At the time when the first edition of C.F. Amerasinghe’s book on international organizations was published there was a gap in the literature on the topic. There was a need for an up-to-date book that could serve as a manageable guide to institutional law for lawyers, academics, and students. Along came Principles of Institutional Law of International Organizations. The book became widely popular soon after its publication in 1996. In fact, it met the need so effectively that its structuring of institutional law is still today of some impact.¹

The first edition of the book has been reviewed several times. The merits of the book have been located in its general characterization of institutional law, in the identification of both possibilities and limits to the very idea of a law of organizations, and in pinpointing the relationship of institutional law to other areas of international law. The book has been applauded for being carefully structured and rich in its use of examples without being overly technical. As to the rare critical remarks, the book has been targeted for a certain lack of vision and argument. Additionally, the merely peripheral treatment of the World Trade Organization and the European Union has been regretted.² Considering the extent to which the first edition has been reviewed and given the fact that the newly published second edition is largely similar to the first, a general overview can be dispensed with. Instead, a closer look can be had at the actual revision.

The first question that arises is why a revision was necessary. Amerasinghe answers this question himself. The ever increasing attention paid to judicial organs of organizations required including them into the book (preface, p. XIII). Alongside some restructuring of the chapters and the general outline of the book, this revision is undertaken mainly through the inclusion of a completely new chapter on judicial organs. As a consequence, whereas the first edition discussed judicial organs as a sub-chapter under the heading ‘Organs of organizations’, the second edition deals with questions of judicial and non-judicial organs separately. Although Amerasinghe sets out to ‘deal briefly’ with the issue of judicial organs (p. 217) this newly independent chapter has also become the most voluminous part of the book, covering over fifty pages. As to the contents of the revision, two questions warrant interest in particular. Firstly, how judicial organs are dealt with as a matter of institutional law, and secondly, how this revision affects the structure and general quality of the book.

The discussion of judicial organs is carefully delimited both in respect of how those organs are defined, and regarding the issues that are dealt with. Amerasinghe
makes it clear repeatedly that his interest is on ‘proper organs’ of organizations, as distinguished from a broader category of judicial institutions. Hence, focus is on administrative tribunals, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda, whereas the International Court of Justice and the Court of Justice of the European Communities are disqualified, along with ‘quasi-judicial’ organs (such as the European Commission on Human Rights and the Inter-American Commission on Human Rights) (pp. 217-224). There are basically two issues concerning these organs that Amerasinghe deals with. The first is the identification and safeguarding of the quality of independence as the essence of the judicial function. The second (and related) issue concerns the proper characterization of judicial organs.

Amerasinghe goes on at some length to position the principle of independence, as a ‘fundamental principle’, at the top of the hierarchy of law. This means associating fundamental principles with peremptory norms (p. 232). He relies heavily on his own previous work on the topic in emphasizing that the principle of judicial independence is something that inheres in the exercise of jurisdictional powers. There are at least two important consequences (pp. 237-238). First of all, from the fundamental character of the principle it follows that everything that can be thought to strengthen the independence of an organ (but which is omitted from its constitutive instrument), can hereby be implied. Secondly, in questions of interpretation independence is always to be emphasized. From here Amerasinghe goes on to demonstrate in practical contexts how the principle of independence might be threatened. Through the topics of qualification of judges and conditions for selection, emoluments and reappointment of judges, conflict of interest, the registry, and legislative powers, an overview is provided of potential threats to the independence of the judicial function. The second main theme of the chapter (although much shorter in length) is connected to this through its focus on the character of judicial organs. Here the issue at stake is whether judicial organs can sensibly be labeled subordinate or subsidiary. Due to the ‘essential nature of the judicial power’ Amerasinghe answers the question in the negative. Turned around, if this was to be the case, then the organ would cease to be judicial (p. 270). Once again, the principle of judicial independence makes a subordinate character logically impossible.

Amerasinghe’s reasoning, intuitively, makes perfect sense. Surely independence must be a central quality of the judiciary if it is to uphold an impartial authority. Amerasinghe provides many illustrative examples of the different ways in which this independence might be challenged. He also emphasizes that principles are indeterminate. And while this for many authors is one of the more regrettable features of international law, Amerasinghe refreshingly appreciates this indeterminacy as a capacity to take into account the particular features of the individual case. In light of the express task of the book – to identify and discuss principles (preface, p. XIII) – the principle of independence hereby constitutes a perfect example of the characteristics of any principle of institutional law. On the one hand, the principle of independence seems to constitute the standard that defines judicial organs. On the other hand, it seems unable to settle contradictory claims.
due to its indeterminate character (pp. 259-260). In this respect the principle meets the familiar problem of failing to be both abstract and concrete at the same time.³ What this means in practice, is that competing conceptions of its proper contents can be put forward. Amerasinghe provides a nice example of this in the context of emoluments in demonstrating how both the increase and decrease of emoluments is a potential source of problems (pp. 246-247).

The practical examples, however, also demonstrate a problem (as far as it is one) with the author’s reasoning. This problem has its source in the level of abstraction that Amerasinghe maintains throughout the chapter. First of all, the reasoning could at times be more elaborate. Relying extensively on ‘logic’, ‘deductions’ and references to (his own) earlier work makes the text at times unnecessarily ‘naturalistic’. Secondly, a level of abstraction also often characterizes the arguments made, leaving the reader a bit hesitant. Considering the nature of the principle of independence, it is, e.g., not difficult to imagine that both an increase, a decrease, and even maintaining the status quo of emoluments might all be defended (or disputed) by reference to the principle of independence. This, however, raises the question as to which of these solutions is preferrable. Similarly, a contention that powers ‘necessarily inherent in the exercise of … jurisdiction’ cannot be taken away by consent (p. 234) seems quite uninformative as to which powers those might be. While one could agree that certain capacities should be present for an organ properly to be characterized as judicial, it is quite another thing to identify those powers in the concrete. Amerasinghe is mindful of this and meets these expectations by recognizing that any ultimate verdict on such questions can not be given in the abstract. Instead, the application of the principle of independence places a heavy responsibility upon those applying it (p. 259). This conclusion does not however suffice to fully answer all the questions raised. For example, concerning reappointment of judges, Amerasinghe’s propositions of an absolute prohibition seems diametrically opposed to practice (pp. 248-249). What should the reader make of this? Why is there such incongruity? What is the utility of a principle which is unsupported by practice? Does this mean that none of the judicial organs discussed are truly independent? Another instance where the reader is likely to get lost is the enigmatic conclusion that there are also other fundamental principles besides independence which should be taken into account in determining the scope of powers of a judicial organ (p. 260). But if it is the case that there are additional principles which can qualify the principle of independence, what is then left of the peremptory character of that principle?

As to fitting the chapter into the overall structure of the book, the discussion of judicial organs arguably deals with quite different questions than the chapter on non-judicial organs (chapter 5). There is no particular looking-glass (such as independence) through which non-judicial organs are analyzed. They are instead dealt with in a rather technical manner with focus on questions such as composition, powers, internal relationship, and voting. However, at least for academics this only makes the chapter on judicial organs stand out as all the more interesting. In this respect, despite the comments above, the professional reader is likely to find this new chapter one of the more interesting of
the revised edition. For those planning to use the book as course literature, basic information on the judicial process is not disregarded altogether. A closer inspection of the settlement of disputes (especially of administrative tribunals) is undertaken in the last chapter (chapter 16). Here issues such as jurisdiction, procedure, reasoning, and enforcement are discussed. Compared with the first edition, this chapter also does seem to have been restructured somewhat in order to present a more concise focus on institutional issues only. This means that no longer is an insight provided into the role of regional, economic, and technical organizations in the settlement of disputes between members. Dispositions of this kind are by Amerasinghe discarded as inappropriate in a study of institutional aspects (p. 507). Instead a more abstract discussion on a hypothetical violation of the general principle of peaceful settlement of disputes is presented.

The chapters dealing with judicial organs and dispute settlement suggest that the second revised edition adopts a tighter focus on identifying common principles. Although Amerasinghe has also made some efforts to include the EU into the discussion more comprehensively (e.g., in discussing the relationship between principal organs, pp. 146-148), regrettably the references to Community law still at times remain hopelessly out of date (as, e.g., regarding amendment, pp. 412-413). Even after the revision there is also an absence of some current discussions concerning organizations such as the World Trade Organization and the ‘constitutionalization’ of organizations (incidentally, often thought to be closely linked to the existence of judicial supervision).

There are nowadays several prominent nominees in the category of general works on organizations. Sands and Klein in Bowett’s *Law of International Institutions* mainly focus on a general characterization of organizations and their role in international governance. Klabbers in *An Introduction to International Institutional Law* identifies how the (political) relationship between the membership and the organization expresses itself throughout institutional law. In the second edition Amerasinghe gears his book ever closer towards discussing common principles. Notably, all of these books approach organizations from different angles. The issues raised in this review are not intended to decry the identification and exposition by Amerasinghe of issues attached to the quest of maintained independence of judicial organs. *Principles of the Institutional Law of International Organizations* is still one of the best general works available on organizations. The multitude of approaches to organizations does, however, provide the opportunity to assess the merits and shortcomings of Amerasinghe’s focus – all to the benefit of a better understanding of international organizations.

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**Book title and contents**

Ali Rıza Çoban is a Turkish scholar of the University of Kırıkkale (Turkey) who prepared his doctoral thesis at the University of Leeds. The doctoral thesis, which was submitted in 2002, was published in slightly modified and updated form by Ashgate in 2004. This book is the subject of our review. The Anglo-Turkish ground from which the book has grown has proven to be fertile. *Protection of Property Rights within the European Convention on Human Rights* is the result of a research project on the legal and philosophical foundations of property as a human right that is as ambitious as refreshing. Çoban presents his readers with a concise and consistent vision of the constitutional aspects of property rights. That vision has unambiguously been inspired, if not shaped, by the Turkish civil law and English common law traditions in which the author received his legal and philosophical education. However, let us save such general consideration for the conclusion and start by giving some further details on the contents of the book.

The title of the book is somewhat misleading. It is true that the book treats Article 1 of Protocol No. 1 to the European Convention on Human Rights (‘ECHR’) and the case-law that the ECHR institutions, the European Court and the now abolished Commission of Human Rights, have developed. However, this is only half the book. The other half is dedicated to the theoretical aspects of property rights from a perspective of constitutional law and political philosophy. In fact, this theoretical part of the book contains the author’s real thesis. Çoban wishes to present to his readers a consistent theory on property as a human right. The research on the ECHR and its case-law is ancillary to Çoban’s thesis on the human right of property. The author wishes to evaluate how the right to property is regulated and protected under international human rights law by contrasting the current practice with his property theory. The choice of the ECHR is almost accidental: the ECHR happens to be the most developed human rights protection system, argues Çoban (p. 123).

This argument does not seem very convincing. In order to test a property theory, one
does not necessarily have to rely on a regulation under international human rights. For that purpose, the regulation and protection of property rights under the United States’ Constitution, with its more than 200 years of case-law, might have been preferable. However, the choice is not very material. Çoban does not evaluate the regulation and protection of property under the ECHR in order to test his theory, but he uses his theory to test the ECHR protection mechanisms and, in particular, the case-law of the Strasbourg institutions. This means that it is not the author’s final goal to provide his readers with a restatement or description of the European case-law on protection of human rights. Rather, he wishes to present his own thesis on a human right of property showing its usefulness by applying it to ECHR practice. This is why the title of the book is somewhat misleading.

Does this make the book unattractive to people interested in ECHR case-law? Not at all. Çoban uses ECHR case-law as a ‘guinea pig’ for his theory. This is a brave, to some possibly an audacious move, but, therefore, also far more interesting than common analyses and restatements of ECHR case-law. For his theory provides Çoban with a means to opine on and criticise the practice under the ECHR. This is very refreshing, because the usual reluctance among many members of the legal profession to disclose one’s own thoughts and opinions on what the courts actually say and do seems almost endemic. Of course, it may well be that many legal writers simply do not have any personal thoughts or opinions on what the courts do. Çoban does have his own opinions, which he expresses, and the present author found that both pleasant and stimulating.

**Çoban’s theory on the human right of property**

This is not the place to go into detail on Çoban’s theory of property, but in order to understand part of his criticism of the European Court’s case-law it is helpful to understand the basics. Çoban’s property theory can be characterised as a liberal one (liberal within the meaning of the word as used in Europe, not as currently used in the USA). According to this theory, property rights are (naturally?) vested in individuals and they can be both one’s patrimony rights and one’s legitimate expectations. Any interference with such property rights by public authorities requires justification. Such justification can and must be based on the principle of autonomy-based freedom, a concept that stems from Raz’s autonomy-based duty theory. It departs from the premise that the public authorities have the duty to create an autonomy-enhancing society in which every individual can realise his or her potential freely. To create such a society, public authorities can interfere with private property (pp. 118-119). In other words, interference with property rights is justified if, and only if, it is aimed at enhancing opportunities for people (presumably people other than the owner) to realise their plans. This autonomy enhancing element is a necessary requirement for assuming the existence of a general, or public, interest in Çoban’s view. By the way, it is not very clear to me whether autonomy enhancement can also mean redistribution of wealth, but it is my impression that no such redistribution would be acceptable in Çoban’s system.

The theory mainly concentrates on the justification of interference with property
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rights. Çoban distinguishes three sorts of interference that can be justified: taxation, taking of property by power of eminent domain, and controlling the use of property by police power regulations. The distinctive characteristic of takings of property, as opposed to taxation, is the singling out feature. Taxation is a taking that affects all people in the same position. Takings of property affect only specific individuals. Çoban admits that there will always be a grey area between the two categories of interference when tax laws impose special taxes on only some classes of people.

A grey area also exists between taking of property by power of eminent domain and the control of property by police power regulations, but Çoban’s theory seems to be able to make a sharper distinction here. If the aim of the interference is to prevent harmful use of the property, it is control by police power regulations. No compensation is required in that event, because the restriction follows from the owner’s obligation not to harm others. However, if the aim of the limitation is to advance public goods (which can only be justified if the measure enhances other people’s autonomy), then compensation is required because there is no obligation to bear an unequal burden of public goods. All such limitations can and should be qualified as takings. Whether or not a certain use is harmful is for the democratic legislature to decide, but because opinions on harmfulness may change from time to time, legitimate expectations of owners should be respected. With this distinction, Çoban is in a position to rightly criticise as arbitrary the European Court’s distinction between taking as total extinction of property itself and control as partial extinction of property rights. Sometimes, partial elimination of property rights can be worse than the extinction of the entire property. Instead, one should examine whether the aim of the interference is to prevent harm or to enhance other people’s autonomy. We will come back on this later.

Furthermore, the principles of lawfulness and proportionality should always be observed if an interference is to be justified. In this respect, Çoban’s theory follows the ECHR case-law.

Çoban is not concerned with questions on the distribution of power within a state or between the state and international organisations. Çoban assumes that all the tests he proposes, with the exception of the determination of harmful use, are to be applied by courts, both national and international. Adjudication as an almost entirely exclusive means to establish the boundaries of constitutional rights and to protect them is not questioned in Çoban’s study.

We will not discuss Çoban’s theory and its premises nor his rather succinct contentions about competing theories, such as the claim that Nozick’s minimalist state is unrealistic and that the ‘social function theory of property’ imposes unspecified duties upon property practically giving a blank cheque to governments to interfere with property. We will concentrate here on Çoban’s examination of the ECHR case-law under his property theory.

The ECHR case-law on Article 1 criticised
Article 1 of Protocol 1 to the ECHR (abbreviated as P1-1) reads as follows in the English and French official versions:
Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest, in such cases and by such procedure as are established by law and subject to such compensation as shall be determined in accordance with the conditions provided for by law.

The present measures shall not however infringe, in any way, the right of a State to pass legislation to control the use of property in accordance with the general interest or to impose taxes or other contributions.

Since its first judgment on P1-1,¹ the European Court in Strasbourg has accelerated almost exponentially its production of case-law under P1-1, with two judgments in the 1970s, thirteen in the 1980s, dozens in the 1990s and already hundreds in the 2000s. The rapid increase in popularity of this provision among litigants is certainly due to the Court’s expansive interpretation of P1-1, especially since the 1990s. ‘Possessions’ (in the French version: ‘biens’) has been interpreted as including all sorts of property rights, including assets and claims in respect of which one can argue that he has at least a ‘legitimate expectation’ of obtaining effective enjoyment of a property right.² Another remarkable feature of the Court’s case-law is that it has developed one general test in order to examine all sorts of alleged violations of P1-1.³ The Court will examine first whether the alleged violation affects a ‘possession’, then it will establish whether there is an interference and finally it will determine whether or not the interference was justified. In order to be justified, the interference must be prescribed by law, in the general interest and proportional. It is the proportionality test where the Court’s own institutional opinion can collide with a Member State’s appreciation. In accordance with its general doctrine, the Court recognises that states have a wide margin of appreciation, but it also clearly reserves the final word to itself as to whether or not the interference strikes a fair balance.

As noted above, Çoban examines this case-law by contrasting practice with his own theory on the human right of property. This is the strength of this book, but this attribute of Çoban’s method also is the weakness of the book. Because the author is focused on comparing ECHR case-law with his own theory, he sometimes tends to lose sight of the evolutionary nature of the case-law. There is a tendency, especially in the beginning of the examination of the case-law (pp. 143-180), to assume that there is one European Court (and until 1998 the European Commission) that has always had one consistent interpretation of Article 1. For instance, on page 176, the 1989 Mellacher, the 1999 Iatridis and the 1986 James and others judgments are compared, without any consid-
eration of the evolution (or revolution) in the Court’s doctrine between 1986 and 1999. It is only later in the book (such as pp. 181, 183, 205 and 210) that one can find some remarks on the evolutionary nature of the Court’s case-law. (Çoban does make several comparisons between the case-law and the P1-1 framers’ intention.)

Moreover, in his examination of the case-law, Çoban does not make any noticeable distinction between decisions and judgments of ordinary chambers and Grand Chambers. Neither does he find it necessary to inform the readers whether a decision or judgment was unanimous and, if not, how many and what dissenting opinions there were. It is, therefore, a bit surprising to find bold remarks in the summary (p. 258) such as: ‘the Commission was reluctant to find applications about P1-1 admissible, because it did not want to interfere with social and economic policies of the contracting states’; and: ‘the meaning of these terms [namely, “margin of appreciation”, “balancing interests”, “on an equitable basis”; CBS] differs according to the personal beliefs of the judges and this leads to an inconsistency among the judgments of different Chambers of the Court’. Not because they are not true (in fact, they are very true), but because little attention has been paid to such historic and organic aspects of the Court and its case-law in the body of the book. This may be understandable from the perspective of Çoban’s purposes, but it makes the book less useful for the student and practitioner who wish to understand the European Court and its working, and to predict its decisions.

Another disadvantage of Çoban’s approach is that where his theory and the Court’s doctrine coincide there is no real need, and therefore little consideration, for a critical examination of the Court’s doctrine. This is especially the case for the two most remarkable developments in the Court’s doctrine: the expansion of the notion of ‘possessions’ (in French: ‘biens’) and the extension of a full application of the proportionality test to any sort of interference. The Court’s extensive notion of ‘possessions’ fully coincides with Çoban’s constitutional notion of property rights. Unfortunately, this leaves little room to question whether ‘possessions’ in P1-1 is, in fact, the same as ‘property rights’ in the very extensive way the Court has established and with which Çoban agrees. Also, the extension of the proportionality test to all sorts of interferences, including to the control of use of property and taxes or other contributions mentioned in the third paragraph of P1-1, is questionable. After all, the provisions of the first paragraph of P1-1 ‘shall not … infringe, in any way, the right of a State to pass legislation’ on control of use of property and taxes (as was acknowledged by the Court in its earlier case-law, a fact that is rightly observed by Çoban (p. 205)). One can question these developments, which will not be done here, as it was already explored elsewhere.

The strong points of this book reside in its criticism of the Court’s doctrine and the alternatives it proposes. One may disagree with Çoban’s criticism because of the premises of his theory. Yet, his criticism is sound and to the point, and his theoretical alternatives are consistent and appealing. Interesting for a lawyer educated in the civil law tradition, as the present author is is Çoban’s discussion on the different attitude to property in the civil law and the common law traditions (chapter 2.2). Property rights are defined in civil law systems as absolute patrimonial rights. The common law has a more
diffuse concept of property as a bundle of rights and actions. Where civil law would see the relationship of the subject-owner with the object-property as one patrimonial property right (propriété, Eigentum, eigendom), common law conceives that the relationship between the owner and his property creates a whole bundle of property rights for the owner.

The European Court has consciously adopted the civil law notion of property, rejecting the bundle of rights conception in its already mentioned first judgment, *Handyside v. United Kingdom*. This was based on an interpretation of the second sentence in the first paragraph of the French wording, which refers to propriété. The consequence was that, next to interferences under the second sentence of the first paragraph (expropriations) and the second paragraph (control of use and taxation), there was a need to distinguish a third category of interference. This third category comprises all other interferences that cause the partial elimination of the right of property without extinguishing the property entirely (e.g., taking away only the right to dispose of property). This was acknowledged in the *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982. In this judgment the Court set the precedent that such interferences should be tested under the so-called first rule, namely the provision in the first sentence of the first paragraph: ‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions.’ According to this test, such interferences are allowed provided that they strike a fair balance between the general interest and the individual’s rights.

In the Court’s doctrine, however, this implies that partial deprivation or taking of property does not necessarily require compensation. This, as Çoban rightly points out, is a clear inconsistency and weakness in the P1-1 protection system. For partial restrictions on property can diminish the use and value of property to the extent that the possession becomes entirely useless or valueless. Certain restrictions may even be more damaging than expropriation, e.g., if such restrictions entail that an individual must continue running a business that can only make losses. Çoban makes a convincing case against the Court’s doctrine on this point, because ‘… even if deprivation causes more loss, there is no moral difference between partial and full deprivations of property interests’ (p. 190). There is no reason to require, in principle, full compensation for expropriation, but not for such partial deprivations. Çoban therefore proposes a different approach that would lead to an examination of whether and to what extent someone’s property rights (in the common law sense) have been taken. Also, in American jargon, ‘regulatory takings’ of property would require compensation. Only restrictions on property that have the aim of reducing the harmfulness to third parties’ property and health need no compensation, as such restrictions follow from the owner’s general duty not to cause damage to third parties (p. 215). Çoban calls such restrictions police power regulations as opposed to taking of property by eminent domain power. This and other ideas seem very appealing and helpful. In this respect, the book is evocative and inspiring.
Conclusion
The motto of Protection of Property Rights within the European Convention on Human Rights is: Mal canın yongasıdır. According to the translation this means in Turkish: Property is a chip detached from the body. This motto reveals the author’s strong belief that the right of property is rightfully considered a human right in the ECHR. This belief is confirmed on almost every page of the book. Even if one does not agree with Çoban’s starting points and conclusions, the book is an important contribution to the discussion of how to come to a more comprehensive and coherent legal construction of the human right of property. Çoban has intelligently conceived an interesting and well elaborated thesis on the human right of property. Çoban also has straightforwardly dared to challenge the inconsistencies in the case-law of the European Court of Human Rights. This combination of intelligence and courage makes Protection of Property Rights within the European Convention on Human Rights a recommendable and attractive read.

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2. Admissibility decision of the European Court’s Grand Chamber in Malhous v. the Czech Republic, 13 December 2000; not quoted by Çoban.
3. Explicitly since the Beyeler v. Italy judgment of 5 January 2000.

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Although its title might suggest otherwise, this book does not deal in great detail with the approach of the Russian Federation to the law of the sea. Rather, the book presents an overview of the major topics in the modern law of the law of the sea. This also is the intention of the author, as is apparent from the title of the original Russian edition of the book Contemporary International Law of the Sea and the Practice of its Application, which was published in 2003. The book is based on lectures Professor Kovalev delivered at the Diplomatic Academy of the Ministry of Foreign Affairs of the Russian Federation, as well as the All-Russian Academy of Foreign Trade, the Egyptian Maritime Academy and universities in New Zealand during the past decade (p. ix). Its principal emphasis is placed on the legal status and regime of maritime zones and the regulation of activities by states in those zones (ibid.). The intended audience are civil servants involved in
formulating national law of the sea policies, legal scholars and teachers and students at
law faculties and institutions offering training in marine sciences (ibid.).

In his editor’s introduction, Professor Butler shortly addresses the changes that have
taken place since he first addressed Soviet approaches to the law of the sea.¹ At that
time the Soviet Union was one of the major sea powers, with global interests. While
this is, to a certain extent, still the case, the Russian Federation’s naval capabilities have
diminished in absolute terms and even more so in relative terms. Merchant shipping
and fishing fleets also have had a hard time in adapting to the collapse of the planned
economy and the transition to capitalism. The independence of the Baltic states, the
Ukraine and Georgia has diminished the extent of the Russian coast. The indepen-
dence of the Central Asian Republics and the heightened interest in oil resources of the
Caspian Sea has brought the political and legal status of the Caspian Sea to the fore,
even though it remains controversial whether this water body is really covered by the
law of the sea. All in all, the Russian Federation remains of major interest as one of
the actors in the international law of the sea, making views on the law of the sea from
Russian scholars of particular interest but for that reason.

In his introduction, Kovalev sets out the main problems that face ocean management
and posits that one may conclude that the present legal framework does not provide
an answer to all existing questions (p. xvi). It is the author’s intention ‘to outline the
existing problems in the international law of the sea and propose the legal resolution
thereof by taking into account the general principles of international law’ (p. xvii).
The subsequent analysis of the law of the sea is done in a number of chapters dealing
with the most important maritime zones, including a discussion of a number of specific
regions. Two further chapters look at the protection and preservation of the marine envi-
ronment and international maritime organizations.

Chapter 1 deals with internal sea waters, which, summarizing the author’s defini-
tion, are all waters of a maritime nature landward of the baseline from which the breadth
of the territorial sea is measured. Kovalev criticizes Article 8(2) of the United Nations
Convention on the Law of the Sea,² which provides that where the establishment of
straight baselines has the effect of enclosing as internal waters areas which had not
previously been considered as such a right of innocent passage continues to exist. This
provision is found to only complicate the question of the legal regime of internal waters
(p. 2). Chapter 1 is one of the chapters which contains a rather detailed discussion of
Russian practice, including a discussion of the claim which has been advanced in Soviet
and Russian doctrine that a number of Arctic Seas (Kara, Laptev and East Siberian Seas)
are historic waters. The official position of the Soviet Union and the Russian Federation
has been less outspoken. Kovalev, who notes the controversy surrounding this question,
oberves that ‘the historic title of the East Siberian Sea, in particular, has been substan-
tiated by scholars’ (p. 9). Another interesting point of this chapter is the criticism of
the Paris Memorandum on Port State Control, which, according to Kovalev, as it was
only signed by fourteen Western European states, leaves the possibility of arbitrary
and unjust specific conditions being imposed on foreign flagged vessels. Instead of a
regional approach a global approach should be followed (p. 15). There is no discussion
of the fact that already for a considerable time the Russian Federation is participating in the Paris Memorandum and that this is just one of the numerous memoranda on port state control covering the globe, which in part have been set up with the assistance of the International Maritime Organization (IMO).

The regime of the territorial sea is discussed in chapter 2. Concerning this area, the information which is provided seems at times outdated. For instance, no reference is made to the fact that a number of states, including Brazil, Nicaragua and Uruguay have adopted legislation establishing a 12 nautical mile territorial sea, replacing legislation claiming a wider breadth. In contrast with the previous chapter, no detailed discussion of Russian practice is included. The chapter does provide some discussion of African practice on the territorial sea.

The contiguous zone is shortly discussed in chapter 3, which is followed by another short chapter on archipelagic waters. The latter chapter sets out the content of the provisions on archipelagic waters contained in the LOS Convention, but makes little mention of recent state practice. For instance, no mention is made of the Indonesian archipelagic sea lanes proposal submitted to the IMO in 1996. Secondly, although the chapter discusses practice in respect of straight baselines (covered by Art. 7 of the LOS Convention), it hardly refers to practice in respect of archipelagic baselines (covered by the Convention’s Art. 47).

Quite understandably, considerable attention is devoted to the exclusive economic zone and the continental shelf (respectively chapters 5 and 6). Chapter 5 starts of with a discussion of the genesis of the concept of the exclusive economic zone. One of the issues which is picked up is the significance of the inclusion of the word ‘exclusive’ in the term. Kovalev concludes that this reference is ‘admissible merely in the sense that this zone was created exclusively to defend the economic interests of the coastal State’ and not as recognition of the national character of the zone (p. 55). In the discussion of the legal regime of the exclusive economic zone reference is also made to the cases before the International Tribunal for the Law of the Sea (ITLOS), which have dealt with the prompt release of fishing vessels. The observation that the provision on prompt release contained in the LOS Convention ‘is rather frequently violated by coastal States with respect to foreign vessels engaging in commercial fishing in the exclusive economic zone of a coastal State’ (p. 60) completely brushes over the point that this concerned vessels which were suspected of being engaged in illegal fishing activities, which threaten the sustainability of numerous fish stocks.

The chapter on the exclusive economic zone does pick up another interesting point in respect of Russian practice. This concerns the maritime delimitation agreement concluded between the former Soviet Union and the United States, which is applied on a provisional basis, as its ratification has not yet been approved by the Russian State Duma. Kovalev, among other factors, criticizes the provisions of the agreement which transfer areas solely within 200 nautical miles from the baselines of one of states concerned to the other state as being contrary to the provisions of the LOS Convention (pp. 67-68).

In respect of the continental shelf, the book first discusses the genesis of the concept
and then turns to the issue of the outer limits of the continental shelf under Article 76 of the LOS Convention. In a case in which the continental shelf extends beyond 200 nautical miles, a coastal state is to make a submission on the outer limits of its continental shelf to the Commission on the limits of the continental shelf (CLCS). The chapter also briefly discusses the delimitation of the continental shelf between neighboring states, recognizing the important contribution of the International Court of Justice ‘in generalizing the practice of States and developing the ideas of delimitation’ (p. 99).

The seabed beyond the limits of national jurisdiction (Area) is treated in chapter 7, first looking at the implications of the concept of ‘common heritage of mankind’ which is applicable to this area and then turning to the specific regime contained in Part XI of the LOS Convention. In this connection, Kovalev recognizes the importance of the 1994 Part XI Agreement, which significantly amended the specifics of the mining regime applicable to the Area. In his view, it was this Agreement that ensured universal acceptance of the regime of the Area. This explains why the Russian Federation accepted this significant change to the Convention (p. 119).

Chapter 8 discusses the high seas, looking at the various high seas freedoms and their limitations, the exercise of criminal and civil jurisdiction on the high seas, the rights of landlocked states of access to and use of the seas and the combating of terrorism at sea. In connection with the discussion of high seas freedoms, it is noted that legal doctrine and a number of states are raising the issue of establishing protected areas on the high seas. Kovalev submits that the creation of such areas on the high seas can hardly be supported by the international community ‘since this is connected with an attempt against the freedom of the high seas’ (p. 139). Although one can agree with Kovalev’s argument that such areas cannot be imposed by a small number of states, the all-out rejection of the concept neither seems the most productive approach, especially if one wishes to deal with the current problems facing the marine environment.

The four-page chapter 9 deals mainly with Articles 122 and 123 of the LOS Convention on enclosed and semi-enclosed seas, but it also discusses the Soviet concept of closed seas (which was intended to exclude non-coastal states from enclosed and semi-enclosed seas), which has been abandoned (p. 154). The chapter closes with a short discussion of the regime of the Sea of Azov, which formed part of the internal waters of the Soviet Union, but is now bordered by the Russian Federation and the Ukraine, which disagree over the sea’s status (p. 156).

Chapter 10 looks at the legal status of the Caspian Sea and the negotiations of its now five coastal states to bring the Caspian Sea’s regime into line with current management requirements. Kovalev observes that the existing regime is governed by the treaties which had been concluded by the Soviet Union and Iran, and that none of the coastal states can unilaterally appropriate parts of the Caspian Sea (p. 166). To resolve the problems facing the Caspian Sea (mainly caused by pollution, overfishing, oil activities and a lesser inflow of water due to extraction for irrigation), Kovalev considers it desirable to establish an independent international agency, a solution which has also been advanced by the Russian Federation (pp. 175-176).
The legal regime of the Arctic and Antarctica is discussed in respectively chapters 11 and 12. The chapter on the Arctic looks at the sector theory, which has been advanced in Soviet and Russian doctrine to claim coastal state control over the area extending up to the North Pole. The Russian Federation and the Soviet Union before it have in general been less pronounced on the legal implications of the sector theory. For instance, all legislation on the extent of maritime zones applies in similar terms to all of the Russian Federation’s coasts. The propositions advanced by Kovalev suggest that the sector theory will continue to play a role in the future. At the same time, Kovalev observes that the legal regime of the Arctic should not differ from that of other expanses of the World Ocean (p. 183). As is also noted, Article 234 of the LOS Convention on ice-covered areas allows the coastal state to adopt more stringent laws and regulations for the protection of such areas (ibid.).

Kovalev submits that it is time to work out the question of a regional treaty in the Arctic addressing various environmental issues (p. 184). Thus far regional cooperation in Arctic has proceeded without such a basis, one of the main reasons being that this might require that questions in respect of the Arctic’s legal status have to be addressed. Finally, the chapter discusses the legal regime of the Svalbard archipelago, which is part of the territory of Norway, but to which a treaty regime is applicable, allowing access to Svalbard to nationals of the contracting parties on an equal access basis. Apart from Norway, the state which has been most active in this respect is the Russian Federation (and the Soviet Union before it). Kovalev expresses some unease with the mining regulations established by Norway, as these make it difficult to use the legal regime of the Svalbard archipelago in the interest of the Russian Federation (p. 189). The chapter on Antarctica is mainly concerned with the Antarctic Treaty and other instruments adopted for the management of Antarctic resources and the protection of its environment. Only limited attention is given to the legal questions in respect of the maritime zones of Antarctica resulting from the continent’s specific regime.

Chapters 13 and 14 of the book deal with respectively international straits and international canals. The chapter on international straits mostly pays attention to straits of particular interest to the Russian Federation such as the Turkish Straits. The chapter on international canals briefly discusses the regime of the Suez, Panama and Kiel Canals.

Chapter 15, on the protection and preservation of the marine environment, is among the book’s longer chapters. The focus of this chapter is the various sources of pollution threatening the marine environment, discussing the relevant provisions of the LOS Convention and a limited number of other international instruments. The chapter pays much more limited attention to issues of biodiversity and nature protection. A final chapter looks at a number of international organizations and bodies which are relevant for the law of the sea. This includes the IMO, the International Seabed Authority, the International Maritime Satellite Communications Organization and the ITLOS, which are discussed by way of example.

It is apparent that the basis of the book is a number of lectures which were delivered on different occasions and for different audiences. This makes the presentation
somewhat unbalanced (e.g., relatively much attention for the North Sea Continental Shelf cases, but hardly any reference to any of the later delimitation cases, apart from the Gulf of Maine case), certain topics are discussed out of context (for instance, the chapter on the Arctic also contains a one page discussion of the delimitation of the maritime boundary in the Gulf of Maine between Canada and the United States) and other topics are not included at all. For instance, the current problems related to high seas fishing are only mentioned in passing. As was noted in several instances, another shortcoming of the book is that information is not always up to date.

At the outset of this review, it was emphasized that the Russian Federation remains of major interest as one of the actors in the international law of the sea, making views on the law of the sea on the part of Russian scholars of particular interest but for that reason. Otherwise, the present book, although it contains quite a few interesting points concerning the law of the sea from a Russian perspective, is somewhat disappointing. The author’s intention ‘to outline the existing problems in the international law of the sea and propose the legal resolution thereof by taking into account the general principles of international law’ (p. xvii) is certainly not met.

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3. It should be noted that the Soviet Union in 1984, two years after the adoption of the LOS Convention, still enacted legislation which referred to the ‘economic zone’. Legislation adopted by the Russian Federation in 1998 refers to the ‘exclusive economic zone’.
6. It should be noted that the submission of the Russian Federation on the outer limits of the continental shelf to the CLCS in December 2001 also was concerned with the Arctic Ocean. The outer limits applied sector lines as provisional limits in those areas in which the Russian continental shelf and that of other states in the view of the Russian Federation extended to these sector lines and there consequently is a need for a delimitation agreement. However, in one area the outer limits do not extend up to the sector line as application of the conditions contained in Art. 76 of the Convention apparently does not allow such extension.

The theme of this PhD thesis, *forum non conveniens*, has already been the subject of a few of European studies and therefore is itself not unique. In contrast with these studies, the book under review is more extensive and, as far as possible, more complete. It is not limited to merely one or two legal systems or the question of compatibility of *forum non conveniens* with the EC-Regulation No. 44/2001 on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters, but provides an integral and coherent treatise of *forum non conveniens*. It discusses *forum non conveniens* in a wider perspective and, in particular, from a comparative point of view.

*Forum non conveniens* is a practical instrument for a court that formally has jurisdiction to hear the case, to decline its jurisdiction because of the fact that the appropriate court is abroad or the local court is inappropriate (p. 1). *Forum non conveniens* is a well-known doctrine in common law systems such as in the United States of America and in England, so it is not surprising that those jurisdictions are extensively considered in this study.

The subject of this thesis is very important since international commercial litigation is rapidly increasing and hence the appeal on *forum non conveniens*. In this respect the author pays attention to the question whether *forum non conveniens* is compatible with the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (the predecessor of EC-Regulation No. 44/2001). Nuyts mentions the preliminary question of the English Court of Appeal in the case *Owusu v. Jackson a.o.* (p. 259), but could not examine the recent preliminary ruling of the European Court of Justice in this case, which was rendered on 1 March 2005 (C-281/02). The Court held that the Brussels Convention precludes a court of a Contracting State from declining the jurisdiction conferred on it by Article 2 of that Convention on the ground that a court of a non-Contracting State would be a more appropriate forum for the trial of the action even if the jurisdiction of no other Contracting State is in issue or the proceedings have no connecting factors to any other Contracting State. According to this decision, the application of *forum non conveniens* within the jurisdictional system of the Brussels Convention (and EC-Regulation No. 44/2001) is principally out of the question. From the perspective of international procedural family law, there is also an increasing attention for *forum non conveniens*. EC-Regulation No. 2201/2003 (‘Brussels II-A’), which entered into force on 1 March 2005, gives rules on jurisdiction and recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility. Article 15 of this Regulation contains a *forum non conveniens*-possibility which permits the competent courts of a Member State to refer the case with regard to parental responsibility to the courts of another Member State where this is in the best interest of the child.
The present thesis is written in the French language and is almost one thousand pages (!). It is divided into three parts, preceded by a general introduction (traditional and modern approach on jurisdiction in the common law systems of the US and Great-Britain, pp. 27-74) and an English written foreword by Professor Arthur T. von Mehren. The incredibly large number of French, English and in particular American literature incorporated in this study (see the bibliographical data at pp. 911-945) is remarkable. The amount of pages indicates the aim of the author to describe *forum non conveniens* as comprehensively as possible. In relation to this, the general conclusions of merely eight pages are somewhat surprising.

Part I deals with the origin and history of *forum non conveniens* (pp. 79-156). Although the origin of *forum non conveniens* is vague, most authors agree that the doctrine was developed by Scottish courts in the 19th century. The author sets out the development of *forum non conveniens* in the case-law of the Scottish courts and, in addition, briefly pays attention to ‘abuse of process’ and *forum conveniens* in England and the development of the doctrine in the case-law of the US. From this it seems that *forum non conveniens* is closely related with and influenced by the use of wide jurisdictional rules. The more jurisdictional grounds liberalised, the more the need for and use of *forum non conveniens* increased.

Part II deals with the contemporary practice of *forum non conveniens* in international civil litigation (pp. 161-515). The author gives an overview of legal practice in the US, England, Australia and – briefly – in the hybrid law systems of Quebec, Japan and Israel. This part contains a useful comparative overview of the elements the court takes into account (e.g., private and public factors), the conditions under which the court declares itself *forum non conveniens* (e.g., the existence of an alternative forum in which the case can be adjudicated) and the consequences of granting or denying *forum non conveniens*. The author points out that the continental states within the European Union generally are unfamiliar with a general rule of *forum non conveniens*. However, an exception can be made for the Netherlands (pp. 444-446), at least until 1 January 2002. Until that time a general *forum non conveniens* rule for petition cases could be found in Article 429c(15) of the Dutch Code of Civil Procedure. Mostly *forum non conveniens* applied in cases involving family law, except divorce cases (Art. 814 para. 2 ancient Dutch Code of Civil Procedure). The competent Dutch court declared itself *forum non conveniens* if the petition was not sufficiently connected with the jurisdiction of the Netherlands. However, it should be mentioned that the Dutch Code of Civil Procedure was fundamentally revised on 1 January 2002. *Forum non conveniens* is no longer a general exception in petition cases, but it can still be used as an instrument in cases of parental responsibility concerning minors (Art. 4(3)(b) and Art. 5 of the new Dutch Code of Civil Procedure). Regarding matters of parental responsibility concerning children, Nuyts discusses EC-Regulation No. 1347/2000 on Jurisdiction and the Recognition and Enforcement of Judgments in matrimonial matters and the matters of parental responsibility (‘Brussels II’). As mentioned above, this regulation has been replaced by EC-Regulation No. 2201/2003 (‘Brussels II-A’) with effect from 1 March
Although the final text of Brussels II-A was at that time not yet published, in my opinion, the author could have paid attention to the then known draft text of Brussels II-A, since it includes the possibility of transfer on *forum non conveniens*-grounds. In matters of parental responsibility the general rule on jurisdiction is given in Article 8(1) Brussels II-A: the courts of a Member State shall have jurisdiction over a child who is habitually resident in that Member State at the time the court is seized. There are a couple of exceptions to this general rule, for example the continuing jurisdiction of the courts of the Member State of the child’s former habitual residence (Art. 9) and jurisdiction based on prorogation (Art. 12) or the child’s presence (Art. 13). Article 15 Brussels II-A gives a procedural rule on the subject of *forum non conveniens*. The courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, transfer the case to this court. The possibility of transfer is restricted to exceptional cases and must be in the best interests of the child. When the court of that other Member State accepts jurisdiction, the court first seized shall decline jurisdiction. It would have been interesting to see if and in which way this *forum non conveniens*-provision differs from its counterpart in common law.

In the last part (III) of this study the author reflects on the future of *forum non conveniens* (pp. 517-902). Brief attention is paid to the judgments project of the Hague Conference on Private International Law and the role of *forum non conveniens* in this respect. Finally, the author extensively considers the justifications and functions of *forum non conveniens*, such as the need of proximity, discouraging the misuse of international jurisdictional rules and the achievement of international coordination and judicial harmony. According to Nuyts, *forum non conveniens* could in some fields operate within the international jurisdictional rules of civil law systems.

This study could be characterized as a splendid performance of Nuyts, describing in great detail and, at times, criticizing the application of *forum non conveniens* in particular in common law systems. The author incorporated an enormous amount of literature from all jurisdictions. Certainly, it is a valuable source for practitioners of private international law, academics, and for both claimants and defendants as well. One minor point is the enormous size of the study, which does not always enable the reader to find his or her way in this book.

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1. As early as 1979 the study of C. Blum, *Forum non conveniens, Eine Darstellung der anglo-amerikanischen Doktrin und die Anwendungsmöglichkeiten im kontinentalen Recht am Beispiel der Züricher Zivilprozessordnung* (Zürich, Schulthess Polygraphischer Verlag 1979),
was published. In the following years other studies on this subject emerged, such as P. Huber, *Die englische Forum-Non-Conveniens-Doktrin und ihre anwendung im Rahmen des Europäischen Gerichtstands- und Vollstreckungübereinkommen* (Berlin, Duncker & Humblot 1994), C. Dorsel, *Forum non conveniens: richterliche Beschränkung der Wahl des Gerichtstandes im deutschen und amerikanischen recht* (Berlin, Dunker & Humblot 1996) and M. Niegisch, *Die Doktrin forum non conveniens und das EuGVÜ im Vereinigten Königreich* (Aachen, Shaker Verlag 1996).


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This second edition of *The Maritime Political Boundaries of the World* differs substantially from its first edition, which was published by Professor Prescott in 1985. The present edition still consists of two basic parts. Part I deals with the legal regime of baselines, the outer limits of maritime zones and their delimitation between states. Part II looks at the delimitation of specific maritime boundaries between states. The changes in Part I probably are the most far reaching. A number of new chapters have been added and some others have been removed. A separate chapter now deals with the provisions on islands contained in Article 121 of the United Nations Convention on the Law of the Sea, focusing, in particular, on its paragraph 3 on rocks. The discussion on baselines, which originally was included in one chapter, is now divided into 4 chapters (dealing with the normal baseline, bays, straights baselines and archipelagic baselines respectively) in view of the wealth of literature on baselines which has appeared after the publication of the first edition (p. 3). For similar reasons, the one chapter dedicated to maritime boundaries in the 1985 edition has been expanded into three chapters dealing with, respectively, principles and methods, disputes and their resolution and technical and practical considerations (ibid.). A chapter dealing with issues arising under Article 76 of the LOS Convention on the definition of the continental shelf has been added. After the entry into force of the LOS Convention in 1994, the Commission on the Limits of the Continental Shelf (CLCS) has been set up to deal with submissions of coastal states in respect of the outer limits of their continental shelf beyond 200 nautical miles. Both the application of the substantive and procedural rules to establish these outer limits raise a number of complex legal issues.

The structure of Part II of the book dealing with specific maritime boundaries in the various regions of the world has been maintained to a large extent, but has been updated
to take into account developments after the publication of the first edition. Otherwise, as
the authors indicate, the regional chapters have been modified in two ways (p. 4). They
no longer considered it necessary to deal in detail with delimited maritime boundaries, in
view of the fact that these are analyzed in considerable detail in the multivolume publica-
tion International Maritime Boundaries, the first two volumes of which were published in
1993 and the latest volume (Volume V) in 2005. Instead, attention is focused on bound-
daries upon which no agreement has yet been reached. Taking into account that of more
than 400 potential maritime boundaries less than half have been delimited, this remains
a formidable task. Secondly, the role of straight baselines in maritime boundary delimita-
tions is given less attention in this second edition, because a number of other publications
give extensive attention to this matter and straight baselines in most cases have a subordi-
nate role in the delimitation of maritime boundaries between states. Consequently, straight
baselines are only given attention when they are a consideration in boundary negotiations
(ibid.).

Chapter 2, the first chapter of Part I, starts with an overview of the various maritime
zones existing under the law of the sea, setting out in general terms the rules applicable
to the establishment of the limits of each zone and the legal regime within each of these
zones. A subsequent section gives an overview of how many coastal states have claimed
specific maritime zones, and, if relevant, how they have defined the outer limit of these
maritime zones (e.g., by reference to a specific distance from the baseline or up to the
maritime boundary with a neighboring state).

The next chapter sets out the geographical factors that influence the extent of maritime
zones of coastal states and forms an introduction to the subsequent chapters dealing in
more detail with individual geographical factors. In chapter 3 these factors are grouped
in two categories: those encouraging the definition of a stable baseline as far seaward as
possible and coastal characteristics that assist extensive maritime claims.

The first chapter dealing with individual geographical factors looks at islands and
rocks. After a short discussion of what constitutes an island under the law of the sea, most
of the chapter is concerned with Article 121(3) of the LOS Convention which provides
that ‘[r]ocks which cannot sustain human habitation or economic life of their own shall
have no exclusive economic zone or continental shelf’. Two conclusions of that analysis
merit some further attention. One is that the travaux préparatoires of Article 121(3)
‘do not explicitly support a liberal interpretation of the term “rock” to include cays and
barren islands. On balance that source supports a strict interpretation of the term’ (p. 88).
Whether this interpretation of the term is really supported by the travaux is doubtful. At
most, the travaux would seem to show that there was no clear understanding about the
implications of the term and as much seems to be admitted by Prescott and Schofield
(p. 74). In such circumstances, it would not seem to be appropriate to employ the travaux
in the interpretation of the term ‘rock’ in Article 121(3). Under the Vienna Convention
on the Law of Treaties2 the travaux are only a supplementary means of interpretation.
Admittedly, the general rules of interpretation contained in the Article 31 of the Vienna
Convention also would not seem to provide a ready answer to the meaning of the term
'rock', but that Article would have to be the starting point of the analysis. If anything, it could be argued that the *travaux* support that a strict interpretation of the term ‘rock’ would lead to a result ‘which is manifestly absurd and unreasonable’.\(^3\)

A second point of interest in the analysis of Article 121(3) is the view that it ‘appears that rocks belonging to an archipelagic state may also be used to generate extended maritime claims even if they are distant from other parts of the archipelago and are not incorporated in a system of archipelagic baselines’ (pp. 88-89). Two arguments are advanced to support this conclusion. One is the fact that Article 47(1) of the LOS Convention concerning the drawing of straight archipelagic baselines refers to ‘may’ and ‘drying reefs’. It is argued that ‘it is inconceivable that states, that decided not to draw archipelagic baselines or were unable to satisfy the tests in Article 47, would be prevented from using the outermost points of the outermost islands and drying reefs as normal baselines’ (p. 84). In addition, the fact that drying reefs can act as baseline points indicates that rocks are similarly entitled in this respect (ibid.). These arguments do not seem to be wholly convincing. Article 47 is only concerned with the drawing of archipelagic straight baselines and there is nothing in the Convention to indicate that Article 121 is not applicable to archipelagic states. It also can be noted that Article 121(3) does not exclude certain features from being used as a baseline, but provides that they do not have the full suite of maritime zones. Another argument provided by Prescott and Schofield to support their contention concerns the *travaux*, which show that Article 121(3) was not intended to apply to archipelagic states (p. 85). Apart from the fact that also in this case this calls into question the role of the *travaux* of a treaty in its interpretation, it is the question whether the *travaux* unequivocally support this interpretation. For instance, statements of New Zealand on a proposal it submitted to the Third United Nations Conference on the Law of the Sea with three other Pacific island states rather suggest that Article 121(3) was considered to be generally applicable.\(^4\)

Chapter 5 is concerned with the normal baseline (i.e., the low-water line along the coast as defined in Article 5 of the LOS Convention), including fringing reefs and low-tide elevations covered by, respectively, Articles 6 and 13 of the LOS Convention. The chapter, among others, explores the relationship between the low-water line as indicated on a chart and the actual low-water line and the problem of ice-bound coasts. This latter issue has attracted renewed attention in connection with the preparation of the submission by Australia to the CLCS, which included the Australian Antarctic Territory.

The establishment of the baseline for measuring the breadth of the territorial sea in the cases of bays, mouths of rivers, ports and roadsteads is discussed in chapter 6. Almost all of this chapter is concerned Article 10 of the LOS Convention on bays. This Article, which sets out specific rules for the drawing of closing lines in bays, has been the focus of much scholarly debate and a number of court cases. The chapter provides an informative discussion of Article 10 in the light of these materials.

In connection with the discussion of straight baselines in chapter 7, it is observed that the large amount of state practice which seems to deviate from Article 7 of the LOS Convention concerning straight baselines has bent the rules of this provision out of shape.
It is argued that this should surprise no analyst, as the ‘terms of Article 7 are so impre-
cise that it would be possible for most countries to draw straight baselines along some
or all of their coastlines. Nor would such countries need to invent new interpretations of
terms in Article 7, because existing baselines provide all the justifications in terms of state
practice and precedents that any country could need’ (p. 142). Still, the authors proceed to
a detailed analysis of the various provisions of Article 7, one reason being that there are
a number of states with a vested interest in resisting excessive coastal state claims, and
the other that the legality of straight baselines may be an issue in bilateral negotiations
on maritime boundaries (pp. 142-143). The analysis which follows is generally critical
of studies which argue for a restrictive interpretation of Article 7. Interestingly, consider-
able weight is attached to state practice in this connection. In their conclusion, Prescott
and Schofield suggest that the trend of excessive baselines now has become irreversible
(pp. 162-164). However, although state practice in this respect might at first glance be
impressive some comments are possible. First, the authors submit that since the judgment
of International Court of Justice (ICJ) in the Anglo-Norwegian Fisheries case there has not
been any significant clarification of Article 7 in the case law (p. 162). However, although
no specific straight baselines claims have been scrutinized by the Court since then, in its
judgment on the merits in the Qatar v. Bahrain case the Court observed

‘the method of straight baselines, which is an exception to the normal rules for the
determination of baselines, may only be applied if a number of conditions are met.
This method must be applied restrictively. Such conditions are primarily that either
the coastline is deeply indented and cut into, or that there is a fringe of islands
along the coast in its immediate vicinity.

... The Court does not deny that the maritime features east of Bahrain’s main islands
are part of the overall geographical configuration; it would be going too far, how-
ever, to qualify them as a fringe of islands along the coast. The islands concerned
are relatively small in number.’

These pronouncements clearly suggest that the Court does not share the liberal inter-
pretation of the rules concerning straight baselines that a considerable number of states
have adopted. Although the judgment should not be expected to have any immediate
impact on state practice, the Court is likely to rely on it if there is any future case
requiring a ruling on the validity of straight baselines. Some comments on this aspect of
the judgment in the Qatar v. Bahrain case would have been welcome.

Secondly, it has to be considered whether state practice has actually had the effect
of ‘bending the rules of article 7 out of shape’. As a recent analysis points out, there
are cogent arguments indicating that the impact of state practice inconsistent with the
Convention, including that on straight baselines, has had a limited effect, the main gist
of the argument being that inconsistent state practice has to be seen in the whole context
which is relevant for establishing its legal implications.

Chapter 8 of the book discusses the regime of archipelagic baselines and the naviga-
tional rights existing in the waters enclosed by such baselines. As Prescott and Schofield note (p. 181), in this case state practice seems to conform to the rules of the LOS Convention to a much greater extent that in the case of straight baselines.

Chapter 9 is concerned with the definition of the continental shelf contained in Article 76 of the LOS Convention. This mostly concerns the establishment of the outer limits of the continental shelf, where this maritime zone extends beyond 200 nautical miles from the baseline. In a discussion of the location and nature of the continental shelf beyond 200 nautical miles, it is noted that in a large number of areas there exist overlapping entitlements of coastal states. This issue has been dealt with by the CLCS, drawing up specific provisions in its Rules of Procedure. The five submissions that have been made thus far to the CLCS all have been influenced in some part by the existence of overlapping entitlements. The authors offer some examples of how states actually have approached or may approach this issue in making a submission to the CLCS. The chapter also includes a discussion of the characterization of the role of the Commission in the process of establishing outer limits. Prescott and Schofield tend to agree with McDorman, who has concluded that the role of the Commission mainly should be limited to making exaggerated claims less likely and if they occur, less successful (p. 193). The analysis of the substantive provisions of Article 76 makes reference both to earlier discussions in the literature and, to a more limited extent, the Scientific and Technical Guidelines drawn up by the Commission.

The three final chapters (10-12) of Part I deal with different aspects of the delimitation of maritime boundaries between states. The first of these chapters deals with principles and methods of delimitation. The part on principles mainly discusses the dominant role of coastal geography and the meaning of the term ‘relevant circumstances’. The part on methods concentrates on the various types of equidistance lines and a number of other delimitation methods that have been employed in state practice and the case law. Quite understandably, considerable attention is devoted to the changes in approach in the case law over the past decades as far as the role of the equidistance method is concerned. In state practice, equidistance has always been applied much more than other methods. As the authors note, the reasons for this relate to ‘its mathematical precision, lack of ambiguity and its accordance with equity where the parties’ coastlines are broadly comparable’ (p. 240). The recent shift in the case law of starting the delimitation process with the drawing of a provisional equidistance line both for opposite and adjacent coasts and then looking at whether there are any circumstances that would require a shift of such a line is welcomed by the authors (p. 241). Chapter 11 examines maritime boundary disputes and the options for their resolution. The chapter provides a useful overview of the causes of disputes (e.g., legal uncertainty, disputed sovereignty and access to resources) and of the various dispute settlement mechanisms available to states. The chapter includes a table (pp. 265-284) giving an overview of sovereignty disputes over islands, including a synopsis of the legal claims of the states concerned and the history of each dispute. This overview is clear evidence of the number of such disputes actually awaiting resolution and the large impact such disputes may have on the
delimitation of maritime boundaries. Chapter 12 deals with a number of technical (e.g., the importance of significant figures, datum issues and the various types of ‘straight’ lines) and practical considerations related to the delimitation of maritime boundaries between states. The section on practical considerations has the purpose of outlining the key stages involved in maritime boundary negotiations (p. 305). This chapter offers a useful introduction for those who are interested in these aspects of maritime boundary delimitation.

Part II of the book, which consists of 11 chapters, each dealing with a separate region, considers the delimitation of specific maritime boundaries between neighboring states. As was pointed out above, the focus of Part II is on undelimited maritime boundaries. Although this implies that a large number of bilateral boundary relations do not have to be considered, the number of maritime boundaries on which no agreement has been reached is such that available space allows a discussion of just a number of paragraphs. In their analysis, the authors in each case first construct a line of equidistance taking into account all relevant coastal features. They then make an assessment whether either state involved might have reasons for arguing the equidistance line produced an inequitable outcome (p. 4). This is a highly sensible approach as it facilitates the comparison of different bilateral cases and different regions and would also seem to be in line with the approach the ICJ has taken in a number of recent maritime delimitation cases. Still, the approach actually advanced by the Court is slightly different, as it has observed that ‘under existing law, it must be demonstrated that the equidistance method leads to an equitable result in the case in question’.

A couple of examples seem to illustrate that Prescott and Schofield possibly may give somewhat too much weight to equidistance in their evaluation of the possible outcomes of the specific case. For instance, in their discussion of the maritime delimitation involving the Danish island of Bornholm and the opposite Polish mainland coast in the Baltic Sea, they conclude that there seems to be little reason to depart from equidistance. The reasons they invoke are that this method has been overwhelmingly invoked in the Baltic Sea, an equidistance line has been used in other delimitations involving Bornholm, and that Bornholm is a relatively large island with a population of around 44,000 and thus is not an inconsequential islet that could be easily discounted (pp. 377-378). The first two reasons would not seem to have any relevance under maritime delimitation law. As far as the latter argument is concerned, without disputing the figures the authors present in respect of Bornholm, it would seem to be quite possible to argue that there is a considerable difference in the length of the relevant coast of the island of Bornholm and the relevant Polish coast. This would seem to require serious consideration of the question if this is a case in which the equidistance line leads to an equitable result.

Another example is provided by the delimitation between Brunei Darussalam and Malaysia in the South China Sea. Prescott and Schofield submit that equidistance leads to an equitable result as far as the delimitation of the water column is concerned (p. 455). However, as the two lateral equidistance lines between Brunei and Malaysia
meet relatively close to the coast, it could be questioned whether this method leads to an equitable result in view of the overall coastal relationship between both states, or whether some other method should be applied for part of the boundary to avoid a cut-off effect as far as the maritime zones of Brunei are concerned.

One final example of the complexities involved in some pending delimitations concerns the delimitation between the Bahamas and Cuba. In this case the authors argue that Cuba might refrain from claiming a line of equidistance as the maritime boundary as this would deliver it part of the Great Bahama Bank. Apart from a reference to the fact that both states are archipelagic states, the only justification for such an approach would seem to be that Cuba is separated from the Great Bahama Bank by the Bahama Channel (p. 335). Whether this is a convincing argument can be doubted. In addition, it should be noted that this case would require a consideration of the impact of potential archipelagic baselines of the Bahamas and the fact that a strict equidistance line lies between the island of Cuba and islands in its immediate vicinity on the one hand, and a number of mostly small islands on the Bahaman side on the other hand.

The above in no way is intended to detract from the value of the exercise carried out in Part II of *The Maritime Political Boundaries of the World*. Part II is a highly useful reference guide to outstanding delimitations, on which in a number of cases hardly any information is readily available in the public domain. What the above comments intend to illustrate is that one should be careful not to accept the suggested outcomes at face value.

As far as an overall assessment is concerned, this book is a very useful reference guide for anyone interested in issues related to maritime limits. In this connection reference should also be made to the fact that there is an overview of literature at the end of each chapter and a set of over more than 100 illustrative maps at the end of the book, to which numerous references are included throughout the book. At the same time, as any reference work, it necessarily deals with some issues in a cursory matter. As the present review points out, the approach the authors take to some legal issues gives rises to some question and some of their conclusions as a consequence are debatable. Still, that may to some extent be inevitable in a book dealing with so many, at times highly controversial, issues and should not deter people from consulting it.

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7. Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf (Doc. CLCS/11 of 13 May 1999; Doc. CLCS/11/Add.1 of 3 September 1999; Doc. CLCS/11/Corr.1 of 24 February 2000). The Guidelines provide that they aim to clarify the scope and depth of admissible scientific and technical evidence to be examined by the Commission during its consideration of submissions (ibid., para. 1.2).


9. The boundaries of the continental shelf between both states have been (partially) delimited.


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Dr Yuval Shany, a Lecturer at the College of Management, Academic Studies Division, Israel, has provided an original and very useful study on an important topic in the field of the international conflict of laws. The book is an edited version of the doctoral thesis Shany wrote at the School of Oriental and African Studies at the University of London under the supervision of Professor Philippe Sands. The volume constitutes the first number in a series published by Oxford University Press devoted to international courts and tribunals.

Traditionally, the field of what is sometimes either called conflict of laws or private international law has had as its principal focus the interplay amongst municipal legal systems. Additionally, public international law has long had an interest in the relationship between international and municipal law and process. What is new in the last several decades is an emerging concern about the inter-relationship of different forms of international legal process. It is to this third topic that Shany’s book is addressed.

That there are an increasing number of real and potential conflicts between different sorts of international legal process is affirmed simply by a listing of some of the international legal tribunals on the playing field today. Shany mentions, for example, eighteen of these (at least!) in his Introduction: the International Court of Justice, the European Court of Justice, the European Court of Human Rights, the Inter-American Court of Human Rights, the International Tribunal for the Law of the Sea, the Appellate Body of the World Trade Organization dispute settlement system, the Court of the European Economic Area, the Central American Court of Justice, the Economic Court of the Commonwealth of Independent States, the Court of Justice of the Commonwealth of
Eastern and Southern Africa, the International Criminal Court, the Court of Justice of the Economic Community of West Africa, the Caribbean Court of Justice, the MERCOSUR Permanent Court of Review, the African Court on Human and Peoples’ Rights, the International Criminal Tribunal for the Former Yugoslavia, the Permanent Court of Arbitration, and the International Centre for Settlement of Investment Disputes (pp. 1-11).

The author does an excellent job in setting out and elaborating the nature and theoretical bases of the problems that can arise amongst all these international courts and tribunals in his first three chapters: 1. What Constitutes Competing Proceedings (pp. 19-28), 2. Delineation of Jurisdictional Overlaps: Theory and Practice (pp. 29-74), and 3. Jurisdictional Competition in View of the Systematic Nature of International Courts and Tribunals (pp. 77-127). After this review, he correctly concludes, that ‘international courts and tribunals constitute either a very loosely structured system or a group of unorganized elements operating within a larger systematic context, [and] are probably located somewhere in the middle of the scale between a full-fledged judicial system and an assortment of unrelated judicial bodies having some common features’ (p. 116). He accordingly suggests a moderate degree of international regulation of international judicial competition (pp. 117-127).

The remainder of the book is devoted to introducing and testing various principles and devices that have been and might be used to regulate such competition: 4. Jurisdiction – Regulating Norms Governing Competition Involving Domestic Courts: Should They be Introduced into International Law? (pp.128-175), 5. Competition – Regulating Norms Found in Instruments Governing the Jurisdiction of International Courts and Tribunals (pp. 179-228), 6. Jurisdiction-Regulating Norms, Derived from Sources Other than Treaties, asApplied by International Courts and Tribunals (pp. 229-271), and 7. Possibilities for Future Improvement (pp. 272-288). The topics most exhaustively considered are methods of jurisdictional selection, e.g., by the parties, by treaties, and by case law, and rules about the finality of judgment.

The book relies heavily and expertly on detailed evidences of the law of international conflict of laws in such a manner as to be extraordinarily useful to those lawyers and judges who will be vexed with these problems in the future. All in all, Shany has provided us with a theoretical analysis and a compendium that is a wonderful contribution to the literature and practice of international law.

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