

THE INTERPLAY BETWEEN LANDLOCKED STATE AND ITS SURROUNDING COASTAL STATES : CASE STUDY OF LAOS

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ABSTRACT

This paper analyzes the problems concerning Laos as a Land-locked state (LLS) rights to gain access of the sea and its resources, including conflicts and disadvantages which may arise regarding Laos and its neighboring states and/or transit states to figure out the best way to get access to fisheries at the sea. This study is normative and conceptual which lead us to discover the rights of landlocked states provided by the UNCLOS being violated or constrained by technical problems and the denial of free transit which is highly influenced by international relation between states. This study revealed the gaps on getting access to natural resources at sea that faced by landlocked State. The results shows that the rights must necessarily be supported with another bilateral/multilateral agreements and organization which may help to manage landlocked states in effort of the realization of their rights

Keywords : Landlocked State, coastal States, Laos, UNCLOS 1982

A. INTRODUCTION

Land-Locked States by definition of UNCLOS 1982 Article 124 point (1) is a state which has no sea-coast. Result of this Land-Locked State or LLS particularly speaking is minimum access of fisheries and aquaculture. Our main topic among LLS will be Laos as part of International Organization that consists mostly of Maritime based states, ASEAN.

Laos as LLS surprisingly has a high demand on fisheries and other aquaculture product as stated that Laos spends 142 million US Dollar per year on 208,503 tons of which 167,922 tons were fish and 40,581 tons OAAs (*Mekong River Commission, 2013*). The price of spending is quite high in terms of LLS. One of the reasons of the high demands on fisheries and aquaculture resources are indicated as one of Laos culture festival during April to feast on fish of Mekong River and high number of illegal market to China and Thailand.

Nine of twelve countries with the lowest Human Development Index scores are landlocked, thirteen landlocked countries are classified as 'low human development' and not one

of the non-European landlocked countries is classified as ‘high human development’ (UNDP, 2002). Up to the present days, Laos’s only access to water living resources are the Mekong River and other small water bed such as ponds, pool and underwater cave. As the main source of water living resources, the Mekong river is heavily exploited while it has to fulfill the subsistence requirements of every households, on the other hand the Mekong river’s nature of being strongly seasonal causes the tendency of not fulfilling the fisheries demand in Laos. Laos treaty with Vietnam grants channel to Laos to have their own Marine Forces, but not much indication of Laos fishermen, as mostly of Laos fishermen are illegal or under foreign flag. In this case we examine the treaty of Laos and its neighboring with coastal states on access of Laos to coastal states seaport. Laos’s fishermen are limited on the locations of the major stream of the Mekong river and thus they are not even being commercial fishermen.

The main violation unto Laos as LLS are UNCLOS Article 125 and Article 131 that speaks of freedom and rights of LLS on enjoying the sea on its fullest and the rights of LLS to be treated equally as other coastal state respectively.

Continually depending on fisheries imports would be quite an economical and dependency problem, Laos will need to gain access unto the high seas to be able to exploit salt water fish, and for the need of that matter, Laos will need treaties and agreements with the neighboring states to gain access for their ship to cross to the high seas and also to gain the rights for transit in harbors of coastal states due to the fact that Laos wouldn’t own a harbor for their ships.

The issue discussed in this article is if Laos would be able and do they have the right to gain those access, and is there any treaties with a neighboring state that is going to be the solution for the need of fisheries resources other than depending on the coastal states to import their fishes

B. PROBLEM STATEMENT

During research on LLS many article pointing out how the LLS tend to be less developed with their neighboring state, by chances it happens due to their constrained reach of communication from the sea and lacks resources options. From the data of World Bank the GDP of Laos is 12.3 billion US Dollar in 2015 while it’s neighboring coastal state, Vietnam, is in huge

margin of 193.6 billion US Dollar in the same year. This condition should be able to be overcome as one of the best LLS state with 664.7 billion US Dollar of GDP (*World Bank, 2014*), Switzerland, the heart of Europe. This article analyze that Laos is lacking on what it takes for LLS to develop its sea supremacy.

C. RESEARCH RESULT AND DISCUSSION

1. Legal Rights of Land-Locked State:

Land-locked developing countries are generally among the very poorest of the developing countries, their lack of territorial access to the sea, aggravated by remoteness and isolation from world markets and the greater difficulties and costs of international transport services, appears to be one of the major causes of their relative poverty, and a serious constraint to their further economic and social development (Development and International Economic Cooperation, 1975). Given these facts, the essential legal issue is whether land-locked countries have a *right* of access to and from the sea, or whether such access is merely a *privilege*, contingent upon terms and conditions unilaterally imposed by countries of transit.(A Mpazi Sinjela, 1982)

Article 2(1) of 1965 Convention on Transit Trade of Land Locked states regulates that Freedom of transit shall be granted under the terms of this Convention for traffic in transit and means of transport. Subject to the other provisions of this Convention, the measures taken by Contracting States for regulating and forwarding traffic across their territory shall facilitate traffic in transit on routes in use mutually acceptable for transit to the Contracting States concerned. Consistent with the terms of this Convention, no discrimination shall be exercised which is based on the place of origin, departure, entry, exit or destination or on any circumstances relating to the ownership of the goods or the ownership, place of registration or flag of vessels, land vehicles or other means of transport used (1965 Convention on Transit Trade of Land Locked states Art.2).

Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport. As we narrate

in the background that LLS hold their basic right in UNCLOS 1982 in article 125 while having its own section starts in the article 124 up to 131, having said that shows how much attention given to this kind of state. The reason of how Land-Locked States have this kind of rights roots to the *1609 Mare Liberum* by Hugo Grotius with his statement that high seas is to be used for everyone. The *Mare Liberum* based on reason that air is limitless and used by everyone, same thing with the sea that is considered to be limitless so can be used by everyone and not to be occupied by anybody or any state to that concern. With this right in the hand, Laos have every mean to use the sea as it's advantage to gain income.

The international community has, over the years, adopted several international legal instruments containing provisions aimed at helping landlocked countries gain access to seaports via transit traffic through neighboring countries. The four main legal instruments containing definitions of transit traffic are:

- a) Convention and Statute on Freedom of Transit, 1921 (entry into force 31 October 1922; 50 parties);
- b) General Agreement on Tariffs and Trade (GATT), 1947, now part of GATT 1994 (provisional entry into force 1 January 1948; 150 members of the World Trade Organization (WTO));
- c) Convention on Transit Trade of Land-Locked States, 1965 (entry into force 9 June 1967; 38 States parties);
- d) United Nations Convention on the Law of the Sea, 1982 (entry into force 16 November 1994; 155 States parties).
(Regional cooperation in transit transport, 2007 UNCTAD)

Most of the world states signed the treaty of UNCLOS 1982, one of the main article regarding Land-Locked States is article 69 point 1 which states as “Land-Locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States”. To be surprised it means UNCLOS 1982 provides rights for Land-Locked States to use its neighboring coastal state territorial sea as their Exclusive Economic Zone. The main barrier for Laos will be its access to the high seas such as ports and highway.

The Legal Rights stated above considered enough stand point to support Land-Locked States place in the seas. While many rights provided for Land-Locked States, most Land-Locked

States seemed to be fallen behind on economy progression compared to its neighboring coastal state as example Ethiopia and Laos. Changes only happen when internal factor take action, rights provided by international treaty only exist as an external factor that helped a state to grow as to be seen not every LLS ends up as a developing country for long ,Switzerland, is one of few LLS to close the distance to the of their land to the sea.

Landlocked countries are also commonly subject to the administrative burdens associated with border crossings, with these often adding the greatest amount to shipping costs. To transit a country, there are a host of direct transit and customs charges. International transit also requires burdensome paperwork and bureaucratic procedures that are costly to deal with and place a high administrative burden on shippers (Michael L. Faye, 2004). Yet the convention on transit trades of land locked states provided that 1) For convenience of traffic in transit, free zones or other customs facilities may be provided at the ports of entry and exit in the transit States, by agreement between those States and the land-locked States. 2) Facilities of this nature may also be provided for the benefit of land-locked States in other transit States which have no sea-coast or seaport (1965 Convention on Transit Trades of Landlocked States Art. 8).

Landlocked states basically would have to go through their surrounding states in order to gain access to the coastal rights, or so to say through the transit states. "transit State" means a State, with or without a sea-coast, situated between a land-locked State and the sea, through whose territory traffic in transit passes (UNCLOS Art. 124(1) point b). Transit is a certain concession system aimed at facilitating trade within a given customs territory or between separate customs territories. It essentially allows the temporary suspension of customs duties or other taxes payable on goods originating from and/or destined for a third country while under transport across the territory of a defined customs area. This suspension of duties and taxes remains in place until the goods either exit the customs territory concerned, are transferred to an alternative customs regime or the duties and taxes are paid and the goods enter free circulation.

In transit regimes, it is necessary for identifiable persons to be responsible for the suspended taxes, duty and excise during the transit. Such a figure exists in all regimes and frequently has to provide customs with a guarantee to back up the financial liability involved. In practice, a number of different systems exist to allow such transit operations to take place. They can vary depending on the territories involved in the transport.

Landlocked countries are completely dependent on their transit neighbors infrastructure to transport their goods to port (Endalcachew Bayeh, 2015). This infrastructure can be weak for many reasons, including lack of resources, miss-governance, conflict and natural disasters. Regardless of the cause, weak infrastructure imposes direct costs on trade passing through a transit country and thus limits the ability of landlocked country products to compete in global markets. The relative impact of weak surrounding infrastructure is particularly severe for the least developed landlocked countries that mainly export primary commodities with low value to cost ratios rather than high value products or services. Weak transit infrastructure also limits the return to investment on landlocked countries' internal infrastructure, since market opportunities are constrained (Michael L. Faye, 2004).

2 Laos Geographical Order

To help our further understanding of Laos supremacy on water body we should analyze the geographical condition of Laos itself. As obviously Laos is a Land Locked State, but how far Laos to the sea and its exact accessibility. As an South Asian State that well known of its tropical island and exotic rain forest help us to easily figure out their water access.

The special needs of Land-Locked Developing Countries (LLDC), especially those related to the need to improve their accessibility and connectivity, have been recognized for a long time by policy makers and developmental institutions (World Bank-United Nations report, 2014) As we have mentioned previously Laos isn't unfamiliar nor foreign to likes of aquaculture as over seventy five percent of its population relies on fishing for its main protein in-take. The data itself is enough showcase how prosperous Mekong River is to supply fish for around four states around it ,to be mentioned: Laos, Thailand, Vietnam and China and not taken to the account yet the imported aquaculture that sent across the world.

As we can see in the map Laos access to the water is quite Locked, while Mekong River is the easiest access to the water body, the route from the Laos capital ,Vientiane, to the Vietnam biggest port ,Hai Phong, estimated 811,1 Km with fifteen hour and eighteen minute travel by land is not an effective distribution for aquaculture to go through. With the condition and infrastructure of Laos at the moment its reasonable for the state to endure minimum supremacy on the sea. The best step for Laos to open its communication with the sea will be to diversify its advancement of infrastructure as the most benefited province by opening Laos to the sea will be

Houaphan Province that locate only half of the route that is 467.3 Km with ten hour an forty minute of land travel or faster which won't destroy the transferred aquaculture to the point of inedibility. This option is better instead of the status quo as Houaphan Province distance to the capital city of Laos is 609.1 Km or even Mekong River that is 825 Km. Open access of Laos in Vietnam Hai Phong Port will be able to improve one province that is Houaphan, if Laos granted with freedom of access to the sea three to four province will be able to maintain itself ,to be mentioned: Bolikhamxai, Khammquan, and Xekong.



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Picture 1. Map of Laos
 Source : <http://www.lib.utexas.edu/maps/laos.html>

3 Laos Opportunity

While rights and theory proves to be a strong enough stand point for Laos to acquire the reason to exploit the sea, the next step will be how Laos as a Land-Locked state acquire the aquaculture provided by the sea. Many ways presented by our modern world of globalization

where states referred as a subject that have rights and needs to be fulfilled like a life to be preserved. The option states vary from treaty bilateral and multilateral, international organization, United Nation as 3rd party or taking it to the extreme by annexation:

a) **Treaty and conventions:** Lauterpacht, confirmed that certain states may legitimately claim “the right of transit” when there exist two fundamental conditions. First, the State claiming the right of transit must be capable of proving the merits and necessity of the right. Second, the exercise of the right must not cause disturbance or prejudice to the transit State. Lauterpacht concludes that the Covenant of the League of Nations, the Barcelona Convention, and similar instruments recognize the principle of free transit. They require transit States “to negotiate and conclude, on reasonable bases, transit agreements or treaty (E. Lauterpacht, 1958). Treaty by definition is a formally concluded and ratified agreement between states. It is viewed as the most effective as it provide every party for what they need and peacefully that sacrifice less than traditional way of annexation. Many transit agreements are negotiated on a bilateral basis (such as Nepal’s agreements with Bangladesh or India) and are in most cases for a limited period of time. Many of them are ad hoc and even others are only some paragraphs in a larger treaty typically dealing with all kinds of trade issues. This can lead to an uncertainty, which is especially harmful to business interests. Though the main disadvantage of this solution will be the bad relationship of Laos with its neighboring coastal state. As we see Laos relation with Thailand severed by the 1984 war due to the Mekong River territorial dispute. Vietnam in the other hand will provide the most since Laos and Vietnam has had through many friendship treaty in history, though till now there is no treaty that provide Laos easy access to the Vietnam port for fishermen boat is nowhere to be seen. Laos’s bilateral treaty would help Land-Locked State as to be seen with successful Land-Locked State, Switzerland, that will be mentioned on to the next point.

Other than transit agreements, a landlocked state can also gain right of access as an international servitude. An international servitude is a right, based on an agreement between two or more States, by which the territory of one State is subjected to the

permanent use of another State for a specified goal. It simply establishes a permanent and legal relation between territories that cannot be affected by a change of sovereignty in one or the other territory. It can be terminated only by mutual agreement, by renunciation by the dominating State, or by consolidation of the affected territories under a single sovereign (Charles G. Fenwick, 1965). Oppenheim defines servitude as “those exceptional restrictions made by treaty on the territorial supremacy of a State by which a part or the whole of its territory is in a limited way made perpetually to serve a certain purpose or interest of another State.”(Kishor Uprety, 2005)

Article 2 of the Convention on the High Seas states that the high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty and article 3 of the said Convention which states:

1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord:
 - a) To the State having no sea-coast, on a basis of reciprocity, free transit through their territory; and
 - b) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports.
2. States situated between the sea and a State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.

b) International Organization: Laos itself have membership of International Organization such as ASEAN, ILO, G-77 and UNESCO, though not to be seen many sea based or aquaculture based organization the main reason for it will be being a member of International Organization need perquisites to be fulfilled as for example Regional

Fisheries Management Organization (RFMO) requires its member to be able to maintain its aquaculture income and provide aquaculture area (Rachma Indriyani, 2016). Even though RFMO viewed as the *referee of high seas*, but maintaining sea resource is not an easy task. Movement and opportunity taken by RFMO should be considered carefully. Basically International Organization as a solution Laos facing right now will not be quick solution as Laos should fulfill the prerequisite which will take more time, thought as a long term program, joining an International Organization is a must as a security means. Laos safest option will be providing RFMO the Mekong River area as long as the RFMO provides Laos with open gate to the high seas. To be an example we take RFMO type of bilateral agreement with it's condition and benefits:

RFMO Agreement

Surprisingly, Laos isn't a member of Regional Fisheries Management Organization in any region, unlike China which is a member in several regions which means they can exploit fishes in regions where it's a member.

There are two main goal of fisheries agreements: access rights to the EEZ; and financial sector support which aims to promote sustainable fisheries development in the partner countries, by strengthening their administrative and scientific capacity through a focus on sustainable fisheries management, monitoring, control and surveillance. (https://ec.europa.eu/fisheries/cfp/international/agreements_en)

The scope of agreement, in practice, consist of Tuna agreements – allow EU vessels to pursue migrating tuna stocks as they move along the shores of Africa and through the Indian Ocean. Mixed agreements – provide access to a wide range of fish stocks in the partner country's exclusive economic zone.

- c) **Annexation:** one way to gain access to everything is by owning it. In the modern world, annexation viewed as the worst possible way for a state to achieve resources, as annexation have almost hundred percent chance of manufacturing war. Laos favored annexation option will be on Thailand due to the bad relationship with Laos in the past history. Manpower viewed, Laos falls short if not making a smart play with bilateral treaty during war, but war is a chaos which outcome will be hardly predicted. And yet

again, annexation doesn't seem as an option, even any disputes which may arise should be settled peacefully through either litigation or non-litigation resolution (Ayub Torry, 2013).

4 Sea Treaty of Laos

In analyzing the development of number of treaty that had been signed, this study compares Laos and Switzerland treaty about the sea toe-to-toe to find any hole in Laos treaty as a state. As a result we found out Laos lack of attention on the sea while maintain more focus on security and stability of it's state which is understandable since Mekong River is pretty internationally considered as robbery area.

| No | Laos Treaty on Sea | Switzerland Treaty on Sea |
|----|---|---|
| 1 | United Nations Convention on the Law of the Sea | Convention on Fishing and Conservation of the Living Resources of the High Seas |
| 2 | Protocol against the Smuggling of Migrants by Land, Sea and Air | Convention on the Territorial Sea and the Contiguous Zone |
| 3 | | Declaration recognising the Right to a Flag of States having no Sea-coast |
| 4 | | Convention on the High Seas |
| 5 | | Brussels Convention on Assistance and Salvage at Sea |

Table 1. Existing treaty of Laos and Switzerland

As to be seen, while Laos approach the sea tends to be criminal related, Switzerland tends to achieve its freedom of the sea and maintaining it. The critical point is the *Declaration*

recognizing the Right to a Flag of States having no Sea-coast. While Switzerland has accepted to be bounded by the treaty that even a state like Zimbabwe was a member, Laos number falls to low on its recognition on the sea, which also show reason for zero to none sight of Laos flagged vessels while Laos have high number of fishermen and make aquaculture as it's second highest income.

Laos geopolitical situation in Southeast Asia, being at the centre of the GMS, is being leveraged on to transform the country from a once-landlocked position to being land-linked through the establishment of transportation corridors linking the five bordering and economically more prosperous countries. Such strategy assumes that development depends on transport as it enhances communication, accessibility to goods and markets. “strengthening connectivity and facilitating cross-border movement and tourism, integrating national markets to promote economic efficiency and private-sector development, addressing health and other social, economic, and capacity-building issues associated with sub-regional linkages, and managing the environment and shared natural resources – especially of the watershed systems of the Mekong River – to help ensure sustainable development and conservation of natural resources” (Asian Development Bank (ADB) 2004: 6)

IV. CLOSING

a. Conclusion

The global and regional status of the land locked states in the law of the sea came into force more substantially after 1982 of UNLOSC. Where as it is still not updated issue in global and regional level. There is number of issues which faced by Landlocked state, one of the main issue is access right. land-locked states have the right of access to and from the sea and freedom of transit to enjoy rights conferred on them by the convention. Due to their lack of territorial access to seaports and the prohibitive cost of airfreight, landlocked countries have to rely on the transport of goods by land through one or more neighbouring countries. For the most part, these countries have lower levels of human development and external trade compared with their maritime neighbours.

b. Suggestion

To open itself for sea supremacy will be a bold move for a state like Laos yet only bold move will be able to form a stable country. The state obligation as protector of its nation and provide welfare for its people have pushed Laos to find more and more resources. Though many options for developing states to develop, it will not be quite viable for Laos at the moment, as such automating the industry that at this point Laos have shortage of human resources or extensive agriculture that might cover the lack of fish resources. The best way for people of Laos to make realization of their rights would be to get involved more in fisheries organization such as RFMO to widen fisheries areas and to strengthen their chances of getting fish and aquaculture supplies.

BIBLIOGRAPHY:

Books and Journals :

- A. Mpazi Sinjela, "Freedom Of Transit And The Right Of Access For Land-Locked States: The Evolution Of Principle And Law", *GA.J.Int'l & Comp. L.* (Vol. 12:31)
- Ayub Torry, "Alternatif penyelesaian sengketa wilayah laut Indonesia-Malaysia", *Yustisia, Vol.2 Number1 Januari-April 2013*
- Charles G. Fenwick, International Law 458–59 in *Vakils, Feffer & Simons 1965.*
- Convention on Transit Trade of Landlocked States
- Development and International Economic Co-operation: Report of the Secretary General, U.N. GAOR (Agenda Item 7) 7, U.N. Doc. A/10203 (1975).
- Dimas Fauzi, *Unlocking the landlocked states, laos in greater Mekong Sub-region*, the department of international relations, Universitas Gadjah Mada
- E. Lauterpacht, *Freedom of Transit in International Law*, 44 *Transactions of the Grotius Society* 332 (1958–59).
- Endalcachew Bayeh. "The Rights of Land-Locked States Under the International Law: The Role of Bilateral/Multilateral Agreements", *Social Sciences. Volume 4, Number 2, 2015.*
- Kishor Uprety, 2005, *The Transit Regime for Landlocked States*, the world bank, LAW, JUSTICE, AND DEVELOPMENT SERIES for LLDC
- Michael L. Faye, "The Challenges Facing Landlocked Developing Countries", *Journal of Human Development, Volume 5, Number 1, March 2004*
- Mekong River Commission, 2013, *An Introduction to the Fisheries of Lao PDR*, World Bank

Rachma Indriyani, 2016, Where does the real Interest of Shared Fish Stocks in Indian Ocean Stand for? Proceeding, The 7th Indonesia Japan Joint Scientific Symposium (IJSS) Chiba

UNCTAD, 2007, *Regional cooperation in transit transport: Solutions for landlocked and transit developing countries*, Geneva, 27–28 September

United Nations, *Improving Trade And Transport For Landlocked Developing Countries, A Ten Year Review*, World Bank-United Nations Report In Preparation For The 2nd United Nations Conference On Landlocked Developing Countries, November 2014

Internet :

https://ec.europa.eu/fisheries/cfp/international/agreements_en