MARITIME ORDER IN THE GLOBAL ERA
National Interest vs. Common Good of Humanity

EXPOSÉ

In the face of ongoing geopolitical realignments, the controversy around the Panama Canal – a "permanently neutral" international transit waterway under the jurisdiction of the eponymous republic – has highlighted the challenges that may arise for the rule of law and peace between nations when major global players resolve to assert their national interests irrespective of the sovereignty of other states or the rights of third parties.

In the last few centuries, disputes over maritime sovereignty were the cause of tension or armed conflict in virtually all corners of the globe. With the Truman Proclamation of 1945, a process for the expamsive assertion of national interests by coastal states has been set in motion that led to an "appropriation" of areas of the sea the magnitude of which, in the words of Arvid Pardo, was "unprecedented in history." The notion of "continental shelf," codified in the United Nations Convention on the Law of the Sea (UNCLOS), has become the rationale behind granting coastal and archipelagic states "sovereign rights" of exploitation in vast spaces of the ocean, with numerous overlapping claims of jurisdiction resulting in new scenarios of geopolitical confrontation. Also, the entitlement of islands, irrespective of the size of their territory, to a continental shelf cum exclusive economic zone (EEZ) – that can be larger than the EEZ of big coastal states – has led to complicated disputes over jurisdiction, particularly in terms of equity.

While, traditionally, rights of maritime sovereignty were tied to the **ability to control** (by military means), as in Cornelius van Bynkershoek's *De dominio maris dissertatio* (1742), or the **ability to exploit**, as in the Geneva Convention on the Continental Shelf (1958), UNCLOS defines sovereign maritime rights in the sense of **entitlement,** resorting, *inter alia*, to the notion of a "legal" continental shelf. Though generously accommodating the interests of coastal and archipelagic states, UNCLOS – unlike the Convention of 1958 – sets an absolute outer limit to the exercise of any kind of national sovereignty and, thus, to the greed justified by invoking it. The "Area" of the sea and its resources beyond the limits of national jurisdiction are declared "the common heritage of mankind."

Use of the “Area” under UNCLOS should not just be “equitable exploitation” of its resources for the benefit of all countries, ultimately driven by collective greed. In the face of global environmental challenges, the principle of **common heritage** must be complemented by the **common good of humanity** as guiding principle for sharing the wealth of the oceans, which must be more than a legalized version of dividing the booty. Rights entail responsibility. It is to be hoped that the paradigm of common good, though not codified in the Convention, will serve as a kind of normative compass also for the overall implementation of UNCLOS – especially in view of the permanent arbitration without which the Law of the Sea, with its often diplomatically vague and at times conflicting provisions, cannot exist. How to navigate the tension between the pursuit of national interests in the name of sovereignty, on the one hand, and a commitment to the global common good, on the other, will be one of the major challenges of the international community in the maritime domain.

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