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Thai Nationality in International Perspective

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Nationality and International Law in Asian Perspective

THAILAND

By Dr. Sompong Sucharitkul

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in Asian Perspective

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Part One

Constitutional and international factors with relevance for the law on nationality of THAILAND

Although the existence of a State is conditioned, among other things, upon a permanent population, the concept of nationality in contemporary international law is a product of recent developments in international relations. Nationality did not occupy a prominent place in primitive international law either as applied in Asia or elsewhere, and accordingly, in Thai legislation, for example, the regulation of nationality is of comparatively recent growth.

With the exception of Thailand ¹⁾ and a handful of other States, the Asian nations are newly independent States with new nationalities. Each of them followed a different historical path in its legal developments, undergoing changes as necessary consequences of the process of colonization and decolonization. The notion of nationality was often merged with that of "subject", "ressortissant", or indeed different levels of "citizenship".

Contemporary problems of nationality in most Asian nations have been further complicated by other factors which have taken deeper root in Asian communities than the modern concept of nationality and which relate to the cultural heritage of a pluralistic society. This cultural heritage constitutes the very basis of the national surroundings of the Asian peoples. Thus from a diversity of cultural backgrounds a sense of unity of purpose and uniformity or generality of outlook emerge, and heterogeneous elements are driven by different forces into one homogeneous composite whole.

While nationality is a more recent product of artificial confection, it may have since become an indispensable qualification for every member of an organized society. To be without one means to be stateless, and accordingly to be without a foothold in terra firma. To be endowed with dual or multiple nationality could be a blessing or an unnecessary burden, depending on the area of interest in which the natural person concerned may find himself or herself. In Asian perspective too nationality is an indication, a signpost, by which to attribute rights and obligations to individuals under contemporary international law. For the same purpose there are, however, other yardsticks, equally valid and even more pertinent

by Asian standards and from an Asian standpoint. Thus, persons may be classified according to their religion (Hindus, Muslims, Buddhists, Christians and others), or according to their race or ethnic grouping such as Malays, Thais, Chinese, Indians, Arabs, Mongolians and others, or in terms of linguistic and cultural traditions such as Chinese, Sanskrit, Arabic and others. While nationality has served to unite different peoples and to bring ethnic minorities under the same flag or to assign the same legal status to several races or tribes, it has equally served to separate peoples of the same ethnic denomination or the same creed or cultural background and up-bringing. All this has been achieved with or without the contribution of the law of nations, classical and modern.

A country study on Thailand regarding the law of nationality is interestingly unique. For one thing, Thailand was the first and for a long time the only sovereign State in Asia ever to enter into direct contact and to maintain official diplomatic relations with European States, such as Portugal, the Netherlands and France, already quite early in the seventeenth century ²). Official relations were also established with the Holy See before the close of that century. The first Treaties of Friendship, Commerce and Navigation (FCN) between European and Asian States were thus concluded by Thailand on the footing of sovereign equality, followed by exchanges of diplomatic missions. Some concept of nationality was already functioning at that time, enabling Thailand and the European States concerned to grant favourable treatment to each other's subjects. For Thailand, Portugal, the Netherlands and France, the expression "subject" was the current term to signify "national". In later treaties of the nineteenth century, when Western nations, including the United Kingdom and later also the United States, began to expand their colonial possessions in Asia and the Pacific the expression "subjects" and "ressortissants" on the side of these States acquired an extended dimension, additionally covering their Asiatic populations. Accordingly the (colonial) subjects of the European Powers were entitled to the privilege of extra-territoriality in independent Asian States. Not only were they exempted from the judicial jurisdiction of the sovereign nations of Asia like Thailand, China and Japan, but they were in effect also considered to be outside the scope of the otherwise applicable territorial law. Despite these unequal relationships the three States attended the Hague Peace

Conferences in 1899 and 1907. Among them, Japan crossed the line that separated Asian from Western civilizations by winning a war with China and with Russia. The Japanese, having shown themselves to be at least equals with the West in "scientific butchery", were at once admitted to Western Council tables as "civilized men". 3)

The above shows that international events have contributed to progressive developments in the laws and constitutions of old Asian nations like Thailand.

An examination of earlier constitutional documents of the Thai Kingdom reveals the apparent recognition of a notion of nationality in its rudimentary form, inherently tied to the concept of "folk" or "people" of Thailand, or "Land of the Free" as the Kingdom has come to be known from time immemorial. In the Sukhothai period 4), King Ramkamhaeng the Great had stone-slabs inscribed 5) in the oldest known Siamese writing in 1293 A.D., recording the practice and usage of the government of the Kingdom of upholding the right of everyone to be free, and of censuring respect for such freedoms as are today recognized as fundamental or basic human rights, viz., freedom of movement, of thought, of religion or conscience, and the free flow of commerce. There is also ample evidence of the generous treatment of visitors and the personal care with which justice was administered without discrimination as to race or sex.

The liberality of Sukhothai hospitality was handed down to the Ayudhya era. During the reign of King Narai the Great in the seventeenth century, when the Siamese Kingdom opened its door to Western diplomatic and Christian missions, Thailand had a Greek chief adviser to the King, the equivalent of a modern day prime-minister. 6) Ayudhya also saw Portuguese militia and Japanese samurais serving for the defense of the Siamese Realm. This spirit of tolerance and non-discrimination passed on to the Bangkok era, which began over two centuries ago. The close of the nineteenth century witnessed another important contact with the West, when Thailand had a Belgian national, Gustave Rolin-Jaacquemyns, as prime-minister or Chief Privy Councillor, with a number of Belgian and American technocrats who rendered their services as part of the administration of the Thai Government.

The generosity of the Thai Kingdom was also reflected in the "assimilation policy" which was conceived for and applied to the Chinese 7) with benevolent effect since the middle of the nineteenth century. As a consequence of this policy, the great majority of the overseas Chinese who had emigrated to Thailand and who had settled in the Kingdom at the time were integrated to and assimilated with the indigenous Thais, and were treated as Thais, the only exception being Chinese foreigners who came for a casual visit and left without any intention of settling down. As part of the assimilation process, existing Chinese schools were allowed to continue, while Chinese newspapers also flourished, but schools teaching in Chinese were not encouraged to expand, thus facilitating wholesale integration of second and later-generation Chinese into existing Siamese society with all its traditions and splendour. Popular tolerance and approval of mixed marriages also accounted for an accelerated rate of assimilation, promoted as it was by the cultural affinities of the two civilizations. 8) On the other hand, aliens of Indian origin have been assimilated to a lesser extent as they tended to stick to their clans and family ties, and owing to vastly differing ethnic and cultural backgrounds.

Part Two

The impact of other factors on the contents of the Thai law on nationality

Against the backdrop of an agricultural boom, Thailand, commonly known as the Rice-bowl of Asia, has attracted a continuous influx of immigrants from neighbouring and more distant Asian countries, thereby enriching the variety of ethnic and cultural elements of Thailand's population. Besides there are the nomadic hill tribes who roam freely through adjoining parts of Northern Thailand, Burma, Laos, South China, Nepal, Assam and Tibet. 9)

The policy of assimilation referred to earlier, which had served as a successful tool for the integration of the Chinese minority into the Thai community, encountered a sharp twist following circumstantial changes occurring elsewhere. The rise in Europe of the Nazi Third Reich and of Mussolini's Fascism, which found their counterpart in Japanese militarism, together took the toll of world population by half a hundred million of

servicemen and innocent civilian people combined. These "isms" were based on a perverted notion of nationalism. In Thailand, meanwhile, the late thirties and the fourties saw a change in Siamese patriotism towards a blend of nationalism that led Thailand to war with France, and after Pearl Harbour to join the ranks of supporters of the Japanese forces. ¹⁰⁾ Japan occupied most of Southeast Asia, with the exception of Thailand that was used by the Japanese as a rest and recreation area and as a source of supplies for their logistic support. However, a resistance movement, initiated by Thai students in England and the United States and supported by the Regent in the Privy Council, infiltrated back into Thailand from China and India, and, together with Thai students at home, developed activities which managed to save Thailand from the scourge of post-war exaction of reparations. ¹¹⁾ Besides, the Thai peasants who risked their lives helping and feeding Dutch, British and Australian prisoners of war in Japanese labour camps in Kanchanaburi have contributed to the recognition of Thailand's popular participation on the side of the Allies in the Pacific War. Subsequently, the Allied forces were even invited to enter Thailand for the purpose of accepting the surrender of Japanese troops in the Kingdom.

With the injection of war-time nationalism ¹²⁾ it was unavoidable that the Thai law on nationality was to undergo some drastic modifications in real terms. ¹³⁾ The post-war period was heralded in by a display of jubilant sentiment by youngsters of Chinese descent in the Chinatown of Bangkok, indicative of their satisfaction for being on the rising tide of China as a real Power on the side of the Allies and the increasing influence of new China in world affairs and in Southeast Asia. ¹⁴⁾ This display of uncontrolled joy was looked upon as disclosing a lack of allegiance or loyalty to the Kingdom and was at the same time a display of arrogance. The so-called Lia-Pah incident was fortunately quickly put under control ¹⁵⁾ and order was restored in record time. Like the mighty Chao Phraya River, the generous and liberal nationality law of Thailand has thus taken many turns, changing with the winds and storms and the undercurrents of international pressures and national aspirations.

Buddhism, which is the predominant religion in Thailand, has been an important contributing factor to the general attitude of tolerance in this country. Although Thailand is a unitary State and not a federation, a

system of internal conflict rules has evolved to the effect that under the legal system of the Kingdom Islamic law is administered to the Muslim population in some Southern provinces of Thailand in practically all cases concerning family relations and succession. The lex patriae is thus supplemented by a limited system of conflict rules, so that Thai nationals may choose to follow the Muslim law of succession, marriage and divorce and family relations instead of the civil and commercial codes of Thailand. The practice of other religions is allowed freely without the necessity of creating a special regime of family law.

The apparent spirit of tolerance is undoubtedly relevant for the development of the law relating to non-discrimination in general and to nationality in particular in a multi-cultural society.

Nationality may also change as a consequence of the transfer of portions of territory. Such transfer of sovereignty or recognition of foreign sovereignty occurred several times in the nineteenth and present century, and there have also been cases of retrocession and re-cession in areas bordering present-day Thailand. Thus as a result Thais have become Indochinese, especially Laotians who speak the same language, or Kampuchians, Burmese or Malays. Consequently the legal notion of Thai nationality should be distinguished from Thai race or origin: there are ethnic Thais today in the Burmese Shan State, in all of Laos, in Yunan (China), in West Kampuchea, in Vietnam ('Black Thais') and in the Northern States of Malaysia.

Part Three

The law on nationality of Thailand in historical perspective

As has been said earlier already, nationality legislation is a matter of relatively recent development. Early Thai usage was to treat the entire populace as Thais (or 'Thai nationals' or 'Siamese subjects') without distinction as to race or religion, and only casual visitors were not treated as such.

The laws and customs of war in Southeast Asia in the Sukhothai (1238 - 1350 A.D.) and Ayudhya (1350 - 1767 A.D.) periods appear to allow for the victorious party to take home the inhabitants of the towns or provinces that were captured in the campaign. These people of a foreign land would originally serve as hostages and would later be integrated in Siamse society. The reverse was also true when Hantawadi Kings ¹⁶⁾ took Ayudhya, ¹⁷⁾ captured the Siamese Crown Prince and raised him as an adopted child and hostage. ¹⁸⁾ Thus the concept of nationality under traditional Asian practice was not absolute but susceptible of changes and modifications, often depending on the outcome of a war or battle.

It is not surprising that at one time or another it has been the practice to look beyond the artificial veil of nationality to discover the blood ties, or parentage, or origin, of a national. Thus, in some sensitive areas, for security reasons, Thais of alien origin or parentage would not be encouraged to enter certain institutions of education, such as the military, navy or air force academies. On the other hand efforts have been made to unify the components of the Thai population through a single educational system. This entailed the adoption of a nationwide uniform system based on Thai literature. Consequently Chinese schools would not expand beyond a tolerable extent, and the Pawnoh Muslim schools were modernized. ¹⁹⁾

As the Chinese ethnic minority grew strong in numbers, in academic standards, and in financial control of the economy of the country, those who had not been assimilated began to suffer from restrictions with regard to certain occupations. This was the result of an upsurge of Thai nationalism in the twentieth century which was reinforced by the hard facts of economic recession in the thirties. The restrictions consisted in reserving, at one time or another, certain occupations for people of ethnic Thai origin. These occupations were, however, mostly of a menial nature and relatively insignificant economically. They included artisanship or handicraft typical of traditional Thai arts, and the policy was more meaningful for the preservation and promotion of the unique character of the Thai cultural heritage, Thai arts and Thai traditions than anything else. It has helped to maintain the distinctive features and characteristics of the Thais while continuing the implementation of the

policy of assimilation which had yielded considerable success with the Thai population of Chinese descent. Some restrictions still persist today in certain sectors of handicraft and art, such as temple crafts and gold and silver handicraft which have been handed down from generation to generation among the local Thais of various regions. For the rest, however, nationality is exclusively determinative for purposes of eligibility to certain reserved professions or occupations, inter alia, under several bilateral treaties in force in Thailand. Otherwise, no distinction is made between nationals and aliens, and there is certainly no discrimination among nationals of different origin.

The above trend has now been arrested and encountered by an opposite trend in favour of special friendliness and goodneighbourliness towards Thailand's closest neighbours, such as Laos, Burma, Kampuchea and Malaysia. This has been even furthered by the upsurge of regional cooperation, as manifested in the creation of the Mekhong Committee to coordinate development plans in the Lower Mekhong Basin, grouping Thailand together with the former French Indochina States Laos, Kampuchea and Vietnam, and in ASEAN comprising Thailand, Malaysia, Singapore, Indonesia, the Philippines and Brunei. The dividing lines drawn by nationality have consequently been blurred by the desire to achieve common objectives and in promoting regional resilience and solidarity. Internationalism, or regionalism at any rate, has overtaken earlier traditions of nationalism. Nationality has not lost its significance in Thai perspective but it has been in some measure overshadowed by increasing common regional interests.

The armed conflicts in Indochina which have continued for nearly half a century, and the internal unrest in Burma have made Thailand an inevitable country of first refuge for many displaced persons. The conflict in Vietnam led to many members of American, British, Australian and New Zealand forces frequently visiting Thailand, and in the sixties and early seventies the so-called rest and recreation visits by US military personnel accounted for an increase in mixed unions whose offspring had to be provided a nationality. These are the facts and elements which accounted for the modifications successively brought about in the Thai nationality legislation. The law merely responded to the necessities of the social, economic and political life, not only of the State but also of the persons who had taken residence or refuge in the "Land of Smile".

Part Four

The legal sources

4.1 National legislation

Thailand has resorted to several types of law-making devices in the field of nationality and related matters. Older Siam knew of royal decrees or prescripts regulating the census for men in the service of the Realm, which was quite useful in times of national crisis, especially when the Kingdom was threatened by invasion from external sources. There was originally no clear-cut division between nationals and resident aliens as the principle of non-discrimination and subsequently the policy of assimilation led to accord national treatment to every person residing in the Kingdom. That is the unique gist of the Stone Inscriptions of 1293 ²⁰⁾, which was a true bill of rights for man and not merely for citizens or nationals. This practice had to be modified owing to the insistence by Western Powers that their Asian subjects ²¹⁾ remain outside the scope of the Siamese laws and accordingly also beyond the reach of Thai territorial jurisdiction. ²²⁾ Thus by the close of the nineteenth and the beginning of the twentieth century it became more advantageous to be an alien in the Kingdom under a special regime of extra-territoriality than having citizenship of Thailand. In 1932, however, Thailand under a constitutional monarchy proclaimed the principle of sovereignty of the people of Thailand, and the law on nationality has since become a political instrument to ensure the smooth functioning of the democratic process. By that time the anachronisms of by-gone colonialism had meanwhile disappeared as a result of Thailand's participation in World War I by sending two expeditionary forces to Europe, and its becoming signatory of the Treaty of Versailles.

Modern Thailand has known several types of legislation, including royal decrees, acts of parliament, ministerial regulations or decrees, and, in emergency situations, declarations or orders of revolutionary councils, all having the force of law in the Kingdom.

A series of acts concerning nationality deserve mention. The first modern law prior to 1932 was the Nationality Act B.E. 2456 (A.D. 1913), ²³⁾ enacted during the reign of King Rama VI. It laid the foundations for

acquisition of Thai nationality at birth on the basis of the principle of jus sanguinis: the child of a Thai father wherever born (Sec. 3, item 1), or indeed of a Thai mother and an unknown father (Sec. 3, item 2), was a Thai. A second principle, viz., that of jus soli, was simultaneously applicable: anyone born within the Kingdom was a Thai (Sec.3, item 3). The law in its original form also recognized the acquisition by an alien woman of Thai nationality by marriage to a Thai husband (Sec.3, item 4), although a Thai woman marrying a foreign national could only effectively renounce Thai nationality if a foreign nationality was acquired by her upon marriage (Sec.4). ²⁴⁾ Naturalization was another method of acquiring Thai nationality (Sec.3, item 5, and Sec.6, et seq.). Renunciation of Thai nationality was not in order unless approved by the Government (Sec.5). The Act put the law on Thai nationality on a rational basis comparable to nationality laws in Europe. It was the earliest in the series of Nationality Acts. Yet in the same year 1913, another Act ²⁵⁾ was passed which for the first time established and promoted the registry and use of family names ²⁶⁾, while a still earlier Royal Decree of 1912 regulated the naturalization of aliens to become Thai nationals. ²⁷⁾ Under this Decree spouses of naturalized Thai nationals were also to be conferred Thai nationality.

The Nationality Act of 1913 was followed in practice for over forty years, during which two world wars were fought and considerable waters appeared to have passed under the bridge so that it deserved a review and a revision. A post-war series of Nationality Acts began with the Act of B.E. 2495 (A.D. 1952) ²⁸⁾ referred to as Act No.I. It was followed by Act No.II, B.E.2496 (A.D. 1953) ²⁹⁾; Act No. III, B.E. 2499 (2500) (A.D.1957) ³⁰⁾; and Act No.IV, B.E. 2503 (A.D. 1960). ³¹⁾ This series of Nationality Acts successively reinforced and broadened the applicability of the jus sanguinis principle. The Act No.1 provided that a child born outside the Kingdom of a Thai mother without a legitimate father or with a stateless father was to acquire Thai nationality by birth (Sec.7, item 2). Besides it provided for acquisition of Thai nationality by mere birth within the Kingdom (Sec.7, item 3). It further laid down requirements regarding naturalization (Sec.9 et seq.) and recovery of Thai nationality (Sec.20).

Act No.II in effect gave added priority to the principle of jus sanguinis by modifying the original section 7 item 3 and introducing birth of a Thai mother as a requirement for acquisition of Thai nationality upon birth in Thailand. Jus soli was thus left less significance, since children born in Thailand without Thai parentage would no more acquire Thai nationality at birth. The requirement of birth of a Thai mother was, however, abolished again by section 3 of Act No.III, and the latter even extended Thai nationality retroactively to children born in Thailand in the period 1953-1956 (covered by Act No.II) regardless of the nationality of the mother. The law thus reverted to the original, more or less equal, position of the principles of jus soli and that of jus sanguinis, though maintaining some preference for parental links. It further regulated in greater detail the loss and restoration of Thai nationality in various circumstances, including after naturalization or denunciation or marriage. Finally, by its retroactive effect Act No.III affected the status of persons acquired by the operation of Act No.II. Act No.IV did not alter the rules regarding acquisition of Thai nationality at birth, but gave wider discretion to the Minister of the Interior in matters of acquisition of nationality by naturalization, marriage ³²⁾, restoration, and withdrawal of Thai nationality ³³⁾. Further implementing regulations were prescribed by Ministerial Decrees Nos. 1, 2, 3 and 4, to give effect to the Nationality Acts No.I and No.II concerning the procedures and fees for setting out naturalization, denunciation and restoration of nationality ³⁴⁾.

The Nationality Act currently in force is the Act of B.E. 2508 (A.D. 1965), ³⁵⁾ which was designed to respond to the needs of contemporary Thailand. The principle of jus sanguinis through paternal descent remained intact (Sec.7, item 1), as does the rule on acquisition through the maternal line when birth takes place outside the Kingdom and the legitimate father is not known or is a stateless person (Sec.7, item 2). ³⁶⁾ The principle of jus soli is equally applicable (Sec.7, item 3). The right to Thai nationality by birth is recognized with every person born in Thailand, although subject to international law exemptions in favour of children of diplomats and consular officers. The provisions of the relevant conventions of 1961 and 1963 were in effect incorporated in this legislation ³⁷⁾. The Act also contains detailed rules dealing with the facilitated acquisition

of nationality by the wife of a person who has obtained Thai nationality by naturalization or by recovery (Sec.11), acquisition and loss of Thai nationality by marriage (Sec.9), naturalization (Sec.10) and otherwise. Wide discretion is conferred on the competent authorities, not only for the granting and restoration of Thai nationality but also for its revocation on a number of grounds.

A survey of Thai legislation on nationality would be incomplete without a quick glance at the Proclamation of the Revolutionary Council ("Order") No.337 of 13 December B.E.2515 (A.D. 1972) on the nationality of persons born in the Kingdom. ³⁸⁾ Inspired by reasons of national security and the threat of infiltration through the influx of refugees and displaced persons from neighbouring countries, the Order revoked Thai nationality acquired jure soli, with regard to persons born in Thailand from an alien father or, in case of an unknown father, from an alien mother, which father or mother, as the case may be, had been allowed to stay in the Kingdom either in exceptional circumstances on an ad hoc basis, or for a temporary period, or had entered the Kingdom in violation of the immigration laws. This Proclamation further strengthened the requirement of parental linkage and weakened the effect of territorial connection at accidental birth as connecting factors for the nationality status of a person.

4.2 International sources: Transfer of territory

Even where treaty provisions regulating nationality affecting Thailand exist, these would only have effect in Thai law if transformed into municipal law. From this perspective there is no direct international source of Thai nationality. Moreover, owing to the precarious regional situation Thailand has carefully avoided becoming a party to any of the existing multilateral conventions relating to nationality issues, for fear lest its already burdensome moral obligations be turned into mandatory legal duties of affording shelter, asylum and place of refuge to persons from neighbouring countries fleeing from persecution or oppression. The shelter provided by Thailand is based on humanitarian considerations as an alternative to refoulement, and is granted at the expense and to the

detriment of its own uprooted inhabitants and displaced native Thais, and against the loud protests from the Governments of the neighbouring states concerned.

The legal sources directly concerned with the general issues of nationality have been mentioned under the previous heading 'National legislation'. To complete the references to the national sources of law on nationality, mention should also be made of the effect on nationality of transfer of territory in which Thailand has been involved, not in the remote past, but relatively more recently, say in the last hundred years. On a number of occasions, under the guise of a series of Friendship, Commerce and Navigation (FCN) Treaties, Thailand has been compelled, invariably with the use or threat of force, to cede portions of its territory to France and Great Britain. ³⁹⁾ These territories today form part of Laos, Kampuchea, Malaysia and Burma. Siamese subjects thereby lost their Thai nationality and acquired a different national status, such as British subjects or French ressortissants, according to the recipient of transfer of sovereignty by Thailand.

Part Five

The initial determination of the body of nationals

A bird's eye view of the nationality legislation of Thailand shows that the earliest legislative efforts in the field of nationality had to presuppose the existence of a body of nationals. In the case of Thailand, there has never been a treaty creating the Kingdom, since Thailand was not born out of a treaty between any Powers or with any party, and has always been independent and sovereign. This has been so not only in the eyes of fellow Asian nations, but also in the eyes of Western Powers. ⁴⁰⁾ This amounts to recognition of Thailand as a State, which is directly relevant to the recognition of the existence of Thai nationality.

Thus an early indication of the body of Thai nationals can not be found in treaties, but is discernible in the constitutional text already referred to earlier, inscribed in stone slabs by King Ramkamhaeng in 1293 A.D. ⁴¹⁾ The body of the populace resident in the Kingdom encompassed not

only Thai ethnic groups but also inhabitants of other tribal origin and races. Only visitors and visiting tradesmen from abroad, coming and going, would not be regarded as Thai subjects. All the others were deemed to be Thai and could live freely and happily on Thai soil. Indeed, even foreign visitors were given the same treatment as subjects, since Thais and others were equal before the law, without discrimination. Alien status could be claimed, inter alia, by registration with a foreign consulate, under the relevant extraterritoriality treaties.

When the very first Nationality Act was introduced in 1913, King Rama VI also introduced the Family Names Act ⁴²⁾ containing a modern census system ⁴³⁾ for the registration of names, family names, marriages, birth and death. Under this dual legislation Thai nationality was henceforth attributed to persons at birth jure sanguinis as well as jure soli (see supra) which birth had to be evidenced by a birth certificate and registration in the population census. Besides, prior to the introduction of the Family Names Act and the Nationality Act of 1913, the Naturalization Act R.S. 130 (1912) was adopted, ⁴⁴⁾ also to facilitate the ascertainment of Thai nationals and for distinguishing between aliens or foreign visitors and local Thais, by clarifying procedures for the naturalization of persons who possessed the required qualifications.

Part Six

Main principles of attribution of nationality at birth, and acquisition and loss of nationality by or by virtue of changes in family status

The main principles of attribution of Thai nationality at birth have consistently been those of jus sanguinis and jus soli. ⁴⁵⁾ Under the current law and practice of the Kingdom, the first and foremost criterion is parentage. If the father is a Thai, regardless of where the child is born, Thai nationality is attributed to that child. For a child born of a Thai mother, Thai nationality is attributed without regard for the place of birth when the legitimate father is unknown or without nationality.

Children born in the Kingdom, regardless of parentage, are attributed Thai nationality , subject to some exceptions, such as those contained in Section 8 of the Nationality Act of 1965 which according to Thai opinion are a consequence of the special nature of the father's residence in Thailand and are recognized under customary international law. Far from treating children of diplomatic agents or consular officers as being extraterritorial, they are considered to be born in Thailand. However, because of the special nature of their fathers' residence in the Kingdom recognized in customary international law, Thai nationality is not attributed to them at birth. ⁴⁶⁾

Another exception is that relating to vital security interests of the Realm as proclaimed by Order No.337 of the Revolutionary Council in 1972. ⁴⁷⁾ A suspension of the application of the principle of jus soli was introduced by the Order for the cases in which territorial connections at the time of birth were based on illegal entry into the Kingdom by the parents, or on the provisional nature of their stay under temporary permits, or on the special (residence) status accorded on an ad hoc basis to the parents, fathers or mothers, as the case may be, at the time of the children's birth.

Acquisition or loss of Thai nationality by virtue of changes in family status, such as marriage, dissolution of marriage and adoption does not automatically result from those changes, but principally depends on the volition of the persons concerned. Thus, an alien woman who marries a Thai national under the current Act of 1965 does not acquire Thai nationality automatically. An application must be filed which may be granted or refused in accordance with the decision of the Minister of the Interior (Sec.9). On the other hand, a Thai woman who marries an alien and who may acquire the nationality of her spouse according to his law, may, if she desires to renounce Thai nationality, declare her intention accordingly (Sec.13). Thus, marriage of a Thai woman to an alien husband does not necessarily entail loss of her Thai nationality. It may be concluded that acquisition or loss by virtue of dissolution of marriage or adoption are governed by the same principles. The right to renounce Thai nationality is also accorded to a person born in Thailand of alien parentage provided renunciation is applied for within one year after attaining majority

(Sec.15). The decision to grant or refuse such an application for renunciation is discretionary on the part of the competent Thai authorities. Renunciation of Thai nationality in various other cases is also possible, always subject to the discretion of the Minister of the Interior. 48)

There are provisions in existing Thai legislation giving wide discretionary power to the Thai authorities to revoke Thai nationality. Such revocation is possible, inter alia, with regard to Thai nationality which has been acquired by an alien woman as the result of her marriage to a Thai husband, on various grounds, e.g., concealment or falsification of material facts in relation to the marriage; commission of an act prejudicial to the security interests of the State or insult to the nation; and commission of an act contrary to public order or good morals. 49) Revocation of Thai nationality is also possible from a person born in Thailand of alien parentage, on grounds which include also, among other things, residence in certain foreign countries consecutively for more than five years after majority. 50)

It is consistent with the idea of nationality as a human right as enshrined in Article 15(1) of the Universal Declaration of Human Rights that the Act provides for the possibility of restoration of Thai nationality, should the marriage of a Thai woman with an alien husband be subsequently dissolved or annulled. 51)

In view of the fundamental change of personal status resulting from the transition from minority to majority age reference should also be made to the rule according to which children who have lost Thai nationality as the result of loss of Thai nationality by one of their parents, may after attainment of majority apply to have their Thai nationality restored. The granting or refusal of such an application is at the discretion of the Minister. 52)

As has been shown, revocation of Thai nationality under Sec.18 of the Nationality Act 1965 in certain cases of doubtful allegiance is at the discretion of the Minister. This has been complemented by Order 337 of the

Revolutionary Council of 1972 which prescribed the automatic revocation of Thai nationality from a certain category of persons previously born in Thailand of alien parentage, while suspending the attribution of Thai nationality with regard to persons born after the entry into force of the Order, for the same underlying reasons. 53)

The Nationality Act is silent on the effect of adoption on acquisition and loss of Thai nationality. It may be assumed from the applicable principles, that acquisition or loss of Thai nationality would not necessarily result from the act of adoption without a separate declaration of intent, by way of an application for naturalization or renunciation, as the case may be, expressed in the form and manner prescribed by law. Such changes in nationality status could only occur upon approval of the application which in general is at the discretion of the responsible Minister. These assumptions are in fact confirmed by practice.

Part Seven

Acquisition of nationality by way of naturalization and related matters

Apart from changes in family status which could result in acquisition of Thai nationality, another well-known method of acquisition of nationality is by naturalization. As far as Thailand is concerned, this was one of the earliest methods recognized by law (in the Decree R.S. 130) 54) for acquisition of Thai nationality by aliens. 55) This legislative act predated even the Law on Family Names and the very first Nationality Act of B.E. 2456 (A.D. 1913). 56)

The possibility of naturalization is based on the will of the individual concerned as expressed in due form and prescribed manner, and the fulfilment of the necessary qualifications and requirements. The final decision rests with the competent authority of the State.

Since the earliest legislation several requirements have to be fulfilled for naturalization, including substantive qualifications as well as formal requirements or compliance with procedural regulations. An application for naturalization had to be submitted by the applicant who was to be a full-fledged person sui juris, who had attained majority under Thai law as well as under his lex patriae at the time, who had settled in the Kingdom, and had been resident in the country for at least five years, and who was a person of good conduct and with apparent means of self-support. 57) The five years' residence requirement could be waived if (a) the applicant had rendered special services to the country, or (b) if he/she had formerly been a Thai national, had acquired a foreign nationality with the Government's permission and wished to have his/her Thai nationality restored, or if the applicant was the child of a naturalized Thai national. 58) The effect of naturalization covered not only the spouse(s) of the naturalized applicant but also the minor children, who could renounce their Thai nationality within one year after attaining majority. 59) Final authorization of naturalization rested with the King. 60)

The above requirements continue to apply until the present day under the current Nationality Act B.E. 2508 (A.D. 1965) 61) with only slight modifications 62) and the additional condition of proficiency in the Thai language. 63) The granting or refusal of naturalization is at the discretion of the Minister. 64) Royal assent is needed to complete the process and the applicant is required to swear an oath of loyalty to the Kingdom. 65) It has been the consistent policy and practice of Thailand to grant naturalization if the requirements are fulfilled. Yet a more or less liberal policy in this regard depends on the exigencies of external circumstances and the time frame, and could be more or less strict. It is flexible and dictated by political expediency. The element of discretion is especially meaningful in those exceptional cases where certain conditions are waived, such as length of time of residence, owing to recognition of special services rendered.

The forms and procedures prescribed are not rigid and can be easily complied with. They are the subject of Ministerial Regulations and include, for instance, application forms for naturalization, the authentication of

naturalization as a Thai citizen and of restoration of Thai nationality, tariffs, etc. The essential thing is the fulfilment of the substantive requirements. Procedures can be simplified and adapted to the needs of a particular period. In time of war or national crisis, it is inevitable that more safeguards would be required to ensure loyalty and allegiance to the Kingdom.

Special or simplified forms of naturalization are open to those who are granted some priority, such as children of naturalized persons. This refers both to those who had attained majority at the time of their father's naturalization and who apply for naturalization themselves, and to those who were still minors at that time and who are being naturalized simultaneously with their father. 66)

Among the other methods or forms of acquisition of Thai nationality after birth mention should be made of the possibility of recovery of Thai nationality by former Thai nationals who have lost it through marriage and renunciation or by virtue of loss of Thai nationality by the parents, and who, upon application, may get their Thai nationality restored. 67)

Part Eight

Loss of nationality

As has been alluded to earlier 68), loss of Thai nationality can only proceed from the operation of Thai law. Thus, each case of loss of nationality must be attributable to the application of a relevant provision of the nationality legislation. While the exclusive direct applicability of Thai law in the field of nationality is in accordance with State practice and international law principles concerning national sovereignty, the municipal law may, of course, be conditioned in turn by the operation of general principles of international law. Thus changes in the law may occur in the event of transfer of sovereignty over portions of territory by Thailand, resulting in loss of Thai nationality, subject to the possibility of retaining Thai nationality while remaining in the territory transferred, or of retaining Thai nationality by transfer of domicile across the new frontiers established by the treaty in question.

Subject to such overall application of rules of international law Thai nationality can only be lost by virtue of Thai law. In principle nationality acquired at birth may be viewed as a person's birth right, as a basic human right that cannot be taken away or lost without legitimate grounds. From this perspective loss of nationality should be kept to the barest minimum. On the other hand, the State should preserve its prerogative to screen or to weed undesirable elements who may present a security threat to the nation. These two basic principles are to be borne in mind and an appropriate balance is to be maintained to ensure the enjoyment of fundamental human rights without impairing national security.

Earlier reference has already been made to the exceptional circumstances and the state of emergency or necessity, which led to the proclamation of the Order 337 of 13 December 1972 of the Revolutionary Council, revoking Thai nationality by operation of law from certain groups of persons born in Thailand of alien parentage.⁶⁹⁾ As we have also seen earlier normal instances of loss of nationality include cases resulting from a status under family law and cases of change of such status, such as marriage, dissolution of marriage, adoption, and naturalization of one of the parents.⁷⁰⁾

Apart from naturalization in a foreign State acquisition of foreign nationality does not necessarily entail loss of Thai nationality, unless the Thai national concerned renounces Thai nationality in due form and in a prescribed manner. Thus we have dealt before with the case of a Thai woman who marries a foreign husband and who thereby acquires the husband's nationality: she loses Thai nationality only with her explicit consent. Thus, the law recognizes the volition or consent of the individual as the basis for loss or forfeiture of Thai nationality.

With regard to Thai nationals jure soli of foreign parentage, foreign State or military service or other forms of foreign attachments may result in revocation of Thai nationality, though not necessarily. In the event of foreign State or military service being rendered to a nation hostile to Thailand and in view of the state of hostilities, or in the event of an armed conflict, Thai nationality could be revoked in the interest of

national security and as a remedy against breach of allegiance to Thailand. ⁷¹⁾ Alienation or loss of affection for the State or of loyalty to the State may follow the use of foreign nationality or long and continuous stay in foreign lands and could ultimately lead to loss of Thai nationality by revocation.

The same considerations apply to naturalized nationals of Thailand ⁷²⁾ whose Thai nationality could be revoked on grounds similar to those applicable in cases of children of foreign parentage or foreign spouses, referred to earlier. Security interests, while not the only applicable standard, are determinative for the revocation or discharge of nationality in these cases.

Loss of nationality may also spring from the will of the individual, and accordingly, within the limits of the law a person may renounce his nationality. Thai legislation thereby seeks to avoid statelessness while it does not encourage dual or multiple nationality. E.g. the law ensures that once a Thai by birth right, a person remains a Thai, as long as no new nationality is acquired by his own will. On the other hand this protective arm of the law does not extend to naturalized Thai nationals or those who are Thai by marriage or adoption, whose Thai nationality can be revoked on various grounds regardless of retention or restoration of a former foreign nationality.

Part Nine

Status, right and duties of nationals

The first question to be examined is whether Thai law or practice distinguishes between different categories of Thai nationals. In Part Three reference has already been made to some consequences of ethnic and similar distinctions. Apart from this it may be asked whether natural-born and naturalized nationals are entitled to the same status, with the same rights and duties. The answer appears to be that for all practical purposes nationals of Thailand whether by birth or through marriage or naturalization are given the same and consistent treatment so long as they retain Thai nationality. The only possible distinction appears to be in the

wider discretion for the State to revoke Thai nationality in the case of naturalized Thais or children of naturalized Thai nationals, and Thai nationals jure soli ⁷³⁾.

Another practical difference is visible in the case of Thai nationals of Islamic faith domiciled in the four southern provinces of Thailand. For purposes of family relations, Islamic law applies as distinct from the Civil Code of Thailand which is applicable to the rest of the Thai population. ⁷⁴⁾ However, this privileged position is not enjoyed by Thai nationals of Islamic faith domiciled in other parts of Thailand. There is thus a secondary distinction between Thai nationals practising the Muslim faith who live in the four southern provinces of Thailand and those in other provinces.

Apart from these anomalies, there are no legal distinctions between different categories of nationals. No caste system is in practice in the Kingdom, and the policy of assimilation that has been followed with regard to the Chinese in Thailand since the 19th century has continued to be pursued consistently vis-a-vis Thai nationals of Chinese origin.

The inclusion of the most-favoured-nation clause in treaties whereby Western States sought to obtain equal advantages from Asian countries, taken in conjunction with a few exceptional cases of "national treatment" being accorded to some neighbouring Asian States, would result in national treatment being accorded to nationals of a host of States contrary to the original intention. That's why the current practice is to act more carefully ⁷⁵⁾ in order to ensure that the exceptional granting of national treatment to certain countries, e.g., by way of aid to some least developed countries or in favour of the inhabitants of regions bordering Thailand ⁷⁶⁾ or a regional grouping ⁷⁷⁾ for economic cooperation ⁷⁸⁾ would not extend to outsiders who happen to be nationals of powerful Western States and who would become entitled to most-favoured-nation treatment.

Thai law as well as Thai treaty practice have generally been generous and hospitable to aliens. This tradition dates back to Sukhothai as evidenced by the already mentioned Stone Inscriptions of 1293. ⁷⁹⁾ The golden age of freedom and absolute equality did not, however, last forever. Reference has already been made earlier to the reservation of

certain occupations exclusively for people of ethnic Thai origin. ⁸⁰⁾ This was, and is, however, often of a minor economic importance, and the restrictions, while in a way designed to reduce unemployment and to encourage self-employment among the Thais, were intended to preserve the Thai cultural heritage rather than to improve the over-all financial or economic situation of the nation. Most banking institutions are, in fact, in the hands of Thais of Chinese descent, and rich textile merchants are often of Indian stock, while Japanese have recently accounted for a greater percentage of investment in capital and in technology within the Kingdom.

In the field of the economic development of the country, Thailand as a rule has not reserved exclusive rights to Thai nationals. There is, generally speaking, complete non-discrimination between nationals and non-nationals of whatever origin or designation. Foreign investments are welcome, and legislation has been adopted to promote industrial investments with incentives in various fields, including tax exemption, import privileges, and other fringe benefits. ⁸¹⁾

Nevertheless, Thai nationality does carry some exclusive rights, e.g. as owners of immovable property. Foreigners may have limited rights in acquiring real property in Thailand ⁸²⁾ but only if they are nationals of States with which Thailand has concluded treaties providing for reciprocal treatment in regard to acquisition of immovables by their mutual nationals. This requirement has become difficult to fulfill, as Thailand decided in the early sixties to denounce all FNC treaties concluded in the thirties. ⁸³⁾ Later treaties made no provision for acquisition of landed property by nationals of the other Party except as provided for by the Investment Promotion Act ⁸⁴⁾ in regard to certain categories of industry. ⁸⁵⁾ The new treaties do not adversely affect property rights already acquired by aliens under earlier treaty provisions or by testate or intestate succession under applicable law, which for immovables is the lex situs.

Apart from ownership of land and other immovables, Thai nationality of natural or corporate owners is a prerequisite for the flying of the Thai flag to a sea-going vessel. To be registered as a Thai ship flying the Thai

flag, all the owners must be Thai nationals in the case of partnership, and at least 70 per cent of the capital must belong to Thai nationals in the case of limited partnership. For a limited company or a public corporation, the majority of directors must be Thai and at least 70 per cent of its shares must belong to Thai nationals, natural or juridical persons, i.e., individuals as well as corporations, enterprises and associations and other entities constituted under Thai law with their main seat of business or headquarters in the Thai Kingdom. 86)

Similar rules apply to aircraft registered as Thai aircraft under the Civil Aviation Act. 87) Foreign aircraft may not overfly, nor land or take off in the Kingdom of Thailand unless permitted by a convention or international agreement or allowed by a written permission from the Minister of Communication.

Thai nationality thus carries the exclusive privilege of the capacity to own land in Thailand, of flying Thai flags for ships, and of registration for aircraft. Special obligations attaching to individual Thai nationals include national service and liability for income tax 88) and other tax assessments. Allegiance to the Crown is a duty under the Constitution, and implies the capacity to commit the crime of high treason.

Nationality is also relevant for the answer to a number of questions in the field of conflict of laws. The lex patriae or law of the country of which an individual is a national may determine his family status, legal capacity, age of majority, marriageable age and other related questions. Lex patriae under the conflict rules of Thailand is at least as important as lex domicilii for numerous purposes. Nationality determines the applicable law with regard to the capacity to act, and hence the voidability or validity of contracts or other legal transactions or acts that may only be performed by a person with full capacity and which are thus subject to certain disabilities, such as if performed by minor persons or persons of unsound mind, or married women.

The right of repatriation or the right to return to the homeland and the "right of abode" is guaranteed to every Thai. It follows that a Thai national can not be deported, or indeed extradited, to a foreign country. Conversely, possession of Thai nationality may afford additional ground for a request of extradition from a foreign State if a Thai national is charged with a serious criminal offence. In these cases the Thai nationality of the accused is an additional ground for Thai courts to assume criminal jurisdiction. ⁸⁹⁾ Thai nationality of the victim of a criminal offence also affords a ground in some cases for the exercise of criminal jurisdiction even if the offence was not committed within the Kingdom. Criminal jurisdiction can also be entertained by Thai courts for acts of piracy committed on the high seas or in the airspace superjacent to the high seas (on the basis of the universality principle). Thai nationality of the accused or the victim could thereby provide additional ground for the authorities to arrest, prosecute and try the offenders. A Thai national may not only be the subject of a Thai request for extradition from abroad, but may, under a relevant treaty for the exchange or transfer of such detainees or convicted persons, ⁹⁰⁾ qualify for an exchange of prisoners or transfer to Thailand from a foreign penitentiary where the person is serving a sentence.

The question of diplomatic and other protection of Thai nationals abroad or overseas Thais ⁹¹⁾ by the Government of Thailand does not arise as often as in the case of nationals of European or American States. Thailand is not in the habit of forcefully extending protection to her nationals abroad. Naturally the Thai Government would protest, at times rather weakly, against violations of international law, especially where some of her nationals have fallen victim, such as in the case of the Korean civil aircraft which was shot down by the Soviets in 1985 and which had some Thai passengers on board. The Thai Government also has been heard to have requested for mercy or justice in some remarkable cases of Thai nationals accused or found guilty of theft or petty offences which are punishable by death in certain countries. ⁹²⁾ Beyond such requests or protestation, the Thai Government, unlike some Western and imperialist States, is not likely to take any clearly hostile action or unfriendly counter-measure. Of course, Thailand is concerned with the welfare of the Thai labour force abroad, but the Thai Government is not in a position to

go to war over the welfare of its nationals or to protect the interests of its nationals by resorting to the use of force or by adopting unilateral economic sanctions or indeed taking military action such as instituting a naval blockade or mining of ports of poorer, defenceless, or least developed neighbours. Such options are open only to powerful nations endowed with military might. The measures adopted by these latter States as counter-measures to protect their citizens abroad are of doubtful validity in today's international law, especially in view of their violation of the rules of proportionality. Self-help in such situations under the guise of diplomatic protection - including the landing of a detachment of marines - should not be encouraged. 93) Diplomatic protection by Thailand is practised through negotiations and other peaceful means, and not by initiation of hostilities or punitive sanctions.

Part Ten

Nationality and State succession

10.1 Thailand as predecessor or successor State

As noted in Part Three (sec.8) on the historical development of the law and Part Four (sec.19) 94), Thai nationality was at some times acquired or lost, as the case may be, as a result of instances of cession, retrocession and recession of portions of outlying provinces of Thailand to France and to Britain during the last hundred years or so.

Even without specific references to the relevant treaty provisions, it may be stated that Western colonialism, accompanied by the application of gunboat diplomacy, has played a major role in carving the present confines of the territory of Thailand. While political independence and sovereignty were maintained intact, some of Thailand's territorial integrity had to be sacrificed.

Under the relevant treaty provisions Thai nationality was withdrawn on the basis of mutual agreement between the high contracting parties. The treaties concerned dealt with the determination of a new frontier or the renunciation or transfer of sovereignty by Thailand to a European Power, or

sometimes, a transfer in reverse by restoration of sovereignty or retrocession of territory. Thus, loss of Thai nationality sometimes resulted from a change of the course of a frontier river, resulting in aliens being left on the Thai side and Thais on the foreign side. In general, the inhabitants would be given a choice to move over to that side of the frontier which they would opt to be their homeland and to maintain their original nationality.

A more comprehensive historical survey of instances of transfer of territory by or to Thailand during the past hundred years with nationality implications has been dealt with elsewhere.⁹⁵⁾ The brief reference above and the ensuing illustrations might suffice to remind us of all those other sources of regulation of nationality in addition to nationality legislation.

The inhabitants of several provinces in Laos and Kampuchea used to have Thai nationality before 1893, or 1904 or 1907.⁹⁶⁾ They recovered their nationality in 1941 by virtue of the Tokyo Convention⁹⁷⁾ and lost it again by the close of 1946 as the result of the Settlement Agreement 1946, otherwise known as the Franco-Thai Washington Accord of 17 November 1946⁹⁸⁾, which created a Conciliation Commission of five members to deliberate on the territorial and other disputes between Thailand and France over provinces bordering Laos and Kampuchea.⁹⁹⁾

In addition to the Protocol Concerning the Procedure for the Evacuation and Transfer of the Territories Referred to in Article I of the Settlement Agreement,¹⁰⁰⁾ an exchange of Notes of the same date, 17 November 1946, regulates the status of nationality and property as follows¹⁰¹⁾:

"(1) Those inhabitants who acquired Siamese nationality under the Convention of 9 May 1941 shall automatically be reinstated in their previous nationality as soon as the transfer of the aforesaid territories has been carried out. These inhabitants who possess Siamese nationality by birth or who have acquired it in accordance with the law shall retain that nationality.

(2) No obstacle shall be placed in the way of such of the latter as may wish to leave the said territories. They may, in particular, dispose freely of their movable and immovable property before leaving.

They shall be at liberty to take with them or to have shipped free of customs duty their movable property of all kinds, livestock, agricultural produce and Siamese currency and banknotes. They may retain ownership of their immovable property."

On the Western and Southern parts, the inhabitants of Burma and Northern Malaysia used to have Thai nationality until the early part of the present century when portions of territories were ceded to Britain and new frontiers were established. ¹⁰²⁾ The position changed during World War II when Thai nationality was restored to the inhabitants of Saiburi (Kedah), Kelantan, Tranganu and of areas in the North of Thailand, ¹⁰³⁾ and again lost after the end of hostilities of World War II. ¹⁰⁴⁾ Not untypical of the kind of agreement regulating questions of nationality affected by readjustment of boundaries may be cited the Exchange of Notes between Great Britain (and India) and Siam on 31 March 1937, at Bangkok, relating to the "redelimitation of the boundary between Burma (Tenasserim) and Siam". ¹⁰⁵⁾ The gist of the Notes exchanged runs thus:

(i) British subjects habitually resident in the territory which has been transferred from British to Siamese sovereignty shall cease to be British subjects, and shall acquire Siamese nationality unless they make application to retain British nationality to the appropriate British authority within 6 months from this day's date.

(ii) the same rule, mutatis mutandis, shall apply as regards territory which has been transferred from Siamese to British sovereignty."

In the above cases Thailand was predecessor and, in the nineteen-forties, briefly successor, and then again predecessor State to France and the United Kingdom with resulting changes in Thai nationality. An example noteworthy of nationality being affected by changes in the course of the frontier river is furnished by the Exchange of Notes between Great Britain and Thailand of 1 October, 1940, and 10 December 1940 ¹⁰⁶⁾ regarding the boundary (Meh Sai River) between Thailand and Kentung (Burma), confirming the principle of "Deep Water Channel" for the Meh Sai River as the Thai-Burmese Border. As a result of the change in the "Deep Water Channel", British subjects normally resident in the territory

transferred "from British to Thai sovereignty should cease to be British subjects and should acquire Thai nationality unless they make application to retain British nationality to the appropriate British authority within six months from the date of the formal transfer of the territory in question." After Burmese independence, some change in territorial control with ensuing change of nationality occurred not on the basis of a treaty. In connection with activities of remnants of Chinese Nationalist troops after the Second World War Thai administration was de facto suspended in an area which is now part of the so-called "Golden Triangle". 107)

10.2 Thailand as a Third State

A different series of questions of State succession arose when Burma, Malaya, Laos and Cambodia obtained their independence, in which cases Thailand remained a Third State. Initially there were no significant movements of inhabitants across the Thai border in either direction. Subsequently, however, the situation in the neighbouring countries, following decolonization and corresponding internal turmoil, developed in such a way that it resulted in Thailand becoming a place of refuge for many displaced persons. While they were no nationals of Thailand, they were not considered either as aliens resident in Thailand. They were, on the contrary, treated as illegal entrants, or as refugees in cases where political asylum had been granted. The problem of nationality arose with those born from these persons in Thai territory, in view of the applicable rule of jus soli. Exceptional rules as contained in Order 337 108) had to be adopted to face these consequences of the current international situation. While humanitarian considerations played an important part in introducing discretionary and flexible treatment to alleviate the plight of these nationals of adjacent neighbour States, yet the children concerned were disqualified from being accorded Thai nationality by operation of Thai law. By way of conclusion it may be said that Thailand has consistently maintained the posture of an outsider or Third State in these different processes of State succession accompanying decolonization, also in the field of nationality.

Part Eleven

State practice with regard to the
nationality of other States

Thai practice with regard to the nationality of other States may be examined in the light of the policy of assimilation introduced during the reign of King Chulalongkorn (Rama V) in the nineteenth century. The assimilation policy was designed more specifically for overseas Chinese who immigrated to Siam during the nineteenth and early twentieth centuries.

109) Unlike other Asian foreigners, overseas Chinese were the only assimilable aliens, as they did not enjoy any privilege of extra-territoriality. On the other hand other neighbouring Asians could claim to be exempt from Thai laws and Thai jurisdiction: Laotians, Vietnamese and Cambodians presented themselves as French "ressortissants", or "protégés", while Burmese, Shans, Malays and Indians could claim to be British subjects, and as such for many decades were directly under the jurisdiction of French or British consulates. Consular courts and, later, mixed courts for foreign cases exercised jurisdiction over Asians who were subjects of these Western Powers. Even Japanese subjects also enjoyed the privilege of extra-territoriality for some time 110) as did Russians during the same period. 111)

This unconstitutional state of affairs, which also was a violation of contemporary international law, prevailed at the expense of Thailand and had to be tolerated by her nationals.

In view of the prevailing international conditions it was not unnatural that Thai courts, however independent they would like to be as the judiciary of a sovereign nation, did not dispute the certificates of nationality or affidavits presented by the consular or diplomatic agents of foreign States, Western or Japanese. This conclusiveness of the certificates of nationality remains the practice until today, long after the removal of the other vestiges of by-gone colonial days which was achieved through the abrogation of the outmoded provisions of the 1925 and 1937 series of FCN treaties concluded by Thailand with a number of Western Powers and Japan. 112) Even among persons of Chinese descent who were as a

rule assimilated and who enjoyed Thai citizenship, there were some who, on the basis of their origin from neighbouring Asian countries, preferred to procure for themselves, or claim the status of subject of a Western colonial Power with the accompanying privileges and even special prerogatives. By so doing they tried to evade the duties of Thai nationals, their liability to Thai law and Thai taxes as well as the fulfilment of national services of all kinds. ¹¹³⁾

After recovering complete judicial independence by the abolition of extra-territoriality, the dissolution of consular courts and their extra-territorial jurisdiction, as well as the termination of the mixed courts, the Thai courts jealously guarded their hard-won independence. Yet, in matters of foreign nationality the Thai courts have been reluctant to take decisions with final effect, conscious as they are of the limits of their competence in the field. While the question of whether or not a person has Thai nationality was since a long time considered to be a legal question which had to be decided by Thai courts with final effect under due process of law, ¹¹⁴⁾ the Thai courts scrupulously prefer to leave to the competent foreign authorities the determination of the nationality of their respective States. These questions concerning foreign laws on nationality are treated in the same way as other questions of foreign law. These laws may be proved either by certificates issued by the Ministry of Foreign Affairs or by duly accredited diplomatic or consular agents, or by evidence furnished by expert witnesses.

The Thai courts would not inquire into the appropriateness or legitimacy of foreign laws on nationality. It is up to the foreign States concerned to make them, as long as they keep to the admissible criteria of jus soli and jus sanguinis or a combination of both. Arbitrary and sweeping provisions declaring all persons to be nationals of a particular State or regime without the faintest legal basis or justification would of course not be admissible. Although such provisions in the form of generally applicable rules never occurred in fact, it may in specific instances give rise to some considerable doubts. Being the organs of a non-involved country, Thai courts maintain the position of via media, the way of Buddha, avoiding extremes. Thailand would not question the absence of reasonableness, or the excessiveness of claims of other States, having

itself had the experience of a victim of the gun-boat diplomacy of occidental and modern oriental Powers. Such silence may be the most viable posture at the risk of being interpreted as tacit assent or acquiescence. 115)

One constant problem in Thailand concerns the nationals or subjects of a number of Asian neighbouring countries which suffer political turmoil and unrest, and where decolonization was followed by a period of confusion. Indochina was divided into Laos, Cambodia and North and South Vietnam, Burma consists of many component parts and ethnic minorities, while the Federation of Malay States constitutes a pluralistic society. Besides, Chinese aliens presented a genuine problem of a political and practical nature, both at the time of continued recognition of the Republic of China and after normalization of relations with the People's Republic of China. Persons who were citizens under either regime were successively recognized as Chinese nationals. Now those adhering to the administration at Taiwan have been given certificates of identity or other travel documents by the Thai Government in the name of human rights and freedom of movement. Residents originating from Hong Kong are granted similar treatment as far as they do not carry British passports or official Chinese travel documents.

On the whole, Thai practice with regard to the nationality of other States is flexible and pragmatic. At present Thailand has more than two hundred thousand refugees and displaced persons on her soil with very little prospect of immediate repatriation or acceptance by third States. No foreign nationality can practically be attributed to these people by the Thai authorities, because of the factual severance of the ties between them and their States. Yet they must be accorded some measure of recognized status without impairing Thailand's relations with her neighbours. For these unfortunate persons, many of whom are classified as illegal entrants, assimilation or integration into Thai society is unlikely. Nor is their presence favourable in view of the existing delicate situation in certain remote areas of the Kingdom. Given the preponderant role of humanitarian considerations underlying Thai practice, foreign nationality or even statelessness was never a bar to the grant of the so-called minimum

standard of treatment by Thailand as a hospitable Buddhist host country, regardless of recognition of the foreign entity concerned as a sovereign state or a legitimate government. Peoples consist of human beings and should accordingly be treated with the respect and dignity due to every person. 116)

Part Twelve

Plural or dual nationality

Thailand has been well aware 117) of the existence and complexity of plural and dual nationality, and has been concurring in the desirability of avoiding both conflicting claims of national jurisdiction over the same persons and concurrence of protection exercised on behalf of such persons, either consular or diplomatic or indeed otherwise. It is simpler for every person to have one nationality at a time, but the existence of overlapping nationalities owing to the interplay of jus soli and jus sanguinis is inevitable. A rational solution is to allow the individual concerned to exercise his option at an opportune moment, such as within one year upon attaining majority. 118)

The practical solutions pursued by Thailand are reasonably satisfactory, entailing no undue hardships. As we have seen in the previous Parts, Thailand has endeavoured to explore, and experiment with, various combinations and permutations of the criteria of jus soli and jus sanguinis, and exceptions with regard to acquisition, as well as loss of Thai nationality. 119)

The legal possibility of dual or multiple nationality cannot be denied. It could be regarded as a temporary or transitory status pending majority and maturity of decision-making by the individual concerned. It could also be regarded as an asset or a privilege of option, provided the incumbent obligations of multiple nationality are not too onerous for the person to fulfill. As long as multiple nationality continues, there is a need to resolve the competing claims of the States concerned for the performance of the respective obligations owed to each of them by the

individual. As long as the options are open, the dignity of man is ensured, and freedom of choice unimpaired. Within the limits of the law, a person could opt for the nationality which is most real to him and which is most closely related to his existence and livelihood.

Part Thirteen

Statelessness

In the case of children born in Thailand and Thai nationals desiring to renounce Thai nationality, care is taken to avoid non-acquisition, cancellation or unnecessary loss of Thai nationality that would result in statelessness. ¹²⁰⁾ Statelessness in case of a person entitled to have Thai nationality either jure soli or jure sanguinis is also unlikely. ¹²¹⁾ In other instances Thai nationality will not be withheld or denied without a reasonable cause. Thus, members of wandering hill tribes in the border area of Northern Thailand are always considered to be Thai nationals, and not stateless, whenever they are on Thai soil. Outside Thai territory, however, without registers and identification documents they may practically be treated as stateless. On the other hand the remnants of foreign armed forces in the areas known as the Golden Triangle ¹²²⁾ have neither been incorporated into the Thai community nor been clothed with Thai nationality. Their offspring are not qualified by any standard of jus soli or jus sanguinis or any combination of the two criteria. They are practically not recognized as Chinese nationals by the People's Republic nor by the Taiwanese authorities, and as such appear to be stateless renegades roaming no-man's land, who present a security threat to the Kingdom. ¹²³⁾ A more durable solution than the current modus vivendi (of status quo ante) will have to be found for a definite status to be recognized. For instances, either of the authorities of their country of origin could accept repatriation, thereby ending an anomalous situation that has persisted since World War II and ending the factual statelessness of the persons involved.

A situation similar to the one referred to above appears to exist with regard to the Indo-Chinese and Burmese refugees and displaced persons ¹²⁴⁾ staying in Thailand. Some of them have formally been given asylum in Thailand without any accompanying facilitated conferment of Thai nationality. Nor do the Thai general rules relating to acquisition of nationality at birth jure soli apply to the second generation, in accordance with the exceptions introduced in Order 337. The others are treated as illegal entrants who are in transition temporarily awaiting repatriation or acceptance by third States, and who do not fall under Thai regulations governing the status of resident aliens and refugees. On the other hand, the countries of origin treat their fleeing nationals as rebels or political offenders, and would not give them any assistance or protection. The nationality status of the persons concerned can practically be equated to statelessness. Their fate is yet unknown and their future uncertain. These are problems that require international settlement. The good will and generosity of the host country alone can not provide a lasting solution to the problem which requires the attention, patience, sympathetic understanding and active cooperation or even sacrifices from the international community as a whole. A Convention like the one of 1961 on the reduction of statelessness can of course serve as a stepping-stone towards a more plausible and durable solution to ease the plight of the unfortunate with only a dim hope of acquiring a new lease of life in a promised land, with a new nationality which could indeed coincide with that of their ancestry but in a more direct and non-colonial or decolonized and enlightened form.

Footnotes with the chapter on Thailand

- 1) "THAILAND" is another name for "SIAM" and may at all times be used interchangeably with it. The original appellation of the people is "THAI", meaning "free", hence "MUANG THAI" or "THAILAND". There is a local Chinese name, SIAMLO or SAYAMLOK, referring to the THAI-LAO ethnic group (in contradistinction to another ethnic group, the MON-KHMER, populating the area in the Golden Peninsula between East Burma and Southern Vietnam.
- 2) For an account of early Thai contacts with European nations, see, inter alia, the records of the Netherlands East India Company. Siam sent her very first diplomatic mission to Holland in the early XVIIth century (1608) during the reign of King Ekatosrot, and one of the earliest East-West trade agreements was concluded between the Netherlands and Thailand on 12 June 1617 shortly before the first publication of De Jure Belli ac Pacis by Hugo Grotius in 1625. The agreement is recorded in the Thai Treaty Series (Collection of treaties compiled by the Treaty and Legal Department of the Thai Ministry of Foreign Affairs), Vol.1 No.1. See also Sumet Jumsai, "The First Siamese Embassy to Europe", in The Voice of the Nation (Bangkok, 17 February 1975) p.5, according to whom some evidence dates the first Siamese embassy to Europe in 1601 during the reign of King Naresuan the Great (A.D. 1590-1605), and G.W. Gong, The Standard of Civilisation in International Society (Oxford, 1984) p.203. Cf., however, G.V. Smith, The Dutch in Seventeenth-Century Thailand (Center for Southeast Asian Studies, Northern Illinois University, Special Report No.16, 1977) p.12 et seq.

Half a century or so after the missions to Holland, Siam exchanged ambassadors with France. King Narai sent two missions to Paris, the second one succeeded in presenting credentials to King Louis XIV at Versailles. On the other hand the French envoy, Chevalier de Chaumont, was received in audience by the Siamese King at the Summer Palace in Lopburi. See D.K. Wyatt, Thailand. A Short History (New Haven: Yale, 1982) p.122 et seq.

- 3) Comment by a Japanese diplomat, quoted by B.V.A. Röling, International Law in an Expanded World (Amsterdam: Djambatan, 1960) p.27; see also R.P. Anand, New States and International Law (Delhi, 1972) p.27.
- 4) The history of Siam or Thailand may be divided into the following periods or eras, designated by the name of the capital city of the Kingdom:
 1. Pre-Sukhothai, before 1238 A.D. (Nanchao Kingdom)
 2. Sukhothai (1238 - 1350 A.D.)
 3. Ayudhya (1350 - 1767 A.D.)
 4. Thonburi (1767 - 1782 A.D.)
 5. Bangkok (1782 - present, Bangkok being the capital under the present Chakri Dynasty)
- 5) See C.B. Bradley, "The oldest known writing in Siamese, The inscription of Phra Ram Kamhaeng of Sukhothai 1293 A.D." 6 Bangkok, the Journal of Siam Society (1909), pp. 1-68.
- 6) In the 1680's, King Narai engaged a Greek adventurer, Constantine Phaulkon, whose pro-French attitudes and gift for persuasion led the King to exchange embassies with France and even to accept French troops to garrison Thai forts. Louis XIV, anxious to convert the Thais to Catholicism and hopeful of establishing a foothold in Asia, sent rather more help than the Thai King desired. The King also exchanged envoys with the Pope in the same period. Local anti-foreign sentiments and growing suspicions led to a successful coup d'Etat against the King in 1688, General Phra Phetra Raja succeeded to the throne, Phaulkon perished in the fiasco, Westerners were banished, French troops expelled and Siam's doors all but closed to Western influence for at least another century. See also Wyatt, op.cit. n.2, p.112.
- 7) Other Asians, such as Lotians, Mon-Khmer or Shans did not require assimilation because they were indistinguishable from the Thais, or else they could not be assimilated, such as Indians or Sinhalese, who

were left to maintain their distinct cultures. Besides, there were groups of Asians who, as subjects of Western Powers, enjoyed extra-territorial status for several decades towards the end of the 19th and early 20th centuries, and consequently could not be assimilated to Thais. See supra, and infra, p.39.

- 8) See, e.g., Mark Elvin and George William Skinner (eds.), The Chinese City Between Two Worlds (California, Stanford University Press, 1974); George W. Skinner and A.T. Kirsch, (eds.), Change and Persistence in Thai Society, Essays in Honor of Lauristan Sharp (Ithaca, Cornell University Press, 1975). Virginia Thompson, Thailand: The New Siam, 2nd ed. (New York, Paragon Book Reprint Corp., 1967); and Walter F. Vella, The Impact of the West on the Government of Thailand (Berkeley, University of California, 1955). Compare, L. Unger, "The Chinese in Southeast Asia", 34 Geographical Review (1944) pp.196-217; Victor Purcell, The Chinese in Southeast Asia, 2nd ed. (Oxford 1965); C.P. Fitzgerald, The Third China: The Chinese Communities in Southeast Asia (Melbourne, Cheshire, 1965).
- 9) See infra, Part thirteen, para.61.
- 10) See Wyatt, op.cit. n.2, p.252 et seq.
- 11) See, e.g., Pridi Banomyong, Ma vie mouvementée et mes 21 ans d'exile en Chine populaire (VARAP, Paris, 1972), Ch.4: "Le Royaume souterrain de Siam", p.47 et seq.
- 12) A Ministry of Culture was established. New traditions were introduced, such as wearing of hats, new modes of greetings, Thai-isation of customs, and reservation of more occupations exclusively for ethnic Thais. There was also greater support for conversion to Buddhism and suppression of religious minorities. Thai-born Chinese who returned to China for studies were denied or deprived of Thai nationality.

- 13) See infra, paragraphs 23-28.
- 14) There were in effect three opposing groups within the Chinese population: The Wang Ching-Wai group, being the puppet of the defeated co-prosperity sphere of Japan, the Chiang Kai-Shek group then on the rising tide, and the Mao clandestine group; dormant but ambulatory, ready to pounce any minute then. The Chinese gangs were probably disappointed since, contrary to their expectation, the Allied troops assigned to accept the surrender of Japanese forces in Thailand did not include any Chinese contingents.
- 15) "Lia-Pah" is a local Chinese expression, meaning "arrest and fight". The incident is sometimes referred to as the "Yaowarat" or "Yawaraj" incident, but spread beyond the Yawaraj district. See, inter alia, G.W. Skinner, Chinese Society in Thailand: An analytical history (Ithaca: Cornell, 1957) p.278 et seq, and J.F. Cady, The History of Post-War Southeast Asia (Athens, Ohio, 1974).
- 16) The Hantawadi (or: Pego) Kings were Mon-Khmers who ruled the Irawadi basin, with Hongsawadee as their eastern capital (now part of Burma).
- 17) See supra, n. 4.
- 18) The captive 'Black Prince of Siam' was brought back to Hantawadi (Mon-Burma) where he was raised and adopted by the Burmese King. At the age of 19 the Prince was returned to Pisanuloke to govern the Northern Thai Province, and later to become King Naresuan the Great, under whose reign (1590 - 1605 A.D.) the Siamese Kingdom was once again expanded as far and beyond the borders of Ramkamhaeng's Sukhothai.
- 19) "Pawnoh" is the Malayan name for an Islamic schooling system. Under the system, the children are given to the teacher to live, work and learn the Koran and obtain whatever professional or occupational experience is needed. They stay with the teacher, like boarders, but they have to work in the field, or rubber plantation, to provide labour in exchange for board, lodging and primitive education, mainly in the religious teachings of the Koran.

- 20) Supra, p.4.
- 21) I.e., "Asian aliens" according to Thai law. See, e.g., F.B. Sayre, "The Passing of Extraterritoriality in Siam", 22 AJIL (1928) pp.70-79.
- 22) Cf. W. Koo, The Status of Aliens in China (New York, 1912).
- 23) Promulgated on 22 March B.E.2455 (A.D. 1913), being the 863rd day of the third year of the reign of King Rama VI, Royal Gazette B.E. 2456, pp.256-259.
- Note: Older Thai legislative instruments are identified by the year according to the so-called Ratanakosin Sok (R.S.), or Bangkok Era, i.e. the era coinciding with the reign of the present Chakri dynasty. See, e.g. infra, n. 3c. These instruments were always Royal Enactments (Decrees) in the absence of a Parliament. Since 1932 Acts of Parliament are identified by the year of the Buddhist Era (B.E.), which starts from the demise of the Lord Buddha. Before 1942 the Siamese Buddhist lunar year used to start around 1 April (as of 1942 the year started on 1 January), and the difference between the B.E. and A.D. year is 543 years (except, before 1942, the period between 1 January and 1 April where the difference was 542 years). While the Nationality Act was promulgated in the year B.E. 2455 (on 22 March 1913), it was to be known as Act B.E. 2456 because it came into effect on 10 April 1913 (already B.E. 2456). The official name of the Thai Royal Gazette, as a publication, is Rajakitchanubeksa; in contradistinction to the term Raj Krisdeeka or P(h)rarajkrisdeeka which refers to Royal Decrees or Rescripts as laws.
- 24) Despite the wording used in the law (secs. 4 and 5), Thai nationality has never been automatically lost nor acquired through marriage without renunciation and ultimate official approval.
- 25) Family Names Act B.E. 2456, Royal Gazette B.E. 2456 (A.D. 1913-1914) p.259.

- 26) This refers to the encouragement to introduce family names and the gradual accustom (accustomization??) of their use. Even today, the habit of calling a person by the first name remains unchanged and surnames or family names are rarely used in everyday parlance except for formal occasions or in official documents. Nothing like the use of family names could be imposed on Thais who have always been free.
- 27) Naturalization Act R.S. 130 (Bangkok Era) of 18 May B.E. 2454 (A.D. 1912), being the 189th day of the reign of King Rama VI, promulgated by Royal Decree of 18 May B.E. 2454 (A.D. 1912), published in Rajakitchanubeksa Vol.28 p.100, of 11 June B.E. 2454 (A.D. 1912).
- 28) Promulgated 31 January B.E. 2495 (A.D. 1952), Royal Gazette Vol.69, part 10, of 12 February B.E. 2495.
- 29) Promulgated 3 February B.E. 2496 (A.D.1953), Royal Gazette Vol.70, part 10, pp.193-195.
- 30) Promulgated 12 February B.E. 2500 (A.D. 1957), Royal Gazette Vol.74, part 15, pp.431-435.
- 31) Promulgated 1 February B.E. 2503 (A.D. 1960), Royal Gazette Vol.77, part 8, pp.5-12.
- 32) The modification introduced by Act No.IV B.E. 2503 (1960) sec.5 in Sec.8 of the Nationality Act No.I B.E. 2495 (A.D. 1952) is identical with the present Section 9 of the Act B.E. 2508 (A.D.1965): "An alien woman who has married a person of Thai nationality shall, if she desires to acquire Thai nationality, file an application with the competent official according to the form and in the manner prescribed in the Ministerial Regulations...."
- 33) The wider discretion referred to is virtually absolute and has since remained a prerogative of the Executive, without possibility of judicial review or recourse to any other legal appeal.

- 34) All four Decrees are issued pursuant to the Nationality Act B.E. 2495 (A.D. 1952): Ministerial Decree No.1 B.E. 2495, promulgated 9 June B.E. 2495 (A.D. 1952), Royal Gazette Vol.69, part 37, of 10 July B.E. 2499 (A.D. 1956); Ministerial Decree No.2 B.E. 2499, promulgated 10 July B.E. 2499 (A.D. 1956), Royal Gazette Vol.73, part 57, of 24 July B.E. 2499 (A.D. 1956); Ministerial Decree No.3 B.E. 2501, promulgated 13 November B.E. 2501 (A.D. 1958), Royal Gazette vol.75, part 105, of 9 December B.E. 2501 (A.D. 1958); Ministerial Decree No.4 (B.E. 2503), updating the procedures and fees, and revising the forms for restoration or acquisition of Thai nationality, applicable also before Thai consulates abroad, promulgated 30 June B.E. 2503 (A.D. 1960), Royal Gazette Vol.77, part 57, of 10 July B.E. 2503 (A.D. 1960).
- 35) Act of 21 July B.E. 2508, 20th year of King Rama IX, Royal Gazette Vol.82, No.62 (Special Issue), of 4 August B.E. 2508 (A.D. 1965).
- 36) Cf. supra, p.14.
- 37) See Section 8 of the Act of B.E. 2508, covering not only diplomatic and consular officers but also officials or experts entering Thailand for official duties in connection with an international organization, including members of their household.
- 38) Royal Gazette, Vol.89, No.190 (Special Issue), of 13 December B.E. 2515 (A.D.1972), p.206, at pp.232-233. See also infra, Part Eight, p.
- 39) See, e.g., the following Siamese (Thai) - French treaties: 15 July 1867 (135 Parry p.213), 3 October 1893 (179 Parry p.149, De Martens, ... 2nd series, Vol.20 p.192), 13 February 1904 (195 Parry p.47, De Martens, ... 2nd series, Vol.32 p.130), 23 March 1907 (204 Parry p.46, De Martens, ... 3rd series, Vol.2 p.38), 14 February 1925 (... Parry p. ..., 43 LNTS p.189), 7 December 1937 (... Parry p...., 201 LNTS p.113), the so-called Tokyo Convention between Thailand and the

Vichy Government of France of 9 May 1941 (... Parry p..., De Martens), and the Settlement Agreement of 17 November 1946 (the so-called Washington Accord) (344 UNTS p.59, registered by France on 16 October 1959) annulling the 1941 Convention.

See also the Siamese (Thai) - British treaties of 18 April 1855 (101 BFSP p.409; 113 Parry p.83), 29 November 1899 (91 BFSP p.101; 5 Parry p.409), 10 March 1909 (102 BFSP p.126, ... Parry, p....), 3 October 1910 (exchange of notes, 5 Parry p.413), 14 July 1925 (49 LNTS p.29), 1 June 1934 (137 BFSP p.185), 31 March 1937 (188 (of 179 LNTS??) LNTS p.257). These treaties are also cited by H. Hecker, Das Staatsangehörigkeitsrecht von Bangladesh, Burma, Sri Lanka (Ceylon), Thailand und der Malediven (Frankfurt/Main: Metzner 1975) p.146 et seq.

See also the case between Cambodia (Kampuchea) and Thailand concerning the Temple of Preah Vihear (Phra Viharn), Judgment, 15 June 1962, I.C.J. Reports 1962 pp. 1-146.

- 40) See supra, p.3, n.2.
- 41) See supra, p.4, n.5.
- 42) See supra, n.25.
- 43) Or: civil registry. The Thai term is 'sammanokrua' and includes a registry system for the civil status of persons as well as for their national or military service.
- 44) See supra, n.27.
- 45) See the Nationality Act B.E. 2508 (A.D.1965) Sec.7, in conjunction with Sec.8.
- 46) See supra, p.16.

- 47) The relevant Sec.8 of the 1965 Nationality Act is not to be considered as the implementation of the relevant provisions of the 1961 and 1963 Conventions on diplomatic and consular relations. In fact Thailand only ratified the 1961 Convention in 1985, see Multilateral Treaties deposited with the Secretary General, status as at 31 December 1986 (UN publication), p.53. Cf. *ibid.* p.71 as to the 1963 Convention.
- 48) Sec.15.
- 49) Nationality Act 1965, Sec.16. Compare also Sec.17 paras 3 and 4 for similar cases.
- 50) See *ibid.*, Sec.17, and also Sec.18, repeated by Order 337 of the Revolutionary Council. Compare also Sec.19.
- 51) *Ibid.*, Sec.23.
- 52) *Ibid.*, Sec.24
- 53) See Order 337 of the Revolutionary Council, *supra* n.38.
- 54) See *supra*, nn.23 en 27.
- 55) Check: Cd, 5806
Martens NRG 3e ser.vol.6 p.478
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- 56) *Supra*, nn.23 and 25.
- 57) Decree R.S.130 Sec.6.
- 58) *Ibid.*, Sec.7.
- 59) *Ibid.*, Sec.12 and 13.

- 60) Ibid., Sec.8, in conjunction with Sec.9.
- 61) See supra, n.8.
- 62) Nationality Act 1965, Secs. 10-12.
- 63) Ibid., Sec.10, item 15.
- 64) Ibid., Sec.12(3). The expression "Minister" in the context of the Nationality Act 1965 refers to the Minister of the Interior, in contradiction to the earlier practice under the Naturalization Act of R.S.130, Sec.2 and the Nationality Act B.E. 2456 (1913), Sec.12, which conferred this task upon the Chancellor (Senabodi) for Foreign Affairs. The change came about with the adoption of the new series of Nationality Acts dating from B.E. 2495 (A.D. 1952) onwards.
- 65) Ibid., Sec.12, third paragraph.
- 66) See Secs.11 and 12(2).
- 67) Secs. 23 and 24. See also supra, Part Six, text at n.18.
- 68) See Parts 4.1 and 4.2 paras 14-18 and 19-20 at pp.9-13.
- 69) Order, Sec.1. See supra, text at n.38.
- 70) Supra, Part Six, paras 24-28.
- 71) See Ibid., Sec.17 and compare Sec.18.
- 72) Ibid., Sec.19.
- 73) See above, Part Eight.

- 74) See above, Part Two para.7.
- 75) By way of requiring strict reciprocity.
- 76) Cf. the border arrangements at local authorities level between Thailand and its neighbours including Burma, Laos, Kampuchea and Malaysia, and dealing with matters such as border passes for inhabitants of both sides of the border. See, e.g., the more recent exchange of letters with Cambodia, 15 December 1960, 382 UNTS pp. 307-327.
- 77) This is a phrase used in Thai treaty practice for the definition of an exception to the MFN clause as admitted under GATT and by UNCTAD. See, e.g., the Thai-US Treaty of Amity and Economic Relations of 29 May 1966, 652 UNTS p.253.
- 78) See supra, Part Three para.12.
- 79) See supra, Part 4.1 para 1 p.9.
- 80) See supra, Part 3, para 11, p.7.
- 81) See the Industrial Investment Promotion Act B.E. 2520 (A.D. 1977) passed by the National Administrative Reform Assembly (NARA) and published in the Royal Gazette on 4 May B.E. 2520 (A.D. 1977), coming into effect the following day. This Act repealed the Announcement of the Revolutionary Council No.31, of 29 November B.E. 2501 (A.D.1958) and Announcement No.227 of the National Executive Council of 18 December B.E. 2515 (A.D. 1972) as well as other laws, rules, and regulations, with a list of activities eligible for promotion. See also Export Promotion Act B.E. 2503 (A.D.1960) of 12 April B.E. 2503 (A.D.1960). Cf. Investment Laws of the World: THAILAND (ICSID Release No.4, April 1982, New York).
- 82) See Land Code B.E. 2497 (A.D. 1953), Secs. 84, 86, 88 - 95.

- 83) The treaties denounced are those:
- (1) with France, 7 December 1937, 201 L.N.T.S. p.113;
 - (2) with Great Britain, 19 February 1938, 188 L.N.T.S. p.333;
 - (3) with the Belgian-Luxembourg Economic Union, 5 November 1937, 190 L.N.T.S. p.151;
 - (4) with Denmark, 5 November 1937, 188 L.N.T.S. p.187;
 - (5) with Italy, 3 December 1937, 189 L.N.T.S. p.255;
 - (6) with Japan, 12 June 1940, 204 L.N.T.S. p.131;
 - (7) with the Netherlands, 1 February 1937, 193 L.N.T.S. p.13;
 - (8) with Norway, 16 November 1937, 186 L.N.T.S. p.9;
 - (9) with Portugal, 2 July 1937, 200 L.N.T.S. p.149;
 - (10) with Sweden, 5 November 1937, 185 L.N.T.S. p.337;
 - (11) with Switzerland, 4 November 1937, 190 L.N.T.S. p.137.

The Treaty with the U.S.A., 13 November 1937, 192 L.N.T.S. p.247, was renounced with the start of negotiation of a new series of Treaties of Amity and Economic Relations on a more equal footing, see Treaty of 29 May 1966, 652 L.N.T.S. p.253.

The reason for this policy of denunciation was the fact that the old treaties affirmed various border changes and were consequently regarded by Thailand to be "unfair" and "unequal" in character.

- 84) See Sec.27 of the Industrial Investment Promotion Act B.E. 2520 (A.D. 1977), footnote 81 supra, giving the Investment Promotion Board wide discretionary power to permit a promoted limited company or partnership registered in Thailand to own land to the extent necessary to carry on the promoted activity.
- 85) Corporations with more than 49 per cent of their shares held by foreigners are regarded as alien for purposes of acquisition of immovables. See Land Code B.E. 2497 (A.D. 1953).
- 86) See Thai Ship Act No.III B.E. 2521 (A.D. 1978) Sec.7.
- 87) See the Civil Aviation Act No.III B.E. 2502 (A.D. 1959), Sec.31.

- 88) Nationality as connecting factor next to source of income and residence.
- 89) Criminal Code B.E. 2499 (A.D. 1956), Sec.8(A), and Code of Criminal Procedure B.E. (A.D.1934), Sec.22(2).
- 90) See on this topic e.g., the treaties concluded with Canada, U.S.A., Italy and France which have all been concluded in the eighties and are not yet ratified. Similar treaties are now under negotiation with other countries.
- 91) I.e. Thais who have settled overseas indefinitely or for a longer period of time. They number nearly one million in the U.S. alone. They can also be found in other, European, Asian and Arab countries (construction workers, labourers).
- 92) As occurred some time ago in some Middle East countries.
- 93) See, e.g., the Judgment of the I.C.J. of 24 May 1980, in the Tehran Hostages Case (US v. Iran), ICJ Rep. 1980 p., especially paragraph 93, at p.43: the operation undertaken on 24 April 1980 by U.S. military units "is of a kind calculated to undermine respect for the judicial process in international relations". See also the Judgment of 27 June 1986 (Nicaragua v. U.S.A.), ICJ Rep. 1986 p., particularly paragraph 292, at pp.137-141.
- 94) Supra, pp. 8 and 17.
- 95) See, e.g., How Thailand lost Her Territories to France (Public Relations Department, Bangkok, Nov.1940).
- 96) The three Treaties were (1) Treaty of 3 October 1893, 87 BFSP p.187, de Martens, NRG, 2nd series, Vol. XX, p.172; (2) Convention of 13 February 1904, 97 BFSP p.961, de Martens, NRG, 2nd series, Vol. XXXIII, p.130; and (3) the Treaty of 23 March 1907, 100 BFSP part 1, p.1028, de Martens, NRG, 3rd series, Vol. II, p.38.

- 97) The Tokyo Convention of 9 May 1941 (De Martens, NRG, 3rd series, Vol.41-3 p.868; 144 BFSP p.805), was repudiated by the French Government and under Article 1 of the Washington Accord was annulled and the status quo restored.
- 98) See 344 UNTS p.59.
- 99) Ibid., Article III: "... France and Siam shall constitute, under Article XXI of the Franco-Siamese Treaty of 7 December 1937, a Conciliation Commission composed of two representatives of the Parties and three neutrals, in accordance with the General Act of Geneva of 26 September 1928 for the Pacific Settlement of International Disputes ...".
- 100) Ibid., p.72 et seq.
- 101) See exchange of letters No.5, ibid. at pp.81-83.
- 102) See supra, n.39.
- 103) See, e.g., the Treaty with Great Britain of 10 December 1940, 203 LNTS p.433.
- 104) See the UK-Indo-Siamese Agreement for the Termination of the State of War, Singapore 1 January 1946, 99 UNTS p.131.
- 105) 179 LNTS p.258; see particularly para 2 which reads, inter alia: "...[]...". Compare also the Treaty with French Indo-China of 25 August 1926, 69 LNTS p.313.
- 106) 203 LNTS p.439, at pp.434-443 (supra, n.103).
- 107) See infra, Part Thirteen, p.33. See also R. Tasker, in the Far Eastern Economic Review of 13 August 1987, p.29: "The Thais ... are now processing the K.M.T. remnants' younger generation for Thai

citizenship - mainly because their fathers fought alongside Thai troops against the Communist Party of Thailand in the 1970's." According to official Thai views, the C.P.T. never existed legally since it was outlawed from its very inception.

- 108) See supra, text at n.38.
- 109) See supra, Part One para.5.
- 110) In 1898, Siam concluded a treaty with Japan allowing extraterritoriality for Japanese subjects resident in Siam as a temporary expediency terminable with the completion of the Siamese Judicial Reforms, i.e., the coming into force of the Siamese Codes of Law, i.e., the Penal Code, the Civil and Commercial Code, the Civil Procedure Code, the Criminal Procedure Code, the Law of the Organization of the Courts of Justice, and the Code on the Conflict of Laws. See, e.g., Francis B. Sayre, "The Passing of Extraterritoriality in Siam", 22 AJIL (1928) p.70, especially at pp. 82-83, where a reference is made to the Treaty with Japan of 10 March 1924 (31 LNTS, p.187), abrogating the existing rights of extraterritoriality, subject to the right of evocation within five years after promulgation of the Siamese Codes of Law. Compare President Wilson's Treaty with Siam of 16 December 1920, USTS No.655; 113 BFSP p.1168; 16 AJIL (1922 Supp.) p.25.
- 111) In 1899, Siam signed a Declaration with Tsarist Russia, 90 BFSP p.66, whereby most-favoured-nation treatment was mutually recognized on the basis of reciprocity with regard to jurisdiction, commerce and navigation, terminable, however, by either Party at any time upon six months' notice.
- 112) See supra, p.32, para.43.
- 113) Local residents in Thailand of Chinese descent could very well obtain certificates from accredited consulates in Thailand testifying their status as British or French subject or as subject of another Western Power. After World War II, when China had become a Big Power and a

permanent member of the UN Security Council, the problem of dual nationality of Thais of Chinese parentage re-emerged and still remains, in particular connection with the authorities in Taiwan (rather than with the People's Republic of China). In effect, these Chinese Thais carry double identity and visiting cards and travel documents. They retain Chinese names when visiting Taiwan but upon returning to Thailand resume Thai identification.

- 114) The courts were often confronted with the question when in the post-war years 1945 - 1952 it was the practice for Thai-born Chinese who spent their youth for years in China, Hong Kong or Singapore, to return to Thailand with foreign passports or certificates of identity or without any such documents. They would then volunteered to be arrested and detained as illegal entrants or for violation of immigration statutes, whereupon proof of Thai nationality was suggested in their defence. Once they could establish proof of their birth place in Thailand, by a record of birth and of registration, the courts invariably upheld their Thai nationality, at a time when jus soli was the sole determining criterion. This practice was discontinued under Section 16 of the Nationality Act B.E. 2495 (A.D. 1952). The courts were thereby given the competence to withdraw Thai nationality from persons born in Thailand of foreign parentage who remained in the country of their parents' nationality after majority for more than ten years. While the Act of 1952 gave the judiciary exclusive competence, later legislation reassigned this power to the executive, either to a committee (Nationality Act No.2 B.E. 2496 (A.D. 1953), Section 9, amending Section 18 now 18bis of the 1952 Act) consisting of the Under-Secretary of the Interior as Chairman and the Attorney-General, the Chief of Police, and the Director-General of the Department of Interior as members, or to the Minister of the Interior with a similarly composed committee under Sections 19 and 20 of the current Nationality Act B.E. 2508 (A.D. 1965), with the addition of a representative of the Ministry of Foreign Affairs.

- 115) That is why estoppel or acquiescence would make hard law if applied to relations between Asian nations and the colonial Powers of the West or the East, and can no longer be accepted or tolerated.
- 116) The preceding paragraphs appear to apply also to the law on nationality in respect of ships and aircraft. Within recognizable limits, Thailand would not object to the nationality of ships flying flags of convenience, although necessary precautionary measures should be taken to ensure that no injustice would result from recognition of such excessive claims. Tolerance is a guiding principle while the interests of the nation and its nationals should be appropriately safeguarded.
- 117) Thailand was one of the very few Asian nations that attended the First and Second Peace Conference at The Hague in 1899 and 1907. Siam is an original member of the Permanent Court of Arbitration. The codification efforts for the unification of private international law including nationality were appreciated by Thai jurists quite early in the present century. Thailand also adopted an Act to Regulate the Conflict of Laws in the thirties at the instigation of Western States, on the model recommended at The Hague.
- 118) On the other hand the retention of the original nationality unless and until another nationality is acquired through marriage, divorce, adoption or other changes in the family status is designed to avoid a vacuum or statelessness which would deprive the individual of protection by any State.
- 119) Reference may be made to the hesitations and fluctuations of criteria adopted by the Nationality Act B.E. 2456 (1913), and the Nationality Acts No. I B.E. 2495 (A.D. 1952), No. II B.E. 2496 (A.D. 1953), No. III B.E. 2499 (A.D. 1957), and No. IV B.E. 2503 (A.D. 1960), and the latest legislation of B.E. 2508 (1965) and the Order 337 B.E. 2515 (1972).

- 120) See, for instance, Section 14 (2) of the Nationality Act B.E. 2508 (A.D. 1965): "If the Minister is of opinion that there is good ground for believing that such person may really acquire the nationality of his father or another nationality, he [the Minister] shall grant permission to renounce Thai nationality".
- 121) See the relevant sections in various Nationality Acts setting out the criteria. For instance, Section 3 of the Nationality Act A.D. 2456 (1913), Section 7 of Act No.1 B.E. 2495 (A.D. 1952), Section 3 of Act No.II B.E. 2496 (A.D. 1953), Section 3 of Act No.III B.E. 2499 (A.D. 1957) and Section 7 of the latest Act B.E.2508 (1965) as qualified by Order 337 (1972).
- 122) These are remnants of former Chinese armed forces left by the Chiang Kai-Shek government after World War II. They did not move to Taiwan when the Government of the People's Republic of China took over the Chinese mainland. They do not owe allegiance to the latter Government, nor are they under the control of the authorities at Taiwan. They have since settled over remote hill sides, controlling the production and traffic of raw opium and heroin in the Golden Triangle, side by side with some hill tribes.
- 123) However, due to their relatively good organization they factually serve as a convenient buffer between Thailand and whatever communist or subversive hostile forces beyond the Thai borders. Thus, these remnants of Chinese forces at the same time present a threat and a risk to national security from the point of view of absence of control by Thai border police or military, and yet provide a comforting defence against other, possibly more hostile, forces. See supra, Part Ten, para.52, and fn.107.
- 124) The refugees and displaced persons have come from every direction at all times. Recently, they have come from Kampuchea, but before that they have come from North Vietnam through Laos, then also from South

Vietnam as boat people. They have come also from Laos (Meo hilltribes), and from Shan (Burma) because of their grievances with the central Burmese Government. It may be recalled that the princes of Shan (San Wee) are traditionally related to the princes of Chiang Mai (Northern Thailand). Refugees have also come from the West and South West. These refer to persons who have formed part of the rebel and secessionist movements of the Karens and Kachins and who have their counterparts and relatives on the Thai side of the Burmese-Thai border. In the South, remnants of the Communist Party of Malaya still roam the Thai-Malaysian border areas, crossing back and forth, depending on pressure from Malaysian or Thai police forces. The Thai-Malaysian Joint Patrol (military forces) did not prove popular with either side of the local inhabitants.