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Freedom and openness in the Asia Pacific free and open for interpretation

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In the week prior to US President Donald Trump embarking on his Asia tour, his National Security Adviser H R McMaster laid out one of the trip's aims: 'to promote his vision of a free and open Indo-Pacific region'.

McMaster [explained](#) the key components of this vision: freedom of navigation and overflight, rule of law, sovereignty, no coercion, private enterprise and open markets. It is intended that US allies and partners like Australia will play a key role in translating this rhetoric into action, even if exactly what this means in practice remains to be seen.

Last month US Secretary of State Rex Tillerson [made it clear that](#) (North Korea aside) the United States regarded China as the main country undermining its 'free and open' vision, while a quadrangle of the United States, India, Japan and Australia were hailed as its core defenders.

China has left itself exposed to the charge.

In July 2016 it rejected the ruling of an arbitration panel established in accordance with the UN Convention on the Law of the Sea (UNCLOS) to investigate claims made against it by the Philippines. The message this rejection sent abroad was that domestic law counts more than international law for Beijing — at least in the case of disputes in the South China Sea.

On the economic front, China will struggle to bill itself as a champion of open markets when many sectors of its own economy remain off-limits to foreign investors. [According to OECD data](#) covering 61 countries, China's investment barriers are higher than all but three.

It's also true that (in contrast to China) India has [shown a willingness](#) to use the UNCLOS arbitration process to clarify competing maritime claims with Bangladesh. Similarly, Australia has [agreed](#) to a Conciliation Commission pursuant to UNCLOS to resolve its maritime boundary issues with Timor-Leste.

Yet when it comes to a free and open Indo-Pacific, the 'Quad' is not without credibility problems of its own. The natural consequence of this is that China will reasonably look sceptically upon the grouping as an entity that might be antagonistic towards its legitimate rise. The fact that the China hawks in each of these countries are most loudly advocating for the Quad will only reinforce that perception.

On President Trump's first day in office, he pulled the United States out of the [Trans-Pacific Partnership](#), which previously had been touted by all negotiating states as the new gold standard in open and rules-based trade.

The only other multilateral free trade deal under negotiation in the Indo-Pacific is the [Regional Comprehensive Economic Partnership](#) (RCEP), of which China is an enthusiastic supporter.

Yet a high quality RCEP has proven difficult, with reports suggesting that Japan [has lost interest](#) and India has been unwilling to [match the offers of liberalisation](#) made by other countries.

While Australia concluded a free trade agreement (FTA) with China in 2015, the hope of signing one with India has now been [shunted out](#) into the distant future. Meanwhile, Australia's FTA with Japan leaves tariffs far [higher](#) than its FTA with China. Earlier this year India also unilaterally [terminated](#) its bilateral investment treaty with Australia (and 57 other countries) seeking to replace it with a modified agreement that offers [fewer protections for foreign investors](#).

At the same time, the Trump administration is [actively undermining](#) the effectiveness of the independent dispute resolution mechanism at the WTO by blocking the appointment of new judges to fill vacant slots on the institution's appellate body.

On regional financial architecture, while every other Indo-Pacific country has joined the China-led Asian Infrastructure Investment Bank and recognised it as a [multilateral institution](#) with world-class governance, the United States and Japan still refuse to do so.

Now consider freedom of navigation.

At the same time as contending that China makes 'excessive claims' beyond what UNCLOS permits, the United States still refuses to ratify the international agreement and join the 167 states that already have. The United States also insists that its military vessels can go wherever international law allows whenever they need. But Abhijit Singh of Delhi's Observer Research Foundation [notes](#) that India's interpretation of international law in this area is actually more aligned with Beijing's than Washington's.

In particular, India says that military ships must announce their passage in advance. And many Indo-Pacific states assert some type of security rights within their exclusive economic zones (EEZ) — a position the United States rejects.

Then there's Japan's insistence that it can claim a 200-nautical-mile EEZ around Okinotori — a tiny uninhabited atoll in the Philippine Sea. Last year Japan's coast guard [detained a Taiwanese vessel](#) for 'illegal' fishing 150 nautical miles off the feature. Okinotori is many times smaller than Itu Aba (the largest formation in the Spratly archipelago) which the 2016 UNCLOS arbitration panel ruled was a 'rock' incapable of generating an EEZ. Tokyo's claim has yet to be legally tested but the apparent double-standard is not missed by Beijing.

In June, Dr Greg Raymond [warned](#) that Australia signing up to a formal quadrilateral would likely only serve to heighten regional insecurities. One reason is that it could strengthen the influence of hawks in China's People's Liberation Army. China [currently only spends](#) 1.9 per cent of its GDP on its military compared with 3.3 per cent by the United States. The scope for a regional arms race is clear.

Meanwhile, Australia's prosperity is [far more closely tied](#) to China than any of the other countries in the Quad. The risk of being seen as ganging up against your largest customer for dubious security benefit should give Australian policymakers pause for thought.

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