Archipelagic Sea Lanes Passage
and the Philippines Situation

Alberto A. Encomienda

Abstract

The Philippines has not designated archipelagic sea lanes (ASLs) under UNCLOS although “in the box” thinking has been that the designation of archipelagic sea lanes is necessary for the orderly transit management of foreign vessels through archipelagic waters. A new policy thrust, however, takes the view that peace, good order, and security in its archipelagic waters, and in the State itself, may be better served through the application of, and focus on, internationally established protection measures for the marine environment while guaranteeing and facilitating freedom of navigation, in lieu of designation of archipelagic sea lanes. Specifically, the Philippines believes that the designation of the entire country as a Particularly Sensitive Sea Area (PSSA), and the consequent institution of associated protective measures (APMs) would address better the peculiar and particular circumstances of the Philippines as an archipelago and archipelagic State.

Under UNCLOS Part IV, archipelagic States may or may not designate archipelagic sea lanes. In the latter case, foreign vessels may exercise the right of archipelagic sea lanes passage through routes normally used for international navigation. Moreover, transit passage through archipelagic waters cannot be confined to archipelagic sea lanes since foreign vessels can enter and exit archipelagic sea lanes at any time during the voyage, or navigate anywhere in archipelagic waters in the exercise of innocent passage. Declaring the country as a PSSA

1 Secretary-General. Maritime and Ocean Affairs Center, Department of Foreign Affairs, Republic of the Philippines.
and instituting APMs to govern vessel transit in exercise of the right of archipelagic sea lanes passage and innocent passage would be a more practical arrangement in the Philippines for two reasons: 1) the entire archipelago is an ecosystem or eco-region by itself with delicate and rich marine biodiversity, and 2) the Philippines archipelago is composed of very closely-grouped islands such that practical application is impossible in regard to technical parameters under UNCLOS for designation of archipelagic sea lanes.

Introduction

This Conference on the “Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention” is a forum to discuss key issues and challenges in dealing with passage regimes, activities in the Exclusive Economic Zone (EEZ), and protection of the marine environment in the context of the Southeast Asia maritime region. It bears highlighting that the geographic coverage of the Conference, a slightly enlarged version of which would include the three classic archipelagic States in the world, is an archipelagic continent with adjoining enclosed or semi-enclosed seas, traversed by regional and international shipping arteries. In this region of the world, the age-old and tradition-bound concept of freedom of navigation is critically tested against the transit passage of vessels under a variety of maritime jurisdictions, some recently established or refined under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Also in this region, customary rules relating to uses of the sea, especially navigation, have recently seen changes that may be considered as “progressive development.”

We are all aware that these changes are not merely a matter of academic interest but rather relate to the pursuit of contending political and economic interests by the so-called maritime nations and coastal States. A balancing of interests is also needed in the matter of passage of