

## **Examining the U.S. Freedom of Navigation Program: An Embarrassing Gunboat Diplomacy?+**

Ching Chang\*

*ROC Society for Strategic Studies*

### **Abstract**

The Freedom of Navigation Program is the U.S. foreign diplomacy for challenging other nations' excessive maritime claim defined by Washington since late 1970s or, more precisely, early 1980s. This policy is basically directed by the executive directives granted by the President of the United States. All the tasks of this program are jointly conducted by the State Department, Department of Defense and Department of Transportation and later by the Department of Homeland Security after the Coast Guard was shifted to the DHS after 911. Nonetheless, the whole program known as the FONOP, Freedom of Navigation Operations, is directed and oversights by the U.S. National Security Advisor. The author would like to examine the true intention and influences of the FONOP from all the policy directives and statements ever expressed by the U.S. government in various forms. All the annual reports regarding the actual practices of this FONOP policy will also be reviewed in order to understand the realities through substantial policy implementations. The basic research methodology of this paper is the

document survey. By comparing and interpreting various U.S. government documents, the author will try to identify the true intention of this policy and the categories of excessive maritime claims and their corresponding claimants, which are the targeted nations by the U.S. FONOP. Whether the State Department has ever well-coordinated with the United States armed forces delivered by the Pentagon or Coast Guard is another aspect the author of this research paper would like to grasp in this paper. Whether the FONOP may link with events ever happened in various periods of time as a part of integrated diplomacy towards specific nation is another research interest that the author would like to discuss. The author will also focus on the gap between the open statements that have been released by the Pentagon and the actual executive directives granted by the President of the United States, and particularly, whether the diplomacy that has been associated with the military operations could be appropriate or not. There are many general misperceptions regarding the FONOP. Especially, the widely agreed international law principle of the freedom of high sea that contains the concept of freedom of navigation and other legitimate privileges is not consistent with the ideas shown by the US FONOP as it always openly stated. Washington executed the FONOP according to its own interpretation of the international law but not under any common understanding ever achieved in the international society. That is, the FONOP is basically related to the U.S. national interest, not the international justice at all. In recent years, the South China Sea is the focus for the United States to exercise its FONOP. The author would like examine whether any constructive results have been created by the U.S. FONOP that enhance the international welfares as many people still misperceived these so far. The author expects all the readers of this research paper will eventually have a more comprehensive perception of the US FONOP policy as a statecraft exercised by the U.S. government,

never an effort to secure the regional stability or the collective interest of any party in the region.

**Keywords:** *FONOP, freedom of navigation, gunboat diplomacy, excessive maritime claim*

## **1. Introduction**

The main theme of this paper is to introduce the nature of the FONOP, also known as the FON Operations (Freedom of Navigation Operations) conducted by the United States Navy or the United States Coast Guard vessels and other U.S. military aircrafts from various services.

The author will first examine the policy statements separately presented by the United States State Department and the United States Department of Defense. The texts of these policy statements will be reviewed and the origins of the arguments made in the policy statements will also be identified. Subsequently the contents of the associated presidential executive directives on the FONOP will be discussed in order to clarify the true positions of the United States government to conduct these operations. Particularly, the excessive maritime claims addressed by the FONOP noted in various presidential executive directives are listed and compared. Other features noted by these presidential executive directives will also be discussed.

The FONOP becomes a vital issue for exercising the United States foreign policies in the South China Sea and the Taiwan Strait in recent years. The author therefore prepared associated tables to elaborate the excessive maritime claims from the governments from two sides of the Taiwan Strait challenged by the United States. The actual practices of the United States FONOP and the political impacts or influences achieved by the FONOP conducted towards either Beijing or Taipei will be considered as the conclusion of this paper.

## 2. FONOP Policy Statements

The United States Freedom of Navigation Operations policies are mainly stated by two federal government departments, the State Department and the Department of Defense. The State Department originally put the FONOP policy statement under the policy of the *Maritime Security and Navigation* with unspecified time of publication before the significant State Department official website renovation started in 2017.<sup>1</sup> And there is no updated policy stance in the same agency page of the new United States State Department official website so far as composing this paper.<sup>2</sup> So, we may assume that the policy stances held by the United States State Department on the FONOP remain the same.

As for the United States Department of Defense, there are two policy statements on the FONOP in recent years. The first one was issued on 1 March, 2015, titled “U.S. Department of Defense Freedom of Navigation Program—Fact Sheet”.<sup>3</sup> And the other one was issued on 28 February, 2017, with the title of “U.S. Department of Defense Freedom of Navigation (FON) Program”.<sup>4</sup> Obviously, the latest statement on the FONOP issued in 2017 after minor revision should be treated as the valid policy edition for now.

According to the statement issued by the U.S. Department of State on the Freedom of Navigation (FON) Program, it is the “U.S. policy since 1983 provides that the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the Law of the Sea (LOS) Convention.”<sup>5</sup> The basic U.S. stance is noted as: “The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.”

It is also important to know that the PON program already existed before the United Nations Convention on the Law of Sea could have completed its own process of codification in December 10, 1982, because the U.S. State Department policy statement indicated that “The FON Program since 1979 has highlighted the navigation provisions of the LOS Convention to further the recognition of the vital national need to protect maritime rights throughout the world.”<sup>6</sup>

Although the LOC Convention and the customary international law is addressed by “the FON Program operates on a triple track, involving not only diplomatic representations and operational assertions by U.S. military units, but also bilateral and multilateral consultations with other governments in an effort to promote maritime stability and consistency with international law, stressing the need for and obligation of all States to adhere to the customary international law rules and practices reflected in the LOS Convention”,<sup>7</sup> yet, the FON Program is still a policy to safeguard the United States national interests, never the international legal justices, since it is conducted “in a manner that is consistent with the balance of interests reflected in the Law of the Sea (LOS) Convention” as well as “to further the recognition of the vital national need to protect maritime rights throughout the world.”

As indicated by the United States Department of State policy statement, whether the terms of the international customary law or the Law of Sea Convention will be adopted or not are still decided according to the United States national interests, not any international legal mechanism. No international judiciary institution could have a word to influence the unilateral FON Program enacted by the United States government.

When we go back to examine those two policy statements published by the United States Department of Defense, both of them have a similar structure containing three main paragraphs: Historical Background, U.S.

Freedom of Navigation Program and DoD Freedom of Navigation Program. Basically, these two policy statements have expressed similar positions and intentions even vocabularies appeared in them may somehow have minor differences.

We may first review the section of “Historical Background” noted by both two FONOP policy statements of the United States Department of Defense. Texts as “in President Woodrow Wilson's famous Fourteen Points speech, he told Congress that one of the universal principles for which the United States and other nations were fighting World War I was "Absolute freedom of navigation upon the seas"”<sup>8</sup> are noted.

Nevertheless, as we compared it with the original text delivered by President Wilson on 8 January, 1918, to the U.S. Congress, he actually said “Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.”<sup>9</sup>

It is important to mention the condition set right after the “Absolute freedom of navigation upon the seas” was “outside territorial waters”, which is already inconsistent with the frequently FONOP practices of challenging privileges of innocent passage for the U.S. military vessels in the territorial waters of other nations in recent years.

And both policy statements have quoted texts said by President Franklin Roosevelt delivered one of his fireside chats to the American people known as “Upon our naval and air patrol ... falls the duty of maintaining the American policy of freedom of the seas”. The more completed original texts associated with aforementioned viewpoint delivered by President Roosevelt on September 11, 1941; in his eighteenth fireside chat essentially were “Upon our naval and air patrol -- now operating in large number over a vast expanse of the Atlantic Ocean -- falls the duty of maintaining the American policy of freedom of

the seas -- now. That means, very simply, (and) very clearly, that our patrolling vessels and planes will protect all merchant ships -- not only American ships but ships of any flag -- engaged in commerce in our defensive waters.”<sup>10</sup>

Here we should notice that the naval and air patrol operations declared by President Roosevelt at that time was only addressing the “defensive waters” and specifically towards the threats with hostility. Of course, in the same fireside chat, President Roosevelt did mention “the freedom of our shipping on the high seas”, nevertheless, it was noted with another bulwark of American defense known as “our line of supply of material to the enemies of Hitler”.<sup>11</sup> Again, President Roosevelt’s position was very different from the FONOP policy exercised nowadays as stated by the U.S. State Department: “The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses”<sup>12</sup> or as the action of “challenging excessive maritime claims” repeatedly addressed by the Pentagon latest published RONOP policy statement.<sup>13</sup>

Nonetheless, a new point noted that the United States the United States “will continue to fly, sail, and operate wherever international law allows” added by President Barack Obama was integrated into the paragraph of the “Historical Background” in 2017 edition United States Department of Defense FONOP policy statement.<sup>14</sup> It was restated by President Obama at U.S.-ASEAN Press Conference on February 16, 2016.<sup>15</sup> However, the same position repeated by President Obama has already been expressed by the U.S. Defense Secretary Ashton Carter in various occasions including a congressional hearing.<sup>16</sup> Eventually, this position was added into the section 1086 of the 2019 U.S. National Defense Authorization Act as the core element of the “United States Policy with Respect to Freedom of Navigation and Overflight”.<sup>17</sup>

The purpose of the United States conducting the FONOP is to “demonstrate U.S. non-acquiescence to excessive maritime claims.”<sup>18</sup> However, we should emphasize here that whether may the maritime claims raised by other nations satisfy the international law or not is still unilaterally and subjectively judged by the United States, not following any decision ever made by the international regime. The national interests therefore are still far above the international justice. Particularly, as the new viewpoints added by the President Obama is included in the latest FONOP policy statement. The coverage of the freedom of navigation in the high seas addressed by the previous two presidents may widely expand into the freedom of navigation privileges in other waters beyond the high seas. We still need to further observe how the United States may act and whether or not expanding the range for exercising the FONOP in the future.

As we compare the FONOP policy statements separately expressed by the U.S. State Department and Pentagon, we may notice that minor differences appeared in the approaches of policy implementation. Nevertheless, consistency may still exist in these policy statements from various institutions.

According to the FONOP policy statement issued by the U.S. State Department, the FONOP Program is conducted by a triple track, diplomatic representations, operational assertions by U.S. military units, and operational assertions by U.S. military units, by the following elaboration: “the FON Program operates on a triple track, involving not only diplomatic representations and operational assertions by U.S. military units, but also bilateral and multilateral consultations with other governments in an effort to promote maritime stability and consistency with international law, stressing the need for and obligation of all States to adhere to the customary international law rules and practices reflected in the LOS Convention”.<sup>19</sup>



But in the two FONOP policy statements issued by the U.S. Department of Defense noted in this paper, the U.S. armed forces categorized the overall approach of conducting the FONOP into two parts as “consultations and representations by U.S. diplomats” charged by the State Department and “operational assertions by U.S. military forces”, which is named as “U.S. Department of Defense (DoD) FON Program” by Pentagon policy statement and further elaborated by the specific paragraph titled “DoD Freedom of Navigation Program”.<sup>20</sup>

Although both Pentagon policy statements all insisted that “The Department executes the DoD FON Program lawfully and responsibly. Activities conducted under the DoD FON Program are deliberately planned, legally reviewed, properly approved, and conducted with professionalism”,<sup>21</sup> yet, how these two departments responsible for conducting the FONOP may coordinate their individual areas of responsibility and further coordinating their operations to achieve operational coherence and unity of efforts, the sequential order of individual aforementioned approaches as well as their causation relationships, how to selective the FONOP objectives, i.e., the states ever made any excessive maritime claims defined the United States government, or even how to formulate the military maneuvers for expressing operational assertions and how much the State Department may have a say in these military actions, or alternatively, totally decided by Pentagon itself has never been clearly noted by these FONOP policy statements from two different U.S. government departments.

Especially, both the Pentagon FONOP policy statements defined the DoD Freedom of Navigation Program in two categories as “FON assertions (i.e., operations that have the primary purpose of challenging excessive maritime claims) and other FON-related activities (i.e., operations that have some other primary purpose, but have a secondary effect of challenging excessive maritime claims)”.<sup>22</sup>

According to the aforementioned category of the “other FON-related activities”, the U.S. armed forces almost may include all the military operations with no limit at all. Particularly, all these military operations defined as “other FON-related activities” and accommodated them into the FONOP program are exclusively decided by the Pentagon. Whether by so doing may satisfy the self-claimed “The Department executes the DoD FON Program lawfully and responsibly. Activities conducted under the DoD FON Program are deliberately planned, legally reviewed, properly approved, and conducted with professionalism” standard is really questionable.

If the United States would like to challenge other states’ excessive maritime claims simply because of its own national interests, then Washington itself should express its positions through international regime. By so actively exercise operational assertions with military maneuvers, it can merely prove that the United States may have the strength to maintain the freedom of action by demonstrating the gunboat diplomacy, however, no convincing international justice norms can be accepted by the international community at all.

The latest policy statement regarding the FONOP was indirectly expressed by the section 1086: “United States policy with respect to the freedom of navigation and over-flight” of the Subtitle F-Other Matters, TITLE X-GENERAL PROVISIONS in the U.S. “National Defense Authorization Act for Fiscal Year 2019” with the following texts:<sup>23</sup>

SEC. 1086. UNITED STATES POLICY WITH RESPECT TO FREEDOM OF NAVIGATION AND OVERFLIGHT.

(a) DECLARATION OF POLICY.—It is the policy of the United States to fly, sail, and operate throughout the oceans, seas, and airspace of the world wherever international law allows.

(b) IMPLEMENTATION OF POLICY.—In furtherance of the policy set forth in subsection (a), the Secretary of Defense should—

(1) plan and execute a robust series of routine and regular air and naval presence missions throughout the world and throughout the year, including for critical transportation corridors and key routes for global commerce;

(2) in addition to the missions executed pursuant to paragraph (1), execute routine and regular air and maritime freedom of navigation operations throughout the year, in accordance with international law, including, but not limited to, maneuvers beyond innocent passage; and

(3) to the maximum extent practicable, execute the missions pursuant to paragraphs (1) and (2) with regional partner countries and allies of the United States.

Again, United States quite skillfully linked the freedom of navigation and overflight together with the “air and maritime freedom of navigation operations”, which actually reshaped the nature of the FONOP and expanded it from a purely maritime action of “operational assertions” into actions containing collective efforts of “fly, sail, and operate throughout the oceans, seas, and airspace”. We should also note that there is no “innocent passage” for any overflight into other nations’ territorial airspace. The original aim of the FONOP for challenging the excessive maritime claims unilaterally defined by the United States was not noted by the policy statement but expecting “execute the missions pursuant to paragraphs (1) and (2) with regional partner countries and allies of the United States” is somehow hard to achieve. How many partner countries and allies will unconditionally follow the U.S. position to challenge the excessive maritime claims of a third party? And what

will be the quid pro quo for supporting such a U.S. policy that Washington may compensate to those partner countries and allies, should their own maritime interests have not been affected at all? Nonetheless, this declaration of policy noted by the U.S. “National Defense Authorization Act for Fiscal Year 2019” is substantially and formally expanded the coverage of the FONOP is for sure.

### **3. Internal Policy Directives**

Those approaches for the United States substantially practice the Freedom of Navigation operations including selecting objectives for challenging the excessive maritime claims, areas of responsibility and operating procedures is never openly declared but granted certain confidential internal policy directives to those departments or agencies involved in the associated operations. Before the 1982 United Nations Convention of the Law of Sea could be formally codified, United States President Jimmy Carter already established the “Freedom of Navigation (FON) Program” in March 1979.<sup>24</sup> Subsequently, several United States administrations also follow the original theme issued the executive policy directives to direct all the detail of conducting the FONOP. Table 1 lists the titles of the presidential executive directives associated with the FONOP and their individual classification status.

The first directive issued by President Reagan coded with NSDD72 listed six categories of the excessive maritime claims that the United States intended to challenge.<sup>25</sup> Principally, these are the selection criteria for the Freedom of Navigation Operations perceived by the academic community. Nonetheless, the contents of these excessive maritime claims have been subsequently revised by the following U.S. Presidential Executive Directives on the FONOP. Although the basic framework of these objectives remains the same and never changed, yet,

**Table 1** Presidential Executive Directives on the FONOP and Classification Status List

Presidency	Date	Directive Code	Directive Title	Classification Status
Reagan	1982/Dec/13	National Security Decision Directive Number 72	United States Program for the Exercise of Navigation and Overflight Rights at Sea	Declassified
Reagan	1987/Mar/16	National Security Decision Directive Number 265	Freedom of Navigation Program	Partially Declassified
G. W. H. Bush	1990/Oct/12	National Security Directive 49	Freedom of Navigation Program	Partially Declassified
Clinton	1995/Jan/23	Presidential Decision Directive 32	Freedom of Navigation	Classified
<p><b>Note :</b></p> <ol style="list-style-type: none"> <li>1. The present effective directive is the Presidential Decision Directive 32 approved by President Clinton. It was never officially declassified before. Nonetheless, certain contents of this directive have been revealed as the U.S. Joint Staff published other documents, yet, it is not the information acquired through any formal declassification process.</li> <li>2. The directive issued by President Clinton is also coded as PDD/NSC32 simply because the code PDD is also used for issuing directives to the National Science and Technology Council. It therefore attached a code "NSC" for categorization.</li> <li>3. Certain tables contained by the directives are never declassified together with the directives themselves.</li> </ol>				

the vocabularies and phrases of these policy directives on the FONOP do appear to contain certain differences. There are spaces for us to argue whether the scope of the stance for the United States to challenge the excessive maritime claims of other states can be consistent. All the excessive maritime claims targeted by various presidential executive directives are listed in Table 2.

Further, started from the NSDD265 issued by the President Reagan, a newly added paragraph known as "Program Guidance" was attached right after the "Categories of Excessive Maritime Claims".<sup>26</sup> This paragraph specifically addressed the areas of responsibility of the departments like State Department and Pentagon as well as individual such as the National Security Advisor involved in the freedom of navigation operations. Operating procedures of diplomatic coordination and assigning military vessels for operational assertion to cruise in the

specific waters are also included in this paragraph.<sup>27</sup> As for the subsequent policy documents on the same FONOP program, they will retain the same structure but with certain adjustments in phrases, either augmentation or deletion, in vocabularies or wordings.<sup>28</sup>

**Table 2** Categories of Excessive Maritime Claims noted by Various Presidential Executive Directives on the FONOP

<b>Category 1</b>	
NSDD72	Those historical bay/historical water claims not recognized by the United States.
NSDD265	Those historic bay/historic water claims not recognized by the United States.
NSD49	Historic bay/historic water claims not recognized by the United States.
<b>Category 2</b>	
NSDD72	Those continental territorial sea baseline claims not drawn in conformance with the LOS Convention.
NSDD265	Those territorial sea baseline claims not drawn in conformance with the customary international law reflected in the Law of the Sea (LOS) Convention.
NSD49	Territorial sea baseline claims not drawn in conformance with the customary international law reflected in the LOS Convention.
<b>Category 3</b>	
NSDD72	Those territorial seas claims exceeding three miles but not exceeding twelve miles in breadth that:
NSDD265	Those territorial sea claims not exceeding twelve nautical miles in breadth that:
NSD49	Territorial sea claims not exceeding twelve nautical miles in breadth that:
<b>Point a</b>	
NSDD72	a. overlap straits used for international navigation and do not permit transit passage in conformance with the LOS Convention, including submerged transit of submarines, overflight of military aircraft, and surface transit of warships/naval auxiliaries, without prior notification or authorization; or
NSDD265	a. overlap straits used for international navigation and do not permit transit passage in conformance with the customary international law reflected in the LOS Convention, including submerged transit of submarines, overflight of military aircraft, and surface transit of warships/naval auxiliaries, without prior notification or authorization, and including transit in a manner of deployment consistent with the security of the forces involved; or
NSD49	a. overlap straits used for international navigation and do not permit transit passage in conformance with the customary international law reflected in the LOS Convention, including submerged transit of submarines, overflight of military aircraft, and surface transit of warships/naval auxiliaries, without prior notification or authorization, and including transit in a manner of deployment consistent with the security of the forces involved; or
<b>Point b</b>	
NSDD72	b. contain requirements for advance notification or authorization for warships/naval auxiliaries of apply discriminatory requirements to such vessels; or
NSDD265	b. contain requirements for advance notification or authorization for innocent passage of warships/naval auxiliaries or apply discriminatory requirements to such vessels; or
NSD49	b. contain requirements for advance notification or authorization for innocent passage of warships/naval auxiliaries, or apply discriminatory requirements to such vessels; or
<b>Point c</b>	
NSDD72	c. apply special requirements, not recognized by international law, to nuclear-powered warships or to warships/naval auxiliaries carrying nuclear weapons or specific cargoes.
NSDD265	c. apply special requirements, not recognized by international law, for innocent passage of nuclear-powered warships (NPW) or warships/naval auxiliaries carrying nuclear weapons or specific cargoes.
NSD49	c. apply special requirements, not recognized by international law, for innocent passage based on means of propulsion, armament, or cargo.

Table 2 (Continued)

<b>Category 4</b>	
NSDD72	Territorial sea claims in excess of twelve miles.
NSDD265	Territorial sea claims in excess of twelve nautical miles.
NSD49	Territorial sea claims in excess of twelve nautical miles.
<b>Category 5</b>	
NSDD72	Other claims to jurisdiction over maritime areas in excess of twelve miles, such as exclusive economic zones or security zones, which purport to restrict non-resource related high seas freedoms.
NSDD265	Other claims to jurisdiction over maritime areas in excess of twelve nautical miles, such as security zones, that purport to restrict non-resource related high seas freedoms.
NSD49	Other claims to jurisdiction over maritime areas in excess of twelve nautical miles, such as security zones that purport to restrict non-resource related high seas freedoms.
<b>Category 6</b>	
NSDD72	Those archipelagic claims that either:
NSDD265	Those archipelagic claims that either:
NSD49	Archipelagic claims that either:
<b>Point a</b>	
NSDD72	a. are not in conformance with the LOS Convention; or
NSDD265	a. do not permit archipelagic sea lanes passage in conformance with the customary international law reflected in the LOS Convention, including submerged passage of submarines, overflight of military aircraft, and surface transit of warships/naval auxiliaries, without prior notification or authorization, and including transit in a manner of deployment consistent with the security of the forces involved; or
NSD49	a. do not permit archipelagic sea lanes passage in conformance with customary international law reflected in the LOS Convention, including submerged passage of submarines, overflight of military aircraft, and surface transit of warship/naval auxiliaries, without prior notification or authorization, and including transit in a manner of deployment consistent with the security of the forces involved; or
<b>Point b</b>	
NSDD72	b. do not permit archipelagic sea lanes passage in conformance with the LOS Convention, including submerged passage of submarines and overflight of military aircraft, and including transit in a manner of deployment consistent with the security of the forces involved.
NSDD265	b. are otherwise not in conformance with the customary international law reflected in the LOS Convention.
NSD49	b. are otherwise not in conformance with customary international law reflected in the LOS Convention.
The present effective directive is the Presidential Decision Directive 32 approved by President Clinton. It has never been officially declassified yet. NSDD 265 and NSD49 are only partially declassified. Nevertheless, the unclassified portion is irrelevant with the contents listed in this table.	

Although the United States government has gradually declassified policy directive documents on the FONOP, yet, the present effective directive and associated rules are still kept in confidential status. The United States stance on the FONOP is expressed via the statement on the State Department website and policy statement issued by the Department of Defense. We can only identify the selection of objective, areas of responsibility and operating procedures associated with the FONOP from those directives already declassified and released to the public.

Also certain attached lists or tables of those directives including essential contents are never declassified together with the directives themselves. For instance, the list of the political sensitive areas (PSA) and the “annual unclassified summary of the diplomatic activities under the PON Program” should be published by the State Department are never released to the general public before.<sup>29</sup> The transparency of the United States FONOP Program is really questionable and could not be covered simply by any policy statement ever published.

#### **4. Actual FONOP Practices towards Mainland and Taiwan**

According to the United States policy statement, the FONOP policy was established in the late 1970s and settled in the early 1980s. Nonetheless, the annual report of the FON operational assertions conducted by the Pentagon was formally charged by the United States Department of Defense after the Cold War in 1991. It has been published by various forms of governmental documents released to the general public.

The FONOP for the Fiscal Year 1991 was listed in the “Annual Report to the President and the Congress” as the specific section of “Freedom of Navigational Assertions” in the “Naval Forces” of Part III “Defense Components” on page 77 to 78.<sup>30</sup> The FONOP for the Fiscal 1992 was listed in the same section also as a specific section on page 84 to 85.<sup>31</sup> As for the Fiscal Year 1993, the FONOP report became the full Appendix G titled “Freedom of Navigation” in the same annual report.<sup>32</sup> For the Fiscal Year 1994, it revised as the Appendix H titled “Mobility and the Law of the Sea” and Appendix I title “Freedom of Navigation” in the same annual report.<sup>33</sup> And for the Fiscal Year 1995, the tile of the Appendix H revised as “National Security and the Law of the Sea Convention” and Appendix I remained its title as “Freedom of Navigation”.<sup>34</sup> The subsequent year the “Freedom of Navigation”



revised as the appendix H again and remained the same framework till the report for the Fiscal Year 2000. After that the Freedom of Navigation assertions conducted by the Pentagon are edited as a separate report directly to the U.S. Congress.<sup>35</sup>

Based on the abovementioned information noted in the FONOP reports, the author of this paper has organized the following three tables. Table 3 and 4 are separately indicating rationales, basically, the excessive maritime claims that the United States would like to challenge, and situations of the Pentagon FONOP, i.e. the operational assertions, towards Taiwan and Mainland China in various years. Codes presented in Table 3 and Table 4 for the excessive maritime claims are noted by Table 5.

**Table 3** The Targeted Excessive Maritime Claims and Situations of the Pentagon FONOP towards Taiwan

U.S. Fiscal Year	Targeted Excessive Maritime Claims	Frequency	Waters
2019	A11	Multiple	Paracel Islands, Spratly Islands
	F4		
2018	A11	Multiple	Paracel Islands, Spratly Islands
2017	A1	Multiple	Paracel Islands
2016	A1.	Multiple	
2015	A1.		
2014	F2; A2		
2013	F2; A3	Multiple	
2012	F2; A3	Multiple	
2011	F2; A3	Multiple	
2010	Taiwan was not Targeted for Operational Assertions		
2009	Taiwan was not Targeted for Operational Assertions		
2008	Taiwan was not Targeted for Operational Assertions		
2007	Taiwan was not Targeted for Operational Assertions		
2006	A4; A5.		
2005	Taiwan was not Targeted for Operational Assertions		
2004	Taiwan was not Targeted for Operational Assertions		
2000-2003	F2; E2		
2000	F1 (Taiwan was listed under the Column of China)		
1999	Taiwan was not Targeted for Operational Assertions		
1998	Taiwan was not Targeted for Operational Assertions		
1997	Taiwan was not Targeted for Operational Assertions		
1996	Taiwan was not Targeted for Operational Assertions		
1995	Taiwan was not Targeted for Operational Assertions		
1994	Taiwan was not Targeted for Operational Assertions		
1993	Taiwan was not Targeted for Operational Assertions		
1992	Taiwan was not Targeted for Operational Assertions		
1991	Taiwan was not Targeted for Operational Assertions		

**Table 4** The Targeted Excessive Maritime Claims and Situations of the Pentagon FONOP towards Mainland China

U.S. Fiscal Year	Targeted Excessive Maritime Claims	Frequency	Waters
2019	F3	Multiple	Paracel Islands
	C2	Multiple	East China Sea
	D5	Multiple	South China Sea and East China Sea
	B6	Multiple	South China Sea and East China Sea
	E4	Multiple	South China Sea
	A13	Multiple	Paracel Islands and Spratly Islands
	G3	Multiple	Spratly Islands
2018	F3	Multiple	Paracel Islands
	C2	Multiple	East China Sea
	D4	Multiple	South China Sea
	B6	Multiple	South China Sea and East China Sea
	E3	Multiple	South China Sea
	A12	Multiple	Paracel Islands and Spratly Islands
	G2		Spratly Islands
2017	F2	Multiple	Paracel Islands
	B1	Multiple	South China Sea and East China Sea
	C1	Multiple	East China Sea
	D1	Multiple	South China Sea
	A6		Paracel Islands
	G1	Multiple	Spratly Islands
	2016	F2; B2; C1; D1; A6,	Multiple
2015	F2; B3; C1; D1; A6,	Multiple	
2014	F2; B2; C1; D1,	Multiple	
2013	F2; E1; B1; D2; A7	Multiple	
2012	B1; D2; A7	Multiple	
2011	B4; D2; F2; A7	Multiple	
2010	B4; D1	Multiple	
2009	B4; D1	Multiple	
2008	B4; D1	Multiple	
2007	B5; D3	Multiple	
2006	China Mainland was not Targeted for Operational Assertions		
2005	China Mainland was not Targeted for Operational Assertions		
2004	China Mainland was not Targeted for Operational Assertions		
2000-2003	China Mainland was not Targeted for Operational Assertions		
2000	F1 (Taiwan was listed under the Column of China)		
1999	China Mainland was not Targeted for Operational Assertions		
1998	China Mainland was not Targeted for Operational Assertions		
1997	China Mainland was not Targeted for Operational Assertions		
1996	A8		
1995	China Mainland was not Targeted for Operational Assertions		
1994	A9		
1993	A9		
1992	A10		
1991	China Mainland was not Targeted for Operational Assertions		

The excessive maritime claims challenged by the United States with the FONOP are basically categorized into several aspects in Table 5. Among them, category A is specifically for the innocent passage rights of the territorial sea. Category B is for the fight for flight over the airspace above the exclusive economic zone. Category C is specifically targeting the privileges affected after the People's Republic of China defined an air defense identification zone in the East China Sea.

**Table 5** Codes presented in Table 3 and Table 4 for the Targeted Excessive Maritime Claims

Code	The Original Texts of the Targeted Excessive Maritime Claims
A1	Prior notification required for foreign military or government vessels to enter the TTS
A2	prior notification required for foreign military or government vessels to enter the territorial sea
A3	prior notification required for foreign military or government vessels to enter territorial sea
A4	Restriction on right of innocent passage through territorial sea
A5	requirement of prior notice of warships transiting territorial sea
A6	Prior permission required for innocent passage of foreign military ships through the TTS
A7	prior permission required for innocent passage of foreign military ships through territorial sea
A8	Prior permission for warship to enter the territorial sea
A9	Prior permission for warships to enter 12 nm territorial sea
A10	Prior permission for warship to enter 12 nm territorial sea
A11	Prior notification required for foreign military or government vessels to enter the territorial sea. [Law on the Territorial Sea and Contiguous Zone, art. 7, Jan. 21, 1998]
A12	Prior permission required for innocent passage of foreign military ships through the territorial sea. [Declaration upon Ratification of 1982 Law of the Sea Convention, June 7, 1996.]
A13	Prior permission required for innocent passage of foreign military ships through the territorial sea. [Law on the Territorial Sea and Contiguous Zone, Feb. 25, 1992.]
B1	Jurisdiction over airspace above the exclusive economic zone (EEZ)
B2	jurisdiction over airspace above the EEZ
B3	jurisdiction over airspace above the Exclusive Economic Zone (EEZ)
B4	Jurisdiction over airspace above EEZ
B5	Claims jurisdiction of superadjacent airspace over the exclusive economic zone
B6	Jurisdiction over airspace above the exclusive economic zone. [Order No. 75, Surveying and Mapping Law, Dec. 2002.]
C1	Restrictions on foreign aircraft flying through an Air Defense Identification Zone (ADIZ) without the intent to enter national airspace
C2	Restrictions on foreign aircraft flying through an Air Defense Identification Zone (ADIZ) without the intent to enter national airspace. [Ministry of National Defense Announcement, Nov. 23, 2013]
D1	Domestic law criminalizing survey activity by foreign entities in the EEZ
D2	domestic law criminalizing survey activity by foreign entities in EEZ
D3	domestic law criminalizes survey activity by foreign entities in any waters under the jurisdiction of the coastal state
D4	Domestic law criminalization survey activity by foreign entities in the exclusive economic zone. [Order No. 75, Surveying and Mapping Law, Dec. 2002.]
D5	Criminalization of survey activity by foreign entities in the exclusive economic zone. [Order No. 75, Surveying and Mapping Law, Dec. 2002.]
E1	security jurisdiction in contiguous zone
E2	24 nm security zone
E3	Claims security jurisdiction in the contiguous zone. [Law on the Territorial Sea and Contiguous Zone, Feb. 1992.]
E4	Security jurisdiction over the contiguous zone. [Law on the Territorial Sea and Contiguous Zone, Feb. 1992.]
F1	Taiwan's excessive straight baselines
F2	Excessive straight baselines
F3	Straight baselines not drawn in accordance with the law of the sea. [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]
F4	Straight baseline claims. [Law on the Territorial Sea and the Contiguous Zone, Art. 4, Jan. 21, 1998; Decree No. Tai 88 Nei Tze #06161, Feb. 10, 1999.]
G1	Actions/statements that indicate a claim to a TTS around features not so entitled
G2	Actions and statements that indicate a claim to a territorial sea around features not so titled (i.e. low-tide elevations)
G3	Territorial sea and airspace around features not so entitled (i.e., low-tide elevations). [Actions and statements indicating such a claim.]
Code Rule: Targeted excessive maritime claims with similar characteristics but with variances in vocabularies or wordings are coded with the same English letters but added with different numbers. For instance, A1 and A2 are totally or almost same in significances but using different vocabularies or phrases are categorized with same English code but different numbers.	

Category D is associated with the domestic law criminalization survey activities by foreign entities in the exclusive economic zone. Category E is about claims on the security jurisdiction in the contiguous zone. Category F is targeted on straight baseline not drawn in accordance with the Law of the Sea Convention. Finally, category G is for actions and statements ever delivered by the People's Republic of China that indicate a claim to a territorial sea around features not so titled. As a matter of fact, for those rationales list for challenging the so-called excessive maritime is pretty coarse by the standard of judiciary terminologies and possibly causing many misunderstandings.

For instance, the item D3 noted in the fiscal year 2007 towards Mainland China noted with "in any waters under the jurisdiction of the coastal state", nonetheless, should the waters is the internal waters on the other side of the baselines of the coastal states, how can the United States may have sensible reason to protest? It is totally against the basic principle of the international law that could not be valid at all. It therefore the United States needs to adjust its position and narrow down the waters merely to the exclusive economic zone as Washington states the excessive maritime claims that it intends to challenge.

As for the item G1 of the fiscal year 2017 for challenging "Actions/statements that indicate a claim to a TTS around features not so entitled" or the item G2 of the fiscal year 2018 known as "Actions and statements that indicate a claim to a territorial sea around features not so titled (i.e. low-tide elevations)" are actually so hard to understand what exactly the claims that Washington would like to challenge and the origin why these actions and statements may violate the international law.

Actually, there are many ridiculous errors ever appeared in the fiscal year 2018 Freedom of Navigation Report submitted by the Department of Defense to Congress. First, it was noted on the face page of the report

as “Pursuant to Section 1275 of the National Defense Authorization Act for Fiscal Year 2018”.<sup>36</sup> As a matter of fact, the title of the Section 1275 of the National Defense Authorization Act for Fiscal Year 2018 is “United States military and diplomatic strategy for Yemen”, which is totally irrelevant to the Freedom of Navigation. The actual term as the legal basis of this annual report is the Section 1262 of the National Defense Authorization Act for Fiscal Year 2018 titled “Modifications to annual update of Department of Defense Freedom of Navigation Operations report.”<sup>37</sup> Why such a terrible error may occur in the Pentagon annual official report? It is simply because the title of the Section 1275 of the National Defense Authorization Act for Fiscal Year 2017 is “Annual update of Department of Defense Freedom of Navigation Report”<sup>38</sup> and lazy staffs in the Pentagon were so absent-minded to copy the section number of the previous year so that producing such an embarrassing error.

It is very important to mention that the modifications demanded by the Section 1262 of the United States National Defense Authorization Act such as “For each country identified under paragraph (1), the types of any excessive maritime claims by such country that have not been challenged by the United States under the program referred to in subsection (a)” and “A list of each country, other than a country identified under paragraph (1), making excessive maritime claims that have not been challenged by the United States under the program referred to in subsection (a) and the types and natures of such claims” are totally ignored by the Pentagon Freedom of Navigation annual report for the fiscal year 2018.<sup>39</sup> Even the title of this annual report was demanded to be modified as “DEPARTMENT OF DEFENSE FREEDOM OF NAVIGATION OPERATIONS REPORT” was unchanged as “Annual Freedom of Navigation Report”.

There are errors that appeared in this annual report including challenging a domestic law of the People's Republic of China that already revised years ago. The term as "Order No. 75, Surveying and Mapping Law, Dec. 2002" addressed twice in the fiscal year 2018 report should be the Surveying and Mapping Law of the Peoples Republic of China originally adopted at the 29th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1992, and subsequently amended at the 29th Meeting of the Standing Committee of the Ninth National People's Congress on August 29, 2002 as well as promulgated and was into effect as of December 1, 2002, by Order of the President of the People's Republic of China No. 75 issued by Jiang Zemin.<sup>40</sup>

Nonetheless, the same law was further revised by the Standing Committee of the National People's Congress in 2017 and subsequently promulgated by the Order of the President of the People's Republic of China No.67 by President Xi Jinping on April 27, 2017 as "The Surveying and Mapping Law of the People's Republic of China, which was revised and adopted at the 27th Session of the Standing Committee of the 12th National People's Congress of the People's Republic of China on April 27, 2017, is hereby issued for implementation as of July 1, 2017."<sup>41</sup> The United States acted like Don Quixote to challenge something totally not existed any more in its Freedom of Navigation operations. Perhaps Washington may demonstrate its power by bullying other states, yet, none of these states ever made excessive maritime claims defined the United States has retracted the original positions. Therefore, it is somehow like a useless gunboat diplomacy.

We may also further review the contents associated with the Mainland China and Taiwan appeared in the fiscal year 2019 United States Defense Department Freedom of Navigation Report, which was

unusually delayed to be publicized for several months until July 20, 2020. The true reason for this delay is still unknown. Nonetheless, an error happened in the last edition was revised by addressing that “Pursuant to Section 1275 of the National Defense Authorization Act for the Fiscal Year (FY) 2017 (P.L. 114-328)”.<sup>42</sup> It was mistakenly noted as “Pursuant to Section 1275 of the National Defense Authorization Act for Fiscal Year 2018” in the previous edition.<sup>43</sup>

However, by so noted that only mentioned the legal basis addressed by the National Defense Authorization Act for the Fiscal Year 2017 in the FY 2019 edition, not only the further requirements noted by the Section 1262 of the National Defense Authorization Act for Fiscal Year 2018 titled “Modifications to annual update of Department of Defense Freedom of Navigation Operations report” but also contents requested by the Section 1288 of the National Defense Authorization Act for Fiscal Year 2019 titled “Modification of Freedom of Navigation Operations Reporting Requirements” are completely unnoted.<sup>44</sup>

Again, the demand for revising the title of this report by the Section 1262 of the National Defense Authorization Act for Fiscal Year 2018 to be modified as “DEPARTMENT OF DEFENSE FREEDOM OF NAVIGATION OPERATIONS REPORT” was unchanged as “Annual Freedom of Navigation Report” for the title of the FY 2019 report.<sup>45</sup> And the aforementioned excessive maritime claims originated by the “Order No. 75, Surveying and Mapping Law, Dec. 2002” were addressed twice again in the fiscal year 2019 report, yet, the errors noted above in the fiscal year 2018 report about these challenges remain existed.

Another item towards Beijing listed as “Restrictions on foreign aircraft flying through an Air Defense Identification Zone (ADIZ) without the intent to enter national airspace. [Ministry of National Defense Announcement, Nov. 23, 2013]” that previously appeared in the

fiscal year 2018 report without listing the legal basis challenged then should also be questioned. First, the nature of establishing the Air Defense Identification Zone is not a maritime claim. As Washington accused Beijing has raised an excessive maritime claim, perhaps the United States should prove the nature of defining an Air Defense Identification Zone can be or even should be categorized as a maritime claim before presenting such an accusation.

Second, the United States government should provide more solid evidence that indicating which words or phrases noted by the *Ministry of National Defense Announcement, Nov. 23, 2013* did put *restrictions on foreign aircraft flying through an Air Defense Identification Zone (ADIZ) without the intent to enter national airspace*, otherwise, the excessive maritime claim noted in this column is nothing else but a plausible speculation. The whole text of the “Announcement of the Aircraft Identification Rules for the East China Sea Air Defense Identification Zone of the People's Republic of China” issued by the PRC Ministry of National Defense on November 23, 2013, is listed as follows:

Announcement of the Aircraft Identification Rules for the East China Sea Air Defense Identification Zone of the People's Republic of China  
Issued by the Ministry of National Defense on November 23

The Ministry of National Defense of the People's Republic of China, in accordance with the Statement by the Government of the People's Republic of China on Establishing the East China Sea Air Defense Identification Zone, now announces the Aircraft Identification Rules for the East China Sea Air Defense Identification Zone as follows:

First, aircraft flying in the East China Sea Air Defense Identification Zone must abide by these rules.



Second, aircraft flying in the East China Sea Air Defense Identification Zone must provide the following means of identification:

1. Flight plan identification. Aircraft flying in the East China Sea Air Defense Identification Zone should report the flight plans to the Ministry of Foreign Affairs of the People's Republic of China or the Civil Aviation Administration of China.
2. Radio identification. Aircraft flying in the East China Sea Air Defense Identification Zone must maintain the two-way radio communications, and respond in a timely and accurate manner to the identification inquiries from the administrative organ of the East China Sea Air Defense Identification Zone or the unit authorized by the organ.
3. Transponder identification. Aircraft flying in the East China Sea Air Defense Identification Zone, if equipped with the secondary radar transponder, should keep the transponder working throughout the entire course.
4. Logo identification. Aircraft flying in the East China Sea Air Defense Identification Zone must clearly mark their nationalities and the logo of their registration identification in accordance with related international treaties.

Third, aircraft flying in the East China Sea Air Defense Identification Zone should follow the instructions of the administrative organ of the East China Sea Air Defense Identification Zone or the unit authorized by the organ. China's armed forces will adopt defensive emergency measures to respond to aircraft that do not cooperate in the identification or refuse to follow the instructions.

Fourth, the Ministry of National Defense of the People's Republic of China is the administrative organ of the East China Sea Air Defense Identification Zone.

Fifth, the Ministry of National Defense of the People's Republic of China is responsible for the explanation of these rules.

Sixth, these rules will come into force at 10 am November 23, 2013.<sup>46</sup>

Not any keyword such as “restriction” or “without the intent to enter national airspace”, or even any equivalent wording shown by the item of the excessive maritime claim challenged by the United States FONOP annual reports ever appeared in this PRC Defense Ministry announcement.<sup>47</sup>

Another revision on the legal basis challenged associated with the “Prior permission required for innocent passage of foreign military ships through the territorial sea” was revised from “Declaration upon Ratification of 1982 Law of the Sea Convention, June 7, 1996” in the fiscal year 2018 report to “Law on the Territorial Sea and Contiguous Zone, Feb. 25, 1992” in the fiscal year 2019 report. This alternation proves the previous challenge on this U.S. defined excessive maritime claim in fiscal year 2018 was literally not based on a comprehensive survey.

As for the two items of excessive maritime claims challenged by the United States towards Taiwan listed in the fiscal year 2019 freedom of navigation report, the first item regarding “Prior notification required for foreign military or government vessels to enter the territorial sea. [Law on the Territorial Sea and the Contiguous Zone, Art. 7, Jan. 21, 1998.]” conducted in the waters around Parcel Islands and Spratly Islands is a long-lasting controversy caused various interpretations of the innocent passage noted in the United Nations Convention on the Law of the Sea.

It was challenged by the operational assertion maneuvers of the United States armed forces for several years. There is no indication that Taipei will surrender the existing position by any circumstance so far.

Nevertheless, the other item noted as “Straight baseline claims. [Law on the Territorial Sea and the Contiguous Zone, Art. 4, Jan. 21, 1998; Decree No. Tai 88 Nei Tze #06161, Feb. 10, 1999.]” was obviously targeted on the first batch of baselines proclaimed by the Republic of China government that disagreed by the United States. The United States has clearly expressed its disagreement in the document titled “LIMITS IN THE SEAS, No. 127 - TAIWAN’S MARITIME CLAIMS” published by the Office of Oceans Affairs Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, on November 15, 2005.<sup>48</sup>

However, the whole batch of these baselines was revised by another administrative order noted as “Decree No. Tai 98 Chien Tze #0980097355, November 18, 2009”.<sup>49</sup> Again, the United States targeted on an item was not valid anymore. Also, the geographical area “Philippine Sea” noted for challenging this excessive maritime claim is fundamentally misleading since the Philippine Sea was never mentioned in the text of the “LIMITS IN THE SEAS, No. 127 - TAIWAN’S MARITIME CLAIMS” shown above. Based on all these flaws appeared by reviewing the contents of the United States Department of Defense annual freedom of navigation report, the credibility of the United States intention for challenging other states’ excessive maritime claims is indeed questionable.

## 5. Conclusion

There are many publications on the freedom of navigation operations ever published by the United States government so far. Nevertheless, the transparency for the United States how to conduct the FONOP is still insufficient. Particularly, the “Program Guidance” of those presidential executive policy directives is never officially declassified. And the present valid policy directive is still confidential to the international community.

Moreover, those categories of excessive maritime claims listed in the presidential executive directives are not completely identical. Whether can these excessive maritime claims be fulfilled the objectives challenged listed in the annual FONOP reports is a subject worth of further study. On the other hand, how the U.S. diplomacy coordinated with the military operational assertions, whether can the objectives eventually give in to the demands from Washington may need further observations. If the operational assertions could not be helpful to establish the international norms, it will never become a legacy of international judiciary practices. This should be the political calculus that the United States should consider in the future.

Last but not the least, the stance unilaterally expressed by the United States by those operational assertions could not become any valid legal argument for establishing international law, not even the international customary law practices since these actions are only be conducted by the United States unilaterally. Also, if there is any media report indicating any other country would like to support the freedom of navigation operations led by the United States in certain water will be totally untrue or even ridiculous since no other government has any policy known as the FONOP program. The possibility for any sovereign state to support a policy never declared before and only conducted by a foreign government is totally nonexistent.

## Notes

- + This paper is basically revised from a conference paper already presented in the 2019 Association of International Relations (R.O.C.) Annual Meeting and Conference on “The Impact of Realism, Populism and Technology on the International Order” on November 30, 2019. Part of the content in this paper has also been presented in the “2019 Yellow Sea Rim Oceanic Development Forum” in Hangzhou, China, on 14 June 2019.
- \* Dr CHANG Ching (張競) is a researcher with long distinguished experiences in national security affairs. He served in the Republic of China Navy as a line officer for over a quarter of a century. Numerous lessons were acquired from various posts in his naval career. Particularly, a decade of sea duty service in which he has committed to different types of surface combatants allows him to grasp much valuable first-hand information and lessons that could never be gained from any academic arena. Further, as a graduate from the Republic of China Naval Academy (中華民國海軍軍官學校), Naval Staff College of the US Naval War College and Naval Command College of the US Naval War College, Dr Chang received orthodox professional military education which serves to support his advancement in research on national security. Dr Chang has a diversified academic background comprised of a Bachelor’s degree in navigation and maritime engineering granted by the Republic of China Naval Academy, a Master’s degree in electrical engineering gained from the University of Colorado at Boulder in the United States, and a Doctorate in politics and international studies conferred by the University of Hull in the United Kingdom. Apart from the posts in the naval fleet, Dr Chang also attained the position of staff officer at various levels in the defense hierarchy. With nobility granted by the defense authority of the Republic of China, Dr Chang has been selected as the teaching staff in the Chinese Naval Command and Staff College as well as the War College of the ROC

National Defense University (國防大學). Dr Chang also owns a honor to be the speech writer for the Defense Ministers of the Republic of China and in charge of the Office of Policy Coordination for the Defense Ministers for two years. Dr Chang has concluded his military career with the rank of navy captain ten years ago, thus acquired a privilege called the “Honorable Citizen of the Republic of China”, and was invited by the Society for Strategic Studies (中華戰略學會), Taiwan, Republic of China, to be a research fellow. Further, Dr Chang is also an active columnist and Internet TV program host for commentary of strategic issues. <Email: [chingchang@hotmail.com](mailto:chingchang@hotmail.com)>

1. Freedom of Navigation (FON) Program, International Navigation, Maritime Security and Navigation. (Archived Content of the U.S. Department of State website, <https://2009-2017.state.gov/e/oes/ocns/opa/maritimesecurity/index.htm>, data accessed time, 1200, November 1, 2019.) It was in the category listed as *Home > Under Secretary for Economic Growth, Energy, and the Environment > Bureau of Oceans and International Environmental and Scientific Affairs > Fisheries, Marine Conservation, Ocean and Polar Affairs > Oceans and Polar Affairs*.
2. Policy Issues, The Ocean and Polar Affairs, <https://www.state.gov/policy-issues/the-ocean-and-polar-affairs/>, data accessed time, 1200, February 15, 2020.
3. U.S. Department of Defense Freedom of Navigation Program—Fact Sheet, United States Department of Defense, March 2015, United States Department of Defense official website, [https://policy.defense.gov/Portals/11/Documents/gsa/cwmd/DoD%20FON%20Program%20--%20Fact%20Sheet%20\(March%202015\).pdf](https://policy.defense.gov/Portals/11/Documents/gsa/cwmd/DoD%20FON%20Program%20--%20Fact%20Sheet%20(March%202015).pdf), data accessed time: 1400, November 2, 2019.
4. U.S. Department of Defense Freedom of Navigation (FON) Program, February 28, 2017, United States Department of Defense official website, <https://policy.defense.gov/Portals/11/DoD%20FON%20Program%20Sum>

- mary%2016.pdf?ver=2017-03-03-141350-380*, data accessed time: 1430, November 2, 2019
5. Freedom of Navigation (FON) Program, International Navigation, Maritime Security and Navigation, *op. cit.*
  6. *Ibid.*
  7. *Ibid.*
  8. U.S. Department of Defense Freedom of Navigation (FON) Program, *op. cit.*
  9. Text, Fourteen Points, *Wikipedia*, [https://en.wikipedia.org/wiki/Fourteen\\_Points#Text](https://en.wikipedia.org/wiki/Fourteen_Points#Text), data accessed time: 1330, November 2, 2019. As a matter of fact, this point of “Absolute freedom of navigation upon the seas” contains more controversial matters for the rest conditions such as “alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.” Please see: Colonel House, Interpretation of President Wilson's Fourteen Points, Mount Holyoke College website, <https://www.mtholyoke.edu/acad/intrel/doc31.htm>, data accessed time: 1345, November 2, 2019.
  10. September 11, 1941: Fireside Chat 18: On The Greer Incident, Presidential Speeches, Franklin D. Roosevelt Presidency, Miller Center, University of Virginia, <https://millercenter.org/the-presidency/presidential-speeches/september-11-1941-fireside-chat-18-greer-incident>, data accessed 1500, November 2, 2019.
  11. *Ibid.*
  12. Freedom of Navigation (FON) Program, International Navigation, Maritime Security and Navigation, *op. cit.*
  13. U.S. Department of Defense Freedom of Navigation (FON) Program, *op. cit.*
  14. *Ibid.*
  15. Remarks by President Obama at U.S.-ASEAN Press Conference, February 16, 2016, The White House President Barack Obama Archives,

- <https://obamawhitehouse.archives.gov/the-press-office/2016/02/16/remarks-president-obama-us-asean-press-conference>, data accessed time: 1200, November 4, 2019.
16. South China Sea tensions – What’s the US strategy? *DW*, <https://www.dw.com/en/south-china-sea-tensions-whats-the-us-strategy/a-18809742>, data accessed time: 1930, November 1, 2019. Also see US will sail, fly and operate wherever international law allows: Ash Carter, *The Economic Times*, October 14, 2015, <https://economictimes.indiatimes.com/news/international/world-news/us-will-sail-fly-and-operate-wherever-international-law-allows-ash-carter/articleshow/49344394.cms>, data accessed time: 2030, November 1, 2019.
  17. SEC. 1086. UNITED STATES POLICY WITH RESPECT TO FREEDOM OF NAVIGATION AND OVERFLIGHT, John S. McCain National Defense Authorization Act for Fiscal Year 2019, One Hundred Fifteenth Congress of the United States of America at the Second Session, U.S. Congress database, <https://www.congress.gov/115/bills/hr5515/BILLS-115-hr5515enr.pdf>, data access time, 2100, February 10, 2020.
  18. U.S. Department of Defense Freedom of Navigation (FON) Program, *op. cit.*
  19. Freedom of Navigation (FON) Program, International Navigation, Maritime Security and Navigation, *op. cit.*
  20. U.S. Department of Defense Freedom of Navigation (FON) Program, *op. cit.*, and U.S. Department of Defense Freedom of Navigation Program—Fact Sheet, *op. cit.*
  21. *Ibid.*
  22. *Ibid.*
  23. SEC. 1086. UNITED STATES POLICY WITH RESPECT TO FREEDOM OF NAVIGATION AND OVERFLIGHT, *op. cit.*
  24. Freedom of navigation program is sufficient to protect U.S. navigation rights, *unclosdebate*, <https://www.unclosdebate.org/argument/860/freedom->



*navigation-program-sufficient-protect-us-navigation-rights*, data accessed time: 1800, November 1, 2019. The original text is “The United States actively protects its Freedom of Navigation rights by protesting excessive maritime claims made by other nations and by conducting operational assertions with U.S. naval forces to physically dispute such claims. These diplomatic and military protests were formally operationalized as the Freedom of Navigation (FON) Program in March 1979 during the Carter Administration.”

25. National Security Decision Directive Number 72, The White House, Washington, December 13, 1982, NSDD – National Security Decision Directives, Reagan Administration, Federation of American Scientists, <https://fas.org/irp/offdocs/nsdd/nsdd-72.pdf>, data accessed time: 1900, November 6, 2019.
26. National Security Decision Directive Number 265, The White House, Washington, March 16, 1987, Reagan Library Archive, <https://www.reaganlibrary.gov/sites/default/files/archives/reference/scanned-nsdds/nsdd265.pdf>, data accessed time: 1300, November 6, 2019.
27. Although the NSDD 265 of the Reagan Administration has never been officially and formally declassified in full, yet, the full texts of NSDD 265 are still available in the cyberspace though its authenticity could not be guaranteed. Please see: National Security Decision Directive 265 (Washington, March 16, 1987) – Freedom of Navigation Program, *Foreign Relations of the United States, 1981-1988*, Volume XLI, Global Issues II, Office of the Historian, Department of State, <https://history.state.gov/historicaldocuments/frus1981-88v41/d200>, data accessed time: 0900, November 7, 2019.
28. National Security Directive 49, The White House, Washington, October 12, 1990, data accessed time: 1000, November 7, 2019. The contents included in the paragraph of “Program Guidance” have significantly expanded as compared with the NSDD 265 of the Reagan Administration.

Nonetheless, the major portions of “Program Guidance” still remain confidential, never declassified and released to the public.

29. *Ibid.*
30. Part III Defense Components: Naval Forces – Freedom of Navigational Assertions. *Annual Report to the President and the Congress*, February 1992, pp. 77-78, <https://policy.defense.gov/Portals/11/Documents/gsa/cwmd/FY1991%20DOD%20Annual%20FON%20Report.pdf>, data accessed time 0900. November 10, 2019.
31. Part III Defense Components: Naval Forces – Freedom of Navigational Assertions. *Annual Report to the President and the Congress*, January 1993, pp. 84-85, <https://policy.defense.gov/Portals/11/Documents/gsa/cwmd/FY1992%20DOD%20Annual%20FON%20Report.pdf>, data accessed time 0900. November 10, 2019.
32. Appendix G: Freedom of Navigation. *Annual Report to the President and the Congress*, January 1994, page G-1, <https://policy.defense.gov/Portals/11/Documents/gsa/cwmd/FY1993%20DOD%20Annual%20FON%20Report.pdf>, data accessed time 0900. November 10, 2019.
33. Appendix H: Mobility and The Law of The Sea, page H-1, and Appendix I: Freedom of Navigation, page I-1. *Annual Report to the President and the Congress*, February 1995, <https://policy.defense.gov/Portals/11/Documents/gsa/cwmd/FY1994%20DOD%20Annual%20FON%20Report.pdf>, data accessed time 0900. November 10, 2019.
34. Appendix H: National Security and the Law of the Sea Convention, pages H-1 to H-2, and Appendix I: Freedom of Navigation, page I-1. *Annual Report to the President and the Congress*, March 1996, <https://policy.defense.gov/Portals/11/Documents/gsa/cwmd/FY1995%20DOD%20Annual%20FON%20Report.pdf>, data accessed time: 0900. November 10, 2019.
35. DoD Annual Freedom of Navigation (FON) reports. United States Department of Defense official website, <https://policy.defense.gov/OSDP-Offices/FON/>, Under Secretary of Defense for Policy.

36. *Annual Freedom of Navigation Report, Fiscal Year 2018*. Department of Defense Report to Congress, December 31, 2018, Department of Defense, generated on February 28, 2019, [https://policy.defense.gov/Portals/11/Documents/FY18%20DoD%20Annual%20FON%20Report%20\(final\).pdf?ver=2019-03-19-103517-010](https://policy.defense.gov/Portals/11/Documents/FY18%20DoD%20Annual%20FON%20Report%20(final).pdf?ver=2019-03-19-103517-010), data accessed time: 1200, November 10, 2019.
37. *PUBLIC LAW 115–91—DEC. 12, 2017: National Defense Authorization Act for Fiscal Year 2018*. The United States Congress website, <https://www.congress.gov/115/plaws/publ91/PLAW-115publ91.pdf>, data accessed time: 1200, November 10, 2019.
38. *PUBLIC LAW 114–328—DEC. 23, 2016: NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2017*. The United States Congress website, <https://www.congress.gov/114/plaws/publ328/PLAW-114publ328.pdf>, data accessed time: 1200, November 10, 2019.
39. SEC. 1262. MODIFICATIONS TO ANNUAL UPDATE OF DEPARTMENT OF DEFENSE FREEDOM OF NAVIGATION OPERATIONS REPORT. *PUBLIC LAW 115–91—DEC. 12, 2017: National Defense Authorization Act for Fiscal Year 2018, op. cit.*
40. Surveying and Mapping Law of the Peoples Republic of China, [www.eduzhai.net](http://www.eduzhai.net), [http://www.eduzhai.net/yingyu/615/763/yingyu\\_247013.html](http://www.eduzhai.net/yingyu/615/763/yingyu_247013.html), data accessed time: 1300, November 10, 2019.
41. Surveying and Mapping Law of the People's Republic of China (Revised in 2017), *Global China Law*, [https://www.globalchinalaw.com/zh/documents/95adb6eb-c43a-972d-c6c1-d95353a89146/bilingual/?keyword=%5B%5D&content\\_type=law](https://www.globalchinalaw.com/zh/documents/95adb6eb-c43a-972d-c6c1-d95353a89146/bilingual/?keyword=%5B%5D&content_type=law), data accessed time: 1300, November 10, 2019.
42. *Annual Freedom of Navigation Report, Fiscal Year 2019*. Department of Defense Report to Congress, December 31, 2018, Department of Defense, generated on February 28, 2020, <https://policy.defense.gov/Portals/11/Documents/FY19%20DoD%20FON%20Report%20FINAL.pdf?ver=2020-07->

- 14-140514-643&timestamp=1594749943344, data accessed time: 1200, July 31, 2020.
43. *Annual Freedom of Navigation Report, Fiscal Year 2018, op. cit.*
44. SEC. 1288. MODIFICATION OF FREEDOM OF NAVIGATION OPERATIONS REPORTING REQUIREMENTS, John S. McCain. *National Defense Authorization Act for Fiscal Year 2019*. One Hundred Fifteenth Congress of the United States of America at the Second Session, U.S. Congress database, <https://www.congress.gov/115/bills/hr5515/BILLS-115hr5515enr.pdf>, data access time, 0800, July 30, 2020.
45. SEC. 1262. MODIFICATIONS TO ANNUAL UPDATE OF DEPARTMENT OF DEFENSE FREEDOM OF NAVIGATION OPERATIONS REPORT. *PUBLIC LAW 115-91—DEC. 12, 2017: National Defense Authorization Act for Fiscal Year 2018, op. cit.*
46. Announcement of the Aircraft Identification Rules for the East China Sea Air Defense Identification Zone of the People's Republic of China, Issued by the Ministry of National Defense on November 23, *China Daily*, November 23, 2013 (Xinhua News Agency), [https://www.chinadaily.com.cn/china/2013-11/23/content\\_17126618.htm](https://www.chinadaily.com.cn/china/2013-11/23/content_17126618.htm), data accessed time: 1400, August 10, 2020.
47. The author's viewpoints on these errors have already been expressed in another article. Please see: CHANG Ching (July 22, 2020). Errors appeared towards Beijing in the US DoD 2019 FONOP report. *South China Sea Strategic Situation Probing Initiative (SCSPI)*, Beijing University, <http://www.scspi.org/en/dtfx/errors-appeared-towards-beijing-us-dod-2019-fonop-report>, data accessed time, 1200, August 15, 2020.
48. Taiwan's maritime claims. *Limits in the Seas*, No. 127 (November 15, 2005), Office of Oceans Affairs Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, <https://www.state.gov/wp-content/uploads/2019/12/LIS-127.pdf>, data accessed time, 1800, July 25, 2020.

49. Decree No. Tai 98 Chien Tze #0980097355, November 18, 2009, for revising the first batch of territorial sea baselines, external boundaries of the territorial sea and contiguous zone. *Gazette of the Republic of China Executive Yuan*, Volume 015, Edition No. 225, November 20, 2009, [https://gazette.nat.gov.tw/EG\\_FileManager/eguploadpub/eg015225/ch01/type2/gov01/num1/OEg.pdf](https://gazette.nat.gov.tw/EG_FileManager/eguploadpub/eg015225/ch01/type2/gov01/num1/OEg.pdf) (text in Chinese), data accessed time: 1500, July 25, 2020.



# Contemporary Chinese Political Economy and Strategic Relations: An International Journal

Volume 6

Number 1

April/May 2020

ISSN 2410-9681

## *China and Taiwan in the Global Arena*

Chinese Direct Investments in the EU and the Changing Political and Legal Frameworks 3  
*István Csaba Moldicz*

India-Taiwan Economic Relations: Charting a New Path 37  
*Sriparna Pathak and Objia Borah Hazarika*

## *From Global Governance to Domestic Challenges*

Bringing Ethics of Global Governance Back In: A Case Study of the Republic of China (Taiwan) 71  
*Kwei-Bo Huang*

Migrant Labour in China: A Case Study of Labour Discontent, Unrest and Protests 105  
*Manganelly Sumesh*

## *Southeast Asia in Time of Trade War and BRI*

A Vietnamese Perspective on China's Belt and Road Initiative in Vietnam 145  
*Duong Van Huy*

*(Continued on next page)*

The Implication of Trade War on Contested Leadership between United States and China in Southeast Asia <i>Affabile Rifawan, Arief Bustaman, Kodrat Wibowo, Maman Setiawan, Bagja Muljarjadi and Ferry Hadiyanto</i>	187
High-Level Visits and the Belt and Road Initiative: The Case of Southeast Asia <i>Wooi Yee Tan and Chong Foh Chin</i>	217
<b><i>NSP and BRI: Prospects and Challenges</i></b>	
Should I Stay or Should I Go? – Taiwan’s Foreign Direct Investment (FDI) Inflows and Outflows <i>Pei Yi Wong and Tuck Cheong Tang</i>	263
China’s Service Export Challenges and Future Potential: Benchmarking the USA <i>Hang-Hang Dong, Chen-Chen Yong and Sook-Lu Yong</i>	293
Chinese Outward Foreign Direct Investment in Belt and Road Countries: Trends, Characteristics and Policies <i>Chang Le and Cheong Kee Cheok</i>	321
<b>Postscript</b>	
A Belt, a Road, a Trade War, and a Pandemic: Exploring Global Relations and Governance <i>Emile Kok-Kheng Yeoh</i>	373
<b>Book Review</b>	
Frans-Paul van der Putten, John Seaman, Mikko Huotari, Alice Ekman and Miguel Otero-Iglesias (eds.) (2016), <i>Europe and China’s New Silk Roads</i> <i>reviewed by Emile Kok-Kheng Yeoh</i>	397





## méxico y la cuenca del pacífico

Navegando el Pacífico, conectando ideas

### *México y la Cuenca del Pacífico*

#### *CALL for PAPERS*

It is a quarterly journal, pioneer in its genre in Mexico and Latin America. An open access publication in digital and printed format, MyCP stands out as a scientific forum recommended to academics and students who are interested in the transcaptic relations. The quality of the articles published, original and unedited, is guaranteed by a strict process of double-blinded peer review of outstanding academics. MyCP is edited by the University of Guadalajara and makes no charges for submitting and processing articles in Spanish as well as in English. MyCP adheres to the ethic rules established by the Committee on Publication Ethics (COPE)

Authors are invited to submit papers about society, culture, economy, environment and politics of the Asia-Pacific economies as well as the regional integration processes in the region. Instructions for authors may be found

at <http://www.mexicoylacuencadelpacifico.cucsh.udg.mx/index.php/mc/about/submissions>

For registration and online submission please

visit: <http://www.mexicoylacuencadelpacifico.cucsh.udg.mx/index.php/mc>

*México y la Cuenca del Pacífico* is indexed in Emerging Sources Citation Index - WoS, SciELO Citation Index - WoS, Redalyc, SciELO México, Sistema de Clasificación de Revistas Mexicanas de Ciencia y Tecnología del Conacyt, CLASE, Lat-Am-Studies, LATINDEX, LatinREV, REDIB, Biblat and Catálogo Colectivo de Publicaciones Periódicas de la Biblioteca Nacional de España

