Restricting the Concept of Free Seas: Modern Maritime Law Re-Evaluated, by George P. Smith, Huntington, New York, Robert E. Krieger Publishing Co. Inc. 1980, 242 pp. U.S.$15.50.

Anyone writing a book on the law of the sea is up against the difficulty that the Third United Nations Conference on the Law of the Sea (UNCLOS III) has still not finished its work. This Conference held its first session in 1973, and the preparation of the Conference extended as far back as 1967. This has left writers on the law of the sea — and even more would-be writers — in a quandary, especially as the International Court of Justice has told us that even that high authority "cannot render judgment *sub specie legis ferendae,* or anticipate the law before the legislator has laid it down". The Court has also told us that the "various proposals and preparatory documents" deposited at UNCLOS III — and these must by now run into hundreds of thousands of pages — "must be regarded as manifestations of the views and opinions of individual States and as vehicles of their aspirations, rather than as expressing principles of existing law".[1] It would not be so bad if the four conventions adopted by UNCLOS I at Geneva in 1958 could still be regarded as "expressing principles of existing law", but unfortunately that is not the case either, having regard to the manner in which international law is made and re-made.

Modern international law — and of no branch of it is this more true than of the law of the sea — is a jumble of treaty law and customary law, and of the interaction between these two sources. The 1958 Geneva Conventions received a respectable but by no means impressive number of ratifications and adhesions. Their authority, always somewhat precarious, has steadily wilted under the combined pressure of State practice during the last two decades and the far-reaching modifications being urged, though not yet finally agreed upon, at UNCLOS III. No doubt many authors — and publishers — are waiting in the wings, ready to pounce with "authoritative" statements of the law of the sea as soon as UNCLOS III grinds to a conclusion. Readers should, however, be warned in advance that such statements will not be "authoritative" — not at least until the convention, or conventions, emerging from UNCLOS III have been widely ratified or adhered to, and until the institutions which UNCLOS III proposes to set up are seen to be working with at least a modicum of efficiency.

The author of this relatively short work (122 pages of text and footnotes; the remainder being appendices), in addition to being professor of law at The Catholic University of America, Washington, D.C., has had the advantage of attending two sessions of UNCLOS III as correspondent for the American Bar Association Journal. He has also attended other international conferences, both governmental and non-governmental. He is thus fully aware that the making of modern inter-

[1] *Fisheries Jurisdiction Case* (1974) I.C.J. Reports 3, 23-24.

national law through protracted conferences is fundamentally a political operation. His conclusion on this point is not encouraging. "One conference", he says, "surely cannot be expected to produce one treaty that will structure a new order for the oceans and comprehensively deal with the social economic, technological, ideological, and political spheres of emerging influences. This is an undertaking that will probably continue for the remainder of the century. Whether world interests can be harmonized in an age of political militancy where new, equally militant and frustrated ideals are advanced by small, emerging nations is debatable" (at pp. 120-121). And Professor Smith's final words are "the new law of the sea will, to a very significant degree, be shaped by patterns and strategies of group solidarity found among the unaligned, underdeveloped members of the world community who wish to promote, build, and develop a new law that is basic to their own egoistic interests" (at p. 121).

It is certainly true that the present uncertainty in the law of the sea has largely been caused because the new nations wish to refashion that law in a manner more conducive to the promotion of their own interests. But there is no reason to suppose that these nations are being any more egoistical than older nations who wish to retain as far as possible principles of law which over a considerable period of time they fashioned to suit their own interests.

This work is a not altogether happy mixture of an academic exercise and a piece of journalism. It is well documented: indeed the footnotes, which in relation to the text are lengthy, are often more illuminating than the text. These footnotes reveal that many of the author's conclusions are based on interviews with persons who have been closely connected with law of the sea issues over the last twenty years. It is interesting, for instance, to be told in a footnote on page 111 that Sterling Professor Emeritus Myres S. McDougal of the Yale University Law School, who has contributed so much to the literature of international law, believes that "no treaty will in fact emerge from the present Law of the Sea Conference sessions". Many prophets of doom predict disaster if this occurs, but it is to some extent reassuring that Professor McDougal believes that "customary law will be left to evolve and expand, and thus will gain as the controlling point in resolving law of the sea questions". It is to be hoped that customary law will prove equal to the task because, as Professor Smith opines, while there is common agreement that it is desirable "to create a new legal and political order for ocean development", there also "appears to be little common acceptance of what must be done in order to build and maintain that order" (p. 120).

D. H. N. JOHNSON*

* Professor of International Law, University of Sydney.