

THE LAW OF THE SEA AND THE MEDITERRANEAN

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IN June 1976, the United Nations Conference on the Law of the Sea, which has claims to being the international conference in human history with the largest number of participant nations ever, stands adjourned. It is not yet certain that it will actually produce a new Law of the Sea. But it has already achieved two things of undoubtedly great historical importance. From a positive point of view, it has put into circulation a powerful concept; it is now impossible for mankind to forget that there is a 'common heritage of mankind'. From a negative point of view, it is already clear that mankind has shown itself not yet in a political condition to apply the concept as fully as it seemed at first reasonable to hope. The reasons for these two results must be left for future historians to determine; I will only say that I think it likely that, among them, Maltese parish-pump politics may be assigned a role analogous to that of the length of Cleopatra's nose in a more ancient period of Mediterranean history. With these two results taken as given and as symptomatic of even more general political conditions, the purpose of this paper is to look for new bearings. Its thesis is that the practical obsolescence of the nation-state on the one hand, and the practical nonachievement of a really significant form of world-government even in the sphere of ocean space on the other hand, point to the need of practical projects on a regional scale. The development of regional institutions may be the transitional way of the present dilemma which confronts the citizens of nations in a world not yet ready to accept that the world is one small planet.

A conclusion which shows some similarities, but also a very notable difference, seems to have been reached by the experts of the Club of Rome. Their first major report (M.I.T. team) attempted to describe the world as a single system in which both natural and cultural factors came into play. Part of the powerful criticism

which that first report aroused, was due to the fact that by its approach in global terms, the report discounted the importance of the inequalities of development between the different parts of the world and hence did not adequately take into account the different shares of responsibility in the causing of the problems and comparatively in the just apportionment of the burden of solving them. The second major report (Mesarovic-Pestel) recognising the validity of this criticism sought to take regional differences into greater account. This was a step forward. However the principle adopted for the division of the world into regions appears again to be wide-open to criticism. For instance, Europe and Africa are taken as 'regions'; while there are strong ecological, in the sense of natural-cultural, reasons for not doing so. Southern Europe and Northern Africa appear rather to go together and apart from the blocs into which Mesarovic-Pestel have fitted them. In other words, it is a region like the Mediterranean which constitutes the kind of unit which appears capable of consideration as a system of a kind which makes sense, at least from the point of view of the need of institutions to deal with the problems which can no longer be tackled at the level of the individual nation-states.

The most basic condition which has allowed and assisted the Mediterranean region to acquire the structure of a system is, of course, geography. The Mediterranean region is clearly marked out by the dividing barriers of mountain ranges to the North and desert expanses to the South which, throughout history, impeded easy trade and other communication. On the contrary, the sea never constituted a dividing barrier between North and South, but rather a means of easy and cheap communication.

As Perry Anderson has written in a recent study:

'Graeco-Roman Antiquity was quintessentially Mediterranean, in its inmost structure. For the inter-local trade which linked it together could only proceed by water: marine transport was the sole viable means of commodity exchange over medium or long distances. The colossal importance of the sea for trade can be judged from the simple fact that it was cheaper in the epoch of Diocletian to ship wheat from Syria to Spain — one end of the Mediterranean to the other — than to cart it 75 miles over land. It is thus no accident that the Aegean zone — a labyrinth of islands, harbours and promontories — should have been the first home of the city-state; that Athens, its greatest exemplar, should have founded its commercial fortunes on shipping; that when Greek colonization spread to the Near East in the Hellenistic epoch, the port of Alexandria should have become the major city of Egypt, first maritime capital in its

history; and that eventually Rome in its turn, upstream on the Tiber, should have become a coastal metropolis. Water was the irreplaceable medium of communication and trade which rendered possible urban growth of a concentration and sophistication far in advance of the rural interior behind it. The sea was the conductor of the improbable radiance of Antiquity. The specific combination of town and country that defined the classical world was in the last resort only operational because of the lake at the centre of it. The Mediterranean is the only large inland sea on the circumference of the earth: it alone offered marine speed of transport with terrestrial shelter from highest wind or wave, for a major geographical zone. The unique position of classical Antiquity within universal history cannot be separated from this physical privilege'.

The geographical characteristic of the region – a fertile, if narrow, belt of agricultural coastal land, enjoying the same climate and, hence, producing similar products, studded with towns which are basically ports and centres for their respective hinterlands, constitutes, as Braudel so rightly emphasized, the framework which has continued from ancient times until today to condition the history of the region and the development of its characteristic ways of life.

In recent times, indeed, the sea has come to assume an even greater importance because of the changing relations between its resources and human needs, in addition to its ancient and still actual role in communication.

Until recently, the main resource of the sea was fish, and many factors, from over exploitation to pollution, now threaten this resource, previously believed to be inexhaustible because self-renewing; on the other hand, the idea of changing the nature of fishing from that of hunting to that of farming is being actively explored. It is abundantly clear that the organisation of fishing today requires overall regional management to save the Mediterranean from becoming a dead sea as many experts are fearing it will otherwise fatally become.

Until recently, the mineral resources of the seabed, especially oil, were as inaccessible to human exploitation and, indeed, as unknown as the moon, but science and technology have altered the situation; and at present the bottom of the sea appears to be more economically interesting than the back of the moon. (It should always be remembered that the Mediterranean Sea, in terms of its depth, is not so much a sea, as a small ocean).

Until recently, the industrial revolution had only slightly affected the region. Now factories are being built, and their builders prefer

the seashores, for greater ease in getting rid of waste material, as well as accessibility to what is still the cheapest means of transportation.

Until recently, only small numbers of wealthy individuals could afford to come to the Mediterranean region as tourists, but in the nineteen-sixties the age of mass-tourism began, and the onslaught of the so called 'golden hordes' descended in their many thousands to bask in the sun and peer at its sights. Suffice it to say, that in Malta, in one decade, the number of hotels quadrupled, and there were more tourist arrivals per square mile of Malta last year than Malta has inhabitants. Another use of the sea which it is impossible to ignore if especially one has the Mediterranean in mind is the military. In fact, while the rest of the world has been achieving a certain progress towards disarmament, the Mediterranean region is experiencing a contrary process. Some Mediterranean countries, including some of the poorest, are themselves, justifiably or not, notably contributing to the escalation of armaments in the region. But it is still true that the Mediterranean Sea is dominated by the presence of the two greatest superpowers – the USA and the USSR. On the one hand, the Israeli-Arab conflict and other inter-Mediterranean disputes provide special pretexts for this presence; on the other hand, several Mediterranean states keep foreign bases in their territory because of the economic advantages they reap from this presence.

Still, other uses of the sea and its shores could be listed. Rather than go on prolonging the list of uses, it is important to realise the incompatibilities between most of them. If a factory is sited near the sea, to use it as a rubbish deposit, the coast can hardly be promoted as a tourist attraction. Neither can it be one, if oil-prospectors are digging in the vicinity, nor will the fishermen continue as happily and successfully at their work.

In the Mediterranean Sea, if anywhere, the need for a policy of overall supranational management is obvious. For the decisions which conflict are, at present, being taken by different nationstates and they can only be harmonised by inter-national agreement. It was in this context that the Maltese delegate to the United Nations proposed the idea of a new Law of the Sea, which would recognise the obsolescence of the old idea of the freedom of the seas and the consideration of the sea as the property of nobody, and substitute it by the new idea of ocean-space, beyond fixed limits of national jurisdiction, as the 'common heritage of mankind' to be governed by an Authority through which all nations would participate in decision-making and in fruit-taking in proportion to ability and need.

This idea, in a first phase, gained ground progressively, against the opposition of the superpowers, but then, in a second phase, began to be whittled down again as the developing countries which had rallied round the idea began to be attracted by short-term advantages. It now seems likely that with the acceptance of an insufficiently rigorously defined economic zone, in principle of 200 miles, but they are likely to be elastic, the resources available to the World Authority will be perhaps only adequate to finance the expenses of running it. Moreover these provisions are clearly hardly capable of rational application to regions like the Mediterranean (or the Caribbean) Sea. Certainly, their unmodified application would hardly lead to the rational development of the resources of the sea. On the other hand, the setting of some regional institutions is contemplated – both a variety of purposes: with regard to the seabed, to the management of living resources, for pollution control scientific research and transfer of technology, and also for dispute settlement. These provisions do, perhaps, indicate on what lines developments might be practically pursued on the regional Mediterranean level, towards seeking to apply the concept which has gained so much applause and so limited a practical application on the world level, so that the Mediterranean marine space, with its living and non-living resources be treated as the common heritage of the Mediterranean peoples who should assume joint responsibility for it on behalf of mankind as a whole.

It appears unfortunately but abundantly clear that the political problems in the area make the prospect of the creation of a Mediterranean Authority which would entirely manage the resources of the Sea as difficult as that of a World Authority with really significant powers proved to be. The creation of such an Authority cannot be regarded as a serious practical prospect. However, it appears that moves in its direction can be made by the setting up of a number of regional institutions, in addition to existing ones, with functional specialisations on the one hand, and then coordinating machinery for the various institutions on the other hand.

There already exists a General Fisheries Council for the Mediterranean, which if restructured and strengthened could provide a starting point for the system. The recently established station for exchanges on marine pollution could be strengthened and developed into an integrated system of environmental quality management. The initiatives of the International Ocean Commission of UNESCO, and of the International Commission for the Scientific Exploration of the Mediterranean Sea, should also be restructured and strengthened to make possible the participation of all Mediterranean countries,

especially the least developed, in the planning and execution of research as well as in making the results and their interpretation promptly available to all. The ICSEM could, indeed, function as one of the Regional Scientific Centres envisaged by the draft text of the Law of the Sea.

In addition to these existing Mediterranean Institutions which, however, badly need reform and coordination, new institutions are required. In the first place, a regional centre is required to regulate activities on the seabed. It should include a commission to regulate the international activities of companies operating on the seabed. Machinery for settling disputes should be created on a regional basis and the aim should be to declare common ownership over disputed areas, pooling costs and sharing profits among the participating countries, on the model perhaps of the Eems-Dollard Treaties between Holland and the German Federal Republic in the North Sea.

In the second place, because of the fact that the Sea can become a significant source of energy through solar collection, exploitation of ocean thermal gradients and geothermal energy, an institution is required to allow the Mediterranean States to launch a cooperative project of scientific research, technological innovation and mutual assistance to ensure the equitable sharing of results. In the third place, that a Mediterranean Development Bank should be established in order to help achieve a more balanced growth in the area mainly by helping to channel capital resources available in countries of the area for the development of the area. Other institutions could also be created to increase data exchange and encourage trade between the Mediterranean countries.

Then, integrative machinery will be required to harmonise the activities of these institutions, to regulate the interaction of uses of Mediterranean marine space and resources, and to consider the needs of other activities not at present regulated by any intergovernmental institutions. Such machinery must be based on an assembly structure composed of the policy-making bodies of the institutions mentioned and might thus consist, in the present situation, of four sections or chambers. To these a fifth, a civic or political chamber might be added which might be derived from the Mediterranean municipal initiative established in the Declaration of Beirut. Decisions should require the consensus of two 'chambers' – the civic chamber and the technical chamber competent in the matter under discussion.

It is felt that, in the present atmosphere of tension and conflict in the Mediterranean area, such a functional, flexible, and decentralized approach to Mediterranean problems common to all States

would obviate many of the difficulty encountered by the traditional approach, and that functional cooperation on the above lines, on the transnational and subnational rather than on the national and international level, would, in turn, enhance the chances of peace in the area. A programme of gradual force withdrawal could then be developed, with the final goal of making the Mediterranean Sea a zone of peace, with particular emphasis on the immediate withdrawal of all vessels and facilities carrying atomic weapons and other weapons of mass destruction. Meanwhile the interests of the world community in free navigation in and through the Mediterranean can be assured, in accordance with the provisions of the new Law of the Sea. The integrative machinery recommended for the Mediterranean could be part of and participate in the decision-making processes of whatever machinery may be established by the Law of the Sea Conference for the managing of ocean space and resources as a whole.

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