

FOREWORD

The International Law Studies “Blue Book” series was initiated by the Naval War College in 1901 to publish essays, treatises, and articles that contribute to the development and broader understanding of international law. This, the sixty-sixth volume of the series, consists of an extensive analysis of the objectives, legal basis, diplomatic and operational components, and historical background of the U.S. Freedom of Navigation Program.

The national security and international commerce of the United States depend upon the freedoms of navigation and overflight on and over the seas. The Freedom of Navigation Program is designed to further the vital need to protect maritime rights by minimizing efforts of other States to reduce global mobility through the assertion of maritime claims that do not conform to the careful balance of interests reflected in the 1982 United Nations Convention on the Law of the Sea. The authors, Captain J. Ashley Roach and Doctor Robert W. Smith, both of the Department of State, have made a valuable contribution to preserving and enhancing navigational freedoms through this articulate reassertion of the U.S. determination not to acquiesce in excessive maritime claims. On behalf of the Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps, I extend to the authors of this exceptionally important work our gratitude and thanks.

The opinions expressed in this volume are those of the authors and are not necessarily those of the United States Navy nor of the Naval War College.

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PREFACE

The purpose of this volume is to describe the diplomatic and military efforts undertaken by the United States Government to preserve and enhance navigation and overflight rights and freedoms worldwide, particularly in the twelve years following the adoption of the 1982 United Nations Convention on the Law of the Sea (LOS Convention). The text describes how States, including the United States, have interpreted and applied this first constitution for the oceans. This volume describes many of the actions taken under the U.S. Freedom of Navigation Program, begun in 1979, including diplomatic efforts and peaceful assertions of the rights and freedoms of navigation and overflight recognized in international law. It also considers the future of U.S. ocean policy after the Convention enters into force later this year.

This study is organized in four parts: Introduction, Legal Divisions of the Oceans and Airspace, Navigation and Overflight Rights, and The Future of U.S. Ocean Policy. In PART ONE, Chapter I examines the challenge of maintaining freedom of the seas, while Chapter II identifies the categories of the maritime claims of States that are inconsistent with international law, *i.e.*, “excessive maritime claims”. PART TWO examines in detail the international legal criteria governing the legal divisions of the oceans and airspace, excessive maritime claims of States in each legal division, and the U.S. responses to those illegal claims. Chapters III through IX consider *seriatim* historic waters, baselines, the territorial sea, the contiguous zone, the exclusive economic zone, the continental shelf, and archipelagos.

PART THREE considers the navigation and overflight rights enjoyed by States, illegal claims by States to restrict the exercise of those rights, and U.S. efforts to counter those excessive maritime claims. Chapters X through XIV review those claims successively in terms of the territorial sea, international straits, overflight restrictions, archipelagic sea lanes passage and navigation in exclusive economic zones. PART FOUR (Chapter XV) considers the future of U.S. ocean policy.

Appended are the 1983 Presidential Ocean Policy Statement, the 1983 Proclamation establishing the U.S. exclusive economic zone, the 1988 Presidential Proclamation extending the U.S. territorial sea to 12 miles for international purposes, and the 1989 U.S.-U.S.S.R. statement with Uniform Interpretation of the Rules of International Law Governing Innocent Passage. Also appended is a list of the States that have ratified or acceded to the LOS Convention. To facilitate the utilization of this volume as a working reference, all relevant articles of the Convention are reprinted in Appendix 6.

On November 16, 1994, the LOS Convention will enter into force for those States—not including the United States—that have consented to be bound by its terms. Negotiations to amend the deep seabed provisions of the Convention

have produced an agreement that will enable the United States to seek the advice and consent of the Senate to accession to a revised Convention.

Readers should be aware that the authors do not claim to have considered in this text all the relevant State practice that is in the public domain. On the other hand, particularly with the delay in publishing current volumes of the DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW, we have succeeded in having declassified much of the U.S. practice during the past decade and have attempted to review the practice of other States that is in the public domain. We regret there is not more available.

Readers should also be aware that the authors do not purport to discuss every coastal State maritime claim that may be inconsistent with the law of the sea, and that the text does not describe all actions taken by the United States (and other States) in response to these excessive claims. Some remain diplomatically sensitive; others remain classified for national security reasons. Thus, the failure to mention a particular claim should not be construed as acceptance of that claim by the United States.

In addition, this analysis does not attempt to identify all the practice of States which conforms to the provisions of the LOS Convention, although basic zonal jurisdictional claims are identified. Nevertheless, the United States believes that the general practice of States reflects acceptance as international law of the non-seabeds provisions of the LOS Convention.

A summary of an earlier version of this analysis was published by the Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, as *Limits in the Seas* No. 112, United States Responses to Excessive National Maritime Claims (1992).

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