8 The Political Geography of the Sea

Are we witnessing a gradual closure of the seas?
[Fawcett 1973]

There can be no doubt that the I.L.C. (International Law Commission) as a body recognised that the legal Continental Shelf might extend beyond the geologic continental shelf.
[Brown 1971]

The states of the world are crowded on its land area, which makes up only twenty-nine per cent of its surface, but this in no sense implies that they are uninterested in the remaining seventy-one per cent which is made up of the oceans and their contained seas. There is, in fact, only one ocean, since the separately named parts are interconnected and much the greater part of this is water subject to tidal influences and to movements at different levels resulting from differential temperatures, winds and varying inflow from rivers and glacier meltwaters. The ocean’s waters are broadly rich in their biological and mineral content and they vary in depth, salinity and temperature. Beneath the waters of the oceans and seas the sea-bed varies greatly in its relief, superficial cover and contained minerals. In a wide variety of ways the oceans and seas have lured man as a valuable and essential part of his habitat and, as his power over his environment has greatly increased with his control of mechanical energy and technological advances, interest in, and use of the ocean have taken on ever more visible prominence. The political interests which attach to the oceans and seas include surface and underwater transport, fish and whales, the riches beneath the sea-bed, international waterways, marine boundaries, strategy and defence, and the special problems of access to the seas faced by land-locked states.

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1 International Law and the Seas

If only for the evident reason that the seas, unlike the land, are incapable, except marginally, of permanent appropriation, they have come to generate their own body of international law. For many centuries the Roman legal maxim that the seas were res communés (i.e. available for all to use) was challenged in practice by states that commanded a measure of naval power and claimed and exercised political control of maritime sectors. The grandest of these claims were made by Spain and Portugal, who regarded the Pacific Ocean and the Indian Ocean respectively as their own by right of discovery. Lesser claims were made, for example, by the Venetian Republic which claimed control of the Adriatic Sea, and by England, which claimed dominion over the waters around the British Isles to outer limits at Cape Finisterre in Spain and in northern Norway. Inflated as such claims may appear, it should be recognised that, without the naval policing that these claimants partially provided, the seas, open to all, were subject to the flourishing trade of piracy.

The formulation of doctrines of what came to be known as international law in the seventeenth century attempted to reduce the lawlessness of those modern absolutist states of Europe which recognised no earthly superior and even applied the principles of Machiavelli’s The Prince with its belief that moral behaviour has no place in political and military affairs. Grotius argued that the seas should be free of territorial sovereignty and from this view evolved the concept of the high seas to which all have free and equal access. Inevitably, however, as responses to the hard facts of geography, it was necessary to establish rules relating to seas marginal to the land, including straits and gulfs. The idea of mare clausum, a semi-enclosed sea or stretch of sea, to which a single state asserted and enforced its own control, long persisted. We may recall that the Black Sea, to which marine access is confined to the narrow waterways of the Dardanelles, the Sea of Marmara and the Bosporus, was for several centuries surrounded by European and Asiatic territories of the Ottoman Turkish Empire. This exercised an exclusive dominion over the Black Sea until the year 1774 and onwards when, by unilateral concessions, it began to permit entry to vessels of foreign powers. And even today, in accordance with the Convention of Montreux of 1936, the Turkish Republic, successor and residual state of the Turkish Empire, enjoys the legal right to control passage through the