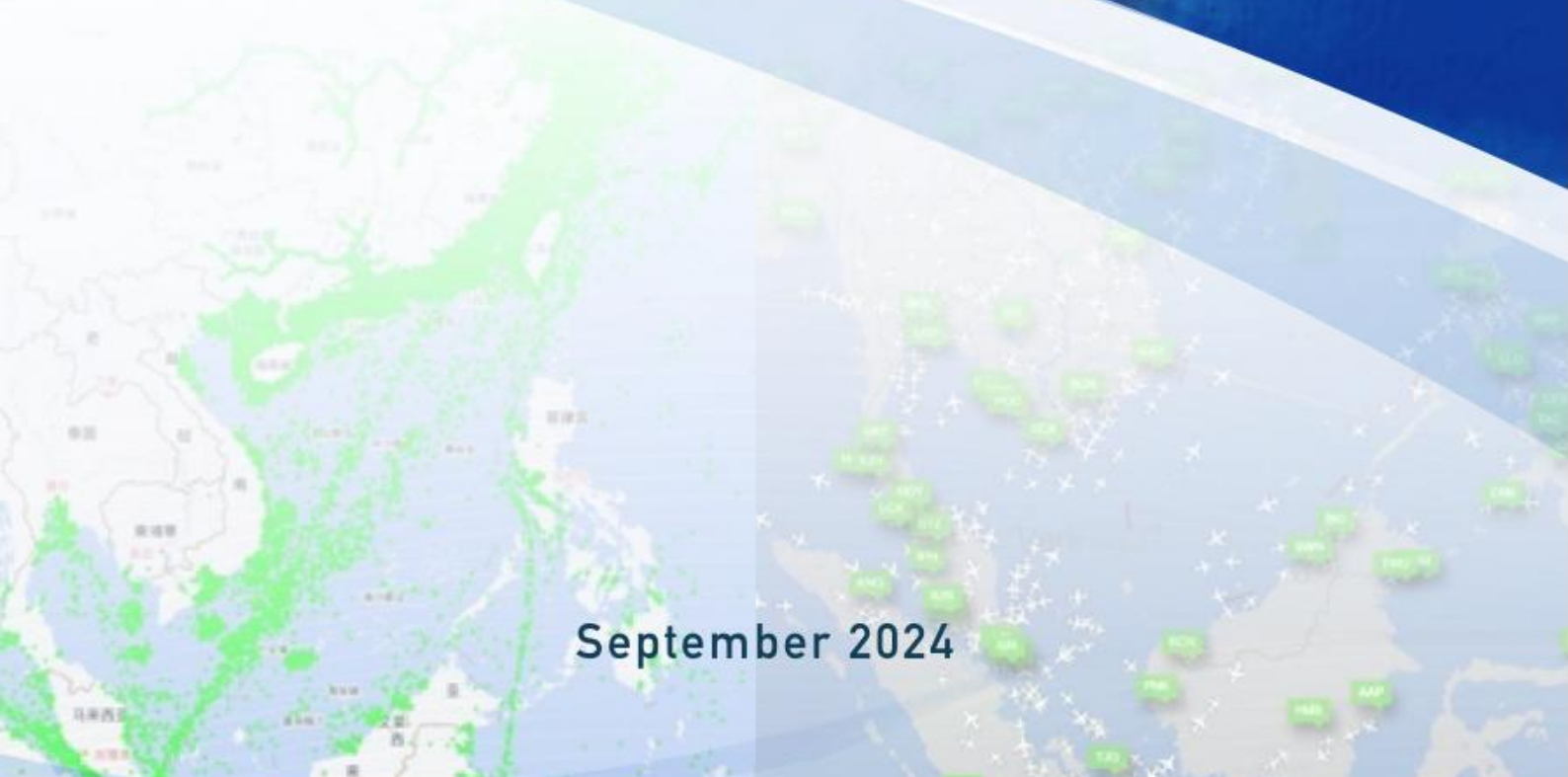




Report on Navigation and Overflight Situation in the South China Sea

SOUTH CHINA SEA STRATEGIC
SITUATION PROBING INITIATIVE



September 2024

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With a view to maintaining and promoting the peace, stability and prosperity of the South China Sea, we launched the South China Sea Strategic Situation Probing Initiative (SCSPI). The Initiative aims to integrate intellectual resources and open source information worldwide and keep track of important actions and major policy changes of key stakeholders and other parties involved. It provides professional data services and analysis reports to parties concerned, helping them keep competition under control, and with a view to seek partnerships.

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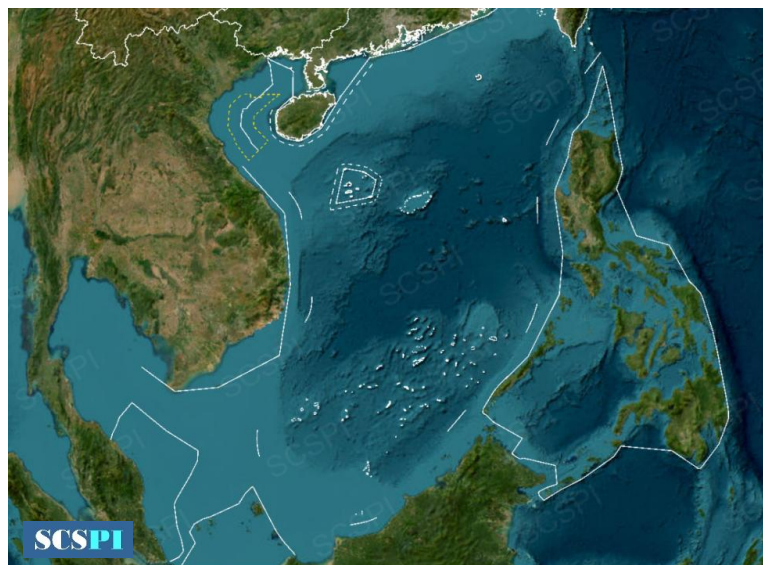
Report on the Navigation and Overflight Situation in the South China Sea

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The South China Sea, located on the edge of the western Pacific Ocean, covers an area of approximately 3.5 million square kilometers, linking the Pacific and Indian Oceans, it serves as a crucial maritime thoroughfare. Geographically, the South China Sea is divided into 5 maritime routes: the northern route includes the China inland sea—the Qiongzhou Strait; the northeastern route connects to the East China Sea through the Taiwan Strait, then extends to the Pacific Ocean through the Bashi Channel, Balintang Channel, and Babuyan Channel; the eastern route leads directly to the Sulu Sea through the Mindoro Strait and Balabac Strait; the southern route connects to the Indian Ocean through the Sunda Strait; and the western route passes through the Singapore Strait and the Strait of Malacca, reaching the Andaman Sea.^①

Figure 1 The South China Sea



^① 中国人民解放军海军海道测量局：《中国航路指南南海海区》，天津：中国航海图书出版社，2016年版。

Freedom of the Seas is a longstanding principle in international law and a significant concept in modern international law development, one that China adheres to. Over the ages, coastal states located around the South China Sea have utilized the sea routes to trade globally, fostering developments in shipbuilding, navigation, and their related fields. *The 1998 Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China* explicitly states that “All countries are entitled, provided they comply with international law and the laws and regulations of the People's Republic of China, to freedom of navigation and overflight in the exclusive economic zone of the People's Republic of China.”^① Apart from provisions concerning marine scientific research and surveys, China has not imposed explicit restrictions on foreign military vessels and aircraft activities in waters under its jurisdiction outside its territorial seas and airspace.

In terms of economic trade, South China Sea’s openness and freedom are evident: Merchant vessels pass through the South China Sea nearly 500,000 times annually, with around 40% of global trade goods transiting the South China Sea and its surrounding straits and millions of civilian aircraft fly over the South China Sea, making it one of the busiest maritime and aerial passages worldwide.

On the security front, military forces from both regional and external countries conduct over 20,000 ship-days and more than 30,000 aircraft sorties in the South China Sea annually, along with hundreds of large-scale drills and various exercises. Compared to civilian vessel and aircraft activities, the scale of military activities is mainly unknown over the long term. There exists an international misconception that some

^① the Ninth National People's Congress, : The 1998 Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China, 26 June 1998, https://www.mfa.gov.cn/web/wjwb_673085/zzjg_673183/bjhysws_674671/bhflfg/hyfxzhxfl/202303/P020230313590134788658.pdf.

coastal states of the South China Sea, especially claimant states, unreasonably restrict military activities in the area. In reality, while coastal states generally do not welcome foreign military forces' activities in their claimed waters, they mainly conduct tracking and surveillance and only resort to measures of a forceful nature in specific areas and circumstances. Overall, countries from both in and outside the region enjoy the freedom to engage in military activities in the South China Sea, as normal under international law.

In recent years, driven by US attempts to “contain China” using maritime disputes, tensions in the South China Sea have escalated. The intensification of certain disputes has attracted significant international attention. However, current frictions mainly exist among some disputing parties, and any relevant disputes have not affected other countries' navigation and overflight freedoms in the South China Sea. China-US militaries' interactions and encounters in the area are generally professional and safe. The impact of great power competition on navigation and overflight freedoms in the South China Sea remains manageable. The primary threats to maritime navigation are non-traditional security factors such as geographical obstacles, natural disasters, unbalanced development, piracy, and armed robbery against ships, which have long been overlooked and lack due attention.

Specialized Terminology

Times of Vessel: Typically refers to the number of times a vessel enters and exits a port, indicating how many times a ship enters and leaves a port within a certain period of time, with each entry and exit counted as one time. In this report, "times of Vessel" refers to each ship being counted once for each entry and exit in the South China Sea.

Vessel: Refers to the total number of vessels entering and exiting ports within a certain period of time, for example, numbering different vessels that visited a port for some duration. In this report, "vessel" refers to the total number of vessels active in the South China Sea within a specific period.

Ship-Day: When vessels are operating at sea, each day is considered as a separate unit, known as a ship-day.

Sortie: After the aircraft is dispatched, the completion of a take-off and a landing comprises a sortie

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I. Rules and Regulations on Navigation in the South China Sea under International Law

1. Provisions on Navigation in International Law

The South China Sea is a marginal sea and a semi-enclosed sea, encompassing almost all types of navigation situations and systems worldwide.

The United Nations Convention on the Law of the Sea (UNCLOS) stipulates various navigation systems in different types of maritime zones, such as innocent passage, transit passage, and archipelagic sea lanes passage. Generally, the closer a vessel is to a coastal state's coast, the more restricted the navigation, and vice versa. These systems aim to balance the navigational rights of user states with the rights of coastal states, especially their security and jurisdiction.

i. Navigation of Foreign Vessels and Aircraft in Internal Waters

Internal waters are the waters landward of the baseline of the territorial sea.^① Coastal states have full sovereignty over internal waters. Unless explicitly agreed upon by the coastal state, foreign vessels or aircraft have no right to pass through internal waters. Coastal states have the right to allow or deny the entry of foreign vessels and aircraft into internal waters. An exception is provided in Article 8(2) of *UNCLOS*, which states that the right of innocent passage can be exercised in waters that were not considered internal waters but are now enclosed due to the effects of drawing straight baselines according to Article 7 of *UNCLOS*.^②

① Article 8(1) of *UNCLOS*, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

② Article 8(2) of *UNCLOS*, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

ii. Right of Innocent Passage in Territorial Seas

While coastal states have sovereignty over their territorial seas, ships of all States enjoy the right of innocent passage through these seas. Innocent passage is a crucial concept in international law, allowing foreign vessels to sail continuously and expeditiously through the territorial sea of a coastal state as long as they do so “innocently”, that is, without prejudice to the peace, good order, or security of the coastal state. Foreign aircraft do not have the explicit right to fly over territorial seas; permission is required to enter the airspace above them. States have differing practices on how foreign naval vessels exercise innocent passage rights, with varying interpretations of UNCLOS. Some coastal states, particularly developing countries, require prior notification or authorization for foreign warships to pass through their territorial seas, citing national security reasons. Some developed countries insist on the explicit right to innocent passage of foreign warships without prior notification or authorization.^① Balancing the navigational rights of user states with the security interests of coastal states is central to resolving this issue.^② On one hand, coastal states have the right to take reasonable measures to protect their security, provided that navigational rights are not unduly restricted. On the other hand, user states should respect coastal states’ laws and regulations and avoid actions that may be seen as provocative when exercising the right of innocent passage.^③

Additionally, under Article 33 of UNCLOS, the contiguous zone extends 12 nautical miles beyond the territorial sea, where coastal states

^① Keyuan, Zou. “Innocent Passage For Warships: The Chinese Doctrine And Practice.” *Ocean Development & International Law* 29, No. 3 (1998): 195-223.

^② Bateman, Sam. *Freedoms Of Navigation In The Asia-Pacific Region: Strategic, Political And Legal Factors*. Routledge, 2019.

^③ Churchill, Robin R. “The Impact Of State Practice On The Jurisdictional Framework Contained In The LOS Convention” *In Stability and Change in the Law of the Sea: The Role of the LOS Convention*, pp. 91-143. Brill Nijhoff, 2005.

may exercise necessary controls to prevent and punish violations of their customs, fiscal, immigration or health laws and regulations within their territory or territorial sea.^①

iii. Freedom of Navigation in Exclusive Economic Zones

Within exclusive economic zones (EEZs), all States have the freedom of navigation and overflight. Meanwhile, according to Article 58(3) of UNCLOS, States shall have due regard to the rights and duties of coastal states. This implies that the exercise of freedom of navigation and overflight in EEZs shall respect the rights of the coastal states within the EEZ, especially those set out in Article 56(1)(a) concerning the sovereign rights and Article 56(1)(b) concerning jurisdiction and duties. For instance, foreign vessels navigating in EEZs shall comply with the coastal state’s regulations on preventing marine pollution.

Table 1 Navigation Regimes Related to the South China Sea

Maritime space under coastal state territorial sovereignty	Internal water	No navigation rights (except under Article 8(2) of UNCLOS)
	Territorial sea	Right of innocent passage
	Archipelagic water	Right of archipelagic sea lanes passage/innocent passage
Maritime space under coastal state sovereign rights	EEZ	Freedom of navigation (subject to the obligation of due regard)

While UNCLOS is not specifically a convention regulating international maritime safety, it incorporates several provisions that safeguard navigation safety, thereby requiring contracting parties to fulfill

^① Tanaka, Yoshifumi. “Jurisdiction of States and the Law of the Sea: Essentials of the Law of the Sea.” *CEPRI Studies on Private Governance* 7 (2022).

regulatory obligations to ensure navigation safety from the perspectives of flag states, coastal states, port states, etc. For example, Article 94 outlines the obligations of flag states concerning seaworthiness and crew eligibility; Article 218 empowers port states to investigate and even prosecute illegal discharges by vessels within their jurisdictional waters; Article 21 permits coastal states to enact laws and regulations regarding navigation safety and maritime traffic management in their territorial seas; Articles 22, 41, and 53 respectively authorize coastal states, states bordering straits and archipelagic states to designate sea lanes or implement traffic separation schemes in their territorial seas, international straits and archipelagic waters to prevent or reduce the risk of collisions.

2. International Rules on Collision Avoidance and Navigation

Safety

UNCLOS provides a legal framework for maritime activities, yet it does not specifically regulate international maritime safety. Numerous international rules and standards related to navigation safety have been established by the International Maritime Organization (IMO). Notable regulations include *International Convention for the Safety of Life at Sea* (SOLAS), which governs vessel safety and navigation; *International Regulations for Preventing Collisions at Sea* (COLREGS), which outlines rules for collision prevention, *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers* (STCW), which ensures crew qualifications; and *International Convention on Maritime Search and Rescue*. *The International Safety Management Code* (ISM Code) is concerned with ship management and operational safety, while *the International Convention for the Prevention of Pollution from Ships* (MARPOL) establishes environmental standards.

Additionally, the *Memorandum of Understanding on Port State Control* (Paris MOU and Tokyo MOU) ensures compliance with international safety and pollution standards among foreign vessels.

Table 2 Regulatory Duties Related to Navigation^①

	Regulatory
Coastal state	Involves coastal state’s territorial waters. <ul style="list-style-type: none"> - Maintain peace, good order, and security - Ensure navigation safety and maritime traffic management - Preserve marine environment, prevent pollution - Enforce coastal state's fishery laws and regulations - Designate sea lanes, set navigational aids - Protect cables and pipelines - Conduct marine scientific research and hydrographic surveys - Enforce coastal state’s customs, fiscal, immigration, or health laws and regulations - Other affairs
	Involves coastal state’s EEZs. <ul style="list-style-type: none"> - Sovereign rights for resource exploration and exploitation - Environmental protection - Marine scientific research - Establishment and use of artificial islands, installations, and structures --other rights and duties provided for in the UNCLOS
Port state	<ul style="list-style-type: none"> - Inspect inbound and outbound vessels - Ensure safety equipment on board in compliance with international standards - Ensure crew possess appropriate qualifications - Take measures to prevent pollution - Assist distressed vessels
Flag state	<ul style="list-style-type: none"> - Ensure seaworthiness and safety - Ensure vessels comply with international and flag state standards - Ensure crew possess appropriate qualifications - Investigate maritime accidents - Take measures to prevent and punish illegal activities

^① The table is organized with reference to the above-mentioned international conventions and rules , <https://www.imo.org/en/About/Conventions/Pages/ListOfConventions.aspx>.

3. International Regimes Related to Overflight Safety

The Convention on International Civil Aviation (Chicago Convention) and its associated annexes represent a fundamental corpus of international aviation legislation.^① The Chicago Convention affirms the state's complete and exclusive sovereignty over its airspace, requiring each contracting state to regulate aircraft registered within its territory to meet international standards. Annex 2 of the Chicago Convention, *Rules of the Air*, sets technical standards to ensure global aviation safety by detailing rules for aircraft operations both in the air and on the ground, aiming to unify global flight standards and prevent aviation accidents. Annex 8, *Airworthiness of Aircraft*, establishes technical standards to ensure global civil aircraft in accordance with specific safety standards in design, manufacture, and operation. Annex 11, *Air Traffic Services*, outlines standards and procedures for air traffic services, including air traffic control services, flight information services and alerting services, guaranteeing the smooth operation of global air transportation. While the Chicago Convention's primary focus is on civil aircraft, it also stipulates that when formulating regulations pertaining to state aircraft, including military aircraft, each contracting state must consider the navigational safety of civil aircraft, thereby ensuring safe coordination between them. Coastal states in the South China Sea are members of the Chicago Convention and have demonstrated a commendable record of compliance.

Besides the Chicago Convention and its annexes, other international rules ensuring flight safety include *Convention on Offenses and Certain Other Acts Committed on Board Aircraft* (Tokyo Convention), *Convention for the Suppression of Unlawful Seizure of Aircraft* (Hague

^① International Civil Aviation Organization, Convention On International Civil Aviation, December 1944 https://www.icao.int/publications/Documents/7300_orig.pdf.

Convention), and *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (Montreal Convention).

II. Navigation and Overflight of Civilian Ships and Aircraft

The South China Sea is the busiest and economically the most prosperous sea in the world. With the rapid economic development of China and Southeast Asia, the South China Sea and its surrounding areas are becoming the world's busiest sea and air transportation artery, with thousands of ships and aircraft operating there every day. For the region and even the world, the South China Sea is a significant artery that affects economic development and prosperity.

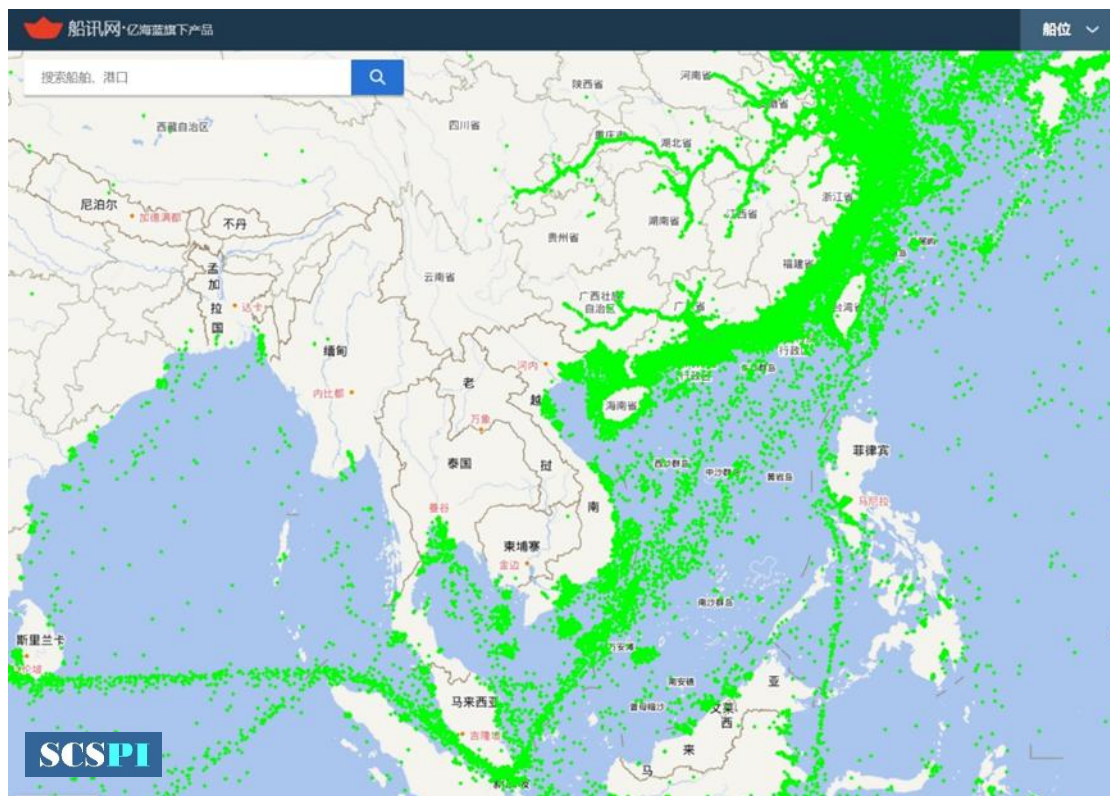
1. Civilian Ship Navigation and Operation

According to statistics provided by Elane Shipxy^① in 2023, there were 1.669 million sailings of diverse types of ships in the South China Sea, of which more than 593,000 were merchant ship, 623,000 fishing vessels and 452,000 of other ships. The total number of ships operating in the South China Sea was 328,000, including 48,000 merchant ships, 78,000 fishing vessels, and 202,000 other ships. In 2022, a total of 1.394 million sailings of diverse types of ships occurred in the South China Sea, with a total number of 260,000 ships. In 2021, a total of 1.481 million sailings of diverse types of ships occurred in the South China Sea, with a total number of 292,000 ships. The types of ships sailing in the South China Sea include oil tankers, bulk carriers, container ships, cargo ships, liquefied gas carriers, passenger ships, ferries, specialized carriers, dredgers, offshore supply ships, tugboats, and other ships, as well as fishing vessels, government vessels, and so on. From 2021 to 2023, an average of 123,000, 116,000 and 139,000 ships of various types sailed in the South China Sea per month respectively, of which more than 46,000, 45,000 and 49,000 merchant ships, 43,000, 37,000 and 52,000 fishing

^① <https://www.shipxy.com/>

vessels, and more than 35,000, 34,000 and 38,000 other ships. The proportion of the three main types of ships, merchant ships, fishing vessels and other ships, is calculated to be merchant ships accounting for 37%, fishing vessels accounting for 35%, and other ships accounting for 28% of the total.

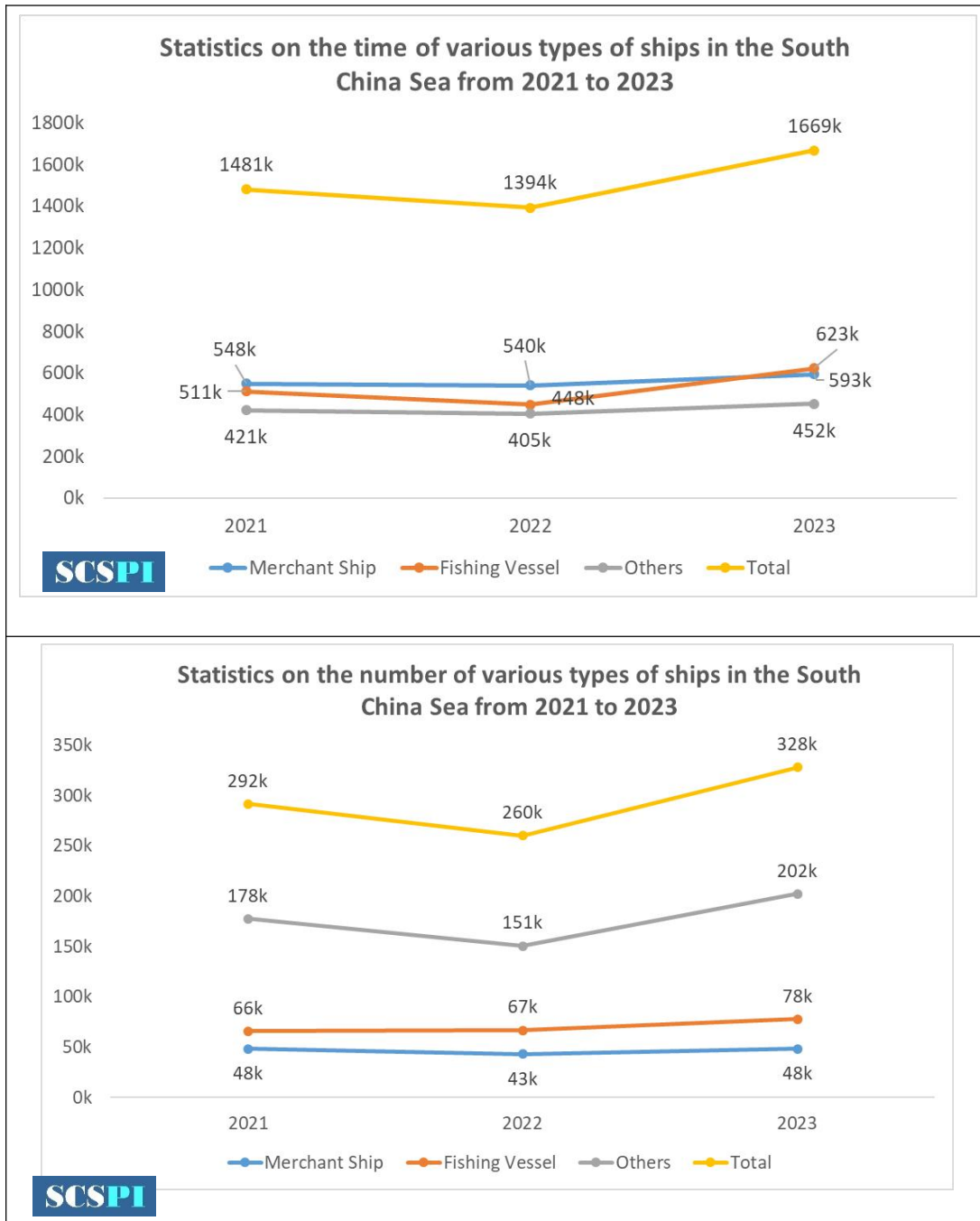
Figure 2 Real-time Situation of Ship Traffic in the South China Sea (2024/09/11 14:00:00 UTC+8)



On monthly average, the ships that navigated or operated in South China Sea are from nearly 110 countries or regions by which the ships are either owned or fly their flags. From the ship owning country perspective, the top ten countries or region whose ships navigated in South China Sea include China, Hong Kong China, Singapore, Republic of Korea, Japan, Greece, the United Kingdom, Norway, Bermuda, and Germany. From the flag State perspective, the top ten countries or region under which the ships navigated in South China Sea flying their flags include China,

Panama, Liberia, Mashall Islands, Hong Kong China, Singapore, Malta, Greece, Japan, and the Bahamas.

Figure 3 Statistics on the Time and Number of Various Types of Ships in the South China Sea from 2021 to 2023



According to statistics from the project team of Ma Mingfei and Zhang Renping in Dalian Maritime University, in 2022, the shipping

lanes off China's coast had the heaviest marine traffic flow in the area between Xisha and Dongsha Islands, the number of ships reached 45,000 on annual basis for both north- and south-bound. The shipping lanes off Singapore Strait witnessed the utmost density of marine traffic flow, the density reached 20,000 per year on average.

Figure 4 Ship Traffic in the South China Sea by Goal Line in 2022

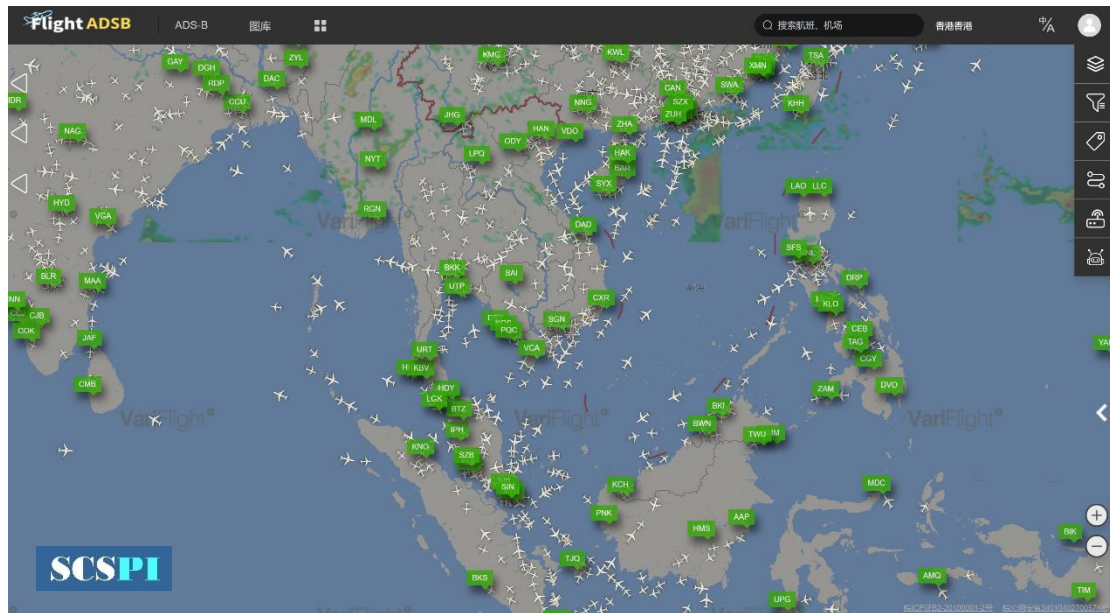


2.Civilian Aircraft Overflight

According to the ADS-B statistics provided by Variflight,^① in 2023, a total of 1,143,105 sorties of civilian aircraft from 106 countries or regions occurred over the South China Sea, an average of about 3,132 flights per day. Of these, 1,125,064 flights were civil aviation, 9,762 flights were business aviation, and 8,285 flights were general aviation.

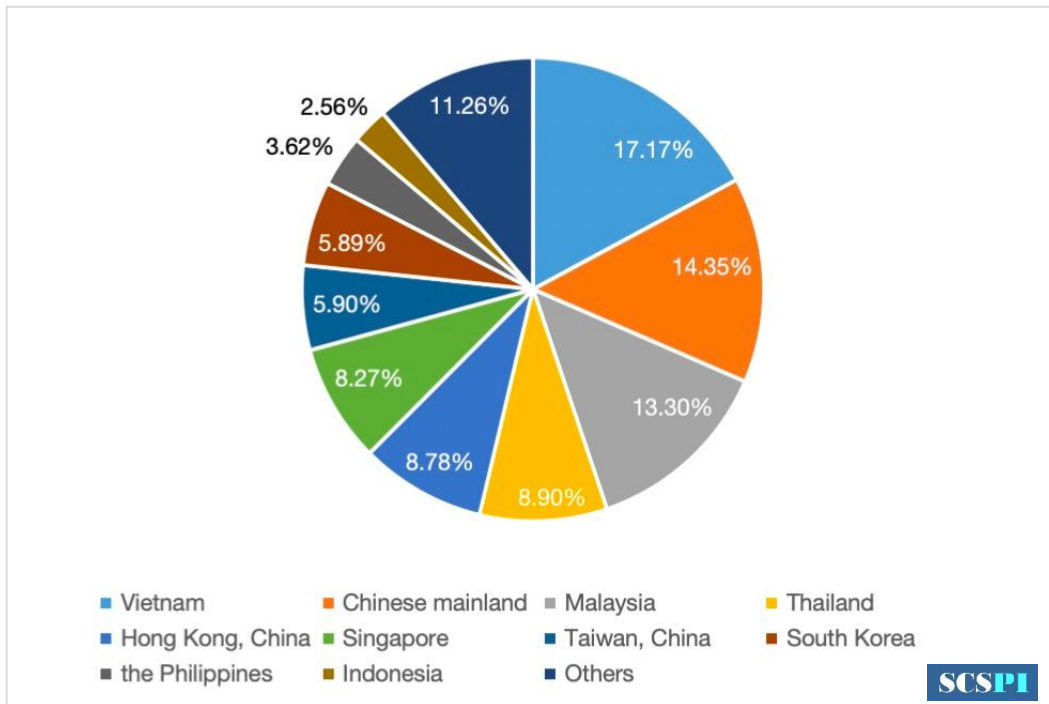
^① <https://flightadsb.variflight.com/>.

Figure 5 Aerial Real-time Situation in the South China Sea and Surrounding Areas (2024/09/04 16:45:25 UTC+8)



Using statistics based on nationality, the top ten are: Vietnam (17.17%), Chinese mainland (14.35%), Malaysia (13.30%), Thailand (8.90%), Hong Kong, China (8.78%), Singapore (8.27%), Taiwan, China (5.90%), South Korea (5.89%), the Philippines (3.62%), and Indonesia (2.56%). The sortie of these ten parties accounted for 88.74% of the total sorties in the South China Sea. According to statistics from the past five years, the flights of civil aviation in 2023 was 86.07% of the flights in 2019 in the South China Sea and is steadily increasing.

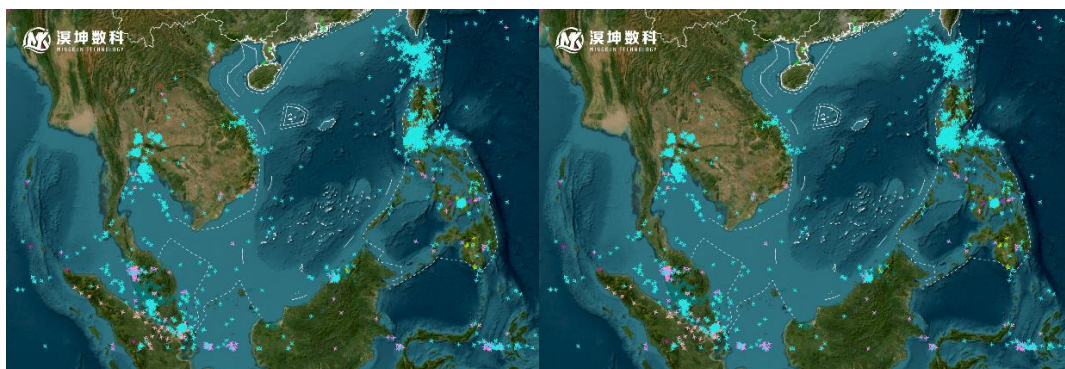
Figure 6 Proportion of Major Civilian Aircraft Sorties in the South China Sea in 2023



III. Activities of Warships and Military Aircraft

The South China Sea is the most open sea in the world. Countries in and outside the region have surface forces presence of over 20,000 ship-days and around 30,000 sorties of military aircraft in the South China Sea each year, along with hundreds of large-scale drills and thousands of various exercises. Not only are the military activities of coastal countries increasing, but the scale of military activities of extra-regional countries in the South China Sea, particularly the US military, is also significant. Every year, the US Navy maintains approximately 1,600 ship-days of surface vessel presence and an undisclosed number of submarines (combat vessels) in the South China Sea, as well as over 3,000 ship-days of auxiliary vessel activities. Overall, US Air Force, Navy, Marine Corps and Army conduct approximately 8,000 sorties of aircraft annually in the region, including reconnaissance aircraft, transport aircraft, refueling aircraft, fighter jets and bombers.

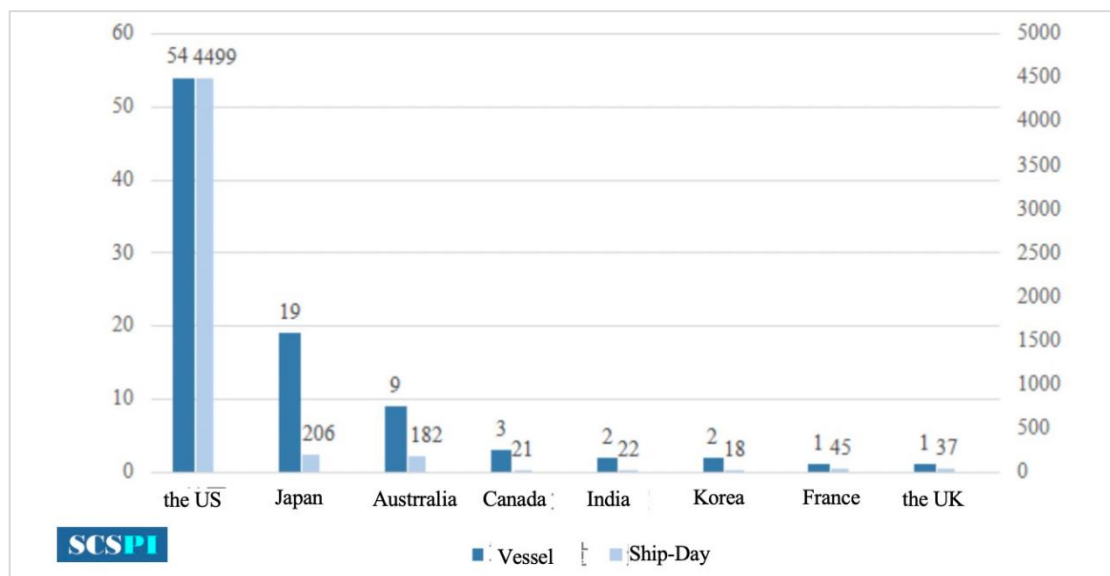
Figure 7 Incomplete Situation of Warships and Military Aircraft in the South China (2024)



1. Warship Activities

In 2023, according to incomplete statistics from *Mingkun Maritime Domain Awareness System (MK-MDA)*, more than 400 warships from 16 countries sailed in the South China Sea, with over 20,000 ship-days of surface forces present throughout the year. On average, around 50 warships are active in the South China Sea each day, among which 91 warships from extra-regional countries such as the US, Japan, Australia, South Korea, the UK, France, India and Canada collectively conducted activities totaling 5,030 ship-days in the South China Sea.

Figure 8 Overview of the Presence of Warships from Extra-Regional Countries in the South China Sea in 2023

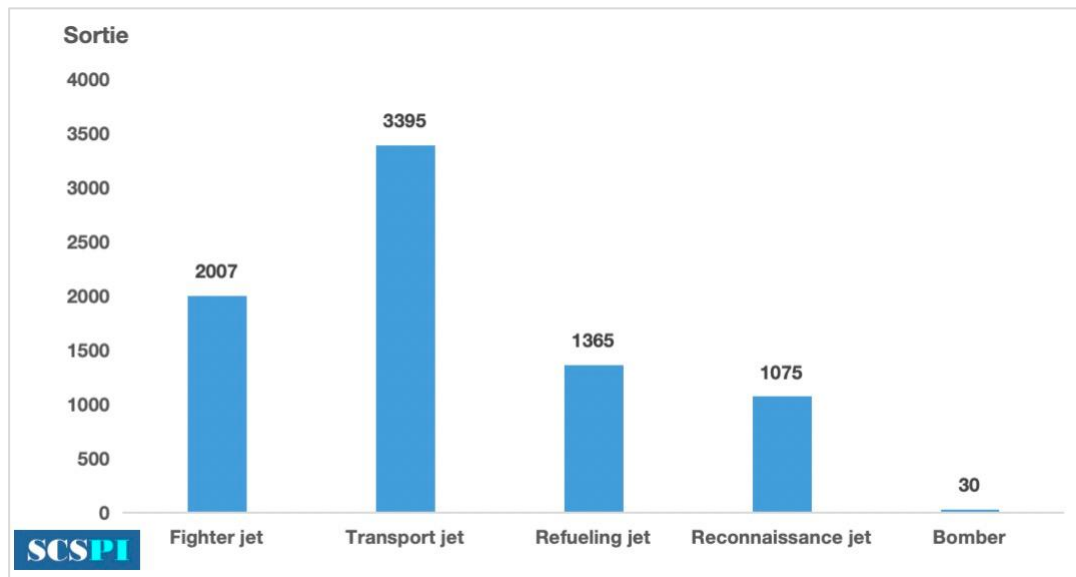


2. Military Aircraft Activities

In 2023, nearly 30,000 sorties of military aircraft occurred in the South China Sea, including fighter jets, helicopters, transport aircraft, reconnaissance aircraft, refueling aircraft and bombers, with two-thirds of the activities conducted by coastal states. Among the nearly 10,000

sorties of military aircraft from extra-regional countries, the vast majority were activities of the US military, approximately 7,872 sorties. In contrast, activities from Australia, Japan, South Korea, and India added up to around 1,500 sorties.

Figure 9 Statistics on the Activities of Major Types of US Military Aircraft in the South China Sea in 2023



3. Professional Interactions and Confrontational Air and Maritime Encounters

In the South China Sea, air, and maritime encounters between military forces of different countries occur frequently, especially between China and the US. Over ten encounters occur daily and thousands annually. The majority of these encounters are professional and safe.

Despite exaggerated interpretations of China’s claims and policies on the South China Sea by politicians and the media in western countries like the US, they also acknowledge that interactions with the Chinese military are generally safe and professional. For example, USS Abraham Lincoln’s Skipper, Capt. Amy Bauernschmidt, stated in a press release in August 2022, “We were operating in the vicinity [of] Chinese warships at

times, mostly ... that shadowed our ship” She further claimed: “It was safe and professional the entire time that we interacted with them. During some flight operations, our aircraft did interact with some of their aircraft, but again it remained safe and professional each and every time we interacted with them.”^①

Regarding foreign military vessels and aircraft entering China’s jurisdictional sea areas and surrounding sea and airspace, the Chinese military, follows and monitors the situation based on international practice for safety and security reasons. As sailors aboard the Royal Canadian Navy frigate HMCS Montréal, which had operated in the South China Sea, pointed out, if the Chinese military operated near Canadian shores, the RCN would also shadow them.^②

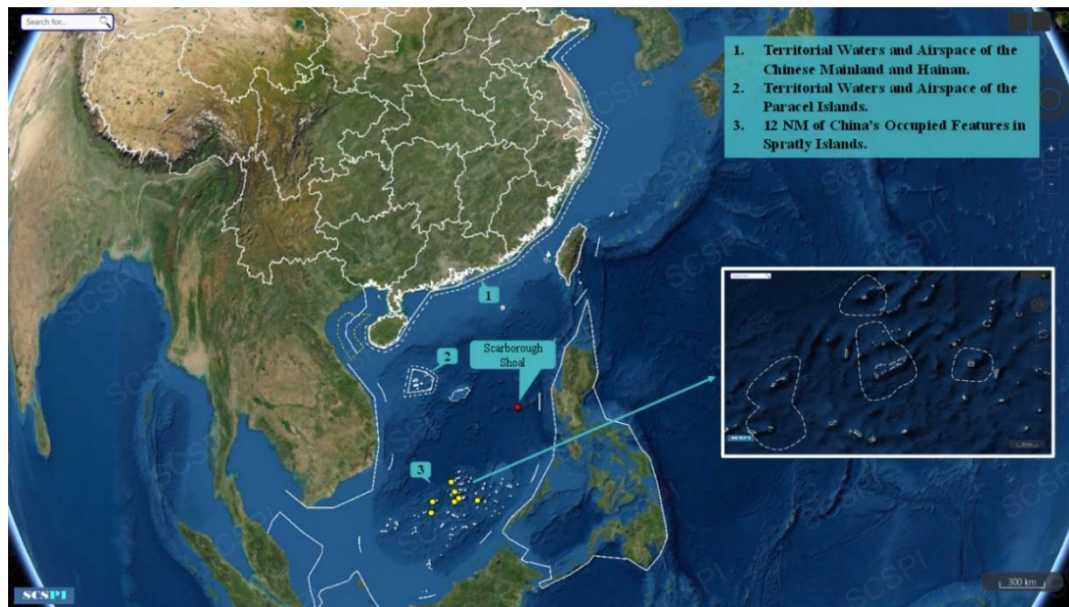
Friction between foreign military forces and the Chinese military in the South China Sea primarily involve three specific areas and one type of specific operation, i.e. the following 4 scenarios: 1) When foreign forces approach the Chinese mainland or Hainan Island territorial waters and airspace, the Chinese military responds vigorously, employing actions including interception and pushing outwards; 2) When the US military enters the territorial waters and airspace of Paracel Islands for so-called “freedom of navigation operations”, the People's Liberation Army (PLA) issues warnings and conducts expulsions; 3) When foreign forces enter within 12 nautical miles of Chinese-controlled features in Spratly Islands and Scarborough Shoal, the PLA issues warnings and expulsions ; 4) When foreign forces excessively approach or intrude into

^① Gidget Fuentes, “Abraham Lincoln Carrier Strike Group Returns from Indo-Pacific Deployment Highlighted by South China Sea Operations,” USNI, August 11, 2022, <https://news.usni.org/2022/08/11/abraham-lincoln-carrier-strike-group-returns-from-indo-pacific-deployment-highlighted-by-south-china-sea-operations>.

^② Mallory Shelbourne, “From the Great White North to the South China Sea,” USNI, August 19, 2024, <https://news.usni.org/2024/08/19/from-the-great-white-north-to-the-south-china-sea>.

PLA military exercises, including live-fire ones.^①

Figure 10 Three Specific Areas Where Foreign and Chinese Military Engage in Confrontational Air and Maritime Encounters



Some foreign militaries often complain about being intercepted by Chinese forces, portraying the South China Sea as restricted and unsafe. However, they conveniently avoid discussing essential information such as the specific locations of encounters and the reasons behind such incidents, clearly indicating a biased narrative. If their roles were reversed, any country facing challenges similar to the scenarios above would take decisive measures, with countries like the US responding even more assertively than China has.

^① Hu Bo, “The Real Risks of Military Encounters Between China and the U.S. in China’s Surrounding Waters,” South China Sea Strategic Situation Probing Initiative (SCSPI), September 13, 2022, <http://www.scspi.org/en/dtfx/real-risks-military-encounters-between-china-and-us-china%E2%80%99s-surrounding-waters>.

IV. Representative Operations Influencing Maritime Freedoms

Extra-regional countries such as the US, often disguise provocative military activities against the coastal states of the South China Sea as freedom of navigation issues. Although international conventions including UNCLOS are ambiguous regarding the provisions on freedom of navigation and overflight of military vessels and aircraft in the waters under the jurisdiction of coastal states, especially in EEZs, there are also significant differences on this in the international community. However, operations that directly endanger the sovereignty and security of coastal states, regardless of any standards, have nothing to do with “freedom of navigation.”

1. The US military’s So-called FONOP

During the late 1970s, *the United Nations Convention on the Law of the Sea (UNCLOS)* negotiations were in full swing. In order to cope with the challenges that the new international regime might pose to the global free access of the US forces, the U.S. Carter administration officially set up the Freedom of Navigation (FON) Program in July 1979, with the purpose of conducting operations to challenge the so-called “excessive maritime claims” of other nations.

The FON Program mainly takes three forms: consultations and representations by U.S. diplomats (i.e., U.S. Department of State), and operational assertions by U.S. military forces. FONOPs are military assertions. US Navy and Air Force conduct operations to challenge what

the US considers “excessive maritime claims” of other countries.^① Its enforcement is not based on international law or rigorous research, but on whether these claims conform to the freedom of navigation that the US wants. Although most countries support freedom of navigation, the rest of the world including US allies such as the UK, Australia, Canada, and other countries, do not employ the concept and practice of FONOP.

Such a US stance also determines that when there is a conflict between the navigation rights of the US and the rights of coastal states, it is impossible for the US to acknowledge the ambiguity of international laws on this issue, actively solve the problem through equal consultation, and take the concerns and interests of other countries into account. Instead, it requires other countries to compromise and make concessions for the interests of the US. This is a blatant practice of hegemony irrelevant to freedom of navigation, setting up a separate system beyond the UNCLOS mechanism and attempt to override international law with its own domestic laws and practices.

Usually, the US military tends to be secretive about the details of FONOPs. The US Department of Defense releases an annual Freedom of Navigation (FON) Report over the last fiscal year, listing operational assertions that are conducted by the US Navy as part of the program. Nothing in the reports explicitly states the number of operations against each type of excessive maritime claim, much less the timing, location, and other details of each operation. Generally, the US military challenges “excessive maritime claims” of more than three dozen countries or regions each fiscal year. The operations are directed at competitors such as China and Russia, as well as its allies such as Japan, the Philippines, and Australia.

^① U.S. Department of Defense, U.S. *Freedom of Navigation (FON)*, February 28, 2017, Program <https://policy.defense.gov/Portals/11/DoD%20FON%20Program%20Summary%2016.pdf?ver=2017-03-03-141350-380>.

According to the U.S. Department of Defense FON reports, at the early stage, US FONOPs in the South China Sea were directed at Vietnam, Malaysia, and the Philippines, rather than China. It was not until 2007 that China gradually became the focus of attention, which is basically synchronized with the process that United States gradually recognized China as a strategic maritime competitor. This shows that FONOPs have a distinct political and strategic significance, rather than the so-called order and rules basis frequently emphasized by the United States.

Compared to FONOPs in other forms and other places, US FONOPs around China stationed features in the South China Sea have been more political and strategically provocative, since October 27, 2015, USS Lassen DDG-82 entered the 12 nautical miles waters of Subi Reef and Mischief Reef to conduct FONOP. On the one hand, the US military actively discloses the details including the performing forces, time and place of FONOPs against China to the media. On the other hand, with the increasing length of the FONOP statements, the wording contained is enhanced in intensity and sharpness. According to published research, 22 FONOPs are related to the US's China-related and maritime policies, such as land reclamation in the Spratly Islands, the South China Sea Arbitration, and the consultation on the "South China Sea Code of Conduct".^① In 39 US military's feature-intrusive FONOPs from 2015 to 2022, it can be seen that the U.S. military's operations in the South China Sea have nothing to do with its so-called maintenance of freedom of navigation and regional stability, but are instead a tool for its gunboat policy and political pressure.

^① Hu Bo, Ai Xueying, "The Politicization of the U.S. Military Operations in the South China Sea: Analysis Based on Intrusive-Featured Freedom of Navigation Operations," *Journal Of Boundary and Ocean Studies*, Vol. 4, No. 1, (2024).

Table 11 US Military Feature-challenge FONOPs and Important Agendas in China-US Relations (2015-2022)

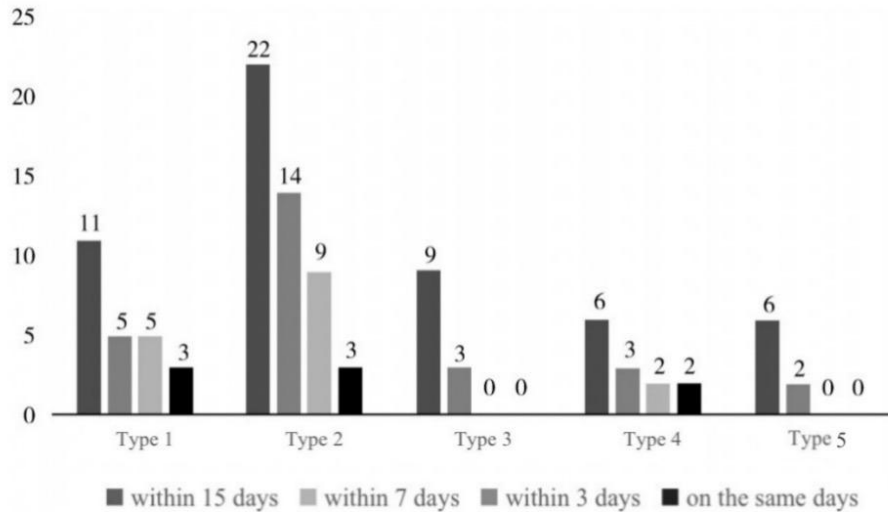


Table Note: Type 1 China’s festivals and meetings; Type 2 Important trends of the US’s China-related and maritime policies; Type 3 Important policy trends and major military operations of China concerning the US; Type 4 Regional hot spots and important international conferences; Type 5 Important bilateral interactions between China and the US

2. Provocations that Approach or even Intrude into the Coastal State’s Territorial Waters and Airspace

In recent years, the US military has become increasingly aggressive in its close-in reconnaissance against China in the South China Sea, frequently approaching the airspace of Chinese mainland and Hainan Island, and constantly decreasing the distance of its approaches to China’s coast. About one hundred aircraft sorties approach the airspace of Chinese Mainland and Hainan Island every year, most of which fly to less

than 30 nautical miles from the baseline of China’s territorial waters.^①

Repetitively emphasizing that its military can operate anywhere permitted by international law, the US never considers the impact of these actions on the security of other countries. In the waters and airspace of the EEZ, normal close-in reconnaissance is disparate from the so-called close-in reconnaissance that is too close or suspected of entering territorial waters or airspace. The latter is a provocative operation that seriously threatens the sovereignty and security of relevant countries. Especially in the air, due to the high speed of modern aircraft, reconnaissance flights that approach too closely to the airspace of other countries (less than 10 nautical miles from their airspace) can easily lead to misjudgment. Regardless of the criteria, it is no longer a matter of freedom of overflight. In October 2023, the US Department of Defense “declassified” some videos and pictures of air encounters with PLA aircraft in the East China Sea and South China Sea, accusing China of “dangerous behavior” and “risky intercept”.^② However, the Pentagon neither specified the locations of these air encounters nor the root behind such incidents. In fact, most of these interceptions occurred within 10 nautical miles or even closer to the airspace of the Chinese Mainland. For example, on December 8, 2022, a US P-8A anti-submarine patrol aircraft flew over the Taiwan Strait, coming within less than 13 nautical miles from the baseline point of the territorial sea in Fuzhou, Chinese Mainland, almost entering its airspace.

^① SCSPi, “An Incomplete Report on US Military Activities in the South China Sea in 2023,” March 22, 2024, http://www.scspi.org/sites/default/files/reports/2023nian_mei_jun_nan_hai_jun_shi_huo_dong_bu_wan_quan_bao_gao_.pdf.

^② U.S. Department of Defense, “Department of Defense Releases Declassified Images, Videos of Coercive and Risky PLA Operational Behavior,” October 17, 2023, <https://www.defense.gov/News/Releases/Release/Article/3559903/department>.

Figure 12 A US P-8A Anti-Submarine Patrol Aircraft Approached Fuzhou at a Close Distance (Dec.8 2022)



Other extra-regional countries occasionally engage in similar operations leading to violent incidents. For example, on May 26, 2022, an Australian P-8A anti-submarine patrol aircraft entered the airspace near the Paracel Islands for close-in reconnaissance. Despite repeated warnings, it continued to approach China’s territorial airspace, forcing the PLA to intercept. Afterwards, the Australian side also accused China of “obstructing the freedom of navigation and overflight in the South China Sea,” but dodged questions concerning the specific location and the trigger for the incident.

3. Intrusions into Temporary Military Exercise Areas of Other Countries

According to relevant international laws and practices, coastal states can establish temporary restricted areas in their jurisdictional waters, other countries' EEZs, and the high seas through navigational warnings to ensure the smooth conduct of military exercises and the safety of passing vessels and aircraft.

When one party conducts exercises, tracking, monitoring, and reconnaissance by the other party are typical and in line with international norms. However, the reconnaissance actions of some militaries in the South China Sea, especially the US military, sometimes involve dangerously close approaches or intrusions. Particularly, during PLA's live-fire exercises, the US military often disregards navigation warnings and intrudes into the relevant maritime and aerial areas, potentially sparking an accidental confrontation. For example, on December 5, 2013, during exercises of China's Liaoning aircraft carrier group in the South China Sea, the USS Cowpens attempted to intrude into the group's inner defense zone. A Chinese landing ship had to intercept and force it to turn away. On May 26, 2023, a US Air Force RC-135V reconnaissance aircraft intruded into the training airspace of the Shandong aircraft carrier group, prompting a close-range interception by a PLA J-16 fighter jet. Such intrusions or harassments have significantly disrupted the maritime freedoms others enjoy and create the potential for misjudgments, confrontation, and conflict to occur.

V. Impact of the South China Sea Disputes on Navigation and Overflight

China, Vietnam, the Philippines, Malaysia, Brunei, and Chinese Taiwan are involved in disputes over the sovereignty of some or all of the Spratly Islands in the South China Sea. These five countries and six parties, along with Indonesia, have overlapping maritime claims in the South China Sea to varying degrees.

1. South China Sea Disputes are Overall Manageable and Have Not Spilled Over

The roots of the South China Sea disputes are complex. Despite frequent flare-ups and maritime incidents since the 1990s, the region has generally maintained peace and stability due to the restraint and efforts of the involved parties. Following the signing of the Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002, parties have handled related issues calmly and rationally according to the DOC's consensus, refraining from new occupation of uninhabited features and avoiding sharp confrontations in overlapping areas. Also, various dialogue and cooperation schemes are constructed among relevant parties. Bilateral maritime mechanisms such as building confidence measures (BCM) dialogues between China and Vietnam, the Philippines, and potential talks with Malaysia are vital in managing disputes and stabilizing the region.

Given that the features of the Spratly Islands occupied by the various parties in the South China Sea are often located within the same group reefs or lagoon, close proximity and overlapping exist in maritime and aerial domains. Alert or restricted zones have been established within 12

nautical miles surrounding these occupied features, while the restrictions are typically not imposed beyond the 12-nautical-mile scale. Moreover, the main disputed features in Spratly Islands are not situated in major sea lanes in the South China Sea. As a result, intrusion incidents have been frequently reported, but this competition and friction have not affected passing vessels and aircraft. Incidents of crisis occasionally arise due to disparate claims via fishing activities, law enforcement patrols and oil and gas development. However, friction and conflicts mainly occur among the involved parties and have not been reported to impact the passage of the vessels and aircraft from extra-regional countries.

2. Activities of Law Enforcement and Maritime Rights Protection are not Navigation Issues

The frequently sensationalized claims of “impeding freedom of navigation” and “endangering navigation safety”, in the South China Sea region are, in reality, certain disputing parties and some external countries deliberately interpreting sovereignty disputes over islands and reefs in the area and maritime boundary disputes as navigation issues. For instance, in the South China Sea Arbitration, the Philippines accused China of operating law enforcement vessels in a dangerous manner and leading to “serious collision risks” with Philippine vessels navigating in the vicinity of Scarborough Shoal (Huangyan Island) through intentionally classified China’s maritime rights protection activities as ordinary navigation activities, and requested the arbitral tribunal to judge China’s law enforcement actions as violating relevant navigation rules based on Article 94 of Convention on the International Regulations for Preventing Collisions at Sea 1972.^①

^① The South China Sea Arbitration, Award of 12 July 2016, para 1059, para 1109.

In the current highly scrutinized China-Philippines friction in the South China Sea, China's relevant actions are maritime rights protection activities in response to Philippine provocations concerning China's territorial sovereignty over related features. Whether it is rights protection activities against Philippine government vessels intruding into waters near Scarborough Shoal (Huangyan Island), interception measures taken against Philippine vessels transporting construction materials to the illegally grounded warship to establish a military outpost at Second Thomas Shoal (Ren'ai Jiao), or coercive measures against Philippine Coast Guard vessels attempting to violate China's sovereignty over Sabina Shoal (Xianbin Jiao), all fall under the nature of sovereignty safeguarding activities. In responding to such provocations, the route controls and other measures taken by China Coast Guard's vessels do not fall into the realm of regular navigational activities and, therefore, do not apply to collision avoidance rules.

Conclusion

Overall, the freedom of navigation and overflight in the South China Sea are fully guaranteed for both military and civilian vessels and aircraft, and the impact of widely discussed geopolitical factors such as major power competition and maritime disputes is very limited. On the contrary, the influence of some non-traditional security factors is worthy of more attention. For example, the South China Sea is characterized by numerous islands, reefs, and sandbars, as well as scattered shoals and shallow banks, with frequent adverse weather conditions like typhoons, sea fog and tsunamis. Additionally, the unbalanced development of countries and regions surrounding the Sea leads to ununified planning for maritime safety as well as weak capabilities in communication, navigation, and search and rescue. Furthermore, the South China Sea remains a hotspot for piracy and armed robbery cases, especially near the Malacca and Singapore Straits.^①

The peace, stability, freedom, and security of the South China Sea is crucial to not only the well-being of regional countries but also the development and security of the region and more globally. Both regional and external countries should contribute their efforts, play constructive roles, and work together to make the South China Sea a sea of peace, friendship, and cooperation. We propose the following:

1. External countries should fully respect the legitimate rights and reasonable security demands of regional countries, especially coastal states in the South China Sea, restrain excessive provocative military activities, stop false narratives, biased interpretations, and baseless

^① 51 Incidents of Piracy and Armed Robbery Against Ships in Asia in First Half of 2024, ReCAAP Information Sharing Centre, July 10, 2024, [https://www.recaap.org/resources/ck/files/news/2024/Press%20release%20-%20ReCAAP_ISC_Half-Year_Report%20\(Jan-Jun%202024\)%20-%20final.pdf](https://www.recaap.org/resources/ck/files/news/2024/Press%20release%20-%20ReCAAP_ISC_Half-Year_Report%20(Jan-Jun%202024)%20-%20final.pdf).

accusations, and reveal the truth about freedom of navigation and overflight in the region.

2. Coastal states in the South China Sea should maintain openness and inclusiveness in their jurisdictional or claimed waters, actively respond to international law requirements, including the UNCLOS, for cooperation in semi-enclosed seas, and enhance cooperation in maritime law enforcement, disaster prevention and reduction, maritime search and rescue, as well as in combating transnational crimes.

3. Parties involved in the South China Sea should continue to resolve disputes peacefully through direct negotiations, keep disputes and friction contained between relevant parties, prevent spillover of friction, and safeguard the navigation and overflight rights of third parties.

4. Academic and think tank institutions of all countries should adopt an objective and neutral stance, rely on data and evidence, strengthen comprehensive research on maritime and aerial incidents from a holistic perspective, and avoid exaggerated and biased narratives.

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