THE LAW OF THE SEA. By R.R. Churchill and A.V. Lowe. 1988. Manchester: Manchester University Press. xxxvii + 370 pp. £45. ISBN 0 7190 2634 2.

THE MEDITERRANEAN CONTINENTAL SHELF: DELIMITATION AND LEGAL REGIME. Edited by Umberto Leanza and Luigi Sico. 1988. Dobbs Ferry: Oceana. 4 vols. U.S. $250.00.

THE FISHERIES REGIME OF THE EXCLUSIVE ECONOMIC ZONE. By M. Dahmani. 1987. Dordrecht: Martinus Nijhoff. xi + 188 pp. U.S. $71.50. ISBN 90 247 3374 X.

EEC FISHERIES LAW. By R.R. Churchill. 1987. Dordrecht: Martinus Nijhoff. xxviii + 294 pp. U.S. $80.00 ISBN 90 247 3545 9.

THE TURKISH STRAITS. By Christos L. Rozakis and Petros N. Siagos. 1987. Dordrecht: Martinus Nijhoff. xviii + 200 pp. U.S. $60.00.

NORTHWEST PASSAGE: THE ARCTIC STRAITS. By Donat Pharand. 1984. Dordrecht: Martinus Nijhoff xxii + 199 pp. U.S. $44.00. ISBN 90 247 2979 3.

THE LAW OF THE SEA AND INTERNATIONAL SHIPPING. Edited by W.E. Butler. 1985. Dobbs Ferry: Oceana. x + 432 pp. U.S. $45.00. ISBN 0 379 20782 8.

MARINE AFFAIRS BIBLIOGRAPHY. Edited by Christian L. Wiktor and Leslie A. Foster. 1987. Dordrecht: Martinus Nijhoff. xv + 685 pp. U.S. $189.00 ISBN 90 247 3570 X.

One of the most complex treaties to have been adopted in recent times is the 1982 United Nations Convention on the Law of the Sea — UNCLOS — which took ten years in the making and contains 310 Articles divided into 17 Parts, to which are added no less than 9 Annexes. The result has been a proliferation of works on the law of the sea of which those listed above constitute a very small selection. Of them, the most general is that by Messrs. Churchill and Lowe which seeks to analyse the new treaty against its background in relatively straightforward language. As such, it may be as well to treat it as an umbrella work fitting in the others as they become relevant.

It will probably come as a surprise to many readers to find that the table of treaties prepared by Churchill and Lowe extends over 20 pages, commencing with the Treaty of Tordesillas, 1494, concerning Pope Alexander VI's division of the Atlantic between Spain and Portugal, and concluding with the 1978 Treaty of Moresby on fisheries, signed between certain Pacific island states and the United States. Apart from the analysis of the 1982 Treaty and descriptions of the law as it affects such matters as baselines, the territorial sea, the exclusive economic zone, fisheries and the rest, the authors have provided a short but interesting introduction giving a quick survey of the significance of these, both for the individual and the state, as well as a bird's eye view of the historical process of creating the modern law of the sea, which is increasingly developing

along 'functional' rather than 'zonal' lines,[1] as may be seen by the recent United States extension of its territorial sea on the basis of UNCLOS while continuing to refuse to recognize it as law.

Churchill and Lowe point out the extent to which law reflects practical realities, and this is "particularly apparent in relation to the law of the sea. From the early seventeenth century up to the end of the nineteenth century the seas were largely subject to a *laissez-faire* regime: beyond the narrow belt of coastal seas, the high seas were open to free and unrestricted use by all. Such a regime reflected the interests of the dominant European powers of the period in promoting seaborne trade and maintaining communication with their colonies.[2] Such a *laissez-faire* regime was also adequate for the two main uses of the sea — navigation and fishing — during this period. . . . In the twentieth century this has all changed. The traditional hegemony of the European States has been challenged both by the emergence of the two Superpowers . . . and by the nationalism and demands for economic autonomy of the developing countries. . . . Furthermore, the use of the sea, as a result of developments in technology and an increasing demand for resources, have multiplied and intensified, with increased possibilities for conflict."[3]

As a general statement concerning the exercise of jurisdiction and sovereignty in regard to the law of the sea, the authors point out that "although a state may legislate for its ships wherever they might be, it will not enforce its law against its ships when they are in a foreign state's internal or territorial waters, because to do so would violate the other State's sovereignty: if it wishes to take enforcement action against such ships, it must wait until they leave the foreign waters."[4] This statement is in accord with what has always been considered a correct exposition of the legal situation. However, recent statements by the United States concerning the seizure of drug traffickers and terrorists indicate that national law may override these international rules, and whether such a rule would in fact be observed is an issue of national policy, regardless of international law. Moreover, the United States has made it clear that its rejection of such rules of customary law may well be the first step in the development of a new rule of customary international law — even though some may consider it to be the negation of established concepts of international law and sovereignty. This attitude of the United States, which is probably acceptable by most states for themselves, despite their criticism of the United States for its open avowal of such a policy, is important in approaching UNCLOS, for "some parts . . . reflect pre-existing customary international law, and other parts which went beyond previous practice have already passed into customary law: in both cases such provisions may, as customary law, bind States whether parties to the Convention or not and whether the Convention has entered into force or not."[5] It would be interesting to know whether countries which have

1. Churchill and Lowe, *The Law of the Sea* (Manchester: Manchester University Press, 1988) at 1.
2. See, for example, the Trudeau proclamation of 18 april 1970, 9 International Legal Materials 600, 602-4.
3. *Supra*, note 1 at 2.
4. *Ibid.* at 10.
5. *Ibid.* at 19.

not signed UNCLOS would concede this, for they, it may be assumed, would argue, even more vehemently than has the United States in the field just referred to, that they may disregard such rules since, in their view, they do not amount to customary law.

It is impossible in the space of a review to comment upon each of the sections into which *The Law of the Sea* is divided. It will suffice to comment on some of the most significant areas. Churchill and Lowe provide an interesting analysis of the methods by which baselines are measured and remind us that while Canada claims Hudson's Bay as an historic bay, this claim is challenged by the United States, which itself claims Chesapeake and Delaware Bays as historic.[6] As to islands, they point out that each of these possesses its own territorial sea, so that "every islet or rock, or rather the low-water mark around it, will serve as part of the baseline."[7] It is perhaps unfortunate that they do not discuss the problem of St. Pierre and Miquelon in this connection. As to innocent passage through the territorial sea, the authors remind us how, in the past, difficulties have arisen in defining 'innocence',[8] and suggest that the reference to activities "not having a direct bearing on passage" in Article 19 of UNCLOS may have reduced the right from what was recognized in earlier customary and conventional law. While coastal states may deny passage in given circumstances, they must not 'hamper' passages which are innocent, and this rule "is of general application and would, for example, operate so as to prevent unreasonable interference with innocent passage by the establishment of installations in the territorial sea."[9] With regard to passage through straits UNCLOS recognizes that a number of littoral states are concerned about damage resulting from the passage of large tankers and, therefore, this issue is now dependent upon the articles relating to 'transit'[10] and 'archipelago sea lanes passage',[11] so that today any analysis of the problem of innocent passage requires consideration of the nature of the waters through which such passage is claimed.

There are straits which have been the subject of international regulation, but of which the international legal status seems to have declined in recent years. Perhaps the most famous are those at the entrance of the Sea of Marmara and the Black Sea, the subject of discussion by Professors Rozakis and Siagos in their *The Turkish Straits*.[12] The bulk of this small work is devoted to the history of the regulation of these straits with particular reference to the Treaty of Lausanne and the Montreaux Convention, 1936. From the point of view of the modern reader the most important chapter is the last dealing with the situation since 1945, drawing attention to the extent to which U.S.-Soviet rivalries have made any attempt to update Montreaux impossible to achieve. Despite recent apparent lip-service by the Soviets with regard to the restrictions upon the passage of such vessels as aircraft carriers, it would seem that the major powers

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6. *Ibid.* at 37.
7. *Ibid.* at 41.
8. *Ibid.* at 69-71.
9. *Ibid.* at 84.
10. *Ibid.* at 90-93.
11. *Ibid.* at 105-6.
12. C.L. Rozakis and P.A. Siagos, *The Turkish Straits* (Dordrecht: Martinus Nijhoff, 1987).

are no longer really interested in preserving the regime established in 1936, so that "for all cases in which the convention is applied in an environment of political dissension between states [e.g., the Israel-Arab confrontations, Korea, Vietnam] Turkey and the other parties concerned will make selective use of the Montreaux provisions. Both the obsolescence of the convention and the great degree of subjective interpretation allowed will reinforce such practice."[13] Despite its obsolescence, it would appear that the major powers are not willing to see the balance established in 1936 disturbed. However, the authors do not suggest that the regime to be applied should be that of UNCLOS. In fact, they seem expressly to reject such a development. They call for revision of the Convention to enable it to reflect present-day political relationships, for "[a]rbitrary interpretation of the convention [by Turkey] could tend to identify the regime of the straits with the general regime evolving under international law. While such a development would not be a great evil in itself, it could, given the delicate political balance of the area, create friction and international consequences."[14] Surely, this is true of any contradictory claims of legal rights, whether maritime or other.

A strait which has been the subject of controversy during recent years, but which is not subject to any form of treaty regulation, is the Northwest Passage, claimed by Canada as territorial and thus outside the scope of UNCLOS.[15] Dr. Pharand is probably the world's leading authority on this particular stretch of water and he comments that during an 80-year period there were only 11 foreign transits, all of which were 'experimental' and made with Canada's consent, either express or implied. He maintains, therefore, that the Arctic Straits do not fall within the conspectus of international law and that, as a result, the right of innocent passage exists as it does in regard to any stretch of the territorial sea.[16] However, although the passage is not an 'international' waterway in the strict legal sense, since it is a strait joining two parts of the high sea, Canada's jurisdiction is subject to the UNCLOS provisions regarding such waters, and Article 234 of the Convention recognizes the special problems that arise "in ice-covered areas within the limits of the exclusive zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment would cause major harm to or irreversible disturbance of the ecological balance."[17] In view of this, "considering the potential impacts of year-round shipping of oil and gas on the ecologically sensitive areas in and adjacent to the Northwest Passage, Canada should acquire and maintain both *de jure* and *de facto* control over commercial shipping through the passage, with a view to preventing major harm to, or irreversible disturbance of, the ecological balance of those areas."[18] Similarly, attention should always be paid to the importance of preserving the rights of the Inuit inhabitants, especially as Canada "could then invoke such settlement in sup-

13. *Ibid.* at 131-2 and 136.
14. *Ibid.* at 136.
15. D. Pharand, *Northwest Passage: The Arctic Straits* (Dordrecht: Maritinus Nijhoff, 1984).
16. *Ibid.* at 102.
17. *Ibid.* at 108.
18. *Ibid.* at 158.

port of the validity of its sovereignty claim over the waters of its Arctic archipelago,"[19] which in turn would assist in enabling Canada to "develop an appropriate surveillance and protection capability in the area to insure its national security."[20]

It has long been recognized that coastal states enjoy a limited jurisdiction within the zone contiguous to their territorial sea,[21] but for some states the contiguous zone became absorbed within the continental shelf,[22] while in accordance with UNCLOS "the contiguous zone falls not within the high seas but within the EEZ [Exclusive Economic Zone]. The consequence is that the presumption against coastal state jurisdiction is removed,"[23] and in this Zone, "which extends up to 200 miles from the baselines, . . . the coastal State enjoys extensive rights in relation to natural resources and other jurisdictinal rights, [while] third States enjoy the freedoms of navigation, overflight by aircraft and the laying of cables and pipelines."[24] But before the EEZ became significant, the concept of the continental shelf was evolving from a purely geographic to one of a legal character. This doctrine may be traced back to Latin American claims of the forties as well as the Truman Proclamation of 1945. The *Abu Dhabi* arbitration, 1952, indicated the significance of this concept when states lacked a shelf, and by the time of the first Geneva Convention on the law of the sea, 1958, the doctrine had developed to an extent that a separate Convention on the shelf was drawn up, recognizing that even countries which lacked a shelf in the geographic sense, or were unble to exploit any shelf they might possess, could lay claim to sovereignty over an area extending seawards to a depth of 100 fathoms. The *North Sea Continental Shelf* cases, 1969, showed that the problem of delimitation of adjoining or overlapping shelf claims was general in character and the World Court established the principle of division on the basis of equity. Later, the Court was faced with delimitation disputes in the Mediterranean, between Libya and Tunisia in 1982, and Libya and Malta in 1985. Those interested in examining the problem regionally as it affects the Mediterranean area will find the documentation provided in the four volumes compiled by Professors Leanza and Sico of inestimable value,[25] for no less than eighteen countries bordering that Sea have issued proclamations or enacted legislation concerning their claims to the continental shelf and territorial sea.

As has been suggested, to some extent the claims over the continental shelf have been absorbed by recognition of an exclusive economic zone, the concept of which is recent in origin,[26] as is the idea of an international seabed area.[27] The latter is to be subject to an International Seabed Authority,[28] which

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19. *Ibid.* at 159.
20. *Ibid.*
21. Churchill and Lowe, *supra*, note 1, c.7.
22. *Ibid.*, c.8.
23. Pharand, *supra*, note 15 at 118.
24. *Ibid.* at 133.
25. U. Leanza and L. Sico, *The Mediterranean Continental Shelf: Delimitation and Legal Regime* (Dobbs Ferry: Oceana, 1988).
26. *Chichill and Lowe*, *supra*, note 1, c.9.
27. *Ibid.*, c.12.
28. *Ibid.* at 188-197.

is under an obligation to ensure that this " 'common heritage' [— the international seabed area —] would be exploited for the benefit of 'mankind as a whole,' and not simply for industrialized States,"[29] on whose technology its exploitation depends. It is the provisions concerning the seabed and the Authority that are primarily responsible for the refusal by the United States among others to become parties to the 1982 Convention. Agitation for recognition of rights to the 'common heritage' has largely come from the developing states, just as they are among the states most concerned with achieving access for 'landlocked and geographically disadvantaged states.'[30] However, Churchill and Lowe suggest that rights granted to such states, "particularly those relating to access to the living resources of neighbouring EEZs and to transit, are subject to so many qualifications and limitations and are expressed in such imprecise language that it is doubtful how much practical benefit they will give (as a matter of law) to landlocked and geographically disadvantaged States."[31]

A list of the landlocked and geographically disadvantaged states is to be found in Dahmani's *Fisheries Regime of the Exclusive Economic Zone*,[32] together with a table indicating their annual nominal catches from 1977 to 1980.[33] The recognition of the EEZ and the rights of coastal states therein has created a multitude of problems, particularly economic, for those nations which have habitually fished in what has now become a reserved area. UNCLOS goes into great detail concerning conservation and exploitation of the living resources of the EEZ, and Dr. Dahmani's short monograph is devoted to examining the manner in which the conflicting rights of littoral and fishing states in this area are to be coordinated and adjusted. He concludes that while the "coastal state is solely responsible for the conservation of the fish-stocks and the promotion of their optimal utilisation, [t]he requirement in this respect that it should maintain the stocks at the level of maximum sustainable yield is more in the nature of a moral dictum than an enforceable obligation, so that the prospects of rational use and exploitation remain entirely within its hands and self-interest."[34] By way of contrast to this cynicism, it is interesting to note that long before UNCLOS was adopted the European Economic Community recognized the importance of regional action for the conservation of European fisheries. In accordance with the Treaty of Rome, the Community had adopted, by 1970, a Common Fisheries Policy concerning equal access, conservation, coordination of policies and regional marketing,[35] but the "extension of limits off Iceland, the USA, Canada and Norway meant the closure of, or at least a reduction in fishing activities in, some of the most important distant-water fishing gounds for EEC vessels. Vessels from other States, too, were similarly affected, and there was a strong likelihood that such vessels would divert their activities to areas of the North Atlantic not subject to 200-mile limits, notably

29. *Ibid.* at 194.
30. *Ibid.*, c.18.
31. *Ibid.* at p. 327.
32. M. Dahmani, *The Fisheries Regime of the Exclusive Economic Zone* (Dordrecht: Martinus Nijhoff, 1987) at 182.
33. *Ibid.* at 183.
34. *Ibid.* at 156.
35. R.R. Churchill, *EEC Fisheries Law* (Dordrecht: Martinus Nijhoff, 1987) at 11.

the waters off EEC Member States. Since most fish stocks in these waters were already fully exploited, there would have been a serious danger of over-fishing resulting.''[36] This fear induced the Community in 1977 to persuade its members to extend their fishing zones to the 200-mile limit, that is to say to what was later recognized as the EEZ, and to authorize the Community to replace the individual Member States in international fishery commissions. Dr. Churchill's book provides an interesting account of how these developments took place and the significance for fishery management as well as the development of law as a result thereof, with the European Court playing a role in the development of this law,[37] although EEC fisheries law is far more comprehensive than the jurisprudence indicates.[38]

For those seeking a more detailed discussion of some of the issues created by UNCLOS and the effect of the new law on international shipping, the papers of an Anglo-Soviet symposium held at University College London in 1984 will prove attractive.[39] The papers are grouped under implementation jurisdiction, environmental protection and international shipping. This last group discusses issues of conflict of laws and maritime trade, and it is interesting to note that 'The Problem of World Maritime Trade and the Carriage of Dry Bulk Cargo' was the subject of comment by two Soviet lawyers. Equally significant is the final paper dealing with flags of convenience and open registration, drawing attention to some of the problems caused by the existence of such registries and those which would be faced, especially by the developing countries, if open registries were abolished, as well as those presented to them by the continuance of such registries.

The group of books here commented upon indicates in a small way the explosion that is now taking place in the doctrine of international maritime law, an explosion that we can expect to expand mightily as UNCLOS receives the ratifications necessary to bring it into force. This means that anyone working in the field is likely to be overwhelmed by the literature and will face great difficulties in finding material in which he/she may be especially interested. It is not only in regard to the law of the sea that bibliographical issues are not important. Air law, international criminal law, environmental law, institutional law, the law of armed conflict and the like all have specialised materials, and we must be grateful to the compilers of bibliographies for enabling us to find those materials which interest us, without spending undue lengths of time searching through library catalogues. Dr. Wiktor is already well-known for legal bibliographical compilation and he, with his research associate, has put us further in his debt with a new *Marine Affairs Bibliography*.[40] Although this only covers the period 1980-1985 it contains no less than 8953 entries, the last one of which concerns 'tunnels and bridges', in this case 'Europe's Missing Link: The Channel Tunnel', a 4-page article in Transportation Journal for 1983-4. Presumably once the tunnel is complete the literature will blossom.

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36. *Ibid.* at 12.
37. *Ibid.* at 44-45.
38. *Ibid.*, c.3.
39. W.E. Butler, ed., *The Law of the Sea and International Shipping* (Dobbs Ferry: Oceana, 1985).
40. C.L. Wiktor and L.A. Foster, *Marine Affairs Bibliography* (Dordrecht: Martinus Nijhoff, 1987).

In preparing this *Bibliography*, the compilers have culled no less than 116 journals, both legal and other, as well as examining collections of essays and listing specialised works. While the *Bibliography* is classified according to general works, the law of the sea and maritime transportation and communication, there are in fact no fewer than 31 individual chapter headings making it relatively easy for the researcher to find that which is sought. Any graduate student seeking a thesis topic in the field of international maritime law will find plenty of material in this collection, while the contents of the other works under review will also suggest topics that might be further pursued.

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