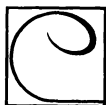


The Law of the Sea in our Time — I
NEW DEVELOPMENTS, 1966-1975



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

General editor: Shigeru Oda

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our Time — I
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Shigeru Oda

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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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