

Department of Defense Report to Congress



Annual Freedom of Navigation Report

Fiscal Year 2021

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Preserving the Rules-Based International Order

International law as reflected in the 1982 Law of the Sea Convention recognizes the rights and freedoms of all nations to engage in traditional uses of the sea, balanced with coastal States' control over activities in their maritime zones. As a nation with both a vast coastline and a significant maritime presence, the United States is committed to preserving this legal balance as an essential part of the stable, rules-based international order.

Some countries do not share this commitment. Unlawful and sweeping excessive maritime claims—or incoherent legal theories of maritime entitlement—pose a threat to the legal foundation of the rules-based international order. Consequently, the United States is committed to confronting this threat by challenging excessive maritime claims.

"Excessive maritime claims" are unlawful attempts by coastal States to restrict the rights and freedoms of navigation and overflight as well as other lawful uses of the sea. They are made through coastal State laws, regulations, or other pronouncements that are inconsistent with international law as reflected in the 1982 Law of the Sea Convention. If left unchallenged, excessive maritime claims could permanently infringe upon the freedom of the seas enjoyed by all nations.

As long as some countries continue to assert limits on maritime rights and freedoms that exceed coastal state authorities reflected under international law, the United States will continue to challenge such unlawful claims. The United States will uphold the rights, freedoms, and lawful uses of the sea for the benefit of all nations--and will stand with like-minded partners doing the same.

The U.S. Freedom of Navigation Program

Formally established in 1979, the Freedom of Navigation (FON) Program consists of complementary diplomatic and operational efforts to safeguard lawful commerce and the global mobility of U.S. forces. The Department of State (DOS) protests excessive maritime claims, advocating for adherence to international law, while the Department of Defense (DoD) exercises the United States' maritime rights and freedoms by conducting operational challenges against excessive maritime claims. In combination, these efforts help preserve for all States the legal balance of interests established in customary international law as reflected in the 1982 Law of the Sea Convention.

Since its founding, the U.S. FON Program has continuously reaffirmed the U.S. policy of exercising and asserting its navigation and overflight rights and freedoms around the world. These assertions communicate that the United States does not acquiesce to the excessive maritime claims of other nations and prevents them from becoming accepted customary international law.

DoD's operational challenges are also known as "FON assertions," "FON operations," and "FONOPs." The regular and routine execution of these operations supports the longstanding U.S. national interest in freedom of the seas worldwide. Activities conducted by DoD under the FON Program are deliberately planned, legally reviewed, and professionally conducted. DoD's actions reinforce international law in an even-handed, principled manner without provoking

armed conflict. This report illustrates that U.S. FONOPs challenge a wide variety of excessive maritime claims made by allies, partners, and competitors. They are not focused on any particular excessive claimant, and they are not executed in response to current events. Rather, their purpose is to reinforce international law peacefully and in a principled, unbiased manner.

A number of like-minded U.S. allies and partners continue to voice strong public support for the Law of the Sea Convention as the legal framework within which all activities in the oceans and seas must be carried out. Moreover, many nations continue to comment favorably on the United States' peaceful vigilance of excessive maritime claims. The United States invites these and other nations to conduct their own freedom of navigation operations and to publicly—and peacefully—contest excessive maritime claims. The Department of Defense will continue to support a growing chorus of nations upholding international law and the rules-based order that has proven essential to global security and the stability and prosperity of all nations.

The Annual DoD FON Report

DoD releases an annual unclassified report identifying the excessive maritime claims that U.S. forces operationally challenged over the last fiscal year.

Below is a summary of excessive maritime claims that DoD challenged during the period of October 1, 2020, through September 30, 2021, to preserve the rights, freedoms, and uses of the sea and airspace guaranteed to all nations by international law. In sum, the United States challenged 37 excessive maritime claims of 26 claimants. The report cites each claimant's specific laws, regulations, and other proclamations articulating the excessive maritime claims in brackets. To maintain the operational security of U.S. military forces, DoD Annual FON Reports include only general geographic information on the location of operational challenges and do not specify the precise number of challenges to each excessive maritime claim.

For the most up-to-date list of all excessive maritime claims made around the world, as well as the years U.S. forces operationally challenged those claims under the FON Program, see the DoD Maritime Claims Reference Manual (MCRM), available online at www.jag.navy.mil/organization/code_10_mcrm.htm. The MCRM currently tracks the maritime claims of 155 claimants. Individual entry updates occur continually to keep pace with current coastal State claims. The MCRM also contains U.S. information regarding diplomatic protests of excessive claims made by the DOS. For an authoritative treatment of U.S. diplomatic communications on freedom of navigation matters, see the Digest of United States Practice in International Law at <http://www.state.gov/digest-of-united-states-practice-in-international-law/>. The DOS Office of the Legal Adviser publishes this digest to provide the public with a historical record of the views and practice of the Government of the United States in public and private international law.

| Freedom of Navigation Operational Challenges Fiscal Year 2021 | | |
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| Claimant | Excessive Maritime Claim | Geographic Area or Location |
| | <p>An asterisk (*) indicates multiple operational challenges to the excessive claim.</p> <p>A pound sign (#) indicates joint challenge with international partners and allies.</p> | |
| Antigua and Barbuda | Requires prior permission for foreign warships to conduct innocent passage through the territorial sea and archipelagic waters. [Maritime Areas Act, Act No. 18, Aug. 17, 1982.] | Caribbean Sea |
| Barbados | Requires prior permission for innocent passage of foreign warships in the territorial sea. [Barbados Territorial Waters Act, 1977.] | Caribbean Sea |
| Cambodia | Straight baselines not drawn in conformance with International Law. [Decree of the Council of the States, Jul. 13, 1982.] | Gulf of Thailand |
| People's Republic of China | * Straight baselines not drawn in conformance with International Law. [Declaration of the Government of the People's Republic of China on the Baselines of the Territorial Sea of the People's Republic of China, May 15, 1996.] | South China Sea |
| | * Restrictions on foreign aircraft flying through an Air Defense Identification Zone without the intent to enter national airspace. [Ministry of National Defense Announcement, Nov. 23, 2013.] | East China Sea |
| | * Criminalization of surveying and mapping activities by foreign entities which do not obtain approval from or cooperate with the People's Republic of China (PRC). Surveying and Mapping Law of the People's Republic of China, Apr. 27, 2017.] | South China Sea |
| | * Requires prior permission for innocent passage of foreign military ships through the territorial sea. [Law on the Territorial Sea and Contiguous Zone, Feb. 25, 1992.] | South China Sea |
| | * Implied claim to territorial sea and airspace around features not so entitled (i.e., low-tide elevations). [Actions and statements implying such a claim.] | South China Sea |

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| Costa Rica | Straight baselines not drawn in conformance with International Law. [Decree No. 18581-RE, Oct. 14, 1988.] | Eastern Pacific Ocean |
| Dominican Republic | Straight baselines not drawn in conformance with International Law. [Act 66-07, May 22, 2007.] | Caribbean Sea |
| Ecuador | Requires express consent for military exercises or maneuvers of any type in the exclusive economic zone. [Declaration upon Accession to the 1982 Law of the Sea Convention, Sep. 24, 2012.] | Eastern Pacific Ocean |
| Haiti | Straight baselines not drawn in conformance with International Law. [Presidential Decree No. 38, Apr. 8, 1977.] | Caribbean Sea |
| India | * Requires prior consent for military exercises or maneuvers in the exclusive economic zone or on continental shelf. [Declaration upon Accession to the 1982 Law of the Sea Convention, Jun. 29, 1995.] | Indian Ocean |
| | Requires 24-hour prior notice for vessels entering the exclusive economic zone with cargoes "including dangerous goods and chemicals, oil, noxious liquid and harmful substances and radioactive material." [Naval HQ Navarea Notice , Feb. 2, 1998.] | Indian Ocean |
| Indonesia | * Limits on archipelagic sea lanes passage through normal routes used for international navigation. [Indonesian Government Regulation No. 37 on the Rights and Obligations of Foreign Ships and Aircraft Exercising the Right of Archipelagic Sea Lane Passage through Designated Archipelagic Sea Lanes, Jun. 28, 2002.] | Makassar Strait Lombok Strait Sunda Strait |

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| Iran | *# Restrictions on the right of transit passage through the Strait of Hormuz to Parties of the 1982 United Nations Convention on the Law of the Sea. [Declaration upon Signature of the 1982 Law of the Sea Convention, Dec. 10, 1982.] | Strait of Hormuz |
| | *# Prohibition on foreign military activities and practices in the exclusive economic zone and continental shelf. [Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea, May 2, 1993.] | Arabian Gulf Strait of Hormuz Gulf of Oman |
| Italy | Straight baselines not drawn in conformance with International Law. [Presidential Decree No. 816, Apr. 26, 1977.] | Mediterranean Sea |
| Japan | Straight baselines not drawn in conformance with International Law. [Enforcement Order of the Law on the Territorial Sea and the Contiguous Zone (Cabinet Order No. 210 of 1977, as amended by Cabinet Order No. 383 of 1993, Cabinet Order No. 206 of 1996 and Cabinet Order No. 434 of 2001).] | Tsushima Strait |
| Malaysia | Requires prior authorization for nuclear-powered vessels to enter the territorial sea. [Declaration upon Ratification of the 1982 Law of the Sea Convention, Oct. 14, 1996.] | Strait of Malacca |
| Maldives | Requires prior authorization for foreign warships, foreign nuclear powered ships, and ships carrying, nuclear or other inherently dangerous or noxious substances to enter the territorial sea. [Maritime Zones of Maldives Act No. 6/96, Jun. 27, 1996.] | Indian Ocean |
| | Requires prior authorization for all foreign vessels to enter the exclusive economic zone. [Maritime Zones of Maldives Act No. 6/96, Jun. 27, 1996.] | Indian Ocean |

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| Oman | *# Requirement for innocent passage of vessels transiting through the Strait of Hormuz, an international strait. [Declaration upon Ratification of the 1982 Law of the Sea Convention, Aug. 17, 1989.] | Strait of Hormuz |
| Pakistan | * Prior consent required for military exercises or maneuvers in the exclusive economic zone. [Declaration upon Ratification of the 1982 Law of the Sea Convention, Feb. 26, 1997.] | North Arabian Sea |
| Republic of Korea | Straight baselines not drawn in conformance with International Law. [Enforcement Decree of Territorial Seas Act, Sep. 20, 1978, as amended by Presidential Decree No. 17803, 18 Dec 2002.] | Yellow Sea |
| | Requires prior notice for foreign warships or non-commercial government vessels to pass through territorial seas (other than strait), and stipulates certain limitations on innocent passage. [Territorial Sea and Contiguous Zone Act, Law No. 3037, Dec. 31, 1977, as amended by Law No. 14607, Mar. 21, 2017.] | Yellow Sea |
| Russian Federation | Straight baselines not drawn in conformance with International Law. [Declaration 4604, Feb. 7, 1984.] | Peter the Great Bay |
| | Claims Peter the Great Bay as "historic waters." [Federal Act on Internal Maritime Waters, Territorial Sea and Contiguous Zone, Jul. 17, 1998.] | Peter the Great Bay |
| Sierra Leone | Prior permission required for innocent passage of foreign military ships through the territorial sea. [Maritime Zones Establishment Decree, Mar. 28, 1996.] | East Atlantic Ocean |
| Sri Lanka | Prior permission required for innocent passage of foreign military ships through the territorial sea. [Maritime Zones Law, No. 22, Sep. 1, 1976.] | Indian Ocean |
| St. Vincent and the Grenadines | Prior permission required for innocent passage of warships through the territorial sea. [Maritime Areas Act, No. 15, May 19, 1983.] | Caribbean Sea |

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| Taiwan | * Prior notification required for foreign military or government vessels to enter the territorial sea. [Law on the Territorial Sea and the Contiguous Zone, Jan. 21, 1998.] | South China Sea |
| United Arab Emirates | * Requirement to provide documentation for entry into the territorial sea or ports, including statement of cargo, crew and passenger list. [Circular No. 34, May 24, 1994.] | Arabian Gulf Gulf of Oman |
| | * Excessive prohibitions on territorial seas entry for vessels over 20 years old. [Ministry of Communications Decree No. 110 of Jan. 1998.] | Arabian Gulf Gulf of Oman |
| Vietnam | * Prior notification required for foreign warships to enter the territorial sea. [Law of the Sea of Vietnam, Law No. 18/2012/QH13, Jun. 21, 2012.] | South China Sea |
| | Straight baselines not drawn in conformance with International Law. [Law of the Sea of Vietnam, Law No. 18/2012/QH13, Jun. 21, 2012.] | South China Sea |
| Yemen | * Prior permission required for foreign warships and nuclear powered vessels to transit the territorial sea. [Declaration upon Ratification of the 1982 Law of the Sea Convention, Jul. 21, 1987.] | Bab al-Mandeb Strait |