

Department of Defense Report to Congress



Annual Freedom of Navigation Report

Fiscal Year 2022

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Preserving the Rules-Based International Order

Customary 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' rights with respect to 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 customary 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 in customary 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, reviewed for legal correctness, 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, including those 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 DoD 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, 2021, through September 30, 2022, 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 22 excessive maritime claims of 15 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 2022		
Claimant	Excessive Maritime Claim An asterisk (*) indicates multiple operational challenges to the excessive claim. A pound sign (#) indicates joint challenge with international partners and allies.	Geographic Area or Location
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
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
	* Jurisdiction over airspace above the exclusive economic zone. [Order No. 75, Surveying and Mapping Law, Aug. 29, 2002.]	South China Sea East 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
	* 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
Croatia	Requires prior notice for warships to conduct innocent passage in the territorial seas. [Maritime Code, Jan. 27, 1994]	Adriatic Sea
Iran	*# Restrictions limiting the right of transit passage through the Strait of Hormuz to only 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
Malaysia	Prohibits military exercises or maneuvers in its exclusive economic zone without consent. [Declaration upon Ratification of the 1982 Law of the Sea Convention, Oct. 14, 1996.]	South China Sea
Malta	Requires prior notification or permission for warships to conduct innocent passage in the territorial sea. [Territorial Waters and Contiguous Zone Act, No. XXXII, Dec. 10, 1971 (as amended by Acts XLVI of 1975, XXIV of 1978, XXVII of 1981, and I of 2002.)]	Mediterranean Sea

Montenegro	Requires use of designated sea lanes in the territorial sea for passage by foreign naval units. [Law of the Coastal Sea and Continental Shelf of the Socialist Federal Republic of Yugoslavia, Jul 23, 1987.]	Adriatic Sea
	Requires 24-hour advance notice for the passage of foreign warships in the territorial sea. [Law of the Coastal Sea and Continental Shelf of the Socialist Federal Republic of Yugoslavia, Jul 23, 1987.]	
Nicaragua	Straight Baselines not drawn in conformance with International Law. [Presidential Decree 17-2018, Decree of Reform to Decree No. 22-2013, “Baselines of the Maritime Spaces of the Republic of Nicaragua in the Caribbean Sea,” Oct. 10, 2018.]	Caribbean Sea
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
Russian Federation	Requires warships or government vessels to provide one hour notification prior to entering the territorial seas. [Ministry of Foreign Affairs Note to the United States, Jul. 29, 2021.]	Bering Sea
Somalia	*Extends its claimed territorial seas to 200nm from its coast. [Law on the Territorial Sea and Ports (Law No. 37), Sep. 10, 1972.]	Indian Ocean
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.]	
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
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