The attack of Soviet publicists on McDougal and his followers is somewhat surprising. Certainly, McDougal does not deny the role and function of international law in the international community. His approach to the study of international law (and municipal law as well) includes the element of policy in the form of unilateral claims as they contribute to norm formation. The norm formation process, as described by McDougal, has to include the element of power. The interplay of unilateral policy claims, and their acceptance by the international community, is essential to the development of "World Public Order," as he calls the system of rules governing international relations.

Compared with McDougal's approach, Soviet theories also lay emphasis on power and policy. But while McDougal avoids dividing the process of norm formation into two categories of social phenomena, Soviet scholars combine in their theories two incompatible elements: norm formation, a voluntaristic process, with the immutable laws of societal development. Intellectually speaking, is this warranted? Is it explained by historical facts? These questions go beyond the scope of the present study. It must be noted, however, that Soviet theories lead to some unexpected results. Socialist internationalism, which is a rule of positive law within the socialist system, is enforced by force, while socialist international law prohibits the use of force. In consequence, sovereign equality has a different meaning within the socialist system than in relation to the capitalist states.[46]

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TO THE EDITORS-IN-CHIEF:

June 8, 1983

In his article, *The Tunisia-Libya Continental Shelf Case: Geographic Justice or Judicial Compromise?* (77 AJIL 219 (1983)), Mark B. Feldman presents an authoritative view of the Judgment of the International Court of Justice concerning the continental shelf delimitation between those two countries. Among the various opinions given in this article, the following may be considered among the more important from the point of view of consequences for future cases.

(1) Feldman states that the Court's Judgment is a step forward towards the formulation of integrated principles to be applied both to the continental shelf and to the economic zone. He concludes that the legal analysis of the Court appears well suited to the delimitation of the exclusive economic zone (pp. 220 and 238).

The Convention on the Law of the Sea consolidates the rules and criteria for the delimitation of the economic zone and the continental shelf. Though the Court did not deal with the delimitation of the economic zone, its legal thinking could well accommodate delimitation problems concerning both the economic zone and the continental shelf; and by dropping the physical features of the shelf as criteria for delimitation and refusing to accept any kind of

[46] *See* Pechota, *The Contemporary Marxist Theory of International Law,* 75 ASIL PROC. 149 (1981).

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natural seabed boundary, the Court opened the door, even before the Convention enters into force, to the consolidated treatment of both areas regarding delimitation.

It would be an anomaly for the economic zone of one state to be superimposed on the continental shelf of another state, but state claims favoring that odd situation have to be noted. In areas up to 200 miles, that anomaly may now be eliminated as the consequence of the interaction of logic, expediency, and judicious interpretation of the new conventional rules. Beyond 200 miles, the continental margin may underlie the high seas.

(2) Feldman states that "[b]y this time, it is beyond dispute that 'equitable principles' form the foundation of the law of maritime boundary delimitation" (p. 228). However, the Judgment "does not identify any equitable principles as such" (p. 229).

As a matter of fact, the Judgment does not specify any equitable principles as a concrete legal basis for the determination of the delimitation line. There are many references in the Judgment to equitable principles, but they are not spelled out. In the *North Sea Continental Shelf* cases, it was unnecessary to specify the equitable principles. The Court did not apply them but advised the parties to take them into account in order to achieve a negotiated and agreed delimitation. In the *Libya-Tunisia* case, the Court itself determined the dividing line of the continental shelf by applying equitable principles. As Feldman states, the general rule that the delimitation "is to be effected in accordance with equitable principles, and taking account of all relevant circumstances," is "too general in itself to provide much guidance for future cases" (p. 238).

It may be expected that in future cases the Court will wish to specify the equitable principles it applies to the delimitation of the continental shelf and the economic zone. Otherwise, as several scholars and the dissenting members of the Court in the *Libya-Tunisia* case fear, the Court may increasingly make decisions *ex aequo et bono* in this undefined area of general rules of law. The subtitle of Feldman's article is meaningful: *Geographic Justice or Political Compromise?*

REYNALDO GALINDO POHL

TO THE EDITORS-IN-CHIEF:

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Ebere Osieke's article, *The Legal Validity of Ultra Vires Decisions of International Organizations* (77 AJIL 239 (1983)), discusses the interesting and troublesome question of the right of member states to reject decisions of international organizations when they regard the decisions as *ultra vires.* He concludes that there is no consensus recognizing such a right, and that it therefore cannot be regarded as a generally accepted principle of international law or of the law and practice of international organizations.

Osieke's article is a most valuable contribution. I agree that there is no broad right of rejection or of auto-interpretation exercisable by member states whenever they think an organization's act is *ultra vires.* I think, though, that there may be a right of rejection or of auto-interpretation in narrowly defined circumstances.