It has been quite a while since the new concept of ‘creeping jurisdiction’, advanced by coastal states, has prevailed over the once venerable notion of freedom of the sea. Of course, it is not easy to go back to the good old days of Grotius, when European maritime states seemingly enjoyed freedom on the oceans of the world. In those days, these countries recognised that this freedom was a kind of public goods or common goods for everybody to enjoy. However, in the new era of the current law of the sea, which embraces the United Nations Convention on the Law of the Sea (UNCLOS), naval powers such as the United States are seriously concerned about their large maritime interests, particularly the wide mobility of their naval power. A maritime order based on the traditional sense of freedom of navigation is also of great interest to them. In this context, China’s rise as a naval power in the East Pacific and its adjacent waters may destabilise the balance of power in this region. The recent situation in the South China Sea is a good example of this unsettling development. Therefore, James Kraska’s Maritime Power and the Law of the Sea (2011) is quite timely and may hold considerable utility not only for experts in the field of international and maritime law but also for practitioners and politicians in this field.

The book under review is based on Kraska’s S. J. D. dissertation at the University of Virginia Law School. His original idea was derived from his service as the legal adviser to the Commander of Amphibious Force, U.S. Seventh Fleet in Okinawa, Japan. Therefore, many of the concepts and
much of the analysis of the book are particularly valuable to the experts of the Pacific region, including Japan, whose security is at stake with the recent rapid maritime ascent of China. At the same time, his desire to recover and reinforce the traditional understanding of freedom of the seas - a liberal maritime regime - clearly reflects his educational and career background in the United States. Accordingly, the theme and perspective of the book is straightforward and clear-cut.

In chapter 1, Kraska seeks to determine ‘how the concept of freedom of the seas can be brought back into focus through a revitalized strategic vision for U.S. oceans policy and a recommitment to strategic oceans diplomacy’ (p. 3). This part of his inquiry sheds light on the law and strategy surrounding the freedom of the seas in the littoral regions of the world by referring to the creeping jurisdiction of coastal states in and around their exclusive economic zones (EEZs), for ‘the EEZs are the most important part of the oceans’ (p. 6) from geostrategic and political-military perspectives. In his analysis, the author utilises concepts adopted from various fields of study, such as international law, military theory, and geopolitics. From this inquiry, he concludes that the freedom of the seas is threatened by various ‘excessive maritime claims’, of which excessive EEZ claims are ‘the major source of instability in the international law of the sea’ (p. 13). Thus, Kraska argues that the current maritime claims, particularly of the BRIC nations (Brazil, Russia, India, and China) are unwarranted and should be counterbalanced by the traditional concept of ‘a liberal order of the oceans’, which is tied to the interests of the U.S. and other maritime states.’

Chapter 2 deals with the history of naval warfare and naval powers in accordance with this basic understanding: ‘The history of international security and freedom of the seas is a story that is intimately woven into the material of world politics and has formed the basis for the modern state system’ (p. 30). Kraska divides this global history into three phases: first, that of the Ancient World, including Ancient Greece and the Roman Empire, which endured until the High Middle Ages and Early Modern period; second, the era when Portugal, Spain and the Dutch Republic competed with each other; and third, from the eighteenth century until today, when the Anglo-American naval states sought ‘to position sea power in pursuit of the maintenance of a minimum global public order’ (p. 51). About two-thirds of the chapter is devoted to the
third period, in which the author widely refers to geopolitical scientists, naval strategists, and historians, such as Alfred Thayer Mahan, Halford Mackinder, Samuel Huntington, and Paul Kennedy, and discusses many significant naval conflicts.

Chapter 3 considers the structure and the detailed rules of the UNCLOS in the light of the historical development of the law of the sea and includes a survey of four major law-making conferences. In analysing the major maritime zones in the UNCLOS, Kraska argues that ‘[e]xclusive marine claims assume a zero-sum diplomatic and economic game’, which ‘produces military and political instability, and generates tension that can lead to conflict’ (p. 95). His references to the drafting history of the UNCLOS, major international jurisprudence, and domestic official documents are convincing and particularly illustrative of American diplomatic and strategic policy. Accordingly, his analysis leads to the conclusion that the UNCLOS ‘promotes U.S. strategic and military interests, which is why [the] DOD [Department of Defence] has supported the treaty since 1994’ (p. 150). As he explains, however, the U.S. accession to the UNCLOS remains yet to be seen, after the U.S. missed certain opportunities of the full Senate’s advice and consent to the UNCLOS.

Chapter 4 discusses the emergent conflict between the excessive maritime claims of the BRICs and the liberal order of the oceans, based on the notion of freedom of the seas, particularly supported by the United States and other maritime powers. Kraska describes the six ‘greatest military risks in the international system’ (p. 167); these are China, Russia, the Middle East, a growing number of rogue regimes such as North Korea, the Pakistan-Afghanistan problem, and ‘an emerging international governance system of pseudo-legality sustained by bureaucratic international elites and anti-American and anti-Western states’ (p. 168). From his point of view, the American grand strategy must meet these six challenges through the implementation of an oceans policy. Reviewing the oceans policy pursued by the American administrations in the last two decades, the author stresses the U.S. effort to maintain the freedom of navigation necessary for the smooth operation of the world’s economy, which is essential to American interests. The U.S. understands that ‘the shift in naval strategy from the high seas to EEZ has been underway for several decades’ (p. 193), and that this shift requires the enforcement of U.S. naval strategy through amphibious and expeditionary operations, which
rests on access to and through the EEZ of the littoral states. Therefore, Kraska alarmingly points out that the notion of freedom of the seas advanced by the U.S. has been gravely threatened by the increasing reach of the coastal states, particularly in their EEZs.

In chapter 5, Kraska illustrates that ‘freedom of the seas is becoming the exception and [that] controlled access by the coastal state is becoming the norm’ (p. 226). Excessive EEZ claims contain three separate but complementary axes: sovereign right over the EEZ, a security interest in the zone, and increased environmental control over activities in the water. After reviewing the drafting history of the provisions covering the EEZ in the UNCLOS, he carefully discusses sovereign immunity, the meaning of relevant terms in the UNCLOS such as ‘peaceful purposes’ and ‘due regards’, and marine scientific research so that he can strengthen his standpoint that the excessive EEZ claims of the coastal states that limit or regulate military activities are unlawful.

Chapter 6 explores several regions where excessive EEZ claims or virtual sovereignty claims over the EEZ have been made. Since ‘efforts to territorialize the EEZ assume many forms’ (p. 292) today, Kraska investigates Australia’s claim on the Antarctic Sea that is connected to its territorial claim to Antarctica; Canada’s claim over the Arctic Ocean, allegedly based on its historical and geographical relations with it; and some national security EEZ claims by Brazil and China, to name a few. In almost 15 pages (pp. 314-329), he critically analyses China’s disproportionate claims from strategic, military, diplomatic, and historic perspectives. As a result, he sheds light on China’s assertions in relation to the maritime and marine strategies of the U.S. in and around the South China Sea.

Chapter 7 demonstrates that such EEZ claims, so tied to sovereignty and security, may be coupled with environmental ones, resulting in a major threat to the stability of the maritime regime. Although the predominance of land-based pollution in the marine environment and its impact on the oceans is well known, some coastal states tend to issue and enforce environmental laws and regulations against foreign-flagged vessels in their EEZs, leading to freedom of the seas conflicts with other maritime states. This tendency is called ‘zoning the zone’, and this practice may be carried out in the name of ‘marine spatial planning’, ‘ecological protection zones’, and so on. Kraska criticises
this practice, stating that ‘[s]uch laws can tend to harden the coastal state’s sense of territoriality and entitlement over the EEZ’ (p. 356). Therefore, the excuse that ‘regulating vessel source pollution is an easier course’ (p. 357) may accelerate the coastal states’ efforts to enhance marine environmental protection through some zoning measures, such as a Particularly Sensitive Sea Area (PSSA) or a high seas marine protected areas (HSMPAs). For Kraska, these environmental measures of the coastal states restrict freedom of navigation in vast areas and deter not only the security interests of naval powers such as the U.S. but also the long-distance trade of the world.

In the last chapter (Chapter 8), Kraska criticizes America’s approach to the excessive EEZ claims of coastal states by stating that ‘[i]t is alarming how little many of the nation’s leaders of both the major political parties, as well as the intelligence agencies, the Pentagon, and foreign policy bureaucracy, understand the central role of freedom of the seas in the U.S. grand strategy’ (p. 381). Accordingly, he stresses the significance of reinvigorating the U.S. Freedom of Navigation (FON) program; of reforming the U.S. interagency oceans policy process; and of transforming ocean diplomacy by strengthening flag state implementation, greater collective and cooperative action, and a strategy to promote freedom of the seas with maritime powers such as Russia, Australia, France, India, and even China.

Kraska’s *Maritime Power and the Law of the Sea* is highly informative and readable and is replete with various illustrations and detailed data. It has 15 figures (maps and diagrams) and 25 well-classified tables. As the subtitle of the book, *Expeditionary Operations in World Politics*, indicates, its coverage is so wide and profound that the volume also requires some advanced knowledge of world politics, geopolitics, military, and strategic studies. These points may compensate for the lack of a bibliography, and, less importantly, for some minor misprints. As mentioned at the outset of this review, his viewpoint in favour of the mobility and navigational freedom of naval powers may be too one-sided and too ‘liberal’ in its perspective, for some advocates and proponents of the resources, environmental protection, and security of the coastal states. In other words, Kraska could have added the investigation of the backgrounds and reasons why more and more states have made such maritime claims. Moreover, creeping jurisdiction is an irreversible phenomenon and should be considered
in the light of the end of the Cold War era. It may be said, however, that both its practicality and theoretical profundity make this an invaluable addition to a series of indispensable monographs with an American background in this field, such as Mark Janis’ *Sea Power and the Law of the Sea* (1976) and Ken Booth’s *Law, Force and Diplomacy at Sea* (1985).\(^1\) Regardless of its tone and perspective, readers will find Kraska’s book stimulating and thought-provoking at this crossroads to a better future order of the sea under current set of maritime law, including the UNCLOS.

\(^1\) One of the influential progenitors in this field with a British background is D. P. O’Connell’s *The Influence of Law on Sea Power* (1975), whose perspective and viewpoints are reflected in the same author’s *The International Law of the Sea*, Vols. I & II, (1982 & 1984).