

THE CODIFICATION OF THE LAW OF THE SEA AND ITS IMPLICATIONS FOR THE ROYAL THAI NAVY

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ABSTRACT

For nearly thirty years since its signing on 10 December 1982, Thailand struggled before working its way to ultimately ratifying the Law of the Sea Convention on 15 May 2011. Although numerous international and domestic maritime communities have been delighted that Thailand has brought the Convention closer to the goal of universality, several Governmental bodies have great concerns about the impact of the Convention on their roles and activities, particularly the Royal Thai Navy—the primary agency responsible for safety, security, and defense of the country at sea. This paper assesses the impact of the Law of the Sea Convention and its implications for the Royal Thai Navy in meeting the requirements of the Government by taking into consideration challenges and trends during three time periods: before signature (past), between signature and ratification (present), and beyond ratification (future).

The paper first highlights the historical setting by tracing the path of the Convention and the history of Thailand's maritime affairs—oceans and human history, battling schools of thought, acts of naval aggression, and codification of the law, as well as Thailand's maritime profiles—prior to the end of 1982. It then examines at the changing maritime environment and changing viewpoints in Thailand. Current status and concerns over Thailand's maritime zones, maritime interests, Government policies, and its implementations in conjunction with the Convention are analyzed in this part. Finally, the paper assesses the impact of the Law of the Sea Convention on the existing roles and activities of the Royal Thai Navy and implications for the future.

SUMMARY

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ACRONYMS

B.C.	Before Christ
B.E.	Buddhist Era
EEZ	Exclusive Economic Zone
GDP	Gross Domestic Product
HTMS	His Thai Majesty's Ship
ILC	International Law Commission
IMO	International Maritime Organization
JDA	Joint Development Area
LOSC	Law of the Sea Convention
nm	nautical mile
PSSA	Particularly Sensitive Sea Area
RTN	Royal Thai Navy
UN	United Nations
UNGA	United Nations General Assembly
UNCLOS I	First United Nations Conference on the Law of the Sea (1958)
UNCLOS II	Second United Nations Conference on the Law of the Sea (1960)
UNCLOS III	Third United Nations Conference on the Law of the Sea (1973-1982)
THAI-MECC	Thailand Maritime Enforcement Coordinating Center
TEU	Twenty-foot Equivalent Unit
USS	United States Ship

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INTRODUCTION

The tenth of December 1982 was a landmark day in the history of oceans governance. On that day, the United Nations Convention on the Law of the Sea, also called the Law of the Sea Convention (LOSC), was opened for signature by States and international organizations at Montego Bay, Jamaica. It was the most comprehensive ocean treaty ever created, and has become a global *Constitution for the Oceans* due to the incredible fact that 119 States from every part of the world with diverse views of interest signed the Convention at that time.¹ Behind this extraordinary triumph was several years of preparatory work and a lengthy 11-session Conference known as the Third United Nations Conference on the Law of the Sea (UNCLOS III) convened by the United Nations (UN). It involved the participation of over 150 States with differing political, social, cultural, religious and historical backgrounds who worked with good will to codify the law by negotiating 25 subjects and issues on maritime matters.² Apart from this culmination of more than 14 years of effort, the successful UNCLOS III was also the result of previous modern attempts to codify the ocean law during the conference instigated by the League of Nations in 1930, followed by the First United Nations Conference on the Law of the Sea (UNCLOS I) in 1958 and the Second United Nations Conference on the Law of the Sea (UNCLOS II) in 1960. These conferences undoubtedly laid much of the groundwork for the UNCLOS III that satisfied the world desire for a widely accepted international law to regulate and manage the use of the oceans as a whole.

Thailand, a country which throughout history has enjoyed the use of the oceans, recognized that the world was moving toward codification of the international law of the sea, and thus sent delegates to participate in the 1930 conference. Although that conference was unable to reach a major international agreement, Thailand continued to quietly practice its maritime law consistent with internationally accepted norms such as the 3 nm territorial sea.³ It was however a

¹ Remarks by Tommy T.B. Koh, President of the Third United Nations Conference on the Law of the Sea, 6 and 11 December 1982, Montego Bay, Jamaica; Available at http://www.un.org/depts/los/convention_agreements/texts/koh_english.pdf.

² *Ibid.*

³ Before the limitation of territorial waters was fixed by law in 1966, Thailand had practiced the English concept of the 3-mile zone about since 1910. Its early 'Law of the Sea' controlled fishery in rivers and in the seas as well as the taxes of sea fishermen. See Jur Reinhard Lehr, 'International Law of the Sea and Its Special Regional Importance for Thailand', *Nitisat Journal*, vol. 19, iss. 2 (June 1991), pp. 27-8, (in Thai).

maritime incident in 1957—when the Thai Customs arrested a vessel smuggling undeclared merchandise 10 nm off Thailand’s shore—that stimulated the Thai Government and its maritime authorities to give more serious consideration to maritime law issues. Therefore during the 1958 UNCLOS I and the 1960 UNCLOS II, Thailand was observed as an active participant in law of the sea development.⁴ Having satisfied with the outcome of these conferences, it was no surprise that Thailand adopted, signed and ratified all four of the 1958 Conventions: the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on the Continental Shelf, and the Convention on Fishing and Conservation of the Living Resources of the High Seas. It also declared a historic bay, made several proclamations and announcements establishing maritime zones, and passed a number of domestic laws and regulations associated with the development of the law of the sea.⁵ In contrast, the result of the UNCLOS III was a significant setback for the country. Although it was heralded as a major achievement in the development of the law of the sea, the 1982 LOSC brought some unfavorable conditions for a number of countries including Thailand. With the concepts of archipelagic waters and exclusive economic zone (EEZ) being introduced and adopted at the negotiations, the Convention has turned Thailand into a zone-locked State—where a large area of its historical fishing grounds became diminished and freedom of the seas became restricted. Despite being unpleasant with the Convention, in keeping with the ASEAN Spirit and being a part of the world community, Thailand decided to sign the Convention on the historic day—10 December 1982—along with 118 other States.

Theoretically, if the cost of becoming a State Party outweighs the benefits, a given State should not accede to the treaty. Therefore, in this case, it can to some extent be understood why Thailand did not ratify the LOSC between the very first day when it was open for signature in 1982 and the first quarter of 1990s. But then, one year after the 60th instrument of ratification or accession was deposited to the UN by Guyana, the Convention thereby came into force on 16 November 1994. Then, the question of “*Should Thailand ratify the 1982 LOSC?*” became more urgent. Increasing dependence on the oceans for revenue and commerce as well as growing maritime security problems during the past two decades since 1982 had led to the conclusion that

⁴ Thanom Charoenlaph, Admiral RTN, *Law of the Sea: Thailand’s Maritime Zones*, Bangkok: Winyuchon Publication House, 2007, p. 1, (in Thai).

⁵ See Siriwat Thanaphaet, Captain RTN, *Treaties and Agreements Relating to Thailand’s Maritime Zones*, Bangkok, 1993, (in Thai).

Thailand's decision not to ratify the LOSC should be re-examined.⁶ In fact, various Government agencies, academic institutions and private enterprises involving the maritime sector had organized a quantity of meetings, conferences and seminars endeavoring to produce a sound recommendation to the Government on whether Thailand's benefits in becoming a party to the LOSC would outweigh the disadvantages. Afterward, these groups concurred that maritime environment had been changed and the ratification to the Convention would in turn be beneficial to the country.⁷ As a consequence, in 2007, the Government agreed in principle that Thailand should ratify the Convention; however, it did not produce a detailed plan on how to implement the treaty. While numerous Government agencies still had great concerns about the impact of the Convention on their responsibilities, the Government appointed the Ministry of Foreign Affairs as a focal point to consolidate a solution to the implementation problems. For this reason, it was evident during the next three years that all agencies involved had attempted to find the best ways to implement the Convention in order to minimize the impact of the ratification. Unfortunately, the discussion and evaluation process were highly controversial and consumed a considerable amount of time.

Still struggling with the detailed plan to ratify the Convention, the Government, on 26 April 2011, approved the country's becoming a State Party to the 1982 LOSC by making a declaration under Article 310 of the Convention. This approach was meant to protect and preserve the national interests of Thailand by exercising the country's rights to gradually review its laws and regulations and harmonize them with the provisions of the Convention. Three weeks later on 15 May 2011, the Ministry of Foreign Affairs, on behalf of the Thai Government, deposited the instruments of ratification and accession of the Convention to the UN.⁸ On 14 June 2011, the 30th day following the submission, Thailand thus became the 162nd State Party to the Convention. While the international and domestic maritime communities have been delighted that Thailand has brought the Convention closer to the goal of universality, several Government agencies have great concerns about the impact of the Convention on their roles and

⁶ Office of the National Security Council, *National Security Policy for Maritime Domain (2005-2009)*, Bangkok: Royal Thai Cabinet and Government Gazette Press, 2005, p. 5, (in Thai).

⁷ See e.g. Committee on the Law of the Sea and Maritime Zones of Thailand, *Report of Meeting on 5 June 2006*, (in Thai).

⁸ Thailand's Declaration Made upon Ratification (15 May 2001). Available at <http://treaties.un.org/doc/Publication/CN/2011/CN.291.2011-Eng.pdf>.

activities, particularly the Royal Thai Navy (RTN)—the primary agency responsible for safety, security, and defense of the country at sea.⁹

The objective of this paper is to examine how historical settings have influenced the codification of the law of the sea, how the changing maritime environment has shaped the interpretation and viewpoints in Thailand, and how the ratification to the Convention will affect the RTN in the near future. There was no attempt to address all issues in great detail, but rather to provide information, highlight important issues, and provide recommendations with regard to the LOSC for decision makers at the Government level and the RTN.

This paper is divided into three interrelated parts. Part I (Chapter One and Chapter Two) reviews the historical setting of the law of the sea and Thailand's maritime affairs since the early days until the end of 1982. Part II (Chapter Three and Chapter Four) concentrates on the current status and concerns over the changing maritime environment and changing viewpoints of the country between 1983 and 2011. Part III (Chapter Five) contains an analysis of the impact of the 1982 LOSC and implications for the RTN towards the future.

Chapter 1 highlights the path of the law of the sea. In this chapter, the intertwining of oceans and human history is summarized while differing schools of thought, acts of naval aggression, and codification of the law are examined from a historical point of view. Chapter 2 reviews Thailand's historical maritime profile by outlining geography, public perceptions, Government policies and traditional uses of the sea. While the rise, the fall, and the rebirth of the RTN are assessed, the last part of this chapter discusses how Thailand historically viewed the law of the sea.

Chapter 3 concentrates on the changing maritime environment after the LOSC was adopted until present (1983-2011). An overview of maritime zones specified by the Convention and Thailand's maritime geography shaped by the law is provided while Thailand's maritime interests are also highlighted. Contemporary key issues and concerns over the exploitation of the seas are evaluated in Chapter 4. An assessment of up-to-date Government policies and its implementations in protecting the country's maritime interests can also be found at the end of this chapter.

⁹ Jumpol Lumpiganon, Captain RTN, Remarks, Seminar on 'Preparatory Process for Ratification of the Law of the Sea Convention', Chonburi, Thailand, 7-9 September 2009, (in Thai).

Chapter 5 deals with the implications for the RTN for the future. First, the impact on roles and activities of the navy is examined. Then, a discussion about navigational freedom and a legal appraisal is presented. Extensive discussion during the UNCLOS III and general contemporary practices by States are also assessed before an analysis of Thailand and the navigational freedom is later finalized. Last but not least, Conclusions and Recommendations are to be found at the end of this paper.

PART I: BEFORE SIGNATURE – THE HISTORICAL SETTING

CHAPTER 1: LAW OF THE SEA – PATH OF THE LAW

1.1 OCEANS AND HUMAN HISTORY

1.1.1 *Emerging from the Seas*

However one believes life arose on our planet, most scientists today who have studied its origins have concluded that life on Earth began in the ancient seas.¹⁰ Regardless of how the first forms of life originated, those scholars strongly believe that the Earth's surface has cooled down significantly since the Earth's formation at some 4 billion years ago when it was largely covered with a primordial ocean thick with organic molecules where the first life appeared.¹¹ Since then, subsequent living organisms have evolved over time and struggled to escape the world's catastrophic events that have previously devastated life on Earth from time to time. While countless legions of entities became extinct, the remaining adapted to survive. Some 550 million years ago during the Paleozoic era when life bloomed in the seas, living organisms continued to grow, multiply and evolve differently; some developed into more complex forms of life resembling plants and animals, some remained simple as microscopic, single-celled organisms.¹² Around 150 million years later when life within the oceans and along the shorelines became fierce and competitive, some species continued living underneath the oceans while others adapted to move onto land.¹³

From living beings in a wet world seeking refuge and new sources of food, evolutionary processes next brought about the early amphibians that spent part of their lives in water and part on land, then came the reptiles—the first land creatures that no longer needed to periodically return to the ocean.¹⁴ Shortly after the appearance of the first reptiles roughly 300 million years ago, two branches split off; one continued to become the modern reptiles while the other turned into the primates. Highly developed brains and warm-blooded mammals appeared some 65

¹⁰ David A. Ross, *Introduction to Oceanography*, New York: Appleton-Century-Crofts, 1970, pp. 19-20.

¹¹ Ellen J. Prager and Sylvia A. Earle, *The Oceans*, New York: McGraw-Hill, 2000, pp. 13-4.

¹² *Ibid.*, p. 23.

¹³ *Ibid.*, pp. 32-3.

¹⁴ *Ibid.*

million years ago.¹⁵ As time passed, life on Earth continued to evolve and depended upon oceans for its existence. From the primates, ancient human ancestors had speciated to the *Hominidae* family at some 15 million years ago, to the *Homininae* subfamily at some 13 million years ago, to the *Hominini* tribe at some 10 million years ago, to *Homo* genus at some 2.5 million years ago, and became the *Homo sapiens* species at some 200,000 years ago.¹⁶ Having evolved to breathe fresh air and walk on land, our early ancestors probably considered the seas the last frontier separating them from other tracts of land, and never suspected that the seas were the birthplace of all life.

1.1.2 *Struggling in Between*

Although the seas are often beautiful and perfectly calm, they are sometimes stormy, unpredictable and hazardous. Many ancients viewed the seas as mysterious, forbidden and sacred places where one should fear the power of occasionally destructive Mother Nature.¹⁷ Some believed that the sea was a vast area of erratic and violent water with great swirling whirlpools that could swallow up unfortunate fleets of sailors and voyagers down to the bottom of the ocean, while others rumored that the sea had a narrow ledge to the edge of the Earth that could lead careless explorers to fall off the land.¹⁸ Some even imagined the sea as a home of many frightening monsters that could swiftly murder any daring adventurers,¹⁹ or thought it was the kingdom of Neptune, the lord of the sea.²⁰ Whilst the Polynesians believed that the world was created by their sea-god—Tagaroa, the ancient Greeks believed that King Minos of Crete was the first ruler of the sea, followed by his successor Poseidon.²¹ These myths in some way made many ancients stay away from the oceans.

However, evidence has shown that ancient peoples had been wandering the seashores, wading in the shallows, gathering food from the shores, collecting and accumulating information

¹⁵ Wikipedia, 'Timeline of Human Evolution', retrieved from http://en.wikipedia.org/wiki/Timeline_of_human_evolution.

¹⁶ Wikipedia, 'Human', retrieved from <http://en.wikipedia.org/wiki/Human>.

¹⁷ *Supra*, note 11, p. 65.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Wikipedia, 'Neptune (Mythology)', retrieved from [http://en.wikipedia.org/wiki/Neptune_\(mythology\)](http://en.wikipedia.org/wiki/Neptune_(mythology)).

²¹ Dorrick Stow, *Oceans: An Illustrated Reference*, Chicago: University of Chicago Press, 2006, p. 10.

about the oceans since the earliest times.²² After recognizing that the endless seas were important sources of food, the ancients began to develop all kinds of traditional fishing gear such as barbed spears, harpoons, nets, lines, hooks, floats, and sinkers that can be traced back about 10,000 years for fishing along the shores.²³ Evidence also suggests that the Phoenicians living along the coastline of the Mediterranean Sea from 1550 B.C. to 300 B.C. took advantage of the source of seafood by constructing the first community founded fishing settlements.²⁴ Before the ancient Greeks caught, preserved, and traded fish in the Mediterranean Sea, the Egyptians had already started out dried fish trading in the Persian Gulf as long ago as 1200 B.C. or perhaps earlier.²⁵ As a way of life while some had a chance to decide whether they wished to live nearby the rich sea, some did not and were even forced out to the sea. Take the Phoenicians who lived in present-day Lebanon from about 1200 B.C. to 146 B.C. for instance. When their neighboring lands that encircled the Mediterranean Sea became densely populated, they were compelled to engage in sea-trade in order to acquire many of the goods and products that they needed.²⁶ Another example is when thousands of desperate Chinese refugees had to seek settlement possibilities by sea in Southeast Asia countries after the fall of Ming dynasty.²⁷ Hence by living next to the sea, people began to have more interest in oceans either voluntarily or through force. Unfortunately, since the oceans had not yet been extensively explored in the early days, the oceans—as far as many ancient peoples were concerned—were simply fishing grounds and pathways from one place to another, and more often than not unsafe.

1.1.3 *Returning to the Oceans*

Although many ancient peoples were afraid of the oceans, there is credible data indicating that some began moving across the seas since very early times. The first wave of *Homo sapiens* migrated out of Africa, through Southern Asia, to some part of Southeast Asia (for instance, on Flores Island, Indonesia) around 700,000 years ago, similar to the Polynesians who

²² Alyn C. Duxbury, Alison B. Duxbury and Keith A. Sverdrup, *An introduction to the World's Oceans*, 8th ed., New York: McGraw-Hill, 2005, p. 2.

²³ SeaWiFS Project, NASA, 'Fishing Gear', retrieved from http://seawifs.gsfc.nasa.gov/OCEAN_PLANET/HTML/sea_people_knowledge_gear.html, dated 17 August 2011.

²⁴ *Supra*, note 22.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Wikipedia, 'Hoa People', retrieved from http://en.wikipedia.org/wiki/Hoa_people.

moved from the Philippines and New Guinea to Australia, then spread slowly over 10,000 islands of Pacific Ocean by around 500 B.C.²⁸ Also the Ciboney Indians started out their ocean crossings from their South American homeland, colonizing the Caribbean islands before the Arawaks set out from the Orinoco Delta region taking over the same destination.²⁹ Apart from the resettlement, the ancients also made use of the oceans for other purposes. While the Egyptians were well-known as excellent shipbuilders for river and coastal trade, the Phoenicians explored and traded to every corner of the Mediterranean Sea, and the Chinese were drawn to the sea, plying their trade, language and culture throughout the Far East.³⁰ The ancient Greeks, who had a rich mythology about the seas, exhibited the first truly scientific interest in the vast expanses of water, thus laying the foundations of modern oceanography.³¹ Although there is still no clear explanation why those ancients took up the challenge of long sea crossings at a time when only primitive stone tools were in use and when navigation was largely a matter of chance, it is logical that different peoples reached out to the seas for different motives.³² Besides, it is appeared that the more experience people had with the sea, the more advantages they could take from it. Thus that may be a reason why people kept going to the oceans.

When vessels became more seaworthy and easier to sail because of improvements in shipbuilding, the fishermen and the sailors could spend more time at sea and make longer trips.³³ The fishermen could then pursue deep-ocean fishing further out while the traders could make voyages to previously established ports much faster and safer and with more goods and products, as well as reach out to new ports much further than before. More effective tools and gear allowed more time at sea, meaning more wealth and more supremacy. The sailing of Admiral Zheng He with a magnificent fleet of 317 ships and 37,000 men across the Indian Ocean and the Pacific Ocean demonstrated the rise of Chinese civilization in the fifteenth century.³⁴ Explorers could then hunt for new lands for their claims to fame and fortune, similar to Ferdinand Magellan who famously completed the first circumnavigation of the Earth. Whilst many

²⁸ *Supra*, note 21.

²⁹ *Ibid.*, p. 11.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*, p. 10.

³³ *Supra*, note 22, p. 4.

³⁴ *Supra*, note 21, p. 12.

appreciated the sea as a source of living resources and a medium for transportation, the Vikings, whose name means “*pirates*,” saw the sea differently as a medium of income.³⁵ They became notorious for sailing ships from their bases in Scandinavia to foreign destinations, fighting along coasts and inland, pillaging towns, villages, and monasteries, and terrorizing much of the North Atlantic.³⁶

Through advances in science and technology, people discovered resources that they could take from the oceans and had a new perspective about the seas. For instance, the findings of new lands by the end of the fifteenth century fueled European naval powers to compete for far-flung empires, and the ocean became a tool for world domination.³⁷ The modern fishing industry expanded fishing activities to new areas that had previously not been fished, although most of the time this was to areas previously fished by other countries, causing a decline in many fish stocks.³⁸ The discoveries of natural resources underneath the seabed correspondingly tempted nations to speedily claim possession of the ocean floor. The emergence of the *USS Nautilus* under the Arctic ice of the North Pole verified, to certain extent, that all parts of the ocean could be explored by humans.³⁹ Also the program called *SEALAB* initiated the possibility of imaginary thought that humans could one day be living in the oceans.⁴⁰ Having realized the significance and benefits of the vast expanse of water, humans have hastily returned to the oceans where they originated.

1.2 BATTLING SCHOOLS OF THOUGHT

1.2.1 *Res Communis* vs. *Res Nullius*

The rush to take advantage of the oceans began to generate major rivalries. Because too many people cause too many problems; and without rule of law, people have tried to find a

³⁵ *Ibid.*, p. 11.

³⁶ *Ibid.*

³⁷ George Friedman, *The Next Decade: Where We've Been... and Where We're Going*, New York: Doubleday, 2011, pp. 143-4.

³⁸ Gary R. Morgan and Derek J. Staples, *The History of Industrial Marine Fisheries in Southeast Asia*, RAP PUBLICATION 2006/12, FAO, Bangkok, 2006, p. 2.

³⁹ *Supra*, note 10, p. 37.

⁴⁰ *Ibid.*, p. 40.

rational line of thinking to legitimize their own actions. Possibly, the first debates over sea law occurred back in Roman times when traditional Roman law asserted that seas and seashores were common to all and could be used by anyone wishing to do so, or in other words, the seas were open to everyone and could be owned by no one.⁴¹ This philosophy of freedom—known as *Res Communis*—assigned the seas common ownership and open to common use all the time, also extended to the inland rivers.⁴² However, just before the fall of the Roman Empire, some scholars had already contested that the empire had the right to punish maritime criminals as if they had committed crimes on land. The concept of *Res Communis* ought to be amended.⁴³

A rather different concept—known as *Res Nullius*—contended that the seas were not common to all but in their original state belonged to no one and were therefore available for national appropriation.⁴⁴ This concept, which had been seriously embraced by Venice, was also adopted by some other States in northern Europe as the number of piracy cases rapidly increased during the thirteen century.⁴⁵ Having great concern for the safety of their traders since there was no international law dealing with the acts of piracy, these States made claims over their parts of the oceans, and compulsorily collected taxes and revenues in order to cover the cost of their anti-piracy operations. The claims resulted in disagreement with other northern European States whose economies and well-being largely depended on navigation, trade and fisheries in the free seas.

1.2.2 *Mare Liberum vs. Mare Clausum*

Contradictory views over rights to the oceans became more apparent after the signing of the *Treaty of Tordesillas* in 1494. It emphasized the concept of *Res Nullius* by the dividing the world's oceans into two territories: Pacific, Gulf of Mexico and West Atlantic for the Spaniards; and East Atlantic and Indian Ocean for the Portuguese. The treaty markedly opposed freedom of the seas and triggered debates among those who were for and against the treaty. The battle over rights to the seas became more extensive when Hugo Grotius, a Dutch jurist, published a book

⁴¹ Percy T. Fenn, 'Justinian and the Freedom of the Sea', *The American Journal of International Law*, vol. 19, no. 4. (October 1925), p. 721.

⁴² Jacqueline Stewart, ed., *Law of the Sea*, Buckingham: The Open University Press, 1978, pp. 5-6.

⁴³ *Ibid.*, p. 12.

⁴⁴ *Ibid.*, p. 6.

⁴⁵ *Ibid.*

titled *Mare Liberum* or *Liberal Sea* in 1609 to support the freedom of the seas for Dutch activities in the Indian Ocean which were directly affected by the *Treaty of Tordesillas*.⁴⁶ His work stated that every State had the right to explore and exploit the seas with due regard for other users. The English also reinforced this concept which later led to the naval battle between the two belligerents. However almost three decades later in 1635, John Selden, an English lawyer, wrote a book titled *Mare Clausum* or *Closed Sea* to support his king by arguing that the seas were somewhat similar to land and each State had the right to possess them. These two conflicting points of view raised the attention and interest of the international maritime community resulting in the so-called *Battle of the Books*.⁴⁷

Although *Mare Liberum* and *Mare Clausum* uphold the concept of *Res Nullius* and *Res Communis* respectively, the differing argument was less than it may appear. With his primary concern to support only the English Kingdom, Selden's concept more or less concentrated on the seas immediately adjacent to the English Isles, not any other parts of the high seas, unlike the basic principle of *Res Nullius* that applied to the seas that had not been taken, thus including the high seas. Grotius, on the other hand, specifically excluded coastal seas from consideration on the grounds that the principle and implications of *Res Nullius* were already widely accepted as being applicable to such zones.⁴⁸ Therefore, as far as Grotius and Selden were concerned, their views were not entirely incompatible—with the concept of *Mare Liberum* applying to the seas in general and to the high seas in particular, and the concept of *Mare Clausum* to a thin strip of sea surrounding coastal States.⁴⁹ The thin strip referred to the present-day territorial sea where its outer limits defined the beginning of the high seas. Then the battling schools of thought turned to the breadth of the territorial sea.

1.2.3 Freedom of Navigation vs. Coastal Jurisdiction

During the fourteenth century, Bartolus had asserted that the marine territorial limit should be 100 nautical miles (nm), and during succeeding centuries the world witnessed a variety

⁴⁶ Somchai Srisomboonvate, *International Law of the Sea*, 2nd ed., Bangkok: Ramkhamhaeng University, 2002, pp. 2-3, (in Thai).

⁴⁷ *Ibid.*, p. 4.

⁴⁸ *Supra*, note 42, p. 7.

⁴⁹ *Ibid.*

of other proposals for limits out to the middle of the oceans.⁵⁰ By the seventeenth century, territorial seas were firmly established as an international principle after recognizing that a State must have exclusive jurisdiction and control in a part of the sea adjacent to its coastline for the protection of its security and other interests.⁵¹ In supporting this philosophy, Bijndershoek, a Dutch lawyer, contested that a sovereign State shall have jurisdiction over its coastal waters to the extent of the reach of its cannon and other onshore artillery. This was the so-called the *Cannon-Shot Rule*, as it could be effectively controlled from land predominantly for safety and security purposes at a time when the maximum firing range of cannon was 3 nm. By the middle of the nineteenth century the most widely accepted breadth of territorial seas was accordingly 3 nm and beyond the 3 nm line seaward was considered high seas—the common area for all.⁵²

In 1945, the United States announced two proclamations—known as *The Truman Proclamations*—after the discovery of oil and gas in the region, challenging the widely accepted 3 nm concept by asserting its 200 nm jurisdiction to protect its natural resources.⁵³ As a result, several Latin American countries began to expand their maritime claims over adjacent water to 200 nm similar to that of the United States. Since then, other countries around the world started to claim more jurisdictions over their neighboring parts of the oceans by using a similar argument.⁵⁴ The battle of rights continued until the world community sought to end the battle by attempting to codify ocean law. Unfortunately, the battle did not end there for a number of reasons. One of the key causes was a conflicting interest between coastal States and maritime nations. Not only coastal States were interested in the oceans for safety and security reasons, but they also desired to protect natural resources next to their land territory for present and future exploitation. On the contrary, maritime States demanded navigational freedom in order to access all parts of the oceans by minimizing the coastal States' rights over their adjacent seas.⁵⁵ Therefore it was observed that the codification of the ocean law during the mid to late twentieth century revolved around the balance of coastal jurisdiction and freedom of navigation.

⁵⁰ *Ibid.*, p. 20.

⁵¹ Ram P. Anand, *Origin and Development of the Law of the Sea: History of International Law Revisited*, The Hague: Martinus Nijhoff Publishers, 1983, p. 137.

⁵² *Supra*, note 42, p. 20.

⁵³ Office of Coast Survey, National Oceanic and Atmospheric Administration, 'Law of the Sea', retrieved from http://www.nauticalcharts.noaa.gov/staff/law_of_sea.html.

⁵⁴ *Supra*, note 46, p. 8.

⁵⁵ *Ibid.*, pp. 9-10.

1.3 ACTS OF NAVAL AGGRESSION

1.3.1 *From the Roman Period to the Middle Ages*

History demonstrates that humans have frequently settled their disputes on the battlefield since the dawn of time. Although an act of aggression was not always the first means or the only means available to solve mutual problems, humans have gone many times through a means of attrition after other peaceful manners such as negotiation or mediation failed. Clausewitz asserted in his book *On War* that military serves as an instrument of foreign policy to achieve national political objectives,⁵⁶ and the world has seen military powers playing great roles in global politics while naval power rules the game at sea.⁵⁷ Obviously when the Phoenicians established marine routes to the west of the Mediterranean Sea, they built up their navy to protect their sea trade. Before Rome was able to assert the thought of *Res Communis*, it had already annihilated its potential adversaries at the naval battle at Cape Ecnomus off the coast of Italy, resulting in the Roman armies controlling all the shores of the Mediterranean Sea.⁵⁸ Not too long after the fall of the Roman Empire, when Roman naval supremacy no longer existed, Bartolus of Sassoferrato affirmed that a coastal State could legitimately claim sovereignty over islands not more than 100 nm away from the coast and over the intervening seas. Gentilis of Venice also contended that coastal waters were merely a continuation of the adjacent land.⁵⁹ These illustrated examples of how the powerful States ruled in the past.

When Venice embraced the concept of *Res Nullius* within its maritime policy during the thirteen century, it claimed sovereignty over the whole Adriatic, however, not over the opposing shores which were already held by others.⁶⁰ It was also at that time when the Venetian State was prosperous and renowned for its commerce and navigation and in a position to enforce the claim. The Venetians imposed tariffs on all ships using the Adriatic, and prevented certain vessels from

⁵⁶ Carl von Clausewitz, *On War*, trans. Michael Howard and Peter Paret, New Jersey: Princeton University Press, 1989.

⁵⁷ James Kraska, *Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics*, New York: Oxford University Press, 2001, p. 31.

⁵⁸ *Ibid.*, p. 35.

⁵⁹ Sebastian I. Sobceki, *The Sea and Medieval English Literature*, Cambridge: D.S. Brewer, 2008, pp. 144-5.

⁶⁰ *Supra*, note 42, p. 6.

entering that sea if necessary.⁶¹ This assertion was mastery through naval power for a time when other European States, including the Vatican, had no choice but to comply with Venice's demands. Two additional examples of naval power ensuring a practical application of *Res Nullius* were also witnessed in the Ligurian Sea by the Genoese and in the Baltic Sea by the Scandinavians.⁶² Similar to the Roman's sea power, after Venetian military might eventually faded, its rights over the seas could not to last and came to an end.

1.3.2 The Early Modern Period: Portugal, Spain, the Dutch Republic, and England

It was clear that a combination of advanced cartography, skillful navigation, and technological breakthroughs in naval construction made Portugal and Spain the first nations able to project military power at the global level.⁶³ While the Spanish navy dominated maritime interests in the Gulf of Mexico, West Atlantic and the Pacific Ocean, the Portuguese navy mastered the maritime commerce of the East Atlantic and Indian Ocean.⁶⁴ Because Asian countries were generally land powers and never endeavored to have big navies, the arrival of Portuguese warships with heavy cannons in the Indian Ocean introduced a new and revolutionary factor that none of the navies in the region could challenge.⁶⁵ The Indian Ocean, which had never been the theatre of very serious naval conflicts, quickly became controlled by the Portuguese navy to a great extent.⁶⁶ Consequently, throughout the sixteenth century the Portuguese navy was fairly successful in destroying the freedom of the seas in Asian waters and became a great distribution center for the world's merchandise, especially pepper and other spices produced in Asia.⁶⁷

Towards the end of sixteenth century while the Spaniards still controlled the Gulf of Mexico and the Pacific Ocean, Portuguese power declined and came under the control of the Spanish monarchy after the War of the Portuguese Succession.⁶⁸ The Dutch, on the other hand,

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Supra*, note 57, p. 40.

⁶⁴ *Ibid.*, p. 42.

⁶⁵ *Supra*, note 51, p. 52.

⁶⁶ *Ibid.*, p. 59.

⁶⁷ *Ibid.*, p. 64.

⁶⁸ Wikipedia, 'Iberian Union', retrieved from http://en.wikipedia.org/wiki/Iberian_Union.

had spent a great deal of resources building up their national fleet. As a result in 1670, it had a commercial fleet that was larger than that of other countries in its region combined, with ten percent of its male population involved in seafaring.⁶⁹ For most of seventeenth century the Dutch were successively a dominant naval power asserting the concept of *Mare Liberum* insisting that Portugal and Spain could no longer claim sovereignty over the world's oceans. That is the seas must be open for all.

After the Dutch navy gradually waned, its power was in turn largely replaced by the rise of the English Navy at around the beginning of the eighteenth century. Asserting the concept of *Mare Clausum*, the English claimed sovereignty around England and allocated zones of customs enforcement for foreign ships calling in an English port.⁷⁰ However, as the great expansion of Europe overseas led to remarkable economic growth of Europe, European countries engaging in maritime commerce including England, by the early quarter of the nineteenth century, became concerned with commercial prosperity and free trade.⁷¹ The concept of *Mare Clausum*, which was practiced by most of the European powers for more than two centuries, was then again supplanted by the doctrine of the freedom of the seas—*Mare Liberum*—throughout the entire world.⁷²

1.4 CODIFICATION OF THE LAW

1.4.1 Prelude to the 1930 Conference

When Eudaimon of Nicomedia was shipwrecked in Icaria and robbed by inhabitants of the Cyclades, Emperor Antoninus made a remarkable statement that this maritime dispute could only be resolved by the maritime law of the Rhodians.⁷³ Whilst William Dampier, an English buccaneer who was the first person to circumnavigate the world three times, was praised by the Royal Society for his scientific observations during his pirate expeditions, Edward Teach, an English mariner better known as Blackbeard the Pirate, was accused of breaking the law of the

⁶⁹ *Supra*, note 57, p. 50.

⁷⁰ *Ibid.*, p. 54.

⁷¹ *Supra*, note 51, p. 129.

⁷² *Ibid.*, p. 130 and *Supra*, note 57, p. 55.

⁷³ *The Digest of Justinian: Volume II*, trans. Charles Henry Monro, Cambridge: The University Press, 1909, p. 389.

high seas and beheaded under authority of the King of England for conducting piracy operations.⁷⁴ Similarly, Sir Francis Drake, who was an English pirate as far as the Spaniards were concerned, was however knighted by the Queen of England for his glorious actions.⁷⁵ These examples demonstrated that the judgment of contradictory matters was in the eye of the beholder, particularly the one who possessed the power, whether economic or military. At that early time, those that had the power ruled, and those that had the stronger navy made the oceans rules. Some even tried to legitimize their actions as the world saw the Portuguese and the Spaniards sought papal blessings for taking over the world's oceans. Nonetheless, when they were not powerful enough to assert the claims when the rest of the world disagreed; and this was how naval battles began. As a result, this happening raised a pressing need for a fair international ocean law which in fact had been an issue among scholars and lawyers for over 2,000 years.⁷⁶

As the need to fulfill European business interests in the second half of the nineteenth century became increasingly important, the need for developing and formulating a variety of modern peacetime international laws became especially urgent.⁷⁷ The first attempt to codify ocean law was instigated by the League of Nations in 1930. A committee of experts was appointed by the League of Nations with the primary objective to gather all existing international laws relating to the ocean and to organize them into categories. One of their important tasks was to prepare three topics—nationality, State responsibility, and territorial waters—to be negotiated at the conference.⁷⁸ Unfortunately, the 1930 conference at The Hague did not succeed in adopting a convention on the territorial sea to answer one of the most crucial questions—the breadth of territorial seas. However, it adopted a functional approach to the rights of coastal States in territorial seas as well as recognized a contiguous zone, an area adjacent to and immediately beyond the territorial sea. Undoubtedly, the conference report set the basis of the work for the next conference held in 1958.⁷⁹

⁷⁴ *Supra*, note 42, p. 5.

⁷⁵ *Supra*, note 21, p. 13.

⁷⁶ *Supra*, note 42, p. 5.

⁷⁷ *Supra*, note 51, p. 135.

⁷⁸ Conference for the Codification of International Law, The Hague, March 13, 1930, *The First Report Submitted to the Council by the Preparatory Committee for the Codification of the Conference*.

⁷⁹ Robin Churchill and Vaughan Lowe, *Law of the Sea*, 3rd ed., Manchester: Manchester University Press, 1999, p. 13.

1.4.2 UNCLOS I (1958)

Established in 1947, the International Law Commission (ILC) started its primary mission of gathering all international customary law concerning law of the sea that had previously been practiced in the international community. It studied the problem of determining the breadth of the territorial sea, all matters about the continental shelf, and preservation of natural living resources at sea, in order to regulate a common international practice for all nations. After ten years of preparation, the ILC submitted a draft of a law of the sea to the United Nations General Assembly (UNGA) in 1956, which was later used at the UNCLOS I between 24 February to 27 April 1958 in Geneva. With the number of the participants including observers from inter-Governmental bodies almost double the number at the 1930 Conference, representatives from 86 States adopted four conventions; the Convention on the Territorial Sea and the Contiguous Zone (41 signatures), the Convention on the High Seas (46 signatures), the Convention on the Continental Shelf (43 signatures), and the Convention on Fishing and Conservation of the Living Resources of the High Seas (35 signatures).⁸⁰

The conference was deemed to be a great success that resulted in four codified conventions, although it failed to solve the key issue—the breadth of the territorial sea—that had not been resolved since the first attempt at The Hague. Nonetheless, it raised more concerns that needed to be further discussed such as the extent of the continental shelf and fishing rights in areas beyond the territorial sea.⁸¹ It also fundamentally divided the oceans into regimes, namely territorial sea, contiguous zone, continental shelf, and high seas in accordance with the four conventions. Despite a number of issues on which the law was still uncertain or disputable, the conference adopted a series of resolutions for further study, such as nuclear tests on the high seas, pollution of the high seas by radio-active materials, fishery conservation conventions, special situations relating to coastal fisheries, and a regime of historic waters.⁸² It should also be noted that although the conference was held at the time when maritime powers “dominated the conference, and through their political influence and divisive power, controlled a majority of the votes taken and proposed most of the amendments accepted,”⁸³ the first three of these

⁸⁰ United Nations, ‘Status of Treaties’, retrieved from <http://treaties.un.org/pages/ParticipationStatus.aspx>.

⁸¹ *Supra*, note 46, p. 12. and *Supra*, note 51, p. 185.

⁸² *Ibid.*

⁸³ *Ibid.*, p. 184.

conventions were later ratified by a substantial number of States, and are also based in large measure upon customary international law.⁸⁴

1.4.3 UNCLOS II (1960)

The UNGA requested the Secretary-General convene a subsequent conference, the so-called UNCLOS II in Geneva from 17 March to 26 April 1960 to continue discussing the two unsettled issues of most concern—the breadth of territorial sea and fishing limits—and other relevant matters.⁸⁵ However, as the number of emerging independent States had sharply increased after 1955, in conjunction with a change in the uses of the sea through the development of technology, developing States started to challenge the power of maritime nations by proposing a 12 nm territorial sea in order to gain more coastal jurisdiction.⁸⁶ While the developing States wanted to extend their jurisdiction further out to the seas, the maritime powers were determined to keep the territorial sea as narrow as possible, perhaps to 3 nm as previously accepted by the *Cannon-Shot Rule*.

With fundamental differences in considerations between developing States—which had special sensitivities to issues of offshore sovereignty and security—and maritime powers—which were mostly concerned with navigational freedom for trade, distant water fishing, and the unimpeded use of naval power in the ocean, the conference with representatives from 88 States and observers from international organizations once more failed.⁸⁷ Although a reconciliatory, comprehensive formula providing for a 6 nm territorial sea plus a 6 nm fishery zone was proposed, the conference was not able to adopt the concept by only one vote.⁸⁸ It should also be noted that during this negotiation the maritime powers did not achieve their goals; their influence was challenged by less powerful States.⁸⁹ Therefore, the struggle between coastal jurisdiction supported mostly by developing States and the freedom of navigation supported mostly by maritime powers remained to be resolved at the next consultation.

⁸⁴ *Supra*, note 79, p. 13.

⁸⁵ *Supra*, note 51, p. 185.

⁸⁶ *Ibid.*, pp. 161-3 and 188.

⁸⁷ *Supra*, note 57, p. 97.

⁸⁸ *Supra*, note 79, p. 13.

⁸⁹ *Supra*, note 51, p. 189.

1.4.4 UNCLOS III (1973-1982)

By the late 1960s, it had become clear that the four conventions produced by the UNCLOS I and reconsidered by the UNCLOS II were no longer sufficient to govern the use of the oceans effectively and would become increasingly insufficient as time went on.⁹⁰ Advances in technology, changes in international political tensions and more intensive use of the world's oceans, particularly non-living resources, had drawn attention to the need for a comprehensive review of the law of the sea.⁹¹ As a start, the UNGA established a Sea Bed Committee in 1967 to examine the question of the deep seabed lying beyond the limits of national jurisdiction over the continental shelf.⁹² Along with widespread support by developing States wishing to revise the old ocean law which had been formerly developed without them, in 1970 the UNGA agreed to convene the UNCLOS III to review the whole of the law of the sea.⁹³

After several years of preparatory work, the first session took place from 3 to 15 December 1973 in New York, United States. The attendance of more than 150 States, each with its own interests, made negotiations difficult, so a number of groups were organized in the hope for effective concerted actions. The so-called Group of 77 consisting of a large number of developing countries of Asia, Africa and Latin America in spite of the differences in their political, social, cultural, religious and historical backgrounds was formed⁹⁴ amongst many other special interest groups such as group of land-locked and group of geographically disadvantaged States.⁹⁵ Since there was a concern over the risk of any of these groups dominating the negotiations, the Conference was managed by the maritime powers to adopt the use of a consensus process rather than majority vote.⁹⁶

Followed by nine sessions from 1974 through 1981,⁹⁷ the outcome of the conference was summarized by Kraska in his book:

⁹⁰ *Supra*, note 42, p. 39.

⁹¹ *Ibid.*, p. 40.

⁹² *Supra*, note 79, p. 14.

⁹³ *Ibid.*, p. 14.

⁹⁴ *Supra*, note 51, p. 194.

⁹⁵ *Supra*, note 79, p. 15.

⁹⁶ *Supra*, note 51, p. 210.

⁹⁷ Alfred H.A. Soons, *Marine Scientific Research and the Law of the Sea*, Deventer: Kluwer Law and Taxation Publishers, 1982, pp. 106-18.

The Third UN Conference solved several highly controversial matters, including setting the breadth of the territorial sea at 12 nm, affirming coastal State regulation of foreign-flagged fishing in offshore areas, protecting the right of innocent passage in the territorial seas for warships as well as merchant vessels, and recognizing transit passage through international straits and archipelagic sea lanes. Each of these compromises captured the essence of the liberal and functional design of the Convention, accommodating the needs of the international community to enjoy the full use of the oceans. At the same time, the interests of the coastal States to access, manage, and exploit offshore resources were protected.⁹⁸

The final decision-making session was held from 8 March to 30 April 1982 in New York, United States and the LOSC comprising 17 parts, 320 articles and 9 annexes—which embedded the context of the four previous Conventions, but did not replace them⁹⁹—was brought to a conclusion with 130 votes in favor, 4 against and 17 abstentions.¹⁰⁰ On 10 December 1982, the LOSC which had been developed to regulate the use of the world’s oceans was opened for signature by States and international organizations at Montego Bay, Jamaica; and came into force on 16 November 1994, one year after the deposition of the 60th instrument of ratification to the UN by Guyana.

⁹⁸ *Supra*, note 57, p. 99.

⁹⁹ Surakiart Sathirathai, ‘Thai-Cambodian Maritime Overlapping Area: Problems and Development’, *Security Studies Journal*, vol. 92, May 2011, p. 5, (in Thai).

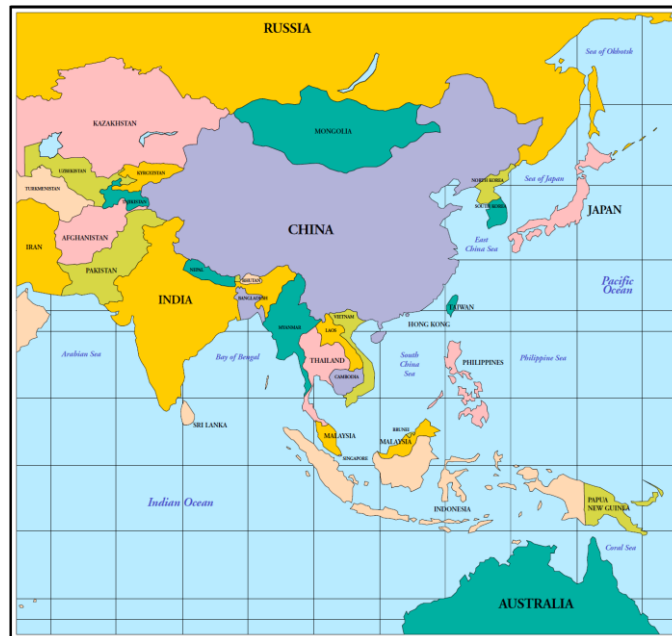
¹⁰⁰ United Nations Convention on the Law of the Sea [hereinafter LOSC], 10 December 1982, Introduction.

CHAPTER 2: THAILAND – HISTORY OF MARITIME AFFAIRS

2.1 GENERAL PROFILE

2.1.1 Geography

Situated in the middle of the mainland in Southeast Asia where much of the region is surrounded by water, Thailand shares its land border with Laos to the northeast, Cambodia to the east, Myanmar to the west, and Malaysia to the south. With its position literally on the crossroads between East Asia and South Asia, Thailand is a gateway to a growing market of nearly 600 million people.¹⁰¹ The narrow peninsula in the south—that connects the upper part of the country to the Malacca Peninsula—intervenes only between the Gulf of Thailand to the east and the Andaman Sea to the west. It is located between two oceans: the Pacific Ocean connecting to East Asia and Australia; and the Indian Ocean connecting to South Asia, Africa and the Middle East.



Map 1: Map of Thailand and its Surroundings¹⁰²

¹⁰¹ Ministry of Foreign Affairs, Kingdom of Thailand, 'Overview', retrieved from <http://thailandtoday.org/overview>.

¹⁰² Cartographic Research Laboratory, University of Alabama. Available at <http://alabamamaps.ua.edu/contemporarymaps/world/asia/easia4c.jpg>.

Its maritime geographical location and shape are strategically important that if a canal is made through the south peninsula, it will shorten the travel distance between the Pacific Ocean and the Indian Ocean by approximately 1,000 nm in comparison to passing through the Strait of Malacca.¹⁰³ The marine characteristics of the Gulf of Thailand are also feasible for building ports and facilities along the coast while its bottom floor is rich in hydrocarbon deposits. Because of its mangroves and coral reefs, the Gulf of Thailand is suitable for spawning, and therefore later on for fishing. On the other side of the peninsula is the Andaman Sea, a world-famous tourist destination for swimming and diving. Whereas the Andaman Sea links to potential sources of fisheries in the Indian Ocean, its coastal areas can also be developed into deep-sea ports and harbors to accommodate supertankers carrying oil from the Middle East.¹⁰⁴ Because of its maritime geography with numerous capabilities and potentials such as solid infrastructure, global connectivity, quality human resources and business-friendly environment, Thailand is a strategic location for maritime proposes.

2.1.2 Public Perceptions

Because of its war history and fertile land, Thailand is seen by its people as a land-oriented country. Whether the original Thais migrated from the Szechuan area China about 4,500 years ago or had already settled in the region over 3,500 year ago, they had gone through many wars fighting enemies for existence.¹⁰⁵ Therefore, when the Thais thought about armed threats, they were mainly concerned by the foreign armies from the north, perhaps the west or the east, but not navies from the south.¹⁰⁶ Unaware of naval threats, the seas posed no danger to the Thais' thinking; therefore, there was no serious reason for them to consider the oceans a source of danger. Apart from land-based threats, the Thais have enjoyed the fruitful land that could grow almost any plants or trees, like an old saying describes Thailand as a place "where there's water, there's fish; where there's field, there's rice." Being an agricultural country, rice and

¹⁰³ Sataporn Kiewvimol, 'Thai Canal', Presentation delivered at Institute of Advanced Naval Studies, Nakhonpathom, 15 Jan 2008, (in Thai). See general Thai Canal Project, available at <http://www.thai-canal.com/index2.php>, (in Thai). A feasibility study conducted identified the pros and cons, but political tension seemed to delay the Government's decision.

¹⁰⁴ Center for Naval Strategic Studies, Royal Thai Navy, *Feasibility Study for Establishment of Royal Thai Coast Guard*, Nakhonpathom, 2010, pp. 11-8, (in Thai).

¹⁰⁵ Royal Thai Armed Forces, 'History of Royal Thai Armed Forces', retrieved from http://www.rtarf.mi.th/EN/pdf/history_of_thai_armed_forces.pdf.

¹⁰⁶ Institute of Advanced Naval Studies, Royal Thai Navy, *75th Anniversary of Institute of Advanced Naval Studies*, Nakhonpathom, 2000, p. 2, (in Thai).

other produce has made Thailand flourish since the early days. Subsequently people tend to stay wherever they had already settled, especially a majority of Thais who live in the north and northeast. Since there was no essential motivation for them to migrate south closer to the ocean, most people did not know much about benefits of the oceans. To them, the oceans were generally another source of aquatic food—an additional food—apart from fresh water fish that they had in abundance, or perhaps a place to vacation or to engage in trading. Although there were some scholars, businessmen, and others who on a daily basis dealt with the seas and realized the significance of the oceans,¹⁰⁷ historically, up until the end of the 1970s the majority of Thais were content with their fertile lands and did not appreciate the benefits of the oceans as other maritime nations did.

2.1.3 Government Policies

Between 1961 and 1981 the Thai Government issued four national economic and social development plans focusing on economic growth and social well-being. Although they acknowledged that coastal transportation and fishing industries were additional sources of income and revenue for the country, not many plans or guidelines with regard to development of these two maritime sectors were formulated into the Government policies.¹⁰⁸ However, the Fifth National Economic and Social Development Plan (1982-1986) started to shift the line of thinking from economic growth oriented to an adjustment of economic structure by emphasizing “economic efficiency and productivity” rather than “overall economic growth” as in the past.¹⁰⁹ The plan started to provide direction for the enlargement and improvement of many maritime elements: the development of coastal transportation and harbors; expansion of the merchant marine fleet; amendment of outdated regulations and laws regarding merchant marine activities; ship construction; ship repair; and construction of deep-sea ports in the eastern and the south in order to conform to the expansion of foreign trade and distribution of economic activities to provincial areas.¹¹⁰ However, in terms of national security, Governmental main concerns in the 1970s were not focused on the seas, but on the potential threat of the Vietnamese army and

¹⁰⁷ Roger Pullin, ‘Thailand’s First Seminar on Marine Science’, *Marine Policy*, vol. 4, iss. (January 1980), pp. 77-8.

¹⁰⁸ The first four National Economic and Social Development Plan (1961-1981), Bangkok.

¹⁰⁹ The Fifth National Economic and Social Development Plan (1982-1986), Bangkok, p. 2.

¹¹⁰ *Ibid.*, pp. 93-4.

internal stability from communism. Therefore, the focus of national security capability and development was largely on the army while the air force, the police, and the navy were less of a concern. Besides, there was only minor overall management by the Government in oceans matters from both economic perspectives and security perspectives. Although some individuals and experts who were well-aware of the benefits of the oceans made various recommendations to the Government, the Thai Government did not enact many policies or plans concerning the oceans during this period.¹¹¹

2.2 TRADITIONAL USES OF THE SEA

2.2.1 Marine Fisheries

Marine fisheries have been an important part of Thailand's way of life since the birth of the nation. With a variety of marine life within the Chao-Phraya Basin and its adjacent seas, Thailand has extensively utilized its fishing grounds for that purpose.¹¹² Marine fisheries have served as a rich source of inexpensive nutrients as well as reliable sources of income for those who live near the rivers and along the coasts.¹¹³ Over centuries Thailand's fishing industry had supplied a great quantity of food for mostly domestic consumption and some export. After the acquisition of pair-trawling expertise from the Japanese in 1959 and the introduction of trawlers by the Germans in 1961, the number of Thai fishing vessels grew dramatically with the number of trawlers operating in Thailand increasing from 99 in 1960 to 2,700 in 1966.¹¹⁴ In 1976 it had a fleet of more than 26,000 vessels, a marine catch of over 1.5 million tonnes worth almost 300 million dollars, ranked as the largest fishing nation in Southeast Asia, and became one of the top ten fishing fleets in the world.¹¹⁵ Whereas most parts of the open oceans around the country in those days were considered to be high seas, Thai fishermen expanded their fishing ground to

¹¹¹ *Supra*, note 107.

¹¹² Phiphat Tangsubkul, 'Thailand and Ocean Governance', Document Presented at the Meeting of Sub-committee on Knowledge Management for National Marine Interests, Bangkok, 19 March 2008. (in Thai)

¹¹³ UNESCO, 'Chao Phraya River Basin', retrieved from http://www.unesco.org/water/wwap/case_studies/chao_phraya/index.shtml.

¹¹⁴ *Supra*, note 38, p. 8.

¹¹⁵ Theodore Panayotou, 'Economic Conditions and Prospects of Small-scale Fishermen in Thailand', *Marine Policy*, vol. 4, iss. 2 (April 1980), p. 142.

cover the entire Gulf of Thailand and the Andaman Sea, and many even went fishing further out in the South China Sea and the Bay of Bengal.¹¹⁶ Thus between 1960 and 1970, the Thai marine fishing industry achieved over a 12-fold increase in fish landings, while the value of exports registered a 14-fold increase between 1966 and 1977, playing a major role in Thailand's economy.¹¹⁷ By the beginning of 1980s, marine fisheries contributed about 3 percent to gross domestic product (GDP) and accounted for more than 5 percent of the total value of exports from Thailand.¹¹⁸

2.2.2 Coastal Mining

Before the exciting discovery of hydrocarbon deposits in the Gulf of Thailand, utilization of non-living resources underneath the seabed of Thailand was mainly limited to coastal mining. While tin, one of the many goods that the Europeans engaged in trade for during the colonial era, was mined in the Andaman Sea, tungsten mining was in the Gulf of Thailand.¹¹⁹ Throughout the 1960s and 1970s, the coastal mining industry in the country had been developed and expanded. Although its production performance was small compared with production in other sectors, the mining potential could be high if properly developed to cope with the problems of inefficient method and the application of inappropriate technology.¹²⁰ Furthermore, coastal mining on both sides of the peninsula had been a key part in the extension of transportation into remote areas, employment creation within the area, and dispersion of economic activities around the peninsula that resulted in significant development in the southern part of Thailand.¹²¹

2.2.3 International Trade and Exchange

Admiral Zheng He was the first foreigner who arrived at the port of Thailand early in the fifteenth century.¹²² With his massive Chinese fleet conducting naval diplomacy and opening

¹¹⁶ Royal Thai Navy, Presentation Delivered at the Thirteenth International Seapower Symposium, Naval War College, Rhode Island, USA, 5-8 November 1995.

¹¹⁷ *Supra*, note 115.

¹¹⁸ *Ibid.*

¹¹⁹ The Fourth National Social and Economic Development Plan (1977-1981), Bangkok, p. 165.

¹²⁰ *Supra*, note 109, p. 67.

¹²¹ *Ibid.*

¹²² Sub-committee on Knowledge Management for National Marine Interests, Report, Seminar on 'Road Map Formulation', Bangkok, Thailand, 24 March 2008, (in Thai).

markets along the rim of the Pacific and Indian Oceans as far as the Arabian Sea, Thailand had greatly benefitted from international trade and exchange from his expeditions. Throughout the sixteenth century, Thailand also established international trade with the Persians, the Arabs, the Portuguese, the Spaniards, the Dutch, and the Japanese. These activities resulted in the trading of goods and products as well as cultural exchanges of religion and knowledge. Since then, international trade and exchange has become the lifeline of the country's development and well-being and continues to bring prosperity to the country of Thailand. This is evidenced by the share of exports and imports in GDP rising from 38 percent in 1976 to 46 percent in 1981.¹²³

2.2.4 Seaside Tourism and Salt Farming

One of two other important usages of the sea in the early days was seaside tourism. Rich in culture and history, Thailand has emerged as a famous destination for tourists, particularly along its shores. With beautiful beaches, resorts, hotels, and a variety of marine activities such as swimming and diving, seaside tourism generated income for local populations and revenue for the country. Although the exact number of earnings before the end of the 1970s was uncertain, it is clear that seaside tourism is very popular and it has emerged as one of the largest business sectors in Thailand.

The other usage of the sea which has been beneficial to the people of Thailand is sea-salt farming. Salt is the oldest and best-known food preservative, especially for meat, and the Thais used it for that purpose since the earliest times. Although land-salt can be produced in certain parts of the north and northeast of the country, its lack of iodine can cause health problems for the people in these regions. Sea-salt was thus provided a primary source of iodine for those who lived in the upper part of the country. Although sea-salt farming did not generate much revenue for the country, it traditionally served as a healthy nutritional component for the people of Thailand.

2.2.5 Military, Security and Safety Purposes

The navy has historically played an important role in defending the country, maintaining freedom and integrity, and keeping abreast with civilized countries since the nation

¹²³ *Supra*, note 109, p. 71.

was first established.¹²⁴ To engage its historical external threats, the navy transported army troops by river and sea, which is equivalent to today's amphibious operations. In addition, it was used for naval diplomacy in support of maritime trade as well as for providing security, safety and order at sea.¹²⁵ Although several maritime agencies were established in the 1970s, they were comparatively small and could not cope with the vast area of operations. Some of their duties were then delegated to the navy, such as the enforcement of fishing laws. As a result by the end of 1970s when the maritime interests became increasingly important, the navy was entrusted to patrol claimed waters, combat illegal fishing, counter piracy, interdict tin smuggling, suppress narcotics trafficking, and ensure maritime safety in addition to its principal duty—the country's defense.¹²⁶

2.3 NAVY IN THE PAST

2.3.1 *Rise of the Navy (Franco-Siam War 1893)*

During the colonial period Thailand had faced external threats from European powers, predominantly by their naval forces. In defense of its sovereignty, it produced a large number of cannons, stockpiled arms and ammunition, and began to build warships.¹²⁷ Nevertheless, the attempt was not sufficient to deter or discourage the French from its interests in Indochina. Once Thailand rejected the French demand for territory east of the Mekong River, it inevitably faced confrontation with the French navy in 1893. After an exchange of gun fire at the mouth of Chao-Phraya River, the overwhelming French naval force sailed up towards Bangkok and trained its guns on the Grand Palace. Thailand had no other choice but to fully submit to the French initial demands, comply with France's additional demands as a guarantee for temporary occupation of some more territories, and later loose Laos and western Cambodia to France.¹²⁸ That humiliating experience placed an immense urgency on the development and modernization of Thailand's

¹²⁴ Ministry of Defence, Kingdom of Thailand, 'About Ministry of Defence', retrieved from http://www.mod.go.th/eng_mod/index.html.

¹²⁵ Royal Thai Navy, *History of the Royal Thai Navy*, 1998, pp. 6-7, (in Thai).

¹²⁶ *Ibid.*, p. 20.

¹²⁷ *Supra*, note 105.

¹²⁸ Chan Patjusanon, Rear Admiral RTN, *History of Naval Operations*, 1965, p. 34, (in Thai).

armed forces. In conformity with western countries, modern capabilities were procured, organizations were restructured, and the navy was separated from the army. The navy grew stronger and the naval academy was founded.¹²⁹ By the end of 1930s, the Thai navy had become one of the major navies in Asia, the second country in Asia to commission a submarine task force after Japan.¹³⁰

2.3.2 *Fall of Maritime Authority (Manhattan Rebellion)*

Since Thailand changed its form of Government from an absolute monarchy to a constitutional monarchy, whereby the Prime Minister is the head of Government and a hereditary monarch is head of State while the judiciary is independent of the executive and the legislative branches in 1932, the country has gone through a score of coups and counter coups. It is fair to conclude that the military activities between 1932 and 1987 were a result of the military's efforts to become the center of political power.¹³¹ With a core belief that the country would not exist without the military, the army as well as the navy, the air force and the police must act however necessary to stabilize the country, including efforts to change the Government regime. That was also the case in the early 1950s when the navy's long-expected attempt to take over the Government took place. The navy had been suspicious that the transfer of the navy's coast guard to the police in April 1951 would allow the head of the police force and Government officials to secure the endpoint of the opium trade.¹³²

The plan to overthrow the Government had been plotted but before it could be executed, a group of junior naval officers kidnapped the Prime Minister during a ceremony at which the American dredge *Manhattan* was being transferred to the Thai navy as part of the United States military assistance program.¹³³ They held the Prime Minister onboard the *HTMS Si-Ayutthaya* hoping that the navy leadership would support their action. However, the senior naval officials stood still and left the young officers on their own. Surprisingly, instead of negotiating with the

¹²⁹ Royal Thai Naval Academy, 'History of Royal Thai Naval Academy', retrieved from <http://www.rtna.ac.th/files/rtna01.php>, (in Thai).

¹³⁰ Royal Thai Navy, 'History of Thai Submarines', retrieved from <http://www.navy.mi.th/submarine/html/data/web4.html>, dated 2 Aug 2011, (in Thai).

¹³¹ *Supra*, note 124.

¹³² Daniel Fineman, *A Special Relationship: the United States and Military Government in Thailand, 1947-1958*, Hawaii: University of Hawaii Press, 1997, pp. 147-8.

¹³³ *Ibid.*

rebels, the Government military began a fierce counterattack. The army and the police besieged naval bases throughout the city while the air force bombed and the police shelled the naval vessel holding the Prime Minister. The unmatched contest ended within thirty-six hours with high civilian casualties. With the rebels' assistance, the Prime Minister, swam safely to the shore and later assumed his command.¹³⁴

Shortly after the rebellion, most leading admirals were replaced; the navy's central and eastern commands were reassigned to the army; the marine battalions were disbanded; the air force assumed control over the navy air section; and navy headquarters were moved from Bangkok to the eastern seaboard; the coast guard was transferred to the police;¹³⁵ and nothing remained of the Thai navy's political power.¹³⁶ Besides being dismantled, the navy's budget was also reduced to a minimum, and as a consequence, resulted in the decommissioning of the four submarines, leaving the navy with aging warships and limited capability as well as a loss of political influence on maritime affairs.

2.3.3 Rebirth of Naval Power—the Threat of Communism

Before the end of the 1940s, the people of Thailand started to feel a threat from communism was approaching as they were experiencing the Communist Party of Siam (Thailand)'s movement within the country. Although the party was relatively small before it later became the second largest communist movement in Southeast Asia's mainland (after Vietnam) by the early 1970s, it was at that time reported that the party had about 3,000 members nationwide.¹³⁷ The people were hopeful that Laos and Cambodia would act as a buffer between Thailand and Vietnam.¹³⁸ However, the victory of the North Vietnamese over the South and later over both Laos and Cambodia became a major setback to this hope. With a presence of some 180,000 Vietnamese troops and tanks in the two neighboring countries along with the Communist Party in Thailand, it added to the fears of the people as well as to the Government's

¹³⁴ Uran Mongkolnavin, Admiral RTN, *A Coast Guard for Maritime Security*, Bangkok: National Defence College, 1990.

¹³⁵ *Supra*, note 132, p. 149.

¹³⁶ *Ibid.*, p. 148.

¹³⁷ Wikipedia, 'Communist Party of Thailand', retrieved from http://en.wikipedia.org/wiki/Communist_Party_of_Thailand#cite_note-ari-2.

¹³⁸ Muthiah Alagappa, *The National Security of Developing States: Lessons from Thailand*, Massachusetts: Auburn House Publishing Company, 1987, p. 56.

that immediate grave danger was coming from the northeast and the east.¹³⁹ Hence, Thailand had no other choice than to develop the capabilities of its army, air force and navy to fight a war.

Because the threat was land-based, most of the budget consciously went to the ground force and air force, leaving the navy in these difficult times to maintain a balanced naval force in order to contest the North Vietnamese navy. There was concern about the domino effect—if one State in a region came under the influence of communism, then the surrounding countries would follow.¹⁴⁰ In other words, similar to Laos and Cambodia, if Thailand fell under the communist regime, Malaysia, Indonesia and Burma would become communist countries. Therefore, the United States offered military assistance with a great deal of ground machines, including naval vessels and equipment. Largely because of the advice and military aid received from the United States in the decades during Vietnam War, Thailand's military establishment reflected the influence of American defense practices.¹⁴¹ This was particularly apparent in the organizational structure of its high command. By the beginning of 1980s, the navy assets included six frigates, six missile equipped fast attack crafts, 50 patrol craft of various sizes, six minesweepers, eight landing ship tanks and landing craft utilities combined, a naval air wing of nine S2 anti-submarine patrol planes, four helicopters, and about 50 utility aircraft were available for surveillance functions from air bases at Utapao, near Sattahip, and Songkhla.¹⁴² Consequently the Thai naval power was reborn, but was still not politically strong enough to influence the Government on maritime affairs.

2.4 THAILAND AND THE LAW OF THE SEA

2.4.1 *First Major Concern About Ocean Law*

Although Thailand started to pass a domestic law to collect taxes from boats fishing in Thai waters in 1852, it did not have much concern over international law of the sea because the

¹³⁹ *Ibid.*, pp. 70-71.

¹⁴⁰ Wikipedia, 'Domino Theory', retrieved from http://en.wikipedia.org/wiki/Domino_theory.

¹⁴¹ *Supra*, note 124.

¹⁴² Joseph R. Morgan, 'ASEAN Navies: New Missions and Old Problems', *Marine Policy*, vol. 6, iss. 3 (July 1982), p. 237.

development of ocean law centered around European countries.¹⁴³ In January 1957, the Thai Customs arrested a vessel smuggling undeclared goods 10 nm off Thailand's shore in the vicinity of an area near the mouth of Chao-Phraya River, known today as the Historic Bay of Bangkok.¹⁴⁴ Because Thailand had never legislatively declared jurisdiction over its territorial waters, the judge in this particular case issued a verdict based on international customary law that the country could enforce its domestic laws up to 3 nm from coastline as it was widely accepted by international community at that time.¹⁴⁵ It resulted in the release of the vessel and crews, the return of merchandise to the owner, and most importantly, it drew great attention among law enforcement officers, lawyers and policy makers within the country.¹⁴⁶ During the UNCLOS I in 1958, Thailand indicated its intention to declare a historic bay¹⁴⁷ before hosting two conferences on 30 January and 6 February 1959 in order to take more details into consideration. At the end it was recommended that Thailand enact the law and deposit the declaration of the historic bay to the UN.¹⁴⁸ As a consequence, Thailand announced its proclamation of the bay and submitted the declaration to the UN on 22 September 1959.¹⁴⁹

2.4.2 Involvement in Ocean Law Development

Although the Government had not displayed much interest in the oceans in its policies and plans before, by the mid-1950s it began to realize that maritime interests could contribute to national economic growth. The Government requested transfer of know-how and technology from overseas. To participate and take benefit of the 1958 UNCLOS I in Geneva, Thailand assigned Major General Prince Naradhip Bongsprabandh, Minister of Foreign Affairs, as the head of Thailand's delegation, and among representatives of each State he was honored to chair the conference.¹⁵⁰ As far as the delegation and the Thai people operating at seas especially the

¹⁴³ Phiphat Tangsubkul, *ASEAN and the Law of the Sea*, Singapore: Institute of Southeast Asian Studies, 1982, p. 20.

¹⁴⁴ *Supra*, note 4.

¹⁴⁵ Criminal Court, Verdict on Case Number (Black) 284/2501 and (Red) 797/2501 on 13 May 1958, (in Thai).

¹⁴⁶ *Supra*, note 4, p. 2.

¹⁴⁷ Sirapa Jumpatong, Lieutenant Commander RTN, 'Historic Bay', *Nitisat Journal*, vol. 16, iss. 4, (Oct 1988), p. 72, (in Thai).

¹⁴⁸ *Supra*, note 4, p. 2.

¹⁴⁹ Declaration of the Office of the Prime Minister concerning the Inner Part of the Gulf of Thailand, 22 September 1959. Also available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/THA_1959_Declaration.pdf.

¹⁵⁰ *Supra*, note 99, p. 3.

navy were concerned, the outcome of the conference was beneficial to the country.¹⁵¹ Consequently, Thailand acceded to the four Conventions by signing them on 29 April 1958 immediately after the conference and deposited the instrument of ratification at the UN on 2 July 1968. Then 30 days after the ratification, these Conventions entered into force for Thailand on 1 August of that year.¹⁵² With an objective to protect its ocean interests, the four Conventions guided Thai development in ocean law, policy and management until the beginning of the UNCLOS III.¹⁵³

In 1960, Thailand appointed delegations to participate the UNCLOS II and also recognized the trend to widen the breadth of territorial seas to 12 nm. As a number of countries began to extend their territorial waters to 12 nm, on 6 October 1966, Thailand made a proclamation establishing the breadth of its territorial waters of 12 nm from its baseline.¹⁵⁴ Four years later, on 11 June 1970, Thailand's Prime Minister announced Thailand's three straight baselines in the Gulf of Thailand and the Andaman Sea.¹⁵⁵ Although Thailand was a party to the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, it did not claim a contiguous zone that could provide Thailand with jurisdictions to prevent, punish, and enforce infringement of Thai customs and fiscal regulations until 1995. Moreover, since Thailand was a State Party to the 1958 Convention on the Continental Shelf, and in order to exercise the sovereign rights of the country with regard to the exploration and exploitation of the natural resources, it declared the Royal Proclamation establishing the Continental Shelf of the Kingdom of Thailand in the Gulf of Thailand on 18 May 1973.¹⁵⁶ The same approach applied to the Royal Proclamation establishing the Exclusive Economic Zone of the Kingdom of Thailand on 23 February 1981.¹⁵⁷

¹⁵¹ Royal Thai Navy Advisory Committee, *Minutes of Meeting on 20 Nov 2004*, Bangkok, (in Thai).

¹⁵² Jumpot Saisunthorn, *Examples and Explanations: Law of the Sea Convention*, Bangkok: Nititham Publishing House, 1993, p. 6, (in Thai).

¹⁵³ Kriangsak Kittichaisaree, 'Development of Ocean Law, Policy and Management in Thailand', *Marine Policy*, vol. 14, iss. 4 (July 1990), p. 315.

¹⁵⁴ Proclamation establishing the Breadth of the Territorial Waters, of 6 October 1966. Also available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/THA_1966_Proclamation.pdf.

¹⁵⁵ Announcement of the Office of the Prime Minister, 12 June 1970. Also available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/THA_1970_Announcement.pdf.

¹⁵⁶ Royal Proclamation establishing the Continental Shelf of the Kingdom of Thailand in the Gulf of Thailand, 18 May 1973.

¹⁵⁷ Royal Proclamation establishing the Exclusive Economic Zone of the Kingdom of Thailand, 23 February 1981. Also available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/THA_1981_Proclamation.pdf.

2.4.3 Overall Views of UNCLOS III in Thailand

In general, Thailand was very pleased when the international community started to hold The Hague Conference of 1930 for the codification of the international law of the sea. Although it failed to reach agreement, Thailand still played an active role in the 1958 and 1960 Conferences, and continued as an active participant during the UNCLOS III. Hoping that the outcome of the conference would bring benefit over cost, the concepts of archipelagic State and EEZ brought a greatly disadvantageous situation to the country. These two concepts led Thailand to become a zone-locked State with no direct access to the high seas except through neighboring State zones. Moreover, the area of Thailand's EEZ is considerably less than that which accrues to its neighbors. For the Thai fishing fleet, the extension of zones had brought approximately 300,000 square kilometers of former Thai fishing grounds within the national jurisdiction of neighboring States and has made fishery relations with neighbors a major concern for the Government and fishing industry.¹⁵⁸ However, in keeping with the ASEAN spirit, where Indonesia and the Philippines would benefit from the concept of an archipelagic State, Thailand decided to endorse the concept of an archipelagic State and consequently had to recognize the EEZ concept as a package deal.¹⁵⁹ Having been unsatisfied with the 1982 LOSC, Thailand signed the Convention on 10 December 1982 along with 118 other States, but delayed ratification of the Convention for nearly three decades.

¹⁵⁸ Ted L. McDorman and Panat Tasneeyanond, 'Increasing Problems for Thailand's Fisheries: Malaysia's New Fisheries Law', *Marine Policy*, 1987 Butterworth & Co (Publishers) Ltd, p. 205.

¹⁵⁹ *Supra*, note 143, p. 23.

PART II: BETWEEN SIGNATURE AND RATIFICATION
– CURRENT STATUS AND CONCERNS

CHAPTER 3: THE CHANGING MARITIME ENVIRONMENT

3.1 THAILAND'S MARITIME ZONES

The LOSC divides the ocean into zones for jurisdictional and regulatory purposes. The various zones of jurisdiction describe the area of sovereignty and sovereign rights of coastal States for the conduct of various marine activities, as well as the certain rights of foreign States in these zones.

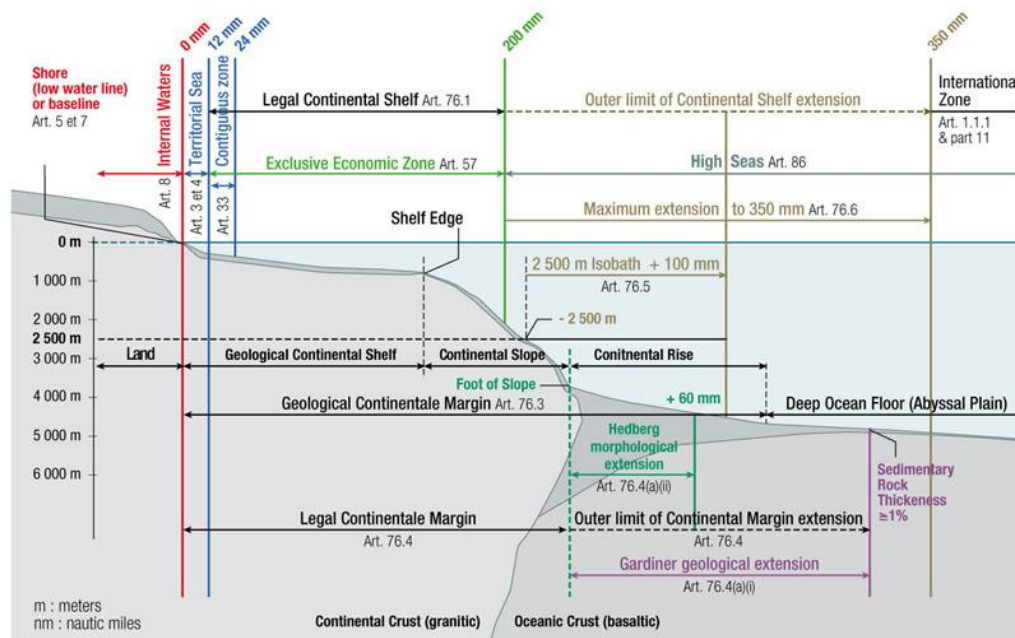


Figure 1: Maritime Zones According to the 1982 Law of the Sea Convention¹⁶⁰

3.1.1 Internal Waters and Territorial Sea

1982 LOSC defines internal waters as waters landward of the baselines where coastal States have sovereignty over it as over land territory¹⁶¹ and permits every State the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nm, measured from

¹⁶⁰ Le Cercle Polaire, 'Maritime Zone', available at http://www.lecerclepolaire.com/articles_archives/Pratt_maritime_Arctic.html.

¹⁶¹ *Supra*, note 100, art. 8 and 2.

baseline.¹⁶² Within the territorial sea, the air space over the territorial sea and its seabed and subsoil remain under the sovereignty of the coastal State.¹⁶³ The limitation of this sovereignty is the right of innocent passage of ships through this zone.¹⁶⁴ However, the coastal State may take the necessary steps in its territorial sea to prevent innocent passage if a ship fails to comply with the rights of innocent passage.

Although during the mid-1950s the widely accepted breadth of territorial sea was 3 nm, by enforcing its domestic law in the arrest of a smuggling boat in 1957 and having observed the trend of widening the breadth, Thailand proposed a tentative 6 nm territorial sea at the UNCLOS I and supported the proposal of a 6 nm fishing zone beyond the 6 nm territorial sea, meaning that Thailand believed that coastal States were entitled to a 12 nm jurisdiction.¹⁶⁵ Seven years after it declared sovereignty over the Historic Bay of Bangkok, Thailand in 1966 claimed a 12 nm territorial sea by issuing a Proclamation Establishing the Breadth of the Territorial Waters stating:

Whereas Thailand always maintains that the sovereignty of Thailand extends, beyond its land territory and its internal waters, to a belt of sea adjacent to the coast, described as the territorial sea, including the airspace over the territorial seas as well as its bed and subsoil;

Whereas it is deemed appropriate to establish the breadth of the coastal territorial waters;

It is hereby proclaimed that the breadth of the territorial waters of Thailand is established at twelve nautical miles measured from a baseline used for measuring the breadth of the territorial sea.¹⁶⁶

It means that in 1966 Thailand's territorial sea was 12 nm measured from the normal baseline defined as "low-water line along the coast as marked on large-scale charts officially recognized by the coastal State" by the 1958 Convention,"¹⁶⁷ and the straight baseline in

¹⁶² *Ibid.*, art. 3.

¹⁶³ *Ibid.*, art. 2.

¹⁶⁴ *Ibid.*, art. 17 and 18.

¹⁶⁵ *Supra*, note 143, p. 22.

¹⁶⁶ Thailand's Proclamation establishing the Breadth of the Territorial Waters, of 6 October 1966.

¹⁶⁷ Convention on the Territorial Sea and the Contiguous Zone, 29 April 1958, art. 3.

accordance with the previously declared historic bay in 1957. However, Thailand declared three more straight baselines on 12 June 1970 that enclosed three particular areas as internal waters of Thailand and amended them on 11 August 1992 as follows:

- Area No. 1: East coast of the Gulf of Thailand, between Laem Ling at 12°-12.3' Latitude North; 102°-16.7' Longitude East and the Thai-Cambodian boundary.
- Area No. 2: West coast of the Gulf of Thailand, between Laem Yai at 10°-53.7' Latitude North; 99°-31.4' Longitude East and Laem Na Tham at 09°-12.4' Latitude North; 99°-53.2' Longitude East.
- Area No. 3: In the Andaman Sea, between Ko Phuket at 07° 46.5' Latitude North; 98°-17.5' Longitude East and the Thai-Malaysian boundary.¹⁶⁸

Another straight baseline was announced on 17 August 1992 enclosing one more area:

- Area No. 4: In the Gulf of Thailand, between Ko Kong Ok at 9°-36'-06" Latitude North; 100°-05'-48" Longitude East and the Thai-Malaysian boundary.¹⁶⁹

Therefore, Thailand's territorial sea is 12 nm measured from six baselines where the waters on the landward side are internal waters.

3.1.2 Contiguous Zone

Coastal States are able to extend their jurisdictional power in a maritime regime called the contiguous zone not exceeding a limit of 24 nm from the territorial sea baselines. The LOSC allows coastal States to exercise controls necessary to prevent the infringement of their customs, fiscal, immigration or sanitary laws and regulation within this zone or to punish violation of those laws and regulations within this zone.¹⁷⁰

¹⁶⁸ Thailand's Announcement of the Office of the Prime Minister, 12 June 1970 and Announcement of the Office of the Prime Minister concerning the Straight Baselines and Internal Waters of Thailand, 11 August 1992. Also available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/THA_1993_Announcement.pdf.

¹⁶⁹ Thailand's Announcement of the Office of the Prime Minister concerning straight baselines and internal waters of Thailand Area 4, 17 August 1992. Also available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/THA_1992_Announcement.pdf.

¹⁷⁰ *Supra*, note 100, art. 33.

Although Thailand was entitled to declare its contiguous zone after ratification of the 1958 Convention on the Territorial Sea and the Contiguous Zone on 2 July 1968, it realized that the 12 nm maximum breadth of contiguous zone under the 1958 Convention was being increased by the UNCLOS III to 24 nm. It therefore decided to await the outcome of the UNCLOS III and finally announced its claim over the contiguous zone in 1995.¹⁷¹ Meanwhile Thailand also enacted laws with regard to customs, fiscal, immigration and sanitary matters with the right to police and punish offenders of those laws complying with its proclamation stating:

For the purpose of exercising the rights of the Kingdom of Thailand with regard to the contiguous zone, which are based on generally recognized principles of international law, it is deemed appropriate to establish the contiguous zone of the Kingdom of Thailand as follows:

1. The contiguous zone of the Kingdom of Thailand is the area beyond and adjacent to the territorial sea of the Kingdom of Thailand, the breadth of which extends to twenty-four nautical miles measured from the baselines used for measuring the breadth of the territorial sea.
2. In the contiguous zone, the Kingdom of Thailand shall act as necessary to:
 - (a) Prevent violation of customs, fiscal, immigration or sanitary laws and regulations, which will or may be committed within the Kingdom or its territorial sea;
 - (b) Punish violation of the laws and regulations defined in (a), which is committed within the Kingdom or its territorial sea.¹⁷²

3.1.3 Exclusive Economic Zone

Coastal States may claim an EEZ of up to 200 nm from the baselines.¹⁷³ Within the EEZ, coastal States have sovereign rights for the purpose of exploring, exploiting, conserving and managing the natural living or non-living resources.¹⁷⁴ This includes other activities such as the production of energy from waves, currents and winds. Coastal States also have jurisdiction

¹⁷¹ *Supra*, note 153, p. 317.

¹⁷² Thailand's Royal Proclamation establishing the Contiguous Zone of the Kingdom of Thailand, 14 August 1995. Also available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/THA_1995_Proclamation.pdf.

¹⁷³ *Supra*, note 100, art. 57.

¹⁷⁴ *Supra*, note 100, art. 56.

in relation to the establishment of artificial islands; installations and structures; protection and preservation of the maritime environment; and marine scientific research.¹⁷⁵

Knowing that the concept of EEZ would be adopted in the UNCLOS III, Thailand made an EEZ proclamation on 23 February 1981 to protect its maritime interests before the conference concluded in 1982 stating that:

In the exclusive economic zone, the Kingdom of Thailand has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the seabed and subsoil and the superjacent waters, and with regard to other activities for the economic exploration and exploitation of the zone, such as the production of energy from the water, currents and winds.

(b) jurisdiction with regard to :

- (i) the establishment and use of artificial islands, installations and structures;
- (ii) marine scientific research;
- (iii) the preservation of the marine environment.

(c) other rights as may exist under international law.¹⁷⁶

Apart from stating its sovereign rights, it indicated the will to negotiate with other coastal States to delimit any overlapping claims that might occur:

In any case where the exclusive economic zone of the Kingdom of Thailand is adjacent or opposite to the exclusive economic zone of another coastal State, the Government of the Kingdom of Thailand is prepared to enter into negotiations with the coastal State concerned with a view to delimiting their respective exclusive economic zones.¹⁷⁷

Being a country with geographical disadvantages, its 200 nm EEZ claims overlapped with other countries' EEZs. For many years, Thailand involved negotiations with neighboring countries—Cambodia, India, Indonesia, Malaysia, Myanmar, and Vietnam—some were successful but some were not. Nonetheless, Thailand was able to issue two further

¹⁷⁵ *Ibid.*

¹⁷⁶ Thailand's Royal Proclamation establishing the Exclusive Economic Zone of the Kingdom of Thailand, 23 February 1981. Also available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/THA_1981_Proclamation.pdf.

¹⁷⁷ *Ibid.*

proclamations with regard to accepted EEZs by neighboring coastal States in the Gulf of Thailand adjacent to the Malaysian EEZ¹⁷⁸ and in the Andaman Sea.¹⁷⁹

3.1.4 *Continental Shelf*

Embedding the context of the 1958 Conventions on the Continental Shelf, but not replacing them, the LOSC allows nations to claim sovereignty over the continental shelf between 200 and 350 nm from the baselines.¹⁸⁰ The coastal State has a sovereign right to exploration and exploitation of the non-living resources and living resources of sedentary nature.¹⁸¹

Thailand had already declared its continental shelf on 18 May 1973 about five years after it ratified the 1958 Convention on the Continental Shelf on 2 July 1968. As with its EEZ, there were overlapping claims with other coastal States' continental shelves. In the Gulf of Thailand, Malaysia and Thailand agreed to establish a 50 year Joint Development Area (JDA) for seabed exploitation, of which profits are split fifty-fifty between the Malaysian-Thailand Joint Authority and the contracting company, and a ten percent royalty is divided between the two Governments.¹⁸² On the other side of Thai peninsula—the Andaman Sea—the five coastal States of India, Indonesia, Malaysia, Myanmar and Thailand negotiated and settled their overlapping claims over the continental shelf.¹⁸³

3.1.5 *Maritime Geography Shaped by the Law*

At present, Thailand's maritime zone consists of internal waters, territorial sea, contiguous zone, EEZ and continental shelf, encompassing an area of about 100,500 square kilometers. Its coastline is approximately 1,500 nm long: 1,000 nm along the Gulf of Thailand and 500 nm along the Andaman Sea. Although the Gulf of Thailand and the Andaman Sea

¹⁷⁸ Thailand's Proclamation establishing the Exclusive Economic Zone of the Kingdom of Thailand adjacent to the Exclusive Economic Zone of Malaysia in the Gulf of Thailand, 18 February 1988. Also available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/THA_1988_1_Proclamation.pdf.

¹⁷⁹ Thailand's Proclamation establishing the Exclusive Economic Zone of the Kingdom of Thailand in the Andaman Sea, 18 July 1988. Also available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/THA_1988_2_Proclamation.pdf.

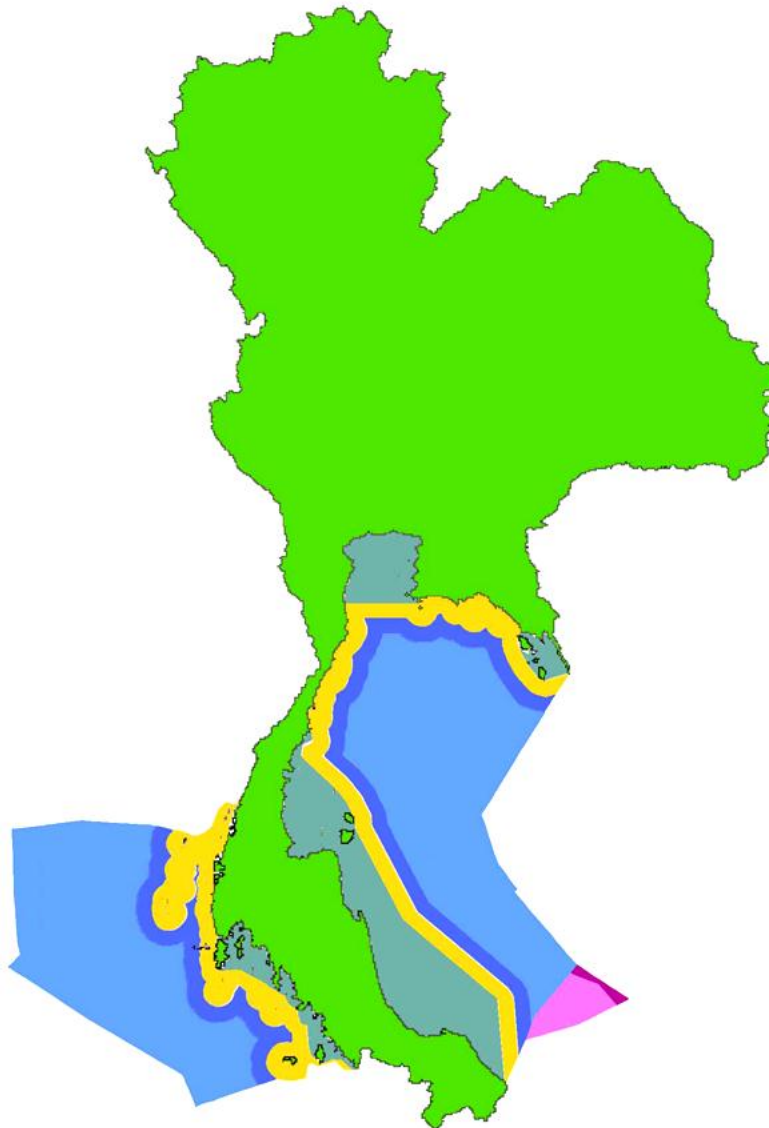
¹⁸⁰ *Supra*, note 100, art. 76.

¹⁸¹ *Ibid.*, art. 77.

¹⁸² Liselotte Odgaard, *Maritime Security Between China and Southeast Asia*, Vermont: Ashgate Publishing Limited, 2002, pp. 227-8.

¹⁸³ *Supra*, note 152, pp. 112-3.

connect Thailand to two oceans, both seas are defined as enclosed or semi-enclosed sharing maritime boundaries with Cambodia, Malaysia and Vietnam in the Gulf of Thailand, and with Indonesia, India, Malaysia and Myanmar in the Andaman Sea. Therefore, Thailand's EEZ cannot be extended to a maximum of 200 nm in accordance with the 1982 Convention. Enclosed by other countries, Thailand has become a zone-locked country and its EEZs are approximately 120 nm in the Gulf of Thailand and 163 nm in the Andaman Sea.¹⁸⁴



Map 2: Thailand and its Maritime Zones

¹⁸⁴ *Supra*, note 104, p. 44.

3.2 THAILAND'S MARITIME INTERESTS

3.2.1 A Source of Nutrients

Emerging as a major fishing nation in the mid-1970s, Thailand has long utilized this excellent source of healthy protein and low fat content from the ocean to meet its domestic demand and supply an export market.¹⁸⁵ As a vital part of the country's daily diet, the average consumption of fish in 1982 in Thailand was 17.9 kilograms per capita or 5.5 grams of protein per capita per day—about 1.5 fold of the world's consumption, accounting for 35.5 percent of animal protein intake and 11.4 percent of all proteins consumed in the country.¹⁸⁶ In 2007 the number increased noticeably to 30.9 kilograms per capita or 9.2 grams of protein per capita per day—almost double that of 15 years ago.¹⁸⁷ The same set of data also indicated that 38 percent of animal protein intake and 16.4 percent of all protein consumed in Thailand derived from the fisheries industry.¹⁸⁸ By comparing these numbers with those of the global consumption at 17.1 kilograms per capita which was accounting for 16.1 percent of the global population's intake of animal proteins and 6.2 percent of all proteins consumed,¹⁸⁹ Thailand's fisheries have played a key part in bringing essential nutrition to the Thai people.

Besides the fact that fish is the primary accessible animal protein for most Thai people, the fisheries industry contributes considerably to the economy of Thailand. In terms of economic significance, the fisheries sector added about 1.9 percent to national GDP in 1996¹⁹⁰ and 2.5 percent in 2000.¹⁹¹ Despite the fact that a large area of oceans which was previously considered high seas available for Thailand's fishing industry are now within the reach of other State fisheries' jurisdiction and control in accordance with the 1982 LOSC, Thailand, with one of the largest fishing fleets in the world, has been able to maintain its steady growth. Landed fish

¹⁸⁵ *Supra*, note 158, p. 205.

¹⁸⁶ FAO, Food Balance Sheets of Livestock and Fish Primary Equivalent, 2007. Also available at <http://faostat.fao.org/site/617/default.aspx#ancor>.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ FAO, *Overview: Major Trends and Issues 2008*, p. xvii.

¹⁹⁰ Duke University, 'Country Profile: Thailand', retrieved from <http://bycatch.nicholas.duke.edu/regions/SoutheastAsia/Thailand.pdf>.

¹⁹¹ FAO, 'The Impact of International Fish Trade on Food Security in Thailand', retrieved from <http://www.fao.org/DOCREP/006/Y4961E/y4961e0j.htm>

caught at sea totaled 1.95 million tonnes in 1982, 2.75 million tonnes in 1993, and 2.63 million tonnes in 2004, with a value worth around 13,371 million, 36,224 million, and 61,801 million baht¹⁹² respectively.¹⁹³ After the disastrous tsunami of 26 December 2004, the number of landings dropped to 1.65 million tonnes, earning about 42.147 million baht in 2008.¹⁹⁴ Interestingly, Thailand was still a top fishing country, ranked eleventh after two of its neighboring countries, Indonesia (third) and Myanmar (ninth).¹⁹⁵

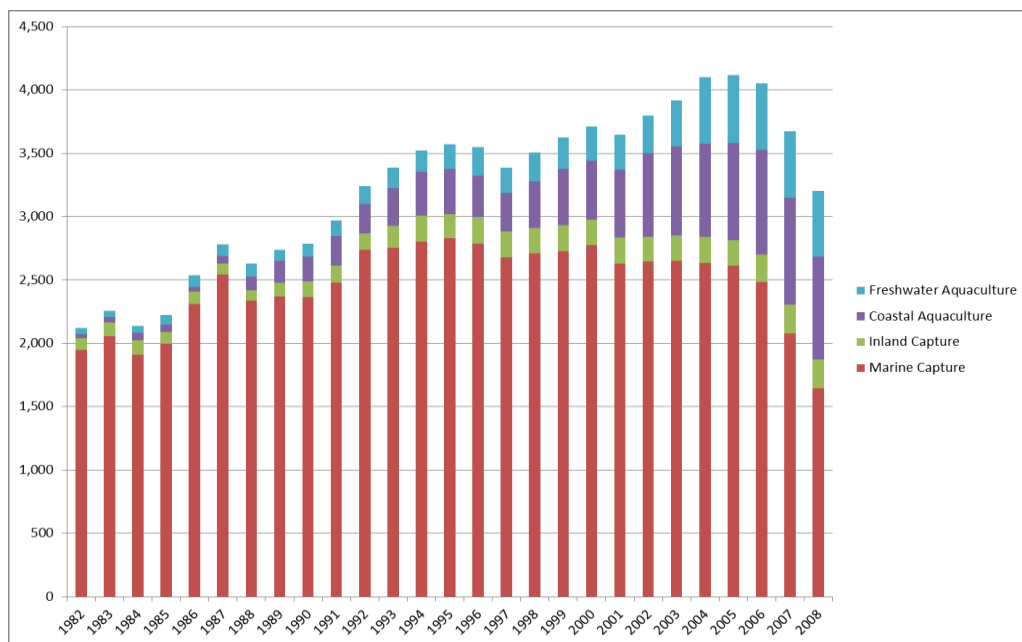


Figure 2: Fisheries Production in Quantity by Sub-sector, 1982-2008 (1,000 tonnes)¹⁹⁶

The marine fish catch comes more from the east coast than the west coast of Thailand's peninsula, and the amount of catch in all fishing grounds—Area 71 (Gulf of Thailand), Area 57 (East of Indian Ocean), and Area 51 (West of Indian Ocean)—has continued to decrease.¹⁹⁷ The decline has been mainly because of fishery over-exploitation and ineffectiveness of ocean

¹⁹² The value of Thai baht has gradually increased since the beginning of the twenty-first century. From around 42 baht per U.S. dollar in 2001 to 30 baht per U.S. dollar in 2011. For further details See e.g. OANDA, 'Historical Exchange Rate', available at <http://www.oanda.com/currency/historical-rates/>.

¹⁹³ Department of Fisheries, *Fisheries Statistics of Thailand 2008*, Ministry of Agriculture and Cooperatives No. 12/2010, pp. 13-4, (in Thai).

¹⁹⁴ *Ibid.*

¹⁹⁵ FAO, *FAO Yearbook: Fishery and Aquaculture Statistics 2008*, p. 24.

¹⁹⁶ *Supra*, note 193.

¹⁹⁷ *Ibid.*, p. 515.

governance in the Gulf of Thailand, devastation of the west coast fisheries industry by the tsunami disaster, and the threat of piracy in the Gulf of Aden. Nevertheless, Thailand was still ranked third in major exporting countries of the world and ranked first in Southeast Asia in 2008 due to its aquaculture production.¹⁹⁸ As the world aquaculture production has maintained its steady growth with the average annual growth rate of 6.2 percent from 2003 to 2008, Thailand came in fourth place among top aquaculture producers of the world after India, Vietnam, and Indonesia with 1.4 million tonnes.¹⁹⁹ Although aquaculture farming has major negative impacts on coastal habitats in the region such that Thailand had experienced about a 64.3 percent loss of its mangrove areas to coastal aquaculture, it is undoubtedly playing an increasing role in supplying fish for human consumption and has great potential for the country's revenue and the livelihood of fishermen.²⁰⁰

3.2.2 A Source of Energy

Energy has always been a crucial factor for Thailand's security and development. It became apparent during the reign of King Rama V when he actively pursued a policy of reforming and modernizing the country. Between 1868 and 1910, a great deal of his mega-projects such as the establishment of post and telegraph services, the construction of railways, the foundation of a ministerial system, and the creation of a variety of public utilities, particularly in the fields of health and education, required a tremendous amount of energy that must be imported from abroad by means of the sea.²⁰¹ By the end of 1920s, the country started to have grave concerns about the energy situation because it has depended heavily on imported oil. Therefore, in 1933 Thailand activated a redundant program by establishing an energy department, building an oil refinery and procuring a navy tanker, *HTMS Samui*, in order to provide support for transportation of oil from overseas.²⁰² However, during and immediately after WW II the country suffered greatly from oil shortages after its oil trading perished, the oil refinery was bombed, and the navy tanker was sunk by a submarine.

¹⁹⁸ *Supra*, note 189, p. xvii.

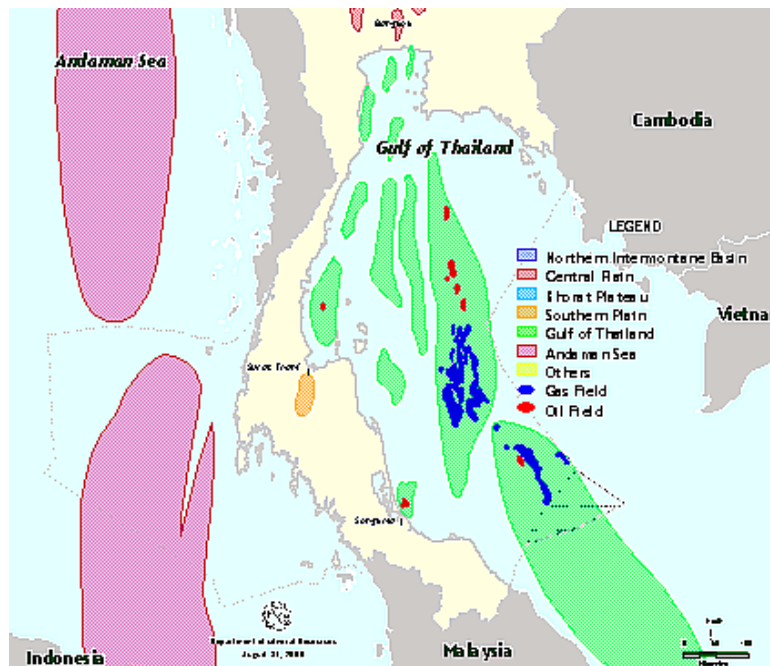
¹⁹⁹ *Ibid.*, p. xvi.

²⁰⁰ Nopparat Nasuchon and Anthony Charles Naval, 'Community Involvement in Fisheries Management: Experiences in the Gulf of Thailand Countries', *Marine Policy*, vol. 34, iss. 1 (January 2010), p 163.

²⁰¹ Ministry of Energy, Kingdom of Thailand, Direction of Thai Energy, p. 27. Also available at http://energy.go.th/?q=th/energy_history, (in Thai).

²⁰² *Ibid.*

Throughout the next decade, the country slowly recovered and began to launch the first national economic and social development plan in 1961. Since then, Thailand has had constant and critical demands for petroleum in order to sustain its rapid economic growth and to meet all possible consequences.²⁰³ The demand for energy progressively increased by 16 percent per year throughout the 1960s while oil consumption rates had leaped correspondingly from 5 million liters of oil per day in 1960 to 26 million liters per day in 1972.²⁰⁴ The import of oil has therefore been a heavy drain on the country's foreign exchange reserves as oil accounted for 81.7 percent of energy consumption in 1977,²⁰⁵ resulting in the country's need for exploration and exploitation of hydrocarbon deposits within the Gulf of Thailand and the Andaman Sea. Although Thailand granted the first concessions to explore for oil and gas in the Gulf of Thailand in the same year that it ratified the 1958 Convention on the Continental Shelf in 1968, it was only after the promulgation of the Petroleum Act in 1971 that the exploration in Thailand's claimed continental shelf actually began.²⁰⁶



Map 3: Potential Hydrocarbon Deposits in the Gulf of Thailand and the Andaman Sea²⁰⁷

²⁰³ *Ibid.*, p. 35.

²⁰⁴ *Supra*, note 143, p. 87.

²⁰⁵ *Supra*, note 119, p. 159.

²⁰⁶ *Supra*, note 143, p. 87.

²⁰⁷ Coordinating Committee for Geoscience Programmes in East and Southeast Asia, 'Thailand: Petroleum Geology and Potential', retrieved from http://www.ccop.or.th/epf/thailand/thailand_petroleum.html.

While the result of seismic surveys in the shallow water areas of the Andaman Sea discouraged drilling, the sounding and drilling in the Gulf of Thailand led to the discovery of natural gas at depth of below 6,000 feet in 1977.²⁰⁸ Although the aim of offshore exploration was primarily oil, the country did not hesitate and moved rapidly to exploit the natural gas finds in the Gulf of Thailand. Having established its primary mission to procure adequate oil for domestic consumption in 1978, the Petroleum Authority of Thailand began laying submarine gas pipelines in the Gulf of Thailand in order to utilize the source of energy underneath its seabed²⁰⁹ before the Sixth National Economic and Social Development Plan (1987-1991) which emphasized transforming the nation into a newly industrialized country. This caused a jump in energy demand.²¹⁰ Throughout 1990s Thailand's energy consumption had remarkably increased, and in 2002 its commercial energy demand totaled 1,282 thousand barrels per day of crude oil equivalent, an increase of 6.6 percent from the demand in 2001.²¹¹ In 2004 Thailand's total energy consumption was estimated at 1,451 thousand barrels per day of crude oil equivalent, representing about 0.7 percent of total world energy consumption.²¹²

As of January 2008, Thailand granted 32 concessions and 39 blocks in the Gulf of Thailand, covering an exploration area of 148,040 square kilometers, a production area of 14,994 square kilometers, and a reserve area of 6,028 square kilometers in the Gulf of Thailand, and 1 concession and 3 blocks covering 68,820 square kilometers of exploration area in the Andaman Sea.²¹³ With the entire group of 438 petroleum wells drilled offshore (27 exploration and 411 development) in 2008, the total production of natural gas, condensate, and crude oil were 917 billion cubic feet, 27.8 million barrels, and 51.1 million barrels respectively, reflecting approximately 387.2 billion baht in value and 47.9 billion baht in royalties.²¹⁴ As of December 2010, the continental shelf of Thailand has remained a substantial source of energy with natural gas, condensate, and crude oil proven reserves of 10.59 trillion cubic feet, 245 million barrels,

²⁰⁸ *Ibid.*, p. 88.

²⁰⁹ Petroleum Authority of Thailand, 'Background', retrieved from <http://www.pttplc.com/en/about-ptt-background.aspx>.

²¹⁰ *Supra*, note 201.

²¹¹ Energy Policy and Planning Office, Ministry of Energy, 'Thailand Energy and Natural Resources', retrieved from <http://www.eppo.go.th/doc/NIO-EnergyAndNaturalResource2003.html>.

²¹² Library of Congress – Federal Research Division, *Country Profile: Thailand*, July 2007, p. 14.

²¹³ Department of Mineral Fuels, 'Annual Report 2007', retrieved from http://www.dmf.go.th/resources/annualReport/factFigure/th/Fact&Figures_2007_th.pdf.

²¹⁴ Department of Mineral Fuels, 'Annual Report 2009', retrieved from <http://www.dmf.go.th/resources/annualReport/annual/th/SummaryReport05-09.pdf>.

and 197 million barrels respectively, and probable and possible reserves of 17.87 trillion cubic feet, 465 million barrels, and 708 million barrels respectively (including those in Thailand-Malaysia JDA), which were available for future exploration and exploitation.²¹⁵ In light of the great demand for energy, while renewable energies are being developed,²¹⁶ the utilization of all domestic energy resources has become a crucial issue for the nation.

3.2.3 A Medium of Transportation

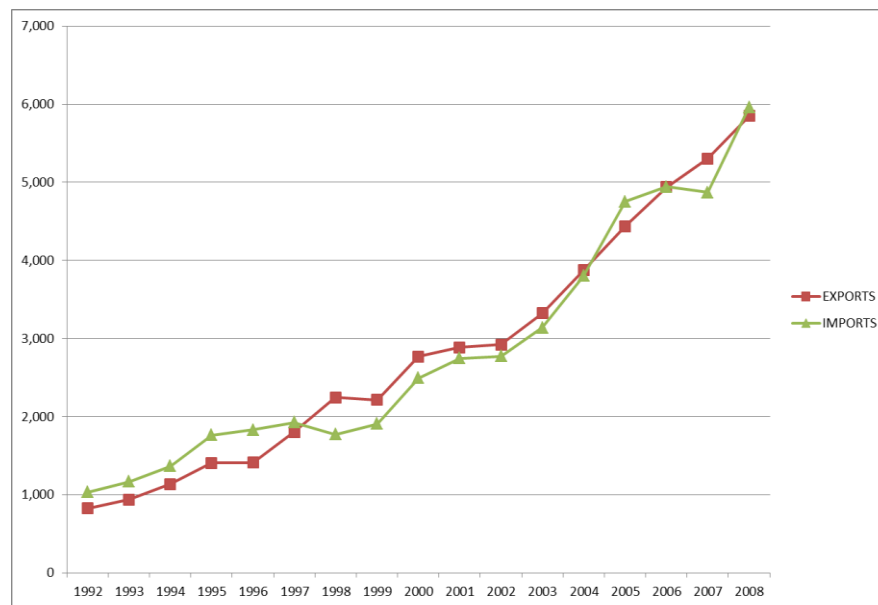


Figure 3: Value of Thailand's Imports and Exports, 1992-2008 (billion baht).²¹⁷

Because sea transport is more convenient and less expensive to carry massive cargo from one destination to another, it was estimated in 2007 that about 95 percent of Thailand's maritime trade went by sea.²¹⁸ It was reported that the value of Thailand's exports in 1992 was approximately 1.03 trillion baht and the value had increased dramatically to 4.87 trillion baht in 2007—about a 4.7-fold increase over 15 years.²¹⁹ The value of exports continued to grow and in

²¹⁵ Department of Mineral Fuels, 'Statistics', retrieved from <http://www.dmf.go.th/index.php?act=service&sec=yearReserve>.

²¹⁶ Department of Alternative Energy Development and Efficiency, 'Alternative Energy', retrieved from http://www.dede.go.th/dede/index.php?option=com_content&view=category&layout=blog&id=103&Itemid=225&lang=en.

²¹⁷ Ministry of Commerce, Kingdom of Thailand, 'Thailand's International Trade Statistics', retrieved from http://www.ops3.moc.go.th/hs/trade_yearly/report.asp, (in Thai).

²¹⁸ Ministry of Transport, Kingdom of Thailand, 'Values of International Trade Categorized by Means of Transportation 2007', retrieved from <http://www.news.mot.go.th/motc/portal/graph/excel/index2.asp>, (in Thai).

²¹⁹ *Supra*, note 217.

2008 with a growth rate of 10.36 percent from the previous year, its exports accounted for about 60 percent of GDP.²²⁰ Extraordinarily, in 2010 the export of goods and products brought in a great deal of the country's income, accounting for nearly 70 percent of the country's GDP.²²¹ There is no doubt that the Thai economy is deeply export-dependent. Marine fishery products, along with other agricultural products including rice, were among the top export commodities by volume that contributed to the country's earnings.

Whilst its export market is crucial for Thailand's economy, its import trade is similarly necessary for the country's security and development. Thailand relies heavily on imported energy and technology, crude oil, natural gas, machinery, electrical circuit and micro assembly, computers, telecommunications equipment, parts and accessories. The nation has spent tremendous of currency on these commodities for many years.²²² Other products can be easily transported by air, however, oil and gas must be transported predominantly by sea. Thus in 2005 transport of petroleum products was ranked first by volume accounting for 88.26 percent of total coastal shipping, and a yearly average of 86.04 percent of the total number from 2006 to 2009 has been maintained.²²³ It was also recorded that the import of oil and gas alone was valued 1,120 billion, 761 billion, and 883 billion baht in 2008, 2009, and 2010 respectively with an average of 921 billion baht a year.²²⁴ While acknowledging the importance of inland and coastal transportation, it is clear that maritime transport is vital for Thailand's economy and security. A large quantity of exports and imports has steadily grown, which is illustrated in figure 3.

3.2.4 A Site of Tourism

With a wide variety of natural beauty and activities on its beaches and islands, Thailand has become one of the preferred holiday destinations for hundreds of thousands visitors every year. Amongst other scenic and attractive places of the country, each beach and island has its own character and identity that draws a specific type of visitor from around the world resulting in

²²⁰ Tourism Authority of Thailand, 'Economy', retrieved from <http://www.tourismthailand.org/about-thailand/economy>.

²²¹ United States Department of State, 'Background Note: Thailand', retrieved from <http://www.state.gov/r/pa/ei/bgn/2814.htm>, dated 31 Aug 2011.

²²² Ministry of Commerce, Kingdom of Thailand, 'Principal Imports', retrieved from http://www.ops3.moc.go.th/infor/menucomen/stru2_import/import_topn_re/#

²²³ Ministry of Transport, Kingdom of Thailand, *Transport Statistics*, p. 36. Also available at <http://www.news.mot.go.th/motc/portal/graph/transtat09.pdf>.

²²⁴ *Supra*, note 222.

a large influx of foreign currency.²²⁵ In the Andaman Sea, the west coast of Thailand features beaches that appeal to every type of traveler including the activity-filled resort island of Phuket; the popular backpacker beaches of Koh Phi Phi, Koh Lanta, Krabi; the pristine coast of (Khao Lak, Panga; the spectacular diving spot of the Similan Islands; and the remote and undeveloped islands of the far south. Along the Gulf coast, the resort island of Koh Samui lies near the natural magnificence of Koh Phangan and the scuba diving paradise of Koh Tao. Closer to Bangkok are the popular resort towns of Hua Hin, Koh Samet, Koh Chang and Pattaya beach in the northern Gulf that feature upscale resorts, hotels and bungalows.²²⁶ Apart from the beautiful coastlines, an area of about 44 square kilometers of coral reefs along the coasts in the Gulf of Thailand and the Andaman Sea are also a gateway to Thailand's coastal tourism.²²⁷

Even though the 2004 tsunami in the Andaman Sea dramatically shocked visitors from all over the world by the unexpected terrible damage and discouraged Thai tourism, most tourists who prefer visiting beaches and the sea of Thailand changed to visit alternative sites in the Gulf of Thailand resulting in a high occupancy rate during the past five years.²²⁸ After being assured of the safety and security measures put into place, the situation gradually recovered. Coastal tourism has made a large contribution to Thailand's economy as well as the promotion of regional development along the coast. Between 2007 and 2009, when an average of some 15 million international tourists visited Thailand, millions of Thais also made pleasure trips around the country.²²⁹ About 49 percent of the combined tourists travelled to coastal areas and spent 274,491 million baht on yearly average, accounting for 54.53 percent of the country's earning by tourism.²³⁰ All the taxes and revenues indicate that coastal tourism has become increasingly significant and plays a major role in Thailand's economy.

²²⁵ Tourism Authority of Thailand, Kingdom of Thailand, 'Beaches and Islands', retrieved from <http://www.tourismthailand.org/about-thailand/nature/beaches-and-islands/>.

²²⁶ *Ibid.*

²²⁷ Padermsak Jarayabhand, *Thailand's Maritime National Interests: Situations and Recommendations*, Bangkok: Research and Development Funding Office, 2007, p. 15, (in Thai).

²²⁸ Ministry of Tourism and Sports, *Tourism Situation Concerning Inbound Foreign Visitors in 2005*, retrieved from [www2.tat.or.th/stat/download/ind/2005%20Tourism%20Situation%20\(English\).doc](http://www2.tat.or.th/stat/download/ind/2005%20Tourism%20Situation%20(English).doc), (in Thai).

²²⁹ Tourism Authority of Thailand, 'Tourism Statistic in Thailand', retrieved from http://www2.tat.or.th/stat/web/static_index.php.

²³⁰ Marine Knowledge Hub, "Maritime Tourism", retrieved from http://www.mkh.in.th/index.php?option=com_content&view=article&id=67&Itemid=71, (in Thai).

CHAPTER 4: CHANGING VIEWPOINTS

4.1 CONTEMPORARY KEY ISSUES AND CONCERNS

4.1.1 Depletion of Living Resources and Conflicts of Interest

Although marine fisheries in the past sometimes used drafts and other vessels to fish further out at sea, fishing in Thailand was largely concentrated in coastal areas with low intensity and low technology that had little impact on the natural environment. Hence, Thailand traditionally enjoyed the fertile seas and never worried about the sustainability of fishery resources. However, after its fishing fleet dramatically enlarged and become increasingly commercialized in mid-1970s, too many fishing boats were taking too many fish and too fast, causing the fish populations in the Gulf of Thailand to diminish. Along with new techniques and equipment, fishing at sea has become extremely efficient and has resulted in the rapid depletion of living stock. As a result, Thai fishermen had to go fishing beyond Thai waters in new fishing grounds of their neighboring countries, namely Cambodia, Indonesia, Malaysia and Myanmar, and some moved further to the South China Sea and the Bay of Bengal—which was at that time considered the high seas—in order to earn income.²³¹ However, after these neighboring countries declared their 200 nm EEZs, the historical Thai fishing grounds thus became restricted would violate the laws of those countries and did not comply with the LOSC. Consequently, they once again returned to fish in Thai waters which already had very limited fish stocks. A large number of Thai fishermen then faced financial problems, catching few fish but working for long hours. Many decided to go back to the earlier fishing grounds without appropriate legal arrangements. This resulted in 1,295 Thai trawlers and 14,341 Thai fishermen being arrested by neighboring countries on charges of poaching between 1982 and 1983. Many were miserably and inevitably forced out of business.²³²

Aquaculture farming, introduced by the Government, was deemed to be an answer to the existing need to generate fishermen's income as well as fulfill the country's food needs. Many fishermen and many locals who saw the opportunity turned to the aquaculture business.

²³¹ *Supra*, note 116.

²³² *Ibid.*

Unfortunately, large areas of coastal land were converted without proper management by the Government. For example, rice fields could be converted for sea shrimp farming, but this then made the land unusable for growing rice since the soil becomes salty. These areas were uncontrollably expanded and regrettably harmed the coastal habitats of sea life along the shores. The urgent need to promote coastal tourism added to the existing problems when resorts and hotels were built on areas rich in mangroves. The contamination caused by tourism industry and irresponsible use of the sea by tourist businesses damaged coral reefs and aggravated the growing problems. Fewer habitats mean less fish now and for the future. The Government tried to encourage sustainability of the existing living resources by enacting domestic laws that prohibit trawlers from fishing activities within 3 km from shore, controlling fishing seasons, and enacting coastal environmental laws and relevant mechanisms. But sadly it has been frequently reported that the Government's management of the oceans and its enforcement of laws have been ineffective and inefficient. This has resulted in increasing conflicts and disputes between those who have different maritime interests.²³³

4.1.2 Protection of Major Ports and Offshore Installations

Ports and their facilities are a major component of maritime transport. There are presently about 122 ports, wharves and jetties which are able to accommodate sea-going vessels engaging in international trade. While conventional cargos are handled through small private wharves and jetties, most containerized cargos are handled at public ports such as Bangkok Port, once the largest public port in Thailand, and Laem Chabang Port, currently the largest public port in Thailand. These two major ports handle a large volume of goods and products entering as well as leaving the country. For instance, it was reported in 2001 that Bangkok Port situated on the bank of Chao-Phraya River handled 1.609 million TEU of containerized cargo while Laem Chabang Port situated on the Eastern Sea Board handled 2.371 million TEU and the capacity of Laem Chabang Port could increase to 3.5 million TEU at the completion of the second basin. However, these two major ports as well as other ports along the coast of Thailand might not be sufficient to handle the amount of cargo volume that dramatically increases every year. Therefore, a shutdown of these two major ports would drastically interrupt the flow of commodities in and out of Thailand.

²³³ *Supra*, note 104, p. 88.

As of December 2009, Thailand has already invested in 63 exploration and 393 development wells in the Gulf of Thailand, producing 154,041 barrels per day of crude oil and 2,990 million standard cubic feet per day of natural gas accounting for a share of 79 percent of the total natural gas supply of the country.²³⁴ Some of these production platforms are strategically important, for example, the Bong-kot platform, which is the largest production field in the Gulf of Thailand, alone yielding natural gas equivalent to about 28 percent of the total domestic production and several platforms being built are even larger and more productive. These facts indicate that the protection of these offshore installations is critical for Thailand, a country which relies heavily on imported oil for energy consumption.

After the terrorist attacks on 11 September 2001, which were followed by several bombings and the arrest of terrorist leaders in Southeast Asia, many nations focused on the global war against terrorism.²³⁵ Although Thailand is not a primary target, it can no longer ignore the fact that terrorism poses great concerns for the country. There is no absolute guarantee that potentially vulnerable targets such as oil and gas platforms as well as major ports are safe from acts of terrorism. With increasing incidences of piracy within the Strait of Malacca as well as in other waters in the region, the international maritime community, including Thailand, has become concerned about the possibility of criminal acts, particularly from terrorism.²³⁶ Taking into account the large number of vessels carrying hazardous materials such as liquefied crude oil and natural gas passing through the Gulf of Thailand, terrorists could exploit these vulnerable vessels by adopting piracy tactics or teaming up with such criminals to board and seize the vessels. Terrorists could blow up a vessel or even use it to ram into other ships or major ports or offshore installations.²³⁷ This would be a major disaster for Thailand.

4.1.3 Security of Sea Lines of Communications and Distant-Fishing Fleets

²³⁴ Department of Mineral Fuels, Ministry of Energy, *Annual Report 2009*, Bangkok, Thailand, p 5. Also see Energy Policy and Planning Office, Ministry of Energy, *Energy Statistics of Thailand 2010*, Bangkok, p. 35 and 63.

²³⁵ The National Institute for Defense Studies, *East Asian Strategic Review 2006*, Tokyo, p 139.

²³⁶ Robert Beckman, 'The Role of Major Powers and International Cooperation to Enhance Maritime Security in Southeast Asia', Presentation to Ministry of Foreign Affairs, Bangkok, 3 July 2008.

²³⁷ Lynn D. Pullen and Scott C. Truver, 'Security in the Pacific Rim: Evolving U.S. Strategies, Doctrines, and Forces for Maritime Cooperation and Regional Collective Action', in Lawrence W Prabhakar, Joshua Ho, and Sam Bateman, eds., *Evolving Maritime Balance of Power in the Asia-Pacific: Maritime Doctrines and Nuclear Weapons at Sea*, Singapore: World Scientific Printers (S) Pte Ltd, 2006, p. 155.

Since imports and exports are crucial for Thailand's economy and security, the safe passage of these commodities is becoming one of the country's prime concerns. Since a number of piracy incidents and attempts occurred in two strategic areas, the Strait of Malacca and the Gulf of Aden—where Thai and foreign cargo ships transporting countless commodities to and from Thailand navigate—the Government of Thailand directed its relevant ministries and agencies to pay particular attention to these areas. Being a littoral State to the Strait of Malacca, Thailand has regularly deployed ships and aircraft to patrol and provide surveillance for its area of responsibility in the northern part of the Strait. Although there was hardly an incident reported in its area of operation, the RTN continues to emphasize operations for countering piracy and also recommended that Thailand be actively involved in the security measures of the Strait where Indonesia, Malaysia and Singapore have already conducted operations.²³⁸ In 2008, while a number of vessels were reported robbed and hi-jacked in the Strait, the Government authorized the RTN to join the coordinated patrols codenamed “The Malacca Strait Patrols” (MSP), which comprises the “Malacca Strait Sea Patrol” (MSSP) and the “Eyes-in-the-Sky” (EiS) air patrols in order to secure sea lines of communication in the Strait of Malacca.

Another area where the latest RTN operation has begun is in the Gulf of Aden where a number of vessels have been arrested or have faced attacks by pirates. This has raised international concerns since this is where the most oil and gas is exported. Thailand particularly depends on this oil and gas and imports some crude oil from Russia, Australia and Malaysia, but over 65 percent of it (63.85 percent in 2010 and 68.10 percent in 2011) came from the Middle East. Similarly, although a majority of natural gas (68.92 percent in 2010 and 60 percent in 2011) came from Myanmar, it was reported that at least one fifth of imported natural gas (21.65 percent in 2010 and 29.2 percent in 2011) also came from this part of the world.²³⁹ Furthermore, the Gulf of Aden is where many Thai distant-water fishing boats operate. About one third of the total fish caught at sea by Thai fishermen comes from the Gulf of Aden. Several unprotected fishing vessels and crews have already been hi-jacked and exchanged for ransom. A few Thai fishing boats were converted to become pirate “mother ships” and were eventually sunk by a foreign navy. The Government had no choice but to direct the RTN to deploy a task group to

²³⁸ Institute of Advanced Naval Studies, RTN, *Security in the Strait of Malacca*, Nakhonpathom, 2005, p. 69, (in Thai).

²³⁹ *Supra*, note 222.

provide security for international safe passage and to protect Thailand's distant-water fishing fleet in the Gulf of Aden.

4.1.4 Arising Transnational Crimes

Because movement over the waters is now easier through technology, the oceans are no longer something that divides lands, but instead connects them. But unfortunately, this also means that the sea has become a convenient medium for the illegal movement of people and goods. Large quantities of illicit shipments can now be easily trans-shipped at sea and brought into a country, for example, by a local fishing boat, without detection of local authorities.²⁴⁰ Before the end of the twentieth century, many countries in Southeast Asia estimated that a number of transnational crimes conducted by transnational organized criminal groups existed but went unobserved. As trafficking by sea will remain a major source of income for transnational organized criminal groups, transnational crime will be a serious challenge for countries in the region for the next century. One of the non-traditional threats to Thailand is drug trafficking. Putting a lot of effort into narcotics' prevention and suppression, Thailand has ceased the flow of amphetamines from the Bermuda Triangle through its mainland. But to avoid being arrested, the drug traffickers found new routes of transporting drugs through maritime domains.²⁴¹ Their tactics include the hiding of drugs in fishing boats since they know that it is almost impossible for maritime authorities to inspect the large quantity of fishing fleets operating in the area.

Similar tactics apply to the trafficking of firearms by sea. As the insurgency in the southern part of Thailand is still restless, the proliferation of firearms remains one of the major challenges to maritime authorities in order to prevent separatists from being reinforced by sea. Not only can drugs and firearms easily be transported by fishing boats, so can illegal immigrants who want to come to Thailand. Since the legal punishment for human trafficking is not as serious compared to drug and firearms trafficking, organized crime groups took advantage of ineffective ocean governance to broaden their actions and increase their profits this way.²⁴² Illegal people movement includes short-term for social visits, long-term mainly to look for work, and permanent for settlement. For example, after Cyclone Nargis struck in 2008, desperate

²⁴⁰ Sam Bateman, Joshua Ho and Jane Chan, 'Good Order at Sea in Southeast Asia', *RSIS Policy Paper* (April 2009), p. 21.

²⁴¹ Thailand Maritime Enforcement Coordinating Center, *Annual Report 2006*, Bangkok, p. 135, (in Thai).

²⁴² *Supra*, note 240, p. 23.

Rohingya refugees sought refuge in their neighbouring countries, including Thailand. Cambodian immigrants have also sought a new homeland in Thailand. As the world continues to experience climate change, the significant decline in grain harvests and the rise of sea levels will bring more illegal movement of people by sea.²⁴³

4.1.5 Unintended Regulations Against the Freedom of Navigation

Marine fisheries have played an important role in the economy of Malaysia as a way to provide food and alleviate the poverty that exists for many of its fishermen.²⁴⁴ Thus Malaysian fisheries policy always aims directly to ensure that Malaysia secures the benefits of its fishing grounds. Recognizing that the LOSC would allow coastal States to claim 200 nm rights over living resources, Malaysia declared its EEZ on 25 November 1981 before the Convention was officially adopted and subsequently enacted the Fisheries Act of 1985. A number of provisions in the 1985 Fisheries Law affect other neighboring countries, but especially Thailand. Of great concern to Thailand is the ability of its fishermen to transit through the Malaysian waters on their way to other fishing grounds. One Thai Government official estimated that 2,000 vessels pass through Malaysian waters annually on the way to other waters.²⁴⁵ A provision of Section 16 demands foreign fishing vessels notify Malaysian authorities prior to transiting Malaysian waters. Failure to do so automatically gives rise to a presumption, under Section 56, of illegal fishing or the attempt to fish illegally in Malaysian waters.²⁴⁶ While there is nothing in the LOSC that mentions fishing vessel notification,²⁴⁷ Malaysia has applied a strict measure to protect its maritime interests. This has caused a number of Thai vessels transiting through Malaysian waters when returning from legal fishing activities to be arrested. As Thailand was not a Party to the LOSC, Thailand has tried to solve this problem through negotiations, and as a result some flexible arrangements have been made. Nonetheless, this regulation costs time and money, apart from the fact that it does not comply with the law.

²⁴³ Lester R. Brown, 'Could Food Shortages Bring down Civilization?', *Scientific American*, vol. 300, iss. 5 (May 2009), p. 55. Also available at http://www.earth-policy.org/images/uploads/press_room/SciAm-final.pdf.

²⁴⁴ Wachiraporn Wongnakornsawang, *Malaysia As a Maritime Nation: A Study of Capabilities*, The National University of Malaysia, Kuala Lumpur, 2008, p. 30.

²⁴⁵ *Supra*, note 158, p. 208.

²⁴⁶ *Supra*, note 153, p. 321.

²⁴⁷ *Supra*, note 158, p. 210.

Another concern for Thailand is the suggestion to impose a compulsory pilotage system in the Strait of Malacca and Singapore. The side supporting this has argued that the busy Strait which more than 150-200 ships transit each day amounting to more than 70,000 ships annually, is at risk from navigational hazards, particularly from tankers which may accidentally collide or go aground, or intentionally pump bilges that could harm its fragile environment. Therefore, the supporting side contends a Particularly Sensitive Sea Area (PSSA) proposal should be made to the International Maritime Organization (IMO), following the path of Australia and Papua New Guinea in the Torres Strait.²⁴⁸ The opposing side protests that this plan undermines the transit passage regime under the LOSC provision that vessels and aircraft of all flags may exercise the right of transit passage while navigating through straits used for international navigation. While Singapore may refuse to apply for the designation of the Strait of Singapore as a PSSA, Indonesia and Malaysia might continue and propose it as they are very concerned about protecting and preserving the marine environment.²⁴⁹ Although it is still unclear about the next step of this proposal, Thailand, a littoral State to the Strait, must carefully consider this issue as Thailand depends heavily on imports and exports transiting through the Strait. Hence, Thailand needs to balance between the compulsory pilotage system that would inevitably increase shipping cost and the protection of the marine environment in its EEZ that lies in the northern part of the Strait of Malacca.

4.2 POLICIES AND IMPLEMENTATIONS

As Thailand emerges with strong interests in the maritime sector because a large portion of its national prosperity and security is derived from maritime related industries such as marine fisheries, oil and gas, international trade, and coastal tourism, the country has come to believe that the key to a successful exploitation of oceans is sound governance at the national level and effective implementation at the operational level.

²⁴⁸ See Aldo Chircop, 'The Regulation of Marine Transportation and Integrated Coastal Management', in Myron H. Nordquist, John Norton Moore and Kuen-chen Fu, eds., *Recent Development in the Law of the Sea and China*, Massachusetts: Martinus Nijhoff Publishers, 2006, p. 75. Several PSSAs have been designated by the IMO, including the Great Barrier Reef, Sabana-Camaguey Archipelago, Wadden Sea, Florida Keys, Malpelo Island off Colombia, Paracas National Reserve in Peru, and Western European Waters consisting of large portions of the EEZs of Belgium, France, Ireland, Portugal, Spain and the United Kingdom.

²⁴⁹ Mohd Hazmi bin Mohd Rusli, 'The Application of Compulsory Pilotage in Straits Used for International Navigation: A Study of the Strait of Malacca and Singapore', *Asian Politics and Policy*, vol. 3, no. 4, Wiley Periodicals, Inc., 230, pp. 501-26.

4.2.1 The Maritime Policy?

Since there is no single appointed Government organization responsible for the country's overarching maritime policy, there is no such thing as "Thailand's Maritime Policy." However, each Government organization has attempted to formulate its own plan by combining two mainstream policies, the National Economic and Social Development Plans and the National Security Policies which are formulated by National Economic and Social Development Board and National Security Board, both headed by the Prime Minister. Almost a half century since it launched the first national economic and social development plan in 1961, the focus of development has changed according to the environment from economic growth, to development of economic structure, to people-centered development, and then lately to a self-sufficiency economy philosophy.²⁵⁰ However, the past ten plans largely describe general directions to develop the country as a whole, they do not specifically provide guidelines for maritime sector development. Although they acknowledge the benefit of the oceans, there was no section in the plans addressing the use of the oceans. Some might mistakenly believe that increasing activities in the maritime domain that have brought prosperity to the country are a result of the plans, but it is instead the result of each ministry performing its own duties and tasks. National security policies are different because it is clear that the realm of the military is divided into land, sea, and air components. The development of the navy reflects the intent to defend the country in the oceans. However, as the maritime environment becomes more complex that requires cooperation with other Government departments outside of the ministry of defense. Things have become more complicated. It is obvious that Thailand's maritime policies are sector-based, but the country needs one solid policy addressing the exploitation and protection of the oceans.

4.2.2 Implementations for Protection of Maritime Interests

With regard to the implementation of Government policies, Thailand relies on a number of agencies to coordinate and cooperate at sea. In terms of maritime defense, the RTN is the primary agency to fight sea battles and to operate in a joint operational environment with the army, air force and other defensive mechanisms if necessary. Throughout the twentieth century the Government has authorized the navy to procure a large number of frigates, jet aircraft and

²⁵⁰ The Tenth National Economic and Social Development Plan (2007-2011), Bangkok, pp. 1-2.

helicopters including *HTMS Chakri Naruebet*, a 11,500 tonne helicopter carrier to execute its mission as laid down in the Constitution and to comply with the national security policy and ministry of defense policy. By the beginning of the twenty-first century, the RTN has become a balanced naval force within the region capable of defending the country with some capability of power projection. Currently the navy is in a process of procuring submarines and amphibious landing platform docks to strengthen underwater capability and more power projection capability.

In term of safety and security at sea, Thailand, like many nations whose navies are a key player at sea, the RTN has been empowered with 28 domestics maritime laws including the fisheries Act, Vessel Act, and Customs Act.²⁵¹ Therefore, the navy is entrusted with constabulary duties such as safety and security at sea, maritime law enforcement, and protection of the coastal environment. Since a number of Government agencies such as the RTN, Marine Police, the Department of Fisheries, the Marine Department, the Customs Department, and the Department of Marine and Coastal Resources, and the Department of Environment are responsible for various aspects of maritime duties in the same area of operation, in 1997 the Government established a coordination center. This center is called Thailand Maritime Enforcement Coordinating Center (THAI-MECC) and manages all maritime affairs, coordinating the activities of the relevant agencies in order to prevent duplication of operations and to ensure continued exchange of information.²⁵² The RTN is the main coordinator.

This sectoral management principally involves six maritime agencies—the RTN, the Marine Police, the Department of Fisheries, the Marine Department, the Customs Department, and the Department of Marine and Coastal Resources—but also includes other agencies totaling nearly 20 organizations with some 200 ships and boats. However, even though a large amount of resources were allocated to these operations, it was found that the involvement of multiple agencies has resulted in overlapping functions, overlapping jurisdiction, ineffective coordination and inefficient use of resources, as well as competition in asset procurement. The Government undertook a feasibility study in 2008 to determine whether it is viable to form a coastguard.²⁵³ In

²⁵¹ Somjade Kongrawd, Captain RTN, *Security Maritime Law: Driven Force for Seapower Development*, Bangkok, 2011, p. 18, (in Thai).

²⁵² Thailand Maritime Enforcement Coordinating Center, Bangkok, 2006, p. 5, (in Thai).

²⁵³ *Supra*, note 6, p. 7.

2009, the study found that it is necessary and feasible to form a new maritime agency under the navy or a separate coast guard in the near future for better operations, but the details have to be carefully worked out. Meanwhile the upgrade of THAI-MECC is urgent and the feasibility study team has been tasked to monitor and provide further recommendations in the near future.²⁵⁴ It is obvious that the establishment of a Thai Royal Coast Guard will not happen soon. Apart from the military role, the navy will therefore have to continue to perform its constabulary role in the near future, perhaps indefinitely.

²⁵⁴ Office of National Security Council, *Assessment of Feasibility Study for Establishment of Royal Thai Coast Guard*, 2010, (in Thai).

PART III: BEYOND RATIFICATION – TOWARDS THE FUTURE

CHAPTER 5: IMPLICATIONS FOR THE ROYAL THAI NAVY

5.1 IMPACT ON ROLES AND ACTIVITIES

As laid down in the Constitution and the Organization of Ministry of Defense Act, the RTN is entrusted with maintaining the sovereignty and integrity of the country in the maritime domain, protecting maritime interests, and supporting national development.²⁵⁵ It has formulated this responsibility by organizing around three specific roles: military, constabulary, and diplomacy.²⁵⁶ While the constabulary and the diplomatic roles are strategically important for maintaining the security and integrity of the country in the maritime environment, the military role—the fundamental ability is to defend sovereignty from maritime threats—is its ultimate goal for the RTN. Decree

5.1.1 Military

Military role is defined as the responsibility of the navy to swiftly use its force to win naval battles in order to defend the country's sovereignty as well as to control situations or threats that may affect stability of the country. This includes all kind of military operations ranging from maritime surveillance, intelligence collection, logistics at sea, sea denial, naval blockade, sea control, projection of power, and so forth.²⁵⁷ Although a number of provisions of the LOSC address rights and duties of warships and craft within maritime zones, they generally aim to provide a rule of law that regulates uses of the oceans in times of peace. It was clear that the UNCLOS III concurred to avoid negotiation of the rules applicable to military operations on the seas.²⁵⁸ Therefore, military operations in time of war or conflicts are mostly irrelevant to the Convention. Instead, the military role of the navy falls under the supervision of the Law of War or the Law of Armed Conflict and the Law of Neutrality.²⁵⁹

²⁵⁵ See Constitution of the Kingdom of Thailand, B.E. 2550 (2007), art. 77. Available at <http://www.isaanlawyers.com/constitution%20thailand%202007%20-%202550.pdf>. See also Organization of Ministry of Defense Act, 2008, art. 20. Available at <http://www.rtaf.mi.th/mission/mod2551.pdf>, (in Thai).

²⁵⁶ Royal Thai Navy, *Commander in Chief Directive*, 2011, (in Thai).

²⁵⁷ Royal Thai Navy, *Maritime Doctrine-Royal Thai Navy*, 2003, p. 73, (in Thai).

²⁵⁸ *Supra*, note 79, p. 421.

²⁵⁹ *Ibid.*, p. 422.

5.1.2 Constabulary

The LOSC has divided the ocean into a number of regimes that balance the rights of coastal States regarding the resources and jurisdiction of the sea against the interests of other States for equitable access to those resources and the protection of navigational freedom.²⁶⁰ Although it signed the Convention, but did not ratify it until 2011, it has however accepted the obligation under the Convention by not acting against the Convention and taking further steps by enacting its domestic laws in order to comply with the Convention during nearly 30 years. Since 1959, Thailand had accordingly established its historic bay, defined straight baselines, declared and amended four regimes—territorial sea, contiguous zone, exclusive economic zone and continental shelf—as well as recognized the high seas and many other State's maritime zones that comply with the LOSC.

Within the country, since the RTN is the principal agency in the maritime domain, the Government also empowered the navy for its constabulary role. For over a half century the navy has supported other maritime agencies in surveillance and enforcement of Thailand's sovereign rights in Thailand's maritime zones. The RTN works with other maritime agencies to enforce 28 domestic laws, such as The Thai Vessels Act B.E. 2481, the Navigation in Thai Waters Act B.E. 2456, the Fisheries Act, the Customs Act, and the Migration Act.²⁶¹ Since the provision of the LOSC gives coastal States the right to protect the environment in their EEZs, Thailand is considering implementing law that might lead to the passing of a new Environmental Act for its EEZ. Then the question arises, what agency should be responsible for enforcement of this coming law? Other maritime agencies do not own large vessels. It is only the navy that possesses offshore capability. At this point it is likely the navy will be empowered with a new Environmental Act for the EEZ and other new relevant laws in the near future.²⁶²

While piracy is a universal crime at sea,²⁶³ the RTN has long been entrusted with the responsibility to ensure the safe passage. With increasingly domestic demand for protection of

²⁶⁰ John Norton Moore, in Conversation with the Author, University of Virginia, 30 June 2011.

²⁶¹ Office of the Naval Judge Advocate General, *Maritime Laws for Naval Officers*, 2010, pp. 1-2, (in Thai).

²⁶² Center of Naval Strategic Studies, Report, Seminar on 'Becoming a State Party to 1982 Law of the Sea Convention', Bangkok, 26 June 2008.

²⁶³ See James Kraska, 'Developing Piracy Policy for the National Strategy for Maritime Security', in Myron H. Nordquist, Rudiger Wolfrum, John Norton Moore and Ronan Long, eds., *Legal Challenges in Maritime Security*, Massachusetts: Martinus Nijhoff Publishers, 2008, p. 333. Piracy affects all nations and enforcement against piracy is a right and a duty

the Thai fishing fleets and international invitations to join counter-piracy operations in the Gulf of Aden and surrounding areas, the navy has deployed a task force in the Gulf to provide security for Thai fishermen and their assets while they are fishing in the region as well as provide security for other commercial vessels traveling through risky waters.²⁶⁴ With regard to the Strait of Malacca, the navy also regularly monitors and patrols the northern part of the Strait of Malacca and joins a coordinated patrol with three other littoral States. Similar to the task force in the Gulf of Aden, this operation aims to suppress piracy in the area, making sure that the Strait is safe for international use and conducive to international commerce, especially the import of energy and export of goods and products. This type of policing duty will increase the demand for law of the sea involvement and compliance. Hence the ratification of the LOSC will absolutely increase the constabulary role and activities of the RTN.

5.1.3 Diplomacy

Warships are important symbols of a State's national power, and have the mobility, flexibility, and reach to convey messages and influence events overseas in support of a nation's foreign policy.²⁶⁵ It offers the Government a wide range of policy options that they may choose to exploit in order to defend national interests with a cost-effective means.²⁶⁶ Unlike the army that must be on the territory of some country, the navy can be used to exercise *Naval Presence* in the waters of other countries in accordance with the LOSC. It may be only "showing the flag," demonstrating a nation's concern and interest in another region, or including the threatened application of another of the naval missions, especially the threat of some sort of projection of power ashore. As such, it can be used in attempts to sway the policies of other countries.²⁶⁷ Similar to other types of vessels, warships enjoy the rights of innocent passage in the territorial sea, archipelagic sea lanes passage in archipelagic waters, transit passage through international straits, and freedom of navigation in exclusive economic zones and the high seas. Like many navies, the RTN plays a diplomatic role supporting the Government's foreign policy, sometimes

shared by all States. See also *Lloyd's List*, 05 December 2007 (No.59, 562), p 21. International law has long accorded a unique status to pirates by deeming them criminals subject to universal jurisdiction.

²⁶⁴ Royal Thai Navy Counter Piracy Task Unit, 'Background', retrieved from <http://rtncptu.fleetpx.com/>, (in Thai).

²⁶⁵ Geoffrey Till, *Maritime Strategy and the Nuclear Age*, 2nd ed., London: MacMillan Press, 1982, pp. 209-12.

²⁶⁶ Geoffrey Till, *Sea Power: A Guide for the Twenty-First Century*, 2nd ed., London: Routledge, 2009, p. 260.

²⁶⁷ Mark W. Janis, *Sea Power and the Law of the Sea: Studies in Marine Affairs*, Massachusetts: Lexington Books, 1976, pp. 2-3.

by demonstrating force in order to support negotiations when disputes arise or under other circumstances that have direct impact on national interests.

Despite the fact that warships have immunity from some restrictions,²⁶⁸ when it comes to transiting through other States' waters, some coastal States assert more restrictions on warships. Article 19 of the LOSC clearly contends that the navy may exercise the right of innocent passage as long as its activities are not prejudicial to the peace, good order or security of the coastal State such as practicing weapons, launching and landing aircraft and devices, and interfering with communication systems within a foreign territorial sea.²⁶⁹ Article 58 specifies the rights of other States to navigate through coastal States' EEZ as long as there is due regard to the rights and duties of the coastal States (of which details will be discussed in the next section). Although Thailand is a peaceful nation, if necessary it will not hesitate to exercise naval diplomacy to support foreign affairs, especially when it comes to national interests.

5.2 IMPACT ON NAVIGATIONAL FREEDOM

5.2.1 Extensive Discussion during UNCLOS III

History has shown that traditional law of the sea was largely the creation of the British Navy in the first quarter of the nineteenth century. Since then, freedom of the seas, or in other words the philosophy of *Mare Liberum*, had been broadly asserted and generally practiced for another hundred years. During that time all ocean users including the navies had enjoyed sailing freely on oceans, only within a narrow band of 3 nm territorial sea that coastal States might put some enforcement on merchant ships and legal constraints on mobility of warships.²⁷⁰ Most of the oceans were thus free for use by all nations; freedom of navigation was subsequently widely recognized and accepted. It was however the quest for economic resources that upset this favorable ocean order for traditional activities, particularly the mobility of naval forces. Coastal States wishing to take advantage of potential resources from their adjacent seas had sought to keep foreign navies far away from their shores, beginning with the *Cannon-Shot Rule* in the early

²⁶⁸ *Supra*, note 100, art. 32.

²⁶⁹ *Supra*, note 100, art. 19.

²⁷⁰ *Supra*, note 67, p. xiv.

of seventeenth century. Around eight decades ago, at The Hague conference of 1930, there was an attempt to codify the law of the sea by putting freedoms of the high seas and the 3 nm territorial sea in term of treaty, but it failed. Twenty eight years later, at the 1958 UNCLOS I, another attempt to settle the outstanding disputes among States over coastal rights and freedoms of the high seas was also unsuccessful. Most importantly, it failed to reach an agreement on the breadth of territorial sea. The UNCLOS II in 1960 was again unable to adopt a joint United States and Canadian proposal for a 6 nm territorial sea coupled with an additional 6 nm contiguous zone. As a consequence, a balance between navigational freedom of warships mostly protected by major naval powers and some limitations on naval activities proposed by some coastal States, as well as that of merchant vessels, remained unsettled. Therefore, it was no surprise that this particular issue became one of the most controversial debates during the next law of the sea conference, the UNCLOS III.

5.2.1.1 Protecting Navigational Freedom of Warships

For the same reason that Britain dominated the nineteenth century, the United States has utilized its capable naval force and sea-trade to become the center of the world's international system in the second half of twentieth century.²⁷¹ Depending greatly on secured sea lanes of communication for maritime commerce and navigable access to project its naval power, the United States Navy is the most effective tool to ensure freedom of navigation through straits and along coasts.²⁷² Its stance on free transit through straits is often shown overtly and once again was reemphasized at the Caracas session of the UNCLOS III in 1974. As Moore, the United States Chairman of National Security Council Inter-Agency Task Force on the Law of the Sea, put it:

The United States delegation has stated on numerous occasions the central importance that we attach to a satisfactory treaty regime of unimpeded transit through and over straits used for international navigation. Indeed, for States bordering as well as States

²⁷¹ George Friedman, *The Next 100 Years: A Forecast for the 21st Century*, New York: Doubleday, 2009, pp. 4-5.

²⁷² Scott G. Borgerson, 'The National Interest and the Law of the Sea', *Council on Foreign Relations*, Special Report No. 46 (May 2009), p. 14.

whose ships and aircraft transit such straits, there could not be a successful Law of the Sea Conference unless this question is satisfactorily resolved.²⁷³

With regard to the transit along coasts, Stevenson, the Chairman of United States delegation, emphasized that his country's acceptance of a 200 nm EEZ was strictly contingent upon the recognition of the preservation of high seas freedoms for non-resource uses, and at the same time expressed great concerns about EEZ creeping into a 200 nm territorial sea over times:

His delegation, which was willing to support a 200-mile economic zone as part of an over-all acceptable convention, wished to make some preliminary comments on document A/CONF.62/L.4 which dealt with the economic zone. That zone was a new concept designed to reconcile the primary interests of the coastal State in resources with the primary interests of all States in navigation and other uses.

While his delegation would welcome comments on its proposals for the economic zone, it could not negotiate in the face of conceptual arguments that any particular idea was incompatible with the "essential character" of the zone. One of the most serious restraints in the history of the law of the sea on the expansion of coastal State jurisdiction over resources had been the concern that that jurisdiction would, with time, become territorial in character.²⁷⁴

With its large and capable fleet of submarines, surface forces, naval air arm, and the world's largest fishing fleet, the Soviet Union shared the same concerns over transit through straits and transit along coasts during the negotiation at the UNCLOS III with the United States.²⁷⁵ When the early round of conference commenced, it was the same time that the Soviet Navy was entrusted to carried out three specific roles; defense of the homeland, sea denial, and naval presence.²⁷⁶ Similar to the United States Navy, the Soviet Navy had the same desire, or perhaps even more, for freedom of navigation through straits since three of its four fleets—except the Northern Fleet—have no strait-free route to the high seas. The Black Sea Fleet must sail through the Turkish straits to reach the Mediterranean and then the straits of Gibraltar to

²⁷³ United States Department of State, Press Release, 22 July 1974, p. 1. Cited in 67, p. 16.

²⁷⁴ United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea* (A/CONF.62/C.2/SR.24), vol. II, 1 August 1974, p. 190.

²⁷⁵ *Supra*, note 67, p. 29.

²⁷⁶ Sergey G. Gorshkov, Admiral Soviet Navy, 'Navies in War and in Peace', *Morskoy Sbornik*, 1972-1973, translated in *Naval Institute Proceedings* 100 (November 1974), p. 55-60.

reach the Atlantic or Suez to reach the Indian Ocean. The Baltic Fleet must sail through the Danish straits to reach the North Sea and then through Dover or through the Britain/Norway gap to reach the Atlantic, whereas most of the Pacific Fleet must sail through the straits of the Sea of Japan to reach the Pacific.²⁷⁷

To avoid its navy being hampered by restrictions on the freedom of navigation created by the LOSC, the Soviet Union promoted free transit through international straits as Kolosovsky, the head of the Soviet delegation, made this declaration before the Second Committee in 1974 at Caracas:

The USSR recognized the need to protect the security of coastal States bordering on straits used for international navigation between one part of the high sea and another, but it also believed that the security and other interests of countries that used those straits, which comprised the majority, should also be taken into account. The security of the USSR depended upon communications by sea and through straits. Consequently, his delegation could not agree that matters relating to navigation through straits used for international navigation admitted unilateral solutions. Attempts to modify the traditional regime or to limit transit through those straits were against the interests of the international community.²⁷⁸

The Soviet Union also considered that innocent passage regimes for international straits would not be adequate for its purposes as Khlestov of the Soviet delegation made an earlier statement to the Seabed Committee in 1972 as follow:

It was hardly possible to claim that a regime of innocent passage would suffice for international straits. Experience in recent years had shown that the regime was sometimes interpreted in different ways; it might result in attempts by States to regulate the passage of ships unilaterally and to obstruct freedom of navigation. In practice, control of those important straits would be in the hands of a small group of States, which would be prejudicial not only to international navigation but also to the entire international community.²⁷⁹

²⁷⁷ *Supra*, note 67, p. 25.

²⁷⁸ United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea* (A/CONF.62/C.2/SR.12), vol. II, 22 July 1974, p. 127.

²⁷⁹ United Nations, *Permanent Sea-Bed Committee Records* (A/AC.138/SR.83), 1972, p. 71. Cited in 67, p. 31.

As did the United States, the Soviet Union agreed to accept 200 nm EEZ, but also made it clear that such zone was strictly contingent upon the preservation of freedoms of the high sea for non-resource uses. Kolosovsky explained the following to the Second Committee at Caracas:

His delegation wished to point out that the granting of sovereign rights in the economic zone to the coastal State was not equivalent to the granting of territorial sovereignty and must in no way interfere with the other lawful activities of States on the high seas, especially with international maritime communications. The convention must state clearly that the rights of the coastal State in the economic zone must be exercised without prejudice to the rights of any other State recognized in international law, including the freedoms of navigation, overflight and the laying of cables and pipelines, and the freedom of scientific research not connected with the exploration and exploitation of the living and mineral resources of the economic zone.²⁸⁰

Although the British naval power has diminished considerably since the end of World War II, it has still depended heavily on the freedoms of navigation to execute its war-fighting mission as well as to protect commercial sea trade. Since the country is an island and 98.5 percent of its trade was seaborne, any disruption to the British's sea transport would therefore harm its economy more than those of continental or more self-sufficient countries. This position for freedom of navigation of the British Navy was largely supported by other Governmental agencies such as the Foreign Office and the Department of Trade²⁸¹ which afterward reflected at the UNCLOS III as Ennals of the British delegation stated:

Like many of the other nations represented at the Conference his country had defence commitments which must not be imperilled. It was concerned not only with the defence of British interests, but with the fulfilment of its obligations to other nations in the areas of the Mediterranean and the North Atlantic, the Persian Gulf, the Indian Ocean and the Pacific. Those interests, like those of other countries, required the freedom of navigation and overflight.²⁸²

²⁸⁰ United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea* (A/CONF.62/C.2/SR.28), vol. II, 6 August 1974, p. 221.

²⁸¹ *Supra*, note 67, pp. 43-4.

²⁸² United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea* (A/CONF.62/SR.29), vol. II, 4 July 1974, p. 111.

Not only the major naval powers had concerns about free transit through straits and along coasts, but also for States with weaker coastal navies, particular with geographical disadvantage status like Thailand, shared the same concern. As Panupong of the Thai delegation presented to the Second Committee at Caracas in hopes that the outcome of the conference would promote passage through straits and passage along another State's coasts and passage through the waters of archipelagic States.²⁸³

[s]uch as Thailand, which were enclosed by waters of archipelagic States. First, there was the problem of communication and access to the open ocean space. The proposals for international navigation did indeed provide for innocent passage through designated sea lanes. On the other hand, the enclosed countries needed passage through the waters of archipelagic States, not only to engage in international navigation or trade, but to enable them to reach the open sea for other purposes as well, or to communicate with other parts of their territories.²⁸⁴

5.2.1.2 Limiting Mobility of Naval Forces

Whilst the major naval powers wished to keep most parts of the oceans open for warships, many coastal navy States, on the other hand, had an opposing standpoint. They viewed that the presence of foreign naval power in the regions would inevitably pose a threat to them. The difference between these two opposing concepts was clearly seen during the negotiation at the UNCLOS III. In the debate at Caracas on the issue of straits, the three opening statements made by coastal States bordering straits—Spain on Gibraltar, Iran on Hormuz, and Denmark on the Danish straits proposed that some form of innocent passage regime for straits be established, but did not make any distinction between the passage of merchant vessels and that of naval forces through the straits.²⁸⁵ However, De Alwis of Sri Lankan delegation made a declaration distinguished between the two that favored free transit for merchant ships but treated the passage of warships more suspiciously:

His delegation considered that a distinction should be made between the passage of merchant vessels and that of warships. As a developing country with an export-import

²⁸³ *Supra*, note 67, p. xiv-xvi.

²⁸⁴ United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea (A/CONF.62/C.2/SR.36)*, vol. II, 12 August 1974, p. 265.

²⁸⁵ *Supra*, note 67, p. 65.

economy, desirous of increasing its share in an expanding world trade, Sri Lanka supported the view that it was in the interests of the world economy that passage of merchant vessels should be unimpeded except in circumstances such as *force majeure* or navigational hazards, and that the right to transit passage should be recognized for all ships without discrimination as to flag, point of origin or destination.

On the other hand [...] Sri Lanka, which was committed to a nuclear-free zone and to zones of peace, obviously could not advocate or encourage the passage of foreign warships.²⁸⁶

Warioba of the Tanzania delegation similarly emphasized the difference between merchant ships performing international duties—which their passage should not be hampered in any way—and warships performing national duties—which were used to further the foreign policies of some States and should therefore give notification prior to passing through a strait.²⁸⁷ Furthermore, Ling Ching of the Chinese delegation strongly stated that free transit of straits by military vessels could not be acceptable in the law of the sea treaty since it was nothing more than a superpower plot to carry out an expansionist policy of world hegemony, and suspected such naval interests of any naval power as a threat to the world's security:

That super-Power was also peddling its claim for free passage of warships through straits under the label of safeguarding collective security. But it had substantially increased its fleet in the Mediterranean and in the Indian Ocean, thus directly threatening the security of the countries in those regions, infringing their sovereignty and interfering in their internal affairs. That action could in no way be described as a measure of collective security; on the contrary it had greatly aggravated insecurity in the world.²⁸⁸

Later on during the negotiations, Oman, Spain, Algeria, Nigeria, Albania, Kuwait, and Yemen all supported draft articles prepared by Malaysia, Morocco, Oman, and Yemen, which maintained innocent passage regimes at least partly on the grounds that they would give coastal

²⁸⁶ United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea* (A/CONF.62/C.2/SR.11), vol. II, 22 July 1974, p. 126.

²⁸⁷ United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea* (A/CONF.62/C.2/SR.12), vol. II, 22 July 1974, p. 129.

²⁸⁸ United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea* (A/CONF.62/C.2/SR.13), vol. II, 23 July 1974, p. 134.

States better legal justification for regulating the passage of foreign warships.²⁸⁹ With regard to transit along the coasts, as Janis put in his book *Sea Power and the Law of the Sea*, there was not much concern by coastal navy States displayed at the conference as with naval passage through straits. “Insofar as there was a clash between the maritime powers and the coastal States, it dealt with economic issues” and “most seem willing to trade transit rights for the right of the coastal State to control economic exploitation in the 200-mile zone.”²⁹⁰ He further pointed out that economic development was a driven force of the settled outcome, and predicted a possibility of troublesome in the future as follows:

At the Law of the Sea Conference, the coastal navy States are more interested in securing the economic resources of the 200-mile zone than in pushing the naval operations of the maritime powers that far from their shores. This is a result not only of the high priority given to economic development by most States, but also of the sentiment that most of the naval activities of the maritime powers are directly toward each other and do not directly challenge the sovereignty of coastal countries. Once the economic issues of the oceans are better settled, however, it is likely that the national security interests of the coastal navy States will reemerge.²⁹¹

As Janis anticipated, at the closing plenary session of the UNCLOS III, Thompson-Flores, a Brazilian representative, made the following statement indicating his country’s concern about national security interests and its willingness to prohibit certain naval operations by foreign States in the EEZ unless consent is obtained from its capital:

It is our understanding that the provisions of article 301, which prohibit the threat or use of force on the sea against the territorial integrity or independence of any State, apply particularly to the maritime areas under the sovereignty or jurisdiction of the coastal State. In other words, we understand that the navigation facilities accorded third world countries within the exclusive economic zone cannot in any way be utilized for activities that imply the threat or use of force against the coastal State. More specifically, it is Brazil’s understanding that the provisions of the Convention do not authorize other States to carry out military exercises or manoeuvres within the

²⁸⁹ *Supra*, note 67, pp. 65-7.

²⁹⁰ *Ibid.*, pp. 68-9.

²⁹¹ *Ibid.*, p. 70.

exclusive economic zone, particularly when these activities involve the use of weapons or explosives, without the prior knowledge and consent of the coastal State.²⁹²

5.2.2 General Contemporary Practices by States

Claims for ownership of some part of the ocean, or in case of the *Treaty of Tordesillas* which claims over the whole ocean, have been observed since the Roman time. Even after the LOSC was codified, adopted, opened for signature and accession, and eventually entered into force in 1994, an extraordinary work titled *Excessive Maritime Claims* by Roach and Smith still indicated that more than 80 coastal States had asserted various maritime claims that threatened the rights of other States to fairly use the oceans.²⁹³ These claims, inconsistent with the 1982 LOSC, were categorized into 11 groups. One of these groups having immediate impact on the RTN role and activities is the group of claims that does not permit foreign military exercises in the EEZ.

5.2.1.1 Restricting Foreign Naval Activities in EEZ by Some States

The LOSC establishes the EEZ as a zone of shared rights and responsibilities, where the rights and jurisdiction of the coastal State over living and non-living resources are balanced with the freedom of navigation and lawful use by other States. However, the word *due regard*, in Article 56 stating “the coastal State shall have *due regard* to the rights and duties of other States” and in Article 58 stating “States shall have *due regard* to the rights and duties of the coastal State,” created different interpretations between States.²⁹⁴ Although most EEZ claims submitted to the UN are generally consistent with the Convention’s provisions relating to navigational freedoms, about 20 of over 85 countries claims permit imprisonment for fisheries violations which was contrary to the expression provision of the LOSC.²⁹⁵ However, less than 15 States, have declared some restrictions for warships, specifically military exercises or maneuvers, when transiting through their EEZs.²⁹⁶

²⁹² United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea* (A/CONF.62/SR.187), vol. XVII., 7 December 1982, p. 40.

²⁹³ Ashley J. Roach and Robert W. Smith, *Excessive Maritime Claims*, New York: Williams S. Hein & Co. Inc., 1994, p. 11.

²⁹⁴ *Supra*, note 100, art. 56 and 58.

²⁹⁵ *Supra*, note 293, p. 14.

²⁹⁶ *Supra*, note 57, p. 303.

Take Brazil, the most powerful proponent of coastal State security interests in the EEZ for the first example. To certify its position previously expressed by the end of the UNCLOS III on the restriction of military exercises or maneuver in its EEZ, Brazil issued a declaration when signing the Convention on 10 December 1982 and another declaration when ratifying the Convention on 22 December 1988 stating:

The Brazilian Government understands that the provisions of the Convention do not authorize other States to carry out **military exercises or manoeuvres, in particular those involving the use of weapons or explosives**, in the exclusive economic zone without the consent of the coastal State.²⁹⁷

India, a rising power, is another example of national security concerns raised by foreign warships in the EEZ. It claims authority to constrain military activities by foreign naval forces in the EEZ. Unless an approval is authorized, military exercises or maneuvers are not considered complying with the provisions of the LOSC. The declaration was put in writing as:

The Government of the Republic of India understands that the provisions of the Convention do not authorize other States to carry out in the exclusive economic zone and on the continental shelf **military exercises or manoeuvres, in particular those involving the use of weapons or explosives** without the consent of the coastal State.²⁹⁸

Similar to Brazil and India, Malaysia has made official statements about EEZ contending that military activities, particularly the use of weapons by foreign forces, are not permitted in the EEZ without consent of the Government:

The Malaysian Government also understands that the provisions of the Convention do not authorize other States to carry out **military exercises or manoeuvres, in particular those involving the use of weapons or explosives** in the exclusive economic zone without the consent of the coastal State.²⁹⁹

²⁹⁷ Brazil's Declaration Made upon Ratification (10 December 1982). Available at http://www.un.org/depts/los/convention_agreements/convention_declarations.htm#Brazil Upon ratification.

²⁹⁸ India's Declaration Made upon Ratification (29 June 1995). Available at http://www.un.org/depts/los/convention_agreements/convention_declarations.htm#India Declaration made upon ratification.

²⁹⁹ Malaysia's Declaration Made upon Ratification (14 October 1996). Available at http://www.un.org/depts/los/convention_agreements/convention_declarations.htm#Malaysia Upon ratification.

These three example States view some types of military activities such as military exercises and maneuvers, particularly those involving the use of weapons or explosives, as threatening their national security. Similar declarations have been filed by Bangladesh, Cape Verde, China, Iran, Kenya, Pakistan, Peru and Uruguay.³⁰⁰ Although the term *military activities* is not defined by the LOSC, it is generally accepted by many States that they include task force maneuverings, launch and recovery of aircraft, operation of military devices, intelligence collection, weapon exercises, ordnance testing and military surveys.³⁰¹ Some of these activities, such as massive weapon exercises, ordnance testing and military surveys, could, to some extent, be viewed as a threat to coastal States, but other activities such as task force maneuvering, launch and recovery of aircraft, operation of military devices, intelligence collection, and exercises are typically *Normal Modes of Operation* for modern warships today. When warships operate at sea, they normally form a task unit, task group, or task force in order to provide mutual support for each other. They will customarily get underway in formation, launch and recover aircraft, deploy military devices, collect data and regularly conduct exercises including live firing for readiness. If a coastal State prohibits military exercises or maneuvers in its EEZ, it could only be interpreted that *Normal Modes of Operation* by warships in its EEZs are not peaceful; and navigational freedom of warships must be restricted.

5.2.1.2 Promoting *Normal Modes of Operation* in EEZ

In countering effort to reemphasize its understanding that the provision under the LOSC does not allow coastal States to prohibit military exercises or maneuvers in the EEZ, the United States responded to the Brazilian declaration for such prohibition of naval activities by stating:

This concept, as set forth in the Convention, recognizes the interest of the coastal State in the resources of the zone and authorizes it to assert jurisdiction over resource-related activities therein. At the same time, all States continue to enjoy in the zone traditional high seas freedoms of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, which remain qualitatively and quantitatively the same as those freedoms when exercised seaward of the zone. Military operations, exercises and activities have

³⁰⁰ *Supra*, note 57, p. 303.

³⁰¹ Ashley J. Roach and Robert W. Smith, *United States Responses to Excessive Maritime Claims*, 2nd ed., London: Martinus Nijhoff Publishers, 1996, p. 427.

always been regarded as internationally lawful uses of the sea. The right to conduct such activities will continue to be enjoyed by all States in the exclusive economic zone. This is the import of article 58 of the Convention³⁰²

Germany, Italy and the Netherlands joined the United States to clarify their positions on military exercises and maneuvers in the EEZ that the rights and jurisdiction of the coastal States in such a zone do not include the right to obtain notification of military exercises or maneuvers or to authorize them.³⁰³ In 1997, Britain made a declaration indicating in particular that weapons exercises of foreign States in EEZ of coastal States do not require consent:

The United Kingdom considers that declarations and statements not in conformity with articles 309 and 310 include, inter alia, the following: [...] those which are not in conformity with the provisions of the Convention relating to the exclusive economic zone or the continental shelf, including those which claim coastal State jurisdiction over all installations and structures in the exclusive economic zone or on the continental shelf, and those which purport to require consent for exercises or manoeuvres (including weapons exercises) in those areas.³⁰⁴

However, the United States viewed that the LOSC and declarations by those who were in favor of navigational freedoms of warships through diplomatic channels alone was insufficient to constitute customary international law of the sea. As several coastal States still maintain maritime claims considered excessive when measured against the Convention, it believes that unchallenged excessive maritime claims may, in time, become valid through acquiescence. Although not yet a party, it is necessary for the United States to protest excessive coastal claims and to exercise their navigation and overflight rights through the *Freedom of Navigation Program* in those concerned regions.³⁰⁵ Realizing that acquiescence in excessive claims may allow States to develop their practices into customary international law.³⁰⁶ The program

³⁰² United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea* (A/CONF.62/WS/37 and Add.1-2), vol. XVII, Note by the Secretariat, 8 March 1983, p. 244.

³⁰³ Jon M. Van Dyke, 'Military Ships and Planes Operating in the Exclusive Economic Zone of Another Country', *Marine Policy*, 2004 Butterworth & Co (Publishers) Ltd, p. 30.

³⁰⁴ United Kingdom's Declaration Made upon Ratification (25 July 1997). Available at http://www.un.org/depts/los/convention_agreements/convention_declarations.htm#UK Upon accession.

³⁰⁵ United States Department of Defense, 'Freedom of Navigation', retrieved from http://www.dod.mil/execsec/adr95/appendix_i.html, dated 18 Dec 2011.

³⁰⁶ Horace B. Robertson, Jr., 'The Law of the Sea', in John Norton Moore and Robert F. Turner, 2nd ed., *National Security Law*, North Carolina: Carolina Academic Press, 2005, p. 728.

operated on a triple track, involving not only diplomatic representations and operational assertions, but also bilateral and multilateral consultations with other Governments, stressing the need for and obligation of all States to adhere to the customary international law rules and practices reflected in the LOSC.³⁰⁷ United States recognizes that all States have the right to conduct military activities within the EEZ, provided that they do so with due regard to the rights of the coastal State and other States. Appropriate activities include launching and landing of aircraft, operating military devices, intelligence collection, weapons exercises, and military survey, the *Normal Mode of Operations*.³⁰⁸

5.2.3 Thailand and the Freedom of Navigation

Freedom of navigation has long been one of the most crucial elements for Thailand since the early days of the country. Since traditional uses of the sea such as marine fisheries, coastal mining, and international trades depended heavily on transit freely within the vast oceans, it was imperative that Thailand ensure safe and open navigable passages for its people, for all purposes, and for all times. Realizing that the country would become a zone-locked State by the introduction of the EEZ and archipelagic concepts, the delegation of Thailand at the UNCLOS III had made efforts to protect these rights and freedoms.³⁰⁹ Panupong, Chairman of the Thai delegation, proposed that zone-locked States should have some sort of special privileges as geographically disadvantaged States similar to land-locked and archipelagic States:

In the first place, it was imperative for the countries concerned to have access to the open sea. The problem was different from and more complicated than that of the countries bordering on the open seas. Special consideration should therefore be given by the enclosing States and by the convention itself to the right of free passage for the enclosed States through the waters of the enclosing States, on the same lines as the right of free transit for land-locked States through the territories of coastal States. [...] and should be given special treatment in the international law of the sea, in the same way as the land-locked, archipelagic and other geographically disadvantaged States.³¹⁰

³⁰⁷ *Supra*, note 293, p. 4.

³⁰⁸ *Supra*, note 293, p. 249.

³⁰⁹ John Norton Moore, in Conversation with the Author, University of Virginia, 12 October 2011.

³¹⁰ United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea* (A/CONF.62/C.2/SR.38), vol. II, 13 August 1974, p. 275.

His concern was the passage through another countries' EEZ. With his delegation's willing to accept the 200 nm zone under some jurisdictional rights of the coastal State depended on the settlement of the problem—despite the fact that it would bring close to 36 percent of the total area of the sea come under national jurisdiction, 29 land-locked States gain practically nothing, close to 80 coastal States gain comparatively little, and only about 30 States representing less than one third of the countries of the world gain substantially—Panupong emphasized his standpoint on uninterrupted freedom of navigation and overflight. As he put it this way at Caracas in 1974:

His delegation considered the words “restrictions [...] resulting from the exercise by the coastal State [of its rights]” to be rather vague and, in that connexion, preferred the wording of article 2, paragraph 1, of document A/CONF.62/C.2/L.21, which recognized freedom of all States in the economic zone regarding navigation and overflight as well as laying of submarine cables and pipelines. Any restrictions should be strictly confined to those resulting from the exercise in good faith of the rights with regard to the exploration, exploitation and conservation of the resources of the sea; the exercise of those rights should not have the effect of obstructing or impeding sea or air international communication.³¹¹

Today, this perception is still true for Thailand, a country which has a two-ocean navy, without direct access to the high seas, and regularly relocates its naval force from the Gulf of Thailand to the Andaman Sea, or vice versa, and must navigate its warships through other States' EEZs. This also applies when a task force is deployed to the Gulf of Aden to protect the distant-fishing fleet, or increasingly, to other operations in other areas. The fact is that the RTN is no longer a coastal navy that can only operate close to its homeland, heavily rely on local ports for supplies, and deeply depend on the support of land-based guns and aircraft. With a helicopter carrier equipped with fighter jets and helicopters, auxiliary oiler replenishment vessels, a number of major warships, amphibious and mine squadrons, marines and special force, the RTN is currently capable of projecting naval power and operate far from its shores, and it needs freedom of navigation to do so as required.

³¹¹ United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea* (A/CONF.62/C.2/SR.24), vol. II, 1 August 1974, p. 192.



Figure 4: Example of RTN Warships Operating in Normal Mode³¹²

Interestingly, when Thailand deposited the instruments of ratification and accession to the Convention to the UN, it made a declaration stating that consent is required before some types of military activities could be conducted in Thailand's EEZ. It also indicated that *other activities* (unclearly defined) *which may affect the rights or interests* of Thailand to be prohibited in its EEZ:

The Government of the Kingdom of Thailand understands that, in the exclusive economic zone, enjoyment of the freedom of navigation in accordance with relevant provisions of the Convention excludes **any non-peaceful use** without the consent of the coastal State, in particular, **military exercises or other activities which may affect the rights or interests of the coastal State; and it also excludes the threat or use of force against the territorial integrity, political independence, peace or security of the coastal State.**³¹³

It could be understood that Thailand took the same approach in interpreting the word “*due regard*” in Article 58 as those countries which seek to restrict foreign military activities in their EEZs. With regard to a broader term “*other activities*,” Thailand might wish to propose in advanced that other types of naval activities that do not exist now, but could emerge in the near

³¹² Royal Thai Navy.

³¹³ *Supra*, note 8.

future through advances in technology, such as the change from the *Cannon-Shot Rule* from 3 nm to 12 nm territorial sea. However, the term “*other activities*” is too vague and difficult to define, meaning that if a situation occurs, the navy might not be able to decide by itself. Even if the navy identifies a foreign warship conducting activities which affect the interest of Thailand, the Thai navy could only ask the foreign warship to leave the area, the Ministry of Foreign Affairs could protest or condemn such activities, and the Government would need to submit another notification to the UN to make known that this activity is not acceptable to Thailand. By adding an unclearly defined term, Thailand signaled that it is willing to put more restrictions on foreign warships in Thailand’s EEZ. Besides, declaring that *the threat or use of force against the territorial integrity, political independence, peace or security of the coastal State is to be prohibited* is too obvious. At the same time, it was contradictory to the Thai navy’s diplomatic role as Thailand might use it to naval power to influence decision of other countries.

Theoretically, if Thailand begins to put restrictions on foreign warships in the Thai EEZ, foreign States will reciprocate or respond with the same or even more restrictions on Thai warships in their EEZs. If coastal States could pose some unjustified restrictions on Thai warships, they could also easily apply more restrictions on Thai distant-fishing boats and merchant vessels that are the life line of prosperity and security for the nation. As the country counts on the RTN to ensure secured sea lanes of communication for imports and exports, safe passage for fishing industry, and legitimacy to conduct naval diplomacy, it can therefore not be overemphasized that navigational freedom is strategically vital to the RTN’s roles and activities, as well as to the country of Thailand.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

Oceans and human history can be traced back some 4 billion years ago to when the first life on Earth began in the ancient seas. From microscopic to complex organisms, all life forms ultimately originated in the oceans. Not knowing that their existence sprang from it, ancient peoples were often reluctant to explore and take advantage of the vast but frequently dangerous expanses of water. While many stayed away from the oceans, others began to embrace this resource. After realizing the significance and benefits of the oceans, as the centuries passed humans returned to the seas for further exploration and exploitation. Having rushed to harvest whatever the seas have to offer, problems arose and humans fought wars against each other attempting to take possession of their respective parts of the oceans, and maritime powers were the ones who benefitted the most.

Driven by varying schools of thought, especially *Res Communis* vs. *Res Nullius* and later *Mare Liberum* vs. *Mare Clausum*, maritime powers, throughout history, relied on acts of naval aggression to enforce and support their respective views in order to rule the world's oceans. In the eyes of weaker powers this was unjust. Thus, a widely accepted international law that could fairly regulate and manage the use of the oceans as a whole has long been desired. Nevertheless, by the time a modern codification officially began in 1930, the differing approaches to oceans governance had already shifted the emphasis. The battling schools of thought have altered to revolve around the balance of the freedom of navigation and coastal jurisdiction until today.

During the negotiation, there was a struggle between groups of different interests, which maritime powers first appeared to dominate the negotiation. However, throughout the codification of the law process, the influence of maritime powers in making laws began to weaken following the 1930 Conference. Their monopoly on decision making decreased even further during the UNCLOS I, UNCLOS II, and UNCLOS III Conferences. From 1973 to 1982, the UNCLOS III resulted in the LOSC, a very unique international agreement concerning the use of the world's oceans, a so-called *Constitution for the Oceans*. This Convention—which strikes

a balance between freedom of navigation and coastal jurisdiction that both allows and limits States to take advantage of the oceans including the activities of naval force at sea—was adopted, signed, ratified, and came into force in 1994.

With its location in the center of Southeast Asia's mainland and its narrow peninsula between the Indian Ocean and South China Sea, Thailand is a desirable place for commercial and military purposes; not only for the country, but also for major powers. Its maritime geography and features, which are rich in natural living and non-living resources have already contributed to the well-being of the country, and could be developed for further prosperity. It was evident that marine fisheries, coastal mining and international trade and exchange have played a role in the Thai economy since the early days. In addition to these maritime activities, seaside tourism and salt farming are among those important maritime usages that have established ways of life for those who live nearby the ocean. However, there were not many development projects in the maritime sector because Thailand has traditionally been perceived by its people as a land-oriented country due to its war history and fertile land. Having fought many land wars, the Thai people tended to believe that hostility would manifest in an army from neighboring lands, not a navy from adjacent seas. Also because of fertile lands where crops could be easily produced everywhere, there was little reason for either the public or the Government to focus towards the sea—even though traditional uses of the sea were beneficial to the country.

Established to defend the country, to protect maritime interests, and to keep abreast with the naval forces of other civilized countries, the RTN had consistently performed its obligation and duty as such. Having survived western colonization, painful experiences with foreign navies pushed the country to eventually separate the navy from the army and systematically modernize its undersized naval force. In the late 1930s, the RTN had grown to become one of the strongest navies in the region. Unfortunately, the struggle of political power within the country led to the fall of maritime authority and its loss of influence on country's maritime affairs during the second half of the twentieth century. Many years later, the fear of the spread of communism during the Vietnam War however brought about the rebirth of the country's naval power. Along with the world community, Thailand had recognized the need to take part in the development of international ocean law since the conference of 1930. This became especially true after a smuggling incident in the Bay of Bangkok in 1957 as it assigned delegations to participate in all of the next three ocean conferences between 1958 and 1982. Satisfied with the 1958

Conventions, Thailand signed and ratified all of the four treaties, and subsequently declared and enacted its domestic laws to reflect them. However, unsatisfied with the 1982 LOSC as the country had turned into a zone-locked State, Thailand signed, but hesitated to ratify the Convention for nearly three decades.

The LOSC divides the ocean into areas of jurisdiction by regulating maritime zones of sovereignty and sovereign rights of coastal States for the conduct of various marine activities, as well as the rights of foreign States in these zones. Coastal States are entitled to claim a territorial sea up to a limit of 12 nm measuring from their baselines where waters landward of the line automatically become internal waters. While coastal States have sovereignty over these two particular zones, foreign States also have the right of innocent passage in coastal States' territorial sea but need the coastal State's permission prior to entering its internal waters. The contiguous zone, which is a band of water not exceeding a limit of 24 nm from the baseline, allows coastal States to exercise controls necessary to prevent the infringement of their customs, fiscal, immigration or sanitary laws. Although coastal States may claim an EEZ up to 200 nm for the purpose of exploring, exploiting, conserving, and managing the natural living and non-living resources, a continental shelf may be claimed under certain circumstances up to 350 nm for the purpose of exploring and exploiting the non-living resources and living resources of sedentary nature. As a result, the high seas, as previously defined by the 1958 Convention, have been significantly reduced. The LOSC legal regimes have had great impact on Thailand's maritime geography as it has resulted in the country becoming "zone-locked" with a great loss of fishing grounds. Although Thailand was very displeased with the outcome of the UNCLOS III, in keeping with the ASEAN Spirit and being a part of the world community as well as desiring to preserve its maritime interests when the Convention eventually came into force, it signed the LOSC in 1982 and has acted in accordance with the law ever since. Until now, it has declared a historic bay, four straight baselines, territorial seas, contiguous zones, EEZs and continental shelves while still amending and negotiating with its neighboring States where overlapping maritime claims exist.

Regardless of its geographically disadvantageous situation, Thailand has benefited remarkably from the seas. Emerging as a major fishing nation in the mid-1970s, Thailand has utilized the oceans as a source of nutrients, providing healthy protein for the populace. Ranked third in major exporting countries of the world, the Thai fishing industry brings essential

nutrition to the world and earns considerable revenue for the country. After the discovery of oil and natural gas in the Gulf of Thailand in the late 1970s, the oceans have become a vital component of domestic petroleum resources. Because oil and gas account for about 80 percent of its energy consumption, it cannot be overstated that exploration and exploitation of hydrocarbon deposits in the continental shelf of Thailand is crucial. Furthermore, as 65 percent of its oil and gas consumption is imported, its economy is deeply export-dependent, and its foreign earning is greatly from coastal tourism, it is clear that Thailand relies heavily on the oceans for the transportation of energy and commerce as well as tourism revenue.

As the use of the oceans has dramatically increased during the past three decades, maritime challenges facing Thailand today are varied and complex. The country has experienced a depletion of living resources after its fishing fleet was enlarged and commercialized without proper management by the Government while a large area of fishing grounds that were once considered the high seas are now within other States' jurisdiction. The introduction of aquaculture farming was initially deemed to be a great success in compensating for decreasing catches and lost employment. However, the farming was allowed to expand without controls and subsequently damaged coastal habitats. Reckless tourism even added more problems to the aquaculture production while pollution caused by aquaculture in turn negatively impacted the tourism industry.

Indeed, there are a number of growing conflicts of interest between those who are using the same seas. As ports and facilities are major components of maritime transport, they currently handle a large volume of goods and products entering and leaving Thailand at their full capacity. Therefore, any disruption of the flow of these commodities would drastically harm the economy of the country. A main concern is maritime terrorism. As a large amount of vessels move in and out of these ports every day, terrorists could easily seize the vessels and use them to ram into ports. The same tactics could also be used by terrorists to strike oil and gas platforms which are widely spread in the Gulf of Thailand.

In addition to the protection of major ports and offshore installations, the security of sea lines of communication and distant fishing fleets in the Gulf of Aden as well as in the Strait of Malacca are not to be overlooked. Safe passage of goods and products as well as the safety of fishermen always remains one of the country's prime concerns. In addition, Thailand is affected

by the trafficking in drugs, firearms and illegal migrants. Rising transnational crimes by sea have caused great difficulties for maritime authorities, especially in Thai waters where a large quantity of fishing boats operate. Last but not least, unintended regulations against freedom of navigation are becoming one of the country's key concerns. These regulations, such as the ongoing requirement for prior notification when fishing boats exercising navigational freedom within another State's EEZ and a possible proposal for a compulsory pilotage system when transiting through the Strait of Malacca, cost time and money while inconsistent with the LOSC.

As the country has become increasingly interested in the maritime sector, each Government organization has attempted to formulate its own plan from both the national economic and social development plan and the national security policy when maritime policy does not exist. As the mentioned plan and policy are not intended to address the maritime domain, they do not specifically provide guidelines for maritime sector development. Adding to the fact that the succeeding policies formulated by different maritime organizations are independently developed, ocean management in Thailand has been understandably unproductive. As a consequence, the implementations for protection of maritime interests are ineffective and inefficient and raise an urgent need for the Government to establish a single operational agency in charge of maritime matters. Regardless of the outcome, the RTN will definitely be involved.

The ratification of the LOSC in 2011 clearly raises a great deal of questions for the maritime agencies, especially for the RTN. Since its responsibilities as stated in the Constitution are fundamentally to defend the country, protect maritime interests and support national development, the navy has translated that into three roles; military, constabulary, and diplomatic. As the LOSC tends to deal with activities in time of peace, the constabulary and diplomatic roles are the most affected by the Convention. Even though the RTN by law plays a supporting role for other maritime agencies, its capabilities make the navy a leading agency in the maritime domain. Empowered with 28 domestic laws, the navy has contributed its capability for law enforcement ranging from safety inspections to the preservation of the maritime environment. While it is likely that the ratification of the LOSC will catalyze the legislative process resulting in the passing of an EEZ Environment Act for the navy to enforce, naval diplomacy is another important role for the RTN. Because of the nature of warships and navigational freedom specified by the LOSC, the navy can be used in support of national foreign policy. Similar to

other maritime countries, Thailand has used and is willing to use its naval diplomacy when it comes to national interests.

While the LOSC clearly establishes the EEZ as a zone where the rights and jurisdiction of the coastal State over resources are balanced with the navigational freedom and lawful use by other States, some coastal States have restricted military activities in their EEZs, specifically military exercise and maneuvers. Extensive discussion during the UNCLOS III appeared to draw a consensus as each side had different views about naval activities in the EEZ, even the draft of the Convention was adopted and the Convention has finally come into force. Diplomatic representations and operational assertions have been used to reemphasize their understanding of the LOSC. Interestingly, these coastal countries include Thailand, a zone-locked country with a strong desire for freedom of navigation since the birth of the nation, during the codification, even today. Thailand made a declaration to restrict some types of naval activities in the EEZ. It is appeared that the interpretation of the right of foreign warships in Thai EEZ is inconsistent with Thailand's will to use its warships in foreign EEZs. This may cause foreign States to reciprocate the same manner to pose even more restrictions on Thai Warships in their EEZs. When the life line of prosperity and security for the nation hangs on its access to all parts of the oceans, freedom of navigation is strategically vital to the RTN and Thailand.

RECOMMENDATIONS

History has shown that the more experience people had with the sea, the more advantages they could take from it; and the larger navy they possessed, the better influences they had at seas. The Roman, the Portuguese, the Spaniards, the Dutch, the English, the Soviet, and the Americans are excellent examples of how a combination of merchant shipping and naval power contributed to the prosperity and security of a nation in the past and even today. Nonetheless, this indisputable fact does not intend to draw to a conclusion that naval aggression is the solution to all maritime disputes, but rather to bring attention to the Thai Government that the oceans are there to take the benefits; and the navy is required to protect it. Commercial fleets, ports and facilities must be speedily developed; naval forces must be continually modernized while a consolidated *Maritime Strategy* is provided by the Government.

Maritime activities have long been a “Thai way of life.” The people of Thailand have gone fishing, done mining, been trading, and made use of the seas since the early day. They had been utilizing it as a source of nutrients, a source of energy, a medium of transportation, a site of tourism, and some other useful activities. Some are even now exploring and exploiting the oceans as far thousand miles far beyond Thailand’s territory. Unfortunately, these amazing activities are not well known to the majority of the Thais. Unforgivingly, many of those who are operating at seas do not comprehend the strategic importance of the oceans to their country as a whole. Educations programme to promote maritime awareness must be put in place.

Law of the sea development has brought great concerns to the country as well as to the RTN. Unbelievably, there are not many Thai lawyers and technical experts in this field, to be specific, not many in the RTN. It is thus difficult for the country and the navy to keep an eye on every detail on a great deal of issues that are presently debated. It is very necessary to launch a capacity building programme in order to develop lawyers and technical experts in the field of the law of the sea and related field. Moreover, since the nature of maritime issue is not interdependent, it is against the nature and, in fact, impossible to deal with one particular matter from one particular angle. A Governmental platform like a task force should be organized to facilitate brainstorming and planning to tackle a particular issue from several points of view.

Ratification of the Convention will raise more activities in the navy’s constabulary role. It is likely that the Government will empower the RTN to carry out new maritime laws if any is to be implemented in the future. Since the ultimate responsibility of the navy is military role, its personnel and platforms are not currently well-equipped and sufficient for this type of duty. Appropriate training must be given to war-fighters, proper equipment and platforms must be provided for better execution. Lastly, existing doctrine and procedures not only for constabulary role, but also for military and diplomacy roles should immediately be reviewed to validate their compliance with the LOSC.

Naval activities in the EEZ were a controversial issue at the UNCLOS III and continue to be so in State practice. Some coastal States including Thailand claim that other States cannot carry out some types of activities in or over their EEZs without their consent, and have sought to apply restrictions in their EEZs that are not accepted by other States. Regardless the different interpretations by States, the claim by the Government of Thailand appears NOT to be in the

same line as the RTN's activities and roles entrusted by the Constitution. The navy needs navigational freedom of warships to transit through other State's EEZs while being able to conduct its Normal Mode of Operation. The declaration by the Government to the UN is inconsistent with its will, when necessary, to conduct full-scale naval diplomacy in another country's EEZ. It is proposed that a comprehensive review of this matter should be conducted.

The law of the sea can be developed both by convention and by custom. Outside the codifications of the law, States attempt to develop customary law by making claims and counterclaims in their actual maritime activities. Naval operations are crucial part of this process. Warships, Government ships and craft operated for non-commercial purposes are symbol of its Government. Their consistent and accepted maritime practice will later play a major role in customary law development. It is therefore important for those who are in command of warships, Government ships and craft operated for non-commercial purposes to understand this. Their misinterpreting or misleading actions could lead to an undesired development of the law of the sea.

To the Government of Thailand

- Formulate and manage *Maritime Strategy* in order to consolidate and integrate all thoughts and efforts available.
- Continue to develop commercial fleets, ports and facilities as they are a life line of economy, which in turn contributes to a high level of security such as military budget and transportation of demanding petroleum.
- Continue to develop naval force capabilities in order to protect the country's progressively increasing maritime interests.
- Develop more lawyers and technical experts in the field of the law of the sea and other related fields. This is to prepare the country for future capabilities relating to the LOSC.
- Promote better understanding of the LOSC and the process of customary law as such an action will put the country in good stead for contemporary development in the law of the sea.

- Utilize existing frameworks such as the Sub-committee on Knowledge Management for National Marine Interests to promote maritime awareness both for the public and within maritime agencies. Better knowledge equals to better performance.
- Consider using existing platforms and capabilities such as THAI-MECC and the navy, or even establishing a new agency namely Coast Guard to act as a focal point to coordinate efforts in tackling all maritime issues.
- Reconsider if the benefit of the restriction on foreign military activities such as naval exercises and maneuvers in the EEZ outweigh the cost.

To the Royal Thai Navy

- Continue to train and equip its force with effective and efficient capabilities to conduct military, constabulary and diplomacy roles as required by the Government.
- Provide recommendation and assist the Government to formulate *Maritime Strategy*.
- Promote maritime awareness within organization through education, training and broadcasting programs.
- Promote better understanding of the LOSC and the process of customary law because the navy plays a significant role in development of the law.
- Monitor and coordinate all maritime issues both domestically and internationally in order to quickly provide recommendations and responsive actions accordingly.
- Recruit and develop additional lawyers and technical experts in the field of the law of the sea as needed.
- Review existing maritime doctrine and procedures for legal validation in order to ensure that the navy comply with the LOSC and meet the requirements of the Government.
- Advise the Government of the importance of navigational freedom for warships and craft to the economy and security of Thailand as they are required the navy to protect them.

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