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Archipelagic sea lanes passage and maritime security in archipelagic Southeast Asia

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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**ARCHIPELAGIC SEA LANES PASSAGE
AND MARITIME SECURITY
IN ARCHIPELAGIC SOUTHEAST ASIA**

by

VIVIEN JANE EVANGELIO CAY
Republic of the Philippines

A dissertation submitted to the World Maritime University in partial
fulfilment of the requirements for the award of the degree of

MASTER OF SCIENCE

in

MARITIME AFFAIRS
(MARITIME LAW and POLICY)

2010

DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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ACKNOWLEDGEMENT

The numerous issues affecting the Philippine maritime domain have inspired me to write this dissertation. In accomplishing this task, I depend on the assistance of some great people. I am extremely grateful to Associate Professor Maximo Q. Mejia Jr. my dissertation supervisor for his proper guidance and critical comments on my drafts. I am thankful to my organization, the Philippine Coast Guard for nominating me to pursue masteral studies at WMU. I am also grateful to Dr. Yohei Sasakawa and the Nippon Foundation for the opportunity to study at WMU; to Professor Proshanto K. Mukherjee for unselfishly sharing his knowledge in international law to the students particularly to MLP Class 2010 and to my two good friends and fellow Coast Guard officers Lt. Cdr. Jun C. Valdez (JAGS) PCG and Lt. Cdr. Fedelyn A. Santos (JAGS) PCG for encouraging me to develop this unfamiliar topic.

I would like also to express my gratitude to those who shared unconditional friendship: my buddies Masashi Sugomori and So-Hyun Jo for our three months together in the library; to Aditya Pramana for patiently attending to my computer needs; Ti Phuong Thao Le, Tazril Tarmizi, Arief Risdianto and my Filipino classmates Joey Victoria and Jophs Castillo. To the eleven wonderful people of MLP Class 2010 and to WMU Class 2010.

My appreciation to Chief Librarian Chris Hoebeke, Cecilia Denne and Mia Hedin for accommodating my request for research materials. To Anne Pazaver for refining the language.

My personal thanks to Prayudi Budi Utomo for walking me through and for always keeping me in the right track;

Lastly, to my parents for the never ending support and to my siblings Marlo, Olel, Bebe, We, Sheila and Ob for always believing in me.

All praises to the Father Almighty!

ABSTRACT

Title of Dissertation: Archipelagic Sea Lanes Passage and Maritime Security
in Archipelagic Southeast Asia

Degree: Master of Science

This dissertation examines the regimes of archipelagic waters and archipelagic sea lanes passage in the context of the two primary proponents of the archipelagic principle in the United Nations Convention on the Law of the Sea, in light of new developments in maritime security.

The assessment undertaken in this dissertation deals with the unprecedented efforts of the Philippines and Indonesia to persuade the international community to recognize the archipelagic concept, that a group of islands and the waters around, between and connecting the islands belong to one state should be treated as one single entity for the purpose of delimiting the maritime zone to achieve prosperity and development free from external pressure. In order to uphold the traditional freedom of navigation of the international community in seeming opposition to the concept, the right of archipelagic sea lanes passage through archipelagic waters was granted to foreign vessels. This concession was given for purposes of reconciling the conflicting interests in a manner acceptable to all concerned.

Chapter IV highlights the experience of Indonesia, as the first archipelagic state to designate archipelagic sea lanes passage while Chapter V looks at the concerns of the Philippines with regard to the issue of designating such sea lanes.

The concluding chapters contain an analysis of the factors influencing the designation and the exercise of the right of archipelagic sea lanes passage, and an

assessment of whether the compromise results in a balance. Relevant recommendations are made with regard to Indonesia and the Philippines.

KEYWORDS: Archipelago, Archipelagic States, Archipelagic Waters, Archipelagic Sea Lanes Passage, UNCLOS

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LIST OF ABBREVIATIONS

ASL	archipelagic sea lanes
ASLP	archipelagic sea lanes passage
ASL I	Archipelagic Sea Lanes Passage I (Indonesia)
ASL II	Archipelagic Sea Lanes Passage II (Indonesia)
ASL III	Archipelagic Sea Lanes Passage III (Indonesia)
ALKI	Alur Laut Kepulauan Indonesia
EEZ	exclusive economic zone
GPASLP	General Provisions for the Adaption, Designation and Substitution of Archipelagic Sea Lanes Passage
IMB	International Maritime Bureau
IMO	International Maritime Organization
MSC	Maritime Safety Circular
RA	Republic Act
RECAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea, 1982
UNCLOS I	The First United Nations Conference on the Law of the Sea, 1958, Geneva
UNCLOS II	The Second United Nations Conference on the Law of the Sea, 1960, Geneva
UNCLOS III	The Third United Nations Conference on the Law of the Sea 1973-1982
US	United States of America

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CHAPTER I

INTRODUCTION

One of the oldest and most recognized principles governing ocean space is freedom of the sea enshrined in the chapter '*De Mare Liberum*' of Hugo Grotius's '*De Iure Praedae*'.¹ The principle upholds the free use of the sea for commercial purposes and at the same time rejects the claim of exclusive use and possible establishment of sovereignty over parts of the sea.² It overshadowed national interests in coastal fisheries and most of the extravagant claims to maritime sovereignty were abandoned.³

During post World War II period, Grotius's approach to freedom of the seas began to be limited by claims of coastal states to sovereign rights over waters adjacent to their coast.⁴ Claims to historic bays and archipelagic waters were among the few exceptional cases to this principle.⁵ The codification of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS 1982) gave way to expand the

¹ Rüdiger Wolfrum, *Freedom of Navigation: New Challenges* in Myron H. Nordquist, Tommy T.B. Koh and John Norton Moore (Editors), Leiden: Martinus Nijhoff Publishers, 2008 at p. 79

² Karl Zemanek, *Was Hugo Grotius Really in Favour of the Freedom of the Seas?* Journal of the History of International Law Vol.1 No.1 1999 at pp. 48-60

³ R.R. Churchill and A.V. Lowe, *The Law of the Sea*, 3rd Edition, Manchester: Manchester University Press, 1999 at p. 204

⁴ Agustín Blanco-Bazan, *Freedom of Navigation: An Outdated Concept?* Background concepts to the lecture delivered by Dr. Agustín Blanco-Bazán at the IFLOS Summer Academy on 17 August 2007

<http://www.iflos.org> 3 August 2010

⁵ *Supra*, footnote 3 at p. 205

law of the sea to recent developments concerning the interests of individual groups of states and the international community as a whole.⁶

UNCLOS 1982 created a new regime for the sea-bed and the ocean floor and subsoil thereof, beyond the limits of national jurisdiction; a special regime for archipelagic waters was introduced and increasingly recognized along with other ground breaking principles in international law.⁷ The regimes of archipelagic waters and mid-ocean archipelagos are perhaps some of the most difficult and complex problems in international law considering that geopolitics, economics and security interests as well as countless of attendant factors posed a monumental challenge.⁸

The archipelagic states in Southeast Asia, the Philippines and Indonesia, pressed the international community for some time to recognize their right to establish a system of straight baselines around their archipelago.⁹ The geographical features of these two states can be described as landmasses connected by waters. Both states regard the waters landward of territorial sea as extensions of land territory. The seas around, between and connecting the landmasses need to be governed similarly to land territory. Their primary consideration for the recognition of the archipelagic principle is the preservation of the integrity of the archipelago.¹⁰ Another concern is directed at the presence in their waters of ships with special characteristics such as warships, surveillance vessels, unauthorized fishing vessels and vessels engaged in the carriage of contraband.¹¹ For the reason that the Philippine and Indonesia lie in the crossroads of the Indian and Pacific Oceans, the geographical locations of these two major archipelagos constitute a barrier for maritime

⁶ Budislav Vukas, *Law of the Sea: Selected Writings*, Leiden: Brill Academic Publishers, 2004 at p. 263 <http://site.ebrary.com/lib/wmulib> 3 August 2010

⁷ *Ibid.*

⁸ Hiran W. Jayewardene, *The Regime of Islands in International Law*, AD Dordrecht: Martinus Nijhoff Publishers, 1990 at p. 103

⁹ E. D. Brown, *International Law of the Sea*, Aldershot: Dartmouth Publishing Company, 1994 at p. 20

¹⁰ *Supra*, footnote 8 at p. 103

¹¹ *Ibid.*, at p. 112

movement between the two great oceans.¹² Also, most of the major straits in Southeast Asia pass through the waters of either of these two states.¹³

Under the archipelagic regime, the traditional high seas freedom of navigation between islands of the archipelagic state has been replaced by a *sui generis* legal regime under archipelagic waters.¹⁴ The establishment of baselines enclosing the entire archipelago would regard the waters in, between and around the islands and extending outward from the perimeter boundary line as forming part and parcel of the territory of these archipelagic states.¹⁵ This very concept was opposed by the international community particularly by maritime powers that needed unrestricted freedom for their navies because of the crucial importance of free navigation of submarines to their interests.¹⁶ Their concerns stem from the fundamental concept of freedom of the sea derived from customary law. The high seas are free and open to the use of all nations and channels traditionally used for international shipping, where the right of free passage have been present and exercised long before, should be respected.¹⁷ Further, this situation poses a threat to international navigation in the waters that would be enclosed by the straight baselines drawn around the outermost islands of archipelagos.¹⁸

In view of the complexity of the problem, a major compromise was made in favour of inclusive interests, which permitted the right of passage through archipelagic waters.¹⁹ Two rights of passage were granted to third states within the archipelagic

¹² Mark J. Valencia and James Barney Marsh, *Access to Straits and Sea lanes in Southeast Asian Seas: Legal, Economic and Strategic Considerations*, Journal of Maritime Law and Commerce, Vol. 16 No. 4 1985 at p. 513

¹³ Barbara Kwiatkowska, *Archipelagic Regime in the Philippines and Indonesia*, International Journal of Estuarine and Coastal Law, Vol. 6 No. 1 1991 at p. 30
<http://www.ingentaconnect.com/content/mnp/ijec/1991> 7 July 2010

¹⁴ *Supra*, footnote 13 at p. 2

¹⁵ *Supra*, footnote 8 at p. 104

¹⁶ *Ibid.*, at pp. 112-113

¹⁷ *Ibid.*, at p. 112

¹⁸ Mohamed Munawar, *Ocean States, Archipelagic Regimes in the Law of the Sea*, AD Dordrecht: Martinus Nijhoff Publishers 1995 at p. 10

¹⁹ *Supra*, footnote 8 at p. 55

waters: the right of innocent passage and a newly defined right of archipelagic sea lanes passage.²⁰ Innocent passage is for transit by ships through all other archipelagic waters except for internal waters of an archipelagic state; whereas archipelagic sea lanes passage is for transit by ships and aircraft in the designated sea lanes or through routes normally used for international navigation.²¹ The right of innocent passage can be suspended whenever it is essential for the protection of the security of the archipelagic state²² whereas, the right of archipelagic sea lanes passage is a non-suspendable right.²³ It reflects a level of freedom of passage by foreign shipping – with an arguably high seas character akin to those guaranteed under the regime of straits used for international navigation.²⁴ Passage under this regime is concerned with transit and carries no requirement of innocence.²⁵ It also allows transit in ‘normal mode’, which includes submerged submarine transit, flight operations by aircraft carriers, and the undertaking of all usual shipboard activities and security measures.²⁶ Johnson pointed out that this additional freedom is very significant to military vessels and aircrafts and considered as one of the principal concessions granted by archipelagic states to third states in the negotiation process.²⁷ This compromise is intended to create a balance between the archipelagic states, with regard to their interests to exercise sovereignty over adjoining waters, and international community as the user states or third states on their desire to

²⁰ Victor Prescott and Clive Schofield, *The Maritime Political Boundaries of the World*, Leiden: Martinus Nijhoff Publishers at p. 12

²¹ Satya N. Nandan and Shabtai Rosenne, *United Nations Convention on the Law of the Sea 1982 A Commentary*, AD Dordrecht: Martinus Nijhoff Publishers, 1993 at p. 401

²² *Supra*, footnote 20 at p. 12

²³ Constance Johnson, *A Right of Passage: the IMO Consideration of the Indonesian Archipelagic Sea Lanes Submission*, *The International Journal Of Marine and Coastal Law*, Vol. 15 No. 3 2000 at p. 319

²⁴ Timothy C. Perry, *Blurring the Ocean Zones: The Effect of the Proliferation Security Initiative on the Customary International Law of the Sea*, *Ocean Development & International Law* 2006, Vol. 37 No.1 at pp. 33-53

²⁵ *Supra*, footnote 23 at p. 318

²⁶ Stuart Kaye, *Freedom of Navigation in the Indo-Pacific Region*, *Papers in Australian Maritime Affairs* No.22 2008 at p.33 <http://www.navy.gov.au/publication> 25 July 2010

²⁷ *Supra*, footnote 23

retain historical freedom of the seas. Consequently, the specialized passage regime for archipelagic sea lanes was codified in Part IV Article 53 of UNCLOS 1982.

Prescott states that “once a coastal state has declared archipelagic status it places upon itself considerable responsibilities to the international community, perhaps the greatest of which is the right of archipelagic sea lanes passage for international routes through the archipelago.”²⁸ Presently, among the claimants of archipelagic status, it is only Indonesia that has designated archipelagic sea lanes. In 1996 Indonesia submitted a proposal to the International Maritime Organization (IMO)²⁹ for the adoption of various sea lanes and air routes covering north-south routes through and over its archipelagic waters.³⁰ The absence of other routes used for international navigation specifically the east-west route led to significant international protests from maritime states, including Australia, the United States, the United Kingdom and Japan.³¹ In this regard, the proposal was regarded only as partial designation and other archipelagic sea lanes will be required to satisfy the requirements of IMO.³² Also, it leaves the way open for user states to regard any route used for international navigation as available for archipelagic sea lanes passage.³³ Although it was held by IMO as a partial designation, it was subsequently approved on May 1998 and duly entered into force through Indonesian Government Decree No. 37/2002 dated 22 June 2002.

On the other hand, the Philippines has yet to submit a similar proposal to IMO although it has already identified the routes where archipelagic sea lanes will be designated. There are legal issues surrounding the case of the Philippines considering

²⁸ *Supra*, footnote 20 at p. 12

²⁹ A specialized agency of the United Nations with main tasks of developing and maintaining a comprehensive regulatory framework for shipping, safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping. <http://www.imo.org> 10 July 2010

³⁰ *Supra*, footnote 23 at p. 317

³¹ *Supra*, footnote 16 at p. 16

³² *Supra*, footnote 20 at p. 13

³³ *Supra*, footnote 16 at p. 16

that it regards the archipelagic waters as internal waters.³⁴ This implies that rights of innocent passage and archipelagic sea lanes passage may not be recognized in these waters. It has not also enacted legislation to govern routes used for international navigation. Be that as it may, its state practice complies with the requirements of UNCLOS 1982 in terms of allowing passage of foreign vessels through its archipelagic waters.³⁵

Under UNCLOS 1982, an archipelagic state is not required to designate archipelagic sea lanes. Should it choose to do so, however, it shall cover all routes used for international navigation. UNCLOS also provides that if no archipelagic sea lanes are designated, the right of passage may be exercised through routes normally used for international navigation. Given that the right of archipelagic sea lanes passage is non-suspendable under any circumstances, different factors that may affect the designation or non-designation of these sea lanes, primarily the security of such sea lanes, their adjacent coasts and waters, and that of the state itself, will be the very focus of this study.

1.1 Objective and Significance of the Study

The events of September 11 changed the perception of the world to terrorism and increased the concern of all states with regard to their national security. This is illustrated by the notion that terrorists can turn ordinary means of transportation into devastating weapon against wide variety of targets, not only governmental but also economic lifelines.³⁶ A large percentage of the global economy is facilitated through the

³⁴ *Supra*, footnote 13 at p. 4

³⁵ Mary Ann Palma, *The Philippine as an Archipelagic and Maritime Nation: Interests, Challenges and Perspective*, RSIS Working Paper 2009 at p. 7 <http://www.rsis.edu.sg/publication> 25 June 2010

³⁶ Catherine Zara Raymond, *Maritime Terrorism, A Risk Assessment: The Australian Example* in Joshua Ho and Catherine Zara Raymond (Editors) *The Best of Times, The Worst of Times*, Nanyang: Institute of Defence and Strategic Studies 2005 at p. 184

sea which makes shipping and seaborne trade attractive targets for terrorist attacks. This vulnerability is aggravated by difficulties of enforcement both in port and at sea and quantities of cargo involved which could be exploited by terrorist to launch an attack on shipping and port infrastructure that could cause massive economic disruption.³⁷

A significant volume of world trade, particularly those between East Asia and the rest of the world, passes through the important sea lanes and international routes of Indonesia and the Philippines. Any maritime threat that would result in the blocking of straits and international routes would affect the global economy and security of maritime domain of the archipelagic state. With this development, the maritime security concerns of these two archipelagos have increased further. For a long period of time, both states have been facing challenges regarding their respective strategic straits, sea lanes and other parts of the maritime domain. These challenges are brought about by the threats of piracy³⁸, armed robbery against ships³⁹ and maritime terrorism along with other crimes committed through the use of the sea. They also deal with the issue of intrusion of foreign vessels on their waters as a result of varying interpretation by third states of the status of archipelagic waters and sea lanes passage. Taking into consideration these challenges, this dissertation sets the following objectives:

1. Assess the importance of archipelagic sea lanes to the archipelagic states and the relevance of same to modern day maritime security concerns;

³⁷ Sam Bateman, *Assessing the Threat to Maritime Terrorism: Issues for Asia-Pacific Region*, Security Challenges Vol. 2 No. 3 2006 at p. 78 <http://www.securitychallenges.org.au> 12 July 2010

³⁸ Article 101 UNCLOS - (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

³⁹ International Maritime Bureau definition -Armed Robbery Against Ship – any unlawful act of violence or detention or any act of depredation or threat thereof, other than act of piracy directed against a ship or against persons or property on board such ships, within a state’s jurisdiction over such offences.

2. Determine whether the right of archipelagic sea lanes passage affect territorial integrity of the archipelagic states;
3. Evaluate whether the designation is necessary to have a systematic management of passage for foreign vessels through the archipelagic waters;
4. Examine the so called balance of interests between archipelagic states and the user states relative to the designation of archipelagic sea lanes;
5. Attempt to recommend measures relevant to the present status of the two biggest archipelagic states.

1.2 Areas Covered and Research Method Applied

This study will trace the historical development of the archipelagic regime under UNCLOS 1982 in which the right of archipelagic sea lanes passage was introduced. In analyzing the rationale for Article 53 (Right of Archipelagic Sea Lanes Passage), it is necessary to look into state practices, experience of Indonesia in complying Article 53 and the preliminary concerns of the Philippines in holding in abeyance the implementation of this Article, in the light of the new developments in maritime security.

The research method applied in this study involves qualitative research in order to analyze the concept and entire framework of designation of archipelagic sea lanes and its impact on both the archipelagic states and the user states or third states. Literature reviewed in this regard included academic books, journal articles, thesis, conference papers and reports. Also utilized were articles taken from online libraries, relevant texts from internet websites and newspapers, concerning information that is not readily available in the WMU library. Interviews to the government officials of either the Philippines or Indonesia dealing with maritime security issues were not conducted due to lack of material time.

CHAPTER II

ARCHIPELAGIC STATE REGIME

2.1 Development under United Nations Convention of the Law of the Sea

The great efforts to draft a text on the special status for archipelagos started as early as the 1920s where the concept had been suggested in different international fora, such as the International Law Association, the Institute of International Law and the American Institute of International Law. It was also discussed at the Hague Codification Conference of 1930 but without conclusive results because technical information on the matter was inadequate.⁴⁰ The question of archipelagos particularly that of coastal archipelagos was taken up mostly in connection with the question of coastal baseline.⁴¹

It was first raised in the *Institute de Droit International* and was discussed only in 1927 and 1928 where the following proposals were made by the Fifth Committee.⁴²

Where a group of islands belong to one coastal State and where the islands of the periphery of the group are not further apart from each other than the double breadth of the marginal sea, this group shall be considered a whole and the extent of the marginal sea shall be measured from a line drawn between the outermost parts of the island.

Where archipelagos are concerned, the extent of the marginal sea shall be measured from the outermost island or islets

⁴⁰ *Supra*, footnote 21 at p. 399

⁴¹ UN DOALOS *Legislative History of Part IV UNCLOS*, New York: United Nations 1990 at p. 1

⁴² *Supra*, footnote 9 at p. 102

provided that the archipelago is composed of islands and islets not further apart from each other than twice the breadth of the marginal sea and also provided that the islands and islets nearest to the coast of the mainland are not situated further out than twice the breath of the marginal sea.

While the question on archipelagos was also considered by the International Law Association (ILA), the proposal in this regard did not provide for the permissible distance between the islands of archipelagos but only states that “the islands thereof shall be considered as a whole and the extent of the territorial waters laid down in article 4 shall be measured from the islands situated most distant from the centre of the archipelago”.⁴³ Similarly, the proposal of American Institute of International Law published in 1926 did not lay down the maximum distance but only provides that in case of archipelago, the islands and keys composing it shall be considered as forming a unit.⁴⁴ The subject was also not dealt with in the Plenary of The Hague Codification Conference in 1930 although a proposed article thereof was drafted.⁴⁵ Seemingly, after a considerable debate on the issue of whether the rule that every island can generate a territorial sea should apply to a group of islands or whether there should be a special regime to govern it, the subject did not gain support among international bodies dealing with law of the sea.

It was the decision of the International Court of Justice in the *Anglo-Norwegian Fisheries* case, 1951 ICJ Reports 116, 128 and 139 that gave rise to the discussion of a coastal archipelago concept.⁴⁶ It may be recalled that under this case, the United Kingdom challenged the legality of the lines of delimitation of the Norwegian fisheries zone which was established based on the July 1935 Decree and was found by the Court

⁴³ *Ibid.*, at p. 103

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, at p. 104

⁴⁶ *Supra*, footnote 41 at p. 41

to coincide with the territorial sea of Norway.⁴⁷ The ICJ held that the method of straight baselines employed by Norway in connecting the outermost islands adjacent to its coast was not contrary to international law.⁴⁸ Taking into consideration the ICJ judgement, the International Law Commission included in its first draft several provisions allowing straight baselines to be used in case a state has fringe of islands in the immediate vicinity of its coast and it further analysed whether other types of archipelagos should fall under special regime or be treated similarly with isolated islands for purposes of delimitation of territorial waters.⁴⁹ However, the provisions on groups of islands were not included in the articles because of complexities brought by formations of different archipelagos where some were compact groups of islands with overlapping territorial seas while others were scattered and that there was no agreement on the breadth of territorial sea.⁵⁰ It may be noted that the *Anglo Norwegian Fisheries* case judgment was the very first legal development and a concrete foundation to support the scheme but akin to previous proposals and submissions, the issue of archipelagos was left unresolved.

Another attempt was made in the first United Nations Convention on the Law of the Sea (UNCLOS I) where Indonesia raised the issue of archipelagos with draft articles sponsored by Yugoslavia and the Philippines with the intention to apply the method of straight baselines to archipelagos. Under this principle, it was proposed to draw straight baselines around the outermost points of a coastal archipelago and connect them to the main island.⁵¹ This is in effect applying by analogy the principle used by ICJ in the *Anglo-Norwegian Fisheries* case to mid-ocean archipelagos like the Philippines and

⁴⁷ *Supra*, footnote 9 at p. 24

⁴⁸ *Supra*, footnote 41

⁴⁹ *Supra*, footnote 21 at p. 400

⁵⁰ *Ibid.*

⁵¹ *Supra*, footnote 3 at p. 118

Tonga.⁵² However, the proposal was subsequently withdrawn for lack of international support.⁵³ Had the proposal been adopted, its application would enclose huge areas of water.⁵⁴

In the second Law of the Sea Conference, the issue was raised again by the Philippines and Indonesia, pressing the claim for the special rules on the delimitation and status of archipelagic waters but the discussion did not reach any conclusion⁵⁵. There was no major development on the issue of the archipelagic regime although the matter was continuously brought to the attention of the Conference.

It was in 1971 that the subject matter was finally considered when the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction (Sea-bed Committee), particularly Sub Committee II, took note of the interests of the concerned states and the subject of archipelagos was placed as item 16 of its agenda. Attention was given to the special needs and interests of archipelagic states by setting out the principles which shall govern the regime of archipelagic waters including the provision of innocent passage through the designated sea lanes for international navigation through those waters.⁵⁶ Consequently, discussion of the issue began in 1973 where a group of four archipelagic states; the Philippines, Indonesia, Mauritius and Fiji submitted two proposals entitled “Archipelagic principles as proposed by the Delegations of Fiji, Indonesia, Mauritius and the Philippines” concerning the general principles of archipelagic state and the draft articles on archipelagos⁵⁷. The draft General Principles and Articles submitted by the proponent States contains the following provisions⁵⁸

⁵² *Ibid.*

⁵³ *Supra*, footnote 41 at p. 2

⁵⁴ *Supra*, footnote 9 at p. 106

⁵⁵ *Supra*, footnote 41 at p. 2

⁵⁶ *Ibid.*, at p. 3

⁵⁷ *Supra*, footnote 21 at p. 401

⁵⁸ *Supra*, footnote 41 at p. 7

General Principles

1. An archipelagic State, whose component islands and other natural features form an intrinsic geographical, economic and political entity and historically have or may have been regarded as such, may draw straight baseline connecting the outermost points of the outermost islands and drying reefs of the archipelago from which the extent of the territorial sea of the archipelagic State is or may be determined.
2. The waters within the baselines, regardless of their depth or distance from the coast, sea bed and the subsoil, and the superjacent air space, as well as their resources, belong to and are subject to the sovereignty of the archipelagic State.
3. Innocent passage of foreign vessels through the waters of the archipelagic State shall be allowed in accordance with its national legislation, having regard to the existing rules of international law. Such passage shall be through sea lanes as may be designated for that purpose by the archipelagic State.

Articles

2. An archipelagic State is a State constituted wholly or mainly by one or more archipelago.
3. For purposes of these articles an archipelago is a group of islands and other natural features which are so closely interrelated that the component islands and other natural features form an intrinsic geographical, economic and political entity or which historically have been regarded as such.

This proposal is considered as comprehensive and covers the whole range of archipelagic regimes, different from the proposals made during UNCLOS I, further giving a clear and concise picture of the general position of states claiming archipelagic status.⁵⁹ It also provides the drawing up of straight baselines connecting the outermost

⁵⁹ *Supra*, footnote 18 at p. 91

points of the outermost islands for the purpose of delimiting the territorial sea and further establishing a regime in the regime inside the baseline which is considered as *sui generis*.⁶⁰ Relatively, the United Kingdom also submitted a proposal that sought to establish “objective criteria and to elaborate the legal status” of archipelagic states in order to determine which states composed of groups of islands would be eligible for application of the concept and to preclude other States with remotest archipelagic claim from using the archipelagic principles to expand their national domain by including vast ocean spaces.⁶¹ The discussion in the Sea Bed Committee did not only recognize the pressing needs of the archipelagic states but it also provides a legal framework for the archipelagic regime. It may be noted that the issue is too complex as it involves the enclosure of waters previously used in international navigation to form part of the national territory of one State.

The enclosure of waters was the primary reason for the opposition from the major maritime states as it would overlap the important shipping routes and would result in the loss of navigational rights for both their naval and commercial vessels, particularly in the case of archipelagos like the Philippines and Indonesia.⁶² Notwithstanding, the issue on special archipelagic regimes was substantively discussed and pursued in Sub Committee II taking into account the special position of archipelagic states in international law and various criteria which would determine whether groups of islands would constitute archipelagos, as well as the nature of passage through archipelagic waters and straits.⁶³ During the Tenth Session of Sub Committee II in 1981, the concept of archipelago was laid down based on the proposed General Principles and Articles submitted by proponent states which eventually became part of UNCLOS 1982, where the status of enclosed waters and the rights of passage through archipelagic

⁶⁰ *Ibid.*

⁶¹ *Supra*, footnote 21 at p. 401

⁶² *Supra*, footnote 3 at p. 119

⁶³ *Supra*, footnote 41 at p. 3

waters were defined.⁶⁴ It may be easily understood that the intentions of these states are founded on the security and integrity of their respective territories. Considering the configuration of the states concerned, all the islands shall be unified and treated as one entity by drawing a straight baseline that would connect one island to another to prevent fragmentation.

2.2 Concept of Archipelagic State under International Law

The concept of the new regime of archipelagos as laid down under Part IV of UNCLOS 1982 has the following essential features: first, it permits straight baselines to be drawn around the outermost islands of archipelagos; second, it creates a new legal concept of archipelagic waters designed to accommodate the navigational interests of maritime states⁶⁵. Article 46 of UNCLOS 1982 defines an archipelagic state as “a state constituted wholly by one or more archipelagos and may include other islands.”

In order to have a better view of the concept of an archipelagic state, the definition of archipelago should be discussed first. Archipelago has been defined in Article 46 (b) as “a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely inter-related that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.” In its strict geographical terms, archipelago means a formation of two or more islands which geographically may be considered as a whole.⁶⁶ It includes not just insular natural formations but also non-insular formations, like reefs, and the areas of the sea around them among which there must be a close interrelationship thereby constructively forming a single physical and

⁶⁴ *Ibid.*, at p, 101

⁶⁵ *Supra*, footnote 3 at p. 120

⁶⁶ Clive R. Symmons, *The Maritime Zones of Islands in International Law*, Leiden: Martinus Nijhoff Publishers, 1979 at p. 60

economic entity.⁶⁷ The two or more islands must be so situated as to be capable of being geographically considered as a whole or a unit.⁶⁸ In this regard, the mere existence of islands does not qualify as an archipelago if they are not closely situated physically through interconnecting waters to form as a whole.

Taking into consideration the definition and descriptions of an archipelago, an archipelagic state is comprised of groups of islands that are described in paragraph (b) Article 46. There are several aspects to be noted in the definition of an archipelagic state.⁶⁹ First, it was adopted to reflect the actual situation of states having archipelagic claims such as Papua New Guinea which is comprised of a main archipelago and two other archipelagos, or Fiji which has far flung islands, or in case of Indonesia and the Philippines which both have only one archipelago. Secondly, the requirements of Article 46 must be complied with where a group of islands cannot constitute an archipelagic state if the islands are not closely interrelated as to form an intrinsic geographical, economic and political entity or have not been historically regarded as such.

In line with this, if a particular country consists of a group of islands, interconnecting waters and other natural features, it may establish its claim as archipelagic state provided that the islands form an intrinsic geographical, economic and political entity or the islands must be subject to a single government.⁷⁰ Additionally, a country may establish a claim upon the condition that the islands, parts of islands, intervening waters and other natural features have historically been regarded as an intrinsic geographical, economic and political entity.⁷¹ The historical factor is an alternative to geographical, economic and political requirements rather than additional

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Supra*, footnote 18 at p. 126

⁷⁰ *Supra*, footnote 20 at p. 171

⁷¹ *Ibid.*, at p. 171

thereto.⁷² Hence, the primary consideration to be regarded as an archipelago is the proximity of groups of islands to one another in order to form one geographical entity.

Related to the definition provided under paragraph (a), it requires that an archipelagic state be constituted wholly by one or more archipelagos.⁷³ It further requires the exclusion of continental states which possess non-coastal archipelagos like Denmark, with respect to the Faroes; Ecuador pertaining to the Galapagos Islands and Spain with regard to the Canaries.⁷⁴ This means that these States cannot draw archipelagic baselines around such islands.⁷⁵ Simply put, the archipelagic regime is not applicable to groups of islands belonging to continental states.

Consequent to the concept of archipelagic states is the archipelagic waters or the waters within or enclosed by the archipelagic straight baseline system which falls under special legal regime. Such waters are neither internal waters nor territorial sea although they bear similarities with the latter.⁷⁶ Article 47 of UNCLOS states that “an archipelagic state may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago...” It bears stressing that baselines have a direct connection to the outer limits of maritime zones because the breadth of the territorial sea, the contiguous zone, exclusive economic zone and continental shelf of an archipelagic state are measured initially from the baseline. For purposes of delimiting its internal waters, the archipelagic state may draw closing lines across the mouth of a river, the mouth of a bay or the outermost harbour works.⁷⁷ The waters so enclosed are internal waters, not archipelagic waters based on Article 50 considering that it is *within* the archipelagic baseline.⁷⁸ This means that closing lines

⁷² *Supra*, footnote 66 at p. 61

⁷³ *Supra*, footnote 18 at p. 126

⁷⁴ *Supra*, footnote 3 at p. 120

⁷⁵ James C. F. Wang, *Handbook on Ocean Politics and Law*, Westport, CT: Greenwood Press, 1992 at p.

48 <http://books.google.se> 10 June 2010

⁷⁶ *Supra*, footnote 3 at p. 125

⁷⁷ S.P. Jagota, *Maritime Boundary*, Leiden: Martinus Nijhoff Publisher, 1985 at p. 33

⁷⁸ *Supra*, footnote 3 at p. 125

apply only with respect to the mouth of the rivers, across bays and using permanent harbour works in accordance with Articles 9, 10 and 11 of UNCLOS, respectively, and delimitation under Article 50 refers to the establishment of a line delimiting the internal waters and separating those waters from archipelagic waters.⁷⁹ However, before an archipelagic state may draw archipelagic baselines, it must satisfy the objective criteria under Article 47, as well as the requirement that it consists of one or more archipelagos.⁸⁰

It may be recalled that among the opposing views to the establishment of this new regime in international law is the absence of objective criteria to which the regime should apply.⁸¹ However, this issue was basically addressed by Article 47 by providing objective standards for drawing archipelagic baselines which include: maximum length of baseline (not exceeding 100 nautical miles); the minimum and maximum water-to-land ratios within those baselines; conformity of the baselines to the general configuration of the archipelago and the restrictions on the point to and from which baselines shall be drawn.⁸² Article 47 also addressed the problem of protecting and preserving the rights of neighbouring states which may be affected by the adoption of archipelagic baselines, through paragraph 5 and 6, respectively, which specifically provides that the baseline shall not be applied in such a manner as to cut off from the high seas or the exclusive economic zone and territorial sea of another State and that existing rights and all other legitimate interests traditionally exercised by the neighbouring state shall continue and be respected.⁸³ In effect, these principles meet the objectives of the archipelagic states to effectively control its territory and at the same time recognize the interests of other states.

⁷⁹ *Supra*, footnote 21 at p. 445

⁸⁰ *Ibid.*, at p. 415

⁸¹ *Ibid.*, at p. 418

⁸² *Ibid.*

⁸³ *Ibid.*

In line with being an archipelagic state, it exercises sovereignty over the waters enclosed by the archipelagic baseline including the superjacent airspace, subjacent seabed and subsoil and all the resources contained therein, pursuant to Article 49. This right is subject to a number of rights enjoyed by third states deriving from existing agreements so as to prevent conflict between the rights of archipelagic states under UNCLOS and its obligation under these agreements.⁸⁴

2.3 Struggle to Achieve Recognition of the Archipelagic Principle

As the forerunners for the recognition of archipelagic principles, the Philippines and Indonesia together with Fiji and Mauritius waited a long period of time for the international community to recognize the archipelagic principle. These states being oceanic nations submitted documents to the Sub-Committee II to seek the establishment of fundamental principles applicable to an archipelagic state to include its rights over the waters within its baselines as well as the right to innocent passage by other states.⁸⁵ Emphases were made on the right of every state to exercise control over its territory and the difficulty in exercising it by reason of the complicated island networks as well as the absence of international rules to govern archipelagos. It is worth mentioning that the claim for special regime was based on the concept of the right of the state to draw straight baselines around its outermost islands for purposes of measuring its territorial sea from the baseline and to further consider the waters enclosed as internal waters.⁸⁶

⁸⁴ *Supra*, footnote 3 at p. 125

⁸⁵ *Supra*, footnote 41 at p. 40

⁸⁶ *Supra*, footnote 21

State Practice

Prior to UNCLOS III, the Philippines and Indonesia already had an established state practice regarding the delimitation of their territorial waters and determining the status around and surrounding their islands⁸⁷. In the case of the Philippines, it submitted a *note verbale* to the Secretary General of United Nations in 1955, claiming exclusive rights over waters within the coordinates of the Treaty of Paris of 1898 which provides for the cession of the Philippine archipelago by Spain to the United States and specifies geographical coordinates for the area of the ceded territory.⁸⁸ It claimed that “all waters around, between and connecting different islands belonging to the Philippine archipelago, irrespective of their width and dimension form an integral part of the national or inland water, subject to the exclusive sovereignty of the Philippines. ”

Also, in 1961, the Philippine Congress enacted the Republic Act 3048 (as amended by RA 5446) defining specifically the seventy-nine (79) baselines drawn from the outermost points of the archipelago, averaging 35 miles each in length and further describing the waters enclosed by these baselines as internal waters placed under the sovereignty of the Philippines.⁸⁹ In its 1973 Constitution, particularly in Article 1, it defines national territory as “comprising of all islands and waters and all other territories belonging to the Philippines by historic rights or legal title including the territorial sea, the air space, the subsoil, the seabed, the insular shelves and other submarine areas over which the Philippines has sovereignty and jurisdiction. The waters around, between and connecting the islands of the archipelago, irrespective of their breadth and dimension, form part of the internal waters of the Philippines. ”⁹⁰

⁸⁷ *Supra*, footnote 18 at p. 62

⁸⁸ *Ibid.*, at p. 63

⁸⁹ *Ibid.*, at p. 64

⁹⁰ Philippine Constitution of 1973

On the other hand, Indonesia proclaimed in 1957 its archipelagic concept and issued a Government Declaration concerning the Water Areas of the Republic of Indonesia otherwise known as Djuanda Declaration.⁹¹ It defines both Indonesia's territorial waters and internal waters by declaring that "the delimitation of territorial sea is measured from the baselines connecting the outermost points of the islands of Indonesia" and it provides that "all waters surrounding, between and connecting the islands constituting the Indonesian state, regardless of their extension and breadth, are integral parts of the territory of the Indonesian state, and therefore, parts of the internal or national waters which are under the exclusive sovereignty of the Indonesian state."⁹²

Both the Philippines and Indonesia received protests from major maritime powers during that time including the United States, United Kingdom, Australia and the Netherlands with the view that the declaration violated international law and constituted a major encroachment on freedom of movement on the world's ocean.⁹³ They expressed concern about passage through the archipelagic waters particularly with reference to warships.⁹⁴ The oppositions were based on their view that the freedom of their respective fleets, whether commercial or military, to navigate through the waters of the two biggest archipelagic countries would be curtailed and hampered.

The proposal for the recognition of a special regime is founded on the protection of national territory and promotion of unity within the country. It may be recalled that during the deliberation before the Sub Committee II in 1974, Indonesia, the Philippines, Fiji and Mauritius stressed that the concept was essential to the national unity, political stability, economic, social cultural cohesiveness and territorial integrity.⁹⁵ Their waters

⁹¹ John G. Butcher, *Becoming an Archipelagic State: The Djuanda Declaration of 1957 and the Struggle to Gain International Recognition of the Archipelagic Principle* in Robert Cribb and Michael Ford (Editors), *Indonesia Beyond the Water's Edge: Managing an Archipelagic State*, Pasir Panjang: ISEAS Publishing, 2009 at p. 39

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Supra*, footnote 18 at p. 64

⁹⁵ *Supra*, footnote 41 at p. 39

would become separating rather than unifying factors if not enclosed and that this would form pockets of the high seas, open to the activities which might endanger the unity, security and territorial integrity of the country.⁹⁶ The sovereignty of the archipelagic states and the preservation of same are vital to their basic national unity and the protection of their waters from intrusion is crucial to their national security⁹⁷. Although many countries supported the proposal, it was pointed out that the regime would entail problems concerning the existing uses of the sea considering that some archipelagic waters are situated in the middle of inter-oceanic commercial navigation, hence, passage through said waters should be unrestricted and recognized and should be more than simple right of innocent passage.⁹⁸ The proponents were in effect criticised on the absence of formulated rules on passage through archipelagic waters.

It is in this regard that the proposal was amended to include provisions on the right of innocent passage, the extent to which the state could regulate such passage as well as the designation of sea lanes and set limitations on their powers to make laws and regulations on the innocent passage of foreign ships through archipelagic waters.⁹⁹ It was emphasised that a delicate balance had to be struck to ensure minimum interference with interests of maritime states as well as the legitimate interest of transit State.¹⁰⁰ Hence, in order to reconcile the conflicting interests of the sponsoring states and other States opposed to the regime, they had to limit their powers to enact rules and regulations that would govern the passage of foreign vessels through their waters, thereby putting first the interests of other States in order to gain recognition of archipelagic principle. Based on the foregoing, it is worth mentioning that the great efforts of these states to seek a regime that would unify their respective territories for the sake of security and integrity paved the way subject to the interests of other states.

⁹⁶ *Ibid.*,

⁹⁷ *Ibid.*, at p. 45

⁹⁸ *Ibid.*

⁹⁹ *Ibid.* at p. 59

¹⁰⁰ *Ibid.*

Consequently, a new maritime regime of a hybrid nature has been accepted in the emerging law of the sea and the division of the seas into high seas, territorial seas and internal waters now includes archipelagic waters.¹⁰¹ In their 25 year struggle for recognition as an oceanic archipelagic regime, they have gained advantage by unifying their respective territories. As pointed out by these states, sovereignty and exclusive jurisdictions over the waters that serves as links of communication to every island were vital to archipelagic states, not only to their economy but also to their national security and territorial integrity.¹⁰² Another advantage is that the extent of the interconnecting waters is utilized by the inhabitants of the islands for economic purposes, to include the exploitation of the resources thereof for food and wealth.¹⁰³

As previously discussed, the very intention of archipelagic states is to protect their territorial integrity and national security. This new approach reflected the national outlook of the archipelagic states as nation states and their aspiration to acquire territorial unity.¹⁰⁴ The claim for recognition for a special regime does not imply acquiring extended territory but for self preservation. It is crucial for them to establish maritime boundaries that would define their territorial limits as sovereign states.

¹⁰¹ *Supra*, footnote 66 at p. 70

¹⁰² *Supra*, footnote 41

¹⁰³ *Supra*, footnote 18 at p. 124

¹⁰⁴ *Ibid.*, at p. 154

CHAPTER III

BOUNDARY SETTING IN RELATION TO SECURITY

There are five key maritime zones which the coastal state may claim: internal waters, territorial waters, the contiguous zone, the exclusive economic zone (EEZ) and the continental shelf and in case of an archipelagic state, it may claim archipelagic waters within archipelagic baselines.¹⁰⁵ These maritime zones established under UNCLOS 1982 are of crucial importance to coastal states because they afford them security in the face of threats of cross-border crimes such as smuggling, illegal migration and ultimately the threat of terrorism and the use of military force.¹⁰⁶ For this reason, coastal states assert their right to maritime zones and at the same time set their respective borders in order to determine span of control over their territory.

It is in this regard that the archipelagic states particularly the Philippines and Indonesia have become conscious of their national security taking into account the configuration of the territory where islands spanning a large part of the ocean have made it difficult for them to exercise effective central authority together with ease of intrusion by outsiders¹⁰⁷. Insofar as the exclusive interest is concerned, the most important fact here is that a political entity is comprised of a group of islands separated by expanses of water where exchange and travel between various parts of the state greatly depends on

¹⁰⁵ *Supra*, footnote 20 at p. 42

¹⁰⁶ *Ibid.*, at p. 9

¹⁰⁷ Kriangsak Kittichaisaree, *The Law of the Sea and Maritime Boundary Delimitation in Southeast Asia*, New York: Oxford University Press 1987 at p. 151

the use of the ocean¹⁰⁸. It becomes extraordinarily difficult to exercise control of implementation of local policies and matters of special importance to all states such as immigration, entry of alien and import and export problems¹⁰⁹. Also, the military aspect of security has become complicated because of the geographical situation. The state can hardly maintain a regular watch over all means of access to the various islands or even to a large island since the ocean areas involved are so vast which makes espionage and surveillance from the outside less difficult.¹¹⁰ Hence, there is the desire to enclose their respective islands and interconnecting waters within a single unit to insulate them from outside intrusion¹¹¹.

As sovereign States, it is customary for archipelagic states to take special and vital interest over their maritime zones. They have to find or establish measures within the bounds of international law to delimit their boundaries to protect their territorial integrity.

3.1 Archipelagic Boundary Delimitation

The recognition of archipelagic principle in international law allows archipelagic states to delimit their respective boundaries and draw baselines that will delineate the areas of waters and land that are to be measured. Article 47 of UNCLOS prescribes boundary delimitation of the archipelagic State to determine the general extent of the archipelago. It also deals with rules for safeguards for neighbouring states which might be affected as well as the recording and publication of archipelagic baselines.¹¹² The following provisions of Article 47 of UNCLOS illustrate boundary delimitation:

¹⁰⁸ Myres S. McDougal and William T. Burke, *The public Order of the Oceans, A Contemporary International Law of the Sea*, New Haven: New Haven Press 1987 at p. 412

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Supra*, footnote 107 at p. 151

¹¹² UN DOALOS, *Baselines: An Examination of the Relevant Provisions of the United Nation Convention on the Law of the Sea*, New York: United Nations Publications, 1989 at p. 35

1. An archipelagic State may draw straight archipelagic baselines joining the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the land area of the land, including atolls, is between 1 to 1 and 9 to 1.

2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 percent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone or the territorial sea of another State.

6. If a part of the archipelagic waters of archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue to be respected.

7. For purposes of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical co-ordinates of points, specifying the geodetic datum, may be substituted.

9. The archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

Based on the foregoing, the following rules must be satisfied by the archipelagic state in drawing baselines: the archipelagic state must include the main islands; the designated baseline must enclose an area of sea at least as large as the area of enclosed land but not more than nine times that of the land area; the baseline may not exceed 100 nautical miles in length except that up to three percent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles and it must not deviate from the general configuration of the archipelago to any appreciable extent.¹¹³

Also, regarding the first requirement, “main island” may be construed, depending on the interest of the archipelagic state, as the largest island of the archipelago or the most populous island or most economically productive islands or the most pre-eminent in a historical or cultural sense.¹¹⁴

Further, the purposes of water-to-land ratio of 1:1 and 9:1 are to provide objective criterion for the concept of an archipelagic state, to limit its application to relatively compact oceanic island groups and to meet the claims of archipelagic states participating in the Conference.¹¹⁵ The lower ratio was selected to exclude those archipelagos that are dominated by one or two large islands or parts of islands between which there are comparatively small areas of interconnecting seas such as, the United Kingdom, Madagascar and Cuba; whereas the upper ratio excludes those widely dispersed archipelagos because it is impossible to enclose large areas of seas within

¹¹³ UN DOALOS, *Handbook on the Delimitation of Maritime Boundaries*, New York: United Nations Publications, 2002 at p. 7

¹¹⁴ *Ibid.*, at p. 8

¹¹⁵ *Supra*, footnote 21 at p. 429

archipelagic baselines as in the case of Tuvalu and Kiribati.¹¹⁶ In this regard, the countries that could enclose waters approximately within the prescribed ratio are Indonesia and the Philippines with 1:1.8 and 1.1.2, respectively.¹¹⁷

In sum, the very idea of Article 47 is to have a compact and integrated territory through straight archipelagic baselines that would connect the islands and waters of the archipelagic State. The archipelagic baseline is the starting point from which the extent of territorial sea, contiguous zone, the exclusive economic zone and continental shelf will be measured.

Relatedly, there are baseline options for archipelagic states that are consistent with UNCLOS which could be identified from existing state practices.¹¹⁸ First is the *single baseline system*. This option allows the inclusion of all the islands and other natural features and the interconnecting waters that constitute the archipelagic State within a single composite baseline system. The states like Indonesia, the Philippines and Cape Verde have applied this system in enclosing their respective archipelagos. Second option is the *multiple baseline system* which allows the drawing of archipelagic baselines around each archipelago forming the archipelagic state. However, each archipelago should be consistent with Article 46(b) and each enclosure should satisfy Article 47 on the drawing of archipelagic baselines. The country that was able to apply this option is Solomon Islands with five archipelagos and has drawn baseline around each archipelagos. Third is the *non-archipelagic straight baseline system*. This option can be applied by States which fall within the definition of archipelagic state and predominantly consist of one large island. They may draw straight baselines which tie the coastal islands to the main island, similar to mainland coasts that are fringed by coastal islands or coastal archipelagos. The advantage of this is that the waters inside the

¹¹⁶ *Supra*, footnote 20 at p. 176

¹¹⁷ *Supra*, footnote 3 at p. 123

¹¹⁸ *Supra*, footnote 18 at pp. 135-136

straight baselines then become internal waters rather than archipelagic waters. Madagascar and Cuba have chosen this option in their respective legislations.

Status of Waters Enclosed and Rights Accorded to the Archipelagic State

There are various terms used to describe the status of archipelagic waters. There are views that waters landward of straight archipelagic baselines should be described in the same manner as in the case of waters enclosed landward of the straight baseline system as provided under the 1958 Convention on the Territorial Sea which was described as internal¹¹⁹. However, in order not to deviate from the accepted categories of internal waters, territorial sea and straits used for international navigation, the 4-State Drafts and the United Kingdom emphasized the *sui generis* character of the waters enclosed by archipelagic baselines by adopting a new term archipelagic waters.¹²⁰ Hence, the waters within or enclosed by the archipelagic baselines are referred as archipelagic waters.

The legal status of archipelagic waters is embodied in Article 49 of UNCLOS where it specifically states the following:

1. The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance Article 47, described as archipelagic waters, regardless of their depth or distance from the coast.
2. Their sovereignty extends to the air space over archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.
3. This sovereignty is exercised subject to this Part.

¹¹⁹ *Supra*, footnote 66 at p. 68

¹²⁰ *Supra*, footnote 9 at p. 114

4. The regime of archipelagic sea lanes established in this Part shall not in other respects affect the status of the archipelagic waters including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein.

The archipelagic waters should be distinguished from internal waters. The concept of internal waters is retained for bays, river mouths and ports in accordance with Articles 9, 10 and 11. The internal waters in this regard are those created by delimiting closing lines across bays, rivers and ports, therefore, subject to normal rules while archipelagic waters are those enclosed by or within the archipelagic baselines. There is no right of foreign passage over internal waters.¹²¹ On the other hand, the archipelagic state exercises sovereignty over archipelagic waters including seabed and subsoil therein regardless of their depth or distance from the coast but the exercise thereof is subject to some limitations in favour of rights of passage for foreign ships and aircrafts.¹²²

These distinctions connote that the archipelagic state exercises absolute jurisdiction over its internal waters while its rights over archipelagic waters are subject to certain conditions. It is similar to rights over territorial sea where foreign vessels enjoy innocent passage and transit passage. With regard to the boundary setting of the archipelagic state, it meets the objective and requirements of unity and national integrity of the archipelagic state. It may be understood that if the waters will not be enclosed by baselines, they will possess the character of international straits where passage of foreign vessels is a matter of right.

3.2 Introduction of Archipelagic Sea Lanes Passage (ASLP)

It may be recalled that the issue of passage through archipelagic waters was controversial during the deliberation stage of UNCLOS III. The opposition of major

¹²¹ *Supra*, footnote 107 at p. 164

¹²² *Ibid.*, at p. 162

maritime powers and other states was overwhelming by reason of the obstacles they would face in commercial navigation, strategic movement of military forces as well as the right of innocent passage and other existing rights in the event that waters would be enclosed and placed under jurisdiction of the archipelagic states.

Oppositions contended that once the archipelagic state acquired the exclusive rights over the waters previously regarded as high seas but now placed under the sovereignty of that state, foreign military aircrafts or vessels would have no right to navigate or fly over those waters. On the other hand, the archipelagic states argued on the grounds of territorial integrity and national security. In order that the archipelagic concept be acceptable to maritime powers and other states, negotiation and compromise on navigational rights over archipelagic waters were made. This is where the concept of archipelagic sea lane passage was introduced as a compromise for gaining archipelagic state status.

Rights of passage of all states through and over archipelagic waters are the major limitation to the sovereignty of the archipelagic state¹²³. Worth mentioning are the two groups of rights of other states over archipelagic waters introduced in UNCLOS III; these are non-navigational and navigational rights. The former consists of previous rights being exercised by neighbouring States in archipelagic waters by virtue of agreement prior to becoming as such; whereas, the latter includes right of innocent passage which had been present since UNCLOS I and the new concept of archipelagic sea lane passage¹²⁴.

The existing agreements are those entered into by the archipelagic States with other States that will be affected once an archipelagic State draws its baseline. Taken as example are the immediately adjacent States of Malaysia and Indonesia. They entered

¹²³ Robert Beckman, *Archipelagic Sea Lanes Passage In Southeast Asia*, in Chong Guan Kwa, John Kristen Skogan *Maritime security in Southeast Asia*, New York: Routledge, 2007 at p. 119, <http://books.google.com> 22 February 2010

¹²⁴ *Supra*, footnote 18 at p. 158

into an agreement on 25 February 1982 on the breadth of navigational corridor entitled The Treaty Between Malaysia and the Republic of Indonesia Relating to the Legal Regime of Archipelagic State and the Rights of Malaysia in the Territorial Sea and Archipelagic Waters as well as in the Airspace above the Territorial Sea and Archipelagic Waters and the Territory of the Republic of Indonesia Lying Between East and West Malaysia, (otherwise known as Jakarta Treaty)¹²⁵. The treaty provides a 20 mile corridor between their borders particularly on east and west part for navigation purposes. It means that the stipulations regarding the use of waters enclosed by archipelagic baselines stay although such waters were placed under the jurisdiction of Indonesia.

Relatedly, non-navigational rights include the interest of other States in lying submarine cables within the scope of “direct communication”¹²⁶. The establishment of archipelagic baselines does not affect this particular right of other States.

On the other hand, navigational rights involve right of innocent passage and archipelagic sea lanes passage. Similar to the innocent passage rights that could be exercised by a State over the territorial sea of another State, it could also be exercised through archipelagic waters pursuant to Article 52 of UNCLOS. The rule on innocent passage shall be governed by Part II Section 3 of UNCLOS¹²⁷. Passage, in this regard, means navigation through the territorial sea for the purpose of (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters or (b) proceeding to or from internal waters or a call at such roadstead or port facility and it shall be continuous and expeditious except for anchoring in normal access of navigation, in *force majeure* or when assisting another vessel¹²⁸. Also, Article 19 of

¹²⁵ *Ibid.*, at p159

¹²⁶ *Supra*, footnote 9 at p. 117

¹²⁷ UNCLOS Article 52 – (1) Subject to article 53 and without prejudice to article 50, ships of all States enjoy the right of innocent passage through archipelagic waters, in accordance with Part II, section 3. (2) The archipelagic State may, without discrimination in form or in fact among foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

¹²⁸ UNCLOS Article 18

UNCLOS provides that a vessel exercising the right of innocent passage must not engage in conduct which is prejudicial to the peace, good order or security of the coastal state. Further, it is a requirement under Article 21 for foreign vessels exercising the right of innocent passage through archipelagic waters to comply with laws and regulations of the archipelagic State as well as the international rules against collision at sea.

Another navigational right is referred to as the specialized regime of the right of archipelagic sea lane passage. Based on Article 53 of UNCLOS, archipelagic sea lane passage means the exercise of the rights of navigation and overflight in normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone¹²⁹. This right could be exercised in two instances, first, in all normal passage routes used for international navigation or over flight through or over archipelagic waters and its adjacent territorial sea; second, in sea lanes or air routes which the concerned archipelagic state has specifically designated¹³⁰.

3.3 Aspects of Right of Archipelagic Sea lane Passage

This particular regime guarantees that ships and aircrafts of other States have the right to pass through and over archipelagic waters on designated sea lanes and air routes¹³¹. It is very much different from innocent passage. The following instances constitute distinctions between two principles of innocent passage and archipelagic sea lane passage with regard to passage through archipelagic waters¹³²:

¹²⁹ *Supra*, footnote 12 at p. 522

¹³⁰ *Supra*, footnote 23 at p. 318

¹³¹ *Supra*, footnote 123 at p. 119

¹³² Hashim Djalal, *Indonesia's Archipelagic Sea Lanes*, in Robert Cribb and Michelle Ford (Editors) *Indonesia Beyond the Water's Edge*, Pasir Panjang: ISEAS Publishing at p. 60

1. The right of innocent passage requires that submarines and other under water vehicles should navigate on the surface, showing their flags; whereas in archipelagic sea lane passage, underwater vehicle is allowed to navigate under normal mode which is possible that it pass underwater;
2. There is no right of over flight in areas where innocent passage is allowed while in archipelagic sea lane, over flight is permitted;
3. The right of innocent passage could be suspended in certain cases like when there is military exercise or the State has to deal with local crises but archipelagic sea lane passage cannot be suspended, it may only be substituted;
4. With regard to warships, there are no precise rules under international law that would require countries to give prior notice on innocent passage of warships; other countries necessitate prior notice while some do not require but in archipelagic sea lane passage, prior notification on the passage of warship through it is explicitly not required;
5. The provisions on archipelagic sea lane do not include the possibility of cooperation between the archipelagic State and user States in terms of establishment of safety rules on navigation and the prevention and control of pollution from ship through archipelagic sea lane are not covered by this concept.

It may be understood from the above mentioned distinctions that the rules on innocent passage are more stringent than that of the archipelagic sea lane passage. Violations of conditions on innocent passage that would affect national security of the State will give rise to suspension of the right. However, the same cannot be done in archipelagic sea lane passage because it is designed for continuous, unobstructed and expeditious passage of foreign vessels.

Another aspect of archipelagic sea lane passage is that it is almost similar to the right of transit passage through and over straits used for international navigation. Transit passage means the exercise of freedom of navigation and overflight, in accordance with Part III UNCLOS, solely for the purpose of continuous and expeditious transit of the

strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone (Article 38). It is the same as freedom of the high seas in the aspect of continuous and expeditious passage¹³³. Moreover, Article 54 of UNCLOS specifically states that provisions on transit passage shall be applied *mutatis mutandis* to the regime of archipelagic sea lane passage. Emphasis should be made on the following similarities¹³⁴:

1. The rights of transit passage and archipelagic sea lane passage include overflight for aircraft as well as navigation for ships;
2. Ships exercising right of transit or archipelagic sea lane passage may use their normal mode of transit, hence, surface warship may pass through sea lane in a manner necessary for their security to include formation steaming and recovery of aircraft;
3. Both rights may never be suspended for reason of national security, even temporarily.

The foregoing circumstances do not apply to right of innocent passage. On the other hand, these rights differ from one another under the following aspects:¹³⁵

1. Transit passage signifies exercise of freedom, while archipelagic sea lanes passage is the exercise of the rights of navigation or overflight;
2. As a matter of general right, ships and aircrafts enjoy right of transit passage through straits. On the other hand, they enjoy a general right of sea lanes passage if the archipelagic state designates; otherwise this right “may” be exercised through the routes used for international navigation;
3. Unlike in the case of transit passage, both sea lanes and air routes must be established on axis lines within archipelagic waters;

¹³³ *Supra*, footnote 9 at p. 89

¹³⁴ *Supra*, footnote 123 at p. 119

¹³⁵ *Supra*, footnote 13 at p. 25

4. All normal passage routes used for international navigation should be included in designating archipelagic sea lanes and air routes, whereas; it is not a requirement in transit passage;
5. The right of overflight under archipelagic sea lanes passage is restricted to air routes above sea lanes, unlike in the freedom of overflight within transit passage regime. This means that overflight should be made strictly above the designated sea lanes or routes normally used for international navigation, in the absence of designated sea lanes.

Additionally, although its designation is not mandatory as the phrase ‘may designate’ is expressly stated in Article 53, the right of archipelagic sea lane passage applies by default because of paragraphs (4) and (12) thereof which provide that sea lanes shall include all passage routes used for international navigation through archipelagic waters and that if no sea lanes are designated, the right may be exercised through routes normally used for international navigation¹³⁶.

In the event the archipelagic sea lane will be established in narrow channels, the archipelagic State may prescribe traffic separation scheme for the safe passage of ships based on Article 53 (6). Also, the proposal to establish a sea lane has to be approved by a competent international organization, in this case the International Maritime Organization (IMO) which has jurisdiction over shipping and navigation questions¹³⁷. Once the proposal for its designation is approved by the IMO, ships and aircraft of all states, to include military ships and aircraft, may enjoy the right of archipelagic sea lane passage continuously and expeditiously through the archipelagic waters¹³⁸.

Considering that archipelagic sea lane passage is similar to transit passage in major aspects, the rights afforded to archipelagic states over archipelagic sea lane are very limited. It grants maritime nations non-suspendable rights of passage through an

¹³⁶ *Supra*, footnote 132 at p. 62

¹³⁷ *Supra*, footnote 18 at p. 169

¹³⁸ *Supra*, footnote 123 at p. 120

archipelago¹³⁹. This is the greatest among the considerable responsibilities of the archipelagic States to the international maritime community and the price they have to pay for the advantages of gaining archipelagic status¹⁴⁰.

Purpose of Archipelagic Sea Lanes

As provided under Article 53 of UNCLOS, an archipelagic state may designate sea lanes and air routes above them for continuous and expeditious passage of foreign ships and aircraft through its archipelagic waters and territorial sea and air space above. It shall include normal routes used for international navigation. The sea lane connects one part of the high seas or exclusive economic zone to another part of the high seas or EEZ or territorial sea of another state. In order to reach the other part of the high seas, the vessel could traverse through the archipelagic sea lane. Although it is similar to transit passage in straits used for international navigation, it is adjusted to reflect the differences between the vast expanses of ocean that become archipelagic waters as well as narrow passages that comprise most straits used for international navigation¹⁴¹.

Basically, archipelagic sea lanes cater to the needs of user states so they could have uninterrupted navigation through archipelagic waters. They facilitate the unobstructed passage of military vessels and aircrafts over the waters of the archipelagic state¹⁴².

In order to protect its maritime security in relation to the establishment of archipelagic sea lane passage, the archipelagic state may, under Article 42 UNCLOS, adopt laws and regulations relating to sea lane passage in respect of safety of navigation,

¹³⁹ Chris Forward, *Archipelagic Sea Lanes in Indonesia – Their Legality in International Law*, Maritime Journal 2009 at p 153 <http://martimejournal.murdoch.edu.au> 21 June 2010

¹⁴⁰ *Supra*, footnote 20 at p. 178

¹⁴¹ *Supra*, footnote 21 at p. 466

¹⁴² *Supra*, footnote 18 at p. 168

prevention and control of pollution, prevention of fishing and the loading and unloading of any commodity, currency or person or sanitary laws or regulation.

3.4 Maintaining Territorial Integrity

In asserting their rights to maritime spaces, the archipelagic states have to agree to the establishment of sea lanes for passage of foreign ships in the archipelagic waters. Although the archipelagic states preferred the use of these sea lanes to be subject to the rule of innocent passage, demands from maritime states eventually led to a regime of passage comparable to transit passage which is less stringent¹⁴³. The interests of the user states have been taken into account in order that their freedom of navigation will not be obstructed.

However, the archipelagic states have to balance their interests of maintaining territorial integrity with the right of user states to navigate uninterruptedly through the archipelagic waters. The two biggest archipelagic states and the primary proponents of archipelagic principles, Indonesia and the Philippines have to consider their respective security interests, economic interests as well as the environment.

In protecting the security interest, archipelagic state may limit the number of sea lanes designated and may chose the shortest possible routes or it may limit certain types of vessels or vessels carrying certain types of cargos¹⁴⁴. The archipelagic state is permitted to adopt laws or regulations that will govern the exercise of archipelagic sea lanes passage but should not result to hampering or impairing the relevant right of passage¹⁴⁵ The vessels and aircrafts are obliged to comply with the following conditions

¹⁴³ *Supra*, footnote 107 at p. 161

¹⁴⁴ *Supra*, footnote 18 at p. 170

¹⁴⁵ *Supra*, footnote 23 at p. 319

under Articles 39 and 40 of UNCLOS while exercising the right of archipelagic sea lanes passage:¹⁴⁶

1. ships and aircraft exercising right of archipelagic sea lane passage shall proceed without delay;
2. they are not allowed to cause any threat to the security of archipelagic State;
3. ships shall comply with international rules for preventing collisions between ships;
4. they shall take necessary precautionary measures to prevent causing of pollution to the marine environment.

While it is true that designating archipelagic sea lane passage is the ultimate responsibility of archipelagic States to the international community, it shall also be considered that maintaining territorial integrity is paramount to other obligations. There are certain important interests which the archipelagic state cannot give up, for instance its maritime security, to satisfy concerns of the user states. Hence, designation of archipelagic sea lanes shall be viewed as the greatest contribution of archipelagic states to the international community, particularly to major maritime powers because their right to navigation through archipelagic waters is being upheld and guaranteed.

¹⁴⁶ *Supra*, footnote 21 at p. 334

CHAPTER IV

INDONESIA'S COMPLIANCE

The archipelagic sea lanes passage (ASLP) is extremely important to international commercial and naval navigation particularly through Indonesian and Philippine archipelagic waters and international straits.¹⁴⁷ Major maritime powers claimed uninterrupted passage through these archipelagos for reasons of international trade and strategic security, like the United States for the transit of its submarine to and from Guam, as well as Japan for the passage of its oil tankers to and from the Persian Gulf.¹⁴⁸ From the view point of these maritime powers these archipelagic states hamper free navigation because they lie at the crossroad of two great oceans, Indian and Pacific Oceans. Indonesia, in particular, the largest archipelagic state in the world with 5.8 million square kilometres consisting of 0.3 million square kilometres of territorial sea, 2.8 million square kilometres of archipelagic waters and 2.7 million square kilometres of EEZ, is lying not only between these oceans but also between two continents, Asia and Australia.¹⁴⁹ Hence, absence of sea lanes would considerably delay navigation activities of their commercial and military fleets because they have to take a long route.

¹⁴⁷ David L. Larson, *Innocent, Transit and Archipelagic Sea Lane Passage* Ocean Development and International Law Vol. 18 No. 4, 1987 at p. 417

¹⁴⁸ *Ibid.*

¹⁴⁹ Arif Havas Oegroseno, *Indonesia's Maritime Boundaries* in Robert Cribb and Michelle Ford (Editors) *Indonesia Beyond the Water's Edge*, Pasir Panjang, ISEAS Publishing 2009 at p. 49

Figure 1 Map of the Republic of Indonesia



Source: Ministry of Marine Affairs and Fisheries, Republic of Indonesia <http://www.dkp.go.id> 5 July 2010

It was previously pointed out that it is not mandatory upon the archipelagic state to designate archipelagic sea lanes passage. However, if it chooses to designate, Article 53(4) requires that the designation includes all normal passage routes used for international navigation. From the Indonesian perspective, this means that it can only exercise its full sovereignty over its archipelagic waters if it designates a full regime of archipelagic sea lanes through its waters.¹⁵⁰ The fact that a number of straits are also located in Indonesia like the Straits of Malacca and Singapore, the Sunda Strait and Lombok Strait, means that there is a need to designate sea lanes which are not duplicative for purposes of enhancing safety of navigation, protection of the environment and strengthening the security of the maritime domain.¹⁵¹

¹⁵⁰ *Supra*, footnote 132 at p. 62

¹⁵¹ Arif Havas Oegroseno, *Archipelagic Sea Lanes: The Indonesian Experience* in Myron H. Nordquist, Tommy T. B. Koh and John Norton Moore (Editors), *Freedom of the Seas, Passage Rights and the 1982 Law of the Sea Convention*, Leiden: Martinus Nijhoff Publishers 2008 at p. 388

In this regard, Indonesia started the process of designating archipelagic sea lanes passage in its waters in 1994 by conducting national surveys, and in 1995 it undertook national inter-agency coordination.¹⁵² In 1996, it began its consultations with the International Hydrographic Organization and with interested user states such as Australia, Japan, the United States and the United Kingdom on the designation of archipelagic sea lanes as well as the rules that will govern the same.¹⁵³ Since the beginning of the negotiation, it has been the intention of the United States, whose prime mission is to strengthen the capability to provide global reach through sea power, to ensure that all normal routes and transit through the area would be properly included in the designation.¹⁵⁴ With regard to Australia, its concern is not only regional security but also economic aspects in case of any erosion of free access through the sea-air gap to their north.¹⁵⁵

On the other hand, Indonesia had taken into account important factors, from technical requirements to environmental matters, before the axis of sea lane was decided. These include the presence of maritime installations and structures, underwater cables and pipelines, the needs of international vessels and aircraft that intend to pass through or over Indonesian waters, the capability of law enforcement agencies to monitor the archipelagic sea lanes, the maintenance of peace, stability and security in the country's heavily populated coastal zones, the intensity of fishing activities and the need to protect marine parks and ecosystems.¹⁵⁶ Considering that the establishment of archipelagic sea lanes is on territorial waters of the archipelago, it has to re-adjust its archipelagic starting lines in the Natuna Sea.¹⁵⁷

¹⁵² *Ibid.*

¹⁵³ *Supra*, footnote 132 at p. 63

¹⁵⁴ Mark F. Mayer, *Archipelagic Sea Lanes: Designation Factors and Effects on Operational Art*, Naval War College Report, 1999 at p. 4 <http://www.dtic.mil> 10 May 2010

¹⁵⁵ *Ibid.*

¹⁵⁶ *Supra*, footnote 1132 at p. 63

¹⁵⁷ Indonesia Diplomatic Handbook, Washington, DC: International Business Publications 2008 at p. 137 <http://books.google.se> 30 June 2010

Additionally, Indonesia had indicated that an east – west sea lane through the Java Sea, which is a major normal route for international navigation, was not likely to be included in the proposal. The United States and Australia which are concerned about the non-inclusion of other normal routes opposed the proposal stressing on the requirements of UNCLOS 1982 that all normal routes should be included in designation of archipelagic sea lanes, hence it urged Indonesia not to submit a proposal unless it include all normal routes.¹⁵⁸ Notwithstanding, Indonesia submitted in 1996 its proposal to IMO for the designation of archipelagic sea lanes passage in accordance with Article 53(9), with rules to govern their use which resulted from coordination with the user states.¹⁵⁹

4.1 The Indonesian Submission

The United States maintains its position that the Indonesian submission should be regarded as a partial designation only; that the right of archipelagic sea lanes passage shall continue to be applied in routes used for international navigation through the archipelago and that the right of innocent passage should not be affected by the designation of archipelagic sea lanes passage.¹⁶⁰ Australia's view in this regard is that the proposed mechanism shall be interpreted in line with the issue of normal passage routes, number and location of sea lanes and that the outcome of the consideration of the proposal shall reflect the balance of interests of the user states and archipelagic state.¹⁶¹ In line with the Indonesian proposal, the IMO issued Resolution MSC. 71(69) entitled Adoption of Amendments to the General Provisions of Ships' Routing (RESOLUTION

¹⁵⁸ Jonathan P. Edwards, *The Development and Operational Impact of Indonesia's Approved Partial System of Archipelagic Sea Lane*, Naval War College Report 1999 at p. 16 <http://www.dtic.mil> 10 May 2010

¹⁵⁹ *Supra*, footnote 132 at p. 64

¹⁶⁰ *Supra*, footnote 23 at p. 328

¹⁶¹ *Ibid.*

A.572(14), as amended) where the General Provisions for the Adoption, Designation and Substitution of Archipelagic Sea Lanes (GPASL) is embodied in Annex 2 thereof to serve as guidelines for the adoption of proposals on archipelagic sea lanes (see Annex 1). GPASL provides the concept of a “partial archipelagic sea lane proposal” which means the proposal made by an archipelagic state which does not meet the requirement to include all normal passage routes and navigational channels as required by UNCLOS (paragraph 2.2). In 1998, in its 69th Maritime Safety Committee session through Resolution MSC 72(69) (see Annex 2) the IMO accepted the proposal as partial designation of archipelagic sea lanes because it represented only north/south routes.¹⁶² This means that routes used for international navigation which were not covered in the proposal remain available for archipelagic sea lanes passage while the remainder of archipelagic waters is available for innocent passage.¹⁶³ With regard to the east-west route from the southern end of the Malacca Strait to the Arafura Sea, it will be required to satisfy the IMO rules on designation of archipelagic sea lanes passage.

The accepted proposal of Indonesia consists of the following three north-south routes of archipelagic sea lanes passage:¹⁶⁴

- ASL I: Sunda Strait – Karimata Strait – Natura Sea – South China Sea
- ASL II: Lombok Strait – Makasar Strait – Sulawesi Sea
- ASL III A: Sawu Sea – Ombai Strait – Banda Sea (West part of Burn Islands) – Seram Sea (Eastern part of Mongole Island) – Maluku Sea - Pacific Ocean
- ASL III B: Timor Sea – Leti Strait – Banda Sea (West part of Burn Islands) – Seram Sea (Eastern part of Mongole Island) – Maluku Sea - Pacific Ocean

¹⁶² *Supra*, footnote 20 at p. 13

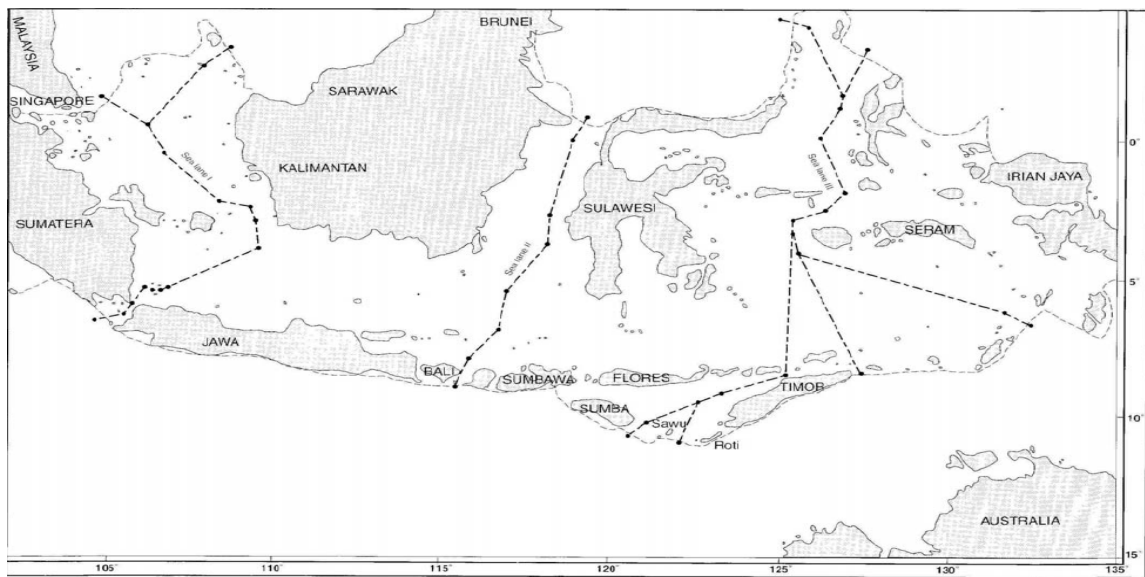
¹⁶³ *Ibid.*

¹⁶⁴ UN DOALOS, *Bulletin No.52*, New York: United Nations 2003 at p 23; Indonesia Diplomatic Handbook at p 137 <http://books.google.se> 30 June 2010

ASLIII C: Arafura Sea – Banda Sea (West part of Burn Islands) – Seram Sea (Eastern part of Mongole Island) – Maluku Sea - Pacific Ocean

ASL I facilitates navigation from the Indian Ocean, through Sunda Strait while ASL II, the central route, facilitates navigation from Indian Ocean through Lombok Strait and Makassar Strait and to Sulawesi Sea and Pacific Ocean and Philippine waters and lastly ASL III, which is in the southern part with three branches, facilitates the navigation from Timor Sea and Arafura Sea to the Pacific Ocean through Sawu Sea, Banda Sea, Seram Sea and Molucca Sea.¹⁶⁵ All these routes were indicated in the map submitted to the IMO. It may be noted that the designation did not include east-west route although the user states insist on this issue.

Figure 2 Indonesian Archipelagic Sea Lanes I, II and III



Source: Resolution MSC.72(69) <http://www.imo.org> at p. 9

The IMO Resolution was subsequently implemented through Indonesian Government Decree No. 37/2002 dated 28 June 2002 and referred to as Alur Laut

¹⁶⁵ *Ibid.*

Kepulauan Indonesia (ALKI) which made it the very first archipelagic State to designate archipelagic sea lanes passage (Annex 3).¹⁶⁶ This decree was primarily based on the rules of UNCLOS 1982 and the outcome of consultations with the user states. It acknowledges certain rights of user states.¹⁶⁷ Article 2(1) thereof provides the right of innocent passage of foreign vessels through Indonesian territorial seas and archipelagic waters for transiting from one part of the EEZ or high seas to another part of the EEZ or high seas; Articles 2, 3 and 11 prescribe the right of archipelagic sea lane passage through certain parts of the Indonesian territorial seas and archipelagic waters referred to in the Decree as specific archipelagic sea, while Article 4(1) provides the right to navigate in normal mode solely for the purpose of continuous, direct, expeditious passage and unobstructed transit in line with Article 53 (3) of UNCLOS. The Decree also requires that ships and aircrafts exercising the right of archipelagic passage and overflight are not allowed to deviate more than 25 nautical miles from the axis of the archipelagic sea lane and may not navigate or fly closer to the coast than 10% of the distance between the nearest points on the islands bordering the sea lane.¹⁶⁸

With the adoption of the proposal and its subsequent enactment into national legislation, Indonesia has indicated its intention to balance the interests of the user states with its own national interest although the user states continue to press the issue on additional routes.

4.2 The User States' Perceptions on Indonesia's Partial ASLP Designation

The prerogative given by UNCLOS to the archipelagic states to submit sea lanes that they want to be approved may give rise to a situation where they may only propose

¹⁶⁶ *Supra*, footnote 132 at p. 63

¹⁶⁷ *Ibid.* at p. 66

¹⁶⁸ *Ibid.*

a small number of sea lanes for designation that best serve their interest.¹⁶⁹ This is reflected in the submission of Indonesia which has become the primary concern of the United States and Australia because an east-west passage is not included in the designation of archipelagic sea lanes passage although it is a normal route under UNCLOS. According to a study conducted in the US Naval War College in 1998, potential consequences to operational planning elements may impact the operational commander in the case that Indonesia fails to provide or designate a sufficient number of sea lanes particularly through the east-west corridor.¹⁷⁰ These include effects on the sequencing and synchronization of forces if the routes in the archipelago are insufficient because alternative routing will be employed; it will expand or extend the overall force structure and logistics trail thereby committing more assets to support movements, deception actions and operational protection requirements and an increased risk to force structure is immediately present because of the funnelling of forces created as both commercial and military assets are forced to utilize designated archipelagic sea lanes. This means that insufficient routes may reduce the flexibility available to operational commanders in passing through Indonesian archipelagic waters which will definitely hamper operations. In a related study in 1999, in the case that the limited number of archipelagic sea lanes will not affect operational plans, it will still require changes at the tactical level where ships will need to remain within the designated sea lane and will no longer be able to operate close to the shore for safety reasons.¹⁷¹

Relatively, while Indonesia maintains before the international arena that its designation of archipelagic sea lanes is only partial and that the right of archipelagic sea lanes passage is available to transiting vessels that navigate through normal routes used

¹⁶⁹ *Supra*, footnote 154 at p. 8

¹⁷⁰ *Ibid.* at p 10

¹⁷¹ *Supra*, footnote 158 at p. 22

for international navigation, Government Decree 37/22 provides otherwise.¹⁷² It is stated in this law that innocent passage is the only right of passage that could be exercised outside the three designated sea lanes, which creates difficulty for transiting vessels.¹⁷³

Considering that the user states are persistent in their stand that east-west route passage is considered as normal route, the US asserted what it claimed to be customary right, sent an aircraft carrier *USS Carl Vinson* and five fighter aircrafts on manoeuvres near the island of Bawean in Java Sea in July 2003, which created inconvenience in Indonesia.¹⁷⁴ Five F18 Hornet jets escorting the aircraft carrier were detected by Air Force radar manoeuvring for more than 2 hours over Bawean Island in East Java. Indonesian government officially lodged its “deep concern” about the incident through US Ambassador in Indonesia during that time, stating that the US Navy F18 Hornets may be violating Indonesia’s airspace.¹⁷⁵ Aside from this incident, it has been noted that some user states claim that they are passing through international waters even if they are navigating through Indonesian waters and even in the designated archipelagic sea lanes. Indonesia is not pleased with this perception but it has so far tolerated the breaches for the sake of understanding the balance that was so painstakingly negotiated over many years in order to avoid unnecessary conflict.¹⁷⁶

¹⁷² Penny Campbell, *Indonesian archipelagic Sea Lanes*, Australian Maritime Issues 2005, Papers in Australian Maritime Affairs No.16 p. 118 <http://www.navy.gov.au> 25 June 2010

¹⁷³ *Ibid.*

¹⁷⁴ *Supra*, footnote 131 at p. 68

¹⁷⁵ Tiarna Siboro, *Minister summons US Envoy over Hornet intrusion*, The Jakarta Post 11 July 2003 <http://www.thejakartapost.com/news/2003/07/11/minister-summons-us-envoy-over-hornet-intrusion.html> ; Fabiola Desy Unidjaja, *Government to protest U.S. over intrusion*, The Jakarta Post 10 July 2003 <http://www.thejakartapost.com/news/2003/07/10/government-protest-us-over-intrusion.html>

¹⁷⁶ *Supra*, footnote 151 at p. 391

4.3 Present Interpretation of Archipelagic Sea Lanes Passage

The issues raised by the user states particularly the United States and Australia were all embodied in the GPASL. The designation of archipelagic sea lanes passage is regarded as partial under this General Provision. This means that Indonesia is still required to propose for adoption further archipelagic sea lanes including all normal routes and navigational channels; it has to inform the IMO of its plans for the future designation and submission of additional sea lanes, and foreign states are entitled to exercise the right of archipelagic sea lanes passage through all routes used for international navigation.¹⁷⁷ However, the GPASL is considered as against the provision of Article 53(4) as the article provides only a designation covering all normal routes used for international navigation.¹⁷⁸

Also, this brings the situation where the user states will continue to request additional routes for archipelagic sea lanes passage and would take away the prerogative given to the archipelagic state of determining the necessary archipelagic sea lanes for management of maritime traffic.¹⁷⁹ Further, the consideration by IMO of Indonesia's submission reflects that the regime is focused on the preservation of interests of user states and further diminishes the control of archipelagic states.¹⁸⁰ If this is the case, this situation is not favourable to the archipelagic state because its position may no longer be equal to that of the user states. Article 53 may not be implemented by other archipelagic states and they may choose to apply restrictive policies to govern the use of its waters. In

¹⁷⁷ *Supra*, footnote 23

¹⁷⁸ *Supra*, footnote 139

¹⁷⁹ Jay L. Batongbakal, *Barely Skimming the Surface: Archipelagic Sea Lanes Navigation and the IMO* in Alex G. Elferink, Donald R. Rothwell (Editors) *Oceans Management in the 21st Century: Institutional Framework and Response*, Leiden: Brill Academic Publishers 2004 at p. 90

<http://site.ebrary.com/lib/wmulib> 10 April 2010

¹⁸⁰ *Supra*, footnote 23 at p. 332

the case of Indonesia, it chose to designate archipelagic sea lanes passage and considered it as a step closer to implementing its rights over its waters.¹⁸¹

4.4 Factors Affecting the Archipelagic Sea Lanes

It bears stressing that in designating archipelagic sea lanes passage, it would be important for an archipelagic state to take into great consideration its legitimate security interests as well as economic and environmental matters.¹⁸² Indonesia has taken note of these factors, particularly the matter of security. The interpretation of the user states on Indonesian archipelagic waters and the archipelagic sea lanes passage as international waters is a security issue because it involves claim of jurisdiction over Indonesian waters. Conflict may arise if both states assert their respective rights over these waters. Recall the incident in July 2003 involving US F18 Hornet jets detected flying Indonesian airspace without prior clearance while escorting the aircraft carrier *USS Carl Vinson* that alarmed the government.¹⁸³ Although there were no incidents of similar nature that have been recorded since that time, it does not follow that it will not be repeated in the near future.

Other major factors that affect archipelagic sea lanes passage and the larger part of Indonesian waters are the maritime crimes of piracy and armed robbery. It may be noted that ASL I passes through the Natuna Sea before dividing towards the Singapore Strait and South China Sea. In 2009, International Maritime Bureau (IMB)¹⁸⁴ identified Natuna Islands, Anambas and Mangkai islands as the three piracy-prone areas in

¹⁸¹ *Supra*, footnote 132 at p. 69

¹⁸² *Supra*, footnote 18 at p. 169

¹⁸³ *Supra*, footnote 132 at p. 68

¹⁸⁴ A specialised division of International Chamber of Commerce (ICC) established in 1981 to serve as a focal point in fighting maritime crimes and malpractices. <http://www.icc-ccs.org> 22 July 2010

Indonesian waters.¹⁸⁵ The IMB also issued warnings to mariners to take necessary precautionary measures while passing through these waters (see Annex 4). The pirates are armed with guns, knives or machetes and many attacks have gone unreported. Similarly, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)¹⁸⁶ made a special report on piracy incidents in Natuna, Anambas and Magkai Islands where a total of eleven incidents of piracy attacks on vessels underway transpired in the area between January to June 2010. The analysis of ReCAAP in these incidents is that those reported in 2008 and 2010 were more scattered and occurred in a larger area than those in 2009.¹⁸⁷ These two reports signify that piracy and armed robbery, as the case may be, are taking place in the area where ASL I lies and divides to Singapore Strait and South China Sea. The pirates operate in these areas considering that the waters are less monitored because of the distance.

More attention must also be given to terrorism at sea as a problem that is likely to grow in the future. Although there have been no major incidents of terrorist attacks on board the vessel in the areas where three archipelagic sea lanes traverse, in case a terrorist attack were to occur, it would have an immense impact not only on the security of the state but also on the global economic and political situation. The trade would definitely be disrupted because these areas may be closed for shipping or fishing in case of a single terrorist attack. Taking into account the total value of trade passing through archipelagic sea lane, 300USD trillion annually that would be lost.¹⁸⁸ In the event that Sunda Strait and the Lombok-Makasar Strait (ASL II) would be blocked, the only detour available is to go around the south of Australia, hence transporting crude oil from

¹⁸⁵ ICC IMB Piracy and Armed Robbery Against Ships Report – Annual Report 2009 at p. 22
<http://www.icc-ccs.org> 22 July 2010

¹⁸⁶ The first government-to-government agreement that addresses the incidence of piracy and armed robbery in Asia. The agreement was finalised on 11 November 2004 in Tokyo, and came into force on 4 September 2006. <http://www.recaap.org> 02 July 2010

¹⁸⁷ Special Report on Situation Update off the Islands of Anambas, Natuna and Mangkai, ISC Special Report 02/2010. <http://www.recaap.org> 02 July 2010

¹⁸⁸ Djoko Sumaryano, *The Indonesian Maritime Coordinating Board* in Robert Cribb and Michelle Ford (Editors) *Indonesia Beyond the Water's Edge*, Pasir Panjang: ISEAS Publishing at p. 134

Middle East to Japan would add two weeks to the voyage and additional eighty (80) or so tankers would be needed to fulfil crude oil requirements.¹⁸⁹ Terrorism at sea in this regard cannot be discounted because the vessels are regarded as vulnerable targets and sea lanes are being used by international vessels whether commercial or military. Terrorists could gain the international attention that they always seek in staging an attack or series of attacks.

The significance of Indonesian sea lanes cannot be discounted. They definitely provide the shortest routes from the Indian Ocean to the rest of the world. While there are still important practical issues to be resolved relative to Indonesian sovereignty and the reasonable rights of international shipping to pass through Indonesian waters, Indonesia chose to designate archipelagic sea lanes passage and considered it as a step closer to implementing its rights over its waters.¹⁹⁰

¹⁸⁹ Kazumine Akimoto, *The Current State of Maritime Security – Structural Weaknesses and Threats in the Sea Lanes*, “Maritime Security in Southeast Asia and Southwest Asia” conference paper 2001 at p. 7 <http://www.iips.org> 24 June 2010

¹⁹⁰ *Supra*, footnote 132 at p. 69

CHAPTER V

THE PHILIPPINES OUTSTANDING CONCERNS

Similar to Indonesia, the Philippines, as one of the principal sponsors of the archipelagic principle brought this concept to the international community for the sake of unity of land, water and people and territorial integrity. The Philippine archipelago consists of 7,107 islands which are linked by waters. It has a total coastline length of 36,289 kilometres and total land to water ratio of 1:1.2. The land area is approximately 300,000 square kilometres and total water area of 2.2 million square kilometres.¹⁹¹ It lies between the Indian Ocean and the Pacific Ocean. The waters around the archipelago are important to international navigation because commercial ships passing through the Malacca Strait bound for Guam and Hawaii, must pass through Philippine archipelagic waters.¹⁹² These geographic characteristics suggest the need for the country to protect the security of its waters from unlawful use, external threats and to preserve marine resources and the environment.¹⁹³

Prior to UNCLOS 1982, the Philippines had already embraced the archipelagic doctrine and incorporated it in its national legislations in 1961 through the Republic Act (RA) 3046 as amended by RA 5446 of 1968 as well as in the 1935 Constitution and the

¹⁹¹ The World Bank Group, *Coastal and Marine Resource Management*, The Philippine Environment Monitor 2005 at p. 1 <http://www-wds.worldbank.org> 4 August 2010

¹⁹² Mario Manansala *Designation of Sea Lanes in the Philippines*, in Maribel B Aguilos (Editor) *Ocean Law and Policy Series Vol 1 No1*, Diliman: Institute of International Legal Studies 1997 at p. 7

¹⁹³ *Supra*, footnote 35 at p. 1

1973 Constitution. Further, it adopted the principle in Article I of the 1987 Constitution which specifically defines Philippine territory as:

“The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.”¹⁹⁴

From the time the Philippines issued *note verbale* in 1955, its state practice has always been put in question as to whether the government complies with international law because its laws on maritime zones are not consistent with it. When the Philippine government signed the UNCLOS 1982, it issued a written declaration that “the provisions of the Convention on archipelagic passage through sea lanes do not nullify or impair the sovereignty of the Philippines as an archipelagic state over the sea lanes and do not deprive it of authority to enact legislation to protect its sovereignty, independence and security.”¹⁹⁵ It further stated that “the concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters within the economic zone or high sea from the rights of foreign vessels to transit passage for international navigation.” This very declaration has earned adverse reactions from maritime powers charging that the Philippines was making an unauthorized reservation or evading the obligations of the Convention. In response, the Philippines issued another declaration in 1988 assuring the State Parties to the UNCLOS 1982 that it would abide by the provisions of the Convention.¹⁹⁶

¹⁹⁴ The 1987 Constitution of the Republic of the Philippines <http://www.chanrobles.com/article1.htm>
6 July 2010

¹⁹⁵ *Supra*, footnote 41 at p. 114

¹⁹⁶ *Supra*, footnote 13 at p. 11

However, it may be understood that the conflicting regimes in domestic laws were enacted prior to its ratification of the Convention.¹⁹⁷ The Philippines is continuously revisiting and harmonizing its laws with UNCLOS. Recent development in this regard was the enactment in March 2009 of RA 9522 otherwise known as an *Act to Amend Certain Provisions of Republic Act No. 3046, as Amended by Republic Act No. 5446, to define the Archipelagic Baselines of the Philippines, and for Other Purposes*. It adopted the straight baselines system consistent with Article 47 of UNCLOS. This particular legislation was deposited with the UN Secretary General on 21 April 2009, in compliance with Article 47 (9).

5.1 Perspective as an Archipelagic State

From the country's standpoint, there is no doubt that the Philippines is determined to fulfil its duties and obligations under the Convention. However, it is how these obligations and duties may be best carried out while at the same time protecting its own interests.¹⁹⁸ It may be noted that based on its 1987 Constitution there is no distinction between archipelagic waters and internal waters while in the Convention these two maritime zones are specifically delineated. The archipelagic waters are constantly equated as internal waters because of the inseparable unity of land and water domain.¹⁹⁹ The waters adjoining land territory are regarded as the extension of the land. Further, the waters around, between and connecting the islands of the archipelago had always been highways of communication between the islands which brought the people together under one sovereign state.²⁰⁰ They are directly within sight of a large part of the

¹⁹⁷ *Supra*, footnote 35 at p. 3

¹⁹⁸ Jay L. Batongbakal *Archipelagic Sea Lanes and Transit Passage Through Straits: Shared Responsibilities and Essential to Implementation*, Papers in Australian Maritime Affairs No. 10, 2002 at p. 101 <http://www.navy.gov.au/publications> 24 June 2010

¹⁹⁹ *Supra*, footnote 41 at p. 45

²⁰⁰ *Ibid.*

population; hence, the government is expected to exercise full control over all the activities in the archipelagic waters, particularly those undertaken by foreign vessels.²⁰¹

For this reason, the management of these waters should be closer to the internal waters regime than to territorial sea regime and the state's protection of this maritime zone from foreign intrusion is equated with the preservation of national integrity.²⁰² Be that as it may, although the archipelagic waters are regarded as internal waters, the Philippines continue to respect and recognize traditional navigational right of innocent passage of foreign vessels over Philippine waters in consonance with the UNCLOS.

5.2 The Philippine Archipelagic Sea Lanes Proposal

While designation of archipelagic sea lanes passage is the consequence of acquiring archipelagic status, the Philippines has yet to submit a proposal to IMO on the designation of archipelagic sea lanes passage. This also raised the issue of whether the Philippines would fulfil its statements made in 1988 that it would harmonize its domestic legislation with the provision of the Convention and that necessary steps were being undertaken to enact legislation dealing with the establishment of archipelagic sea lanes passage.²⁰³ Though there was a declaration, the Philippines is of the view that the matter of designating sea lanes should be studied carefully.²⁰⁴ This is of such vital concern because it critically puts into test the freedom of navigation, sovereignty over the archipelagic waters granted by UNCLOS 1982 to the archipelagic states and the Philippine legislations in this regard.

²⁰¹ *Supra*, footnote 198 at p. 102

²⁰² *Ibid.*, at p. 102

²⁰³ *Supra*, footnote 123 at p. 128

²⁰⁴ *Supra*, footnote 192 at p. 8

In line with this, two archipelagic sea lanes were proposed to be designated in the country; the East-West sea lane and the North-South sea lane.²⁰⁵ The East-West will traverse from Balabac Strait to Sulu Sea Junction going through Bohol Sea between Northern Mindanao and Southern Negros Islands and the Bohol Islands then through Surigao Strait going through Pacific Ocean. The North-South route is from Celebes Sea going through Sibuto Passage between Sibuto Island and Simunol Island, Bongao passing through the Sulu Sea to Mindoro Strait into the South China Sea.

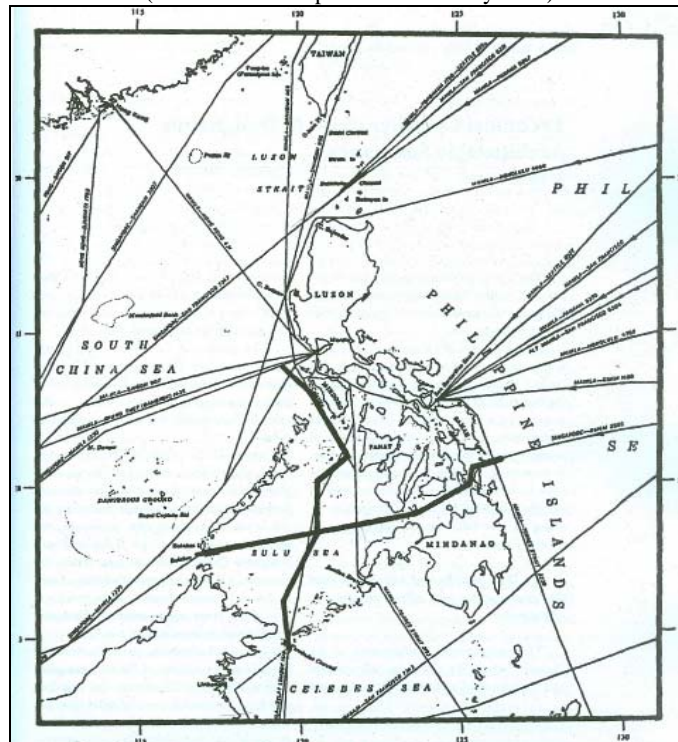
The straits of Balabac, Surigao between Leyte and Mindanao are normal routes used for international navigation while the straits of Mindoro, Balabac and Sibuto passage have to be settled because of full sovereignty exercised by the country over these waters.²⁰⁶ Nonetheless, the proposed sea lanes adequately cover the usual passage routes because the East-West route will serve the ships coming from the Malacca Strait going to Guam, Hawaii and other destinations in the Pacific while the North-South will serve the ships coming from the west coast of Australia and Lombok Strait going to Taiwan, Hong Kong, Northern China, Korea and Japan.²⁰⁷

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ Renato B. Fier, *Technical Considerations in Designating Sea Lanes*, in Maribel Aguilos (Editor) *Designation of Sea Lanes in the Philippines*, Diliman, Institute of Legal Studies 1997 at p. 13

Figure 3 Philippine Proposed Archipelagic Sea Lanes Passage
(The ASLP are represented in heavy lines)



Source: *Ocean and Law Policy Series, Vol 1 No. 1 1997 at p11*

The proposed sea lanes follow the requirements of UNCLOS specifically that they should not deviate more than 25 nautical miles to both sides of the axis line, provided that ships and aircraft do not navigate more than 10% of the distance closer to the coast between the nearest points on islands bordering the sea lanes.²⁰⁸ This means that the 25 nautical miles is an allowance for navigational purposes to avoid collisions of ships and aircraft but it does not prevent the archipelagic states from prescribing shorter distance depending on the situation.²⁰⁹ In this regard, the Philippines may limit the physical extent of the archipelagic waters where the sea lanes may be designated for safety purposes. Further, the difference provides a greater degree of flexibility in

²⁰⁸ *Supra*, footnote 192 at p. 8

²⁰⁹ *Supra*, footnote 198 at p. 109

protecting the coast of the islands adjacent to archipelagic sea lanes from intrusion.²¹⁰ It may also be noted from the figure above that the sea lanes would traverse in the waters adjacent to the islands where there are existing fishing grounds. Hence, though deliberation on the matter is being undertaken.

5.3 Issues Covering the Philippines Proposed ASLP

Based on Article 53 of the UNCLOS, archipelagic sea lanes passage should be designated through archipelagic waters, covering all normal routes used for international navigation and shall traverse to the adjacent territorial sea. Though the Philippine proposal may have covered all routes normally used for international navigation, it is not yet submitted to IMO for approval. A number of factors should be taken into account in the event that the Philippines chose to designate archipelagic sea lanes.²¹¹ These include the effectiveness of the government to monitor the sea lanes, security of the country, measures to ensure safe, expeditious and continuous passage, fisheries and marine environment, inter-island shipping and the possible connection with the Indonesian established ASLP.

5.3.1 Legal Issues

It may be recalled that the archipelagic waters referred to under the Convention are considered as internal waters under the 1987 Constitution. These are the waters landward of the baselines (though in Philippine legislation they are described as waters around, between and connecting the islands of the archipelago). Under the internal water regime, the state enjoys absolute sovereignty and no right of innocent passage exists.²¹²

²¹⁰ *Ibid.*

²¹¹ *Supra*, footnote 35 at p. 9

²¹² *Supra*, footnote 3 at p. 61

This is the very essence of internal waters under the Philippine Constitution. Entry of foreign vessels may be prohibited and they may be apprehended for intrusion. This is where the problem would arise in designating archipelagic sea lanes passage.

There is constitutional issue in designating archipelagic sea lanes passage because the waters within the Philippine archipelago are national or internal waters.²¹³ In case the archipelagic sea lanes passage is established, it follows that the status of internal waters may be diluted or may be given two characteristics, that is, *internal waters with a strip of archipelagic waters* or *absolute sovereignty over internal waters can be exercised but diluted with rights given to foreign vessels to pass the internal waters through archipelagic sea lanes without permission of the Philippine government.*²¹⁴ It may be understood that the nature of the internal waters will be diminished because foreign vessels could pass through in normal mode even without prior notice to the government, thereby creating more legal issues.

Relatedly, taking into account that the Philippines (to include Cape Verde, Dominican Republic and Maldives) has designated archipelagic baselines in a manner not consistent with Article 47, no right of archipelagic sea lanes passage would exist because the presence of archipelagic waters is a condition precedent to this passage.²¹⁵

Considering the foregoing legal issues, it may be argued that the conflicting regime in domestic law may delay full implementation of Part IV of UNCLOS by the government.

²¹³ Jorge Coquia, *Some Legal and Constitutional Issues on Archipelagic Sea Lanes*, in Maribel Aguilos (Editor) *Designation of Sea Lanes in the Philippines*, Diliman: Institute of International Legal Studies 1997 at p. 55

²¹⁴ Gilberto B. Asuque, *Legal and Ocean Policy Implications of Sea Lanes Designation* in Maribel Aguilos (Editor) *Designation of Sea Lanes in the Philippines*, Diliman: Institute of International Legal Studies 1997 at p. 60

²¹⁵ Martin Tsamensi, Clive Schofield and Ben Milligan, *Navigation Through Archipelagos: Current State Practice* in Myron H. Nordquist, Tommy T.B. Koh and John Norton Moore (Editors) *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention*, Leiden: Martinus Nijhoff Publishers 2009 at p. 445

5.3.2 Environmental Issues

Other than legal issues, the marine environment is also taken into account. The government is of the view that by reason of closely knit geographical features, navigational corridors of 50 nautical miles wide for archipelagic sea lanes passage cannot be accommodated and in case sea lanes are designated, foreign vessels may still deviate by passing through non-designated routes invoking their right to innocent passage.²¹⁶ The proposed routes present threats to two of the most delicate marine biodiversity areas in the country and the world: the Tubbataha Reef, a World Heritage Site; and the Verde Island Passage Marine Corridor which is known as a world hot spot for marine biodiversity as well as center of shorefish biodiversity.²¹⁷

Hence, in lieu of establishing archipelagic sea lanes passage, the whole country will be designated as a Particularly Sensitive Sea Area (PSSA)²¹⁸ and associated protective measures (APMs) will be instituted in order that security, good order and peace may be better served.²¹⁹ The APMs will be instituted to guide vessel transit in exercise of the right of archipelagic sea lanes passage. Specific measures, like routeing of ships can be used to control the maritime activities in the PSSA. Simply put, designation of archipelagic sea lanes passage may not be applicable to the Philippines because of its unique marine environmental features and geographical set up.

²¹⁶ Alberto A. Encomienda, *Archipelagic Sea Lanes passage and the Philippines*, in Myron H. Nordquist, Tommy T.B. Koh and John Norton Moore (Editors) *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention*, Leiden: Martinus Nijhoff Publishers 2009 at p. 406

²¹⁷ *Ibid.*

²¹⁸ A PSSA is an area that needs special protection through action by IMO because of its significance for recognized ecological, socio-economic, or scientific attributes where such attributes may be vulnerable to damage by international shipping activities. Resolution A.982(24) <http://www.imo.org/environment>

²¹⁹ *Supra*, footnote 216 at p. 406

5.3.3 Major Maritime Security Issues

Apart from legal and environmental issues surrounding the designation of archipelagic sea lanes passage, maritime security remains to be the primary factor with respect to passage of vessels through archipelagic waters.²²⁰ Maritime security in the Philippines is a key component of national security and it is specifically defined under its National Marine Policy of 08 November 1994, as “a state wherein the country’s marine assets, maritime practices, territorial integrity and coastal peace and order are protected, conserved and enhanced.”²²¹ It involves national security aspects and security issues with regional impact.²²² The former includes protection of the integrity of the Philippine territory whereas the latter comprises illegal activities that fall within the purview of transnational crimes and may affect neighbouring states.²²³ Protection of territorial integrity is of paramount importance to Philippine defence policy which involves addressing land based insurgencies which is a long standing security concern of the government and maintaining physical presence to safeguard the territories in the Philippine-occupied islands in the Spratly.²²⁴

In protecting its territory, the passage of military vessels in the Philippine waters without prior clearance from the government poses maritime security concerns. The government has never changed its policy of requiring prior notice of passage of warships for purposes of proper management of the very extensive vessel traffic that takes place daily and to avoid sources of friction.²²⁵ However, different notions of third states on the status of Philippine waters may undermine the prior notice requirement of the

²²⁰ *Supra*, footnote 179 at p. 96

²²¹ Michael Garcia, *Progress in the Implementation of the Philippine National Marine Policy: Issues and Option* 2005 at p. 57 <http://www.un.org/depts/los/nippon> 14 July 2010

²²² *Supra*, footnote 35 at p. 18

²²³ *Ibid.*

²²⁴ Rommel C. Banlaoi, *Security Aspect of Philippines-China Relations: Bilateral Issues and Concerns in the Age of Global Terrorism*, Manila: Rex Bookstore Incorporated 2007 at p 86-87 <http://books.google.se> 01 August 2010

²²⁵ *Supra*, footnote 179 at p. 98

government. The United States included the Philippines and Indonesia in its Freedom of Navigation Program 2000-2003 Operational Assertion as countries in which it can regularly assert its freedom of navigation.²²⁶ Under this Program it conducted dozens of routines passage through the waters of these two archipelagos. In 2000, it conducted 28 transits in the Philippine archipelago. It regarded the Philippines to have excessive straight baselines. In June 2009 it was reported that a Chinese submarine collided with underwater sonar array towed by destroyer *USS John McCain* at approximately 144 miles from Subic, potentially placing it in Mindoro Strait, Philippines.²²⁷ This indicates that they have different interpretations on the status of the waters of the Philippines. From the point of view of the Philippines, the baselines drawn are not excessive and are consistent with UNCLOS.

On the other hand, the waters in southern Philippines have always been a maritime security hot spot even before 9/11 because it is the home of Islamic separatist groups. The location where the proposed two archipelagic sea lanes passage will be established traverses the Sulu Sea in southern Philippines, an area of major concern to the government. The Sulu Sea is one of the theatres of operation of the terrorist groups Abu Sayyaf Group (ASG) and Moro International Liberation Front (MILF). There is a still high risk of a terrorist attack in the Philippines because of the presence in the country of these major terrorist groups that definitely have the capabilities to launch an attack at sea.²²⁸ The ASG which was founded in the early 1990s has proven its intent and capability to wage maritime terrorism in the bombing of Christian missionary ship

²²⁶ Annual Report to the President and the Congress 2002 Appendix E Freedom of Navigation Report <http://www.dod.mil/execsec> 15 July 2010; Freedom of Navigation 2000-2003 Operational Assertion <http://policy.defense.gov> 15 July 2010

²²⁷ Harry L. Roque Jr, *Dangerous Seas*, ABS CBN News 15 June 2009 <http://abs-cbnnews.com> 28 July 2010; Andrew Scutro *Navy was tracking Chinese Sub*, Navy Times 22 June 2009 http://www.navytimes.com/news/2009/06/navy_mccain_china_061909w/ 28 July 2010; Barbara Starr *Sub collides with sonar array towed by US Naval Ship* 12 June 2009 <http://edition.cnn.com/2009/US/06/12/china.submarine/index.html> 28 July 2010

²²⁸ Sam Bateman, *The Growing Significance of Coast Guards in the Asia-Pacific: A Quiet Development in Regional Maritime Security*, Ocean Yearbook Vol. 20 2006 at p. 521

MV Doulos in August 1991; kidnapping of twenty-one people, ten of whom were foreign tourists, in Sipadan, Malaysia in April 2000; abduction of three Americans and seventeen Filipinos in Dos Palmas Resort, Palawan in May 2001 and the bombing of *Superferry 14* in February 2004 after it left Manila Bay.²²⁹

Other than ASG, the MILF which was founded in 1978 with the aim to establish a separate Islamic state in southern Philippines through *jihad* has also extreme familiarity within the maritime domain. The group always denies its involvement in terrorist attacks in the south particularly that of *Our Lady of Mediatrix* in February 2000 at the bay off Mindanao which killed forty people. Despite MILF's continuous denial of their involvement in maritime terrorism, it has to be taken seriously because of its links to regional terrorist organizations, such as the Indonesian terrorist group Jemaah Islamiah (JI), which has been making plans for maritime terrorist attacks in Southeast Asia.²³⁰

While the gruesome terrorist attacks mentioned did not transpire in the proposed ASLP area, the ASG proved its maritime terrorist mettle and demonstrated its capabilities of operating outside its usual maritime turf.²³¹ The members of ASG and MILF live very close to the waters of Basilan, Sulu and Tawi-tawi where they have gained tremendous familiarity with the maritime environment.²³² Presently, these terrorist groups are operating in landbases. However, seas in southern Philippines are more vulnerable to terrorist attack because of difficulties to guard these waters. The proposed routes for archipelagic sea lanes passage are of no exception.

²²⁹ Rommel C. Banlaoi, *Threats of Maritime Terrorism in Southeast Asia* in Rupert Herbert-Burns, Sam Bateman and Peter Lehr (Editors) *Lloyd's MIU Handbook of Maritime Security*, London: Auerbach Publications 2005 at p. 257

²³⁰ Stefan Eklöf Amirell, *Political Piracy and Maritime Terrorism: A Comparison between the Straits of Malacca and the Southern Philippine* in Graham Gerard Ong-Webb (Ed) *Piracy, Maritime Terrorism and Securing the Malacca Straits*, Pasir Panjang: ISEAS Publishing 2006 at p. 61

²³¹ *Supra*, footnote 229 at p. 258

²³² *Ibid.*, at p. 258

It bears stressing that the discretion to designate archipelagic sea lanes remains on the archipelagic state. Although it is not mandatory, non-designation may be disadvantageous to the Philippines because the right of passage through these sea lanes may be exercised through routes used for international navigation and the state cannot monitor and regulate the passage of foreign vessels.²³³ The advantage to the Philippines if it designates sea lanes is that the routes over which vessels can exercise archipelagic sea lanes passage will become clear and monitoring of traffic therein for possible vessel-source pollution will be better implemented.

In the light of the preceding discussions, the Philippines recognizes the significance of archipelagic sea lanes passage. Once the sea lanes are designated, uncontrolled navigation over its waters will be prevented. Vessels shall respect the designated sea lanes and corresponding traffic separation scheme based on Article 53(11). However, it is carefully balancing the interest between the third states with its own interest as the possessor of jurisdictional rights over its waters. It may revisit its position with regard to designation of archipelagic sea lanes passage following the newly enacted Baseline Law, RA 9522, but the paramount importance of security of its waters will be considered.

²³³ *Supra*, footnote 213 at p. 53

CHAPTER VI

MARITIME SECURITY CHALLENGES

The Philippines and Indonesia may have different perspectives with regard to the establishment of archipelagic sea lanes passage. Indonesia preferred to designate these sea lanes to fully acquire archipelagic status while the Philippines chose to withhold the designation to assess carefully the needs of the user states and the concerns of the country. However, both states have common interests in protecting the archipelagic sea lanes from unlawful interference because such sea lanes traverse the archipelagic waters and the adjacent territorial sea. This implies direct access to the archipelagic domain right around the perimeter.²³⁴ Any incident that may happen on the archipelagic sea lanes passage will have direct effect on the archipelagic state concerned because it is within its maritime jurisdiction. The nature of archipelagic sea lanes passage is exposed to maritime security challenges be it maritime crimes or foreign intrusion.

Maritime security can be defined as those “measures employed by owners, operators and administrators of vessels, port facilities and offshore installations and other marine organizations or establishments to protect against seizure, sabotage, piracy, pilferage, annoyance or surprise”.²³⁵ The definition enumerates the crimes that may be committed against vessels while underway or anchored. Also, it denotes the state of being free from such threats.²³⁶ Maritime targets may be considered less attractive than

²³⁴ *Supra*, footnote 8 at p. 164

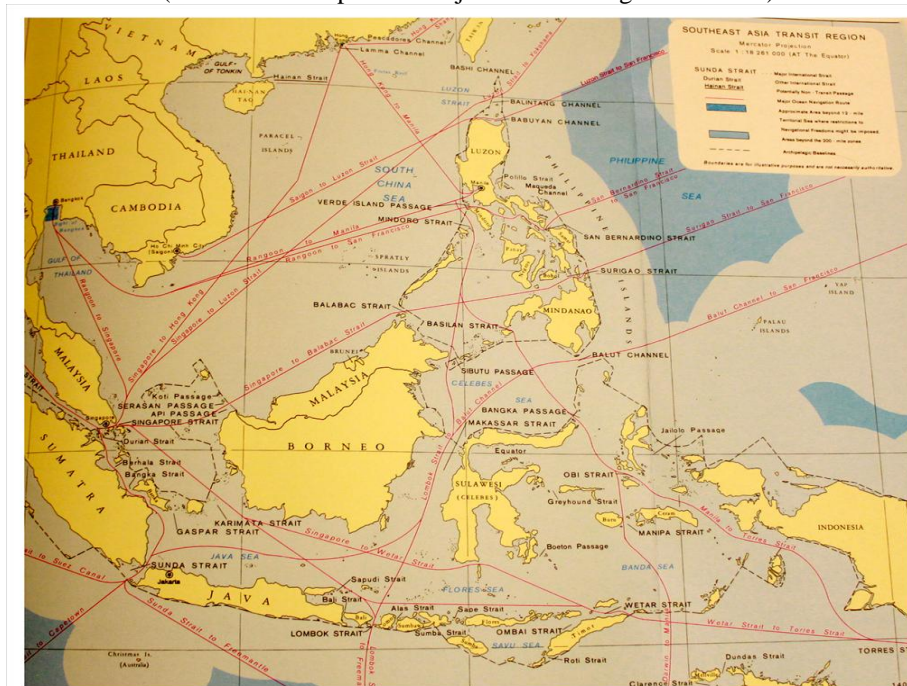
²³⁵ Kenneth Gale Hawkes, *Maritime Security*, Centreville, MD: Cornell Maritime Press, 1989 at p. 9

²³⁶ Maximo Q. Mejia Jr., *Law and Ergonomics in Maritime Security*, Lund: Lund University, Department of Design Sciences, 2007 at p. 5

land and air targets because the terrorist should possess a high degree of skills and capabilities in executing the attack. However, seas are apparently more vulnerable to terrorist attacks because of embedded difficulty to guard the waters.²³⁷ The Philippines and Indonesia contribute 24 and 59 percent, respectively; to the total 92,451 km coastline of Southeast Asian region.²³⁸ This situation raises the concern of these two world's largest archipelagos over their respective maritime zones and sea lanes used for international navigation even higher. The figure below illustrates the important routes for international navigation between Indonesia and the Philippines.

Figure 4 Southeast Asia Transit Region

(The red lines represent Major Ocean Navigation Routes)



Source: *Navigational Restrictions within the New LOS Context, Geographical Implications for the United States 1986* at p 290

²³⁷ *Supra*, footnote 229 at p. 258

²³⁸ *Ibid.*

6.1 Facing Maritime Threats

The attack against US Navy Destroyer, *USS Cole* in the port of Aden in 2000 and that of French oil tanker *Limburg* in the coast of Yemen in 2002 have made the terrorist statements clear that they can penetrate the force protection and they can affect world commerce.²³⁹ The *Limburg* attack raised concerns over the possibility that terrorists in the Southeast Asian region might attempt a maritime terrorist attack in the Straits of Malacca.²⁴⁰ The latter is the shortest route between Middle East and the ever growing Asian market with an estimated 15 million bbl/d flow in 2006.²⁴¹ In recent years, international interest in maritime security has been focused on Malacca and Singapore Straits but shipping in the Indonesian archipelago, particularly through Lombok and Makassar Straits is potentially vulnerable to attacks.²⁴² These straits constitute ASL II and similar to other established archipelagic sea lanes passage in Indonesia, they serve as primary shipping lanes for Australian international commercial navigation. In 2004–05, freight carried via the ASL constituted 39 per cent of Australia’s exports by value (50 per cent by weight) and 32 per cent of imports by value (41 per cent by weight).²⁴³

²³⁹ Brian Fort, *Transnational Threat and the Maritime Domain*, in Graham Gerard Ong-Webb (Editor) *Piracy, Maritime Terrorism and Securing the Malacca Straits*, Pasir Panjang: ISEAS Publishers 2006 at p 29

²⁴⁰ *Supra*, footnote 230 at p. 58

²⁴¹ World Oil Transit Chokepoints, US Energy Information Administration 2008 <http://www.eia.doe.gov> 4 August 2010

²⁴² Sam Bateman, *Piracy and Armed Robbery Against Ships in Indonesian Waters*, in Robert Cribb and Michelle Ford (Editors) *Indonesia Beyond the Water’s Edge Managing an Archipelagic State*, Pasir Panjang: ISEAS Publishing 2009 at p. 117

²⁴³ Working Paper 69 Bureau of Transport and Regional Economics, Department of Transport and Regional Services, Canberra, Australia, 2007 <http://www.btre.gov.au> 19 July 2010

Table 1
Estimate of ship movements passing through world's shipping lanes relating to Australia's trade, 2004-05

International sea lane	Tanker	Gas	Passenger	Livestock	Dry bulk	Liner	General	DBO ^a	Other
Cape of Good Hope	np	np	0	0	25	np	3	0	0
Red Sea	6	5	np	8	21	41	11	np	4
Persian Gulf	34	5	np	21	30	0	9	10	0
Arabian Sea	36	8	np	21	45	3	16	10	0
Straits of Malacca	19	0	np	7	91	41	9	6	np
Sunda Straits (ASL I)	168	14	7	46	329	159	64	7	20
Lombok Straits (ASL II)	56	15	6	40	749	np	40	18	7
Indonesia (east-west)	128	4	np	4	197	162	110	7	15
Timor Sea / Philippines									
ASL III A&D ^a	9	73	np	np	377	0	15	np	3
ASL III B	0	5	np	10	3	np	4	0	0
West of Irian Jaya	68	np	np	5	815	387	38	11	np
Torres Strait	217	5	3	9	890	582	138	14	6
East of Papua New Guinea	44	4	4	6	1121	11	209	np	np
New Caledonia onwards	37	11	36	np	143	86	85	0	7
New Zealand direction	86	15	19	0	125	269	99	np	13

np: Refers to a cell with a count of less than 3 ships which are not published for confidentiality reasons.
a. Many of these ships are large bulk carriers, in the outward movements, that are carrying iron and therefore, because of draught limitations, probably transit Selat Lombok instead. Selat Lombok is also the deepwater alternative for large ships which can not transit Malacca Straits in the world east-west trade.
b. Combination dry bulk/oil
Note: Routes determined on direct route between first/last port in Australia and last/first port of call overseas. It does not take into account ship draught limitations of some channels.

Source: Working Paper 69, Bureau of Trade and Maritime Economics, Australian Maritime Trade 2000-01 2004-05 at p. 13
<http://www.btre.gov.au>

Table 2
Estimate of Australia's trade passing through world's shipping lanes 2004-05

International sea lane	Value (\$'000s)		Weight (tonnes)	
	Imports	Exports	Imports	Exports
Cape of Good Hope	4 841 019	40 464 761	19 037 561	8 811 092
Red Sea	1 856 084	23 020 504	5 415 540	4 152 268
Persian Gulf	7 241 652	6 153 063	2 809 448	2 106 395
Bay of Bengal	378 787	20 646 718	615 544	2 646 397
Arabian Sea	168 454	5 422 813	498 308	904 798
Straits of Malacca	5 416 899	26 744 894	4 136 613	5 485 083
Sunda Straits (ASL I)	12 835 813	28 546 337	10 854 864	12 424 674
Lombok Straits (ASL II)	3 735 223	132 975 463	5 027 633	9 834 899
Indonesia (east-west)	10 852 061	43 751 252	9 356 116	8 141 049
Timor Sea / Philippines				
ASL III A&D ^a	947 441	136 263 521	1 422 672	10 270 287
ASL III B	409 751	1 670 381	275 229	486 951
NW/SE West of Irian Jaya	13 233 832	41 461 711	19 434 403	10 890 628
Torres Strait	24 041 697	78 563 223	28 988 231	18 625 397
East of Papua New Guinea	5 073 058	153 289 484	17 083 147	22 240 856
New Caledonia onwards	8 506 509	18 498 891	13 024 931	9 452 985
New Zealand direction	2 731 405	8 024 464	4 768 024	7 093 954
Total ^b	102 269 686	765 497 481	142 748 266	133 567 714

a. Much of this cargo in the export trade is iron ore on large bulk carriers which because of draught limitations may have to transit the Lombok Straits. The Lombok Straits are also the deepwater alternative for large ships which can not transit the Straits of Malacca in the world east-west trade.
b. Values do not add to total due to cargoes using more than one sea lane.
Note: Routes determined on direct route between port of unloading/loading in Australia and port of loading/unloading overseas. It does not take into account the ship draught limitations of some channels.
Sources: BTRE estimates based on cargo port to port movements as reported in ABS, International Cargo Statistics, unpublished.

Source: Working Paper 69, Bureau of Trade and Maritime Economics, Australian Maritime Trade 2000-01 2004-05 at p. 14
<http://www.btre.gov.au>

It may be noted from the tables above that a significant number of vessels relating to Australian international trade pass through the established archipelagic sea lanes. Although the data reflect only the utilization by Australia of the sea lanes, these shipping routes are important to the world's sea borne trade between the Indian Ocean and the Pacific Ocean. These particular sea lanes have not been included in scenarios where possible terrorist attacks could take place. However, their susceptibility to maritime threats cannot be ignored.

6.1.1 Maritime Terrorism

One of the threats is maritime terrorism. Any disruption caused by the blocking of passage due to this maritime security threat would result in great economic loss for the user states. Taking Australia as an example, its reliance on Indonesian ASLs constitutes a significant percentage of its seaborne trade. Any unplanned disruption of sea lines of communications between Australia and the rest of the world could devastate the country's national economy.²⁴⁴ This also impacts upon the archipelagic state because the passage traverses within its maritime zones.

The main terrorist organization operating not only in Indonesia but also in the larger part of Southeast Asia that has capability of launching attacks be it in the sea or on land is Jemaah Islamiya (JI). It is labelled as Al-Qaeda in Southeast Asia that promotes the idea of establishing an Islamic Caliphate in the region around Indonesia, Malaysia, Singapore, southern Philippines and southern Thailand.²⁴⁵ JI is known for its hideous terrorism activities particularly the Bali attack on October 2002 that claimed approximately 200 lives. The seaborne capabilities of its key operatives and its notorious history of planning suicide missions to attack American naval warships passing through

²⁴⁴ *Supra*, footnote 26 at p. 2

²⁴⁵ *Supra*, footnote 229 at p. 255

Malacca Strait in 2001 as well as vessels visiting Changi Naval Base in Singapore make JI as a real threat to maritime security.²⁴⁶

On the other hand, maritime terrorism also affects the waters of the Sulu Sea where the proposed north-south and east-west routes of archipelagic sea lanes will traverse. This is undertaken by extremists groups ASG and MILF. They have records of linkages with JI which started in Afghanistan in 1980s.²⁴⁷ MILF protects JI members by providing training facilities for over a decade and key JI fugitives from Indonesia and Malaysia join ASG.²⁴⁸ The members of ASG and JI joined together in July 2005 for underwater training in Sandakan, Malaysia in preparation for attacking maritime targets.²⁴⁹ They routinely move between Sabah, Borneo and their training camps in Mindanao by speedboat, local craft and ferries.²⁵⁰ This alliance of terrorist groups shows their capabilities. They are well equipped, well trained and their styles of attacks vary which makes future terror activities even harder to predict. This is also an indication that these terrorist groups may have begun to look at the maritime domain as a new avenue for attacks.

6.1.2 Piracy and Maritime Terrorism

Piracy is another great concern for these two states on their waters. Based on the reports of ReCAAP and IMB, as pointed out in Chapter IV, piracy and armed robbery exist in Natuna waters where Indonesian ASL I traverses. It is also worth mentioning that Indonesian waters continue to be included on the IMB list of piracy prone areas in

²⁴⁶ *Ibid.*

²⁴⁷ International Crisis Group, *Southern Philippines Backgrounder*, Asia Report No. 80 2004 <http://www.crisisgroup.org> 12 July 2010

²⁴⁸ *Ibid.*

²⁴⁹ *Supra*, footnote 229 at p. 258

²⁵⁰ Sam Bateman, *Assessing the Threat of Maritime Terrorism: Issues for the Asia-Pacific Region*, Security Challenges Vol. 2 Number 3 2006 at p82 <http://www.securitychallenges.org.au> 12 July 2010

Southeast Asia. From 2005 to March 2010, IMB recorded a total of 57 piratical and armed robbery attacks in the waters of Indonesia compared to 7 attacks in the Malacca Strait in the same period (see Annex 5). The drop in number of piratical attacks in the Malacca Strait is attributed to the aggressive patrol of littoral states since 2005 but it remains to be in the IMB list of piracy prone area according to ICC-IMB Report First Quarter 2010.

While piracy is also reported in ports and anchorages and regarded as largely a criminal issue, it has become a serious security issue by reason of its potential connection with maritime terrorism.²⁵¹ It is given that piracy is different from terrorism considering that the former is motivated by private ends while the latter is rooted in political or religious ideology. However, possible cooperation between terrorists and pirates poses a huge risk.²⁵² The indications that piracy is used as a means of funding terrorism activities are conclusive in the case of Southern Philippines.²⁵³ Members of MILF and ASG use piracy mainly as a means of fund raising.²⁵⁴ These extremists have been accused of conducting piratical attacks in Sulu and Sulawesi as a means of generating income for their causes.²⁵⁵ The vast majority of maritime depredations in these areas have gone unreported to the IMB because it only receives reports in English via high frequency radio or fax, and language skills and equipment are often lacking.²⁵⁶ Also, the masters of the vessels prefer not to report the incidents even to local authorities for fear of another attack. Maritime violence in this area has so far been more serious in terms of human suffering.²⁵⁷

²⁵¹ *Supra*, footnote 229 at p. 260

²⁵² Leticia Diaz and Barry Hart Dubner, *The Problem of Utilizing Unilateral Action to Prevent Acts of Sea Piracy and Terrorism: A Proactive Approach to the Evolution of International Law*, 32 *Syracuse Journal of International Law and Commerce* Vol. 1 2004 at p. 1

²⁵³ *Supra*, footnote 230 at p. 63

²⁵⁴ *Ibid.* at p. 60-61

²⁵⁵ Ian Storey, *The Triborder Sea Area: Maritime Southeast Asia's Ungoverned Space*, *Terrorism Monitor*, Vol. V Issue 19 2007 <http://www.jamestown.org> 26 July 2010

²⁵⁶ *Ibid.*

²⁵⁷ *Supra*, footnote 230 at p. 64

Seemingly, the international attention on maritime violence remains focused on the Straits of Malacca because of its importance as a major international sea lane with over 50,000 vessels²⁵⁸ transiting per year and an attack in this area would have a great consequence to the global economy²⁵⁹. However, if maritime terrorism and piracy are placing Malacca Straits or any other sea lines of communication in great danger, these maritime threats also place the archipelagic sea lanes in great danger which will prejudice global maritime trade and specifically the security of the archipelagic state.

6.2 Securing Maritime Domain

The issue of passage of military vessels has been the heart of the archipelagic problem and is likely to remain a source of controversy.²⁶⁰ The primary military concern of third states is the maintenance of their navigational rights within archipelagic waters which makes the regime a highly politicized problem.²⁶¹ There are differing interpretations of user state and archipelagic state on various issues surrounding the right of archipelagic sea lanes passage of military vessels and aircrafts.

“normal mode”

The term “normal mode” in Article 53 (3) provides an undetermined range of activities for warships navigating archipelagic waters which are not permitted in the case of innocent passage in territorial seas.²⁶² The meaning of “normal mode” is not given in UNCLOS 1982.²⁶³ From the context and from the negotiating history, the term was

²⁵⁸ *Supra*, footnote 241

²⁵⁹ *Supra*, footnote 230 at p. 64

²⁶⁰ *Supra*, footnote 8 at p. 162

²⁶¹ *Supra*, footnote 13 at p. 24

²⁶² *Supra*, footnote 179 at p. 97

²⁶³ *Supra*, footnote 21 at p. 342

intended to refer to that mode which is normal or usual for navigation by a particular type of ship or aircraft making the passage; hence, the employment of radar, sonar and depth finding devices would be included if they are normally used in navigation.²⁶⁴ The term could also include submerged transit, maintenance of ship formation, continuous operation of naval surveillance and monitoring equipment, constant weapon readiness and aircraft launch and recovery.²⁶⁵

Under Article 39(c), warships navigating in normal mode shall refrain from any activities other than those incident to their normal modes of continuous and expeditious transit except in cases of *force majeure* or by distress. This means that they are not permitted to engage in any other activities like conducting war game exercises, making covert transmission or hydrographic surveys. Otherwise, navigating in normal mode would be contrary to continuous and expeditious passage required by Article 53(3) which are the obligations that fall on the transiting ships or aircraft in archipelagic sea lanes passage.²⁶⁶ Also, this may bring the situation where the archipelagic sea lanes would be considered as a playground of foreign warships which is not favourable to archipelagic states.

“connecting parts of the high sea”

Relatedly, the fact that archipelagic sea lanes passage may further proceed through territorial sea can be interpreted in a broad sense, as connecting parts of the high seas or exclusive economic zone.²⁶⁷ The user states construe sea lanes as extensions of the high seas or EEZ while the archipelagic states regard them only as a link between one part of the high seas or EEZ and another part of the high seas or an EEZ. In

²⁶⁴ *Ibid.*

²⁶⁵ *Supra*, footnote 179 at p 97

²⁶⁶ *Supra*, footnote 21 at p. 477

²⁶⁷ *Supra*, footnote 13 at p. 27

asserting their respective rights, the former would always maintain freedom of navigation while the latter would claim sovereignty over the archipelagic waters pursuant to Article 49(4).

In the reported incident mentioned in the preceding Chapter involving a US destroyer and Chinese submarine, the states concerned claimed that they were in international waters. It may be noted that the location points to Mindoro Strait, one of the routes proposed as north-south archipelagic sea lanes. While Philippine government did not file a diplomatic protest with either the US or China and chose not to commence a political discussion on the issue, this has caused uproar among civil society. The incident was regarded as one of the many unnoticed intrusions in the Philippine archipelago because of its vast maritime space and extremely limited surveillance capability. A similar case took place in Indonesia as mentioned in Chapter IV which prompted the citizens to push the government to regularize a single east-west route through Java Sea.

In the case that the warships mentioned or any other foreign warships are exercising the right of archipelagic sea lanes passage in that particular route, the UNCLOS 1982 requires that the act of passing should be continuous; vessels shall proceed without delay and shall not cause any threat to the security of the archipelagic state. In case of an aircraft, the right of overflight is restricted to air routes above sea lanes which preclude its application to overflight above land territory.²⁶⁸ It is important for foreign warships or aircraft to proceed without delay through these sea lanes to prevent any notion of performing other activities prejudicial to the security of the archipelagic state. Hence, archipelagic sea lanes passage means no-stopping passage where there should be no activities may be conducted.

Both the Philippines and Indonesia prefer prior notice of passage of warships because the mere presence of military vessels within the archipelagic waters if there is

²⁶⁸ *Ibid.*

no military exercise raises a security issue. Indonesia requires prior notification for warships entering its territorial sea.²⁶⁹ This may not be convenient for the user states on the grounds that it hampers the continuous and expeditious passage. However, this requirement is designed to prevent any surprise to naval forces securing the waters, which may create other issues between third states and the archipelagic state. In practice, both states recognize the navigational right of third states over their archipelagic waters wherein even statements of excessive claims are oftentimes tolerated. They further allow foreign warships to pass through the routes normally used for international navigation.

“level of jurisdiction”

Emphases should also be made on the level of jurisdiction that the archipelagic state may exercise over the vessel exercising the right of archipelagic sea lanes passage. It bears stressing that Article 42 applies *mutadis mutandis* to archipelagic sea lanes passage. It provides that the application of laws and regulations shall not have a practical effect of denying, hampering or impairing the right of passage. In this regard, the level of jurisdiction is prescriptive only.²⁷⁰ This level of jurisdiction allows a coastal state to require ship’s compliance with safety rules, fishing, pollution control and customs laws.²⁷¹ Ships may not be inspected, arrested, detained, refused passage or subjected to other forms of control that would impair the right of passage.²⁷² In this regard, the archipelagic state could only exercise its enforcement jurisdiction to the full extent in case the ship would voluntarily enter the state’s ports or in some other way comes within the state’s competence to totally exercise its enforcement jurisdiction.²⁷³ Nonetheless,

²⁶⁹US Freedom of Navigation Program FY 2000-2003 <http://policy.defense.gov/gsa/cwmd/docs> 4 August 2010

²⁷⁰ *Supra*, footnote 21 at p. 377

²⁷¹ *Supra*, footnote 24 at p. 34

²⁷² *Supra*, footnote 21 at p. 377

²⁷³ *Ibid.*

these restrictions should not affect the right of the archipelagic state to board a particular vessel passing through the sea lanes based on reasonable suspicions that it is engaged in piracy or in unlawful acts or is a ship without flag.

It is given that the right is non-suspendable under any circumstances and that passage of foreign warships in normal mode cannot be impeded. However, by reason of this limited jurisdiction, the archipelagic state may exercise other options for the sake of its self preservation in the event it is confronted with serious maritime security issues caused by vessels exercising the right. It may be recalled that there were times particularly in 1988 where Indonesia closed or attempted to close some of its straits and in 1992 it questioned the passage rights of an Australian submarine navigating through Sunda Strait.²⁷⁴ These situations indicate that the archipelagic state would implement necessary measures to ensure that its national interest is adequately protected.

6.3 Advantages of Archipelagic Sea Lanes Passage

As the seaborne trade flows into and within the Asia-Pacific region increase, the reliance on the sea as a mode of transport also increases.²⁷⁵ This development makes the security of sea lanes even more crucial as they are considered major arteries from which the wealth of regional economic progress will spread.²⁷⁶ It is important that navigation of commercial shipping in Southeast Asia should be free and safe despite of the challenges.

One of the advantages of designating sea lanes is the proper monitoring of vessel traffic on routes normally used for international navigation. Once sea lanes are designated, foreign vessels, particularly warships, are confined to exercise the right of

²⁷⁴ *Supra*, footnote 23 at p. 330

²⁷⁵ Josua Ho, *The Security of Sea Lanes in Southeast Asia*, Military Technology Academic Research Library 2005 at p. 14 <http://www.apcss.org> 25 June 2010

²⁷⁶ *Ibid.*

passage through designated archipelagic sea lanes and can only exercise innocent passage through the remaining archipelagic waters.²⁷⁷ This will prevent warships from navigating within any part of the state's maritime zones and further claim that they are exercising the right, thereby indiscriminately opening the whole archipelago to archipelagic sea lanes passage. It facilitates the transport of seaborne trade because foreign commercial vessels would traverse the shortest international route in a continuous and expeditious manner. For Indonesia, the designation enhanced the safety of navigation, protection of the environment and also the security of maritime domain.²⁷⁸ With regard to designation of east-west passage, it requires thorough deliberation to ensure safety of passage and the marine environment and that the security of Indonesia would be safeguarded.²⁷⁹

On the other hand, the Philippines is aware that the sea lanes are the lifeline of the region and securing them provides unhampered access to markets and investment opportunities on economies within the region.²⁸⁰ Notwithstanding the restrictive nature of passage regime in archipelagic waters, it may be proper and advantageous for the country to use the designation as a means of maintaining a relationship with the international community particularly the user states traversing its waters.²⁸¹

In case the Philippines decides to push through with the designation of archipelagic sea lanes following the enactment of the new baseline law, the country may consider designating a minimum number and only the major routes used for international navigation should be covered for purposes of archipelagic sea lanes

²⁷⁷ *Supra*, footnote 172 at p. 116

²⁷⁸ *Supra*, footnote 151 at p. 389

²⁷⁹ *Supra*, footnote 132 at p. 68

²⁸⁰ Lowell B. Bautista, *The Legal Status of the Philippine Treaty Limits of Territorial Waters Claim in International Law: National and International Legal Perspective*. University of Wollongong Research Online 2010 at p. 185 <http://ro.uow.edu.au> 25 July 2010

²⁸¹ Jay L. Batongbakal, *The Philippines' Right to Designate Sea Lanes in Its Archipelagic Waters Under International Law* in Maribel Aguilos (Editor) *Designation of Sea Lanes in the Philippines*, Diliman: Institute of International Legal Studies 1997 at p. 114

passage.²⁸² In any case that these normal routes accommodate the interests of the major user states, the Philippines may choose to enter into bilateral agreements with, e.g., the US for its naval interest and Australia for its commercial interest.²⁸³ Considering the importance of protecting environmentally sensitive areas, it would also be in the interest of the country to limit the passage by certain types of vessels with special types of cargo through certain sea lanes.²⁸⁴ The government may also prescribe the areas to be avoided or provide a traffic separation scheme in case the route would traverse a declared PSSA²⁸⁵ as long as it would not impede the passage. This would ensure the safety of navigation through the designated sea lanes as well as protect the marine environment and its maritime security.

The designation of archipelagic sea lanes carries with it the obligation to keep them safe. Both states should focus on capability building measures whether at the national level or regional level to ensure the safety of navigation. Cooperation between the governments of Indonesia and the Philippines for the possible connection of ASL II and the projected north-south route should be studied in order to safeguard the passage. Continuous coordination is necessary to overcome the challenges of maritime security along the sea lanes as well as the entire maritime domain.

²⁸² *Supra*, footnote 123 at p. 129

²⁸³ *Ibid.*

²⁸⁴ *Supra*, footnote 18 at p. 170

²⁸⁵ Raul Pedroso, *Archipelagic Sea Lanes Passage* in Myron Nordquist, Tommy T.B. Koh and John Norton Moore (Editors) *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention*, Leiden: Martinus Nijhoff Publishers 2008 at p. 459

CHAPTER VII

CONCLUSION

It is worth noting that maritime security challenges related to archipelagic sea lanes passage being faced by the Philippines and Indonesia encompass general concerns for the security of the maritime domain and crimes that may be committed through the use of the sea. Differing interpretations on the status of passage create security issues. Maritime crimes such as piracy, maritime terrorism and armed robbery against ships in the maritime domain are among the factors that have a potentially great impact to sea lanes be they archipelagic sea lanes or routes or straits used for international navigation. Notwithstanding, both states are conscious of the interests of maritime powers with regard to strategic and economic dependence on the passage through the archipelagos. Both continue to protect the needs of the user states by implementing measures to keep the shipping lanes free from obstruction.

In this regard, the claims of the archipelagic states, the Philippines and Indonesia, for special regimes and for recognition as single entities cannot be construed as mere claims to extend maritime jurisdiction.²⁸⁶ They are not plain eager assertions of sovereign control over the waters connecting the islands of the archipelago. It is extremely important for these states to preserve territorial integrity which serve as a stepping stone to economic development. The specialized regime of archipelagic sea lanes passage was negotiated in the hope that this scheme would achieve a balance

²⁸⁶ *Supra*, footnote 18 at p. 45

between the rights of navigation of third states and the archipelagic states' respective national interests.

In exercising the option given by UNCLOS 1982 under Article 53, the archipelagic states may evaluate the advantages and disadvantages this designation might bring in the exercise of sovereignty over their maritime zones. In the case of Indonesia, as the first state to designate archipelagic sea lanes, it considers the move as a step closer to implementing its rights over its waters although the designation was held by the IMO as "partial designation". The issue of "partial designation" creates controversy to the user states but as far as Indonesia is concerned, it has carried out its responsibility to the international community. The Philippines, on the other hand, determined that this matter should be carefully weighed in light of new developments in maritime security before it could finally implement Article 53. Be that as it may, it is important that the legislations to be adopted in this regard be consistent with UNCLOS and that the state practice should uphold overall interests.

The regime brings both advantages and disadvantages. It facilitates transport of seaborne trade and movement of military vessels while the state that designated the same is able to properly monitor vessel traffic on routes normally used for international navigation. On the other hand, the disadvantages to the archipelagic state are the non-suspendable feature of the right and the limited jurisdiction that may be exercised upon the vessel. It is true that freedom of navigation remains a residual fundamental freedom which can be limited only when the need to do so is demonstrated.²⁸⁷ However, measures by archipelagic states such as coastal monitoring/surveillance or boarding of suspect vessels might be justified in cases where the activities of foreign vessels affect the security of the archipelagic sea lanes or the maritime domain in general. Foreign warships and commercial vessels might consider these measures as obstructions to

²⁸⁷ *Supra*, footnote 4

continuous navigation. Nevertheless, preventive measures should not be interpreted as encroachments on passage rights but should be viewed as initiatives advantageous to both user states and archipelagic states.

The principle introduced by Grotius does not mean freedom to navigate in accordance with the domestic laws of the flag state alone but should be understood as navigation, trade and commerce within the framework of international law. Hence, the responsibility must be shared between the user states and the archipelagic state. Balancing of interests, which is the very purpose of introducing this specialized regime, involves careful consideration of the concerns of both sides and continuous reconciliation of the interests involved.

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ANNEX 1

RESOLUTION MSC.71(69) (adopted on 19 May 1998)

ADOPTION OF AMENDMENTS TO THE GENERAL PROVISIONS ON SHIPS' ROUTEING (RESOLUTION A.572(14) AS AMENDED)

THE MARITIME SAFETY COMMITTEE,

RECALLING Article 28(b) of the Convention on the International Maritime Organization concerning the functions of the Committee,

RECOGNIZING the need to provide general provisions for the adoption, designation and substitution of archipelagic sea lanes,

TAKING INTO ACCOUNT the decision of the Sub-Committee on Safety of Navigation at its forty-third session that an archipelagic sea lane should be considered to be a routeing system,

HAVING CONSIDERED, at its sixty-ninth session, the text of proposed amendments to the General Provisions on Ships' Routeing (resolution A.572(14), as amended), to incorporate provisions relating to the adoption, designation and substitution of archipelagic sea lanes to form a new annex thereof,

1. ADOPTS the Amendments to the General Provisions on Ships' Routeing, (resolution A.572(14), as amended), concerning the adoption, designation and substitution of archipelagic sea lanes, the text of which is set out in the Annex to the present resolution;
2. DETERMINES that amendments to the General Provisions on Ships' Routeing, including amendments to the General Provisions for the adoption, designation and substitution of archipelagic sea lanes, shall be adopted, brought into force and shall take effect in accordance with the provisions of A.572(14), as amended;
3. INVITES Governments intending to submit proposals for the adoption, designation and substitution of archipelagic sea lanes to take account of the annexed General Provisions;
4. REQUESTS the Secretary-General to bring this resolution and its Annex to the attention of all Contracting Governments to the SOLAS Convention and to Members of the Organization which are not Contracting Governments to the Convention.

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Source: <http://www.imo.org>

**AMENDMENTS TO THE GENERAL PROVISIONS ON SHIP'S ROUTEING
(RESOLUTION A.572(14), AS AMENDED)**

- 1 The existing annex is renumbered as annex 1.
- 2 The following new annex 2 is added:

"ANNEX 2

**GENERAL PROVISIONS FOR THE ADOPTION, DESIGNATION AND
SUBSTITUTION OF ARCHIPELAGIC SEA LANES**

INTRODUCTION

This Part takes into account the unique character of archipelagic sea lanes as a routeing system.

The legal regime for archipelagic sea lanes is contained in Part IV of the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS provides that designation and substitution of an archipelagic sea lane by an archipelagic State automatically includes a corresponding air route above the sea lane. Use of an air route above a designated archipelagic sea lane by civil aircraft engaged in international air navigation shall be in accordance with any relevant requirements of the International Civil Aviation Organization (ICAO). International air traffic services (ATS) routes above the archipelagic waters to be used by civil aircraft engaged in international air navigation are subject to the approval process of ICAO.

1 OBJECTIVES

1.1 The purpose of these provisions is to provide guidance for the preparation, consideration and adoption of proposals for the adoption, designation and substitution of archipelagic sea lanes.

2 DEFINITIONS AND CLARIFICATIONS

2.1 The terms used in connection with matters relating to archipelagic sea lanes have the same meaning as in UNCLOS. These terms include:

- .1 *Archipelagic State*
- .2 *Archipelagic sea lane*
- .3 *Archipelagic sea lanes passage*
- .4 *Innocent passage*

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2.2 The following terms are also used in connection with matters relating to archipelagic sea lanes:

.1 *All normal passage routes and navigational channels as required by UNCLOS*

All normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary.

.2 *Partial archipelagic sea lanes proposal*

An archipelagic sea lanes proposal by an archipelagic State which does not meet the requirement to include all normal passage routes and navigational channels as required by UNCLOS.

3 PROCEDURES AND RESPONSIBILITIES

Procedures and functions of IMO

3.1 IMO is recognized as the competent international organization responsible for adopting archipelagic sea lanes in accordance with the relevant provisions of UNCLOS and these provisions.

3.2 When adopting a proposed archipelagic sea lane, IMO will ensure that the proposed sea lane is in accordance with the relevant provisions of UNCLOS and determine if the proposal is a partial archipelagic sea lanes proposal. IMO may adopt only such archipelagic sea lanes as may be agreed by the Government of the proposing archipelagic State.

3.3 Upon receipt of a proposal for designating archipelagic sea lanes and before consideration for adoption, the IMO shall ensure that the proposal is disseminated to all Governments and ICAO so as to provide them with sufficient opportunity to comment on the proposal.

3.4 Following a proposal to the IMO by an archipelagic State, other States may request that the archipelagic State propose additional sea lanes to include all other normal passage routes used as routes for international navigation or overflight through or over archipelagic waters as required by UNCLOS.

3.5 In order for IMO to ensure that sea lanes proposed for adoption include all normal passage routes, IMO shall retain continuing jurisdiction (i.e., competence) over the process of adopting archipelagic sea lanes until such time that sea lanes including all normal passage routes have been adopted as required by UNCLOS.

Responsibilities of Governments and recommended practices

3.6 The Government of an archipelagic State considering proposing archipelagic sea lanes should consult at an early stage with other user Governments and the IMO.

3.7 Subject to paragraph 3.9, the Government of an archipelagic State which wishes to designate archipelagic sea lanes shall propose to IMO for adoption archipelagic sea lanes including all normal passage routes and navigational channels as required by UNCLOS.

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3.8 An archipelagic sea lanes proposal shall provide sea lanes suitable for the continuous and expeditious passage of foreign ships and aircraft in the normal mode through or over the archipelagic waters and the adjacent territorial sea. In proposing archipelagic sea lanes, the Government shall explain in its proposal the suitability of such sea lanes for such continuous and expeditious passage.

3.9 The proposal shall also indicate if it is a partial archipelagic sea lane proposal.

3.10 In proposing archipelagic sea lanes, Governments shall also include the number, edition and, where possible, the geodetic datum of the reference charts used for the proposed sea lanes, together with copies of the reference charts listed in the proposed sea lanes showing the axis of the proposed sea lanes.

3.11 It is recommended that in areas where the 10 per cent rule applies (see paragraph 6.3) the outer limits of the sea lane should, so far as practicable, be clearly indicated on the charts.

3.12 If IMO adopts a partial archipelagic sea lane proposal as a partial system of archipelagic sea lanes, the archipelagic State shall periodically inform IMO on its plans for conducting further surveys and studies that will result in the submission to IMO of proposals for adoption of all normal passage routes and navigational channels as required by UNCLOS, along with the general location of these lanes and time frame for this effort. In such a case, the archipelagic State is ultimately required to propose for adoption archipelagic sea lanes including all normal passage routes and navigational channels as required by UNCLOS.

3.13 Archipelagic sea lanes adopted by IMO shall come into effect on a date promulgated by the Government of the archipelagic State that proposed the sea lanes, which shall be communicated to IMO by that Government. That date shall not be earlier than six months after the date of designation of the sea lanes by that Government. Either Notices to amend charts, or revised charts to depict the sea lanes, shall be made available at least six months before the sea lanes come into effect.

4 CRITERIA FOR CONSIDERATION AND ADOPTION OF PROPOSALS

4.1 Archipelagic sea lane proposals shall conform with the relevant provisions of UNCLOS, including Article 53, and the requirements of this Part.

4.2 The adequacy of aids to navigation, hydrographic surveys and nautical charts of the area, as well as the configuration of the archipelagic State, shall be considered.

4.3 Routing measures in the vicinity shall also be considered.

5 SUBSTITUTION OF ARCHIPELAGIC SEA LANES AND TRAFFIC SEPARATION SCHEMES

5.1 An archipelagic State may, when circumstances require, after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by it.

5.2 The provisions of this Part concerning the designation of archipelagic sea lanes apply equally to the substitution of archipelagic sea lanes.

5.3 The provisions of this Part and Part A of the IMO publication on Ships' Routeing concerning the prescription of traffic separation schemes apply equally to the substitution of traffic separation schemes.

6 USE OF ARCHIPELAGIC SEA LANES AND NORMAL PASSAGE ROUTES

6.1 Ships and aircraft shall exercise in accordance with UNCLOS their right of archipelagic sea lanes passage in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

6.2 Ships and aircraft in archipelagic sea lanes passage shall respect applicable sea lanes and the relevant provisions of UNCLOS, including Article 39. Ships shall also respect any traffic separation schemes in archipelagic sea lanes established in accordance with Part A of the IMO publication on Ships' Routeing.

6.3 Ships and aircraft in archipelagic sea lanes passage shall not deviate more than 25 nautical miles to either side of the axis lines defining archipelagic sea lanes, provided that such ships and aircraft shall not navigate closer to the coasts than 10 per cent of the distance between the nearest points on islands bordering the sea lane.

6.4 Within archipelagic sea lanes, traffic is not separated, except in traffic separation schemes.

6.5 Except for internal waters within archipelagic waters, ships of all States enjoy the right of innocent passage through archipelagic waters and the territorial sea.

6.6 If an archipelagic State does not designate sea lanes and air routes thereabove, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

6.7 Where a partial archipelagic sea lanes proposal has come into effect, the right of archipelagic sea lanes passage may continue to be exercised through all normal passage routes used as routes for international navigation or overflight in other parts of archipelagic waters in accordance with UNCLOS.

6.8 The right of archipelagic sea lanes passage shall not be suspended, hampered or obstructed.

6.9 The archipelagic State shall give appropriate publicity to any danger to navigation within archipelagic sea lanes of which it has knowledge.

7 REPRESENTATION ON CHARTS

7.1 Axis lines of archipelagic sea lanes are shown on charts for the purpose of defining the sea lanes. Axis lines do not indicate any routes or recommended tracks as defined in Part A of the IMO Publication on Ships' Routeing.

7.2 The axis of designated archipelagic sea lanes, including a listing of geographical co-ordinates with geodetic datum that define axis turning points, so far as practicable the outer limits of the sea lanes where the 10 per cent rule applies (see paragraph 3.11 and 6.3), and any prescribed traffic separation schemes, shall be clearly shown on all appropriate scale charts, to which due publicity shall be given, and referred to in complementary hydrographic publications.

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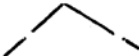
7.3 The legends, symbols and notes appearing in paragraphs 7.4, 7.5, 7.6 and 7.7 are recommended by the International Hydrographic Organization as guidance for the representation of details of archipelagic sea lanes and associated measures on nautical charts. They are included to illustrate the information likely to be found on charts and as an aid to those designing archipelagic sea lanes proposed for adoption by IMO.

7.4 Use of legends on charts and in notes

Legend	Use of legend
Archipelagic Sea Lane	Not usually shown on charts but referred to in notes
ASL	Shown on charts in conjunction with symbol for axis line (paragraph 7.5)

7.5 Symbol for axis line of archipelagic sea lanes

Unless otherwise specified, symbols are printed on charts in colour, usually magenta.


Description	Symbol	Note
1 Axis line of archipelagic sea lane	— — — —	1
2 Legend	ASL (see Note)	2
3 Turning point of axis line of archipelagic sea lane		3

NOTES:

- 1 The axis line will be shown through other routing measures without interruption, since it may not necessarily form the centre line of a routing measure established in Archipelagic Sea Lanes, in accordance with Part A of the IMO Publication on Ships' Routing.
- 2 The legend *ASL (see Note)* should normally be used. The full legend *Archipelagic Sea Lane (see Note)* may however be used in cases where it is considered appropriate.
- 3 Turning points are indicated by joined pecked lines.

7.6 Symbol for outer limits of archipelagic sea lanes

Unless otherwise specified, symbols are printed on charts in colour, usually magenta.

	Description	Symbol	Note
1	Limit of area in which 10% rule applies		1
2	Outer limit	Not usually shown on charts but referred to in notes	


NOTE:

- The solid half circle indicator is on the side of the limit of the area which lies within 10% of the distance between the nearest points on islands bordering the sea lane.

7.7 Cautionary and explanatory notes on charts

The following note provides an example of the type of information which should be included in the note:

ASL - ARCHIPELAGIC SEA LANES

Archipelagic Sea Lanes as defined in UNCLOS have been designated in the area of this chart. Vessels exercising archipelagic sea lanes passage shall not deviate more than 25 miles from the charted axis line and shall not navigate, while in archipelagic sea lanes passage, within the areas indicated thus: .

Where a traffic separation scheme exists in a narrow channel in such a sea lane, rules for the use of traffic separation schemes apply. It should be noted that the axis line of the ASL does not indicate the deepest water, any route or recommended track."

ANNEX 2

RESOLUTION MSC.72(69) (adopted on 19 May 1998)

ADOPTION, DESIGNATION AND SUBSTITUTION OF ARCHIPELAGIC SEA LANES

THE MARITIME SAFETY COMMITTEE,

RECALLING Article 28(b) of the Convention on the International Maritime Organization concerning the functions of the Committee,

RECALLING ALSO regulation V/8 of the International Convention for the Safety of Life at Sea (SOLAS), 1974, concerning the adoption by the Organization of ships' routing systems, and article 53 of the United Nations Convention on the Law of the Sea (UNCLOS), concerning the adoption, designation and substitution of archipelagic sea lanes,

RECALLING FURTHER resolution A.858(20), which authorizes the Committee to perform, on behalf of the Organization, the function of adoption and amendment of traffic separation schemes, routing measures other than traffic separation schemes, including designation and substitution of archipelagic sea lanes, and ship reporting systems,

TAKING INTO ACCOUNT the General Provisions for the adoption, designation and substitution of archipelagic sea lanes, adopted by resolution MSC.71(69),

HAVING CONSIDERED the recommendation of the Sub-Committee on Safety of Navigation at its forty-third session,

1. ADOPTS, in accordance with SOLAS regulation V/8, resolution MSC.71(69) and UNCLOS article 53, the Partial System of Archipelagic Sea Lanes in Indonesian Archipelagic Waters, as set out in the Annex to the present resolution;
2. RECOMMENDS that any associated rules and regulations adopted governing the use of archipelagic sea lanes by the Government of Indonesia shall be consistent with UNCLOS, including article 42;
3. REQUESTS the Secretary-General to bring this resolution and its Annex to the attention of Members of the Organization and Contracting Governments to the 1974 SOLAS Convention.

Source: <http://www.imo.org>

**PARTIAL SYSTEM OF ARCHIPELAGIC SEA LANES
IN INDONESIAN ARCHIPELAGIC WATERS**

Part I

SEA LANE I: SOUTH CHINA SEA - NATUNA SEA - KARIMATA STRAIT - WESTERN JAVA SEA
- SUNDA STRAIT - INDIAN (HINDIA) OCEAN

(Reference Charts: Publisher, Chart number and scale, points reflected on chart)

Indonesian Navy Hydrographic Office Chart No. 2, September 1988, corrected to 17 February 1997,
1:4,000,000, (I-1) - (I-15), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 38, February 1989, corrected to 11 May 1996,
1:1,000,000, (I-1) - (I-7), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 66, June 1990, corrected to 15 September 1997,
1:1,000,000, (I-8) - (I-5), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 147, March 1993, corrected to 6 March 1993,
1:500,000, (I-1) - (I-2), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 148, December 1995, corrected to 9 December 1995,
1:500,000, (I-3) - (I-4), WGS 84

Indonesian Navy Hydrographic Office Chart No. 149, September 1981, corrected to 15 February 1992,
1:500,000, (I-5) - (I-8), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 78, March 1995, corrected to 15 September
1997, 1:200,000, (I-9) - (I-12), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 71, March 1995, corrected to 11 March 1995 1:200,000,
(I-13) - (I-15), WGS 72

Description of the archipelagic sea lane

The axis line connects the following geographical positions:

(I-1) 03° 35'.00 N; 108° 51'.00 E

(I-2) 03° 00'.00 N; 108° 10'.00 E

(I-3) 00° 50'.00 N; 106° 16'.33 E

(I-4) 00° 12'.33 S; 106° 44'.00 E

(I-5) 02° 01'.00 S; 108° 27'.00 E

(I-6) 02° 16'.00 S; 109° 19'.50 E

(I-7) 02° 45'.00 S; 109° 33'.00 E

(I-8) 03° 46'.75 S; 109° 33'.00 E

(I-9) 05° 12'.50 S; 106° 54'.50 E

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(I-10) 05° 17'.25 S; 106° 44'.50 E

(I-11) 05° 17'.25 S; 106° 27'.50 E

(I-12) 05° 15'.00 S; 106° 12'.50 E

(I-13) 05° 57'.25 S; 105° 46'.33 E

(I-14) 06° 18'.50 S; 105° 33'.25 E

(I-15) 06° 24'.75 S; 104° 41'.42 E

Notes for the use of this archipelagic sea lane:

- (a) Geographical positions (I-1) to (I-3) define the axis line from the South China Sea through the Natuna Sea.
- (b) Geographical positions (I-3) to (I-5) define the axis line from the Natuna Sea to the Karimata Strait.
- (c) Geographical positions (I-5) to (I-7) define the axis line through the Karimata Strait.
- (d) Geographical positions (I-7) to (I-12) define the axis line through the western Java Sea.
- (e) Geographical positions (I-12) to (I-15) define the axis line through the Sunda Strait into Indian (Hindia) Ocean.

SEA LANE IA: SPUR FROM NORTH OF P. MERAPAS TO POINT (I-3)

(Reference Charts: Publisher, Chart number and scale, points reflected on chart)

Indonesian Navy Hydrographic Office Chart No. 38, February 1989, corrected to 11 May 1996, 1:1,000,000, (IA-1) - (I-3), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 2, September 1988, corrected to 17 February 1997, 1:4,000,000, (IA-1) - (I-3), Bessel 1841

Description of the archipelagic sea lane

The axis line connects the following geographical positions:

(IA-1) 01° 52'.00 N; 104° 55'.00 E

(I-3) 00° 50'.00 N; 106° 16'.33 E

Notes for the use of this archipelagic sea lane:

- (a) Geographical positions (IA-1) to (I-3) define the axis line from the Singapore Strait through the Natuna Sea.

PART II

SEA LANE II: CELEBES (SULAWESI) SEA - MAKASAR STRAIT - LOMBOK STRAIT - INDIAN (HINDIA) OCEAN

(Reference Charts: Publisher, Chart number and scale, points reflected on chart)

Indonesian Navy Hydrographic Office Chart No. 2, September 1988, corrected to 17 February 1997, 1:4,000,000, (II-1) - (II-8), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 121, October 1993, corrected to 7 July 1997, 1:1,000,000, (II-1) - (II-4), Bessel 1841

Indonesian Navy Hydrographic Office Chart No.111, August 1997, corrected to 4 August 1997, 1:1,000,000 (II-4) - (II-8), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 128, October 1997, corrected to 20 October 1997, 1:500,000, (II-4) - (II-5), WGS 72

Indonesian Navy Hydrographic Office Chart No. 113, July 1988, corrected to 2 July 1988, 1:500,000, (II-6) - (II-8), WGS 72

Indonesian Navy Hydrographic Office Chart No. 291, June 1996, corrected to 20 July 1996, 1:200,000, (II-7)-(II-8), WGS 72

Description of the archipelagic sea lane

The axis line connects the following geographical positions:

(II-1) 00° 57'.00 N; 119° 33'.00 E

(II-2) 00° 00'.00; 119° 00' 00.E

(II-3) 02° 40'.00 S; 118° 17'.00 E

(II-4) 03° 45'.00 S; 118° 17'.00 E

(II-5) 05° 28'.00 S; 117° 05'.00 E

(II-6) 07° 00'.00 S; 116° 50'.00 E

(II-7) 08° 00'.00 S; 116° 00'.00 E

(II-8) 09° 01'.00 S; 115° 36'.00 E

Notes for the use of this archipelagic sea lane:

- (a) Geographical positions (II-1) to (II-2) define the axis line from the Celebes (Sulawesi) Sea to the Makasar Strait.
- (b) Geographical positions (II-3) to (II-6) define the axis line between Borneo (Kalimantan) and Celebes (Sulawesi) islands.
- (c) Geographical positions (II-6) to (II-7) define the axis line through the Bali Sea.
- (d) Geographical positions (II-7) to (II-8) define the axis line through Lombok Strait to the Indian (Hindia) Ocean

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PART III

SEA LANE IIIA: PACIFIC OCEAN - MALUKU SEA - SERAM SEA - BANDA SEA - OMBAI STRAIT
- SAWU SEA - INDIAN (HINDIA) OCEAN

(Reference Charts: Publisher, Chart number and point numbers and scale, points reflected on chart)

Indonesian Navy Hydrographic Office Chart No. 3, March 1985, corrected to 13 October 1997,
1:4,000,000, (IIIA-1) - (IIIA-11), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 403, September 1996, corrected to 14 September 1996,
1: 500,000, (IIIA-1) - (IIIA-3), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 357, December 1985, corrected to 17 February 1997,
1:1,000,000, (IIIA-1) - (IIIA-3), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 142, May 1991, corrected to 24 August 1996,
1:1,000,000, (IIIA-4) - (IIIA-8), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 366, July 1993, corrected to 15 September 1997,
1:1,000,000, (IIIA-10) - (IIIA-13), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 367, August 1993, corrected to 7 July 1997, 1:1,000,000,
(IIIA-9) - (IIIA-10), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 112, June 1991, corrected to 10 June 1995, 1:1,000,000,
(IIIA-9) - (IIIA-13), Bessel 1841

Indonesian Navy Hydrographic Office Chart No 363, January 1990, corrected to 15 June 1996,
1:1,000,000, (IIIA-3) - (IIIA-6), Bessel 1841

Indonesian Navy Hydrographic Office Chart No 404, October 1993, corrected to 13 November 1993, 1:
500,000, (IIIA-4)-(IIIA-5), Bessel 1841

Description of the archipelagic sea lane

The axis line connects the following geographical positions:

(IIIA-1) 03° 27'.00 N; 127° 40'.50 E

(IIIA-2) 01° 40'.00 N; 126° 57'.50 E

(IIIA-3) 01° 12'.00 N; 126° 54'.00 E

(IIIA-4) 00° 09'.00 N; 126° 20'.00E

(IIIA-5) 01° 53'.00 S; 127° 02'.00 E

(IIIA-6) 02° 37'.00 S; 126° 30'.00 E

(IIIA-7) 02° 53'.00 S; 125° 30'.00 E

(IIIA-8) 03° 20'.00 S; 125° 30'.00 E

(IIIA-9) 08° 25'.00 S; 125° 20'.00 E

(IIIA-10) 09° 03'.00 S; 123° 34'.00 E

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1 4 5 0 0

(IIIA-11) 09° 23'.00 S; 122° 55'.00 E

(IIIA-12) 10° 12'.00 S; 121° 18'.00 E

(IIIA-13) 10° 44'.50 S; 120° 45'.75 E

Notes for the use of this archipelagic sea lane:

- (a) Geographical positions (IIIA-1) to (IIIA-5) define the axis line from the Pacific Ocean through the Maluku Sea.
- (b) Geographical positions (IIIA-5) to (IIIA-7) define the axis line through the Seram Sea.
- (c) Geographical positions (IIIA-7) to (IIIA-9) define the axis line through the western Banda Sea to the Ombai Strait.
- (d) Geographical positions (IIIA-9) to (IIIA-13) define the axis line through the Ombai Strait and Sawu Sea between Sumba and Sawu Islands to Indian (Hindia) Ocean.

SEA LANE III E : SPUR FROM POINT IIIA-2 - IIIE-2

(Reference Charts: Publisher, Chart number and scale, points reflected on chart)

Indonesian Navy Hydrographic Office Chart No. 3, March 1985, corrected to 13 October 1997, 1:4,000,000, (IIIA-2) - (IIIE-2), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 403, September 1996, corrected to 14 September 1996, 1:500,000, (IIIA-2) - (IIIE-2), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 357, December 1985, corrected to 17 February 1997, 1:1,000,000, (IIIA-2) - (IIIE-1), Bessel 1841

Description of the archipelagic sea lane

The axis line connects the following geographical positions:

(IIIA-2) 01° 40'.00 N; 126° 57'.50 E

(IIIE-1) 04° 12'.10 N; 126° 01'.00 E

(IIIE-2) 04° 32'.20 N; 125° 10'.40 E

Notes for the use of this archipelagic sea lane:

- (a) Geographical positions (IIIA-2) to (IIIE-2) define the axis line from the Maluku Sea to the Celebes (Sulawesi) Sea.

SEA LANE IIIB: SPUR FROM POINT IIIA-8 - IIIB-2; BANDA SEA - LETI STRAIT - TIMOR SEA
(Reference Charts: Publisher, Chart number and scale, points reflected on chart)

Indonesian Navy Hydrographic Office Chart No. 3, March 1985, corrected to 13 October 1997, 1:4,000,000, (IIIA-8) - (IIIB-2), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 142, May 1991, corrected to 24 August 1996, 1:1,000,000, (IIIA-8) - (IIIB-1), Bessel 1841

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Indonesian Navy Hydrographic Office Chart No. 367, August 1993, corrected to 7 July 1997, 1:1,000,000, (IIIB-2), Bessel 1841

Indonesian Navy Hydrographic Office Chart No.146, October 1993, corrected to 1 April 1995, 1:1,000,000, (IIIB-2), Bessel 1841

Description of the archipelagic sea lane

The axis line connects the following geographical positions:

(IIIA-8) 03° 20'.00 S; 125° 30'.00 E

(IIIB-1) 04° 00'.00 S; 125° 40'.00 E

(IIIB-2) 08° 31'.00 S; 127° 33'.00 E

Notes for the use of this archipelagic sea lane:

- (a) Geographical positions (IIIA-8) to (IIIB-2) define the axis line through the Banda Sea and Leti Strait to the Timor Sea.

SEA LANE IIIC: SPUR FROM POINT IIIA-8 - IIIC-2; BANDA SEA - ARAFURU SEA
(Reference Charts: Publisher, Chart number and scale, points reflected on chart)

Indonesian Navy Hydrographic Office Chart No. 3, March 1985, corrected to 13 October 1997, 1:4,000,000, (IIIA-8) - (IIIC-2), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 142, May 1991, corrected to 24 August 1996, 1:1,000,000, (IIIA-8) - (IIIB-1), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 367, August 1993, corrected to 7 July 1997 1:1,000,000, (IIIC-1) - (IIIC-2), Bessel 1841

Indonesian Navy Hydrographic Office Chart No.146, October 1993, corrected to 1 April 1995, 1:1,000,000, (IIIC-1)-(IIIC-2), Bessel 1841

Description of the archipelagic sea lane

The axis line connects the following geographical positions:

(IIIA-8) 03° 20'.00 S; 125° 30'.00 E

(IIIB-1) 04° 00'.00 S; 125° 40'.00 E

(IIIC-1) 06° 10'.00 S; 131° 45'.00 E

(IIIC-2) 06° 44'.00 S; 132° 35'.00 E

Notes for the use of this archipelagic sea lane:

- (a) Geographical positions (IIIA-8) to (IIIC-2) define the axis line through the Banda Sea to the Arafuru Sea.

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SEA LANE IIID: SPUR FROM POINT IIIA-11 - IIID-1 ; SAWU SEA - SEA BETWEEN SAWU AND ROTI ISLANDS - INDIAN (HINDIA) OCEAN
(Reference Charts: Publisher, Chart number and scale, points reflected on chart)

Indonesian Navy Hydrographic Office Chart No. 3, March 1985, corrected to 13 October 1997, 1:4,000,000, (IIIA-11) - (IIID-1), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 112, June 1991, corrected to 10 June 1995, 1:1,000,000, (IIIA-11) - (IIID-1), Bessel 1841

Indonesian Navy Hydrographic Office Chart No. 366, July 1993, corrected to 15 September 1997, 1:1,000,000, (IIIA-11) - (IIID-1), Bessel 1841

Description of the archipelagic sea lane

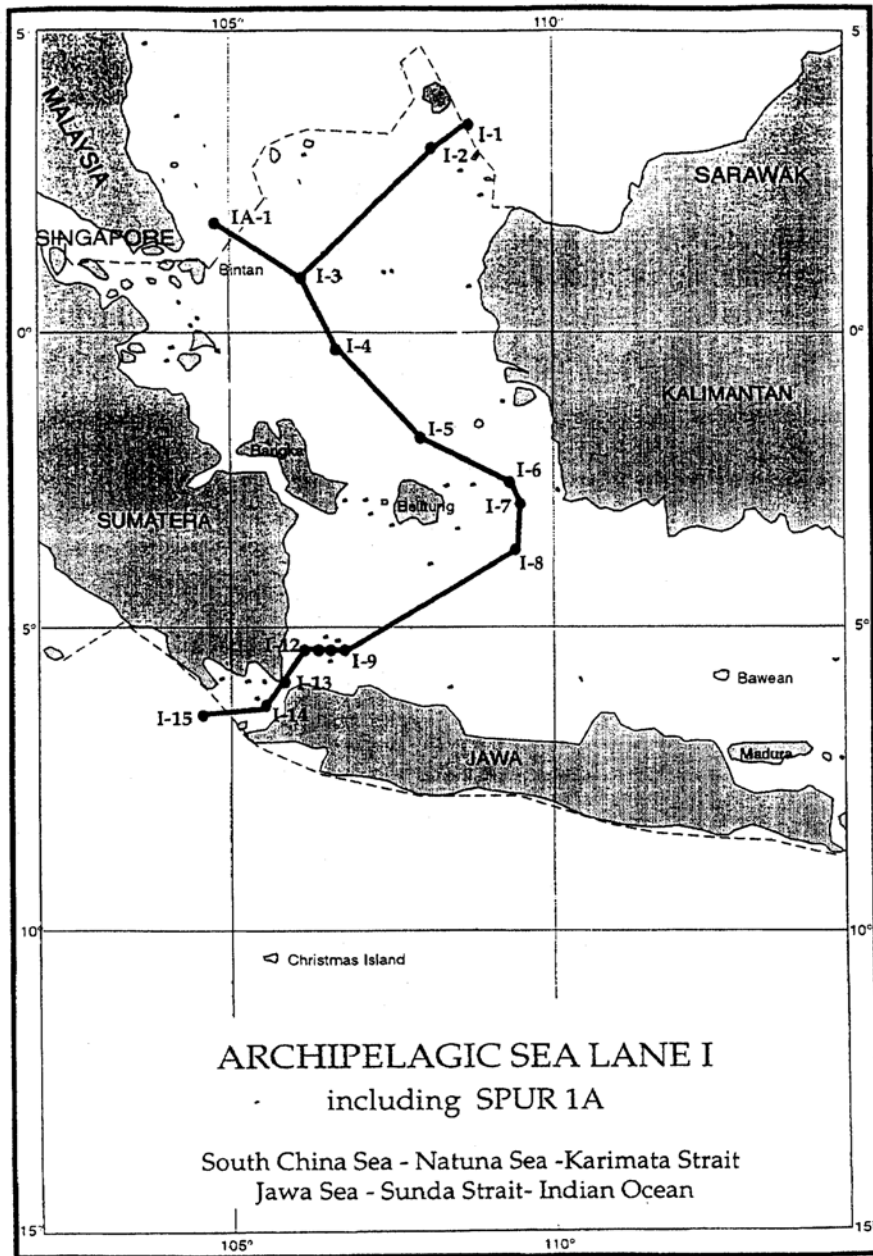
The axis line connects the following geographical positions:

(IIIA-11) 09° 23'.00 S; 122° 55'.00 E

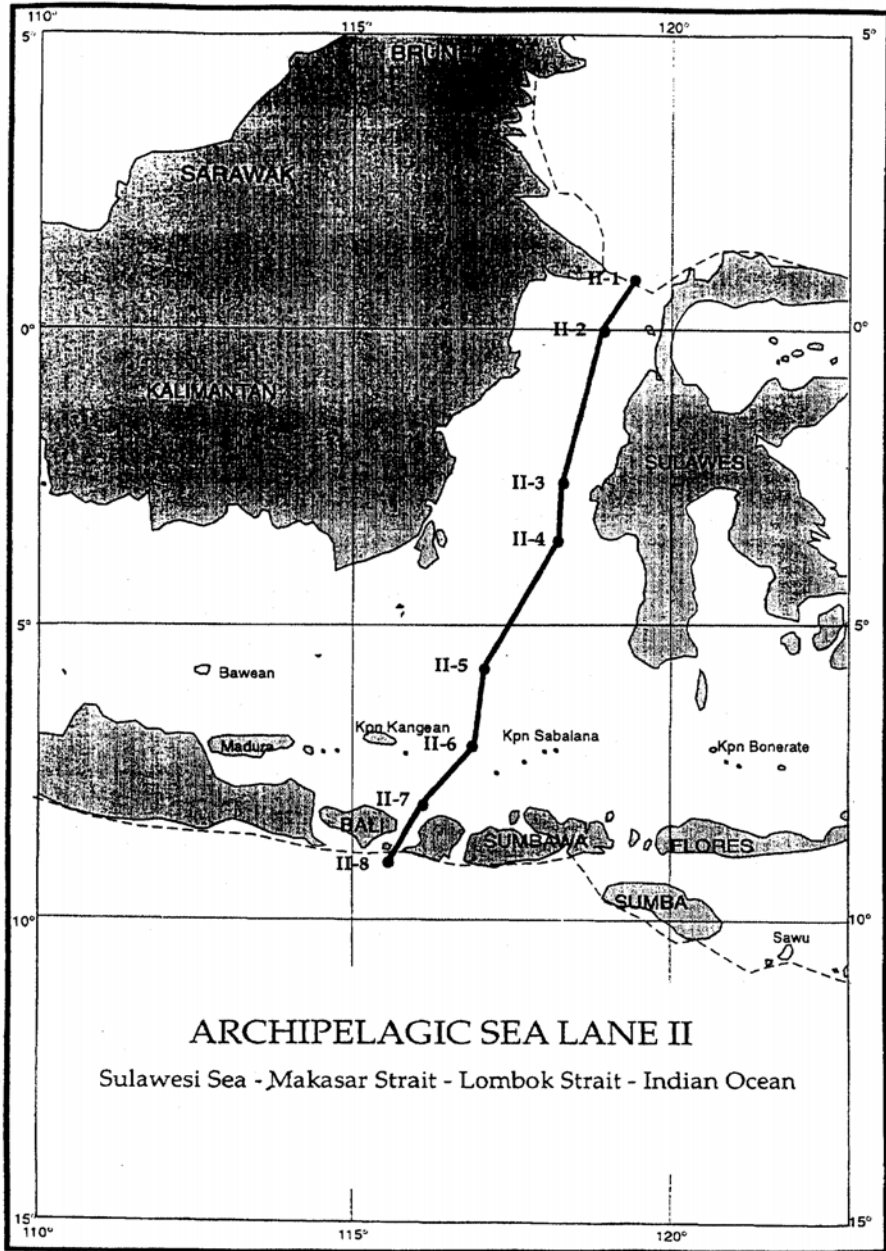
(IIID-1) 10° 58'.00 S; 122° 11'.00 E

Notes for the use of this archipelagic sea lane:

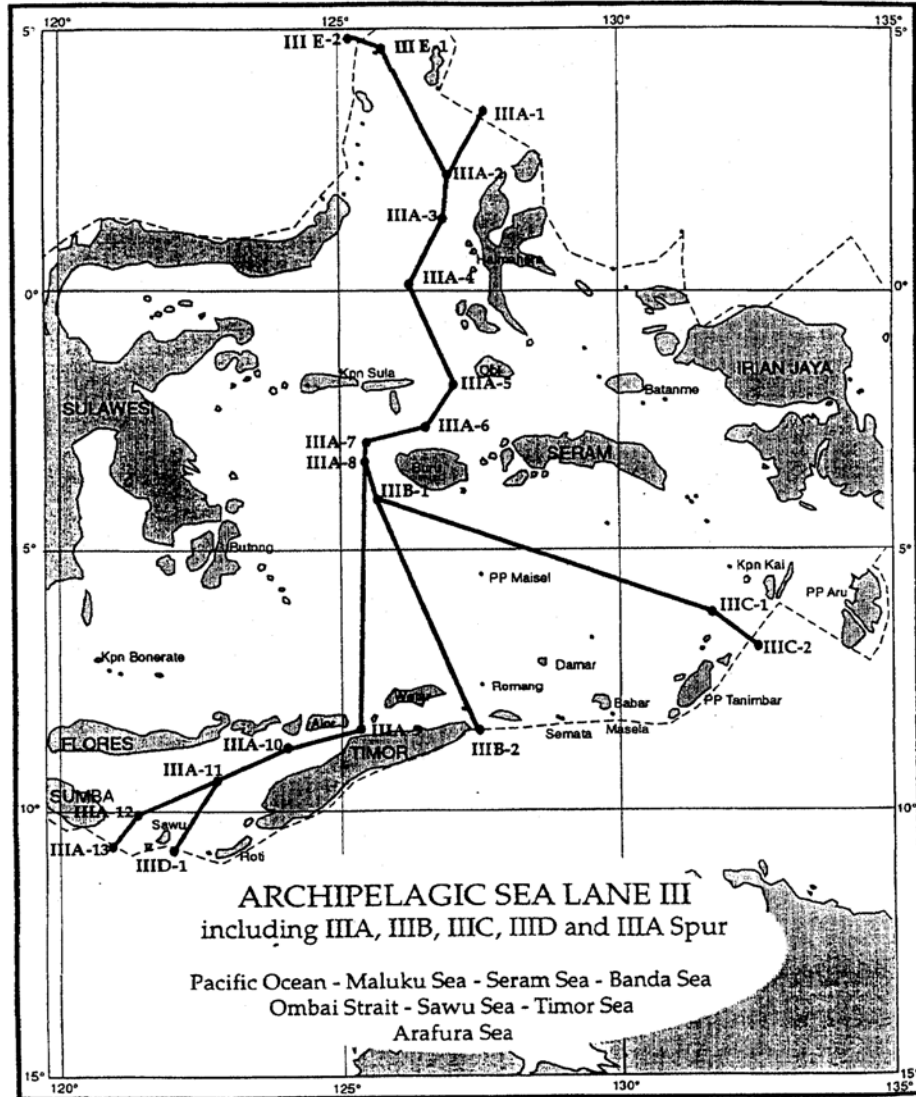
- (a) Geographical positions (IIIA-11) to (IIID-1) define the axis line from the Sawu Sea to the Sea between Sawu and Roti Islands to the Indian (Hindia) Ocean.



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ANNEX 3

INDONESIAN GOVERNMENT REGULATION
NO. 37 OF 2002

CONCERNING

THE RIGHTS AND OBLIGATIONS OF FOREIGN SHIPS AND AIRCRAFT
WHEN EXERCISING THE RIGHT OF ARCHIPELAGIC SEA LANES
PASSAGE THROUGH ESTABLISHED ARCHIPELAGIC SEA LANES¹

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. that Law No. 6 of 1996 concerning Indonesian Waters, which implements the 1982 United Nations Convention on the Law of the Sea, provides inter alia that the rights and obligations of foreign ships and aircraft when exercising the right of archipelagic sea lanes passage will be further regulated by Government Regulations;
- b. that Law No. 6 of 1996 concerning Indonesian Waters also provides that the Government will determine the sea lanes, including flight routes above the sea lanes, that are suitable for exercising the right of archipelagic sea lanes passage, by marking their axes on nautical charts which are given publicity;
- c. that the Maritime Safety Committee of the International Maritime Organization during its 69th session in 1998, by Resolution MSC. 72 (69) has accepted the Indonesian submission concerning Indonesian archipelagic sea lanes;
- d. that based on the considerations enumerated in points a, b and c, there is a need for establishing Government Regulations concerning the rights and obligations of foreign ships and aircraft when exercising the right of archipelagic sea lanes passage through established sea lanes;

Referring to:

1. Article 5 paragraph (2) of the 1945 Constitution as amended by the Third Amendment of the 1945 Constitution;
2. Law No. 6 of 1996 concerning Indonesian Waters (State Gazette of 1996 No. 73, Supplement to the State Gazette No. 3647);

¹ Translated by Rowan Gould, Research Assistant, Asian Law Centre, with Associate Professor Tim Lindsey, Director, Asian Law Centre, +61-3-8344 6847.

DECIDES:

Establishing:

A GOVERNMENT REGULATION CONCERNING THE RIGHTS AND OBLIGATIONS OF FOREIGN SHIPS AND AIRCRAFT WHEN EXERCISING THE RIGHT OF ARCHIPELAGIC SEA LANES PASSAGE THROUGH ESTABLISHED ARCHIPELAGIC SEA LANES.

CHAPTER I
GENERAL PROVISIONS

Article 1

In this regulation:

1. "archipelagic sea lane" is a sea lane as defined in Article 1 paragraph 8 of the Law that is determined as a lane for the exercise of the right of archipelagic sea lanes passage.
2. "the Law" is Law No. 6 of 1996 concerning Indonesian Waters.
3. "right of archipelagic sea lanes passage" is the right of foreign ships and aircraft to passage, as defined in Article 18 paragraphs (1) and (2) of the Law.
4. "right of innocent passage" is the right of foreign ships to passage as defined in Article 11 of the Law.
5. "territorial sea" is the territorial sea as defined in Article 3 paragraph (2) of the Law.
6. "archipelagic waters" are archipelagic waters as defined in Article 3 paragraph (3) of the Law.
7. "Convention" is the convention as defined in Article 1 paragraph 9 of the legislation.

CHAPTER II
RIGHTS AND OBLIGATIONS OF FOREIGN SHIPS AND AIRCRAFT WHEN EXERCISING THE RIGHT OF ARCHIPELAGIC SEA LANES PASSAGE

Article 2

Foreign ships and aircraft may exercise the right of archipelagic sea lanes passage in order to sail or fly from one part of the high seas or an exclusive economic zone to another part of the high seas or an exclusive economic zone through or over the Indonesian territorial sea and its archipelagic waters.

Article 3

- (1) The exercise of the right of archipelagic sea lanes passage as described in Article 2 may be through a sea lane, or through the air above a sea lane, which has been determined to be an archipelagic sea lane that may be used for exercising the right of archipelagic sea lanes passage as described in Article 11.
- (2) The exercise of the right of archipelagic sea lanes passage in accordance with this Government Regulation in other parts of the Indonesian waters may be conducted after archipelagic sea lanes that may be used for exercising the right of archipelagic sea lanes passage have been established in those other parts.

Article 4

- (1) Foreign ships and aircraft exercising the right of archipelagic sea lanes passage must pass through or above the archipelagic sea lane as quickly as possible in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit.
- (2) Foreign ships and aircraft that are conducting archipelagic sea lanes passage must not deviate more than 25 (twenty five) nautical miles to either side of the axis line of the sea lane, provided that such ships and aircraft must not navigate closer to the coast than 10% (ten per cent) of the distance between the nearest points on islands bordering the sea lane.
- (3) Foreign ships and aircraft, while exercising the right of archipelagic sea lanes passage, must refrain from any threat or use of force against the sovereignty, territorial integrity, or political independence of the Republic of Indonesia, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations.
- (4) Foreign military aircraft and warships, while exercising the right of archipelagic sea lanes passage, must refrain from any war game exercises or exercises using any type of weapons whatsoever and using ammunition.
- (5) With the exception of a situation of force majeure or in the event of a disaster, aircraft exercising the right of archipelagic sea lanes passage must refrain from landing in Indonesian territory.
- (6) All foreign ships exercising the right of archipelagic sea lanes passage must refrain from stopping, dropping anchor or loitering, with the exception of a situation of force majeure or in the event of a disaster or in order to render assistance to a person or persons or a ship or ships experiencing a disaster.
- (7) Foreign ships or aircraft exercising the right of archipelagic sea lanes passage must refrain from making covert transmissions, interfering with telecommunications systems, and communicating directly with an unauthorized person or group of persons in Indonesian territory.

Article 5

Foreign ships or aircraft, including research or hydrographic survey ships or aircraft, while exercising the right of archipelagic sea lanes passage, must refrain from conducting oceanographic research or hydrographic surveys, whether with the use of detection equipment or sample gathering equipment, unless they have obtained permission to do so.

Article 6

- (1) Foreign ships, including fishing ships, while exercising the right of archipelagic sea lanes passage, must refrain from conducting fishing operations.
- (2) Foreign fishing ships, while exercising the right of archipelagic sea lanes passage, besides fulfilling their obligations under paragraph (1), must stow all their fishing equipment within the hold.
- (3) Foreign ships and aircraft, while exercising the right of archipelagic sea lanes passage, must not load to a ship or unload from a ship persons, goods or currency in a manner that contravenes the laws and regulations concerning customs, immigration, fiscal matters and health, except when in a situation of force majeure or in the event of a disaster.

Article 7

- (1) Foreign ships, while exercising the right of archipelagic sea lanes passage, must comply with the generally accepted international regulations, procedures and practices concerning shipping safety, including regulations relating to the prevention of collisions at sea.
- (2) Foreign ships, while exercising the right of archipelagic sea lanes passage in a sea lane where a traffic separation scheme has been established for the regulation of shipping safety, must comply with the provisions of the traffic separation scheme.
- (3) Foreign ships, while exercising the right of archipelagic sea lanes passage, must not cause disturbance or damage to navigational facilities or submarine cables or pipes.
- (4) Foreign ships, while exercising the right of archipelagic sea lane passage in a sea lane where there are installations for the exploration or exploitation of living or non-living natural resources, must not sail too close to the prohibited zone, which is determined to be of a width of 500 (five hundred) meters around such an installation.

Article 8

- (1) Foreign civil aircraft exercising the right of archipelagic sea lanes passage must:
 - a. observe the Rules of the Air established by the International Civil Aviation Organisation concerning flight safety;

- b. at all times monitor the radio frequency assigned by the competent internationally designated air traffic control authority or the appropriate international distress radio frequency.
- (2) Foreign national aircraft exercising the right of archipelagic sea lanes passage must:
 - a. respect the regulations concerning flight safety as detailed in paragraph (1) a;
 - b. fulfil their obligations as detailed in paragraph (1) b.

Article 9

- (1) Foreign ships exercising the right of archipelagic sea lanes passage must refrain from expelling oil, oily wastes or other noxious substances into the marine environment, or conducting other activities in contravention of international regulations and standards for the prevention, reduction and control of marine pollution that originates from ships.
- (2) Foreign ships exercising the right of archipelagic sea lanes passage must refrain from dumping waste in Indonesian waters.
- (3) Foreign nuclear-powered ships and ships carrying nuclear goods or other inherently dangerous or noxious substances must, when exercising the right of archipelagic sea lanes passage, carry documents and observe the special precautionary measures established for such ships by international agreements.

Article 10

- (1) The person or legal body responsible for the operation or cargo of foreign commercial ships or aircraft or foreign government ships or aircraft operated for commercial purposes shall be liable for any loss or damage suffered by Indonesia as a result of non-compliance with any of the provisions of Articles 7, 8 and 9 while exercising the right of archipelagic sea lanes passage in Indonesian waters.
- (2) The flag State shall bear international responsibility for any loss or damage suffered by Indonesia as a result of non-compliance with any of the provisions of Articles 7, 8 and 9 by a foreign warship or aircraft while exercising the right of archipelagic sea lanes passage.

Chapter III

THE DETERMINATION OF ARCHIPELAGIC SEA LANES WHICH MAY BE USED FOR THE RIGHT OF ARCHIPELAGIC SEA LANES PASSAGE

Article 11

- (1) The archipelagic sea lane that may be used for exercising the right of archipelagic sea lanes passage for sailing from the South China Sea to the Indian Ocean or vice versa through the Natuna Sea, the Karimata Strait, the

Java Sea and the Sunda Strait, is Archipelagic Sea Lane I, the axis of which is the line that joins connecting points I-1 through to I-15 as detailed in the Coordinates Tables as defined in Article 12, paragraph (2).

- (2) Archipelagic Sea Lane I, as detailed in paragraph (1), includes Archipelagic Sea Lane Branch IA, which joins Archipelagic Sea Lane I at point I-3, for sailing from the Singapore Strait through the Natuna Sea or vice versa, of which the axis is the line that joins connecting points IA-1 and I-3 as detailed in the Coordinates Tables as defined in Article 12, paragraph (2).
- (3) The archipelagic sea lane that may be used for exercising the right of archipelagic sea lanes passage for sailing from the Sulawesi Sea to the Indian Ocean or vice versa through the Makassar Strait, the Flores Sea and the Lombok Strait, is Archipelagic Sea Lane II, the axis of which is the line that joins connecting points II-1 through to II-8 as detailed in the Coordinates Tables as defined in Article 12, paragraph (2).
- (4) The archipelagic sea lane that may be used for exercising the right of archipelagic sea lanes passage for sailing from the Pacific Ocean to the Indian Ocean or vice versa through the Maluku Sea, the Seram Sea, the Banda Sea, the Ombai Strait and the Sawu Sea, is Archipelagic Sea Lane IIIA, the axis of which is the line that joins connecting points IIIA-1 through to IIIA-13 as detailed in the Coordinates Tables as defined in Article 12, paragraph (2).
- (5) Archipelagic Sea Lane IIIA, as detailed in paragraph (4), includes:
 - (a) Archipelagic Sea Lane Branch IIIB, which joins Archipelagic Sea Lane IIIA at point IIIA-8, for sailing from the Pacific Ocean to the Indian Ocean or vice versa through the Maluku Sea, the Seram Sea, the Banda Sea and the Leti Strait, of which the axis is the line that joins connecting points IIIA-8, IIIB-1 and IIIB-2 as detailed in the Coordinates Tables as defined in Article 12, paragraph (2).
 - (b) Archipelagic Sea Lane Branch IIIC, which joins Archipelagic Sea Lane Branch IIIB at point IIIB-1, for sailing from the Pacific Ocean to the Arafura Sea or vice versa through the Maluku Sea, the Seram Sea and the Banda Sea, of which the axis is the line that joins connecting points IIIB-1, IIIC-1 and IIIC-2 as detailed in the Coordinates Tables as defined in Article 12, paragraph (2).
 - (c) Archipelagic Sea Lane Branch IIID, which joins Archipelagic Sea Lane IIIA at point IIIA-11, for sailing from the Pacific Ocean to the Indian Ocean or vice versa through the Maluku Sea, the Seram Sea, the Banda Sea, the Ombai Strait and the Sawu Sea, of which the axis is the line that joins connecting points IIIA-11 and IIID-1 as detailed in the Coordinates Tables as defined in Article 12, paragraph (2).
 - (d) Archipelagic Sea Lane Branch IIIE, which joins Archipelagic Sea Lane IIIA at point IIIA-2, for sailing from the Indian Ocean to the Sulawesi Sea or vice versa through the Sawu Sea, the Ombai Strait, the Banda Sea, the Seram Sea and the Maluku Sea, or for sailing from the Timor Sea to the Sulawesi Sea or vice versa through the Leti Strait, the Banda Sea, the Seram Sea and the Maluku Sea, or for sailing from the Arafura Sea to the Sulawesi Sea or vice versa through the Banda Sea, the Seram Sea and the Maluku Sea, of which the

axis is the line that joins connecting points IIIA-2, IIIE-1 and IIIE-2 as detailed in the Coordinates Tables as defined in Article 12, paragraph (2).

Article 12

- (1) The archipelagic sea lane axes and connecting points mentioned in Article 11 shall be marked on navigation charts for appropriate publication.
- (2) The geographic coordinates for the archipelagic sea lane connecting points mentioned in Article 11 are as detailed in the Coordinates Tables in Annexes I, II, IIIA and IIIB.
- (3) The positions of connecting points I-1, I-15, IA-1, II-1, II-8, IIIA-1, IIIA-13, IIIB-2, IIIC-2, IIID-1 and IIIE-2 as the outermost connecting points of archipelagic sea lane axes, as detailed in the Geographic Coordinates Tables defined in Article 12, paragraph (2), are located at the intersections of the archipelagic sea lane axes and the territorial sea border.
- (4) If, as a result of a natural change, such outermost connecting points are not in the geographic position as detailed in the Geographic Coordinates Tables defined in Article 12, clause (2) then the geographic position of such outermost connecting points is determined according to the actual situation in the field.
- (5) Illustrative charts displaying the axes and connecting points as detailed in Article 11 are attached as Annexes IV, V, VI and VII.

CHAPTER IV OTHER PROVISIONS

Article 13

The provisions of this Government Regulation do not reduce the rights of foreign ships to exercise the right of innocent passage in archipelagic sea lanes.

Article 14

The provisions of this Government Regulation concerning Indonesian archipelagic sea lanes and Indonesian archipelagic sea lanes passage do not apply to the Leti Strait and the part of the Ombai Strait that borders the territory of East Timor, which, with the change in the status of the territory of East Timor, have changed in status to become waters that are not part of the Indonesian archipelagic waters.

Article 15

After six months of this Government Regulation taking effect, foreign ships and aircraft may exercise the right of archipelagic sea lanes passage only through the archipelagic sea lanes that are determined in this Government Regulation.

CHAPTER V

CLOSING PROVISIONS

Article 16

This Government Regulation comes into force on the date that it is promulgated. So that it be known by all persons, this Government Regulation is promulgated by placing it in the State Gazette of the Republic of Indonesia.

Ratified at
Jakarta
on the 28th of June
2002

THE PRESIDENT OF
THE REPUBLIC OF
INDONESIA,

sgd

MEGAWATI
SOEKARNOPUTRI

Promulgated at Jakarta
on the 28th of June 2002

STATE SECRETARY OF THE REPUBLIC OF INDONESIA,

sgd

BAMBANG KESOWO

STATE GAZETTE OF THE REPUBLIC OF INDONESIA NO. 71 OF 2002

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Deputy Secretary of the Cabinet for
Law and Legislation,

sgd

Lambock V. Nanhattands

ANNEX I
INDONESIAN GOVERNMENT REGULATION
NO. 37 OF 2002
28 JUNE 2002

TABLE OF GEOGRAPHIC COORDINATES
CONNECTING POINTS FOR THE AXIS OF ARCHIPELAGIC SEA LANE I

ARCHIPELAGIC SEA LANE	REF. NO.	COORDINATES		INFORMATION
		LATITUDE	LONGITUDE	
ARCHIPELAGIC SEA LANE I For sailing from the South China Sea to the Indian Ocean or vice versa through the Natuna Sea, the Karimata Strait, the Java Sea, and the Sunda Strait.	I-1	03° 35' 00" N	108° 51' 00" E ¹	The geographic positions of (I-1) to (I-3) determine the axis from the South China Sea to the Natuna Sea. The geographic positions of (I-3) to (I-5) determine the axis from the Natuna Sea to the Karimata Strait. The geographic positions of (I-5) to (I-7) determine the axis through the Karimata Strait. The geographic positions of (I-7) to (I-12) determine the axis through the western part of the Java Sea. The geographic positions of (I-12) to (I-15) determine the axis through the Sunda Strait to the Indian Ocean.
	I-2	03° 00' 00" N	108° 10' 00" E	
	I-3	00° 50' 00" N	106° 16' 20" E	
	I-4	00° 12' 20" S	106° 44' 00" E	
	I-5	02° 01' 00" S	108° 27' 00" E	
	I-6	02° 16' 00" S	108° 19' 30" E	
	I-7	02° 45' 00" S	108° 33' 00" E	
	I-8	03° 46' 45" S	108° 33' 00" E	
	I-9	05° 12' 30" S	108° 54' 30" E	
	I-10	05° 17' 15" S	108° 44' 30" E	
	I-11	05° 17' 15" S	108° 27' 30" E	
	I-12	05° 15' 00" S	106° 12' 30" E	
	I-13	05° 57' 15" S	105° 46' 20" E	
	I-14	06° 18' 30" S	105° 33' 15" E	
	I-15	06° 24' 45" S	104° 41' 25" E	
ARCHIPELAGIC SEA LANE BRANCH IA	IA-1	01° 52' 00" N	104° 55' 00" E	The geographic positions of (IA-1) to (I-3) determine the axis from the Singapore Strait through the Natuna Sea.
	I-3	00° 50' 00" N	106° 16' 20" E	
For sailing from the Singapore Strait to the Indian Ocean, or vice versa through the Natuna Sea, the Karimata Strait, the Java Sea and the Sunda Strait, or to the South China Sea or vice versa through the Natuna Sea.				

¹ As provided for in the agreement with the IMO No MSC 72 (68), in the Table of Coordinates units of latitude and longitude are given in decimal minutes.

PRESIDENT OF
THE REPUBLIC OF
INDONESIA,

sgd
 MEGAWATI
 SOEKARNOPUTRI

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 Deputy Secretary of the Cabinet for
 Law and Legislation,
 sgd.
 Lambock V. Nahatands

ANNEX II
 INDONESIAN GOVERNMENT REGULATION
 NO. 37 OF 2002
 28 JUNE 2002

TABLE OF GEOGRAPHIC COORDINATES
 CONNECTING POINTS FOR THE AXIS OF ARCHIPELAGIC SEA LANE II

ARCHIPELAGIC SEA LANE	REF. NO.	COORDINATES		INFORMATION
		LATITUDE	LONGITUDE	
ARCHIPELAGIC SEA LANE II For sailing from the Sulawesi Sea to the Indian Ocean or vice versa through the Makassar Strait, the Flores Sea and the Lombok Strait.	II - 1	00° 57' 00" N	119° 33' 00" E	The geographic positions of (II-1) to (II-2) determine the axis from the Sulawesi Sea to the Makassar Strait.
	II - 2	00° 00' 00" S	119° 00' 00" E	
	II - 3	02° 40' 00" S	118° 17' 00" E	The geographic positions of (II-2) to (II-5) determine the axis between Kalimantan and Sulawesi.
	II - 4	03° 45' 00" S	118° 17' 00" E	
	II - 5	05° 28' 00" S	117° 05' 00" E	The geographic positions of (II-5) to (II-7) determine the axes through the Flores Sea.
	II - 6	07° 00' 00" S	116° 50' 00" E	
	II - 7	08° 00' 00" S	116° 00' 00" E	The geographic positions of (II-7) to (II-8) determine the axis through the Lombok Strait to the Indian Ocean.
	II - 8	09° 01' 00" S	115° 36' 00" E	

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ANNEX III
INDONESIAN GOVERNMENT REGULATION
NO. 37 OF 2002
28 JUNE 2002

TABLE OF GEOGRAPHIC COORDINATES
CONNECTING POINTS FOR THE AXIS OF ARCHIPELAGIC SEA LANE IIIA

ARCHIPELAGIC SEA LANE	REF. NO.	COORDINATES		INFORMATION
		LATITUDE	LONGITUDE	
Archipelagic Sea Lane IIIA For sailing from the Pacific Ocean to the Indian Ocean or vice versa through the Maluku Sea, the Seram Sea, the Banda Sea, the Ombai Strait and the Sawu Sea to the west of Sawu Island.	IIIA - 1	03° 27' 00" N	127° 40' 30" E	The geographic positions of (IIIA-1) to (IIIA-5) determine the axis from the Pacific Ocean through the Maluku Sea.
	IIIA - 2	01° 40' 00" N	126° 57' 30" E	
	IIIA - 3	01° 12' 00" N	126° 54' 00" E	
	IIIA - 4	00° 09' 00" N	126° 20' 00" E	
	IIIA - 5	01° 53' 00" S	127° 02' 00" E	
	IIIA - 6	02° 37' 00" S	126° 30' 00" E	The geographic positions of (IIIA-5) to (IIIA-7) determine the axis through the Seram Sea.
	IIIA - 7	02° 53' 00" S	125° 30' 00" E	
	IIIA - 8	03° 20' 00" S	125° 30' 00" E	
	IIIA - 9	08° 25' 00" S	125° 20' 00" E	The geographic positions of (IIIA-7) to (IIIA-9) determine the axis through the Banda Sea to the Ombai Strait.
	IIIA - 10	09° 03' 00" S	123° 34' 00" E	
	IIIA - 11	09° 23' 00" S	122° 55' 00" E	
	IIIA - 12	10° 12' 00" S	121° 18' 00" E	

	IIIA – 13	10° 44' 30" S	120° 45' 45" E	The geographic positions of (IIIA-9) to (IIIA-13) determine the axis through the Ombai Strait and the Sawu Sea between Sumba Island and Sawu Island to the Indian Ocean.
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PRESIDENT OF
THE REPUBLIC OF
INDONESIA,
sgd
MEGAWATI
SOEKARNOPUTRI

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sgd
Lambock V. Nahattands

ANNEX IIIA
INDONESIAN GOVERNMENT REGULATION
NO. 37 OF 2002
28 JUNE 2002

**TABLE OF GEOGRAPHIC COORDINATES
CONNECTING POINTS FOR THE AXES OF ARCHIPELAGIC SEA LANE
BRANCHES IIB & IIIC**

ARCHIPELAGIC SEA LANE	REF. NO.	COORDINATES		INFORMATION
		LATITUDE	LONGITUDE	
Archipelagic Sea Lane Branch IIIB For sailing from the Pacific Ocean to the Timor Sea or vice versa through the Maluku Sea, the Seram Sea, the Banda Sea and the	IIIA – 8	03° 20' 00" S	125° 30' 00" E	The geographic positions of (IIIA-8) to (IIIB-2) determine the axis through the Banda Sea and the Leti Strait to the Timor Sea.
	IIIB – 1	04° 00' 00" S	125° 40' 00" E	

Leti Strait.	IIIB - 2	08° 31ꞑ 00² S	127° 33ꞑ 00² E	The geographic positions of (IIIB-1) to (IIIC-2) determine the axis through the Banda Sea to the Arafura Sea.
Archipelagic Sea Lane Branch IIIC For sailing from the Pacific Ocean to the Arafura Sea or vice versa through the Maluku Sea, the Seram Sea and the Banda Sea.	IIIA - 8	03° 20ꞑ 00² S	125° 30ꞑ 00² E	
	IIIB - 1	04° 00ꞑ 00² S	125° 40ꞑ 00² E	
	IIIC - 1	06° 10ꞑ 00² S	131° 45ꞑ 00² E	
	IIIC - 2	06° 44ꞑ 00² S	132° 35ꞑ 00² E	

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ANNEX IIIB
INDONESIAN GOVERNMENT REGULATION
NO. 37 OF 2002
28 JUNE 2002

**TABLE OF GEOGRAPHIC COORDINATES
CONNECTING POINTS FOR THE AXES OF ARCHIPELAGIC SEA LANE
BRANCHES IIIB & IIIC**

ARCHIPELAGIC SEA LANE	REF. NO.	COORDINATES		INFORMATION
		LATITUDE	LONGITUDE	
Archipelagic Sea Lane Branch IIID For sailing from the Pacific Ocean to the Indian Ocean or vice versa through the Maluku Sea, the Seram Sea, the Banda Sea, the Ombai Strait and the Sawu Sea.	IIIA - 11	09° 23' 00" S	122° 55' 00" E	The geographic positions of (IIIA-11) to (IIID-1) determine the axis from the Sawu Sea to the Sea in between Sawu Island and Roti Island to the Indian Ocean.
	IIID - 1	10° 58' 00" S	122° 11' 00" E	
	IIIE - 2	04° 32' 12" N	125° 10' 24" E	
	IIIE - 1	04° 12' 06" N	126° 01' 00" E	
Archipelagic Sea Lane Branch IIIE For sailing from the Sulawesi Sea to the Indian Ocean or vice versa, through the Maluku Sea, the Seram Sea, the Banda Sea, the Ombai Strait, and the Sawu Sea to the west of Sawu Island or the Sawu Sea to the east of Sawu Island, or to the Indian Ocean or vice versa through the Maluku Sea, the Seram Sea, the Banda Sea, the Leti Strait and the Timor Sea, or to the Arafura Sea or vice versa through the Seram Sea and the Banda Sea.	IIIA - 2	01° 40' 00" N	126° 57' 30" E	The geographic positions of (IIIE-2) to (IIIA-2) determine the axis from the Sulawesi Sea to the Maluku Sea.

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**ELUCIDATION
OF
INDONESIAN GOVERNMENT REGULATION NO. 37 OF 2002
CONCERNING**

**THE RIGHTS AND OBLIGATIONS OF FOREIGN SHIPS AND AIRCRAFT
WHEN EXERCISING THE RIGHT OF ARCHIPELAGIC SEA LANES
PASSAGE THROUGH ESTABLISHED ARCHIPELAGIC SEA LANES**

GENERAL

Law No. 6 of 1996 concerning Indonesian Waters ("Law No. 6 of 1996"), which was legislated in order to implement Law No. 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea ("Law No. 17 of 1985"), provides, in accordance with that Convention, that the sovereignty of the Republic of Indonesia encompasses not only its land and internal waters, but also the territorial sea and archipelagic waters, and the airspace above its land, internal waters, territorial sea and archipelagic waters.

Although Indonesia has sovereignty over the Indonesian territorial sea and archipelagic waters, Law No. 6 of 1996, in accordance with the 1982 United Nations Convention on the Law of the Sea ("the Convention"), provides that foreign ships and aircraft enjoy the right of archipelagic sea lanes passage through Indonesia's territorial sea and archipelagic waters for the purpose of passing through such territorial sea and archipelagic waters from one part of the high seas or an exclusive economic zone to another part of the high seas sea or an exclusive economic zone.

Law No. 6 of 1996 contains basic provisions concerning the right of archipelagic sea lanes passage as detailed in the Convention, while further regulation of the terms of such right of archipelagic sea lanes passage was to be provided for by Government Regulations.

The Government Regulations need to contain provisions for the implementation of the provisions on archipelagic sea lanes in Law No. 6 of 1996, and other provisions concerning archipelagic sea lanes passage as contained in the Convention.

In the implementation of the right of archipelagic sea lanes passage for traversing the Indonesian territorial sea and archipelagic waters, in accordance with the Convention, Indonesia may determine sea lanes from among those that are customarily used for international shipping as sea lanes that may be used for such archipelagic sea lanes passage.

The implementation of the right of archipelagic sea lanes passage using routes that are normally used for international shipping as provided under Article 53 paragraph (12) of the Convention may give rise to many security risks, because archipelagic sea lanes passage is a type of passage that includes specific freedoms.

In order to reduce the security risks associated with the right of archipelagic sea lanes passage, certain archipelagic sea lanes need to be established that may be used for the exercise of such archipelagic sea lanes passage.

The establishment of such sea lanes was carried out by the Government of Indonesia, taking into consideration the interests of the international community, through the competent international organization in the field of international shipping, namely the International Maritime Organization (IMO). On 19 May 1998 the 69th Session of the Maritime Safety Committee (MSC-69-IMO) accepted the Government of Indonesia's submission concerning the establishment of 3 (three) archipelagic sea lanes, together with their branches, which may be used for the exercise of the right of archipelagic sea lanes passage through Indonesian waters. In order to follow up the acceptance of the Government of Indonesia's submission by the IMO, the 3 (three) archipelagic sea lanes and their branches need to be established by a Government Regulation by determining the geographic coordinates of the connecting points of the axes of such archipelagic sea lanes.

The establishment of these 3 (three) archipelagic sea lanes and their branches does not mean that they may only be used for exercising the right of archipelagic sea lanes passage by foreign ships that wish to sail from one part of the high seas or an exclusive economic zone through Indonesian waters to another part of the high seas or an exclusive economic zone. Foreign ships that wish to sail from one part of the high seas or an exclusive economic zone to a port in Indonesia or to another part of the high seas or an exclusive economic zone may do so based on the right of innocent passage in Indonesian waters, whether within the archipelagic sea lanes or outside them.

Therefore, in accordance with the provisions of Articles 18 and 19 of Law No. 6 of 1996, a Government Regulation to regulate the rights and obligations of foreign ships and aircraft when exercising the right of archipelagic sea lanes passage through established archipelagic sea lanes needs to be promulgated.

This Government Regulation contains provisions relating to:

- a. General Provisions;
- b. Rights and Obligations of Foreign Ships and Aircraft When Exercising the Right of Archipelagic Sea Lanes Passage;
- c. Determination of Archipelagic Sea Lanes to be Used for Archipelagic Sea Lanes Passage;
- d. Other Provisions; and
- e. Closing Provisions.

This Government Regulation regulates the implementation Law No. 6 of 1996, which itself is an implementation of the ratification of the Convention through Law No. 17 of 1985. In order to guarantee consistency between the interpretation of this Government Regulation and the interpretation of the provisions of the Convention, in accordance with the elucidation of the Articles of Law No. 6 of 1996, in the elucidation of the Articles of this Government Regulation it is considered that there should be reference to the Articles or paragraphs of the Convention, particularly in the elucidation of Articles whose terms are not found in Law No. 6 of 1996 but are found in the Convention.

The supervision that is necessary so that foreign ships conducting archipelagic sea lanes passage through Indonesian waters comply with the provisions of this Government Regulation shall be carried out in accordance with the regulations as described in Article 24 paragraph (1) of Law No. 6 of 1996. Such supervision at this time is carried out on the basis of, inter alia, the 1939 Territorial Sea and Maritime Environment Ordinance (Stbl. 1939 No. 442) and its implementing regulations namely the 1935 Territorial Sea and Maritime Environment Verordening (Stbl. 1935 No. 525) and Decision of the Governor-General No. 39 of 1939 concerning Guidelines to be Used for Criminal Investigations at Sea.

ARTICLE BY ARTICLE

Article 1

Sufficiently clear.

Article 2

The provisions relating to archipelagic sea lanes passage may be used by foreign ships in order to pass through Indonesian waters from one part of the high seas or an exclusive economic zone to another part of the high seas or an exclusive economic zone, whereas the provisions relating to innocent passage may be used by foreign ships both to pass through Indonesian waters without entering an Indonesian port and also to stop at an Indonesian port.

Foreign ships that sail in Indonesian waters with the intent of entering or leaving an Indonesian port are subject to the terms of innocent passage and thus while sailing within archipelagic sea lanes remain subject to the terms of innocent passage and may not use the terms of archipelagic sea lanes passage.

Article 3

Paragraph (1)

See the General Elucidation at paragraph 5.

Paragraph (2)

Sufficiently clear.

Article 4

Paragraph (1)

The provisions of this paragraph implement Article 54 jo. Article 39 paragraph (1)(a) of the Convention.

Paragraph (2)

The provisions of this paragraph implement Article 53 paragraph (1) of the Convention.

Paragraph (3)

The provisions of this paragraph implement Article 54 jo. Article 39 paragraph (1)(b) of the Convention.

Paragraph (4)

While conducting archipelagic sea lanes passage, foreign warships and military aircraft must refrain from the acts described in this paragraph because such acts are acts that are not directly related to continuous and expeditious transit in the normal mode, which may disturb the peace or order or security of the State.

The provisions of this paragraph implement Article 54 jo. Article 39 paragraph (1)(c) of the Convention.

Paragraph (5)

While conducting archipelagic sea lanes passage, foreign ships and aircraft must refrain from the acts described in this paragraph because such acts are acts that are not directly related to continuous and expeditious transit in the normal mode, which may disturb the peace or order or security of the State.

The provisions of this paragraph implement Article 54 jo. Article 39 paragraph (1)(c) of the Convention.

Paragraph (6)

While conducting archipelagic sea lanes passage, foreign ships must refrain from the acts described in this paragraph because such acts are acts that are not directly related to continuous and expeditious transit in the normal mode, which may disturb the peace or order or security of the State.

The provisions of this paragraph implement Article 54 jo. Article 39 paragraph (1)(c) of the Convention.

Paragraph (7)

While conducting archipelagic sea lanes passage, foreign ships and aircraft must refrain from the acts described in this paragraph because such acts are acts that are not directly related to continuous and expeditious transit in the normal mode, which may disturb the peace or order or security of the State.

The provisions of this paragraph implement Article 54 jo. Article 39 paragraph (1)(c) of the Convention.

Article 5

The provisions of this Article implement Article 54 jo. Article 40 of the Convention.

Article 6

Paragraph (1)

The provisions of this paragraph implement the fisheries laws and regulations and Article 54 jo. Article 42 paragraph (1)(c) of the Convention.

Paragraph (2)

The provisions of this paragraph implement the fisheries laws and regulations and Article 54 jo. Article 42 paragraph (1)(c) of the Convention.

Paragraph (3)

The provisions of this paragraph implement the customs, fiscal, immigration and sanitary laws and regulations and the provisions of Article 54 jis. Article 42 paragraph (1)(d) and Article 39 paragraph (1)(c) of the Convention.

Article 7

Paragraph (1)

The provisions of this paragraph implement Article 54 jo. Article 39 paragraph (2)(a) of the Convention.

Paragraph (2)

The provisions of this paragraph implement Article 53 paragraph (1) of the Convention.

Paragraph (3)

The provisions of this paragraph implement Article 54 jo. Article 42 paragraph (1)(a) of the Convention.

Paragraph (4)

The "prohibited zone" means the zone that is determined to surround an installation, the width of which is 500 (five hundred) metres from the outermost points of the installation or other points which constitute permanent parts of the installation, in which a third party ship may not sail.

While conducting archipelagic sea lanes passage, foreign ships must refrain from acts as described in this paragraph in order to protect such installations from dangers caused by the sailing of such foreign ships.

Article 8

Paragraph (1)

The provisions of this paragraph implement Article 54 jo. Article 39 paragraph (3) of the Convention.

Paragraph (2)

The provisions of this paragraph implement Article 54 jo. Article 39 paragraph (3) of the Convention.

Article 9

Paragraph (1)

The provisions of this paragraph implement Article 54 jo. Article 42 paragraph (1)(b) and Article 211 paragraph (2) of the Convention.

Paragraph (2)

The provisions of this paragraph implement Article 210 paragraph (1) of the Convention.

Paragraph (3)

The international agreements referred to in this Article are as follows:

1. the Convention on the Physical Protection of Nuclear Materials;
2. the Irradiated Nuclear Fuel (INF) Codes;
3. the International Maritime Dangerous Goods (IMDG) Codes;
4. the Hazardous Materials and Noxious Substances (HNS) Codes.

Article 10

Paragraph (1)

The liability of the person or legal body responsible for the operation or cargo of ships or aircraft in this paragraph means civil liability such as compensation for loss or damage.

Paragraph (2)

The provisions of this paragraph implement Article 54 jo. Article 42 paragraph (5) of the Convention.

Article 11

Sufficiently clear.

Article 12

Paragraph (1)

The marking of the archipelagic sea lanes on navigational charts is intended so that foreign ships when sailing may comply with the conditions of archipelagic sea lanes passage in accordance with the provisions of this Government Regulation as it implements the Convention.

Paragraph (2)

The geographic coordinates of the connecting points of the axes of the archipelagic sea lanes are given in latitude and longitude, with an explanation of which particular waters the points are located in together with other necessary indicating data.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

The provisions of this paragraph are intended to give legal certainty concerning the true locations of the outermost connecting points of the axes.

Paragraph (5)

The illustrative charts referred to in this paragraph are charts that give a general picture of the positions of the axes of the archipelagic sea lanes and are not navigational charts.

Article 13

See the General Elucidation at paragraph 7.

Article 14

Indonesia's submission concerning the establishment of archipelagic sea lanes was accepted by the IMO in Resolution MSC. 72 (69) at the 69th Session of the Maritime Safety Committee that took place in London from 11 to 20 May 1998, at which time the Leti Strait and the part of the Ombai Strait that borders East Timor were still part of the Indonesian archipelagic waters.

However, with the change in the status of East Timor, the Leti Strait and the aforementioned part of the Ombai Strait no longer constitute straits that are part of the Indonesian archipelagic waters, because they are now straits that lie between two States.

Article 15

This Article provides for a change from the situation where, in accordance with Article 53 paragraph (12) of the Convention, foreign ships and aircraft still have a right of passage using the routes that are normally used in international shipping, to the situation where, in accordance with this Government Regulation, such right of passage for foreign ships and aircraft may be conducted using particular sea lanes.

ANNEX 4

ICC-IMB Piracy and Armed Robbery Against Ships Report-First Quarter 2010 Prone Areas and Warnings

ICC-IMB Piracy and Armed Robbery Against Ships Report – First Quarter 2010

PIRACY PRONE AREAS AND WARNINGS

Mariners are warned to be extra cautious and to take necessary precautionary measures when transiting the following areas:

SOUTH EAST ASIA AND INDIAN SUB CONTINENT

Bangladesh : Attacks are still continuing. The area is listed as high risk. Pirates are seen targeting ships preparing to anchor. Most attacks reported at Chittagong anchorages and approaches.

Indonesia : Anambas / Natuna / Mangkai islands area, Belawan. Pirates normally armed with guns / knives and / or machetes. Generally be vigilant in other areas. Many attacks may have gone unreported.

Malacca Straits : Although the number of attacks has dropped due to the increase and aggressive patrols by the littoral states authorities since July 2005, ships are advised to continue maintaining a strict anti piracy watch when transiting the straits. Currently, there are no indications as to how long these patrols will continue or reduce.

Malaysia : Off Tioman / Pulau Aur / South China Sea. Pirates armed with guns and knives attack vessels during the hour of darkness.

Singapore Straits : Vessels should remain vigilant and maintain anti piracy watch. Pirates attack ships while underway or while anchored at Eastern OPL.

South China Sea : in the vicinity of Anambas / Natuna islands area.

Vietnam : Vung Tau

AFRICA AND RED SEA.

Africa :- Lagos (Nigeria): Pirates are violent and have attacked and robbed vessels / kidnapped crews along the coast rivers, anchorages, ports and surrounding waters. A number of crew members were injured in some of the attacks. Vessels are also advised to be vigilant in other parts in Nigeria as many attacks may have gone unreported.

-Conakry (Guinea) : Pirates armed with automatic weapons are violent and aggressive in the attacks. In some attacks, pirates dressed in military uniforms.

Gulf of Aden/Red Sea : Somali pirates continue to attack vessels in the northern Somali coast in the Gulf of Aden and southern Red Sea in the Bab El Mandeb TSS despite increased presence of warships. The pirates are firing automatic weapons and Rocket Propelled Grenades (RPG) in an attempt to board and hijack vessels. Once the attack is successful and the vessel hijacked, they would sail the vessel towards the Somali coast and thereafter demand a ransom for the release of the vessel and crew. All vessels transiting the area are advised to take additional precautionary measures and maintain strict 24 hours visual and radar anti piracy watch using all available means. Watch keeping crews should lookout for small suspicious boats converging to own vessel. Early sightings / detection and accurate assessment will allow Master to increase speed and take evasive manoeuvres to escape from the pirates and at the same time request for assistance from various Authorities / Agencies including the IMB PRC.

Since 1 February 2009, MSCHOA (www.mschoa.org) has established the Internationally Recommended Transit Corridor (IRTC). Military assets (Naval and Air) will be strategically deployed within the area to best provide protection and support to merchant ships.

Source: IMB ICC IMB Piracy and Armed Robbery Against Ships Report – First Quarter 2010
<http://www.icc-ccs.org> 22 July 2010

ANNEX 5

ICC-IMB Piracy and Armed Robbery Against Ships Report-First Quarter 2010

ICC-IMB Piracy and Armed Robbery Against Ships Report – First Quarter 2010

TABLE 1: Locations of ACTUAL and ATTEMPTED attacks

January - March 2005 – 2010

Locations	2005	2006	2007	2008	2009	2010
S E ASIA Indonesia	16	19	9	4	1	8
Malacca Straits	4		2		1	
Malaysia	2	3	1	1		2
Philippines		1		2		1
Singapore Straits	2	1		1		
Thailand	1	1			1	
FAR China/Hong Kong	1					
EAST South China Sea	1					2
Vietnam	3	1	1	1	4	2
INDIAN Bangladesh	6	9	2	2	1	1
SUB India	5		3	5	3	3
CONTINENT Sri Lanka			2	1		
AMERICAS Brazil	1	1			2	
Colombia	1				2	
Dominican Republic	1					
Ecuador		1				1
Guyana			1			1
Haiti					2	1
Jamaica	1					
Peru	1	3	2	2	7	2
Venezuela			1	1	1	
AFRICA Angola			1	2		
Congo						1
Dem. Congo Republic		2	2			
Equatorial Guinea				1		
Ghana	1			2	1	
Guinea						1
Gulf of Aden *	3	7	3	5	41	12
Ivory Coast		1		1		1
Kenya					1	
Liberia						1
Morocco	1			1		
Mozambique				2		
Nigeria		4	6	10	7	2
Red Sea**						3
Sierra Leone		1				
Somalia	3	5	2	1	20	18
Tanzania			3	4	2	
Togo					2	
REST OF Arabian Sea***	2					2
WORLD Indian Ocean****					1	
Iraq		1				
Sub total	56	61	41	49	102	67
Total at year end	276	239	263	293	410	

Source: IMB ICC IMB Piracy and Armed Robbery Against Ships Report – First Quarter 2010
<http://www.icc-ccs.org> 22 July 2010

ICC-IMB Piracy and Armed Robbery Against Ships Report-First Quarter 2010

ICC-IMB Piracy and Armed Robbery Against Ships Report – First Quarter 2010

*Gulf of Aden

**Red Sea

***Arabian Sea

****Indian Ocean

All of the above attacks are attributed to Somali pirates

CHART A : THE FOLLOWING SIX LOCATIONS SHARED MORE THAN TWO THIRDS OF THE 67 INCIDENTS REPORTED FOR THE PERIOD.

