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Peacemaking Operations in Southern Thailand

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Peacemaking Operations

In

Southern Thailand

By

Major Pantanin Pisalasupongs, WRTA

A Dissertation submitted

To

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Introduction

As the concept of peacekeeping continues to evolve as a pragmatic solution to conflict resolution, another term — peacemaking — requires equal consideration. Peacemaking is a form of conflict resolution that focuses on establishing equal power relationships that will be robust enough to forestall future conflict, and establishing some means of agreeing on ethical decisions within a community that has previously had conflict. Whereas peacekeeping is a notion that rose to importance when it became part of the Charter provisions relating to the maintenance of international peace and security, peacemaking is a term that is yet to reach popular appeal but nonetheless conveys some important ideas. Whereas the term peacekeeping is used to describe a way of helping countries torn by conflict create conditions for sustainable peace,¹ peacemaking is a means of bringing about peace through a willful effort to prevent or mitigate conflict rather than a passive stance that hopes to maintain the status quo.² This research aims to provide an overview of the primary documentation of those political organs relating to the history, structure, and laws of international peacekeeping. But its purpose is to show through an analysis of these laws and histories that the costs and benefits of keeping peace in a particular region call upon peacemaking operations. The focus of this research is southern Thailand with the idea that such a study will help bring back the security, stability of the region and will support the reconstruction, development and integration of the varying differences while keeping in mind some of the contemporary challenges of globalization.

¹ Meeting New Challenges, United Nations Peacekeeping, available at <http://www.un.org>

² Webster's Third New International Dictionary, G.&C. Merriam Company, Springfield, MA 1965.

Although throughout its long history, Thailand has undergone many significant changes –, abolishing the system of slavery, transitioning from an absolute monarchy to a democratic regime, neutralizing the challenge for the Communist Party of Thailand in the early 1980s. -- these major transitions, the conduct and resolution of Thailand's external and internal affairs, happened without a major political revolution.³ Whether as a result or a cause of this, the Thai people have been often characterized as peaceful, typically seeking to resolve conflict through means other than extreme forms of violence.

The violent attacks in southern Thailand in 2004 are, however, an example of serious internal conflicts that pose a great challenge to the current Thai Government. Yet they are not conflicts that, I believe, should lead to broad, full-scale structural change but rather important changes in laws, policies and attitudes that this thesis will hope to explore in analyzing the various aspects of the cultural, racial, economic and ideological conflicts.

In the first chapter, I hope to look at the history and background of those cultural groups in conflict in Southern Thailand. In order to understand where the difficulties stand at the present moment, it is crucial to understand how those problems are rooted in the past. Because this region used to be prosperous and used to be the center of the old Empire, the religious, linguistic cultural and economic landscape is distinctly different from the rest of the country. The primarily Muslim population of Southern Thailand inhabits a world where the vestiges of the old regime are very much alive. Part of the challenge for modern Thai Government is to incorporate and balance the various regional concerns with the demands of a centralized state. As an example of these old conflicts, Pattani once paid tribute to Siam, and this gift was taken by the Siam Government as a

³ Likit Teeravakin, Political Revolution in Thailand 2, Thammasat Press 2003 (1990).

sign of respect for the law. However, Pattani did not consider the gift to be a concession to the government's legal power but merely a gift that had no other meaning. When the Thai Government declared that scarves (traditionally a Muslim adornment) could not be worn, there was a great furor over the way in which the centralized government did not respect or accommodate Muslim cultural and religious mores. This type of policy that has been culturally insensitive to Thailand's diverse populations has contributed to the potential for violence and this thesis hopes to explore the possibility of new policies based on greater cultural, historical and economic understanding of this region (Pattani) so as to analyze the problems that have occurred during and since 2004.

In the second chapter, I will explore the particular tactics and strategies of violence that have characterized these moments of dissent. It is important not only to consider the forms of violence (how acts of violence were committed) but the pattern of violence. Without scholarship on this topic, these patterns will doom Thailand to an ongoing and unresolved internal battle that can only escalate without a reconsideration of contemporary policy. Furthermore, there can be no attempt to resolve these violent outbursts without first considering how those eruptions of violence are deeply rooted in economic disparities, the historically high crime rate and the long-standing history of discrimination against Muslims in this area. To attempt to resolve the violence without considering the economic and religious context would only to looking at the symptom without considering the disease. This chapter will examine, therefore, the forms of violence that erupted in 2004 and attempt to put those acts in context of the region's troubled economic, religious and cultural climate. The Thai Government cannot have a

successful policy if there is only an attempt to fix the chronic problems without taking into account where those problems came from.

Chapter Three will explore whether the violence in Southern Thailand is related to the terrorist acts in this era or not. I will look at the application of Thai and international laws to such acts of violence, how the Thai Government responds to these acts, and the problems in the use of the term encountered by the United Nations.

Chapter Four will examine the question of whether Thailand's domestic laws regarding the operation of Thai Security Forces defies international agreements of armed conflict, humanitarian laws, and human rights law. This thesis will examine where there are inconsistencies in order to consider ways of reconciling those differences between Thailand's military laws and international agreements.

Chapter Five will suggest ways of resolving the problems by considering various issues including legal battles, security issues, domestic policies, international relations, cultural conflicts, and educational concerns. Further, the purpose of such a study is to find the most appropriate approaches that respond to complex circumstances that characterize this region's strife. The causes of the violent acts that have taken place in Southern Thailand are composed of many factors and it is impossible to attempt to solve such complex problems without consideration of these various elements. I will then look at both long term and short term solutions.

This study is an attempt to understand the structure, nature and extent of related public acts of violence in Thailand and the policies, laws and issues that have contributed to the ongoing problems. It is my hope that through this research, there will be a greater

sense of what might be done to attain justice and peace while maintaining a faith in the basic concept of Human Rights.

CHAPTER I

HISTORICAL BACKGROUND

I - 1 Introduction

The Kingdom of Thailand (“Thailand”) is the only Southeast Asian country that the European powers were unsuccessful in their combined and separate attempts to subjugate and colonize. Thailand is located on the Southeast Asian Peninsula,⁴ and covers an area of 513,115 square kilometers (198,062.39 square miles). Archaeological recently discoveries made this century support us logical ideas to believe that the northeastern region⁵ of Thailand was actually one of the first cradles of civilizations in Southeast Asia.⁶ The country was known as “Muang Thai” and interchangeably as “Siam” until May 11, 1939, when its official name, “Thailand,” was adopted. The word “Thai” means “free”; thus, “Thailand” means “Land of the Free.”⁷ Thailand as a Kingdom is a constitutional monarchy with the King as a sovereign Head of State. The Government exercises power under the law and the Constitution is based on democratic principles (i.e., the King rules the country through the National Assembly, the Council of

⁴ Pre-History, Suvarnabhumi, Land of Gold, The Siam-Thai Millennia Book, Nation Multimedia Group 19-20, 2000.

[S]outheast Asia is referred to as Suvarnabhumi or the “Land of Gold.” The remains of Homo Erectus found in Java prove that this region has been occupied by humans since the Pleistocene period (two million to 100,000 years ago) when islands in the South China Sea including those now part of Malaysia and Indonesia, were joined to the mainland. Other evidence indicates that there were permanent settlements in Southeast Asia at least 30,000 years ago.

⁵ Isaan region

⁶ See Pre-History, Suvarnabhumi, Land of Gold, cited in note 4 *supra*, at p.11.

⁷ Historical Background, Ministry of Foreign Affairs, Kingdom of Thailand, available at <http://www.mfa.go.th/web/14.php>. (last visited Feb. 14, 2006).

Ministers and the Courts of law in accordance with the provisions of the Thai Constitution).⁸⁹

The country comprises 76 provinces, and has a population of approximately 64 million, of which 75 percent are ethnic Thai, 14 percent Chinese, 3 percent Malay and other ethnic minorities (such as Mons, Khmers, Karens, Kachins, and various hill tribes).

The Thais are not a "pure" race; they are descended from people of many different ethnic backgrounds,¹⁰ and the people of modern Thailand are as varied as those in any nation.

They are of all shapes and sizes, complexions, and statures. Their professions vary widely as well: farmers and computer programmers, soldiers and bus drivers, merchants and students, princesses and monks. But virtually all of those who would call themselves first and foremost "Thai," would define "Thai" as primarily political. In other words, the Thai are "Thai" because they are citizens of Thailand, subjects of the Thai monarch. The

⁸ Constitutional of Royal Kingdom of Thailand B.E.2550 (2007), the National Legislative Assembly's Version [hereinafter Thai Constitutional B.E.2550], sec. 3

[T]he sovereign power belongs to the Thai people. The King as Head of the State shall exercise such power through the National Assembly, the Council of Ministers and the Courts in accordance with the provisions of this Constitution. The performance of duties of the National Assembly, the Council of Ministers, the Courts, and the constitutional organs as well as State agencies shall be under the Rule of Law, available at <http://www.senate.go.th/pdf/Constitution2007.pdf> (last visited Aug. 1, 2007);

Constitutional of Royal Kingdom of Thailand (Interim Edition) B.E.2549 (2006), the National Legislative Assembly's Version [hereinafter Thai Constitutional B.E.2549], sec. 2

[T]he sovereign power emanates from the Thai people. The King who is Head of State exercises such power through the National Legislative Assembly, the Council of Ministers and the Courts in conformity with the provisions of this Constitution, available at <http://www.senate.go.th/pdf/const.pdf> (last visited Nov. 1, 2006);

See also the Constitutional of Royal Kingdom of Thailand B.E.2540 (1997), Office of the Council of State, Thailand version [hereinafter Thai Constitutional B.E.2540], sec. 3 [T]he sovereign power belongs to the Thai people. The King as Head of the State shall exercise such power through the National Assembly, the Council of Ministers and the Courts in accordance with the provisions of this Constitution.

⁹ Davit K.Wyatt, *The Politics of Reform In Thailand: Education in the Reign of King Chulalongkorn 1*, Yale University Press 1969.

[T]he first major Thai Kingdom was founded at the town of Sukhothai, on the northern edge of the great Central Plain of the Chaophraya River system, in the first quarter of the thirteenth century. The political and cultural foundations of Sukhothai established by its great rulers, from King Ram Khamhaeng at the end of the thirteenth century to King Lu Thai at the middle of the fourteenth.

¹⁰ See Pre-History, *Suvarnabhumi, Land of Gold*, cited in note 4 *supra*, at p.11.

social, cultural and linguistic components of Thai identity each has its own rich history and although such an analysis goes well beyond the scope of this study, what is important to keep in mind is that the Thai people share a common linguistic and cultural identity that historically has become differentiated into a large number of separate but related identities.¹¹

The Thai Constitution recognizes the right of the people to enjoy freedom of religion. Thus, Buddhism, Islam, Christianity, Hinduism and other faiths are represented throughout the Kingdom. Buddhism is the official main religion and can be considered the national religion of Thailand (roughly 94.6 percent of the populations are Buddhists). 4 percent of the population is Muslim, the second most popular faith, which is concentrated in the southern part of the country and constitutes a strong majority there. Finally 0.7 percent are Christian, and 0.1 percent embrace other faiths.¹²

Over many centuries "Thai," as term that denotes both a civilization and a marker of cultural identity, has evolved out of the ongoing interaction between Tai¹³ and indigenous and immigrant cultures.¹⁴ The Thai people have lived with generally peaceful relations within the varying cultures and politics without great political turmoil or irreconcilable ethical dilemmas.

¹¹ David K. Wyatt, *Thailand A Short History* (2nd edition), University Press 2003.

¹² Population and Housing Census 2000, National Statistical Office Available at <http://web.nso.go.th/pop2000/tables.htm>, (last visited Oct. 1, 2006).

¹³ A term used to denote the various Tai peoples in general.

¹⁴ See D. K. Wyatt cited in Note 11 *supra*.

Since 2004, Thailand has encountered sporadic bursts of internal violence in the southern part of the country. The South includes the provinces of Pattani, Yala,¹⁵ Narathiwat,¹⁶ and Songkhla¹⁷ where violent activities have caused the death toll to top 3,000 in recent years. The attacks generally have occurred without warning, and are often vicious and indiscriminate. The victims have included civilians, monks, and ethnic Thai and Muslim government officials. On January 4, 2004, a group of Islamic militants stole a cache of weapons and killed four soldiers in Narathiwat. On April 28, 2004, the Thai army captured more than one hundred of the suspected terrorists at Krue Se mosque in Pattani. On October 25, 2004, after a protest turned violent, hundreds of protestors were arrested, and approximately eighty died after being crammed into army trucks. Even now the newspapers continue to report killings on a daily basis. The Government's efforts to enhance security by placing four provinces--Pattani, Yala, Narathiwat and Songkhla--under martial law¹⁸ has resulted in further unending chaos.

The Government is not only concerned about the terrorist movement, but also keeps a wary eye on the separatist movement. Although separatism and terrorism might seem related in that terrorist activities perpetrated by individuals who desire to forge a separate state, historical accounts show no actual or necessary connection between the

¹⁵ Yala provinces is the southernmost province of Thailand. It has an area of 4,521 square kilometers (1745.1 square miles)and is 1,083 kilometers (672.97 miles) from Bangkok. Its border is connected to Malaysia (Perak and Kedah State) but it used to be part of Pattani Region.

¹⁶ Narathiwat province which borders on Malaysia is the southernmost province of Thailand. In fact Narathiwat province was part of the Pattani Region until the Government made it a separate province in the period of King Rama V.

¹⁷ Songkhla province is a border province in southern Thailand, adjoining the State of Kedah in Malaysia. Songkhla covers an area of 7,393.9 square kilometers (2854 square miles). It is 950 kilometers (590.32 miles) from Bangkok.

¹⁸ This law was superseded by the Thai Emergency Decree on Public Administration in Emergency Situation, B.E.2548(2005).

separatist movement and international terrorism. Recent events, however, like the arrest of Riduan Isamuddin, an Indonesian who goes by the alias, Hambali, could force the Government to re-consider whether there might be an international or transboundary connection. Isamuddin was suspected of being the operations chief for Jemaah Islamiah (JI), a group allegedly linked to Al Qaeda and blamed for the recent Bali bombing and other attacks. Isamuddin was captured in the ancient temple city of Ayutthaya on August 11, 2003 during a raid on an apartment building after a tip-off by an unnamed Government agent.¹⁹

This dissertation will analyze the political and cultural issues involved and propose a peaceful resolution to the problems that have been ongoing in Southern Thailand. As ethical and religious conflicts are pressing contemporary issues, I will discuss these problems by first contextualizing them and situating the challenges in this region within the historical background. The purpose of such a study is to find the most appropriate laws that respond to complex circumstances that characterize this region's strife. Additionally, I will analyze the other factors in conjunction with particular incidents to find the best approach to workable legal, social solutions and policies. In other words, my purpose is to find the most appropriate domestic, international law and military operations for a set of complex circumstances in other chapters. The following section introduces the province of Pattani and its history.

¹⁹ Terror suspect Hambali quizzed, BBC NEWS (Aug.15, 2003) available at <http://news.bbc.co.uk/2/hi/asia-pacific/3152755.stm>. (last visited Feb. 14, 2006).

I - 2 Pattani

A. Introduction

Pattani (or "Patani" in the Malay spelling) is a small province that is located on the east coast of Thailand. It has been known as an autonomous region for hundreds of years. Pattani, with an area of 1,377 square kilometers (532.52 square miles), is approximately 1,055 kilometers (655.57 miles) from Bangkok. Many millennia ago, Pattani as an Empire included part of present-day Yala and Narathiwat provinces, which had long been dissociated from Pattani to become autonomous provinces in their own right. Pattani has a rich and diverse culture, its own indigenous regional customs, and is known for extensive golden beaches along its portion of the Gulf in Southern Thailand.

Pattani region also has considerable natural resources such as rubber, coconuts and sea fauna; much of the marine fauna is used as food. However, despite its ideal location and cultural success, violence has been an ongoing problem in Pattani for as long as 500 years. In fact, Pattani unsuccessfully revolted several times against Ayutthaya²⁰ and Bangkok under the modern Thai Rattanakosin Kingdom.²¹ To understand how and why Pattani has become the focus of conflict, and to resolve such problems, one must take into account the history and perspectives of the southern region, its cultural evolution, and be mindful of events and personalities from the past. We shall now turn to this task, beginning with the history of Pattani. Time constraint implies that an in-depth

²⁰ The Kingdom of Ayutthaya was officially founded in 1350 by King Ramathibodi (U-Thong). The Kingdom of Ayutthaya, whose capital was also called "Ayutthaya", expanded its territory and became the dominant power in Asia. The Kingdom of Ayutthaya had existed for 417 years until it was sacked by Burmese in 1767.

²¹ Rattanakosin Kingdom was established by King Rama I in 1782, founder of the Chakri Dynasty. Bangkok was founded as its capital and remains the capital city of Thailand today. The Chakri dynasty has crowned nine Thai Kings, who have reigned without interruption for over 200 years.

study of history would be beyond the scope of this dissertation. I shall, therefore, provide a brief outline and references for anyone desiring to pursue a more thorough historical study of Pattani.

B. Historical Perspectives

The history of the Pattani region is related respectively to the circumstances of indigenous Malays in the Southern Peninsula and the Empire of Lankasuka. The Kingdom of Pattani was founded in the early second century A.D. Legend has it that Pattani probably rivaled Kedah as being the oldest ethnic Malay States on the Peninsula.²² Historical documents show varying descriptions of Pattani, many of which seem appropriate to reproduce in extracts below.

1. The Arab Account:

*Lankasuka was located on some latitude intermediate between Kelantan and Singora. The position of Lankasuka most nearly consonant with the exigencies is the vicinity of Patani.*²³

²² The end of Lankasuka, the rise and fall of Malay Kingdom at Patani, available at <http://www.sabrizain.demon.co.uk/malaya/kedah3.htm>. (last visited Mar. 14, 2006).

²³ Paul Wheatley, *The Golden Khersonese studies in the Historical Geography of the Malay Peninsula before A.D.1500* 258, University of Malaya Press 1966 (1961).

2. The Chinese Map:

*Lankasuka (Lang hsi chia) is placed uncomprisingly to the south of Songkla (Singora). Its southern boundary appears to be a river with the name (in Amoy Hokkien) of Kun-ha-ti. It is difficult to suggest any modern place – name corresponding to this, but is clearly in the position of the Patani River.*²⁴

3. The Chinese Record:

*Langkasuka... was well known in China as a religious centre, and in the later seventh century several Buddhist monks specifically made voyages there.....these small states could conduct diplomatic affairs with the aplomb of their neighbor...By the sixth century Lankasuka in the Patani region was sending envoys to the Chinese Emperor.*²⁵

4. Malay Folklore:

*Langkasuka has passed into Malay folklore as a west- coast kingdom the predecessor of modern Kedah, though the evident association of its rulers with Patani beyond and the hills and forest may not be without significance.*²⁶

²⁴ *Ibid.*

²⁵ Barbara Watson Andaya & Leonard Y. Andaya, *A History of Malaysia* 21, Macmillan Education Ltd. 1987(1982).

²⁶ See P. Wheatley, cited in note 23 *supra*, at p.262

5. *The Thai Alphabetical Order, the Royal Institute, the Royal*

Academy stated:

...the position of Lankasuka and Pattani were located at the same latitude...²⁷

Dr. Paul Wheatley²⁸ believed that Lankasuka was an important Kingdom during the fifteen century and was situated in the vicinity of modern Pattani.²⁹ Meanwhile, the history of Pattani indicates that Pattani was settled during the Empire of Langkasuka in the seventh century. This is similar to the Chinese report.³⁰ The historical evidence found in ancient documents is supported by archeological surveys of limestone hill formations from Tham Din Cavern, which provide evidence substantiating a history of Pattani dating back three and a half millennia.³¹

²⁷ Anand Wattananikorn, *History of Lankasuka and Pattani* 13, Mitr - Siam 1988.

²⁸ Cited in note 23, *supra*.

[The] author was a specialist on comparative urbanism and historical urban geography and long-time professor and chairman of the Committee on Social Thought at the University of Chicago. Dr. Paul Wheatley served in the Royal Air Force during World War II. He was best known for his works on Asia, which explored social relations and developments related to ecological settings and comparative urbanism. An early work published in 1961, *The Golden Khersonese*, focused on historical, social, and ecological development in the Malay Peninsula and drew heavily on primary source materials in Latin, Greek, Chinese, Arabic, and South and Southeast Asian languages. The first draft of this work on Southeast Asia was also submitted as his doctoral thesis at the University of London, awarded in 1958.

²⁹ See P. Wheatley, cited in note 23 *supra*, at p. 265.

³⁰ *Ibid.* at p. 263.

³¹ The archaeological studies in South Thailand, a Fulbright-sponsored project at the Prince of Songkhla University, Pattani surveyed in the areas near Pattani on the coast, investigation of the Yarang ancient religious complex inland on the coastal plain, and an intensive field survey of an interior region, available at <http://www.uoregon.edu/~wsayres/Thailand.html> (last visited Mar. 15, 2006).

The first settlement of people to inhabit the Malay Peninsula³² was of a primitive tribe after which came the Hindus from India and those who migrated from Siam; these groups were followed by the indigenous Malay ethnic group.³³ Ethnographers and archeologists, respectively, stated that the Thai and Malay races originated from the same racial stock and geographical area.³⁴ In other words, the people of Pattani were aboriginal Malay and were indistinguishable from the ethnic Thai group.³⁵

C. The Prosperity and Decline of Pattani

1. The beginning of Pattani

After the Empire of Langkasuka collapsed, leaving only a legendary name to peasant mythology,³⁶ archaeological evidence suggests that Pattani continued to thrive. Though there is no clear and precise evidence about the origins of Pattani,³⁷ certain references can be found on record:

³² See Pre-History, Suvannabhumi, Land of Gold, cited in note 4 *supra*, at p.1p.

[M]any tales in the *Jatika* (including "Mahajanaka" recently rewritten in Thai and English by HM King) tell of voyages made Suvannabhumi which is described as a prosperous land with which people from many races aspired to trade.

³³ Ibrahim Syukri, *History of The Malay Kingdom of Patani: Sejarah Kerajaan Melayu 4*, (Conner Baailey & John N. Miksic., trans., Silkworm Books Publisher 2005) (1985).

³⁴ See P. Wheatley, cited in note 23 *supra*, at p. 265.

³⁵ Sri Nuryanti, *The landscape of Intellectuals' Thought: Pattani Identity and the Emergence of a Resistance Movement* Center for Political and regional Studies (LIPI), Indonesia 130, *The Asian Face of Globalization, Reconstructing Identities, Institutions and Resources*, the Paper of 2001 API Fellows.

³⁶ See P. Wheatley, cited in note 23 *supra*, at p. 265.

³⁷ *History of Pattani, Pattani Province*, available at <http://www.pattani.go.th/> (last visited Feb. 14, 2006).

*the people of Pattani are able to eat a hundred kind of fruits and many kinds of meat such as beef, mutton, goose, duck, chicken, capon, peacock, deer, mouse deer and birds.*³⁸

Known not only for the richness of its natural resources, Pattani also became an important center of trade. It also had a well-known port, which was part of the general trading system with Brunei, Cambodia, China, Holland, England, Indonesia, Java, Malay, Portugal, Siam, and Sumatra.³⁹ Items of trade included pepper, gold, textiles, and various foodstuffs. Pattani functioned to circumvent Portuguese Malacca's predominant commercial influence by serving as an international port from which pepper could be acquired from its neighbors for trade with Chinese merchants in exchange for luxury textiles and porcelain.⁴⁰ Historians also believed that within Southeast Asia, Pattani eventually became a more important trade center than Ayutthaya.⁴¹ The chart on the following page shows the reigning monarchs and queens of Pattani.

2. Kings and Queens of Pattani

It is believed that Pattani was one of the oldest kingdoms on the Malay Peninsula. For centuries Pattani existed as an independent Kingdom. The chart below shows that Raja Sri Wangsa⁴² was the first ruler. Thereafter, a number of his descendants ascended to the Pattani throne.

³⁸ See I. Syukri, cited in note 33 *supra*, at p. 32.

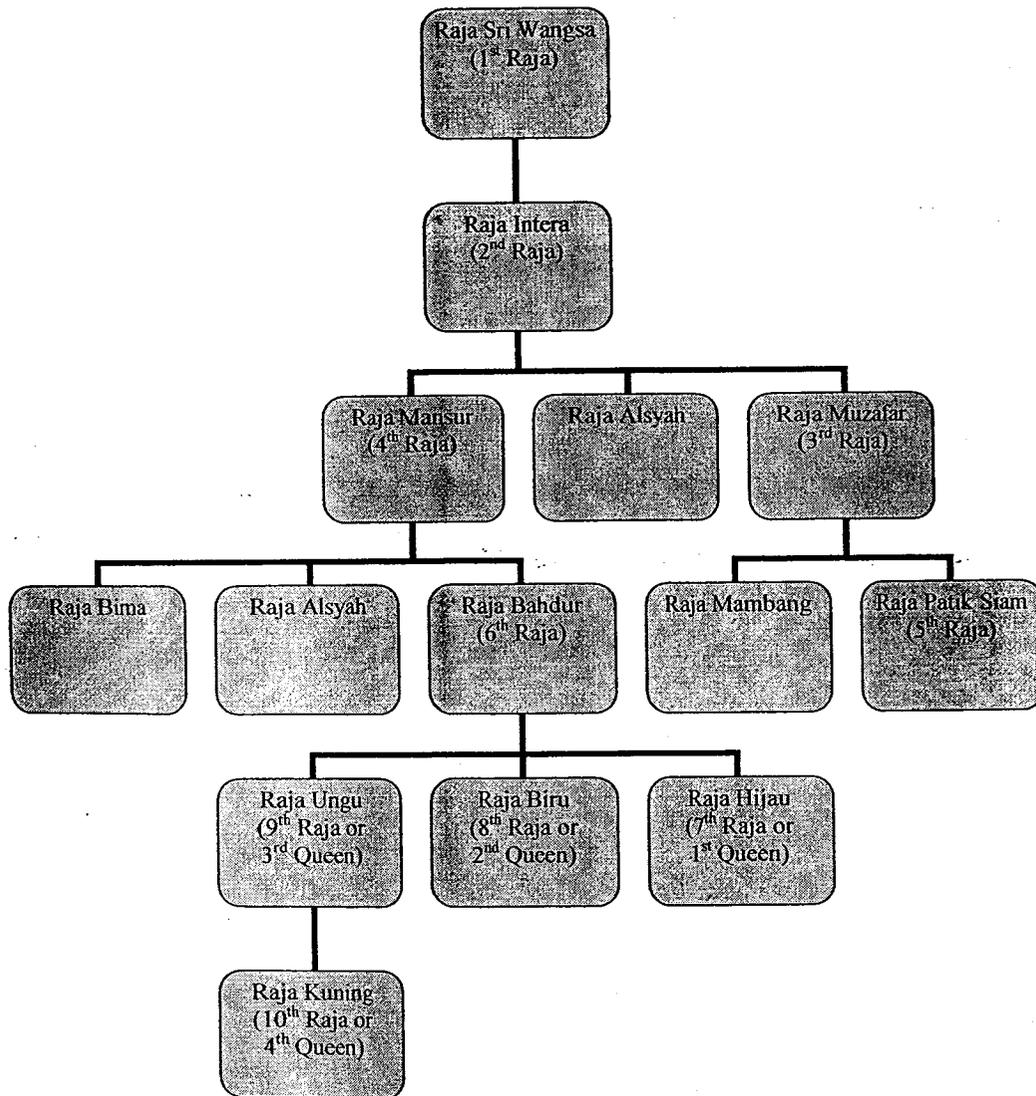
³⁹ A. Teeuw & D.K. Wyatt, HIKAYAT PATANI THE STORY OF PATANI 19, Koninklijk Instituut 1970.

⁴⁰ *Ibid.* at p.7.

⁴¹ See I. Syukri, cited in note 33 *supra*, at p. 32.

⁴² See at the chart of Pattani Rajas.

The Chart of Pattani's Rajas



As mentioned above, Pattani also enjoyed its greatest prosperity during the reigns of the Queens⁴³ and became well-known in countries in Asia as well as in Europe. The golden age of the Kingdom was during the regimes of its four queens: known as Raja Hijau (The Green Queen), Raja Biru (The Blue Queen), Raja Ungu (The Purple Queen) and Raja Kuning (The Yellow Queen).⁴⁴ After Raja Kuning died, there were no other descendants of Raja Sri Wangsa in line for the throne. Thereafter, Pattani was ruled by Raja of Kelantan, Kampung Dawai and Sultan. The commerce of Pattani began to decline after the rule of the Kelantan Raja.

D. Beliefs and Religions

According to Islam, each person has his or her own identity. Each has individual practices, rituals and systems of ethics that regulate behavior, and stress harmony and obedience to Allah, the central deity. Further, Islam has promoted advancement in several branches of science and medicine.⁴⁵ Thus, Islam has been in practice in Southern Thailand for a long time, and it has thereby established a lifestyle that has brought about the harmonious binding of relationships among Muslims.

Since the first century A.D., Hinduism played a vital role in the mundane and ecclesiastical affairs of the coastal kingdoms, namely, Langkasuka, Ganga Negara, and to some extent Melaka. The Hindu-Malay rulers observed the same doctrines as

⁴³ See I. Syukri, cited in note 33 *supra*, at p. 52.

⁴⁴ *Ibid.*

⁴⁵ Semonti Hossain, Islam behind the Stereotypes, available at http://www.religioustolerance.org/hossain_01.htm (last visited Mar. 14, 2006).

*preached in the Indian heartland. Following the spread of Buddhism in India and the activities of its traveling monks, the scenario in Malaya changed accordingly. Many rulers adopted the new faith, and the masses followed suit. For a thousand years, these two religions had a popular following at all levels of society. Hindu temples and Buddhist pagodas flourished across the land. Their influences have left permanent marks on the local language and custom. In the thirteenth century, when Arab and Indian Gujerati traders brought Islam to the region, among the Hindu-Malay aristocracy of the time, the first ruler to officially accept Islam was Parameswara, the Raja of Melaka, who upon conversion changed his name to Megat Iskandar Shah. From Melaka, Islam spread to other districts of the Malay Peninsula and to the Malay states in Sumatra and along the trade routes throughout the Indonesian archipelago.*⁴⁶

Islam began a rapid expansion into the Domain of the Malay Peninsula, causing many of the imperial rulers to change their religious beliefs. During this period, Islam took root in Pattani during the reign of Raja Intera. For the edification of the royal family and other people of importance, studies of Islamic law were conducted in the royal palace. After that, the Islamic religion began to spread beyond the royal palace and among the common people. It was only a matter of a few years before nearly all the people of Pattani had embraced this new religion. Meanwhile, as the people of Pattani began to give it less attention, the Hindu religion began a gradual decline. Buddhist

⁴⁶ History of Malaysia, Embassy of Malaysia in Seoul, available at www.malaysia.or.kr/history.htm (last visited Mar. 14, 2006).

idols, temples and other places of worship eventually succumbed to complete disrepair, or were intentionally destroyed.⁴⁷ After Pattani had completely converted its inhabitants to Islam, many Mosques were established. These edifices were symbolically intended for the performance of religious activities while strengthening the belief in Allah.

Currently, eighty-eight percent of the population of southern Thailand are Muslims. This constitutes 4.6 percent of all Thais.⁴⁸ Although Muslims are a minority group of the country, the majority group of people in Pattani and the three provinces of southern Thailand are Muslims.

As the Muslims have always been part of the historical and political scenery of Siam, in the long-established period, their role was extremely significant and varies. The region communities differed widely in many customs from Siam, nonetheless they were easily accommodated by the traditional systems. Muslims were able to settle, develop and share their role within the Thai polity despite their cultural, ethnic, and religious differences. The reform of the Thailand introduced factors that were not present in the previous period. But even then, relations between the Muslim and the majority Buddhists were still generally amicable and subtle. There is something in the nature and culture of Thai society that seems to make Buddhists reasonably broadminded of others who are different from them in terms of beliefs, origins, or outlooks, as long as Buddhism is not politicized. There have been few cases of interpersonal conflicts or interreligious rivalry. Throughout the centuries-old association with the Thai Buddhist polity, the Muslims in Thailand, nearly have never experienced any mass persecution of systematic

⁴⁷ See I. Syukri, cited in note 33 *supra*, at p. 22.

⁴⁸ See National Statistical Office, cited in note 12 *supra*.

discrimination.⁴⁹ Consequently, it is probable that the Muslim minorities in Thailand are more preponderant in the four southern provinces. Throughout many decades of cultural growth and creation in Pattani, the overall cultural and religious settings become a unique society. Islam has been widely practiced throughout the South of Thailand and was considered by many to result from an original Thai Muslims culture. It seems apparent that Islam has been rapidly absorbed into the region's culture.

E. The Expanding Kingdom of Siam

The Thai "Palatine Law" (Kod Monthianban), which King Ramathibodi Borommtrailokkanat promulgated in 1448-1488 states:

...Altogether, twenty towns send gold and silver flowers to the King: Nakhon Luand, Sri Sattanakkhanahut, Chieng Mai, Tong U, Chiang Krai, Chiang Kran, Chiang San, Chiang Tung, Chiang Rai, Hsenwi, Khemmarat, Phra, Nan, Tai Thong, Khotrabong, and Reo Kaeo, these sixteen in the north; and, in the south Ujong Tahah, Malacca, Malayu, and Varavari four towns; altogether twenty towns which send the gold and silver flowers...⁵⁰

⁴⁹ Wattana Sugunasil, *Dynamic Diversity in Southern Thailand*, Prince of Songkla University, Pattani Campus 15, Silkworm Books 2005.

⁵⁰ David K.Wyatt, *Studies in Thai History* 83, O.S.Printing House 2004 (1994).

The ideas following the foundation of Ayutthaya Kingdom modeled after Hindu Kings or Godly Kings based on the epic of Ramang are not too dissimilar to those inspired by the imperialistic ambitions of Great Britain, French, China, and Japan. The objective of Ayutthaya was to create an empire by dominating its less powerful neighbor nations.

According to the Ligor Chronicle or Nakhon Si Thammarat,⁵¹ Ayutthaya Kingdom began to extend southwards to annex the area of Malay-speaking peoples. The two lords from Phetburi who were the descendants of the Phetburi royal family were responsible for appointing Malays to supervise the Malay lands under Ayutthaya control such as Pahang, Kelantan, Pattani and Kedah. Ligor known as Nakhon Si Thammarat became the major Thai center in the south through which Ayutthaya was able to supervise its Malay vassals. In the early sixteenth century each province, including Terengganu (formerly spelled *Trengganu*), was required to send 600 grams of gold as tribute. The two Ligor officials supervised the collections.⁵²

In the seventeenth century, the *bunga mas*⁵³ was sent from Kedah and Pattani to the Thai Prince. In the Malay view, the Kedah ruler claimed that the *bunga mas* demonstrated a gift of friendship and alliance, and not to confirm, or accept a vassal

⁵¹ Nakhon Si Thammarat province, originally known as Ligor, is the second largest province in the South of Thailand. It was predominantly Buddhist during the Srivijaya Empire Period. Nakhon Si Thammarat occupies an area of 9,942 square kilometers (3837.61 square miles) and approximately is 780 kilometers (487.5 miles) from Bangkok. The exact founding date of Nakhon Si Thammarat is unknown. From the historical evidence, the city flourished for 1,800 years and was a trading center since the first century. The Kingdom of Nakhon Si Thammarat remained semi-independent until finally surrendering to the Thai Kingdom during the reign of King Taksin.

⁵² See B. W. Andaya & L. Y. Andaya, cited in note 25 *supra*, at p. 62.

⁵³ A tree with flowers and leaves made of gold which the Ayutthaya Kingdom required its vassal States to send as tribute.

status. Ayutthaya, nonetheless, saw the dispatch of the *bunga mas* as Malay recognition of its authority over Malay.⁵⁴

The period from 1549 to 1563 was historically significant; during the reign of King Mahachakrapat, a massive attack from Burma (Myanmar) was launched against the Kingdom of Ayutthaya. Phraya⁵⁵ Tani Sri Sultan (Sultan Muzafar Shah) came to assist Ayutthaya with two hundred warships, one thousand soldiers and one hundred women as a combined force. However, when the Sultan saw that the Burmese had surrounded the citadel of Ayutthaya and that the troops of Ayutthaya appeared to be losing, the Sultan switched alliances and attacked the Ayutthaya Royal Palace, killing many of Ayutthaya's soldiers. Eventually, His Majesty King Mahachakrapat succeeded in driving off the Burmese troops and re-gathered his forces. King Mahachakrapat then counter-attacked the forces of Phraya Tani Sri Sultan and defeated them. The Sultan died during that campaign from uncertain causes but was not buried in Pattani.⁵⁶

Between 1688 to 1702, during the reign of King Phrapethraja, Pattani declared its full independence from its earlier status of semi-independence under the rule of Ayutthaya. Afterward, in 1767, when Ayutthaya was defeated by Burma and the Kingdom was completely destroyed, all rajahs who ruled the various territories subject to Siam at that time desired to be independent and freed themselves from subservience to the Kingdom of Ayutthaya.⁵⁷

⁵⁴ *Ibid.* at p.66.

⁵⁵ A non hereditary title conferred by the King.

⁵⁶ See I. Syukri, cited in note 33 *supra*, at p. 27

⁵⁷ *Ibid.* at p. 52.

It took seven months for Phraya Taksin to drive off the Burmese and to settle in the new capital of Thonburi. After he became King of Siam, he led an army to all territories under the control of Siam to defeat the minor rajas who had strongly advocated independence from Siam. In a short time, all the minor rajas, including Pattani (Sultan Mahmud Reign), had again surrendered to King Taksin.

After the end of the reign of King Taksin, King Rama I rose to establish the Chakri Dynasty in 1782 (the Rattanakosin Period). Since the country had endured a long war, King Rama I began to reunite the country. At the beginning of the Chakri Dynasty, the attempt to regain the control of the Malay Peninsula was a complete success. The reunion included Pattani, Kedah, Kelantan, Perlis and Terengganu.

From that time on, Pattani was ruled by the dynasty of Kalantan that had been appointed by the King of Siam.⁵⁸ On account of the massive resistance demonstrated in Pattani and other areas of Siam, a new strategy to restrict power was implemented during the reign of King Rama II; it was a strategy of "divide and conquer." Pattani was, therefore, divided into the seven following districts :

1. Pattani
2. Yaring
3. Saiburi
4. Nongchik
5. Ra-ngae
6. Reman
7. Yala

⁵⁸ *Ibid.* at p. 72.

Each district still retained its own raja who was supervised and controlled by Siam. After the formal enthronement of King Rama V in 1873, His Majesty announced the reforms of all infrastructures in Siam such as the judiciary, the Treasury, and the political structure.⁵⁹ This was a time of large-scale reform and initiate fundamental change of all structures within the country.⁶⁰ The organization of the southern part of the Kingdom included the four following regions (Monthon):

1. Monthon Phuket
2. Monthon Chumpom
3. Monthon Nakhon Si Thammarat
4. Monthon Saiburi

⁵⁹ Arthorn Chantavimol, *History of the Land, Thailand* 280, Auxsornthai 1995(1993).

⁶⁰ See D.K.Wyatt, cited in note 50 *supra*, at p. 273 and 278.

[T]he reform decree that followed, through the rest of 1873 and all of 1874, began more substantial institutional change and attacked directly the existing state of public affairs. Along four separate approaches, they undermined the strength of the semi-independent, oligarchic nobility. First, by announcing the progressive abolition of hereditary slavery and by severely restricting the conditions under which the nobility could hold debt bondservants, the King undertook to free the ordinary Thai farmer from traditional constraints on his political and economic life—an action which struck against the chief source of the nobility's wealth, which was their control over manpower. Second, he established special law courts to clear the enormous backlog of litigation in Bangkok and its concomitant delays, which oppressed all the litigants involved and profited the nobleman and petty officers who controlled the myriad jurisdictions of the Kingdom's legal system. Third, he worked to build up the financial resources available to the central government, at the expense of numerous private pockets, by attempting to centralize collection and disbursement records, by standardizing rates of taxation, by ordering that tax collections farmed out to private individuals be let by public auction, and by establishing a central audit office (in which the King himself, with the assistance of his teenager brother, pored over ledgers and receipts). Fourth, and finally, he moved to consolidate his own political support against the men left in office by his father by establishing two advisory councils to consider public legislation and policy, the Council of State and the Privy Council. His intention in this respect was to bring older, more conservative officials into a larger body where they could be outvoted or influenced by his young friends and loyal supporters.

Ibid. at p.282

[P]rovincial administration was brought under centralized direction and control and serviced by specialized functional ministries staffed by competent specialists. Modern law-codes were drafted and put into force by administrators, judges, and lawyers. Fiscal administration was centralized and modern accounting, budgeting, and auditing procedures introduced. Railways and telegraphic communications were constructed. A broad range of educational institutions was founded to serve all the varied needs of the state, and modern military and naval forces were created.

The seven districts of Pattani were combined with Monthon Nakhon Si Thammarat and each of the Monthon was ruled by royal commissioners instead of Rajas. This reform impacted Pattani. When Muslims are governed by Buddhists, they might feel that they are being ruled by “foreigners.” Siam respects the unique cultural, historical Buddhist and linguistic heritage of ethnic Thais, and the administration of the Siamese Government control over its territory by a central bureaucracy.⁶¹ Such reform brought great dissatisfaction to Phraya Vichitpakdi (Tongku Abdulkadir Kamaralladin), which led to the failed rebellions against the Siamese Government. Phraya Vichitpakdi was sent into confinement in Phitsanulok for nine months. After his release, he returned to Pattani; however, the central government had undergone a great many changes because of the reform initiated by Siam. Consequently, Phraya Vichitpakdi moved to Kalantan where he died. Even during the reign of King Chulalongkorn, which sought the abolition of the Pattani Sultanate, such historical tolerance was not entirely in jeopardy. His Majesty’s intention was to develop the country, by modernizing its outlook and creating a secular, polyglot of various cultures on equal footing within the whole of the country. The King once stated that he hoped to eventually to achieve a situation where “even though [certain citizens] are Malay and have a different faith...[t]hey are Thai in sentiment and outlook as any other Thai...” For example, the King donated a piece of land to build the new mosque “Unsorrizzunna” in Bangkok Noi and offered asylum to many Muslim peoples in Bangkok. There is a long tradition in which many Muslim people have

⁶¹ Aurel Croissant, *Strategic Insights*, Volume IV, Issue 2 (Feb.2005): Unrest in South Thailand: Contours, Causes, and Consequences Since 2001, NPS Department of National Security Affairs, available at <http://www.ccc.nps.navy.mil/si/2005/Feb/croissantfeb05.asp> (last visited Apr. 13, 2006).

become extremely wealthy such as Sakul⁶² Na Na, Sakul Boonnak and others. Resulting to this reform, the seven districts of Pattani were reorganized and separated from Monthon Nakhon Si Thammarat to become Monthon Pattani and remains a simple separate province until this day.

During the age of the British Empire, from 1867 until 1946, the Malay States were British Crown colonies. The British established their first strait settlement on the Malay Peninsula in 1786. During the following century the annexation of the key ports of Penang and Singapore led to the main region of Southern Peninsula being brought under British control.⁶³

During this period, the influence of the colonial era expanded over the entire region of South East Asia, Siam had to struggle hard to maintain its territorial integrity and political “independence.” Siam had its own methods of achieving its objectives. A treaty was entered into between the King of Siam and Great Britain on June 20, 1826, to engage in friendship, cooperation, and as well as to acknowledge Siam’s sovereignty over Kedah, Kelantan, Perlis and Terengganu. Another objective was to guarantee Britain’s right to Kelantan and Terengganu.

Siam could not, however, withstand the power of Britain. Therefore, on March 10, 1909, Siam signed another Agreement with Britain to cancel the Convention of April 6, 1897. The agreement concerned the Non-Alienation of Certain Districts of the Malay Peninsula, which delimited the boundary as follows:

⁶² Thai Last Name

⁶³ Michael Lynch, the British Empire 5, Book Print ltd 2005.

Commencing from the most seaward point of the northern bank of the estuary of the Perlis River and thence north to the range of hills which is the watershed between the Perlis River on one side and the Pujok River on the other; then following the watershed formed by the said range of hills until it reaches the main watershed or dividing line between those rivers which flow into the Gulf of Siam on the one side and into the Indian Ocean on the other; following this main watershed so as to pass the sources of the Sungei Patani (S. Pattani), Sungei Telubin (Khlung Sai Buri), and Sunge Perak, to the point which is the source of the Sungei Pergau; then leaving the main watershed and going along the watershed separating the waters of the Sungei Pergau from the Sungei Telubin, to the hill called Bukit Jeli (Buket Yeli) or the source of the main stream of the Sungei Golok to the sea at a place called Kuala Tabar.

This line would leave the valleys of the Sungei Patani, Sungei Telubin, and Sungei Tanjung Mas (Tanjong Mat), and the valley on the left, or west bank, of the Golok to Siam, and the whole valley of the Perak River and the valley on the right, or east bank, of the Golok to Britain.

In addition to the Agreement of 1909 between Britain and Siam repealing the Convention of April 6, 1897 (the Non- Alienation of Certain Districts of the Malay Peninsula), the London Treaty was signed on July 14, 1925 with ratifications exchanged in London on March 30, 1926. Article 5 stated as follows:

*Any treaty in force at the time of the signature of the present treaty, which fixes or delimits the boundary between Siam and British possessions or protectorates shall remain in force.*⁶⁴

As a result of the 1909 Bangkok Treaty and the 1925 London Treaty was the boundary established between Siam and Malaysia. This settled the question of the boundary and Pattani, Narathiwat, Songkla, Satun and Yala have remained under Siam until this day.

F. Reform of the War-Time Siamese Government: Industrialist and Nationalist Movements

In 1942, the ultimate goal of Field Marshall Phibul Songkhram⁶⁵ was to completely transform Thailand⁶⁶ into a larger and more homogenous nation state.⁶⁷ To create this new national identity, it was necessary to go beyond the scope of the current regulations, or any religious belief or cultural practices. Therefore, Songkhram attempted to achieve his aims by promulgating the “Rataniyom policy,” and unavoidably, such

⁶⁴ International Boundary Study no.57 -- November 15, 1965, Malaysia – Thai Boundary, The Geographer, Office of the Geographer, Bureau of Intelligence and Research, available at <http://www.law.fsu.edu/library/collection/LimitsinSeas/IBS057.pdf> (last visited Mar. 14, 2006).

⁶⁵ A Prime Minister of Thailand from 1938 to 1944 and 1948 to 1957.

⁶⁶ Siam became known as “Thailand” in A.D. 1939.

⁶⁷ See I. Syukri, cited in note 33 *supra*, at p. 87

[I]n 1940 a Siamese cultural institute was established in Bangkok and was known by the name of “Sapha Watthanathan,” the goal of which was the advancement of nationalism and the expansion of Siamese culture throughout the country.

transformation impacted the lives of Muslims of the South. The chief features of the Rataniyom policy towards Islam are summarized in the following twelve statements.⁶⁸

- Statement 1: The official proclamation of the name of the country, civilians, and nationality
- Statement 2: The protection of the country from damages
- Statement 3: The requirement of Thai citizens to acquire a Thai name
- Statement 4: The respect of Thailand's national flag, Thailand's national song and the King's anthem each morning or on special occasions in every town and village
- Statement 5: The campaign of Thai people to consume Thai Products
- Statement 6: The lyrics of the King of Thailand's national anthem
- Statement 7: The campaign to build up the country
- Statement 8: The King's anthem
- Statement 9: The requirement that every Thai must learn the Thai language
- Statement 10: The requirement that Thai citizens must dress in Western European style
- Statement 11: The activities of the Thai people
- Statement 12: The aid and protection of young people, seniors and disable persons

Certainly, at least four of the statements seem antagonistic to Muslim culture.

Statement 3 requires every person to have a Thai name although they may already have a

⁶⁸ Thamsuk Nummond, Thailand in the period of World War II 61, Winyuchon Publisher 2004.

Muslim name. Statement 9 requires the study of the Thai language and prohibits the use of Malay language, and requires Malay children to pray to Buddhist idols even though they have the right and freedom to select their own religion, as guaranteed by the Thai constitution. Statement 10 prohibits the wearing of Malay clothing. It also requires both men and woman to wear hats. Statement 11 addresses daily activities of Thai citizens. These statements are too inflexible to be compatible with Muslim traditions as Islam prescribes certain activities for everyday life.

Unquestionably the campaign to harmonize traditions under the country's "Rataniyom policy" has caused much widespread resentment and resistance among Muslims. The policies of Phibul Songkhram administration significantly contributed to the occurrence of the violence in southern region, which's religious and cultural has been very sensitive. The use of policy by the central government and the Thai authorities made ordinary Muslim depressing and uncomfortable. Therefore, processing and carrying out this policy has been very difficult for the Thai authorities in the southern provinces. Although this policy was not successful in forcing Muslims to accept Buddhism, the government's attempt to push new ideas into Muslim faith, without first trying to comprehend the role of Islam in their daily life, has led to serious tension. The thought of losing their religion, being subjected to forced assimilation, and being asked to abandon large amounts of their indigenous culture, forced many Muslims to consider immigrating to Malaysia. Muslims began condemning the government's policy rather than accepting it. The growth of the religious conflict expanded to a large scale. Haji Sulong Tokmina, a Pattani Leader who did not accept and respect the Rataniyom policy, began a widespread dissident movement that proclaimed a Muslim separatist movement

from Thailand. This led to the deaths of many people and Haji Sulong Tokmina was arrested.

As the result of the Rataniyom policy, it is probable that such a policy would cause severe opposition having a religious fervor. The strong spirit of Islam among those early Muslims, who had feared the loss of their culture and being totally assimilated into the Thai way of thinking, made them become extremely distrustful of the Thai Government. The Muslims who had most strongly resisted the Rataniyom policy immigrated to Malay.

We have learned from the Rataniyom policy that the Government completely failed. Muslims stubbornly resisted being assimilated into Thai traditions and culture, and refused to be fully integrated into the Thai society.

I - 3 Conclusion

This section started with a study of the history. In addition to showing important cultural and religious trends, I have also tried to add a human aspect to that history. Although Thailand has governed of Pattani for centuries, the record, both past and present, testified to the fact that Thailand has never conquered the heart and mind of the Muslims of Pattani.

It may seem that the study of history is intended to relive the painful past, and therefore, no State enjoys to reveal all of its history, only the lighter and more flattering aspects. However, it remains true that the facts speak for themselves, and this can be our guide to resolving certain problems that may seem interminable at the moment. For success in the south to be achieved, the appropriate approach will be to confront these

problems with wisdom and moderation and to appreciate the reasons for their failure. This is a task that is distressing but ignoring the age-old problems can cause far more distress and hopelessness.

Pattani's long history and the development of its own governmental infrastructures, and its diverse culture and social structures, have been the source of pride among the people of Pattani. No doubt, Pattani still has strong social structures and a very distinctive character. Pattani is no different from any other Empire or State in the world that has tried to establish its own independence.

As the Thai Government attempts to create a centralized administration rapidly without good research, the government officers will continue to face with the problem of the power differential between the officers and native people from different cultures. The contributing elements in this power differential are still the language problems. Until today, Muslims who stayed in the countryside felt uncomfortably when in contact with Thai officers. When people did not have good relationships with the government services, they shut down communications. Therefore, first, it is imperative that the government should seek to win the heart of Muslims. One of the best solutions to the problems in the South is to understand the way the people live and how they respond to the government's policy. The Government has to bear in mind that peace cannot be achieved in a single day or a single week.

This should be done prior to taking any other actions. When the Government attempts to win over the "southern zone," at the very least, it should ensure that its plans are not inconsistent or antagonistic to the local or indigenous culture.

The above discussion has been aimed at gaining a historical perspective of the historical and current problems occurring in the south of Thailand. This foundation of understanding should help both the Government and the Muslim population to work out solutions to the problems of the South that continue to lead to deadly conflict. Further discussion of the history and the conflict will be reserved for the ensuing chapter.

CHAPTER II

PATTANI TODAY

II - 1 Varying Types of Continuing Problems

Most Thais have never entertained the question of whether there could be a way of living without conflict. Thais accept conflict as a part of their lives due to the cultural belief that there is no life without conflict, and therefore, there is no living society without conflict.⁶⁹ Within every society or community, there are conflicts and problems. Even though the four provinces of Southern Thailand — Pattani, Yala, Narathiwat, and Songkhla — form a small part of the Kingdom, these provinces have been the cause of serious concern for the Royal Thai Government. In past decades, these four Muslim-dominated provinces have been a source of natural history in Thailand, but the government has been increasingly concerned with the other four southern coastal tourist provinces of Phangnga,⁷⁰ Krabi,⁷¹ Surat Thani,⁷² and Phuket.^{73 74}

⁶⁹ J. Krishnamurti, *Psychological Revolution: 1962-1963: A Psychological Revolution* 17, Krishnamurti Foundation Publisher 1992.

⁷⁰ Phang Nga, one of the southern provinces, is nestled among mountains which rise up around the city and is located 788 kilometers (489.64 miles) from Bangkok on the west side of the Malay Peninsula. Phang Nga covers an area of 4,170.9 square kilometers (1,610.38 square miles) and includes many islands in the Phang Nga Bay, one of the famous tourist attractions for diving.

⁷¹ Krabi, one of the most attractive tourist destinations in Southern Thailand, is located 814 kilometers (505.80 miles) from Bangkok. Krabi occupies an area of 4,708 square kilometers (1,817.75 square miles) and borders the Andaman Sea to the west, which is known for its natural attractions such as white sandy beaches, enchanting coral reefs, limestone hills, and leafy forests with caves and waterfalls.

⁷² Surat Thani is the largest province of Southern Thailand, covering an area of 12,891 square kilometers (4,977.21 square miles). Surat Thani is located 644 kilometers (400.16 miles) from Bangkok. To the north and west, it borders on the Gulf of Thailand where countless islands around, including the tourist island Ko Samui. Surat Thani, named by Rama VI, literally means "City of Good People."

It has been ninety four years since the accession of Kelantan, Terengganu, Saiburi, and Perak to the Anglo Siamese Treaty.⁷⁵ Under this treaty Thailand retained sovereignty over Pattani, Yala, and Narathiwat. These provinces have a population of approximately four million⁷⁶ and are located in a very poor and undeveloped part of Thailand in which there is woven a complex history of social, political, economic, and religious conflict.

This chapter will be divided into two issues at the heart of the problems in this region. The first issue will focus on the problems associated with social, economic, and cultural structures. I will look first at the endemic crime in this region, considering why the high crime rate is unchanged both before and after the resurgence of violent acts. Secondly, I will spend some time analyzing the complex and long-standing ethnic conflicts so as to propose how the Thai Government might issue a policy that attempts to unify the disparate elements of its society and integrate this region while respecting the profound ethnic differences. Lastly, I will look closely at the economic problems that characterize this region, which is rich in natural beauty, but is home to the poorest members of Thai society. In examining these three elements, I hope to reflect upon the types of Thai Government policies that have been implemented but have failed to provide

⁷³ Phuket is known as the Pearl of the South and is Thailand's largest island with an area of 543 square kilometers (209.65 square miles). It is 862 kilometers (535.62 miles) south of Bangkok. With splendid coves and bays, white sandy beaches, a warm climate, comfortable accommodations, super seafood, Phuket is one of the perfect places in the world to have a relaxing vacation.

⁷⁴ Anucha Charoenpo, Crime's fifth phase of crackdown kicks off this month: 30,000 drug dealers are still at large, Bangkok Post, Mar. 19, 2006.

⁷⁵ The Anglo – Siamese Treaty of 1909, or the Bangkok Treaty, was a treaty between the United Kingdom and Siam signed on March 10, 1909 in Bangkok.

⁷⁶ See National Statistical Office cite in note 12 *supra*.

assistance in order to get closer to a policy that, I believe, is appropriate for the problems of this area.

In the second issue of this chapter, I will focus on patterns of violent acts in order to better prepare the Government for potential violence. I will look at the legal and military ramifications of trying to keep the peace in this area. In this section, I am also concerned about what types of military operations and legal terminology has and has not worked in the past in order to better formulated future plans for containing, preventing, and managing violent acts and their consequences. We now turn to examine more closely the main conflicts in this area.

A. Criminal Problems

During the period of increasing globalization over the past few decades, Thailand has actively participated in international investing, technology, trade, and tourism.⁷⁷ Although one of the changes that occurred as a result of the population explosion was an increase in the crime rate following necessary economic and social modernizations, even if compared to most industrialized countries, the crime rate in Thailand remains relatively low.⁷⁸ The following chart shows recent comparative statistics of reported crimes.

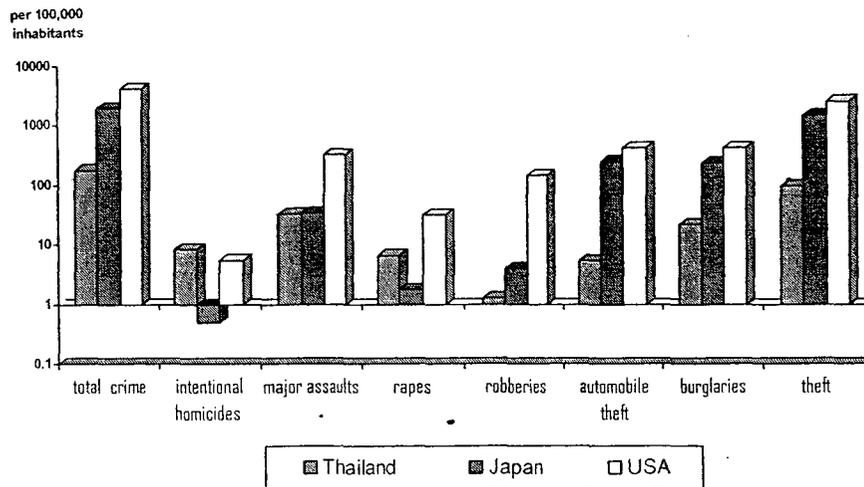
⁷⁷ Jerrold W. Hudguet & Sureeporn Punping, *International Migration in Thailand v, International organization for Migration, Regional Office Bangkok, Thailand* (2005).

⁷⁸ A comparative criminology tour of the world, San Diego State University, available at http://www.-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/Thailand.htm (last visited Mar. 30, 2006).

The Statistics of Reported Crimes⁷⁹

of

Thailand, United States, and Japan (2000)⁸⁰



East Asian countries, such as Thailand, Malaysia, Singapore, and Hong Kong, are used as transit points for drug trafficking, but the risks of rapid globalization are not just economic.⁸¹ Thailand is a victim of its own virtues. Known for its cultural hospitality, its

⁷⁹ *Ibid.*

[T]he offenses include murder, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft. In the UN reports, murders are referred to as "intentional homicides." Aggravated assaults are referred to as "major assaults," and larcenies are referred to as "thefts".

⁸⁰ *Ibid.*

[A]ccording to the United Nations Seventh Annual Survey on Crimes, all Index crimes in Thailand by crime recorded in police statistics shows the crime rate for the combined total of to be 174.84 per 100,000 inhabitants in 2000. Compare this to 1951.92 for Japan (country with a low crime rate) and 4123.97 for USA (country with high crime rate). For intentional homicides, the rate in 2000 was 8.47 for Thailand, 0.50 for Japan, and 5.51 for USA. For major assaults, the rate in 2000 was 33.15 for Thailand, compared with 34.04 for Japan, and 323.62 for USA. (Note these data for Japan are for total recorded assaults, since Japan did not report a figure for major assaults.) For rapes, the rate in 2000 was 6.62 for Thailand, 1.78 for Japan, and 32.05 for USA. For robberies, the rate in 2000 was 1.29 for Thailand, 4.07 for Japan, and 144.92 for USA. For automobile theft, the rate in 2000 was 5.40 for Thailand, 243.81 for Japan, and 414.17 for USA. The rate of burglaries for 2000 was 21.78 for Thailand, 233.45 for Japan, and 414.17 for USA. The rate for thefts in 2000 was 95.13 for Thailand, compared with 1434.27 for Japan and 2475.27 for USA.

⁸¹ United Nations Office on Drugs and Crimes : Drug Control and Urban Government, available at <http://www.unodc.un.or.th/factsheet/druggovernance.PDF> (last visited Mar. 20, 2006).

easy-going lifestyles, and its tolerance of diversity, the relative ease with which one can get a visa have made it easy for illicit businesses to establish themselves in the country. There is also the problem of large expatriate business communities that have made the Kingdom one of the world's favorite tourist destinations.⁸²

This has been increasingly appreciated by globally minded criminals, and an army of illegal migrants from all over the world has helped form crime syndicates that include not only Asian but offenders from China, Taiwan, India, Russia, Korea, Australia, Europe, Africa, and North and South America. Many of them have settled down and made Thailand their home.⁸³

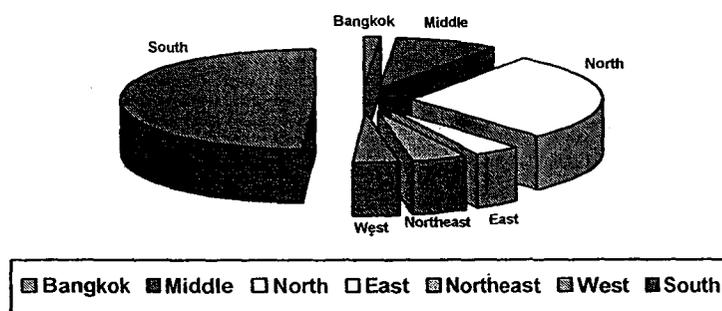
Southern Thailand has a reputation as a troubled region characterized by a high crime rate, lawlessness, endemic corruption within the bureaucracy, and as a place where smuggling, small arms trade, and other forms of illegitimate businesses flourish.⁸⁴ The problems include economic injustice, powerlessness or lack of political access, inequality in the distribution of revenues, and the struggle to retain a cultural identity within the larger political, economic, and social structure of Thailand.

⁸² Antony Davis, Vol.26 No.40 Asia Weeks, Oct.13, 2000, available at <http://www.pathfinder.com/asiaweek/magazine/2000/1013/nat.thailand.html> (last visited May. 29, 2006).

⁸³ Crime in Thailand, available at http://www.thai-info2004.com/crime_in_thailand.htm (last visited May. 28, 2006).

⁸⁴ See A. Croissant, cited in note 61 *supra*.

The Statistics of Reported Crimes of Thailand by Region (Year 2003)⁸⁵



During the 1970s and 1980s⁸⁶, Thailand faced an increasing crime rate from illicit trade in opium, heroin, and cannabis. For many years, the Thai Government had been moderately successful in handling these problems on both domestic and international fronts.⁸⁷ Ever since World War II, small bands of guerrillas, made of local Malaysian communists (mostly Chinese)⁸⁸, have stayed on bases along the rugged border

⁸⁵ Royal Thai Police.

⁸⁶ Paul Battersby, *Border Politics and the Broader Politics of Thailand's International Relations in the 1990s: From Communism to Capitalism in Pacific Affairs* 473-488, Vol. 71, No. 4. (Winter, 1998-1999).

[W]ithin the space of two decades, mainland South East Asia passed from being a region characterized by the presence of fragmented states where governments were challenged from with separatist or revolutionary forces, to one where a discernible trend towards territorial consolidation is emerging. As it seeks to position itself as a regional commercial hub, Thailand must contend with a new political challenges arising from the expanding territorial reach of state power in Cambodia, Laos and Burma. One of the many ironies globalization, the spatial hardening of states underline the tensions and opportunities that shape Thailand's border relation and it broader economic and political relations with neighboring countries.

⁸⁷ See A comparative criminology tour of the world, cited in note 78 *supra*.

[T]hailand is one of the most successful countries of narcotic crop control programs in the world. Over the past twenty years, efforts to discourage cultivation and later to penalize growers through an active eradication campaign have proven effective. The eradication campaign is one of the main reasons refineries no longer operate in Thailand, and has reduced opium cultivation in Thailand to a point where opium must now be imported to meet the requirements of domestic addiction.

⁸⁸ Thomas A. Marks, *Anatomy of A Counterinsurgency Victory* 36-37.

[A]s in other regional conflicts, the Thai conflict grew out of a Communist bid for power. In a challenge to the Royal Government, the Communist Party of Thailand (CPT) shed its pre-Second World War adherence to orthodox Marxist-Leninism, embraced Maoism, and adopted people's war as its strategy. From the outset, societal transformation was the CPT's goal. Its strategy was to negate the state's greater military power by mobilizing the people against it through the creation of a counterstate. Direct mobilization of a popular base and indirect mobilization through front organizations were to be the party's main lines of operation.

between Southern Thailand and Northern Malaysia. These guerrillas, a faction that contributed to the criminal element of this region when they signed a peace accord with the Malaysian Government in December 1989, made this region their home⁸⁹ despite the fact that Thailand had been a tool for anti-communist campaigns launched by France and United States.⁹⁰ Even today, the Thai Government continues to struggle with these dilemmas: For instance, in a recently published report, the National Center Against Illicit Drugs stated that 400 big-time drug dealers and more than 20,000 small-time traffickers have been at large since 2003.⁹¹

B. Ethnic Conflicts

Ethnic conflict commonly arises when social, economic, religious, or cultural differences between the dominant ethnic groups or classes of people clash with local ethnic constructs, spurring the rise of nationalism within some particular ethnic group.⁹² Ethnic conflict has multiple causes, many of which stem from structural differences between cultural groups.⁹³ “Structural” factors including historical concerns, religious

⁸⁹ Thailand Islamic Insurgency, available at <http://www.globalsecurity.org/military/world/war/thailand2.htm> (last visited May, 28, 2006).

⁹⁰ Sam Lightner, *Thailand: A Climbing Guide* by 53, the Mountaineers Books, 2005(1967).

⁹¹ See A. Charoenpo, cited in note 74 *supra*.

⁹² See A. Croissant, cited in note 61 *supra*.

⁹³ *Ibid.*

differences, and social and economic marginalization sometimes result in local grievances and latent crises in inter-ethnic relations.⁹⁴

Recently economists have focused on ethnic diversity, or "fractionalization," as a possible cause of corruption, political instability, and poor economic performance. Political scientists have argued for years over possible links between ethics, structures, civil violence, democratic stability, and party systems.⁹⁵ In addition, a study published in 1999 reviewing Australian evidence on ethnic crime states that: "*Criminological literature over the last several decades shows that socio-economic disadvantage and disorganized communities contribute substantially to a city's crime problem ... race, ethnicity, or country of origin has less to do with crime than the environment and the disorganized communities people live in.*"⁹⁶

A study in 1990 found that out of 160 surveyed countries there were 820 ethnic groups, meaning that on average 1% of each country's population is composed of some ethnic minority. In Asia, North Africa, and the Middle East, the configuration of ethnic structure is characterized by splinter groups that clash with a large lowland majority (Burma, Laos, Thailand, Vietnam, and Pakistan).⁹⁷ For instance, in Southeast Asia, nationalist uprisings have all come from the following areas: the Shan, Kachin, Karenni,

⁹⁴ *Ibid.*

⁹⁵ James D. Fearon, Ethnic Structure and Cultural Diversity around the World: A Cross - National Data Set on Ethnic Groups, Remarks at the 2000 Annual Meeting of the American Political Science Association, Boston (Aug.29 - Sep.1, 2000)(transcript available in the DEPT. of Science, Stanford University).

⁹⁶ Zachariah Matthews, A structure of violence or peace? Address at the University of Sydney (Aug. 22, 2001).

⁹⁷ See James D. Fearon, cited in note 95 *supra*.

Chin, and Rakhinein in Burma (Myanmar),⁹⁸ Moro in the Philippines, the Amboinese Acehnese in Indonesia, and the Pattani in Thailand.⁹⁹

As a result of the fight for democratic rights among ethnic minorities as well as the struggle for cultural identity rights and equal opportunities, Burma (Myanmar) remains today as much embroiled in conflict as it ever has been. These deep-rooted ethnic clashes have led to resistance movements and have jeopardized any sense of a unified state.¹⁰⁰

In the Philippines, the ethnic conflict stems from the resistance many Muslims have toward integration. Fearing that assimilation would wipe out their ethnicity, religion, and culture, the Muslim community has protested and defied Philippine law.¹⁰¹ Today, measures have been taken in order to circumvent such divisiveness. The Government knows very well the problem of ethnic conflict in the country and, after international pressure, has found legal support for indigenous peoples. Thus, regional autonomy laws were passed by the Aquino Government, however, the language of the region had to be changed so that the conflict of autonomy laws would not bring about conflict between indigenous peoples and government forces.¹⁰²

⁹⁸ Chao - Tzang Yawngwe, *Burma and National Reconciliation: Ethnic Conflict and State-Society Dysfunction*, Legal Issues on Burma J., Burma Lawyer's Council, 10 Burma J. 1-3 (2001).

⁹⁹ Thanet Aphornsuvan, *Origins of Malay Muslim "Separatism" in Southern Thailand* 4, Working Paper Series No.32, Asia Research Institute, National University of Singapore 2004.

¹⁰⁰ See Chao - Tzang Yawngwe, cited in note 98 *supra*.

¹⁰¹ Filipino Muslims Need More Than Economic Development, United States Institute of Peace, Apr. 2002, available at <http://www.usip.org/peacewatch/2002/4/filipino.html> (last visited Jul. 18, 2006).

¹⁰² John M. Richardson and Jianxin Wang, *Peace Accords and Ethnic Conflict*, (K.M.deSiva and S.w.R.de A Samarasinghe eds., New York: St. Martin's Press 1993) (1992).

The conflict in Indonesia in the past four years has resulted in about 4,000 deaths from Christian-Muslim fighting and has displaced 500,000. So although the roots of the conflict have distinct historical, political, and economic factors, it could be said that the ethnic conflicts came from a basic structure.¹⁰³ For example, today the roots of ethno-religious unrest and the most visible signs of armed separatism in Southeast Asia Islamic dissident movements in Southern Thailand, the Southern Philippines, and Aceh still share many of the basic factors: insensitivity to local concerns, regional neglect, military repression, and the contemporary sect of Islamic militants.¹⁰⁴

As mentioned in an earlier Chapter, four percent of the population in Thailand is Muslim, which is itself hardly a homogeneous group. At least three types of Muslim communities can be distinguished in Thailand. Malay Muslims living in the provinces of Narathiwat, Yala, and Pattani in the eastern peninsula of Thailand have a strong Malay identity and consider Thai culture a foreign imposition. In 1975, records showed that 85% of the village heads in Pattani, Yala, and Narathiwat were Muslims who could not read and write in Thai.¹⁰⁵ However, the Thai-speaking Muslims in Satun adjusted smoothly to Thai society, probably owing to their proficiency in Thai. Muslims in the last group are found among the overwhelming Buddhist majority in and around the Bangkok metropolitan area, where they are tightly integrated into the larger urban milieu and have more or less adapted to Buddhist social customs. All of these three Muslim

¹⁰³ Sidney Jones, Executive Director, Asia Division, Causes of Conflict in Indonesia, Excerpts from Asia Society panel discussion on New York, Oct. 24, 2000, available at <http://www.asiasource.org/asip/sidneyjones.cfm> (last visited Jun. 30, 2006).

¹⁰⁴ Peter Chalk, *Studies in Conflict and Terrorism* 241-269, Routledge (Taylor & Francis Group) 2001.

¹⁰⁵ Girling, John L.S. *Thailand: Society and Politics*. Ithaca: Cornell University Press (1981) cited by Duncan McCargo, *Southern Thai Politics : A Preliminary Overview* 5, POLIS Working Paper No. 3 Feb. 2004, University of Leeds.

groups share the same cultural identity as followers of Islam, whose organization is radically different from that of Buddhism.¹⁰⁶ These differences within the ethnic group complicate any government policy that is formulated toward helping the Muslim minority.

Because the majority of Thais are Buddhist, and the King is the head of State,¹⁰⁷ the Thai Constitution and the basic laws promulgate that the King uphold Buddhist principles. The Thai legal system itself is built upon such beliefs.¹⁰⁸ Although the Thai constitution recognizes the rights and liberties of the Thai people to profess any religious beliefs, and the Constitution prohibits discrimination against person for religious reasons.¹⁰⁹ For instance, currently, the Thai Government nominated — with the endorsement of King Bhumibol Adulyadej — General Sonthi Boonyaratglin, the first

¹⁰⁶ Yoneo Ishii, Religion and Law, A Dynastic Realms and Secular States, 453 THAI MUSLIMS AND THE ROYAL PATRONAGE OF RELIGION, 28 Law & Soc'y Rev. 453, L. & Society R. Part I.

¹⁰⁷ Constitution of Royal Kingdom of Thailand B.E. 2540 (1997) [hereinafter Thai Constitutional B.E.2540] sec. 9 [T]he King shall be Buddhist and the upholder of Buddhist faith.

¹⁰⁸ Sompong Sucharitkul, Thai Law and Buddhist Law, American Society of Comparative L. INC., XL VI Am. J. of Comp. L. 82, Supp.(1998).

¹⁰⁹ See Thai Constitutional B.E.2550 sec. 4 [T]he human dignity, rights and liberties and equality of the people shall be protected; sec. 5 [T]he Thai people, irrespective of their-origins,sexes or religions, shall enjoy equal protection under this Constitution;

Thai Constitutional B.E.2549 sec. 3 [U]pon the provisions of this Constitution, the human dignity, right, liberty and equality of the Thai people protected by the democratic tradition of Thailand with the King as head of State and by the existing international commitments of Thailand shall be protected by this Constitution;

See also the Thai Constitutional B.E.2540] sec 30. [A]ll persons are equal before the law and shall enjoy equal protection. Men and women shall enjoy equal rights. Unjust discrimination against a person on the grounds of difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view shall not be permitted ; sec 38.[A] person shall enjoy full liberty to profess a religion, a religious sect or creed, and observe religious precepts or exercise a form of worship in accordance with his or her belief; provided that it is not contrary to his or her civic duties, public order or good morals. In exercising the liberty referred to in paragraph one, a person is protected from any act of the State, which is derogatory to his or her rights or detrimental to his or her due benefits on the grounds of professing a religious precepts or exercising a form of worship in accordance with his or her different belief from that of others.

Thai Muslim army officer, to the position of Army Supreme Commander, which is the highest rank and position in the Thai Army. In fact, a number of Muslims in Thailand have had important positions in the Government both in the present and in the past. Also, Thai Law on family relations recognizes a pluralistic society wherein persons of different faiths are subject to different personal laws such as family relations, adoption, betrothal, marriage, divorce, and succession. Thus, Thailand already recognized a choice of family laws other than Buddhist even prior to the adoption of the Code on the Conflict of Law in B.E.2481 (1938).¹¹⁰ However, language and religion are usually considered key elements in what constitutes an ethnic group.

Data of Population and Religion 2000 ¹¹¹

No.	Area	Population	Muslim	Buddhist	Christian	Others
1	Pattani	608,246	485,718	119,090	1,173	1,735
2	Yala	358,011	279,705	74,730	2,691	865
3	Narathiwat	671,649	529,398	89,262	1,380	1,987
4	Satun	260,265	200,700	59,234	212	119
	Total	1,898,201	1,495,521	342,316	6,016	4,706

Based on data collected by the Islamic Committee of Pattani, 2000.

¹¹⁰ See S. Sucharittkul, cited in note 108 *supra*, at p. 86

¹¹¹ Sri Nuryanti, the Landscape of Intellectual's Thoughts: Pattani Identity and the Emergency of a resistance Movement 127 - 128, Center for Political and Regional Studies (LIPI), Indonesia, the Papers of the 2001 API Fellows, the Asian Face of Globalisation Reconstructing Identities, Institutions, and Resources (2001).

Trends in the Social Structure of Pattani ¹¹²

No.	Main issue	Thai-Buddhist*	Thai-Muslim*	Malay-Muslim*
1	Location	Urban	Semi-urban	Rural areas (southern part)
2	Population Spread	Over most areas of the country	Southern areas	Pattani, Yala, Narathiwat, Satun
3	Social and Economic Status	Advanced	Moderate	Low
4	Level of Education	High school and upper levels	High school	Primary
5	Occupation	Staff and peasant	Sales and peasant	Peasant or jobless

*According to the use of language and religion faith.

People in this southern area of Thailand speak a dialect (yavi) and embrace Islam, and they remain traditionally Islamic and fulfill religious duties by teaching the Islamic faiths and practices to their children. There are several hundred Pondok¹¹³ offering a traditional religious education that does not always provide a strong preparation for successful employment in wider Thai society.¹¹⁴ Moreover, Pondok

¹¹² *Ibid.*

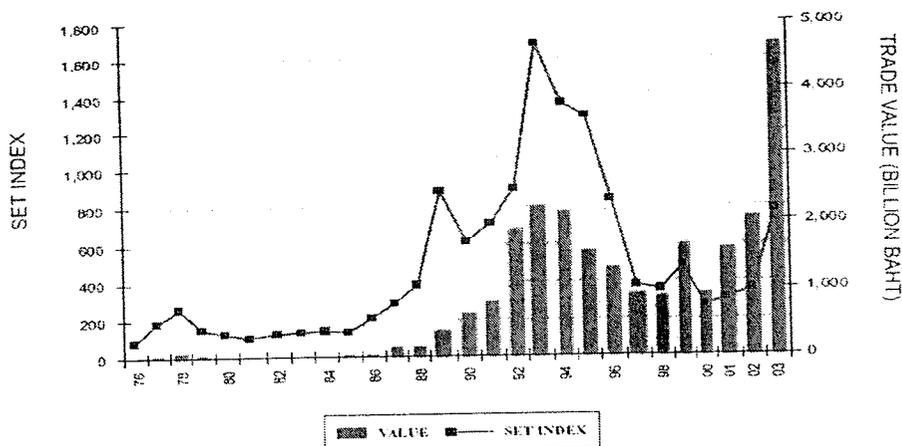
¹¹³ The origins of this school can probably be traced back to the Hindu Buddhist ashram (retreat) in pre-Islamic Southeast Asia. But as the Malay word "Pondok" indicates, it developed into a uniquely Southeast Asian yet thoroughly Islamic institution. Maintaining such a Pondok can be considered as fulfilling a religious duty, since taking care of traveling scholars or students "on the way of Allah" is one way to meet the obligation of Zakat, one of the five pillars of Islam (Carool Kersten: 21 Am.J. Islamic Soc.Sci.2004).

¹¹⁴ Duncan McCargo, Southern Thai Politics: A Preliminary Overview 6, POLIS working Paper No. 3 Feb., 2004, University of Leeds 2004.

have been blamed for providing the breeding ground for the bloody uprising¹¹⁵ and have long been suspected of having links to Muslim militants.¹¹⁶

C. Economics

SET INDEX & TURNOVER OF CORPORATE SECURITIES
YEARLY : 1976 - 2003



* Source: The Stock Exchange of Thailand

Thailand had a good record of economic growth in both the GDP¹¹⁷ and the SET index between 1976 and 2003. There was considerable expansion from 2003 to this current year. In the view of the US Central Intelligence Agency (CIA), Thailand was one of East Asia's best performers in 2002-04 because of a well-developed infrastructure, a

¹¹⁵ John R Bradley, Islamist schools are blamed for bloody uprising in Thailand, The Independent newspaper, May.15 2004, available at <http://news.independent.co.uk/world/asia/article60509.ece> (last visited May.18, 2006).

¹¹⁶ Jan McGirk, Thai soldiers search Islamic schools for terrorism suspects, The Independent newspaper 13 Jan.13, 2004, available at <http://news.independent.co.uk/world/asia/article73330.ece> (last visited May. 1, 2006).

¹¹⁷ The report of National Economics and Social Development Board, Bank of Thailand shows the economic growth (%) in Thailand from year 1999 through 2004 are 4.4, 4.8, 2.1, 5.4, 6.8, and 6.1. Meanwhile the World Economic Growth (%) from year 1998 through 2003 are 2.8, 3.7, 4.6, 2.5, 3.0 and 4.0.

free-enterprise economy, and pro-investment policies. Thailand appears to have fully recovered from the 1997-98 Asian Financial Crisis despite a sluggish global economy. Bangkok has pursued preferential trade agreements with a variety of partners in an effort to boost exports and to maintain high growth. However, ordinary people are more worried about the rising cost of living compounded by the fear of lay-offs for their newly graduated sons and daughters. Most Bangkokians still remember the pain of the economic meltdown in 1997, which toppled many businesses, bled into the poorer segments of society, and cast many deep into debt.¹¹⁸

According to studies by the United Nations agencies conducted to find out about the consequences of those policies, 82% of the southern province's 730,146 people are Malay-Muslims, who have a poverty rate that is two to three times higher than Thailand's national average.¹¹⁹ These provinces have long been at a disadvantage since economic neglect, little industry, no infrastructure, and a failed tourism campaign (despite extensive natural beauty)¹²⁰ have conspired to make this region less prosperous compared to the central country.¹²¹ However, in terms of revenue, Thai records show that the poorest provinces lie in the Northeastern region of Thailand.¹²² This is completely contrary to the

¹¹⁸ Kamol Hengkietisak, *Juling – A Model Teacher*, Bangkok post 1, May 28, 2006.

¹¹⁹ Marwaan Macan –marker, *Armed Conflict report*, Asia Times online, Sep. 29, 2008, available at <http://www.ploughshares.ca/libraries/ACRText/ACR-Thailand.htm> (last visited May. 1, 2006).

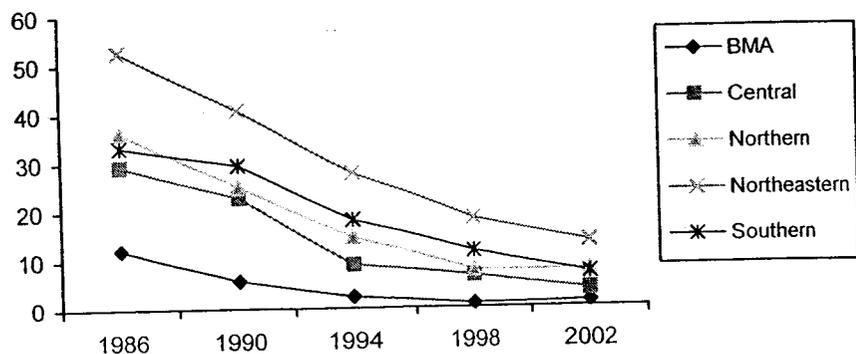
¹²⁰ Daniel Lovering & Kareem M. Kamel, *Bloodshed in Thailand's Restive Muslim South Follows Decades-Old Struggle*, Apr. 28, Associated Press (2004).

¹²¹ *Thailand's restive south*, Jul. 15, 2005, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/3955543.stm> (last visited Aug. 1, 2006).

¹²² In year 2006, unemployment was the highest in the Northeast at 1.87 per cent, but it dropped from 3.2 per cent in the same period last year. Unemployment was the lowest at 1.09 per cent in the South due to the rising price of rubber. Unemployment in the Central region was 1.56 per cent and in the Northern region at 1.47 per cent.

studies by the United Nations Agency, which provide evidence that Pattani, Satun, Yala, and Narathiwat are among the least developed provinces of the Kingdom.¹²³

Poverty in Thailand, 1986-2002¹²⁴



*BMA = Bangkok metropolitan area, which includes Samut Prakarn, Nonthaburi, Pathum Thani, and Samut Sakorn.

¹²³ See A. Croissant, cited in note 61 *supra*.

¹²⁴ Somchai Jitsuchon & Jiraporn PLangraphan, Poverty, Economic Security and the Role of the Thai Government: TDR1 Quarterly Review Naresuan University, Vol.18 No.4, December 2003, at 20 and 21.

[T]hailand is among the countries of the world with an impressive record of poverty reduction. In the early 1960s, around 60 percent of the Thai people lived in poverty; in 2002 the proportion was less than 10 percent. However, as recently as 1986 the incidence of poverty, measured by head-count ratio, was still around 40 percent. The pace of poverty reduction has been both rapid and virtually uninterrupted. Only twice during the past two decades has the incidence of poverty increased: first, between 1981 and 1986 when commodity prices plummet and second, after the financial and economic crises of 1997/98, which resulted in widespread unemployment.

Of the five regions, including the Bangkok Metropolitan Area (BMA), the Northeastern region is always the one showing the highest incidence of poverty. The Northern and Southern regions have a comparable incidence of poverty, second to the Northeastern region, while the Central region and BMA enjoy the lowest incidence.

Also, as in many other countries, poverty in Thailand is largely a rural phenomenon. The rural poor accounted for around 80 percent to 85 percent of the total poor during most of the last 20 years. The fact that the proportion between the rural poor and the urban poor remains largely unchanged amid the urbanization that has taken place suggests that rural poverty declined at a somewhat slower rate than urban poverty.

The conflicts that have erupted in this area are the result of the accumulation of many problems—historical, economic, political, and ideological. It is apparent that the problem is not simple, but certainly drugs, crime, and religious fanaticism could lead to a large-scale conflict. All of these issues are central to the current serious crisis in the southernmost provinces. So long as the State cannot eradicate the root of the conflict, the violent past will reoccur. This is the reason why Thailand has been continually faced with escalating violence in its southern provinces since the beginning of 2004.

II - 2 Resurgence of Violence

In 1948, a villager from Dusun Nyir,¹²⁵ Narathiwat Province, rebelled against the Thai government because the Thai Nationalism policy (so-called Rataniyom policy) disregarded Islamic religion during the leadership of Field Marshall Pibulsongkram. This policy caused the death of many Muslim villagers. Until the last two years, there have been very few deaths related to this conflict. On January 4, 2004, violence again erupted in the four Muslim-dominated southern provinces, violence that started with “stealing weapons.”

¹²⁵ Vorramai Kabinsingha. Dusun Nyir, S.P.S.Printing, 2004.

A. Weapon Seizing

BBC news posted on January 4, 2004:

Armed raids in southern Thailand; Four soldiers have been killed and 18 schools burned down in a series of attacks in predominantly Muslim southern Thailand. About 30 gunmen raided an army depot in Narathiwat province early on Jan 4, 2004, stealing some 100 rifles.

1. Succession of Systematic Acts of Violence

An unexpected raid at the army depot shocked Pattani into a new era of violence and terror. Some thirty armed bandits stormed the army depot in Narathiwat and made off with a cache of 300 weapons including 300 assault rifles, 40 pistols, and two M-60 machine guns. This attack killed four Thai soldiers and stunned the country. Even though the raid was not an act of war or an armed conflict, the effects were not different from military conflict, and the attack seemed to be ushering in a new era of armed conflict. When in the same area eighteen schools were set on fire using mosquito coils on petrol-soaked sacks, these conflicts seem to embroil more and more Thai citizens in a new epoch of ethnic war. On the following Monday, January 5, 2004, two policemen were killed when a bomb they were trying to defuse (planted on a motorcycle parked outside a shopping mall in Pattani) exploded. In another incident, an explosion ripped through a police box in a nearby public park killing two policemen and injuring another policeman. Two more bombs were found and defused, one in a shopping-mall telephone booth and

another in a nearby petrol station.¹²⁶ The bombs in the shopping mall were perhaps the most disconcerting because it was clear that the attack was aimed to impact the daily lives of common people (to say nothing of causing havoc with the Thai economy). These scare tactics were the result of careful planning in which a series of attacks were to occur many places within and outside government buildings at the same time. However, these acts of violence were focused on symbols of the Government because schools in the past were seen as anti-Islamic by separatist militants.¹²⁷ Furthermore, these attacks not only aimed at challenging the authority of the government, but also of gaining access to weapons for the assailants' plan. Deputy Prime Minister Chavalit Yongchaiyudh speculated that the assailants were aided by someone inside the military's armory. This supposition of the Deputy Prime Minister showed the weakness of the armed forces in areas of security and intelligence as Military units had the guards performed their daily duties as usual. However, this raid was very audacious and started the wave of violence.

2. Government Response

Initially, former Prime Minister Taksin Shinawatra said most of the separatists in the area were bandits who ran rackets along the Thai-Malaysian border and described the violence as the work of only criminals,¹²⁸ but Police General Sant Sarutanond said intelligence officers learned that a group of 12 Muslim terrorists had planned to plant

¹²⁶ See Globalsecurity, cited in note 89 *supra*.

¹²⁷ *Ibid.*

¹²⁸ Jill McGivering, Thailand's separatist fears, Jan. 6, 2004, available at <http://news.bbc.co.uk/2/hi/asia-pacific/3372923.stm> (last visited Mar. 18, 2005).

bombs in the four Muslim-dominated provinces as part of an ongoing terror campaign.¹²⁹ Meanwhile some Thai officials have even suggested that the leaders of the groups of violence have fled into the Terengganu, Province of Malaysia, but Malaysian officials have been quick to deny that suggestion.¹³⁰

It was not difficult to imagine why former Prime Minister Taksin insisted that this incident was merely a criminal act. He did not want this incident to become an international affair and did not want to panic the people even though the gravity of the raid was unusual as many experts have pointed out.

Subsequent to the violence on January 4, 2004 where there was a robbery of military weapons at the Army camp in Narathiwat province, the Thai Government placed these three southern provinces under martial law, which afterward was superseded by the Emergency Decree On Public Administration in Emergency Situation, B.E. 2548 (2005). This Decree is broadly criticized for its neglect of human rights, an issue to be discussed in another chapter. In the meantime, as a consequence of the army raid, the army offered a reward of 1 million bath (\$25,000 US dollars) for information leading to the arrest of those responsible¹³¹ and issued special licenses for civil servants to carry guns for self-defense.¹³²

¹²⁹ Armed raids in southern Thailand, Jan. 4, 2004, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/3366359.stm> (last visited Mar. 18, 2005).

¹³⁰ Nualnoi Thammasathien, Thailand wakes up to southern threat, Jan. 8, available at <http://news.bbc.co.uk/2/hi/asia-pacific/3379345.stm> (last visited May. 1, 2006).

¹³¹ See Globalsecurity, cited in note 89 *supra*.

¹³² Rungrawee C. Pinyarat, Gun lessons for teachers in the South, the Nation, Oct. 10, 2004, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=3&id=108043&date=2004-10-26> (last visited Aug. 1, 2006).

Because the Government knew that it would be blamed for the poor quality of security and intelligence, they launched strong policies to respond to the attack. Although it is the duty of every State to protect its citizens, such policies were considered to be too harsh and the Thai Government resorted to the use of extreme force to perform the operation.

Finally, the predictions of many analysts and officers that tensions would rise and continue in this area were accurate. The robbery of rifles was followed by gun shots, bombings, and random attacks, setting off a second wave of violence on April 28, 2004, in "Kre Se Mosque" in Pattani Province.

B. Krue Se Mosque

CBSNEWS posted on April 29, 2004:

Angry and grief-stricken villagers buried their dead Thursday a day after Thai police killed more than 100 suspected Islamic militants, and the government braced killings happened as police repulsed coordinated insurgent attacks across Thailand's Muslim south. Bands of about 20 people each raided about 15 police outposts for revenge attacks amid allegations of excessive force. The widespread and checkpoints in the provinces of Yala, Pattani and Songkhla. Security forces shot and killed 108 alleged militants, including 32 held up in a mosque. Five police

*were killed in fights with the suspects; most of them are teenager armed with knives or other blade weapons.*¹³³

1. Systemic Violence

In another attack focused on symbols of Government authority, thirty members of an armed Islamic band started to open fire by launching rifle shots at the police outpost, killing two security officers in the Pattani Province. After the gun shots, the Islamic band escaped, carrying off AK-47 and M-16s rifles to the Kru Se mosque,¹³⁴ and continued to fire from the mosque at Thai security forces. This appeared as if the Kru Se Mosque was deliberately used as a place of their choosing according to a scheme. Finally, the Thai Security Forces made the decision to execute all of the armed bandits after waiting for several hours while villagers surrounded the Thai Security Forces and began to try to assist the armed Islamic band. Although the Thai security said these were necessary measures for the operation at that time, newspapers from around the world did not see it in that light. After the Thai Security Forces decided to kill the suspects, it was found that most of these allied offenders only had machetes and very few were carrying rifles.

In this case, it is very significant that they were trying to attack symbols of Government authority by targeting fifteen police outposts again, and this situation was different from the January 4, 2004 assault because of villager involvement. The Islamic

¹³³ Thais Fear 'Militant' Revenge, CBS News, Apr.29, 2004, available at <http://www.cbsnews.com/stories/2004/04/27/world/mail614100shtml> (last visited Aug. 1, 2005).

¹³⁴ Kru Se mosque is one of the oldest mosques in Pattani province which was unfurnished and built in 1578 by a Chinese convert to Islam.

armed band attempted to lead the Thai Security Forces into misunderstanding that the band had rifles and to make the situation worse by pushing villagers into pressuring the Thai Security Forces to resort to the use of force. Moreover, some analysts observed that the date of the incident coincided with the same period of the Dusun Nyir incident in 1948.

From the incidents, it could be gathered that this act was calculated to start conflict between the Thai Security Forces and the villagers. This could be seen from the strange way in which the villagers surrounded the Thai Security Forces. To complicate matters, if the Thai Security Forces used force on the villagers, whether it was deliberate or not, this could easily go beyond the scope of domestic issues. This incident could spark an international debate and get international attention in favor of the Islamic militants cause. If it were, in fact, the case that Thai Security Forces used more force than necessary, it would definitely raise the issue of human rights before the United Nations. It would be an act of mistreatment of the Government towards its civilian population, and as a result many sections of international law would be concerned and affected. At this stage, it could be said that the well-deliberated plan of the Islamic dissidents to die had succeeded. Because, beyond doubt, the international community would be outraged by the needless execution of thirty unarmed Islamic minorities at the hands of the Thai police.

2. Government Response

Faced with the fact that the Government could do nothing to stop the harshness of the dissidents, Prime Minister Thaksin Shinawatra finally accepted the theory that the

raids were linked to a January 2004 attack on a military camp and hinted that these dissidents received financial support from influential figures, politicians and drug gangsters. He, however, still did not believe that the attackers had any connections with international terrorists¹³⁵ despite the fact that one of the men killed in the violence was found to be wearing a shirt with JI¹³⁶ emblazoned on the back.¹³⁷ Meanwhile, widespread critiques on the war on drugs policy and the arrest of Riduan Isamuddin (so-called Hambali) at Ayutthaya on August 11, 2003 were perceived to be related to the armed bandit groups.¹³⁸ On the contrary, Defense Minister Chettha Thanajaro said the attacks were carried out by Muslim separatists who received assistance from abroad. Furthermore, General Pallop Pinmanee, deputy chief of the Internal Security Operations Command, said that one of the group's leaders, Jehbemaie Buteh, was being hunted and was believed to be hiding in Malaysia.¹³⁹ The possibility can be seen that the political and military operations cannot work together. At this stage, no matter how violent an act would be -- whether it was committed by gangsters or separatists or any other bandits, the National Intelligence Agency would blame such attacks on the Muslim dissidents.¹⁴⁰

¹³⁵ South's Bloodiest Day, The Nation, Apr. 28, 2004, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=1&id=97874&date=2004-04-28> (last visited Mar., 2005).

¹³⁶ Jemaah Islamiah (JI), a militant Islamic organization was founded in the mid-1990s. This group has the goal of establishing an independent Islamic State in Indonesia, Malaysia and the southern islands of the Philippines.¹³⁶ The goal is to use violence to overthrow the governments in Indonesia, Malaysia, the Philippines, Singapore and Thailand.

¹³⁷ Scores killed in Thai gun battles, Apr. 28, 2004, available at <http://news.bbc.co.uk/2/hi/asia-pacific/3665293.stm> (last visited Mar. 18, 2005).

¹³⁸ A possible reference to Jemaah Islamiah, the group blamed for terrorist attacks across South East Asia, including the Bali bombings.

¹³⁹ Muslim group 'behind Thai raids, Jan. 8, 2004, available at <http://news.bbc.co.uk/2/hi/asia-pacific/3379079.stm> (last visited Mar. 18, 2005).

Prime Minister Taksin did not take any further steps that would have been helpful in an effort to establish a link between this incident and the army raid. But Prime Minister Taksin still insisted that the incident was most likely a criminal act rather than an international incident because he feared such a connection would enflame the international criminal organizations and might inspire another Muslim militant group to undertake another wave of attacks. Whether to take consolation or to make amends for the failure of the Government in handling problems in the south, the Prime Minister promised, after the attack on Kru Se mosque (one of the oldest mosques in Thailand), to restore the historic temple by ordering the Fine Arts Department to repair the walls that were torn down or damaged.¹⁴¹

C. Tak Bai

After the detention of six men who were accused of providing the stolen weapons from an Army camp to Islamic militants, later that year, violence erupted again:

USATODAY posted on October 26, 2004:

Officials say 78 died after Thailand riot: At least 78 people were suffocated or crushed to death after being arrested and packed into police trucks following a riot in southern Thailand over the

¹⁴⁰ Southern Carnage: Kingdom shaken; The Nation, Apr. 29, 2004, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=2&id=97956&date=2004-04-29> (last visited Mar. 1, 2005).

¹⁴¹ PM Promises to Rebuild Mosque Damaged in Police Attack, Yahoo!News, May. 8, 2004.

*detentions of Muslims suspected of giving weapons to Islamic separatists.*¹⁴²

1. Acts of Violence

Acts of violence began when a crowd gathered at the Tak Bai police station in the Narathiwat province, and asked for the unconditional release of the six detained men who were accused of unlawful seizure of weapons in January of 2004. There has been speculation that this incident had a connection with the preceding story. The protesters injured three officers and overturned two military trucks and one police car. Again, this was not a peaceful riot. Evidence recovered from the area of the protest during their attempt to storm the police station showed that the protesters had knives, machetes, and grenades. At this stage, the situation seemed to be getting worse. The Thai Security Forces were facing a situation that might spiral out of control, but they had to attempt to make the situation manageable. However, after being arrested and loaded into army trucks, at least seventy-eight people died from suffocation. This raises the question: did the Thai Security Forces cause the death of seventy-eight people either deliberately or out of neglect? The media reported that there was an unnamed group that tried to block the riots and failed to get away from the scene.¹⁴³ Who was this unnamed group? How reliable is the media's report? Is it suspicious that this riot also included a group who failed to leave or was it just a typical protest?

¹⁴³ Chutarath Aueu- Umnuey, *The prosecution in 3 southern provinces: problems and remedies* 69-70, October Printing (2005).

2. Government Response

Once more, the Government was compelled to resort to the use of force because the Thai Security Forces failed to exercise enough restraint in handling the protesters. Lack of experience and negligence in the past by Thai Security Forces have long been causes of these tragedies even if the capacity of the Thai Security Forces was not at its highest on the weekend because there were not enough trucks to serve the need. This incident was understood by the public as an example of government security officials mistreating protesters who dispersed after the demonstration by using reckless tactics.¹⁴⁴ At this time, Prime Minister Taksin made a statement to the Senate asserting that the protesters belonged to the Autash group or were teachers at the Ponok School that had induced the crowd to protest by asking the crowd, their friends, and their relatives to join in so as to reveal Pattani history.¹⁴⁵ This gave Thailand a bad reputation as a government that violated human rights. However, Prime Minister Taksin's speech implied that he knew of no relation between the domestic dissidents and any international terrorist group. Despite the fact that Prime Minister Taksin had always insisted that the incident was only confined to domestic affairs, his statement was meant to explain the use of force by Thai Security Forces as absolutely necessary. Although Prime Minister Taksin attempted at first to support the Thai Security Forces because he realized that the use of force was not effective enough and accomplished nothing toward the task of relieving ethnic tensions. At this stage, Prime Minister Taksin launched a policy to reimburse the victims and ordered the formation of the 48-member commission, known in short as the Thai

¹⁴⁴ Thai army criticized over Tak Bai, May. 4, 2005, available at <http://news.bbc.co.uk/2/hi/asia-pacific/4512845.stm> (last visited Mar.2, 2005).

¹⁴⁵ Ukrit Pattamananda, Thailand 38 - 39, *The Asia Annual*, Institution of Asian Studies, Chulalongkorn University, CU Publisher 2004.

National Reconciliation Commission (NRC). The commission was appointed on March 28, 2005 and was responsible for suggesting policies, measures, mechanisms, and methods to reconcile and bring peace to Thai society, especially the three southern border provinces, Yala, Pattani, and Narathiwat, with former Prime Minister Anand Panyarachun as chairman. The NRC was then appointed to investigate the Kre-Se case.¹⁴⁶ Although the appointment of the committee may have made the matter look better for the time being, it was not the best long-term solution. In this case, the transparency of criminal justice would be the best indication of any sign of recovery of the soiled reputation of the country.

D. The Abduction and Murder of the Two Marines

In an unprecedented incident, two marines were held hostage and later killed by villagers who accused them of shooting customers at a teashop. The marines were part of a central government plan to support the alliance policy of providing good relations between Security Forces and the people. In this case, I will focus on why the two marines were killed in spite of the fact that they had been successful in their mission to become very friendly with the local inhabitants.

¹⁴⁶ The National Reconciliation Commission to Help Ease Southern Problems, Apr. 1, 2005, available at http://thailand.prd.go.th/the_inside_view.php?id=663 (last visited Mar. 18, 2006).

ASIANEWS posted on September 22, 2005:

Two Thai Marines held captive by villagers in the insurgency – raked south were beaten and stabbed to death yesterday by young Islamists who rushed into the house where the two marines were being held.¹⁴⁷

1. Acts of Violence

On Tuesday night (Sep 20, 2005), there were gun shots at a local teashop that caused the death of two people and injured four. At that time, the two servicemen were just passing by on their way to another incident but decided to stop after they heard the shooting at the teashop. Their car appeared to have broken down at the same time.¹⁴⁸ Because the villagers accused the two marines of being behind the shooting, hundreds of villagers took the two marines hostage and locked them in a religious school that night. In these circumstances, villagers expressed their distrust of the Thai press and their preferences for Malaysian coverage of the incident. They demanded that the government set up a committee to investigate the shooting at the teashop and that foreign media be permitted into the village to document the incident. Why the international media were so quick on the scene lent suspicions to the incident, begging the question why people would be thinking about the media when there was an emergency in progress. But no one would step forward to act as a representative of the villagers. For the moment,

¹⁴⁷ Fundamentalists Kill Thai marines held in the mosque, Asianews, Sep. 22, 2005, available at <http://www.asianews.it/view.php?1=en&art=4167> (last visited Mar. 1, 2006).

¹⁴⁸ Southern murders reflect lack of effective, The Nation, Sep. 22, 2005, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=2&id=122774&date=2005-09-22> (last visited Mar. 1, 2005).

commandos were positioned to storm the village and rescue the marines, but hooded villagers took advantage of the absence of eyewitnesses to kill the men when people gathered in the mosque for mid-day prayers. Throughout the entire stand-off, hundreds of women - their faces wrapped in traditional headscarves - stood on a tiny bridge just meters away from heavily armed soldiers, as their children played nearby. Also, it is possible that these children were deliberately put there by people who wished to stage or choreograph a scene that pulled at the hearts of TV viewers watching the showdown. The women and children blocked the entrance to the village for 18 hours. Meanwhile, they put up a large tent that was plastered with messages: *"Evil has spread since Thaksin's party came to power. Ethnic Malay people have been cruelly killed by soldiers. They are the real terrorists."* The killings came amid a desperate attempt by authorities to negotiate their release from Ban Tanyonglimo in the border province of Narathiwat. But by the time Malaysian reporters arrived on the scene in the middle of the afternoon, the two marines had been executed. This incident explains how in some measure the extremists used violence to draw public attention to the injustices of the Thai Government no matter how violent and unspeakable the methods were.

An autopsy performed by doctors revealed that the pair had died a gruesome death after being beaten and tortured. The time of their deaths was about 2.00 p.m. on September 20, 2005. The bodies of the two marines were recovered by the Thai military already brutally beaten to death with machetes and sticks with their hands and legs tied up. They were also gagged and blindfolded.

Again, this incident is related to the villagers' blockade and the demanding of foreign media to document the incident. This case leads to the next question: Is that the real intention of the villagers? If not, who induced them?

2. Government Response

In this case, even though the authorities had the capacity to assist the two marines, they did not. This begs the question why the authorities let the two marines die. The authorities preferred to negotiate rather than use force out from the lessons they had learned in the Tak Bai and Kru Se case. This decision of whether or not to assist the two marines was an example of the risk the Government had taken to protect its reputation. Because the authorities feared that the unnamed group might kill villagers and that even greater chaos and violence might erupt, they let the two marines die. After the two marines died and before the discouragement of authorities, the Government tried to win back the confidence and the trust of the authorities. Prime Minister Thaksin Shinawatra announced his decision to capture the killers of the two marines and launched an all-out military operation to bring the suspected militants and villagers responsible for the crimes to justice. On September 23, 2005, the Narathiwat Provincial Court issued arrest warrants for 11 suspects, including a 48-year-old woman, in connection with the brutal murder of the two marines in a hostage drama, and the two suspects were arrested.

Many of the violent responses from the dissidents in this incident resemble that the first year of the attack. It was as if the violence continued on as before and in some ways was worse since the arrest of 48-year-old woman implied that the members of the

militant group was composed of all types of people – the elderly, teenagers, and women. This raised concerns that the dissidents had gained in numbers and suggested that as a result in the not too distant future boys, girls, or children will be involved. That will be a tough task for the Government to handle successfully if this militant group is not just a group but is a society or community. However, this incident underscores that this approach of using force — either to suppress behavior or to instill peace— did not work at all.

E. Assassination of Teachers

THE NATION posted on February 16, 2006:

*Teachers take a week off after five colleagues shot: Some 250 primary schools hit as attacks continue; 3 defense volunteers killed.*¹⁴⁹

Resulting from tensions since the army raids on April 2004, more than 1,000 schools in Southern Thailand have closed. A teacher at one school in Pattani province told The Nation newspaper on January 28, 2004, that she had received leaflets threatening attacks on teachers and students in the province.¹⁵⁰ Then, no less than 3,000 teachers in southern Thailand held a rally to demand better security after one of their colleagues was shot.¹⁵¹ In Yala, teachers at 250 primary schools refused to go to perform

¹⁴⁹ Teachers take a week off after five colleagues shot, *The Nation*, Feb. 16, 2006, available at http://www.nationmultimedia.com/2006/02/07/national/national_20000456.php (last visited Mar. 1, 2005).

¹⁵⁰ Schools closed in Thai south, *BBCNEWS*, Jan. 28, 2004, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/3436795.stm> (last visited May. 18, 2005).

¹⁵¹ Thai teachers march for security, *BBCNEWS*, Jun. 9, 2004, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/3790221.stm> (last visited May. 1, 2005).

their duties for one week. The atmosphere in the area was very tense, and the teachers refused to go to work. Since being targeted by militants during the resurgence of violence over the past two years, many teachers in the three southernmost provinces have sought transfers to other areas.¹⁵²

From 2004 to May 2006, at least forty-nine teachers and other school staff have been killed.¹⁵³ Although teachers were escorted to and from schools by security forces in many parts of the border provinces, and the Government allowed them to carry guns, they still have been targeted by Muslim separatists. Many teachers (Buddhists and Muslims alike) have been gunned down while traveling alone.¹⁵⁴

a. Muslim Teachers

On June 21, 2005, a group of killers entered the home of three young Islamic teachers (ustazs) shot them in their heads, killing them instantly, while they were performing their nightly prayers (Isha).¹⁵⁵

b. Buddhist Teachers

The two most tragic incident of Buddhist teachers occurred on June 24, 2005, when at least two gunman opened fire by shooting four times – twice in the chest and

¹⁵² Yala Violence: Teachers take a week off after five colleagues shot, Feb.7, 2006, available at <http://www.nationmultimedia.com/search/page.news.php?clid=3&id=20000456> (last visited May. 1, 2006).

¹⁵³ No Go, Thai Politics, The Nation, May.20, 2006, available at <http://www.nationmultimedia.com/board/thaipol/view.php?id=749&offset=0> (last visited Jun.1, 2006).

¹⁵⁴ *Ibid.*

¹⁵⁵ Chaiwat Santha-Ananda, the Trap of Violence, Jul.5, 2005.

twice in the arm--which killed the victim instantly. The teacher was identified as Kobkul Runsaewa, 47, a female school director, the director of Ban Tua Ko School in Narathiwat's Rangae district. Because the school director visited her home daily to take care of her paralysed mother during lunch break, the assailants might have been tracking her movements just prior gunning her down. This case received attention from all sectors¹⁵⁶ because Thais customarily respect the teacher and adore the grateful person. So, there were more than 2,000 people from many areas including northern, eastern and central provinces came to attend her funeral and cremation.

On the following day (May 19, 2006), Juling Panganmoon (or Teacher Juei) and another female teacher Sininart, Thawornsuk were taken hostage and beaten by villagers until Juling fell into a comatose state and was taken to Prince of Songhkla Hospital in the Hat Yai district. As the villagers demanded security officers release two men arrested earlier in connection with the murders of the two marines in the same district in 2005,¹⁵⁷ around 100 villagers stormed Gujingruopo School and abducted the two teachers --an altercation that appears to have been well-planned.¹⁵⁸

In the Juling case, the violent villagers wanted Thai Security Officers to release two men arrested in connection with the murders of the two marines last year. These were the same conditions of the Tak Bai case when the rioters demanded the Government release suspects wanted for the seizure of weapons. After the villagers abducted and beat the two women Buddhist teachers, more than 100 Government schools in Thailand's

¹⁵⁶ *Ibid.*

¹⁵⁷ See K. Hengkietisak, cited in note 118 *supra*.

¹⁵⁸ Three more arrested for attack on teachers, Bangkok Post, May. 24, 2006.

rebellious Muslim in the far south were closed.¹⁵⁹ These attacks definitely caused southern provinces to lose more good education personnel.¹⁶⁰

Expert¹⁶¹ viewed the deaths of these teachers as important for three reasons. First, Kobkul was killed while trying to perform an act of a daughter's filial duty to her mother. The moral outrage that was triggered by her murder was therefore comprehensible. Second, her killing was unique in the history of violence in Southern Thailand because it was very unusual for a woman to be deliberately targeted for an assassination. Third, the assassination of the three young ustazs could be seen differently by the killers and families of those killed as well as ordinary Muslims.¹⁶² These assassinations have a definite and visible aim; killing teachers would attract media attention from around the world.

Moreover, political analysts¹⁶³ say that the reason for killing teachers is because Muslim radicals prefer an uneducated populace. They do not want the Muslim population

¹⁵⁹ School in Muslim Thai south closed after attack, Reuters, May. 22, 2006.

¹⁶⁰ Interview by The Nation with Pakorn Thepsorn, director of Narathiwat's Education Zone 2, Southern Violence: School director gunned down, available at <http://www.komchadluek.net/breaking/read.php?lang=en&newsid=66742> (last visited Jun. 30, 2005).

¹⁶¹ Dr. Chaiwat Satha-Anand is the professor of political science at Thammasat University, Bangkok and director of the Thai Peace Information Centre which conducts studies and activism in relation to the Thai military and social issues. He is an expert on non-violence theory as well as activism and Islam. He has published numerous articles and book chapters on the military, alternative defense, religion and peace, Islam and nonviolence, and modern political philosophy. For many years, he directed the International Peace Research Association's (IPRA) commission on non-violence, and he serves at the Scientific Committee of the International University for Peoples' Initiative for Peace, IUPIP, in Rovereto, Italy.

¹⁶² Chaiwat Satha-Anand, Southern Thailand: Beheading citizens: Killing Teachers as the Trap of Violence, Bangkok Post, Jul. 5, 2005.

¹⁶³ Dr. Grace Gorospe-Jamon is an esteemed associate professor of political science for twenty-eight years with the College of Social Sciences and Philosophy at the University of the Philippines where she teaches and does research in the area of religion and politics. She has also done research assessing the legislative performance of members of both Houses of Congress and serves as consultant to the Office of the Presidential Adviser on Revenue Enhancement.

to be educated, so that this area can eventually become the breeding grounds for recruitment for terrorist groups like Al Qaeda.¹⁶⁴

The impact of these acts of violence is a great challenge to the Government. But the important thing is that it affects the feeling of the children that have to be confronted with the daily killing of indiscriminate targets that happen to be their teachers or people that they are familiar with. If the Government cannot stop this violence, it should be concerned about the aggressive characteristics of these children in the next ten years.

1. Government Response

After a number of threats to teachers and students, as well as arson attacks on school buildings, the Government has tried to step up security in southern schools, but fewer than 1,000 soldiers and police have been deployed to the schools.¹⁶⁵ However, the incidents of teacher assassination suggest that the lack of appropriate security in the schools demonstrates the Thai Government's inability to respond to the demands of rapid operation.

F. Decapitation

The dissident groups use decapitation as a form of assassination not merely because of its dramatic effect but also to symbolize the act of violence. The main target of this

¹⁶⁴ Lucille Talusan CBN News Asia Correspondent, Thailand's Islamic Radicals Target Teachers, CBN, available at <http://www.cbn.com/cbnnews/news/051104f.aspx> (last visited Jun.30, 2006).

¹⁶⁵ See Nationmedia, cited in note 152 *supra*.

symbol is Buddhism.¹⁶⁶ Although various acts of violence have in their own ways sought to bring about religious conflict, the beheading of a Buddhist village leader in Thailand's Muslim-dominated south has provoked serious concern throughout Southeast Asia.¹⁶⁷ Besides, authorities believe sometimes decapitated victims were Muslims suspected by the extremist of cooperating with government authorities.¹⁶⁸ Since most of the dead bodies were first shot and then followed by the act of severing the head, decapitation as a form of torture designed to elicit fear or terror would seem superfluous. But this act of mutilation implies more than a way of inducing fear, but it is also a direct challenge to the power of the State and is seen as a form of punishment.¹⁶⁹

G. Acts of Terror

BUDDHIST CHANNEL posted on October 17, 2005

About 20 suspected Muslim separatists stormed a monastery, hacked an elderly Buddhist monk to death and fatally shot two temple boys Sunday in southern Thailand, police said.¹⁷⁰

¹⁶⁶ See N.Go, cited in note 153 *supra*.

¹⁶⁷ Bertil Lintner, Yale Global, Yale Center of the Study of Globalization, Nov.24,2004, available at <http://yaleglobal.yale.edu/display.article?id=4922> (last visited June 15, 2006).

¹⁶⁸ Insurgents behead rubber tapper, The Nation, Mar. 7, 2006 available at <http://www.nationmultimedia.com/search/page.news.php?eid=35&id=20002170> (last visited June 15, 2006).

¹⁶⁹ See C.Santha-Anand, cited in note 155 *supra*.

¹⁷⁰ Monk, temple boys murdered, Oct.17, 2005, available at <http://www.buddhistchannel.tv/index.php?id=1,1823,0,0,1,0> (last visited Jun.15, 2006).

This incident is a straightforward and clear instance of the dissidents group's endeavor to pressure Buddhists and Muslims into religious conflict so as to provoke further dissension and disorder. After a monk was hacked to death and two temple boys were killed, their bodies burned in a raid on a Buddhist temple in Pattani,¹⁷¹ the local southern leaders appealed for calm and urged authorities not to take rash action. However, the Buddhist community began to protest and ask the Government to take action against the Islamic dissidents. This violence is not merely intended to spark off religious conflict but also to choose indiscriminate targets. After the killing of elderly people, next would inevitably be infants and children.

XINHUA posted on May 27, 2006

*A three-year-old infant was shot dead in his mother's arms in Thailand's southern province of Pattani by unidentified gunmen late Saturday, and his parents and brother were severely injured.*¹⁷²

About 7:00 p.m. on May 27, 2006, while a father was riding a motorcycle in Pattani's district with his wife sitting behind him holding their infant and a one-year-old little brother in her arms, an unidentified gunman opened fired on them, killing the infant on the spot and injuring the other three persons.¹⁷³

¹⁷¹ *Ibid.*

¹⁷² Infant shot dead in Thai South, weapons recovered by military, Xinhua, May. 27, 2006 available at http://news.xinhuanet.com/english/2006-05/27/content_4609668.htm (last visited Jun. 15, 2006).

¹⁷³ *Ibid.*

From these facts alone, it would be hard to say that the violence in this incident goes beyond the statistically "normal" daily killing. However, if we observed that the infant's father was a civil servant in the local government, this violence could be interpreted not only as cruel and wanton act but also an expression of opposition against a civil servant of the Government who had failed to perform his duty in this area.

Another couple was brutally murdered in Yala. The victims were Jud Suwanchatree, 52, and his wife Serm Suwanchatree, 50. While they were riding a motorcycle with a side car, the husband was shot several times in the body, and his throat was slit until he was nearly decapitated. The wife's throat was also slit until her head was almost severed. Inside the side car, their pet dog was found dead with knife wounds to the body and neck.¹⁷⁴

The act of brutal murder by a militant group reflects a sentiment of a strong separatist movement and a disregard for human life. Many of them are without justification for their indiscriminate murderous acts simply because of alleged lack of effective cooperation between the Government and its people. The goal of brutal murder is to put terror and fear in the mind of the people with a view to driving those who are not part of their militant group into leaving their hometown.¹⁷⁵

¹⁷⁴ Southern Violence: School director gunned down, Komchadluek, Jun. 24 , 2005, available at <http://www.komchadluek.net/breaking/read.php?lang=en&newsid=66742> (last visited Jun. 15, 2006).

¹⁷⁵ Kankavi, Fire in the South 198 -199, Animate Group, 2004.

1. Government Response

Closed-circuit televisions were installed in government buildings, where officials trained villagers to use weapons for self-defense.¹⁷⁶ It would seem that the State resorted to many innovations with different tactics and techniques. However, the State must be fully aware and take care not to release any policy that might cause a reaction to such measures. For example, when all unregistered mobile phones began to be banned last year in order to prevent bomb attacks in the region,¹⁷⁷ there was an immediate outburst of 11 bombings, both before the blockade and after.¹⁷⁸

H. The Deportation of 131 Muslims

As Thailand plans to make the country as attractive as possible for tourists and businesses, a great effort was displayed to show the gentle character and hospitality of the Thai people who provide a warm welcome for visitors. Thailand has given a safe haven and afforded asylum to persons fearing persecution from as many as forty States around the world. No fewer than 100,000 persons have fled their homelands to avoid being caught in the crossfire of local armed conflicts, and at least 2 million migrants from neighboring countries are seeking employment in the Kingdom.¹⁷⁹ Recently, more than

¹⁷⁶ Couple Slain, School Boss Shot Dead, Bangkok Post, Jul.25, 2005 Post (Pg. Unavail. Online) 2005 WLNR 10148222

¹⁷⁷ Thai ban mobile in terror drive, BBCNEWS, Nov, 15, 2005, available at <http://news.bbc.co.uk/2/hi/asia-pacific/4439716.stm>, (last visited Jun. 15, 2006).

¹⁷⁸ Zachary Abuza, Southern Thailand Still Suffering from Insurgent Violence, Jamestown Organization, May. 31, 2006, available at www.Jamestown.org/terrorism/news/article.php?articleid=2370013 (last visited Jun. 15, 2006).

¹⁷⁹ See J.W.Hudguet & S.Punping, cited in note 77 *supra*.

erty neighboring States, including Malaysia, have concluded agreements with Thailand on the dispensation of visa requirements for holders of diplomatic, official, or service/special passports that are automatically permitted to enter and stay in the Kingdom for 30 to 90 days.¹⁸⁰ This was made possible by the fact that Malaysia, Thailand's adjacent neighbor, has had a tradition of Thais and Malays people being on good terms. So much so, that it is very easy for Malays to enter Thailand even without any travel documents. Just using the "angkat tangan" practice of raising a hand and waving at the personnel manning the Bukit Kayu Hitam checkpoint, a border pass is scarcely ever stamped. The locals have been using the "border pass system" for years to enter Thailand for various reasons.¹⁸¹

On October, 30, 2005, 131 Thais took refuge in mosques in Kelantan, Malaysia, which offered temporary shelter. These 131 Thai Muslims fled across the border because they had lost faith in the Government's willingness or ability to protect them. However, they were blamed for illegally traveling to Malaysia. Malaysian police said they had detained 131 Thai Muslims, including women and children, who had fled across the border to escape the continuing violence without any travel documents and have handed them over to the immigration department for further action.¹⁸² These situations raised doubts about the standard of the pass checkpoints between the two countries. Meanwhile the Malaysian foreign minister also said that there were contemplating an immediate

¹⁸⁰ Ministry of Foreign Affairs, Kingdom of Thailand, available at <http://www.mfa.go.th/web/2381.php#thailand> (last visited Jun. 30, 2006).

¹⁸¹ Bukit Kayu Hitam, New Straits Times, May. 24, 2006.

¹⁸² More bombings rock south Thailand, BBCNEWS, Sep.1, 2005, available at <http://news.bbc.co.uk/2/hi/asia-pacific/4204028.stm> (last visited Jun. 30, 2006).

repatriation of the 131 Thai Muslims who had effectively left Thailand to avoid conflict and the acts violence in Southern Thailand.¹⁸³ On the other hand, Thailand had a different view of the incident.

1. Government Response

On September 5, 2005, Dr. Kantathi Suphamongkhon, Foreign Minister, gave a press conference¹⁸⁴ on Thailand's reaction to the latest development in the South with regard to the 131 illegal entries of Thai citizens from the 3 southernmost provinces into Malaysian territory. On September 7, 2005, Mr. Sihasak Phuangketkeow, Director-General of the Department of Information and Spokesman of the Ministry of Foreign Affairs, also gave a press conference¹⁸⁵ at the Press Center of the Foreign Ministry on the

¹⁸³ Malaysia risks row with Thailand, BBCNEWS, Sep. 2, 2005, available at <http://news.bbc.co.uk/2/hi/asia-pacific/4208094.stm> (last visited Jun. 30, 2006).

¹⁸⁴ Kantathi Suphamongkhon, Foreign Minister, address Minister of Foreign Affairs: Thailand's reaction to the latest development in the south with regard to the 131 illegal entries of Thai citizens from the 3 southernmost provinces into the Malaysian territory (Sep. 5, 2005) as follows:

1. Dr. Kantathi Suphamongkhon, Foreign Minister, disclosed that yesterday he had another telephone conversation with his counterpart, Syed Hamid Albar, the Malaysian Foreign Minister. Both sides understood each other with regard to the issue. He pointed out that the Thai government intended to treat the 131 Thais with compassion and understanding and would be working closely with Malaysia at all levels to establish the facts. Efforts would be undertaken to ensure their safety and protection upon their return to Thailand.
2. With regard to the status of the 131 persons who have entered Malaysia illegally, Dr. Kantathi clarified that he has been misquoted by the press and pointed out that, according to his information, most of them were likely to be innocent civilians although there may be a few who were driven by hidden agendas which aimed to create misunderstanding among international community by way of spreading unfounded rumors.
3. Given the present situation and sensitivity involved, it is necessary for all sides to be careful and to avoid words or statements that may not be helpful or may be interpreted as causing misunderstandings which may impede efforts to resolve the situation. What is important under the present circumstances is that it is necessary to act on facts and to engage in constructive exchanges of views and statements.

¹⁸⁵ Sihasak Phuangketkeow, Director-General of the Department of Information and Spokesman of the Ministry of Foreign Affairs, address at the Press Center of the Foreign Ministry: The latest developments regarding the 131 Thai citizens who crossed the border into Kelantan State of Malaysia illegally (Sept. 7, 2005) as follows:

1. The governments of Thailand and Malaysia are working closely to resolve the problem. The Thai authorities concerned will deal with the problem on the basis of national reconciliation and will make the best efforts to ensure the safety of the 131 Thai citizens.
2. According to Thai intelligence report, in early August 2005, around 10 militant leaders crossed the border to the Kelantan State of Malaysia in order to spread rumors that there would be serious incidents in the 3 southern provinces of Thailand. The rumors were also spread among Thai-Muslims who were employed in

latest developments regarding the 131 Thai citizens who illegally crossed the border into Kelantan in Malaysia.¹⁸⁶

This is the first time that Thailand officially called an organization by name, namely, the Pattani United Liberation Organisation (PULO)—as being behind the terrorizing acts causing the 131 Thai Muslims to flee from Narathiwat into Kelantan.¹⁸⁷ It is therefore the first accusation against the world's largest body of Islamic nations—the Organization of the Islamic Conference (OIC)—where the organization is accused of disseminating misperception and misinformation about the unrest caused by religious conflict.¹⁸⁸ Also Prime Minister Thaksin Shinawatra believed the departure might have

Tranganu State. With regard to the case of the 131 people who have illegally entered Kelantan from Thailand, intelligence reports have confirmed that leaders of the militant groups traveled into Kelantan five days before the incident took place to lay the groundwork, after which the 131 persons gradually fled in groups into Malaysia on 30 August 2005.

3. The claim that the death of Mr. Satopa Yuso, a villager of Lahan Nua sub-district, Su-ngai Padi district, Narathiwat Province, on 29 August 2005 was the main cause for the fleeing of the 131 Thais to Malaysia was not consistent with the facts. Most of those who crossed the border to Malaysia actually came from other areas.

4. The militants have also conducted activities abroad by working with the PULO movement, which established a front organization called Pattani Malay Human Rights Organization (PMHRO) to spread inaccurate information through its website www.pmhro.org to tarnish Thailand's image. Right after the incident took place, the PMHRO is believed to have made approaches to the United Nations High Commissioner for Refugees (UNHCR) in Switzerland with the information alleging that the 131 Thais were terrified by the Thai government authorities after the implementation of the Executive Decree on Emergency Situation because it is alleged that these people were involved in the Tak Bai incident last October. The PMHRO, therefore, asked the UNHCR to render assistance to the 131 persons as well as to coordinate with the Malaysian Government not to repatriate these people back to Thailand. Moreover, the website of the organization was updated to report on the incident almost immediately after the report of illegal border-crossing.

5. According to the interrogation of the 131 Thais, it is believed that these people entered Malaysia as a result of the rumors from the militants as well as the fear for their safety and not as a result of any acts committed by the Thai authorities. In addition, these insurgents had the intention to create misunderstanding between the Thai and Malaysian Governments.

6. The Thai government stands ready to protect these 131 Thai citizens. The Malaysian government also recognizes that this incident is Thailand's internal affair. The governments of both countries would work together closely to resolve the situations as soon as possible.

The spokesman reiterated that this incident is Thailand's internal matter and that the Thai government has never resorted to any acts by the authorities that might threaten or endanger Thai citizens in any way.

¹⁸⁶ See Minister of Foreign Affairs, cited in note 184 *supra*.

¹⁸⁷ Bangkok Post, Sep.7, 2005.

¹⁸⁸ Thailand Rejects Criticism from Muslim Nations Over Handling of Unrest in South, Reuters, Oct. 19, 2005.

been orchestrated to turn the southern situation into an international issue. Although Prime Minister Taksin did not specially assert that the situation in the South was related to the neighboring country, it is implicit in his account of the 131 Thai Muslims found crossing the Southern border. Finally, international attention was raised. This is consistent with the statement by the director of the Southern Border Provinces Peace-building Command who confirmed that the escalating violence in the deep South was part of the militant group's attempts to get the Organization of the Islamic Conference (OIC) involved.¹⁸⁹ Furthermore, Prime Minister Thaksin blamed the militants for instilling fear in the hearts of the people, which he claimed eventually led to a state of panic in the villages of Narathiwat. The Prime Minister also condemned activists who had lodged a petition with the Thai embassy in Kuala Lumpur for being the villains and rebels and warned the United Nations High Commissioner for Refugees not to get involved, or they would "become a pawn in the hands of the rebels."¹⁹⁰ Although Prime Minister Taksin tried to explain the situations, it was ineffective after the United Nations refugee agency had begun interviewing the 131 Thai Muslims sheltered in Kelantan, the Malaysian State bordering Narathiwat since September 6, 2005,¹⁹¹ and the summary of UNHCR on September 27, 2005 decided to withhold any public announcement as to the status of the 131 Southern Thais currently living in Malaysia. At this stage, the important issue is that the investigation of these 131 Thai Muslims would verify the accuracy of the information furnished by Prime Minister Taksin. The Thai side had to prove that there

¹⁸⁹ See Bangkok Post, cited in note 187 *supra*.

¹⁹⁰ Antonio Guterres, Urgent Alert : Get Malaysia and UNHCR to Grant Refugee Status to Persecuted Thai Muslims, Islamic Human Rights Commission, ICHR, Oct. 5, 2005, available at <http://www.ihr.org.uk/show.php?id=1576> (last visited 5 June 2006).

¹⁹¹ See Bangkok Post, cited in note 187 *supra*.

was a hidden conspiracy plan on the part of the 131 Thai Muslims. Failure to establish such a plan beyond a reasonable doubt, this question might function as a violation of human rights on the part of the Thai Government. Meanwhile, one of the 131 Thai Muslims was handed over to the Thai authorities and is facing criminal charges.¹⁹²

II - 3 Conclusion

The history of violent incidents in Southern Thailand is long and complex. The root causes of the problems are expressed in the ongoing clash between the push toward national identity and the pull of ethnic customs, beliefs and traditions. In this respect, the prevailing concept of the ideology is not the same as it was in the past. These problems are an extension of, but also different from, the old pre-existing problems. It is far broader in scope than merely a battle fought by the nation against disgruntled citizens, but now involves an international group with a deep understanding of media politics.

No one exactly knows whether the strategy of the attacks in the last two years might well have been planned over hundreds of years or just designed in this era. The five basic operations of militants, separatist and terrorist, start from day one in the following order:¹⁹³

1. *Falling Leaf Strategy: killing people daily*
2. *Extinction of Dharma Strategy: killing monks*

¹⁹² D. Arul Rajoo, No Plan For Extradition Treaty With Thailand, Says Najib, Bernama, Jul. 14, 2006 www.bernama.com (last visited Jun.30, 2006).

¹⁹³ Kankavi, A true story from Tanyong Limor 191, Animate Group, 2004.

3. *Extinction of Light Strategy: killing teachers*

4. *Land of Darkness Strategy: blasting power plants*

5. *Land of Flood: blasting damns*

These strategies cover operations in small areas of Southern Thailand. The result is not much different from armed conflict and traditional or conventional warfare. The tactical aspects include assaults in various forms of warfare, only it is worse than war or armed conflict because it disregards any humanity concept or respect for the Rule of Law.

Without any doubt, it is clear that all of the responses of the Government have absolutely failed to deter these acts of violence as exemplified by the coordinated bombings of government offices, police stations, and Army checkpoints at more than 40 locations in Yala, Pattani, and Narathiwat by Islamic militants.¹⁹⁴ In this case, there were untold physical injuries and damage to Government and private properties. As such, the violence continued on June 15, 2006, a day deliberately chosen by a militant group to represent the 'national day' of an independent Pattani sultanate. It was designed to remind the local population that the cause championed by small groups of Malay nationalists to create a separate homeland in the Muslim-majority region is still very much alive and that the Government's effort to restore peace and re-establish the Rule of Law is not working. The recent acts of the last four years were meant to send a message that "the circle of violence" is approaching as it already has in the form of the Army raid,

¹⁹⁴ Militants evolve as military wilts, The Nation, Jun. 16, 2006, available at <http://www.nationmultimedia.com/option/print.php?newsid=30006576> (last visited Jun. 30, 2006).

or the stealing of weapons in the case at the army camp. The characteristics of these acts of violence indicate recurrent patterns:

- Challenge the power of the State;
- Indiscriminate targets;
- Villagers involvement;
- Prelude to a religious conflict;
- Appealing to international audiences, organizations, and mass media.

From all of these circumstances, violence has persisted for the past two years as if there were no financial obstacles and as if the money has been sent from external sources to support local assaults. This raises the question as to the planning, instigation or perpetration of these acts of violence, and the profits of those who sponsor them. The Government claimed to have knowledge and to have learned from intelligence information that the militants were planning a 'major operation'¹⁹⁵ on that date but the Thai Security Forces simply lacked the capability to fight elusive battles with the militants who have made effective use of hit-and-run tactics, creating havoc and then quickly blending into the local population. The important thing that the government must realize is that it may well be just the beginning: As long as the Government cannot control the violence, "civil war"¹⁹⁶ remains a distinct possibility.

Throughout the history of Thailand and South Asia, untold numbers of people have suffered from extreme acts of violence. The instances I mentioned are hardly

¹⁹⁵ 46 bomb attacks rock Thailand, Daily News, Jun.16, 2006.

¹⁹⁶ A war between different sections or parties of the same country or nation (Webster's Third New Edition Dictionary); A war between factions of the same country; there are five criteria for international recognition of this status: the contestants must control territory, have a functioning government, enjoy some foreign recognition, have identifiable regular armed forces, and engage in major military operations. (See globalsecurity cited note 89 *supra*).

comparable to the pain and suffering endured by the people. Whether those who committed these acts of violence were to be later labeled as "rebels," "militants," "dissidents," "separatists," or "terrorists," or some combination of two or three of these classifications, the key is how to arrest or interrupt these acts of violence for good by all of the peaceful means at our disposal. It is everyone's fervent hope that in the long run reason, wisdom, and justice will prevail.

CHAPTER III

TERRORISM

III-1 Introduction

Just as so many dimensions of the world we live in today have changed significantly with the rapid advances in technology so too have terrorist acts undergone drastic changes within this period of modern globalization. Recently, terrorism has been on the rise. Terrorist acts continue to occur in almost every corner of the world -- in Europe, America, Asia, Africa and throughout Asia. The number of nation states in the year 2001 that fell victim to terrorist attacks was no less than 26. The countries that have the highest rate of terrorist activity are: India, Columbia, Algeria, Russia, Israel, and the Philippines.¹⁹⁷

Terrorism has become, in some regions, an increasingly advanced operation often involving networks of small groups of individuals (or cells) in which members are united through a common cause. These networks of terrorist cells operate in close connection to each other across great distances and, much like the digital global integration, have permeated geographic boundaries and state sovereignties.¹⁹⁸ The events of September 11, 2001, directly affected New York and Washington, but not only were US citizens impacted but so too were people all over the world. This incident illustrated how

¹⁹⁷ ERRI Annual Report into International Terrorist Activity 2001, Emergency Response and Research Institute, available at www.emergency.com (last visited Nov.1, 2006).

¹⁹⁸ Neal A. Pollard, The Future of Terrorism, Terrorism Research Center, available at www.terrorism.com (last visited Nov.1, 2006)

terrorism created a crisis not merely for the United States but an international crisis that directly involved US allies, detractors and nations who had hitherto attempted to remain neutral.¹⁹⁹

The word "terrorism" is a contentious one. One man's "terrorist" is another man's "freedom fighter." However, whatever interpretation of the motives for these acts, it is impossible to escape the fact that the violent acts are a global concern. The United Nations recently added 'terrorism' to the list of the most significant world problems that include²⁰⁰:

- *war between States;*
- *violence within States; including civil wars, large - scale human rights abuse and genocide;*
- *poverty, infectious disease and environmental degradation;*
- *nuclear, radiological, chemical and biological weapon;*
- *transnational organized crime; and*
- *terrorism.*

Because it is typically innocent people who are killed by terrorists, terrorism, unlike war, touches the lives of people, regardless of political affiliation, all around the world. The whole idea of creating a State of Terror has also had the effect of making

¹⁹⁹ Press Release, Secretary-General's message to the ceremony marking the commencement of the work of the regional counter-terrorism structure executive committee of the Shanghai Cooperation Organization, SG/SM/9372 (Jun. 17, 2004) as follows:

[T]errorism strikes at the very heart of everything the United Nations stands for. It is a global threat to democracy, the rule of law, human rights and stability, and therefore requires a global response. The United Nations has an indispensable role to play in providing the legal framework within which the international campaign against terrorism can unfold.

²⁰⁰ Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change, A more secure world: Our shared responsibility at 2, United Nations 2004.

more and more people aware of the profoundly global nature of this problem. Comparisons have been made between terrorism and 'SARS' because terrorist acts can occur anywhere and, like SARS, can never be eradicated once and for all. Both are global concerns that although they appear within the confines of a particular country, have ramifications that defy all political, ideological or economic boundaries.²⁰¹

Within the evolving political, ideological, social and economic changes that belong to this era of globalization, this chapter attempts to explore and analyze some of the complexities facing in the world today. In this chapter, I will explore:

1. The use of the term "terrorists" by Thailand and the problems inherent in defining terms such as "terrorist" by the United Nations;
2. The network of Al Qaeda in Southeast Asia and the effects on the recent situations in southern Thailand;
3. The analysis of the violence in Southern Thailand in terms of terrorist law, self-determination and the status of prisoners of war;
4. The Thai Government's response to the United Nations.

Before we discuss the issues above, it is important to first give an overview of the historical background of terrorism in order to contextualize the modern day dilemmas.

²⁰¹ Tony Tan Keng Yam, Deputy Prime Minister And Minister For Defence, at the Singapore-US Business Council Plenary Meeting in New York (Apr. 10, 2003) as follows:

[T]errorism is similar to SARS in yet another way. The battle against terrorism, like the battle against SARS, has to be a long and sustained one. Weeks and months may go by without a terrorist attack, but it does not mean that the threat is gone. As Bali, Riyadh and Casablanca reminded us. A country can eliminate SARS with robust healthcare measures, but the disease can come back - perhaps brought back by a traveler who caught it in another country. Toronto knows this only too well. Toronto was declared SARS-free by the WHO in mid May, only to be hit by another outbreak of SARS less than two weeks later.

Terrorism is also a global menace. With its roots in radical Islamic elements in the Middle East, terrorism is now a phenomenon penetrating all corners of the globe.

Terrorism is not a new phenomenon nor is it a new word. There have been so-called terrorist acts before the first century [the Zealots- Sicarii²⁰²]. In more recent history, the end of World War II marked the beginning of new dividing lines for terrorists. With the cold war, the idea of anti-Democratic/anti-Capitalist, Marxist-based ideology arose as a popular motivating factor for many terrorist acts. There were terrorists to be found in Indochina, the first notable terrorist group known in Asia with trans-boundary activity was the C.T. (Chinese, or at time Communist, Terrorist).²⁰³ Terrorism arose in any place where anti-government sentiment leads to outright violence. Such "terrorists," however, tended to wage their wars in the traditional manner of rural guerrillas, sometimes coupled with urban operations.

It was in this context that "terrorism" has become a historical term variously associated with French terror, revolutionary Anarchism or the "Mad" bombers. While anti-insurgency and guerrilla warfare were fashionable terms for academic subjects, this was not true of terrorism. Western governments would label any number of group terrorists for a variety of politically motives. It was common for the government to blame any political adversary as a 'terrorist.' As a result, the term became a catch all phrase that, although ubiquitous, is inherently politically suspicious.

The British had fought CTs--Communist terrorist--in Malaya and the "mad" terrorists of the Mau Mau in Kenya. The French had fought the FKN terrorists in Algeria and, in the process, had fashioned their own brand of philosophy for counter-terrorism.

²⁰² A Jewish group in Palestine murdered individuals with dagger and swords. Later, they turned to open warfare. Their objective was to create a mass uprising against the Greeks in Judea and against the Romans that governed both Greeks and Jews. The revolt had unforeseen and devastating consequences, leading to the destruction of the Temple and to the mass suicide at Masada.

²⁰³ Sompong Sucharitkul, International Terrorism and the Problem of Jurisdiction 148, *Syr.J.Int.L. & Com.*, Vol.14 No.2, winter 1987.

Also, the Thai Government had fought local Malaysian communists (mostly Chinese) who made their home base in the border between southern Thailand and northern Malaysia. Thailand made a law banning Communism (the Communist Act) at that time to justify its military presence in this region and has since disbanded this law.

Such violence, however, was commonly perceived by the world within the imperialist context in which rural guerilla warfare was seen as an effective response to institutionalized injustice and centralist despotism.²⁰⁴ However, ideological terrorism was more often than not the most modern incarnation of ethno-religious conflicts in some centuries-old disputes, the terms of which now took the form of terrorism, insurgency, regional instability, and civil war.²⁰⁵

III - 2 The Use of the Term "Terrorism"

A. Problems defining the term "Terrorism" as articulated by the United Nations

Although terrorist acts have occurred among states for centuries and today we have twelve major multilateral conventions and protocols related to States' responsibilities for counter-terrorist acts,²⁰⁶ there are still problems with defining, classifying and formulating terrorism as a legal category. These problems with defining the term have impeded meaningful endeavors to suppress acts of terrorism on an

²⁰⁴ J. Bowyer Bell, *A time of Terror : How Democratic Societies Respond to Revolutionary Violence* 58, Basic books, Inc., Publisher 1978 (1931).

²⁰⁵ See N. A. Pollard cited in note 198 *supra*.

²⁰⁶ Conventions against Terrorism, The United Nations, available at http://www.unodc.org/unodc/terrorism_conventions.html (last visited Aug. 1, 2006).

international scene.²⁰⁷ However, even if no universal definition of terrorism has yet been defined the United Nations, there are generally accepted ideas of what terrorism means. When walk about terror, everybody knows, broadly speaking, what this means.

The first attempt to define terrorism was made under the League of Nations, the draft in 1937 was never ratified. However, the United Nations did not ignore the importance of terrorism. Twelve Conventions and Additional Protocols were negotiated from 1963 to 1999. Most are penal in nature with a common format. Typically, they defined a particular type of terrorist conduct as an offense under the convention, such as seizure of an aircraft in flight by threat or force. The convention also called upon State parties to penalize that activity in their domestic law; identified certain bases upon which the relevant state parties are required to establish jurisdiction over the defined offense, such as registration, territoriality, or nationality; and entitled the State party in which an accused offender is found to establish jurisdiction over the offense and to refer the offense for prosecution if the party does not extradite pursuant to other provisions of the Convention.²⁰⁸

Obviously, terrorists do not call themselves terrorists. The rhetoric of freedom fighters, replete with images of liberation, military structure, self-defense, righteous vengeance, self-determination, has made these unclear definitions more complex. Furthermore, one of the problems of finding a proper definition of "terrorists" is that terror can be applied downwards as well as upwards. In other words, certain groups can use terror as an attempt to influence government decisions (or public approval of

²⁰⁷ See S. Sucharitkul, cited in note 203 *supra*. at p. 141

²⁰⁸ Country Reports on Terrorism, the Office of the Coordinator for Counterterrorism Apr. 27, 2001, US Department of States, available at www.state.gov (last visited Nov. 1, 2006).

government decisions) or even to demolish the structure of a State. On the other hand, the spread of fear can be applied to the government itself (used “downwards”) against its own citizens as a method of retaining power (Chile under Pinochet was a clear example of this use of terror).²⁰⁹

However, if there is no agreed-upon definition to the term, the violence will inevitably continue. Of course, the violence may continue with or without such a definition but formulating a legal term might better help stem the acts of violence (even if it does not squelch anti-government sentiment).

B. Efforts to Define “Terrorism” by Nations

*All States, in every region -- large or small, strong or weak -- are vulnerable to terrorism and its consequences. They all stand to benefit from a strategy to counter it. They all have a role to play in shaping such a strategy, in implementing it, and in ensuring that it is updated continuously to respond to challenges as they evolve.*²¹⁰

Terrorism, unlike manslaughter, takes as its target the State not an individual.²¹¹ Accordingly, States have a duty to guard their sovereignties by maintaining their powers of determination through legally defining what constitutes terrorism in their countries.

²⁰⁹ Nici Keijer, *Terrorism as a crime* 119 (Wybo P. Heere, ed, Cambridge University Press 2003).

²¹⁰ The Secretary-General, *Address on the Launch of Uniting Against Terrorism : Recommendations for a Global Counter – Terrorism Strategy*, New York (May. 2 2006), available at <http://www.un.org/unitingagainstterrorism/sgstatement.html> (last visited Nov 1. 2006)

²¹¹ Sompong Sucharitkul, *Terrorism as an international crime: Questions of responsibility and complicity* 247, *Israel Yearbook on Human rights*.

The principal judicial statement following comes from the principles in customary international law namely, *Lotus case*,²¹² which can be categorized the aspects of jurisdiction such as:

1. *Prescriptive jurisdiction refers to the power of a State to make its laws applicable to people, events and things, whether by legislation, administrative rule, executive order, or sometimes judicial ruling.*
2. *Adjudicative jurisdiction refers to the power of a State to subject a person to the process of its courts*
3. *Enforcement jurisdiction refers to the power of a State to ensure through coercive means that its legal commands are complied with.*²¹³

Howsoever, the five basic fundamentals that international law recognizes for the sovereign rights of States are²¹⁴:

1. The Territorial Principle²¹⁵
2. The Nationality Principle²¹⁶
3. The Protective Principle²¹⁷

²¹² France v. Turkey, 1927 PCIJ, ser.A, No.10.

²¹³ Jurisdiction and Immunities, Public International Law, Part IB, 2005-6, available at <http://www.law.cam.ac.uk/docs/view.php?doc=2893>. (last visited Nov.1, 2006).

²¹⁴ Thomas Buergenthal & Harold G. Maier, Public International Law 163-174, West Publishing (1985).

²¹⁵ *Ibid.*

[S]tates have jurisdiction over their nationals, even when those nationals are physically outside the country's borders. This is so both because the national owes allegiance to his own country no matter where he or she is located and because each nation has both responsibility to other nations for the conduct of its nationals and an interest in their welfare while they are abroad.

²¹⁶ *Ibid.*

[E]ach state has the right to define who are its nationals. Nationality may be acquired "naturally" as the result of birth, either by being born within a state's territory (*jus soli*) or through the nationality of one's parents (*jus sanguinis*) or both. It may also be acquired "artificially," by naturalization.

4. The Universality Principle²¹⁸

5. The Passive Personality Principle²¹⁹

Because States have self-sovereignty, territorial integrity and political independence, they also have jurisdiction over all acts committed by as well as upon its nation (despite whether acts against the nation were actually committed within the nation's boundaries). When there is terrorist activity that threatens the State's security, States have the right to ascertain their jurisdictions to establish and enforce their laws.

Recently, over 170 nations continue to participate in the war on terrorism by taking terrorists into custody, freezing terrorist assets and providing military forces and other support. International organizations are also adapting to meet the threat. There have been numerous steps taken to eliminate underlying circumstances that foster terrorism.²²⁰ Because the US faces many terrorist acts, many US organizations have attempted to define the term "terrorist" in relation to various ideologically motivated acts of violence. Such definitions have been generated by: the U.S. National Counter Terrorism Center

²¹⁷ *Ibid.*

[T]his principle permits a state to exercise jurisdiction over conduct outside its territory that threatens its security, as long as that conduct is generally recognized as criminal by states in the international community.

²¹⁸ *Ibid.*

[T]he "universality" principle recognizes that certain activities, universally dangerous to states and their subjects, require authority in all community members to punish such acts wherever they may occur, even absent a link between the state and the parties or the acts in question.

²¹⁹ *Ibid.*

[U]nder this principle a state claims jurisdiction over acts committed abroad solely because they injure a national of the claiming state. This principle is related to the universality principle in that it is invoked only where the state claiming jurisdiction has no other connection with the act.

²²⁰ The U.S. Department of State.

[T]he U.S. Department of State defines "terrorism" to be "premeditated politically-motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents, usually intended to influence an audience".

(NCTC),²²¹ the U.S. Code of Federal Regulations,²²² the United States Department of Defense,²²³ the USA PATRIOT Act²²⁴ and the Federal Bureau of Investigation (FBI).²²⁵

No States, however, are able to stay for the UN to arrive at a definition since the threat to State sovereignty is often urgent and pressing. Many States do not hesitate to adopt a definition of "Terrorism" that hopes to quell any threat to national security.

The US White House's report on September 11, 2002, divided the global war on terrorism into three parts:

1. *Attacking Terrorist Networks at Home and Abroad;*
2. *Securing the Homeland; and*
3. *Strengthening and Sustaining the International Fight against Terrorism.*

The first section focuses on defeating terrorist leadership and personnel, denying terrorist haven and sponsorship, and eradicating sources of terrorist financing. The second section is concerned with reorganizing the federal government -- especially creating the Department of Homeland Security— by reducing America's vulnerability to

²²¹ The U.S. National Counter Terrorism Center (NCTC): [A] terrorist act as one which was: "premeditated; perpetrated by a sub national or clandestine agent; politically motivated, potentially including religious, philosophical, or culturally symbolic motivations; violent; and perpetrated against a noncombatant target"

²²² The U.S. Code of Federal Regulations. [T]he unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

²²³ United States Department of Defense. [T]he calculated use of unlawful violence to inculcate fear; intended to coerce or intimidate governments or societies in pursuit of goals that are generally political, religious, or ideological.

²²⁴ USA PATRIOT Act. [A]cts dangerous to human life that are a violation of the criminal laws of the United States or of any State.

²²⁵ Federal Bureau of Investigation (FBI). [T]errorism is the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

terrorists through enhancing emergency preparedness and response capabilities. The third part is devoted to global and regional efforts of fighting terrorism by attempting to remedy the underlying social, cultural and economic conditions that terrorists exploit.²²⁶

²²⁶ See US Department of State cited in note 220 *supra*.

The British Terrorism Act 2000 of the UK²²⁷, the Philippines²²⁸, and Australia

²²⁷ The British Terrorism Act 2000.

- (1) terrorism means the use or threat of action where –
- (a) the action falls within subsection (2),
 - (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and
 - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
- (2) Action falls within the subsection if it –
- (a) involves serious violence against a person,
 - (b) involves serious damage to property,
 - (c) endangers a person's life, other than that of the person committing the action,
 - (d) creates a serious risk to the health or safety of the public or a section of the public, or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.
- (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

The British Terrorism Act 2006.

Amendment of the definition of "terrorism" etc.

In each of—

- (a) section 1(1)(b) of the Terrorism Act 2000 (c. 11) (under which actions and threats designed to influence a government may be terrorism), and
- (b) section 113(1)(c) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (offence of using noxious substances or things to influence government or to intimidate), after "government" insert "or an international governmental organisation".

Anti-terrorism, Crime and Security Act 2001.

Dangerous Substances

- (113) Use of noxious substances or things to cause harm and intimidate
- (1) A person who takes any action which—
 - (a) involves the use of a noxious substance or other noxious thing;
 - (b) has or is likely to have an effect falling within subsection (2); and
 - (c) is designed to influence the government or to intimidate the public or a section of the public, is guilty of an offence.

²²⁸ Act of Terrorism, Republic of the Philippines House of Representatives(2002).

sec.3. [T]errorism refers to the premeditated use or threatened use of violence or means of destruction against innocent civilians or non-combatants, or against civilian and government properties, to instill a state of common danger, panic or fear intended to influence and audience, regardless of motivations.

ibid. at sec.3 h)

[C]yberterrorism refers to unlawful act and threat of attack against computers, networks, servers, and information and communication system resulting in violence against persons or property when done to intimidate or coerce a government or its people using available and sophisticated instrument in cyberspace.

ibid. at sec.5.

[A]n act of terrorism is committed when an individual acting for, or an aggravation, organization, congregation or band of people come together to create or sow common danger or a state of terror, fear panic and chaos on the general public, or in order to coerce or intimidate the public in the government, through the use of force, intimidation, or violence, or by means possible and by every method available resulting in the deprivation of personal liberty, or destruction of lives and property to achieve any of following:

- 1) To threaten or cause death or serious bodily harm to a person by the use of violence or to cause a serious risk to health or safety of the public or any segment of the public;
- 2) To threaten or cause substantial damage to infrastructure or property, public or private; and

The Criminal Code 1995 of the Commonwealth)²²⁹ defined terrorism not only as a military act but any act that is potentially considered to perpetrate violence upon the State or its citizens (such as shutting down a website or security system), whereas the Penal codes of Indonesia²³⁰ and Thailand²³¹ and the Internal Security Act (ISA) of Malaysia²³²

3) To threaten or cause serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of lawful advocacy, protest dissent or stoppage of work.

Act of Terrorism, Republic of the Philippines House of Representatives(2007).

Sec.3 [T]errorism is the premeditated or threatened use of violence of force or any other means that deliberately cause harm to persons, or of force and other destructive means against property or the environment, with the intention of creating or sowing a state of danger, panic, fear, or chaos to the general public or segment thereof, or of coercing or intimidating the government to do or refrain from doing an act.

²²⁹ The Criminal Code 1995 of the Commonwealth, sec. 100.1.

"terrorist act " means an act, or threat of action, that is done or made with the intention of advancing a political, ideological or religious cause; and done or made with the intention of advancing a political, ideological or religious; and done or made with the intention of either;

- coercing or influencing by intimidation the Government of Australia or of another country; or
- intimidating the public or a section of the public.

The act or threat of action, must also cause a person serious physical harm or death, or involve serious risk to public health or safety, serious damage to property, or interfere with an electronic system.

²³⁰ Government Regulation in lieu of Legislation of the Republic of Indonesia No 1/2002 on Combating Criminal Acts of Terrorism. sec.1.

1. A criminal act of terrorism is any action having the elements of a criminal act in accordance with the provisions of this Government regulation in Lieu of Legislation.
2. A person is any individual or group of persons, either civilian, military or police, who is responsible individually or as a corporation.
3. A corporation is an organized group of persons and/or properties, whether or not in the form of a legal entity.
4. Violence is any act of misusing physical strength with or without the use of unlawful means, which causes danger to the body, life and freedom of a person, including causing a person to become unconscious or powerless.
5. A threat of violence is any action intentionally committed to give a sign or warning about a certain circumstance that tends to cause widespread fear for a person or for the community in general.
6. The Government of the Republic of Indonesia is the government of the representatives of the Republic of Indonesia Overseas .
7. Representatives of foreign countries are foreign diplomatic and consular representatives and their members.
8. An international organization is an organization within the structural scope of the United Nations or any international organization outside the United Nations or any organization undertaking its duties representing the United Nations. Assets are any movable or immovable, tangible or intangible objects.
10. A vital and strategic object is any place, location or building that has very high economic, political, social, cultural, and defence and security values, including international facilities.
11. A public facility is any place used for the interests of the general public.
12. An explosive is any material that may explode any type of ammunition, bomb, burning bomb, mine, hand grenade or any explosive material made from chemicals or other materials used to create an explosion.

²³¹ The Penal Code Amendment Act (No.13) B.E.2546 (2003). sec. 135/1.

[T]he scope of terrorism would treat terrorist acts as serious offences, and criminalize all steps in the terrorism process: the preparation, the aiding and abetting, and the actual commission of acts of terrorism .

cover any and all acts that could be construed as terrorist acts. Yet, Australia launched the Australian Anti-Terrorism Act 2005 to extend the Criminal Code 1995 of the Commonwealth relating to terrorist acts such as an extension for the definition of a terrorist organization, an allowance for monitoring of terrorist suspects, a grant of controlling a person for up to 48 hours without charge.²³³

[A] conduct made with the intention to —intimidate a population, to threaten or compel the Royal Thai Government or any government or international organization to do or abstain from doing any act.

Ibid. at sec. 135/2.

[A]ny person providing forces, arms, properties or any support for the commission of terrorism is considered to be committing an act of terrorism.

Ibid. at sec. 135/3.

[C]riminalizes - stockpiling weapons, providing or compiling property, or organizing any preparation or conspiracy in order to commit a terrorist act. (available at www.interpol.int, last visited nov.1, 2006).

²³² Koninklijke Brill N.v 2004. The Internal Security Act (ISA) 1960, Asia-Pacific Journal on Human Rights and the Law 1:86-203, 2004.

- P.I, sec.2 defines "terrorist" as meaning a person who:

- by the use of any fire- arm, explosive or ammunition acts in a manner prejudicial to the public safety or to the maintenance of public order or incites violence or counsels disobedience to the law or to any lawful order;

- carries or has in his possession or under his control any fire – arm, ammunition or explosive without lawful authority; or

- demands, collect or receives any supplies for the use of any person who intends or is about to act, or has recently acted, in a manner prejudicial to public safety or the maintenance of public order

[T]he ISA prohibits a wide variety of conduct, apparel and objects including:

- P.II, sec.3 and sec. 7. manufacture, use, sale, display or possession of uniforms, other dress or emblems of political or quasi-military organization;

- P.II, sec.5quasi- military organization;

- P.II, sec.6 illegal training in the use of arms;

- P.II, Chap.III, sec.22, 25, and 27. possession, printing, sale etc of documents and publications or the posing of placards that incite violence, counsel disobedience to the law, is likely to lead to a breach of the peace, is prejudicial to the national interest;

- P.II, Chap.IV, sec.35. holding of any entertainment or exhibition detrimental to the national interest;

- P.II, Chap.V, sec.41B. use of a school or educational institution for a purpose detrimental to the interests of Malaysia or the public, for instruction detrimental to the interests of the public or pupils, or as a meeting place of an unlawful society;

- P.III, Chap.III, sec.57 and sec.58. offences relating to fire-arms, ammunition and explosives, including consorting with, or being a person who, carries or has possession of arms or explosive; and

- attempting to commit any of the above acts.

²³³ See Australian National Security, available at, www.ag.gov.au.

[T]he Anti-Terrorism Act (No. 2) 2005 is an act to amend the law relating to terrorist acts, and for other purposes. The principal features of the Act are:

a) an extension of the definition of a terrorist organisation to enable listing of organisations that advocate terrorism;

Although Thailand does not specify what types of acts constitute terrorism, her definition does not exclude the possibility of cyber-attacks or infiltration of security systems as forms of terrorist attacks. Further the Money Laundering Control Act B.E.2542(1999) states "terrorist offence" to be "predicate offences" in the Act. Further, it could be observed that the Penal Code of Singapore does not contain an offense of — committing a terrorist act," but covers the planning, preparation, and perpetration of terrorist acts that involve murder, causing injury, hijacking, kidnapping and other offenses covered by the criminal.²³⁴

A number of States define terrorism in terms of criminalization because the act of terrorism is clearly seen by many as a criminal act even without this additional element that links the act of violence to the State through the "undertaking," "assisting," "encouragement" or "toleration" by State authorities.²³⁵

-
- b) a new regime to allow for 'control orders' that will allow for the overt close monitoring of terrorist suspects who pose a risk to the community;
 - c) a new police preventative detention regime that will allow detention of a person for up to 48 hours without charge where it is reasonably necessary to prevent a terrorist act or to preserve evidence of such an act;
 - d) updated sedition offences to cover those who urge violence or assistance to Australia's enemies;
 - e) strengthened offences of financing of terrorism by better coverage of the collection of funds for terrorist activity;
 - f) a new regime of stop, question, search and seize powers that will be exercisable at airports and other Commonwealth places to prevent or respond to terrorism;
 - g) a new notice to produce regime to ensure the AFP is able to enforce compliance with lawful requests for information that will facilitate the investigation of a terrorism or other serious offence;
 - h) amendments to ASIO's special powers warrant regime;
 - i) amendments to the offence of providing false or misleading information under an ASIO questioning warrant;
 - j) amendments to authorize access to airline passenger information for law enforcement and intelligence agencies;
 - k) the creation of a legal basis for the use of video surveillance at Australia's major airports and on aircraft;
 - l) additional implementation of FATF Special Recommendations covering criminalizing financing of terrorism, alternative remittance dealers, wire transfers and cash couriers.

Available at, HYPERLINK "<http://www.interpol.int/Public/BioTerrorism/NationalLaws/Singapore.pdf>" <http://www.interpol.int/Public/BioTerrorism/NationalLaws/Singapore.pdf> (last visited Nov. 1, 2006).

See S. Sucharitkul, cited in note 203 *supra* at p.145.

According to the attempt to identify such criminals through available investigative tools, granting liberal permission for intelligence gathering in order to target those who commit or support terrorism. Often States authorize a military response (in certain circumstances), allocate resources, create and refine legal responses and call upon international and interagency cooperation.²³⁶

One of the central reasons for defining terrorism in such a way is to consecrate the offense with a seriousness that elevates it from an ordinary crime made punishable under domestic law to the top category of the gravest international crimes, an “offence against the peace and security of mankind,” with all the grave consequences that inevitably follow.²³⁷

Without a definition from the United Nations, the ICC cannot adopt terrorism as a separate crime in the Statute. The reason for this was the lack of a definition that was generally acceptable and would not include acts committed in the context of a people’s struggle for self-determination.²³⁸

III - 3 The Al Queda Network in Southeast Asia and its efforts on Southern Thailand

Because of the events of September 11, 2001, the term “terrorist” has been indelibly linked to Al Queda and Osama Bin Laden. I wish to take a few moments to

²³⁶ Joint US military Advisory Group Thailand (JUSMAG THAI).

²³⁷ See S. Sucharitkul, cited in note 203 *supra*. at p.145.

²³⁸ Nico Kojer, Terrorism and the Military International Legal Implications, Terrorism as a Crime 125 (Wybo P.Heere ed., Cambridge University press 2003).

explore the complex history of this Al Qaeda terrorist organization in order to better explicate the circumstances in Thailand and the problems in southeast Asia.²³⁹

Al Qaeda is an international organization founded in 1979, a virtual clearinghouse for Muslims opposed the invasion of Soviet invasion of Afghanistan in 1979. After one year, the Services Office—run by Bin Laden and the Palestinian religious scholar Abdullah Azzam—recruited, trained, and financed thousands of foreign *mujahadeen*, or holy warriors, from more than fifty countries.²⁴⁰ After the Afghan war was over, Bin Laden returned to Saudi Arabia where he inherited a fortune estimated at US \$300 million. However, he was expelled in 1991 and has his political status revoked as a result of his political activities. He then moved to Sudan, where he established training camps for his followers who were incensed by the presence of America troops on Saudi soil during the Gulf war. Under pressure from the US, Sudan expelled him. He then headed back to shelter under the new Taliban Government in Afghanistan.²⁴¹ Al Qaeda worked out of Pakistan along the Afghan border, or inside Pakistani cities during 1991 -1996. Until today Al Qaeda is still an international terrorist network run by Osama bin Laden.

The goal of this international organization was to rid Muslim countries of what was seen as the profane influence of the West and replace their governments with fundamentalist Islamic regimes.²⁴² One of the principal goals was to pressure the United States armed forces out of Saudi Arabia and Somalia.²⁴³ Even though the terrorist

²³⁹ Barbie Zelizer, *Journalism After September 11 22*, Routledge Publisher 2002.

²⁴⁰ Council on Foreign Relations: A Nonpartisan Resource for Information and Analysis, available at <http://www.cfr.org/> (last visited Aug. 1, 2006).

²⁴¹ Andrew Tan, *The 'New' Terrorism: How Southeast Asia Can Counter It* 89, (Uwe Johanannen, Alan Smith, James Gomez eds., Select Publishing Pte, 2003).

violence occurred around the world, the most prominent and desirable target has always been the infrastructures of the US.²⁴⁴ However, many countries (even those which are not strong US allies) have been the victims of terrorist threats.

Al Qaeda has strong connections to other "terrorist organizations that operated under its umbrella." To further its objective of a global Jihad Al Qaeda has had a longstanding interest in utilizing leaderless terrorism²⁴⁵ such as: the al Jihad group based in Egypt, the Islamic Group, formerly led by Sheik Omar Abdel Rahman, and other jihad groups in other countries.²⁴⁶ Moreover, Al Qaeda has an underground branch connection to no less than 100 countries, including the United States, the United Kingdom, Italy, France, Spain, Germany, Albania, Uganda, and elsewhere.²⁴⁷ The list of major groups in Asia and several groups have been accused of the linking with Al Qaeda and the movements in the region are : Jemaah Islamiyah (JI), Laskar Jihad (LJ), The Front Pembela Islam (Islamic Defenders Front-FPI), Abu Sayyaf (Bearer of the Sword), The Moro Islamic Liberation Front (MILF), and The New People's Army (NPA).²⁴⁸

²⁴² See B. Zelizer, cited in note 239 *supra*.

²⁴³ Background Al Queda, available at <http://www.pbs.org/wgbh/pages/frontline/shows/binladen/who/alqaeda.html> (last visited Nov. 1, 2006).

²⁴⁴ In 1996, Bin la din declared war on the USA, describing it as the enemy of Islam.

²⁴⁵ Dennis Pluchinsky, Live Webcast: The Global Jihad: Leaderless Terrorism? Former Senior Intelligence Analyst, Diplomatic Security Service, U.S. Department of State.

²⁴⁶ See Background Al Queda, cited in note 243 *supra*.

²⁴⁷ See B. Zelizer, cited in note 239 *supra*.

²⁴⁸ Frank Frost & Ann Rann, & Andrew Chin, Terrorism in Southeast Asia, Foreign Affairs, Defence and Trade Group, Parliament of Australia, available at <http://www.apf.gov.au/library/intguide/FAD/sea.htm> (last visited Aug. 1, 2006).

Because Al Qaeda uses a religious connection and Muslims have a long history of contact with co-religionists in Southeast Asia and the Middle East,²⁴⁹ there are long-standing economic and trade connections between Southeast Asia and Middle Eastern and South Asian countries. Many of them are connected to each other by way of legal financial channels without any formal government links. For example, the U.S. Department of the Treasury designated the Philippine and Indonesian branch offices of the Saudi-based International Islamic Relief Organization (IIRO) for facilitating fund raising for Al Qaeda and affiliated terrorist groups.²⁵⁰

These have facilitated the transfer of funds from the Middle East and South Asia to radical groups in the region.²⁵¹ The Asian Financial crisis in 1997 put pressure on regional governments to stimulate the economy but spending on crucial areas such as education remained restricted. Because local schools were under-funded, there was an increase in the popularity of religious schools (for instance, Ponok school in Thailand).

Furthermore, well-funded Islamic radical movements have been able to offer financial support both to adherents and their families (for example, in the event of death in combat). This has had considerable appeal to those in outlying and economically disadvantaged areas. Meanwhile, socio-economic factors have fostered further support for radical Islamic groups in the region. Efforts to attain autonomy by Islamic movements have often either been resisted by central governments or have been implemented

²⁴⁹ Thailand – August 2003, Asian Analysis, Asian Focus Group, the Faculty of Asian Studies, The Australian National University. <http://www.aseanfocus.com/asiananalysis/article.cfm?articleID=668>(last visited Nov. 1 2006).

²⁵⁰ Treasury Designates Director, Branches of Charity Bankrolling Al Qaeda Network, The U.S. Department of the Treasury.

²⁵¹ See F. Frost & A. Rann, & A. Chin cited in note 248 *supra*.

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ineffectively (as in the southern Philippines).²⁵² In addition to these factors, domestic security lost funds, borders were porous, and immigration control became weak. Malaysia, for example, has not until recently required visas for anyone from Muslim countries who is a member of the Organization of Islamic Countries (OIC). Another example of weak immigration control is Thailand, where there is an influx of illegal from Burma, Laos, Cambodia and Malaysia. The system in the Philippines is similarly lax; there it is easy and common for foreigners to marry Filipino citizens so as to effectively change their identity. Administrative requirements can also be circumvented through corruption, graft being an all-too common result of drug trafficking, traditional ethnic allegiances or both.²⁵³

It initially appeared to many experts that the terrorist organization responsible for the hijackings of September 11 had used Southeast Asia as a transit zone between Al Qaeda's base in the middle east.²⁵⁴ However, British-based terrorist's experts have calculated that 20% of Al Qaeda's organizational strength has always been in Asia, including volunteers from Central Asian, China, Pakistan, Bangladesh, Indonesia, Malaysia, Singapore and the Philippines.²⁵⁵

Most notably, the geographically extensive and porous archipelagos of Indonesia and the Philippines afford a suitably remote base for training camps. Southeast Asia is also home to nations with large Muslim populations sympathetic to Al Qaeda's hostility

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ Hadi Soesastro: *Global Terrorism: Implications for State and Human Security* 76, (Uwe Johanannen, Alan Smith, James Gomez eds., Select Publishing Pte, 2003).

²⁵⁵ Alan Boyd, Jakarta blast a sign of what's to come, *Asia Times*, Sep. 11, 2004, available at http://www.atimes.com/atimes/Southeast_Asia/F111Ae01.html (last visited Aug. 1, 2006).

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towards western culture, and some of Al Qaeda's views have gained popularity with the great numbers of individuals living below the poverty line. The bombing in Bali in 2000 caused panic not only in Southeast Asia, in the US and abroad but it was also an irrefutable sign that modern terrorist activities are expanding across the Asia-Pacific region.

The Bali bombings in Indonesia on October 12, 2002, have directed attention to the issue that Southeast Asia is a region that continues to cultivate both indigenous and international terrorist groups. The two are closely interlinked.²⁵⁶ Shortly after the September 11th attacks, for instance, the Indonesian police raided the safe house of Jemaah Islamiya (JI) senior member Noordin Mohammed in Wonosobo, Central Java.²⁵⁷ Although there has been great suspicion that JI is linked with Al Qaeda, arrests of many members of JI have weakened its power in this region. Despite these arrests, JI was responsible for terrorist acts, twice in Jakarta and in Bali. So even though a lot of JI member have been arrested, JI has survived partly because of its financial backing of Al Qaeda and the fact that it is held together by an intricate pattern of kinship bonds. JI members tend to cement ideological bonds by marrying the sisters and daughters of their comrades-in-arms. This is a unique tool utilized for recruitment and for further engagement in the JI cause, thus limiting disengagement options for JI members and blocking effective counter-terrorism tactics. Generally, people do not gravitate to JI due to some individual pathology. Indeed, most recruits look, dress and behave like normal individuals, at least until they are given a deadly mission or are deeply engaged with the

²⁵⁶ See F. Frost & A. Rann, & A. Chin, cited in note 248 *supra*.

²⁵⁷ Southeast Asia's most wanted terrorist. (see Noor Huda Ismail, The Role of Kinship in Indonesia's Jemaah Islamiya, available at <http://jamestown.org> (last visited Nov.1, 2006) and see also Terrorism in Indonesia : Noordin's Network , International Crisis Group available at <http://www.crisisgroup.org> (last visited Nov.1, 2006).

Ji ideology and group. The choice to become a terrorist or engage in terrorist activities is a gradual process with many routes toward this type of political violence.

It becomes difficult for a member to defect from Ji without seeming to betray his family in the process of disengagement. Kinship ties help to keep the network secure from infiltration. Ji as a case study offers several examples that highlight the complexity of kinship links in terrorist organizations (such relationships include: two or more male siblings, in-laws, fathers and sons, as well as more distant kinship relations).²⁵⁸ These familial connections demonstrate that far from terrorism tearing connections between individuals apart, it is precisely those close bonds that allow a terrorist network to undertake *jihadi* operations.²⁵⁹ Even the Indonesian Government's attempt to launch counter-terrorism measures has not been entirely successful because the central government is unable to fully control what goes on in its far-flung outer islands.

In the Philippines, the Government keeps an eye on the Abu Sayyaf rebels in the southern Philippines, given that they have closed links to Al Qaeda.²⁶⁰ The group has its base in the Basilan Island in the South, and these rebels have plagued the Government in Manila for decades. Abu Sayyaf's link to Al Qaeda has not been questioned, although more recent reports suggest that there are stronger ties between the MILF (Moro Islamic Liberation Front) members and Al Qaeda. Abu Sayyaf has about 2000 members, some of whom have trained in Afghanistan, and are fighting to establish an Islamic State. The group is responsible for bombings, killings and a multitude of kidnappings, where the

²⁵⁸ Noor Huda Ismail, The Role of Kinship in Indonesia's Jemaah Islamiya, available at <http://jamestown.org> (last visited Nov. 1, 2006).

²⁵⁹ *Ibid.*

²⁶⁰ See H. Soesastro cited in note 254 *supra* at p.73.

ransom money was used to buy weapons and speedboats.²⁶¹ However, the current cooperation between the Philippines and the United States, in which joint military exercises have been able to strengthen the capacity of the Philippine military for counterterrorism, has seen by many as attempting to stem the violence but not the underlying deep-seated problems responsible for the terrorist acts.²⁶²

Singapore has a long history regarding anti-government violence, beginning with communist terrorists active from 1950 to 1970. It is not surprising why the Singapore Government believes that there are many more members who are hiding and planning to carry out more attacks. Moreover, Singapore, with its weak immigration control, has been a safe haven for those terrorists in the region. During the JI arrests, those JI members able to return to Singapore managed to escape ISD's arrests. Even though there were more than 200 JI members arrested in Southeast Asia, the regional JI has been recruiting more members to fill the ranks of those who have been arrested, seeking cooperation with other terrorist groups. This group has the manpower and resources to continue their terror plans in Southeast Asia and Singapore. Although Singapore supports the policy to provide information to neighboring governments on the JI, which led to the JI members there being arrested, Singapore also fears that JI would take revenge on their "brothers" who have been caught as a result of Singaporean operations.²⁶³

²⁶¹ *Ibid.* at 76.

²⁶² Filipino Muslims Need More Than Economic Development, United States Institute of Peace, Vol. VIII, No.3, available at <http://www.usip.org/peacewatch/2002/4/filipino.html> (last visited Nov. 1, 2006).

²⁶³ Mr Wong Kan Seng, Minister for Home Affairs, The Official Launch of The Counter-Terrorism Security Briefing for Taxi Drivers at Yio Chu Kang Community Club (Jul. 11, 2005) as follows:

[T]errorism has posed a threat to Singapore for many years, even before our independence. We fought the communist terrorists in the 1950s to 1970s, and dealt with other terrorist groups in the following years. The Jemaah Islamiyah (JI) terrorist group was plotting to bomb key installations in Singapore, which would also have killed many Singaporeans. The JI wanted to use violence to overthrow the governments in Indonesia, Malaysia, the Philippines, Thailand and Singapore. The JI's plot against Singapore was prevented by ISD,

Given the network of terrorist acts in Southeast Asia in the age of global terrorism, it is reasonable that the Thai Government would be concerned that JI and Al Qaeda would choose Southern Thailand as the new home for terrorists operations. Thailand would seem to be a desirable target for Al Qaeda operations because of its large Muslim community that might provide support as well as asylum for those dissidents hiding out.²⁶⁴

Furthermore, the arrest of Hambali, who was nicknamed the "Osama bin Laden of Southeast Asia," in Thailand as well as the JI member at Ayutthaya caused the Thai government to panic (justifiably) that terrorists have found Thailand a place to elude authorities in their own country. According to police intelligence networks in Singapore, Malaysia and the Philippines, Hambali was involved with (if not orchestrated himself) the foiled terrorist assaults at the US Embassy in Singapore.²⁶⁵ Intelligence experts also pointed out that Hambali was not only a mastermind and operations planner for the region but also one of the key links between the regional terror group Jamaah Islamiyah (JI) and Al Qaeda.²⁶⁶

Also, the arrests of Jemaah Islamiyah (JI) associates in Thailand and Cambodia, where members were attempting to buy radioactive material for making a 'dirty' bomb,

and its network in Singapore has since been crippled, but this does not mean that Singapore is now completely safe. The JI network across Southeast Asia still views Singapore as a target, and they will continue to try to attack us. One reason is that we have arrested more than 30 JI members in our security operations, and placed many others on Restriction Orders. Singapore also provided information to neighbouring governments on the JI, which led to the JI members there being arrested as well. The JI, therefore, would want to avenge their "brothers" who have been caught as a result of our operations against them. Additionally, radical elements in the region, including the JI, who see the US as their principal enemy, associate Singapore as a US ally, because of our strong support for US actions against terrorism.

²⁶⁴ See F. Frost & A. Rann, & A. Chin cited in note 248 *supra*; See also Asian Focus Group, cited in note 249 *supra*.

²⁶⁵ See H. Soesastro cited in note 254 *supra* at p.76.

²⁶⁶ Bill Guerin, Indonesia's fizzling terrorist threat, Jun. 22, 2006, available at http://www.atimes.com/atimes/Southeast_Asia/HF22Ae01.html (last visited Aug. 1, 2006).

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have dramatically raised perceptions of a terrorist threat in Thailand. This group member were reportedly planning a Bali bomb attack on major centres for foreign tourists, and against five embassies (Israel, the US, Britain, Australia and Singapore)²⁶⁷ as well as the Thai detainees accepted that there are contacting with a Singapore JI member detained in Bangkok.²⁶⁸

Even the British Embassy warned British tourists that there is a high threat of terrorism throughout Thailand²⁶⁹ and the Office of the Coordinator for Counterterrorism in the U.S. Department of State also mentioned that Thailand's Muslim support of Afghanistan's Muslim population makes Thailand a possible terrorist-safe haven (even though British-based terrorists experts do not mention Thailand as a possible place for such asylum).²⁷⁰

The pattern of violence in southern Thailand created a new phenomenon. Before the presence of terrorist networks, violent acts were typically the result of individual conflicts. Even when there were moments of anti-government sentiment, such violent outbursts were contained in discrete episodes. Subsequent to the attacks in southern Thailand, there is not only an ongoing threat to public safety and a serious risk to the damage of property but there is a threat to the infrastructures of the Government. Even

²⁶⁷ B.Raman, Muslim Anger: The Thai Dilemma, South Asia Analysis Group, Nov.1, 2004, available at <http://www.saag.org/papers12/paper1156.html> (last visited Aug. 1, 2006).

²⁶⁷ See Asian Focus Group cited in note 249 *supra*.

²⁶⁸ *Ibid.*

²⁶⁹ British Embassy Bangkok, available at <http://www.britishembassy.gov.uk> (last visited Aug. 1, 2006).

²⁷⁰ Patterns of Global Terrorism, The Office of the Coordinator for Counterterrorism, U.S. Department of State; See also David Martin Jones & Mike Lawrence Smith, Southeast Asia and the war against terrorism: the rise of Islamic and the challenge to the surveillance state 151-152 (Uwe Johanannan, Alan Smith, James Gomez eds., Select Publishing Pte, 2003).

symbolic targets as in the September 11 attacks, the close proximity in time between the attacks in southern Thailand (2004), the Bali attacks (2002) and the incidents of September 11, 2001, suggest that a growing global terrorist threat has a connection to Southeast Asia. Although the British-based terrorist experts have concluded there is no basis of an international terrorist group located in Thailand, the very serious incidents of violence in the southeast region suggest that Thailand might someday serve such a purpose. All of these are the reason why the Thai Government has concerns that International groups may have already started laying the groundwork for operations in Thailand.

A. Terrorist

Not only Thailand has been active in arresting a number of nationals with suspected links to these organizations²⁷¹ but the weak of legal process attracts the terrorist-related activities such as: trafficking in drugs, persons, and weapons, organized crime, official corruption.²⁷² The connection between Al Qaeda and JI is all the more likely if the Thai Government cannot stop a multitude of criminal activity of any sort.²⁷³ Furthermore, although there has been no terrorists group on this scale, Thailand has had a long history of internal violence and many groups that operated in her country since 1959. These include:

1. *Barasi Revolusi Nasional (BRN)*²⁷⁴
2. *Barisan National Pember-Basan Pattani (BNPP/BIPP)*²⁷⁵
3. *Pattani United Liberation Organization (PULO)*²⁷⁶

²⁷¹ *Ibid.*

²⁷² See U.S. Department of State cited in note 220 *supra*.

²⁷³ See Asian Focus Group cited in note 249 *supra*.

²⁷⁴ The Barasi Revolusi Nasional (BRN) was founded in 1960. Its goal is to achieve Self-Determination in the southern provinces against the central government of Thailand. It is an underground operation. However, it was separated in two groups because of interest and ideological conflicts. Then, it was further split into three groups: the BRN Coordinate (not active in Thailand but carrying out political activity in Malaysia), the BRN Congress (chaired by Rosa Burako conducting military affairs), and the BRN Uram (the most active group headed by the late Hajji Abdul Karim consolidating the entire armed units). The last group still operates in southern Thailand but its headquarters are in Malaysia.

²⁷⁵ In the Dsungnyor rebellion, Adul Saiburi, the leader was arrested and imprisoned. After he was released, he fled to Kalantan in Malaysia and founded the Barisan National Pember-Basan Pattani (BNPP) in 1959; however, the name was changed to the BIPP. The group ceased its activity for a while. Until 2002, it was thought to have been involved in the acts of violence in southern Thailand.

²⁷⁶ The Pattani United Liberation Organization (PULO) is the largest and most active organization that operates in southern Thailand. It was founded in 1968 by Tuanku Biyo Kodoniyo. This organization also operates in various Middle Eastern countries. It joined the violent activities in Libya and Syria by sending teenagers to operate within their groups. However, the organization split into two factions in 1992: 1. The first faction was headed by Dr. A-rong Muleng. Its logo is a symbol of a dagger crossed with a sword. Its

4. *United Front for the Independence of Pattani (Bersatu)* ²⁷⁷
5. *Mujahideen Pattani Movement (BNP)* ²⁷⁸
6. *Gerkan Mujahideen Islam Pattani (GMIP)/ Pattani Islamic Mujahideen Movement* ²⁷⁹

Even though there is no firm evidence that these groups are connected to international terror groups operate in Thailand, there is strong suspicion. In joint military exercises to strengthen the capacity of the military for counterterrorism, the Thai Corps and the Government officials are preparing for the possibility of activity by those rebel groups in the southern region whether or not there are concrete ties to international terrorist organizations.

militia unit is called the "Caddan Army." However, this faction was split again and set up a new organization called "PULO 88" or the Abu Jihad PULO, 2. The second faction was lead by Hayihadi Mindosali who is the founder of PULO army Command Council [MPTP]. It has an eagle for its logo and the name of its army is "Abudaban," and its militia is called Caddan Army. This group supports Tuanku Abdul Kade in southern Thailand. Both factions have headquarters in Malaysia and have joined forces with the military and political operations in a few areas of the three southern border provinces.

²⁷⁷ The United Front for the Independence of Pattani, also known as Bersatu, was established on August 31, 1989, by joining of the United Liberation Organization Mai (New PULO), the original PULO, the Barisan Revoluis Nasional Melayu Pattani (BRN), the Barisan Nasional Pember-Basan Pattani (BNPP) and the Mujahideen Pattani under an umbrella organization. At first the name of this group was Payong Organization. In 1992, it adopted its current name. Bersatu was founded in order to unify many terrorist groups into a single entity in order to avoid any confusion in accepting money from foreign countries. Operating both political and military activities, Bersatu carried out guerrilla actions by using ambush tactics on the government officers and positions and conducting sabotage in public places. Moreover, it has issued propaganda blaming the Thai government for mistreating Muslim citizens. The group might have intended its action to cause serious rifts between Thai Buddhists and Thai Muslims and bring foreign intervention. Nowadays, a part of Bersatu is conducting activities in Sweden hoping to get help from the Nobel Foundation.

²⁷⁸ Intending to fight for the independence of the southern border provinces, the Mujahideen Pattani Movement was formed on September 16, 1985. Its mission was to try to combine many separatist organizations and emphasize personal training and political cooperation. The Mujahideen Pattani Movement is headquartered in Malaysia. Most of its important leaders have left the BIPP in part because the BNP's performance has not been particularly successful. It was then subsumed by other separatist allies to establish Bersatu.

²⁷⁹ This group was founded in 1995 and is possibly the only significant armed force conducting activities in the lower south of Thailand. This group does not have a unique pattern of organization. However, it has carried out so-called moderate terrorist acts such as urban sabotage and theft. As with the GMIP, the Barisan Revelusi Malaysia (BRN) was supported by the Kumpulan Mujahideen Malaysia and Malaysian militants, and they have been revived and transformed into insurgency groups.

The incidents of September 11²⁸⁰ brought about three significant changes in international relations such as:

1. Economic globalization

Despite advances in technology, science and industry, economic globalization continues to polarize the world into the haves and have-nots, between the information-poor and the information-rich, between the premodern, the modernizing, and postmodern worlds. Religious, ethnic, and political ideologies are often employed in this warfare largely to mobilize sympathizers, but it would be a serious analytical error to consider this warfare between the Islamic world and the Western, Christian, and secular world, even though the geographic boundaries coincide with that definition of the problem. The Islamic world as the rest of the less-developed world is itself deeply divided between the have and have-nots demonstrating corresponding pro and con sentiments vis-a-vis the West.

2. Technological globalization

The drastic changes in technology have created a global communication network (computers, satellites, telephony, internet) employed by transnational corporations, territorial states, civil society movements, as well as terrorist and counter-terrorist organizations. In contrast to the previous state-centric wars, the new "netwar" is global in reach and employs both conventional and unconventional weapons. In this war, small-scale conflicts such as that in Afghanistan become globalized while global issues, such as weapons of mass destruction and biochemical warfare, play important roles in what

²⁸⁰ Majid Techranian, *The Center cannot hold: Terrorism and Global Change* 53-54 (Uwe Johanannen, Alan Smith, James Gomez eds., Select Publishing Pte, 2003).

would have been seen a hundred years ago as a smaller-scale conflict (such as those in the Arab-Israeli and India-Pakistan).

3. Cultural globalization

This change has brought about a consciousness of the interconnected nature of world economy and with it a consciousness of the ever-widening divide within and between nations. It has also created a global dual pathology focused on commodity fetishism and identity fetishism, consumerism and envy, arrogance and anger. At the same time, cultural globalization has also gotten governments to focus on the promotion of international security through cooperation rather than competition, democratic participation, sustained and sustainable development, and global unity in diversity.

Dr. Sompong Sucharitkul²⁸¹ claims that international terrorists persist in their relentless efforts to inflict untold pain, sorrow and sufferings through a menacing reign of terror that strikes indiscriminately at countless members of the international community, regardless of their creed, religion, belief, gender, age, nationality or political ideology and affiliation.²⁸² Further, the targets of modern terrorism generally are not the actual victims of the terrorist acts, but government infrastructure and public safety. The hope is that such violence will trigger fear, repulsion, intimidation, overreaction, etc.²⁸³ The desired outcome is to make people remember the incident as long as possible and consequently, an important element is that the terrorist commits suicide rather than surrender. The word

²⁸¹ Associate Dean and Distinguished Professor of International and Comparative Law, Director, SJD and LLM in International Legal Studies Program; B.A. (Honours), B.C.L., MA., D.Phil., and D.C.L., Oxford University, England; Docteur en Droit, University of Paris, France; LL. M, Harvard, Diploma, Hague Academy of International Law, of the Middle Temple, Barrister at Law.

²⁸² Sompong Sucharitkul, *State Responsibility and International Liability: Recent Developments in the Practice of States and International Organizations* 2.

²⁸³ See JUSMAG THAI cited in note 236 *supra*.

'terrorists' is synonymous with a violent act in which both innocent people and the terrorist him or herself are killed.

Still in this modern era, the main characteristics and elements of terrorism are not dramatically different from the past because the character of terrorist acts can be seen as bearing similarities to the basic methods of the Zealots-Sicarii case, even if in that case the weapons were daggers and swords not guns and grenades.

The modern terrorist acts have obviously much more far-reaching means of terror, examples not the least of which include weapons of mass destruction, cyber attacks or bioterrorism. Even violations that are not directly violent can be construed as terrorist actions if they are related to tactics and strategies that are intended to cause terror. The classic characteristics of terrorism can be said to involve the following attributes. A terrorist act

- *involves serious criminal actions to public, major targets or infrastructure;*
- *the use of violence against innocent people or the government for political and social purposes;*
- *a racist or religious motivation;*
- *a method by which public fear is instilled by a psychology strategy.*

The violence in southern Thailand raises the question about whether or not these acts are, in fact, acts of terrorism or not. The patterns of violence in this region could be characterized by the following elements. All of the acts have challenged the power of the State, taken as their targets indiscriminate and helpless people (e.g., infants, teachers, either Muslim or Buddhist), involved villagers (e.g., the incident at Takbai), lead to religion conflict (e.g., killing monks) and aimed to capture international attention through the media.

It is not difficult to argue that these acts of violence seem to be terrorist acts by the classic characteristics of terrorism or by the standards many have become familiar with as a result of the incident of September 11.²⁸⁴ The elements of these crimes correspond closely to the description of acts of terror in the Thai Penal Code Section 135:

A conduct made with the intention to intimidate a population, to threaten or compel the Royal Thai Government or any government or international organization to do or abstain from doing any act.

Given these class characteristics, the violence seems to be the conduct of terrorists.

However, according to section 59 of the Thai Penal code:

A person shall be criminally liable only when such person commits an act intentionally...

In some cases, it is impossible to say such acts are, strictly speaking, terrorist acts since it is very difficult to prove the intentions of the criminal. Even if the acts of violence look like they meet the criteria for terrorism, the Thai Penal Code makes it clear that proof of intention through the process of the court system is still necessary. Namely,

²⁸⁴ See M. Tchrnarian cited in note 280 *supra*.

a terrorist group must operate as a ranking organization. The group must have a strict chain of command and framework which are able to operate as a chain network. However, if the terrorist section in the Thai Penal Code does not apply, other serious crimes still shall apply to these acts. It is just more difficult to prove in a court of law the intentions of a criminal who has in his or her mind the attack is an attack against the State but it does not mean that the offender will be not be punished.

Whether or not one can truly distinguish between a terrorist organization and a group seeking self-determination, such groups are nevertheless still beholden to Thai domestic law. So when perpetrators of acts of violence are tried in Thailand even if those crimes do not meet the standard of Terrorist section (they do not apply by the offence in terrorist section), it is unavoidable that those convicted will be tried for equally serious crimes.

B. Self-Determination

The question why the United Nations failed to reach consensus and has not accepted a terrorism definition is understandable. It is impossible to distinguish in many cases "one State's "terrorist" from another State's "freedom fighter." These arguments inevitable come up against the word "Self-Determination," a concept crucial to the origins of so many different nations (including the US). The scope of self-determination has been expanded since 1945²⁸⁵ and as a result, neither the definition of Terrorist nor Self-Determination had ever been ultimately established. Within the framework of the United Nations, the concerns of State powers have come into the conflict with the equally

²⁸⁵ Elizabeth Chadwick, *Self -Determination, Terrorism and the International Humanitarian Law of Armed Conflict* 3-4, Martinus Nijhoff Publishers 1996.

important need of equal rights and self-determination of the people.²⁸⁶ For example, United States, Canada and Australia, the initial concerns voiced by or on behalf of the indigenous peoples can be seen four steps:

- *they would like to have their collective indigenous rights recognized;*
- *they would like to have their territorial rights restored and their land returned;*
- *they would like to have right to self-determination as an autonomy or a self-government within the established community;*
- *they would like to have their status recognized by the international community.*²⁸⁷

It is no surprise why there is no singular definition of "Self-Determination." The widespread use of the expression "Self-Determination" has made it a catchall phrase that is an expansive rather than a restrictive term.²⁸⁸ This is unavoidable given that the term is used in so many different contexts and in relation to such diverse ethnic, cultural and national problems. Even when States concede that people's right to self-determination exists, giving "Self-Determination" a distinct legal definition could undermine the way in which conflict is resolved through traditional mechanisms of the sovereign State's

²⁸⁶ *Ibid.*

²⁸⁷ Sompong Sucharitkul, *The Inter-Temporal Character of International and comparative Law Regarding the Rights of the Indigenous Populations of the world* 13, *The American J. of Com.Law* Vol.L, 2002.

²⁸⁸ See E. Chadwick cited in note 285 *supra*.

community.²⁸⁹ That most nation states are more comfortable to exercise and make a definition for "terrorism" than "Self-Determination" suggests that the term terrorism is itself heavily weighted towards the point of view of State sovereignty.

One of the reasons that suggest the violence in the South is not purely a result of a coherent separatist movement seeking Self-Determination is that there have many instances of Muslims killing other Muslims. For instance, Muslim tree farmers were killed by Muslim extremists when they were caught working on Friday, a day deemed to be a holy day of rest.²⁹⁰ In another instance, Muslim extremists killed other Muslims who had close relations to Buddhists or to members of the Thai Government. In these cases, moderate Muslims who did not obey the strictures of the Koran or follow the ideological path of the more extreme separatists were considered heretics, obstructionists or supporters of the Thai Government.

In the public eye, however, Muslim extremists wish to make their cause seem to be one uniformly supported by moderate and extreme Muslims alike. For instance, on June 15, 2006, a date representing the 'national day' of Pattani rebellion, there were several bombings in towns, villages and government buildings. This made it seem as if such a day had the support of the entire Muslim community because it seemed like a well-coordinated attack on symbols of the Thai Government and expressed political and ideological aspirations.

So although the Thai Government is concerned about the separatist movement, the right of self-determination will be left open to question someday. Although the United Nations states that everyone has the right to a nationality and that no one should

²⁸⁹ *Ibid.*

²⁹⁰ See Kankavi cited in note 175 *supra*, at p.166.

be arbitrarily deprived of a nationality or denied the right to change nationality, the situation in southern Thailand is not one unambiguously driven by self-determination. It remains to be seen to what degree these acts of violence are the result of a powerful but small minority of Muslim extremists and to what degree these acts of violence are the necessary steps towards reclaiming the cultural and ideological independence of a separate nation-state.

C. The Status of Prisoner of War

The situation in the South raises the question about POW status. Are those arrested by the Thai military authorities to be tried as criminals or do the laws of war apply to these cases, in which case the individuals would be considered prisoners of war? If the dissidents are local groups and the level of the conflict in southern Thailand has not risen to the level of armed conflict then these cases are tried under the Thai Penal Code. However, the situation is more complex if -- The violence is wide-spread and protracted and the Thai Government cannot control the situation; -- The perpetrators were under a chain of command within an international network of organized terrorists (such as Al Qaeda, which has support under the new Taliban Government in Afghanistan) or any international organization that took as its ambition the downfall of the Government. Therefore, I will explore the question of whether the situation in the south of Thailand meets these two criteria.

Even though there is no settled definition of "armed conflict" in international law, and a case by case analysis has often produced unsatisfying results,²⁹¹ many international organizations agree that the laws of war do not apply to situations of internal disturbances and tensions such as riots, sporadic acts of violence or other acts of a similar nature.²⁹² The violence in the south of Thailand does not fit prevailing conceptions of "war" or "armed conflict" because the acts of violence were not overtly carried out by transnational criminal group acting on behalf of any State. The attacks were seemingly sporadic and infrequent, even though they were clearly well-planned and organized to create fear and terror in the public eye. Importantly, the group responsible for the attacks did not seek—at least not explicitly seek-- to administer or control any part of Thailand.

Moreover, recently there is no precise evidence that the dissident groups operated within a chain of command under Al Queda or JI. Moreover, it is not clear that those who committed the acts of violence in this region have any one clearly formulated center of command. The acts of violence were quite possibly perpetrated by various groups with a similar ideological stance. Their connections, therefore, are at times unstable and in many instances members of these groups acted like common criminals.

For these reasons, I do not believe that the status of POWs pertains to the situations in Southern Thailand at this moment. However, if the violent situation reaches

²⁹¹ Derek Jinks, September 11 and the Laws of wars, 28 Yale J.Int'L.1, winter 2003.

²⁹² See paragraphs 215-220 of the ICJ decision in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, 1986 I.C.J. 14 (Jun. 27). Also, for a lucid assessment of the difficulties in establishing when Protocol II applies, see Arturo Carillo, *Hors de Logique: Contemporary Issues in International Humanitarian Law as Applied to Internal Armed Conflict*, 15 AM. U. INT'L L. REV. 1, at 66-97; No. IT-94-1-AR72, Appeal on Jurisdiction, paras. 66-70 (Oct. 2, 1995), 35 I.L.M. 32 (1996). The ICTY Appeals Chamber provided useful clarifications regarding the appropriate geographic and temporal frames of reference for internal armed conflicts.

to the scope of an international armed conflict, the law of war will be applicable.

According to Article 4 (1) and (2) of Geneva Conventions III defines prisoners of war as:

-- Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

-- Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions:

(a) that of being commanded by a person responsible for his subordinates;

(b) that of having a fixed distinctive sign recognizable at a distance;

(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war.

These groups in Southern Thailand, therefore, does not seem to automatically qualify for POW status. However, the content of Geneva Convention is so broad and the nature of what constitutes armed conflict is always changing, the Article goes on to state.²⁹³

²⁹³ Kenneth Anderson, Law of War and Just War Theory Blog, available at <http://kennethandersonlawofwar.blogspot.com/2004/12/wsj-editorial-on-icrc.html> (last visited Nov. 1, 2006).

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belongs to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

The Thai Government has to maintain that no doubt could arise with respect to any dissident prisoner, or it must preserve the option of a determination by a tribunal if there are suspicions concerning a group or an individual.

But whatever status is accorded to these dissident groups (whether they qualify as POWs according to the law of war), there is no doubt that the law and actions issued from Thailand's central government cannot contradict to the concepts of Humanitarian Law and Human rights Law which I will discuss in detail in the next chapter.

III - 4. Action Taken by the Thai Government Responding to the United Nations

The Resolution 1373 in Chapter VII of the United Nation Charter of September 28, 2001, created the principle known as "no safe haven for terrorists"²⁹⁴ in response to the attacks of September 11. The counterterrorism Committee Executive Directorate (CTED), which was designated by UNSCR 1535 to enhance their powers to monitor the

²⁹⁴ Overview – Conventions Against Terrorism, The United Nations , August 7,2006, available at http://www.unodc.org/unodc/en/terrorism_convention_overview.html (last visited Aug. 1, 2006).

implementation of Resolution 1373, also adopted certain measures to combat international terrorism, given that the attacks in the US threaten international peace and security. These measures were intended to prevent and suppress the financing and preparation of any act of terrorism in a State's territories through all lawful means. The resolution reaffirmed support that all States are obliged to supplement international agreements by taking additional measures to prevent and suppress terrorist activity in their territories.²⁹⁵

Indeed, Thailand has the cooperation with the United Nations against terrorism since 1963, Thailand was a party to three Conventions and one Protocol such as: The Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963), The Convention for the Suppression of Unlawful Seizure of Aircraft (1970), and The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, (1971), and The Protocol for the Suppression of Unlawful Acts of Violence at Airports serving the International Civil Aviation Organization (ICAO) 1988.²⁹⁶ Even though there are twelve terrorist Conventions today and Thailand cannot be Party all of them, it does not mean that Thailand disputes the other Agreements. Rather, Thai domestic law must be made to abide by the Conventions and that could take a lot of time.

²⁹⁵ Adel Maged, Terrorism and the Military International Legal Implications: International Legal Cooperation: An Essential Tool in the War against Terrorism 178-179 (Wybo P.Heere ed., Cambridge University Press 2003); See also Surakiat Sathirathai, Minister of Foreign Affairs, Thailand (Sep. 16, 2001) as follows:

Following the terrorist acts against the United States, a long time friend and treaty ally, Thailand has made clear our position. We condemn in the strongest terms such acts of terrorism and join the United Nations General Assembly in adopting unanimously the resolution "condemning the attacks and calling for international cooperation to bring to justice the perpetrators, organizers and sponsors of the outrages of 11 September 2001."

Thailand will join any international coalition to combat terrorism.

As a long time friend and treaty ally, Thailand will render all possible assistance to the United States as Thailand has done consistently in the past.

²⁹⁶ Progress Report on Thailand's Implementation of Counter – Terrorism Activities, Ministry of Foreign Affairs, Kingdom of Thailand, available at <http://www.mfa.go.th/internet/document/Terrorism%20Report.doc> (last visited Aug. 1, 2006).

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Concerning the effects of terrorism in Thailand, the Government has adopted laws protecting terrorism in all its forms and manifestations. On December 21, 1999, the Thai Cabinet resolved, pursuant to Security Council 1267 (1999) and Security 1333 (2000), to instruct all authorities concerned to comply with these Resolutions.

According to the freezing of transfer of funds or financial resources belonging to the Taliban, Osama Bin Laden, persons or entities associated with him as identified by the security council committee including Al Qaeda network, the Bank of Thailand has circulated a note to all commercial banks and financial institutions requesting their cooperation to comply strictly with the said Cabinet resolution.²⁹⁷ For instance, all financial institutions are required to report any transfer of funds in cash equal to or greater than 2 million Baht, or transfer of assets equal to or greater than 5 million Baht (approximately \$125,000 US dollars), and any suspicious financial transactions by their clients to the Anti-Money Laundering Office (AMLO),²⁹⁸ which requires all persons or entities to report any remittance in the amount equal to or over US\$ 10,000 to the Bank of Thailand and will soon have to report to AMLO, which maintains these financial records in its electronic database.²⁹⁹

Moreover, the Exchange Control Act of B.E. 2485, which sets out the principles of control under which Notifications and Notices for documenting all major financial transactions, is an important tool for monitoring terrorist activities. Also, the Anti-Money Laundering Act of B.E. 2542 calls for imprisonment as punishment for the offence of

²⁹⁷ See Ministry of Foreign Affairs, Thailand

²⁹⁸ The Anti-Money Laundering Office (AMLO) is now acting as the Thai national financial intelligence unit (FIU) and has become a member of the EGMONT Group of Financial Intelligence Unit since 2000. AMLO is ready to sign an MOU with all 69 members of the EGMONT to help facilitate the exchange of information on terrorist financing and tracking of blacklisted groups. (See www.mfa.go.th, last visited Nov. 1, 2006).

²⁹⁹ See Ministry of Foreign Affairs cited in note 297 *supra*.

money laundering³⁰⁰ and the amendment of the latest Penal Code B.E.2546 (2003) stipulates that a terrorist act is a serious crime with severe punishment.

Because the Government has attempted to stop the transfer of funds or financial resources of alleged terrorists and their collaborators, the punishment outlined in the Penal code is not only intended for perpetrators of the crimes but also their accomplices,

³⁰⁰ The Anti-Money Laundering Act of B.E.2542 (1999), Peeraphan Prembooti version sec.60.
[A]ny individual who is found guilty of the crime of money laundering shall receive a term of imprisonment of one to ten years, or a fine of twenty thousand to two hundred thousand Baht, or both.

Ibid. at sec 61.

[A]ny juristic person who is found guilty of an offense under section 5, 7, 8, or 9 shall receive a fine in the amount of two hundred thousand to a million Baht.

A Director, Manager, or any person responsible for the operation of the juristic person under the first paragraph which is found guilty of an offense shall receive a term of imprisonment of one to ten years, or a fine of twenty thousand to two hundred thousand Baht, or both, unless he can prove that he had no part in the commission of such offense of the juristic person.

Ibid. at sec 62.

[A]ny individual who is found guilty of an offense under section 13, 14, 16, 20, 21, 22, 35, or 36 shall receive a fine not exceeding three hundred thousand Baht.

Ibid. at sec 63.

[W]hoever reports or makes a statement according to section 13, 14, 16, or 21 paragraph two with the assertion of a falsehood or the concealment of the facts which should be revealed to the officials shall receive a term of imprisonment not exceeding two years, or a fine of fifty thousand to five hundred thousand Baht, or both.

Ibid. at sec 64.

[A]ny individual who fails to appear or refuses to testify, or to submit an explanation in writing, or to submit the account document, or evidence required under section 38 (1) or (2), or who obstructs, or fails to cooperate under section 38 (3) shall receive a term of imprisonment not exceeding one year, or a fine not exceeding twenty thousand Baht, or both.

Any individual acts by any means to leak restricted information to others under section 38 paragraph four, except in the course of doing one's job or according to the law, shall receive penalty set forth in paragraph one.

Ibid. at sec 65.

[A]ny person who diverts, damages, destroys, conceals, take away, loses or renders useless the document, memoranda, information, or asset which has been ordered seized or restrained by official action, or which one knows or should have known will be forfeited to the State according to this Act, shall receive a term of imprisonment not exceeding three years, or a fine not exceeding three hundred thousand Baht, or both.

Ibid. at sec 66.

[I]f any person who knows or should have known confidential government information in proceeding according to this Act, acts in any means to let others know or may have the knowledge of that confidential information, except in the course of conducting one's work or according to the law, he or she shall receive a term of imprisonment not exceeding five years, or a fine not exceeding one hundred thousand Baht, or both.

including persons or entities making funds or financial assets available to them.³⁰¹ This policy aimed to prevent terrorist organizations to use Thailand as a base for operations of the terrorist attacks within or outside the country. According to the Ministry of Interior, Thailand has tightened its registration procedure at all temporary shelter areas to ensure that displaced persons seeking shelter in Thai territory are not members of any terrorist organization according to the Immigration Act B.E.2522 (1979).³⁰² All of these laws and policies suggest that Thailand has endeavored to take action pursuant United Nations Security Council such as Security Council Resolutions 1267 (1999), 1269 (1999), 1333

³⁰¹ See Ministry of Foreign Affairs cited in note 297 *supra*.

³⁰² The Immigration Act B.E. 2522 (1979), Immigration Bureau version art. 12
[A]liens which fall into any of the following categories are excluded from entering into the Kingdom.

1. Having no genuine and valid passport or document used in lieu of passport; or having a genuine and valid passport or document used in lieu of a passport without Visaing by the Royal Thai Embassies or Consulates in Foreign countries ; or from the Ministry of Foreign Affairs, excepting if a visa is not required for certain types of aliens in special instances.
Visaing and visa exemption will be under the learn and conditions as provided in the Ministerial Regulations.
 2. Having no appropriate means of living following entrance into the Kingdom.
 3. Having entered into the Kingdom to take occupation as a laborer or to take employment by using physical without skills training or to work in violation of the Ministerial Regulations.
 4. Being mentally unstable or having any of the disease as prescribed in the Ministerial Regulations.
 5. Having not yet been vaccinated against smallpox or inoculated or undergone any other medical treatment for protection against disease and having refused to have such vaccinations administered by the Immigration Doctor.
 6. Having been imprisoned by the judgement of the Thai Court ; or by a lawful injunction ; or by the judgement of the Court of foreign country , except when the penalty is foe petty offense or negligence or is provided for as an exception in the Ministerial Regulations.
 7. Having behavior which would indicated possible danger to the public or likelihood of being a nuisance or constituting any violence to the peace or safety of the public or to the security of the public or to the security of the nation , or being under warrant of arrest by competent officials of foreign governments.
 8. Reason to believe that entrance into the Kingdom was for the purpose of being involved in prostitution , the trading of woman of children , drug smuggling , or other types of smuggling which are contrary to the public morality.
 9. Having no money or bond as prescribed by the Minister under him
 10. Being a person prohibited by the Minister under Section 16.
 11. Being deported by either the Government of Thailand that of or other foreign countries ; or the right of stay in the Kingdom or in foreign countries having been revoked ; or having been sent out of the Kingdom by competent officials at the expense of the Government of Thailand unless the Minister shall consider exemption on an individual special case basis.
- The examination and diagnosis of disease of a physical or mental nature , including protective operations as against disease , shall be conducted by the Immigration Doctor.

(2001), and 1373 (2001) by launching her domestic laws intended to suppress acts of terrorism and comply with counter-terrorist measures.

III - 5 Conclusion

Many countries and organizations around the world have terrorist laws, yet terrorist activity has hardly decreased. Obviously, laws are not enough. Solving the problem requires more than changing the laws. However, this doesn't mean that these laws are not meaningful, only that the reasons for people not respecting and obeying these laws need analysis. In this chapter, I not only examined the act of the terrorism but the Government response (the legal, political and military response) to such acts that are in need of being examined as well. In the next chapter, I will analyze more details about the applicable of Thai law and the action of Thai Security Forces in relation to international humanitarian law.

CHAPTER IV

INTERNATIONAL HUMANITARIAN LAW

IV - 1 Introduction

A. The Incidents

When compared to armed conflicts in other parts of the world, the conflict in the Pattani region of Thailand would likely be classified as a lower-intensity armed conflict. This classification would likely be based upon the understanding that the conflict is essentially an internal armed conflict with little outside news coverage. An important consideration for making such a classification would be the fact that the death toll and the number of individuals injured from Pattani incident is relatively small.³⁰³ This characterization seems appropriate when one considers that during the armed conflict in Bosnia 200,000 people died or went missing, and more than one million people left the country and were scattered throughout the world.³⁰⁴ However, in the four years since the conflict began, the level of violence in the Pattani province of Thailand has increased steadily which has, in turn, caused the Thai Government to become increasingly concerned with the likelihood of a separatist movement growing in the south. Further,

³⁰³ Srisomphop Chitpiomsri, head of research team of Prince of Songkhla University, province of Pattani showed total of dead and injured people in Southern Thailand from year 2004 through 2006 were 1,730 and 2,510. International Herald Tribune, Sep.3, 2006.

³⁰⁴ Bosnia and Herzegovina from Recovery to Sustainable Growth 3, USA World Bank Publications 1997.

the nature of this conflict also has caused the Thai Government to become increasingly concerned with unconventional tactics associated with this conflict.³⁰⁵

To address these concerns and in response to violence on January 4, 2004 where about thirty gunmen raided an army depot in Narathiwat province to steal a cache of 300 weapons to commit arson on 18 schools in the same area, and the subsequent theft of military weapons at the Army camp in Narathiwat province,³⁰⁶ the Thai Government declared martial law on the provinces of Narathiwat, Pattani, Yala³⁰⁷ and Songkhla.³⁰⁸ To replace martial law, the imposition of martial law was followed soon after by the Emergency Decree On Public Administration in Emergency Situation, B.E. 2548 (2005)(the "Emergency Decree") which came into force on July 16, 2005.³⁰⁹

During this period of martial law (January 5, 2004 until July 21, 2005),³¹⁰ several incidents took place that give rise to questions of a state's obligations under international law when dealing with domestic unrest. Specifically, on April 28, 2004, 30 Muslim dissidents were killed by Thai Military Forces during a demonstration at the Krue - Se mosque in Pattani. Then, on October 25, 2004, 80 Muslim demonstrators who had been arrested and loaded into government transport vehicles after a demonstration at the Tak

³⁰⁵ For instance, the Thai Security Forces arrested of Riduan Isamuddin (so-called Hambali), an Indonesian suspected of being the operations chief for Jemaah Islamiah (JI), a group allegedly linked to Al Qaeda and blamed for last year's Bali bombing and other attacks.

³⁰⁶ See more details in Chapter 2.

³⁰⁷ On 05 January 2004 at 6 a.m., Lieutenant General Pongsak Ekbannasingh, Fourth Region Army Commander, declared martial law in the provinces of Narathiwat (Districts of Rueso, Takbai, Su-ngai Padi, Yi-ngo and Su-ngai Kolok), Pattani(Khok Pho District)and Yala (Raman District).

³⁰⁸ On 03 November 2004 at 10 a.m., Lieutenant General Kwanchart Klaharn, Fourth Region Army Commander, declared martial law in the provinces of Songkhla (Districts of Chana (Chenok) and Thepha (Tiba)).

³⁰⁹ Government Gazette vol 122, part 58a Jul.16 B.E.2548 (2005).

³¹⁰ *Ibid.*

Bai Police station were later found to have suffocated while in the custody of Thai Security Forces.³¹¹ While there have been no other major incidents, the region remains under martial law and Emergency Decree. The violence continues, and as of this writing, there have been more than 2,000 casualties.³¹²

B. The Legal Issues

These incidents raise several questions as to whether the Thai Government may have violated its obligations under international law. Specifically:

- (1) Were the Martial Law and Emergency Decree consistent with Thailand's obligations under human rights law, humanitarian law, and the 1925 Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of the Bacteriological Methods of Warfare, and of the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and the Use of Chemical Weapons and on their Destruction?
- (2) Were the actions of the Thai Military Forces in suppressing the demonstrations at Kru Se Mosque in Pattani province and Tak Bai Police Station in Narathiwat province consistent with their obligations under international humanitarian law (or the law of armed conflict) as specifically defined in the Geneva Conventions, the Hague Conventions, and customary law?

³¹¹ See more details in Chapter 2.

³¹² See S.Chitpiomsri cited in note 303 *supra*.

In short, we must ask the difficult question of whether the military operations by the Thai Armed Forces respect the "law of war."

According to Prime Minister Dr. Taksin Shinawatra, Foreign Minister Dr. Kantathi Suphamongkhon, and Director-General of the Department of Information and Spokesman of the Ministry of Foreign Affairs Mr. Sihasak Phuanketkeow, the most disturbing aspects of the southern violence are the attacks on civilians by the group of dissidents³¹³ and the failure of the Thai authorities to protect Thai citizens.³¹⁴ Although the Thai Government has stated that "*Thai Muslims are not mistreated and enjoy all rights as Thai nationals, as enshrined in the Thai Constitution,*"³¹⁵ there is growing concern by many international organizations regarding alleged human rights violations which have arguably increased in recent years as a direct result of this conflict, namely, Human Rights Watches, has been paying close attention to the violence in the southern provinces of Pattani, Yala, and Narathiwat where Thai Security Forces have committed widespread human rights abuse.³¹⁶ Further, the Organization of the Islamic Conference has been critical of Thailand's efforts to end Islamic militant violence in the largely Muslim provinces in the country's south. As the speech of H.E. Prof. Ekmeleddin Ihsanoglu, Secretary-General of the Organization of the Islamic Conference has said on March 15, 2005 that "*the recent abuses of human rights against a section of Muslim Thai*

³¹³ See more details in Chapter 2.

³¹⁴ See Kankavi cited in note 175 *supra* at p. 186-187.

³¹⁵ Krit Garnjana-Goonchorn, Press conference, Permanent Secretary of the Ministry of Foreign Affairs, Minister of foreign Affairs, Kingdom of Thailand (Jun. 7, 2004); See also Thai Constitution B.E. 2540(1997)sec.4.

[T]he Human dignity, right and liberty of the people shall be protected.

³¹⁶ Thailand: Blacklists Create Climate of Fear, available at <http://hrw.org/english/docs/2005/12/16/thaila12317.htm> (last visited June 26, 2006).

citizens in Southern Thailand are another source of concern."³¹⁷ Further still, the United Nations has criticized certain provisions of the Emergency Decree which granted emergency powers to the Thai Armed Forces to combat insurgents in the three predominantly Muslim provinces.³¹⁸ This use of military force, according to the United Nations, violated the terms of international human rights which protects the basic rights of peoples. Since Thailand is a party to many Conventions which enhance well cooperation among the Parties, the United Nations and several other organizations, not only Human Rights Watches and OIC, but the Asian Human Rights Commission, Amnesty International and mores, have voiced concern that the Emergency Decree violates Thailand's international legal obligations as a signatory to an international agreement.

In order to propose more effective peacekeeping means in southern Thailand, I will discuss the interplay of international and domestic law while focusing not only on the alleged violations of international humanitarian law but also on whether or not the Thai Government's actions are consistent with its obligations under applicable human rights standards. This chapter will attempt to explain the complex issues at stake in Thailand's peace-keeping force by examining: (1) the applicability Thai domestic law, (2) the applicable of international humanitarian law and international human rights law, and (3) the nature and extent of any violations. I will conclude this Chapter by analyzing

³¹⁷ Speech, H.E. Prof. Ekmeleddin Ihsanoglu, Secretary-General of the Organization of the Islamic conference, before the sixty-first session of the United Nations commission on human rights, Geneva – Switzerland (Mar. 15, 2005).

³¹⁸ Warren Hoge, World Briefing | Asia: Thailand: U.N. Criticizes Emergency Powers, New York Times, Jul. 22, 2005.

step by step both the facts (Kru Se and Tak Bai cases) and the law that was practiced in Southern Thailand.

IV - 2 Applicable Laws

The following is a discussion of those laws pertinent to the Thai Government's response to the aforementioned incidents in Southern Thailand.

A. Domestic Law

1. Thai Criminal Law

Since Thailand became a constitutional monarchy in 1932, the effects of a democratic system upon the Legal and Judiciary systems have been profound and far-reaching. The Constitution is vested by the judiciary power of the Courts. Judges perform their duties on behalf of the King and are free from political influence when working on cases according to the law.³¹⁹

The Thai Penal Code was first promulgated in 1908 during in the Period of King Rama V. This first version was founded by Prince Rabi of Ratchaburi who played a leading role in introducing a modern system of judicial administration according to the politics of Gradual Reform.³²⁰ Up to now Thai laws have been changed many times towards improving the recent situation of the country. The Thai Penal Code was renewed

³¹⁹ The Judiciary of Thailand, The court of Justice, Thailand, available at <http://www.judiciary.go.th/eng/thejudiciary.htm#t1> (last visited Jul 18, 2006).

³²⁰ B.J. Terwiel, Thailand's political History from the Fall of Ayutthaya to recent times 203, River Books 2005. [T]he changes that were to take place in 1892 have been called the "great transformation," and a "general reorganization of government", statements that give the impression of a sudden metamorphosis.

21 times, and the Code of Criminal procedure was amended 29 times. Due to both, laws have undergone many structural changes.³²¹ For instance, Section 135/1-3 of the Thai Penal Code has been proposed to define the scope of terrorism which would treat terrorist acts as serious offences, and criminalize all steps in the terrorism process which came into force on August 9, 2003. Furthermore, some sections of the Thai Criminal Procedure Code which abridged the rights and freedom of people guaranteed by the Thai Constitutional at that time were abandoned and amended to be consistent with the Constitutional.³²²

Section 4 of the Thai Penal Codes states: “ *whoever commits an offence within the Kingdom shall be punished according to the law* ”³²³ even if such a crime is only a partial offence.³²⁴ This is the principle of jurisdiction which is applied in all Thai courts. However, the “offences within the Kingdom” refers to crimes committed not only within the territorial boundaries of Thailand but also to those crimes committed in another jurisdiction outside the country but where the effects and consequences of those crimes would be felt within the country.³²⁵ The jurisdictional reach of Section 4 and Section 5 of the Thai Penal Code extends to the acts of a co-principal; as such, a supporter or

³²¹ See Government Gazette, Thailand.

³²² Government Gazette vol 121, part 79a Dec.23 B.E.2547 (2004).

³²³ Thai Penal Code sec.4, Lueng Dulyasath-Pathiweth' s version (Suchart Jiwachart ed.).
[W]hoever commits an offence within the Kingdom shall be punished according to Thai law.

³²⁴ *Ibid.* at sec.5.

[W]henver any offence is even partially committed within the kingdom, or the consequence of the commission of which, as intended by the offender, occurs within the kingdom, or, by the nature of the commission of which, the consequence resulting therefrom should occur within would occur within the Kingdom, it shall be deemed that such offence is committed within the Kingdom or it could foreseen that the consequence.

³²⁵ *Ibid.*

instigator (as opposed to a perpetrator) of a crime within the Kingdom³²⁶ or a crime in a foreign jurisdiction that has effects or consequences within Thailand would, according to Section 4, be punished according to Thai law. Further, under Section 7 and Section 8 of the Thai Penal Code, the punishment of such crimes must be administered in the country.

2. The Martial Law Declaration Act B.E. 2457(1914)

Although Thailand has codified criminal law principles into the Thai Penal Code and the Thai Code Criminal Procedure Code, there are certain provisions in both statutes that are applicable to the security of the country and, as such, are relevant to the incidents at Kru Se Mosque in Pattani Province and Tak Bai Police Station on Narathiwat Province. Specifically, Section 2 of the martial law provides for the imposition of martial law in the event of circumstances that could be considered as a threat to the security of Thailand.

Accordingly, on July 5, 2004, martial law was imposed on the southern area of Thailand in Pattani, Yala and Narathiwat Province. Unfortunately, the imposition of martial law had profound effects in these three provinces, especially during periods when confrontations between demonstrators and government officials became violent incidents.

Martial law existed in Thailand before the Thai Constitution was drafted,³²⁷ before the adoption of Universal Declaration of Human Rights, and before the four Geneva

³²⁶ *Ibid.* at sec.6.

[W]henver any offense is committed within the Kingdom, or is deemed by this Code as being committed within the Kingdom, even though the act of a co-principal, a supporter or an instigator in the offence is done outside the Kingdom, it shall be deemed that the principal, supporter or instigator has committed the offence within the Kingdom.

³²⁷ Constitution law has long practiced in Thailand since 1933.

Conventions were ratified by Thailand. Martial law, as it is used in Thailand, was adapted from French martial law and has been periodically imposed in Thailand over the last 90-plus years. Currently, martial law can be imposed in exceptional situations where, the Government perceives a threat to the security of the nation (either within or outside of the country, such as a time of wars and riot).³²⁸ Pursuant to Section 6 of martial law, the provision provides the Thai military personnel with law enforcement and riot control capabilities that are greater than those normally available to the civilian officers at arms.³²⁹ For example, under martial law, Thai military personnel may ask police officers or civilian officers to assist for the peaceful mission. In essence, martial law potentially provides military full authority to the civilian officer, and arguably, the imposition of martial law could give rise to questions of it limiting some of the rights and liberties of the Thai people. However, the imposition of martial law is supposed to be a temporary measure.³³⁰

In fact, martial law has been imposed from time to time throughout the twenty provinces of Thailand³³¹ but to place this law has not been broadly criticized by the media and human rights organizations until martial law was imposed in the provinces of

³²⁸ The Martial Law Declaration Act B.E. 2457(1914), translated by the author [hereinafter Thai Martial Law] sec. 4.

[I]n the time of war or rebellion, the military commander who is responsible for military personnel no less than a battalion or who is the commander of a citadel or of a military base, shall have the power to declare martial law in his military jurisdiction and shall report to the government promptly.

³²⁹ *Ibid.* at sec.6.

[I]n any region under martial law, military officers shall have authority over civilian officers as relating to military affairs, ban, maintenance of peace, and public security. Civilian officers must follow the order of military officer under martial law.

³³⁰ This law shall be applicable only emergency situation.

³³¹ Government Gazette vol 108, part 77 2 May B.E.2534 (1991).

Provinces of Kanchanaburi, Chanthaburi, Chiang Rai, Chiang Mai, Trat, Tak, Narathiwat (only districts of Chanae, Ra-ngae, Waeng, Si Sakhon and Sukririn), Nan, Buriram, Prachin Buri, Phayao, Phitsanulok, Mae Hong Son, Yala (Than To, Betong, Bannang Sata, Yaha), Loei, Sisaket, Songkhla (Na Thawi, Sadao, Saba Yoi (Sebayu)), Satun, Surin, Uttaradit, and Ubon Ratchathani.

Narathiwat, Pattani and Yala. Even when martial law was replaced by an Emergency Decree, this law was widely held as damaging to Thailand's record of human rights. However, this martial law could be construed as appropriate to the southern area. The Government announced the Emergency Decree to be applicable on July 16, 2005 instead of martial law.

3. Thai Emergency Decree on Public Administration in Emergency Situation B.E.2548 (2005)

The public outcry over possible human rights abuse as well as the deprivation of basic legal rights under martial law forced the Thai Government to announce the Emergency Decree on July 16, 2005. This came about when martial law lent itself to civil disobedience. Thai citizens had the feel of a dictatorship, whereas laws instituted and executed by the state were more likely to be obeyed because of the popular view that these laws maintained a tenable connection to democratic ideals. When the Emergency Decree was set in motion, it invoked Section 218 of the Thai Constitution³³² in which a comprehensive system of statutory laws was called upon for necessary measures to manage internal security. However, martial law and the Emergency Decree often amounted to the same type of rules. Some international organizations³³³ still blame the

³³² Thai Constitution B.E.2540 (1997), at sec 218.

For the purpose of maintaining national or public safety or national economic security, or averting public calamity, the King may issue an Emergency Decree which shall have the forces as an Act.

³³³ The International Federation for Human rights (FIDH) and its member organization in Thailand, the Union for Civil Liberties of Thailand (UCL), expressed their deep preoccupation at the various infringements of Thailand's human rights obligations within the Decree which can be applied to the whole, or any part of the Kingdom. (available at www.figh.org, last visited Jan 1, 2006).

Emergency Decree for exacerbating the conflict and deem it to be a threat to public safety, arguing that a change in terminology will not help stem further conflicts.³³⁴

The above-mentioned Thai laws were applicable in the situation in southern Thailand with both the Islamic dissidents (Kru Se Mosque case) and the riots at the Tak Bai Police Station. Both of these incidents violated the Thai Penal Code, which has jurisdiction over all individuals involved pursuant to Sections 4, Section 7,³³⁵ and Section 8,³³⁶ and which asserts what in the provinces of Thailand still can impact or threaten the nation as a whole.

Because Thailand has sovereignty and jurisdiction over their citizens, the Thai Penal Code and the Thai Criminal Procedure Code are applicable in such situations even though these incidents occurred during the declaration of martial law and Emergency Decree. This is because Thai Criminal justice aims to impose sentence within properly determined petitions. The question is whether or not the provisions of Thai laws that had an affect on this situation defy the concept of human rights and humanitarian law.

³³⁴ *Ibid.*

³³⁵ See Thai Martial Law, at sec.7.

Whoever commits an offence outside the Kingdom shall be punished in the Kingdom, namely :

- (1) Offences relating to the Security of the Kingdom as provided in Section 107 to 129;
- (2) Offences relating to Counterfeiting and Alteration as provided in Sections 240 to 249, Section 254, Section 256, section 257, and Section 266 (3) -(4).;
- (3) Offence relating to Robbery as provided in Section 339, and Offence relating to Gang-Robbery as provided in Section 340, which is committed on the High seas.

³³⁶ *Ibid.* at sec.8.

Whoever commits an offence outside the Kingdom shall be punished in the Kingdom, provided that :

- (a) the offender be a Thai person, and there be a request for punishment by the Government of the country where the offence has occurred or by the injured person ; or
- (b) the offender be an alien, and the Thai Government or a Thai person be the injured person, and there be a request for punishment by the injure person.

B. International Law

A court of justice (ICJ) has the task of deciding legal disputes between states and assisting the operations of international organizations by giving them its opinions on legal questions. The disputes cover the most varied aspects of public and private law, concern all parts of the globe, and often call for a re-examination of various legal systems and of wide-ranging state practices including those domestic policies connected to international organizations. However, not every case with which this court deals has to be of paramount significance, and not every aspect of a particular case which has to be submitted for its decision is considered. What matters is that the court should help in resolving disputes and thereby contribute to the maintenance of peace and to the development of friendly relations among states.³³⁷

Article 38 of the Statute of International Court of Justice which has the function of making decisions in accordance with international law on such disputes as are submitted states: "*The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply :*

- A. *international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*
- B. *international custom, as evidence of a general practice accepted as law;*
- C. *the general principles of law recognized by civilized nations;*
- D. *subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."*

³³⁷ The Court is an organ of international law, available at <http://www.icj.org/icjwww/igeneralinformation/ibook/Bbookchapter7.HTM> (last visited Mar. 1, 2007).

This court order asserted the rule of international law and shown that it was the product of one or more of three law-creating processes: treaties,³³⁸ international customary law, or general principles of law organized by civilized nations.³³⁹ As a result, in principle, international law will govern the situation where there is a relationship among States, or where States are deemed to have rights and obligations that are internationally recognized as being regulated by international law.³⁴⁰ Further, although customary international law is not written, it reflects state practice because the rules of customary law govern questions not regulated by the provision of the present convention. Many rules of treaties have become part of customary international law, and many provisions of international law are now accepted as customary law.³⁴¹ That is, as all states are governed by international law,³⁴² then Thailand is a country whose rights and obligations are governed by international law regardless of internal or international affairs so long as political authority is restricted by international law. It is entirely possible that the provisions of a treaty and conventions could apply to conflict within existing domestic law yet international law has no direct application to Thailand's particular situation.

³³⁸ Vienna Convention on the law of Treaties, 23 May 1969, UN Doc A/Conf 39/28, UKTS 58(1980), 8 ILM 679.

'treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

³³⁹ D.J.Harris, Cases and Material on International Law 20, Sweet and Maxwell 1991 (4th ed. 1991)(1973).

³⁴⁰ Thomas Buergenthal and Harold G.Maier, Public International Law 2-3, West Publishing 1990(2nd ed.1990).

³⁴¹ Treaties and customary international humanitarian law, available at http://www.icrc.org/web/eng/siteeng0.nsf/iwpList2/Humanitarian_law:Treaties_and_customary_law?OpenDocument (last visited Jun. 26, 2006).

³⁴² See T. Buergenthal and H. G.Maier cited in note 340 *supra*.

1. International Humanitarian Law

Professor Warren E. Small³⁴³ views international humanitarian law as a subset of human rights law, and international humanitarian law is also known to be part and parcel to a main body of rules for the laws of war or the laws of armed conflict (often abbreviated to “LOAC”) which is concerned with the relation between States that are in a State of armed conflict. Principles of international humanitarian law are only applicable in cases of armed conflict because its objective is to limit the effect of armed conflict. Basically, international humanitarian law is not meant to pertain to the conflicts occurring within states or to non-international tensions. The main purpose of international humanitarian law is to reduce the damage and pain and suffering from such conflicts, to save the combatants and noncombatants from unnecessary suffering,³⁴⁴ and to protect persons who are not or who are no longer participating in the hostilities. The main bodies of the humanitarian law can be found in:³⁴⁵

³⁴³ Captain Warren E. Small, Esq. spent his twenty – five years in the U.S.Navy as a commissioned officer. He earned his J.D. from Golden Gate University, where he specialized in international law. He joined the adjunct faculty in 1996 to complement his private practice which specializes in all aspects of domestic and international law.

³⁴⁴ Joint Publication 1-02 (2001), DOD Dictionary of Military and Associated Terms.

³⁴⁵ Operational Law Handbook 31, The Judge Advocate General’s School Charlottesville (2003).

- *the Hague Conventions*³⁴⁶
- *the Geneva Conventions of 1949 (4 Conventions)*³⁴⁷
- *the Geneva Protocols I and II of 1977*³⁴⁸
- *Customary International Law*
- *Treaties*³⁴⁹
- *Regulations*

The basic concept of “Law of the Hague” and “Law of the Geneva” are generally based upon the concept of a universal humanity. The nature of these conventions provides not only recommendations for military procedures, but also concern for the victims. This simple concept forbids any attack on an enemy that causes unnecessary suffering, injury, or destruction. The use of force must not exceed the minimum required to achieve that basic objective. That is to say, the Law of the Hague is a term used to

³⁴⁶ Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954, 249 U.N.T.S.240 – 88 (*entry into force* Aug.7, 1956) [hereinafter 1954 Hague Cultural Property Convention]; Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, T.S.539, including the regulations thereto [Hereinafter Hague IV]; Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, The Hague, 18 October 1907, 36 Stat.2310, 2 A.J.I.L.(1908) Supplement 117-127; Convention (IX) Concerning Bombardment by Naval Forces in Time of War, The Hague, 18 October 1907, 754 U.N.T.S. 73, 8 ILM 68; Protocol for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954, 249 U.N.T.S. 358 [hereinafter Protocol I to the 1954 Hague Cultural Property Convention].

³⁴⁷ Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Force in the Field, Geneva, 12 August 1949, 75 U.N.T.S.1950 31 - 831949 (*entry into force* Oct 21, 1950)[hereinafter Geneva Convention I]; Convention for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of Armed Force at Sea, Geneva, 12 August 1949, 75 U.N.T.S.1950 85 - 133 (*entry into force* Oct 21, 1950)[hereinafter Geneva Convention II]; Convention Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, 75 U.N.T.S.1950 135 - 285 (*entry into force* Oct 21, 1950)[hereinafter Geneva Convention III]; Convention Relative to Protection of Civilians in Time of War, Geneva, 12 August 1949, 75 U.N.T.S.1950 287 - 417 (*entry into force* Oct 21, 1950) [hereinafter Geneva Convention IV].

³⁴⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 U.N.T.S.1950 (1979) 3-608, 16 I.L.M.(1977) 1391-441 (*entry into force* Dec 7, 1978) [hereinafter Additional Protocol I]; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 U.N.T.S.1950 (1979) 609-99, 172 A.J.I.L.457 (1978) 16 I.L.M.(1977) 1442 - 9 (*entry into force* Dec 7,1978)[hereinafter Additional Protocol II].

³⁴⁹ See Vienna Convention on the law of Treaties, cited in note 338 *supra*.23.

denote an attempt to regulate the means and methods of warfare (prohibiting the use of certain weapons such as poison) that promote war-time humanitarian concerns (such as warning the civilian population before bombardment). The primary rule is derived from regulations respecting the laws and customs of war on land,³⁵⁰ Meanwhile the Geneva Conventions and their additional protocols provide an extensive legal framework for the protection of persons not or no longer participating directly in hostilities.³⁵¹

Recently, more than 190 States of the world have agreed to the four Geneva Conventions of 1949 are customary international law (although the Geneva Protocols I and II of 1977 are still being debatable). However, it could be addressed that the Geneva Conventions and their additional protocols are, in fact, international treaties of a sort since they make the most important contribution in limiting the barbarism of war.³⁵² The Geneva Convention and additional protocols mark the most significant development from a legal perspective toward an attempt at international legislative response to armed conflict. These four Geneva Conventions were intended to apply to all international armed conflicts, regardless of whether or not war has been declared, or whether there is a partial or total occupation of another state's territory.³⁵³

As Thailand has lead an ongoing effort to promote and cooperate with peacekeeping forces that follow these principles laid out by the Charter of the United Nations, Thailand has ratified the four Geneva Conventions and the Hague Conventions.

³⁵⁰ See Operational Law Handbook cited in note 345 *supra*.

³⁵¹ Jean – Marie Henckaerts, The law of armed conflict: problem and Prospects, Chatham House, Apr. 18-19 2005, available at <http://www.chathamhouse.org.uk/pdf/research/il/ILParmedconflict.pdf> (last visited Jun. 26, 2006).

³⁵² The Geneva Conventions: the core of international humanitarian law, available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions> (last visited Jun. 26, 2006).

³⁵³ The Conventions had changed the use of technical term of 'war' to 'armed conflict cited by Leslie C. Rosen, the contemporary law of armed conflict 43-44, Manchester Jurist Publishing 2000 (1993).

Accordingly, it is legally bound to comply with the standard law of armed conflict required by these Conventions.

After reviewing the four Geneva Conventions, there is another question regarding whether the two additions to the protocol of the Geneva Convention are universally customary or not.

In recent times, Additional Protocol I has been ratified by more than 160 states, meanwhile Protocol II also has been ratified by almost 160 states. There are only a few states in which non-international armed conflicts are taking place (including Thailand) that have not ratified such protocols. Although Thailand has not ratified Protocol I and II, many of the provisions of the protocols may be applicable as customary law.³⁵⁴ That is, the main source of humanitarian law for centuries has stated that no States shall violate international humanitarian both in international and in non-international armed conflict.

³⁵⁵ Since customary international law consists of rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way,³⁵⁶ it is in Thailand's best interest not to be contrary to the rules which are derived from its very own legal tradition.

³⁵⁴ See Operational Law Handbook cited in note 345 *supra*.

³⁵⁵ The rule of customary international law is derived from state practice and has developed out of conflicts that fall within customary law rather than in treaty law, which is exemplified in military manuals, national legislation, official statements [protests, declarations, "*prises de position*"], positions adopted by States in international conferences [unanimity in adopting some provisions, or the prohibition of reservations], official reports on battlefield behavior and case law [decision of the courts].

As such, the rule of customary international law normally binds on all States even in those cases when the state is not a party to such treaties. Under article 38 of Vienna Convention on the Law of Treaties states: "*Nothing in Article 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third as a customary rule of international law, recognized as such.*" Also, article 38(1) of Statute of the International Court of Justice established the court's function as a means to decide whether international law applies to such disputes: (a) *international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;* (b) *international custom, as evidence of a general practice accepted law;* (c) *the general principles of law recognized by civilized nations.*

³⁵⁶ Rosanne Palmer, *Practice and Methods of International Law* 55, 1984

Although the latest violence that erupted in Thailand occurred within its national borders and appeared to be the result of internal conflict, it is difficult to establish whether these incidents reached the level of armed conflict in which the Hague and Geneva treaties apply. In general principle, the scope of international humanitarian law is limited to what is considered to be internal armed conflict. However, under Common Article 2 and Common Article 3, the laws of armed conflict still are not limited to war between States. The law appears to apply to many situations because Common Article 2 of the Geneva Convention provides:

The law of armed conflict applies to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties.

This formulation establishes that a State of war may exist even if the State does not officially recognize the other party and it also applies to all cases of partial or total occupation of the territory by a High Contracting Party, even if the said occupation meets with no armed resistance. Because internal armed conflicts lead to extreme violence and cruelty, many States accept that they cannot treat some situations as merely internal conflicts. And Common Article 3 goes on to state:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum

This Common Article 3 provides an exception to the law of war that otherwise seems to be devoted solely to international conflict insofar as Article 3 carves out a conceptual area for domestic as well as international human rights. This Article could be read to pertain directly to the case of internal armed conflict occurring within the territory of one of the High Contracting Parties. Therefore, the internal incidents, which involve either regular armed forces fighting groups of armed dissidents or armed groups fighting each other, could be governed by this Common Article 3.³⁵⁷

Since these two Articles were repeated in all four Conventions, it could be said that all these rules are intentionally deemed customary. The situation in Thailand, however, will be governed under Geneva Conventions if the violence goes beyond the scope of internal disturbance because the conventions formulated in the four Conventions can be applied to the level of internal armed conflict. But Thailand does not need to be contrary to the fundamental law of Hague Convention or any law which seems to be customary law.

2. Human Rights Law

Human rights have emerged as a significant moral and legal force in modern domestic and international relations and universally apply as much to individuals as to governments.³⁵⁸ Apart from obligations undertaken by a treaty, a State is entitled to treat both its own nationals and stateless persons equally, but how civilians and stateless

³⁵⁷ The Law of Armed Conflict: Non-International Armed Conflict, ICRC, available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5P8EX4/\\$File/LAW10_final.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5P8EX4/$File/LAW10_final.pdf) (last visited Aug. 1, 2006).

³⁵⁸ Jeffrey F. Addicott, *Terrorism Law* 306-307, Lawyers and Judges Publishing Company, Inc., (3rd ed. 2006).

persons are treated is not a matter with which international law, as a rule, generally concerns itself. Human rights law has developed from international law and seeks to become binding across States as customary law. They apply to all States that are not subject to the party of such treaties. The hope is that each state will establish protective measure to diminish any violation of the basic concepts of human rights, such as deprivation of liberty, torture, inhuman treatment, murder, and other cruelties. Even if the applicability of human rights law is different within different States, every State has to be concerned with violations of human rights.

Today, Thailand is a party to international human rights instruments and has already acceded to five core United Nations human rights instruments.³⁵⁹ It is unavoidable that Thailand must not violate the human rights fundamental.

3. Treaties

The distinguishing factor of the law of treaty is that it has garnered the consent of those States that have been increasingly turning to treaties as a source of international law. The law of treaties permits a State to make a reservation if such a reservation is not

³⁵⁹ Thailand has been proactive in becoming a Party to international human rights instruments and has already acceded to five core UN human rights instruments as follows:

1) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, (entered into force Sep. 3, 1981) [hereinafter CEDAW]; 2) Convention on the Rights of the Child, A/RES/44/25 (entered into force Dec. 12, 1989) [hereinafter CRC]; 3) International Covenant on Civil and Political Rights on 29 January 1997, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]; 4) International Covenant on Economic, Social and Cultural Rights (CESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976. [hereinafter CESCR]; 5) International Convention on Elimination of All Forms of Racial Discrimination (CERD), G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter CERD].
(See Ministry of Foreign Affairs, Thailand available at www.mfa.go.th/web/24.php, last visited Jan 1, 2007).

prohibited by the treaty that the State has signed.³⁶⁰ This means that traditional international law emphasizes the respect of State sovereignty and fundamental freedoms. States can have the sovereign right to exploit their own resources and enjoy their rights so long as their policies ensure that activities within their jurisdiction or control do not cause damage to any other States or areas beyond the limits of their national jurisdiction.

When States sign and ratify any treaty, it means that they are expressing consent to be bound by such treaty and must refrain from acts that would defeat the objective and purpose of such treaty. Therefore, not only considering the four Geneva Conventions and customary law, Thailand has to bear in mind other treaties that the country has signed and its duties regarding the implementation of such treaties.

C. Conclusion

That is to say both domestic law and International law are applicable to the violence in Southern Thailand. Although some Treaties and Conventions of international law are not applicable at this moment, Thailand has to realize that the Thai Security Forces shall not violate either Thai law or international law especially human rights. Furthermore, to operate in harmony for the peace of the country and the world, Thailand should inspect its law against the concept of international law. I shall examine further how Thai law and the actions of the Thai Security Forces comply with the international law in human rights and humanitarian law and treaties in the following discussion.

³⁶⁰ See Vienna Convention on the Law of Treaties.

IV - 3 Is Thai Domestic Law inconsistent with International Humanitarian Law and Human Rights Law:

What is the Applicable of Thai Law regarding Pattani?

In Southern Thailand, the domestic laws applicable to the situation are: Thai criminal law, martial law and the Thai Emergency Decree. There have been questions as to whether these laws violate fundamental humanitarian law and human rights law because Thai law has set up a system of tribunals empowered to impose punishment for serious offences, punishments that include the death penalty, long-term prison sentences, and severe restrictions on rights and liberties.

Although the concept of martial law was replaced later by the Emergency Decree, the statutes are not strikingly different. Both place a prohibitive framework upon normal civilian life and allow for responsive military action in the event of a threat to national security. Both have the potential to impact human rights and set dangerous precedents. All of the above regulations can generally be justified in the scope of international law. But are these laws endangering individuals and jeopardizing public support for Government authority?

A. Punishment to Ensure a Measure for Safety

1. Death Penalty

Punishment in Thai law³⁶¹ is strongly weighted toward retribution as opposed to rehabilitation, and the most extreme form of punishment that the Thai Penal Code provides is the death penalty. The death penalty, however, does not apply strictly to threats to the well-being of individuals. A recent Penal Code includes the death penalty as also applicable to those acts of terrorism warranting maximum punishment. The amendment, therefore, that pertains to terrorist activity is in keeping with the domestic legal tradition.

The meting out of punishment through criminal procedure is determined by court penalties according to the degree of individual guilt and the background of the offender. Although there are campaigns geared toward eradicating the death penalty for any person, the campaigns are not popular among Thais. Many believe the death penalty is still necessary for a developing country and that what limited budget the government has should not be spent on rehabilitating criminals but on compensating victims.³⁶²

³⁶¹ Thai Penal Code B.E.2499 (1956).

[O]ffenses include Regicide; Sedition or Rebellion; Offenses against the external security of Thailand; Offenses against the friendly relations with foreign States; Bribery; Malfeasance in Judicial Office; terrorist(cited in Chapter 3); Offenses relating to causing public dangers; Arson; Rape; Offenses against life and body ; Kidnapping; Robbery resulting in death.

Military Code B.E.2454((1911).

[O]ffenses include Desertion; Absence without leave during war time or before the enemy; Disobeying a commander; Duties-and-Orders Offenses ; Failure to Obey an Order or Regulation ; Combat-related Offenses include Misbehavior before the Enemy; and Misconduct as a Prisoner.

Narcotics Act B.E.2522 (1979).

[O]ffenses include Produce, Import or Export for the Purpose of Disposal; Use of Force against Other Persons to Consume Narcotics.

³⁶² A Seminar on Death Penalty in Thailand, Jul.3-4, 2006, The National Human Rights Commissions, Thailand.

a. Human Rights Law

Socialists view the concept of human rights as being based on the proposition that each rights are guaranteed by the State. This view shifts the emphasis from individual freedom to social and economic rights (that is, those freedoms an individual enjoys within the context of the community).³⁶³ The question becomes: what is the limitation of basic right? Does the death penalty violate human rights laws?

Recently, there are 137 countries that have abolished the death penalty,³⁶⁴ and many organizations³⁶⁵ have campaigned to abandon this punishment because it is deemed to be an act of cruel and inhuman punishment.³⁶⁶ Another reason is that to many human rights activists view, the death penalty does not solve the root of the problem because there is no causal relation between capital punishment and serious crimes.³⁶⁷

If, however, we scrutinize the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights article by article, there are no rules prohibiting the death penalty. In keeping with the socialist view, the death penalty can be seen as a way to ensure the protection of certain freedoms rather than as a basic infringement of human rights so long as it is just punishment for a capital crime. This

Peter Malanczuk, Akehurst's Modern Introduction to International Law 210, Routledge, Taylor and Francis Group 1997 (1970).

<http://www.amnesty.org/en/death-penalty> (last visited Aug. 11.2007).

60 countries have abolished the death penalty in law or practice; 60 countries retain and use the death penalty, most often as a punishment for people convicted of murder; At least 1,252 people were known to be executed in 24 countries during 2007. The true figure was certainly higher; 88 per cent of all known executions in 2007 took place in China, Iran, Saudi Arabia, Pakistan and the USA.

CRC, Amnesty, Human Rights Watch and World coalition organization.

Final declaration of the 3rd World Congress Against the Death Penalty, available at <http://www.worldcoalition.org/bcoaldecla.htm> (last visited Jan 31.2007).

Death Penalty Q&A, available at http://www.amnestyusa.org/abolish/dp_qa.html (last visited Jan.31.2007).

perspective takes the goal of the social world as more important than individuals and that certain freedoms must be sacrificed in order to maintain a healthy and functioning society.

There have been movements dedicated to abolishing the death penalty, such as the Second Optional Protocol to the International Covenant on Civil and Political Rights Aimed at Abolishing the Death Penalty. In this case, the protocol was undersigned by 50 countries, a number that is too low to justify it as customary law. Thailand was not party to this protocol. We might compare this to Human Rights instruments and International Criminal Court (ICC), both of which do not prohibit the death penalty and are customary laws because there are more than 190 countries party to those treaties.

b. Humanitarian Law

The Geneva Conventions and their Additional Protocols have not banned the death penalty outright. The regulations of those Conventions regarding the death penalty establish rules that ban capital punishment for those individuals less than eighteen years of age at the time they committed the offence.³⁶⁸

Although Thai law provides the punishment of death penalty for serious crimes, the provisions in Section 288 of the Thai Penal Code prohibit the execution of a person who is under eighteen years.³⁶⁹ In addition, this Section also bars the execution of any

³⁶⁸ See Geneva Convention IV, at art 68.

³⁶⁹ In any case, the death penalty may not be pronounced on a protected person who was under eighteen years of age at the time of the offence.

³⁶⁹ See Additional Protocol II, at art 6 (4).

The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

woman at the time of her pregnancy.³⁷⁰ In this respect, Thailand has made a deliberate effort to make domestic laws compatible with the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, or Geneva Conventions (to which Thailand is Party). For example, in 2003 the Thai Criminal Procedure Code, was amended so that the “conventional” form of execution was by the use of lethal injection (as opposed to firing squad). In making these changes, Thailand has attempted to make certain laws compatible with the generally agreed-upon concepts of human rights. Therefore, even though Thailand continues to have the death penalty, it is legally still in keeping with humanitarian law insofar as it bans execution for those under the age of eighteen and bars the execution of pregnant women.

2. Arrest, Detention and Imprisonment

As most countries have a law prohibiting dangerous acts. Certainly, Thailand does. The body of Thai criminal law deals with crime and the legal punishment of criminal offences. The Thai criminal law permits an authority to arrest, detain, and imprison suspects in response to a criminal offence. If we focus on both of the laws – martial law and the Emergency Decree – that were used to respond to the waves of violence in attempt to maintain stability in the Southern area, Section 15 (bis) of the Martial law provides that so long as there are reasonable grounds for suspicion, a person can be arrested and detained, although no more than seven days. Also, Section 12³⁷¹ of

³⁷⁰ See Thai Penal Code, at sec.288.

³⁷¹ In the cases of murder offences, the penalty options that judges may select to impose are death, imprisonment for life or imprisonment of fifteen to twenty years.

³⁷² Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005), Thai Law Reform Commission Version [hereinafter Thai Emergency Decree] sec.12.

³⁷³ In arresting and taking suspected persons into custody under section 11(1), the competent official shall apply for leave of a court of competent jurisdiction or the Criminal Court. Upon obtaining leave of the court,

the Emergency Decree permits an authority to arrest and detain any person who is suspected under Section 11 (1)³⁷² of its provision. The overseeing official shall ask permission from the court to arrest or detain the individual for a period not exceeding seven days. If it seems necessary, competent officers shall ask the court's permission to extend such a detention period by seven days at a time but the total period shall not exceed thirty days. The suspected person shall be taken into custody at a designated place that is not a police station, detention center, penal institution, or a prison and shall not be treated as convict.³⁷³ Although the Emergency Decree aimed to revise and refine martial law, it still provides the authorities with the power to arrest, detain, and imprison a suspect. The question is do such laws violate human rights law and humanitarian law? There are two legal issues involving detention of suspects in Thai law and international law covered here. The first issue is whether the detention of criminals in Thai law is compatible with human rights and humanitarian law. The second issue is whether detention lasting longer than seven days is still within the accepted understanding of "promptly" and "reasonable time" as those terms are used in the framework of human rights law.

the competent official shall be empowered to arrest and take the suspected persons into custody for a period not exceeding seven days. The suspected persons shall be taken into custody at a designated place which is not a police station, detention centre, penal institution or prisons and shall not be treated as a convict. In case where it is necessary to continue the detention in order to remedy the emergency situation, the competent official shall apply for the leave of the court to extend such detention period by seven days at a time, provided that the total period shall not exceed thirty days Upon the expiration of such period, if the detention is still required, the competent official shall proceed under the Criminal Procedure Code.

³⁷² *Ibid.* at sec.11 (1).

[T]o issue a Notification that a competent official shall have the power of arrest and detention over persons suspected of having a role in causing the emergency situation, or being an instigator, a propagator, a supporter of such act or concealing relevant information relating to the act which caused the emergency situation, provided that this should be done to the extent that is necessary to prevent such person from committing an act or participating in the commission of any act which may cause a serious situation or to foster cooperation in the termination of the serious situation.

³⁷³ See Thai Emergency Decree, at sec.12 cited in note 371 *supra*.

a. Human Rights Law

According to Article 9 of the Universal Declaration of Human Rights: “*No one shall be subjected to arbitrary arrest, detention ...*” Also, Article 9 (1) of the International Covenant on Civil and Political Rights provides: “*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*”

In these provisions, the International Covenant on Civil and Political Rights guarantees the rights and liberties of the individual and human rights law allows States to arrest people suspected of crimes so long as it is done according to the rules and regulations of the law of that country. The Universal Declaration of Human Rights also considers the prohibition of arbitrary arrest and detention. What this means is that the State is entitled to judge who can be subject to this law, and why and how they should be handled so long as the treatment is fair, legitimate, and customary.³⁷⁴ So although detention itself is compatible to human rights law, Article 9 (3) of the International Covenant on Civil and Political Rights restricts the rights of States regarding the nature of this detention: “*Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.*” The person who has been arrested, charged, or detained shall have the right to due process of law without any delay. Because human rights law uses the word “promptly” and therefore does not specify the exact amount of time, the law is open to interpretation. Thus, Thailand must

³⁷⁴ Burns H Weston, Human Rights in the World Community 96-97: Issues and Action, Richard Pierre Claude ed., University of Pennsylvania Press, 1992.

take it upon itself to see that detention of suspects follows a procedure this is standard and customary compared to other countries. However, if the period of allowable detention in Thailand is longer than periods in other countries, it does not necessarily mean there is a violation of human rights because each country has its distinct problems that require different types of solutions. But Thailand has to prove that the process is necessary and reasonable and the government has to support significant efforts (and intends on continuing these efforts) to improve laws to meet the international standards, compared to other developed countries.

b. Humanitarian Law

The Geneva Conventions do not prohibit detention, internment or imprisonment as exemplified in Article 89 (4)³⁷⁵ of the Geneva Convention III and Article 119 (4)³⁷⁶ of the Geneva IV, which states confinement shall be permitted for disciplinary punishment. Article 68³⁷⁷ of the Geneva IV allows internment or imprisonment for the person who commits an offence. Even Article 70³⁷⁸ of the Geneva IV states that the protected

³⁷⁵ See Geneva Convention III, at art. 89.

[T]he disciplinary punishments applicable to prisoners of war are the following :
(1)...., (2)...., (3)...., and (4) Confinement.

³⁷⁶ See Geneva Convention IV, at art. 119.

[T]he disciplinary punishments applicable to internees shall be the following:
(1)....,(2)....,(3)... and (4) Confinement .

³⁷⁷ *Ibid.* at art.68

[P]rotected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed.

³⁷⁸ *Ibid.* at art.70

[P]rotected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

persons shall not be arrested, prosecuted or convicted by an Occupying Power when such an act is committed before the time of occupation or temporary interruption. Article 70 also provides for the ability of the state to detain suspects during the period of occupying power if the law of the occupied State justified extradition in time of peace. Therefore, such persons can be arrested, prosecuted or convicted under Geneva Conventions. Article 117³⁷⁹ of the Geneva IV also respects the laws in force in the territory in which these individuals are detained. This Article only limits the punishment to disciplinary punishment in the case where those same criminal acts were committed by persons who were not internees. These fundamental rules are not different from their Additional Protocols.³⁸⁰ Those provisions are supported by the theory of state sovereign immunity,

³⁷⁹ *Ibid.* at art. 117.

[S]ubject to the provisions of the present Chapter, the laws in force in the territory in which they are detained will continue to apply to internees who commit offences during internment.

³⁸⁰ See Protocol Additional I, at art. 75.

(3) Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) no one shall be accused or convicted of a criminal offence on account or any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) anyone charged with an offence shall have the right to be tried in his presence;

(f) no one shall be compelled to testify against himself or to confess guilt;

(g) anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(h) no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;

(i) anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and

which holds the basic principle that just jurisdiction belongs solely to the State under Article 2(7).³⁸¹ However, the provisions of the Geneva Convention state that the place of detention must be in buildings or quarters that meet the appropriate health and safety standards during acts of war.³⁸² These laws also state that there should be no forms of cruelty during the imprisonment³⁸³ and such detained persons shall be treated humanely during the period of detention.³⁸⁴

(i) a convicted person shall be advised on conviction or his judicial and other remedies and of the time-limits within which they may be exercised.

³⁸¹ Charter of the United Nations with the Statute of the International Court of Justice annexed thereto, 26 June 1945, 59 Stat.1031, T.S.993, 3 Bevans 1153 (as amended, Dec.17, 1963, T.I.A.S.5857; 557 U.N.T.S.143 Dec 20, 1965, 19 U.S.T.5450; T.I.A.I.6529 and Dec.20, 1971, 24 U.S.T.2225; T.I.A.S.7739) (entry into force Oct.24, 1945) [hereinafter UN Charter] art.2(7).

[[N]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

³⁸² See Geneva Convention IV, at art.85.

[T]he Detaining Power is bound to take all necessary and possible measures to ensure that protected persons shall, from the outset of their internment, be accommodated in buildings or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigours of the climate and the effects of the war. In no case shall permanent places of internment be situated in unhealthy areas or in districts, the climate of which is injurious to the internees. In all cases where the district, in which a protected person is temporarily interned, is in an unhealthy area or has a climate which is harmful to his health, he shall be removed to a more suitable place of internment as rapidly as circumstances permit.

The premises shall be fully protected from dampness, adequately heated and lighted, in particular between dusk and lights out. The sleeping quarters shall be sufficiently spacious and well ventilated, and the internees shall have suitable bedding and sufficient blankets, account being taken of the climate, and the age, sex, and state of health of the internees.

Internees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene, and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them. Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning.

Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory.

³⁸³ *Ibid.* at art. 118.

[A]ll forms of cruelty without exception are forbidden.

³⁸⁴ *Ibid.* at art. 37.

[P]rotected persons who are confined pending proceedings or serving a sentence involving loss of liberty, shall during their confinement be humanely treated.

Because human rights and humanitarian law have no provision to prohibit detention, detention can be seen as a potentially necessary peace-keeping measure even if it might appear to violate the concept of basic human rights. However, Martial law made no stipulations about the place that suspects were to be detained (so as to risk violating international law), whereas the Emergency Decree provides a designated place that is not a prison cell. Then, the Emergency Decree has a better solution not against any international law.

3. Expulsion

Section 15 of the Martial law has the authority to expel a person who has no domicile or who has a temporary resident status if he or she has, on reasonable grounds, been suspected as someone who has jeopardized the security of the state. Also, section 11(8)³⁸⁵ of the Emergency Decree allows authorities the power to instruct an alien to leave the Kingdom in the case that such a person is deemed to be a supporter of the group causing the emergency situation. Although an international judicial body has yet to judge the issue, the expulsion could be regarded as a crime against humanity under international law as the International Criminal Court stands today.³⁸⁶ I will consider then whether the expulsion of someone from a country by either Martial law or Emergency Decree can be permitted by human rights and humanitarian law or not.

³⁸⁵ See Thai Emergency Decree, at sec.11 (8).

³⁸⁶ To issue a Notification that a competent official shall have the power to instruct an alien to leave the Kingdom in the case where there are reasonable grounds to believe that such person is a supporter in causing the emergency situation, provided that the law on immigration shall apply *mutatis mutandis*.

Expulsion of Germans after World War II Expulsion of Germans after World War II, available at <http://en.wikipedia.org> (last visited Jan. 1, 2007).

a. Human Rights Law

Article 9 of the Universal Declaration of Human Rights states that: "*No one shall be subjected to arbitrary exile...*" Also, Article 9 (1) of the International Covenant on Civil and Political Rights provides: "*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*"

It was seen that Human rights law basically prohibits forced exile but it also provides exceptions in cases that jeopardize the security of the State. These laws (Martial Law and Emergency Decree) were intended to protect the integrity of the country and to stabilize Southern Thailand, and they do not contradict the concept of human right laws. But the question as to whether it is appropriate to use the expulsion measures is a question that needs to be considered on a case-by-case basis and should not be regarded as a general principle that applies to any and all instances.

b. Humanitarian Law

Even if Geneva Conventions has no provision prohibiting forced exile, Article 45 of Convention IV states that protected persons shall not be transferred to a country that is not a party to the Convention, or to any country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.

Martial law and Emergency Decree also do not designate a place of exile but Emergency Decree ensures extradited persons are sent to countries where they are not persecuted for political or religious beliefs. Further, it does include language that

recognizes treaties with other countries because it provides the condition to expel individuals by following the "mutatis mutandis" of immigration law that is consistent to Geneva Convention and holds states accountable to the treaties they signed as International agreements. The effectiveness of the ratification of Geneva Convention can be enhanced Thailand, such as the Senate issued the Geneva Act, B.E.2522, in 1990. Although Thailand supports initiatives toward achieving this objective, it is important to stress that each military officer has an obligation to comply with the Geneva Conventions. The implementation and compliance with this Act is required by every military member to perform their duties.

Because Martial law does not specify the scope of expulsion there is a risk that such a law could violate the Geneva Conventions and this broad provision of Martial law (even justified for peaceful purposes) should be amended.

4. Enlistment

Not only Thailand but almost every country in the world (including civilized countries such as United States of America, Canada, and the United Kingdom) has a means by which citizens are recruited as military members.³⁸⁷ Thai law also allows for Martial law, which takes effect when there is a threat to national security, and which authorizes military officers with the power to enlist civilians to assist any military effort in protecting the country. In fact, enlistment has been practiced in Thailand before the period of the Sukothai Kingdom (1238-1438).³⁸⁸ Even the Emergency Decree does not

³⁸⁷ *Ibid.*

³⁸⁸ Pairoj Nuchaja, Relationship between the military and politics in Thai history 68-69, Royal Thai Army War College, 1990.

state the provision of enlistment, although it could be implied that Section 11(6)³⁸⁹ allows for enlistment because it empowers the Prime Minister to perform such an act if it is deemed necessary and is for the security of the country. Is enforced enlistment, in other words, a form of servitude as it is defined by Article 4 of the Universal Declaration? Does the provisional status of national emergency make enforced enlistment a necessary step toward stabilizing a country and ensuring the peace or might these laws serve to justify forms of slavery and abuse?

a. Human Rights Law

Article 4 of the Universal Declaration of Human Rights, states that: "*No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.*" The Article was meant to guarantee minimum standards of protection and support for the freedom of people, standards that are consistent with fundamental rights articulated in the International Covenant on Civil and Political Rights. Also Article 8 prohibits any person to be held in slavery in any form, including servitude. It might be argued that enforced enlistment is a type of servitude but the covenant includes an important distinction between military service and other forms of service in those periods of national emergency: "*Any service exacted in cases of emergency or calamity threatening the life or well-being of the community.*" This exception under Article 8 in the International Covenant on Civil and Political Rights understands the real meaning of

³⁸⁹ See Thai Emergency Decree, at sec.11(6).

³⁹⁰ To issue a Notification the prohibition of any act or any instruction to perform an act to the extent that is necessary for maintaining the security of the state, the safety of the country or the safety of the people.

³⁹¹ See Thai Constitutional B.E.2549 at sec.69.

³⁹² Every person shall have a duty to defend the country, serve in armed forces, pay taxes and duties, render assistance to the official service, receive education and training, protect and pass on to conserve natural resources and the environment, as provided by law.

peace, not an ideal state of goodwill and community (enlistment impacts people's liberties), but rather a long-term political stability in which certain measures must be taken in order to ensure that longevity.

Although no provisions prohibit particular forms of enlistment that Martial law deems as appropriate, there are laws that prohibit the State from arbitrarily enlisting citizen or doing so without legislation. The military has to respect basic human rights for this reason regardless of whether recruitment is "necessity" or "regular." Thailand must ensure that all individuals are treated equally, even when the issue at stake involves the security and national interest of the country.

b. Humanitarian Law

Humanitarian law also prohibits slavery or servitude under Article 4(f) of the Additional Protocol II states: "*Slavery and the slave trade in all their forms.*" As well as Article 7 of the Rome Statute of International Criminal Court stated that enslavement is one of the acts designated as a "crime against humanity." But these do not include the term "enlistment" as a form of servitude. Then, enlistment, which is provided by the legislation of State, seems to be a reasonable demand so long as the measures uphold principles of constitutional law, protects State sovereignty, and obeys international standards of human rights law.

For that reason, martial law and Emergency Decree do not violate human rights and humanitarian law because there are the system of laws that take effect in the period of an emergency, and the body of law imposed by the military over any and all civilians without discrimination. Normally, Martial law shall not allow persons to be enlisted

unreasonably except by the standards of the Thai Constitution. But because of these extreme circumstances, the law provides that it is a duty for everyone to protect the country. Enlistment is a "necessary" practice in an urgent situation.

5. Search, Seizure, Demolition, and Modification

A right of ownership assures the owner the right to dispense with property in a manner he or she sees fit, whether to use or not use the property, or to exclude others from using it. As John Locke said: "*Every man has a property in his own person. This nobody has a right to, but himself.*"³⁹⁰ Generally property rights are protected by Thai laws found in the form of Thai Constitutions and the Civil Codes. In some cases, however, the laws allow the officer, against the right of ownership of person, to search without a warrant as Thai criminal law authorizes the issuance of a search warrant to search and seizure so long as there are reasonable grounds.³⁹¹ For example, Martial law

³⁹⁰ John Locke (Aug.29, 1632 – Oct.28, 1704) was an influential English philosopher. His ideas had an enormous influence on the development of political philosophy, and he is widely regarded as one of the most influential Enlightenment thinkers and contributors to liberal theory. His writings reflected in the American Declaration of Independence. (available at www.wikipedia.org, last visited Jan 1, 2006).

³⁹¹ The Thai Criminal Procedure Code of Thailand, Suchart Jiwachat & Lertchai Jiwachat 's version [hereinafter Thai Criminal Procedure] sec. 69.

[T]he grounds upon which a warrant of search may be issued are as follows :

- (1) to discover and seize any article which may be used as evidence in the course of an inquiry, preliminary examination or trial;
- (2) to discover and seize any article the possession of which is an offence, or which has been unlawfully obtained or which is reasonable suspected to have been used or intended to be used for committing an offence ;
- (3) to discover and rescue any person who is wrongfully restrained or confined;
- (4) to discover any person against whom a warrant of arrest has been issued;
- (5) to discover and seize any article according to the judgment or order of a Court, in the case where such discovery or seize cannot be otherwise effected.

ibid. at sec.92.

[N]o search may be made in a private place without a warrant of search, unless it is made by an administrative or police official and in the following cases;

- (1) where there is a cry for help emanating from the private place;
- (2) where a flagrant offence is evidently being committed in the private places;
- (3) where a person having committed a flagrant offence has, whilst being pursued, taken refuge; or there are serious grounds for suspecting that such person is concealing, in the private place;

provides that military officers have full power to carry out searches, or inspect suspicious items, seize property that may have been possessed by illegal means or without any prior consent by a Government official.³⁹² Furthermore, Section 8 of Martial law also provides military officers with the full power to demolish any buildings or to enter people's dwellings if it seems appropriate for military interest. They also have the right to use all vehicles, animals, foods, armaments, and any appliances of person or company for military affairs. Section 11 (3)³⁹³ and Section 11(4)³⁹⁴ of the Emergency Decree provides that competent officials shall have the power to issue search warrants. Also, Section 11(4) of the Emergency Decree permits competent officials the power accompanied by a notification from the Prime Minister to issue a warrant for removal, withdrawal, or demolition of buildings, structures, or obstructions. However, these provisions of the Emergency Decree are different than martial law because the Emergency Decree permits competent officials such power only on reasonable grounds to seize items if they are

(4) where there are reasonable grounds for suspecting that an article obtained through an offence is concealed or to be found inside, and there are reasonable grounds to believe that by reason of the delay in obtaining a warrant of search the article is likely to be removed;

(5) where the person to be arrested is the head of the household of such private place and there is a warrant for his arrest, or the arrest is to be made under Section 78

When the search is made by superior administrative or police official acting in person, no warrant of search is necessary but it must be a case where a warrant of search may be issued or where a search may otherwise be made under this Code.

³⁹² See Thai Martial law, at sec 9.

[M]ilitary officers have full power to inspect persons, vehicles, and buildings for any reason, at any place, and at any time. They may also inspect letters, telex, parcels, or censor books, broadsheets, newspapers, advertising pictures and articles.

³⁹³ See Thai Emergency Decree, at sec. 11(3).

[T]o issue a Notification that a competent official shall have the power to seize or attach arms, goods, consumer products, chemical products or any other materials in the case where there are reasonable grounds to suspect that such objects have been used or will be used to commit or support an act which causes an emergency situation.

³⁹⁴ *Ibid.* at sec. 11(4).

[T]o issue a Notification that a competent officials shall have the power to issue a warrant for the search, removal, withdrawal or demolition of buildings, structures or obstructions as necessary for the exercise of functions in order to promptly terminate a serious situation where a delay might render the situation beyond control.

suspected of having been used or suspected of being used in the future to “commit or support an act which causes an emergency situation.” But the Emergency Decree does not have any provision to permit an officer to enter a dwelling without a warrant, modify any building, or commandeer property. However, Section 11(6) of the Emergency Decree still provides that the Prime Minister shall have the power to issue a notification to prohibit or allow any act, if such an act is deemed necessary and is for the security of the country. Although this power can accrue to the benefit of the military, permission from the Prime Minister is required, not from a military commander.

a. Human Rights Law

Article 17 (1) of the International Covenant on Civil and Political Rights provides: “*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honour and reputation.*”³⁹⁵

Basically human rights law prohibits “arbitrary interference” in order to protect individuals against the abuse of those laws (such as Martial law) that have ostensibly peaceful intentions.³⁹⁶ Traditionally, those rights include: 1. *control of the use of property*; 2. *the right to any benefit from the property (examples: mining rights and rent)*; 3. *the right to transfer or sell the property*; and 4. *the right to exclude others from the*

³⁹⁵ J.G A.H. Robertson, *Human Rights in Europe: A Study of the European Convention on Human Rights* 138, Manchester University Press 2001.

³⁹⁶ Parvez Hassan, *The Word (Arbitrary) As Used in the Universal Declaration of Human Rights: Illegal Or Unjust?*, (10 Harv. Int'l L. J. 225 (1969); Christopher Keith Hall, *Contemporary universal jurisdiction*, in Morten Bergsmo, ed., *Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjørn Eide* 110 n.3 (Leiden/Boston: Martinus Nijhoff Publishers 2003).

property.³⁹⁷ Thus, everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his or her property.³⁹⁸

b. Humanitarian Law

According to the fundamental provision of “grave breaches,” under the Geneva Convention, any act that was committed against the property, if it was extensive appropriation and not justified by military necessity, is deemed to be carried out unlawfully and wantonly.³⁹⁹ Namely, Article 85 (3) (b)⁴⁰⁰ of the Additional Protocol I prohibits making the civilian population or individual civilians the object of an indiscriminate attack. Moreover, Article 52 (2)⁴⁰¹ of the Additional Protocol I provides that attacks shall be limited strictly to military objects, and the Hague Convention,⁴⁰²

³⁹⁷ Available at www.wikipedia.org (last visited Jan. 1, 2007).

³⁹⁸ Available at www.un.org/cyberschoolbus/humanrights/declaration/17.asp (last visited Jan. 1, 2007).

³⁹⁹ See Geneva Convention I, at art. 50.

(Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

⁴⁰⁰ See Additional Protocol I, at art.85 (3).

(Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects.

⁴⁰¹ See Additional Protocol I, at art.52 (2).

Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

⁴⁰² See 1954 Hague Cultural Property Convention, at art.19.

Conflicts not of an international character:

In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property.

provides protecting of cultural properties as a whole, irrespective of origin or ownership, and prohibiting acts of aggression toward historic monuments, works of art, or places that do not directly aid military support.⁴⁰³ Although international law permits each State to have the right to protect its citizens, it was noted that the process of the law has to be followed by a humanitarian legal framework as well.

Considering Martial law, the law attempts to provide how to use military power as a necessary means only in the emergency situations. Although martial law authorizes military officers to demolish and modify any buildings, the provision-- consistent with the fundamental aims of Geneva Convention—permits this only in the cases of military necessity. But these considerations are not enough because this law does not prohibit the using of extra power by the military officers. The provision does not limit the time period in which this might be carried out nor does it clearly define the phrase “full power.” The scope of the provision does not allow for the military to wage war; the actions taken by the military might, actually, fan the flames of enemies of the State because the operatives are not deemed to be legitimate, and these might violate humanitarian law. Moreover, the permission to use all vehicles, animals, foods, armaments, and any appliances of person or company for military affairs might violate Geneva Convention III.⁴⁰⁴ Even

⁴⁰³ *Ibid.* at art.16.

[P]rotection of cultural objects and of places of worship: Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.

⁴⁰⁴ See Geneva Convention III, at art.18.

[A]ll effects and articles of personal use, except arms, horses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

Article 97⁴⁰⁵ of the Geneva Convention IV permits this authority if it is in accordance with established procedure, but the issues and details in martial law are not sufficient and do not cover for the operation and risk to causes effects on the violation of proportional fundamental.

These problems were resolved, in part, by Emergency Decree, which, although having the basic premise as Martial law, uses different terms for the operation. It added the phrase "necessary and promptly" and did not include the phrase "full power," as this law was explicitly designed to be a provisional set of rules in times of emergency.

The Emergency Decree permits only the reasonable grounds to seize the suspected object and obeys the concept that searches must be conducted for a reason⁴⁰⁶ and that such reasons can be articulated and based on general principles of law. The scope of the Emergency Decree is much narrower than that of Martial law in that the power it authorizes the military is not justified merely on the grounds that such acts benefit the military as a whole but so long as acts such as search and seizure might work to prevent prolonging the emergency situation. Then, this provision suggests that such seizure and search might not violate human rights law if the search is implemented pursuant to the scope of impartiality and could not be categorized as an arbitrary act. Moreover, the transferring of military power to Prime Minister Power was intended to make such operations accountable and to limit the use of this exception as it exists by military officers.

⁴⁰⁵ See Geneva Convention IV, at art.97.

(Internees shall be permitted to retain articles of personal use. Monies, cheques, bonds, etc., and valuables in their possession may not be taken from them except in accordance with established procedure.

⁴⁰⁶ Law of Armed conflict, Lesson 12 23, ICRC.

One concern is that such laws will be either unjust or merely the prerogative of a dictator or other powerful political figure. Therefore, when the Government declares martial law, it must ensure all concerned that the action is to promote the welfare and safety of the general populace, and not to further the objectives of any exclusive or special interest group. If the government meets this standard, a declaration of Martial Law and Emergency Decree will not be contrary to the edicts of humanitarian law.

B. Prohibitions

Although the Thai Constitution of 1997 was given extensive power to regulate and control government and public agencies as well as to provide and protect individual rights and liberties,⁴⁰⁷ Martial Law and Emergency Decree still were in effect during that period. Thus, although the Thai Constitution of 2006 continues to affirm the right and liberty of people, it continues to allow for the possibility of Martial law and Emergency Decree.

1. The Assembly or Gathering of Persons

Ordinarily, Thai Constitution of 1997 provides for freedom of assembly and association, and the government generally respects these rights in practice.⁴⁰⁸ However, Martial law states that the assembly or gathering of persons shall be prohibited,⁴⁰⁹

⁴⁰⁷ Thanet Aphornsuvan, *The Search for Order: Constitutions and Human Rights in Thai Political History*, Faculty of Liberal Arts, Thammasat University, Bangkok Thailand.

⁴⁰⁸ Country Reports on Human Rights Practices 2005, the Bureau of Democracy, Human Rights, and Labor, Mar.8, 2006.

⁴⁰⁹ See Thai Martial law, at sec.11(1)
[B]anning of public meeting and suspension of the activities of associations.

whereas Emergency Decree⁴¹⁰ states the assembly or gathering of persons shall be prohibited only if such an assembly or gathering seems to be unruly. But these provisions were not used during the year 2005.⁴¹¹

a. Human Rights Law

Dr. Manfred Nowak noted freedom of assembly as a fundamental human right and functioning of democracy: "*As a political right, [freedom of association] is indispensable for the existence and functioning of democracy, because political interests can be effectively championed only in community with others (as a political party, professional interest group, organization or other association for pursuing particular public interests).*"⁴¹² Freedom of assembly is guaranteed by Article 20 (1) of the Universal Declaration of Human Rights, which states that: "*Everyone has the right to freedom of peaceful assembly and association.*" Also the International Covenant on Civil and Political Rights provides: "*Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*"

As a fundamental of human rights, the right of peaceful assembly without arms is recognized by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and every person has the right to assemble and maintain a

⁴¹⁰ See Thai Emergency Decree, at sec. 9 (2).

[I]t prohibit the assembly or gathering of persons at any place or the commission of any act which may cause unrest.

⁴¹¹ See Country Reports cited in note 408 *supra*.

⁴¹² 1999 Reports, Human Rights Watch.

public group without any prejudice. To restrict such a right must be prescribed by law and is only necessary in a democratic society in order to protect the interests of national security, public safety, or public order. According to the emergency situations, Article 21 of International Covenant on Civil and Political Rights provides: *No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

Although every person has the right to organize meetings or to take part in meetings in a peaceful way, the provision of martial law can suspend such meetings if the peace of the country is deemed to be at stake. Such restrictions on public gatherings may be imposed for the preservation of security. This provision appears potentially tyrannical and can be seen to restrict people's liberties. However, if the State cannot control people during an emergency period, it is hard for the State to aid, shelter, and protect their own citizens. Therefore, this prohibition to assemble and gather during martial law may limit the human rights but only insofar as it intends to re-establish safety through peaceful means. However the provisions of Emergency Decree seem to be more lenient.

b. Humanitarian Law

There are no provisions to restrict any states that seek to institute martial law in response to a group gathering to protect their people.

Press Release

Even though Thailand has had a democratic system for no less than 75 years, media censorship remains in place in a whole country as a result of the emergency decree instituted in the southern area. The injunction given by the Thai Government to the media was to report all the news and events in a constructive and honest manner in order to create the harmony and reconciliation in the South.⁴¹³

Section 11 (2) and (3) of the Martial law prohibits the release, sale, distribution of any press release, book, newspaper, or article, and prohibits the freedom of the expression, including receiving and sending radio or television waves. Section 9 (3)⁴¹⁴ of the Emergency Decree prohibits the press release, distribution, or dissemination of letters, publications, or any means of communication, which may cause fear amongst the people or have the intention of providing information that intentionally misleads the public during the emergency situation. The Government may restrict print or broadcast media by specific legislation in times of crisis. The Decree empowers the Government "to prohibit publication and distribution of news and information that may cause the people to panic or with an intention to distort information." The Emergency Decree also authorizes the government to censor newspapers and ban publications, although these powers have not been used since 2005.⁴¹⁵

⁴¹³ Thailand: Coup Leaders Must Restore Fundamental Rights, Oct. 2, 2006, Human Rights Watch.

⁴¹⁴ *Ibid.* at sec. 9 (3).

⁴¹⁵ To prohibit the press release, distribution or dissemination of letters, publications or any means of communication containing texts which may instigate fear amongst the people or is intended to distort information which misleads understanding of the emergency situation to the extent of affecting the security of state or public order or good moral of the people both in the area or locality where an emergency situation has been declared or the entire Kingdom.

⁴¹⁵ See Country Reports cited in note 408 *supra*.

a. Human Rights Law

Article 19 of the Universal Declaration of Human Rights states that: *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontier.* Also Article 19 of the International Covenant on Civil and Political Rights provides: *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.* These provisions recognize the freedom of expression, but in the name of protecting national security and preserving public order, the statute of International Covenant on Civil and Political Rights allows the State to restrict such freedom. This restriction is provided by law and is derived out of necessity: *The exercise of the rights ... may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary.*

Democratic principles require that the people shall have the freedom to express ideas in public because the fairness system depends on the free flow of information. People shall enjoy the freedom to express whatever they like without political interference. However, during this emergency period, media expression might cause more violence and more chaos. Protecting security as a nation remains a priority because it is in the national interest to maintain the economic stability, protect citizens' rights, and preserve the democratic system within the country. If national security is not consistent, no one shall enjoy their cherished freedom again. Therefore, these provisions of martial

law and Emergency Decree do in fact work to preserve rather than erode the concept of human rights law.

b. Humanitarian Law

Article 79⁴¹⁶ of Additional Protocol I is a measure to protect journalists but because the law states that every person is entitled to humane treatment, it stipulates the standards for international law in humanitarian concerns. It does not limit the right of the State to prohibit any press release but it does protect certain rights and duties of a democratic system of the people. Thus, these provisions are consistent with humanitarian law.

3. Freedom of Movement

In general practices, authorities respect citizens' rights by the Constitution law. Thus, people can change their homes and workplace at their will, or travel freely within the Kingdom. However, there are with some exceptions.⁴¹⁷ Namely, Sections 11(4)⁴¹⁸ and (6)⁴¹⁹ of the Martial law prohibit any person to use public transportation and to depart

⁴¹⁶ See Additional Protocol I, at art. 79.

[M]easures or protection for journalists:
1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.
2. They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 (A) (4) of the Third Convention.
3. They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the Journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.

⁴¹⁷ See Country Reports cited in note 408 *supra*.

⁴¹⁸ See Thai Martial law, at sec. 11(4).

[B]anning of using public transport either on land, water or air including by train and tram.

⁴¹⁹ *Ibid.* at sec. 11(6)

[B]anning the leaving out of dwelling during determined period.

from a dwelling place during the period of martial law. Sections 9 (1),⁴²⁰ (4),⁴²¹ (5),⁴²² and (6)⁴²³ of Emergency Decree prohibit any person from departing from a dwelling place and the use of routes or vehicles. They also prescribe conditions on the use of routes or vehicles and the right to enter into or stay in any place. Moreover, such provisions call upon the State to specify the chosen area of safety for people to stay. Up to this day, Thailand extends a State of emergency in Pattani, Yala, and Narathiwat to deal with the escalating violence. The Decree extends the period for which suspects can be detained, and limits freedom of movement.

a. Human Rights Law

Article 13 of the Universal Declaration of Human Rights, states that: "*Everyone has the right to freedom of movement ...*" The Universal Declaration of Human Rights is the first international document that explicitly recognizes the rights of persons to freedom of movement. Normally, all people are entitled to the recognition of this inherent dignity, which is a "foundation of freedom and justice in the world." Freedom of movement is part of the "liberty of man" (Jagerskiold) and creates one of the most basic human rights.⁴²⁴ However, Article 12 of International Covenant on Civil and Political Rights

⁴²⁰ See Thai Emergency Decree, at sec.9(1).

[]o prohibit any person from departing from a dwelling place during the prescribed period.

⁴²¹ *Ibid.* at sec.9(4).

[]o prohibit the use of routes or vehicles or prescribe conditions on the use of routes or vehicle.

⁴²² *Ibid.* at sec.9(5).

[]o prohibit the use of buildings or enter into or stay in any place.

⁴²³ *Ibid.* at sec.9(6).

[]o evacuate people out of a designated area for the safety of such people or to prohibit any person from entering a designated area.

⁴²⁴ Freedom of movement, Human rights Education Associates, available at <http://www.hrea.org/learn/guides/freedom-of-movement.html> (last visited Aug. 1, 2006).

provides that the right to liberty of movement can be restricted if: *those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*" Due to the fact that this Article provides limits on the freedom set forth in the Covenant and Universal Declaration, measures derived from the provisions can only be legitimate so long as they are exceptional, reasonable, and of a temporary nature. The State should carefully consider whether these restricted measures are necessary and appropriate for the situation. The State has to ensure that such limitations are in accordance with domestic law, so that the provisions of martial law and Emergency Decree will meet such standards and will not be inconsistent with the fundamental of freedom of movement.

b. Humanitarian law

Article 35⁴²⁵ of the Geneva Convention IV permits the State the right to refuse any request for permission to leave the territory, if such departure would be contrary to the security interests of the State. As every State has its own system based on its own laws, all countries could exercise their jurisdiction through appropriate laws and have the

⁴²⁵ See Geneva Convention IV, at art.35.

[A]ll protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. The applications of such persons to leave shall be decided in accordance with regularly established procedures and the decision shall be taken as rapidly as possible. Those persons permitted to leave may provide themselves with the necessary funds for their journey and take with them a reasonable amount of their effects and articles of a personal use.

If any such person is refused permission to leave the territory, he shall be entitled to have refusal reconsidered, as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose.

Upon request, representatives of the Protecting Power shall, unless reasons of security prevent it, or the persons concerned object, be furnished with the reasons for refusal of any request for permission to leave the territory and be given, as expeditiously as possible, the names of all persons who have been denied permission to leave.

right to secure the safety of their country. Thus, these provisions are consistent with humanitarian law.

4. Freedom of Communication and Correspondence

Although the Thai Constitution avowedly protects a "person's family rights, dignity, reputation or the right of privacy," in which "the assertion or circulation of a statement or picture in any manner whatsoever to the public that violates or affects a person's family rights, dignity, reputation or the right of privacy, shall not be made except for the case which is beneficial to the public," there has been a good deal of criticism that legislation and administrative directions under the Constitution have primarily concerned data handled by government agencies, rather than the private sector.

⁴²⁶In the case of emergency, the freedom of receiving and sending radio or television waves is prohibited by Martial law. Section 11(5)⁴²⁷ of the Emergency Decree provides that a competent official has the power to issue an order to inspect letters, books, printed matters, telegraphic transmission, telephone communications, or any other means of communication as well as to cancel or suspend any contact or communication even though Thai law guarantees: *"Persons have the freedom to communicate with one another by lawful means."*

⁴²⁶ Asia and the Pacific, Caslon Analytics, available at [www. http://www.caslon.com.au/privacyguide6.htm](http://www.caslon.com.au/privacyguide6.htm) last visited

⁴²⁷ See Thai Emergency Decree, at sec.11(5).
[T]o issue a Notification that a competent official shall have the power to issue an order to inspect letters, books, printed matters, telegraphic transmission, telephone communications or any other means of communication as well as to cancel or suspend any contact or communication in order to prevent or terminate the serious incident provided that the rules prescribed in the law.

a. Human Rights Law

In general, everyone shall have the right to freedom of communication and correspondence; these rights are basically guaranteed by Article 12 of the Universal Declaration of Human Rights, states: *No one shall be subjected to arbitrary interference with hiscorrespondence.* As well as Article 17 (1) of the International Covenant on Civil and Political Rights states: *No one shall be subjected to arbitrary or unlawful interference with correspondence, nor to unlawful attacks on his honor and reputation.* This right is a common right for all mankind, regardless of age or gender. These provisions recognize that these are inherent rights and should be protected. However, if we consider the world '*arbitrary or unlawful interference,*' the freedom of correspondence is obviously limited as it is related to this law. What this means is that there are situations that are consistent with justice and domestic law and that this right can be narrow.

b. Humanitarian Law

There are no provisions of humanitarian law that forbid the State's temporary regulation of these provisions that are not against the fundamental nature of humanitarian law

C. Justice and Remedy

1. Judicial Proceedings

When martial law is in effect, a military court will be provided for cases that do not fall under military jurisdiction. However, the Emergency Decree did not mention

jurisdiction under the military court because the case will be heard in any court that has jurisdiction over non-military cases.

a. Human Rights Law

Even though the concept of human rights law has encouraged countries to create the domestic infrastructure needed to support a fair justice system, legislation is needed in order to provide the legal basis for national legal systems that have the power to stop violence and bring peace to nations and people. Therefore, the appropriate system is needed to exercise a response to violence and to bring perpetrators to trial and just punishment. Articles 8, Article 10 of the Universal Declaration of Human Rights, Article 9(3), and Article 14 of the International Covenant on Civil and Political Rights assert every person shall have the right to a fair trial by the court. Human rights law does not differentiate military courts from non-military courts as long as the judicial process is done in accordance to the constitution or the law, and the Judge is independent and free from influence of any political party. The Thai military court, therefore, shall not be prohibited to trying any case or adjudicating a case against an individual who is under military's jurisdiction so long as the military procedure is conducted without discrimination and prejudice.⁴²⁸ However, military court procedures state that the verdicts for cases that are related to emergency conditions under section 61⁴²⁹ shall be final. This

⁴²⁸ The Act on the Organization of Military Courts B.E. 2498(1955), Judge Advocate General's Department 's version, sec. 13. [hereinafter The Act on the Organization of Military Courts].
[A] military court shall be competent to try and adjudicate and inflict punishment to any person who violates military law or other laws of criminal nature in the case which the offender in under the jurisdiction of the military court at the time of committing of offence.

⁴²⁹ See The Act on the Organization of Military Courts, at sec. 61.

bridged the rights of victims because Article 14 (5) of the International Covenant on Civil and Political Rights provides: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

This military procedure violates the concept of human rights law because a system of military tribunals prohibits the right to appeal but not by reason of providing a military court.

b. Humanitarian Law

The law of armed conflict permits the adjudication of many types of cases in military courts. For example, Article 84⁴³⁰ of Geneva Convention III states that the prisoner has to be provided due process by military court. However, Article 106⁴³¹ states that every prisoner of war has the right to appeal. Then, the Martial procedure might violate the humanitarian law. On the other hand, there is no provision to prohibit the right to appeal by Emergency Decree.

[N]either appeal nor dika appeal shall be lodged against judgments or orders of military court in an abnormal period.

⁴³⁰ See Geneva Convention III, art. 84.

[A] prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

⁴³¹ *Ibid.* at art. 106.

[E]very prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

2. Restitution and Reparation

According to Section 16 of the Martial law, the provision does not provide the right to compensation by giving the reason that it is necessary for the protection of the nation, religion, and the King. However, Section 17⁴³² of the Emergency Decree provides that victims shall have the right to seek compensation from the Government.

a. Human Rights Laws

Article 8 of the Universal Declaration of Human Rights provides: "*Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*" Also, Article 9(5) of the International Covenant on Civil and Political Rights provides: *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.* Further, Article 2 provides: "*To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity...*"

According to international law, the compensation or other means of remedies shall be done at a local level before seeking an international intervention. This rule intends to allow the State to make the correction to the damage done. People whose rights or freedoms have been violated should pursue the legal redress domestically before seeking an international committee, court, or other tribunal.⁴³³ These remedies are not

⁴³² See Thai Emergency Decree, at sec.17.
This does not preclude the right of a victim to seek compensation from a government agency under the law on liability for wrongful act of officials.

⁴³³ International Norms and Standards relating to Disability, available at <http://www.un.org> (last visited Jan 31, 2007).

limited to property losses but including death, personal injury, property losses, losses of income, loss of support, loss of housing, loss of medical expenses, or costs of departure.⁴³⁴

So therefore, the regulation of the applicable of broad provision of martial law is clear-cut in that it is contrary to the provision of human rights law even though its operation might seem just for the protection of a nation.

b. Humanitarian Law

Although humanitarian law does not have a provision to remedy the victims, according to Article 68⁴³⁵ under the Geneva Convention III, the compensation provided for the injury is as a prisoner of war. The broad provision of martial law might have violated this article because it applies in all circumstances. However, the Emergency Decree does not violate the Geneva Convention because all victims have the right to compensate.

D. Conclusion

Martial law and the Emergency Decree might seem to abridge the rights and liberties of civilians. However, if we look to the human rights laws and humanitarian laws, any government restrictions on freedom for reasons of the nation and security can be done. Even the Universal Declarations of Human Rights recognizes the standard rights

⁴³⁴ Luke T. Lee, The Issue of Compensation for Palestinian Refugees, Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem.

⁴³⁵ See Geneva Convention III, at art.68.
(Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends.

of people; under Article 29 (2) provides as follows: *"In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."* In addition, the International Covenant has a provision that is similar to the Universal Declarations of Human Rights but more explicit. It could be said that such rights and freedoms are exercised if there is support for the purposes and principles of the United Nations. The issuance of these laws are not contrary to international law. Nonetheless, such laws must have a clear legal basis for reasons of security, necessity, and proportion. According to Thai domestic law, there are some provisions of the martial law that risk violating human rights and humanitarian law. Because the Thai Government knew that the martial law might be obsolete because this law occurred before the Universal Declarations of Human Rights and the International Covenant on Civil and Political Rights existed, they issued the Emergency Decree. From my analysis, it was found that the Emergency Decree does not violate both human rights and humanitarian law, but there were some provisions of the martial law that violate both laws. Then, such provisions of martial law should be abandoned.

IV - 4 Nature and Extent of Violence

While the military and police forces exercised their powers in the Kru Se Mosque and the Tak Bai case, there were other accusations against these Thai Security Forces that made matters worse. It is true that a few aspects of the operations violated human rights

law and raised questions whether all the methods used by the Thai Government violated humanitarian law.

1) Consider the Kru Se mosque case. According to the Thai authorities, 30 Islamic dissidents opened fire by launching rifle shots at the police outpost, killing two security officers in the Pattani province. After the gun fire ceased, the dissidents escaped, carrying off AK – 47 and M -16 rifles to the Kru Se mosque, and continued to fire from the mosque at Thai Security Forces. However, after the Thai Security Forces already had used force, it was found that most of these deceased dissidents only had machetes and only few carried rifles.⁴³⁶

As State members “pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,” the use of force by the Thai Security Forces must not be against the fundamental of the Universal Declaration and the International Covenant on Civil and Political Rights that contains a number of provisions which constitute the foundation for resolutions based on the principle of equal rights.⁴³⁷ Although the Universal Declaration of Human Rights forms the fundamental normative basis on which international norms provides: “Everyone has the right to... life,” these rights and lives must include not only the dissidents but shall cover the life of the officers as well. As the

⁴³⁶ See more details in chapter 2.

⁴³⁷ International Norms and Standards relating to Disability, available at <http://www.un.org> (last visited Jan 31, 2007); See also the Universal Declaration and the International Covenant on Civil and Political. “recognized that the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” In Article 7 of the Universal Declaration states: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” Also Article 2 of the International Covenant on Civil and Political Rights provides: “ Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

Universal Declaration of Human Rights in Article 29 (2) states: “(2) *In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely...*”, and Thai law states : “*every person shall obey the law...*” In this case, we might consider whether the treatment of these dissidents qualifies as a violation of the fundamentals of human rights law or not. The use of force to stop the violence after the dissidents launched grenades upon the officers (killing an officer at the outpost) in order to prevent further violence seemed justified because it came after a warning and a failed negotiation for surrender. This incident occurred while there were approximately 4,000 onlookers who started fighting with Thai Security Forces.⁴³⁸ Thai law⁴³⁹ permitted the officers to use reasonable power to keep the public at peace as long as the operations of the Thai Security Forces had been performed without prejudice and treated every person fairly and equally. At this point, we could see that this was not against the concept of human rights laws. In other words, the Thai Security Forces have the right to operate according to human rights laws because their duty was to protect the security of the country.

In cases where the law of armed conflict applies, they would be related to humanitarian law under the Geneva Convention under Common Article 3. Then, the second question is whether the method of Thai Security Forces violates the concept of Common Article 3 because most of these dissidents only had machetes and few carried rifles.

⁴³⁸ Tak Bai and Kru Se Report, The National Reconciliation Commission, Thailand.

⁴³⁹ The Criminal Procedure Code of Thailand, at sec.2(16)
[A]dministrative or Police Official” means an official invested by law with the power and duty to keep the public peace.

As with the concept of Common Article 3,⁴⁴⁰ the provision protects the person who laid down their arms. This is indeed not the case of the dissidents as they did not lay down their arms, still fired, and threw grenades to the Thai Security Forces; thus, they lost protection under Common Article 3. The following question is whether the use of force is to be deemed excessive and indiscriminate. If so, does that violate the Additional Protocols in Article 51(4)? In this case, the dissidents armed with AK-47 and M-16 rifles, and they barricaded themselves in the mosque. The confrontation was made more perilous by the fact that a number of civilians, apparently hostile to the Thai Security Forces, had gathered outside the mosque. As time dragged on, and fearing that the crowd was on the verge of assisting the dissidents in the mosque, the Thai Security Forces decided that storming the mosque would be the best operational procedure. Therefore, this did not constitute an indiscriminate target so as to be characterized as an impulsive reaction or an excessive use of force. The acts of the Thai Security Forces did not violate the humanitarian law.

Moreover, in discussing whether Thailand's use of force in the Kru Se situation violated the law or not, it is important to not only look at human rights and humanitarian

⁴⁴⁰ The Four Geneva Conventions Common art. 3.

[I]n the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

law, but also at other treaties that Thailand is party to. According to the Thai Security Forces stormed this mosque by using tear gas and firing several rounds of vehicle-mounted recoilless guns, rocket-propelled grenades, and an RPG Missile. As Thailand is a State Party to the 1925 Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of the Bacteriological Methods of Warfare,⁴⁴¹ and of the 1993 Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction which entered into force on April 29, 1997,⁴⁴² it raises questions about whether the use of such weapons violated such treaties.

As the 1925 Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare and the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction do not allow Thailand to use chemical weapons as a method of warfare. They allow, however, the right to use chemical weapons in response to special cases such as rebellions and riots. These Conventions do not apply to internal affairs. Therefore, the Thai Security Forces still have the right to use tear gas, liquids, or similar substances to control agents under Thai law so long as the conflict is not an armed conflict and the using of such instruments are proportional. Considering the use of grenades and bombs on the mosque, such an attack seems to fit the category of “incendiary weapons” that falls within the scope of 1980 Convention on prohibitions or

⁴⁴¹ Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 17 June 1925, 94 L.N.T.S.65 [Hereinafter 1925 Geneva Gas Protocol].

⁴⁴² Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Paris 13 January 1993, 32 I.L.M.800 (*entry to force* Apr.29, 1997) [hereinafter 1993 Chemical Weapons Convention].

restrictions on the use of certain conventional weapons that may be deemed excessively injurious or to have indiscriminate effects. However, Thailand has not acceded to this Convention and is not bound by it, even if the weapons that I mention are designed to set fire to objects or to cause burning injuries to persons through the action of heat and flame from shells, rockets, bombs, and other incendiary weapons.

2) Consider the Takbai case. This violence began when a crowd gathered at the Takbai police station in the Narathiwat province and asked for the unconditional release from detention of six men who were accused of stealing weapons in January of 2004.

In this assembly, the protesters injured three officers and overturned two military trucks and one police car. Besides, the evidence showed that the protesters had knives, machetes, and grenades which were recovered from the area of the protest during their attempt to storm the police station. The Security Forces managed to stop the attack and forced the protestors to surrender, after which approximately 1,300 people were arrested and detained. Ultimately, they were put into military trucks to be transferred to detention centers but during that trip, it was reported that 78 prisoners died as a result of suffocation or dehydration.⁴⁴³ The question is in this cases is whether the Thai Security Forces violated human rights and humanitarian law.

Both human rights and humanitarian law absolutely prohibit all forms of torture and the killing of defenseless people. The Universal Declaration of Human Rights recognizes the rights of all people and all nations. These people were protected under human rights law, and they were legally protected from being treated inhumanely under Common Article 3 of humanitarian law.

⁴⁴³ Tak Bai and Kru Se Report, The National Reconciliation Commission, Thailand.

In this case, the evidence showed that the demonstrators or protestors had weapons and attempted to storm a police station by demanding the release of six detained Muslim security guards.⁴⁴⁴ They would not be protected by the Universal Declaration of Human Rights in Article 20, which states: “ *Everyone has the right to freedom of peaceful assembly and association.* ” As a result, the State has the right to keep the peace to detain or arrest by due process of the law. Although the Fact-Finding Commission presented to the Cabinet on December 28, 2004 that the State exercises its legal authority in taking control of the situation and maintaining public order, dispersing the crowd and taking custody of the demonstrators, it concluded that the transportation of those held in custody was conducted in conformity with laws and was reasonable given the necessity dictated by the prevailing circumstances. However, serious mistakes occurred during the transportation process in which the commanding officers failed to carry-out their duties properly which resulted in many unfortunate deaths.⁴⁴⁵ According to Article 5 provides: “ *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.* ” and as Article 9 of Universal Declaration of Human Rights states: *No one shall be subjected to arbitrary arrest, detain ...* ”, It could be pointed out that the Thai Security Forces had violated the human rights law because of the fact that people were detained face down with hands tied behind their backs inside the trucks without any prior warning. In this case, it could be said that the Thai Security Forces also violated Common Article 3 of Geneva Conventions because the Thai Security Forces did not treat them humanely. However, a conflicting report suggests that some deaths were due to

⁴⁴⁴ *Ibid.*

⁴⁴⁵ *Ibid.*

weakness as a result of religious fasting.⁴⁴⁶ Therefore, to analyze this case without prejudice, one would have to compare the treatment of the protesters to others put in a similar situation without having fasted. Could anyone have withstood this treatment? Such a question can only be answered by a medical doctor and such a judgment can only be passed through the process of the justice system. Any person who violates the law shall be punishment.

IV - 5 Conclusion

To impose an Emergency Decree on three provinces seems to limit the rights of the people and would not be in the best interests of all Thai citizens. However, violence in Southern Thailand has impacted the peace and stability of the country. If we consider the families of those killed by the violent acts, then they need protection to ensure the safety and well-being of Thai citizens as protected by Thai laws. The aim of such laws is to protect innocent persons and their properties during the eruption of a crisis. The State has a duty to prevent and block unlawful acts, and perpetrators must be brought to justice. Additionally, the most important thing that Thailand shall realize is that legislative and practical means have to fall within the scope of the standard of humanitarian law and the principles and purposes by charter of the United Nations. As an active member of the United Nations, Thailand has participated in numerous treaties, international conventions and international agreements. After ratifying such conventions or agreement, the Thai domestic laws have to be implemented accordingly. It could be said that the concepts of

⁴⁴⁶ 78 perished in custody, The Nation, Oct. 27, 2004, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=2&id=108077&date=2004-10-27> (last visited Aug. 1, 2006).

international laws influenced the Thai laws, which were created to be conformity with them. Although certain conventions Thailand has not yet ratified (such as the Second Optional Protocol to the International Covenant on Civil and Political Rights Aimed at Abolishing the Death Penalty, Rome Statute of the International Criminal Court, and any other treaties), all are currently under active consideration and there are no government policies that suggest they would be denied. Thailand has led an ongoing effort to promote and cooperate with peacekeeping forces that follow these principles laid out by the Charter of the United Nations. Thailand has also ratified the four Geneva Conventions and the Hague Conventions. Accordingly, there was not a case that Thailand defied or did not cooperate with the United Nations. The evidence suggests that Thailand accepts in principle the existence of customary international law, and as a consequence, is legally bound to comply with the standard law of armed conflict required by these Conventions. That is to say both domestic laws and International laws are applicable to the violence in Southern Thailand. Although the Geneva Convention and the Additional Protocols do not apply to lately situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature in Thailand, Thailand has to realize that the Thai Security Forces shall not violate either Thai law or international law especially human rights according to a common standard of achievement for all peoples and all nations. Thailand has to bear in mind that these rights are the basic rights and freedoms to which all humans are entitled. Furthermore, to operate in harmony for the peace of the country and the world, Thailand should ensure that its laws respect the concepts of international law even though some Conventions have not yet been ratified. The most fundamental purpose of Human Rights and International Law is to protect the

right to life. To violate this most basic human right is to not only deny individuals their fundamental moral entitlement but to make a country vulnerable to "crimes against humanity."

Additionally, there is a support for the International Criminal Court in the Asian region, which is crucial for the growing global fight against impunity and for the defense of fundamental human rights. Thailand has already signed such a statute even though it has not ratified the Rome Statute. Thailand played a crucial role to support the establishment of the International Criminal Court and remains a staunch supporter of the main idea behind this Statute. For that reason, Thailand has to take measures to ensure that the country can effectively operate all of the measures in its humanitarian approach throughout the country.

CHAPTER V

SOLUTIONS AND RECOMMENDATIONS

V- 1 Introduction

In the last four years, there has been an increase in seemingly unpredictable, sporadic and pointless acts of violence in southern Thailand. A few of the conditions that have perpetuated the conditions for such violent acts include weaknesses in the infrastructure, long-standing misunderstandings of the history and culture of ethnic groups, and the lack of coordination between government agencies across the country.⁴⁴⁷ Thus, there is no single flawed policy of the Thai Government that might fix this serious dilemma but rather multifold reasons that are intricately woven into the conflicts of society and culture, economic factors, domestic and international organizations as well as domestic and international laws and policies. This chapter will examine the solution of problems in this area by addressing the following important points:

-- Ethnic diversity in Thailand must be understood, its history must be made public, and its differences must be publicly as well as privately appreciated so that the ethnic conflicts can be diminished. This is an important part of Thailand's domestic policy that can have significant international implications.

-- An analysis of security measures – of both preventative measures and of the mistakes made in the past of what security forces did (or did not perform)—will help find ways to resolve the immediate and long-term violence.

⁴⁴⁷ Michael Ignatieff, *Humanitarian Intervention : Ethical, Legal, and Political Dilemmas* 302, (J.L.Holzgrefe & Robert O.Keohane., ed., Cambridge University Press 2003).

-- The studying and comparison of Communist Party of Thailand (CPT) and the violence in southern Thailand by analyzing the strategies, tactics, and techniques are to provide the policies for the Thai Government to adjust for the current situations.

-- The goal to stem violence cannot be merely something that Thailand tries to achieve by itself. Rather, it needs the cooperation of international organizations and other countries.

A. History

Pattani has long been recognized as one of the most important of the ancient empires in Malaya. Pattani's history is one rife with conflict with the Siamese Empire and the profound differences between Pattani's and Siam's religious, political and cultural history have been (and continues to be) sources of great misunderstanding and prejudice. Historically, Pattani has embraced Islam and the vast majority of citizens identify themselves as either practicing Muslims, or belonging to the Muslim community. As with most traditional Muslim communities, notions of religion and the law are inextricably tied to one another. In Thailand, however, monarchical rule is in many ways the result of enlightenment ideals of the separation of church and State. This is a point of contention between Siam and the former colonized country, in which the Koran continues to dictate moral and legal precedent for the vast majority.

To complicate matters, Thailand has suppressed the history of Pattani in the education of its youth out of fear that being too explicit about Pattani's past might give cause for more dissident in the name of self-determination in that troubled southern region. Siam has, for centuries however, been able to incorporate diverse ethnic

populations where traditional values and practices have survived within the increasingly modernized world of Southeast Asia.

In general, Thai policies have proven to be contentious issues for the southern region because the uniformity of such laws lacks a particular responsiveness to the distinct cultural differences found in the south. So even when Pattani, Yala and Narathiwat seem to be congenial to certain policies of Siam, all policies, however seemingly innocuous, have far-reaching impact. For example, despite the goals of the government to improve the structure of these provinces, policies that required Thai language as the official language alienated those in the south who were not native Thai speakers. This is one of many examples that suggest that, prior to launching any policy, the government should study how these policies might impact this important minority population. Any policy concerned with sustaining and maintaining a peaceful community in Thailand must have a healthy balance between the people's needs and State's needs. It is impossible to have a peaceful community if only one side is satisfied.

In this thesis, I recommend the first goal for improving government policy-making is to make an attempt to understand the diversity of cultural, religious and political histories that make up the main subgroups in Thailand. As the well-known aphorism would have it, those who fail to learn the lessons of history are doomed to repeat it.⁴⁴⁸ According to Adam Garfinkle, history is "an art just like painting or architecture and is designed like them only to give intellectual and artistic pleasure."⁴⁴⁹ But most of those who seek knowledge from history have more purposeful ends in mind,

⁴⁴⁸ Adam Garfinkle, How to Learn Lessons from History— And How Not To, Foreign Policy Research Institute, May. 2001, Vol. 7, No. 1, available at <http://www.fpri.org/footnotes/071.200105.garfinkle.lessons.html> (last visited Aug. 1, 2006).

⁴⁴⁹ *Ibid.*

particularly policymakers and policy analysts who discern a moral responsibility to protect their nations and their fellows from gratuitous harm. Thailand should apply this idea towards improving its domestic policies because the past is the only data we have from which to glean patterns of behavior, the endurance of which are features of human nature, relevant to our own times and problems.⁴⁵⁰

Because an understanding of history and traditions of peoples helps the State to launch the appropriate policy, the State should publicly avow respect of people history. For instance, public schools should therefore include more history of Pattani in their curriculum. So although the history of Pattani might cause pain for many of those who have suffered during Siam's conquest, no State is without prior conflict and we can learn how to solve such programs from understanding better the world's history. It's hard to find the "perfect" solution but improvements can be made. For instance, I mentioned that Pattani's people are proud of their history and that Thai schools should include such history in their curriculum. I understand this is not only to benefit the people intellectually but is, more importantly, a sign of the Thai Government's sincere intention to recognize and support this difficult past. By including such a history, it is less likely that Pattani children will reject studying in a state school.

B. Culture

In order to have a better understanding of Pattani's people history, the next step is to attempt to understand more about the distinct cultural, social, religious and ideological beliefs and values. According to Mathew Arnold, culture is a constantly evolving

⁴⁵⁰ *Ibid.*

component of a healthy democratic State, but rather than assuming that these values exist in the abstract and are the same for all human societies, values, behaviors, and ideologies obviously differ from people to people.⁴⁵¹ To better understand the culture of a people is to better understand how policy might exacerbate or allay the conflict between the State and various ethnic, religious or educational problems.

After the Government clearly understands more about the culture and nature of ethnic peoples, the Government will be able to better manage the system through various kinds of responses to religious, political and military conflicts. For instance, when the Thai police or military want to search, seize person or things especially in the respectful place or the Muslim temple, it has to be done in a manner that's respectful and not against the religion of Islam. The use of police dogs should be the last option to the operation. If it is unavoidable to using dog police, the Government should ask for the recommendation of Muslim leaders first. To create a peaceful community, the Government needs to show concern for all types of people and belief systems.

⁴⁵¹ Matthew Arnold, Culture is "High Culture" From Culture and Anarchy, 1869, available at <http://www.wsu.edu:8001/vcwsu/commons/topics/culture/culture-definitions/arnold-text.html> (last visited Nov. 1, 2006).

C. Education

Today, there are more than 500 pondok schools that operate in southern Thailand. These schools were originally religious schools that took as their aim the continuation and promotion of Muslim customs, beliefs and culture. However, only about 300 of them are registered with State authorities. The Thai Government suspects that some of these traditional schools foster religious extremism and harbor militants. 300 of these 500 schools are suspected of being places where preaching violence is a commonly accepted practice.⁴⁵² Recently, research conducted by the Prince of Songkhla University (Pattani) found that up to 64% of the Pattani people desired general education for their children rather than Ponok schools in spite of the fear that secular education will not provide a balance of religious instruction and other forms of education.⁴⁵³ Therefore, the challenge of the Thai Government is to distinguish between the illegal ponok's school and the traditional pondok's school.

This implies that many people still see the benefit of a State funded education and these findings are not only a sign of confidence in the Thai education system but also an acknowledgement of the power that such a system has in regards to future employment.

The Thai Government has a plan to develop the education in this region but the management of these institutions has to start with the balance between culture and education. By this I mean that the development of an educational system and socioeconomic development has to be consistent with the region's culture.⁴⁵⁴ The final

⁴⁵² Joseph Liow, The truth about pondok schools in Thailand, Sep. 3, 2004, Asia Times , available at http://www.atimes.com/atimes/Southeast_Asia/FI03Ae04.html(last visited Nov. 1, 2006).

⁴⁵³ *ibid.*

⁴⁵⁴ Overcoming Violence Through the Power of Reconciliation: Executive Summary, the National Reconciliation Commission, Thailand.

report of UNESCO-UNICEF on March 1, 2006, suggested that the Thai Government should support such policies as follows:⁴⁵⁵

- *Work (in cooperation with Southern leaders) to support a written Malay language since the Ministry of Education still has no clear policy on use of language in mother tongue language and writing;*
- *Make more government resources available since the Thai state is weak in the South, and (regarding the decentralized system) insure better quality to promote the participation of all in learning, and for education management;*
- *Provide more resources from the state to support better development of rural areas and especially under privileged children, particularly in pondoks and tadikas;*
- *Provide government advisors in pondoks;*
- *Give more scholarships for Muslims to study abroad (and then teach the next generation in Southern Thailand);*
- *Provide the best teachers for Southern Thailand (not now a priority)*

To develop the education system, therefore, will be to help solve some of the deep-seated poverty of this region since more education also means more job opportunities for a region traditionally saddled with low income and lacking job opportunities. To improve the quality of the education, Thai public schools need to include more culturally sensitive understandings of the Thai ethnic past so that there is a viable option for trying to solve not only ethnic divisiveness but also economic disparity.

⁴⁵⁵ Final Report, UNESCO-UNICEF on March 1st 2006 workshop on: [E]ducation for Peace-building in Southern Thailand: Reflections on Human Security.

D. Economics

One of the main causes for the radical separatist sympathies in southeastern Thailand is the impoverished conditions that the majority of Muslims in this area contend with. The disparity between the rich and poor has generated dissident groups that galvanize various Muslim factions and often justify crimes on the grounds of social equality and economic justice.⁴⁵⁶ The Thai Government cannot ignore this crucial element of the conflict in this region. The Government should not only be concerned with the GDP or SET index but should pay attention to the ways of life particular to the cultural and social context. The plan to support the weak economy in this region has been effective and needs to find continual support in the coming years. It advises:⁴⁵⁷

- *Promoting the halal food industry to enhance job opportunities and stimulate economic growth in the south;*
- *Providing financial assistance and tax incentives to attract investments;*
- *Ensuring that financial services provided be in accordance with the Islamic principles;*
- *Providing assistance in developing local products and enhancing its market accessibility;*
- *Providing low interest rates to expand the economy; and*
- *Improving the transportation system to enhance the flow of goods and services.*

⁴⁵⁶ Asep Chaerudin, *Countering Transnational Terrorism in Indonesia and the Phillipines*, Naval Postgraduate, 2003.

⁴⁵⁷ *Developments in the Southern Provinces of Thailand*, Royal Thai Consulate-General, Jeddah, Saudi Arabia.

The important thing that the Government has come to realize is that developing economic initiatives must be undertaken in a long-term and comprehensive manner. Although the government does not have the capacity to develop all of these areas in a short period of time, at least one of the three provinces should be the focus of a developing tourist or agricultural industry.

E. Creation of a Unified Society

The Phibulsongkram policy only proved that the attempt to unify the country by compelling the subjects to accept Buddhism as the state religion was a failure. Muslim people could not accept such policies because they did not allow for the integration of the ideas, beliefs and values of Islam. However, the Government's need to create a unified society need not depend upon the notion that all subjects share the same religion. A more persuasive idea, in fact, is that a shared sense of community is built upon the principle that people come from very different origins, religions or cultures. The key is how government integrates the varieties of people to live together in the same community or country. China has managed to create a nation in which over fifty different languages are used on a daily basis and the United States is another good example of how a unified society might integrate diverse populations. In many cities, such as Los Angeles, San Francisco and New York, there are big Chinese communities with vibrant Chinese cultural traditions and most Americans have the impression that the Chinese in the United States live in these Chinatowns.⁴⁵⁸ However, there is a wide variety of diversity among the Chinese who, in reality, often speak different languages, come from different cultures

⁴⁵⁸ Paul Halsall, The History of Chinatown, Brooklyn College, 1996-1999, available at <http://academic.brooklyn.cuny.edu/core9/phalsall/studpages/ikram/chinatown.htm> (last visited Nov. 1, 2006).

and live in all different parts of town. Among Native Americans, many human cultures over thousands of years flourished without resorting to reward-punishment systems. The results were cohesive societies that could serve as models for changing our fundamental approach to fairness today.⁴⁵⁹

These are good examples that Thai Government can learn from. Moreover, the Thai Government should revise previous policies that succeeded in the past such as the flexible policies of King Rama XI.⁴⁶⁰

F. The Transparent Justice System and Fair Policy

The concept that the justice system is transparent is at the heart of the Thai Government's need not only to ensure the legitimacy of the criminal justice system but also to establish a foundational public confidence in all of the infrastructures. According to this understanding, justice informs the making of life decisions, the building of social relationships and the designing of societal structures. For these reasons, the transparency

⁴⁵⁹ Denise Breton, *The Mystic Heart of Justice*, Steiner Books 2001.

⁴⁶⁰ 1. Any regulations or procedures that coerce people into suppressing their religious beliefs or practices have to be abandoned or amended. The new amendment shall not contradict Islam religion. If any regulations or procedures will support the Islamic Religion, it should be done.
2. To collect Tax or any fee should be comparable to the rate of tax in a neighbor country. The rate **should** not exceed or be less than the rates in such country.
3. Any action of the officers that make the civilian waste their time shall be revised and processed **by the** justice.
4. Any policy that make the civilian waist their time shall be revised and amended. The officer shall **do** his best.
5. The officer who shall be designated in Pattani must be honest and polite. When sending any officer, such officer has to be trained to know his duty according to section 1 and section 4 above. The commander must supervise his officers in control and attempt to prevent mistakes from happening before they happen.
6. Any regulations or procedures that make people feel uncomfortable shall be considered or, at the **very** least, such regulations or procedures shall be submitted to the King who will adjudicate.

of the law is a crucial element to establishing a fair and just (as well as functioning) society.⁴⁶¹

One part of such a foundational concept is that the Thai Government gives out fair punishment whether the offender is an officer or civilian. There is a popular prejudice that officers of the law receive less than impartial treatment when any charge is brought against them. Part of the challenge that exists in Thailand today is to find a way to rectify this popular belief so that if an officer is proven guilty of a crime, he or she is punished accordingly. Of course, if a civilian commits the same offense, the Government must be compelled to punish him or her using the same criteria.

Moreover, punishment is only meted out to people once firm evidence has established guilt beyond a reasonable doubt in a fair legal process. When the judge orders the punishment to the offender, it is crucial that it is a result of the transparent process of justice that the offender is guilty of such a crime and not merely because the State is more powerful than the individual.

A shift in the popular belief towards a more just and transparent system of the Government will help build trust in the Government's policies. It will also remind the officer to exercise more judiciousness in volatile situations and will help decrease what is currently rampant corruption.

Secondly, the Thai Government should review the justice system by starting with identifying the problems and proposing the implementing of solutions. For example,

⁴⁶¹ Lynette Parker, cited Denise Breton and Stephen Lehman, *The Mystic Heart of Justice*, West Chester Pennsylvania: Chrysalis Books 2001.

according to Chapter 4, there are some provisions of Martial law against the Human Rights Law. These provisions should be amended in order to accord with (not in contradiction to) Human Right Laws. Moreover, mostly people in southern Thailand are Muslim, and the Thai law for Muslim people must be adjusted according to the whole system not merely the family law.

Thirdly, the implementation of the provisions should be made as easy as possible. The provisions should not use the vague words or meanings that might lead to dispute or might be easily misinterpreted. Namely, many international organizations such as the International Crisis Group ⁴⁶² or Human Right Watches are concerned that the Thai Emergency Decree grants enforcement official's immunity from prosecution and such a decree violates Thailand's international legal obligations.⁴⁶³ According to these provisions, the two articles have created a grave public misunderstanding that this Decree granted immunity of officers. The aim of the Decree is to assure the officer who is on duty that he will not be punished if he performs an action in good faith in case of there is any infringement against a civilian. This fundamental Decree is similar to the Section 449⁴⁶⁴ and Section 450⁴⁶⁵ of the Thai Civil and Commercial Code and the Section 67⁴⁶⁶ and

⁴⁶² An independent, non-profit, non-governmental organization, working through field-based analysis and high-level advocacy to prevent and resolve conflicts across Africa, Asia, Europe, Latin America and the Middle East.

⁴⁶³ See Thai Emergency Decree B.E.2548 (2005), at sec.16.

[A] Regulation, Notification, order or an act under this Emergency Decree shall not be subject to the law on administrative procedures and the law on the establishment of Administrative Court and Administrative Court Procedure.

ibid. at sec.17.

[T]his does not preclude the right of a victim to seek compensation from a government agency under the law on liability for wrongful act of officials.

⁴⁶⁴ See The Civil and Commercial Code of Thailand, Kamol Sandhikshetrin's version, at sec.449

[A] person who, acting in lawful defence or under a lawfull command, has caused injury to any person is not liable to make compensation.

Section 68⁴⁶⁷ of the Thai Penal Code, in which guilt is only established by identifying a clear intention and exempts punishment if the illegal act was committed in good faith. Such a decision is, however, the result of legal procedure and if such an act is clearly seen to have a clear intention then that officer will have to be committed and punished. This law does not prohibit the victim from suing the officer if he or she believes that such an infraction violated their rights.⁴⁶⁸ Because any person may be criminally responsible for committing an offence against the law of nations, no one individual is exonerated from this responsibility.⁴⁶⁹ Then, this Decree cannot mitigate or disallow punishment of an official for any illegal operation. There is no such rule as: "*The King can do no wrong,*" "*the Emperor is above the law,*" or "*Cesar's wife is above suspicion.*"⁴⁷⁰

The injured person can claim compensation from the person against whom the lawful defence was directed, or from the person who wrong fully gave the command, as the case may be.

⁴⁶⁵ *Ibid.* at sec.450.

[I]f a person damages or destroys a thing in order to avert an immediate common danger, he is not liable to make compensation, provided the damage done is not out of proportion to the danger.

If a person damages or destroys a thing in order to avert an immediate individual danger, he shall make restitution therefore.

If a person damages or destroys a thing in order to protect the rights of himself or of a third person against immediate danger threatened by the thing itself, such person is not liable to make compensation, provided the damage done is not out of proportion to the danger. If the danger was caused by such person's fault he is liable to make compensation.

⁴⁶⁶ See Thai Penal Code sec.4, Lueng Dulyasath-Pathiweth' s version (Suchart Jiwachart ed.), sec.67

[A]ny person shall not be punished for committing any offence of account of necessity:

(1) when such person is under compulsion or under the influence of a force such that person cannot avoid or resist; or

(2) when such person acts in order to make himself or another person to escape from an imminent danger which could not be avoided by any other means, and which such person did not cause to exist through his own fault;

Provided that no more is done than is reasonably necessary under the circumstances.

⁴⁶⁷ *Ibid.* at sec.68.

[W]henever any person commits any act for the defence of his right or right of the another person so as to escape from danger arising from act of violence which violates the law and such adanger is imminent, such act, if reasonably committed under the circumstances, is lawful defence, and such person shall not be guilty.

⁴⁶⁸ The Office of the Council of State, Thailand.

⁴⁶⁹ See S. Sucharitkul, cited in note 211 *supra* at p.249.

⁴⁷⁰ *Ibid.*

Every civilian and officer is a legal subject and therefore beholden to the Courts of Justice.

Fourthly, heavy-handed policies, characterized by slogans such as the “war on drugs” or the “war on terror,” will stimulate rather than quell dissident groups looking for an overt (seemingly) anti-Muslim policy against which they might seek to revenge themselves upon the State. Although the State’s standpoint is, of course, that every kind of illegal act is in need of punishment, whereas the dissidents will likely look upon such a policy as a fairly transparent form of social control.

Finally, before launching any policy, the Thai Government should be concerned that there is an underlying sense of distrust in the Government. Most perceive the State to break its promises, incompetent and the antagonistic towards those whom they are supposed to serve. Citizens are likely to trust the Government only to the extent they believe that it will act in their interests, that its procedures are fair, and that their trust of the state and of others is reciprocated.⁴⁷¹ As I mentioned in the above chapter, Southern Thailand has continuing problems, namely; crime, grim poverty levels and ethnic conflict. To resolve these problems, the Thai government must develop a policy that devotes funds to this area, funds equivalent in size to those devoted to the other provinces. Moreover, funds must be accompanied by a way for the State to check if these funds are being utilized effectively and ways to monitor how the State might best use this money in the future interests of the region.

⁴⁷¹ Margaret Levi, *A State of Trust, Trust and Government* 8, New York: Russell Sage Foundation.

G. Remedial Measures

As the Government attempts to go forward with changing this popular belief, another help would be to give assistance to the victims who have suffered as well as expedite and review pending issues and petitions in accordance to the due process and the law to the remedial measures given to families affected by incidents. This has already started to take place. For instance, the Prime Minister's Order No. 9/2548, dated 6 January B.E. 2548 (2005), allowed a Remedial Commission for persons who have suffered from the Tak Bai incident to be provided with necessary assistance and compensation for the families of the deceased. The injured, as well as missing persons, are covered by damages and losses. Regardless of the investigation's result, remedies have been made in various forms such as financial assistance of up to 300,000 baht per person, free education as well as social assistance to enable the affected families to continue their daily lives and lifestyles.⁴⁷² However, remedy measures are not the only form of payment, and the Thai Government should express a public apology to the family of the innocent victims.

V-2 Security Measures

In an attempt to stop the violence, there have been security measures that the Thai Government has instituted. However, daily killing goes on and an analysis of both preventive measures and where security has failed in the past will help try to solve some

⁴⁷² The Thai National Reconciliation Commission (NRC).

of the security problems that have plagued Thailand despite the Government's best efforts to secure land, air and sea for this area.

A. Border Security

Protecting cross-border security and enhancing business mobility are two key elements in these efforts. But more is needed. All security and law enforcement agencies must be improved upon to detect, monitor and be alert to any movement of persons or a group of persons who are believed to be associated with terrorist organizations. The goal is to deter any terrorist group from using Thailand as a base.⁴⁷³

The Ministry of Interior formulated policies for cross-border security and equipped rural provinces with ways to prevent, arrest, and suppress terrorists from using Thailand as a safe haven. As a result, the Thai authorities responsible for protecting national security have created a "watch list" database of suspicious terrorist groups.⁴⁷⁴

However, there is again great room for improvement. There needs to be a far greater assurance that the highest possible integrity of all government officials who are involved in border operations have a more well-coordinated exchange of knowledge, know-how and experience. Immigration officers need to have seminars, conferences or workshops for managing groups of individuals from the ultra-wealthy to the very poor.⁴⁷⁵

In terms of preventing passport counterfeit, the Ministry of Foreign Affairs and other relevant authorities are doing their utmost to ensure that the procedure of issuing

⁴⁷³ Progress Report on Thailand's Implementation of Counter – Terrorism Activities, Ministry of Foreign Affairs, Kingdom of Thailand, available at <http://www.mfa.go.th/internet/document/Terrorism%20Report.doc> (last visited Aug. 1, 2006).

⁴⁷⁴ *Ibid.*

⁴⁷⁵ Counter Terrorism Action Plan: Counter Terrorism Task Force Meeting Phuket, Thailand, Aug. 20, 2003 2003/SOMIII/CTTF/028 Agenda Item : 6, Asia-Pacific Economic Cooperation.

visas for entry and exit continues to meet international standards.⁴⁷⁶ But to ensure more safety and security for tourists, a standardized strategic safety and security master plan needs to be developed—one that is based upon a crisis management model and the promotion of and development of simple-to-use security measures for potential threats to the tourist industry.⁴⁷⁷

B. Maritime Security

Ninety-five percent of Thai imports and exports are transported exclusively by sea. With the Andaman Sea in the West and the Gulf of Thailand in the East, Thailand has one thousand and five hundred nautical miles around its border and a water area of about three hundred and eighty thousands square kilometers. Thailand is also surrounded by the water areas of many neighboring countries, namely, Cambodia, Vietnam, the Philippines, Malaysia, Singapore, Indonesia, Myanmar, Bangladesh and India. Therefore, coping with maritime terrorism is quite a challenge to Thailand, as the area of responsibility is huge, compounded by concerns about criminal activity (piracy and drug trafficking) as well as threats to Thailand from unprotected connecting waters.⁴⁷⁸

Although Thailand also continues to promote strengthening domestic policies and broadening international cooperation to suppress piracy and armed robbery, Thailand needs to enhance its maritime defense and disaster relief capabilities in order to improve

⁴⁷⁶ See Ministry of Foreign Affairs, Kingdom of Thailand.

⁴⁷⁷ See Counter Terrorism Action Plan cited in note 475 *supra*.

⁴⁷⁸ Suriya Pornsuriya, *Maritime Terrorism: Thailand's Perspective 1*, Royal Thai Navy.

the navy's mobility capability and enhance its ability to work with other allies or coalition partners during contingencies.

Besides the Royal Thai Navy, the Marine Police, the Marine Department, the Customs Department and the Fisheries Department are also major players in maritime counter-terrorist capacities in Thailand.⁴⁷⁹ The joint training on the international level units are very important but such ventures need to be more routine so that there is an ongoing commitment between Thailand and countries such as the USA, Australia, Canada, and India to develop the skills and required discipline for the Thai armed forces. Moreover, the support and financial assistance to help build a greater capacity of Government agencies for maritime security is necessary.⁴⁸⁰

⁴⁷⁹ *Ibid.* at p 3.

⁴⁸⁰ See Ministry of Foreign Affairs, Kingdom of Thailand.

C. Aviation Security

Although the National Security Program of Thailand has made progress revising its security program, measures, and procedures to provide tighter civil aviation security systems in airports and the screening of passengers' luggage are as important as maritime security. Training for emergency responses during aircraft hijacking situations among national authorities⁴⁸¹ has improved and the introduction of highly effective baggage screening procedures has tightened security in the airports. So although accelerating implementation of standards for reinforced flight deck doors for passenger aircraft and supporting International Civil Aviation Organization (ICAO) mandatory aviation security audits has helped,⁴⁸² Thailand still needs additional training and technical assistance in completing the ICAO mandatory aviation security audits to develop into a center to train other countries or organizations. It would be in Thailand's best interest to set up simulation-type activities for crisis management during emergency situations.⁴⁸³

Although Thailand has joined Conventions to prevent the use of Weapons of Mass Destruction through biological and chemical forms, there is an ongoing need to exchange up-to-date information among all relevant agencies and countries. For example, the Office of the National Security Council of Thailand with the US embassy arranged the Weapons of Mass Destruction (WMD) First Responder Training Program in June 2001 and also jointly held the Postal Chemical/Biological Incident Management Training Program for relevant governmental agencies during April 2002.⁴⁸⁴ This is a good

⁴⁸¹ *Ibid.*

⁴⁸² See Counter Terrorism Action Plan cited in note 475 *supra*.

⁴⁸³ *Ibid.*

⁴⁸⁴ See Ministry of Foreign Affairs, Kingdom of Thailand.

example of cooperation between the US and Thailand although there is an ongoing need for more cooperation between Thailand and other countries as well. Thailand also needs to develop a strong policy toward countries that have such weapons and must develop concrete plans as to what to do in response to a country potentially deploying these weapons.

D. Intelligence Measures

So long as the violence in Southern Thailand continues to increase, it could be implied that these intelligence measures are inadequate and need more development and improvement. The Thai Government has increased her existing close cooperation with their allies. For example, the sharing of information and intelligence on terrorist activities and movements has dramatically increased in the last five years. A list of persons who have any connection with terrorist groups has been shared among a wide array of agencies so that they can cooperate in an attempt to prevent suspects from entering the country by checking criminal records, interrogating suspects and monitoring their movement.⁴⁸⁵ However, such problems can't be solved by one agency alone; they require the cooperation from a great array of government officials as well as those from other countries.

⁴⁸⁵ *ibid.*

E. Cyber Crime

To anticipate and prevent violence of all types, the Thai Government has become cognizant of a new form of violent threat. The FBI predicts that terrorist groups will either develop or hire hackers specifically for the purpose of coordinating large-scale attacks with cyber attacks.⁴⁸⁶ A cyber attack could be used to destroy not only the electronic, but also the physical infra structure that holds a nation together since important elements of a nation's infrastructures (defense systems, chemical and hazardous materials, water supply systems, transportation, energy, finance systems, and emergency services) are electronically controlled by centralized computer networks. For instance, in 2002, a hacker was arrested in Australia for breaking into the Supervisory Control and Data Acquisition (SCDA) of an Australian sewage and water treatment plant for directing the pumping of one million liters of sewage into the environment. This is the first reported instance of a hacker successfully breaking into a critical infrastructure and causing massive damage. I believe it is a harbinger of things to come.

With nearly two hundred countries connected to the Internet, cyber crime has become a global issue that requires the full participation and cooperation of the public and private sectors in all countries, including each one of the one hundred and eighty developing countries around the globe. A major component of information and infrastructure security is a nation's ability to deter, detect, investigate, and prosecute cyber criminal activities. Industrialized nations and multinational organizations have taken significant steps toward combating cyber crime. The central problems in combating cyber crime to date are (1), inadequate international coordination and (2),

⁴⁸⁶ Terrorism Law 286, Jeffrey F. Lawyers & Judges Co, 2004.

woefully deficient legal frameworks and organizational capacity in developing countries.⁴⁸⁷ Not only should the provision of laws relating to such crimes be updated by the Thai Government but there should be institutional agencies devoted to directly assessing the level of threat and vulnerability such as Computer Emergency Response Teams.⁴⁸⁸

F. Rules of Engagement⁴⁸⁹

Not only preventative measures need to be evaluated but it is also necessary to consider the failure of security forces in the past in order to better evaluate what needs to be changed for greater success. One of the lessons that the tragic events in Krue Se and Tak Bai taught the Thai Government is that although the training and equipment for the Security Forces were adequate to handle crowd control situations, the decision about what type of force to use, when to use it, under what circumstances should it be used and what are the repercussions of that act were all not well thought out. In the case of killing of the two marines and Juling Case, for instance, Thai Security Forces failed to use force out of fear that such action would escalate the violence and enflame public opinion. However, were they to have followed the concepts of the Rules of Engagement, which permit force in cases of national security, many lives would most likely have been saved. According to international standards and practice, military use of force is allowed in

⁴⁸⁷ Jody R. Westby, International Guide to combating Cyber crime XXI, American bar Association Privacy & Computer Crime Committee Section of Science & Technology Law (Chicago, Illinois).

⁴⁸⁸ See Counter Terrorism Action Plan cited in note 475 *supra*.

⁴⁸⁹ Rules of Engagement (ROE) are the primary tool used to regulate the use of force, and thereby serve as one of the cornerstones of the Operational Law discipline. The legal factors which serve as a foundation for ROE, that is, customary and conventional law principles regarding the right of self defense and the laws of war, are varied and complex. They do not, however, stand-alone: non-legal issues, such as political objectives and military mission limitations, also play an essential role in the construction and application of ROE. (see Operational Law Handbook cited in note 329 *supra* at p.67).

cases of self-defense and under circumstances of necessity. The rules of engagement are, in other words, not merely measures necessary for crowd control but also for preventing too long a delay in responding to a terrorist act.⁴⁹⁰ The rules allow for action as much as they attempt to deter an irresponsible use of force.

Since 1981, Thailand and the United States have coordinated annual bilateral military exercises.⁴⁹¹ This mission (COBRA GOLD) was originally created to improve Thailand's military readiness and knowledge of how to fight terrorism by providing an opportunity for the two militaries to work together. However, this training is not just a political bond between Thailand and the United States but rather a sign of the United State's investment with helping prevent terrorism throughout Southeast Asia.⁴⁹² Thailand is one of five countries in the Pacific region in which the U.S. has devoted time, money

⁴⁹⁰ 1) Every military officer stationed in the three southern provinces of Thailand must receive training on effective crowd-control handling and negotiations in accordance with the standards used during UN peacekeeping operations in East Timor;
2) A special "Riot Control Company" was set up to handle crowd control – using only shields and batons for protection and no firearms permitted. There are two units thus far – one stationed in the south and other – its reinforcement unit, is located in Bangkok;
3) The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials was also translated and disseminated as a training manual to all relevant agencies;
4) The Southern Border Provinces Peace building Command also conducts an evaluation of its personnel's overall performance periodically (3 to 6 months) to ensure efficiency in resolving the situation in the south in a peaceful manner;
5) A number of cultural awareness trainings and language course have been organized for security personnel working in the southern provinces of Thailand to enhance understanding among the local community;
6) The Ministry of Defense and its Supreme Command Headquarters have periodically organized human rights seminars, in conjunction with international military offices. (e.g., May 2005, a seminar on human rights and laws governing conflicts of firearms);
7) The Royal Thai Police also gives high priority on the prevention of human rights violations by police officers. It issued a human rights handbook and organized education and training programs for police officers on human rights issues. (e.g., Training for police officers in the south by the Foundation for Human Rights and Development in Yala).

⁴⁹¹ Four years after independence, unrest again threatens East Timor, THE JAKARTA POST, May.17, 2006 p. 12, available at <http://www.etan.org/et2006/may/13/17military.htm> (last visited Nov.1, 2006).

⁴⁹² Abigail B. LaBin, USMC, 17th Annual Cobra Gold In Thailand, available at http://www.pacom.mil/forum/Winter_98/cobra_r.html (last visited Nov.1, 2006).

and energy to help fighting terrorism (along with Japan, the Republic of Korea, Australia, and the Republic of the Philippines).⁴⁹³

Although the military training (COBRA GOLD) was commonly perceived to be a sign of tacit support for US foreign policy, the Thai Government promotes such military training because the Military Joint Task Force is a way for Thai Security Forces to develop military skill and tactics. The Thai Government should not support the Military Joint Task Force, however, if it is an endorsement of any particular US political policy but only so long as it is merely an acknowledgement of the ongoing commitment both countries have toward combating terrorist activity.

V - 3 Modifying the Communist's strategies

As a result of Vietnam War (a conflict that provided numerous lessons regarding counterinsurgency), Thailand faced to a bid for power from the Communist of Thailand (the CPT). The strategy of the Communist Party is to combat the state's greater military power by mobilizing the people through the appeal to a counter-state. Direct mobilization of a popular base and indirect mobilization through front organizations were to be the party's main lines of operation. Further, the Communist Party used local guerrilla units (main forces were never formed) to challenge government control of certain areas tactically. The link operationally between the party and the guerrillas was a clandestine infrastructure, the counter State, a local area in which the Communist of Thailand control was deeply rooted and that functioned as a base for further expansion. To establish authority in such areas, the Communist party employed terror. Recalcitrant

⁴⁹³ Military Cobra Gold, Global Security Organization, available at <http://www.globalsecurity.org/military/ops/cobra-gold.htm> (last visited Nov. 1, 2006).

villagers, or those whose community standing made them symbols of government authority (e.g., village headmen and schoolteachers), were selectively targeted.⁴⁹⁴ The Communist Party of Thailand continues to use the same strategies for committing acts of violence as they have for the last twenty years. They have recruited new members of political dissent. For instance, the hill tribe people, who have been typically treated as second-class citizens, by the average Thai soldier, are frequently involved in hostile acts against members of the population. The Communist Party of Thailand (CPT) has taken advantage of the hostility generated and stoked the fire created by the government's discriminatory racial attitudes.⁴⁹⁵

However, the new face of the dissident was dissimilar from the communists of the 1970s and 1980s, as the communist – separatist struggle in southern Thailand was rapidly transforming into a politico-religious conflict. Dissident ideologues were becoming increasingly skilled at politicizing and mobilizing the target audience, using religion rather than nationalism as the selling point. The character of campaign was changing from guerrilla warfare to urban terrorism as communists engaged in ambushes and raid in populous areas. The dissidents mostly conducted assassinations and bombings. Whereas the communists of the past operated mostly in the jungles and mountains, the new wave of dissidence began to operate in the villages, towns and cities.⁴⁹⁶ The complexion of the problematic in southern Thailand is changing rapidly although much as changed from end of the cold war, the main strategies of these

⁴⁹⁴ See T.A.Mark , cited in note 88 *supra*

⁴⁹⁵ *Ibid.* at p. 39

⁴⁹⁶ Rohan Gunaratna, & Arabinda Acharya , & Sabrina Chua, Conflict and Terrorism in Southern Thailand 110, Marshall Cavendish Academic 2005.

dissenting factions have remained the same. These groups continue to bid for power, despite the changes in the world politics.

Today, the members of dissidents are the Ponok's teachers and religious leaders. There is no arguable that the dissident movement in Southern Thailand has used *pondok* as recruitment centers. The main strategies and approach of the communist party are not different and have inspired the current group of dissidents in southern Thailand.

As General Saiyud Kerdpol stated:

*An imperfect system itself "threw up" the manpower that became the Communist Party of Thailand (CPT). The people's war strategy, combined with a plenitude of manpower produced by government abuses, allowed the Communist Party of Thailand to grow.*⁴⁹⁷

To establish political control over the formerly contested areas and to meet future challenges, the old strategies that the Thai Government have relied on should not be forgotten and should be revised in the following ways:

- * *Psychological operations, persuasion, and using the cooperation of civilians.*
- * *Development-for-security, with development understood to be a socio-economic-political process.*
- * *Civic-action programs instituted and local forces formed.*

⁴⁹⁷ See T.A.Mark , cited in note 88 *supra*

** The democratic process to be brought in accord with traditional demands by the populace for a just order, thereby legitimizing the government.*

** The army's task to foster just such development as a counter.*

** All regular army and security force units in operational areas were likewise placed under the CPM task forces, where they work intimately with civil authority.*

** Offer amnesty with minimal security precautions, so as to entice demobilize insurgents to resume normal lives.⁴⁹⁸*

That is, the Thai Government should consider developing new capabilities adapted from what can be learned from the past in order to meet future challenges. Even these are old strategies but not completely antiquated; the government can adjust these strategies to the current situations and apply them. In addition, one of the most important issues is that the Government must realize is that as the heavy-hand tactics grew, so did the number of dissidents.

V - 4 International Cooperation

Any policy on terrorism cannot succeed alone. Any plan for peace between nations needs mutual assistance and international cooperation. In 1992, Thailand developed the Mutual Assistance in Criminal Matters Act that forms a broad basis for cooperation with other countries in criminal matters, e.g., taking testimony and statements; providing documents, records and evidence for prosecution and search and

⁴⁹⁸ *Ibid.*

forfeiture of properties. The rest of the law is based on principles of double criminality and reciprocity that allow Thailand to extend assistance in criminal matters to virtually every country. The law is supplemented by the Treaties of Mutual Assistance in Criminal Matters that Thailand has with five countries (United States, Canada, United Kingdom, France and Norway). The Royal Thai Government set up the Committee of Counter-International Terrorism (COCIT), which is responsible for the coordination between policies and operational units. This measure was proposed by the National Security Council and endorsed by the Thai Cabinet in 1983, when the National Reconciliation Commission (NRC) was established in order to address the violence afflicting southern Thailand and bring about a peaceful resolution by balancing security with respect for the rule of law and human rights. That is a good policy but not adequate. Thailand has to do more to cooperate with international human rights organizations that have as their goal protecting against civilians from violence.

One such instance of an effort to solve problems in the south is the cooperation between the Thai Government and the Organization of the Islamic Conference (OIC). The Thai Government reaffirmed that the Government is willing to work with the Organization of the Islamic Conference and with southern local communities to solve problems by peaceful means. The Thai Government also avowed to keep an open mind, welcoming the occasion to exchange opinions with the Organization of the Islamic Conference to promote the constructive role of the peace-loving moderate Muslims (which constitute the majority of the world's Muslims). In exchange, the Organization of the Islamic Conference will try to help the communities in the southern Thailand. The relationship between the Organization of the Islamic Conference and the Thai

Government is, nonetheless, a tenuous one and both sides must pay constant attention to how the media reports on this ongoing dynamic. Public opinion is easily swayed by such reports and media bias can often distort and exaggerate politically volatile situations.

An admirable instance of cooperation between both sides was Thailand facilitated and arranged a visit by the OIC delegates to visit to Pattani, Yala, and Narathiwat. This visit enabled the delegation to have a better understanding of the actual situation in the southern part of Thailand. In the future, there should be a permanent office in the area devoted to human rights and coordinating the joint efforts of the Thai Government with the Muslim factions.

V – 5 Conclusion

The short-term goal is to stop the daily killing; the long-term goal is to stem the ongoing violence. The success of such security measures depends largely upon funding, military training, developing tactics and techniques through the cooperation on both a domestic and international levels. Most importantly, there will be no success if the problems in southeastern Thailand are seen as what could be solved over a short period or without the cooperation from the diverse groups of people in this area and the Thai Government.

In 2005, a hundred million hand-made paper origami birds were dropped over the troubled Southeast region of Thailand with peace messages on the paper. The spectacle showed, if anything, the great dedication of many Thai citizens (the creators of the birds were primarily non-Muslims) to the cause of resolving the conflict but little practical help in addressing the deep-seated problems of this conflicted region.

Regardless of how the form or characteristic of the violence changes over time, the solutions and recommendations that I suggest can be used in many different circumstances. These ideas I believe apply not to resolving problems during the times of violence but also to easing tension during peacetime.

By addressing the roots of the problem and the attempts to settle these disputes through dialogue and acknowledging the legitimate aspirations of the Muslim people in the south, there can be a deeper sense of connection between these people. There has been little done by the Thai Government to encourage the people of this area to maintain a proud expression of their cultural identity. This freedom of cultural expression should be guaranteed by the Thai constitution within the framework of respect for the territorial integrity of Thailand. The fairness of the Thai policies, the transparency of the justice system, the effectiveness of security measures, the International cooperation and most importantly, the concept of universal human rights -- all of these are what will make southern Thailand forever peaceful.

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