University was on the New Deal of Franklin Delano Roosevelt—when surmising that quite a few academics in the former USSR, including Tunkin, concentrated, sometimes subconsciously, on abstract and theoretical topics often related either to the ancient past or to faraway lands because, first, it was safer and, second, it somewhat helped avoid the necessity of making compromises with one’s conscience. Tunkin often resorted to apology (using Martti Koskenniemi’s distinction between apologetical and utopian uses of international law), usually sincerely believing in the superiority of the Soviet political system and the noble aims of its foreign policy: a few bad apples were due, in his opinion, to the distortions of Marxism-Leninism or to the follies and mistakes of some Soviet leaders, among whom the long-term Soviet Foreign Minister Andrei Gromyko seemed to stand out, probably because Tunkin knew Gromyko well.2 Yet he also was a utopian who sincerely believed in the ability of international law—and his own efforts in this field—to contribute to world peace. In his diary, for instance, he confides: “I am writing my works on international law not only with my mind, but with my heart. I am comforted by the thought that I can thereby do something of the greatest importance: the preservation and maintenance of peace” (p. 21). Knowing him rather well, I have no doubt as to the sincerity of these words.

In the Soviet international law academia, there were, roughly speaking, two competing and feud- ing schools. One was centered at the Foreign Ministry’s Institute for Foreign Relations. The other was at Moscow University, where Tunkin—from

2 In his diary entry for October 10, 1965, he tells a joke about Gromyko that I read as Tunkin’s subtle way of criticism of the man for whom he certainly did not have much respect. It was often Tunkin’s wife, Itta Eftimovna, who, during our five o’clock teas, having finished working on some paper, expressed what obviously for me Tunkin himself thought about some Soviet leaders. Tunkin’s comment usually was: “Itta, you are exaggerating.”
1965, when he was forced to leave the Foreign Ministry (after twenty-nine years of service in various posts, including head of the legal department), until his death in 1993—chaired its international law department. If the first school was overtly and proudly apologetic, the second one was sometimes accused by the first of “objectivism,” that is to say, not always being guided by correct ideology and therefore sometimes using facts without taking account of the main contradictions of the Cold War period between the progressive socialist world, led by Moscow, and the regressive capitalist one, led by Washington. Although having special significance in closed totalitarian societies like the Soviet Union, such terminology and practice were not unknown to the so-called free societies. For example, for some American neoconservatives, there has been a wider truth than the correspondence of one’s thoughts and factual reality. For these Americans, it did not matter that no weapons of mass destruction were found in Iraq or that Saddam Hussein was not an ally of Al Qaeda. However, they believed that it was nevertheless right to invade the country and overthrow Hussein. And it does not matter that democracy is not flourishing in Iraq today or that the country may be on the verge of collapse. What is important for ideologues is to be on the right side of history, be it the inevitable march towards the bright communist future or the eventual triumph of liberal democracy all over the world. Rephrasing Deng Xiaoping’s famous adage, for ideologues the color of the cat is more important than its mice-catching qualities.

How these accusations of “objectivism” were used in Moscow against Tunkin can be illustrated by an episode in which I played a minor role. In 1982, a textbook of international law edited by Tunkin was published. At that time I was a young researcher who had helped him to polish those chapters written by other scholars. Naturally, the most important chapters were written by Tunkin himself, and in one of them he had, albeit in passing but in a positive way, referred to Hans Morgenthau—a prominent American international relations theorist. Soon Tunkin received a note from the Communist Party’s Central Committee, together with a copy of an anonymous letter whose author accused Tunkin of having committed serious ideological errors, including depicting “such a well-known Zionist as Hans Morgenthau” in a positive light. I had to spend several weeks drafting Tunkin’s response and trying to explain, among many other things, that, even if one has a Jewish wife (as Tunkin’s wife Itta Efimovna was Jewish) and has something good to say about Morgenthau, one is not necessarily a Zionist.

Tunkin belonged to the category of those Soviet intellectuals who enthusiastically welcomed Mikhail Gorbachev’s perestroika and glasnost policies. He, like many others, felt that those distortions of Marxism and the occasional follies of Soviet leaders that had not allowed the true Marxism in domestic as well as foreign policies prevail, would be corrected and that new foreign-policy thinking, based, inter alia, on the primacy of law over politics, would eventually be accepted, and not only by the Soviet Union. What Tunkin could not accept was that the whole Soviet system was not amenable to any meaningful reform and had to be dismantled. However, even here he was rather prescient. It may have been either at the end of 1989 or at the beginning of 1990 when he called me and explained that the policies of Boris Yeltsin, then leader of the Russian Federation, which was still a part of the USSR, would lead to the dissolution of the Soviet Union. In fact, that prediction turned out to be correct. Therefore, Tunkin asked me to join him in writing an article that would reveal the dangers of Yeltsin’s policies. By that time, however, I had come to the conclusion of the inevitability of the end of the Soviet system and the dissolution of the USSR, and, though I tried to explain myself to him in rather cautious, polite, and circuitous terms, this episode considerably cooled our relations. It was a serious rift, especially taking into account that as a supervisor Tunkin never imposed his views on his students. It was possible to argue and even disagree with him. Only much later, in summer of 1993 when his diary entries come to an end and shortly before his death that August, at the close of our last telephone conversation, he shared a few kind words about me. It was unusual since Tunkin was by nature a very reserved man, with a buttoned-up personality,
whose character, moreover, was formed in a country and at a time when self-restraint may have been a means of survival. I did not know, what he certainly knew by then, that this conversation was to be our last. I am immensely thankful to him also for that farewell. It shows that deep down he was a much warmer and more emotional person than others may have thought.

Although Tunkin’s diary reveals much about his attitude to international law and to his colleagues (mostly respectful), as well as his interest in the arts, literature, and music, in reading his diary entries I had the impression that he may have written them with a feeling that somebody was looking over his shoulder. Accepting that Tunkin was a man of considerable integrity and that his private thoughts and personal feelings may have very much conformed to his public image and overt expressions, one would have nevertheless expected to find in his personal diaries, if not necessarily something about his attitude towards women (only Venus de Milo is often mentioned) then at least something about his views on politics and politicians whom he closely knew. Unfortunately, there is very little of the latter and nothing of the former. In that respect, the second-to-last entry of May 23, 1993, seems to stand out. There he reflects on Machiavelli (and I completely agree with his views there) and refers to the two authors that he often mentioned in his lectures and conversations, Morgenthau and Georg Schwarzenberger.

Certainly, Tunkin was a more complex and an even more controversial person than his diary reveals. For example, when working on my PhD in 1977 at the library of the Hague Academy of International Law in its cellars (where I could read whatever I wanted to avoid ordering up materials that were not directly necessary for my dissertation or may have even been considered as antisocialist in orientation), I discovered an article stating that Tunkin, then the Soviet chargé d’affaires in Canada, had brought American nuclear secrets to Moscow in 1944 by travel in a cargo plane. Unfortunately, but quite understandably, I did not write down the source of this information (or misinformation). Much later, already during the years of perestroika, I jokingly told Tunkin what I had read in The Hague. He dismissed my query, saying, “They write about many things.” However, reading in the volume under review what Vladimir writes about his father’s unexpected and urgent September 1944 flight from Ottawa to Moscow via the United States, while his family followed him by boat via the Far East, one may even believe in such a James Bond-type situation in Tunkin’s life.

The volume contains all four lectures, including the 1975 General Course, that Tunkin delivered at the Hague Academy of International Law. It is noteworthy that only a few international lawyers have had the honor of giving four lectures at this prestigious institution. Bringing these lectures together in a single volume makes them an invaluable source for those interested in the history of international law during the Cold War period. They reflect Tunkin’s general approach to international law for which Edward McWhinney dubbed him “Mr. Peaceful Coexistence.” However, one may be justified in asking to what extent Tunkin’s understanding of international law, his “theory of coordination of wills” as the means of creating norms of international law, differed from the prevalent Western approaches to international law. In my opinion, not much. Summarizing and also simplifying a bit, it would be possible to conclude that if one were to delete references to Marx, Engels, and Lenin, as well as to pay less attention to Tunkin’s own emphasis on the distinctiveness of his theory vis-à-vis so-called bourgeois theories, one would not discover much in his approach to international law that would have been unique. In my opinion, it was a solid and rather traditional approach to international law, supported by his thorough and respectful analysis of the views of his—mostly Western—colleagues. Some peculiarities of his theoretical views were obviously due to the need to squeeze international law theory into the Procrustean bed of the doctrinal foundations of Marxism, such as the relationship between the basis and superstructure, with international law being a specific part of the latter. Tunkin’s strongest points were often in his critical Marxist analysis of the policies of Western countries, especially those of the United States, and the legal doctrines that justified such policies, while his weakest
points were in discarding the same critical Marxist approach when writing about Soviet policies in light of international law.

Some would take such a reading of Tunkin as belittling the role of the patriarch of the Soviet doctrine of international law, while others may see it as putting him on par with the greatest international lawyers of the twentieth century. As I noted, Tunkin’s achievements were due to his talent, hard work, self-discipline, and luck. Yet, in his career, he also faced and had to struggle with significant disadvantages and constraints, many dictated by the environment—a closed totalitarian society—within which he was brought up, lived, and worked. In a way, he certainly understood his situation, and, thanks to the positive features of his character, he was even able to loosen some of these constraints. He traveled abroad more than most Soviet academics, combined his academic interests with the practice of international law and diplomacy, and intensively communicated with the brightest and the best in his field. Had he not felt the constraints imposed by the Soviet realities, he would not have so enthusiastically welcomed Gorbachev’s policies of openness. But Tunkin, like all of us, was formed by the time and space in which he lived and worked. He triumphed as one of the best, and as the best in his own field, within the confines of the system. His tragedy, in my opinion, was that he could not break free. But that is why he survived; many did not.

Butler and Tunkin’s son Vladimir have put immense effort into the book. Vladimir’s recollections of his father add much to the understanding of the man and his time, and Butler’s knowledge of international law and diplomacy, and intensively communicated with the brightest and the best in his field. Had he not felt the constraints imposed by the Soviet realities, he would not have so enthusiastically welcomed Gorbachev’s policies of openness. But Tunkin, like all of us, was formed by the time and space in which he lived and worked. He triumphed as one of the best, and as the best in his own field, within the confines of the system. His tragedy, in my opinion, was that he could not break free. But that is why he survived; many did not.

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