

BOOK REVIEWS

The International Law of Fisheries, by Douglas M. Johnston, Yale University Press, 1966, xxiv and 554 pp.

Half a century ago a Scottish fisheries expert named Fulton transformed himself into an international lawyer and wrote a classical, and legalistic, treatise on the Law of the Sea. Professor Johnston of Louisiana University has achieved the reverse: a lawyer, he has transformed himself into a marine ecologist, and even into an economist and demographer, and has written a worthy successor and supplement to Fulton's book. His is an inter-disciplinary approach, an attempt to see the problem of fishery control from all possible angles, and thereby to rationalize the rules of international law concerning fisheries. This is one of the best studies from the "Yale school", to which the author belongs, and which aims to study the law as a process rather than as a statement of rules.

The traditional law of the sea, with its divisions between inland waters, territorial waters, contiguous zone and high seas, Professor Johnston finds "curiously irrelevant to the great technological challenge confronting mankind" (p. 483). The reasoning which leads to this conclusion involves a criss-crossing of complex factors. Fish do not respect these divisions; fisheries are constantly migrating as sources of food shift, and this shift is due to changes of climate as well as other factors; the dependence of a coastal population on the sea varies enormously for many reasons, and is in its turn forever altering in degree; health interests compete with economic interests in some cases, and coincide with them in others; in some instances the motive behind exclusive fishery claims is exploitationary, in others it is conservationary. The lawyers, when they have in fact listened at all to marine ecologists and biologists or to economists, have been misled because they have been presented with only one or a few of the many factors which should underlie a decision concerning the control of fishery, either by a single State acting pursuant to the thesis of sovereignty, or by several States acting under treaty. Professor Johnston argues for a "functional" approach, and the technical and technological evidence which he marshals in the first third of the book is impressive and persuasive.

The values he lists are: health, national self-respect, technical knowledge and efficiency (pp. 131-142). The principles by which these values are realised are: (1) to facilitate the development of the world's marine resources; (2) to avoid practices that tend to impair the productivity of particular stocks as contrary to the interests of the world community; (3) to share on an inclusive basis a physically shareable fishery resource in a non-domestic domain; (4) to preserve the prior rights of States which have a special interest in a fishery resource; (5) to negotiate solutions to fishery disputes; (6) to have universally acknowledged procedures for settling such disputes (pp. 149-153). Decisions should be made which (1) consider economic maximization as a significant objective of fishery management; (2) take account of the socio-economic elements in each claim; and (3) evaluate the claims in light of the most relevant behavioural and ecological studies (p. 464).

The historical studies of fishery disputes and the literature on fishery

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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