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Treaty Series No. 4 (1929)

EXCHANGE OF NOTES BETWEEN
HIS MAJESTY'S GOVERNMENT
IN THE UNITED KINGDOM AND
THE GOVERNMENT OF SIAM
regarding the
Navigation of the River Mekong

Bangkok, July 17, 1927 ; February 7, 1928 ;
August 18, 1928 ; August 21, 1928

Presented by the Secretary of State for Foreign Affairs
to Parliament by Command of His Majesty

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**Exchange of Notes between His Majesty's Government
in the United Kingdom and the Government of Siam
regarding the Navigation of the River Mekong.**

*Bangkok, July 17, 1927; February 7, 1928; August 18, 1928;
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(1.)

Mr. Waterlow to Prince Traidos.

British Legation,

M. le Ministre,

Bangkok, July 17, 1927.

ACTING on the instructions of His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to inform your Highness that the attention of His Majesty's Government in Great Britain has been drawn to the terms of Article 4 of the Convention recently concluded between France and Siam for the purpose of regulating the relations between Siam and Indo-China.

In that Article the two High Contracting Parties undertake that commercial navigation companies which may in future be authorised by either the Siamese or Indo-Chinese administration to operate those portions of the Mekong River which form the frontier between Siam and Indo-China must be exclusively either Siamese or Indo-Chinese. That frontier is defined in Article 3 of the Convention as being constituted by the "thalweg" of the river and those portions of the river which are on the right of the thalweg as defined in the Convention become Siamese territory.

Article 20 of the Anglo-Siamese Commercial Treaty of 1925, however, provides that neither of the two contracting parties shall place any obstacle in the way of companies of the other which may desire to carry on in its territories, whether through the establishment of branches or otherwise, any description of business which the companies of any other foreign country are or may be permitted to carry on; and also that in no case shall the treatment accorded by either of the two contracting parties to companies of the other be less favourable in respect of any matter whatever than that accorded to companies of the most favoured foreign country.

Article 24 also provides that in respect of the coasting trade as also in respect of all other matters of navigation the subjects and vessels of each of the contracting parties shall enjoy most-favoured-nation treatment in the territories of the other in addition to any other advantages that may be accorded by the Treaty.

In the view of His Majesty's Government in Great Britain these provisions clearly preclude the Siamese Government from extending to Indo-Chinese Companies any authorisation to navigate the River

Mekong which is not extended also to British Companies, and in inviting the attention of the Siamese Government to the matter I am instructed to request an assurance that no obstacle will be placed by the Siamese Government in the way of any British companies, British subjects or British vessels that may wish to operate on those portions of the River Mekong which lie within Siamese jurisdiction.

His Majesty's Government in Great Britain also desire in this connexion to reserve all or any of the rights which the Freedom of Transit Convention may confer upon British persons, goods and vessels passing in transit along the River Mekong or any part of it and across the frontiers between British India, Siam and French Indo-China.

I have accordingly the honour to request your Highness to give me a formal assurance that no obstacles will be placed by the Siamese Government in the way of any British companies, British subjects, or British vessels that may wish to operate on those portions of the River Mekong which lie within Siamese jurisdiction, and further to request that note may be taken of the desire of His Majesty's Government in Great Britain to reserve all or any of the rights which the Freedom of Transit Convention may confer upon British persons, goods and vessels passing in transit along the River Mekong or any part of it and across the frontiers between British India, Siam and French Indo-China.

I avail, &c.

S. P. WATERLOW.

(2.)

Prince Traidos to Mr. Waterlow.

Ministry of Foreign Affairs,

Saranromya Palace, February 7, 1928.

M. le Ministre,
I HAVE the honour to refer to your letter of the 17th July last in which your Excellency informed me that your Government was of the opinion that Article 4 of the recent Convention between Siam and Indo-China was in conflict with the most-favoured-nation treatment provided for in Articles 20 and 24 of the Anglo-Siamese Commercial Treaty of 1925; and that the British Government desired a formal assurance to the effect that no obstacles will be placed by the Royal Siamese Government in the way of British companies, British subjects or British vessels that may wish to operate on those portions of the River Mekong which lie within Siamese jurisdiction; and also in which you requested my Government to note the desire of His Britannic Majesty's Government to reserve all or any of the rights which the Freedom of Transit Convention may confer upon British persons, goods or vessels passing in transit along the River Mekong or any part of it, and across the frontier between British India, Siam and French Indo-China.

The River Mekong where it forms the boundary between Siam and Indo-China is not navigable from the sea, and is, therefore, not a river of international concern, according to the definition in the

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Barcelona Convention of 1921 concerning navigable waterways. During the negotiation of the Convention with Indo-China it did not occur to His Majesty's Government that the general most-favoured-nation provisions of Article 20 and Article 24 of the Anglo-Siamese Treaty would prevent an arrangement concerning the joint use by France and Siam of the River Mekong where it forms the boundary such as is expressed in Article 4 of the Convention. When this view was called to the attention of His Majesty's Government, it would have given the letter of assurance requested freely and without reservation, if it had been of the opinion that the view of the British Government was clearly correct. However, His Majesty's Government permits itself to doubt whether the general most-favoured-nation clauses of the Anglo-Siamese Commercial Treaty were intended to apply, or ought properly to be applied, to special privileges granted reciprocally by co-riparian States in the regulation of navigation on boundary rivers not navigable from the sea.

His Majesty's Government, however, has always desired to meet the wishes of the Government of Great Britain wherever it would do so without the sacrifice of essential rights or interests. It does not attach any practical importance to exclusive navigation on that part of the River Mekong which is under its jurisdiction. Therefore on its part my Government was not unwilling to give the assurance requested, provided that it was clear that it did not thereby admit that the legal position of the British Government was well founded. Naturally before giving such a letter it felt under the duty of consulting the French Government. This accounts for the delay in answering your letter of last July.

I am glad now to inform your Excellency that His Majesty's Government, while not admitting that the most-favoured-nation clauses in Articles 20 and 24 of the Anglo-Siamese Commercial Treaty of 1925 apply to the case of a special arrangement with France concerning navigation on the parts of the River Mekong which constitute the boundary between Siam and Indo-China, will, nevertheless, place no obstacles in the way of British companies, subjects or vessels desiring to operate on the portion of the Mekong which lies within Siamese jurisdiction that are not placed in the way of the companies, subjects or vessels of the most favoured nation.

Your Excellency will note that this assurance varies somewhat from that requested by your Government. As stated in your letter of the 17th July last, British companies, subjects or vessels would secure the treatment afforded nationals and not merely most-favoured-nation treatment.

His Majesty's Government also takes note of the desire of His Britannic Majesty's Government to reserve all or any of the rights which the Freedom of Transit Convention may confer upon British persons, goods or vessels passing in transit along the River Mekong or any part of it, and across the frontier between British India, Siam and French Indo-China. In acknowledging receipt of this notice of reservation of its rights on the part of His Britannic Majesty's Government, the Royal Siamese Government does not admit that any of the provisions of the Indo-Chinese Convention are, in fact, in

conflict with the Freedom of Transit Convention; and my Government desires on its part to reserve all questions of what its legal rights are under the Transit Convention.

In expressing the hope that this letter is acceptable to your Government, I avail, &c.

TRAIDOS,
Minister for Foreign Affairs.

(8.)

Mr. Johns to Prince Traidos.

*British Legation,
Bangkok, August 18, 1928.*

M. le Ministre,

WITH reference to correspondence ending with His Majesty's Minister's note of the 27th February last I have the honour to inform your Highness that His Majesty's Government in Great Britain are prepared to accept the assurance contained in your Highness's note of the 7th February last, that the Royal Government will place no obstacles in the way of British companies, subjects or vessels desiring to operate on the portion of the Mekong which lies within Siamese jurisdiction that are not placed in the way of companies, subjects or vessels of the most favoured nation.

My Government have, at the same time, instructed me to convey to the Royal Government an expression of their satisfaction at the receipt of this assurance.

I avail, &c.
J. F. JOHNS,
Chargé d'Affaires.

(4.)

Prince Traidos to Mr. Johns.

*Ministry of Foreign Affairs,
Saranromya Palace,*

M. le Chargé d'Affaires,

August 21, 1928.

I HAVE the honour to acknowledge the receipt of your letter of the 18th August, informing me that His Britannic Majesty's Government have accepted the assurance concerning navigation on that part of the Mekong which lies within Siamese jurisdiction, contained in my letter of the 7th February last.

In expressing my pleasure that this matter has been satisfactorily adjusted, I avail, &c.

TRAIDOS,
Minister for Foreign Affairs.