

## TOPIC: FREEDOM OF NAVIGATION OPERATIONS (FONOPS) - PEACEFUL, PRINCIPLED UPHOLDING INT'L LAW (COUNTERING PRC FLAWED NARRATIVES)

### BLUF

- Freedom of navigation is **guaranteed to all nations under int'l law** and **essential to global security and economic interests** and a Free and Open Indo-Pacific.<sup>i</sup>
- Freedom of navigation operations (**FONOPs**), **in conjunction w/ diplomacy, challenge excessive maritime claims** that are inconsistent w/ int'l law and impinge on rights, freedoms, and uses of the sea preserved to all nations.<sup>ii</sup>
- FONOPs are **principles-based exercises of freedoms of navigation** and overflight recognized under int'l law.<sup>iii</sup> They uphold int'l law and the rules-based int'l order.
- The PRC attempts to discredit FONOPs through **false narratives** that FONOPs are destabilizing or provocative. **To the contrary, the PRC's sweeping, expansive maritime claims** threaten to erode the rules-based int'l order. For example, "nowhere is the rules-based maritime order under greater threat than in the South China Sea. The People's Republic of China (PRC) continues to coerce and intimidate Southeast Asian coastal states, threatening freedom of navigation in this critical global thoroughway."<sup>iv</sup>

### WHY THIS MATTERS TO YOU

- Freedom of navigation is essential to security/economic interests, including global mobility of forces in peacetime and contingency/crisis. It is a global interest, allowing goods, people, and ideas to flow freely.
- FONOPs are an important element of the U.S. freedom of navigation program to challenge excessive maritime claims and preserve navigation, overflight, and other rights/freedoms guaranteed to all nations under int'l law.
- You can support FONOPs, and overcome misperceptions and flawed PRC narratives about them, by understanding their importance in upholding int'l law and freedom of navigation and that they are peaceful and principle-based.

### DETAILED DISCUSSION

- Freedom of navigation, overflight, and other lawful uses of the seas are **guaranteed to all nations** under int'l law:
  - Law of the sea, reflected in UNCLOS, is the primary body of int'l law guaranteeing freedom of navigation.<sup>v</sup>
  - Law of the sea helps protect common interests of the int'l community as a whole, not just the U.S.<sup>vi</sup>
- The U.S. has **vital national interests** in preserving freedom of navigation:
  - Freedom of navigation is essential to global security and economic interests, and to a Free and Open Indo-Pacific. It allows goods, ideas, and people to flow freely across the open seas (and skies) and enables global mobility of our forces during peacetime and conflict/crisis.<sup>vii</sup>
  - Many like-minded allies and partners share this interest** in freedom of navigation.<sup>viii</sup>
- Excessive maritime claims:**<sup>ix</sup>
  - Are contrary to int'l law.
  - Impinge on freedom of navigation and other lawful uses of the sea/airspace guaranteed to all nations.
  - Risk undermining/eroding the rules-based int'l order if left unchallenged.
  - Come in many forms. Examples include but are not limited to: unrecognized historic waters claims; improperly drawn baselines; territorial sea claims greater than 12-nm; and impermissible restrictions on innocent passage, high-seas freedoms of navigation/overflight, and other rights/freedoms.
- For over **40 years, the U.S. has carried out a FON program** to protect freedom of the seas and challenge excessive maritime claims. This program has **two primary components:**<sup>x</sup>
  - Diplomacy (i.e., consultations/representations)
  - Operational assertions (i.e., FONOPs)

- FONOPs are:<sup>xi</sup>
  - **Peaceful** exercises of rights/freedoms of navigation and overflight recognized under int'l law.
  - **Principle-based**, administered with regard to the **excessive nature of maritime claims rather than identity of coastal nations** asserting those claims; in other words, the U.S. does not “FON countries,” but an array of excessive maritime claims specifically. As a result, U.S. forces challenge excessive claims asserted not only by potential adversaries and competitors, but also by allies, partners, and other nations.
- The U.S. maintains transparency in its FON program, including by publishing analysis of excessive maritime claims,<sup>xii</sup> the purpose of the FON program and FONOPs,<sup>xiii</sup> and annual FON reports.<sup>xiv</sup>
- The **PRC seeks to propagate false/flawed narratives** that FONOPs are provocative, destabilizing, “muscle-flexing,” “trespassing,” or “not conducive to regional peace and stability.”<sup>xv</sup> To the contrary, the PRC’s excessive maritime claims and attempts to enforce them are destabilizing, coercive, and threaten the rules-based order:
  - The PRC makes **sweeping and expansive excessive maritime claims**.<sup>xvi</sup> Examples include but are not limited to: unlawful restrictions on the right of innocent passage enjoyed by all states; unlawful restrictions on high-seas freedom of navigation/overflight in its EEZ; excessive claims of maritime jurisdiction; unlawful maritime closure areas; an ambiguous and legally baseless “dash-line” claim over wide swaths of the South China Sea; claiming maritime entitlements around features not entitled to them; invalid claims to historic rights; and others.
  - The PRC uses its expansive maritime claims to **coerce/intimidate others and attempt to unilaterally erode** and reform the int'l rules based order in its favor.<sup>xvii</sup>
  - The PRC continues to **unlawfully interfere with the maritime rights of others**. For example, in **2016, an Arbitration Tribunal** constituted under UNCLOS **determined in a unanimous and binding award that the PRC had behaved unlawfully**, including unlawfully interfering w/ Philippines’ resource rights in Philippines’ EEZ.<sup>xviii</sup> The Tribunal repudiated the PRC’s legal arguments and legally baseless claims. The PRC flouts and refuses to abide by that binding award (calling it scrap/waste paper).<sup>xix</sup>
  - The PRC **attempts to impede lawful FONOPs** and makes false claims that it “expels” vessels conducting FONOPs. These are yet more examples of the PRC’s attempt to intimidate and impede freedom of navigation guaranteed to all nations, and they underscore the importance of FONOPs.

## COUNTER-LAWFARE APPROACH

- Freedom of navigation, overflight, and other lawful uses of the sea are guaranteed to all nations under int'l law.
- Freedom of navigation is essential to global security and economic interests and a Free and Open Indo-Pacific. FON enables the free flow of people, ideas, and goods across the open seas and skies and global mobility of U.S. forces in peacetime and conflict/crisis.
- Excessive maritime claims are contrary to int'l law and impinge on navigational freedoms guaranteed to all nations. If left unchallenged, those excessive claims risk ripening into customary int'l law.
- It is important to challenge excessive maritime claims, through FONOPs and diplomacy, in order to exercise and preserve freedom of navigation and uphold the rules-based international order.
- The PRC’s narrative that FONOPs are provocative and destabilizing is false/flawed.
- FONOPs are conducted responsibly and in accordance with int'l law. FONOPs are peaceful exercises of rights and are principle-based, focusing on excessive maritime claims and not any particular country. FONOPs are conducted against a wide array of excessive maritime claims, including those of competitors, potential adversaries, allies, partners, and others. The U.S. is transparent in its FON program, including by publishing analyses of excessive maritime claims, the purpose of the FON program and FONOPs, and annual FON reports.
- To the contrary, the PRC’s sweeping, expansive excessive maritime claims threaten the rules-based int'l order. The PRC uses its excessive maritime claims to intimidate/coerce. The PRC continues to unlawfully interfere with other states’ maritime rights. The PRC’s excessive maritime claims underscore the importance of FONOPs.

# WANT TO KNOW MORE ABOUT FONOPS?

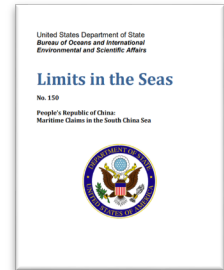
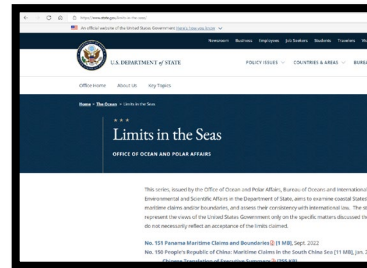
## U.S. Navy JAG Corps Maritime Claims Reference Manual

[https://www.jag.navy.mil/organization/code\\_10\\_mcrmm.htm](https://www.jag.navy.mil/organization/code_10_mcrmm.htm)



## U.S. Department of State, Office of Ocean and Polar Affairs, Limits in the Sea Series

<https://www.state.gov/limits-in-the-seas/>



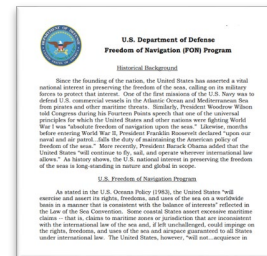
## DoD Annual Freedom of Navigation Reports

<https://policy.defense.gov/OUSDP-Offices/FON/>



## DoD FON Programs Fact Sheet

<https://policy.defense.gov/Portals/11/DoD FON Program Summary 16.pdf?ver=2017-03-03-141350-380>



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<sup>i</sup> U.S. Dep't of Defense, Freedom of Navigation Program Fact Sheet, Feb. 28, 2017 [hereafter DoD FON Program Fact Sheet], <https://policy.defense.gov/Portals/11/DoD%20FON%20Program%20Summary%2016.pdf?ver=2017-03-03-141350-380>.

<sup>ii</sup> Id.

<sup>iii</sup> U.S. State Dep't, Limits in the Sea (LIS) No. 112, Mar. 1992, <https://www.state.gov/wp-content/uploads/2019/12/LIS-112.pdf>.

<sup>iv</sup> SECSTATE Blinken, Fifth Anniversary of the Arbitral Tribunal Ruling on the South China Sea, Jul. 11, 2021 [hereafter Fifth Anniversary Statement] <https://www.state.gov/fifth-anniversary-of-the-arbitral-tribunal-ruling-on-the-south-china-sea/>.

<sup>v</sup> U.N. Convention on the Law of the Sea.

<sup>vi</sup> Yoshifumi Tanaka, The International law of the Sea (3rd ed. 2019), pp. 4-5.

<sup>vii</sup> SECSTATE Blinken, Speech: A Free and Open Indo-Pacific, Dec. 14, 2021, <https://www.state.gov/a-free-and-open-indo-pacific/>; DON FON Program Fact Sheet.

<sup>viii</sup> See, e.g., Japan Ministry of Foreign Affairs, Free and Open Indo Pacific Basic Thinking Material, [https://www.mofa.go.jp/policy/page25e\\_000278.html](https://www.mofa.go.jp/policy/page25e_000278.html) (including freedom of navigation in three pillars of a free and open Indo-Pacific); Lee Jaehyon, South Korea and the South China Sea: A Domestic and International Balancing Act, Asia. Policy J., Jan. 2016 (noting South Korea supports freedom of navigation); Reuters, Australia to Continue to Support Freedom of Navigation in South China Sea, PM Says, Jul. 15, 2020, <https://www.reuters.com/article/us-australia-china-southchinasea-pm/australia-to-continue-to-support-freedomof-navigation-in-south-china-sea-pm-says-idUSKCN24H0D5>; Rhyannon Bartlett-Imadegawa, UK's Asia Minister: Freedom of Navigation 'Incredibly Important', Mar. 18, 2021, <https://asia.nikkei.com/Editor-s-Picks/Interview/UK-s-Asia-minister-Freedom-of-navigation-incredibly-important>.

<sup>ix</sup> See U.S. DoS LIS No. 112.

<sup>x</sup> DoD FON Program Fact Sheet.

<sup>xi</sup> Statement on U.S. Oceans Policy, Mar. 10, 1983.

<sup>xii</sup> See, e.g., U.S. Navy MCRM; U.S. DoS Limits in the Sea (LIS) series at <https://www.state.gov/limits-in-the-seas/>.

<sup>xiii</sup> See, e.g., DoD FON Program Fact Sheet; 1983 U.S. Oceans Policy Statement.

<sup>xiv</sup> DoD annual FON reports are published online at <https://policy.defense.gov/ousdp-offices/fon/>.

<sup>xv</sup> See, e.g., Aaron Connelly, US Manoeuvres in the South China Sea are not Provocative, Jun. 8, 2017, <https://www.lowyinstitute.org/publications/us-manoevres-south-china-sea-are-not-provocative>.

<sup>xvi</sup> See, e.g., U.S. DoS LIS No. 150; SECSTATE Blinken, Fifth Anniversary Statement; U.S. Navy MCRM.

<sup>xvii</sup> Blinken, Fifth Anniversary Statement.

<sup>xviii</sup> See South China Sea Arbitration (Philippines v. PRC) Award, Jul. 12, 2016, <https://pca-cpa.org/en/cases/7/>.

<sup>xix</sup> See PRC MFA Statement, Jul. 12, 2021, [https://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/2511\\_665403/202107/t20210712\\_9170783.html](https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/202107/t20210712_9170783.html); Camila Domonoske, Chinese Official on Tribunal Ruling: 'It's Nothing But A Scrap Of Paper', Jul. 13, 2016, <https://www.npr.org/sections/thetwo-way/2016/07/13/485814417/chinese-official-on-tribunal-ruling-its-nothing-but-a-scrap-of-paper>.