CHAPTER 9


David H. Anderson*

1 Introduction

When the Grotius Society was formed in 1915, UK was engaged in what is now known as the First World War (WWI): accordingly, until 1918, many maritime issues arising at that time were regulated by the rules of naval warfare, including those on neutrality, blockade, contraband and prize. Indeed, the very first article in the first volume of the Proceedings of the Grotius Society was entitled ‘The Position of Enemy Merchantmen’. In the light of experience gained in those years, the rules of naval warfare were authoritatively expounded by Professors Pearce Higgins and Colombos in International Law of the Sea, published during the Second World War, when once again those rules were applied. In both wars, British influence on the law of naval warfare was considerable. Since 1945, the Charter of the United Nations has formed the basis for international relations: as a result, the concepts of neutrality, and so forth, have become parts of the law relating to armed conflict at sea and recent scholarly works on the law of the sea concentrate on times of peace. If only for reasons of space, the remainder of this chapter will also be confined to considering British influence on the law of the sea in times of peace.

Over the past century, the law of the sea has undergone extensive changes in response to several factors, including the appearance of new States and the undertaking of new maritime activities, the increase in the number and intensity

* Former Judge, International Tribunal for the Law of the Sea; member of the British delegation to the Third UN Conference on the Law of the Sea.

1 IV Hull, A Scrap of Paper Breaking and Making International Law during the Great War (Cornell University Press 2014).
2 C Stubbs, ‘The Position of Enemy Merchantmen’ (1915) 1 Trans Grot 19.
4 British acceptance of the Optional Clause was delayed until 1929 largely on account of concerns over belligerent rights: see L Lloyd, Peace through Law: Britain and the International Court in the 1920s (Royal Historical Society 1997).
of the uses of the seas and oceans, and a growing awareness of the need both to protect and to study the marine environment. Four major international conferences were convened in 1930, 1958, 1960, and from 1973 to 1982 in order to consider questions to do with the law of the sea. As a result, a great deal of State practice and customary law has been codified, while completely new concepts, such as the continental shelf, the exclusive economic zone (EEZ) and the common heritage of mankind, have been defined and have secured general acceptance as both conventional and customary law. The UN and several specialised agencies⁶ are involved in fostering international co-operation in different aspects of maritime affairs, as well as in global standard-setting. The customary international law in force in 1915 has gradually given way to a largely conventional law, centred around the United Nations Convention on the Law of the Sea⁷ and its related instruments.⁸ As an island nation with extensive overseas interests, the UK has been closely involved in these developments. An account of the British influence on the law of the sea over the last century involves touching briefly upon many of these developments, but without attempting a full history.

British influence on the law of the sea has been exercised in many different fora and has involved many actors beyond ministers and civil servants. For these reasons, influence is difficult to describe, let alone assess. The main part of this chapter will review British influence on developments in the law of the sea by reference to multilateral negotiations, bilateral agreements, cases before international courts and tribunals, cases before British courts, UK legislation (both primary and secondary) and practice in relation to overseas territories worldwide. These activities have involved members of successive British governments and officials in several departments in Whitehall, and in particular the Foreign and Commonwealth Office (FCO) Legal Advisers. It should not be overlooked, however, that throughout the past century, British academic lawyers have been teaching the law of the sea to British and overseas students; and British writers have been influencing their readers with textbooks and learned

---

⁶ Including the FAO (fisheries), the IMO (navigation and environmental protection) and UNESCO (scientific research and historic wrecks).
