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NAA: A1838, 451/3/1/1 PART 2

Series number: A1838

Control symbol: 451/3/1/1 PART 2

Barcode: 523749

Number of pages: 10

Thailand - Australian general policy towards

(A) SECRET FILE No. 451/3/1/1

Pt. 2.

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DEPARTMENT OF

Pacific Division

South East Asia Section

R.P.

Thailand	SUBJECT.
	Australian General Policy towards

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SECRET

5790.... By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.

FOR THE MINISTER:

WAR DAMAGE CLAIMS AGAINST THAILAND.

I. Following the conclusion of their respective peace treaties with Thailand, Australia, the United Kingdom and India presented a number of claims for compensation in respect of war losses and damage sustained by their citizens and enterprises. On 6th January, 1947, an agreement was concluded for setting up in Bangkok a Joint Claims Committee consisting of one representative each from Australia, the United Kingdom and India, and three from Thailand. Claims for war losses and damage which were disputed by the Thai Government were referred to this Committee for jurisdiction.

The Joint Claims Committee made extremely slow progress in the examination of the disputed claims. From time to time, therefore, proposals were made for payment by Thailand of a lump sum in settlement of all outstanding claims. After protracted negotiations agreement has now been reached concerning the size of the proposed lump sum payment. The attached telegram (No.59 of 4th May) from the Australian Consul-General, Bangkok, sets out the figure which has been agreed upon, together with certain conditions which it is proposed should govern the payment.

II. Conditions of Lump Sum Settlement.

The conditions proposed by the Thai Government seem broadly satisfactory, subject to the following points:-

(a) Condition 4 is primarily a matter for Treasury, who have indicated their concurrence verbally and will confirm it in writing;

(b) Under the joint effect of conditions 1, 3 and 6 the position with regard to the Bangkok dock and any unrestored mining leases would not be ideally satisfactory. Conditions 3 and 6 would leave the respective owners with no specific remedy if the Thais subsequently failed to restore such property or leases, and redress could be sought only through ordinary diplomatic channels. The Bangkok dock does not concern us and the number of unrestored Australian mining leases is not thought to be great. (The mining companies are in actual possession of the properties but, owing to red tape, the leases have not in all cases been restored into their names). It may well be that any problems which arise in practice could be settled through diplomatic channels with no greater delay or difficulty than we have been accustomed to in the Claims Committee;

(c) In our proposal to the Thai Government on 1st December, 1948, we provided for the saver of the following Articles of the Claims Agreement in the event of a lump sum settlement:

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Siam Peace Agmt

451/3/1/1

(i) Article 6 (e) - restored property to be free of liens, charges etc;

(ii) Article 6 (h) - Statute of Limitations not to run in respect of war period;

(iii) Article 6 (i) - property not to be liable to any tax to meet costs of Thai Government in respect of war damage;

(iv) Article 9 - compensation to be free of income tax.

The Australian Consul-General now mentions the saver of only Article 9. The United Kingdom Ambassador's telegram attached to Bangkok memorandum 143/50 of 1st May, 1950, however, mentions the desirability of retaining Article 6(i) also, and this view seems sound. The United Kingdom Ambassador to Thailand considers that Articles 6(e) and 6(h) need not be retained; while these provisions might well be saved their abrogation is unlikely to cause much practical difficulty from the Australian point of view.

The advances referred to in Condition 2 were made to the Companies, partly in sterling and partly in ticals, against their war damage claims. The sterling advances were paid to the Companies by the United Kingdom out of frozen Thai assets held in London and the tical advances were paid direct to Companies by the Thai Government. The figure of £2,100,000 at which Mr. Shipley assessed the companies' claims included no deduction for advances already received, which should therefore be repaid on the basis now proposed by the Thai Government. (The approximate total of advances received by all companies is £stg.324,000 and Ticals 27,900,000).

III. Distribution of the Lump Sum Payment.

The conditions of the lump sum settlement having been agreed, the question now arises as to the method of distribution of the total sum to be paid by the Thai Government under this settlement.

At an earlier stage of the negotiations the United Kingdom suggested, and Australia and India agreed, that in the event of a lump sum settlement the present British Commonwealth-Thai Claims Committee should be replaced by a "rump" Committee, comprising United Kingdom, Australian and Indian representatives, which should continue with the adjudication of the remaining British Commonwealth Claims and award compensation to individual claimants within the overall limit set by the lump sum.

Since then the various classes of property claims, which constitute the great bulk of those still outstanding, have been individually assessed by experts appointed to assist the British Commonwealth members of the Claims Committee. With regard to the relatively small residue of "personal prejudice" claims (mostly arising out of deaths or injuries at the hands of the Japanese) no agreed assessments have yet been made, although certain controlling principles have been laid down by the Claims Committee. In the formulation of these

principles and in their application to certain cases which have already been decided, the Indian representative, with the support of his Government, has frequently aligned himself with the three Thai members and so defeated by a majority vote classes of claims which were strongly supported by the Australian and United Kingdom members. The United Kingdom Ambassador and the Australian Consul-General therefore feel that a "rump" committee, as previously proposed, would now serve no useful purpose so far as property claims are concerned, and might prove embarrassing as well as cumbersome with regard to "personal prejudice" claims owing to the probable necessity of frequently outvoting the Indian representative. They therefore recommend that the lump sum to be paid by Thailand should be apportioned between the United Kingdom, Australian and Indian Governments, and that each of such Governments should itself handle the distribution of its share amongst its own group of claimants. This proposal is strongly supported by the Indian Minister and his Government, though for somewhat different reasons.

The Consul-General has not yet suggested a definite figure for the Australian share in the proposed sub-division. He stated, however, that the proposed basis would be as follows:-

(a) Tin mining claims and United Kingdom commercial property and general property (petty traders) claims.

The expert assessments already made by Mr. Shipley and Mr. Shorts;

(b) United Kingdom, Indian and Australian personal property claims.

The estimates previously made by the respective Governments for the purpose of the lump sum negotiations; of these the United Kingdom estimate is understood to be reasonable, the Indian estimate may be over-generous but amounts to only £95,000 in a total overall estimate of nearly £5½ millions, while the Australian estimate is approximately £5,000 higher than the figure since assessed by Mr. Shorts;

(c) Personal prejudice claims.

The Consul-General recommends that the rough total estimate of £174,300 under this heading, as used for the lump sum negotiations, should be apportioned on the basis of £10,000 to India, £20,000 to Australia and £144,300 to the United Kingdom. This basis seems not unreasonable. The figure of £20,000 for Australian claims appears slightly on the low side but this would be adequately balanced by the over-estimation of our personal property claims (see (b) above).

As the Department has not yet received full details of certain recent adjustments made by Mr. Shipley to his assessments of tin mining claims, we are unable to calculate the exact share which would fall to the Australian Government on the above basis. A provisional calculation, based on the best ... information at present available in Canberra, is attached and suggests that the Australian share would be about £stg.528,388, or approximately £96.2% of the probable fair value of our total claims. (From this would be deductible the Australian component of sterling advances already received by tin companies against their claims; tical advances already received by the companies would be repayable by them direct to the Thai Government).

ANNEX TO PART III

WAR DAMAGE CLAIMS AGAINST THAILAND.

(All figures are in £Stg.)

Type of Claim.	Total C'lth estimates or Assessments. (Used in lum-sum negotiations).		Australian Estimates or Assessments.
Tin mining claims	£2,100,000	(a)	£499,206
U.K. commercial property claims	2,645,000		
U.K. and Commonwealth personal property claims (excluding Australia and India)	239,854		
Australian personal property claims	30,000	(b)	30,000
Indian Personal property claims	95,000		
U.K. and Commonwealth (excluding Australia and India) general property (petty traders)	157,203		
Remaining personal prejudice claims	174,300	(c)	20,000
	£5,441,357		£549,206

Notes:

(a) This figure is approximate only as we have not yet received full details of certain recent adjustments made by Mr. Shipley to his assessments;

(b) Mr. Shorts assessed these claims at approximately £25,000;

(c) This figure appears slightly on the low side, but would be adequately balanced by the overestimation in (b).

The agreed settlement is for £5,245,000 or 96.2% of our combined estimate. The Australian share of the lump sum should therefore be about 96.2% of £549,206 or £stg.528,388.

IV. Australian Representation in Thailand.

In the light of the impending agreement with the Thai Government concerning final settlement of war claims, the question of raising the level of Australian representation in Thailand arises.

On 2nd November, 1949, following a proposal by the Thai Government that diplomatic representatives should be exchanged, the Australian Government stated that such an exchange should await the satisfactory completion of current negotiations concerning war claims. This view was reiterated by the Australian Consul-General, Bangkok, in discussions with Thai officials on 6th April, 1950.

The Thai Government have long been anxious to exchange diplomatic representatives with Australia and in the light of these statements by the Australian Government, would be seriously offended if their desires in this matter were not now satisfied.

Though relations have been strained in the past in view of the firm stand taken by the Australian Government, it is felt that a great measure of goodwill might well be regained by prompt action by Australia in reopening discussions with a view to exchanging diplomatic representatives.

V. Conclusions.

It is therefore recommended:-

(a) That the following cable be despatched to the Australian Consul-General, Bangkok:

"Priority. Secret. Your 59. Claims against Thailand.

Conditions 2, 4 and 5 are acceptable.

2. Joint effect of conditions 1, 3 and 6 would seem to leave owners of unrestored mining leases without any specific remedy if Thai Government subsequently failed to restore them. We have no details here of Australian leases still unrestored but presume number is small. If you and your British colleagues are satisfied that no difficulty of this sort is likely to arise which could not be settled satisfactorily through ordinary diplomatic channels, these conditions may be accepted subject to preservation of substance of Articles 6(i) and 9 of Claims Agreement."

(b) That the Australian Consul-General, Bangkok, be informed:

(i) That it is agreed in principle that the lump sum should be divided between the three Governments and that each Government should handle the distribution of its share amongst its own group of claimants;

(ii) That, before entering into any final agreement on the point, he should submit for approval the exact division proposed and any necessary explanatory details.

(The Department of the Treasury agrees with this recommendation and is consulting the Attorney-General's Department on the legal questions which would be involved in the su bsequent distribution of compensation to individual claimants).

(c) That the Australian Consul-General, Bangkok, be instructed to reopen negotiations for an exchange of diplomatic representatives with the Thai Government, as soon as agreement concerning conditions of the lump sum settlement has been reached.

Pacific Division.

PS/mnc

10th May, 1950.

Annex to Part 1.

DEPARTMENT OF EXTERNAL AFFAIRS.

CABLEGRAM. **SECRET.**

I.6523
FEL/SC Dated: 24th. May, 1950.
2335
Recd: 25th. May, 1950.
1400

DECODED FROM:

Australian Consul General,
BANGKOK.

59. IMMEDIATE SECRET.

Claims against Thailand.

The Thailand Government by formal note today agreed settle all outstanding claims for £5,245,000 as we proposed.

2. Conditions stated are as follows:-

(1) Cash and property in the custody of the Thailand Government except mining leases and property of Bangkok dock will lapse to the Thailand Government.

(2) Sterling advances to tin companies will be deducted from lump sum and advances will be repaid by companies in accordance with their agreement.

(3) No further claim will be made under the relevant agreement.

(4) Balance of frozen assets in British Commonwealth countries will be released.

(5) Any balance left after payments to claimants will be returned to the Thailand Government.

(6) "War claims clause" in the peace agreement will be abrogated.

3. Conditions seem broadly satisfactory. Condition 5 is face saving provision to which I feel we should raise no objection. In view of discount intended there will be no balance. In addition, however, we should require further the condition that there should be exemption from income tax on compensation payments (see Article 9 of claims agreement). Question is being further discussed here but I feel we should keep conditions to an absolute minimum with which the British Ambassador fully agrees (see exchange of cables forwarded with my memorandum 1st. May sent in bag yesterday).

4. Having reached this stage I feel it is of great importance that settlement should be effected without delay and I should greatly appreciate your very early comments especially on the question of conditions.

Treasurer & Treasury
Min & Dept. E.A.
P.M.'s Dept.

5th. May, 1950.

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