

**Summary of the briefing to the Diplomatic Corps  
On the revocation of Martial Law  
and the application of Head of NCPO's Order No. 3/2558  
Tuesday 7 April 2015, 13.45hrs  
Naradhip Auditorium, Ministry of Foreign Affairs**

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**Col. Winthai Suvaree**

- There has been a lot of misinformation and use of arms to cause unrest in Thailand. Some of these attacks were aimed at the monarchy, the foundation of Thailand, in order to disrupt the morale of the people. The methods used to curb these actions were insufficient

- The use of martial law was limited and enacted only in the most strenuous of circumstances. Thailand has had a number of unorthodox laws, and martial law in Thailand is no exception being used very conservatively.

- Article 44 will be used only to maintain stability, and it is limited to the protection of the monarchy and enforcing order. The article will stop those who:

1. Undermine the monarchy
2. Threaten national security
3. Illegally possess/use arms and weapons
4. Act against the orders of the NCPO

- Those who have done nothing wrong have nothing to fear from the government. According to the poll, 51 percent of the people are satisfied with Article 44.

**Dr. Wissanu Krea-Ngam**

- Article 44 is only the source of power granted by the Interim Constitution. Since 22 July 2014 (the promulgation of the Interim Constitution), the NCPO has exercised its power under this article only once to extend the term of local governments.

- According to analysis of the security unit, there have been at least 5 groups of people that may cause crisis in the Thai society. These are: (1) those who had lost political power; (2) those affected by the social or economic measures imposed by the government and the NCPO; (3) those who want to stir up the society and cause a crisis in the country; (4) those who want to interrupt the promulgation of the new constitution or the new election for their own benefit and (5) those who want to express their opinion in a radical way in order to respond to alleged injustice received from the officers. Therefore, the government needs some powers to deal with such crisis in order to replace the martial law.

- In fact, the power authorized under Article 44 is not new in the history of Thai politics. During the past 50 years, articles similar to article 44 has appeared in the Interim Constitution as follows: (1) The Interim Constitution (1959) (Sarit, Thanom); (2) The Interim Constitution (1972) (Thanom, Sanya); (3). The Interim Constitution (1976) (Tanin); (4) The Interim Constitution (1977) (Kriengsak); (5). The Interim Constitution (1991) (Anand) and (6) The Interim Constitution (2014) (Prayut)

- The text of Article 44 was taken from past Interim Constitutions, with some modifications, from Article 16 of the French Constitution (1958).

- The government will use Article 44 constructively to tackle the issues that are almost impossible to solve using normal laws.

### **The Choices of Laws**

- There are at least 3 choices of laws to be used in the times of emergency.

1. **Martial Law (1914)** – For a martial law to be effective, it needs to be declared within certain areas or throughout the Kingdom. The consequence of Martial Law is that military has power over civilians in all cases and military court plays a more significant role than civilian courts. Secondly, the officer has the power to carry out searches, seize property, control the media, impose curfew or put someone in custody. The drawback of declaring a martial law is that people will not have the right to get compensation for any damages caused by the military.

2. **Emergency Decree (2005)** – In order for Emergency Law to be effective, the government needs to declare a state of emergency which leads to the following consequences. First, all administrative powers will be transferred to the Prime Minister. Second, officers will have the power to search, seize, destroy property, impose curfew or prohibition, arrest, control the media, destroy, deport, control, and put somebody in custody for not more than 7 days. Political assembly is prohibited. Last year, the government has declared the state of emergency but crisis still happened, so emergency law was not successful. Martial law is an area-based law and it has to be declared by the government before it can be effective. The consequence of emergency law is that people who have been affected by the state of emergency have the right to compensation.

3. **Internal Security Act (2008)** – Nothing needs to be declared in order to apply this law. To exercise the power according to the Internal Security Act, the internal security command will be set up. The Internal Security Command has the power to expel, prohibit, impose curfew, close, or evacuate the building. According to the Internal Security Law, people also have the power to claim compensation from the government. Internal Security Law also extends to the people the right to compensation.

- Prior to 22 May 2014, the Emergency Decree and the Internal Security Act were already applied during political crises in Thailand, but their applications were unsuccessful. Secondly, Military needs power, less than Martial Law but should be clearer than Emergency Law because some dangers or public disorder are still anticipated. We need a clearer explanation of what the military can do in a state of emergency since to avoid the problems arising from vague terms stated in the emergency law especially on the role and power of the military. Thirdly, emergency law is an area-based law while Order No. 3 is offence-based (cover only 4 types of offences). And lastly, plea-bargaining can be introduced to replace prosecution which was not allowed in those two laws. In this Order, the NCPO also incorporates the concept of “plea-bargaining” which means that if the accused or the defendant is willing to accept some conditions, their cases can be dropped. Such measure does not exist in Thailand before.

### **The consequences of Order No. 3**

1. Neither martial law nor the state of emergency is declared in Thailand.
2. There are only 4 types of offences covered under this Order: (crimes against Monarchy, national security, and war weapons law and offences on violation of NCPO orders). Other offences are not within this Order.
3. Officers have power to call for report, arrest, search, seize, enter into any place (under some conditions) prohibit dissemination or distribution of information which disturbs national security or peace and order, and put the suspected person in custody not exceeding 7 days (not in jail or police station)
4. Political assembly of more than 5 persons is possible if allowed by NCPO.
5. Violation of NCPO order and illegal political assembly may be exempted from prosecution.
6. Nothing in Order No.3 is more radical than Martial Law and Internal Security Law. Some measures are taken from the Criminal Procedure Law of Thailand.
7. From 1 April 2015, cases in 4 offences are still tried in the military court with the right to counsel and the right to appeal but some cases may be withdrawn. Some cases may be withdrawn if the accused are willing to enter into the plea bargaining system which means receiving some training of less than 7 days and they will be released and the case will be dropped.

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