

Chapter I

Introduction



I. Objectives of the Study

The nation that first learns to understand the seas will control them. And the nation that controls the seas will control the world.

-G.V. Petrovich

This is the old belief of the people particularly the maritime nations since many centuries ago. The immortality of these phrases is still going to exist in the present and future world political systems.

The seas are a medium of navigation and communication, a source of food, a vast treasure of resources, and a vital link in the earth's life-support system. The seas play a central role in promotion of the well-being of mankind. At a time when this crowded planet is fast exhausting available and known natural resources, the oceans offer, if wisely managed, abundant alternative resources, such as fish to meet food and protein requirements of industrialization.

Aside from this, the oceans play an indispensable role in furthering international trade. Several new uses, such as the establishment of deep water terminals for loading and unloading cargoes, artificial islands to provide sites for dumping and treating wastes, and areas for offshore habitat for health and

recreational purposes are also contemplated.

Furthermore, today's technology has unlocked the sea depths, opening a new store of treasures. Oilmen can locate oil, drill and cap wells under the enormous pressure of 700 feet of water. Mining companies know how to sweep minerals off the cold abyssal plains 20,000 feet down. Fishermen in modern, mechanized trawlers can draw bottom fish off the ocean floor in a single huge net. Traditional uses of the oceans also multiply--the world harvest of fish grows from 16 million tons in 1950 to 69 million tons in 1974, and the merchant tonnage in the same period from 76 to 306 million gross registered tons.¹

For this reason, men are looking at the oceans that cover two-thirds of the planet's surface in almost this way--as a real estate. It is a momentous change of man's long relationship with the sustaining seas. The race for the sea resources begins in earnest. The ocean's competition runs parallel with the ocean's technological changes. "We are in a period like the opening of the American West," says Marine Biologist John Teal at the Woods Hole (Mass.) Oceanographic Institution. "Everybody is trampling over everybody else to stake a claim in the

¹John Temple Swing, "Who Will Own the Oceans?" Foreign Affairs, 54, 3(April, 1976), 528.

oceans."² And that signals an end to a view that has prevailed for 350 years of the concept of the fundamental freedom of the seas laid down by the Dutch Jurist Hugo Grotius in 1609.

As the ocean's significance for the welfare of mankind changes, it becomes imperative that the law of the sea, as evolved through customary state practice, should also be changed. The law of the sea, one of the oldest and strongest parts of the body of international law, has seen great change in our days. The very function of the law of the sea, as a general principle of international law, is to protect and serve common interests of the people of the world. Its entire purpose is to serve the common interests, both inclusive and exclusive, of the different communities and to reject all claims of special interest of the sea.

With the discoveries of important resources and a sharp rise in all ocean uses generally, that accepted principles of the law begin to be eroded rapidly. Customary law of the sea, dependent on slow growth, no longer could move fast to provide generally acceptable solutions to new problems. It is recognized that technological changes and more intensive use of the oceans require new agreements to apply to contemporary uses of the oceans.

²"The Oceans: Wild West Scramble for Control," TIME (July 29, 1974), 39.

The prospects of marine science and technology, and the transfer of new hopes and national aspirations to the ocean realm are forcing the pace in evolution of the law of the sea. Additional needs calling for additional uses in additional part of the seas and thus make the existing law inadequate.

The sea law as it is raises issues and presents problems. Some arise from technological advance as time and again the rate of technological progress has outdistanced predictions. Some are due in part to the uncertainty, and others to old and new inadequacies in the law. These problems and prospects, consequently calls for the present study.

This study attempts to evaluate the major problems of the law of the sea and the utilization of the oceans in the following areas: territorial sea, continental shelf, and the high seas. Concentration is to be given to the problem-oriented to each of the mentioned areas. The author will discuss the causes of each of the problems, noting the ones that are stemming from the ambiguity of the existing sea law together with those pertaining to the self-interpretation of various countries stemming from the loopholes of the law. The past efforts to solve the problems are to be reviewed. New trends arising from the recent United Nations Conferences on the Law of the Sea as well as consideration and suggestions on how to tackle all these problems are discussed and analyzed.

II. Scope of the study and Research Methodology

This study intends to analyze the problems of the law and the uses of the sea with special reference to territorial sea, continental shelf and high seas. Fisheries problems and marine pollution which are affected directly from the uses of the sea are considered. The study covers the period of the United Nations Sea Law Conferences since 1958 to 1976. Nevertheless, the details of the Conferences' procedure will be looked at briefly, the emphasis is on the outcome of the Conferences. Anyhow, the study does not design to tackle any specific problem but it generally aims to provide an overall nature of the problems and reports those sequels gathering from the study.

The method and approach of the study are arranged in terms of the "explanatory" and "documentary" research. Data used in the study are mostly from the "secondary sources," compiled in the form of "descriptive analysis". Documents and books come from various libraries of the universities and governmental offices, such as Chulalongkorn University, Thammasat University, National Institute of Development Administration, and Ministry of Foreign Affairs. Apart from these, personal and private documents of various civil servants and university professors together with pertinent newspaper clippings are also consulted.

III. Presentation

The study is divided into 6 chapters as follows:

- Chapter 1 introduces the essence and objectives, scope

and method of the study including sources of data, presentation, and immediate result of the study.

- Chapter 2 deals with the territorial sea focusing on the following problems: problems of the breadth of the territorial sea, the use of straight and normal baselines in delimiting the boundary of the territorial sea, and the distinction between internal and territorial seas. The problems of international straits particularly problems of transit through straits are included in this chapter, and finally, archipelago concept and contiguous zone are also discussed.

- Chapter 3 considers the problems occurring in the area of continental shelf and beyond which are caused from the ambiguity of the 1958 Geneva Convention on the Continental Shelf. The rich resources comprising both the natural and mineral resources together with the potential mining in this area are examined. Specific emphasis is given to the exploitation and exploration of the seabed and subsoil in the limits of national jurisdiction over the seabed. The international regime for the seabed beyond national jurisdiction is also included. Various schemes for seabed utilization such as Pardo's Proposal and Nixon's Announcement are also presented.

- Chapter 4 focuses on the questions arising from the utilization of the high seas with special reference to fishing and conservation of the living resources, and prevention and control of pollution of the marine environment.

- Chapter 5 reviews all the past efforts in order to solve the stated problems, and suggests some solutions. The necessity for a more advanced law of the sea will be contemplated and the proposal for some international machinery or organizations for the ocean management will be pondered. The study also focuses on the new trends deriving from the recent conferences on law of the sea. Some marine organizations of the United Nations and other international organizations which actively dedicated to the law of the sea activities will also be included.

- Chapter 6 provides some tentative conclusions and discussions.

IV. Immediate Result

It is academically expected that this study will provide basic data and general overview of the subject which is useful to both students and teachers of international law of the sea in the universities in Thailand. It is hoped that such work will lay down the ground for a more advanced study or intensive research in the future. The author is well-aware of the present shortcoming of this sort of study. This is particularly true for such study of sea law subject is still very scanty despite the worldwide attention paid to this problem. An intensive study of the law of the sea is urgently needed considering its significance as the major topic raised by various countries in the United Nations Conferences since 1973 to the present time.

Consequently, this is one of the immediate result the author would like to see--i.e. to stimulate more further study.