Rules-based Order and Maritime Southeast Asia

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Southeast Asia is a distinctive maritime region. Its strategic location coupled with high volume of seaborne trade passing through regional waters, are both economically and strategically important to the Association of Southeast Asian Nations (ASEAN) member states and the wider Indo-pacific region. In a broader maritime context, regional countries are showing greater awareness of their interests in the oceans and seas. While maritime developments in the region feature contestations between the great powers and unilateral responses to competing maritime interests, ASEAN member states have shown support to open and inclusive regional security architectures and ASEAN led mechanisms which promotes and strengthen collaborative partnerships at sea. An inclusive maritime region founded upon international rules and norms lay the foundation for safe and secure seas, which is crucial for the region's continued growth and prosperity.

This chapter goes on to highlight that this rules-based formulation draw on the United Nations Convention on the Law of the Sea (UNCLOS), which establishes a legal framework to govern all uses of the oceans including the various passage regimes that ensures freedom of navigation and overflight. Although UNCLOS has no provisions on how to determine sovereignty over offshores islands, there are numerous provisions which are relevant to developments in the South China Sea beyond territorial disputes. The chapter will highlight inconsistencies in State's interpretation and application of the rights and jurisdiction of coastal states, as well as the rights and freedom of the user states. It will draw on examples of such state practices that have caused concerns and instability in the region.

Order in Southeast Asia

There is varying definition of what a rules-based order constitutes, though majority using the term meant a liberal order. John Ikenberry defined liberal order as a set of 'open, rules-based relations systems organised around expanding forms of institutionalised cooperation'. This order is based on large scale institutions, open market and most importantly, US playing a hegemonic role. (Ikenberry, 2010). The rise of China and its corresponding behaviours within the current international systems has led many to believe that China is set on challenging the current rules-based order. Is China challenging a US-led order or is China trying to change the rules of the game within the international system?

Like the various multilateral institutions such as the United Nations, the International Monetary Fund, the World Trade Organisation, ASEAN also act accordingly to a set of laws,

rules and norms. These rules are established according to certain processes within the ASEAN framework. Some are like informal law which involves the customary aspects of the legal system. ASEAN consistent practice and strict adherence to the 'ASEAN Way', and its principle of non-interference assures member states of stable, recurring patterns of states' behaviour to generate an element of stability.

To the small and medium states in Southeast Asia, strong regulatory rules help constrain the exercise of coercive power and ensures that no single state's influence is exclusive. The organisational weight of the 'rules-based' formulation must not be underestimated and undermined. The key distinction lies in the impartial standard to evaluate the policy according to rules accepted by all participants. In a broader sense, 'rules-based' formulation is 'just and equitable' in that they do not only favour great power interests.

However, there is a point of contention on what constitutes 'just'. For most countries, rules-based order can be expressed in terms of defending and promoting democracy. For example, the ASEAN Political-Security Community promoted cooperation in political development that adheres to the principles of democracy, the rule of law and good governance as well as respect for, promotion and protection of human rights and fundamental freedoms.

In the emerging world of multiple powers besides the US, supporting norms and rules serve to constrain and socialise great power. Coalitions of like-minded countries like the Quadrilateral Security Dialogue (QUAD) between India, Japan, Australia and the US band together to counter a common threat. Rules-based order can only be realised with a high degree of regional integration, which ensures compliance and effective implementation of the decision-making process. Frequent interaction would increase intra-regional trust and confidence, allowing member states to see that it is in their self-interest to cooperate more closely. This process will help states appreciate the stronger collective identity and enhanced legitimacy and reputation that came from upholding their regional commitments. Increased cooperation in the face of changing geopolitical and emerging security exigencies helped to remind all of the collective aims and values, culminating in the ASEAN Charter's ambitions of forming a community based on the rule of law and institutions.

International Law and the UN Convention on the Law of the Sea

UNCLOS is often viewed as one of the key props upholding a maritime rules-based order. UNCLOS is a complex convention acting as a constitution for the oceans and the basis for the types of jurisdiction that a country may exercise at asea in its various roles as coastal, user, port or flag states. It sets out the rights and duties of the states with regards to the various uses of the oceans and prescribes the regime of maritime zones that establish the nature of state sovereignty and sovereign rights over ocean space and resources. UNCLOS also provides the principles and norms for navigational rights and freedoms, flag state responsibility,

enforcement rights at the various maritime zones, all of which are relevant to the maintenance of good order at sea. UNCLOS also provide legal frameworks for preserving and protecting the marine environment, sustainable development of marine living resources, marine scientific research and importantly, and dispute resolution. The convention has 168 state parties including the European Union. Even though the US is not a party, it recognises the convention as customary international law.

UNCLOS established a system for dispute settlement which constitutes an integral part of the Convention. In particular, Part XV of UNCLOS on Settlement of Disputes sets out compulsory dispute settlement procedures which are binding on a state once it becomes a party to the convention. UNCLOS promotes peace at sea in three ways. First, by establishing a new, fair and equitable world order for the oceans. Second, by promoting the rule of law. Third, by promoting the peaceful settlement of disputes. The convention has some unique features. It does not allow a state party to make reservations or exceptions. UNCLOS dispute settlement system plays a meaningful role in the resolution of long-standing territorial and maritime disputes in Asia.

UNCLOS Tribunals served as the legal foundation for the parties to reject unlawful claims and proceed with their legitimate activities. In the Bay of Bengal case, the decision of ITLOS and Annex VII Arbitral Tribunals established maritime boundaries after years of unsuccessful negotiations, which allowed the states concerned to embark on and continue with various economic activities crucial to their economic development. UNCLOS Tribunals laid the foundation for further negotiations and facilitated co-operation and mutual agreements between the parties. ASEAN member states has displayed willingness to adopt a rules-based recourse to settle bilateral disputes over territory. This can be seen from the 2002 ‘Sipadan and Ligitan case’ between Malaysia and Indonesia, the 2003 ‘Land Reclamation Case’ between Malaysia and Singapore, the 2008 ‘Pedra Branca case’, where Singapore and Malaysia resolved a long-standing territorial dispute.

However, the effectiveness of UNCLOS is often up for debate, and its provisions are often sources of contention between states. There are also many examples of non-compliance, including the uses and abuses of straight baselines, perceived illegal restrictions on freedom of navigation by coastal states, and reluctance to acknowledge the rights and duties of user states in the Exclusive Economic Zone (EEZ). One could argue that current tension between US and China has magnify the difference in interpretation and application of international law in regional waters. The continuing development of the law has led to tension between the interests of coastal states on the one hand and those of major maritime powers or users states on the other.

Freedom of Navigation

The maritime geography of East Asia meant that freedom of navigation are of great importance in the region both for the movement of commercial and naval vessels. The free movement of commercial shipping through southeast Asian waters is vital to the economies of regional countries. Any unlawful restrictions on freedom of navigation could have a serious impact not only to regional economies, but economies further away also relying on timely passage through regional waters. The US, in particular, is concerned with its ability to conduct naval operations freely in regional waters without restrictions. Though this concern is rather unique to the US as a maritime power.

The term "Freedom of Navigation" was used explicitly in UNCLOS in relation to the provision on straits used for international navigation, the EEZ and the high seas. The term "right" was used when referring to innocent passage in territorial seas, archipelagic waters, and archipelagic sea lanes (ASLs). Whilst the importance of freedom of navigation in regional waters is frequently iterated by regional countries, there do not seem to be a common understanding of what these freedom entails, and under what law. China's widespread claims in the South China Sea has led it to become the focus of concern for various extra-regional countries as many believe that China's claims threaten freedom of navigation in the sea.

There is regional concern that the Law of the Sea favours the major powers and their preferences for navigational rights. UNCLOS was negotiated in the 1970s, during the Cold War, when there were two superpowers, the US and the Union of Soviet Socialist Republics (USSR). Despite their differences at the time, both superpowers stood together during the negotiations of UNCLOS on issues relating to naval operations in the oceans. Both had a common interest in ensuring that they could move their navies freely around the world and carry out naval operations in ocean area. (Beckman, 2019). UNCLOS contains several provisions that reflect 'grand bargains' between coastal states and the naval powers. One of the grand bargains is on passage regimes through straits used for international navigation and archipelagic waters. Coastal states are entitled to claim a 12 nautical mile (NM) territorial sea, and archipelagic states are given sovereignty over the 'archipelagic waters', that is, waters inside straight baselines connecting the outer most part of their outermost islands and drying reefs. However, sovereignty in these waters is subject to the passage regimes set out in UNCLOS. Two new passage regimes were established in UNCLOS to ensure that all states enjoy rights of overflight and navigation through the straits used for international navigation within the 12 nautical miles territorial sea and through routes used for international navigation through archipelagic states. These regimes guarantee the right of naval powers to send their ships and aircraft through chokepoints in straits used for international navigation and in archipelagic states, with submarine cover below and air cover above. Some coastal states, however, see such extensive rights as a threat to their national sovereignty and

security. China, Indonesia, Malaysia, the Philippines, Vietnam and Thailand, for example, interpret UNCLOS as providing grounds for some restrictions on warships entering their EEZ.

The United States and Japan interpret UNCLOS similarly, advocating that freedom of navigation should be applied to both commercial and military vessels, prohibiting coastal states from requiring prior notification or authorization for foreign ships to exercise innocent passage. In their view, military vessels have a right to innocent passage, and that coastal states' security is covered under articles 19 and 25 of UNCLOS. For the United States, rights and not freedom of navigation per se are the core interest.

China, on the other hand, has a different perspective on freedom of navigation, arguing that full freedom should only apply to commercial ships. As such, Beijing requires foreign military vessels to obtain permission before entering Chinese waters, whereas commercial vessels enjoy the right of innocent passage. Nevertheless, it was pointed out that this may change in the long-run, as China's maritime interests could change with time.

China is not the only country in the Asia-Pacific to claim that UNCLOS does not give foreign military vessels the right to innocent passage. As an archipelagic state, Indonesia has been preoccupied with the provision of ASLs in conjunction with freedom of navigation, and how this would affect its territorial integrity and security. Jakarta maintains that it has fulfilled its obligations under UNCLOS by designating three North-South ASLs. Nevertheless, there has been an ongoing debate over the designation of an additional East-West ASL. Jakarta, however, pointed out that an additional ASL is not required since the right of ASL passage may still be exercised by user states via the routes normally used for international navigation. In the 90's, several states and institutions voiced concern over a missing East-West ASL. Today, some user states, such as Australia and the U.S., are still pushing for the designation of an East-West ASL.

Malaysia's perspective on freedom of navigation is similar to that of China, arguing that there are no specific provisions in UNCLOS on the right to conduct military activities in another country's EEZ. Therefore, activities that are military in nature or result in the production of data to serve military needs and can be used against the interests of the coastal state are not allowed in Malaysian waters without prior approval. Malaysia considers unauthorized military activities in the EEZ as unlawful and a threat to its territorial integrity and political independence.

The Philippines pushed for recognition of the concept of an archipelagic state with archipelagic waters, to strengthen its sovereignty, security and economic progress. In 2011, the Supreme Court of the Philippines ruled that archipelagic waters are subject to sea lanes passage and that the government could designate routes within the archipelagic waters to regulate innocent and sea lanes passage. This decision by the Supreme Court was highlighted

as a step towards normalisation with UNCLOS. Nevertheless, no ASLs have been declared so far.

Critics has argued that China's historic position on naval operations in the oceans is not consistent with its evolving interests in the oceans. China is fast becoming a naval power that will rival or even overtake the US. China is the world's major trading nation and a world-wide investor with global maritime interests. As a major naval power, China has a legitimate interest in moving its navy around the world and sending its naval vessels off the coasts of its potential adversaries to monitor their military capabilities. China also has a very strong interest in maintaining the passage regimes in UNCLOS. Commercial ships and naval vessels from ports in China cannot sail to the Indian Ocean or Europe without passing through choke points governed by the regimes of transit passage or archipelagic sea lanes passage. This is also the case for ships sailing from Chinese ports through the Arctic. Arguably, it would be in China's national interests to look beyond the current threats it perceives from foreign naval vessels sailing through or conducting naval operations off its coasts or off disputed islands it occupies, and focus on how the provisions in UNCLOS further its long-term interests as a major naval power with global maritime interests. Once it recognises that its long-term interests are consistent with the interpretations of the other naval powers on the legal regimes established in UNCLOS, it can focus its efforts on the creation of mechanisms to minimise the risk of conflict arising from the unique circumstances resulting from the sovereignty and maritime disputes in the South China Sea.

Exclusive Economic Zones

Closely related to the tension over freedom of navigation is associated with the EEZ regime, particularly with regards to military activities. The establishment of EEZ as a new zone under UNCLOS is the second grand bargain between the maritime powers and coastal states. The EEZ begins at the 12 NM territorial sea limit and extends out to 200 NM from the baseline from which the territorial sea is measured. It is a not part of the high seas and it is not subject to a sovereignty claim of the coastal state. Rather, it is a sui generis zone in which the rights and jurisdiction of the coastal state are set out, and the rights and freedoms of other states are set out. The grand bargain was to give coastal states the exclusive right to explore and exploit all the hydrocarbon and mineral resources as well the fisheries resources in the EEZ. Consequently, long-distance fishing states suddenly found that they no longer had any right to fish in their historic fishing grounds. In addition, the EEZ regime gives coastal states the right to regulate other economic activities as well as marine scientific research in their EEZ.

At the same time all states enjoy the freedom of navigation and overflight and 'other internationally lawful uses of the sea' related to those freedoms in the EEZ of every state. The naval powers maintain that the phrase 'other internationally lawful uses of the sea' preserves their right to conduct traditional naval operations in the EEZ of any state. In summary, the

view of the naval powers is that the EEZ regime gives all the natural resources to the coastal states, but preserves high seas freedoms of the seas for all other states. In exercising their rights and jurisdiction over the natural resources in the EEZ, coastal states must give 'due regard' to the rights and freedoms of the other states in their EEZ. At the same time, states exercising high seas freedoms in the EEZ of other states must give 'due regard' to the rights and duties of the coastal states in their EEZ. The reciprocal nature of the 'due regard' criteria in the EEZ regime remains an issue of contention. Some clarification was still required to understand what constitutes as giving 'due regard' to the rights and duties of the other party.

Many regional countries are sensitive to the activities of foreign warships in their adjacent waters. Indonesia for example perceives the topic of freedom of navigation at international forums as a rather sensitive topic due to its long-standing argument with user states regarding its Archipelagic sea lanes. UNCLOS itself allows signatories to exclude themselves from remedial procedures addressing a significant range of issues that do come up under UNCLOS. In addition, Article 298 of UNCLOS allows countries to carve out other exceptions to the compulsory remedial procedures. China and a number of other countries have taken the requisite steps to activate those exceptions and limit the issues an arbitration tribunal may consider.

Lawfare in the South China Sea

In recent years, China has taken on a harder stance with regards to maritime disputes with its ASEAN neighbors in the South China Sea. It has actively engaged in the building and militarization of artificial islands in the South China Sea - capitalizing on its superior military and naval resources to assert and defend its maritime claims.

Tracing back to the 2009, when the now infamous Chinese 'nine- dash line' map of the South China Sea officially surfaced. 2009 was the year where the dateline looms for states to file submission on their respective claims on the outer limits of the continental shelf to the Commission on the Limits of Continental Shelf. Malaysia and Vietnam filed a joint submission on 6 May 2009 for extended continental shelf beyond their 200 nautical miles EEZ in the South China Sea. China filed a Note Verbale a day after to the UN officially objecting to the joint submission of Malaysia and Vietnam, and also to the separate submission of China. In its note verbal, China claims it:

> "has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map)," (China Note Verbale, 2009)

The map attached depicts China's claims with a nine- dash U-shaped line. Although this was a turning point of the long standing disputes between China and the other Southeast Asian claimants, no legal actions was taken until the Philippines filed a case again China much later.

The 2016 ruling by the Arbitral tribunal on a case filed by the Philippines against China over maritime rights and jurisdiction in the South China Sea was deem to be comprehensive in its rejection of China's vast and expansive claims in the South China Sea. The hardest blow to China would be that the Tribunal concluded "there was no legal basis for China to claim historical rights to resources within the seas areas falling with the 'nine-dash line'". China claims to historic rights within the 'nine-dash line' are contrary to UNCLOS and without lawful effect to the extent that they exceed the geographical and substantive limits of China's maritime entitlement under UNCLOS. To the extend China had historical rights to resources in the waters of the South China Sea, such rights were extinguished by the entry into force of UNCLOS to the extent they were incompatible with the systems of maritime zones in UNCLOS.

The tribunal ruled that none of the high-tide features in the Spratly Islands generate entitlements to an EEZ or continental shelf because they are all 'rocks' within Article 121(3). Both Mischief Reef and Second Thomas Shoal are low-tide elevations that are not capable of appropriation and do not generate entitlements to maritime zones. Essentially, they are within the EEZ of the Philippines and subject to Philippines jurisdiction and control. On top of that, the Tribunal also ruled that Chinese actions in the South China Sea such as its persistent interfering with Philippine fishing and exploration activities, large scale land reclamation and construction of artificial islands, failure to regulate its own fishing activities, and enforcement activities in the same area were either in violation of the sovereign rights of the Philippines, or had breached various obligations under the Convention of the Law of the Sea (UNCLOS). As anticipated, China has categorically rejected the ruling and expressed every intention to continue its current South China Sea policy trajectory. Consequently, all eyes are on whether and how ASEAN can deal with a defiant China.

Essentially, the award by the arbitral tribunal significantly reduced the maritime areas in the South China Sea that are deemed to be in disputes. The only maritime areas in dispute in the southern part of the South China Sea are the 12 nautical miles territorial sea around the disputed islands within the Spratly Isles. In practical terms, there is no overlapping areas of EEZ or continental shelf between China and Philippines that is subject to the provisions in Article 74(3) and 83(3) requiring 'provisional arrangements of a practical nature'. The award identified the precise scope of what has always been referred to collectively and vaguely as the 'South China Sea disputes'.

China has contested not so much the substance of the rules, but rather the interpretation by others, in particular the arbitral tribunal's determination that it did have jurisdiction. China's initial rejection of the outcome of the awards and denouncing the Arbitral Tribunal, prompted doubts regarding the extent to which the arbitration could have an impact on China's behaviour and the usefulness of the Philippines' resort to the UNCLOS dispute settlement system. The outcome of the awards laid a highly important stepping-stone for the parties

concerned to engage in more substantial negotiations to address the remaining issues that divide them. Due to the lack of enforcement mechanism, the arbitral awards did not resolve territorial sovereignty and maritime delimitation disputes. It was not meant to. It did show that UNCLOS is not purely a great power treaty. A developing country like the Philippines brought China to arbitration—amidst the latter's rejection. This decision of the tribunal may have great significance to how Vietnam, Malaysia and Brunei manage their disputes with China.

More recently, exchanges of note verbales seems to be the diplomatic action of choice. Triggered by Malaysia's December 2019 partial submission to the Commission on the limits of the Continental shelf, a follow-up of its 2009 submission claiming sovereign rights and jurisdiction to the natural resources of the seabed and subsoil in an area beyond the 200 nautical miles limit of its exclusive economic zones in the southern part of the South China Sea. China's Note Verbale was presented to the UN Secretary General on the same day as Malaysia's partial submission.

The Note Verbale states three main points. First, China has sovereignty over the four island groups in the South China Sea, and that the island groups are entitled to all maritime zones, including EEZ and continental shelf. Second, these positions comply with relevant international law and practice, and are known to the international community, including Malaysia. Third, the submission of Malaysia seriously infringed China's sovereignty, sovereign right and jurisdiction in the South China Sea. (China Note Verbale 2019). This led to response from the Philippines, Vietnam and Indonesia, which in turn, triggered further responses from China. All three Southeast Asian states noted in their notes verbale that claims to rights and jurisdiction and to the maritime zones in the South China Sea must be in accordance to UNCLOS. They further state that China has asserted rights and jurisdiction in the South China sea that are not consistent with UNCLOS.

The Philippines Note Verbale in March 2020 states that Philippines considered China's position as inconsistent with international law including UNCLOS, which comprehensively allocates maritime rights to states. Reiterating the findings of the arbitral tribunal in 2016 on maritime entitlements from the features in the South China Sea. First, the tribunal found that 'none of the features in the South China Sea generate entitlements to an EEZ or continental shelf'. Second, the Spratly Islands 'cannot be enclosed within a system of straight or archipelagic baselines and was accorded an entitlement to maritime zones as single unit.' Third, the tribunal 'conclusively settled the issue of historical rights and maritime entitlements in the South China Sea'.

Vietnam's Note Verbale dated 30 March 2020 emphasized that 'as between Vietnam and China, UNCLOS provides the sole legal basis for and defines in a comprehensive and exhaustive manner the scope of their respective maritime entitlements…'. It also highlights

that 'maritime entitlement of any features in the Paracels or Spratlys shall be determined in accordance with Article 121(3) of UNCLOS; baselines of groups of islands 'cannot be drawn by joining the outermost point of their respective outermost features; ' low-tide elevations or submerged features are not capable of appropriation and do not, in and of themselves, generate entitlements to any maritime zones'. (Vietnam Note Verbale, 2020)

Indonesia is not a claimant in the South China Sea. In its 26 May 2020 Note Verbale, Indonesia emphasized that the nine-dash line map 'lacks international legal basis and is tantamount to upset UNCLOS'. China responded directly to this Note Verbale on 2 June 2020, stating that although 'there is no territorial disputes between China and Indonesia in the South China Sea…China and Indonesia have overlapping claims on maritime rights and interests in some parts of the South China Sea'. To which, Indonesia in another Note Verbale dates 12 June 2020 reiterated Indonesia's view that 'no feature in the Spratly Islands is entitled to an Exclusive Economic Zone or Continental Shelf of its own, hence no feature therefrom will generate overlapping maritime entitlement with Indonesia's Exclusive Economic Zone or Continental Shelf', and that ' no historical rights exists in Indonesia's Exclusive Economic Zones and Continental Shelf…any historical rights existing prior to…UNCLOS, those rights were superseded by the provisions of UNCLOS 1982'.

By mid 2020, the US has also joined the fold. The US explained its intervention by stating that it submitted the note because China's note asserts claims which purport to unlawfully interfere with the rights and freedoms enjoyed by the US and all other states. This includes its unlawful claim to 'historic rights, and extending it's maritime zones from features not defined as an 'island'. In general, the US note is consistent with the position of Indonesia, Philippines and Vietnam. One distinct difference, was that the US note does not refer to the decision of the tribunal in the Arbitral Award. Secretary Pompeo, US Secretary of State, did however reference the 2016 arbitral award in a speech in July 2020, stating that the award is final and binding on both parties. He emphasized that US is aligning it's position on China's claims with the decision of the tribunal. (Pompeo, 2020)

Japan statement in January 2021, while less categorical and more specific in highlighting China's actions that directly contravene UNCLOS, it represents Japan's efforts to coordinate with key countries in the region to counter China's growing assertiveness in both the East China Sea and the South China Sea.

Conclusion

The 2016 decision of the arbitral tribunal finding that none of the islands in the Spratly Islands are entitled to an EEZ and continental shelf of their own is of critical importance to the Southeast Asian states bordering the South China Sea. The award ensures that the waters in the South China Sea outside the 12 nm territorial sea from various features will be open to all

States to exercise freedoms of the high seas, including overflight, navigation and military activities. This will be welcomed in particular by the United States and its allies in the region. States concerned with the importance of a rules-based order for the oceans will be able to point out the validity of the outcome of the award, which is final and binding.

The ongoing 'battle of Note Verbales' saw China receiving more serious pushback from Southeast Asia states, both claimants and non-claimants, as well as from extra-regional powers including US, Japan, Australia and major European states. All of the objecting states referred to UNCLOS and have challenged the legality of China's claims to sovereign rights and jurisdiction in the South China Sea based on the historic rights or the nine-dash line. It is encouraging to see more Southeast Asian states placing emphasis on the importance of UNCLOS and arbitral award, stepping out and clearly iterating their positions. This change in attitude is likely abetted by China's own attitude towards international law and is perceived to be on the path of challenging the current rules-based legal order in regional waters.

Even if China recognises that it is in its own interest as a rising maritime power to align its position on UNCLOS closer to that of the US, it may only perpetuate the current tension between coastal states and the major naval powers. The underlying tension arising from the ambiguity and different interpretation of vital provisions in UNCLOS remains unresolved and has given rise to many questions on whether it is time to review and revise such provisions. Tommy Koh was quick to remind us that 'UNCLOS was a product of a grand bargain, one that was forged through difficult compromises, which we may not achieve again'. (Koh, 2019) Indeed, the rights and obligations of the coastal and user states as laid out in UNCLOS were a result of long and arduous rounds of negotiations and compromises among the parties. The final agreement, a grand bargain no less, reflected an equitable balance between the interests and jurisdiction of the littorals, small and big, and the navigational rights and obligation of the user states, naval power or not. These carefully negotiated provisions, including the freedom of navigation, must not be arbitrarily curtailed or undermined in contravention of international law.

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