Prosecutor, [1972] 2 M.L.J. 177 Lee Hun Hoe J. stated that the case of *Joseph Chia Saiko* v. *Public Prosecutor* was referred to the Federal Court. He said:—

> "In *Public Prosecutor* v. *Joseph Chia Saiko*, I expressed the view that the test of a "reasonable and prudent driver would exercise in the circumstances as laid down in *Simpson* v. *Peat* [1952] 1 All. E.R. 449 and *Voo Yun Fatt* v. *Reg* (1957) S.C.R. 127 could be applied to section 304A bearing in mind the additional element required to be established. This view must now be regarded as wrong in the light of the answer given by the Federal Court to the second question."

The second question was whether evidence sufficient to sustain a charge under section 14(1) of the Road Traffic Ordinance would also be sufficient to warrant a conviction under section 304A of the Penal Code provided death was also shown to be the immediate and not the remote cause of the negligent act".

The Federal Court stated that its answer to the second question was in the negative but unfortunately they did not give any written judgment. The case of *Abdul bin Pelaga* v. *Public Prosecutor* was decided on December 19, 1972 but unfortunately it was not reported till the end of 1973 and therefore presumably the report was not available to the authors.

This review has unfortunately been critical but the criticisms have been made, so that the book can be improved and so that students and practitioners can use the book with confidence. Like the authors the reviewer has commented on the more important and controversial aspects for the purpose of provoking thought.

Ahmad Ibrahim.

PIRACY, PARAMOUNTCY AND PROTECTORATES

By Alfred P. Rubin

[Kuala Lumpur: Penerbit Universiti Malaya, 1974; 155 pp.
Bound M$15.00, paper M$8.50]

As the author indicates in his Introduction this book focuses on the evolution during the nineteenth century of European formulations as the basis for political actions in, or re-organization of, the Malay Peninsula. To be more specific, the book tells the story of British attempts to justify, legally, their interference in, and domination of, the affairs of the northern Malay Sultanates.

The story begins with the British acquisition of Penang from Kedah in

1786 and the consequent attempts by ex-Sultan Tajuddin and his kinsmen to regain his throne from Thailand (then Siam) which, as claimant to Kedah and Penang, occupied Kedah in opposition to the British acquisition. The British were obliged to suppress these raids (which took place within the land territory of Thailand or Province Wellesley or Perak) under Article 13 of the Burney Treaty 1826 signed between the British and Thailand to settle the tension between them resulting from the Thai occupation of Kedah. The "Supreme Government" in Bengal in correspondence with the Governor-in-Council of Penang (renamed Prince of Wales Island) alluded to the law of nations as sufficient basis for suppressing the activities of ex-Sultan Tajuddin and his men, which could, in the opinion of the "Supreme Government", be regarded as "piracy". Rubin does not, unfortunately, in this book deal with the question whether in 1828 the International Law of piracy was applicable to justify suppression of politically-motivated behaviour, nor with the process by which piracy, which in Europe could occur only if committed upon the high seas or in territory outside the jurisdiction of any sovereign, came by 1830 to be acknowledged by British officials in India and the Malay Peninsula to be applicable to acts of depredation within land territory subject to the jurisdiction of a sovereign. These are analysed in his book "The International Personality of the Malay Peninsula; a Study of the International Law of Imperialism" (Kuala Lumpur, in process of publication) and in his paper "The Uses of Piracy in Malayan Waters". (In C.H. Alexandrowicz, ed., *Grotian Society Papers, 1968*, The Hague, 1970). However, he does point out that "the concept (i.e. piracy) was used against politically organized and motivated non-European composed of Europeans in most cases" and that "the Supreme Government at first took the view that 'piracy' within the land territory of the Thai or the Malay Sultan of Perak was a definitional impossibility, but receded from that position when informed that the suspected 'pirate' had been proved by captured documents to be a bad character and that the expedition occurred in Perak territory with the permission of the Sultan of Perak." This use (or abuse) of the International Law concept of piracy was however not unanimously or consistently held or adhered to without misgivings but managed to hold sway only because the Penang Courts lacked admiralty jurisdiction. When the courts did obtain such jurisdiction the piracy argument was deprived of much of its usefulness in the *Mohamed Saad Case* in 1840, whereby Sir William Norris, Recorder, decided that the accused, a nephew of ex-Sultan Tajuddin, could not be guilty of piracy because he acted as an agent of a government.

With the usefulness of the concept of piracy as a justification for bringing British law and order to the Malay Peninsula much eroded, the British developed another theory as legal rationalization for imperial policy – Paramountcy: the theory "that the strongest had a legal duty to keep its weaker neighbours in sufficient order to permit trade". As Rubin

clearly exposes, the real root of the theory lay in the desire to protect rights of property. The British utilized this theory to place themselves under a duty to settle squabbles over dynastic succession in Pahang – for fear that "British commercial and political interests in the Malay Peninsula would be jeopardized by the intrusion of non-Malay rivals of the British" (namely the Thai). This sense of "duty" climaxed with the bombardment of Trengganu in 1862 (being the punishment levied on the Sultan of Trengganu for failure to act upon the advice of the British to ship ex-Sultan Mahmud of Lingga, a meddler in the dynastic struggle in Pahang, to Thailand within twenty-four hours of notice and to stop all aid to Wan Ahmad, one of the two main protagonists in the dynastic wars). The bombardment of Trengganu did not put an end to the underlying tensions: did not rid the British of Thai presence in the Malay Peninsula or deter the Malay Sultans from fighting for more territory and enlisting outside help to do so. However, adverse reaction to the bombardment did deter British officials from the use of force as a means of extending British rule.

The British extended their law and order to Perak with the Pangkor Agreement 1874 whereby Perak nobles agreed that a British Resident should be accredited to the court of a Sultan recognized by the British, and that the Resident's advice be asked and acted upon on all questions except those touching Malay religion and custom. Similar Pangkor-like agreements were entered into to extend British rule to Johore and Pahang in 1885 and 1887 respectively. This mechanism of British advance – supported by the international practice of according recognition to an entity or withholding it (recognizing an amenable Sultan or deposing a rival by refusing to recognize his claim) was not considered appropriate for acquiring legal rights in Kedah, Perlis, Kelantan or Trengganu as the British Foreign Office did not want to "run afoul of Thai claims" there; in fact the attitude of the British Foreign Office was to help prop Thai authority in these states as a means of keeping European rivals out. Although, as Rubin categorically states, British desire to expand was based on racial or cultural pride, expansion on this rationalization would bring war; to avoid war diplomacy was therefore resorted to in the 1890s to complete the process of political subjugation of the northern Malay States. This was indeed achieved by treaty with the Thais in 1909. To illustrate the complex interplay of law and diplomacy Rubin refers to two case studies, the acquisition of Reman from Thailand and the history of the Duff Development Company in Kelantan. This rather involved history (it is in fact questionable whether it is absolutely necessary to dedicate over 60 of the book's 155 pages to the rise and fall of that erstwhile company) includes the legal saga which culminated in the decision of the House of Lords, and brings the story to its close.

"Piracy, Paramountcy and Protectorates" makes fascinating reading. It gives candid insights into the British struggles to clothe imperialistic

designs with legal drapery, the search for international law labels to attach to expansionist thrusts, regarded necessary to mitigate political repercussions and opposition in London. As Rubin frequently demonstrates this necessarily led to legal techniques which were at variance with International Law as applied in Europe or with British Constitutional Law (e.g. that piracy could apply to acts, politically motivated, occurring in territory subject to the jurisdiction of a sovereign, that an alien could be a British subject by virtue of owning land in British territory; that a British subject could be extradited to a country with whom there was no extradition treaty) – resulting in what Rubin terms "British Imperial Law."

Nevertheless there are times one feels that one is deprived of the full story of British reconciliation between legal theory and political ambitions; this is perhaps inevitable since Rubin has dealt with these issues elsewhere in his writings.

There are passages in the book which do not make for easy comprehension, for example at page 11 (20th line down): "Even if they did, presence in British territory to seek the protection of British courts would, on the territorial principle of jurisdiction, subject them to the authority of the courts for whatever crimes against British municipal law committed in British territory, or in case of piracy the high seas, Ibbetson could discover that might be proved against them." And at page 80 (13th line down): "The Thai, neither Aryans nor Shemites to Lorimer, but something between entitled to 'partial recognition', not only had the power to resist British aggression with some success, at least making it doubtful that God had intended British dominion to be gained easily over lands claimed by the Thai, but other Europeans powers were seeking to expand their territorial bases with Southeast Asia at the expense of Thailand."

However, these do not detract from the book's readability.

Wan Arfah Hamzah

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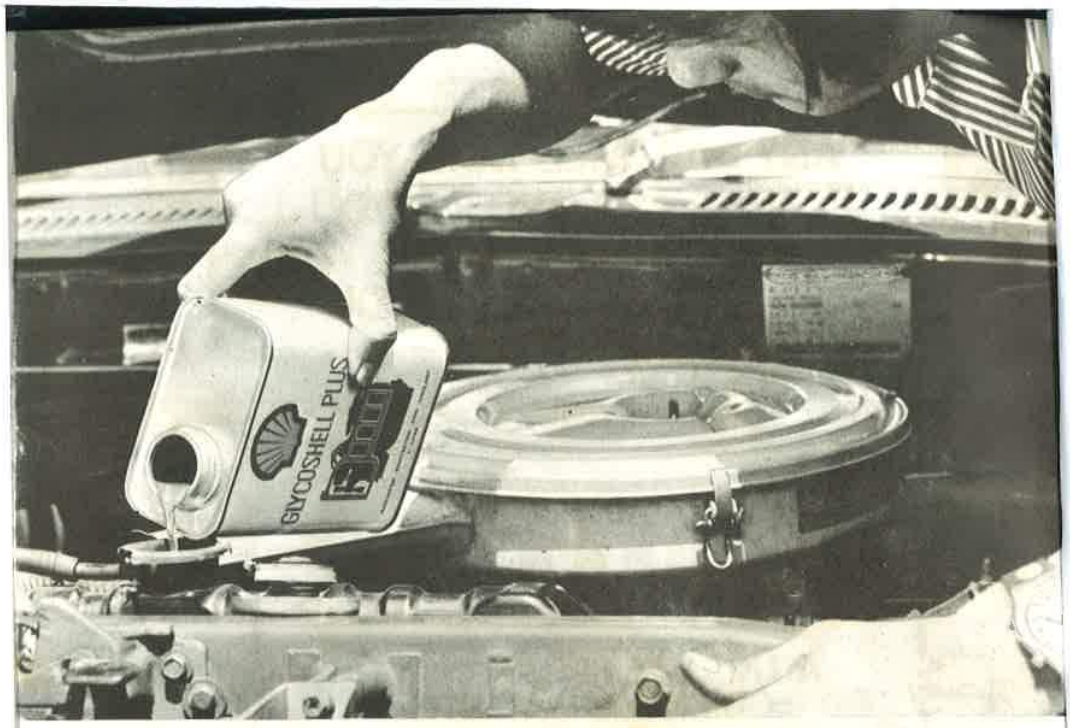

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