Navigation through Archipelagos: Current State Practice

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Abstract


This chapter provides an overview and analysis of the special rules applicable to archipelagos before examining how the Part IV regime has been implemented by States claiming archipelagic State status. It also identifies, in the context of international and municipal law, how varied implementations of the Part IV regime affect the existence of navigational rights through waters of such States.

INTRODUCTION

One of the innovative aspects of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereafter the LOSC)1 was the recognition given to the concepts of ‘archipelagic State’ and ‘archipelagic waters’ in international law. The compromise creating this new category of States with considerable maritime jurisdictional advantages, and the associated rights enjoyed by foreign states through and above the

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archipelagic waters are governed by Part IV of the LOSC. Part IV has four distinctive aspects. First, it defines archipelagic status. Second, it provides the rules under which archipelagic States may draw straight ‘archipelagic baselines’ around their constituent islands. Third, it defines the legal character of waters enclosed by such archipelagic baselines as ‘archipelagic waters’. Fourth, and of particular relevance to this chapter, Part IV defines the navigational rights enjoyed by foreign states in the archipelagic waters. Two specific navigational rights are granted in the archipelagic waters. Apart from the traditional right of innocent passage through some parts of archipelagic waters, there is also the broader right of ‘archipelagic sea lanes passage.’

According to records of the United Nations, 20 States had claimed archipelagic State status as of 28 May 2008. State practice in the implementation of LOSC Part IV, particularly in respect of the right of archipelagic sea lanes passage, is undeveloped and incoherent.

This Chapter provides an overview of Part IV of the LOSC before examining the nature of the navigational rights through and above the waters of States claiming archipelagic State status. Relevant state practice will be analysed under the following categories: first, those States which have claimed archipelagic State status and which have defined both archipelagic sea lanes and archipelagic baselines; second, States that have defined archipelagic baselines in accordance with LOSC Part IV but which have not designated archipelagic sea lanes; third, States which have claimed archipelagic State status but have determined their

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3 Ibid., p. 120.
4 See LOSC, Article 47.
5 See LOSC, Articles 49, 51-54.
6 Churchill and Lowe, supra note 2, p. 127.