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On April 30, 1982, Venezuela joined Israel, Turkey, and the United States in voting against the final draft of the United Nations Convention on the Law of the Sea (UNCLOS).<sup>1</sup> It is, however, a party to the 1958 Convention on the Territorial Sea and Contiguous Zone and the 1958 Convention on the Continental Shelf.

**Excessive Straight Baselines.** On July 10, 1968, Venezuela established a 98.9 nautical mile (nm) straight baseline that closes the delta system of the Orinoco River.<sup>2</sup> The baseline extends twenty-six miles beyond Venezuelan territory into neighboring Guyana. Although the baseline does not depart appreciably from the direction of the coast, a point west of the middle of the line is about twenty-two nautical miles from the nearest mainland and the mouth of the Orinoco River is more than thirty nautical miles from the baseline. Additionally, the waters enclosed by the baselines do not meet the legal definition of a juridical bay and the eastern terminal point is about fifty nautical miles to the east of the eastern natural entrance point for the Orinoco delta system.

The normal baseline for measuring the breadth of the various maritime zones is the low-water line.<sup>3</sup> Straight baselines may only be used in extremely limited circumstances.<sup>4</sup> UNCLOS allows for the use of straight baselines in areas where the coastline is highly unstable because of the presence of a river delta or other natural condition.<sup>5</sup> The 1958 Territorial Sea Convention does not contain a similar provision. But even if it did, the points selected must be along the furthest seaward extent of the low-water line. The terminal points selected by Venezuela are not consistent with this requirement.<sup>6</sup>

Both UNCLOS and the 1958 Convention also allow States to draw a straight baseline across the mouth of a river that flows directly into the sea, like the Orinoco River.<sup>7</sup> But the line must be drawn between terminal points on the low-tide line of the river's banks. Venezuela's straight baseline does not comply with this requirement. Finally, the area in question does not meet the semi-circle test for determining whether an indentation along the coast can be regarded as a juridical bay.<sup>8</sup> Even if it did, the closing line of a bay may not exceed twenty-four nautical miles, and in the case of Venezuela, the closing line is 98.9 nm long.<sup>9</sup>

Accordingly, Venezuela's use of a straight baseline in the area in question is inconsistent with international law.<sup>10</sup> Venezuela's excessive straight baselines infringe on Guyana's sovereignty. They also allow Venezuela to claim waters as territorial seas that should remain international waters and to claim

waters as internal waters that should be territorial seas and contiguous zone. The excessive straight baseline also impermissibly impedes navigational rights and freedoms of the international community.



Venezuela's Straight Baseline Claim

**Excessive Historic Waters Claim.** The Gulf of Venezuela is 75 miles long, 52 miles wide at its mouth, and 150 miles wide at its widest point. The Gulf is connected to Lake Maracaibo in the south by the Tablazo Strait and opens into the Caribbean Sea to the north. It is situated between the Guajira and Paraguaná Peninsulas, but virtually all its shoreline lies within Venezuelan territory. Venezuela purports to claim the Gulf as internal waters, arguing that it has historically exercised continuous sovereignty over the Gulf for more than four hundred years. However, Colombia, which also borders the Gulf, has actively opposed Venezuela's claim.<sup>11</sup>

The United States has also challenged Venezuela's excessive claim. On October 21, 2000, the U.S. Coast Guard Cutter *Reliance (WTR-615)* was on a counter-narcotics mission in the Gulf of Venezuela when it was buzzed by

Venezuelan F-16s.<sup>12</sup> Venezuela later protested to the United States, indicating that the Gulf was internal waters and that the *Reliance* had violated Venezuelan sovereignty by operating in the Gulf. The U.S. response refuted the protest, indicating that the United States was unaware of such a claim and that previous Venezuelan edicts—the 1956 maritime law and 1968 presidential decree—did not claim the Gulf as an historic bay.<sup>13</sup>

To substantiate a claim of historic waters, international law requires that a coastal State demonstrate open, effective, and continuous exercise of authority over the waters, as well as the actual acquiescence of the claim by foreign governments.<sup>14</sup> Venezuela has failed to meet this high standard. Based on Colombia’s open and long-standing objections, as well as persistent U.S. opposition, Venezuela’s historic waters claim lacks foreign government acquiescence.



**Venezuela’s Historic Waters Claim**

**Unlawful Security Zone.** In 1956 Venezuela claimed a three nautical mile security zone adjacent to its twelve nautical mile territorial sea, where it purported to have authority to exercise security jurisdiction over foreign flag vessels.<sup>15</sup> The 1958 Territorial Sea Convention, which Venezuela ratified, allowed for the establishment of a contiguous zone adjacent to the territorial sea but limited coastal State authority in the zone to the control necessary to prevent or punish infringement of its customs, fiscal, immigration, or sanitary laws and regulations in its territory or territorial sea.<sup>16</sup> Thus, Venezuela's purported claim to security jurisdiction in the three nautical mile zone is inconsistent with international law, as it is unlawful for coastal States to establish security zones in peacetime that would restrict freedom of navigation and overflight beyond the territorial sea. Accordingly, the United States diplomatically protests the excessive claim and U.S. ships and aircraft routinely challenge the security zone under the Freedom of Navigation Program.<sup>17</sup>

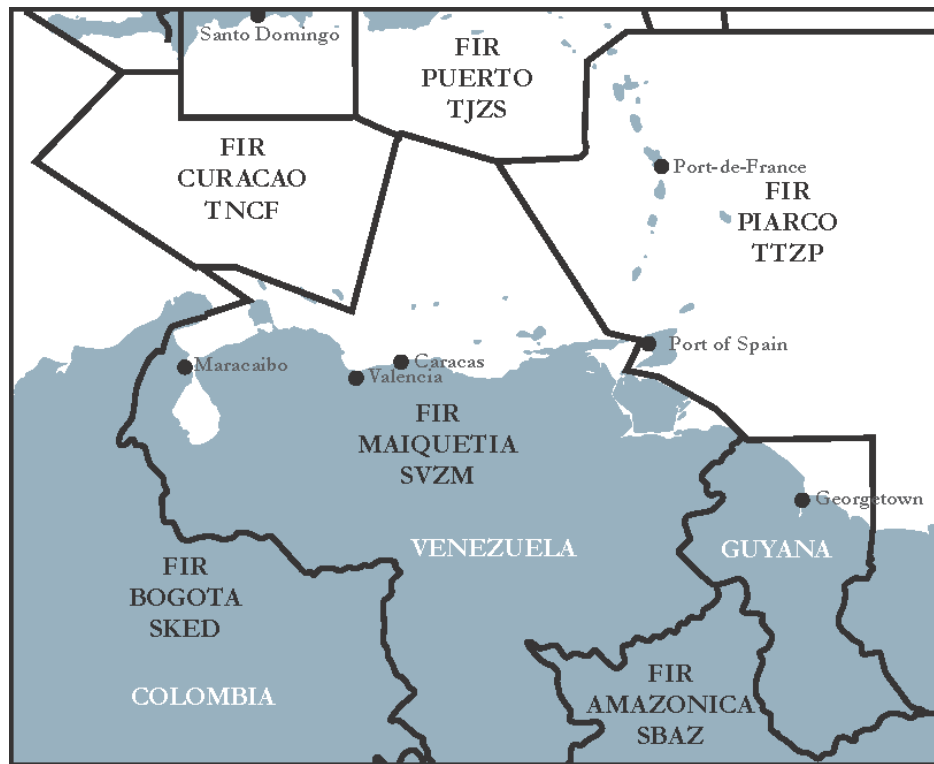
In 2014, Venezuela adopted the Aquatic Areas Organic Act and established a twenty-four nautical mile contiguous zone consistent with UNCLOS.<sup>18</sup> The Act also repealed the three nautical mile security zone.<sup>19</sup> Nonetheless, Article 21 of the Act allowed the National Executive to establish exclusive surveillance jurisdiction zones as required where Venezuelan authorities can identify, visit, or detain persons, ships, vessels, and aircraft if there are reasonable grounds to suspect "that they might pose a threat to public order in aquatic areas."<sup>20</sup> It is unclear whether this provision is intended to apply outside the territorial sea. However, U.S. ships and aircraft operating outside the territorial sea continue to be challenged by Venezuelan authorities, as Venezuelan authorities assert activities in the "jurisdictional waters of Venezuela" as the sole responsibility of the Venezuelan Government.<sup>21</sup> Accordingly, the United States continues to deploy warships to challenge the unlawful claim. In 2020, the *USS Detroit (LCS 7)*, *USS Nitzze (DDG 94)*, and *USS Pinckney (DDG 91)* conducted Freedom of Navigation operations in January, June, and July, respectively, to demonstrate U.S. non-acquiescence and preserve navigational and access rights for all nations.<sup>22</sup>

**Excessive Jurisdiction in Flight Information Region.** Venezuela established a two hundred nautical mile exclusive economic zone (EEZ) in 1978.<sup>23</sup> For the most part, the EEZ law comports with international law by recognizing both coastal State resource rights and navigational rights and freedoms of the international community.<sup>24</sup> Venezuela operates the Maiquetía Flight Information Region (FIR), part of which extends into international airspace (including airspace over Venezuela's EEZ) in the Caribbean Sea.

FIRs are established by the International Civil Aviation Organization (ICAO) to ensure the safety of civil aviation. Within the FIRs, State authorities provide flight information and alerting services to transiting aircraft. Although U.S. military aircraft may voluntarily follow ICAO flight procedures and utilize FIR services during routine point-to-point flights through international airspace, FIR rules and procedures do not apply as a matter of law to military and other State aircraft operating in international airspace.<sup>25</sup> Thus, military aircraft transiting through a FIR that do not intend to penetrate foreign national airspace are not required to utilize FIR services or submit a request for diplomatic clearance to local authorities.<sup>26</sup> These transits are conducted with due regard for the safety of all other aircraft.<sup>27</sup>

Since the mid-2000s, Venezuela has challenged U.S. military aircraft operating in the FIR, claiming that it is sovereign airspace. The United States considers the portion of the FIR beyond the territorial sea as international airspace. Accordingly, the United States has protested the excessive claim on several occasions and U.S. aircraft have conducted numerous operational assertions.<sup>28</sup>

For example, on July 19, 2019, Venezuela's Communication Minister claimed that an American EP-3 "spy plane" had flown through the Maiquetía FIR without reporting its presence or explaining its reasons for operating in the FIR.<sup>29</sup> A Venezuelan fighter jet responded to the alleged intrusion and, according to U.S. defense officials, aggressively shadowed the EP-3 at an "unsafe distance" thereby "jeopardizing the crew and aircraft."<sup>30</sup> U.S. officials claimed that the Venezuelan fighter acted unprofessionally and that the EP-3 was lawfully conducting a mission in international airspace. U.S. officials also accused the Maduro regime of undermining internationally recognized laws and demonstrating its contempt for international agreements that authorize the "U.S. and other nations to safely conduct flights in international airspace."<sup>31</sup> Venezuela raised a similar complaint two weeks later, alleging that a second U.S. EP-3 had violated its national airspace by transiting through the Maiquetía FIR on July 31 without complying with established protocols.<sup>32</sup> U.S. Southern Command officials responded that U.S. forces would "continue to fly and operate wherever international standards apply and that includes around Venezuela, South America and the world."<sup>33</sup>



Venezuela's Flight Information Regions

**Excessive Restrictions on Military Activities in and over the EEZ.** The EEZ was created primarily to grant coastal States greater control over the living and non-living resources adjacent to their coasts. Apart from these limited resource rights, all States enjoy high seas freedoms of navigation and overflight, and other internationally lawful uses of the seas related to those freedoms, in the EEZ. Thus, UNCLOS accommodates the various competing interests of coastal and user States in the EEZ, maximizing coastal State control over natural resources without diminishing freedom of navigation and other internationally lawful uses of the sea.<sup>34</sup>

Venezuela's claimed security jurisdiction beyond its territorial sea and purported authority to regulate military aircraft operating in the Maiquetía FIR outside national airspace are, in effect, an excessive attempt to restrict military activities in and over its EEZ. A plain reading of UNCLOS and its negotiating history confirms the long-standing State practice that all nations have an absolute right under international law to conduct military activities



that are consistent with Article 2(4) of the UN Charter beyond the territorial sea and national airspace of another nation.<sup>35</sup>

Military activities, including surveillance and reconnaissance operations, have always been regarded as “internationally lawful uses of the sea,” and the right to conduct such activities is enjoyed by all States in the EEZ without coastal State notice or consent.<sup>36</sup> The Security Council has determined that peacetime collection operations are not considered a “threat or use of force against the sovereignty, territorial integrity or political independence of the coastal state” in violation of the UN Charter.<sup>37</sup> Following the shoot down of an American U-2 spy plane near Sverdlovsk in 1960, an effort by the Soviet Union to have the Security Council adopt a resolution that would have labelled the U-2 flights as “acts of aggression” under the Charter failed by a vote of seven to two (with two abstentions). The Council thereby confirmed that peacetime surveillance and reconnaissance operations are consistent with the UN Charter.<sup>38</sup>

This decision is consistent with a 1985 report by the UN Secretary-General that concluded that “military activities” consistent with the principles of international law embodied in Article 2(4) and Article 51 of the UN Charter are not prohibited by UNCLOS.<sup>39</sup> Similarly, Ambassador Tommy Koh, President of the Third United Nations Conference on the Law of the Sea that negotiated the Convention, confirmed at a conference in Singapore in 2008 that coastal States have limited authority in the EEZ. Ambassador Koh recalled that, during the negotiations of the Convention, some States argued that the status of the EEZ should approximate the legal status of the territorial seas. Most States, however, believed coastal State rights in the EEZ were limited to the exploitation of resources, and that the water column should be treated much like the high seas. He concluded by confirming that the “tendency on the part of some coastal States . . . to assert their sovereignty in the EEZ . . . is not consistent with . . . the correct interpretation of [Part V] of the Convention.”<sup>40</sup>

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