

Original Paper

The Legal Status of Archipelagos in the International Law of the Sea

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Abstract

The archipelagic States, which attempt to extend their control over the waters surrounding their islands, are demanding the establishment of a legal system for archipelagos in order to preserve their interests, their maritime wealth and their regional security. On the other hand, there are the great maritime States that hold on to the freedom of the sea and international navigation.

The problems raised by the islands constituting the archipelago did not stand at the end of sovereignty disputes and their right to their own maritime areas, but many other problems were associated with the presence of archipelagic islands. The measurement of marine areas of archipelagic islands requires a description of how the baselines from which these areas are measured are to be drawn. Also, the measurement of marine areas of the islands of individual problems is different from those raised by the presence of the islands in the form of an archipelago. Drawing baselines also varies according to the archipelagic islands site, and whether they are located in front of the coast regions or at the entrances to the bays in these coasts, or were located in the sea or ocean.

These problems remained subject to international controversy and tension until a new system of archipelagic State was adopted under Part IV of the United Nations Convention on the Law of the Sea in 1982, which represents a very important renewal of the international law of the sea.

Keywords

archipelagos, the archipelagic States, international navigation, islands, United Nations Convention on the Law of the Sea

1. Introduction

The term “archipelago” is used to refer to the sea areas spread by a group of islands and on the same islands at the same time. The islands can therefore be used as synonyms for the archipelago. However, the geographical location distinguishes between two types of archipelagos, where there are coastal archipelagos near the continental coasts, archipelagos located in the middle of the seas and oceans consisting of several islands and forming an independent State (Mohamed, 2000, p. 377).

Archipelago is the most visible phenomenon of the extension of State sovereignty within the seas and oceans. The new regime adopted by the United Nations Convention on the Law of the Sea guarantees the Archipelagic State an impressive expansion in its maritime areas. In addition to its rights to the territorial sea, the adjacent area, the exclusive economic zone and the continental shelf, as in other maritime States, it also exercises sovereignty over waters within the archipelagos baselines that determine the maritime extensions of the archipelagic State, called archipelagic waters (Qu, 2017, pp. 216-222).

However, the issue is not so simple as the legal system of archipelagos raises some legal problems and difficulties in drawing the baselines from which the territorial sea of the archipelago is measure, because of the different location of the archipelago islands and their economic and navigational importance. The difficulty also lies in determining the legal nature of the water that exists among the archipelago islands. Does this water take the legal nature of inland water, does it have the legal status of territorial waters, or is it of a different nature? What is the system of traffic in those waters, the rights of the state in its archipelagos waters, and in return the rights of the international community to pass through this water?

The importance of this study is to try to answer these questions, in order to uncover the ambiguity that may surround the subject archipelagos and rules governing them in international law. In this regard, the study will address the main elements surrounding the subject, such as the evolution of archipelago system in international law of the sea, and then shed light on the Archipelagic State in terms of the identification and legal nature of archipelagos waters and, finally, the archipelagos water system.

2. The Evolution Archipelagos System in International Law

The situation of archipelagos States has been raised since the 1920s, when intensive discussions were held in various scientific societies concerned with the study of international law on the question of the territorial waters of the islands. At the time, these discussions shed some light on the legal status of the archipelago in general (Note 1).

When the Hague Conference on the codification of international law was held in 1930, Portugal suggested that, in the case of the archipelago, its constituent islands were considered one unit, and the territorial sea was measured from the farthest reaches of the archipelago. This was opposed by the participants of the conference, where the United States and a large number of countries to deny the idea of the legal archipelago, and demanded that each island has its own territorial sea (Mohamed, 2000, pp.

386-387).

Thus, the texts of the articles adopted by the Hague Conference of 1930 did not contain any texts dealing with archipelagos.

Indeed, during that period, international practice had known successive attempts by archipelagos States to extend their territorial jurisdiction over the waters surrounding their islands. Under the Fisheries Act, Denmark declared all archipelagos waters around the island of Greenland to be “archipelagic waters” (Note 2). In 1934, the Cuban Government declared archipelagos waters to be internal waters, covering all the waters surrounding all the large and small islands and the rocky highlands surrounding Cuba’s main island (Note 3).

The International Court of Justice, in its famous judgment in the fisheries case between Britain and Norway in 1951, addressed the issue of coastal archipelagos States with regard to the drawing of the baselines from which the territorial sea would be measured in such cases (Note 4).

Some archipelagic States have attempted to invoke the judgment of the International Court of Justice in the case of fisheries and to consider the waters between their islands as internal waters, although the distances of these islands are far apart.

Philippines initiated to consider separating water of the islands as internal waters, in a memorandum addressed to the Secretary-General of the United Nations on December 12, 1955 was followed by Indonesia in this direction also under the declaration of its government, issued on December 13, 1957 as the Maldives, Fiji has issued national legislation considered the water between its islands internal water (Amer, 2000, pp. 300-301).

In the first United Nations Conference on the Law of the Sea, found some proposals in favor of the treatment archipelagos ocean similarly coastal archipelagos, but the Geneva Convention of 1958 on the territorial sea and the contiguous zone, pointed out only in the article (4) to the coastal archipelagos when the principles had already approved by the International Court of Justice in the Fisheries Case, on the straight-baselines method. Thus, the conditions for oceanic archipelagos remained outside the scope of the 1958 Geneva Convention (Mohamed, 2000, p. 408).

At the Third United Nations Conference on the Law of the Sea-Caracas session-Indonesia, the Philippines, Mauritius and Fiji made a proposal that the waters behind the baselines are subject to the sovereignty of Archipelagos States. The four archipelagos States project’s was presented for discussion in the Second Committee.

The discussion focused on the archipelago, which consists of a group of islands, including the islands parts and water connecting them and other natural attractions, which are closely interrelated with each other, so that together constitute the geographical entity, economically and politically self-contained, or which historically has been considered (as well) (Note 5).

This prompted a number of countries to submit proposals aimed to ensure the freedom of transit through the straits, located in the archipelagos waters and nearby corridors of them, as well as in the archipelagos waters where there are shorter routes used for international navigation. On the other hand,

major navigational States have made strong reservations about the expansion of the maritime extensions of archipelagic States (Note 6).

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Hence, archipelagos countries have sought to develop a system that includes coastal archipelagos as part of the state, and archipelagos in the middle of the sea and one legal system. But in the end they did not respond to the claims of some coastal archipelagos States in the development of rules include qualitative archipelagos. Part IV of the 1982 United Nations Convention on the Law of the Sea dealt with the subject of archipelagos in a manner that harmonized the interests of the opposing States and confined itself to the situation of oceanic archipelagic (Arellano, 2017, pp. 38-39).

3. Definition of Archipelagic State

Article 46.1 of the 1982 United Nations Convention on the Law of the Sea defines the archipelagic State as “a State constituted wholly by one or more archipelagos and may include other islands”.

We can therefore distinguish between two types of archipelagos States. Type I: coastal archipelagos States, a State consisting of a territory that is part of a continent, followed by a group of islands near its coasts that are archipelagos. A typical example of this species is the Norwegian coastal archipelago. The second type is the archipelagos States, which means a State whose whole territory consists of one or more archipelago surrounded by seawater or ocean, such as the Philippines, Indonesia and Fiji (Sa’adi, 2010, p. 57).

In accordance with article 46, paragraph 2, of the Convention on the Law of the Sea, the archipelago means “a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such” (Santos, 2008, pp. 13-16).

It should be noted that some of the archipelagic States in the middle of the sea have called for extending the application of the legal system of Archipelagos’ States to the Arctic Archipelago that forms part of the State (Note 7).

However, the Convention on the Law of the Sea did not provide for any provisions relating to this type of archipelago. This was due to the strong opposition of the rest of the international community, which was demanding that the archipelagos concept be applied to Archipelagos States only, because the water that is located within the archipelago Would change the legal nature of this water, having been subject to the legal regime of the high seas, which recognized the freedom of navigation, fishing and some general rights of all States of the international community. Therefore, there is a common international

interest which has led to the failure of the archipelagos system to apply to the archipelago of the middle of the sea, which does not constitute an independent archipelagic State (Mohamed, 2000, p. 413).

There is also a fundamental difference between the concept of archipelagos, which is a geographic and a topographic concept, and the elements that justify the concept of Archipelagic State such as the Philippines and Indonesia. They are not only geographical elements but also political, economic and historical (Mohamed, 2000, p. 414).

The Convention also exempted any provisions governing coastal archipelagos. The rule of these archipelagos has been left to the general rules for the baselines from which the territorial sea is to be measured (Arellano, 2017, p. 10). However, the Convention on the Law of the Sea has a legal regime for oceanic archipelagos, and has given free legal extensions to peripheral archipelagos States that have not existed before (Churchill & Lowe, 1999, p. 119).

4. Archipelagic Waters

The United Nations Convention on the Law of the Sea responded to the claims of the archipelagic States to impose their sovereignty over the waters surrounding the islands comprising the archipelago by drawing the baselines along the lines of the archipelagos islands, most of which are far from their center, Water is archipelago. Therefore, we shall address the determination of archipelagos waters, and their legal nature.

4.1 Determination of Archipelagic Waters

Archipelagos waters are those waters confined between the straight baselines connecting the farthest points of the islands from the heart of the Archipelagos State, the specific lines of the outer perimeter of the island group of the archipelago.

Archipelagic water is determined by the use of straight baselines, which form the starting point for the identification of the various marine areas surrounding the archipelagos state (Douglas & Johnston, 1988, p. 95) (Note 8). The straight-line method is detailed in article 4 of the Geneva Convention on the Territorial Sea and the adjacent area of 1958, as well as article 7 of the 1982 United Nations Convention on the Law of the Sea. In the case of coastal archipelagos consisting of a group of islands along the coast or Distance from it, the identification of water between or between these islands and the coast is carried out by applying the same rules as the baselines for which the territorial sea is measured (Munavvar, 1995, p. 69) (Note 9).

Many States have used straight baselines or their national legislation has authorized their use. Under Articles 4 and 6 of the Saudi Royal Decree of May 28, 1949, the islands and the coastal archipelago are part of the outer coast of Saudi Arabia, and the group of islands can be connected by baselines of no more than 12 nautical miles. The islands and the mainland are inland waters. The Egyptian Royal Decree of 18 January 1951, as amended on 17 February 1958, also provides for this. Indonesia issued the so-called Djuanda Declaration in December 1957, which provided for the use of straight baselines to limit water between islands by measuring from the farthest point of the islands forming the archipelago (Phiphat,

1982, p. 6).

China also applied the straight-line system. The Declaration of 4 September 1958 states in its second article that the territorial sea baselines along the main land and coastal islands are the line consisting of straight lines connecting base points located on the main coast of the Earth, and that the water area extending from these lines 12 nautical miles towards the sea is the Chinese territorial sea (Mohamed, 2000, p. 330).

Article 47 of the United Nations Convention on the Law of the Sea (1982) provides for the definition of archipelago baselines, which are considered to be archipelagos waters. This is in accordance with a set of criteria and controls, foremost among which is the provision of the first paragraph of this article that “An archipelagic State may draw straight archipelagic baselines joining the outermost points of 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 area of the land, including atolls, is between 1 to 1 and 9 to 1” (Note 10).

The term “Main islands” refers to the largest islands in the archipelago in terms of population or economic production, or islands that are prominent in the historical and cultural sense (Myron, 1985, pp. 401-402).

This paragraph also identified the ratio between the land formed by the terms of the islands and the surrounding marine area, with a ratio of 1 to 1, 9 to 1. Countries such as Indonesia and the Philippines can meet the land-to-water ratio, large islands and thousands of small islands. On the contrary, this condition prevents countries such as the United Kingdom, Australia and Cuba from drawing archipelagos straight baselines, because their archipelagos are dominated by a large island or two interconnected islands (Arellano, 2017, p. 18).

Thus, the ratio of water to land is not met. Some archipelagos States, such as Mauritius and Seychelles, will not be able to prolong their archipelago in one framework because they are composed of scattered islands (Santos, 2008, pp. 24-25).

The second paragraph states “The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles”. It is clear that this provision gave archipelagic archipelagos’ States broad maritime stretches beyond the provisions of article 4 of the Geneva Convention on the Territorial Sea and article 7 of the United Nations Convention on the Law of the Sea (Arellano, 2017, p. 19).

In considering these criteria in paragraphs 1 and 2 of article 47 of the Convention, they exclude coastal archipelagos States, which can determine their archipelagos waters by applying the method of baselines from which the territorial sea is measured. Archipelagos baselines are limited to oceanic archipelagos States, because they are the only ones by virtue of their composition and location at the heart of water that can meet the requirements of article 47 of the Convention on the law of the Sea.

Article 47 (5) of the Convention on the Law of the Sea embodies the principle of “non-arbitrariness of the archipelago State”. Where the Archipelago State was required to draw the archipelagos baselines, it would not separate the territorial sea of another State from the high seas or the exclusive economic zone. The principle of non-arbitrariness also appears in the provision of this article: “If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighboring 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 and be respected”.

We believe that this specific provision could also be applied in the case of coastal archipelagic States, because it implies a general provision that the establishment of baselines should not adversely affect the rights of neighboring and adjacent States, which is largely achieved in coastal archipelagos for interfering with the waters of their neighboring States in some cases.

We can argue that the judgment of the International Court of Justice in the British-Norwegian Fisheries case of 1951 was present in the minds of the authors of the text of article 47, paragraph 6, of the Convention on the Law of the Sea (Note 11).

In order to determine the exact archipelagic waters, the Convention provides that “The width of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from the archipelagic baselines laid down in accordance with Article 47” (Note 12). The archipelagic State may also draw, in its archipelagic waters. In accordance with articles 9, 10 and 11 of the Convention on the Law of the Sea, in the case of estuaries, bays and ports (Note 13).

4.2 The Legal Nature of Archipelagic Water

In accordance with article II of the 1982 Convention on the Law of the Sea: “The sovereignty of a coastal State outside its territory and its internal water or archipelagic waters shall extend to an adjacent maritime belt known as the territorial sea”.

There is therefore a presumption or presumption that the islands located in the internal or archipelagic waters or the territorial sea of the coastal States are subject to the sovereignty of that State (Abu al-Wafa, 1989, p. 553) (Note 14).

Article 49 of the Convention on the Law of the Sea came to emphasize the principle of the sovereignty of the archipelagic State over the waters confined within the archipelagic baselines, which were called archipelagic waters.

The sovereignty of the State over its archipelagic waters extends to the airspace above archipelagic waters, as well as to its waters and subsoil, and to its living resources. Finally, the system of passage in the archipelagic sea lanes established by the Convention should not affect the status of archipelagic waters, Nor on the archipelagic State’s exercise of its sovereignty over these waters, their airspace, the subsoil, the subsoil thereof and the resources therein (Note 15).

Thus, the sovereignty of the State over its archipelagic waters is different from its sovereignty over its internal waters, since the sovereignty of the State over the internal waters is absolute or total sovereignty. While archipelagic waters, although subject to the archipelagic sovereignty of the archipelagic State in principle, have rights established in the archipelagic waters of other States, with a view to ensuring the freedom of international navigation (Amer, 2000, p. 313).

Where the archipelagic State is committed to respecting the status of existing agreements with other States and recognizes the traditional fishing rights and other legitimate activities of neighboring and adjacent States directly in certain sectors within archipelagic waters.

The archipelagic State also respects submarine cables established by other States and passers-by through its waters without affecting land. The Archipelagic State allows the maintenance of these cables and their replacement upon receipt of the necessary notification of their location (Note 16).

We can also note that archipelagic waters differ in their legal status from the situation of the territorial sea, despite the fact that they are subject to state sovereignty. This difference or paradox shows that archipelagic waters lie behind the archipelagic baselines from which the territorial sea of the State begins. However, the Archipelagic State has obligations in those waters vis-à-vis other States beyond the established obligations in the territorial sea.

Archipelagic waters are not considered part of the high seas and are not subject to the sovereignty of any State. Archipelagic waters can be said to be of a special nature and subject to rules and regulations that differ from the rest of the rules governing the rest of the maritime areas (Hammoud, 2008, p. 222).

5. Traffic System in the Archipelagic Waters

Although archipelagic waters are subject to the sovereignty of the archipelagic state, there are rights to other states in these waters. These rights constitute restrictions on the archipelagic state. The most important of these restrictions is the passage of two types of traffic in archipelagic waters, namely the right of innocent passage, the right of archipelagic traffic.

The regime adopted by the Convention on the Right of Foreign Ships to Exercise International Navigation via Archipelagic Water is a kind of reconciliation between archipelagic water subordination to the sovereignty of the State and considerations of guaranteeing the freedom of international navigation and not placing impediments to its movement (Charlotte, 1991, p. 472).

5.1 The Right of Innocent Passage through Archipelagic Waters

In 1982, the United Nations Convention on the Law of the Sea recognized the right of foreign vessels to pass through archipelagic waters. Article 52, paragraph 1, of the Convention states: "Subject to article 53 and without prejudice to article 50, ships of all States shall enjoy the right of innocent passage during archipelagic waters, in accordance with Part III, section 3". It is clear from this text that innocent passage in archipelagic waters is subject to the same rules as the Convention, which governs and regulates innocent passage in the territorial sea (Note 17).

Article 52, paragraph 2, of the archipelagic State also allowed the passage of innocent traffic in its archipelagic waters, in accordance with the same conditions as the third paragraph of Article 25 on the cessation of innocent passage in the territorial sea, namely, that the moratorium shall be limited to specific sections of archipelagic waters and shall be necessary to protect the security of that State and shall declare such suspension.

Indeed, the right of a coastal State to stop innocent traffic in its territorial sea is based on international custom and exists in a large number of national legislation of States, before it is provided for in the 1958 Convention on the Territorial Sea and the Adjoining Zone and the 1982 Convention on the Law of the Sea (Eldesoki, 2008, pp. 192-196) (Note 18).

5.2 The Right of Passage in Archipelagic Sea Lanes

Since innocent traffic in archipelagic waters does not provide sufficient freedom for foreign vessels in those waters. This was one of the most important points of disagreement between States during the Third Conference on the Law of the Sea. A new traffic system known as the archipelagic system of traffic has thus been established to balance the principle of international freedom of navigation and the considerations of State sovereignty over archipelagic waters, which is similar to the transit system through straits used in international navigation (Amer, 2000, p. 316).

The archipelagic passage means “the exercise of the rights of navigation and flying in the normal manner in accordance with the Convention on the Law of the Sea for the sole purpose of continuous, unimpeded and rapid transit between a part of the high seas or a pure economic zone and another part of the high seas or exclusive economic zone” (Note 19).

Thus, the archipelagic traffic of foreign ships and aircraft ensures continuous and rapid traffic for maritime and air navigation through the routes used for international shipping through archipelagic waters. However, the archipelagic State may require these ships and aircraft to pass through sea lanes and air routes determined by them (Note 20).

Article 53 of the Convention sets forth a number of disciplines and standards to which the archipelagic State is bound when determining maritime times in its territorial waters, while at the same time providing for the duties of foreign vessels and aircraft as they cross archipelagic waters. The most important of these controls are as follows:

These sea lanes and air routes are determined by a series of continuous axial lines from the entry points to the exit points. And on the ships and aircraft passers-by would not deviate more than 25 nautical miles to either side of these axial lines as they pass, provided that they are not going these ships and aircraft at a distance of more than proximity to the beach, ten per cent of the distance between the nearest points on the littoral islands maritime corridor (Note 21).

The Archipelagic State, which establishes sea lanes under this Article, shall also decide on the distribution of traffic to ensure the safe passage of ships through narrow channels in those sea lanes (Note 22).

The archipelagic State may replace those designated by other maritime corridors or establish other systems for the division of traffic if circumstances so require (Note 23).

These sea lanes and traffic division systems must conform to generally accepted international regulations (Note 24).

The archipelagic State shall, upon its designation or replacement of these sea lanes, or in the determination of systems for the division or replacement of traffic, submit its proposals to the competent international organization for adoption, and the Organization shall not rely on sea lanes or traffic systems except as agreed with Archipelagic State (Charlotte, 1991, p. 473) (Note 25).

The archipelagic State clearly identifies the axis of all the sea lanes and the traffic division systems that it assigns or decides in maps to be declared public.

If the archipelagic State does not designate sea lanes or airways, the right to pass through the archipelagic sea lanes may be exercised during the routes normally used in international navigation (Note 26).

It should be noted that article 54 of the Convention on the Law of the Sea, while passing through archipelagic waters or flying in its airspace, binds ships and aircraft with the same obligations as ships and aircraft in the exercise of the right of transit through straits used for international navigation (Note 27).

The previous rules also apply to the passage of warships in archipelagic lanes (El Desoki, 2008, pp. 142-152). In order to confirm the rules relating to the passage of those vessels provided for in the Convention on the Law of the Sea, the San Remo Manual on International Humanitarian Law Applicable to Armed Conflicts at Sea, 1994, States: "The rights of transit passage and archipelagic sea lanes passage applicable to international straits and archipelagic waters in peacetime continue to apply in times of armed conflict. The laws and regulations of States bordering straits and archipelagic States relating to transit passage and archipelagic sea lanes passage adopted in accordance with general international law remain applicable" (Note 28).

The San Remo Manual also affirms that: "A belligerent in transit passage through, under and over a neutral international strait, or in archipelagic sea lanes passage through, under and over neutral archipelagic waters, is required to proceed without delay, to refrain from the threat or use of force against the territorial integrity or political independence of the neutral littoral or archipelagic State, or in any other manner inconsistent with the purposes of the Charter of the United Nations, and otherwise to refrain from any hostile actions or other activities not incident to their transit. Belligerents passing through, under and over neutral straits or waters in which the right of archipelagic sea lanes passage applies are permitted to take defensive measures consistent with their security, including launching and recovery of aircraft, screen formation steaming, and acoustic and electronic surveillance. Belligerents in transit or archipelagic sea lanes passage may not, however, conduct offensive operations against enemy forces, nor use such neutral waters as a place of sanctuary nor as a base of operations" (Note 29).

5.3 Comparison between Archipelagic Traffic and Innocent Traffic

The international law of the sea regulates the passage of ships and aircraft into the sea and divides them into four types: free passage, innocent traffic, transit and archipelagic traffic, so that ships and aircraft in each particular maritime area exercise their own traffic system. Where both the free passage and the innocent passage of traditional traffic systems in the seas that have emerged for a long period of time are referred to in the 1958 Geneva Conventions of the Law of the Sea, while transit and archipelagic traffic are considered as traffic systems developed under the 1982 Convention on the Law of the Sea.

In view of the rules governing, the innocent traffic is generally regulating the passage in archipelagic corridors. It is clear that there are fundamental differences between them, the most important of which is the following:

- Archipelagic traffic includes maritime and air navigation, while only innocent traffic is restricted to maritime navigation. Thus, the archipelagic system of navigation expands international shipping, something that the great maritime States have been looking for (Essad, 1982, p. 97).
- The State may, in an innocent passage, determine freely certain shipping lines or decide to divide the traffic taking into account the recommendations of the competent international organizations, while it cannot do so in the archipelagic traffic unless the matter is submitted to the competent international organization. In accordance with article 53, paragraph 12, the use of the right of passage in the archipelagic sea lanes may be exercised arbitrarily through routes normally used in maritime navigation. This ensures international navigation during archipelagic waters (Hamoud, 2008, pp. 234-235).
- Rules on innocent passage have been divided into rules applicable to private ships and other rules applicable to public vessels. While the rules relating to archipelagic traffic Rules are the one applicable to all ships, which indicates that Rules of Archipelagic Traffic Expansion of international free shipping.
- The archipelagic traffic system allows submarines to pass through archipelagic waters underwater, without having to pass freely and fly their flags, as in the case of innocent traffic. This is a greater freedom of navigation.
- The traffic regime establishes certain restrictions on the passage of nuclear-powered or nuclear-powered ships or other hazardous or harmful materials, while there was no restriction on the passage of these vessels through archipelagic waters.

A part of international jurisprudence argues that there is no reason to exempt such vessels from their obligations under article 23, concerning innocent passage in the territorial sea, when passing through archipelagic waters, on the grounds that the provisions of the Convention on the Law of the Sea do not preclude such interpretation. As well as the fact that the passage of these vessels into the territorial sea of the archipelagic State is always a long way from passing through archipelagic waters. Thus, the fulfillment of the requirements of Article 23 is necessary for the exercise of innocent passage through archipelagic waters or transit through archipelagic sea lanes (Amer, 2000, pp. 319-320).

- The authority of the State to enact laws and regulations relating to the regulation of innocent traffic that is broader than its authority in archipelagic passage (Hamoud, 2008, pp. 234-235). The Convention

on the Law of the Sea also authorized coastal States to charge for services provided to ships during innocent passage. There was no such text in archipelagic passage (Note 30).

6. Conclusion

There is no doubt that the United Nations Convention on the Law of the Sea, when providing for the legal regime of archipelagos, has thus established a solution to some of the issues that have remained controversial for many years. Having examined the legal status of archipelagos in international law of the sea, we have reached several important conclusions.

First, the adoption of the new system of archipelago came after the insistent demands of archipelagic countries, especially Indonesia and the Philippines as one of the largest archipelagic countries around the world.

Second, the Convention on the Law of the Sea was limited to the organization of oceanic archipelago, did not address the coastal archipelago and left its organization to the general rules governing the measurement and passage of the territorial sea.

Thirdly, the absence of specific legal rules in the international law of the sea that governs the question of archipelago in the middle of the sea has made this matter in a situation of uncertainty and confusion. And that the claim of the continental Powers exercising their sovereignty over this type of archipelago must be taken into account in order to preserve its integrity. Which requires the formulation of international rules that balance these considerations on the one hand and freedom of navigation and international communications on the other.

Fourth, the right of foreign vessels to exercise international navigation through archipelagic waters is a compromise system that combines archipelagic water subordination with the sovereignty of the archipelagic State and the guarantee of freedom of international navigation.

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Notes

Note 1. There were scientific and doctrinal discussions in this period on the issue of baselines and the delimitation of territorial waters in the case of archipelagos. For example, the draft Faqih Alvarez which he submitted to the International Law Society in 1924, the American Institute of International Law No. 10 on the national sphere in 1926, and the International Law Institute in 1927. United Nations, Conference on the Law of the Sea, Geneva, Switzerland 24 February to 27 April 1958. Doc, A/CONF.13/18, p. 291.

Note 2. By Various Danish Regulations and Decrees, the waters between and inside the Danish coastal archipelagos are considered Danish internal waters (See, e.g., Neutrality Decrees of 27 January 1927 and 11 September 1938, and enactments concerning Fishing and Hunting in Greenland Waters of April 1, 1925, May 27, 1950, June 7, 1951 and November 11 1953).

Note 3. According to article 6, Paragraph 2, of the Decree of January 8, 1934, provides: The Waters Situated between the Islets or Cays and the Mainland of Cuba are Internal Waters.

Note 4. ICJ, Fisheries Case, United Kingdom V. Norway 1951, Para. 129.

Note 5. Third United Nations Conference on the Law of the Sea, 9 August 1964. UN Doc, A/Conf.62/C.2/L.49.

Note 6. Summary Records of Meetings of the Second Committee (12 August 1974, UN Doc, A/Conf.62/C.2/SR.37).

Note 7. Examples of Arctic Archipelago, which follow some countries: The Faroe Islands in Denmark, the Andaman and Nicoba in India, the Azores in Portugal and the Galapagos in Ecuador.

Note 8. As Johnston Describes “A baseline is Typically the Exterior Limit of Internal and Archipelagic Waters as well as the Interior Limit of the territorial sea”.

Note 9. Straight Baselines, on the Other hand, are the artificial construct created for the purpose of facilitating the measurement of the breadth of the territorial Sea where the coastline is significantly irregular or has the presence of certain features that require a special set of rules to ascertain a more precise starting point.

Note 10. According article 47:

- 1) An archipelagic State may draw straight archipelagic baselines joining the outermost points of 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 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 per cent 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 the territorial sea of another State.
- 6) If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighboring 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 and be respected.
- 7) For the purpose 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 coordinates 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.

Note 11. ICJ, Fisheries Case, United Kingdom V. Norway 1951.

Note 12. Article 48 of UNCLOS.

Note 13. Article 50 of UNCLOS.

Note 14. This was confirmed long ago by the arbitration rule on the island of Biolama between Portugal and Britain on 21 April 1870, when he decided that the islands in the territorial sea were within the sovereignty of the coastal state.

Note 15. Article 49 of the Convention on the Law of the Sea.

Note 16. Article 51 of the Convention on the Law of the Sea states that:

1) Without prejudice to article 49, an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighboring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the amount and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them. Such rights will not be transferred to or shared with third States or their nationals.

2) An archipelagic State shall respect existing submarine cables laid by other States and passing through its waters without making a landfall. An archipelagic State shall permit the maintenance and replacement of such cables upon receiving due notice of their location and the intention to repair or replace them.

Note 17. Articles 17 to 32 of the UNCLOS.

Note 18. There is a lot of domestic legislation for coastal states that provides for the cessation of innocent passage in their territorial waters. For example: Article VI/2 of the French Ordinance No. 85/185 of 6 February 1985 on the regulation of the passage of foreign vessels in French territorial waters, the Indonesian Law No. 6 of 8 August 1996 on Indonesian waters, the Law on inland waters and the territorial sea the area adjacent to the Russian Federation issued on July 17, 1998.

Note 19. Article 53.3 of the UNCLOS.

Note 20. East-West Environment and Policy Institute, Research Report, No. 15, February 1984, pp. 17-18.

Note 21. Article 53.5 of the UNCLOS.

Note 22. Article 53.6 of the UNCLOS.

Note 23. Article 53.7 of the UNCLOS.

Note 24. Article 53.8 of the UNCLOS. It should be noted that the controls laid down in article 53 on the determination of archipelagic passages are only a repetition of article 41 of the Convention on the Law of the Sea concerning the designation of sea lanes and the division of traffic in straits used for international navigation.

Note 25. Article 53.9 of the UNCLOS. The competent organization is the International Maritime Organization (IMO), as well as the International Civil Aviation Organization (ICAO).

Note 26. Article 53.12 of the UNCLOS.

Note 27. Article 39 of the UNCLOS, which provides for the duties of ships and aircraft during transit.

Note 28. Para. 27 of the San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 1994.

Note 29. Paragraph 30 of the San Remo Manual.

Note 29. Article 26. 2 of the UNCLOS.