

Book Review

THE FUTURE OF THE OCEANS, by *Wolfgang Friedman*. New York: George Braziller, Inc., 1971. 132 pp. \$2.45.

Having read to this point in the fourth Law of the Seas Symposium, one presumably does not need to be convinced that the oceans present crucial international legal problems. Nor presumably does one need to be convinced that we are currently at the threshold of solving some of those legal problems. However, one may need to be convinced that there is a necessity for personal and professional interest in law of the seas and in the future of the oceans. Professor Friedman's compact, readable book should demonstrate to those who need to be convinced that they have a real personal interest and at least a potential professional interest in how national and international laws for the seas develop and in the future of the oceans.

By his own admission, Professor Friedman has not written a neutral book. His thesis is simple and to the point: The developing system of laws and government for the oceans is off on the wrong foot. Unless something is done and done now, the same attempted territorial division that has accounted for much of man's problems on dry land will be repeated in the oceans. *The Future of the Oceans*, however, is more than just a position statement by one professor of law. The book is a primer on the oceans and the attempts man has made to govern them. If for no other reason, this particular aspect of the book dictates that it be a part of the attorney's personal and professional library.

Before the oceans and law of the seas can be understood, complex technical jargon must be mastered. Because such terms as *abyssal plains*,¹ *Manganese nodules*² and *the common heritage of mankind*³ are an integral part of the scientific and legal lexicon of the oceans, they must be understood in order to understand the oceans. Most lawyers simply do not have the background to understand the jargon without some form of help. It is not that these terms are conceptually difficult, but rather that they have evolved over the years from little publicized areas of the physical sciences or politics. There have been few, if any, basic books to teach these terms to "laymen". The *Future of the Oceans* explains most of these technical terms in a concise manner which can be understood at the first reading. For those who have a background in the area or who need a more complex treatment, chapter footnotes provide a rather complete bibliography of the available material.⁴

The *Future of the Oceans* begins with a statement of the challenges the oceans present. Professor Friedman sees both an ecological challenge, in its broadest sense, and a political challenge in the oceans—challenges to use the oceans and to govern that use. With these challenges in mind, the reader is taken through a series of chapters which explain the basic physical, political and legal concepts of the oceans. Then the reader is turned to the history of man's attempts to govern the oceans and to develop laws for the seas. It is at this point where the reader can begin to see why traditional legal notions no longer form a satisfactory basis for dealing with the ocean problems of today.

For thousands of years, man's involvement with the oceans has generally been with the surface of the ocean. Because there were more fish than could be caught by primitive methods, and because

1. Flat areas of the ocean floor adjacent to the continental margin and at depths of about 5,000 meters.

2. Manganese lies in "nodules" on the *surface* of the ocean floor, generally on the abyssal plains. For an extensive treatment of the mineral resources of the ocean, see Mero, *A Legal Regime for Deep Sea Mining*, 7 *SAN DIEGO L. REV.* 488 (1970).

3. This is the term used by President Nixon to describe how the ocean's resources should be used. One United States expert has suggested that the term "Human Comitage" would be more appropriate and thereby avoid preconceived notions of what "common heritage" means. Knight, *The Draft United Nations Conventions on the International Seabed Area: Background, Description, and Some Preliminary Thoughts*, 8 *SAN DIEGO L. REV.* 459, 492 (1971).

4. Unfortunately, Professor Friedman does not cite these symposia. As the book becomes dated, it will be necessary to refer to periodicals to stay current in this area of fast changing developments. For some other periodicals which may be helpful, see Wilkes, *Law of the Sea Needs for the 1970's*, 8 *SAN DIEGO L. REV.* 453 (1971).

man took nothing else from the oceans, the use of the surface was all important. Water-borne trade, of course, was, and remains the primary use of the surface of the oceans. The basic law of the seas, freedom of the seas, arose in response to man's use of the surface of the oceans. Until recently, the freedom to pass unmolested over the surface of the oceans was sufficient to protect all man's use of the oceans. Now, however, man has begun to explore and exploit the subsurface of the seas. Freedom to pass unmolested over the surface does not answer the question of who may take what from the oceans. Professor Friedman explains what is in the oceans that man will probably have to use in order to survive (almost everything) and details the recent attempts to begin using it. He then turns to a more thorough treatment of what "laws" have been generated to regulate these uses of the oceans. Of particular interest is the discussion of international bodies and the laws they are attempting to formulate. Again, this is an area which must be understood, but which is relatively unknown to most lawyers.

The *Future of the Oceans* concludes with a prognosis that "is not one of unmitigated doom." While it may not be unmitigated doom, it is one of caution: "The tragedy of mankind may prove to be the inability to adapt its modes of behavior to the products of its intellect. Twentieth-century man threatens to be a new kind of dinosaur, an animal suffering from a brain ill-adjusted to its environment."⁵

No attempt is made to convince the reader of a need for personal involvement in the future of the oceans through the tired exhortation to "get involved." Instead, Professor Friedman demonstrates that the future of the oceans is so important to man that noninvolvement is nothing less than suicidal. He would appear to be correct. If even a portion of the reports on the oceans' wealth are correct, man's very survival on this planet will require the enlightened use of that wealth. What better reason can there be to "get involved" now, before the wrong decisions are made.

The need for greater professional involvement is demonstrated by the accusation that some members of the legal profession are among an "unholy alliance of governments, interest groups and lawyers" who are attempting to carve the oceans into nothing less

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than fiefdoms for unleashed exploitation. Such castigation by a fellow member of the profession is not particularly startling, but it does point out the important role that the legal profession can and must play in the development of a rational system of laws for the seas. Too often in the past, the bulk of the profession has been left behind when important national and international legal problems were being solved. The recent ecology crisis provides an example of what can happen. Almost overnight, lawyers were faced with legal problems in which they had not been trained to deal. Law schools, with uncharacteristic speed, began teaching environmental law courses—without text books, without trained professors and without really knowing what the lawyer's proper role was in solving problems of the environment. Like many other crash programs, the results were not always good.

It seems clear that unless there is greater involvement by the profession and its schools in the developing law of the seas, this same catching up will be necessary in the future. Most of the contributions to *law* of the seas are being made by laymen, not the lawyer. Take, for example, the annual law of the seas conference at the University of Rhode Island. The vast majority of the participants are scientists and engineers, not lawyers. The number of practitioners in attendance can be counted on one hand. Yet it is at this type of gathering that the policies behind the laws, if not the laws themselves, are being made.⁶ Sooner or later, if something is not done, the profession will begin to have to catch up.

No one, including Professor Friedman, is suggesting that there be a crash program for teaching law of the seas or that scientists and engineers should not play an important role in the development of laws for the seas. As a matter of fact, some law schools and professional organizations have been and are becoming involved in law of the seas.⁷ However, the time has come when certain fundamental questions about the future of the oceans must be answered. Who will be allowed to take minerals from the oceans? Who will be allowed to take fish? Who will license, tax and regulate the takers? How will the resources of the oceans be divided? Will these

6. Even the lawyers who are present do not seem to fair too well. At the 1970 conference, one of the lawyer participants pointed out that his clients could not be expected to invest millions of dollars in exploration of the oceans until they could be reasonably sure that they could take what they found and at a profit. He did not appear to receive much sympathy from the other participants.

7. The University of Miami and Louisiana State University, for example, have new programs dealing with law of the seas. On the other hand, some law schools, especially those in the coastal states, have failed to realize the importance of law of the seas.

questions be answered with the help of a few law schools and a few lawyers, or will they be answered with the aid of a greater segment of the legal profession? Here is an opportunity for the profession to help formulate the laws that will someday provide its livelihood. Until law schools begin teaching something about law of the seas or until professional organizations expand their scope, the lawyer who desires to play a part in answering questions about the future of the seas and law of the seas will have to turn to books such as *The Future of the Oceans* to learn what he will need to know.

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