



# A Response to Arif Havas Oegroseno

*Robert Beckman and Tommy Koh*



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## **A Response to Arif Havas Oegroseno**

*By Robert Beckman and Tommy Koh*

We want to begin by stating that we are good friends and admirers of Pak Havas. He is an accomplished lawyer and diplomat and very knowledgeable about the law of the sea. He knows that the UN Convention on the Law of the Sea is of existential importance to Indonesia. It was the convention which recognised, for the first time, in international law, the concept of the Archipelagic State. For this reason, Indonesia's national interest is to support and protect the convention and not to undermine it.

We have three comments on Pak Havas' [RSIS commentary](#).

First, the basic thesis of the commentary is that the decisive maritime strategy of the 21st Century will be "sea denial". Pak Havas argues that modern weapon systems enable middle powers bordering maritime choke points to make it impossible for naval powers to keep the choke points free for international navigation at an acceptable cost. The examples he cites to support his thesis include the Houthis in the Red Sea and Iran in the Hormuz Strait.

He argues that modern technology has produced weapon systems such as anti-ship missiles, inexpensive drones, sea mines, and sensors that enable middle powers bordering a strategic choke point to make it impossible for major naval powers to ensure free and unencumbered passage for their navies and commercial ships. He asserts that there are three dimensions to this thesis – geography, new weapon systems and international law.

He argues that international law is an important factor in this development and highlights that most maritime choke points pass through waters subject to the sovereignty of coastal States or archipelagic States. He argues that the 1957 Djuanda Declaration of Indonesia was instrumental in expanding the sovereignty of archipelagic States over the waters in their archipelago. He points out that the major maritime powers initially challenged the concept of archipelagic waters, but later

accepted it at the United Nations Conference leading up to the 1982 UN Convention on the Law of the Sea (1982 UNCLOS). He points out that the projection of naval force in strategic geographic choke points in Asia must pass through waters subject to the sovereignty of coastal States where traps can be set. He concludes by arguing that Indonesia's role in enhancing the sovereignty of coastal States should be recognised.

Second, we accept that geography and modern weapon systems have created a challenge for free navigation in many of the world's maritime choke points. However, we disagree with the assertion that this development is supported by the development of international law as set out in the 1982 UNCLOS. 1982 UNCLOS did expand the areas of ocean space subject to the sovereignty of coastal States by permitting coastal States to claim a 12 nm territorial sea. In addition, 1982 UNCLOS gives archipelagic States sovereignty over their archipelagic waters, that is, the waters inside baselines connecting the outermost points of the outer most islands and drying reefs in their archipelago. However, 1982 UNCLOS also created two new passage regimes that are designed to ensure that coastal and archipelagic States cannot infringe on the navigation rights of all States through straits used for international navigation and through the normal routes used for international navigation through an archipelagic State.

Under 1982 UNCLOS, ships of all States, including warships, have the right of transit passage through straits used for international navigation, such as the Straits of Malacca and Singapore. Ships of all States also have the right of archipelagic sea lanes passage through the archipelagic waters of an archipelagic State on all routes normally used for international navigation. Such passage rights cannot be suspended by the coastal State or archipelagic State. In addition, submarines and other underwater vehicles can transit in their "normal mode", which is submerged. In other words, international law, as set out in 1982 UNCLOS, does not in any manner support middle powers attempting to deny or restrict passage through straits used for international navigation or through archipelagic States.

The provisions in 1982 UNCLOS on straits used for international navigation were intended to balance the interests of coastal States and the interests of international shipping and the maritime powers. The provisions were supported by Indonesia, Malaysia and Singapore, as well as the Philippines, and all eleven ASEAN States are now parties to 1982 UNCLOS and legally bound by these provisions.

Third, middle power coastal States should also consider the impact of unmanned underwater vehicles and modern weapon systems on their own security. Unmanned underwater systems can pose a serious threat to the economic and security interests of coastal States and archipelagic States. Unmanned systems may conduct research and survey activities in the maritime zones of coastal States and archipelagic States without their consent, even though such activities are prohibited. Consequently, like many developments in technology, they pose risks as well as opportunities for coastal States.

## Conclusion

In conclusion, geography and modern weapons systems may threaten passage through critically important maritime choke points. However, restrictions on passage in maritime choke points by coastal States bordering the choke points are not supported by 1982 UNCLOS. The provisions in 1982 UNCLOS support navigation rights for all ships on the major shipping lanes, including sea lanes in strategic choke points. Because passage rights are critically important for all States, any attempts by middle powers to impose “sea denial” on major naval powers and/or commercial shipping are likely to be challenged by the vast majority of States.

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