



THE RIGHT OF NAVIGATION V. FREEDOM OF NAVIGATION: BALANCING RIGHTS AND OBLIGATION IN ARCHIPELAGIC SEA-LANE PASSAGE

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ABSTRACT

*This article examines three unresolved legal ambiguities within the archipelagic sea lanes passage (ASLP) regime under Part IV of the United Nations Convention on the Law of the Sea 1982 (UNCLOS): the permissible scope of an archipelagic state regulatory authority; the enforceability of Part XII UNCLOS environmental obligations without impeding navigation; and the legal consequences of deviation from designated sea lane routes. Employing doctrinal legal research through a treaty interpretation methodology derived from Articles 31–33 of the Vienna Convention on the Law of Treaties 1969 (VLC) and Indonesia's Archipelagic Sea Lanes (IASP) as operationalised ASLP case study. This article advances three original arguments: First, ASLP is conceptually grounded in right of Navigation (RoN) – a conditional, treaty-based entitlement – rather than in the customary-law derived Freedom of Navigation (FoN), a distinction carrying material consequences for coastal state regulatory competence. Second, UNCLOS Part XII environmental obligations function as *lex generalis* alongside the *lex specialis* of Part IV, permitting proportionate emergency environmental intervention without nullifying navigational rights. Third, unjustified departure from designated routes activates full scope*

1. INTRODUCTION

The United Nations Convention on the Law of the Sea 1982 (UNCLOS) has been recognised as “a constitution for the oceans”, that introduced a new regime of maritime zoning, utilisation and other matters related to the sea.¹ Its package-deal character – admitting no reservations or exceptions under Article 309 – ensures that the rights and obligations it confers form an indivisible legal whole.² It codifies, crystallises and in several respects develops customary international law across the full spectrum of maritime affairs.³

The extensive legally contested during the establishment of archipelagic state on UNCLOS concerns the regime governing the passage of foreign vessels through archipelagic waters.⁴ Part IV of the Convention confers a *sui generis* legal status upon archipelagic States.⁵ It establishes a tripartite passage framework consisting of innocent passage, archipelagic sea lanes passage (ASLP), and the residual default under Article 53(12). This framework reflects a deliberate effort to reconcile two competing imperatives: the sovereign prerogatives of archipelagic States over their enclosed maritime geography, and the international community's enduring interest in unimpeded navigation. The tension between these imperatives is not merely structural — it is the central doctrinal challenge of Part IV.

Two normatively distinct concepts animate this framework. The freedom of navigation (FoN) is a principle of customary international law, with roots in the Grotian doctrine of the mare

¹ Koh, T.T.B., ‘A Constitution of the Ocean’, Opening Statement at the Third UN Conference on the Law of the Sea (1982), available at http://www.un.org/depts/los/convention_agreements/texts/koh_english.pdf.

² Article 309 UNCLOS, *No reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention*

³ Lee, M.L. The Interrelation between the Law of the Sea Convention and Customary International Law’, *San Diego International Law Journal*, Vol.7, Issue.2 (2006), p. 405–420; Also see, House of Lords International Relations and Defence Committee, *UNCLOS: The Law of the Sea in the 21st Century*, (2022), 2nd Report of Session 2021–22, HL Paper 159, London; see also UK Parliament, p. 8 (based on examination of witness of Prof. Sir Malcolm Evans from question 19 in House of Lords (HL) at 20 October 2021).

⁴ Butcher, J.G., *Becoming an Archipelagic State: The Juanda Declaration of 1957 and the “Struggle” to Gain International Recognition of the Archipelagic Principle*, in Cribb, R. and Ford, M. (eds), *Indonesia Beyond the Water's Edge*, Singapore: Institute of Southeast Asian Studies, 2009, p.44; also see , Prescott, J.R.V. and Schofield, C.H., *The Maritime Political Boundaries of the World*, Leiden: Martinus Nijhoff Publishers, 2005, p.168; also see, Tsamenyi, M. et al., *Navigation Through Archipelagos: Current State Practice*, in Nordquist, M.H. et al. (eds), *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention*, Leiden: Martinus Nijhoff Publishers, 2009, p.9; also see, Lokita, S., *The Role of the Archipelagic Baselines in Maritime Boundary Delimitation*, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, 2010, p.14.

⁵ Kopela, S. *Archipelagos and Archipelagic Regimes in the Law of the Sea*, in *Maritime Order and the Law in East Asia*, 1st edn, Abingdon: Routledge. 2018, p.222

liberum.⁶ While, FoN presumes as the right of all vessels to traverse ocean space free from coastal State interference.⁷ In contrast, The right of navigation (RoN) recognize as a treaty-based entitlement of navigational access on compliance with designated routes.⁸ Its specified obligations, and regulatory requirements for the flag and coastal or archipelagic State. The relationship between these concepts is not merely taxonomic. It determines the outer bounds of the archipelagic State's regulatory competence, the enforceability of environmental duties during passage, and the legal characterization of route deviations. Consequently, it raise questions for remaining unresolved on the face of the Convention and undertheorized in the scholarly literature.

These issues are neither abstract nor peripheral. This strategic sea lanes traversing on archipelagic States (the Karimata, Lombok, Makassar, and Sunda passages, together with the three Indonesian ASLP corridors), carry the bulk of Indo-Pacific maritime trade and naval transit. Then, as great-power competition intensifies and climate-related marine degradation accelerates, the legal rules governing within these corridors may carry acute geopolitical significance⁹. In contrast, UNCLOS only provides skeletal guidance under Article 53 (the ASLP entitlement), Article 54 (duties to foreign ships), and Part XII (environmental obligations). In which, leaving the precise interface between these provisions open to competing interpretations.

This article intended to create three original contributions to the literature on the law of the sea. First, it advances a conceptually precise account of the RoN and FoN distinction by demonstrates that ASLP is anchored in RoN rather than FoN. Also, providing concrete doctrinal consequences for regulatory authority that existing scholarship has not systematically elaborated. Second, it applies interpretive framework to an Articles 31–33 VCLT the Part IV/Part XII interface within proportionate environmental enforcement without nullifying foreign vessels navigational rights. Third, it assesses Indonesia's IASP regime as the only operationalized ASLP system and draws normative lessons for undesignated archipelagic States. Therefore, it expected to develop contribution to the ocean governance mechanisms.

2. RESEARCH METHODS

In this study, we employ a doctrinal legal research methodology grounded in normative analysis.¹⁰ The primary legal materials comprise the UNCLOS treaty text and its annexes,

⁶ Thornton, H. Hugo Grotius and the Freedom of the Seas, *International Journal of Maritime History*, Vol.16, Issue.2 (2004), p.17–38.

⁷ Cogliati-Bantz, V. Archipelagic States and the New Law of the Sea', in del Castillo-Laborde, L. (ed), *The Law of the Sea From Grotius to the United Nations Convention on the Law of the Sea: Liber Amicorum Judge Hugo Caminos*, Leiden: Brill, 2015, p.299–317; also see, Buntoro, K. An Analysis of Legal Issues Relating to Navigational Rights and Freedoms Through and Over Indonesian Waters, PhD thesis, University of Wollongong, 2010, p.3.

⁸ Article 53(3) UNCLOS 1982

⁹ Hartanto, H., Victoria, Ong Argo, Chuasanga, A. Maritime Transportation in Indonesian Policy. *Jurnal Pembaharuan Hukum Unissula*, Vol.6, No.1 (2019), p.36–44, <http://jurnal.unissula.ac.id/index.php/PH/article/view/4657>

¹⁰ Andri Winjaya Laksana et al., "Critical Opinion Paradigm Regulation of Criminal Actions of Drug Abuse Through Religious Rehabilitation Based on the Legal System," *Media Iuris* 7, no. 3 (2024): 401–16, <https://doi.org/10.20473/MI.V7I3.62984>.

relevant International Maritime Organisation (IMO) rules and guidelines, the *travaux préparatoires* of the convention, and the domestic law of Indonesia as the sole state to have formally designated ASLP routes. Secondary materials include judicial and arbitral decisions addressing navigational rights and coastal state jurisdiction in maritime zones, and peer-reviewed scholarly commentary. We survey state practice beyond Indonesia as a case study to the extent it illuminates the normative content of ASLP obligations, particularly with respect to environmental enforcement and route-deviation incidents.

We will conduct treaty interpretation in accordance with Articles 31–33 of the VCLT. We will conduct it through: 1. textual analysis of the ordinary meaning of terms; 2. situational analysis of the individual provisions within the architecture of UNCLOS as a whole; and 3. teleological analysis referencing the Convention’s object and purpose as expressed in its preamble and negotiating history.¹¹

The methodology deliberately prioritises rigorous interpretive methods: the central research questions concern what the law provides and what it should provide, rather than patterns of behavioural compliance where the Convention text is ambiguous. Thus, our analysis draws on established principles of international legal interpretation, including the *lex specialis* or *lex generalis* relationship, to propose coherent doctrinal solutions capable of providing practical guidance to states and international institutions.

3. RESULTS AND DISCUSSION

3.1. The Grotian Legacy and the Principle of Freedom of Navigation

The freedom of navigation is the most foundational principle within the legal regime governing ocean space.¹² FoN stems from Hugo Grotius’s *Mare Liberum*, published in 1609. The *Mare Liberum* concept articulated the foundational argument that the sea acts as a *res communis*. As such, it is incapable of state appropriation and must remain open to all nations for purposes of navigation and commerce.¹³ Grotius’s central contention is that no state can lawfully obstruct navigation on the high seas.¹⁴ Consequently, *Mare Liberum* established a presumption in favour of navigational liberty that has endured through subsequent centuries of treaty-making. The doctrine also received formal recognition in President Wilson’s Fourteen Points

¹¹ Vienna Convention on the Law of Treaties, A Treaty Shall Be Interpreted In Good Faith In Accordance With The Ordinary Meaning To Be Given To The Terms Of The Treaty In Their Context And In The Light Of Its Object And Purpose, Adopted 23 May 1969, entered into force 27 January 1980, Article Vol.3, No.1.

¹² Wolfrum, R. Freedom of Navigation: New Challenges, in Nordquist, M.H., Koh, T.T.B. and Moore, J.N. (eds), *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention*, Leiden: Martinus Nijhoff Publishers, 2009, p.79–101.

¹³ Grotius, H. *Mare Liberum*, translated by van Deman Magoffin, R., Oxford: Oxford University Press, 1609/1916; Also see Thornton, H. Hugo Grotius and the Freedom of the Seas, *International Journal of Maritime History*, Vol.16, Issue.2 (2004), p.17–38; Also see, Sardinha, C. Natural Law and the Defense of Freedom of Trade and Navigation in Hugo Grotius, *Mare Liberum* (1609) with Regard to the Seizure of the Portuguese Carrack Santa Catarina by the Dutch during the Reign of Philip III of Spain (1603), *Journal on European History of Law*, Vol.14, Issue.1 (2023), p.62–69.

¹⁴ Rodrigo, Á.J. Between Grotius and the Pro Communitate Principle: The Limits to the Principle of Freedom of the Seas in the Age of Marine Global Commons, *Paix et Sécurité Internationales*, Vol.8, (2020), p.95–119. http://dx.doi.org/10.25267/Paix_secur_int.2020.i8.04.

(1918) statement of principles for peace, which proposed “absolute freedom of navigation upon the seas outside territorial waters.”¹⁵

However, the Grotian thesis was contested almost immediately. John Selden’s *Mare Clausum* (1635) defended the right of coastal states to assert exclusive control over adjacent seas, providing the theoretical antecedent for the modern territorial sea.¹⁶ The contemporary resolution of this tension is embodied in UNCLOS, which partitions ocean space into zones of graduated sovereignty and assigns navigational entitlements calibrated to each zone. FoN in its purest form – unrestricted, state-intervention-free passage – applies only on the high seas (Article 87). The extension of this concept is to the Exclusive Economic Zone expressly preserved under Article 58. However, it does not apply, as Djalal has emphasised, in archipelagic waters.¹⁷

3.2. The Freedom of Navigation as a Legal Category under UNCLOS

UNCLOS operationalises FoN across four principal contexts: transit passage through straits used for international navigation (Article 38); in the Exclusive Economic Zone (EEZ) (Article 58); on the high seas (Article 87); and, implicitly, innocent passage in the territorial sea as a constrained approximation of navigational freedom (Articles 17–26). Each of these regimes reflects a different calibration of the underlying FoN principle in light of coastal state interests.¹⁸ To some extent, UNCLOS prescribed extensive rules not only for the freedom of navigation but also for freedom of overflight in the EEZ and above the high seas.¹⁹

The concept of ‘freedom’ in this context, as Callister has observed, connotes the ability to act without state intervention.²⁰ When this concept is applied to navigation, FoN denotes the presumptive right of vessels to traverse ocean space without requiring coastal state consent, subject only to rules of customary international law. Its legal basis is accordingly dual: it is partially rooted in customary international law (with regard to the high seas),²¹ and partially in treaty provision (governing EEZs and straits).

3.3. The Right of Navigation as a Treaty-Based Entitlement

The right of navigation (RoN), in contrast, is a term denoting a treaty-conferred entitlement to

¹⁵ Wilson, W. Fourteen Points, Speech, 8 January 1918, The Avalon Project, Yale Law School, 1918

¹⁶ Selden, J. 1635 *Mare Clausum*; see also Sardinha, C. Natural Law and the Defence of Freedom of Trade and Navigation in Grotius, *Mare Liberum*, *Journal on European History of Law*, Vol.14, Issue.1 (2023), p. 62.

¹⁷ Djalal, H. Remarks on the Concept of Freedom of Navigation, in Nordquist, M.H., Koh, T.T.B. and Moore, J.N. (eds), *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention*, Leiden: Martinus Nijhoff Publishers, (2009), p. 65, 70.

¹⁸ See note 10 Rüdiger Wolfrum.

¹⁹ Galdorisi, G. The US Freedom of Navigation Program Preserving the Law of the Sea, *Ocean & Coastal Management*, Vol.25, Issue.3 (1994), p.179–188, [https://doi.org/10.1016/0964-5691\(94\)90055-8](https://doi.org/10.1016/0964-5691(94)90055-8); Also see, Pedrozo, R. Maintaining Freedom of Navigation and Overflight in the Exclusive Economic Zone and on the High Seas, *Indonesian Journal of International Law*, Vol.17, Issue.4 (2019), p.477–494, <https://doi.org/10.17304/ijil.vol17.4.796>.

²⁰ Callister, P.D. What Is Meant by Freedom?, *Pace Law Review*, 2017, p.507

²¹ Lee, M.L. The Interrelation between the Law of the Sea Convention and Customary International Law, *San Diego International Law Journal*, Vol.7, Issue.2 (2006), p.405–430.

navigate in defined conditions and subject to defined obligations. The concept is similar to that implied in the term 'right of passage' implicitly highlighted in Articles 17–26 (innocent passage), Article 38 (transit passage) and Article 53 (ASLP). Therefore, under UNCLOS, RoN may be described as the entitlement of foreign vessels to continuous and expeditious passage through specific maritime zones in a manner consistent with treaty requirements. Criteria defining the vessel's passage as "innocent" include that the passage be continuous and expeditious, that the vessel not stop (except for reasons of force majeure or distress), and must not be prejudicial to the peace, good order, or security of the coastal state, based on Article 18(2).²² As Gibb observed in an early analytical contribution, the right to navigate in coastal waters is a limited right, circumscribed by the legal status of the waters in question and the regulatory authority of the coastal or archipelagic state.²³

Puspitawati and Djalal highlight that the difference lies in the degree of obedience to certain rules: a 'right' implies compliance with specific rules, whereas a 'freedom' may be less constrained.²⁴ The normative consequence of this distinction is significant. FoN generates a presumption against interference that the coastal state must rebut, whereas with RoN the navigating state must affirmatively demonstrate compliance with treaty conditions to assert the entitlement. This structural difference informs the allocation of regulatory authority in each passage regime.

3.4. The Conceptual Distinction in Practice: ASLP versus Transit Passage

The distinction between FoN and RoN finds its sharpest institutional expression in the contrast between transit passage (Article 38) and ASLP (Article 53). Transit passage is conceived as a manifestation of FoN, which it grants to ships and aircraft of all states. This freedom of navigation and overflight exists solely for continuous and expeditious transit, and coastal states may not suspend or impede it.²⁵

ASLP, by contrast, is grounded in RoN, through which it grants the right of passage in the normal mode through designated sea lanes.²⁶ It allows the archipelagic state to exercise non-discriminatory regulatory authority in specified domains, as per the substantive requirements of Articles 53 and 54. The difference is not semantic but structural, because ASLP is treaty-based and conditional. Consequently, the archipelagic state retains a residual regulatory competence that coastal states bordering international straits do not.²⁷

As Rothwell and Letts have noted, ASLP occupies an intermediate position in the navigational hierarchy. It is freer than innocent passage, insofar as it cannot be suspended and extends to

²² Article, Vol.18, No.2, UNCLOS

²³ Gibb, G.S. Public Right of Navigation, *Law Magazine & Review (5th series)*, Vol.2, 1876, p.216

²⁴ Puspitawati, D. Indonesia's Archipelagic Sea Lanes (ASLs) Designation: Rights Turning to Obligations?, *Hasanuddin Law Review*, Vol.4, Issue.3 (2018), p.265–280; Also see, Djalal, H. The 1982 UN Convention on the Law of the Sea and Navigational Regimes, in Johnston, D.M. and Sirivivatnanon, A. (eds), *Maritime Transit and Port State Control: Trends in System Compliance*, 2002, p.74, 79

²⁵ Article, Vol.38, No.2, UNCLOS

²⁶ Article, Vol.53, No.3, UNCLOS, Limiting archipelagic sea lanes passage to the normal mode.

²⁷ Bugajski, D.R., Navigational Rights in Archipelagic Waters, *Polish Review of International and European Law*, Vol.12, Issue.2 (2022), p. 229.

all ships including warships. However, it is more constrained than transit passage, because it lacks the customary-law foundation and is confined to designated routes.²⁸

Churchill and Lowe similarly characterise the navigational entitlements in archipelagic waters as “extensive” but not unlimited.²⁹ The normal mode requirement and the obligation to comply with sea lane designations impose qualitative constraints that transit passage does not.³⁰

3.5. The Legal Architecture of Archipelagic Sea Lanes Passage Under Part IV UNCLOS

A. Status, Sovereignty, and Passage in Archipelagic Waters

The UNCLOS framework for archipelagic states creates three interrelated legal determinations: 1. the conditions for acquiring archipelagic state status (Article 46); 2. the drawing of straight archipelagic baselines (Article 47); and 3. the legal status of the enclosed waters (Article 49). Article 49(1) vests full sovereignty status in the archipelagic state over the waters enclosed by archipelagic baselines, the seabed and the subsoil, and the airspace above. This is not only a reduced or qualified sovereignty, but also a plenary sovereign authority. The result may be equivalent in legal character to sovereignty over the territorial sea, but it does not.

However, sovereignty over archipelagic waters is immediately reduced by the passage rights enshrined in Articles 52 and 53. Article 52 preserves the right of innocent passage for foreign ships (subject to the archipelagic state’s power of temporary suspension for security reasons). Article 53 establishes the more significant entitlement, which provides the right of all ships and aircraft to exercise continuous and expeditious ASLP through sea lanes and air routes designated by the archipelagic state.

The legal character of ASLP as a reduction of the archipelagic state’s otherwise plenary sovereignty is underscored by Article 53(2). The term “may designate” the sea lanes is a permissive formulation that has generated controversy regarding the consequences of non-designation. Article 53(12) resolves this uncertainty by providing that where no designation occurs, the right of ASLP may nonetheless be exercised through routes “normally used for international navigation.” This provision effectively prevents an archipelagic state from eliminating ASLP by omission – a significant constraint on sovereign discretion.³¹

b. Rights and Obligations of Ships Exercising ASLP

The obligations of ships exercising ASLP are stipulated in Article 54, which incorporates the duties of ships in transit passage under Articles 39, 40, 42 and 44. These include: the duty to proceed without delay; the prohibition on the threat or use of force against the sovereignty,

²⁸ Rothwell, D.R. and Letts, D. *Law of the Sea in South East Asia: Environmental, Navigational and Security Challenges*, Abingdon: Routledge, 2019, p. 11.

²⁹ Churchill, R., Lowe, V., & Sander, A. *The law of the sea*, Fourth Edition, Manchester University Press, 2022, p.192-193; Also see Churchill, R.R. and Lowe, A.V. *The Law of the Sea*, 3rd edn, Manchester: Manchester University Press, 1999, p.105.

³⁰ *ibid*

³¹ Article Vol.53, No.12 UNCLOS

territorial integrity or political independence of the archipelagic state; and the duty to comply with generally accepted international regulations, procedures and practices concerning safety at sea and prevention of pollution.

The “normal mode” requirement of Article 53(3) is analytically important.³² It mandates that ships proceed in the mode of operation normally employed. This has created constructive ambiguity, with no universal consensus on the definition of the “normal mode” yet being reached.³³ Submarines, for example, may not navigate on the surface, as the usual naval warfare perspective does not consider surface operations to be the norm;³⁴ military aircraft, equally, may not refrain from military manoeuvres. In contrast, Reisman emphasises that UNCLOS does not explicitly permit submerged passage for submarines under ‘normal mode’ criteria.³⁵

However, this requirement does not appear for transit passage, where Article 38 refers only to “freedom of navigation and overflight” without specifying the mode. The normal mode constraint is a functional marker of ASLP’s conditional character as an RoN rather than an FoN regime. In ASLP, archipelagic states may designate sea lanes and prescribe traffic separation schemes (TSSs) under Article 53(6), subject to the approval of the competent international organisation (namely, the IMO) under Article 53(9). They must not impose requirements that practically deny, hamper or impair the right of passage (Article 54 and Article 44), and their regulations must be non-discriminatory (Article 53[8]).³⁶

c. Regulatory Competence: What the Archipelagic State May Lawfully Do

The regulatory jurisdiction of the archipelagic state with regard to ASLP is determined by the prohibition on impairing or impeding passage, rather than affirmatively with regard to the passage itself.³⁷ Thus, this regulatory ASLP competence may be considered to be defined negatively under UNCLOS. This is a structurally different approach from innocent passage (Articles 21–22), where the coastal state is granted explicit legislative jurisdiction over enumerated subject-matters including safety; traffic regulation; protection of navigational aids, cables and pipelines; conservation of living resources; marine environment protection; marine scientific research; and customs enforcement.

³² Article Vol.53, No.3 UNCLOS: The Right Of Passage Applies In Normal Mode Through Sea Lanes And Air Routes Above Them For Continuous And Expeditious Transit.

³³ Yoga, P.R.A. and Alverdian, I. Reinterpreting the Normal Mode of Submarine in Archipelagic Sea Lane Passage, *Indonesian Journal of International Law*, Vol.21, (2024), p.593; Also see, McLaughlin, R. Reinforcing the Law of the Sea Convention of 1982 through Clarification and Implementation, *Ocean & Coastal Law Journal*, Vol.25, (2020), p.130; Also see Grunawalt, R.J. Freedom of Navigation in the Post-Cold War Era, in Rothwell, D.R. and Bateman, S. (eds), *Navigational Rights and Freedoms and the New Law of the Sea*, Leiden: Brill Nijhoff, 2000, p.11-16

³⁴ Doswald-Beck, L. (ed), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, Cambridge: Cambridge University Press, 1995, p.105; Also see Yoga, P.R. and Bautista, L. Legal Analysis of the Establishment of Exclusion Zones for Submarines in Indonesia’s Archipelagic Sea Lanes, *Ocean Development & International Law*, Vol.56, Issue.3 (2025), p.290–318.

³⁵ Reisman, M.W. The Regime of Straits and National Security: An Appraisal of International Lawmaking, *American Journal of International Law*, Vol.74, (1980), p.48; Also see Burke, W.T. Submerged Passage Through Straits: Interpretations of the Proposed Law of the Sea Treaty Text, *Washington Law Review*, Vol.52, (1976))p. 193.

³⁶ Article Vol.53, No.4, UNCLOS

³⁷ Article Vol.53, No.3, UNCLOS

No equivalent positive grant of legislative competence appears in Article 53 or Article 54. Consequently, archipelagic states may not enact ASLP beyond what is permitted by the incorporated provisions of Articles 39, 40 and 42. They may, however, require ships to comply with accepted international standards during transit (such as IMO conventions, Convention on the International Regulations for Preventing Collisions at Sea (COLREG) 1972, International Convention for the Safety of Life at Sea (SOLAS) 1974 and the SOLAS Protocols, and International Convention for the Prevention of Pollution from Ships (MARPOL) 1973 and the MARPOL Protocols, etc.) because those obligations bind ships as a matter of international law independent of domestic legislation.

This negative approach has a significant practical implication. It entails that the archipelagic state cannot lawfully require foreign ships to obtain something derived from national law as such a requirement would, in effect, impede the passage. If there exists an idea of compulsory prior notification or authorisation before exercising ASLP, thus obstructing the passage, it may be considered unauthorised by UNCLOS. However, should this prior notification not hinder continuous and expeditious passage, it is not explicitly explored in the convention. State practice (including Indonesia's IASP regime) reflects this constraint, with regulations confined to route and TSS compliance rather than conditional entry permissions.³⁸ Therefore, in Indonesia, prior informational notification only applies to innocent passage under Governmental Regulation number 8/1962 (Article 7[1]) as amended by Law number 6/1996 and Governmental Regulation number 36/2002.³⁹ Per Djalal, UNCLOS does not explicitly require prior notification or prior authorisation for the passage of warships in the territorial sea.⁴⁰ This domestic practice also applies to archipelagic sea lanes with regard to prior notification or prior authorisation due to the absence of specific, relevant matters under international law.⁴¹

3.6. The Unresolved Doctrinal Problems and Interpretive Solutions

a. Environmental Protection during ASLP: The Part XII Interface

The most significant unresolved issue in the ASLP regime concerns the enforceability of environmental obligations during passage. UNCLOS Part XII, which governs the Protection and Preservation of the Marine Environment, imposes general duties on all states under Articles 192–194. This duty not only protects and preserves the marine environment, but also requires states to take measures to prevent, reduce and control pollution from vessels. The Convention does not, however, specify whether these obligations modify or qualify the navigational rights

³⁸ Lestari, M.M. What Is the Right, Archipelagic Sea Lanes and Passage?, *Indonesian Journal of International Law*, Vol.18, Issue.2 (2020), p.209

³⁹ Governmental Regulation number 8/1962 innocent for foreign vessels passage in Indonesian Waters; Law number 6/1996 Indonesian Waters; Governmental Regulation number 36/2002 concerning Rights and Obligations of Foreign Ships in Carrying out Innocent Passage through Indonesian Waters

⁴⁰ Djalal, H. Indonesia's Archipelagic Sea Lanes, in Cribb, R. and Ford, M. (eds), *Indonesia Beyond the Water's Edge: Managing an Archipelagic State*, Singapore: ISEAS Publishing, 2009, p.59–69.
. <https://doi.org/10.1355/9789812309815-008>

⁴¹ *ibid*

determined under Part IV.⁴²

Therefore, there are three considerations that justify lawful archipelagic interventions to halt or redirect the vessel when it is exercising ASLP. They are as follows: 1. When the vessel causes or imminently threatens to cause serious marine pollution in archipelagic waters; 2. when this (potential) pollution is caused through casualty, inadequate pollution prevention equipment, or deliberate discharge; or 3. when this (potential) pollution would be of a nature that would obstruct the passage, such that intervention is necessary to preserve the integrity of navigational rights.

Three possible responses address those issues. First, the navigational right provided by the non-impairment obligation under Article 54 and 44 is absolute. Thus, an archipelagic state's only recourse is post-passage enforcement through the flag state claims mechanism or IMO proceedings. Second, an environmental priority issue would (under Part XII obligations), supersede navigational rights (under Part IV). However, it may only apply when serious pollution threatens. Third, Part XII operates as general law applicable to all maritime zones, while Part IV constitutes the *lex specialis* governing ASLP. The *lex specialis* principle permits the special regime to take precedence in areas of direct conflict but leaves the general law operative in areas not expressly addressed by the special regime.⁴³

The *lex generalis* claim is supported by three textual and structural arguments. First, the general obligation – framed without maritime-zone qualification – is that states are obliged to protect and preserve the marine environment under Article 192. Second, an archipelagic state can impose a cooperative duty to protect archipelagic waters effectively through its national rules (Articles 195 and 197). Third, the archipelagic state may not alter the rights and obligations of states under other international agreements (Article 311[2]). Consequently, MARPOL and other environmental conventions remain in effect even during ASLP⁴⁴.

The practical consequence of this idea is that an archipelagic state may take measures proportionate to an environmental emergency, without such measures constituting unlawful impairment of ASLP. Moreover, it also must satisfy the requirement that these measures be non-discriminatory, temporary and directed at specific environmental threats, to prevent a foreseeable casualty such as deviating a vessel from its course to a port of refuge or requiring it to alter speed. This means emergency environmental action is permissible, but blanket environmental justifications for vessel or cargo restrictions are not.⁴⁵

⁴² Articles 192–194 (Part XII) UNCLOS; see also Lottilla, R.P.M. The Efficacy of the Anti-Pollution Legislation Provisions of the 1982 Law of the Sea Convention: A View from South East Asia, *International and Comparative Law Quarterly*, Vol.41, Issue.1(1992), p.137.

⁴³ International Law Commission, Draft Articles on State Responsibility, Article 55: The Lex Specialis Principle Applies Where A Special Rule Governs The Same Subject-Matter.

⁴⁴ Erika Buchari, Ong Argo Victoria, Policies Conducted to Support Maritime Safety and Security in Sea Transportation Systems, *KnE Social Sciences*, Uni Emirates Arab, 2021, p.238–248 https://scholar.google.com/citations?view_op=view_citation&hl=en&user=9BcCVQUAAAAJ&pagesize=80&citation_for_view=9BcCVQUAAAAJ: 5tno0g5mFcC

⁴⁵ Galani, S. and Evans, M.D. The Interplay between Maritime Security and UNCLOS: Help or Hindrance?, in *Maritime Security and the Law of the Sea*, Cheltenham: Edward Elgar, 2020, p.1.

b. Route Deviation: Legal Characterization and Consequences

A second unresolved problem concerns the legal status of a vessel that deviates from a designated ASLP route into adjacent archipelagic waters. Article 53(3) limits ASLP to designated sea lanes, and Articles 53(10 - 11) require ships to refrain from stopping or anchoring except in cases of force majeure or distress. No provision explicitly addresses the consequences of unauthorized deviation.

Three scenarios require differentiation. In the first, a vessel deviates due to force majeure, such as: mechanical casualty, severe weather, or distress situation. Article 53(11) expressly preserves the right to stop or anchor in such circumstances, and the same principle a fortiori permits route deviation under equivalent conditions.

In the second scenario, a vessel deviates deliberately but without hostile intent, for example to avoid a navigational hazard that not reflected on current charts. This case turns on whether the deviation is consistent with reasonable seamanship in accordance with generally accepted international standards. If so, a purposive of UNCLOS consistent with the object of ASLP (safe, continuous, and expeditious passage) would support treating the deviation as within the scope of ASLP rather than as innocent passage or as a violation. Therefore, logically the archipelagic State should have the right to monitor and verify the reason for deviation.

In the third which most contentious scenario, a vessel deliberately departs from a designated ASLP route into other parts of archipelagic waters and claims innocent passage in the middle of the voyage outside the route. This scenario creates genuine enforcement difficulties because, as the Convention remain silent and does not specify the consequences of such a passage switch.⁴⁶ Consequently, the vessel could exploit the transition to evade ASLP obligations (such as if any the surface navigation requirement for submarines) while simultaneously denying the archipelagic State supervisory authority under the innocent passage regime (where temporary suspension is available under Article 52(2)).⁴⁷

The preferred interpretive solution, if the voluntarily departs from a designated ASLP route without force majeure or navigational necessity, may loses the protections of ASLP. Thus, logically it falls to the subject to the full scope of the archipelagic State's regulatory authority applicable to non-ASLP navigation in archipelagic waters and its enforcement mechanisms. Therefore, providing a regulatory guidance to avoid legal vacuum that consistent with the principle that navigational rights must be exercised in good faith is crucial.

Moreover, ASLP is in inside the baseline which is part of archipelagic state sovereignty.⁴⁸ The concept sovereignty on territorial sea and archipelagic water is different. Although, in in territorial seas coastal states may suspend innocent passage and exercise jurisdiction, archipelagic states are not granted the authority to suspend in ASLP. Therefore, Enny higlighted this is considered unfair, because archipelagic waters lie within the state's baselines, where

⁴⁶ Narwati, E. *Kedaulatan Negara Kepulauan Atas Hak Lintas Alur Laut Kepulauan Saat Konflik Bersenjata*, Malang: Doctoral Dissertation, Universitas Airlangga, 2018, p.260.

⁴⁷ Yoga, P.R. and Bautista, L. Legal Analysis of the Establishment of Exclusion Zones for Submarines in Indonesia's Archipelagic Sea Lanes, *Ocean Development & International Law*, Vol.56, Issue.3 (2025), p.290.

⁴⁸ Article 47 and 47 UNCLOS

sovereignty should be stronger than in territorial seas located outside the baselines.⁴⁹ Therefore, the archipelagic states may have more regulatory rights as long as is not hamper safety, continuous, and expeditious purpose of the passage. should be granted greater authority over ASLP.

3.7. The Indonesia's IASP Regime: Practice, Gaps, and Lessons

a. The Establishment and Structure of the Indonesia Archipelagic Sea Lanes Passage (IASP) Regime

Indonesia is the only State to have formally designated and approved ASLP routes under Article 53. Three north–south corridors—IASP I (through the Karimata Strait), IASP II (through the Lombok and Makassar Straits), and IASP III (through the Banda Sea and Ombai or Wetar Straits)—were established by Government Regulation No. 37 of 2002 and approved by IMO pursuant satisfied Article 53(9).⁵⁰

The designation was driven by Article 53(12), virtually major straits within the Indonesian archipelago (historically used for international navigation) would be subject to unregulated ASLP. The establishment of IASP accordingly converted a pre-existing navigational practice into a legally structured regime. It preserved navigational access and established defined corridors amenable to State supervision.⁵¹ The IASP corridors are oriented exclusively north–south as partial archipelagic sea lane proposal,⁵² reflecting Indonesia's security concerns across its archipelago.⁵³

b. National Implementation: Regulatory Framework

Indonesia's ASLP implementation rests on several legislative instruments: Law No. 6 of 1996 on Indonesian Archipelagic Waters; Law No. 32 of 2014 on Maritime Affairs; Government Regulation No. 36 of 2002 and previous Government Regulation No. 8 of 1962 governing innocent passage, and Government Regulation No. 37 of 2002 governing IASP. The regulations specify permitted routes, TSS requirements, and the obligations of masters of ships transiting IASP corridors.

Critically, the IASP regime does not require prior notification or authorization, which it consistent with the non-impairment obligation. However, establishing passive monitoring and reporting for safety reason including vessel traffic services and AIS tracking, does not impair

⁴⁹ See note 43 , Enny Narwati

⁵⁰ Government Regulation No. 37 of 2002 on the Rights and Obligations of Foreign Ships and Aircraft Exercising the Right of Archipelagic Sea Lanes Passage Through the Designated Archipelagic Sea Lanes (Indonesia); adopted by IMO pursuant to UNCLOS Article Vol.53, No.9.

⁵¹ Buntoro, K. Legal and Technical Issues on Designating Archipelagic Sea Lanes Passage: Indonesia's Experience', *Indonesian Journal of International Law*, Vol.8, Issue.2 (2010) p.219, 230–235.

⁵² Maritime Safety Committee, *General Provisions for the Adoption, Designation and Substitution of Archipelagic Sea Lanes (GPASL)*, 1998, para. 2.2.2.

⁵³ Puspitawati, D. Indonesia's Archipelagic Sea Lanes (ASLs) Designation: Rights Turning to Obligations?, *Hasanuddin Law Review*, Vol.4, Issue.3 (2018), p.265–280.

the right to enjoy unobstructed ASLP.⁵⁴

c. Enforcement Challenges and Interpretive Gaps

The enforcement challenges illustrate the practical operation of the doctrinal ambiguities identified above. First, transiting IASP corridors in submerged mode, in apparent violation of the normal mode requirement of Article 53(3). The legal framework for enforcement in such cases is uncertain: the archipelagic State may arguably intercept and surface the vessel, but the absence of express enforcement powers in Part IV creates procedural uncertainty.

The environmental enforcement gap has become pressing considering increasing tanker traffic and the vulnerability of coral reef ecosystems in the Banda Sea. Government Regulation No. 37 of 2002 requires ships to comply with international pollution standards but does not specify the enforcement mechanisms available where a ship poses an imminent environmental threat. The *lex generalis* reading proposed in Section V above would permit Indonesia to rely on Part XII to justify emergency intervention, but the absence of express domestic implementing legislation for this scenario creates legal uncertainty that should be addressed by legislative reform.

d. Normative Lessons for Other Archipelagic States

The Philippines which the other major archipelagic State with strategically significant sea lanes, which has not designated any ASLP routes according to Article 53 that. This means that foreign vessels may exercise ASLP on any route normally used for international navigation through entire Philippine archipelagic waters.⁵⁵ However, since November 2024 through Philippine Archipelagic Sea Lanes (PASL) Act (Republic Act No. 12065) established the archipelagic passage, but it has not formally adopted by IMO under Article 53(9).

The Indonesian experience suggests several normative lessons. Formal designation under Article 53(9) confers significant governance benefits. It establishes clear corridors for TSS, enables targeted environmental monitoring, and provides a legal basis for enforcement of the ASPL violation. However, designation must be comprehensive in geographic scope and approved by the IMO, to prevent unfair restrictions on historically used passages.⁵⁶

For archipelagic States generally, the article proposes that cooperative mechanisms (bilateral or regional agreements) in accordance with principal environmental emergency procedures, deviation protocols, and information-sharing arrangements—offer a more durable governance solution than unilateral regulatory assertion. Such mechanisms could operate within the UNCLOS framework as "arrangements" for the purposes of Article 311, supplementing rather than derogating from the Convention's navigational rights provisions.

⁵⁴ Puspitawati, D. et al. Law Enforcement at Indonesian Waters: Bakamla vs. Sea and Coast Guard, *Indonesian Journal of International Law*, Vol.17, Issue.4 (2019) p.495.

⁵⁵ Article Vol.53, No.12

⁵⁶ Mahon, R. and Fanning, L. Regional Ocean Governance: Polycentric Arrangements and Their Role in Global Ocean Governance, *Marine Policy*, Vol.107, (2019) p.103590.

4. CONCLUSIONS

This article has advanced three principal arguments regarding the legal architecture of archipelagic sea lanes passage under UNCLOS. *First*, ASLP is conceptually grounded in the RoN which recognized as a conditional treaty-based entitlement, rather than in a customary-law presumption of the FoN doctrine. This distinction is not merely conceptual, but carries significant doctrinal consequences. It supports a residual regulatory competence for archipelagic States that does not exist for coastal States bordering international straits. Also, the concept structures is presumption-shifting analysis when coastal State measures are challenged as impairing passage. However, the scholarly literature has not sufficiently elaborated this distinction, and its practical implications merit systematic attention. *Second*, the interface between Part IV ASLP and Part XII environmental obligations is best resolved through a *lex generalis* concept. Part XII continues to operate as general international law within archipelagic waters, complementing the *lex specialis* navigational regime of Part IV. Thus, it permits emergency environmental intervention proportionate to specific threats without converting environmental regulation into restriction on navigational rights. Archipelagic States (particularly Indonesia) should enact domestic legislation that expressly implements this interpretive framework to reduce enforcement uncertainty. *Third*, route deviation does not automatically transform the character of a vessel's passage. However, for voluntary and unjustified departure from a designated ASLP route triggers the archipelagic State's full supervisory authority applicable to non-ASLP navigation, including the innocent passage framework. By this interpretation fills the legal gap left by the treaty, aligns with the good-faith principle on the international law.

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