DESIGNATION OF ARCHIPELAGIC SEA LANES ACCORDING TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982 (INDONESIA ARCHIPELAGIC SEA LANES CASE)

Masitha Tismananda Kumala  
Faculty of Law  
Airlangga University, Surabaya, Indonesia  
Email : sitha.kumala@gmail.com

Dina Sunyowati  
Faculty of Law  
Airlangga University, Surabaya, Indonesia  
Email : dinasunyowati@gmail.com

ABSTRACT

According to Article 53 of the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), in designating sea lanes, an archipelagic state shall refer a proposal to the International Maritime Organization (IMO) with a view to their adoption. Before adopting the proposed archipelagic sea lanes, the IMO should ensure that the proposed sea lanes are in accordance with the relevant provisions of UNCLOS 1982 in that they shall traverse both the archipelagic waters and the adjacent territorial sea, and shall include all normal passage routes used as routes for international navigation or overflight through or over the archipelagic waters. The finding showed the fact that there is no legal document that defines what is meant by normal passage routes and routes normally used for international navigation. It is therefore essential to create a new legal document which defines those two concepts.

Keywords : archipelagic state, archipelagic waters, archipelagic sea lanes

Introduction

Over the past one and a half decades, law of the sea and especially of the maritime routes has changed dramatically. This change is supported by the International Maritime Organization (IMO). One of the organs in the IMO is Maritime Safety Committee who meet regularly to discuss maritime security, including maritime routes. Until June 2015, the number of IMO member is 171 states and three associate members. This number is bigger than the number of states that ratified the United Nations Convention on the Law of the Sea (UNCLOS) 1982, which is only 166 states. It showed that many states are concerned about maritime security and maritime routes.

There is a new concept in UNCLOS 1982 which is not governed by the Geneva Convention on The Law of The Sea 1958. That new concept is archipelagic state. Article 46 (a) of UNCLOS 1982 defines an archipelagic state as a state constituted wholly by one or more archipelagos. According to the table of claims released by the United Nations, until July 2012, there were 22 states declaring themselves as an archipelagic state. The fact that many states declared themselves as an archipelagic state shows that the archipelagic state concept is very beneficial and can protect the interest of the state claiming an archipelagic state status.

According to UNCLOS 1982 Art. 49, an archipelagic state may draw straight archipelagic baselines joining the outermost point of the outermost island and drying reefs of the archipelago. The legal status of the waters enclosed by the archipelagic baselines or described as archipelagic waters is the sovereignty of an archipelagic state. This Sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein. Prior to UNCLOS 1982, there was no recognition of archipelagic states. It means that the waters inside the archipelago, or described later by UNCLOS 1982 as archipelagic waters, may be included in high seas where other states can freely conduct exploration and exploitation activities in these waters.

A substantial conflict between the right of coastal states or archipelagic states to control adjacent maritime areas and the right of maritime states to enjoy the freedom of navigation has endured for much of history of the law of the sea. The archipelagic state concept set out in UNCLOS 1982 is a compromise between the maritime states or described as user states and archipelagic states. The interest of user states in archipelagic waters is on the navigational rights through that waters.

UNCLOS 1982 states that there are two navigational rights applied in the archipelagic waters. An archipelagic state may designate sea lanes and air routes their above, suitable for the continuous and expeditious passage through or over its archipelagic waters and the adjacent territorial sea. It is important to designate archipelagic sea lanes to protect the archipelagic state’s interest because if an archipelagic state does not designate sea lanes or air routes, the rights of archipelagic sea lanes passage may be exercised through any point which is the routes normally used for international navigation [Art 53(12) UCLOS
In designating the archipelagic sea lanes, an archipelagic state may not unilaterally designate sea lanes and then simply announce it to other states. In designating or substituting archipelagic sea lanes, an archipelagic state shall refer a proposal to a competent international organization with a view to their adoption. The organization may only adopt such sea lanes if they are jointly agreed with the archipelagic state [Art. 53 (9) UNCLOS 1982].

Unfortunately UNCLOS 1982 does not set out however the competent international organization mentioned in Art. 53 (9) of UNCLOS 1982. In the 1996, the United Nations Division for Ocean Affairs and Law of the Sea in the Office of Legal Affairs published the list of competent international organizations to handle certain problems set out in UNCLOS 1982, and IMO is recognized as the competent international organization that adopts archipelagic sea lane proposals in accordance with the relevant provisions of Article 53 (9) of UNCLOS 1982.

Upon receiving the proposal for designating archipelagic sea lanes, the IMO should firstly ensure that the proposed sea lanes are in accordance with the relevant provisions of UNCLOS 1982, however the relevant provisions of UNCLOS 1982 have not given clear and detailed criteria of archipelagic sea lanes that have met the requirements given by UNCLOS 1982 and then adopted by the IMO. It can be difficult to designate archipelagic sea lanes because there will be a lot of subjective opinions about the requirements by both the IMO and archipelagic states. There is a possibility of an archipelagic state believes that the proposed archipelagic sea lanes have met the requirements of UNCLOS 1982, but the IMO comes with the opposite decision and does not adopt the proposed archipelagic sea lanes.

An archipelagic state whose proposed archipelagic sea lanes are not adopted by IMO means that it does not have archipelagic sea lanes used by all foreign ships. In line with Article 53 (12) of UNCLOS 1982, archipelagic sea lanes passage may be exercised through the routes normally used for international navigation. This in turn can threaten the national interest of an archipelagic state. Routes normally used for international navigation may not be the same with routes proposed by the archipelagic state to become its archipelagic sea lanes.

This article propose that it is necessary to create a legal document which sets out the definition and criteria of normal passage routes and routes normally used for international navigation. That legal document can be equipped with a negative list of which routes can not be categorized as normal passage routes and routes normally used for international navigation.

THE RIGHTS OF ARCHIPELAGIC SEA LANES PASSAGE

In Art. 53 (2) UNCLOS 1982, when traversing archipelagic waters, all ships enjoy not only the rights of innocent passage but also the rights of archipelagic sea lanes passage. Unlike the right of innocent passage which is only applied for ships, the right of archipelagic sea lanes passage is applied for all ships and aircraft. Archipelagic sea lanes passage regime is a compromise between the right to innocent passage wanted by Indonesia (as one of the states which proposed the archipelagic states concept at the Third Law of the Sea Conference) and other archipelagic states on the one side, and freedom of navigation regime wanted by maritime states or user states on the other. Archipelagic sea lanes passage is the implementation of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious, and unobstructed transit from high seas or an exclusive economic zone to another high seas or an exclusive economic zone [Art. 53 (3) UNCLOS 1982].

There is no legal document governing the meaning of normal mode and what activities categorized as normal mode that all ships can do when enjoying the rights of archipelagic sea lanes passage. This fact poses some difficulties on operational level because it is hard to define whether a ship does activities of normal mode or not. For example, in the process of designating Indonesian archipelagic sea lanes, Indonesia held an informal meeting with Australia which opined that normal mode was related to activities normally performed by ships such as rescuing people at sea, lifeboat drills, maneuvering the ships, helicopter and aircraft operations, warfare exercises, electronic warfare exercises and so on. Indonesia did not support those broad interpretations on the meaning of normal mode by Australia. Indonesia believed that normal mode of ships or aircraft traversing archipelagic waters is limited to the transit which in essence should be continuous, expeditious and fast. All ship or aircraft activities that did not relate directly to that transit was excluded from normal mode.

Art. 54 UNCLOS 1982 states that all ships and aircraft during their passage in archipelagic waters should perform some duties. Duties of ships and aircraft in enjoying the right of transit passage as stipulated in Articles 39, 40, 42, and 44 of UNCLOS 1982 are applicable mutatis mutandis to archipelagic sea lanes passage. Archipelagic sea lanes passage are often associated with the rights to transit passage because the provisions about duties of ships and aircraft in enjoying their rights to transit passage are also applicable mutatis mutandis to the archipelagic sea lanes passage. As Churchill and Lowe stated that in principle, the right to transit passage is the same as archipelagic sea lanes passage and the difference is only the place where it is applied. The right of transit passage is applied in straits used in international navigation but the archipelagic sea lanes passage is applied in archipelagic waters.

On the other hand, Djalal has a different opinion from that of Churchill and Lowe’s. He stated that the rights of transit passage and right of archipelagic sea lanes passage are different. Article 38 (2) of UNCLOS 1982 which set out the right to transit passage in straits used in international navigation refers to the freedom of navigation, whereas Article 53 of UNCLOS 1982 which set out the right of archipelagic sea lanes refers to the right to navigation. In the rights to archipelagic sea lanes passage, the rights of navigation should be qualified as normal mode which is unknown in the right of transit passage regime.

THE DESIGNATION OF ARCHIPELAGIC SEA LANES
An archipelagic state may designate sea lanes and air routes thereabove, suitable for continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea [Art. 53 (1) UNCLOS 1982]. All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes. The phrase “sea lanes and air routes thereabove” in Art. 53 (1) UNCLOS 1982 means there will be no air route if there are no archipelagic sea lanes below. Therefore, in designating archipelagic sea lanes, an archipelagic state should consider whether the sea lanes are appropriate and can be used for overflight or not.

Archipelagic sea lanes should be designated in accordance with the valid regime implemented in archipelagic waters namely the sovereignty of archipelagic states. During their archipelagic sea lanes passage in archipelagic waters, all ships and aircraft should do it in accordance with related provisions in UNCLOS 1982. All ships and aircraft should traverse archipelagic sea lanes during their archipelagic sea lanes passage. According to Article 53 (12) of UNCLOS 1982, if an archipelagic state does not designate sea lanes and air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation. It can be imagined if foreign ships and aircraft traverse archipelagic waters in the absence of designated archipelagic sea lanes. It means that an archipelagic state’s national interest will be threatened because archipelagic states cannot suspend the right of archipelagic sea lanes passage.

Several states claiming to be archipelagic states have archipelagic waters which are international trade navigation routes, such as the Philippines and Indonesia. The Philippines waters are traversed by foreign ships from Makassar Straits or Pacific Ocean to the East Asia. Indonesia is an international trade navigation route. Each year, about 2,280 ships traverse Sunda Straits and 420 ships traverse Makassar Straits. With so many ships traversing archipelagic waters, it is necessary to designate archipelagic sea lanes to protect their national interest. Archipelagic sea lanes are designated to facilitate monitoring and provide safety routes for foreign ships enjoying the right of archipelagic sea lanes passage in order to prevent collisions at sea.

According to Art. 53 (4) UNCLOS 1982, in designating archipelagic sea lanes, an archipelagic state should ensure that its archipelagic sea lanes are through or over archipelagic waters and the adjacent territorial sea, and should include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters. There is no further explanation about the meaning of normal passage routes. The documentation of Preparatory Committee UNCLOS did not give further explanation about the definition of normal passage routes.

According to Article 53 (9) of UNCLOS 1982, an archipelagic state who wants to designate archipelagic sea lanes should refer a proposal to the competent international organization with a view to their adoption. The competent international organization to adopt the proposed archipelagic sea lanes is the IMO. The IMO may only adopt such archipelagic sea lanes with the agreement of the proposing archipelagic state. Thus, designated archipelagic sea lanes are an agreement between the IMO and the archipelagic state.

The lack of state practice in designating archipelagic sea lanes has made it difficult for archipelagic states to propose their archipelagic sea lanes. So far, Indonesia is the only archipelagic state that has designated its archipelagic sea lanes. UNCLOS 1982 did not set out the procedure of archipelagic sea lanes designation clearly. UNCLOS 1982 only stipulated that if an archipelagic state wants to designate archipelagic sea lanes, it should refer a proposal to the IMO. UNCLOS 1982 also requires that the proposed archipelagic sea lanes should include all normal passage routes without giving an explanation of the meaning of normal passage routes. The absence of the definition of normal passage routes is a challenge in the process of designating archipelagic sea lanes because the definitions of normal passage routes according to archipelagic states and user states could be different. The differences in views about the definition of normal passage routes will elongate the process of designation archipelagic sea lanes which in turn could negatively affect archipelagic states.

At the 67th session of the MSC, at which Indonesia formally proposed archipelagic sea lanes, Australia proposed that the IMO should firstly discuss the procedure of designating archipelagic sea lanes, considering Indonesian proposal was the first designation archipelagic sea lanes proposal accepted by the IMO. Based on the Australian proposal, the IMO adopted the General Provisions for Adoption, Designation, and Substitution of Archipelagic Sea Lanes 1998 (General Provisions 1998).

An archipelagic state which wants to designate archipelagic sea lanes shall propose to IMO for adoption of archipelagic sea lanes which include all normal passage routes and navigational channels as required by UNCLOS 1982 [Art. 3.7 General Provisions 1998] General Provisions 1998 did not set out the meaning of normal passage routes. Before an archipelagic state officially proposes archipelagic sea lanes to the IMO, it should consult other user states and the IMO about the proposed archipelagic sea lanes [Art. 3.6 General Provisions 1998].

In proposing archipelagic sea lanes, an archipelagic state should 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. Upon receiving 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 the ICAO so as to provide them with sufficient opportunity to comment on the proposal [Art. 3.3 General Provisions 1998]. When adopting a proposed archipelagic sea lanes, the IMO will ensure that the proposed sea lanes are in accordance with the relevant provisions of UNCLOS 1982 and determine if the proposal is a partial archipelagic sea lanes proposal [Art. 3.2 General Provisions 1998].
The IMO shall consider the adequacy of aids to navigation, hydrographic surveys, and nautical charts of the area, as well as the configuration of the archipelagic state before adopting the proposed archipelagic sea lanes [Art. 4.2 General Provisions 1998]. 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 the IMO by that government.

THE AUTHORITY OF IMO IN ADOPTING ARCHIPELAGIC SEA LANES PROPOSAL

In designating archipelagic sea lanes, an archipelagic state shall refer proposals to the IMO. The IMO is given an authority by UNCLOS 1982 to adopt the proposed archipelagic sea lanes. In the process of designating archipelagic sea lanes, the IMO can not simply adopt the proposed archipelagic sea lanes, because IMO shall ensure that proposed sea lanes are in accordance with the relevant provisions of UNCLOS 1982. The provisions are that the proposed archipelagic sea lanes should include all normal passage routes used for international navigation or overflight, and the proposed sea lanes shall traverse archipelagic waters and the adjacent territorial sea [Art. 4.2 General Provisions 1998]

It is easy to determine whether the proposed archipelagic sea lanes traverse archipelagic waters and the adjacent territorial sea or not. But, it is rather difficult to determine whether the proposed archipelagic sea lanes include all normal passage routes or not because UNCLOS 1982 did not give the definition or further provisions about the normal passage routes. The IMO has an authority to determine whether the proposed sea lanes include all normal passage routes or not.

There are two main terms in General Provisions of 1998. The terms are archipelagic sea lanes that include all normal passage routes and partial archipelagic sea lanes. Partial archipelagic sea lanes is a concept proposed by the United States delegation in the 67th session of MSC. UNCLOS 1982 did not set out about partial archipelagic sea lanes. Designating such sea lanes was later introduced by the IMO through the General Provisions of 1998 due to the absence of state practice and cleared regulation about designating archipelagic sea lanes. Designation of partial archipelagic sea lanes concept is used when the proposed archipelagic sea lanes do not meet the requirement to include all normal passage routes and navigational channels as required by UNCLOS 1982.

In practice, Indonesian archipelagic sea lanes have been adopted as partial archipelagic sea lanes because the IMO believed that the proposed archipelagic sea lanes by Indonesia did not meet the requirement to include all normal passage routes. An archipelagic state who proposed partial archipelagic sea lanes is ultimately required to propose for adoption archipelagic sea lanes including all normal passage routes as required by UNCLOS 1982. In order for the IMO to ensure that sea lanes proposed for adoption include all normal passage routes, Art. 3.5 General Provisions 1998 set out that the IMO retains continuing jurisdiction over the process of adopting archipelagic sea lanes until that sea lanes including all normal passage routes have been adopted.

Art. 3.12 General Provisions 1998 states that an archipelagic state who proposes partial archipelagic sea lanes should periodically inform the IMO on its plans for conducting further surveys and studies that will result in the submission to IMO of proposal for adoption of all normal passage routes, along with the general locations of these lanes and time frame for this effort. General Provisions 1998 give the IMO authorities beyond what was mandated by UNCLOS 1982. Determination of whether proposed archipelagic sea lanes are partial archipelagic sea lanes or including all normal passage routes depends on where are the routes that user states normally use as routes for international navigation. It is because there is no legal document that sets out the definition of normal passage routes. If the definition of normal passage routes depends on user states, there will be too many routes because each user state has its own routes that are normally used as a route for international navigation.

In the process of establishing Indonesian archipelagic sea lanes, there were three illustrative charts given by the British, the United States, and Australia. Those illustrative charts contained normal passage routes in Indonesia’s archipelagic waters that they believed. Of the three illustrative charts given, there were some routes were the same, but there were also a lot of different routes and variation from the existing routes.

The plethora of routes given by user states, that they believed were normal passage routes according to UNCLOS 1982, surely will impede the process of designating archipelagic sea lanes. Therefore, UNCLOS 1982 assigned the authority of defining normal passage routes to the archipelagic states, not the to IMO or user states. On the other hand, General Provisions 1998 gave the IMO authority to determine if the proposed archipelagic sea lanes are partial archipelagic sea lanes. If the IMO believes that the proposed archipelagic sea lanes do not meet the requirements of including all normal passage routes, the IMO will determine the proposal being a partial archipelagic sea lanes. According to Article 3.4 of General Provisions 1998, other states may request that the archipelagic state propose additional sea lanes that include all other normal passage routes used as routes for international navigation or overflight through or over the archipelagic waters.

There is a possibility that an archipelagic state believes that the proposed archipelagic sea lanes have included all normal passage routes but the IMO and user states do not. Most member states of the IMO are user states and have an interest in international navigation. If defining normal passage routes depends on user states, and determining whether the proposed archipelagic sea lanes are partial archipelagic sea lanes or already have included all normal passage routes depends on the IMO where user states are members, it can be said that the authority of the IMO and user states has exceeded the archipelagic state itself. It does not meet the requirement in Article 49 (4) of UNCLOS 1982.
There is a possibility that the IMO does not adopt the proposed archipelagic sea lanes. According to Article 3.2 of General Provisions 1998, the IMO should ensure that the proposed archipelagic sea lanes are in accordance with the relevant provisions of UNCLOS 1982, in which case IMO can adopt the proposed archipelagic sea lanes. If the IMO believes that the proposed sea lanes do not meet the requirement of UNCLOS 1982 or do not meet the technical provisions, the IMO will not adopt the proposed archipelagic sea lanes.

In the 43th Session of Sub Committee on Safety of Navigation, July 1997, related to the Indonesian archipelagic sea lanes proposal, some technical deficiencies were discovered by the Session of Sub Committee on Safety of Navigation. The Session suggested to Indonesia to improve its archipelagic sea lanes proposal, especially regarding the format. It took almost a year, until May 1998, for the IMO to adopt Indonesian archipelagic sea lanes.

The authority of the IMO to adopt the proposed sea lanes granted by UNCLOS 1982 automatically gives the IMO authority to determine whether the proposed sea lanes meet the requirement or not. It means that the IMO determines whether the proposed archipelagic sea lanes are adopted, need some improvement, or not adopted. It was not a big issue when Indonesian proposed archipelagic sea lanes needed to be improved because it did not involve the locations of archipelagic sea lanes. But it will be a problem if someday proposed archipelagic sea lanes are not adopted by IMO because they do not meet the requirements of UNCLOS 1982 which did not give clear provisions and they involve the locations.

It can be said that an archipelagic state does not designate sea lanes or air routes when its proposed archipelagic sea lanes are not adopted by the IMO. Therefore if an archipelagic state does not designate sea lanes or air routes, the right to archipelagic sea passage may be exercised through the routes normally used for international navigation. This can threaten the national interest of an archipelagic state because it will be different when foreign ships pass through archipelagic waters using the right of innocent passage and using the right of archipelagic sea lanes. It is related with the term suspension.

If archipelagic sea lanes are not designated, foreign ships will enjoy the right of archipelagic sea lanes in different lanes from the proposed archipelagic sea lanes. On the operational level, an archipelagic state will find it difficult to distinguish which foreign ships are enjoy the right to innocent passage and which ones are enjoying the right to archipelagic sea lanes passage. It is possible that a foreign ship undertake activities which are prejudicial to the peace, good order or security of the archipelagic state in its archipelagic waters. But if the archipelagic state protects jurisdiction by suspending the right to of navigation of that ship, the ship might argue that it is enjoying the right of archipelagic sea lanes which the archipelagic state has no right to suspend.

Similar condition will happen if the proposed archipelagic sea lanes are adopted as partial archipelagic sea lanes by the IMO. Foreign ships can enjoy the right to archipelagic sea lanes in routes normally used for international navigation. They will argue that the archipelagic state has not designate archipelagic sea lanes that include all normal passage routes. Hasjim Djalal said that user states can enjoy the right of archipelagic sea lanes in routes normally used for international navigation in archipelagic waters where its archipelagic sea lanes are adopted as partial archipelagic sea lanes.

Either the proposed archipelagic sea lanes are not adopted by the IMO or the proposed archipelagic sea lanes are adopted as partial archipelagic sea lanes by the IMO, both make the national interest of archipelagic state harmed. In these two cases, foreign ships exercise the right to archipelagic sea lanes passage through the routes normally used for international navigation.

Nowadays, there is no legal document that sets out the definition of normal passage routes which is the main point in determining whether the proposed archipelagic sea lanes can be adopted by the IMO and whether the proposed archipelagic sea lanes are partial archipelagic sea lanes. There is also no legal document that sets out the definition of routes normally used for international navigation and what routes criteria that can be determined as routes normally used for international navigation. The absence of such legal document has created many subjective opinions from each state based on their own interest.

Both phrases “normal passage routes” and “routes normally used for international navigation” are technical terms specified in UNCLOS 1982. There are no definitions of the two terms, but some states have illustrative charts showing where their ships are used to pass in their international navigation. The illustrative charts is part of sailing directions released by some states such as British with its British Admiralty Chart, United states with its United States Hydrography, and Indonesia with its Indonesian Navy Hydro-Oceanography Office (TNI AL DISHIDROS). The three states have different opinions about which routes are normal passage routes or routes normally used for international navigation.

There are so many state that claimed that they are archipelagic state. It has a big possibility if there will be many archipelagic state that submit their archipelagic sea lanes. It is necessary to make a legal document as a follow up to UNCLOS 1982 which clearly stipulates archipelagic sea lanes designation and implementation to overcome different opinions between archipelagic states and user states. General Provisions 1998 adopted by the IMO did not give the procedure of archipelagic sea lanes designation clearly as there is no definition of normal passage routes which is so important and crucial in designating archipelagic sea lanes. General Provisions 1998 also did not give the provisions of archipelagic sea lanes implementation as there is no definition of routes normally used for international navigation. If it is too difficult to bring together the member states of UNCLOS 1982 to discuss the necessary legal documents following UNCLOS 1982, another approach that can be taken is using the IMO as a forum to negotiate the legal document. As has already been mentioned, that the IMO has member states more than number of states that ratified UNCLOS 1982.
Both the criteria of routes that can be categorized as normal passage routes and routes normally used for international navigation are not easy to establish. An easier way that can be taken by the IMO is setting a negative list of routes that cannot be categorized as normal passage routes or routes normally used for international navigation. Defining something by creating a negative list has been applied by the negotiating states of UNCLOS 1982 when they were unable to define the right of innocent passage. In the end, the negotiating states, via Article 19 (2) of UNCLOS 1982, created a negative list showing what passages were not categorized as innocent passage so that an archipelagic state or coastal state can suspend innocent passage.

Conclusion

Archipelagic sea lanes are important to be designated to provide safe routes for all ships enjoying the right of archipelagic sea lanes passage. An archipelagic state that wants to designate archipelagic sea lanes should submit a proposal to the IMO with a view to their adoption. The proposed archipelagic sea lanes shall include all normal passage routes, but there is no legal document that defines normal passage routes and what route criteria that can be classified as normal passage routes. There is a possibility that an archipelagic state believes that the proposed archipelagic sea lanes have included all normal passages but the IMO believes the opposite. That condition has caused confusion to archipelagic states because finally it is the IMO which is authorized to determine whether the proposed archipelagic sea lanes have included all normal passage routes or not. This is supported by provisions in Article 3.2 of General Provisions 1998 which give the IMO the authority.

The IMO is authorized to determine whether the proposed archipelagic sea lanes are partial archipelagic sea lanes or include all normal passage routes already in accordance with Article 53 (1) of UNCLOS 1982 which stipulates who is given authority to designate archipelagic sea lanes, which is archipelagic states. The regime of archipelagic sea lanes passage will not affect the status of the archipelagic waters, including the sea lanes, or exercise by an archipelagic state of its sovereignty over such waters, including the sea lanes, or the exercise by the archipelagic state of its sovereignty over such waters and their air space, bed and sub soil, and the resources contain therein. When the proposed archipelagic sea lanes are adopted as partial archipelagic sea lanes by the IMO, the right of archipelagic sea lanes passage still can be exercised in routes normally used for international navigation. On the other hand, there is no legal document giving the definition of routes normally used for international navigation.

This article propose that it is necessary to create a legal document which sets out the definition and criteria of normal passage routes and routes normally used for international navigation. That legal document can be equipped with a negative list of which routes can not be categorized as normal passage routes and routes normally used for international navigation.

An archipelagic states shall negotiate about the new legal document which sets out the definition and criteria of normal passage routes normally used for international navigation. The archipelagic state’s interest will be protected if the legal document already exist. The criteria of normal passage routes and routes normally used for international navigation will be cleared and the submission of the proposed archipelagic sea lanes will be easier.

References

List of Website

<http://www.imo.org/en/About/Membership/Pages/Default.aspx>