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## U.S. Freedom of Navigation Program

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## U.S. Freedom of Navigation Program

*Office of the Staff Judge Advocate, U.S. Indo-Pacific Command\**

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**T**he United States has worldwide security and economic interests, which are dependent on the transport of goods in international trade and the free movement of fleet submarines, surface ships, and aircraft. The Department of Defense is tasked with securing access to the world's oceans in order to retain global freedom of action to maintain international peace and security and to facilitate and enhance global trade and commerce. To counter the proliferation of excessive maritime claims, the United States maintains a Freedom of Navigation (FON) Program to influence nations to either avoid new excessive maritime claims or renounce existing ones.

**Excessive Claims.** Excessive maritime claims are attempts by coastal States to unlawfully restrict the freedoms of navigation and overflight and other lawful uses of the sea guaranteed to all nations under international law. Excessive maritime claims are made through laws, regulations, or other pronouncements that are inconsistent with international law as reflected in the United Nations Convention on the Law of the Sea (UNCLOS) and the Convention on International Civil Aviation (Chicago Convention). If left unchallenged, excessive maritime claims can infringe the rights, freedoms, and lawful uses of the sea enjoyed by the United States and other nations.

**Inception.** Recognizing that diplomatic protests were insufficient and that a tangible demonstration of U.S. resolve was needed to counter excessive maritime claims, the Carter Administration instituted the FON Program in 1979.<sup>1</sup> The Program was reaffirmed by President Reagan in the 1983 U.S. Ocean Policy statement, which provides that the United States will not “acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight,” and that United States would “exercise and assert its rights, freedoms, and uses of the sea on a worldwide basis in a manner that is consistent with the balance of interests” reflected in UNCLOS.<sup>2</sup>

**Rationale.** The FON Program preserves U.S. national interests and global mobility by challenging excessive maritime claims and demonstrating U.S. non-acquiescence in unilateral acts of other States that are designed to restrict navigation and overflight rights and freedoms of the international community and other lawful uses of the seas related to those rights and freedoms. The FON program underscores U.S. willingness to fly, sail, and operate

wherever international law allows and exemplifies our unwavering commitment to a stable, rules-based legal regime for the world's oceans. Since its inception, hundreds of operational challenges and diplomatic protests have been conducted to demonstrate U.S. non-acquiescence in excessive maritime claims.<sup>3</sup>

**Application.** Operating along three tracks, the FON Program includes diplomatic protests or demarches and other communications by the Department of State; operational assertions by U.S. ships and aircraft; and U.S. bilateral and multilateral consultations with other governments. Freedom of Navigation Operations (FONOPS) are conducted on a worldwide basis to complement U.S. diplomacy, and are intended to be non-provocative exercises of rights, freedoms and lawful use of the sea and airspace recognized under international law. The FON Program is applied globally to a wide range of excessive maritime claims, without regard to current events or the identity of the nation advancing the claim. Routine application of the Program to excessive claims of allies, partners, competitors, and adversaries alike maintains the Program's legitimacy and demonstrates U.S. resolve to uphold navigational rights and freedoms guaranteed to all nations. FONOPS are deliberately planned, legally reviewed, properly approved by higher authority, and safely and professionally conducted in a non-escalatory manner.

**Rights and Duties.** International law, as reflected in UNCLOS and the Chicago Convention, provide for certain rights and freedoms and other lawful uses of the sea to all nations. The international community, as a whole, has an enduring obligation and role in preserving the freedom of the seas, which is critical to global security, stability, and prosperity. As long as some countries continue to claim and assert limits on rights that exceed what is provided for under international law, the United States will continue to demonstrate its resolve to uphold these rights and freedoms for all. No member of the international community should be intimidated or coerced into giving up their guaranteed rights and freedoms.

**Challenges.** In fiscal year 2018 (FY18), the United States challenged the excessive maritime claims of twenty-six States as outlined in the table below. Many of these excessive claims were challenged multiple times.<sup>4</sup>

FY 18 FONOPS	
Country	Claim Challenged
Albania	Prior authorization required for foreign warships to enter the territorial sea. Straight baselines not drawn in accordance with the law of the sea.
Burma	Straight baselines not drawn in accordance with the law of the sea.
Cambodia	Straight baselines not drawn in accordance with the law of the sea.
China	Straight baselines not drawn in accordance with the law of the sea (Paracel Islands). Restrictions on foreign aircraft flying through an Air Defense Identification Zone (ADIZ) without the intent to enter national airspace. Domestic law criminalizing survey activity by foreign entities in the exclusive economic zone (EEZ). Jurisdiction over airspace above the EEZ. Claims security jurisdiction in the contiguous zone. Prior permission required for innocent passage of foreign military ships through the territorial sea (Paracel Islands and Spratly Islands). Actions and statements that indicate a claim to a territorial sea around features not so entitled ( <i>i.e.</i> , low-tide elevations in Spratly Islands).
Croatia	Prior notification required for foreign warships to exercise innocent passage in the territorial sea.
Dominican Republic	Straight baselines not drawn in accordance with the law of the sea.
Egypt	Prior notification required for foreign warships to exercise innocent passage in the territorial sea. Straight baselines not drawn in accordance with the law of the sea.
Haiti	Straight baselines not drawn in accordance with the law of the sea.
Indonesia	Limits on archipelagic sea lane passage through normal routes used for international navigation.
Iran	Restrictions on the right of transit passage through the Strait of Hormuz to Parties of UNCLOS. Prohibition on foreign military activities and practices in the exclusive economic zone.
Japan	Straight baselines not drawn in accordance with the law of the sea.

Country	Claim Challenged
Albania	Prior authorization required for foreign warships to enter the territorial sea. Straight baselines not drawn in accordance with the law of the sea.
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China	Straight baselines not drawn in accordance with the law of the sea (Paracel Islands). Restrictions on foreign aircraft flying through an Air Defense Identification Zone (ADIZ) without the intent to enter national airspace. Domestic law criminalizing survey activity by foreign entities in the exclusive economic zone (EEZ). Jurisdiction over airspace above the EEZ. Claims security jurisdiction in the contiguous zone. Prior permission required for innocent passage of foreign military ships through the territorial sea (Paracel Islands and Spratly Islands). Actions and statements that indicate a claim to a territorial sea around features not so entitled ( <i>i.e.</i> , low-tide elevations in Spratly Islands).
Croatia	Prior notification required for foreign warships to exercise innocent passage in the territorial sea.
Dominican Republic	Straight baselines not drawn in accordance with the law of the sea.
Egypt	Prior notification required for foreign warships to exercise innocent passage in the territorial sea. Straight baselines not drawn in accordance with the law of the sea.
Haiti	Straight baselines not drawn in accordance with the law of the sea.
Indonesia	Limits on archipelagic sea lane passage through normal routes used for international navigation.
Iran	Restrictions on the right of transit passage through the Strait of Hormuz to Parties of UNCLOS. Prohibition on foreign military activities and practices in the exclusive economic zone.
Japan	Straight baselines not drawn in accordance with the law of the sea.

Malaysia	Prior authorization required for nuclear-powered ships to enter the territorial sea. Prior consent required for military exercises or maneuvers in the EEZ.
Maldives	Prior authorization required for all foreign vessels to enter the EEZ.
Oman	Prior permission required for innocent passage of foreign military ships through the territorial sea. Requirement for innocent passage through the Strait of Hormuz, an international strait.
Pakistan	Prior consent required for military exercises or maneuvers in the EEZ.
Philippines	Claims archipelagic waters as internal waters.
Saudi Arabia	Claims that innocent passage does not apply in territorial sea when a high seas or EEZ route exists that is equally suitable with regard to navigational and hydrographic features.
Sierra Leone	Prior written consent required for warships to pass through the territorial sea.
Slovenia	Prior notification required for foreign warships to exercise innocent passage in the territorial sea. Foreign warships required to confine innocent passage to designated sea lanes or traffic separation schemes in the territorial sea.
Sri Lanka	Prior consent required for foreign warships to transit the territorial sea. Claims security jurisdiction in the contiguous zone.
Taiwan	Prior notification required for foreign military or government vessels to enter the territorial sea (Paracel and Spratly Islands).
Thailand	Straight baselines not drawn in accordance with the law of the sea.
United Arab Emirates	Prior permission required for foreign warships to exercise innocent passage in the territorial sea.
Venezuela	Prior permission required for military operations in the EEZ and Flight Identification Region.
Vietnam	Prior notification required for foreign warships to enter the territorial sea (Paracel and Spratly Islands). Straight baselines not drawn in accordance with the law of the sea.
Yemen	Prior permission required for foreign warships to transit the territorial sea.

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1. Memorandum from Lincoln P. Bloomfield, National Security Council Staff to Zbigniew Brzezinski, U.S. National Security Advisor (July 31, 1979).
  2. President Ronald Reagan, Statement on United States Oceans Policy (Mar. 10, 1983).
  3. U.S. DEPARTMENT OF DEFENSE, DOD 2005.1-M, MARITIME CLAIMS REFERENCE MANUAL (2008).
  4. For a complete list of all coastal States making excessive maritime claims, as well as the years those claims were last operationally challenged by U.S. forces under the FON Program, see the U.S. Department of Defense, Maritime Claims Reference Manual, [https://www.jag.navy.mil/organization/code\\_10\\_mcrm.htm](https://www.jag.navy.mil/organization/code_10_mcrm.htm) (last updated Nov. 2020).