เรื่องเสร็จที่ ๓๙/๒๔๗๖

Office of the legislative adviser,
Bangkok,23th February 1954.

Dear Prince Varnvaidya,

I have examined the questions raisd is the letter of Your…dated 7th. Inst., the applioation of (Mr. Mas Farinni) to exchange a certain piece of land belonging to him against another one.

1. I have been very interested to know how of ownership of land in the area specified by the of the Fourth Heign have been made in favear of American subjects before the new constitutional regime. The wording used in the letters of the Foreign office (permission grated as a matter of courtesy) is not in similar.As to the legal value of a permission to purchase land is a "matter of courtesy", it is certainly a "question d'say…", the permission being quaited for each particular care for a specified land. This seems to be easily admitted by the International Private Law.

2. Another interesting question, as far an those grants befor the new Constitution are concome, is to quote the formula adopted in the letters of the Minister of Foreign Affaire when those grants have been made after the conlasin of the treaty 16th. December 1920 namely: "While under the Treaty with the United States of America citisene of the country do not posems the right to ..

H.S.H Prince Varnvaidya,
Adviser to the Ministry for Foreign Affaire.

I find in the above formula an sihesion to my construction of the treaty which I have explainet in my letter …November 1933: namely that the wating of the treaty has been different in matter of building (purchase) and of land (lease only). The above formula above that the Ministry has interpreted the wording of the treaty as a the right of of land to American under the treaty.

3. I think quently that both agree, as you may (page 9) that ht silence of the treaty means (at least) that American cannot rights of land by virtue of the Treaty.

4. going further, does not the of the Treaty that the policy of the Government has been to the of land

5. the which says that does not probation what is not expreasly being possible. Please consider that the formula of the Ministry of foreign Affairs does not settle the point. It my be protectly interpreted in favour of the prohibition. "shile under the Treaty" but my mean also "while as a comseques of the Treaty". With the last construction, the formula of the Ministry should appear as an also the being taken as prohibition.

May first if the Treaties are not inteated to create a status of the rights of fareign citons living in a contry (personal) status, property's status, commercial stetus, etc.) and if, wher they cleberatly enteblish a stutes where a right is not ineluded. That right may be re imiirectly by the subject of the Sigh Contracting fewer to whom it was not grented by the statute? It be maid also that, if on account of the silence of a Treaty, foreigers have no right to aegive land, this only means that they connot clain the interession of their for such an acquition, but that they can recover that right of acquisition by claiming it outaile their Treaty's status and so to

may as a private matter between them and the country they live in, under the local low of that country (suppuing it is amitted that law allo of land) and provided they do not elais any intercession of their Government?

The system would come to say that the fo Treaty ane only an fo that each Government intenis to do or not to do in favour ar for the protection fo its can subjects. It seam that the and atrangth of the Treation are considerable, because

a) the Treaties are not only equal to law, let even asper made the local low when contrary to them, a Sigh contracting party being unable to the consequenece of a Treaty by referring to its local legislation (Fauenille, International Fublic, 1,3 partie,)

b) It is even admitted that Treaties being agreements in good ffalth, they are conpulsery not only as for provimions expresaly contained therein, but also as to covient le mieur contrat at a intention des parties contreatentes' the consequence being that something understed must be with as well when it naturally from the wording of the act it after euity, customs or law (Faushille, op. eit.)

Please note that, when a right not included is a treaty would be grested by the Government of one of the Sigh contracting powers to the national of the other power, the latte could perfectly say that it diellkes eatrely the grenting of the said right to the national , even if the national wishes or likes it. For instance, if a Treaty refuses to a American subject the right to own land in the country A, it is not at all sure that the American Government would like the country A to grant that right to one of its subjects by : such great may be entirely disapproved by the American state by fear of conpoliestions,etc.,and it is why it has not been specified in the Treaty.

6. I am consequently inclined still to think that a strict construction of a Treaty, as creating a status of foreign deliberately agreed between the High Contracting parties, is the best legal system of construction, and that is what I have propound in my precedents note.

However I as quite ready to admit that the intention of the High Contracting parties is an elements to be given due consideration, and, in that respect, I seen no objection to retain from the explanation which you give behalf of the Ministry for Foreign Affairs two important arguments:

a) first, that a strict application of the new Treaty, taken as a new status replacing entirely the farmer one, would give the American citizens in this country, as to the acquisition of lands,a worst position than the position they had before, and worst also then that of the non-Treaty people such as American, Poles, etc.) on account of the friendly relations between also and the U.S.A., it it quits admissible that that the Ministry did not intend to remove the right to own land as instrument d'change for the future, as one would be inclined to believe when reading the Treaty; however I cannot help to recent that, is your system, the "instrument d" four the future remains as to the lands situated outside the Decree Area; so much the best for :

b) second, that if one then wonder why not to have said it plainly in the now Treaty, instead to leave us have so may d and controversies in that matter, a reasonable summer is probably that this is due to the constitutional position which is so different in sine and in U.S.A going to the federal organization of U.S.A., there may be different land lave in the different states, and no unification. In Siam, there is one land-law only. It is simisalbel that the new Treaty has been induced to keep silent an the question of the right of land ownership. because if was impossible for the American Government to includes a common rule in the Treaty. To different rules in the States. This difficulty has been interest to the U.S.A 's position, and not to Siam's position. However this show that, as far an Siam is concerned, if she is agreeable to

grant a right of land- to all American Citizens, she own never have any hope to obtain a total reciprocity, since the said right is refused in certain states.

7. In may case, those points are so important that the intentions of the High contracting Powers should be made clear in the present ease , and I concur entirely with the proposal of four serene highness to enquire into the American legation far a statement of the following positions after the treaty of 16th December 1980,may a Siamese who is a been fide resident in U.S.A. have the right to land ownership under the local law of the particular state where to resides?

8. How, if the Government will adult, as a conclusion of the above enquiry:

a) that the American Treaty does not great to American Citizens the right of land-ownership is Siam:

b) that however the status of American subjects in Siam as to the ownership of immovable property is not entirely settled by the treaty:

c) that the said status may be ovulated by the application of the local in matter of ownership of immovable property:

d) that the Government is ready to recognize to all American subjects (as a matter of right, and set by ..) a right to own land which, in the most favorable construction, will not entails the right for all cttiens in U.S.A.

those solutions right be taken in feat as the construction of the treaty its application by High Contracting P arties in order to stele amiably difficulties of interpretation (I don't mean an official settlement by exchange of letters, etc.,but an officious containing and knowledge of the interpretation given or palliations made).

I don't believe that an affirmative r owner to all the points in this item 8. would that the most favorable position of the legal question has been adopted for Siam. But the policy would have the advantage to be once for all a friendly arrangement of the matter, something out by the spirit of "courtesy" expressed in the letters of the Ministry of foreign affairs in the old hegine,but having however more legal consistency and stability.

9. in that case, the question of application of the Decree of the Fourth Heign to American Citizens would raise little difficulty. I have always been in agreement with you as to its general construction. The point to know whether a Treaty (being a law) abrogate o not a former law has no more practical interest, since it would be admitted that the American Treaty is so to say incomplete and permit to settle apart of it the question of land: being incomplete, the Treaty cannot abrogate provisions which relate to sights which are not dolts with in the Treaty. In other words the Decree of the Fourth Heign keeps its fell value, become no prodigious of law at least ravine as identical subject are fond in the Treaty concerning their right to land-ownership. The theory that the Treaty has separated other former law,as I have said in my precedent letter, remains good but when our adults that aliened does not prohibition, of course the application of other former law as far as questions not dealt with in the treaty are communed is not contrary to the theory, but even confrere it.

Also there is no need to discuss any further if a Treaty is different from a law by nature (my point being that Treaty is equal to law as far as the subjects of the Sigh contracting fewer are command, those subjects having to consider only that the legislative and executive powers of their country has made it a law, whatever may be the unilateral or unilateral or biinteral origin of that law.)

10. Now, although the solution of the question by an affirmative arrear to item 8 is not favorable to siam as a strict policy of "status by treaty" (I mean by treaty only) it may be said that the dangers is minimized, or the lose of an " "

lessened by the feet that to apply the decree of the Fourth Heign would grant right of land-ownership to American subjects only within a small area and not in the whole Kingdom.

When granting the right, the competent Minister should take a great care to specify clearly, as you say, in which legal conditions the great is made. This is necessary not only to prevent in the future requests extending to lands outside the decree area, but also to permit continuity legal explanation to the Assembly which is not unlikely to claim information and to show divergent views oring to the complexity of that contentions question.

Yours sincerely,