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Archipelagic States

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An archipelagic State is a nation constituted wholly of one or more archipelagoes and may include other islands.¹ An archipelago means a group of islands, interconnecting waters, and other natural features that are closely interrelated and form an intrinsic geographical, economic, and political entity.² Thus, a continental nation, like China or the United States, cannot claim archipelagic status for its claimed mid-ocean island possessions. Twenty States purport to claim archipelagic status: Antigua & Barbuda, The Bahamas, Cape Verde, Comoros, Dominican Republic, Fiji, Indonesia, Jamaica, Kiribati, Maldives, Marshall Islands, Papua New Guinea, Philippines, Saint Vincent & the Grenadines, Sao Tome & Principe, Seychelles, Solomon Islands, Trinidad & Tobago, Tuvalu, and Vanuatu.

Archipelagic Baselines.

Archipelagic States may draw straight baselines joining the outermost points of their outermost islands, if the ratio of water to land within the baselines is between 1:1 and 9:1.³ Thus, even if a State is an island nation it must still meet the water-to-land ratio—so Australia and Japan, for example, cannot claim archipelagic status because they have too much land territory. The waters enclosed within the straight baselines are archipelagic waters, which are subject to archipelagic State sovereignty.⁴ The right of innocent passage applies in archipelagic waters not covered by the archipelagic sea lanes passage (ASLP) regime discussed below.⁵ Archipelagic baselines are also used to measure the archipelagic State's territorial sea, contiguous zone, and exclusive economic zone (EEZ).⁶



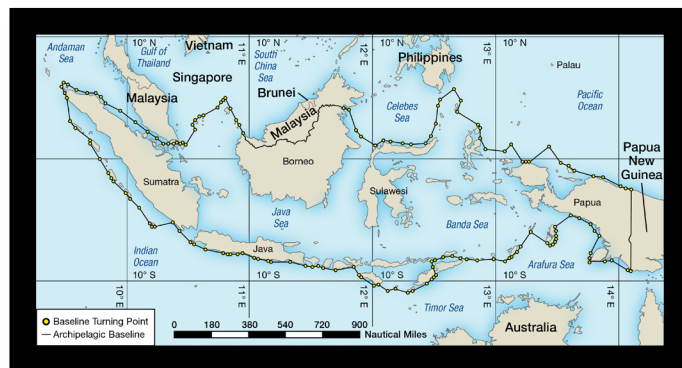
Archipelagic Sea Lanes (ASL). Archipelagic States may, but are not required to, designate ASLs through their archipelagic waters suitable for

continuous and expeditious passage of ships and aircraft. All normal routes used for international navigation and overflight are to be included in the designation and must be adopted by the International Maritime Organization (IMO).⁷ If the archipelagic State does not designate or makes only a partial designation of ASLs, vessels and aircraft of all nations may continue to exercise the right of ASLP in all normal passage routes used for international navigation and overflight through the archipelago.⁸

Archipelagic Sea Lanes Passage. ASLP applies within archipelagic waters and the adjacent territorial sea whether or not the archipelagic State has designated ASLs and is virtually identical to the transit passage regime. ASLP is the exercise of the rights of navigation and overflight in the normal mode of operation solely for the purpose of continuous, expeditious, and unobstructed transit through archipelagic waters. Normal mode includes submerged transit by submarines; launching and recovery of aircraft and military devices for force protection; formation flying and steaming for force protection; and replenishment at sea and air-to-air refueling. All military and commercial ships and aircraft enjoy the right of ASLP while transiting through, under, or over archipelagic waters and adjacent territorial seas via all normal passage routes used as routes for international navigation or overflight.⁹ The archipelagic State may not impede or suspend the right of ASLP for any reason.¹⁰ Additionally, there is no requirement for ships or aircraft to request diplomatic clearance or provide prior notice to or receive consent from the archipelagic State to engage in ASLP.

Archipelagic States—Rights and Duties. Archipelagic States may adopt laws and regulations relating to ASLP with respect to any of the following:

(a) safety of navigation and the regulation of maritime traffic; (b) prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances; (c) prevention of fishing, including the



stowage of fishing gear; and the loading or unloading of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary laws and regulations of the archipelagic States. Such laws and regulations shall not discriminate in form or in fact among foreign ships and shall not have the practical effect of denying, hampering, or impairing the right of ASLP.¹¹ Additionally, warships, naval auxiliaries, and other government non-commercial vessels are not required to comply with any of the environmental provisions of the United Nations Convention on the Law of the Sea (UNCLOS).¹²

Duties of Ships and Aircraft. Ships and aircraft, while exercising ASLP, must (a) proceed without delay; (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of the archipelagic State; and (c) refrain from activities other than those incident to their normal mode of continuous and expeditious transit, unless rendered necessary by *force majeure* or distress. All ships, including sovereign immune ships, shall comply with the International Collision Regulations (COLREGS),¹³ and commercial vessels shall additionally comply with generally accepted international regulations, procedures and practices for the prevention, reduction, and control of pollution from ships.¹⁴ Ships are also prohibited from carrying out marine scientific research and hydrographic survey activities without archipelagic State consent.¹⁵ Civil aircraft in ASLP shall (a) observe the International Civil Aviation Organization (ICAO) Rules of the Air; and (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.¹⁶ Military and other State aircraft will normally comply with the ICAO Rules of the air, and will at all times operate with due regard for the safety of navigation.¹⁷

Indonesian Archipelago. To date, the only archipelagic State that has designated ASLs is Indonesia (See figure three below). In introducing its proposal before the Maritime Safety Committee (MSC), Indonesia confirmed that the proposed designation was a “partial” ASL proposal and that the right of ASLP would continue to apply in “all other normal passage routes used for international navigation and overflight . . . including an east-west route and other associated spurs and connectors, through and over Indonesia’s territorial sea and its archipelagic waters.”¹⁸ Accordingly, the IMO adopted Indonesia’s ASL proposal as a “partial system” because it did not include all normal routes used for international navigation, as required by

UNCLOS.¹⁹ Relevant IMO documents reflect that, where a partial ASL proposal has come into effect, the right of ASLP “may continue to be exercised through all normal passage routes used for international navigation or overflight in other parts of archipelagic waters” in accordance with UNCLOS.²⁰



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1. United Nations Convention on the Law of the Sea art. 46, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].
 2. *Id.*
 3. *Id.* art. 47.
 4. *Id.* art. 49.
 5. *Id.* art. 52.
 6. *Id.* art. 48.
 7. *Id.* art. 53.
 8. *Id.* art. 53(12); IMO Doc. SN/Circ.206/Corr.1, Guidance for Ships Transiting Archipelagic Waters, Mar. 1, 1999; IMO Doc. A.571(14), General Provisions on Ships' Routing, Nov. 20, 1985, Part I; IMO Doc. SN/Circ. 206, Guidance for Ships Transiting Archipelagic Waters, Mar. 1, 1999, ¶ 2.1.1.
 9. UNCLOS, *supra* note 1, art. 53.
 10. *Id.* arts. 44, 54.
 11. *Id.* arts. 42, 44, 54.
 12. *Id.* art. 236.
 13. 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREGS), Oct. 20, 1972, 28 U.S.T. 3459, T.I.A.S. No. 8587, 1050 U.N.T.S. 16.
 14. UNCLOS, *supra* note 1, arts. 39, 54.
 15. *Id.* arts. 40, 54.
 16. *Id.* arts. 39, 54.
 17. *Id.*
 18. MSC 69/5/2; MSC 77/25/7; Report of the Maritime Safety Committee 69/22, ¶ 5.23.2; Report of the Maritime Safety Committee 77/26, ¶ 25.40.
 19. UNCLOS, *supra* note 1, art. 53; IMO Doc. MSC.72(69), Adoption, Designation, and Substitution of Archipelagic Sea Lanes, May 19, 1988; IMO Doc. A.571(14), General Provisions on Ships' Routing, Nov. 20, 1985, Part H, ¶¶ 3.2, 3.9, 6.7, Sec. I. *See also* IMO Doc. SN/Circ. 200, Adoption, Designation, and Substitution of Archipelagic Sea Lanes, May 26, 1998; IMO Doc. SN/Circ. 200/Add.1, Adoption, Designation, and Substitution of Archipelagic Sea Lanes, July 3, 2008; and IMO Doc. SN/Circ. 202, Adoption, Designation, and Substitution of Archipelagic Sea Lanes, July 31, 2008.
 20. IMO Doc. A.571(14), General Provisions on Ships' Routing, Nov. 20, 1985, Part H, ¶ 6.7; IMO Doc. SN/Circ. 206, Guidance for Ships Transiting Archipelagic Waters, Mar. 1, 1999, at para. 2.1.1.