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## BOOK REVIEWS

### *International Control of Sea Resources*

By

SHIGERU ODA

Leyden: A. W. Sythoff. 1963

Pp. 215, \$8.19

The problems of international fisheries have received a great deal of attention over the last two decades from scientists, diplomats, jurists—and the fishermen themselves! These problems are usually regarded as divisible into two broad categories: problems of exploitation (allocation, distribution) and problems of conservation. The fishermen and diplomatists, representing national interest, are usually more immediately concerned with the former, whereas the scientist is more likely to be engrossed with the challenge of the latter. When there is a recurring danger of abusing a finite resource, the scientist tends to conceive it to be his duty to oppose the temptations of short term interest with considerations of the longer term; and when the resource is an internationally shared or internationally shareable fishery the conflicts of interest are very real and very deep. Since the Second World War, massive diplomatic efforts have been made by many nations to reconcile these differences, through concession and compromise, or threat and favour; but these human energies, as finite as any fishery stock, were sadly depleted at Geneva in 1958 and 1960. The First and Second United Nations Conferences on the Law of the Sea were indeed historic in importance, but failed, at least formally, to make history in the sense intended, as the most ambitious codification accomplished in the history of international law.

The reasons for these failures are no doubt numerous, but a reading of the official records suggests that most of the delegations had failed to make a thorough-going analysis of the factors actually involved in the making of international policy regarding the use of the seas. From the earliest preparatory exchanges between the governments it was apparent that fishery interests were to be the dominant theme of the 1958 Conference. It was generally accepted that the law of the sea could not be codified in a meaningful way

until agreement could be reached on a uniform breadth of the territorial sea; this in turn was believed to depend mainly upon satisfactory solutions being found to the various fishery problems that arose in coastal or near-coastal waters. Since most sea fishing is conducted in such waters, it was at best a hopeful quest to proceed independently to a framework of legal principles to govern fishery conservation. As long as the territorial sea problem remained unsolved the optimism was bound to prove unwarranted, as far as formal law-making is concerned. Perhaps a more charitable verdict might be returned on the 1960 Conference, where the climactic resolution on exclusive fishery rights and the width of the territorial sea, sponsored jointly by Canada and the United States, failed by only one vote to obtain the required two-thirds majority vote of approval. This diplomatic disappointment broke many hearts; but even depleted human energies, like fishery stocks, are renewable. Once regenerated, these should now be turned, by scholars if not by governments, on new questions: What went wrong at Geneva? What can and should be salvaged from the wreck? What are the social and economic consequences of the various, conflicting national fishery policies? How do we adjudge the interest of the world community in formulating international fishery policy? What role, if any, should codification play in its formulation? And so on.

Currently Professor of International Law at Tokyo University and formerly a Japanese delegate at both Geneva Conferences, Professor Oda has had the opportunity over the last ten years to immerse himself in the law of the sea. This book reflects the degree of familiarity and expertise that he has acquired in the legal and diplomatic history of international fishery problems, particularly those involving the vast and far-flung Japanese fishing industry whose activities have been increasingly curbed since the end of the Second World War. The author does not conceal that much of his book is written in the vein of an advocate or apologist, and it is only fair to add that some of his most interesting comments are entirely personal. Those who have ventured with him into the fascinating study of international fishery problems will understand the difficulties that Professor Oda encountered in undertaking this work and will admire his deft organization of materials and marvel at such a lucid presentation in a language foreign to him. The international scope of his scholarship matches that of the subject matter, and his provision of charts and tables adds to the readability of his work, though one might wish to register a quibbling protest that

his maps are limited to the Japanese fishery disputes with Korea, China and the Soviet Union.

The book is divided into three parts. The first and longest of these, entitled "Fundamental Problems of International Fisheries," is likely to be of the most immediate interest to readers of this Journal, for it includes not only a description of the pattern of claims by coastal states to exclusive jurisdiction—designed partly to monopolize marine resources—but also a discussion of the various conservation problems and suggested solutions. It is here, writing as an international lawyer, that Professor Oda fails to carry his analysis far enough, and it is here that he tends to write, like most legal writers on the subject, as if he believed that legalisms and documents have an existence of their own. More useful now than a textual analysis of the abortive Geneva Conventions of 1958 would be a sustained effort to bring together all the social, economic, political, historical and biological factors that actually go into the making of fishery policy, for it is only in this way that a fresh and satisfactory approach can be made to the awesome task of constructing a comprehensive scheme of principles to resolve conflicts between national fishery policies. This is admittedly an ambitious project, since fishery science and fishery economics have only recently begun to provide significant data, but it is one that seems to have been made necessary by the diplomatic failures which Professor Oda describes so well.

In Part Two of the book the author subjects the 1958 Convention on the Continental Shelf to critical scrutiny and deplores the extension of unshared authority that it purported to confer on those coastal states blessed by nature with wide submarine projections of their land-mass. Unlike Professors McDougal and Burke, authors of *The Public Order of the Oceans*,<sup>1</sup> Professor Oda is indiscriminating in his adoption of the universalist principle and resists the encroachments by coastal states to achieve monopolistic control over mineral exploitation in the sea-bed outside coastal waters in much the same way as he attacks similar encroachments by coastal states in respect of floating fisheries.

In Part Three Professor Oda continues to press his assault on the very concept of the continental shelf and on those delegations at Geneva that succeeded in having it applied to sedentary fisheries as well as minerals, and by way of rebuttal he re-states his own view that:

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1. Utton, Book Review, 3 *Natural Resources J.* 208 (1963).

1. There is no logical or practical reason for separating exploitation of live resources attached to the sea-bed from the customary type of fishing. The only reason for treating the exploitation of live resources attached to the sea-bed differently from regular fishing should be the existence of historic rights. The consolidated treatment . . . of sedentary fisheries and the continental shelf seems to be ill-advised.
2. Provided reasonable safety measures are taken and conflicts with other proper uses of the high sea are adjusted, there is no reason for the prohibition of exploitation of marine resources from special installations. Being legally permissible, such activities should be subject to the regime of the high seas, and not reserved to the coastal States.<sup>2</sup>

This is a careful and interesting book, written by an acknowledged expert, serving its purposes well. In the end, however, the impression remains that these purposes were unnecessarily modest and that the author might well have cast his net more widely over troubled waters. Systematic and comprehensive policy analysis may not be everyone's cup of tea, but perhaps we may now look forward to something of this kind from Professor Oda: a projection of the trends in evidence and a development of the ideas that he stimulates, calling upon all the non-legal disciplines concerned with the resources of the sea.

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2. P. 186.

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