

**MARITIME INSTITUTE OF MALAYSIA**

# **FREEDOM OF THE SEAS : CONCEPTUAL FRAMEWORK AND FUTURE TRENDS**

**NAZERY KHALID**  
**Research Fellow**

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*Advancing the Frontier of Maritime Knowledge*



# Presentation outline



- The concept of freedom of the seas (FOS).
- Historical development of FOS.
- Legalities & conventions binding the idea.
- Developments affecting the ideals of the doctrine and analysis of their impacts on FOS.
- Crystal gazing : FOS in the future.

# Importance of unhindered passage at sea



- 90% of global trade carried via sea – the most cost efficient method.
- Delay in delivery of raw materials and goods to manufacturers, retailers and consumers may affect global trade.
- Naval warfare doctrines put premium on access and control of the seas.
- Nations project power at sea to protect trade & sovereign interests.

# Conceptual framework



- The concept of freedom of the seas (FOS) guarantees nations the right of unhindered passage in times of peace.
- The cornerstone of international seafaring.
- Widely recognized principle in law.
- Legislations & conventions binding the idea i.e. UNCLOS 1982.

# Historical development



- The origin of FOS could be traced to the Roman Empire.
- In 15<sup>th</sup> to 19<sup>th</sup> century, naval powers imposed restrictions to protect trade interests.
- Protestations led to revived definition & agreement of FOS.
- US played key role in shaping modern-day ideals of FOS.

# Historical development



- Declaration of London 1909 set code of conduct of naval war.
- Mahanian doctrine influential in shaping modern-day understanding of FOS.
- US-revision led to acceptance that FOS cannot be legally restricted except via international agreements.
- US neutral on FOS during WWII.

# Historical development



- Void in leadership in protecting FOS ideals post-WWII.
- UN conferences on Law of the Sea in Geneva in 1958 & 1960. US pushed concept of limits for territorial waters (12 nm) & EEZ (200 nm) in Caracas, 1974 .
- Alvin Pardo's call for ocean protection in 1967 led to New York meeting in 1973 to establish UNCLOS.

# UNCLOS 1982

- Between 1973-1982, nations discussed critical issues of the seas.
- UN Convention on the Law of the Sea (UNCLOS) introduced in 1982 .
- UNCLOS regulates all aspects of ocean governance & resources.
- Came into force in 1994.
- Article 87 guarantees FOS.



# Article 87 of UNCLOS 1982

- *“The high seas are open to all states ...”*
- *“Freedom of the high seas is exercised under conditions ...”*
- *“Freedom of the high seas comprises freedom of ... navigation, overflight, to lay submarine cables & pipelines, to construct artificial islands & other installations, fishing, scientific research”*

# Issues affecting FOS



- Expansion of territorial waters & maritime boundaries.
- Aggressive posturing of navies.
- Introduction of post 9-11 security measures.
- Changing perception towards maritime multilateral engagements.

# Expansion of territorial waters & sea boundaries



- Coastal nations scrambled to delineate EEZ post-UNCLOS, resulting in overlapping claims.
- Socio-economic significance of EEZ makes it a coveted area.
- Under UNCLOS, EEZ no longer regarded as "high seas", giving coastal states full control of their EEZ.
- Some disputes have historical basis.

# Aggressive posturing of navies



- Nations project power at sea through navies.
- Rise / maneuvering of one naval power invites reaction from others.
- New security matrix, countering maritime claims, exercising 'containment' policy & protecting sovereign rights may drive navies to behave aggressively.

# Introduction of post 9-11 security measures



- Various measures taken to beef up security of shipping, ports, cargo and maritime logistics since 9-11.
- Maritime transport is vulnerable to acts of sabotage, being at the forefront of global trade.
- Better security is welcomed, but some are anathema to the spirit of FOS.

# Introduction of post 9-11 security measures



Post 9-11 security measures :

- ISPS Code
- 24-Hour Rule
- US Maritime Transportation Security Act
- 96-Hour Advance Notification of Arrival
- International Port Security Program
- Proliferation Security Initiative
- Regional Maritime Security Initiative

# Changing perception towards multilateralism



- Post 9-11, more multilateral efforts at sea to counter security threat.
- Maritime security is now viewed through multilateral lens.
- Changing perception of security threat & multilateralism have influenced international stance on FOS ideals and application.

# FOS under siege?



- FOS ideals are increasingly besieged in today's post 9-11 security / strategic matrix.
- Despite laws & mechanisms for "good order at sea", a free-for-all element prevails.
- Nations get away with behaviors at seas that would not pass on land.



# FOS under siege?



- Ray of hope in amicable solutions to maritime disputes i.e. ICJ, arbitration, Conduct of Parties in South China Sea.
- Our fate is interlinked at sea, hence good senses must prevail over individualistic interests.
- FOS is too precious and important to succumb to unilateral interests.

# Crystal gazing : FOS in the future



- FOS will continue to be under pressure by changing strategic matrix & complex interplays of many elements.
- Laws relating to freedom of passage might have to be changed to accommodate new realities.
- '3C spirit' : cooperation, collaboration & compromise will be crucial in protecting FOS ideals.

# Crystal gazing : FOS in the future



- IMO has to play leading role in protecting FOS concept.
- More multilateral efforts at sea especially in the area of security.
- More cases of nations asserting claims at sea, undermining FOS ideals.
- FOS survival depends on complex interplay among global powers and their handling of many strategic elements.

Finally, some poignant  
words of wisdom...



*"The land divides,  
but the sea unites"*

Let us be guided by the spirit of unity  
fostered by the oceans in our future  
conducts and in the protection of the  
cherished ideals of freedom of the sea!

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Thank you

[nazery@mima.gov.my](mailto:nazery@mima.gov.my)  
[www.mima.gov.my](http://www.mima.gov.my)

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