

THE PUBLIC ORDER OF THE OCEANS. By Myres S. McDougal and William T. Burke. [Yale University Press; London: Oxford University Press. 1962. xxv + 1226 pp. U.S. \$15. £5 5s.]

Although the Geneva Conventions of 1958 have been ratified by only a small number of States, they have already had a major effect on the law of the sea and doctrinal approach thereto. In their *Public Order of the Oceans*, Professors McDougal and Burke use the Conventions as the outline within which to discuss 'A Contemporary International Law of the Sea', evolving this through the medium of the views of writers, the activities of the International Law Commission, the Plenary Records of the Geneva Conferences, and the Conventions.

Perhaps the significance of their contribution to the subject lies in the view that "it is....only the beginning of wisdom to perceive that in some circumstances an activity ought to be given priority but that, in other circumstances, it must yield this priority to other activities. The problem realistically posed is to indicate guides for determining under what conditions which activities ought to be given priority in establishment of reasonable accommodation". Thus, when assessing the need to preserve fishing rights as against other forms of maritime exploitation, investigation should be made of the number of nations whose nationals fish in the particular area; the importance of the fishery both from the point of view of food and economic resources; the productivity of the area as a fishery; and the type of fishing carried on in relation to the other potential forms of exploration and exploitation. A similar balancing approach would prove useful with regard to every other use of the seas.

Professor McDougal has recently committed himself to approaching various problems of international law from the point of view of what might be called a policy-oriented jurisprudence, and the present work is but one in a series devoted to

this concept. Too often, textbooks on the law of the sea state what the customary law is, what State practice makes of it, and how international conventions have affected the situation, recognising that the seas are the inheritance of all and excessive claims cannot be tolerated. However, acknowledgment of the importance opened vast new fields for user and application of the seas, necessitate a somewhat more analytical approach: "The most complete and refined application of these methods would require comprehensive and realistic orientation in the factual processes of interaction by which the oceans are enjoyed, an economic categorization of the major recurring types of problems which raise common issues in policy and are affected by common conditioning factors, the postulation of the most general overriding community policies with respect to such problems, the detailed clarification and recommendation or particular policies with respect to each problem, the description of past trends in decision in terms of conformity to these policies, the identification in the degree possible of the factors which have affected past decision, the projection of possible future decisions and conditioning factors, and the recommendation of alternatives in principle and procedure appropriately designed better to secure recommended policies."

The learned authors have applied these methods of inquiry to investigate all those matters of international maritime law which were dealt with at Geneva — it is to be hoped that in the future they will apply a similar method of study to the maritime law of war too. In the meantime, here may be found perhaps the most comprehensive exposition yet made of claims to internal waters and the territorial sea and of the right to demarcate their border; assertions regarding unilateral delimitation of the width of the territorial sea and to claim authority over a contiguous zone; the position with respect to common user of the high seas including claims to regulate particular activities therein; and finally there is a careful analysis of the position relating to nationality of ships, in the course of which dissatisfaction is expressed with the concept of the 'genuine link' between the State and the ship.

From the point of view of the junior student, some of the arguments may be a little too involved and provocative, without providing sufficient indication as to what the generally accepted rule may be. But for post-graduate students, *The Public Order of the Oceans* constitutes an Aladdin's cave of problems, ideas and example.