



How effective the *LOSC* as “Constitution for the Oceans” deal with maritime issues in Thailand in the case of IUU fishing and human trafficking

Chaidech Chantarasena¹

Naval Operations Department

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Abstract

After the 1982 United Nations Convention on the Law of the Sea Convention (*LOSC*) came into force in 1994, it has become the primary international maritime law which has been widely utilized by many countries all over the world. Likewise, Thailand has been one country utilizing the *LOSC* to adopt and revise national laws, particularly fisheries laws and policies. Due to these revised laws, Thailand could deal with IUU fishing more systematically and effectively in the country. By contrast, it seems that the *LOSC* still has loopholes and insufficient consideration in some areas, such as human trafficking, which has been aroused in Thailand for a long time. Nevertheless, it can be argued that the *LOSC* as “the constitution for the oceans” has effectively contributed on the improvement of conservation and administration of living resources. One tangible evidence is that Thailand could successfully lift the EU’s yellow card last year.

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¹ Head of Evaluating Exercises Section, Naval Exercises Division, Naval Operations Department,
E-mail: jobnavyblue@gmail.com



1. Introduction

It has been over two decades since that the *LOSC* came into force on 16 Nov 1994. (United Nations Treaty Collection, 1982) Significantly, *LOSC* has established standardized international maritime law for state parties, covering several aspects such as navigational rights, territorial sea limits, rights to seabed resources and environmental security. (Zacharias, 2014, p.62) Like other state parties, after Thailand ratified the *LOSC* in May 2011, (United Nations Treaty Collection, 1982) Thailand could step more prominently on to the international stage, while further developing its own domestic maritime laws. Notably, Thailand has faced contemporary maritime issues such as Illegal, Unreported and Unregulated (IUU) fishing, and human trafficking, in recent years. This essay will explain the importance of *LOSC* to Thailand concerning IUU fishing and human trafficking, along with an assessment of the ability of the *LOSC* and how well it supports effective national law and policy to meet the challenges of these issues. Finally, it will critically analyze to what extent the *LOSC* operates as a “Constitution for the Oceans”.

2. IUU fishing

IUU fishing has been the most serious problem for globally seafood sustainability and it is considered as a global crime. Prior to the twentieth century, little attention or interest was paid to the issue of fisheries management. This is because marine fisheries were commonly considered as a never-ending resource. Little thought was given to how to allocate and manage sustainable fisheries. (Zacharias, 2014, p.176) This caused complicated and severe problems like overfishing and illegal fishing. Unfortunately, Thailand has been one country afflicted by IUU fishing over recent decades. The situation became worse in April 2015. The European Union (EU) noticed that Thailand was not conducting adequate operations to meet global standards in order to combat IUU fishing, issuing it with a yellow card. (European Commission, 2015) This penalty triggered Thailand to realize the importance of sustainable fisheries management. More importantly, it was a starting point for Thailand to revise legal and policy frameworks to be more up-to-date and comprehensive to handle contemporary IUU fishing. The *Thai Fisheries Act B.E.2490 (1947)* had not regulated fishing activity, such as the amount of fishing gear, number of hooks set, and number of hours trawled in one day. (*Thai Fisheries Act B.E.2490./1947, January/14*) Also, the *Thai Vessel Act B.E.2481 (1938)* did not contain provisions relating to how to control and register fishing vessels voyaging out to sea. (*Thai Vessel Act B.E.2481./1938, April/10*) At the time of overhauling the fisheries legal frameworks, the *LOSC* was used as a primary guideline to create national fisheries laws in Thailand. It can be argued that *LOSC* is an international instrument which has made a significant impact on fisheries. This is because it contains many revolutionary provisions relating to fisheries management. (Khemakorn, 2015, p.82) To explain, coastal states have sovereign rights to survey, utilize, conserve and administer living and non-living resources in their Exclusive Economic Zones (EEZs). (United Nations Convention on the Law of the Sea 1982 [*LOSC*], 1982, art 56(1))



Furthermore, in regards to living resources, countries should decide and regulate the allowable catch of living resources in their EEZs (*LOSC*, 1982, art 61(1)) and guarantee suitable management measures to maintain and protect living resources from over-exploitation activities. In order to do this effectively, each state is required to cooperate with international organizations at both regional and international levels. (*LOSC*, 1982, art 61(2)) Besides, each state should enhance the aim of ideal and finest use of living resources in their EEZ. (*LOSC*, 1982, art 62(1)) Related to this, states determine their own capability to gather and collect the living resources of the EEZ, or in the case of not reaching the entire permissible catch, states may permit and make agreement with other states to access their zone for fishing. (*LOSC*, 1982, art 62(2)) More significantly, states have to adopt and utilize laws, orders, and regulations on the administration of living resources, compatible with the *LOSC*. For example, Thailand is obliged to regulate licensing of fishermen, fishing vessels and fishing instruments, (*LOSC*, 1982, art 62(4)(a)) the kinds of fish which could be caught, control of quantity of catch relating to stocks and catch per vessel over a period of time. (*LOSC*, 1982, art 62(4)(b)) Also, the laws should prescribe time of year (seasons) and zones of catching fish, sizes, types and amount of fishing tools, (*LOSC*, 1982, art 62(4)(c)) the age and size of fish that should be harvested (*LOSC*, 1982, art 62(4)(d)) and specific knowledge about fishing vessels such as fishing statistics and ship position. (*LOSC*, 1982, art 62(4)(e)) The *LOSC* requires state parties to manage and organize their fishing activities in countries more systematically and effectively. Therefore, in Thailand, these concepts relating to fisheries management in the *LOSC* have been utilized to formulate the new *Royal Ordinance on Fisheries B.E.2558*, which came into effect in November 2015. This law provides stronger regulations to control fishing gear, limit catch capacity, prohibit fishing methods deemed to be highly destructive, and mete out effective punishment to people who violate the law. (the *Royal Ordinance on Fisheries B.E.2558//2015,/November/13*) Moreover, it has been a starting point for Thailand to restructure fleet management. A vessel registration database has been established and used to inspect the licensing of all fishing vessels in Thailand. As a result, more than 10,000 vessels were detected to have expired licenses. This is a step toward effectively managing the number of vessels in the country. (Ministry of Foreign Affairs of Thailand, 2018) As well as this, a Monitoring Control and Surveillance (MCS) system was established and strengthened. The new law regulates that fishing vessels weighing over 30 gross tonnages must have a Vessel Monitoring System (VMS) onboard. (The *Royal Ordinance on Fisheries*, 2015, art 81) Consequently, the Fishery Monitoring Center could conduct MCS operations over all vessels equipped with VMS. All of these significant changes and new laws have enabled Thailand to more successfully address IUU fishing, and the EU's yellow card was lifted in 2019. It can be considered that *LOSC* has played a key role providing guidelines to support and raise the level of standard of national laws in Thailand. In some ways, *LOSC* has enabled Thailand to comply with international standards and laws for management of fisheries resources.



3. Human trafficking

Undeniably, human trafficking happens in almost every country around the world. Human trafficking is the root cause of many different problems such as forced labor and criminal organizations. Likewise, Thailand has been one country which faced human trafficking for a long time. Thailand has become a transit destination exploited by international people smugglers. For example, Asian migrants are often left in Thailand seeking employment opportunities. (United Nations Office on Drugs and Crime [UNODC], 2019, p.149) Existing Thai laws, which are the *Immigration Act of B.E.2522(1979)* (the *Immigration Act of B.E.2522//1979,/March/1*) and the *Anti-Human Trafficking Act B.E.2551(2008)*, seem to be out of date, unenforceable, and unable to effectively deal with human trafficking. (*Anti-Human Trafficking Act B.E.2551//2008,/Febuary/6*) Likewise, *LOSC* itself seems to be ineffective in tackling this issue. Firstly, the term, human trafficking does not exist in any provision in the *LOSC*. Secondly, few provisions in the *LOSC* come close to dealing with problem like human trafficking. Under article 99, state parties ought to conduct operations to prevent and penalize the conveyance of slaves in their flagged vessels. (*LOSC*, 1982, art 99) Also, the right of visiting regime on the high seas allows warships which have reasonable grounds to board and investigate vessels doubted of engaging in the slave trade. (*LOSC*, 1982, art 110(1)(b)) However, the implementation of these two articles is limited and ambiguous. The meaning of the term 'slave trade' is unclear and not described in more detail in the *LOSC*. Consequently, states are interpreting the meaning and enforcing the law in different ways. Moreover, in regards to inspection after boarding, the *LOSC* does not explicitly indicate what types of document should be checked. (*LOSC*, 1982, art 110(2)) It would be useful if authorities who board the suspect ship can inspect identity cards and working contracts of crew members. (Macfarlane, 2015, pp.119) In brief, the utilization of the right of visiting regime in the *LOSC* is not sufficient to effectively deal with the human trafficking issue. Thailand has needed to find other international legal instruments to adopt in order for existing national laws to become more up-to-date. Thailand's ratification of the United Nations Smuggling of Migrants by Land, Sea and Air Protocol which it signed in 2001 is one such example. (United Nations Treaty Collection, 2020)

4. The operation of the *LOSC* as "Constitution for the Oceans"

Moving back to the operation of the *LOSC*, as Tommy T.B. Koh, president of the conference on *LOSC*, stated, *LOSC* is a constitution for the oceans. (Oceans and Law of the Sea United Nations Division for Ocean Affairs and the Law of the Sea, 1982) *LOSC* has played a vital role as international maritime law. The *LOSC* institutes an all-encompassing regime of maritime law and order which promotes the tranquil utilization of the oceans, efficient utilization and conservation of living and non-living resources, and protection of maritime environment. (*LOSC*, 1982) Similar to the EEZ regime, states firstly have the responsibility to take necessary measures in their own countries to conserve living resources in the high seas. (*LOSC*, 1982,



art 117) Then, states are required to cooperate to conserve, control and direct living resources on the open oceans (high seas). Whenever similar living resources or unlike living resources are exploited in the same maritime zone, states should take measures to negotiate with others. As well as this, state parties ought to collaborate to inaugurate sub-regional or regional fisheries associations if necessary. (*LOSC*, 1982, art 118) Also, state parties ought to conduct scientific methods to keep or re-establish inhabitants of harvested species at degrees which have ability to generate sustainable yield. At the same time, scientific information such as catch and fishing activity statistics must be collected and exchanged through international organizations, whether at sub regional or regional levels. (*LOSC*, 1982, art 119) This implies that one objective of the *LOSC* is to enhance cooperation between countries to regulate and manage the ocean. Importantly, when considering the number of state parties of *LOSC*, currently 168, (United Nations Treaty Collection, 2020) it can be seen that the operation of the *LOSC* covers the entire world's ocean. Moreover, the *LOSC* is a starting point for the idea of the institution of several Regional Fisheries Management Organizations (RFMOs). For example, the foundation of the Indian Ocean Tuna Commission (IOTC) is formed on the concern for highly migratory species, like tuna, specified in the *LOSC*. (*LOSC*, 1982, art 64) IOTC is an international organization to look after the administration of tuna and tuna-like species in the Indian Ocean. The purpose of the IOTC is to encourage collaboration within state parties to ensure proper administration, conservation and utilization of stocks. More significantly, the function and responsibilities of the IOTC, such as reviewing conditions and trends of stock, collecting statistics and relevant data, encouraging and coordinating research and development activities, and adopting scientific evidence, are all drawn from the *LOSC*. (Indian Ocean Tuna Commission, n.d.) Thailand joined the IOTC in 1997. (Indian Ocean Tuna Commission, 2014) As a consequence, Thailand is now managing Thai fisheries more effectively and legally in accordance with international standards. Furthermore, becoming a part of the IOTC, provides an opportunity for Thailand to cooperate with other nations in the Indian Ocean more efficiently. More importantly, like other RFMOs, IOTC also issued special resolutions to solve contemporary problems such as resolutions concerning the support of the International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU). This plan implements methods and operations helping contracting parties to combat IUU Fishing activities. (Indian Ocean Tuna Commission, n.d.) In brief, it can be seen that the *LOSC* is a fundamental law which is utilized and implemented by state parties to establish RFMOs. The role of the RFMOs is then not only to issue mandates based on the *LOSC*, but also to operate more broadly.

5. Conclusion

In conclusion, the *LOSC* is a crucial international maritime law for Thailand. The *LOSC* is utilized as a primary guideline to create national fisheries law. As a result, Thailand has more comprehensive and international standards in regards to management of fisheries resources



which is reflected in success of combating IUU Fishing in the country. On the other hand, the LOSC has weaknesses in terms of dealing with human trafficking. Thailand cannot only rely on the utilization of the right of visiting regime in the LOSC to solve this problem. Nevertheless, in terms of conservation and administration of living resources, the LOSC does operate as a constitution of the oceans. The LOSC is not only highly accepted by countries all over the world, but also plays a vital role in enhancing cooperation between countries to regulate and manage the ocean. State parties are utilizing the LOSC as fundamental law to adopt their national laws and establish several RFMOs. Despite its shortcomings in some areas, the LOSC is a clearly important and largely effective convention.

Bibliography

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, August 4, 1995, **United Nations, Treaty Series**, vol. 2167, p. 3 (entered into force 11 December 2001).

Ahmed, M. (2007). Overfishing in the Gulf of Thailand: policy challenges and bioeconomic analysis. **Environment and Development Economics**, 12(1), 145.
doi:10.1017/S1355770X06003433

Anti-Human Trafficking Act B.E.2551./(2008, 6 February)./Ratchakitcha./125/29 A/28-49./Retrieved May 29, 2020, from (<http://www.ratchakitcha.soc.go.th/DATA/PDF/2551/A/029/28.PDF>)

Birnie, P., Boyle, A., & Redgwell, C. (2009). **International Law & the Environment**. Oxford: Oxford University Press.

European Commission (2015, 21 April). EU acts on illegal fishing: Yellow card issued to Thailand while South Korea & Philippines are cleared. **European Commission**. Retrieved June 1, 2020, from https://ec.europa.eu/commission/presscorner/detail/%20en/IP_15_4806

Food and Agriculture Organization of the United Nations. (2020). **Illegal, Unreported and Unregulated (IUU) fishing : What is IUU fishing?**. Retrieved May 30, 2020, from <http://www.fao.org/iuu-fishing/%20background/%20what-is-iuu-fishing/en/>

Indian Ocean Tuna Commission. (2020). **Indian Ocean Tuna Commission, Food and Agricultural Organization of the United Nations**. Retrieved May 30, 2020, from <https://iotc.org/>

Indian Ocean Tuna Commission. (2020). **Resolution 01/07 Concerning the support of the IPOA-IUU Plan**. Retrieved May 30, 2020, from <https://www.iotc.org/cmm/resolution-0107-concerning-support-ipoa-iuu-plan>



Khemakorn, P. (2015). **Fishing Capacity Management for Sustainable Fisheries in Thailand.** (Doctor of Philosophy (PhD) thesis). Wollongong: University of Wollongong.

Macfarlane, D. (2015). The Slave Trade and the Right of Visit Under the Law of the Sea Convention: Exploitation in the Fishing Industry in New Zealand and Thailand. **Asian Journal of International Law**, 7(1), 94. doi:10.1017/S2044251315000235

Marine Knowledge Management Subcommittee. Maritime Zone. (2020). **Marine Knowledge Hub.** Retrieved May 30, 2020, from <http://www.mkh.in.th/>

Ministry of Foreign Affairs of Thailand (2018, 24 September). Significant Strides Made in Thailand's Battle against IUU Fishing. **CISION PR Newswire.** Retrieved June 1, 2020, from <https://www.prnewswire.co.uk/news-releases/significant-strides-made-in-thailands-battle-against-iuu-fishing-694112361.html>

Oceans and Law of the Sea United Nations. Division for Ocean Affairs and the Law of the Sea. (2020). **United Nations Convention on the Law of the Sea of 10 December 1982 Overview and full text, The Convention, history background, A Constitution for the Oceans Remarks by Tommy T.B. Koh, of Singapore, President of the Third United Nations Conference on the Law of the Sea.** Retrieved May 28, 2020, from https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm

Rothwell, D.R., & Stephens, T. (2010). **The International Law of the Sea.** London: Hart Publishing.

Thai fisheries Act B.E.2490./(2490, 14 January)./Ratchakitcha./64/3./81-114. Retrieved May 29, 2020, from/(<http://www.ratchakitcha.soc.go.th/DATA/PDF/2490/A/003/81.PDF>)

Thai Vessel Act B.E.2481./(2481, 10 April)./Ratchakitcha./56/230-271. Retrieved May 29, 2020, from/(<http://www.ratchakitcha.soc.go.th/DATA/PDF/2482/A/230.PDF>)

The Immigration Act of B.E.2522./1979, 1 March)./Ratchakitcha./96/28/45-92. Retrieved May 27, 2020, from/(<http://www.ratchakitcha.soc.go.th/DATA/PDF/2522/A/028/45.PDF>)

The Royal Ordinance on Fisheries B.E.2558./2015, 13 November)./Ratchakitcha./132/108 A/1-45. Retrieved May 20, 2020, from/(<http://www.ratchakitcha.soc.go.th/DATA/PDF/2558/A/108/1.PDF>)

United Nations Convention on the Law of the Sea 1982 (LOSC), December 10, 1982, 1833 UNTS 397 (entered into force 16 November 1994) UN Treaties.

United Nations Office on Drugs and Crime (UNODC) Regional Office for Southeast Asia and the Pacific. (2019). **Criminalisation of Smuggling of Migrants in ASEAN Member States.** Bangkok: United Nations Office on Drugs and Crime (UNODC).

United Nations. (2020). United Nations Convention on the Law of the Sea of 10 December 1982 Overview and full text. **Ocean and the Law of the Sea United Nations.** Retrieved May 20, 2020, from <https://bit.ly/3wuWFML>

United Nations. **United Nations Convention on the Law of the Sea Montego Bay,** 10 December 1982 status as at: 25-05-2020. Retrieved May 25, 2020, from <https://bit.ly/2TQDsaZ>



Zacharias, M. (2014). *Marine policy: an introduction to governance and international law of the oceans*. London: London Earthscan from Routledge.

