THAILAND AND INTERNATIONAL LAW:

By

Wayne Douglas Burns

BA (cum laude), Calif. State University/Long Beach
LL.B. University of British Columbia (1972)

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Department of **LAW**

The University of British Columbia
Vancouver, Canada

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This thesis is an analytical study of Thailand's culture, society, history and foreign relations, and the effect all these factors have had on its behaviour relative to International Law. It involves an analysis of its historical development as a sovereign state and its early treaties with the European powers. The role of certain institutions in its society such as the military and the bureaucracy are analyzed particularly regarding their influence on Thailand's stance on international politics and to a lesser extent, on international law. An analysis of the one case Thailand has dealt with in the International Court of Justice is presented in the context of Thailand's growing participation in international organisations and specifically, the United Nations.

As for its record dealing with human rights issues, a chapter is devoted to the reasons for Thailand's response to international human rights covenants, as evidenced by the way it treats women, minority groups and refugees.

Finally, a chapter is devoted to Thailand's involvement with the newly emerging international Law of the Sea and the problems which arose for its fisheries as a result of this new regime.

Overall, Thailand is portrayed as becoming more aware of International Law as a means to effect its policies and the example of its behaviour regarding the Vietnamese invasion in Cambodia is
given and the favourable response its stance has received, which has supported the style of diplomacy it has used relative to that conflict, over the 1980's.
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Chapter One

THE THEORETICAL UNDERPINNINGS TO AN APPROACH

TO THAILAND AND INTERNATIONAL LAW

A. Law and International Law: A Plethora of Definitions

International law has, since the last war, gone through some profound changes. But then the world it supposedly regulates has also changed enormously as well. With the most recent and dramatic changes which have rendered the Soviet Union a part of history, the world political picture has grown more blurred. The certainties offered by the idea of a bi-polar world have evaporated, even if as some believe, those certainties were founded on myth. In the place of those certainties we have a world in less focus, its ideologies less clear cut. And if international law is to be understood in the light of this much-changed world it must be seen for what it is. But what is it? And does it by its very nature invite incessant questioning? Regard this litany of questions posed by W.L. Gould and M. Barkun in the Preface to their text on International Law:

Is International law insignificant, secondary, impotent? Is it merely a product of the relations between states and therefore an instrument of no value in efforts to produce a more orderly, less violent world? Is there no feedback from international legal norms that can so assist a transition away from international entropy or chaos that the law itself becomes one cause of order and one indispensable instrument for the non-violent management of conflict? Is law so tied up with individual cases that it cannot contribute to an upgrading of aggregative justice for nations and their aspiring
manipulation sufficient routes to self-realization and avoidance of frustration in international affairs?\(^1\)

Reviewing that list of questions one almost wishes for a computerised answer sheet marked off with blocks appended, with "Yes", "No", "Maybe" sitting next to each question. But those questions continue to be repeated in one form or another in almost any text on international law one chooses to peruse. If nothing else this eternal questioning of international law seems to point up that the process of seeing international law clearly and defining exactly what it is, has to be a priority for any scholar willing to wade into its murky waters.

More fundamentally, this eternal questioning as to its nature, value and function has aroused skepticism over whether, in fact, international law really even qualifies as law. Is it merely international politics cloaked in the jargon of legal doctrine? This question has particular relevance when analyzing the perspective of a country like Thailand, which has been a victim of international law at least the law as applied by European powers.

Robert McLean in the Canadian Yearbook of International Law suggested that, "In addressing the issue of whether international law is a species of law, critics have failed to recognize that the crucial question is not whether it possesses such features, but whether international law is an identifiable body of rules which

exercises a degree of normative influence on state conduct."²

Sometimes it seems that those that react to the critics of international law, often have a vested interest in saying, "But of course its law because it feels like law, it tastes like law, it acts like law. And anyway I have done my work in it and I am a lawyer. So it must be law." But their answer is inadequate and without sufficient relevance to the real world.

For the purposes of this analysis, international law is accepted as being law. It is seen and accepted in this paper as exercising a degree of normative influence on State conduct. How much influence depends on the many facets of the nation-state being considered and that is also the crux of the approach used in this paper, to use an interdisciplinary method to look at one State, Thailand and deduce its attitude to international law by reviewing its domestic history, its own legal system development, its foreign relations and its involvement in some international legal issues.

Law in whatever area should be seen relative to the consequences it has for the human beings it most affects. While international law may seem far removed from individuals going about their daily lives within the legal regimes of individual States, international law is having increasing effect on individual lives and sometimes in ways directly linked to their survival.

Examples abound in almost any area of international law one chooses to consider. The wording of the International Convention

and Protocol on Refugees is being employed on a daily basis around the world to determine if an individual falls within its definition of "refugee" and therefore if that individual deserves asylum. The newly emerging law of the sea is having enormous impact on the lives of fishermen, ship-owners and even consumers in the world marketplace. International environmental laws regulating pollution will have increasing consequence for individuals living their everyday lives along international waterways and seacoasts. And these are only three examples of the myriad ways international legal norms are being applied by tribunals and government officials in determining the fate of individual citizens.

B. Sources of International Law: The Search for a Theory

Much of the controversy over a definition of international law centers on what scholars regard as its sources, and to find them they resort to a multitude of methods. The international laws which have been formed by the various processes which are usually cited as its sources, are linked inevitably to the domestic policies of the nation-states dominating the consensus of the time. And today, like yesterday, States formulate policies relative to the historical interaction with the regions in which they are located. But more importantly their view of law draws from all that has made them a State and whatever its source, international law represents something different for every nation according to how it has arrived on the world scene, its own unique path to statehood within
the greater international community.³

Third World States in particular have a traditional suspicion of classic international law largely, one might suggest, because of its origins, because they feel that so much of it was established to justify the actions of colonial powers. The law of reprisal is one example of customary international law from the past, still in use today, but usually exercised in a more covert way as evidenced by the United States actions in Vietnam and Cambodia, where actions were justified according to the verbiage of legality. But such actions were according to many new States, merely another example of a powerful state using legal language as a convenient means of legitimizing action leading to yet another small state's disempowerment.⁴ Thailand has particularly bitter memories of this at the hands of the French at the turn of the century, and this will be discussed in greater detail in Chapters Two and Three.

The literature written about international law seldom seems to dwell in the real world, a world made up in the majority by small States unfamiliar with the complexities of international law, often without lawyers knowledgeable in how international law orders their relations with other states.⁵

Law students of international law in the nations of the North,


should be presented with their own nation's place in the community of nations as a first step in explaining international law: the State with which they are most familiar presented as a case study, how it has behaved and continues to behave internationally, as a nation-state within a regime regulated by international law. That should be the lodestone for international legal scholarship: why has my nation acted in the way it has vis-a-vis international law? This, I would suggest, would inject more meaning into the study of international law and meld it with its political underpinnings.

But the presentation of international law has followed a format primarily concentrating on its doctrinal sources, customary international law, treaties and cases before international tribunals. This traditional approach to the analysis and study of international law has neglected analysing national behavior relative to international politics. It divides the study from its true sources and fails to contextualize it. Henkins put it this way:

When nations behave consistently with law, it is commonly seen as fortuitous; the law happened to coincide with what nations wished to do. There are reasons why nations make law and conclude agreements, and why they make particular law; like law in many national societies, international law results from the complex interplay of varied forces in international politics. There are reasons why nations act in accordance with these undertakings. One can explain, too, why law is sometimes disregarded. Not unlike law in a national society --- and for reasons that are not dissimilar----international law is observed by nations as national policy, shared with other nations, in support of an orderly society.⁶

Some international legal scholars regard the relationship of national behavior in the international system to the application of international law as not only one element of many, but the key to an effective understanding of its various mechanisms. Mr. Ahmed Sheikh relying on the writings of scholars such as Richard Falk has claimed that national behavior should be the at the root of any analysis of international law. As he said:

There is... a considerable difference between the mythical law that will prevail over national interests and, in fact, will abolish international politics, and the fictitious law that unsuccessfully conceals the stark realities of international politics. This is the realm of international law that is intertwined with international politics and therefore, can be best studied in the context of international politics. It reflects the paramount political interest of nations. It registers the dynamics of international politics that are both consensual and conflictive and takes note of the systemic adjustments. It expresses in its stability and instability the political demands for order and predictability and for rapid change. It is the real international law. It makes no promises to transform the international system overnight nor does it provide a mask for states to disguise the realities of that system. It establishes channels through which states may achieve tentative accommodation between their simultaneous urges for freedom of action based on notions of sovereignty, (i.e. a nation's right to be unpredictable) and their need to act in predictable patterns to be able to deal with the major catastrophes that always seem ready to erupt in the international system.7

International legal scholars are duty bound, it seems, to first determine their own view of what international law signifies and this of course remains another cause for endless debate if not confusion. It is difficult enough to formulate an informed opinion

of the definition of law itself that a majority can agree on, a subject providing enough material to keep an industry alive, never mind finding an answer satisfactory to all people as to what constitutes international law. Nevertheless, definitions while difficult to agree on and certainly not writ in stone, give both scholars and their readers the underpinnings for further discussion or at least the basis to understand where a writer is going in a particular analysis.

For the purposes of this work, law appears to be a body of normative rules created by a group which shares a view of itself as a viable community and according to Sheik, "...[these] rules are generally regarded as the outcome of a successful political process in which the people have had some say". But as he goes on to point out, even this definition is not an all-inclusive view of law. Neither in the People's Republic of China nor the former Soviet Union at least at the time he was writing in 1974, was law viewed that way. Instead according to him, law was viewed primarily as an "instrument of state policies". But if a general definition of law itself is still called into question by individual States, then obviously this also enters into the way each of them views emerging international law.

In addition to the above view of law, it should be necessary to include the more mundane aspects of law's role in a domestic society. Almost every facet of human is regulated by law in almost

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8supra. Sheik, p.220.

9Ibid
any society one chooses to study. This regulation, in a so-called "civilized" society is so pervasive, it is often taken for granted by most people. One does not cross a street without bringing law into play. And this has a spin-off for an appreciation of international law.¹⁰

There is not a nation in existence that does not basically accede to the vast mass of international law which we take for granted. If any nation does not comply with the long-established rules on various forms of sovereign immunity, for example, the protected status of embassies on its territory, it will be declared an outlaw by other states which will ignore its existence. Or as Henkins puts it,

"Although there is no international 'government,' there is an international 'society'; law includes the structure of that society, its institutions, forms, and procedures for daily activity, the assumptions on which the society is founded and the concepts which permeate it, the status, rights, responsibilities, obligations of the nations which comprise that society..."¹¹

Irrespective of cultural and ideological divergencies on what law is, the key elements whatever the State, would appear to be rules and a sense of community. International law by definition aims at providing rules to govern what States can and cannot do. But the community made up of individual States must feel that their individual interests are better protected by rules established as guides to the individual entities within the community.

¹⁰Henkins, supra in note at p. 14.

¹¹Ibid.
International law is therefore reflective of these two essential elements of law which span cultures. It has been developed by the community of nation-states. And the rules have been established by the community of nations because they feel their interests are better served with them than without them.

To arrive at a satisfactory definition of law and therefore international law carries the observer back to the roots of law itself, and the philosophical schools which have devised theories regarding its roots. But the search for a general theory is an exercise which has hamstrung much greater legal scholars than this humble writer.\(^\text{12}\)

It is enough to say that today humanity seems to have moved toward a view of international law based on what has been loosely described as natural law. The question of what is right and what is wrong behavior, even when it is the behavior of a nation, would seem to be defined in most societies according to a perceived connection between law and some greater power beyond the petty world of human beings. The Nuremberg Trials dramatised the acceptance of this view but that still does not halt the endless questioning that continues to plague international law, a questioning which some writers even suggest lies at the heart of it.

Nevertheless, the world community seems to share a belief that we can as a global community create a Universal Declaration of Human Rights believing that it articulates what humanity

\(^{12}\)Gould and Barkun, op. cit. supra at pp.15-18.
universally regards as the basic human rights all nation-states should respect and guarantee their citizens. Mark Gibney writing recently on this discussion observed, "...some of the literature concerns itself with cultural relativism and a central issue here is the extent to which notions of human rights are universal, or whether certain human rights norms merely reflect the dominant ideology in a particular country or in the world more generally." While some States continue to deny the rights to their own citizens which were enshrined in the Universal Declaration, there should be no doubt that its passage in 1948, was a guiding light which a country like Thailand, even though a military dictatorship for most of his last fifty years, saw important enough to echo in its own constitution.

C. International Law as Doctrine: A System of Analysis

Some societies as nations, make no effort to disguise the connection between their laws and the dominant religion in their society. And undoubtedly their behavior in reaction to international law would have to be analyzed relative to their national view of law generally and its religious linkages.

When this line of thought is continued beyond the origins of domestic law to the level of international law, the defining process is carried a step further. After all, whatever theory we employ to explain law's origins generally, international law cannot be the result of only one school of thought since it is the product

of a shared consciousness of law, collectively realised by the divergent views of law in the nations making up the world community. It is almost by definition a supreme compromise, a middle road. And to approach an analysis of one nation's behavior within the arena of international law, it seems necessary to first accept the middle ground, between a view of law generally described as originating from the dictates of a supreme decision-maker (however characterised) and the contrary view which sees law as a synthetic body of human-made rules which have evolved out of the babble of human history and international politics.

Richard Falk has stated that international law has a dual nature which takes it beyond this discussion of its origins. It is "...an intellectual discipline devoted to the study of order in world affairs and an operative code of conduct capable of exerting varying degrees of beneficial and detrimental influence on the quality of international life."\(^\text{14}\) He further suggested that "...the growth of legal authority must be conjoined with the locus of political power."\(^\text{15}\)

D. Choosing the Analytical Tools to Contextualize International Law

Between the two schools of thought often characterised as the positivists versus the naturalists, or in more international terms,


\(^\text{15}\)Ibid.
the views of the skeptics who despair that nations merely use international law when it suits them, versus the optimists who believe we are moving toward a world utopia ruled by law, there is according to Falk also a happy medium.  

While most societies would seem to see law, whatever its sources as functioning to regulate individual excesses, it would have to be agreed whatever national system one looks at, that law is an imperfect social tool. One has only to look at one's own legal system, or even one as blatantly linked to divine sanction as the "shariah", the holy law of Islam, to see that law is frequently violated by the members of whatever societies it regulates. This awareness might lead the observer of the international scene to further despair, since even the leading nation-state citizens of the world community at times act in complete disregard for international law. But this seems to dismiss too quickly its value as an evolving phenomenon. While it may not ever be an absolute guarantee that we will live in a completely ordered society or world community without disruptions to our peace, international law can do the job of making our world more orderly, more orderly than it would be if we had nothing comparable to the rules of international behavior to keep nations from acting unpredictably in times of crisis. 

1. Compliance or non-compliance:

16Ibid
17Henkin, op. cit. supra. at pp.12-27.
To determine whether a State complies or does not comply with international law requires the setting up of some sort of method for analysing if law has affected national behavior, and if so, how. Or as Falk wrote, "...conjoining law to politics without collapsing the one into the other and attaining a realism that neither expects law to guarantee a peaceful world nor concludes that law is irrelevant to international peace."\textsuperscript{18}

He outlined how international law can give to States a guide for them to use in times of crisis and therefore a more reasoned method for them to weigh up the pros and cons of alternatives available to them in determining their foreign policies. Further to that, he points out that the institutions of international law have begun to facilitate a variety of cooperative endeavours in our world which have arisen out of states seeing the need to share responsibility. And there is the alternative to this, that such cooperative ventures can inhibit state behavior by threatening a denial to uncooperative states of access to the benefits of participating in such ventures.\textsuperscript{19}

But the first step in attempting to analyze what laws a nation complies with or does not comply with, would seem to be to first look at what sectors of international law seem to have had the most impact on a particular nation's national behaviour. In Thailand's case for example, being a small, largely regional power, many areas of international law have had little impact on it. But even before

\textsuperscript{18}Falk, supra, note 2, p. 147.

\textsuperscript{19}Ibid.
attempting to describe the effects of international law on a State's behaviour, it is necessary to formulate a system for presenting a profile of that State, and illustrate why it has reacted the way it has.

In Thailand's case as a developing nation in Southeast Asia, international law relating to Antarctica, outer space or the deep sea bed are not sectors of international law which one would expect to find much Thai activity. But if international law is brought into play to determine which nation controls a temple straddling its border with a neighbour, undoubtedly one would expect Thailand to be very active in whatever process is used to determine which nation owns the temple.

2. The Steps to Analysing National Behavior: Macro-Psychology

There are several steps to any analysis of a nation's behavior vis-a-vis international law. First it seems necessary to arrive at a general idea of what can be agreed on as contributing to the national attitudes of most if not all States. Once those determinants are pinpointed it follows that certain behaviour can be presumed.\(^{20}\)

Second, in reviewing a State's foreign policies historically, patterns of conduct will emerge and where those arise, either from its internal make-up or its view of the external reality affecting it, a researcher can show how and why that State has acted the way

it has vis-a-vis international law and politics, and possibly, predict how it will act in the future. This requires a review of what has determined its national personality, the development of those attitudes to the external world and the behavior that has resulted.

Third it seems necessary to structure an analysis of one nation's behaviour, its foreign policies, and its reactions to international law by looking at what areas of international law particularly affect that State and arrange the analysis of that nation's behaviour relative to those areas. This process is not helped by a dirth of such approaches in the literature. Or as Barkun and Gould stated, "The paucity of truly empirical studies of the nature, functions and uses of law in international relations leaves speculation virtually unrestrained."

Any attempt to do this has to involve using information from other social sciences: history, political science, sociology, anthropology and even behavioral science or psychology. It seems necessary to systematically analyze the many facets of a nation's character which go toward its sense of national identity within the so-called "society of nations".

If a nation refuses to abide by an accepted rule of international law, or seldom signs or ratifies international conventions or covenants, then there are reasons for that behavior and those can be found in all that makes up that nation's character and the determinants of its stance internationally. If on the other

21 Gould and Barkun, op.cit. supra. at p.126.
hand, the nation picks and chooses what international laws it accedes to but generally supports the spirit if not the substance of international law, then that behavior too is rooted in the nation's personality, in its view of itself relative to the global community.

3. **Ideology: Critical Legal Studies**

Looking at ideology as it affects international law might seem outdated in light of the revolution occurring in the bi-polar view we have lived with for so long, Marxism versus capitalism. But it must be stressed that the break-up of the Soviet empire does not mean the Marxist view of state and international law has evaporated from the globe. The entire school of thought loosely termed "critical legal studies" would seem to rest on a "leftist" view of law similar to that of Marxism, that, "...all law being for it merely an expression of the will of the dominant classes in defense of their power and privileges, international law can be nothing more than a projection into international relations of the ruling social ideas of a given period. Relations between States of totally different social structures can therefore sustain only a very partial and entirely provisional legal integration."\(^{22}\)

The Critical Legal Studies movement has carried its dialectic into international law by attempting to clarify its true path, while deconstructing the old order based on the classical objectivist school which was obsessed with a formalistic analysis

of the "rules". But this effort to illuminate in a new modernist light the musty corridors of international law, has opened the approach up to critique as well. Purvis describes this New Stream international legal studies movement as striving for something which may make them into exactly the utopians they criticize: "New Stream scholars believe that international discourse should focus on poverty, totalitarianism, racism, sexism, illness, hunger and income inequality. They see international discourse as a tool of international development and an instrument of political empowerment."\(^{23}\)

Purvis says further on, that these lofty goals must be put into practical terms: "If international legal discourse stands a chance to live up to the role created for it in the fight for world justice, we must conceive of an ethical foundation for international social life beyond modernism."\(^{24}\)

4. The Third World view of International Law and its colouring of National Behaviour

While many conservative Third World states like Thailand would certainly not enjoy hearing their international attitudes characterized as Marxist, Third World States regard the West's attitudes to international law as keeping them down. The Western States still often seem to be acting in the guise of former

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\(^{24}\) Ibid. p.127.
colonial powers protecting their traditional powers and privileges. In other words the rhetoric of Marxism through such Third World exponents as Cuba and China, has entered the vocabulary of the non-aligned movement in international gatherings.

It is difficult enough to piece together the jigsaw puzzle making a nation an international personality, to try and figure out why it behaves as it does as an international citizen. And it is doubly difficult to characterize a grouping of nations so huge and diverse as the so-called "Third World" and point to shared views on international legal issues.

The Third World includes nations with enormously divergent economies, levels of wealth, ideologies and size, to the point where the term has become almost meaningless. Nevertheless there are some realities which Third World nations share. Even if a nation like Thailand does not feel it has the same position on a particular issue as other Third World States, it still may feel the need to act in line with other Third World nations, especially if they belong to the same regional bloc. The following are some the characteristics generally shared by developing states vis-a-vis international law and organisations.²⁵

a. **Recent Induction into the International Legal Community**

The rapid influx of newly emerging nations since the last war as international personalities has had a phenomenal impact on the trends of international law in this period. Not only has the West

been forced to acknowledge their points of view, but it has had to do so based on law which existed prior to these new states emergence, regarding the recognition of state sovereignty and all the international rights which sovereignty accords. Once independent and recognized as legitimate internationally, these states became entities within an international legal system but ironically a legal system primarily created by the Western nations reflective of their own specific needs internationally. While these emergent nations are generally weaker, poorer and less versed in the traditions of law than Western nations, as independent nations and members of the United Nations, they have become legal personalities internationally and they have lost no time in making their views felt on international law since prior to their creation and independence. Prior to their autonomy, international law aided and abetted their subjugation.26

b. Anti-colonialism

Since the first developing states began to gain their independence in the 1950's, anti-colonialism and the principle of self-determination, have been the one sure rallying cry for the States making up the Third World. Even a State as firmly committed to the Western bloc as Thailand has felt itself a part of the collective recognition of having been a victim of the international legal system imposed on them by the old order of the Imperialists. It has taken a long time for the suspicion and hostility of many

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26 Sheik, op. cit. supra. p. 235.
Third World countries to soften. \(^{27}\) And given the "New Economic Order", the debate on intellectual property and chronic indebtedness of developing nations to the developed North, the old debate has taken a modern twist.

It is still not difficult to find Western legal scholars writing on international law and using the expression "civilised" nations especially when discussing human rights. In other words the legacy of bias is still visible on both sides, but the anti-colonialist sentiments of former colonies are especially heartfelt, even by States like Thailand that were never colonized. As R.P. Anand, an Indian scholar described international law, "...[it] was developed during the last four centuries and specially consolidated and systematized during the last part of the nineteenth and beginning of the present century. Asian and African countries had very little to do with it because they were conquered and colonized and made to serve merely the interests of the metropolitan states and their masters."\(^{28}\)

For most statesmen in the period before the last great war, to consider the aspirations of the colonized peoples in the European empires, was to consider them only in light of the manifest destinies of the Empire. The egoism of those statesmen prompted them to talk of law and freedom as defined, not by the subjugated peoples they ruled in their empires, but by the needs of the dominant power. Sir Winston Churchill commenting on the rise of

\(^{27}\)Ibid.

\(^{28}\) As quoted in Sheik, supra at page 220.
It is at this stage that the spacious conception and extremely vital organisation of the League of Nations presents itself as a prime factor. The League of Nations is, in a practical sense, a British conception, and it harmonises perfectly with all our past methods and actions. Moreover, it harmonises with those broad ideas of right and wrong, and of peace based upon controlling the major aggressor, which we have always followed. We wish for the reign of law and freedom among nations and within nations, and it was for that, and nothing less than that, that those bygone architects of our repute, magnitude and civilisation fought and won.²⁹

c. The Have-Nots

Another sure unifying force for Third World states has been their shared consciousness as "have-not" nations. Thailand, while moving quickly toward economic well-being still shares with the other members of the Third World the attitudes fostered by a history of underdevelopment. Even the oil-rich nations of the Middle East while not poor on a per capita income basis, are lacking in the technological and industrial structures which are defined as separating the developed nations from the Third World.³⁰

And this shared attitude has implications for international law and


³⁰Henkins, op.cit. supra. at p. 126.
its development, in everything from intellectual property protection to General Agreement on Tariffs and Trade.

d. Third World Reasons for Observing or not Observing the Rules of the New Order in International Law

One quick perusal of a legal periodicals index shows up an immediate dearth of contributors from Third World countries. Most of the debate regarding international law is still centered in the Western countries. They are the ones which have developed a fluency in the language of international law and their writers spawn most of the literature. This means that the discussion of international law in developing countries, even when they are becoming increasingly affected by its regime, is still very basic.

The example of the states of Micronesia comes to mind in their dispute with the United States over access of the American tuna fishing fleet to their migratory tuna resources. They were at a tremendous disadvantage in the dispute, because nowhere in the islands was there an adequate law library. Not to speak of a complete absence of trained international lawyers.\footnote{Professor Munroe, Interview at UBC Faculty of Law, March, 1991.}

Even when a viable legal profession is in place, it is usually too busy dealing with the myriad other jobs there are, in dealing with so much other legal business in the running of the legal system to be involved in the esoteric and seemingly luxurious
business of debating issues of international law.\textsuperscript{32}

In addition to often fledgling views of law generally in their populations and educated elites, many Third World governments face pressures from their people based on nationalism, or economics to not comply with international law.

Many of these new nations also, have no need to tailor their foreign policies to the rules of international law since their resources are meagre and often their preoccupation with the outside world goes only as far as their efforts to attract foreign aid. Some of these nations even favour a general instability in their regions because it enhances what their leaders have set as their national agendas.\textsuperscript{33}

In addition to the above themes in assessing Third World nations' compliance with international law, there are numerous other considerations which should order any analysis of a State's behaviour. How that state has reacted to tensions generated by the East-West conflict will inevitably be carried into its observance or non-observance of international law. Its relations regionally, its membership in regional associations or alliances will have effect on its compliance with law. The nature of its political system and its adherence to principles of human rights will affect its reaction to the emerging and controversial regime of international human rights laws. How it has dealt with the environmental concerns domestically and whether it does or does not

\textsuperscript{32} Henkins, \textit{op. cit. supra} . p. 130.

\textsuperscript{33}\textit{Ibid.} p. 131.
share important parts of its environment with its neighbours will affect its behaviour on the newly developing international environmental laws. On a more general note, all Third World nations have had their identities confirmed by the support they have collectively generated and received from International Organisations, specifically the United Nations. But Third World nations vary in how much they participate in the United Nations. Many of them are key players. Collectively their participation has done much to make international law more inclusive of their concerns. As Henkins observed:

The influence of the Third World on law and law observance promised to be greatest in and through the United Nations organization in regard to those international obligations that have been the principal concern of that organization and the new law which they have tried to make there.\(^{34}\)

4. Thailand and International Law

Why Thailand? In addition to the many subjective reasons for choosing Thailand as a Third World nation deserving of study regarding how it behaves relative to international law, there are a number of sound, objective reasons.

First, historically Thailand has survived as a viable nation-state free of colonialism and to all intents and purposes, has been an independent decision-maker for over a millenium. Its status as having never been colonized is a source of pride to its people. It is therefore quite unique in Asia, and the Third World in having a long history of independent relations with European states and

\(^{34}\)Ibid. p. 134.
therefore a long history of involvement in international law.

Second, Thailand had an early involvement in international organisations, being a founding member of the League of Nations and an early member of the United Nations.

Third, Thailand has domestic characteristics as a nation-state which render its behaviour particularly interesting as a case study. It is a relatively homogeneous nation, with a large proportion of the people (90%) speaking one language. So too it is relatively homogeneous in terms of its religion, since a similar percentage of its people are Buddhist, which undoubtedly influences its view of the world. Geographically, it is split between the maritime and archipelagic part of Southeast Asia and the continental north. This influences its climate and the livelihood of its people. The region where it is located is especially important today as one of the fastest economic growth areas in the world. Yet at the same time it shares borders with some of the poorest and least developed nations in Asia. Finally, it is a constitutional monarchy. The monarchy has given it a unique touch to its view of itself and inevitably had consequences for its foreign relations and for its behaviour relative to international law.\(^{35}\)

For all of the above reasons, Thailand, as distinct from other Southeast Asian nations like Malaysia, or Indonesia has a

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\(^{35}\)All of these characteristics, I present as givens. For references and an extensive bibliography on Thailand as a Buddhist Kingdom see Charles Keyes, *Buddhist Kingdom as Modern Nation-State*, (Boulder and London: Westview Press).
remarkably stable and cohesive sense of its own national identity. This has meant that its nationalistic sentiments are often passionate especially when its sensitive political toes have been stepped on. It also means that with a relatively unified population proud to be included on the "Thai team", it is correspondingly easier to depict certain traits as distinctly Thai, and therefore to link them to the nation's actions relative to international law.

Not that this process will be faultless. Inevitably, even with a State as culturally together as is Thailand, there are pitfalls awaiting the hapless scholar who is only too willing to draw conclusions where the evidence is meagre.

Nevertheless, the exercise while fraught with scholastic dangers and a dirth of materials on Thailand's view of international law, is instructive as a case study of one Third World nation with a longer involvement with international law and organisations than many others.

Because of its position in Southeast Asia and its membership in ASEAN, Thailand is worthy of study as well. The recent history of Cambodia, the refugee situation along its borders, the rapid changes taking place in Indochina and Thailand's pivotal position as a stable, pro-Western State with a prosperous and growing market economy guarantees that its importance will likely continue to grow in the next decades politically because its prestige would seem to have been enhanced by the ceasefire and peace initiatives now taking place in the region.

This analysis begins with a review of the main determinants
which formed the Kingdom of Siam and then Thailand as a nation-state. The approach is descriptive, but by necessity brief, drawing a picture of all that has gone into making Thailand a viable society and cultural entity. This includes a review of its historical development and the century of interaction with the colonial powers. There is an equally general discussion of the development of its legal system and Thai cultural reactions to law.  

Chapter 3 presents an introduction to Thailand's foreign relations and what have been its main determinants historically. There follows a discussion of the themes characterizing Thailand's stance internationally. This is followed by a discussion of the areas of international law which have had the most impact, and how Thailand has behaved when confronting them. The approach once again is historical, following through Thailand's foreign relations since World War II, the treaties it has signed, and its position on certain issues before the United Nations and its organisations. The

See, Corrine Phuangkasem, Determinants of Thailand's Foreign Policy Behavior, (Bangkok: Thammasat Univ. Press, 1984) What determines how a country responds to the outside world? Corrine Petchakesem attempted to set up a quasi-scientific study of the determinants of Thailand's national behavior in its foreign relations. She also took on certain methodological tools from statistics and political science to measure the extent of influence the factors she pinpointed had on the formation of Thai foreign policy. The effort, while barely readable, did survey through a questionnaire distributed to four former Thai Prime Ministers and several other officials such as former Foreign Ministers, what they considered to be the main determinants of Thai foreign policy. Half of those questioned seemed to feel that both internal factors and external factors were balanced in their influence on foreign policy making. This study will be referred to in greater detail in the next Chapter.
germ of this chapter resides in an analysis of the case brought by Cambodia against Thailand, before the International Court of Justice over the disputed ownership of the Temple of Preah Vihear which straddles their borders.

In Chapter Four, a discussion of the International Law of Human Rights and Thailand's general position is presented. At the outset, Thailand's the domestic responses to human rights and civil liberties are reviewed along with an analysis of how its politics have inhibited the development of civil liberties. From this opening, an analysis of Thailand's response to two key human rights issues with international implications is presented: first of all, its treatment of its minorities, and specifically its hill tribes; secondly, its behaviour relative to international refugee conventions and the problems it has had accommodating the thousands of refugees who have flooded into its territory from Indochina.

Chapter Five offers a discussion of Thailand's behaviour vis-a-vis the emerging Law of the Sea and the impact this Conference has had on its economy and the livelihood of its fishermen.

A short summary is presented at the paper's end, synthesizing the conclusions which can be drawn and linking them in a general statement on Thailand's perspective on international law and what can be anticipated regarding its compliance in the future. This conclusion will also present some suggestions on how international law has modified Thailand's behaviour and encouraged it to not only change but incorporate international law into its own legal system.
CHAPTER TWO

DETERMINANTS OF THAILAND'S NATIONAL CHARACTER

Introduction

Thailand has had a long involvement with the regime of international law and organisations dating back to its involvement with the Hague Conventions in the last century. This Chapter begins with a general introductory view of Thailand's national personality as formed by its geopolitical situation, and its history. There follows an overview of some of the discernible patterns revealed by its history and still evident in its national behavior today which have given rise to trends in its relations with other states. This is followed by an exploration of Thai attitudes to law domestically.

A. Geopolitical Facts of the Thai land and its People

1. Climate

Thailand or Siam as it was called until 1939, is a tropical

37Prior to Premier Pibul Songkram changing its name to Thailand, the Kingdom was known to the world and recognised as a member of the League of Nations as the Kingdom of Siam. This name
country. Its climate varies from north to south, with the southern region more connected to the monsoonal cycle common to Malaysia and Indonesia and the north, especially the far north, affected by the land mass of China and beyond to Siberia. Over most of Thailand, the rains begin in May and continue to early November. Then throughout the cool dry season and later the hot season in March and April, the country survives on the water flowing in its rivers or stored in village cisterns.

2. Historical Economic System

The majority of Thailand's people are still tied to the land. Agriculture is still the predominant economic activity of the people although this is changing rapidly. The land in the north is covered in hills which until the 1950's kept the valleys there remote. Most of Thailand's population has settled in the rich central river valleys and the settlements they have established over the centuries have, for the most part been devoted to the cultivation of rice.38

The first settlements to be established in Thailand were set up to cultivate rice and up to the last few decades there was an equal dependence on Thailand's abundant tropical forests for building materials, game, and other foods. Uncontrolled logging has eradicated much of the Kingdom's forest cover in the last fifty

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years and made Thailand a net importer of timber.39

In any discussion of Thai culture and its main determinants, rice must be mentioned not only as the staple of the Thai diet, but because of its requirements as a crop which have structured the way Thais have used their land through the centuries. Legally established land boundaries between landholdings have undoubtedly followed the contours of the land as they best suit rice cultivation.40

Until the advent of modern fertilizers, rice fields depended on the annual flooding and flow of water from rivers and canals to replenish the soil nutrients used up by each year's rice crop. This meant that a vast and intersecting web of aqueducts, main canals and smaller irrigation channels were early on in Siamese history used to make Siam's central river valley a vast garden of rice paddies.41

B. Population

1. The Thai peoples

For most of Thai history there has been sufficient land

39This figured extensively in several articles I wrote for the Bangkok Post from 1985 to 1990 on the consequences for various regions. My most recent series of articles was on the eucalyptus plantations being established in areas of formerly forested land which was not being used for other forms of agriculture. Villagers in many parts of Thailand were demonstrating against eucalyptus because of reports that the trees, not being native to the country would take over and destroy the soil for indigenous tree species.

40See C. Keyes, generally on how rice is cultivated and how the grid system of paddies in the Central Valley of Thailand stretches back centuries to before Ayuthaya. See also, Wyatt.

41Keyes, supra, p. 9.
to feed the population and provide almost everyone with a landholding. They may have had to hack a rice field out of the jungle, but still there was always the sense that land was available even when the population expanded. 42 While this is no longer the case, Thailand is one of the few countries in Asia which is a net exporter of food and the people are relatively well-fed.

According to the most recent census as quoted in Keyes, 99 percent of the populace are citizens of Thailand, and 97 percent speak Thai. While the government in its census would seem to lump many different groups under general descriptions such as "Thai-speaking" or "Buddhist", and is anxious to portray the Kingdom as a homogeneous society, Keyes suggested that:

"Language acquired from one's parents, and spoken at home, the religious tradition inherited from one's parents, memory of descent from immigrants to Thailand, and stories of past political independence from or discrimination by the government in Bangkok are the most salient attributes for those who claim distinctive ethnic identities in Thailand."43

2. Non-Thai Minorities

While this subject will be dealt with in more detail in the Chapter on Human Rights, it is important when establishing an introductory understanding of the Thai personality and the

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42At the end of World War II, Thailand had a population around 14 million people. In the 1940's and '50's, the population expanded rapidly and by the 1960's it was close to 50 million. It was then recognised that the high birth rate, combined with a rapid decline in the mortality rate and an increase in the average life expectancy because of better medical care, had begun to put a strain on Thailand's available resources, especially land.

43Keyes, supra, p. 15.
determinants of its national character that there are many non-
Thais in Thailand (although in percentage terms they are not major
portions of the population). Nevertheless, there has long been a
policy on forming Thai nationality and the Thais have been
extremely successful at assimilating those who are not originally
Thai. In the south, the most resistant to this process have been
the Malay Muslims who make up a sizeable proportion of the
population of the four most southerly states in Thailand, strung
along the frontier with Malaysia.

In addition to the Muslims, there is a Chinese population
which makes up Thailand's largest minority group. It has become
important and wealthy especially in the last fifty years.
Centered primarily in Bangkok, where it is estimated, 25% of the
population is Chinese, the group is predominant in trade and
commercial activities, although now third and fourth generation
Thai-Chinese are found in all walks of life.  

Finally, there are the peoples of the hill tribes who live
primarily in the north but are also strung along the western border
with Burma. All of these groups have figured in helping to form
certain national Thai attitudes, national policies and attitudes to
international law which will be discussed in greater detail in

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greater detail on the Chinese in Thailand and a history of their
arrival, settlement and assimilation see, R.J. Coughlin, Double
Identity: The Chinese in Modern Thailand, (Hong Kong: Oxford
C. Historical Development

1. The Early History: Pre-history to 1767

Anthropologists and historians are still at odds over where the Thais as a people actually originated. Linguists have drawn parallels between the Thai language and the Tai peoples scattered across the remote hills and mountains of South China, Laos, and Burma. These language roots are the strongest link connecting the modern Thai with the peoples and tribes to the north. As the theory goes, the Tai people began moving south from China around 700 AD, although this has yet to be clearly confirmed by historical evidence.\(^4^{6}\)

By the 11th Century this influx had produced a large Tai-speaking population which had settled in much of the north and northeast of present day Thailand. These immigrants began pressuring the established kingdoms in the region. Around present day Bangkok and covering the territory into Burma, the Buddhist Mon had established an empire. To the east, the large Khmer Empire centered in Angkor had been in place for several centuries. The interlopers from the north seemed to have got on reasonably well with these empires and by the 13th century Tai lords had been established in a number of centers in the north, paying homage to

\[^{45}\text{Ibid. 60.}\]

\[^{46}\text{D.K. Wyatt, } \text{Thailand: A Short History,} \ (\text{New Haven: Yale Universtiy Press, 1984}) \text{ 20.}\]
the rulers to the south. \(^{47}\)

By the 13th Century, the southern kingdoms were in decline and one of the Tai lords had established a strong kingdom of his own at a place called Sukhotai in the north. Today, this city of ruins is cited as the birthplace of King Ramkamhaeng who is credited with devising the first writing system for the Thai language. This city was also an important center for Buddhist culture and art, and sent delegations to China to the court of Kublai Khan.\(^{48}\)

2. The Ayuthaya Period: 1350 to 1767

But Sukhotai had a relatively short role in Thai history. To the south on the banks of Chao Phya River, another Tai kingdom had been founded by King Rama Thibodi (1350-1369).\(^{49}\) This was the fabled city of Ayuthaya, centered on an island in the Chao Phya River which drained most of central Siam. In 1431, Ayuthayan forces overran the Khmers and captured Angkor itself. Ayuthaya also absorbed Sukhotai to its north becoming the only effective power in the area and the center of a powerful state known as Siam.\(^{50}\)

The only other Tai state which had evolved and stayed viable was centered in Chiang Mai in the far north along the Mekong. The city kept its freedom from Ayuthaya primarily because of its remote location in the northern mountains. Isolated and self-contained, Chiang Mai became a famous Buddhist literary center, only falling

\(^{47}\)Ibid.

\(^{48}\)Ibid

\(^{49}\)Smith, supra in note 3 at p. 61

\(^{50}\)Ibid. 62.
to Ayuthaya and later the Burmese several centuries later.  

A feature of Thai history which would have consequences for Ayuthaya 200 years later were the wars between Ayuthaya and the Burmese. One of these, in 1569, resulted in the Burmese making Ayuthaya a vassal state. During the fifteen years of Burmese occupation, Thai law and custom were adapted to Burmese influence. At that point Thai law had been primarily based on the Palace Law of one of the greatest Ayuthayan kings, King Trailok (1448-1488), which established the rules for court, the royal hierarchy and the giving of tribute to vassal states and provinces.

After its liberation from Burmese rule, under King Naresuan, Ayuthaya quickly regained its former power. In control of a vast area of river-fed rice lands, and in possession of the ceremonial artifacts of the Khmer court, Ayuthaya through the next centuries grew in wealth and prestige until by the 17th Century it was receiving delegations from abroad which wrote glowingly of its marvels.

Larger than either Paris or London at the time, it was a city of canals, temples and palaces, characterized by some of these adventurers as the "Venice of the East". Buddhist temples and stupas formed a skyline for this island city, glittering with mosaics and gold leaf. Some of the foreign visitors settled, notably some Japanese Christians fleeing oppression in Japan and

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51 Ibid. pp. 61 to 86.
52 Smith supra in note 3 at 62
53 Wyatt supra in note 7 at 43.
later the Portuguese and the French.\textsuperscript{54}

Ayuthaya's contacts and trade grew and the Europeans vied with each other to gain a foothold in the Kingdom in order to monopolise the outflow of teak, rice and other exotic commodities Siam was producing. But in 1688, the growing military power of the French aroused opposition to the increase of foreign influence at Court and a backlash resulted. Westerners were ejected from Siam.\textsuperscript{55}

Ayuthaya over the centuries of its development and growth, set down the foundations for Siam as a nation-state. Its legacy is still discernible today especially in the structure of the Thai bureaucracy and social hierarchy and the foundations of the Thai legal system. It also sent delegations to China and to France and set up what can be regarded as the first Siamese Legations abroad.\textsuperscript{56} Many of the social structures that persist even today in modern Thailand can be traced back to the traditions established in Ayuthaya. At the center of Ayuthayan society was of course, the monarch. The Kings of Ayuthaya laid down an elaborate legal system, which established a hierarchy in two divisions, the military and the bureaucracy with the monarch at its apex.

Buddhism was Ayuthaya's official religion and the monarchy was inextricably connected with the Buddhist hierarchy. Ayuthaya also enacted compulsory military service and by the time the


\textsuperscript{55}Smith supra in note 3 at 62.

\textsuperscript{56}Ibid
Portuguese, were establishing their enclave in Malacca, Ayuthaya was already a formidable military power controlling lands far to the south on the Kra Isthmus.\(^{57}\)

But Ayuthaya's days were numbered. By the mid-18th Century, endless changes of power and internal bickering had distracted the rulers from the threat from Burma to the west. Relations with Burma had always been difficult. Two centuries before, Burmese armies, in their conquest, as mentioned had destroyed most of the major cities of Siam and occupied Ayuthaya itself, turning it into a vassal state. The monarchy which had usually been a source of stability was a source of turmoil during Ayuthaya's last two centuries. Some Kings lasted only months before a brother usurped them.\(^{58}\) Even in that tradition perhaps, today's coups and counter-coups may have their links.

In 1763, after several years of turmoil, a rebel king in Burma succeeded in raising a large army and directed it north at Chiang Mai. Within six months they had conquered the northern capital, re-directed their attentions south. Over the next four years, they consolidated their hold in the north. By 1766 they had joined other armies from Burma in the march on Ayuthaya itself.\(^{59}\)

After a long siege, on April 7, 1767, the Burmese took the capital and etched that date into the Thai psyche. For historians it represents the end of an era in Siamese history. But

\(^{57}\)Wyatt, supra in note 7 at p. 60

\(^{58}\)Ibid

\(^{59}\)Keyes supra in note at p. 39.
for the populace it was a bitter pill. The Burmese were not merciful conquerors, destroying almost everything that a millenium of Ayuthayan history had wrought. They removed gilded Buddhas carting them back to Burma on the backs of their elephants. Those they could not carry they destroyed. Vast libraries of ancient books and records were burned. Gold was peeled off the temples and palaces filled with art were pillaged and burned.60

c. The Chakri Dynasty and the Growth of Kingship

When Ayuthaya fell to the Burmese, the old state of Siam was essentially without government. But their conquest and rapid exit did lay the foundations for the next stage in Siam's history, the eventual emergence of a modern nation with Bangkok as its capital. After their heady victory and pillage, the Burmese found themselves facing Chinese armies on their northern borders. In their haste to return to Burma to defend their own homeland they quickly relinquished their conquests in Siam. In the vaccuum they left behind, anything could have been expected except what actually occurred.61

Within a decade of the fall of its ancient capital, Siam was

60Ibid. "I cry to think how much was destroyed of our history." said one student in Chulalongkorn University in Bangkok, recalling the extent of the destruction. The Thai Ambassador to Canada, Chawat Arthayukti put it more diplomatically. "What happened in Ayuthaya still remains in our hearts and minds. But we are in the modern age now and we must coexist with our neighbours." Interview conducted in August, 1990 in Vancouver.

61Ibid
again united. Out of the anarchy left in the conquerors' wake emerged a half-Chinese governor from the north, who regrouped the scattered provinces vacated by the retreating Burmese armies. This general's exploits in unifying the kingdom earned him wide support and he was crowned monarch.62

Called King Taksin, he ruled for fifteen years and left two things to the new regime. His armies succeeded in not only uniting all of Ayuthaya's former domains by 1776, but even in expanding them. And he established a new capital further south at a site more easily defended only 20 miles from the sea. Called "Krung Thep" by the Thais, or "City of Angels", it was to become known to the outside world as Bangkok. 63

Unfortunately his accomplishments went to the his head and he began seeing himself as a god, expecting others to treat him accordingly. He threw his wife in jail along with his sons and he began to require that monks prostrate themselves before him. As powerful as he was, tampering with the religion of the state was too much. 64

In 1782, a rebel army marched on Bangkok and captured the king. They invited a leading noble, Chaophraya Chakri to accept the throne. Invoking a little used law from Ayuthaya which had established the methods for executing royalty, the new king had King Taksin tied up in a velvet sack and beaten to death with a

62Ibid
63Ibid
64Wyatt supra in note at p. 67.
Thus, began the Chakri Dynasty which continues to this day. The dynasty began with the reign of King Chakri, (Rama I) who occupied the throne until 1809 and guided Siam into the 19th Century. He moved the capital from Thonburi across the river, to Bangkok. The new capital was only a few miles from the Gulf of Siam and more accessible as a port for trade and contact with the outside world, than Ayuthaya had ever been.66

By the end of Rama I's reign in 1809, Siam's borders extended all the way to Vietnam and incorporated most of Laos and Cambodia. In the south, four northern Malay principalities had also been absorbed. There are Thai irredentists who even today suggest that Thailand's boundaries should include these conquests established under Rama I. This has continued to affect Thai relations with its neighbours and was the pretext for Thailand taking back these lands during World War II.67

But the nineteenth century was dominated by the advent of European colonialism in Southeast Asia. Although Siam was to survive as the only truly independent nation-state in the region during that century, its freedom cost it dearly. In 1785, the British had established a stronghold in Penang in Malaya. By 1800 they had also taken some territory on the mainland opposite the island. By 1819 with their trade to China blossoming and the

65Ibid

66Keyes supra in note at p.40

67Ibid.
rivalry with the Dutch in the East Indies growing, they established a free port in Singapore. During this period of expansion, the British were very aware of Siam's crucial position in the region. This was emphasized by Singapore's founder, Sir Thomas Stamford Raffles who said: "When it is considered that Siam extends its influence over the whole Malay peninsula.... and this influence prevails over states with which our unrestricted intercourse is indispensable, the advantage of a good understanding with that court is obvious."\textsuperscript{68}

The process of achieving that understanding was based largely on a series of treaties Siam was coerced into signing over the next century. It was at this juncture with the arrival of European colonialism that the Siamese were exposed to their first experiences with Euro-centric international law. At first they gave up little. In fact their trade benefited from the first treaty with the British which recognised the border between Siam and Burma and formalised trading relationships.\textsuperscript{69}

But the main treaty between the two States, the Bowring Treaty named after the British envoy who engineered it, was signed on April 18, 1855. As a result of its signing, Siamese ambassadors travelled to London to open Siam's embassy in 1857.\textsuperscript{70}

This treaty marked a turning point in Siam's dealings with

\textsuperscript{68}Keyes supra in note 7 at p. 231

\textsuperscript{69}A.L.Moffat, Mongkut, the King of Siam, (Ithaca, N.Y.: Cornell Univ. Press, 1962) 41-45

\textsuperscript{70}Ibid. p. 49.
the West. When Prince Mongkut ascended the throne in 1851, as King Mongkut (Rama IV), the king inherited a kingdom surrounded by enemies. The European powers were establishing footholds throughout Southeast Asia, and every bit of his wisdom and education was tested during the 17 years he ruled to keep the sovereignty of his realm intact.\(^{71}\)

The King's delicate manoeuvring and the deft negotiating of terms in the treaties he signed with the Western powers set down a style for Thai diplomacy which has been instructive to Thai leaders ever since. While relinquishing some of Siam's sovereignty, King Mongkut was able to balance the Europeans off against each other, especially the British against the French. And in this way he kept them at bay. An example of Siam's earliest involvement with international law occurred during this period of the European states demarcating their Asian possessions. After the British gained control of Burma, the Anglo-Siamese border commission was established and Siamese rulers had to deal with established and internationally recognized boundary lines, rather than the traditional system where historic tribute was paid to the Siamese kings by vassals.\(^{72}\)

King Mongkut was also forced to concede to the imposition of extraterritoriality laws, which gave up Siam's legal jurisdiction over foreign subjects resident in the Kingdom. Treaties to this effect were signed first with the British and later with the

\(^{71}\)Keyes op.cit. supra at 45.

\(^{72}\)Ibid. p.49.
French, the Americans and the Japanese. But he kept the kingdom essentially a unit and, above all, independent.\textsuperscript{73}

Domestically, King Mongkut also saw the need to bring information about his government to the people. He sponsored the first government gazette in Siam and the printing of the laws which had been codified to that point. He also gave to the Kingdom perhaps his greatest gift, a son and heir, able to converse in English. Called Chulalongkorn, he also became the first Thai king to travel to Europe. While King Mongkut did much to preserve Siam's independence, his son, King Chulalongkorn faced the greatest challenges to Siam's independence and persevered.\textsuperscript{74}

The new King, (Rama V) faced the most direct confrontation with a Western power of any Siamese king. In 1893 a crisis arose with France over French incursions into Laos. In the confrontation, some French officers were killed in the Laotian capital. France used the incident as a pretext to send gunboats into the Gulf of Siam and threaten the mouth of the Chao Phya River leading to Bangkok. A Siamese fort at the entrance to the river, fired the first shots and after crossing the bar at the entrance to the river, the French ships reached Bangkok and anchored outside the French Legation. A Siamese Prince demonstrated traditional Thai diplomacy and congratulated the French commander on his daring.\textsuperscript{75}

\textsuperscript{73}Ibid.

\textsuperscript{74}D.G.E.Hall, \textit{A History of Southeast Asia}, (New York: Macmillan, 1968) 666-678

\textsuperscript{75}Ibid. p. 694
But nevertheless, the Siamese government was presented with an ultimatum which it had no choice but to accept.\textsuperscript{76} This was Thailand's introduction to the international law of reprisal.

The resulting territorial adjustments had finally placed the French possessions in Laos in direct contact with the British in Burma. This meant the two European powers had to agree to a shared border and in the process, they established legal recognition of Siamese control over the rest of the territory between their possessions which amounted to de facto recognition of Siam's control of the crucial Chao Phya River valley and the lands drained by its tributaries. \textsuperscript{77}

This incident set the tone for the first decade in the twentieth century. Siam was forced to cede more territory to the French, namely three more provinces in Cambodia through a treaty in 1907 and the British acquired four more Malay states and the exclusive right to build a railway down the peninsula linking Bangkok with Singapore.\textsuperscript{78} These treaties would come up later in a case that modern day Thailand had to defend in the International Court.

But as it turned out, these would be the last chunks of its territory, Siam would be forced to relinquish. The previous century had seen it forced to give up almost half its territory in order to preserve its freedom.

\textsuperscript{76}Ibid.

\textsuperscript{77}Ibid, pp 679-701

\textsuperscript{78}Ibid. p.700.
d. Prelude to Change: Thai Nationalism and the steps leading to the Coup in 1932

King Chulalongkorn's son, Vajiravudh, (Rama VI) is often said to be the father of Thai nationalism. During his reign, Buddhism along with the monarchy and the people (the Thai nation) were proclaimed the "three pillars of Thai nationalism". The King who had been educated in England, preferred art to politics. He never took a wife until late in his reign and ironically, in spite of his efforts to foster Thai nationalism and build up Siam's military, his excesses, it has been said, sparked the first questioning of Siam's system of absolute monarchy.

After World War I, in which Siam participated with allied the forces, Siam began slowly extricating itself from the onerous extraterritoriality laws that had been imposed in the previous century. It became a member of the League of Nations along with other Asian nations such as Japan, India, Persia and China. But unlike the other Asian states, Siam did not have to endure further European incursions on its sovereignty. But in the League as in its foreign relations generally, Siam did not easily forget the lessons of the recent past and continued to negotiate along a diplomatic tightrope.

The first three decades of the twentieth century set in motion

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79 Keyes op. cit. supra at p. 59.

80 Ibid. p. 60-61.

the steps to Siam's modernisation. One step was the promotion of education. And the coup-makers who ultimately rose on June 24, 1932 were among the young men sent abroad to be educated in the West. When they returned, they saw Siam as still backward and some of them became determined to bring the Kingdom more emphatically into the modern world.  

Among these young thinkers were two fed on the radicalism of Paris in the mid-1920's. Luang Pridi Banomyong was a law student working on codifying Siamese law. Another, Luang Pibul Songkhram was a young military officer. When they returned to Siam, they very quickly saw how much reform was needed and they began mustering support to challenge the absolute monarchy which they diagnosed as the main reason for the Kingdom's backwardness.

In 1930, Siam's economy was devastated by the grave economic crisis brought on by the worldwide depression. Rice had plummeted in price and because it was its principal export, Siam's economy was thrown into chaos. By 1932, even the peasants in the rural areas, who were normally the traditional supporters of the monarchy, were becoming increasingly restive. In Bangkok, ferment and rumours were on the rise as the aristocracy's lavish lifestyle stood in stark contrast to the escalating deprivation of the general population.


83Ibid. pp. 10 - 22.

84Keyes op. cit. supra at 63
e. The 1932 Coup and the End of Absolute Monarchy

On June 23, 1932, the coup promoters from the civil service and the military gathered while the king was at his summer palace in Hua Hin, south of Bangkok. They rallied enough troops to their cause to cut the telephone lines to houses and offices of the king's royal advisers. Early on June 24th, several advisers and members of the royal family were arrested and the coup promoters proclaimed a constitutional monarchy. King Prajadihok, (Rama VII) accepted the proclamation two days later, becoming Siam's first constitutional monarch. 85

If any one institution of Thai society can be said to dominate the next period in Thailand's history, it is the military. The armed forces had an important role to play throughout Siamese history, which not only involved matters of defense, but politics as well. The military hierarchy were extremely important socially in Siam, a fact of life it had inherited from Ayuthaya. 86

Therefore, it was no coincidence that the coup in 1932 was led by commoners of military background. They rose after a long history of Siamese military development. The military was the favored occupation for royal princes. The strict definition of place in the Thai social hierarchy conformed well to the uniforms and ranks. 87

f. The 1930's

85Ibid. p. 63.
86Ibid. p. 66
87Ibid. p. 68
After the coup in 1932, successive regimes followed in turbulent succession in Siam while the world moved inexorably to war. In 1933, Colonel Phibun Songkhrarn, one of the original coup-leaders led government troops in putting down a rebellion led by a royal prince. The distrust of the monarchy that he fomented, prompted King Prajadihok to leave for Britain, ostensibly to seek medical treatment. He never returned. In 1935 the king abdicated and the government invited ten year-old Prince Ananda Mahidol, the nephew of the old King to take the throne. But the young king's mother preferred that he continue his schooling in Switzerland and a Regent was appointed in Siam.88

Throughout this decade, the military not only grew in importance but began to take a greater portion of the national budget. Paralleling the rise in military preoccupations arose a fascination with Germany, Italy and Japan. And this provoked the government to stimulate a sense of Thai nationalism which was inevitably directed both internally and externally. By 1938, the Siamese government through the demise of various other factions, was firmly in the hands of the faction dominated by Luang Pibul Songkhram. Wyatt describes the Pibul period as follows:

"Luang Pibun Songkhram is one of only handful of people who definitely put their stamp on Thai history. His first government which ran from the end of 1938 to mid-1944 was a period thoroughly shaped by his power and personality, much as absolute kings had done a generation earlier."89

88Stowe, op.cit. supra at p. 84.

89Wyatt, supra in note 7 at p. 245
But Pibun through the cult of the leader had a different image he wanted to cultivate. As Keyes maintained:

Even before he became prime minister, Phibun and his followers had begun to be influenced by the ultranationalism rampant in Europe and especially in Japan. He favored the idea that the country needed a leader (phunam) who would not be like the kings of old but would be articulate, authoritative, and able to embody the aspirations of the nation. Phibun saw himself as such a leader, one who would unite all Thai.  

In the thirties, Luang Pibul made no secret of his admiration for Mussolini and Hitler. In 1939, he instituted a name change for Siam, arguing that the old name was given by outside powers like China. The nation deserved a new name, one which incidentally linked the country to the Tai peoples, many of whom resided outside the boundaries of the Kingdom. And so, Siam became Thailand, (Muang Thai), the Land of the Free.

He also raised the banner of nation against the powerful Chinese minority. In a speech, one of his ministers compared them to the Jews in Europe and suggested that Hitler's policies against the Jews might be applicable to the Chinese in Thailand. Pibul did in fact set in place several anti-Chinese policies. State monopolies were formed to compete in trading tobacco and other commodities with the powerful Chinese merchant class. Revenue taxes were increased which had impact on the Chinese commercial class.

90Keyes, supra in note 2 at p.66

91Stowe, op.cit. supra at p. 122.
Non-citizens were barred from engaging in numerous occupations. Chinese schools were required to curtail their instruction in Chinese language to two hours per week.  

**g. The War with French Indochina and World War II (1940-45)**

In June 1940, France fell to Hitler's armies. The wounds suffered by the Thais, at the hands of the French less than fifty years before still festered. Not only that but the Japanese in 1940, with the agreement of Vichy France, had moved into Indochina and established air bases near Saigon. Anticipating that they might be locked out of regaining territories they had lost in Laos and Cambodia, Pibul after long negotiations with the French, moved Thai armies in and took the disputed provinces by force in November, 1940.  

For several months, battles raged, the Thais doing well on land but losing their fledgling navy's flagship in the sea war. Eventually, in April 1941, an agreement mediated by the Japanese formally recognised Thai annexation of most of the disputed provinces.  

But it was to prove a pyrrhic victory. By August 1941, Thailand watched helplessly as Japanese divisions moved into the eastern half of Cambodia, barely a day's march from Bangkok. In spite of a call by Premier Pibul for national mass resistance in the event of invasion, few believed Thailand could hold its own if

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92Ibid. p. 132-33.

93Keyes, op.cit. supra. at p. 69.

94Stowe, op.cit. supra at pp. 143-78.
the Japanese did choose to invade. Britain was too preoccupied fighting in Europe to offer any effective help. And the Americans suddenly recognised how precarious they were in the Philippines.95

In the early hours of December 8th, 1941 after the Japanese Ambassador delivered an ultimatum to the Thai Government asking for right of passage for Japanese troops on their march into Malaya, the Japanese invasion of Thailand began. Scattered Thai units along the Gulf coast fought throughout the night and early morning. But by dawn Premier Pibul, realizing that to continue the fight would amount to national suicide, called a ceasefire.96

In the first few months of the Pacific War the West's possessions in Asia fall like dominoes before the Japanese armies. The Pibul government pragmatic and to some observers unprincipled, entered into a military alliance with Japan. Pibul issued formal declarations of war against the United States and Great Britain in early 1942. Thai armies moved into territories in the Shan states in northern Burma. And the sultanates in northern Malaya were taken back. For a brief time, Thailand had regained most of the territories that Siam had been forced to sacrifice to the colonial powers in the previous century. 97

During the first three years of the war, Thailand remained relatively untouched. The Japanese constructed their infamous "Death Railway" from Bangkok, through Three Pagodas Pass into

95 Keyes, op.cit. supra, at p.70.
96 Ibid.
97 Ibid.
Burma. There were a few bomber attacks on Bangkok which the British flew from India. But for the most part, Thailand came through the war unscathed, its economy and infrastructure almost completely intact.98

By 1945, the Thais, behind the backs of the occupying Japanese, began to make secret overtures to Britain and America to soften the results of an allied victory. Because the Thai Ambassador to Washington, Seni Pramoj had never delivered the declaration of war to the US government and had sponsored a Free Thai movement based in the United States, the Thais were able to find some success in their efforts with the Americans.99

After the war these contacts with the Americans signalled the commencement of the most pivotal relationship in post-war Thai foreign relations. The U.S. interceded on Thailand's behalf with the British and the French after the war in their negotiations of their postwar demands for the return of territories in Burma, Malaya and Indochina. Keyes described this sudden friendship as "...one that would lead to marked changes in Thai society from the mid-1950's through the mid-1970's."100

h. The Post-War Readjustments: 1945-50

Immediately after the war, Seni Pramoj, the Thai Ambassador to Washington who had so adroitly refused to deliver Thailand's declaration of war, was appointed Prime Minister in order to assist

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98Ibid. p. 71.

99Ibid.

100Keyes, op.cit. supra at 71.
Thailand's negotiations with the allied victors. In January, 1946, an election was held which resulted in the civilian, Pridi Banomyong, one of the coup leaders of 1932, being elected Premier. While this suggested a new period of democracy had arrived, the new government faced an epidemic of infighting between the various military factions jockeying for power.  

In the euphoric aftermath of the war, the Kingdom had joyfully welcomed back home King Ananda Mahidol from Switzerland. The young king seemed to embody the national mood to put the war and the sorry past behind. But this renewal was derailed when the young King was found shot in his bed on June 9, 1946, only six months after his return. At first his death was termed an accident but later called murder. Government heads rolled because of the tragedy (three officials were executed). 

The resulting controversy over the circumstances of the death, never really settled down until long after King Ananda's brother, King Bhumipol Adulyadej, (the current king, Rama IX) ascended the throne. But rumours were whispered around Bangkok, by certain factions regarding the role of Premier Pridi in the King's death. This campaign did much to create the confused environment perfect for a coup which occurred on November 8, 1947. The instigators were primarily forces from the military, who chafed at the tarnished image of the military after the war. With the glories they had reaped for Thailand against the French in Indochina and

\[\text{\textsuperscript{101}}\text{Ibid.}\]

\[\text{\textsuperscript{102}}\text{Ibid. p. 72}\]
elsewhere still fresh in their memories, they wanted more power and prestige. ¹⁰³

Keyes described this coup as follows:

The 1947 coup marked the beginning of a period in which the Thai military and more specifically, the army, assumed the role determining the character of the governments that rule Thailand, even to the present day. Although the military had been involved in the 1932 Revolution and military men, mostly Phibun, had participated in the governments between 1932 and 1947, the role played by the military had been a supporting rather than a preeminent one. The coup of 1947 changed the parameters of Thai political life.¹⁰⁴

D. The Evolution of the Thai Legal System and Attitudes to Law

In reviewing the development of Thai law since the turn of the century two motives of the early law reformers of Siam must be recognized. First of all, they saw that the new Siamese legal system while drawing its sources from the traditional law originating in Ayuthaya, had to provide the basis for the modernization of the nation-state. Therefore their reforms followed a European (French) codified model.¹⁰⁵ The second factor to be borne in mind was the effort of Thai law-makers to create a system which would be legitimate in the eyes of Europeans, specifically, to rid the Thai legal system of any vestige from the past which would allow Europeans an excuse for prolonging the hated

¹⁰³Ibid.

¹⁰⁴Ibid. p. 72.

extraterritorial legal regime.\textsuperscript{106}

To satisfy these two motives, the French Civil Codes were employed and rewoven to conform to Siam's requirements. This process was assisted by French and Belgian legal advisors.\textsuperscript{107} In the reign of King Chulalongkorn, (1868-1910), the first Siamese Codes were produced. In 1908, a law instituting the Courts of Justice was passed and this was quickly followed by the Code of Civil Procedure and the Criminal Code, all promulgated that year.

In outlining the reasons for these changes, the King cited the example of Japan which had also used the services of foreign advisors to assist in the drafting of new laws.\textsuperscript{108}

The Criminal Code incorporated many European legal concepts: sentencing was conditional similar to French and Belgian law; recidivism was redefined according to the European codes; punishment was reformed maximum and minimum terms to reflect the severity of offenses.

The Code of Civil Procedure and the Law of the Courts of Justice established a judicial hierarchy directly responsible to the Minister of Justice who was in turn responsible to the King. The Minister was responsible for appointing all judges throughout the courts. These judges did not refer to the traditional law or Thammasat, the laws of the moral universe upon which the rules of


\textsuperscript{107}Hooker, \textit{A Concise History}, op.cit.

\textsuperscript{108}Ibid. p. 184.
old Siam had been based, and which the Europeans regarded as an excuse for the imposition of extraterritoriality on Siam.¹⁰⁹ Judges in the new system based their decisions on the public law as codified, which was linked to the newly instituted ideas of state sovereignty.¹¹⁰

Gradually the codification of the public law through the abovementioned codes, was extended to private law through the promulgation of the Civil and Commercial Code in 1935.¹¹¹ The main stumbling block to this codification was the law on marriage. Traditional Siamese law, long criticized by the missionaries as being immoral, allowed polygamy. The debate over what to do about this went on for several decades until 1935, when the new Code prohibited any form of marriage except monogamy.¹¹² While the new law still supported the husband's paramountcy especially in giving him control of the property of the marriage, it sanctioned divorce by mutual consent.¹¹³

In relation to land law, a system of certificates of ownership stretching back to Ayuthaya was in effect at the turn of the century. The certificates were issued more for the purposes of assessing land taxes but they did establish land title to the

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¹⁰⁹Ibid.
¹¹⁰Ibid.
¹¹¹Ibid.
¹¹²Hooker, Legal Pluralism, op cit at p. 382.
¹¹³Ibid.
owners based on occupancy and cultivation.\textsuperscript{114} In 1901, King Chulalongkorn issued a decree requiring the registration of all land titles and effectively enshrined into law a distinction between mere occupancy and ownership.\textsuperscript{115} This situation was further formalized in the Civil and Commercial Code in 1935, which set out the procedures for passing and transferring rights in land.\textsuperscript{116} Several changes to this Code were enacted in the next two decades culminating in the Land Code passed in 1954, which extended land rights to all people, limited the rights of aliens to land ownership, and established a table of fees for land use.\textsuperscript{117} The power to adjudicate in disputes over land ownership was given to the Provincial Governors who were governed by regulations attached to the Code. While all of these efforts to make the law clearer were fruitful, there is still some confusion over the effectiveness of traditional titles to land. Also the rural population is still very ignorant of its rights under Thai land laws.\textsuperscript{118}

One holdover from traditional times, is squatter's rights, dating from the old days when an occupier of unoccupied or unused land could through occupation claim title. This was even put into the Land Code. An individual can give notice of the intention to occupy unused land and receive a license to occupy and cultivate.

\textsuperscript{114}Ibid. p. 384.
\textsuperscript{115}Ibid.
\textsuperscript{116}Ibid. p. 385.
\textsuperscript{117}Ibid.
\textsuperscript{118}Ibid.
After three years, the occupancy will be certified. This allowance has opened up the system to much abuse and squatters frequently occupy land without observing the legislated formalities.  

All of the law reforms cited above can be said to have been prompted by the process of induction Siam was undergoing, into the world community. The Siamese government at the time of its emergence as a modern nation-state into the community of nations, needed at least to appear to be modern. The other theme of this legal reformation was to promote national unity. As Hooker summarized the process:

"The entry of Thailand into the world community which this implied was accompanied by new concepts of law out of which grew the present amalgam of substantive traditional law and Western legal administration. The significant change in the land administration was the introduction of a title deed system as a result of which rights to land have come to depend upon the deed and endorsements therein."  

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119 Ibid. p. 388.  
120 Ibid. p. 389.
CHAPTER THREE
THE EXTERNAL FACTORS: THEIR INFLUENCE ON THAILAND'S NATIONAL BEHAVIOUR

I. Introduction

The period since the last war and the coup of 1947, spanning almost five decades, has seen Thailand develop what has been called, the Thai form of democracy. While the recent history of Thailand continues to be dominated by the military, many of the institutions stretching back to Ayuthaya and old Siam, the monarchy and the bureaucracy for example, continue to play crucial roles in maintaining Thailand's stability. The Kingdom has changed enormously in the decades since the war but much of its current success can be attributed to its strong sense of nationhood and a greater sense of its own security. These themes plus others will be explored in this chapter which reviews Thailand's perspectives on foreign relations and how they have figured in its involvement with international organisations and the development of international law.

Prior to proceeding through a history of international
politics in the Post War era and a description of the context in which certain questions involving Thailand and international law have occurred, it is necessary to retrieve some threads from the legacy of foreign relations Thailand inherited from the old Kingdom of Siam which was reviewed in the last chapter.

If any one international legal term has significance for Thais, in the modern era it is extraterritoriality. It still haunts the Thai memory and will on occasion enter Thai rhetoric. As Santaputra wrote:

[It] was the price Siam had to pay in exchange for her preservation of independence during the nineteenth century. Foreseeing the threat to survival of the nation from the imperialistic policy of Britain and France, in 1855, Rama IV agreed to an unequal treaty with Queen Victoria's emissary Sir John Bowring. This treaty created the right of extraterritoriality for British nationals in Siam. They were thus freed from the jurisdiction of the Siamese courts. Siamese autonomy in imposing tariffs was also curtailed. Provision for the unequal right of extraterritoriality was followed in treaties made with 12 other powers of the day.121

The special courts set up to deal with matters involving foreign nationals were still in operation in 1939, and British jurists were still operating in Siam, almost a century after the Bowring Treaty was signed.122

Extraterritoriality gave to the nations of the West and Japan the right to withdraw any case involving their nationals or the nationals of one of the countries which were their protectorates or

121 C. Santaputra, Thai Foreign Policy: 1932 - 46, (Master's Thesis), (Bangkok: Thai Khadi Research Institute, 1985), p. 84.
122 Ibid.
colonies. If a matter arose in Siam's provinces they could apply to have it moved to Bangkok. They had the right to have their own legal advisors present and any matter could be appealed to Siam's highest court. It also imposed on Siam, British law of property and testacy in British cases in the absence of Siamese law in those areas. When Siam was among the victors after World War I, at the Treaty of Versailles in 1918, its negotiators began the process of extricating the Kingdom from this imperialistic yoke. The United States was the first to abandon extraterritoriality in Siam in 1926. American advisors in the Siamese Foreign Ministry assisted it in drafting treaties with all the other powers based on national equality. Treaties with the other powers followed throughout the 1920's and 1930's. Perhaps the most significant of these, especially in light of its current preoccupation with events in Indochina, were the treaties it signed with France to legitimize its frontiers with Laos and Cambodia. Between 1867 and 1907, Siam lost 467,500 square kilometers of traditional territories to France. These areas of Laos and Cambodia had a population of 4 million at the time. The final Franco-Siamese treaty in 1937 was the last before Thailand eventually, unilaterally abrogated that treaty and marched into Cambodia in

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Ibid. p. 85.

Ibid.

Ibid.

Ibid. p. 27.

Ibid. p. 97.
II. Themes that have Emerged from the History of Thai Foreign Policy

A. Foreign Policy and the Military-Bureaucratic Elite

In the Thai bureaucracy, the officials and lawyers responsible for determining Thailand's stance on issues involving diplomacy, foreign relations and international law reside in the Foreign Ministry. But most observers of the Thai scene see the military decision-makers who have dominated the governments since World War II, as the key personalities determining Thailand's policies. Their dominance, in spite of the weight given to the influence of high-ranking officials in the Foreign Ministry, can be explained by the position foreign policy has had in legitimizing and justifying the military regime of the moment. In other words, the military is by definition supposed to be primarily involved in defending the nation. This means presumably against external enemies. Therefore the predominance of the military in forming Thai foreign policy can be explained by seeing Thai government, even today as defined by: the nature of the regime and how it came to power (i.e. most commonly by coup d'etat); the dependence on the leader which allows

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128 Ibid. p. 98.

his personality and biases to be incorporated into foreign policy and therefore responses to issues involving international law; the nature of Thai culture with its hierarchical structure and elite-based politics which permits only a few individuals with little appearance of consultation to make policy.\textsuperscript{130} 

\textbf{B. External Determinants} 

External determinants of national behaviour are those factors which are outside a nation's control. Phuangkasem in her analysis of Thailand's foreign relations, lists the following external factors which have influenced and continue to influence Thailand's foreign relations. They also affect its involvement in international organisations and law. First of all she observed that Thailand like other states is very much affected by events in the nations with which it shares borders. Second the geographic distance Thailand is from the nearest major power must be considered. Third, membership in ideological and regional blocs has very much had its effect on Thailand's foreign relations and the stance it has taken on international law. Fourth, Thailand's dependence on foreign aid and how much it is receiving relative to the Gross Domestic Product is a factor to be considered. Its balance of trade is the fifth consideration. She also cites factors such as the number of college students studying abroad, the nation's ranking in the world in terms of economic development and 

\textsuperscript{130}C. Phuangkasem, op.cit. p. 11.
Because Thailand is a small power with limited resources, its impact is very much restricted to the region where it is located. The countries that have had the most influence on it historically, have been its neighbours, Burma, Laos, Cambodia and Vietnam. Vietnam and Siam traditionally were rivals in Laos and Cambodia. When the Europeans arrived on the scene, they merely moved in and replaced the local rulers as the prime powers affecting Siamese affairs. But they did not change the need for the rulers of Siam to keep constantly vigilant of the situation on its borders.\textsuperscript{132}

Thailand's first exposure to international law and treaty-making came over having the boundaries between its neighbours and itself demarcated in boundary treaties signed with the Europeans. Siam's historic preoccupation with the situation in Burma, Laos, Cambodia and to a lesser extent, Vietnam and the Malay states continues to dominate Thai foreign policy today. Most of the major issues involving international law which will be discussed in this chapter have involved its position in the region and regional security. Even its involvement with international human rights law has arisen mainly because of the situation in the adjoining nations, involving refugees from Indochina, and hill tribes spilling over from Burma.


As for the distance Thailand is from major powers geographically, the major power closest to it geographically is the People's Republic of China. The other major power that has figured in its post-war relations is the United States. For the first three decades after the war, Thailand's geographic proximity to the PRC and its reaction to conditions in the PRC and its foreign policies were cushioned by its strong relationship and military alliance with the Americans. But in the mid-1970's when America's will to continue its high profile in Southeast Asia diminished and it was perceived as retreating, Thailand did a swift volte-face and began speedily repairing its relations with China. This process has continued until today: the two nations are so close, their relationship causes Thailand's ASEAN partners some degree of anxiety.\textsuperscript{133} Thailand was also one of the few nations in Southeast Asia that did not condemn the killing in Tiananmen in 1989.\textsuperscript{134}

For all of its post-war history, Thailand's relations with the outside world have been governed by its membership in regional and ideological blocs. Regionally, through its membership in the South East Asian Treaty Organization, it not only joined with other pro-Western Southeast Asian nations in a security alliance but did so firmly allied to the anti-communist American and pro-Western camp. This position was consistent with the wishes of its military leadership which has been the most strongly pro-American force in

\textsuperscript{133}"Sino-Thai ties boosed by President's visit," \textit{Far Eastern Economic Review}, (June 27, 1991), 22.

\textsuperscript{134}Ibid.
Thai politics. Because the Thai military has depended on American military aid since the late-1940's to build itself up, it has never waivered from its commitment to the American cause. The first US-Thailand military assistance agreement was signed on October 17th, 1950 and was extended every few years. This friendship coloured Thailand's foreign relations right up to the mid-1970's and affected its stance on numerous bloc-oriented issues before the United Nations.  

When its alliance with the United States became less important to it in terms of regional security, Thailand became an active member of the Association of South East Asian Nations (ASEAN), to ensure that it became a strong and effective counterweight to Chinese, Soviet and even American influence in the region. Thailand has never been seen as a committed team player historically. But since it joined ASEAN in 1967, its foreign policy decisions and its position in the United Nations, or in international conferences like those involving the law of the sea, do reflect its concern with the positions of its partners in ASEAN.

The last two factors which have influenced Thai foreign relations and its involvement with international organisations are economic determinants. First because of its position as a recipient of foreign aid from the United States and Japan, it has consciously tailored its foreign relations to be as palatable as possible to these two nations. But as the amount of foreign aid relative to its

See UN Yearbooks 1950-1975 on General Assembly votes on ideological issues such as China's seat in the UN, voted with the Western bloc.
Gross Domestic Product has declined, Thailand has been able to steer a more independent line in its relations with both the United States and Japan. Through the 1980's this greater independence was reflected in Thai reactions to American actions like the bombing of Libya.

As for foreign trade, because of the rapid growth in its economy during the 1980's, Thailand has become a much more important player economically on the world stage. While still a minor economic power, its economic growth has moved it close to the ranks of the Newly Industrializing Countries, Singapore, Hong Kong, Taiwan and South Korea. This new sense of economic security has been translated into greater confidence in its foreign relations but at the same time Thailand is very conscious of arranging its foreign relations to be consistent with its new dependence on strong trading relations with the ASEAN countries, North America, Europe, and Japan.

International law and organisations have some role in this process. The Law of the Sea Conferences have resulted in law which will be discussed in greater detail in Chapter 5, with enormous consequences for Thailand's fishing sector. The areas of the Gulf where it has sunk wells and now pumps natural gas into a nationwide pipeline grid border zones claimed by the Indochinese states and Malaysia. As for its trading relationships, it has acceded to the Generalised Agreement on Tariffs and Trade and been under pressure from the United States to bring its intellectual property legislation into conformity with international law on intellectual
property.\textsuperscript{136}

III. Post-War Relations, Treaties and International Law

A. Aftermath of War (1945 - 50)

The period immediately following World War II, found Thailand still the only sovereign nation in a region to which the colonial powers wanted to return and reclaim their possessions. In the first year, 1945-46, as described in the preceding chapter, Thailand took advantage of the goodwill it had with the United States, and successfully negotiated peace treaties with the British and French which among other things, forced it to relinquish the territories it had occupied in Burma and Indochina. In fact the treaty Thailand signed with the British and India on January 1, 1946 was the first peace treaty any enemy state signed with the allies.\textsuperscript{137}

The treaty was also the first act involving international law which Thailand performed after the war, in order to begin the process of regaining its legitimacy in the world community. In the treaty, Thailand agreed to nullify all territories it had taken

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\textsuperscript{136}Brief presented to the US Trade Representative in Washington as published in the Bangkok Post, June 7, 1987 on Patents for Pharmaceuticals and Protection of Intellectual Property in Thailand as presented by the Foreign Pharmaceutical Manufacturer's Association. In the author's files.

during the war. It provided for Thai collaboration in whatever United Nations post-war security arrangements were to be arranged for the region. It provided for the restoration of diplomatic, economic and commercial relations between Thailand, Britain and India. And Thailand also promised not to construct a canal across the Kra Isthmus without British consent. \(^{138}\)

For a short year, Prime Minister Pridi Banomyong ruled the nation, installed by the allies after his success leading the Free Thai movement. But his regime was short-lived largely destroyed by the death of King Ananda as discussed in Chapter Two. In 1946, Thailand by legalizing the Communist Party of Thailand, overrode the possible veto of the Soviet Union in the United Nations (UN) Security Council and joined the UN on December 16th, 1946. \(^{139}\) It began in that year to enter the various special organisations of the United Nations which have become extremely important to its development in the last fifty years.

Reviewing the first years of Thailand's involvement in the United Nations and its enlightened support of such progressive documents as the Universal Declaration of Human Rights seems ironic in light of the regressive nature of its domestic politics.

In 1947, the key player on the home front was Pibul Songkhram who re-emerged after the war and dominated Thai politics until 1951.

**B. A Decade of Anti-Communism (1950-60)**

\(^{138}\) Ibid.

\(^{139}\) UN Yearbook, 1953.
Two personalities emerged in the post-1951 scene, after Premier Pibul's demise. General Sarit Thanarat of the army and General Phao Sriyanonda of the police were able to dominate Thai politics for most of the 1950's because of United States financial support and their own efficient systems of corruption which ensured that their factions remained loyal.  

It is this last point which seems most significant. By the early 1950's corrupt military and police generals dominated Thailand's internal politics. And the United States through the U.S. Central Intelligence Agency was their main benefactor.  

This mix, of rightist, strongly anti-communist military leaders and an alliance with the United States brought Thailand like many countries in the region, in line with long term U.S. foreign policy strategy to contain the perceived threat to the region from the People's Republic of China.

When Mao's armies moved south in China and drove remnants of the Kuomintang (KMT) into Burma, and Laos in 1949, the Truman Administration reacted in panic. While the Thai political scene had its usual ups and downs during this period, they were almost secondary to the national interests of the U.S. in the region. For the next twenty years American military aid and financial manipulation in Thailand did much to influence both its internal

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141 Ibid.
The 1950's saw not only forces from the KMT enter the northern hills of Thailand, but fighting between the French and the Viet Minh forces in Vietnam spilled over the border and caused the first influx of refugees into Thailand from Vietnam. Even to this day, remnants of this population reside in Thailand's northeast. 

In addition to its proximity to the growing insurgency against the French in Indochina, Thailand saw itself as a strong ally of the United States and a member of the UN, forced to get involved in the Korean conflict. Thailand was one of 15 members of the UN which sent forces to Korea.

In 1954, Thailand lodged a complaint in the UN regarding threats to its national security posed by fighting in an unnamed country on its borders. The Soviet Union objected to the matter being brought to the Security Council since the Indochinese question was being negotiated in Geneva between the Vietnamese and the French. The Soviets also maintained that Thailand was merely acting as a proxy for the U.S. and the U.S. wanted to sabotage the negotiations in Geneva. The Thais in their complaint to the UN, outlined how Viet Minh forces had invaded Laos and Cambodia and had escalated their charges that Thailand was sending forces into

\[142\text{Ibid.}\]

\[143\text{See Chapter Four, section on Refugees and Thailand's response.}\]

\[144\text{UN Yearbook, New York: United Nations, 1954.}\]

\[145\text{UN Yearbook, (New York: United Nations, 1954)}\]
the two countries as well. Thailand requested that the UN send a Peace Observation Commission to the border areas but the Soviet Union vetoed the request.\textsuperscript{146}

On questions such as this, involving Thailand against Soviet interests, Thailand stood firmly in the Western camp. It voted, for example with the Western bloc of 50 nations in the UN on adopting the Korean Armistice Agreement. But on issues which involved self-determination of peoples, it sided with the Third World and the Soviet bloc. For example, in a vote to bring the Netherlands and Indonesia to the bargaining table to resolve their dispute over Irian Jaya, Thailand sided with the Third World bloc. In 1954, it stood among the Third World nations against France and the West to bring the question of Moroccan independence before the General Assembly.\textsuperscript{147} On questions regarding apartheid and South West Africa it also stood with the Third World, against the West.\textsuperscript{148}

This pattern continued through the 1950's. Where issues were clearly defined as East - West issues, issues of security and ideology, like Korea, Vietnam, or the seat for China in the UN, Thailand came down firmly in the Western camp. But on issues involving colonialism and self-determination, it stood with the Third World. It also emulated the Third World in its reactions to emerging international covenants on human rights. For example it stood with the Islamic countries in abstaining on the Draft

\textsuperscript{146}Ibid.


Convention on the Status of Nationality of Married Women. It also abstained on a vote to reconstitute the United Nations Refugee Fund.

Late in the 1950's, Thailand began to lodge complaints at the UN regarding the border situation with Cambodia. Or Cambodia would lodge complaints about Thai incursions in its border region. These charges and counter-charges escalated in intensity until November 29, 1958, Cambodia broke diplomatic relations with Thailand. At this time the Temple of Preah Vihear began to appear in the controversy. The Cambodians charged that while the Temple stood on Cambodian soil, as confirmed by the treaties Siam had signed with the French, Thailand had stationed troops at the Temple which amounted to its de facto annexation of the Temple. The Secretary-General sent Swedish Ambassador Johan Beck-Friis as his representative to observe the border and make a report.

These charges and counter-charges continued throughout 1958 and culminated in 1959, with the Cambodians filing in the Registry of the International Court of Justice, an application instituting proceedings against Thailand. The Cambodian application stated that since 1949, Thailand had occupied the site of the temple and since 1954, stationed paramilitary forces there.

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149 Ibid.
150 Ibid.
152 Ibid.
2. Regional Security: the Unsettled Decade (1960-70)

a. The Temple of Preah Vihear Case: Cambodia v. Thailand in the International Court of Justice.

This case crystallized in a single suit before the International Court of Justice (ICJ) all of the key elements of the Thai perspective on International Law. At the time that the case arose in 1959, Thailand was ruled by a strong military government supported by infusions of money from the United States. It was allied with the anti-communist government in South Vietnam which was fighting a growing insurgency against the Viet Cong, and Thailand, too, was facing its own Communist Party of Thailand insurgents although on a much smaller scale than in Vietnam. Although the case was initiated by Cambodia, the Thai military elite wanted the case before the ICJ to vindicate their claim to the Temple. For them it was a matter of historic pride and national dignity.

The case also illustrated how domestic and international politics coalesced in influencing Thailand's stance on the issues before the ICJ, where the international law involved was not for the Thais the priority. It was a matter of national dignity. Underneath those motives, lay the sovereignty issue over a Temple which for the Thais suddenly symbolized all that it had lost to the imperialists in the previous century.

As already mentioned, the Cambodians began to complain in the late 1950's about Thai moves in the area around the temple. It
should not be forgotten that Thailand was brought for the first time to the ICJ, not by a Western power, but by a smaller, weaker Third World state that was traditionally regarded by them as a vassal to the Kings of Siam. And it had only gained its independence from France in 1953. For the status conscious Thais their cultural reaction to this upstart nation challenging them before the world was doubly galling.

The Temple of Preah Vihear involved the terms of a treaty between France and Siam, of 1904 with a subsequent Mixed Commission set up to survey the border and produce maps which were completed in 1907. It stood on a promontory overlooking the plains of Cambodia. Because it stood on the edge of an escarpment, it was reached up stairs which rose gradually from the north on the Thai side. The edge of the escarpment on what the Thais claimed was the Cambodian side formed a cliff face which plummeted down to the plains below. There is little doubt from descriptions of the site before the Court and the fact that the Mixed Commission of 1907, was supposed to draw the frontier to follow the watershed line, that the natural configuration of the escarpment did place the Temple on its north, and therefore, Thai side. But the arguments turned on law and the interpretation of the wording of the treaties signed in 1904 and 1907.


155 Ibid.

156 Ibid.
The Court described the facts of the case as follows:

In the present case, Cambodia alleges a violation on the part of Thailand of Cambodia's territorial sovereignty over the region of the Temple of Preah Vihear and its precincts. Thailand replies by affirming that the area in question lies on the Thai side of the common frontier between the two countries, and is under the sovereignty of Thailand. This is a dispute about territorial sovereignty.\(^{157}\)

Thailand was defended by a team of international lawyers drawn mostly from the English Bar. The team was headed by a former Attorney-General of England. Mr. Seni Pramoj, the former Thai Minister to the U.S. who had tactfully not delivered Thailand's Declaration of War to the U.S. State Department in 1942, was the Thai lawyer leading the case. A Member of the Legal Division of the Thai Foreign Affairs Ministry, Sompong Sucharitkul, who has since become a member of the UN International Law Commission was the other Thai lawyer on the case.\(^{158}\)

Cambodia was represented by Dean Acheson, the respected former Secretary of State under the Truman Administration. He was assisted by two professors at the Paris Law Faculty.\(^{159}\)

While the lawyers representing the litigants would seem to be minor considerations in an ICJ case, they figured in the


\(^{159}\)Ibid.
controversy which followed the Court decision.

There were two arguments Thailand used in responding to Cambodia's claim of sovereignty over the site of this temple. The first involved a preliminary objection regarding the compulsory jurisdiction of the International Court of Justice. The ICJ had, upon the creation of the United Nations in 1945, become an organ of the UN which unless otherwise stated, all members of the United Nations automatically became members of. The ICJ assumed the mantle of the old Permanent Court of International Justice and remained in the premises of the old Court in The Hague in the Netherlands. But the Permanent Court of International Justice was dissolved on 19th April, 1946 and according to the Thai argument declarations accepting its compulsory jurisdiction could not be renewed since it was defunct.\(^{160}\)

Thailand had accepted the compulsory jurisdiction of the Permanent Court in 1929 and then in conformity with that Court's Article 36 requiring renewal of a nation's acceptance every ten years, renewed its declaration again in 1940 and once more in 1950. It was the Thai argument that the renewal of its acceptance of the Permanent Court's compulsory jurisdiction was void ab initio because the Court itself no longer existed.\(^{161}\)

The Court found that this Declaration of renewal in 1950, although it mentioned the Permanent Court and the renewal of its acceptance of that Court's jurisdiction, indicated Thailand's

\(^{160}\)Ibid.

\(^{161}\)Ibid. 21-22.
intention to accept the ICJ's jurisdiction as the new form of the old Court since it was well aware at the time of the new Court's existence, and Thailand's use of the old renewal process was merely a procedural expedient. In support of its decision, the Court quoted its own Article 36, paragraph 5 which states that Declarations accepting the jurisdiction of the previous Court will be held to apply to the ICJ.\footnote{\textsuperscript{162}}

In support of its argument, Thailand cited the case of Aerial Incident of July 27th, 1955 (Israel v. Bulgaria) in which Bulgaria, too, had claimed that its acceptance of the Court's compulsory jurisdiction had lapsed. In that case, decided in 1959, the Court held that Article 36 did not apply indiscriminately to all states. As the Court summarized its position in that case:

Suffice it to say that, on the basis of this reasoning, the Court held that Bulgaria not having, through its admission to the United Nations, become a party to the Statute until 14 December, 1955, the Declaration which she had made in 1920 accepting the compulsory jurisdiction of the former Permanent Court for an indeterminate period of years, must be regarded as having lapsed on 19 April 1946 and as not having been transformed by the operation of Article 36, paragraph 5, into an acceptance relative to the present Court, Bulgaria having never at any time made a declaration independently accepting the compulsory jurisdiction of the Court, it followed, on this view, that she was not bound by that jurisdiction.\footnote{\textsuperscript{163}}

The Court distinguished Thailand's situation from that of

\footnote{\textsuperscript{162}}Ibid. p. 24.

\footnote{\textsuperscript{163}}Ibid. p. 26.
Bulgaria and pointed out that Bulgaria had accepted the Permanent Court's jurisdiction in 1921 which in the Court's view had lapsed in 1946 without any effort to renew it. Bulgaria had made no request to have its Declaration of 1921 considered as applying to the new ICJ. In those circumstances the Court held that Bulgaria had taken no steps indicating it had done anything accepting the ICJ's compulsory jurisdiction.\textsuperscript{164}

But in Thailand's case, the Court held that by her Declaration of May, 1950, Thailand placed herself distinct from Bulgaria which had done nothing regarding acceptance of the Court's jurisdiction upon being admitted to the United Nations.\textsuperscript{165} Article 36 requires under paragraph 4, deposit of a nation's acceptance with the Secretary General of the United Nations. Since Thailand did this in whatever form, and the Court says the language of acceptance is up to each state to choose, the Court held that Thailand had accepted the compulsory jurisdiction of the Court.\textsuperscript{166} Its decision was framed as follows:

\begin{quote}
...when a country has evinced as clearly as Thailand did in 1950, and indeed by its consistent attitude over many years, an intention to submit itself to the compulsory jurisdiction of what constituted at the time the principal international tribunal, the Court could not accept the plea that his intention had been defeated and nullified by some defect not involving any flaw in the consent given, unless it could be shown that this defect was so fundamental that it vitiated the instrument by
\end{quote}

\textsuperscript{164}Ibid. 28.
\textsuperscript{165}Ibid.
\textsuperscript{166}Ibid. p.32.
failing to conform to some mandatory legal requirement.\textsuperscript{167}

The second portion of the case was argued in 1962. This involved the question of sovereignty over the disputed Temple. Thailand argued that the escarpment as described at the beginning of this case study, was the logical line along which the frontier should have run, and if that was accepted, the temple in question was definitely on Thai territory.\textsuperscript{168} The documents submitted from the time that the boundary was marked and surveyed indicated that the Parties (France and Siam) had wanted the boundary to conform to natural phenomena, i.e. rivers, mountain chains (escarpments) and watersheds.

In a significant statement the Court also observed, "The Parties have also relied on other arguments of a physical, historical, religious and archaeological character, but the Court is unable to regard them as legally conclusive."\textsuperscript{169}

The case cited the boundary settlements between France and Siam and the Treaty between the two of 3 February, 1904. The Court decided, therefore, not to delve into the events which led up to this treaty. A Mixed Commission had been set up with members from both France and Siam to draw boundary lines through the Dangrek range, which was the name of the mountains where the escarpment and

\textsuperscript{167}Ibid. p. 34.


\textsuperscript{169}Ibid.
temple site were located. While there was no mention of the Preah Vihear site specifically, the Court presumed that frontier lines had been drawn. This it confirmed by referring to the maps which had been drawn up by French topographers which the Court felt had been done with Siamese acceptance. One map of the eleven produced, showed the Preah Vihear site clearly marked as being within Cambodia.\textsuperscript{170}

Thailand argued that these maps were not binding. They were not the work of the Mixed Commission. Supposedly the maps were supposed to show the frontier following the watershed line but were in fact in error. If they had marked the frontier along the actual watershed line, they would have shown the Temple on the northern side of the watershed line and therefore in Thai territory. Thailand further maintained that nothing in its behaviour ever indicated that it had accepted this map or in the alternative, if it had accepted the map, it did so because of the mistaken belief that the map portrayed the frontier as correctly running along the actual watershed line.\textsuperscript{171}

In response to this argument, the Court said that the maps had been produced and approved officially by both France and Siam because they were distributed by the Siamese to their Legations in the main capitals of Europe and the US. At their creation, the Court agreed, the maps were perhaps not binding. But for the Court, the real question rested on whether the Parties had through their

\textsuperscript{170}Ibid. p. 1038-9.

\textsuperscript{171}Ibid.
subsequent conduct, adopted the maps as properly demarcating the boundary and therefore the site of the temple, and by acting thus, rendering the maps binding on them both.\textsuperscript{172}

The Court further cited a letter from the Siamese Minister in Paris to the Minister of Foreign Affairs in Bangkok of 20 August, 1908 in which he said that the maps produced by the Mixed Commission had been completed. As the Court noted, nowhere in the letter was there any indication that the Minister thought there had been any errors made. And for the Court this "...amounted to acknowledgement by conduct."\textsuperscript{173} As the Court said:

That the Siamese authorities by their conduct, acknowledged receipt, and recognized the character, of these maps, and what they purported to represent, is shown by the action of the Minister of the Interior, Prince Damrong, in thanking the French Minister in Bangkok for the maps and in asking him for another 15 copies of each of them for transmission to the Siamese provincial Governors.\textsuperscript{174}

This conduct and acknowledgement, according to the Court was further confirmed by the Mixed Commission of 1909 which met to set up a geographic service for Siam with the idea of producing and translating such maps into other languages.

Thailand further argued that at the time, no one in Siam knew of the existence of the temple and the maps had only been seen by minor officials. The Court said that the records from the time indicated that leading Ministers of the Siamese Government had seen

\textsuperscript{172}Ibid. p. 1040.

\textsuperscript{173}Ibid. p. 1041.

\textsuperscript{174}Ibid.
the maps and the Governor of the Province where the temple site was located had seen the maps, and presumably he would have been well-aware of the temple's existence and location.\textsuperscript{175} The Court put it as follows:

Frontier rectifications cannot in law be claimed on the ground that a frontier area has turned out to have an importance not known or suspected when the frontier was established.\textsuperscript{176}

The Court also said that the rule of law cannot allow error to be pleaded as an excuse for a party's consent. If the conduct of the party indicates an acceptance of the results of the error, or by so acting the party further compounds the error, the party cannot later claim that all that has gone after the error, is of no consequence.\textsuperscript{177} In support of this proposition, the Court cited Thailand's behaviour subsequently. In 1934-35, it did its own survey which once again showed the temple in Cambodian territory. Then in 1937, it entered into another boundary agreement with France with no protest about the temple being inaccurately depicted in the old maps, as sitting in Cambodian territory.\textsuperscript{178}

Then again in 1947, when a Commission was convened in Washington to deal with boundary disputes between Thailand and France over Indochina, Preah Vihear was never discussed.\textsuperscript{179}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{175}Ibid. p. 1043.
\item \textsuperscript{176}Ibid.
\item \textsuperscript{177}Ibid, p. 1044.
\item \textsuperscript{178}Ibid.
\item \textsuperscript{179}Ibid. 1045.
\end{enumerate}
\end{footnotesize}
In 1949, when Thailand placed temple keepers at the temple site, France sent a note to Bangkok, asserting its sovereignty over the site. This was followed by another note in 1950. Thailand responded to neither.\textsuperscript{180} When Cambodia gained its independence in 1953, it sent its own keepers to the temple but when they found Thai police there, they withdrew. In 1954, Cambodia sent a note to Thailand and as tensions increased over the site, negotiations were commenced which broke down in 1958. Cambodia then made application to the Court in 1959.\textsuperscript{181}

The Court for the reasons cited previously found that the Temple belonged to Cambodia. Its conclusions were as follows:

In general when 2 countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called into question, and its rectification claimed whenever any inaccuracy by reference to a clause in the parent treaty is discovered. Such a process could continue indefinitely and finality would never be reached so long as possible errors still remained to be discovered. Such a frontier so far from being stable, would be completely precarious.\textsuperscript{182}

With that the Court seemed to suggest that its decision was aimed at establishing stability and finality to the situation existing between Cambodia and Thailand. And it did so in a decision couched in legal language when its decision could easily be construed as political.

The dissenting judges, (on the issue of sovereignty, there

\textsuperscript{180}Ibid. p. 1047.

\textsuperscript{181}Ibid.

\textsuperscript{182}Ibid. p. 1049.
were three out of nine) indicated answers to some of the questions the Court had asked about Thailand's conduct at the time the original boundaries were mapped. Sir Percy Spender of Australia brought a breath of reality to the Court when he wrote:

In determining what inferences may or should be drawn from Thailand's silence and absence of protest regard must I believe, be had to the period of time when the events we are concerned with took place, to the region of the world to which they are related, to the general political conditions existing in Asia at this period, to political and other activities of Western countries in Asia at the time and to the fact that of the two States concerned, one was Asian, the other European. It would not, I think, be just to apply to the conduct of Siam in this period objective standards comparable to those which reasonably might today be or might then have been applied to highly developed European States.

There is a further general consideration of some significance. There can be little doubt that, at least in the early part of this century, Siam was apprehensive about the aspirations of France....This apprehension on the part of Siam as to France's attitude toward her is a factor which cannot be disregarded in evaluating Siam's conduct -- her silence, her lack of protest, if protest might otherwise have been expected of her. 183

While Jessup used the case to illustrate his point that it can often be quite misleading to characterize views of judges in the Court according to national alignments, the case illustrates more than that about the Court and its inadequate consideration of the politics surrounding the case.

Siam as discussed in Chapter Two, had suffered huge losses of territory because of French incursions into Indochina. Even the boundary area on which Preah Vihear sits, was taken by France in its last territorial grab from Siam and this was accomplished

through certainly illegal gunboat diplomacy, forcing Siam to give up territory while two French warships were anchored only a kilometer away from the Grand Palace in Bangkok. Therefore for the Court to disregard how this entire matter arose in the first place, how even that Cambodia was asserting its rights based on the heavy-handed actions of its former colonial master, which were probably unjustified under international law, was to blind itself to the real issues. But in doing this, the Court must have been aware of the plethora of questionable boundaries carving up the globe and separating the new states which were in the majority former colonies, formed by boundaries drawn by colonizers according to their own jurisdictional needs rather than the needs of the nations which would eventually emerge upon the break-up of colonial empires.

The reaction in Thailand was popular outrage especially at the Court's directive that it quit the temple. As celebrants in Phnom Penh, gathered in the streets to celebrate the Cambodian victory, General Sarit announced that Thailand would not only refuse to withdraw its troops from the temple but would send in reinforcements to the contingent already there.

Thailand declared a boycott of SEATO, which was headquartered in Bangkok, in reaction to what some Thai sources quoted by the New York Times had said was undue US favoritism for neutralist Cambodia. The Thais were apparently upset that former Secretary of


State Dean Acheson had represented Cambodia before the Court. In addition to Mr. Acheson's involvement, Thai sources were also complaining about the votes of judges on the Court from Britain, the US and France which they clearly saw as a betrayal of a pro-Western ally. In an editorial at the time, the New York Times stated that Thailand's emotional reaction to the Court's decision while understandable was not conducive to international harmony and peace and recommended a saner, more rational approach since after all, the temple site was of little strategic value. As the Times wrote:

...the Thais would have much to gain from heeding the court decision and giving up Preah Vihar [sic]. The temple has emotional but no strategic importance. To yield it to Cambodia would remove a source of friction and possibly pave the way for a mutually beneficial improvement in Thai-Cambodian relations. And Thailand would acquire prestige for accepting findings, however unpalatable, of a world tribunal whose activities are one of the main hopes for building a world rule of law.\(^6\)

On July 1, 1962, the Times reported that Thailand's Foreign Minister Thanat Khoman had, with reluctance, acknowledged the Court's ruling and said that Thailand would shortly withdraw from the site although it did not regard the decision as legal. Nevertheless, as a member of the UN, he stated, Thailand accepted its obligations. The Foreign Minister also was quoted in the article as observing that Cambodia's only access to the temple was through Thai territory and suggested the US and the PRC cooperate in building the Cambodians an elevator up the cliff to the site. This, as the Times pointed out reflected the traditional

relationship the Thais have with Cambodia plus Cambodia's neutralist position that enabled it to receive foreign aid from both the West and the Communist bloc. This stood in contrast to Thailand's staunchly pro-West position internationally. 187

Further to its protest, that the Chief judge of the Court was a Polish communist, the Thai government asked a visiting Polish trade delegation to return to Poland. And in protest over the judge from France finding against Thailand, the Thai ambassador in Paris was withdrawn. 188

Over July, Thailand continued its protests but in compliance with the Court ruling, announced its withdrawal from the temple site. The Minister of the Interior was quoted in the Times as saying, "History will remember this day as the day we lost our sovereignty over the shrine." 189 But it quietly ended its boycott of SEATO and its representatives resumed attending meetings at the SEATO headquarters in Bangkok. 190 The Sarit regime was also reported to have called a halt to demonstrations over the Court decision. General Sarit was quoted in the Bangkok World, as noted by Singh as saying:

Although Cambodia has for the moment won the ruins of the temple, the soul of the temple of Phra Viharn remains with Thailand. We reserve our inherent right of Thailand in this matter, especially the right to have resource to

any legal processes which may offer themselves in the future and will result in the recovery of our rights over the temple at an opportune moment.\textsuperscript{191}

This case in retrospect illustrated many aspects of Thailand's traditional view of foreign policy and its effect on international law. First, its most immediate reactions to the decision, were strongly influenced by the political needs of the leader, General Sarit at the time. There is little doubt he sanctioned the bluster that greeted the news of the decision, all for the benefit of the population, the need to encourage national unity. The Thai nation as a unit had lost face. And so when passions were at their hottest, it was necessary for the government to portray the Court's decision as unjust, to accuse the judges of being communist, sympathizing with neutralist Cambodia against pro-West Thailand.

Second, the case demonstrates Thailand's relative inexperience with international tribunals and law. While it did have two Thai lawyers on the case before the World Court the case was primarily run by British jurists. Its reactions to personalities as lawyers and judges influencing the decision indicates either a failure to appreciate the supposed objectivity of such players in a legal arena or its unwillingness to accept them as impartial.

Third, the case shows that even in matters where law has come down against it, Thailand will eventually accede to the rule of international law. Once public opinion was no longer focused on the loss, and it was no longer alive as a political issue, the Thai

\textsuperscript{191}As quoted in Singh, op. cit. supra in note 63.
government withdrew it from public attention, relying on the public's short attention span to cool tempers and allow diplomacy to take over.

There are parallels that can be drawn to other instances where Thailand has come into conflict with international law and organisations. Its reaction, for example, to the sudden influx of refugees from Cambodia in 1979 after the Vietnamese invasion, put it in breach of the international law of non-refoulement. At first the Thai government in violation of international law, pushed back the refugees. But in the face of international pressure it did comply with international law and grant them sanctuary. This will be discussed in greater detail in the next chapter.

b. The aftermath of Preah Vihear and the lead up to the Vietnamese embroglio

If the Court genuinely wanted to impart stability to the boundary between Thailand and Cambodia, its wish was a long way from fulfillment. It is ironic that the case which was designed to bring finality to the boundary seems in retrospect to have become more of a milestone heralding the beginning of over twenty years of strife along that very frontier.

From 1964 to 1970, Cambodia and Thailand presented charges and counter-charges to the UN Security Council regarding border violations. The Cambodian complaints usually centered on incursions into Cambodia of Thai police, intelligence units, and loggers. Thai
fishing boats were frequently caught fishing in Cambodian waters.\textsuperscript{192} It was noted that the area around the disputed temple was the subject of many of these charges. In 1968, Cambodia protested that Thailand had ambushed a battalion of Cambodian soldiers and killed 16 on Cambodian territory.\textsuperscript{193}

3. A Decade of War and its Aftermath (1970-80)

If the previous decade was "unsettled", it was followed by ten more years of equally extreme disruption, not only on Thailand's borders but domestically as well. On the home front, after the repressive regimes of the 1960's failed to relinquish control in the face of increasing agitation, student riots brought down governments in 1973, and again in 1976.

On the foreign relations front, the most noteworthy development during this period was the change in Thailand's relationship with the United States. When it became obvious that the United States was no longer as committed to its presence in Southeast Asia as it had been earlier, and it withdrew its forces from Vietnam, Thailand performed one of its characteristic reversals of policy and asked the US to withdraw its forces from its bases in Thailand as well. This was also the result of democratically-elected governments in Thailand at the time being less addicted to American military aid than the military regimes of

\textsuperscript{192}UN Yearbook, 1966., pp. 162-63.

\textsuperscript{193}UN Yearbook, 1968, pp. 187-89.
the 1950's and 1960's.\textsuperscript{194}

One of the consequences of this policy was Thailand's new warming toward China and in 1975, Thailand recognized the People's Republic of China.

This period was one of flexibility and more experimental diplomacy. Thai diplomats and international lawyers in the Foreign Ministry had to face the victory of communism during this decade in all the states of Indochina. Viraphol put it as follows:

Thailand has understood well the rule that in politics there are no permanent friends or enemies, and prevailing conditions are the prime determinants of the proper course of action to be taken. In this respect, Thailand is less obsessed with the question of morality in international politics and is more concerned with the art of survival.\textsuperscript{195}

4. The 1980's: Coping with War and Prosperity

"I would say that Cambodia remains one of our major foreign policy concerns. After all we still have a half million refugees in camps in Thailand." His Excellency Chawat Arthayukti, Thailand's Ambassador to Canada made this statement in 1990, describing Thailand's past decade of preoccupation with the situation in Cambodia and the rest of Indochina.\textsuperscript{196}

When Vietnamese forces invaded Cambodia in December, 1978,


\textsuperscript{195}S. Viraphol, \textit{Directions in Thai Foreign Policy}, (Singapore: Institute of South East Asian Studies, 1976), p. 58.

\textsuperscript{196}Interview conducted in August, 1990, in Vancouver, B.C.
Thailand reacted characteristically, mobilizing its forces along the border, protesting in the United Nations, and working actively with its partners in ASEAN to formulate a joint reaction. This invasion according to Alagappa, "...effectively removed the only remaining buffer between Thailand and Vietnam. Vietnamese military presence in Cambodia was viewed as a direct threat to the national security of Thailand."\(^{197}\)

In addition to this gathering of support, Thailand moved even closer to China. The last five years have seen a remarkable warming of Thai relations with China. The People's Republic of course, became a formidable counterbalance to Vietnam and long been its traditional enemy. Through adroit bargaining and sweetheart deals, China has sold enough tanks, ships and aircraft to Thailand to make some military analysts suggest Thailand's traditional reliance on the U.S. is shifting. Professor Surachart Bamrungsuk of the Institute of Security and International Studies at Chulalongkorn University in Bangkok in a paper presented to military circles in the U.S. argued that Thailand would increasingly resort to China because Chinese weaponry was more appropriate for Thai needs in terms of price and technology. The closeness in relations with China was reflected in a ban on a visit of the Dalai Lama to Bangkok and the deafening silence in Bangkok after Beijing's crackdown in Tiananmen Square.\(^{198}\)

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\(^{198}\)*Bangkok Post*, July 2, 1987, p. 5. In the author's files.
The invasion completely altered the balance of power on the Indochinese peninsula in the Thai view, and although its prime political motivation for its actions during the 1980's was to restore this balance once again, it used the rhetoric of international law to attack the Vietnamese position. 199

Together with China and the ASEAN countries, Thai support of the Coalition Government for a Democratic Kampuchea (CGDK) guaranteed it recognition by the international community. Thailand's provision of sanctuary for the forces of the CGDK was backed by the weight of international law and the United Nations. It meant that the forces of the resistance and the waves of refugees which poured over the frontier, could to some extent serve as buffers between the vulnerable Thai hinterland and the Vietnamese. And Thailand's political needs were not only reinforced by its powerful friend on Vietnam's northern frontier, but also by the international community. 200

Thai policy confronted head on what it regarded as expansionist Vietnamese policy. It saw Vietnam as the proxy for Soviet influence against the Chinese. Vietnam aimed at wiping out the resistance forces, developing an internationally-recognized government in Cambodia and setting up an organization of the fraternal nations of Indochina as a counterweight to the Chinese and to a lesser extent, Thai interests. Therefore in dealing with Vietnam, Thai policy employed all the tools at its disposal,

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199 Ibid.

200 Ibid.
including international law and the United Nations, to effect its national agenda.\textsuperscript{201}

Both sides used the language of international law to justify their actions. The Thais complained in the United Nations that Vietnam's actions were "illegal". The Vietnamese portrayed themselves as the liberators ridding Cambodia of the Khmer Rouge scourge which had committed genocide against their own people.\textsuperscript{202}

While the policies of the two sides resulted in a stalemate for most of the decade, Vietnam's announced withdrawal from Cambodia was the first step needed by Thailand to justify any change in its approach to Indochina.

Thailand's Prime Minister, Chatichai Choonawan in August 1988, announced his policy of "...turning Indochina from a battlefield into a marketplace" and this change in politics relied according to Alagappa, on Bangkok's recognition that eventually it would be able to take advantage of traditional Khmer antagonism against the Vietnamese.\textsuperscript{203} It also shared language and religion with Laos and religion with the Khmers. Premier Chatichai's move reflected basic changes in the goals of Vietnam and Thailand, both of which were faced with rapid changes elsewhere, especially the different priorities emerging in China and the Soviet Union.\textsuperscript{204}

\textsuperscript{201}Ibid.

\textsuperscript{202}See Shawcross, \textit{The Quality of Mercy}, as quoted in Chapter Four.

\textsuperscript{203}Alagappa, op.cit.

\textsuperscript{204}Ibid.
The only solution in Cambodia as far as the Thais were concerned, involved four steps. First, a U.N. peacekeeping force had to be introduced to regulate a ceasefire. Next, a Supreme National Council would have to be formed to organise the country and prepare for internationally-supervised elections. All factions would have to be disarmed. Finally, economic assistance would have to be poured in to get the country functioning again. With the peace accord between the various factions now in place this would seem to be what is occurring. In other words, to all intents and purposes, Thai policy and reliance on international law and organisation to support it, has been vindicated and the current regime in place after the coup of February 23, 1991 seems to support developments in Cambodia.205

To the north, along the Mekong, relations with Laos are improving as well. This warming is also a recent change. Despite the two nations' very similar languages and cultures, relations have been cool ever since the Communist takeover in Laos, and have sometimes descended to open hostilities. But responding to a petition from the governors of the provinces bordering Laos, Bangkok liberalised its terms of trade with Laos in 1988, removing goods such as bicycles from its list of items it had previously defined as "strategic". Cross-border trade has jumped enormously as a result.206


But a similar push to improve relations with Burma, or as it is now called, Myanmar, has demonstrated what little heed Thailand pays to international condemnations regarding human rights violators, especially if its own political priorities will be enhanced in cultivating a relationship with the violators. Former Supreme Commander General Chavalit Yongchaiyut flew to Rangoon in December, 1988, and had lunch with General Saw Muang, the chief of the Burmese Army. This visit coincided with a nationwide ban Thailand had recently imposed on logging in Thailand. In an article in the Far Eastern Economic Review, titled "Partners in Plunder", Hamish McDonald quoted Saw Muang as saying in his speech of welcome, that General Chavalit was "...the first dignitary to visit us after the new situation has developed in Burma." As Mr. McDonald wrote, "Actually it was only three months after Saw Muang's troops gunned down perhaps 3,000 demonstrators in Rangoon." 207

Within days of the visit, Thai logging companies were moving into the border areas, buying up teak concessions. Within months, the hungry sawmills of Thailand were once again churning out teak for the world market and international environmentalists were condemning the wholesale eradication of teak forests in Burma. This tacit understanding gave Thai companies what they wanted. The Burmese received Thai acquiescence to move against the ethnic minorities along the Thai border and in some cases massacred entire

Many of these moves have been noted by Thailand's other neighbours like Laos which is hesitant to open its doors to Thailand's commercial interests as a result.209

All of this, whether consistent or inconsistent with international law, reflects basic Thai policy: if it coincides with international law, so much the better. If it does not, try and effect the policy with as little loss of face or influence as possible.

Thailand's relations with the rest of Southeast Asia are largely based on its membership in the Association of Southeast Asian Nations (ASEAN). Made up of Thailand, Malaysia, Singapore, Indonesia, the Philippines and Brunei, this grouping has traditionally had an economic focus. However, it is on one political issue, Cambodia, that ASEAN has been most active internationally although national as distinct from regional interests do prevail on other questions. For example, there is no common ASEAN stand on the question over the U.S. military bases in the Philippines. Thailand regards the issue as one Filipinos must decide for themselves although it does favor a continued American presence in the region. 210

But ASEAN members do want to be consulted before Thailand

208 Ibid.


changes its political mind. The tendency of the Chatichai Government to flip a page and make an announcement of change without consulting its ASEAN colleagues beforehand was greeted with consternation. The new policy on Indochina was a case in point. Another recent instance of Thai policy shifts causing anxiety among its ASEAN partners involved Prime Minister Chatichai's proposal in May, 1990, that the Thai and Japanese navies conduct joint naval exercises in the South China Sea. Even the Japanese stayed cool over the proposal.\(^{211}\)

The vicissitudes of Thai foreign policy have not escaped notice especially from its neighbours in ASEAN. As Tasker observed:

Other ASEAN countries are aware of Thailand's history of swaying into the fold of one power or another as it deems fit for its own stability and prosperity. At various times Britain, France and more recently the US have fitted that role for the Thais. During World War II Thailand swung towards the imperial power of the time, Japan, which immunised it against the brutal Japanese military occupation which afflicted the rest of Southeast Asia.\(^{212}\)

But then as Gardiner Wilson, for two years until July 1989, head of the Political Section at the Canadian Embassy in Bangkok, observed:

Every nation's foreign policy is determined by their own perception of their national security. If you look at Thai history over the last two centuries, the invasions by the Burmese, the loss of almost half its territory to British and French imperialism, it is easier to


\(^{212}\)Tasker, "Full Astern!", *Far Eastern Economic Review*, op.cit.
understand why the Thais are concerned about their borders. That is why their national survival has had such a strong influence in determining their foreign policy."^{213}

Conclusions

Rather than reviewing the myriad foreign policy problems Thai policy-makers have confronted over the decades of the post-war era, and their links to international law and organisation, it seems more valuable to attempt to hypothesize what are the main preoccupations of Thai policy makers when they formulate foreign policy and ultimately what have been the main determinants of Thai actions regarding international law and organisations.

In discussing the modern period from the 1960's to the present in Thailand's foreign relations, its relations with the states contiguous to its borders can be said to have dominated. Thailand's relations during this period and the manner it conducts its foreign affairs have not really deviated from the historic trends established and described in the previous chapter. As Phuangkasem observed:

Despite the frequent changes of government, Thailand's foreign policy objectives have been rather firm and constant. The fundamental goals have been the maintenance of national independence and the integrity of the kingdom. As Thailand is a small country, limited in its human and material resources, its foreign policy has been subjected to changes brought about by adjustments to internal and external situations.^{214}

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^{213} Interview with Gardiner Wilson, Vice-President of Asia-Pacific Foundation, Vancouver, August 21, 1990.

Thailand has been active in international organizations since the League of Nations and is now a member of the United Nations and many of its subsidiary organs. Its eventual acceptance of the decision of the ICJ in the case brought before it by Cambodia indicates that faced with world opinion, it will acquiesce when international law would seem to be against its actions. But if it can evade international attention, and advance its interests as it would seem to be doing in its relations with Myanmar, which might at times be in violation of international law, Thailand will also act outside international law.

Yet in the most recent past, Thailand's position before the United Nations regarding Cambodia and Vietnam's invasion has been vindicated by both international law, support from the international community and eventually even, the events themselves. What has unfolded in Cambodia has given Thailand all that its policy-makers in its Foreign Ministry could have ever hoped for. This most recent experience finding its foreign policies largely in conformity with the letter of international law, and eventually reaping success, augers well for its compliance in other areas of international law which will be discussed in the next two chapters.
Chapter Four

Thailand and International Human Rights Law

I. Introduction

In the previous chapter, a history of Thailand's foreign relations revealed how it has been affected by international law and in turn, used international law in certain ways to effect its political agenda. This chapter deals with the law that has developed regarding international human rights. In taking a stance on issues involving international human rights, Thailand has been influenced primarily by internal factors such as its cultural reactions to minorities, aliens, women and other disadvantaged groups but most importantly, the ideological complexion of the regime in power. It has also been influenced by its internal stability, not only dependent on the regime in power and the extent of military control, but the success or failure of destabilizing groups like the Communist Party of Thailand, (CPT) or certain separatist groups like the Muslims in the four southernmost provinces. Internal security has also depended on the degree of economic security in the country.

Externally, Thailand's attitudes to human rights have like its foreign policies, been influenced by the alliance of the moment
which in the post-war era has been predominantly with the United States. It has also been influenced by the political situation on its borders and specifically the relations it has with the States of Indochina. While it can be said that certain of the internal factors cited above have had a decisive role in determining Thailand's stance on refugees and international law for example, Thailand was very much influenced by external relations with the United States, China and the threat posed by Vietnam, especially when it invaded Cambodia. These external relations largely governed the way it reacted to the sudden wave of Cambodians across its borders in 1979, and this will be discussed in more detail later in this chapter. Finally, Thailand has become a key member of the Association of South East Asian Nations (ASEAN) as discussed previously and this has encouraged it to have a more regional attitude to political and economic questions as they relate to international law and human rights.

The countries which have been the most involved with the emerging regime of international human rights have been the countries with the greatest tradition of protecting human rights in their own legal systems. Western liberal democracies have been the firmest supporters of the evolution toward universal human rights and much of their concern with international human rights arose out of their collective horror in the aftermath of World War II when the results of Hitler's holocaust were revealed.  

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This is not to say that the same democracies are not often singled out by groups such as Amnesty International for their own shoddy record protecting human rights. But in most instances, their citizens and various non-governmental civil liberties organisations acting as lobbyists in their own governments, have had the time to develop the ideology of human rights, unfettered by totalitarian governments and slowly evolving legal traditions.\(^2\)\(^1\)\(^6\)

There also must be considered the level of political, social and economic development which most developed States have reached which allows them the luxury of making human rights a priority for a majority of their populations. Having passed through the phases of development which have given most of their people the basics of life, adequate food, education, medical care and shelter, they can devote their energies to ensuring rights for those sectors of their population not included in the overall prosperity of the general society. This has meant in the Western nations that rights granted women have matured and now, it might be suggested, they can in many instances be extended to gay men and lesbians. Poverty and welfare rights are being extended to visible minorities.

In addition, the drive for justice and equality in these societies has been supported by the institutions with which democracy is usually associated, a free press, an independent judiciary, a viable legal profession, and an educated population.

\(^{216}\)Ibid at 231.
watchful of government and free to vote them out of office if they fail to meet their expectations. Therefore there has been the argument advanced, based on the foregoing, that human rights lack universality because they are basically a Western creature grounded in the Western concept of "natural" rights.\(^{217}\)

2. The Present State of International Human Rights Law

As for the evolution of international human rights law, most of the most recent Declarations and Covenants we think of as being included under that rubric, have developed through the United Nations and its various organisations.\(^{218}\) This has meant that States like Thailand have had to make a stand on international declarations which, on their face are often not in conformity with their national interests or traditions. Jealous of their sovereignty and certainly not wanting intrusive foreign observers commenting on their human rights records, States like Thailand have often stood mute on the sidelines of a unanimous vote, watching the measures pass through the United Nations General Assembly, rather than risk the taint their opposition would establish in the eyes of the world.\(^{219}\)


\(^{218}\) Henkins, op.cit. supra at pp. 230-31.

\(^{219}\) Ibid.
Henkins described this phenomenon as follows:

"Protected by the principle of unanimity, governments could take part in the law-making process without any commitment to adhere to the final product, trying nevertheless to shape emerging international norms so that their country's behavior would not be found wanting in their light; and it might even be possible to adhere to them without undue burden if that later appeared desirable.\textsuperscript{220}

This discussion of international human rights and Thailand's failure to sign or ratify many of the Conventions dealing with human rights is offered only in that light: that Thailand has failed to participate to a large extent in the emergence of these declarations and covenants but this low profile can be explained by two facts of its political life which might on the surface seem contradictory.

First, as has been said repeatedly throughout this paper, Thailand has, for most of its post-war history, been governed by the military elite, which has not placed evolving civil liberties at the top of its agenda. And, internationally, Thailand has been allied with the West and specifically, the United States against the spread of totalitarian communism in the region. Therefore, while using the excuse of internal security concerns to curb internal dissent, it has not been able to come out blatantly against human rights provisions either, even provisions which might allow international organisations to intrude on its precious sovereignty and make observations on its protection of civil

\textsuperscript{220}Ibid.
liberties.

The value of international human rights law is demonstrated when nations incorporate the provisions of the major internationally-created human rights covenants into their own domestic legal systems. As said earlier, while human rights covenants would seem to be creations of the West, in fact these covenants do have universality by the very fact that they have been supported in the majority by non-Western nations.\textsuperscript{221}

In spite of its reluctance, there are several international human rights provisions that Thailand has acceded to, merely by being a member of the United Nations. In addition to the U.N. Charter which includes in its Preamble a general commitment by member states to protect human rights, the other major human rights Declaration, is of course the Universal Declaration of Human Rights which was passed unanimously by the General Assembly on December 10, 1948. \textsuperscript{222} Thailand, being a member at the time, was part of that vote.

Other Conventions which relate to Thailand are Declarations and Conventions passed by the United Nations in the 1950's and '60's, which have enshrined in international law the human rights of aliens, women, children, and refugees. Specifically the following Covenants have been passed by the UN: Convention on the Prevention and Punishment of the Crime of Genocide, 1948; the Convention Relating to the Status of Refugees, 1951 and amended by

\textsuperscript{221} Crawford, supra in note 3.


Thailand joined the United Nations in 1946, and was one of forty-eight countries which voted for the Universal Declaration of Human Rights. At the time of Thailand's vote, its domestic political scene was extremely unsettled since it had undergone a military coup in 1947 which had put Premier Pibul and his military faction firmly in power once again.\textsuperscript{223} If Thailand had chosen to abstain, it would have placed it in the unsavory company of the communist bloc and South Africa. Thus even if some of the Declaration's provisions were antithetical to Thai law or constituted freedoms at the time, it would have been unthinkable for Thailand to stand up and be counted among such a minority of nations, as being unsure of such a monumental document. And anyway, the government of Premier Pibul was undoubtedly aware that the Declaration was at the time, not regarded as being legally binding.\textsuperscript{224}

\textsuperscript{223}Refer to Chapter 2, for a more detailed discussion of the events of this period.

Thailand has neither signed nor ratified many of the abovementioned human rights Covenants but specifically, by March 1990 it was not among 91 UN members who are now parties to the International Covenant on Civil and Political Rights. The majority of those States are developing nations and in signing this Covenant they have extended certain guaranteed rights to ethnic minority groups. Neither had Thailand by March, 1990, acceded to the UNESCO Convention on Discrimination in Education. It is not among the States which are parties to the International Convention on the Elimination of All Forms of Racial Discrimination. And it has not joined the 100 members which have become party to the Convention on the Prevention and Punishment of the Crime of Genocide, 1948.225

II. Internal Factors Militating Against the Development of Human Rights in Thailand

A. The Monarchy and Lese Majeste

The cultural and political impediments to true democracy in Thailand are many and are rooted in the most basic institutions of its society. The monarchy in Thailand is still at the top of the social pinnacle. The Thai Royal Family sits at the apex of the Thai social hierarchy and is protected by law against any unsavory criticism. The threat of the law against lese majeste, acts as a

catch-all accusation hanging over the heads of all Thais, and foreigners in Thailand too, for that matter. Anything written, not only about the current Royal Family but even the previous Kings of Siam or Thailand, if judged disrespectful, will often result in an immediate ban on the utterance or the individual who uttered it. This has effectively stifled discussion of the place of monarchy in Thai society. And without the freedom to discuss the position of the highest authority in the land, (albeit titular), freedom of speech is definedly curtailed. Every year in addition to Thais who step into this treacherous area, a few foreigners run afoul of the law. They find themselves thrown in jail for expressing some perceived slur against the monarchy. Often they are forcibly ejected, unsure about what they were reported to have said, or to whom.

226 This brings to mind the book, "The Devil's Discus" which was published in the 1960's and involved theories concerning the death of King Ananda, Rama VIII, the brother of the current King. The author meticulously reviewed the evidence and concluded that the young King had committed suicide. This author received a copy photocopied which was passed to him by a teaching colleague at Chulalongkorn University and the actual transfer was performed with the air of tension one might associate with a drug deal.

227 An acquaintance of the writer, in April, 1989, was having a conversation with an alderman in the town of Hua Hin to the southwest of Bangkok one evening over a few whiskies and made some comments about a Princess who was visiting the town at the time. His comments were reported to the police even though it was not clear exactly what he had said, since his remarks were in English and none of the participants spoke English well. He spent a week in jail and upon being released pending trial, exited Thailand leaving behind a large investment.

228 The Canadian Embassy informed me of a case where they were called to the Airport by a frantic American free lance journalist who was being held in custody under armed guard. Apparently the Thai police had arrested him thinking he was the Globe and Mail
In spite of being rendered a "constitutional monarch" in the coup of 1932, the King of Thailand, currently His Majesty King Bhumipol Adulyadej still wields considerable authority. His word counts for much in Thai politics and if he has not sanctioned a particularly significant change on the political front in Thailand, it is unlikely to continue unmodified. King Bhumipol is the ninth in the Chakri line and actively participates in ceremonies which accentuate the family's links to the 700 years of monarchical tradition in Thailand.

The Thai Royal Family not only has important symbolic power in the granting of privileges and titles to honoured citizens, but through its Crown Bureau, has become perhaps the richest property and corporate owner in the Kingdom, holding investments in properties and corporations worth billions of dollars.

Thai love of ceremony, pomp and circumstance can be said to act as a further guarantee of the perpetuation of the monarchy's mystique, and the hierarchical class structure which places considerable constraints on social mobility.

In relation to human rights, kingship seems to mean more to the Thai people than what a Western constitutional monarch would embody for his or her people. First the Thais view the king as the symbolic father of the nation and therefore, the wise advisor and impartial judge. Secondly, the King has inherited Hindu-Buddhist correspondent who had written an article about the King which had suggested that the King had a certain opinion on some issue. And the comment was not even particularly critical of His Majesty King Bhumiphol.
ideas of kingship which suggest his adherence to principles of law, the right way. Therefore he has access to universal power.\textsuperscript{229}

In addition to these ideas of his earthly powers, the Thai king has traditionally been revered as the "earthly incarnation of a Hindu god".\textsuperscript{230} Even today the king has a traditional retinue of Brahmans who keep up at least the appearance of the god king. This has meant that the respect accorded the Thai king is akin to a cult, especially among the rural peasantry which still gives the monarchy its strongest support.\textsuperscript{231}

B. The Cult of the Leader

The cult of kingship has naturally led the Thai population to a reliance on "the leader" and therefore a susceptibility to strong men who are not only political and military leaders but who also cultivate an image conforming to the idea of Thai "manhood" involving womanizing and heavy drinking.\textsuperscript{232} This is perhaps changing to some extent as Thai society becomes more sophisticated and old values dissolve. Nevertheless, in light of this reliance on the personality of the leader, considerable weight must be placed


\textsuperscript{230}Ibid.

\textsuperscript{231}Ibid.

\textsuperscript{232}See Wyatt, \textit{Thailand: A Short History} cited previously and his section on General Pibul during the 1930's and General Sarit during the late 1950's and early 1960's.
on the background of the man in power at the time, in predicting the course of Thai policy on issues involving international law and relations. As Phuangkasem described this phenomenon:

In analysing the relationship between internal politics and foreign policies, one also has to stress the role of the decision-makers in determining the type of foreign policy to adopt. In this regard, many see Thai foreign policy during much of the last three decades [1950-80] as a reflection of the idiosyncracies of the ruling military elites.233

Up to 1980, Thailand had had seven prime ministers who were military officers and nine who were civilians.234 Since 1980, there have been three governments. Prime Minister Prem Tinsulanonda was a Army general and appointed by his faction or coalition. Prime Minister Chatichai Choonawan, also a general and former diplomat, was the first elected Prime Minister for some time, but supported by a clique in the military. The current Prime Minister, Anand Panyarachun, was appointed by a military faction after a coup on February 23, 1991.235

At times of modern Thai history where the leader is in obvious control, without any pretense at maintaining a plurality, policies internationally have very much been affected by his personality.236 Even the most recent Prime Minister to be elected, Chatichai Choonawan, with his policy to turn Indochina from a


234Ibid.


236Phuangkasem, op. cit. at p. 11-12.
battlefield into marketplace, had enormous effect on the course of Thai foreign relations during the brief period he was in power.  

C. The Military-Bureaucratic Elite

The evolution of Thailand's present constitution began with the coup which overthrew the absolute monarchy on June 24, 1932 as described in Chapter 2. While the purpose of the coup plotters was to render the monarchy constitutional supposedly along the lines of the monarchies which had evolved in Europe, the Thai monarchy did not become as innocuous as its European counterparts.  

And the use of a coup initiated by factions from the military established a pattern for political change in Thailand which is still in effect today. As recently as February 23, 1991, the elected government of Prime Minister Chatichai Choonhavan was overthrown and the Prime Minister took the customary flight to Switzerland. 

Linked to the rigidity of class divisions in Thai society is the paramount position of the Thai military in almost every important aspect of power in Thai society but especially their links to the bureaucracy. Some observers such as Keyes, have

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240 See Keyes in the following note.
suggested that the military does give poor working class or rural Thais eventual access, via promotion through the ranks, to the corridors of power. But this attribute of the military would seem to be outweighed by the way the interests of the military leadership stultify genuine democratic evolution. The fear of military retaliation ensures that the media and Thai groups promoting civil liberties must be careful of treading on the soldiers' tender toes.  

The institutions of monarchy, the military and the bureaucracy are of course instrumental as the formulators of policy in Thailand and especially policies as they relate to international human rights. But Thai history has been very much a record of arriving at consensus. In his analysis of the Thai attitudes to society and politics, J. S. Girling said:

"Policy is habitually decided not by constitutions, elections or parliaments (when permitted to exist), but within the bureaucracy, in which the armed forces, particularly the army, play the key security role. The values sustaining the "bureaucratic polity" are those of a status society: essentially this means "knowing one's place" in a hierarchy in which individuals are ranked according to their power, prestige and increasingly, wealth."

Because of the paramount position of the military in Thai politics and almost every other aspect of social life in Thailand,

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242 Ibid. p. 12
its concerns have dominated not only the way Thai society operates but Thailand's external relations with the world as well. Both Thailand's foreign policy and its resultant stance when dealing with international law and human rights can be linked to the aims and interests of its armed forces and their influence over the bureaucracy.\textsuperscript{243}

On the domestic front, this military pre-eminence has set the tone for the development of civil liberties in Thailand. Being the conservative and reactionary organisation it is, the military has regarded other competing interests in Thai society with consistent suspicion. Neither are Thais raised to be assertive individuals. Rather they are socialised to conform.\textsuperscript{244} This has meant that most interest groups in Thai society have seldom challenged the status quo except in very quiet ways. And this has played into the hands of the military over the years.

2. Internal Security and the Communist Party of Thailand (CPT)

Founded in 1942, the CPT was throughout its history, closely linked to the Chinese Communist party. In 1946, it was briefly legalized in order for Thailand to get membership in the United Nations and avoid a Soviet veto. But this was brief. It was banned

\textsuperscript{243}Ibid. p. 231.

\textsuperscript{244}See W. Klausner, \textit{Conflict or Communication} as cited in the Bibliography.
Anti-communism has been part of the rhetoric of Thai governments since the war. This stance can be partially explained by Thailand's close relations with the United States which after the success of the Communists in China in 1949, became increasingly involved in Southeast Asia as a counterweight to perceived Chinese designs on the region. But, as a conservative Buddhist monarchy dominated by the military, Thailand was almost by definition, a society radically opposed to communism.\textsuperscript{246}

For most of the post-war period, but especially during the 1960's and '70's, the CPT operated primarily in rural areas to recruit support among the peasants who were most affected by poverty. They also exploited ethnic disaffection especially among Lao-speaking minorities in Thailand's northeast, some tribal peoples in the north (see the section on hill tribes that follows) and the Malay-speaking Muslims in the South.\textsuperscript{247}

In 1965, the first armed confrontation occurred between the Thai military and the units of the CPT. In 1967, the CPT organized the Thai People's Liberation Army. Throughout their insurrection, the CPT never did gain widespread support among the rural population. Their campaign involved primarily small, hit and run operations against isolated police posts, propaganda campaigns in

\begin{itemize}
\item $^{245}$Keyes op.cit. supra. at p. 107-110.
\item $^{246}$Ibid.
\item $^{247}$Ibid.
\end{itemize}
remote villages and ambushes of military convoys.\textsuperscript{248}

But their value to the regime and the military was considerable in terms of justifying repression of rights, keeping the general population believing that the threat was serious to their security, and validating the amount of resources syphoned out of the national budget by the military. This was further assisted by the successes of the communists in the countries of Indochina. And some of the fighting there spilled over the border. All of this added to the tensions in the 1960's and 1970's and made it all the more difficult for human rights activists and liberal politicians to prevail.\textsuperscript{249}

The CPT, which had been conducting an insurrection in the north, northeast and extreme south of Thailand, lost foreign support in the late 1970's. The Chinese withdrew support in order to improve their relations with Thailand. The Vietnamese because the CPT had sided with China during the Sino-Vietnamese dispute, also withdrew support.\textsuperscript{250} But the impact of this change on the fortunes of the CPT was not immediate. Because it was able to recruit several thousand students and intellectuals who had seen it as the only effective alternative to the authoritarian regimes which had replaced the brief democratic governments of 1973-76, by 1979, the CPT was at the summit of its power in Thailand. But international events, especially the Vietnamese invasion of

\textsuperscript{248}Ibid.

\textsuperscript{249}Ibid.

\textsuperscript{250}Keyes, supra at pp. 107-110.
Cambodia and the loss of support from China combined to signal its decline. By the late 1980's a successful campaign to bring its scattered remnants in from the hills, through a general amnesty, guaranteed its virtual extinction.\textsuperscript{251}

3. Thailand's Changing Demographics: Pressures for Liberty

Even the Thai military-bureaucratic elite has been unable to withstand the inevitable stresses demographic change and rapid economic development have wrought on Thai society. The first major change that has occurred in Thai society has been the rapid growth in its population since the last war. From 18 million in 1947, Thailand's population mushroomed to near 60 million in 1990.\textsuperscript{252}

While this rapid growth encouraged the government to create a remarkably successful population control programme which brought down Thailand's birth rate to a manageable level by the 1980's, the Kingdom had gone from being relatively underpopulated to being overpopulated. Accompanying this, was the explosive growth which hit Bangkok and even the main provincial capitals, straining their infrastructures to the limit.\textsuperscript{253}

Paralleling this change in its population size was the change in the economic profile of the country. In 1960, 74\% of the people

\textsuperscript{251}Ibid.


\textsuperscript{253}Ibid. p. 292.
lived in rural villages and tilled the fields raising primarily rice. By the 1980's this percentage was dropping to below 50%, with the other half involved in the growing manufacturing and service sectors.\textsuperscript{254} This reflected the rising importance of these industries in the Thai economy. In the late 1980's, for the first time tourism eclipsed rice exports as the main foreign exchange earner for Thailand.\textsuperscript{255}

With the growing urban population and increasing wealth of the population, there was a parallel growth in the Thai middle class. The phenomenal rise in the size of this class has occurred almost totally since 1960. And for this group, their view of the future has been almost completely defined by the access they can have to good education for their children. This keenness to send their children to secondary and higher educational institutions has itself created a revolution in Thai society. And a further aspect of the middle class's addiction to education has been the equal access given to both men and women. Alongside their love of education has arisen a parallel need for upward mobility.\textsuperscript{256}

The growth of the Thai middle class in numbers has far exceeded the ability of either the military or the bureaucracy, the traditional professions for the newly-educated, to absorb them. This has meant that the usual way up the Thai social ladder, has no longer been a sure thing and this has made them less secure about

\textsuperscript{254}Ibid. p. 293.

\textsuperscript{255}Year-end Economic Review, Bangkok Post, 1987.

\textsuperscript{256}Ibid. p. 295
their social standing.\textsuperscript{257} Regarding their social values and how they view issues parallel to this discussion about national attitudes to civil liberties and human rights, David Wyatt described them as follows:

"The members of this class have a clear interest in preserving a relatively privileged social and economic position. At the same time, their formal values --- the liberal values gained from schooling and encouraged through their exposure to Western political life---increasingly have made them uncomfortable with authoritarian military rule and with those elements of Thai cultural tradition they regard intellectually as superstitious or, by international standards, inhumane."\textsuperscript{258}

The period from 1973 to 1976 brought to a head how much Thai society had changed and the new pressures the traditional sources of power had to face. Between the 6th and 8th of October 1973, 13 Thai students and intellectuals were arrested while giving out pamphlets. Mass student protests in Bangkok erupted over the imprisonment of their leaders, forcing the military government to resign.\textsuperscript{259} In characterising the mood of the Thai populace and the temper of the times, Wyatt wrote:

By this time there was widespread agreement on what was wrong with the old system of government: corruption; the subordination of national interests to military self-interest; arrogant insensitivity to the interests and values of other social and economic groups; insufficient commitment to and progress toward economic and social reform; and what was perceived as excessive

\textsuperscript{257} Ibid.

\textsuperscript{258} Id. p. 296.

dependence on and subservience to America and the West.\footnote{Wyatt supra at p.300.}

The heady political climate that was produced by this "revolution" encouraged a brief flowering of freedom. Urban workers and rural farmers got into the fray by organising unions and demonstrating for increased access to power. Far left organisations were allowed to operate openly. On the political front, the government held a number of parliamentary elections and no party emerged a clear winner in either 1975 or 1976. By October, 1976, the students had become increasingly radical in their public declarations. They were depicted in the press as desecrating an image of the Crown Prince and after a broadcast on the army radio station inciting the people to attack the university and exterminate the communists, a grouping of paramilitary groups attacked the students at Thammasat University. The violence resulted in many deaths and some students had to swim the river for their lives.\footnote{Wyatt supra at p.300.}

This brought an end to the coalition government of the time and the brief revolution in civil rights. Thereafter a succession of governments backed by the military proceeded to demolish whatever was left of the civil liberties constructed by the elected governments. At this time King Bumiphol said over the radio to the nation that the military was crucial to defending the nation against its enemies indicating that he viewed the previous years of
civil liberties to be detrimental to the health of the nation. By 1979, with the Vietnamese invasion of Cambodia and the problems which arose because of it, the people's attention was directed to the external threat and the agitation for more freedoms was redirected to the menace presented by an external enemy.

4. Thai Buddhism, and Human Rights

The main religion affecting Thai society and culture, Theravada Buddhism, must enter any discussion about social and political rights in Thailand since its doctrine has formed the Thai view of social differences and therefore, place, in the Thai social hierarchy. National attitudes especially those reflected in the Kingdom's stance on such internationally recognised human rights issues as the rights of women, or children, can be seen more clearly in terms of Buddhism. Even the Thai view on issues involving refugees and other minority rights can without too much intellectual manipulation be better understood if one sees them in terms of Thai Buddhist thought.

For those members of the Thai polity other than the Thai-speaking Buddhists, the pervasiveness of Buddhism and its links to the state-inculcated idea of "Thai-ness" have caused tensions over the years, especially when the regime has used Thai nationality as

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a theme for accentuating ethnic differences.\footnote{Girling supra at p. 215.}

Buddhism depends in Thailand on its hierarchy of monks and the unifying tradition that all Thai men must spend at least one rainy season in the monkhood.\footnote{Keyes supra at p. 123.} The Thai government has a close linkage with the monkhood and actively sponsors Buddhist organisations. Thai art and literature draw heavily from the nation's Buddhist origins.\footnote{Ibid.}

This linkage of the government and the Royal Family to Buddhist organizations, has presented difficulties especially in relation to religious minorities like the Muslims in the south of Thailand.

Thai Buddhism definitely varies from the teachings of the Buddha and it might be suggested that where Marx regarded religion generally as "the opiate of the masses", in relation to Thais agitating for more freedoms and greater responsibility for their own affairs, free from authoritarian government, Buddhism can be seen to be Thailand's own unique form of sedation.

Most Thais not only believe in much of the scriptural requirements of Theravada Buddhism, but also believe in a pantheon of spirits which have nothing inherently to do with Buddhist teaching. Hence the widespread use of spirit shrines in front of almost every residence in Thailand. Nevertheless, Buddhist clerics

\footnote{Refer to Chapter 2, and the section discussing Premier Bibul.}
are involved in sprinkling lustral water on these shrines to purify
them.\textsuperscript{268} Thais have incorporated their innate love of fun and
pleasure into their life pursuits. "Sanuk" or seeking what makes
them happy is, according to the strict letter of what the Buddha
taught, in violation of his teachings, of constantly striving to
rid oneself of such longings for happiness. And in relation to this
discussion of human rights, many of these aspects of the Thai
religion, plus the Government's use of it to promote a unified Thai
view, can be seen as detrimental to evolving civil liberties. The
religion fosters a fatalistic population which accepts its lot and
if true democracy is founded on a questioning, intellectually-
independent electorate, then Buddhism can be seen to limit this
development in Thai society.

5. Thai Constitutionalism, Law and Human Rights

Since 1932, Thailand has had thirteen constitutions. The most
recent government after the coup, is working on its fourteenth.
Generally newly-formed governments have operated without any
pretense at constitutionality and in some instances ruled without
any support from the National Assembly or political parties, using
martial law to govern.\textsuperscript{269} All of the thirteen constitutions were

\textsuperscript{268}Ibid.

\textsuperscript{269}Ibid as noted on p. 3, that Premier Sarit's government which
had dominated the first half of the 1960's was replaced by the
military of government of Thanom Kittikachorn who stayed in power
from 1964 to 1973. Only after 5 years in power did Thanom feel
confident enough of his control to hold elections and re-establish
abrogated by military coups. Even when a Constitution prevailed and
the National Assembly operated, elected representatives of the
people were expected to perform their role within the Thai social
system, i.e. as superiors or patrons of their clients who were
their constituents. Their role as defined in the Constitution of
being true political representatives of their constituencies, was
taken less seriously than their function as conduits for rural
peasants to Bangkok's corridors of power. Human rights issues have,
in other words, traditionally throughout Thailand's modern
constitutional history, taken a back seat to bread and butter
concerns.270

Thus it can be suggested, in relation to the development of
sound view of human rights grounded in law and practice, Thais have
not been conditioned by history to fight for their own civil
liberties. Wongrangan described this phenomenon as follows:
"...popular participation of the Thais is quite limited because
according to the patron-client value, they tend to think it is the
duty of a good ruler to perform good services for the people by

himselt."271
democratic institutions. Even then, in 1971, Thanom staged a coup
against

Instead of being arrested in place, only in 1973, when
his government began arresting students, and causing a bloody
demonstration, did it collapse.

270K. Wongrangan, "Reflections on Thai Constitutionalism,"
Proceedings of the International Conference on Thai Studies, Vol.3:
Part 1, (Australian National University, July 3-6, 1987). p.128.

271Ibid.
government which ensures them stability, order and ultimately a secure haven in which they can carry on economic activities which will bring them and their offspring the fruits of prosperity. This has meant that for the most part, the sixty years of Thai constitutional development has resulted in strong executives (usually military leaders) overseeing rather weak, faction-ridden legislatures embroiled in bickering over minor administrative matters. The legislatures are usually in session for only about 90 day periods, which are then broken by long periods during which the members politick in their constituencies.\textsuperscript{272}

The most recent history of the Thai Constitution illustrates how dependent the strength of human rights guarantees expressed by it are, on the ideology of the regime in power at the time. On October 6, 1976, after considerable domestic turmoil, with its origin in the violent student demonstrations of 1973, the government of Thanin Kraivichien came to power. His regime is generally regarded as one of the most rightist of Thailand's post-war governments. He was personally selected by the Royal Family and his selection sanctioned by a National Administrative Reform Council. As Keyes explained, "He was a former Supreme Court \textsuperscript{273} Keyes, op.cit. supra at p. 100. Justice, a member of the Privy Council and an arch anti-communist."\textsuperscript{273}

Although only in power for a year, he imposed extremely repressive policies which used grounds of national security and
especially the perceived growth of the CPT in the countryside as the reason for the abrogation of rights and liberties.\textsuperscript{274}

On October 20, 1977, after only a year in power the Thanin Government was replaced by a coup which installed General Kriangsak Chomonan as Prime Minister.\textsuperscript{275} The new government promised a new Constitution and elections both of which it delivered. The new Constitution was promulgated on December 22, 1978 and made an effort to guarantee many of the rights and freedoms included in the Universal Declaration of Human Rights.\textsuperscript{276}

Specifically, the Constitution gave inviolability of the person the protection of law through Section 28 (right to liberty of person). Section 23 provided for equality before the law for all persons regardless of sex, race, religion and circumstances of birth etc. Section 26 prohibited any form of punishment not prescribed by law and Section 27, guaranteed the presumption of accused persons' innocence until they were proven guilty. Section 29 set up a legal aid system to provide financial assistance to any indigent person accused of crime.\textsuperscript{277}

In addition to these sections of the Constitution, which reflected the language of articles 3, 5, 6, 7, 9, 10 and 11 of the Universal Declaration respectively, other Thai laws incorporate the


\textsuperscript{275}Ibid.

\textsuperscript{276}Ibid.

\textsuperscript{277}Ibid.
Declaration's provisions especially as they deal with criminal law. The Criminal Procedure Code sections 134, and 234, prohibit torture and cruel, inhuman or degrading treatment or punishment.\textsuperscript{278} This code also requires that persons must be informed immediately upon their arrest of the charges against them.\textsuperscript{279} The Penal Code delineates five forms of punishment which can be meted out to persons convicted of crimes: death, imprisonment, confinement, fines and confiscation of property.\textsuperscript{280}

Many of the other articles of the Universal Declaration of Human Rights were incorporated into Thailand's 1978 Constitution. Freedom of religion was guaranteed by Section 25. Freedom of expression and specifically, freedom of the press was protected by Section 34.\textsuperscript{281} But freedom of expression was defined by the Constitution in language which left much open to interpretation:

\begin{quote}
Every person shall enjoy the liberty of speech, writing, printing and publication. The restriction of such liberty shall not be imposed except by virtue of law specifically enacted for the purpose of maintaining the security of the State or safeguarding the liberties dignity or reputation of other persons or maintaining public order or good morals or preventing deterioration of the mind or health of the public.\textsuperscript{282}
\end{quote}

This guarantee is usually one of the first abrogated in the

\begin{footnotes}
\item[278]Ibid.
\item[279]Ibid.
\item[280]Ibid. 133.
\item[281]Ibid.
\item[282]As quoted in K. Wongrangan, \textit{op. cit. supra}, p. 133.
\end{footnotes}
time of a coup as evidenced by Martial Law Decree #42 which extends
to the Minister of the Interior, not the Courts, the right to
decide whether a publication is in conformity with the security
needs of the state.\textsuperscript{283}

Even though the Constitutions have seemed to be paramount,
specific laws have overruled them and continue to do so. For
example, while the Constitution of 1978 guaranteed freedom of the
person and the privacy of dwellings, and reflected the language of
the Universal Declaration of Human Rights, the Anti-Communism Act
overruled those Constitutional guarantees. This has provoked some
observers like Wongrangan to doubt the strength of Thai
Constitutionalism. As he wrote: "...the constitution in reality is
a political means for the elites to have political power on behalf
of the people and legitimize the exercise of that power for their
own benefit."\textsuperscript{284}

Freedom of peaceful assembly was guaranteed by Section 36 and
Freedom of Association by Section 37. In addition to those
guarantees, an Amnesty Act was passed specifically to extend
Amnesty to members of the unsuccessful coup in 1977 and the
students who were charged in the uprising at Thammasat University
in 1976.\textsuperscript{285} This Act has been used since to extend amnesty to
other coup plotters and members of the moribund CPT during the

\textsuperscript{283}Ibid.

\textsuperscript{284}Ibid. 134.

\textsuperscript{285}Yearbook on Human Rights, \textit{op. cit. supra}, p. 135.
1980's. There is provision as reflected in Article 29 of the Declaration, that derogation from rights and freedoms can be allowed during times of public emergency.286

Therefore, in relation to civic freedoms, this quick review of the recent history of the major social and political institutions and forces shaping Thai society, illustrates what has militated against the effective development of civil rights and freedoms in Thailand as they are known and respected in the West. And this must be factored into this analysis of how and why Thailand behaves as it does, when dealing with issues involving international law and in this instance international human rights laws.

III. Social attitudes, Human Rights and Repression of Disadvantaged Groups in Thai Society

A. The lot of Thai Women in a Patriarchal Society

The expression for 'gonorrhea' in Thai is 'rok ying' which means 'woman's disease'. Language is merely one of many clues to indicate that the traditional place of women in the Thai Buddhist world-view is as the servants to their men. 287

286Ibid. 136.

287W. Burns, "Wife Abuse in Thailand", Bangkok Post. (July, 5, 1987) 19. The speaker, a worker with Empower, a group set up to educate Thai women in the late 1980's, and specifically those working in Bangkok's red light districts was interviewed for this article. She described how Thai society has put at least 100,000
Educating Thai women about their rights is only part of the problem in a basically patriarchal society. One big obstacle to securing respect for fundamental rights and protection in law, is the reluctance of Thais generally, to speak out. This is especially true of women. It is viewed as unseemly to cause problems. Children are taught early the virtue of keeping a cool heart, and in a social climate like Thailand's such an approach is not without its merits.288

But a cool heart can also mean being apathetic to social inequities. Expressing a Western view on the relations between the sexes in Thailand usually meets an embarrassed silence in any discussion on the subject with Thai men or women. This reluctance to address deeply-held social attitudes about women and their place in Thai society is especially problematic when it comes to change. Prostitution is technically illegal in Thailand but it is endemic throughout the country. Its place in Thai society is connected with how Thai men have traditionally been expected to express their potency with as many women as possible. This tendency is largely to blame for the widespread HIV epidemic which will have increasingly severe consequences for the country in the years ahead.289

women to work as prostitutes. Every city, town and village has working brothels and fathers in northern villages will often sell their daughters to agents from Bangkok to pay off their debts.

288 Ibid.

But it is unfair to discuss the lot of Thai women without reference to women in other Southeast Asian societies. In spite of the foregoing comments, Thai women have, in comparison with women in other Asian societies, attained a high degree of freedom. While they must deal with a basically conservative society that dislikes change, they are undoubtedly moving up into areas of society and positions of power formerly reserved for men.290

Education has been the most favored route for women to advance

the U.S. and campaigning for greater awareness of the dangers of AIDS said "It's traditional that Thai men can play around. Just look around the bars and restaurants. Men are sitting in groups getting drunk. And where do they all go after they're drunk -- the brothels. As long as they keep it outside the home, their wives go along with it. But it's no longer a joke when HIV is being brought into Thai homes and infecting wives and potentially their children." In 1989, Ms. Troy led supporters on a march to the beaches of Pattaya Resort when the U.S. fleet lands for frequent rest stops to protest their exploitation of Thai women.

With the new emphasis on liberating the campaign against the spread of AIDS in Thailand, some hard hitting questions are now being asked about many of the time-honoured practices of Thai male society. For example, traditionally the Thai form of hazing freshmen entering universities was to pay a visit to a brothel en masse. Letters to the editor in Thai newspapers have questioned whether this practice is not unwise in light of the spreading AIDS epidemic. But very seldom do such letters ponder whether the practice is wrong because of its inherent exploitation of women.

Early in 1990, because of alarming statistics of HIV infection in prostitutes in the north, the Thai Ministry of Public Health announced that prostitutes would be henceforth, tested and issued an "infection-free certificate" to reassure their clients.

In its report on the how the anti-AIDS campaign has sparked a discussion of male-female roles in Thai society, the Far Eastern Economic Review had this to say: "...opposition is growing to the bias against women in the various campaigns and programs --- Chiang Mai's campaign was criticised for focusing too much on prostitutes and largely ignoring their clients. The issue that Thai society has avoided addressing is the sexual habits of Thai men: patronising prostitutes is widely accepted behavior."

290 Keyes supra at p. 124.
themselves in Thailand. Today, the Kingdom's university campuses are filled with women and in such disciplines as law, education, the arts, political science, economics, nursing, medical science and commerce, women are often in the majority. In the Faculty of Arts at Chulalongkorn University, the nation's leading university, most of the lecturers and almost 90% of the students are female. But Thai women continue to confront legal vestiges of the male-dominated order. For example, any Thai woman who marries a foreigner automatically loses her right to buy property in Thailand. But this is not true for men. Rural women are of course the most tradition-bound. But in the 1970's their cooperation with the birth control campaign of "condom king" Meechai Veeravaidya did much to make it a success, bringing down

But this does not necessarily mean Thai women move into jobs consistent with their education. "Have you ever noticed how many Thai women university graduates become air hostesses?" asks Keokam Kraisoraphong. Keokam received a CIDA scholarship and is currently working on her PhD at UBC. She intends to work as an agricultural outreach worker with fruit growers in the North of Thailand when she finishes her studies. She went on to say, "Thai women are under a lot of pressure from Thai society. They're brought up to be good girls and are expected to continue that way. Higher education implies a certain independence and for a male-dominated society like Thailand's, this makes the males feel insecure. And women who are independent are no longer considered good girls. They are showing they have their own ideas, ways of thinking. But good girls are supposed to go on living under their men's rules." Interview in Vancouver, September 7, 1990.

Interview, September 10, 1990., Vancouver, B.C with Suchitra Singhasene, now a resident of Vancouver, wife of a Canadian diplomat and mother, who described what happens to the children of such a marriage. "If a male Thai marries a foreigner, their children retain Thai nationality. But if a Thai woman marries a foreigner her children cannot claim Thai nationality and cannot inherit any real estate she might own."
the nation's birthrate dramatically and making the approach a model for much of the Third World.

A superficial analysis of Thai Buddhism with its all-male monkhood and the prohibition against any monk touching a woman might suggest some inherent anti-feminist bias. In fact the reverse is true. Part of the beliefs regarding the genders in Thailand did not originate with Buddhism but with the pre-Buddhist idea shared by all the Tai-speaking peoples (the Burmese and Khmer) that women are linked with the earth and rice. The life-giving qualities of the earth and rice are depicted as goddesses, as Keyes states, "While men realize their religious potential by being ordained into the Buddhist order, women realize theirs by providing alms and food for the monks."²⁹³

Thai women do of course continue to play domestic roles, especially in rural areas, but the Thai view of life allows every individual regardless of gender, to shape his or her own destiny. Rural life by its nature reinforces traditional roles, with women performing the household chores and raising the children. Men still run the show, as village-headmen and keepers of the shrines. But Keyes writes that even this can be deceptive. Women, even in the villages, break from the norm, becoming successful vendors, primary school teachers or nurses in the village clinics.²⁹⁴

While it might be argued that Thailand has given women more


²⁹⁴Ibid.
equality than many other developing countries, it has still vestiges of law which recognize the traditional place of women behind their men. Yet Thailand was a signatory to the United Nations Charter which states in its Preamble: "...Peoples of the United Nations Determined ...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women..." In addition to legalized inequalities such as women losing their property rights if they marry non-Thais, there is the social inequity which is manifested by the enslavement of thousands of women and girls often by their fathers, in the huge prostitution industry.

While Thailand has not received any real international attention for its failure to better protect the human rights of women, its record regarding child labour and the rights of the child, has received attention by international human rights activists. During debate on the Draft Convention on the Rights of the Child in the United Nations, the Secretary General of the United Nations was asked to make a report on the sale of children in Thailand and to recommend that the International Law Commission invite Thailand to adopt and enforce legislation prohibiting such practices.

In addition, that year, the Sub-Commission of the Economics and Social Council of the UN, in its report on slavery and slavery-


like practices cited Thailand in regards to its record on child labour. It was pointed out that Thailand has failed to ratify the 1973 ILO Convention on the Minimum Age for Admission to Employment.\textsuperscript{297}

\textbf{B. Non-Thai Minority Groups and International Human Rights Law}

\textbf{1. Indigenous and Ethnic Minorities}

\textbf{a. The Sakai}

The idea of "indigenous" is not of particular relevance to Thailand which defines its peoples according to being Thai or non-Thai. There are nevertheless some small groups of people in the mountains in the south of Thailand called the "Sakais" who are described as of "negrito" stock. They only number a few thousand but they would seem to fulfill the definition of indigenous.\textsuperscript{298}

In spite of their primitive state and low level of education these people have expressed a desire to achieve an equal status in Thailand. According to researchers who have visited their villages in the South of Thailand, they chafe over their inability to own land, denied them by the Thai government which regards them as tribal and transient. Many Sakai, as a result, have travelled

\textsuperscript{297}Ibid. p. 869

across the border to Malaysia where they have received citizenship and permanent sanctuary. But once they have done this, they are no longer permitted to return to Thailand. They have also been consistently refused Thai citizenship by Thai officialdom because as Chullakasa maintains, "...they have no use in the economic dimension of the country."

In addition to this there is an apparent suspicion that they may be pawns or spies used by the Malaysian government to foment disruption along the frontier.

Many of these themes used by the Thai government bureaucrats will be seen to be consistent with excuses used to justify their policies regarding the hill tribes in the north.

b. The Chinese of Thailand

While the Chinese minority in Thailand have been assimilated for the most part and grown wealthy, they are still distinct and must be mentioned in any discussion of minorities in Thai culture because of their pervasiveness and numbers. They are the most numerous ethnic minority group in Thailand. At times they have endured active repression, for example as cited in Chapter 2 under Premier Pibul, before World War II, when he was cultivating Thai nationalism and characterized the Chinese as the "Jews of Asia".

The Chinese have played the game well in Thailand, and even in times where the regime in power is anti-Chinese, they have used

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299 Ibid.
300 Ibid.
301 Ibid.
their wealth to negotiate themselves out of a tight corner.

In relation to human rights, it can be argued that they do not figure more or less in the picture, than other parts of the Thai population since for all intents and purposes, they have been better integrated into the Thai scene than any other Chinese community in Southeast Asia and therefore, are no more victimized by the dirth of genuine civil liberties in Thailand than the general population. While they have been stigmatized, the Chinese in Thailand are successfully integrating themselves into the Thai mainstream, changing their names to Thai names and blending in. As Coughlin wrote:

Recent naturalization laws provide an illustration of the government's point of view. These laws declare in effect that the mere fact of acquiring Thai nationality, even by birth in Thailand, is not in itself, sufficient proof that a person has truly identified himself with the interests of the Kingdom. Thus it demands further evidence of bona fides of both former aliens and second-generation Chinese in the form of government employment, education according to Thai standards, and honourable military service, before granting such persons the full rights of citizenship.302

c. The Muslims

The Muslims in Thailand are made up of two groups. First there are the Malay Muslims who live in the four southernmost provinces of Thailand and make up a majority of these provinces populations. They are significant in Thailand because they are truly remnants of an era when Siam controlled the northern Sultanates of Malaya. The Malay Muslims speak a Malay dialect and are Muslims. They have for

several decades supported an insurgency which has agitated for autonomy. This has kept the security issue alive along the southern border, forced the Bangkok government to station the Royal Thai Army in strength there, and often cause relations between Thailand and Malaysia to be rocky.\textsuperscript{303}

The other Muslims are resident throughout Thailand, and are either Thai Muslims, descended from the southern Muslims or are descendants of Muslims who came to Thailand centuries ago from India and Persia.

While freedom of religion is guaranteed in the Thai Constitution, the religion the state recognizes as the state religion is Buddhism and to be out of the Buddhist mainstream as the Muslims are in Thailand is to be on the outside. Nevertheless, the Muslims demand their own schools in the south, maintain mosques and would seem to have a great deal of freedom. Laws such as the family law of Thailand which was codified in the Civil and Commercial Code, were drafted to incorporate Islamic law cognisant of the wishes of the Muslims in the South.\textsuperscript{304}

d. The Hill Tribes of Thailand

Scattered through the hills of Northern Thailand, are villages populated by over twenty different tribal groupings, each with its

\textsuperscript{303}M. Alagappa, \textit{Australian Journal of International Affairs}, op.cit. at. p. 9.

own history, dialect and ethnic characteristics. It is estimated that the tribal peoples in the North number about 300,000 people although it is difficult to pin down how many people there are exactly because of a constant inflow and outflow across the borders with Burma and Laos. There has also been a remarkably rapid increase in the population of the tribal peoples in recent years because of a high birth rate, a fall in the mortality rate and emigration into the hills from the lowlands. Some tribes like the Hmong, for example are increasing at 3% to 5% per year. This is, for the first time in their history putting pressure on the Thailand's hill tribes because of overpopulation.

The hill tribes are relevant to this discussion of human rights law and Thailand's national policies for a number of reasons. First of all, while they are not numerically significant being less than 1% of the Thai population, they have become the major preoccupation for security reasons in Thailand's northern provinces. This brings up how they are perceived by Bangkok which first of all, denies them citizenship and land rights, and then questions their loyalty to the Thai monarchy. J. McKinnon described this conundrum the tribal peoples are placed in as follows: "They are not citizens because we cannot be sure of their loyalty and

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306 G. Young, Hill Tribes of Northern Thailand, (Bangkok: The Siam Society, 1962), iii.

because they are not citizens, we cannot be sure of their loyalty."^{308}

In addition to the security concerns which have dominated the policies of the central Thai government in dealing with the tribes since they began to take notice of them in the 1950's, the other major problem that has also brought in international involvement is that of narcotics and more particularly, opium.^{309}

In 1966, the Thai government requested United Nations assistance in helping to replace opium as the main cash crop for the hill tribes.^{310} Opium is not a recent phenomenon in Thailand's northern hills. It is a leftover largely of European 19th Century colonialism. Therefore, the economy of the North to a large extent, and this includes large parts of Burma and Laos as well, depended on growing, processing and selling opium for over a century.^{311} At the time that the UN came to Thailand's assistance in its crop replacement program, opium was the mainstay for an estimated 45% of the tribal population in Thailand's northern hills.^{312} The lengthy history of opium cultivation in Thailand's

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^{310} Ibid.


^{312} Ibid.
north is one reason it has been difficult to stamp it out. But the other major reason is that it is an ideal crop for the hill tribes. It has high value for the weight produced. The price is rising. It grows well in the soil, moisture and other conditions of the hills. And it can be grown almost anywhere. Nevertheless, an international convention banned it and pressure has been on Thailand ever since, to work on crop replacement programs. This campaign has now been going on for several decades. The International community has spent millions on these programs since they were inaugurated, but opium is still grown in the hills albeit at a much reduced rate. Nevertheless, an international convention banned it and pressure has been on Thailand ever since, to work on crop replacement programs. This campaign has now been going on for several decades. The International community has spent millions on these programs since they were inaugurated, but opium is still grown in the hills albeit at a much reduced rate.

In the year 1966/67 when the programs came into force in the hills, the crop yield in Thailand was estimated at 150 tons. By 1986/87, this was estimated as having been reduced to 25 tons. It has even become a question whether this success in reducing the crop yield might be detrimental to Thailand in the long run since the programs have still not stamped out opium addiction in the hills and an estimated 30 tons is needed by the tribes to maintain their current consumption levels. So this might force Thailand to become a net importer of opium. Or worse, encourage tribes to use heroin as a substitute.

313 Ibid.
314 Ibid.
316 Ibid.
The other major problem relates to the ecology in the hills. Because of "swidden" cultivation techniques, otherwise described as slash and burn, the tribes have been blamed for a drastic deforestation of the hills in the north of Thailand. Traditionally, tribal villages establish themselves in one locale, cut down the trees to clear fields for their crops, primarily opium, and remain in that location for about 10 years until the soil is depleted of nutrients.\footnote{J. McKinnon et al, "Critical Words for Critical Days," Hill Tribes Today, xx-xxi.}

Whether the highlanders are in fact the real or only culprits, is a moot issue.\footnote{Some sources blame lowlanders who have moved into the hills in recent years, and illegal loggers who fell trees in park lands and use the highlands as the scapegoats. The Bangkok Post has written extensively on this issue. Articles in author's files.} But deforestation in the hills there is. And the central government has portrayed this as yet another of its major concerns regarding the tribes, since authorities now blame this deforestation for everything from desertification in the north, a drop in rainfall and a resulting change in the climate, to a threat to the national watershed through erosion of the hills, silting of the waterways and drastic flooding during the monsoons.\footnote{Ibid., xxi.}

In order to solve these problems of security along its northern frontiers with Burma and Laos, narcotics and ecological degradation, the Thai Government has instituted numerous projects and brought into play many agencies, some of them international, to...
deal with the hill tribes. In reaction to international pressure, the Thai government passed the Opium Act in 1958 which made the production, consumption and sale of opium illegal. In 1959, the government formed the National Hill Tribes Welfare Committee and set in place detachments of the Border Patrol Police (BPP) to conduct surveillance along the border, but especially to familiarize themselves with the tribes and locate the villages, many of which were not even known to the government at the time.

These efforts came after decades of governmental indifference. While the governments of Burma and Laos were conducting campaigns across the border to control the own restive provinces populated by tribal peoples, Thailand left the area relatively untouched. This meant that many tribal people from Burma and Laos moved into Thailand where they could live without as much government interference. By the 1950's both because of the international pressure regarding opium, but also because of its uncertainties regarding its northern borders, with China only a short distance away, the government in Bangkok decided to improve on its supervision of the northern provinces.

In the 1960's because of fears that the Communist Party of Thailand was finding converts among the tribes, the government set

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321 Ibid.

322 Ibid. 32.
up units of the BPP to construct airstrips throughout the north near tribal villages and begin surveying the area. Local tribal people were trained in first aid and given political indoctrination in "Thai-ness and loyalty to the King". At this time the Communist Suppression Operations Command was put into operation to take over this task from the BPP because of a Government White Paper which described the tribes as vulnerable to the CPT because of their primitive social structure, the inaccessibility of their settlements and their status as ethnic minorities outside the mainstream of Thai life, society and culture.\textsuperscript{323}

This campaign and intrusion of troops into the insular lives of the tribes did not go smoothly at first and heavy-handed military intervention, on one occasion resulted in violence especially in Hmong villages. A Hmong village was burned which resulted in retaliatory acts of violence against government troops and installations. The problem escalated until the central government was characterizing it as a full scale insurgency. Some villages were bombed from the air. Napalm and heavy artillery were used and even local Chinese and Akha tribal militia were mobilised primarily against the Hmong. As Tapp observed, "It was at this time that the government most clearly revealed its fears of insurgency among the non-Thai minorities and a policy of assimilation toward them."\textsuperscript{324}

Fortunately saner minds prevailed on both sides and the

\textsuperscript{323}Ibid. 34.

\textsuperscript{324}Ibid. 36.
fighting subsided. The government was prevailed upon to deal with the deeper issues and problems of the peoples in the hills by instituting more sophisticated solutions. One of the more successful programs from the Thai government was set up by His Majesty the King to encourage crop replacement. This program has done much to bring unique crops to the north and wean many of the highlanders from their dependence on opium. International involvement of Missionary groups and National Assistance organisations from countries like Germany and the United States have also made an important contribution. The Joint U.N./Thai Programme for Drug Abuse in Thailand (UNPDAC) 1971 was one of the first international programs set in motion and hundreds have followed.\(^{325}\)

Assessing the success or failure of these myriad projects is difficult. For every problem cited as affecting the hills, whether security, narcotics or land degradation, there is a project focused on an aspect or aspects of these overlapping concerns. And the projects have erected a mini-industry unto themselves with the workers in the projects and researchers, having a vested interest in defending the integrity of their approach to the particular problem they are confronting. McKinnon said the following:

Projects are attempts to solve well-recognized "problems" and the funds allocated to ameliorate these provide a living for many. All projects have answers which they consider the best and do not welcome criticism from outsiders engaged in different work who have the audacity

to assume they know better.\footnote{McKinnon, \textit{Hill Tribes Today}, p. xxvi.}

Up to 1980, the policy of the Thai government was to deal with the three main problems described previously which relate to the hill tribes using projects focused on these problems. During the 1980's, the policies have been in some senses, assisted by the sudden emergence of the tribes as a tourist attraction. Where before, the Government had to be assisted by international organisations and foreign aid, to push roads and airstrips into the hills to increase the accessibility of the tribes, this decade of tourism development has added the funds of the hungry local tourist industry. \footnote{E. Cohen, "Hill Tribe Tourism," \textit{Highlanders of Thailand}, J. McKinnon and Wanat Bhrkusasri, (eds.) (Kuala Lumpur: Oxford Univ. Press, 1983),308.}

At first glance this rapid development of the hill tribes as yet another attraction on the list of "must-sees" in a tourist's itinerary, might seem to be merely an innocent offshoot of the mania for foreign exchange earnings. But the tourist development of hill tribe villages has been orchestrated from the beginning by the Tourism Authority of Thailand, which is a state enterprise. It has encouraged the idea of seeing a group of people, "untouched by civilization" which has the effect of bringing the most remote villages within reach of the treks organized out of Chiang Rai and Chiang Mai.\footnote{Ibid. 309.} This has guaranteed that tourists in pursuit of that illusory ideal, the completely primitive, the unspoiled, have
brought villages previously inaccessible and relatively autonomous from mainstream Thai culture, firmly into the Thai reality.\footnote{Ibid. 318.}

Previously, projects for crop replacement were aimed at getting the tribes to settle and slowly be inducted into the Thai economy through producing and marketing crops saleable in the general Thai economy. Now with the advent of tourism development, the tribes are being brought abruptly into the international economy and it is having some profound effects on their cultures and ways of life.\footnote{Ibid. 323.}

Economically, they have benefitted from selling their handicrafts, hosting tourists in their villages, selling them food and meals, and begging for handouts.\footnote{Ibid. 320.} This last "benefit", resulted from the earlier habit of tour operators giving villagers gifts when a tour group would arrive in their villages. As tours became more organised and permanent facilities were established in the villages, the operators ceased giving the gifts out to the general tribal population but instead, paid those tribespeople directly involved with providing services to the group. But the expectations for handouts had been created and begging can be linked to this.\footnote{Ibid. 323.}

There has been the inevitable disruption of a basically subsistence economy brought suddenly into contact with the

\footnote{Ibid. 318.}
\footnote{Ibid. 323.}
\footnote{Ibid. 320.}
\footnote{Ibid. 323.}
consumerist Western market economy with all its "blue jean glamour". This has done to the tribes what such exposure has done to other indigenous groups elsewhere in the world: made them view themselves as objects, wearing their traditional dress as entertainers for tourists, and using Western apparel as their everyday wear. Their own view of themselves as objects, as subjects for photos without valid identities of their own has produced a sinister diminution of the tribespeople's sense self worth.333 All the symptoms so well known in North America, of a people who have been deprived of a sense of their own identity, is now being evidenced in the hill tribes. But then as Cohen wrote:

"...problems are too often overlooked by those who judge success of tourist development, merely in terms of the cash income it generates."334

And underlying all the problems cited is one involving human rights and law. Even though many of the tribal peoples in the north have been described by anthropologists as probably pre-dating the lowland Thais themselves in the time they have inhabited Thailand proper, particularly the Lawa peoples, the tribes people are for the most part denied citizenship.335 Other than those tribes that have historically resided in Thailand, even the children of the tribes born in Thailand are not given citizenship automatically. The current policy would appear to be that, if the tribes people

333Ibid. 323.

334Ibid.

335G. Young, Hill Tribes of Northern Thailand, p. 51.
become "Thai", abandon their culture, animist religious practices and transient ways, learn the Thai language, then they have indicated their openness to being assimilated. Once that is accomplished the cherished status of Thai citizenship perhaps will be granted. Article 1 of the Thai Constitution says that the Kingdom is "... a unitary state and shall remain undivided." But this basically assimilationist policy of the government has been criticized by international anthropologists who see such policies being in violation of international human rights. Some observers also suggest that the government and its agencies would probably prefer that the tribes were not even in the lands they occupy and wish they would go back where they came from.

In demanding that, the hill tribes must abandon their cultures, in order for them to be given rights of citizenship and land title, the Thai government would appear to be in violation of the spirit if not the letter of the following covenants of international human rights law. First the Universal Declaration of

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336 Bhruksasri, "Government Policy: Highland Ethnic Minorities" as previously noted, at p. 25.

337 Ibid.

338 As McKinnon puts it in his introductory article at pp. xx - xxi, in Hill Tribes Today as noted previously:

The Royal Forestry Department if not the state would prefer the highlands be unencumbered, to be unoccupied. This is difficult to achieve but the wish survives. The state has yet been unable to extend citizenship to a large number of highlanders many of whom were born in Thailand. Then again like most South East Asian nations, it denies "tribals" land rights over which is considered to be public domain.
Human Rights in Article 15 guarantees every one rights to nationality and the protection of the state. It also guarantees everyone the right to own property as in Article 18, but Thai law prohibits non-Thais from owning property which when citizenship is denied the tribespeople, effectively denies them the right to own the land they occupy.\textsuperscript{339}

The Convention on the Reduction of Statelessness, 1961 declares that, "...a contracting state shall grant its nationality to a person born in its territory who would otherwise be stateless".\textsuperscript{340} While this Convention has not been widely signed nor ratified, it did result from a vote in the U.N. General Assembly and recognizes the necessity of at least granting to those born in a state, its nationality. Even if the continued reluctance by the Thai government to grant the tribes Thai nationality is followed to its logical conclusion and the hill tribes people are accepted as "aliens", there is still an accepted minimum standard internationally that a state's municipal law must accord so-called aliens within its borders. \textsuperscript{341} If applied, the international protections for aliens would certainly apply to those hill tribes who may have only recently arrived in Thailand.

\textbf{2. Refugees and International Law: the Thai experience.}


\textsuperscript{341}C. Amerasinghe, State Responsibility for Injuries to Aliens (1967), p. 44.
1. History

Thailand has long functioned as a haven for people on the run from their usual homelands. The recent history of refugees in Thailand has brought to the world's attention the plight of the peoples fleeing persecution from the countries of Indochina. But for a variety of reasons, Thailand has been taking in people from neighbouring countries for centuries. As early as 1776, fleeing a war in what was then referred to as Cochin China, now the northern portion of Vietnam, people fled to what was then the Kingdom of Siam and its relative calm. In that century and the next, similar influxes occurred from both Laos and Cambodia and in the majority these people became part of Siam, their descendants populating the rural areas of Thailand's northern and northeastern regions, to this day speaking dialects incomprehensible to the majority of Thais.\textsuperscript{342}

The next major upheaval in the region which disrupted the stability provided by almost two centuries of colonialism and European domination of regional politics was of course the Second World War. Thailand was invaded and occupied by the Japanese. But because of the pragmatic approach of its leaders who sided with the "invaders" for most of the war, and Thailand's status as the only independent state in Southeast Asia at the time, it emerged from the war with its social institutions, economy and governmental

\textsuperscript{342}Indochinese Refugees: Asylum and Resettlement, (eds: Supang Chantavanich and E. Bruce Reynolds), Institute of Asian Studies: Chulalongkorn University, Bangkok, 1988, p. 1.
infrastructure relatively intact.\textsuperscript{343}

But around it, its neighbours did not fare as well under the Japanese. Their economic infrastructures had been plundered by the war. Also their basic governmental and social institutions were torn apart by the conflicts that arose in the vacuum created as the various colonial powers slowly relinquished control of their Indochinese and South East Asian possessions.

In the Indochinese countries especially, and Vietnam in particular, the anti-colonial forces aligned themselves with the Soviet Union and the newly emergent People's Republic of China. The war that erupted with the French eventually forced up to 50,000 Vietnamese to flee into Thailand.\textsuperscript{344} They are still cited as examples of why Thailand has taken the stand it has on refugees, and its fears regarding refugees as threats to its national security.\textsuperscript{345}

At the time, Thailand was sparsely populated having about 14 million people at the end of the war. Its rural areas still had land available for settlement and these new arrivals could be absorbed with not much disruption to the status quo. The Vietnamese influx was part of what has been characterised as the first wave of refugees in Thailand since the war. Other components of this wave were remnants of the Kuomintang Army of the Nationalist Chinese who

\textsuperscript{343}Refer to a discussion of the period in Chapter 2, p.

\textsuperscript{344}Id. p. 5

arrived and set up communities in Thailand's north from 1950 to 1959. With General Ne Win's victory in Burma in 1959, several thousand Burmese added to this wave.\textsuperscript{346}

Largely because of the numbers of displaced persons fleeing their countries around the globe at this time, the member states of the United Nations, of which Thailand was one, attempted to enshrine into international law, a statement articulating what was meant by the term "refugee". On July 28, 1951, the International Convention Relating to the Status of Refugees (hereinafter referred to as the Refugee Convention) was open for the signatures of participating states. It defined a refugee as:

\textit{[a person who] owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country: or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.}\textsuperscript{347}

But Thailand has neither signed nor ratified this accord.\textsuperscript{348}

This has effectively placed Thailand outside the obligations imposed on the signatories since international law has long


\textsuperscript{348}Ibid.
recognised if a state does not sign a human rights covenant it is
not bound by it.\textsuperscript{349} International law has even extended this
further, realising that if a signing state chooses not to
incorporate the rights protected by an international covenant into
its own legal system, such a state is not bound by the covenant
either.\textsuperscript{350}

While the Refugee Convention aimed at providing protection for
refugees and defining their basic rights and freedoms, it was
fettered by the relatively narrow definition of "refugee" upon
which the member states agreed.\textsuperscript{351}

With its history of accommodating previous influxes of
refugees and its relatively peaceful situation surrounded by
turmoil in neighbouring states, it was inevitable that Thailand
would continue to receive a spillover of people fleeing war or
economic deprivation in their home countries. But the refugee
situation that faced Thailand with the fall of Saigon to North
Vietnamese forces in 1975 was more than it had ever dealt with
before. This victory combined with the subsequent victories of the
communist Pathet Lao in Laos and the Khmer Rouge in Cambodia,

\textsuperscript{349} D. Sanders, "The Emergence of Indigenous Questions in

\textsuperscript{350} Ibid.

\textsuperscript{351}\textit{The International Convention Relating to the Status of
Refugees, Article 1(2) defined a refugee as any person who
"...owing to a well-founded fear of being persecuted for reasons of
race, religion, nationality, membership of a particular social
group or political opinion is outside the country of his
nationality and is unable, or, owing to such a fear, is unwilling
to avail himself of the protection of that country..."
produced a massive wave of Vietnamese, Laotian and Khmer refugees which began flooding into Thailand primarily by land, but many Vietnamese also began to arrive by sea.\textsuperscript{352}

The first part of this wave was made up mostly of Lao and Hmong 166,000 of whom fled into Thailand from April, 1975 to September, 1979. There was a second wave of Vietnamese after the fall of South Vietnam in 1975. This was followed by a third wave made up mostly of Khmer refugees from Cambodia in 1979, following the Vietnamese invasion and takeover of Phnom Penh.\textsuperscript{353}

Cambodia had become an independent kingdom in 1953 under the rule of Prince Norodom Sihanouk who struggled to maintain his nation's neutrality throughout the Vietnam war. The United States was a key player in Cambodian politics and in 1970 when the Lon Nol clique overthrew Prince Sihanouk they received U.S. support. The communist Khmer Rouge were still able to gain power in 1975 and under their leader Pol Pot, they proceeded with their infamous policies like the mass evacuation of the capital and the eradication of the civil bureaucracy. It has been estimated that 3 million Cambodians died as a result of these policies.\textsuperscript{354}

The waves of Cambodians fleeing their homeland numbered in excess of 500,000 people and put enormous burdens on Thailand's border areas. The Thais living in the area along the Cambodian

\begin{footnotes}
\item\textsuperscript{352} S. Chantavanich, "Introduction," \textit{Indochinese Refugees: Asylum and Resettlement}, (Bangkok: Chulalongkorn Institute of Asian Studies, 1988) 6-8
\item\textsuperscript{353}Ibid.
\item\textsuperscript{354} W. Shawcross, \textit{The Quality of Mercy}, 63 (1984).
\end{footnotes}
border were displaced and became increasingly resentful.355

But part of the problem of the this third wave of "illegal immigrants" as they were described by the Thai Government, was that they were technically, outside the jurisdiction of the United Nations High Commission for Refugees, and were not under international law, necessarily within the definition of "refugee". There were an estimated 200,000 Cambodians who fall in this category, outside the UN definition, and in 1989, they were strung still along the Thai-Cambodian border, sometimes on the Thai side and in times of calm, moved back to Coalition for a Democratic Kampuchea (CDK) bases on the Cambodian side.356

2. Cultural and Political Background to the Refugee Problem

Thais have never taken kindly to outsiders and even the Indians who have settled in Thailand for centuries, with some families able to trace their origins back to Ayuthaya, still resent their designation in Thai, as "kon kaek" meaning "guests".357 There are no individual expressions for "exile, migrant or refugee" in the Thai language. Any expression that comes close to being


appropriate also includes the connotation of permanent residence which Thai governments have been very insecure about ever suggesting, given the scarcity of resources available to their own people especially in the border areas.\textsuperscript{358}

In order to appreciate the background to the refugee problem in Thailand and its reactions to criticism from the international community and conflicts with international law, the lessons of history should be borne in mind.

The Kingdom of Siam had a long rivalry with Vietnam both in Laos and Cambodia, which even pre-dated French involvement in the region. In fact the French used this rivalry to offer "protection" from Bangkok to the courts of Laos and Cambodia.\textsuperscript{359} As mentioned in the preceding chapters, both Laos and Cambodia were historically vassal states and paid tribute to the Siamese kings throughout the centuries until they both became incorporated into French Indochina. The Kings of Cambodia had even been crowned in Bangkok.\textsuperscript{360} As subject peoples, Laotians and Cambodians were not on an equal footing with Thais in the Thai view. Even today mothers of newborn infants will describe them as "black as Cambodians". It is a common reaction to anyone praising their offspring, to ward off evil spirits which might steal the baby.\textsuperscript{361} But it indicates

\textsuperscript{358}Shawcross, \textit{op. cit. supra.} at p. 82.


\textsuperscript{360}Ibid. 112.

\textsuperscript{361}W. Klausner, \textit{Conflict or Communication}, (Bangkok: Business and Research Co.Ltd., n.d.). 111.
how ingrained these traditional and historical attitudes are in the Thai reaction to the peoples of the region.

Even the plundering of refugee boats and the raping of Vietnamese women by Thai fishermen can be partially explained by this historic rivalry between the two states and the view of them as social inferiors. To defile their women is justified to bring shame on them as beneath them as Thai. While it might be true that as Helton maintains, "...[a] basic measure of a civilized society is the way it treats strangers", Thailand's failure to provide a level of protection to refugees consistent with international law has historic, cultural and political reasons which must be understood first before making loud condemnations.

Politically, the refugee problem has arisen because of the complicated international politics of Indochina, and the competing interests of China, the Soviet Union and the United States which have used Thailand, Vietnam and the warring factions in Laos and Cambodia as their proxies. In the conclusion to his description of the tragic history of Cambodia, the refugees and the massacre of millions, Shawcross ended by putting the blame on Vietnam as the primary instigator of the tragedy.

3. Current situation with Refugees


363 Ibid. 21.

364 Shawcross, supra at p.403.
Since 1975, over one million Indochinese have entered Thailand.\textsuperscript{365} Of that number, an estimated 700,000 had been resettled in third countries with the United States taking about 378,000 up to 1986.\textsuperscript{366} Thailand has been closing a number of the camps that were operated to accommodate the first asylum refugees. Also, while trying to improve the situation through bettering relations with Vietnam, Thailand is still having to deal with the arrival of Vietnamese by boat on its Gulf of Thailand coast.\textsuperscript{367} It has therefore declared as government policy, pushing the Vietnamese boats back from the shore where they land. This has resulted in loss of life, and a further rise in incidents of piracy.\textsuperscript{368}

In addition to the forced refoulement of Vietnamese "boat people", there have been reports of the forcible return of Laotian migrants who have been held and then forced back over the Mekong into Laos. In 1985-86, an estimated 27,000 Lao arrived in Thailand, allegedly because of the Laotion government's imposition of new taxes and military conscription. This coupled with a perceived increase in Western resettlement at the time, were the reasons cited for this surge in Lao emigration.\textsuperscript{369}

It is now difficult to accurately estimate how many refugees

\textsuperscript{365} A. Pongpanich et al, supra at p. 15.

\textsuperscript{366} S. Chantavanich, supra at p. 6.


\textsuperscript{368} Ibid.

\textsuperscript{369} A. Pongpanich supra at p. 13.
and non-registered Cambodians and Lao are resident in Thailand because the situation is in such a state of transition. With the halt of the civil war in Cambodia and the stabilisation of the situation there, it is certain more and more people along the Thai border will filter across to return to their homes and villages once they no longer fear for their safety.

With Vietnam's open door economic policies, greater prosperity and optimism, better relations with Thailand, and bilateral agreements with its neighbours to curb the exodus of its people by boat, it is to be hoped the Thai policy of forced repatriation of the boat people will not be continued.

4. Thai Refugee Policy and International Law.

It is undeniable that the refugee situation in Thailand was not welcomed by the Thais. In most respects, they did nothing to encourage the situation. As Shawcross pointed out, while they were active with the United States in attempting to prevent communist victories in Indochina, after 1975, with the fall of Saigon, Thailand went through a shift in policy which resulted in the American withdrawal from their bases in Thailand and the Thais were anxious to reach a modus vivendi with the Chinese and the new regimes in Indochina.

At first, with the beginning of the Cambodian influx in 1979, the Thai government under General Kriangsak Chamanand authorized the Thai security forces to force the people back over the border
which resulted in much loss of life. This action provoked an international outcry which Thailand reacted to angrily. The Vietnamese boat people were pouring into the other countries of Southeast Asia at this time and in some instances being turned back. The United Nations convened a Geneva Conference on the Indochinese refugee situation in 1979, and produced pledges from countries like the United States, Canada and France for resettlement places.

The refugee situation produced an enormous influx of international organisations into Thailand into the camps which were eventually set up. Thailand was forced to deal with the resulting social, economic and political problems for what it regarded as humanitarian reasons. During the initial phase of the problem in 1979, General Kriansak was under pressure from the Thais along the border and the Thai military to deal with the problem effectively, which meant in some instances, violating international law on "non-refoulement" and sending the refugees back. In addition to this pressure, other first asylum states in the region were also forcing boat people back to sea, so Thailand was not alone in this attitude. In addition, in spite of international law, General Kriangsak was under pressure to confront the Vietnamese who had invaded Cambodia and were moving quickly toward the Thai frontier.

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370 Shawcross supra at p.84-94
371 Ibid.
372 Pongsapich et al, supra at p. 36.
373 Shawcross, supra in note 100.
There were factions in the Thai military who wanted to cross into Cambodia and confront the Vietnamese directly.\(^{374}\)

In other words, this episode which continues because refugees are still living in Thailand has been one with no easy solution. International law while finding certain of Thailand's actions wanting, most particularly its forcible repatriation of Cambodian refugees in 1979, has not been of much assistance in finding solutions. And only now, with the easing of the conflict in Cambodia and Thailand's participation in that nation's reconstruction, is there hope that the refugees or "illegal immigrants" as Thailand has consistently dubbed them, will return to their homelands voluntarily.

Thailand reacted to international law and organisations characteristically. It was not a signatory to the Convention or Protocol. It was therefore outside its requirements. Nevertheless, it was subject to international customary law on non-refoulement which is accepted as being part of general international law.\(^{375}\) Its most recent policies to push Vietnamese boat people back out to sea, as cited at the beginning of this section, violates the Brussels International Assistance and Salvage at Sea Convention of 1910. This together with Article 98 of the 1982 Law of the Sea Convention (discussed in more detail in Chapter 5), which Thailand has signed although not ratified, binds Thailand to international

\(^{374}\)Ibid.

law which requires that refugees must not be turned back at frontiers or on a nation's coasts.\textsuperscript{376} International law requires that refugees must be accorded first asylum and allowed a full examination of their status under the Convention.\textsuperscript{377}

In addition to customary international law respecting non-refoulement, it can be argued that Thailand has violated and continues to violate international law on the rights of aliens. The International Court of Justice has upheld the rights of aliens in the \textit{Barcelona Traction and Light Co}, case by stating that States are obligated to accord certain rights to aliens who have been accepted within their borders.\textsuperscript{378}

The Universal Declaration of Human Rights which Thailand has acceded to, prohibits arbitrary and prolonged detention in Article 9. Article 13 also guarantees everyone "...the right to freedom of movement and residence within the borders of each state".\textsuperscript{379}

This analysis consistent with its original premise that we can learn much about a nation according to its reactions to international law, illustrates the following about Thailand's national behaviour relative to international law as it relates to refugees.

Thailand has been at the outset of the refugee crisis in the

\textsuperscript{376}Helton supra at p. 40.

\textsuperscript{377}Ibid.

\textsuperscript{378}I.C.J. Rep., 32.

1970's, preoccupied with internal political turmoil. The CPT was still active and actually at the apogee of its success. Student demonstrations brought down two governments and the military had been influential in having civil liberties drastically curtailed in 1976. General Kriansak Chamanand who came to power in 1977, was a moderate relative to his predecessor but was still faced with pressure from the military to enter Cambodia, as well as domestic political pressure to forcibly repatriate the waves of refugees arriving in Thailand especially in 1979, primarily to deter others. Thailand therefore reacted to the increasing refugee problem by forcing refugees back. This definitely contradicted international law. But in the context of the times, and its cultural reaction to outsiders, it is understandable.

Subsequent to this, Thailand was condemned by a number of International agencies and its cultural reaction to this was at first one of outrage but eventually, with more moderate pressure through the UNHCR, it allowed a large influx of funds, food and resources to deal with the refugee problem. This change can be explained cynically as showing how officials and the military saw this international effort as a potential source of funds and prestige. It also can be argued that strategically, this massive international presence militated against sizeable Vietnamese incursions across the border.

But it has to be concluded, that international human rights law would appear to have only moderate influence on Thailand's national behaviour especially as it relates to the refugee
situation. Humanitarianism has entered the rhetoric to characterize Thailand's behaviour. But Thailand has at the same time hinged its acceptance of the refugees and their accommodation on their eventual resettlement elsewhere. In other words it has not accepted the inherent right of refugees to protection, irrespective of other nations policies on resettlement. While it shares this stance with other nations in Southeast Asia, it still does not obviously respect this independent human rights principle.\textsuperscript{380}

Whatever its stance, the refugee situation has not been a happy interlude for Thailand. As Khien Theeravit stated:

Thailand has felt pressure from various sources: the hostile governments that pushed out the refugees, some of its own people who put security considerations above humanitarianism, some serious reporters concerned only about freedom of the press, some vocal human rights activists who aggressively demanded all universal rights but ignored all responsibilities, some representatives of international organisations who often thought that their money and the worthiness of their cause could override all sovereign rights...\textsuperscript{381}

Summary

It can be said that Thailand has been somewhat affected by international human rights law and, based on the examples present in this analysis, modified its behaviour and its laws accordingly. Many of the articles of the Universal Declaration of Human Rights were incorporated into the 1978 Constitution. It remains to be seen if this will be followed in the Constitution which is currently

\textsuperscript{380}Helton supra at p. 45-6.

being discussed.

Culturally Thailand would seem to react to outside pressure like the individual Thai responds to situations where face is involved. It is extremely jealous of its national dignity. While this can produce a reaction of sullenness if the regime of the time sees the nation as slighted, diplomatic approaches to the Thai government if handled correctly have seemed to work, especially, as described in this analysis, regarding the treatment of refugees. When, for example, international organisations have approached the Thai government discreetly it appears that the Thai government has been persuaded by international pressure relative to the law of international human rights.
I. INTRODUCTION

Millions of tourists visit Thailand every winter and during their vacations along its coasts they inevitably see fishermen lining the decks of trawlers, waving to them, with big smiles on their faces as they head out in search of their next catch. But the tourists certainly do not realise how successful those men are in their work or how important they are to the economic well-being of Thailand. Nor do they realise as they pick out their seabass for the evening meal, what tensions are provoked every year by the Thai fishing fleet as it illegally probes the fishing zones of Thailand's neighbours.

A quick glance at a map of the Southeast Asian region reveals Thailand located as it is often characterized in tourist guides, like an elephant's head, the back of the head bordering Laos and Cambodia, the forehead abutting Burma, and the trunk snaking down to dribble into Malaysia. It has a total land area of 513,115 sq. kms. This shape has arisen partially because of its sea boundaries, on the Gulf of Thailand to the South and East (1,735 kms. in length) and off its southwestern coastline (908 kms.), the

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382 Fishery Resources, Thailand Natural Resources Profile, Thailand Development Research Institute, 1987, p.165.
Andaman Sea. In total length, almost 3,000 kilometers of coastline would appear to give Thailand ample access to the seas.\(^2\)

But in 1982 after the UN Conference on the Law of the Sea, and the resulting treaty, the Third United Nations Convention on the Law of the Sea, (UNCLOS III), Thailand found itself in the unlikely company of nations such as Singapore and West Germany, the so-called "disadvantaged states". The delimitation on the area of its own Exclusive Economic Zone, (EEZ)\(^3\) and Continental Shelves and therefore the jurisdiction over non-living resources in the Gulf of Thailand was not its only concern. There was the additional problem of fish and fisheries.

At the time, in 1982, Thailand had the seventh largest distant water fishing fleet in the world and the largest in Southeast Asia.\(^4\) Fish are an integral and traditional part of the Thai diet. Fishing was central to the economies of hundreds of communities along the Thai coasts and the distant water boats


\(^3\)Exclusive Economic Zones were established unilaterally by countries until the UN Conferences on the Law of the Sea began to deal with them, eventually writing them into the Convention specifically in Articles 56 and 57 which defined them and the way countries could draw the lines from their coastlines to set them in place. The EEZs do not give states exclusive sovereignty within them but extend international recognition to a state's right to exclusive economic activity in the zone. Now, for example, scientists engaged in marine research in a state's EEZ must get that state's permission before embarking on their expedition in the EEZ.

employed thousands of young men from the northeast of Thailand who would have been unemployed otherwise. Finally, fish processing had become a big industry in Thailand and by 1982, Thailand was a world leader in the export of fresh, frozen and canned seafood.

The treaty and its regime came into effect almost a decade ago. Yet Thailand has continued to fish and its fishing industry has not only prospered but it continues to grow. The purpose of this chapter is to look at how Thailand, a "disadvantaged" state as created by UNCLOS, has adapted. In order to do that it is necessary to review the cultural, historical and political facts which are connected to this adaptation. Following that is a brief description of Thailand's fishery resources, further documenting the importance of its fishing industry to its welfare, recounting the pattern of growth before and after UNCLOS. Conflicts and tensions arose in the 1970's when Thai fishermen began trespassing on neighboring zones. What happened as a result of these disputes? In reviewing the literature, this chapter covers Thailand's involvement in the development of the Law of the Sea and the results of UNCLOS. Finally, it describes the problems Thailand has grappled with since 1982 regarding the management of living resources in its own waters and the effort it has made to keep its fisheries viable. And in conclusion this chapter attempts to forecast how the United Nations

Convention on the Law of the Sea will affect Thailand's fisheries in the future.

II. PRAGMATIC BY NATURE

"Eclectic borrowing, temporization, adaptive skill, and pragmaticism [sic] are the very flavor of the Thai cultural genius and lend it its continuity." said Dr. Niels Mulder in his analysis of Thai culture.\(^6\)

Opportunism characterised Thailand's early foreign relations in the last century as presented in Chapter Two, and this opportunistic approach to foreign relations, international politics and law has continued into the twentieth century when it became one of the only independent Asian members of the League of Nations.

The desire to impress outsiders and earn results to her own benefit also extended to the realm of law. In the last century Thai law was relatively undeveloped but as the Europeans pushed on Siam's frontiers, and foreigners demanded trading rights, a more clearly-defined legal system came to be a necessity at least for the purposes of appearances to outsiders. Foreign powers demanded and received extraterritorial legal privileges. Laws were drafted, which were based on European models. Some were even drafted in English to be translated later into Thai.\(^7\)


Yet even with the incorporation of European forms and institutions into its legal system, Thai traditional social attitudes to the resolution of disputes relied more on negotiation and compromise than the use of law and courts. Avoidance was always the best tact. And today Thais still suffer from a culturally-defined shyness of using institutions like the courts to defend their interests.  

The earliest known laws or Royal decrees on the Law of the Sea were promulgated during the reign of Rama III (1824-51) controlling fishing in the rivers and the sea. His successor, King Mongkut (Rama IV) began taxing marine fishermen under a tax act enacted in 1852. In 1899, King Chulalongkorn sent a delegation to the First Hague Conference on the codification of International Law and in 1938, the Thai Vessels Act put into effect the first direct reference to Thailand's sovereignty over its seas. Although Thai law never formally defined the limits to its territorial sea until 1966, the British concept of three nautical miles had been enforced through practice since the beginning of Rama VI's reign in 1910.

Beyond these early beginnings, Thailand was a pioneer in the development of the International Law of the Sea, attending the 1930 Conference for the first attempt at codification. At the First United Nations Conference on the Law of the Sea at Geneva in 1958, Thailand's delegation leader was elected to the Conference's...
Presidency and is credited with first introducing to a UN forum the idea that the resources of the sea were the common heritage of mankind.\textsuperscript{11} Malaysia and Thailand were the only developing countries from Asia to sign and ratify the UN Convention on the Law of the Sea in 1958.\textsuperscript{12} That same year Thailand enacted the Historic Bay of Bangkok Law drawing base lines across the Chao Phya River estuary leading to its heartland and capital, Bangkok. In 1966 it extended its territorial sea out to 12 nautical miles, prompted by the exploration it was sponsoring of oil and gas resources in the Gulf of Thailand and in 1970 it proclaimed three more areas as internal waters using the straight baselines principle along deeply indented coastlines with fringes of islands.

When the Third UN Conference on the Law of the Sea was held, in which it actively participated, Thailand found itself unlike the other developing Asian countries, viewing some of the concepts being mooted with definite alarm. In addition to the threat of being hemmed in by the Exclusive Economic Zones (EEZs) surrounding its own, Thailand found that it would be further disadvantaged as a major fishing nation by the drawing of boundary lines around the archipelagos of Indonesia and the Philippines. This would mean that, as the owner of a large distant water fishing fleet its fishermen would have to pass through the EEZs of its neighbours to reach the high seas. Not to speak of losing access to traditional fishing grounds with the stroke of a pen.

\textsuperscript{11}Ibid.

\textsuperscript{12}Ibid.
The Law of the Sea, like any area of International Law, has evolved into its current form because of the needs of the various nation-states involved in its development as discussed in Chapter One. Their distinct needs as nations, their national interests as they relate to the sea, even their cultural and traditional attitudes to the seas, have determined what position they have taken in the continuing debate over the legal regime governing the oceans. And the resultant law has been a compromise, reconciling often divergent interests for the common design.

This means that everything that has determined the character of a nation such as Thailand, determines the position it takes in any International Conference especially one as far reaching as UNCLOS. In 1982, Thailand became a beneficiary and a victim at the same time. It endorsed the solidification of the law on the Continental Shelf and the resultant access to the non-renewable resources of the seabed. This ensured that the gas fields it was rapidly developing in the Gulf of Thailand, were in the majority going to be secure under International Law. But its fishing industry was another matter. Suddenly, the thousands employed in that growing sector of its economy were finding their jobs and futures in jeopardy. And all because of a law which few of them even knew about, much less understood.

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14Id. ESCAP Study. p.3.
In that sense then, Thailand's fisheries and access to the oceans beyond its traditional fishing grounds were jeopardised by the forest of EEZ's which suddenly hemmed it in in 1982. It meant that its fishermen who had formerly enjoyed unimpeded access on international waters to the high seas found themselves potentially subject to the regulation of fishing in the EEZ's of Malaysia, Indonesia, Cambodia, Vietnam and Burma.

III. FISH IN THE WATERS, RICE IN THE FIELDS

But Thailand needs fish. Its very culture can in a sense be said to depend on fish, or at least a very important component of that culture, its cuisine. The staple most often equated with "food" to the Thais in their concept of sustenance is rice. Rice unites the people of Thailand but fish have long provided to the majority of Thais who cannot afford meat, a relatively cheap source of protein to supplement their rice diet. 15 Keyes wrote:

"...the main food 'to be eaten with rice' is fish (pla) in some form. Many communities along the coast of the Gulf of Thailand specialize in fishing. Although some of the catch is eaten fresh -- more today than in the past because of improved means of transportation and refrigeration --- much of it is dried and salted."16

Marketplaces all over Thailand, even in its most remote villages in the north display stacks of "pla thu", a popular form of salted mackerel. Other ingredients essential to Thai cuisine

15Id. "Thailand Natural Resources Profile, p.172.

such as fish sauce and fermented shrimp paste come from the fish caught by Thailand's fishermen.

Even religion comes into this dietary choice. Thais in the majority are Buddhists, belonging to the tradition of that religion, "Theravada" meaning "the way of the elders". There is of course, a Buddhist abhorrence of killing animals for meat. Hence it is rare to find Thais working as butchers. Fish are a preferred food because rather than being killed, they are merely taken from the water and allowed to die.\(^\text{17}\)

Over and above the dietary and religious considerations, fishing is important to the Thais as an economic activity which employs thousands either directly on the boats or indirectly in the processing plants.\(^\text{18}\) In Thailand's northeast, drought and other hindrances to development have contributed to the region's poverty. An exodus of young men and women have flooded into Bangkok and the more prosperous regions of the south. Many have gone to work abroad in Singapore or the Middle East. And, a large number work crewing Thailand's fishing fleet.\(^\text{19}\) The Thai Department of Fisheries estimates that the fishing industry in 1982 contributed 1.16% to the GDP which is a decline from the 3% the Asian Development Bank estimated in 1985. This reflects the growth of Thailand's industrial sector rather than a decline in the actual role of

\(^{17}\text{Ibid., 13}\)

\(^{18}\text{Id. Resources Profile, p.172.}\)

\(^{19}\text{1987 Economic Review, Bangkok Post,}\)
fisheries as a source of employment.\textsuperscript{20} ESCAP estimated in 1990 that 57,591 households are involved with marine fishing as their business and another 29,904 families are employed on fishing boats. With an additional 26,000 households working in the post-harvest activities this comes to over 100,000 households directly dependent on fishing.\textsuperscript{21}

The Thai fishing industry experienced significant growth in the Seventies, and this is what made Thailand's trawler fleet one of the largest in the world. Thailand's fishermen had formerly been traditional fishermen restricting their catch to what they could harvest from the Gulf of Thailand and the coastal waters along the Andaman Coast. But foreign assistance and loans from institutions like the Asian Development Bank gave the industry the capital to invest in larger boats and better technology. This in turn gave them distant water capabilities and they found themselves going further and further afield, entering the waters of the Indian Ocean and the South Pacific. Within a decade, the fleet had become one of the world's major distant water fishing fleets.\textsuperscript{22}

This growth in the trawler fleet resulted in rising catches throughout the 1960's and '70's. Where formerly the coastal and traditional fishing industry had only to catch enough fish to feed the Thai population, the new larger fleet was able to do this

\textsuperscript{20}Id. ESCAP p. 10.

\textsuperscript{21}Ibid.

and still have a surplus left over for export. The surplus gave rise to the development of processing industries mainly along Thailand's Gulf Coast. Fishmeal plants processed the scrapfish hauled in by the trawlers. Canning plants sprouted up to deal with the surplus in tuna, shrimp and other species sought by growing markets for Thai processed seafood around the world, the US, Canada, Japan, and the countries of the EEC.\textsuperscript{23}

At the end of 1989, Thailand's position as a leading member of the global fisheries business placed it among the top ten. Its catch reached an estimated 2.8 million tons, making it the top performer in SE Asia. Thai authorities have registrations for 17,000 fishing vessels and the number of unregistered vessels is twice that figure. From an average export value of $300 million (US) in 1977-82, seafood exports tripled in value during 1984-87 to close to $1 billion (US). In 1988, exports reached 43,000 million baht (US$ 1.5 billion), placing it among the top seven exporters of fish products worldwide.\textsuperscript{24}

An estimated 20% of the present catch landed in Thailand comes from the Bay of Bengal and the remainder is caught in the Gulf of Thailand, allegedly in Thai waters.\textsuperscript{25} The Gulf of Thailand is a relatively shallow inland sea which is remarkably productive considering that even as far back as 1985, the Asian Development

\textsuperscript{23}Ibid., 61

\textsuperscript{24}Year-End Economic Review 1989, \textit{Bangkok Post}, p. 81.

\textsuperscript{25}Id. ESCAP Study, p. 10.
Bank declared it overfished. The fishing taking place in the Gulf is often illegal. Fishermen use dynamite or fish out of season. Both activities result in a large percentage of juvenile fish being taken. Nevertheless the stocks are extremely resilient and the survival rate is high for all the many species in the Gulf because of the optimum conditions.

But with the pace of growth in the Thai trawler fleet, the rise in capacity of Thailand's seafood processing industry and the increased demand for exports, Thailand's fishing fleet has had to either sink, or swim into troubled waters, in other words trespass on the zones of other states if it was to increase its catch.

IV. A TROUBLED SUCCESS STORY

The 1980's saw Thailand pushing its economy into high throttle in its zeal for growth, foreign investment and its much ballyhooed newly industrialised country, (NIC) status. This stretched every aspect of its infrastructure to the limit and put a tremendous strain on its environment. Its fisheries were caught up in the national push and the resources the fishermen sought in their traditional fishing grounds were quickly becoming exhausted. At the

27 Ibid.
same time, in 1982, UNCLOS allowed neighbouring states to erect their sea walls around internationally sanctioned EEZ's.

The introduction of the 200 mile nautical mile limit to EEZ's by Thailand's neighbours locked out Thailand's fishermen from an estimated 300,000 square miles of fishing grounds that had formerly been regarded as theirs traditionally. It was only a matter of time before Thai fishermen broke the barriers that were vaguely drawn anyway, especially when they had broken them with impunity as long as they could remember without ever considering they were doing anything wrong.

Throughout the 1980's headlines began appearing with increasing frequency in Bangkok newspapers citing yet another Thai trawler arrested in a neighbouring state's EEZ. The littoral states around the Gulf of Thailand began arresting trawlers, impounding the vessels and imprisoning their crews. This produced rising tensions in the Gulf and Thailand saw its reputation decline as these incidents escalated throughout the decade.

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30 The author was resident in Thailand from 1985 - 1990 and worked for the Bangkok Post during those years, writing about fisheries and other resource based industries for the Business Post.

31 Id. McDorman, p.41
One by one, the states controlling the Gulf, the South China Sea and the Indian Ocean erected their 200 mile sea boundaries. Vietnam started the ball rolling in 1977. Cambodia was close on its heels in 1978. Malaysia followed in 1980. Seeing the emerging regime as a permanent feature of international law, Thailand with reluctance, drew its own 200 nautical mile limit in 1981.\textsuperscript{32}

Prior to this, the Thai delegate, Mr. Arun Panupong, said to the Second Session of UN Conference on the Law of the Sea in 1974:

"With regard to the Economic Zone which proposes in essence that within the limit of 200 nautical mile national jurisdiction, the coastal state would have the exclusive authority to establish whatever rules and regulations concerning disposition of resources under its jurisdiction, my Delegation is very sympathetic to the broad national jurisdiction, this, of course without unreasonable interference with other uses of the sea or non-resource aspects. But serious consideration should be taken from two distinct points. The first point...in the case of 200 mile criteria being finally accepted by the majority it is my Delegation's position that a formula of international standard should be devised so as to ensure compensatory rights or benefits for the countries which do not have potential to extend their jurisdictional sea areas to that limit." \textsuperscript{33}

He went on to state in his second point, that the EEZ should not allow a blanket jurisdiction over both living and non-living resources because they are fundamentally different.\textsuperscript{34}

\textsuperscript{32}Ibid.

\textsuperscript{33}Quoted in Pipat Tangsubkul, p. 77.

\textsuperscript{34}Ibid.
The Thais continued to advocate a purely economic jurisdiction for the EEZ concept, a position they shared with Singapore. But they did state their hesitation about the EEZ's carving up the world's oceans in such a way that one third of the world's nations reaped a mother lode, 29 landlocked states got nothing, and some 80 states of which Thailand was one, got the crumbs.\textsuperscript{35}

They also stated their objections to the archipelagic concept when its two fellow ASEAN members, Indonesia and the Philippines drew lines around their archipelagos and declared the seas inside those boundaries their EEZ's.\textsuperscript{36}

When the dust settled and the nations around it fell into step with the UNCLOS line, drawing boundaries all over the maritime map, Thailand had joined a handful of Asian nations, like Singapore, Cambodia and Brunei, which were definitely disadvantaged. It was zone-locked because its vessels had to pass through neighbouring zones to get to the high seas. It was shelf-locked because at no point could it fully extend its 200 nautical mile limit without encroaching on the EEZ's of its neighbours. By way of comparison its actual coastline of 2600 kms is similar to Myanmar's (3,000) yet its EEZ is only 94,700 sq. kms. compared to Myanmar's 148,600 sq.kms. As a result of this anomaly, Thailand applied to be considered as a geographically-disadvantaged state under the Convention but was refused on the grounds that its problems were no

\textsuperscript{35}Ibid. p.80.

\textsuperscript{36}Id. ESCAP report, p.11.
different than the sixty to seventy other nations which had lost out in the feeding frenzy resulting from the UNCLOS.37

In spite of its hesitant opposition to an international law which was definitely going to work to its disadvantage, Thailand signed UNCLOS in 1982. Prior to this when it appeared certain that the nations surrounding it were already treating the accord as customary international law and setting up their maritime boundaries to reflect it, Thailand began negotiating with its neighbours to arrive at agreements over shared interests.38

The maritime boundary delimitation process in the Gulf of Thailand was more problematic than the process off its Andaman seacoast. For one thing, Thailand's relations with two of the Gulf states, Vietnam and Cambodia, had been rocky for some time. For another, Cambodia has been in a constant state of internal turmoil for almost two decades. Not to speak of the Thai refusal to sign treaties with a regime it has refused to officially recognise. Finally, Cambodia bases its adjacent boundary claim on the Franco-Siamese treaty of 1907 which Thailand regards as only applicable to the drawing of land boundaries.39

As for Malaysia's claims in the Gulf, Thailand signed a Memorandum of Understanding with Malaysia regarding their boundaries and continental shelves in 1979 and established a Joint Authority to administer an overlapping area. In this zone, both

37Ibid.
39Ibid.
nations' fishermen were given equal access to the living resources. In 1987, the Malaysian navy arrested several Thai boats and sparked a crisis which brought the issue to the attention of the highest levels of both governments. 40

That is not to say that Thai fishermen were not giving headaches to the policy-makers in Bangkok as well. It must be understood that what the various players in the Thai fisheries equation want also often diverges. The Thai fishing industry itself is not uniform, combining different kinds of vessels and crews, many of which are unregistered. The Department of Fisheries has a different agenda from the Foreign Ministry as well.41 While the Foreign Office in Bangkok might genuinely seek better relations with its neighbours and hope for a more peaceful solution to the disputes that arise because of incursions by Thai fishermen, they have little control over these men. Thai fishermen have long had a less than lustrous reputation as swashbucklers in the seas of Southeast Asia. Frequent incidents of piracy involving brutal attacks on Vietnamese refugee boats in the Gulf of Thailand in the early 1980's did not diminish this notoriety. This was especially true when international organizations invariably blamed Thai fishermen for the attacks.42

40Ibid.

41Ted McDorman, Interview at the University of Victoria, Faculty of Law, Victoria, B.C. April 12, 1991.

But the Thai approach to preventing potential conflicts with individual nations has been piecemeal to say the least. Rather than attempting to take on the issue in a regional way, the Thais in the 1980's seemed to favour the signing of a series of bilateral agreements with individual neighbours, thus setting up a patchwork of relationships which presented an appearance of cooperation. But because Thailand has signed but failed to ratify the UNCLOS, no legislation has been passed which directly reflects its signature to the Convention. It seems that the Thai hesitancy to ratify the Convention is based on its reluctance to incorporate into Thai law, segments of a Convention which compromise its security merely for the purpose of accepting into its law the rest of the Convention which does conform to its national interests. This, incidentally is probably the reason the majority of nations would give for their reluctance to ratify the Convention. 43

What laws have been enacted to deal with fisheries in Thailand? The Fisheries Act of 1947 is the main piece of legislation with its accompanying implementation regulations. The Thai Vessels Act, 1938, specifies registration procedures for vessels. Finally there is the Navigation in Thai Waters Act (1913). The Fisheries Act and regulations prohibit activities such as illegal forms of fishing (use of dynamite, illegal forms of nets etc.) or the capture of endangered species such as certain marine turtles or dugong.44

43 Id. Torrell, p.47.

44"Id. Thailand Natural Resources Profile, p. 186."
Consistent with Thai cultural attitudes to foreign relations and confrontation, the Government throughout the negotiations leading to UNCLOS in 1982, used quiet diplomacy to set up the needed agreements to deal with the new regime, while turning a seemingly blind eye to its fishermen going in the back door of its neighbours and doing what the diplomats in Bangkok said they were not doing. This resulted in hundreds of Thai vessels being impounded and the government required to pay out millions in compensation to neighbouring governments. It increased tensions in the region and gave the Thais a reputation completely opposite the one their Foreign Office wanted them to have.  

In its Fifth Five Year Plan which came into effect in 1982 (1982-86) the Thai Government placed high priority on continued growth in the fishing industry but seemed to see that it could no longer depend on its fishermen keeping the harvest rising in volume without breaching the zones of Thailand's neighbours. And the costs had become too prohibitive. So the Plan stated as its two main themes relative to fishing, the promotion of the development of high seas capabilities in the fleet and more substantial joint ventures with neighbouring states.  

It took time to be able to say this new approach was having its effect. But in 1983, Thailand's fisheries production reached a level close to what it had been in 1977 because as Torrell claimed

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45Ibid.
46Ibid
there had been several successful joint ventures concluded which reaped rapid results. There was heavier exploitation of local resources and a greater productivity from the Gulf fleet as it grew more sophisticated in locating local resources. Formerly unexploited stocks like squid and tuna were fished, eventually becoming important as exports. But the problem of Thai fishermen trespassing into the zones of neighbouring states continued.47

By 1985, an estimated 467 Thai fishing vessels had been reported seized and over 1000 Thai fishermen were in jail in neighbouring countries.48 Of that number, 198 boats were seized by Vietnam and 107 by Burma. The remainder were arrested by Malaysia, Cambodia, India, Indonesia and Bangladesh.49

It was not until the period after 1985, that the publicly expressed attitude toward greater cooperation with neighbouring states seemed to be bearing fruit. Some of these agreements, like the early efforts at joint ventures with Bangladesh and Myanmar foundered with recriminations on both sides and accusations that the Thais had breached their promises and overfished contrary to the agreements.50 But in Myanmar's case, political expediency came to Thailand's assistance. The new military government's efforts to

47Id. Mark Torrell, p. 31.

48It is estimated that even with releases of fishermen from jails in Vietnam and Burma, their numbers have been replaced and there are still well over 1000 Thai fishermen in prison throughout Southeast Asia.


50Thailand Resource Profile, p. 186.
cosy up to the Thais produced a new arrangement in 1990, which was lavishly reported in Bangkok newspapers.\textsuperscript{51}

Successful venture agreements were concluded with Australia in 1984 and India in 1985 which would appear to be still in effect.\textsuperscript{52}

With the change in Thailand's government in 1988, a new policy was announced by Prime Minister Chatichai Choonhavan, to make Indochina a marketplace rather than a theatre of war. Overtures designed to stimulate trade and investment were made to both Cambodia and Vietnam. Such a change in direction would have been unthinkable a few years before. In relation to fishing these efforts began to reap results in 1990. In January of that year, a Thai fishing company announced the signing of an agreement with Cambodia's Heng Samrin Government which, for a relatively modest fee, enabled it to fish in Cambodian waters using a 60 ton trawler. Soon after this announcement, 40 other fisheries companies announced their interest in concluding similar agreements with the Cambodian authorities.\textsuperscript{53}

Vietnam had also expressed interest in being more flexible with the Thais regarding its maritime jurisdiction. While doing very well by UNCLOS in terms of its EEZ, Vietnam had lost most of its fishing fleet with the exodus of refugee boats to other

\textsuperscript{51} "Broking house set up to deal with Burma fishing," \textit{Bangkok Post}, 19 Jan. 1990: 16.

\textsuperscript{52} ESCAP report, p. 15.

Its relations with Thailand had been extremely cool throughout the 1980's but Vietnam did much to reconcile their differences by releasing several Thai fishermen and allowing them to fly home. In November 1990, a high level Thai delegation went to Vietnam and signed a Memorandum of Understanding. In December, 1990, the terms of the MOU were formalised and included a comprehensive agreement to cooperate in fisheries development. They agreed to set up a joint fishing fleet and cooperate in upgrading Vietnam's canning industry. There was also provision for the building of a shipyard in Ho Chi Minh City with repair facilities for Thai vessels.

Malaysia as Thailand's closest neighbour has been the most recalcitrant in relation to fishing disputes. In 1987 they established a Joint Commission for Bilateral Cooperation which had a subcommittee to work out fisheries disputes. That same year there was a private sector joint venture for Thai and Malaysian companies to fish in Malaysian waters using Thai boats. But in spite of these agreements, Malaysian suspicions continued.

Looking back over the record of the Thai fishing fleet's intrusions into its neighbours' EEZs, Professor McDorman admits in his paper on fishing disputes in the Gulf, that there has been a reduction in tensions but states:


"...none of the sources of the conflicts have been removed."\textsuperscript{56}

He therefore concludes that it will be only a matter of time before the Thai fleet again runs into trouble in neighbouring EEZ's and this will again characterise the 1990's. That forecast seems, to this author unduly pessimistic. The sources of the conflicts have slowly been changing. First of all the politics in the Gulf are in definite transition and Vietnam is desperate for assistance to get its fisheries back on track. Second, Thailand is doing something to make its fishing industry aware and accepting of the UNCLOS regime and attempting to lessen the industry's dependence on the catch from the Gulf by increasing production from aquaculture and expanding its high seas fishing capabilities.

In regard to the last point, Thailand seems poised according to a number of sources to make a stab at increasing its distant water fishing capacities and enter the ranks of South Korea and Taiwan, if not Japan and the United States in setting up a fleet capable of going after the lucrative tropical tuna stocks in the South Pacific.

At the dawn of UNCLOS, the ASEAN countries were minor players in the world harvest of tropical tuna. But by the mid-1980's the Philippines had begun to record sizeable tuna harvests, (200,000 tonnes per year) while ASEAN overall was bringing in 650,000 tonnes. Both Indonesia and the Philippines benefited from UNCLOS recognition of their status as archipelagic states. Under UNCLOS

\textsuperscript{56}McDorman supra. "Conflicts in the Gulf," p. 52.
Article 56 they also have sovereign rights over the tuna stocks which originate in their waters.\textsuperscript{57}

In addition to the growth in tuna harvests of the ASEAN states, there was a shift of the processing industry away from countries like the U.S. to less developed countries. First the Philippines benefited from this trend and then Thailand. Thailand's tuna processing capacity has grown in spite of a dirth of tuna in its own waters. This has meant that by the end of the 1980's it had become the world's leading exporter of canned tuna.\textsuperscript{58}

Another development that augers well for Thailand's fishing industry and its reliance on the conflict-ridden waters at home, is the growing cooperation between the island states of the South Pacific and ASEAN. In the mid-1980's the South Pacific islands through their fisheries organization, the Forum Fisheries Agency, (FFA) approached ASEAN with an eye to effecting some form of cooperation between the two organizations. Although nothing concrete resulted, the FFA did broach the possibility of a joint project to monitor and manage tuna fisheries since the FFA states share straddling stocks of tuna with Indonesia and the Philippines. Thailand fits in this scenario as follows: the FFA states' have expressed interest in obtaining assistance in developing their own tuna processing capacity. Thailand's position as a world leader is


of interest to them and Thailand may be able to work its way into the vacuum in the South Pacific tuna fisheries created by the exit of the US and Japanese tuna fleets. Some authorities are suggesting that Japan and the US have lost their comparative advantage as harvesters and will soon be replaced.  

Thailand is in the process of building a state-of-the-art purse seiner with licensed technology from abroad. It is the stated goal of the Government to use the new boat as a model for its own shipyards to begin building up its fleet of such boats.  

There is the additional possibility ASEAN will begin cooperating with the FFA in the establishment of a joint Regional Register of Foreign Fishing Vessels. This would make sure any vessels found in violation of the various organizations' regulations or quotas would be barred from the region. This could be a double-edged sword for the Thais. If they can respect the requirements, they could have access to a vast swath of ocean and lessen their dependence on fishing resources closer to home. But if Thai fishermen are caught repeating the sorry record they have created with Thailand's neighbours, they could find their vessels permanently locked out of the richest tuna fishery in the world.  

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59 Ibid. p.304.  
60 1989 Year-End Economic Review, Bangkok Post.  
61 Id. Munroe, p. 304.
As has been stated throughout, Thais have traditionally found their way around problems by hook or by crook. Some observers of the Thai fishing scenario, McDorman for one, seem to view this decade ahead with pessimism, believing that it is only a matter of time before the conflicts characterising Thailand's relations with its Gulf neighbours again heat up and recriminations are flying over the waters once more.

But the inherent pragmatism of the Thais will hopefully prevail. After all, the problems confronting the Thai fishing industry are not insurmountable. As has been demonstrated, UNCLOS did formalise the hemming in of its EEZ by the zones of its neighbours and thereby deny the Thai fleet free access to the high seas. And it must be agreed, the Thai fleet is too large for the resources in its own EEZ. But even this last problem is solvable if the other major problem, the continuous conflicts with its neighbours, is adroitly handled. Thailand has obviously not put enough emphasis in the past, on forming joint ventures with its neighbours and then impressing its fishermen with their terms. McDorman's view that, "The Government of Thailand's inability to control its fishermen makes it inevitable that Thai fishermen will be arrested in non-Thai waters..." carries the conclusion one step further into the touchy business of forecasting future conflicts. Instead it seems necessary to highlight how the Thai Government has been conducting seminars for its fishermen to try and halt pirate
attacks on refugee boats in the Gulf. This approach coupled with increased international cooperation and better patrols of the main routes for refugees in the Gulf, seems to have brought about a rapid decline in pirate attacks. Cannot a similar approach work to deter Thai fishermen from straying into the EEZ's of other states?  

In addition to educating its fishermen about UNCLOS and Thailand's need to cooperate, the Thai Government needs to spend more on equipment to patrol the outer limits of its own EEZ. It has already embarked on the expansion of its navy with frigates purchased from China. Perhaps it could put the money to better use building smaller patrol craft for its coast guard and purchasing patrol helicopters.

ASEAN's discussions with the FFA nations also raise the possibility that Thailand will enter the ranks of countries doing their own form of technology transfer. Already Thai experts in fields such as family planning have been sponsored by UN organizations to teach other developing countries how to set up similar programs. The experience the Thais have in establishing a world class seafood processing industry could have definite practical value for the underdeveloped island nations of the South Pacific and such exchanges might open up further opportunities for Thailand's fishing fleet.

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62 Id. Menefee, p.20.

During a conference on extended maritime jurisdiction in the Pacific in 1987, Dr. Phipat Tangskubkul of Chulalongkorn University acknowledged that Thailand had accepted the inevitable and had begun phasing out fishing in the EEZs of neighbouring countries. In response to the statement that Thailand has had to expand its horizons, he said, "...you know that Thai fishermen are experienced mostly in trawling in shallow waters. We don't have any experience with tuna fishing in deep sea areas such as the South Pacific. But we are now obliged to start to learn how to fish for tuna, and maybe in ten years Thailand will be another tuna fishing country. And then our problem will not be with our neighbouring countries, Malaysia, Burma, or Vietnam, but with the US and the USSR."64

CONCLUSION

This paper has proceeded from a general thesis based on the idea that States are influenced by international law and their behaviour in relation to it, although closely linked to all that goes into their foreign policy-making. In analyzing how and why a nation behaves as it does in relation to international law, it was stated, both internal and external determinants for its behaviour should be reviewed. Texts on Canada for example, that discuss Canadian attitudes to international legal issues, discuss the internal factors such as its history as a French then British colony, federalism, English-French relations, its geography and vast northern areas, its underpopulation and widely spread out population centers, its resources and its coastlines, its ethnic mix and its indigenous peoples. Externally, its relations with the United States, its relations with Europe and specifically Britain and its newly emerging consciousness as a nation on the rim of the Pacific Basin are considered.

While this paper is by no means an exhaustive analysis of all aspects of Thailand's character vis-a-vis international law, leaving out the rapidly developing involvement with private
international law and international commercial law, it has attempted to put together a narrative of Thailand's development as a nation-state which because of its long history of independence is unique among developing states.

Out of this analysis a number of characteristic Thai responses to international law and politics have, it is hoped, been clarified. Historically, Thailand learned as the ancient Kingdom of Siam that it had to bend with the powers that were ascendant at that moment in its history. It accepted the imposition of extraterritoriality laws and signed treaties with all the major powers throughout the nineteenth century, using what international law existed through these agreements to safeguard its sovereignty. Early on it sought to establish its national legitimacy in the eyes of European powers, especially Britain and France. And it played them off one against the other to stay free from the control of either. Its kings learned quickly that they had to bend at least in appearance to these powers while perhaps doing as they wished all along. They brought in European advisors to reform their laws to give them the appearance of European codes, but in many ways retained important vestiges from the traditional law of Siam.

While Thailand has had to adjust to the external factors such as the powers that are most in control in Southeast Asia, it has also been influenced in its foreign policies and reactions to international law, by several internal factors as well. Internally, perhaps the greatest influence on its behaviour internationally and stances like strong anti-communism, has been the dominance of the
military in its political system, especially since the coup of 1932. Several institutions have supported the continuation of the military's power, not least of which is the monarchy. And the nature of the Thai people themselves to leave the business of government to their leaders, and give respect to the leader, has assisted the military to retain control, even to this day.

The military elite have influenced Thailand's behaviour relative to international law and organisations in a number of ways. First, Thailand has been an enthusiastic participant in the United Nations since it joined in 1946. It has benefited from this appearance of participation, but in many instances has not incorporated the spirit of the United Nations covenants especially in human rights, into its own legal system.

Second, when Thailand has been brought before an international tribunal as it was in the Temple of Preah Vihear case, and the decision went against it, the government's reaction demonstrated the petulance of the leader in power at the time, and his need for using the decision as a scapegoat to further his political needs. Only when American sources recommended a calmer approach to the decision, did the government soften its stance and allow the matter to be de-fused.

Third, in relation to human rights, the military has never allowed its priorities and concern for national security to be compromised by international criticism over its human rights record. Regarding the hill tribes and relations along the borders with neighbouring states, the military has long had an involvement
in a complicated network of cross-border deals and trading relationships. Where international organisations have run afoul of these, they have had little success. But where international law and the organisations that operate under it, in relation to the hill tribes, the ethnic disturbances along the Burmese frontier, or the refugee situation on the borders with Laos and Cambodia, have worked with the military and tried to merge their agendas, there has been success and Thailand has appeared to behave consistent with international law.

That has generally been the lesson that has come from this analysis. Thailand will, like any nation perhaps, ignore international law if it is perceived as compromising its fundamental values as a sovereign state. While it has incorporated the Universal Declaration of Human Rights into its 1978 Constitution, it still maintains a very tenuous protection of basic civil liberties and in times of martial law, has no compunction with abrogating them completely. When it was first faced with a massive influx of refugees coming from Cambodia it panicked and forced many of them back over the border. But with international support, the Thai government eventually cooperated in allowing a vast number of refugees to be accommodated on its soil, over a million by 1990. And it might be asked how other nations would react given the circumstances Thailand faced in 1979.

As for the Law of the Sea, Thailand has seen itself deprived of access to the high seas by a law which has been supported by its counterparts in ASEAN. While it has had definite regrets, it has
accepted this monumental regime that has re-ordered the control of
the seas, because it has no other choice. But characteristically,
it has adapted. Even though the Law of the Sea could have severely
hampered its fishing industry's growth potential, it has through
government policy directed the industry to grow in areas that are
possible under new international law. And it has negotiated
bilateral with its neighbours to set up joint ventures. In other
words, in relation to international law, Thailand has bent like the
bamboo in the wind, when it has seen the winds of change impossible
to deal with in any other way.

Last but not least, Thailand would seem to have become more
sophisticated in dealing with international law and institutions
since its confrontational approach to the decision against it of
the International Court of Justice. Thirty years have passed since
that decision. During that time, Thailand has used the United
Nations to bring world opinion down against the Vietnamese, and
keep the CGDK as the recognized faction in the world community.
While other factors certainly were involved in the resolution of
the war in Cambodia and Vietnam's withdrawal, Thailand's consistent
use of the United Nations and conformity with international law
when its security was being threatened, have undoubtedly made it
more favorable toward bringing its foreign policy priorities into
line with international law.
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