เรื่องเสร็จที่ ๕/๒๔๖๖

MEMORANDUM
concerning
the Foreign Letters of Request in Civil and Commercial Suits.

The attention of the Governments has been frequently called in all countries upon the difficulties raised up by the execution of Letters of Request sent by foreign tribunals especially for the examination of witnesses in civil and commercial suits.

The difficulty comes generally from the differences existing between the civil or commercial procedures in all countries of the world, what practically prevents a universal similarity. An attempt to reach such uniformity has been made however by the International Convention of the Hague 17th July 1905. But it seems that not so many Governments have up to now ratified it: in any case the Siamese Government, and, as far as I know, the British Government are not parties to it.[1]

As a rule, many Governments seem to have preferred to keep their own liberty in this matter. If doing so they use the following policy:

1) they enact some directions for their own Civil Courts or other officials as to the Letters of Request sent from abroad. This is generally by way of Ministerial Regulations or even mere Circulars of the Ministry of Justice. A Law in this matter is disfavored owing to the questions of reciprocity with such or such foreign Powers which prevents uniformity in all cases and which may, on account of Conventions with the latter, require from time to time and very frequently changes in the policy;

2) they come to some understandings with such or such foreign Powers, based on reciprocity, such understandings being either general or dealing only with some particular points (this being usually made by Conventions or diplomatic letters);

3) as soon as there are special understandings agreed with a foreign Power creating henceforth a special procedure for the exchange of Letters of Request, the special conditions of this understanding are communicated by the Ministry of Justice to the Courts or interested officials and shall henceforth be complied with as often as there are reciprocal Letters of Request with the foreign Power concerned.

The present case of the English Circular gives a good illustration of this policy, England being not a party to an International Convention.

The British Government remind that, before the Rule 60 promulgated in 1907, they did not use to authorize the diplomatic channel for the Letters of Request, and used to let such Letters to the initiative of the parties exclusively.

However, since the diplomatic channel is allowed in this matter by

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[1] Countries which are parties to the Convention seem to by France, Germany, Austria-Hungary, Belgium, Denmark, Spain, Russia, Italy, Norway, Netherlands, Portugal, Roumania, Sweden, Luxemburg

almost all the countries, England was practically compelled (owing "to the fact that H. B. M's Government were not in a position to give reciprocal treatment to foreign Governments") to permit the use of diplomatic channel also by the Rule 60 in 1907. Now the British Government complain that too many Letters of Request are received through the diplomatic channel and by their Circular 30th. September 1922, notify their intention to restrain the cases where the English diplomatic channel shall be put at the disposal of the parties to some specific cases which are imitatively enumerated in the Circular.

England being not a party to an International Convention in this matter is quite at liberty to do so. But this becomes then a question of reciprocity. In other words, the treatment which is given by the English policy in England to foreign Letters of Request can be and as a fact shall be accepted by a foreign Power, say Siam, but being understood that Siam will henceforth use also the same treatment to deal with English Letters of Request sent to Siam, Reciprocity is traditional and unquestionable in this matter.

Finally, this comes to say that the Siamese Government have: first, to answer and agree formally to the Circular of the British Government, this as a fact becoming a Convention binding the two Governments; second, to specify in the reply that the policy adopted by the British Government towards Siamese Letters of Request will henceforth be adopted by way of reciprocity by the Siamese Government towards English Letters of Request; third, to send directions of the Ministry of Justice to all Departments, Courts or interested officials in order to notify that henceforth, and owing to a reciprocal Convention agreed with England, English Letters of Request shall come under such and such treatment (similar to that specified in the English Circular 30th. September 1922 for Siamese Letters).

I have no doubt that this is the course followed in the other countries which have also been communicated the Circular of the English Foreign Office.

From an enquiry I have made there are in Siam, no Law or Regulations in force now in this matter, but only informal practices of the Courts. Then the provisions of the English Circular, if agreed, have no change to introduce in the Siamese legislation. But such provisions remain quite special to an English-Siamese Convention and it is doubtful they could be the basis of a legislation likely to apply to all foreign countries indiscriminately.

The conclusion is that, as far as the English Circular is concerned, there is no opportunity to make a special Law for its application. Even if a Law in matter of Letters of Request was now in force in Siam, since such a Law would probably be different in many points from the new English policy as adopted only in 1922, the existence of such a Law would not save the Government from notifying the interested Departments or Courts that, owing to a new and reciprocal agreement with England, the law has to be modified in such or such extent when English Letters of Request are dealt with.

This shows how difficult it is to make a Law in this matter, since new reciprocal agreements with foreign Powers would compel too frequently to promulgate Amendments-Laws embodying the policy of Siam towards such or such power. Therefore, it is more commendable to deal with this matter of Letters of Request by way of mere Ministerial Regulations or Circulars of the Ministry of Justice, which are an imperative guidance for the Courts or other officials, but are likely to be much more easily changed, amended or modified when new reciprocal Conventions make it necessary.

As a conclusion, I would suggest to take this opportunity, as suggested

by the Ministry of Foreign Affairs, to draft Ministerial Regulations or Official Circular of the Ministry of Justice concerning the procedure for Letters of Request sent by foreigners, so that the draft will contain the average rules which are generally used of abroad and the most generally adopted. This would be the guidance, being understood that all reciprocal Conventions with such specified Power being or to be agreed are or will be exceptions to this general guidance and shall duly be notified in time to the interested Departments or Courts as, for instance, Amendment No.1 concerning especially England, Amendment No.2 concerning especially say Italy, and so on.

If the opinions here above explained are agreed by the Government, the Commission will further consider a draft in the matter, which involves rather a number of rules of procedure.

12th June 1923