

BOOK REVIEWS

THE NEW LAW OF MARITIME ZONES (1983). By P. Chandrasekhara Rao. Milind Publishers, New Delhi. Pp. xi+423. Price Rs. 200.

THIS BOOK review is an exception to the happy rule that while the authors may take as much time in composing their work, the reviewers must perform their tasks expeditiously! With apologies to the readers, the author and the *Journal*, the reviewer offers here a 'vintage' review which he hopes will draw as much welcome attention to this work¹ as a 'deadline' review.

The work is exciting and important. With this work, the author joins the thin ranks of outstanding Third World publicists who have contributed to the clarification and codification of the new law of the sea. He offers us, as it were, a 'ringside' view of the processes of emergence of the new legal regime of maritime zones, both from the international and national law standpoint. For quite sometime to come, his work should furnish many authoritative starting points of discourse in this area. And it should continue to invite 'bureaucratic' envy for a kind of versatility which combines efficient discharge of high governmental and official responsibility with scholarly vitality.

The author addresses in great depth the federal question concerning territorial waters in India.² He starts off with a categorical assertion that article 297 vests both *dominium* and *imperium*: "In the scheme of Article 297, the concepts of sovereignty and property coalesce."³ He is critical of the decisions of the High Courts of Madras and Madhya Pradesh holding that the territorial waters of India form "part of the territories of the respective coastal units." He subjects these decisions to a comprehensive critique both on the ground of "mistaken assumptions of the principles of international law" and of inapposite interpretational techniques concerning the distribution of powers under the Indian Constitution.⁴ He even goes so far as to maintain that, even though article 297 does not *ex facie* vest legislative competence in the Union of India outside "all lands, minerals and other things of value underlying the ocean within territorial waters," and despite entry 21 of the state list conferring power on states to legislate with respect to fisheries, the "vesting of in the Union of the lands in territorial waters has the effect of vesting the waters above such lands in the Union."⁵ He restricts the scope of state legislative power only to inland

1. P. Chandrasekhara Rao, *The New Law of Maritime Zones* (1983).

2. *Id.* at 22-62.

3. *Id.* at 27.

4. *Id.* at 34-40.

5. *Id.* at 46.

fisheries,⁶ despite acknowledging B.R. Ambedkar's view in the Constituent Assembly that "fisheries will continue to be a provincial subject even within the territorial waters of India,"⁷ a view endorsed by the Madras High Court.

The Union of India, interestingly, has not contested before the Supreme Court any of these matters, including a spate of state legislations concerning fishing in territorial waters.⁸ It would have been interesting for us to have some clues to this 'acquiescence' with the judicial decisions both by the executive and Parliament. Neither the Marine Products Export Development Authority Act 1972 nor the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act 1981, cited by the author,⁹ does, in the present opinion, sufficiently impugn the view of the Madras High Court followed by the legislatures of Maharashtra, Kerala, Goa, Daman and Diu. And further the Constitution (Fortieth Amendment) Act 1976 did not clarify this aspect for once and all.¹⁰

It would surely be interesting to await what the Sarkaria Commission on Union-State Relations, which has recently submitted its report, has to say on this aspect. In any case, on so important an issue the Union of India could not have a more cogent and cosmopolitan (in its erudition) brief than the one presented by the author.

On the international law aspects of the evolution of the new law of maritime zones, this work is an eminently safe guide. Just one example of this should suffice to prove this assertion. On the question whether continental shelf regime gives to coastal states (in the international law sense) only economic rights so as to enable the assertion that foreign states may, when they can, erect military installations on the continental shelf without the consent of the coastal states, the author concludes, after meticulous analysis, that neither customary nor conventional law authorises such actions, even on the alleged grounds of their "reasonableness."¹¹ The study constantly highlights the fact that the new law of the seas does not altogether supplant customary law on the subject, a truth that bears heavy reiteration. And it is on this test that the author justifies the Indian assertions under the Maritime Zones Act 1976, which preceded, among other bouts of anticipatory multilateralism, the finalisation of the new law of the sea.

The *cognoscenti* will, of course, find many a proposition in the book provocative. For example, the statement¹² that, "conceptually speaking," "the new law of the sea" has not "materially altered the basic structure of the regime of continental shelf" or the author's complete condonation of unilateralism in the Indian Maritime Zones Act 1976, while the new law

6. *Id.* at 61.

7. *Id.* at 44.

8. *Id.* at 41-43.

9. *Id.* at 43.

10. See *id.* at 278.

11. *Id.* at 122-28.

12. *Id.* at 339

was on the anvil,¹³ will be liable to contention. The problem of whether the coastal state is entitled to exercise its jurisdiction to enforce all its laws, even in the absence of *prima facie* infringement, over contiguous zone,¹⁴ is one on which divergence of views may not be as easy to resolve as the author, at times, takes it to be.

The principal merit of this work is that it takes firm and diligently researched positions, with an urbanity which commands emulation on matters which must remain somewhat controversial. If international law is not to be a prisoner of power-politics, publicists have to persevere in the task of maintaining critical dialogical spaces. In this vital task, the work succeeds most admirably and that is the achievement worthy of applause.

*Upendra Baxi**

13. *Id.* at 343.

14. *Id.* at 305-15

* Professor of Law, Delhi University, Honorary Director (Research), Indian Law Institute.