ments within the ILO organisation. He certainly does not have a blind eye for its weak spots. We are increasingly living in a global multi-stakeholder network society, where inequality is a nasty reality. States, businesses, workers, NGOs, global and regional international organisations, think-tanks, researchers and universities, they are all interconnected and interdependent. They all have to adjust and adapt to new circumstances and developments. Maupain's book shows that a multi-stakeholder approach is inevitable in tackling the main socio-economic issues ahead of us. As an example of the role the ILO can play in the coming years one could look at the Rana Plaza tragedy: the collapse of the unsafe Rana Plaza building in April 2013 near Dhaka, the capital of Bangladesh. More than 1100 textile workers, mostly young girls, were found dead; it was one of the biggest industrial accidents in history. Immediately after the accident the ILO took a leading role in bringing together the many stakeholders in this complicated supply-chain garment industry. States were involved, including in the EU, as well as big companies in the US, Europe and elsewhere, international organisations, trade unions and NGOs, and many initiatives emerged. Most of the stakeholders were already involved in improving labour standards in Bangladesh before the accident. The ILO served as the coordinating independent chair of a Committee that made an arrangement on payments to the victims of the accident according to the ILO Employment Injury Benefits Convention 121. The ILO also chaired the negotiations that led to The Bangladesh Accord on Fire and Building Safety, a legally binding agreement, signed by over 150 apparel companies from different continents, as well as global trade unions and Bangladeshi unions. The ILO also provided for technical assistance to the Bangladesh government and monitored the application of the Labour Inspectorate Convention 81, ratified by Bangladesh. The ILO was and is the lynchpin of various post-Rana Plaza initiatives, a big and important knot in the network. It is too early to judge, but it could be the way a new model works. Public and private actors intensively work together in a network to enforce the rules made by a trusted international organisation and coordinated by that same international organisation.

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1. WTO Appellate Body Report, 5 April 2001, WT/DS135/AB/R (*EC-Asbestos*).

A.G. OUDE ELFERINK, *The Delimitation of the Continental Shelf between Denmark, Germany and the Netherlands: Arguing Law, Practicing Politics?*, Cambridge University Press, Cambridge 2013, xxv + 508 pp. ISBN 978-1-107-04146-2 (hardback).
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Unlike some other semi-enclosed seas, such as the Caribbean and the Mediterranean, the North Sea is today (almost) fully delimited though a series of bilateral agreements.[1] The

story of how that came about, chiefly in the 1960s and early 1970s, is the subject of this excellent book by Alex G. Oude Elferink, who focuses on 'the determination of the role of international law in the negotiations between Denmark, Germany (FRG) and the Netherlands on the delimitation of their continental shelf in the North Sea' (p. 449). It was not clear to those involved in the early 1960s that the matter would end up before the International Court of Justice (ICJ), or even be dealt with bilaterally. There was talk, at least on the part of Germany, of holding a multilateral conference to decide how the shelf should be divided up. The position of Germany was the main difficult issue, but there were other potential difficulties in the North Sea, touched on in this book, including the Norwegian Trough, which could have complicated delimitation between Denmark and Norway (as well as between Norway and the United Kingdom).

The book is not just about the ICJ's landmark *North Sea Continental Shelf* judgment of 1969.[2] As the title indicates, it is a case study of a complex series of negotiations. It imparts a deep understanding of how the Danish, Dutch and German authorities acted – and reacted towards each other – in the 1960s (not so long after the War, something of a *Leitmotiv* in the book). The resulting work is well worth the effort that the author has devoted to it (pp. xv-xvii; 'thousands of documents'), and – one might add – well worth the effort required of the reader.

Oude Elferink is an international lawyer specializing in the law of the sea. He is a leading expert on international maritime boundary delimitation. Since 1 February 2014, he has been Director of the Netherlands Institute for the Law of the Sea at the University of Utrecht (NILOS), with which he has long been associated. He is very well qualified to write this book.

The book comprises eleven chapters. It covers a great sweep of negotiation and litigation between Germany and its neighbours. And it also looks at the other maritime boundaries of Denmark and the Netherlands. While parts of the book may seem heavy going (especially to those not involved with maritime delimitation), it is worth persevering. The structure is complex, but then so too is the subject-matter. The reader is well advised to begin by studying carefully the author's own outline (pp. 3-7).

After an introductory chapter, chapters 2 to 4 describe, with reference in particular to the attitudes of Denmark, Germany and the Netherlands, the development of the legal regime of the continental shelf and its acceptance in conventional and customary international law. The 1958 Geneva Conference and the resulting (Geneva) Convention on the Continental Shelf are highlighted. Most interesting here is the negative attitude of Germany towards the concept of coastal state rights and jurisdiction over the continental shelf (including a hopeless last-ditch attempt to block its adoption at the 1958 Conference). This negative attitude was abruptly reversed with the Proclamation of the Federal Government on the exploration and exploitation of the German continental shelf (22 January 1964), once it was realised that German economic interests required acceptance of the continental shelf concept. The FRG's legal maritime diplomacy is seen as having been quite unrealistic and ineffective during this early period (see pp. 38-46, 55-59, 75-88, 92-93, 142).[3]

Chapters 5, 6, 8, 9 and 10 cover the maritime delimitation negotiations between the three states, as well as the case before the ICJ.[4] The different stages in the negotiations between the various parties, which to some degree overlap, are described more or less chronologically. Chapter 5 describes the first phase of bilateral negotiations, between 1963 and 1965, which led to the two partial maritime boundary agreements, of 1 December 1964 (Germany-Netherlands) and 9 June 1965 (Germany-Denmark), but stalled on everything else. Chapter 6 deals in some detail with the issues involved in the decision to go to third party dispute settlement, which were complicated in the present instance by the fact that there were two separate but related disputes involving three states. Whether the case should be initiated unilaterally (as would have been possible under both the European Convention for the Peaceful Settlement of Disputes and under two treaties of Arbitration and Conciliation dating from 1926) or by special agreement (*compromis*)? Which forum to choose, the options being the ICJ or *ad hoc* arbitration? What question should be put to the Court?[5] If the submission was by agreement, whether the pleadings should be simultaneous or consecutive? What were the domestic political implications of going to court, and how could these best be managed? Chapter 8 discusses the two rounds of written and oral pleadings. It is a convenient introduction to what is already published in two volumes of the *Pleadings, Oral Arguments, Documents* series,[6] and also sheds light on how the various arguments were developed, including through close – but not always harmonious – coordination between Denmark and the Netherlands (who among other things shared the same Counsel, Sir Humphrey Waldock). The author's analysis in chapter 9 of the Court's 1969 judgment is a good introduction to the very extensive description (100 pages) in chapter 10 of the nine rounds of post-judgment negotiations that eventually led to the agreements of 28 January 1971.

The two ICJ cases loom large. Yet the author's consideration of all the stages of these (separate but joined) cases[7] covers only one third or so of the book (180 out of 482 pages of text). Even when referring to the ICJ proceedings, the author dwells more on the associated negotiations than on the law, as argued by the Parties and applied by the Court. One of his striking claims (not entirely borne out by his description of the facts) is that '[t]he outcome of the [post-judgment] negotiation suggests that the judgment did not have a profound impact on it' (p. 2).[8]

One is tempted to ask, 'Who won?' A simplistic, but possibly more or less correct answer seems to emerge from this book: 'Germany won at the ICJ, but Denmark and the Netherlands won in the subsequent negotiations.' If so, that illustrates the fact that litigation is sometimes just one stage in a settlement. So perhaps, after all, at least in negotiation international law is 'used' by states as (part of) a process, rather than simply as a set of rules leading inexorably to a single conclusion.

Many interesting insights will strike a chord with anyone who has been involved with maritime delimitation, including the influence on states of their other outstanding maritime delimitations;[9] the comment that 'the initial choice for a not too credible legal argument may have continued repercussions for a party';[10] and the remark that 'there may be a chasm between how a party sees itself and how its negotiating partner looks at that same behaviour' (p. 456, fn. 4).

There are, in addition, insights of a wider relevance for anyone embarking on this kind of research: 'one should in any case be careful not to attribute too much weight to statements concerning the facts many decades after the events actually took place' (p. 10); and 'personal impressions may not always be a reliable source of information' (p. 10). The author's conclusions on the general problems of relying on documentary evidence are certainly worth quoting:

> 'Although there exist thousands of pages of primary sources that allow piecing together a detailed account of almost all episodes of the negotiating history, the reasons for specific choices, including key decisions, at times are hardly documented or even completely undocumented, making it difficult to determine the considerations that feed into the decision-making process with certainty' (p. 474).

And this notwithstanding that, in the period under study, records were doubtless more orderly than today, where so much is recorded (or not) in a cat's cradle of email strings.

The account of the negotiations, and of the handling of the litigation, rings true. The negotiations were untidy, lengthy, often at cross-purposes, uncertain as to the law (which as regards delimitation was only in its very early stages); and they took place against the background of astoundingly complex bureaucratic and political configurations (at least in the cases of Germany and the Netherlands).[11] It seems likely that other maritime boundary negotiations have had, and will continue to have, many of the same features.[12] Even today, the 'soft' obligation to negotiate an agreement, under conventional and customary law, has to be squared with the often conflicting political or tactical considerations, not least those of timing.

The law of maritime delimitation has developed a great deal since 1969, with the Third United Nations Conference on the Law of the Sea and the inclusion of Articles 74 and 83 in UNCLOS, and through the post-1969 case-law of the ICJ and other international courts and tribunals. Yet the 1969 Judgment remains relevant, at least as a starting point. It is often cited in argument, and the insights conveyed by this book will undoubtedly help to ensure that it is seen in context. The recent litigation concerning delimitation in the Bay of Bengal, between Bangladesh and Myanmar[13] and between Bangladesh and India,[14] has many similarities, especially as regards the concavity of the coast with Bangladesh 'hemmed in' between its two neighbours. Bangladesh referred among other things to the fact that the FRG had cited the situation of East Pakistan as comparable to its own, and to illustrate its point had presented to the ICJ a sketch-map of the Bay of Bengal. But there were major differences. The *North Sea* cases were unique in that the parties posed questions of law to the Court rather than asking it to draw the boundaries. And in the case of the Bay of Bengal the proceedings were separate, essentially sequential, and in two different instances (though with significant common membership on the Bench).

Among many interesting non-delimitation issues touched on, if only incidentally, are questions relating to judges *ad hoc*, and to the duty not to mislead the Court. It seems somewhat odd that those representing Germany should have thought it proper to consult the German judge *ad hoc*, Professor Mosler, about the composition of the German legal

team (pp. 231-236). More remarkable, however, is that it was apparently considered unobjectionable for Professor Sørenson to be appointed as judge *ad hoc* by Denmark and the Netherlands, despite the fact that as Legal Adviser to the Danish Foreign Ministry he had been closely involved throughout the negotiations and, until his resignation in March 1967, had been acting as Agent for the Danish Government in the preparation of the case (pp. 262-263).[15]

Did the Dutch Agent deliberately mislead the Court as regards the Dutch position in the negotiations with Guyana? It seem to this reviewer that the author may overstate what occurred when he concludes that '[t]he Legal Advisor of the Ministry of Foreign Affairs of the Netherlands was prepared to tell what, in everyday language cannot be termed differently than lies and half-truths in front of the highest judicial organ of the United Nations to maintain the image that the Netherlands had never deviated from the equidistance principle' (pp. 231-236 at p. 236).[16]

The author's efforts, in a final chapter, to relate the case study to certain generalized 'perspectives' on the relationship between international law and state behaviour (Goldsmith and Posner,[17] Guzman,[18] Henkin,[19] Scott[20]) are not particularly convincing, as he himself seems to acknowledge when he concludes that

> 'On the basis of one case study dealing with one specific issue … it is not feasible to be too specific about the explanatory value of the different perspectives' (p. 482).

This is an impressive piece of research. Perhaps academics should return more often to their roots as doctoral students, and produce studies of such depth – though the discouraging modern practices required of academe, apparently and happily not insisted upon in Utrecht, seem to be against this.[21]

The book is highly recommended for all who are interested in international negotiation and the politics and practice of international litigation. It is well edited, well illustrated and well indexed. There is a useful bibliography, though one striking omission is Jack Lang's 1970 work on the Court's judgment.[22] While the book under review will be of particular interest to those concerned with the law of the sea and with maritime delimitation, its appeal is wider. It casts light on relations between three neighbouring states, Denmark, Germany and the Netherlands, at a time when a dreadful period in European history was far from being a distant memory. International lawyers tend only to know the ICJ judgment in the *North Sea Continental Shelf* cases, which they cite in connection with maritime delimitation as well as on the formation of customary international law. Thanks to Oude Elferink, they can now appreciate the full context of the legal proceedings, what came before and what came after. It would be interesting to see similar works on other leading cases in international law – but that would be asking a great deal.[23]

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1. See D.H. Anderson, 'Northern and Western European Maritime Boundaries', in J. Charney and L. Alexander, eds. *International Maritime Boundaries*, Vol. I (Dordrecht, Martinus Nijhoff 1993) pp. 331-341 (with map); D.H. Anderson, 'Report Number 9-8, Denmark-Germany' and 'Report Number 9-11, Federal Republic of Germany-The Netherlands', in J. Charney and L. Alexander, eds., *International Maritime Boundaries*, Vol. II (Dordrecht, Martinus Nijhoff 1993) pp. 1801-1814 and pp. 1835-1853. There have been recent technical adjustments, and continental shelf boundaries have been transformed into all-purpose maritime boundaries, since the United Kingdom adopted an exclusive economic zone in 2014. See the Exclusive Economic Zone Order 2013 (S.I. 2013/3161), which came into force on 31 March 2014. The Explanatory Note lists agreements concluded between 2009 and 2013 with Belgium, Denmark, the Netherlands and Norway.

2. *North Sea Continental Shelf*, Judgment, *ICJ Reports* (1969) p. 3.

3. The FRG was similarly slow, in the 1970s, to realise that the concept of the exclusive economic zone was an inevitable result of the Third United Nations Conference on the Law of the Sea.

4. Chapter 7 considers the interaction between the delimitations with Germany in the North Sea and other delimitations involving Denmark and the Netherlands.

5. The parties seem to have based their negotiations on the assumption that the Court should be asked a question about the applicable law, thus reflecting the main bone of contention between them, leaving the parties to negotiate the actual boundaries on the basis of the judgment – though Elihu Lauterpacht advised the Danish licensee (DUC) that the Court should be asked to establish the boundaries (pp. 185-190).

6. Available on the Court's website.

7. Negotiation of the two *compromis*/special agreements; litigation strategy; Denmark/Netherlands coordination; preparation of pleadings, including joint pleadings; oral hearing; judgment; separate and dissenting opinions.

8. 'After the judgment of the Court, Denmark and the Netherlands successfully disengaged themselves from a meaningful discussion of the implications of the judgment and extended political pressure on Germany to accept a compromise solution' (p. 458). See the further remarks at pp. 457-458.

9. For example, in the case of the Netherlands, the delimitations of the other countries of the Kingdom of the Netherlands – Suriname and Netherlands Antilles (chapter 7).

10. This refers to the Dutch and Danish interpretation of Art. 6 of the Continental Shelf Convention to the effect that it entitled them unilaterally to define their boundaries, and that the onus was on Germany to prove the presence of special circumstances (pp. 453-454).

11. There is a fascinating account of differences between the legal and policy departments within the German Foreign Office: pp. 163-164.

12. See D.H. Anderson, *Modern Law of the Sea: Selected Essays* (Leiden, Nijhoff 2008) ch. 24 ('Negotiating Maritime Boundary Agreements').

13. *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment of 14 March 2012, *ITLOS Reports* (2012) p. 4.

14. Award of 7 July 2014, available at <www.pca-cpa.org/showpage.asp?pag_id=1376>.

15. It will be recalled that the 'other four members' of the Arbitral Tribunal in *Mauritius* v. *United Kingdom*, after citing Arts. 17(1) and (2) of the ICJ Statute, summarised the position as being that 'no judge, whether regular or ad hoc, can sit in a particular case if he or she has been involved previously with the very subject matter of that case': *Reasoned Decision on Challenge*, 30 November 2011, para. 143, available at <www.pca-cpa.org/showpage.asp?pag_id=1429>. For a view that the strict application of Arts. 17 and 24 of the Statute may properly be modified in the appointment of a judge *ad hoc* to which all the parties are prepared to agree, see P. Couvreur, 'Article 24', in A. Zimmermann, et al., *The Statute of the International Court of Justice: A Commentary*, 2nd edn. (Oxford, Oxford University Press 2012) p. 463, MN 32. Of course, even if this is right, there remains the question of how influential such an appointee will be with his or her colleagues on the bench.

16. For an account of similar incidents, see M. Reisman and C. Skinner, *Fraudulent Evidence before Public International Tribunals: The Dirty Stories of International Law* (Cambridge, Cambridge University Press 2014).

17. J.L. Goldsmith and E.A Posner, *The Limits of International Law* (Oxford, Oxford University Press 2005).

18. A.T. Guzman, *How International Law Works: A Rational Choice Theory* (Oxford, Oxford University Press 2008).

19. L. Henkin, *How Nations Behave: Law and Foreign Policy*, 2nd edn. (New York, Columbia University Press 1979); L. Henkin, *International Law: Politics and Values* (The Hague, Kluwer Law International 1995).

20. S.V. Scott, 'International Law and Ideology: Theorizing the Relationship between International Law and International Politics', 5 *EJIL* (1995) p. 313.

21. The author writes, at p. xvi: 'Although it goes against much of the current ideas about doing legal research – with its focus on broad research programs and quantified output on a yearly basis – I am convinced that real progress in understanding international law and its relevance for international society is only possible on the basis of the kind of time-consuming research that resulted in this book. Otherwise we will never have more than a superficial understanding of the workings of the law.' – with which one can only agree.

22. J. Lang, *Le plateau continental de la Mer du Nord: arrêt de la Cour internationale de justice 20 février 1969* (Paris, LGDJ 1970).

23. For brief accounts of a number of international cases, see J.E. Noyes, et al., eds., *International Law Stories* (New York, NY, Foundation Press 2007).

Y. SHANY, *Assessing the Effectiveness of International Courts*, Oxford University Press, Oxford, 2014, xix + 322 pp. ISBN 978-0-19-964329-5.
doi:10.1017/S0165070X1400134X

Although this work is published by Oxford University Press in its 'International Courts and Tribunals Series', it is not an international law treatise. The question whether or to what extent an international tribunal is 'effective' is not a legal question: it cannot be answered by applying legal principles or rules. The question is a political or social one, or indeed a sociological one. The approach adopted therefore draws on sociology and public administration studies, which may be territory little known to many international lawyers. Yet legal issues do arise in this context: the legal and the sociological would appear to intersect in some respects.

The book is, if only in part, a collective work. While the name of Professor Yuval Shany stands alone on the title-page, and the first section of the book is attributed to him, each chapter of the second section, a series of detailed studies of specific international tribunals, is expressed to have been written by him 'with' individual members of a research team, to whom the principal author gives full credit.

The coverage, in terms of tribunals studied, is wide. Following an explanation (Part I) and a study of the general application (Part II) of the approach adopted, Part III comprises specific sections devoted to the International Court of Justice (ICJ), the WTO Disputes Settlement System, the International Criminal Court (ICC), the European Court of Human Rights and the Court of Justice of the European Union. Passing reference is also made to, for example, the Caribbean Court of Justice, the International Centre for Settlement of Investment Disputes (ICSID), the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and a number