

**THE POSEIDON PROJECT:
THE STRUGGLE TO GOVERN THE WORLD'S OCEANS.**

By *David Bosco*. New York: Oxford University Press. 2022. \$29.95.

Reviewed by *Stephen Cody**

David Bosco¹ has a remarkable ability to write gripping stories about international organizations and international law. His latest book, *The Poseidon Project*, reconstructs centuries of maritime, military, and diplomatic history with the aim of answering two crucial questions: “who controls the oceans and what are the rules for their use?”² Answers to these questions, of longstanding concern to seafarers and national governments, are vital in a world where 80 percent of commerce now travels by sea.³ The book’s expansive scope—from the rise and fall of British naval empire to the painstaking negotiation of the United Nations Law of the Sea Convention—offers a rich account of state attempts to manage the world’s oceans.

Bosco’s narrative begins on the Senkaku Islands, an uninhabited archipelago in the East China Sea claimed by both China and Japan. After the Second World War, U.S. military forces used the islands as a practice bombing range before Washington relinquished the islands to Japan in the late 1960s. China forcefully objected to this transfer of sovereignty, arguing that its own historic rights to the islands date back to the 14th century. In subsequent decades, the dispute between Beijing and Tokyo has only intensified. Both countries now regularly patrol nearby waters with armed naval vessels, raising diplomatic tensions and risking military hostilities. For Bosco, the Senkaku dispute illustrates the stakes of ocean governance: “Small islands, rocks, and reefs that might otherwise be of little significance threaten to instigate major power conflict.”⁴ Maritime affairs profoundly shape the character of international politics and security.

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3. P. 8.

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Each chapter of *The Poseidon Project* details a unique historical period from the early globalization of maritime trade to the contemporary debate on Arctic protection. Throughout the book, Bosco also traces the ways that Hugo Grotius' concept of the freedom of the seas—*Mare Liberum*—structures political relations and ocean governance regimes. Grotius, a brilliant Dutch lawyer and diplomat, famously argued that the sea could not be claimed by sovereign states.⁵ Oceans were common to all humankind. "Grotius leaned heavily on what he saw as the distinctive nature of the oceans in making his case for freedom," writes Bosco. "The seas were fluid and could not be occupied in the way that land could."⁶ Seas' vastness and presumptive inexhaustibility made sovereign control both impractical and unnecessary, at least beyond a state's coastal waters.

By the 18th and 19th century, Bosco explains, the expansion of global maritime commerce had strengthened arguments for freedom of navigation. British naval ships came to dominate the oceans, and rather than exercise their naval superiority to limit foreign navigation, the British promoted open seas. "Belatedly and inconsistently," Bosco writes, "Britain also tamped down private violence on the oceans and advocated for rules that delegitimized marauding as a tool of state policy."⁷ By the early 20th century, the Grotian free seas ideal seemed to be on the horizon. Then came The World Wars.

Indiscriminate attacks on merchant vessels and clandestine submarine warfare undermined faith in free seas and called into question the very possibility of ocean governance. "The Second World War shattered interwar hopes that even the limited form of freedom of navigation during wartime could endure," writes Bosco.⁸ Law of the sea bowed to military advantage. Perhaps because of such growing skepticism, postwar reconstruction notably ignored maritime governance, even as world leaders established a succession

5. Michael A. Becker, *The Shifting Public Order of the Oceans: Freedom of Navigation and the Interdiction of Ships at Sea*, 46 HARV. INT'L L.J., 131, 169 (2005) ("In the numerous historical accounts of the development of the law of the sea, this is widely viewed as the triumph of Hugo Grotius' *Mare Liberum* over John Seldon's *Mare Clausum*—the rejection of the idea that national dominion could extend to the high seas and deny access and use to the rest of the world community, and the limitation of exclusive national sovereignty to the vessels flying the state's flag.").

6. P. 6.

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of international institutions, including the United Nations, the World Bank, and the International Monetary Fund. “[T]he world’s new international edifices,” Bosco writes, “barely touched the oceans. Given the salience of ocean freedom as a theme during the war, the lack of attention was striking.”⁹

Not until the late 1960s did ocean governance reemerge as a prominent political or diplomatic agenda. Conservationists alarmed by oil spills, commercial fishing trawlers, and whaling fleets renewed calls for ocean administration and protection. At the United Nations, Malta’s Ambassador, Arvid Pardo, emerged as a central figure in new negotiations for a law of the sea treaty. Concerned about future exploitation of ocean resources, including seabed minerals, Pardo opposed the Grotian model. Instead, he wanted international governance of the ocean floor that would recognize the seabed as the heritage of all of humankind. After years of negotiation, Pardo’s view largely prevailed and produced the United Nations Law of the Sea Convention (UNCLOS), regularly referred to as the ocean’s constitution.¹⁰

UNCLOS secured compromises on seabed mining and high-seas fishing and revived prospects for the internationalization of ocean governance. The agreement formalized maritime jurisdictions, expanding states’ territorial seas and their exclusive control of resources in maritime economic zones up to 200 miles from sovereign shores. However, for Bosco, the Convention also eroded the venerable international commitment to free seas. “Freedom of the seas endured in parts of the Convention, but it was now more limited and accompanied by a formidable rival philosophy—the oceans as the common heritage of humanity.”¹¹ The Convention, Bosco argued, increased unilateral control of oceans, even as they also created new forms of international governance.¹² For Bosco, this new hybrid approach complicates management regimes and makes unilateral national expansion more likely. State leaders can exploit vagueness in implementing agreements or jurisdictional ambiguities in layered governance structures to grab more ocean space. “For all its

9. P. 91.

10. U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 396.

11. P. 141.

12. P. 245.

defects,” Bosco writes, “freedom of the seas had a coherent philosophical foundation that today’s hybrid model lacks.”¹³

But Bosco’s defense of Grotius and free seas raises difficult questions for those of us concerned about ocean protection. Freedom of the seas principles often compromise ocean ecologies. Marine Protected Areas, for example, are often explicitly prohibit exploitation of marine resources by infringing on freedom of the seas. Still, they are essential to the recovery of threatened fisheries and overall marine sustainability. As Bosco notes, ocean environments enjoy few protections beyond national jurisdictions other than prohibitions against dumping oil or radioactive waste. Oceans need more government supervision and protection. United Nations delegates recently reached an agreement on a new treaty to protect ocean biodiversity and delegates to the International Seabed Authority are presently drafting regulations to govern deep sea mining. These endeavors, if successful, will likely limit free seas, even if they do so through multilateral agreements and institutions. If the ocean is the heritage of all humankind, including future generations, the international community cannot sacrifice ocean protection to free seas principles.

Climate change is rapidly transforming ocean governance priorities. Hurricanes and intense storms now regularly batter coastal communities, rising temperatures melt sea ice and imperil coral reefs, and human-made pollution and plastics poison and endanger marine life in every marine environment. Oceans make up 71 percent of our planet’s surface and 95 percent of its living space. Phytoplankton, seaweeds, and seagrasses produce more than half of the oxygen on earth, in excess of all the world’s forests and terrestrial plants, and absorb about half the carbon dioxide released into the atmosphere each year. Every other breath we breathe is gifted from oceans. In the age of Anthropocene, where human activities are the dominant influence on the environment, ocean governance should not focus predominately on international trade and security. Our capacity to govern the oceans will decide humanity’s survival. Bosco views freedom of the seas as “a conceptual bulwark against states claiming the oceans as their own.”¹⁴ But *The Poseidon Project*

13. P. 247.

14. P. 10.

raises a deeper unanswered question: if nation-states don't claim oceans as their own, who will be responsible for their protection? All of us? Or none of us?