

SECOND NOTE
RE. THE DRAFT PROTOGOL
CONCERNING TINTERNATIONAL TRAFFIC IN WOMEN SUI JURIS

The Letter of the Ministry of Foreign Affairs dated 22nd. December 1933 to the Legislative and Judicial Council in the matter of the new Draft Protocol for the suppression of the (international) traffic in women sui juris, has been examined and is answered as follows.

From the letter, it appears that there is similar understanding of the question by all the authorities concerned, especially on the pints that:

- 1) the new Draft Protocol is acceptable because it clearly refers to the international traffic only and does not trespass on the internal questions in the matter;
- 2) that, if accepted, the Protocol would necessarily entail an Amendment to the traffic in Women and Children Act B.E. 2471, as far as the said international traffic is considered.

Agreement having been reached on those points, the following questions are raised in the letter of the Ministry for Foreign Affairs.

a) Is it not bettor for the Siam, before becoming a party to the new convention; to wait that necessary ratifications or accessions shall occur – It is agreed entirely with the Ministry that the matter is not an urgent one, the present legislation in Siam being drastic enough to cover important cases, and the agreement to be given to the Protocol being more a necessary sequel of the acceptation by Siam of former Protocols than a real need of this country. Consequently it is agreed that to wait is harmless and more reasonable.

b) The draft Amendment to the Traffic in Women and Children B.E. 2471 should first be made by the Legislative and Judicial Council and submitted for understanding to the interested Ministries.

c) it is much more difficult to decide when and how the draft Amendment, having been finally agreed by the Government, should be submitted as a bill to the Assembly of People's Representatives in order to become a law of the country. The difficulty is not a new one. It happens from the fact that Siam is now under the Constitution B.E.2476 and that an entirely new procedure is to be established concerning the application of international Treaties or Conventions, in order to comply with Section 54 paragraph 3 of the Constitution. The same question on is raised up now by all new International Treaties or Conventions to which the Government will become a party, as it has been explained already at length in other similar cases. As far as we know no decision has been taken in the former cases. So that the best is to repeat exactly what we have said before, the case examined in this note being exactly similar to former ones.

The question is as follows.

Section 54 parag. 3 of the Constitution provides that “treaties which require the promulgation of a law to enforce their provisions must receive the approval of the Assembly of the People's Representatives”. This is the case, since amendments to the present legislation are to be made for securing the enforcement of the Protocols.

In which form is such approval of the Assembly to be given?

Two ways are possible.

(1) Either the Government shall submit the Treaty (or Protocols) to the Assembly, with an explanatory note showing what has been made up to now for the accession of Siam to the said International Acts, and requesting the approval of the assembly, which may be given by a formal resolution to that effect;

(2) or the Government may submit to the Assembly an Act specifying the promulgation, application and enforcement in Siam of the Protocols as annexed to that Act itself. It is a matter of course that if the Assembly passes that Act, it means at the same time and *irso racto* that the Protocols are approved by the Assembly; if on the contrary the Assembly disapproves of the Protocols, they will reject the Act. Besides a formal approval of the Protocols by the Assembly may appear in the Preamble of the Act itself, for instance in the mention *w* whereas the Assembly approves of the international Protocol.....etc”.

It seems that it is the first time since the Constitution that Section 54 parag. 3 is to be enforced. Consequently it is recommended that the Government will take that opportunity to decide which policy is the best, in order that it can

But a first important point is that any International Treaty, Protocol or convention (including its annexes if any) must be known by the Member of the Assembly before they can give their approval. One cannot approve what he does not know. Consequently, the text of any such international Treaty, Protocol or Convention, including Annexes, which has to be submitted to the Assembly by application of Section 54, shall always in the future be translated in Siamese. The members of the Assembly do not necessarily all know the French or English the official languages in which the International conventions are officially published. But, irrespective of the fact, the work of a national legislative Assembly must always be made in the national language. It is assumed for instance that when the Spanish Parliament has to take knowledge of an International convention for approval or otherwise, the text is translated first into Spanish language.

It is admitted that to translate its Annexes, is very often a rather long and difficult work. Especially when technical words are to be used, translation is hard. Sometimes, in the past time, some tendency has been ascertained to issue a proclamation to say that an International Treaty, Protocol or Convention was accepted, promulgated, issued and enforceable, without publishing the text in the Government Gazette. Unfortunately this is highly objectionable: citizens cannot be expected to conform to provisions of law which they do not know; courts cannot be expected to apply provisions of law which they do not know; and now the Assembly, as said before, cannot be expected to approve provisions of law which it does not know. Otherwise, since the now texts of the Protocols must naturally be distributed to the Members of the Assembly when their approval there of is requested, if only texts in foreign languages are distributed, the Government should be exposed to have a Member of the Assembly raising this objection: how can you expect me to approved an Agreement which is written in a foreign language which I do not understand?”.

The conclusion is that, however long and delicate may be the technical translation of an International convention including its Annexes, this should be made first, and it is difficult, not to say impossible, to avoid it. Then the approval of the Assembly should be requested in order to comply with the constitution. And then only a bill could be submitted in order to amend the Traffic in Women and Children Act B.E. 2471

19th. February 1934