



The Law of the Sea in  
our Time — I  
NEW DEVELOPMENTS,  
1966-1975

Shigeru Oda

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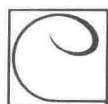
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SIJTHOFF PUBLICATIONS ON OCEAN DEVELOPMENT  
VOLUME 3

*A series of studies on the international, legal, institutional  
and policy aspects of the ocean development*

General editor: Shigeru Oda

TO MY TEACHER AND FRIEND, MYRES S. MCDOUGAL

## FOREWORD

The law of the sea, which has a long tradition of development, has been put to many tests during the last decade, and is now about to undergo a drastic change. This change might be the greatest in scope experienced by any field of international law. More than twenty years have passed since I first took an interest in the law of the sea, and the present situation is far more complicated than that which I anticipated only vaguely at that time.

Since the First United Nations Conference on the Law of the Sea in 1958 I have participated, as a member of the Japanese delegation, in almost all the international conferences on that subject. I have also been requested on various occasions by the United Nations and some other international organizations to render certain services concerning the law of the sea, and have been invited to participate in international academic meetings on this topic. As a student of the law of the sea from one of the maritime nations, I have always endeavoured to emphasize that we should observe both the fragile reality of the situation as well as the final goal of an international society.

Several times I have had occasion to write on the law of the sea. From among the things I wrote, the following comes to mind. I pointed out in 1954 that, while the extent of the territorial sea was of great importance mainly in the monopolization of coastal fisheries, conflicts of interests over coastal fisheries would give rise to extreme difficulties in the future law of the sea. With regard to this, I made an analysis in 1962 which

showed that the concept of the contiguous zone, if properly understood, would not be applicable in solving the difficult problems of fisheries, as it was generally expected so to do. I stated in 1957 that the future problems of international fisheries would lie not in the conservation of fishery resources but in the allocation of the limited fishery resources among those nations which expressed unlimited demand. In 1959 I suggested, in connection with the Continental Shelf Convention adopted the previous year, that the thesis that the superjacent waters of the continental shelf remained as high seas would inevitably face some contradictions, and that the ambiguity of the provisions of the outer limit of the continental shelf would become a cause of difficulty in the future. I thus proposed in 1967 that the Continental Shelf Convention should be revised to meet these difficulties.

Since 1968 when the United Nations Committee on the Seabed was organized, I have devoted much time and energy to the development of a new law of the sea. Several articles which I wrote during that period are included in this book. Today, there is an abundance of excellent works on the law of the sea produced by scholars all over the world. It certainly seems dubious as to whether the addition of this small book will be of any significance. However, as one who has recently resigned from active participation in law-making concerning the ocean, I would like to put some of my thoughts on record. These articles naturally represent only the views of the author. Some of the articles in this book, which originally were published on different occasions, may overlap each other to some extent in content, but they



remain untouched in their original form except for minor changes. This is because it was extremely difficult to keep these articles up to date in the light of the day-by-day progress concerning the law of the sea, and it seems also meaningful to register those ideas which I held at each stage of my writing.

It was Professor Myres S. McDougal who advised me, when I was a graduate student at Yale, to take up the law of the sea. To understand the original and profound thoughts of this great scholar was far beyond the ability of a foreign student. However, without his kindness and friendship over the past quarter of a century, I could not have carried out my research on international law, although I have become somewhat heretical. With my heartfelt gratitude, I should like to dedicate this book to him.

Finally, I am grateful to the Ministry of Education of Japan which graciously has given me financial assistance in translating the original manuscripts from Japanese into English, which thus makes them accessible to my foreign colleagues.

October 1976  
The Hague

Shigeru Oda

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1

THE DAWN OF A REGIME  
FOR  
THE DEEP OCEAN FLOOR,  
1966-1970

- I. Developments prior to the Maltese resolution
  - A. Some activities of non-governmental organizations in the United States, prior to 1967
  - B. The International Law Association (deep-sea mining committee), 1966-1967
  - C. Deliberations by the United States Congress in 1967
- II. The Maltese resolution at the twenty-second session (1967) of the United Nations General Assembly
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  - C. Discussions at international gatherings
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- V. Deliberations in the United Nations during 1968-1970
  - A. The 1968 Ad Hoc Seabed Committee
  - B. The 23rd session of the General Assembly (1968)
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- VI. Actions taken by the United Nations organs other than the Seabed Committee during 1968-1970
- VII. Developments within the United States Government after 1968
  - A. Report of the Commission on Marine Science, Engineering and Resources
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  - C. Determination of a seabed policy by the United States Government in 1970

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(May and December 1970).

When the Convention on the Continental Shelf was adopted at the UN Conference on the Law of the Sea in 1958, the exploitation of seabed areas of more than 200 metres in depth was not generally (though there were some exceptions) considered to be a realistic question. However, today, the rapid progress of technology has made the exploitation of such areas possible and the development of the deep ocean floor has become an actual, not merely theoretical, problem. It is only since the Maltese draft resolution at the 22nd Session of the UN General Assembly in 1967, that the régime for the deep ocean floor has been discussed as a practical problem on the international level. Arvid Pardo, Malta's Permanent Representative to the United Nations, suggested the imminent need for establishing a régime for the deep ocean floor, and in response the General Assembly began to consider such a régime by setting up an ad hoc committee on the seabed. In fact this Maltese proposal was not a sudden one; the opportunity had gradually matured both inside and outside the United Nations. But, after the Maltese proposal, in parallel with the debates at the United Nations, there were also many discussions on the régime for the deep ocean floor at the non-governmental level.

## I. DEVELOPMENTS PRIOR TO THE MALTESE RESOLUTION

### A. Some Activities of Non-Governmental Organizations in the United States, Prior to 1967

Prior to the Maltese proposal at the General Assembly in 1967, a movement was emerging among non-governmental organizations in the United States to place the deep ocean floor under a certain kind of international control.

1. The Committee on Natural Resources Conservation and Development of the National Citizens' Commission on International Cooperation

In October 1964, the President of the United States convened a meeting, "The White House Conference", in order to study and discuss international co-operation for peace at the non-governmental level. The area of study and discussion covered some 30 items including "Natural Resources Conservation and Development". The Committee on Natural Resources Conservation and Development, consisting of 18 members, met in Washington, D.C., from 29 November to 1 December 1965. In the report of that meeting, a specialized agency of the United Nations for marine resources, including mineral resources, was proposed. Pointing to the ambiguity of the outer limit of the continental shelf, the report suggested international control of exploitation of the seabed area beyond.<sup>1</sup> This seems to have been the first time such an idea was made public.

Among the members of the Committee was Francis T. Christy Jr., who, as a member of the staff of Resources for the Future Inc., was known for his book on marine resources, The Common Wealth in Ocean Fisheries (Baltimore, 1965). It appears that his idea had led the Commission to suggest the control of resources of the deep ocean floor.

2. The Commission to Study the Organization of Peace

The Commission, originally set up in 1939 to study possible organizations to replace the League of Nations, was an auxiliary organ of the United Nations Association of the United States. Christy, who was invited by the Commission to its meeting held in Wisconsin in August 1965, together with David B. Brooks, who was then a teacher at a small college in Kentucky, and who later became the Chief of Economic Analysis in the Bureau of Mines, proposed an idea that the United Nations should supervise



and control the deep ocean resources. This idea was incorporated in the report of the 17th Session (May 1966) of the Commission.

The report, New Dimensions for the United Nations: The Problems for the Next Decade dealt with the problems of the sea, and particularly discussed the exploitation of the deep ocean floor. This part, essentially written jointly by Christy and Brooks, proposed that the United Nations be vested with title over the mineral resources of the deep ocean floor and that a specialized agency called the UN Marine Resources Agency be established.<sup>2</sup> Furthermore, Christy and Brooks jointly submitted an additional paper to the meeting.<sup>3</sup> The Chairman of the Commission was Clark M. Eichelberger, Vice-President of the United Nations Association of the United States, who before World War II was national director of the League of Nations Association. Christy and Eichelberger thus started working together on the régime of the deep ocean floor.<sup>4</sup>

### 3. The First Annual Meeting of the Law of the Sea Institute at Rhode Island

In 1965, the Law of the Sea Institute was established at the University of Rhode Island for the purpose of exchanging ideas and information on matters relating to the control and use of the sea. Presided over by Lewis M. Alexander, Professor of Geography at the university, the executive committee included Christy, and William T. Burke, then Professor of Law at Ohio State University, who was known for his work The Public Order of the Oceans (New Haven, 1962), written in collaboration with Myres S. McDougal of Yale University.

This Institute, without a full-time staff, worked mainly through its annual meetings, the first having been held from 27 June to 1 July 1966.<sup>5</sup> On that occasion, Christy and Eichelberger jointly advocated the idea of