
PROTECTING FREEDOM OF NAVIGATION RIGHTS IN THE SOUTH CHINA SEA: UPHOLDING THE 1982 UN LAW OF THE SEA CONVENTION

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ABSTRACT

The South China Sea is crucial for regional and global trade, making the ongoing maritime disputes among coastal states both tense and complex. Freedom of navigation is a key legal principle under the UNCLOS. It grants every state whether coastal or landlocked the right, interest, and obligation to navigate freely. This principle is especially important in the South China Sea, where territorial conflicts among littoral states affect navigation rights. To understand the current situation, this study analyses the legal framework governing freedom of navigation and evaluates how territorial disputes in the South China Sea interfere with it. It uses a comparative case study approach, reviewing relevant legal precedents and notable incidents linked to these disputes.

Keywords: UNCLOS, South China sea, Freedom of navigation, South China sea dispute, IMO.

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1. INTRODUCTION

The South China Sea is a vital maritime route for regional and global trade, making the ongoing disputes among coastal states both sensitive and complex. The South China Sea constitutes one of the globe's most frequented maritime corridors, facilitating an estimated \$3.4 trillion in vessel-borne trade annually³. Notwithstanding the significance of transit routes, the principal impetus driving corporate interest in the South China Sea lies in its abundant natural endowments. The U.S. Energy Information Administration estimates that this maritime jurisdiction harbors approximately 11 billion barrels of crude petroleum, 190 trillion cubic feet of natural gas, alongside substantial stocks of piscine resources, coral formations, and other subaqueous assets of considerable value. Freedom of navigation is a fundamental principle under the UNCLOS⁴. It grants all states coastal or landlocked the right and obligation to navigate through international waters without interference. This principle is especially crucial in the South China Sea, where overlapping territorial claims impact navigation rights. This study examines the legal framework governing freedom of navigation and assesses how territorial disputes in the South China Sea interfere with these rights. It employs a comparative case study method, analyzing relevant legal precedents and significant incidents arising from these disputes.

The South China Sea serves as a critical commercial gateway linking the Pacific and Indian Oceans and connecting Asia with other continents. It supports a significant portion of global maritime trade, including the transport of oil and natural gas, with volumes far exceeding those passing through the Suez and Panama Canals. Approximately one-third of global maritime traffic and over half of the world's merchant fleet tonnage transit this area annually, carrying goods valued at around five trillion US dollars. The United States alone accounts for trade worth 1.2 trillion dollars through these waters. Besides commercial vessels, fishing, military, and public service ships operate densely in this region. Due to its strategic location and abundant resources, the South China Sea benefits all states, whether coastal or landlocked, especially concerning freedom of navigation rights recognized under international law, including UNCLOS.

³ What is the South China Sea dispute? BBC News, Jun. 13, 2011, <https://www.bbc.com/news/world-asia-pacific-13748349> (last visited Aug 28, 2023).

⁴ United Nations Convention on the Law of the Sea

According to UNCLOS, freedom of navigation applies to both the high seas and EEZs⁵, allowing operation of commercial and non-commercial vessels in these waters (Articles 58, 86, 87, and 90). States exercising this right must comply with all relevant international legal obligations, including those set by UNCLOS and the IMO⁶.

Coastal states bordering the South China Sea are parties to the United Nations Charter, UNCLOS, and IMO conventions that safeguard freedom of navigation. They have enacted domestic laws and regulations to implement and enforce these international obligations.

China and the ten ASEAN⁷ member states, Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam, have adopted regional agreements such as the 2002 Declaration on the DOC⁸ and its 2011 Implementation Guidelines. These agreements aim to peacefully resolve sovereignty disputes and preserve navigation rights. Despite these efforts, territorial tensions have escalated over the past fifteen years, severely impacting freedom of navigation.

The disputes primarily concern maritime zones and features claimed by littoral states, notably China's expansive "nine-dash line" claim covering nearly 80% of the South China Sea, which China enforces through occupation and artificial island construction with military installations. These unresolved conflicts have resulted in unlawful acts that interfere with lawful navigation, including detention, threats, and obstruction of vessels. Such conduct violates international law, destabilizes regional peace, and endangers maritime safety, sometimes causing ship damage, sinking, and crew injuries.

In sum, the South China Sea is a prime example where freedom of navigation is directly threatened by territorial disputes. Ensuring navigation rights depends on regional stability and dispute management. Use of force or threats not only infringe on navigation freedoms but also disrupt maritime commerce, contravening UNCLOS, the UN Charter, IMO conventions, and regional agreements like the DOC. The international community recognizes this challenge and calls for adherence to international law and regional mechanisms to uphold freedom of navigation in the South China Sea.

⁵ Exclusive Economic Zones

⁶ International Maritime Organization

⁷ Association of Southeast Asian Nations

⁸ Conduct of Parties in the South China Sea

2. OBJECTIVES OF THE STUDY

- 2.1 This research aims to examine the principle of freedom of navigation within the contested maritime zones of the South China Sea and to identify viable solutions for safeguarding this right under the framework of UNCLOS.
- 2.2 The first objective is to conduct a comprehensive review and critical analysis of the legal regime governing freedom of navigation in the South China Sea. This includes an assessment of the United Nations Convention on the Law of the Sea (UNCLOS), pertinent International Maritime Organization (IMO) conventions.
- 2.3 Secondly, the study will scrutinize how freedom of navigation is impacted by ongoing territorial disputes within these contested waters, evaluating the legal complexities arising from overlapping claims and sovereignty assertions.
- 2.4 Finally, the research will propose strategic recommendations aimed at reinforcing and preserving the unimpeded right of passage through these disputed maritime areas, ensuring adherence to international legal standards and promoting maritime security in the region.

3. LITERATURE REVIEW

The rules governing freedom of navigation in the South China Sea are mainly based on the United Nations Convention on the Law of the Sea (UNCLOS), often called the constitution for ocean governance⁹. UNCLOS sets out rights for ships on the high seas¹⁰, protects navigation in exclusive economic zones (EEZs)¹¹, and defines rules for transit passage through international straits¹². Legal experts agree these rules balance the rights of coastal states with the global interest in free movement at sea¹³. Important Articles 58 and 87 of UNCLOS specifically protect military navigation in EEZs, as long as ships respect certain duties¹⁴.

A key moment came with the 2016 South China Sea Arbitration¹⁵. The tribunal dismissed

⁹ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

¹⁰ Id. art. 87.

¹¹ Id. arts. 55–58.

¹² Id. arts. 37–44.

¹³ Donald R. Rothwell & Tim Stephens, *The International Law of the Sea* (2d ed. 2016).

¹⁴ Douglas Guilfoyle, *Naval Operations and International Law in the Indo-Pacific*, 73 *Int'l & Comp. L.Q.* 411 (2024).

¹⁵ South China Sea Arbitration (Phil. v. China), PCA Case No. 2013-19, Award (Perm. Ct. Arb. July 12, 2016).

historic rights claims that clashed with UNCLOS¹⁶ and clarified that many disputed islands don't qualify for full EEZs under Article 121(3)¹⁷. Even though China¹⁸ hasn't complied, scholars say the ruling is gaining influence over time. Recent studies show diplomatic protests and state behavior increasingly refer to this Award, helping to build customary international law supporting UNCLOS¹⁹.

Recent reports on Freedom of Navigation Operations (FONOPs) for 2023–2024 show ongoing efforts to challenge excessive maritime claims worldwide, including in the South China Sea²⁰. Scholars debate if these multilateral operations strengthen legal norms or risk turning disputes into security conflicts²¹. Analysis of naval activity highlights the importance of consistently asserting navigation rights to avoid accepting unlawful restrictions²². Yet, the rise of gray-zone tactics like coast guard and maritime militia operations makes the legal and operational picture more complex²³.

Between 2023 and 2025, research has focused more on tensions near contested spots like Second Thomas Shoal. Policy experts warn that incidents involving water cannons, vessel shadowing, and risky maneuvers threaten not only sovereignty claims but also the safety of commercial shipping²⁴. Security studies describe these tactics as hybrid strategies mixing legal pressure and maritime coercion²⁵. This shift moves the conversation from legal theory to practical crisis management and incident prevention.

Negotiations between ASEAN and China on a Code of Conduct (COC) have also gained attention. Analysts express cautious hope about procedural progress but stress that any binding COC must align with UNCLOS²⁶. Regional reports highlight the need to reaffirm UNCLOS as

¹⁶ Id. ¶¶ 225–278.

¹⁷ Id. ¶¶ 473–553.

¹⁸ Natalie Klein, *The South China Sea and the 2016 Arbitral Award: Seven Years On*, 24 *Melbourne J. Int'l L.* 1 (2023).

¹⁹ Robert Beckman, *UNCLOS and Recent Tensions in the South China Sea*, 118 *Am. J. Int'l L. Unbound* 75 (2024).

²⁰ U.S. Dep't of Def., *Annual Freedom of Navigation Report to Congress: Fiscal Year 2023* (2024); U.S. Dep't of Def., *Annual Freedom of Navigation Report to Congress: Fiscal Year 2024* (2025).

²¹ Yurika Ishii, *Freedom of Navigation and Strategic Competition in the Indo-Pacific*, 15 *Asian J. Int'l L.* 201 (2025).

²² Raul (Pete) Pedrozo & James Kraska, *The Law of Naval Operations in Disputed Maritime Zones*, 99 *Int'l L. Stud.* 210 (2023).

²³ Jonathan G. Odom, *Gray-Zone Operations and the Law of the Sea*, 52 *Ocean Dev. & Int'l L.* 301 (2023).

²⁴ Gregory B. Poling, *Illuminating the South China Sea's Gray Zone*, *Ctr. for Strategic & Int'l Stud.* (2023).

²⁵ Bec Strating & Joanne Wallis, *Maritime Security and the South China Sea in 2024*, 78 *Int'l Aff.* 1345 (2024).

²⁶ Carlyle A. Thayer, *Recent Developments in ASEAN–China Code of Conduct Negotiations*, 45 *Contemp. S.E. Asia* 215 (2023).

the supreme legal authority to prevent confusion²⁷. Experts warn that a poorly drafted COC could unintentionally limit military exercises or navigation rights if unclear language remains²⁸.

Environmental concerns have taken a more prominent role in 2024–2025 scholarship. Researchers link artificial island building, coral reef damage, and marine pollution to risks for navigation safety²⁹. They point to Part XII of UNCLOS, which covers environmental protection, arguing that environmental duties intersect with navigation rights when man-made structures affect sea lanes. This growing field shows that freedom of navigation is not just a military or commercial issue but part of broader ocean governance.

Legal scholars in the Indo-Pacific region place the South China Sea dispute in the context of wider strategic rivalries. Some view UNCLOS as resilient despite great-power competition, while others see selective compliance weakening the system. While there is growing naval cooperation supporting UNCLOS norms, questions remain if such actions alone can replace formal enforcement mechanisms. This debate reflects ongoing doubts about UNCLOS's strength in politically tense waters.

Finally, recent legal work stresses the need for transparency, better maritime monitoring technology, and cooperative plans to manage incidents at sea³⁰. Hybrid governance models blend clear legal rules, diplomacy, and operational steps to reduce tensions. These efforts aim to separate unresolved sovereignty disputes from navigation rights to keep the seas orderly despite political conflicts.

In summary, post-2023 studies confirm three main points: UNCLOS remains the key legal framework; the 2016 Arbitration continues to shape legal norms; and enforcement challenges now mostly come from gray-zone maritime tactics rather than open territorial claims. The South China Sea continues to test the durability of freedom of navigation under modern international law.

²⁷ ASEAN Secretariat, ASEAN–China Negotiations on the Code of Conduct in the South China Sea: Progress Report 2024 (2024).

²⁸ Clive Schofield & Ian Storey, Artificial Islands and Navigational Safety in the South China Sea, 92 *Marine Pol'y* 104 (2024).

²⁹ Tara Davenport, The Environmental Dimensions of the South China Sea Disputes, 39 *Int'l J. Marine & Coastal L.* 55 (2024).

³⁰ U.N. Div. for Ocean Affairs & the Law of the Sea, Recent State Practice Relating to Maritime Claims in the South China Sea (2024).

4. RESEARCH METHODOLOGY

The research will use a qualitative approach, focusing on reviewing and analyzing how UNCLOS regulations on freedom of navigation are applied. It will also examine related International Maritime Organization (IMO) Conventions, national laws, and regional agreements to provide a comprehensive understanding of the legal framework in practice.

5. LIMITATION OF THE STUDY

This research focuses specifically on the regulations of UNCLOS, regional agreements, and national laws that ensure freedom of navigation in the South China Sea. The study is limited to examining freedom of navigation under UNCLOS in this area. While related topics like maritime safety, maritime security, environmental protection, innocent passage, and transit passage connect to freedom of navigation, they will not be reviewed or analyzed in detail within the scope of this research.

6. FREEDOM OF NAVIGATION IN UNCLOS

The UNCLOS establishes the legal framework governing the rights, interests, and obligations of states concerning maritime zones under their jurisdiction, as well as international waters beyond national control. UNCLOS codifies the global legal architecture for oceans and seas, focusing on the equitable and sustainable exploitation of marine resources to uphold the legitimate interests of all states, while promoting international peace, security, and prosperity. This framework holds particular importance in the South China Sea, where escalating territorial disputes and challenges to the freedom of navigation raise significant concerns.

Freedom of navigation stands as one of the oldest and most foundational principles within the law of the sea. Originating in the early 19th century³¹ and later enshrined in the 1958 Geneva Convention on the High Seas, this principle guarantees that all states possess equal rights to navigate through the high seas and EEZs. Under international law, the right to freedom of navigation compels states to exercise these rights in compliance with UNCLOS provisions. Article 87 of UNCLOS explicitly affirms the legal regime governing freedom of navigation on the high seas, ensuring unimpeded maritime passage consistent with international obligations.

³¹ Yoshifumi Tanaka, *The International Law of the Sea* (2d ed. 2015).

“The high seas remain accessible to all States, whether coastal or landlocked. The exercise of freedoms on the high seas is governed by the provisions of this Convention and established principles of international law. Such freedoms encompass, without limitation, the following rights for both coastal and landlocked States:

- (a) The right of navigation;
- (b) The right of overflight;
- (c) The right to lay submarine cables and pipelines, subject to the stipulations in Part VI;
- (d) The right to erect artificial islands and other lawful installations, consistent with international law and subject to Part VI;
- (e) The right to engage in fishing activities, pursuant to the conditions set forth in Section 2;
- (f) The right to conduct scientific research, in accordance with Parts VI and XIII.

States are obligated to exercise these freedoms in strict adherence to the legitimate interests of other States concurrently exercising their high seas entitlements, while scrupulously upholding the sovereign rights and obligations enshrined in this Convention pertaining to activities conducted within the Area.

Beyond Article 87, which articulates the freedoms on the high seas, the right of freedom of navigation for vessels of a State extends into the EEZ of another State, as prescribed by Article 86: “The provisions herein apply to all maritime zones not encompassed within the exclusive economic zone, territorial sea, internal waters of a State, or archipelagic waters of an archipelagic State. This article does not diminish or restrict the freedoms enjoyed by all States within the exclusive economic zone pursuant to Article 58.”

Article 58(1) states that in the EEZ, all States whether coastal or landlocked have the freedoms outlined in Article 87. These include navigation, overflight, laying submarine cables and pipelines, and other lawful uses related to these activities, as long as they comply with the Convention's provisions.

Freedom of navigation covers not only the high seas and EEZs but also straits used for

international navigation³². This freedom does not hold if there is another route through the high seas or EEZ that offers comparable navigational and hydrographic conditions. In those situations, other applicable provisions of the Convention related to navigation and overflight rights come into effect.

The provisions of UNCLOS confirm that freedom of navigation applies on the high seas, in EEZs, and in straits used for international navigation. This means that vessels of all states have the right to navigate freely in these areas without interference, interruption, or threat. This is especially important in the South China Sea, where about two-thirds of the waters are high seas and EEZs, including the Strait of Taiwan, a key international navigation route.

However, to exercise this right in the South China Sea, flag states must ensure their vessels comply with UNCLOS requirements related to maritime safety, security, and environmental protection. Relevant articles include those on ship nationality³³, ship status³⁴, flag state duties³⁵, immunity of warships on the high seas³⁶, immunity of government non-commercial vessels³⁷ penal jurisdiction over collisions and navigation incidents³⁸, duty to render assistance³⁹ prohibition of slave transport⁴⁰, cooperation against piracy⁴¹ right of visit⁴² right of hot pursuit⁴³, and other applicable provisions.

7. NAVIGATIONAL FREEDOM AND RELATED MARITIME RIGHTS

The legal framework governing freedom of navigation is anchored in the right to navigate the high seas as stipulated in Article 90 of UNCLOS, which affirms that “Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.” This framework also encompasses additional navigation rights under UNCLOS, including:

³² Art 36, UNCLOS

³³ Art.91, UNCLOS

³⁴ Art.92, UNCLOS

³⁵ Art.94, UNCLOS

³⁶ Art.95, UNCLOS

³⁷ Art.96, UNCLOS

³⁸ Art.97, UNCLOS

³⁹ Art.98, UNCLOS

⁴⁰ Art.99, UNCLOS

⁴¹ Art.100, UNCLOS

⁴² Art.110, UNCLOS

⁴³ Art. 111, UNCLOS

The right of innocent passage through internal waters⁴⁴ territorial seas⁴⁵ archipelagic waters⁴⁶ and straits utilized for international navigation⁴⁷

The right of transit passage through straits used for international navigation⁴⁸ which holds particular significance for the Strait of Singapore, where vessels enjoy uninterrupted transit passage. Such transit passage must conform to Part III of UNCLOS, preserving freedom of navigation strictly for the continuous and expeditious transit between parts of the sea or EEZs. This passage must be uninterrupted and swift, without impeding navigation to littoral State territory or the lawful departure or re-entry thereto, in accordance with the State's domestic provisions. The right of access to and from the sea and freedom of transit for land-locked States⁴⁹, granting these States access rights consistent with UNCLOS, including access to the high seas.

While distinct in character, freedom of navigation and these ancillary navigation rights are interrelated. States are obliged to implement and adhere strictly to the provisions of UNCLOS and other pertinent international legal instruments, including IMO Conventions. This obligation is especially critical for littoral States bordering the South China Sea.

8. COASTAL STATES OF THE SOUTH CHINA SEA WITH UNCLOS

The effectiveness of UNCLOS depends largely on how well its rules are followed and enforced by its member states. The freedom of navigation is protected only when countries fully respect and implement UNCLOS. This means that member states not only have rights under the Convention but also have the responsibility to uphold its rules.

According to the United Nations, the South China Sea coastal countries are all members of UNCLOS, as shown in Table A. These countries have agreed to follow international sea laws, including UNCLOS. But UNCLOS's strength relies not just on respect but on active enforcement by each member.

In reality, when countries ignore or selectively apply UNCLOS rules, it causes conflicts,

⁴⁴ Art.8(2), UNCLOS

⁴⁵ Art. 17, UNCLOS

⁴⁶ Art. 52, UNCLOS

⁴⁷ Art. 45, UNCLOS

⁴⁸ Art.37 & 38, UNCLOS

⁴⁹ Art.125 UNCLOS

especially over territorial claims in the South China Sea. If all these countries followed UNCLOS properly, such disputes would be reduced, and freedom of navigation in the area would be protected.

9. IMO AND FREEDOM OF NAVIGATION

The countries bordering the South China Sea follow IMO Conventions, especially those about maritime safety, security, and protecting the environment. These IMO Conventions set the rules that all ships must follow when exercising their right to freedom of navigation under UNCLOS. This means that both commercial and non-commercial ships from any country, including those bordering the South China Sea, have the right to navigate freely. But they must comply with safety, security, and pollution prevention rules under UNCLOS and other international laws, especially IMO Conventions.

Stopping, blocking, or threatening the safety of a ship navigating under the right of freedom of navigation in the South China Sea breaks UNCLOS and related IMO Conventions. This includes the COLREGs⁵⁰, and the SUA⁵¹. Such acts harm ships and crews, interfere with navigation rights, and endanger maritime safety. Therefore, all parties involved in South China Sea disputes should avoid such conduct and work together to prevent it effectively.

10. NATIONAL LAWS AND REGIONAL AGREEMENTS RELATED TO FREEDOM OF NAVIGATION'S REGIME

The national legislation of the states bordering the South China Sea delineates the legal framework governing the regime of freedom of navigation, encompassing statutes, regulations, and maritime protocols that prescribe conditions for vessels exercising navigation rights within these waters. Within the confines of this analysis, only the principal statutes of these coastal states pertinent to the legal regime of freedom of navigation are encapsulated in Table B.

Pertinent to the legal regime of freedom of navigation, Article 16(2) of Vietnam's 2012 Maritime Law explicitly articulates:

“The State acknowledges and respects the freedoms of navigation and overflight; the right to lay submarine cables and pipelines; and lawful maritime activities of other States within

⁵⁰ Convention on the International Regulations for Preventing Collisions at Sea, 1972

⁵¹ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988

Vietnam's exclusive economic zone, pursuant to this legislation and international treaties ratified by the Socialist Republic of Vietnam, provided such rights do not prejudice Vietnam's sovereignty, sovereign jurisdiction, or national interests at sea."

A comprehensive review of the national legislations of the South China Sea littoral states reveals several salient features. Firstly, these laws meticulously define sovereignty, sovereign rights, and jurisdiction over internal waters, territorial seas, contiguous zones, EEZs, and continental shelves, in strict conformity with the UNCLOS. This statutory adherence establishes the foundational legal parameters for demarcating maritime zones and implementing the regime of freedom of navigation as prescribed under UNCLOS.

Secondly, the national maritime laws regulating shipping, fisheries, and ancillary maritime activities articulate rigorous standards for maritime safety, security, and environmental protection, echoing the mandates of UNCLOS and the IMO conventions. Notably, these laws impose stringent requirements pertaining to vessel registration, inspection, certification, and the qualification, certification, and watchkeeping obligations of seafarers, alongside compliance mandates for shipping enterprises.

Finally, the maritime zones claimed under sovereignty, sovereign rights, and jurisdiction by South China Sea littoral states including China have been proclaimed pursuant to UNCLOS provisions. However, China maintains its assertion of "historic rights" via the controversial "nine-dash line," encompassing nearly 80% of the South China Sea and encroaching upon the EEZs of neighboring states. This claim was unequivocally repudiated in 2016 by the Permanent Court of Arbitration's Award in the South China Sea Arbitration, which found no legal foundation for China's historic rights assertion. Should China persist in upholding this claim, the resultant maritime disputes among littoral states will inevitably intensify, perpetuating constraints on the exercise of freedom of navigation within contested maritime zones of the South China Sea.

The countries bordering the South China Sea have come together to sign agreements about freedom of navigation in the region, which you can see in Table C. These agreements show that these nations care about keeping the seas open for safe travel, protecting the environment from pollution caused by ships, and avoiding conflicts over territorial claims. This commitment is clear in Articles 3 and 4 of the Declaration on the Conduct of Parties.

“3. The Parties confirm their respect for and commitment to freedom of navigation and overflight in the South China Sea, as guaranteed by international law, including the UNCLOS 1982.

The Parties agree to settle their territorial and jurisdictional disputes peacefully, without threats or use of force, through friendly consultations and negotiations by the sovereign states directly involved, following international law, including UNCLOS.”

Despite these agreements, the principles laid out in the DOC haven’t yet brought the peace everyone hoped for. In fact, tensions over territorial claims have grown, and freedom of navigation in disputed areas of the South China Sea remains seriously challenged.

Besides these multilateral agreements, the coastal states have also made bilateral agreements about freedom of navigation in this region, as detailed in Table C. These agreements serve as legal foundations not only to assert sovereignty and jurisdiction over nearby seas but also to define the boundaries of sea zones like the high seas and EEZs. These zones are subject to the right of freedom of navigation under UNCLOS.

Therefore, the right of freedom of navigation offers clear benefits but also imposes legal duties on every state. This is especially important in the South China Sea, where territorial disputes are interfering with this right.

11. THE SOUTH CHINA SEA ARBITRATION⁵²

China’s unfounded claim over the South China Sea, especially following its takeover of Scarborough Shoal in 2012. In response, the Philippines initiated arbitration proceedings against China at the Permanent Court of Arbitration in January 2013. Despite China’s refusal to participate, the PCA, operating under Annex VII of the UNCLOS, proceeded with the case. After over three years, the PCA issued its ruling on July 12, 2016.

The tribunal addressed 15 key issues raised by the Philippines, including:

The “nine-dash line” and China’s claim to “historic rights”:

The PCA unequivocally rejected China’s “nine-dash line” claim, holding that it has no legal

⁵² Philippines v. China, PCA Case No. 2013-19, Award (July 12, 2016).

foundation under international law. This ruling is significant because the “nine-dash line” encompasses nearly 80% of the South China Sea, covering major maritime features like the Paracel Islands, Spratly Islands, and Scarborough Shoal. Most of the waters inside this line fall within the EEZs of neighboring coastal states or are part of the high seas under UNCLOS. Therefore, beyond the limited territorial seas around these features, the rest of the area remains open to freedom of navigation for all states, whether coastal or landlocked. Historically, China’s “historic rights” claim has been a source of dispute among regional and extra-regional states with lawful interests under UNCLOS. The tribunal also noted that the concept of “historic rights” was superseded and discarded with the adoption and enforcement of UNCLOS.

The Philippines sought clarity on whether certain maritime features are islands or rocks, as this classification determines the maritime zones, they can generate under UNCLOS. The PCA found that none of the features in the Spratly Islands qualify as islands capable of generating extended maritime zones such as EEZs or continental shelves. Instead, these features are entitled only to territorial seas. This decision curtails the ability of any state, including China, to claim vast maritime zones from these features, protecting the maritime boundaries of neighboring states. It effectively blocks China’s attempts to use these features to justify broad territorial claims under the “nine-dash line.”

China’s unlawful conduct in the South China Sea:

The tribunal held that several of China’s activities within the Philippines’ EEZ violate the Philippines’ sovereign rights and jurisdiction under international law. It further concluded that China’s deliberate and hazardous actions against Philippine vessels breach the International Regulations for Preventing Collisions at Sea (COLREGs) 1972 and Article 94 of UNCLOS.

In sum, the PCA ruling affirms the legal rights of the Philippines and other coastal states, rejects China’s expansive claims, and condemns China’s breaches of international maritime law.

12. WHY SOLUTIONS ARE NEEDED TO PROTECT FREEDOM OF NAVIGATION IN THE DISPUTED WATERS OF THE SOUTH CHINA SEA

As discussed earlier, the freedom of navigation in the disputed areas of the South China Sea is being challenged by ongoing territorial disputes. To protect this freedom, the coastal states

involved, including those with overlapping claims, must act either individually or together to adopt solutions grounded in international law, especially the UNCLOS. These measures are vital now and for the future to address several key concerns.

First, it's crucial to uphold and respect the right of freedom of navigation in the South China Sea. This right applies to all states, whether coastal or landlocked, as recognized under international law. Therefore, states must honor this principle in the South China Sea, particularly in contested zones. Respecting UNCLOS and other relevant maritime conventions, like those from the IMO, means safeguarding the lawful rights of all vessels to pass freely through these waters.

Second, the South China Sea supports essential maritime activities global trade routes, fishing, resource exploration, and maritime zone management. These activities can only thrive if freedom of navigation is guaranteed and not hindered by disputes. The ongoing tensions complicate matters and threaten this freedom, which is a concern not just for the region but for the world. That's why swift action to secure navigation rights is critical.

Third, protecting freedom of navigation also advances maritime safety, security, and environmental protection. When vessels can navigate without threat, risks of accidents, conflicts, and pollution decrease. Ensuring these rights helps maintain safe seas and reduces the chance of environmental harm, fulfilling obligations under international maritime law.

Fourth, the South China Sea is a powerhouse for regional and global economic growth. Its sea lanes connect economies and fuel trade, making it a vital "hub" and "bridge." But this role depends on calm and controlled disputes that don't interfere with navigation rights. Supporting freedom of navigation fosters economic stability and growth for all.

Finally, peace and stability in the South China Sea benefit everyone. All states want to avoid conflict, and unresolved disputes only increase tension, threatening both navigation rights and regional security. Implementing solutions to reduce and eventually resolve these disputes is urgent, especially for the states directly involved.

In short, safeguarding freedom of navigation in the South China Sea isn't just a legal formality it's essential for respecting international law, supporting maritime activity, protecting the environment, driving economic growth, and maintaining peace.

12.1. DEVELOP AND ENFORCE A CODE OF CONDUCT FOR THE SOUTH CHINA SEA

The goal is to create a legally binding Code of Conduct that clearly defines the responsibilities of coastal states to prevent conflicts and protect navigation rights, especially in disputed waters. ASEAN and China should prioritize negotiating, signing, and implementing this Code.

As noted earlier, the Declaration on the Conduct of Parties in the South China Sea (DOC) sets out general principles for dispute resolution and navigation rights. However, since its adoption, tensions have not eased; instead, disputes have grown more complex, threatening navigation freedoms. This is largely because the DOC lacks legally binding enforcement mechanisms, limiting its effectiveness. Therefore, establishing a binding Code of Conduct is essential to uphold navigation rights and regional stability.

12.2. CREATE COORDINATED MECHANISMS TO PROTECT FREEDOM OF NAVIGATION

This involves establishing a joint coordination center tentatively named the “Coordination Center on Ensuring Freedom of Navigation in the South China Sea” to facilitate cooperation among littoral states. This center would help manage and resolve incidents that interfere with navigation rights, particularly in contested areas.

ASEAN and China should negotiate and implement an agreement to formalize these coordination mechanisms, including incident reporting, joint patrols, and conflict prevention. Currently, there is no such framework, leaving the region vulnerable to navigation disruptions. This agreement will also support the enforcement of the Code of Conduct once adopted.

12.3. PREVENT AND ELIMINATE INTERFERENCE WITH NAVIGATION RIGHTS

Territorial disputes have undermined freedom of navigation, often because parties fail to respect international law, such as the UNCLOS and the COLREGs. Lack of control over actions that provoke conflicts threatens navigation rights.

Binding obligations and enhanced cooperation are necessary to prevent unpredictable or aggressive acts that obstruct navigation. Avoiding conflicts, especially those involving the use or threat of force, is critical for regional peace and safeguarding navigation freedoms.

12.4 STRENGTHEN ENFORCEMENT OF INTERNATIONAL LAW ON NAVIGATION RIGHTS

Many disputes and actions obstructing navigation violate international law and commitments. The South China Sea should be governed by international legal principles, meaning it cannot be exclusively claimed by any single state.

It is incumbent upon all littoral states to uphold and apply international law rigorously to protect freedom of navigation, particularly in disputed zones. This legal framework is fundamental to maintaining order and ensuring open access to these vital waters.

Ensuring freedom of navigation in the South China Sea through robust cooperative mechanisms is imperative for sustaining both present and future regional stability. ASEAN and China must advance this objective via the following strategic measures:

12.5 FORMULATE AND IMPLEMENT A LEGALLY BINDING CODE OF CONDUCT

The paramount objective is to establish a codified, legally enforceable Code of Conduct delineating the obligations of coastal states to pre-empt conflicts and safeguard navigation rights, particularly within contested maritime zones. ASEAN and China should prioritize the negotiation, ratification, and strict enforcement of this Code.

While the Declaration on the Conduct of Parties in the South China Sea (DOC) articulates foundational principles for dispute resolution and navigation rights, it remains non-binding and has failed to mitigate escalating tensions or complexity of disputes. The absence of enforceable sanctions under the DOC weakens its efficacy, thereby rendering the formulation of a binding Code essential to uphold navigational freedoms and regional order.

12.6. ESTABLISH COORDINATED MECHANISMS FOR PROTECTING NAVIGATIONAL FREEDOMS

This entails the creation of a joint coordination apparatus provisionally designated as the “Coordination Center on Ensuring Freedom of Navigation in the South China Sea” to facilitate multilateral cooperation among littoral states. The Center would serve as a platform for managing incidents that imperil navigation rights, especially in disputed waters.

ASEAN and China should formalize these coordination protocols through a binding agreement encompassing incident notification procedures, joint maritime patrols, and conflict prevention mechanisms. The current absence of such a legal framework exposes the region to navigational disruptions. This agreement will complement and reinforce the enforcement of the Code of Conduct once adopted.

12.7. PREVENT AND SUPPRESS INTERFERENCE WITH NAVIGATION RIGHTS

Persistent territorial disputes have eroded freedom of navigation, largely due to noncompliance with international legal instruments such as the United Nations Convention on the Law of the Sea (UNCLOS) and the International Regulations for Preventing Collisions at Sea (COLREGs). Unregulated provocations and hostile acts undermine navigation rights and threaten maritime security.

Binding legal obligations coupled with enhanced interstate cooperation are indispensable to deter and address acts that obstruct navigation, particularly those involving the use or threat of force. Maintaining peace and security in these waters is crucial to preserving unimpeded navigation.

12.8 REINFORCE ENFORCEMENT OF INTERNATIONAL LEGAL NORMS GOVERNING NAVIGATION

Numerous disputes and obstructive actions contravene established international law and treaty obligations. The South China Sea must remain governed by universally recognized legal principles, precluding any unilateral sovereignty claims that contravene customary or treaty law.

All littoral states bear the legal duty to rigorously uphold and implement international law to protect freedom of navigation, especially within contested maritime zones. This legal regime is the cornerstone of regional stability and guarantees unobstructed passage through these strategically vital waterways.

13. CONCLUSION

Disputes in the South China Sea must be resolved through legal frameworks reflecting the will and responsibility of disputing parties, consistent with their international obligations.

Adherence to international law fosters respect among states, promotes stability, and ensures the preservation of navigation rights in contested waters. This legal fidelity is essential for the sustained development and security of the region.

This research highlights the South China Sea's strategic geographic location, rich marine resources, and significant maritime and commercial advantages, making it crucial both regionally and globally. However, these benefits have led to complex territorial disputes among the coastal states, threatening regional stability and the principle of freedom of navigation, particularly in contested waters.

Freedom of navigation is a fundamental principle under the United Nations Convention on the Law of the Sea (UNCLOS). It is both a right and an obligation for all states, coastal or landlocked. This principle is especially critical in the South China Sea, where ongoing disputes jeopardize navigational freedoms. Whether these rights are upheld or hindered by such conflicts is a matter of international concern.

To address these issues, this research proposes two primary solutions: establishing cooperative mechanisms to safeguard freedom of navigation in the South China Sea and resolving disputes through legal avenues before competent international courts or arbitral tribunals.

Specifically, the recommendations are as follows:

First, ASEAN and China should expedite negotiations and adopt the "Code of Conduct in the South China Sea" and an "Agreement on Coordinated Mechanisms between ASEAN and China to Ensure Freedom of Navigation," aimed at preventing and eliminating interference with navigation.

Second, disputing parties must respect and comply with international law and relevant regional agreements, pursuing dispute resolution through lawful means.

Finally, China should recognize and abide by the Permanent Court of Arbitration ruling in the South China Sea Arbitration. The legal framework safeguarding freedom of navigation is grounded in UNCLOS, and all states are legally bound to uphold these principles.