SIAM IN BRITISH FOREIGN POLICY 1855-1938: THE ACQUISITION AND THE RELINQUISHMENT OF BRITISH EXTRATERRITORIAL RIGHTS

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Vikrom Koompirochana

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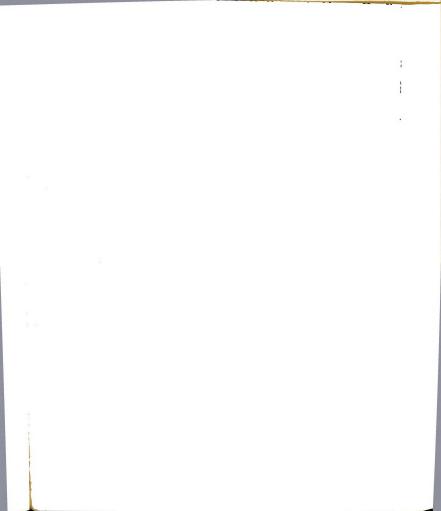
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SIAM IN BRITISH FOREIGN POLICY 1855-1938: THE ACQUISITION AND THE RELINQUISHMENT OF BRITISH EXTRATERRITORIAL RIGHTS

By

#### Vikrom Koompirochana

This dissertation is a study of British foreign policy with regard to the question of extraterritoriality in Siam and of Siam's foreign policy in coping with this question. It traces how British extraterritoriality originated in Siam and how it was relinquished from Siamese soil. Great Britain was the first Power to acquire extraterritorial rights in 1855 as well as the first to relinquish the last vestiges of extraterritoriality in 1937.

With the British settlements at Penang and Singapore firmly established, Britain became increasingly interested in opening commercial relations with Siam. The East India Company was seeking to remove the restrictions upon the trade of British subjects in Siam. In 1821, the Indian Government sent John Crawfurd to head a mission to Siam. This mission proved abortive to break the impasse. In 1826, the Indian Government sent Henry Burney to Bangkok. He managed to conclude an Anglo-Siamese Treaty of 1826, which was regarded as the first modern Treaty between Siam and a Western nation. As time went by, the British were disappointed with the results of this Treaty. In 1850, Sir James Brooke headed another mission to Siam to negotiate a new treaty. The attempts again failed.

With the death of King Rama III (1824-1851) and with the accession of King Mongkut, Siam entered upon a new era.

In 1855, the Foreign Office gave Sir John Bowring plenipotentiary powers to come to Siam to make a new treaty of commerce and friendship, with an instruction to arrange a treaty providing for an extraterritorial jurisdiction over British subjects. Bowring succeeded in securing the extraterritorial regime in Siam.

After 1870, Siam moved towards the modification of this regime.

Before the close of the 19th century, a number of treaties and agreements were concluded between the two governments to deal with the administrative and political difficulties of the extraterritorial system: the Indo-Siamese Treaty of 1874, the Anglo-Siamese Treaty of 1883, the Agreement on the Registration of British Subjects in Siam, November 1899, and the Agreement relative to the Abolition of Land Tax Schedules, September 1900.

With the arrival of Edward Strobel, the first American Adviser to the Siamese government, Siam opened new negotiations with Britain, which culminated in the Treaty of 1909. This treaty was an important turning point with regard to British consular jurisdiction. After 1892, Siam kept steadily improving her administration of justice and manifested extraordinary progress. It was not until 1925 that the other Anglo-Siamese Treaties were concluded. They were the most significant of all, for a definite time was set when Siam was to regain full fiscal autonomy and complete jurisdiction over all British subjects. The Anglo-Siamese Treaties of 1909 and of 1925 were accomplished with the help of several American advisers on Foreign Affairs, especially, Edward H. Strobel, Jens I. Westengard, and Francis B. Sayre. In 1935 all the Siamese codes of law were promulgated and put into force. Then Siam began to negotiate a series of treaties based on equality and reciprocity with other Powers having

treaty relations with her. Great Britain was the first Power to abolish the last vestiges of extraterritoriality and the first to establish regular diplomatic relations. Thus after 82 years of existence, British extraterritoriality in Siam came to an end.

## SIAM IN BRITISH FOREIGN POLICY 1855-1938: THE ACQUISITION AND THE RELINQUISHMENT OF BRITISH EXTRATERRITORIAL RIGHTS

Ву

Vikrom Koompirochana

### A THESIS

Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

Department of History

1972



To my father and mother,

Phairote and Prachaub Koompirochana

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### **ACKNOWLEDGEMENTS**

I wish to thank Professor Donald N. Lammers, the adviser and the chairman of the Committee for his invaluable advice with regard to this dissertation from the time it was initiated and for his encouragement, and historical instructions he gave me throughout my graduate studies at Michigan State University. I am much indebted to Dr. Paul R. Sweet, Professor of the History of International Relations for many valuable suggestions, for his encouragement, friendship, and for giving me an insight into new dimensions in history. I should like to thank Professor Donald N. Baker, a member of the Committee for his advice and invaluable historical instructions. My thanks also go to Professor John B. Harrison, my academic adviser during the year 1968, for his friendship and encouragement.

To these professors I again wish to express my sincere gratitude and appreciation.

I wish to thank my only brother, Dr. Choompol Koompirochana, for his constant encouragement. Last of all, I owe a special debt of gratitude to my father and mother, Phairote and Prachaub Koompirochana, for their love and constant encouragement, and for aiding in innumerable other ways throughout my studies. This dissertation is specially devoted to them.

LIST OF A

CHAPTER I, TH

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II, pr

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III. F

### TABLE OF CONTENTS

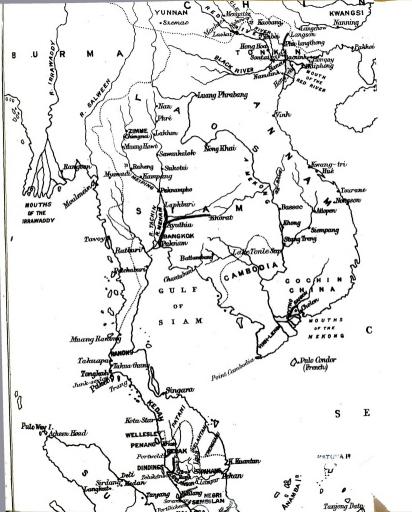
LIST C	of abbreviations
CHAPTE	IR.
I.	THE ACQUISITION OF BRITISH EXTRATERRITORIAL SYSTEM IN SIAM . 1
	Great Britaina Burgeoning Power in Southeast Asia 3 Projection of British Influence and Control in the
	Malay Peninsula
	Nineteenth Century
	The Crawfurd Mission of 1822
	The Burney Mission and the Anglo-Siamese Treaty of 1826 25
	Anglo-Siamese Relations after 1826
	Sir James Brooke's Mission to Siam in 1850
	King Mongkut (1851-1868) and the New Orientation of
	Siam's Foreign and Commercial Policies
	The Bowring Mission and the Treaty of 1855the
	Beginning of British Extraterritorial Rights in Siam 50 Harry Parkes' Mission and the Supplementary Agreement
	of 1856
II.	PROCESSES OF THE MODIFICATION OF THE EXTRATERRITORIAL SYSTEM (1874-1900)
	Potential Inconveniences of the Extraterritoriality 69 Treaty between Siam and the Government of India,
	January 1874
	The Anglo-Siamese Treaty of 1883
	The Registration of British Subjects in Siam, November 1899
	Agreement between Great Britain and Siam Relative to the
	Abolition of Land Tax Schedules attached to the
	Agreement of 1856, September 1900
III.	FURTHER MODIFICATIONS OF EXTRATERRITORIALITY (1901-1909) 135
	Anglo-Siamese Negotiation in respect to the Siamese
	Proposed Revision of Article VIII of the Treaty of 1883
	in exchange for the right of British subjects to hold land . 136
	The Franco-Siamese Treaty of 1907, and the Question of
	Extraterritoriality in Siam
	Anglo-Siamese Negotiations and the Treaty of March

•		
IV.	ROADS TO FISCAL AND JUDICIAL AUTONOMY (1910-1925) 202	
	Siam and the First World War	
	Extraterritoriality	•
	Anglo-Siamese Negotiations	j
V.	THE RELINQUISHMENT OF THE LAST VESTIGES OF BRITISH EXTRA- TERRITORIAL JURISDICTION IN SIAM (1927-1938)	
BIBLIC	OGRAPHY	

#### LIST OF ABBREVIATIONS

AJIL .	•	•	•	•	•	The American Journal of International Law		
BFSP .		•	•			British and Foreign State Papers		
co				•		Colonial Office		
FO	•	•				Foreign Office		
10						India Office		
JRASMB				•.	<b>'</b> •	Journal of the Royal Asiatic Society, Malayan Branch		
JSS .		•				Journal of the Siam Society		
PRO .						Public Record Office		





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### CHAPTER I

### THE ACQUISITION OF BRITISH EXTRATERRITORIAL SYSTEM IN SIAM

Siam and Great Britain first entered into treaty relations in 1684, but nearly 150 years lapsed before Siam signed another treaty with Britain. in 1826. The latter's renewed interest in Siam rose chiefly from its encroachments in the Malay Peninsula and Burma. However, of all the Western countries, Portugal was the first one to come to establish friendly relations with Siam. Her representatives came in 1511 and obtained permission to trade. The Portuguese were the only European community to settle in Siam in the sixteenth century. Other European nations came to Siam in the next century: the Dutch in 1604, the English in 1611, the Danes in 1621, and later in the seventeenth century, the French arrived in 1662. The French began to be successful in Siam because the Siamese wanted them as a balancing power against the Dutch, whose influence was increasing. But with the growth of French influence in Siam a large number of the Siamese officials gradually became suspicious of French political policy and feared that Siam might be taken under French control. Following the Revolution in Siam in 1688 the French influence at Ayuthia, the former capital of Siam, was suppressed and from that time onwards Siam did not enter into treaty relations with any of the Western countries 1 until the emergence of Great Britain as a Far Eastern Power at the beginning of the nineteenth century.

 $<sup>^{1}\</sup>text{D.G.E.}$  Hall, an authority on Southeast Asian history, explains this position thus:

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During most of the 18th century. Siam was occupied with incessant civil wars and with a series of invasions by the Burmese, its traditional enemy. These disorders had the effect of practically cutting off Siam from any contact with any European countries. As a matter of fact, the principal trading nations in the Far East--France, Britain, Spain, Holland, and Portugal -- were occupied elsewhere. Siam was in the process of reconstituting and consolidating its boundaries after the fall of Ayuthia to the Burmese armies in 1758. In 1782, a new capital of Siam was founded at Bangkok and Rama I ascended the throne as the first king of the present dynasty, the Chakri. His important preoccupations were to regain control over the Siamese vassal states in Laos, Cambodia, and in the Malay Peninsula where the Siamese influence was extended to cover Kelantan and Trengganu. When Rama II (1809-1824) succeeded the throne after his father's death in 1809, his main task was again to consolidate the country. Therefore, while the Siamese were heavily preoccupied by their own affairs-incessant civil wars, a series of struggles with Burma -- little encouragement was given to foreign intercourse. The history of Siamese foreign relations remained a virtual blank for nearly 150 years after 1688.

Before turning to a discussion of how Great Britain came into contact with Siam in the nineteenth century, it will be helpful to consider the course of British encroachments to the South, in the Malay Peninsula.

<sup>&</sup>quot;Ever since the failure of the attempt of Louis XIV to gain control over the old kingdom of Ayuthia in the seventeenth century, the Siam had become inordinately suspicious of Europeans, and every possible restriction was placed on their trade. During the first half of the 19th century this attitude was first maintained. But one may discern the faint beginning of change in Rama III's reign."

D.G.E. Hall, A History of South-East Asia, (London: Macmillan & Co., 1964), p. 436.

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## Great Britain -- a Bourgeoning power in Southeast Asia

The expansion of British influence and commercial hegemony in Southeast Asia in the early part of the nineteenth century was closely connected with the position the British established for themselves in India. The British East India Company played a predominant role in the absorption of the dying Mogul Empire and the subsequent domination of the principal ports of India. From its established position in India, Britain expanded eastwards towards Southeast Asia and the Far East. The Malay Peninsula became more important since most of the merchant vessels from Europe and India passed through the Straits of Malacca en route to China. The steady decline of Dutch commercial activity during the latter part of the eighteenth century also played an important part in British commercial expansion to the East. The Dutch East India Company's competition was completely eliminated in favour of England by 1795, following the occupation of the Netherlands by French Revolutionary armies. By this time the British East India Company had acquired territorial responsibilities in India which involved the transformation of its commercial machinery into a government service. 3 As a commercial concern its main interest by the end of the eighteenth century was in the trade through the Straits of Malacca to China.

In the early seventeenth century the British East India Company had gained a number of bases for the spice trade with the East Indies. The desire to have some stations in the East Indies trade was one of the reasons for the Company's continued interest in the possession of a port of call

<sup>&</sup>lt;sup>2</sup>John F. Cady, <u>Southeast Asia</u>: <u>its Historical Development</u>, (New York: McGraw-Hill, 1964), p. 303.

<sup>&</sup>lt;sup>3</sup>Brian Harrison, South-East Asia: A Short History, (London: Macmillan & Co., 1966), p. 151.

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in Southeast Asia. In 1685 the Company established a base at Bencoolen on the west coast of Sumatra, but it became one of the "most costly and unprofitable stations which the Company ever possessed," for it was situated away from the Malacca Straits and was inconvenient as an entrepot. Bencoolen was therefore never developed as a wider trade-centre. The need for an English-controlled port of call between Bombay or Calcutta, and Canton became more urgent with the increased trade between India and China in the second half of the 18th century. Before the Company's settlement in Penang in 1786 English ships sailing between the Indian ports and Canton, when in need of supplies or repair, had to resort to either the Dutch ports or the ports belonging to the native rulers, which caused various inconveniences in the time of war or of local disputes.

Britain was the first country to experience rapid industrialization. This unprecedented expansion continued into the period of the French Revolutionary wars, though irregularly. The dynamism of an expanding economy made it necessary for the British to secure new markets and new sources of raw materials. Britain was thus gradually being transformed into an industrialized country seeking to exchange her industrial products and machinery for food and raw materials for manufacture. India, and later China, became vast potential markets for British manufactured products. Trade with China, the keystone to the whole of the Far East, had been well

<sup>4</sup>L. A. Mills, "British Malaya 1824-1867," <u>Journal of the Royal Asiatic Society</u>, <u>Malayan Branch</u>, Vol. 1, pt. 2, Nov. 1925, p. 13.

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developed even before the middle of the eighteenth century; it was expanding with extraordinary rapidity by the end of the century. 5

<sup>5</sup>EAST INDIA COMPANY'S TRADE AT CANTON

Year	Imports in Merchandise	Imports in Coin	Total Imports
	£	£	£
1699	5,475	26,611	32,086
1709	2,635	31,000	33,635
1719	5,611	62,000	67,611
1729	4,317	160,000	164,317
1738	3,829	162,000	165,829
1749	3,069	58,000	91,069
1762			121,435
1769			345,743
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1779	-		1,022,694
1789	1,295,799	1,321,920	2,617,719
1792	2,038,139	518,400	2,546,538
1794	2,171,897	****	2,171,897

Year Exports Number of Ships Total Tonnage (taels)\* 1699 45,928 1 250 1709 1 330 1719 -----2 650 1,900 1729 420,000 4 1738 2,040 -----5 1749 -----2-3,000 4-8 £243,097 1762 1769 £514,852 tls. 1779 5 1,022,694 1789 4,433,431 21 18,144 1792 3,535-407 12,271 16 1794 20,333 4,704,488 21

Figures are based on tables in E.H. Pritchard, "Anglo-Siamese Relations during the Seventeenth and Eighteenth Centuries," <u>University of Illinois Studies in the Social Sciences</u>, Vol. 17, 1929, pp. 210-211.

<sup>\* 1</sup> pound (1b.) equals 3 taels.

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7Joh 181 The development of British commercial relations with China tremendously increased both the volume and value of trade. A steady rise in the annual tonnage sent to China and an increase in the size of the merchant ships (from an average of 55 tons in 1750 to 1200 in 1795) became apparent. This was due to the growth of British public and official interests in matters relating to China. The effect of tea upon English life was the most marked impression which contact with China had produced. The management of this distant trade with China fell completely within the East India Company's monopoly. This trade was favourable to the Company in terms of the balance of trade: its exports to China exceeded its imports.

The value of both imports and exports increased greatly after the Seven Years' War. British trade with Canton increased by 184 percent over the years between 1764 and 1800. The export of opium by the country traders was growing in importance to India. But it was the Company's monopoly on the export of tea from China to Europe which was vital to British interests. It became by far the "most important commodity in the trade," and also "the most lucrative." Between 1770 and 1779 the Company imported an annual average of five to six million pounds weight of tea into Britain, paying on it very high customs and excise duties. The chief causes of this massive importation of tea into England were "the gradual

<sup>&</sup>lt;sup>6</sup>British trade with China was divided among three distinct groups; the Company, the Private traders, and the Country traders. "The Company, with its headquarters in London, had control and supervision over the whole trade. The Private trade was carried on between England and China and between India and China by the commanders and officers of the Company's ships under license of the Company. The Country trade between India and China was conducted by Englishmen resident in India under the license of the Company and by native Indian merchants."

Earl H. Pritchard, The Crucial Years of Early Anglo-Chinese Relations, 1750-1800, (New York: Octagon Books, 1970 [1936]), p. 142.

<sup>&</sup>lt;sup>7</sup>John Bastin, "Raffles and British Policy in the Indian Archipelago, 1811-1816," <u>JRASMB</u>, Vol. 27, 1954, p. 85.

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expansion of the tea-drinking habit to the lower classes of England, the increased consumption on the part of the upper classes, and the increase of population generally, providing more mouths to be fed." However, the most fundamental stimulus of the general commercial development of the period was the passing of Pitt's Commutation Act in 1784. By the provisions of this Act the duty on tea was reduced from an average of 119 percent ad valorem to 12 1/2 percent, and the East India Company's monopoly was confirmed. This had an important effect upon the China trade for it encouraged its phenomenal expansion. Imports from China, especially of tea, rose tremendously until they reached an average of 30 million pounds a year during the last ten years of the Company's monopoly (which was ended in 1833).

Silk and nankeen cloths were the two most important exports in addition to tea. Chinese silk had been the article which originally attracted British ships to China, and was of much greater importance than tea during the early part of the 18th century. As the demand for tea in England increased, however, the relative importance of silk declined.

Tea alone was an object which did not compete with home manufacture, and from it the Company drew over 90 percent of its commercial profits. Every precaution was taken to expand this trade at the expense of foreign competitors and to preserve it as a strict monopoly.

To be able to finance its trade at Canton without having to depend on imported bullion from England, the Company had to find articles of exchange for tea and other Chinese products. It found them in woollens from Britain, raw cotton and opium from India. These exports to China

<sup>&</sup>lt;sup>8</sup>E. H. Pritchard, "Anglo-Chinese Relations during the Seventeenth and Eighteenth Centuries,", p. 161.

<sup>9</sup>E. H. Pritchard, The Crucial Years, p. 145.

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were of value in aiding the Company to finance its trade. 10 The market for British woollens and metals, and for Indian cotton and opium, expanded enormously after 1784 as the direct result of the lowering of the duties on tea, and it left an insignificant place for other imported products.

As the value of commerce expanded, its importance to the Company and to Britain increased. Therefore the Company naturally became more desirous than ever of maintaining and protecting the trade and of doing nothing which might endanger it.

## Projection of British Influence and Control in the Malay Peninsula

The British East India Company had conducted long drawn-out search for a naval and commercial station in Southeast Asia before the promulgation of the Commutation Act of 1784, which has been described as a turning point in the development of the Company's China trade. In the 1770's the China trade-route through the Straits of Malacca was considered more seriously than ever before as the Company's interest in protecting the route grew with the trade itself. Commercial interest was the compelling motive for the British occupation of Penang in 1786 and it also formed "the most powerful reason for the retention of Raffles' settlement at Singapore" in 1819. In fact, it was not the Company's interest alone which sustained the growth of British outposts along the Straits of Malacca, but also the growth in the country trade between India and China conducted by the private merchants who sometimes went no further than the Southeast Asian ports if they could manage to dispose of their merchandise there in exchange for local products, such as spices and pepper. The growth in

<sup>10</sup>Pritchard, "Anglo-Chinese Relations...", p. 161.

P. 4. Nineteenth Century Malaya: the Origins of British Political Control (London: Oxford University Press, 1961),

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1. 70-7 trade with the Indonesian islands made it additionally important to establish British settlements as trading centres in the area.

Commercial motives were not, however, the only ones which induced the Directors of the Company to turn their attention to the Malay Peninsula; they were influenced by the considerations of naval strategy as well. 12

The successful defence of the British possessions on the east coast of India demanded a good harbour suitable as a naval base, where the fleet could refit and take on provisions. Anglo-French rivalry for supremacy in India rendered it increasingly necessary for the British to have a naval station on the eastern side of the Bay of Bengal, which was the main scene of naval warfare. Their upper hand in India was found to depend largely upon the question of the naval control over the Bay. For the British the need for a naval base and repair stations became particularly acute from 1740 onwards, when an excellent harbour was developed by the French at Mauritius. British experience in the Seven Years' War underlined the need for a repair station and port more convenient than Bombay.

When that War ended in 1763 the directors of the Company gave orders to search for a suitable base to the eastwards, preferably on the Bay of Bengal. Surveys of its western coast showed that it lacked a suitable harbour for a naval base. The outbreak of the War of American Independence (1775-83) marked the revival of Anglo-French struggle both in the East and the West. The renewed war with France furnished the Marquis of Hastings with fresh objectives of finding a naval base. As soon as the Peace of Versailles was concluded in 1783, Hastings began positive action by sending missions to find a suitable site. It was at this juncture that Francis Light, an English private trader in the East

<sup>12</sup>J. Kennedy, A History of Malaya, (London: Macmillan & Co., 1970), pp. 70-72.

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Indies, came forward with his suggestion of the British settlement in Penang. Light did not regard the occupation of the island as a solution to the naval question, but he saw it as a suitable port of call for British merchantmen engaged in the China trade, a most valuable branch of the Company's commerce.

The Company was much influenced by commercial motives in this period. The directors wished to increase trade with the East Indian islands; thus, it would help the British merchants if they were provided with a port under direct British control. A desire for a port of call for the British merchants between India and China was increased with the consideration that there was not a single British port on the trade route to China, which ran through the centre of the Dutch Empire. In time of troubles the Chinese market might be completely cut off from India; and British ships seeking shelter in a Dutch port were charged exorbitant port dues. The directors of the Company therefore considered that the occupation of Penang would be a useful move towards "securing the greater safety of the China shipping" and towards "breaking the Dutch monopoly," $^{13}$ Francis Light had long advocated the advantages of Penang as possessing an excellent harbour with facilities for refitting ships, as a centre for the commerce of the Archipelago, and as a mart where the ships bound for China could be supplied with the products of the Archipelago which were suitable for the Canton market.  $^{14}$  His project of establishing a new settlement at first met with a complete failure. But with the Company's flourishing China trade after 1784, the question of a settlement in Penang became once again important. In due course Light came forward with an

<sup>13</sup>Hall, op. cit., p. 468.

<sup>14</sup>Mills, op. cit., p. 23-24.

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agreement with the Sultan of Kedah, and took possession of the island of Penang for the Company in August 1786. The Company decided to establish Penang primarily for commercial reasons; the question of its use as a naval base was left undecided. It was only during the war with revolutionary France that naval opinion changed in favour of Penang, when it proved useful as a base for the naval expeditions to the Dutch East Indies.

The projection of British influence and control in the Malay

Peninsula coincided with the decline of Dutch power in the area. In the

course of the fourth Anglo-Dutch War of 1780-84, the Dutch had suffered

a number of naval defeats and the Dutch government conceded to Britain in

the peace settlement the right of the British to trade in the East Indies.

During the French Revolutionary wars the British occupied a large number

of Dutch forts, factories, and stations on the west coast of Sumatra.

Britain also brought Malacca under its control in 1795. Then in 1800 the

Company acquired Province Wellesley, the strip of territory on the mainland

facing Penang. The principal reason for obtaining it was to achieve

complete control of the harbour of Penang, which was in the strait separ
ating the island from the Maylay Peninsula. The acquisition would make

Penang independent of Kedah for its food supplies. Sufficient rice and

other food products would be raised in Province Wellesley to make Penang

independent of all foreign supplies.

After its establishment in 1786 Penang prospered, largely owing to the transit trade. By 1789 the total value of imports and exports was 853,592 Spanish dollars, and by 1804 it had risen up to 1,418,200. The height of the boom period was reached in 1805, when Penang was raised to the Status of a fourth India Presidency. Soon gradual disillusionment began. The first disappointment was the discovery that it was not really suitable for the proposed naval base. In 1812 the plan to make Penang

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<sup>16</sup>John tolonizing a naval base was finally abandoned. The second disappointment was the failure of the position of Penang to become a great trading centre for the East Indian islands. Stamford Raffles, who arrived there as assistant secretary in 1805, soon realized that Penang lay too far to the west of the Archipelago to become a great trading center for the islands. Moreover, it lay outside the gates so far as the Dutch empire was concerned.

During the Napoleonic wars the British Government instructed its naval squadron to attack the French bases in the Indian Ocean and to subdue the Dutch government in Java with military operations. In 1811 forces from India occupied Java and most of the Dutch posts in the other islands. During the years of the British occupation the whole of the area became a British trading preserve, allowing the merchants to develop an extensive trade in the area. At the close of the Napoleonic wars and with the Convention of London (August 13, 1814) the eastern colonies, except Ceylon and the Cape of Good Hope, were returned to the Dutch. Therefore, a source of present commercial profit to Britain was threatened with extinction by the return of Java to Dutch control in 1816. Raffles had bitterly opposed the surrender of Java. He wanted to see the permanent extension of British influence to the islands lying eastward of Java, and he saw Java as "the centre of a great British Empire dominating the Eastern Seas." 16

The decision of the Government in London to restore Java to the Dutch forced Raffles to formulate a new policy. In a paper entitled "Our Interests in the Eastern Archipelago," addressed to George Canning, President of the Board of Control, Raffles proposed that Britain should

<sup>15</sup>T. S. Tay, "The Attempts of Raffles to establish a British Base in Southeast Asia, 1818-1819," <u>Journal of Southeast Asian History</u>, I, no. 2, 1960, p. 30.

<sup>16</sup> John Bastin, "Sir Stamford Raffles' and John Crawfurd's ideas of colonizing the Malaya Archipelago," JRASMB, XXVI, 1953, p. 81.

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take "immediate possession of a port in the Eastern Archipelago, the best adapted for communication with the native princes...for the resort of the independent trade, and the trade with our allies; for the protection of our commerce and all our interests, and more especially for an entrepot for our merchandise." He considered that the Company's stations at Bencoolen and Penang were "too remote from the scene to answer any of these purposes." He recommended that a new port should be founded upon the principal of free-trade, which would counter the commercial ambitions of the Dutch and secure British power in the Archipelago. Raffles advocated the expansion of the British Empire; he saw the colonies as a source of unlimited wealth to Britain, not as a burden to the mother-country. He was an imperialist convinced of the intrinsic superiority of British rule. 18

With all their former possessions in the Archipelago were restored to them, the Dutch lost no time in reestablishing their former supremacy in the area and in recovering the monopoly of their commerce. British ships were forbidden to visit any port except Batavia. The question of the settlement of a new port in the Malacca Straits near the China Sea was thus brought into sharp focus. Unless Britain possessed such a post, the Dutch would be left in command of the principal trade route to China. The Company's search for another port better situated than Penang arose from two reasons: 1) a reluctance to see Dutch influence in the areas of British commerce; 2) a desire to be in closer contact with the Archipelago trade than was possible from Penang. 19 Raffles foresaw the great future of

<sup>17</sup>Raffles Collection, (India Office), Vol. II, no. 3, undated, quoted in J. Bastin, <u>Ibid.</u>, p. 82.

<sup>18</sup>Cady, op. cit., p. 320.

<sup>&</sup>lt;sup>19</sup>Kennedy, <u>op. cit.</u> pp. 89-90.

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Singapore as a possible alternative site for a free-trade entrepot. With an excellent harbour and easily defensible, the island was a strategic position of commanding importance, for it dominated the southern entrance to the Straits of Malacca; its possession meant that in the event of war it would no longer be possible for the Dutch to close the Straits and destroy British trade to China. 20 Raffles began negotiating in January 1819 on his own initiative with Dato Temenggong, the chief local authority of Johore. A 'Preliminary Agreement' was signed on January 30, 1819, allowing the East India Company to establish a factory on the island and pledging that the local chief would not enter into relations with any other power or allow it to settle within his own territory.

Having obtained a provisional concession of occupancy rights,
Raffles turned his attention towards establishing Britain's footing on
the island on a permanent and impregnable basis. He realized that the
treaty had to be ratified by the Sultan of Johore to have the force of
law. The problem had to be solved by signing a treaty directly with him.
The new Treaty of February 1819 was signed to confirm the 'Preliminary
Agreement'. In return for granting the Company the rights to build factories in his dominions, the Sultan was to receive an annual allowance of
5,000 dollars and the temenggong one of 3,000 dollars. Raffles was successful in acquiring Singapore for Britain. The port was considered to be
under the immediate protection and subject to the regulations of British
authorities. Raffles installed Colonel Farquhar as the first governor.
He wrote home, "What Malta is in the West, that may Singapore become in
the East."21

<sup>20</sup>Mills, op. cit., p. 61.

<sup>&</sup>lt;sup>21</sup>Hall, <u>op</u>. <u>cit</u>., p. 471.

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Singapore progressed rapidly as a free-trade entrepot. A great influx of people and trade flowed to Singapore. It attracted larger vessels from China and India as well as merchant ships from the neighboring countries. In one historian's view.

With the signing of the Treaty of February 9, 1819, Raffles' attempts to counteract the expansion of Dutch commercial influence came to a successful conclusion. His station at Singapore, planted in a position that commanded absolutely the principal route from the West to the East, required only a few years to establish itself as the greatest commercial emporium in the East. With its foundation, Britain's position in the Eastern Seas was permanently secured and the danger of Dutch monopoly forever destroyed.<sup>22</sup>

The British title to Singapore was thus derived from treaties signed in 1918 and 1824 with the Sultan of Johore and with the Temenggong, the local ruler of Singapore. In June 1823 Raffles negotiated with them for the Company's control of trade at Singapore in return for further pensions in place of the loss of income. They surrendered the monopolies and dues they had previously imposed on trade and placed Singapore entirely under British control.

1824 was an important year for the British in Southeast Asia.

With the Treaty concluded in London on March 24, 1824, Anglo-Dutch rivalries in Southeast Asia were settled. The main purpose of this treaty was to resolve existing differences between the two countries, and to plan for the avoidance of the future conflict. Article XII of the Treaty determined the fate of Singapore. It stipulated that "His Netherland Majesty withdraws the objections which have been made to the occupation of the Island of Singapore by the subjects with His Britannic Majesty." The territorial clauses of the Treaty were of the utmost importance in removing one of the greatest causes of friction. Britain agreed to abstain from all political interference in Sumatra and islands south of Singapore; in return.

<sup>&</sup>lt;sup>22</sup>Tay, op. cit., p. 46.

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the Dutch gave a similar undertaking not to interfere in the Malay Peninsula and abandoned their claim to Singapore. They also ceded Malacca to Britain. These settlements resulted in the division of spheres of influence dominated by Britain and the Netherlands. The withdrawal of the latter from the Malay Peninsula left Britain as the only European Power with a footing there, so that slowly and inevitably it became the paramount power in the area. At the same time the treaty secured British control of the Straits of Malacca and of the route to China. It made certain that Singapore, Penang, and Malacca would grow into important trading centres from which British influence could spread into the neighboring states. 23

It may be recalled here that British aims in Southeast Asia had been predominantly commercial when Penang was first settled in 1786.

But commercial and political aims have almost always been closely interrelated. Yet it was not until the nineteenth century that British aims in this region became consciously political as well as commercial.

According to Brian Harrison.

It was not until then that those areas of South-east Asia which for the most part had already been subjected for a considerable time to European commercial penetration became colonies in the modern sense of the term. Before then, although there was political action there was no political policy; there was only commercial policy.<sup>24</sup>

Britain and Siam came increasingly into contact during this period, while Britain was firmly settling in Penang and Singapore and while Siam was recovering from the Burmese invasions and attempting to revive its ancient claims over its vassal states in the Malay Peninsula.

<sup>23</sup>Cowan, op. cit., p. 9.

<sup>24</sup>Harrison, op. cit., pp. 126-27.

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## Anglo-Siamese Relations in the first Half of the Nineteenth Century

From the moment that the East India Company occupied Penang it tried to keep clear of any political commitments in the peninsula. By and large the Indian Government maintained this policy successfully, but by the beginning of the nineteenth century, it was found that it could not keep entirely clear of all involvement. The problem of keeping to the policy of non-intervention was complicated by the position of Siam in the northern Malay States. Siamese activities were one of the outstanding problems which forced the Company to pursue an active policy. The situation was that Siam, by about 1800, after having recovered from the Burmese invasions, made several attempts to revive her ancient claims to dominate over its vassal states in the Peninsula. The governors of Penang during the first quarter of the 19th century feared that much of the Peninsula would fall under the yoke of Siam if these efforts succeeded.

Theoretically the Siamese Malay States--Kedah, Kelantan, and

Trengganu--were in a tributary relationship to the Siamese kings. 25 They

were expected to send a tribute of "ornamental plants with leaves and

<sup>&</sup>lt;sup>25</sup>Siam first made conquests in the Malay Peninsula from the end of the 13th century. The area over which the Siamese influence was expanded fluctuated considerably, but by 1767 the northern parts of the Peninsula had been firmly incorporated in the kingdom and Siam's suzerainty had been established over Pattani and Kedah.

By the fall of Ayuthia to Burma in 1769, Siamese control over the Peninsula was temporarily broken. The Siamese vassal states claimed their independence.

Siam's peninsula domains were recovered by the first two kings of the Chakri dynasty. In addition, two new vassal states--Kelantan and Trengganu-were annexed to the kingdom. The policy of southward expansion into the Malay Peninsula was continued by Rama III (1824-1851). The Siamese continually sought to tighten and expand her administrative control over the Malay vassal states in an effort to absorb additional Malay territories into Siam proper. The underlying Malay resentment of and opposition to the Siamese had always created problems in the Siamese administration.

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flowers of gold and silver" every three years to the Siamese capital. 26

They might also be called on for contributions of men, arms, and supplies in time of war. The Malay rulers, or sultans, and their principal officials were given Siamese titles and insignae of office. In return for assuming the responsibilities recognition of Siamese suzerainty imposed, the vassal states were guaranteed Siamese protection from external threats and were allowed to live under their own laws, customs, and rulers. 27

During the last quarter of the 18th century Siamese influence lapsed for a time as a result of the wars with Burma. It was during this period that the Sultan of Kedah engaged in the negotiations with Francis Light for the lease of Penang to the British East India Company. When Penang was leased in 1786, Siam was not in a position to assert any effective control over Kedah. Sultan Abdullah's decision to lease Penang was based on the clearly stated condition that in return the Company would protect him from Siam. But the Company seized the island without giving a clear promise to support Kedah in case Siam should try to assert its rights of suzerainty. Roman about 1816 Siam was free of any serious threat from Burma because the Burmese efforts were now concentrated on the political developments at Assam; therefore, Siam at once resumed the traditional policy of establishing its supremacy over its Malay vassal states. Kedah was naturally the first state to suffer from this policy because of its proximity to the Siamese frontier.

<sup>&</sup>lt;sup>26</sup>L. A. Mills says that the tribute, called "bunga mas" in Malay, was worth about £1,000, op. cit., p. 34; also see Hall, op. cit., pp. 473-74.

<sup>27</sup>Walter F. Vella, <u>Siam under Rama III 1824-1851</u>, (New York: J. J. Augustin, 1957), pp. 60-61.

<sup>&</sup>lt;sup>28</sup>R. Bonney, "Francis Light and Penang," <u>JRASMB</u>, Vol. 38, July 1965, pp. 141-45, passim.

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British policy at this time was to avoid interference in the internal affairs of the Malay States. The Government took the position that the affairs between Siam and Kedah were those between a suzerain and a dependent state; and the Penang Council was expressly forbidden to protect Kedah against Siam. In 1818 Siam ordered the Sultan of Kedah to conquer Perak and forced him to send the tributary 'bunga mas' to Bangkok. Three years later the Sultan was ordered to go to Bangkok to answer a number of charges; his refusal to obey provoked a Siamese invasion into his state, which was conquered after a short campaign. The Sultan thereupon fled to Penang, while thousands of fugitives escaped to Province Wellesley. The Raja of Ligor, the Siamese commander, demanded the surrender of the Sultan, but the Governor of Penang flatly refused to take such a step.

The Siamese conquest of Kedah caused much apprehension at Penang regarding its food supply; Penang depended on Kedah for most of its provision. For some time Penang had been attempting to obtain more favorable trading conditions from the Siamese government. Hence the mission of John Crawfurd to Siam in 1822 was the response of the Company to both economic and political considerations. <sup>29</sup> The Company's government in India and the Penang Council expected that all the outstanding questions arising between the two countries could be solved by this mission.

<sup>&</sup>lt;sup>29</sup>L. A. Mills explains that: "The East India Company was wedded to the policy of non-intervention in Malayan affairs, and for as long as possible it refrained from interfering with Siam's designs. The logic of events however proved too strong for it, and at last the Company with great reluctance found itself compelled to intervene. The causes of this change of policy were two fold: the Siamese conquest of Kedah in 1821, and the unfair treatment of British merchants at Bangkok.", op. cit., p. 128.

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## The Crawfurd Mission of 1822

The reasons which led the Company to enter into political relations with Siam were primarily economic. In the first place, the Penang Council was afraid that the Siamese conquest of Kedah would interfere with the export of food-stuffs to Penang. When it came to consider the growing commerce of Penang with Siam, 30 the Council realized that it would be advantageous to the British merchants if they could secure the revision of the Siamese commercial regulations, which had greatly hampered the development of trade, 31 Under more favorable customs regulations, a great expansion of trade could be expected. Furthermore, if friendly relations could be established with Siam, an important trade with the Siamese dependencies would be improved, namely trade in tin with Patani, and Junk Cevlon Island (Puket). By 1821 the Siamese were in control of the Malay States as far south as Perak, and their bellicose attitude made larger scale trade with that region impossible. As a consequence, the Council wished to put commercial relations with Siam on a better footing by sending a mission to Bangkok. The disposition of the Kedah affair, i.e., the restoration of the dethroned Sultan of Kedah, was one of the motives for the mission but was far from being its main cause.

<sup>&</sup>lt;sup>30</sup>In 1820-21 this commerce was valued at \$207,750, an increase of almost 39 percent in three years. Mills, op. cit., p. 131.

<sup>31</sup>The British merchants coming to Siam were discontented with the restrictive Siamese trade operations. Trade was monopolized under the hands of the King and the high ranking officials. Crawfurd commented about the system of 'royal monopoly' of trade that: "The mode of carrying on the foreign trade at Siam, is, in short, this: when a ship arrives, the officers of Government, under pretext of serving the King, select a large share of the most vendible part of the goods, and put their own price upon them. No private merchant, under penalty of heavy fine, or severe corporal punishment, is allowed to make an offer for the goods until the agents of the Court are satisfied. A large portion, and often the whole, of the export cargo is supplied to the foreign merchant upon the same principle. The officers of Government purchase the commodities at the lowest market rate, and sell them to the exporter at an arbitrary valuation. The Chinese alone, from their numbers and influence, have

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All these transactions naturally interested the Indian Government. It gave permission to send an official mission to Siam with the view of establishing the relations on a sound basis, of arranging the Kedah affair and also of seeing what might be done with regard to the development of trade. 32 Of all these objectives, the commercial aspects were mostly emphasized, the political aims being emphatically subsidiary points. In September 1821, the Governor-General of India, the Marquis of Hastings, nominated John Crawfurd as the British envoy to proceed to the courts of Siam and Cochin-China to negotiate commercial treaties with those countries.

In the meantime the resident councilor to Singapore, Colonel
Farquhar, thought it expedient to enter into direct commercial relations
with Siam and to acquire information about that country. Prior to Crawfurd's
mission a Singapore merchant named John Morgan was sent to Bangkok by the
Penang Government to estimate the Siamese attitude; ostensibly as a private trader, but in reality as a secret agent of the Company, to collect
information and sound the Siamese ministers on the possibility of improving commercial relations. He was instructed only to speak in his own name
and not commit the Company by any act. When Morgan left Siam, he had
managed to collect the necessary information about the nature of the
Siamese commercial intercourse with foreign countries, and his reports
were handed over to Crawfurd before the latter began his mission to
Bangkok, Morgan reported that trade with Siam could be carried on only

got over this difficulty, and of course are carrying on a very large and valuable commerce. This pernicious and ruinous practice is the only real obstacle to the European trade in Siam..."

John Crawfurd, Journal of an Embassy from the Governor-General of India to the Courts of Siam and Cochin China, (London: Oxford University Press, 1967). pp. 144-45.

<sup>320.</sup> Frankfurter, "The Unofficial Mission of John Morgan, Merchant, to Siam in 1821." JSS, XI, 1914-15, p. 3.

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through treaty arrangements, and it was unwise to establish an English factory or consulate at that time lest it lead to entangling complications.

Crawfurd's mission was of considerable historical significance: it was "the first major European mission" to Siam since the end of the seventeenth century. The main object of this mission was to lay the foundation of a friendly intercourse, which may prepare the way for the establishment of a commercial relation. 4 Knowing that the Siamese were inordinately suspicious of Europeans, the Indian Government instructed Crawfurd not to ask for any of the privileges which had formed an important part of the commercial treaties of the previous centuries, such as extraterritorial jurisdiction and the erection of forts or factories. To this end he was instructed to

...refrain carefully from demanding or hinting at any of those adventitious aids or privileges upon which earlier traders of Europe founded their expectations of commercial benefits, like the establishment of forts, factories, expemption from municipal jurisdiction and customary imports, the monopoly of favourite articles of commerce, and the exclusion of rival European nations. 35

So far as the commercial aspects of this mission are concerned Crawfurd was instructed to attempt to place commerce "on a defined and permanent footing, so as to expose the British traders to the least possible vexation."36 The Government of India considered "the levying of

<sup>33</sup>D. K. Wyatt, "Introduction" to John Crawfurd's <u>Journal of an Embassy from the Governor General of India to the Courts of Siam and Cochin China</u>, (London: Oxford University Press, 1967) (1828), p. iii.

<sup>34&</sup>lt;u>Ibid.</u>, p. 590.

<sup>35&</sup>lt;u>Ibid.</u>, p. 590.

<sup>36&</sup>lt;u>Ibid.</u>, p. 591.

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duties in kind, the rude examination of a cargo in detail by the native officers,... and the irregular exactions of the revenue officers, to be such serious impediments to the operations of commerce...."<sup>37</sup> They wished to substitute a fixed and known scale of duties for the unknown and exorbitant fees. In all instructions that Crawfurd had received, the commercial angle was stressed at the expense of the political; he was directed to avoid, while negotiating, "any appearances that may countenance the erroneous belief, that your mission is directed towards objects of a political nature."<sup>38</sup> However, he was directed to collect as much information about Siam as he could without alarming the Siamese. As regards the restoration of the Sultan of Kedah, it was left to his own discretion whether the subject should be brought up for discussion or not.

Crawfurd left Calcutta on November 21, 1821 and arrived in Bangkok on March 28, 1822. There were some delays and repeated interviews with some principal Siamese officials before the formal negotiations took place with the Siamese Foreign Minister, Chao Phya Suriwong Kosa, in the middle of April. For the purposes of the commercial arrangements which Crawfurd was anxious to make with Siam, he presented the notes for a treaty which

provided generally for a free and fair trade; for the determination of the export and import duties, and of all fees and charges; providing at the same time security for the persons and properties of British subjects resorting to Siam. 39

To ensure the extension and security of British subjects and interests,

Crawfurd hinted at the establishment of a commercial agent. This action

was clearly contrary to the instructions of the Indian Government. These

<sup>37&</sup>lt;u>Ibid.</u>, p. 591.

<sup>38</sup> Ibid., p. 592.

<sup>39</sup> Ibid., p. 133.

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proposals were rejected by the Siamese government. As regards the extradition of the Sultan of Kedah, Crawfurd tried to avoid the subject for as long as he could. The discussions of the Kedah Affair resulted in nothing in particular, and it was left to Henry Burney to settle it during his mission to Siam in 1826. Thus the Anglo-Siamese negotiations ended on June 12 without resulting in a treaty or any major concessions from the Siamese. Crawfurd's mission was almost a complete failure; all of his specific suggestions to improve trade with Siam were rejected by the Siamese government.

Nonetheless. Crawfurd's mission had gained some beneficial results. Prior to his departure he obtained a commercial document which promised that the amount of Siamese duties and charges would not be increased and that the Siamese Superintendent of Customs would render all assistance in buying and selling British goods. As he was a keen observer, he collected much valuable information about the geography, population and resources of Siam, the character of the government, and the weakness of its power, which was of great value for later British envoys in their negotiations. 40 Siam impressed Crawfurd favourably as a great field for British commerce. He remarked that "the country is fertile, abounding in productions suited for foreign trade beyond any other with which I am acquainted."41 In spite of his failure to achieve his main objectives, Crawfurd's mission resulted in an increase of trade between Siam and the British dominions. An English merchant, Robert Hunter, came to trade with Siam in 1824. His attention was turned towards Siam by the Crawfurd mission. Later he settled in Bangkok and laid the foundations of modern trade in Siam. 42

<sup>40</sup>Mills, op. cit., p. 133.

<sup>41</sup>Crawfurd, op. cit., p. 145.

<sup>42</sup>Adey Moore, "An Early British Merchant in Bangkok," JSS, VIII, 1959, pp. 232-35.

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So far as Penang was concerned, Crawfurd came away believing that the Siamese acquiesced in the British occupation; the Siamese avoided all voluntary reference to Penang, but when they were compelled to mention it they spoke of it as a British possession. Siam preferred to make no objection to it, knowing that they could not sustain one by force of arms.

## The Burney Mission and the Anglo-Siamese Treaty of 1826

Within a few years after the Crawfurd mission a number of changes took place within and without Siam which resulted in a change of Siamese foreign policy and led in 1826 to the signing of the first treaty with Great Britain. In Siam, King Rama II died in July 1824 and Prince Kromchiat ascended to the throne as Rama III (1824-1851). Before his accession he had already experienced contact with the West. His interests in foreign affairs were already marked when Crawfurd was sent as British envoy to Siam in 1821. 43 Greater knowledge of the West placed him in a better position to realize the growth of its power in Southeast Asia.

Outside of Siam, many changes took place in the year 1824. In

March the Anglo-Dutch Treaty was signed dividing Southeast Asia into

spheres of influence. Britain was given a free hand in the Malay Peninsula

without any further concern for Dutch intervention. Also in March the

Indian Government declared war on Burma. To draw away the Burmese forces

from the Indian frontier, the British plan of campaign was to concentrate

upon a large-scale seaborne invasion of Lower Burma. The Anglo-Burmese

War was the chief reason for the Government of India to send another mission

to Siam to put diplomatic relations with that country on a good footing.

It was during 1824 that Siam attempted to subjugate Perak and Selangor.

<sup>43</sup>Crawfurd, op. cit., pp. 85-88, passim.

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in Sian louncil tegotia This happened to coincide with the arrival of Robert Fullerton as a new Governor of Penang in August 1824. Hitherto the Governors of Penang had acquiesced in the Siamese claims to overlordship in Malaya. Fullerton came with the idea that the Siamese claim to suzerainty over the northern Malay States had no basis in fact; in foreign policy his guiding principle was to protect British interests in the Malay states wherever possible. He wanted to rebuff the Siamese expansion and he was determined to protect the independence of Perak and Selangor from any Siamese intervention and to restore the Raja of Kedah to his former status. Therefore, it was additionally necessary for the Government to make a new attempt to reach a political agreement with Siam over the Malay states questions.

The outbreak of the Burmese War had caused the British Government to take a much greater interest in Siam than had hitherto been the case. The desire to cultivate a good understanding with Siam was the more intense because Siam and Burma had a conterminous frontier on the west of Siam. If Britain could persuade Siam to go to war against Burma, it would be advantageous for the British in their conduct of war. Even at this time the idea of negotiating for a favourable commercial treaty with Siam was not abandoned by the Indian Government. They even thought of ceding to Siam part of the territory on the Tenasserim coast which the British Government intended to take away from Burma in return for the favourable commercial treaty. The Government of India preferred to obtain a commercial treaty giving a fair share of freedom and security to British trade in Siam rather than to make a political treaty as desired by the Penang Council. 44 In 1825 Fullerton sent Captain Henry Burney as his envoy to negotiate with the Raja of Ligor on the Malay States question. Burney was

<sup>44</sup>Mills, op. cit., pp. 137-38.

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able to persuade the Raja to sign a preliminary treaty promising not to attack Perak and Selangor in return for a British guarantee not to interfere in Kedah. Burney's mission to Ligor thus paved the way for a second approach directly to Bangkok.

With all these questions in hand the Indian Government now decided to send Captain Henry Burney to lead another mission to Siam. The Government instructed Burney that his mission was to be "entirely complimentary and conciliatory," to congratulate the new King of Siam on his accession to the throne, and to promote friendly relations between the two countries. To rid the Siamese of fears and suspicious of the British, Burney was to keep them informed of developments in the Anglo-Burmese War. Burney's attempts to persuade the Siamese to attack the Burmese in the north got no results. The Siamese did not desire to enter the war on the British side because they were afraid of becoming too closely involved with the British and felt that close military association might lead to misunderstandings and, as a consequence, to the Anglo-Siamese conflict. 45 It was not until the Treaty of Yandabo (February 24, 1826) had been signed, which concluded the Anglo-Burmese War, that Burney began to negotiate the subjects of trade, the Malay States question, and the text of the Treaty.

The negotiations proceeded rapidly. Many high ranking Siamese officials had the opinion that the British had once been turned down; another rejection might result in the end of friendly relations between the two countries. They argued that now that Siam had a common frontier with that of the British in Lower Burma, a conflict would give Siam a difficult time guarding its borders against them. As a result a course of peace was desired by the political faction which most strongly influenced

<sup>45</sup>vella, op. cit., p. 119.

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the treaty negotiations with Britain. Burney presented his first draft treaty on March 29. The Siamese were so suspicious of every document proposed by Burney that he suggested that the Ministers should draw up the treaty in Siamese. The Siamese negotiators were pleased with this proposal, and the English translation merely reflected the original in Siamese language. Burney succeeded in signing the first Anglo-Siamese Treaty on June 20, 1826. It was regarded as the first modern treaty of friendship and alliance and the first commercial agreement between a Western nation and Siam. 46 The Treaty was concerned with both political and commercial arrangements. 47

The Treaty was aimed at securing a state of peace and friendship between Great Britain and Siam. One outstanding characteristic of the treaty was its absolutely reciprocal nature on every point. For example, Article I stipulated that:

The Siamese must not meditate or commit evil, so as to molest the English in any manner.

The Siamese must not go and molest, attack, disturb, seize, or take any place, territory, or boundary belonging to the English in any Country subject to the English, and vice versa.

The "Treaty of Friendship" contained fourteen articles, seven of which dealt with political matters. Of particular interest were the questions of the Malay States; the two countries were able to reach settlement as regards their spheres of influence in the Malay Peninsula. Articles XII, XIII, and XIV determined the status of Siam and Britain in the Peninsula. Article XII dealt with the question of the status of Kelantan and Trengganu. It stipulated that:

Siam shall not go and obstruct or interrupt commerce in the states of Trenganu and Calentan; English merchants and subjects shall have trade and intercourse in future with the same facility and freedom as they have heretofore had; and the English shall not go and molest, attack or disturb those states upon any pretence whatever.

<sup>46</sup> Vella, op. cit., p. 120.

<sup>47</sup>British and Foreign State Papers, Vol. 23, pp. 1153-59 (treaty),

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Regarding Kedah, there was a complete victory for Siam: Britain accepted Siamese sovereign rights over Kedah, and it fixed the southern boundary of Kedah as the limit of legitimate Siamese control. Article XIII stipulated that:

The Siamese engage to the English that the Siamese shall remain in Queda, and take proper care of that country and of its people; the inhabitants of Prince of Wales' Island and of Queda shall levy no duty upon stock and provisions...which the inhabitants of Prince of Wales' Island, or ships there, may occasion to purchase in Queda.... and the Siamese...shall levy fair and proper import and export duties. The English engage to the Siamese, that the English do not desire to take possession of Queda, that they will not attack or disturb it, nor permit the former governor of Queda, or any of his followers, to attack, disturb, or injure in any manner the territory of Queda, or any other territory subject to Siam....

This Article solved the problem which Crawfurd failed to settle during his mission to Bangkok in 1821. The provisions of the Article safeguarded Penang's indispensable need of obtaining food supplies from Kedah. Article XIV stipulated that:

The Siamese and English mutually engage, that the Rajah of Perak shall govern his Country according to his own will. Should he desire to send the Gold and Silver Flowers to Siam as heretofore, the English will not prevent his do ng as he may desire....The English will not allow the State of Selangore to attack or disturb Perak; and the Siamese shall not go and attack or disturb Selangore.

By this provision Perak and Selangore were secured in their nominal independence.

Of more significance than the political agreements reached by

Burney were the commercial articles of the Treaty. A commercial agreement

of six articles, signed at the same time as the Treaty, was designed to

permit greater freedom of trade and to define more clearly the levy of

duties on import and export goods. The most advantageous concession

granted the British by Article VI was the provision for free trade between

merchants and inhabitants of both contracting parties without any inter
ference.48 However, there were certain limitations to the conduct of

PP. 1165-67 (commercial agreement).

<sup>48</sup>Article VI stipulated that: 'Merchants subject to the Siamese or

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free trade. The import of opium was banned in Siam (Article X). Rice and paddy were restricted products and were prohibited to be exported. If the merchants coming to Bangkok imported "fire-arms, shot or gunpowder, they are prohibited from selling them to any party but to the Government." (Article I of the Additional Articles on Trade.) Trade with Siam was limited to the port of Bangkok and to the Malay provinces where free trade was allowed; provindial trade was not allowed unless the merchants received an approval of the governor of the province in which they desired to trade. Furthermore, the merchants had to pay "at once the whole of the duties and charges consolidated according to the breadth of the vessel;" this new system, known as the "measurement duty" was introduced to replace various and perplexing imposts. A single consolidated duty would be computed according to the breadth of the vessel. If the vessel brought an import cargo, the charge was 1,700 bahts (a unit of Thai currency, about U.S. \$1,000) for each Siamese fathom of a ship's beam (approximately 78 inches). In case of the empty vessel, she would be charged 1,500 bahts. After the payment of the 'measurement duty' "no import, export, or other duty shall be levied upon the buyers or sellers from or to English subjects."

In this Treaty extraterritorial rights were explicitly denied. The Siamese strongly objected to Burney's demand for the Counsular establishment because they wanted to safeguard their judicial sovereignty. A clause of Article I stated that "The Siamese shall settle every matter within the Siamese boundaries, according to their own will and customs."

There were additional provisions which pointed out the extent to which Siam

English, going to trade either in Bengal, or in any Country subject to the Siamese, must pay the duties upon commerce according to the customs of the place or Country, on either side; and such merchants and inhabitants of the Country shall be allowed to buy and sell without the intervention of other persons in such Countries...."

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desired to preserve her sovereign powers. Article V stipulated that "The English subjects who visit a Siamese Country, must conduct themselves according to the Established Laws of the Siamese Country, in every particular" and vice versa; and Article VI stated that "Should a Siamese or English merchant have any complaint or suit, he must complain to the officers and Governors, on either side; and they will examine and settle the same according to the established Laws of the place or Country, on either side." Article I of the Additional Agreement emphasized the same purpose of preserving her extraterritorial rights by stating that "Vessels belonging to subjects of the English Government, whether Europeans or Asiatics, desiring to come and trade at Bangkok, must conform to the established Laws of Siam, in every particular."

In this Treaty we can see that the Salmese were deliberate in preserving their sovereign powers; the provisions of many Articles placed the British subjects under Siamese law and jurisdiction. Yet, the Burney Treaty contained concessions from both sides. The commercial clauses granted British trade more favourable terms than what Crawfurd had managed to obtain. The Siamese in return for the British recognition of their interests in Malaya, agreed not to interfere with the trade operations between British and Siamese territories on the Peninsula. Siam also acknowledged the British lease of Penang and Province Wellesley. The Siamese viewed the Treaty as a political necessity; it was due principally to the fear of increasing British power in the Far East. Siam made some commercial concessions in order to preserve peace and to maintain friendly relations with Britain. Burney's ability had to be given credit for the conclusion of this Treaty. Other factors -- the moderateness of Burney's requests, his concessions of Kedah in exchange for Siamese concessions on trade, and, lastly his personality--all facilitated success. 49 The

<sup>49</sup>Vella, op. cit., p. 121.

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Anglo-Siamese Treaty of 1826 was the first treaty Siam made with a Western country since 1688.

## Anglo-Siamese Relations after 1826

The Anglo-Siamese Treaty of 1826 was received with different attitudes among the British. The political portions that defined the British and the Siamese spheres of influence in the Malay Peninsula were condemned by the Penang Government, especially among Governor Robert Fullerton's faction, which was anti-Siamese. In his opinion, Article 12 was so worded as to amount to the admission of the actual dependence of Trengganu and Kelantan on Siam, and that the phraseology was so vague that two entirely opposite meanings could be drawn from it. The British might argue that it precluded Siam from any interference, for such action would produce confusion and interruption of trade, and the British might construe such action as conveying to them the right of direct interposition; while, the Siamese however might contend that the article gave them the right of complete subjugation, so long as the British trade was not interrupted. Nevertheless, the Indian Government ratified the Treaty.

After 1826 the relations between the Company and Siam became less strained than they had been in the preceding year. The Siamese abandoned their attempts to subdue the Malay States on the West Coast, and resigned themselves to maintaining their position in Kedah. This proved to be far from easy, for the Malays hated their conquerors, and frequent revolts occurred. These troubles lasted for 15 years, until 1842, when the Sultan made his submission and was restored to the throne under Siamese sovereignty. As for Perak and Selangor, Siam abandoned its attempts to subdue them.

On the East Coast, the Siamese continued their aggressive policy in Kelantan and Trengganu, but were opposed by the Government of the Straits Settlements as far as the latter could do so. In any case, no strained relations

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resulted from this policy. In short, there were no strained Anglo-Siamese relations in the Malay Peninsula for about a generation after 1826.50

Seven years after the Burney Treaty was negotiated, Siam signed another Treaty, this time with the United States, on March 20, 1833; it followed the model set by Burney. It was the Siamese fear of the effects of exclusive relations with Britain more than any real desire for commerce with America which brought her into another treaty relationship. Siam wished to use America as a counter-balancing power against Britain.51

The Siamese tactic of playing off one power against another had been followed earlier, in the seventeenth century, and remained its principal diplomatic device even in the later 19th century.

In 1839 the Government of India sent a mission under Dr. Richardson to Siam to investigate trade conditions along the border between British Burma and Siam. Its main purposes were to secure permission to buy cattle and elephants to be used in the territories of British Burma and to put an end to Siamese restrictions on border trade. This mission did not succeed in securing any of these aims. 52

After the conclusion of the Burney Treaty, Siamese foreign trade appeared to increase rapidly in importance. As an example, trade between Bangkok and Singapore gradually increased from 432,000 Spanish dollars

<sup>50</sup>For details, see Mills, op. cit., pp. 157-170, passim.

<sup>51</sup>Walter F. Vella, <u>Origins of "Survival Diplomacy" in Siam</u>: <u>Relations between Siam and the West</u>, 1822-1856, unpublished M.A. thesis, University of California, Berkeley, 1950, pp. 34-41; also see W. F. Vella, <u>Op</u>, <u>cit.</u>, p. 124.

<sup>&</sup>lt;sup>52</sup>Dr. Richardson, "Journal of a Mission from the Supreme Government of India to the Court of Siam," <u>The Journal of the Asiatic Society of Bengal</u>, VIII (Dec. 1839), pp. 1016-36; IX (Jan. 1840), pp. 1-30; IX (March 1840), pp. 219-50, passim.

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53<sub>Ha</sub> 54Ad to \$898,000 in 1839-40.<sup>53</sup> In 1842 no less than 55 square-rigged vessels, chiefly under British colours, came to the port of Bangkok. Nine of them were regular traders; with the exception of three or four direct from Great Britain, most of them came from Bombay, Singapore, or China. These boats mostly carried away sugar, the principal export item, the average annual export of which was in 1844 put at 110,000 piculs.<sup>54</sup> (A Siamese picul is approximately 132 lbs.)

After a few years of conducting their trade along the stipulations of the Commercial Agreements of the Burney Treaty, the Siamese found those regulations to be a financial disadvantage for themselves. By the stipulation of the Treaty the royal monopoly had been done away with and all governmental participation in trade terminated. Article I of the Additional Commercial Agreement did not allow any export and import duties to be levied other than 'measurement duty' to be collected in proportion to the breadth of the vessels involved. These commercial restrictions had caused the Siamese government a severe financial burden. Much of the government's revenue had been intimately connected with trade and the royal monopoly system. Due mainly to economic difficulties, the Siamese government now decided to reverse its foreign policy. Trade restrictions were gradually reimposed. Various internal duties were then levied on products destined for export. To this circuitous way of taxing commercial goods, the King thought he had the right because it was not a tax on foreigners but on his own people. Late in the 1830's the Siamese government began to extend the monopolistic system by tax farming. This new method of obtaining revenue was by farming out the country's products to

<sup>&</sup>lt;sup>53</sup>Harry Parkes to E. Hammond, Aug. 3, 1855. FO 17/236 (PRO).

<sup>54</sup>Adey Moore, op. cit., p. 238.

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various officials and merchants, who returned a portion of their income to the government. One historian explains the system in this way: 55

The system in theory removed the King from trade operations. In fact, however, the new system operated in much the same way as had the royal monopolies. Its effects were the same in that the king and his officers still imposed a stranglehold on trade--now through the medium of the tax farmers.

In 1839 the government reintroduced some controls over trade in sugar, which was looked upon as the principal item of payment for British imports. Rama III, conceiving the idea of taking part in sugar trade himself, at first confined himself to purchasing the quantity required for the lading of his own vessels, but eventually he engrossed the whole trade by seizing the boats as they came to market, and compelling the owners to receive a price which was denounced by the British merchants as seldom a remunerative one. In 1842 he established a rigid monopoly by storing the sugar in his own godowns and publicly prohibiting its sale to anyone save himself, or to parties licensed for the purpose. British merchants were immediately affected by these injudicious measures as they had to buy from the King for ready money instead of in barter for their goods. They had to cease from that time the direct importation of goods from England. 56

<sup>55</sup>Vella, Siam under Rama III, op. cit., p. 127. "Tax farming system" is further explained by the same author that:

<sup>&</sup>quot;Tax farming had been introduced during the reign of Rama II, when leases were given out for the collection of taxes on the manufacture and sale of liquor, on gambling institutions, and on shops. The system had its greatest growth, however, during the Third Reign, replacing the royal monopolies. It was applied to thirty-eight types of enterprises during the reign--most of them in the field of production for export. There were two reasons for the phenomenal growth of the tax farming system. First, the system was profitable; the tax farms were largely responsible for the marked increase in revenue during the reign. Second, it was seized upon as a means of circumventing the provisions disallowing royal monopolies in trade treaties Siam signed with the British and Americans during the reign." Vella, op. cit., p. 23.

<sup>56</sup>Parkes to E. Hammond, Aug. 8, 1855. Enclosure no. 11, Notes on the Trade with Siam. FO 12/236.

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Finding that the British Government did not directly object to these measures, the Siamese made their control complete. The principal commodities for exports, namely, pepper, dried meat and fish, began to be heavily taxed. The teak trade carried on by British subjects until 1841 was suddenly forbidden. <sup>57</sup> At this juncture also, the leading Siamese officials began trading in their own square-rigged vessels. Rama III had resumed his earlier interest in building a Siamese merchant fleet. <sup>58</sup> Foreign merchants were forbidden to charter any other vessels than those belonging to the Siamese.

The return to monopolistic trading practices proceeded from about 1840 to the end of Rama III's reign in 1851. In a petition of the British merchants to their home Government, it was asserted that "the King observed the terms of the Treaty from 1826 till 1840 and then effected his purpose by degrees, and it was only after he found his conduct met with no attention or remonstrance from the Government of Great Britain, that he completed the monopoly."<sup>59</sup> Up to 1840 business progressed favourably: the whole foreign trade was estimated at £500,000; but in 1846, after the reestablishment of various monopolies and the prohibitions of the export of several articles such as teak, rice, salt, and bullion, the whole foreign trade had decreased in value to £325,000.60

In the last decade of Rama III Anglo-Siamese relations became strained on several occasions, owing mainly to commercial disputes. Also in this period the Siamese became increasingly distrustful of foreigners.

<sup>570.</sup> Frankfurter, "The Mission of Sir James Brooke to Siam, September 1850," JSS, 1959, pp. 221-22.

<sup>58</sup>vella, Siam under Rama III, op. cit., p. 128.

<sup>&</sup>lt;sup>59</sup>A petition of British merchants dated August 29, 1849, reproduced in the Bangkok Calendar of 1870, <u>JSS</u>, VIII, 1959, p. 222.

<sup>60</sup>Harry Parkes to Hammond, Aug. 8, 1855. FO 17/236.

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They believed that even with good formal relations with the West Siam might be vulnerable to Western interference based on the pretext that the treaty stipulations had been violated. Therefore, they began to see that a treaty with a foreign power was unnecessary. The Siamese had initially signed treaties with the intention to ward off political threats from the West; anyhow, as time went by they did not feel secure that such threats had been decreased. In the 1840's Britain was taking a forward policy in China. There were rumors that the British would come to Siam after the conclusion of affairs in China. A number of incidents contributed to the heightening of Siamese fear of Britain, namely, in 1840, the Siamese intercepted a British trading expedition between Chiengmai and Burma, the British Government charged that Siam had violated the 1826 Treaty and threatened to withdraw friendly relations if Siam continued to violate the commercial restrictions in the Treaty.

Shortly after the first treaty settlement with China had been concluded, Britain and the United States made preparations for sending new missions to Siam with the aim of reaffirming Siam's adherence to the treaties made with the two countries. The American mission under Joseph Balestier came to Siam in April 1850, shortly before Sir James Brooke's embassy.

Balestier failed to secure a new treaty. Siam refused to abolish or modify the existing 'measurement duty' or change any of her commercial restrictions. The American proposals for the appointment of a consul and the establishment of a commercial agent in Bangkok were flatly rejected. A few months after Balestier's departure, the British Government decided to send Brooke as an envoy to negotiate with the Siamese government, and this was to be the last foreign mission sent to the Court of Siam under Rama III.

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## Sir James Brooke's Mission to Siam in 1850

The lucrative trade of Britain with Siam was the main motive in the despatch of another diplomatic mission to Siam to negotiate for a more effective treaty. Siam would produce a large quantity of raw materials and agricultural products required by the British merchants as well as offering an immense outlet to British manufactures. In a report to the Foreign Office. Brooke remarked that Siam was second only to China in terms of trade values and that "by a favourable development might at no distant period rival our commerce with that [latter] country."61 In the 1840's, however, the British merchants had difficulty in obtaining profitable returns on their trade with Siam; for, contrary to the Treaty, the Siamese government adopted a monopoly system and prohibited the export of several commodities; this was coupled with exorbitant dues levied on British shipping. Late in the 1840's petitions from commercial bodies in England and from the Chamber of Commerce at Singapore had been made to the Foreign Office, pressing for measures to place British commerce in Siam on a better footing. The Burney Treaty was infringed, it was argued, and great impediments thrown in the way of British trade with Siam. The Singapore Chamber of Commerce even regarded the Treaty of 1826 with Siam as being inadequate and strongly urged a new treaty to establish equitable duties, secure unrestricted trade, end prohibitions, and provide for consul. In August 1849, they sent a memorial to Lord Palmerston suggesting the appointment of Sir James Brooke<sup>62</sup> to head a new mission to Siam.

<sup>61</sup>Sir James Brooke to Lord Palmerston, Oct. 5, 1850. Reports on the Results of the Siamese Mission. FO 69/1.

<sup>62</sup>Brooke was appointed Commissioner and Consul-General to the Sultan and Independent Chiefs in Borneo; in 1847 he concluded a treaty with Brunei and became Governor of the new colony of Labuan. Nicholas Tarling, "British Policy towards Siam, Cambodia, and Vietnam 1842-1858," Asian Studies, IV, August 1966, pp. 244-45.

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With his experiences in the Malay Archipelago, the Foreign Office considered him to be a suitable person for a mission to Siam late in 1849. The main purpose of the Foreign Office was to put the commercial relationship with Siam "on a better footing than that on which it at present stands." Brooke was authorized by Palmerston to form any arrangements "that would affect an improvement in the British Commercial relations" with Siam. He was not given any specific instructions as regards the precise nature of the commercial stipulations; it was suggested that they might bear some relation to those made with other "imperfectly civilized States," such as China and Turkey.

As for non-commercial matters, Brooke could conclude any treaty which should give British subjects "the unrestricted rights of exercising Christian worship, and all necessary facilities for the decent subjects as may die in such Country." His instructions also stipulated that "the exclusive jurisdiction of British authorities over British subjects," should be provided for. The "most-favoured-nation" clause should be added to this Treaty: on this point, Palmerston instructed him that "British subjects shall enjoy in the most complete manner all privileges which are, or which hereafter may be conceded to, or enjoyed by, the subjects or citizens of any other Nations whatever," but he was not to demand from the Siamese government "any exclusive advantages for British Subjects or Commerce, or any advantages which should not be equally enjoyed by the subjects and Commerce of all other Nations." 63

In giving these instructions the Foreign Office was influenced by
the views of the India Board that Anglo-Siamese relations should be left
as they were rather than run the risk of a deterioration if the negotiations
failed. Siam was considered to lie within the shadow of Indian diplomacy,

<sup>63</sup>Palmerston to Brooke, no. 1. Dec. 18, 1849. FO 69/1. Instructions as to improving Commercial Relations with Siam and Cochin-China.

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with some connection to Burma and to India in general. Even if the Siamese violated particular clauses of the Burney Treaty, the Government of India thought it best to avoid risking unfriendly relations with them, because British interests in Siam were of great importance. Therefore the Indian authorities advised a cautious policy toward Siam, rather than an aggressive one which was favored by the Foreign Office. 64 Brooke was firmly instructed that:

In conducting these negotiations you must be very careful not to get involved in any dispute or hostile proceedings which would render our position in Siam or in Cochin-China worse than it now is, or which might compel Her Majesty's Government to have recourse to forcible measures in order to obtain redress. It is important that if your efforts should not succeed, they should at least leave things as they are, and should not expose us to the alternative of submitting to fresh affront, or of undertaking an expensive operation to punish insult.65

Of these instructions, Brooke expressed the opinion that "in order to ensure the maintenance of our present relations, the proposed Treaty should be of a very general character, and the arrangements for the amount of duty, and the future conduct of trade, be afterwards attempted in a supplementary treaty."66

Brooke arrived in Siam on August 10, 1850. The details of his mission were better arranged than those of Burney, but he was accredited by the Foreign Office rather than by the Governor-General of India. It was thought at Singapore that this would prove "a serious obstacle in the way of success" since the Foreign Office did not provide Brooke with a letter from Queen Victoria to the King of Siam. Before his arrival in Bangkok, he had already heard of the failure of the American embassy

<sup>64</sup>Nicholas Tarling, "British Policy towards Siam," op. cit., pp. 243-44, passim.

<sup>65</sup>palmerston to Brooke, no. 1, Dec. 18, 1849. FO 69/1.

<sup>66</sup>Brooke to Palmerston, March 5, 1850. FO 69/1.

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under Joseph Balestier. Brooke assured Palmerston that he would "avoid all occasion of dispute or unfriendly discussion with the Minister."

Brooke came to Siam with a good intention to carry his mission into effect; he hoped that if he failed to negotiate a new treaty, it would at least pave the way for "a more frequent and friendly communication," and furnish "some sure indication of the best course to be pursued in the future."

The first interview with the Siamese Foreign Minister, Chao Phya Praklang, was held on August 16. Praklang from the beginning showed his reluctance to make a new treaty; he considered that, as the Treaty of 1826 had not been denounced, it was still to be considered in force and he insisted that since the Treaty had been concluded by the Government of India, its modifications should be effected by the same government.

After these preliminary issues had been cleared up, the formal negotiations between Brooke and the Siamese Ministers began on August 25. It was decided then that subsequent negotiations would be conducted through correspondence. From the first meeting till September 4, Brooke submitted five statements to the Siamese Ministers detailing his aims; he also enclosed the proposed Treaty and a draft commercial agreement. The main points of his proposals were the need for an amendment of the Burney Treaty and the desire for the conclusion of a new commercial agreement.

Regarding the proposed Treaty he explained in his correspondence that "it is not to annul, but to ratify anew the Treaty of 1826...the only alteration proposed being in the commercial agreement appended to that Treaty..." Brooke showed how Britain desired to strengthen peace

<sup>67</sup>Brooke to Palmerston, July 2, 1850. FO 69/1.

<sup>68</sup>Brooke to Praklang, Sept. 4, 1850, no. 1. FO 69/1.

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and to increase trade with Siam. To these ends drastic revisions of the former Treaty were required and the main points of his proposed treaty were: i) the granting of the rights of residence and purchase of land, ii) guarantees of freedom of worship, iii) guarantees not to obstruct merchants, and iv) permission to appoint consuls with extraterritorial rights. All these proposals were to be reciprocal. Concerning the commercial agreement, Brooke asked for drastic reforms in Siamese commercial regulations: the reduction of the measurement duty' from 1,700 bahts per Siamese fathom to 500; the removal of the ban on the export of rice; the removal of the prohibition to import opium; the fixation of duty on articles in ways which had the effect of a monopoly; he also demanded free trade in Bangkok and other Siamese ports without any intervention. 69 In these submissions Brooke explained about the advantages Siam was to receive from the practice of free trade. Brooke followed the traditional nineteenth century arguments that free trade would result in more trade, which, in turn, would increase customs revenue. and stimulate internal production. He stated that:

...the burdensome amount of dues on shipping reduces the amount of trade, and allows of very few British vessels coming to Siam. The increase of British shipping will increase the quantity of produce grown in the country instead of causing increased competition; and the increased number of ships will more than compensate for the reduction of duties, and the revenue be further benefited by the transit duty levied on produce....Thus this reduction of the dues, levied on vessels, will be an advantage to Siam, as well as to England, and extend the Commerce between the two Countries. 70

The Siamese Ministers answered Brooke's proposals point by point in considerable detail and refused his demands on every one of them.

An evasive answer was given to every point. 71 For example, Brooke's

<sup>&</sup>lt;sup>69</sup>Brooke to Praklang, no date. FO 69/1. Principal heads of a Commercial Convention proposed by Sir James Brooke for the consideration of Chow Kun Praklang.

<sup>&</sup>lt;sup>70</sup>Brooke to Praklang, Sept. 10, 1850. FO 69/1.

<sup>710.</sup> Frankfurter, "The Mission of...," op. cit., pp. 229-30.

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proposal for the unrestricted right to exercise Christian worship the Siamese government considered to be unnecessary, since Siam gave perfect tolerance to all religions and the missionaries were already free to practice their religious beliefs in Siam.

Brooke had been instructed to request both a consular establishment and the granting of extraterritorial rights to a British consul. 72 This was an indication of the new approach of the British Government towards its subjects abroad, especially in Siam, for Crawfurd and Burney in their earlier missions had been strongly enjoined against raising these issues with the Siamese Government. To the demand of an appointment of a British consul in Siam, the Ministers returned a refusal, stating that it was not their custom to send consuls to any country and that they would not do so even if invited. The demand for the granting of extraterritorial rights was completely denied on the grounds that the Siamese government could not "perceive a single advantage...accruing from it,"73 and that those who came to Siam should conform to the Siamese laws. In turn, those Siamese

<sup>72</sup>To show how the British extraterritorial rights were developed in Siam, it is worthwhile that Article VI of Brooke's proposed treaty be reproduced, because this was the first time in the history of Anglo-Siamese relations that the British Government asked for the appointment of a consul with jurisdiction over British subjects. Article VI stipulated that:

His Majesty the King of Siam agrees to the appointment of Consuls or Superintendents of Trade, at the various trading Ports within His dominions, should Her Britannic Majesty consider the presence of such Officers necessary for the protection of the British subjects or for the advantage of Trade; and these Officers shall be duly empowered to consider and to decide in conjunction with the Siamese authorities in all cases where disputes and differences shall arise between British subjects, and between British subjects and the subjects of His Majesty the King of Siam; and Her Majesty the Queen of Great Britain and Ireland and Sovereign of Hindostan, fully concedes the same privilege to His Majesty the King of Siam.

Brooke to Palmerston, no. 9, Oct. 5, 1850. FO 69/1.

<sup>73</sup>Ibid.

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resorting to foreign land were expected to respect the laws and customs of that country and foreign governments might claim absolute jurisdiction over them.

Regarding the proposed Commercial treaty the same kind of refusal was given to Brooke's demands. The Siamese government explained that the "measurement duty" had already been lowered appreciably by the Burney Treaty and could not be further reduced.

After these explanations were given the negotiations were broken off. Brooke left Siam on September 28, taking with him a letter from the Siamese Foreign Minister to Lord Palmerston. The Foreign Minister stated in his letter that the new treaty relations were unnecessary and inadvisable, since the Siamese government still adhered to the Burney Treaty and since the changes to that treaty suggested by Brooke would mean violation of Siamese customs. In closing he expressed the desire of the Siamese government to strengthen friendly relations with Britain.

Brooke left the country with an unfavourable impression as to future British prospects of success in developing commercial relations with Siam. He had strictly adhered to his instructions in avoiding all grounds for disputes. The report of his mission to Siam to the Foreign Office gave useful information for the British Government when it came to making appropriate instructions for future British envoys to Siam. He recommended to the Foreign Office that "it may be held as a rule in our dealings with all despotic states, similar to Siam, that a resolute attitude and our unflinching determination to support our rights, is the only means of avoiding hostilities or of attaining permanent peace after a single struggle."<sup>74</sup> He even recommended the use of force to compel the Siamese to come to terms with Britain. For the matters of "...Justice-compassion-interest-dignity- and a consistent course of policy," he

<sup>74</sup>Brooke to Palmerston, Oct. 5, 1850. FO 69/1.

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urged the Government to "call for decisive measures to be taken without delay."<sup>75</sup> Lord Palmerston, though approving Brooke's conduct of the mission, decided against any hostile proceedings, and thus was in favour of the traditional policy towards Siam. <sup>76</sup>

## The Acquisition of British Extraterritorial Rights in Siam

It can be seen that British and American efforts in 1850 to make new diplomatic and commercial treaties with Siam were unsuccessful. Rama III and many of the high-ranking Siamese officials saw more disadvantages and danger to the country in accepting treaty changes than in rejecting them. They were afraid that changes in existing conditions would result in the expansion of Western influence and alter the established order. They were also keenly aware of the economic revolution implied in the provisions for free trade.

The accession to the throne of King Mongkut after the death of Rama III on April 3, 1851, marked a propitious opportunity for the British Government once more to come to negotiate a new treaty with Siam. Sir James Brooke was again selected to proceed to Siam for this purpose, but the Siamese government asked for a postponement till after the cremation of the late king. 77

The new reign was marked by many changes in Siamese foreign policy and by internal reforms. A more liberal policy was introduced. A few months after his accession, King Mongkut made it clear that he intended to encourage trade by taking off duties levied on foreign trading vessels. At the beginning of 1852 a proclamation was issued in which practically

<sup>75</sup> Ibid.

<sup>&</sup>lt;sup>76</sup>Palmerston to Brooke, Feb. 6, 1951. FO 69/3.

<sup>77</sup>Palmerston to Brooke, August 29, 1851. FO 69/3.

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79<sub>Al</sub> Miversity all the wishes of foreign powers with regard to Siam were acceded to, viz., the "measurement duty" was reduced from 1,700 bahts a fathom to 1000 bahts, rice was allowed to be exported, and opium could be imported but only under the government's monopoly. These reforms in Siam lasted for four years before Sir John Bowring was deputed as a British plenipotentiary to proceed to Siam in March 1855. King Mongkut's accession to the throne thus brought about a decisive reversal of the anti-Western policy that had characterized the last years of the reign of Rama III.

## <u>King Mongkut (1851-1868)</u> and the <u>New Orientation of Siam's Foreign</u> and <u>Commercial Policies</u>

Before he came to the throne, Mongkut had spent 27 years in the Buddhist priesthood. He became interested in scientific knowledge and during the last years of his priesthood he began to widen the scope of his studies learning Latin, astronomy, and mathematics from the French missionary, Bishop Pallegoix, and English from the American missionaries. Beyond this, he also learned from them much about the major Western countries, their histories, the methods of their administration, and what was taking place there currently. His knowledge of English was to prove of the utmost value to his country; it helped him tremendously to secure information about foreign countries and international relations by reading foreign newspapers, journals, and various other publications. He formed a conviction that Siam had to learn to live with the Western nations if she was to survive as an independent nation. Intercourse with the missionaries during his priesthood gave him an insight into other creeds

<sup>780.</sup> Frankfurter, "Sir James Brooke's Mission to Siam," op. cit., p. 231; and his article on "King Mongkut," JSS, Vols. I-II, 1904-5, p. 196.

<sup>&</sup>lt;sup>79</sup>Abbot L. Moffat, Mongkut, the King of Siam, (Ithaca: Cornell University Press, 1961), pp. 20-21.

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In the last decade of Rama III's reign, the court had become increasingly "nationalist and isolationist." The followers of the traditional political thought wished to isolate the country from contacts with the Western countries; but Mongkut, seeing what was happening to Siam's neighbors and what had already happened to mighty China, realized the superiority of the West. 81 The Anglo-Burmese War had shown that an eastern country could not resist Western influence by any use of arms. China had failed in its policy of isolation. The first Anglo-Chinese War in 1842 (or the "Opium War") resulted in the breakdown of Chinese isolation. Britain used her naval power to force China to open her borders With the Treaty of Nanking, China had to accept to the Western traders. trade and diplomatic relations with the West. Most Siamese at that time believed the Chinese propaganda, that they made the Treaty with Britain as a compromise to avoid annoyance, but a few Siamese, including King Mongkut, were convinced of the strength of British power and influence. 82

<sup>800.</sup> Frankfurter, "King Mongkut," op. cit., p. 194.

<sup>&</sup>lt;sup>81</sup>Later Mongkut expressed the problem of Siam in these words: "Being, as we are now, surrounded on two or three sides by powerful nations, what can a small nation like us do? Supposing we were to discover a gold mine in our country from which we could obtain many million catties weight of gold, enough to pay the cost of a hundred warships; even with this we would still be unable to fight against them, because we would have to buy those very same warships and all the armaments from their countries. We are as yet unable to manufacture these things, and even if we have enough money to buy them, they can always stop the sale of them whenever they feel that we are arming ourselves beyond our station. The only weapons that will be of real use to us in the future will be our mouths and our hearts, constituted so as to be full of sense and wisdom for the better protection of ourselves." A. L. Moffat, op. cit., pp. 24-25. Quoted from translation of letter to Phraya Suriyawongse Vayavadhana. Siamese Ambassador to Paris, March 4, 1867, in Seni and Kukrit Pramoj, "The King of Siam Speaks," p. 186.

<sup>82</sup>Prince Damrong Rajanubhab, "The Introduction of Western Culture in Siam," JSS, XX, 1926-27, p. 96.

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They considered that Siam should begin to accommodate itself to western approaches and prepare for future eventualities. Siamese traditionalism and semi-isolationism should be abandoned as they were obsolete and inefficient. The attitude of Siam toward the West in the 1840's was passive: it was not completely averse to it, but it did nothing to encourage it. In 1850, the attempts of Britain and America to establish a new intercourse with Siam had not led to any appreciable result. Actually, the commercial agreement of the Treaty of 1826 remained largely a dead letter, owing to various infractions practiced by the Siamese government, viz., by the system of monopolies, and by its prohibition of many articles of merchandise. Foreign relations under Rama III showed no signs of movement.

Mongkut's accession to the throne on April 1851 was hailed with satisfaction among the foreigners in Bangkok. He was regarded by the Westerners as a "liberal and enlightened" monarch. In 1852 he affected the major reforms relating to foreign trade. A heavy "measurement duty" was reduced by nearly half. Rice, formerly a forbidden article to be exported, was allowed to be sold out of the country, subject to "the fruitfulness or unfruitfulness of the seasons producing it." As for opium,

the former Kings of Siam have uniformly prohibited traffic in it and have caused merchants found engaged in the traffic of it, to be seized and their property confiscated. These efforts to cleanse the land of the evils of opium, produced ruin of estates and business, and revengeful feelings to a very great extent. Hence his present Majesty has been pleased to grant a monopoly of the traffic in opium to certain individuals of his subjects, allowing them to purchase it, and to sell it only to the Chinese who have come hither to seek their livelihood under his auspices. But to all Siamese and others who are subjects of the Kingdom of Siam, and who constitute the force of the Kingdom--Opium is contraband as an article of trade or consumption. 83

<sup>83</sup>Phya Sri Suriwong, Minister of Foreign Affairs, to Sir James Brooke, Private, March 24, 1852. FO 97/368.

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Among the first acts of his reign had been "the assurance to all foreign residents at Bangkok of perfect freedom and equality both in civil and religious matters; the grant in perpetuity of ground for the purposes of burial, and the erection of religious edifices...."84

King Mongkut acknowledged the increase of British influence in the Far East. The Siamese desire to come to terms with Britain peacefully was strengthened by the events of 1852 which saw British force, acting on little provocation, occupy the central part of Burma. France, meanwhile, was conducting a forward policy in Indo-China. Therefore, Mongkut thought that the expedient foreign policy would be to accommodate to the desires of Western powers. The readiness to come to reasonable terms with the West by making certain concessions could save Siam from any unwelcome intervention.

In March 1582, Lord Malmesbury, the new Foreign Secretary, considered sending Brooke to lead another mission to Siam. For some years, however, the mission was deferred. The Foreign Office concurred with John Crawfurd's opinion, 85 which was in harmony with that of the India Board, that since reforms in Siam were still in progress it would be more advantageous for the British to await their completion. In this period the Government were concerned with the development of events in the Balkans; this probably had an important bearing upon the decision to postpone the mission to the Far East. The question of the mission to Siam was shelved until 1854.

With the appointment of Sir John Bowring as a new Superintendent of Trade in China and as Governor-General at Hongkong in 1854, the Foreign

<sup>84</sup>W. Parker Hammond to Clarendon, Feb. 21, 1853. FO 97/368.

<sup>85</sup>Crawfurd to Derby, March 25, 1852. FO 97/368.

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Office took the opportunity to give him plenipotentiary powers to make commercial treaties with Siam, Cochin-China, and Japan. He was instructed to arrange for a treaty which would provide for:

...British jurisdiction over British subjects--for the interpretation of the terms of the Treaty by the British version,--for the power of revision at the expiration of a stated time,--and for participation in all the benefits which now or hereafter may be conceded...to foreign nations....86

As for the provisions for British extraterritorial rights, he was instructed to be careful as to the terms on which he had to undertake to extend to the subjects of the countries under British domination the equivalent advantages granted to the British themselves. "The form of stipulation," he was informed, "should be that the subjects of those States shall enjoy in the British dominions the privileges granted in those dominions to the Subjects of other Countries."

Bowring thought he might have an easier time in Siam than elsewhere. <sup>88</sup> He informed the Foreign Office early in March of 1855 that, in his opinion, it would be useful within a few weeks to run down to Bangkok to see about negotiating a commercial Treaty with Siam. <sup>89</sup> This was the beginning of Sir John Bowring's mission to Siam in 1855.

## The Bowring Mission and the Treaty of 1855--the Beginning of British Extraterritorial Rights in Siam

Sir John Bowring left his headquarters at Hong-Kong on March 12, 1855 on board H.M.S. 'Rattler', escorted by H.M.S. 'Grecian'. His suite consisted of his eldest son, John C. Bowring, who accompanied him as his

<sup>86</sup>Clarendon to Bowring, Feb. 13, 1854. FO 17/210.

<sup>87&</sup>lt;sub>Ibid</sub>.

<sup>&</sup>lt;sup>88</sup>Bowring to Clarendon, Sept. 8, 1854. FO 17/216.

<sup>&</sup>lt;sup>89</sup>Bowring to Clarendon, no. 125, March 5, 1855. FO 17/228.

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personal secretary; Harry Parkes, the Consul of Amoy, as secretary to the mission; Georges Caine, and Mr. Bell. In his report to the Earl of Clarendon he expressed his intention of returning to Hong-Kong before the middle of April; and he had arranged with the Naval Commander-in-Chief, Sir James Sterling, that the 'Grecian' should remain at Bangkok with Mr. Parkes if such steps were necessary. He put this time-limit to his mission because he was concerned about the development of events in China, and he believed that "everyday's delay is unfavourable to our interest in that quarter (Siam)."90

In coming to Siam, Bowring was armed with a knowledge of all the difficulties confronted by the former diplomats in their missions to the Siamese Court. Unlike his predecessors, Bowring bore credentials directly from Queen Victoria. This gave the Siamese Court a great satisfaction. It will be recalled that Captain Henry Burney was sent by the Governor-General of India. and that Sir James Brooke, although sent by the British Government, had his credentials from the Foreign Secretary. From the beginning, there were signs that this mission would be successful. King Mongkut and Bowring had long before made contact through "personal" correspondence. When King Mongkut learned of Bowring's appointment as a British plenipotentiary to negotiate commercial treaties with the Far Eastern countries, he wrote to congratulate him and mentioned that "...I shall therefore have the honour of meeting Your Excellency personally, and have an opportunity of making the friendship that exists between the Kingdom of Great Britain and our country more firm and greater than it ever has been before."91 One should bear in mind that Siam was at this time

<sup>90</sup> Bowring to Clarendon, March 12, 1855. FO 17/228.

<sup>91</sup>Mongkut to Bowring, July 18, 1854 in King Mongkut, "English Correspondence of King Mongkut," JSS, XXI, 1927-28, pp. 14-15.

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ruled by an absolute monarchy. If the King decided to do anything, the action had to be carried out. This time he was friendly to the British diplomat himself, and had a high regard for the British power. These tender hands of friendship to the British Government would render the negotiations for a new treaty easier. Mongkut wrote to Bowring urging him to write him privately in respect to the exact nature of the forthcoming visit and the nature of the Treaty desired so that he and his Council could consult and thus save time for the later negotiations. 92 The path for understanding seemed to be smooth. The Siamese foreign minister wrote in reply to Bowring's letter of February 20, 1855, expressing complete readiness to accept him "in a manner consistent with your rank and dignity as a High Minister of Her Majesty the Queen of England."93

The mission arrived off the bar of the Chao Phya River on March 24. Bowring sent Parkes and his son to the mainland to ascertain the attitudes of the Siamese, while he remained on board the 'Rattler' preparing for the main discussions. Preliminary meetings were arranged between the Siamese representatives and Parkes to settle the matter of etiquette in the reception of the British plenipotentiary. Bowring came on shore on April 3, and was welcomed by the King's chief Minister, Kalahome. Bowring insisted that the 'Rattler' fire a twenty~gun salute and that she should follow him to Bangkok. 94 He felt the importance of her presence in order to assist him in the course of the negotiation. Bowring decided to follow a "very decided course of action;" without "surrendering any purpose" he had to make an announcement, in order to show the Siamese of the British

<sup>92&</sup>lt;u>Ibid., p. 15.</u>

<sup>93</sup>Chao Phya Praklang to Bowring, undated, (approximately Feb. 20-25, 1855), FO 17/229.

<sup>94</sup>G. F. Bartle, "Sir John Bowring and the Chinese and Siamese Commercial Treaties," <u>Bulletin of the John Rylands Library</u>, XLIV, no. 2, March 1962, p. 302.

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determination in this negotiation. He was afraid that any concessions "might lead to other experiments upon my forbearance." 95

In an interview between the Siamese Prime Minister, Kalahome, and Sir John Bowring, the former expressed his hope that Great Britain would be the 'pioneer' nation to open new relations between Siam and the West, as the Siamese "could then count upon such arrangements being concluded as would both be satisfactory to Siam, and sufficient to meet the demands that might hereafter be made by other of the Western Powers...." He meant, of course, that Siam would use the Treaty concluded with Britain as a model when making treaty relations with the other Western powers. Bowring suggested that the Siamese government nominate a commission to negotiate the Treaty with him. By April 8, a commission of five dignified Siamese ministers had been appointed by the King; they were invested with

full royal and noble power to discuss the negotiations of treaties, to arrange and receive certain accent [sic] and to correct some old articles of treaty, to make both sides be peaceful and useful by best arrangement, which will be with his Excellency Sir John Bowring.... whatever the five...would agree and consent, or whatever they would solicit the plenipotentiary, it shall be known and ascertained that all are agreed and consulted, and requested by us both (King Mongkut and his brother): and all royalty and nobility of Siam. 97

With this proclamation of the appointment of the Siamese plenipotentiaries, the formal negotiations were arranged to begin on April 9.

The British negotiators had drawn up a treaty memorandum between April 5th and 8th, during their preliminary meetings with the Siamese representatives. Since Bowring could not afford to spend longer time in Siam, and owing to the difficulty of inter-communication, he found it

<sup>95</sup>Bowring to Clarendon, no. 144, April 28, 1855. FO 17/229.

<sup>96</sup>Harry Parkes' Journal of the Bowring's Embassy. Enclosure no. 15, <u>Ibid</u>.

<sup>97</sup>Sir John Bowring, The Kingdom and People of Siam, II, (London: Oxford University Press, 1969 (1857)), pp. 213-14.

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necessary to confine his negotiation to the "simplest and most essential points." His proposals therefore were limited to: 1) the appointment of a Consul with jurisdiction over British subjects; 2) freedom to possess houses or land; 3) unrestricted exercise of the Christian religion; 4) abolishment of heavy measurement dues, and the substitution of import and export tariffs; 5) abolishment of certain monopolies, prohibitions and inland taxation; 6) access to the interior of the country; 7) British shipping to have the same privileges as Chinese or native craft; 8) equal privileges to those granted to the most-favoured-nation; 9) the interpretation of the treaty by the English version; and 10) the right of revision within a period of ten years. 98 Bowring did not submit these demands in writing; he preferred to raise each question in the discussions. When agreement was reached each point would be noted as part of "the basis for the Treaty,"

As a matter of fact, various points in the proposed treaty had been discussed between the British negotiators and the Siamese ministers before the official conference opened. Bowring had anticipated the difficulties in his dealing with the questions of the abolishment of certain monopolies and of heavy measurement duties, including the question of an appointment of a British consul with jurisdiction over British subjects. These were the most important objectives of Bowring's mission to Siam. The request for British extraterritorial rights in Siam invoked a lengthy debate.

many manders admitted that

...the most difficult part of my negotiation was the emancipating British subjects from subjection to Siamese laws, and the establishment of a consul charged with magisterial functions, whose duty would be to compel obedience on the part of all British residents in Siam to British law, 99

<sup>98</sup>Mr. Parkes to E. Hammond, Oct. 8, 1855. FO 17/236.

<sup>99</sup>Bowring, op. cit., Vol. II, p.183.

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To attain these rights, he regarded the abrogation of Article VI of the Treaty of 1826 as indispensable, as it placed British subjects entirely under the jurisdiction of Siamese laws, and rendered them liable to be punished "by a capital penalty in cases of homicide; by whipping, fine. or imprisonment, for other offences."100 The Siamese courts were badly organized and the mode of procedure was partial and irregular. His comment on the constitution of the Siamese judiciary was that "the organization of the tribunals and the protecting of legislation can afford but very inadequate security" and that "bribery is said to flourish from the judge down to the lowest clerk." 101 Because of these discontents. Bowring thus insisted on the right of British jurisdiction over their subjects as a sine qua non. The Siamese objected to these proposals by virtue of the fact that the Siamese government was afraid that other nations would then claim the same privileges and that it would be bad to have these functionaries residing at Bangkok. Bowring argued that only those governments with large interests in Siam would send consuls to protect their subjects and look after their properties, and that their number would be limited. Seeing that the British negotiators were determined on this point, the Siamese commissioners therefore suggested that the appointment of a consul be delayed till trade had increased and a number of British vessels had called at the port of Bangkok after the conclusion of the Treaty. A compromise was finally reached which stated that the appointment of a consul would be delayed till the arrival of 10 British merchant vessels beginning from the day the treaty came into force. In addition, it was agreed that other ports than Bangkok were to be opened to British ships but British subjects were not allowed to reside

<sup>100</sup>Bowring, op. cit., Vol. II, p. 204.

<sup>101&</sup>lt;sub>Bowring</sub>, op. cit., Vol. I, p. 170.

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there permanently. This important object of Bowring's negotiations was now accomplished.

As regards Bowring's other proposals, all were agreed upon without much argument. The articles on which both sides agreed were then drafted into a treaty. After the English and Siamese versions of the treaty had been compared for accuracy, the whole was duly signed on April 18, 1855. 102 Harry Parkes, secretary to the mission, thought that Bowring had secured "as complete and advantageous conditions as the opportunity afforded. "103 Bowring achieved his main objectives within a fortnight. He was happy at this successful consummation. 104 His satisfaction was marked in his report to the Foreign Office:

My success has far exceeded my most sanguine expectations and has been accomplished almost without example in the history of oriental nations, when neither the powers of war or conquest have been auxiliaries to the negotiations.... Every important object is accomplished by the Treaty. 105

Britain received most of the advantages granted by the stipulations of the Treaty. According to Article II Siam surrendered a portion of her judicial autonomy to the British Government. This marked the beginning of the British extraterritorial rights in Siam. From 1855 onward British subjects enjoyed special immunities from local jurisdiction. Article II stipulated that:

The interests of all British subjects coming to Siam shall be placed under the regulation and control of a Consul, who will be appointed to reside at Bangkok....Any dispute arising between British and Siamese

<sup>102</sup> Treaty of Friendship and Commerce, between Great Britain and Siam. Signed at Bangkok, April 18, 1855, <u>BFSP</u>, Vol. 46, pp. 138-146.

<sup>&</sup>lt;sup>103</sup>Parkes to E. Hammond, Oct. 8, 1855. FO 17/236.

<sup>104</sup>In his article "Personal Reflections of Siam," in Fortnightly Review, Vol. II, Aug.-Nov., 1865, p. 341, he wrote, "Some delays, difficulties, and vexations occurred in the progress of the negotiations, but a most satisfactory treaty was finally signed..."

<sup>105</sup>Bowring to Clarendon, no. 140, April 25, 1855. FO 17/229.

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subjects, shall be heard and determined by the Consul, in conjunction with the proper Siamese officers; and criminal offences will be punished, in the case of English offenders, by the Consul, according to English laws, and, in the case of Siamese offenders, by their own laws, through the Siamese authorities. But the Consul shall not interfere in any matters referring solely to Siamese, neither will the Siamese authorities in questions which only concern the subjects of Her Britannic Majesty. 105

In other words, the British Consuls would maintain the right of jurisdiction over their own subjects in all disputes, civil or criminal. In the cases between British and Siamese subjects, the Consul would be given right of access to the native Courts, with the means of watching, and to a certain extent, taking part in the proceedings. But in criminal cases, the British consul would bring the offenders to prosecution according to English laws, and the Siamese judges would not have any right to intervene. By these means, the Siamese government lost its judicial autonomy.

The Treaty of 1855 also granted "free trade" to British subjects:
"they are permitted to trade freely in all the seaports of Siam," (Article IV) and British merchants were allowed to buy and sell directly without any interference. The measurement duties as well as many transit duties were removed, and so were the government's 'farming system' and multitudinous monopolies. All articles of export were subject to the payment of only one impost, from production to shipment, no matter if this be levied under the name of inland tax, transit duty, or duty on exportation (Article VIII); and the duty to be paid on each Siamese product was specified in the schedules of tariff attached to the Treaty; for example, the duties of the new tariff amount on sugar to 6 percent, and on cotton to 10 percent, based upon their value in Siam. Measurement duties and tonnage dues were abolished; their place was taken by an import duty of 3 percent ad valorem on all articles "calculated upon the market value of the goods."

<sup>105</sup>Bowring to Clarendon, no. 140, April 25, 1855. FO 17/229.

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By the terms of this Treaty, a large part of the Siamese public revenue system was frozen. Bowring himself admitted that:

...It was clear that my success involved a total revolution in all the financial machinery of the Government, -- that it must bring about a total change in the whole system of taxation, -- that it took a large proportion of the existing sources of revenue, -- that it uprooted agreat number of privileges and monopolies which had... long been established...."106

By these provisions respecting commerce, Siam lost her fiscal autonomy.

Her collection if import and export duties became subject to the terms of the Treaty.

In addition to those crucial provisions, Siam made many other concessions. The right of settlement was granted to British subjects who came to reside at Bangkok; they were given rights to rent land, to buy or to build houses. Certain restrictions were imposed: they could not purchase lands within a circuit of four miles from the city walls, "until they shall live in Siam for ten years, or shall obtain special authority from the Siamese Government to enable them to do so. But with the exception of this limitation, British residents in Siam may at any time buy or rent houses, land, or plantations, situated anywhere within a distance of 24 hours' journey from the city of Bangkok, to be computed by the rate at which boats of the country can travel" (Article IV).107

<sup>106</sup>Bowring, op. cit., II, p. 226.

<sup>107</sup>The problem arose as to what precise distance would the circuit of four miles from the city walls of Bangkok, or a distance of 24 hours' journey by boat be. Under Articles X and XI of Parkes' Agreement of 1856, a definite distance was marked. Siam, in a later period, made use of these limitations of the right of British subjects to hold land in Siam as a bargaining point when she attempted to limit the British extraterritorial jurisdiction.

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In order to obtain possessions of lands, houses, or plantations, it was necessary for the British subjects to make an application through the Consul to the proper Siamese officer. The Treaty also imposed on all British subjects intending to reside in Siam the obligation to register at the British Consulate. Whenever they wanted to proceed beyond the limits assigned by the Treaty, a passport was required from the Siamese authorities, to be applied for by the British Consul. But within the assigned limits, "British subjects are at liberty to travel to and from under the protection of a pass, to be furnished them by the Consul, and counter-sealed by the proper Siamese officer, stating, in the Siamese character, their names, calling, and description" (Article V). The free exercise of the Christian religion, and liberty to build churches was provided for the British subjects in Article VI.

A defect of the Treaty of 1855 was the non-specification of the final date of its expiration. This was a heavy burden for the Siamese government in the ensuing years when it tried to abrogate the Treaty. Article XI indicated only the right of revision of the Treaty after the lapse of 10 years from the date of ratification. It could be done upon the desire of either the British or Siamese Governments on 12 months' notice. The lack of a "termination clause" in the place of a "revision clause" had to be regarded as a grave mistake of the Siamese government for they could not revoke the Treaty within a certain limit of time. It was agreed also that the English text was to be taken as conveying the true text and meaning of the Treaty. This agreement at the special request of the King was transferred to the Regulations annexed to the Treaty. Bowring also asked for the "most-favoured-mation treatment" which was provided for in Article X of the Treaty.

Bowring had obvious reasons to be pleased and felt happy with his success, for the Treaty marked a considerable improvement from its

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predecessors. He left Siam on April 24 with high elation at his achievement. He decided to send Parkes back to England to carry the letters and presents from King Mongkut to Queen Victoria, and also to provide any necessary explanations to the Foreign Office. 108 Bowring himself rushed back to China for he considered he could not afford to withold his "invaluable" services there. The Singapore Chamber of Commerce congratulated him on his success, expressing extreme satisfaction that the provisions of the Treaty were "more favourable" than they had anticipated. 109 With the liberal nature of the Treaty a large extension of a Siamese trade, not only with Singapore, but with other British possessions, could be expected.

## Harry Parkes' Mission and the Supplementary Agreement of 1856

The text of the Treaty of 1855 had been studied by the Foreign Office and the Queen's Advocate (later known as the Law Officer of the Crown) who objected that some treaty terms were vague and many desirable stipulations omitted. The Queen's Advocate remarked that the terms of Article II of the Treaty appeared to be "very vague." This stipulated that the British Consul "will enforce the observance by British subjects of all the provisions of this Treaty, and such of the former Treaty negotiated by Captain Burney of 1826, as shall still remain in operation," but that Article omitted to set forth what those treaty terms were; so the precise meaning and operation of this Article in its present form "did not appear to be intelligible." 110 During the negotiations with the

<sup>108</sup>Bowring to Clarendon, no. 140, April 25, 1855, FO 17/229; Nicholas Tarling, "The Mission of Sir John Bowring to Siam," <u>JSS</u>, Vol. 50, Dec. 1962, p. 111.

<sup>109</sup> The Chamber of Commerce, Singapore, to Bowring, May 3, 1855. FO 17/229.

<sup>110</sup>parkes to E. Hammond, Oct. 8, 1855. FO 17/236.

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Siamese, Bowring tried to avoid discussions about the political contacts of Siam with British Burma and with the northern Malay States regulated by the Burney Treaty, because he felt himself unauthorized to interfere in the political questions therein treated. Therefore, the subject of the entire abrogation of the Burney Treaty, which the British regarded as being disadvantageous to their interests and ill-adapted to the development of trade, was not directly brought up by Bowring in the negotiations. for he wanted to avoid an inconvenient subject of discussion. 111 Regarding the matter of British consular jurisdiction over British subjects in Siam, the Queen's Advocate recommended stipulations which provided for the erection of a Tribunal, with the Consul as always a member, to have exclusive civil jurisdiction in all cases in which a British subject might be either plaintiff or defendant; in criminal cases, he advised that British subjects should be exempted without any exception from the Siamese criminal jurisdiction, so as to place them "in the same peculiar position in Siam as that which they actually occupy in Turkey." In Article II of the Treaty of 1855, there were no such words to secure British subjects from complete exemption in all cases without any exception. 112

The Queen's Advocate's objections to the Treaty of 1855 could be limited to two points:  $^{113}$ 

- 1) The absence of some explicit definition or enumeration of the particular Articles of the Burney Treaty and Agreement which were destined to be retained; and
- 2) The want of perspicuity in the wording of the portion of Article
  II of the Bowring Treaty which was intended to provide for the exclusive
  jurisdiction of the Consul over British subjects.

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<sup>112</sup> Ibid.

<sup>113</sup>parkes to Lord Wodehouse, Nov. 20, 1855. FO 17/236.

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The Foreign Office, in turn, directed Parkes to state his opinions regarding the changes to be introduced into the Treaty of 1855 as the Queen's Advocate had suggested. In his report to Lord Wodehouse, the Under Secretary of State for Foreign Affairs, Parkes pointed out that any additional articles of explanation or extra conditions might be obtained from the Siamese government if the British Government could show it that these additional stipulations would not involve any revocation of the original provisions of the Treaty "but are in unison with its spirit and intent." For these measures, the Government could refer to Article IX of the Treaty which provided for the subsequent negotiations of further regulations. Parkes thought that many articles of the Burney Treaty had become obsolete whilst others had been virtually rescinded by the negotiations of the Treaty of 1855. If the consent of the Siamese government could be obtained thereto, he considered its entire abrogation would be the best course to remove ambiguity as to the present or future extent of its operation. He also advocated the necessity of some clearer stipulations to the jurisdictional rights of the British Consul, as had been recommended by the Queen's Advocate. Parkes suggested that British subjects. premises, and property should be completely exempted from the Siamese process or interference of any nature. In addition, there should be the stipulations for the recovery of debts: debtors on either side should be liable to the punishment of their respective laws, since Siamese laws on debts were severe. British subjects, he added, should be entirely freed from Siamese public burdens, and their ships or property from embargo. or forcible appropriation for public uses. In his report there were other recommendations, the most important of which were: the right of succession to real or personal property in Siam including the collection or recovery

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of debts from a deceased person either by the Consul or otherwise; the right of disposing freely of all real estate acquired by British subjects. 114

Parkes was to return to China to resume his post as the Consul at Amoy. On this occasion the Foreign Office decided to entrust him with the task of exchanging the ratifications of the Bowring Treaty, and he was instructed to negotiate with the Siamese government on the additional articles needed to establish the explicit meaning of certain articles of the Treaty. He was instructed by the Foreign Minister, the Earl of Clarendon, that "the proposed additional stipulations....should not be allowed to interfere with the exchange of the Ratification" and was to assure the Siamese that they could rely on "the good faith and friendly intention of Her Majesty's Government" in asking for the proposed amendments. 115

Parkes arrived in Bangkok on March 12, 1856. The first thing he did was to arrange for the exchange of the ratified Treaties, which was done on April 5. Thereafter, the negotiations for the "additional" articles went on its way. Four out of five of the Siamese Plenipotentiaries were those who had negotiated the Bowring Treaty. Some of Parkes' proposals were to clarify the definitions of some articles of the Treaty; the others were just new proposals, and they were met with objections from the Siamese negotiators. One of his major aims, to abrogate the entire Burney Treaty, was resisted by the Siamese representatives who wanted to keep certain of its articles. Parkes, therefore, had to enumerate the articles which were to remain valid by any subsequent stipulation in the Treaty of 1855.

<sup>114</sup> Parkes to Lord Wodehouse, Nov. 20, 1855. FO 17/236.

<sup>115</sup> Parkes to Lord Wodehouse, Dec. 7, 1855. FO 17/236.

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That or in deter Concerning the second important object, exclusive Consular jurisdiction, Parkes was able to induce the Siamese Commissioners to understand and agree to his proposal for "the exercise by the Consul of sole criminal and civil jurisdiction over British subjects in Siam." Agreement was reached on many other points in the Bowring Treaty which required either explanation or concessions from the Siamese Government. Parkes' Agreement supplementary to the Treaty of Friendship and Commerce, containing twelve articles, with the attachment of additional schedule of taxes on garden-ground, plantations, or other lands, and the Custom-House Regulations, was signed on May 13, 1856, 116 after more than a month of negotiation.

With regard to the exclusive British consular jurisdiction over British subjects, Parkes was successful in excluding all doubts about the stipulations in Article II of the Treaty of 1855 by adding several explanatory clauses to Article II of the Supplementary Agreement. On the "non-interference" of the Consul with the Siamese, or of the Siamese with British subjects, it was agreed that the British consul should hold no jurisdiction over Siamese in their own country, and that

the Siamese authorities, on the other hand, will feel themselves bound to call on the Consul to apprehend and punish British subjects who shall commit, whilst in Siamese territory, any grave infractions of the law, such as cutting, wounding, or inflicting other bodily harm. But in disputes, or in offences of a slighter nature, committed by British subjects among themselves, the Siamese authorities will refrain from all interference.

With reference to the punishment of offences, or the settlement of disputes, it was agreed:

That all criminal cases in which both parties are British subjects, or in which the defendant is a British subject shall be tried and determined by the British Consul alone. All criminal cases to which

<sup>116</sup>BFSP, Vol. 46, pp. 146-57.

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both parties are Siamese, or in which the defendant is a Siamese, shall be tried and determined by the Siamese authorities alone.

In civil cases the same stipulations were to be followed.

Furthermore, to secure a proper administration of justice by either side, it was agreed:

That in all cases in which Siamese or British subjects are interested, the Siamese authorities in the one case, and the British Consul in the other, shall be at liberty to attend at, and listen to, the investigation of the case; and copies of the proceedings will be furnished from time to time, or whenever desired, to the Consul or the Siamese authorities, until the case is concluded.

With the 1855 Treaty and the Supplementary Agreement of 1856, the British extraterritorial rights in Siam were completely attained: all British subjects in Siam should be exempted from the jurisdiction of Siamese courts and law and should be judged by the British Consul. Moreover, the fiscal provisions prevented from imposing an import tariff in excess of three percent ad valorem and restricted her to a fixed schedule of duties.

Although the 1855 Treaty did not contain any reciprocal provisions, and the British gained all the advantages, Siam was obliged to sign it.

Considering the fact that at the beginning of King Mongkut's reign Great Britain was launching an active penetration in Burma and Malaya, diplomatic obstruction, and more seriously, armed resistance, would have been futile. Mongkut was therefore confronted with the problem of how best to cope with the rising tide of European aggression, considering the fact also that France was equally busy in Annam and Cochin-China. Being able to comprehend the strength of the West and the imminence of the danger which was threatening his country, he decided to bend before the tempest by making concessions which would secure for Siam immunity from absorption for the moment. 117

<sup>117</sup> The Bowring Treaty opened the way for the conclusion of treaties, on the same basis, between Siam and the following countries: the United

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Powers,

At the time when the judicial and fiscal provisions of the Treaty were adopted, no one foresaw that they could be used in future years to curb Siamese domestic and foreign policy and handicap the future development of the country. With the increase of British dominions in the Far East, the extraterritorial privileges were soon extended to cover all those born in the Asiatic colonies. As a result, Siam was deprived of jurisdiction over Malayans, Burmese, Chinese from Hong Kong, and Indians, even though residing for a long time or permanently and doing extensive business in Siam. Whatever violations of Siamese law they might commit, Siam was powerless to touch them or their property. A dispute soon arose over the status of these Asiatic British subjects.

Extraterritoriality was a burdensome matter for the Siamese government. The question of how Siam was able to relinquish step by step the system of British extraterritoriality in Siam will be considered in detail in the following chapters.

States of America (May 29, 1856); France (Aug. 15, 1856); Denmark (May 21, 1858); Portugal (Feb. 10, 1859); the Netherlands (Dec. 17, 1860); Prussia (Feb. 7, 1862); Norway and Sweden (May 18, 1868); Belgium (Aug. 29, 1868); Italy (Oct. 3, 1868); Austria-Hungary (May 17, 1869); Spain Feb. 13, 1870).

Luang Sidhi Sayamkar, <u>Treaties of Friendship between Siam and Foreign Powers</u>, (Bangkok: Prachan Press, 1963), p. 38.

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#### CHAPTER II

#### PROCESSES OF THE MODIFICATION OF THE EXTRATERRITORIAL SYSTEM: 1874-1900

By the Treaty of 1855, with its Supplementary Agreement of 1856. the British Consul had acquired exclusive jurisdiction over British subjects in Siam; it was necessary therefore that the Consul should receive from the British Government proper authority to carry out his duties, and that British subjects should have imposed upon them, by the British Government, the duty of submitting to this consular jurisdiction. In 1843 an Act of Parliament 1 had been passed regularizing the exercise of British jurisdiction in places outside the British dominions, and in pursuance of this Act was promulgated the British Order in Council of July 28, 1856, 2 providing for the organization of the British Consular Court and the exercise of jurisdiction in Siam. By this Order the Consul was charged with seeing that the British subjects in Siam obeyed the stipulations of the Treaty, and he was empowered to make rules and regulations to that end. Judicial powers were conferred upon him: he could try and decide without assessors any case where the penalty would not exceed a fine of 500 Spanish dollars or an imprisonment of 3 months. Although in such cases he sat with assessors, the decision of the case rested with him.

<sup>&</sup>lt;sup>1</sup>This Act was officially called "Act to Remove Doubts as to the Exercise of Power and Jurisdiction by Her Majesty within diverse Countries and Places out of Her Majesty's Dominions, and to Render the Same More Effectual," BFSP, Vol. 31, pp. 984-89.

<sup>&</sup>lt;sup>2</sup>BFSP, Vol. 46, pp. 546-58.

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In criminal matters the Consul's power to inflict punishment was limited to an imprisonment not exceeding 12 months<sup>3</sup> or a fine of 1,000 dollars. But by Article 22 of the Order of 1856 the defendant might be sent for trial to Singapore and be dealt with there as if the crime had been committed within the colonial jurisdiction.

The Order in Council of 1856 gave every detail of the Consul's power in all criminal and civil cases among the British subjects themselves, or between the British and the Siamese subjects. By Article 29, all British subjects residing in Siam were required to register at the British Consulate to entitle them to protection in any difficulties in which they might become involved; failure to do so might deprive them of the privileges.

The commercial and jurisdictional provisions of the Bowring Treaty and Parkes' Agreement contributed towards the promotion of British trade with Siam. The rights of acquiring land, houses, and property granted by the Treaty also contributed indirectly to the stimulation of trade. With the exclusive jurisdicial rights in the hands of the British Consul, British subjects naturally felt that their interests and property in Siam would be securely protected by their own laws and system of procedures. With King Mongut's new commercial policy in 1852, trade transacted at Bangkok rose to the level of 1,580,000 bahts compared with an annual average of 605,000 bahts during the last decade of the reign of Rama III. After the conclusion of the Treaty of 1855, the value of trade rose to 5,695,000 bahts in 1856. Three decades later, it amounted to 94,878,013 bahts.

<sup>&</sup>lt;sup>3</sup>By the Order in Council of 1876 the maximum punishment which a Consular Court could inflict was three years' imprisonment.

<sup>&</sup>lt;sup>4</sup>House of Commons, Accounts and Papers, Trade of Various Countries, Vol. LV, 1857-58, pp. 169-80.

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The growth of British trade with Siam could also be measured by the number of merchant ships calling at Bangkok after 1856. No statistics were available for their numbers before 1856, but there would have been very few, to judge from the point made by the Siamese negotiators, that an English Consulate could not be established until after 10 British ships had called at Bangkok. In 1856, 141 ships called there.

## Potential Inconvenience of the Extraterritoriality

The existence of an extraterritorial regime within an independent state is derogatory to the plenitude of sovereign rights to which that state is entitled in international law. By allowing the foreign consul to exercise the right of police and jurisdiction, Siam renounced a double prerogative: 1) that of exercising that right herself; 2) that of excluding an official of a foreign state from exercising that right in her territory. Furthermore, by accepting a forced rate of import duties at 3 percent ad valorem and by agreeing to a forced schedule of export duties, Siam incurred a considerable limitation of her source of revenue. Moreover, she could not levy an inland tax or a transit duty on articles paying export duties. These inconveniences and the difficulties of the extraterritorial regime can be summarized on these questions:

#### a) Right of Police

The British Consul, being charged with the enactment of rules and regulations for the British subjects to follow, was also responsible for the violations of the Siamese laws, and therefore had to take cognizance of such rules and regulations. It was necessary for the Siamese authorities to notify the Consul of any new rules and regulations promulgated by the Siamese Government. In a number of cases the Consul's assent was required before they could be put into execution. In this way inevitable delays were caused, which unduly retarded the execution of the most urgent

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5<sub>Sia</sub> ing the Rev measures. Delays on several occasions had proved injurious to the Siamese administration. For instance, the warrant of arrest for a British subject had to be obtained from the Consul before the Siamese authorities could proceed to effect the arrest. This arrangement was not practicable in cases of emergency, such as smuggling of contraband articles like opium, or in cases occurring far away from the Consulate, such as those taking place on the frontier.<sup>5</sup>

## b) Right of Jurisdiction

Since British subjects, as well as the subjects of the other nations having the treaty relations with Siam, were exempted from the Siamese jurisdiction, when two subjects of different treaty powers were implicated in a crime, they were each tried by their own consuls according to their respective countries. Such cases were a source of difficulty because the defendants or the plaintiffs might not be content with the decision: one penalty might be inflicted upon the one and another upon the other, owing to the differences in the two systems of law applicable. Similarly, in a civil case where the defendants were of different nationalities, the plaintiff had not only to go to various courts for trial, but also ran the risks of having diverse and contradictory judgments and different awards since the laws administered were not uniform. Beyond this some difficulty arose from the scarcity of consular courts. The trials could only take place in the towns where there was a consul. Thus the British subjects or the subjects of other nations who extended their commerce inland found out how irksome and costly their rights of consular jurisdiction were since many nations had their consulates settled only in

<sup>&</sup>lt;sup>5</sup>Siamese Delegates to Balfour, Feb. 22, 1919. Memorandum respecting the Revision of Treaty and Tariff. FO 422/74.

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Bangkok.<sup>6</sup> The parties engaged in disputed cases found it costly and time-consuming to bring their cases before the nearest consular court, and the consul found it hard to decide because of the difficulty in obtaining evidence.<sup>7</sup> Witnesses in many cases declined to make trips owing to the distance from place to place and the costs of transportation. In this way the administration of justice was made exceedingly difficult.

The question of the application of different systems of laws was later complicated by a partial surrender of jurisdictional privileges by some treaty powers; for instance, in 1883 the British Government allowed the Siamese government to establish an 'International Court' in Chiengmai which permitted the Siamese judges to try cases between Siamese and British subjects, while the other nations still maintained exclusive consular jurisdiction. This gave rise to a new question of different jurisdiction.

A case study of British consular jurisdiction in action will give an example of the inconvenience of the system of extraterritoriality in Siam. In 1882, a man named Ai Baa, an illigitimate son of an Englishman born of a Siamese woman, was charged with murdering a Siamese policeman; he was handed over by the Siamese authorities to William Palgrave, the British Consul-General at Bangkok, to be tried for murder. According to the usage prevailing in Siam, such a person was treated as a British subject and enjoyed British protection. But there was no provision in the Treaty between Great Britain and Siam as to "British protection," and

<sup>7</sup>De Bunsen to Foreign Office, no. 33, Aug. 13, 1895. Enclosed J.S. Black's General Report on the Working of Judicial System in the North of Siam. FO 69/162.

<sup>&</sup>lt;sup>8</sup>The whole volume 97 of FO 69 was devoted to the subject of "Trial of Ai Baa for Murder 1882-84: British Consular Jurisdiction over Protected Persons."

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the Orders in Council regulating the exercise of civil and criminal jurisdiction in Siam by the British consular officers, contained no provision empowering them to exercise their jurisdiction in the case of persons who were not British subjects, but only enjoyed "British protection."

In this case, Ai Baa was tried before the British Consular Court, found guilty and the maximum sentence of three years' imprisonment was inflicted. The Siamese government objected to this punishment as inadequate, for this light penalty would encourage rather than deter a crime. The objective of the Siamese government in this protest was to obtain a proper sentence which would serve as an example and precedent to guide similar cases in the future. 10 Palgrave, in reply, informed the Siamese government that he had no power to inflict a heavier penalty: if a severer penalty was required the case had to be sent before the Supreme Court at Singapore. But he added that since in this case the evidence was confused and imperfect, it would, if the case had been sent to Singapore for trial, have resulted in the acquittal of the accused.

The Siamese government being discontented with this argument, asked for copies of the evidence and records of the case upon which the decision was made. Palgrave declined to comply with the application of the Siamese government on the grounds that the case was fully examined and sentence passed in accordance with English law. After the Foreign Office and the Law Officers of the Crown had studied the case, they agreed on the following: that Palgrave's proceedings were irregular and his answer to the Siamese government was not justified under the circumstances; that in any case the

<sup>&</sup>lt;sup>9</sup>The Law Officers of the Crown and Dr. Deane to Earl Granville, Feb. 7, 1883. FO 69/86.

<sup>10</sup>Chaw Phya Bhanuwongse to W. G. Palgrave, May 20, 1882. FO 69/97.

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evidence was insufficient for him to decide the case; that the prisoner should have been discharged; and that copies of the proceedings should have been furnished to the Siamese authorities according to the provisions of Article II of Parkes! Agreement. 11

In a memorandum to the Foreign Office Palgrave remarked on the existing system of British jurisdiction in Siam. Many inconveniences arose from the transfer of graver cases for trial to the Supreme Court at Singapore; partly from the cost of transporting the parties concerned; and partly because the distance of more than 800 miles from Bangkok to Singapore which made it difficult for the British Consulate at Bangkok to provide the required documents and evidence. Deficiencies that could be remedied on the spot could not be achieved in due course for the trials at Singapore. Palgrave admitted that the British Consular Court at Bangkok lacked men with adequate legal training. He remarked that:

Without any trained legist that is professional person to assist in the Court or assist from the Agents downwards, and with the legal complications and affairs of about ten thousand British subjects, to distinguish and decide, in matters civil and criminal, of very variety, it is possible that the proceedings of the Consular Court at Bangkok should not be just in its decisions, and frequently fail to meet the technical exactness and strict regularities of English law.

and he continued to explain that

In most countries where extraterritorial jurisdiction exists, in Turkey, China, and Japan, the difficulty is met by regular Courts, presided over and served by professional British legists. No such provision exists in Siam; yet the need is not less. I state this as a fact regarding the Court and its proceedings in the abstract. 12

The extraterritorial regime in the beginning functioned smoothly when it was confined to Europeans alone. The difficulties in the judicial

<sup>11</sup>Sir Julian Pauncefote's Note on "British Protected Persons in Siam," May 26, 1883. FO 69/97.

<sup>12</sup>Palgrave's Memorandum to Foreign Office, no. 19 A, Feb. 28, 1883. FO 69/97.

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administration were multiplied with the increased number of British Asian subjects and protégés. The British subjects who registered themselves at the British Consulate were entitled to the consular jurisdiction. The case of Ai Baa gave a rough idea how British consular system worked out in the first three decades after the attainment of British extraterritorial privileges in Siam in 1855. There had been no provisions in the Treaty or in any Orders in Council extending British jurisdiction to British "protected persons" in Siam. There was no criterion for judging who were or who were not entitled to British protection until 1899, when Britain and Siam signed an Agreement on the Registration of British Subjects in Siam. In 1883, the Law Officers recommended that the Foreign Office "avoid raising the question with the Siamese Government until some practical necessity for so doing arises," 13 thus avoiding any direct confrontation of the question.

# Efforts of the Siamese Government to Curtail the Extraterritorial Privileges of the British Subjects

Whereas by the treaties with the Western nations Siam granted them the privileges of extraterritoriality, nevertheless the intercourse with the Western peoples marked a substantial advance for Siam. Increasing communication with outside influences stimulated Siam to adopt the policy of modernization according to Western models. In the 1870's the Siamese government began to move towards a steady development of her laws and legal system, and proceeded to prepare herself to win back her grants of extraterritoriality, "by offering to her foreign residents a system of law and legal administration under which they would be willing to come." 14

<sup>13</sup>The Law Officers of the Crown and Dr. Deane to Earl Granville, July 31, 1883. FO 69/97.

<sup>14</sup>p. W. Thornely, The History of a Transition, (Bangkok: Siam Observer Press, 1923), p. 119.

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Great Britain, the first Power to take the initiative in the acquisition of formidable foreign judicial controls, was also the first country to relax her control over this regime. Four years after the last Treaty of the Bowring type was concluded with Spain in February 1870, Siam and the Government of India entered into the negotiations regarding the administration of British subjects, the disposition of civil disputes among the subjects of Siam and Britain, and the prevention of crimes and dacoity in three northern provinces of Siam (Chiengmai, Lakon, and Lampoonchi), which had the territories adjoining the Burmese Tenasserim division. The arrangement made in the Indo-Siamese Treaty of 1874 for the disposition of civil disputes had a great historical significance, for it was the first real withdrawal of some of the privileges of extraterritoriality, although it affected only certain British subjects in the North of Siam.

## Treaty between Siam and the Government of India, January 1874.

The trade in timber, especially in teak, was the great industry of Northern Siam, of which Chiengmai<sup>15</sup> was the centre. In 1860, Sir Robert Schomburgk, the British Consul-General at Bangkok, pointed out to the Board of Trade of the India Office the facilities for establishing commercial intercourse with Pegu, Ava in Burma and Southwest China by way of Cheingmai. There was an overland route from China and several trade routes from Burma into this region. Chiengmai was constantly visited by the British Indian and Burmese traders. Some British subjects worked in the teak forests and others purchased certain rights from the Chief of Chiengmai to cut timber in forests in the territory of Chiengmai. It was,

<sup>15</sup>Chiengmai, the capital of the North of Siam, at the time of the Treaty of 1874, was a feudatory province of Siam, situated on the frontier of British Burma from which it was separated by the River Salween. It is about 500 miles away from Bangkok, the capital of Siam.

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therefore, not unnatural that disputes and crimes involving British and Siamese subjects would occur. Disputes regarding timber cut in the Siamese territories (on the left bank of the Salween River) were "very frequent." 16 Charges were regularly made against the Chief of Chiengmai from the fact that he often took duty on the same timber from two different parties, who were both given permission to cut and drag timber, leaving the parties to settle its possession between themselves. 17 Burdens fell upon the British Consul-General at Bangkok whose duty was to obtain for those British subjects the justice requisite in such cases. The British Consular Court at Bangkok encountered difficulties in the trial of these cases owing to the great distance from Bangkok to Chiengmai and consequent difficulty of obtaining the necessary evidence to convict offenders. 18 The aggrieved parties had to pay considerable expense and it was time-consuming before a suit was brought to a conclusion. As an example, in 1862 Mong Shuez Gan, a British subject of Moulmein, brought a suit against the Chief of Chiengmai before the Consular Court of Bangkok. He came to Bangkok in February 1862 but not having sufficient documents to prove his case, returned to Moulmein and came back again in 1863 with the necessary documents. The petition was then forwarded by the British Consul to the Siamese authorities. The proceeding went on in the Siamese Court for two years before it was settled. delays being caused from the difficulties of bringing the witnesses from Chiengmai; and in many cases, witnesses had refused to come for the trial. 19

<sup>16</sup>Consul Knox to Earl of Clarendon, March 14, 1866. FO 69/42.

<sup>17</sup> Ibid., and Memorial of the Merchants and Foresters of Moulmein to Thomas Knox. Dec. 16, 1865. FO 69/42.

<sup>&</sup>lt;sup>18</sup>Sir R. Schomburgk to King Mongkut, March 9, 1864. FO 69/42; and Knox to Earl Granville, Sept. 11, 1872. FO 69/60.

<sup>19</sup>Knox to the Secretary to the Government of India, Foreign Department, March 6, 1866. FO 69/42.

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Dacoity was a common cause of complaint among British subjects bordering Chiengmai and Burma. The Siamese territories were alleged to be a refuge for dacoits, who committed outrages in British territory and upon British subjects trading in Chiengmai. The Government of India was of the opinion that the suppression of dacoity would be effective if the Siamese government increased their police force along the frontier and established posts to correspond with those on the British side -- for the one-sided action on the part of the British police force would make it impossible for the more effectual suppression of crime. 20 Furthermore. on the Salween frontier, there was constant trouble between two hilltribesmen, the Eastern Karennees and the Shans, arising from their hostile relationships. This particular dispute was a claim by both parties to certain forests on the left bank of the Salween. Consequently the area was in a disorderly state and became a refuge for criminals who crossed the border to plunder in British territory. In a despatch to Consul Knox. the Government of India advised him that:

...the first and most necessary step to be taken is that you should drive the Siamese Government at once to adopt early and efficient measures for the protection of their rights in the forests in question against the encroachments of the Karennees....that the country should be occupied by a sufficient force to prevent the rights of the Siamese Government from being interfered with and to afford protection to the lives and property of the inhabitants and the people engaged in the timber trade. 21

The Indian Government also looked forward to the efficient arrangements for the administration of justice in Northern Siam. By Article II of the Treaty of 1855 and the Additional Agreement of 1856, all criminal

<sup>&</sup>lt;sup>20</sup>Aitchinson, Secretary to the Government of India, to Knox, June 4, 1872, and Knox to Chao Phya Bhanuwongse, Siamese Minister of Foreign Affairs, Aug. 9, 1872. FO 69/60.

<sup>21</sup> Ibid.

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and civil cases in the Siamese territories in which both parties were British subjects or in which the defendant was a British subject, had to be tried by the British Consul alone. Cases of this kind which occurred in the Chiengmai districts could not be tried by the local Siamese Courts. As the Consular Court at Bangkok was a great distance from Chiengmai, even more serious cases could not be disposed of there, but had to be referred to the Supreme Court at Singapore, the result was that civil cases, in which British subjects were concerned as parties or defendants, could not be settled except at grievous expense and delay; hence in many cases crimes committed by British subjects in the Siamese districts on the Salween simply went unpunished. In such cases, the British authorities needed Siamese cooperation "to arrest and deliver up British subjects charged with offences in the Siamese territory and to forward to British Courts the evidence and witnesses necessary for their trial."<sup>22</sup>

Late in the 1860's, Thomas George Knox, the British Consul-General at Bangkok, thought that the difficulties experienced by British subjects in the Siamese northern provinces bordering Burma would continue unless the British Government appointed some British officers to superintend matters there. 23 In the case of such appointment being made, the question arose whether it should be a Vice-Consul subordinate to the Consul at Bangkok and under the control of the Foreign Office, or an officer appointed by the Indian Government and subordinate to the Chief Commission of British Burma. At any rate, the Foreign Office did not bring up these questions in direct discussions with the India Office. In their opinion, there was not yet any urgent necessity of establishing another British agent at Chiengmai.

<sup>&</sup>lt;sup>22</sup>Aitchinson to Knox, June 4, 1872. FO 69/60.

<sup>23</sup>Knox to Earl of Clarendon, March 14, 1866. FO 69/42.

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Early in 1872 the question was brought up by the Indian Government again. They proposed not only to have an agent on Burmese territory but to accredit another to reside there on the part of the Viceroy in Siam. The Foreign Office opposed this idea of having two political agents of the British Government in the same country, giving these reasons:

Whatever action is to be had at Foreign Courts can be usefully conducted by one person alone; and the presence of two in an Eastern Court especially would be followed by constant endeavours on the part of the Eastern Government to play one off against the other and to appeal as it suited its convenience to Calcutta or London. Siam because it borders on British India, does not become exclusively an Indian State, and would probably not be pleased to do so. But Imperial interests are connected with Siam growing out of Imperial interests in Eastern Seas which would render it a matter of doubtful policy to detach Siam from direct intercourse with the Imperial Government.... There is no allegation that Indian interests have suffered by the existing state of things; it is only just discovered that there are many Indian interests that require looking after on the Siamese frontier. Whatever support those interests may require will be more effectually given by the representative of the British Crown at Bangkok than by a delegate of the Indian Government, 24

The India Office agreed with these reasonings; as a result, no political Indian agent was established at Bangkok. Nevertheless, the Indian Government appointed an officer invested with extensive powers to take charge of the British territory on the right bank of the Salween. A Court was also established at Yoonzaleen, a district bordering on Chiengmai, to which the accused and witnesses could be transferred. In the views of the Indian Government, "the most effective remedy" to remove the difficulties over the jurisdiction of British subjects would be for the Siamese government to consent to the exercise of coordinate authority by an Indian officer with the Consular Court at Bangkok over British subjects on the Siamese bank of the Salween. If this were done, they believed that the Indian officer could settle cases on the spot with great advantage to all the parties concerned.<sup>25</sup>

<sup>24</sup>FO to 10. Jan. 18, 1872. FO 69/55.

<sup>25</sup>Aitchinson to Knox, June 4, 1872. FO 69/60.

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After Knox had forwarded the proposals of the Indian Government to the Siamese government, they cooperated with the Indian requests; for instance, they agreed to station a police force on the Siamese bank of the Salween. Regarding the administration of justice, they agreed to grant to an Indian officer "full power, the same as a Consul" to investigate all cases arising in Chiengmai. Furthermore, they saw the necessity of appointing a Siamese high ranking official to reside in Chiengmai with power to investigate all cases arising between the subjects of the two countries, who would work together with the English officer to inquire into such cases to settle them as quickly as possible. If in any case they could not agree, "the correspondence and papers concerning the case shall be at once sent to Bangkok, where the British Consul-General and the Siamese Government will consult and decide the matter."26

In 1873 relations between the Siamese government and the British Consul-General at Bangkok were strained owing to the "Chiengmai claims." In previous years numerous claims arising out of business transactions in Northern Siam had been brought by British subjects against the Chief and other authorities of Chiengmai. Knox raised the matter in discussions with the Siamese government which showed a strong desire to assist in the adjustment of those long-standing claims by deputing a High Commissioner from Bangkok to inquire into and dispose of the cases at Chiengmai. Heavy cases that he could not dispose of there were to be brought to Bangkok, along with both defendants and plaintiffs. In Bangkok, a Court of Arbitration was established by an agreement between the Siamese government and the Consul-General, consisting of two Siamese and two British officials to investigate the claims brought by the British subjects. The claims were shortly brought to a conclusion with decrees given in favour of the

<sup>&</sup>lt;sup>26</sup>Chao Phya Bhanuwongse to Knox, Aug. 21, 1872. FO 69/60.

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British subjects, to the effect that the Chief of Chiengmai was responsible and was to pay the total amount of 490,246 rupees for the losses inflicted on British subjects.<sup>27</sup> Since the sums were large, the Chief begged to forward half the amount first, but he applied to the Siamese government to allow him a period of six months to pay the balance. This extension was granted and the Siamese government agreed to hold themselves responsible for the due payment of the balance if not paid by the Chief by the end of the six-month period. Knox declined this request, stating that if the payment was deferred, he would claim interest, and that unless that was agreed to, he would not allow any delay in payment.<sup>28</sup> Nevertheless the Siamese government refused to pay interest as Knox preferred. Upon this, Knox stated that if the claims were not met with within a time-limit,

I shall cease from all further correspondence on the subject, and after laying the matter before my Government, await the arrival of sufficient means with which to enforce the due payment of claims now withheld from British subjects by the frivolous excuses and needless delays of the Siamese Government.<sup>29</sup>

Being dissatisfied with Knox's extremely high-handed answer, the Siamese government declined to hold further communication with him on the subject. They even refused to enter into any further negotiations in respect to the suppression of dacoities in the northern provinces of Siam which prevailed during the early months of 1873, or regarding the regulations necessary for the proper working of the teak forests in Chiengmai. 30

<sup>27</sup>Chao Phya Bhanuwongse to Knox, Feb. 8, 1873. FO 69/60.

<sup>28</sup>Knox to Chao Phya Bhanuwongse, March 22, 1873. FO 69/60.

<sup>29</sup>Knox to Chao Bhanuwongse, May 6, 1873. FO 69/60.

<sup>30</sup>Knox to the Secretary to the Government of India, Foreign Department, May 17, 1873. FO 69/60.

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As a result, the Siamese government considered sending an envoy to the Indian Government to negotiate directly with them on the problems relating to British subjects in Northern Siam.

The Siamese preliminary step was the despatch of a Siamese official holding the correspondences of King Chulalongkorn and those from the Siamese foreign minister to the Chief Commissioner of British Burma, manifesting an earnest desire of the government to do all they could to procure adjustment of the Chiengmai claims. In reference to the provision of security on the frontier, the Siamese government showed its determination to organize proper arrangements to accomplish the object "to the best of our ability," 31 and to regulate the affairs of Chiengmai with an earnest desire "to give every facility to British trade." 32 At the same time they asked for the consent of the Indian Government to send the Siamese envoys to negotiate with them at Calcutta.

In forwarding these correspondences to the Indian Government, the Chief Commissioner of British Burma was of the opinion that the Siamese government had shown its utmost efforts to maintain its good relations with Britain. He did not agree with Knox's action to press for the "Chiengmai claims," stating that the British Government "are on the most friendly and cordial terms with the Government of Siam, and it is certainly not worthwhile to quarrel about the payment of the balance a few months earlier or later." He foresaw the advantageous results if the Siamese envoy were sent to Calcutta, recommending to the Indian Government that "if the Home Government have no objection to the course, it would no doubt lead to a solution of this long pending (frontier) question if the King

<sup>&</sup>lt;sup>31</sup>King Chulalongkorn to Chief Commissioner, British Burma, May 25, 1873. FO 69/60.

<sup>32</sup>Chao Phya Bhanuwongse to Chief Commissioner, May 12, 1873. FO 69/60.

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of Siam is allowed an opportunity of discussing the subject direct with the Government of India."33

In reply the Indian Government, in July 1873, authorized the Chief Commissioner to inform the Siamese Officials of their willingness to receive the embassy from Siam<sup>34</sup> in order to discuss and, if possible, to settle the pending questions relating to the better administration of the disturbed frontier of Siam and Burma.

Shortly after a Siamese embassy headed by Phya Charun Raja Maitri arrived in Calcutta on December 22, 1873, negotiations with the plenipotentiaries of the Indian Government<sup>35</sup> were begun. The Siamese draft treaty contained two major propositions: the establishment of a strong police post on the Chiengmai frontier, and the setting up of a regular court run by Siamese judges at Chiengmai. The Chief Commissioner of British Burma had strongly supported these proposals. The negotiations proceeded smoothly without any major disagreements and they were quickly brought to a successful conclusion. The Treaty with the Government of India was signed at Calcutta on January 14, 1874. <sup>36</sup> Its purpose, other than to promote commercial intercourse between Burma and the adjoining territories of Chiengmai, Lakon, and Lampoonchi (three northern provinces of Siam), was to prevent dacoity and other serious crimes within the said territories.

<sup>33</sup>Major H. T. Duncan, Officiating Secretary to the Chief Commissioner, to the Secretary to the Government of India, June 10, 1873. FO 69/60.

<sup>34</sup>Foreign Department, Government of India, to Duke of Aiggl1, no. 207, Nov. 21, 1873. FO 69/60.

<sup>35</sup>They were Charles U. Aitchinson, Thomas G. Baring, and Baron Northbrooke.

<sup>36</sup>BFSP, Vol. 66, pp. 537-42.

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For the repression of crimes and the prevention of dacoities, Article I stipulated that the King of Siam was bound to cause the Chief of Chiengmai to establish and maintain guard stations on the right bank of the Salween River and to maintain a sufficient force there. If any persons committed dacoity in the said territories and crossed into the British territories, the British authorities and police were to use their best endeavours to apprehend them. The arrested dacoits, if they were Siamese subjects, would be delivered to the Siamese authorities at Chiengmai; if British subjects, they would be dealt with by the British officer in the Yoonzaleen district (Article II). A corresponding arrangement was made in cases of dacoity in British territory if the dacoits fled into Siam. However, if any person were apprehended in the territory in which the dacoity had been committed, they were to be tried and punished by the local courts without question as to their nationality. This was the first time since 1855 that the British Government allowed the Siamese Court to try and punish British subjects in criminal cases, even though this authority was confined to the three northern provinces and only to dacoity. Passports were required for Siamese going into British territory and for British subjects entering Siam from British Burma; passports had to be renewed for each journey and to be shown to the Siamese officers at the frontier stations or in the interior of the said provinces on demand. Native Indian British subjects entering the three provinces without passports might be turned back to the frontier, but should not be subjected to further interference. If they committed offences on Siamese territory, they were liable to the local courts and the local law for such offences, but if provided with passports, they were to be dealt with according to English law by the Consul at Bangkok, or by the British officer in the Yoonzaleen district in Burma, who was authorized, subject to the conditions

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of the treaty, to exercise all or any of the powers of a British Consul under the treaty of 1855 and the Supplementary Agreement of 1856. The stipulation enforced on British subjects to provide themselves with passports rendered it convenient for the Siamese authorities to distinguish between British subjects and the persons who merely claimed to be British subjects so as to obtain the advantages of British consular jurisdiction.

The Indo-Siamese Treaty of 1874 arranged elaborately for the settlement of civil disputes. Article V stipulated that the King of Siam should appoint proper persons to be judges in Chiengmai, with jurisdiction: 1) to investigate and decide claims of British subjects against Siamese subjects in the three northern provinces; and 2) to investigate and determine claims of Siamese subjects against British subjects who had passports to enter into the Siamese territories from Burma. But this would be done only in case such British subjects consented to the jurisdiction of the Court; if not, the claims of the Siamese subjects should be investigated and decided either by the British Consul at Bangkok, or by the British Officer of the Yoonzaleen district in Burma. For the proper administration of justice, the Siamese and the British authorities would at all times use their best endeavours to procure and furnish to the Courts in the Yoonzaleen district, the Consular Court at Bangkok, and the Siamese Court at Chiengmai, "such evidence and witnesses as may be required for the determination of civil and criminal cases pending in these Courts" (Article VIII). Furthermore, it was allowed that Siamese subjects in civil disputes could apply to the Deputy Commissioner of the district to arbitrate between them. At the same time, British subjects in the three provinces could apply for arbitration to any of the Judges at Chiengmai.

The consent of the British Government to allow Siamese Judges to investigate and decide civil disputes between Siamese and British subjects

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was counted as a novel procedure and a departure from the strict exercise of exclusive consular jurisdiction provided by the Treaty of 1855 and the Parkes' Agreement of 1856. Actually the Court to decide such civil disputes was not the ordinary Siamese Courts but was the Court of specially appointed Siamese judges at Chiengmai. This Court was the first foundation of the "international courts" which figured so largely in the later British treaties of 1883 and 1909.

To avoid any future dispute and difficulties regarding timber transactions in the Siamese territories, Article X provided that British subjects "with passports" who desired to purchase, cut, or girdle timber in the forest of Chiengmai, Lakon, or Lampoonchi had to enter into a written agreement for a definite period with the owner of the forest. "
"Such agreement must be executed in duplicate, each party retaining a copy, and each copy must be sealed by one of the Siamese Judges at Chiengmai... and by the Prince of Chiengmai. A copy of every such agreement shall be furnished by the Judge at Chiengmai to the British Officer in the Yoonzaleen district." Article XI stipulated that the Judges and the Prince of Chiengmai should prevent owners of forests from executing agreements with more than one party for the same timber or forest, and to prevent any person from improperly marking or effacing the marks on timber which were lawfully cut or marked by another person.

Britain and Siam agreed that the Indo-Siamese Treaty of 1874 should have a duration of seven years from the date it came into force, but was subject to revision on 12 months' notice by either party, "by Commissioners appointed on both sides for this purpose, who shall be empowered to decide on and adopt such amendments as experience shall prove to be desirable." The Treaty came into force on January 1, 1875.

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This Treaty marked the beginning of some relaxation of British extraterritorial jurisdiction in Siam; it set up a modified system of extradition for certain offences as well as for the submission, in certain cases, of British subjects to the jurisdiction of Siamese courts. Moreover, British subjects who were making claims against Siamese subjects were to have their cases tried by specially appointed judges, they were not to claim against the Siamese defendant in the ordinary Siamese courts. The new system "was an experiment, affording an opportunity of seeing what prospects there were of the institution of Siamese courts under the jurisdiction of which British subjects could be placed." 37

<sup>37</sup>Thornely, op. cit., p. 120.

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## Anglo-Siamese Treaty of 1883

When Consul Knox, in 1866, recommended the appointment of a political agent to superintend British interests in the Siamese northern provinces bordering Burma. the Foreign Office paid no attention. In 1875 Knox proposed again to establish a British Vice-Consul at Chiengmai to exercise consular functions over British Indian subjects and to look after their interests in the frontier provinces of Northern Siam. 38 The Foreign Office now concurred and put his proposals to the India Office for consideration. However, the Government of India saw no reason to comply since they had already appointed the Assistant Commissioner of the Salween District to reside at Paphoon, situated about 198 miles from Chiengmai, with duties and functions similar to those of a Consular officer. 39 In addition to his duties as an officer of British Burma, he was assigned to exercise a general supervision over the working of the Indo-Siamese Treaty of 1874. with special regard to the interests of British traders and the security of British subjects and their property on the frontier. The Assistant Commissioner at Paphoon was invested with all the powers of a Political Agent in the territories of Chiengmai, Lakon, and Lampoonchi, to investigate and decide all civil cases in which British subjects were plaintiffs or in which British subjects holding passports were defendants.

Consequently the Indian Government suggested that the arrangements concluded with Siam in 1874 should be allowed to have longer trial to enable them to form a judgment as to their ultimate working. Still, they did not concur with the Foreign Office that the difficulties would be

<sup>&</sup>lt;sup>38</sup>Foreign Office, Memorandum respecting the appointment of a British Vice-Consul at Chiengmai, in Siam. March 27, 1878. FO 69/94.

<sup>39</sup>Foreign Department, Government of India, to the Marquis of Salisbury, Feb. 11, 1876. FO 69/65A.

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removed by the location of a Consular officer from the Bangkok Consulate at Chiengmai. explaining that:

The natural relations of Zimmay (Chiengmai) are in our opinion connected more closely with British Burma than with Bangkok, and the interests of the Burmese British subjects, who form the bulk of the traders, would be more conveniently provided for by an officer under the Government of India residing at Paphoon than by an officer deputed for that purpose from Her Majesty's Consulate in Siam. 40

Therefore, they suggested that it would be more practical for them to place at Chiengmai "a trustworthy and efficient Native Agent who could accommodate himself to Siamese customs" in subordination to the British officer at Paphoon, in case they decided to station an officer there. 41

Scarcely two years after the Treaty of 1874 came into force, the Chief Commissioner of British Burma called the attention of the Indian Government to the subject of dacoities, indicting the Siamese government either for their inability to enforce many provisions of the Treaty for the repression of crime, or for their indifference to the engagements therein concluded. Not only were the Siamese guards unable to safeguard the British traders from robbery, but in many cases they refused assistance in following up the dacoits and endeavouring to recover the plundered property. The criminal administration of the Siamese authorities was equally ineffective, for "it affords protection to neither life nor property" of British subjects. Under the existing circumstances, the Chief Commissioner of British Burma thought it expedient to appoint a resident Consular Agent at Chiengmai to represent British interests and to provide for the protection of British subjects carrying on trade with the Siamese northern frontier provinces. 42

<sup>40</sup>Ibid.

<sup>41</sup> Ibid.

<sup>42</sup>E. J. Sinkinson, Junior Secretary to the Chief Commissioner, British Burma, to the Secretary to the Government of India, Foreign Department, Aug. 9, 1876. FO 69/65A.

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The Indian Government in the interests of trade as well as for the safety of the British traders, made little resistance to such a measure. Upon reconsideration of the whole question, they came to the conclusion that the appointment of a resident Vice-Consul at Chiengmai under the Consul-General at Bangkok would give better results than would the deputation of a Native Agent to that place in subordination to the officers in British Burma. They were even ready to pay a salary of 5,000 rupees per annum to the appointed Vice-Consul; in addition, his other expenses as well as the requisite establishment were to be borne by them. At the India Office, Lord Derby was ready to assent to the appointment of an officer under the orders of the Consul-General at Bangkok, on the understanding that the Vice-Consul was to be selected by the Indian Government. Moreover, he would be free to communicate with the Chief Commissioner of British Burma and with the officers of the Indian Government on the frontier. 43

After the preliminary questions had been settled between the Foreign and the India Offices, Knox brought the question of the appointment of a resident British Vice-Consul at Chiengmai into discussions with the Siamese government by holding that it was a means by which the two governments could give mutual assistance in the "oversight and protection" of their subjects. 44 The Siamese government refused to agree to that proposal, on the grounds that the establishment of the Vice-Consul would be a breach of the Treaty of 1874, Article XIV of which provided that only after a period of seven years from the day that it came into force would the Treaty be subject to revision and amendments. 45 The appointment of a

<sup>&</sup>lt;sup>43</sup>IO to FO, Aug. 3, 1877. FO 69/94.

<sup>44</sup>Knox to Chao Phya Bhanuwongse, Nov. 27, 1877. FO 69/94.

<sup>45</sup>Chao Phya Bhanuwongse to Knox, Jan. 2, 1878. FO 69/94.

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Vice-Consul was not a matter included in the Treaty, and it would be an unhelpful precedent to every country having treaty relations with Siam. Knox held that the British Government had the right to do so, since the privilege of appointing consuls, vice-consuls, and consular agents in Siam was already enjoyed by Germany and other countries having treaty relations with Siam. 46 By virtue of Article X of the Bowring Treaty, which provided for the most-favoured-nation treatment for British subjects, Britain might claim equal privileges to appoint the British Vice-Consulate at Chiengmai. 47 Finally, the Siamese government had to yield to the wishes of the British government in that respect.

Even though the Siamese consent had been given, the Foreign Office, in conjunction with the India Office, decided to hold the matter of the appointment of a Vice-Consul at Chiengmai in abeyence because there were still many outstanding claims and civil suits, in which British subjects were concerned, to be disposed of; in addition, it was necessary to

<sup>46</sup>Article II of the Treaty signed at Bangkok between Prussia and Siam on February 7, 1862 contained the following clauses:

<sup>&</sup>quot;The high contracting Powers recognise reciprocally their right to appoint Consuls General, Consuls, Vice-Consuls, and Consular Agents in the ports and towns of their respective states and these officers are to enjoy the same privileges, immunities, powers and exemptions as are or may be accorded to those of the most favoured nation.

The contracting German states will appoint one Consular officer only for each port or town, but for those places where they appoint a Consul General or a Consul, they shall have the right of nominating a Vice-Consul or Consular Agent or Consul in case of his being absent or unable to attend. Vice-Consuls or Consular Agents may also be appointed by the Consul General or Consuls their Chiefs." BFSP, Vol. 53, p. 741. Similar clauses were found in the treaties with Denmark, Netherlands, Sweden and Norway, Belgium, Austria-Hungary, and Spain.

<sup>47</sup>Knox to Chao Phya Bhanuwongse, Jan. 7, 1878; and Foreign Office to Knox, April 20, 1878. FO 69/94.

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Street, 10 69/7 consider the principal question concerning the nature and extent of power to be invested in the Vice-Consul. 48

Meanwhile, the Government of India deputed Major C. W. Street to proceed on a mission to Siam to enquire as to the best means of providing for the safety of British commerce, and to devise some arrangements, in communication with the Consul-General and the Siamese ministers, for better orders and reasonable security to life and property of British subjects coming to trade in the Siamese northern frontier provinces.

Moreover, he was authorized to exert his influence on the Siamese government to bring the pending suits, in which British subjects were plaintiffs at Chiengmai, to a decision. The Indian Government also instructed him to make a report on the form in which the Agency to be established at Chiengmai could best be instituted. Both the Foreign Office and the India Office agreed that they would reconsider the question of the appointment of a Vice-Consul at Chiengmai after Major Street's reports were received.

Upon his arrival in Bangkok in January 1879, Major Street called on the Siamese foreign minister, Chao Phya Bhanuwongse, to give him a general idea on the subject of the special Indian interests. He urged the Siamese government to send up with him to Chiengmai a High Commissioner with full power to adjudicate all pending cases. In view of the maintenance of good order in the disturbed areas, he requested the Siamese government to place an efficient man at the head of the police force in Chiengmai, stating that the Indian Government were willing to lend a police officer

<sup>&</sup>lt;sup>48</sup>IO to FO, Oct. 4, 1878; and FO draft to Knox, Oct. 15, 1878. FO 69/94.

<sup>&</sup>lt;sup>49</sup>A.C. Lyall, Secretary to the Government of India, to Major C.W. Street, Secretary to the Chief Commissioner, British Burma, Dec. 2, 1878. FO 69/72.

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at their own expense to the Siamese government to organize the police force and introduce the system of patrolling. 50

The Siamese government were ready to carry out as much as possible all of the British requests. They were to order a Siamese judge to consult with Major Street and work with him to settle all the pending cases. The proposal to place a British officer at the disposal of the Siamese government for the purpose of organizing the police on the frontier did not appear to be very acceptable, unless such officer would carry out the orders of the Chief of Chiengmai and of the Siamese Commissioner in all matters in accordance with proper police regulations. <sup>51</sup> With the appointment of a Vice-Consul or other British officer at Chiengmai, Major Street argued, there would not be any necessity for the Chief to give the British police officer any orders so long as he was to carry out such orders issued with the consent and sanction of the Vice-Consul. Finally, the Siamese government agreed to accept the services of the British officer at their own expense for a period of two years beginning on January 1, 1880.

Regarding the question of the appointment of a British Vice-Consul at Chiengmai, Major Street thought it inadvisable to reopen the discussion with the Siamese government since the matter had already been settled in August 1878. At any rate, Street discussed the matter with Knox, who thought that the Vice-Consul at Chiengmai should be appointed from among the officers of the Consulate at Bangkok because of their knowledge of the Siamese language and customs; as a result, he would be likely to exert more influence on the Siamese authorities than would an officer serving under the Indian Government. Furthermore, the Vice-Consul should be

<sup>50</sup> Major Street to Chao Phya Bhanuwongse, Jan. 25, 1879. FO 69/70.

<sup>51</sup>Bhanuwongse to Major Street, Jan. 29, 1879. FO 69/70.

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subordinate to him (Knox) in all political and administrative matters, except judicial powers, which should be subordinate to the authorities in British Burma, 52 for Chiengmai was nearer to Burma than to Bangkok.

After having accomplished his objectives of the mission, Major Street made several observations in his report to the Indian Government about the working of the Treaty of 1874, among them, that there was no special provision in regard to appeals from the Court established under Article V of the Treaty. The question arose whether the suitors could appeal to any court if they were dissatisfied with the decision of the Siamese Judge, and if so, to what court it should be made. Street recommended that the cases of appeal should be made to the same ordinary Siamese Courts. Nevertheless, the trouble and expense of appeal deterred many from adopting this procedure. The other solution would be Siamese consent to establishing a special Court of Chiengmai, as a temporary measure, to hear appeals from the decision of the Judge. This procedure would be of use, in Major Street's opinion, only if an English officer were stationed at Chiengmai, who would see that the Court enquired properly into such cases.

In addition, he commented that the Siamese government had not acted up to their engagements as regards Article V of the Treaty. The Court established to try cases in which British subjects were concerned should have consisted of several judges, yet only one had been appointed. At any rate, delays were caused owing in great measure to the inexperience of the Judge. The Burmese and Indian suitors took this advantage to induce him to adopt sometimes the procedure of the Indian Courts, and other times that of the Siamese Courts. The Judge on several occasions had to

<sup>52</sup>Major Street to A. C. Lyall, April 3, 1879. FO 69/75.

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ask the opinions of the Commissioner of Tenasserim or the Assistant Commissioner of Paphoon. 53 Major Street thought that the mere presence of a British officer would restrain not only the illegalities and irregularities of the Siamese officials in the disposal of suits in which British subjects were concerned, but also would check the extravagant claims of their own subjects. 54 Other than this, it would give the Siamese judge more confidence to adjudicate any case; if he had any problem, he could easily ask such officer for advice. He strongly recommended that the Government of India station a British officer, especially a Vice-Consul at Chiengmai, if they looked for a permanent improvement in the Chiengmai affairs. Regarding the status of the Vice-Consul, he concurred with Knox's proposed arrangements that a Vice-Consul be subordinate to the Consul-General at Bangkok in all political and administrative matters, but subordinate judicially to the Indian Government. He suggested that the Consul-General should no longer have any jurisdiction in the provinces of Chiengmai. Lakon, and Lampoonchi, but the Vice-Consul would have to be empowered to try claims of Siamese against British subjects, holding passports, who did not consent to the jurisdiction of the Chiengmai judge under Article V of the Treaty of 1874; in addition, the Vice-Consul had to be empowered to try all British subjects, holding passports, for any criminal offences committed in Siamese territory, except dacoity. 55

Once Major Street's reports had been received, the Government of India began serious consideration of the nature and extent of power to be invested in the Vice-Consul at Chiengmai. The Chief Commissioner of British Burma suggested that the Vice-Consul be empowered to exercise judicial

<sup>&</sup>lt;sup>53</sup>Major Street to A. C. Lyall, May 22, 1879. FO 59/75.

<sup>54&</sup>lt;u>Ibid.</u>, and Government of India to Viscount Cranbrooke, Jan. 28, 1880. FO 69/94.

<sup>55</sup>Major Street to A.C. Lyall, May 22, 1879. FO 69/75.

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57, Poreign O functions. On the other hand, the Indian government preferred that the local court of Chiengmai be allowed to deal with all cases, both civil and criminal, while the Vice-Consul reserved the right to intervene in any case in which British interests might be injuriously affected. 56 This was the system prevailing with regard to British subjects in native states of India, under which the British Government left to the local courts jurisdiction over its native Indian subjects, relying upon its political power to interfere whenever necessary for the interests of justice. Concerning Siam, the Indian Government explained that in the event of refusal of redress by the local authorities, the matter then could be brought to the notice of the Consul-General at Bangkok to take further action for establishing British rights by direct reference to the Siamese government. For the purposes of good order and the convenient disposal of cases in the Siamese northern provinces, the Indian Government went so far as to suggest that the right which British subjects possessed under the Treaty to be exempted from local jurisdiction be withdrawn. The cases in which British subjects refused to go to the local jurisdiction were likely to be "precisely those cases in which the ends of justice will be defeated by the objection." It therefore appeared to the Indian Government that the British representative at Chiengmai should have the right to decide, both in civil and criminal matters, whether any case should be tried by the local authorities or not, and they believed that if this power were given to that officer, he would possess "all the authority necessary to enable him to make his influence felt."57

<sup>&</sup>lt;sup>56</sup>A.C. Lyall to the Chief Commissioner of British Burma, July 14, 1879. FO 69/95.

<sup>57</sup>Government of India to India Office, Jan. 28, 1880, submitted to Foreign Office, March 28, 1880. FO 69/94.

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The practice of leaving British subjects under the ordinary Courts of any foreign country would depend greatly for its efficiency on the capacity of the British Government to exert adequate political influence in a foreign state. In order to carry out the proposal of the Indian Government, numerous alterations in existing arrangements were necessary. All jurisdiction in judicial matters in Chiengmai would have to be withdrawn from the Consul at Bangkok, and several of the provisions of the Treaty of 1874 would have to be amended.

While agreeing with the Indian Government regarding the jurisdiction of the Chiengmai court over British subjects, the India Office nevertheless found that the provisions of the Treaty of 1874 were, in some points, inconsistent with those of the Treaty of 1855. Thus they thought it expedient to revise the Indo-Siamese Treaty in order to obviate difficulties in practice. They recommended the Foreign Office to enter into negotiations with the Siamese government for a new treaty which should embody such provisions of the existing Treaties of 1855 and 1874 as they might desire to retain, together with such further provisions for the administration of justice in the Siamese frontier provinces as experience had shown to be necessary. 58 The Foreign Office concurred and decided that the Treaty of 1874 was to be replaced by a new one, whose draft clauses were to be prepared by the Indian Government in cooperation with the India Office. In this case of the new treaty, the Foreign Office decided that it was to be concluded by the Imperial Government, not by the Indian Government as in the previous occasions. 59 However, the Indian

<sup>&</sup>lt;sup>58</sup>IO to FO, March 24, 1880. FO 69/94.

<sup>&</sup>lt;sup>59</sup>Memorandum by Sir Julian Pauncefote, Under-Secretary of State, Foreign Office, Jan. 26, 1881. FO 69/94.

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Government would be consulted on every point, and the new treaty would be concluded either in London or at Bangkok.

By March 1881, the Indian Government had despatched their draft articles for the new treaty, prepared after receiving the articles that were submitted by the Chief Commissioner of British Burma and by Gifford Palgrave, the new Consul-General at Bangkok, for the consideration of Lord Hartington at the India Office. Generally the views of the Indian Government were agreed to, but certain modifications were called for in the articles which dealt with the jurisdiction of the British Vice-Consul at Chiengmai. Lord Hartington wanted such articles to be drawn so as to leave exclusively to the British agent the initiative to remove cases from the jurisdiction of the local Courts to that of the Courts at Bangkok. On the other hand, the British agent would have full power to intervene, if he thought that such a course was advisable, for the protection of British subjects and their interests. The object in view was to promote the settlement of disputes between British and Siamese subjects on the spot.60

When the India Office presented the draft treaty to the Foreign Office early in 1882, it was amended in some particulars. The revised draft treaty was thereupon transmitted to the Law Officers of the Crown, to determine whether any of its provisions were open to objection. In the Treaty of 1874 only native Indian subjects going to the frontier provinces of northern Siam were to be under British jurisdiction. In consequence of the future establishment of a British Consulate at Chiengmai, European British subjects were to be attracted there. The Foreign Office draft treaty therefore made no distinction between the two classes of

<sup>60&</sup>lt;sub>10</sub> to FO, June 8, 1881. FO 69/94.

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6 April 5, British subjects, and all were made amenable alike to Siamese jurisdictional Nevertheless, if there were not any constitutional objection to the distinction of British subjects, the Foreign Office would prefer to have only the Indian natives subject to the Siamese jurisdiction. Such an idea was nullified when the Law Officers reported that there had been no precedent for making any distinction between different classes of British subjects in treaties with foreign countries and there were "grave constitutional objections to such a course." 162

After having carefully modified, in some particulars, the provisions of the draft treaty to avoid any loop-holes, as the Law Officers had recommended, the Foreign Office sent its revised draft treaty to the India Office for consideration. Lord Granville considered the new phase of British extraterritorial jurisdiction in Siam--to abandon all British subjects, resorting to the northern provinces of Siam, to the civil and criminal jurisdiction of the local Siamese courts -- as a "most hazardous experiment." He therefore thought that the treaty should be of a tentative character and contain provisions affording the best guarantees that could be devised against the risks. The form of guarantee introduced by the Foreign Office was a compromise between the suggestions by the Chief Commissioner of British Burma and by the Indian Government: the British Consular officer at Chiengmai, who was to be invested with full civil and criminal jurisdiction over British subjects, would be entitled to attend the hearing of any case tried before the Siamese court. He would also have power to transfer any such case to his own court whenever he deemed it necessary to do so.63

 $<sup>^{61}\</sup>mathrm{Sir}$  Julian Pauncefote to the Law Officers of the Crown and Dr. Deane, March 27, 1882. FO 69/95.

 $<sup>^{62}</sup>$ The Law Officers of the Crown and Dr. Deane to Earl Granville, April 5, 1882. FO 69/95.

<sup>63&</sup>lt;sub>FO</sub> to IO, May 16, 1882. FO 69/95.

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Meanwhile, the Indian Government and the India Office had intimated their acceptance of the draft treaty. Without delay the Foreign Office sent instructions to Palgrave to proceed with negotiations with the Siamese government. 64 At the first meeting for the negotiations of the new treaty with the Siamese plenipotentiaries on November 7, 1882, several objections were raised, among which were the right of interference of the Vice-Consul and his right to transfer cases, in which British subjects were suitors, to the British Consular Court; the Siamese desired to limit the Vice-Consul's cognizance of civil or criminal cases to those between British subjects or where a British subject was defendant only. However. these objections were either withdrawn or accomodated during subsequent negotiations. The Siamese plenipotentiaries conducted the negotiations with a "conciliatory spirit." and eventually the Siamese government agreed in substance to the draft treaty. They requested some modifications which in most cases were "very slight," and, in Palgrave's view, were "mere formal and almost tautological expressions."65 The negotiations were shortly concluded, but Palgrave delayed signing the new treaty while awaiting further instructions from the Foreign Office. By January 1883, the Foreign Office instructed him to defer any signature as the amended draft treaty was still under consideration. However, Palgrave signed the treaty on January 10, 1883, explaining that he had not received telegraphic instructions in time. 66 The Foreign Office thereupon decided to disavow the treaty signed by Palgrave, and gave William Newman, acting

<sup>64</sup>FO to Palgrave, Sept. 8, 1882. FO 69/95.

<sup>65</sup>W. G. Palgrave to C. Grant, Secretary to the Government of India, Foreign Department, Nov. 15, 1882. FO 69/95.

<sup>66</sup>Foreign Office Memorandum. New Treaty with Siam, Jan. 16, 1883. FO 69/95.

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in the motion Signe 1884) Agent and Consul-General, full powers to conduct new negotiations while recalling Palgrave. <sup>67</sup> Newman presented a new draft treaty to the Siamese government on March 20, 1883, in which the Foreign Office inserted some modifications "with the view to prevent future misconception and complication," and it included the alterations suggested by the Siamese government "in all essential particulars." <sup>68</sup>

Both sides were able to reach an agreement in the meantime, but the treaty was not signed until September 3, 1883.<sup>69</sup> The delay was caused by the desire of the Siamese government to await communications from the Indian government regarding the list of extraditable "heinous crimes" which would be annexed to the new treaty, known as the "Chiengmai Treaty."

<sup>67</sup> It should be noted that on January 1, 1883, Palgrave telegraphed to Sanderson to request Lord Granville not to delay permission to sign the new Treaty as the Siamese were ready and he was unable from illness to remain in Bangkok much longer. The Foreign Office sent a telegram on January 3, instructing him to defer the signature of the treaty until further instructions would be sent to him. At the same time he was told that "Full powers have been sent to Newman in case you should go on leave."

Granville thought that Palgrave's statement—that he did not receive the telegram of January 3 until after he had signed—was not likely to be true; although there was no telegraph from Bangkok to Singapore, the transmission of a message between those places would take from 4 to 7 days. In his note, Granville stated that "he (Palgrave) must have known that he was not authorized to sign as he has repeatedly telegraphed for permission to do so.... The fact is he was in a great hurry to get away and was determined to sign the Convention." He further criticized Palgrave that "He is a most unscrupulous and unsafe agent and it would be a great benefit to the public if his conduct deserves dismissal."

At the Foreign Office, Sir Julian Pauncefote agreed with Lord Granville's views, stating that; "I entirely concur it is a case of gross misconduct and considering the numerous complaints against him the sooner his connection with the Foreign Office ceases the better."

By the middle of January, Palgrave was instructed that: "Inform Siamese Government that you signed Convention without authority and then come here at once to explain your conduct."

Minutes on Foreign Memorandum. Jan. 16, 1883. FO 69/95.

<sup>68</sup> Newman to Chao Phya Bhanuwongse, March 20, 1883. FO 69/95.

<sup>&</sup>lt;sup>69</sup>Treaty between Great Britain and Siam, for the prevention of crime in the territories of Chiengmai, Lakon, and Lampoonchi, and for the promotion of commerce between British Burma and the territories aforesaid. Signed at Bangkok, September 3, 1883. (Ratification exchanged May 7, 1884). <u>BFSP</u>, Vol. 74, pp. 78-83.

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By the Treaty of 1883, the Indo-Siamese Treaty of 1874 was abrogated, yet many articles of the former treaty were adapted from the provisions of the latter for more efficiency. Among them were those on the requirement of passports for the subjects of both countries travelling between Burma and the three Siamese northern provinces of Chiengmai, Lakon, and Lampoonchi (Article III); on the undertaking by the Chief of Chiengmai to establish guard stations on the Siamese bank of the Salween River, and the maintenance of sufficient force for the prevention of murder, robbery, dacoity, and other violent crimes (Article V). The provisions on extradition were elaborated and were extended to include offences other than dacoity (Article VI).

The chief innovation in the Treaty of 1883 was the consular establishment at Chiengmai. Article VII of this treaty provided that the interests of all British subjects coming to Chiengmai, Lakon, and Lampoonchi, should be placed under the regulations and control of a British Consul or Vice-Consul who was to be appointed to reside at Chiengmai. This Consul or Vice-Consul was to have the power to exercise civil and criminal jurisdiction in accordance with Article III of the Parkes Agreement of 1856 (which gave the Consul sole authority to try cases in which British subjects were defendants or accused, and the Siamese authorities sole trial of cases in which Siamese subjects were defendants or accused; but the Consul and the Siamese authorities had the right to be present at each other's sittings), subject to Article VIII of the new Treaty, which was the core of the Chiengmai Treaty.

Article VIII stipulated that the King of Siam would appoint proper person(s) to be Commissioner(s) and Judge(s), who would be empowered to exercise civil and criminal jurisdiction in all cases arising in the three provinces mentioned above, between British subjects exclusively, or in

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which they were parties as plaintiffs or defendants, according to Siamese law. This was subject to the conditions: that the Consul or Vice-Consul was to be entitled to be present at the trial of such cases, and to be furnished with copies of the proceedings; that he could make any suggestions to the Siamese Judge(s) if he thought it proper for the interests of justice; that he was empowered, at any time before judgment, to direct to the Siamese Judge(s) by a written requisition "to signify his desire that any case in which both parties are British subjects, or in which the accused or defendant is a British subject, be transferred for adjudication to the British Consular Court at Chiengmai,...and be disposed of by the Consul or Vice Consul" as provided by Article II of the Parkes' Agreement.

From this article it has to be observed that, although the Consul or Vice-Consul at Chiengmai was invested with judicial powers, he could exercise such powers only after he had extracted the case from the Chiengmai Court. In other words, all cases involving British subjects had to go first to the Siamese Court of Chiengmai, but could be removed by the British Consul or Vice-Consul under the conditions prescribed in Article VIII. This new system of jurisdiction placing all British subjects resorting to the said provinces under the jurisdiction of a special Siamese Court, at the sittings of which the British Agent could be present, was in the later treaties with Britain as well as with other powers known as the "International Court" system. 70

<sup>&</sup>lt;sup>70</sup>The so called "Siamese International Court" was not in fact international at all. "It was only a new name for the Siamese tribunal created under the British treaty of 1883, a court created by and entirely within the control of the Siamese Government, presided over by a judge chosen and paid solely by the Siamese Government." It was international only in the sense that its jurisdiction was confined to cases in which British subjects were parties and by virtue of treaty provisions the British Consul or Vice-Consul had the right to be present at its sessions and to evoke certain of its cases.

Francis B. Sayre, "The Passing of Extraterritoriality in Siam, The American Journal of International Law, (AJIL), Vol. 22, 1928, pp. 76-77.

The "International Court" at Chiengmai became the model for a transitional

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Article IX of the Treaty dealt with the appeals from the Chiengmai Court and defined the nature of cases in which appeal could be made. In criminal and civil cases in which British subjects were involved, either party could appeal to Bangkok after having obtained the sanction of the British Consul or Vice-Consul; in other cases, by leave of the presiding Judge(s). In all such cases a transcript of the evidence, together with a report from the presiding Judge(s), would be forwarded to Bangkok where the appeal was to be disposed of by the Siamese authorities in consultation with the British Consul-General, with the proviso that in all cases where the defendants were Siamese the final decision on appeal would rest with the Siamese authorities, and with the British Consul-General in the cases of British subjects. The appeal had to be entered in the Chiengmai Court within a month of the original verdict, and be presented at Bangkok within a reasonable time.

It must be observed that these appeals were appeals from the judgments of the Chiengmai "International Court," which was in fact a Siamese Court, not from the judgments of the Consul or Vice-Consul on transferred cases. Such consular judgments would of course be judgments of a British Court and the appeal therefrom would have to go to a British Appeal Court as provided by the British Orders in Council. 71

type of court which played an important part in similar arrangements subsequently made with other Treaty Powers. Three other treaties with somewhat similar provisions to the Anglo-Siamese Treaty of 1883, also applicable to the northern provinces alone, were adopted in: a Franco-Siamese treaty of February 13, 1904; a Danish-Siamese treaty of March 24, 1905; an Italian-Siamese treaty of April 8, 1905. Arnold J. Toynbee, ed., "The Far East and the Pacific," section on 'The Liquidation of Foreign Extra-Territorial Privileges in Siam, Survey of International Affairs, 1929, p. 408.

<sup>71</sup>Thornely, op. cit., p. 127.

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The Treaty of 1883 was not a replacement of the Bowring Treaty and the Supplementary Agreement of 1856, but a supplement to their provisions (Article XIII). Unlike those treaties which had no time limit, this treaty was made for a fixed period of seven years after it came into effect (the exchange of its ratifications was made on May 7, 1884), and in the event of notice to terminate it not being given before its expiration after seven years, it was to remain in force subject to a year's notice of the desire of either side to terminate it.

To give effect on the British side to the stipulations of the Chiengmai Treaty, an Order in Council was promulgated by the British Government on June 26, 1884.<sup>72</sup> By this Order it was provided that there should be in Siam "district courts" presided over by a Consul or Vice-Consul, who would be empowered with all the powers and jurisdiction exercised by the Consul-General at Bangkok (Article IV). It was also provided that an appeal from judgment of a district court should be addressed to the Consul-General at Bangkok, with the right however of further appeal to the Supreme Court of the Straits Settlements. Furthermore, a new procedure was introduced, whereby a judge of the Supreme Court of the Straits Settlements might, with the consent of the Siamese government, come to Siam and exercise not only the judicial powers vested in the Consul-General, but also those invested in the Supreme Court of the Straits Settlements (Article XIV).

The arrangements under Article VIII of the Chiengmai Treaty were truly a novel experiment, which had not been tried elsewhere except in Egypt where, however, the British Government provided for certain safeguards by appointing a majority of the British judges in the tribunal; furthermore,

<sup>72</sup>BFSP, Vol. 75, pp. 661-666.

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the Egyptian law codes were framed upon Western models. Unlike in certain of the northern provinces of Siam, where the British Government conceded her consular jurisdiction, both in criminal and in civil cases, to the Siamese Court, the British Consul still continued to exercise criminal jurisdiction over British subjects in Egypt. Also up to the time of the Treaty of 1883, neither China nor Japan had yet obtained any share of jurisdiction over subjects of the treaty powers. 73

The Chiengmai Treaty did not function smoothly in the first few years of its operation owing to the new procedures with which the Siamese Judges had to cope. As time went by, the new system worked reasonably well. When the Treaty was due to expire in 1891 no notice of its termination was given either on the part of Siam or Great Britain. The Treaty, therefore, continued to remain in force "without the necessity of any formal renewal."74 That the Chiengmai International Court system functioned to the satisfaction of both sides was evidenced from the extension of its jurisdiction beyond the areas hitherto in its power. Between 1883 and 1896 the system was extended on three occasions to include provinces not mentioned in the Treaty of 1883. The first extension to the provinces of Nan and Phrae, in December 1884 and January 1885 respectively, was made by means of diplomatic exchanges of notes between the British Consulgeneral and the Siamese Minister of Foreign Affairs, 75 to the effect that the said territories should come under the operation of the Chiengmai Treaty. The later additions of Thon in 1895, Raheng (Tak), Sawankaloke,

<sup>73</sup>Satow to Foreign Office, no. 32, April 15, 1886. FO 69/109.

 $<sup>^{74}{\</sup>tt FO}$  draft to Captain Jones, British Minister Resident, Sept. 11, 1890. FO 69/139.

<sup>&</sup>lt;sup>75</sup>De Bunsen to Salisbury, Nov. 2, 1869. FO 69/169. For text of notes between E. M. Sattow, British Minister Resident (of Dec. 13, 1884) and Chao Phya Bhanuwongse (of Jan. 10, 1885), <u>BRSP</u>, Vol. 88, pp. 34-5.

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Sukothai, Utaradit, and Pichai in 1896, 76 were likewise made with the purpose of facilitating the administration of justice to British subjects in those regions. On the whole, the system worked with remarkable success. In a report to the Foreign Office in 1902 William J. Archer, a Judge of the British Consular Court at Bangkok, stated that: "A test of its satisfactory working could be seen in the number of cases that the Consul found necessary to transfer to his own Consular Court," in fact, "there have not been half a dozen cases so removed during the eighteen years that the system has been at work." 77

## The Registration of British Subjects in Siam

By the terms of the Bowring Treaty of 1855 and the Supplementary agreement of 1856, the Siamese government had no rights of jurisdiction over British subjects living in Siam. Not only did the Treaty introduce the consular system, but it established extraterritorial jurisdiction, that is, it gave into the hands of the British consul judicial authority over the subjects of his nation. So long as there were not too many European as a static British subjects in the country, the system of extraterritorial purisdiction functioned without much problem. The exemption from Siamese aws and jurisdiction was first intended to apply only to the "Westerners," at the extension of the British colonies in the Far East had resulted in ringing under Britain's protection a large number of Asiatics, (who had reviously been subject to Siamese jurisdiction during their sojourn in the since such colonials were in point of law European subjects. As result, Siam was deprived of jurisdiction over Malayans, Burmese, Chinese

<sup>76</sup>Text of notes between de Bunsen, British Chargé d'Affaires and nsul-General (of Sept. 29, 1896) and Prince Dewawongse (of Oct. 28, 96) in BFSP, Vol. 88, P. 33.

<sup>77</sup>Archer to Lansdowne, no. 152 Confidential, Aug. 23, 1902. FC

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and the French born in Hong Kong or Macao, and Indians, <sup>78</sup> even though they were residing permanently or doing an extensive business in Siam. Whatever violations of Siamese law they might commit, the Siamese government had no rights of police over them. After being arrested, they could only be tried in the British consular courts, except in the northern provinces of Siam where they could be tried by the "International Court" under the stipulations provided by the Treaty of 1883.

To be exempted from the jurisdiction of Siamese courts, British subjects were required to register themselves at the British Consulate. Article V of the Treaty of 1855 stipulated that "All British subjects intending to reside in Siam shall be registered at the British Consulate." The British European subjects could be clearly differentiated, but with the exception of natives of British India, other British Asiatic subjects-Burmese, Malay, or Chinese--were not easily distinguishable from Siamese by their appearance. As a result, an identification was needed for these British subjects for the purpose of preventing their trial and possible conviction in a Siamese court. They would be deprived of the extraterritorial privileges if they could not prove themselves to be British subjects. For example, on account of a large number of Chinese residing in Siam. it was specifically provided in Article III of the Bowring Treaty that "Chinese, not able to prove themselves to be British subjects, shall not be considered as such by the British Consul, nor be entitled to his protection." The necessity of registration was reasserted in Article 20 of the Order in Council of 1856.

Although the registration clause was asserted in the Treaty, the enforcement was not effectual and the registration of the British subjects

<sup>&</sup>lt;sup>78</sup>Report on the Condition of British Asiatic Subjects in Siam, and their Position as regards British and Siamese Authorities, by G. H. French, H. B. M.'s Acting Consul, March 18, 1891. FO 69/141.

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was passports, but they were inadequate. In 1880, Palgrave complained of the difficulties that the British Consulate had experienced, owing to the claim to British protection among those who did not possess any identification. The inconvenience was caused by the grant of collective passports by the Indian officials to Burmese subjects who, after crossing over to Siam, would break up and disperse over the country, still laying claim to British protection under the original collective passport. It became in such circumstances practically impossible for the British consular officers as well as the Siamese authorities to achieve verification in each case. 79 the problem became more complex when Britain annexed the Upper Burma and Shan States in 1885. Even before such annexation, the Siamese authorities found it difficult to differentiate the Burmese of Upper Burma who, when in Siam would be under Siamese jurisdiction, from those from Lower Burma, who enjoyed British protection. Again, after 1885 the question was whether

buses of extraterritorial privileges should correspondingly grow; those esirous of avoiding police interference or arrest often resorted to preign papers as a wise measure of protection. Therefore, the need for trict rules for obtaining identification of these subjects became apparent. It 1884, Ernest Satow, British Minister Resident and Consul-General, subtited to the Foreign Office a draft regulation on the registration of itish subjects in Siam, which was approved later by the British Government.

the Burmese of Upper Burma had emigrated to Siam before or after the British

As the British subjects in Siam grew in number, it was natural that

<sup>&</sup>lt;sup>79</sup>Palgrave to Salisbury, April 13, 1880. FO 69/63.

<sup>80</sup>Notification by the British Minister in Siam, providing for the distration of British subjects resident in Bangkok and Chiengmai, or

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confirmed by the Order in Council of 1887), 81 requiring that all British subjects living in Bangkok and Chiengmai, or within 24 hours' journey from those places, register themselves either at the British Consulate-General at Bangkok or at the Vice-Consulate at Chiengmai, and the registered persons would be furnished with a registration certificate. Those who failed to register would be subject to a fine.

Even though there was a Notification enforcing a British subject to register, no rules were imposed to deal with the more important question of identifying the persons who were or were not entitled to British protection. The Foreign Office had consulted the Law Officers in May 1867 as to whether the Chinese were under British protection. The Law Officers were of the opinion that the Chinese resident at Hong Kong and Kowloon at the time of the cession of those places to Britain were entitled to British protection everywhere, even in China itself according to the rules and principles of international law, and the British Government was to afford the same protection to the children of those persons.

In Siam no special practice was laid down by the British Government, and the question of who should be considered as British subjects and entitled to full extraterritorial privileges became important when the serious disputes between Siam and France over the registration of French subjects and protégés broke out on several occasions after 1893. France wanted to extend its registration to all Annameses, Laotians, and Cambodians as its protégés even though they had been domiciled in Siam long before the French annexation of those areas. A diplomatic clash was inevitable when the Siamese authorities rejected the French registration certificate, for they regarded the offenders as Siamese subjects.

within 24 hours' journey of those places--March 19, 1886, BFSP, Vol. 77, pp. 982-83.

<sup>81</sup>British Order in Council, July 12, 1887, BFSP, Vol. 78, pp. 829-30.

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De Bunsen's sympathetic attitude towards the difficult position of ne Siamese government had led him to refuse protection to the large irmese community, consisting of former immigrants from Burma and their escendants. In his opinion, an extensive application of British protective ights might lead to friction with the local Siamese authorities, and he onsidered it "unreasonable that British Asiatics who have elected to ake up a fixed residence in this country should bequeath the protection nich they enjoy to an increasing progeny of descendants who in process f time become more and more assimilated to the surrounding population."82 Bunsen warned Salisbury of the dangers of an undefined policy on the egistration of British subjects as more British subjects became permanently omiciled in Siam. He also anticipated that the rules adopted by the ritish Government would influence similar demands on the part of the French uthorities, particularly as there was some analogy between the status of ambodians and Laotians long settled in Siam and that of the Burmese who migrated before annexation.83

Since the proposed registration of British subjects for the purpose by British protection was a new departure from the usual practice of the citish Consulate in Siam, the Foreign Office immediately consulted the hadia Office, as to who should be entitled to British protection and to lich generation of British protected persons such protection should be keepeded. While the views of the Indian Government were being awaited, case in point of disputed British nationality occurred in Bangkok. A in named Awang, who was registered as a British subject in 1894, was

<sup>82</sup>De Bunsen to Salisbury, Sept. 11, 1895, no. 98. FO 422/43.

<sup>8310</sup> to FO, Sept. 7, 1896. FO 69/262.

<sup>84</sup>Ibid.

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arrested on a serious charge by the Siamese police, who stated that he was liable to Siamese jurisdiction. The British Legation took responsibility to request the Siamese government to bring him to the Consulate for an investigation, as it had been the custom to send persons furnished with a certificate of registration whose claim to British protection was doubtful to the Consulate for an inquiry. In this case the Siamese had rejected his certificate as invalid. Their contention was that the mere possession of a British registration certificate was not a prima facie evidence of nationality and that the burden of proof in establishing such nationality lay with the British Legation. 85 "Acting on this theory," de Sunsen stated that, "they have three times during the last few months ignored or disregarded the British certificate of registration. 86

Meanwhile, de Bunsen argued that the Siamese government should admit their responsibility for bearing the burden of proof in such cases by proceeding to the British Consulate where "the documentary and other evidence produced by either side was to be thoroughly sifted."87 If it were proved that the person had no right to British protection having obtained his certificate under false pretences, it should be withdrawn and his name struck off the register. On the other hand, if it were roved that he was rightly registered as a British subject, he should etain his certificate and be prosecuted before the British Consular Court. The British Legation and the Siamese government agreed that if Awang ould show that he was born subsequent to the date of his father's (who as a British Asiatic subject) registration, he should have his British ertificate confirmed. It was further agreed that as soon as this particular

<sup>85</sup>De Bunsen to Salisbury, no. 23 Consular, Oct. 21, 1896. FO

<sup>86</sup> De Bunsen to Salisbury, no. 28 Consular, Nov. 17, 1896. FO 69/262.

<sup>87</sup>De Bunsen to Salisbury, Oct. 21, 1896. FO 69/262.

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plair Object a sin case was settled, "an endeavour should be made to lay down definite rules for observance in this Consulate as regards the true principles of registration and the manner of settling disputed cases." In Awang's case, the Siamese authorities were able to prove that he was born before the date of his father's registration; therefore he was handed back to the Siamese authorities and his certificate withdrawn.

Although de Bunsen could not accept the Siamese government's attitude in refusing to recognize a British certificate as prima facie evidence of the holder's right to British protection, he understood that they did it out of a sense of consistency, for they had already rejected the French certificates in an attempt to frustrate the far-reaching French protection of a large number of Laotians, Cambodians, and Annamites. His experience in Siam also taught him that bonâ fide Siamese subjects could, by mistake or by intention, be taken under the protection of foreign Powers. 89 In the case of Asiatics provided with passports from a British Colony or dependency, the matter of registration was a simple as for Europeans: the British Consulate just assumed the passports were being issued to a bona fide British subject. However, in the absence of a passport, there were no definite rules for the British Consulate to follow. Usually the simple course of filing an affidavit at the Consulate would be sufficient to btain a right to British protection. De Bunsen did not agree with such rocedure, 90 viewing it as a source of conflict with the legitimate claims f Siam.

<sup>&</sup>lt;sup>88</sup>W. J. Archer (Acting Chargé d'Affaires at Bangkok) to Prince evawongse, August 24, 1896, enclosed in <u>Ibid</u>.

<sup>&</sup>lt;sup>89</sup>J. Chandran, "British Foreign Policy and the Extraterritorial uestion in Siam, 1891-1900," <u>JRASMB</u>, Vol. 38, pt. 2, 1965, pp. 302-303.

<sup>&</sup>lt;sup>90</sup>De Bunsen stated that: "A native of India shows his origin so lainly by his general appearance and dress that there seems to be no bjection to recognizing him as a British subject on the strength of simple affidavit declaring the date and place of his birth. He may

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In order to avoid further disputes with the Siamese government and to meet all registration difficulties, de Bunsen framed a system of rules for guidance of consular officers in registering British subjects. 91 As a result of the uncertainty arising from an affidavit or sworn declaration, the draft rules provided that an Asiatic entering Siam without British passport would not be registered until he had supplied other proofs to satisfy the consular officers that he had a valid claim to be considered a British subject. This precaution was directed against the large number of Chinese who claimed British protection in Siam. De Bunsen stated that he would refuse to register Chinese unprovided with a passport. "except upon the production of convincing proofs of their birth within the Queen's dominions."92 He also proposed not to register natives of Upper Burma or the British Shan States if they had become domiciled in Siam before 1886. as well as the children of British subjects if they were born before the father's registration. Moreover, he proposed to permit the Siamese authorities to inspect the list of registered British subjects to ascertain who were the British protected persons residing in Siam, "As these Rules have been drawn up with the desire to avoid any conflict with the

possibly be a native of a French or Portuguese Settlement, but the presumption is strongly in favour of his being a British Indian. On the other hand in the case of a Chinese subject, unprovided with a passport, the presumption is against the applicant. It is much more probable that he was born in China proper than Hong Kong or some other British Colony largely resorted to by his countrymen. I think that a simple affidavit, even if supported by others attested by the Chinese applicant's friends and relations, is evidence altogether insufficient to establish a right to British protection." And he believed that "Thousands of genuine Chinese subjects in Bangkok would be ready to make such an affidavit, in the well-founded confidence that the statements contained in it are incapable of verification, and that there is practically no risk of detection and punishment in the case of a false fectaration." De Bunsen to Salisbury, Oct. 21, 1896. 76 69/262.

<sup>&</sup>lt;sup>91</sup>Draft Rules for the Guidance of H.M.'s Consular Officers in Siam, enclosed in <u>Tbid</u>.

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egitimate claims of Siam," de Bunsen brought the proposed rules into iscussion with M. Rolin-Jacquemyns, the Belgian Adviser to the Siamese overnment, who was engaged in drawing up a Siamese Law of Nationality, that he could bring as far as possible the proposed Rules and the roposed Law into harmony with each other. As a matter of fact, de unsen's draft Rules served as the basis for negotiations in the following ears for the registration of British subjects in Siam between the two overnments.

In the meantime, by September 1896 the India Office was in a posiion to state its views on the registration question after having consulted
ne Government of India. The Viceroy of India and the Chief Commissioner
f Burma thought that all persons who were legally British subjects should
a construed in its strictly legal sense, <sup>93</sup> The Indian Government even
considered that there should be no exception among Burmese of Upper Burma
to had crossed into Siam before or after the British annexation in 1886;
therefore, British certificates should be issued to the Burmese of Upper
arma although they emigrated into Siam before 1886. They also believed

<sup>93</sup>British subjects were either:

Natural-born subjects, or

<sup>2.</sup> Aliens who had been naturalized in H.M. 's dominions, latural-born subjects" included all persons born in any part of H.M. 's minions whether they were the children of British subjects or of aliens. Statute Law the term was also deemed to include persons born out of M.'s dominions whose fathers or grandfathers by the father's side were tural-born British subjects.

The second class of British subjects, <u>viz.</u>, naturalized aliens, were ose who had obtained a certificate of naturalization as British subjects. The term "British subject" in the Siam Order in Council, 1884, ncludes every person for the time being properly enjoying Her Majesty's otection in Siam, in so far as by Treaty, Capitulation, grant, usage, fferance, or other lawful means, Her Majesty has jurisdiction in Siam

relation to such persons."

Note by Government Advocate, Burma, March 29, 1894. Enclosed in T. White to the Government of India, (confidential), Jan. 25, 1896; d the Government of India to Lord G. Hamilton, (secret), July 7, 1896. 69/262.

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the children and grandchildren of all British subjects should have all claim to be treated as British subjects. 94 The Foreign Office contend with the Indian Government's views that emigrants from Upper Burma are the British annexation would become, by such an annexation, British sects and so invested them and their descendants with the statutory test of British subjects, which extended the status of British subject the third generation, i.e., to the grandchildren of natural-born British sects.

The view of the Indian Government was accepted with some misgiving the India Office, which preferred the policy of de Bunsen, that the major of the number of protected British Asiatic subjects was not to be desired. As to the statutory definition of British subject, Lord ge Hamilton had no objection to the Foreign Office's view; however, suggested limiting the registration of British Asiatic subjects to second generation, that is, to their children only. As regards granding of all such persons, the India Office urged that protection and "be discouraged, if possible." S As for de Bunsen, who was alarmed be views of the Indian Government and of the Foreign Office, he hastened arm Salisbury that if English Statute Law was to prevail "the heavy of protecting many thousands of British Asiatics in this country will be more difficult," of and the burden would fall on the British Consulate Bangkok to recognize all the registration certificates issued be Legation. Being anxious about numerous registration certificates.

 $<sup>^{94}</sup>$ English Statute Law extended the status of natural-born subjects third generation. Memorandum by C. B. Robertson (Legal adviser Foreign Office) on IO to FO, Sept. 7, 1896. FO 69/262.

<sup>&</sup>lt;sup>95</sup>IO to FO, Nov. 30, 1896. FO 69/262.

<sup>96</sup>De Bunsen to Salisbury, Nov. 17, 1896. FO 69/262.

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tha Bog e thought that Britain should avoid falling "into a position similar to hat which is now occupied by the French in Siam, many of whose certifiates are openly disregarded by the Siamese in spite of the French Minister's rotests." It is essential that our certificates be respected, he ontinued to explain, "[so] I have advocated a limitation rather than a extension of our lists of protected persons."

In December 1986, W. J. Archer, the Acting Chargé d'Affaires at

angkok, raised the question as to the procedure of registration of a citish subject who was polygamous, for it very often happened that an static British subject had more than one wife. 99 Article 94 of the Order Council of 1889 had stated that the registration of a man should be emed to include the registration of his wife and Article 9 had stated at the name of a wife should be endorsed on her husband's certificate. erefore the question was, which wife was to be considered the wife thin the meaning of the Order in Council. Behind the question of the gistration of the wife came the more important question of the registration of her children. The question raised seemed to turn mainly on a considerations of law but a question of policy was also involved, when the legal considerations were settled a final opinion could be pressed on the issues of policy.

Although polygamous marriages might be legitimate in India and er Mohammedan countries, in the view of English law they were illegit-te. 100 Consequently, the children of such marriage were also

<sup>98</sup>Ibid.

<sup>99</sup> Memorandum by Mr. Archer, Dec. 3, 1896. Enclosure in de Bunsen Halisbury, Dec. 3, 1896, no. 30 Consular. FO 69/262.

 $<sup>100 \</sup>rm W$ . E. Davidson, legal advisor to the Foreign Office, stated "They may be legitimate in India and under Indian law, but where ish law prevails, and English Statutes alone can be regarded, this

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262 the legitimate "in contemplation of English Statute of George II, which ovides that the children of natural-born British subjects born out of e legiance [sic] of the United Kingdom, are themselves to be deemed itish subjects." They, therefore, could not be registered as British bjects under a system of registration, which would be founded exclusively the provisions of English Statutes and the rules of English law. The velopment of this doctrine had been approved by the Law Officers in 38, in the case of Abdulkerim Grant, a British subject, who contracted polygamous marriage in Morocco, and the British Government refused to gister his children as British subjects on the ground that his marriage in the amount of English law; therefore, they were legitimate, 102

Faced with these vacillating legal interpretations, the India fice suggested the Foreign Office ask the opinion of the Law Officers the Crown for a final decision. 103 The Law Officers agreed with the a that Burmese subjects became British subjects upon the British quest of Burma, and they thought that their children and grandchildren a subsequent to the conquest were also, by British law, British

not so." Minute by W. E. Davidson, Jan. 23, 1897. FO 69/262. The only marriage recognized by English law was the form of wedlock, on familiarly as "Christian marriage," or, a marriage which observed was the essential attribute and conditio sine qua non of marriage ugst peoples professing the Christian religion, viz., the union of one with one woman to the exclusion of all others, until life's end. hildren not born in wedlock which fulfilled this condition, were in emplation of English law fill; fillae nullius.

<sup>101</sup> Ibid.

<sup>102</sup>Memorandum by Davidson, Foreign Office, April 5, 1897. FO 69/ At any rate, they did not lay down any general principle apart from facts of the particular case.

<sup>10310</sup> to FO, May 27, 1897. FO 69/262.

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jects, though born out of Burma. Regarding the fact of their being children and grandchildren of polygamous marriages, they thought t it was "not...decisive of the question of nationality," explaining t:

There are many parts of the British dominions in which polygamous marriages are lawful, and for the purposes of nationality it seems to us impossible to treat the issue of such marriages, who are legitimate by the law of the domicile of their parents, as illegitimate.

These considerations do not, however, dispose of the question whether these persons are British subjects within the meaning of the Treaty between this country and Siam. If it be contended by the Siamese Government that according to Siamese law these persons are Siamese subjects, in such a conflict of laws it is impossible to say that the question can be disposed of merely by reference to the municipal law of either country. Such questions must be decided rather with reference to those principles of fairness and good sense which must govern the relations of two nations." 104

In August 1897, King Chulalongkorn who left Siam for a European

in April, arrived in London. One of his objectives in England was egotiate with the British Government regarding registration of British ects in Siam. At the interview with Salisbury on August 7, the King iam received an assurance that the British Government expected to be position to negotiate for a formal agreement in the near future. 105 Chulalongkorn's personal intercession at the Foreign Office encouraged bury to make definite proposals. By the end of August both the India the Colonial Offices had been consulted, and Salisbury sent his suctions on British policy relative to the registration and protection itish subjects in Siam to George Greville, the new British Minister ent at Bangkok, in mid-September. Greville was instructed to registectified and grandchildren of British subjects in Siam as if they egal right to British protection outside the limits of that country.

 $<sup>104</sup>_{\mbox{\footnotesize{The}}}$  Law Officers of the Crown to Salisbury, July 31, 1897. 262.

 $<sup>105</sup>_{\mbox{Memorandum}}$  by Sir T. Sanderson, Foreign Office, Aug. 7, 1897. 262.

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regard to the question of protection within the Kingdom of Siam, as laid down as a matter of policy that, in cases of dual nationality, is to say, "when a child born abroad is a British subject in contemion of English law, but by the law of the foreign State where he was a, the subject of such foreign State," British protection should be ed in favour of Siamese jurisdiction, "while he resides in that State." hermore, he was informed that the British Government "would be osed to waive their claim to protect the 'third generation'" or the dechildren born in Siam of British Asiatic subjects. 106

The Foreign Office's instructions to Greville marked a great adec in British policy designed to deal with the political as well as administrative difficulties of extraterritorial jurisdiction in Siam. By rate, Greville was instructed to insist on the views expressed Bunsen, that the possession of a registration certificate was to be uself <a href="mailto:prima">prima</a> facie</a> evidence of British nationality, and that the burden coof that the holder of such certificate was not entitled to it would with the Siamese government. 107

In October, Salisbury made a new move towards the solution of the tration certificate question. He informed the Siamese Chargé d'Affaires ndon that whenever a person with a British certificate was charged crime by the Siamese government, he should first be brought to the sh Consulate, where the joint investigation would be done by the sh Consul in friendly communication with the Siamese authorities; t would be determined in what Court the accused was justiciable, or

 $<sup>106</sup>_{\mbox{Salisbury}}$  to Greville, no. 10. Treaty, Sept. 14, 1897./262.

<sup>107</sup> Ibid.

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ther his certificate was in order, 108 The Siamese representative and further proposed that the mode of crtaining Siamese nationality should be extended to civil as well as riminal proceedings. Salisbury saw no objection to such a proposal Greville was informed of another step in the direction of formalizing ish registration practice in Siam. 109

In fact, the Siamese Foreign Office was content with the new is of British registration policy, such as, the proposed relinquish-of extraterritorial jurisdiction over the grandchildren of British tic subjects. Furthermore, the negotiations in London between the ish Foreign Office and the Siamese Legation solved another vexing tion, by reaching agreement as to the joint examination needed for settlement of doubtful registration certificates. Meanwhile, the tiations also proceeded in Bangkok. Prince Devawongse, the Siamese ign minister, raised the question of how to register the wives and iren of polygamous marriages. He suggested that only children of first or chief wife should be registered. 110 The Foreign Office a consulted the India and the Colonial Offices. 111 After having eved their viewpoints, Salisbury could not resolve this highly complimatter. Therefore, he thought it right to refer the matter for the view of the Lord Chancellor, who was of opinion that "the registration

 $<sup>^{109}</sup>$ Salisbury to Greville, Nov. 11, 1897. FO 69/262.

<sup>110</sup>Prince Devawongse to Greville, Nov. 15, 1897. Enclosure in lle to Salisbury, no. 1 Treaty, Feb. 18, 1898. FO 69/262.

<sup>111</sup>The India Office, in reply to the Foreign Office's request to olution of the difficulty, viewed the question on the grounds that: ince polygamous marriages are lawful and sanctioned by the religious ocial customs of India, it seems to the Secretary of State impossible eat any of the issue of such marriages, all equally legitimate by the f the domicile of their parents, preferentially or differently the rom the other. There is no objection to the registration of the name

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ould be extended to all wives and children of British subjects."112

e Law Officers were again consulted after the Lord Chancellor's opinion
d been obtained on the specific points, and they gave no contrary opinion.
April 1899, Salisbury gave his new instructions to Greville, affirming
at the wife or wives of British subjects be endorsed on her husband's
rtificate, and that all their children be registered for the purpose of
itish protection; nevertheless, the third generation of British Asiatic
bjects were not to be granted the right of protection inside Siam
though a British passport would be granted entitling them for protection
tside Siam. 113 The Law Officers recommended that they be registered as
ritish protected persons," to be distinguished from natural-born

During these years, not only did the Siamese government negotiate the British Government for a registration agreement, they also negotited with the French Government on the same question, and they believed

ritish subjects.

the mother of each child who is entitled to be registered, but it does appear to be possible or expedient to limit the benefits of registion to the issue of any particular wife." IO to FO, Sept. 22, 1898. 69/262.
The Colonial Office, though accepting that polygamous marriage was

egitimate by the principles of English law, deemed it expedient that r the purpose of the registration of British subjects polygamous riages should be recognized," and in that case "all the wives, and not first or chief wife only, should be deemed to be included in the registion of the head of the family," and similarly they thought that "the Idren of all such wives, and not those of the first or chief wife only, ald be recognized as British subjects." CO to FO, Sept. 14, 1898.

It the Foreign Office, Sir Martin Gosselin was of opinion that a strict remee to legal principles was often injurious to national interests, in this particular case it appeared to him that "the views of the a Office--the Department primarily interested--should be given due tht." Minutes by Sir M. Gosselin and the Marquess of Salisbury, Nov. 398. FO 69/262.

 $<sup>^{112}</sup>$ Opinion of the Lord Chancellor, Jan. 10, 1899. FO 69/262.

 $<sup>^{113}</sup>$ Salisbury to Greville, no. 1 Treaty, April 5, 1899. FO 69/262.

the French would follow the British lead in the matter. By the end pril, King Chulalongkorn was very anxious to arrive at an agreement Britain so that it would facilitate the Siamese negotiations in s. He referred to Salisbury's promise at the end of 1897 that Britain d attempt to settle the question as soon as possible; he hoped therefore there would be no further delay. 114 Consequently, Salisbury consented he Siamese informing the French Government that Britain had renounced protection of the grandchildren of British Asiatic subjects. 115

Britain and Siam were finally able to reach an agreement on this stant question of the registration of British subjects in Siam in the 1899. The Agreement was signed between Prince Devawongse and ge Greville at Bangkok on November 29. 116 The principal provisions contained in Article I, which confined British subjects to the owing categories:

1) All British natural-born or naturalized subjects, other than of Asiatic descent, and all their children and grandchildren born am: they were entitled to the status of British subjects in contemon of English law. But neither great-grandchildren nor illegitimate ren born in Siam were entitled to be registered.

2) All persons of Asiatic descent, born within British dominions, turalized within the United Kingdom, but with the exception of natives her Burma or the British Shan States who came to reside in Siam before y 1, 1886. Their children were also entitled to be registered for h protection in Siam, but not their grandchildren.

 $<sup>^{114}\</sup>mathrm{Greville}$  to Salisbury, April 29, 1899. FO 69/262.

 $<sup>115 \</sup>text{Minute}$  by Salisbury on Verney to Sir F. Bertie, April 29, FO 69/262.

<sup>116</sup>Text in BFSP, Vol. 91, pp. 101-2.

The wives and widows of any persons who were entitled to registrander the above categories.

Siam and Britain also agreed that the lists of registration should on to inspection of the Siamese authorities. If any question arose the right of any person to hold a British certificate or as to the ity thereof, the British and the Siamese authorities would make a inquiry and decide upon the evidence adduced by the holder of the ficate,

The above agreement not only put an end to numerous controversies

the right to British extraterritorial jurisdiction due to the claims of the right of British protection, but also decreased numbers of British protected persons as time went by--the grandchildren the third generation, born in Siam, whose fathers and grandfathers had wise been born in Siam, of natural-born British subjects, would come siamese jurisdiction. The significance of this Agreement lay within limits to which British protection was subjected. This concession by an in was one of the major events in the abolition of some of the most assant consequences of extraterritoriality. This Agreement was followed mewhat similar arrangements between Siam and the Netherlands in 1901, e in 1904, Denmark and Italy in 1905.

ment between Great Britain and Siam relative to the Abolition of Tax Schedules attached to the Agreement of 1856, September 1900.

In the 1890's King Chulalongkorn had started a number of miscells reforms--administrative, judicial, or fiscal. Ten new ministries established in 1892, and European advisers as well as foreign techns were hired by the Siamese government to assist in the elaborate ams of various departments. The foreign advisers were chosen from as countries without regard to nationality. British advisers

ce, police, education, mining and surveys. The post of General er to the Siamese Government was first entrusted to a Belgian, M.

-Jacquemyns, who served from 1892 to 1902.117 The employment of an advisers was of incalculable value in the development of the country his period.

Inevitably new funds were needed in each field of national develop
A lack of sufficient funds was one of the obstacles to the reforms development; the Siamese government, therefore, sought the means to ease national revenue to carry out the policy of modernisation. The rument was unable to raise the needed funds by traditional revenues ly because inelastic tax rates, governed by the Bowring-type treaties inued in force at arbitrarily low figures. The treaties allowed Siam mpose an import tariff of merely 3 percent ad valorem. As for articles export, they were limited to fixed duty according to the schedule ched to the Treaty of 1855. The existence of the Inland dues or Transit es specified in the "Tariff of Export and Inland Duties to be levied rticles of Trade" annexed to the Treaty of 1855 was "a serious drawto the development and prosperity of this country." By Article f the Agreement of 1856, British subjects purchasing real property in would enjoy "the same taxation that is levied on Siamese subjects." 119

<sup>117</sup>He was succeeded by a series of American international lawyers, choice of American Advisers appeared appropriate in view of the rival-etween Great Britain and France to gain influence in Siam.

<sup>118</sup> Prince Devawongse to Greville, June 3, 1898. FO 69/184.

<sup>119</sup>In the treaties made between Siam and other countries along Bowring model--Austria-Hungary, Denmark, Italy, Netherlands, Norway Sweden, and the U.S.A.--national treatment was accorded with in regard saxes on real property, but no schedule of taxes was annexed to the ites.

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give further safeguard for British interests, the Supplementary Agreet of 1856 bound the Siamese government to agree to a Schedule of a sections which specified a fixed amount of taxation that could be ied on plantations, garden-ground, or other lands. 120 The result the rigidity thus introduced into the fiscal system was that Siam id neither increase her revenues as she chose, nor could she eliminate sirable or inefficient taxes by replacing them with others, except the consent of the British Government.

In 1892 the financial system was renovated as part of a general ganization of government initiated by King Chulalongkorn. Before period, there was no budget, little or no audit, and no separation he king's expenditures from the general revenues of the country. After, the Siamese financial administration was reorganized: a budget system introduced; a proper system of audit and accounts was set up; the 's personal expenditures were separated from the state expenditures; improvements were made in the collection of taxes. 121 The Ministry inance was also remodelled, and in 1896 the services of a financial er were obtained from the British Government, on the recommendation rd Gromer. 122

<sup>120</sup>Belgium, France, Germany, Portugal, and Spain were entitled to favoured nation' treatment in respect of these taxes. These countries therefore lose the advantage that Britain enjoyed, in the event of the agreement to surrender it. Memorandum by Mr. F. H. T. Streat-(Assistant Librarian at the Foreign Office), Dec. 8, 1898.

 $<sup>^{121}</sup> James$  C. Ingram, Economic Change in Thailand Since 1850, (Stanford: rd University Press,  $\overline{1955}$ ), pp. 177-78.

<sup>122</sup>W. A. Graham, "Siam, and her Relations with other Powers," <u>Journal Royal Institute of International Affairs</u>, Sept. 1928, p. 309.

In the meantime, the achievement of fiscal autonomy was the major bjective of Siamese diplomacy. The Siamese government conceived that he negotiations for immediate and complete fiscal autonomy were virtually mpossible, so it decided to begin by negotiating for a revision of the reaty of 1855, or rather the Agreement of 1856, with Britain, taking first he tax on real property. Consequently, in June 1898 Prince Devawongse pealed to Greville for the suppression of the 1856 Taxation Schedule d the modification of the Treaty provision, alleging that Siam was facing lequal treatment; the fact was that the value of money had depreciated fty percent since the Treaty had been signed. 123 In this request r a readjustment of taxation. Prince Devawongse maintained that British bjects could be assured of their security because, by a clause in Article of the Bowring Treaty, they would be subject to the same taxation as e Siamese: thus the Siamese government could be relied upon not to ertax their own people. In return for British concessions, Prince wawongse had offered to issue permits to British subjects to buy land houses in Chiengmai.

The financial policy of gradually increasing Siamese revenue from ded property was firsted mooted by Mitchell Innes, the Siamese governt's financial adviser, who was sympathetic with the Siamese financial lens imposed by the Bowring Treaty. Driven by his desire to put Siamese naces on a stable footing, he compaigned assiduously for the release Siam's onerous financial burdens from the British Government. In his let to George Greville, the British Minister Resident in Siam, he stated "I do not know of any country which is tied hand and foot like Siam

<sup>123</sup>Prince Devawongse to Greville, June 3, 1898; and Mitchell Innes eville, June 6, 1898. FO 69/184.

vere, and I think...that the bonds on the Chinese Government do not tend beyond customs."124 If the Siamese government were to be allowed a raise taxation on real property, he explained, the British Government and not fear that this taxation would be "unduly raised" owing to the last that it was now so low. "the lowest probably in the world,"125

regards its internal taxation. The Turkish capitulations are less

While on leave of absence in England, Innes continued his campaign or the Siamese cause at the Foreign Office. Nevertheless, the Foreign of the Siamese cause at the Foreign Office. Nevertheless, the Foreign of the land taxations on British subjects, and they thought that the amese were asking too much while offering "nothing in return for the neession." 126 The question was left unsettled when Innes left for ngkok by the end of October 1898. At any rate, his discussions at the reign Office helped arrange the basis for future negotiations—the inciples to which the British Government would be inclined to agree, at limits within which the details would have to be negotiated, and conquently the form which the modification on Siamese taxation should take.

When Innes retired from his position early in 1899, King Chulalongkorn ointed another British officer, Rivett-Carnac, on loan from the India ernment, as the new financial adviser. After some study of the Siamese clem he soon became a vigorous supporter of the Siamese case for the egation of the Taxation Schedule annexed to the Agreement of 1856. In morandum to Greville he showed how the Schedule was totally "obsolete"

h on the spot than in London.

 $<sup>^{124}</sup>$ Mitchell Innes to Greville, June 6, 1898. FO 69/184.

<sup>125&</sup>lt;u>Ibid</u>.

<sup>126</sup> Memorandum by Sir Martin Gosselin, Oct. 18, 1898. FO 69/185.

character; that certain measures of value prevalent in 1856 were no ger in existence; that the relative value of different kinds of duce taxed was different to what it had been at the time of the eement. In proving these arguments he stated that:

The value of the silver coins in which the tax was assessed has fallen more than one hundred percent since the Treaty was signed. The result is that the Government is now getting less than half of what was considered its proper share of the profits of the Land more than forty years ago: and this notwithstanding the fact that the value of all kinds of Land produce has increased some 300 percent since the year  $1856^{\circ}_{\circ}$  Land produce has increased some 300 percent since the year

In his memorandum, Rivett-Carnac set forth strong arguments in

port of the Siamese request for the abrogation of the Taxation Schedule. Stated that "the taxation on land is at present....so absurdly low Siam that it will be impossible for the Government to raise it to ching like the taxation per acre in Burma for the next twenty or thirty is" and the reformed taxation would affect only a few British protégés ily of Chinese origin, and he thought that British subjects would ecure as long as the Siamese government could guarantee that the tion on land in Siam should never exceed that on similar land in a. Finally, he urged the British government to agree to such an abroon for it was "absolutely essential to the progress of Siam," which ed upon Britain as "the most disinterested and powerful friend and ally," that "if Great Britain, the Country which has done so much to assist in her path of Reform, fails her in this most vital matter, what can

<sup>127</sup>Memorandum by Rivett-Carnac, Aug. 31, 1899. Enclosure in Greville lisbury, Aug. 31, 1899. FO 69/196.

<sup>128&</sup>lt;sub>Ibid</sub>.

expect in the future from Countries which have hitherto displayed such anxiety for her welfare." 129

Reporting to the Foreign Office. Greville endorsed the justice of

t-Carnac's cogent arguments. $^{130}$  He felt convinced of the Siamese nment's restraint in not abusing their power once they were given e hand in taxation because "they would never venture to overtax own people," and "the British subjects affected by this change were hinese protected subjects, while the European British subjects were n number." $^{131}$  Greville consequently suggested that the Foreign Office ate the "now obsolete" Schedule and that such abrogation would not e any British interest in Siam if the British Government could make amese government guarantee that they would not impose the land tax cess of similar tax in Burma--or a maximum taxation should be fixed d which the Siamese government should not be allowed to go. $^{132}$ By October 1899, the Foreign Office had consulted the India Office the proposed abrogation asking whether such change would affect umber of British Indian subjects in Siam. 133 The India Office greatly ened Salisbury's task by agreeing to the abrogation on the conditions he Siamese government would allow British subjects to own land elsethan in the vicinity of Bangkok and that they should not levy taxation d rented, held, or owned by British subjects in excess of the taxation on similar land in "Lower Burma." The India Office emphasized

<sup>129&</sup>lt;sub>Ibid</sub>.

<sup>130</sup> Greville to Salisbury, Aug. 31, 1899. FO 69/196.

<sup>131</sup> Ibid.

<sup>132</sup>Greville to Salisbury, Oct. 15, 1899. FO 69/196.

<sup>&</sup>lt;sup>133</sup>FO to IO, Oct. 13, 1899. FO 69/202.

<sup>134</sup>**I**0 to **F**0, Dec. 16, 1899. **F**0 69/202.

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e word "Lower Burma" because rents were not uniform in Upper Burma
ere there were two land tenures, whereas land in Lower Burma was taxed
uniform principles. 135

Nevertheless, the Siamese government could not agree to this itish proposal to allow British subjects to own land in any parts of am than in the vicinity of Bangkok owing to the fact that the Siamese re concerned about the possible demands from other powers if British objects were granted increased landowning privileges, and the endless ificulties this would entail. 136 Therefore, Greville, who understandably ognized the Siamese problem, recommended that his Government either ete or modify the proposal for the rights of British subjects to own in all parts of Siam in such a way "as to meet the wishes of the mese Government so as not to increase their difficulties or needlessly arrass their relations with other Governments." 137

Before taking any further steps in the matter, Salisbury decided await further discussions with Greville at the Foreign Office during leave of absence to England. At the Foreign Office, Greville strongly orted the Siamese cause with the contention that the British Government ald not demand any further concessions from the Siamese as the preconons for the British assent to abrogate the Taxation Schedule, in view the good will the Siamese had displayed in the treatment of all questions and between the two governments, especially regarding the Perak-Raman lary delimitation in the Malay Peninsula.

<sup>135</sup> Viceroy of India to IO, Dec. 14, 1899. FO 69/202.

<sup>136</sup>Greville to F. Bertie, Telegram, Dec. 21, 1899. FO 69/198.

<sup>137</sup>Greville to Salisbury, Dec. 21, 1899. FO 69/197.

Early in 1900 the Indian Government declared itself willing to forgo recondition that British subjects should be allowed to own land elsethan in the vicinity of Bangkok. This agreement greatly facilitated oreign Office's task. The Anglo-Siamese Taxation Agreement was d on September 20, 1900<sup>138</sup> whereby the Schedule of Taxation attached e Agreement of 1856 was abrogated; and whereby the Siamese government d not to collect more taxation on land rented, held or owned by sh subjects than than levied on similar land in "Lower Burma,"

us burdens of British extraterritoriality in Siam. By virtue of ost-favoured-nation treatment, the Taxation Agreement of 1900 thus atically limited the rights of any other treaty powers to the same t as those granted to British subjects. With the abrogation of the Taxation Schedule, the Siamese government were given some freedom e matter of taxation on landed property, and therefore enabled to nother source of revenue of the country, which had been mostly dependent on revenues from gambling, spirits, and opium farms. Thus the Anglose Taxation Agreement of 1900 was a significant step for Siam towards chievement of her fiscal autonomy.

This Agreement was another achievement by Siam to remove one of the

Siam owed much to Britain for her generous concessions during this if from 1874 to 1900, when the Siamese government attempted to curtail straterritorial privileges of British subjects in Siam, for without the concurrence and her friendly disposition towards Siamese grievances, amese requests for several reforms of the extraterritorial system have been impossible. Regarding judicial matters, in 1874 Britain

<sup>138&</sup>quot;Agreement between Great Britain and Siam, relative to Taxation d held or owned by British subjects in Siam," signed at Bangkok, 20, 1900, BFSP, Vol. 92, pp. 46-7.

wed the Siamese judges in Chiengmai to investigate and decide claims ing between British and Siamese in civil cases in the three Siamese nern provinces of Chiengmai, Lakon, and Lampoonchi. Further modifications made again in 1883 when Britain agreed to allow all British subjects e specified provinces to be placed under the jurisdiction of a special se court, administering Siamese law. Although certain provisions made to safeguard British interests, the relaxation of British jurisonal privileges was a remarkable transformation. Its justification depend entirely upon the ability of the Siamese courts to administer ient justice. Between 1883 and 1898 no treaties were made concerning atter of jurisdiction. During the following year an agreement was ed into between Siam and Britain on the question of registration of sh subjects in Siam, whereby rules and procedures of registration instituted. Although Britain insisted on rights of extraterritoriality ne children of all British subjects, and even for the grandchildren opean British subjects, though born and resident in Siam, she consented reat-grandchildren of European and grandchildren of Asiatic British ts should not be entitled to rights of extraterritoriality. The tion of the persons entitled to registration at the British Consulate the provisions of the Agreement would put a limit upon the number of h subjects in Siam in the long run. The year following the regisn agreement, another agreement was concluded with Britain, dealing and taxation. The Agreement marked another relaxation in fiscal ctions of the British Treaty which had restricted Siam to a fixed

Although some changes in the regime of British extraterritoriality

were made during the last third of the nineteenth century, the

was not yet completed. But Siam had begun a series of negotiations

le of duties.

ith Britain and other treaty powers to free herself from the shackles of the treaty restrictions by the beginning of the twentieth century.

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## CHAPTER III

## FURTHER MODIFICATIONS OF EXTRATERRITORIALITY (1901-1909)

Before the close of the nineteenth century the Siamese government made several attempts to bargain for the surrender of British extraditorial privileges as well as for the modifications of the fiscal crictions imposed by the Treaty of 1855, together with the Supplementagreement of 1856. With the close of the century we saw a beginning a small way of the withdrawal of the privileges of extraterritoriality inted to British residents in Siam.

The eventual abolition of extraterritorial privileges, at least

so far as they extended over the Asiatic subjects of the foreign powers, always been one of the cherished hopes of the Siamese government. By in the twentieth century the subject had on different occasions been ught forward by the government, with suggestions for a partial, if for the total, surrender of British jurisdiction in return for some censating advantage. Negotiations on this question took place in 1902 1903, along the line that Great Britain should surrender the right of this Consular officers to withdraw cases, under Article VIII of the try of 1883, from the International Court to their own Courts in return Siam's conceding to British subjects the right to acquire and hold in any part of the country, a right which under Article IV of the ing Treaty, was limited to the region within 24 hours' journey by boat Bangkok.

With the appointment of Professor Edward H. Strobel, then Bemis Professor of International Law in the Harvard Law School, as General Adviser to the Siamese Government in 1904, Siam recommenced a series of negotiations with Britain with the intention of modifying as much as possible the system of British jurisdiction in Siam. A series of Anglo-Siamese negotiations from 1904 onwards culminated in the Treaty of 1909, which greatly modified the judicial privileges of British subjects in Siam.

Anglo-Siamese negotiation in respect to the Siamese proposed Revision of Article VIII of the Treaty of 1883 in exchange for the right of British subjects to hold land in Siam,

It has to be remembered that Article VIII of the Anglo-Siamese

Treaty of 1883 contained two provisions safeguarding the justice and
interest of British subjects who, under the terms of this Treaty, came
within the jurisdiction of the International Court at Chiengmai. In the
first place, it gave the British Consul or Vice-Consul, in cases in which

pointed Bemis Professor.

The Siamese government had come to recognize the wisdom of his policy, nd by his tact and general ability he won powerful influence on the Siam-

lEdward H. Strobel, Bemis Professor of International Law, was the first American appointed as General Adviser to the Siamese Government, after the retirement in 1903 of a distinguished Belgian jurist and statesman, M. Rolin-Jacquemyns, appointed the first General Adviser in 1892. After his arrival to Siam in 1904, he had changed the methods of the Siamese government from, according to Paget, "supineness, prevariacation, and tortuous dealings [which] often led to misunderstanding and consequent friction," to those of "promptitude, straightforwardness, and rational discussion of any difficulty that may arise." In addition to this, in its policy as regards the foreign powers, Strobel gave proof that he was unimated by common sense and moderation. He correctly gauged the position of Siam as dependent on the good-will of Great Britain and France, and ecognized that Siamese policy had to be subservient to British and French interests.

se government and was able to hold the personal confidence of King whulalongkorn. He was consulted not only about international questions, at about every subject connected with the administration of the country, and at his instigation many reforms had been introduced.

Strobel died in Siam in January 1908. Upon his death he was succeeded Jens I. Westengard, who, as an assistant professor in the Harvard Law hool, had come to Siam as Assistant General Adviser in 1903. Westengard reved as General Adviser until his retirement in 1915, when he was

3ritish subject was the defendant or the accused, or in which both rties were British subjects, the power to transfer such cases, at y time before judgment, to the Consular Court, if he thought it fit r the interests of British subjects to do so. Secondly, it enabled e Consul or Vice-Consul to remove from Siamese control any British bject undergoing a sentence of imprisonment, to complete the remainder his sentence in the Consular prison.

In August 1902, Prince Devawongse proposed to W. J. Archer, when was the British Chargé d'Affaires at Bangkok, that the clause in the diengmai Treaty giving the Consul power to remove cases into his own burt should be struck out; in return the Siamese government would give it is subjects the right to hold landed property within the scope of at Treaty. The chief arguments advanced in favour of surrendering the emoval clause" were: in the first place, that during the twenty years the existence of the Treaty the provisions of the clause had seldom en made use of; and secondly, that the concession on the part of Britain uld be a small matter since the right of appeal to Bangkok was still tained as a check on Siamese judges and a safeguard against ultimate justice. 2

The right of land ownership in Siam also came into question. By cicle IV of the Bowring Treaty, British subjects were given the right acquire and own land and establish permanent residence in Siam only in the limits of 24 hours' journey by boat from Bangkok; and such a distance British subjects were not allowed to go without a sport nor to acquire land. Owing to the Chiengmai Treaty, which gave Siamese certain jurisdiction over British subjects, the Siamese

<sup>&</sup>lt;sup>2</sup>Archer to Lansdowne, no. 152. Confidential, Aug. 23, 1902. FO. 230.

government pretended to be disinterested in any infringement of this restrictive provision by British subjects in the northern part of Siam.

They felt, however, unable to waive the provision, because if British subjects were legally permitted to hold land in any part of Siam the same permission could not be refused to French subjects.

The restriction on the tenure of land greatly disturbed British subjects, and it was not applicable to the conditions, when the whole country was studded with settlements of Asiatic British subjects. The Siamese government recognized this difficulty and did not apply the provision imposed by Article IV of the Treaty of 1855 very strictly; but, at the same time, they chafed against its constant evasion and refused to admit the ownership of real property by British subjects in any formal or judicial proceeding. In Archer's view, the restriction imposed by the esidence clause of this Treaty was one that caused "constant friction. uspicion, and subterfuge."<sup>3</sup> As a matter of fact, the Siamese had already one so far as to concede to British subjects in the Chiengmai consular istrict the right of acquiring land under certain conditions, but ones hich the British regarded as being of an onerous nature. In January 1899. he High Commissoner at Chiengmai announced that British subjects could urchase land under the conditions that they had to apply first to their onsul, who would then apply to the High Commissioner, who would refer he matter to Bangkok to obtain permission. A permit would then be issued the purchaser. However, the large number of British subjects--Burmese. ongsus, and Shans--permanently settled in Chiengmai, did not take advanage of the opportunity to obtain the permit. Those who had already held and continued their tenure with risks, for they did not possess the ficial title-deeds. Those who wished to purchase new land usually prerred to do so quietly by arrangement with the owner rather than accepting

<sup>3</sup> Ibid.

permit which could only be secured after protracted references to angkok; besides, a refusal would probably result in their eviction, or, coording to the opinion of Beckett, the British Consul at Chiengmai, would t least incur the displeasure of the local authorities.

The conditions for the tenure of land in Chiengmai had thus been

insatisfactory and had become a constant source of complaint by British ubjects. Yet British subjects continued to buy land and rent houses. ands, and plantations in all the large towns of the north without protest rom the Siamese officials. The more the native owners of land sold or disposed of their land to British subjects, the more they were involved n civil disputes. In many cases that were brought before the International ourt, it happened that the British subject who had purchased land, after any years' tenure, was ousted from the land at the instance of a native laintiff, merely because he held no official title-deeds, and could not old land according to the Treaty of 1855. When this occurred he was aid back at the nominal value of land. Thus, any native land-owner ould enter a suit in the International Court for the eviction of the ritish subject; after payment of considerable sums of money in improveents, the British subject had to leave his land without any compensation or the enhanced value of the land, or for interest on capital that he d invested. Beckett viewed this state of affairs as "intolerable."5

After having considered Prince Devawongse's proposal, Archer was the opinion that the bargain would not fail to be an advantageous one British subjects, but before recommending it to the Foreign Office referred the matter to Beckett at Chiengmai, since the proposed

<sup>&</sup>lt;sup>4</sup>Memorandum by W.R.D. Beckett, Oct. 5, 1902. Enclosure 2 in Archer ansdowne, No. 190 Confidential, Nov. 5, 1902. FO 69/231.

<sup>&</sup>lt;sup>5</sup>Consul Beckett to Greville, Oct. 13, 1989. Enclosure in Archer to downe, Nov. 5, 1902. FO 69/231.

Iteration of Article VIII of the Treaty of 1883 directly concerned the atter's district. Archer himself was in favor of the Siamese proposal, 1though he knew that the Consul's power of removal had acted as a check o any possible injustice against British subjects; but he thought that he effect of the loss of this latent power was not considerable, so long s the power of appeal to Bangkok, which would bring a case under review y the British and Siamese authorities, was to remain. C. E. W. Stringer, ho was Acting Consul at Chiengmai for a number of years, agreed with rcher on this point, that it would be well worthwhile to give up the removal clause" in order to obtain the withdrawal of the Siamese restriction gainst British subjects holding land in Chiengmai. In his opinion, such ithdrawal would be a boon to British subjects, and would "do away with much discontent among them and so many subterfuges now restored to by nem for obtaining possession of land."6 As regards Consul Beckett's lews, they were, in general, in concurrence with the other two officials; thought that the cancellation of the "removal clause" would not materally alter for the worse the existing position of British subjects, but suggested the following conditions: 1) That a British subject, when quiring land, should obtain his title-deed, not through the British msul, but directly from the local authorities, or that the application considered and disposed of without reference to the central government Bangkok; that the conditions for purchase should be the same as those r natives of the country, and that all British subjects who had already rchased land should be given every facility to obtain the official titleeds; 2) That a European Adviser with knowledge of Siamese should sit th the Siamese judge appointed to the International Court. 7 These

<sup>&</sup>lt;sup>6</sup>Memorandum on the suggested Alteration in the Chiengmai Treaty, C.E.W. Stringer, Aug. 23, 1902. FO 69/230.

<sup>7</sup>Memorandum by W.R.D. Beckett, Oct. 5, 1902. FO 69/231.

suggestions, in Consul Archer's opinion, might well form the subject of negotiations with the Siamese government when details of the modification of the 1883 Treaty would come up for consideration; but it was unnecessary to impose them upon the Siamese government in the form of preliminary conditions to the carrying out of the proposed change.<sup>8</sup>

It can be seen that when the suggestion to modify Article VIII of the Treaty of 1883 was first mooted by the Siamese government, it apparently had the approval of all the British officials best qualified to give an opinion. The Foreign Office referred Archer's and Beckett's reports to the India Office, which, after consultation with the Indian Government, recommended acceptance of the Siamese proposals as favourable to British interests. 9 Although the abrogation of the extraterritorial clauses in the northern part of Siam would particularly affect the British ressortissants, such as the Burmese and the Shans, and large companies like the Bombay, Burma, and Borneo Companies, the Government of India considered that the right to purchase land without the vexatious procedure was an enormous benefit to the British subjects and would save the companies also much trouble. 10

In accordance with the wishes of the Indian Government, the Foreign Office instructed Ralph Paget, the new Consul-General at Bangkok, to negotiate the agreement with the Siamese government along the lines recommended by Consul Beckett. Upon the request of Prince Devawongse, Paget drew up the draft agreement and communicated it for his observations.

<sup>&</sup>lt;sup>8</sup>Archer to Lansdowne, no. 190, Confidential. Nov. 5, 1902. FO 69/231.

<sup>&</sup>lt;sup>9</sup>I0 to FO, Jan. 28, 1903. FO 69/250.

<sup>&</sup>lt;sup>10</sup>Sir J.G. Scott's Memorandum. Jan. 3, 1903. Enclosure in Government of Burma to Government of India, Jan. 6, 1903. FO 69/250.

During the course of the negotiations with the Siamese government, Paget came up with the view that any proposition contemplating an abrogation of a removal clause of Article VIII of the Chiengmai Treaty, which was regarded as a check on Siamese judiciary, would be fraught with danger to the interests of British subjects. 11 This new light was thrown upon the subject from the thorough investigation of the petitions and representations from British subjects resident in the north of Siam, and the memoranda given by Beckett and T.E. Lyle, the British Consul and Vice-Consul at Chiengmai. Consul Beckett, who had at first recommended the acceptance of the Siamese proposal as being favorable to British interests, by the middle of 1903 considerably altered his views. Without the retention of the 'removal clause' he was now afraid that British subjects would be the victims of an injustice. 12

At the time of the making of the 1883 Treaty the British community in norther Siam consisted almost entirely of Asiatics. As European British capital investment in the timber industry in the area had largely increased, British European subjects also increased in numbers. 13 As a result, the Chiengmai Consular district came so rapidly to resemble that of Bangkok as to justify the demand for identical treaty conditions with

<sup>11</sup>Paget to Lansdowne, no. 75, Aug. 4, 1903. FO 69/246.

<sup>12</sup>Memorandum by Consul Beckett, Dec. 17, 1903. Enclosure in Paget to Lansdowne, no. 115, Dec. 17, 1903. FO 69/246.

<sup>13</sup>According to Consul Beckett, in 1874 the total number of British subjects in northern Siam could not have exceeded 150, and there were no British European subjects. Since 1883, the area affected by the 1883 Treaty had undergone great changes. In 1886, the whole of Upper Burma and the Shan States, west of the Salween River, came under British rule. The five Shan States east of the River and the large province of Kentung, all adjoining the province of Chiengmai, were added a few years later.

The immigration of Burmese, and especially Shans in the north of Siam soon became active, and had so steadily increased that whereas the number of British subjects registered at the British Consulate at Chiengmai in 1884 was no more than 50, and of Shans, some 20 to 30, in 1902, the number

the Treaty of 1855. 14 With the difference in jurisdiction covering British subjects in the north and the south, it was not unnatural that British subjects in the north, especially the European community, would oppose the idea of being subjected to the direct orders of Siamese officials in all judicial matters, while others, in Bangkok, were provided with European legal advisers and had other powerful checks around them. Beckett thought that the mere substitution of the right to hold land for this important concession of extraterritorial jurisdiction on the part of Britain was insufficient. In the absence of adequate safeguards from the Siamese government, he recommended strongly that the negotiations had better cease rather than move towards the conclusion of an agreement. Furthermore, the Treaty of 1883 was, in his opinion, unsuitable to the existing conditions in the north of Siam, and Britain should give notice to the Siamese government showing her desire for its revision. Unless the Siamese were prepared to revise it, however, it would be necessary for the British government to give notice prescribed by Article XIV of the Treaty for its termination.

of Burmese amounted to some 400, and of Shans, not less than 2,000 or 3,000. The influx of British Indian subjects was also considerable. The number in 1902 was about 3.000.

The most important change of all was found in the establishment of three British teak companies between 1886 and 1896, with several agencies in many of Siam's northern provinces. The amount of British capital invested in teak was not less than £1,000,000, and the yearly disbursements £300,000. The number of European British subjects in the Chiengmai consular district rose from 3 in 1884 to over 50 in 1903.

Ibid.

<sup>14</sup>Memorandum by T. H. Lyle (no date). Enclosure in Ibid. Beckett stated on this point that: "With the vast political changes of the last twenty years, the increase in the number of European subjects and the probable further increase on the advent of the railway, and the altered conditions of timber trade and Siamese administration, the reasons that may have held for the existence of separate Treaties discriminating between British subjects in the north and south in my opinion no longer hold."

Beckett to Paget, Tel. no. 43, July 16, 1903. FO 69/246.

thus bringing the northern provinces within the scope of the Treaty of 1855. 15

In Lyle's memorandum, he admitted that every branch of the Siamese administration in Bangkok had shown signs of improvement in past years, but concluded that it was not prudent, on that account, to suggest that the affairs of British subjects in Bangkok should be governed by Siamese law, or that British subjects should be handed over to the jurisdiction of Siamese courts. At any rate, he thought that if the British government were to make a drastic concession of extraterritorial jurisdiction in Siam, it would be better to adopt it in Bangkok than in Chiengmai, where the judiciary was in a far more unsatisfactory condition. alone," he stated, would appear to emphasize the inopportuneness of the moment for granting the Siamese Government that which practically amounts to absolute judicial control over British subjects."16 He explained to a certain extent the reasons why the appeal to Bangkok by itself could not be regarded as sufficient safeguard to permit the 'removal clause' being dispensed with. Firstly, under the Treaty of 1883, the final decision on appeal in cases in which British subjects appeared as defendants or accused, rested with the Consul-General. The question remained undecided as to by what system of law, Siamese or British, the Consul-General was to be guided when considering his decision, since the judgment in the court of the first instance was given under Siamese law; he believed the Siamese government would contend that the final appeal decision had to be given also according to Siamese law, even if made by the Consul-General

<sup>15</sup> Memorandum by Consul Beckett, Dec. 17, 1903. FO 69/246, and Beckett to Paget, Tel. no. 43, July 16, 1903. FO 69/246.

<sup>16</sup>Memorandum by Lyle, (no date). FO 69/246.

alone in the exercise of his privilege. In his opinion, "the anomaly of a British official being expected to decide any claim or charge against a British subject according to a foreign (Siamese) system of law, of which he is entirely ignorant, rather than by British law, is only too patent." Secondly, in considering the cases of appeal, the Consul-General had before him the record of the case only, although it was open to parties to appear and plead with witnesses before the Appeal Court. Nevertheless, the expense and the inconvenience of the trips between Bangkok and Chiengmai made it impossible, except under unusual circumstances, to bring the presence of parties or the introduction of witnesses before the Appeal Court. As a matter of fact, the Consul at Chiengmai wrote an 'opinion' on the whole case accompanying the record of appeal and forwarded it for the perusal of the Consul-General. Lyle mentioned that there was a tendency to legal formality in the acceptance of anything written in the record. By that time the Siamese side of the Appeal Court was presented by a trained European lawyer, and the appeal functions of the Consul-General were practically exercised by the British Judge of the Consular Court. As the Consul's 'opinion' was not 'evidence', the Appeal Court might be compelled to ignore his 'opinion' in so far as it was not supported by documentary evidence, and consequently to give a ruling in conformity with the record, which, in Lyle's opinion, could be manipulated by unscrupulous parties and witnesses to produce any impression that might be required. 17 It was not therefore easy for the Appeal Court to judge the character of evidence. Furthermore, the chief objection to counting on the appeal to Bangkok alone as a safeguard was that few British subjects, knowing their Consul unable to exercise a direct control, would be

<sup>17</sup> Ibid.

likely to rest satisfied with the decision of a Siamese judge. As a consequence, the number of cases sent on appeal to Bangkok would greatly increase. 18

After having examined various aspects of the question, Paget anticipated the following effects, which were likely to occur as the result from a cession of the 'removal clause': 19 deterioration and greater laxity in the proceedings, such as partiality towards Siamese witnesses, of the International court--and consequently a large increase in the number of appeals to Bangkok; more frequent disagreement between the British and Siamese judicial authorities respecting cases on appeal, and therefore more necessity for an arbitrary decision by one side or the other in the final decision; and last of all, great discontent among British subjects in northern Siam, to whom the question of jurisdiction was far more important than a public acknowledgment of their right to hold land.

Because Beckett's and Lyle's attitudes were not only strongly against any curtailment of the rights of British consular officers to withdraw cases from the International Court, and in favour, if possible, of dispensing with the jurisdiction of the International Court and bringing British subjects in the provinces comprised within the Treaty of 1883 entirely under the jurisdiction of their own Consul as in other parts of Siam, <sup>20</sup> Paget viewed the abrogation of the Treaty "without further examination of the situation and without previous attempt at some arrangement" not only as being unfair towards Siam but also impolitic. <sup>21</sup> In Paget's opinion, once the negotiation had been begun, it should be continued, but should not proceed to the conclusion of a Supplementary Agreement on the

<sup>18</sup>paget to Lansdowne, no. 115, Dec. 17, 1903. FO 69/246.

<sup>19</sup>Ibid.

<sup>20</sup>paget to Lansdowne, no. 75, Aug. 4, 1903. FO 69/246.

<sup>21</sup>Paget to Lansdowne, no. 115, Dec. 17, 1903. FO 69/246.

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lines first suggested by the Foreign Office without some adequate provision being made for the control of the Siamese judges of the International Court. If the negotiation were to continue with the Siamese government. he recommended not only that Beckett's former suggestion -- that a European Legal Adviser should be appointed to sit with the judge in the International Court -- might well form the subject of negotiation, but also that this suggestion should be amplified by the addition of such stipulations as: the Legal Adviser should be British and should be approved. if not actually selected, by the British Legation, and that he should be removable at the request of the British Government; furthermore, no proceedings against a British subject in the International Court should hold good unless the Legal Adviser be sitting on the bench; in addition, the control of the Adviser over the judge and the machinery of the Court should be effective. If the Siamese government would consent to the above stipulations, he would see no further objection to the surrender of the 'removal clause' in return for such guarantees. 22

From the point of view of British subjects, the Siamese bargain was a one-sided one, which, if the British government accepted it without modification and conditions, would leave the Siamese government the gainer by the transaction.<sup>23</sup> It should be understood that the anxiety of the Siamese government to rid themselves of the 'removal clause' was prompted by the idea that if Great Britain would only give the lead, and practically hand over her subjects in the north of Siam to Siamese jurisdiction, retaining only the appeal to Bangkok as safeguard, other Powers might be induced, if not to follow suit entirely, at least to adopt some system

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

less galling to Siamese pride than the existing consular jurisdiction.

In order to obtain their objective, the Siamese government meditated using the right of British subjects to hold land in the provinces specified by the 1883 Treaty as the temptation for British concessions on jurisdiction. The negotiations begun in August 1902 by Archer were continued by Paget by correspondence or in personal interviews with Prince Devawongse between May and August 1903.

In the meanwhile the Foreign Office communicated all the correspondence from the Legation at Bangkok for the considerations of the India Office, for they regarded the question of the right of British subjects to hold land in northern Siam as primarily an Indian issue. 24 Before taking any action on the matter the Foreign Office decided to await the views of the Indian Government, which in turn consulted the Government of Burma. By now the Indian Government had changed their former attitude and opposed the surrender of the Consul's right to remove cases from the International Court even with Paget's recommended additional safeguards. 25 Nevertheless, they were still anxious to abolish the Siamese restriction, affecting British subjects, as regards land holding and residential rights in the Chiengmai Consular district. In their opinion, the British Government might claim the right to hold land there by the operation of the most-favoured-nation clause (Article X of the Treaty of 1855), since they believed that the Siamese had already modified the restrictions under Article IV of that Treaty, by giving the nationals of other Powers the right to hold land. At the same time the Indian Government recommended that should it be impossible to substantiate this claim, Britain should

<sup>&</sup>lt;sup>24</sup>FO to IO, Feb. 20, 1904. FO 69/260.

<sup>25</sup>Government of India to IO, March 26, 1904. Enclosure in IO to FO, April 13, 1904. FO 69/260.

demand a general revision not only of the Treaty of 1883, but also of that of 1855, with a view to getting rid of the restrictions upon British subjects in regard to the acquisition of land. <sup>26</sup>

In the circumstances, it appeared reasonable to the Foreign Office to instruct Paget to withdraw from the negotiation of the Supplementary Agreement. Britain was afraid that their subjects would be exposed to danger if left to the mercies of the Siamese court unchecked by the restraining influence which the British Consul had been in a position to exercise. The justification for the withdrawal from the negotiations which Paget was to give to the Siamese government was the recently-concluded Franco-Siamese Convention of 1904, under one of whose Articles an International Court system was established, and French subjects placed, in regard to jurisdiction, in almost the identical position to that held by British subjects under Article VIII of the Treaty of 1883. Furthermore. Paget was instructed to argue that the conclusion and publication of the Franco-Siamese Treaty would increase the difficulty for the British Government if they decided to surrender the right of removal; British subjects resident in northern Siam had already opposed this idea, and they would have additional cause for complaint if Britain surrendered her removal clause while France retained her Consular right to remove cases into her Consular Court. At any rate, the Foreign Office decided to await Paget's opinion with regard to the suggestions by the Indian Government before making the final decision. 27 However, the instructions did not reach Paget until shortly before his departure for leave of absence; therefore, it devolved upon Beckett, who acted as Chargé d'Affaires while Paget was

<sup>26&</sup>lt;sub>Ibid</sub>.

<sup>27</sup>Lansdowne to Paget, no. 34, April 28, 1904. FO 69/253.

away, to furnish the opinion with regard to the suggestions of the Indian Government. Before formulating that opinion he thought it advisable to enter into a frank and open discussion upon the whole matter of the status of British subjects in the north of Siam with Strobel, the General Adviser to the Siamese Government, 28

Upon his arrival in Siam towards the end of March 1904. Strobel rapidly acquired an intimate knowledge of the complicated political and other conditions prevailing in different portions of Siam. As time went on, he was able to grasp the exact situation in the north, and as his experience matured he could discuss it in all its various bearings. Before the arrival of Strobel, Beckett found it difficult to deal with Prince Devawongse in finding some amicable solution of the difficulty of land tenure, or to convince him of the inequitableness of his original proposal. On the other hand, in dealing with Strobel he enjoyed the "harmonious official and social relations" existing between them, and found that, where differences of opinion had existed, they could bring them to an amicable conclusion by means of compromise, 29 This manner led Beckett to believe that discussion with Strobel as to the whole status of British subjects in the Chiengmai Consular district would promote an understanding upon terms acceptable to both the Siamese government and to the British subjects concerned, since the influence exercised by Strobel over the Siamese government was considerable and his views carried weight. 30

Strobel and Beckett were in entire agreement that the Treaties of 1855-6 and of 1883 were out of date and required revision. Strobel

<sup>28</sup>Beckett to Lansdowne, no. 74, Nov. 17, 1904. FO 69/255.

<sup>29</sup> Ibid.

<sup>30</sup>Ibid.

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argued that, when Siam entered into treaties with foreign Powers, she had intended to accord the privileges of extraterritoriality only to the white European subjects of the contracting Powers, between whom and the Siamese a great gulf was fixed from a religious, ethnical, social, and moral standpoint, and who, therefore, demanded special treatment when in Siam. The Treaty-makers did not anticipate, however, that there should develop in Siam a large community of alien Asiatics, with creeds, thought, and modes of life similar to the Siamese, but subjects or protégés of European powers. Among these were the Burmese, Shans, Cambodians, and Laos, who descended from a common race-stock. Nor had it been contemplated that these Asiatics should enjoy the same differentiation from the Siamese natives as that enjoyed by whites. Strobel wished to see this anomaly abolished. The presence of a large alien Asiatic community in Siam did not occur to a similar extent in other countries which had experienced extraterritoriality, such as Japan, China, and Turkey.

With regard to the British European subjects in northern Siam or in the Chiengmai Consular district, Strobel thought that the Siamese government did not intend to apply the provisions of the 1883 Treaty, especially the stipulations of Article VIII, to them. 32 He was confident that the Siamese government would agree to exclude this class of British subjects from the operation of that Article, and that they should be amenable to the jurisdiction of the purely British courts as in Lower Siam. In any case, his advice to the Siamese government with regard to the holding of land by aliens, especially Asiatics outside the limits prescribed by Article IV of the Treaty of 1855, was based upon the principle that such alien holder should, as regards the land he occupied, be on an absolute equality in the matter of jurisdiction with the Siamese

<sup>31</sup> Ibid.

<sup>32&</sup>lt;sub>Ibid</sub>

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holder. To act on any other principle would place the Siamese at a manifestly unfair disadvantage, for disputes or claims arising as to the land of the Siamese subjects would be heard and decided in the nearest local Court according to local law and custom, and an appeal would lie to Siamese judges deciding by Siamese land laws. On the other hand, British and other European white subjects would have any action regarding their land removed to the International Court, where a Consul should be present at the trial. In sum, Strobel had made a discrimination between British European and British Asiatic subjects.

It seemed to Beckett that the principle enunciated by Strobel was "not unreasonable." 33 At any rate, he submitted to the latter the tentative proposition that in return for the recognition by the Siamese government of the right of British subjects to buy and hold land and to enjoy residential rights in the Chiengmai Consular district, the operation of the 'removal clause' should be withdrawn only with respect to all actions arising in connection with the title to such land. In other words, such actions should be heard in the International Court, where the Siamese law was to be applied, and without the possibility of the application of English law relating to real property. The second part of the proposition was that European British subjects, as opposed to Asiatics, should be excluded from the International Court and be amenable to the jurisdiction of the British courts only, except in actions relating to the title to land, which would fall within the International Court with the same proviso as to the non-operation of the 'removal clause'. Strobel seemed to react favourably to this proposition -- though he thought that Siam would gain too little by the exchange and Britain too much. 34

<sup>&</sup>lt;sup>33</sup>Ibid.

<sup>34</sup>Ibid.

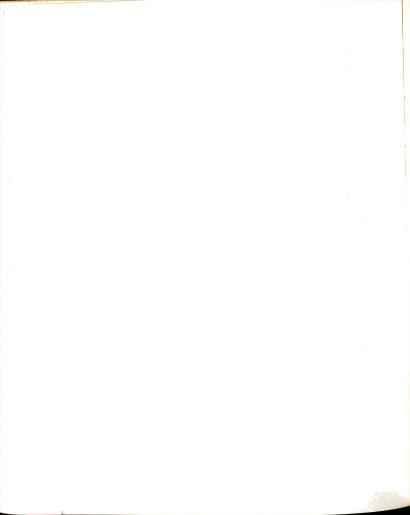
As a result of his discussions with Strobel, Beckett suggested to the Foreign Office that negotiations should be opened with the Siamese government on the following basis: in the first place, to acquire recognition of the title to land by all British subjects in return for the abrogation of the 'removal claus' in cases affecting the title to such land; in the second place, to obtain the acceptance by the Siamese government of the exclusion ov European British subjects from the authority of the International Court, except in that class of cases. 35

Beckett's suggestion entails a discrimination being made between the treatment accorded to European and to Asiatic British subjects. Such a differentiation, Beckett suspected, might be open to objections from a constitutional standpoint, but as the principle had been admitted in the Registration Agreement of 1899, he thought that there would be less difficulty in extending the principle in this case. He maintained that the proposal would be the best alternative: the European subjects of large British firms in the north would rejoice at their freedom from interference by Siamese judges; Asiatic British subjects would lose none of their privileges, and would have a long-standing grievance removed by acquiring title to land. Furthermore, the natural sequel of these conditions, in Beckett's opinion, would be the general revision of the land laws by the Siamese government, and the improvement of their administration on a sounder basis. 36

Having thoroughly examined Beckett's proposals, the Foreign Office thought that the India Government might not approve such proposals, as the great majority of British subjects in northern Siam were Burmans and Shans who would be affected by such discrimination, even though they were

<sup>35&</sup>lt;u>lbid</u>.

<sup>36&</sup>lt;sub>Ibid</sub>.



anxious to secure the recognition of the right to purchase and hold land.<sup>37</sup> Furthermore, they referred to the opinion of the Law Officers expressed in April 1882, at the time when the Treaty of 1883 was in the process of negotiation, that there were grave constitutional objections to such a course of making distinctions among British subjects. On this occasion, the Foreign Office also had strong objections:

It is hardly open to doubt that the principle of discrimination, if adopted in this case as proposed by Mr. Beckett, would, or might have, far-reaching effects. Although in the present instance such discrimination would become operative in Siam alone, and would there apply chiefly to the coloured subjects of British India and its dependent states, the precedent thus set would reach far beyond the confines of Siam and of British India, and the discrimination, if adopted in the case of British Indian coloured persons, would appear to be equally applicable in principle to other and non-Indian British subjects of coloured race, 38

Therefore, the best arrangement, in the Foreign Office's view, would be

to leave unaltered the existing prosition of all British subjects in regard to jurisdiction, except in the cases involving the title to land.

The India Office was then asked whether Beckett's suggestion on the second point involving the discrimination between British European and Asiatic subjects should be dropped, and whether the Foreign Office should begin the negotiation on the terms of his first recommendation. <sup>39</sup> To this the India Office had no objection. Consequently the Foreign Office instructed Paget to recommence the negotiation with the Siamese government respecting the question of securing to British subjects the right to hold land, on the ground that:

<sup>37</sup>Minute by F. A. Campbell, in reference to <u>Ibid</u>., Jan. 13, 1905. FO 69/255.

<sup>&</sup>lt;sup>38</sup>FO to IO, Feb. 6, 1905. FO 69/269.

<sup>39</sup>Ibid.

In return for the recognition by the Siamese Government of the right of British subjects to buy, and their title to hold land, and enjoy residential rights in the Chiengmai Consular district, His Majesty's Government are willing that the operation of the 'removal clause' of Article VIII of the Treaty of 1883 should be withdrawn with respect to all actions arising in connection with the title to such land. Such actions will be heard in the International Court, where the law applied will be that of Siam without the possibility of the application of English law relating to real property."40

Soon after the receipt of his instructions. Paget took an early opportunity of acquainting Strobel with the British proposal. Since the question of the right of British subjects to hold land in Chiengmai had been dealt with between Beckett and Strobel, the latter preferred to give further consideration to the proposal before letting Paget make an official communication to the Siamese government, 41 In a memorandum to Paget. he had shown that he was unable to advise the Siamese government to accede to the arrangement suggested by the British Government, as it appeared that Britain did not offer any quid pro quo to Siam in return for the concession to British subjects of the right to hold land. The Siamese government gave several reasons for declining to accept the terms that Britain had offered 42 Only two of the Siamese arguments appeared to be reasonable to the Foreign Office: 43 1) that, in the absence of any provisions in the Treaties, English law could be applied in Siam, but generally that actions arising in connection with titles to land would naturally be settled according to Siamese law; therefore, the concession that Britain had offered did not give any quid pro quo to the Siamese government, and such actions would in the natural course be heard in the International

<sup>40</sup>Lansdowne to Paget, no. 29, May 18, 1905. FO 69/263.

<sup>41</sup>Paget to Lansdowne, no. 69, Sept. 22, 1905. FO 69/265.

 $<sup>^{42}\!\</sup>text{Memorandum}$  by Mr. Strobel on Extraterritoriality in Siam, Sept. 11, 1905. Enclosure in  $\underline{\text{Tbid}}.$ 

<sup>43</sup>Foreign Office Memorandum by Mr. Davidson (no date, approximately Nov. 20-23, 1905) in reference to Paget, no 69, Sept. 22, 1905. FO 69/265.

court; and 2) that, the complications arising from the system of extraerritoriality would be increased if foreign subjects became permanently ttached to the soil. The remaining arguments were for the outright bolition of British extraterritorial rights. Strobel proposed again to oncede to British subjects the right to hold land in Siam in return for he surrender by the British Government of their jurisdiction over coloured ritish subjects. He pointed out that extraterritoriality was based pon difference in race, customs, and religion, and existed because social nd legal conditions in an Oriental country were incompatible with European deas and customs. Extraterritoriality should not, therefore, rightly e applicable in Siam to British Asiatic subjects, to whom it would be no ardship to live under Siamese jurisdiction. Furthermore Strobel condered that the administration of law in Siam was constantly improving nder the guidance of European advisers; consequently there would not be ich question of the fitness of the Siamese courts to exercise jurisdiction ver British subjects. 44 Paget concurred with Strobel's opinion that the lamese judicial administration was constantly improving, but in his opinion, e Siamese judiciary did not as yet justify sufficient confidence on the irt of the British Government to permit the Siamese to exercise full jurisction over the persons and property of British subjects. Even though robel pointed out that the Siamese had no desire to acquire jurisdiction er British European subjects, Paget could not accept such an argument he foresaw the difficulties arising from the opposition of the Asiatic itish subjects, such as the Indians, if a line of discrimination between

ite and coloured British subjects were to be drawn. 45

 $<sup>^{44}</sup>$ Memorandum by Mr. Strobel on Extraterritoriality in Siam, Sept. , 1905. FO 69/265.

<sup>45</sup>paget to Lansdowne, no. 69, Sept. 22, 1905. FO 69/265.

In sum, Paget thought that Strobel's suggestion to place Asiatic British subjects entirely under Siamese jurisdiction was too high a price to pay in return for the right to hold land; 46 but Strobel had shown a fixed determination in his Memorandum not to give way respecting the right to hold land unless jurisdiction over Asiatic British subjects be conceded in return. Nevertheless, Paget believed that it would be possible for the British Government to find other inducements, -- such as, offers for a revision of the customs tariff, or for the introduction of the International Court system in other parts of Siam--which, added together, would decide the Siamese government to strike a bargain. 47

Paget had an opportunity to discuss the question of extraterritoriality and the acquisition by British subjects of the right to hold land with Strobel again in October 1905. Strobel made it known that he was unwilling to enter a discussion upon any other basis than that of an extension of Siamese jurisdiction. AB Paget then enquired whether he would agree to an extension of the International Court system, which, in his opinion, would be a greater gain to Siam than the suggestion made by Strobel, since it implied the abolition of all direct British jurisdiction in Siam, leaving only the 'removal clause' and Court of Appeal as safeguards. After some consideration, Strobel declined to accept Paget's proposal reverting to his former suggestion that coloured British subjects should be placed under Siamese jurisdiction. Strobel candidly revealed the Siamese position that:

... the right to hold land represented the last lever in the hands of the Siamese Government with which to obtain a mitigation of the extraterritorial system, and that, were this lever given up in return for

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup>Paget to Lansdowne, no. 79, Oct. 27, 1905. FO 69/265.

<sup>49</sup>Ibid.

an extension of the International Court system, it would be tantamount to surrendering all hopes for the future of exercising full jurisdiction over either white or coloured British subjects. 50

Strobel also made it clear that should British Asiatic subjects be given the right to hold land, they would be left entirely to Siamese jurisdiction; whilst in the case of white British subjects. Strobel thought that special arrangements might be made in each individual case, and the land holdings were to be in the form of concessions with special stipulations mentioned in the documents relating thereto. Paget could not accept these conditions, because he found that British subjects would gain no advantage in foregoing the extraterritorial privileges which they valued more highly than the right of holding land. Under these circumstances he advised the Government to leave the matter in abeyence, "unless His Majesty's Government and the Government of India consider that the right to hold land is of so great importance as to make an immediate settlement of the question desirable and to justify a partial surrender of our jurisdiction in Siam."51 At any rate, Paget still hoped that circumstances might arise which would induce the Siamese government to seek concessions from the British Government in other matters, in which case the question of the tenure of land by British subjects might again be brought forward. 52

Sir Edward Grey shared Paget's view that no useful object would be served by continuing the negotiations with the Siamese government, and allowed the matter to drop for the moment. 53 However, he instructed Paget that whenever the Siamese government approached him with a proposal to

<sup>50</sup>Ibid.

<sup>51</sup>Ibid.

<sup>52</sup>Ibid.

<sup>&</sup>lt;sup>53</sup>FO to IO, Dec. 15, 1905. FO 69/269.

increase the rate of import tariff, he should bring pressure upon them to modify their attitude respecting the land question. 54

Not long after the Foreign Office's instruction was sent to Paget, the Siamese Minister in London, Rajah Nuprabandh, approached the Foreign Office, informing it of the intention of the Siamese government to modify the existing tariff system. <sup>55</sup> Internal development and national reforms caused a real need for the Siamese government to search for the means to increase their national revenue, and they looked forward to an increase of the import duties. Nevertheless, the fixed rate of import tariff could not be modified without the consent of the British Government; therefore, Siam was compelled to approach the British Government to negotiate for a revision of such arrangements.

In the meanwhile, Paget happened to be in England and was consulted on the subject. He pointed out that the Siamese regarded the restriction imposed upon foreigners respecting land tenure as the only available lever which could be used for obtaining the removal or relaxation of the extraterritorial jurisdiction exercised by foreign nations in Siam. Therefore, he thought that:

If the Siamese Government were called upon to remove the restrictions with regard to land tenure as the price of the consent of His Majesty's Government to an increase in the import duties, they would feel that their acceptance of the condition would entail a great sacrifice, which, in fairness, ought not to be demanded of them...<sup>56</sup>

Paget also warned the Foreign Office of the increasing German influence in Siam, adding that the German representative at Bangkok would not miss the opportunity of pointing out to the Siamese government that, while

<sup>&</sup>lt;sup>54</sup>Grey to Paget, no. 3, Jan. 12, 1906. FO 422-60.

<sup>&</sup>lt;sup>55</sup>Rajah Nuprabandh to Grety, Feb. 5, 1906. FO 422/60.

 $<sup>^{56}</sup>$ FO to IO, Confidential, Oct. 8, 1906. FO 422/60.

Britain, in return for her consent to the increase of the import duties, imposed upon Siam a <u>quid pro quo</u>, the German Government complied unconditionally with the wishes of Siam. As increased German influence was likely to be at the expense of Britain, Paget consequently advised the Foreign Office not to give the Germans any opportunity, and he suggested that the question of land tenure should be kept apart from the question of an increase of the tariff. 57 Fortunately, Sir Edward Grey concurred with Paget's views. As a result, the question of land tenure by British subjects was not raised when proposals for the increase of the import duties were received from the Siamese government.

The Anglo-Siamese negotiations from 1902 to 1906 with regard to the right to hold land in exchange for the surrender of British extraterritorial jurisdiction over British Asiatic subjects proved abortive. Since 1906, several proposals, -- such as, surrendering British jurisdiction in land cases, the extension of the International Court system to the Malay Peninsula--were mooted with a view to inducing the Siamese government to concede to British subjects the right to hold land, but these proposals still proved fruitless. 58 Strobel, the General Adviser to the Siamese government, continued to insist on the point he had made, that the withholding of the right to hold land was the only lever with which the Siamese could hope to obtain the modifications or the abolition of the system of extraterritoriality, and Siam was not prepared to entertain any proposition which did not offer as a quid pro quo a prospect of the abolition of foreign jurisdiction in Siam. The question had formed the subject of discussion

<sup>57</sup> Ibid.

<sup>&</sup>lt;sup>58</sup>Paget to Grey, no. 24, Confidential, March 11, 1907. FO 422/

and of exchanges of diplomatic correspondences up to the time of the conclusion of the Franco Siamese Treaty of March 1907. This event rendered entirely futile any progress Britain had made in the discussions with the Siamese government regarding the extension of the International Court system in exchange for the right to hold land.

## The Franco-Siamese Treaty of March 23, 1907, and the Question of Extraterritoriality in Siam

The year 1907 ranks as one of high importance in the history of Siam, inasmuch as it witnessed the first distinct departure from the extraterritorial regime instituted under the Treaties which Siam had concluded with other foreign Powers in the latter half of the nineteenth century. The initiative in this departure was, surprisingly, taken by France, the power of all others most jealous of any curtailment of extraterritorial rights in Siam, and the one most assiduous in asserting those rights over her subjects and protégés. 59 The jurisdictional stipulations of the Franco-Siamese Treaty marked a great advance in the modifications of the extraterritorial jurisdiction in force in Siam. By this Treaty, France required her Asiatic subjects, who registered themselves at the French Consulate after the conclusion of the Treaty, to submit to the Siamese tribunals.

After the Franco-Siamese Convention of 1904, two important issues were left without any definitive settlement between France and Siam: the boundary questions, and the question of French jurisdiction in Siam. The colonial party in France and in Indo-China wanted to see Siam return Battambong, Siemreap (Angkor) and Sisophon to Cambodia. On the other hand, the

<sup>&</sup>lt;sup>59</sup>Paget to Grey, no. 17, Feb. 28, 1908. Annual Report on Siam for the Year 1907. FO 405/178.

Siamese government desired to exclude French Asiatic subjects and protégés from the privileges of extraterritoriality and place them under Siamese jurisdiction. 60

In February 1907, Strobel, who had just returned from leave of absence, received an intimation from the French Government that they were willing to negotiate with the Siamese government regarding an exchange of territories: namely, that Siam should cede to France her Cambodian provinces of Battambong, Angkor, and Sisophon, in return for which Siam would recover Krat and the adjacent islands, and Dansai. The grounds on which the desirability of such an exchange was based were, that the firstmentioned provinces were purely Cambodian, while Krat, on the other hand, was entirely Siamese. However, had the negotiations been limited to an exchange of territories alone, Siam would have been the loser as regards the extent of territories under the proposed arrangement. With this circumstance in view. Strobel considered the moment opportune to introduce the subject of an abatement of French extraterritoriality in Siam. his opinion, one of the subjects of the negotiations should comprise the abandonment of French jurisdiction over French Asiatic subjects in Siam. 61 Strobel, whose aim was to recover all rights of sovereignty on Siamese soil, looked towards France to become the first European Power to abandon the extraterritorial privileges of her Asiatic subjects in Siam in exchange for the Siamese Cambodian provinces. If Siam were to be successful with France, in Strobel's opinion, in time she would be able to make a similar pargain with other foreign Powers.

<sup>60</sup>Lawrence P. Briggs, "The Treaty of Marcy 28, 1907 between France and Siam and the Return of Battambang and Angkor to Cambodia," The Far Eastern Quarterly, Vol. 5, no. 4, Aug. 1946, p. 449.

<sup>61</sup>Paget to Grey, no. 26, Confidential, March 27, 1907. FO 422/61.

After only a little over three weeks of negotiations. Prince Devawongse, on behalf of the Siamese government, and Victor Collin de Plancy. a career diplomat who was made Minister to Siam especially to take up negotiations with the Siamese government for a new treaty, were able to arrive at a settlement, and a new Franco-Siamese Treaty was signed on March 24. 1907.62 Siam ceded the provinces of Battambong, Sisophon, and Angkor to France, but received in retrocession the port of Krat with adjacent islands and the territory of Dansai. Article V of the Treaty dealt with the question of French Consular protection. France agreed that all her Asiatic subjects and protégés who registered themselves subsequent to the signature of the Treaty should be amenable to the jurisdiction of the ordinary Siamese courts. The persons who had already registered previous to the date of the Treaty, including their children. but not grandchildren, should be justiciable in the International Courts, established by Article XII of the Convention of 1904, which should be extended throughout the kingdom of Siam for the adjudication of disputes involving French Asiatic subjects and protégés. This system would come to an end and the jurisdiction of the International Courts be transferred to the ordinary Siamese courts after the promulgation and the coming into force of the Siamese codes, namely, the Penal Code, the Civil and the Commercial Codes, the Codes of Procedure, and the Law of Organization of Courts. As a matter of fact, these codes were still in preparation. At any rate, the right of the French authorities to withdraw cases to the French Consular Courts would cease to be exercised as soon as one of the Codes or any particular law, namely, Customs law should be promulgated and notified to the French Legation. When all the Codes had finally been promulgated,

<sup>62</sup>Text in BFSP, Vol. 100, pp. 1028-31.

then French Asiatic subjects would become amenable to purely Siamese courts. 63

In exchange for this cession of extraterritorial privileges on the part of the French Government, French Asiatic subjects and protégés obtained by Article VI of the Treaty the rights and prerogatives throughout Siam enjoyed by the Siamese themselves, notably the right of property, the right of free residence and travel. They were, however, to be subject to ordinary taxes and services, but not to military service or any extraordinary requisitions or taxes. 64

The judicial stipulations of the Treaty were the first great step for Siam in removing the "stigma of inferiority" implied in the extraterritoriality of Asiatics. 65 The Treaty considerably extended Siamese jurisdiction over French Asiatic subjects and protégés. It went much further in the direction of giving up extraterritorial privileges throughout Siam than any previous treaty. However, this Treaty did not place the French European subjects or non-Asiatic subjects or protégés under the jurisdiction of the Siamese courts. 66

Those French Asiatic subjects and protégés who were registered in the French Consulate in Siam before the signing of the Treaty of 1907 were called "pre-registered;" on the other hand, those registered after the signature were called "post-registered." These terms, "post-registered" and "pre-registered," came into general use in later treaties, not only

<sup>63</sup>Paget to Grey, no. 33, Confidential, April 18, 1907.

<sup>64</sup>Sir F. Bertie to Sir E. Grey, no. 163, March 29, 1907. Transmits extract from "Le Temps" analyzing Articles of the new Franco-Siamese Treaty. FO 422/61.

<sup>65</sup>Briggs, op. cit., p. 453.

<sup>66</sup>Thornely, op. cit., p. 157.

with regard to Asiatics under the French Treaty of 1907, but also with regard to all British subjects, both European and Asiatic, under the Treaty of 1909, and all Danish subjects under the Treaty of 1913.67

with the advent of the new Treaty, a decided improvement was noticeable in the tone of Franco-Siamese relations. The introduction of the new system of jurisdiction provided for by the Treaty gave a special impulse to the work of codification of Siamese laws which had been going on for several years with the assistance of M. Padoux, the Legislative Adviser to the Siamese government. The Siamese government felt it incumbent on them, henceforth, to allow the French a share of the legal advisers, who in the past decade were mostly of British nationality. 68

Although the French Government had sacrificed her Asiatic subjects and protégés to Siamese jurisdiction with certain reservations, it was not by any means abruptly taken away from them.<sup>69</sup> However, the judicial stipulations of the Treaty had considerable bearing upon the relations between Siam and all the European Powers having treaty relations with her,

<sup>67</sup>Thornely, op. cit., p. 158.

<sup>68</sup>Beckett to Grey, no. 87, Confidential, Oct. 10, 1907. FO 422/61.

<sup>69</sup>In this manner three distinct stages occurred in the transition of French Asiatic subjects from their possession of full extraterritorial privileges to their eventual submission to complete Siamese jurisdiction:

<sup>1.</sup> From the French Consular court the pre-registered Asiatic subjects were taken instead to the International Court, in which a French Consular officer would sit with the Judge and have the right of withdrawing cases, while appeal were sent to the Siamese Appellate Tribunal in Bangkok, whose members would include at least two European judges.

<sup>2.</sup> While the pre-registered French Asiatic subjects were still only amenable to the International Court, the right of withdrawal by the French authorities would cease as each new Siamese Code was published in respect of all cases coming within the scope of that particular Code. Appeals still remained as under the first stage.

<sup>3.</sup> When all the Codes were published, French Asiatic subjects would pass from the International Court to the purely Siamese courts both as regards courts of first instance and appeal.

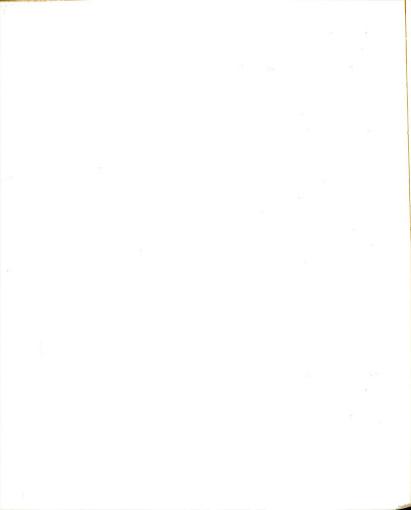
Paget to Grey, no. 33, Confidential, April 18, 1907. FO 422/61.

for the Siamese government could now approach other foreign Powers for jurisdiction negotiations along similar lines to those that they had followed in concluding their treaty with France. One immediate effect of the Franco-Siamese Treaty was that it stultified the Anglo-Siamese discussions then in progress regarding the extension of the International Court system in exchange for acquiring the right to hold land. As a result. Paget recommended to the Foreign Office that if the British Government wanted to continue the negotiations with the Siamese government, they should change their bases of negotiation with a view to securing a more profitable bargain than hitherto contemplated. 70 Considering that Siam had made a large territorial sacrifice to France in order to obtain a concession regarding jurisdiction, he thought that Britain should expect likewise some territorial or other concession to be the price of a partial surrender of British extraterritorial jurisdiction in Siam, and that the mere acquisition of the right to hold land would be inadequate. 71 Furthermore, as the British Government could not make any distinction between their European and Asiatic subjects, as the French Government had done, he suggested that, if it should be necessary to hand over British subjects to the Siamese courts, it should be done with great care and with restrictions. 72 As a result of the Treaty of 1907, then, Great Britain was practically compelled to follow the lead given by France, though with the addition of some necessary precautions which the French Government neglected to take.

<sup>70</sup> Ibid.

<sup>71</sup>Paget to Grey, no. 26, Confidential, March 27, 1907. FO 422/61.

<sup>72</sup> Ibid.



## Anglo-Siamese Negotiations and the Treaty of March 10, 1909

Following upon the signature of the Franco-Siamese Treaty of March 23, 1907, Paget expected that Siam would approach Britain for a new negotiation regarding questions within the British sphere of influence. 73 True to his anticipation, shortly afterwards Strobel threw out some hints that Siam would be willing to make some arrangement with Britain regarding jurisdiction similar to that with the French, and he suggested at the same time, though not in connection with jurisdiction, 74 that Siam might be willing to cede to Britain her Malay States of Kelantan, Trengganu, and Kedah, over which Siamese control was more theoretical than practical. Informal pourparlers between Paget and Strobel then led to a proposal for negotiations to include: i) cession of Siamese Malay States to Britain; ii) modification of British extraterritorial rights in Siam; iii) abrogation of the Secret Convention of 1897; iv) arrangements for construction of a Malay Peninsula Railway. 75

## Negotiation for the Abrogation of the Secret Convention of 1897

The Secret Convention of 1897 constituted one of the principal subjects for discussion in their negotiations. The Siamese government

<sup>73</sup>Paget to Grey, Tel. no. 27, April 27, 1907. FO 422/61.

<sup>&</sup>lt;sup>74</sup>Strobel did not want it to appear that Siam had ceded to France her Cambodian provinces in exchange for the French concessions in the matter of jurisdiction. In other words, he desired it to appear that the two questions of territorial exchange and of jurisdiction had been considered separately. In the case of the cession of Siamese Malay States to Britain, he desired to create the same impressions.

In my opinion, Strobel had a long-ranged view; he was afraid that foreign Powers, other than Britain and France, might demand the same concessions, namely territorial concessions, from Siam whenever she negotiated for obtaining jurisdiction over the subjects of a foreign Power.

 $<sup>^{75}</sup>$ Paget to Grey, no. 17, Feb. 28, 1908. Annual Report on Siam for the year 1907. FO 405/178.

desired to abrogate the Convention since it hampered enterprise and commercial liberty in the Siamese Malay States. Summary consideration of the British position in the Straits Settlements and the Federated Malay States would show that Britain was unable to tolerate the prospect of another foreign Power obtaining a footing in any part of the Malay Peninsula, as she regarded the Peninsula to be under her sphere of influence.

Although Siam had, ever since the existence of Anglo-Siamese relations, claimed the greater portion of the Peninsula as a part of Siamese dominions, her hold over these regions comprising the States of Kelantan, Trengganu, and Kedah was of the most shadowy and feeble kind, and Britain was afraid that Siam would naturally be unable to resist any serious aggression on the part of a foreign Power. An additional danger lay in the fact that the Sultans of several of these States refused to recognize Siamese authority, but Siam could not properly exercise control over them owing to their remoteness from Bangkok. Furthermore, Britain constantly suspected that at some moment any one of these petty Rulers might be enticed into relations either directly with some foreign Government for the cession of a harbour or coaling station, or by the grant of concessions of land in their States, might permit the establishment of large foreign interests leading eventually to intervention in the Peninsula by a foreign country. 76

The attention of the British Government was thus drawn to this danger. As a result, the Foreign Office considered it advisable in the year 1897 to negotiate a Secret Convention with Siam, which was signed on April 6, 1897, 77 whereby the Siamese government engaged themselves not

<sup>76</sup>Paget to Grey, no. 42, May 27, 1907. General Report on Siam for the Year 1906. FO 405/171.

<sup>77</sup>T. Numnonda, "The Anglo-Siamese Secret Convention of 1897," JSS, Vol. LIII, part 1, Jan. 1965, pp. 51-52.

to grant, cede, or let any special privilege or advantage, whether as regards trade or land, either to the Government or subjects of a third Power in the Siamese territories south of Moung Bang Tapan, on the 11th parallel, without previous reference to the British Government. Great Britain, in return, guaranteed that she would support Siam in resisting any attempt by a foreign Power to acquire dominion or to establish its influence or protectorate in these territories.

The Convention worked reasonably well during the first few years of its operation, and brought satisfaction to both countries. 78 The Foreign Office took every possible precaution to preserve the secrecy of the Convention to comply with the wish of the Siamese government, and the British could rest secure from fear of foreign commercial and political intervention in the Peninsula. As regards the Siamese government, they had reason to be content since the British Government did not question any longer Siamese sovereignty over the Malay States. However, this situation did not last. As the twentieth century opened, various interpretations of the Convention led to a good many discussions and disagreements between the two Governments. The Siamese government chafed under the provision which imposed upon them the obligation of consulting the British Government in every instance before granting a concession in the Malay Peninsula. This left the Siamese government in an awkward position in dealing with applications for concessions in the Malay Peninsula from other foreign Powers. One of the chief Siamese complaints was the delay caused by reference of each case to the British Government; if the concession were not approved, the Siamese would be laid open to remonstrance and the accusation of non-compliance with Treaty rights from other Powers. The

<sup>78&</sup>lt;u>Ibid.</u>, p. 52.

policy of "wholesale discrimination against foreigners in favour of British subjects and capital," Strobel pointed out, placed the Siamese government in an extremely embarrassing position by obliging them to find all kinds of pretexts for delaying a reply to applications for concessions, and ended by their having to refuse the concession when no plausible ground existed. Furthermore, Strobel was afraid that the time would come when the Siamese government could no longer take the responsibility of refusing foreigners such concessions when no plausible pretext for the refusal could be found; as a result, those foreigners would undoubtedly appeal to their own Governments for intervention, and such an action would put the Siamese government in an extremely difficult position. 80

With increasing demands for land in the Siamese Malay States by the subjects of other foreign Powers, the difficulties surrounding the question were consequently increasing. This led the Siamese to contend that the Convention was intended as a purely political instrument to prevent foreign

<sup>&</sup>lt;sup>79</sup>Memorandum on the interpretation of the Secret Convention between Great Britain and Siam, by Mr. Edward H. Strobel, Sept. 4, 1905. Enclosure in Paget to Lansdowne, no. 67, Confidential, Sept. 7, 1905. FO 69/265.

<sup>80&</sup>lt;u>Ibid</u>. In Lansdowne's opinion, the policy of the entire exclusion of foreigners and foreign capital from the Peninsula would bring the British Government into serious difficulties with foreign Powers, and would not bring "any commensurate advantage" to Britain. He thought that whenever the Siamese government ran out of new reasons to furnish to foreign Powers in the refusal of an application for concession, they would be driven to admit, as the real ground for refusal, that they had been bound by Convention not to grant any concession to foreigners other than British subjects without the assent of the British Government. Consequently, the Governments of the countries concerned would then appeal to the most-favoured-nation Article of their Treaties with Siam; and the Siamese Government would inevitably have to accept the applications.

Therefore, Lansdowne was of the opinion that if foreign concessions were confined to purely industrial enterprise, with limited number and area, British interests in the region would not thereby be endangered. FO to CO. Confidential, April 8, 1905. FO 69/269.

Powers from obtaining any strategic position, naval station, or coaling station in the Peninsula, and not to be utilized to block foreign commercial concessions as such. In return, the British Government argued that it was extremely difficult to distinguish between purely commercial enterprises and concessions likely to be of political import, since an agglomeration of foreign interests might well lead a foreign Power into using large vested interests and rights as a pretext for intervention.81 To avoid the irksome issue of having to find or invent grounds for refusal of concessions, the British recommended that Siam should reveal the situation to foreign Powers by the publishing of the Secret Convention, and also should publish the fact that the British Government held the right to sanction or veto concessions. This would be a satisfactory means to check the applications from foreigners. 82 After all, it was pointed out. the original objection of Siam to such publication had been the fear of French demands with respect to the provinces in the east of Siam now ceded to France by the recently-concluded treaty.

As Paget noted, with the policy of the entire exclusion of foreigners and foreign enterprise from the Siamese Malay States, the British Government had reversed its policy of the "open door," which they had pursued in other parts of the world. <sup>83</sup> The terms of the Convention had restricted the liberty of the Siamese government to grant concessions, whether as regards land or trade, without the consent of the British Government, which restriction had proved itself to be inconvenient, a hindrance to commercial

 $<sup>^{81}\</sup>mathrm{Paget}$  to Grey, May 27, 1907. General Report on Siam for the Year 1906. FO 405/171.

<sup>82</sup>Paget to Lansdowne, no. 5, Confidential, Jan. 25, 1905. FO 69/264.

<sup>83</sup>Memorandum. The abrogation of the Secret Convention of 1897 and substitution of an Undertaking of a Political Nature. Enclosure 15 in Paget to Grey, Feb. 27, 1908. PO 422/62.

enterprise, and had placed Siam in an awkward position as regards her relations with other foreign Powers. <sup>84</sup> As for the British Government, they were anxious lest they find themselves directly at issue with one of the foreign Powers, and under the necessity either of vindicating the stipulations instituted by the Convention or of receding from that policy. From the British point of view, the disappearance of the Secret Convention would, therefore, remove a cause of anxiety, namely the friction and annoyance to which the interpretation of this Convention had constantly given rise between the two Governments. At any rate, they thought that the Convention might with advantage be replaced by some instrument setting forth more definitely the object of the British Government to prevent political interference by any other Power, as distinguished from the hampering of commercial enterprise and of the development in the Malay Peninsula, <sup>85</sup>

At the outset of the negotiations, simultaneously with his request for the abrogation of the Convention, Strobel himself made the proposal to substitute an agreement of a wholly political character. 86 Paget, looking for the best bargain, urged that in addition to such an agreement the British Government require a provision similar to Article VII of the Franco-Siamese Convention of 1904, which gave the French Government the right to be consulted on public works in their sphere of influence. Paget suggested the following wording for the agreement:

That Siam will neither in the Malay Peninsula nor in the islands adjacent thereto, nor in the territories situated in the immediate neighbourhood of British India, cede or lease any territory of any description directly or indirectly to any foreign Government; and

<sup>84</sup>Paget to Grey, no. 36, Secret, April 29, 1907. FO 422/61.

<sup>85</sup>Memorandum. The Abrogation of the Secret Convention of 1897. Enclosure in Paget to Grey, Feb. 27, 1908. FO 422/62.

<sup>86</sup> Ibid.

that the right shall not be granted to any foreign Government or Company to establish or lease any coaling station, to construct or own docks, or to occupy any harbour or position likely to be prejudicial to British interests from a strategical point of view. 87

To this suggestion Strobel demurred on the ground that the aim of the Siamese Government in making a cession of the Siamese Malay States to the British Government was to retain absolute freedom of action within the territories which remained to them; therefore, a clause similar to the one in the French Convention might become an exceedingly irksome restriction. He was negotiating with the French Government to modify such an Article on the ground that, having given up a large portion of territory to France, the Siamese government should have a free hand in that which remained. Accordingly, Strobel did not want to see Siam being restricted in controlling and managing her own territory even after the cession of territory to Britain. Furthermore, he explained that should Siam be bound by the stipulation as mentioned above. British intervention in the Malay Peninsula would continue in a different form "but be almost equally annoying" in spite of the abrogation of the Secret Convention. 88 In view of this strenuous opposition, the British claim to such a provision was dropped.

# Cession of Siamese Malay States to Great Britain

The idea of the cession of the Siamese Malay States of Kelantan, Trengganu, and Kedah to Britain in return for suitable concessions to Siam, originated with Strobel after the conclusion of the Franco-Siamese Treaty of 1907. In his opinion, the time had arrived when the Siamese government should look forward to "more control over its own affairs and

<sup>87</sup> Ibid.

<sup>88</sup>Strobel to Paget, Private and Confidential, Sept. 14, 1907. FO 422/61.

to less interference from without."89 His theory was that it was well worthwhile for Siam to sacrifice the portion of territory over which the government did not exercise effective administrative control and from which constant trouble and difficulty might arise, in exchange for suitable advantages for Siam; and, in the case of Britain, for such concessions as the abrogation of the Secret Convention of 1897, the giving up of British extraterritorial jurisdiction, at least to the extent of the Treaty with France in 1907, and an agreement for the construction of the railway in the Malay Peninsula with a loan from the Federated Malay States to the Siamese government. 90

To Strobel, the Siamese Malay States were of little value to Siam; they were a source of weakness and did not bring any revenue to the Exchequer. 91 The administration of these States had been a constant source of trouble and friction between Siam and the Straits Settlements. Furthermore, the status of the Malay Sultans and their states in their relation to Siam was somewhat indefinite. There was so much to be done in the heart of Siam that men and money could not be spared to rule those outlying possessions with the strong hand needed to establish a satisfactory administration. This uneasy situation coincided with the wish of the British Government to expand British influence in the north of the Peninsula. If these conditions were allowed to continue, he was afraid that the day would inevitably arrive when Siam would lose all her Malay possessions to Britain without getting any return. 92 In addition to these factors, Strobel regarded the Secret Convention, with the interpretation

<sup>&</sup>lt;sup>89</sup>Strobel to Paget, July 1, 1907. FO 422/61.

<sup>90</sup>Ibid.

<sup>91</sup>Paget to Grey, no. 36, Secret, April 29, 1907. FO 422/61.

<sup>92</sup>Paget to Grey, no. 4, Confidential, Jan. 15, 1909. FO 422/64.

regarding concessions which had been placed upon it, as affording Britain so stringent a hold over the Siamese Malay States as to render those dominions valueless to Siam. 93 His policy had therefore been to cede the States, which only constituted a weakness to Siam, and thereby to assure the future of the more northerly Siamese possessions in the Peninsula. 94 In other words, he preferred to see Siam retain only those territories over which she could exercise an effective control. Westengard, Strobel's assistant, who had travelled all through the Peninsula in 1906, was also very decidedly of this way of thinking.

Although Strobel knew that the loss of territory was undoubtedly galling to the Siamese national pride, he was convinced that the cession of the Malay States to Britain, all those recurring difficulties and numerous sources of friction which so regularly arose would automatically disappear. He drew an analogy for the Siamese, based on medical experience, comparing the Malay States to diseased limbs that needed to be amputated to save the body, that is the healthy portions of the kingdom, from disease or source of weakness for Siam. 95

## The Anglo-Siamese Negotiations 1907-1909

The informal negotiations between Britain and Siam began between Strobel and Paget in April 1907. Strobel considered the abrogation of the 1897 Convention, and the gradual submittance of British Asiatic subjects to Siamese jurisdiction in the same manner as that provided by the French Treaty, as the sine qua non for the cession of the Siamese Malay States

<sup>93</sup>Paget to Grey, no. 15, Confidential, Feb. 27, 1908. FO 422/62.

<sup>94</sup>Paget to Grey, no. 4, Jan. 15, 1909. FO 422/64.

<sup>95</sup>Peel to Grey, no. 10, Confidential, March 8, 1910. Annual Report for 1909. FO 405/195.

to the fact that the policy of the British Government, unlike the French, had made no distinction between European and Asiatic subjects. Strobel expressed the hope that Britain might find some means of overcoming the difficulty of creating a distinction between British European and Asiatic subjects. If guarantees were required for the probity of the Siamese courts, he was convinced that the Siamese government would accept the appointment of British Legal Advisers, although they would not go so far as to appoint British judges. 96

To solve this difficulty Paget suggested: 97

- 1. That British Asiatic subjects should gradually be submitted to Siamese jurisdiction, following the lines laid down in the Franco-Siamese Treaty with regard to French Asiatic subjects, but that provision should be added to secure the integrity of the Siamese courts by stipulating for the appointment of British Legal Advisers to these courts.
- 2. That European British subjects, instead of becoming amenable to the ordinary Siamese courts after the introduction of the new codes in the same manner as Asiatics, should only become amenable to a Siamese court in which one of the British Legal Advisers to the Siamese government should sit as judge together with a Siamese judge, and that they should have the option of having their cases, both civil or criminal, tried in Bangkok. Furthermore, the Appeal court, for cases in which Europeans were concerned, should continue to have two European judges in its composition.

Undeniably in the above proposal, a distinction was still made between European and Asiatic British subjects, but inasmuch as both

<sup>96</sup>Paget to Grey, Tel. no. 27, April 27, 1907. FO 422/61.

<sup>&</sup>lt;sup>97</sup>Paget to Grey, no. 36, Secret, April 29, 1907. FO 422/61.

Europeans and Asiatics were made subject to the Siamese courts, the difference lay merely in the composition of the courts. A distinction of this kind, in Paget's opinion, would not offer the same objections as one which caused Asiatics to fall entirely under Siamese jurisdiction but Europeans to remain under their own Consular courts. 98

Beside the question of jurisdiction, it appeared to Paget that nothing in Strobel's proposals was likely to present much difficulty to Britain. Kedah, Kelantan, and Trengganu, to which might possibly be added the smaller states of Perlis, Stul, and Raman as being also purely Malay States, constituted a very considerable portion of the area covered by the Secret Convention of 1897, and that portion to which British interest more especially attached. Paget was of the opinion that if these states were to become British possessions, and, in addition, an Agreement could be made of a purely political nature to preclude any acquisition of territory by a foreign Power in the remaining portion of the Peninsula, the advantage of the bargain would appear to be entirely on the British side. 99

These important issues not only concerned the Imperial Government directly, but also the Governments of India and of the Straits Settlements. As a result the Foreign Office needed some time to have full discussion with the India and the Colonial Offices before any definite instructions could be given to Paget to commence the formal negotiations with the Siamese government. After having received the concurrence of both the India and the Colonial Offices, the Foreign Office instructed Paget, who was on leave in England by August 1907, to send a reply to Strobel indicating the willingness of the British Government to enter upon negotiations with the

<sup>98</sup> Paget to Grey, Tel. no. 28, April 29, 1907. FO 422/61.

<sup>99</sup>Paget to Grey, no. 36, Secret, April 29, 1907. FO 422/61.

Siamese government on the lines already discussed between himself and Strobel at Bangkok. 100

Before the formal negotiation began, the Colonial Office sent to the Foreign Office the observation made by Sir John Anderson, the Governor of the Straits Settlements, that they should endeavour to induce Siam to cede a considerably larger area than was suggested by Strobel. But Lord Elgin was of the opinion that it would be unwise to put forward any demands which the Siamese would likely think excessive or unreasonable, lest the success of the whole negotiation be jeopardized. He would leave it to Sir Edward Grey to decide, after consultation with Paget, the exact nature of the demands which should be put forward on behalf of the British Government. 101

Strobel evinced much pleasure in hearing of the willingness of the British Government to enter upon negotiations, but nothing could be done in the absence of King Chulalongkorn, who was touring Europe for the second time, and no one could take the responsibility of authorizing the official proposals from the Siamese government. In the meanwhile, he discussed different subjects of the coming negotiation with Beckett, who was acting as Chargé d'Affaires while Paget was in England. He expressed his opinion that the Siamese government would follow the lines laid down by the Treaty with France as the minimum that they would accept in the matter of jurisdiction, and he was sure that they would consider as a retrograde step any cession of extraterritoriality short of that, and if the British Government decided to go a considerable distance beyond the French minimum, that is, to include British European subjects to Siamese

<sup>100</sup>FO to CO, Secret, Aug. 23, 1907. FO 422/61.

<sup>101</sup>FO to CO, Sept. 6, 1907. FO 422/61.

jurisdiction, there would in that case undoubtedly be more guarantees and safeguards than those given to France. 102 However, he avoided giving the impression that the gradual abolition of extraterritoriality was being bought by the cession of territory. In a private letter to Paget, Strobel stated that he should be able to show that, in addition to the surrender of British jurisdiction, the Siamese government was receiving "very material advantages," among which were the abrogation of the Secret Convention and the loan at a low rate of interest by the Federated Malay States for the construction of the Siamese Peninsula railway; otherwise, they would greatly hesitate in being drawn into any negotiation regarding the transfer of territory without knowing beforehand exactly whether they would receive a satisfactory return for the sacrifice they made. 103

After the return of His Majesty to Siam on November 17, Strobel decided not to make any communication to him in writing, but to use his personal influence to induce the King, who gave him implicit confidence, to consent to the negotiations. His object was a first to sound out the King and ascertain how far he would approve the general principles. On the whole, his first interview with the King on November 23 was favorable, for the latter did not take a non possumus attitude regarding either the cession of territory or any other principles raised. 104 This interchange of views between His Majesty and Strobel considerably cleared the air, 105 and gave the King time to think over the whole matter before Paget's return.

<sup>102</sup>Beckett to Grey, Confidential, Sept. 13, 1907. FO 422/61.

<sup>103</sup>Strobel to Paget, Private & Confidential, Sept. 14, 1907. FO 422/61.

<sup>104</sup>Beckett to Langley, Very Confidential, Nov. 27, 1907. FO 422/62.

<sup>105</sup>The main points which Strobel explained to the King were the Malay Peninsula Railway, the abrogation of the 1897 Convention and

Paget returned to Bangkok in December and negotiations with Strobel began. The question of jurisdiction was taken up first, and both

cession of territory, and the abandonment of jurisdiction.

Concerning the Malay Peninsula Railway, Strobel impressed on the King the importance of the railway as a factor making for greater consolidation of the kingdom, improved administration, and commercial expansion. To build this railway money was required. To this end, a loan might be advanced by the Federated Malay States at a far lower rate of interest than was possible in case of another public loan in Europe.

Concerning the cession of territory, Strobel explained the policy which he had pursued in his negotiations with the French Government and which he considered, in the best interests of Siam, should now be pursued in any negotiations that took place with Britain, --namely, one having for its object the abandonment of such distant portions of the kingdom as were useless incumbrances and inwhich control was non-effective, and the greater consolidation and more effective control of the remaining portions. Furthermore, the existence of the Secret Convention was a serious bar to the consummation of this policy. To remove this bar, Strobel thought that it was well worth considerable sacrifices to consider the cession of Kelantan, Trengganu, and Kedah in this connection, since the position of these States was far from satisfactory.

The King had no objection as to Kelantan and Trengganu, but he feared public opinion in Siam would make the cession of Kedah a difficult matter.

Concerning the abandonment of jurisdiction, Strobel explained his desire to bring all the Treaty Powers into line with the principles laid down in the Treaty with France. He saw the great access of prestige which would accrue to Siam if she could obtain direct jurisdiction over all foreign subjects. She would then be in the same category of oriental nations as Japan, and be included no longer in the same category as China or Turkey.

Britain was the Power whose interests in Siam were the largest, and whose consent, therefore, was of premier importance. Strobel believed Britain to be willing to negotiate for the acceptance of the principle, not only as regards Asiatic, but also European, British subjects. Therefore, she would naturally require more ample consideration than the French in the matter of a set-off and also of guarantees.

Strobel went on to suggest that, in addition to the right to hold land, a Court, by which he meant the International Court, should be instituted in Bangkok, consisting of a British and Siamese judge, for the trial of all cases in which British and Siamese subjects were concerned. This would serve the double purpose of acting as the additional safeguard required by Britain on account of the inclusion of her European subjects, and of at the same time meeting any possible opposition by the latter on the score of too violent a transition, want of consideration of British commercial interests, or other reasons. The law applicable in this International Court would be that of Siam, modified by English law principles in cases where Siamese law was silent.

On hearing this explanation, the King appeared to consider the proposal not unfavorably, so long as the proposed court was not the same as the Mixed Courts in Egypt--a court in which all the Powers were represented in turn. He objected to the institution of any such courts in Siam.

Memorandum of Conversation between the King of Siam and Mr. Strobel

negotiators were able to agree upon various points in judicial matters after a short discussion. 106 Britain agreed to submit her Asiatic subjects to the jurisdiction of the Siamese courts on the same terms as had been made by France respecting her Asiatic subjects. However, Britain requested that a British Legal Adviser should be present as a guarantee for the proper administration of the Siamese courts, a precaution which the French Government omitted to take. Given the British policy of making no distinction between European and Asiatic British subjects, the submission of the latter to Siamese jurisdiction entailed the submission of the former. Strobel had not only assented to the special conditions as safeguards for European subjects but had suggested that the judges of the British Consular court should enter the Siamese service. Under the circumstances, Strobel proposed that he and Paget should begin to draft various points that they could agree upon for eventual inclusion in the Convention.

The railway and territorial issues were the only ones over which difficulties had arisen. The Federated Malay States, in return for the loan of money, 107 desired to exercise some control over the construction of the railway, namely, that construction should be undertaken by the Federated Malay States, and that each section, when completed, should be mortgaged to the Federated Malay States as security for the loan. The idea of such control was both wounding to Siamese amour-propre and aroused Siamese fears that the railway might possibly become the means of further increasing British influence in the Siamese Malay States at the expense

on November 23, as described by the latter to Mr. Beckett on November 26, 1907. Enclosure 2 in Beckett to Langley, Nov. 27, 1907. FO 422/62.

<sup>106</sup>Paget to Grey, no. 3, Secret, Jan. 1, 1908. FO 422/62.

<sup>107</sup>The estimated sum for the construction of the whole length of railways was £3,000,000 to £4,000,000. The Siamese government wanted to raise the loan of £3,000,000.

of Siamese influence there. Strobel objected to the actual construction being placed in the hands of the Federated Malay States, but he was willing to agree that none but British and Siamese engineers should be employed on the construction. 108 The hitch with respect to territory was that the Siamese government wanted the low interest rate of 3 3/4 percent instead of 4 percent for the loan to form part of the consideration for the cession of territory. To this Paget replied that the Railway question, including the rate of the loan, had been discussed since 1906, long before the cession of territory and other questions were mooted. As a result, he argued, they should be considered separately. 109

Regarding the cession of the Siamese Malay States, Paget kept in view the desire expressed by the Federated Malay States' Government for a larger cession of territory than that of the three States originally mentioned by Strobel. Paget suggested that the two smaller States of Perlis and Setul should be combined with Kedah, since they were considered to be the provinces of that State. Strobel replied that Perlis might for practical purposes be considered a part of Kedah, but that Setul was separated from that State by a high range of mountains and was ethnologically different, for 60 percent of its inhabitants were Sam Sam, or Siamese who embraced Mahommedanism. Under the circumstances, he opposed the cession of Setul. At any rate, Paget thought it would be more politic to turn the British claim to account by agreeing to renounce Setul if the Siamese government would in its stead hand over to Britain the Langkawi islands and the lower portion of Rahman.

Unfortunately Strobel, who had already been unwell since November of the previous year, died on January 15, 1908. His sudden death was not

<sup>108</sup> Paget to Grey, no. 7, Confidential, Jan. 30, 1908. FO 422/62.

<sup>109</sup>Paget to Grey, no. 3, Secret, Jan. 1, 1908. FO 422/62.

only a serious national loss to Siam, but took place at an extremely important juncture, when the negotiations with Britain were approaching their final solution. Various issues, having been discussed between Strobel and Paget, had been carried through as far as the jurisdiction question was concerned. However, Strobel's position as the General Adviser to the Siamese government was taken up by Jens I. Westengard, his assistant, who had been fully cognizant of his views. Consequently, Westengard took up the threads of the negotiations from the point to which Strobel had carried them. Westengard, however, did not have the personal confidence of the King to the extent achieved by Strobel. Strobel had been able to bring control of Siamese foreign relations effectively into his own hands. Westengard did not have the same power to counteract the advice of the King's counsellors. 110 Nevertheless, the Siamese Government invested him with full authority to continue the Anglo-Siamese negotiations.

The negotiation between Paget and Westengard was resumed on January 25, in the course of which the latter tried to bring the question of the cession of more territory to Britain in conjunction with the lower interest rate of the railway loan. Westengard maintained that the Siamese would be willing to cede Lower Rahman and Langkawi islands to Britain if they could have the railway loan at 3 3/4 percent. This proposal met with different reactions from Sir John Anderson of the Straits Settlements and from Paget. The former suggested that Siam might, by a further cession of territory, obtain the loan at 3 3/4 percent. Paget, on the other hand, opposed such a proposal; he did not see why Britain should be asked to

<sup>110</sup> Peel to Grey, no. 10, Confidential, March 8, 1910. Annual Report for 1909. FO 405/195.

pay for territories with money. In his opinion, Britain had already made several concessions to Siam in the course of the negotiations, namely, the proposed abandonment of the right to be consulted on public works in the British sphere of influence. 111 In subsequent discussions, however, Westengard decided to part with Lower Rahman and the Langkawi islands as an offset against the British claim for other Siamese Malay-speaking provinces in the Peninsula, such as Legeh, and Patani, which had been more desirable from a Federated Malay States' point of view. 112

After no more than a month of discussions, Paget and Westengard arrived at a settlement of all the issues. By the end of February 1908, a draft treaty with annexes--namely, the declaration abrogating the Secret Convention of 1897, and an agreement concerning the proposed Siamese-Malay Peninsula Railway--prepared by both negotiators was ready to be sent for the approval of their governments.

It was to the Siamese suggestion for a cession of territory that the negotiations owed their origin. The first article of the draft Treaty, therefore, provided for the cession by Siam to Britain of the States of Kelantan, Trengganu, Kedah, and Perlis. The addition of territory to the British Malay States, considered in conjunction with the projected railway connecting the Federated Malay States' system with the Siamese system, constituted a great advance of British interest in the Peninsula. 113 Broadly speaking, by the new arrangement the whole of the Malay Peninsula up to within a short distance of the 7th parallel was to pass under direct British control. The cession of the Siamese Malay States had a direct

<sup>111</sup> Memorandum by Mr. Paget respecting Interview with Mr. Westengard on Jan. 28, 1908. Enclosure in Paget to Grey, Jan. 30, 1908. FO 422/62.

<sup>112</sup> Memorandum, Cession of Territory, Enclosure in Paget to Grey, no. 15, Confidential, Feb. 27, 1908. FO 422/62.

<sup>113</sup>paget to Grey, no. 15, Confidential, Feb. 27, 1908. FO 422/62.

bearing upon another matter. A considerable portion of the area which the Secret Convention was framed to cover was to be annexed to the British possessions, and with the transfer Siam would be relieved of all responsibility in respect of this area. The northern portion of the Peninsula, which still remained to Siam, stood on a different footing. The provinces here formed an integral part of the Siamese dominions, and they were well under Siamese control. Any machinations in this area would be known to the Siamese government. Therefore, Britain could feel confident that Siam would be averse to allowing a foreign Power to establish a footing in those regions. Nevertheless, Britain still required a declaration to be made by Siam, that she would not cede or lease territory or coaling stations to any foreign Power, within certain limits. The principal value of such a declaration lay in publicizing what Britain would consider a threat to her political interests, and thus serve as a warning to foreign Powers not to interfere in the Peninsula. 114

Regarding the question of jurisdiction, the proposed Treaty introduced several changes affecting British subjects. Article VI of the draft Treaty, which referred to the question of jurisdiction, was analogous to Article V of the 1907 Franco-Siamese Treaty, but with this difference, that in the British case it included European British subjects as well as Asiatics, a fact which was of considerable prominence when considering the provision that persons registering after conclusion of the Treaty should be amenable to the ordinary Siamese courts. 115 On account of this difference, when first discussing the details of this question with Strobel, Paget urged that it would be necessary to depart from the lines of the Franco-Siamese Treaty, since it would be a radical and momentous change

<sup>114 &</sup>lt;u>Ibid</u>.

<sup>115</sup> Memorandum on Jurisdiction. Enclosure in Ibid.

to submit European British subjects, even though they would register themselves at the British Consulate after the signature of the Treaty, directly to the Siamese courts. Strobel fully appreciated the justice of this contention and agreed to inform the Siamese government that all British subjects, whether registered before or after conclusion of the Treaty, should be amenable to the jurisdiction of the International Court only.

Apparently, however, Strobel had not quite correctly gauged the Siamese feeling on this point, for when, subsequent to his death, Westengard came to take the matter up with the Siamese government, he met with strong opposition on the part especially of the King, who argued that Siam had obtained certain rights over foreign subjects by the French Treaty, and could not agree to accept less favorable terms from another Power; further, that were the right conceded to Britain that all British subjects should be amenable to the International Court only, France would at once demand the same privilege, a contingency which would entail a backward instead of a forward step for Siam. Paget made representations to the effect that Britain stood on a different footing from France, inasmuch as it was proposed to submit European no less than Asiatic subjects to the International Court, and hence eventually to the Siamese courts. This argument proved of no avail, for the King remained obdurate, insisting that all British subjects registering after the Treaty should come under the ordinary Siamese courts. 116

Paget eventually found it possible to agree that all British subjects, both European and Asiatic, registering after the conclusion of the Treaty should be amenable to the ordinary Siamese courts. Originally, however, he had proposed to Strobel guarantees for the protection of British subjects

<sup>116</sup> Ibid.

in the International Court which he thought were necessary in view of the gradual cessation of the right of evocation (withdrawal clause). These were, broadly speaking, that in every case to which a European British subject was a party there should be a European judge on the bench, and that Europeans should have the right of having their cases tried in Bangkok; and that in every case to which a British Asiatic subject was a party there should be one of the European Legal Advisers of the Siamese government in court.

When a hitch developed in the negotiations, however, Paget's attention became more directed to an examination of the guarantees that Britain would possess regarding the conduct of the Siamese courts. It became apparent to Paget in his conversation with Westengard that no conditions had been made regarding the Siamese courts. In order to overcome the difficulty and to make a bargain, Paget was willing to admit that British subjects registering after the Treaty should be amenable to the ordinary Siamese courts, if the Siamese government would make the guarantees which Britain held in the International Court applicable likewise to the Siamese courts, and would agree that these guarantees should not cease except with the consent of the British Government. This proposal had been accepted in the stipulations of Section 4 of the draft Jurisdiction Protocol and the notes to be exchanged on the matter. 117

## General Reactions towards the Proposed Treaty

The proposed Treaty met with different reactions among British subjects and the Siamese. Every Siamese felt strongly the desirability of getting rid of extraterritorial rights root and branches, but many felt that the Siamese government would pay too much by the cession of the

<sup>117</sup> Ibid.

Siamese Malay States. If Siam could afford to wait longer, the price

Siam had to pay would become less; especially since, when the judicial

reforms of Siam should have become completed, the government would obvious
ly be in a much stronger position to make a bargain with Britain. 118

From the point of view of the British subjects, the most prominent portion of the proposed treaty was the abandonment of British jurisdiction; they expressed disapproval of the principle of European British subjects being amenable to the courts of any Asiatic Power, and of the idea that "our extraterritoriality is being bartered for a few square miles of territory." 119 This latter point had become almost a catch phrase. It was, however, inaccurate; no bargain on the basis of jurisdiction in exchange for territory alone could ever have been struck. Strobel, with whom the negotiation originated, was far less concerned with the mere acquisition of jurisdiction over British subjects -- an advantage, which it was commonly agreed. Britain could not much longer have withheld-than with how best to consolidate the Siamese dominions and to protect them against future dangers. Strobel saw in the feebleness of Siamese administration in the Malay States a positive menace to Siam, and that the 1897 Convention was, in his opinion, "the most deplorable document Siam had ever signed." The bargain, therefore, as it presented itself to his mind, was that Siam should sacrifice her Malay States in return for securing the abrogation of the Convention. 120 The territories which Britain was to acquire, in Paget's opinion, were in reality the price paid by Siam to

<sup>118</sup>A Siamese Viewpoint, Extract from the "Bangkok Times" of March 24, 1908. Enclosure in Paget to Grey, no. 36, Confidential, April 13, 1908. FO 422/62.

<sup>119</sup> Paget to Grey, no. 42, Confidential, May 5, 1908. FO 422/62.

<sup>120</sup>Paget to Grey, no. 36, Confidential, April 13, 1908. FO 422/62.

free herself from the 1897 Convention--a payment by which she also consolidated her position; other results, such as jurisdiction advantages, were the fruits of the subsequent Anglo-Siamese negotiations. At any rate, he thought that the possibility of abrogating British extraterritoriality in Siam should depend "solely and entirely" upon the elaborating of a satisfactory system of guarantees for British subjects when under Siamese jurisdiction. Failing such guarantees, he would see that no amount of territory could have brought about a bargain. 121 Furthermore, he had a firm conviction that if the stipulations for guarantees and safeguards against the injustice of the Siamese courts were made public and explanations were furnished to the British community in Siam, the discontent within it would soon disappear.

In the meanwhile, Paget asked the Foreign Office whether they desired to introduce any alterations, for the Siamese government, having had cognizance of all the details, would be prepared to adhere to the various provisions of the draft. By the end of June, the Foreign Office summoned Paget back to England to furnish them with more information, as they considered the surrender of British jurisdiction over their European as well as their Asiatic subjects would involve some "very complicated and delicate points," which required more time to study. At the same time Paget was asked to inform the Siamese government that although the British government did not desire to abandon the treaty negotiations indefinitely, they were not prepared to pursue them without further inquiries and further consideration of the various issues. 122 This statement was regarded unfavorably by the Siamese government, who concluded that the concessions they had made after considerable pressure from Strobel and Westengard were held to be insufficient, and that more would be required to close the

<sup>121</sup> Ibid.

<sup>122</sup> Grey to Paget, Tel. no. 12, June 22, 1908. FO 422/62.

bargain. They were at a loss to understand why the British Government should not at once accept the favorable terms which, in their opinion, were offered, and contrasted the easy and quick settlement effected with France with the slow progress made in the negotiations with Great Britain. 123

Upon his arrival in England, Paget was not able to communicate immediately to Westengard any definite news as to the probable fate of the draft treaty. The Siamese government interpreted the British delays as merely a euphemism for the death and burial of the negotiations. The King and many of his ministers began to show a lack of interest and increasingly came to display a marked peevishness and discontent respecting some of the provisions of the draft treaty. <sup>124</sup> These circumstances caused Westengard no little anxiety. When, therefore, the Siamese heard towards the end of 1908 that the British Government had eventually decided to accept the main principles, especially those in connection with the surrender of British jurisdiction, the interest which the chief supporters of the treaty had at one time evinced had already waned, and the opponents of the treaty were busy disseminating suspicion of Britain and dissatisfaction at what they considered a one-sided bargain for the British. <sup>125</sup>

Sir Ralph Paget returned to Siam on December 29, 1908, with the special object of concluding the Treaty, and the negotiations were resumed in January 1909. Several amendments, especially those in connection with the jurisdiction provisions, were introduced by the Siamese government in the course of these negotiations. The position of Westengard thus became so difficult, and he found it so hard to keep within due limits the various

 $<sup>^{123}\</sup>mathrm{Pee1}$  to Grey, no. 10, Confidential, March 8, 1910, Annual Report for 1909. FO 405/195.

<sup>124</sup>Paget to Grey, no. 4, Confidential, Jan. 15, 1909. FO 422/64.

<sup>125</sup>Peel to Grey, March 8, 1910. FO 405/195.

new phases of sentiment amid which the King and his ministers had fluctuated during the two months immediately preceding the signature of the treaty, that it was doubtful whether the treaty would be signed at all. It seemed to Paget that if the Siamese continued to amend the draft treaty, it was possible that the negotiations would fail. The intimation conveyed to Westengard that Paget, who returned to Bangkok for a short period for the special purpose of completing the treaty, would leave in any event on March 10, finally brought the Siamese government to an urgent reconsideration of the whole draft treaty. 126 The King eventually on March 8 signified his consent. On March 10, the Treaty and the various documents connected with it were signed by Prince Devawongse and Paget, the plenipotentiaries appointed for the purpose. 127

The Anglo-Siamese Treaty of March 10, 1909, consisted of eight articles, and to it were annexed a Boundary Protocol and a Jurisdiction Protocol, together with some diplomatic correspondence passed between the plenipotentiaries on the day of the signature.

By Article I of the Treaty Siam transferred to Britain all rights of suzerainty, protection, administration, and control whatsoever which they possessed over the states of Kelantan, Trengganu, Kedah, Perlis, and the adjacent islands. Articles II, III, IV concerned the details of this transfer. Article V was significant to the question of British extraterritoriality in Siam. It stipulated that:

The jurisdiction of the Siamese International Courts established by Article VIII of the Treaty of the 3rd September, 1883, shall, under the conditions defined in the Jurisdiction Protocol, annexed hereto,

<sup>126</sup>Paget to Grey, Tel. no. 9, March 5, 1909. FO 422/64.

<sup>127</sup> Treaty and Notes between Great Britain regarding the Cession and Boundaries of the Siamese Malay States, the Jurisdiction of the Siamese Courts, and the non-Cession, etc., of Siamese Territory--signed at Bangkok, March 10, 1909. <u>BFSP</u>, Vol. 102, pp. 125-33.

be extended to all British subjects in Siam, registered at the British Consulates before the date of the present Treaty.

This system shall come to an end, and the jurisdiction of the International Courts shall be transferred to the ordinary Siamese Courts after the promulgation and the coming into force of the Siamese Codes, namely, the Penal Code, the Civil and Commercial Codes, and the Codes of Procedure and the Law for Organisation of Courts.

All other British subjects in Siam shall be subject to the jurisdiction of the ordinary Siamese Courts under the conditions defined in the Jurisdiction Protocol.

British subjects who were thus placed under Siamese jurisdiction acquired all the rights and privileges enjoyed by the Siamese, notably the right of property and the right of residence and travel; similarly they incurred liability to taxation and services (except forced loans and military services) to which the Siamese were subject (Article VI). Article VII kept in force the provisions of all previous Treaties, Agreements, and Conventions, not modified by this Treaty. Article VIII dealt with the ratification of the Treaty which was to be done within four months from its date, that is, in July 1909.

It will be seen that, as in the case of the French Treaty of 1907, British subjects were divided into two classes, "pre-registered" and "post-registered," and the jurisdiction of the International Courts primarily applied to the pre-registered class. Similarly the system was declared to be transitory inasmuch as it came to an end with the promulgation of certain Siamese codes. This International Court system remained for all cases until all the Codes mentioned came into force or until there were no more pre-registered subjects. As a matter of fact, where an International Court was established the usual local Siamese judges sat but they held their appointments as International Court judges as well as judges of the ordinary Siamese courts. In districts where there was no International Court a case might be heard by the ordinary district court, without Consul or Adviser, and the record, with the opinion of the judges

of that court annexed, would be sent to the International Court where judgment was given. These matters were settled according to convenience and the nature of the case. 128 The Jurisdiction Protocol annexed to the Treaty consisted of eight sections. By Section I of the Jurisdiction Protocol annexed to the Treaty of 1909, International Courts were established where necessary for the good administration of justice; the selection of these places being the subject of an understanding between the British Minister at Bangkok and the Siamese Minister for Foreign Affairs. 129

By Section II, the jurisdiction of the International Court was declared to extend:

- 1) "In civil matters: To all civil and commercial matters to which British subjects shall be parties.
- 2) In penal matters: To breaches of law of every kind, whether committed by British subjects or to their injury."

By Section III, the consular right of evocation in accordance with the provisions of Article VIII of the Treaty of 1883 was retained, but would cease in all matters coming within the scope of Siamese codes or laws regularly promulgated and communicated to the British Legation at Bangkok.

Paget to Devawongse, March 10, 1909. FO 422/64.

<sup>128</sup>Thornely, op. cit., pp. 103-105.

<sup>129</sup> In the exchange of correspondences between Prince Devawongse and Paget on the question of jurisdiction on the day of the signature of the Treaty, Paget mentioned that: "I wish to say that the International Courts referred to in Section I of the protocol on Jurisdiction annexed to the Treaty signed today need not necessarily be Courts specially organized for this purpose. Provincial ("Monthon") Courts or District ("Muang") Courts may constitute International Courts, according as British subjects may be established in greater or less number within the jurisdiction of those Courts. The fact that an ordinary Court is designated as an International Court will have as a consequence the introduction into that ordinary Court of all the provisions relating to International Courts secured by the Protocol on Jurisdiction."

Section IV stipulated that in all cases, whether in the International Court or in the ordinary Siamese courts in which British subject was defendant or accused, a European Legal Adviser should sit in the Court of the first instance.

That is to say, pre-registered and post-registered British subjects were alike entitled, when defendants, to the presence of an Adviser on the bench, but the pre-registered defendant had the additional privilege of having his Consul also present, and the Consul might evoke cases if he thought fit to do so. This provision as to the presence of Euorpean Legal Advisers was the first treaty agreement on the subject, although long before 1909 European Advisers had sat in the courts, not only International Courts, but purely Siamese courts dealing with purely Siamese cases.

In addition, it was provided that: "In cases in which a Britishborn or naturalized subject not of Asiatic descent may be a party, a
European Adviser shall sit as a Judge in the Court of First Instance,
and where such British is defendant or accused the opinion of the adviser
shall prevail." It can be explained that in all cases in which the British
European subject--no matter whether he was "pre-registered" or "postregistered"--was a party, a European Legal Adviser should sit not as a
mere adviser to the Siamese judges, but "as a judge," so that he might
vote upon the judgment of the case. Furthermore, when a British subject
of this class was defendant or accused, the European Adviser's opinion
also prevailed.

This strong provision seemed to place the British born or naturalized subject not of Asiatic descent, when he was a defendant, practically under a British court, or at least a European court. Still, even with this provision, the treaty constituted an advance on all previous treaties

in that the non-Asiatic British subjects throughout Siam, and not merely in a few special provinces, were placed under the Siamese jurisdiction and withdrawn from the Consulate Court. 130 The remainder of Section IV referred to the right of a British subject who was a defendant or accused in any case arising in the provinces to apply for a change of venue, and if the provincial courts considered such change desirable the trial would take place at Bangkok.

Section V dealt with appeals and abrogated Article IX of the Treaty of 1883, which provided for an appeal from the up-country International Court to a mixed court in Bangkok. The mixed Court of Appeal was replaced by the Siamese Court of Appeal at Bangkok, and all appeals from the decisions of the International Courts would be laid to this court. Notice of all such appeals should be communicated to the British Consul, who would have the right to give a written opinion upon the case to be annexed to the record. Furthermore, it was provided that the judgment on appeal from either the International Courts or the ordinary Siamese Courts should bear the signature of two European judges. Thus, in the Court of Appeal the pre-registered and the post-registered British subjects, whether they were the non-Asiatic class or not, ranked equally.

Section VI of the Protocol provided a further appeal on a question of law to the Supreme Court (or "Dika" court). There was no provision as to the presence of any European judge or adviser in this Court. It was desired that this Court should really act as a Privy Council advising the King, and the judgment of this Supreme Court of Appeal was unanimous and therefore they had to sign with the majority.

Section VII contained the necessary provision that no plea of want of jurisdiction based on the rules prescribed by this Treaty should

<sup>130</sup> Thornely, op. cit., pp. 206-207.

be advanced to any Court after a defense on the main issue had been offered. This was, in fact, to prevent persons trying their luck in one court and upon finding the case turning against them, suddenly claiming treaty rights which would remove their case to another court.

Section VIII consisted of transitory provisions, in order to prevent difficulties arising from the transfer of jurisdiction by this Treaty and Protocol, while the Treaty was waiting for its ratification.

On the day upon which the Treaty and Protocols were signed, four correspondences passed between Prince Devawongse and Paget; two of which consistuted the Siamese assurance to safeguard British interests in the Malay Peninsula; 131 another two concerned the question of jurisdiction. Regarding judicial matters, both Paget and Devawongse agreed that:

With reference to the provision contained in Article IV of the Jurisdiction Protocol to the effect that in all cases in which a British subject is defendant or accused a European adviser shall sit in Court,...His Britannic Majesty's Government will be prepared in due course to consider the question of a modification of or release from this guarantee when it shall be no longer needed; and....in any negotiations in connection with such a modification or release the matter may be treated upon its merits alone, and not as a consideration for which some other return should be expected. 132

Though the railway question had been part of the Anglo-Siamese negotiations, it was not referred to in the Treaty; nevertheless, an Agreement for the loan from the Federated Malay States was signed on March 9, a day prior to the signature of the Treaty. The Railway Agreement and the

<sup>131</sup>Since the Secret Convention was abrogated by this Treaty, the British Government were desirous of receiving an assurance that the Siamese government would not permit any danger to arise to British interests through the use of any portion of the Siamese dominions in the Peninsula for military or naval purposes by foreign Powers. Prince Devawongse replied then in compliance with the British request. For details of correspondences, see Paget to Devawongse, March 10, 1909; and Devawongse to Paget, March 10, 1909. FO 422/64 or in BFSP, Vol. 102, pp. 131-32.

<sup>132</sup> Ibid.

Treaty of 1909 had been separated for the sake of appearances and convenience; it was nevertheless understood that they should remain interdependent and should stand or fall together. Should the Treaty by any chance fail to obtain ratification, the Railway Agreement, even though signed, would cease to be binding. 133

While the Treaty was waiting for the ratification of both Governments, a question arose on the subject of the interpretation of Article V. The Siamese raised the question as to how far the powers of the executive authorities would be conferred with regard to all matters pertaining to jurisdiction. 134 According to the interpretation placed upon the Article by the Siamese government, the Treaty conferred upon them full administrative as well as judicial jurisdiction, and British subjects were to be placed on the same footing with Siamese subjects. The subject was a matter of discussion between the British Foreign Office and the Siamese Legation in London. The stage of arguments was settled in July, before the ratification. Britain agreed to confer on the Siamese executive authorities the right of entering the house of British subjects, including arrest, without being required to have any warrant from, or make any reference to, the competent court or Consul, though the British Government expected the Siamese government would not abuse those powers, 135 Within six months after the Treaty was to be ratified, the various enactments and regulations which defined the powers of all executive and administrative authorities were to be codified and published.

Prior to the ratification of the Treaty, another complication arose between the two Governments. Beckett approached Westengard to say that

<sup>133</sup>Westengard to Paget, Private, March 9, 1909; and Paget to Westengard, March 10, 1909. FO 422/64.

<sup>134</sup>Sir F. A. Campbell to Archer, June 15, 1909. FO 422/64.

<sup>135</sup>Campbell to Archer, July 1, 1909. FO 422/64.

the British Government would publish the terms of the Treaty on June 4, including the Boundary and the Jurisdiction Protocols, and also the notes exchanged between Paget and Prince Devawongse. 136 The latter thought it unusual to publish a Treaty before its ratification, and he wanted to submit the British proposal for the opinion of the King, who, by that time, was away from Bangkok, and was supposed not to return to Bangkok until June 6. Westengard, therefore, hoped that the British Government would defer the publication for a few days awaiting the King's views.

When upon his return his views were asked for, His Majesty showed unwillingness to publish the Treaty before ratification with the following observations:

If by any chance there should be an unfavorable vote upon the Treaty by Parliament, the position of His Majesty's Government in regard to the territory proposed to be transferred would be an embarrassing one. in such event His Majesty's Government might meet the difficulties in dealing with those territories in future. 137

At any rate, against the wish of the Siamese government, the Foreign Office decided to inform the Siamese government that the Treaty would be published on June 11. In the event of the Treaty not being ratified, Britain agreed to revert to the status quo ante. 138 On June 11, a Parliamentary Paper (Cd. 4646) was issued containing the text of the Treaty with the two Protocols, and the following day the London "Times" also published its text, with the explanatory review of the Treaty. 139

Ratification of the Treaty was delayed to the utmost limit of the four months allowed, owing chiefly to the discussion raised by the Siamese government as to the interpretation of Article V. Both the British and the Siamese Governments tried to solve their pertinent problems step by step until July 9, when ratifications were exchanged in London.

<sup>136</sup>Grey to Beckett, Tel. no. 18, May 29, 1909. FO 422/64.

<sup>137</sup>Beckett to Grey, Tel. no. 30, June 8, 1909. FO 422/64.

<sup>138</sup>Grey to Beckett, Tel. no. 23, June 9, 1909. FO 422/64.

<sup>139</sup>London "Times," June 12, 1909.

In Bangkok, the Siamese government did not publish the Treaty until the day of ratification. Owing to the delay in publication, a certain amount of irritation was displayed in the press among British subjects, who generally complained of the secrecy and mystery surrounding the Treaty. They were discontented with the jurisdiction arrangements and expressed irritation at the disadvantages imposed on them. Both in the interests of the Siamese government and of British subjects, and in order to promote the harmonious working of the Treaty and to remove all cause of friction arising from ignorance, Beckett, the British Consul at Bangkok, published the communique in the local press inviting all interested British subjects to a meeting at the British Legation on July 12 where he would explain to them the new conditions and arrangements provided in the Treaty. The meeting cleared the air. 140

The judicial arrangements of the Anglo-Siamese Treaty of 1909 marked a major advance in the modifications of British extraterritoriality in Siam. Although it was France which had begun the new episode of extraterritoriality in Siam with her agreement to put all her Asiatic subjects under the jurisdiction of the Siamese courts, it was Britain which made further concessions by putting her European British subjects as well under the adjudication of the Siamese courts. International Courts similar to the one created by the Treaty of 1883 were to be extended to all British subjects in Siam registered at the British Consulate prior to the date of the Treaty of 1909, though this system was to come to an end and the jurisdiction of the International Courts was to be transferred to the ordinary Siamese courts after the promulgation and the coming into force of the Siamese Codes. At the same time, all other British subjects

<sup>&</sup>lt;sup>140</sup>Beckett to Grey, no. 59, July 14, 1909. FO 422/64.

in Siam were to be subject to the jurisdiction of the Siamese courts under the conditions defined in the Jurisdiction Protocol annexed to the Treaty.

There were, however, marked differences between the Treaty of 1883 and that of 1909 in respect of jurisdiction. While the former relied for the security of British subjects on the power of the Consul to withdraw cases to the Consular court and on the appeal to the British and Siamese authorities to consider the cases jointly at Bangkok, the new Treaty relied on the presence of a European judge in the cases of European British subjects, or the presence of a European Legal Adviser if the British subject were an Asiatic, and on the provision that two European judges had to sign the judgment in the Court of Appeal at Bangkok.

Consequently under the 1909 Treaty no binding judgment could be rendered against a European British subject except by a European judge or adviser. As a matter of fact the European adviser was in every sense a Siamese official; the Siamese government freely chose him, paid him and controlled him. In practice the European advisers were chiefly British and French and they generally acted quite independently of the desires and wishes of the British and French Legations. Nevertheless, the fact that the Treaty terms required their presence in the Siamese courts caused a natural irritation among the Siamese. To many it seemed that since Siamese judges could not of themselves render a binding judgment against European British subjects, Siam by the Treaty of 1909 had gained the shadow rather than the substance of actual judicial autonomy. Moreover, no time-limit had been set to the provisions requiring the presence of European judicial advisers; the requirement was "as irrevocable and unending as the provisions of the treaty of 1855." 141 Siam had paid a heavy price--the Siamese Malay

<sup>141</sup>Francis B. Sayre, "The Passing...", op. cit., p. 80.

States, the right to hold land, the right of property, the right of residence and travel--to gain the partial abolition of British extraterritorial rights in Siam. "Without having gained autonomy, Siam had nothing left with which to bargain." 142

It was obvious that Great Britain had gone further than any other European nations by that time in the modification of her extraterritorial jurisdiction in Siam, but still Siam was bound by the 3 percent tariff restriction in addition to the existing rights of extraterritoriality among the European British subjects. Up to 1909 Siam was not yet in the proper position to apply for complete judicial and fiscal autonomy. However, she was not discouraged from making further attempts to persuade the British to relinquish these extraterritorial privileges.

<sup>142</sup>F. B. Sayre, "Siam's Fight for Sovereignty," Atlantic Monthly, Vol. 140, Nov. 1927, p. 677.

#### CHAPTER IV

## ROADS TO FISCAL AND JUDICIAL AUTONOMY 1910-1925

The Anglo-Siamese Treaty of 1909 was a formal announcement of the fact that Great Britain was ready, upon the reorganization of the Siamese judicial system and practice and the promulgation of the Siamese codes of law which were in the process of compilation, to renounce the extraterritorial rights hitherto exercised in Siam. Moreover, the Treaty was a strong incentive to Siam to put the judicial reforms on a more extensive scale. 1

King Chulalongkorn recognized that the exercise of alien jurisdiction would disappear as soon as the Western Powers saw that Siam had conformed to the western standard of justice. However, judicial reforms could not be achieved with full effectiveness, unless other administrative reforms were undertaken as well. Under the enlightened guidance of the far-sighted King Chulalongkorn, Siam started seriously to work at reorganizing her system of administration on modern, progressive and liberal lines. He saw that law and order at home and peace abroad (that is, to enter into closer relations of friendship with foreign Powers) were the indispensable conditions of the national development. One of the first steps that the Siamese government undertook to modernize the country was a reform of the administration of justice on modern lines, so that the

202

lArnold Wright, ed., Twentieth Century Impression of Siam: Its History, People, Commerce, Industries, and Resources, Section on "Constitution and Law," by T. Masao, (London: Lloyds Greater Publishing Co., 1908), p. 92.

differences in the systems of law and its administration between Siam and the Western nations, which constituted the ground whereupon they based their doubts about the efficiency and fairness of the Siamese judicial administration, would be eliminated.

Although the reform program for the entire judicial system had been announced for 1886, it did not actually begin in full force until the establishment of the Ministry of Justice in March 1892. Prior to that time, there had been no central control of the administration of justice; therefore, after 1892, the Siamese judicial system was reorganized to become a uniform one. Sixteen Bangkok courts were placed under its control and later in the year the Police courts (Borispah courts), which had hitherto been under the Ministry of Local Government, were also transferred to the Ministry of Justice. The same year saw the appointment of a new legislative council, and a new law of evidence was promulgated. The King appointed, in 1895, special commissioners to organize the administration of justice in the interior. By this means the provincial courts were brought under the control of the Ministry of Justice, and the separation of the judiciary from the executive was brought about. A Criminal Procedure Law was also enacted as a temporary measure until a code of criminal procedure should be drafted. This law provided, among other things, that no person should be arrested or detained for a criminal offence otherwise than on the warrant of a competent judge, except in the case of arrest of the criminal in the act of committing his offence, or on suspicion of his having committed an offence and his being about to abscond. Since 1897, a mixed commission consisting of Siamese lawyers, and foreign legal advisers -- Belgian, British, and Japanese -- had attempted to draw up a Penal code based on the legal systems of these and other advanced European

Codes. Furthermore, other codes--civil and commercial, codes of procedure and a law of organization of courts, were projected.<sup>2</sup>

The interesting question early presented itself as to whether the new law to be formulated should be based primarily upon the English common law or upon the Continental codes, descended from the Roman law. The latter won the day. In 1905, King Chulalongkorn appointed a celebrated French jurist, Georges Padoux, as Legislative Adviser to take the lead of a royal commission, composed of Siamese and French jurists, to draft the new codes. Consequently the new Siamese written law was based largely upon the Code Napoleon, and had a strong French flavor.

The first fruit of Siam's effort to carry out a more extensive scale of law reforms was the promulgation of the Penal Code<sup>4</sup> in April 1908. The work on the other codes required several years to accomplish. After the promulgation of the Penal Code, King Chulalongkorn appointed another commission—a Commission of Codification—entrusting it with the drafting of the other codes—the Civil and Commercial Code, the Code of Civil Procedure, the Code of Criminal Procedure, and the Law on the Organization of Courts. This Commission was made up of French jurists, with Padoux as president from 1908 to 1914 and Delestre from 1914 to 1916. The work of codification was hampered by the First World War, as well as by frequent changes in the personnel of the commission.

Upon the death of King Chulalongkorn on October 23, 1910, he was succeeded by his son, King Vajiravudh or Rama VI. His Majesty's death

<sup>&</sup>lt;sup>2</sup>For details of Siamese legal reforms in the 1890's, see Thornely, op. cit., pp. 129-38.

<sup>&</sup>lt;sup>3</sup>F. B. Sayre, "Siam," <u>Atlantic Monthly</u>, Vol. 137, June 1926, pp. 246-47.

<sup>&</sup>lt;sup>4</sup>For details, see T. Masao, "The New Penal Code of Siam," <u>JSS</u>, Vol. 5, 1908, pp. 1-14.

upon his own initiative would also vanish. Rama VI continued his father's work of reforms. The process of codifying and modernizing the Siamese laws was continued. Whereas the reign of King Chulalongkorn was to be looked upon as a period in which firm foundations were laid, the lasting credit for the edifice built thereon would be attributed to the reign of his son. Rama VI proceeded to carry into effect certain reforms and developments which his father had inaugurated. 5

# Siam and the First World War

When the Great War broke out, Siam declared its neutrality and meant strictly to preserve it. In the meanwhile, King Rama VI followed the news of the development of warfare and studied the international crisis. After the declaration of war on Germany, the American Government had appealed to the neutral nations to break off diplomatic relations with Germany in order to put pressure on the Central Powers to demand early peace. In response to the American request, the Siamese government replied that:

His Majesty's Government feels that, owing to the geographical situation of its territories so remote from warfare, and to the fact that its interests are not yet so directly affected as other neutral Powers, it would therefore be preferable, while maintaining its neutrality to watch the further development of the matter until its interests will demand similar action. 6

It will be seen that the Siamese government clearly reserved their attitude towards any immediate rupture of diplomatic relations with the Central
Powers. The French and the British Ministers at Bangkok understood the
Siamese attitude, seeing in their reply the possibility of further action

<sup>&</sup>lt;sup>5</sup>Thornely, op. cit., pp. 241-43.

<sup>&</sup>lt;sup>6</sup>Dering to Balfour, Tel. no. 16, Feb. 16, 1917. FO 422/72.

by the Siamese government if submarine or other atrocities affected their interests. They thought, therefore, that it would be impolitic to press the Siamese government, as a signatory of the Hague Conventions of 1899 and of 1907, to take a decided action against the Central Powers at that time. 8

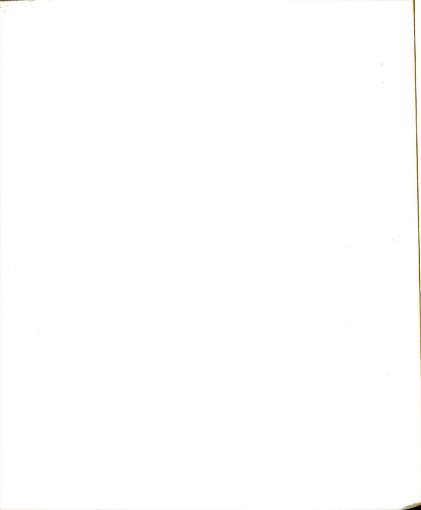
Rama VI, who had been watching the military developments came to realize that if Siam joined the War on the side of the Allies, she would gain a favorable positionwhen the peace treaty was concluded. On July 22, 1917, Siam threw in her lot with the Allies by declaring war on Germany and Austria-Hungary. The decision doubtless afforded the Allied Government much satisfaction.

Siam proceeded to do all she possibly could within her means and power to render assistance to the Allied cause. 9 On the day of the declaration of war all enemy subjects in Siam were arrested and interned, to be deported afterwards to India. All costs of transport and subsequent maintenance of the German and Austrian community were defrayed by the Siamese government. At the same time all German vessels in Siamese water were seized, and later were put at the disposal of the Allies in order to alleviate their shortage of shipping for Far Eastern traffic. Desiring to take a more active part in the military operations, the Siamese government decided to send to the Allied front in France in 1918, at their own expense, the Siamese expeditionary force of 1,500 soldiers, then composed of an automobile corps, an aviation corps, and a sanitary corps. Meanwhile, Siam's food supply was placed at the Allies' disposal in the East.

<sup>7&</sup>lt;sub>Ibid.</sub>

<sup>8</sup>Memorandum communicated to French Embassy, Foreign Office, Feb. 21, 1917. FO 422/72.

<sup>9</sup>Dering to Balfour, no. 109, July 24, 1917. FO 422/72.



The General War enabled Siam to secure a notable improvement of her international status. Having intervened in the War on the side of the Entente, she became a participant in the Paris Peace Conference in 1919. The Siamese delegates at the Conference--Prince Triados Prabandhu, Under-Secretary for Foreign Affairs, Prince Charoon, Minister at Paris, and Phya Bibadh Kosha--first raised the question of Siam's aims at the Peace Conference in January 1919 and asked for the support of the British Delegation. Siam also appealed to her Allies on the strength of their oft-repeated assertions that the War was really fought to protect the rights of small nations and to remove international injustices. 10

On February 22, the Siamese delegates submitted to Balfour a lengthy memorandum expressing the reasons why Siam wished to revise the existing treaties of friendship and commerce. 11 They pleaded for new treaty arrangements with a view to Siam's regaining Siam's judicial and fiscal autonomy. Together with the 'Memorandum respecting the Revision of Treaty and Tariff,' the Siamese Delegation also submitted a draft treaty with a view to abrogating all the former treaties, conventions, and agreements between the two countries, with the exception, however, of the provisions dealing with territorial arrangements of the Treaty of 1909, which the Siamese government considered as definitely settled. They hoped that if the British Government agreed to accept the proposed draft treaty, Siam could use such a treaty as a model to negotiate for the revision of treaties with other Powers.

In the memorandum, the Siamese delegation enumerated the inconveniences of the extraterritorial jurisdiction set up by the Anglo-Siamese Treaty of 1855. First of all, the Siamese government could not exercise

<sup>10</sup>F. B. Sayre, "The Passing of...," op. cit., p. 81.

<sup>11</sup>Siamese Delegates to Balfour, Feb. 22, 1919. Enclosure in Balfour to Curzon, no. 264, March 18, 1919. FO 422/74.

the right of police and jurisdiction directly over the subjects of foreign Powers. The Consul, having to give effect to rules and regulations enacted for the subjects of his country, had naturally to take cognizance of such rules and regulations made by the Siamese authorities. They had therefore to be notified to him, and in a number of cases they even required his assent before being put into force. In this way inevitable delay was sometimes caused. Concerning the right of jurisdiction, the Siamese authorities could not adjudicate directly the cases in which the subjects of foreign Powers were parties, especially when they were defendants or accused, Furthermore, in a case in which all the parties concerned were foreigners-and foreigners of different nationalities -- they were each tried by their respective consul according to the law of their own countries. As a result, the law administered was not uniform; therefore, different judgments would arise with the application of different laws. Moreover, the law applied, since it was foreign law, might not be suitable to conditions in such a country as Siam. In addition, the scarcity of consular courts caused great inconvenience to foreign subjects, whose trials could only take place in the towns were there was a consul. Foreign subjects who carried on commerce in the interior of the country found out how irksome and costly their right of consular jurisdiction was.

Another salient feature of the Siamese memorandum involved the question of tariff. The tariffs for both import and export had definitely been fixed since 1855; for imports at 3 percent ad valorem, and for exports according to a fixed schedule--export duties were assessed only once, whether under the name of inland tax, transit duty, or export duty. Such a rigid regulation of tariffs was inequitable, and in practice prejudicial to Siamese interests. The Siamese delegation contended that since economic conditions changed constantly, this fixed rate of tariffs could

not answer the need of the Siamese government for an increase in revenue for national development. As the value of currency had declined considerably since the middle of the nineteenth century, the rates figured in the Schedule no longer represented the same value; therefore, the Siamese revenue from export duties automatically decreased in value in the same proportion. According to the original treaties, the Siamese government could not collect other taxes on the subjects of contracting Powers without the consent of their consul. Siam's liberty of action in fiscal matters was thus considerably limited. The Siamese government were of the opinion that Siam should be allowed, for humanitarian reasons, to regulate and limit the importation of harmful drugs and deleterious spirits; and this could be done by imposing prohibitive tariffs on those articles.

In the request of Siam to have free hands fiscally, "not only to carry out on am ampler scale her work of reforms, but also to meet extraordinary items of national expenditure," the Siamese delegation explained that as an essentially agricultural country, Siam could hardly adopt a high tariff because she had to be dependent on the manufactured goods from the industrial countries in exchange for her raw materials. It was further explained that:

It would thus be against Siam's own interests to raise the tariffs to such prohibitive rates that the Siamese people themselves would thereby be hindered from procuring the goods they require. All that Siam has in view in the assessment of her import and export duties is a fiscal tariff which would yield sufficient revenue to enable His Majesty's Government, on the one hand, to meet the constantly increasing charges, entailed by the improvements and reforms of the administration, and on the other, to make up for the loss of revenue brought about by the humanitarian policy of suppressing national vices,...

<sup>12</sup>Memorandum respecting the Revision of Treaty and Tariff, by Siamese Delegation to the Paris Peace Conference, Feb. 22, 1919. FO 422/74.

in the already effected abolition of gambling and the contemplated abolition of the opium traffic. 13

To support their proposals for an abolition of existing treaties. the Siamese delegates referred to a great number of reforms, particularly the judicial reforms, which Siam had begun three decades ago, and which had made considerable progress. For this reason, and with the encouraging example of Japan, who had succeeded as far back as 1894-96 in obtaining the restoration of her sovereign rights, Siam consequently moved towards regaining judicial and fiscal autonomy. To prove that there was a great improvement in the administration of justice, the Siamese delegation testified that ever since the establishment of the "International Court" system in 1883, the Consul's right of evocation for trial in the consular court had been seldom used; from 1883 to 1909 only three cases of evocation were recorded, and none at all since 1909. From April 1909 to September 1918, a period of nearly a decade during which the Anglo-Siamese Treaty of 1909 had been in force, there had been in the International Court 1,974 cases, both civil and criminal, to which British subjects were parties. Out of these, there were only 14 cases in which the British Consul. in pursuance of the stipulations provided in section 5 of the Jurisdiction Protocol annexed to the Treaty, filed a memorandum dissenting from the judgment of the International Court. Six of these cases were agreed to by the Court of Appeal at Bangkok, but in eight cases the judges of the Appeal Court had approved the judgment of the International Court. Therefore, from 1909 to 1918, there were only six cases in which injustice occurred to British subjects, less than 1/3 of one percent, a record which could be judged as "very creditable and deserving praise and commendation. 14

<sup>13</sup>Siamese Delegation to Balfour, Feb. 22, 1919. FO 422/74.

<sup>14</sup>Memorandum by Siamese Delegation, Feb. 22, 1919. FO 422/74.

The retention of the Consul's right of evocation was of serious concern to Siam, which was anxious to clear away any trace of the interference and intervention of foreign authority in the Siamese courts of justice. Siam was undoubtedly anxious to win back the plenitude of her sovereign rights. Nevertheless, she was not likely, in the view of the Siamese Delegation, to dispense with the policy of the employment of a European legal adviser in the Ministry of Justice for a long time to come. The Siamese government found that the existence of the International Court system for British subjects registered before 1909 and ordinary Siamese courts for the post-registrants, created much complication and confusion in the designation of the competent jurisdiction; consequently Siam desired to suppress this variety of jurisdictions, and establish a uniform judicial administration. 15

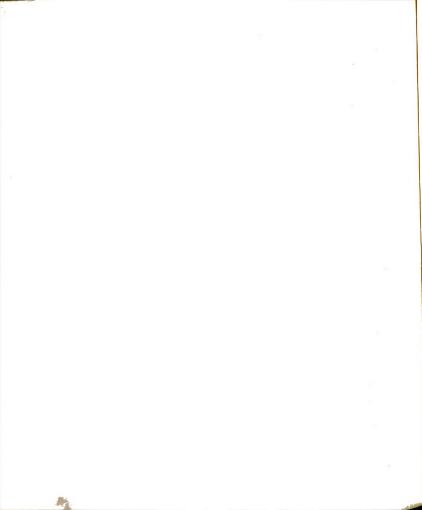
As a victorious country in the First World War and a participant in the Paris Peace Conference, Siam obtained certain advantages. In Article 135 of the Treaty of Versailles of June 28, 1919, between the Allied and Associated Powers and Germany, it was provided that:

Germany recognized that all treaties, conventions and agreements between her and Siam, and all rights, titles and privileges derived therefrom, including all rights of extraterritorial jurisdiction, terminated as from July 22, 1917.

Corresponding renunciations in Siam's favor were made by Austria in the Treaty of St. Germain (September 10, 1919) in Article 110, and by Hungary in the Treaty of Trianon (June 4, 1920) in Article 94. 16 Insofar as the subjects of Germany, Austria, and Hungary were concerned, Siam regained her complete sovereign rights at one stroke. Siam was thus completely

<sup>15</sup> Ibid.

<sup>16</sup>Eldon R. James, "Jurisdiction over Foreigners in Siam," op. cit., p. 600.



freed from her juridicial servitude to these threeEuropean nations and could place their subjects in ordinary Siamese courts with no vestiges of external control in any form; fiscally, Siam would have free hands in collecting new taxes and fixing new export and import tariffs.

## Post-war Negotiations for the Abolition of Extraterritoriality

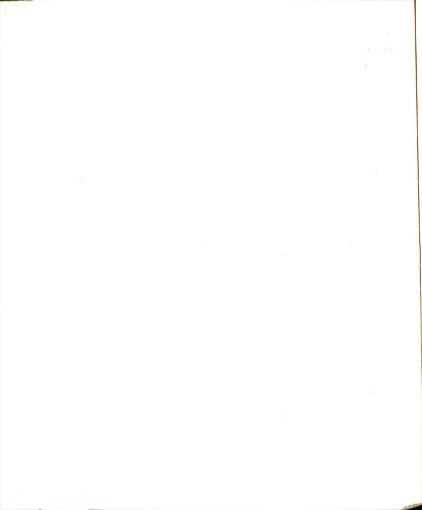
In order to achieve her long sought goal of complete abolition of extraterritoriality, Siam had to be successful first with the three principal treaty Powers--France, Great Britain, and the United States.

France and Britain had considerable commercial interests as well as a larger number of subjects and protégés than any other treaty nation. The United States had minor interests in Siam, but owing to the fact that America had become a world power and gained great influence by the end of the War, the Siamese government estimated that if they gained the consent of the United States Government in the relinquishment of extraterritoriality, they would be able to use the American treaty to bargain with the other European Powers. The Siamese delegation to the Paris Peace Conference presented identical memoranda to the one which they had submitted to Balfour to the representatives of France and the United States, 17 gathered around the council table at Versailles, with a view to concluding

<sup>&</sup>lt;sup>17</sup>Francis B. Sayre stated that at Versailles, Siam had appealed to her Allies saying that:

<sup>&</sup>quot;We have all been fighting shoulder to shoulder for the right of small nations and for the great cause of humanity. If, as so often proclaimed, we have in truth been fighting to protect the weak against the rapacious strong and to remove some of the old injustices that make for war, is it not right and fair that Siam should be freed from the outworn treaty restrictions of an earlier day which under the changed conditions in Siam have lost all reason for existence?"

President Wilson replied that: "You are right. America will give to Siam a new treaty relinquishing the old extraterritorial rights; and she will give it as an act of justice, freely and without price." In Sayre's opinion, it was the new note in international diplomacy. Sayre, "Siam's Fight for Sovereignty," op. cit., p. 677.



new treaty arrangements restoring to Siam complete judicial and fiscal autonomy.

In August 1919, the Siamese Delegation addressed a note to the President of the Peace Conference 18 on the subject of article 295 of the Versailles Treaty, which would seriously affect the revenue of Siam derived from the cultivation of opium. Article 295 practically incorporated into the Versailles Treaty the text of the Opium Convention signed at The Hague on January 23, 1912, and

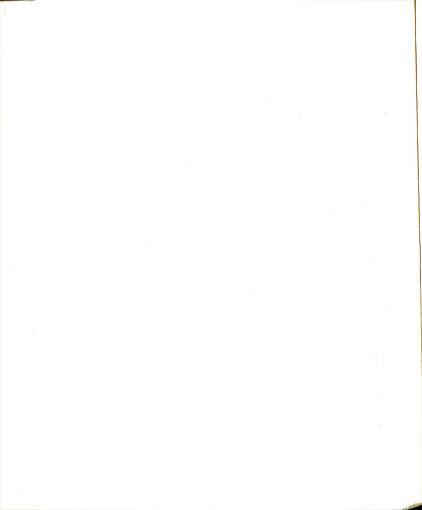
thereby binds those of the high contracting Powers, who have not signed, or, having signed, have not yet ratified that convention, to enact without delay and in any case within a period of twelve months from the coming in to force of the Treaty of Peace, the necessary legislation to make that convention operative. Adhesion to the terms of the Treaty of Peace is to be regarded as a ratification of the Opium Convention, and is to be so notified to The Hague. 19

Thus, the Opium Convention was put into force as among the parties to the Versailles Treaty within a period of twelve months.

Article 6 of the Opium Convention of 1912 provided that the contracting Powers should take measures for the gradual and effective suppression of the manufacture of, internal trade in, and use of prepared opium, with due regard to the varying circumstances of each country concerned. The effect, therefore of the incorporation of the Opium Convention into the Versailles Treaty would be the ultimate abolition of the opium traffic within the territories of the contracting nations, and the first steps towards this abolition had to be put into operation within twelve months from the ratification of the Treaty.

<sup>18</sup> Memorandum as to the Revision of Siamese Treaties made necessary by Requirements of the Treaty of Peace with Germany, Siamese Delegation, Paris, Aug. 12, 1919. Enclosure in Balfour to Curzon, no. 1648, Aug. 19, 1919. FO 422/75.

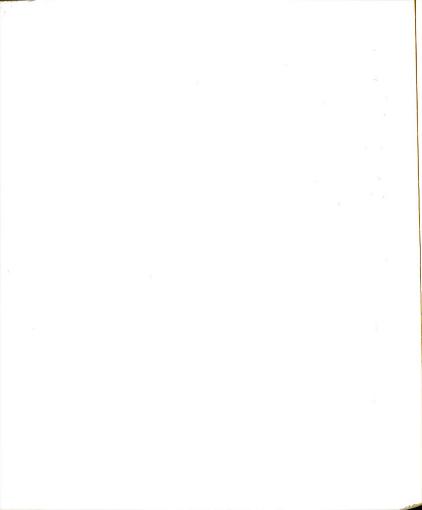
<sup>19</sup> Ibid.



The sale and distribution of opium in Siam had been for a long time an exclusive privilege of the Siamese government, which also looked forward to its ultimate extinction. At any rate, the revenue of the Siamese government derived from the monopoly for opium constituted more than 25 percent of the total revenue of the kingdom. The Siamese delegation maintained that the Siamese government viewed the destruction of this important source of revenue with grave concern, especially in view of the requirement that the first steps towards such abolition had to be taken within twelve months after the ratification of the Treaty. It was imperative, therefore, for the government to find some other source of revenue to make good the losses caused by the ultimate abolition of the opium monopoly. 20

As Siam was an agricultural country and had to be dependent on foreign manufactured products, the Siamese government considered necessary a moderate increase of custom duties. As regards internal taxation, they contemplated that an increase of land taxes and other internal taxes was not very practical since agriculture was the chief occupation of the people, and heavy increase would cause serious difficulties among the people. Therefore, they considered that the increase by gradual steps of the custom duties would be more reasonable. Anyhow, Siam had been prevented by treaties from increasing her custom tariff upon all articles of import-except opium and fire-arms, the prohibited articles of import--beyond the fixed rate of 3 percent ad valorem. To enable Siam to carry out the conditions of article 295 of the Treaty of Peace, and to carry on her national development and administrative reforms, she asked to be allowed to revise all the obsolete treaties with contracting countries, both in judicial and fiscal matters. The Siamese delegation contended that those treaties prevented the application of Siamese laws to a large number of

<sup>20</sup> Ibid.



foreigners resident in Siam, except with the consent of the consuls of the treaty Powers, which had in so many instances not been possible to obtain. Opium had been regarded in the treaties as specially under the control of the Siamese government, and legislation affecting the importation, exportation, sale, use and possession of opium in Siam did not have to be submitted to the foreign consulates for approval. Nevertheless, in many instances some foreign consulates for approval. Nevertheless, in many laws against their nationals, although the same laws were applied by other consulates. Even those Consulates which had agreed to comply with the Siamese opium laws, sometimes insisted that the Siamese authorities could arrest their subjects only with the warrants of arrest issued by their Consuls and that prosecutions be instituted and maintained in the Consular courts.

With the exceptions of the Anglo-Siamese Treaty of 1909, the Franco-Siamese Treaty of 1907, and the Treaty with Denmark in 1913 which followed after the Treaty of 1909 with Britain, the other treaty Powers--the United States, the Netherlands, Sweden and Norway, Portugal, Belgium, Italy, Spain, Russia, and Japan--still exercised full jurisdiction over their nationals. The Siamese delegation finally requested that:

...the effective performance by Siam of the obligations created by the Treaty of Peace involves not only a revision of the commercial clauses of the various treaties, but also a revision of the jurisdiction arrangements established by them as well. Without such a complete revision of the treaties Siam is faced with a situation which will make it difficult for her to perform her full obligations under the Treaty of Peace, to the performance of which, however, she is loyally committed. <sup>21</sup>

It has to be noted that the Siamese proposals were originally handed to the British Peace Delegation in Paris and were communicated by the latter to the Foreign Office. T. H. Lyle, the British Chargé d'Affaires at Bangkok, was then asked for his observations on such proposals. In

<sup>&</sup>lt;sup>21</sup>Ibid.

the meantime, before the reply was received from Bangkok, the French Government made a suggestion that the British, French and American Governments should come to a previous understanding regarding the question of jurisdiction to be exercised over foreigners in Siam before replying to the recent Siamese proposals on the subject. 22 Lord Curzon, who considered such idea to be advantageous to the three Governments, agreed to communicate further information to the Quai d'Orsay.

By August 1919, the opinions of the British Legation at Bangkok were forwarded to the Foreign Office. Lyle was of the opinion that though Siam had made remarkable progress since the reign of King Chulalongkorn in every branch of governmental administration, including justice, the time was not yet ripe to conclude that the improvement was stable. However, in regard to tariff, he agreed with the Siamese proposal that the existing Schedule was out of date and deserved revision, provided that limits were set to the new rate of increase. Lyle recommended that the Siamese government should expend the increased revenue from tariffs in directions which would benefit the commercial public, namely, port improvements and road construction. However, he hoped that the British Government should consult the British mercantile community in Siam before they sanctioned the modifications of existing tariffs. As regards jurisdiction, he thought that Britain should retain its former position in the treaties with Siam, for the Siamese judicial system was not yet qualified to administer its justice directly on foreign subjects. In Lyle's view:

...except in the matter of tariffs, there are no good reasons for abrogating the provisions of the existing treaty engagements between ourselves and the Siamese. The potential effects of wholesale treaty abrogation are so far-reaching as to be attended in this case with grave risk. 23

<sup>22</sup>Curzon to M. Cambon, Aug. 1, 1919. FO 422/75.

<sup>&</sup>lt;sup>23</sup>Lyle to Curzon, no. 134, Confidential, Aug. 20, 1919. FO 422/74.

Therefore, he suggested that any modifications in the Anglo-Siamese treaties should be confined to tariff matters, but in other respects the treaties should be allowed to stand as they were. As regards the question of jurisdiction, he suggested, however, that it would be a sound policy for the British Government to give support to Siam "to the extent of aiding her in the direction of persuading the various other treaty Powers to abandon their ex-territorial jurisdiction to the same extent and on the same lines as we ourselves have done."24

Using Lyle's recommendations as a guide-line, the Foreign Office replied to the Siamese request by saying that Britain had already gone further than any other Powers in virtue of the Treaty of 1909, towards abandoning the special privileges of extraterritorial jurisdiction which her subjects enjoyed in Siam, and they considered that until the other Powers gave up their existing rights to the same extent as Britain had done, any application for the British Government to proceed further in such direction would be premature. 25 Yet the British Government were ready to give careful consideration to the Siamese proposed revision of the commercial treaties with a view to changing the existing tariffs. Before giving a definite reply to the Siamese government upon this question, the Foreign Office had to consult the different Departments concerned--the Board of Trade, the Department of Overseas Trade, the India Office, and the Colonial Office.

Having studied the question, the Board of Trade did not have any objection in principle to the proposed Siamese increase in import duties. They accordingly confined their observations to that aspect of the question: they suggested that the policy of the British Government should be guided

<sup>24</sup>Ibid.

<sup>25</sup>Curzon to Phra Buri Navarasth, Siamese Minister, Oct. 30, 1919. FO 422/74.

by their general attitude towards China; 26 that Siam might be allowed to raise the existing tariff of 3 percent ad valorem to one of, but not exceeding 5 percent, which would apply generally to imports of goods from whatever source arriving. At any rate, there were exceptions in the case of a small number of luxury articles, such as alcoholic beverages, tobacco, and deleterious drugs, upon which the Siamese government could impose a higher rate of duty up to 10 percent ad valorem. 27

The Department of Overseas Trade also called attention to the similarity between Siam's claim and that of China, and considered a revision of the tariff to the maximum of 10 percent as desired by Siam, equitable in principle and not likely to effect the prospects of British trade in the future, provided: a) the principle of a single import and export duty, excluding all inland or transit duties, could be upheld for all commodities; b) all nations were to be treated alike. 28

Before continuing to study the question of British commercial negotiations with the Siamese government, it will be useful to undertake a separate treatment of the Siamese negotiations with the United States Government, which culminated in the American Treaty of 1920 and which exercised a considerable influence upon the Anglo-Siamese negotiations.

<sup>&</sup>lt;sup>26</sup>In the case of China the magnitude of the transit duty difficulty led to the division of revision into two stages, viz., 1) revision of existing specific duties up to 5 percent ad valorem; 2) addition of surtax to the ad valorem rate instead of transit and other inland charges. The first stage had been passed since China's participation in the First World War.

<sup>&</sup>lt;sup>27</sup>Board of Trade to FO, Jan. 12, 1920. FO 422/76.

<sup>&</sup>lt;sup>28</sup>Memorandum respecting the Increase of Siamese Tariffs. Enclosure in Department of Overseas Trade to FO, Jan. 22, 1920. FO 422/76.

## The American Treaty of 1920 and its Vital Effects on Anglo-Siamese Negotiations

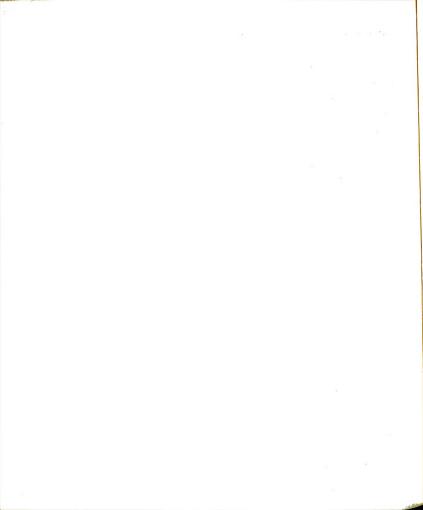
After the War, Siam not only approached European Powers like France and Great Britain for the revision of her archaic and unequal treaties, she also appealed to the United States Government in the same cause. Having considered Siam's case, America was willing to return to the Siamese government her complete jurisdiction over American subjects in Siam, with minor reservations, and she surrendered this right of extraterritoriality without compensation and without secret understanding of any sort. On December 20, 1920, the United States and Siam signed a Treaty<sup>29</sup> revising the conventions theretofore existing between the two countries, as well as a protocol attached to and made a part of the Treaty. This accomplishment was in part the result of the protracted and unremitting labors of three distinguished American advisers to the Siamese government<sup>30</sup>--Edward Strobel, Jens Westengard, and Eldon James--who had engaged in the series of negotiations with the United States Government.

In opening the negotiations with the American Government, the Siamese hoped that if they were successful in acquiring the American agreement to complete fiscal autonomy and complete freedom of jurisdiction over all their subjects, they would be able to bargain for the similar arrangements with the other interested Powers. Already in May 1920 the Siamese minister in London asked the Foreign Office whether they would reconsider their position with regard to judicial matters, whenever special arrangements were made between the Siamese and the American Government. 31 On

<sup>&</sup>lt;sup>29</sup>Treaty between Siam and the United States of America revising the Treaties hitherto existing between the two Countries, Dec. 16, 1920, <u>BFSP</u>, Vol. 113, pp. 1168-1174.

<sup>30</sup>Charles C. Hyde, "The Relinquishment of Extraterritorial Jurisdiction in Siam," AJIL, Vol. 15, July 1921, p. 428.

<sup>31</sup> Phra Buri Navarasth to Curzon, March 23, 1920. FO 422/76.



this occasion, the Foreign Office made a wise observation that in the event of any further concessions being made by Siam either in the proposed agreement with America or to any other country in any subsequent agreement, the British Government would have to "reconsider their whole attitude." 32

In the course of the negotiations with the American Government, one of the principal difficulties was the reluctance of the Siamese government to accept the American reservation of the right of evocation in the Supreme Court -- a reservation which was to remain in force for five years after the promulgation of the Siamese codes. The Siamese government were most anxious to introduce as great a degree of uniformity as possible into the jurisdiction question, and they feared that the conclusion of a series of treaties with the different Powers, each containing some important reservation of this character, would not advance the Siamese judicial position far in that direction. 33 Furthermore, the Siamese opposed the exercise of consular right of evocation without definite limitation of a period of time. Finally, the State Department yielded on the two points of contention: a time limit for the right of evocation, and no exercise of evocation in the Supreme Court. The American Government would retain the right of evocation only in the courts of first instance, and would not retain complete jurisdiction over their subjects. At the same time they recognized Siam's right to the principle of national autonomy in fiscal matters.

The new Treaty between Siam and America differed from the usual provisions appearing in the generality of Siam's treaties with foreign countries. 34 Article I accorded to the citizens of subjects of the two

 $<sup>^{32}</sup>$ FO to Siamese Legation, May 20, 1920. FO 422/76.

<sup>33</sup>A. Geedes, British Ambassador at Washington, to Curzon, no. 1316, Nov. 3, 1920. FO 422/76.

<sup>34</sup>Memorandum respecting the Treaty recently concluded between the

countries the mutual right to lease land, but not to own it. This marked a new feature in Siam's foreign treaties. The old treaties of friendship and commerce gave to foreigners a restricted right to own land in or near Bangkok; the later agreements, such as the one concluded with Britain in 1909, while providing for the substantial modifications of British extraterritorial privileges in Siam, had hitherto conferred at the same time on the foreign nationals concerned the general right to possess landed property anywhere in the kingdom. The new feature of the American Treaty had its origin in the wishes of the American Government, which was reluctant to concede to Japanese and other Asiatics the privilege of becoming land-holders in the United States.

Article 3 stipulated that the subjects or citizens of either country were to have liberty to come with their ships' cargoes to all places, ports or rivers in the territories of the other which "are or hereafter may be opened to foreign commerce and navigation." This seemed to imply that all the "places, ports and rivers" in Siam need not necessarily be open to foreign commerce and navigation at any given moment. It had to be noted that the old treaties permitted foreign nationals to trade freely "in all the seaports of Siam."

Article 7 recognized that the principle of national autonomy should apply to Siam in the matter of import and export duties, and agreed to increases by Siam in her existing tariff, subject to the following two conditions:

1) That there should be equality of treatment with other nations; and 2) that the other treaty Powers should also assent to such increases "freely and without the requirement of any compensatory benefit or privilege."

United States of America and Siam, by Consul-General J. Crosby, Aug. 25, 1921. Enclosure in Seymour to Curzon, no. 148, Confidential, Aug. 30, 1921. FO 422/78.

This was a new and unexampled concession. Its effect was of great importance, as it indicated the line which Siam would be obliged to follow in her pending negotiations with countries other than America for a revision of her existing customs tariff. This article strengthened the hands of the Siamese, who would quote it as an additional argument in favor of treaty revision on the merits of the case and use it to justify their reluctance to grant any concession in return. On the other hand, America gained credit for being willing to accord fiscal autonomy to Siam. Yet her concession would not become operative until the remaining treaty Powers had followed her example. In short, the American assent to Siam's increases in tariff had to be qualified by the principle of most-favorednation treatment. From the American point of view, article 7 had thus been devised not unskillfully. 35 But the provision that "all other nations entitled to claim special tariff treatment in Siam assent to such increases freely and without the requirement of any compensatory benefit or privilege," strengthened the position of the Siamese government against a possible demand for such quid pro quo from other treaty Powers.

Article 9 stipulated that, subject to most-favored-nation treatment, the United States admitted the right of the Siamese under this clause to apply such regulation to their coasting trade as they pleased. This was another new concession. In virtue of it, Siam was entitled to confine the privileges of coastal trade to vessels flying the Siamese flag.

Article 12 contained a new and useful provision that the citizens or subjects of either country "shall enjoy in the territories and possessions of the other, upon fulfillment of the formalities prescribed by law, the same protection as native citizens or subjects, or the citizens or subjects

<sup>35</sup> Ibid.

of the nation most favored in these respects, in regard to patents, trade marks, trade names, designs, and copyrights."

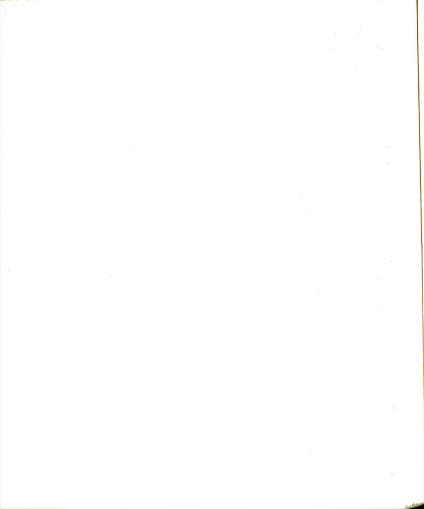
Article 16 laid it down that the new treaty should take the place of the old ones of 1833 (the Roberts Treaty), of 1856 (the Harris Treaty) and of other former agreements, which ceased to be binding. This was a further unexampled and sweeping concession. Those other Powers (Britain, France and Denmark) which had abandoned, either wholly or in part, their extraterritorial privileges in Siam under their new Treaties, had been careful to stipulate that, except as thus modified, the older instruments should still remain in force. 36

Article 17 stipulated that the new Treaty was to remain in force for a period of ten years and thereafter until denounced. It was added, however, that even in case of denunciation, the previously existing treaties and agreements mentioned above would not be revised. In the view of Eldon James, the adviser in foreign affairs to the Siamese government, who was largely responsible for the negotiation of the new American Treaty, this article recognized for the first time in history Siam's right to deal on a footing of equality with a Western Power.

Attached to the Treaty was the Jurisdiction Protocol, <sup>37</sup> to be read in conjunction with articles 4 and 5 of the main Treaty, which assured to subjects and incorporated companies of either country free access to the courts of justice. Article I of the Protocol announced that the system of jurisdiction established in Siam for American citizens, and the "privileges, exemptions, and immunities" enjoyed by them as a part

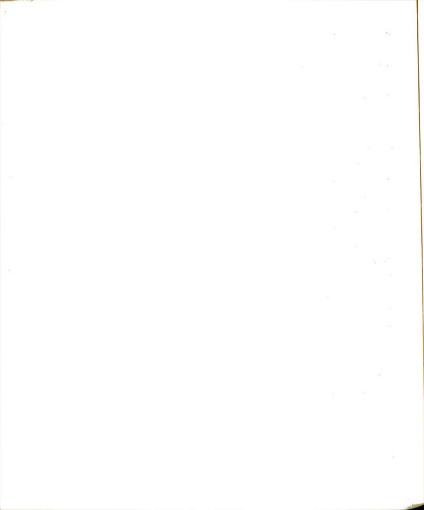
<sup>36</sup> Ibid.

<sup>37</sup>Protocol between Siam and the United States of America concerning Jurisdiction applicable in the Kingdom of Siam to American citizens and others entitled to the Protection of the United States, Dec. 16, 1920, BFSP, Vol. 113, pp. 1174-76.



of or appurtenant to that system, "shall absolutely cease and determine [sic] on the date of the exchange of ratifications," and that thereafter all American citizens and persons, corporations, companies, and associations entitled to its protection in Siam were to be subject to the jurisdiction of the Siamese courts.

It was in the matter of jurisdiction that the new Treaty brought about its most drastic changes. The American consular tribunal disappeared, the Siamese courts were substituted for it and the extraterritorial system was abandoned entirely. No half-measures were adopted; for example, no distinction was made between American citizens registered in Siam before and those registered after the signature of the Treaty. In the case of British and Danish subjects and of French Asiatic protégés, a distinction of the above kind was expressly recognized: the post-registrants being justiciable in the ordinary Siamese tribunals and the pre-registered category being placed under the jurisdiction of the international courts, in which their own consular officers had the right to sit. The new American Treaty not only made no mention of the International Courts, but also did not accord to American consular officers the right of participating in the hearing of cases affecting American citizens. More significant was the readiness of the American Government to dispense with the most important of all safeguards which Britain deemed it prudent to establish when they modified their extraterritorial rights in the Treaty of 1909, namely, the presence on the bench, whether in the international or the ordinary Siamese courts, of a European legal adviser in all cases in which a British subject was the defendant or the accused person. Unlike the British, the French or the Danes, the Americans had gone so far as to stipulate for no western advisers at all. They were prepared in future to confide the interests of their citizens to the unassisted discretion of the Siamese judiciary,



both in the courts of first instance and in the Court of Appeal. It should be remembered that in British cases, the British Government had secured that judgments on appeal were to bear the signatures of two European judges. The only safeguard that the American Government had set up was that the evocation from the Siamese courts by American diplomatic or consular officials, should such a course be deemed proper in the interests of justice, of cases in which an American was in the position of defendant or accused. In this respect the American Treaty went further than the British agreement with the Siamese. In the British case (and in that of the French and Danes also) the right of evocation was limited to the International Courts, and was to cease to be exercisable in all matters coming within the scope of codes or law regularly promulgated and communicated to the British Legation.

In the case of the United States the right of evocation applied to all the Siamese courts of first instance, but not to the Supreme Court. However, there were exceptions to the above principle. The right of evocation would continue until a period of five years should pass after the promulgation and putting into force of all the Siamese legal codes, and thus did not lapse with respect to any individual law or code at the immediate time of its promulgation. Article 2 of the Jurisdiction Protocol terminated with the following provision dealing with the Siamese legal codes which were in the course of preparation:

Should the United States perceive, within a reasonable time after the promulgation of said codes, any objection to said codes, the Siamese Government will endeavor to meet such objections.

This stipulation was a good one, but it would be still more effective and more convenient to the Siamese if it secured to the American Government the right to be consulted before the promulgation of the codes instead of that of raising objections to them after the event. It should be noted

also that the Jurisdiction Protocol applied not only to American citizens, but also to persons, corporations, companies and associations entitled to the protection of the United States.

The new American Treaty and the annexed Jurisdiction Protocol was a marked achievement of the Siamese government in its efforts to free Siam from the shackles of extraterritoriality. The arrangement recorded a definite advance in the condition of Siam. 38 The American concessions in judicial matters were an encouragement to the Siamese to accelerate their judicial reform on a larger scale with a view to bringing about the relinquishment of extraterritorial privileges of foreign Powers from their country. The far-reaching American concessions strengthened the self-assertive attitude which the Siamese had adopted towards the various European governments in the years after the Anglo-Siamese Treaty of 1909, and more particularly since Siam associated herself with the Allies in the War. The Siamese aimed at complete freedom from treaty control, and they were determined to attain that end as soon as possible. The new arrangement in the American Treaty served to inspire fresh negotiations contemplating equal concessions by European Powers. 39 It should be noted that after the end of the First World War, the impulse towards self-assertion and self-determination, which, in one form or another swayed almost all the peoples of Asia, manifested itself in Siam equally with such other countries as India and China. Therefore, the new token of the progress of Siam, as well as the cooperation of the United States, had a far-reaching influence upon other Asian countries in search of complete sovereignty.

<sup>&</sup>lt;sup>38</sup>Hyde, op. cit., p. 430.

<sup>&</sup>lt;sup>39</sup>Greg to Curzon, no. 46, Confidential, Feb. 21, 1922.

In April 1921, the Senate Foreign Relations Committee advised and consented to ratification of the Treaty. On May 6, President Harding ratified it. Another natural consequence of the Treaty was the growth of a distinctly pro-American feeling in Siam. 40 The Siamese turned to the United States as the one disinterested friend from whom they had most favors to expect, counting upon the moral support of America in their campaign to bring about a revision of their treaties with other European Powers, and, being duly grateful for all-important concessions which America had accorded to them.

For the Siamese the ratification of the Treaty of 1920 with the United States was epoch-making in their liberation of extraterritoriality. From the British view-point, the American Government could cede such important concessions to Siam for the reasons that:

Her stake in Siam is not a considerable one, and is in no way to be compared to ours. Her commercial interests are small as yet, whereas ours involve capital amounting to many millions sterling; she counts her nationals by ten where we count ours by thousands, or even by tens

The Speech from the Throne. Extract from the "Bangkok Times" of

<sup>40</sup> Ibid.

<sup>41</sup>It should be noted that in the days before the War the Siamese endeavored to utilize the German elements, whether in the service of the government or in the local commercial agencies, as a set-off against British and French domination. When Germany was defeated in the War, they hoped to find in America a substitute whom the state of world politics rendered more effective for their object. Prince Devawongse, the Siamese Foreign Minister, stated that America was the lighthouse towards which Siam directed her gaze.

In the royal speech of King Rama VI delivered on his birthday on January 1, 1922, in conjunction with the American-Siamese relations, he stated that:

<sup>&</sup>quot;In this treaty the United States of America has given renewed proof of its sincere friendship for our country in a recognition of our full right to fiscal autonomy, and in the complete abrogation of all previous obsolete treaties, convention and agreements. In this generous recognition of the advances made by my Government, the new treaty is in effect, an assurance of justice given to us by the United States of America, and on that account it marks the initial success of our effort towards the revision of the old treaties which constituted an obstacle in the advancement of our policy, and it leads us to hope that all the Great Powers will ultimately help to rid us of such obstacles in the same generous spirit."

of thousands, for the British Asiatic population is a very large one; moreover, her generosity in the matter of the tariffs will not become operative until all the other Treaty Powers have followed her example.<sup>42</sup>

Sir Josiah Crosby, the British Consul-General in Siam was afraid that the signature of the American Treaty would prove a source of embarrassment to Britain as well as to the other Powers, with whom the Siamese would use such agreement as an argument in their endeavors to extract a similar abandonment of treaty control.<sup>43</sup> The British Foreign Office anticipated that the Siamese government would before long renew their request for the wholesale concessions which they had already sought and which had been denied by the British Government in 1919.

The Anglo-Siamese Treaty for the Revision of their Mutual Treaty Arrangements concerning Jurisdiction, and the Treaty of Commerce and Navigation, July, 1925.

In October 1919, the British Foreign Office informed the Siamese Minister in London that, while the British Government regarded the question of surrendering their jurisdictional rights as premature, so long as other Powers still maintained such rights which Britain had already given in virtue of the Treaty of 1909, they would be ready to consider the increase of customs duties proposed by Siam. Since then neither the British nor the Siamese Governments had taken any further steps in the matter of

January 3, 1922. Enclosure in Crosby to Curzon, no. 6, Jan. 5, 1922. FO 422/79.

<sup>&</sup>lt;sup>42</sup>Greg to Curzon, no. 46, Feb. 21, 1922. Annual Report, 1921. FO 371/8057.

<sup>43</sup>Memorandum respecting the Treaty recently concluded between the United States of America and Siam, by Consul-General J. Crosby, Aug. 25, 1921. FO 422/78.

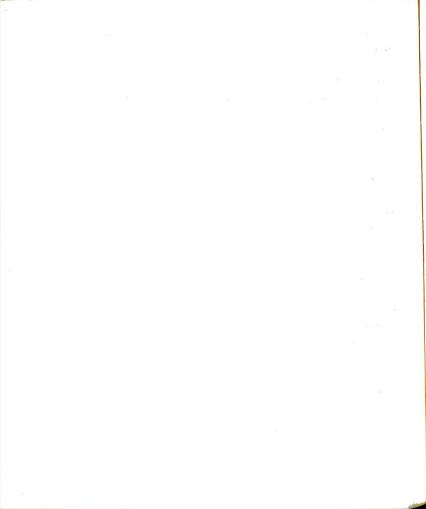
negotiation. Although no direct communication had been passed between the British and the Siamese authorities, the British Government had proceeded to ascertain the views of the various British dominions. Meanwhile, the Board of Trade had prepared a draft of a new treaty, embodying such modifications in the commercial provisions of the existing Anglo-Siamese agreements as would seem expedient in the light of the more recent phases of discussions that had taken place between the British Legation at Bangkok, the Foreign Office and the other government departments concerned. 44 Subject to the concurrence of Lord Curzon and to any observations of the various Departments concerned, this draft would, after submission to the Dominion Governments for their final opinion, be presented to the Siamese whenever direct negotiations were resumed. Curzon further suggested that those negotiations were to be carried on at Bangkok, where all previous treaties between Britain and Siam had been signed. This procedure, in Curzon's view, would enable the British Legation at Bangkok to take full advantage of the expert knowledge possessed by the local advisers who were in close touch with the local British community whose interests were mostly affected. 45

With the precedent of the American Treaty to point to, the Siamese government opened a fresh series of negotiations with the other Powers which possessed extraterritorial rights in Siam. In the case of the European States these diplomatic negotiations made by slow progress. In May 1921, the Siamese government instructed the Siamese Minister in London to approach the British Foreign Office again<sup>46</sup> by referring to their reply

<sup>44</sup>Greg to Curzon, no. 46, Confidential, Feb. 21, 1922. Annual Report, 1921. FO 471/8057.

<sup>45</sup>FO to Board of Trade, May 18, 1921. FO 422/77.

<sup>46</sup>Phya Buri Navarasth to Curzon, May 7, 1921. FO 422/77.



given in October 1919 above mentioned. In his request, Phya Buri Navarasth stated that:

Now that the Government of the United States have made a complete revision of the old treaties in accordance with Siam's appeal... with some reservations which are, in the opinion of His Siamese Majesty's Government, fair and reasonable, I am instructed to approach your Lordship once again, with a request for a more favorable consideration of Siam's case with a view to the early conclusion of a new treaty on the lines of the American treaty.<sup>47</sup>

Britain, still insisting on her former views, replied that "the right of evocation at present retained by His Majesty's Government was...of a more limited character" than that retained by the American Government under the new Treaty, and that until other nations with substantial commercial interests had gone so far as she had in the Treaty of 1909 any further discussion towards granting jurisdictional autonomy to Siam would still be premature. The British Government, moreover, thought that even if other Powers followed the American lead, they "still have gone further than any other Power towards returning to Siam jurisdictional autonomy."48 However, the Foreign Office had consoling information for the Siamese Minister regarding the question of the revision of the commercial treaties between the two countries, saying that consideration of the Siamese proposals by the various departments concerned and by the British representatives in Siam had reached an advanced stage, but that the British Government needed a little time to submit the draft-treaty to the selfgoverning Dominions and the Indian Government for their approval before the Foreign Office could begin the negotiations. 49

Throughout the years 1921 and 1922 no progress had been made by the Siamese and British Governments towards tariff revision and a new

<sup>47</sup> Ibid.

<sup>&</sup>lt;sup>48</sup>Victor Wellesley to Archer, June 11, 1921. FO 422/77.

<sup>49</sup>Curzon to Siamese Minister, May 31, 1921. FO 422/77.

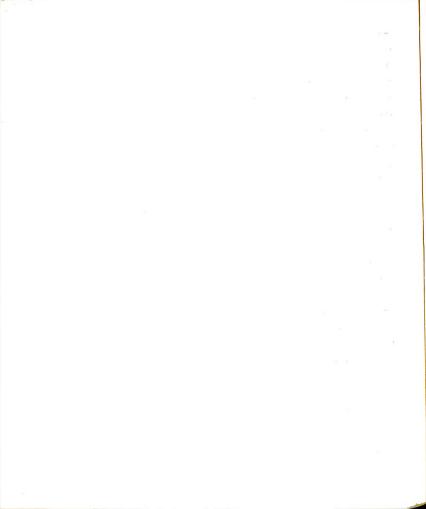
commercial treaty. So far as judicial matters were concerned, the British were not prepared to make any further concessions than those of the Treaty of 1909. Robert Greg, the British Minister in Siam, recommended to Balfour that, no matter what far-reaching concessions Britain made to Siam on the commercial side, the British Government should go slowly on the jurisdictional one, and he thought that "any further whittling down of the rights of British subjects in the matter of administration of justice must, therefore, be regarded with some misgivings." Moreover, he regarded the sharp modification, as in article VII of the American Treaty (which, unlike any treaty hitherto signed with Siam, laid down certain rules and principles for other nations to follow) as "most objectionable," and he saw no reason for Britain to acquiesce in view of the generous arrangements which other Powers would come to.51

At the end of December 1921, Lord Northcliffe arrived at Bangkok from Indo-China, and remained in the city for three days as the guest of the King. He greatly pleased the Siamese, but irritated the British colony to a proportionate degree, by a speech delivered by him at a banquet given in his honor at the British Club, in the course of which he characterized as an "intolerable injustice" the existing system whereby Siam's right to impose commercial tariffs was restricted by her treaties with the foreign Powers. Lord Northcliffe held up as an example for the British to emulate the conclusion of the recent American Treaty which accorded complete fiscal autonomy to the Siamese.

Having ceded her territories to France in 1907 and to Britain in 1909, Siam could not afford to cede any additional territory to any other

<sup>50</sup>Greg to Balfour, no. 84, June 9, 1922. FO 422/79.

<sup>51</sup>Greg toCurzon, no. 151. Nov. 9, 1922. FO 422/79.



Powers. Until she could succeed in separately persuading Britain, France, Italy, Holland, Belgium, Denmark, Norway, Sweden, Spain and Portugal to surrender their fiscal rights voluntarily, and without compensatory benefit, Siam remained permanently bound by the old three percent tariff restriction in addition to the existing rights of extraterritoriality. The difficult problem for the Siamese Foreign Office was how to induce these ten European nations, some of whom had substantial commercial interests in Siam, to give away their rights for nothing in concessions.

In 1923 the Siamese government opened negotiations with Japan. The new treaty was concluded on March 10, 1924; it abrogated the existing rights of extraterritoriality, subject, however, to the same rights of evocation as under the American treaty, and such rights would come to an end five years after the promulgation of the Siamese codes of law. Japan was the first Power to follow the example of the United States. The new Japanese Treaty was of value to Siam chiefly owing to its psychological effect upon the European nations: 52 it strengthened the precedent created by the American Treaty and thus gave Siam additional confidence in dealing with them. In Europe, negotiations with the French Foreign Office in Paris, which had been dragged along for three years, proceeded steadily. In the meantime, the Siamese Legations in several European capitals attempted to induce such Powers as Holland to negotiate, but such efforts had not met with much success so far.

As regards the negotiations with Britain, the Siamese government did not manifest any inclination to reopen the tariff question. Neither Prince Devawongse nor any influential body of Siamese authorities concerned with the subject had ever mentioned the matter to the British Minister at

<sup>52</sup>Sayre, "The Passing...," op. cit., p. 83.

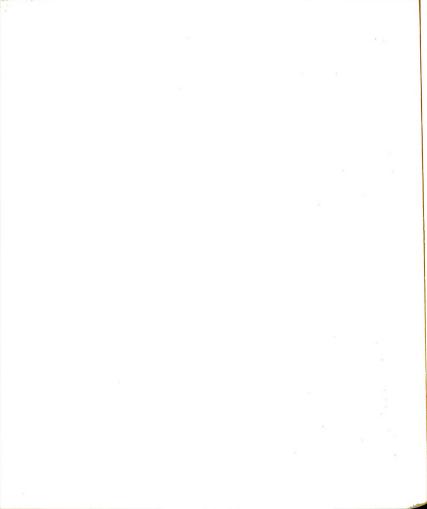
Bangkok. Greg suspected that the Siamese would hold on in the hope of inducing France and the lesser treaty Powers to come into line with the United States, thus isolating Britain and placing her in the embarrassing position of being the only great Power clinging to a fixed and limited tariff. 53 Then Siam would confront Britain with what he considered as "an unanswerable demand for full autonomy."54

Upon the death in June 1923 of Prince Devawongse Varoprakar, for 38 years Minister for Foreign Affairs, his place was taken by his son, Prince Traidos Prabandha, formerly the Under-Secretary of State for Foreign Affairs. On this occasion, Greg approached the latter to say that the British Government were prepared to discuss commercial, though not jurisdictional, clauses of the 1909 Treaty should the Siamese government so desire. This led to some discussion. Prince Traidos finally stated that unless the British Government were prepared to consider, under suitable guarantees, the material modification, if not the extinction, of the existing system of treaties, it would be useless to discuss treaty revision at all. 55 Greg reported this declaration of policy to the Foreign Office, but his telegram and despatch crossed one from London stating the reluctance of the British Government to take the initiative in the matter and their intention to wait until they were approached by the Siamese government, whereupon the negotiations would be conducted at Bangkok. Under such circumstances, Greg did not refer to the matter again, nor did Prince Traidos ever do so, either in writing or in conversation.

The question of the Anglo-Siamese negotiations was left in abeyance for nearly a year, until July 1924, when Prince Traidos informed Greg

<sup>54</sup>Greg to Curzon, no. 79, April 23, 1923. FO 422/80.

<sup>55</sup>Greg to Curzon, no. 146, Confidential, Aug. 8, 1923. FO 422/80.



before his leave of absence to England that as the Siamese government expected to sign the new Franco-Siamese treaty in the fall, they desired to begin negotiations with the British Government, both for a new commercial treaty and for the revision of the jurisdictional clauses of the 1909 Treaty. For this purpose, Francis B. Sayre, 56 the Adviser to the Siamese Ministry of Foreign Affairs, who was of United States nationality, would be appointed to conduct such negotiations. Sayre was proceeding to Europe on a general mission to open the negotiations with the Foreign Offices of European countries which had contractual relations with Siam. Greg promised to communicate this proposal to the Foreign Office, but, at the same time expressed his opinion that should the British Government be prepared to entertain the Siamese suggestion in principle, they would wish the actual negotiations to take place in Bangkok, following the precedent of the 1909 Treaty.

Experience had shown, however, that Siam could not hope to induce the European Powers to surrender their existing rights through ordinary methods of carrying on long-distance negotiations in Bangkok. In Sayre's opinion, "the force of local prejudice and the unavoidable lack of understanding on the part of European Foreign Offices of the true conditions in Siam made it evident that the ordinary and routine methods of negotiation

<sup>56</sup>Francis Bowes Sayre had been professor of International Law at Harvard University before he came to Siam to succeed Eldon R. James as Adviser to the Ministry of Foreign Affairs. He was also son-in-law of President Wilson. He arrived in Siam in November, 1923 and left for Europe in August 1924 to present the case of Siam for a revision of obsolete treaties and to negotiate new ones with various European countries, then returned to America to resume his work at the Harvard Law School. High decorations had been conferred upon him by the Siamese government, and he was created a Siamese nobleman under the style of Phya Kalvan Maitri, or Marquess of Tender International Friendship. He had succeeded in clearing up all the unequal treaties.

could only end in failure."<sup>57</sup> Furthermore, he thought that Siam's success would come through convincing the responsible officials in the Foreign Offices of each of the treaty Powers that "wise statesmanship demanded the recognition of Siam's remarkable progress and stability and the consequent freeing of her from the shackles of extraterritoriality so that her further development might be unimpeded."<sup>58</sup> This idea had the active support of Prince Traidos. Accordingly King Rama VI decided to send Sayre as Siam's representative on a roving commission to Europe, and in conjunction with Siam's diplomatic agent in each country, to persuade the European Foreign Offices to renounce their existing rights, and to negotiate new treaties. Sayre set sail to Europe in August 1924, and was expected to spend the ensuing year for such purposes.

In due course, the British Foreign Office sent instructions to J. F. Johns, in charge of the British Legation in Bangkok, to the effect that there seemed to be no special advantages in conducting the negotiations for the revision of the existing Anglo-Siamese treaties with Sayre, whose term of engagement with the Siamese government was to end in September 1925, and that the British Government would adhere to their previous decision to conduct the negotiations at Bangkok. 59

When this decision was communicated to Prince Traidos, he stated that the Siamese government actually desired that Sayre should present a memorandum explaining the Siamese aims with respect to revision of the fiscal and judicial system existing in Siam, and, if necessary, to elaborate and emphasize its main points orally in the course of discussions

<sup>&</sup>lt;sup>57</sup>Sayre, "The Passing...," op. cit., p. 83.

<sup>58</sup>Ibid.

<sup>&</sup>lt;sup>59</sup>FO to IO, F 2779/52/40, Sept. 9, 1924. FO 422/81.

at the British Foreign Office. Once the British Government had consented to negotiate, the matter would then be transferred to Bangkok for the actual negotiations. 60 This proposal was referred to the Foreign Office, which consented to receive Sayre and consider sympathetically any exposition he might make. 61

Upon arriving in Paris on December 1924, Sayre opened negotiations with the French Foreign Office. His plan was to remain in Paris until the Franco-Siamese treaty had been signed, then proceed to London about the middle of January 1925. Fresh complications arose from the diverging interpretations maintained by both Governments in many stipulations of the draft treaty. Negotiations had to be taken up afresh. After several weeks of intensive discussions, the French Foreign Office finally agreed to accept a formula satisfactory to Siam. The Treaty was signed on February 14, 1925, being based upon the lines of the American Treaty of 1920. Under its terms the position of French Asiatic subjects and protégés remained as fixed by the Treaty of 1907, namely, all those preregistrants were to be tried in the 'International Courts', and the postregistrants in the ordinary Siamese courts with no right of evocation. The International Court system with the right of evocation was to terminate, however, with the promulgation of all the Siamese codes of law. French citizens who, prior to 1925, were subject only to the consular courts, were also to be tried in the International Courts, with the consular right of evocation, until five years after the promulgation of all the Siamese codes, as in the American Treaty. Subject to these restrictions, all

<sup>60</sup> Johns to MacDonald, no. 193, Nov. 3, 1924. FO 422/80.

<sup>61</sup> Johns to Austen Chamberlain, no. 24, Confidential, Feb. 25, 1925. Annual Report, 1924. FO 371/10350.

French extraterritorial rights in Siam were abolished by the new treaty, and the restrictions remaining had definite time limits. The Treaty meant in substance the grant of actual judicial autonomy to Siam. The fiscal provisions of the earlier treaties were also abrogated. France recognized Siam's right to complete fiscal autonomy. Siam might raise its tariff on French goods beyond three percent as soon as all other treaty Powers having similar rights against Siam would come to a similar agreement voluntarily and without compensatory benefit. 62

At the beginning of the year 1925 the policy advocated by the Foreign Office departmentally was to refuse to agree to any immediate revision of the jurisdictional clauses of the Anglo-Siamese Treaty of 1909. 63 On the other hand, the international position 64 made it necessary for the British Government to make it clear to the Siamese government that they had no desire to take up an attitude of unhelpful or selfish obstruction, and that their object was not so much to retain their existing privileges,

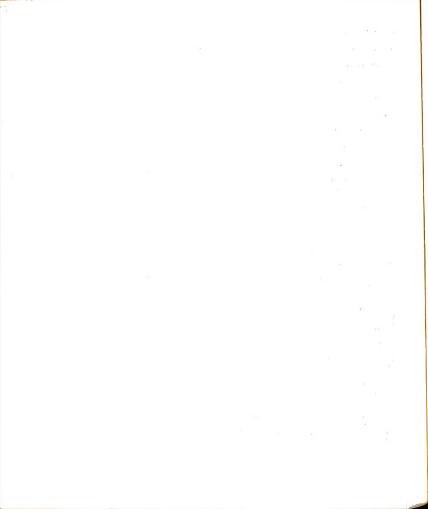
<sup>62</sup>For summary of the Franco-Siamese Treaty of 1925, see Toynbee, op. cit., pp. 413-15.

<sup>63</sup>The Foreign Office had adopted this policy recommended by Greg in April 1924 that the British Government should not agree to the immediate revision of the jurisdictional clauses of the existing Anglo-Siamese treaties, but that they should give an undertaking to accept arrangements similar to those in the American Treaty of 1920, if, at the end of a stated period, such as five years, after the publication of the Siamese codes, and of the date of the termination of the right of evocation enjoyed by the United States Government under that Treaty, the British Government were satisfied with such action, they would be ready to come into line with America, Japan and France.

Furthermore, Greg recommended the arguments for such delay that since the new Siamese codes were Latin in character they would be difficult in application to the British preponderating commercial community brought up on English common law. Therefore, the British Government should ask the Siamese government to give them time to see how the codes would work out in practice before they finally decided to relinquish the remaining treaty guarantees.

FO to IO, Sept. 9, 1924. FO 422/81; CO to FO, no. 43032/24, Sept. 23, 1924. FO 371/10347; and Greg to MacDonald, no. 79, April 7, 1924. FO 371/10347.

<sup>64</sup>Greg was of the opinion that the Siamese would have a very strong



as to ensure that the necessary improvements in Siamese law and its administration should be effected before those privileges were surrendered. With the process of surrender of extraterritorial jurisdiction of the other governments concerned already far advanced, the Foreign Office realized that the privileged position of foreign Powers in Siam would come to a complete end within a reasonable time, and that it would be a mistake on the part of the British Government to attempt unduly to retard its consummation. They looked forward to the fact that:

With the growth of education a demand for more modern and up-to-date governmental institutions will soon make itself heard even in contented Siam, and we shall only increase the odium to which we are always exposed in the Far East if, by the time that stage is reached, we remain the one Power clinging to the vestiges of a system which is increasingly felt as a humiliation. 66

Therefore, they thought of withdrawing themselves judiciously by stages, and simultaneously arranging at each stage for the proper safeguarding of their interests, 67 because they were afraid that British interests might

case on paper for the surrender of British safeguards. He stated that:

"They can point to the general trend of world policy since the war,
particularly to our own policy--the independence granted to Ireland and
Egypt--the more or less complete capitulation to Turkey--the far-reaching
concessions made by us in India and Burma....They will cite the example
of the United States of America, Japan and France, as soon as the latter
has signed her treaty, and it will not be easy to reject off-hand so many
telling arguments in favor of judicial autonomy."
Greg to MacDonald, no. 79, April 7, 1924. FO 371/10347.

<sup>65</sup>Foreign Office Memorandum respecting outstanding Questions with Siam, Jan. 21, 1925. FO 422/82.

<sup>66</sup> Ibid.

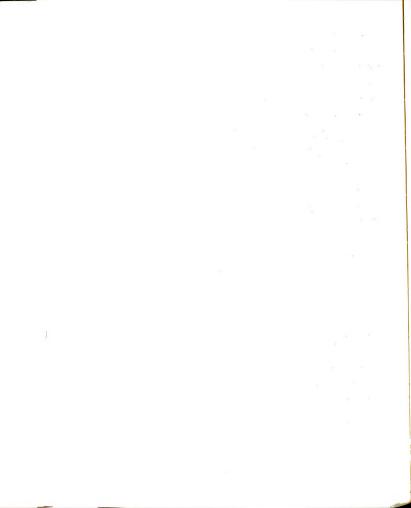
<sup>67</sup>British trade was predominant in Siam and British interests were far more substantial than those of any other country. Over 80 percent of Siam's export trade and 67 percent of her import trade was British.

Sayre, "The Passing...," op. cit., p. 85.
Furthermore, British subjects were by far the largest of foreign subjects in Siam, including among them Indian, Burmese, Malay and Straits-Chinese race.

be seriously prejudiced by subjecting the trading community to the control of the Siamese courts without their existing safeguards; and by giving the Siamese a free hand to put high duties on the entry of British goods.

The Siamese Minister in London had approached the British Government suggesting a treaty revision in November 1924, but no advanced steps had been achieved--Britain had given a noncommittal reply. The delay in getting the French Treaty signed prevented Sayre, the Siamese special negotiator, from opening the negotiations with the British Foreign Office until late in February. This was the most important of all negotiations, in Sayre's opinion, in view of the large numbers of British subjects and of the preponderance of British interests in Siamese trade. If Britain refused to give Siam a new treaty, other European countries concerned would likewise refuse. Therefore, the difficulties of securing a new British treaty were proportionate to its practical importance. The large value of British interests militated against Britain's being willing to surrender voluntarily her right of having European legal advisers sit in the Siamese courts.

At the opening interview at the Foreign Office between Austen Chamberlain and Sayre on February 24, Sayre explained the Siamese aspirations to secure jurisdictional and tariff autonomy. Sayre personally believed that British commercial and strategical interests could be considerably advanced and further secured by a new treaty adjusted to the existing conditions, so framed as to "give in substance enlarged rights to both sides." As regards jurisdictional autonomy, Sayre proposed that Britain should accept the arrangements already agreed to by the United States in the Treaty of 1920, by the Japanese Treaty of 1924, and by the recently concluded Treaty with France. Under the regime, regulated largely by the Treaty of 1909, Britain had entrusted the protection of her interests



to Siamese courts, but subject to two safeguards: a) the presence of a judicial adviser; and b) the right of evocation. He pointed out that when the American Treaty was negotiated in 1920, the Americans felt the inconsistency of retaining both the right of evocation, and the right of the presence of a legal adviser in a case. They chose the right of evocation as the better safeguard; Sayre explained that:

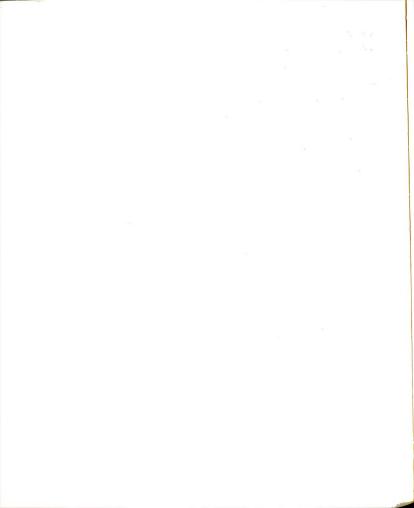
...from the viewpoint of the foreigner if there were an abuse of judicial power the right to evoke the case and try it in the foreigners' own consular court in its own way constituted a far more adequate safeguard than having a judicial adviser present who, as a Siamese officer, would of course be bound by Siamese laws and provisions and whose opinion might be outweighed by the other members of the court. 68

The American Government therefore asked for the right of evocation and enlarged it considerably to embrace all American citizens; whereas, the British right under the 1909 Treaty existed only to the pre-registrants who were subject to the jurisdiction of the Siamese International Courts.

A new jurisdictional agreement with the British Government was most desirable in view of the fact that Britain interests were far more substantial than those of any other country. The Siamese government proposed to grant to Britain an enlarged right of evocation, such as the other Powers had acquired, in return for the abandonment of the requirement of European advisers in the Siamese courts, in order to achieve uniformity of treatment among foreigners in Siam. Sayre explained that the Siamese government had no intention to discontinue immediately the use of foreign legal advisers or of judicial advisers, but "to regain the full sovereignty which every self-respecting state as progressive as Siam must covet."69

 $<sup>^{68}</sup>$ Sayre to Wellesley, personal and confidential, Feb. 24, 1925. FO 371/10971.

<sup>69</sup>Ibid.



Sayre added that the Siamese government were well aware that they could not dispense with the assistance of European judicial advisers, but as a matter of national pride, and in view of the progress Siam had made during the last fifty years, they desired the matter to be a voluntary act on their part and not a matter of treaty compulsion.

Upon the tariff question, Chamberlain presented the British point of view with great frankness; although Britain would be ready to negotiate a modification of the existing arrangement, including a raising of the tariff rates, yet it was questionable whether Britain should allow Siam an absolutely free hand. 70 The substantial volume of British trade caused extreme reluctance on the part of the British Government to take any urgent steps for fear of jeopardizing their commercial interests in Siam. Sayre pointed out that a commercial treaty allowing Siam to raise her tariff duties only within fixed limits might prove dangerous for Siam; for in the treaties between Siam and America, Japan and France, granting fiscal autonomy to Siam, the grants were made only on condition that "all [other] nations did the same without compensation." In case Siam failed to obtain from Britain the right of free fiscal autonomy, other nations which were granting her such right would also withdraw it. Apart from this. Siam could not afford a high tariff since she was a purely agricultural country, and had to depend on foreign Powers for cheap manufactured goods; therefore, a high tariff would hurt Siamese farmers far more than British merchants. 71 To make the British position secure, Sayre suggested that whenever the British Governmented granted Siam the right of fiscal autonomy, Siam could then proceed to give to British interests such protection

<sup>70</sup>A. Chamberlain to Johns, no. 34, Feb. 24, 1925. FO 422/82.

<sup>71</sup>Sayre to Wellesley, Feb. 24, 1926. FO 371/10971.

against the fixing of an unduly high tariff as might seem desirable, by means of a supplementary commercial agreement entered into at the same time as the new general treaty.

After his discussion with Sayre, Chamberlain admitted that Sayre had put a new light upon the situation, and he felt that Sayre's proposals were reasonable. 72 In the meanwhile, Chamberlain consulted Sir Philip Cunliffe Lister, President of the Board of Trade, on the matter. In Lister's view, it would be difficult for Britain to maintain her refusal to accord tariff autonomy to Siam, in face of the action taken by the other Powers. In order to take account of the main British commercial interests in Siam, however, he suggested an arrangement with the Siamese government by which certain classes of British goods should be secured from excessive duties for a certain number of years. Furthermore, he recommended that Sayre should appear before an inter-Departmental Committee to explain the case of Siam. He was of the opinion, however, that whatever agreement in principle the Committee might come to with Sayre in London. the detailed treaty negotiations should be carried out at Bangkok where the grievances and desiderata of the commercial community could be fully represented. 73

In the meantime, Sayre had submitted concrete written proposals to the various government departments concerned and further explained and urged them in intimate personal conferences with those who were particularly influential. 74 The Foreign Office appointed a time on March 6 for Sayre to argue and discuss the Siamese proposals before the assembled representatives of the several ministries and the departments concerned-the

<sup>72</sup>Sayre, "Siam's Fight for Sovereignty," op. cit., p. 681.

 $<sup>^{73}</sup>$ Sir Cunliffe Lister (Board of Trade) to A. Chamberlain, Feb. 27, 1925. FO 371/10971.

<sup>74</sup>Sayre, "Siam's Fight for Sovereignty," op. cit., p. 681.

Foreign Office, the Colonial Office, the India Office, the Board of Trade, the Department of Overseas -- at the Board of Trade. Prior to that date, the Foreign Office held a conference of the departments concerned at the Board of Trade. It was agreed that, subject to discussion with Sayre at the following meeting, the British Government would be prepared to enter upon negotiations with the Siamese for two treaties; commercial and general. 75 With regard to the commercial treaty, it was agreed roughly that Siam would have a free hand as regards duties on all imports except for certain items of British goods on which fixed maximum duties would be imposed, namely, cotton goods, iron and steel, and machinery. On the part of Britain, the British Government would undertake to put no duties on important imports from Siam such as teak and rice. Furthermore, the conference agreed that if agreement in principle could be reached in London, the actual negotiations for this commercial treaty were to be transferred to Bangkok, where points of detail could be conveniently handled. However, the Foreign Office would be required to consult the Governments of India and of the Dominions. As regards the general treaty, it would cover, so far as necessary, the subject-matter of the recent Siamese treaties with other powers, except so far as covered by the commercial treaty. In particular, it would deal with the two principal questions:

- a) The grant of fiscal autonomy to Siam. It was agreed that, if a commercial treaty on the lines indicated above could be negotiated, there would be no objection to an article similar to the fiscal autonomy article in the recent Siamese treaties with the United States, France, and Japan.
- b) Modification of the jurisdictional status of British subjects in Siam. It was agreed that the British Government should accept an arrangement corresponding to that already accepted by the other Powers, namely,

<sup>75</sup>Foreign Office Minute, March 3, 1925. FO 371/10971.

an enlarged right of evocation which would come to an end five years after the date of the promulgation and putting into force of all the Siamese codes. At any rate, this was to be subject to the assent of the Siamese government to declare that they intended to keep European advisers on their courts for a reasonable period of time, and that a reasonable proportion of them would be British.

On the appointed day of March 6, Sayre met with the assemblage of British representatives at the Board of Trade. Sayre continued to explain the Siamese proposals for a revision of their treaty obligations with Britain, and to rid themselves of the burdensome jurisdiction and fiscal provisions which were not consonant with the present-day position of Siam among nations. Sayre later wrote of this conference: "We discussed the British position in Siam from almost every angle; the British experts showed by their searching questions how carefully they had studied our proposals and suggestions."76 Sayre endeavored to explain the weak as well as the strong points of the Siamese proposals. Finally, the interdepartmental committee agreed to a treaty along the lines of the Siamese proposals. They agreed to accept the enlarged right of evocation along the line of the American Treaty. However, they hoped that the Siamese government would give assurance to the British Government that, until sufficient permanent and competent Siamese judges were available to preside over all the courts, European legal advisers, including a reasonable proportion of British, would be retained, and they suggested that the Siamese government should give a written assurance to this effect to the British Foreign Office. 77 The conference also produced a valuable suggestion

<sup>76</sup>Sayre, "Siam's Fight...," op. cit., pp. 682-83.

<sup>77</sup>Memorandum of meeting no. 2 of the Anglo-Siamese treaty interdepartmental committee held at the Board of Trade on March 6, 1925. FO 371/10791.

that the main provisions of the Commercial treaty should, like those of the General treaty, be settled in London; whereas the minor points might be relegated to separate and subsidiary conventions that would be negotiated at Bangkok. 78

The British Government had transferred the venue of negotiations from Bangkok to London. The reason for abandoning the original idea of conducting the negotiations in Bangkok after a preliminary discussion of principles with Sayre was owing in large part to the accommodating spirit which he had displayed and which made it seem probable that any treaties he might negotiate, backed by the influence which he apparently was able to exert on the Siamese government, could be brought to a more satisfactory and speedy conclusion that would have been possible had negotiations been carried on direct with native officials in Bangkok. 79

Several weeks of intensive work and discussions followed the preliminary discussions at the Board of Trade to hammer out a draft which would relieve Siam from the old, unequal restrictions and yet which would not leave British interests unprotected. The Siamese negotiator and the representatives of various British offices agreed to wipe away all the former treaties, and to replace them by a new General Treaty of Friendship and a comprehensive Treaty of Commerce and Navigation framed in the new spirit along the lines of the Siamese initial proposals. By the end of March, the draft treaties were completed. Sayre urged a signature as early as possible, so that the new treaty with the British Government would help Siam in securing new treaties with other European Powers. The main

<sup>78</sup>Waterlow to Sayre, March 10, 1925. FO 371/10791.

<sup>79</sup>Greg to Austen Chamberlain, no. 29, Confidential, Feb. 10, 1926. Annual Report, 1925. FO 371/11719.

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feature of the General Treaty would be that Britain would surrender all her existing treaty privileges in Siam and recognize Siam's complete right to judicial and fiscal autonomy. On the other hand, Siam agreed in the Commercial Treaty to limit the import tariff on all cotton goods, iron and steel and manufactures thereof, and machinery, which constituted the bulk of British exports to Siam, to 5 percent ad valorem for ten years after the coming into force of the Treaty.

The treaty drafts were then mailed to Bangkok for the detailed consideration of the Siamese government and the comments of the British Minister, and were duly received in Bangkok in the middle of May. The General Treaty and Commercial Treaty were regarded as being interdependent; the British Government were reluctant to sign the former unless the Siamese government on their side were prepared simultaneously to sign the latter, under which British commercial interests would be adequately safeguarded. A further safeguard to British interests was a draft letter, which it was proposed that the Siamese Minister in London should, at the conclusion of the treaties, address to the British Foreign Minister as regards the continued employment of European legal advisers.

While the Foreign Office was waiting for the views of the British Legation at Bangkok, Sayre took the opportunity to proceed to the capitals of several other treaty Powers to push new negotiations. On the day that the Dutch Treaty was signed at The Hague on June 8, 1925, the British Foreign Office had notified Sayre that the British Minister in Bangkok had raised some objections to the draft treaties and had recommended a number of amendments. The Foreign Office informed him that after further mature consideration they had to ask for certain additions and modifications to the draft treaties. The general effect of these amendments, in the view of the Foreign Office, was to stiffen up the treaties, particularly

with regard to the further employment of foreign legal advisers in the Siamese Ministry of Justice. It was further proposed that an English lawyer, preferably a barrister familiar with the Indian codes, should be employed in the Law School at Bangkok, and that he would not be subordinate to any other European member of the staff; that the existing undertaking as to the use of British law in commercial cases where no Siamese law existed was to be maintained until the relevant codes were promulgated; and that the practice of having a British subject as adviser in the Siamese Customs Department was to be continued. 80

Sayre rushed back to London. Again he had to appear before the Anglo-Siamese treaty inter-departmental committee to argue Siam's case in several formal meetings. Finally the British representatives agreed to withdraw most of the British requests, or to alter them to a form which was acceptable to the Siamese government. By the beginning of July they were able to find solutions for several "highly technical but extremely difficult legalistic problems." With the last difficulties ironed out, the General and Commercial Treaties were ready for signature. On July 14, 1925, Chamberlain and Phya Prabha Karavongse, the Siamese Minister to London, signed the treaties of such vital importance to Siam. The

<sup>80&</sup>lt;sub>FO</sub> Memorandum, June 2, 1925. FO 371/10972.

<sup>81</sup>Sayre, "Siam's Fight...," op. cit., p. 683.

<sup>82</sup>Treaty between the United Kingdom and Siam for the Revision of their Mutual Treaty Arrangements, and Protocol concerning Jurisdiction applicable in Siam to British Subjects and Protected Persons. BFSP, 1925, pt. 1, Vol. 121, pp. 840-846.
Treaty of Commerce and Navigation between the United Kingdom and Siam, Ibid., pp. 846-857.

Jurisdiction Protocol was also attached to the General Treaty. On the day of the signature of the Treaties, the Siamese Minister to London submitted several letters<sup>83</sup> conveying the Siamese assurances on judicial and fiscal matters to the British Foreign Minister, but they were not considered as part of the treaties. The King of Siam ratified the treaties on December 26, and the ratifications were exchanged at London on March 30, 1926.

Except as to boundary provisions, all former Anglo-Siamese Treaties were abrogated from the date of the exchange of ratifications. In the main outlines the new British General and Commercial Treaties were modeled upon the American Treaty of 1920 and the French Treaty of 1925. The British Government recognized Siam's judicial autonomy: the requirement of legal advisers in the Siamese courts was dropped. Article I of the Jurisdiction Protocol stipulated that:

The system of jurisdiction heretofore established in Siam for British subjects and the privileges, exemptions and immunities now enjoyed by British subjects on Siam...shall absolutely cease and determine [sic] on the date of the exchange of ratifications of the abovementioned treaty, and thereafter all British subjects, corporations, companies and associations, and all British-protected persons in Siam shall be subject to the jurisdiction of the Siamese courts.

At any rate, the British Government preserved the enlarged right of evocation from the Siamese courts until 5 years after the promulgations of
the Siamese codes. This right could be exercised in any Siamese court
"by means of a written requisition addressed to the judge or judges of
the court in which such case is pending," except the Supreme Court, "in
which a British subject, corporation, company or association, or a Britishprotected person is defendant or accused." Thereafter, such evoked case

<sup>83</sup> Exchange of Notes between the United Kingdom and Siam in connection with the General and Commercial Treaties signed at London on July 14, 1925.

<u>Ibid.</u>, pp. 857-862.

was to be disposed of by the diplomatic or consular officials in accordance with English law. (Article 2 of the Protocol.) In order to prevent difficulties from the transfer of jurisdiction contemplated by the new Treaty, it was agreed that:

- a) All cases instituted subsequently to the date of the exchange of ratifications of the Treaty were to be entered and decided in the Siamese courts, whether the cause of action arose before or after the date of such exchange.
- b) All cases pending before the British consular and diplomatic officials in Siam would take their usual course until such cases were finally disposed of by the British officials and by the British law.

  (Article 4 of the Protocol.)

With the abrogation of all the previous treaties, all other forms of guarantees in judicial matters for British subjects were repealed, among which were the irritating requirement that a European legal adviser be present in the Siamese courts when a post-registered British Asiatic subject was defendant or accused; furthermore, the stipulation for the presence of a European adviser to sit as a judge in the Siamese Courts in the case in which a post-registered British-born or naturalized subject, not of Asiatic subject, was a party was also dropped. In addition, there was to be no longer a renewed number of the British post-registrants and the pre-registrants in Siam. From March 30, 1926 onwards British subjects were subject to the jurisdiction of the Siamese courts.

Upon the relinquishment of the British judicial privileges in Siam, the Siamese government gave several assurances in the exchanges of notes communicated between Austen Chamberlain and the Siamese Minister in London on the day of, and after, the signature of the Treaty, to the effect that

the Siamese government would endeavor to do everything to safeguard British interests in Siam, "so far as this could be done without injury to the interests of the Royal Siamese Government." In particular, they gave assurance that:

it is their intention not to dispense with the services of European legal advisers upon the ratification of the new treaties, but to continue to employ them until such time after the promulgation of the codes as they may be convinced that the administration of justice by Siamese judges shows the further services of such European advisers to be unnecessary. 84

With regard to fiscal matters, the British Government recognized Siam's fiscal autonomy, as was the case in Article VII of the American Treaty. The British Treaty of Commerce and Navigation dealt in detail with various subjects which would involve British commercial interests in Siam. Article X of the Treaty attached certain conditions to Siam's right to impose customs duties on British imports. It stipulated that:

The following articles manufactured in any of His Britannic Majesty's territories to which this treaty applies, viz., cotton yarns, threads, fabrics and all other manufactures of cotton, iron and steel and manufactures thereof, and machinery and parts thereof, shall not, on importation into Siam, be subjected to any customs duty in excess of 5 percent ad valorem during the first 10 years after this treaty has come into force.

So far as exportation was concerned, Article VI provided that:

Drawback of the full amount of duty shall be allowed upon the exportation from Siam of all goods previously imported into Siam from His Britannic Majesty's territories which, though landed, have not gone into consumption in Siam, or been subjected there to any process.

Among other advantages gained by the British in the new treaty was the exemption from corvée, which the British government had never before been able to obtain explicitly in the earlier treaties, though, in practice, British Asiatic subjects had usually been exempted by arrangement between

<sup>84</sup>Prabha Karawongse to Austen Chamberlain, July 28, 1925. FO 422/82; or in <u>BFSP</u>, 1925, pt. 1, Vol. 121, p. 860.

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the British consular officers and the local authorities. Article VIII stated that:

British subjects in Siamese territory shall be exempted from all compulsory military service whatsoever, whether in the army, navy, air force, national guard or militia. They shall similarly be exempted from all forms of compulsory manual labor and from the exercise of all compulsory judicial, administrative and municipal functions whatever, as well as from all contributions, whether in money or in kind, imposed as an equivalent for such personal service, and finally from all forced loans, and from all military exactions or contributions.

Another advantage which the British succeeded in acquiring from the Siamese government was the retention of equal rights with the Siamese as regards the forest and mining concessions, including the searches for minerals like oil in Siam. (Art. V)

Unlike the former Anglo-Siamese treaties, namely, the treaties of 1855 and 1909, which provided for no time-limit, the General Treaty and the Treaty of Commerce and Navigation contained a termination clause. Both treaties were made terminable by either party after 10 years upon one year's notice, and such denunciation would not have the effect of reviving any of the abrogated treaties, conventions, or agreements.

So far as Great Britain was concerned, Siam regained complete jurisdictional autonomy, with the reservation of the consular right of evocation for a period which was not exactly defined, but such jurisdictional restriction would cease altogether five years after the promulgation of the Siamese codes. Fiscally, with the exception of a few articles of import from British territories on which the tariff was temporarily restricted to 5 percent ad valorem, it could be said that Siam had fully restored her fiscal autonomy, freeing herself from all the old fiscal restrictions.

With Sayre's success with the three major European Powers in Siam,

France, the Netherlands, and Great Britain-his mission with the rest of
the European countries seemed to be less difficult. Before the end of the
year 1925 treaties on the same pattern as the new French and the British

Treaties had been concluded with Spain (August 3), Portugal (August 14),

Denmark (September 1), and Sweden (September 19); and in the course of the

following year three more treaties followed, with Italy (May 9), Belgium

(July 13), and Norway (July 16). 85 With the last exchange of ratifications

with Norway on March 25, 1927, it can be said that Siam's long struggle

for judicial and fiscal autonomy—although with some reservations which

would be ended in the foreseeable future—had at last been won.

Siam owed these treaties to Dr. Francis B. Sayre's energetic and skillful handling of the negotiations with the European countries. Thanks to his perserverance and to his sincere belief in Siam's case, he was able to relieve Siam from the extraterritorial burdens. Sydney Waterlow, a Foreign Office official who was of invaluable help in bringing about the successful Anglo-Siamese Treaties, and who later became British Minister at Bangkok, stated that:

The conclusion of the series of treaties which have placed the relations of Siam with the outside world in a new basis is a remarkable achievement, well planned and carried through with skill and persistence: it does great credit to him [Sayre] as a negotiator, and the Siamese could certainly not have effected it unaided. 86

With all the new Treaties coming into effect in 1927, the main task of Siam still remained to carry forward her judicial reform on a stronger footing, to promulgate all her codes of law and to put them into force, so that she could wipe out the last vestiges of extraterritorial jurisdiction.

<sup>85</sup>Toynbee, ed., op. cit., pp. 416-17; or Sayre, "The Passing...," op. cit., p. 87.

<sup>86</sup>Waterlow to A. Chamberlain, no. 139, July 29, 1926. FO 371/11717.

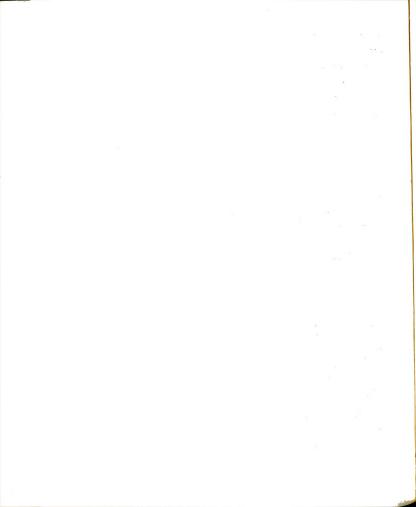
## CHAPTER V

## THE RELINQUISHMENT OF THE LAST VESTIGES OF BRITISH EXTRATERRITORIAL JURISDICTION IN SIAM, 1927-1938

To secure abandonment of the last vestiges of foreign extraterritorial jurisdiction in Siam, it was necessary to promulgate those codes of law which had not yet been pronounced. In the series of treaties that the Siamese government concluded with the foreign Powers in the 1920's, the promulgation of the Siamese codes was the basic requirement for the surrender of their extraterritorial jurisdiction. Once all the Siamese laws had been codified and put into force, this would undoubtedly be a proof of Siam's substantial improvement in judicial matters.

The process of codification proceeded steadily, although slowly, after the First World War. In 1923, the Commission of Codification, which had been established since 1908, was raised to the status of a department and was named the "Department of Legislative Redaction." The first three books of the new Civil and Commercial code came into force on January 1, 1926; they consisted of 1027 sections which, when completed, would contain some 2,000 sections. In addition to the Civil and Commercial Code there remained to be drafted the Codes of Procedure and the Law for Organization of Courts.

A new customs law was promulgated in August 1926, and came into force three months later. Siamese customs practice in the past had been based on provisions incorporated in, or regulations attached to, various treaties between Siam and other countries. A Royal Proclamation of 1885



was also in force and was applied where traders of non-treaty Powers were concerned. This state of affairs was, however, not altogether satisfactory; the rapid disappearance of the old treaties and the negotiation of new treaties according, with certain limitations, fiscal autonomy, made it more than ever apparent that a new law was required. For the most part this new law merely gave legal sanction to practices which were already in existence. Furthermore, the majority of the requirements had been conformed to by merchants for many years. As a result, the new customs law did not bring about any difficulty to the British commercial community in Bangkok and the British Legation did not raise any objection to its introduction. 1

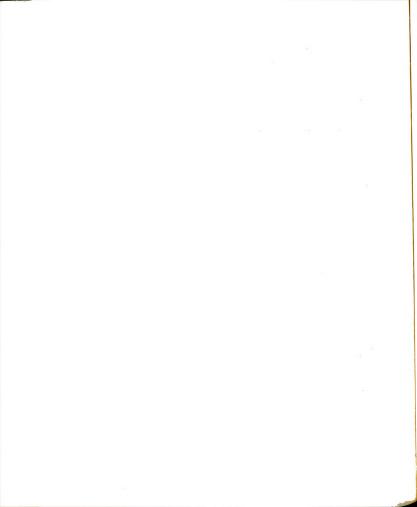
By the middle of 1927 the British Minister in Siam reported to the British Foreign Office that there was no cause for anxiety regarding the operation of the administration of justice by the Siamese government, so long as British interests were reasonably secure under the new order of things provided by the Anglo-Siamese Treaties of 1925. The decrease in the number of complaints at the British Legation indirectly proved the steady, if not notably rapid, improvement of the Siamese administration of justice. In Waterlow's view, the process of improving Siamese courts advanced in the right direction and the Siamese government took the problem seriously. 3

Meanwhile, Book IV of the Civil and Commercial Code was being prepared and was near completion in 1930. Owing to some delay this Book was

<sup>&</sup>lt;sup>1</sup>Waterlow to Austen Chamberlain, no. 39, Confidential, Feb. 22, 1927. Annual Report, 1926. FO 371/12535.

<sup>2</sup>Waterlow to Chamberlain, no. 130, July 23, 1927. FO 422/84.

<sup>3</sup>Waterlow to Chamberlain, no. 173, Nov. 2, 1927. FO 422/84.



promulgated in March 1932 and came into force on April 1 of that year. In the previous year, a series of laws was promulgated by the Siamese government—the Law on Organization of the Courts of Justice Amendment Act, a Civil Procedure Amendment Act, a Penal Code Amendment Act, a Trade Marks Act, and an Act for the Protection of Literary and Artistic Works. Siam had attempted to make the Anglo-Siamese relations as smooth and harmonious as ever. In Articles XXX and XXXI of the Anglo-Siamese Commercial Treaty, the Siamese government undertook, as soon as possible after the preponderating portion of the imports into Siam was obtained from countries whose subjects or citizens were subject to Siamese law and jurisdiction, to promulgate and bring into operation laws for the proper regulation of patents for inventions, trade marks, trade names, and designs and copyright in literary and artistic works. The promulgation of several of these laws was a proof that the Siamese government had more or less fulfilled her treaty obligations on this point.

In 1932 Siam had passed through a period of vital transition from an absolute monarchy to a constitutional government under an oligarchy. In passing through this political transition, Siam was confronted with the need to reorganize in various phases of the national life and in promoting the nation's political, economic and social advancement. In a statement of national policy on judicial matters, the People's Assembly declared that:

In order to obtain full judicial independence, the only course is to expedite the issue of all the codes of law as stipulated in the treaties. The only drafting which has not yet been completed is that the Law for the Organization of the Courts, and the Codes of Civil and Criminal Procedure. Five years after the completion of these codes full independence will be attained in judicial matters.

<sup>4</sup>Dormer to John Simon, no. 7, Confidential, Jan. 5, 1932. Annual Report, 1931. FO 371/16260.

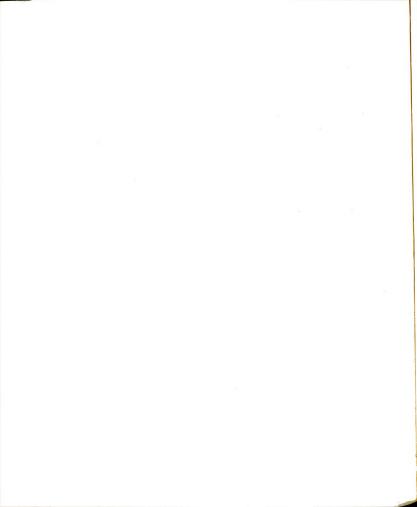
<sup>&</sup>lt;sup>5</sup>Luang Pradist Manudharm, State Councillor for Foreign Affairs, "Unimpaired Balance in World Friendships is Watchword of Siamese Foreign Policy," <u>Siam Today</u>, July, 1936 (first issue).

One of the principles of foreign policy of the new government was that: "When the existing treaties expire, the question of their renewal or revision will be considered."6 In connection with the Siamese policy, by the end of 1934 Raymond B. Stevens. 7 the American adviser on Foreign Affairs, was engaged in preparing a memorandum upon the points calling for revision in Siam's foreign treaties of commerce, most of which were due to expire in the following year. It was intended that the duties stipulated in Article X of the Anglo-Siamese Commercial Treaty of 1925 would be raised, and the Siamese government would denounce Article V of the same treaty, which conferred upon British subjects equal rights with Siamese nationals in the matter of forestry undertakings, searches for minerals, and mining operations. Stevens himself advocated denunciation in the course of twelve months before the date of expiration of such Treaty, which was due in March 1936; during the interval the government would be ready to negotiate in Bangkok with the various countries concerned for the conclusion of new treaties supplementary to the old ones, providing for the retention of such clauses in the latter as it was not wished to discard and omitting or amending those which were considered undesirable.8 It should be noted here that in regard to the American-Siamese Treaty of 1920, ratified at Bangkok on September 1, 1921, Article XVII of this agreement stipulated that it should remain in force for ten years as from the date of its ratification (until September 1, 1931) and that, if not then denounced, it should continue to be valid until the expiration of one year

<sup>6</sup> Doumer to John Simon, no. 263, Dec. 30, 1932. FO 422/90.

<sup>&</sup>lt;sup>7</sup>Dr. Francis Sayre chose and recommended him in the spring of 1926. Stevens was another product of the Harvard Law School.

<sup>8</sup>Crosby to John Simon, no. 262, Dec. 21, 1934. FO 371/19378.



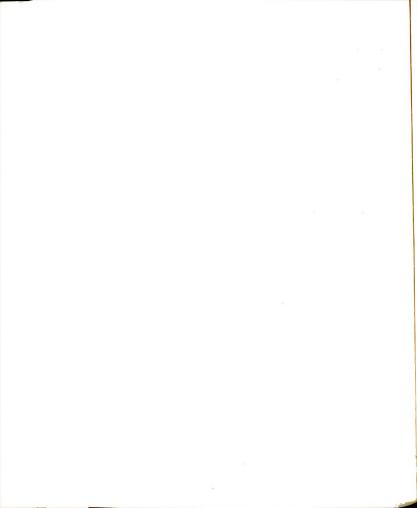
from the date upon which one or other of the contracting parties might denounce it. The American Treaty, however, had not been denounced by the beginning of 1935. The Siamese government intended to allow it to run from year to year until the time was ripe for setting about a revision of the similar engagements of Siam with other countries. 9 that is, to await the approaching expiration of their most recent general treaty with a foreign Power before proceeding to take action; they would then be able to adopt the convenient course of dealing with the revision of all of these treaties at more or less the same time. Their most recent instrument was the Treaty with Italy, signed at Rome on May 9, 1926, and the ratifications of which were exchanged at the same place on March 18 of the following year. This instrument was valid for ten years as from the latter date, and could be denounced on the giving of twelve months' notice, i.e., at any time after March 18, 1936. As regards the Anglo-Siamese Treaties of 1925, the Siamese government were entitled to give twelve months' notice of denunciation of such treaties as from March 30, 1935, but they decided to await the approaching expiration of the Italian Treaty before proceeding to take action -- to denounce them in their entirety and to negotiate fresh ones in their stead without entering into supplementary agreements as they had wished to do in 1934. 10

In the course of the year the remaining portions of Siam's legal Codes were promulgated, 11 being adopted by the People's Assembly, and were put into effect from the first of October. On April 15, the Siamese State

<sup>&</sup>lt;sup>9</sup>Crosby to John Simon, no. 271, Dec. 29, 1934. FO 371/19378.

<sup>&</sup>lt;sup>10</sup>Crosby to John Simon, no. 115, April 2, 1935. FO 371/19379.

<sup>11</sup>Book V and Book VI of the Civil and Commercial Code were promulgated on May 29, and June 7 respectively; on June 10, Siamese Criminal Procedure Code; on June 20, Civil Procedure Code; on June 21, Law on Organization of Court.

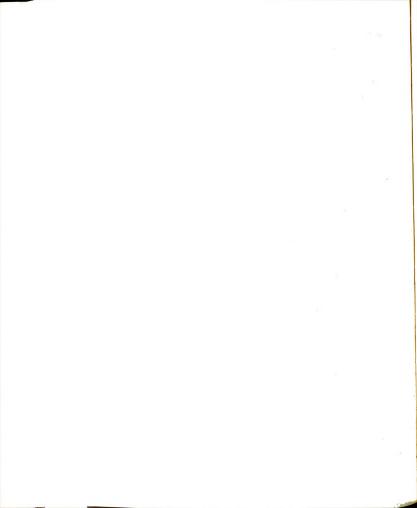


Council appointed the Translation Committees for the various Codes as well as a General Revision Committee. The Siamese government proposed to communicate the semi-official translations of these codes to the foreign legations in Bangkok, and a period of six months would be given for the foreign Powers concerned to make a proper consideration of these codes. If the foreign governments had any observations to make, the Siamese government were ready to take them into account after the coming into force of the Codes in October. 12

The enforcement of all the Siamese Codes had an important bearing upon the country's relations in matters of jurisdiction with foreign treaty Powers. As regards Britain, it should be noted that Article II of the Jurisdiction Protocol annexed to the General Treaty of 1925 gave the British Government the right to evoke from the Siamese courts cases in which a British subject was an accused person or defendant for a period of five years, but no longer, after the promulgation and putting into force of all the Siamese codes. Similarly, Article III of the same protocol secured to such British subjects in cases arising in the provinces the right, throughout the same period, to apply for a change of venue of the trial to Bangkok. As a result of the putting into force of all the Siamese codes in October 1935, a term had been put to both privileges, which were due to expire theoretically in October 1940. Ironically, the "right of evocation" which served as a check upon the Siamese tribunals had never been exercised by the British Legation after the conclusion of the Treaties of 1925.

A more immediate result of the enforcement of the Siamese codes in their entirety was the disappearance of one of the remaining vestiges of British extraterritorial jurisdiction, in the shape of the probate

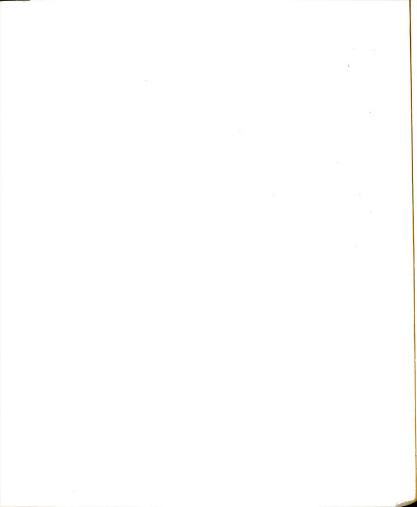
<sup>12</sup>Prince Varnvaidya, Adviser to the Ministry of Foreign Affairs, to J. Crosby, April 12, 1935. FO 371/19379.



jurisdiction exercised by the British Consular Court in non-contentious matters connected with the estates of pre-registered British subjects.

In a note addressed by the Siamese Minister in London to Austen Chamberlain on July 14, 1925, it was agreed that British non-contentious probate jurisdiction should continue "until such time as a new Siamese law shall be promulgated dealing with the question of succession and probate." This condition was fulfilled by the putting into force of Book VI (Succession) of the Civil and Commercial Code, with the consequence that the old British Consular Court ceased to function.

There was, however, another consequence of the enforcement of the whole corpus of Siam's legal codes with respect to the important matter of the employment in the Siamese courts of European legal advisers. At the time of signature of the Treaties of 1925, certain assurances were made to the British by means of an exchange of notes between the British Secretary of State for Foreign Affairs and the Siamese Minister to Great Britain. These assurances were conveniently summarized later on in a semi-official letter which Prince Traidos (subsequently known as Prince Devawongse Varodaya), the Siamese Foreign Minister, had occasion to address on July 20, 1927, to Sydney Waterlow (later Sir Sydney), then the British Minister in Siam. In that communication, the British Government recognized the Siamese government to have assumed the following obligations towards them: 1) To retain the post of British judicial adviser: 2) to employ as a teacher in the law school in Bangkok a British lawyer; 3) to ensure that of the European legal advisers employed a proportion commensurate with British interests should be of British nationality; 4) to continue to employ a reasonable number of European legal advisers; 5) to employ such legal advisers in general in the same posts and in the same judicial



capacities as at the time of the exchanges of notes in London. <sup>13</sup> Prince Traidos went on to explain that the Siamese government would continue these obligations until the promulgation of the Siamese codes and thereafter until such time as the government were convinced that the administration of justice by Siamese judges showed the further services of such European advisers to be unnecessary. <sup>14</sup> Although these assurances had not lapsed with the enforcement of all the Siamese codes, they would continue for such period as the Siamese government might deem necessary in the interest of the administration of justice. As a result, the end of the legal adviser system had come into sight, and the Siamese reserved for themselves the right to decide when the period of its application should terminate.

On March 22, 1936, the Siamese government passed the Siamese government passed the Siamese Customs Tariff Act, in virtue of which a new scale of duties was imposed upon merchandise. The effect of the new enactment was to substitute, in the majority of cases, specific duties for the old ad valorem duties hitherto levied. By the end of March the Anglo-Siamese Treaties of 1925 expired, but the Siamese government had not yet notified their intention to renounce the Treaties. Under Article X of the Anglo-Siamese Commercial Treaty, manufactures of cotton, iron and steel, if arriving in Siam from British territory, were not to be taxed at a rate exceeding 5 percent ad valorem during the first ten years after

<sup>13</sup>Crosby to Anthony Eden, no. 82, Confidential, Feb. 24, 1936. Annual Report, 1935. FO 371/20302.

<sup>14</sup>Ibid.

<sup>15</sup>J. Crosby to Anthony Eden, no. 136 E, Confidential, March 26, 1936. FO 371/20302.

<sup>16</sup>The old tariff had 73 main items, of which only 15 were on specific rates; the new tariff had 167 main items of which only about 20

the coming into operation of the Treaty. Therefore, this engagement would expire on March 30, 1936. Siam would then no longer be bound by any restrictions, and would be able to tax any import goods at their discretion. In other words, Siam finally regained full fiscal autonomy with Great Britain after more than eight decades of treaty restrictions set up in the past century. At any rate, the policy of the Siamese government was to proceed cautiously in the exercise of its newly regained tariff autonomy. In the opinion of Luang Pradist Manudharm, the State Councillor for Foreign Affairs, it would be better for the Siamese to wait until they had recovered full tariff autonomy with respect to all of the Treaty Powers before considering the question of departing from the terms of any one particular agreement. 17

In July 1936, the Siamese government made another move by setting up a Government Committee to deal with the revision of Siam's General Treaties with the various foreign Powers concerned. The Siamese were determined to place the new treaties on the basis of full reciprocity. In the case of the last batch of General Treaties, signed in the 1920's, it was the Americans who had been approached in the first place. In the present instance, however, the Siamese looked to Great Britain to open the first discussions, and they would ask the British Government, "as an act of grace," to surrender immediately the right of evocation which still accrued to the British consular officials. <sup>18</sup> In fact, that right had all along not been exercised inpractice by the British Legation and they were in any event only entitled to enjoy it for the space of another four years, until October 1940, when it would be extinguished automatically.

<sup>&</sup>lt;sup>17</sup>Crosby to Eden, no. 136 E, March 26, 1936. FO 371/20302.

<sup>&</sup>lt;sup>18</sup>Crosby to Eden, no. 107, Sept. 3, 1936. FO 371/20303.

Knowing full well of the determination of the Siamese government and the public to secure complete autonomy for Siam in the judicial sphere, Crosby recommended that the British Foreign Office adopt a conciliatory attitude towards the Siamese request, for he did not see how Britain could "usefully resist" it. 19 Crosby contended that the British Government would not have any means at their disposal of forcing the Siamese to conclude a new treaty upon the terms which would be repugnant to themselves. He continued to explain that:

If we do not go to the extent of reasonably meeting their wishes, a position will be reached which the British mercantile community is not likely to view with equanimity, for our present Treaties will have been denounced and have ceased to be operative, whilst at the same time no new instrument will have been negotiated securing to us definite rights of residence and of trade.<sup>20</sup>

Moreover, he called the attention of the Foreign Office to the fact that if Britain was reluctant to display her willingness to negotiate with the Siamese upon the footing of absolute reciprocity which they desired, "Japan<sup>21</sup> (and, doubtless, other Powers as well) will be only too glad to step in and to rob us of that 'kudos' for being the first to adopt an accommodating attitude towards the Siamese," and he regarded the abandonment of the right of evocation as "an ample gesture of friendship." In granting such a privilege to the Siamese, Crosby was opposed to any demands for a compensating concession, namely, a Siamese assurance as to the continued employment of foreign legal advisers in the courts of justice, for he knew that in their existing temper the Siamese would certainly reject it; and that "to haggle over the concession would be worse than futile."

In the final analysis, he stated that, "The good will of the new Siam

<sup>19</sup> Ibid.

<sup>20&</sup>lt;sub>Ibid</sub>.

<sup>21</sup>The British were suspicious of Japanese designs in the Far East.
The growing Japanese influence in South-east Asia in the 1930's caused

means much to us. Let us cultivate that good will in as frank and friendly a fashion as possible."22

In October, Luang Pradist, the Siamese State Councillor for Foreign Affairs, approached the British Legation again, explaining the intention of the Siamese government to denounce at an early date certain of their existing treaties with the various foreign Powers. <sup>23</sup> The government sought to negotiate new treaties, with the aim at accomplishing not only uniformity, but also "complete reciprocity and full jurisdictional and fiscal autonomy. "<sup>24</sup> At the same time, it was intended that a draft of a new treaty would be promptly communicated to each Foreign Legation as soon as the notice to terminate the existing treaties was given.

On November 5, 1936, the Siamese government notified all the treaty Powers concerned of its intention to renounce all the existing treaties. According to the termination clauses of these treaties, the renunciation would take effect one year from the date of notification. As a result, they would cease to be binding on November 5 of the following year. On the same day that the Siamese government notified these treaty Powers, the Siamese Minister in London also notified the British Foreign Office of the Siamese intention to terminate the Anglo-Siamese Treaties of 1925. It was stated in his note that:

It is very earnestly desired, in view of the fact that the Penal Code, the Civil and Commercial Code, the Codes of Procedure and the Law for Organization of Courts have been promulgated and have been in force for a certain period of time, to terminate the theoretical and unused right of evocation and to enjoy unrestricted jurisdictional autonomy.

great concern to them. During these years intercourse between Japan and Siam was well maintained. Britain could not afford to lose Siam's good-will and friendship in view of the growth of Japan's naval and military power. Siam's geographical position in Southeast Asia was of strategical importance to Britain owing to its propinquity to Singapore.

<sup>&</sup>lt;sup>22</sup>Crosby to Eden, no. 107, Sept. 3, 1936. FO 371/20303.

<sup>&</sup>lt;sup>23</sup>Crosby to Eden, no. 425, Oct. 21, 1936. FO 422/91.

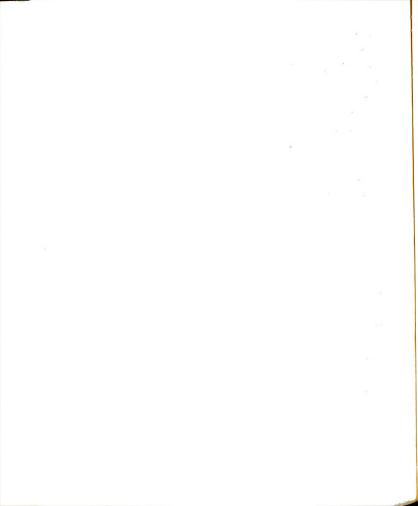
<sup>&</sup>lt;sup>24</sup>Luang Pradist Manudharm to Crosby, Oct. 19, 1936. FO 422/91.

His Majesty's Government therefore would request the friendly assent of your Excellency's Government to the discontinuation of a jurisdictional privilege which has outlived its time.<sup>25</sup>

A proposed draft of a new treaty was simultaneously communicated to each of the foreign Legations in Bangkok, including that of Britain. These drafts, in accordance with the desire of the Siamese government, were drawn up according to one and the same model. $^{26}$  Meanwhile, negotiations were commenced without delay. It was Siam's wish to conclude as many new treaties with the countries concerned as possible before the expiration of all the existing treaties by November 1937, so that there should be an uninterrupted relationship with all countries. As to the place of negotiations, the Siamese Foreign Office laid down the rule that those treaty Powers having diplomatic representations in Bangkok would negotiate there, while for the others negotiations would be carried on between the Foreign Offices and Siam's diplomatic representatives accredited to such countries. According to this rule, Belgium, France, Geramny, Great Britain, Italy, Japan, the Netherlands, and the United States, conducted their negotiations at Bangkok. Negotiations with the Scandinavian countries -- Norway, Sweden, and Demmark, -- were carried out by the Siamese Minister in London, while those with Switzerland and Portugal were entrusted to the Siamese Minister at Paris. Spain was engaged in a civil war, therefore no answer had been received from the Spanish government to proceed with the negotiations. As the old Spanish Treaty had lapsed, the Siamese took the view that the Jurisdiction Protocol annexed to it had expired also and that Spain accordingly no longer possessed the right of evocation.

<sup>&</sup>lt;sup>25</sup>Phya Rajawangsan to Eden, Nov. 5, 1936. FO 422/91.

<sup>&</sup>lt;sup>26</sup>Crosby to Eden, no. 30, Confidential, Jan. 21, 1937. FO 371/21053.



Despite the strenuous efforts of the Siamese government to conclude all the new treaties with the negotiating Powers before November 1937, only a few countries had signed the new treaties by that time.<sup>27</sup> However, the new Anglo-Siamese Treaty of Commerce and Navigation was signed on November 23, 1937, <sup>28</sup> replacing the Treaties of 1925 as well as all arrangements and agreements subsidiary thereto.<sup>29</sup> At any rate, the territorial arrangements of the Treaty of 1909 were still maintained.

Now we return to the important question of jurisdiction. When Siam notified the treaty Powers of her intention to abrogate all the existing treaties, she also requested them to agree to terminate the theoretical and unused right of evocation, the last remnant of extraterritorial jurisdiction, so that Siam would be able to enjoy unrestricted jurisdictional autonomy. Theoretically, the right of evocation of the foreign consuls would last till October 1, 1940, that is, five years from the putting into force of the Siamese codes. Siam had received an encouraging response from Britain. Simultaneously with the signature of the Anglo-Siamese Treaty of 1937, Great Britain agreed to relinquish the 'right of evocation',

<sup>27</sup>These were a series of new treaties which Siam concluded with the countries concerned: with Belgium, Nov. 5, 1937 at Bangkok; with Denmark at Copenhagen on Nov. 5, 1937; with Sweden at Stockholm on Nov. 5, 1937; with Norway at Oslo, on Nov. 15, 1937; with the United States at Bangkok, on Nov. 13, 1937; with Great Britain at Bangkok, Nov. 23, 1937; with Italy at Bangkok, Dec. 3, 1937; with France at Bangkok, Dec. 7, 1937; with Japan at Bangkok, Dec. 8, 1937; with Germany at Bangkok, Dec. 30, 1937; with the Netherlands, Feb. 1, 1938; with Portugal, July 2, 1938.

<sup>&</sup>lt;sup>28</sup>Treaty of Commerce and Navigation between the United Kingdom and Siam, with Protocol and Exchanges of Notes, November 23, 1937. <u>BFSP</u>, Vol. 141. pp. 406-428.

<sup>&</sup>lt;sup>29</sup>The Treaty of Extradition signed at Bangkok on March 4, 1911, and the Arbitration Convention signed at London on November 25, 1925, were not included.

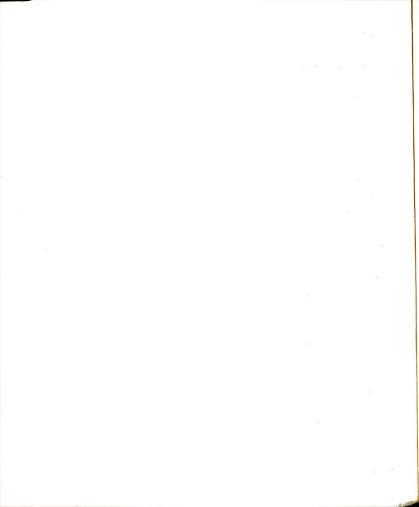
and Britain was the first country to take such initiative. This relinquishment was made on the condition that within 12 months from the date of the new Treaty, the Siamese government would submit to the People's Assembly "an Act on the conflict of laws embodying the normal principles of private international law (including especially the law of nationality in matters of personal status). 30

The Siamese authorities, and particularly Luang Pradist, the main engineer of the Treaty, were delighted at the British consent to relinquish the last vestiges of extraterritorial jurisdiction immediately upon the signature of the Treaty instead of waiting until the subsequent ratification and coming into force of the new instrument, or until 1940, when the right in question should have been abrogated automatically. 31 By the Treaty of 1855 and the Agreement of 1856, Great Britain was the first to introduce the system of extraterritorial jurisdiction into Siam, and it was she who was the first to agree to its final and complete elimination.

Thus ended the system of British extraterritoriality which had been in existence in Siam since April 18, 1855, with the signing of the Bowring Treaty. Was it a wise policy to cede many privileges to the British in such a Treaty? Thanks to King Mongkut for his vision, insight and courage, his policy of reconciliation with the West had shaped the destinies of Siam. A Treaty of 1855 was signed in order to push his policy of opening Siam to foreign trade while more importantly preserving his country's essential independence. If Siam had not agreed to Bowring's demands, the British Government would inevitably have used gun-boat diplomacy to compel

<sup>30</sup> Exchange of Notes between the Siamese Minister of Foreign Affairs and Sir Josiah Crosby regarding the Right of Evocation from Siamese Courts, Nov. 23, 1937. BFSP, Vol. 141, p. 427.

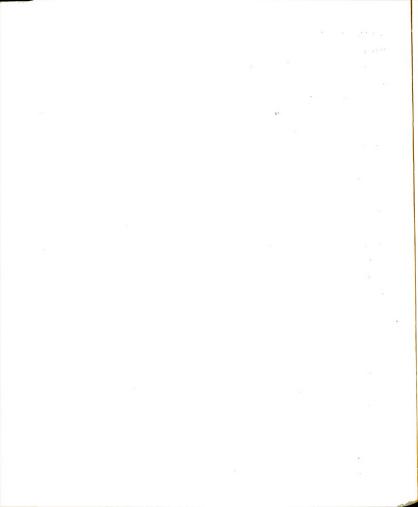
<sup>31&</sup>lt;sub>Crosby</sub> to Eden, no. 428, Nov. 24, 1937. FO 371/21049.



the Siamese government to succumb to their demands, as had been the case in Burma and in China. Extraterritoriality and a limited three percent ad valorem import tariff were not too high prices to pay for Siam's continued political independence.

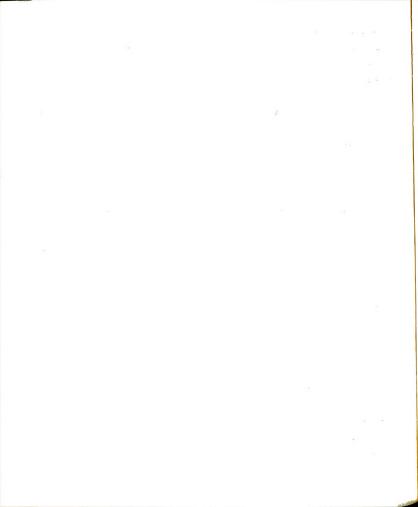
What necessity was there for any departure from the system of British jurisdiction in Siam? At the time of the framing of the 1855 Treaty, those British subjects in Siam whose status had to be regulated and whose interests had to be safeguarded consisted of no more than a handful of Europeans residing in Bangkok, along with those who, in the course of commerce, occasionally visited Siam by ship. With these limited numbers, the Siamese government therefore did not suffer any inconvenience from the complete extraterritoriality granted these persons. As time went by, with the increase of both European and Asiatic British subjects, many difficulties for the Siamese administration of justice ensued; the British Asiatic subjects could practically evade the Siamese jurisdiction in the sphere of administration, law, and taxation. These people were regarded as the dangerous shadows which clouded the independence of Siam.

The 1855 Treaty was destined to have far-reaching and profound effects upon the development of Siam. The removal of extraterritorial privileges could only be effected by means of revision of the existing treaties. To assist the accomplishment of such a revision, the Siamese statesmen realized that they should adopt the program of national reforms in order to convince the Treaty Powers that Siam was a stable country with a well-ordered administrative system, able to give the same measure of protection to the interests of foreigners residing in Siam as they received in their own countries. King Chulalongkorn instituted several important national reforms, beginning with the creation of ministries and departments on European lines, put in charge of capable and responsible ministers;



Europeans were brought in to act as advisers in various branches of government service; Siamese students were sent abroad for education; law schools were set up, and a beginning made in the drafting of legal codes; and many public works were started. These reforms needed an increased revenue to cover the large amount of expenditure. As a result, the necessity for an increase of import and export duties soon followed.

So far as British extraterritoriality in Siam was concerned, the Foreign Office adopted the doctrine of continuity in its policy irrespective of the changes of British Foreign Ministers. The Foreign Office policy was to retain its consular jurisdiction in Siam for as long as it could so that the interests of British subjects in Siam could be safeguarded. The issues of extraterritoriality were dealt with mostly between the Foreign Office, the British agents in Siam, the India Office, the Government of India, and the Colonial Office. The opinions of the Foreign Office were, however, preponderant and the decisions were made almost without reference to party or public opinion. Any questions touching British consular jurisdiction in Siam were dealt with in terms of administrative considerations about what was proper and practical. The relaxations of British extraterritorial rights provided for in the Indo-Siamese Treaty of 1874 or in the Anglo-Siamese Treaty of 1883 were made with the intention of solving the political as well as the administrative difficulties in the northern provinces of Siam. Identical considerations were involved in the question of the registration of British subjects in Siam when the Siamese government refused to consider the registration certificate of a British Asiatic subject as prima facie evidence of British nationality. The marked relaxation of British extraterritorial jurisdiction made by the Liberal Government in the Anglo-Siamese Treaty of 1909, was, in my opinion made possible by Siam's proposal to cede the Siamese Malay States



to Britain. The fact that the British Government went a step further than the French in judicial matters by allowing the post-registered European subjects to be adjudicated in the Siamese courts was due mainly to constitutional differences; the British Constitution forbade the Government to make any distinction between white and colored British subjects, that status with respect to British protection was equal. The Anglo-Siamese Treaties of 1925 were by far the most significant turning point in the processes of the relinquishment of the British extraterritorial regime, because a definite period was set when Siam was to regain her fiscal autonomy as well as to recover her complete jurisdiction over British subjects.

It should be recalled that the Siamese government approached Britain for the negotiations of a new treaty in July 1924 when the Labor Government was in power. This Government was committed to an international policy which emphasized equal treatment for all sovereign states and which was expressly opposed to the perpetuation of imperialistic relationships. It upheld the doctrines of international cooperation, open diplomacy, selfdetermination of nations, arbitration, good will, international peace and the rule of law of international relations. MacDonald, who took the Foreign Office for himself, had on several occasions shown a friendly interest in the Siamese cause. However, before the negotiations were really begun, the Labor Government fell in October 1924 and was replaced by the Conservative Government. Had the Labor Government been in office longer, it would have been easier for the Siamese government to negotiate with them. Nevertheless, even with the Conservatives at the Foreign Office, the British Government had changed their former attitudes of not moving beyond their 1909 position as regards judicial rights. By the beginning of 1925, the Foreign Office contemplated withdrawing judiciously by stages

arranging at each stage for the proper safeguarding of British interests.

Britain wanted to maintain good relationships with Siam, and the Foreign

Office were afraid that "if we (the British) remain the one Power clinging to the vestiges of a system which is increasingly felt as a humiliation, we shall only increase the odium to which we are always exposed in the Far East."32

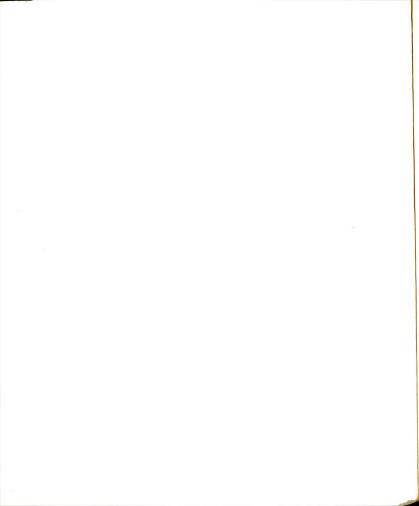
In the early part of the 1920's, there was a rise of 'nationalism' in many Asian countries, such as India, Egypt, and Iraq. These countries started to agitate strongly for national self-determination after the end of the First World War. This nationalist movement, however, did not occur in Siam, for Siam had never experienced any Western domination. The Siamese managed to maintain their country's independence during the period when all other countries in South and Southeast Asia fell under the expansion of European colonialism. Nevertheless, Siam had to cede the extraterritorial regimes to many European countries. The movements toward the recovery of full sovereignty were left in the hands of the oligarchy. "Public opinion" in the sense in which it was understood in Western nations almost did not exist. Siam was under absolutism until the Revolution of 1932 changed the existing regime to a constitutional government. From that time onwards, the Siamese began to be more opinionated, and with the growth of education in the 1930's a demand for more modern and up-todate governmental institutions soon made itself heard. It can be said that there were not changes occurring in Siam at any levels other than the governmental one towards the Siamese movement to relinquish the extraterritorial regime from the Siamese soil.

Certain credit should be given to many foreign advisers, especially Strobel, Westengard, and Sayre of American nationality, and the French

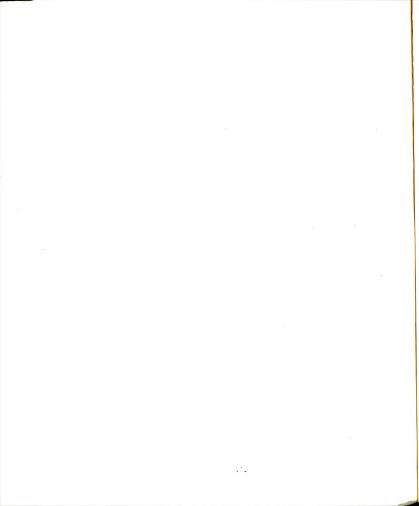
<sup>32</sup>Foreign Office Memorandum respecting Outstanding Questions in Siam, January 21, 1925. F. 270/72/40. FO 422/82.

jurists, M. Padoux and M. Guyon. The three American General Advisers or Advisers in Foreign Affairs above mentioned ably conducted the negotiations of the Treaty of 1909 and the Treaty of 1925, which marked the turning points of British extraterritoriality in Siam. In the meantime the development of Siam's judicial machinery and the reorganization of her law, so as to put them more upon a parity with those of the more juristically advanced countries, were preoceeding. By October 1935, all the important codes were put into force; consequently, the basic requirement for the surrender of British extraterritorial jurisdiction was fulfilled, and from that time on, the Siamese government could proceed with strong hands to negotiate a new treaty on the basis of equality and mutual benefit.

We can see that Siam had worked hard to regain complete fiscal and judicial autonomy. The new Anglo-Siamese Treaty of 1937 terminated the last vestiges of the British extraterritorial system in Siam. Siam could take much satisfaction in it. It was the first fully equal treaty between Siam and a great Power. The Treaty was followed in 1938 by equal treaties between Siam and the other powers enjoying extraterritorial rights; but it was appropriate that Britain, the first Power to establish regular diplomatic relations with Siam, was also the first to abandon the last privilege and negotiate a treaty on a basis of complete equality. Thus Siam began her new era as a fully sovereign state.



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#### **BIBLIOGRAPHICAL ESSAY**

The main source for British foreign policy towards Siam and the history of Siam's foreign policy in this period is the series of Foreign Office papers:

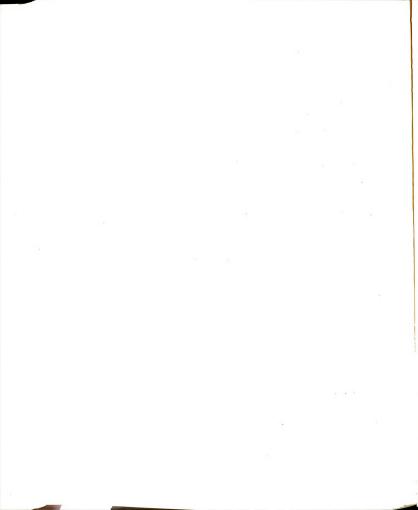
FO 69 (General Correspondence on Siam) contains some 276 volumes of general correspondence from 1849 to 1905 between the Foreign Office on the one hand, and the British Legation at Bangkok, the Colonial Office, the India Office the British Legation at Paris, and the Siamese Representatives on the other. Furthermore, there are minutes of inter-departmental meetings, memoranda on the affairs in Siam, collections of private letters of some British diplomats in Siam, cuttings from local and foreign newspapers, as well as correspondence between the British Legation at Bangkok and consular agents.

It should be noted that the Foreign Office correspondence and papers in FO 69 covering the period from 1849 to the 1890's are mostly manuscript sources. However, late in the 1890's typed correspondence was introduced but many items were still hand-written. Some volumes of FO 69 are devoted to particular cases, namely,

<u>Volumes 60</u> (1872-74) and <u>94</u> (1877-81), which deal with the subject of "Chiengmai Claims, Knox's Relations with Siamese Government";

<u>Volume 95</u> (1882-83): "Chiengmai Treaty";

<u>Volume 97</u> (1882-84):"Trial of Ai Baa for Murder. British Consular Jurisdiction over Protected Persons":



<u>volume 107</u> (1880-85): "Treatment of British and Anglo-Burmese subjects in Chiengmai";

<u>volume 138</u> (1887-89): "Claims of Mr. E. B. Mitchell to be treated as Siamese subject";

<u>Volume 162</u> (1894-95): "J.S. Black's Journeys in Siam," British Consular Court in Siam;

 $\underline{volumes~261}$  (1896-98) and  $\underline{262}$  (1899-1904): "Registration of British Subjects in Siam."

FO 17 (China). Although this classification is the general correspondence on China, there are many volumes containing correspondence on affairs of Siam in the 1850's and the 1890's which is helpful to this study.

FO 405 (China Confidential Prints). The annual reports on Siam are bound

together with the reports of affairs in China and Korea in the following volumes: 176 (1906), 178 (1907), 195 (1909), 201 (1910).

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FO 422 (Siam and South-east Asia). Documents in volumes 1-59 (1883-1905) in the main duplicate those in FO 69, though some are not to be found therein. Volumes 60-91 (1906-1937) are of special value to this study.

FO 371 (Political.) Documents in this classification are very useful for the study of British extraterritorial rights in Siam. This series contains many items of correspondence not filed in FO 422 but which illuminate Siamese foreign relations after the First World War and which comment on certain aspects of Siamese internal history (the codification of laws, the Revolution of 1932 and the advent of constitutional government). It even contains some excerpts and cuttings from Siamese newspapers which are not to be found in the Siamese archives.

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Parliamentary Debates (Official Report) Volume VIII (1909); House of

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# SECONDARY MATERIALS

# A. GREAT BRITAIN

There is an extensive body of historical literature on British activities in Southeast Asia and the Far East. D.G.E. Hall, A History of South-East Asia (London, 1964 [1955]); John F. Cady, Southeast Asia:

Its Historical Development (New York, 1964); and Brian Harrison, Southeast Asia: A Short History (London, 1966), are three valuable books containing substantial information which will be useful for students intending to pursue the subject further.

With regard to Anglo-Chinese relations, especially the British

East India Company's commercial interests in China, E. H. Pritchard, The

Crucial Years of Early Anglo-Chinese Relations, 1750-1800 (New York,

1970 [1936]) examines the origins of British commercial interests with

China. This book was based on researches for a doctoral dissertation at

Oxford in 1933. Pritchard's lengthy article, "Anglo-Chinese Relations

during the Seventeenth and Eighteenth Centuries," in The University of

Illinois Studies in the Social Sciences, Vol. 17, 1929, contains much

useful information, particularly in the chapters on "Features of Chinese

Culture which have complicated Relations with the West," on "The Origins

of English Trade to the East and the First Attempts to Trade with China,"

on "The Origin of the China Trade (1660-1700)," and on "Firm Establishment of the China Trade (1703-1720)." W.C. Costin's <u>Great Britain and China 1833-1860</u> (Oxford, 1968 [1937]) has an informative chapter on British interests in China before 1833. This book is a study of British diplomacy in China and of the British efforts to open that country more fully to Western influence.

Economic interests in the China trade stimulated the East India Company to establish some settlements in the Straits of Malacca en route to China. Many works have discussed extensively the origins of British settlements in the Malay Peninsula. Before Rupert Emerson, Malaysia: A Study in Direct and Indirect Rule (New York, 1937), proceeds to explain the British forward movement in the Malay Peninsula, he traces the historical background of the British interests in the area. In his opinion. economic interests led Britain to search for more territory. Charles D. Cowan, Nineteenth-Century Malaya: the Origins of British Political Control (London, 1961) studied the background and scope of the establishment of the British connection with Malaya. He concludes that concern for the defence of India and of the China trade led the East India Company to establish settlements in the Straits of Malacca. With the defeat of the Dutch and Siamese attempts to give control over the southern portion of the Malay Peninsula, Britain then became the paramount power in the area. Cowan in his article, "Early Penang and the Rise of Singapore, 1805-1832," Journal of the Royal Asiatic Society, Malayan Branch, Vol. XXII, pt. 2, 1950, contends that the motive which prompted the East India Company to sanction the occupation of Penang was almost entirely political. Economic considerations, on the other hand, were distinctly secondary. J. Kennedy, A History of Malaya (London, 1970 [1962]), gives a good account of the British settlements at Penang, Malacca, and Singapore. The best general

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<u>Society</u>, <u>Malayan Branch</u>, Vol. III, pt. 2, 1925. A chapter on "AngloSiamese Relations in the Malay Peninsula 1824-1867" was carefully examined by the author.

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### B. SIAM

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W.A.R. Wood, A History of Siam, (Bangkok, 1833 [1926]), an excellent

Siamese history from the earliest times (since early Thai tribes in Southern China) to 1781; Siam's relations with Western countries in the 16th century are well described; John Anderson, English Intercourse with Siam in the Seventeenth Century, (London, 1890) a detailed description of the opening of British trade with Siam in the middle of the 17th century; it also describes how Siam came into contact with Western countries like France, Portugal, and the Netherlands in that period; Prince Chula Chakrabongse, Lords of Life, (New York, 1960), an attempt to write a history of events neglected by W.A.R. Wood; concentrates on the absolute monarchy of Bangkok between 1782 and 1832 (this book is mainly based on Thai sources, published and unpublished, as well as contemporary sources in English and French. Although it was written by a Thai prince who spent nearly all his life in England, the author tried to be objective. This is a good background work for Thai history in the period mentioned); Virginia Thompson, Thailand, the new Siam (New York, 1967), a brief history of Siam in a few chapters: "Historical Background," "The Era of Transition," and "The Constitutional Regime"; and W.A. Graham, Siam: A Handbook of Practical, Commercial and Political Information (Chicago, 1913).

# C. ANGLO-SIAMESE RELATIONS

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Samuel Company

He gives a general analysis of Siam's history during this reign, and Siam's relations with the West are carefully explored. Adey Moore, "An Early British Merchant in Bangkok," <u>Journal of the Siam Society</u>, Vol. VIII, 1959, and Oscar Frankfurter, "The Unofficial Mission of John Morgan, Merchant, to Siam in 1821," <u>Journal of the Siam Society</u>, Vol. XI, 1914-15, give accounts of British merchants' attempts to open trade with Bangkok early in the 1820's.

After several unsatisfactory attempts of British merchants to do so, the East India Company resolved to send a formal mission to Bangkok. As its envoy, the Company chose John Crawfurd. This mission was the first major European mission to Siam since the 17th century. On account of this mission, Crawfurd wrote Journal of an Embassy from the Governor-General of India to the Courts of Siam and Cochin-China, exhibiting a View of the Actual State of those Kingdoms (London, 1967 [1828]). A narrative of his negotiations is both information and illuminating. It sets forth in detail the position of both parties with some perception and fairness. His account provides an understanding not only of the steps which led up to the impasse upon which the negotiations finally broke off, but also of the major themes which dominated Anglo-Siamese relations in the first half of the 19th century. This book is impressive as a general introduction to Siam as it was early in the 19th century. An anonymous reviewer (American Quarterly Review, Vol. 4, Dec. 1928) appraised it as a "splendid and ponderous volume" containing "comprehensive information and scrupulous research."

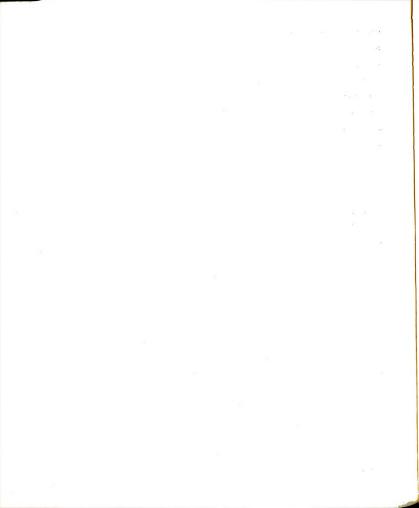
The following articles are useful for the study of the Anglo-Siamese relations in the first half of the 19th century; Nicholas Tarling, "The Superintendence of British Interests in Southeast Asia in the Nineteenth Century," <u>Journal of Southeast Asian History</u>, Vol. 7, March 1966; "British Policy towards Siam, Cambodia, Vietnam, 1842-1858," <u>Asian Studies</u> (Quezon

City), Vol. 4, Aug. 1966, and "Siam and Sir James Brooke," <u>Journal of</u>
the <u>Siam Society</u>, Vol. 48, pt. 2, Nov. 1960; O. Frankfurter, "The Mission
of Sir James Brooke to Siam, September 1850," <u>Journal of the Siam Society</u>,
Vol. VII, 1959.

With the ascension of King Mongkut (or Rama IV) to the throne in 1851, Siam switched her passive policy to one of friendliness to the West. Abbot L. Moffat's Mongkut, the King of Siam (Ithaca, 1961) is a dispassionate account of King Mongkut. Important events that occurred in Siam during Mongkut's seventeen years as king are discussed. Moffat has given an accurate record of Mongkut's early years, his domestic policies, his diplomatic relations with Britain, the United States, and France, etc.

Oscar Frankfurther, "King Mongkut," Journal of the Siam Society, Vol. 1-2, 1904-5; Larry Sternstein, "Bangkok at the Turn of the Century: Mongkut and Chulalongkorn Entertain the West," Journal of the Siam Society, Vol. 54, Jan. 1966; Prince Damrong Rajanubhab, "The Introduction of Western Culture in Siam," Journal of the Siam Society, Vol. 20, 1926-7; and Mongkut, "English Correspondence of King Mongkut," Journal of the Siam Society, Vol. 21, 1927-28--should be read along with Moffat's book.

In 1855, the Imperial Government assigned Sir John Bowring to head a mission to Siam. The outcome of this mission was what has become commonly known as the 'Bowring Treaty of 1855'. Bowring wrote The Kingdom and People of Siam (2 vols.; London, 1969). Bowring's account of his mission gave much added depth to our knowledge of the politics of the Siamese Court at the critical juncture in Thai history, and gave understanding to the delicate negotiations which culminated in the Treaty of 1855. Bowring had prepared himself well for his mission to Bangkok; he read extensively the books on Siamese history written by French missionaries who had served in Siam. This knowledge together with the results of his observations



produced a book which undoubtedly is the finest account of Siam at the middle of the 19th century, when she was facing the rising tide of Western imperialism in the Far East. Particularly noteworthy are his accounts of obsolete Siamese legislation (Chapter V of Volume I, pp. 170-199), and of the commercial and diplomatic relations of Western nations with Siam (Chapter XV, Vol. II, pp. 56-247). In his personal account of this mission (pp. 248-337 of Volume II) Bowring hinted at the methods by which the victory (the Bowring Treaty) was gained.

There is also a secondary literature on the mission of Bowring and the circumstances surrounding it. Of importance are two articles by Nicholas Tarling, "The Mission of Sir John Bowring to Siam," Journal of the Siam Society, Vol. 50, pt. 2, Dec. 1962, and "Harry Parkes' Negotiations in Bangkok in 1856," Journal of the Siam Society, Vol. 53, pt. 2, July, 1965. Sir John Bowring also wrote an article "Personal Recollections of Siam," The Fortnightly Review, Vol. II, 1865, giving a short account of his mission to Siam. Materials from Bowring's personal papers have been used by G.F. Bartle, "Sir John Bowring and the Chinese and Siamese Commercial Treaties," Bulletin of the John Rylands Library, Vol. XLIV. no. 2, March 1962. The immediate economic consequences of the Treaty are described by James C. Ingram, Economic Change in Siam since 1850 (Stanford, 1955), pp. 36-74. The author's revised doctoral dissertation has become the first book to describe in detail the economic changes that have taken place in Siam in the mineteenth century. Following an introductory chapter of general historical background, Ingram describes the economy of Siam at the time of King Mongkut, which is of high importance to this study.

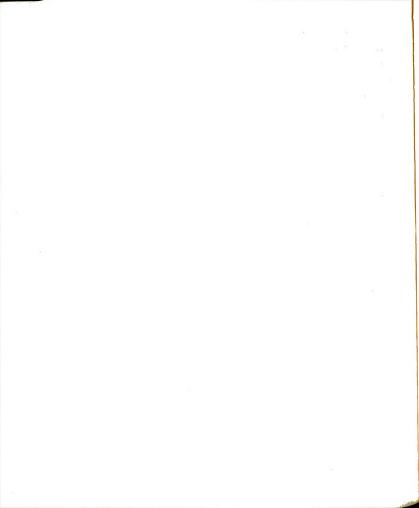
After 1870 the Siamese government took steps to negotiate with the British Government, urging them to modify the extraterritorial system in Siam. There is not much literature concerning foreign extraterritoriality in Siam, but a few good works exist: P.W. Thornely, The History of a Transition (Bangkok, 1923) was of much value to this study. It was not only a history of the various jurisdictions which had at different times come into existence in Siam, but also a record of the conditions and events having bearing on that history. Thornely, who used to be a Judge of the Siamese Court of Appeal and Legal Adviser to the Ministry of Justice, intended to write this book as a record of Siam's legal system from a condition evolved primarily for her own nationals to one which was acceptable to both the Siamese themselves and to nationals of alien races within Siam. Luang Sidhi Sayamkar's Treaties of Friendship between Siam and Foreign Powers, (Bangkok, 1963) published in Thai version dealing with a commentary of the texts of treaties which Siam concluded with Western Powers in the nineteenth century and the first three decades of the twentieth century.

Many articles have been written dealing with general aspects of Siam: Sir Josiah Crosby, "Siam," Oxford Pamphlets on Indian Affairs, no. 26, Jan. 1945; Wilbur L. Williams, "Siam," Foreign Policy Reports, Vol. VII, no. 7, June 10, 1931, has some sections on extraterritoriality in Siam; Francis B. Sayre, "Siam," Atlantic Monthly, Vol. 137, June 1926; Walter A. Graham, "Siam and her Relations with other Powers," Journal of the Royal Institute of International Affairs, Sept. 1928; Eldon R. James, "Siam in the Modern World," Foreign Affairs, Vol. 9, no. 4, July 1931; and "Siam, the Country, the People, and the Trade, and their Relations with Great Britain," Journal of the Royal Society of Arts (London), Vol. 56, 1908.

The following articles are most directly helpful to the study of foreign extraterritoriality in Siam: James B. Scott, "British

Extraterritorial Jurisdiction in Siam," The American Journal of International Law, Vol. 3, 1909; J. Chandran, "British Foreign Policy and the Extraterritorial Question in Siam, 1891-1900," Journal of the Royal Asiatic Society, Malayan Branch, Vol. 38, pt. 2, 1965; Eldon R. James, "Jurisdiction over Foreigners in Siam," The American Journal of International Law. Vol. 16, 1922; Arnold J. Toynbee, ed., "The Liquidation of Foreign Extraterritorial Privileges in Siam." a section in "The Far East and the Pacific." Survey of International Affairs, 1929, Royal Institute of International Affairs (London); Lawrence P. Briggs, "The Treaty of March 23. 1907 between France and Siam and the Return of Battambong and Angkor to Cambodia," The Far Eastern Quarterly, Vol. 5, no. 4, Aug. 1946; Charles C. Hyde, "The Relinquishment of Extraterritorial Jurisdiction in Siam," The American Journal of International Law, Vol. 15, July 1921, discusses briefly the aspects of the significant American-Siamese Treaty of 1920. Francis B. Savre wrote two outstanding articles based on his experiences as the Adviser in Foreign Affairs to the Siamese government; "Siam's Fight for Sovereignty," Atlantic Monthly, Vol. 140, no. 1, 1927, was a recollection of the negotiations which he conducted with some European countries in the first half of the 1920's; in "The Passing of Extraterritoriality in Siam," The American Journal of International Law, Vol. 22. 1928, he described the beginning of extraterritoriality in Siam and discussed how it was relinquished in the 1920's.

There are also some instructive articles dealing with Siamese legislation: T. Masao, "The New Penal Code of Siam," <u>Journal of the Siam Society</u>, Vol. 5, 1908; W.A.G. Tilleke, "The Administration of Justice," and T. Masao "Siamese Law: Old and New," in Arnold Wright, ed., <u>Twentieth Century Impression of Siam</u>: <u>Its History</u>, <u>People</u>, <u>Commerce</u>, <u>Industries</u> and <u>Resources</u> (London, 1908).



From 1904 to 1939, the Siamese government employed a series of American advisers in Siamese foreign affairs, beginning with Professor Edward H. Strobel. These advisers were the products of the Harvard Law School. Eldon R. James, "Yale and Harvard in Siam," The Harvard Graduates' Magazine, Vol. 34, no. 86, 1926, discusses the fact that both Yale and Harvard played important parts in the affairs of Siam. Yale's activities in Siam ended in the closing decades of the 17th century, but those of Harvard began with the opening of the 20th century, and Harvard had much to do with the development of Siam into a modern state, with the abolition of extraterritoriality, the negotiation of treaties, the reform of law and judicial administration, and the reorganization of governmental agencies.

