

India and Freedom of Navigation

Maritime Power and Control of the Sea

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Abstract

India retains a policy that restricts freedom of navigation in what it considers its territorial waters; at the same time, India has taken a vocal stance on the importance of freedom of the sea and the international rules-based order. While maintaining both positions seems contradictory, it should be seen as an aspect of *mare clausum* and India wanting to control its territorial waters. This article traces the historical origins of this view and India's current maritime policies. While most commentators assume India's position will eventually converge with that of the United States, this is unlikely to occur. The United States needs to start planning for an operational environment more marked by *mare clausum*, where not only adversaries but also allies and partners have restriction on the freedom of navigation.

In April 2021, the US Navy conducted a freedom of navigation operation (FONOP) inside India's exclusive economic zone (EEZ), sparking an outcry among Indian commentators. Some speculated this was a deliberate provocation, since it took place during the fiftieth anniversary of the USS *Enterprise* entering the Bay of Bengal during the 1971 India–Pakistan War.¹ This incident highlights an important divergence in how the Washington and New Delhi see some aspects of the rules-based international order in an era when the United States and India are building a strategic partnership and are concerned about freedom of navigation.

It is common to speak of India being a natural security partner of the United States and its allies, not only for geopolitical reasons but also for shared values and interests. The renewal of the Quadrilateral Security Dialogue (Quad) partnership of the United States, Japan, Australia, and India—which is often seen as an alliance of Indo-Pacific democracies—underlines this perception.² However, New Delhi and Washington seem to have divergent views on this critical piece of the rules-based international order.³

Contemporary commentators either call upon nations like India to “ensure their domestic oceans-policy reflects collective strategic interest in a liberal order

of the oceans”⁴ or ask for the United States and India to come to a convergence or compromise on their respective positions.⁵ However, it is useful not to take for granted that maritime powers support freedom of navigation in the same way the United Kingdom and United States have evolved to do. Many states have restrictions similar to India’s, and we could see increasing acceptance of restrictions on freedom of navigations in the future.

Mare Clausum, Mare Liberum, and Freedom of Navigation

The dominant perspective of international maritime law tends to reflect the preferences of the maritime powers, in particular the question of access to the seas. International law of the sea emerged during a debate in the early modern era over whether the seas could be administered as sovereign territory (*mare clausum*), or if they constituted a global commons (*mare liberum*).⁶ It is important to note that the contemporary perspective that “freedom of the seas” is the norm and has been for a long time is misleading. As law of the sea emerged during the first age of Western imperialism in the sixteenth through eighteenth centuries, most great powers sought to control the seas and exclude rivals from what they considered their land domain.⁷

Maritime powers like Spain and Portugal sought to control the seas like the land. They sought to administer and restrict their waters—and markets.⁸ As European powers expanded into the Americas, Africa, and Asia, they brought this norm with them. The Portuguese established a regime of administering maritime trade in the Indian Ocean through superior naval forces and a system of customs, taxes, and requiring licenses for vessels.⁹ Even Britain initially followed the closed sea approach, with the British author John Seldon actually coining the term *mare clausum*.

Later, Hugo Grotius and others articulated the alternative of *mare liberum*, but the major powers resisted the idea in their multipolar struggle for dominance. It was only in the nineteenth century that the British Empire—once it set itself up as the maritime hegemon—sought to enforce a policy of freedom of the seas. After Britain’s decline as a global power, the United States continued this policy of promoting the freedom of the seas. There is an often-overlooked connection between a dominant power establishing and promoting freedom of the seas, and a more balanced system of powers who seek to limit freedom of navigation in their own seas. As Daniel P. O’Connell wrote, “When... great powers have been in decline or have been unable to impose their wills upon smaller States, or when an equilibrium of power has been attained between a multiplicity of States, the emphasis has lain upon the protection and reservation of maritime resources, and consequently upon the assertion of local authority over the sea.”¹⁰ The influence

of the changing balance of power is important to understand the diverging views of the postimperial era and also today's multipolar environment.

Understanding India's Stance on Sovereignty and Maritime Law

Following independence, India's political leaders focused on sovereignty and internal development. As part of this perspective, freedom of navigation—in relation to foreign warships—was something to be limited to help secure India from foreign powers. Recently, a growing sense of “maritime consciousness” has emerged in India that stems from various sources, ranging from naval officers to political commentators and political-economic initiatives.

For India, sovereignty has a natural connection to maritime issues because Western powers dominated and colonized Asia through control of the sea. Indian historian KM Panikkar termed this age the “Vasco de Gama Epoch,” after the first European explorer to sail into the Indian Ocean in the 1490s. Western maritime power was the key to the establishment of European empires in Asia, and therefore, it was the principal reason Asian states lost their sovereignty.¹¹ In 2007, Minister for External Affairs Pranab Mukherjee echoed Panikkar, “The realization that this gross neglect of maritime security eventually led to the colonization of the subcontinent and the consequent loss of India's very independence for nearly three centuries should make a repetition of this strategic error utterly unaffordable.”¹²

Many postcolonial nations like India saw the world divided between the large industrial powers on the one hand, which had navies and wanted freedom of navigation to protect the global commons and to project power, and the developing nations on the other hand, which sought to limit access to waters off their territory to guard against power projection and to secure economic resources in and under those waters.¹³ With decolonization, more and more new states joined the international system and sought to challenge the existing norms. O'Connell observed that the arrangement of states shifts to have more actors the greater the push for *mare clausum* becomes. The developing world sought to shift the norms of the oceans regime away from valuing freedom of the seas and narrow coastal jurisdiction, giving greater economic rights to ocean space off the territorial waters of states beyond the customary three-mile limit and restricting freedom of navigation into territorial waters—and later EEZs.¹⁴ As Robert Keohane and Joseph Nye note, “The situation after 1967 was not merely one of ‘cheating on the regime,’ but of pressure for an alternative regime.”¹⁵ As James Kraska notes, “The relative ascent of the Third World South and Russia . . . presages a reformation of international law, including well-settled tenets of the law of the sea. In particular,

the emerging powers are renewing a push for expanded coastal state authority, jurisdiction, and even sovereignty, in the EEZ.”¹⁶

The issues of freedom of navigation and innocent passage were contentious. The maritime powers maintained that any waters beyond territorial waters were considered part of the high seas or international waters. Hence, all states enjoyed freedom of navigation through them. Depending on the state, this freedom of navigation has included the “innocent passage” of warships through territorial waters and EEZs and the right of ships, even warships, to pass through territorial waters without the need for prior notification as long as those warships did not engage in hostile acts and were directly transiting from one point to another.¹⁷ Many developing coastal states, including Bangladesh, Pakistan, China, and India, supported curtailing the right of innocent passage in their territorial waters and even their EEZs.¹⁸

India sought to limit extraregional powers from having military forces in the Indian Ocean region (IOR), often referred to as India’s Monroe Doctrine.¹⁹ As India defeated Pakistan in the 1971 India-Pakistan War, the Nixon administration sent the carrier USS *Enterprise* from the Pacific to the Bay of Bengal as a token show of force that seemed like a return to imperial gunboat diplomacy. Later, the US presence on Diego Garcia, the Soviet invasion of Afghanistan in 1979, and the Carter Doctrine all seemed to indicate to Indian political leaders that South Asia would be a new front of the Cold War.²⁰ Even in recent years, New Delhi has maintained its objections to US surveying and intelligence collection vessels off India’s coast and made official protests in 2001, 2004, and 2007.²¹ As Indian naval officials are often fond of observing, India is listed as a country in which the United States conducts FONOPs to challenge “excessive maritime claims.”²²

India required foreign warships to provide prior notification and ask for approval before they entered Indian territorial waters.²³ Because the first United Nations Convention on the Law of the Sea (UNCLOS) refused to include this restriction, India did not ratify the four Geneva Conventions on the Law of the Sea (that made up UNCLOS I) in the 1960s.²⁴ Similarly, India tried to limit the access of external military powers into the IOR, as evidenced by its proposal in 1971 for an Indian Ocean Zone of Peace (IOZP).²⁵

In the years leading up to UNCLOS III, India passed the Maritime Zones Act of 1976, “which formally required all foreign warships to give prior notification when passing through the territorial waters of India, even when undertaking innocent passage.”²⁶ New Delhi’s position, as codified in the 1976 Maritime Zones Act, is that “Foreign warships including submarines and other underwater vehicles may enter or pass through the territorial waters after giving prior notice to the Central Government: Provided that submarines and other underwater vehicles shall navigate on the surface and show their flag while passing through such waters.”²⁷

As Iskander Rehman notes, parts of the Maritime Zones Act also seem to indicate an Indian intention to limit outside access to India's EEZ through "designated areas" of its EEZ, which contradicts UNCLOS's definition of *freedom of navigation*.²⁸ Moreover, it is important to note that while India signed UNCLOS in 1982, it was not ratified by India until 1995, and that was only with adding the following declaration to it:

The Government of India reserves the right to make at the appropriate time the declarations provided for in articles 287 and 298, concerning the settlement of disputes;

The Government of the Republic of India understands that the provisions of the Convention do not authorize other States to carry out in the exclusive economic zone and on the continental shelf, military exercises or maneuvers, in particular those involving the use of weapons or explosives without the consent of the coastal State.²⁹

India's Return as a Great Maritime Power

For the past two decades, many domestic and international observers see India as a rising great power and a strategic partner for the United States.³⁰ This perspective also views maritime issues as increasingly important given India's economic and energy needs. Now Indian elites have drawn upon India's often forgotten maritime past to fashion a narrative of an India that is returning to its former position as a great maritime power, as it was during the Chola Empire.³¹

There are several drivers for this change. First, when India opened itself to the global economy, it naturally became more dependent on global trade and external energy sources. This dependence has highlighted the importance of maritime security and sea lines of communication (SLOC).³²

Second, China has replaced Pakistan as India's major security challenge. Along with Pakistan, China has been India's major security concern—dating back to at least the disastrous border war of 1962. India and China share a disputed border, and by most measures, China's military capabilities and terrain hold India at a disadvantage along that border. China has also maintained a strong quasi-alliance with Pakistan and given its ally robust military assistance.³³ From an Indian perspective, this relationship is to "keep India" down, locked in its region in a rivalry with a weaker state, while China can expand its influence into the IOR.³⁴

India is concerned with Beijing's expanding naval and economic links with many of India's neighbors like Pakistan, Bangladesh, Sri Lanka, and Myanmar through China's Belt and Road Initiative (BRI).³⁵ These circumstances give India

an incentive to maintaining the norms of freedom of navigation, as understood by Western maritime powers, or friendly passage of warships through EEZs in Southeast and Northeast Asia, particularly in the South China Sea. A China that controls the South China Sea is a China that can control the Straits of Malacca and can securely project power into the Indian Ocean. As maritime affairs analyst Abhijit Singh warns, “More importantly, India must be aware that a consolidation of Chinese maritime power in Southeast Asia has a direct bearing on the People’s Liberation Army Navy’s (PLAN) power projection plans in the Indian Ocean.”³⁶

The idea of India returning as a great maritime power has been a consistent and growing theme for governments under both major political parties: the Indian National Congress and the Bharatiya Janata Party.³⁷ In 2007, then–Minister for External Affairs Pranab Mukherjee spoke in the following terms: “Fortunately, after almost a millennia of inward and landward focus, we are once again turning our gaze outward and seawards, which is the natural direction of view for a nation seeking to reestablish itself not simply as a continental power, but even more so as a ‘maritime’ power—and, consequently, as one that is of significance on the global stage.”³⁸ Later in the same speech, he addressed the special, moral role of India in upholding international norms:

India, with its growing capabilities and confidence, and its history of benign and active international engagement, is ready to contribute its maritime might to ensure such a positive outcome . . . as a mature and responsible maritime power, we are contributing actively to capacity building and operational coordination to address threats . . . We see the Indian Navy and the Indian Coast Guard as major stabilising forces in this great movement of energy across the Indian Ocean, not just for India, but for the world at large.³⁹

The Modi government has emphasized maritime themes in several of its initiatives like the Security And Growth for All in the Region (SAGAR, also “sea” in Hindi), Blue Revolution, Neighborhood First, and Act East.⁴⁰ In 2015, Prime Minister Narendra Modi launched the SAGAR initiative, and he visited a succession of IOR countries, laying out his “maritime vision” and the Blue Revolution.⁴¹ Perhaps the most high-profile example of this was India’s chairing of the UN Security Council’s (UNSC) open debate on maritime security in August 2021.⁴² Significantly this was the first time an Indian prime minister chaired an open UNSC debate.⁴³

In many of Modi’s speeches at international meetings, he attempts to strike a balance between India’s special role as an ancient civilization and the new India, which is enmeshed in the international order.⁴⁴ His Shangri-La Dialogue speech

in 2018 is perhaps the best example. It consists of the following elements: (1) India is an ancient civilization, one of the world's leading powers, and it is returning to its leading role; (2) India in the past was a great maritime power with strong links with not only the IOR but also Southeast Asia; and (3) India is a responsible state that champions the norms and rules of the international system. First, Modi mentions India's historical links to Southeast Asia:

Singapore is our springboard to ASEAN [the Association of Southeast Asian Nations]. It has been, for centuries, a gateway for India to the East. For over two thousand years, the winds of monsoons, the currents of seas and the force of human aspirations have built timeless links between India and this region. It was cast in peace and friendship, religion and culture, art and commerce, language and literature. These human links have lasted, even as the tides of politics and trade saw their ebb and flow. Over the past three decades, we have re-claimed that heritage to restore our role and relationships in the region. For India, no region now receives as much attention as this. And, for good reasons. Oceans had an important place in Indian thinking since pre-Vedic times.

Modi goes on to stress the importance of the rules-based system:

We believe that our common prosperity and security require us to evolve, through dialogue, a common rules-based order for the region. And, it must equally apply to all individually as well as to the global commons. . . . We will promote a democratic and rules-based international order, in which all nations, small and large, thrive as equal and sovereign. We will work with others to keep our seas, space and airways free and open; our nations secure from terrorism; and our cyber space free from disruption and conflict.⁴⁵

This shift to see India as a great maritime power has resulted in new policy statements and concrete actions related to maritime disputes, the rules-based order, and India's role in Indo-Pacific security. Several examples illustrate this new perspective: (1) the 2014 Hague decision on the India–Bangladesh maritime dispute; (2) Indian comments on freedom of navigation in the Indo-Pacific, especially the South China Sea; (3) a growing appreciation for the utility of sea power for Indian foreign and security policy as seen in the SAGAR policy; and (4) the density of international security arrangements and relationships with other Asian states and the United States.

India and Bangladesh had a long-standing maritime dispute in the Bay of Bengal. Bangladesh brought the dispute to the UN under UNCLOS, and India accepted the case being brought to the tribunal. In 2014, the UN tribunal found in

favor of Bangladesh. Rather than contest this decision, Modi's government accepted it and held it up as a positive example of how powers should settle disputes.⁴⁶ Many have seen this as a signal to Beijing and China's opposition to arbitration of disputes in the South China Sea.⁴⁷

Following a 2011 incident, where a Chinese vessel confronted an Indian naval vessel in what the Indians consider international waters (i.e., within Vietnam's EEZ), the Indian Ministry of External Affairs issued the following statement: "India supports freedom of navigation in international waters, including in the South China Sea, and the right of passage in accordance with accepted principles of international law. These principles should be respected by all."⁴⁸

These comments were reiterated by other government officials. In 2016, the Ministry of External Affairs stated, "Sea lanes of communication passing through the South China Sea are critical for peace, stability, prosperity and development. . . . As a State Party to the UNCLOS, India urges all parties to show utmost respect for the UNCLOS, which establishes the international legal order of the seas and oceans."⁴⁹ In a similar vein, Minister of State V.K. Singh clarified,

Government's position on this issue is very clear. India supports freedom of navigation and over flight, and unimpeded commerce, based on the principles of international law, as reflected notably in the UNCLOS. India believes that States should resolve disputes through peaceful means without threat or use of force and exercise self-restraint in the conduct of activities that could complicate or escalate disputes affecting peace and stability.⁵⁰

This is a position that was then reflected in joint statements with the United States. For example, Prime Minister Modi and President Barack Obama stated in a joint statement released in 2015, "We affirm the importance of safeguarding maritime security and ensuring freedom of navigation and over flight throughout the region, especially in the South China Sea."⁵¹ Then former Indian Naval Chief D.K. Joshi stated that freedom of navigation is India's primary concern in the South China Sea and that India would be willing to use force to protect its interests.⁵²

The place of the navy in Indian security and thinking about security has steadily improved. For most of India's history, territorial disputes have been the primary security concern for New Delhi. Increasingly, India has found the navy useful for securing Indian interests in the IOR, improving security ties with the rest of Asia, and protecting Indian economic growth. In 2004, India selected the Andaman Islands for its first tri-service theater command, the Andaman and Nicobar Command (ANC).⁵³ This command has proven critical for improving outreach and security ties with Southeast Asia through the Milan exercise and other initiatives.

The percentage of the defense budget allocated for the navy has also been increasing; its budget in 2022 increased by 44.53 percent.⁵⁴

In the past 20 years, particularly the last five years, India has undertaken unprecedented outreach to and engagement with the United States and many East and Southeast Asian nations. It started bilateral and eventually multilateral military exercises with the United States and US allies. It also started its own military engagement like the Milan exercises with Southeast Asia, and regular exercises with France, Singapore, and others.⁵⁵ Perhaps the most concrete example of the shift in New Delhi's views has been the series of major security agreements between the United States and India like the Logistics Exchange Memorandum of Agreement (LETMOA) and Communications Compatibility and Security Agreement (COMCASA) and India's role in the renewed Quad. As Tanvi Maden titled her insightful article, "India Is Not Sitting on the Geopolitical Fence," New Delhi has sent some costly signals that while India values its autonomy, the contemporary environment means closer cooperation with the United States and its Indo-Pacific allies.⁵⁶

This stance is also articulated in the 2015 *Indian Maritime Security Strategy*, which stresses the importance of India's relations with its maritime neighbors and its role in that neighborhood, including the fact that these relations are based on mutual respect for international laws and norms and the desire for cooperative, inclusive development.⁵⁷ The document goes on to stress the importance of SLOCs and choke points that pose a danger to them, in a fashion similar to what Panikkar wrote in the 1940s.⁵⁸ It also has a section on maritime territories and disputes, which stresses India's adherence to international law and norms in responsibly settling its maritime disputes:

India shares maritime boundaries with seven countries and has settled the boundaries with all, except Pakistan, in accordance with international laws and norms. . . . India has also welcomed the judgement of the Arbitration Tribunal settling the maritime boundary with Bangladesh in 2014 . . . Resolution of jurisdiction promotes peace, by reduction in the scope for disputes, and facilitates maritime governance, investments in maritime economic activities, legitimate use of the seas, and cooperation for maritime security. Strengthening relations with maritime neighbors requires mutual respect for the common principles of international law and the tenets of *Panchsheel*. These principles and tenets have been consistently supported by India, including in the maritime domain.⁵⁹

This last passage perhaps best illustrates the complexities of India's maritime policy, as it simultaneously calls for all countries to adhere to international laws

and norms and stresses the postcolonial concept of *Panchsheel*—or the Five Principles of Peaceful Co-existence. While New Delhi demonstrates solidarity with Southeast Asian nations and the United States over China's stance in the South China Sea, India still maintains its perspectives as a postcolonial state. India has not changed its existing maritime laws and policy, even as it has shifted its diplomatic rhetoric and its strategic outreach.

Conclusion

India's own laws restricting freedom of navigation in its own waters remain active, even if there is a major shift in New Delhi's diplomatic statements and actions on freedom of navigation in the greater Indo-Pacific region. The conventional argument is that these are a holdover of India's postcolonial past. Within the view is an assumption that as an aspiring maritime power that is increasingly aligned with the United States, India will eventually shift from being a coastal state that values *mare clausum* to a maritime state that values *mare liberum*. As James Kraska argued a decade ago, "With the growth of India more generally, New Delhi is moving from an insular and localized view of the oceans toward a liberal and global perspective."⁶⁰ Kraska laid out a stark alternative for what he termed the "swing states" like India, Brazil, and Turkey: "These key countries can either promote a liberal order of the ocean based on shared or inclusive legal regimes or instead cling to an exclusive maritime vision that is out of sync with the law of the sea."⁶¹ Given that it is often only the United States that maintains this particular stance on freedom of navigation and conducting these FONOPs, India and other nations could take the position that it is more the United States that is out of sync than themselves. As Kraska notes, "The United States, for example, is alone in the world in maintaining a freedom of navigation program that routinely challenges excessive coastal state maritime claims."⁶²

However, in history, many great maritime powers sought to close off parts of the sea to others, particularly when there was no dominant maritime hegemon, and the various maritime powers were rivals. Spain, Portugal and even Great Britain, maintained a closed seas approach for several hundred years before Great Britain adopted its policy on freedom of the seas in the nineteenth century.⁶³ It can be argued that it was only when Great Britain, and then the United States, established themselves as the dominant power and that they decided to uphold freedom of the seas as their preferred maritime regime that *mare liberum* gained traction. Given the contemporary diversification of power in the international system, it seems likely that states will continue to prefer navigation restrictions in seas that they view as under their control. India is not the only state that promotes restrictions on the freedom of navigation in seas viewed as territorial waters. In-

stead, many coastal states share this position, and it could become the new normal. As Kraska puts it, “The ideas of restriction and control—‘management’—have gained greater currency in global governance.”⁶⁴ These restrictions are more likely to be the new norm, instead of new powers shifting their positions to be closer to the American one. We are moving toward a mixed maritime future that will have more elements of a *mare clausum* than the *mare liberum* that has prevailed for the past two centuries. Rising maritime states like India will continue to have restrictions on what they consider their own waters, rather than inevitability moving toward the US perspective. As O’Connell noted decades ago, “The Third Law of the Sea Conference has reflected a trend towards intensifying coastal State control over shipping in the territorial sea, so that innocent passage is likely to become less a right than a privilege.”⁶⁵ 🌐

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Notes

1. Aman Thakker, “Unpacking the U.S. Navy’s FONOP in India’s EEZ,” *The Indialogue*, 12 April 2021. <https://indialogue.substack.com/>.
2. Jeff Smith, “Democracy’s Squad: India’s Change of Heart and the Future of the Squad,” *War on the Rocks*, 13 August 2020. <https://warontherocks.com/>.
3. Rahul Roy-Chaudhury and Kate Sullivan de Estrada, “India US FONOPS: Oceans Apart,” *Survival* 64, no. 1 (February–March 2022): 131–56.
4. James Kraska, *Maritime Power and Law of the Sea: Expeditionary Operations in World Politics* (New York: Oxford University Press, 2011), 2.
5. Roy-Chaudhury and de Estrada, “India US FONOPS”; and Jeff Smith, “America and India Need a Little Flexibility as Sea,” *Foreign Policy*, 15 April 2021, <https://foreignpolicy.com/>.
6. D.P. O’Connell, *The International Law of the Sea*, vol. 1 (Oxford: Clarendon Press, 1982), 1–30; and Lincoln Paine, *The Sea and Civilization: A Maritime History of the World* (New York: Alfred A. Knopf, 2013), 444–47.
7. O’Connell, *The International Law of the Sea*, 1–9.
8. O’Connell, *The International Law of the Sea*, 18–19; and William Bernstein, *A Splendid Exchange: How Trade Shaped the World* (New York: Grove Press, 2008), 257–58.
9. Edward Alpers, *The Indian Ocean in World History* (Oxford: Oxford University Press, 2014), 78–79.
10. O’Connell, *The International Law of the Sea*, 1.
11. Contemporary naval theorists have echoed Panikkar’s perspective: see James R. Holmes, Andrew C. Winner, and Toshi Yoshihara, *Indian Naval Strategy in the Twenty-first Century* (London: Routledge, 2010), 23.
12. Indo-Asian News Service, “India Aiming to Become Maritime Power: Pranab,” *Hindustan Times*, 30 June 2007, <https://www.hindustantimes.com/>. David Scott relates a similar quote from

1996 by Admiral Kailash Kohli, then Commander of the Western Fleet; see David Scott, "India's 'Grand Strategy' for the Indian Ocean: Mahanian Visions," *Asia-Pacific Review* 13, no. 2 (2006), 98.

13. The classic analysis of Robert Keohane and Joseph Nye in *Power and Interdependence* is an excellent introduction to these perspectives. Robert O. Keohane and Joseph S. Nye, *Power and Interdependence* (New York: Pearson, 2011), 78–85.

14. Kraska, *Maritime Power and the Law of the Sea*, 95–156 and 221–89; and O'Connell, *International Law of the Sea*, 270–71.

15. Keohane and Nye, *Power and Interdependence*, 83.

16. Kraska, *Maritime Power and the Law of the Sea*, 159.

17. Nong Hong, *UNCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea* (New York: Routledge, 2012), 78–82; and James Kraska and Raul Pedrozo, *International Maritime Security Law* (Leiden: Martinus Nijhoff Publishers, 2013), 218–19. However, passage is *innocent* as long as it is not prejudicial to the peace, good order, or security of the coastal state. There are warship activities that are prohibited, and generally speaking, foreign warships only transit through territorial waters under exceptional circumstances. My thanks to Al Lord on this point.

18. Kraska and Pedrozo estimate that "About one-fourth of the coastal states that are party to UNCLOS purport to condition the right of innocent passage of foreign-flagged warships in the territorial sea on provision of prior notice to the coastal State of the transit or consent by the coastal state for the transit." See, *International Maritime Security Law*, 253; and Hong, *UNCLOS and Ocean Dispute Settlement*, 78–89. See also the discussion in James Holmes, *A Brief Guide to Maritime Strategy* (Annapolis: Naval Institute Press, 2019), 4–10.

19. David Brewster, "Indian Strategic Thinking about the Indian Ocean," *India Review* 14, no. 2 (2015), 228.

20. Rahul Roy-Chaudhury, *India's Maritime Security* (New Delhi: Knowledge World, 2000), 106–13; and C. Raja Mohan, *Samudra Manthan: Sino-Indian Rivalry in the Indo-Pacific* (Washington, DC: Carnegie Endowment for International Peace, 2012), 242.

21. Iskander Rehman, *India, China, and Differing Conceptions of the Maritime Order* (Washington, DC: Brookings Institution, June 2017), 5; and Kraska and Pedrozo, *International Maritime Security Law*, 239–40.

22. The US Department of Defense lists India as a country that the United States conducts FONOPs against in its annual reports on the subject. See US Department of Defense, *Annual Freedom of Navigation Report, Fiscal Year 2017* (Washington, DC: DOD, 31 December 2017), <https://policy.defense.gov/>.

23. In the seventeenth century, territorial waters were set at a distance of three miles from shore (the distance of canon fire). In the second half of the twentieth century, there was growing movement to extend this, and it was set at 12 miles during UNCLOS III in 1982. See Kraska, *Maritime Power and the Law of the Sea*, 114–23; and Bimalkumar Natvarlal Patel, "The State Practice of India and the Development of International Law: Selected Areas" (PhD dissertation, Leiden University, 21 May 2015), 62.

24. Patel, "The State Practice of India," 61 and 71.

25. John W. Garver, *Protracted Contest: Sino-Indian Rivalry in the Twentieth Century* (Seattle: University of Washington Press, 2001), 277–78; and Brewster, "Indian Strategic Thinking about the Indian Ocean," 223. This idea was also refloated by India in 2015, see Abhijit Singh, "The Indian Ocean Zone of Peace: Reality vs. Illusion," *The Diplomat*, 7 January 2015, <https://thediplomat.com/>.

26. Rehman, *India, China, and Differing Conceptions*, 4; and see also Chaudhury, *India's Maritime Security*, 49.

27. Government of India, "The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976" 25 August 1976, <http://nbaindia.org/>. See also, Rehman, *India, China, and Differing Conceptions*, 9.

28. Rehman, *India, China, and Differing Conceptions*, 4. In his study of the interaction between Indian state law and international law, Patel finds the same contradiction between the Maritime Act and India's ratification of UNCLOS, *The State Practice of India and the Development of International Law*, 72–73.

29. UN, "Declarations and Statements: Oceans and Law of the Sea," <http://www.un.org/>. India's declaration made upon ratification gets at the tensions in the definitions of *marine research* (which can be regulated by the EEZ-owning state) and *hydrographic surveys* and *military surveys* (which cannot be regulated by the EEZ-owning state). My thanks to Al Lord on this point. For more background, see Patel, *The State Practice of India*, 89. This was repeated by the Indian Ministry of External Affairs in response to the April 2021 US Navy FONOPs, see "Passage of USS John Paul Jones through India's EEZ," MEA Media Center, 9 April 2021, <https://mea.gov.in/>.

30. For example, C. Raja Mohan, *Crossing the Rubicon: The Shaping of India's New Foreign Policy* (New York: Palgrave Macmillan, 2004), xii–xxii; Shashi Tharoor, *Pax Indica: India and the World of the 21st Century* (New Delhi: Penguin, 2012): 4–26; and Harsh V. Pant, *Contemporary Debates in Indian Foreign and Security Policy: India Negotiates Its Rise in the International System* (New York: Palgrave MacMillan, 2008), 1–16. For outside observers, see Stephen P. Cohen, *India: Emerging Power* (Washington, DC: Brookings Institution, 2001); Teresita C. Schaffer and Howard B. Schaffer, *India at the Global High Table: The Quest for Regional Primacy and Strategic Autonomy* (Washington, DC: Brookings Institution, 2016); David Malone, *Does the Elephant Dance?: Contemporary Indian Foreign Policy* (Oxford: Oxford University Press, 2011); Baldev Raj Nayar and T. V. Paul, *India in the World Order: Searching for Major Power Status* (New York: Cambridge University Press, 2003); and Amrita Narlikar, "Peculiar Chauvinism or Strategic Calculation?: Explaining the Negotiating Strategy of Rising India," *International Affairs* 82, no. 1 (January 2006): 59–76.

31. For decades, Indian naval leaders bemoaned the "maritime blindness" of India's statesmen. See the excellent review of these views in Holmes, Winner, and Yoshihara, *Indian Naval Strategy*, 13–35. For the first several decades, India focused on internal economic development and not trade; so, there was not a large Indian merchant fleet and no need for a large naval fleet to protect it. After independence, the conflict with Pakistan over Jammu & Kashmir, the disputed border with China, and internal insurgencies meant a terrestrial focus for Indian security and a primary role for the army, with a minor role for the navy.

32. For an overview of these developments, see Karen Stoll Farrell and Sumit Ganguly, eds., *Heading East: Security, Trade, and Environment between India and Southeast Asia* (New Delhi: Oxford University Press, 2016).

33. Anwar Hussain Syed, *China and Pakistan: Diplomacy of an Entente Cordiale* (Amherst: University of Massachusetts Press, 1974); John Garver, *Protracted Contest: Sino-Indian Rivalry in the Twentieth Century* (Seattle: University of Washington Press, 2002), 216–42; and Andrew Small, *The China-Pakistan Axis: Asia's New Geopolitics* (London: Hurst, 2015).

34. One can speculate recent Sino-Indian border confrontations also aim to do this. See Arun Prakash, "The India-China Confrontation: A View Seawards," *Journal of Asian Security and International Affairs* 8, no. 1 (April 2021): 62–76.

35. See Brewster, *India as an Asia Pacific Power*, 34–48; Mohan, *Samudra Manthan*; Jeff M. Smith, *Cold Peace: China-India Rivalry in the Twenty-First Century* (Lanham, MD: Lexington Books, 2014).

36. Abhijit Singh, “Why India Is Right About its South China Sea Stand,” *Raisina Debates*, 26 July 2016, <https://www.orfonline.org/>.

37. Scott, “India’s ‘Grand Strategy’ for the Indian Ocean,” 108–14. A caveat must be stated that while there is a general rise in maritime awareness on an abstract political-strategic level, this does not directly translate into taking concrete actions on maritime issues in the short term. One can make a strong case that before the 2008 Mumbai attacks, Indian politicians did not take maritime security threats particularly seriously.

38. As quoted in Indo-Asian News Service, “India Aiming to Become Maritime Power: Pranab,” *Hindustan Times*, 30 June 2007, <https://www.hindustantimes.com/>.

39. Indo-Asian News Service, “India Aiming to Become Maritime Power.”

40. Harshita Kanodia, “India’s SAGAR Policy in the Indian Ocean,” *The Diplomatist*, 25 December 2020, <https://diplomatist.com/>.

41. Patrick M. Cronin and Darshana M. Baruah, “The Modi Doctrine for the Indo-Pacific Maritime Region,” *The Diplomat*, 2 December 2014, <http://thediplomat.com/>; and G. Padmaja, “Revisiting SAGAR: India’s Template for Cooperation in the Indian Ocean Region,” *NMF*, 25 April 2018, <https://maritimeindia.org/>. The Blue Revolution refers to utilizing the sea to develop the Indian economy. It symbolically refers to the blue chakra or wheel on the Indian flag and alludes to previous “color revolutions” in Indian history like the Green or agricultural revolution of the 1960s. See also, C. Raja Mohan, “Modi and the Indian Ocean: Restoring India’s Sphere of Influence,” *Asia Maritime Transparency Initiative*, 18 June 2015, <http://amti.csis.org/>; and C. Uday Bhaskar, “India’s Maritime Awakening? Modi Endorses a Blue Revolution,” *South Asia Monitor*, 17 March 2015, <http://southasiamonitor.org/>.

42. Narendra Modi, “Enhancing Maritime Security: A Case for International Cooperation” (speech, Ministry of External Affairs, 9 August 2021) <https://www.mea.gov.in/>.

43. Lalit Kapur, “India Leads Maritime Security Discussion at the UNSC,” Delhi Policy Group, 16 August 2021, <https://www.delhipolicygroup.org/>.

44. For Modi’s World Economic Forum speech, see “Prime Minister’s Statement on the Subject ‘Creating a Shared Future in a Fractured World’ in the World Economic Forum” (speech, Ministry of External Affairs, 23 January 2018), <http://mea.gov.in/>.

45. Narendra Modi, “Keynote Address” (speech, Shangri-La Dialogue, Singapore, 1 June 2018), <https://mea.gov.in/>.

46. For an in-depth discussion of the case and the verdict, see Rehman’s excellent study, *India, China, and Differing Conceptions of the Maritime Order*, 11–14. It should not be taken as a given that a Modi-led BJP government would seek to improve relations with a Bangladesh led by Sheikh Hasina. Traditionally, Prime Minister Hasina’s Awami party has had close links with the Indian National Congress party, and Modi himself made remarks during his campaign criticizing Bangladeshi migrants in India that were unpopular in Bangladesh. Deepshikha Ghosh, “Come May 16, Bangladeshi Immigrants Must Pack Up: Narendra Modi,” *NDTV*, 22 September 2015, <http://www.ndtv.com/>.

47. Ankit Panda, “India’s Got a Plan for South China Sea Disputes (And China Won’t Like It),” *The Diplomat*, 11 March 2015, <http://thediplomat.com/>.

48. Ministry of External Affairs, Government of India, "Incident involving INS Airavat in South China Sea," 1 September 2011, <http://www.mea.gov.in/>; and Rajeev Sharma, "India, China Navies Face-off," *The Diplomat*, 1 September 2011, <https://thediplomat.com/>.
49. "South China Sea Verdict: India Urges China to 'Show Utmost Respect' for Law of the Sea Treaty," *The Wire*, 16 July 2016, <https://web.archive.org/>.
50. Press Trust of India, "Our Position Is Clear, We Are for Freedom of Navigation Through South China Sea: India," *Economic Times*, 12 July 2018, <https://economictimes.indiatimes.com/>.
51. "U.S-India Joint Strategic Vision for the Asia-Pacific and Indian Ocean Region" (press release, The White House, 25 January 2015), <https://obamawhitehouse.archives.gov/>.
52. Vinay Kumar, "We'll Send Force to Protect Our Interests in South China Sea, Says Navy Chief," *The Hindu*, 3 December 2012, <http://www.thehindu.com/>.
53. Patrick Bratton, "The Creation of Indian Integrated Commands: Organizational Learning and the Andaman and Nicobar Command," *Strategic Analysis*, 36, no. 3 (2012): 440–60.
54. Snehes Alex Philip, "India Defence Budget is Good News for Navy, BRO; Bad News for China. But there is a Catch," *The Print*, 4 February 2022, <https://theprint.in/>; Sameer Patil, "Defense Budget 2022-23: Securing India, Pursuing Self-Reliance," *ORF Online*, 1 February 2022, <https://www.orfonline.org/>; and Rahul Rawat, "India's Defense Budget: The Navy and Its Atmanirbhar Bharat Mission," *ORF Online*, 16 July 2022, <https://www.orfonline.org/>.
55. "US Forces Participate in Indian Navy Led Exercise Milan for First Time" US Navy, 25 February 2022, <https://www.navy.mil/>; and "India and France Hold Naval Exercise Varuna 22 in Arabian Sea," *Naval Technology*, 1 April 2022.
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57. Indian Navy, *Ensuring Secure Seas: Indian Maritime Security Strategy* (New Delhi: Integrated Headquarters, Ministry of Defence-Navy, 2015), 5, <https://www.indiannavy.nic.in/>. See also, Sarabjeet S. Parmar, "Naval Balance of Power and Freedom of Navigation" (working paper, 2018), <https://www.academia.edu/>.
58. Indian Navy, *Ensuring Secure Seas*, 16-23; and K. M. Panikkar, *India and the Indian Ocean: An Essay on the Influence of Sea Power on Indian History* (London: George Allen & Unwin, 1945), 84–85 and 92–99.
59. Indian Navy, *Ensuring Secure Seas*, 22.
60. Kraska, "Global Swing States and Maritime Order," *Center for a New American Security Global Swing States Working Paper 2012*, 4.
61. Kraska, "Global Swing States and Maritime Order," 3.
62. Kraska, *Maritime Power and the Law of the Sea*, 9.
63. The great theorist of *mare clausum* was Englishman John Selden, see O'Connell, *The International Law of the Sea*, 3–20.
64. Kraska, *Maritime Power and the Law of the Sea*, 11.
65. O'Connell, *The International Law of the Sea*, 270.

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