

claims, and the analysis and evaluations of the treaty regimes currently operating in various parts of the world, together with the Geneva Conventions, are well done. Particular mention might be made of the study of whaling control and sedentary fisheries, whose relation to the continental shelf appears to Professor Johnston to be a significant concession to the functional notion, though contrived in legalistic form. In view of Australia's extension of its fishery limit to twelve miles it is interesting to see what views the author has on this type of exclusive claim. He would oppose the whole approach as needlessly confusing many issues, biological, ecological and economic, and as not necessarily resulting in the maximum exploitation consistent with conservation which an interdependent world requires. But he would concede that in the present structure of world society this type of claim is a necessary preliminary to achieving a regime of shared exploitation. When he speaks as lawyer, almost on the last page, he appears to doubt if claims of more than six miles are valid. He criticizes the International Law Commission for taking too narrow a view of the problem of fishery. But the hard fact is that the practice of States, on which the I.L.C. must take its stand if it is to be realistic, has been obstinately legalistic and conservative, and States have persisted in territorial claims even when international fishery commissions have pointed out the fallacies in such an approach.

Apart from the irritating intrusion of social science jargon, the structure of the book is dictated by a social science breakdown of factors which is of dubious utility. For example, "patterns of exploitation authority" are divided into unshared exploitation authority, modified exploitation authority and shared exploitation authority; and "patterns of conservation authority" are similarly subdivided. Since many of the historical fishery issues which are discussed have passed at one time or another through several or even all of those patterns, the result is an artificial breakdown of the subject matter and some repetition both of facts and of contentions (for example the contention that fishery resources are inexhaustible is stated and refuted several times).

This is a book which should be on the shelves of every Attorney-General's Department in the Commonwealth, and it should be studied in every negotiation concerning fisheries in which Australia may be involved.

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*The Law of the Sea—Offshore Boundaries and Zones*, by Lewis M. Alexander (ed.), Ohio State University Press, 1967, xv and 321 pp.

I In suggesting that the title of this attractive book had better been *Boundaries and Zones of the Law of the Sea*, I do not imply a negative censure. On the contrary, the clear intention of this book is merely to survey the first conference, held between June 27 and July 1, 1966, at the recently established Law of the Sea Institute of the University of Rhode Island. The opening paper was given by Professor Myres S. McDougal and Professor William T. Burke also wrote one of the papers whilst both participated throughout the discussions. It can be assumed, therefore, that participants at this Conference had the joint handbook by these two experts, *The Public Order of the Oceans, A Contemporary International Law of the Sea* (1962) as a basic reference to the discussions. The Conference indeed thoroughly probed some of the boundaries of present international maritime law. Not only the participants, lawyers,

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historians and oceanographers knew more than what they talked about, also the readers of this Conference-report are presupposed to have a basic knowledge of the subject. If they do, or if they have at least basic reference works nearby, they will benefit greatly from this report. Often conference reports deteriorate into nothing else but a personal keepsake for the benefit of the pride or nostalgic memories of those present. This is not so here. No outsider with a genuine interest in the Law of the Sea and the problems, finished and unfinished, raised at the United Nations Conferences at Geneva in 1958 and 1960, could fail to admire the liveliness, the frankness and the keen awareness displayed in these conference papers.

II Some liveliness was, perhaps, infused by unwarranted bragging right at the start. The Honourable Clairborne Bell, Senator from Rhode Island, is mainly at fault here. He did make, indeed, a bragging sort of welcome speech. Rhode Island itself may also be somewhat at fault since it has the pretence of being an *island* state, whereas it is not even a peninsula but simply a coastal state which includes the island truthfully named Rhode Island. There is no need to start an argument with Senator Bell about his watery home-statistics, but what about his fantastic coastline calculations (p. VIII)? First he speaks of a "nautical" coastline or a navigable one in order to get rid of Canada and the U.S.S.R. as countries with very extensive but partly frozen coastlines; then he puffs up the U.S. claims from 11,050 nautical miles (p. 72 of the book is honest, I presume, in its figures) to "almost" 13,000 miles and thus he picks the U.S. as having "the most extensive coastline". He might conceivably think in "miles" rather than in nautical miles, but even then Australia's length of coastline would also jump from its 15,091 nautical miles to leave the U.S. way behind in this kind of race. The cover of a pocket book, Geoffrey Blainey's *The Tyranny of Distance* (Melbourne, 1967) with its "12,000 miles of coastline" claimed for Australia surely is no "estoppel". In any case there remains the approximate 19,000 nautical miles of Indonesia as a formidable obstacle to Bell's boast, unless he is prepared to give the Republic of the South Moluccas that formal recognition as an independent international entity, for which some of its leaders in exile have been striving so long and for which they have vainly argued in their rather unheeded and sporadic news bulletin.

III If the boasts of Senator Bell in respect of the length of the U.S. navigable and "fishable" (p. IX) coastline went uncontradicted, his claim for a twelve mile fishing jurisdiction—a matter of current Australian concern—did not.<sup>1</sup> McDougal was eloquent enough and outspoken about his disagreement in this respect. One of the attractive elements of this book is indeed the candour it displays when one or the other of the contributors defends a particular interest. McDougal desires minimum coastal interferences of whatever kind. He decries such coastal rights as protecting only a particularistic interest. He is an advocate for maximum inclusive interests of the total international community. Senator Bell had remarked that many interests, desiring the utmost restriction of territorial claims, and coastal fishing interests, desiring to keep foreign fishing fleets out as much as possible, are to some extent at loggerheads. Now all sorts of conflicting interests and views were represented and argued at the Conference, even the views of the Commission to study the organisation of Peace and Committee on Natural Resources Conservation and Development in

<sup>1</sup> The promise in 1967 of an Australian 12-mile limit is now at the drafting stage. It should be a matter of grave concern that legislation on such a huge new "contiguity" is not supported by adequate co-ordinated research. Some such efforts are made by State Fish Authorities in W.A. and N.S.W. Subsidies for research or education in Victoria and Tasmania are "in the offing" rather than "at anchor". See Brian Hoad's telling "Australian Fishing is on the Rocks" in *The Bulletin* (9/3/1968) which, regrettably, underestimates the quality of the Commonwealth Research Division of Fisheries and Oceanography at Cronulla.

favour of an "internationalisation" of sea resources. They are in favour not of a simplistic majority of the U.N. General Assembly but of an Agency to be worked out with the efficiency of the International Bank for Reconstruction and Development as a target. In the present reviewer's opinion, Eichelberg and Christy made a forceful case (pp. 299-309) when stressing the future threat to the sea's resources under the present grab-as-you-can system with very limited international restraints. In practice, moreover, these few restraints are sometimes very ineffective.<sup>1a</sup> An advantage of this Rhode Island Conference was the presence of so many sufficiently knowledgeable experts, who could indicate specific research topics which require attention before long distance planning can become a notable proposition. A good instance related to conservation of resources is Wilbert Mcleod Chapman's chapter six (pp. 87-105) on fishery resources.

In this respect McDougal is to some extent correct and representing the opinions of other participants when he says: "I think it may take a hundred years for the law of the sea to recover from the last two international conferences which dealt with it, and I would regard the immediate call of another conference as an unmitigated disaster." (p. 3).

His negative appraisal of the Geneva conventions in general is not as widely shared and needs further weighing up, as does his belief that minimal coastal interference is always a blessing for the international community as a whole. I wish to revert to this at my concluding remarks.

IV Negative appraisals of the 1958 Geneva Conference in the book under review are not exclusively those of McDougal. A somewhat less prophetic view (p. 295) is this: "If you want to, you can interpret the Geneva conventions as a series of loopholes connected by loopholes." Yet in the same book (p. 273) a professor of law finds no basis "for disagreeing with the widespread acclamations which the four Geneva conventions . . . have received" and is in hearty agreement with the lavish praise in the *Naval War College Blue Book Series* (1961). Now such latitude of contradictory opinions, coupled with their outspoken formulations, makes this book a good "catch" for anyone whose task it is to communicate with students or with those engaged in post-graduate research on the problems of the law of the sea. As said before, it is not a regular textbook; nor does it contain a full commentary of the basic texts to be known; but it does discuss many burning problems met in the international law of the sea. This does not mean that the reader can adopt any opinion to his liking and then pick evidence at random to support arbitrary opinion ("no wiser but better informed"). There is too much convincing material for that. Assume that a reader was so naive as to think that the area of the continental shelf has been well defined in Art. 1 of the fourth Convention: "To a depth of 200 metres or, beyond that limit, to where the depth of the superficial waters admits the exploitation of the natural resources of the said areas." The book cures him of the idea: (p. 21) "How far one can dig, if one can trust the *New York Times*, is apparently changing every few minutes." No need even to trust that newspaper; chapter 14 on "Law and the New Technologies" by Burke will bring about the cure no less. Whilst we are provided with the legal starting point in detail, the vexing question is built up (p. 176): "How far, and how deep, does the coastal state's flag march under water?" That question arises also in connection with Art. 6 of that Convention which might seem less ambiguous in dividing the area of the continental shelf between opposite or adjacent states by measuring either the median line or, in the second case, the line emanating from the nearest points of the baselines,

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<sup>1a</sup> Compare Douglas M. Johnston, *The International Law of Fisheries* (New Haven, 1965) and Christy's joint study with Anthony Scott of the same year, *The Commonwealth in Ocean Fisheries*.

according to *equidistance*. Richard Young (p. 129-81) envisages some queer problematics, some of which are likely to arise on purely geographic or cartographic grounds. He also raises the remarkable problem that *equidistance* is related to baselines which are defined in Articles 3 and 4 of the first (Territorial Sea and Contiguous Zone) Convention not necessarily binding on all the parties bound by the fourth (Continental Shelf) Convention.

V Since legal arguments without adequate knowledge of geography, oceanography or geology are often futile or misleading, or both, the remarkably concise overviews of geological aspects of the sea-floor (K. O. Emery in ch. 9, p. 139-59) and of sea-mining (Willard Bascom in ch. 10, p. 160-71) are particularly to be welcomed. Gerard E. Sullivan's chapter thirteen (p. 195-203) on international regulation of communications for oceanographic equipment is a delight for anyone specially interested in international organisation in its development when (p. 195) "an almost sudden curiosity—man's reaction to his intellectual neglect of the vast Sea regions surrounding him—has led to and characterises today's accelerated activities. . . ." One of the mining engineers points to Australian legal encouragements to take up mineral exploration concessions (p. 293) which indeed led to the joint venture known as the Tasmanian Offshore Exploration Company and to the Bass Strait area exploration already foreshadowed at the Conference and mentioned in the book (pp. 163ff.).<sup>2</sup> New Zealand's fisheries problems are concisely reported by Professor Baxter who seemed hopefully, though cautiously, eager (p. 131) to see New Zealand and Japan before the International Court of Justice. Professor Baxter criticises the Dutch for their fight against off-shore pirate broadcasters which was, figuratively speaking, "based" on the continental shelf—not on the Convention so much as on a new principle that coastal states "may exercise jurisdiction over all installations erected on the soil of its continental shelf, no matter for what purpose". Burke quotes the defenders of this new principle, Professor H. F. Van Panhuys and Menno J. Van Emde Boas<sup>3</sup> and accepts their immediate concern, to combat coastal broadcast piracy. However, Burke vehemently disagrees with the thought (p. 211) of a "blanket provision for the extension of national law to any installation on the shelf". He thinks that "officials in some states could, pursuant to identical legislation, harass and perhaps completely frustrate legitimate scientific or other operations in the adjacent shelf region".

VI It may well be doubted whether, for the promotion of the greatly needed further scientific research, so eloquently stressed throughout this book, Professor Burke's requirement of coastal restraint is adequate. To organise further conferences on this score alone, leaving aside for the moment pollution, general resources conservation and mining allocation, would not be amiss. For fruitful suggestions and the awareness of "The Need for Future Modifications" after the Geneva conventions, chapter seventeen (pp. 265-98) contains relevant material. In that chapter Henry Reiff refers to the Intergovernmental Maritime Consultative Organisation which, when it started to function less than ten years ago, took charge at least in such a modest way as it is able to do, of the Convention on Oil Pollution of 1954. The Organisation certainly could make notable contributions to scientific enterprise. It might even prevent the blocking of purely scientific researches by arbitrary decisions of coastal States, which were Professor Burke's worry. There is, however, more scientific co-operation needed than the I.M.C.O. could at present be godfather to, under a Constitution which so limits its purposes (Art. 1) to shipping, maritime safety and navigation. One might also think of the less than ten years old U.N. Water Resources Development Center, but this again does not "catch" living

<sup>2</sup> See also the Commonwealth's Petroleum (Submerged Lands) Act 1967 and accompanying Acts concerning fees and royalties (nos. 120-123 of 1967).

<sup>3</sup> "Legal Aspects of Pirate Broadcasting", (1966) 60 *A.J.I.L.* 303-41.

or mineral resources in and under water and did not even seem to have taken U.N. co-operation in desalination research under its institutional wings.

The Convention on the International Hydrographic Organisation drawn up in April, 1967, at Monaco, supported and signed by Australia, but not yet in force, is a step in the right direction. This cannot yet be said of the 35-member Ad Hoc Committee to study "the scope and aspects of the question of the reservation exclusively for peaceful purposes of the sea-bed and ocean floor, and the subsoil thereof, underlying the high seas". It sounds good, and no one in the General Assembly of the U.N. voted against its establishment on December 18, 1967. Unluckily the vigorous research which is going on has too many strategic overtones, or one should say strategic deep water tones. These highly negative factors in the prognosis for the future international law of the sea should have been mentioned in this otherwise so comprehensive study, even if only in chapter four ("Factor Analysis as a Tool in Studying the Law of the Sea", pp. 47-70). Professor Burke is certainly aware of those aspects.<sup>4</sup>

VII Before concluding, I wish to refer again to Myres S. McDougal's opening chapter, which, in his characteristic all-encompassing manner, touches on all the principles which are or may be relevant to the considerations in detail which the book later provides. There is, by the way, a jarring misprint (p. 7) where the text should read—no one would not like to agree here—that law as "decision in accordance with community expectation is incompatible with arbitrary decision by coercion". Now two stands are taken by McDougal which raise two fundamental issues. The one is his "diehard", as he calls it himself (p. 20), objection to the larger zones claimed for whatever reason by coastal states. More than a diehard attitude even, it is an attitude of enthusiasm and rapture:

. . . if our experience upon the oceans has demonstrated anything, it is that it is in the best interests of the peoples of the world to have the narrowest possible territorial Sea. I sometimes tell my class that this should be the low tide mark. There is not any need even for a three mile territorial Sea.

Now McDougal's intention is far from reviving what was held by the majority in *R. v. Kleyn (The Franconia)*<sup>5</sup> nearly a century ago and even less from letting the strongest rule the waves. Yet, after admitting the good points with which he supports his views, it must be asked in how far his attitude, and perhaps that of most contributors to this symposium, is onesidedly in favour of nations with a strong navy, a strong merchant fleet, a strong fishing fleet and with all kinds of equipment to outstrip the naval and engineering effort of smaller competitors. To some extent this fundamental issue is connected with McDougal's dislike, related before, of the Geneva Conferences and of any further conference to be called in the near future. Again, this is far from being a simplistic negative posture and again some good points must be admitted, including that of a low "community expectation" in the first place. Yet some issues *have* been clarified, by whatever capricious vote juggling that took place, and some serious lack of clarification and lack of agreement between the interested parties has not diminished widespread *concern* and stock-taking. These are two preliminary drives required for any future progress and have been capably and eloquently given expression in the book under review.

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<sup>4</sup> William T. Burke, *Ocean Sciences, Technology, and the Future International Law of the Sea*, Ohio State University Press (1966).

<sup>5</sup> (1876) 2 Ex. D. 63.

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