

12-1987

# A Synthesis of Thailand's Positions in the Light of the New Law of the Sea

Sompong Sucharitkul

*Golden Gate University School of Law*, [ssucharitkul@ggu.edu](mailto:ssucharitkul@ggu.edu)

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/pubs>

 Part of the [Law of the Sea Commons](#)

---

## Recommended Citation

Sucharitkul, Sompong, "A Synthesis of Thailand's Positions in the Light of the New Law of the Sea" (1987). *Publications*. Paper 536.  
<http://digitalcommons.law.ggu.edu/pubs/536>

This Article is brought to you for free and open access by the Faculty Scholarship at GGU Law Digital Commons. It has been accepted for inclusion in Publications by an authorized administrator of GGU Law Digital Commons. For more information, please contact [jfischer@ggu.edu](mailto:jfischer@ggu.edu).

Notre Dame Law School

Notre Dame, Indiana 46556

DIRECT DIAL NUMBER

27th December 1987

Dr. Phiphat Tangsubkul  
SEAPOL Director  
Institute of Asian Studies  
Chulalongkorn University  
BANGKOK  
Thailand

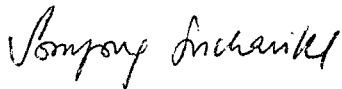
Dear Dr. Phiphat,

Herewith, as promised, please find enclosed my manuscript titled "A Synthesis of Thailand's Positions in the Light of the New Law of the Sea". It is approximate to what you have described, and hopefully introduces the main themes in the four problem areas you would like to have specifically emphasized.

Incidentally, my Dutch Colleague from The Hague, Professor Ko Swan Sik of the T.M.C. ASSER Institute, plans to visit Bangkok next February 7-8, 1988, and I have recommended that he should meet with you. Please feel free to advise him about Thai legislation and documentation.

With best wishes for the New Year,

Yours sincerely,



Sompong Sucharitkul  
Robert Short Professor of International Law

SS/tt

Encl:

A SYNTHESIS OF THAILAND'S POSITIONS  
IN THE LIGHT OF  
THE NEW LAW OF THE SEA

BY  
SOMPONG SUCHARITKUL

---

OUTLINE

- I. GENERAL PURPOSE AND OBJECT
- II. THE EXCLUSIVE ECONOMIC ZONE
- III. TRANSIT PASSAGE
- IV. DISPUTES SETTLEMENT
- V. MARINE POLLUTION

A SYNTHESIS OF THAILAND'S POSITIONS  
IN THE LIGHT OF THE NEW LAW OF THE SEA

by

SOMPONG SUCHARITKUL\*

---

I. GENERAL PURPOSE AND OBJECT

This prelude serves as an overture to the study in greater depth of the policies and positions of THAILAND in regard to the new law of the sea. An endeavour is made in this introduction to project an overview of Thailand's stand on certain vital issues and questions raised by the new prospect and predicament. Thailand's standpoint is grounded on a variety of policy considerations. Her attitude is seasoned by the passage of time. Its formation is not altogether without trials and errors. In more areas than one, Thailand is indeed experiencing untold tribulations. This prologue is intended to foreshadow the overall results of concerted efforts to coordinate and harmonize the interests of various sectors of Thai society and to reconcile the views of competent agencies, participating in policy decision-making in the negotiating process of the new law of the sea. To a considerable extent, Thailand's national interests are closely affected by the changes envisioned in the recent U.N. Convention on the law of the Sea,

2/...

---

\* *Member of the Institute of International Law; Robert Short Professor of International Law at Notre Dame Law School; Contributing Collaborator of UNIDROIT.*

Montego Bay, 1982.<sup>1]</sup> This latest Convention takes the form of a codification package, of which the contents have been delicately balanced, the text intensely negotiated, the provisions carefully assembled and the instruments neatly put together with assured concordance for each of the official languages. This comprehensive treaty is meant to prescribe a uniform standard of State conduct, its rights and obligations in related fields for generations to come.

It is often difficult to assess with reasonable precision the extent of a nation's awareness of the issues and problems facing its government in the wake of far-reaching progressive developments of rules of international law regarding the status and permissible use of the resources of the sea. The difficulty is multiplied in any attempt to evaluate the readiness, willingness and ability of a nation such as Thailand to cope with the new situation, entailing the unenviable task of comprehending the availability of potential wealth and resources and the intriguing mystery of the profound ocean floor. The sea has not ceased to provide a challenge for mankind. At the same time, it is a source of life and livelihood for sea-faring nations from time immemorial, Thailand included.

As a coastal State, Thailand has had to learn to defend herself against the continual waves of colonial expansion from afar, warding off one by one the onslaught of gunboat diplomacy, at its peak, from distant lands, stemming the ugliest tide of aggression from overseas with sword and plough, and repelling alien invading forces

3/...

---

1] *The Law of the Sea, Official Text of the U.N. Convention on the Law of the Sea with Annexes and Index, New York, 1983.*

by the combined use of her inner strength, popular resilience, national unity, cultural maturity, and a touch of tactful diplomacy that is typically Thai.

In terms of national security, the sea has not exactly served as a barrier to obstruct prospective intruders. Rather unkind to the host country, the ocean has opened several sea lanes to provide easy access to this hospitable "Land of a Thousand Smiles". Unlike some island kingdoms whose territorial integrity has been preserved virtually intact by the good grace of the cruel seas, the Kamikaze winds as well as treacherous rocks and under-currents, which time and again turned back or swept away hostile armadas, Thailand's axe-like penninsular position protruded by the warm shallow waters of her enticing Gulf lined by the silvery sand of her peaceful and friendly shores have increased rather than decreased her security risks. The right of transit passage presents a dilemma which must be viewed with the greatest caution. In this context, the adoption of a properly balanced compromise may better serve Thailand's security interests.

Instead of presenting natural obstacles to would-be transgressors from beyond the sea, the Gulf of Thailand has afforded a place of refuge for many a vessel in distress. Friends and foes alike have found Thai shores to be their ideal havens, complete with natural shelter, supply of fresh water, luscious food and luxuriant fruits in utter profusion. Popularly known as "the rice bowl of Asia", Thailand has earned the reputation of an oldest and most experienced rice-growing community with expertise also in fish culture. Freedom of the sea means to the Thais freedom of navigation, freedom of overflight and freedom to fish. Fish and rice constitute the staple diet of the Thais for as long as memory of man can run. As the ancient description

of the golden age of Sukhothai goes : "This land of the free is truly good. There are fish in the water and rice in the paddy". Thus has been the most vivid depiction of the peace and prosperity of Sukhothai Thailand, while freedom and independence have always had to be defended and maintained, they first had also to be won and established. In this connection, food and agriculture have provided a crucial key to Thailand's success in achieving and furthering her healthy growth and economic development. Fishery constitutes a sector of primary importance in Thailand's agricultural extension program. This includes fresh-water, brackish water as well as salt water fish, shrimp, shell-fish and sea-food of various species. Thailand is not only self-sufficient in food, but is also a major food exporter in grains and cereals as well as in sea-food, poultry and other sources of protein. In national planning, therefore fishery ranks second only to defence and security. The extended national jurisdiction over the 200 miles of Exclusive Economic Zones implies a drastic curtailment of Thailand's traditional distant water fishing grounds.

The Gulf of Thailand is also endowed with virtually untapped resources in minerals and natural gas. The country has only just begun to explore and exploit its off-shore non-living resources under the sea-bed. Considerable problems and complications have emerged in connexion with the new advanced technology of production, management and distribution. Highly perplexing problems appear to have arisen in the delimitation of maritime boundary. Without a clearly delineated line agreed upon by interested parties, all plans for exploration and exploitation of natural resources could not effectively proceed. It will be seen how in this particular area, Thailand has lost no time in starting negotiations and in reaching agreements with her neighbours,

adjacent and opposite, in order to enable herself to implement whatever economic development plans the nation has devised for the exploitation of sub-marine areas bordering neighbouring States.

Disputes are believed to be better avoided or prevented from arising than subsequently resolved or settled, in the same way as prevention seems more desirable than cure, as a matter of health-care policy. Thailand offers an interesting case study for experimentation in conflict resolution or pacific settlement of disputes. A restatement and clarification of Thailand's policy and position in this context appears to be warranted and timely. This may in turn serve to explain her attitude towards a number of important issues.

Last but not least is the desirability of measures to be taken towards securing a pollution-free community. Conservation has been a constant theme in the policies respecting marine environment. Clean air and unpolluted sea are clearly targets to be achieved through international cooperation. Abatement of activities generating pollution is only an initial step to ensure circulation of cleaner air and purer water in the ocean and the superjacent atmosphere.

Leaving aside for the time being the feasibility of deep sea-bed mining and the international regime to be established for the management of the common heritage of mankind, this introduction is leading to a synthesis of policies and positions adopted by Thailand in preparation for the entry into force of the impending Convention on the Law of the Sea. It is proposed to examine the impact of the new law in as far as it touches and affects the national interests of Thailand in at least four interrelated principal



areas, viz., 1) The Exclusive Economic Zone; 2) Transit Passage; 3) Disputes Settlement; and 4) Marine Pollution. In each of these areas, it will be shown how Thailand has come to grip with the situation and learned to formulate her positions, taking into account the available alternatives and policy options. In this process, no nation can be said to be totally uninfluenced by considerations other than purely national interests. A number of pertinent factors, vital or material interests and other extraneous policy considerations have been scrutinized and carefully weighed before national position is formulated and finally taken on each point, not without prior consultations with nations or groups of nations sharing common positions, advantages and disadvantages.

## II. THE EXCLUSIVE ECONOMIC ZONE

### 1. THAILAND'S PARTICIPATION IN THE CODIFICATION AND PROGRESSIVE DEVELOPMENT OF THE LAW OF THE SEA

It has frequently been said that the new United Nations Convention on the Law of the Sea, opened for signature at Montego Bay, Jamaica, on December 10, 1982, constitutes a historic milestone, marking the culmination of over 14 years of work, involving participation of more than 150 countries, representing various regions of the world. These countries have different legal and political systems, and are in different stages of socio-economic development. They are countries with various dispositions regarding the types of minerals found in the sea-bed, including coastal States, geographically disadvantaged States, archipelagic States, island States and land-locked States. They all convened for the purpose of establishing a comprehensive regime "dealing with all matters relating to the law of the sea, bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole."

The elaboration of the Convention represents an attempt to establish true universality in the effort to achieve a "just and equitable international economic order governing ocean space." 2]

The Convention contains the constituent instruments of two major international organizations, namely, the Authority (articles 156-191), including the Statute of the Enterprise (Annex IV), and the Statute of the International Tribunal for the Law of the Sea (Annex VI : Statute). In addition, it represents not only the codification of customary norms, but also the progressive development of international law. The precise extent of the combination between codification of existing customary law and progressive development of new law depends on the moment of determination, as subsequent practice of States also operates to accelerate the ripening process of conventional law into an established custom.

The concept of an exclusive economic zone (E.E.Z.) of two hundred nautical miles measured from the straight baselines of a coastal State is relatively new. Whatever the degree of novelty and regardless of the precise moment of crystallisation, it cannot now be gainsaid that E.E.Z. is not here to stay as a generally accepted norm of international law, endorsed by the practice of States evidencing the emergence of new rules of customary international law. 3]

8/...

---

2] See *Introduction to the Law of the Sea Convention 1982*, *ibid.*, at p. XIX.

3] See, e.g., Ted L. McDorman, "Thailand's Fisheries : A Victim of 200-Mile Zones", *Ocean Development and International Law*, Vol. 16, No.2, pp. 183-209, at pp. 187-188.

Without at this stage taking issues with any of the propositions relating to the comprehensiveness or finality of the Convention of 1982 or the proportion between the parts that are customary law and those involving substantial modifications by treaty provisions binding on parties, Thailand is well aware of the inexhaustiveness and transitory character of any man-made norms. As a Buddhist nation, Thailand understands the intertemporal character of international law, which moves and continues to grow with the movement or passage of time. The Convention of 1982 represents an accelerated and timely growth of the corpus juris oceani, a ceaseless and continuing process in progress since time immemorial, especially precipitated by the Codification Conferences of 1958 and 1960.

The 1982 Convention on the Law of the Sea is unprecedented in its wholesomeness or indivisibility of its component parts. It is a compact integral whole. Other significant features, such as the number of sessions or the length of time it took to reach agreement on the finalisation of the negotiating text, are no longer unique as most contemporary codification conferences are now attended by as many delegations although not as large and as lengthy in terms of the duration of the conference. In this connection, the process of multilateral treaty-making has been reviewed and standardized in a report of the working group, adopted by the Sixth Committee of the General Assembly in 1984 4] after eight years of studies and deliberations by experts in the field. The techniques used in the recent Convention of 1982 are relatively new, but the novelty reflects only variations of existing practice without drastically departing from pre-existing methods. The provisions confirming existing practice have been drawn freely from the four 1958 Geneva Conventions on the Law of the Sea 5] and even earlier exercises such as the Harvard

9/...

---

4] *Report of the Working Group on the Review of Multilateral Treaty Making Process*, A/C.6/39/L/2, November 27, 1984.

5] *The Work of the International Law Commission*, 3rd edition, U.N., New York, 1980, pp. 140-165.

Research in the 1930's. 6] Indeed, none of the existing rules has been omitted or overlooked, some although largely outmoded were embodied without much discussion, while new areas and new concepts were initiated and negotiated by representatives of governments without the benefit of legal expertise and draftsmanship of the International Law Commission. Real political and economic bargaining and negotiations were conducted amidst the acceptance of the bulk of the entire body of existing laws and customs of the sea, the corpus juris oceanici.

Gradually maritime jurisdiction of a coastal State has been extending by leaps and bounds, from straight baselines, including widening bays and enlarged jurisdiction around islands, to differences in the growing width of territorial waters from three nautical miles canon-shot rule to four Scandinavian marine leagues in the Anglo-Norwegian Fisheries Case (1950) 7] and thence to the exclusive fishery zone of 50 miles in the Fisheries Jurisdiction Case (Merits), U.K. v. Iceland (1974) 8] and ultimately the 200-mile E.E.Z. 9]

Thailand has not been insensitive to these changes. One of her illustrious international jurists, Dr. Thanat Khoman, was an active member of the International Law Commission in the late 1950's when the draft articles on the Law of the Sea were discussed. Prince Wan Waithayakorn, Krommun Naradhip Bongsaprabhand, President

10/...

---

6] See, e.g., *Harvard Draft*, 29 A.J.I.L. Special Supp. (1935).

7] I.C.J. Report, 1951, pp. 116 et seq.

8] I.C.J. Report, 1974, pp. 3 et seq.

9] See, e.g., Article 57 of the Convention, *Breadth of the Exclusive Economic Zone*.

of the eleventh session of the General Assembly, was elected President of the First and Second Conferences on the Law of the Sea, Geneva 1958 and 1960. The notion of the sea being a common heritage of mankind was warmly embraced by Prince Wan already in 1958 as he accepted the presidency of the First L.O.S. Conference. 10] Two hundred miles zone has become a living nightmare for Thai fishermen and fishing industry from the very start, ever since Professor François, the Dutch Special Rapporteur, suggested in one of his earlier reports to the International Law Commission that coastal States should be given the right to adopt fishery conservation measures within a 200-mile zone off their coasts. These measures were to be binding on other States which could submit their disputes to the International Court of Justice if found to be unjustified. This suggestion was made in 1951, 11] one year before the famous Santiago Declaration of "mar patrimonial" of 200 miles by Chile, Peru and Ecuador. 12] For the protection of the living resources of the sea, the Special Rapporteur came to the conclusion that the diversity of circumstances in which conservation measures could ideally be taken in the various parts of the world and with respect to different species was such that the coastal State in each situation is in the best position to take necessary measures, having regard to existing bilateral and multi-lateral treaties.

11/...

---

10] *First Plenary Session, Conference on the Law of the Sea, Geneva, February 24, 1958, P.V. p. 3, para 37.*

11] *U.N. document A/CN.4/42, Yearbook of the International Law Commission, 1951, Vol.II, p. 88, para 80.*

12] *Andrés Aguilar, "The Patrimonial Sea or Economic Zone Concept". San Diego Law Review, 1974, pp. 571-602.*

Subsequent events and in particular the 1958 and 1960 Conferences on the Law of the Sea were highlighted by further efforts on the part of coastal States and island States, especially archipelagic States, to enclose certain areas of the highseas as lying within their exclusive fishery jurisdiction. Indonesia and the Philippines provide clear illustrations of archipelagic States. 13] The 1960's were marked by the rapid development, by a limited number of countries, some of them developing countries such as Thailand and the Republic of Korea, of long-ranging fishing fleets operating throughout the oceans of the world. In addition, the traditional capacity of developed countries such as Japan, U.S.A. and U.S.S.R. which have long engaged in distant-water as well as deep-sea fishing in practically every sea around the globe, the distant-water fishing industries in the handful of the developing world put up considerable investments and efforts to this end, resulting in overfishing in the many areas of the Pacific, the Atlantic and the North Sea. In most cases, regional fishery commissions lacked the power and the economic and political wills to prevent or slow down the decline and collapse of important fish stocks. 14] Other developing countries, lacking the financial means and practical experience, and fearing depletion of existing stocks within their reach before they could begin to exploit them, naturally reacted to the prospect of over-fishing by extending their protective exclusive fishing zone to 200 miles, a trend that has since been difficult to resist, let alone to reverse. Thailand did her utmost to resist the irresistible trend which ultimately swept her along with Japan and Korea from their feet. For all that, she supports the Convention for what it is worth, believing that the existence of an international regime provides greater protection for developing countries than the primitive state of lawlessness, in which the weak must succumb to the gunboats of the strong.

12/...

---

13] For instance, Indonesia already presented the archipelagic concept at the 1958 Conference, and proceeded to grant licences to foreign fishing vessels in 1968 as soon as the U.N. seabed sub-committee was established.

14] See, e.g., Jean Carroz, *the Management of Humanity's Resources: The Law of the Sea, Workshop 1981*, Hague Academy of International and U.N. University 1980.

## 2. THAILAND'S POSITION IN REGARD TO THE EXCLUSIVE ECONOMIC ZONE

The statistical data staring into Thailand's face portends a frightening prospect of neighbouring coastal States enforcing their exclusive economic zones to the extent of excluding Thai fishing fleets from these zones which used to serve as Thailand's distant-water fishing grounds. Indeed, the figure of 99 per cent of total world catch of fish from within 200 miles exclusive economic zones of coastal States was most alarming.

The upsurge of Thailand's fishing industries, placing the country as the leading distant-water fishing nation in South-East Asia, may be a source of national pride, but it is equally a rootcause of chronic migraine for those responsible for policy-planning and decision-making in connexion with aquaculture, fishery management and export of sea-food product.

Thailand's emergence as one of the top ten fishing nations of the world in the 1970's coincided with the initial implementation of the 200-mile exclusive fishery zone. The trawling techniques in distant-water fishing for shrimps and other surface water species have been learned principally from Japanese fishery schools and from training institutions on the west coast of North America, with the result that for a few recent decades (1950-1980) Thailand's Fishery Department and Thai Delegation to fishery conferences could consult more closely with their Japanese counterparts without the aid of interpretation. In more ways than one, as distant-water fishing nations, Japan and Thailand are sharing a similar fate. It should not come as a surprise that, in the circumstances, Thailand could learn very useful and interesting lessons from Japan's position and practice. The fates of the two nations are similar but by no means common.

a) E.E.Z. viewed as most damaging to Thailand's fishing interests

The 1982 Convention on the Law of the Sea was adopted as a package without any possibility of reservation for any of its provisions. It is a Treaty that must either be accepted in toto or rejected. Thailand cannot afford not to accept it regardless of whatever minor abatement she could introduce in the negotiating process.

In this context, the E.E.Z. appears to be the most dreaded portion of the Convention from Thailand's standpoint. Observing the practice of States, it can be seen that within the region Thailand was decidedly the very last State to make any move towards claiming her own E.E.Z. The position taken by Japan and its timing may have served as a cue for Thailand to react. Being among the very few nations that have been heavily engaged in distant-water fishing, Thailand is included in a small minority group among coastal States.

The concern for Thailand's vital interests in the new law of the sea was discernible from her active participation in the First Committee's discussion of the régime of the seabed and ocean floor beyond national jurisdiction in 1967, 16] which accounted for Thailand's designation by the First Committee Chairman, Ambassador Fami (Egypt), as member of the seabed sub-committee established as a stepping stone along the path leading to the Third Conference on the Law of the Sea. Thus, during an early session of UNCLOS III in 1974, although to no avail, Thailand endeavoured to have her status recognized as a

14/...

---

16] Ambassador Joe Pardo of Malta introduced this item in the First Committee of the General Assembly during its regular session in 1967. Australia and Thailand cooperated closely at committee level. The main problem then was deep-sea mining and the concept of the common heritage of mankind.



geographically disadvantaged State. 17] Up to the final round of the Third LOS Conference in April 1982, Thai Delegation still hoped for a miracle in this particular connexion. Thus, a proposal by Zaïre was supported by Thailand. This would have entitled States to the surplus of living resources in a coastal State's extended zone even where the coastal State in fact did not reach its harvesting capacity and a surplus resulted. 18] This proposal did not find sufficient support and was not actively pursued during the last negotiating session.

Thailand has had to be content with whatever improvements could successfully be introduced into the text of the provisions of the new law of the sea to alleviate the plight of Thai fishermen in distant-waters. Apart from possible access to the surplus allowable catch, paragraph 3 of Article 62 entails a mitigating effect by obliging the coastal State to take into account "the requirements of developing States in the subregion and region in harvesting part of the surplus and the need to minimize dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks." 19]

15/...

---

17] Thailand suggested that there should be a sharing of the living resources in an extended zone on an equitable basis and a right of compensation for those States which would become zone-locked by neighbouring extended zones and thereby deprived of an economic benefit once enjoyed. UNCLOS III, official Records, Vol. 1, July 10, 1974, p. 147 and Vol. II, August 1, 1974, p. 192.

18] See comments by Mr. Sucharitkul, Thai Delegate, in the 170th Plenary Meeting, UNCLOS III, April 16, 1982, U.N. Doc. A/Conf.62/SR. 170/22, April 1980, pp.6-8. Zaïre's Draft Amendment to Article 62 in U.N. Doc. A/Conf.62/L. 107, April 13, 1982.

19] Article 62 (3), A/Conf.62/122, October 7, 1982, reprinted in 21 I.L.M. (1982), pp. 1261 et seq.

Article 73 (Enforcement of Laws and Regulations of the Coastal State) may be viewed as affording some measure of relief for Thai fishermen, vessels and crews. Paragraph 2 stipulates that "arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security." 20] Paragraph 3 provides that "coastal State penalties for violation of fishery laws and regulations in the zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment." 21] Paragraph 4 requires the coastal State in case of arrest or detention of foreign vessels to "promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed." 22]

17/...

---

20] See, *ibid.*, Article 73.

21] Article 72, paras (2) and (3) appear to reduce appreciably the hardship suffered by Thai fishing fleets and their crews. At any rate, the vessels and crews could be released forthwith upon posting of reasonable bond or other security. The practice in the recent decades has been most unkind to Thai fishermen, especially Burma, Bangladesh, Vietnam, Indonesia and even Malaysia. Negotiations were often protracted and fishermen detained as well as the fishing vessels and catches confiscated.

22] The incident involving "The Changyee" is notorious. This was a research fishing vessel provided by Japan to the Southeast Asian Fishery Centre (Singapore base), complete with Japanese teaching staff and crew. The trainees were nationals of member States of the Southeast Asian region. They were detained in Burma for months on end despite collective and official protests from the Centre and member States.

b) Policy options and measures to abate damages to fishing industry

Apart from the humanitarian principles contained in Article 73 toning down the harshness of penalties and measures taken by coastal States in the enforcement of their laws and regulations which could entail correctional or remedial effect for the tail end of the sufferings by fishermen, and the remote possibility of Thailand ever benefiting from the agreements and arrangements to be negotiated with other coastal States in the subregion or region, Thailand seems to be doomed to drastic cuts in her distant-water fishing activities and severe limitations on her total annual catch, subject to costly licensing expenses and procedures as well as hard bargains driven by other coastal States. These factors will add to the increasing costs and growing risks involved in the harvest, production and marketing. Against this backdrop of prohibitive forces, the Thai Government does not have many alternatives aside from a few policy options that will have to be more energetically and relentlessly pursued in order to abate the tragic losses if not altogether to avoid them. The measures taken by Japan might be emulated.

(1) Quest for more scientific data regarding stocks and aquaculture

The need is badly felt to learn all about stocks of various species of interest to the Thai fishing industries, in particular their origins, growth, movements, habits as well as their cultivation and recycling incentives to promote optimum utilisation of allowable catch to be determined for the areas within Thailand's extended zones including the 200-mile E.E.Z. This may represent the last retreat back into waters within Thailand's national jurisdiction. With all the Thai expertise available to international organizations and specialized

agencies such as FAO 23] and OAU 24], "Ayudhaya is not without good men", as the saying goes. But alas, what has happened to Ayudhya? Disunity caused by outdated bureaucracy has chased away better brains in order to make room at the top for lesser minds to prosper. Brain-drain from Thailand has helped the world where it is most needed. Yet it should be pointed out that for a long time to come Thailand herself stands in greatest need of such expertise. It is regrettable that while the Government would stop at nothing to unquestioningly secure the services of foreign experts, the internationally recognized qualities of her own native specialists are ignored and overlooked. With her back against the wall, Thailand has no choice but to learn to rise above local political bickering and domestic professional jealousy, when in fact far more fundamental national interests are at stake. Statistics may be consulted in regard to Japan's enlightened approach to similar problems confronting that island nation. Japan's determination, sound scientific research and good planning have enabled Japanese fishermen to maintain the existing level of overall annual catch of over 10 million tons, fully compensating the 60 per cent reduced tonnage of catch from the extended exclusive fishery zones of other coastal States,

19/...

- 
- 23] *The fishery experts of FAO, for instance, are principally Thai nationals, Dr. Aphorn, Dr. Thep and Dr. Vidhya enriched the fishery expertise of that Specialized Agency of the United Nations.*
  - 24] *Dr. Sawang Charoenphol, former Director-General of the Fishery Department of Thailand, on the other hand, has been lending his expert professional advice and services to countries like Ehiopia and Djibouti in the Red Seas and other areas far away from Thailand.*
  - 25] *A Thai scholar in Japan rather kept his discovery to himself than publish the findings for his doctoral dissertation to a Japanese Fishery School.*

notably the U.S.A., Canada, Korea and the U.S.S.R., by proportionally increasing her allowable catch off Japanese coasts with repopulated and recycled species within Japan's extended zones with sufficient flexible margin to spare. This goal has been achieved by Japan through various means at its disposal, namely, negotiations and friendly persuasions rather than chancing confrontation and experimenting with conflict resolution. 26] Whatever losses Japan has had to sustain as the result of the extension of foreign E.E.Z.'s, the public and private sectors of Japan have collectively succeeded in overcoming them. Thailand's analogous problems may not have been as colossal in terms of magnitude, she nevertheless needs to learn the hard facts of international life and to divert her attention from national disunity. In more ways than one, Thailand's geographical positions have lowered her odds in this context, with her semi-enclosed sea in the gulf of Siam and limited access to the Anderman Sea. The disadvantages of Thailand's coastlines are to be contrasted with the insular character of Japanese archipelago, surrounded by waters from all directions, thus blessed with larger elbow and leg room for manoeuvre.

(2) Request for external assistance

Against this dim prospect of a lone sufferer in the region, Thailand should lose no time to initiate the process of request

20/...

---

26] *Japan has long been engaged in distant-water as well as deep-sea fishing. Japanese societies have been able to conclude all kinds of arrangements, through joint-ventures or other cooperative techniques, allowing Japanese fishermen time to phase out of foreign exclusive economic zones while regaining greater harvest within her own waters, without seriously adversely affecting the status quo ante.*

for external assistance from sympathetic and friendly nations of the developed world as well as from international organizations such as the United Nations and its specialized agencies with competence in some of the technical fields found to be different and most wanting in the areas under Thailand's national jurisdiction. In this connexion, a country most likely to appreciate the problem facing Thailand is probably Japan, which could give sound and valid practical advice, both in regard to technical and also financial assistance, as Japan is a big importer of sea-food product from Thailand. Other developed nations friendly to Thailand and sympathetic to her plight include Canada, Australia, New Zealand, the U.S.A., the Netherlands and the Nordic countries. The United Nations through its regional commission, ESCAP, and its specialized agencies, competent in the relevant fields, notably FAO, UNESCO, WMO and WHO could in their own specialist ways contribute to the alleviation of Thailand's problems. Above all, however, Thailand must be reminded of the dire need for information and assistance, and must start to learn to appreciate and welcome meaningful cooperation both in the technology of aquaculture, conservation measures, production management and marketing. Financial assistance and contribution in joint-ventures should not be ruled out. Regional centres for research and training should be further promoted with Japan or other developed countries as donor. 27]

21/...

---

27] *The South East Asia Centre for Fishery Development with one department in Smutprakarn and another in Singapore should be updated to cope with new situations.*

(3) Negotiations with neighbouring coastal States

Thai fishermen suffered the most in their activities in nearby waters off the coast of more or less immediately adjacent neighbouring States, including Burma, Bangladesh, Indonesia, Malaysia and Vietnam, where Thai fishing vessels have been arrested and confiscated and their crews detained and sentenced to varying prison terms. Valuable catches, regardless of the areas of the catch, were also confiscated along with the vessels and fishing gears, if found within the national jurisdiction of neighbouring countries. The past experience has been painful and the plight of fishermen only an after-thought. No effective, preventive or cooperative measures have been successfully taken. Thai fishermen must either do or die, either fish in foreign unfriendly waters and risk prison terms or be deprived of traditional means of livelihood. Their acquired fishing habits have not been recognized as acquired rights. Admittedly, the application of new rules should not dislocate habitual fishing activities of friendly neighbours. Amicable terms should be reached to permit a graceful transition of gradual withdrawal.

Article 51, paragraph 1 of the 1982 Convention merely recognized "traditional fishing rights" of "immediately adjacent neighbours", but gives no special rights to States that are not "immediately adjacent". Whatever the definition of "immediately adjacent neighbour", Thailand should be qualified under this provision with regard to Indonesian archipelagic waters. The Philippines may be less than "immediately adjacent neighbour". Nevertheless, both Indonesia and the Philippines have benefited from Thailand's strong support of the "archipelagic concept" in the negotiation stage. Now is the time for Indonesia and the Philippines as fellow founding members of ASEAN to accord a more favoured treatment to Thai fishermen, especially those who have traditionally fished in their waters. Thai trawlers could not benefit substantially from the archipelagic waters of the Philippines

or Indonesia, nor could the Philippines or Indonesia benefit much from Thai trawling experiences. Malaysia on the other hand has concluded an arrangement with Indonesia.<sup>28]</sup> Thailand has been rather slow and inactive in this particular regard. Her lack of enthusiasm for the E.E.Z. provisions did not trigger her abstention in voting on the final text of the Convention. Strangely enough, it was more her wish to remain faithful to the United States to the last hours and thereby hopefully to be able subsequently to persuade the United States to re-enter the world maritime community by participating in the international régime to be set up for deep sea-bed mining that, to the incredulous amazement of ASEAN colleagues, precluded Thailand from voting for the Convention.<sup>29]</sup> It should be observed, however, that reason and ASEAN solidarity ultimately prevailed and Thailand joined her true friends in the region in signing the Convention on December 10, 1982.<sup>30]</sup> In any event, no  
23/...

---

28] See, e.g., *Treaty between the Republic of Indonesia and Malaysia relating to the legal régime of archipelagic State and rights of Malaysia in the territorial sea, archipelagic waters as well as in the airspace above the territorial sea, archipelagic waters, and the territory of the Republic of Indonesia lying between East and West Malaysia*, done at Jakarta, February 25, 1982, entered into force, May 1984. See B.A. Hamzak, "Indonesia's Archipelagic Régime : Implications for Malaysia", *Marine Policy* 8 (1984), pp. 30-43.

29] The Thai Delegation had earlier been working closely with ASEAN colleagues and Delegations friendly to the U.S.A., such as Canada and Australia, to endeavour to persuade the U.S. Delegation to vote positively in favour of the text of the Convention.

30] The Deputy Foreign Minister of Thailand, Dr. Arun Panupong, himself signed the Final Act and the Convention at Montego Bay, Jamaica, on December 10, 1982.



amount of persuasive articulation by ASEAN friends and NATO allies could dissuade the U.S. Government from adhering to considerations of short-term national interests as conceived by the United States under current administration.

Initiatives should have been taken already in the mid 1970's to reach some arrangements or agreements with all of Thailand's neighbours, in whose extended zones, Thai fishermen had been engaged in distant-water fishing. The situation should not have gone unnoticed nor allowed to deteriorate. If Japan could reach agreement with the United States for a five-year phase-out period, why could not Thailand with Malaysia? Have we exiled all the good men of Ayudhya?

To be up to the task, it requires more than the knowledge, willingness and skill to negotiate. All the sectors concerned should put their heads together, working side by side, simultaneously and concurrently but harmoniously with proper coordination between the private sectors within Thailand, the Fishing Industries, the Exporting Traders, the Conservation Storage, etc., and the various government departments concerned, the Fishery Department, the External Trade Department and the Economic Department as well as the Treaty Department in the Ministries concerned should work together to reach several levels of understanding, cooperation, and arrangements, both as treaties and as joint-venture agreements to sooth the pain and reduce the sufferings of Thai fishing industries.

Proposals have been made for closer collaboration between Thai private sectors with the South Pacific islands States, members of the Pacific Forum, for joint-venture in the manufacturing of tuna canning product to be re-exported to countries such as the United States. The time has come and the opportunity is ripe for such inter-regional cooperation, befitting the

enterprising character of the Thais as pioneering nation. 31]

### 3. THAILAND'S EXPECTATION AND PERFORMANCE

Any enlightened government in Thailand's position will have to strive relentlessly to struggle for the survival of the country as a fishing nation, whose livelihood and export earnings have substantially depended on fishery. One courageous Prime Minister of Thailand had to resign in 1979, following the decision to increase tax on diesel oil, directly affecting the fate of Thai fishing industries. If Thai farmers are the backbones of the country, Thai fishermen constitute the principal blood vessels which must keep the body of the Thai nation alive and in good form.

Several problems of fundamental importance must be faced squarely. The Government cannot afford to look the other way. Unemployment must be alleviated, over-fishing discouraged, and decline in fishing industry upsetting coastal fishing communities, with resulting loss of export earning and decline in G.N.P. will all have to be amply compensated, if Thailand were to recover from this serious setback.

25/...

---

31] *Proposals have been made, especially from the South Pacific island nations as recent as August 1987 in Hawaii that Thailand should join force with the island States with their extended jurisdiction in the management and production of canned tuna for export.*

The coming decade is inevitably a painful period for reshaping and readjusting the distant-water overcapacity fleet and industry to fit the restricted fishing grounds in the 200-mile zone of Thailand. Unlike Japan and the U.S.S.R., Thailand is neither a developed country nor an industrialized State. The current trends since UNCLOS III have concentrated upon the problems of promoting coastal State fisheries expertise such as Burma, India and Bangladesh within their E.E.Z.s and of restructuring distant-water fleets of developed or industrialized States, such as the U.S.A., the U.K. and Norway. Thailand stands virtually alone, with the exception of Korea, and must devise her own plan to cope with the disruption of her fishing industry.

In particular, Thai fishery may have to be reoriented in diversified directions guided by numerous considerations.

(1) Coastal aquaculture and inland fisheries provide the potential to maintain and even increase the export market at its current levels and ensure the continuous supply of marketable fresh fish for human consumption. Other alternative industrial use of low-quality catches from the sea should be transformed into fish meal for animal or poultry feed. No wastage should be permitted. Fresh water fisheries and coastal aquaculture should be further developed in close cooperation with China and Japan for inland species such as salmon and trout as well as for brackish water shrimp-culture and coastal species. In this connexion, scientific research and marine biology should support the studies and experiments to recycle and increase the stocks within Thai waters, in order to make up for lost grounds.

(2) Negotiations should be conducted with the view to concluding agreements and arrangements with Thailand's coastal neighbours, notably Malaysia, Indonesia, the Philippines, Vietnam, Burma, Bangladesh and India to allow Thai fishing fleets to fish under

licence in the E.E.Z.'s of these neighbouring countries, including archipelagic waters. Arrangements at governmental level must also be followed up by cooperation at the private sectors levels, which may take different forms of joint-ventures. Honesty is the best policy. All partners should benefit equitably from the ventures. Mistakes and misunderstandings should be avoided. Malpractices and misfeasances should not be repeated. In no circumstances should Thai fishing vessels be allowed or encouraged by Thai authorities to fish in the coastal waters of Thailand's neighbours without authorization or licence, thus preventing or pre-empting potential friction in the absence of joint-venture or other forms of arrangements for mutual benefits. This will discourage illegal fishing by Thai fishermen in neighbouring waters, which shows the integrity of Thai fishermen in disreputable light and places the Thai government in an embarrassing and costly position of having to intervene to post bond for the release of the crews and vessels from foreign courts, assuming that the Convention is implemented.

(3) Cooperation within the region or sub-region should be promoted with Thailand participating as full partners in any regional or sub-regional programme such as ASEAN or the Mekong Committee, or indeed the Southeast Asian region with Japan as donor country. Cooperation with other regions should not be precluded. Attention may be paid to overtures being made by the South Asian Association for Regional Cooperation and the Pacific Forum. With adequate experience and credentials in appropriate specialization, Thailand could qualify as efficient partner or collaborator in fishing industries, such as canning, cold storage and fishery conservation and management to enhance potentials and enrich fishing grounds in various zones.

(4) For the government of Thailand, the internal problems are manifold. Unemployment of fishermen needs to be tackled. Forward planning is needed in anticipation of eventual dislocation

of fishermen and the employees in the fishing industries. Fishermen may have to find other employment or follow other pursuits. Larger budget is needed to boost the Department of Fisheries to meet new responsibilities for fisheries management, scientific information gathering, aquaculture development and enforcement. The Government needs re-education through more and better scientific, social and economic information to formulate a balanced plan for the future of Thai fisheries.

(5) In anticipation of Thailand's ratification of the 1982 LOS Convention, 32] a series of legislative acts will be needed either in the form of general enabling act or specialized fields of legislation including detailed ministerial regulations, to implement the 1981 E.E.Z. proclamation by Thailand. The Fisheries Legislation of 1947 needs revision and restructuring. In this particular connexion, the Asian African Legal Consultative Committee, of which Thailand has been active member since 1961, should be closely consulted, in order to adopt timely and appropriate measures in harmonious coordination and cooperation with other coastal countries with the larger regions of Asia and Africa, without overlooking the legislative measures by other coastal States in the North and South as well as East Pacific regions. The European Community also provides excellent models for legislation in regard to the E.E.Z., Community as well as individual member State of the Community. 33]

28/...

---

32] For an opinion in support of Thailand's ratification of the Convention, see, e.g., Ted. L. McDorman, "Thailand and the 1982 Law of the Sea Convention", *Marine Policy* 9 (1985).

33] See, e.g., the fisheries arrangement between Spain and France and the friction that followed between Spaniards and French fishermen. See also Haruhiro Fukui, "How Japan Handled UNCLOS Issues : Does Japan Have an Ocean Policy?" in R.L. Friedheim, *Japan and the New Ocean Régime*, Boulder, Colo., Westview Press, 1984, pp. 45 et seq.

### III. TRANSIT PASSAGE

#### 1. TRADITIONAL STAND OF THAILAND ON FREEDOM OF NAVIGATION AND TRANSIT PASSAGE

If, as has been seen, Thailand's contribution to the three Conferences on the Law of the Sea and even in the preparation of draft articles is not negligible, it must be added that Thailand's positions regarding freedom of navigation and the right of transit passage must have been clear to historians from Grotian time. In the wake of the theoretical debates between Hugo Grotius' "Mare Liberum" and Lord Seldon's "Mare Clausum", Thailand appears to have opted for freedom of the high seas, freedom of navigation, free flow of commerce and the right of free passage through territorial waters and international waterways. The Treaty between Thailand and the Netherlands of June 12, 1617, 34] facilitating commercial exchanges between the two countries testifies to Thailand's stand in favour of freedom of commerce and navigation.

The right of transit passage, as recently developed and endorsed in the LOS Convention Package, is something relatively new and is not automatically accorded or available to those remaining outside the new régime of ocean law. It does contain a novel element that is significant and vital to the strategic position and national security of all nations, large and small, rich and poor, coastal and land-locked alike.

29/...

---

34] See, e.g., G.W. Gong, *"The Standard of 'Civilization' in International Society"*, Oxford, 1984, especially at p.

203. See also Sumet Jumsai, *"The First Siamese Embassy in Europe"*, *the Voice of the Nation*, Bangkok, February 17, 1974, p.4.

A balanced approach to this important notion of "transit passage" requires a basic comprehension of allied notions which have to be frontally faced. Without an exhaustive analysis of the different régimes of various portions of the sea or ocean, such as the high seas, the territorial seas, the archipelagic waters, archipelagic sea lanes, international straits and E.E.Z.s, an understanding of some basic concepts is essential to any introduction to this delicate and controversial subject of "TRANSIT PASSAGE". These notions include "passage", "transit passage", "innocent passage" and "archipelagic sea lane passage" as well as in terms of jural relationship, viz., the "right of passage", "right of transit passage", "right of innocent passage" and "right of archipelagic sea lane passage".

a. Different Types of Passage

1. "Passage" in the context of the Convention on the Territorial Sea and the Contiguous Zone, 1958, means navigation through the territorial sea for the purpose either of traversing through that sea without entering international waters, or of proceeding to international waters, or of making for the high seas from internal waters. 35] This definition is reiterated in Article 18 (1) of the 1982 Convention. Paragraph 2 of Article 18 clarifies this definition further by requiring passage to be "continuous and expeditious". However, passage may include "stopping and anchoring", but only "in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircrafts in danger or distress." 36]

30/...

---

35] See Article 14 (2) and (3) of the Geneva Convention on the Territorial Sea and Contiguous Zone, April 29, 1958; *The Work of the International Law Commission, Third Edition*, U.N., New York, 1980, pp. 140-147.

36] See Article 18 of the U.N. Convention on the Law of the Sea, 1982, U.N. Publication, New York, 1983, at p.18.

Freedom of the high seas, on the other hand, is much more comprehensive than the right of passage. It comprises inter alia, freedom of navigation, freedom of fishing, freedom to lay submarine cables and pipelines, and freedom to overfly the high seas. 37]

2. "Transit passage" means, under Article 38 (Right of transit passage) of the 1982 LOS Convention, "the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering a strait, subject to the condition of entry to that State." 38]

3. "Innocent passage", under Article 14 of the Geneva Convention on Territorial Sea and Contiguous Zone of 1958, means any passage "so long as it is not prejudicial to the peace, good order and security of the coastal State 'and such passage' shall take place in conformity with these articles and with other rules of international law." 39] Under Article 19 of LOS Convention 31/...

---

37] See Article 2 of the Geneva Convention on the High Seas, April 29, 1958, the Work of the International Law Commission, Third Edition, U.N., New York, 1980, pp. 147-155, at p. 147. Compare Article 87 (Freedom of the High Seas) of the 1982 LOS Convention, U.N. Publication, New York, 1983 at pp. 30-31.

38] See Article 38 (2), *ibid.*, at p. 12. See also Articles 39-44, pp. 12-14..

39] See Article 14 of the Geneva Convention on the Territorial Sea and Contiguous Zone, 1958, referred to in Note 32 *supra*.



1982, the concept of "innocent passage" which is further amplified is applicable in the context of the territorial sea, Part II, Section 3, as well as Part III, Section 3, Strait used for international navigation, excluded from the application of the régime of transit passage under Article 38 (1), or between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign State. 40] This "innocent passage" is also applicable through archipelagic waters under Article 52 of the 1982 Convention. 41]

4. "Archipelagic sea lanes passage" means, under Article 53 (3) of the 1982 Convention, 42] "The exercise in accordance with this Convention of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone." Paragraphs 4 and 5 prescribe further requirements for the archipelagic sea lanes passage which "shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary." 43] Such sea lanes and air routes shall be defined as a series of continuous axis lines from the entry points of passage routes to the exit points. Ships and aircrafts in archipelagic sea lanes passage

32/...

---

40] See Article 19 of the Convention of the Law of the Sea, 1982, cited in Note 33, at pp. 6-7.

41] See Article 53, *ibid.*, p. 17.

42] *Ibid.*, p. 17.

43] *Ibid.*, Article 53 (4) at p. 17.

shall not deviate more than 25 nautical miles to either side of such axis lines during passage, provided that such ships and aircraft shall not navigate closer to the coasts than 10 per cent of the distance between the nearest points on islands bordering the sea lane. 44] Traffic separation schemes may also be prescribed for the safe passage of ships through narrow channels in such sea lanes. 45]

b. Variety of rights of passage

Following the preceding description of the different types of passage, it may be convenient to examine the variety of rights relating to the different types of passage outlined.

1. The "right of passage", for example, must be viewed as the most extensive right incidental to freedom of navigation. It is not confined to any sea lanes or routes or subjected to any traffic separation schemes, being one of the freedoms of the high seas. In the narrower context of the territorial sea, however, the passage has of necessity to be "innocent".

2. The "right of transit passage" through straits is the creation of a new régime in modern ocean law, applicable to "straits used for international navigation". It restricts the freedom of navigation or overflight to the sole purpose of continuous and expeditious transit of the strait between one part

33/...

---

44] Ibid., Article 53 (5) at p. 17.

45] Ibid., Article 53 (6) at p. 17; compare Article 41 (Sea lanes and traffic separation schemes in straits used for international navigation), paras 1-7.

of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

3. The "right of transit passage" through archipelagic waters is somewhat larger and more flexible than through a strait used for international navigation. There is room for deviation within the 25 miles range of the archipelagic sea lanes and air routes and the sole purpose of continuous, expeditious and unobstructed transit is further tightened by the requirement of non-obstruction by the archipelagic State.

4. The "right of innocent passage" is better known and more traditional in the sense that it has to some extent been established in the practice of States, as confirmed in no uncertain terms, in the Corfu Channel Case (1949) 46]. Controversy persists nonetheless as regards the requirements of "innocence" or "innocent character" of the passage. This has been further clarified by Article 19 of the LOS Convention of 1982 47] by way of general description of an innocent passage plus an enumeration of circumstances precluding the innocence of the passage. The right of passage through such waters as the territorial waters of a coastal State or an international strait excluded from the application of the régime of transit passage under Article 38 (1), or between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign State, is therefore restricted by the requirement of the passage being "innocent" within the

34/...

---

46] See *U.K. v. Albania, Corfu Channel Case (Merits)* I.C.J. Report, 1949, pp. 4 et seq., the right of passage is recognized for peace time "provided the passage is innocent".

47] See Article 19 of the LOS Convention 1982, U.N. Publication 1983, at pp. 6-7.

meaning of Article 19. 48] Without at this stage conjecturing the extent or limits of this right of innocent passage, it is necessary to underline the compromise nature of the formula adopted, which, not unlike other compromises, is susceptible of differing interpretation to be acceptable to all States, or at least to generate general acquiescence if not consensus.

35/...

---

48] Under Article 19 (1), "passage is innocent as long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law." "Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities :

- (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
- (b) any exercise or practice with weapons of any kind;
- (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;
- (d) any act of propaganda aimed at affecting the defence or security of the coastal State;
- (e) the launching, landing or taking on board of any aircraft;
- (f) the launching, landing or taking on board of any military device;
- (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal States;
- (h) any act of wilful and serious pollution contrary to this Convention;
- (i) any fishing activities;

(to be continued...)

## 2. PROBLEMS AND ISSUES IDENTIFIED

Several questions of fundamental importance have been raised in connexion with the right of transit passage through straits used for international navigation. The first question that stands out is the division of international straits that permit of transit passage and those that would allow only innocent passage in the same way as a passage through the territorial water of another State.

The second basic question of legal and strategic significance is the differences between the right of transit passage and its applicability on the one hand and the very restricted right of innocent passage on the other.

The third question relates to the rights of men-of-war or war-ships in time of peace to pass through international straits. Can a man-of-war exercise the right of transit passage through international straits open for ordinary vessels of commerce with their right of transit passage? Ultimately, can a warship ever exercise the right of innocent passage in peace time without being in one way or another prejudicial to the peace, good order or security of the coastal State? Only activities having a direct bearing on passage, such as uninterrupted and undelayed

36/...

---

48J (cont.)

- (j) *the carrying out of research or survey activities;*
- (k) *any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;*
- (l) *any other activity not having a direct bearing on passage." (para 2).*

navigation or continuous and expeditious voyage would not be considered to be "not innocent". Fishing, collecting scientific data, exploring, mine-sweeping, naval exercise, radio transmission jamming, testing, training, loading or unloading, launching any aircraft or object would render the passage of a ship "not innocent" in spite of the peaceful character of the vessel, be it private merchantman or government ship other than a man-of-war.

The positions of States regarding these questions are necessarily varied. The Super Powers and other traditionally maritime powers would insist on freedom of transit passage through an international strait, however defined in order to ensure their "presence" throughout the world in time of crisis. Coastal States with less effective means of self-defence would prefer to have their security safeguarded by absence of the show of forces, sea and air power, of the stronger States. Their interests appear to conflict inter se. There appears to exist also a third group of States which may need the assistance of their allies in time of emergency, hence the need to support freedom of transit passage. On the other hand, this freedom should be sufficiently restricted to permit the coastal States or strait States adequate control of movement of hostile vessels through their territorial waters or the straits they border. A compromise has had to be struck and it has to be sufficiently controversial to allow for differences in interpretation and implementation. Resulting conflicts could be resolved through the various pacific means of dispute settlement to be worked out in State practice.

### 3. THAILAND'S POSITION ON TRANSIT PASSAGE

To assess Thailand's position on the right of transit passage is an interesting challenge. Different aspects of the question need to be examined with the greatest care.

#### (a) General Principles

Thailand's policies are conditioned by certain considerations and constraints. There are some principles from which Thailand cannot deviate. She must continue to support freedom of navigation, having regard to her liberal trade policies and the right to fish in as wide an ocean space as could be allocated. Thailand's strong opposition to "mare clausum" in the context of fisheries is too well known to need any elaboration at this point.

Freedom of navigation and other freedom of the high seas have not embittered Thailand's experience with western expansionism to the point of losing her national independence and territorial integrity. The gunboat diplomacy of the West was intolerable but it was endured with untold hardship. But past is past. The present posture of Thailand continues to be supportive of freedom of navigation, hence relatively free transit passage through international straits for her own fishing vessels, merchant marine and also naval forces.

In the world of inter-dependence, mutual assistance is indispensable. Thailand stands in need of help from her friends and allies. Freedom of transit passage may provide a key to her defence and survival in terms of logistic support and other forms of subsistence assistance.

(b) Geographical or geopolitical considerations

"Transit passage" is a plus for Thailand from the point of view of her geographical situation and geopolitical position. Thailand's peninsular portion in the South serves to separate her defence fleets into two, one for the Gulf of Thailand and another, perhaps less important, for the Andaman Sea, and Indian Ocean. Divided in fact by the Malacca straits, Thai fleets of all types, whether fishing, commercial or governmental vessels, cannot readily service both sides of the Southern panhandle bordered by the Gulf of Thailand to the East and the Andaman Sea to the West.

Besides, given the definition of "passage" through territorial water, there is little chance of a hostile vessel exercising any right of transit or indeed innocent passage through Thailand's territorial water. It is essentially, therefore, in Thailand's national self-interest to protect the right of transit passage as well as innocent passage for all practical purposes for all Thai flags. Thailand stands to gain more than lose on the general application of the right of "transit passage".

(c) Thailand's positions

In the ultimate analysis, national self-interests, immediate, intermediate or long-term, cannot per se conclusively determine Thailand policies. Taking into account the principal role initially played by Thailand in ASEAN, Thailand cannot afford to turn deaf ears to the pleadings of her close associates and friendliest neighbours. The position of ASEAN cannot be said to be uniform in this particular connexion. While the Philippines and Indonesia would prefer to restrict "transit passage" as much as possible, thus, allowing the coastal States, or archipelagic States or indeed strait States, to exercise effective control over the



passage of foreign vessels of all denominations, especially warships which should seek prior authorization before commencing any transit passage. Malaysia is also inclined in this direction although she has been less vocal. On the other hand, Singapore, albeit a riparian of the Malacca Strait, and hence further bound by a stronger sense of solidarity to support the majority in the Malacca Strait, is clearly concerned with its own freedom of navigation and transit passage not only for its own flags but more precisely also for international commerce and navigation, being dependent, although to a diminishing degree, on the entrepôt trade. Traffic separation schemes approved by the I.M.O. (Intergovernmental Maritime Organization) appear to provide the much needed balance to ensure Singapore's positive stand in favour of transit passage guaranteed by safety of navigation. Thailand's position within ASEAN is unique in that unlike the Philippines which is an archipelagic State and further away from Malacca Strait, Thailand is virtually the opposite of an archipelagic State. Her southern isthmus separates two seas, and therefore two fleets. Furthermore, she is immediately opposite to India and Indonesia and adjacent to Malaysia.

In the circumstances, Thailand is obliged to keep a low profile, fully cognizant of her national interests in regard to the right of transit passage while not unmindful of the vital interests of her ASEAN friends and associates. She also has to take into consideration her own security interests which may be linked to other overseas friendly powers beyond ASEAN and Southeast Asia. Thailand must go along with whatever compromise has been reached, after trying her hardest to have her interests adequately reflected and protected, by making certain that her fleets are not permanently separated and friendly assistance from overseas is not precluded by non-application of transit passage for military or other assistance in time of need.

IV. DISPUTES SETTLEMENT

## 1. GENERAL CONSIDERATIONS

(a) General Policies and Guidelines

"AROKA PARAMA LABHA". However potent may be the cure prevention of illness is best. The Thais, like many other Buddhists in Asia, remain firm believers in this philosophy. Orientals share a natural aversion for litigation in general and international adjudication in particular. 49]

Despite the numerous variations of pacific methods of dispute settlement or conflict resolution, including the principal means mentioned in Article 33 of the Charter of the United Nations, none seems in Thailand's bitter experience to have offered an ideal solution to the problem of conflict resolution.

Thailand is convinced that it is far better to prevent conflict, to avoid the causes of conflict and to pre-empt any potential dispute from arising, than to allow an international difference to grow into a conflict or dispute between nations requiring delicate and ceaseless attention.

As Thailand can afford neither the time nor the expenses for international adjudication or other lesser forms of third-party dispute settlement, the first priority for Thailand is to avoid friction or potential dispute at all costs.

41/...

---

49] Compare the Chinese saying ; "Robbery leaves something. Fire does not consume land. A law-suit is worse than robbery and fire combined."

(b) Anticipation and identification of problem areas

Thailand's best insurance against risks of conflict in the context of the new law of the sea lies in her ability to anticipate problem areas where conflicts are likeliest. It is abundantly clear that the new ocean law is opening new possibilities for the exploration and exploitation of all living and non-living resources of the sea, the sea-bed, ocean floor and mineral resources underneath.

Apart from fisheries conservation and management which, as noted in Section II 50], may require attention in areas beyond national jurisdiction, the exploration and exploitation of living and non-living resources of the ocean depends on the national confines of a State. The problem of delimitation of maritime boundaries is inevitable, vis-à-vis, opposite and adjacent States, both with regard to water-column and the continental shelves and subsoil. New areas require new delimitation, partially unilaterally to some extent such as the drawing of straight baselines, partially with the common heritage of mankind, separating the E.E.Z.s from the high seas or areas beyond 200 miles, and the continental shelves within the 200 miles as well as the extension of the continental margin for up to 350 miles measured from the base-lines.

Such unilateral measures are not necessarily binding unless acquiesced in by other interested States. Absence of protest or objection may indicate some certainty in such actions.

42/...

---

50] Section II, *The Exclusive Economic Zone*, pp.6-27supra.

Other types of delimitation involving the marking of a frontier line dividing adjacent States or opposite States obviously requires the agreement or concurrence of the other party or indeed parties, in regard, for instance, to a tri-junction.

(c) Thailand's preventive or pre-emptive measures

It is Thailand's conviction that pre-emption is better than remedial or curative effort. Thus, long before the signing of the LOS Convention on December 10, 1982, Thailand had embarked on the negotiations of a series of bilateral treaties to delimit her maritime boundaries with her most immediately adjacent neighbours, including Malaysia, Burma, Indonesia and India. Kampuchea did reach a draft agreement before it was overtaken by an upheaval which put the clock back for that unfortunate country. Vietnam also endeavoured to reach agreement with some of its neighbours, but so far yielding little results, owing to its somewhat unusual theory of the deepest channel or thalweg, an analogy derived from the law of international rivers.

Anxious to settle the delimitation question with all her neighbours, Thailand must be seen as very willing and generous in making concessions to India, Burma and Indonesia without much bargaining. Thailand must have appeared to be the most agreeable and easiest to negotiate partners. What is important is the certainty of the delimitation agreed upon by the parties. Whatever the principle preferred or adopted, equitable principles or other geographical or geometrical techniques such as equidistance or median line, as long as the results are equitable and agreeable, Thailand will accept and honour. Thus the agreement with India was concluded in record time. The Thai-Burmese maritime boundary was based on quasi or approximate equidistance principle. The Thai side approved Burmese line more than once without quibbling. The tri-junction, Thai-India-Indonesia, was the first to be established in the sub-region.

The problem with Malaysia was more difficult. It concerned an area in the Gulf of Thailand, because of the existence of many special circumstances, including the presence of an island and shifting sand at the mouth of the Golok boundary river. The good will of both Parties, backed by genuine conviction in the principle of good neighbourliness, led the leaders of the two Southeast Asian ASEAN Kingdoms to overcome what had appeared to be insuperable difficulties and conclude an agreement which was durable enough to ensure timely exploration and exploitation of all mineral resources in the area in question, designated under the agreement as the "Joint Development Area". Problems of great legal, political and economic significance have been resolved, and there are many more to be overcome in the actual implementation and administration. The creation of a joint Malaysia-Thailand authority is the establishment of an international organization to administer the joint development area, applying a régime and a development law which is neither Thai nor Malaysian.

Once the two Parties could reach agreement, private sectors interested in the joint-development area also have to renegotiate since the original concession agreements were without exception applicable to areas already delimited. In the absence of delimitation, a new régime will have to be introduced and accepted by all concerned. It may take further negotiations, but one thing is clear, Thailand and Malaysia could agree on the joint exploration and exploitation of resources in the area.

(d) Obstacles to overcome

Negotiation is an art that requires both knowledge and skills, knowledge of what constitute the national interests at stake and their priority, and the skill to persuade the co-partner to accept the wisdom of a mutually beneficial agreement.

Far-sightedness and insight are difficult to learn. The ability to estimate the level of the bottom line and to calculate the econometrics of each step of the bargain, including the advantages and disadvantages to be carefully weighed, is only acquired after long experience.

Understanding and appreciation of each other's position and difficulties must be learned by negotiators. Thailand has been successful in several negotiations and also unsuccessful in several others which required subsequent efforts and forbearance to rectify the situation. The Special Yen Agreement may be given as one such example of protracted renegotiation. Clearly Thailand is more or less experienced compared to some of her Asian colleagues. The art of negotiation can be learned and passed on from school to school, from generation to generation. A thorough understanding of the subject-matter is essential to successful negotiations. Of late, multilateral negotiations have become a permanent feature in international relations and meetings. Legal knowledge and linguistic abilities will go a long way towards the making of a sound negotiator. There is no substitute for intelligence, far-sightedness and sincerity. The Japanese experience has been systematic, progressive and fully disciplined.

## 2. AVAILABLE OPTIONS

Among the alternative methods of dispute settlement should be mentioned negotiation, good offices, commission of enquiry, mediation, conciliation, arbitration and judicial settlement. It might be pertinent to examine some of these pacific means of conflict resolution in the light of Thailand's recent experience, excluding the imposition of unequal treaties and the untiring efforts of Thailand to negotiate their elimination.<sup>50]</sup>

45/...

---

<sup>50]</sup> *This episode deserves a separate treatment by itself.*

(a) Negotiation and renegotiation

As is shown in the preceding subsection, negotiation is a means to reach agreement between States and also to avoid or pre-empt future conflicts. Thus, a well thought out agreement is not likely to generate disputes. Should a dispute arise, however, from a negotiated arrangement, then the most natural and immediate way to deal with the situation is direct negotiation or renegotiation between the original parties involved.

Even where a dispute arises out of a situation and not from an agreement, negotiation affords the first and foremost logical means to air the difference with the view to resolving whatever conflict that may persist. Negotiation, or renegotiation as the case may be, is therefore the very first attempt at conflict resolution or dispute settlement.

It is sometimes said that not everything is negotiable. Thus, neither peace, nor sovereignty nor political independence of a State would seem negotiable. 51] It should also be added that many other things are negotiable, and disputes can be successfully negotiated to the mutual satisfaction of both or all parties involved.

"Renegotiation" has been employed as a means to reschedule international debts in the case of a state of necessity. Thailand has had to renegotiate out of a status of unequal treaties like other Asian nations under a régime of extra-territoriality such as China, Japan and Turkey.

46/...

---

51] *For example, in the Falkland Islands (Malvinas), dispute between Argentina and the United Kingdom, there seem to be non-negotiable issues.*

In the context of ocean law, Thailand has had to negotiate with everyone of her neighbours to delimit her maritime boundary, primarily the continental shelf and eventually also the E.E.Z. Further negotiations, such as with Vietnam, remain to be undertaken in due course and with utmost care and vigilance.

Fishery agreements both at governmental level and joint venture agreements have had to be negotiated and continue to be an item for further negotiation or renegotiation in several areas of interests to fishing nations and coastal States.

The considerations that apply to negotiation to avoid and pre-empt conflict equally apply to negotiations to resolve existing dispute or conflict that has resulted. Thailand has had her share of satisfaction and disappointment, of success and failure, both bilaterally and multilaterally.

(b) Good offices

Once negotiation or renegotiation fails to produce agreed results, other means at the disposal of the Parties must be examined and employed if at all practicable. "Good offices" appear to be the most palatable or the least objectionable among the means of third-party dispute settlement. Next to negotiation, "good offices" afford a convenient means to resolve a conflict with the assistance or rather with a "passive" attendance by a third party, providing the good offices, without asserting any views on the substance of the dispute.

In her recent practice, Thailand has found this method to be the least burdensome if not indeed the most acceptable of all the methods of third-party conflict resolution. The party providing the "good offices" remains a silent observer in the



process of negotiation between the parties in dispute. "Good offices" include every possible facility to induce the parties to a negotiating table. Such facilities include not only accommodation, meeting room, translation services and precis-writers, but also other amenities to allow free and frank exchanges of views between the parties. It does not preclude an independent opinion, now and then, of a procedural nature or explanation of implications under the established practice of the United Nations, for instance, in the case of the "good offices" provided by Secretary-General Dag Hammarskjold in disputes between Thailand and Kampuchea in 1960 which culminated in the conclusion of four sets of exchange of letters between the Parties in the presence of the Secretary-General and his deputy, Ambassador Engers of Norway.

"Good offices" of the Secretary-General of the United Nations have been employed by Thailand and Kampuchea in subsequent dispute or situation which requires the presence of an independent observer representing the Secretary-General of the United Nations, such as Ambassador Bo de Ribbing of Sweden.

Thailand, in turn, has provided the much needed good offices which contributed to the successful resolution of the "CONFRONTATIE" between Indonesia and Malaysia in the mid sixties, and between the Philippines and Malaysia immediately after the creation of Malaysia including Sabbah in 1963. In this triangular conflict, Thailand presented herself as a disinterested Party, with Foreign Minister Thanat Khoman, commanding the respect and confidence of the three Parties in question. Minister Khoman's good offices restored law and order in Southeast Asia and paved the way for the next phase of regional cooperation, the establishment of ASEAN.

For Thailand, "good offices" are welcome and much encouraged, especially for resolution of regional or sub-regional conflicts.

(c) Commission of enquiry

Under this heading may be included among the pacific means of conflict resolution the establishment of a "commission of enquiry" or a "fact-finding commission" or "committee" or simply "verification team" to ascertain, establish or verify the existence of certain facts or situation. Thus, a "fact-finding commission" was established to find facts regarding the practice of genocide in Kampuchea after the fall of Longnol and the establishment of Democratic Kampuchea under Polpot in 1975. "Commission of enquiry" or "fact-finding commission" whose task it is to ascertain and report on actual situation has often been used by an international organization such as the United Nations. On a smaller scale, a "verification team" may be set up to verify or confirm, say the withdrawal of a number of guerillas despatched across the border. Thus, Thailand was asked to send a "verification team" to verify and certify the withdrawal of Indonesian troops from various points in Sarawak, Malaysia, during the height of the "Confrontatie" between Indonesia and Malaysia in 1964-1965.

(d) Mediation

"Mediation" has not always been a happy medium to reach a satisfactory solution to any international conflict. In one instance, Count Bernadotte, a mediator for the Palestinian conflict lost his life to an assassin. Secretary-General Dag Hammaskjold himself met with a tragic accident in Africa on a mission of a fact-finding nature. As far as Thailand is concerned, mediation is a method to avoid. Japan mediated the dispute between Thailand and France, resulting in the Tokyo Convention of May 9, 1941

before the outbreak of the Pacific war. Thailand signed an agreement with the Vichy Government only partially restoring portions of territories earlier ceded to France by Thailand under the 1904 and 1907 Treaties, while Japan, acting as mediator, took over the rest of French Indochina. Mediation reminds us of the story of TA IN and TA NA, fighting over the fish, disagreeing as to which half should belong to whom, while TA YU, the mediator, took the body, giving the head of the fish to one party and the tail to another.

(e) Conciliation

Conciliation is another method of pacific settlement of dispute through conciliation procedure, generally each Party nominating one member to serve on the three or five member commission nominated from a panel of international jurists of recognized competence, such as members of the Permanent Court of Arbitration at The Hague.

Thailand has had one experience in a territorial dispute with France following the Settlement Accord of Washington of November 17, 1946, 52] establishing a five-member Conciliation Commission under Article XXI of the Franco-Siamese Treaty of December 7, 1937. This was all in accordance with the General Act of Geneva of September 26, 1926 53] for the Pacific Settlement of International Disputes.

Thailand nominated one expert to the Commission chaired by Ambassador Belaunde of Peru. The Conciliation Commission was  
50/...

---

52] See Article III of the Washington Accord 1946, 344 UNTS 59, No. 4943, and exchange of letters.

53] See LNTS Vol. 93, p. 343, and Vol. 197, p. 304.

heavily lopsided to begin with in favour of France, as a Latin and Roman Catholic culture. Counsel for Thailand induced almost every imaginable argument for the return of lost territories, including ethnic, linguistic and cultural affinities. The Commission recommended in favour of France, basing its reasoning on political and legal considerations, especially applying under the law of treaties, *inter alia*, the principle "*Pacta sunt servanda*". Thailand was disappointed. Once bitten, she became shy and more careful of western procedures of pacific settlement of dispute.

Of late, however, conciliation commission of a kind has been reintroduced for compulsory settlement of legal and political disputes with binding effect within the framework of ASEAN. Each member is to designate a minister to serve on the conciliation commission. 54] There is thus far no recorded hearing or recommendation on any dispute or question.

Conciliation commission has also been adopted in the latest Law of Treaties between States and International Organizations and between International Organizations, 1986, 55] as a compulsory procedure for settlement of disputes concerning the application of "jus cogens". In a way the procedure for compulsory arbitration is combined with compulsory conciliation, and arbitrators/conciliators are persons of recognized competence in international law.

51/...

---

54] See, e.g., C. Quisumbing, "Problem and Prospects of ASEAN Law : Towards a Legal Framework for Regional Dispute Settlement", ASEAN Identity Development and Culture, Honolulu, East West Centre, Cultural Learning Institute, 1981, p. 300.

55] See the relevant articles 53 and 64 on Jus Cogens of the 1986 Convention, not yet entered into force.

(f) Arbitration

Many types of international arbitration are possible, as between States, some with compulsory procedure and binding awards, others within the framework of an established arbitral tribunal, or the Permanent Court of Arbitration at The Hague, or ad hoc tribunal, or sole arbitrator.

Commercial arbitration in the context of international trade lies outside the scope of the present introduction, but international arbitration involving government contracts or concessions, or the type of ICSID convention arbitration, between States and private enterprises in connection with development investments may be of some interest. Thailand has recently signed the ICSID Convention which awaits ratification before entry into force for Thailand. Her internal law and procedures allowing international arbitration will have to be amended or readjusted.

Recently, Thailand was party to a dispute which was brought before an arbitral tribunal in Zurich by Union Oil Co. (1986) 56] concerning royalties assessment.

(g) Judicial Settlement

Thailand was among the very few Asian nations that attended the First and Second Peace Conferences at The Hague in 1899 and 1907, and subscribed to the Permanent Court of Arbitration, whose panel of arbitrators nominate candidates for judges in the Permanent Court of International Justice and since 1945 the International Court of Justice at The Hague. Thailand was an original member of the Statute of the Permanent Court but did not become party to the Statute of the International Court until 1946, a year since its existence and operation.

52/...

Thailand ranks among important nations which have suffered some disappointments at the hands of the highest judicial instance for pacific settlement of international disputes. The United Kingdom was not particularly pleased with the decisions of the Court in the Anglo Iranian Oil Co. Case (U.K. v. Iran), 1951-52 57] and the Anglo-Norwegian Fisheries Case (U.K. v. Norway) 1951. 58] Nor was the United States especially enthusiastic about a recent decision in Nicaragua v. U.S.A., 1986/ 59] The U.S. Government appears to have expressed the sentiment of disenchantment felt by Thailand after the judgement in the Temple of Phra Viharn Case, 1961-62. 60] The darkest days of the Court came upon its judgement in the South-West Africa Cases (second phase), 1966, 61]. and <sup>it</sup> has encountered endless difficulties, trying to recover from that case. Both Thailand and the United States declared their sense of disillusionment by the decisions of the Court which were believed to be due in no small measure to the hazard of its composition at the material times, i.e.,

53/...

- 
- 57] U.K. v. Iran, *Anglo-Iranian Oil Co. Case*, 1951-1952, *I.C.J. Reports* 1951, p. 89. (Interim Measures); *I.C.J. Reports* 1952, p. 93 at p. 103, (Preliminary Objections).
- 58] U.K. v. Norway, 1951, *I.C.J. Reports*, p. 116.
- 59] Nicaragua v. U.S.A., 1986, June 1986, *I.C.J. Reports* 1986.
- 60] Cambodia v. Thailand, 1961-1962, *I.C.J. Reports* 1961, p.17 (Preliminary Objections), *ibid.*, 1962.
- 61] *I.C.J. Reports* 1960, p.6.

in 1962, and in 1986 by the United States for diametrically opposite reasons. Thailand thought the Court was too European and colonial in its approach to the law of treaties, especially where treaties were induced by force while the United States hinted that the Court was leaning excessively towards non-European views of the Third World. The truth of the matter is that very few States have been satisfied with the performance of the Court. More recent cases have been frequently maritime delimitation disputes, directly arising out of the new Law of the Sea. It should be noted that developed countries preferred arbitration (e.g., U.K. v. France delimitation) or special chamber to select their own judges (e.g., Canada v. U.S.A.). while countries from the Third world, especially Africa and Latin America have sought judicial settlement of their maritime boundary disputes by the International Court of Justice.

The experience of Thailand has been one of bitter disappointment. From the start, a mistake was made by the Secretary-General of the United Nations in his note reminding Thailand that her declaration made in 1939 to the Permanent Court which the Secretary-General erroneously believed was transferred to the International Court of Justice in 1945 was about to expire in 1949 and suggested that Thailand should renew that declaration, which in fact as well as in law lapsed in 1945. 62] Unquestionably, Thailand without consulting the Cabinet, let alone seeking parliamentary approval, filed a declaration renewing the old declaration that had long lapsed, believing falsely with the Secretary-General that it was still valid and unthinkingly that

54/...

---

62] As was clearly demonstrated by the Agent for Israel in the Bulgarian Aerial Incident Case, Israel v. Bulgaria, 1957, I.C.J. Reports 1957, Pleadings.

it was the normal thing to do. The facts of international life were far from Thailand's innocent and credulous belief. 63] On the merits of the Temple Case, the Court erred in favour of a colonial power by allowing acquisition of title against the original holder, not by usucapion nor by subsequent conduct, and contrary to boundary treaty provisions, but, basing its decision on the binding character of an erroneous French-made map which was the source of publications and reproductions on papers without actual possession on the ground. 64] The Court wrongly held Thailand's silence to be acquiescence, while, in actual fact, Thailand had always been in actual possession of the Temple without any protest from France. Does it mean then that territorial sovereignty could be displaced by mere surreptitious publication of a false map or misleading or inaccurate document?

Since 1962, Thailand's disenchantment with judicial settlement of disputes prevented her from filing any further declaration under the optional clause. This does not mean that Thailand is necessarily averse to the Court or its compulsory jurisdiction. In fact, the decision in the Temple Case was carried out under strong reservation. Serious objections were expressed through the Thai Representative in the Sixth Committee in 1962. Thailand's acceptance of compulsory jurisdiction of the Court has since been on a selective, ad hoc or eclectic basis, such as, in

55/...

---

63] *A young Director-General of the Department of United Nations Affairs in Bangkok, bypassing the Legal Adviser's Office, gave the view in 1949 that Thailand should of necessity accept the optional clause like every body else. (sic.)*

64] *The Temple Case (Merits) , I.C.J. Reports 1962, p.6. The map was not an integral part of the Treaty of 1904. It was made much later not strictly in conformity with the relevant Treaty provisions.*



bilateral treaties on conditions of strict reciprocity and subject to appropriate reservation or in multilateral conventions on a special subject where compulsory jurisdiction is deemed to be useful, practical and without discrimination or element of surprise. In principle, Thailand does not object to compulsory adjudication, so long as she could choose her partners or opponents or the subject-matters of the dispute to be submitted for adjudication.

What is lacking in Thailand is perhaps not so much the necessary brain-power 65] as an adequate appreciation by the Government of the role of international law and the necessity to place the conduct of foreign relations and possibility of dispute settlement on a sound basis of the law rather than on superstitions or groundless suspicion or witchcraft. The Government must begin a process of self-education to accept the sound legal advice of its own native experts and not readily and summarily to dismiss as hostile any constructive suggestion based on sound legal reasoning. 66] Legal expertise should be cultivated not discouraged if a nation such as Thailand expects to survive in this severely competitive world. 67]

56/...

---

65] *In fact, very few Thais have reached international recognition. Only two in the span of a century were elected to the Institute of International Law, the first one was originally a Belgian national, Gustav Rolin Jacquemyne, Chao Phya Abhai Raja. Only one Thai was invited to teach at the Hague Academy of International Law at the regular session. Only two Thai jurists were ever elected to serve on the International Law Commission of the United Nations. One was nevertheless the first Asian ever to be appointed Special Rapporteur of the Commission.*

66] *In 1960, a young Thai jurist was nearly summarily executed under Section 17 of the order of the Revolutionary Council for contradicting an optimistic assessment that Thailand had a 300 per cent chance of winning the Temple Case. Had it not been for the shrewdness of Field Marshall Sarit Dhanarajata the Thai expert would have long perished before his attaining international recognition.*

67] *Thailand never had a Judge on an International Court inspite of the existence of a number of her most highly qualified publicists. Indeed, no other nation in the world instructed its representative to dissuade its allies from voting for its national candidate, even if it was just an election to fill in a casual vacancy.*

### 3. NEW DISPUTES SETTLEMENT MACHINERIES AND THAILAND'S REACTIONS

#### (a) New options open by the Convention of 1982

Under the LOS Convention 1982, new procedures and new mechanisms are being set up to facilitate still further the solution to the problem of dispute settlement in the context of the new Ocean Law. There appears to be a proliferation of judicial machineries with adjudicative functions to determine questions of law and of fact relating to matters falling within the scope of the new ocean law. Parties to a dispute have much wider options than ever before. There is truly an "embarras de choix" of different procedures for compulsory dispute settlement including compulsory arbitration, compulsory conciliation and compulsory adjudicative jurisdiction by one of the special tribunals or chambers in addition to, and intentionally or otherwise, in competition with existing machineries including the Permanent Court of Arbitration and the International Court of Justice with its new streamlined procedures for special chamber. There are also options for non-compulsory procedures available, such as conciliation and fact-finding commission. The compulsory procedures may also entail binding decisions.

Thus, in addition to the Permanent Court of Arbitration at The Hague, and the International Court of Justice which continue to be available to settle all legal disputes between the Parties, the following new procedures and machineries are envisaged upon entry into force of the LOS Convention of 1982.

#### (1) The International Tribunal for the Law of the Sea

The proposal to establish an international tribunal for the law of the sea has been well received without much opposition although with some reservation. The duplication and proliferation of judicial institutions with overlapping functions are intended to provide further options and to allow the law progressively

to be developed within the framework of its particular specialisations. The new tribunal is characterized by its administrative rather than purely legal approach. Besides the Parties to a conflict may include subjects of international law other than States, such as international organizations, public and juridical persons could have their disputes settled by the international tribunal for the law of the sea.

(2) The Sea-Bed Disputes Chamber

This special chamber is provided by Article 187 (Part XI) of the Convention with jurisdiction to entertain and decide disputes in regard to activities in the area under the administration of the Sea-Bed Authority covering six categories of disputes between State Parties or between a State Party and the Authority or between Parties to a contract, or between a prospective contractor and the Authority, or between States Parties, or the Authority or the Enterprise and natural or juridical persons. Procedures for requesting advisory opinions are also open. Other procedures such as an ad hoc Chamber of the Sea-Bed Disputes Chamber and binding commercial arbitration are also available under Article 188.

(3) The Arbitral Tribunal under Annex VII of the Convention

Annex VII of the Convention provides for the establishment of the Arbitral Tribunal designed to overcome some of the difficulties encountered by existing international arbitral tribunals. It is intended to furnish an improved model to facilitate arbitration. Not unlike the Permanent Court of Arbitration at The Hague, the LOS Arbitral Tribunal is composed of a panel of arbitrators, four from each member States, presumably the arbitrators are qualified persons with experience in maritime affairs and enjoy the highest reputation of fairness, competence and professional integrity. The arbitral awards are final and binding on the Parties.

Full compliance with the award by the Parties is assumed.

(4) The Special Arbitral Tribunal Constituted under Annex VIII

A special arbitral tribunal may be established in accordance with Annex VIII for one or more categories of the disputes specified in that Annex for highly technical disputes envisaged in Article 287 (1)(d) of the Convention. Such special arbitral tribunal can be constituted for the interpretation and application of the articles of the convention relating to :

- (i) fisheries;
- (ii) protection and preservation of the marine environment;
- (iii) marine scientific research; and
- (iv) navigation, including pollution from vessels and by dumping.

Special tribunals require experts, hence, a separate list of experts on various subjects will be compiled and maintained by the respective agencies such as the FAO, UNEP, Inter-governmental Oceanic Commission, IMO and their subsidiary bodies.

(b) Thailand's Positions

Thailand's reactions to the new paraphernalia and potentials or possibilities for pacific settlement of ocean law disputes are less than enthusiastic, bearing in mind her general predilection and priority for prevention or pre-emption of disputes from ever arising and her preference for negotiation and good offices. On the other hand, as a peace-loving nation, Thailand is opposed to the use of force as an instrument of national policy or a means to resolve conflicts. It should be added that the new compulsory procedures to be made available, including

the arbitral tribunal and special arbitral tribunal as well as the new international tribunal for the law of the sea will provide new options that may be acceptable in the ultimate analysis as the very last resort, having exhausted all other preferred methods of conflict resolution.

The additional available procedures are welcome provided that no undue burden is thereby created. The choice for Thailand as a prospective Party to a dispute in this context must remain equally wide if not indeed wider and more flexible in the light of the new ocean law and the proliferation of arbitral and adjudicative bodies, new and current, with overlapping functions to choose from. In this respect, the Convention is a package with a widening choice of procedures for compulsory settlement of disputes to be opted by the Parties in advance or on an ad hoc basis in the event a dispute has arisen. Although the package is not open to reservation, it is open to declaration regarding options.

## V. MARINE POLLUTION

### 1. RECENT DEVELOPMENTS IN THE PROTECTION AND PRESERVATION OF MARINE ENVIRONMENT

The problem of marine pollution is relatively of recent occurrence. The expanse of ocean space used to seem unlimited and virtually untarnished by the amount of dumps and wastes introduced by man. Of late, however, the situation appears to have changed and the danger to the world ecology has become a living reality, owing to the accumulation of industrial and nuclear waste, chemical discharges and radio-active materials and fallouts which have found their way into the ocean and the superjacent atmosphere. Even the ozone layer seems to have diminished in intensity, threatening the health of man and other living creatures.

(a) Nuclear Fallouts

The testing of nuclear explosions in the Pacific by the United States in 1954 causing death to one Japanese fisherman and injury to several members of the Japanese fishing fleet in the area and the inhabitants of the Rongelap Atoll owing to contamination beyond the radius of the calculated warning zones. The United States Government gave medical and other assistance and paid compensation ex gratia to the injured parties. 68] The United Kingdom also conducted nuclear tests on the high seas near Christmas Island in the Pacific from 1956-58. 69] These tests were not then considered to be illegal, although during the First Geneva Conference on the Law of the Sea in 1958 the Soviet proposed to make nuclear testing on the high seas a violation of the Convention was not voted upon at Geneva. 70] But the matter was instead referred to the General Assembly for "appropriate action". 71] In 1963, a Nuclear Test Ban Treaty 60/...

---

68] See generally 4 Whiteman 553 et seq.; see also McDougal and Schlei, 64 Yale L.J. (1955), 648 (for the legality of the tests) and Margolis, 64 Yale L.J. (1955), 629 (against their legality).

69] See Hansard, H.C., Vo. 568, WrittenAnswers, cols. 27-29, April 2, 1957. In U.K.'s view, it is impossible to consider the question of stopping nuclear tests without having regard to the wider problem of preventing war in general, including of course nuclear war.

70] 4 Whiteman, 585-586, the U.S.S.R. conducted most of its tests in Siberia, but some also in the Barents Sea, p.574.

71] Resolution on Nuclear Tests on the High Seas, 1958, Sea Conference Records, Vol. II, p. 24, p. 101 (text).

was signed and came into force, 72] with the strong implication that nuclear tests are outlawed and therefore illegal in international law. France did not sign the Test Ban Treaty and continued to conduct tests in the South Pacific in 1972 and 1973. Several States protested France's tests which led to the Nuclear Tests cases (1974) brought by Australia and New Zealand. 73] The Court did not pronounce upon the legality of nuclear tests over the ocean in the atmosphere. The cases were taken off the court's list without a decision being taken on the merits when France announced that she would not conduct further tests after 1973. 74] It remains always questionable whether France's unilateral declaration was binding on France, and if so, who would be entitled to invoke this declaration. 75]

61/...

---

72] U.K.T.S. 3 (1964), Cmd.2245; 480 U.N.T.S. 43. In force 1963. 111 Contracting parties as of June 30, 1982, including the U.K., U.S.A. and U.S.S.R.

73] I.C.J. Reports 1974, p. 253 (Australia v. France), *ibid.*, p. 451 (New Zealand v. France). For a discussion of the illegality of these tests, see Mercer, (1968), N.Z. & J. 405-408, 418-421, and Swan, 9 Melb. U.L.R. 296 (1973-74).

74] I.C.J. Reports 1974, pp. 253, 457, by a decision of 9 to 6, the Court decided that the claim (by Australia/New Zealand) no longer has any object and that therefore the Court is not called upon to give a decision thereon.

75] France began testing again in 1981, and unashamedly admitted that one of the reasons that kept France in the South Pacific was the testing grounds for nuclear explosion. See also the Rainbow Warrior - Greenpeace Case, 1985.

(b) International Liability for Injurious Consequences Arising out of Acts Not Prohibited by International Law

Whatever the views of States on the legality of nuclear tests in the Pacific, whether or not the testing is an act prohibited by general international law, the State conducting the test must be held internationally liable for the injurious consequences arising out of such act. This notion of international liability constitutes a new item under study by the International Law Commission. The reports presented by the late Special Rapporteur, Professor Quentin-Baxter, and the current Special Rapporteur, Ambassador Julio Barbosa, have received general approval of the Sixth Committee and were warmly embraced by the developing countries (or the group of 77). International liability is established even in the absence of State responsibility and in spite of the circumstances precluding wrongfulness.

The ugly truth of the matter is that developed countries like the United States and Japan had suffered considerably from industrial pollution within their respective borders, and that considerable efforts and expenses had to be deployed to combat pollution to protect and preserve healthy environment within the territorial confines of their own borders. The European States have concluded a Geneva Convention 1980 which has entered into force since 1985 to ensure abatement and regulation of the level of pollution from acid rains from the skies within Western and Central Europe. Yet, multi-national corporations established in accordance with the laws of Japan and other western countries set up factories in virgin lands, in the lands where nature was still beautiful, without exporting their sophisticated factories with all the safeguards required in accordance with their own internal laws had the factories been installed in their countries of origin. Without such safeguards, these corporations were able to make exorbitant profits, by cutting costs and



corners, not having to bear the necessary expenses and to take the required precautions against pollution, but only to reap unearned benefits at the expense of developing countries. This is particularly odious, when factories such as the Asahi Glass started in the early seventies to discharge mercury into the Chao Phya River and eventually into the Gulf of Thailand. Such injurious consequences could have easily been prevented, but were knowingly allowed to cause pollution of the river, the estuaries and the sea bordering the beaches in the inner Gulf of Thailand, injuring the physical health of bathers, and users of the river and sea waters, harming river and marine plants and fisheries of several significant species. Had such an incident occurred in a developed country such as in New York, the damages assessable by a United States court could have reached billions of dollars, but the innocence of the Thai Government and the avaricious greed of the multi-national corporation, caring not for the safety and the welfare of the host country or of its inhabitants, have combined to add insult to injury. The resulting injury left permanent scars not only in the Gulf of Thailand but also in the memories of Thai youths. In like circumstances, the Indian Government has been more successful in recovering substantial damages from Union Carbide in connection with the Bophol accident in the fall of 1984. Radio active fallouts from Chernobyl Nuclear accident in 1985 is still unresolved.

(c) Sources of Marine Pollution

Nature has its own law to regulate the equilibrium of the environment around the globe, including the ecology of the sea and its surroundings. Pollution is invariably man-made. Pollution of the sea may originate from various sources. For all practical purposes, the following sources have contributed to marine pollution :-

- (1) pollution from land-based sources, such as from industrial waste, chemical discharges from factories into the river or directly into the sea;
- (2) pollution from the airspace above the ocean, such as from the overflying aircraft, from radio-active fallouts, from nuclear explosion tests, or from acid rains and emission of fumes or smog, which could be traceable back to land-based sources;
- (3) pollution from sea-going vessels, such as oil leaks, or collision at sea, or accident of navigation, or pipelines leakages;
- (4) pollution from marine scientific researches, such as release or discharge of chemicals, electric shock-waves, or explosives;
- (5) pollution from sea-bed activities, such as exploration or exploitation activities, depth charges or blasts from rigs or platforms or artificial islands, or submarines and under-water vehicles; or
- (6) pollution by dumping of toxic or nuclear wastes or chemical compounds, ultra hazardous substances or industrial discharges, (peace-time mining of the harbour, territorial sea or straits used for international navigation requires special treatment, see the Corfu Channel Case, 1949, Nicaragua v. U.S.A. (1986) and the Gulf of Persia 1987).

(d) Special Régimes for International Control of Marine Pollution

Special conventional or treaty régimes have been in operation to regulate and abate marine pollution. The following deserve mention .

- (i) The Geneva Convention on the High Seas 1958, 76] contains provisions designed to regulate marine pollution by States.

Article 24 of the 1958 Convention imposes an obligation of conduct on States Parties "to draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the sea-bed and its subsoil, taking into account existing treaty provisions on the subject". 77]

A further obligation of conduct is imposed by Article 25 of the 1958 Convention, requiring every State to "take measures to prevent pollution of the seas from the dumping of radio-active waste, taking into account any standards and regulations which may be formulated by the competent international organizations". 78] There is also an obligation to "cooperate with the competent international organization in taking measures for the prevention of pollution of the seas or airspace above, resulting from many activities with radio-active materials or other harmful agents." 79]

65/...

76] Geneva, April 29, 1958, in force September 30, 1962, the Work of the International Law Commission, 3rd Edition, U.N., New York, 1980, pp. 147-155.

77] *Ibid.*, at p. 153. Reference to "existing treaty provisions" is to the International Convention for the Prevention of Pollution of the Sea by Oil 1954, U.K.T.S. 56 (1958), Comnd. 595; 327 U.N.T.S.3. There were as of 1982, 68 contracting Parties.

78] *Ibid.*, at p. 153, Article 25 (1).

79] Article 25 (2), *ibid.*, at p. 153

The Convention of 1958 seeks to regulate marine pollution exclusively from sources in the sea and airspace above, leaving the control of land-based sources to each State to undertake necessary regulatory measures.

- (ii) The Test Ban Treaty 1963, as seen earlier, has generated the effect of outlawing all nuclear explosion tests in the atmosphere over and above the ocean any where, thereby preventing radio-active fallouts and contamination of the ocean not occasioned by accident.
  
- (iii) The International Convention on Civil Liability for Oil Pollution Damage 1969 81] entered into force in 1975 with 49 contracting parties in 1982, is known as the "private law" Convention, imposing strict liability on the owner of any "sea-going vessel actually carrying oil in bulk as cargo". This Convention was supplemented by the 1971 Internatinal Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage. Brussels. 82] Victims may also have recourse to two compensation schemes set up by tanker owners - The Tanker Owners' Voluntary Agreement concerning Liability for Oil Pollution 1969 (TOVALOP) 83] and the Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution 1971 (CRISTAL). 84]

66/...

- 
- 80] U.N.T.S. 3 (1964), Cmd. 2245; 480 U.N.T.S. 43, with 111 Contracting Parties as of 1982.
  
  - 81] U.K.T.S. 106 (1975), Cmd. 6183; 9 I.L.M.45. The Convention was amended by a 1976 Protocol Misc. 26 (1977), Cmd. 1028. On October 31, 1981, there were 14 Contracting States.
  
  - 82] 11 I.L.M. 284 (1972). On August 21, 1982, 11 Contracting States were Parties, in force 1978.
  
  - 83] 8 I.L.M. 497 (1969).
  
  - 84] 10 I.L.M. 137 (1971).

(iv) The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 85] is concerned with discharges resulting from accidents at sea in addition to the 1954 Convention 86] which was concerned with operational discharges. The 1969 Convention was extended to cover "substances other than oil which may reasonably be expected to result in major harmful consequences" by the 1973 Protocol. 87] This Intervention Convention is known as the "public law" Convention side by side with the civil liability or "private law" Convention of the same year. It was prompted by the Torrey Canyon incident in 1967. Many such accidents have occurred in the Malacca Strait, the Showa Maru in 1975 and the Amoco Cadiz in 1979 off the coast of Brittany. 88]

(v) The U.N. Convention on the Law of the Sea 1982 89] has been influenced by a number of accidents at sea causing pollution for coastal States and strait States. The

67/...

---

85] U.K.T.S. (1975), Cmnd. 6056; 9 I.L.M. 25 (1969). In force 1975, on August 21, 1982, there were 42 Contracting Parties including the U.K.

86] U.K.T.S. 50 (1958), Cmnd. 595; 327 U.N.T.S.3.

87] Misc. 12 (1975), Cmnd 6038; 13 I.L.M.605 (1974).

88] The Torrey Canyon, a Liberian "supertanker" carrying over 119,000 tons of crude oil, negligently became stranded on the Seven Stones on the high seas off the coast of Cornwall. The Showa Maru, a Japanese "super tanker" carrying nearly 200,000 tons of crude oil hit uncharted rocks in the Malacca strait, causing pollution affecting Indonesia, Malaysia and Singapore. The Amoco Cadiz, a Liberian registered tanker owned by the U.S. company was wrecked on the Brittany Coast, losing most of 230,000 tons of crude oil. France now requires tankers to keep 7 miles from her coasts in innocent passage through territorial waters.

89] The U.N. Convention on the Law of the Sea, December 10, 1982, U.N. Publications, N.Y. 1983.

1982 Convention contains a large number of detailed provision on the protection of marine environment of global and regional cooperation, technical assistance, monitoring and environmental assessment, and the development and enforcement of international and national laws preventing pollution."

Article 192 imposes on States the general obligation to protect and preserve the marine environment, and Article 193 subjects the sovereign rights of States to exploit natural resources pursuant to their environmental policies and in accordance with the duty under Article 192 to protect and preserve marine environment.<sup>90]</sup>

In particular, Article 194 requires States to take all measures consistent with this Convention to prevent, reduce and control pollution of the marine environment from any source. <sup>91]</sup> Measures shall include, inter alia, those designed to minimize to the fullest possible extent:

- (a) the release of toxic, harmful, or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;
- (b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;

68/...

---

91] See Articles 192 and 193, *ibid.*, at p. 70, Part XII.

92] See Article 194, especially paragraph 3, *ibid.*, at p.70.

- (c) pollution from installation and devices used in exploration or exploitation of the natural resources of the sea-bed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;
- (d) pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.

Article 235 (1) [and (2) 92] impose on States liability for failure to fulfil international obligation concerning the protection and preservation of marine environment in accordance with international law, and the obligation to make available recourse for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.

## 2. THAILAND'S POSITIONS REGARDING MARINE POLLUTION

As will be seen in greater details in specific papers concerning national legislation for implementation of the

69/...

---

92] See Article 235, Section 9. Responsibility and Liability, *ibid.*, at p. 84.

LOS Convention provisions regarding protection and preservation of the marine environment. Thailand has recently recovered her appropriate place in the family of nations desiring to protect and preserve the environment, including marine environment. 93] Not unlike other countries, Thailand has had her shares of suffering as the result of marine pollution, especially in the Gulf of Thailand. Like her Asian neighbours, Thailand too will have to devise appropriate measures, legislative, procedural and practical to cope with the situation. Her obligations to protect and preserve the marine environment are far reaching and all embracing. In preparation for the treaty obligations, Thailand has to brace herself and be prepared to meet new challenge, to overcome past bitterness and prejudices.

2 A new legislative framework<sup>e</sup> has to be structured, anchored in constitutional provisions, (1974), and the National Environment Policy Act to provide legal basis for the formulation of environmental policy and planning. Two bodies have been established, viz., the National Environment and Service Development Board (NESDB) and its secretariat, the Office of National Environment Board (ONEB), with a legal sub-committee to prepare appropriate draft legislation for submission to parliament.

A Series of legislative acts have been adopted to deal with marine pollution from land-based sources, including the Public Health Act 1941 (PHA) to control the dumping of municipal waste, and the Factories Act 1969 (FAC) to set industrial effluent standards, and to regulate the treatment of industrial wastes, as well as agricultural chemicals such as fertilizers and toxic substances.

70/...

---

93] See, in particular, a paper by Mr. Panat Tasneeyanond on this topic.



Another series of legislations have been passed in respect of national control of marine pollution from sea-bed activities, in the form of the Petroleum Act 1971, establishing the Petroleum Authority of Thailand with an autonomous status, and with power to regulate offshore oil and gas drilling, including laying of gas pipelines in the Gulf of Thailand, and precautionary measures to prevent leakage. The Mineral Act 1967 was designed to regulate mining of all mineral resources, including off-shore tin mining. Slime and tailings emitted by the off-shore mining operations are subject to ministerial regulations and required to meet the standards set.

In addition, there has been a recent legislation in the form of Regulations on the Prevention and Abatement of Oil Pollution (RPAOP) to provide regulatory basis for evolving a national contingency plan for the abatement and monitoring control of oil spills resulting from the accidents of navigation, operational discharges of vessels, on a large scale and blasts or blown-out from off-shore drilling activities.

There are some sporadic provisions in the Navigation in Thai Waters Act (NTWA) of 1913, concerning ocean dumping. Legislation in maritime law was long overdue, although reference to a specific maritime code was mentioned in the Civil and Commercial Code of Thailand. The National Research Council, Law Section, did make recommendations as early as 1961 in support of the necessity for Thailand to have her own national maritime code, or the carriage of goods and passengers by sea. With the advent of Thai merchant marine and growing shipping activities now, such a code has come into existence. In this connexion, Thai vessels, whether for commercial transport or fishing have to abide by international regulations and standards set by various international organizations such as IMCO, IMO and ILO. Thus, Thai

vessels must obey regulations regarding discharge of oil waste and cleaning of bunkers, or dumping of waste in the ocean. A curious incident took place off a Japanese island where the carcass of a dead elephant was dumped by a Thai vessel, the municipality of the Japanese island took great care and spent a large sum of money to remove the carcass and to clean the beach. Upon investigation, the matter was amicably settled as the Thai captain was able to certify the whereabouts of the dump which was held to be outside the prohibited zone for dumping. The dead elephant was carried by the current unexpectedly. A compromise solution was reached.

Whatever the status of preparedness of the Thai Government to implement the new Law of the Sea Convention of 1982, there appear to be countless problem areas requiring legislative measures and adjustments of existing regulations. The attitude of the Thai Government in preparation for the ratification of the Convention must be one of cautious optimism. The marine environment constitutes the common heritage of mankind. As a law-abiding member of the world community, Thailand supports all forms of cooperative efforts and measures to prevent, reduce, abate and minimize as much as possible marine pollution everywhere, especially of course in the Gulf of Thailand and in the Andaman Sea, for which Thailand is directly responsible as coastal State.

\* \* \* \* \*