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UNCLOS AS A GEOPOLITICAL CHOKEPOINT

Locked Down, Locked In, Locked Out

Elspeth Probyn

> The law of the sea … offers a microcosm of the opening and foreclosure of international law's rulemaking protocols.
>
> —Surabhi Ranganathan, "Decolonization and International Law"[1]

The turbulent times of Covid-19 continue to reveal with force the multifaceted nature of the inequalities and inequity of those locked down, and those locked out. From the perspective of the ocean, I examine how Covid-19 has laid bare structural chokepoints. I attend to the situation of stranded seafarers unprotected by any state, and I note those whose livelihoods are being ravaged by the mobility of distant-water fisheries (e.g., those that fish outside of their 200-nautical-mile exclusive economic zone [EEZ]).

For some, it may come as a surprise that these situations are enabled by one of the most wide-ranging and ambitious pieces of legal thinking of the 20th century. Indeed, the United Nations Convention on the Law of the Sea ("UNCLOS"[2]) is one of the most radical if deeply uneven legal documents ever produced about the ocean. Phillip Allot's view from 1992 (a couple of years before UNCLOS was in full force) was that UNCLOS contained "a half-formed new structural uniqueness, full of painful ambiguities and exciting possibilities."[3] It tried to envision the ocean as a global commons but became a conduit for enclosing the more-than-human marine environment. As I argue, certain articles enabled conceptual and practical chokepoints, disrupting the circulation of its vaunted quest for harnessing the ocean for humanity. And one of its greatest occlusions

FIGURE 8.1 Commercial container ship, "Ever Given," stuck in the Suez Canal in March 2021. Image is about 2.64 kilometers wide. Processed by Pierre Marcuse. Licensed under the Creative Commons Attribution 2.0 Generic.

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is the lack of recognition of Indigenous rights to their traditional sea countries. As Charlie Watts, an Inuk Senator, states about Inuit Rights in Canada, "the UNCLOS system does not provide a mechanism to ensure the participation of Indigenous peoples in any matters relating to the law of the sea, even when these directly affect Indigenous peoples' rights."[4]

In this chapter, I explore how certain articles enshrined in the Law of the Sea, as well as the underlying tensions at the time of its final articulation in 1982, haunt us. The very question of that "us" compels my argument. Forged within a certain understanding of humanity, and of humanitarianism, the language of UNCLOS contains blind spots in its in/occlusions. The "structure of feeling"[5] that fed UNCLOS's formulation of humanity is today certainly no longer in play. As Ayça Çubukçu queries in her recent review of Achille Mbembe's latest book on Afropolitics and decolonization,[6] can we envision "a humanist invitation to live up to humanity?"[7] However, to hope for better we must better understand the historical present. This is where the analyses of UNCLOS's "opening and foreclosure" continue to be critical. What spheres—cultural, economic, humanitarian, social, geopolitical—are being brought together or forced apart, reworked, or occluded through the legacy of the law?

My argument proceeds in four parts. The first part positions the strange locked down nation I inhabit, and through the optic of cruise ships and cargo fleets I examine the plight of seafarers locked out at sea during Covid-19. The second part examines certain regulatory terms that emerged alongside and through UNCLOS, which I argue allow for the evasion of the protection of human and more-than-human lives.[8] The third part examines the philosophical and political underpinnings of UNCLOS. In the fourth part, I explore the notion of legal and marine geopolitical chokepoints, before finally turning in my conclusion to a reflection on whether UNCLOS as a juridical system of opening and enclosure may prompt us to re-evaluate the legacies of maritime law. I also raise the crucial issue of how Indigenous people were and continue to be locked out of their traditional sea countries.

Seafarers Stuck at Sea

The hackneyed phrase, "we're all in this together" continues to be countered by the dizzying ways in which we are not. At the height of the Covid-19 crisis, there were over a million seafarers caught at sea. On land, some hoarded toilet paper and mastered sourdough, while some were under considerable hardship caused by socio-economic pressures, and others working on the ocean were denied basic human rights. A report from the International Transport Workers' Federation frames seafarers as "out of sight, out of mind."[9] But it is because of them that commodities circulate—more than 90 percent of global trade is shipped around the world. They enable our everyday consumption (of tea and spices or now, plasma TVs), and are indeed out of the minds of most. Seafarers have been variously described as "social marginals within their home societies

… away from home … harbingers of drunkenness and disorder."[10] Conversely, in colonial Southeast Asia, "the sea was integral to a 'home place.'" Relegated by ethic difference, seafarers were designated as "sea gypsies" with no home*land*.[11]

With Covid-19, the feeling of being trapped inside has become a widespread effect of being trapped, one that elsewhere I typify as "cleithrophobia."[12] All those images of people's faces pressed against windows to see their loved ones wave on the other side. Since March 2020 in Australia, it is illegal for citizens and permanent residents to leave or enter their island home. The Commonwealth budget delivered on May 12, 2021 came with the bald statement that international borders would not be opened until at least mid-year 2022. At the time of writing (May 2021), those trying to enter Australian from India, including Indian Australian citizens and residents, face a six-year jail term and fines of up to $AUD66.600. As one ex-pat Australian reporter stuck in the United States writes: "There are up to 40,000 Australians around the world registered with the Department of Foreign Affairs who identify as 'stranded'—that is, they desperately want to return home, but they can't."[13]

I think of the irony of White men who proclaimed this land as terra- and aqua-nullius free to be conquered, who now in the figure of the present prime minister, Scott Morrison, won't let anyone leave or return. And the awful weight of White history reminds me of how the Indigenous people of this land have been locked down since the arrival of Cook. As Bradley Moggridge, an Indigenous hydrogeologist from the Kamilaroi Nation, succinctly puts it: "we've been locked up on missions and reserves, losing our language and stories; locked out of country and we still don't have the keys to our country."[14] It was, after all, only in 2021 that the Australian government condescended to change the words of the Australian National Anthem from "For we are young and free" to "For we are one and free." The oldest continual civilization in the world does not, however, enjoy freedom from everyday harassment and the trauma of past and present injustice.

This is to say that I write from a very parochial place. An island nation that has benefited hugely from globalization now pulls down the iron shutters—as Lester says, we are the new "Hermit Kingdom."[13] Australia has become very insular with a "[literally superficial] view of connections."[15] It isn't by chance, although it is ironic, that Australia has locked down its own citizens and residents. As Itamar Mann argues, Australia's offshore refugee detention system is one "of cruelty by design."[16] Those who live on the island "know" at some level—some fiercely opposed, others in favor, and still more who seemingly don't care—of the atrocity that several different governments of both political parties[17] have inflicted on refugees. It was John Howard's Coalition government that in 2001 first introduced "offshore processing" in Nauru and Papua New Guinea. This is a reality that I cannot further explore here but it remains a significant fact of Australian life[18]—and one that other governments such as the UK's have been tempted to replicate.

In his ethnography of cargo ship crew, Ben-Yehoyada spatializes how "One's social worth was tied to one's ability to get off the ship."[19] Is it too far a bow to

draw to consider how some Australian citizens and permanent residents took for granted their ability to get off the island—their social worth measured in business trips, overseas holidays and cruises?

And what of cruise ships—those floating gin palaces—which during the height of the crisis entrapped people in different ways. At one level, they are enormous spaces of privilege that criss-cross the seas. A publicity line from one of the largest cruise companies states:

> From the moment you step aboard, we want you to feel welcomed and right at home. And with attentive service from a friendly staff that knows what hospitality means, you'll find your Princess® ship truly is your home away from home.[20]

Those homes soon became unheimlich as they were proven to be floating containers of the virus. In Australia, the most notorious case was a US-headquartered Carnival ship operating under the flag of Bermuda. On March 19, 2020, the ship slunk into Sydney Harbour in the early morning with over 660 infected people on board. Passengers disembarked although there were no results from the very few swab tests conducted. They immediately flew off to their various homes across Australia and the world. Amy Dale writes that "the cruise cluster, which is believed to have originated from an infected crew member distributing food and drinks, has been responsible for at least 20 deaths."[21] Twenty-one of the overall 908 deaths thus far recorded in Australia came from one ship.

Then New South Wales Police Commissioner Mick Fuller had a stern message to all cruise ship operators: "They don't pay taxes in Australia; they don't park their boats in Australia … time to go home."[22] Natalie Klein writes, "In early April 2020, it was estimated that 15,000 crew were stranded on 18 cruise ships around the Australian coast with concerns that coronavirus would take hold and spread."[23] On April 23, the *Ruby Princess* left for the Philippines where it joined a huge, stilled flotilla: mid-year, Manila Bay was the world's biggest "parking lot" for cruise ships, with many thousands of crew still on board.[24] Freya Higgins-Desbiolles notes that "[a]s the cruise ships became stranded around the world as ports closed to them, the question of exactly where home for them was, as they operated under FoC [Flags of Convenience], began to be discussed."[25] "Cruise companies choose to use a FoC as part of their economic model, helping their business gain profits by helping them avoid stringent economic, social and environmental regulations."[26]

For cruise ship workers, being locked away at sea for a long period was an extraordinary situation. They normally would change crew when the cruise reaches its destination. However, for the seafarers on cargo ships incredibly long hours and year-long periods at sea are normal. It is also normal to be abandoned "in calculated economic decisions by ship owners … to stop paying for the upkeep of the crew and the ship."[27] State and international government responses to Covid-19, were exacerbated by shipping companies' cavalier attitudes. As one

crew member stated: "'We just want to request … on humanity ground [sic] please release us,' said Gaurav Singh, 29, an officer on the Anastasia, where several crew members are suicidal after waiting for about five months."[28] The living conditions in their tiny, shared cabins are horrendous, with one crew member saying he feels like he is "in prison, with a bunch of very grumpy men."[29] Another trapped ship member said, "We are simultaneously always leaving and never leaving."[28]

Locking Up the More-than-Human Ocean: EEZ, MSY & TAC, ITQ, FoC

The question of "home" is vexed because of the complicated system of vessel flags, especially "open registry" versus "closed registry." Under UNCLOS, the latter represents a "genuine link" between the ship and the state under which flag it sails, in the French "un lien substantiel": "a substantial link" hinting at some possibility of substantiating that connection. Conversely, the former relies on weak claims: "it may be that a ship has no physical connection with its flag State. Indeed, it may never visit its notional 'home port,' or even find it possible to do so, given that some open registries, such as those of Mongolia or Bolivia, are based in land-locked States."[30]

Flying the flag of whatever state is cheapest and most blind to human rights and environmental abuse, ships shuttle commodities around the world with a brutal efficiency. When, however, they were stopped, caught by Covid-19, some of the realities of their labor came to light. Strangely enough, while cruise ships and cargo ships were refused entry to ports, distant-water fisheries industries continued to operate illegal, unreported, and unregulated (IUU) fishing in coastal waters of the Global South.[31] These huge enterprises rarely need to land as the fish is frozen and processed at sea and transhipped to smaller vessels. This is not necessarily an innocent manoeuver: it allows for illegal fish to go unnoticed.

I want to step back a moment to consider how international regulations in the last century allowed for this strange situation. The alphabet soup in the subheading above includes some of the most important ways in which the ocean was, and continues to be, framed. They were measures propelled by the realization that the seemingly inexhaustible supply of fish in the sea was in fact not the case. It dawned on scientists and regulators that fish could be finite.

The acronyms mentioned above: EEZ (Exclusive Economic Zone), MSY (Maximum Sustainable Yield) & TAC (Total Allowable Catch), ITQ (Individual Transferable Quota), and FoC (Flags of Convenience) are interlinked. Following the Truman Proclamation of September 28, 1945, the United States asserted exclusive jurisdiction beyond their traditional territorial seas. The machinery of UNCLOS eventuated in the 1982 decision to make EEZs applicable for all coastal countries. UNCLOS ruled that a state's EEZ is an area beyond and adjacent to the territorial sea, extending seaward to a distance of no more than 200 nautical

miles out from its coastal baseline. This would lead to states realizing that they could protect "their" fish through fisheries science.

The Maximum Sustainable Yield (MSY) was first enshrined in American fisheries policy as early as the 1950s. Its author Wilbert Chapman, who comes across as an ardent American fish nationalist, argued that "there was no time to waste in staking an American claim to high-seas fish."[32] As Carmel Finley and Naomi Oreskes bluntly state,

> US policy was designed to draw the seas—in particular the Pacific—under US influence and control. Thus, while not a physical enclosure, in the sense of fencing in a commons, it was, for all intents and purposes, a 'political' enclosure.[33]

MSY soon became widely seen as the vehicle that would arrive at the holy grail: sustainable fisheries. It is ensconced in Total Allowable Catch (TAC), which dictates how many fish of different species can be taken out of the sea. How much is being fished is measured against estimates of the reproduction of fish stocks. But of course, counting fish is not an exact science. As one fisheries regulator I interviewed wryly acknowledged, "fish have tails" and no regard for manmade lines in the sea. As Finley and Oreskes put it, "MSY is an example of the proverbial three-legged stool. It began as policy, it was declared to be science, and then it was enshrined in law."[33]

These two moves to lock in the ocean were accompanied by another move that many see as the ultimate privatizing of the ocean.[34] Individual Transferable Quotas (ITQs) were progressively introduced in numerous fishing nations in the early 1980s. If it was hard to count fish, ITQs promised to render fish as private property to be rented or sold. To take a striking Australian instance, in 1984 the highly lucrative Southern Blue Tuna fishery was divided up by ITQ. Based on the historical catch of boats, owners were given a yearly quota to fish. The hope was that this would be a check to "the race to fish" as everyone was assured of their portion. However, due to a number of factors (mainly very high interest rates), a majority of boat owners sold out, and the fate of tuna ended up in the hands of less than 20 boat owners (from a previous fleet of over 200).[35]

These interlinked mechanisms profoundly altered the ocean, effectively enclosing it in different ways—parceling it up into privatized enclaves, and rendering fish as livestock. One could say that it ended the ocean as global commons. It also strangely divorced fish from their marine habitat—the former to be counted and allocated to owners, the latter fenced off. As Liam Campling and Alejandro Colás put it, capitalism at sea "reshaped coastlines and reconfigured marine ecosystems."[36]

I've already discussed the final acronym—FoC—which, as we will see, combined with another of UNCLOS's articles, continues to plague the more-than-human marinescape. As I will describe shortly, UNCLOS tried to evenly distribute the sea to developing nations and even to noncoastal states. Article

91 states, "Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship."[37] As I flagged above, there has been much discussion over decades as to the interpretation of what a "genuine link" entails. While one might think that UNCLOS would have been clearer in its wording, Surabhi Ranganathan notes "UNCLOS is not simply permissive but suggestive in how prohibitions of FoCs may be evaded."[38]

If we can simplify the question of national flags, it seems that UNCLOS sought to extend rights to the ocean for all countries. Article 62(1), however, applies only to coastal states. It requires "coastal states to promote optimum utilisation in their EEZs."[39] As Parzival Copes states, this "essentially … constitute[s] a commandment that 'thou shalt not waste fish,' imposing a moral obligation on the coastal state to be reasonable in sharing resources in excess of its own capacity to utilize them."[40] While state oceanic boundaries were laid out, new "moral obligations" to far-flung nations were imposed.

Together these articles form the condition of possibility for the millions of seafarers left in precarious situations, and the countless small fishers who struggle to find fish in their national EEZ waters overexploited by the distant-water fishing industries. These long-distance fleets often engage in illegal fishing and operate under ever-changing or even multiple flags. This has produced no-go areas for local fishers whose inshore fish stocks are overexploited, or it forces them further out to sea at great risk in their small boats (see Florian Grisel, this volume, on small-scale fishers in France). West Africa has become a global hub of illegal fishing, losing an estimated $1.3 billion annually to the trade, according to a report from the Africa Progress Panel.[41] China's distant-water fishing fleet reports only an estimated eight percent of its catch.[42] Lest this seem to point solely at China, other major distant-water fisheries are from Spain, South Korea, and Russia—and privately-owned industrial fishing fleets are handsomely subsidized by their governments.

UNCLOS: Humanitarian Chaos

How did this come about? How did a document dedicated to resolving much of the world's economic and political divisions allow for this situation? Reading the history of the lead up to and implementation of the Law of the Sea Convention is heart-rending. As Ranganathan asks in 2021, looking back at the long and tortured story of the three UNCLOS, what "alternative political geographies, economic imaginaries and epistemic approaches were highlighted in the process?"[43]

Let us pause on the sheer breadth of what was hoped for. One of the central figures in the epic tale of UNCLOS was Elisabeth Mann Borgese. The daughter of the exiled German writer Thomas Mann, Borgese's gendered vision for the oceans encapsulated the hopes of post-World War II.[44] As Behnam, a diplomat with the UN, central to the UN Conference on Trade and Development (UNCTAD), and a close colleague of Borgese, writes:

> A new paradigm for the ocean was in construction—no longer mare liberum, no longer mare clausum—but the common heritage of mankind. Elisabeth's love for the ocean was surpassed only by her commitment to peace and the well-being of humankind. She saw in the making of the constitution of the ocean through the Third United Nations Conference on the Law of the Sea (UNCLOS III), the making of a new world order.[45]

Following her death in 2002, the tributes to her vision and political tenacity were copious. But equally the titles of some of the articles reveal the disappointment that promises of a new order were betrayed. Behnam entitles one article, "The unfulfilled promise of the seventies,"[46] and another, "Twilight of the flag state control."[47] Others were more wishful: "Peace and the Law of the Sea."[48] Reading accounts of the times, what is striking is the sheer amount of activity involved in trying to come up with documents that would be purpose-fit for the vision of the ocean for all humanity. Interwoven throughout was the question of how to best harness the economic possibilities of the ocean for developing countries. It is remarkable to consider the geopolitical changes taking place. As Behnam puts it: "The period 1947 to 1964 witnessed the birth and the struggle for existence of some 75 new and developing States."[49] He continues:

> Trade was envisaged as the engine of growth and development for fledging economies and a vehicle by which developing countries could integrate themselves into a world economy so as to acquire the capacity to accumulate wealth and the capacity to deal with the kaleidoscope of development problems.[49]

And trade meant transport, and more precisely the ocean as a medium of transport—as it always has been but now in a different key. Behnam was clear-sighted about the Global North's motivation despite the 1970s exuberance to include the whole of mankind in a teleological passage to economic salvation. From within the bowels of UNCTAD, Behnam reports that "[a] rhetorical question was being bandied about in the corridors and smoke-filled rooms of UNCTAD: 'if developing countries cannot develop in the field of shipping, then where can they?'"[50] But as the developing nations increasingly used their majority votes to put their demands to the fore, Behnam notes how the goodwill of the 1970s began to evaporate. In Behnam's estimation, that "goodwill" was carried by "the remnants of a guilty conscience for colonial domination."[51] Writing from the perspective of the American military, Mark Rosen is even more blunt:

> the LOS Convention was negotiated during the height of the Cold War, in which there were basically three competing factions: (a) major maritime states such as the United States and the USSR, which wanted broad rights to ocean access; (b) the developing countries that made up the G-77 [the

> now 134 strong UN collation of developing nations], which were mostly concerned with gaining access to marine resources and revenues commensurate with their population size; and (c) coastal states, which were interested in being able to exclusively exploit and protect their coastal resources and being able to hold the navies of the major maritime powers at arm's length.[52]

Now as oceans are filled with ships hiding under and changing flags of state from one moment to the next, and as coastal nations of the Global South gain precious little in fishing access fees, it is harder to cheer at these at times well-meaning sentiments. And to wonder at the political stakes. For instance, Harry Pitt-Scott relates how "The drafting of Liberia's Maritime Code … was checked and approved by the American Overseas Tanker Corporation, Standard Oil, and ESSO (ExxonMobil), who wished to use the Liberia flag to weaken ship workers' unions and undermine the European shipping nations."[53]

UNCLOS as Chokepoint

What I want to explore now is how the ocean is a minefield of chokepoints, both geophysical and jurisdictional, and test out whether the concept of the law as chokepoint is useful. Donald Rothwell notes how marine chokepoints have traditionally been described:

> The law of the sea and maritime security has often placed emphasis upon so called "choke points," that is those navigation routes which either due to their geographical location or strategic significance are navigation routes through which large volumes of shipping pass and as a result the legal regime regulating that passage and the geopolitical factors within those waters take on particular significance to the international community.[54]

Chokepoints trouble the still dominant ideas about the fluidity of the ocean, whether celebratory or not. Allan Sekula, the famed filmmaker and writer, describes how under "the world's increasingly grotesque 'connectedness,' the hidden merciless grinding away beneath the slick superficial liquidity of markets," global capitalism rules.[55] That connectedness has increasingly become unstuck by economic and (il)legal chokepoints. The myth of the smooth connectedness of globalization across liquid expanses has been torn. Sometimes the chokepoints occur when geographical narrowing meets the vast size of super Panamax cargo ships. For instance, in March 2021 the 400 meters long (1,300 feet) *Ever Given* got stuck in the Suez Canal—blocking the passage of hundreds of cargo ships. The Suez, an engineering feat opened in 1869, is simply not wide or deep enough for the ever-growing size of cargo ships. Built to facilitate passage between the Mediterranean Sea to the Red Sea through the Isthmus of Suez, the canal also produces restrictions and immobility.

While there is not room here to properly discuss it, the 1990s return of piracy on a large, and international scale brought renewed attention to the precarity of ships traveling through the chokepoints of narrow straits. For instance, it was estimated that US$13 to $16 billion per year was lost to piracy "concentrated in the waters between the Red Sea and the Indian Ocean, off the Somali Coast, the Strait of Malacca and Singapore."[56] In the case of Somalia, no longer a functioning state, several argued that the "pirates" were "fishers" whose income was destroyed by distant-water fleets who through intensive IUU left fishers with no fish. As Stig Hansen reports, "Speaking on 20 November 2011, President Farole of Puntland reiterated what has become one of the most repeated explanations of Somali piracy: 'The piracy started when fishermen defended themselves against illegal fishers.'"[57] This view has been contested by many.[58] However, as one former fisher turned pirate or "protector of the sea" put it, "why would anyone go back to catching tuna when you can catch an oil tanker?"[59]

Jatin Dua's ethnography of Somali piracy[27] is a compelling account of the delicately intertwined histories of power in that region. More recently, he and colleagues in anthropology have turned to the notion of chokepoint to broaden its conceptual scope. As Ashley Carsh et al. argue, the concept of the chokepoint exposes "the underside of global circulation—the situated processes through which deterritorilized flows are channeled, diverted and bogged-down in the murky, sticky particularities of localities."[60] While this is somewhat obvious in the case of natural chokepoints, more widely they state that "the chokepoint is a useful analytic for examining the operative—and often generative—interplay of circulation and constriction in the contemporary world."[61]

What is particularly useful about their reconceptualizing of chokepoints is that they free it from a focus on immobility. Chokepoints do not only stop movement, they also operate relationally and temporally: "chokepoints are different things for different people at different times."[62] Carsh et al. argue generatively how "chokepoints are not only good to control or pass through, but they are also—to use Levi-Strauss's timeworn phrase—good to think with."[63] They turn to a particularly interesting question: "how do we think about something … that is both a concept and a thing in the world?"[64]

Can we think of UNCLOS itself as a chokepoint? UNCLOS conceptually created and in practice produced new "things of the world," new borders, new ways of trying to measure the ocean's immensity, and new ways of functioning on and in the ocean. Article 62(1), whereby "coastal states to promote optimum utilisation in their EEZs," constitutes a chokepoint in that it lays open coastal nations to the push to fully exploit their resources while it encloses them to the predations of long-distance fishing fleets. In terms of a mechanism to control circulation, UNCLOS tries to get around a "natural" chokepoint of landlocked states with no access to marine resources by bringing them into the coastal more-than-human family. For instance, Article 91 gifts flags to any and all states

whether they have a coast or not. Carsh et al.'s description below seems to apply to UNCLOS's action in the world:

> What emerges in and around the chokepoint, then, are high-stakes interplays and tensions between circulation and regulation, local and remote forces, and human and nonhuman agencies, often with unexpected and far-ranging effects.[65]

In its conceptual reach, chokepoint allows us to consider the law as a mobile force that remakes oceanic and terraqueous arrangements (see Henry Jones's chapter in this volume for an argument about the co-constitution of law and geography). The importance of chokepoint as both a thing in the world and as a concept, as Elizabeth Dunn points out, is that it forges "geopolitics based on the control of circulation rather than the control of territory."[66] Most obviously UNCLOS produces a construction of marine EEZs based on previous imperial conquests. As we've seen, it forms the conditions of possibility for different regimes of labor as seafarers are locked down on stilled ships. Through regulations that EEZs allow for, fish become enclosed as private property. In short, UNCLOS has reformed the relations between land and sea, between flow and constriction, opening and closing, and between nations and people.

Conclusion: Accounting for Occlusion

In this chapter, following Ranganathan's argument about oceanic opening and foreclosure cited in my epigraph, I examined UNCLOS as a juridical system of opening and enclosure and foreclosure understood as a conceptual chokepoint that allows for flow and blockage. I focused on the unintended consequences of certain articles in UNCLOS that have resulted in a free-for-all for vessels, owned in one country, often run by companies in another, manned by crew mainly from the Global South although overseen by officers from the North. The more-than-human is devastated by unregulated fishing practices that ravage the marine environment and deplete the fish stock of developing coastal nations, depriving them of precious sources of protein. Instead of a set of interlocking parts, UNCLOS can be seen as a kaleidoscope or "a telescope for exploring relationships and disjunctures across multiple spatial and temporal scales."[63] We can palpably feel those temporal and spatial disjunctures underlying the accounts I have related of UNCLOS's deep commitment to, and the equally profound betrayal of, the humanitarian conviction of some players in the last century. That legacy has produced our present ocean: piecemeal watery parcels fought over through ocean grabbing, illegal fishing, or home to the ultimate in late-capitalist formations such as seasteading.[67]

Perhaps most heinously, UNCLOS and the deliberations and discussion behind it were deeply mired in colonial blindness. Blindness to the imperial

histories of colonization resulted in very differently sized EEZs. As Peter Nolan astutely points out, the maritime imperial nations such as France and Britain were given the EEZs of their considerable colonies.[68] For instance, the British Indian Ocean Territory with a land mass of 60 square kilometers has an EEZ of 639,000 square kilometers (compared to China's total of 900,000 square kilometers). The British are free to do as they wish to "their" territory even though it was not terra- or aqua-nullius. The Chagossian People, who had lived on the islands since the 1790s, were completely and utterly removed from Diego Garcia, the largest island, so that the British could allow the US military to set up a large air and naval base.

In Australia, the Indigenous coastal people were, and still largely remain, locked out of their sea countries. The deep materiality and history of this form of lockout is hard for non-Indigenous people to fathom. From 1770 to 1829, 6,363,000 square kilometers of Australia's EEZ was locked down to Indigenous coastal people. Without treaty, taking back those unceded marine areas has been a long and painful fight. The year UNCLOS was enacted in 1982 was also when Eddie Koiko Mabo and his fellow Meriam kinspeople first started their challenge of legal fictions of terra- and aqua-nullius in Australia. On June 3, 1992, the High Court of Australia held that the Meriam possessed the traditional ownership of the lands of Mer, which lead the passing of the Native Title Act of 1993, providing the framework for all Australian Indigenous people to make claims of native title.[69] On July 31, 2008, Australia's High Court granted traditional owners exclusive native title rights to the intertidal zone in the Blue Mud Case, which is to say the area between high and low water marks including river mouths and estuaries. This gave Indigenous sea-country people control over fishing rights in that zone. Now the Northern Territory Aboriginal Land Council grants these licenses to recreational fishers, and commercial fishers cannot fish in the areas covered by the Aboriginal Land Rights (NT) Act.[70]

These are history-breaking legal judgments for Australian Indigenous people (in Aotearoa/New Zealand, Iwi/Māori now own about 50 percent of quota). They are unfortunately ongoing as each case has to be brought by individual Indigenous land councils to the courts. In addition to the immense hard work that this legal work entails, around the world, and especially in the Global South, there is a fine web of organizations, communities, NGOs, and different para- and governmental bodies that have over the decades sometimes used UNCLOS, and sometimes not, to bring about forms of oceanic justice. These range from the at times aggressive attitude of groups like Sea Shepherd who starting in 2014 chased the Bandit 6 for two years until they caught them. These were six notorious illegal fishing vessels (four of which were owned by a Spanish company, Vidal Armadores that still sails illegal fleet under various flags, including North Korea) who were plundering toothfish in the southern seas. In a productive and long-term move, in 1982 eight tiny Pacific island countries decided to do something against the foreign fishing fleets that caught much of the world's skipjack tuna but for which they received little recompense. They formed the Parties

to the Nauru Agreement[71] and over the years they have rendered their fishing practices sustainable, and have forced foreign fishing fleets to properly pay them for being able to fish in their combined EEZ. Here we see some of the hopes of UNCLOS realized: developing nations banding together to protect their marine resources and ways of life.

Alongside these examples, countless "soft laws" have enabled better outcomes for the oceans, marine life, and seafarers. Others, such as WorldFish and the Gender in Aquaculture and Fisheries Section of the Asian Fisheries Society, have turned to trying to count what goes uncounted—refugees, women's work, discards—and organizations like the International Marine Organization, and the different national and international bodies of marine unions have pursued the objective of ensuring human and more-than-human marine rights. These bodies are crucial in accounting for the occlusions of UNCLOS.

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Notes

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