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Editor's Comments

Dear *JTMS* Readers,

Greetings again from *JTMS*. The temperatures have once again dropped, and winter is here. While the changing of the seasons marches on, the conflicts we are seeing in Ukraine and the Middle East remain. Territory, and the conflicts it engenders, continues to be an important issue for study to create a better understanding of how these conflicts occur and how they may be avoided in the future. Before I introduce this issue, I would like to welcome our new editorial board members.

First, Jevon Dixon investigates the socioeconomic and political patterns of cyberattacks in the maritime sector. He uses data from the Maritime Cyber Attack Database, Democracy Index data from the Economist Intelligence Unit, political regime data from Freedom House, and income level data from the World Bank. Descriptive statistics and hierarchical clustering are employed to identify patterns in the data set. His analysis reveals that socioeconomic, (geo)political, and technological factors influence the dynamics of maritime cyber-incidents. Notably, the research highlights the attribution problem in cyberspace as seen by the huge percentage of cyberattacks from unknown origins. The findings reveal clusters of countries that are targeted similarly by cybercriminals. Dixon provides evidence that geopolitical tensions are increasingly reflected in the maritime cyber-domain. It suggests the need for tailored national maritime cybersecurity strategies and the establishment of an international framework for collaborative efforts among governments, private sector, and international organizations.

Second, Ipshita Chakravarty asserts that, while a plethora of literature exists on the ethnographic study of tribes native to the Andaman and Nicobar Islands (ANI), a paucity of literature that evaluates its geostrategic relevance in India's maritime security discourse exists. Chakravarty deploys a content analysis model and a descriptive approach to arrive at its findings to address this blind spot. She finds the geostrategic relevance of the ANI has amplified with the pivot to Asia being completed, the enunciation of the Indo-Pacific strategy and the Indian Ocean Region (IOR) emerging as a battleground for the two Asiatic giants, India and China. The ANI acts as India's naval sentinel in the eastern sector of the IOR. It is a springboard for power projection, forward presence and defender of India's national interest amid conventional threats in the IOR. Chakravarty concludes that to navigate the geopolitical power shift in the IOR, the Indian mainland has adopted a proactive approach to the capacity building of the archipelago.

Third, Alik Naha contends that deepening the strategic partnership between Seoul and New Delhi is crucial to establish partnerships that can advance the shared values inherent in the strategy of fostering a "free Indo-Pacific." According to Naha, amid the

backdrop of the great power competition between the United States and China, which casts a shadow over the Indo-Pacific region, New Delhi and Seoul recognize the significance of forging stronger ties to wield a substantial influence on global dynamics in economics, technology, and politics. While the bilateral relationship between India and South Korea has witnessed rapid evolution over the past decade, South Korea has received relatively less attention within India's Indo-Pacific initiative compared to other strategic partners such as Japan, the United States, Australia (through the QUAD), and ASEAN. Naha contends that, as middle powers capable of uniting smaller countries in the region, both India and South Korea bear a responsibility to contribute to the construction of a positive regional order.

Fourth, Eduardo Cavalcanti de Mello Filho presents an alternative interpretation of Grotius, challenging the conventional association of his ideas solely with the "freedom of the seas" and *res communis*. This perspective hinges on Grotius' emphasis on expediency as a pivotal factor in shaping the law of the sea, such as considering whether it is expedient for coastal states to exert sovereignty over territorial waters. Cavalcanti's reassessment aims to evaluate the compatibility of contemporary law of the sea, including recent developments like the 2023 Agreement on Biodiversity Beyond National Jurisdiction, with the Grotian tradition. Given Grotius' substantial influence on scholarly perceptions of the law of the sea, the proposed reassessment may impact how relevant epistemic communities conceptualize the contemporary law of the sea. Under positive international law, it is also posited that the Biodiversity beyond National Jurisdiction (BBNJ) Agreement, identified as Grotian, could influence the status of the high seas by emphasizing a community-oriented approach, supplanting the "freedom of the seas" as the default rule.

Fifth, Vasiliki Lampiri discusses whether maritime delimitation agreements can be terminated in the face of sea-level rise due to the invocation of a fundamental change of circumstances under Article 62 of the Vienna Convention on the Law of Treaties. She explains that the authentic and correct interpretation of the boundary exception in Article 62(2) (a) covers equally land and maritime boundaries, and thus maritime delimitation agreements cannot be terminated due to climate change. Even in the event of a different interpretation, sea-level rise could not amount to a fundamental change of circumstances because the threshold to meet the conditions of Article 62(1) is extremely high. Lampiri asserts that, despite the extensive scholarship on the effects of sea-level rise on baselines and unilateral limits, few articles focus exclusively on its effects on maritime delimitation agreements. Through an examination of Articles 31 and 62 of the VCLT—on treaty interpretation and the *rebus sic stantibus* clause, respectively—this article provides a step-by-step analysis and deconstructs the arguments advocating for the termination of maritime agreements in the face of climate change.

Sixth, Pranav Bhaskar and Sitakanta Mishra attempt to divine the future of the Quadrilateral Group (Quad) by scrutinizing its evolution, the pronouncements of its leaders, and observing the reorientations of its members' security strategy in collaboration with other members. Since its inception, the Quad has been perceived, and also dismissed, as the "Asian NATO." Most of the literature rejects the extrapolation of the Cold War scenario and the emergence of NATO in the evolving Indo-Pacific strategic context. While China has viewed it as an anti-China grouping, the Quad members deny it as a military grouping intending to counter China. They conclude that the Quad, in the short term, will evolve as

an Informal Intergovernmental Organization if one examines the members' reorientation of military-strategic posture and the group's agenda. In the longer term, depending on the pace of Chinese assertive behavior, it may take the form of a military-strategic alliance or a different avatar, which is unpredictable. Last but not least, Vishal Singh Bhadauriya reviews *The New Cold War: The United States, Russia, and China from Kosovo to Ukraine* by Gilbert Achcar.

In closing and as always, I would like to thank our readers, our authors, and our editorial board and staff for their continued support. May you have a healthy and happy 2025.

Jongyun Bae
Editor

Analyzing Cyberattacks in the Maritime Domain Using Hierarchical Clustering and Descriptive Statistics

Jevon Dixon

Structured Abstract

Article Type: Research Paper

Purpose—This paper investigates the socioeconomic and political patterns of cyberattacks in the maritime sector.

Design/Methodology/Approach—This research uses data from the Maritime Cyber Attack Database, Democracy Index data from the Economist Intelligence Unit, political regime data from Freedom House, and income level data from the World Bank. Descriptive statistics and hierarchical clustering are employed to identify patterns in the data set.

Findings—The analysis reveals that socioeconomic, (geo)political, and technological factors influence the dynamics of maritime cyber-incidents. Notably, the research highlights the attribution problem in cyberspace as seen by the huge percentage of cyberattacks from unknown origins. The findings reveal clusters of countries that are targeted similarly by cybercriminals.

Practical Implications—The study provides evidence that geopolitical tensions are increasingly reflected in the maritime cyber-domain. It suggests the need for tailored national maritime cybersecurity strategies and the establishment of an international framework for collaborative efforts among governments, the private sector, and international organizations. The study also suggests minilateralism among regional countries to enhance their cybersecurity strategies.

Originality, Value—This paper makes an original contribution revealing that geopolitical tensions appear not only in traditional physical domains of land, air, sea, and space but also within maritime cyberspace. Furthermore, this paper uses machine learning techniques to identify clusters of countries that are targeted similarly.

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Keywords: cyberattacks, cybersecurity, cyberspace, hierarchical clustering, maritime

I. Introduction

The maritime industry facilitates over 90 percent of global trade.¹ In the age of globalization, the maritime industry has capitalized on information and communication technologies to enhance its efficiency and to reduce costs. However, as the maritime sector becomes increasingly reliant on new information and communication technology, it also opens itself to vulnerabilities that malicious actors can exploit.² This paper examines maritime cyber-incidents and determines their patterns over the past two decades.

This paper will assess over 140 cyber-incidents in the Maritime Cyber Attack Database (MCAD) compiled by the NHL Stenden University of Applied Sciences in the Netherlands. By exploring these incidents, this study highlights patterns in cyberattacks in the maritime industry. It is essential to assess the cybersecurity landscape in the maritime industry because these attacks pose substantial risks to global trade, national security, and international relations.

Networks in the maritime industry are not only limited to vessels but also ports, individuals, shipping companies, etc. The maritime sector has embraced the use of technology in its industry. Nevertheless, numerous vulnerabilities have emerged within the industry's digital infrastructure, rendering it susceptible to cyberthreats.³ For this research cyberattacks are defined as "illegal actions that are carried out through computer channels or that aim to destroy and damage [or disrupt] computers, electronic media and internet networks, as well as management and organization systems."⁴ To comprehend the scope of potential cyberattacks, it is necessary to understand the motivations and factors driving these malicious actions. This research seeks to determine if there are socioeconomic and political patterns with cyberattacks in the maritime cyber-domain and to determine if they reflect geopolitical tensions. Analyzing the socioeconomic and political patterns as well as the origins and victims of cyberattacks is crucial in understanding how victim countries can work together to implement robust policies to protect their cyber-infrastructure. The findings indicate that socioeconomic and (geo)political patterns exist in maritime cyberattacks. Furthermore, the maritime cyber-domain is highly characterized by the attribution problem.

The first section discusses the related literature that shows political and socioeconomic factors as main drivers of cyberattacks, aiming to disrupt networks, gather intelligence, or derive economic benefits. The second section introduces the data source and methods of analysis. In the third section, the results are presented. The fourth section discusses the results and situates them in the current scholarly literature. Finally, concluding remarks are given with policy recommendations and suggestions for future research.

II. Related Works

The prevalence and impact of cyberattacks in contemporary society have made cybersecurity a timely issue for governments and the private sector worldwide. Cyberattacks can be carried out for various economic or political gains.⁵ Despite growing awareness of

cyberthreats, actors have been disincentivized to report cyber-incidents due to concerns about reputational damage.⁶ Cybersecurity threats are compounded by the inability of organizations to find suitable personnel to safeguard their systems and the limited technology to tackle evolving cyber threats.⁷ This problem is further exacerbated by limited investment in cybersecurity technology.⁸ The following literature review provides an overview of current research on cybersecurity, covering challenges in cybersecurity preparedness and investment, socioeconomic, political, and cultural drivers of cybercrime, the attribution problem in cyberspace, and cybersecurity within the maritime domain.

2.1 Cybersecurity Preparedness and Investments Challenges

Despite its importance, cybersecurity remains underfunded, with limited budgets impacting the availability of skilled personnel and the adoption of technology to aid in the prevention of cyberthreats.⁹ The literature points to a substantial gap between the perceived importance of cybersecurity and actual organizational practices. For instance, a study conducted by Grant Thornton found that while 95 percent of business leaders consider cybersecurity essential, only 55 percent have a formal cybersecurity strategy and a mere 45 percent offer cyber awareness training to their employees.¹⁰ Additionally, the lack of investment in cybersecurity has real-world implications because an insider attack takes, on average, fifty days to resolve while a ransomware attack takes, on average, twenty-three days to resolve.¹¹ These statistics underscore the slow pace of cyberthreat preparation and mitigation.

Routine activity theory offers a useful framework for understanding cybercrime. This theory posits that three conditions are necessary for a crime to occur: a motivated offender, a suitable target, and absence of a capable guardian.¹² This theoretical approach is invaluable in assessing cybercrime because it helps researchers to understand that a lack of capable guardians can stem from insufficient training, limited technology, and understaffing, further amplifying vulnerabilities across sectors including the maritime sector. Improving capable guardians reduces the risk of cyberthreats. For instance, research concluded that the development of training and knowledge related to the use of information and communication technology reduces losses due to cybercrime.¹³

2.2 Socioeconomic, Political, and Cultural Drivers of Cybercrime

Cybercrime is a social phenomenon driven by compound interactions of underlying socioeconomic factors.¹⁴ Research shows cybercrime often mirrors social, political, economic, and cultural conflicts.¹⁵ Their research assessed political, economic and cultural disputes that resulted in cyberattacks on the countries involved.¹⁶ Their initial observation reveals a positive correlation between political and cultural disputes and cyberattacks.¹⁷

The spatial heterogeneity of cybercrime is closely related to specific socioeconomic contexts.¹⁸ This spatial heterogeneity of cybercrime is significant in understanding how socioeconomic and political trends impact different regions. Countries with a higher gross domestic product (GDP) per capita and advanced information and communication technologies (ICT) experience higher attack rates, while countries where the attack originates tend to have high levels of corruption and large internet bandwidth.¹⁹ Nevertheless, countries with better cybersecurity preparedness may reduce the frequency

of cybercrime originating within them, and countries with better technological infrastructure, greater political freedom, and less organized crime are more likely to report malware infections.²⁰ In a study analyzing the source of cybercrime, cybercrime-related IPs were concentrated in North America, Central and Eastern Europe, East Asia, India, and eastern Australia, while lower concentrations were observed in large parts of Africa (excluding South Africa), western and northern South America, Central America, certain Middle Eastern regions, southern Central Asia, and specific parts of Southeast Asia.²¹ This difference in distribution is influenced by varying regional socioeconomic development, as high-income regions are associated with hosting a higher number of cybercrime IPs compared to low and middle-income regions.²² These findings imply that cybercrime is not only technologically driven but highly dependent on the socioeconomic and cultural characteristics of specific areas, which may reflect similarly in the maritime cyber-domain.

2.3 The Attribution Problem

The theme of attribution is also a common theme in cybersecurity studies. Attribution remains one of the most challenging issues in cybercrime prevention and response. The anonymous nature of cyberspace allows malicious actors to evade identification, further complicating efforts to deter and hold perpetrators accountable.²³ The literature reveals that weak attribution hinders deterrence and favors cyber offense over cyber defense.²⁴ The lack of accountability stemming from weak attribution, weak international norms, weak geographical constraints, and weak deterrence favors cyber offense.²⁵

2.4 Cybersecurity in the Maritime Domain

Cybersecurity in the maritime sector is becoming increasingly important because of the impact disruptions to this sector can have on the global economy. Recent maritime cyberattacks were often directed at port infrastructure.²⁶ Research on maritime cybersecurity is minimal and research on national and international regulations has not made any valuable progress, thus leaving a huge gap in the literature.²⁷ International regulations are not sufficient to tackle cyber threats in the maritime domain.²⁸ Maritime operations often involve multiple jurisdictions; however, a common platform to share information on similar threats is nonexistent particularly because of national security concerns.²⁹ Routine activity theory suggests that a lack of capable guardians in the maritime sector due to the aforementioned challenges renders it a particularly suitable target for cyberattacks.

In summary, the literature indicates that cybercrime is a socioeconomic phenomenon influenced by economic disparities and political tensions. These general cybercrime patterns are expected to be reflected in the maritime cyber-domain. Additionally, the persistent problem of attribution in cyberspace poses significant challenges to deterring cyberattacks in the maritime domain. This study seeks to explore these issues further by positing that the socioeconomic patterns observed globally in cybercrime, as well as the physical political tensions, are reflected in the maritime cyber-domain, along with the enduring challenge of attribution, which hinders effective deterrence and accountability.

III. Data Source and Methods of Analysis

The data for this research comprises 142 attacks cataloged in the MCAD compiled by the NHL Stenden University of Applied Sciences in the Netherlands. The table below provides a description of the variables in the data set.

<i>Variable</i>	<i>Description</i>
viccountry	Victim country of cyberattack, inclusive of both state and non-state actors.
title	A brief description of the incident.
attackcountry	Originating country for cyberattack, inclusive of both state and non-state actors.
inccountry	The country or countries where the incident occurred.
type	Type of attack (e.g., DDoS, hacking, malware, etc.).
area	The area affected by the attack (e.g., shore, offshore, vessel, port, etc.).
referenceNumber	A reference number associated with the incident.
identity	The entity or organization targeted in the attack.
year	The year in which the incident occurred.
method	Specific details about the attack method.
lat	Latitude coordinates associated with the incident location.
lng	Longitude coordinates associated with the incident location.

Table 1. Description of Maritime Cyber Attack Database

The first part of the analysis relied upon the Democracy Index data provided by the EIU spanning the years 2006 to 2022. This period was selected because it is the time period that data is available on the quality of democracy from the EIU. Based on a scale of 1 to 10, the Democracy Index measures the quality of democracy in a country and is based on five different categories: electoral process and pluralism, functioning of government, political participation, political culture, and civil liberties.³⁰ A higher index score indicates a more democratic country. An examination of the mean values for each country from 2006 to 2022 was conducted, with attention to the standard deviations. The standard deviations for most countries were found to be relatively small, indicating a limited fluctuation in their respective democracy indices throughout the specified timeframe. An exception to this pattern was observed in the case of Venezuela, which had a larger standard deviation. The homogeneity in most countries allowed for the acceptance of the mean democracy index as a robust measurement for representing the central tendency of the data set. This decision aimed to mitigate the influence of outliers and capture a more representative overview of the democratic landscape over the studied period. To visually assess potential patterns, the average democracy index for each country throughout the specified time frame was employed to construct a scatterplot to explore the relationship between democracy indices and cyberattack frequenc.

The subsequent phase of analysis involved the use of data from Freedom House to categorize countries based on their political regime. This classification by Freedom House comprises three categories: “free,” “partly free,” and “not free.” While most

countries maintained a consistent classification throughout the studied period, a subset exhibited fluctuations. For those countries with variable classifications, the approach involved considering the most frequently occurring classification over the duration of the analysis. In cases where the classification was nearly indeterminate, the incident year of the attack was consulted, and the regime classification for that specific year was employed.

Countries were categorized into regional groups according to the World Bank’s established regional classifications. Furthermore, a categorization based on economic indicators was conducted to discern potential patterns. Specifically, the World Bank’s income group classification for the fiscal year 2024 was employed as the basis for economic classification. This fiscal year was selected because it reflects the most recent groupings of countries. This approach, encompassing both geographical and economic dimensions, aims to enrich the analysis, allowing for a comprehensive exploration of potential patterns and relationships within the data set. Table 2 below shows the World Bank income group classification.

<i>Income Group</i>	<i>Low Income</i>	<i>Lower Middle Income</i>	<i>Upper Middle Income</i>	<i>High Income</i>
Gross National Income (GNI) per capita (USD)	<= 1, 135	1, 136–4, 465	4, 466–13, 845	> 13, 845

Table 2. Country Income Group Classification Thresholds for GNI per capita

To determine patterns within the relationship between the country of attack origin and the victim country, as well as victim country and method of attack, a clustered heatmap was generated. This involved an initial application of agglomerative hierarchical clustering—a machine-learning technique. Specifically, this method was applied to the variables representing the victim country and attacker country and, subsequently, the victim country and method of attack within the contingency matrix, aiming to visualize patterns and group similar entities together based on frequency of attacks.

Agglomerative hierarchical clustering, a machine-learning clustering technique designed to group similar data points, emerged as a suitable approach for analysis. Unlike regression techniques, traditionally applied to data sets with at least two data points (x, y), the nature of this data set prevented the use of regression analysis due to possessing solely one data point (x). Thus, clustering presented itself as a method, providing visual insights and presentations that are difficult by human observation. The application of hierarchical clustering ensures the proximity of similar items and serves as a visualization tool to depict dissimilarity or similarity levels across clusters. To enhance the comparative analysis of attacks across diverse victim-attacker pairs, standardization into z-scores was performed. This statistical normalization allows for a meaningful assessment of the relative magnitudes of attacks. Euclidean distance served as the metric for measuring the similarity between data points, facilitating their grouping into clusters. This distance metric computes the square of the distance between each variable, aggregates the squares, and calculates the square root of the sum.³¹

To aid in the interpretation of the heatmaps, the following guidelines are provided. The greyscale gradient used in the heatmap represents the relative magnitude of

attacks. Darker shades indicate higher z-scores, signifying a greater number of attacks compared to the mean, while lighter shades correspond to lower z-scores. The z-score serves as a standardized measure, representing how many standard deviations the data point (in this case, the number of attacks converted to z-scores) is from the mean. In the context of this research, the z-scores provide insights into the relative intensity of attacks for each victim-attacker pair. A positive z-score implies that the number of attacks for a specific victim-attacker pair is above the mean. The larger the positive z-score, the farther above the mean the value is, indicating a comparatively higher frequency of attacks. Conversely, a negative z-score suggests that the number of attacks for a specific victim-attacker pair is below the mean. The greater the negative z-score, the farther below the mean the value is, suggesting a relatively lower frequency of attacks compared to the average.

IV. Results

4.1 General Descriptive Statistics

Figures 1 and 2 show the distribution of known cyber-incidents from country source and receiver of attack from 2001 to 2023. It can be observed that the majority of cyberattacks are of an unknown origin, followed by Russia, China, and North Korea. Furthermore, most victims of cyberattacks are in the US, UK, and South Korea. Additionally, cyber incidents fluctuated between zero to four incidents from 2001 to 2015 (figure 3). However, it

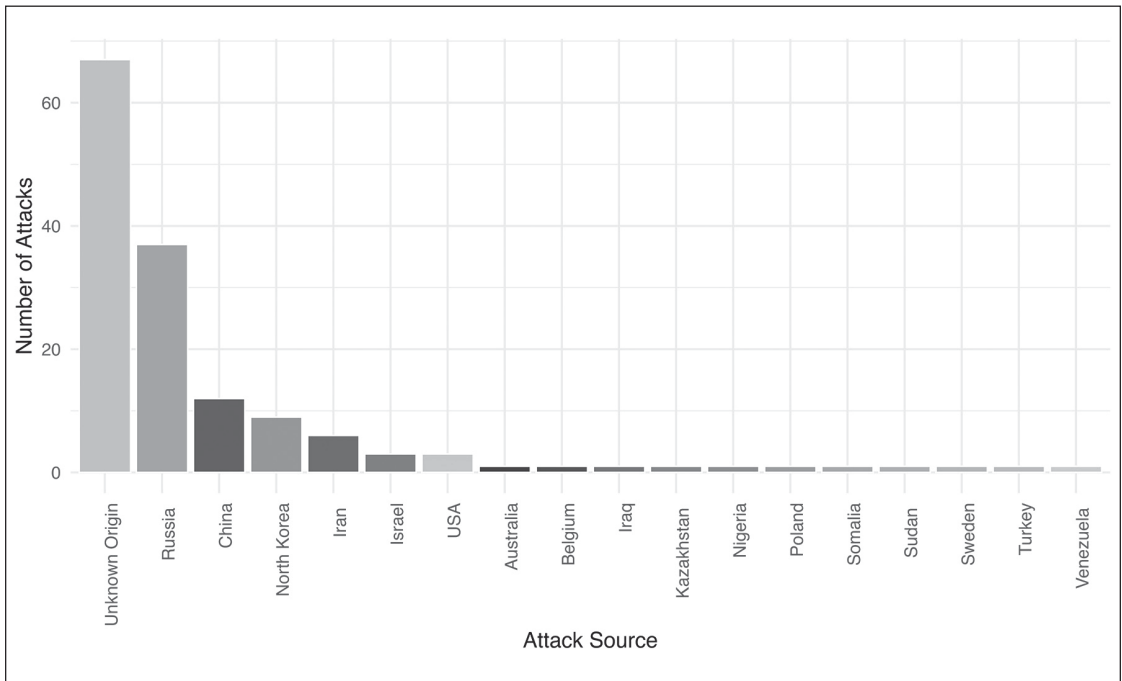


Figure 1. Worldwide Maritime Cyber Attacks by Source of Attack Country

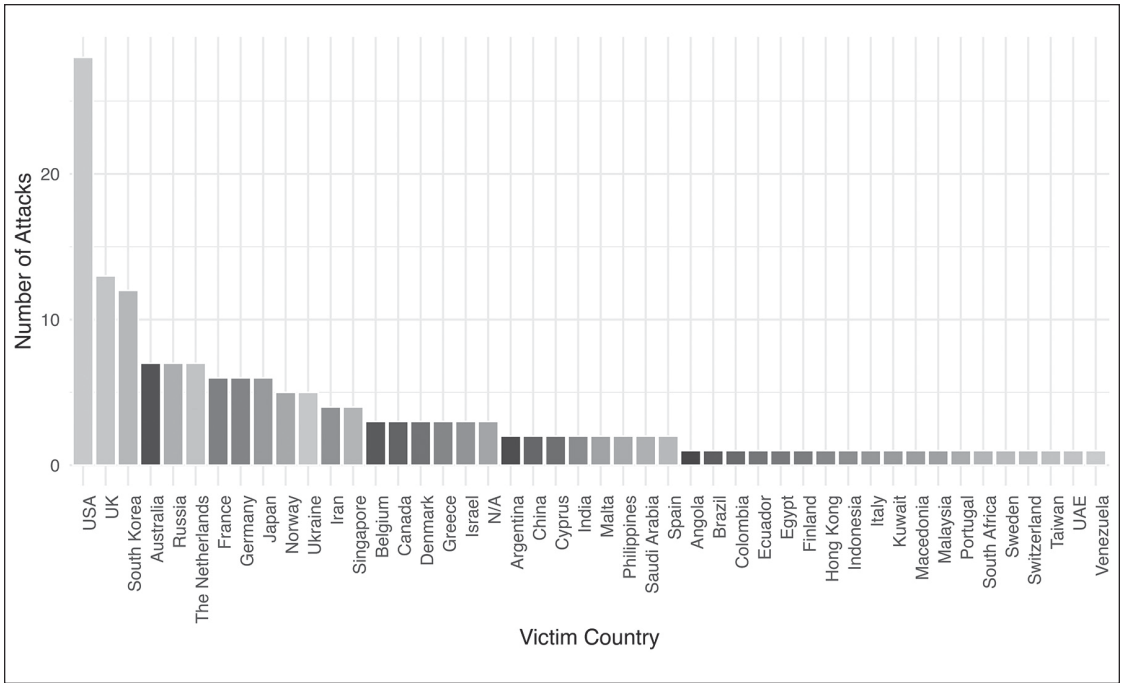


Figure 2. Worldwide Maritime Cyber Attacks by Country of Victim Location

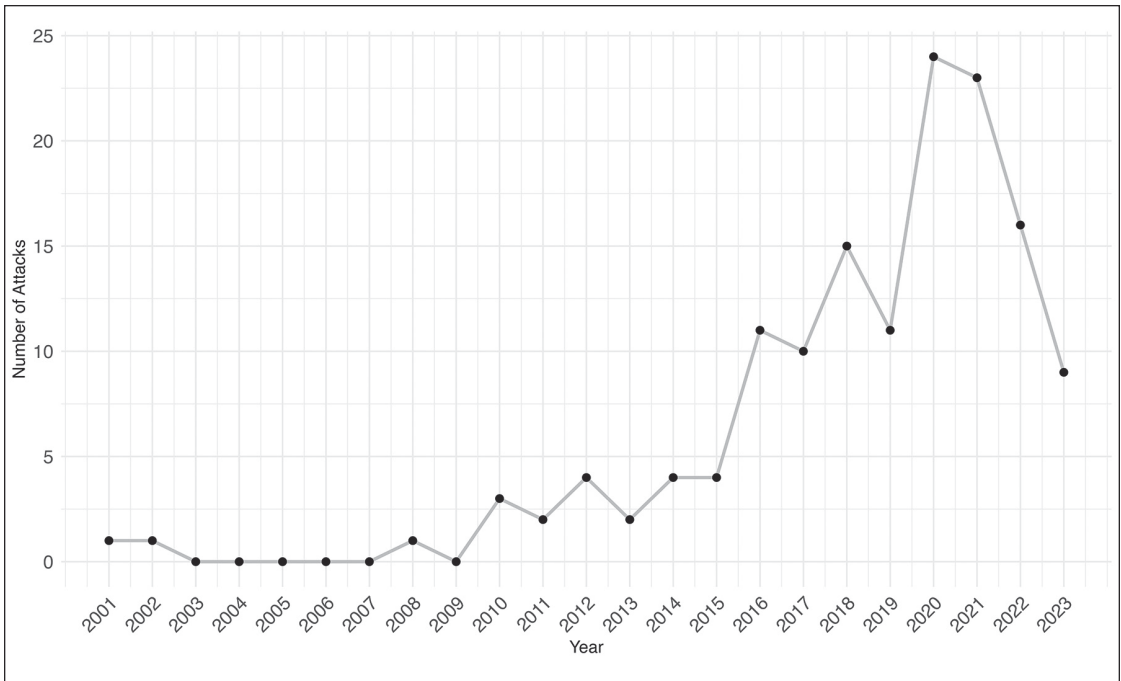


Figure 3. Annual Trend of Maritime Cyber Attacks

began to increase after 2015, culminated at twenty-four incidents in 2020 and slowly began to decrease thereafter to nine in 2023.

The chord diagram (figure 4) shows the flow of cyberattacks in the maritime domain. The majority of the attacks are from an unknown origin, and they are usually directed to the US or strong allies of the US.

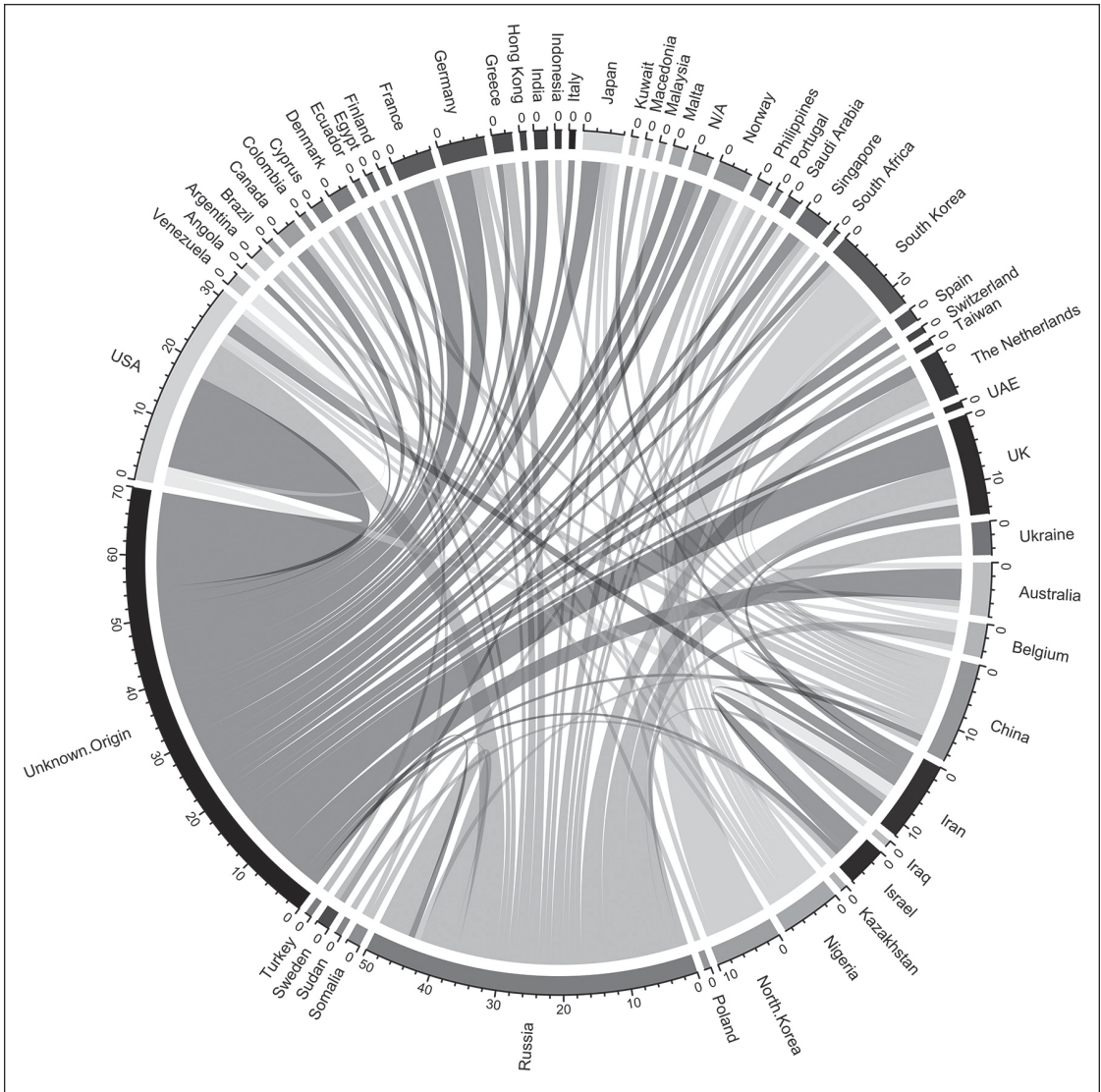


Figure 4. Chord Diagram Showing the Source of Attack and the Victim Country

4.2 Political Patterns

As for victim countries, the political patterns according to this data set do not seem to reveal patterns for flawed and full democracies. However, there is a grouping of countries

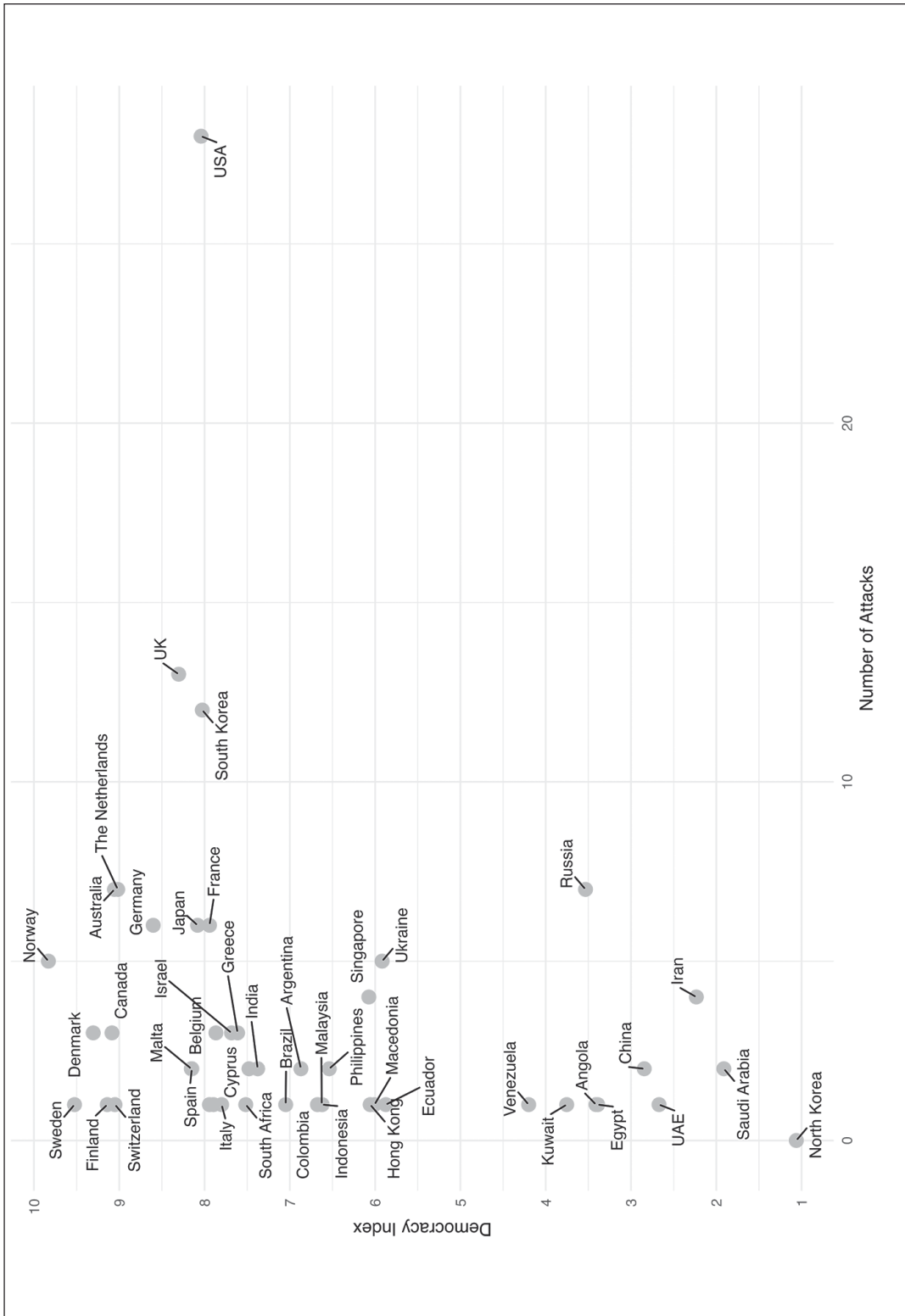


Figure 5. Relationship Between a Country's Democracy Index and the Frequency of Maritime Cyber Attack Victimization

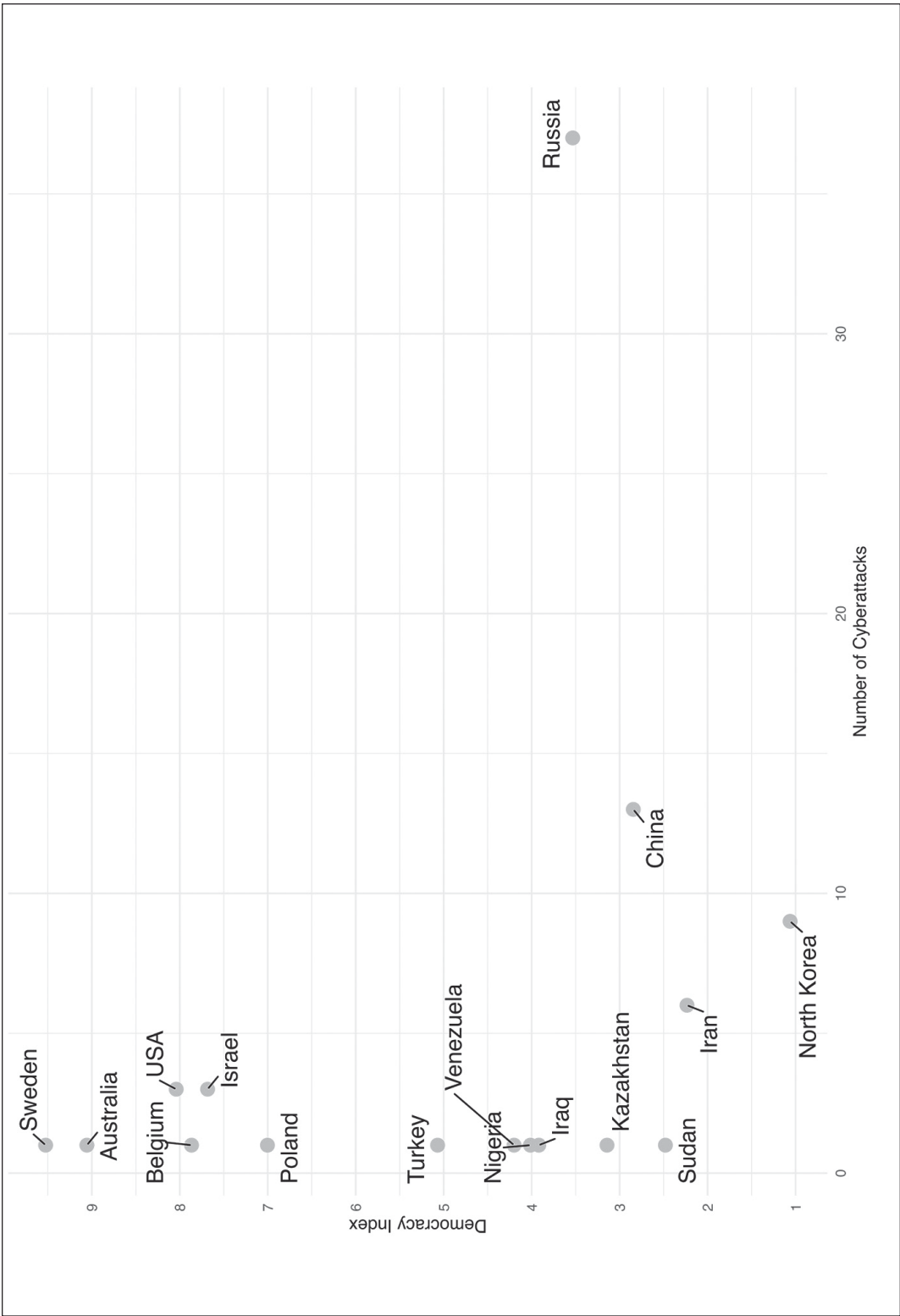


Figure 6. Relationship Between a Country's Democracy Index and the Frequency of Maritime Cyber Attacks Initiated

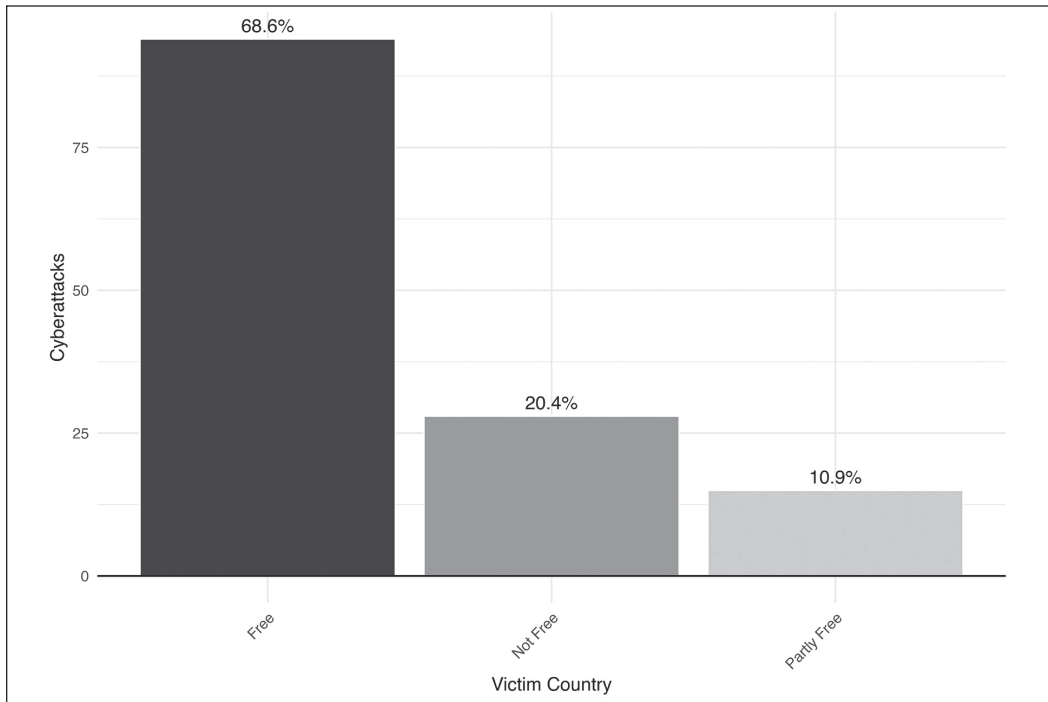


Figure 7. Cyber Attacks by Political Regime of Victim Country

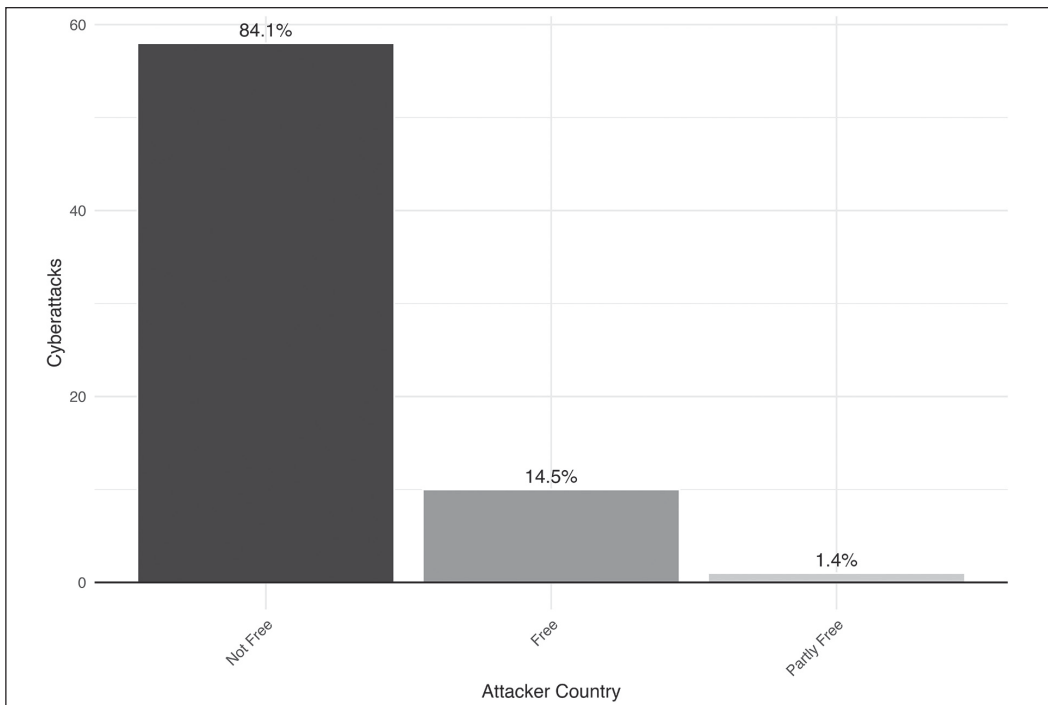


Figure 8. Cyber Attacks by Political Regime of Source Country

that are considered authoritarian regimes that have been victims of the least number of attacks. The other significant pattern seen in this plot is that the US, UK, and South Korea are subjected to significantly higher numbers of cyber incidents. Even though there is no linear relationship between the democracy index and number of attacks, countries classified as free represent approximately 69 percent of all victim countries. For source of attack countries, patterns show that most of the attacks come from countries classified as not free (authoritarian regimes).

4.3 Economic Patterns

Figures 9 and 10 show that the source countries of the majority of cyberattacks are upper-middle-income countries, followed by low-income countries and high-income coun-

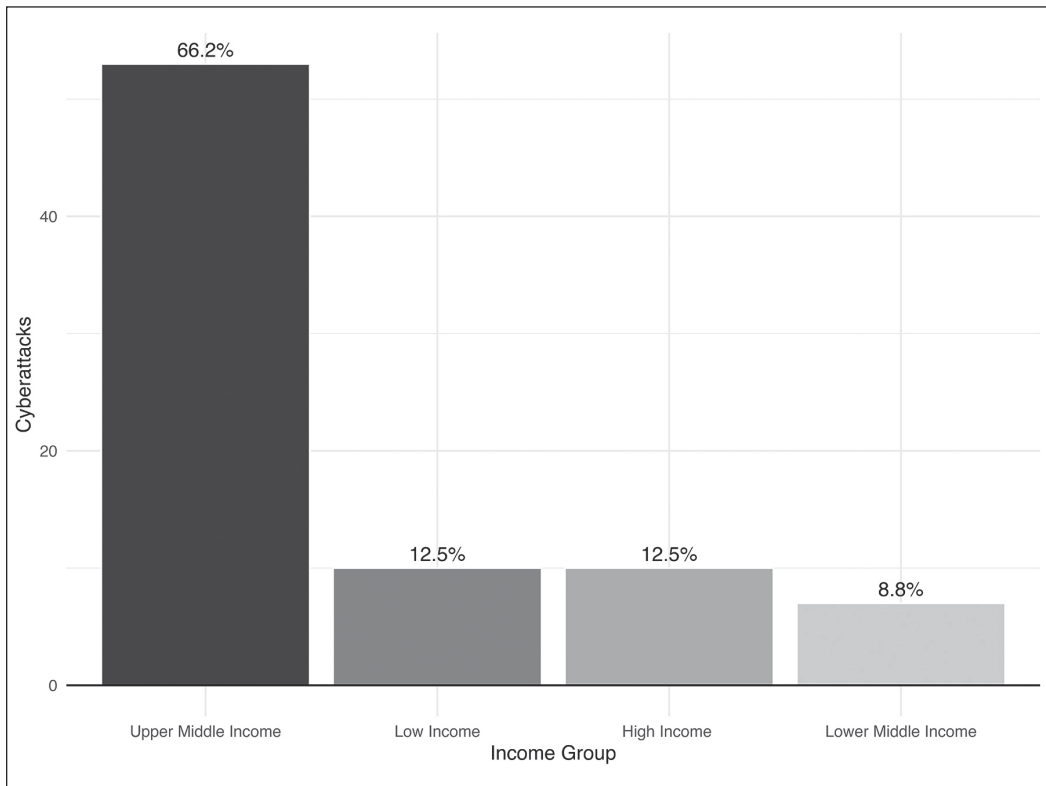


Figure 9. Distribution of Cyber Attack Sources Across Different Country Income Groups

tries (both in second position), and finally, lower-middle-income countries, while most victims are in high-income countries.

4.4 Geographical Patterns

The geographical distribution by region highlights that most attacks originate from Europe and Central Asia as well as East Asia and the Pacific region, while most

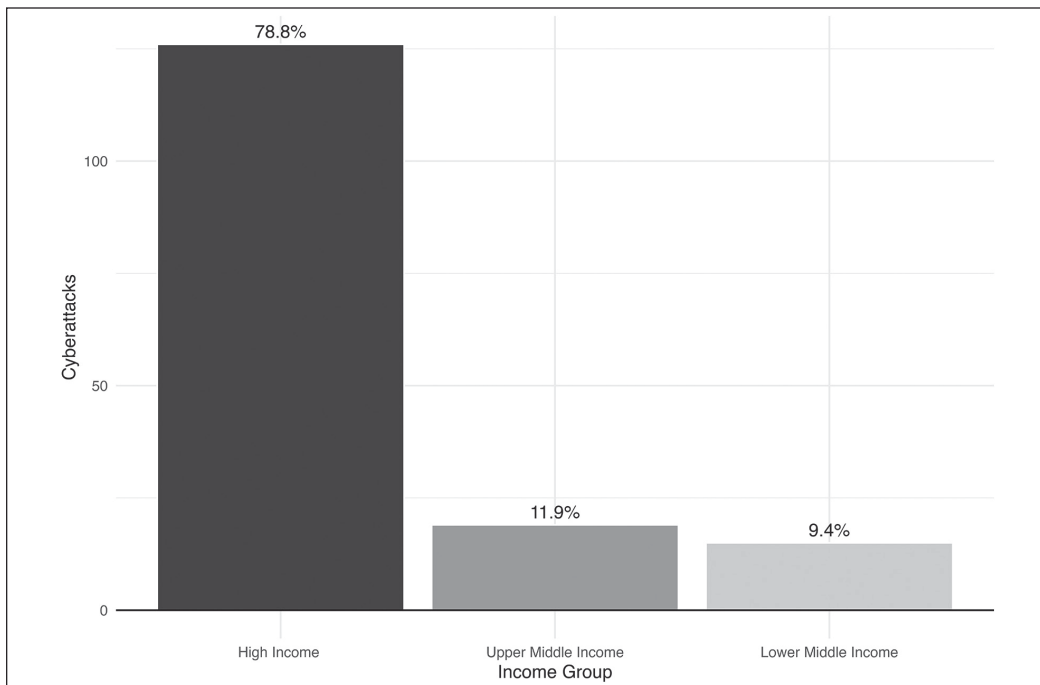


Figure 10. Distribution of Cyber Attack Victims Across Different Country Income Groups

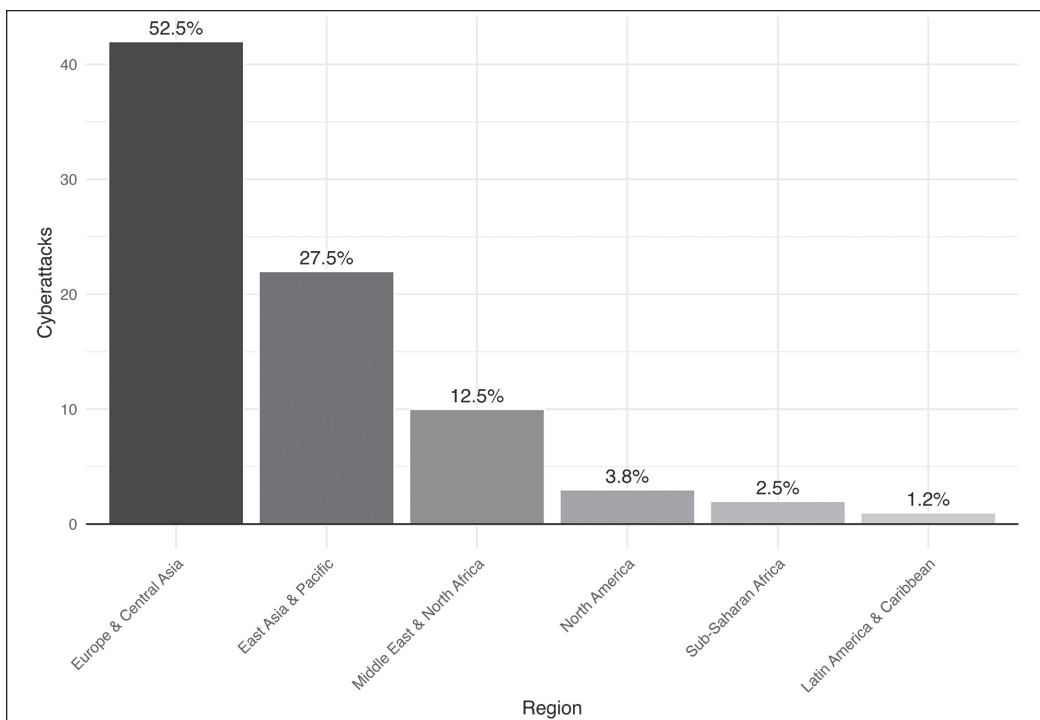


Figure 11. Geographical Distribution of Cyber Attack Sources

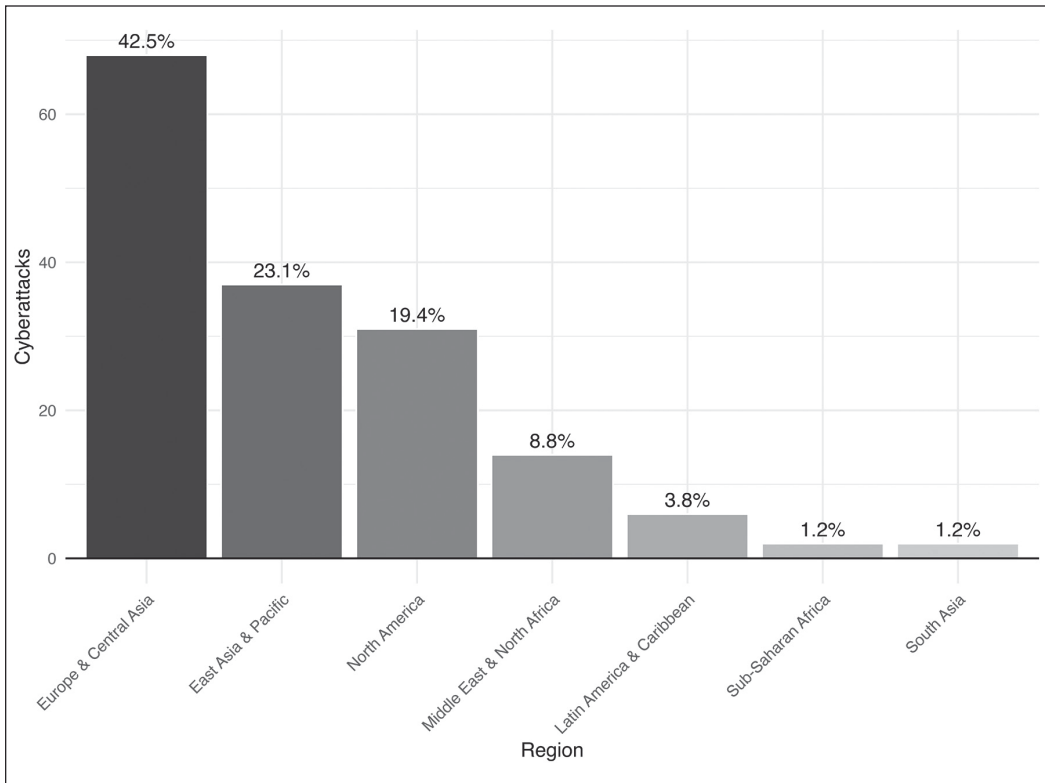


Figure 12. Geographical Distribution of Cyber Attack Victims

victims are in Europe and Central Asia, East Asia, and the Pacific region as well as North America.

4.5 Method of Attack

The bar chart highlights the method of cyberattacks, revealing ransomware as the leading choice. Following in the second position is malware, then hacking and spoofing.

4.6 Heatmap Visualization

In figure 14, an unclustered heatmap illustrates the pairwise number of attacks from the source country to the victim country, with darker cells indicating a higher number of attacks compared to other pairs in the matrix. In figure 15, a clustered heatmap represents the z-score of the attacks. The cell colors now reflect the proportionality in the number of attacks for each pair, and the heatmap is ordered and clustered by similarity based on the value of the Euclidean distance. Figure 16 displays the clustered heatmap of the attack method-victim matrix, highlighting proportionality in the number of attacks for each method to each country. Similar to figure 15, this heatmap is ordered and clustered by the

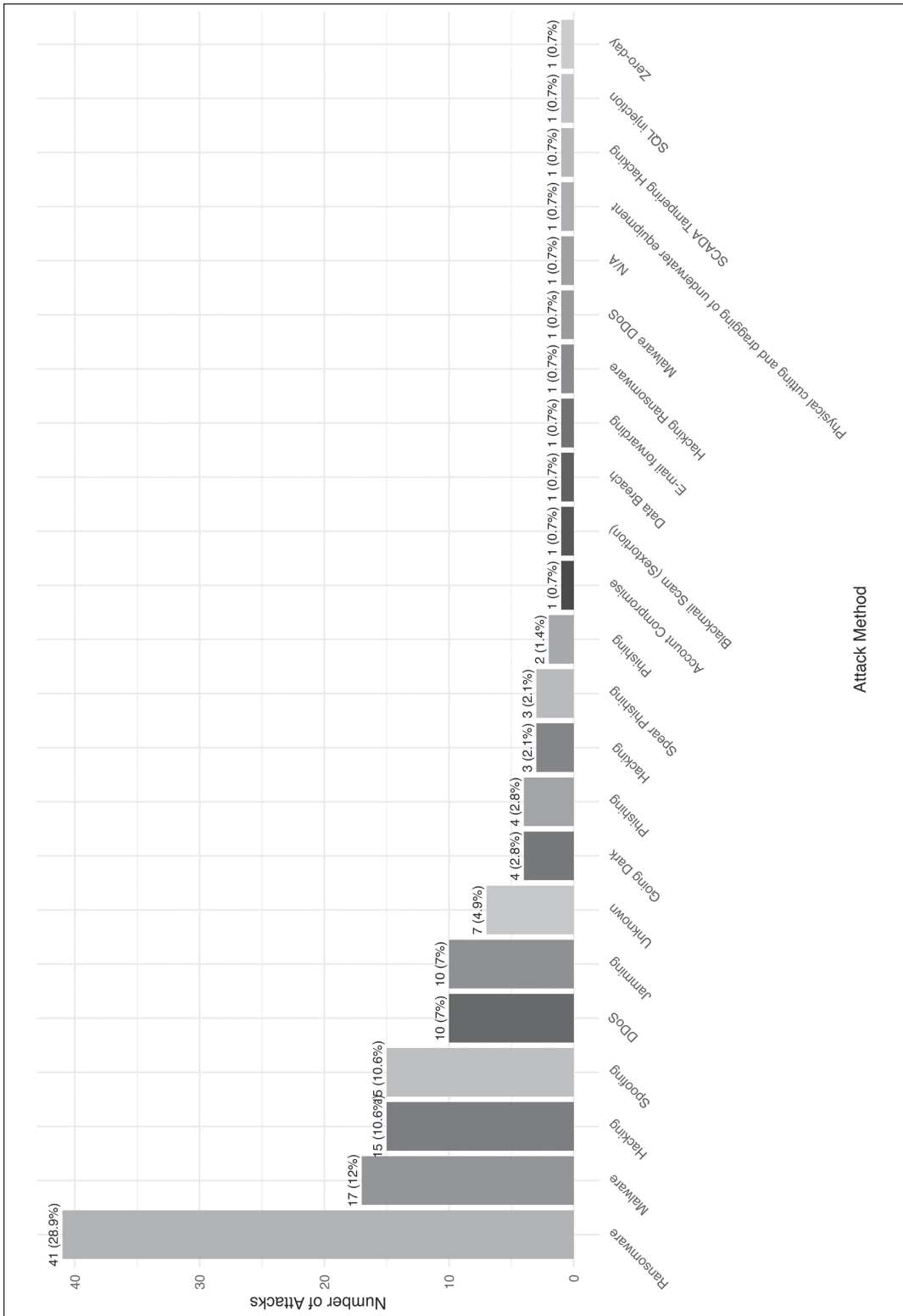


Figure 13. Distribution of Maritime Cyber Attacks by Attack Method

similarity of proportionality and the Euclidean distance. Table 3 and table 4 below show a non-exhaustive list of clusters based on results from the heatmap clustering.

<i>(Sub)Cluster</i>	<i>Countries</i>	<i>Rationale</i>
Cluster 1	USA, Israel, UK, South Korea, Australia, Denmark, Switzerland, Spain, Malta, India, Finland, Greece, Canada France, Japan, Norway, Singapore, Germany, The Netherlands	Compared to other countries, they face higher cybersecurity risks from an unknown origin
Cluster 2	USA, UK, Greece, Canada, France, Japan, Norway, Singapore, Argentina, Germany, The Netherlands, Belgium, Ukraine, Sweden, South Africa, North Macedonia, Portugal	Compared to other countries, they face higher cybersecurity risks from Russia
Cluster 3	USA, South Korea, Australia, Denmark, Taiwan, Indonesia, Malaysia, Philippines, Argentina, Germany	Compared to other countries, they face higher cybersecurity risks from China
Sub-Cluster 1	Denmark, Switzerland, Spain, Malta, Italy, Finland, Greece, France	Compared to other countries, regionally, they face higher cyberthreats from unknown origins
Sub-Cluster 2	Taiwan, Indonesia, Malaysia, Philippines	Compared to other countries, regionally, they face higher cyberthreats from China
Sub-Cluster 3	South Korea, Japan	Compared to other countries, regionally, they face cyberthreats from North Korea

Table 3. Clusters from Hierarchical Clustering Based on Source of Attack (Non-exhaustive list)

<i>Cluster</i>	<i>Countries</i>	<i>Rationale</i>
Cluster 1	USA, The Netherlands, UK, Australia, Norway, Denmark, South Africa, Portugal, North Macedonia, Finland, Greece, France, India, Singapore, Germany, Japan, Belgium, Spain	Compared to other countries, they face higher cybersecurity risks from ransomware attacks
Cluster 2	USA, UK, South Korea, France, India, Singapore, Germany, Japan, Israel	Compared to other countries, they face higher cybersecurity risks from hacking
Cluster 3	USA, The Netherlands, UK, Ukraine, Israel, Taiwan, Sweden, Italy, Belgium, Spain	Compared to other countries, they face higher cybersecurity risks from spoofing
Cluster 4	USA, Netherlands, Australia, South Korea, Ukraine, Japan, Belgium, Argentina, Philippines, Switzerland, Kuwait, Brazil, Indonesia	Compared to other countries, they face higher cybersecurity risks from malwares
Cluster 5	USA, South Korea, Norway, Denmark, Singapore, Germany, Japan, Philippines, UK, Malaysia, Taiwan	Compared to other countries, they face higher cybersecurity risks from phishing and spear-phishing

Table 4. Clusters from Hierarchical Clustering Based on Method of Attack (Non-exhaustive list)

V. Discussion

The first major observation that can be seen from the descriptive statistics is the percentage of attacks from an unknown origin. The attribution characteristic of cyberattacks

is reiterated in the maritime domain. The problem of attribution in cybersecurity is defined as the difficulty of locating, identifying, and ultimately holding accountable perpetrators of a cyber-incident.³² The dematerialized nature of cyberspace, as well as the interconnectivity on large networks, allows for the ease in concealment of cyber-activities, making identification of attackers difficult.³³ Not only is it difficult, it can be time-consuming for cybersecurity specialists to follow digital footprints to identify malicious actors. This method of identification involves the use of various cyber forensic techniques. Even when an actor is identified, cyber forensic analysts must take care not to falsely attribute an attack since malicious actors can deliberately mimic the characteristics of other hacking actors to avoid identification.³⁴ Consequently, due to the attribution problem, which contributes to weak cyber-deterrence, cyber incidents in the maritime domain continue to prevail because the problem of attribution is not addressed.

The second interesting finding is the known origins of attacks. Russia, China, North Korea, and Iran are prominent sources of cyberattack actors. These countries have non-democratic regimes, and the geopolitical tensions these nations have with others suggest a strategic use of their cyber capabilities against other countries. Russia, China, Iran, and North Korea, having lower Democracy Index scores, are actively involved in maritime cyber operations. This could be linked to these nations employing cyber capabilities as tools for crisis diplomacy or compensating for conventional military capabilities. However, it must be noted that there might be more cyberattacks from democratic regimes, but they might not be publicized by their respective countries to avoid political tensions. The victim countries of the attacks coming from Russia, China, North Korea, and Iran tend to be democratic states that have political tensions with them. Russian cyber operatives primarily target Ukraine, the United States, and its allies. Additionally, Chinese cyber operations primarily target the United States and its allies. North Korean cyber operatives primarily target South Korea and Japan, whereas Iran's cyberattacks focus on the United Kingdom, the United States, and Israel. Interestingly, from the source-victim heatmap (figure 15), the US and Israel as source countries seem to target Iran similarly. Additionally, in comparison to other victims, cyber actors from China seem to disproportionately target its neighbors in the Southeast Asia Sea, namely Taiwan, Indonesia, and Malaysia. Cyber actors from Russia disproportionately target Ukraine, Sweden, South Africa, North Macedonia, and Portugal. The case of the 2017 cyberattack of the Maersk shipping company is an example of terrestrial geopolitical conflict spilling over into the maritime cyber-domain. Sandworm, the Russian state-sponsored hacking group, targeted Ukraine and infected Maersk systems with the NotPetya malware.³⁵ This cyberattack was used as a cyber weapon to aid in Russia's war on Ukraine.³⁶ This is interesting as it highlights that traditional geopolitical tensions are being mirrored in the maritime cyber-domain.

The United States, the United Kingdom, and South Korea are in the top three position for countries that have the highest number of victims of cyberattacks (figure 2). The United States faces cyber threats largely from unknown sources, Russia, China, and Iran. South Korea is mostly subjected to cyberattacks from North Korea. The United Kingdom faces most cyberattacks from unknown sources and Russia. This could be attributed to their significant roles in global politics, making them attractive targets for cyber adversaries seeking strategic advantages. South Korea and the UK are strong allies of the US which could make them targets for attacks. Additionally, the US, South Korea, and the UK are

mostly targeted by attackers from non-democratic regimes. This observation reinforces the democratic peace theory, which posits that democracies are less prone to initiating wars with fellow democracies. In this instance, it can be reframed as democratic states being less inclined to participate in actions that might escalate into conflicts with other democratic nations. Furthermore, the heatmap analysis reveals patterns not easily discernible through descriptive statistics. Notably, countries such as the UAE, Switzerland, Spain, Malta, and Italy exhibit high z-scores of 4, indicating the highest proportionality of attacks with an unknown origin compared to other countries. Similarly, Canada, France, and Denmark, also facing cyberattacks from unknown sources, show slightly lower but still significant z-scores of 3, signifying a noteworthy proportionality of attacks from unknown sources.

Most cyberattacks originate from political regimes categorized as not free, and most victims of cyberattacks are located in political regimes classified as free (figure 7 and figure 8). This data supports research findings by other authors that authoritarian regimes tend to be more inclined to initiate conflicts with democracies rather than democracies instigating conflicts against authoritarian regimes.³⁷ One explanation is the institutional constraints on both state actors and non-state actors. State actors are constrained by democratic decision-making that would make them reconsider such offensive decisions as well as costly policy decisions that could cost them electoral support.³⁸ Non-state malicious cyber-actors are restrained by the strong rule of law in democratic states, acting as a deterrent even when engaging in cyber-activities against adversaries of their respective state. Victims have an incentive not to disclose cyber incidents. As a result, the true figure reflecting the number of attacks is highly understated.³⁹ Therefore, there exists a potential underreporting of cyber-activities stemming from democratic states, which is driven by the shared interest of states in avoiding public disclosure.

Between democratic allies, such revelations may negatively impact perception as it reveals underlying distrust among allies. For example, the 2012 revelation that the United States National Security Agency was wiretapping German politicians resulted in a significant decline in German trust in the United States.⁴⁰ At the time, German Chancellor Angela Merkel referred to the incident as a “grave breach of trust.”⁴¹ In cyber-incident interactions between democratic and non-democratic regimes, the democratic regime’s reluctance to disclose such activities arises from their desire to avoid being perceived as an aggressor and to prevent legitimizing potential retaliatory measures from the adversary. Not disclosing being the instigator of a cyberattack helps to maintain ambiguity so as to reduce escalation with adversaries and not reveal their level of cyber-capability, thus enhancing deterrence.⁴² However, when states are asked about their involvement in cyberattacks, they often give ambiguous non-denial statements to prevent retaliation.⁴³ Additionally, the victim may refrain from disclosing cyberattacks to avoid appearing vulnerable.⁴⁴ However, the victim may reveal cyberattacks and identify the aggressor to name and shame as well as send a warning to the aggressor.⁴⁵ Furthermore, the victim might reveal the cyberattack and the aggressor to reduce public humiliation if the incident were to be revealed by the aggressor.⁴⁶ On the other hand, the victim might disclose the cyberattack without disclosing the aggressor to also avoid humiliation.⁴⁷

The analysis of the source of attacks and the victims of attacks verifies that geopolitics influence malicious activities in cyberspace. Cyberspace has become inseparable

from traditional geopolitical competition as it has evolved into an arena for conflicts and confrontations in the new age of digital global power dynamics.⁴⁸ This supports other authors' classification of cyberspace as the fifth domain of warfare.⁴⁹ Interestingly, upon closer examination of the data set, a cyberattack by the Chinese government stood out. This cyberattack targeted a Russian submarine design company. It highlights that China is actively involved in cyberattacks against Russia. This revelation is not surprising, given the inherent lack of complete trust among democratic allies. This mutual distrust extends to non-democratic regimes where skepticism is prevalent, possibly even more than among democratic allies.

Most cyberattacks originate from upper-middle-income countries, and most targeted are high-income countries (figure 9 and figure 10). Additionally, the most preferred method of cyberattack is ransomware (figure 13). Global networks are highly susceptible to cyberattacks, and although progress has been made in developed countries to enhance the resilience of their networks against such threats, vulnerabilities persist within their cybersecurity infrastructure. Furthermore, developing states are more susceptible to cyberattacks. Therefore, the prevalence of cyberattacks on high-income countries relative to other income groups requires closer examination. The rationale behind these attacks can be attributed to economic motivations, a determination derived from the prevalent use of ransomware as a method of attack. This method is primarily used to secure economic gains, facilitated notably through the use of cryptocurrency. The question arises as to why upper-middle-income countries tend to be the source of cyberattacks while high-income countries frequently find themselves targeted as victims. This can be explained by the characteristics of upper-middle-income countries and high-income countries. Upper middle-income countries possess enough technological capital to carry out cyberattacks, whereas high-income countries possess the economic capital sought after by the perpetrators. This validates work by Kumar and Carley (2016), which highlights that countries with higher GDP per capita and better ICT infrastructure are more targeted by cybercriminals, as countries in the high-income groups have these characteristics.⁵⁰

Perpetrators may weigh the possibility of carrying out cyberattacks on upper-middle-income, low-middle-income, and low-income countries. However, the considerably lower returns from such endeavors, particularly when compared to high-income countries, diminish the overall incentive for engaging in these activities. As for the source of attack, the majority of these countries are upper-middle-income countries, which are characterized by higher levels of internet connectivity compared to low-income and low-middle-income countries.⁵¹ This supports Kumar and Carley's (2016) work.⁵² Countries in the low-income and low-middle-income category may encounter challenges in their technical capabilities, such as internet bandwidth, for carrying out these operations. On the other hand, high-income countries may experience limitations due to state action against individuals engaging in such activities domestically, societal norms discouraging such behavior, the prosperity of their citizens, etc. However, the observed lower frequency of cyberattacks from high-income countries may be attributed to the ability of cyber-actors in these countries to conceal the identity of their attacks as well as underreporting.

The top four methods of cyberattacks—ransomware, malware, hacking, and spoofing—account for over 60 percent of all cyberattacks. Among these, ransomware constitutes

approximately 29 percent, primarily driven by economic motives. Analyzing the malware, approximately 8.5 percentage points are attributed to political motivations, while the remaining 3.5 percentage points are undetermined. As for hacking, approximately four percentage points are attributed to political motivations, while the remaining six percentage points are undetermined. However, it is unclear whether these undetermined cases are driven by geopolitical reasons or simply unknown malicious activities. Notably, compared to other methods of attack, South Africa, Portugal, North Macedonia, Hong Kong, Finland, and Greece are targeted disproportionately higher using ransomware (figure 16). As demonstrated in this research and highlighted by other scholars, malware (inclusive of ransomware) seems to be the most preferred mode of attack.⁵³ In 2020 and 2021, the preferred method of attack was commonly through ransomware. This trend may be attributed to the COVID-19 pandemic as malicious actors sought economic gains through such means.

The routine activity theory is applicable to cybersecurity in the maritime domain where the elements necessary for a crime to take place, namely a motivated offender, a suitable target, and the absence of a capable protector to prevent the crime, are present. First, motivated offenders in this context are often driven by political or economic motives. Then, the choice of suitable targets depends on the motives of the offender. Politically motivated malicious actors target their political adversaries while economic motivated malicious actors target entities with high economic returns. Finally, the challenge of identifying vulnerabilities in the dematerialized cyberspace makes it difficult to have a capable protector, even with advanced network protection technologies, as vulnerabilities are frequently overlooked.

VI. Conclusion

The integration of technology into the maritime industry, while enhancing global trade and communication, has exposed several cyber-vulnerabilities. These vulnerabilities extend far beyond economic consequences, also including consequences for international security. Cyber-incidents in the maritime domain are motivated by both political and economic reasons. The socioeconomic patterns that are exhibited in global cyberattacks, as well as political tensions among countries, are exhibited in the maritime cyber-domain. The dynamics of cyber-incidents in the maritime domains are affected by socioeconomic, (geo)political, and technological reasons and remain perpetuated because of the attribution problem in cyberspace. In general, most cyberattacks originate from non-democratic political regimes, while most victims of cyberattacks are in democratic regimes. Additionally, most cyberattacks originate from upper-middle-income countries, while most targets are in high-income countries. Furthermore, geopolitical patterns were revealed, and attribution remains a significant issue.

As a vital medium for global trade, the maritime industry requires comprehensive strategies to protect its digital infrastructure against cyberthreats. The research paper advocates a multifaceted approach to enhance international maritime cybersecurity. First, countries within each cluster identified in the heatmap are encouraged to establish formalized intelligence and information sharing mechanisms, fostering trust and collaboration to collectively strengthen defenses against maritime cyberthreats. Second,

recognizing the interconnectedness of the government and the private sector in the maritime industry, a robust public-private sector partnership is recommended. Collaborative frameworks should be established to facilitate the exchange of threat intelligence, ensuring a comprehensive understanding of cyberthreats. To address the unique challenges faced by democracies, this paper recommends the formulation and implementation of tailored national cybersecurity strategies specifically for the maritime domain. These strategies should encompass proactive measures, incident response plans, and collaboration with the private sector. Norm-building in the maritime cybersecurity domain is crucial, and this paper suggests engaging in informal political agreements and regular multilateral track 1.5 meetings to establish and adhere to agreed-upon principles and norms. Regionally, the paper promotes unilateralism and inter-regional dialogue to foster collaboration among neighboring countries in responding to cyberthreats. Finally, to strengthen global governance, the International Maritime Organization (IMO) should act as a central platform for not only developing standardized cybersecurity practices and regulations but also a reporting hub for maritime cyber-incidents. This research paper advocates for a cohesive international framework, involving governments, private sector, and international organizations to collectively address the evolving challenges of maritime cybersecurity.

This research paper acknowledges two key limitations. First, due to time constraints, the distinction between state-sponsored and non-state cyber-actors in the data set remains unclear, impacting detailed understanding of the motivations and dynamics of maritime cyber-incidents. Second, the data set only includes reported or publicly known attacks, potentially overlooking undisclosed incidents and limiting the overall comprehensiveness of this analysis. Future research should address these limitations by investigating the state—non-state actor distinction and incorporating a more comprehensive data set for a better understanding of maritime cybersecurity.

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Biographical Statement

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Contextualizing the Geostrategic Relevance of the Andaman and Nicobar Archipelago in India's Maritime Discourse Amid Conventional Threats in the Indian Ocean

Ipshita Chakravarty

Structured Abstract

Article Type: Research Paper

Purpose—While a plethora of literature exists on the ethnographic study of tribes native to the Andaman and Nicobar Islands (ANI), a paucity of literature that evaluates its geostrategic relevance in India's maritime security discourse is observed. The paper seeks to address this blind spot.

Methodology—The paper deploys a content analysis model and a descriptive approach to arrive at its findings.

Findings—With the pivot to Asia being completed, the enunciation of the Indo-Pacific strategy, and the Indian Ocean Region (IOR) emerging as a battleground for the two Asiatic giants India and China, the geostrategic relevance of the ANI has amplified. The ANI acts as India's naval sentinel in the eastern sector of the IOR. It is a springboard for power projection, forward presence and defender of India's national interest amid conventional threats in the IOR.

Practical Implication—To navigate the geopolitical power shift in the IOR, the Indian mainland has adopted a proactive approach to building the archipelago's capacity.

Originality—The paper marshals arguments to illustrate the long-forgotten archipelago's role in India's maritime security discourse.

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I. Introduction

The IOR has emerged at the forefront of geopolitics as a chessboard for the great game to be played again. However, in the twenty-first century, the great game is panning out with newly activated competing power centers in the IOR. The renewed geostrategic relevance of the IOR implies an increase in the power presence of extra-regional navies like the US, China, etc.

The IOR comprises two quadrants, the Arabian Sea and the Bay of Bengal arena. The presence of critical Sea Lanes of Communications (SLOCs) and nine chokepoints like the Strait of Malacca, Bab-el-Mandeb, Mozambique channel, Sunda Strait, Lombok Strait, etc., augment the vitality of the IOR.

As far as India is concerned, historically, the sea routes of the IOR have served as a conduit to the colonizers to subjugate the former for two hundred years. India's loss of freedom was correlated to her inability to exercise the command of the sea tenet. The Indian Ocean is the lifeline of the Indian state. Thus, the position of the "influence of the Indian Ocean on Indian history" was articulated. It led to the transformation of the Indian Ocean to a "British lake."¹ The conclusion of World War II was associated with the birth of independent nations, India being one of them. With the departure of the British, a power vacuum was created in the IOR and with the stage set for the Cold War, the baton for the command of the IOR passed onto the US. Amid the restructuring of power dynamics, India, in the 1970s, advocated for the IOR to be declared a "zone of peace." The US emerged as the only superpower in the IOR after the Soviet Union was blown into smithereens in the early 1990s. With the onset of globalization, the nations found a reinvigorated interest in the maritime domain and the SLOCs. Further, the decade witnessed China making its headway into the IOR. In this process, China has entered India's sphere of influence. The extra-regional presence of the Chinese Navy and the "broadening of its maritime horizon" in the region has exacerbated India's security dilemma.²

One of the several panaceas of the Indian state to navigate the vortex of dilemma has been the capacity enhancement of the Andaman and Nicobar Islands (ANI). The archipelago has emerged as India's naval sentinel in its maritime discourse in the eastern quadrant of the IOR or the Bay of Bengal arena.

II. Literature Review

K.M. Panikkar, in his writings, projected the Indian Ocean as "truly Indian" and stated that India's "freedom is dependent on the freedom of the coastal surface."³ Further, Panikkar underscored the vitality of the ANI as a "strategic base" which, if and when operationalized in its entirety, can secure the Bay of Bengal.⁴ Establishing control on the narrow entrances or chokepoints like the Malacca Strait becomes essential. The archipelago not

only facilitates the guarding of the narrow entrances but can also constitute a “steel ring” in the eastern hemisphere of the IOR.⁵

The archipelago evaded the government’s policy-making process in the aftermath of Independence owing to the absence of proximity to the mainland. Khurana captured the essence accurately as the “slipping away” of the ANI from the Indian mainland.⁶ The archipelago’s relegated position in the initial years after independence has further been confirmed in the writings of Kaul. A policy of “masterly inactivity” and “benign neglect” was followed by the Indian state regarding the ANI.⁷

However, with a reorientation of the power dynamics in the region, the policy of inactivity was discarded in favor of a proactive approach by the Indian state. The Indian Air Marshal, Kukreja, critically analyzed the need to enhance the amphibious, airlift, and sealift capabilities of the ANI against the backdrop of a rising China.⁸ Jarocki, a journalist and a defense analyst specializing in Indian–Chinese maritime rivalry in the IOR, contextualized the geostrategic vitality of the ANI against the Chinese activities in the IOR. Jarocki highlighted that the proximity of the ANI to the Malacca Strait bestows the advantage on India to conduct surveillance and exercise sea denial and sea control vis-à-vis the archipelago.⁹

Thus, a transition in the normative value of the archipelago has been observed from being a liability to a geostrategic asset to the Indian state. The newly acknowledged geostrategic value of the ANI has emerged as a game changer for India’s maritime security in the eastern IOR.

III. Evolution of India’s Naval Strategic Discourse

The trajectory of India’s naval strategic discourse has experienced a phased evolution. After India’s independence, strategic analysts like Vaidya upheld the Indian Ocean as an “Indian Lake” and that it was the need of the hour to harness a robust Indian Navy that is adept in defending “not only her coast but her distant oceanic frontiers with her own navy.”¹⁰ Consequently, Prime Minister Nehru envisioned a potent Navy for an independent India.¹¹ However, soon after independence, the Indian state got embroiled in three consecutive territorial wars with Pakistan in 1948 and 1965, and in 1962 with China. As expounded by C. Raja Mohan, preoccupied with its “continentalist security” and territorial commitments, the general maritime domain and particularly the ANI didn’t feature in New Delhi’s “mental map.”¹² The relegated position of the maritime domain in India’s strategic discourse led to the reduction in the status of the Indian Navy as the “Cinderella services” of the Indian state. It was a divergence from Nehru’s vision of a navy capable of “power projection” and “domination.”¹³ However, the regional developments that ensued in the 1970s compelled the Indian state to reorient its approach to the maritime domain. The India-Pakistan 1971 war marked a watershed moment in India’s naval and maritime history. During the war, the Indian state was caught unguarded when the USA’s carrier battle group, USS *Enterprise*, waded into the waters of the Bay of Bengal. It became a potent factor for India to establish a more resilient and robust navy in the 1980s.

India’s supply chain received a shock with the disintegration of the Soviet Union and the end of the Cold War. With the enforceability of the United Nations Convention on Law of the Seas (UNCLOS), the time had arrived for India to “reorient” its approach toward the

maritime domain.¹⁴ With India opening its frontiers to the global economy with the onset of globalization in the 1990s, a spike in its commercial vessels was observed. A demand arose for a more competent navy capable of securing India's maritime frontiers, SLOCs and trade. Thus, a transformational shift in the Indian Navy's role from being a brown-water navy to a blue-water navy started. The tectonic shift became relevant because of its ability to project power in distant waters, especially when contextualized against the Asia-Pacific geographical nomenclature. Its evidentiary value could be traced to a plethora of maritime documents that surfaced in the aftermath of such developments. For instance, India's maritime doctrine titled "Freedom to Use the Seas: India's Maritime Military Strategy" was published in 2009 and subsequent revision in 2015 "Ensuring Secure Seas: Indian Maritime Security Strategy," the Indian Naval Indigenization Plan of 2015, etc.¹⁵ Shattering its image as the "Cinderella Service," a marked change in the commitment of the Indian maritime discourse was seen from merely supporting the tenet of "freedom to use the sea" to "ensuring its security" and stability. In contemporary times, the Indian Navy has evolved as a "net security provider" in the IOR.¹⁶

Be that as it may, the Indian Maritime Security Strategy document (2015) enlists the Bay of Bengal arena and the Andaman Sea as an area of primary interest for the Indian Navy.¹⁷ The geostrategic relevance of the ANI has the potential to catapult India's maritime discourse to new heights in the Bay of Bengal arena.

IV. India's Stakes in the Bay of Bengal

A section of analysts, such as C. Raja Mohan, decodes India's footsteps in the Bay of Bengal as more "rhetorical and aspirational than real." In other words, the act of establishing itself as a regional power has propelled the Indian state to transcend the frontiers of its sphere of influence and include the Bay within its fold. It is interpreted as a retreat to British India's foreign policy.¹⁸ However, the other strand of analysts perceives the Bay as an area of strategic significance from an economic and security standpoint.

The trough of the Bay harbors vital SLOCs. Although India purchases substantial barrels of oil from West Asia, a tangible proportion of it is also bought from the Far East Russia and Vietnam.¹⁹ In an added attempt to diversify its supply chain, India's ONGC Videsh Ltd. and Vietnam's Petro-Vietnam have had a long-standing joint venture in Vietnam's Exclusive Economic Zone (EEZ) for oil and gas.²⁰ Further, a "steady expansion" and a spike in the volume of India's bilateral trade with Japan and its Foreign Direct Investment have been recorded in recent years.²¹ The Bay of Bengal's ANI basin houses substantial hydrocarbon reserves. The procurement from the reserves has the potential to bolster India's domestic production of natural gas.²² Given the rising geo-economic stakes in the Bay of Bengal arena, India is bound to increase its engagements with the region. The economic stakes in the trough of the Bay of Bengal have further propelled India to enhance its connectivity with the other states of the Southeast Asian region. For instance, as a stepping stone to its Act East initiative, the Indian state has become a vital partner in the Kaladan Multi-Modal Transport Project. As a subset of the multi-modal project, India's India Ports Global acquired the operational rights of Myanmar's Sittwe deepwater seaport.²³ The India-Myanmar-Thailand Trilateral highway project is another area of India's

infrastructural investment to promote trans-border regional connectivity and trade with the Southeast Asian market.

The strategic relevance of the Bay is also evident from India's port construction spree and acquiring access to geostrategic ports of like-minded partners in the region. At the behest of the gravitas of the power matrix reorientation in the IOR, India should reconfigure its approach because "the Bay of Bengal is no longer a backwater but a strategic hub connecting the Indian and Pacific Oceans as well as China and the Bay of Bengal."²⁴ A case in point is India's recent measures to develop Indonesia's Sabang port.²⁵ The measures are part and parcel of India-Indonesia's strategic, military and economic partnership. In the 2017 joint press briefing on the second Defense Minister's Dialogue between Singapore and India, a bilateral agreement on naval cooperation was inked. As a part of the deal, India secured the right to access Singapore's Changi naval base. Singapore's Defense Minister Ng Eng Hen's comment, "I think I speak on behalf of both countries. We want to see more participation and activity in both Strait of Malacca and Andaman Sea," was conspicuous in this context.²⁶

From the prism of security considerations, the Bay's significance is reinforced by executing various bilateral, trilateral and multilateral naval exercises. For instance, in 2020, India and Japan conducted the Maritime Partnership Exercise in the Andaman Sea. It aimed at "ensuring safe and secure international shipping and trade in the Indian Ocean Region."²⁷ In 2021, the Indian Navy participated in the trilateral naval exercise "SITMEX" with Singapore and Thailand in the Andaman Sea.²⁸ "MILAN," a multilateral naval exercise, was conducted by the Indian Navy in ANI in 2018.²⁹

Thus, India's approach to the Bay has been largely characterized by coordination, cooperation and collaboration with regional states on subjects of commerce and defense. Contrary to a unilateral approach, the Indian approach employs multilateralism and pluralism as the foundational rules for engagements.

V. The China Factor in the Bay of Bengal

China's proactive role in the South and Southeast Asian states bordering the Bay of Bengal can be attributed to two factors. Externally, as an established regional power, India's lackadaisical pace to initiate greater infrastructural connectivity created a power vacuum. China shattered the vacuum and converted it into leverage to augment its presence in India's neighborhood. Internally, China's Malacca conundrum played a prominent role in enhancing its regional presence. The Malacca Strait constitutes a vital sea route for China's energy supplies. Any blockade imposed on the bottleneck channel of Malacca can paralyze its economy. Thus, China unleashed the "String of Pearls" blueprint to navigate its paranoia.³⁰

In this context, as a subset of its Belt and Road Initiative (BRI) and the Maritime Silk Route, China endeavors to make its headway into the IOR vis-à-vis Bangladesh's Payra and Chittagong ports and Myanmar's Kyaukpyu port to gain traction. Concerning Bangladesh, the Chinese have constructed its Pekua naval base to enhance the former's maritime capacity. Recently, the spokesperson of the Chinese Foreign Ministry announced the "China-Bangladesh Golden Friendship 2024," a joint exercise to be conducted.³¹ In 2023, the Chinese successfully concluded the construction of Bangladesh's BNS Sheikh Hasina Naval

Base. The Bangladeshi Prime Minister described the latter as a base with “ultra-modern” facilities.³² On the other hand, Myanmar’s Kyaukpyu port is a part of the China-Myanmar Economic Corridor. According to the Chatham report of May 2023, Myanmar’s Coco Island is undergoing considerable military and aircraft facility upgradation. Although its application by China remains unconfirmed yet, its mere presence near India’s territory and sphere of influence has raised red flags in New Delhi. Moreover, Coco Island is situated approximately 55 km from the northern tip of ANI.³³ Thus, an extra-regional force is capitalizing on the sluggish pace of infrastructural installation of a regional force, silently penetrating the Bay of Bengal.

The Chinese state is investing in constructing alternatives in the Bay to bypass and circumvent the Malacca Strait. In 2015, the Chinese inked an agreement with Thailand to construct the latter’s Kra canal. The installation of a canal across the Kra Isthmus is being projected as a part of China’s String theory. Although the project was shelved due to its high cost, it has been revived recently. Another section of scholars perceives the Sunda and Lombok Strait as alternatives to the Malacca Strait. However, the limited depth and strong current raging in the area impose navigational difficulties for the ships transiting the Sunda Strait. Concerning the Lombok Strait, its width and depth enable the passage of super-tankers and is less congested than the Malacca Strait. However, it demands an additional three and a half days for navigation. Thus, the extra mileage for rerouting incurs extra charges and leads to a spike in transportation cost. Further, even if the alternatives are implemented, Chinese cargoes will still have to transit the ANI.³⁴

However, Chen Shaofeng deduces that even if the Kra Canal project and the China-Myanmar corridor are operationalized, it would only account for 26 percent of China’s energy demand. China’s “self-extricating” policy of circumventing its Malacca Dilemma will encounter a roadblock, and it will still have to depend on the Malacca Strait to match its energy demands. Shaofeng also articulated that naval buildup by China will follow suit to preserve its SLOCs near the Malacca Strait.³⁵ Shaofeng’s premises have withstood the test of time, hence the militarization of China’s pearls in the IOR. Apart from China’s military presence in Myanmar’s Coco Island, a new feather to the Chinese hat of “String of Pearls” has been added in the form of Cambodia’s Ream naval base. Constructed with Chinese funds, the Cambodian state has eliminated its future application as a permanent naval base by China. However, two corvettes of China’s People’s Liberation Army and Navy have been docked since its inauguration.³⁶

The mere presence of China in India’s backyard does not raise eyebrows. However, its belligerent posturing in the IOR, supplemented by its debt-trap policy, territorial conflict with India, and unilateral attempt to change the status quo, induces deep consternation within Indian strategic clusters. While China grapples to execute its alternatives in the trough of the Bay of Bengal, India has its natural physiological archipelago, ANI, to check the former’s intrusions.

VI. Evolution of the ANI as India’s Strategic and Naval Asset

The physiographical diversity and geopolitical character accord relevance to the ANI. The archipelago is often termed “miniature India” owing to its diversity. The archipelago is

bounded by three foreign states: Myanmar, Indonesia, and Thailand. The elongated island chain comprising Andaman and Nicobar is separated from each other by the Ten Degree channel. It overlooks the Six-Degree channel, which is a vital SLOC. The archipelago harbors 836 islets, of which only thirty-six are inhabited: twenty-four in Andaman and twelve in Nicobar. It accounts for 30 percent of India's EEZ.³⁷

The geostrategic relevance of the archipelago is a precolonial construct. Its vitality could be traced to 1014–1042 AD when the Cholas converted the archipelago into a naval base. This was followed by an abortive attempt by the Danes to settle in the Islands. Subsequently, it came under British rule. It was under them that the Islands first came under a structured administration. The British established a Penal settlement at Nancowry Island with the twin objective of creating surveillance and regulating trade practices in the region. With the onset of World War II, the Andamans came under the Japanese occupation. The Japanese installed an airstrip in Car Nicobar after gauging its strategic importance associated with its proximity to the Strait of Malacca. With the defeat of the Axis powers, the archipelago again found itself in the clutches of the British.³⁸

India's independence in 1947 followed the conclusion of the Second World War. However, it is to be noted that due to its strategic significance, the British Royal Airforce sustained its presence on the archipelago till 1956, even after India's independence. Panikkar promptly articulated that the "possession of Andaman and Nicobar gives protection to the eastern coast gives adequate control of Bay of Bengal" and "India should not neglect these islands and develop suitable naval and air force facilities." The ANI was ultimately integrated as a union territory into the Indian Union in 1956. The Indian government resolved to abandon the archipelago to its "own fate." The "masterly inactivity" and "neglect" policy was characterized by minimum administration and no major economic and security development.³⁹

The policy of "benign patronage" continued till the 1970s with sporadic development of the archipelago as a strategic asset. The only notable development occurred in 1964 when INS Jarwa, a naval base, was commissioned in Port Blair. In the aftermath of the 1962 Sino-Indian war, a shift in the geopolitical trajectory was registered by the Indian state. Thus, the installation of INS Jarwa had become a necessity.⁴⁰ The preoccupation of the strategists in New Delhi with territorial security received a jolt from the blue in the 1971 India-Pakistan war. The war underscored the Navy's vitality in supplementing the Army's efforts in a territorial battle. As mentioned above, the war also unleashed the blind spots that infested India's maritime security in the Bay with the entry of the USA's carrier task force. Thus, a comprehensive evaluation of India's security, including the maritime domain, "unconstrained by the static inertia" of the continental calculations was warranted.⁴¹ In this context, in 1985, the Indian Navy assumed the command of the airfield in Port Blair from the Airport Authority of India and established its naval air base, INS Utkorsh. Thus, though the impact of the territorial wars was successful in administering a dent in the Indian state's protectionist approach toward the ANI, the overall blanket approach toward the ANI continued. Amid this scenario, the archipelago had become a recipient of asymmetrical and irregular government attention.

The decade of the 1990s witnessed the forces of globalization being unleashed by the neo-liberal world order. The phenomenon of globalization since then has been characterized by heavy economic interdependence among the nation-states. A logical corollary to the entire process was to secure the SLOCs.

However, a major strategic shift in the trajectory of defense policy toward the archipelago occurred again in the aftermath of the Kargil conflict in 1999. In the context of a spate of territorial wars and an attempt to consolidate India's national security, a historic development in 2001 was the establishment of the Andaman and Nicobar Command (ANC).⁴² With headquarters in Port Blair it is India's first integrated tri-service command. The charter of responsibility of the ANC comprised surveillance of the EEZ, territorial security of the archipelago and securing the SLOCs in the region. However, unlike the consternations that were stoked among the Southeast Asian states in the mid-1980s, due to the installation of military infrastructure in the ANI, the ANC was successful in eschewing it vis-à-vis naval diplomacy. As a mechanism for trust-building, transparency and professional engagements, regular naval exercises are conducted in the region.⁴³

A landmark event that followed the creation of the ANC was the articulation of India's Maritime Doctrine in 2007 and its subsequent revision in 2015. An enlistered objective in the document has been to maintain freedom of navigation via securitizing the SLOCs and gain control of the corresponding chokepoints. The ANI enhances India's outreach in the IOR.⁴⁴ Consequently, the archipelago overlooking the SLOC of the six-degree channel and its proximity to the Malacca Strait gained traction. To secure this objective, in 2012 the Indian Naval Air Station, INS Baaz was commissioned at Campbell Bay in the Great Nicobar Island 2012 to assist the maritime domain awareness process and enhance surveillance ambit in the region. It not only overlooks the Malacca Strait but also dominates the six-degree channel.⁴⁵ In 2019, Rs 5,650 crore was finalized to enhance the archipelago's military, amphibious and aerial infrastructure. A holistic blueprint for the "force accretion" at the ANC by 2027 is also being considered adjacently. It aims to achieve a phased increase in the assets and the Army manpower operating in the archipelago. India has entered into a collaborative security framework like the US and Japan to upgrade the security apparatus of the ANI vis-à-vis the installation of a "fish hook" or a Sound Surveillance System. Architected to detect and track submarines, the system can act as an effective defense barrier against Chinese submarines.⁴⁶

In 2020, the Indian government announced its flagship project in the Great Nicobar Islands. The construction of an International Container Transshipment Port (ICTP) has been envisaged as a "key project" in the Galathea Bay of the Great Nicobar Island by the Maritime India Vision 2030 and the Amrit Kal Vision 2047. It is a transformative project of "strategic relevance." The Indian Union Minister of Port, Shipping and Waterways, Sarbananda Sonowal, stated "This project will be a major landmark in developing India to become a self-assured and self-reliant Nation and will support the economic development of the country" and it will "fulfil the grand vision of making a New India." The Ministry of Environment and Forests & Climate Change (MoEF&CC) has ratified the project, and Stage 1 forest clearance has also been obtained. Additionally, the Ministry of Finance has given a green signal to the ICTP project for the "holistic development" of the archipelago.⁴⁷ The geopolitical relevance of the project can be analyzed from its ability to illustrate a more robust presence of the Indian state, especially amid the growing extra-regional presence in the IOR. Further, the prominent transshipment hubs are presently located in Colombo and Singapore. Thus, India has been incurring a loss in substantial revenue yielded from facilities and higher landing rates.⁴⁸

The opinion on developing the ANI as a strategic asset has received a dichotomous

response from the community of strategic analysts. In this aspect, two diametrically opposite schools of thought have emerged. The first school of thought renders its support in favor of the capacity building of the ANI with military facilities and enhancing it as a source of power projection and regional surveillance. However, the other school is representative of the viewpoint that the commission of any act other than cooperative security activities will be interpreted as an act of interference with the security of the Southeast Asian states. Continuous military upgradation of the archipelago may be perceived as an act of threat by the states bordering the Malacca Strait.⁴⁹ The second school of thought remained a dominant approach till the 1980s. However, a point of inflection in the strategic calculation was reached with India's overwhelming territorial experiences, the gradual rise of China and its entry into the IOR. The militarization of the archipelago thus became a *sin qua non* to India's maritime security in the eastern front of the IOR.

In contemporary times, the archipelago is experiencing rapid military upgradation. It includes enhancement in its surveillance and logistic storing capacities, widening of airstrips in key naval air stations, modification of jetties, and improving facilities to dock warships, submarines, larger aircraft, etc. In 2024, a Precision Approach Radar (PAR) has been installed in INS *Utkorsh*. The apparatus is designed to provide horizontal and vertical guidance to the landing aircraft, surveillance and an Integrated Underwater Harbor Defense system. Previously, INS *Utkorsh* also witnessed the establishment of a modern Hangar and Dispersal system. Recently, the Indian government has directed the National Remote Sensing Centre to augment its manpower in evaluating the technical capacity and the satellite imagery of specific inhabited islands of the archipelago.⁵⁰

The archipelago has traveled from being characterized by a conscious strategy of "benign neglect" to the other end characterized by a conscious "proactive" approach of the Indian state. From being perceived as a "liability" and a "vulnerability" to national security to becoming a strategic security asset, the archipelago has evolved as the forward base in projecting India's power in the eastern hemisphere of the IOR. Its surveillance capacity and radar stations will maintain "good order at sea" and enhance maritime domain awareness.⁵¹ It has emerged as India's "unsinkable aircraft carrier" in the IOR.⁵²

VII. Conventional Threats in the Bay and the ANI

The presence of extra-regional entities like the USA or China in the IOR subverts and compromises India's image as a net security provider. The probability of direct combat or a confrontation in the region with an extra-regional entity is limited. Tensions brewing from great power rivalries have the potential to manifest themselves in the IOR.

The probability of a spillover effect of a Sino-India territorial conflict on the Bay cannot be discounted. Landfall Island, the northernmost island of the ANI, is barely a few kilometers from Myanmar's Coco Island, where China is ramping up its presence. The proximity of the Landfall Island could be employed to monitor Chinese movement in the region.⁵³ In the wake of a contingency or conflict with China, the Indian state can exercise sea control and sea denial and impose a blockade vis-à-vis the ANI on the former's commercial vessels availing the Malacca route. The naval blockade of Malacca is often

displayed as an option for deterrence to keep China in check. However, the option of a blockade must be deliberated upon. The blockade will entail a first-order effect on China and a second-order effect on India. The duration of a blockade will have to be debated, primarily because a short-term blockade will not incur heavy losses in the Chinese economy. A long-term blockade will administer a blow to the Chinese economy; however, the Indian state will have to equip itself to combat a hostile reaction from its adversary and architect ways to mitigate backlash and mounting pressure from the international community. Further, most transactions occur in international waters or the high seas, and ships reroute themselves in transit. Given this, Chinese transactions can occur after the ships have transited the Malacca passage. In such a scenario, will the Indian state halt a cargo vessel flying the flag of another nationality that is trading with China? The impact of an act of blockade commission will have to be driven by pragmatic considerations and premeditated by the Indian state.⁵⁴

The ANI acts as a steel ring and a “check-post” against any foreign intrusions in India’s region. For instance, in 2019, the Indian Navy, with the assistance of the ANI’s surveillance system, interdicted the Chinese research vessel *Shiyan-1* had waded into the archipelago’s EEZ without prior consent. The then–Naval Chief Admiral Karambir Singh expressed that “China’s presence in the Indian Ocean is increasing.”⁵⁵

The matrix of conventional threats operating in the Bay is complicated by the alleged claims of the US attempting to acquire Bangladesh’s St. Martin Island. The US’s State Department has dismissed any such claims. However, the island is of immense strategic importance. It sits at the mouth of the world’s largest bay, the Bay of Bengal, and lies close to Myanmar’s Coco Island, which harbors a Chinese presence. The US, as a subset of its Indo-Pacific strategy, wants to make its presence in the Bay. China is also considering St. Martin Island to harness it at its alternative route to the Bay.⁵⁶ The US has an existing base in the IOR, Diego Garcia. Amplifying the US presence in India’s sphere of influence may prove counter-productive for the latter’s national interest and security. On the flip side, to rebalance or scuttle China, the US may allow India to sit by its side for a specific period. Thus, the Bay of Bengal zone may experience partnership due to the convergence of interest or the presence of a common denominator. However, such arrangements will only be interim and pro tempore in nature. A latent fear seems to guide the perspective of various strategic analysts in New Delhi concerning the USA’s presence in the Bay. A divergence in the ramifications of such a presence may be observed within the strategic circle. One strand of analysts gives credence to the USA’s presence in the eastern IOR as a method to counter China. However, analysts like Abhijit Singh articulate that they reckon excessive US availability may lead to an “over-crowding of the neighborhood strategic space” in the IOR.⁵⁷ Another section perceives the excess presence of the US in the eastern bed of the IOR as a symbolic act of provocation for China. A third segment articulates that it would dilute India’s role as a security provider and eventually lead it to “relinquish its security commitments” in its neighborhood.⁵⁸

The then–Indian Defense Minister, Nirmala Sitharaman, in the inaugural address of 2017 Goa Maritime Conclave, expressed the government’s concern over the “increasing militarization” and the extra-regional power maintaining a sustained presence in the IOR based on “some pretext or the other.”⁵⁹ The defense minister further stated that “in order to sustain such a presence through operational turnaround, these countries, which are

extra-regional, are creating naval outposts as well as dual use infrastructure in the region. This sort of militarization increases the complexities for the countries of this region.”⁶⁰ Thus, the Indian state is seen to be distinguishing between regional and extra-regional navies in the IOR. In this scenario, the ANI acts as India’s naval sentinel and operates as India’s eyes and ears screening potential threats emerging from and in the Bay. The archipelago consolidates India’s presence in the zone and acts as India’s linchpin for securing the power balance in the region amid extra-regional presence.

VIII. Contextualizing the ANI in the Indo-Pacific Policy

The Indian maritime discourse acknowledged the paradigmatic shift in the pronouncement of Indo-Pacific policy in its various documents and speeches of governmental officials. For instance, the former chief of naval staff in 2011 argued that “it is time to coin a new term, the ‘Indo-Pacific.’”⁶¹ The Indian Maritime Doctrine (2015) indicates the shift. It projects it as “The shift in worldview from a Euro-Atlantic to an Indo-Pacific focus and the repositioning of global economic and military power towards Asia,”⁶² which has resulted in significant political and socioeconomic changes in the Indian Ocean Region and has impacted India’s maritime environment tangibly. Scott articulates that the Far Eastern Naval Command in Port Blair of the ANI is a “bridge between the Indian and Pacific Ocean.”⁶³ The Andaman Sea is highlighted as the “geostrategic gateway” vis-à-vis which India can extend its outreach to the wider maritime domain of the Indo-Pacific. In the Shangri-La speech in 2018, Prime Minister Modi reinforced India’s commitment to an “open, stable, secure and prosperous Indo-Pacific” associated with the tenet of freedom of navigation. One of the functional objectives of the ANC is to maintain, sustain and secure the freedom of the SLOCs. Thus, the ANC, with its surveillance and patrolling facilities, can play a conspicuous role in facilitating a free and fair Indo-Pacific.⁶⁴ However, a roadblock awaits in exercising the freedom of navigation praxis by India. Aligning with China’s stance and unlike the USA, the Indian state also exhibits repugnance concerning the unannounced passage of any foreign navy invoking the freedom of navigation tenet through its territorial waters or the EEZ. The Indian state apprehends that the adoption of liberal posturing on the navigational freedom praxis may act as a window for China to augment its presence near the ANI.⁶⁵

Further, investments from India’s Indo-Pacific partners can be used to build ANI capacity. For instance, in 2022, the Japanese government penned an agreement with the Indian government to invest approximately US\$133 million to stabilize ANI’s renewable power supply.⁶⁶ The unleashing of the fish hook project mentioned above is another case in point.

Amid the growing convergence of threats in the region, the ANC often conducts bilateral and multilateral exercises. In this context, naval exercises with India’s Quad partners gain relevance. For instance, the above-mentioned bilateral exercise with Japan is a case in point. Another event can be traced to 2017 when the Malabar exercise was conducted in the Bay of Bengal. The execution of the exercise in the Bay represents a barometric geopolitical shift of the Indo-Pacific. It has evolved as a mechanism to construct a strategic

environment to check the level of interoperability and a “reinforcement exercise” in the region against a rising China.⁶⁷

However, a major impediment that has the potential to scuttle the relevance of the ANI as a gateway to the Indo-Pacific initiative is the contention concerning the USA’s access to the ANI. While other naval forces like the Royal Australian Navy, a French Naval ship, Var in 2006 and a Japanese minesweeper flotilla in 2011, etc., have made port visits to the ANI’s Port Blair, the access of the US naval ships to the archipelago has been declined by the Indian state in the past. The port visits by the above-mentioned navies have been sporadic and have maintained a low profile. The Indian state displays a specific degree of institutional reluctance concerning the US port visit. The Indian strategic circle seems to be guided by a few considerations in adopting this posture. First, India is apprehensive about being perceived to be in cahoots with the larger anti-China collaborative framework of which Japan, Australia and the US are already members. Second, such strategic interactions will antagonize China and exacerbate the Malacca conundrum. Third, encouraging such visits may entail docking foreign navies in the ANI during contingencies beyond a specific limit. It will not only complicate India’s strategic calculations but may also adversely impact India’s interests. The counter-argument to this approach can be articulated as follows: first, India will have to de-hyphenate between its bilateral relations with China and its bilateral partnerships with other navies. Second, China also engages with states antithetical to the Indian interest. For instance, it regularly conducts bilateral exercises with Pakistan, etc. India’s collaboration with the navies of the Quad partners in the ANI should not necessarily be interpreted as India’s intention to impose a blockade on the Malacca waterway. Visit by any ally’s navy is natural in defense partnerships. It should not have a bearing on a third party. Third, the ANI falls within the ambit of India’s territorial sovereignty. Thus, rendering or negating its consent to the presence of a foreign navy in the ANI’s vicinity should be the Indian state’s prerogative.⁶⁸

Therefore, the Indian state should settle the scores with lacunae characterizing its Indo-Pacific approach so that the ANI can be projected as the gateway to the Indo-Pacific, in the truest sense. The Indo-Pacific entails a prominent opportunity for India to catapult its image as an aspiring global power by employing the ANI springboard as a medium. Realpolitik extends its consent only to limited cooperation and convergence based on a common denominator identification. However, a caveat should be applied in this process. This is to say that India should apply the ANI’s strategic leverage only to secure its national and maritime interests and not plunge into other’s brawl. Only time will tell how India straddles the challenges and opportunities harbored by the Indo-Pacific.

IX. Conclusion

With the pivot to Asia being completed, the Indo-Pacific initiative and a rising China, the IOR has emerged as the forum for the great game and geopolitics to unravel. Maritime security and the discourse associated with it thus becomes a *sin qua non* to India’s national security and interest. In contemporary times, the ANI is experiencing rapid capacity

development initiatives from the Indian government and has evolved as India's sentinel in the Bay of Bengal. The archipelago, with its aerial and amphibious capacities, has the potential to facilitate India's role as a "net security provider" and to resurrect the Indian Ocean as India's Ocean.

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Biographical Statement

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Synergistic Engagements Between South Korea and India in the Indo-Pacific

Alik Naha

Structured Abstract

Article Type: Research Paper

Purpose—This paper contends that deepening the strategic partnership between Seoul and New Delhi is crucial to establish partnerships that can advance the shared values inherent in the strategy of fostering a “free Indo-Pacific.”

Design, Methodology, Approach—The content analysis approach has been used to prepare the paper.

Findings—Based on their shared strategic outlook on the Indo-Pacific region, it is imperative for India and South Korea to enhance their defense cooperation to effectively tackle the diverse challenges within this vital area. In terms of maritime security, both nations should explore avenues for conducting collaborative maritime exercises and contemplate broadening their involvement in multinational and multi-service exercises, particularly those geared toward maritime security. Furthermore, both countries must delve into how cooperation within specific minilateral and multilateral frameworks in the region—such as the Quad Plus, SCRI, IPOI, IPEF, and IONS, among others—can contribute to attaining mutual objectives. Moreover, there exists considerable potential for New Delhi and Seoul to evaluate the benefits of establishing issue-based trilateral partnerships, potentially involving nations like Australia, Indonesia, and others.

Practical Implications—As middle powers capable of uniting smaller countries in the region, both India and South Korea bear a responsibility to contribute to the construction of a positive regional order. Such a partnership has the potential not only to bolster India’s economic growth prospects but also to advance its objectives in the Indo-Pacific region.

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Strengthening ties with South Korea can enhance India's position in the region and contribute significantly to its strategic goals.

Keywords: India, Indo-Pacific, middle powers,
South Korea, synergy

I. Introduction

The Indo-Pacific region is experiencing a significant influence from the strategic competition among major powers, which is having far-reaching effects. This competition has been primarily fueled by the ascent of China and the diminishing relative power of the United States, leading to substantial shifts in global dynamics across economic, technological, and political realms. Established principles of foreign policy are undergoing considerable strain, prompting capitals throughout the region to urgently devise coherent and strategic approaches to address the systemic challenges arising from the resurgence of great power rivalry. This resurgence marks a pivotal development, as it represents the first instance of such intense competition in the region since the conclusion of the Cold War.¹ Nowhere is the impact of this phenomenon more evident than in the responses of nations like India and South Korea, which are actively grappling with the implications and complexities of this evolving geopolitical landscape.

During the 23rd ASEAN–South Korea Summit held in November 2022, President Yoon Suk Yeol officially introduced the Indo-Pacific Strategy and affirmed the government's commitment to implementing this strategy based on three core principles of cooperation: inclusiveness, trust, and reciprocity.² These guiding principles are underpinned by a broader vision encapsulating freedom, peace, and prosperity. Subsequently, in late December of 2023, Foreign Minister Park Jin presented the “Strategy for a Free, Peaceful, and Prosperous Indo-Pacific Region” as ROK's distinct regional approach. Foreign Minister Park emphasized the Indo-Pacific Strategy as the prevailing foreign policy doctrine of the Yoon administration.³

For South Korea, the Indo-Pacific region represents not only a bustling economic hub but also a landscape fraught with challenges that undermine the establishment of a peaceful, free, and rules-based regional order. These challenges encompass a wide spectrum, ranging from heightened great power competition and escalating arms races to a dearth of initiatives aimed at fostering transparency and trust within military and security domains. Additionally, concerns arise from North Korea's ongoing bolstering of its nuclear and missile capabilities, as well as disruptions within global supply chain networks. Aligned with its strategic vision, South Korea endeavors to position itself as a “global pivotal state” by actively seeking opportunities for cooperation and shaping discussions both within the region and on the international stage. In this pursuit, South Korea is actively working toward deepening bilateral engagements, fostering cooperation through a “multi-layered and comprehensive approach,”⁴ and forging partnerships with minilateral groupings, as well as regional and global organizations.⁵ This collaborative effort transcends the confines of Northeast Asia, extending its reach to pivotal regions within the Indo-Pacific such as Southeast Asia, South Asia, Oceania, and the African coast of the Indian Ocean.

Furthermore, South Korea aims to extend its strategic footprint to encompass Europe and Latin America, to cultivate a "...network of strategic partnerships tailored to each region."⁶

Over the course of fifty years since the formal establishment of diplomatic ties between South Korea and India in 1973, the bilateral relationship has experienced consistent and incremental advancement. Collaboration has flourished across various spheres, spanning politics, diplomacy, economics, trade, culture, and people-to-people interactions. Noteworthy is the progressive elevation of the partnership, transitioning into a Strategic Partnership in 2010 under the stewardship of President Lee Myung-bak and Prime Minister Manmohan Singh. This evolution reached a significant milestone in 2015, during the tenures of President Park Geun-hye and Prime Minister Narendra Modi, when the relationship was further consolidated into a Special Strategic Partnership.⁷

The Moon administration (2017–2022) pursued the New Southern Policy (and its extension, the New Southern Policy-Plus) to enhance its relations with India to a level on par with its engagements with the US, China, Japan, and Russia neighboring the Korean Peninsula. However, this policy primarily emphasized functional and pragmatic cooperation, displaying limited interest in forging strategic ties with India and overlooking the evolving geostrategic dynamics within the Indo-Pacific region. However, under the Yoon Suk-yeol government, significant revisions were made to Seoul's approach to the burgeoning Indo-Pacific region. Proactive diplomacy emerged as a central tenet, as the Korean government endeavored to cultivate strategic solidarity and collaboration with like-minded nations in the area. This shift marked a notable departure from South Korea's previous stance on Indo-Pacific security and the broader strategic landscape. Significantly, the strategy document highlights Korea's acknowledgment of India's significance and value in global politics.⁸

Analyzing recent advancements in bilateral relations, analysts contend that the Special Strategic Partnership signifies a fresh phase in India–South Korea relations, facilitated by India's Act East Policy (AEP) and Korea's New Southern Policy.⁹ The roles of Prime Minister Modi and President Moon, alongside the economic and developmental reform agendas of their respective administrations, are identified as pivotal factors contributing to renewed momentum in bilateral ties. Some scholars posit that under the SSP, India–Korea relations reflect the emergence of a new shared geostrategic context within the evolving Indo-Pacific regional construct.¹⁰ The unveiling of a shared vision for regional order during President Moon's visit to India in July 2018 underscores the regional dimension now integral to bilateral relations. The Indo-Pacific discourse introduces a novel context for India–South Korea relations, framing the relationship within a unified strategic framework.

Both Seoul and New Delhi have realized that their Indo-Pacific vision shares a congruence around fundamental principles such as ASEAN centrality, freedom of navigation, the significance of international norms, and the necessity for innovative multilateralism to safeguard regional stability. Therefore, by forging a closer partnership grounded in these common values, they can collaborate on technical endeavors such as disaster relief, maritime search and rescue operations, and bolstering maritime domain awareness. As regional stability faces gradual erosion and the specter of conflict looms, both India and South Korea, with their shared goals, can evolve as compatible partners in the Indo-Pacific.¹¹

Providing context and analyzing the trajectory of South Korea–India synergy in the Indo-Pacific, this article contributes to the academic discourse surrounding India–Korea

relations. This qualitative article is structured into five sections, each addressing specific issues and themes. Following the introduction, the second section investigates the overview of the South Korea–India Special Strategic Partnership. Subsequently, the second section provides a concise overview of South Korea’s Indo-Pacific strategy and opportunities for collaboration with India. The third section delves into India’s Indo-Pacific approach as a strategy of pointed alignment in the Indo-Pacific region. The fourth section evaluates the opportunities for India–South Korea partnership in the Indo-Pacific. The fifth section explores the potential of the India–South Korea–Japan trilateral as a middle power alliance in the region. Finally, the fifth section explores the way ahead for future cooperation.

II. South Korean Indo-Pacific Strategy

The release of the ROK Indo-Pacific Strategy on December 28, 2022, marks a significant departure in Seoul’s foreign policy approach, transitioning from a primarily regional focus to a broader engagement with the Indo-Pacific region.¹² Previous administrations under various South Korean presidents have demonstrated a combination of continuity and incremental shifts aimed at diversifying the country’s foreign policy initiatives. Examining South Korea’s policies from the late 1990s, particularly those regarding Southeast Asia during President Kim Dae-Jung’s tenure, followed by President Lee Myung-Bak’s New Asia Initiative in 2009, and President Moon Jae-in’s New Southern Policy (NSP) in 2017 provides valuable context for understanding this evolution.¹³

Under President Yoon Suk-Yeol’s leadership, the newly released strategy heralds a fresh era in South Korea’s foreign policy landscape, acknowledging the expansive nature of the Indo-Pacific region, which extends from the African coast in the Indian Ocean to the Americas in the Pacific. This broader conceptualization aligns South Korea with India’s perspective on the region. The strategy is characterized by its ambitious scope, aiming to engage with nations across six sub-regions of the Indo-Pacific, including Europe, through nine Core Lines of Effort (CLOEs).¹⁴ The overarching goal is to realize a vision of a free, peaceful, and prosperous Indo-Pacific. This vision is underpinned by three fundamental principles of cooperation: inclusiveness, trust, and reciprocity. Three notable elements that emerge prominently include the emphasis on inclusivity, the ambition to transform into a Global Pivotal State (GPS), and the portrayal of South Korea as an Open Trading Nation dedicated to fostering global peace.

At the heart of the Indo-Pacific framework lies the Yoon administration’s vision of positioning South Korea as a GPS. This vision fundamentally entails expanding South Korea’s foreign policy interests beyond the confines of the Korean peninsula and North-east Asia, envisaging a more active engagement in the Indo-Pacific region and global affairs at large. In a Foreign Affairs article (2022), then-presidential candidate Yoon articulated the necessity for South Korea to assume a more substantial regional and international role rather than merely reacting to changing global dynamics.¹⁵ Critiquing the narrow focus of the previous Moon administration’s foreign policy, Yoon emphasized the imperative for South Korea to transcend its traditional boundaries and embrace a broader global outlook. In his inaugural address as president, Yoon underscored ROK’s commitment to assuming a greater global responsibility commensurate with its standing, echoing calls from

the international community to uphold and promote principles such as freedom, liberal democracy, and the rule of law worldwide. Shin Kak-soo, a former vice foreign minister and ambassador to Japan, characterized the release of the Indo-Pacific strategy as a step to:

... normalize what has been abnormal. [...] South Korea is a core nation in the Indo-Pacific, and it does not make sense for the country not to have a diplomatic strategy for the region when even European countries have them. [...] As an Indo-Pacific country, (introducing the regional strategy) is an opportunity for South Korea to clarify its direction and position in the region where it has great interest.¹⁶

During the unveiling of the strategy, President Yoon underscored the nation's commitment to fostering freedom, peace, and prosperity in the region within a framework of rules-based order, guided by the principles of inclusivity, trust, and reciprocity. In the words of a South Korean official, "The Indo-Pacific strategy [...] will be based on [a] mutually reciprocal approach, and suggest the direction in which we can contribute to enhance freedom, peace and prosperity in the region."¹⁷ He further notes that there are "common factors the Korean strategy may share with other friendly nations, and the government will cooperate with the countries in those areas of common pursuit."¹⁸

ROK's strategy is driven by nine CLOEs aimed at realizing its vision for a free, peaceful, and prosperous Indo-Pacific region, guided by the principles of inclusiveness, trust, and reciprocity. These nine CLOEs are:

building a regional order based on norms and rules; cooperating to promote the rule of law and human rights; strengthening non-proliferation and counterterrorism efforts across the region; expanding comprehensive security cooperation; building economic security networks; strengthening cooperation in critical domains of science and technology, and closing the digital gap; leading regional cooperation on climate change and energy security; engaging in "contributive diplomacy" through tailored development cooperation partnerships and promoting mutual understanding and exchanges.¹⁹

South Korea's Indo-Pacific strategy underscores the nation's dedication to aligning with like-minded countries based on shared values, aiming to bolster regional security and prosperity. The strategy places particular emphasis on upholding a rules-based order and advancing the principles of the rule of law and human rights within the Indo-Pacific region, which serve as fundamental pillars of this approach.²⁰ Notably, when President Yoon Suk Yeol introduced the Indo-Pacific strategy in November 2022, he specifically emphasized the unequivocal rejection of unilateral attempts to alter the regional status quo. In this context, the South Korean Free and Open Indo-Pacific (SFPPIP) initiative seeks to reinforce rules-based mechanisms to prevent conflicts and promote peaceful resolutions through dialogue.

President Yoon reiterated the critical importance of peace and stability in the Indo-Pacific region during his opening remarks at the ASEAN summit, highlighting their direct correlation with South Korea's survival and prosperity.²¹ To contribute to regional peace and stability, President Yoon pledged to engage in multilateral regional cooperative endeavors, participate in trilateral security coordination with the United States and Japan, and collaborate with other democracies within and beyond the Indo-Pacific to safeguard freedom of navigation and overflight in the region.²²

Regarding ASEAN, President Yoon proposed convening a meeting between South

Korea's defense ministers and ASEAN member states, as well as conducting joint exercises with the bloc, indicating South Korea's willingness to play a role in ensuring freedom of navigation in the region.²³ While there are potential areas for enhanced cooperation with ASEAN, particularly in maritime security, the bloc may approach with caution if South Korea shifts its focus toward "minilateral" groupings such as the QUAD, as such a shift could divert attention from ASEAN-led approaches.

2.1 Positioning India in South Korea's Strategy

Historically, the foundation of South Korea and India's relationship has been rooted in economic ties.²⁴ The increasing volume of trade has organically positioned the two nations as maritime partners, recognizing the importance of maintaining stable sea routes across the Indian and Pacific Oceans, as well as ensuring freedom of navigation in these waters. Given the strategic dynamics of the Indo-Pacific region, characterized by ongoing attempts by revisionist powers (like China) to alter the existing order, cooperation to bolster maritime security to counter revisionism becomes imperative.²⁵ Hence, these apparent shared interests have provided scholars and experts with avenues for exploring various areas of cooperation. Among these, security cooperation emerges as the most prominent. While previous studies occasionally propose several activities for bilateral coordination—including humanitarian assistance and disaster relief efforts, monitoring illegal, unreported, and unregulated fishing (IUU fishing), and addressing marine pollution—the primary objective for both nations is to develop a comprehensive roadmap to strengthen their maritime partnership.

The initial step involves expanding and diversifying connectivity between the two nations and fostering layers of trust and comprehension regarding each other's interests, both operationally and strategically. For example, as part of constructive maritime engagements various activities such as platform and technology transfer, ship refit and maintenance support, personnel exchanges for training and interoperability, navy-to-navy staff talks, maritime exercises, hydrographic surveys, and similar initiatives. The following are some instances of such interactions observed over the past two years: Exercise MILAN (2022) at Visakhapatnam, RIMPAC-22 Multilateral Maritime Exercise off Hawaii (2022), South Korean Navy Joint Maritime Exercise (2022), Maritime Partnership Exercise when INS Shivalik and INS Kamorta visited Busan (2022), P-8 naval reconnaissance aircraft in SEA DRAGON Joint Antisubmarine warfare exercise off Guam (2023). Continuation of such engagements will enable both countries to gain a more precise and nuanced understanding of their shared interests and potential threats within the Indo-Pacific region.

Subsequently, South Korea and India can pool their capabilities to pursue common objectives. Collaboration between the two nations can act as a force multiplier in upholding stability in the Indo-Pacific. Particularly concerning capacity building to address regional security challenges like humanitarian assistance and disaster relief, combating marine pollution, and countering terrorism and piracy, joint efforts involving both countries' navies, air forces, and coast guards will be pivotal. In this regard, a concerted focus on maritime domain awareness is imperative. India has already established multiple information fusion centers across the Indian Ocean Rim, which gather radar and sensor data from participating nations. South Korea can similarly contribute to these initiatives, enhancing its comprehension of the strategic dynamics within the Indo-Pacific theater. This expanded role

could be instrumental in further solidifying its position as a globally influential actor in the region.

Connectivity needs to be supplemented by operational engagements. There is potential to diversify military exercises between India and South Korea. For instance, recent naval drills conducted in the Bay of Bengal in 2022, as well as another exercise involving the Indian naval vessel INS Kiltan and South Korea in the East China Sea in 2021, along with the ADMM-Plus Maritime Security Field Training Exercise in 2019, serve as examples of collaborative efforts by both nations. These exercises encompass communication drills and tactical maneuvers and ultimately aim to enhance the interoperability of their respective navies. It is worth noting that India may harbor suspicions regarding the extent to which South Korea is willing to confront China.²⁶ This skepticism stems from the accommodating stance toward China adopted by the previous Moon administration, which sought to sustain momentum for ongoing dialogue with North Korea.²⁷ However, there has been a subtle shift under the current Yoon administration, which has started to lean toward the notion that China's involvement in either imposing sanctions or facilitating dialogue with North Korea is ineffective, given China's primary focus on maintaining a balance vis-à-vis the US on the Korean peninsula.

Finally, South Korea-India collaboration on maritime security can be viewed as an institutional endeavor aimed at establishing an inclusive, rules-based maritime order in the Indo-Pacific. While South Korea has long-held interests in maritime security, its alignment with other nations to pursue this objective is relatively new. For example, given South Korea's eagerness to participate in initiatives like the QUAD, initiating cooperation with India on maritime security could enhance South Korea's role and capabilities in enhancing maritime security, thereby making Seoul a suitable partner for US-led coalitions such as the QUAD or other regional multilaterals. In 2022, QUAD members launched the Indo-Pacific Partnership for Maritime Domain Awareness (IPMDA), signifying a notable development.²⁸

While previous QUAD summits and meetings have not explicitly framed their gatherings as responses to China's growing power and revisionist actions, the establishment of the IPMDA, which aims to enhance maritime domain awareness among QUAD members and combat illegal, unreported, and IUU fishing in the Indo-Pacific, carries clear implications for China.²⁹ Nonetheless, the IUU fishing issue serves as a significant example of how a rules-based order can be managed in the maritime domain, as outlined in the United Nations Convention on the Law of the Sea (UNCLOS). Aside from the QUAD's IPMDA, other multilateral coalitions such as the Australia-India-Indonesia Trilateral also exist to uphold the rules-based order in the Indo-Pacific.³⁰ In the future, South Korea's engagement with these bilateral, multilateral, and multilateral initiatives (such as IORA, IONS, ADMM+, and ReCAAP) aimed at preserving the rules-based maritime order could bolster the legitimacy of its efforts vis-à-vis China and serve as a cooperative endeavor to achieve an inclusive regional order.

III. India's Indo-Pacific Strategy

PM Modi's address at the Shangri-La Dialogue in 2018 laid out the framework for India's Indo-Pacific strategy, highlighting its priorities, concerns, and challenges. The speech

upheld India's definition of the Indo-Pacific as spanning "from the shores of Africa to that of the Americas,"³¹ thus establishing a broad physical parameter for its initiatives. India's Indo-Pacific strategy embodies a comprehensive perspective, addressing both security and economic dimensions. This holistic approach is exemplified by SAGAR (meaning "sea" in Hindi)—Security and Growth for All in the Region—which encapsulates India's fundamental vision for regional engagement. SAGAR aims to foster deeper economic and security collaboration with maritime neighbors, synergizing with India's AEP to form the foundation of its Indo-Pacific strategy. Under the Modi administration, there has been a sustained expansion of India's strategic outlook from AEP to Act Indo-Pacific, characterized by a broader definition of its extended neighborhood and a more pragmatic approach to strategic orientation. This evolution entails an intensified economic focus incorporating security considerations, particularly in light of India's perception of China's role in the region.

New Delhi's Indo-Pacific strategy, marked by concentrated interaction with select strategic partners, constitutes a significant aspect of its evolving foreign policy doctrine. This fresh paradigm in Indian foreign policy can be interpreted through the lens of "pointed alignment," grounded in realpolitik principles.³² India's engagement in the Indo-Pacific consistently underscores inclusivity as a fundamental tenet, aligning with its vision of a multipolar global order. This approach of "pointed alignment" signifies a departure from the emphasis on Asian solidarity toward the establishment of a novel balance of power framework within the Indo-Pacific region. Consequently, New Delhi has noticeably intensified its involvement with key partners such as Japan, the United States, Australia, ASEAN, South Korea, and the European Union. Simultaneously, it has assumed a more prominent leadership role in engagements with a diverse array of regional and global institutions, advocating for the interests of the Global South.³³ India's active participation in shaping the Indo-Pacific minilateral framework through platforms like the Quad, Quad Plus, Supply Chain Resilience Initiative (SCRI), Indo-Pacific Economic Framework (IPEF), the India-led Indo-Pacific Oceans Initiative (IPOI), and various other trilaterals underscores its steadfast commitment to fostering security and prosperity in the region.³⁴

3.1 Situating South Korea in India's Indo-Pacific Strategy

Understanding South Korea's position within India's Indo-Pacific strategy is a nuanced endeavor, given the absence of a delineated strategy document outlining India's vision, objectives, action plan, and perceptions toward regional partners in the Indo-Pacific region.³⁵ However, the burgeoning bilateral relationship between India and South Korea, along with the evolving strategic dimensions of their interactions, underscores the significant value that New Delhi attributes to Seoul as a cooperative partner, sharing common values, visions, and ambitions. In 2018, following former President Moon Jae-in's state visit to India, both countries issued a joint statement explicitly affirming Delhi's recognition of South Korea as an "indispensable partner" in its AEP. This statement underscored the bilateral partnership as a crucial pillar supporting peace, stability, and security in the Indo-Pacific region.³⁶ Conversely, India occupies a pivotal position in South Korea's NSP, introduced under President Moon's administration, and now in its Indo-Pacific strategy. This framework delineates the economic, sociocultural, political, and strategic cooperation between the two nations.

India's evolving stance toward China coincided with a similar shift in South Korea's perception, as the relationship between China and South Korea faced numerous challenges in recent times. Seoul's increasing economic reliance on China is complicated by the threats to its maritime freedom and the unimpeded flow of goods resulting from China's expanding military capabilities and escalating regional tensions. Essentially, South Korea's close geographical proximity to China exposes vulnerabilities in its security calculus. Moreover, China aligning with North Korea during a military parade in Pyongyang, where the latest nuclear-capable missiles and attack drones were showcased, further elucidates Seoul's rapidly deteriorating security environment. Consequently, South Korea finds itself navigating a progressively hostile and unstable regional landscape. Similar to India, South Korea grapples with the imperative to cultivate deeper strategic partnerships with middle powers. The deployment of the US-constructed THAAD missile defense system in 2016 led to severe Chinese sanctions, inflicting significant economic repercussions on South Korea.³⁷ This episode underscored the necessity for South Korea to prioritize forging special strategic alliances across the continent, particularly to enhance economic resilience by diversifying its economic portfolio. For India, South Korea holds critical importance in its economic aspirations, aligning with its overarching vision to emerge as a prominent regional, if not global, power.

As the regional dynamics face escalating challenges, India increasingly acknowledges a shared predicament with South Korea amid China's assertive conduct. Both nations share imperatives concerning the reinforcement of *ASEAN centrality*, the preservation of freedom of navigation, the enhancement of international norms, and the utilization of innovative multilateral and minilateral approaches to uphold regional security. India's paradigm of inclusive growth in the Indo-Pacific, coupled with its strategy of *pointed alignment*, serves as a driving force for tailored engagement with individual countries, with Australia, South Korea, and Japan occupying a prominent position therein. Recognizing their status as middle powers with considerable capacity to influence change, these countries understand that their partnership holds the potential to promote peace and unite smaller nations in fostering a constructive regional order.³⁸

Despite the mutual esteem evident in the political rhetoric of both nations and the numerous areas of alignment in their perspectives, the partnership between India and South Korea remains somewhat constrained. Some attribute this limitation to geographical factors; both middle powers are constrained by the geopolitical dynamics in their respective sub-regions. While South Korea has primarily concentrated on addressing the nuclear threat posed by North Korea, India has traditionally focused on the IOR as its strategic sphere. However, this explanation fails to account for the significant advancements made in the India-Japan Special Strategic and Global Partnership. It can be argued that India-South Korea relations have lacked the political momentum witnessed in other partnerships. Nevertheless, India's expansion beyond the confines of the IOR into the broader Indo-Pacific strategic arena, coupled with South Korea's endorsement of the concept through the unveiling of its strategy in December 2022, presents fresh opportunities for collaboration between the two nations. As India and South Korea commemorate the golden jubilee of diplomatic relations in 2023, they can reflect upon robust and diversified cooperation across various spheres. The 5th India-Korea Security and Foreign Policy Dialogue, convened at the secretarial level in January 2023 shortly after Seoul's publication of its Indo-Pacific strategy,³⁹ reiterated the significant advancements achieved by both countries and underscored the

pivotal role of their bilateral relationship in shaping the future of the Indo-Pacific region. Their alignment on issues such as the centrality of ASEAN, maritime security challenges, and economic synergies and complementarities, particularly evident in the shipbuilding sector can serve as a catalyst for substantive progress in the times ahead.

IV. Opportunities for Collaboration between India and ROK in Indo-Pacific

Despite the launch of South Korea's Indo-Pacific strategy, it does not imply any alignment or siding with the US amid the ongoing great power competition in the region. China continues to be identified as a "key partner" in South Korea's Indo-Pacific strategy. However, this strategy does indicate South Korea's recognition of the implications of China's hegemonic rise and the necessity to engage with other regional actors such as India. India, too, is acutely aware of the challenges posed by China and has taken a firm stance in response to China's assertiveness along the LAC. Nevertheless, India has maintained its strategic autonomy and has not consistently aligned itself with other regional partners, such as its counterparts in the QUAD, opting instead to pursue an independent position, as evidenced by its approach to critical issues like the Russia-Ukraine War.⁴⁰

South Korea seeks to adopt a similar policy stance, aiming to avoid becoming entangled in the US-China rivalry in the Indo-Pacific region while preserving its autonomy. In this regard, Seoul can draw insights from India's experience in strategic balancing. Despite its long-standing strong ties with the US, the reluctance of the previous administration to endorse the Indo-Pacific terminology provided some reassurance to China, suggesting that South Korea, like certain other Indo-Pacific nations, was not fully aligned with US interests or supportive of all anti-China narratives promoted by the US. However, the current South Korean administration has not only embraced the FOIP concept but has also expressed interest in participating in minilateral groupings such as the QUAD. Therefore, South Korea must uphold and safeguard its strategic autonomy, particularly given these evolving dynamics. This presents an opportune moment for Seoul to learn from New Delhi's experiences, and vice versa, as both countries navigate their respective roles and interests within the complex Indo-Pacific geopolitical landscape.

As outlined in South Korea's strategy, there is a pressing need for the expeditious conclusion of the Comprehensive Economic Partnership Agreement. The ninth round of negotiations was held in Seoul in November 2022.⁴¹ Additionally, in the realm of economics, there has been a growing emphasis on supply chain resilience, particularly in the aftermath of the COVID-19 pandemic. Notably, India, Japan, and Australia have established the Supply Chain Resilience Initiative (SCRI); expanding the participation to include more countries, including South Korea, could be advantageous, especially considering the improving Japan-Korea relations. Furthermore, initiatives such as the Indo-Pacific Economic Framework (IPEF), although in its nascent stages, offer another avenue for India and South Korea to collaborate on economic issues. By actively engaging with other countries in the region, India and South Korea can work toward enhancing the effectiveness of the IPEF, transforming it from a mere economic arrangement into a valuable platform for addressing economic challenges in the Indo-Pacific region.

South Korea has indicated its willingness to participate in minilateral groupings like the QUAD. However, it remains uncertain whether the QUAD members intend to expand this platform into a QUAD Plus format. Nevertheless, there are established Working Groups focusing on crucial areas such as critical and emerging technology and climate change, among others. These are domains where South Korea can make significant contributions. Furthermore, South Korea could potentially join initiatives such as the QUAD Maritime Domain Awareness Initiative, also known as the Indo-Pacific Maritime Domain Awareness Initiative (IPMDA). This initiative aims to enhance maritime security and promote shared domain awareness in the region through technology and training support. Given that both India and South Korea heavily rely on intra-regional sea lanes for energy transportation—with over 77 percent of India's foreign trade occurring by sea and more than 90 percent of South Korea's energy imports and 30 percent of its total trade exports passing through Indo-Pacific maritime transport zones—there is ample scope for collaboration in this area.⁴² Moreover, there are opportunities for India and South Korea to deepen their engagement within platforms like the Indian Ocean Rim Association (IORA), especially now that South Korea holds the status of a dialogue partner. In 2018, the Indian Navy established the Information Fusion Centre in Gurugram, which serves as a hub for maritime information sharing. Several countries have already stationed their liaison officers there, and it would be beneficial for South Korea to appoint a liaison officer to India's IOR-IFC as well.

South Korea has the opportunity to participate in India's Indo-Pacific Oceans Initiative, which focuses on seven key pillars within the maritime domain, including maritime security, maritime ecology, maritime resources, capacity building and resource sharing, disaster risk reduction and management, science, technology and academic cooperation, and trade connectivity and maritime transport.⁴³ Notably, countries such as Indonesia, Australia, Vietnam, and most recently, the US have already joined this initiative. Following the footsteps of the US, South Korea can also contribute to the Trade Connectivity and Maritime Transport Pillar. Collaboratively, India, South Korea, the US, and Japan can work toward enhancing maritime port infrastructure in Southeast Asian countries like Indonesia and the Philippines.⁴⁴ Moreover, the two nations can collaborate on capacity-building efforts in third countries and regions such as Southeast Asia, Africa, and the island nations in the Indian Ocean Region and the South Pacific. India is increasingly regarded as a credible defense and security partner in Southeast Asia, while South Korea maintains strong defense partnerships with countries like Indonesia. Additionally, the trio, along with Japan, can engage in infrastructure development initiatives in the region.

In the South Pacific, both India and South Korea have intensified their focus. Indian Prime Minister Modi's visits to Fiji and Papua New Guinea, as well as hosting the India-FIPIC Forum, reflect this heightened attention. Similarly, South Korea hosted the inaugural Korea-Pacific Islands Forum Summit. The two countries can collaborate within India's Coalition for Disaster Resilient Infrastructure Initiative in this region, given its vulnerability to climate change-induced natural disasters such as tsunamis and sea-level rise. Furthermore, South Korea can partner with India in promoting capacity-building efforts in Indian Ocean Island nations, particularly in HADR initiatives.

India is actively pursuing its objective of exporting defense and military equipment to friendly nations within the region, as evidenced by recent agreements with the Philippines

and Vietnam. South Korea has long been recognized as a prominent defense exporter, and its advanced technological capabilities in shipbuilding present a valuable complement to India's efforts in manufacturing weapons and equipment. Both India and South Korea have consistently expressed mutual interest in collaborative endeavors, including joint production and export of military equipment, enhanced information sharing, and increased cooperation in cyber and space domains. A significant development occurred in November 2019 when the Indian Army introduced the K9 VAJRA-T 155mm/52, a self-propelled howitzer based on technology widely utilized by the South Korean military, thereby advancing defense and security relations between the two countries. Furthermore, there is a recognized need for increased high-level defense engagements involving defense ministers and naval leaders from both nations, either on the sidelines of gatherings such as the ASEAN Defense Ministers Plus or through bilateral meetings.⁴⁵ Maritime cooperation, in particular, holds significant potential for enhancing engagement between India and South Korea.

4.1 India–Japan–South Korea Trilateral

The empirical findings of the Lowy Institute's Asia Power Index highlight a commonality among India, South Korea, and Japan in terms of their comprehensive national power, categorizing them as middle powers.⁴⁶ However, this classification as middle powers does not provide a comprehensive understanding of their diplomatic approaches, given the political and economic diversity within this grouping. Indeed, this middle power grouping encompasses a range of nations, from Japan and South Korea to Iran, Vietnam, Indonesia, and India, each with its unique characteristics and interests. Nevertheless, despite this heterogeneity, there are notable convergences among countries such as India, South Korea, and Japan in certain key areas of interest.⁴⁷ These include advocating for a rules-based international order, addressing the challenges posed by China's growing influence in the Indo-Pacific region, and collaborating on emerging global issues. Among the issues of mutual concern are initiatives aimed at enhancing resilience, advancing technology, ensuring the provision and safeguarding of global public goods like health infrastructure, maintaining stability in the Taiwan Strait, and promoting infrastructure development and connectivity initiatives.

Since the onset of the COVID-19 pandemic in early 2020, resilience has emerged as a focal point in the planning of economic security policies. The lockdown measures implemented within China-based global production networks caused significant disruptions across various supply chains, prompting many nations to recognize the imperative of integrating broader and more robust resilience measures into these networks. The goal was to mitigate the risk of a breakdown or disruption in one part of the global supply chain cascading into broader economic insecurity. Beyond the disruptions directly attributable to the COVID-19 pandemic, countries such as Japan, India, and South Korea have increasingly acknowledged the potential for the weaponization of supply chains and the threat of economic coercion as additional sources of disruption. This heightened awareness has spurred intensified efforts toward unilateral, minilateral, and multilateral cooperation aimed at bolstering resilience and economic security. Central to these efforts is a focus on de-risking strategies and selective diversification to mitigate vulnerabilities within supply chains.

Japan, India, and Australia have already made investments in the SCRI.⁴⁸ The recent G7 Hiroshima Summit featured a dedicated session on “Economic Resilience and Economic Security,” during which the G7 leaders issued the Statement on Economic Resilience and Economic Security.⁴⁹ There is potential for enhanced coordination among South Korea, Japan, and India in bolstering supply chain resilience, de-risking strategies, and joint economic security efforts at a trilateral level. Moreover, integrating with existing initiatives like the SCRI presents an opportunity to align comparative advantages with the requirements of economic security. India, South Korea, and Japan should adopt a pragmatic, realistic, and regionally focused approach to their cooperation rather than dispersing resources across the expansive Indo-Pacific region. For instance, this trilateral could concentrate their efforts on enhancing resilience in specific sub-regions such as South Asia or Southeast Asia.⁵⁰ This could involve intensifying de-risking initiatives and leveraging the SCRI through coordinated policies, including but not limited to financing, labor coordination, and human capital development. Such efforts would aim to imbue regional supply chains and economies with greater resilience. Additionally, the Pacific Island region presents another opportunity for trilateral coordination among middle powers. This collaboration could focus on delivering environmentally resilient initiatives to a region grappling with existential environmental threats.

In the Indo-Pacific region, technology cooperation stands out as another crucial area where middle power synergy between these three nations can make a significant impact. All three nations acknowledge the vital role of technologies such as artificial intelligence (AI), quantum computing, and the digital economy in shaping the region’s economy, societies, and governance structures. There is a shared understanding that AI and quantum computing will exert profound influence on various aspects of life, including the relationship between governments and their citizens. Effective coordination of policies related to AI, quantum computing, and the digital economy is essential to ensure that the development and deployment of these technologies adhere to transparent rules and are compatible with democratic principles and the rule of law.

Trilateral cooperation can be facilitated by integrating into existing multilateral frameworks such as the QUAD or specific components of initiatives like AUKUS focusing on AI and quantum computing. Alternatively, India, Japan, and South Korea can pursue stand-alone forms of cooperation. Establishing interfaces for engagement as a trilateral partnership, which would leverage expertise, capital, and a collective pool of resources, is likely to yield successful outcomes if New Delhi, Seoul, and Tokyo can package their collaboration into tangible deliverables.⁵¹ Additionally, proactive support for initiatives like the IPEF, which includes provisions for technological cooperation, presents another avenue for leveraging the combined influence of India, Japan, and South Korea to shape the development of technology in the region.

Leveraging coordinated diplomacy among middle powers such as New Delhi, Seoul, and Tokyo is crucial for upholding the existing rules-based order in the Indo-Pacific region. This could involve various initiatives, including issuing joint diplomatic statements emphasizing the significance of peace and stability across the Taiwan Strait while respecting the principles of the “One China” policy. Additionally, it may entail reaffirming the legitimacy of the 2016 Permanent Court of Arbitration decision, which ruled against China’s territorial claims in the South China Sea. Furthermore, enhancing the enforcement of sanctions on North Korea could also be part of these collaborative efforts.

To avoid being influenced solely by strategic competition, middle powers like South Korea, India, and Japan must engage in proactive and pragmatic cooperation to safeguard their national interests. Achieving these goals involves exploring various approaches where this middle power trifecta can leverage their combined comparative advantages to devise innovative and enduring initiatives. These initiatives could take the form of independent trilateral cooperation efforts or integration into established minilateral or multilateral frameworks such as the Quad, AUKUS, and IPEF.

V. The Path Forward

As South Korea embraces the Indo-Pacific concept and endeavors to position itself as a Global Pivotal State through more contributive and proactive cooperation policies in the region, there exist numerous areas ripe for enhanced bilateral engagement. To transcend historical inconsistencies and fragmented partnerships and elevate their ties to a strategic, pivotal, and multidimensional level in the Indo-Pacific, India and South Korea should concentrate on the following pathways:

1. Enhancing strategic dialogues and interactions should be a key focus for India and South Korea to infuse substance and dynamism into their strategic partnership. Seoul faces the task of positioning itself as a dependable regional ally to India; to achieve this, bilateral engagements should encompass not only frequent high-level meetings but also multifaceted cooperation across different sectors at various operational levels. Ultimately, both parties should aim to establish regular 2+2 Foreign and Defense dialogues to bolster the strategic depth of their partnership.

2. Given its status as a dynamic economy, South Korea holds the potential to not only provide India with expertise and assistance but also to contribute to elevating India's status as a global manufacturing hub—a key objective of the Modi administration under its Make in India and Atmanirbhar Bharat initiatives. Ongoing discussions center on how South Korea can lend support to India's emerging shipbuilding industry, leveraging its extensive expertise in this sector. Additionally, as a technologically advanced nation, South Korea can aid India's efforts to enhance its capabilities in high-end manufacturing across various sectors such as semiconductors, advanced materials, electric and autonomous vehicles, as well as renewable and new energy industries, including solar power. Both countries can explore avenues for collaboration on critical issues like climate change, energy security, and the development of digital technologies for public health. These areas represent shared priorities for India and South Korea, offering promising opportunities for joint endeavors.

3. Based on their aligned perspectives on the Indo-Pacific as a crucial strategic domain, India and South Korea should strengthen their defense collaboration to effectively address the multifaceted challenges within this region. Regarding maritime security, both nations can explore opportunities for conducting joint HADR exercises, which may include deploying rescue submarines in challenging deep-sea environments, conducting counter-piracy operations, and enhancing maritime domain awareness. Additionally, efforts to improve interoperability can be pursued

through joint training programs, regular exchanges between naval and coast guard personnel, military logistics agreements, and joint exercises. Furthermore, they should consider expanding their participation in multinational and multi-service exercises, particularly those focused on maritime security. Both countries already collaborate in civil nuclear, space, and defense industrial sectors, and sustaining this cooperation is crucial for advancing their strategic partnership. Continued emphasis on enhancing defense-industrial ties can serve as a cornerstone for deepening the strategic relationship between India and South Korea.

4. Moreover, both nations need to investigate how collaboration within specific minilateral and multilateral frameworks in the region—such as the Quad Plus, SCRI, IPOI, IPEF, and IONS, among others—can contribute to achieving mutual objectives. Given its significant reliance on solar power, South Korea could, for instance, consider joining the India-led International Solar Alliance. Furthermore, there is substantial potential for New Delhi and Seoul to assess the advantages of establishing issue-based trilateral partnerships, potentially involving countries like Australia, Indonesia, or the middle powers within Europe. Additionally, exploring track 1.5 dialogues on Indo-Pacific security with Japan could also be beneficial. Such cooperative efforts could extend into the multilateral arena, including South Korea's endorsement of India's aspiration for a permanent seat on the UN Security Council.

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Biographical Statement

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Revisiting the Grotian Law of the Sea: From *Mare Liberum* to the BBNJ Agreement

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Structured Abstract

Article Type: Research Paper

Purpose—This paper presents an alternative appreciation of the Grotian law of the sea, challenging the conventional association of his ideas solely with the “freedom of the seas.” The conventional perspective hinges on Grotius’ emphasis on long-term societal expediency as a pivotal factor in shaping the law of the sea, such as considering whether it is expedient for coastal states to exert jurisdiction over territorial waters. This reassessment aims to evaluate the compatibility of the contemporary law of the sea with the Grotian tradition.

Design, Methodology, Approach—This paper relies on bibliographic sources, particularly primary ones, such as Grotius’ original works. While predominantly rooted in legal dogmatics and theory, this methodology draws inspiration from contextualist historiography to enhance comprehension of Grotius’ law of the sea.

Findings—By disassociating him from the exclusive identification with the freedom of the seas, this alternative reading of Grotius suggests that the contemporary law of the sea, in pursuit of societal expediency and more democratically, aligns with Grotian principles as far as the current institutional and normative development of the international legal order permits.

Practical Implications—Given Grotius’ substantial influence on scholarly perceptions of the law of the sea, the proposed reassessment may impact how relevant epistemic communities conceptualize the contemporary law of the sea. It is suggested that the Grotian perspective elaborated here is the discipline’s historical and ontological origin. Therefore, the pursuit of societal expediency has always been, and still is, an axiomatic element essential to the law of the sea praxis.

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Originality, Value—Recognizing the Grotian law of the sea’s foundation in expediency is not a novel contribution. This paper distinguishes itself by detaching Grotius from the mainstream free seas thesis. The originality lies in asserting that despite increasing limitations on this freedom, or precisely because of them, the contemporary law of the sea remains inherently Grotian as it responds to a changing factual setting and is based on an institutionally and normatively evolved international legal order and arguably does this toward long-term societal expediency.

Keywords: BBNJ Agreement, Grotius, History of the Law of the Sea, Law of the Sea, UNCLOS

I. Introduction

This paper challenges the usual association of the Grotian law of the sea with the freedom of the seas. I suggest that, in analyzing how the contemporary law of the sea welcomes or preserves Hugo Grotius’ contribution, legal scholars and practitioners should not focus on the “free seas.” This is because Grotius’ conclusions supporting it were contingent upon the factual setting and an institutionally and normatively limited international legal order in seventeenth-century Europe. Therefore, I propose to focus not on his conclusions nor on circumstantial minor premises of four centuries ago, but on his major premises.

The Dutchman asserted, as a major premise, that natural law mandated the community and division of the seas to be determined according to societal expediency. Grotius’s free seas defense was contingent upon the minor premise that “the Sea is of so vast an Extent, that it is sufficient for all the Uses that Nations can draw from thence [in a non-rivalrous manner], either as to Water, Fishing, or Navigation.”¹ Since these common uses were non-rivalrous, it was not societally expedient for one nation to prohibit another from engaging in them. This has changed tremendously since.

In the last four centuries, the international community has identified and legally protected a myriad of other sea uses. These uses have become far more intensive and rivalrous among themselves. Additionally, they have put significant stress on the marine environment, threatening critical ecosystemic services and products. The law of the sea has become so much more complex that no single use of the sea can be considered non-rivalrous, requiring a balance of rights and obligations. As such, the 1982 United Nations Convention on the Law of the Sea (UNCLOS)² represents the ultimate effort to determine the community and division of the oceans—or, in Allot’s words, “power-sharing.”³ Thus, the 1982 package deal represented what was minimally expedient for the international community, taking into account political considerations and severe power imbalances.⁴

Obviously, to address the ocean complexities of our times, simply assigning maritime rights and obligations is insufficient. Since the nineteenth century’s second half, the international community has also prioritized regulating how these rights and obligations are implemented, especially concerning navigational safety.⁵ Most recently, the 2023 Agreement on Marine Biodiversity beyond National Jurisdiction’s (BBNJ Agreement) adoption marks an important step in that direction, generally regulating the high seas’ freedoms and other rights so that uses of the sea are sustainable or oriented toward marine environment conservation.⁶

With these developments, associating Grotius only with the free seas led Wolfgang Friedmann to denounce in 1971 the ongoing movements for coastal State jurisdiction expansion as a “*Selden redivivus*,” referring to the English author who opposed Grotius by advocating for the Crown’s sovereignty over the *British Seas*.⁷ Eleven years later, John Logue dubbed a final draft of what became UNCLOS as “[t]he Revenge of John Selden.”⁸ For Logue, the Grotian tradition epitomizing the freedom of the seas was defeated in 1982. From a similar perspective, juxtaposing Grotius and national territorialism, McDougal believed “it [was] fantastic to suggest that an argument which subjects a major percentage of the surface of the globe to exclusive, monopolistic control, as the new economic zone does, is in accord with Grotius’ views.”⁹ Likewise, the BBNJ Agreement can be viewed as limiting the free seas. For example, Lothian has argued that “a historical devotion to the Grotian tradition underlie[d] the position of maritime States in the BBNJ negotiations and this is ‘based on an unwavering belief in the principle of freedom of the seas as the governing paradigm.’”¹⁰

Herein, I challenge these understandings, but not because they are wrong—Grotius indeed defended the free seas. Rather, I argue that limiting Grotius to the free seas relegates the Grotian law of the sea to a piece of history, relevant to his time only. Meanwhile, I observe that Grotius’ focus on societal expediency has oriented the praxis of the law of the sea until now. Changes in positive law or natural law’s understandings have been grounded in evolving circumstances changing the conditions for societal expediency. Parallely, institutional and normative developments in the international legal order have introduced new possibilities beyond the free seas versus closed seas dichotomy, with pluri- and multilateralism, specific treaties, standard-setting international organizations, robust institutions, dispute settlement mechanisms, and even the internationalization of the Area.

Accordingly, I argue that UNCLOS has some very important Grotius traits, although it has fallen short of advancing long-term societal expediency in some respects, particularly in areas beyond national jurisdiction (ABNJ), including the seabed area. Therefore, in very significant ways, Grotius did not leave Montego Bay defeated, nor did Selden consume his revenge in Jamaica. Furthermore, I conclude that there could hardly be any more a Grotian endeavor than the BBNJ Agreement.

Hence, this contribution is original and relevant in two ways. First, it underscores the epistemological risk of reducing the Grotian law of the sea to the freedoms of the seas. With Grotius’ pervasive influence on the relevant epistemic community dealing with the contemporary law of the sea, this is relevant in its own right. Second, and crucially, this contribution instills the contemporary law of the sea with a soul. Unsatisfying *monolithic* theorizations of the (open) seas—such as *res nullius*, *res communis*, public domain, based on the principle of reasonableness, et cetera—have caused generations of law of the sea scholars and practitioners to examine positive law only.

This soulless positivism risks an eternal status quo. Moreover, it is prone to induce legal operators into the trap of managerialism, preoccupied with uncritically applying the (existing) rules in an effective manner.¹¹ However, from a Grotian perspective, and thus based on the modern law of the sea’s very historical and ontological origins, States and legal operators should act to advance long-term societal expediency attending to changes in the relevant factual setting and to institutional and normative developments in the international legal order. By covering the law of the sea in the past and present centuries,

I understand this is actually an element of the contemporary law of the sea praxis. In this sense, I do not present this element as a rule of positive law but as an axiom.

To substantiate and develop the assertions outlined above as well as to address eventual objections, this paper is divided into three sections. Sections II and III consider the Grotian law of the sea and section IV centers on the contemporary law of the sea. In Section II, I will examine Grotius' foundational work on the law of the sea, *Mare Liberum* (ML, 1609), explaining Grotius' expediency-based argument for the free seas and the nuances he introduced. Section III systematizes the Grotian law of the sea after ML, by also considering Grotius' *magnum opus De Jure Belli ac Pacis* (DJBP, 1625) and other books, written by Grotius' opponents in the seventeenth century. Section IV focuses on the law of the sea's development in the twentieth and twenty-first centuries, focusing on the extension of coastal State jurisdiction, the regime governing the Area, and the BBNJ Agreement—the matters most inviting of being analyzed from a Grotian perspective. Concluding remarks will follow.

II. The Expediency-Based Argument in *Mare Liberum*

In 1609, the ML's publication inaugurated the so-called “Battle of the Books” in Europe, which lasted until the seventeenth century's conclusion.¹² Books here refer to texts written by scholars either defending the freedom of the seas or, more frequently, a State's sovereignty or jurisdiction over parts of the sea. Notably, claims of rights over parts of the sea by a coastal State was not new to Europe.¹³ Nevertheless, when authors recount the history of the Battle, they commonly start with the 1493 papal bull *Inter Cætera*.

For example, Tanaka simplifies the narrative by stating that through that bull, Pope Alexander VI granted Spain and Portugal “all newly discovered and to-be-discovered lands, that were divided into two with a straight line—toward the west of it unto Spain and the east, Portugal. However, this was not welcomed by other maritime nations.”¹⁴ Thus came the foundational book: *Mare Liberum*. To describe Spanish and Portuguese claims,¹⁵ Grotius resorted to Alfonso de Castro:

I have often heard a great multitude of the Portugals to be of this opinion that their king hath so prescribed for navigation of the West Indian (peradventure the East), yea and that a most huge sea, that it should not be lawful for other nations to cross those seas, and among our Spanish nation the common sort seem almost to be of the same opinion that it should not be lawful for others save only the Spaniards to sail through that huge and vast sea to the Indies which our most puissant kings have conquered, as if they prescribed for that right.¹⁶

Attacking these opinions, Grotius' ML was part of a more extensive *livre de circonstance: De Jure Praedae* (DJP).¹⁷

Its usual story begins in 1603 when the Dutch vice admiral Jacob Van Heemskerck captured the *Santa Catarina*, a richly laden Portuguese carrack at the entrance of the Singapore Strait.¹⁸ The Prize Court in Amsterdam found the capture lawful, yielding over three million Dutch guilders—almost the entire English annual revenue—to the United Amsterdam Company, a precursor of the United Dutch East India Company (VOC). The Portuguese had protested that its capture had been an act of piracy. Largely based on religious

reasons, some directors of the VOC agreed, refusing the prize, selling shares, and even discussing the possibility of a separate trading company under the French King's protection.¹⁹

By 1604, other VOC directors requested Grotius to write in the capture's defense. The outcome was the DJP, publicized entirely only in 1868.²⁰ In 1609, nonetheless, amid truce negotiations with Spain, Grotius found a condition demanded by them unjust, "namely, that [the Dutch] refrain from commerce with India." He then decided to publish Chapter 12 of the Commentary anonymously, which he called ML.²¹

Published right after the truce treaty had been signed, ML quickly became the target of erudite reactions because, although it attacked only Spanish-Portuguese claims, Grotius' arguments could affect several European maritime claims, including those of Venice, Genoa, England, Denmark-Norway, Sweden, and Poland.²² To be sure, ML did not introduce completely new arguments,²³ but its message was timely.²⁴

Grotius, in opposing the prevalent European practice of appropriating parts of the sea, recognized that to prevail in the debate, he needed to diminish State practice's significance and accentuate natural law's enduring principles.²⁵ Immutable, a rule of natural law (primary law of nations) is necessary and cannot be trumped by volitional human law (secondary law of nations). Thus, if natural law determined that the seas could not be appropriated by any nation, neither custom, prescription, nor papal donation—the principal legal grounds advanced by Spain to sustain its claims—could entitle a State to jurisdiction over the sea.²⁶ Under Grotius, the debate had left history to enter nature.

Therefore, Grotius' argument against Spanish claims is simple. The sea was not susceptible to appropriation for two main reasons. First, the sea could not be enclosed or occupied because of its physical nature and fluidity.²⁷ This fragile argument fundamentally depends on one's understanding of how the sea can be occupied. As will be demonstrated later, Grotius acknowledged that "jurisdiction or sovereignty" over parts of the sea could be established without limiting it to clearly geographical enclosable areas, such as bays and gulfs.²⁸

Second, the sea was common to all and there was no justification for it to come under any one State's jurisdiction or sovereignty. Drawn heavily from Spaniard Fernando Vázquez de Menchaca's *Controversiarum Illustrium Aliarumque Usu Frequentium Libri Tres* (1564),²⁹ this is the heart of the Grotian law of the sea. Grotius relied primarily on Christian theology and Roman law to confirm that "in the beginning," everything was common.³⁰ Private property's advent came as a matter of expediency regarding certain goods. For example, food is consumable and its use by one deprives others from using it again. The same holds true regarding other goods, like clothes, which deteriorate over time.³¹

This division is expedient because it advances a criterion of justice (first come, first served) that could prevent dispute and war—or the "perpetual race for the occupation of goods." The necessity for stability, provided by private property, was so obvious for Grotius that, in DJBP, he established the necessary hypothesis that humans are assumed to have agreed to allowing each other's personal ownership over this sort of goods.³² This rationale was also extended to pieces of land because the same piece of land cannot simultaneously yield different crops for different families.³³ Following Vázquez de Menchaca, the original communality in the primary law of nations (natural law) was not expedient for these matters, which became then regulated by the secondary law of nations (volitional law).³⁴ Assuredly, it is volitional because the acquisition of a title over these movable and non-movable goods is premised on acts of will, like occupation of a *res nullius*.

However, for Menchaca and Grotius in ML more generally, this transition to the secondary law of nations did not extend to the air or the sea.³⁵ Their point was that the use individuals made of the sea did not prevent others from using it as well.³⁶ To use contemporary language, Grotius considered the uses of the sea as “non-rivalrous” and, for that reason, he advocated that, as a matter of expediency, they did not need to be “excludable.” In other words, the sea (and its uses) was seen by Grotius as a “global public good.” From a Menchacan perspective, this characteristic of the uses of the sea made the transition to the secondary law of nations unjustifiable because the very nature and purpose of the law was to work for the benefit of the common good. Indeed, the expediency criterion in Menchaca is closely linked to enabling the common good.³⁷

Now, ML’s specifics must be read in their context: Grotius advocated for the VOC. Nuance was not always in the *ordre du jour*. Consider, for instance his overarching grand argument: “[f]or the Sea is of so vast an Extent, that it is sufficient for all the Uses that Nations can draw from thence, either as to Water, Fishing, or Navigation.”³⁸ When provoked by Welwod with respect to his obviously extreme contention about fisheries, he candidly replied:

To show that it [the sea] could not have been occupied, I used the following argument. The sea cannot become the property of anyone, but owes forever to all men a use which is common to all. To clinch the argument, I cited authorities who asserted that not even fishing on the sea could be prohibited by anyone. This argument had a twofold use. For the cause was demonstrated from the effect, namely, the community of the sea from the freedom of fishing; and the less from the greater, for if fishing should be free, which takes something from the sea, much more would navigation, which takes nothing. This question of fishing, therefore, was not “a general position” ..., but “a special point” ... as is apparent to anyone who reads. [Emphasis added.]³⁹

Therefore, noting that his plea was for the right of navigation to the Indies, Grotius covered the freedom of fishing only for rhetorical purposes: a simple *a maiore ad minus* argument. It was not a fundamental part of his argumentative structure and reveals the changeability of conclusions based on his expediency-based arguments.

This character of changeability is also observed in Grotian nuances, again employed for rhetorical purposes. To exclude Spanish-Portuguese positions as absurd, he addressed less ambitious claims, such as Venice and Genoa’s, respectively over the Adriatic and Ligurian Sea:

Whereunto we must also add that their authority who dissent or disagree [with the non-appropriability of the seas] can no way be applied to this question, for they speak of the Midland Sea, we of the ocean, they of a gulf, we of the huge sea, which in the manner of occupation differs much. And they to whom they lightly grant prescription, even they possess the shores bordering on the sea, as the Venetians and the Genoese, which even now was plainly proved could in no wise be said of the Portugals.⁴⁰

This aspect of the Grotian argumentation is very curious: the authorities he cited, such as Menchaca and Roman jurisconsults, had asserted the sea’s non-appropriability in absolute terms.⁴¹ Menchaca, in particular, directly attacked Venetian and Genoese assertions of jurisdiction over parts of the sea.⁴² In contrast, Grotius had to limit his contentions, based on these absolutist assertions, to the bolder Spanish-Portuguese claims.

This allowed Grotius to delineate circumstances when, if at all, jurisdiction or sovereignty

over portions of the sea was possible: “if any those things [sea and shore] by nature may be occupied, that may so far forth become the occupant’s as by such occupation the common use be not hindered.”⁴³ Subsequently, this more nuanced delineation emphasized the Spanish-Portuguese claims’ purported absurdity, which supposedly limited the common use of navigation. In this construction, tracts of the seas cannot be owned by one nation to the exclusion of others, for the seas are *res communis*. Yet, parts of the sea could be controlled by—or placed under the jurisdiction of—a nation provided common uses are not hindered.⁴⁴ Beyond the argumentative strategy favored by this nuance, Grotius likely envisioned his writing’s political repercussions, as it disfavored many European nations beyond the Iberian peninsula.⁴⁵

It is thus remarkable that Grotius’ advocacy work made him diverge from Menchaca, partially bringing the sea to the secondary law of nations, with the natural law caveat preserving common uses. This transformed law of the sea debates into a more open discussion of what actually is expedient, inviting responses. This will be seen in the next section elaborating on the development of the Grotian law of the sea after ML, as it distances itself from Menchaca’s absolutism and more liberally envisages expediency considerations in the community and division of the seas among nations.

III. The Grotian Law of the Sea After *Mare Liberum* Systematized

The last section suggested that there were nuances to the “free seas” in ML: that a State might exercise jurisdiction over the sea, which remains *res communis*, if it is occupied and if common use is not hindered.⁴⁶ Logically, this assertion reveals a gap in the Grotian argument. In ML, he had cited authorities denying jurisdiction or sovereignty over the seas in absolute terms, but he presents nuances to that himself. He even noted that his argument targeted only the Spanish-Portuguese claims.

In DJBP, Grotius clarified—rather, he corrected—some of his ML assertions. In ML, he claimed that the Roman orators had proclaimed rules of natural law, which volitional law could not trump.⁴⁷ However, in DJBP, he understood that “it was yet in Consequence of an arbitrary Establishment [Roman law], and not by Vertue of any Prohibition of the Law of Nature, that the Sea was not then possessed, or that it could not be lawfully possessed.”⁴⁸

In DJBP, Grotius admitted very clearly that the law of nature does not prohibit possession of (part of) the sea. Particularly, he made special reference to parts of the sea enclosed by the land⁴⁹ and a “Part of the Sea [that], compared with the Land, is not larger than a small Slip of the Sea.”⁵⁰ He also noted that it conformed with the law of nature “that those who shall take upon them the Burden and Charge of securing and assisting Navigation, either by erecting or maintaining Lighthouses or by affixing Sea-Marks, to give Notice of Rocks and Sands, should impose a reasonable Tax upon those who sail that Way.”⁵¹ Generally, he stated that:

“[T]he Jurisdiction or Sovereignty over a Part of the Sea is acquired, in my Opinion, as all other Sorts of Jurisdiction; that is, as we said before, in Regard to Persons, and in Regard to Territory. [...] In Regard to Territory, as when those that sail on the Coasts of a Country may be compelled from the Land, for then it is just the same as if they were actually upon the Land.”⁵²

Seemingly, in DJBP, Grotius became closer to his critics, rendering the Menchaca “free seas” argument moot. It seems indeed that for Grotius the seas then became *res nullius*, like land territory—instead of *res communis*. Where Grotius differed from his opponents would be arguably with respect to the facts, of whether a nation had indeed “occupied” a determined part of the sea.

These observations are correct, except that, in the Grotian law of the sea, the fact that the seas are subject to occupation does not deprive them of their *res communis* character—the seas could not be *owned* by a nation to the complete exclusion of others.⁵³ As seen in ML, Grotius already contemplated the possibility of occupying the seas but clarified that it could not cause “the common use” to be hindered.⁵⁴ On the same basis, in DJBP, he was specific in defending innocent passage: “[i]t is also certain that he, who is in Possession of any Part of the Sea, cannot lawfully hinder Ships that are unarmed, and give no Room to apprehend Danger, from Sailing.”⁵⁵

To better understand this liberality of Grotius, it is useful to observe a similar pattern in one of his remarkable opponents: the Portuguese monk Serafim de Freitas, author of *De Justo Imperium Lusitanorum Asiatico*. Freitas did not deny the sea’s *res communis* nature. Agreeing with Ulpiano, he noted “the sea is common to all, just like the air, and, notwithstanding, also admits of privative fishing by a people or a prince at sea.”⁵⁶ Interpreting Paul, the Roman jurisconsult, Freitas understood that “in the law of nations, the sea is common to all, but, if it is occupied by the prince, the latter can impose servitudes and prohibit free navigation from others.”⁵⁷

The aspect of ML subject to more criticism by Freitas was corrected by Grotius in DJBP as seen above. Freitas argued that the non-appropriability of the seas, defended by Grotius in ML and Menchaca, could not be considered a mandatory prescription of natural law, an immutable command. Freitas noted that the law of nations, based on *natural reason*, aimed at the good of humanity (literally, “human nature”). However, the law of nations could refer to matters pertaining either to the state of integral nature or to the state of corrupt nature, where corruption is the stain of the original sin, marking the evil and selfish tendencies of humans.⁵⁸

The first kind refers to prescriptions of natural reason for the good of humankind that do not need to adapt to the corrupt nature of humans, such as the unchangeable prescriptions on repulsing violence. These prescriptions, within Christian theology, are based on necessary truths that are immutable.⁵⁹ Perhaps today, an equivalent would be the *jus cogens* obligations regarding genocide.

However, the second kind covers issues where circumstances change, necessitating changing rules and principles; these include, for instance, servitude, manumission, and, especially, the distinction (or division) of dominions. Freitas noted, with Grotius’ support, that in the beginning “the earth liberally gave everything, with nobody asking for it.”⁶⁰ With human needs occasioned by original sin—before which, in Christian theology, humans had access to the Tree of Life to fulfill all their needs—came the necessity of regulating other matters pertaining to the state of corrupt nature, such as the community and division of things.⁶¹

Freitas argued the law of nature does not impose immutable precepts regarding these matters. Rules and principles governing them can vary and be replaced “conforming to the diversity of times and states.”⁶² Hence, the law governing the community and division of

the oceans could change according to the “factual setting” and institutional and normative development level of the international legal order.

Freitas thus denied the absolute *free seas* put forward by Menchaca and Grotius in ML. After all, this could not be a prescription of the law of nations pertaining to the state of integral nature. Conversely, the relevant factual setting could not require from natural reason an absolutely free sea either; European nations’ practice widely recognized jurisdiction or sovereignty over coastal waters for several reasonable purposes.⁶³

In Alexandrowicz’s classical reading of Freitas, when arguing for the possibility of (quasi-) occupying the open seas, the Portuguese monk highlighted the anarchy evinced by the free seas, particularly in the Indian Ocean, in which context “the Portuguese, not without selfish interest, arrogated to themselves the responsibility of converting the anarchy into conditions of security under their own jurisdiction.”⁶⁴

Crucially for this paper, in advancing this argument, Freitas did *not* depart from the Grotian criteria of long-term societal expediency. He simply observed that societal expediency could not affirm absolute freedom of the seas as a matter of natural law and preclude a nation from providing conditions of secure navigation, including for foreign sailors’ and peoples’ benefit.⁶⁵ Alexandrowicz emphasized that, for Freitas, always maintaining the *res communis* character, sea rights were functional in nature—unlike land sovereignty, which has depended solely on “unmotivated” occupation.⁶⁶

For the Portuguese, attacked by Grotius, the functionality was that preserving security on certain maritime routes leading to determined territories and its practice—Freitas argued—generated a right to control navigation along those routes through prescription and custom.⁶⁷ That the Portuguese might gain privilege therefrom is a warranted conclusion: as seen above, in DJBP, Grotius admitted that nations taking upon themselves the burden of securing navigation may “impose a reasonable Tax upon those who sail that Way.”⁶⁸

Another Freitas criticism of Grotius revealed their divergence on what are “common uses” of the sea, which, for both, cannot be justifiably hindered. Freitas criticized Grotius for not “distinguishing nor respecting the causes and circumstances of things and times, hiding and confusing them.”⁶⁹ Namely, Freitas criticized Grotius for paying lip service to the “factual setting” while affirming Menchaca’s immutable free seas. Freitas then distinguished three different scenarios: simple, innocent passage; extreme necessity to travel to (access) a place; and the right to travel to foreign provinces.⁷⁰

Freitas understood that innocent passage in parts of the sea under foreign jurisdiction or sovereignty was so fundamental that its denial constituted just cause for war.⁷¹ Regarding cases of extreme necessity to travel to a place, he argued that its impediment was illicit either under the “law of charity” or because the “division of things” cannot jeopardize a person by preventing her from using something she extremely necessitates.⁷² The latter part evidences Freitas’ concern with rationalizing the “division of things” disciplined by natural reason for the good of humanity: it made no sense to include in this division the faculty of denying hospitality to a human being in extreme necessity.

However, the right to travel to foreign provinces differs from these two. Freitas here not only addressed “free navigation” but also the use of sea routes leading to bountiful provinces as well as the access to them and their markets. He observed that admitting foreigners this way was a liberality of these provinces’ inhabitants, which, *in casu*, had exclusivity agreements with Portugal.⁷³ He pointed out that “the Portuguese do not claim the occupation

and the empire of the Ocean sea in a way to prohibit navigation or demand tributes from other peoples.” Instead, they only claimed “that the Dutch do not navigate to [their] conquerors, achieved with great expense of blood and financial resources [far superior to the profit derived therefrom].”⁷⁴

Freitas underscores that navigation through the routes established and secured by the Portuguese and to the provinces with which they were the first Europeans to engage was no “common use” of the seas at all—this did not concern the seas’ *res communis* nature. Freitas highlighted that if “the Spanish King admitted other nations to the exploitation of gold mines, to the commerce and to the navigation to the Indies,” Spain would, of course, profit less.⁷⁵ Thus, the general argument that navigation by a nation does not hinder navigation by other nations completely misses the point; what really mattered in the Dutch-Portuguese controversy did not concern the law of the sea as understood today.

This thinking follows very clearly the Grotian argumentative structure in ML based on societal expediency; it simply represents another assessment. Indeed, in 1613, now defending the Dutch exclusivity of navigation to and trade with the Spice Islands against the English,⁷⁶ Grotius himself expressed the view that “it must be recognized that many of the laws of nature and nations are indefinite,” that is, in Knight’s reading, “their content and application must depend upon particular human opinions and social conditions.”⁷⁷ This is what I have called in this paper the “factual setting,” notably as apprehended by “human opinions”—Freitas and Grotius had different opinions.

In the precise context of the 1613–1615 Anglo-Dutch negotiations, the Dutch underscored the time and resources invested in the East Indies trade, including against the Portuguese. The Dutch Memorial concluded that “considering the great charge we were at in maintaining our trade there, we tell the [English] King that it is very hard that his subjects should trade in those parts, seeking a harvest at our expense, they escaping the cost.”⁷⁸

Given the above similarities, I argue that Freitas and Grotius should be contrasted with Selden, who focused on individual expediency considerations, paying less regard to the sea’s *res communis* nature and admitting way too easily one nation’s *dominion* of the seas in the law of nations. The Seldenian argument’s summary in his *Mare Clausum* (1635) is that the sea can be appropriated just like land without distinction.⁷⁹

Particularly telling is that, in examining natural law, he starts with God bestowing the Earth to Noah and sons after the flood (the new beginning). In this narrative, he finds “no express mention made of any Sea, as a part assigned: But yet sometimes the Sea is assigned as a Bound to a part assigned.”⁸⁰ Meaning, he *assumes* the possibility of dominion over the sea. Thus, Selden redefined “property as historically, not theoretically, always private,” neutralizing the Bible as a source of divine and, therefore, natural law. History, favoring the powerful, became the “highest source of law.”⁸¹

Accordingly, in Chapter XX of Book I of *Mare Clausum*, Selden covered “Freedom of Commerce, Travel, and Passage, pretended to be common to all [...] from the very Nature of the Sea.”⁸² He compared passage at sea to passage at land (e.g.: “that [...] the Spaniards had a free passage over the Pyrenean Mountains into France”) and considered scenarios where Princes should be “wary and careful, that they admit no such strangers, or Commerce, where *pro re nata*, the Common-weal may receive any damage thereby.”⁸³

Leaving it more to the concerned nation’s discretion regarding dominion of the seas, Selden affirmed, “it is most evident from the Customs of all times, that free Passage (as they

call it) is wont ever to bee so limited by Princes in their Territories, that it is permitted or prohibited, according to the various concernments of the Publick Good [of the nation with dominion of the seas], and, not otherwise.”⁸⁴

In Chapter XXII, Selden addressed the Grotian argument “touching the vast magnitude of the Sea, and its inexhaustible abundance” more clearly from an individual, or self-ish, expediency viewpoint.⁸⁵ He noted that fish and other resources at sea were, in fact, exhaustible, unlike the lighting of a candle by another, the latter losing nothing of its own light. Besides that, however, he also contended that “by reason of other men’s Fishing, Navigation and Commerce [...] and others that enjoie it in his rights [...] less profits ariseth, then might otherwise bee received thereby.”⁸⁶ For the Englishman, thus, virtually all the seas’ uses were somewhat rivalrous, further propelling (the British) maritime territorialism and colonialism,⁸⁷ whereas Freitas and Grotius were, at least theoretically, more considerate of the seas’ *res communis* nature.

This section has considered Grotius’ argument for the free seas in ML’s major premises and expanded upon them. Their reading together with DJBP as well as comparing and contrasting them to the works of Freitas and Selden provides an improved understanding of how the Grotian major premises operate. While Grotius and Freitas clearly focused on societal expediency as a criterion for determining the community and division of the uses of the seas in view of the relevant factual setting, Selden takes a less axiomatic approach that is more deferential to history and, arguably, power-based injustices.

In the next section, on how the contemporary law of the sea has worked on the basis of Grotius’s premises, it should be recalled that the Dutchman also considered the role of positive law concerning the uses of the sea: “Nations, as well as private Persons, may give up not only that Right which is properly their own; but that also which they have in common with all Mankind, in Favour of him for whose Interest it may be.”⁸⁸ Therewith, Grotius recognized the important role that the voluntary (secondary) law of nations may play in the law of the sea. Obviously, this understanding was of minor significance in the modern law of the sea and was more helpful in settling particular disputes. In contrast, virtually the whole law of the sea today would fit this possibility. While it is true that such a perspective would relegate Grotius to somewhere near insignificance, I argue that the Grotian tradition, especially where it gives effect to long-term societal expediency, still has a role to play in the contemporary law of the sea.

IV. The Grotian Perspective and the Contemporary Law of the Sea

In this section, I examine to what extent developments in the contemporary law of the sea have welcomed a Grotian-based consideration of societal expediency. With that, I argue that the contemporary law of the sea, severely limiting the freedoms of the seas, is fairly Grotian and that the pursuit of societal expediency still is an axiomatic element orienting change and stability in this discipline.

To this end, this section is subdivided into four subsections. First, I examine why this natural law–rooted perspective should be used to assess law of the sea developments in the contemporary international legal order, which is rather positivist and voluntarist. In the

following two subsections, I analyze two of the biggest developments in the law of the sea of the twentieth century: the expansion of coastal States' jurisdiction, in particular the establishment of the exclusive economic zone (EEZ), and the creation of the internationalized seabed Area regime. Finally, in the last section, I will cover the BBNJ Agreement. I understand that these three areas are good general case studies to make the points advanced in the previous paragraph.

4.1. Natural Law's Place in the Contemporary Law of the Sea

Grotian natural law's irrelevance could be attested by its unsuitability for today's challenges. Thus, Oude Elferink's conclusion that "De Groot's writings and those of his contemporaries have little interest for addressing the challenges facing the modern law of the sea. Neither freedom of the high seas nor coastal State jurisdiction work miracles."⁸⁹ However, as argued herein, this view ignores the expediency-based nature of Grotius's arguments and its openness to changing rules and principles in view of changes in the "factual setting" as well as in the institutional and normative development of the international legal order.

Alternatively, one could oppose this exercise because States' maritime jurisdiction in the seventeenth and eighteenth centuries was premised on their effective occupation over parts of the ocean, whereas, since the nineteenth century, coastal State jurisdiction has been based on the "land dominates the sea" maxim.⁹⁰ In other words, the mere fact of sovereignty over coastal land territory entitles a State to maritime jurisdiction in conformity with its rights under positive international law.

But this opposition misses the point. As seen, Freitas and Grotius focused not on the extent of a State's power at sea but rather on the limitations of this power, especially regarding common, innocent, and non-rivalrous uses by other nations. These societal expediency-based considerations are also relevant in today's order where the "land dominates the sea" maxim is dominant. Moreover, with customary and treaty law disciplining more precisely the breadth of maritime zones, arguments for their extension have also needed societal expediency justification.

Nevertheless, the argument could be made—and not without reason—that the contemporary law of the sea is based on customs and treaties, agnostic to natural reason. Extensive codification, judicial precedents, and the professionalization of international law seem to preclude any need to resort to natural law or any higher ideals consideration. But this argument is dangerous and, in fact, epistemologically wrong.

It is dangerous, because, as explained in the introduction, it risks falling into the trap of managerialism, whereby legal operators are preoccupied with effectively applying the (existing) rules, with no critical attitude toward them.⁹¹ Naturally, these favor those supporting the status quo who tend to defend the "rules-based order" under the cloak of technique and, therewith, impartiality. There is, of course, a drop of cynicism in all that.

It is epistemologically wrong because, in virtue of its own nature, the law of the sea has been continuously invented and reinvented. New factual settings have introduced the necessity of regulating navigation more closely, enclosing coastal resources, and protecting the environment. New institutional and normative developments in the international legal order include not only the twentieth century's wave of codification, but also the decolonization process post-World War II. Newly independent states as

well as peoples in non-self-governing territories have acquired a previously unknown level of agency in the law of the sea.⁹²

Societal expediency considerations—or the dictamens of natural reason for humankind’s benefit, as asserted by Freitas—have historically inspired not only scholars in their natural law treatises but also States in their claims and negotiations in a more voluntarist setting.⁹³ Hence, the law of the sea’s very nature requires it to accommodate change. While it could be argued that States, in pursuing change, have only considered their (short-term) selfish interests, my point is that this discipline’s ontological origin orients its processes of change and stability toward the good of humankind—or societal expediency.

Finally, it could likewise be argued that any claim that an intended change is for the humankind’s benefit could be doubted: the cloak of humankind would be covering selfishness. But this relativism risks leading the legal interpreter to other traps—namely skepticism and indifference. In developing the law, the preoccupation is not with avoiding narratives, but with understanding them and promoting the necessary changes.⁹⁴ While “natural reason” might be somewhat inscrutable, “historical reason” is usually at hand for human beings made of flesh and bones.⁹⁵

4.2. *Was the Expansion of Coastal State Jurisdiction Anti-Grotian?*

Before and after the first and second Law of the Sea conferences (1958 and 1960), the prospect of expanding coastal State jurisdiction incentivized academic production, particularly in the United States, warning against the limitations on the freedom of the seas, construed as the preeminent interest of the international community at sea.⁹⁶ The argument was that coastal states seeking new and larger maritime zones were putting forward an egoistic and nationalistic agenda, threatening the common seas.⁹⁷ In this section, from a Grotian perspective, I challenge the freedom of the seas’ sacralization and the demonization of coastal State jurisdiction.

That the free seas are usually an illusion can be explained in two ways. First, as Freitas expressed regarding the Indian Ocean, the free seas could very easily degenerate into anarchy. Therefore, the “common uses” supposedly favored by the freedom of the seas are severely undermined by disorder. Second, as affirmed by Potter in 1924, “freedom from all authority at sea [...] is impossible from a practical viewpoint, and undesirable. Freedom from having the law dictated by one power, as by Britain, can come only matching the naval strength of that power. That not all states can do.”⁹⁸ It is particularly curious that a full-fledged freedom of the seas was only affirmed in the nineteenth century, in the *Pax Britannica*’s consolidation—always to the resistance of less navally powerful coastal States.⁹⁹ This aggressive free seas doctrine was by no means inspired by societal expediency as Grotius advanced, especially later in DJBP.

In keeping with considerations of societal expediency and taking his legal realism offshore in the 1940s and 1950s, Stanford law professor Joseph Walter Bingham was a solitary voice in the US that helped shape “modern ocean law”¹⁰⁰:

[N]o lover of justice can study the history of coastal fisheries and the economics of their use without reaching a conviction that the cases of the coastal states—especially such small coastal states as Norway and Portugal—have conclusive arguments of justice in their favor and that the Anglo-American doctrine which favored aggressive destructive

invasions by large foreign commercial organizations, was against that justice to small states as well as large which should be a reality and not merely an academic theory of international law.¹⁰¹

From this perspective, denying coastal States the right to legally protect their littoral populations' sea-based activities would not conform to appraisals of higher ideals concerning the community and division of the oceans in view of the changing relevant circumstances. Accusing them of nationalism and egoism oversimplified the issues at stake¹⁰² and missed the point as to why coastal States' having limited maritime rights is societally expedient.¹⁰³ Perhaps, the better-known historical struggle for coastal State jurisdiction expansion was the one spearheaded by Latin American States, at the origin of the EEZ.¹⁰⁴

It followed the two 1945 Truman Proclamations. While the first proclamation, on the resources of the continental shelf,¹⁰⁵ is more famous, it was the second one, on conservation areas on the high seas adjacent to US territorial waters,¹⁰⁶ that spurred the avalanche of Latin American "territorialism."¹⁰⁷ But the US and Latin America had two diametrically opposing positions. On the one hand, the US argument for establishing conservation areas on the high seas relied on concepts such as "maximum sustainable yield," to demonstrate that unlimited freedom in the designated areas led to overfishing. At the same time, the US contested other States' claiming economic zones without such a "scientific pedigree," thus preserving the freedom of the seas.¹⁰⁸

Conversely, the Pacific-facing South American Chile, Ecuador, and Peru worried that foreign fishing vessels would deplete their coastal resources. In the twentieth century, it had become clear that developed countries had more advanced technologies than developing ones, fomenting the fear that, without legal protection, developed countries would deplete a developing country's coastal resources before it had the technology to exploit them itself.¹⁰⁹

As such, the 1952 Santiago Declaration adamantly affirms that territorial sea limits and the contiguous zone were "*inadequate for the purposes of the conservation, development and exploitation [for the benefit of the signatories' populations]*" (emphasis added).¹¹⁰ This language is illustrative as it refers to the "inadequateness" of the short limits of territorial waters. It implies an obvious reflection about what is societally expedient regarding the community and division of the oceans. With technological developments in the developed world, it did not matter where: the freedom of the seas provoked the "tragedy of the commons" in an unprecedented manner in maritime history, with coastal populations being particularly disfavored.¹¹¹

The Santiago Declaration also propelled the famous 200 M extension of territorial waters. In fact, in hindsight, appropriation of marine resources in the form of the EEZ arguably does not present an effective solution to the commons problem.¹¹² It is also true that the 200 M number could be considered arbitrary¹¹³ or, at any rate, not informed by natural reason. Nevertheless, it reflects a persuasive case of *historical reason*, especially considering that the 200 M off the South American Pacific-facing coast covers more or less precisely the Humboldt, or *Peru*, current, responsible for bringing a wealth of living resources to Chile, Ecuador, and Peru's coasts.¹¹⁴

Developing "historical reason,"¹¹⁵ it is useful to recall here that the community and division of the seas, as per Freitas' and Grotius' natural law, should be governed by rules and principles that change in accordance with the evolving factual setting. In *ML*, Grotius was particularly mindful of the challenges of dividing the oceans, as he affirmed:

God, who is both the distributor and first author of the division and distinction of both land and sea, hath given an understanding heart to man for the same effect as well as for all other necessary actions wherein he hath to employ himself, so that to a very wonder God hath diversely informed men by the helps of the compass, counting of courses, sounding, and other ways to find forth and to design *finitum in infinito* so far as is expedient for the certain reach and bounds of seas properly pertaining to any prince or people.¹¹⁶

It is indeed clear that the community and division of the seas happen in *history*, through human endeavor.

In fact, the law of the sea's institutional and normative evolution favored the coordination of consistent positions among developing countries—first in Latin America and then in Africa, Asia, and countries like Australia, Canada, New Zealand, and Norway.¹¹⁷ The possibility of identifying customs more easily, including through the activity of international courts and tribunals to clarify and progressively develop the law, and the twentieth century's codification fever have added to the precisizing and positivizing of the regimes governing maritime zones under national jurisdiction.

Throughout all these developments, the process's rationale, as historical struggles based on considerations of societal expediency, has been essentially the same for centuries.

4.3. *The Deep Seabed Area Regime: "Who says humanity, wants to deceive?"*

Whether the Area regime in UNCLOS and the 1994 Agreement is consistent with the Grotian law of the sea could have a straightforward answer: yes, for the CHM principle governing it is an expression of the *res communis* nature of the seas.¹¹⁸ As the reader may now guess, my view is that this is not necessarily correct. The Area regime's establishment is essentially Grotian but also limited in terms of advancing societal expediency.

The deep seabed problem was, first and foremost, one of legal certainty and stability. As is well known, States declaring continental shelves typically relied on the natural prolongation criterion, seldom projecting limits to their extensions. The 1958 Convention on the Continental Shelf provided as a limit the 200m depth criterion "or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas."¹¹⁹ In other words, there was no precise limit.¹²⁰ It was in this context that Maltese Ambassador Arvid Pardo made his historic speech before the UN General Assembly in 1967:

The process [of declaring and extending the continental shelf] has already started and will lead to a competitive scramble for sovereign rights over the land underlying the world's seas and oceans, surpassing in magnitude and its implications last century's colonial scramble for territory in Asia and Africa. [...] Between the very few dominant powers, suspicions and tensions would reach unprecedented levels. Traditional activities on the high seas would be curtailed and, at the same time, the world would face the growing danger of permanent damage to the marine environment.¹²¹

The internationalization of the deep seabed Area, also made possible by the setting of limits to the continental shelf, served societal expediency not necessarily linked to equity but to legal certainty.¹²² Indeed, without a limit to States' claims over the sea, it was feared that there would be a race to the bottom (of the sea, literally), threatening international peace and security, as well as the legitimate freedoms of the seas and the

marine environment. While industrialized countries expressed this concern, Pardo was probably more preoccupied with less-developed States that would be ill-equipped in this race.¹²³

In terms of the actual Area regime's equitability, Grotian concrete ideas were agnostic to benefit-sharing considerations, for example. This was probably due to institutional and normative limitations of the international legal order at that time. In the seventeenth century, the seas were either "free" or somewhat under a particular nation's control. Based on societal expediency, a nation could establish jurisdiction over the seas when a particular use was rivalrous (e.g., fisheries)—and it was reasonable for nations to secure these uses—or to ensure common use by all nations, such as by securing navigation in combating piracy or placing navigational aids. The seas' *res communis* nature was never lost, but the law's rudimentary institutional and normative development at the time limited it in giving more effect to societal expediency.

The institutional possibility of internationalizing the Area presents a novel alternative to advancing the *res communis* nature of the seas, now including equitable benefit-sharing of the riches held in common. The declaration of the Area and its (mineral) as the "common heritage of mankind" in UNCLOS Article 136 is obviously a welcome development, but I recall here Gallindo's quotation of Carl Schmitt referring to the deep seabed: "[w]ho says humanity wants to deceive."¹²⁴ Just like depoliticization in the form of managerialism masks political economies, so do grand claims purporting to represent humankind.¹²⁵ The rhetoric involved here is simple: a particular set of rules is apolitical and on behalf of humankind, hence equitable and not subject to criticism.

However, the Area regime fell short of advancing its *res communis* nature as well as it could have. As insightfully demonstrated by Ranganathan,¹²⁶ during the Third Conference and later with the 1994 Agreement, the Area regime was so weakened that it essentially became a system of concessions—or "managed freedom"¹²⁷—for companies whose beneficial owners are in the Global North.

More specifically, the current regime has fewer tangible benefits for the developing world, including technology transfer and funding the "Enterprise" of the International Seabed Authority. The argument of developed countries, favoring a managed freedom and weakening the Enterprise and modalities of benefit-sharing, always focused on "commercial viability," which the developing world accepted as part of the UNCLOS package deal—the 1994 Agreement was later accepted so that UNCLOS could enter into force.¹²⁸ The commercial viability basis of the Area regime in turn consolidated an extractive imaginary¹²⁹ and obfuscated other societally relevant interests in the deep seabed, especially concerning ecological balance and sociocultural relationships.¹³⁰

4.4 The BBNJ Agreement as a Grotian Endeavor

The urgency of adopting the BBNJ Agreement derives from a simple, yet fundamental, observation: the oceans are no longer limited to sparse shipping and coastal fishing. These activities' increased intensity, the prominence of ocean-based carbon dioxide removal technologies in the race for net zero GHG emissions, the potential for marine genetic resources to fuel the trillionaire industries in pharmaceuticals and cosmetics, the construction of artificial structures at sea: all these, among others, have recently come to the fore requiring

regulation and coordination, especially in ABNJ. In view of the changes in the “factual setting,” the law of the sea needed to respond.¹³¹

Hence, the BBNJ Agreement covers four main issues besides cross-cutting ones. The first issue, which refers to an ideational gap in UNCLOS, concerns marine genetic resources (MGRs). Following the example left by the 1992 Convention on Biological Diversity, applicable only to areas within national jurisdiction in the case of MGRs,¹³² their regulation in ABNJ is fundamental if the use of marine biodiversity beyond national jurisdiction is to be regulated at all.¹³³ The other three issues concerned areas in need of further regulation for the implementation of obligations in UNCLOS concerning the protection and preservation of the marine environment: area-based management tools (ABMTs); environmental impact assessment (EIA); and capacity building and transfer of marine technology.

In dealing with those matters, the BBNJ Agreement represents yet another unfolding of the law of the sea’s institutional and normative development. Like the 1995 Fish Stocks Agreement,¹³⁴ the 2023 Agreement supposedly “respect[s] the balance of rights, obligations and interests set out in the Convention.”¹³⁵ Once it enters into force, it will implement rules and principles already provided for in UNCLOS in a manner that enables conservation and sustainable use of biodiversity beyond national jurisdiction.

Undoubtedly, this advances long-term societal expediency since it covers activities that, if left unregulated, could threaten the common use all humanity derives from marine biodiversity, including marine ecosystemic products and services.¹³⁶ The BBNJ Agreement’s preamble is remarkable in that it envisions long-term societal expediency, mentioning the Intergovernmental Conference that adopted it as desirous “to act as stewards of the ocean in [ABNJ] on behalf of present and future generations.”

The case of MGRs is a particularly eloquent illustration of how societal expediency is innovatively advanced through the BBNJ Agreement. All States may collect MGRs in ABNJ by virtue of their freedom of the seas, as enshrined in UNCLOS Article 87(1).¹³⁷ But the matter is not specifically regulated in UNCLOS. In practice, States or juridical and natural persons under their jurisdiction could collect MGRs and register patents that used them. Because of widely ratified multilateral intellectual property treaties, those patents would be valid in virtually all jurisdictions on Earth.¹³⁸ In turn, this would preclude other States and their persons from—without a license—using or, in any case, benefiting from those resources found in ABNJ. Ergo, the use of MGRs is rivalrous in view of international IP law, with developed countries taking the lead in the race: the international legal order’s very normative development made the use of MGRs potentially rivalrous.

Unlike in coastal areas, developing States could not legally protect their access to these resources by declaring jurisdiction over ABNJ. This would not be feasible for obvious reasons, and, in any case, the “land dominates the sea” maxim reigns in the contemporary law of the sea.¹³⁹ Fortunately, the international legal order has institutionally and normatively developed in such a way that regulating this kind of activity is not only possible, but its implementation can also be largely steered by international institutions.

While MGR regulation in the Agreement covers notification obligations as well as monetary and non-monetary benefit-sharing,¹⁴⁰ the institutions include an Access and Benefit-sharing Committee, a Conference of the Parties (CoP), a Clearing-House Mechanism, a Financial Mechanism, an Implementation and Compliance Committee, and a compulsory dispute settlement mechanism largely similar to the one in UNCLOS Part XV.¹⁴¹ It remains

to be seen how Part II (MGRs) will be implemented. In particular for its equitability, the modalities of monetary benefit-sharing are still subject to decisions by the CoP. There is, however, hope to be more optimistic about it than with respect to deep seabed mining in the Third Conference. The CoP decisions shall be taken by parties that have already ratified the BBNJ Agreement and by a three-quarters majority vote if consensus is not reached.

Likewise, Parts III (ABMTs) and IV (EIAs) further regulate activities which are in fact encompassed by the freedoms of the sea. Their regulation, implemented by a robust institutional setting, including a Scientific and Technical Body, is set to advance long-term societal expediency particularly in view of a changing factual setting. Naturally, there are still institutional limitations, and the Agreement left some significant leeway to individual States in regulating their activities in ABNJ.

Consider, for instance, Article 34(1), which provides that it is the “Party under whose jurisdiction or control a planned activity falls [that] shall be responsible for determining if it may proceed.” The Scientific and Technical Body (STB) will be competent to make comments and recommendations amid the process for EIAs; other parties will also have opportunities to issue their own comments; the CoP will have the power to adopt (non-binding) standards and guidelines.¹⁴² Still, the decision is to be taken by the party concerned. Another example is Article 23(5), stipulating the parties’ right to object to the establishment of ABMT if: (a) the CoP decision establishing it is inconsistent with the Agreement or the rights and duties of the objecting Party in UNCLOS; (b) The decision unjustifiably discriminates against the objecting Party; or (c) the Party cannot practicably comply with the decision.

All BBNJ bureaucracy could prove worthless with these “loopholes.” It is thus unsurprising that a critical legal scholar has criticized the BBNJ text for its “insistence on the high seas, suggest[ing] the principle of ‘Freedom of the High Seas’ having more truck than the ‘Common Heritage of Humankind.’ (The ghost of Grotius lingers.)”¹⁴³ But this sort of criticism not only gets Grotius wrong but also misses the point of the Agreement. Legally, the freedoms cover the *rights of use* that every state has on the high seas. The BBNJ Agreement’s purpose was never to eliminate, but to regulate them. Moreover, while these “loopholes” (or language safeguarding the freedoms of the seas) might tranquilize states in ratifying the Agreement, I understand that they will not significantly impact its implementation.

First, because States’ decisions taken under Articles 23(5) and 34(1) shall not be discretionary but within the bounds of the law, a party can only object to a CoP decision establishing an ABMT in three instances and, in any case, it has marine environmental obligations, such as in UNCLOS Articles 192 and 194(1). Similarly, Article 34(1) is more of a procedural than substantive nature: in authorizing an activity that is, e.g., in opposition to the STB or other parties, the State concerned will be under greater pressure for its diligent compliance with its general and specific obligations to protect and preserve the marine environment. Second, through all its bureaucracies, the BBNJ Agreement will promote a multilateralization of States’ decision-making regarding activities in ABNJ. The scrutiny from civil society, other States, and BBNJ institutions should heavily influence this decision-making process. Third, satisfying academics at least, substantive and procedural obligations in the Agreement are covered by a compulsory dispute settlement system.

Finally, the Agreement was certainly the result of several compromises reached by entities that traditionally wish to preserve their *marge de manœuvre*. Against this backdrop, it is unquestionable, to the extent allowed by political and legal feasibility, that the BBNJ Agreement is fairly Grotian.

V. Concluding Remarks

Grotius is such a “rock star” in several disciplines that to claim originality in an academic paper becomes quite a bold task. Intellectual historians have covered Grotius’s ideas and their context far better than I have. Philosophers have a much tighter grasp of Grotius’ natural law, including his theory of property as applied to the seas. Yet, I understand that it is fair to say that no scholar, especially in the law of the sea, has avoided associating Grotius with the freedom of the seas as much as I have.

His relevance in the contemporary law of the sea has been limited to that of historical reference to explain the origin of the “freedom of the seas” that is now withering. While this is not incorrect, it fails to appreciate the full extent of Grotius’ contribution, which is not only the historical, but also the ontological origin of the law of the sea. If it is true that his conclusions for the free seas are untenable today, it is truer that his premises have never left the practice and theorization of this discipline.

In this paper, I focused on his major premises, for his conclusions were contingent upon his time’s factual setting and the institutionally and normatively limited international legal order (minor premises). His major premises, though flexible, are not hollow. They serve to orient the community and division of the seas—more precisely, of the several uses of the seas. As repeated herein, Grotius’ argumentative structure was more concerned with ascertaining an expedient rule in the law of nature than with establishing freedom as an end in itself.

From a societal perspective, it was generally sensible for rivalrous-use-goods to be subject to appropriation, whereas subjecting non-rivalrous-use-goods to appropriation was selfishness. The analysis of whether a good lends itself or not to rivalrous use is a factual matter (minor premise). Similarly, the precise modality of community and division of the seas depends on the law’s institutional and normative development.

The centuries that followed Grotius complicated this logical reasoning tremendously. There are now many other uses beyond fishing and navigation, and they are rivalrous among themselves. New developments in the international legal order have created new possibilities for conciliating these different uses. A careful balancing exercise of freedoms, sovereign rights, jurisdiction, control, and sovereignty can be considered an expedient mix of “community and division of the oceans,” at least in terms of political acceptability in an international society fraught with power inequalities.

Ironically, “societal expediency” discussions are perhaps more important for the law of the sea discipline in today’s voluntarist juspositivism than in yesterday’s jusnaturalism: yesterday, the arena was more intellectual; today, the arena is more political and the arguments orienting change or stability must convince more than the intellect. These conclusions can be fairly abstracted from our findings in section IV, especially while covering the expansion of coastal State jurisdiction and the deep seabed Area mining regime.

In this scheme of things, contestations may appeal to a “universal juridical conscience”—the *material* source of international law *par excellence*, according to Cançado Trindade’s doctrine.¹⁴⁴ I easily concede that international law today is revealed by *formal* sources, but I argue with vehemency that material ones give birth to the law. This is especially evident where the formal sources present inadequate or insufficient outputs, such as in the law of the sea—a part of international law particularly prone to change.

In summary, I have argued here that the Grotian origin of the “free seas” does not erect it to the rank of “governing paradigm.” Instead, the Grotian pursuit of societal expediency axiomatically integrates the “universal juridical conscience” of sea lawyers.

Notes

1. Hugo Grotius, *The Rights of War and Peace (Book II)*, ed. Richard Tuck, trans. Jean Barbeyrac (Indianapolis: Liberty Fund, 2005), p. 429.
2. United Nations Convention on the Law of the Sea, December 10, 1982, 1833 UNTS, p. 397.
3. Philip Allott, “Power Sharing in the Law of the Sea,” *American Journal of International Law* 77 (1983), p. 1.
4. MCW Pinto, “What’s Wrong with International Law?,” in Cedric Ryngaert, Erik J. Molenaar, and Sarah Nouwen (eds), *What’s Wrong with International Law?* (The Hague: Brill Nijhoff, 2015), p. 372.
5. See, in particular, JNK Mansell, *Flag State Responsibility: Historical Development and Contemporary Issues* (Heidelberg: Springer 2009), p. 40ff.
6. Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, June 19, 2023, UN Doc. A/CONF.232/2023/4.
7. Wolfgang Friedmann, “Selden Redivivus—Towards a Partition of the Seas?,” *American Journal of International Law* 65 (1971), p. 757; John Selden, *Of the Dominion, or, Ownership of the Sea, Two Books*, trans. Marchamont Nedham (London: William Du-Gard, 1652).
8. John Logue, “The Revenge of John Selden: The Draft Convention on the Law of the Sea in the Light of Hugo Grotius’ Mare Liberum,” *Grotiana* 3(1) (1982), p. 27, <https://doi.org/10.1163/187607582x00042>.
9. Myres McDougal, “Concluding Remarks,” in *International Law and the Grotian Heritage* (The Hague: TMC Asser Instituut, 1985), p. 165.
10. Sarah Louise Lothian, *Marine Conservation and International Law: Legal Instruments for Biodiversity Beyond National Jurisdiction* (London: Routledge 2022), p. 58.
11. Martti Koskeniemi, “The Politics of International Law—20 Years Later,” *European Journal of International Law* 20 (2009), p. 14–18, <https://doi.org/10.1093/ejil/chp076>.
12. This paper starts with ML in 1609, but it is true that since the Middle Ages there had been many writings in defense of one or another *dominium maris* claims and a few defending the freedom of the seas. A concise recollection of these “books,” from the middle age to the end of the seventeenth century, can be found in Ernest Nys, *Les origines du droit international* (Paris: Thorin & Fils, 1894), p. 379ff.
13. See Arnold Raestad, *La Mer territoriale, études historiques et juridiques* (Paris: A. Pedone, Éditeur, 1913), p. 11–61.
14. Yoshifumi Tanaka, *The International Law of the Sea* (Cambridge University Press, 2019), p. 22–23.
15. From 1580 to 1640, the Spanish king also held the Crown of Portugal. This is why sometimes reference is made to Spain even though Portugal is the relevant nation.
16. Hugo Grotius, *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), p. 44.
17. Hugo Grotius, “Commentary on the Law of Prize and Booty,” ed. Martine Julia van Ittersum (Indianapolis: Liberty Fund, 2006).
18. For a contextualist approach to the development of the Grotian *Mare Liberum* surrounding the *Santa Catarina* incident, see, in particular: Martine van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies, 1595–1615* (The Hague: Brill Nijhoff, 2006).

19. Anthony Pagden, ed., *The Burdens of Empire: 1539 to the Present* (Cambridge University Press, 2015), p. 158.
20. Martine Julia Van Ittersum, "Preparing Mare Liberum For The Press: Hugo Grotius' Rewriting of Chapter 12 of *De Iure Praedae* in November-December 1608," *Grotiana* 26–28 (2007), p. 249.
21. Hugo Grotius, *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), p. 77.
22. Eric Fletcher, "John Selden (Author of *Mare Clausum*) and His Contribution to International Law," *Transactions of the Grotius Society* 19 (1933), p. 7.
23. For example: (i) already in chapter one of ML, he relied on the Spanish School's *jus communicationis*, particularly Francisco de Vitória's; (ii) his assertions regarding the freedom of the seas essentially built upon the work of Spanish School, particularly Vázquez de Menchaca's (see note 28); (iii) as reported by Walker, in defending Francis Drake's plundering of Spanish ships in the 1580s, Queen Elizabeth had replied to the Spanish ambassador that "[countries] may also freely navigate that vast Ocean, seeing the use of the Sea and Ayre is common to all. Neither can any title to the Ocean belong to any people, or private man; for as-much as neither Nature, nor regard of the publike use, permitteth any possession thereof"; (iv) In the first half of the sixteenth century, France already challenged Spanish *dominium maris* claims, with Grewe noting that, in 1533, King Francis I issues letters of marque stating that everyone was free "to navigate in the common sea." Hugo Grotius, *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), pp. 12, 42–43; Thomas Alfred Walker, *A History of the Law of Nations* (Cambridge University Press, 1899), p. 161; Wilhelm G. Grewe, *The Epochs of International Law*, trans. Michael Byers (Berlin: De Gruyter, 2013), p. 260.
24. Alison Reppy, "The Grotian Doctrine of the Freedom of the Seas Reappraised," *Fordham Law Review* 19 (3) (1950), p. 272.
25. Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge University Press, 2009), p. 131.
26. Grotius covers those mostly in chapters two and seven of ML. Hugo Grotius, *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004).
27. *Occupatio* in Latin, in Grotius' works, can be understood as possession. Richard Perruso, "The Development of the Doctrine of Res Communes in Medieval and Early Modern Europe," *Tijdschrift voor Rechtsgechiedenis/Legal History Review* 70 (2002), p. 91.
28. See *infra* notes 39, 48, and 49.
29. Menchaca himself found support in Roman law and medieval and early-modern scholars, such as Ubaldis and Alfonso de Castro. The novelty of his argument lies in the emphasis on the distinction between primary and secondary law of nations and on his expediency criteria. Fernando Vázquez de Menchaca, *Controversias Fundamentales y Otras de Más Frecuente Uso (Libros I y II)*, trans. Fidel Rodríguez (Valladolid: Editorial Maxtor, 2023).
30. Hugo Grotius, *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), p. 20–21.
31. *Ibid.*, p. 22–23.
32. *Ibid.*, p. 426–427.
33. *Ibid.*, 22–23.
34. Fernando Vázquez de Menchaca, *Controversias Fundamentales y Otras de Más Frecuente Uso (Libros I y II)*, trans. Fidel Rodríguez (Valladolid: Editorial Maxtor, 2023), Book II, Chapter LXXXIX.
35. Hugo Grotius, *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), p. 25; Fernando Vázquez de Menchaca, *Controversias Fundamentales y Otras de Más Frecuente Uso (Libros I y II)*, trans. Fidel Rodríguez (Valladolid: Editorial Maxtor, 2023), Book II, Chapter LXXXIX, No. 23–45.
36. Hugo Grotius, *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), p. 31–32.
37. Camilo Barcia Trelles, "Fernando Vazquez de Menchaca (1512–1569): L'école espagnole du Droit International du XVIe siècle," *Hague Academy Collected Courses* 67 (1939), p. 501–502.
38. Hugo Grotius, *The Rights of War and Peace (Book II)*, ed. Richard Tuck, trans. Jean Barbeyrac (Indianapolis: Liberty Fund, 2005), p. 429
39. *Ibid.*, p. 78.
40. *Ibid.*, p. 47.
41. *Ibid.*, p. 20ff.
42. Fernando Vázquez de Menchaca, *Controversias Fundamentales y Otras de Más Frecuente Uso*

(*Libros I y II*), trans. Fidel Rodríguez (Valladolid: Editorial Maxtor, 2023), Book II, Chapter LXXXIX, No.15–30.

43. Hugo Grotius, *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), p. 27.

44. On Grotius's apparent novelty in advancing this argument, see Martin J. Schermaier, "Res Communes Omnium: The History of an Idea from Greek Philosophy to Grotian Jurisprudence," *Grotiana* 30 (2009), p. 35–36.

45. See, in particular, Andrea Weindl, "Grotius's Mare Liberum in the Political Practice of Early-Modern Europe," *Grotiana* 30 (2009), p. 131.

46. See note 39.

47. Hugo Grotius, *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), p. 26.

48. *Ibid.*, p. 463.

49. *Ibid.*, p. 463.

50. *Ibid.*, p. 465.

51. *Ibid.*, p. 470.

52. *Ibid.*, p. 470.

53. In the reading of Benton—who distinguishes, in Grotius, jurisdiction (control) from dominion and ownership—"as common property, the sea could not be owned, but it could be controlled." Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge University Press, 2009), p. 123.

54. Hugo Grotius, *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), p. 27.

55. *Ibid.*, p. 165–166

56. Serafim de Freitas, *Do Justo Imperio Asiático dos Portugueses* (Lisbon: Instituto de Alta Cultura de Lisboa, 1959), p. 279–280.

57. *Ibid.*, p. 266.

58. *Ibid.*, p. 107.

59. *Ibid.*, p. 107.

60. *Ibid.*, p. 108.

61. Theoretically, in an uncorrupted state, human beings would be able to live harmoniously, with everything held in common. From this perspective, the very idea of navigation (to go to another place to fulfill whatever need) was seen as a consequence of our corrupt state not only by Freitas, but also by Menchaca.

62. Serafim de Freitas, *Do Justo Imperio Asiático dos Portugueses* (Lisbon: Instituto de Alta Cultura de Lisboa, 1959), p. 110.

63. *Ibid.*, p. 258.

64. CH Alexandrowicz, "Freitas Versus Grotius (1959)," in David Armitage and Jennifer Pitts (eds), *The Law of Nations in Global History* (Oxford University Press 2017), p. 132.

65. Serafim de Freitas, *Do Justo Imperio Asiático dos Portugueses* (Lisbon: Instituto de Alta Cultura de Lisboa, 1959), p. 258.

66. CH Alexandrowicz, "Freitas Versus Grotius (1959)," in David Armitage and Jennifer Pitts (eds), *The Law of Nations in Global History* (Oxford: Oxford University Press 2017), p. 133.

67. Serafim de Freitas, *Do Justo Imperio Asiático dos Portugueses* (Lisbon: Instituto de Alta Cultura de Lisboa, 1959), p. 291ff.

68. Hugo Grotius, *The Rights of War and Peace (Book II)*, ed. Richard Tuck, trans. Jean Barbeyrac (Indianapolis: Liberty Fund, 2005), p. 470.

69. Serafim de Freitas, *Do Justo Imperio Asiático dos Portugueses* (Lisbon: Instituto de Alta Cultura de Lisboa, 1959), p. 115.

70. *Ibid.*, p. 115

71. *Ibid.*, p. 115

72. *Ibid.*, p. 116

73. *Ibid.*, p. 118–120.

74. *Ibid.*, p. 285.

75. *Ibid.*, p. 284.

76. See, more generally: George Norman Clark and WJM van Eysinga, *The Colonial Conferences between England and the Netherlands in 1613 and 1615*, 2 vols., *Bibliotheca Visseriana XV and XVII* (2ed, The Hague: Brill 1940).

77. WSM Knight, "Grotius in England: His Opposition There to the Principles of Mare Liberum," *Transactions of the Grotius Society* 5 (1919), p. 29.
78. *Ibid.*, p. 28.
79. John Selden, *Of the Dominion, or, Ownership of the Sea, Two Books*, trans. Marchamont Nedham (London: William Du-Gard, 1652).
80. *Ibid.*, p. 25.
81. Mark Somos, "Selden's Mare Clausum: The Secularisation of International Law and the Rise of Soft Imperialism," *Journal of the History of International Law* 14 (2012), p. 298–299, <https://doi.org/10.1163/138819912x13333544461551>.
82. John Selden, *Of the Dominion, or, Ownership of the Sea, Two Books*, trans. Marchamont Nedham (London: William Du-Gard, 1652), p. 123ff.
83. *Ibid.*, p. 124–125.
84. *Ibid.*
85. *Ibid.*, p. 141.
86. *Ibid.*
87. Mark Somos, "Selden's Mare Clausum: The Secularisation of International Law and the Rise of Soft Imperialism," *Journal of the History of International Law* 14 (2012), p. 325–326.
88. Hugo Grotius, *The Rights of War and Peace (Book II)*, ed. Richard Tuck, trans. Jean Barbeyrac (Indianapolis: Liberty Fund, 2005), p. 474; Hugo Grotius, *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), p. 31.
89. Alex Oude Elferink, "De Groot—A Founding Father of the Law of the Sea, Not the Law of the Sea Convention," *Grotiana* 30 (2009), p. 166.
90. A summary is provided in Bing Bing Jia, "The Principle of the Domination of the Land over the Sea: A Historical Perspective on the Adaptability of the Law of the Sea to New Challenges," *German Yearbook of International Law* 57 (2014), p. 1.
91. Martti Koskenniemi, "The Politics of International Law—20 Years Later," *European Journal of International Law* 20 (2009), p. 14–18, <https://doi.org/10.1093/ejil/chp076>.
92. In this regard, Pinto's suggestions are interesting. He underscored that, for Grotius, the "Law of Nations ha[s] in view the advantage not of particular States, but of the *great society of States*" (emphasis added). Pinto placed the Dutchman as the writer of an emerging "developing" former colony (of Spain) seeking the recognition of the "great society of States," also in the context of the law of the sea. MCW Pinto, "What's Wrong with International Law?" in Cedric Ryngaert, Erik J. Molenaar, and Sarah Nouwen (eds), *What's Wrong with International Law?* (The Hague: Brill Nijhoff, 2015), p. 365–366.
93. In writing his 1950 famous Memorandum on the Regime of the High Seas, commissioned by the UN Secretariat, Gidel noted the "*apparition de la notion d'intérêt commun*" in the end of the nineteenth century, with the first environmental concerns at sea in the international legal arena. Naturally (societal) expediency was considered before this by each State individually in claiming specific maritime rights. *Memorandum on the Regime of the High Seas (Prepared by the Secretariat)*, A/CN.4/32 (1950), p. 73.
94. Similarly, in an epochal monograph, Koskenniemi noted that his essays did not seek "a neutral description of the past 'as it actually was'—that sort of knowledge is not open to us—but a description that hopes to make our present situation clearer to us and to sharpen our own ability to act in the professional contexts that are open to us as we engage in our practices and projects. In this sense, it is also a political act." Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press, 2001), p. 10.
95. I borrow this concept from Spanish philosopher Ortega y Gasset's "razón histórica." He posited that humans have "no nature, but history," and that reason should not focus on what *is* (static)—or natural reason—but what *becomes* (dynamic). Historical reason can be considered an aspect of Ortega y Gasset's more holistic "vital reason" (or "razón vital"). See Felix Alluntis, "The 'Vital and Historical Reason' of José Ortega y Gasset: Introductory Note," *Franciscan Studies* 15 (1955), p. 60.
96. E.g.: Arthur H. Dean, "The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas," *American Journal of International Law* 54 (1960), p. 751, <https://doi.org/10.2307/2195140>; Bernard G. Heinzen, "The Three-Mile Limit: Preserving the Freedom of the Seas," *Stanford Law Review* 11 (1958), p. 597, <https://doi.org/10.2307/1226663>.
97. E.g.: Josef L. Kunz, "Continental Shelf and International Law: Confusion and Abuse," *American Journal of International Law* 50 (1956), p. 828, <https://doi.org/10.2307/2195625>; Myres S. McDougal and William T. Burke, "Crisis in the Law of the Sea: Community Perspectives versus National Egoism," *Yale Law Journal* 67 (1958), p. 539, <https://doi.org/10.2307/794096>.

98. Pitman B. Potter, *The Freedom of the Seas in History, Law, and Politics* (New York: Longmans, Green and Co., 1924), p. 247.
99. Ram Prakash Anand, "'Tyranny' of the Freedom-of-the-Seas Doctrine," *International Studies* 12 (1973), p. 416.
100. Harry N Scheiber, "Taking Legal Realism Offshore: The Contributions of Joseph Walter Bingham to American Jurisprudence and to the Reform of Modern Ocean Law," *Law and History Review* 26 (2008), p. 649, <https://doi.org/10.1017/s073824800002601>.
101. Joseph Walter Bingham, "The Continental Shelf and the Marginal Belt," *American Journal of International Law* 40 (1946), p. 177, <https://doi.org/10.1017/s0002930000157938>.
102. Max Sørensen, "The Law of the Sea," *International Conciliation* 520 (1958), p. 199.
103. A significant caveat with respect to this argument is that more than a quarter of States in the world are either landlocked or geographically disadvantaged. In assessing societal expediency, there would be a need to conceptualize their relationship with the oceans. Perhaps it is a fact of life that they are less concerned with the "maritime" because of their geography—the contemporary law of the sea is indeed oriented by the "land dominates the sea" principle. Alternatively, their stake in the oceans as *res communis* can be reaffirmed in several ways. For example, regarding their rights regarding foreign EEZs, see UNCLOS Arts. 69–72.
104. F.V. García-Amador, "The Origins of the Concept of an Exclusive Economic Zone: Latin American Practice and Legislation," in Francisco Orrego-Vicuña (ed), *The Exclusive Economic Zone: A Latin American Perspective* (New York: Routledge, 1984), p. 7ff.
105. "Proclamation No. 2667—Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental," in *Exec. Order* 9,633, 3 C.F.R., 1943-1948 Comp., 437 (September 28, 1945).
106. "Proclamation No. 2668—Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas," in *Exec. Order* 9,634, 3 C.F.R., 1943-1948 Comp., 437 (September 28, 1945).
107. FV Garcia-Amador, "The Latin American Contribution to the Development of the Law of the Sea," *American Journal of International Law* 68 (1974), p. 33ff.
108. Carmel Finley and Naomi Oreskes, "Maximum Sustained Yield: A Policy Disguised as Science," *ICES Journal of Marine Sciences* 70 (2013), p. 247–8, <https://doi.org/10.1093/icesjms/fss192>.
109. Ram Prakash Anand, *Origin and Development of the Law of the Sea: History of International Law Revisited* (The Hague: Brill Nijhoff, 1983), 165.
110. "Declaration on the Maritime Zone," Aug. 18, 1952, 1006 U.N.T.S. 325.
111. Garrett Hardin, "The Tragedy of the Commons," *Science* 162 (1968), p. 1243.
112. But see Gabriel Englander, "Property Rights and the Protection of Global Marine Resources," *Nature Sustainability* 2 (2019), p. 981, <https://doi.org/10.1038/s41893-019-0389-9>.
113. Hollick refers to "the numerous ingenious legal and economic justifications that developed after the first claims were made." However, the Humboldt Current example, addressed in the next note, was in fact the reason behind Peru's 200M claim. Ann L. Hollick, "The Origins of 200-Mile Offshore Zones," *American Journal of International Law* 71 (1977), p. 494, <https://doi.org/10.1017/s0002930000106499>.
114. According to García Sayán, the Peruvian Foreign Minister responsible for the 1947 decree declaring the Peruvian sovereignty over the 200 M, Professor Erwin Schweigger, in his book "La Costa del Peru"—or "El Litoral Peruano"—(1947) had covered the "biological limit" of the Humboldt Current: 80–100 M from the Peruvian coast during Summer and 200–250 M, during Winter. Peru's decree came a few weeks after the Chilean one, the precursor of the 200 M zone. Enrique García Sayán, "La doctrina de las 200 millas y el Derecho del mar," *Revista de la Facultad de Derecho PUCP* 32 (1974), p. 15, <https://doi.org/10.18800/derechopucp.197401.002>.
115. See note 95.
116. Hugo Grotius, *The Free Sea*, ed. David Armitage, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), p. 71–72.
117. Reynaldo Galindo Pohl, "The Exclusive Economic Zone in the Light of Negotiations of the Third United Nations Conference on the Law of the Sea," in Francisco Orrego-Vicuña (ed), *The Exclusive Economic Zone: A Latin American Perspective* (New York: Routledge, 1984), p. 37.
118. E.g.: Vid Prislán and Nico Schrijver, "From Mare Liberum to the Global Commons: Building on the Grotian Heritage," *Grotiana* 30 (2009), p. 168, <https://doi.org/10.1163/016738309x12537002674484>; John Logue, "The Revenge of John Selden: The Draft Convention on the Law of the Sea in the Light of Hugo Grotius' Mare Liberum," *Grotiana* 3 (1) (1982), p. 29–30, <https://doi.org/10.1163/187607582x00042>.
119. Convention on the Continental Shelf, April 29, 1958, 499 UNTS, p. 311.

120. This interpretation was famously suggested by Judge Oda. But it was widely dismissed, including because the continental shelf was limited “to the sea-bed and subsoil of the areas *adjacent to the coast*” (emphasis added), in any case. Shigeru Oda, “Proposals for Revising the Convention on the Continental Shelf,” *Columbia Journal of Transnational Law* 7 (1968), p. 1; Ram Prakash Anand, *Legal Regime of the Sea-Bed and the Developing Countries* (The Hague: Brill Nijhoff, 1978), p. 52.

121. Arvid Pardo, *The Common Heritage: Selected Papers on Oceans and World Order 1967–1975* (Malta University Press, 1975), p. 31.

122. Ram Prakash Anand, “‘Tyranny’ of the Freedom-of-the-Sea Doctrine,” *International Studies* 12 (1973), p. 416.

123. Ram Prakash Anand, *Legal Regime of the Sea-Bed and the Developing Countries* (The Hague: Brill Nijhoff, 1978), p. 110.

124. In the German original: “[W]er Menschheit sagt, will betrügen.” Carl Schmitt, *Der Begriff Des Politischen* (Munich: Duncker & Humblot, 1932), p. 42; George Galindo, “*Quem Diz Humanidade, Pretende Enganar?*”: *Internacionalistas e Os Usos da Noção de Patrimônio Comum da Humanidade Aplicada aos Fundos Marinhos (1967–1994)* (PhD Thesis, Universidade de Brasília, 2006).

125. See Carl Schmitt, “Das Zeitalter der Neutralisierungen und Entpolitisierungen,” in *Der Begriff des Politischen* (Munich: Duncker & Humblot, 1932), p. 66, 77.

126. See Surabhi Ranganathan, “Ocean Floor Grab: International Law and the Making of an Extractive Imaginary,” *European Journal of International Law* 30 (2019), p. 573, <https://doi.org/10.1093/ejil/chz027>.

127. Alex Oude Elferink, “De Groot—A Founding Father of the Law of the Sea, Not the Law of the Sea Convention,” *Grotiana* 30 (2009), p. 164, <https://doi.org/10.1163/016738309x12537002674448>.

128. The rules of procedure of the Third Conference on the Law of the Sea have been the subject of extensive studies. The package deal meant all things would be addressed in a single instrument and, to preserve the deal’s integrity, no reservation would be allowed. To implement it, the Conference was consensus-based. In short, this meant that, on the one hand, a minimally satisfactory compromise for many was possible, but, on the other, that developed countries, although outnumbered, always had their voices heard. In this context, given that reaching the agreement of particular powerful countries was the main task in achieving consensus, informal negotiating groups and social events became more popular than ever. Naturally, informal also meant private or closed-door, further curtailing the influence of the host of developing countries at the Third Conference. See, e.g., Surabhi Ranganathan, “Decolonization and International Law: Putting the Ocean on the Map,” *Journal of the History of International Law* 23 (2021), p. 177–179, <https://doi.org/10.1163/15718050-12340168>.

129. Surabhi Ranganathan, “Ocean Floor Grab: International Law and the Making of an Extractive Imaginary,” *European Journal of International Law* 30 (2019), p. 573, <https://doi.org/10.1093/ejil/chz027>.

130. Rozemarijn J Roland Holst, “Exploiting the Deep Seabed for the Benefit of Humankind: A Universal Ideology for Sustainable Resource Development or a False Necessity?” *Leiden Journal of International Law* 37 (2024), p. 400, <https://doi.org/10.1017/s092215652300064x>.

131. For an overview, I recommend: EM De Santo and others, “Protecting Biodiversity in Areas beyond National Jurisdiction: An Earth System Governance Perspective,” *Earth System Governance* 2 (2019), p. 100029.

132. Convention on Biological Diversity, Art. 4(a), June 05, 1992, 1760 UNTS, p. 79, <https://doi.org/10.1016/j.esg.2019.100029>.

133. But see David Leary, “Marine Genetic Resources in Areas beyond National Jurisdiction: Do We Need to Regulate Them in a New Agreement?,” *Maritime Safety and Security Law Journal* 5 (2018), p. 47. (Leary argued that MGRs were the least important aspect in an agreement designed to protect marine biodiversity beyond national jurisdiction. He questioned the actual or potential benefits of MGRs from ABNJ, while highlighting the rapid alarming loss of marine biodiversity.)

134. Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, August 4, 1995, 2167 UNTS, p. 3.

135. BBNJ Agreement, Paragraph 3 of the Preamble 2.

136. This is, of course, an anthropocentric perspective. The positive law of the sea today, as well as its Christianity-based origins, are starkly anthropocentric—the BBNJ Agreement, in particular, focuses on the interests and needs of humankind.

137. Article 7(c) of the Agreement includes as principles guiding the Parties in achieving its objectives “[t]he freedom of marine scientific research, together with other freedoms of the high seas.”

138. See Paul Oldham, Stephen Hall and Oscar Forero, “Biological Diversity in the Patent System,” *PLoS ONE* 8 (2013), p. e78737, <https://doi.org/10.1371/journal.pone.0078737>.
139. Alfred Soons, “Remarks by Alfred Soons,” *Proceedings of the ASIL Annual Meeting* 114 (2020), p. 392.
140. BBNJ Agreement, Arts. 12–15.
141. BBNJ Agreement, Arts. 15, 47, 51–53, 56–61.
142. E.g.: BBNJ Agreement, Arts. 31(1) (a) (ii–v), 32, 33(4), 37(3–5), 38.
143. Binoy Kampmark, “The Ghost of Hugo Grotius: The UN High Seas Treaty,” *Dissident Voice*, March 11, 2023, <https://dissidentvoice.org/2023/03/the-ghost-of-hugo-grotius-the-un-high-seas-treaty/>, accessed November 13, 2024.
144. Antônio Augusto Cançado Trindade, *International Law for Humankind Towards a New Jus Gentium*, 3rd ed. (The Hague: Brill Nijhoff, 2020), p. 139.

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The Law of Treaties as a Safeguard for the Viability of Maritime Delimitation Agreements in the Face of Sea-Level Rise

Vasiliki Lampiri

Structured Abstract

Article Type: Research Paper

Purpose—This article discusses whether maritime delimitation agreements can be terminated in the face of sea-level rise due to the invocation of a fundamental change of circumstances under Article 62 of the Vienna Convention on the Law of Treaties.

Design, Methodology, Approach—The analysis is based on a comprehensive examination of the rules of the law of treaties.

Findings—The article explains that the authentic and correct interpretation of the boundary exception in Article 62(2)(a) covers land and maritime boundaries equally, and thus maritime delimitation agreements cannot be terminated due to climate change. Even in the event of a different interpretation, sea-level rise could not amount to a fundamental change of circumstances because the threshold to meet the conditions of Article 62(1) is extremely high.

Practical Implications—This paper restates the genuine principles of the VCLT and UNCLOS that call for the maintenance of international peace and security, the strengthening of peaceful uses of the oceans, and friendly neighboring relations that are at stake with the termination of maritime agreements. It contributes to the prevention of further conflicts in the oceans, which could emerge if existing maritime boundaries are challenged due to sea-level rise.

Originality, Value—In contrast with the extensive scholarship on the effects of sea-level rise on baselines and unilateral limits, few articles focus exclusively on its effects

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on maritime delimitation agreements. Through an examination of Articles 31 and 62 of the VCLT—on treaty interpretation and the *rebus sic stantibus* clause, respectively—this article provides a step-by-step analysis and deconstructs the arguments advocating for the termination of maritime agreements in the face of climate change.

Keywords: fundamental change of circumstances,
maritime delimitation agreements, sea-level rise,
termination of maritime boundaries, VCLT

I. Introduction

The 6th Assessment Report by the Intergovernmental Panel on Climate Change (IPCC) estimates that sea level will rise between 0.28 and 1.01 meters by 2100,¹ which presents serious challenges to maritime limits and boundaries.² Unfortunately, although the geoscientific community was already aware of climate change in the 1970s, the drafters of the United Nations Convention on the Law of the Sea (UNCLOS) did not anticipate climate change's effects on the oceans, leading States not to address the issue at all during the Conference. The establishment of maritime zones, either unilaterally (unilateral limits) or through the conclusion of delimitation agreements and adjudication (maritime boundaries) depends on coastal geography and the location of the baseline. If the normal baseline is ambulatory, it shifts to reflect the changes occurring to the coastline.³ Sea-level rise will thus trigger a landward shift of the baseline and, in turn, of the outer limit of distance-based maritime zones.⁴ The issue of the effects of sea-level rise on unilateral maritime limits is a matter of interpretation of the UNCLOS, whereas its legal effects on the boundaries established by maritime delimitation agreements depend on the rules of the Vienna Convention on the Law of the Treaties (VCLT).

Treaties, including maritime delimitation agreements, are binding upon parties due to the customary⁵ principle *pacta sunt servanda*, which has been codified in Article 26 of the VCLT. The principle, however, cannot be applied “in clinical isolation.”⁶ It is balanced through the inclusion of the rules on invalidity, termination, and suspension of treaties. The VCLT recognizes that the invocation of a material breach of a treaty, impossibility of performance, a fundamental change of circumstances, or the emergence of a new *jus cogens* rule that conflicts with the terms of the treaty can be considered solid grounds for treaties' termination.⁷ Given the pivotal role that coastal geography plays in maritime delimitation, the most likely grounds that could justify the termination of a maritime boundary treaty in the face of sea-level rise is the invocation of a fundamental change of circumstances under Article 62 of the VCLT. Due to its customary nature,⁸ it binds both Parties and non-Parties to the VCLT. According to Article 62, a fundamental change of circumstances cannot be invoked as a ground for terminating or withdrawing from a treaty, unless the change is unforeseen, related to circumstances that constituted an essential basis of the consent to be bound, and its effect radically transformed the extent of obligations still to be performed. Yet, subparagraph (a) precludes the invocation of the doctrine for treaties establishing boundaries.

This article seeks to explore whether the VCLT safeguards the viability of maritime delimitation agreements and whether Article 62 leaves room for their termination owing

to climate change-induced sea-level rise. Section II examines whether maritime delimitation agreements fall under the boundary exception of Article 62(2)(a) of the VCLT. Section III discusses whether—on the occasion of a negative answer in section II—climate change could fulfill the conditions of Article 62(1) of the VCLT and amount to a fundamental change of circumstances allowing the termination of maritime delimitation agreements. Lastly, I briefly present treaty practice on the matter.

II. Interpreting the Boundary Exception of Article 62(2)(a) of the VCLT

Article 62(2)(a) of the VCLT precludes the invocation of a fundamental change of circumstances “*if the treaty establishes a boundary.*” It has generally been accepted that boundary agreements represent a special category of treaties and, as such, have been treated by the international community. As early as 1925, the Permanent Court of International Justice (PCIJ) asserted that treaty provisions that fix a boundary should be interpreted as establishing a “precise, complete and definitive frontier” throughout its length; this is the result of both the boundary itself and the boundary treaty.⁹ In the same vein, the ICJ confirmed that “the continued existence of a boundary is not dependent upon the continuing life of the treaty” that established it.¹⁰ In other words, the object of the treaty—which is the boundary itself—has a legal life on its own.¹¹ It emphasized that the primary objective of a frontier established between two countries is to achieve “stability and finality,” and this cannot be fulfilled if the boundary line can at any time be challenged.¹² The problem, however, arises because Article 62(2)(a) does not clarify whether the term “boundary” contained therein covers equally land and maritime boundary treaties. A negative answer could be justified based on the 1966 ILC drafts, which did not refer to maritime agreements, while there were only a few such agreements concluded back in the 1960s.¹³ Articles 31–33 of the VCLT on treaty interpretation shed some light on this ambiguity.

Article 31(1) of the VCLT states that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. Interpretation must be based, above all, upon the text of the treaty, which is the vehicle for legal certainty and increases the predictability of the normative content.¹⁴ The Oxford English Dictionary defines the term “boundary” as “that which serves to indicate the bounds or limits of anything whether material or immaterial and the limit itself.”¹⁵ Other relevant terms are “border,” defined as the “line separating one country from another,” and “frontier,” defined as “the part of a country which borders another country.”¹⁶ Similarly, according to the Oxford Dictionary of English, a “boundary” is “a line which marks the limits of an area; a diving line.”¹⁷ The first definition comes from a so-called “historical” dictionary of the English language, while the other one includes a more “modern” meaning. In both cases, the term boundary seems to be the most general one and encompasses the other two, which are more specific. There is no difference in the understanding of the term throughout the decades. The Australian Law Dictionary confirms that a “boundary” marks both the “territorial and jurisdictional limits of the State,”¹⁸ which could indicate that it also covers maritime boundaries. It is noteworthy that the word “jurisdiction” has widely been used in UNCLOS in the provisions dealing with the EEZ.

Given that lawyers need to exit their comfort zone when dealing with delimitation matters and need to consider the imperatives and restrictions of other sciences, such as cartography, geography, etc.,¹⁹ it is important that the analysis above confirms that the legal understanding of the term does not differentiate from the common understanding.

The equally authentic—under Article 33 of the VCLT—French version of the Convention uses the term “frontière” in Article 62(2)(a), which is defined as “la ligne conventionnelle marquant la limite d’un Etat, séparant le territoires de deux Etats limitrophes.”²⁰ This term is attributed in English as either “boundary,” “border” or “frontier.” Based on the French version of the VCLT, one may assume that States had land boundaries in mind when drafting Article 62(2)(a). Nevertheless, a word cannot be understood in isolation from the sentence, paragraph or part of the treaty it belongs to. Article 31(1) demonstrates that the interpreter needs to examine the treaty as a whole and identify its context, object and purpose. The context is comprised of the text, preamble and annexes, together with others related to the treaty agreements and instruments,²¹ while the object and purpose of the treaty as a unitary concept refers to the goals that the drafters intended to achieve through the conclusion of the treaty.²² The PCIJ confirmed that the “[Treaty’s] meaning is not to be determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense.”²³ The object and purpose of the boundary exception is to provide for the stability of boundaries, create a stable legal position and function as a safety valve for the maintenance of peaceful relations.²⁴ As one author rightly sustains, such an interpretation renders the boundary exception more efficacious, which is required by the *ut res principie*, and thus allows “to secure a greater number of boundaries.”²⁵ The United Nations Handbook on Maritime Delimitation highlights that like any other boundary treaty, maritime delimitation agreements “have a vocation of permanence and stability” and accepts that the VCLT “establishes the sacrosanct nature” of such agreements.²⁶ Interestingly, it accepts the permanency without making any distinction on the regime of the various maritime zones and thus does not differentiate the importance of their boundary line.

It is true that under articles 74 and 83 of UNCLOS, the delimitation of the EEZ and the continental shelf “shall be effected by agreement on the basis of international law in order to achieve an equitable solution.” Yet, accepting that maritime boundary treaties should not equate to treaties establishing land boundaries because the latter’s objective is stability, while the former’s is the equitable solution²⁷ is a fallacy. An equitable solution does not preclude a stable solution. Both equity and stability are “integral parts of the process of delimitation,” and the delimitation/the boundary line should simultaneously be equitable and achieve a stable legal outcome as affirms the Arbitral Tribunal in the Barbados and Trinidad and Tobago case.²⁸ Several other judicial decisions reaffirm the need for stability on maritime delimitations. The Bangladesh/India case notes that “maritime delimitations, like land boundaries, must be stable and definitive to ensure a peaceful relationship between the States concerned in the long term.”²⁹ Similarly, the Guinea-Bissau and Senegal maritime delimitation states that “...le but des traites est le même: déterminer d’une manière stable et permanente le domaine de validité spatiale de normes juridiques de l’Etat.”³⁰ The fact that maritime boundary delimitation is governed by law (e.g., UNCLOS), while land boundaries are settled arbitrarily based on natural or political circumstances³¹ does not mean that maritime boundaries’ objective is not stability. On the contrary, it proves that maritime

boundaries entail stability by their (legal) nature. International law is based on consent. States gave their consent freely to be bound by UNCLOS (which sets the rules on delimitation) and by the bilateral maritime boundary agreement, while some land boundaries were determined through coercion, for example, in the case of post-war peace treaties. I thus cannot help but agree with Thao, who argues that the equitable principle is a win-win solution, where future sea-level rise is not recognized as a special circumstance that benefits one Party to the detriment of the other, but as equally affecting both Parties to the dispute.³²

Good faith, as an umbrella principle, should be used in every step of interpretation as envisaged in Article 31(1), and requires Parties to apply it in a reasonable manner so as the treaty's/provision's purpose can be realized.³³ The preamble of the VCLT, which forms part of its context, demonstrates that the drafters recognized the importance of good faith, but also of the maintenance of international peace and security and the development of friendly relations among nations. Concluding a maritime delimitation agreement is a complex, time-consuming process, entails many compromises of States' interests, and may even lead to conflict among neighboring nations. Interpreting Article 62(2)(a) as covering only land boundaries and allowing the termination of maritime delimitations goes against the principle of good faith and does not advance the VCLT preamble's objectives.

Reading paragraph (a) within the context of Article 62 and Part V of the VCLT reveals that States aimed to use the *rebus sic stantibus* as a ground for treaty termination only in exceptional cases; as a result, the drafters framed the provision in the negative. To establish the "legally correct meaning" of the treaty, we must assume that States Parties acted rationally when concluding the provision.³⁴ Excluding maritime delimitation agreements from the boundary exception would not advance the drafters' aims because it would render the invocation of a fundamental change of circumstances not an exception but a rule for these kinds of agreements. Resort to it may happen more and more frequently since geographic change is somehow inherent in the oceans. Yet, an interpretation rendering parts of the treaty superfluous or diminishing their practical effects should be avoided.³⁵

Articles 31(3)(b) and (c) of the VCLT, which call the interpreter to consider both subsequent practice and any other rules of international law when interpreting the treaty, justify the inclusion of maritime delimitations under the term "boundary." Subsequent practice may consist of any conduct whether in the exercise of States' executive, legislative, judicial or other functions³⁶ and recourse to it constitutes an objective element of States' understanding regarding the meaning of the treaty.³⁷ No State has questioned the finality of maritime delimitation agreements and several delegations at the Sixth Committee of the UN General Assembly highlighted the importance of stability for maritime boundaries.³⁸ They agreed that maritime boundaries are covered by Article 62(2)(a), excluding the possibility of the invocation of the *rebus sic stantibus*.³⁹ Cameroon stressed that maritime boundaries are characterized by the same legal stability as land boundaries and fall within the boundary exception,⁴⁰ while the Maldives at the 72nd ILC session maintained that "the term boundary is broad enough to encompass both maritime and land boundaries" and the former fall under Article 62(2)(a).⁴¹ An examination of bilateral maritime delimitation agreements reveals that States frequently use the term "maritime boundary" or "frontière maritime" in either the title or body of those treaties.⁴² The same applies to case law. Not only did the term appear as early as 1909 in the *Grisbardarna* case or in the 1969 *North Sea*

Continental Shelf Cases (which was released before the adoption of the VCLT), but, most importantly, it has widely been used after the 1970s. The terms “frontier,” “border” and “boundary” seem to be used interchangeably in both land and maritime delimitations.⁴³ French and Spanish-speaking nations often use the term “frontier” in English legal texts that deal with zones where no sovereignty applies, such as the continental shelf and the EEZ, showing that ultimately there is no difference between the terminology used in the English and French version of the VCLT that was discussed earlier. For instance, the 1993 Cape Verde-Senegal agreement or the 1986 Colombia-Honduras agreement use the term “maritime frontier” although they delimit an EEZ.⁴⁴ As Bardonnnet has pointed out, the evolution in the vocabulary reflects the assimilation of the legal regime of maritime boundaries to that of land boundaries.⁴⁵

Taking into account the other rules of international law, and thus examining what the sources of international law reveal on the matter, ensures that the fragmentation of international law will be avoided.⁴⁶ Around 100 of the States-Parties to the VCLT are also Parties to UNCLOS. Interestingly, UNCLOS refers to maritime delimitations as “boundaries” in Article 298(1)(a)(i), which allows States to exclude disputes concerning the interpretation of articles 15, 74, 83 from compulsory procedures entailing binding decisions. The same applies to Article 9 of Annex II, which says that the Commission on the Limits of the Continental Shelf shall not prejudice matters relating to the “delimitation of boundaries.” This has also been highlighted by Antigua and Barbuda.⁴⁷ Moreover, its preamble recognizes the Convention as a tool for the strengthening of peace, security, cooperation and friendly relations among nations, all of which may be at stake if maritime agreements are susceptible to termination.

The importance that States have attached to the boundary agreements is also apparent by their preferential treatment under the 1978 Vienna Convention on Succession of States in respect of treaties. Article 11 of the said treaty recognizes a special regime for boundaries and expressly provides that “a succession of States does not as such affect (a) a boundary established by a treaty, or (b) obligations and rights established by a treaty and relating to the regime of a boundary,” while according to Article 12(1), succession does not affect the obligations and rights established by a treaty for the benefit of any territory.⁴⁸ As the Croatia/Slovenia delimitation indicates, the boundary established pursuant to the 1968 Treaty delimiting the continental shelf between Italy and Yugoslavia was applicable to Croatia and Slovenia as successor States to the Socialist Federative Republic of Yugoslavia.⁴⁹ Similarly, the 1978 agreement on the continental shelf and the Exchange of Notes on the delimitation of the EEZ between the USSR and Turkey remained in force not only for Russia as the State continuing the international legal personality of the USSR, but also for Ukraine.⁵⁰

Jurisprudence, as part of the “other relevant rules of international law,” has consistently assimilated maritime and land boundaries for the purposes of Article 62(2)(a). The Aegean Sea case recognized that both land frontiers and continental shelf boundaries enjoy permanency and stability and fall under the exception of the *rebus sic stantibus* clause.⁵¹ It should not be disregarded that the rights of States on the continental shelf exist *ipso facto and ab initio* and the continental shelf relates to the territorial status⁵² because it is the natural prolongation of the land territory, that is, the land territory beneath water. Although Arnadottir dismisses the importance of this statement because it was made obiter,⁵³ Jain rightly emphasizes that it formed a critical part to the ICJ’s reasoning and played a role in

its final decision.⁵⁴ Moreover, the Aegean Sea conclusion has been reiterated in other cases. The more recent Somalia-Kenya delimitation affirmed that “boundaries between States, including maritime boundaries, are aimed at providing permanency and stability,”⁵⁵ and the Bangladesh/India case that the effects of climate change cannot jeopardize the settled maritime boundaries established by agreement or adjudication.⁵⁶ The last two cases came out when the international legal community had already engaged in the discussion about the impact of sea-level rise on oceanic boundaries. The International Law Association had already released its Baselines Report and had established a specialized Committee on Sea-Level Rise. The general wording used by the Tribunal (i.e., “settled maritime boundaries”) and the fact that it decided the course of all zones (including the EEZ) suggest that all maritime boundaries without any distinction are not susceptible to sea-level rise and fall under Article 62(2)(a). Lando rightly points out that rejecting the application of the boundary exception for zones beyond the territorial sea “builds upon a formalistic distinction between boundaries in different maritime zones.”⁵⁷ Nowadays, States tend to draw a single maritime boundary for all zones, which makes it more difficult to separate the regime of the continental shelf from that of the EEZ.

Some justify the exclusion of maritime boundaries from Article 62(2)(a) by focusing on the differences between the process of maritime and land delimitation and the non-applicability of *uti possidetis juris* in the maritime space. The doctrine has its own limitations because it does not necessarily identify the precise location of the boundary line.⁵⁸ Case law moves towards bringing closer the two types of boundaries.⁵⁹ In their separate opinions in the Tunisia/Libya case, Judges Ago and Arechaga were the first to accept the applicability of *uti possidetis* in the maritime space.⁶⁰ Since individual opinions are particularly influential for the development of international law,⁶¹ it is of no surprise that the ICJ accepted that the *uti possidetis* applies to the waters of the Gulf of Fonseca as well as the land.⁶² Moreover, the arbitral Tribunal in the Guinea-Bissau/Senegal case accepted the stability of the maritime boundary based on a colonial treaty,⁶³ while the Nicaragua/Honduras case stated that the doctrine may apply “to offshore possessions and maritime spaces.”⁶⁴ The general wording (“maritime spaces”) and the drawing of a single maritime boundary indicates that *uti possidetis* could apply to all zones. Stoutenburg is thus right to claim that the view that stability of boundaries and *uti possidetis* do not apply to the maritime space has now been abandoned.⁶⁵

Another issue worth pointing out is whether the boundary exception should be interpreted in light of the law as it stood at the time of the conclusion of the VCLT or at the time of interpretation. Even if Article 62(2)(a) did not initially intend to cover maritime delimitation, it is notable that States have not so far challenged settled maritime boundaries on the grounds of climate change. Should we interpret the term boundary with its meaning at the time of interpretation, it certainly covers maritime delimitations. The conclusion of maritime agreements had been widely suggested by scholars⁶⁶ but also by some States—among which the US, as a solution against sea-level rise—indicating that they view these agreements as final and subject to the boundary exception of the VCLT.⁶⁷

Articles 31–33 of the VCLT allow for an evolutive interpretation because the ordinary meaning may change over time.⁶⁸ Article 31(3)(c) calls the interpreter to take into account the other rules of international law and may help determine whether interpretation of the term should evolve.⁶⁹ Land and maritime delimitations are equally politically sensitive,⁷⁰ which

justifies why States included Article 298 in UNCLOS. As a leading authority on the law of the sea underlines, the differences between maritime and land boundaries are a matter of nuance; the result of both land and maritime delimitation is essentially the same.⁷¹ Weil further contends that “the theory of maritime delimitation will complete the theory of the state in international law.”⁷² An evolutionary interpretation of the treaty allows us to adapt the law and avoid the invocation of a fundamental change of circumstances for maritime boundaries. The Aegean Sea case introduced an evolutive interpretation of the “generic” term “rights” and implied that the “territorial status” could similarly “evolve in the meaning in accordance with the development of international relations.”⁷³ Following the ICJ’s reasoning in the Navigational and Related Rights case, it could be inferred that the term “boundary” in Article 62(2) (a) is a “generic term,” the VCLT was entered into for an unlimited duration and even if the term’s meaning is no longer the same as it was at the time of conclusion, this does not mean that “no account should ever be taken of its current meaning.”⁷⁴

Turning now to Article 32 of the VCLT, the *travaux préparatoires* reveal that the term *treaty establishing a boundary* included not only treaties of cession, but also of delimitation.⁷⁵ It has also been accepted that although the term “boundary” customarily refers to the limit of the land territory of a State, in fact, it can be taken more broadly “to designate the various lines which fix the spatial limits of the exercise of different powers,” while the territorial sea, continental shelf and EEZ’s limits can be considered “boundaries.”⁷⁶ When the ILC was discussing the issue of the 1982 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, it made a special reference to the law of the sea and pointed out that the International Seabed Authority (ISA) might have to conclude treaties establishing lines, which might fall under the category of “boundary.”⁷⁷ Given that the ISA is not a State and thus not sovereign of a land territory, it is logical that those boundaries would exist in the maritime space.

During the VCLT negotiations, the only definition of boundary that was ever mentioned was Oppenheim’s. He defined boundaries as “imaginary lines on the surface of the earth which separate the territory of one state from another, or from unappropriated territory, or from the Open Sea.”⁷⁸ Oppenheim makes a reference to the “boundary line of the maritime belt” as being three miles from the shore.⁷⁹ Since he passed away before the emergence of the extended maritime zones, it is of no surprise that he focused on the outer limit of the territorial sea. Although most emphasize only the first part, in fact, Oppenheim identifies three alternatives of boundaries, with the third being the boundary separating one State’s territory from the high seas. The beginning of the high seas is the critical point from a law of the sea perspective suggesting that Oppenheim covered all maritime areas landward of this point.

The ILC had recognized that the territorial sea limit is a “true limit of the territory of the State, which is not the case with other lines.”⁸⁰ This makes some scholars accept that territorial sea delimitation agreements fall under the boundary exception, in contrast with agreements of other maritime zones.⁸¹ The ILC itself left unclear whether paragraph 2(a) applies to territorial sea boundaries. Its report is a bit confusing. While it acknowledges that territorial sea boundaries may have some privileges as “true limits,” it simultaneously concedes that true maritime boundaries may not enjoy the stabilizing effect of Article 62.⁸² Yet, this could mean that even territorial sea boundaries do not fall under the exception of Article 62(2)(a). Except for not being the intention of the drafters, such a view also violates international law. Article 2(1) of UNCLOS, which determines the legal status of the

territorial sea, makes clear that state sovereignty extends from the land to the territorial sea and archipelagic waters. Consequently, any discussion that excludes territorial sea and archipelagic boundaries from the application of Article 62(2)(a) has no legal basis. Furthermore, according to the ILC, the term “boundary agreements” covers not only treaties of delimitation but also treaties of cession and treaties establishing or modifying the territory of a State.⁸³ The ILC Commentary on the Geneva Convention states that “the rights of the coastal state over the territorial sea do not differ in nature from the rights of sovereignty which the state exercises over other parts of its territory.”⁸⁴ An extension of the territorial sea up to the lawful limit of 12 nm or a territorial sea delimitation “modifies” somehow the territory of a State, as it extends its sovereignty over a specific maritime space.

The *travaux préparatoires* of the VCLT confirm that boundary treaties should be recognized as an exception to the *rebus sic stantibus* clause, otherwise “instead of being an instrument of peaceful change, [the VCLT] might become a source of dangerous frictions.”⁸⁵ They reveal the overarching purpose that lies behind the boundary exception. Article 62(2) (a) serves as an instrument of peaceful change aiming to avoid dangerous frictions.⁸⁶ States intended to avoid “conflict” through the establishment of a stable regime for boundary treaties, irrespective of whether these concerned a land or a maritime boundary. The same conclusion was reached by the Co-chairs of the ILC Study Group on Sea-Level Rise.⁸⁷

Cogliati-Bantz argues that “absolute stability [of boundaries] may be less conducive to peaceful relations” because it may conflict with other principles, among which the “land dominates the sea.”⁸⁸ Indeed, a conflict with established legal norms may endanger international peace. However, under a flexible interpretation this principle is not violated as the land dominates the sea the moment when the baseline is declared,⁸⁹ or when the maritime delimitation agreement is concluded. Moreover, concluding a maritime delimitation treaty requires years of negotiations for States to achieve an optimal balance of their interests. It took Norway and Russia forty years to reach the 2010 agreement for the delimitation in the Barents Sea and the Arctic, and France and Suriname twenty years for their 2017 EEZ treaty.⁹⁰ The prolonged maritime disputes in the South China Sea are also indicative of the dangers that a potential termination of a maritime delimitation agreement entails. The constraints of international political relations and international legal order preclude States from accepting without discomfort the loss of maritime space due to climate change. Resources in the maritime space may be vital for the livelihood of coastal populations, while their exploration and exploitation require installations and financial burden for the States, for which the respect and stability of the boundary is a prerequisite. It thus comes as no surprise that according to the Tribunal “the possibility of change in the maritime boundary ... would defeat the very purpose of delimitation.”⁹¹ As is evident from the analysis in Section II, both a textual and a historical approach in the interpretation of Article 62(2)(a) confirm that maritime delimitations fall under the boundary exception.

III. The Conditions of Article 62(1) of the VCLT

Even if maritime delimitation agreements did not fall under the boundary exception, it would be extremely difficult for States to terminate them through the invocation

of a fundamental change of circumstances under Article 62(1). This Article sets five conditions that must be fulfilled *cumulatively* for a treaty to be terminated, rendering the burden exceptionally high for a State to meet.⁹² Specifically, the change of circumstances must be (i) fundamental, (ii) unforeseen by the Parties, (iii) fundamental and unforeseen in relation to the circumstances that existed at the time of the conclusion of the treaty, (iv) the circumstances that changed must constitute an essential basis of the consent of the Parties, and (v) the effect of the change radically transforms the extent of their obligations. To emphasize the exceptional character of the rule, the drafters chose to frame the introductory clause in the negative (“may not be invoked ... unless”),⁹³ and thus, the conditions embodied therein must be interpreted strictly. Indeed, a proposed amendment by Venezuela to state the principle in a positive form met great opposition because such a change would turn the exception into a rule and enlarge the scope of the provision, “which should in all cases be applied only with the greatest caution.”⁹⁴ According to the Chilean representative during the VCLT negotiations, the negative formation reflects more faithfully the very limited character of the cases that constituted an exception to the general principle that a change of circumstances cannot be invoked to terminate a treaty.⁹⁵

3.1 Fundamental and Unforeseen Change of Circumstances

There is some controversy on whether fundamentality constitutes a separate condition. Kolb, for example, relates it to the radical transformation of the circumstances,⁹⁶ while Giegerich believes that the textual development of the article shows its connection with the requirements in both paragraphs (a) (“essential basis”) and (b) (“radically transform”), and thus it has no particular significance as an independent condition.⁹⁷ What is crystal clear, however, is that the change must be substantial and the circumstances are no longer the same as the moment when the Parties concluded the treaty.⁹⁸ Any kind of circumstances, no matter whether they are factual, legal, political, economic, or social, could fall under the meaning of the provision.⁹⁹ Yet, a subjective change in the attitude towards the treaty cannot serve as a ground for its termination.¹⁰⁰

An example of a fundamental change that was presented during the codification phase was a treaty with which a State had undertaken to supply oil or other goods, but due to sudden changes, its reserves reduce to the point that it could not even cover its own needs.¹⁰¹ Environmental changes, such as the drying up of a river, have been referred to as examples that could justify the invocation of a fundamental change of circumstances if the other conditions are met.¹⁰² Interestingly, in the two ICJ cases that the *rebus sic stantibus* was invoked (i.e., Fisheries and Gabčíkovo-Nagymaros), the Parties cited ecological/environmental concerns.

Moreover, the change of circumstances must be unforeseen by the Parties when they concluded the treaty. Lissitzyn criticizes the formulation of Article 62 because some expressions are not clearly explained, despite the drafters’ attempt to formulate an objective rule.¹⁰³ He claims that a change that is not foreseen could have different meanings, and thus foreseeing an event may mean “expecting it as inevitable, expecting it as possible, or thinking of it as possible but not likely.”¹⁰⁴ Special Rapporteur Fitzmaurice considered a change unforeseen when the Parties of the treaty had not anticipated it by the “exercise of reasonable foresight,” while the change should not have been provided within the treaty either expressly or in implied terms.¹⁰⁵

The rising sea level has been widely known in the legal-diplomatic sphere since the 1980s, and thus it cannot qualify as an unforeseen situation for treaties concluded thereafter. Since the EEZ was an innovation of UNCLOS, most EEZ delimitation agreements were signed during the last forty years when States were already aware of the rising sea level. Undoubtedly, there are several maritime delimitation treaties signed before the 1980s, especially as regards the territorial sea boundaries. However, sea-level rise is not a sudden phenomenon and cannot be assimilated with a fundamental change.¹⁰⁶ Apart from that, it could be argued that climate change is just an “exacerbated form of natural coastline shifts,” and thus, when States conclude a treaty, they are aware of the possibility of coastline retreat.¹⁰⁷ Indeed, as Special Rapporteur Fitzmaurice claimed “If the change was foreseen by the parties, whether actually or as a possibility, and even if they did not provide for it in terms in the treaty, they must be taken to have contracted with reference to it or the possibility of it. Either they must be taken impliedly to have excluded it as a ground of termination, or the change itself must be held not to be an essential one giving rise to such a ground.”¹⁰⁸

Article 62 of the VCLT must be read together with Article 45, which determines the conditions under which the right to invoke a fundamental change of circumstances is lost. This Article provides that if, after becoming aware of the facts (i.e., of the change in the coastline caused by sea-level rise), the State does not react, it has acquiesced in the validity of the treaty or in its maintenance in force or in operation. Both municipal courts and the ILC have held that the doctrine must be invoked within “reasonable time” after the change in the circumstances,¹⁰⁹ because the non-invocation means that the state did not consider the change fundamental. Consequently, even if we accept that sea-level rise was not foreseen when some of the bilateral delimitation agreements were concluded, undoubtedly it has been foreseen during the last decades, but no State has so far challenged settled maritime boundaries. Article 45 of the VCLT, thus, functions as an additional safeguard for the stability of maritime delimitation treaties.¹¹⁰

3.2 Essential Basis of Consent to Be Bound by the Treaty

A successful invocation of the doctrine requires that the circumstances that changed between the conclusion of the treaty and the invocation of the doctrine should constitute the essential basis of Parties’ consent. In the absence of those specific circumstances, the States concerned would have never entered a treaty with those specific terms. The importance of this condition is indisputable. International law is based on State consent, that is, what the States have accepted as law in their bilateral or international relations. The identification of the determining factor that convinced States to enter into this treaty passes through the rules on interpretation in Articles 31–33 of the VCLT. The object and purpose of the treaty, the historical background, and the circumstances surrounding its conclusion must be examined.¹¹¹ An unforeseen change, which, however, does not constitute the determining factor for States’ consent, will not trigger a successful invocation of a fundamental change of circumstances as a ground for the treaty’s termination. In the *Gabcikovo-Nagymaros* case, for example, the ICJ did not challenge that the political situation, or the economic system were relevant to the conclusion of the 1977 Treaty between Slovakia (Czechoslovakia) and Hungary; it merely did not accept that these factors were “so

closely linked to the object and purpose” of the treaty and, in turn, did not constitute an essential basis of the consent of the Parties.¹¹²

Undoubtedly, sea-level rise brings geographical changes to the coasts and coastal geography is central in delimitation. Nevertheless, what matters is whether the initial geographical circumstances were the basis of Parties’ consent; not all circumstances are found relevant when concluding the treaty.¹¹³ It is doubtful whether coastal geography forms the essential basis of the consent to be bound. Grima argues that the circumstances that brought States to the negotiating table in the first place were not triggered by the coastal geography but by other factors, among which the resources of the disputed areas, while he also highlights that bilateral negotiations on maritime delimitation may not necessarily follow the law of the sea rules.¹¹⁴ Most agreements specify the boundary’s geographic coordinates but lack references to the motivation or methodology used to reach that agreement, making it impossible for States to convince that that precise coastline configuration was the basis of their consent.¹¹⁵ Agreements without coordinates, which specify only the method of delimitation (e.g., equidistance line) could theoretically be vulnerable in the face of sea-level rise, if the “ambulation” of baseline is accepted. Yet, to date there is only one such agreement, namely, the EEZ France-Tonga Agreement.¹¹⁶ Since geographical change is inherent to maritime delimitation, one could argue that geographic stability is not itself the grounds for the consent of the Parties.¹¹⁷ Interestingly case-law deems future coastline instability irrelevant to the delimitation process.¹¹⁸ To identify the basis of States’ consent, we should investigate what was the determining factor that convinced *both* Parties to conclude a bilateral agreement.¹¹⁹ As Arnadottir underlines, what constitutes an essential basis for the consent of one State is not always a necessity for the other.¹²⁰

3.3 The Effect of the Change Is Radically to Transform the Extent of the Obligations Still to Be Performed Under the Treaty

A successful invocation of Article 62(1) requires that the effect of the change of circumstances radically transforms the extent of Parties’ obligations. To fulfill this condition, the change must “increase the burden of the obligation to be executed to the extent of rendering the performance something essentially different from that originally undertaken.”¹²¹ The reference to “obligations” (in plural) in Article 62(1)(b) does not mean that all obligations must radically be transformed. The object and purpose of Article 62 reveals that any obligation of the state invoking the doctrine could fall under this provision so long as it fulfills all the remaining conditions (unforeseen, essential basis, etc.).¹²² This radical transformation can be two-fold; the effect of the change can either increase the onerousness of the obligation or diminish the value to be gained by further performance.¹²³

It is doubtful that States would be convinced that the change caused by sea-level rise radically transformed their obligations or substantially hindered the realization of the object and purpose of the treaty, on which, after all, the consent to be bound was based. As an authority of the law of the sea argues, the disappearance of some basepoints would probably not have significant effect on Parties’ obligations under the treaty because their obligation is primarily the observance of the boundary.¹²⁴ In that respect, charts could still assist in locating the boundary line. Concerns regarding the change caused by natural phenomena in the location of the boundary were expressed during the VCLT negotiations by the

representation of Canada. Interestingly, although Special Rapporteur Waldock accepted that an extraordinary flood, an earthquake or a landslide might conceivably alter the location of a feature used in delimitation, he doubted whether this could raise the question of treaty termination on the basis of a fundamental change of circumstances.¹²⁵

Some scholars believe that sea-level rise would not have any effect on maritime delimitation agreements, unless a major island disappears completely beneath water, making it impossible for States to locate the boundary. Although this falls outside the scope of this article, it should be mentioned that States could resort to Article 61(1) of the VCLT and invoke impossibility of performance. Indeed, the ILC Commentary on draft Article 58 mentions the submergence of an island as an example for the invocation of impossibility of performance.¹²⁶ Yet, Purcell argues that the establishment of the boundary is the object of the boundary agreement, not “an object indispensable for the execution of the treaty” as Article 61 requires.¹²⁷

The difficulty for the successful invocation of a fundamental change of circumstances lies on the requirement that all conditions of Article 62 should be fulfilled cumulatively; the changed circumstances must simultaneously be fundamental and unforeseen but also constitute the essential basis of consent and radically transform the extent of State’s obligations. The non-fulfillment of one of these conditions would not allow its successful invocation, making the termination of maritime delimitation treaties in the face of sea-level rise extremely difficult, if not impossible.

International Courts and Tribunals (ICTs) are particularly reluctant to accept unilateral termination based on a fundamental change of circumstances; this has never been successfully invoked before the ICJ.¹²⁸ It is thus understandable why Fitzmaurice considers the doctrine as being “*only a theoretical possibility*” for treaty termination.¹²⁹ The negative and conditional wording of Article 62 indicates that the plea of fundamental change of circumstances should be applied only in exceptional cases.¹³⁰ Accepting it on a large scale for maritime delimitation agreements affected by sea-level rise goes against both the purpose of Article 62 of the VCLT and the objective that lies behind UNCLOS as a whole, that is, the “strengthening of peace, security, cooperation, and friendly relations.”¹³¹ The latter will be at stake because the potential termination of boundary treaties may create fertile ground for international conflicts. One-third of cases before ICTs concern maritime delimitation, which proves how prone States are to disputes over their maritime zones.

IV. Treaty Practice in Respect to Maritime Delimitation Agreements

Undoubtedly, States are free to revise a maritime boundary treaty. Article 2(5) of the Micronesia–Marshall Islands Treaty, for example, provides that States shall agree to revise the boundary’s coordinates if significant shifts occur in the location of islands used as base-points.¹³² To date, this seems to be the exception rather than the rule. The ILC examination reveals that out of 250 maritime delimitation treaties, the vast majority do not include amendment provisions, and none provide for explicit adjustment due to sea-level rise.¹³³ Even the agreements containing general provisions for adjustment explicitly refer to the need for more information or acknowledge that physical changes might occur.¹³⁴ In the

latter case, the condition of foreseeability of the *rebus sic stantibus* cannot be fulfilled.¹³⁵ The limited number of agreements that include provisions for adjustments indicates that States generally consider maritime delimitation agreements to be final and fall under the exception of Article 62(2)(a). If they considered maritime agreements not being covered by the boundary exception, the adjustment provisions would be superfluous; States could just invoke the doctrine requesting a renegotiation of the boundary any time there was a change in the coastline that could amount to a fundamental change of circumstances. Moreover, several agreements, such as the 1992 Agreement between Oman and Yemen¹³⁶ or the 1977 Agreement between India and Indonesia on their Continental Shelf delimitation,¹³⁷ expressly include provisions on the permanent character of the delimitation.¹³⁸ Overall, the agreements entailing provisions on the permanence of the boundary significantly outnumber those allowing for adjustments.¹³⁹ It is also worth pointing out that several States have expressly excluded the application of the *rebus sic stantibus* clause for maritime boundaries before the Sixth Committee of the UN General Assembly.¹⁴⁰ Based on the above, both the ILA Report and the ILC First Issues paper concluded that neither can sea-level rise constitute a fundamental change of circumstances, nor endanger the validity of maritime boundary treaties.¹⁴¹ The fact that to date no State has requested the termination of such a treaty due to sea-level rise confirms that States have favored stability, certainty, security, and predictability in maritime boundaries.¹⁴² Most scholarship supports this conclusion.¹⁴³

V. Conclusion

This paper examined whether maritime boundaries established by delimitation agreements are susceptible to climate change's effects on the oceans. The issue at stake is whether States can invoke the *rebus sic stantibus* clause to terminate maritime boundary agreements when the coastline undergoes natural changes, such as the landward shift of the baseline. The article applies the rule on treaty interpretation embodied in Articles 31–33 of the VCLT and concludes that maritime delimitations cannot be terminated because they fall under the boundary exception of Article 62(2)(a). It employs a step-by-step textual interpretation to elucidate the objective meaning of the boundary exception. Although this must be the starting point of the interpretation process, it is often overlooked in favor of a historical approach. In this paper, the preparatory work of the VCLT comes only to confirm the outcome of the textual analysis, rather than become the main argument advocating for the stability of boundaries.

In any case, it is extremely difficult for a State to prove that the requirements of Article 62(1) have been fulfilled cumulatively when sea level rises. The drafters of the VCLT set the threshold extremely high to avoid opening Pandora's box in international treaty relations. Treaty and State Practice also treat maritime delimitation agreements as final and stable. Consequently, the rules of the law of treaties safeguard, rather than endanger, the viability of maritime delimitation agreements in the era of climate change.

Future research could delve deeper into the number (and content) of the agreements delimiting zones beyond the territorial sea that were signed before the 1980s because these could theoretically meet at least the "unforeseen" criterion of the *rebus sic stantibus* clause. Moreover, how do States adapt to recent developments following the release of the ILA and ILC Reports and the request for Advisory Opinions by the ICTs? Would an incorporation of explicit provisions for

the finality of boundaries in bilateral treaties strengthen the outcome of this paper that Article 62(2)(a) does not leave room for the invocation of a fundamental change of circumstances or would it suggest the opposite? Given that the stabilizing effect for the maritime boundary is established through the VCLT rules, while the bilateral agreement does not create obligations and rights to third States, how could coastal nations respond if third States challenge their maritime agreements? Undoubtedly, sea-level rise is a pressing reality and poses challenges to the international community. Yet, it also offers an opportunity for fruitful legal discussions. It remains to be seen how states will adapt to these circumstances.

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Why the Quad Can Become an Asian NATO

Pranav Bhaskar and (corresponding author) *Sitakanta Mishra*

Structured Abstract

Article Type: Viewpoint

Purpose—This study envisages the future of the Quadrilateral Group (Quad) by scrutinizing its evolution, the pronouncements of its leaders, and observing the reorientations of its members' security strategy in collaboration with other members. Since its inception, the Quad has been perceived, and also dismissed, as the "Asian NATO." Most of the literature rejects the extrapolation of the Cold War scenario and the emergence of NATO in the evolving Indo-Pacific strategic context. While China has viewed it as an anti-China grouping, the Quad members deny it as a military grouping intending to counter China.

Methodology—The study relies on an analytical approach along with a thematic review of existing literature.

Findings—This research concludes that the Quad will evolve as an informal intergovernmental organization in the short term if one examines the members' reorientation of military-strategic posture and the group's agenda. In the longer term, depending on the pace of Chinese assertive behavior, it may take the form of a military-strategic alliance of a different avatar, which is unimaginable.

Originality/Value—This paper takes a contrary view of the Quad as a loose grouping without any military-strategic intent and, therefore, demonstrates out-of-the-box thinking. When the gamut of activities and interactions among members during the last decade is keenly observed, one will get a sense of the Quad's potential and possibility to evolve as a security grouping, but it may not exactly be like NATO. It will contribute to the existing pool of literature on the subject as an original point of view with important implications and would be useful for scholars and policymakers.

Keywords: Asian NATO, Indo-Pacific, military grouping, Quad, South China Sea

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I. Introduction: Setting the Narrative

In a way, the Quadrilateral Security Dialogue (QSD) comprising Australia, India, Japan, and the United States of America is a reincarnation of the consultative framework (Tsunami Core Group) to coordinate rescue and relief operations when a huge tsunami hit Indo-Pacific rim countries in December 2004. Though the group was disbanded in January 2006, it had sown seeds that would grow to become the QSD in 2007. Meanwhile, two out of the four members of the QSD—India and the USA—were already involved in a multilateral naval exercise (Exercise Malabar) since 1992, to which the third and fourth members—Japan and Australia—were added in 2015 and 2020 respectively.¹ Given its motto to promote “free, open rules-based order ... in the Indo-Pacific and beyond”² and collaborations in ten important areas, including joint naval exercises, counterterrorism, maritime security, etc. The Quadrilateral Group or Quad has been touted (and dismissed) as “Asian NATO.”³ The idea of the Quad becoming a North Atlantic Treaty Organization (NATO) type grouping is extrapolated to the evolving Indo-Pacific strategic context. The Cold War-type power alignment and “bloc confrontation” has been perceived by China vis-à-vis the Quad.⁴ On the contrary, Quad members assure that it is “not a military grouping or meant to counter China.”⁵ Also, the four members had repeatedly clarified that the vision of “security dialogue” is “not oriented traditionally toward one specific state but rather is focused on the non-traditional issues” that apply to all stakeholders in the Indo-Pacific region.⁶ But the Quad, like the NATO, is driven by function rather than form.

NATO is, of course, a distinctive form of military alliance with a hard security function based on the collective security principle. Can the Quad not evolve, both in its function and form, like NATO given the nature of the Indo-Pacific security environment where all four members pursue the agenda to push back China and maintain “rules-based order”? Will the four members not revisit their engagement in any circumstance in the future by reassessing Chinese capabilities, intentions, and actions to expedite regional connectivity as an alternative to the Belt and Road Initiative (BRI)? Will their counterterrorism cooperation not respond militarily to the “gray-zone activities” by China in the region? Should the Quad members not learn from the Ukraine-Russia war that too much emphasis on “softer” facets of security will nurture geopolitical contestations culminating in military escalation at sea as the region is “maritime underbelly”? All these questions are bound to arise as the potential for an armed conflict in the Indo-Pacific far exceeds what happened in Ukraine; if such a conflict unfolds in the Indo-Pacific, will the Quad framework not emerge as a “security cohort,” if not a NATO-type alliance? There are sufficient indications of the Quad evolving as a security alliance given its current expansive character and the evolving security situation in the region.

This paper, while delving into the history of the Quad, assumes that it can become a more sophisticated military alliance, and it is gradually evolving in this direction; this can be visualized if one discards the conventional framework (Cold War and military alliance) to understand the forms and functions of (military) alliances in the current scenario, and introspects the new vocabulary of “security cohort” in this “world adrift.” Here an attempt is made to analyze the character of the Quad grouping, the evolving security environment in which it operates, and its prospects to undertake a mutual security provider role in the region. It speculates on the future contours of this “plurilateral” grouping; specifically,

whether the Quad is likely to “overcome or reinforce Cold War” type of scenario. Besides, it attempts to explore India’s interest and role in shaping this plurilateral grouping, putting China’s reactions into perspective.

II. Origin of the Grouping

The origin of the Quad framework is in tune with the evolution of the Indo-Pacific narrative. One may trace back the idea of the confluence of two regions (Indian and Pacific Oceans) to former Prime Minister of Japan Shinzo Abe’s speech “Confluence of the Two Seas” (August 27, 2007), in the Indian Parliament, where he hinted at a new “broader Asia” taking shape.⁷ His idea for the possible conjunction of the two regions with common objectives originated from the formation of the Tsunami Core Group to respond to the emergency resulting from the tsunami in 2004. After serving its purpose it was disbanded in 2005 and folded into the broader UN-led operations. Shinzo Abe attempted to institutionalize this temporary group as the Quad during his first term as prime minister of Japan from 2006 to 2007.

One can argue that the origin of the Core Group was linked to a crisis (natural disaster) in the region, and it left a template and a successful track record of crisis-time cooperation for the future. Prime Minister Abe’s rationale for proposing the Quad was probably based on his anticipation of a crisis in the future emanating from China’s assertive posture threatening the rules-based order in the region and beyond. The first meeting of Quad officials took place on the sidelines of the ASEAN Regional Forum summit in the Philippines in May 2007. This meeting was premised on the idea to build on the work the three members (Australia, Japan, and the US) were already doing in other forums like the Trilateral Security Dialogue, and “to improve cooperation between the democracies in the Indo-Pacific region to manage China’s growing power and ambition.”⁸ However, the clear intention to revive the Core Group into a security dialogue within the context of the “China threat” did not take off. The subsequent meeting of the group was delayed. It is widely known that it “fell dormant for nearly a decade, particularly amid Australian concerns that it would irritate China.”⁹ With the change in political leadership in Australia in 2017 with Anthony Albanese, the leader of Australia’s Labor Party, as the new prime minister, Canberra seems to have overcome its inhibitions and confirmed its alignment with the priorities of the Quad nations and its objective—“free and open Indo-Pacific.”¹⁰ In November 2017, on the margins of the East Asia Summit, the second Quad summit was convened for consultations on connectivity issues, maritime security, counterterrorism, and proliferation threats in Asia, besides reasserting the shared principles for a Free and Open Indo-Pacific.¹¹

2.1 Revival and Anticipation

The debate over the nature of the Quad has been framed within the classical alliance formation framework and NATO as a reference point. The Quad is something very different as it is a product of a different era; therefore, the Cold War framework of treaty-based alliance formation cannot be extrapolated. Ukraine is not in an alliance with NATO, but it is strongly backed by it and other like-minded nations in its war with Russia. Alliance

formation within a treaty obligation is a system of the past ideology-driven era. Today, joint military planning and defense cooperation can be managed without one dedicated military staff. Besides, regional groupings need not be confined to one objective today. An umbrella grouping with a broad agenda can address common security threats concertedly. The successful joint military/naval exercises by the Quad members were indicative of the group's capability and intentions. Though the Quad agenda is viewed as diverse and broad, it focuses on four issues to sustain regional "rule-based order": (1) maritime security driven by a shared concern owing to the militarization of artificial islands by China in the South China Sea; (2) enhance connectivity in response to China's ambitious BRI; (3) dealing with counterterrorism in the region; and (4) North Korea's nuclear brinkmanship.¹² In subsequent years, the agenda has been broadened to include cyber espionage, disinformation, and security of digital infrastructure as "gray-zone activities" by China have increased phenomenally.

2.2 The Quad's Future

A plethora of studies by scholars have examined the character of the Quad and its prospects as a military grouping, mostly suggesting that the grouping cannot be a NATO-type arrangement. Broadly three versions of arguments are discernible when one scrambles through the literature. While some American officials seem to foresee Quad "into a full-fledged military alliance like NATO," ... a bulwark against "a potential challenge from China,"¹³ some Chinese officials view the initiative as US pushing for "an Asian version of NATO to contain China."¹⁴ In contrast, Indian officials outrightly argue that this plurilateral grouping "...reflect[s] the more contemporary world, it is overcoming the Cold War, not reinforcing it."¹⁵ China has noticed, and taken seriously, the group's emergence and activities because all members have tense relations with Beijing, and their focus is the Indo-Pacific—a region extremely critical to Chinese strategic interests.

However, given the absence of any sign of the fortitude of NATO in the Quad at the moment (yet to have a formal strategic grouping badge), prognostication on the future of the Quad is not simple. Relying on the current trends and extrapolation of precedents, one may peep into the future, but without any guarantee, as trends are not often the best predictors. One can observe that Australia (and Singapore) had to dissociate from the Malabar exercise for a few years owing to Chinese objections. Can one ensure that all the members of the grouping will be able to withstand Chin's fury and remain cohesive to defend each other against the Chinese threat? The Quad was born in response to the crisis resulting from the tsunami in 2004; if the Indo-Pacific region experiences another crisis involving China's activities vis-à-vis any Quad member, will the Quad not act as a NATO-type grouping? It is a grouping of democratic countries in the region with a determination to ensure the Indo-Pacific is safe and secure. Will the Quad eventually become the Asian NATO?

There can be no definite answer to all these intriguing questions today. However, it would be safe to assume that the grouping will gradually groom its institutional structure and shape its agenda, and there is no looking back or disbanding. Since its revival in 2017, with the determination to keep the group together and develop it into something more substantive by expediting cooperation among members, the Quad has introduced foreign minister-level dialogues, semiannual senior official-level meetings, working-group

structures, and issues joint statements, like any other multilateral group. The group's agenda is also broadening, including vaccines, climate change, critical and emerging technologies, infrastructure, cyber, space, and so on. Since March 2020, it has also branched out to convening a "Quad plus" (Quad members plus New Zealand, South Korea, and Vietnam) dialogue. All these indicate the gradual consolidation of Quad as a new regional diplomatic framework. During the last four years, from 2020 to 2024, the Quad members have had six summits, and its expansive agenda has been consequential. The process of its institutional shaping will continue, and it may be a matter of time for it to evolve as a full-fledged multilateral organization.

Extrapolation of an event of another era often ignores the importance of context; therefore, projecting past trends into the future with the assumption that things will grow in the same direction would be fallacious. One can only anticipate the most likely outcome or scenario instead of forecasting with increasing reliability. Keeping the above principles as a guide, an attempt is made here to examine if the Quad is a manifestation of, or response to, the "China threat" as the background condition and behavioral events common to its member countries.

III. Networked Quad (NETQUA)

Regional security is of utmost importance to all, and the situation in the Indo-Pacific in general, and the South China Sea in particular, is volatile with frequent tensions at sea besides diplomatic friction. It would be unrealistic to argue that the Quad countries are "just networked, not allied," vis-à-vis China. Since 2017, there has been a growing convergence of foreign and security policies of four countries and others, largely owing to the destabilization of the region of China's assertive presence and activities. The latest new grouping is the SQAD (May 2024), comprising the USA, Japan, Australia, and the Philippines, with the primary objective of countering China's politico-military assertive actions in the region. Of course, all countries are cautious not to trigger China, and prefer the grouping to remain informal for the foreseeable future and "continue its cooperation in maritime security, cybersecurity, and other military-related cooperation and consultation, and supplement the US-centered 'hub and spokes' bilateral alliances in Asia."¹⁶ Besides, as a step toward a security network, the constituting countries not only started discarding or burying their policy of caution ("Quad-caution"), but also the grouping "now features firmly across the four countries' fiercely negotiated bilateral and trilateral joint statements."¹⁷ For example, in February 2020, former "US President Donald Trump remarked that India and the US were working toward revitalizing their expanded cooperation within the Quad"¹⁸; in June 2020 at the Australia-India Virtual Summit, both countries "reaffirmed their commitment to the ongoing Quad consultations."¹⁹ The Australia-Japan-US Trilateral Strategic Dialogue is a means for channeling their cohesive security policy mechanism.

Today, all acknowledge the importance of the Indian Ocean and South China Sea for Indo-Pacific regional security and the global maritime order, which drives the Quad members to calibrate their approach. While Japan and the US are alliance partners, India and Australia are close to the USA and have strategic partnerships including bilateral defense and security-related agreements.²⁰ Perceptibly, all four members are bilaterally and

multilaterally networked and gradually recalibrating their response to China. For example, India has always been cautious about taking sides in geopolitical issues; but on the South China Sea issue, it seems to have undertaken “strategic recalibration” and “departure from its earlier more cautionary and neutral position.”²¹ In the context of the ongoing West Philippine (South China) Sea dispute between China and the Philippines, India has expressed full support for the Philippines in upholding its national sovereignty. During his visit to Manila in March 2024, Indian External Affairs Minister S. Jaishankar, in a joint press conference after talks with Mr. Manalo, firmly reiterated “India’s support to the Philippines for upholding its national sovereignty.”²² More importantly, amid the Philippines’ bitter naval standoff with the Chinese navy in the South China Sea, both countries inked a deal worth \$375 million in January 2022 for the supply of BrahMos missiles,²³ and in April 2024, India delivered the first batch of missiles to the Philippines.²⁴ Besides, India has substantive defense cooperation and exchanges with Cambodia, Laos, and Brunei. Besides hosting the annual naval exercise (Malabar), it has signed military logistics agreements with other Quad members. On the other hand, Australia’s statement that “our strategic circumstances are rapidly evolving and the risks we face as a nation are now radically different from those we have faced in the past” claims a review of its national security commissioned by the Anthony Albanese government in April 2023.²⁵ It concludes that “the risks of military escalation and major conflict in the Indo-Pacific region are rising,” and China’s assertion of sovereignty over the South China Sea threatens a rules-based order on which Australia’s global trade is heavily reliant.²⁶ With great concerns about the “China threat,” “a radical makeover of Australia’s defense strategy” has been kickstarted. Its endeavors to overcome its nervousness vis-à-vis China has culminated in a trilateral military and technology pact (AUKUS: Australia-UK-US) signed on September 15, 2021 to acquire nuclear-powered submarines, which “intensifies Australia’s deterrence capability amid the rising perils of Chinese naval power.”²⁷

Similarly, Japan is gradually moving away from its pacifism policy and is set to become a self-reliant “major military power” by doing away with its self-imposed cap on defense expenditure, building counter-strike capabilities, and easing the ban on weapons export. Gradually it is renovating its “famed civilian industrial capability into a military-industrial complex, and turning from being a US protectorate into an American partner and a significant contributor to Asian and Indo-Pacific security.”²⁸ During the last two decades, Japan has begun to nurture a new security architecture in Asia, led the Global Combat Air Program, and revised its Command-and-Control framework with the US. This reorientation and revamping in Japan’s defense posture and planning is certainly triggered by the “rise of China” and its maritime border dispute, besides other factors. During Shinzo Abe’s prime ministership, the Japanese cabinet had agreed to the right to “collective self-defense” by reinterpreting the Constitution. Recently, the forthcoming prime minister from the Liberal Democratic Party, Shigeru Ishiba, in his article published by the Hudson Institute, has highlighted the necessity of the “creation of an Asian version of NATO...to deter China.”²⁹

It would not be an exaggeration, therefore, to argue that the Quad partners are gradually inching toward a cooperative security architecture by reorienting their national defense framework and strategy. This may not culminate in a Cold War-era treaty alliance, but they are moving toward a collective and cooperative security strategy against a common threat. Realistically, none of them are openly proposing an archaic framework like

NATO, but when and if it emerges, the nomenclature of this bandwagon would be futuristic and robust, which is unimaginable at the moment. Given China's all-pervasiveness and dominant presence in the region, the formation of a NATO-type formal grouping will face significant backlash. Therefore, the Biden administration had made it clear in 2021 that "the Quad will remain an informal grouping, and will not become an Asian NATO, even though it will become a premier grouping in the Indo-Pacific."³⁰ Similarly, Indian External Affairs Minister S. Jaishankar has viewed the notion of the Quad becoming an Asian NATO as a "lazy analogy" and "completely misleading."³¹ These pronouncements at the highest official level suggest that a shared desire to accept the risk on the military front is yet to emerge among the Quad members, though there are enough shared strategic interests and a shared desire to work together against a recognized common problem. How to deter Chinese expansionism is on the minds of all Quad partners. "The US is developing more explicit military instruments such as AUKUS, deeper trilateral security cooperation with South Korea and Japan, and lending military support for the Philippines that is at the receiving end of Chinese aggressiveness on the disputed frontiers. India and the US have steadily increased the range and depth of their military cooperation in the last few years."³² This stage might evolve toward the formation of a concrete security grouping with a common strategic vision in proportion to the pace with which China escalates its strategy and activities in the region. Its current informal character provides it the ability to offer strategy flexibility and coordination comfort to its members. For example, their collaborative work in the non-traditional security domain through six working groups of Quad is one such opportunity to assume regional responsibility and deepen ties by aligning its goals with broader regional strategies.³³

IV. Headwinds

Even if one assumes that the NETQUA is a security alliance in the making, what is holding it back from becoming full-fledged now? There are a few compelling reasons for the slow progress and caution on the part of the members to expedite such a step. First, the current world system, which is adrift, does not offer any clear picture of the global power balance and divide among dominant players. The current global power configuration is unclear, unlike the post-World War period when bandwagoning was straightforward on an ideological basis. The emergence of a clear-cut divide of world powers and alliance formation will take more time. Second, the COVID-19 pandemic has exhausted every nation, and in the post-pandemic phase, there is less incentive and intent for a military alliance among the major powers, including the Quad partners. Prime Minister of India Narendra Modi's clarion call to avoid war—"This is not an era of war. But it is one of dialogue and diplomacy"—sums it up aptly.³⁴ There is a certain "uncertainty, and anxiety" prevailing in the post-pandemic economic environment³⁵ that compels every nation to prioritize domestic economic stabilization compared to other objectives.

Third, Southeast Asia is uneasy about the potential impact on regional stability, and it "needs assurance to overcome skepticism about the Quad and assuage a deep-seated fear of upsetting China."³⁶ After all, China is the largest trade partner of the ASEAN nations and, therefore, they are bound to be cautious for fear of pushback from China if they promote,

and join hands with, the Quad overtly. After the Quad was revived in 2017, the ASEAN response to the grouping has been muted and lukewarm; there is “no clear, consistent, and coherent picture of Southeast Asian views of the Quad other than the fact that some appear to be skeptical of the grouping while others may (partially) welcome it.”³⁷ Though concerns about China’s assertive actions are central to all Quad members, there is no clarity or unanimity among Southeast Asian states on the perceived challenge; different countries consider China differently as it offers varying degrees of opportunity, especially economic, to many. Also, there is no consensus among Southeast Asian countries about the Quad’s capability to address the unspoken primary threat, i.e., China. Given their extensive ties with China, many are “committed to a policy of engaging, not containing it. The Quad can be, therefore, projected as a group of democracies seeking to strengthen their ties with each other on the basis of shared values. Indirectly, this helps to isolate China as a non-democratic state and erode its political standing.”³⁸

More importantly, the ASEAN centrality in Southeast Asia and the Asian Pacific was well-established much before the evolution of the Indo-Pacific framework, and the origin of the Quad. With the new regional configuration (Indo-Pacific) and grouping (Quad), there is genuine speculation on the equation between ASEAN and Quad; whether ASEAN will remain the “primary driving force” and continue to set regional agenda? In other words, “some ASEAN members (Indonesia, Malaysia, Laos, Thailand, and Cambodia) remain deeply insecure about the prospect of an alternative regional order,”³⁹ i.e., Indo-Pacific developing an institution like the Quad. Also, a concern that remains among many ASEAN members is to what extent “the Quad may or may not supplant existing ASEAN-related institutional mechanisms such as the East Asia Summit (EAS) or the ASEAN Regional Forum (ARF).”⁴⁰

In reality, the day Quad started to articulate its agenda, the ASEAN-related mechanisms have facilitated its process; Quad meetings have always been conducted on the sidelines of the ARF and EAS meetings. There seems to exist considerable convergence of interests and operations between Quad and the ASEAN. Particularly India and the US have often expressed their vision for the Indo-Pacific based on ASEAN centrality, but the concerns about unfolding hyper-securitization and major power competition owing to the materialization of the Quad have been raised by many Southeast Asian states. To look through the acceptance of the Indo-Pacific construct and Quad by Southeast Asia, one has to focus on the pervasive phenomenon of “China threat,” which is a factor either driving them closer to, or deflecting them from, the Quad. Nevertheless, Southeast Asia will continue to judge the Indo-Pacific narrative and Quad on its promise and deliberations.

With the aim of greater security cooperation, the Quad is willing to welcome other members in the region. New Zealand, South Korea, and Vietnam have been part of Quad deliberations which is termed the “Quad Plus” arrangement. It indicates that the Quad format and its horizons will expand to accommodate pluralism and inclusivity by inviting new and emerging powers to the fold. Therefore, the Quad will need nimble diplomacy to navigate the dynamics in the region. However, expanding the Quad with more members is “not going to be easy as it will attract challenges of divergent concerns, but there is an impetus for Quad expansion.”⁴¹

Fourth, there seems to be a lack of clarity among the Quad members regarding the group’s future trajectory. In addition, there is no unanimity yet on the nomenclature or

exact geographic contours of the Indo-Pacific; all define the broader Indo-Pacific differently. About the themes of the grouping, it also remains unclear, how exactly it will proceed on them is undefined except all agree to maintain a “free and open” Indo-Pacific to counter China’s actions in the region. “Free” refers to traditional freedom of navigation, and freedom from coercive threats in and from the sea, and “open” stands for an environment of fair, equitable, and inclusive sea-going economic and other forms of enterprise among stakeholders.⁴² Above all, critics say that there is no concrete planning in place for the implementation of the seven core themes identified in the 2017 Quad meeting such as: (1) a rules-based order in Asia, (2) freedom of navigation and overflight in the maritime common, (3) respect for international law, (4) enhancing connectivity, (5) maritime security, (6) the North Korean threat and nonproliferation, and, (7) terrorism.⁴³ If these are the current guiding objectives of the grouping, they hint pursuance of hardcore security strategies in reaction to China and North Korea’s defiant behavior. How and when the Quad will take up such a role remains a matter of speculation. Meanwhile, it will “continue its cooperation with partners in maritime security, cybersecurity, and other military-related cooperation and consultation.”⁴⁴

Many non-Quad countries, like the UK, France, Germany, and the Netherlands, are increasingly adopting the “Indo-Pacific” concept in their strategic documents. As many view it as a coalition of democracies, the grouping is gradually assuming an ideological identity as a grouping of those who oppose are non-democratic (China). Whatever may be its future *avatar*, the Quad has an “ideological and geographic bounding” in this twenty-first century, and the “contrasting presumption about its intent and future”—a network to contain China or a disparate grouping without a common strategic vision⁴⁵—will continue for some time.

V. Conclusion: A Prognosis

The game of narratives and counter-narratives involving regional geopolitics is gradually polarizing the Indo-Pacific region. What this polarization would culminate in is a matter of conjecture, but geopolitical polarization generally gives rise to strategic groupings, formal or informal. At this stage, the Indo-Pacific is nurturing informal and formal intergovernmental organizations like the Quad and AUKUS by like-minded nations. In response, China and its supporters have not yet made such an initiative visible. As far as the Quad is concerned, it looks too fluid and faces waves of uncertainty as an Informal Intergovernmental Organization (IIGO). Under the Quad, no security guarantees among members are signed, and there is no hint of an “Article 5” type of arrangement that NATO—a Formal Intergovernmental Organization (FIGO)—has. Given the diversified interests of the member states, the Quad cannot mimic the European and Atlantic security arrangements and structures. Ryan Mitra (2023) opines that Quad is currently a “minilateral” grouping that could transform into an IIGO in the third decade of this century by passing through the litmus test.⁴⁶

The IIGOs are normally formed for decentralized cooperation and help maneuver the geopolitical powerplays of influential states; they can be trans-domain, non-structured, and are not based on one theme or issue area. Therefore, it has the scope to be modeled to

meet the members' interests as it is not bound by constitutional constraints; with greater state autonomy and flexibility, it can maneuver during high uncertainty. From this perspective, the Quad has a wide scope of various domains, including negotiations and arrangements in hardcore security domains, that would not be possible under the rigid constitution of FIGOs. One way this nature of the Quad would be appropriate is to deal with China's geopolitical behavior. The Quad has identified and acts upon two clear functions—traditional (politico-military, geopolitical dimensions) and non-traditional security (economic, human rights, disaster management, etc.). In peacetime and long-term, its traditional security role can be streamlined, or if any other multilateral (ad hoc network) emerges, it will either collaborate with it or play an influential role in its operations. Ryan Mitra (2023) believes that “the state-centric nature of the Quad will materialize in a manner that, as consensus is incrementally achieved, will be seen as a blanket structure under which this trilateral and all other applicable permutations and combinations will continue to operate.”⁴⁷

The emergence of AUKUS as a minilateral grouping with explicit traditional security objectives among the three countries, out of which two (Australia, USA) are Quad members and three of the Five Eyes Intelligence Oversight and Review Council, confirms the blanket nature of the Quad. This trilateral security pact is evolving as a FIGO with clear military objectives focusing on intelligence, security, military, and technology sharing under a treaty arrangement and is viewed as a most significant security arrangement. AUKUS “enables the US and the UK to share nuclear submarine technology with Australia, helping Canberra possess a fleet of nuclear-powered submarines ... to counter Beijing's adventurism in the Indo-Pacific.”⁴⁸ Its objective to counter China is in sync with Quad's even if they have not developed any formal connection between them. The possibility of Quad becoming an overt military grouping may be grim as members like India are always averse to military security pacts but “AUKUS helps India without directly involving India since the trilateral pact involves close strategic partners of New Delhi to counter China in the Indo-Pacific, and consequently serves New Delhi's interests for a stable balance of power in the Indo-Pacific, a check on Beijing's bellicosity, all the while allowing India to maintain its strategic autonomy.”⁴⁹ Similar is the benefit for Japan.

Besides AUKUS, the US is keen to foster more minilaterals by expanding beyond Indo-Pacific which would give the Quad a much broader scope. For example, the I2U2 format (also expressed as “West Asian QUAD” or “QUAD 2.0”)⁵⁰ brings together India, Israel, the US, and the UAE to redefine the Middle East as West Asia with a geo-economic focus to compete with comparable Chinese initiatives like the BRI.⁵¹ Essentially, Quad is given a more expansive or umbrella character, including a formal intergovernmental security cohort within its ambit with separate institutional mechanisms. Presumably, within a decade, it would morph into a unique organization beyond the conventional wisdom and framework of intergovernmental groupings. Until then, it will continue to be described variously: a US-led project, an alliance, an axis of democracies, a security diamond, or an anti-China grouping. Currently, the Quad is an informal grouping with multifarious objectives, including balancing China; it will confront enormous challenges to maintain its informality, multi-layered structure, and function.⁵²

Therefore, it is safe to conclude that the “Quad is here to stay,” and in the short term, it will evolve as an IIGO; it will keep up the momentum of cooperation among the members,

and there is no rollback of this minilateral. However, the defining features of an institutionalized Quad are essentially three: (1) the degree of reconciliation of the varying interests of the member states; (2) the nature of India's involvement amid its foreign policy of strategic autonomy; and (3) China's geopolitical behavior vis-à-vis the Indo-Pacific littorals. Besides, how the China-Russia equation vis-à-vis the US and Europe unfolds will greatly determine the *avatar* of the Quad. In the recent Quad summit, Biden outright said that "China continues to behave aggressively, testing us all across the region, and it is true in the South China Sea, the East China Sea, South China, South Asia, and the Taiwan Straits. It's true across the scope of our relationship, including in economic and technology issues."⁵³ Above all, if a military-strategic alliance is not viable to win the objective of a "free and open Indo-Pacific," is "managing competition" with China the only substitute for victory? As Matt Pottinger and Mike Gallagher argue, "competition with China must be won, not managed" because "China isn't aiming for a stalemate."⁵⁴ Accordingly, an Asian NATO is inevitable, and the Quad shows the way and is more strategically aligned today than ever before.

Notes

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The New Cold War: The United States, Russia, and China from Kosovo to Ukraine

Gilbert Achcar (2023). Chicago: Haymarket Books. ISBN: 978-1642599107. 376 pages.

In *The Clash of Civilizations*, Samuel P. Huntington emphasized the importance of India as a rising power capable of influencing the balance between global superpowers.

He argued that as China's influence in the Middle East grows through its support of Muslim nationalism worldwide, and as Russia strengthens its ties with China to counter US dominance, India will emerge as a critical player. India's geopolitical significance lies in its ability to function as a counterbalance to this Russo-Chinese alliance, aligning itself more closely with the US to maintain global stability and US supremacy.

Gilbert Achcar's *The New Cold War* builds on these themes, exploring India's evolving role within contemporary realities. While the book primarily focuses on the strategic triad of the US, Russia, and China, India's position is implied as increasingly significant. India, with its growing economy, military strength, and strategic partnerships—especially with the US—plays a pivotal role in the broader geopolitical chessboard. As the US seeks allies to counterbalance China's rise and Russia's resurgence, India becomes a key factor in maintaining equilibrium in global power dynamics.

Achcar's work, while not as India-centric as Huntington's in this particular regard, nonetheless recognizes the importance of the shifting alliances and the emerging multipolar world order where India's role in countering the Russo-Chinese bloc is critical for the U.S. and the West. Thus, India's significance is embedded in the broader strategic narrative, reinforcing its importance in contemporary global politics.

Achcar's thesis is clear: while the world may have assumed that the Cold War ended with the fall of the Soviet Union, its essential dynamics have returned in a modified form. The book traces this transformation from the aftermath of the Soviet collapse, through NATO's expansion, to the Kosovo War of 1999, and finally to the crises in Ukraine and growing US-China tensions. At the heart of Achcar's analysis is the "strategic triad" of the United States, Russia, and China. He carefully examines how these three powers interact in a multipolar world that is increasingly defined by competition rather than cooperation.

Achcar divides his analysis into two main parts: the genesis of the new Cold War and its subsequent escalation. The first part focuses on how global tensions simmered and eventually resurfaced after the Cold War's supposed conclusion. The second part examines how these tensions have "heated up" in recent years, particularly with Russia's resurgence and China's aggressive push to challenge US dominance.

Each chapter of the book provides both a historical overview and a contemporary analysis of the evolving relationships between the three powers. Through this structure, Achcar argues that the factors leading to today's geopolitical challenges were already in place by the end of the twentieth century. He meticulously connects the dots between past events and today's realities, offering readers a comprehensive understanding of how we arrived at this new Cold War.

The Strategic Triad: The United States, Russia, and China

One of the core ideas in Achcar's *The New Cold War* is the "strategic triad" involving the United States, Russia, and China. Achcar argues that the end of the Cold War didn't eliminate these power dynamics but instead paved the way for new forms of rivalry. While Russia's decline in the 1990s led many in the West to believe it had been neutralized as a global force, this view ignored the historical reality that every attempt to "Westernize" Russia has been met with fierce nationalist resistance. Achcar sees this as a major miscalculation. Even in its weakened post-Soviet state, Russia retained substantial military and

political clout. The resurgence of Russia under Vladimir Putin, according to Achcar, was not unexpected but rather a predictable result of NATO's expansion and Western interference in Eastern Europe.

Deng Xiaoping's strategy of "hide your strength, bide your time" allowed China to capitalize on economic engagement with the United States, positioning itself as a responsible global player in the eyes of the West. However, China eventually emerged as a key force in the strategic triad alongside the U.S. and Russia. Its rapid economic growth and expanding military capabilities have made it a formidable rival to the US, which had long maintained dominance in the post-Cold War world. While China initially pursued a "peaceful rise" under Jiang Zemin, Achcar notes that its approach shifted as it began asserting itself more forcefully on the global stage. A key element in this new Cold War dynamic is the growing strategic partnership between China and Russia, largely in response to mounting Western pressure.

NATO's Expansion and Western Hubris

A significant portion of Achcar's critique is directed at the policies of the United States and NATO. He argues that NATO's expansion eastward, particularly into former Soviet territories, played a crucial role in reigniting tensions with Russia. The decision to include countries like Poland, Hungary, and the Baltic states in NATO, while excluding Russia, created a sense of encirclement and hostility in Moscow. Achcar points out that many Western analysts, including prominent figures like George Kennan and Stephen Cohen, had warned against NATO's expansion, predicting that it would provoke backlash from Russia.

The Kosovo War in 1999 serves as a pivotal moment in Achcar's narrative. He argues that this conflict, and the subsequent NATO bombing of Serbia, marked the beginning of the new Cold War. It was during this period that Russia, under Putin, began to view NATO's actions as a direct threat to its sphere of influence. Achcar revisits his 1999 analysis of the Kosovo War, where he had already identified the seeds of the new Cold War. He believes that this war, coupled with NATO's expansion, solidified Russia's perception that the West was intent on weakening and isolating it.

Vladimir Putin and the Return of Ultra-Russian Nationalism

In the chapter titled "Vladimir the Terrible: An Opera in Five Acts," Achcar provides a detailed analysis of Vladimir Putin's rise to power and his foreign policy strategy. He presents Putin as a pragmatic and calculating leader who has managed to restore Russia's position as a major global power, despite the country's economic weaknesses. Putin's actions, particularly in Ukraine and Syria, are seen as part of a broader strategy to reassert Russian influence in regions where the West has tried to expand its own presence.

Achcar argues that Putin's foreign policy is largely shaped by a sense of encirclement and the need to defend Russia's national interests against what he perceives as Western aggression. The annexation of Crimea in 2014, for example, was not just an opportunistic move, but a response to NATO's growing presence in Ukraine and the perceived threat of losing Russia's strategic foothold in the Black Sea. Achcar also emphasizes the importance

of Russia's military buildup and modernization, which has enabled the country to punch above its economic weight in global affairs.

China's Assertiveness: The End of the "Peaceful Rise"

Achcar's treatment of China is one of the book's highlights. He traces the country's shift from a policy of cautious diplomacy under Jiang Zemin to a more assertive and confrontational stance under Xi Jinping. Achcar argues that China's rapid economic growth, coupled with its rising military power, has emboldened its leadership to challenge the United States on multiple fronts. This is particularly evident in the South China Sea, where China has aggressively expanded its territorial claims, much to the dismay of its neighbors and the United States.

Achcar views China's assertiveness as a calculated response to what it sees as a US-led effort to contain its rise. He highlights the role of US foreign policy, particularly the "pivot to Asia" under President Obama, as a factor that has accelerated the Sino-American rivalry. The trade war initiated by Donald Trump, along with growing tensions over Taiwan, has further deepened the rift between the two powers. Achcar suggests that China's partnership with Russia, though not formalized in a military alliance, represents a significant shift in global power dynamics, as both countries seek to counterbalance US influence.

The Ukraine Crisis: A Turning Point in US–Russia Relations

The 2014 Ukraine crisis marks a major escalation in the new Cold War. Achcar argues that the overthrow of the pro-Russian government in Ukraine and the subsequent annexation of Crimea by Russia brought US–Russia relations to their lowest point since the end of the original Cold War. Achcar places much of the blame on US and EU interference in Ukraine, suggesting that their support for the Maidan protests and the ousting of President Yanukovich was a direct challenge to Russia's influence in its "near abroad."

For Putin, the loss of Ukraine to Western influence was unacceptable, leading to the swift annexation of Crimea and support for separatist movements in Eastern Ukraine. Achcar points out that while Russia's actions were condemned by the West, they were widely supported within Russia, where the annexation of Crimea was seen as a necessary move to protect Russian interests and prevent NATO's further encroachment. Achcar also highlights the role of economic sanctions, which, while damaging to Russia's economy, have not succeeded in altering its foreign policy behavior.

Where Do We Go from Here?

Achcar concludes the book by asking the critical question: "Where do we go from here?" He suggests that the current trajectory of global politics, particularly the growing militarization and lack of diplomatic engagement, is leading the world toward a more dangerous and unstable period. The rivalry between the United States, Russia, and China shows no signs of abating, and Achcar warns that without a major shift in US foreign policy, the new Cold War could escalate into a more overt and destructive conflict.

Achcar calls for a rethinking of US foreign policy, particularly its reliance on military

interventions and its policy of containment toward Russia and China. He argues that the United States must adopt a more cooperative approach, focusing on diplomacy and engagement rather than confrontation. Achcar also emphasizes the need for a new international order that reflects the multipolar reality of the twenty-first century, where the United States is no longer the sole superpower.

Gilbert Achcar's *The New Cold War* is a comprehensive and meticulously researched analysis of the current state of global politics. One of the book's greatest strengths is its ability to connect historical events with contemporary developments, offering readers a clear understanding of how we arrived at this point. Achcar's writing is accessible yet detailed, making complex geopolitical issues understandable to a broad audience.

Achcar's critique of US foreign policy is sharp and unrelenting. He argues convincingly that the United States bears significant responsibility for the current state of global tensions, particularly through its policies of NATO expansion and military intervention. While some readers may find his critique of the US too one-sided, Achcar balances this by acknowledging the agency of Russia and China in shaping the new Cold War dynamics.

One of the book's standout features is its treatment of China. In many discussions of the new Cold War, China is often overshadowed by the focus on US–Russia relations. However, Achcar places China at the center of his analysis, recognizing it as a key player in the new geopolitical order. His exploration of China's rise and its shifting foreign policy under Xi Jinping is one of the most compelling parts of the book.

However, *The New Cold War* is not without its limitations. At times, Achcar's reliance on economic and military data can overwhelm the reader, particularly those who are not well-versed in Cold War history or international relations theory. Additionally, while Achcar provides a thorough analysis of the actions of the US, Russia, and China, he gives less attention to the perspectives and agency of other global actors, such as the European Union, India, or the countries of the Global South, which are also impacted by these power dynamics.

The New Cold War is an important and timely contribution to the discourse on contemporary global politics. Gilbert Achcar's analysis of the strategic triad between the United States, Russia, and China offers a nuanced and insightful perspective on the forces driving today's geopolitical tensions. While the book can be dense at times, it is a valuable resource for anyone seeking to understand the complexities of the new Cold War and its implications for the future of international relations.

Achcar's warnings about the potential escalation of the new Cold War should be taken seriously. As the world moves deeper into a period of multipolarity and rising nationalism, the risks of conflict are higher than ever. Achcar's call for a rethinking of US foreign policy and a more cooperative international order is a necessary and urgent plea for diplomacy in an increasingly divided world.

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Call for Papers and Style Guide

***JTMS* Summer/Fall 2025 Issue Call for Papers**

The *Journal of Territorial and Maritime Studies (JTMS)* is soliciting submissions for its Summer/Fall 2025 issue. *JTMS* is an interdisciplinary journal of research on territorial and maritime issues sponsored by the Northeast Asia History Foundation with editorial offices hosted by Yonsei University in South Korea. The journal provides an academic medium for the announcement and dissemination of research results in the fields of history, international law, international relations, geography, peace studies, and any other relevant discipline as they pertain to terrestrial and maritime territorial issues. The journal covers all continental areas across the world, and it discusses any territorial and maritime subjects through the various research methods from different perspectives; moreover, practical studies as well as theoretical works, which contribute to a better understanding of terrestrial and maritime territorial issues, are encouraged.

For consideration in the Summer/Fall 2025 issue, Manuscripts should be submitted electronically to jtms@yonsei.ac.kr by February 1, 2025. Submitted papers should include four major sections: the title page, structured abstract, main body, and references. The title page should contain the title of the paper, the author's name, the institutional affiliation, and keywords. To be considered, Manuscripts must follow the *JTMS* style guide available on our website. A length of maximum 9,000 words is preferred for an article, including endnotes, and approximately 2,000 words for a review. Inquiries may be sent via the email address provided above.

Our style guide and other journal information may be found on our website at: <http://www.journalofterritorialandmaritimestudies.net/>

***JTMS* Call for Blog Entries**

The blog of the *Journal of Territorial and Maritime Studies* welcomes submissions for blog entries. This forum is intended to discuss topics related to recent territorial and maritime news, research, and policy. It is hoped that this blog will help bring a fresh perspective on how to deal with territorial and maritime issues and the complexities these issues present.



Those wishing to submit a blog post can send their post to *jtms@yonsei.ac.kr* along with the author's contact info, bio, and a recent photo.

JTMS Style Guide

General Guidelines

JTMS is a scholarly journal. Paragraphs must be fully developed without contractions, first and second person pronouns, repetition, jargon, sexist language, awkward syntactical constructions. Use a limited number of succinct headings and subheadings that are underlined or italicized as appropriate. Carefully honed style that is in a mellifluous prose is as important as substantive content. *JTMS* recommends authors ask colleagues whose writing style they respect for help with review and revision. Please note that all accepted material is subject to editorial emendation.

Length: Research articles should be no more than 9,000 words, commentary essays no more than 4,000 words and Book Reviews no more than 2,000 words.

Format: Research should be saved as Microsoft Word document formatted Times New Roman, twelve-point font, double-spaced. There should be generous margins, no right-hand justification, and pages numbered consecutively.

Title Page: Title page must include (1.) the title of the paper, (2.) author's contact information including name, affiliation, address, phone number, fax number, email address (3.) A structured abstract (see samples below) and few key words of the paper.

Biography: Author's biographical statement (75 words or less) must be underneath his/her contact information. This will be edited and published in the *Journal of Territorial and Maritime Studies*.

Headings: *JTMS* uses three levels of headings. Major headings (heading level 1) are center justified in bold with no indentation of the first sentence following the heading. Secondary heading (heading level 2) is left justified in italic with the first sentence after the heading indented. Tertiary heading (heading level 3) is left justified in italic with the first sentence after the heading beginning on the same line.

Tables & Figures: Insert each table or figure on a separate page at the end of the text. Indicate the position of the table or figure in the text (e.g., Insert Table 2 here). The page containing the table or figure should be placed after the page that first references the table/figure in the text. Authors have the responsibility of providing high quality figures and images in tiff format and a resolution of 800dpi or higher. Supporting materials may be submitted as hard copies for scanning or through email submission. Please forward all materials to the editor.

Endnotes: Use full citation endnotes with no bibliography or reference list. Endnotes should be brief, used sparingly, and consecutively numbered with subscript Arabic numbers. Please convert all footnotes to endnotes.

Book

1. Robert Jervis, *The Meaning of the Nuclear Revolution: Statecraft and the Prospect of Nuclear Armageddon* (Ithaca, NY: Cornell University Press, 1989), p. 167.

2nd non-consecutive endnote

2. Jervis 1989, p.160

Consecutive endnote

3. Ibid. p.50

Journal

2. David Karl, "Proliferation Pessimism and Emerging Nuclear Powers," *International Security* 21(3) (1996–97), p. 89.

Website

3. Sangwon Yoon and David Lerman, "Hagel Calls on North Korea to Tone Down Rhetoric," *Bloomberg News*, April 11, 2013, <http://www.bloomberg.com/news/2013-04-10/south-korea-braces-for-possible-missile-test-from-north-today.html>, accessed January 21, 2014.

Legal Case Citations

Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001, pp. 101102, para. 205

Non-consecutive citations:

ICJ Reports 1978, supra note 18, p. 50, para. 102

Newspaper Article

4. Andrei Lankov, "Stay Cool. Call North Korea's Bluff," *New York Times*, April 9, 2013.

Footnote

5. The classic optimist-pessimist debate can be found in Scott Sagan and Kenneth Waltz, *The Spread of Nuclear Weapons: An Enduring Debate*, 3d. ed. (New York: W.W. Norton & Company, 2013). For detailed surveys of the literature more generally, see Peter Lavoy, "The Strategic Consequences of Nuclear Proliferation: A Review Essay," *Security Studies* 4(4) (1995), pp. 695–753; and Francis Gavin, "Politics, History and the Ivory Tower-Policy Gap in the Nuclear Proliferation Debate," *The Journal of Strategic Studies* 35(4) (2012), pp. 573–600.

One File: Submit the paper as one file in the following order: Title, Structured Abstract, Text, Endnotes, Tables and Figures, and Biographical Statement.

Structured Abstract

Article Classification: JTMS categorizes articles into six of the following classifications: Research Paper, Viewpoint, Technical Paper, Conceptual Paper, Case Study, and General

Review. Please write *one* of the categories in which your paper belongs on the article title page.

The article title page must include a structured abstract with 4–5 of the following sub-headings: (1.) Purpose, (2.) Design/Methodology/Approach, (3.) Findings, (4.) Practical Implications, (5.) Originality/Value. The structured abstract, including keywords and article classification, must be 200 words or less.

Structured Abstract Samples

SAMPLE 1:

Article Type: Research Paper

Purpose: Some scholars imprint an academic discipline by their contribution to the manner in which people think and research, namely, by putting forward novel concepts and insights. The purpose of this paper is to examine the impact of Sumantra Ghoshal's work on the study of subsidiaries and multinational enterprises and organizational formats for foreign operations.

Design, Methodology, Approach: A bibliometric study on Bartlett and Ghoshal's well-known book *Managing Across Borders: The Translational Solution* is performed to assess its impact in international business research. The entire record of publications in the top leading IB journal, *Journal of International Business Studies*, is examined.

Findings: Theoretically supported, Ghoshal's work was keenly influenced by his corporate experiences and his constant questioning of the dominant theories and assumptions. The analyzes in this paper show the impact of the work on the "transnational solution," namely, on the understanding of multinationals and subsidiaries, thus being one of the most notable contributions for IB research over the past twenty years.

Practical Implications: Useful for graduate students and in writing a literature review, this paper presents an interesting manner to examine a scholar's and a theory's impact on a discipline.

Originality, Value: This paper presents an extensive bibliometric analysis of research published over a timespan of 22 years in international business studies.

SAMPLE 2:

Article Type: Research Paper

Purpose: While many studies on institutional environment have primarily focused on the influence of the host country environment, limited insights have been offered on how the different dimensions of home institutions affect firm internationalization. This paper aims to fill this gap by investigating the effects of regulatory institutions at home.

Design, Methodology, Approach: Using country governance quality to proxy quality of regulatory institutions, this study attempts to reveal how regulatory institutions at home facilitate a multinational enterprise's (MNE's) international expansion and why the influence differs in different country clusters. Using hierarchical linear modeling and cluster analysis, proposed hypotheses were tested with a three-year panel 511 firms from thirty-eight countries.

Findings: The results provide substantial support for authors' hypotheses that MNEs with high governance quality at home are more engaged in internationalization than those

with low governance quality at home. Moreover, differences in institutional effect do exist between country clusters.

Practical Implications: This study provides evidence that while country difference exists, governance quality at home can facilitate MNE's expansion into foreign markets. This finding will help managers of any MNEs to consider country-level factors and evaluate the governance quality at home before committing resources into foreign operations.

Originality, Value: Building on the institutional environment literature, this theory and results make original contributions by underscoring how the consideration of regulatory institutions at home can significantly improve understanding of institutional influence on MNEs. The findings have important implications for both international business researchers and managers of MNEs.