

Challenges to Freedom of Navigation along the Maritime Silk Road

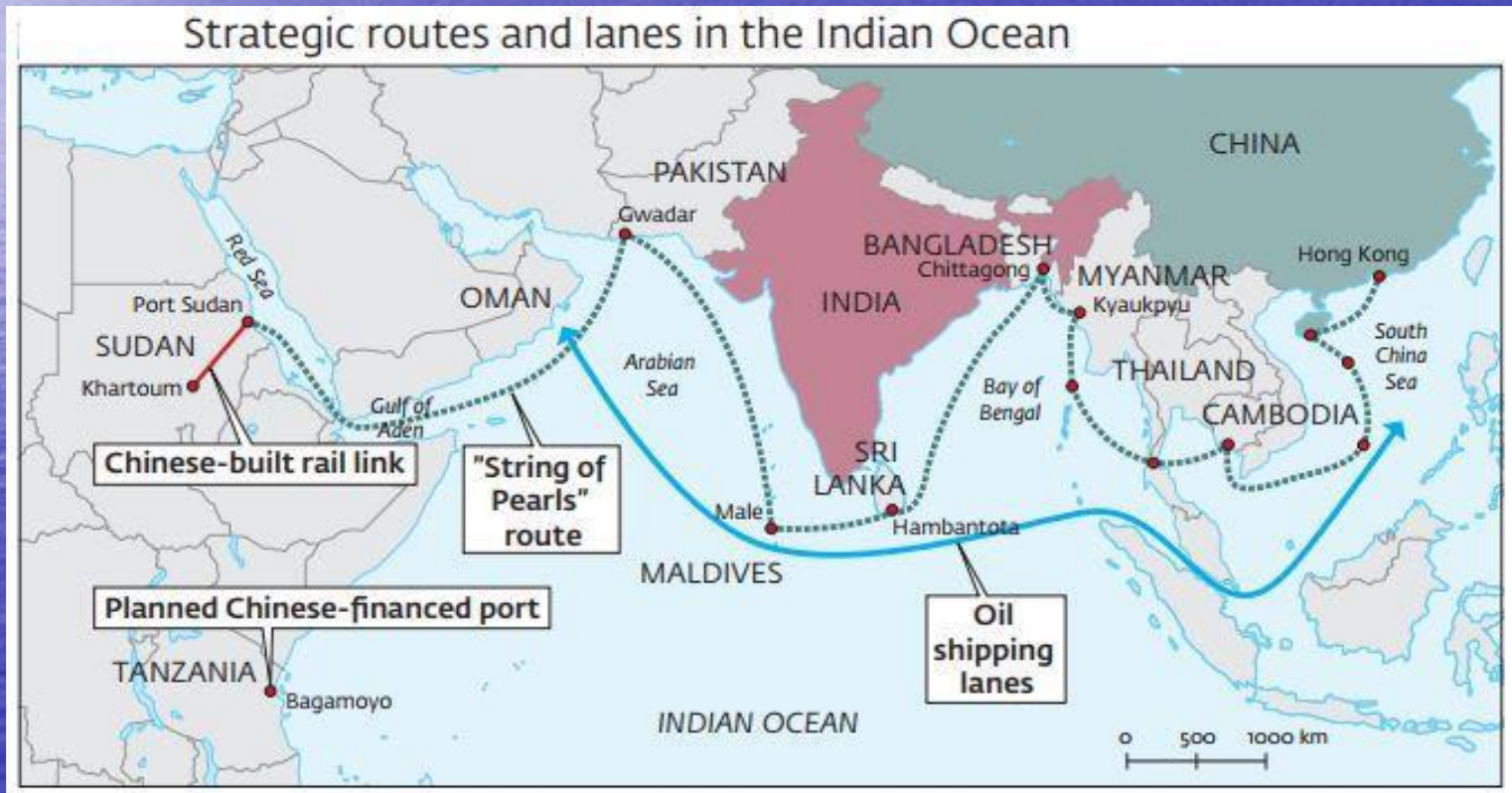
Keyuan Zou

Distinguished Professor of Law, Dalian
Maritime University

Introduction: Maritime Silk Road



Introduction: Strategic Sea Lanes



Introduction-3

- The safety of navigation still remains an issue in the sense that navigation through sea lanes such as in the South China Sea is essential for world seaborne trade and communications
- Territorial and maritime disputes would constitute a threat to the safety of navigation as well.

Navigation in the International Context

- Freedom of navigation has been accepted as a principle of international law for centuries.
- it was first incorporated into conventional international law as late as 1958 when the four Geneva Conventions on the Law of the Sea were adopted.
- At present, the navigational rights of vessels are mainly governed by the LOSC.

Navigation in the International Context-2

- The LOSC has made the legal arrangements for navigational rights of foreign vessels in accordance with different sea zones established under the Convention.
- The sea zones of territorial sea and EEZ are particularly related to navigational rights of foreign vessels within national jurisdiction of a coastal State.

Navigation in the International Context-3

- the right of innocent passage
- freedom of navigation in the EEZ
- due regard

Chinese Regulations

- Law on the Territorial Sea and the Contiguous Zone
- Law on the Exclusive Economic Zone and the Continental Shelf
- Law on Maritime Traffic Safety
- Regulations Governing Supervision and Control of Foreign Vessels
- Regulations Governing Non-Military Foreign Vessels Passing Through the Chiungchow Strait

Chinese Regulations-2

- Foreign ships for non-military purposes enjoy the right of innocent passage through China's territorial sea
- Foreign ships used for military purposes are subject to a permission from China before entering the territorial sea
- Foreign submarines and other underwater vehicles, when passing through the territorial sea, should navigate on the surface and show their flag.

Chinese Regulations-3

- In 1996 when ratifying the LOSC, China re-emphasised its position on innocent passage for foreign warships by stating that “the provisions of the United Nations Convention on the Law of the Sea concerning innocent passage through the territorial sea shall not prejudice the right of a coastal State to request, in accordance with its laws and regulations, a foreign State to obtain advance approval from or give prior notification to the coastal State for the passage of its warships through the territorial sea of the coastal State”.

Chinese Regulations-4

- According to China's Law on the Exclusive Economic Zone and the Continental Shelf, foreign vessels including warships can enjoy the freedom of navigation in China's EEZ provided that they comply with the relevant Chinese laws and regulations as well as international law

Chinese Regulations-5

- The Chinese EEZ Law provides that China should have the right to take necessary measures against violations of Chinese laws and regulations, and to investigate according to the law those who are liable, and may exercise the right of hot pursuit

Piracy: International Instruments

- 1982 Convention on the Law of the Sea
- 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation

LOSC

- LOSC has established an obligation for States to cooperate in the suppression of piracy and grants States certain rights to seize pirate ships and criminals.
- Article 100 of the LOSC provides that "All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State".

SUA Convention

- The SUA Convention applies to all maritime terrorist acts, whether private or political. The significance lies in that if terrorist acts would not be punished and suppressed under the LOS Convention, they are still under the suppression of the SUA Convention. This means that any maritime terrorist and piratical act cannot escape justice.

Regional Anti-Piracy Cooperation

- **2002 Joint Declaration on Cooperation in the Field of Non-Traditional Security Issues with the Association of Southeast Asian Nations**
- **2002 Declaration on the Conduct of Parties in the South China Sea**
- **2004 Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)**

ReCAAP

- Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)
- It was adopted on 11 November 2004 and came into force on 4 September 2006
- The Information Sharing Centre (ISC) was officially launched in Singapore in November 2007.

ReCAAP-2

- Several characteristics:
- It is not exclusive
- It is the first specific international treaty concerning the prevention and suppression of piracy
- ISC established under the ReCAAP is a governmental international organization
- It contributes to the legal definition on piracy

UN Security Council Resolutions

- In June 2008 the United Nations Security Council passed a resolution on combating acts of piracy and armed robbery off Somalia's coast (Resolution 1816)

China's Position

- At a special conference sponsored by the UN in December 2008, the Chinese representative expressed China's willingness to cooperate with other countries to suppress piracy in accordance with international law and the UN Security Council resolutions.
- In January 2009 China decided to send warships overseas to the sea areas around Somalia contributing to the international efforts to crackdown on Somali piracy.

China's Naval Task

- The task of the Chinese navy is to protect Chinese ships and crew on board as well as ships carrying humanitarian relief materials provided by international organizations including the World Food Programme, in strict compliance with the UN Security Council resolutions and international law

Maritime Claims

- After the entry into force of the LOS Convention in 1994, the national enclosure of maritime spaces has been intensified
- As calculated, an island which cannot sustain human life can have its territorial sea of 1,550 km², while a big island which can maintain economic life or human habitation can obtain its EEZ of about 420000 km²

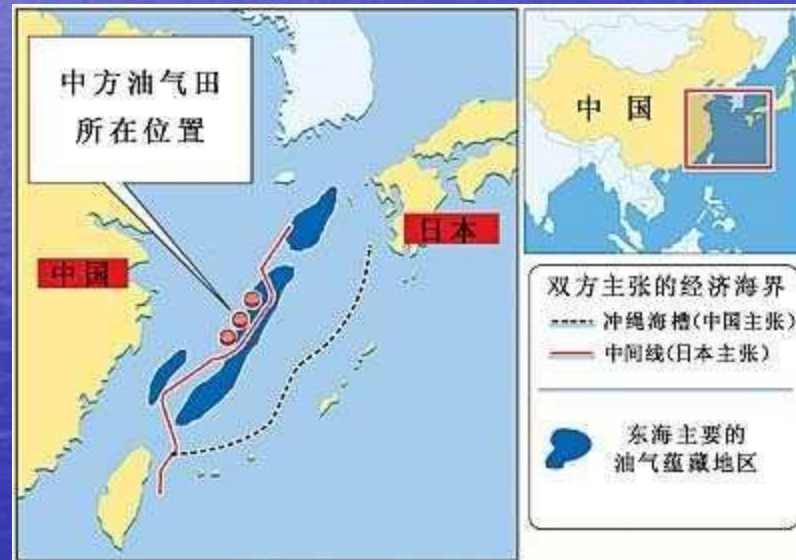
Location of Diaoyu/Senkaku Islands



Diaoyu/Senkaku Islands



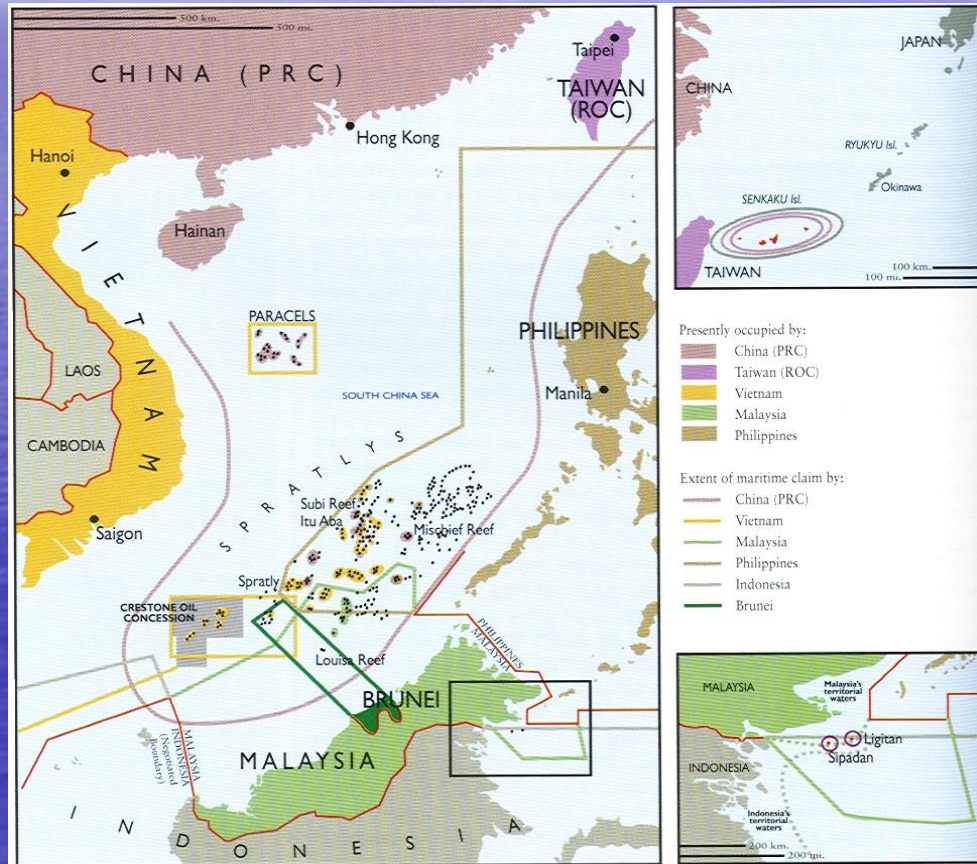
Location of China's Gas Field



The South China Sea Issue

- The dispute over the Spratly Islands is most complicated and involves as many as five States and six parties, i.e., China, Taiwan, Malaysia, Vietnam, the Philippines, and Brunei.

Overlapping Claims



U-shaped Line in the PRC Map



Maritime Boundary Delimitation

- China acknowledged that it has maritime boundary delimitation problems with 8 neighbouring countries including two Koreas, Japan, the Philippines, Brunei, Malaysia, Indonesia and Vietnam.

Different Claim Lines in the East China Sea



Any Solution?

- Joint development
- Third party dispute settlement
- Regional cooperation

Recent US Military Activities in the South China Sea

- Since Donald Trump, the US naval exercises in the South China Sea have been intensified.
- By May 2018, six FONOPs had conducted including three even entering into China's territorial sea of Xisha Islands (USS Stethem, 02/07/17, USS John S. McCain, 10/08/17 and USS Chafee, 10/10/17).

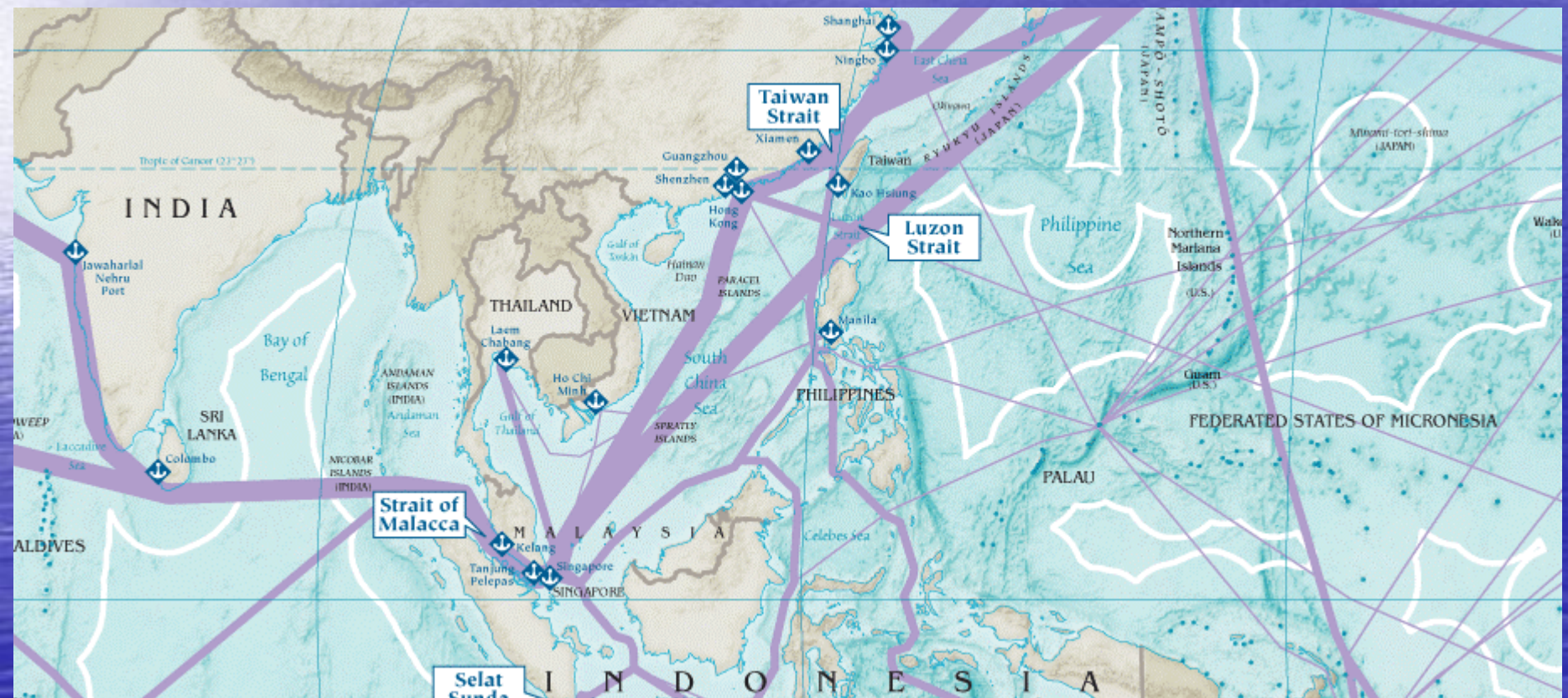
US Military Demonstration 2019

- Two US Navy guided-missile destroyers conducted a freedom-of-navigation operation in the South China Sea on 6 May 2019, challenging China's so-called excessive claims there.
- It marked the US Navy's third such operation in the South China Sea this year.

US Military Demonstration since Biden Administration

- The Biden Administration follows the suit of Trump Administration and carries out regular naval patrols in the South China Sea.
- The latest is undertaken on 12 July 2021 by USS Benfold entering the waters of the Paracel Islands.

SLOCs in the South China Sea



Threat to Sea Routes

- Two most important shipping routes in the West Pacific pass through the neighboring waters off the Xisha and Nansha Islands as well as the Huangyan Island.
- The US frequent military activities nearby these shipping routes would pose increasing risks and threat to the safety of navigation.

Conclusion

- The LOS Convention has established a rule-of-law regime for the oceans and compliance with international law is one of the requirements when States interact and cooperate in international relations.
- China holds that in order to maintain a harmonious maritime order, it is important to strengthen international rule of law with the UN Convention on the Law of the Sea as the legal basis.

Conclusion-2

- There should be a caution for foreign vessels navigating in and through disputed waters due to the unclear maritime boundary delimitation between countries concerned.
- If there is a tension/conflict between claiming States in the disputed areas, then the normal navigation would be unnecessarily hampered.

Conclusion-3

- As shipping is a key element in the execution of the Maritime Silk Road initiative, the safety of navigation along the Road should be guaranteed through joint efforts between China and participating countries by working out a viable and rule-based mechanism towards the reach of common prosperity for the whole international community.