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ABSTRACT

The Eastern Corridor is a crucial highway for global trade flows, where any disruption could severely affect the global economy. The route comprises some of the world's most vulnerable Sea Lanes of Communication (SCLOs), with potential flashpoints such as the South China Sea. For years, these SLOCs have been characterised by tensions in South Asia and Southeast Asia; the more recent years are seeing a heightening of both intent and capacity for contravention of maritime stability. It is imperative to explore the gaps in the legal framework governing maritime security, and assess the potential risks of disruption not only in the economy but also in the rules-based global order. This paper studies the interface between established maritime legal frameworks and spatial politics in the Eastern Corridor.

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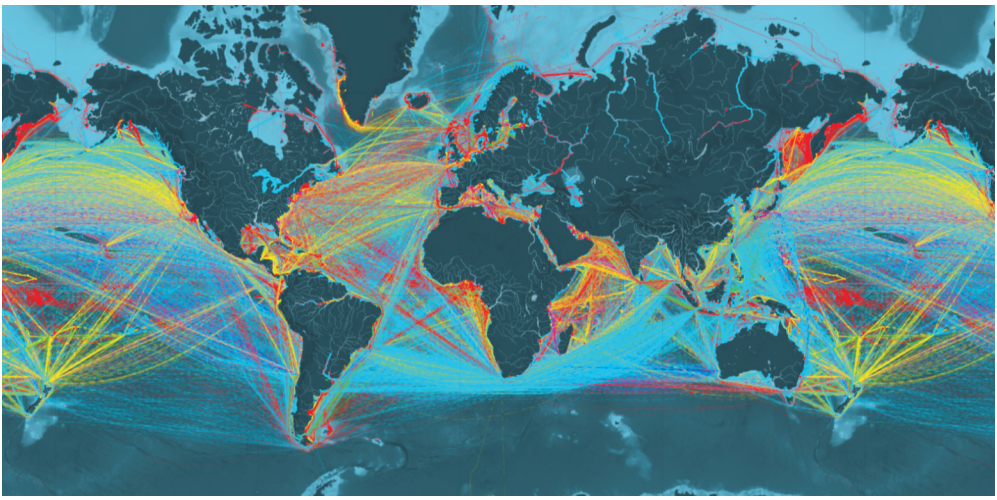
INTRODUCTION: GEOPOLITICS AND MARITIME HIGHWAYS

Commercial exchanges are fundamental to global connections and have historically had a vital bearing upon the sustenance of nation-states and, specifically, on maritime politics. Shipping, one of the most globalised industries in the world, is the lifeblood of globalisation. The two share a symbiotic relationship:[1] globalisation has increased the demand for maritime shipping, and maritime shipping has facilitated globalisation along with a transportation system that includes ocean and coastal routes, inland waterways, railways, roads and air freight. Indeed, the smooth functioning of commerce, coupled with a degree of control over resources and their acquisition, has been a key requirement of countries, especially growing economies. This in turn has influenced regional as well as global political relations. As Sanjaya Baru writes,[2] "The intellectual roots of geo-economics are embedded in seventeenth-century European, largely French, mercantilism."[a]

Global interactions take place along designated maritime highways known as Sea Lanes of Communication (SLOCs), which run across ocean spaces, linking distant shores through trade and, by extension, facilitating an ever-expanding web of political and cultural associations. Since major actors are largely dependent on these SLOCs for commerce as well as their energy supply, the protection of the routes and competition over the resources they carry assumes strategic significance. The ever-increasing number of stakeholders further adds to the risks of competition.

a Baru writes: "The military pursuit of markets, resources and bullion intended to allow a country to export more and import less, and to buy cheap and sell dear, preceded the advent of modern economics based on ideas of free trade and laissez-faire … The rise of China and indeed of other emerging economies both in Asia and elsewhere denotes a structural shift in the locus of growth in the world economy, one that has already had, and will continue to generate, geopolitical consequences, along with political risks and opportunities."

Figure 1: The Dense Network of Global Maritime Trade Routes



Source: https://www.shipmap.org/

The high seas are deemed as global commons: all countries are entitled to equal rights and access to peaceful exploration and resource exploitation. In the purview of maritime law, the "high seas" encompass all parts of the sea outside of internal, territorial, contiguous waters and the Exclusive Economic Zones (EEZs) of littoral countries. Increasingly, these commons are becoming more accessible with scientific and technological advances that expand the reach of physical connectivity, exploration, monitoring and, inevitably, surveillance.

Already, parts of the deep seabed have ceased to be 'free', as the resources of these areas are explored and utilised. While this is a testimony to progress and a more extensive understanding of deep-ocean ecosystems, it brings up a host of issues in governance, the scope of permissible activities, and safety measures in case of untoward incidents. There is a governance structure for mining and undersea utilisation of the high seas under the auspices of the United Nations Convention on the Law of the Sea (UNCLOS) and the International Seabed Authority (ISA). Concerns related to the exploitation of the deep

seabed stem from its potential adverse impact on the fragile marine ecosystems. Consequently, measures have been proposed to ensure the employment of sustainable practices.

The high seas are crucial for global trade and commerce. They are home to SLOCs that act as maritime highways for the transport of cargo between countries and continents. Much of geopolitics in the last few years has revolved around maritime geostrategy, including cases of unlawful claims, aggression, and challenges posed to the freedom of navigation and stable seas. Maritime law covers the spectrum of a state's actions with respect to its designated maritime territory as well as commercial shipping regulations. However, maritime law remains ambiguous in relation to the geostrategic threats perceived by states with respect to the high seas. Additionally, these laws primarily concern themselves with peacetime threats at one end of the spectrum of conflict, and situations of war at the other, without addressing the possibilities of state actions in between. States, therefore, in response to maritime strategic threats are often forced to either develop their own naval capabilities or forge security alliances.

Maritime trade encompasses various security considerations intertwined with the interests of businesses, governments and consumers. This interconnectedness makes the transportation network vulnerable to disruptions, which affects supply chains that support global commerce and national economies.[3] As Troein and Moulakis have observed, "Globalisation, facilitated by trade liberalization, has led to the dispersion of manufacturing and retail sites across vast distances, the rapid worldwide adoption of just-in-time inventory control and tight supply chain management."[4]

The modern global economy has been made possible largely due to the maritime movement of goods, enabled by maritime security.[5] Over

the past 50 years, shipping costs having consistently fallen, further encouraging the dispersion of manufacturing and retail. Efficient, timely maritime transportation has become central to economic competition, for both individual businesses and national economies. Since the SLOCs are vital to the smooth functioning of economies, potential sources of disruptions must be examined and addressed on priority. Maritime trade operates in the global commons, and the safeguarding of maritime transport networks must happen at a global level through a multistakeholder model.

OCEAN SPACES AND THE AMBIT OF LEGAL REGIMES

Legal regimes in ocean spaces can be broadly classified into two main categories: **the law of the sea** and **maritime law**. The law of the sea is part of public international law and governs the geographic jurisdictions of coastal states, and the rights and duties thereof for the use and conservation of the ocean ecosystem and its natural resources. It is distinct from maritime law, in that it relates to private laws of shipping and the commercial business of shipping. Maritime law, on the other hand, is often used synonymously with "admiralty law." The latter, however, applies to the private law of navigation and shipping in the inland waters of nations as well as in the high seas.[6]

International maritime law propounds the doctrine of freedom of the seas, which was first proposed by Hugo Grotius in the 17th century. While the history of maritime law dates back to the Classical Ages, contemporary maritime law has its roots in the work of Grotius. The development of the law of the sea before him is sometimes loosely traced back to a Papal Bull, which took place in 1493 and was instrumental in dividing the world's oceans between Spain and Portugal for the purpose of rule-based colonisation. This, in turn, helped justify Spain's claim to the "discovery" of the New World by Columbus.[7] In the

17th century, John Selden, an English academic, advocated for the establishment of sovereign rights over maritime areas. In the mercantilist era, before the establishment of open registries, naval power, economic power and the flag were viewed together, with the belief that economic power could enhance naval power. Despite the prevalence of this idea well into the 20th century, Grotius contested it and established the tenet of "free seas."[8]

Grotius proposed this idea at a time when the major European maritime states had expanded trade in the Atlantic and Indian oceans, shifting their conflicts from land to the seas. He argued that a state could not claim sovereignty over the seas and exercise exclusive control, and advocated for free navigation and trade over the seas, deeming it to be embedded in the "law of the nations," with every state having a "natural" right over these resources.[9] According to Grotius, seashores were *res communis*. Most of his principles were affirmed through the Treaty of Westphalia of 1648, which recognised, *inter alia,* that all nation-states had equal rights to the use of international waters. Sovereignty was limited only to a narrow belt of sea surrounding a state's coastline.[10] The Declaration of Paris (1856), signed between 55 nations across Europe and the Americas, obligated its signatories to respect the prevalent principles of maritime law during wartime as well. However, their acceptance and practice only commenced much later, with the rise of maritime commercial nations such as Great Britain. Freedom of the seas gradually came to include the freedom of navigation, overflight of aircraft, the laying of submarine cables and pipelines, fishing and, by the 20th century, exclusive offshore-fishing rights and the conservation and exploitation of maritime resources, especially oil.[11]

The laws of the sea are designed to preserve order in the high seas, with respect to territorial waters, sea lanes, and ocean resources. The

UNCLOS (1982) is the primary and most comprehensive foundation for these laws. Over the years, there have been many attempts to codify the law of the high seas, leading to the establishment of several global institutions that govern different aspects related to the laws in their current form. Nevertheless, several issues remain unresolved.

The world's ocean spaces are divided into five zones. The demarcation of these zones begins from what is known as the "baseline," i.e. the waterline of coasts at low tide.

1. **Territorial Sea:** This area covers the immediate waters from the baseline up to 12 nautical miles. Coastal states have full sovereignty over this area, on matters of safety of navigation, protection of the marine environment, prevention and control of pollution, and the exploitation and use of resources. Such jurisdiction is the sole right of the coastal state, without any obligation to conform to international regulations. Vessels and warships (with due notice and permission) of other states have the right of innocent passage within the territorial sea of the respective coastal state.

2. **Contiguous Zone:** Extending 24 nautical miles from the baseline is the contiguous zone, where the coastal state has authority with regard to customs, immigration, fiscal and sanitary laws. While the UNCLOS does not accord security jurisdiction to coastal states in this zone, increasingly, some states have asserted this authority, resulting in the practice being co-opted under customary international law.

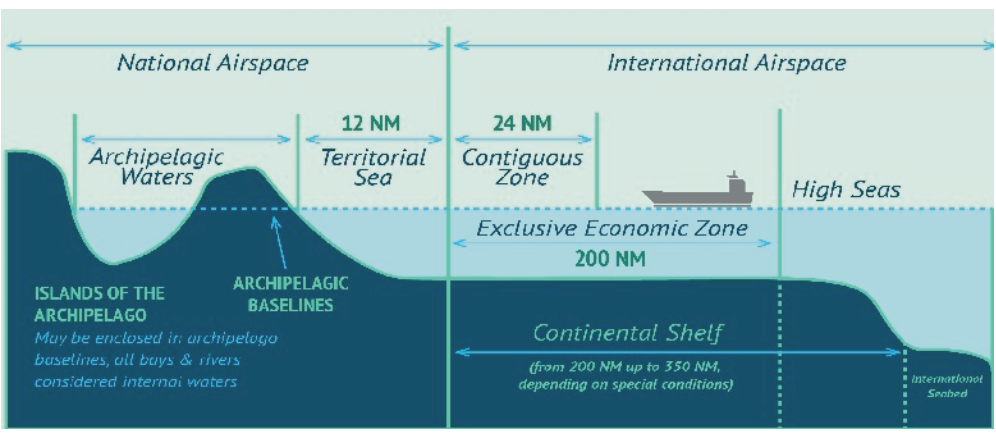
3. **Exclusive Economic Zone:** This zone stretches up to 200 nautical miles from the baseline. In this area, coastal states may exercise sovereign rights with respect to the scientific research, exploration, conservation, exploitation, and management of marine resources for economic activities. Other states hold the right to navigation,

overflight and the laying of pipelines and submarine cables in any country's EEZ, while coastal states reserve the right to any structural installations and constructions.

4. **Continental Shelf:** The submerged prolongation of the landmass from the baseline constitute the continental shelf, comprising the slope, seabed and sub-soil shelf. It extends to the outer edge of the continental margin (till the beginning of the ocean floor) or up to 200 nautical miles, whichever lies farther. Coastal states have sovereign rights over exploration and exploitation of seabed and subsoil resources in this zone.

5. **High Seas:** The maritime spaces that lie beyond the EEZ are defined as the high seas. All states have rights of navigation, overflight, fishing, scientific research, and the laying of pipelines and submarines cables in this zone. The flag state holds the right of jurisdiction over vessels in the high seas, except in the cases of piracy, drug and human trafficking, unauthorised broadcasting, and instances of statelessness.

Figure 2: UNCLOS Maritime and Airspace Zones



Source: Calvin W. Taetzsch, "China's Use of People's War Theory in the South China Sea."[12]

Resources found in the seabed, subsoil and ocean floor extending beyond the continental shelf belong to all states in compliance with conservation measures. Activities in these zones are regulated by the International Seabed Authority.

The main objective of the UNCLOS is to standardise protocols and encourage nations to draft their regulations in accordance with global best practices. This is aimed at balancing overlapping rights and obligations, and ensuring equitable access of the seas to all states, whether coastal or landlocked. The UNCLOS aims to facilitate international communication; promote the peaceful uses of the seas and oceans, and the equitable and efficient utilisation of their resources; the conservation of their living resources; and the study, protection and preservation of the marine environment.[13] In this regard, the UNCLOS has defined the limits of sovereign waters for every state and their rights over the resources of such zones.

There are three components of the rights to freedom of navigation: a) innocent passage through territorial waters; b) transit passage through international straits as well as territorial waters for continuous and expeditious journey; and c) archipelagic sea-lanes passage. According to Article 19 of UNCLOS, the first should not be prejudicial to the peace and stability of the coastal state. The article lists 12 activities that fall into the category of being "prejudicial."[14]

The UNCLOS delineates the rights of other nations with respect to sovereign waters and accords protection of passage and navigation under exceptional circumstances. It further institutes mechanisms for achieving and maintaining peace and security of oceans and seas, for undertaking the conservation and management of marine living resources, for protecting and preserving the marine environment, for undertaking marine scientific research, and for settling disputes

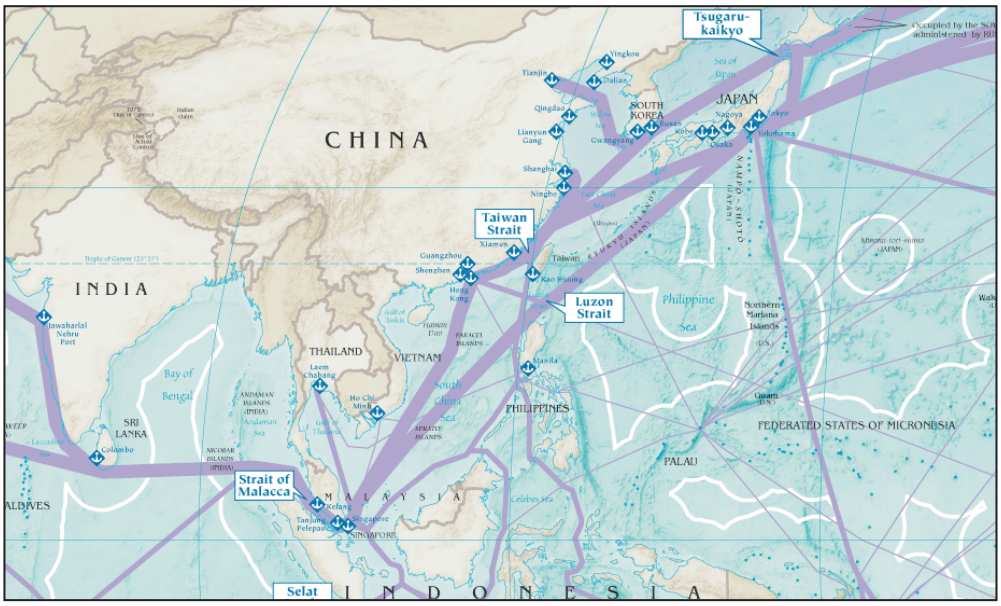
regarding activities on the oceans. The UNCLOS has established the International Maritime Organisation (IMO) as the standard-setting authority for the maritime and marine-related activities, and the International Tribunal for the Law of the Seas (ITLOS) to arbitrate maritime disputes between nations.

SLOC SECURITY IN THE EASTERN CORRIDOR

Historically, human interactions that take place in the oceans have given rise to cross-cultural and commercial linkages, which are the foundation of prosperous civilisations. Thus, maritime routes have always been based on the principle of free passage. With time, and with the advancement of exchanges and modernity, these sea routes came to be organised, monitored and legally classified. Today, SLOCs form a complex network spanning the globe and ensure the seamless functioning of a logistics system that is fundamental to the global economy.[15]

The East–West Corridor, or the Eastern Corridor, is a long and busy network comprising several maritime routes that link major industrial centres of North America, Western Europe and Asia. The nations along this corridor are dependent on the security of SLOCs. However, the preservation of navigational safety and security cannot be carried out and sustained by individual countries, companies, or stakeholders. There are many dimensions to the security of SLOCs, such as physical attacks to vessels, disruptions to navigational access, risks of accident, and environmental concerns. The sheer scope[16] demands concerted efforts for a thorough understanding and assessment of the risks involved, the identification of potential flashpoints, and the consideration of political sensitivities. With globalisation increasing interdependencies and aspirations, leading to a rise in trade and connectivity, the security of SLOCs is becoming increasingly important.

Figure 3: Shipping Lanes in Southeast Asia



Source: "Southeast Asia: India, China and Sea Power," EagleSpeak.[17]

SLOC security has long been a part of studies, discussions and debates; however, coherent policy approaches are yet to emerge. While individual issues, such as illegal activities at sea and piracy, have received some degree of attention, the overarching political and strategic implications of threats to SLOC security remain inadequately addressed, especially in terms of defining and mitigating threats through rules-based multilateral action. The recognition and implementation of legal aspects of maritime security have been largely left to individual coastal states, as they are characterised by political and strategic drivers that include the augmentation of naval capabilities and the conducting of naval exercises (individual/bilateral/trilateral or multilateral).

Regional and subregional organisations dealing with maritime affairs focus on strengthening identified areas of cooperation, which may cover aspects such as the exploration and exploitation of energy

and marine resources, information-sharing, conservation of fisheries and so on. While most of these organisations work towards the preservation of freedom of navigation and order and stability at sea, the mechanism for ensuring the same remains inadequately expressed. Moreover, there are gaps in the provisions of UNCLOS, which invite differences in interpretation based on the differences of interests among coastal states. Consequently, the security of sea lanes becomes a concern in areas characterised by maritime volatility.

This paper focuses on the significance of sea lanes in Southeast Asia that allow the region access to the South China Sea (SCS). The SCS, home to four island groups and energy reserves, is characterised by decades-long intractable maritime tensions over conflicting territorial claims. In Southeast Asia, there are three key SLOCs:[18]

- **The Strait of Malacca:** The most important and most used sea lane, it connects the Indian Ocean with the SCS. It is the second-most important chokepoint in the world, after the Strait of Hormuz.

- **The Strait of Lombok:** The safest sea lane in the region, it is wider and deeper than the Strait of Malacca and mostly preferred by large tankers and carriers transiting between the Persian Gulf and Japan.

- **The Strait of Sunda:** Another substitute route for the Strait of Malacca, it has strong currents and limited depth, making it a less favoured sea lane.

While the Strait of Malacca is strategically the most prominent sea lane in the region, China's prerogatives and activities in the SCS stand to threaten the maritime stability by disrupting trade and upending legal frameworks. Even in the absence of overt conflict, persistent tensions and the legally unfounded challenges to freedom of navigation and

peaceful use of resources can threaten the safety of the sea lanes that pass through the region.

Sea Lanes Under Strain: Redlines, Grey Zones and Hybrid Warfare

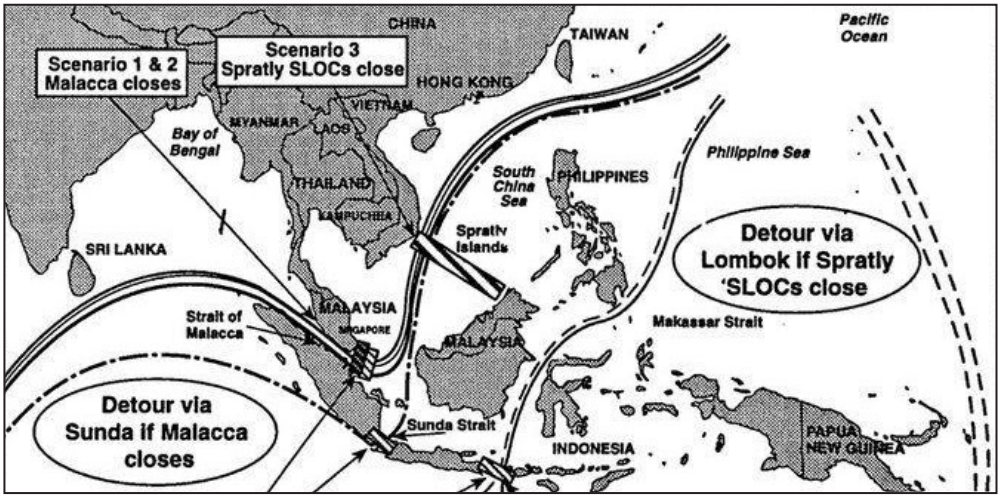
Since the turn of the millennium, there has been a marked increase in the spatial politics over water,[19] which now includes historical and cultural claims, particularistic interpretations of maritime zones, increased extension of control over territorial seas, and changes in the interpretation of the jurisdictional power of littoral states. The geopolitical threat perception that is frequently underscored with reference to SLOCs is an attestation of the fact that these lanes are, or can easily become, vulnerable. Such threat perceptions are not related to non-traditional maritime security threats. Instead, they indicate an apprehension of the uninterrupted movement of trade and energy supplies upon which respective economies are dependent. Psychological and historical associations with territories can often be disproportionate to economic and strategic concern, posing a direct threat to international stability.[20] Therefore, it is essential to establish a functioning and credible resolution mechanism for maritime territorial disputes, the absence of which can disrupt SLOCs and affect the economy, not only within the region but also globally.

With regard to SLOC security, threats can be classified into two broad categories: **wartime threats** and **peacetime threats**. The former includes blocking the movement of naval and merchant ships, and maritime interdiction operations. While the possibility of war cannot be ruled out entirely, the instances of such events have declined since World War II, making these threats less acute than they used to be. Peacetime incidents, therefore, are the main source of threat at sea in

current times, perpetuated mostly by non-state actors and complicated by the proliferation of open registries. Threats to SLOCs can be further categorised into **traditional** and **non-traditional threats**, the former comprising incidents such as piracy, trafficking and smuggling, and the latter comprising militarisation, territorial conflicts and so on. Threats to freedom of navigation and SLOC security could arise out of attempts by coastal states to control the rights of passage due to national security concerns; domestic instability; and tensions over competing and overlapping maritime territorial claims.[21]

For instance, a situation that includes a threat to block the safe passage of ships in the three key straits of Malacca, Sunda and Lombok by Indonesia or Malaysia would have a direct bearing SLOC security, akin to the Suez Crisis or the Gulf War.[22] Similarly, any extension of maritime jurisdiction beyond the UNCLOS would only be defensible as a measure of national security in times of emergency. In this context, China's assertions and imposed restrictions in its perceived sphere of maritime jurisdiction are unwarranted and unfounded. Moreover, in the event of a blockade of a key chokepoint, e.g. the Malacca Strait, ships must make detours, which increase both time and cost, affecting bulk shipping as well as container shipping, the latter more than the former.[23] The impact of detours on bulk carriers/tankers, especially those transporting crude oil, would depend on the domestic stockpile. Detours for container ships, on the other hand, would cause delays in the delivery of raw materials as well as manufactured products, disrupting supply chain networks across the world and upsetting the economies of many countries.

Figure 4: SLOC Blockages and Alternate Routes



Source: "Sea Lines of Communication (SLOC)," EagleSpeak.[24]

Historical evidence shows that even during peacetime, states can pose a threat to each other in terms of navigation and sovereignty in the high seas. Since the middle ages, there have been instances of nations asserting their sovereignty over parts of the high seas, notably, the UK over the North Sea, and the port city of Genoa in Italy over the Mediterranean.[25] Until now, SLOCs have been threatened only during the two world wars and the Cold War. The most striking example of an extension of the scope of sovereignty and claims of maritime jurisdiction in recent times has been in the SCS. Across the length of the East–West Corridor, the SCS is one of the most important SLOCs, with the semi-enclosed sea space comprising the key lanes connecting Europe and the Middle East to northeast Asia, and Southeast Asia to the Pacific Ocean and North America. The SCS is bound by the east coast of Vietnam, the Spratly islands, the Bashi/Luzon Strait and the Hainan Island.[26]

Figure 5: The South China Sea

Source: CIA Factbook.[27]

The composite geography and the decades-long intense geostrategic tensions make the SCS one of the most vulnerable SLOCs in the entire world. Moreover, the geography of this sea space lends itself considerably to jurisdictional ambiguity, which further exacerbates geopolitical tensions. Littoral states, including China, hold varying interpretations of the law of the sea,[b] stymieing the efforts towards mitigating the disputes that characterise it.

b China bases its claims on historical rights (ambiguous), which has no place in the UNCLOS.

These challenges have cleared the way for what is referred to as "grey-zone situations," officially acknowledged in Japan. Grey-zone situations indicate "confrontations over territory, sovereignty and economic interests that are not to escalate into wars."[28] This definition is useful for understanding maritime activity such as those in the SCS, which consist of persistent low-intensity threats that gradually erode the framework of the international world order.

Additionally, the term "grey zone" links with China's philosophy of "hybrid warfare," e.g. the role and activities of the Chinese maritime militia where fishing vessels are being deployed to advance the country's maritime territorial interests. In hybrid warfare, there is no overt conflict, with activities and provocations being limited to a level that does not merit an armed response. This complicates the application of law and the enforcement of legal limits, since the provocations are undefined, unpredictable and equivocal, and differ in nature and scope with each instance.

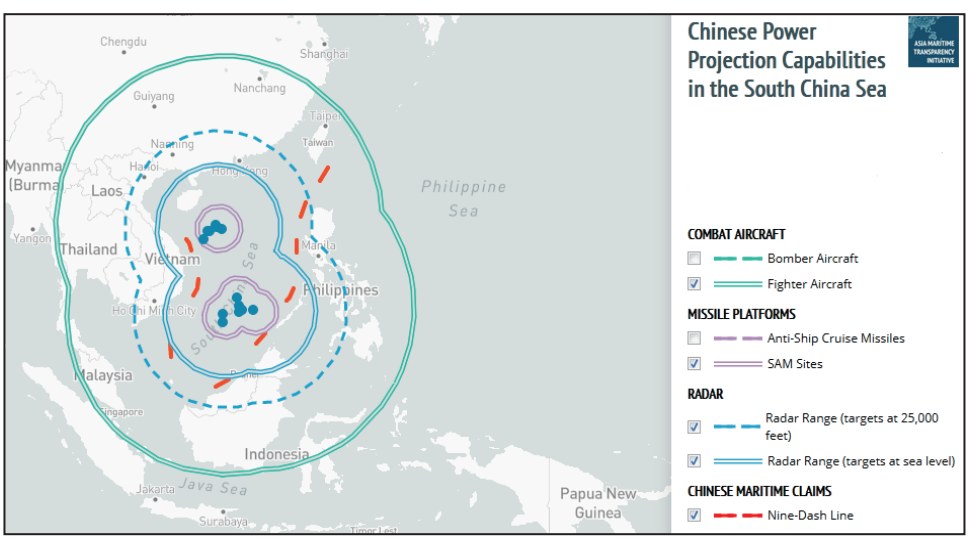
Figure 6: South China Sea: Chinese Claims and Disputed Islands

Source: "South China Sea - what you need to know," DW.[29]

As is the case with most grey zones, the SCS issue is a distinctly political one. Grey-zone situations are born out of contentious issues that are either strategic or deep-rooted, or both, making it difficult to reach diplomatic settlement. To effectively manage such disputes, it is necessary to depoliticise spaces; provide political incentives to deter nations from inciting instability; and establish drivers to facilitate third-party resolution.[30] Littorals of the SCS have sought "third-party resolutions," or supranational-level resolutions, for a long time. However, China is against such interventions, insisting on bilateral solutions to leverage its power asymmetry.

Figure 7[31] illustrates China's power projection capabilities in the SCS, which has increased exponentially since 2014. With the construction of civilian-military bases on the islands of Paracel and Spratly, Beijing has expanded its ability to monitor and deploy power.[32] These island bases have been fortified with new radar and communications arrays, airstrips and hangars to accommodate combat aircraft, as well as the deployment of mobile surface-to-air and anti-ship cruise missile systems.

Figure 7: Chinese Power Projection Capabilities in South China Sea



Source: "Chinese Power Projection Capabilities in the South China Sea," AMTI.[33]

In several instances, China has harassed or forcibly seized vessels in international waters, especially US vessels. In 2016, a People's Liberation Army (PLA) Dalang-III class submarine rescue vessel seized a US UVV (Unmanned Underwater Vehicle) 50 nautical miles northwest of Subic Bay in the Philippines,[34] in a clear instance of infringement of freedom of navigation and sovereign immunity. In 2009, the Pentagon announced[35] that US Navy's intelligence ship *Impeccable* was harassed by Chinese vessels 70 miles south of the Hainan Island.

While China's official statements affirm the principles of freedom of navigation and freedom of the seas, its actions belie this position, since policy formulations of the country are based on the nine-dash line perception. From Beijing's perspective, the waters of the SCS fall within its jurisdictional scope, and therefore, freedom of navigation applies to its own vessels and not those of other coastal states.[36] While other littorals of the SCS who are claimants to the disputed maritime features have been vocal about the competing claims, non-claimant stakeholders have endorsed freedom of navigation as a foundation of their policies related to the SCS.

Power dynamics between the US and China have swiftly transformed the regional dynamics and intensified what was already a tenuous situation. The "Pivot to Asia" policy during the Obama administration; the renaming of the oldest and largest military command, the Pacific Command, to the "Indo-Pacific Command;" and other official policy positions are primarily geared to contain China's influence over the region and serve as reminders that the US continues to be a major player in maritime affairs of Indo-Pacific. However, fears regarding a US draw-down, brought to the forefront during the previous administration, contributed to strategic uncertainties.[37] To remedy this, the present administration's official policy statements and reports have

specified stronger wordings and clearer measures to offset the bellicose stance of China.[38] Currently, the US is the only countervailing force that has the requisite naval capabilities to contain China's assertions.

China defends militarising the features it has in its possession by citing protection of interests and right to self-defence. However, the increasing militarisation of the SCS undermines diplomatic efforts towards a resolution and promotes belligerence. As Thayer points out, "[P]riority ... should be given to redlines that, if crossed, would be destabilising."[39]

FILLING THE GAPS IN GOVERNANCE PARADIGMS

There are two key issues that affect maritime security. One, the existing gaps or loopholes in the UNCLOS framework, which result in varying interpretations of its provisions, depending on the security considerations of individual coastal states. Two, the wilful infringement of the sovereign rights and jurisdictions of other states, which is in contravention of internationally agreed upon and recognised legal provisions. The former calls for deliberations to help in dispensing such ambiguities and establishing a clearer, more functional referral framework. The latter is a more complex and intractable political problem. Concerns as well as aspirations, with respect to maritime commerce, have spurred the mushrooming of multilateral and minilateral organisations. However, there is ambiguity in terms of which overarching framework can govern and regulate activities in the high seas, and be a point of reference threats or breaches. The UNCLOS comes closest; however, it is a partial reference point at best as various aspects remain unclear and need to be considered.

In recent years, there has been an increase in naval patrolling and surveillance of maritime highways, fuelled by rising apprehensions over

the security of navigation and an absence of legal recourse. In the 20th century, there was a decoupling between maritime sovereign power and merchant fleets due to the emergence of open shipping registries. Since states distinguish between threats aimed at them and those aimed at commerce,[40] this resulted in security challenges, with politically and economically powerful nations seeking rights of interdiction under the pretext of preserving national interests. This predicament further increases the need for regional and global cooperation mechanisms to address threats to SLOCs.

To resolve existing ambiguities, it is vital to first define the key legal terms and the difference between perception and factual instances. This, in turn, will help frame amended provisions regarding safety and the limits to state activity at sea. For instance, the rocks and reefs in the SCS, often the subject of "land reclamation" by China, are entitled to a 500-metre safety zone with no corresponding air space. Despite constructing airstrips and other installations, China has not defined any baseline around these features but claims a "military and security alert zone"[41] around the same. Since the physical extents of the zone are not officially declared, it could imply that China is asserting control over the territorial waters within its nine-dash line claim zone. Such issues bring into question the validity of entitlements based on legal regimes as opposed to historical claims, and challenges the rationality and legitimacy of the liberal international order. This creates a gulf between the established mechanisms for dispute resolution, on the one hand, and the perceived entitlements that lie outside the perimeter of the global order, on the other.

For marine threats against states, the approach adopted is to revise the understanding of sovereignty to expand the scope of security for individual nations. For threats aimed at commerce, however, the strategy is to either rely on "internationally sanctioned maritime

coalitions"[42] or avail the services of private security providers. These approaches are connected to the ideas of positive and negative sovereignty.[43] Positive sovereignty is the capacity of a state to maintain its freedom to act and deter other states from encroaching on what it perceives to be its freedoms. Negative sovereignty, on the other hand, comprises the normative protections guaranteed to states on land and sea, i.e. the rules and regulations in place that ensure non-intervention in internal affairs as well as rights and freedoms to act in the international arena. Any contravention of UNCLOS provisions thus calls into question "sovereignty" as acknowledged and accepted under international law.

Further, initiatives such as the Code for Unplanned Encounters at Sea (CUES) and the Declaration on Conduct of Parties in the SCS must clear ambiguities with respect to legitimate actions that can be undertaken in the case of incidents that provoke the misinterpretation of behaviour at sea. The lack of clarity allows nations the scope to exploit loopholes and engage in brinkmanship through the limited use of force. For instance, a key point of difference between the political climate in the SCS and the East China Sea[44] is that the parties involved in the East China Sea have sophisticated defence capabilities and credible deterrence in the form of the US–Japan Mutual Cooperation and Security Treaty.

CONCLUSION

Increasing militarisation poses a major threat to the stability of SLOCs, especially in enclosed sea spaces such as the SCS. The Southeast Asian and East Asian regions have witnessed a steady naval build-up in recent years, fuelling persistent maritime tensions. This underscores another, more difficult to define, threat in addition to the two categories discussed in this paper: the threat posed by the nature of China's

activities in the region. Many terms have been coined to explain the phenomenon, e.g. salami-slicing, hybrid warfare, limited war, and tolerance warfare.[45] However, the nature and extent of these actions are indeterminable, impeding the formulation of structured tactics of response and politicising legal delineations and their ramifications.

Thus, while the temporary modus operandi may be worked out to quell a particular instance or possibility of escalation, in the absence of political incentives, such mechanisms would not be sustainable.[46] To deal with the SCS issue in a realistic manner, a special legal regime can be developed, accommodating competing interests across a spectrum of issues.[47] Such a legal regime must be worked out under the auspices of the existing rules-based global order, without challenging or altering this foundational legal framework.

The UNCLOS is global in scope and attempts at undermining it not only have regional repercussions but also impair the global order.[48] It is imperative that ambiguity regarding rights and jurisdictions in maritime zones be made as precise as possible to avoid the scope for varied interpretations. Indeed, Article 123 of the LOS Convention obligates littorals of a semi-enclosed or enclosed sea to work out appropriate rights and duties among themselves.[49] Further clarity regarding persisting legal loopholes as well as 'redlines' would help establish foundations and allow parties to a dispute to recalibrate their approaches,[50] enhancing both regional and global stability. ORF

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