



Evolution of the International Regime for Oceans Under the Hobessian Image View

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Abstract. The evolution of the international regime for the oceans use, was materialized in the United Nations Convention on the Law of the Sea (UNCLOS), which regulates sovereignty and rights over maritime spaces and its resources. This paper analyses the historical stages established by Keohane and Nye (1988), under the conceptual view proposed by Hobbes in Chap. 13 of *Leviathan*, regarding the natural condition of men and the anarchic state of nature similar to war. According to Hobbes, a government or a common power would avoid anarchy and conflict. However, after the UNCLOS was established, disputes arose in the process of defining maritime zones and boundaries between neighboring coastal states, expecting to obtain more resources and spaces at sea. Thus, conflict may be diminished in the presence of a common power represented by an international regime or authority, but not completely eliminated. That is man's nature.

Keywords: Hobessian image · Maritime conflicts · UNCLOS
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1 Introduction

The Hobessian image of international relations is one of the characteristics that has been suggested and recognized by many theorists in the international political system, which establishes that anarchy in the international system and in relations among states would be similar to an anarchic state of nature explained by Thomas Hobbes in his book *Leviathan*.

Hobbes (1651) in Chap. 13 of the aforementioned work, describes the natural life of men, as supposedly was carried out before a central power with a set of laws governs the behavior of members of society. According to Hobbes, men in the state of nature would have lived in a permanent war of all against all, that is, they would have lived in a situation of permanent hostility and threats [1]. Of course, this situation to be applied in international relations and in the issue that brings us together -conflicts in the evolution of the International Regime related to the oceans- needs to replace men by nation-states.

In this context, the absence of a central authority that governs states, which act according to their own interests, would be one of the aspects that produce a situation of anarchy, which in our case would be at sea. On the other hand, for the subject in question, it should be noted that during the historical evolution of the International Regime relative to the oceans, the United Nations Convention on the Law of the Sea (hereinafter UNCLOS), the situation of conflicts and disputes was a constant in the relations between states, whose realistic motivation has always been to protect and satisfy their own interests. Thus, conflicts over the delimitation of maritime spaces and especially over the control of the natural resources contained in it, increasingly took on greater relevance, as the advance of technology allowed to discover new resources and modern methods to extract them.

Szekely in his study of the law of the sea confirmed “History testifies that most of the conflicts that have taken place, in the contemporary era, have been due to the attempts of some state to increase the spatial scope of its sovereignty, obviously at the expense of another, or the lack of agreement between neighboring states regarding the criteria to be used for fixing the dividing line of their respective sovereignties” [2].

So it could be said, in the pure style of the Hobbesian image, that evolution to define the international regime in the oceans, that is, a common authority that regulates, among other things, the delimitation of maritime spaces between states and the sovereignty of the resources contained in the seas, has been resembled to a situation of “war of all against all”.

In this sense, this work proposes the following purpose: To verify if some aspects of the Hobbesian anarchic image are identified in the historical process for establishing an authority for the use of oceans, and determine similarities between Hobbes’ state of anarchic nature and the evolution process for developing an international regime to the oceans.

For this purpose, the evolution of the international regime relating to the oceans, UNCLOS, is briefly explained, considering as a basis the study carried out by Keohane and Nye (1988) with respect to international regimes in the maritime policy system. Next, we go over the most important aspects written by Hobbes in Chap. 13 of the *Leviathan*, referring to the natural condition of the human race. Afterwards, we try to establish similarities between the state of nature of Hobbes and the conflicts in the evolutionary process of the aforementioned international regime. Finally, the respective conclusions are proposed.

2 Evolution of the International Regime Relate to the Oceans

Aristotle in his book *Republic*, referring to the sea said “there is no doubt that, taking into account the security and abundance necessary to the State, it is very convenient to the city and the rest of the territory to prefer a shore by the sea” [3]. In that sense, oceans since antiquity have always had strategic importance. In the first place, in the economic aspect, by its inexhaustible source of both living and non-living resources, and because it facilitates trade through maritime transport; secondly, in the political area, related to security and defense; and thirdly, as a consequence of the two previous ones, a legal importance, to regulate its use in the face of conflict and anarchy.

In the sixteenth century there was a first attempt to regulate the authority in the oceans and their resources, through the great debates of Hugo Grotius, who defended the concept of *Mare Liberum* or freedom of the seas -free navigation-, and John Selden who defended the concept of *Mare Clausum* or property of the seas, postulating the latter that: the sea belongs to who can appropriate it and defend it [4]. In 1882, civilized nations recognized that the open sea must be internationalized. By then, territorial waters were in the vicinity of the coast, at a distance of three miles [5].

Keohane and Nye in their book *Power and Interdependence* [6], indicate three main stages to explain the International Regime referred to the sea, in the system of maritime policies, as indicated in the following (Table 1).

Table 1. International regimes in the maritime policy system 1920–1975 (Source: [6]).

Period	Years	Status of the regime	Action at the beginning of the period
1	1920–1945	Maritime freedom regime	Great Britain reaffirms its leadership after the First World War
2	1946–1966	Quasi strong regime	Declaration of Truman 1945 and expansion of jurisdictions in Latin America
3	1967–1975	Quasi weak regime	Speech by Pardo, United Nations in 1967

The first period comes from the nineteenth century, in which the regime of freedom of the seas was associated with the interests and power of the main maritime country, England. Thus, the first period that Keohane and Nye indicate is initiated in 1920, and marked by the mentioned maritime hegemony. In 1930, during the Conference of the League of Nations in The Hague, where small states had voice and vote, they began to question the three-mile limit and made efforts to reach other extensions. They initiated a series of disputes; twenty countries that represented the main powers supported the territorial limit of three miles, except the Union of Soviet Socialist Republics (USSR) that supported twenty and Italy six miles. However, efforts made by countries such as Ecuador, Mexico and Iran to extend jurisdiction were not recognized by maritime powers [6].

A conflicting situation arose, due to the great interests of the powers to continue with the regime of freedom of the seas, and thus have larger maritime extensions to be exploited. A series of claims and tensions were present in the international scenario by the rights of coastal nations claimed over resources existing in distant waters, and the prospects of obtaining resources at the bottom of the sea, before the increase in the presence of maritime powers eager to exploit them. All this favored turning the oceans into a scenario of instability and confrontation. After the First World War, until 1945, the principle of freedom of the seas began to decline. In the absence of international norms governing the use of the sea as a source of wealth, the world entered then into a new era of unilateral measures of self-protection adopted by the respective states [7].

In the second moment proposed by Keohane and Nye from 1945, there was a change in the international regime of the oceans, with the declaration of President

Truman, with the new technologies of fishing and oil drilling in the marine platform, The United States of America unilaterally established jurisdiction over all the natural resources of its continental shelf (oil, gas, minerals, fisheries, etc.), until a depth of 200 m. In this situation, other countries such as Egypt, Ethiopia, Saudi Arabia, Libya, Venezuela and some Eastern European countries claimed a territorial sea of 12 miles, all of which clearly departed from the traditional three-mile limits [8].

At the same time, on the west coast of South America, countries such as Ecuador, Peru and Chile, where there is very little continental shelf, argued that the depth criterion had no value for them and claimed jurisdiction in terms of distance, which was concretized with the Santiago Declaration of 1952, establishing 200 miles here for its territorial sea. This brought several diplomatic conflicts, before the seizure of North American tuna vessels, found within the jurisdictional waters of Ecuador and Peru [6].

Situations that occurred in less developed countries, with hope of preventing access by large fishing fleets and preserving the existing fish resources within their adjacent seas, for which warships and coast guard boats were required to defend jurisdictional spaces.

The United States and Great Britain guided their efforts to protect the weakened regime of the freedom of the seas, during the two conferences on maritime law held in Genoa in 1958 and 1960, where no agreement was reached on the limit of territorial waters. Several countries tried to transcend the freedom of the seas to the territoriality of the seas, pretending to submit to their jurisdiction, vast areas of what had traditionally belonged to the high seas [6]. Conflicts continued, for example in the North Sea oil found on the high seas was interest of Britain, Denmark and Germany, which sparked confrontations because of the sovereignty of the continental shelf, due to the rich resources of this mineral [8].

The third moment of Keohane and Nye started in 1967, when Ambassador Pardo's speech impacted the international community, regarding the enormous benefits of the seabed and focused attention on ocean resources and distributional issues, as well as the conservation of the seabed. Since then, it has been considered that the efficient management of the oceans can achieve great benefits to the states; however, it has been thought at the same time that the benefits of a state turn out to be the losses of other states [6].

During this time, dangers were numerous in the presence of nuclear submarines with the possibility of exploring the seabed and designed with missile systems; supertankers that transport oil from the Middle East to the ports of the world leaving traces of oil spills; and the increase in tensions among nations over the demands for maritime spaces and resources; what generated in the oceans an anarchic environment, with a multitude of demands, counterclaims and sovereignty disputes [8].

Less developed countries, fearful that the global goods of the seas would be exploited only by the countries with the most technology capabilities, insisted on a greater extension of the national jurisdiction and to strengthen the international regulatory body. Thus, a series of controversies have arisen, China maintained that the freedom of the seas was maintained by both powers (United States and Great Britain), to exercise hegemony and expansionism in the oceans and the plundering of the maritime resources of other countries [6].

On the other hand, Canada and Australia allied with the United States and England during the cold war, changed their political point of view in favor of their coastal interests. Thus, in 1970, Canada asserted the right to regulate navigation in an area extending up to 100 miles from its coasts in order to protect water against Arctic contamination [8].

Finally, in December 1973, the Third International Conference on the Law of the Sea was convened, which after eleven sessions, over the course of nine years, adopted in 1982 in Montego Bay, Jamaica, the Convention of the Nations United on the Law of the Sea, better known as the constitution of the seas, which came into force in 1994. Thus, after several years of conflicts, controversies and discussions, UNCLOS adopted, among other things, the following maritime spaces for the coastal states: territorial sea with an area of 12 nautical miles with full sovereignty; exclusive economic zone with an area of 200 nautical miles with sovereignty to explore, exploit, conserve and manage natural resources; continental shelf, which includes the bed and subsoil of the underwater areas up to the outer edge of the continental margin or up to a distance of 200 nautical miles, with the possibility of extending up to 350 nautical miles; and the high seas, beyond 200 nautical miles for global use; and likewise, the way to delimit with the neighboring coastal countries was established, by means of the equidistant line [9].

3 Review of the State of Nature of Hobbes Concepts for the Analysis

According to the above, taking into account the conflict and anarchy of the process to agree on a common authority to govern the activities and conduct of the states at sea, it has been considered a review of the book written by Hobbes, *Leviathan*, exclusively Chap. 13 [1]: “Of the Natural Condition of Mankind, as Concerning Their Felicity and Misery”.

For which, the following paragraphs and main texts have been extracted as core issues, in order to subsequently find similarities with the evolution of the International Regime explained above.

“Men are equal by nature”, Hobbes begins his description of the state of nature by referring to a basic natural equality between all men, and based on this fact he urges the inescapable conflict between them. This is indicated:

Nature hath made men so equal in the faculties of the body and mind, as that, though there be found one man sometimes manifestly stronger in body or of quicker mind than another, yet when all is reckoned together the difference between man and man is not so considerable (...) For, as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination or by confederacy with others that are in the same danger with himself (...)

(...). For such is the nature of men that, howsoever they may acknowledge many others to be more witty or more eloquent or more learned, yet they will hardly believe there be many so wise as themselves, for they see their own wit at hand and other men's at a distance. But this proveth rather that men are in that point equal than unequal (...).

Based on this equality of capacity, Hobbes continues with “From Equity comes distrust”, and mentions that:

From this equality of ability ariseth equality of hope in the attaining of our ends. And therefore, if any two men desire the same thing which nevertheless they cannot both enjoy, they become enemies; and, in the way to their end, which is principally their own conservation and sometimes their delectation only, endeavour to destroy or subdue one another. And from hence it comes to pass that, where an invader hath no more to fear than another man’s single power.

In other words, as Miranda also reasons, “equality of capacity leads to equal expectations of reaching the same ends, and this is the source of conflicts between men, because when two men want the same thing, and that thing cannot be enjoyed by both together, they become enemies” (1984, p. 72) [10].

And Hobbes continues saying that “Of the distrust, the war”, that is, before this situation of mutual distrust, men try to dominate through force or by cunning, until they no longer have a threat, this is understood it is for their own conservation and interests. And it is necessary for the preservation of a man, to increase his dominion over other men.

Hobbes distinguishes three main causes of discord: competition, diffidence and glory. And it indicates:

The first maketh man invade for gain; the second, for safety; and the third, for reputation. The first use violence, to make themselves masters of other men’s persons, wives, children, and cattle; the second, to defend them; the third, for trifles, as a word, a smile, a different opinion, and any other sign of undervalue, either direct in their persons or by reflection in their kindred, their friends, their nation, their profession, or their name.

That is, the first cause drives men to use violence to obtain a benefit; the second, the defense to obtain security; and the third, resorts to force to achieve reputation.

Next Hobbes says:

Hereby it is manifest that, during the time men live without a common power to keep them all in awe, they are in that condition which is called war, and such a war as is of every man against every man.

Consequently, for Hobbes a common power is necessary to control and regulate the activities of men, including, frightening to avoid war.

He also mentions:

For ‘war’ consisteth not in battle only or the act of fighting, but in a tract of time wherein the will to contend by battle is sufficiently known (...) the nature of war consisteth not in actual fighting but in the known disposition thereto during all the time there is no assurance to the contrary. All other time is ‘peace.’

(...)Whatsoever therefore is consequent to a time or war where every man is enemy to every man, the same is consequent to the time wherein men live without other security than what their own strength and their own invention shall furnish them withal.

It is understood that these moments of war of all against all, are not exclusively referred to the real moments of struggle, but also, at times when there is a willingness to go to the war, there will be a war in pot. Your safety is through your own resources.

He continues:

(...)Let him therefore consider with himself, when taking a journey, he arms himself and seeks to go well accompanied; when going to sleep, he locks his doors; when even in his house, he locks his chests; and this when he knows there be laws and public officers armed to revenge all injuries shall be done him; what opinion he has of his fellow-subjects when he rides armed; of his fellow-citizens, when he locks his doors; and of his children and servants, when he locks his chests. Does he not there as much accuse mankind by his actions as I do by my words? (...)

Here, it is reiterated with respect to the distrust existing among men, which motivates them to implement assurances, such as armed walking and placing enclosures or locks on their property.

And later on it continues referring to the common power that must be had to avoid war:

(...)Howsoever, it may be perceived what manner of life there would be where there were no common power to fear, by the manner of life which men that have formerly lived under a peaceful government use to degenerate into, in a civil war.(...)

(...)To this war of every man against every man this also is consequent, that nothing can be unjust. The notions of right and wrong, justice and injustice, have there no place. Where there is no common power, there is no law; where no law, no injustice.(...)

In the aforementioned, Hobbes insists on the need for a common power, which imposes laws, so that there is justice.

(...) It is consequent also to the same condition that there be no propriety, no dominion, no 'mine' and 'thine' distinct, but only that to be every man's that he can get, and for so long as he can keep it. And thus much for the ill condition which man by mere nature is actually placed in (...)

Here, Hobbes reiterates about the natural human condition of war, where everything is anarchy.

Finally: The passions that incline men to peace are fear of death, desire of such things as are necessary to commodious living, and a hope by their industry to obtain them. And reason suggesteth convenient articles of peace, upon which men may be drawn to agreement.

At this point, it is highlighted that peace is motivated by the desire to achieve well-being, and can be achieved through standards reached through agreements or agreements between men.

From the paragraphs reviewed and in order to summarize the most important aspects, the following are two condensed central ideas:

- First idea: In the natural state of the man of equality among them, the weakest would have the possibilities of equaling the strongest, through alliances with others or using their ingenuity; thus the two consider that in equal capacities they would be in the same conditions to attack or be attacked. Furthermore, given this equality comes the distrust between them, therefore, when both have the same goals and interests for something, such as their survival, need for resources or simply satisfy even trivial issues, both become enemies. Mistrust is evident when men must be armed and must place their assets secure.

- Second idea: If there is no common power or authority to regulate the activities among them, including obliging or intimidating the rules, the situation would always be one of anarchy and constant conflicts. The war situation of all against all, it is understood that not only refers to the real moments of struggle, but also to the moments when you have the disposition to go to war or to the will to face the enemy. When there is no common power or authority, there are no regulations, in other words there are no laws to comply with, therefore, there is no justice to apply. In the situation of war, what would affect to reach peace would be the fear of dying, the desire to maintain a comfortable life, for which, mutual peace agreements should be established.

4 Some Similarities Among the Conflicts in the Evolution of the International Regime for Oceans and the Hobbes' State of Nature View

Before moving forward with the similarities, it is worth mentioning the analogy expressed by Miranda regarding the actions of the countries in international relations and the state of nature of Hobbes: "The search for preservation, security, and in general, the own interests, remain the primary and primary causes of the actions of states in the international arena, in the same way that the search for the preservation of one's own life, security and one's own interests were the main causes of actions of individuals in the state of nature described by Hobbes" [10]. Thus, below it is proposed an analysis of the similarities found between the core parts of Chap. 13 of Hobbes' work, the Leviathan, summarized in the two last ideas and the evolution of this international regime referring to the oceans, taking into account the three periods initially explained:

The first period of the evolution of the international regime considered by Keohane and Nye, from 1920 to 1945, was characterized by the particular interest of the maritime powers, whose hegemony was maintained by Great Britain, in continuing with the regime of freedom of the seas and thus maintain access to a larger maritime area to freely exploit the resources of the sea. During this period, there were tensions and claims in the coastal nations, for the rights that they also have to the existing resources in distant waters, mostly exploited exclusively by the great maritime powers.

Similarities: The first idea previously indicated, referring to that natural state of man of equality between them, which leads to mistrust and become enemies if they have the same interests, is directly related to the aspects of this first period analyzed, in the sense that the natural attitude of the great powers was to take advantage of their condition of hegemonic states to satisfy their own interests, and in the same way, the natural attitude of the less developed countries was also to protect their interests, which provoked conflicts and claims of the latter, so that their rights were respected. The marked distrust between them is observed, that when coinciding in their same ends and interests -added to other geopolitical issues-, therefore some of them became potential enemies.

In the second period, from 1946 to 1966, where the beginning of the decline of the principle of freedom of the seas that had been sustained by the maritime powers, the absence of international standards to regulate the uses of the sea, promotes states to adopt unilateral measures of self-protection. Less developed countries such as Ecuador, Peru and Chile unilaterally proclaim 200 miles of territorial sea. There are arrests of North American tuna vessels in the waters of Ecuador and Peru. In short, the least developed countries sought to prevent access by foreign fishing fleets off their coasts, in order to prevent and control the depletion of fishing in their adjacent seas.

Similarities: Like the previous case, this period shows analogies with the first idea established, in the sense that the equality that becomes distrust and enemies when you have the same ends, continues to appear, before the coinciding interests for natural resources from sea. Additionally, it is observed in this period that in a similar way to what was raised by Hobbes regarding the possibilities of equaling the strongest, through alliances with others or using their ingenuity, the less developed countries sought pacts or alliances between similar to face the power of the strongest countries, this is the case of the South American countries of the south pacific coast (Ecuador, Peru, Chile).

In the third period, from 1967 to 1975, the principle of freedom of the seas is completely questioned. For this time, the dialogues and conferences that concluded with the establishment of the regulatory authority of the seas, UNCLOS were in process. However, tensions and conflicts between states over the sovereignty of oceanic spaces and their resources continued, despite the fact that certain norms and regulations were already being applied. It was known that the benefits that a state would obtain resulted from the loss of these same benefits in another state.

Similarities: This period is more similar to the second idea described, in the sense that in the absence of a common power or authority to regulate the activities between them, the situation remains conflicting and anarchy. That was exactly happening with the coastal states, which did not reach agreements, especially regarding the extension of the sea, where the resources can be explored and exploited with total sovereignty, the environment was conflictive.

In addition, in the second idea that war is also considered during the moments when there is a willingness to face the enemy, an analogy is observed with the three periods, because although there were several conflicts that did not degenerate into wars declared, with the exception of some disputes such as the cold war between Iceland and Great Britain for fishing rights in the North Atlantic -between the 1950s and 1970s-, it is understood that all countries are predisposed to go to war when it comes to defending their sovereignty, especially to protect what they consider their rights and interests in the exploitation of the resources of the sea, as these undoubtedly serve for their survival and development.

Likewise, an analogy is found with the second idea, in reference to what Hobbes said: "where there is no common power, the law does not exist; where there is no law, there is no justice," that is, in the absence of a common authority or regulations, there would be no justice to apply. This was exactly what was happening in the case of the oceans, there was no law or justice, until the authority was established with UNCLOS and rules and regulations were implemented.

It is worth mentioning that is indicated by Armitage [11], regarding the fact that initially “Hobbes was not associated with international relations, and that he began to be considered a theoretician of international anarchy once a consensus emerged on the fact that the scope of international relations was certainly anarchic” (2006, p. 34). In this sense, the several similarities found in this analysis corroborate the direct relationship of Hobbes’ anarchic state, with the evolution of the International Regime referred to the oceans, within the anarchic situation of the international system.

Also, Miranda in his analysis of Hobbes and international anarchy, concludes by saying that: “the Hobbesian description of the anarchic state of nature as a state of war, is a suggestive image that can be profitably used in the study of international relations contemporary, from the moment in which the main guide of the States when designing their international policies is the search of what safeguards their interests, in view of which, they are all even willing to resort to war, forgetting any moral consideration” [10].

Therefore, once UNCLOS was established, with a series of regulations designed to avoid disputes and conflicts between states, paradoxically, disputes and confrontations arose again in the process of defining maritime zones and boundaries between coastal states, motivated by the aspiration of states in reaching agreements to obtain greater maritime territory and greater resources from the sea.

5 Conclusions

During the three periods considered to explain the evolution of the international regime referring to the oceans, UNCLOS, there are several similarities with the state of nature of Hobbes. Among them, from 1920 to 1945, when there was a general acceptance of the principle of freedom of the seas, the natural state of man of distrust and enemy (if they have the same interests), resembles the attitude of the great powers in taking advantage of its hegemonic condition to satisfy its ends, and with the attitude of some other countries, which coincided in their interests for the resources of the sea, and became potential rivals. From 1946 to 1966, in which there is a decline in the principle of freedom of the seas, the idea that the weakest would have the possibility of equaling the strongest through alliances, is related to the pacts or agreements of the less developed countries to face to the powers regarding their interest at sea, likewise, that distrust among men that causes it to arm itself, resembles the acquisition of ships to maintain their security. From 1967–1975, when the principle of freedom of the seas is questioned and new norms appear, the idea that the situation is anarchic in the absence of a common regulatory authority, is related to what happened between the coastal states, which without rules to delimit and exploit the resources of the sea, the situation was conflictive.

All these similarities and others found confirm that the Hobbesian anarchic image has been present in the historical process that has elapsed to establish authority in the oceans. However, established the UNCLOS, paradoxically, there arose again disputes and confrontations between the states when defining their limits and maritime zones, in the pretension to reach greater spaces of the sea. What finally leads to rethink about the state of nature of Hobbes and the power or common government that could avoid anarchy and conflict, because in the analyzed case, after many disputes an authority was

established, but in the path of apply the new rules, new conflicts appeared. This leads us to a final reflection, based on the Hobbesian image: conflict may be diminished in the presence of a common power, but not completely eliminated, that is the nature of man!

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