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LAW OF THE SEA AND MARITIME SECURITY CHALLENGES

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UNCLOS and Maritime Security Challenges

Outline

- **The UNCLOS of 1982 : Lawful Uses of Sea and Relevant Activities**
- **Regional Maritime Security and Issues**
- **Future Challenges**
- **Questions/Discussion**
- **Conclusion**

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FREEDOM OF NAVIGATION AND OVER FLIGHT

- There appears to be broad consensus on the recognition of freedom of navigation and over flight in and above EEZs.
- No other interpretation seems to be justified in the light of the plain text of Article 58 (1) of the 1982 UNCLOS, which provides:
  - " In the [EEZ], all states, … enjoy, *subject to the relevant provisions of* "
  - " *this Convention*, the freedoms referred to in Article 87 of navigation and over flight ……"

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PEACEFUL USES/ PURPOSES

- The term 'peaceful purposes' – used in 1982 UNCLOS in the Preamble and Articles 88,141,143 (1), 147 (2)(d), 155 (2), 240 (a), 246 (3), and 301.
- only the Preamble and Article 301 (in the title) use the term 'peaceful uses' rather than ' peaceful purposes'.
- There appears to be no substantial difference in the purpose of these 2 terms.
- Apart from the pre-ambular paragraph which expresses the desirability of establishing a legal order of the seas and oceans that will promote their peaceful uses.

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PEACEFUL USES/ PURPOSES

- Due regard
- Navigation and over flight in the 'normal mode'
- Hostile intent
- Abuse of right
- Transit and Innocent passage
- **For Example : The freedom of sea principle is set out in the UNCLOS in 1982 and received the support of international community. In pursuance of Articles 19 and 37 of UNCLOS 1982, foreign ships have the right of innocent and transit passages.**

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PEACEFUL USES/ PURPOSES

Due Regard

- States shall have ' due regard' to the rights and duties of the coastal state and shall comply with the laws and regulation adopted by coastal states as stipulated in Article 58(3).
- The essential economy of 'due regard' standard law, according to the US, would be the duty to refrain from activities that unreasonably interfere which the exercise of the right of the coastal State.

Normal Mode

- The term ' normal mode' is not defined in the Convention.
- In practice of US, ' normal mode' means that surface warships way transit in a manner and with sound navigation practice and the security of the force.

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Relevant activities

The peaceful purposes/uses clauses in Article 88 and 301 do not prohibit all military activities on the high seas and in EEZs but only those that threaten or use force in a manner inconsistent with the UN Charter.

- For example: Conducting MSR in China's EEZ (about 70 nautical miles from Hainan) in the South China Sea by the U.S *Impeccable* MSR on 8 March 2009 without the permission from the coastal state.

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Maritime security issues

- 3 factors that are affecting regional maritime security

1) Vast span of South China Sea (SCS)

-1800miles from Sumatra and Taiwan

-Sea Lane of Communication (SLOC) linking of Indian Ocean and Pacific Ocean

-Provides shipping routes connecting North East Asia with Southeast Asia and Middle East

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