

***Freedoms of Navigation in the Asia-Pacific Region.* By Sam Bateman.  
Abingdon, UK: Routledge, 2020. Hardcover: 106pp.**

Over recent years, maritime disputes have been increasingly viewed as a microcosm of Great Power competition. Some describe conflict in the seas as a potential flashpoint or arena for kinetic clashes between the Great Powers as they seek to either defend their visions of freedom of navigation or extend their security jurisdiction seaward. This timely book provides a valuable and thought-provoking overview of the different perspectives held by Asia-Pacific states in relation to the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and maritime freedom of navigation.

The author, Sam Bateman, is a well-known Australian expert on maritime security. Those familiar with Bateman's work will recognize themes and observations from his earlier writings, but it is valuable to see his ideas crystallized into a broader analysis of the political and legal factors influencing legal interpretations of freedom of navigation in the Asia Pacific.

Interestingly, the book steers clear of the politically loaded term "Indo-Pacific". Bateman explains that he has used the term Asia Pacific because of its focus on East Asia and the Western Pacific, although given the interconnectedness of the seas, the Indian Ocean is not entirely neglected. Bateman also employs the term "freedoms" rather than the more conventional "freedom" of navigation. This framing is useful in a number of ways. First, it allows for the distinction between commercial shipping interests and military transit. While these two dimensions of navigation are often conflated in political rhetoric, the difference is at the heart of the varying maritime strategies and viewpoints advanced by regional states. While most states in the Asia Pacific agree on the definition of freedom of navigation for commerce, the real disagreement relates to the freedoms of warships, particularly in terms of where they can transit and the types of activities they can undertake in distinct maritime zones. Second, the book is usefully structured around legal regimes. The second chapter examines different views on navigational regimes, while the third focuses on exclusive economic zone (EEZ) issues. This reviewer found

the sections on transit passage and archipelagic sea lanes passage particularly valuable for gaining a deeper understanding of the various navigational regimes in UNCLOS.

The final chapter sets out the key contemporary challenges for UNCLOS. The first is the conflicting strategies of maritime powers who seek sea control on the one hand, and regional countries who focus on sea denial on the other. These stem from two essentially distinctive visions of how the sea is conceptualized in relation to sovereignty and security, reflected in how states view the military freedoms of warships in territorial seas and EEZs. The second major challenge is the ambiguities and uncertainties of UNCLOS. While UNCLOS was a remarkable achievement, the lack of consensus about the balance between the seas as *res communis* and as sovereign possession has resulted in significant gaps within the maritime rules-based order. The third challenge comes from American efforts to “defend” the maritime order through Freedom of Navigation Operations (FONOPs). In Bateman’s view, FONOPs are problematic because their passage is not “innocent” and because they send a “political message that can easily be misconstrued” (pp. 87–88). Indeed, there is something to be said for the suggestion that maritime powers such as the United States pay closer attention to the differing views and concerns of regional states about freedoms of navigation, as well as the types of activities undertaken to support them.

Bateman demonstrates how legal complexities are compounded by strategic and political factors (p. 76), yet the underlying ethos of his book is perhaps more political than legal. The author’s overarching aim is to understand the different views on matters relating to freedom of navigation in the hopes of reconciling or resolving them. In other words, he attempts to outline the views of the different states rather than take a stand on the legal veracity of their individual claims. In the introduction, Bateman argues that “China is usually the recipient of such attacks with calls for it to adhere more closely to a ‘rules-based’ order at sea with accusations that it is threatening the freedoms of navigation of other nations” (p. 2), in a seeming attempt to distance his own analysis from the tendency of trenchantly criticizing China. This appears to be the case as Chapter Three provides a corrective to the idea that the United

States is a devoted follower of the maritime “rules-based order”. While much is (reasonably) made of America’s refusal to ratify UNCLOS, Bateman also highlights another instance of US hypocrisy when he argues that America is “not acting judiciously” in treating EEZs as “international waters” (p. 71). In doing so, Washington ignores the need for maritime states to have “due regard” for the rights of coastal states and the *sui generis* nature of the EEZ. Yet, “due regard” flows both ways, and it was not entirely clear what rights coastal states have in preventing others from conducting military “activities”, “survey activities” or “maritime scientific research” (which Bateman also points out are not clearly defined).

While it may not have been the intention of the author, the book seems to imply that the claims and actions of the two great Asia-Pacific maritime powers, America and China, are morally equivalent. We may accept that states hold different interpretations, but it does not necessarily follow that those interpretations are equally valid. While Bateman makes clear in the preface that he has “tried to represent fairly those different views but am very conscious that this risks being seen as the protagonist of one particular view or the other” (p. xi), some readers may see this discussion as partisan since it appears much more cautious and circumspect in criticizing China. Although the book offers much in understanding the political grey zone of legal interpretations and national interests, surprisingly it does not concern itself as much with differences in power among disputing parties. For example, it steers clear of the ways in which China’s assertions have threatened the entitlements of smaller Southeast Asian states. The comment about how all the judges on the arbitral tribunal for the 2013–16 Philippines versus China case on the South China Sea were Europeans (except for one) appears to support a narrative propagated by China, although the author is careful to make the claim—though without supporting evidence—that it *may* have “reinforced views in the region about cultural bias in UNCLOS and international law more generally” (p. 82).

Nevertheless, the book is an interesting and thought-provoking addition to the literature on maritime security and the law of the sea in the Asia Pacific. It sheds valuable light on issues that receive comparatively less attention than the prolific maritime disputes in the South and East China Seas. It is clearly written and provides

an accessible entry point for those seeking to learn more about the multifaceted drivers of contemporary maritime disputes in the region and maritime law in general. While it is likely that not all legal scholars will agree with aspects of Bateman's analysis, from a political perspective, it provides an important and timely interrogation of key assumptions and dominant narratives around freedom of navigation.

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