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Beyond Arms Race Concern: Indonesia and Submarine Passage in Archipelagic Waters

Aristyo Rizka Darmawan

SYNOPSIS

*The recently released joint statement by AUKUS on the initiative to equip Australia with nuclear-powered submarines have sparked concerns of a potential arms race in the region. Beyond the threat of nuclear proliferation, Indonesia faces immediate practical issues of possible nuclear submarine passage in its regional waters. **ARISTYO RIZKA DARMAWAN** evaluates how international laws regulate submarine passage in peacetime and conflict, and how Indonesia can best respond to the current situation.*

COMMENTARY

Earlier this month, Australia, the United Kingdom, and the United States announced [the launch of an AUKUS initiative to equip Australia with conventionally armed, nuclear-powered submarines \(SSNs\)](#). The joint initiative will begin this year with the training of Australian military and civilian personnel alongside the US Navy and the Royal Navy. AUKUS aims to help Australia acquire and operate SSNs by the early 2040s.

The recent joint statement led to mixed responses from countries in the region, similar to when it was first introduced in 2021. China immediately responded by accusing the multibillion-dollar deal as a [“path of error and danger”](#) and an [“expensive mistake”](#). Malaysia’s [recent statement](#) remains consistent with its initial response in 2021 where it reiterated the importance of “transparency and confidence-building” as well as “refraining from any provocation that could potentially trigger an arms race or affect peace and security in the region.”



An artist's rendering of how SSN-AUKUS submarines may look like. The initiative launched by AUKUS to equip Australia with nuclear-powered submarines has unsettled the region. *Image from Wikimedia Commons.*

It is Australia's immediate neighbour and the archipelagic state of Indonesia who has to deal with the present and practical concerns of possible nuclear submarine passage in its regional waters. Indonesia shares similar concerns regarding nuclear weapons, [promptly responding](#) to the recent AUKUS joint statement by emphasizing that it expects "Australia to remain consistent in fulfilling its obligations under the NPT (Treaty on the Non-Proliferation of Nuclear Weapons) and IAEA (International Atomic Energy Agency) safeguards, as well as to develop with the IAEA a verification mechanism that is effective, transparent and non-discriminatory".

Beyond the threat of nuclear proliferation, Indonesia is also concerned about Australian SSNs potentially entering the South China Sea during a regional conflict through its Archipelagic Sea Lane (ASL). An Indonesian Member of Parliament (MP) proposed that Indonesia deny nuclear-powered submarines passage through Indonesia's ASLs. Senior MP Tubagus Hassanudin released a [statement on the issue](#), saying that "Indonesia's standpoint is clear [in] that [our archipelagic sea lanes] cannot be used for activities related to war or preparation of war or non-peaceful activities".

The question now is – how does international law regulate submarine passage, and on what basis can Indonesia deny submarines from travelling across the Indonesian archipelago?

[The United Nations Convention on the Law of the Sea](#) (UNCLOS) regulates several passage regimes for submarines, namely that of transit passage, innocent passage, and ASL passage. These three regimes allow the passage of submarines on different levels.

If nuclear submarines want to utilise Indonesian territorial waters and archipelagic waters outside of the designated ASLs, UNCLOS allows for the passage of submarines under the innocent passage regime. This means that the passage should be conducted continuously and expeditiously, and only for peaceful purposes. Under the innocent passage regime, an underwater vehicle must navigate on the surface and show its flag (article 20). If Indonesia later finds out that a passage was not intended for peaceful purposes, Indonesia can then deny access to the innocent passage of vessels, including submarines, in its territorial waters and archipelagic waters outside the designated ASLs.

Conversely, if submarines use the transit passage (in a strait used for international navigation) or Indonesia's ASLs, they can pass through Indonesia's maritime waters

in normal mode, which means they can remain submerged. The main distinction between these regimes is that Indonesia can suspend innocent passage if it suspects that the passage of the submarine is not for peaceful purpose. However, UNCLOS does not allow coastal states to suspend these rights for transit passage and ASL passage.

UNCLOS only regulates activities in a time of peace, but what happens in cases of armed conflict? Can Indonesia close its archipelagic waters?

During armed conflict, innocent passages, transit passages, and ASL passages should comply with the law under [the San Remo Manual](#) on International Law Applicable to Armed Conflicts at Sea (1994). Article 27 of the San Remo Manual states that “the rights of transit passage and archipelagic sea lanes passage applicable to international straits and archipelagic waters in peacetime continue to apply in times of armed conflict.” Moreover, Article 29 also stipulates that “Neutral States may not suspend, hamper, or otherwise impede the right of transit passage nor the right of archipelagic sea lanes passage.”

This means that even in times of conflict where Indonesia is a neutral state that is not directly involved in the conflict, Indonesia cannot suspend the transit passage and ASL passage for a belligerent submarine. However, under Article 30 of the San Remo Manual, belligerent states using their rights of passage are obligated to “proceed without delay, to refrain from the threat or use of force against the territorial integrity or political independence of the neutral littoral or archipelagic State”.

The regime of submarine passage in Indonesian archipelagic waters is clear under international law; Indonesia cannot suspend ASL passage or transit passage for submarines in either peacetime or wartime (if it is a neutral party). Beyond international law, the relevant ministries, including the Ministry of Foreign Affairs and Ministry of Defense, will need to work together and figure out Indonesia’s position in such a scenario.

While the states involved in AUKUS and in the region continue to work on maintaining peace and security, it is in Indonesia’s interest to maintain peace in the region by remaining neutral. Denying submarines from passing through Indonesian ASLs without a firm legal basis will have foreign policy implications. Therefore, despite Indonesia’s concerns about the possibility of an arms race in the region, it should permit submarines complying with international law to pass through its archipelagic waters, regardless of whether it is innocent passage, transit passage, or ASL passage. In maintaining a neutral stance, it is imperative that Indonesia continues to observe the developments of the AUKUS initiative and to be prepared to navigate related complexities in the future.

Aristyo Rizka DARMAWAN is a Ph.D. Scholar at the College of Asia and the Pacific, Australian National University (ANU) in Canberra, and a lecturer in international law at Universitas Indonesia.