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# Evolution of International Law: Thailand's Experience at the Threshold of the Third Millennium

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**ASIAN PERSPECTIVES OF THE  
EVOLUTION OF INTERNATIONAL LAW:  
*THAILAND'S EXPERIENCE AT THE THRESHOLD OF THE  
THIRD MILLENNIUM***

**SOMPONG SUCHARITKUL, D.C.L.**

*"... And since one part of Asia had escaped **grosso modo**, the work of direct European domination, unlike Latin America and Africa, the relations between Asia and Europe have been systematized in a kind of international law in a minor and marginal manner."*

-Mohammed Bedjaoui

**To be published in the forthcoming law journal commemorating Judge Li Haopei**

## ASIAN PERSPECTIVES OF THE EVOLUTION OF INTERNATIONAL LAW

### THAILAND'S EXPERIENCE AT THE THRESHOLD OF THE THIRD MILLENNIUM\*

"... And since one part of Asia had escaped **grosso modo**, the work of direct European domination, unlike Latin America and Africa, the relations between Asia and Europe have been systematized in a kind of international law in a minor and marginal manner."

Mohammed Bedjaoui

For a New International Economic Order

1979, UNESCO, p. 52\*\*

## I. INTRODUCTION

In the ensuing pages, an endeavor will be made to ascertain the actual existence, if any, of "perspectives" which can be said to be typically "Asian" in the perception of international law. The exercise will be based on historical facts tending to indicate that "A part of Asia had escaped **grosso modo** the work of direct European domination." The question to be examined is whether the evolution of contemporary international law presents any specific

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challenges for one of the oldest Kingdoms of the world, THAILAND or SIAM, as we know it today, and as the European had preferred to call it in the not too distant past. It should be asserted at the very outset that the name THAILAND<sup>1]</sup> is even more indigenous and far more original than the nomenclature SIAM.<sup>2]</sup> As a country and people, the expression THAILAND or THAI appears preferable, although the term SIAM still retains much of the splendor of an unforgettable past.

From the start of our enquiry, the very first question we should address relates to the ASIAN<sup>3]</sup> nature of the perspectives, through which the evolution of international law is perceived. In other words, it is questionable whether international law today can be or deserves to be viewed from the standpoint or through a

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<sup>1]</sup> "THAILAND" or "MUANG THAI" is really derivative of the word "THAI", denoting the land or country of an ethnic group known as the THAI or TAI meaning FREE or FREE PEOPLE. Literally thus "THAILAND" means the "Land of the Free." The term "MUANG THAI" was used in the Treaty of 1855 in its original draft but was replaced by "SIAM" in its final text. See Vol. 1 (1617-1869, Bilateral Treaties and Agreements between Thailand and Foreign Countries and International Organizations, 23-81 (1968), published by the Ministry of Foreign Affairs of Thailand.

<sup>2]</sup> "SIAM" is originally a geographical area of which the derivative word "Siamese" refers to the inhabitants of that territory and is often used as an adjective pertaining to Siam, including the language used. To the Chinese who used to inhabit territories north of the Golden Peninsula, the Thais or Siamese have been known as "Siam-Lo" and the land as "SIAM-lo-kok". The term "THAI" or "MUANG THAI" pre-existed the place name "SIAM". See Sucharitkul, *Thai Law and Buddhist Law*, in the American Journal of Comparative Law, Vol. XLVI, Supplement 1998, pp. 69-86, at p. 73.

<sup>3]</sup> "ASIAN" is a more frequently used adjective pertaining to the continent of Asia. The term "Asiatic" is more European or Western in outlook and carries an implication that is less than flattering and to some extent is reminiscent of a not too remote colonial past. "ASIAN" should be used and not "ASIATIC" in any other European languages. Wherever inevitable, the term "of ASIA" may offer a more palatable alternative to "ASIA-TIC".

perspective which necessarily varies from one geographical region to another, be it European,<sup>41</sup> African<sup>51</sup> or Asian. The answer appears to be inevitably in the affirmative.<sup>61</sup>

To begin with, it should be pointed out that international law as we conceive it to form an integral part of our current study, and international law that we take as our point of departure is none other than the international law which has traditionally emerged from its European origin in the seventeenth century, dating from the conclusion of the Treaty of Westphalia in 1648,<sup>71</sup> following the close of the thirty-year war which entailed

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<sup>41</sup> "EUROPEAN" is used here as a collective or regional term embracing all countries peoples and languages in Europe, including continental European States as well as the United Kingdom of Great Britain and Northern Ireland. In other words, the expression "EUROPEAN" is used in a collective and comprehensive sense, embracing also areas and peoples outside or beyond the continental European mainland.

<sup>51</sup> "AFRICAN" is an expression used and officially understood by the peoples of Africa and recognized by the Organizations of African Unity (OAU). Now there is not a single land in the continent of Africa that is not African. Every State and people in Africa must today be referred to as African, at any rate, since the new face of the Union of South Africa.

<sup>61</sup> As each geographical region of the world seems to have followed a different historical path, it is not illogical to assume that international law in its progressive evolution could be viewed from different perspectives : European, Asian African, Latin American and even Arabic, Hispanic or Chinese. Certainly there have been several schools of international law among European national legal systems, such as, the Dutch School, the Viennese School, the English School, the Spanish School and the Italian School. Socialist legality offers another option as a distinct School of International Law. Currently United States of America may be credited with an autonomous School of International Law by itself.

<sup>71</sup> The Treaty of Westphalia (1648) put an end to the Thirty-Year War which began in 1618. It also officially confirmed the principle of equality of the European nation-States, which were thereby created. It is often said that modern international law had its origin or starting point from the Treaty of Westphalia. See Roberto Ago, *Pluralism and the Origins of International Community*, Italian Yearbook of

as a consequence the dissolution of Europe until then unified under the Holy Roman Empire.<sup>8]</sup> Europe was thus disintegrated into several separate, independent, sovereign and autonomous territorial units. The relations among these new-born entities of the Christendom had to be regulated by a new law of nations of European making and based on the principle of equality, exclusively among the European nations, otherwise designated as Christian, or States that are as such labelled "civilized".<sup>9]</sup> With the sole exception of the United Kingdom of Great Britain which was known to have been ex-communicated by the Pope and, as a result, excluded from the Catholic order, but which somehow still retained its status as a "civilized nation", remaining in any event an essential part of the Christian world.<sup>10]</sup>

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International Law, Vol. III, Naples, pp. 3 et seq.

<sup>8]</sup> The Holy Roman Empire, united under the Pope, could no longer be maintained. Smaller territorial units of nation-States emerged as a result of the war. The previously crowned heads of Europe no longer were crowned by the Holy Father. Each sovereign ascended the throne without external Papal authorization. See, e.g., Paradisi, *Storia del diritto internazionale nel medio Evo*, 1, Milan, 1940, pp. 8 et seq.; see Roberto Ago, *Mélanges offerts à Paul Reuter, Le droit international unité et diversité, "Les premières collectivités interétatiques méditerranéennes"* pp. 3-4; and Verosta, *Die Geschichte des Völkerrechts*, in Verdross, *Völkerrechts*, 5th edition, Vienna, 1964, at p. 32.

<sup>9]</sup> Hugo de Groot, writing in the early seventeenth century in his magnum opus, *de Jure Belli ac Pacis*, first published in France in 1625, was addressing the princes and free peoples of the Christian world - *ad principes populosque liberos Christiani orbis*. International Law was conceived as a set of principles and rules for the regulation of relations among European nations. See Sucharitkul, *L'Humanité en tant qu'élément contribuant au développement progressif du droit international contemporain*, Colloque 1983, *L'avenir du Droit International dans un monde multiculturel*, at p. 416.

<sup>10]</sup> After the ex-communication of Henry VIII of England, the Church of England established a new Christian Order (Protestant), not subservient to the Pope. England was run, in ecclesiastical matters, by Archbishop of Canterbury and other bishops of rank, such as York. Hugo de Groot, in his

True it is, nevertheless, that contemporary international law has evolved from the traditional European law of nations of the seventeenth century. Whatever the ideological basis or the legal foundation of the theory of international law, the principles of territorial sovereignty and equality of States initially applied exclusively to European nations<sup>11]</sup> and only since the Declaration of Independence of the United States of America in 1776 were also applicable to countries of the Christian faith or of Christian civilization.<sup>12]</sup> Thus was the reason which has been advocated to justify the division or partitioning of the rest of the non-European and non-Christian world by western countries for their colonial expansion and domination, which took place in the course of the eighteenth century and continued in operation throughout the nineteenth and well into the middle of the twentieth century right up to the eve of the formation of the United Nations in

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earlier work, *De Veritate Christianae Religionis* sought to defend the Christian faith, see *ibid.*, at p. 416.

<sup>11]</sup> Originally, it came about that principles of international law as conceived and devised in the practice of European nations were the exclusive property and of exclusive application to relations between European States. Pre-existing rules of inter-governmental law in Asia and other parts of the world were unknown to the European international jurists. Thus Roberto Ago concluded in his *Mélanges offerts à Paul Reuter*, cited in Note 8 above at pp. 3-4 : "*Que le droit international dont nous avons hérité n'est que le produit concret des exigences réelles de la vie de relation qui a réuni, et ceci dès le début, une pluralité des entités souveraines appartenant souvent à des civilisations différentes et d'après le vocabulaire actuel à des mondes distincts qui ont été amenés à se rencontrer au fil de l'histoire*".

<sup>12]</sup> The United States of America, upon attaining independence, did all it could to gain recognition by the European world as an equally sovereign and independent nation State. It observed all the rules and principles of international law even to its disadvantage or detriment, in order to gain admission to the family of nations, albeit European.

1945.<sup>13]</sup> General Assembly Resolution 1514 in 1960 set into motion the irreversible process of decolonization of all territories which at that moment were still non-self-governing.<sup>14]</sup>

In point of fact, the revolutionary process of decolonization had already started since the last quarter of the eighteenth century with the emergence of the United States,<sup>15]</sup> followed by a series of wars of independence fought by the countries of Latin America and the Caribbean in the nineteenth century.<sup>16]</sup> For colonial territories or territories under protectorates in Asia and Africa, the struggles for their independence and sovereign

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<sup>13]</sup> Indeed at the end of World War II, territories liberated by the Japanese invading forces and granted virtual independence, such as Burma and the Philippines, and indeed Indonesia and former French Indochinese States were reverted to their original colonial masters following the acceptance of the surrender of Japanese forces in Asia and the Pacific.

<sup>14]</sup> General Assembly Resolution 1514 of December 14, 1960, on the Granting of Independence to Colonial Countries and Peoples, UN Doc. A/4684, following the Bandung Communiqué of April 24, 1955, D. Problems of Dependent Peoples. This resolution was adopted with 89 votes for, none against and 9 abstentions, including France, South Africa, United States and United Kingdom. It did much to accelerate the process of decolonization. Bandung Communiqué of 1955 also called for universality of the United Nations and the admission of Cambodian, Ceylon, Japan, Jordan, Libya, Nepal and United Vietnam. With the exception of Vietnam, which was still divided in 1955. The States participating in Bandung were admitted to the United Nations later that year.

<sup>15]</sup> And yet the principle of universality for membership of the international community took several decades to gain complete acceptance within the United Nations notwithstanding vigorous opposition from reactionary quarters in the West. See, e.g., A.V. Freeman, *Professor McDougal's Law and Minimum Public Order*, 58 AJIL (1964), p. 712.

<sup>16]</sup> The United States was the first of the colonies to achieve independence from the United Kingdom after a War of Independence. Next in line was Haïti from France. Then most of the Central and South American States as well as Mexico won their independence from Spain and Brazil from Portugal, well within the nineteenth century, thanks to some extent to Simon Bolivar.



statehood had to await the advent of the United Nations Organization to begin to implement the protracted and uphill task of decolonization.<sup>17]</sup>

European domination of African and Asian lands, accompanied by a seemingly endless period of colonial rules over Asian African territories, has been thus interrupted by the movements and wars of national liberation with the exceptions of territories previously liberated and decolonized with the concurrence of the western colonial administering powers following the end of World War II.<sup>18]</sup> The achievement of liberation and decolonization which brought an end to an unspeakable era of colonial domination presented a common phenomenon for Africa as well as for Asia without following a uniform model or any particular pattern. Each of the African and Asian nations under western colonial yoke has had to take the path that was more or less appropriate at the time, in the circumstances and in accordance with its traditions.<sup>19]</sup> In Africa, the African continent in its entirety was occupied by the Western Powers after the Congress of Berlin in

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<sup>17]</sup> Non self-governing territories in Asia, Africa and the Caribbean did not regain independence till well after the advent of the United Nations and as further implementation of General Assembly Resolution 1514 (1960). Many lost their lives in the struggle for independence.

<sup>18]</sup> Partitioning of India and Pakistan did not come about without sacrifices before independence was achieved. Former Indochinese States had to fight the war of national liberation before winning national independence. Malaysia was an example of orderly decolonization process but not without security problems

<sup>19]</sup> After Bandung 1955, national liberation movements gained further ground. Algeria was welcome in the United Nations in 1960 and a wave of Asian African and Caribbean nations, one by one, succeeded in entering the United Nations, once the floodgate was open. Territories under administration have been supervised by the Trusteeship Council, whose purpose it was to achieve its own termination by guiding indigenous population towards independence.

1885.<sup>20]</sup> Today, all African territories have been liberated and completely decolonized.<sup>21]</sup>

In Asia, the prolonged struggles to maintain political independence and territorial integrity very rarely met with a durable success. Only very few Asian nations have been able to keep intact their national sovereignty and political independence; and to this end, they were obliged to make concessions against their will, and often compelled to make financial, fiscal, commercial and economic sacrifices as well as acquiescing in the unlawful taking of their enormous richness and natural resources to be able to maintain and retain their national identity and their status as politically independent nation.<sup>22]</sup>

Thus, if the majority of Asian countries fell victims and succumbed to the colonial domination of Western Powers, without mentioning India, Mesopotamia (Iraq), Persia (Iran), the Ottoman Empire (Turkey), Indonesia, the Philippines, Korea and even Australia and New Zealand. Like all other islands in the Pacific, only a handful of States in East and Southeast Asia managed to survive the onslaught of the systematic campaign of colonial

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<sup>20]</sup> The congress of Berlin (1885) served in many respects as a signal to facilitate and accelerate the "Grab of Africa" by the Western European Powers, following mutual acquiescence in each of the European or Western ventures into the "dark" continent of many a great ancient civilizations to be treated as "NO MAN'S LAND" and hence up for Western "GRAB".

<sup>21]</sup> The Union of South Africa long independent under the Statute of Westminster may be listed among the most recent African territories liberated from the régime of subjugation of men by men, of racial discrimination and of the most heinous offence against the peace and security of mankind, APARTHEID.

<sup>22]</sup> The Asian continent was not the hunting ground for slave trade, but more of a market place with seemingly unlimited supplies of raw materials to feed European factories. For the well established and fortified nations, it was difficult for the West to overpower by sheer force. The technique of "divide and rule" was frequently applied to achieve colonial domination or economic dominance.

expansion conducted by the countries of the West.<sup>23]</sup> Among these survivors may be counted China, Japan and Thailand or Siam to which allusion has been made at the outset.<sup>24]</sup>

Among the three surviving Asian countries mentioned above, the Celestial Empire, China, suffered the most painful and the least tolerable fate with the most indelible injurious consequences. Between the Western Powers and China, the Rule of the Game was the Rule of Force and not the Rule of Law. International law has stopped short of discouraging the Western Powers from resorting to the use of armed forces against this Celestial Empire.<sup>25]</sup> Unequal treaties have been imposed upon China, one after another, including a régime of extraterritoriality which has persisted right up to the attack of Pearl Harbor by the Imperial Navy and Air Forces of Japan in December 1941.<sup>26]</sup>

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<sup>23]</sup> The expansion of European or Western influence in East and Southeast Asia began with the establishment of trading posts or opening up of sea-ports, although in some cases, such as Malacca with outright invasion and occupation through the use of force or gun-boat diplomacy.

<sup>24]</sup> See I. INTRODUCTION, pp. 5-6 *supra*. In effect, international law has condoned if not permitted the treatment of Asian nations by European States not as equal, but as territories with a status inferior to that of a Western or Christian independent sovereign State which has emerged only since the end of the European Thirty-year War upon the conclusion of the Treaty of Westphalia.

<sup>25]</sup> There was as yet no rule against the use of force nor any prohibition or ban or the use of armed force by one State against the territory of another State. Force had certainly been used against China by European countries which included Imperial Russia and the West which included the United States of America.

<sup>26]</sup> Before the outbreak of hostilities in the Pacific War, Japan had already invaded parts of China including Manchuria which the Japanese gave a new name of Manchukuo. The advent of Pearl Harbor led the United Kingdom to relinquish its extraterritorial privileges over Chinese territories, as the last surviving anachronism of the nineteenth century and the vestige of British colonialism all over the world.

As for the Empire of the Rising Sun, Japan itself had not escaped the expansion of western domination. Persuaded by the threat of force through the implementation of gut-boat diplomacy in its traditional and literal sense, Japan had to concede to the demands of Western States for the establishment of an extraterritorial régime in favor of nationals and subjects of the Western Powers.<sup>271</sup> But the Japanese were swift in their response to the exigencies of their counterparts from the West. This ancient empire of East Asia found itself speedily transformed and Europeanized. It was for this reason and in this manner that Japan was able to forsake its tradition to regain its judicial and fiscal independence vis-à-vis the Western Powers to which Japan truly endeavored with gradual success to assimilate.<sup>281</sup> Once the frontier was crossed between Asia and Europe, Japan did not hesitate to emulate the European Powers and posed itself as one to enjoy the benefits of an extraterritorial régime at the expense of its Asian neighbors, namely, China and Thailand.<sup>291</sup>

It is true that Japan was able successfully to safeguard its political independence as well as its territorial integrity but this success was due in no small measure to the expanse of waters of the Japan Sea and to the Wind of Kamikaze, which once before

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<sup>271</sup> Edwin O. Reischauer, *The Japanese*, Harvard, 1977, pp. 87-102 : *"The Constitutional System. By 1899, the British, impressed by Japan's modernization, agreed to relinquish their extraterritorial privilege and other western nations followed."*

<sup>281</sup> Japan under the Meiji Restoration adopted contemporary European style of clothing, at any rate, for men's suits and proceeded to adopt the final draft of the German Civil Code as the Civil Code of Japan in 1898, before Germany finalized the text of its civil code.

<sup>291</sup> Vis-à-vis China, Japan rallied to the cause of the Western Powers in the Boxers Rising. For Thailand, Japan was equated to the rank of Western nations and was accorded the same treatment and status of extraterritorial privileges as any European nation or the United States, see FCN Treaty with Japan.

in the remote past had destroyed and drowned the combined fleets of China and Korea in the thirteenth century and thanks to the good grace of the Pacific Ocean whose width and depth as well as tempestuous temperaments had served as an insuperable natural obstacle to any plan for the invasion of Japanese islands.<sup>30]</sup>

On the other hand, Thailand has never been protected by such lign of defence which nature has endowed to prevent invaders and marauders from the North or from the West. On the contrary, this Siamese Kingdom, depleted of all geographical hindrances has appeared to be not only highly vulnerable but also irresistibly attractive for neighboring States as much as for overseas powers to visit and to share the abundance of its fortunes and its bounteous natural resources.<sup>31]</sup> Thus exposed to all the winds and the danger of invasion of forces from foreign lands, the Kingdom of Siam has had to be well organized and to manage its own system of self-defence relying on its political skills and diplomatic agility and tactfulness, having regard to the contemporary state of international law at the time which tended to favor the domineering position of the Western Powers in regard to matters of international relations between Thailand and Europe, including the United States of America.<sup>32]</sup>

It is now opportune to examine the ways and means by which

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<sup>30]</sup> The Dutch missionary was the first to be stationed in Japan at Nagasaki. The Portuguese and the Spanish did not make any attempt to land on Japanese islands. It was not till Commodore Perry in the nineteenth century that Western Gun Boat Diplomacy was applied to Japan.

<sup>31]</sup> See, e.g., Nicholas Gervaise, *Histoire naturelle et politique du Royaume de SIAM*, Paris, 1688, translated by John Villiers, White Lotus Co., 1989, especially Fourth, Fifth, Sixth and Seventh Chapters, pp. 23-30.

<sup>32]</sup> As will be seen throughout her national history, Thailand had had incessantly to fend for herself and to defend her shores from Asian as well as European visitors and adventurers, seeking trade, fortunes, influence and colonial expansion at the expense of the Siamese Kingdom, at various stages and phases of the history of Southeast Asia.

Thailand has succeeded in safeguarding its political independence and the territorial integrity of its Kingdom, given the then existing principles of international law which appeared to be applicable at the time to regulate the relations between this Asian Kingdom and the mighty Powers from the occident.<sup>33]</sup>

## II. FIRST PHASE : THE APPLICABILITY OF INTERNATIONAL LAW INTERNATIONAL LAW AND THAILAND

### 1. The First Encounters with European Visitors : The Portuguese (1511) and the Spaniards (1598)

The very first point of contact that the Kingdom of Siam experienced with a European country took place in the form of an encounter with the expedition of a naval fleet dispatched by the Vice-Roy of Portugal across the Indian Ocean from Goa. The Portuguese were the first to have reached Asian shores by maritime route.<sup>34]</sup> If Marco Polo had succeeded in crossing the frontier line between Europe and Asia by the discovery of the "Silk Trail" departing from Venezia and heading for China in East Asia,<sup>35]</sup> it

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<sup>33]</sup> It is against all odds that the Kingdom of Siam managed to survive the successive waves of Western colonial expansion as well as invaders from neighboring lands to the North as well as from the West and the East.

<sup>34]</sup> In 1498, Vasco da Gama circumvented the Cape of Good Hope, the southern tip of Africa, crossed the Indian Ocean and settled in Goa on the Malabar Coast of India. This became the first Portuguese possession in the Indian sub-continent and led to further expansion of Portuguese domain. See Rong Syamananda, *A History of Thailand*, 1988, p. 42.

<sup>35]</sup> The "Silk Trail" was also discovered by a Venezian, who imported back to Europe not only "silk" but also the substance used by the Chinese to celebrate their New Year, the fire-works, which was later transformed into gun powder. The very same substance employed by the Chinese to entertain and delight spectators on festive occasions was actually

was Vasco da Gama who performed successfully the circumnavigation of the Continent of Africa via the Cape of Good Hope, setting sail from Lisbon and crossing the Indian Ocean to reach Goa on the Malabar Coast on the Indian sub-continent where the Portuguese gained their first foothold on Asian Soil.<sup>36]</sup>

The second Vice-Roy of Portugal implemented a plan of expansion of Portuguese influence towards the extreme orient, having an eye for the occupation of the West coast of the Malay Peninsula to ensure the production and distribution of the product of spices.<sup>37]</sup>

Four Portuguese men-of-war arrived in Malacca in 1509.<sup>38]</sup> At that time, Malacca was a sultanate, governed by a Malay Sultan, forming part of a vassal territory of Siam Since Sukhothai and more effectively under the reigns of King Ramathibodi I and II of Ayudhya, as the Siamese King had just expedited a military mission to suppress the forces of the rebellious Sultan of Malacca in 1489.<sup>39]</sup>

In 1511, d'Albuquerque despatched an armed fleet of 18

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turned into fire-power which centuries later was repeatedly applied against China to the detriment of the land of its inventor whose patent of invention continues to be infringed.

<sup>36]</sup> See Rong Syamananda cited in Note 34 above at p. 42.

<sup>37]</sup> See the Right of Passage over Indian Territory, ICJ Report 1957, Portugal v. India (1957), where the Court upheld the right of passage of Portuguese civilians across Indian territory to Goa, but not police or security forces.

<sup>38]</sup> These Portuguese ships were placed under the command of Diego Lopes de Sequeira, who set up a trading post in Malacca with the permission of the Malay Sultan. This provoked some resentments among the Arab merchants who were there before the Portuguese. The Portuguese post was attacked by the native Malay who captured some twenty Portuguese men. But Lopes de Sequeira escaped in his ship to Galle in Ceylon and returned to Malacca with 18 ships.

<sup>39]</sup> After the unsuccessful rebellion, the Sultan of Malacca was subdued by Siamese expeditionary forces and Malacca once again was placed under Siamese suzerainty in 1489.

battleships from Goa through the Straits of Malacca. Having taken the capital city of Malacca by force, the Portuguese proceeded to annex the territory as part of their colonial possession.<sup>40]</sup> Upon learning later that the Sultanate of Malacca was then under Siamese suzerainty, the Portuguese Viceroy decided to woo Ayudhya by proposing to establish diplomatic relations with the Siamese Kingdom of Ayudhya.<sup>41]</sup> A Portuguese envoy by the name of Duarte Fernandez was sent to Ayudhya where King Ramathibodi II granted him royal audience. Having accepted a gift of a box filled with gold and diamonds presented by Fernandez, who never demonstrated any sign of superiority or disdain towards the King, His Siamese Majesty abstained from raising any objection.<sup>42]</sup>

Fernandez returned to Malacca by way of Tenasserim, accompanied by a Siamese special envoy with a gift for the Viceroy of Portugal.<sup>43]</sup> In response to the royal message of good will, a second Portuguese diplomatic mission was sent to Ayudhya in 1512. This envoy, Antonio Miranda de Azevedo, was the first ever

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<sup>40]</sup> After taking Goa in India and Galle in Ceylon, the Portuguese Viceroy Alfonso d'Albuquerque extended Portuguese domain in the east and the west of Bengal and since 1511 stormed and seized the town in the Straits of Malacca, which became yet another Portuguese possession in Asia by the second decade of the sixteenth century.

<sup>41]</sup> Duarte Fernandez, one of de Sequeira's officers who knew a little Siamese was despatched to Ayudhya to be granted an audience with King Ramathibodi II.

<sup>42]</sup> The Siamese King appeared pleased with the gift presented by Fernandez. It was a sword with a golden scabbard encrusted with diamonds. The Portuguese envoy was well received in the Siamese Court, having displayed no arrogance, nor superiority over the Thais.

<sup>43]</sup> This was the first encounter between representatives of an Asian Kingdom and diplomatic envoys from the West. In the annals of diplomatic practice between Europe and Asia, the Siamese envoy did not only bear a gift for the Portuguese Viceroy but he was also assigned the duty to observe and report on the position and strength of the Portuguese establishment.



European explorer to have undertaken the journey by land across the South of Siam towards Ayudhya.<sup>44]</sup> Azevedo was assisted by Fragozo, who remained in Ayudhya for two years to study and complete a report of Siamese customs and traditions.<sup>45]</sup> On his return to Goa, Fragozo was accompanied by another Siamese special envoy, bearing a letter of credence from the King of Ayudhya addressed to the Portuguese King at Lisbon.<sup>46]</sup>

In 1516, the Portuguese Governor of Malacca appointed Duarte de Coelho as a third special envoy to be accredited to the Siamese Court. During the course of this year, the first Treaty of Friendship and Commerce was concluded between Siam and Portugal.<sup>47]</sup>

Under its provisions, the Government of Portugal agreed to supply Ayudhya with cannons and ammunitions in exchange for the establishment of residence of Portuguese nationals in Siam, including their right to engage in trade at Ayudhya, Ligor, Pattani, Tenasserim and Mergui, as well as royal permission for Portuguese subjects to practice their Christian faith.<sup>48]</sup> A

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<sup>44]</sup> Professor Rong Syamananda, cited in Note 34 above, found no further record of Antonio Mirande de Azevedo as the first of the European explorers of Southern Siam apart from the fact that the mission was undertaken in 1512.

<sup>45]</sup> More record could be found on Fragozo, who after two years in Ayudhya left for Goa with an accompanying Siamese envoy. Such exchanges of envoys became the consistent practice between Siam and Portugal which subsequently would become more widespread with other European Kingdoms with which Ayudhya were to maintain close and cordial relations.

<sup>46]</sup> Goa became the intermediate station for exchange of letters and notes between the Siamese King and his Portuguese counterpart in Lisbon. Messages were transmitted and relayed to and from Goa where the Portuguese Viceroy was established.

<sup>47]</sup> There is no record of the original text of this very first bilateral Treaty in the archive of the Thai Ministry of Foreign Affairs. The Treaty may have perished with the sacking of Ayudhya by the Burmese in 1767 when looting and pillaging took place, resulting in the ruins of the capital city.

<sup>48]</sup> The contents of the Treaty were reported and substantiated.

trading post or a central commercial quarters was set up at Pattani in 1516. In 1538, about three hundred Portuguese nationals resided at Pattani, engaging in the export trade with Arabia, Persia and countries overseas.<sup>49]</sup>

The Portuguese overtures followed by the establishment of diplomatic relations and the maintenance of friendly rapport on an equal footing and on the basis of reciprocity and mutuality of benefits appeared to have furnished a sound legal basis for the future fruitful relations between the two Asian and European Kingdoms.<sup>50]</sup>

While the Portuguese continued to expand their sphere of influence and domination in East Asia beyond Goa and Malacca, up to Timor and Ma Cao, the Spaniards who had acquired the habit of sharing their conquests with their Portuguese cousins, having been blessed by His Holiness the Pope at Rome, above all with regard to the partition of the New World.<sup>51]</sup>

In Asia, a Spanish diplomatic mission led by Don Tello de Aguirre was despatched from Manila in 1598 to Ayudhya, then capital city of Siam. It was King Naresuan the Great, who

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The Portuguese invited the Siamese in turn to settle in Malacca because the Arabs had left town after the Portuguese take-over.

<sup>49]</sup> The Treaty was concluded in 1516, signed on behalf of Portugal by envoy Duarte de Coelho. Its application did result in an expansion of trade between the two Kingdoms. The Siamese appeared reasonably persuaded that the Portuguese policy towards Siam aimed at trade development rather than colonial expansion or territorial acquisition.

<sup>50]</sup> By 1538, the number of Portuguese settlers in Pattani reached three hundred, engaging in trade and business with merchants from Arabia, Persia and other lands, according to Fernando Mendez Pinto in his writing entitled *Preregrinacam* or "Peregrinations".

<sup>51]</sup> King Naresuan found time to cultivate friendly relations with the Europeans. In addition to the Portuguese who had been to Ayudhya much earlier, the King also extended a cordial welcome to Spaniards who had occupied the Philippines.

received the Spanish mission at the Siamese Metropolis. A Treaty of Amity was concluded between the two Asian and European Kingdoms on the footing of absolute equality.<sup>52]</sup>

## 2. The First Siamese Diplomatic Mission to Europe The Netherlands (1608)

The Dutch followed the Spaniards in 1604.<sup>53]</sup> Four years later, King Ekatosarot, the White Prince, younger brother of the Black Prince, King Naresuan, decided to send a diplomatic mission to the Netherlands, or Holland, to find out the truth about a newly independent European State which had been rumored to be under Spanish domination.<sup>54]</sup>

Two special envoys from Ayudhya were received and accredited by Prince Maurice of Orange Nassau, the Stadholder.<sup>55]</sup> On 12 June 1617, the Netherlands concluded its first Treaty of Commerce with

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<sup>52]</sup> A Treaty of Friendship, Commerce and Navigation was concluded between Siam and Spain in 1598 by a Spanish envoy from Manila on mission to Ayudhya. This was a record treaty between Siam and a Western European Power. Although no official text was available in the Siamese archive, the contents of the Treaty were reasonably known. The Spaniards had the right to reside, to trade and to practice Catholicism in Siam.

<sup>53]</sup> The Dutch came to Ayudhya, the Siamese capital following the Spaniards in 1604. In fact, the Dutch reached Pattani already in 1601 and was given permission to set up a trading post. In 1602, the United East Indies Company (Verenigde Oost-Indische Compagnie (VOC)) was formed in Batavia. King Naresuan granted audience to Cornelis Specx, the CEO of the Dutch East Indies Company. In 1608, the first Dutch trading post was established under the direction of Specx.

<sup>54]</sup> The Siamese were keen to establish business relations with the Dutch as they imported cotton and textile from Holland in exchange for hides and spices from Siam.

<sup>55]</sup> The Siamese envoys travelled by a Dutch steamship which took seven months to reach Amsterdam. The Siamese mission was accorded a warm reception at The Hague.

Siam, under which the two countries agreed to exchange goods and products on the basis of absolute equality and reciprocity in actual practice.<sup>56]</sup> Important concessions were exchanged between Siam and the Netherlands, entailing the obligation of mutual recognition of the necessity for complete liberalization of international trade, specifically permitting access of Dutch vessels to Asian ports via maritime routes controlled by Siamese men-of-war, which enabled the Dutch merchantmen to enjoy freedom of navigation and exploitation of commercial potentials of the Islands of Java and Sumatra by the Dutch East Indies Company (Oost-Indische Maatschappij).<sup>57]</sup>

It is interesting to note that even well prior to the Treaty of Westphalia of 1648, the relations between Siam and Portugal as well as Spain and the Netherlands had always proceeded on the footing of complete equality, based on the treaties of friendship and commerce, and regulated by the provisions of bilateral treaties between a European State on the one part and an Asian Kingdom on the other, without any inconvenience or discrimination of any sort.<sup>58]</sup>

### 3. The Franco-Siamese Rapport of the Seventeenth Century

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<sup>56]</sup> The Dutch signed the first commercial Treaty with Siam on June 12, 1617. Treaty Series, Vol. I : 1617-1869. Maerten Houtman *cum su'is* signed on behalf of the Netherlands and Ollon Soupattrou, *Opra (Ok Phra)*, in the service of the King of Siam.

<sup>57]</sup> The English text of the Treaty available in the archive of the Ministry of Foreign Affairs of Thailand was an English translation of the Dutch original, see Dutch Colonial Archive, inv. no. 4464 L. pp. 122 verse - 125. The Treaty was concluded in Ayudhya.

<sup>58]</sup> Another Treaty of Alliance of Peace was concluded between the King of Siam and the Governor-General of the United Netherlands over the United East Indies Company in the East, State Papers of the Kingdom of Siam ; 1664-1886, London; William Ridgeway, 169. Piccadilly, 1886, p. 233.

Better known to the outside world than the earlier relations between Siam and the three European nations, namely, Portugal, Spain and the Netherlands, were the close rapport and warm relations between King Narai The Great of Ayudhya (1656-1688) and King Louis XIV of France (1643-1715).<sup>59]</sup>

The struggle conducted by the Dutch for freedom of the sea including freedom of navigation on the High Seas as exemplified in the writing of the Dutch publicist, Hugo Grotius, entitled "*Mare Liberum*"<sup>60]</sup> published in the beginning of the seventeenth century was contested by an English jurist, John Selden, in his treatise "*Mare Clausum*"<sup>61]</sup> reflected the superiority of the Dutch naval forces at the expense of British maritime interests. The English would prefer the closure of the High Seas rather than complete freedom of the sea, open to all flags. The seizure of a Portuguese trading vessel in the Gulf of Tonkin in 1661 with a merchandise of contraband belonging to the King of Siam had given rise to a protest from the Dutch Government, seeking to blockade Ayudhya in 1664.<sup>62]</sup> It was in effect the first recorded incident

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<sup>59]</sup> Louis XIV, the Sun King, 1638-1715, (Son of Louis XIII), became King of France in 1643 until 1715.

<sup>60]</sup> Apart from the well-deserved title of "Father of International Law", Grotius was also known for his thesis on *Freedom of the Sea*, as in *Mare Liberum* opposing any attempt to foreclose the Sea *Mare clausum*.

<sup>61]</sup> The British preferred the notion of "*Mare Clausum*", i.e., the sea being closed or restricted and not accessible to all sea-faring nations but only open to a handful of sea-Powers, so that some areas of the sea would be open only to some nations and not to others.

<sup>62]</sup> See G.V. Smith, *The Dutch in Seventeenth Century Thailand*, Center for Southeast Asian Studies Special Report No. 16, Illinois, Northern Illinois University 1977. The vessels *Princesse Royale*, *Hoogcaspel* and *Elseburg* were sent to Siam to collect personnel and goods from the Dutch trading post, the Amsterdam warehouse, down the river from Ayudhya. The *Hoogcaspel* and the *Elseburg* which had been sent earlier remained at the mouth of the Chao Phraya from November 1663

of blockade under the prevailing law of nations undertaken against an Asian State. The King of Siam had to make another substantial concession in a Treaty concluded after the application of gun-boat diplomacy pursued by the Dutch Government.<sup>63]</sup>

The occupation of Cambodia or Kampuchea by Annam or Vietnam in 1659 resulted in the exodus of English merchants from Cambodia to take up residence in Ayudhya with a branch office of the East India Company in Siam.<sup>64]</sup> In 1661, an English factory was set up anew in Ayudhya. King Narai would play the game of encouraging competition almost to the point of enhancing rivalry between the Netherlands and Great Britain. The English company once again enjoyed the monopoly of external trade in Siam.<sup>65]</sup>

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to mid-February 1664, seizing the cargo off a Chinese junk fitted out by the Siamese King and returning from Japan.

<sup>63]</sup> According to some accounts, the two vessels instituted a complete blockade of the Chao Phraya estuary, giving an indication that the Dutch company had declared war on the Siamese King Narai. Dutch sources do not corroborate this, although the presence of two vessels of war would not fail to create the impression of a show of force made on the Siamese.

See Han ten Brummelhuis, *Merchant, Courtier and Diplomat : A History of the Contacts between the Netherlands and Thailand*, presented to the Royal Netherlands Embassy in Celebration of His Majesty King Bhumibol Adulyadej's Completion of the Fifth Cycle or Sixtieth Birthday, December 5, 1987, especially at pp. 35-38.

<sup>64]</sup> *Ibid.*, at p. 35, the Dutch company had to compete both with Siamese King - in the Japanese trade - and with the English who returned to Ayudhya in 1661.

<sup>65]</sup> Early in 1662, an open conflict broke out. The Dutch company was at war with Portugal at the time, and had captured a ship sailing under the Portuguese flag, with a Portuguese crew, off Hainan between Macao and Canton, China. which proved to have been fitted by the Siamese King. The news reached the King of Siam while on an expedition against Laos and the Dutch lodge was surrounded and kept under surveillance. The King claimed 84,000.00 Dutch guilders in compensation for the ship seized off Hainan. Those incidents led to a decline in the Dutch trade and the blockade of the Chao Phraya river by the two Dutch vessels. As a consequence, the return of the English coincided with these fortuitous events, enhancing the

In 1675, an English trader by the name of George White brought with him a Greek boy, Constantinos Phaulkon, from the island of Cepholonias. This little Greek was to play a leading role in the development of amicable relations between Siam and the Western world, above all with France under the reign of King Louis XIV.<sup>66]</sup>

The Greek youth was to become in the course of time ennobled as Phra, Phraya and Chao Phraya Wijayen, the highest title in Siamese nobility of Ayudhya period, equal to the rank of today's Prime Minister.<sup>67]</sup> His wife being a Catholic of Japanese ancestry and his religion had changed from Orthodox to Protestant and ultimately Catholic, the first advisor to the throne of Ayudhya was to share the responsibility for the direction of Siamese policy in favor of France and of the Holy Father in Rome.<sup>68]</sup>

Chevelier de Chaumont was the first appointee as French

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trading opportunities of the English company almost to the point of enjoying virtual monopoly in certain areas of export trade.

<sup>66]</sup> See Nicolas Gervaise, *Histoire Naturelle et Politique du Royaume de SIAM*, Paris 1688, translated and edited with an introduction and notes by John Villiers, White Lotus Co., 1989, Fourth Chapter, of the King's occupation and his usual diversions. The King's agenda was described as follows :-  
*"After breakfast at eight o'clock, he enters his Grand Council, where he remains until noon. There M. de Constance (Constantinos Phaulkon), his prime minister gives him an exact and faithful report of all the affairs of the Kingdom on which he must pronounce..."*

<sup>67]</sup> Indeed Constantinos or M. de Constance as he was better known to the French Jesuit priests was identified and treated with respect as the Chief or prime minister of Siam under the reign of King Narai the Great which partially coincided with that of Louis XIV of France.

<sup>68]</sup> See Rong Syamananda, cited in Note 34, at pp. 74-79. The French missionaries submitted report of their activities to the Pope and King Louis XIV. Both were pleased with King Narai who continued to display good-will towards the missionaries, while King Louis considered himself the defender of the Catholic faith.

Ambassador to Siam, and admitted to present his credentials to King Narai at his Summer Palace in Lopburi.<sup>69]</sup> The King was impressed by French architecture, and French handicraft works were objects of admiration in the Royal Household. French missions were rewarded by royal grants of plots of land and buildings for the establishment of Catholic missions at Lopburi, Ayudhya, Pitsanuloke and Petchburi.<sup>70]</sup> Catholic churches were constructed and a printing press set up to publish religious books in Siamese.<sup>71]</sup> The French King and the Holy Father were cherishing the hope that the Siamese King could be persuaded to join the Catholic faith.<sup>72]</sup> But without success, the French Ambassador endeavored to convert the King who remained faithful to Buddhism because of his unshaken conviction.<sup>73]</sup>

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<sup>69]</sup> Ibid., at p. 78. On October 18, 1685, Chevalier de Chaumont proceeded to the King's Summer Palace at Lopburi presenting Louis XIV's letter of credence to King Narai, with Constance acting as interpreter during the audience.

<sup>70]</sup> Ibid., at p. 76. Plots of land were bestowed upon the Catholic churches at Lopburi and Ayudhya, as King Narai never ceased to be generous to religious groups of all denominations, although he himself remained a devout Buddhist all through his reign.

<sup>71]</sup> Ibid., at p. 76. The French Jesuits attempted to romanize the Thai script as the missionaries set up a printing press using Roman alphabets for publishing religious books in the Thai language. This press was closed down at the end of King Narai's reign in 1688 after what became known in Europe at the time as the Siamese Revolution. See Han ten Brummelhuis, cited in Note 63 above at p. 40. Director Johannes Keijts (1685-1688) completed a Brief Account of the Strange Changes which occurred in the Kingdom of Siam in 1688, Amsterdam.

<sup>72]</sup> Ibid., at p. 77. When Bishop Lambert and his followers had an audience with King Narai in 1665, they took occasion to expound the principles of Christianity. Similarly, in 1668, a group of Muslim missionaries arrived from Aatchen or Acheen in North Sumatra and endeavored to persuade the King to accept Islam, but the King was not attracted to other religions.

<sup>73]</sup> Ibid., at pp. 78-79. When the French Ambassador came in 1685, again a further effort was made to convert the Siamese



Siam under the reign of King Narai actually sent three diplomatic missions to Paris. Members of the Siamese Embassy left for France together with the returning French Ambassador, Chevalier de Chaumont in 1685.<sup>74]</sup> Ambassador Kosa Parn or Phra Visutsunthorn was received in audience by Louis XIV at the gallery of mirrors in the Chateau de Versailles on 1 September 1686.<sup>75]</sup> The Siamese Mission returned to Ayudhya with the second French Embassy in 1687. The French Mission consisted of two envoys and 636 royal guards under the command of General Desfarges.<sup>76]</sup>

A Treaty of commerce was concluded between France and Siam on December 1, 1687.<sup>77]</sup> France was accorded the right to trade in

King to Christianity, and again it was to no avail. The role of Abbe de Choisy as religious instructor to the King became redundant. Nevertheless, a Treaty was concluded between France and Siam in 1685, signed by Chevalier de Chaumont, *"Ambassadeur de Sa Majesté très Chrétienne, and M. Constance Faulkon, Commissaire avec ample pouvoir de Sa Majesté de Siam pour accorder en son royal nom des privilèges aux Missionnaires Apostoliques dans tous ses royaumes"*. Treaty Series, Vol. I, 1617-1869, pp. 11-17.

<sup>74]</sup> *Ibid.*, at pp. 78-83. The third Thai embassy arrived at Brest in June 1686 and was granted an audience by King Louis XIV in the Galerie des Mirroirs of the Chateau de Versailles on September 1, 1686. The Siamese Mission was headed by Kosa Parn, a skilled diplomat even by Western European standard.

<sup>75]</sup> Kosa Parn and his assistants returned to Siam with the second French embassy which arrived at Ayudhya on September 27, 1687. Subsequently, Kosa Parn was appointed the *Praklang* with the title of Chao Phraya Kosathibodi, the post and title previously occupied by his elder brother, Khun Lhek.

<sup>76]</sup> Father Tachard and 492 French soldiers arrived in Siam with two French envoys : Claude Cébéret du Boullay, a director of the French company (Compagnie royale des Indes Orientales) established in 1664, and Simon de la Loubère, a lawyer who had acquired some diplomatic skill under St. Romain in Switzerland.

<sup>77]</sup> Treaty Series, Vol. I, 1617-1869, pp. 19-22. *"Traité de Commerce et Privilège concédez, touchant le commerce des Indes Orientales et particulièrement au Royaume de Siam et ses districts, entre Leurs Excellences Mrs. de la Loubère et Ceberet envoyés extraordinaires de sa majesté très Chrétienne*

Ayudhya without having to pay any tax, except for a few articles of contraband for which prior authorization was needed for each sale or purchase.

Without doubt, the exchange of diplomatic missions carried an implication that in the diplomatic practice and tradition of the western world a régime of extraterritoriality of diplomatic and consular mission was to be recognized together with the inviolability of private and official residences of the ambassador on the basis of strict reciprocity. It was clear that at this point of time the relations between Siam of Asia and France of Europe were conducted on an equal footing with the complete application of the law of nations without any limitation. The principle of equality of States and universality of international law did not seem ever to be challenged.

### III. SECOND PHASE : NON-APPLICATION OR RESTRICTED APPLICATION OF INTERNATIONAL LAW FOR THAILAND

#### 1. Continued Application of International Law to Euro-Asian Relations in the course of the Eighteenth Century

Principles of international law as recognized and practiced in Europe continued to apply to independent Asian nations like Thailand throughout the seventeenth century and even almost half a century thereafter.<sup>781</sup> In point of fact, the Treaties concluded by

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*au Royaume de Siam, et Oya Pra Sedet Surenta Tibody Si Supora Periapah exercent par commission l'Office de Barcelon, et Opra Sipipat Rattana Raya Cussa Commissaire du Roy de Siam".*

<sup>781</sup> See, e.g., the Treaty and Alliance of Peace with the Netherlands, in 1664, and Act of Renovation of the Contract in 1688 and the Treaty between Siam and the Dutch Company in 1668. Treaty Series, Vol. I, 1617-1869, at pp. 3-7.

Siam with European States in the course of the sixteenth and seventeenth centuries never once adversely affected the notion of territorial sovereignty of Siam, nor placed in doubt the principle of equality of States, European and Asian all of which were treated on the basis of perfect non-discrimination.<sup>79]</sup>

The Siamese Kingdom of Ayudhya lasted more than four centuries from A.D. 1350 until A.D. 1767, when this capital city was attacked by Burmese armed forces and ransacked, literally scorched and razed to the ground.<sup>80]</sup> Replaced for a brief period by Thonburi<sup>81]</sup> and finally the Kingdom's metropolis was moved one more time across the mighty Chao Phraya River to be seated at Bangkok where the Ratanakosin Era and the Chakri Dynasty emerged for the first time in 1782.<sup>82]</sup>

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<sup>79]</sup> See, e.g., the Treaty between the King of Siam and Great Britain of June 20, 1826, Treaty Series, Vol. I, 1617-1869, pp. 23-31, with Additional Articles with the King of Siam, ratified January 17, 1827, signed on behalf of the United Kingdom by Henry Burney, Captain, Envoy to the Court of Siam. (L.S.) Amherst, State Papers of the Kingdom of Siam, p. 75. The final clauses of Article XIV runs, in fine, "*The Siamese and English will form a friendship that shall be perpetuated, that shall know no end or interruptions as long as heaven and earth appear*".

<sup>80]</sup> See Rong Syamananda, cited in Note 34 above, Chapter VIII, at pp. 90-92. The reign of King Ekatat (1758-1767) marked a catastrophe for Siam. Ayudhya fell into the invaders' hands on the night of April 7, 1767. Showing no mercy whatever to the Siamese people, Burmese forces put the city to the fire and sword, carrying off to Burma incalculable amount of booty and about 30,000 Siamese including ex-King Utumporn. The sacking of Ayudhya entailed the loss of Siamese treasures both material and cultural. See also Naradhip Bongsprapandh, *Diplomatic History of Thailand*, Bangkok 1958, and Bidyalabh, *An Outline of Siamese Cultural History*, Bangkok, 1954.

<sup>81]</sup> *Ibid.*, Chapter IX, *Taksin of Thonburi*, at pp. 93-99. King Taksin was at one time Governor of Tak near Kamphaengphet, hence the name Phraya Tak. Phraya Tak seized Thonburi and recovered Ayudhya within seven months after the holocaust.

<sup>82]</sup> *Ibid.*, Chapter X, *Siam under Rama I (1782-1809)*, pp. 100-113, King Ramathibodi, founder of the current Chakri Dynasty of the Reigning Siamese Monarch, moved the Siamese capital

## 2. Progressive Limitations on the Application of International Law

### a. A.D. 1782 - 1898 :

The Treaties concluded by Siam in the Bangkok period with Western States continued to bear the mark of equality. The Treaty with Great Britain in 1826<sup>83]</sup> and with the United States of America in 1833<sup>84]</sup> contained no provision of surprise with regard to the general applicability of international law.

The year 1855 witnessed an abrupt radical evolution in favor of the Western Powers. Siam was no longer able to resist the desire on the part of the Western States to create a régime of inequality. To begin with, China already in 1840<sup>85]</sup> and Japan soon thereafter,<sup>86]</sup> had been subjected to a régime of unilateral

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from Thonburi to Bangkok in 1782 for reasons that were partly geographical, partly strategic and also partly religious.

<sup>83]</sup> See Note 79 above, The Preamble rekindled the hope that *"The Siamese and English nations may become great and true friends, connected in love and affection, with genuine candour and sincerity on both sides..."*

<sup>84]</sup> Ratification exchanged at Bangkok, April 14, 1836, Treaty Series, Vol. I, 1617-1869, at pp. 33-36; British and Foreign State Papers, Vol. xxii (1833-34), p. 590. It is written in the Preamble : *"For this purpose, the Siamese and the citizens of the United States of America shall, with sincerity, hold commercial intercourse in the Ports of their respective nations as long as heaven and earth shall endure"*.

<sup>85]</sup> See the Treaty of Nanjing (1842). G.W. Gong, *The Standard of Civilization in International Society* (1986), at pp. 136-138, the Treaty of Nanjing was followed by the Treaty of Boque (1843), which formed the basis for unified Western relations with China. See also Sompong Sucharitkul, *Rebirth of Chinese Legal Scholarship*, Leiden Journal of International Law, Vol. 3, No. 1, April 1990.

<sup>86]</sup> The First Treaty between Siam and the United States was signed in 1833, eleven years before the Treaty of Wanghia between the United States and China, and twenty-one years before the Treaty of Ranakawa by which Japan was obliged to

extraterritoriality at the expense of the Asian States in favor of the Western Powers.

At Bangkok, a new series of Treaties of Friendship, Commerce and Navigation (FCN Treaties) were negotiated and concluded with the western world, of which Great Britain was its pioneer in 1855<sup>87]</sup> with a supplement of 1856.<sup>88]</sup> This series of Treaties were known as the Bowring Treaties, after the name of Sir John Bowring, British Ambassador to the Siamese Court in Bangkok. The United States followed suite in 1856,<sup>89]</sup> then France,<sup>90]</sup> Denmark,<sup>91]</sup> the

open its door to the West, thanks to the gunboat diplomacy executed adroitly by Commodore Perry of the United States Government. By 1854, extraterritoriality régime was established for the West in Japan, ten years after the Treaty of Wanghia and twelve years after the Treaty of Nanjing which imposed an extraterritoriality régime for China in favor of the United Kingdom.

<sup>87]</sup> Treaty Series, Vol. I, 1617-1869, pp. 37-45. The Treaty of Friendship and Commerce between Siam and Great Britain, signed at Bangkok on April 18, 1855 and ratified at Bangkok on April 5, 1856, Article II, establishing for the first time in Siam the exclusive jurisdiction of the British Consul over British subjects in Siamese territories. It should be pointed out that the British really had no authority to exercise jurisdiction beyond the territories under British rule. It was not until the Foreign Jurisdiction Act 1873 that it became legally possible for British authority to exercise judicial power beyond the confines of British territories.

<sup>88]</sup> Treaty Series, Vol I, 1617-1869, pp. 45-57. Agreement Supplementary to the Treaty of Friendship and Commerce between Siam and Great Britain, signed at Bangkok on May 13, 1856, reinforcing and implementing the Treaty of 1855.

<sup>89]</sup> Treaty Series, Vol I, 1617-1869, pp. 59-67. Treaty of Peace, Friendship, Commerce and Navigation between Siam and the United States, signed at Bangkok, May 29, 1856, Article II relates to disputes between American citizens and Siamese subject to be heard and determined by the Consul in conjunction with the proper Siamese officers. Not unlike the British, the American constitution did not authorize the exercise of judicial power by United States agencies outside the United States until much later. The Treaty was thus illegitimate and unconstitutional even in the eyes of the United States, let alone unequal and therefore illegal and

Hanseatic Republics in 1858,<sup>92]</sup> Portugal<sup>93]</sup> and the Netherlands<sup>94]</sup> in 1859 and 1860 respectively. Belgium,<sup>95]</sup> Italy,<sup>96]</sup> Sweden,<sup>97]</sup>

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void under modern international law.

<sup>90]</sup> Treaty Series, Vol I, 1617-1869, pp. 69-92. *Traité d'Amitié de Commerce et de Navigation conclu à Bangkok le 15 Août 1856 entre le Siam et la France.* See especially Article VII.

<sup>91]</sup> *Ibid.*, at pp. 93-104, Treaty of Friendship, Commerce and Navigation between Siam and Denmark, sign at Bangkok on May 31, 1858, ratifications exchanged at Bangkok on September 15, 1859. See especially Articles II, VII and X.

<sup>92]</sup> *Ibid.*, at pp. 105-117, Treaty of Friendship, Commerce and Navigation between the Kingdom of Siam and the Hanseatic Republics, signed at Bangkok on October 5, 1858. See especially Articles II, VII and X.

<sup>93]</sup> *Ibid.*, at pp. 119-131, Treaty of Friendship, Commerce and Navigation between Siam and the Kingdom of Portugal, signed at Bangkok on February 10, 1859. See especially Articles II, III, XVIII and XIX.

<sup>94]</sup> *Ibid.*, pp. 133-146, Treaty of Friendship, Commerce and Navigation between Siam and the Netherlands, signed at Bangkok on December 17, 1860, ratified at Bangkok on March 24, 1862. See especially Articles II, VII, IX and X.

<sup>95]</sup> *Ibid.*, pp. 205-216, Treaty of Friendship and Commerce between Belgium and Siam, signed at London on August 29, 1868, especially Articles II, VII and X. It is noteworthy that the Treaty was signed on behalf of Siam by former British Ambassador to the Siamese Court, Sir John Bowring, who initiated this series of Treaties beginning with the United Kingdom.

<sup>96]</sup> *Ibid.*, pp. 217-228, Treaty of Friendship, Commerce and Navigation between Siam and Italy, signed in London on October 3, 1868, ratified at Bangkok on January 1, 1871, especially Articles VI, IX, X and XXV, and Explanatory Declaration of December 10, 1868 on the allocation of jurisdiction. Like the Treaty with Belgium, the Treaty with Italy was also signed in London by Sir John Bowring, later to be knighted as Phra Sayamanukoolkij.

<sup>97]</sup> *Ibid.*, pp. 191-204, Treaty of Friendship, Commerce and Navigation between Siam and Sweden and Norway, signed at London on May 18, 1868, ratified at London on November 9, 1869. See especially Articles II, VII and X.

and Norway<sup>98]</sup> also concluded similar Treaties with Siam in 1868, followed by Austro-Hungary<sup>99]</sup> and Spain<sup>100]</sup> in 1869 and 1870.

At this stage, the entire western world consisted exclusively of these countries, Japan being as yet preoccupied with its own Asian internal affairs before it eventually crossed the dividing ideological line between Asia and Europe. It was not until 1898 that Japan managed finally to transform itself into a military power on the European model,<sup>101]</sup> enjoying the benefits of the régime of extraterritoriality established by the Treaty of that year at the expense of its Asian neighbors. It was from the year 1855 onwards that began the series of unequal Treaties which Thailand was obliged to conclude with the European nations and the United States of America, not to mention also Japan.<sup>102]</sup>

b. 1898 - 1918 :

International law seemed to have authorized not only the

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<sup>98]</sup> *Ibid.*, pp. 191-204, the same Treaty as in Note 97 above, also signed in London by Sir John Bowring.

<sup>99]</sup> *Ibid.*, p. 235, Treaty of Commerce between Siam and Austro-Hungary, signed at Bangkok on May 17, 1869, ratified on April 30, 1872, with similar provision.

<sup>100]</sup> Treaty Series, Vol II, 1870-1919, pp. 13-26, Treaty of Friendship, Commerce and Navigation between Siam and Spain, signed at Bangkok on February 23, 1870, ratified at Bangkok on March 23, 1872, especially Articles III, VII and X.

<sup>101]</sup> *Ibid.*, pp. 155-162, Treaty of Friendship, Commerce and Navigation between Siam and Japan, signed at Bangkok on February 25, 1898 (with Protocol), ratified at Bangkok on May 31, 1898, especially Article II establishing consular relation, and the Protocol consenting to Japanese consular officers exercising jurisdiction over Japanese subjects in Siam, "until the judicial reforms of Siam shall have been completed, that is until a criminal code, a code of criminal procedure, a civil code, a code of civil procedure and a law of constitution of the courts of justice will come into force".

<sup>102]</sup> See Notes 89 and 101 above.

creation of a status of inequality, but also approved the use of force or the deployment of armed forces, in an act of direct aggression against territories not occupied by a Western Power to culminate in annexation and eventual colonization in the name and on behalf of European civilization or for the glory of the Christian God.<sup>103]</sup>

For the Kingdom of Thailand, the practice of extraterritoriality implemented since 1855 became more and more severe and as a result more and more intolerable.<sup>104]</sup> The economic consequences of the fixing of customs duties for importation of merchandises from western countries at two or three per cent ad valorem duties, appeared to have entailed the consequence of constraining the growth and progressive economic and fiscal development of Thailand.<sup>105]</sup> The European never ceased to complain of their own utter ignorance of the applicable civil and penal law of Thailand, to such an extent that the Thai Government had to adopt a new civil and commercial code as well as a new penal code and code of criminal procedure and a judicature act for the administration of justice and the organization of the Law Courts of Thailand.<sup>106]</sup>

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<sup>103]</sup> International law in the nineteenth century was still very primitive in that it condoned the use of force by western or Christian nations against Asian, African and even Latin American and Caribbean States. Several decades had to elapse before the law evolved into a more humane, more internationalized and more universalized body of international norms.

<sup>104]</sup> The unequal nature of the series of Treaties concluded by Siam with the Western Powers became more odious and needed to be abolished.

<sup>105]</sup> The economic aspects of unequal treaties reflected in the imposition of restrictions on fiscal policies and tariff had rendered the treaties obsolete and unfair hindrance on Siam's national economic development.

<sup>106]</sup> Even the Japanese echoed the European sentiments once Japan crossed the line by adopting as its civil code the nearly final draft of the German civil code.



Under these pretexts, Great Britain and France proclaimed a Declaration of London (1898),<sup>107]</sup> not dissimilar in motivation from the Congress of Berlin in 1885,<sup>108]</sup> partitioning between the two European Powers, the zones of influence over the territories forming integral part of metropolitan Thailand as well as other portions of adjacent territories under the suzerainty of Siam.<sup>109]</sup>

Another set of new Treaties of Friendship, Commerce and Navigation contained provisions under which Thailand renounced her suzerainty over certain territories and ceded portions of Siamese territories to Great Britain<sup>110]</sup> and France.<sup>111]</sup> Judicial independence and autonomy of the Siamese authorities were thus curtailed by the establishment of a régime of consular courts and mixed tribunals or magistrates to settle the disputes involving

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<sup>107]</sup> To counter balance the London Declaration between France and the United Kingdom, Siam and Russia proclaimed a Bangkok Declaration on June 23, 1899.

<sup>108]</sup> The Congress of Berlin 1885 was a license for the Western Powers to seize whatever territories in Africa that could be taken without going to war with each other. It was a general authorization to take what was known as the "GRAB for AFRICA".

<sup>109]</sup> France was to have undisturbed influence over territories left of the left bank of the Chao Phraya River, while Great Britain was to enjoy quiet influence over territories right of the right bank of the same river. Thus France proceeded to grab more territories from Siam to add to Laos and Cambodia under French Protectorates, while the British not only took Burma but also territories on the western and southern regions of Siam.

<sup>110]</sup> See, e.g., the Treaty between Siam and Great Britain, concerning the transfer of the States of Kelantan, Trengganu, Kedah, Perlis and adjacent islands, signed at Bangkok on March 10, 1909, Treaty Series, Vol. II, 1870-1919, pp. 217-220.

<sup>111]</sup> See *Ibid.*, pp. 185-192, *Convention entre la France et le Siam Modifiant les Stipulations du Traité du 3 octobre 1893, le 12 février 1904*; and pp. 201-206, *Traité entre sa Majesté le Roi de Siam et Monsieur le Président de la République Française, fait à Bangkok, le 23 mars 1907*.

the interest of a national or even subject of a signatory State of a bilateral Treaty with Thailand, in spite of the Asian ethnic origin of that particular foreign national.<sup>112]</sup> Furthermore, the fiscal independence of the Kingdom would seem to have been restrained by the scheduling of a fixed tariff rate for import of merchandises taxable under Thai laws.<sup>113]</sup>

On the other hand, the Declaration of 1899 between Imperial Russia and the Royal Kingdom of Thailand, between Tzar Nicholas II and King Rama V appear to have provided a much needed counter-weight to restore the required equilibrium of power.<sup>114]</sup> At least, the alliance with Russia meant for Thailand an invitation to attend the first Hague Peace Conference in 1899, as well as the second Conference in 1907, the test of civilization adopted by the Dutch Government at the time being the existence of diplomatic relations and exchange of embassies with Imperial Russia.<sup>115]</sup>

In other words, the western world could no longer ignore the existence of Thailand as one of the few Asian nations recognized worldwide as forming part of the global community, along with China, Japan and Persia, whatever the degree of unequal status or partial inapplicability of international law at the turn of the

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<sup>112]</sup> *Ibid.*, pp. 205-208, *Protocole concernant la juridiction applicable dans le Royaume de Siam aux asiatiques sujets et protégés français et annexé au Traité du 23 mars 1907*, and pp. 2321-232, *Procès verbal*, signed by Great Britain and Siam for the establishment of an international court at Lakorn Lampang, signed at Bangkok on August 25, 1910.

<sup>113]</sup> *Ibid.*, pp. 25-26, *Tariff of Import, Export and Inland Duties which are to be levied on Articles of Commerce*. Article I, The Duty on Merchandise imported into the Kingdom of Siam in Spanish vessels shall not exceed 3 per cent on its value, and shall be paid in kind or in money, at the option of the importer.

<sup>114]</sup> See Note 107 above, the Bangkok Declaration of 1899 between Siam and Russia.

<sup>115]</sup> Siam was invited and attended the First and Second Hague Peace Conferences in 1899 and 1907 as a mark of recognition of its status as a "civilized nation".

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twentieth century.<sup>116]</sup>

c. 1919 - 1931 :

The Treaty of Versailles of 1919 marked the beginning of a new struggle for Thailand to regain its judicial independence and fiscal autonomy.<sup>117]</sup> In the first place, the European Powers defeated in the first Great War could not very well insist on the continued enjoyment of the privilege of extraterritoriality over Thailand.<sup>118]</sup> The Siamese Kingdom emerged as a victorious power of World War I, having dispatched two expeditionary forces to Europe to liberate France from Germany.<sup>119]</sup>

Among the triumphant allies of Thailand, the United States of America and Japan were the first to agree to renounce the privilege of extraterritoriality over the Siamese territories in a series of Treaties from 16 December 1920 with the United States<sup>120]</sup> and 10 March 1921 with Japan.<sup>121]</sup> The other Western Powers, one

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<sup>116]</sup> How soon and by what yardsticks Siam has had to transform itself before fuller admission into the family of nations with its proper and rightful place remains to be seen with the advent of global conflicts.

<sup>117]</sup> The race to regain judicial independence and fiscal autonomy or self-determination was on once Thailand entered World War I soon after the United States joined the allies.

<sup>118]</sup> As a victorious signatory of the Treaty of Versailles in 1919, Germany and Austro-Hungary renounced extraterritorial rights over Siam, thus denouncing existing treaty obligations undertaken by Siam under Treaties concluded in the nineteenth century. Siam was the founding member of the League of Nations.

<sup>119]</sup> See Rong Syamananda, cited in Note 34 above, pp. 151-155.

<sup>120]</sup> Treaty Series, Vol. III, 1920-1926, pp. 1-7; and also pp. 8-9, Treaty between Siam and the United States of America, signed at Washington on December 16, 1920 and ratified at Bangkok on September 1, 1921, especially Article XVI, substituting the unequal treaty provisions of the earlier treaties of 1856 and 1884.

<sup>121]</sup> Ibid., at pp. 41-48, Treaty of Friendship, Commerce and

after another, had to abandon the unequal privileges on condition and as soon as Thailand could produce evidence of its adoption of the Law Codes, systematically enacted and intelligible to the occidental world.<sup>122]</sup>

Thus, it was with such great pains and sacrifices that Thailand was able ultimately to recover its reciprocal independence, judicial as well as fiscal vis-à-vis the States of the Western World and as such was admitted with full natural birth right as a proud member of the League of Nations.<sup>123]</sup>

d. 1932 - Present :

The Kingdom of Thailand enacted its first constitution in 1932,<sup>124]</sup> marking an important step in the fundamental change of its form of government from Absolute to Constitutional Monarchy. Up to the present time, some sixteen constitutions or fundamental or basic laws have been adopted, revised and amended, so as to improve the machineries and mechanisms for the administration and governance of the Kingdom.<sup>125]</sup>

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Navigation between Siam and Japan, signed at Bangkok on March 10, 1924.

<sup>122]</sup> See the Treaty Series, Vols. III and IV.

<sup>123]</sup> Siam, as a founding member of the League of Nations had made valuable and material contribution to its mission.

<sup>124]</sup> See the Constitution of the Kingdom of THAILAND, Provisional Constitution, Government Gazette No. 49, of June 17, B.E. 2475 (1932) and the Constitution, Government Gazette No. 529, of December 10, B.E. 2475 (1932).

<sup>125]</sup> See Sompong Sucharitkul, *Constitution of the Countries of the World : Kingdom of Thailand*, Oceana Publisher, N.Y., Release 93-7, November 1993, Release 96-2, March 1996. and Release 98-2, March 1998.

#### IV. CURRENT STATE OF INTERNATIONAL LAW : UNIVERSAL APPLICATION OF THE LAW OF NATIONS

The principle of universality of international law has not seen any light of day until well after the end of World War II in 1945.<sup>126]</sup> The establishment of the United Nations Organization represents a first step towards the acceptance of the principle of universality and uniformity of the law of nations.<sup>127]</sup> The application of the principle of universality coincided with the admission of newly independent States as members of the United Nations, or the World Organization. This acceptance was necessitated in some measure by Resolution 1514 of the General Assembly of the United Nations in 1960.<sup>128]</sup>

The introduction of the notion of *Jus Cogens* and *Jus Cogens Superveniens* by the Vienna Convention on the Law of Treaties in 1969<sup>129]</sup> and the provisions contained therein concerning invalidity of Treaties imposed upon States under duress or threat or compelled by force of arms served to attenuate appreciably the apprehension entertained by many that the continued subsistence or persistence of unequal treaties at the expense of Asian nations like China and Thailand would at this time an age be the cause of

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<sup>126]</sup> The advent of the United Nations in 1945 paved the way to the gradual acceptance of the principle of universality in the practice of States as well as for international organizations.

<sup>127]</sup> General Assembly Resolution 1514, 15 GAOR Supp. 16, UN Doc. a/4684 (1960) clearly ignited the irreversible process of decolonization and forced open the flood gate of newly emerged nations of the world.

<sup>128]</sup> The Resolution solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations.

<sup>129]</sup> The adoption of the principle of *jus cogens* necessarily eliminates the possibility of revival of unequal treaties in any form or guise.

friction and tension between Asia and the western world.<sup>130]</sup>

Once terminated or denounced, such an unequal treaty could have no place within the ambit of the current Vienna Convention on the Law of Treaties which as a constitutive element of international law must have a general and universal application with neither exception nor discrimination in favor of former imperialist powers of bygone era and at the expense of two of the oldest sovereign nations of the world, China and Thailand.<sup>131]</sup>

No State, no one, can any longer be heard to deny the application of international law to any State, country, people or even non-self-governing territory, whatever its size or status and wherever its geographical location or position on this earth.<sup>132]</sup> International humanitarian law of today must apply to protect every human being, each HOMO SAPIENS, however corrupt, dishonest, piratical or totally deprived of any juridical personality, or any of the civil rights.<sup>133]</sup> Even the enemies of mankind, the HOTES GENERIS HUMANI would have to be treated with respect and decency due to each human kind with the complete recognition of the fullest dignity of man.<sup>134]</sup>

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<sup>130]</sup> The transfer of authority over Hong Kong provided a clear and convincing evidence of an application of the principle of jus cogens superveniens.

<sup>131]</sup> Some judicial decisions of international instances still preserved the anachronisms of the old colonial days when might was still right. New and enlightened tribunals should free themselves of the lingering shackles of colonial vestiges.

<sup>132]</sup> Universal application of international law would help alleviate the injustices suffered by a great majority of peoples and nations alike.

<sup>133]</sup> Human rights are still very much misconceived and misunderstood in the world today. Like charity, human rights must begin at home and not across the border or overseas yonder.

<sup>134]</sup> Torture and cruel treatment of a fellow human being is a crime against humanity and may be punished universally by any competent tribunal, national, regional or international, ad

Thus, it has taken more than three centuries for international law to attain its current status of maturity as a universal law, the law of nations thus universalized, internationalized and humanized. Sight should never be lost of the decisive role played by Asian States in their constructive and tireless contribution to the ever progressive development of the law of nations.<sup>135]</sup>

## V. CONCLUSION

Given the progressive evolution of international law through the history of the nations of the world since the fifteenth century until present days, we now share an understanding of what was meant by our dear and respected confrère, Mohammed BEDJAOUI, son of Africa, brother of Asia, co-combattant for international justice for all, in his reference to *"the relations between Asia and Europe"* as having *"then been systematized in a kind of international law in a minor and marginal manner."*<sup>136</sup>

It is thus under these perspectives that Asian States, such as Thailand, have had to view the evolution of international law through the passage of at least five centuries of relations often perturbed between Europe and Asia. It is through this optic which is uniquely Asian that we could perceive with greater clarity and certitude this kind of international law put into play in this region of the world in a minor and marginal manner which has just been assimilated and integrated in the entirety of the wholesome global community.

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hoc or institutionalized.

<sup>135]</sup> Asian nations have displayed extreme patience in their effort to contribute to the progressive development of principles of international law for the benefit of mankind as a whole.

<sup>136]</sup> Bedjaoui's comment has its purpose and should be read in the light of the foregoing background report.



This should remind us of the not too distant past, when this part of the world was about to endure the passage of the international order of misery or better still to overcome the misery of the international order of the time which lasted almost one hundred years for Thailand from 1855. We who have survived the tragedy brought about by international law of yesteryear must take every possible precaution to see to it that in the foreseeable future we should not ever again permit the repetition of such catastrophe in Asia or anywhere else to ensure our survival without the necessity of having to endure the sufferings in our struggle to achieve a new international order, which is bearable and tolerable for everyone in Asia, Africa, Latin America, the Caribbean or any other region of the world.

***Sompong SUCHARITKUL***

San Francisco, May 20, 1999