



## ARCHIPELAGIC STATES

The impact of the Convention on those states which can claim status as archipelagic states<sup>1</sup> due to the fact that they consist of a group of islands forming an intrinsic geographical, economic, and political entity<sup>2</sup> is considerable, as all of the water area between the islands (the archipelagic waters) is under the sovereignty of the state<sup>3</sup>, regardless of the depth of the water or the distance from the coast<sup>4</sup>. One of the consequences of this assignment of sovereignty is that passage of vessels through these areas is basically innocent passage<sup>5</sup>. Sea lanes and air routes<sup>6</sup> through archipelagic waters are governed by specific regulations, including certain provisions of the regime of passage through straits<sup>7</sup>. Vessels are to respect sea lanes and traffic separation schemes<sup>8</sup>. As long as the archipelagic state has not designated sea lanes as provided by the Convention, the routes normally used for international navigation may be used as "sea lanes,"<sup>9</sup> with the status of "archipelagic sea lane passage"<sup>10</sup>. If necessary for the security of the state, navigation may be suspended temporarily in specified areas of the archipelagic waters, but this may not result in a suspension of sea lane passage<sup>11</sup>.

An archipelagic state may draw straight archipelagic baselines of a maximum of 125 nautical miles in length to join the outermost points of the outermost islands and drying reefs,<sup>12</sup> provided that the ratio of land to water is not more than 1:1 and not less than 1:9<sup>13</sup>. These baselines are to be shown on charts and given due publicity.<sup>14</sup> The waters enclosed by the archipelagic baselines are the archipelagic waters and are under the sovereignty of the state<sup>15</sup>.

The legal concept of archipelagic waters is without prejudice for the right of the state to draw lines for the delimitation of internal waters in accordance with Articles 9, 10, and 11<sup>16</sup> for the mouths of rivers, bays, and ports. Such lines of delimitation are known as closing lines rather than baselines as in the territorial sea concept,<sup>17</sup> as they serve only as the boundary for waters completely outside the jurisdiction of the Convention (internal waters) and do not act as the starting point for establishing zones. There is no right of innocent passage in internal waters enclosed by closing lines, even if they were not considered internal waters previously, a further contrast to the territorial sea concept<sup>18</sup>.

The territorial sea, contiguous zone, exclusive economic zone, and continental shelf are measured from the archipelagic baselines, not from the closing lines drawn to delimit internal waters<sup>19</sup>. An archipelagic state may designate sea lanes through its archipelagic waters and through the adjacent territorial sea as well, and establish air routes there above<sup>20</sup>.

An archipelagic state is to respect existing agreements and to recognize legitimate activities by neighbouring states in its archipelagic waters; this includes existing submarine cables passing through the archipelagic waters. An archipelagic state is to permit the maintenance and replacement of such cables<sup>21</sup>.

In respect to pollution matters, there is a curious situation which might raise some concern in practice. Archipelagic sea lane passage is obviously intended to have a status similar to that of transit passage through straits.<sup>22</sup> But whereas the general enforcement regulations for pollution from vessels referred to in Part XII (Pollution) are not applicable in straits<sup>23</sup>, a corresponding exclusion for archipelagic sea lane passage, either *expressis verbis* or by reference, does not exist. Archipelagic states may therefore apply Part XII to the full extent if not contrary to specific provisions of Part IV<sup>24</sup>.

<sup>1</sup> Art. 46, Subpara. (a)

<sup>2</sup> Art. 46, Subpara. (b)

<sup>3</sup> Art. 2, Para. 1

<sup>4</sup> Art. 49, Para. 1

<sup>5</sup> Art. 52

<sup>6</sup> Art. 53

<sup>7</sup> Art. 53, Para. 2-3; Art. 54

<sup>8</sup> Art. 53, Para. 11

<sup>9</sup> Art. 53, Para. 12

<sup>10</sup> Art. 53, Para. 1-3

<sup>11</sup> Art. 52, Para. 2; 54; 44

<sup>12</sup> Art. 47, Para. 1-2

<sup>13</sup> Art. 47, Para. 1, 3-7

<sup>14</sup> Art. 47, Para. 8-9

<sup>15</sup> Art. 49, Art. 2, Para. 1

<sup>16</sup> Art. 50

<sup>17</sup> Art. 5

<sup>18</sup> Art. 8, Para. 2

<sup>19</sup> Art. 48

<sup>20</sup> Art. 53, Para. 1

<sup>21</sup> Art. 51

<sup>22</sup> Art. 54

<sup>23</sup> Art. 233

<sup>24</sup> e.g. Art. 42; 44

## OPERATIONS IN ARCHIPELAGIC WATERS

### I. DETERMINING ARCHIPELAGIC SEA LANES FOR VESSELS

- (1) The archipelagic state may establish sea lanes which traverse the archipelagic waters and the adjacent territorial sea (Article 53, Paragraph 4)
- (2) These routes are to include all normal passage routes and all normal navigational channels within such routes  
*Unless:* this would lead to duplication of routes of similar convenience (Article 53, Paragraph 4)
- (3) A sea lane is defined as a series of continuous axis lines from entry point of passage routes to the exit point (Article 53, Paragraph 5)
- (4) Vessels must not deviate more than twenty-five nautical miles to either side of the axis line during passage  
*But:* they must not navigate closer to the coast than 10% of the distance between the nearest points on islands bordering the sea lane (Article 53, Paragraph 5)
- (5) The archipelagic state may prescribe traffic separation schemes for sea lanes to ensure safe passage of vessels through narrow channels (Article 53, Paragraph 6)

### II. RIGHTS OF FOREIGN STATES IN ARCHIPELAGIC WATERS

Activity	Rights
Navigation	- Foreign vessels' enjoy rights of innocent passage through archipelagic waters, but these may be suspended temporarily for security reasons (Articles 52, 54) - Designated sea lanes are to be respected (Article 53, Paragraph 11); in such sea lanes vessels have right of "archipelagic sea lane passage" (Article 53, Paragraph 2) - Sea lane passage may not be hampered or suspended (Articles 54, 44) - Traffic separation schemes are to be respected (Article 53, Paragraph 11)
Overflight	Foreign aircraft have right of overflight, but must follow designated corridors (Article 53, Paragraph 2); must observe Rules of the Air and monitor the assigned radio frequency (Articles 54; 39, Subparagraph 3)
Fishing	Can be obtained by agreement; archipelagic state must recognize traditional fishing rights (Article 51)
Scientific Research	Consent of archipelagic state is required (Articles, 54, 40)
Submarine cables	Foreign states have rights only with regard to existing cables (Article 51)
Mining	Foreign states have no rights
Environmental Legislation and Enforcement	Archipelagic state may adopt laws and regulations to give effect to international regulations to prevent, reduce and control pollution in sea lanes, but restricted to "discharge" (Article 54, Article 42, Subparagraph 1(b)). Passage outside sea lanes is passage through territorial sea (Article 52)