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ARCHIPELAGIC SEA LANES DESIGNATION:
CONSIDERATIONS FOR OPERATIONAL LEVEL PLANNERS

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.



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This month, Indonesia will submit to the Maritime Safety Committee of the International Maritime Organization (IMO) a compromise proposal for the partial designation of Archipelagic Sea Lanes (ASLs) in accordance with Article 53 of the 1982 United Nations Convention on the Law of the Sea. The United States raised objections and blocked Indonesia's earlier proposals before the IMO based on national security concerns but has more recently worked very closely with Indonesia to craft a proposal that is both acceptable to the United States and expected to be acceptable to other concerned maritime powers. This paper provides a brief background of the issues surrounding ASL designation, reviews the current status of the Indonesian proposal, frames the United States' position on the designation of ASLs and discusses the operational limitations that will be imposed on military forces required to operate in designated sea lanes once they are approved by the IMO.

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INTRODUCTION

The Government of Indonesia, working closely with the United States and other regional maritime powers has prepared for submission to the 69th Session of the Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) a proposal for the partial designation of archipelagic sea lanes (ASLs). If approved, this partial proposal will be the first such designation of sea lanes by an archipelagic state since the regime of archipelagic waters was established by the Third United Nations Conference on the Law of the Sea in 1982 (1982 Convention).

Consistent with the U.S. National Security Strategy policy of *engagement* and in order “ to exert global leadership and remain the preferred security partner for the community of states that share our interests,” the U.S. Department of Defense has consulted with the Government of Indonesia over the terms of their intended designation in an effort to ensure that the competing interests of all maritime powers are protected.¹

From the perspective of a theater CINC, in this case U.S. Pacific Command, and his operational level planners, designation of ASLs is an important planning consideration for future U.S. military operations. After a complete designation is made by an archipelagic state, and subsequently approved by the IMO, theater operational planners will need to assess the impact, if any, to traditional maritime deployment and operating patterns, and

reevaluate the interrelationships of the operational factors space, time, and forces in their area of responsibility. ASLs designation will have important planning implications for theater operational level decision makers considering the employment of maritime and air forces across the spectrum of potential military operations, from peacetime presence to war.

This paper provides a brief historical background of the relevant ASL designation issues from the perspective of Indonesia, reviews the pending Indonesian submission for ASLs designation, discusses in detail the position of the U.S. Government with respect to this maritime regime, and analyzes in some detail the implications of ASL designation for future military operations.

INDONESIA'S POSITION AND THE 1982 CONVENTION

Indonesia, like many of the other archipelagic nations, has lobbied in the international community for years to gain control of the waters that connect its many islands. Motivated by a concept of unity, "unity in [a] geographic, political, economic and cultural sense," and in order to provide for the ongoing security of its nation, Indonesia has sought sovereignty over the waters adjoining its many islands since gaining national independence in 1945.² Declaring itself to be an archipelagic state in December 1957, Indonesia "stated, among other things, that all waters around and between the islands of the Republic of Indonesia are natural appurtenances of the land

territory of [Indonesia] and therefore form part of its internal or national waters under its absolute sovereignty.”³ From the Indonesian point of view, the waters between their individual islands are as essential to their nation's survival as the Mississippi River and the Saint Lawrence Sea Way are to the economic well being of the United States. More specifically, in order to achieve its national goal to form a “prosperous society” founded in the principles of “unity, territorial integrity, and political and economic stability,...” Indonesia believes that it must

“maintain sovereignty over national waters to manage the living and non-living resources, to use them as a medium of communication for inter-island trade, to achieve the status of a single political unit with a single system of law, to create a unified national defense and security system and to maintain laws and regulations relating to the sea.”⁴

But Indonesian, or any other archipelagic nation's, sovereign control over the waters within its archipelagic baseline raises immediate concerns by maritime nations like the United States for their continued access to traditional routes of maritime passage and overflight from one region of the high seas to another.

The United States' and other maritime nations' concerns are particularly acute in the case of Indonesia as the Indonesian Archipelago is strategically located between the Asian mainland and the Australian sub-continent. The archipelago is bounded by the South China Sea to the north, the Pacific Ocean to the east, and the Indian Ocean to the south and west.

Comprising over 17,500 islands and encompassing over five million square kilometers of territory, of which more than three million square kilometers is archipelagic waters, Indonesia sits astride an international maritime crossroads for traffic proceeding between the Pacific and Indian Oceans. The "Lombok and Sunda as well as Malacca-Singapore Straits are included into 17 waterways representing the choke points of critical importance to the military and commercial traffic of the United States."⁵

The 1982 Convention negotiated a "comprehensive set of legal principles to govern practically every aspect of use of the world's oceans" and accommodated the interests of states like Indonesia by formally recognizing the legal regime of an "archipelagic state."⁶ The Convention defined an archipelagic state as:

those states who are "constituted wholly by one or more archipelagos" and perhaps other islands as well. Archipelagic states must also meet other criteria, such as a water-to-land ratio of between 1:1 and 9:1. The convention gives archipelagic states which meet this definition the right (subject to a number of restrictions) to draw strait baselines around "the outermost points of the outermost islands and drying reefs," which then constitute the inner delimitation of the archipelagic state's territorial sea. The waters which fall within these straight baselines constitute the regime of archipelagic waters and are within sovereign jurisdiction of the archipelagic state.⁷

In addition to gaining sovereignty over their archipelagic waters, the 1982 Convention afforded archipelagic states sovereignty over the air space above their archipelagic waters, the associated sea-bed and subsoil as well as the natural resources contained therein.⁸

In establishing the regime of archipelagic waters, the 1982 Convention was careful to preserve certain maritime interests, including the right of "innocent passage," for all ships navigating inside these waters. However, innocent passage pertains only to surface navigation and is subject to temporary suspension by the archipelagic state, in specified areas, "if such suspension is essential for the protection of its security."⁹

Of more immediate relevance to U.S. military operational planners contemplating the employment of naval surface, submarine and air forces, is the concept of archipelagic sea lanes and its associated transit regime, archipelagic sea lane passage (ASLP). "An archipelagic sea lane is a route normally used for international passage through archipelagic waters. While in them and the adjacent territorial sea, vessels and aircraft may travel in their normal mode. Thus, overflight of aircraft and submerged [transit] by submarines is permissible," without state consent.¹⁰

Additionally, ASLP has been interpreted to allow for formation steaming by foreign military ships, as well as the right to conduct launch and

recovery operations of embarked aircraft; and, unlike innocent passage in archipelagic waters, ASLP cannot be suspended by the archipelagic state.¹¹

In accordance with the 1982 Convention, “an archipelagic state **may** [emphasis added] designate sea lanes and air routes thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and adjacent territorial sea.”¹² In the absence of such designation, ships and aircraft may transit through, under and over all routes normally used for international navigation.¹³

To be acceptable, the proposed designation of lanes must include “all normal passage routes” but need not include routes of similar convenience through the same entry and exit points; and designated lanes “shall be defined by a series of continuous axis lines from the entry points of passage routes to the exit points. Ships and aircraft in [ASLP] shall not deviate more than 25 nautical miles to either side of such axis lines....”¹⁴ Moreover, “[o]nce a state, working through the IMO, designates sea lanes, vessels and aircraft are only authorized to engage in [archipelagic sea lanes] passage through those lanes.”¹⁵

In 1996, Indonesia decided to pursue formal designation of its sea lanes in accordance with the 1982 Convention. This has been the subject of recent Indonesian-United States consultations and is currently pending before the IMO. The primary issues that arise from the Indonesian proposal are:

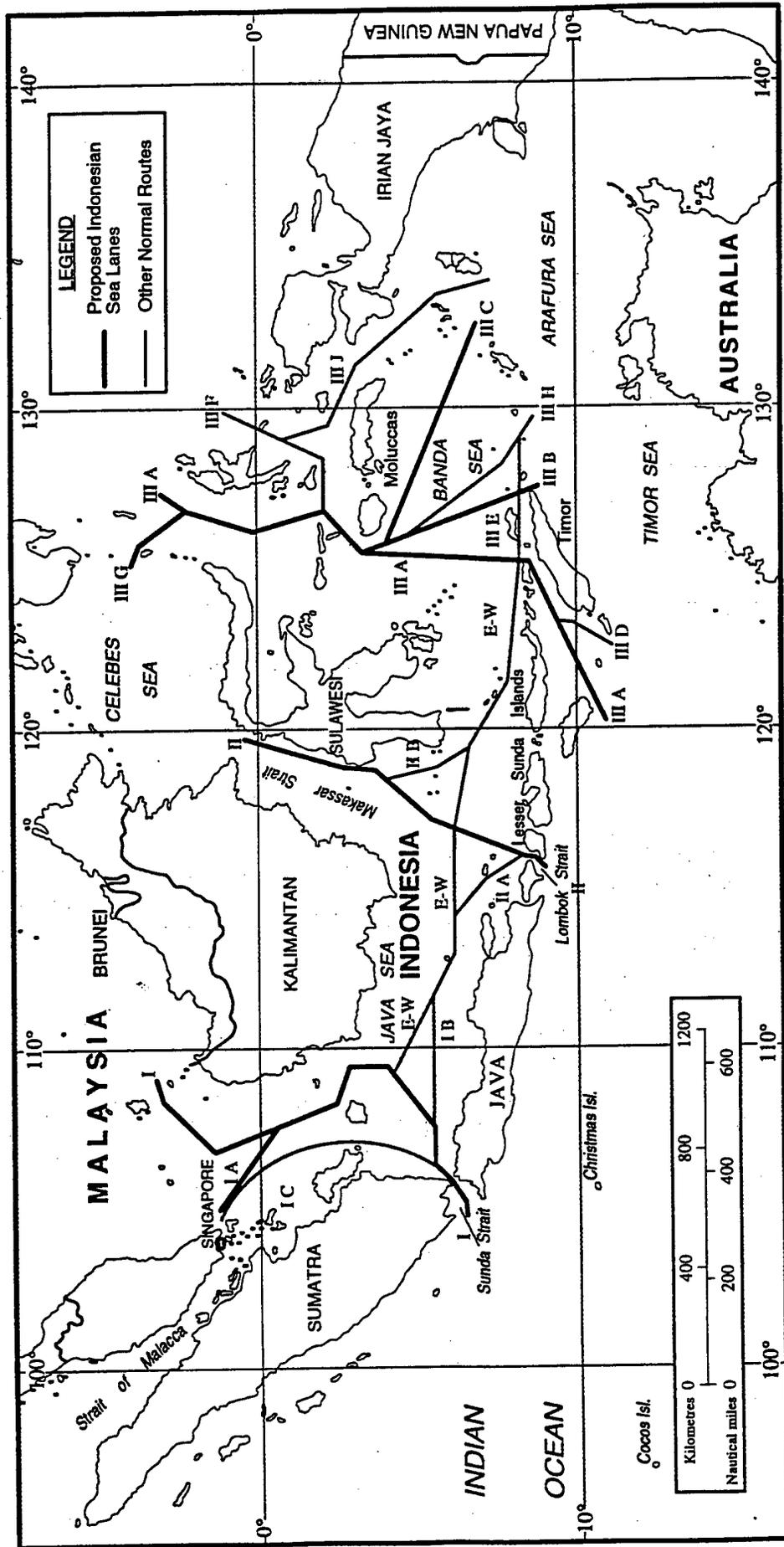
What routes represent those normally used for international navigation and what are their precise locations?

UNITED STATES POSITION

The United States has engaged Indonesia with respect to the designation of ASLs since the mid-1980s. From the Department of Defense perspective, “unimpeded transit through straits and sea lanes under the regime of [ASLP] is critical to the movement of trade goods, strategic minerals, military forces, and energy supplies to sustain the U.S. economy.”¹⁶ U.S. efforts have focused bilateral consultations and negotiations before the IMO on compliance with the 1982 Convention in order to ensure sufficient sea lanes are designated to meet operational and economic needs of all concerned maritime nations.

Indonesia’s submission before the May 1998 meeting of the MSC is a “partial” designation of ASLs. It identifies the three primary north-south sea lanes but does not specify a route to encompass normal passage along the east-west traffic corridor through the Java Sea. Figure 1, on the following page, illustrates the Indonesian proposal for designation of three primarily north-south ASLs, and also shows some of the other “normal” routes as expressed by the United States and various maritime nations whose ships frequent Indonesian waters.

Figure 1.
INDONESIAN PROPOSAL AND OTHER NORMAL ROUTES



In considering Indonesia's partial designation, and in view of the requirement for ships and aircraft to conform to ASLs once designated, the United States, in conjunction with other regional maritime powers, proposed that in the case of any partial designation of sea lanes the right of ASLP would continue to be exercised "through all normal passage routes used as routes for international navigation and overflight in other parts of archipelagic waters...."¹⁷ Indonesia agreed to this proposal and the MSC subsequently approved a change to the designation procedures in the case of a partial designation in 1997.

However, Indonesia's national security concerns remain; and, domestic political pressures have made the Indonesian's reluctant to identify more than the three north-south ASLs. Their omission of a number of "spurs" and "connector routes" associated with the three north-south ASLs and their failure to propose an east-west lane became major sticking points in recent consultations with the United States and other concerned maritime powers. Only Indonesia's agreement in 1997 with respect to the rules for partial designation, summarized above, has allowed their proposal to go forward with any likelihood for acceptance by the international maritime community and IMO.

The Indonesian proposal is the first to be considered by the IMO and the action taken by the MSC in May 1998 will establish the precedents for

future designations. The principle remaining and unresolved issues from the United States' perspective are related to the actual description of the lanes. With respect to their placement, the United States' position, in addition to including all normal routes as outlined above, is to ensure:

- Maximizing the size of the lanes, which can be as broad as 50 nautical miles (25 nautical miles either side of the axis of the sea lanes). This is important not only for surface and subsurface transits, but is especially critical to aircraft operations.
- [Minimizing the impact] of the so-called "Ten Percent Rule." The [1982] Convention provides for reduction in the size of lanes when there are islands bordering the lanes. [The United States] has worked [in multilateral consultations] to place the lanes wherever possible such that this rule will not apply.¹⁸

This latter element to the United States' position has led to some disagreement with other maritime powers. Motivated by concerns for future commercial shipping requirements that rely on deep draft vessels, some maritime powers are more concerned that the axis of the designated lanes conform as much as possible with the natural deep water channel. The United States' competing concern is motivated by a desire to preserve maximum flexibility for conducting military operations, specifically flight operations and therefore the United States has negotiated for Indonesia to designate an axis that will maximize the width of their designated ASLs.

OPERATIONAL PLANNING CONSIDERATIONS

The immediate operational effect on U.S. military forces when the IMO accepts Indonesia's partial designation of ASLs is negligible. As agreed with Indonesia in bilateral consultations and as stipulated in their latest draft submission to the MSC, until a full designation is made, accepted by the IMO, and subsequently becomes international law, the deployment of forces through the Indonesian archipelago and the Southeast Asian area of operations will be materially unchanged. In the interim, it is useful for operational level planners, and in particular planners for maritime component commanders, to consider how the space-time relationship and the employment of maritime forces may be affected by the designation of ASLs.

When an operational planner considers the space-time relationship, normally "...space is [viewed as] static or fixed, and hence unchangeable, while [only] time is dynamic and changeable."¹⁹ With the designation of ASLs, space becomes changeable to the extent that the ultimate designation may preclude alternative lanes of similar convenience and to the extent that travel along designated sea lanes is limited along a prescribed axis.

Additionally, it would not be unexpected in times of regional crisis or during periods of open hostilities for a neutral archipelagic state to exercise its existing right to temporarily suspend innocent passage within its undesignated archipelagic waters "without discrimination in form or in fact

among foreign ships.”²⁰ Taken in conjunction with designated ASLs, such action by a neutral archipelagic state would limit the passage of maritime forces to designated sea lanes with potentially negative consequences for the operational security and operational protection of those forces during their movement along what would now be limited lines of operation.

Although all forces conducting ASLP “... are permitted to take defensive measures consistent with their security, including launching and recovery of aircraft, screen formation steaming and acoustic and electronic surveillance;” their vulnerability to detection may be increased as a result of a neutral archipelagic state’s action to protect its security interests by restricting access to its archipelagic waters.²¹ The maritime forces transiting this regime in times of conflict are limited in movement to designated lanes which will reduce the number of possible locations for approach and create geographic decisive points for the opposing force at the entry and exit points of the designated lanes. Additionally, if the neutral archipelagic state chooses to suspend innocent passage, forcing all traffic military and civilian to conform to designated sea lanes, the resulting increase in traffic density along the ASLs would further reduce the likelihood of the undetected movement of forces. Therefore, even though belligerents may not “...conduct offensive operations against enemy forces, nor use [ASLs] as a place of sanctuary nor as a base of operations,” an enemy or other hostile force may gain some exploitable

advantage from the channeling of opposing forces through designate sea lanes.²²

While this may appear to be a purely academic consideration, actions by neutral third party states, exercising their rights under international law, have had planning implications for U.S. military operations in the not too distant past. For example, during "Operation El Dorado Canyon", U.S. aircraft based in Great Britain were denied overflight of territorial airspace by France and Spain en route to their target areas in Libya. While different aspects of international law were at play in that case, the point to be learned from an operational planning perspective is that the United States respected the requests of these third party states in planning and executing a major operation. "Even though the United States may have the military power to operate where and in the manner that it believes it has the right to do so, any exercise of that power is significantly less costly if it is generally accepted as being lawful."²³

CONCLUSION AND RECOMMENDATIONS

The foregoing discussion of issues surrounding Indonesia's designation of archipelagic sea lanes illustrates the effect that this regime has on the military organization of space and further identifies specific planning considerations for theater operational level planners. Archipelagic regimes,

and related international law of the sea issues, are important for an operational level planner to understand in order to properly evaluate the maritime portion of factor space. "Any maritime theater contains a number of physical (tangible) or 'abstract' (intangible) features that can be either natural or human-made. These features, arbitrarily called 'elements' often considerably affect the employment of combat forces at any level of war."²⁴ Archipelagic sea lanes qualify as an abstract or intangible element in the maritime theater. They can be lines of operations or lines of communications. Their specified entry and exit points establish decisive points for maritime traffic just as a geographic strait is a natural choke point for maritime traffic. ASLs and other ocean regimes cannot be dismissed or ignored by operational planners. In time of war or in operations other than war, the principle of "legitimacy" demands that the United States abide by international law and respect the sovereignty of foreign nations in order to gain and retain support for military operations.

In closing, "the significance of [archipelagic sea lanes and all other elements] depends primarily on their relative place in a given theater. It is critically important that the operational commander and his staff know and understand the advantages and disadvantages of these elements to ensure the most effective employment of one's own and friendly forces."²⁵

NOTES

¹ President, Report, "A National Security Strategy for a New Century," (May 1997), 2.

² Noregroho Wisnoemoerti, "Archipelagic Waters and Archipelagic Sea Lanes," (Unpublished Research Paper, Geneva Switzerland: 1986), 11. This paper is on file with the Department of Ocean Law and Policy, Naval War College, Newport, RI.

³ Atje Misbach Muhjiddin, "Some Aspects That Should be Considered in Designating Indonesia's Sea Lanes," (Unpublished Paper, University of Hawaii School of Law: Undated), 2. This paper is on file with the Department of Ocean Law and Policy, Naval War College, Newport, RI.

⁴ Ibid., 3.

⁵ Barbara Kwiatkowska and Etty R. Agoes, "Archipelagic Waters: An Assessment of National Legislation," (Final Text for Publication of 15 October 1990, Institute of International Law, The University of Kiel, Federal Republic of Germany:1990), 27. This paper is on file with the Department of Oceans Law and Policy, U.S. Naval War College, Newport, RI.

⁶ Christopher C. Joyner, "The United States and the New Law of the Sea", Ocean Development & International Law, vol:27, 1996, 41.

⁷ A. L. Morgan, "The New Law of the Sea: Rethinking the Implications for Sovereign Jurisdiction and Freedom of Action," Ocean Development & International Law, vol:27, 1996, 15.

⁸ United Nations Conference on the Law of the Sea, 3rd, United Nations Convention on the Law of the Sea, A/CONF.62/122(n.p.:1982), Article 49.

⁹ Ibid., Article 52.

¹⁰ John Astley III and Michael N. Schmitt, "The Law of the Sea and Naval Operations, The Air Force Law Review, vol:42, 1997, 135.

¹¹ 1982 Convention, Article 53.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Astley and Schmitt, 136.

¹⁶ Department of Defense, National Security and the Convention on the Law of the Sea, (Washington, DC:January 1996), 7.

¹⁷ International Maritime Organization Sub-Committee on Safety of Navigation, 43rd Session, "Adoption of Amendments of the General Provisions on Ship's Routing," Draft Resolution NAV 43/15 (1997) para 3.23.

¹⁸ Alex Whitaker, "United States and Australian Discussions Regarding Designation by Indonesia of Archipelagic Sea Lanes," (Unpublished Position Paper, Office of the Deputy Department of Defense Representative for Ocean Policy Affairs, Washington, DC: 24 November 1997), 1.

¹⁹ Milan Vego, "On Operational Art," 2nd Draft, (Unpublished collection of the author's articles and notes, U.S. Naval War College, Newport, RI: March 1998), 67.

²⁰ 1982 Convention, Article 53.

²¹ Louise Doswald-Beck, ed., San Remo Manual on International Law Applicable to Armed Conflicts at Sea (Great Britain: Cambridge University Press, 1995), 106.

²² Ibid.

²³ George Galdorisi, "The United States Freedom of Navigation Program: A Bridge for International Compliance with the 1982 United Nations Convention on the Law of the Sea," Ocean Development & International Law, vol:27, 1996, 401.

²⁴ Vego, 33.

²⁵ Ibid.

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