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**Policy options for the management of territorial
disputes in South-East Asia: A case study of the
Preah Vihear temple dispute**

A thesis

submitted in partial fulfilment

of the requirements for the degree

of

Masters of Arts and Social Sciences in Public Policy

at

The University of Waikato

by

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2013

Abstract

The stability of the Southeast Asian region has been affected by a number of unresolved territorial and maritime disputes because most parts of the region were not demarcated after the colonial period. Overlapping claims have led to disputes among ASEAN members for the rightful ownership of those areas. ASEAN, however, does not have the power to resolve disputes among its members or between its members and outsiders. The International Court of Justice (or the ICJ) has played an important role in ending long-standing disputes in the region; the ICJ's judgements have normally been accepted.

Thailand, which is an ASEAN member, has faced both territorial disputes due to the European colonists' treaties over boundary agreements with its neighbouring states as well as maritime disputes due to the announcement of the 1983 United Nations Convention on the Law of the Sea (UNCLOS), particularly in the Gulf of Thailand. It seems to be easier to reach an agreement on the overlapping claims in the Gulf of Thailand than to settle disputes over land. Sharing the benefits of fisheries, oil and gas have contributed to Thailand and some claimants reaching an agreement by peaceful means. Territorial disputes are more complicated and sensitive than the maritime ones because they include strategic, ethnic and economic values, thus they are more likely to result in the use of military force which greatly harms the stability and peace of the region.

Thailand has had many territorial disputes with its neighbours such as Myanmar, Laos, Malaysia and, particularly, with Cambodia. The rivalry between Thailand and Cambodia has existed since ancient times. One of the most important territorial disputes between the two nations is the territorial dispute over the sovereignty of the Preah Vihear temple which was awarded to Cambodia in 1962 by the ICJ. However, the 4.6 sq km area surrounding the temple has not yet been demarcated by the ICJ, thus the territorial dispute over the temple's surrounding area occurred in 2008, and it was seen to be one of the bloodiest disputes in the region. The dispute has not yet ended. The ICJ has finally become involved and Thailand and Cambodia still need to provide evidence to the Court

in 2013 to claim their rights over the disputed area. This dispute has caused ASEAN to become more concerned about its role and power to maintain peace in the region. ASEAN in the future must have more power to control such a situation so that it does not escalate into the use of military force among its members. This can prevent outsiders' involvement and also improve trust among member states as well.

Acknowledgements

I would like to express my gratitude to my supervisor, Dr Mark Rolls, whose advice and support has guided me to complete this thesis. Your knowledge and experience has encouraged and helped to push me to complete my study.

My sincere thanks to all those in the Department of Political Science and Public Policy, particularly Tutoring Assistants for International Students, Sheeba Devan-Rolls, who always gave me advice and help with my academic writing. I have greatly appreciated your assistance.

I would like to thank the University of Waikato in providing necessary materials and information for my Master's and an opportunity to gain a great experience of New Zealand life and study.

I could never have completed this study without big support of my father Chumpol. Thank you for your love, your advice, your encouragement, and the opportunities that you gave me to study in New Zealand. Thank you for believing in me.

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List of Abbreviations

APSC- ASEAN Political-Security Community

AHC- ASEAN High Council

ARF- ASEAN Regional Forum

ASEAN- Association of Southeast Asian Nations

CMS- China Marine Surveillance

COC- Code of Conduct

CPP- Cambodian People's Party

DOC- Declaration on the Conduct of Parties

EEZ- Exclusive Economic Zone

ICJ- International Court of Justice

JBC- Joint Boundary Committee

JDA- Joint Developing Area

MID- Militarized Interstate Dispute

MOU- Memorandum of Understanding

NACC- National Anti-Corruption Commission

OCA- Overlapping Claims Area

PAD- People's Alliance for Democracy

PKD- Party of Democratic Kampuchea

PDZ- Provisional Delimilitarized Zone

PETRONAS- Petroliam Nasional Berhad

PETROVIETNAM- Vietnam oil and Gas Corporation

PPP- People's Power Party

PRC- People's Republic of China

PRD- Peaceful Resolution of Dispute

ROC- Republic of China

TAC- Treaty of Amity and Cooperation

ECS- East China Sea

SCS- South China Sea

US- United States

UK- United Kingdom

UN- the United Nations

UNCLOS- United Nations Convention on the Law of Sea

UNESCO- United Nations Educational, Scientific and Cultural Organization

USSR- Union of Soviet Socialist Republics

Chapter 1

Introduction

1.1 Context

Theoretically, territorial disputes are generally regarded as the primary cause of war. The various types of territorial disputes have normally been explained in terms of rational strategic and economic interests and changing power relations (Forsberg, 1996). States have many choices in dealing with territorial disputes. They can use military force or Militarized Interstate Disputes (MIDs) which would lead to conflict and war or choose the Peaceful Resolution of Disputes methods (PRDs), such as negotiations, nonbinding third party methods, arbitration or adjudication. Basically, disputant states will consider the use of means to deal with their disputes based on their past experience: thus, if a disputant state has had a good experience of using one of the PRD methods, it is more likely to use the same method again (Manicom, 2006 ; Powell &Wiegand, 2010).

Generally, territorial disputes have increased around the world since the colonial period. Countries in Southeast Asia have been particularly affected because most parts of the region have not yet been demarcated. For example, China which is the biggest country in the world (after the collapse of the Soviet Union) had large areas which stretched across a number of nations during the colonial period. This has led to a number of border disputes due to unclear landmarks and overlapping claims in the seas with other Southeast Asian countries such as Vietnam and the Philippines. Since the 1960s, China has attempted to deal with border disputes by negotiating with its bordering countries which include Burma, Nepal, Mongolia, North Korea, Pakistan and Afghanistan, and maritime disputes with Southeast Asian disputants such as Vietnam and the Philippines (Chung, 2010).

Similarly, Thailand has faced border disputes or territorial disputes with its neighbours since the colonial era which were caused by European nations which drew up many unclear and complex land and water boundaries (Wain, 2012). Thailand as a coastal country has been affected by the announcement of the 1982 United Nations Convention on the Law of Sea (UNCLOS) (Nguyen, 1999). One of its significant maritime disputes is in the Gulf of Thailand with the ASEAN member states Malaysia, Vietnam, and Cambodia. It can be understood that the disputes over the Gulf of Thailand is about ASEAN member states' overlapping claims, with huge benefits to be gained from the products of the Gulf; in particular, the fisheries, as fish exports earn the majority of each country's revenue, and the right to exploit oil and gas. Those natural resources have pushed disputant states to claim overlapping areas, on the other hand, some disputants prefer sharing the advantages of the Gulf of Thailand by having an agreement to share natural resources, such as Thailand and Malaysia which have negotiated and reached agreements in 1979 and in 1990 on establishing and developing the Joint Authority in the Gulf of Thailand. However, the disputes between Thailand and other Southeast Asian states over the Gulf of Thailand still remain (Clive, 2007).

Thailand has also faced many territorial disputes with its neighbours such as Myanmar, Laos, Malaysia and, with one of its significant rivals, Cambodia or Khmer. The thesis will focus on the territorial disputes between Thailand and Cambodia which share boundaries which are significant for tourism and commerce for both the domestic and national revenues of the two countries. The border is approximately 800 kilometres long stretching along the seven Thai provinces of Trat, Chantaburi, Sakaeo, Buriram, Sisaket, Surin and Ubonratchathani from the lowest northeast from a point called 'Chong Bok' which is located in Ubonratchathani and ending in 'Had Lek' which is the sub-district of 'KlongYai' district in Trat. Thailand and Cambodia have faced many problems, such as illegal immigration, alien workers, AIDS infection, casinos, cross-border smuggling, transportation of narcotic drugs and human trafficking (Burasith, 2009; Kasetsiri, 2006).

Although many problems have occurred along the border between the two countries, the border dispute around the PreahVihear temple seems to be the cause of a major crisis in relations between the two nations. The PreahVihear temple

was built at the beginning of the 9th century (during the Khmer Empire) and located between the Choam Khsant district in the PreahVihear province of northern Cambodia and the Kantharalak district in the Sisaket province of north eastern Thailand. In 2008, the temple was listed as one of the World Heritage Sites by the United Nations Educational, Scientific and Cultural Organization (UNESCO) (Thayer, 2009; Marcan-Markar, 2009).

The dispute over the ownership of the temple, which is one of the most important places for tourism for both Thailand and Cambodia, has occurred because of missing boundary markers and an undefined maritime border. Thailand and Cambodia have used different maps since 1907, when the temple was claimed by the French colonists who ruled Cambodia and drew a map (see Annex I) to define the boundaries between Thailand and Cambodia. The French put the temple into Cambodia's territory without it being rejected by Thai authorities at that time. After the French left Cambodia, Thailand (or Siam) took over the temple again. Cambodia opposed this claim and submitted the case to the International Court of Justice or the ICJ in 1959. The ICJ considered the 1907 Treaty between Thailand and France, (see Annex I) which shows that the temple is located in Cambodia's territory and Thailand has accepted this Treaty and the map for a long time. Thus, Thailand moved its troops from the temple and returned the ownership to Cambodia by following the order of the ICJ in 1962. The PreahVihear temple was officially awarded to Cambodia in 1962 based on a border map drawn by the French. However, the ICJ did not mention the ownership of the 4.6 square kilometre area surrounding the temple, thus the area has occasionally become a battlefield between the two nations (Thayer, 2009; Marwaan, 2009).

Thai-Cambodia relations worsened after a well-known Thai actress said in public that the Angkor Wat Temple had been stolen from Thailand by Cambodia. This led to the arson of the Thai Embassy and other Thai property in Cambodia, on 29 January 2003 during Cambodian anti-Thai riots. The relationship between the two neighbouring states deteriorated when Cambodia sent an application to UNESCO to list the Preah Vihear temple to be one of the World Heritage Sites by rejecting a Thai joint application. Thus, Thailand claimed the 4.6 sq km area surrounding the temple (which is the only place with an entrance to the temple)

which has never been demarcated by sending its troops to the area. The relationship between the two countries has been strongly affected since that time. As a result, heavy mining and skirmishes along the Thai-Cambodian boundary including the surrounding area of the temple has occurred frequently. This has led to a series of violent incidents on both sides, resulting in deaths and injuries, and a worsening in relations without any effective policy to rebuild the relationship between the two countries again. The situation was driven by a strong sense of nationalism, particularly from the People's Alliance for Democracy (PAD)-or the Yellow Shirts-which forced the Thai government to use tough means to deal with Cambodia in claiming the temple's surrounding area. The Thai government had rejected binding third party methods, but asked for bilateral talks with Cambodia, while Cambodia had tried to get some help from other international organizations such as the UN and ASEAN. After many outbreaks of fighting and failed ceasefire agreements, Cambodia submitted the 2008 dispute to the ICJ again. The two countries finally withdrew their troops from the temple and its surrounding area, following the ICJ's order. The ICJ also asked them to cooperate with ASEAN to allow Indonesian observers into the conflict zone and to try to rebuild their relationship again. This dispute has been seen as the one of the most bloodiest among ASEAN members and threatens the stability and peace in the region (Ngoun, 2012 ; Kasetsiri, 2006 ; Global Agenda, 2008).

In conclusion, territorial disputes can occur everywhere. The approaches to reduce territorial disputes can be through peaceful methods, such as negotiation to reach an agreement for the benefit of both sides, or military force which may result in violence and lead to wars. However, the success of the methods used depends on many factors, thus policy makers have to carefully consider all elements involved. Comprehending the primary theories and research about territorial disputes and their resolution options in particular the peaceful resolution methods to provide background knowledge, are necessary. The unresolved territorial and maritime disputes in Southeast Asian countries, including the disputes that have been resolved, can be a good case study for policy-makers to see how some of them had been resolved and why some have not yet been resolved. The thesis will examine the roles of ASEAN and the ICJ to resolve the territorial and maritime disputes in the region, focusing on Thailand's.

1.2 Purpose

This study aims to comprehend the escalation of territorial and maritime disputes in the Southeast Asian region after the colonial period and the use of the 1982 UNCLOS for the region. Most Southeast Asian countries have not yet demarcated their lands or seas after the colonial period, as a result, the region has faced many disputes over the ownership of an area or islands with its fellow ASEAN members or with other states outside ASEAN. The study will examine both differences and similarities between the roles that ASEAN and the ICJ have played in dealing with territorial and maritime disputes in the region. The main purpose of this study is to study the territorial and maritime disputes which Thailand has had with its neighbouring countries, and to understand how the territorial dispute over the sovereignty of the 4.6 sq km. around the Preah Vihear temple with Cambodia emerged in 2008. This dispute is very important because it has not only affected Thai-Cambodian relations, but also affected the stability and economic systems of the ASEAN region. In comprehending for this dispute can be permanently resolved this case can be used as a case study, or an example for ASEAN, on how to prevent the use of military force between ASEAN disputants, and improve its ability to resolve other disputes that may occur in the future, particularly when ASEAN has planned to build the ASEAN Political-Security Community (APSC) structure by 2015. This study may benefit particularly the Thai government so it can prevent the emergence of territorial and maritime disputes, and help its policy-makers use previous territorial and maritime disputes studies that Thailand has had as an example, or past experience of, to make the most effective policy to resolve its disputes in the future.

1.3 Research methodology

The methodology for this study will be documentary by using primary and secondary sources. These include government documents, legislation/legal documents, books, journal articles, electronic academic research (retrieved from EBSCOhost Megafire Premier database), reports, web pages from reliable websites and conference papers. These sources help to create a literature review of

territorial disputes and policy options to resolve the disputes; and information on territorial and maritime disputes in Southeast Asia, Thailand's territorial and maritime disputes with other ASEAN members, especially with Cambodia, and the involvement and the roles of ASEAN and the ICJ in resolving territorial and maritime disputes in the region.

1.4 Outline

This thesis will have six main chapters:

Chapter One is the introductory chapter which will provide overall general information, the purpose of study and the direction the thesis will take.

Chapter Two will generally review the primary studies, literature, articles and theories about the meaning and importance of territory. Basic information on territorial and maritime disputes, how those disputes have emerged, two options in dealing with territorial and maritime disputes, Militarized Interstate Dispute and Peaceful Resolution of Dispute methods will also be looked at.

Chapter Three will describe and examine the territorial and maritime disputes which have emerged in the Southeast Asian region after the colonial period and the announcement of the 1982 UNCLOS by giving examples of cases of territorial and maritime disputes which have not yet been solved such as those in the South China Sea (Spratly Islands and Paracel Islands). It will also give two examples of disputes which were resolved: the disputes over Pulau Ligitan and Pulau Sipadan between Malaysia and Indonesia and the dispute over Pedra Branca/Pulau Batu Puteh between Malaysia and Singapore. The chapter will examine how some maritime disputes in the region are resolved and some are not, including the roles of other parties involved such as the ICJ and ASEAN in resolving disputes in the region, and other elements that escalated those disputes.

Chapter Four will focus on both the settled and unsettled territorial and maritime disputes which Thailand has had with its neighbouring countries such as Vietnam, Malaysia, Myanmar, and Cambodia or between ASEAN member states. The chapter will focus particularly on the maritime disputes over the Gulf of

Thailand where Thailand has reached an agreement with some ASEAN disputants, but not with others. The territorial land disputes along the common borders between Thailand and surrounding nations will be mentioned and categorised between resolved and unresolved land disputes.

Chapter Five specifically discusses a case study of the territorial dispute over the sovereignty of the Preah Vihear temple in 1962 which has affected the 2008 dispute over the 4.6sq km area surrounding the temple between Thailand and Cambodia. Information about the histories of the Thai-Cambodian relations and the Preah Vihear temple will be provided to understand the importance of the temple and how the has developed. The roles of ASEAN in resolving the 2008 dispute will be examined along with that of the ICJ which ended the 1962 dispute over the temple and which has also played the most important role in stopping the fighting along the border between the two countries after the 2008 dispute. It will also discuss the 2008 dispute over the temple's surrounding area; how it re-emerged, what important elements caused the escalation of the dispute, and the possibility of resolution for the dispute.

Chapter Six will conclude the thesis, considering the possibility of the Court's judgments, and making suggestions on to what the Thai government can do to improve Thai-Cambodian relations after the 2008 territorial dispute and to prevent disputes with neighbouring states in the future.

Chapter 2

Literature review: Explaining disputes over territory and peaceful attempts to resolve territorial disputes

In this chapter, a literature review of territorial disputes and a study of the primary theories about the meaning of territory are considered, which are crucial for an understanding of this research topic.

2.1 The development of territory and its meanings

In ancient times, people who had the same beliefs and lifestyles generally gathered together to hunt and share food as a small group, and then expanded into clans or tribes, and finally into a social group which had been derived by ‘culture’. Thus, it can be understood that, in a cultural world, there are countless numbers of groups each of which have a separate sense of being and identities, and that people are defined by the social group into which they are born and their territory. This gives rise to a sense of belonging and land ownership of the territory to its people. However, in the modern world, particularly in Western culture, political interference (state or government) has played a significant role in changing the ideal of land ownership and the territorial identification of its people. In the political world, land in its territorial connotation is seen as a commodity to be bought and sold, and separate from considerations of social relations. It can be noted that the dominant social group has created the concept of “nation” to be a politically bound territory which encourages a sense of belonging to its people. For that reason, the meaning of “state” and “territory” need to be examined (Knight, 1982).

The state, a legal and physical entity, with an effective system of government, was once defined as a large but generally compact area under the rule of one dynasty, probably with tributary areas beyond the core area with sub-rulers who may or may not be related to the principal rulers. In the modern era,

however, the state is more rigid, and involves many basic characteristics such as land territory, citizens, government, organized economic system, circulation system, sovereignty and recognition, including technological developments (Knight, 1982; Glassner & Blij, 1980).

The concept of territory in terms of political system is the area where there are formal or informal boundaries including terrain, flora and fauna, resources, and human inhabitants and their ways of life. Interestingly, a territory itself is passive; its meanings are filled by human beliefs and actions which are all based psychologically and culturally. It can be noted that the meaning and the significance of territory exists only in the minds of its groups which are influenced by those beliefs. In this case, “geographies of the mind” can be used as a definition to describe what territory means. Geographies of the mind refers to landscapes as perceived by the occupants which have powerful symbolic links to a group’s territorial identity (Knight, 1982, p.517).

Symbolically, a territory under the full control of a government actually provides both security and opportunity for everyone who lives within its boundaries. Particularly, the perspective of security obviously focuses on protection against physical attack and against the taking of scarce resources by others. Therefore, territory is regarded as a space or area to which identity is attached by a distinctive group who hold or covet that territory and who desire to have full control of it for the group’s benefit (Gottmann, 1973; Knight, 1982).

2.2 A realistic distinction between the two categories of disputes: a boundary dispute and a territorial dispute

There have been many debates about how to distinguish between boundary and territorial disputes among scholars. These have led to great confusion and argument; particularly in terms of how to make a meaningful distinction between the two categories of disputes.

Confusion over the distinction between the two categories of disputes has arisen from the problems and policies created by them. Territorial and boundary

disputes are very similar and have no distinctive differences between them on the surface. They are both part of the larger question of territorial sovereignty, and involve comparable sets of claims and counter-claims and legal policies. They can lead to frequent arguments and counter-arguments and are the proof of long and effective sovereignty and jurisdiction in the disputed areas (Sharma, 1997).

Boundary disputes naturally emerge where two or more governmental entities contest the line to be drawn between their respective territorial domains. The two or more disputants actually have lawful claims to adjacent territory, but the main point of contention is how this territory can be divided between them (Sharma, 1997, p.23). Conversely, territorial issues occur when one state, by drawing a boundary, seeks to supersede or eliminate another state in relation to a particular area of land. Furthermore, territorial disputes between two or more states can occur even though they may not share the same boundary lines, such as the territorial dispute in the East China Sea over the Senkaku/Diaoyu Islands between China, Taiwan, and Japan who do not have a common land boundary (Zhao, 2011). Whereas a dispute about the acquisition of territory is competitive between the claimants, in the sense of one must 'lose' completely, a boundary dispute may or may not involve the complete suppression by one entity over another in relation to a particular land area (Sharma, 1997, pp. 23-24).

According to international law, territorial questions involve traditional rules regarding modes of acquisition of title, such as discovery, occupation, conquest, cession or prescription, whereas the boundary issues involve the rules which are related to specifying functions performed in the fixation and maintenance of boundaries like determination, delimitation, demarcation and administration, and may also relate to traditional rules or "title" as well. Therefore, it can be concluded that boundary disputes deal with issues concerning demarcation and administration, while territorial disputes address the mode of acquiring title. It should be noted that boundary disputes are actually about where the line is to be drawn and they are not always identical with a dispute over territory, while the traditional conquest of an entire state cannot be counted as a boundary dispute. A territorial dispute can be seen as a dispute over the possession of a large area lying between two or more states, with their own identity, and this territorial dispute may or may not be related to boundary issues.

It actually depends on the size or structure of the area because some areas might be too large or too complicated to be only regarded as a boundary dispute.

Importantly, some areas (including islands) which have a particular identity of their own, cannot be regarded as boundary disputes, but territorial disputes in a larger sense (Sharma, 1997).

Hence, Allott (1969) argues that there is no absolute dichotomy between boundary disputes and territorial disputes because they are inseparable and interdependent, and can also overlap in specific situations. He gives the example of the dispute between Cambodia and Thailand over the Preah Vihear temple to demonstrate his point. In this case, the two countries have been in conflict for the claim to sovereignty over the temple region which has been regarded as a territorial dispute, but this issue also concerns the boundary lines which they share around the temple (International Court of Justice, 1962).

In sum, boundary disputes affect relations between countries and the economies of the countries involved. Similarly, territorial disputes can also involve two claimants which do not share a boundary, and which demand for a redrawing of the boundary to include the disputed territory as part of their own land. Apart from the two distinctive categories of disputes, there is a category of mixed disputes which attract the application of a set of mixed principles and rules. No matter what kind of dispute, it is very important for a policy-maker to carefully examine the basic character of a particular dispute to help them understand policy implications and to select policies to effectively solve or reduce the conflict between the disputants (Sharma, 1997).

2.3 Explaining territorial disputes

According to many previous studies of disputes over territory, territorial disputes were traditionally regarded as the primary cause of war. Most primary research on territorial disputes- which are normally based on power-political assumptions- pointed out that the motivations for the emergence of territorial disputes generally occur from rational strategic and economic interests; the change in power relations; and state authorities' self-interest. Forsberg (1996)

argues that these primary studies of territorial disputes are severely misleading. He argues that the explanations for territorial disputes based on power-political assumptions are unsatisfactory as far as many current territorial disputes are concerned. He believes instead that many of the present territorial disputes are better explained from a normative perspective instead of a power-political explanation. The following sections will provide basic information about the power-political explanations for territorial disputes, and examine the new normative explanations for territorial disputes which have been put forward by Forsberg (1996).

First of all, there is a fundamental question about the meaning of a territorial dispute because a territorial dispute has been described in many different ways. This paper will use the definition of a territorial dispute by Powell and Wiegand (2010) who define it as a ‘dispute’ between two sovereign states in which the authorities in the challenger state have started a legal claim to a territory of the target state. A dispute exists when the target state refuses to cede the claimed territory to the challenger state resulting in violence and the use of military force between the two disputed states (Powell & Wiegand, 2010, p. 129).

Forsberg (1996) proposes two opposing explanations- power-political and normative- for a dispute over territory in terms of International Relations theory. The main idea of these distinctions is that normative explanations direct scholars to think about the different objects of disputes, the behavioral effects, policy prescriptions and strategies of resolution rather than just the dominant power-political explanations. Nevertheless, it is still necessary to review the idea of power-political explanations for territorial disputes in the first place because most dominant theories of International Relations have been Realist. Hence, it can be understood that most theories of territorial disputes are adopted in political praxis or hypotheses.

2.3.1 Power-political explanations

The primary territorial dispute explanations are derived from a power-political perspective which is based on Realist presuppositions. The Realist paradigm that refers to territorial disputes arises mainly because of power-political interests and favourable power relations (Forsberg, 1996). According to

Morgenthau (1954), political realists believe that politics is governed by objective laws which are based on human nature in order to develop society. Furthermore, the main signpost that helps political realism to find its way through the landscape of international politics is the concept of ‘interest’ defined in terms of ‘power’. With this concept, states’ power interests can be seen through the lenses of; classical realism and neo-realism. Classical realists will see that states’ power interests emerge from the selfishness of human nature, while neo-realists think that the anarchical nature of the international system is the main factor to force states to think only about their own benefits (Morgenthau, Thompson, & Clinton, 2005, pp. 4-5).

Overall, most Realists see that territorial disputes and territorial claims occur for selfish reasons, because territory has been seen as a fundamental power base. This is because they believe that territory provides significant strategic and economic benefits to states, particularly if they can expand in terms of geography. Therefore, states can increase in power and obtain further benefits as well. It can be noted that rising powers will make territorial demands and, conversely, declining powers will be challenged by territorial claims. Thus, Realists regard boundary changes as indications of the shift in the balance of forces, and argue that shifting power relations in the international system will normally result in territorial redistribution (Forsberg, 1996, p.435).

2.3.2 Normative explanations

Normative explanations refer to intersubjectively formed norms, regimes and institutions and subjective conceptions of justice or what might be called ‘principled beliefs’, for example, the idea to specify criteria for distinguishing right from wrong, and just from unjust, such as “slavery is wrong” and “human beings have the right to free speech” (Goldstein & Keohane, 1993, p. 9). Thus, morality and justice based on norms are seen as motivations for states’ actions in disputes over territory not states’ power interests. Unlike Realism or power-political reasons, there is no alternative theory based on normative interests. Normative explanations actually play only a minimal role in explanations of international politics. Interestingly, normative explanations actually raise a question about the meaning of justice interests or motives. Normative

explanations identify justice as an evaluative and emotional judgement which is based on the recognition that there is no appropriate correspondence between a person's fate and that to which the actor is entitled or what is deserved. Hence, the concept of justice in terms of normative explanations can be described as altruistic. Although when justice is regarded as a state interest, it does not mean that there are no self-interests in actors. On the other hand, those actors might choose among desirable objects those that also correspond with their views of justice. Thus, it can be noted that normative factors are significant to understanding the concept of justice which plays a major role as a motive for the dispute (Forsberg, 1996).

Although the concept of normative explanations point out that a state's actions over territorial disputes are for justice, a dispute over territory is one of the issues that often causes a sense of injustice in international affairs and among disputants. This is because most territorial claims are motivated by the sense of the right of ownership or the sense of belonging rather than by strategic or economic benefits because border disputes are usually based on history. Thus, there are two normative conceptions that are usually seen in the emergence of territorial disputes; the disputes that emerge from self-determination, and those that rise from historical changes of territory. Both concepts are powerful at an international level because they have their origins in values (the right of ownership). Furthermore, territorial disputes in normative views are fairly violent and long-standing. Although some other issues might be more likely to cause a war than territorial issues, there are various cases of war that have been closely linked to territorial issues (Welch, 1993, p. 42).

To conclude, territorial disputes are more likely to be normative than most other issues because respect for territorial integrity is one of the first principles of international law. The idea that some territories have been 'stolen away' is a powerful sentiment to motivate state action. Furthermore, in terms of normative and emotional explanations, territory relates to the collective memories of nations, ethnic groups and families, which cannot be easily forgotten (Smith, 1994, p. 190).

2.4 The development of a dispute over territory into militarized interstate disputes (MIDs), and war

Territorial disputes have been seen as a primary cause of war (Senese & Vasquez, 2003; Chang, Potter & Sanders, 2007; Wiegand, 2011), and territory itself is a source of power (Carter, 2010). Territorial disputes are often an underlying cause of interstate armed conflict which is an important factor in increasing the outbreak of war (Vasquez & Henahan, 2001). Territory is viewed as a highly salient issue for governments. This is because territory usually provides issues which set off a chain of events and those events can lead states into Militarized Interstate Disputes (MIDs). Additionally, territorial disputes tend to involve a military dimension and when territorial disputes are militarized they most often escalate to full scale war more than other types of disputes (Manicom, 2006).

2.4.1 Territory and the onset of war

There are several empirical studies all of which point out that territorial disputes are the main factor in the outbreak and intensity of the majority of interstate military conflicts and wars. However, this statement still lacks an explicit theoretical link between the role of territorial players in disputes and how it leads to the outbreak of war or the use of military force (Carter, 2010).

Vasquez (2001) agrees that territorial disputes play an important role in the onset of war. Historically, territorial and other types of disputes will not escalate to war at the first stage, but they tend to recur and fester then leading to conflict and war. Territorial disputes also lead to war when they are handled in a way which sets off a train of events which escalate into war. Thus, the decrease or increase in the probability of war depends on how territorial disputes are handled by the states (Vasquez & Henahan, 2001). Similarly, Senese and Vasquez (2003) state that territory can be the main factor in the onset of a war, but it does not immediately produce war. They also mention that the probability of going to war from territorial issues is not increased by the presence of a territorial disagreement in terms of one or both sides having conflicting territorial claims, but it increases because one side decides to use military force to support their claims. This means

that if states decide to militarize territorial disputes, there is a much higher probability of going to war in the next stage (Vasquez, 2001; Senese & Vasquez, 2003).

2.4.2 Territorial disputes and other types of disputes

Interestingly, states involved in disputes over territory tend to initiate militarized interstate disputes more than states involved in other types of disputes. This is the reason why territorial disputes are more likely to escalate the situation into war than other types of disputes (Wiegand, 2011). Furthermore, Vasquez and Henehan (2001) also discovered that territorial disputes have a higher probability of an escalation into war than other types of disputes as well, particularly when states decide to militarize territorial disputes (Vasquez, 2001).

Senese and Vasquez's (2003, p. 277) study demonstrates that territorial issues are very salient to authorities, and they will be willing to incur costs and take risks on territorial questions that they would not on other issues (regime or policy issues). The first reason that territory is very salient is that humans are territorial creatures and this tends to make them fight for territory. From the territorial explanation of war, human territory is the key to comprehend interstate conflict and war in the modern world. This is because it has been seen as responsible for the division of the Earth into territorial units, which makes states more concerned or sensitive about their borders and to any threat to their territory.

Another reason supporting the idea that territory is politically salient is a state's leader. State leaders may use territorial issues as an excuse to ride into power. Thus, territorial issues can be seen as a motivation for authorities to persuade their people to support states' actions. This is because territorial disputes are highly susceptible to increased hard-line actions from people. This logic supports the statement that territorial MIDs are more likely to cause fatalities and war than other types of MIDs (Senese & Vasquez, 2003).

Based on Gershenson and Grossman's (2000) 'myopic' framework, Chang, Potter and Sander (2007) found out that war is physically destructive and diminishes the value of land. They developed a stylized game-theoretical model to characterize explicitly the outcome of a territorial dispute. From the model, they

found out that the roots of variation in a conflict's duration and outcome depend on the two disputing countries' land valuation, military effectiveness, and cost of arming. Furthermore, they also conclude that land disputes between two similarly placed disputants will persist indefinitely given that the controlling party does not enjoy a stark positional advantage. Therefore, a dispute tends to end when opponents have access to different technologies for challenging political dominance, and if a dispute is to end, a high rate of physical destruction may lead it to end more quickly. Their observation shows that war is naturally destructive, but the likelihood of a peaceful outcome, in which the territory's initial possessor deters the challenging party, may be more likely to increase if the initial possessor holds more intrinsic value for the land.

2.4.3 The main factors explaining the emergence of territorial MIDs

Wiegand (2011) assumes that militarizing interstate disputes between the disputants tends to occur when territorial disputes are involved, particularly when those territorial disputes have strategic or ethnic value, when the opposing states are contiguous, rivals or have power parity, and when one or both sides of the dispute have a low or non-existent level of democracy.

Similarly, Carter (2010) states that territorial characteristics influence state behaviour in disputes over territory. Strategic location, the presence of valuable economic resources, and the presence of a minority with ties to the challenger state, are the main factors which can increase the disputants' valuations of territory and reshape their military capabilities. Hence, territorial characteristics affect states' means to obtain territory by force because those characteristics define how effective target state consolidation is in reshaping the conventional military situation.

According to the territorial explanation for war, geographic proximity or contiguity provides states with an opportunity to be involved in a conflict (Carter, 2010). Territorial disputes are more likely to end up being MIDs than other disputes. The most important factor explaining the emergence of territorial disputes is contiguity, or geographic proximity, between the states which give opportunities for contiguous states to be involved in disputes with each other. Therefore, contiguity actually increases the possibility of territorial disputes and

war because neighbouring states with closer distances can frequently interact along the boundary (Wiegand, 2011).

In terms of the contiguity explanation, Vasquez's (2001) research shows that contiguous states are much more likely to have a higher probability of going to war than non-contiguous states. Similarly, the presence of territorial disputes (regardless of contiguity) tends to increase the probability of going to war. Conversely, Senese (2005) found out from observation that contiguous states are less likely to escalate their disputes into war. Although it is normal that many contiguous states are more likely to get involved in various wars, the main factor of escalation is that those contiguous disputants are involved in many disputes and not because those disputes themselves lead to an outbreak of war.

Senese (2005) explains that contiguity affects the chances of conflict without the presence of territorial disagreement. Similarly, the latter raises the risk of disputes and war without the presence of contiguity. Senese's observation (2005) demonstrates that territorial claims influence states to be involved in MIDs more than non-territorial claims and the absence of contiguity and territorial MIDs have more probability of going to war than non-territorial MIDs. Therefore, the roles of contiguity and territory are both main factors in pushing states into disputes and wars and they are regarded as significant precipitators of conflict. However, territory is more likely to be an important precipitator of conflict than contiguity, particularly in terms of the onset of war.

Other territorial characteristics, such as strategic location, ethnic value, and economic value, have a high potential to influence states to get involved in MIDs in order to win the territory. This is because those values are sources of state power (Wiegand, 2011). According to Powell and Wiegand (2010), they categorize three typical types of territorial value which are strategic value, economic value, and ethnic value. The territory which has strategic value is the area that is located at or near military bases, major shipping lanes, or choke points for ships. The territory which has economic value is normally located at or near a significant amount of natural resources, such as fishing grounds, or depots of oil, iron, copper, and gemstones. Lastly, ethnic value refers to a territory which has minorities living on the other side of the border. There are several instances that

show that states have a high probability of getting involved in territorial MID when territorial disputes have strategic and ethnic value rather than economic value. This is because if territorial disputes have a high level of salience, as measured by the presence of a permanent population, existence of valuable resources, strategic value, and existence of ethnic or religious kinsmen, the likelihood of the use of armed force or MID is increased (Wiegand, 2011).

There are many studies that also show that states which are less or non-democratic are more likely to be involved in MID or the use of military force. However, Wiegand (2011) disagrees that democracy does not necessarily influence the probability of MID in territorial disputes. Indeed, although democracy was previously found to be positive in controlling the use of armed force along borders used to divide ethnic groups, terrain differences, and the existence of colonial masters before independence, it does not necessarily prevent wars. In fact, a democratic dyad has only little or even no effect on the onset of MID, particularly when the states are involved in disputed territory. It can be assumed that the existence of a democratic system cannot influence the probability of MID when factors such as salient issues which have strategic or economic values, or that are important to its people in terms of religion like the Preah Vihear temple, past attempts at settlement, and recent MID occur.

In conclusion, the general concept of territory has a strong impetus for militarized action, and tends to affect domestic populations which are more concerned about the rights of land ownership and are willing to fight in defense of it rather than in defense of an ideological or policy stance. Territorial claims on another state's territory influence the decision making of a state's leaders to get involved in a MID and the onset of disputes which finally escalate into war. This means that territorial claims increase the likelihood of a MID and territorial MID increase the probability of war (Senese & Vasquez, 2003).

As a result, resorting to the threat of or actual use of territorial MID can obviously lead to war. Territorial claims, however, have the potential to sour relations between the states. The initiation of a territorial MID, particularly in an area which has strategic, ethnic or economic value, is the main factor which drives states into war. Nevertheless, war is a highly costly and uncertain venture for

states, hence states normally do not escalate the situation into war unless less costly means fail. Therefore, it is reasonable to believe that the first MID would not necessarily increase the probability of going into war. Territorial MIDs may not immediately escalate into war, but they are more likely to recur and generate crises which particularly affect domestic political issues and the relationship on both sides, and those crises can finally escalate into war (Senese & Vasquez, 2003).

Additionally, territorial disagreements are expected to increase the probability of both an onset and escalation of a militarized dispute, and they can lead the disputes to become non-territorial disagreements as well (Senese, 2005).

2.5 Resolution of a territorial dispute: Peaceful Resolution of Disputes (PRD) methods

States which are involved in international disputes over territory are naturally unable or unwilling to resolve their disputes. This leads to an increase in tensions and conflict which might escalate into MIDs or even war between disputants. However, there are several options for the resolution of territorial disputes available to states. This paper will focus on the use of peaceful resolution of disputes methods (PRDs), such as bilateral negotiations, mediation and adjudication in dealing with territorial disputes and avoiding territorial MIDs.

First of all, there are many examples of territorial MIDs which occur when the disputants cannot find the best solution for both sides. Thus, territorial MIDs which are normally used by challenger states in winning and possessing territory, tend to occur before the use of peaceful resolution methods. The question arises as to why states tend to be involved in territorial MIDs before seeking a peaceful way to resolve the dispute in the first place. Wiegand (2011) mentions that the involvement of military force is influenced by the reputation of a state. A state's reputation in the international system is a very significant factor because it can affect how a state is perceived with respect to the credibility of threats, its resolve to use force, or its military capabilities, among disputed countries. In other words, states are concerned with their bargaining reputations when they get involved in

interstate disputes, thus those states which are perceived as being more powerful are more likely to use costly signals, deployment of troops, mobilization of armed forces, threats of military force, and limited war, in order to signal resolve and credibility to adversaries.

In this case a territorial MID is characterized as a ‘super costly signal’ which is normally used by challenger states to project its reputation to resolve disputes. If the situation was influenced by systemic factors, such as rivalry, power parity, major power states, contiguity, and strategic and ethnic values of territory, the likelihood of the onset of a territorial MID is increased. Indeed, challenger states often threaten or use force in a dispute over territory, and initiate another MID with a different adversary at the same time. Interestingly, challenger states are likely to be involved in territorial MIDs when they really need to signal resolve to other adversaries (Wiegand, 2011).

Challenger states are more likely to intensify the dispute into MIDs and are willing to win and possess territory by force. Gershenson and Grossman (2000) explain that challenger states want to win territorial disputes because of both economic and non-economic benefits and also the ability to be politically dominant. Political dominance can enable a group to appropriate economic rents with higher income or wealth, and to dictate social or religious policy and/or to avoid having the other group dictate social or religious policy which may allow the politically dominant group to obtain ultimate economic benefits.

Carter (2010) develops a framework to explain why and when the target of a territorial claim strategically consolidates its position in the disputed territory. The framework demonstrates that if a target state is weaker than its opponents, it tends to consolidate its position in the disputed area. This is because a stronger challenger state has more ability in military threat, hence it is more likely to use military force to resolve a dispute. For that reason, a weaker target state has to consolidate disputed territory because consolidation reshapes the military situation and increases the probability for the targets to deter some challengers from escalating disputes. Therefore, consolidation is effective when territory holds significant characteristics like strategic location, which leads to territorial consolidation: itself an important source of power.

However, Vasquez (2001) points out that most individual territorial MIDs actually do not lead states into war. Interestingly, the probability of war will increase if the practices of power politics are employed in attempting to resolve territorial disputes. He also mentions that the possibility of peace is more likely to happen if states can avoid military buildups which lead to arms races while being engaged in territorial disputes with another state. Therefore, a key to peace is the development of norms and rules of the game that will limit the unilateral acts of states and make states less likely to rely on the practices of power politics and more likely to peacefully resolve territorial disputes. For that reason, peaceful resolution of disputes methods (PRDs) should be the best way of resolving disputes over territory and rebuilding disputants' relationships in the future as well.

Wiegand and Powell (2011) present a theory which portrays the peaceful resolution of disputes (PRD) methods as a strategic process for states that search for the most favourable method of peaceful resolution in which the final choice is based on the state's past experience with a particular method. They also point out that past victory or loss or past experience of territorial disputes are strategically significant for challenger states to consider in the final decision to choose the best PRD methods for solving present disputes. Challenger states' past records guide them in selecting the best way of winning, while the targets' past win/loss records are also considered by the challenger states in providing them with clues about the most trustworthy way to settle territorial disputes. Hence, challenger states will use both their own and the targets' win/loss records as a guideline for the possibility of winning.

Apart from past win/loss records, Powell and Wiegand (2010) note that disputed states tend to choose an approach which is normally based on their domestic legal systems to resolve territorial disputes. This is because domestic legal systems provide states with clues about the most trustworthy ways to settle disputes and influence states' choices of PRD methods. Thus, states are more likely to choose PRD methods which are similar to those embedded in their domestic legal systems. Powell and Wiegand (2010) acknowledge the fact that territorial disputes are the primary cause of war, but they also point out that most states that are involved in territorial disputes have attempted to resolve disputes

peacefully, not through armed force. They also believe that when states make a decision to choose PRD methods (negotiations, nonbinding third party methods, or binding third party methods), they will consider a particular PRD that will work with both their own and the other side's domestic legal systems.

Allee and Huth (2006) explain that state authorities have to rely on their domestic political systems for policy-making for resolving territorial disputes and it has to be accepted domestically, because there is no recognized international actor with the power or authority to resolve international disputes. Thus, domestic political systems are one of the main factors in influencing states to choose a PRD method that will be most familiar and most understandable to them because states are more comfortable with a PRD method that employs rules and principles similar to their own domestic systems and is less likely to be blocked by local politics as well (Powell & Wiegand, 2010; Simmons, 2002). Similarity between a domestic legal system and rules of PRD methods helps states to understand each phase of the process of dispute settlements better. Familiarity allows states to predict their outcomes from settlements in a more precise way because states can expect their outcomes from the use of settlement in resolving territorial disputes, while differences between a domestic legal system and the rules of PRD methods decreases predictability (Powell & Wiegand, 2010).

Past experience is still the main factor in influencing states' approaches to resolving territorial disputes. This is because past win/loss records with peaceful resolution influences states' decisions to settle their disputes peacefully. The question that is generally asked is why states' decision making in resolving territorial disputes has to rely on past win/loss records. This is because states actually learn from their past interactions with PRD approaches, and also consider the outcomes of each approach as a guideline by which to find the best PRD method for the present dispute. This means that if a PRD method for a previous dispute has resulted in a favourable outcome for a state, that state is more likely to use the same method for a new territorial dispute. For instance, if a state had used arbitration and this led to a favourable outcome in the past, this state would be more likely to use arbitration for its subsequent dispute, although it might be over a different territory and with a different opponent. A particular PRD method

which is based on the past win/lose record satisfies a state which wins after resorting to the method (Wiegand & Powell, 2011).

Wiegand and Powell (2011) point out that winning or losing records do not matter equally in all PRD methods, but they matter more in third-party methods than in bilateral negotiations. A mediator, conciliator, good offices, arbitration panel, or a panel of judges naturally lead the disputants to form expectations and opinions regarding the third-party's decision. The win/loss record also matters most in binding third-party methods, arbitration and adjudication, which are based on relatively formal procedures of settlement (international law).

Nonbinding third party methods, such as good offices, inquiry, conciliation, and mediation, are based on more formal sets of rules (Wiegand & Powell, 2011). Parties might avail themselves of a third party to support the disputed states to find the most satisfactory resolution for all disputed states (Schoenbaum, 2008, p.70). They are created to soften the clear-cut winner-loser dichotomy. In the case of good offices, disputing states ask a third party to help them to find a peaceful settlement by negotiations. A commission of inquiry is set up on purpose to ascertain the contentious facts. During the process of conciliation, a third party- be it an individual or a plurality of personalities (Schoenbaum, 2008, p.71) - will consider all elements of the dispute, and then formally submit suggestions for a settlement to disputed states. In terms of mediation, disputants will provide a more active role for a third party in the negotiation stage, hence the third party can influence disputants' perceptions or behaviour regarding the dispute. However, nonbinding methods also support the interests of one disputant over the other and can create perceptions of winning or losing as well (Powell & Wiegand, 2010; Wiegand & Powell, 2011).

Bilateral negotiation is the way that states try to determine their grievances without the involvement of any third party. However, third party involvement naturally includes rules, procedures, and decisions about resolution, and also persuades disputants to negotiate for a peaceful settlement (Wiegand & Powell, 2011).

Lastly, arbitration and adjudication are binding third-party methods which are based on international law to resolve the disputes. Disputants will accept the award (arbitration) or judgment (adjudication) based on formal procedures of settlement. The similarities between arbitration and adjudication are that they both constitute legal means of settling disputes based on international law, with disputed states agreeing in advance to accept the award or judgment which are both based on relatively formal procedures of settlement. The main difference between arbitration and adjudication is that rules of arbitration are more flexible than rules of adjudication. Adjudication entails the submission of a dispute to a permanent court whose composition is largely fixed, while arbitration allows the contesting parties to choose the arbitrators. Although arbitration seems to be a reasonable choice for state authorities to settle territorial disputes, the method faces very specific domestic conditions, such as having no support from domestic political opposition (Simmons, 2002, p. 847). It is noted that the result of victory or failure play a very significant role in binding third-party methods because the consequences of a binding judicial decision or an arbitration award carry substantially graver consequences. Arbitration can be seen as a starkly asymmetric award, thus it is highly likely to yield a clear winner or loser (Powell & Wiegand, 2010; Wiegand & Powell, 2011, p.39).

2.5.1 Scholars' research on territorial PRD methods

Border or territorial disputes are seen as zero-sum games, and as a straightforward contest over territory among states or between states, or even non-state groups, by participants. The third-party (individuals and organizations) that tries to intervene in the disputes must take a flexible approach for dispute resolution. For interveners or third parties, territorial disputes tend to end in violence, hence they must be able to apply a variety of methods to different kinds of conflicts.

First, bilateral negotiations are most likely to occur when a disputed area has a highly salient value, and has had unsuccessful settlement attempts in the past. Second, nonbinding, third-party methods are most likely when the parties are engaged in military conflict or have fought a full-scale war. Third-party methods are less likely to be applied if bilateral negotiations between the parties were

successful in the past. Lastly, binding third-party resolution is more likely to be applied when there is a history of unratified border treaties, indicating internal opposition to a settlement.

Intervenors have to suggest models which may have a neutral or positive-sum outcome for the resolution of the disputes that disputants may agree on; this will help them to recognize their overarching interest in settling their dispute in a cooperative manner. Additionally, the disadvantage of judicial adjudication and arbitration is that if they are unpredictable in application, then the disputants cannot fully assess their risks before entering into these processes. For conciliation, intervenors cannot use this approach to reach a final outcome without agreement by the disputants (The Carter Center, 2010).

Wiegand and Powell (2011) state that past experience of both victory and failure from the use of a particular PRD method highly affects the process of a PRD method choice selection by a state for a subsequent dispute. They assume that the states' past win/loss records with different PRD methods used serve as a guideline in the quest for the most favourable forum. They also believe that a PRD method which has not yielded a favourable outcome in the past is less likely to be selected again, but a state is more likely to choose a PRD method that has previously fulfilled a state's expectation for a subsequent dispute. For instance, previous victories which are achieved by a PRD method actually increase states' trust in this method. From a state's point of view, a previous positive experience with a method increases the likelihood of another positive outcome, while previous failures create a negative experience. Unlike the winning experience which encourages states to use the same PRD methods, a losing experience decrease states' enthusiasm for a particular PRD method and that PRD method will be unlikely to be used again. Thus, states have to switch their strategy to a different bargaining strategy. Jervis (1976) explains that policymakers see unsuccessful outcomes as failures of policy, thus they will just switch to a different bargaining strategy.

There has to be a degree of control over the possible outcome of settlement in the challenger state's view, particularly for its reputation. This is because the challenger's reputation may be damaged if the judicial decision or an

arbitration award does not further its interests. The challenger's past victories or losses influence its perceptions of all PRD methods. At the stage of choosing a method of peaceful resolution, the challenger will try to persuade the target state to agree with the forum which best suits the challenger's interests (Wiegand, 2011).

Furthermore, the past victories or losses of the target state will also be considered by the challengers. In the challenger's view, the best possible forum should be a method that not only has benefited the challenger's interests, but also has not proven to be too favourable to the target. In fact, the challenger has to be aware of the truth that the target state may or may not agree to a particular method that has not proven to benefit it too. Therefore, the challenger must carefully weigh the costs and benefits of a particular PRD method for both disputants, and also maximize its possibility of winning (Wiegand & Powell, 2011, p.43).

Wiegand and Powell (2011) present two hypotheses: a challenger state with a positive win/loss record in a third-party PRD method is more likely to pursue the same method again, and the challenger's past win/loss record has greater influence on the pursuit of binding PRD methods than it does on the pursuit of bilateral and nonbinding PRD methods. Their research shows that bilateral negotiations are more likely to be proposed by most challenger states in attempts to resolve territorial disputes. Nonbinding third-party methods, which lie between political bilateral negotiations and strongly legalized arbitration and adjudication, and binding third-party methods are respectively much less popular than bilateral negotiations. A survey of territorial disputes from 1945 to 2003 shows that challenger states normally won most of the territorial settlements and gained most of the territory.

Challenger states actually use the target states' past win/loss records with third-party methods as clues to help make a decision about resorting to adjudication or arbitration. Positive experience with adjudication or arbitration increases challenger states' trust in all third-party methods. However, if target states have had a good experience with adjudication, arbitration, or even any nonbinding third-party methods, the challenger states are less likely to propose legalized PRDs (Wiegand & Powell, 2011). Legalization is a form of institution

distinguished by obligation, precision and delegation (Keohane, Moravcsik, & Slaughter, 2000, p.458). Keohane, Moravcsik and Slaughter (2000) also explain that legalization actually controls state behaviour in international territorial disputes bargaining.

Past experience also matters greatly in nonbinding third-party methods because challenger states are more likely to propose nonbinding third-party methods to target states which have had past positive experiences with these methods before. Thus, a challenger state tends to propose a nonbinding third-party method to a “winner target” or a target state that had a positive record with this method in the past, and needs to mould the outcome of the settlement by choosing an appropriate third-party, a third state or international organization (IO), which will benefit the challenger’s claims. From the challenger’s point of view, the target states which have had positive experiences with these methods before, have a high potential to agree with these methods (Wiegand & Powell, 2011).

For the second hypothesis, the results show that the challenger’s past win/loss record matters particularly in binding third-party PRD methods for states which have faced past violence before, but the challenger’s decisions mainly depend on the target’s win/loss record. Two states with power asymmetry or which are somewhat equal in power tend to propose negotiations to binding third-party assistance, while international organizations play a significant role as third-party conflict managers in a situation of power parity (Wiegand & Powell, 2011).

Interestingly, they also found that if the two disputants share membership in peace-promoting organizations, they are more likely to use binding methods of PRD versus bilateral negotiations to resolve territorial disputes. Shared alliance and joint democracy do not greatly influence the choice of PRD methods. States which have a military alliance (a sign of trust between states) are more likely to propose bilateral negotiations rather than arbitration or adjudication (Wiegand & Powell, 2011), because arbitration and adjudication are often hindered by domestic politics (Simmons, 2002). The disputants who are military allies normally share security interests which encourage informal and low-cost bilateral negotiations (Wiegand & Powell, 2011).

To conclude this survey of Wiegand and Powell's (2011) study, challenger states are more likely to choose PRD methods which will be most likely to give a favourable outcome to them, and use both their own and the target's past win/loss records to identify the optimal way to settle a dispute. Territorial disputes have both negative and positive influences in terms of world politics. On the negative side, several PRD methods encourage states to rank forums of disputes resolution in order of being more biased toward them or their opponents. Thus, the judgment from third-party organizations like the ICJ seems to fulfil one side's expectations more than the other which may automatically generate an absolute loser and winner. The "loser" will reject the judgment from the court and find other methods in the hope of obtaining a victory instead. On the other hand, the positive side is that all PRD methods ranging from bilateral negotiations to binding adjudication can constitute effective conflict management strategies for states that see the methods as legitimate, which leads to a number of potential forums existing in international law. Thus, states can resolve disputes on their own outside of court.

According to Powell and Wiegand (2010), less than half of all territorial disputes have become one or more militarized interstate disputes (MIDs), and most territorial disputes are about disagreements over past treaties, conventions, and even colonially imposed borders, which involve the interpretation of law. Although most territorial disputes are resolved through bilateral negotiations, disagreements over territory can also be subject to resolution by a third party through mediation, conciliation, good offices, inquiry or more formal mechanisms, arbitration or adjudication. Their research demonstrates a theory of all methods of peaceful resolution of disputes as legal phenomena, ranging from the least to the most formalized and legalized bilateral negotiations, nonbinding third party methods, and arbitration and adjudication, respectively. They note that 'salience' of the territorial claim is the main factor for states' resolution choices in resolving their disputes. They also mention that third parties are more likely to get involved in nonbinding activities when those territorial disputes tend to threaten global or regional stability, and intervene in disputed issues that are highly salient.

Power relations between the disputants also influence the choice of peaceful resolution method. Recourse to legal dispute settlement is more likely to

occur if the disputants have relative power parity; states with power preponderance are less likely to trust and accept third party judgments. States which have power parity are less likely to seek negotiations and much more likely to resort to third party methods, and more likely to accept a peaceful settlement if they have faced a high risk of armed conflict. However, if states have faced past failed settlement attempts, in particular concerning territorial disputes, it actually increases the prospect of third party assistance, whereas past successful settlement attempts increase the probability of bilateral negotiation. Adversaries that have past winning records are most likely to use binding party methods, such as arbitration and adjudication, to deal with their opponents.

Powell and Wiegand (2010) note that states tend to prefer using particular methods of PRD which are based on the resemblance of rules and principles embedded in their domestic legal systems because those methods are familiar to them and make states more comfortable with using them effectively. Furthermore, a PRD method which is based on domestic legal systems is less likely to be blocked by domestic politics and more likely to be continued to be used throughout the process of resolving territorial disputes (Keohane, Moravcsik, & Slaughter, 2000). In terms of interstate interaction, each PRD method has a unique set of rules which generally control the behaviour of the participants, disputants and the third party (if present), and supply the basis for evaluating how the dispute will be settled (Powell and Wiegand, 2010).

Keohane, Moravcsik and Slaughter (2000, pp. 457-458) present two ideal types of legalized disputes resolution. First, interstate dispute resolution is “consistent with the view that public international law comprises a set of rules and practices governing interstate relationships”. Thus, states play a role as gatekeepers both to the international legal process and from that process back to the domestic level. Secondly, transnational dispute resolution where “access to courts and tribunals and the subsequent enforcement of their decisions are legally insulated from the will of individual national governments”. With this type of legalized dispute resolution, courts are more open to individuals and groups in civil society to participate in and creates a range of opportunities for courts and their constituencies to set the agenda.

Powell and Wiegand (2010) also present a continuum of the degree of how legalized and formalized PRD methods are. The least legalized method of PRD is negotiations, and the most legalized methods of dispute settlement are arbitration and adjudication, while nonbinding third party methods (good offices, mediation, conciliation, and inquiry) are in the middle. They assume that a dispute involving territory with ethnic and strategic values will make it more likely for states to choose more legalized PRD methods. On the other hand, a dispute involving territory with economic values will make it more likely for states to choose less legalized methods. Powell and Wiegand state that all dyads are most likely to resort to bilateral negotiations. From their observation, negotiations are the most popular settlement for territorial disputes, while arbitration is the least popular of the PRD methods.

2.6 Conclusion

Since ancient times, humans have been instilled with a sense of belonging and land ownership of their territory; territory significantly refers to its people's beliefs and identities. Thus, people will fight and protect their territory so as to protect their identities and maintain their rightful ownership of the land and its resources. In the modern world, economic, resource and political benefits over territory are seen to be the main factors influencing states to get involved in disputes over territory. Territorial disputes are actually disputes over the sovereignty between two states or more which normally occur when a challenger state starts a legal claim to a territory of the target state: they can significantly affect international relations and economic systems.

Many scholars believe that territorial disputes are the primary cause of war. Despite this, territorial disputes will not directly escalate into war, but set in motion a train of events. For instance, territorial disputes which cannot be resolved by negotiations will normally result in an outbreak of military force on both sides, escalating the territorial dispute into a territorial militarized interstate dispute and war. To prevent the outbreak of war, disputed states need to find ways to deal with the disputes peacefully. Peaceful Resolution of Disputes methods (PRDs), nonbinding third-party methods, bilateral negotiation and binding third-

party methods, have been recommended by many scholars as the most favourable forum or settlements to resolve disputes among states which are unable or unwilling to resolve their territorial disputes. First, nonbinding third-party methods, such as good offices, inquiry, conciliation, and mediation, help disputed states to softly decide the winner or the loser by negotiation. Bilateral negotiation is the second PRD method; disputed states will negotiate with each other without interveners or third parties. Lastly, binding third-party methods such as arbitration and adjudication, are based on international law and the International Court of Justice will decide the absolute winner. Thus, these methods yield a clear winner and loser.

For disputed states which want to use PRD methods to resolve territorial disputes effectively, past winning/losing records or past experience of using particular PRD methods on both sides will be considered. Considering the past experience of using a particular PRD method can provide a state with a predictable outcome, and the method may be more effective if a state has a good experience of using it before rather than using a method that has never been used. In addition, to find an effective settlement in resolving territorial disputes, policy-makers or authorities have to consider disputed states' domestic legal systems as well as past winning/losing records, because using a particular PRD method which is based on their own domestic legal systems provides states with familiarity. This will allow them to be more comfortable using a particular method, and hence that method tends to be more effective.

Chapter 3

Territorial disputes in Southeast Asia: Unresolved territorial and maritime disputes in the South China Sea and other resolved cases

3.1 Introduction

From the previous chapter, territory has been seen as one of the main sources of states' power because it provides both economic and strategic benefits to claimants by raising states' political leverage in the international system. Thus, this can explain why territorial issues have been acknowledged as one of the major causes of war by various scholars. This chapter will focus more specifically on both territorial and maritime disputes in the Asian region, particularly in Southeast Asian countries, and available policy options.

Most territorial and maritime issues in Asian regions generally result from historical, geographical, and political shifts. Geographically, Asia is divided into two sub-regions: Northeast Asia, such as China (including Hong Kong, Macau, and Taiwan), Japan, North Korea, South Korea, Mongolia, and Russia (Russian Far East), and Southeast Asia, such as the Philippines, Vietnam, East and Peninsular Malaysia, Brunei, Cambodia, Laos, Burma (Myanmar), East Timor, Indonesia, Christmas Island, Singapore, and Thailand (Emmers, 2010). Asian nations are geographically linked to each other in terms of international relations and economic associations such as inter-state trade and investments. The South China Sea (SCS) is an important sea line of communication and an important maritime gateway for China's mainland and nearby islands (Lim, 1979). Although the region is becoming more economically integrated, there are a number of unresolved territorial disputes, especially in maritime areas. These unresolved territorial and maritime disputes greatly threaten stability and peace in the region.

Territorial and maritime disputes in Southeast Asia generally result from two main factors: history and the legacy of the colonial period. Maritime

boundaries and territorial disputes in Southeast Asia are about a combination of sovereignty and sovereign rights: the rightful ownership of disputed islands which is an issue of territorial sovereignty; their maritime boundary delimitation from the baselines of mainland coasts or from the disputed islands; and the exploitation of resources within these extended maritime boundaries (Kim, 2008 ; Zhao, 2011). Moreover, the question of the ownership of these islands in the South China Sea has become one of the most fundamental barriers to closer inter-state relations in the region, particularly since oil and natural gas were found there in the late 1960s (Min, 2009).

This chapter will examine unresolved territorial and maritime disputes in the Southeast Asian region, focusing on issues in the South China Sea (Spratly Islands and Paracel Islands), and the available policy options or strategies that have been used, including treaties and agreements, in dealing with these disputes. This chapter will also examine two resolved territorial and maritime disputes in Southeast Asia which are the disputes over Pulau Ligitan and Pulau Sipadan between Malaysia and Indonesia and the dispute over Pedra Branca/Pulau Batu Puteh between Malaysia and Singapore, and their successful resolution as examples for other unresolved disputes in the region.

3.2 An overview of territorial and maritime disputes in Southeast Asia

While the number of armed forces in Western countries has reduced, the number of armed forces and military expenditure in Asia has substantially increased. This results from the lack of international cooperation among the region's members. Territorial maritime disputes in Asia, particularly in Southeast Asia, have become multilateral issues because these disputing nations are interconnected with each other, but they lack cooperation in compromising or dealing with the disputes. This can be seen as one of the region's main weaknesses, especially when compared to other regions' territorial and maritime cooperation. Furthermore, most territorial disputes among Asian nations are more complicated, whether they exist on land or sea, due to historical animosities or

complex conditions relating to the rightful claims of borders and resources in the regions (Guan & Skogan, 2007 ; Min, 2009).

There are two main areas of disputes in the region: territorial sovereignty and maritime sovereignty. First, territorial sovereignty concerns claims of rightful ownership of the land itself and it also refers to historical presence in determining rightful control, while maritime sovereignty tends to relate to the territorial delimitations based on the 1982 United Nations Convention on the Law of the Sea (UNCLOS III) (Manicom, 2006). Manicom (2006) concludes that there are two key issues of territorial maritime disputes in Southeast Asia, maritime boundaries and the resources of the sea.

Manicom (2006) also identifies six main elements in the emergence of territorial maritime disputes in Asia. First, territorial contiguity provides states with opportunities to interact across a border which can lead to territorial disputes. According to the 1982 UNCLOS III, a 12 nautical mile (nm) territorial sovereign boundary was specified from a nation's coastline, and also a 200 nm Exclusive Economic Zone, which includes the seabed resources, islets, and shipping lanes. Therefore, the country which has the rightful sovereignty over the islands or maritime boundaries would also possess all natural resources in the surrounding areas, including untapped oil and gas deposits surrounding the islands. For these reasons, Southeast Asian nations that geographically share maritime boundaries, have faced both maritime and territorial disputes frequently. The resources within the seas and many small islets in the South China Sea are significant factors for the emergence of territorial disputes in the region, particularly between China and other neighbouring countries (Zhao, 2011). For instance, after UNCLOS III gave every state the right to claim a 200nm EEZ, territorial contiguity in terms of maritime context can be understood as allowing any two states who share an EEZ border with each other to claim that border with each other up to 400nm. However, the claim of the Spratly Islands in the South China Sea between China and Taiwan is not contiguous because it is beyond the 200nm criteria. Thus, contiguity in the maritime context is problematic and more complicated because it might give contiguous states an opportunity to claim the ownership of unclear landmarks areas with their neighbours which will lead to disputes between them.

The second element is the existence of natural resources or other installations, which can all affect the degree and tone of local interactions across the border. For example, the Paracel and the Spratly Islands in the South China Sea may be included because they both have constructed military installations, such as airfields and signalling stations. Relative military capability is the third element which affects a state's determination to acquire territory in as much as they are a measure of the balance of power across a given border. In the case of the South China Sea, particularly the Spratly Islands, all claimants except Brunei have constructed military facilities on the islands. The fourth criteria is salience (how important a territory is to a state) which again impacts on a state's determination to acquire territory. Salience is a measure of the value of a territory, such as its natural resources, economic benefits, cultural homogeneity, and role in strategy which are important to a state's security. For example, in the disputes in the East China Sea over the Senkaku/Diaoyu Islands between China and Japan, the territory is salient in terms of strategic rivalry. The next element concerns domestic political considerations such as public opinion and national identity, which strongly affect a state's decision on territorial issues. The relevance of regime type is the last criteria. Democracies do not use military force against each other, especially in an Asian context. However, there are many different types of regimes among the South China Sea claimants: two liberal democracies, one monarchy, one guided democracy, and two authoritarian 'market socialist' states (Manicom, 2006).

From the six elements explaining the emergence of maritime disputes in Southeast Asia, it can be seen that the South China Sea is the most disputed maritime area in the region. Therefore, it can be understood that the main maritime disputes in Asia are over territorial ownership of the sea, EEZs, and the continental shelf between states. Moreover, territorial maritime issues in Asia, particularly in the South China Sea, are complex because of the existence of islands in the disputed areas. This is because the claimants try to claim "sovereign rights" over the continental shelf and/or the EEZ around the islands because those provide economic rights to the claimants. In this case, the key legal regimes of maritime jurisdiction established by UNCLOS III need to be given more consideration. The creation of EEZs (including sovereign rights with the

continental shelf with sovereign rights over the water columns a conceptual column of water from surface to bottom sediments beyond the territorial sea) by UNCLOS has resulted in a complex maritime space between states in Southeast Asia which has led to disputes over who has the rightful ownership and therefore the formal sovereign right to possess, explore, exploit, conserve, and manage the natural resources, whether living or nonliving, of the water column of the sea, and the seabed (Min, 2009).

It is important to comprehend China's role in these SCS disputes because China, which is one of the most powerful nations in the world, has claimed these disputed areas over other Asian nations, particularly Southeast Asian states such as Vietnam, Malaysia, Indonesia and the Philippines. As a consequence, this has had a great impact on China's relations with its neighbours and on Asian security. This has raised the question as to why China has tried to claim the SCS. To understand this, the importance of the South China Sea to China has to be considered.

First of all, it is necessary to look at China's past disputes. Like many existing territorial and maritime disputes around the world, China's territorial disputes are also about territorial integrity. However, China's territorial disputes have been particularly linked to ethnic geography which refers to the density and distribution of ethnic groups within a state, inherited from its imperial past. Looking back at the past, before becoming the Republic of China, the nation had many dynasties, such as the Qin (221 b.c.-206 b.c.), the Yuan (1271-1368), the Ming (1368-1644), and the Qing (1644-1911), which allowed the empire to expand its territory all over the region (most of Asia in the present time) and dominated many ethnic groups, such as Mongolians and Tibetans, for centuries. However, after the collapse of the Qing Empire around the early nineteenth century, the number of territories under Qing rule decreased dramatically because those ethnic groups became independent from main land China and ruled themselves. Thus, after 1949, China has experienced many territorial and maritime disputes with its neighbours who once were under the control of Chinese Empire (Fravel, 2008).

As a result, China uses ‘historical right’ to claim territory which used to belong to the Empire, particularly the whole of the South China Sea including all islands and rocks. China is also less likely to compromise with other claimants, and tends to resort to military means instead (Guan & Skogan, 2007). Apart from historical rights, the South China Sea is also of great importance to China in terms of maritime commerce, its economy, and oil reserves. China has tried to claim some areas in the South China Sea, particularly over the Spratly Islands and the Paracel Islands, with the goal of historical claim, oil and gas exploration, and other resources within these islands (The maritime executive, 2012). China now has over four million square km of sea area, 1,400 harbours, and a great number of cargo ships, thus these maritime industries formed 10 per cent of the country’s GDP (US \$270 billion) in 2006, and might reach one US\$ trillion by 2020 (Wu & Zou, 2009). However, the disputes over the Spratly and the Paracel Islands are still going on without any permanent resolution or agreement to end the disputes.

The Spratly Islands are located to the south of China, southeast of Vietnam, west of the Philippines, and north of Malaysia, and have been disputed among these countries since 1988. The Paracel Islands are located to the east of Vietnam and south of China’s land province of Hainan. Although the Paracel Islands have been less disputed than the Spratly Islands, Vietnam still contests China’s administration (Zhao, 2011).

It is very interesting that there have been no fundamental resolutions of territorial sovereignty or maritime boundary delimitations acceptable to the various parties involved in the disputes. Thus, China has used this opportunity to announce the Law on the Territorial Sea and Contiguous Zone by its National People’s Congress in 1992, which has helped China to claim a “U-shaped line” of demarcation in the SCS for its EEZ and continental shelf and to specify that the SCS islands have fallen under China’s geographic scope. As a result, China has continued sovereignty claims over the SCS and ECS islands, stressing that it has “indisputable sovereignty” and threatening the use of force in both regions anytime if it is necessary (Zhao, 2011).

3.3 Territorial and maritime disputes over the Spratly and Paracel Islands

Territorial and maritime disputes in the South China Sea, particularly over the Spratly and the Paracel Islands, are influenced by four main factors: historical, strategic, economic, and political (Guan & Skogan, 2007). Since the second decade of the 21st century, many scholars, politicians, and admirals have seen the SCS region as combining competing naval exercises and debates over the ownership of islands, seabed, and resources among those powers involved (Dillon, 2011).

The territorial disputes over sovereignty in the SCS involve six coastal states (Taiwan is considered as being separate from the People's Republic of China or PRC) (Elforink, 2001). The SCS is strategically important as the shortest route connecting the Indian and Pacific Oceans. In terms of economic value, the region is a "maritime pipeline" which is used to transport "goods" or fishery products and over half of the world's oil tankers each year from the Middle East, Africa and South America to Asia and other continents (Pham, 2010). The SCS is one of the busiest waterways in the world with almost half of the world's shipping passing through it, including a significant portion of northeast Asia's oil which comes from the Middle East (Dillon, 2011, p.54). Apart from being one of the most important shipping lanes in the world, the region is also rich in fish resources and is thought to have a large amount of oil and gas resources (Guan & Skogan, 2007).

The Paracel archipelago is a group of fifteen islands and several sand banks and reefs (Lo, 1989) which has the most strategic location in terms of surveillance and potential control of the main north-south shipping route. The largest island of the Paracel group is Lincoln Island with a length of 2.3 kilometres and width of 800 metres (Lim, 1979). The sovereignty of the Paracel Islands has been contested by China and Vietnam since the early 1950s, but the PRC is actually the first claimant since 1951 along with its claim to the Spratlys (Fravel, 2008).

The Spratly archipelago is a group of more than a hundred islets, reefs, shoals, and sand banks in the southern part of the SCS (Lo, 1989). The Spratlys also have great strategic value in terms of proximity to vital trade routes and as a basis for further enlarged claims on available sea-space and, significantly, for extended influence within a semi-enclosed arena where, in the long-term, littoral states will play a greater role in regional affairs in contrast to the colonial and immediate post-Second World War eras (Lim, 1979). The Spratly Islands' sovereignty has never been determined in an international agreement. They are claimed in whole or in part by China, Taiwan, Malaysia, the Philippines, Vietnam, and Brunei (Fravel, 2008). Zhao (2011) presents a table which provides an overview of territorial disputes over the Spratly and the Paracel Islands.

Table 3.1 an overview of territorial disputes over the Spratly and the Paracel Islands

	Spratly Islands	Paracel Islands
Claimants	PRC, Taiwan, Vietnam (complete) Malaysia (part), Philippines (part), Brunei (part – fishing zone)	PRC, Taiwan, Vietnam
Chinese Name	Nansha Islands (南沙群岛)	Xisha Islands (西沙群岛)
Geopolitical Significance	Oil, natural gas, fisheries, shipping links, Strait of Malacca	Oil, natural gas, fisheries, shipping links, Strait of Malacca
Ownership and Claims (from 20th century)	1930s: French occupation WWII: Japanese occupation 1951: Japan renounced claims in the San Francisco Treaty; claimed by Vietnam	1930s: French occupation WWII: Japanese occupation 1951: Japan renounced claims in the San Francisco Treaty; claimed by Vietnam 1956: France withdraws, South Vietnam controlled islands 1958: Claimed by PRC
Current Administration	PRC, Taiwan, Malaysia, Philippines, and Vietnam; Vietnam controls largest number of islands	PRC's Hainan Province
Notable Conflicts and Developments	1974: PRC and Vietnam 1988: PRC and Vietnam (Johnson Reef) 1992: PRC and Vietnam (Da Lac Reef) 1995: PRC and Philippines (Mischief Reef) 2002: ASEAN Declaration of Conduct	1974: PRC and Vietnam (Battle of the Paracel Islands) 2002: ASEAN Declaration of Conduct

(Zhao, 2011)

According to Table 3.1, the disputes over the sovereignty of those islands have been between Southeast Asian countries and China. The Paracel group is the subject of a bilateral dispute between the People's Republic of China and Vietnam, while the Spratly Islands are disputed between China, ASEAN members, Brunei, Malaysia, the Philippines and Vietnam, and also Taiwan (Pham, 2010). China seems to have strongly stated its claims to sovereignty over both island groups in the SCS, even though this has been opposed by many Southeast Asian countries and Taiwan. This raises the question as to why China may be willing to risk a military conflict in the SCS.

Claims over the Spratlys and the Paracels are generally based on historical factors. Pham (2010) explains that in the ranks of claims over territory of the Spratlys and the Paracels, all the claimants, except Brunei, have carried out occupation of disputed islands. Interestingly, Vietnam ranks the first with twenty-one occupied islands and reefs. The Philippines ranks second by occupying nine islands. Next is China which occupies seven reefs and shoals, and has some facilities, while Malaysia ranks fourth with five occupied areas of the Spratlys. Taiwan is the last one by occupying only one island, Itu-Aba, but it is the largest island of the Spratly archipelago with the most facilities among the occupied islands because it was once used by Japan as a wartime submarine base (Pham, 2010 ; Lim, 1979). Brunei, on the other hand, claims a continental shelf which is based on an extension of the inshore limits created by the British in 1958 incorporating the Louisa Reef (or Nantung Chiao), a feature that has a couple of rocks that are above high tide and “ a navigational light maintained by Malaysia” (Smith, 2010, pp. 215-216).

Territorial and maritime disputes over the Spratly and the Paracel Islands can be examined in the context of UNCLOS III which was adopted on 30 April 1982 and came into force on 16 November 1994. The claims made by the parties involved can be characterized into historical claims of discovery and occupation, and claims that rest on the extension of sovereign jurisdiction under interpretations of the provisions of UNCLOS (Guan & Skogan, 2007, p.51).

All claimants are using interpretive definitions of UNCLOS articles to justify their respective territorial claims, except China which uses a combination of broad territorial claims; economic, political, and military strength; an uncompromising diplomatic stance; and demonstrated aggressiveness in pursuing its objectives. This has made China the most significant actor in resolving the territorial disputes and also the biggest obstacle to this (Dillon, 2011, p. 54). This was seen after China and its Standing Committee of the National People's Congress announced the "Law on the Territorial Waters and Their Contiguous Areas" (Territorial Sea Law) on 25 February, 1992, which allows the Chinese government to engage in activities in asserting sovereignty over the Paracels and the Spratlys (Dillon, 2011). However, the great confusion over sovereignty claims in the SCS has actually emerged from several "lines" that have appeared on maps and charts since 1992, such as the 1947 U-shaped lined map (Smith, 2010). For instance, China was the first nation in the SCS region to assert sovereignty over the islands and islets enclosed by the unique U-shaped line system, and there were no objections or protests against its claims when the Chinese government declared the U-shaped lines in 1947. China released 'the 1947 U-shaped lined map' in the context of the aforementioned practices of the Chinese Government (Wang, 2010).

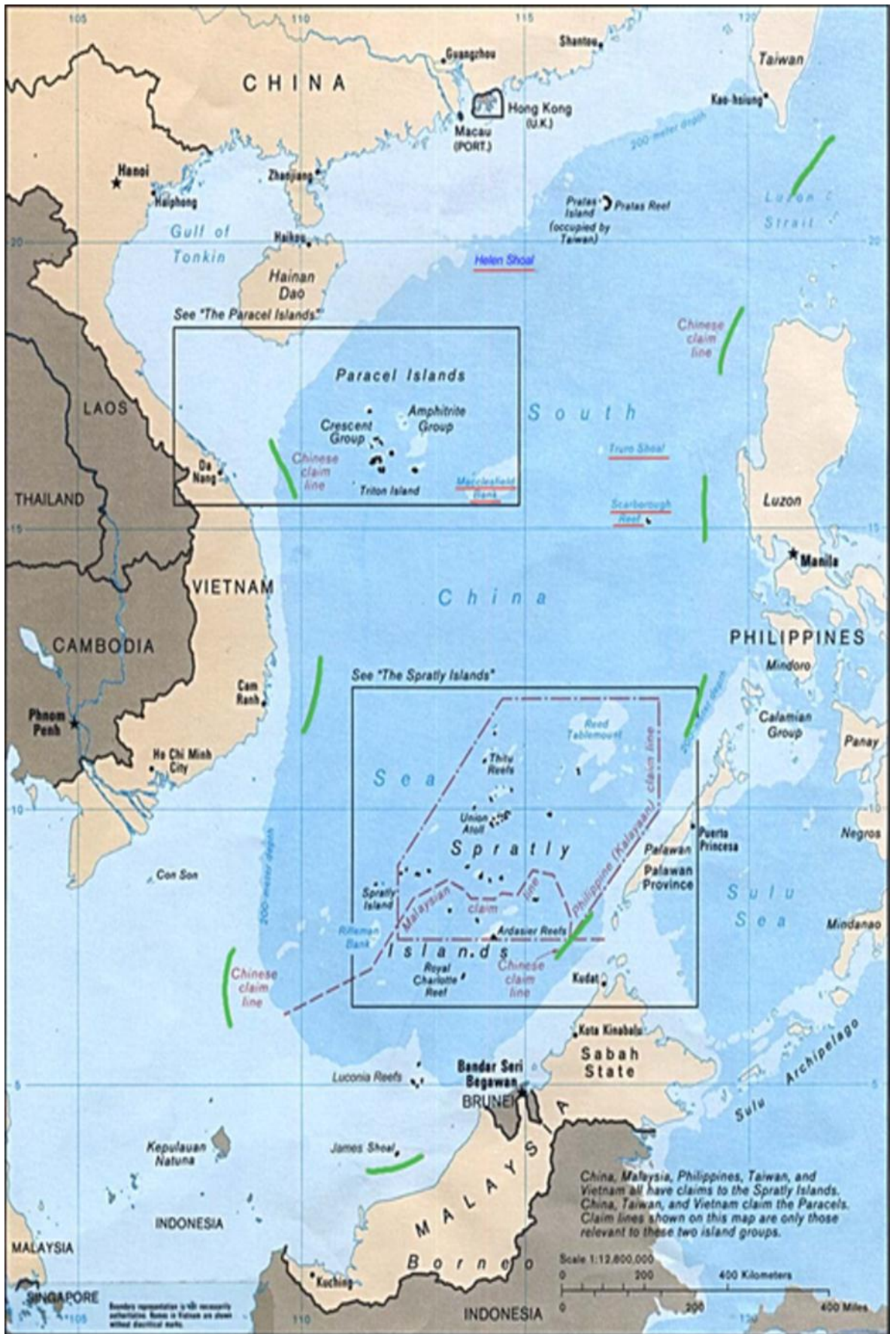


Figure 3.1: U-shaped line map claimed by the PRC (Bozzi, 2012)

The map (see Figure 3.1) illustrates the U-shaped line in which there are nine or eleven (in some articles) intermittent dotted lines encompassing most of the islands and islets in the SCS (nine short lines around the SCS), such the Paracel and the Spratly Islands and the internal waters between other claimants such as Vietnam, Taiwan, the Philippines, and even Indonesia. The Chinese government used this U-shaped line map to justify its claims over the region (Wang, 2010). The PRC has continued using its own map based on its history with nine or eleven dotted lines outlining its claim, which gives China almost the whole sea. China still firmly states that territories which appear in its map belong to China because the map has been used since the ROC published it during the Chinese civil war in the 1940s and no powers had objected to it (“Carps among the Spratlys,” 2011). Thus, these dashed lines can be seen as an “historic claim line” or “traditional sea boundaries line”, which provide China the right to possess most of the territory over the SCS (Smith, 2010, p. 224). With this map, China can reinforce its jurisdiction over virtually all of the waters of the region, which has been strongly opposed by other claimants like Vietnam, the Philippines, Malaysia, Brunei and Taiwan (The Maritime Executive, 2012 ; Turton, 2011). China has claimed about twenty miles of the Sarawak coast of East Malaysia, and embraces the Paracels, all of the Spratly archipelago, the Pratas islands, the Macclesfield Shoal, the Reed Bank, and the Tsengmu Reef off the Sarawak coast. The Chinese map shows that China has extended its claims close to the central Vietnamese coast, which Vietnam has completely rejected (Lim, 1979). Indonesia, which is not one of the claimants, also objected to China’s map because the claim encroached on Indonesia’s water and the dotted lines extended all the way to the EEZ of Indonesia’s Natuna Island too (Smith, 2010 ; Dillon, 2011). Therefore, the map has created great confusion among scholars and governments for decades because some scholars and other disputing nations point out that any sovereign or jurisdictional rights must come from ownership of the islands not from the dashed lines (Smith, 2010). The history of territorial disputes over the two islands groups in the SCS between some ASEAN members and China needs to be reviewed.

The disputes over the Spratly and the Paracel Islands in the South China Sea have emerged from many elements, but one of the most important elements is the historical perspective, particularly for China resulting from the use of its own

map. Historically, China discovered, exploited, and developed those disputed islands in the SCS for over two thousand years, long before the islands were put under the administrative jurisdiction of the Chinese government as Chinese territory. The Chinese government divided those islands in the SCS into four main groups; Dongsha (East Sand) Archipelago, Zhongsha (Central Sand) Archipelago, Nansha (South Sand) or Paracel Archipelago, and Xisha (West Sand) or Spratly Archipelago. Unlike the Paracel and the Spratly archipelagos, China's sovereignty over the Dongsha and the Zhongsha Islands has never been questioned or disputed by other countries (Chang, 1991).

China's first claim over the Spratly or Xisha Islands dates back to the second century on the principle of first discovery. China mentions that Chinese fishermen used the islands as a transit point during the Western Han Dynasty, and demonstrates that there were several expeditions that were sent by the Ming Dynasty to the Spratlys in the fifteenth century, and that periodic references to the islands were made in Chinese records up to the seventeenth century (Emmers, 2010). The Spratlys are geographically important to China in terms of being interlinked with other Chinese claims such as those relating to the Soviet Far Eastern border lands and the Senkaku or Tiao-yu islands between Taiwan and Japan, which are held by Japan. The disputes are all interlinked and if one dispute is settled that is against China, then China will see this as a threat to its other claims (Lim, 1979).

China first placed its markers on the Paracel islands in 1907 after the country signed a boundary agreement with France to leave the islands on China's side of the designated line (Emmers, 2010). Both the Spratly and the Paracel territories were challenged by France before World War II (during the colonial period in the 1930s), and by the Philippines and Vietnam after World War II. For instance, France asserted its ownership of the Spratly and Paracel Islands between 1930 and 1932, after that Japan occupied all four archipelagos during World War II from 1939 to 1945, and returned them and other territories to China after World War II under the San Francisco Peace Treaty of 1951 and the Sino-Japanese Peace Treaty of 1952. Many official maps, documents and British and French books recorded Chinese inhabitants in the Paracels and the Spratlys, providing important

evidence that the two archipelagos had been China's territories before (Chang, 1991).

During the 1930s, China had lost its position and power, and some territories to colonial powers such as France. France declared formal possession over both the Spratly and Paracel archipelagos in 1933 as parts of its colonial administration over Vietnam, which was disagreed with by China. Another colonial power was Japan; Japanese companies had excavated guano in the Spratlys since 1918 for use in fertilizer. Japan used many of the major islands in the Spratly and the Paracel Islands in 1939 for strategic purposes. One of the major islands that was used by Japan was 'Itu Aba', the largest island in the Spratly archipelago, as a submarine and naval base to support the invasion of the Philippines and to carry out other attacks in Southeast Asia. Japan withdrew its troops and left the archipelago unoccupied in 1945. In 1947, the Nationalist government of Chiang Kai-shek defined China's traditional claims by an area delimited by nine (or eleven) interrupted marks (a U-shaped line) which covered almost all of the South China Sea region. The occupation of Itu Aba on 12 December 1947, was the first physical action in the Spratlys after the announcement of a map of U-shaped lines by the Chinese government. In the same year, the government also declared the incorporation of the Paracels and the Spratlys into Guangdong Province before China was forced by the United States and the Soviet Union to abandon many of the islands after the Nationalists lost the Chinese Civil War (Emmers, 2010). This is because the U.S. and USSR saw that the occupation of the Paracel and the Spratly Islands would make China a major maritime power in Asia (Lo, 1989).

According to the two characteristics of the claims for the SCS put forward by Guan and Skogan (2007), historical claims of discovery and occupation, and claims that rest on the extension of sovereign jurisdiction under interpretations of the provisions of UNCLOS, China's claims over territory of the Spratlys and the Paracels are more likely to be based on historical claims of discovery and occupation of territory, rather than international law. This can explain China's strong, unchanged statement of its claim over the two archipelagos since 1951. Based on historical administration of the area, China has not felt the need to give a legal explanation for, or give specific delimitations to, its territorial claims

(Emmers, 2010). Other claimants are also using history as a reason to claim and occupy territory over those disputed islands (Guan & Skogan, 2007). For example, Taiwan's claim over Itu Aba since 1956 also relies on history similar to that of China's. Vietnam is another example of a claimant which uses history as a reason for its claiming ownership of those islands since 1975, and it has also established a 200-nautical-mile EEZ in the region to enhance its claims (Guan & Skogan, 2007). Vietnam uses historical evidence for its claims which date back to several hundred years ago. Vietnam's claim over the Paracel Islands began in the fifteenth century. In 1956, South Vietnam made a statement that the Paracels had been incorporated into Vietnam by the unification of the country in 1802 under the Nguyen Dynasty. Vietnam has claimed the Spratlys dating back to the reign of King Thanh Tong in the fifteenth century. After reunification, Vietnam officially stated its claims over both archipelagos in 1975. Other claimants such as the Philippines and Malaysia first stated their claims during the late 1970s. The Philippines officially claimed sovereignty over some islands of the Spratly archipelago in 1971, and extended this to the waters between these islands in 1979. In 1979, the Philippines announced its claim over fifty-three islands of the Spratly group. Malaysia had joined the claim over some parts of the Spratly group by the end of the 1970s. In 1983, Malaysia took the first action in occupying Swallow Reef which is a part of the Southern Shoals of the Spratly archipelago (Lo, 1989).

To conclude, China has claimed the ownership of the Paracel Islands and all the Spratly Islands along with the ASEAN members Vietnam, the Philippines, Brunei, and Malaysia, and also Taiwan, based on historic evidence. China has claimed the resources based on history, discovery, and usage, mostly by fishermen, supported extensively by ancient documents, charts, maps, and descriptions dating back as far as the seventh century which make these claims firmer than its claims to the Spratlys (Lim, 1979). Some other claimants such as Taiwan, and especially Vietnam, are also using historical factors in claiming those islands as well, and this has helped to keep the disputes going within the region. For other claimants, however, they point out that territorial and maritime disputes in the SCS should rely on international law, including the extension of the continental shelf, rather than on historical argument (Guan & Skogan, 2007). It can be understood that the disputes over the SCS have historically mirrored major issues in the regional

strategic and political balance in the past (Lim, 1979). Apart from the historical perspective, another perspective in influencing territorial and maritime disputes in the SCS is economic influence and oil interests within the region.

Rapid economic growth and urbanization in Asia, especially China, have led the region to an increasingly large gas and fuel consumption. This is one of the most important motivations for China and other countries in Asia to increase their interest in, and incentives for, developing energy resources in the SCS after the existence of a large amount of potential hydrocarbon resources was found in the area (Hong, 2010 ; Smith, 2010). Particularly for China, its purposes in claiming the SCS can be seen clearly after it produced a map with a series of nine dashed lines that is not based on historical reasons in claiming the region, but is more about the goal of oil and gas exploration and benefits due to high demands of oil consumption from its population as well (The Maritime Executive, 2010 ; Turton, 2012). Southeast Asian claimants, on the other hand, are searching for new energy resources of cleaner burning gases to generate electricity, the increasing need for which has also resulted from rapid economic and population growth. Primary energy demand in Southeast Asia is about to increase from 513 million tons of oil equivalent (Mtoe) in 2007 to 903 in 2030 or an increase of 2.5% per year (Hong, 2010, p.415). Furthermore, offshore oil production in Southeast Asia, including Indonesia, has rapidly increased, particularly in the SCS, the Gulf of Thailand, and the belt covered by the Spratly archipelago. There are numerous reports of indications of oil and gas discoveries off South Vietnam and the Reed Bank off the Philippines close to the Spratlys which have increased attention on the region (Lim, 1979).

Thus, it can be understood that a high demand for energy in Asia has pushed China, the various ASEAN nations, and Taiwan, into territorial and maritime disputes over sovereignty of the SCS where it is believed that a huge amount of oil and natural gas exists (Hong, 2010). Emmers (2010) also agrees that territorial and maritime disputes in the SCS have been mainly influenced by economic interests, particularly for oil and gas reserves. It is assumed that the SCS might hold 23-40 billion tons of oil reserves, or 168-220 billion barrels. Moreover, fishing resources around EEZs are also economically important for countries as are strategic locations. Hong (2010) points out that China might see

Southeast Asia as an important transit area for China's energy supply, particularly four sea lanes in the SCS which are used to connect the country with the Middle East and Africa, and also with Latin America, for crude oil imports and exports, and trading in goods and fishery products.

Economic growth in offshore regions has led to urbanization which has resulted in high energy consumption since 1949, especially in maritime resources. Many nations see offshore islands as only one tool for asserting an EEZ under UNCLOS III, which allows any country to claim rights to natural resources in the water column and seabed, for fishery resources, strategic shipping lanes (Fravel, 2008), but also energy resources as well, in particular China, which has the biggest population of all the claimants and also the highest energy consumption demands. Thus, the SCS is the most important conduit for China's energy security, and can provide the country with an important source of clean and alternative energy. A high demand for oil and gas by China, the various ASEAN nations, and Taiwan, has created conflicts in order to gain the right to assert ownership and exploit the resources of the region (Hong, 2010). Territorial and maritime disputes in the SCS have motivated these claimants to search for the right to exploit the natural resources in the region legally and acceptably. For instance, oil companies that have agreements with the governments will not invest large amounts of money to explore potential oil areas if they are concerned about not having the legal rights to exploit the resources if any are found (Smith, 2010).

3.4 Suggested solutions for resolving territorial and maritime disputes over the Spratly and the Paracel Islands

The disputes over the SCS are long-standing ones whereby one claimant's or another's action would invariably draw sharp reactions from the others (Baviera, 2011). The South China Sea is an area of competing claims involving China, some ASEAN countries, and Taiwan in which the determination of sovereignty has become significant for the ability to exploit oil, gas, and fishing resources. China expects to claim greater rights over the region by using historical

evidence and also by increasing her military capabilities to compel smaller ASEAN states not to challenge her claims over the region (Buszynski, 2003). The growth of China's economic strength in recent years has led China to be more powerful in terms of overall national strength, particularly in its military power (navy and airforce). The rapid growth of China's military capabilities has led to concern among its neighbours, especially among Southeast Asian states who have competed over China's claims in the SCS (He, 2011). Thus, China's actions can be the most worrisome in the disputes over the SCS because China has increased its maritime enforcement capabilities. It has been reported that its China Marine Surveillance (CMS) authority has added over 1000 new personnel, 36 ships and new equipment to strengthen their 'enforcement capability' since 2010. The CMS was established in 1998; it had 91 patrol boats at the end of 2005 before it increased to 300 boats and 10 aircraft by the end of 2010 (Baviera, 2011, p.1). The increase in China's military capabilities in the SCS has led to great concern not only among the Southeast Asian claimants, but also Japan and is peer as challenge to the U.S. and its naval dominance in the region (Emmers, 2010).

However, Yee (2011) points out that the reason for the increase in China's maritime enforcement capabilities was because Vietnam and the Philippines were becoming increasingly assertive over the SCS. Geographically, the disputed areas of the Spratly and the Paracel archipelagos, lie within or close to the EEZs of Vietnam and the Philippines, and they are much further away from China. This can explain why these states are becoming more assertive over the disputed areas. For example, the Philippines renamed the SCS the 'West Philippines Sea' and removed some of the Chinese markers. Meanwhile, Vietnam signed more than fifty petroleum-sharing contract models with foreign companies between 1998 and 2005 to exploit oil in the SCS which has reached 1.37 million barrels per day. Furthermore, not only has China increased its maritime enforcement capabilities, Vietnam and the Philippines have also upgraded their navies. In August 2011, the Philippines bought a decommissioned US Coast Guard cutter, while Vietnam also received a second Russian 'Gepard'-class guided missile frigate which is the most modern Vietnamese ship now, and will also spend two billion dollars on an order for six Russian diesel-electric submarines (Yee, 2011, pp. 1-2).

Although Southeast Asian claimants, especially Vietnam and the Philippines, feel threatened by China's actions and its enforcement capabilities, the problem of sovereignty in the SCS is still not regarded as a direct danger to any of the individual ASEAN states concerned national security (Guan & Skogan, 2007). China explains that it is willing to settle all disputes with its neighbours over territories, territorial waters and marine rights and interests, by peaceful means through negotiations rather than by using armed force, and the increase in maritime enforcement capabilities does not aim to threaten other claimants. However, when comparing other disputes that China has had to the territorial disputes over the SCS, the disputes over the SCS are so much more complicated because of the many factors involved such as historical factors, and oil and gas benefits. Thus, it will be very difficult for policy-makers to find an effective solution which will please all the claimants or even reduce tensions among them (He, 2011).

There is actually no clear answer as to how these states can resolve their territorial and maritime disputes over the Spratly and Paracel Islands, even though they have the same goal of regional stability. The problem is that they have taken the wrong steps to achieve their goal. To resolve the disputes over the SCS through negotiations, those claimants must learn to look at the issues from each other's perspective, and China must try to clarify its claims. Those unclear claims such as 'indisputable jurisdiction' and 'indisputable sovereignty' should be avoided by all involved claimants until they reach an agreement or treaty (Chen, 2011). It is very difficult to find a solution for territorial disputes over the SCS because all parties have repeated their claims to sovereignty; have displayed no willingness to make any concessions with regards to their territorial claims; and have refused to discuss the problem of sovereign jurisdiction over the islands. There is also no obvious legal means to resolve the disputes in the SCS because claimants do not tend to have a clear-cut case in juridical terms, and the significance of international law in resolving the disputes seems limited. History and first discovery have been used as reasons for claiming the disputed areas by most claimants, particularly by China, Vietnam, and Taiwan, in occupying their positions, while international law is insufficient to determine sovereignty (Emmers, 2010). Moreover, the SCS area is entangled in so many separate

disputes. For instance, China and Vietnam have claimed sovereignty over the Paracel Islands chains; Taiwan has become involved in this dispute because it is the “Republic of China” and mirrors China’s claim; Southeast Asian states such as Malaysia, the Philippines, and Brunei, have partial claims over the Spratly Islands; and China, Vietnam, and Taiwan have also been involved in the disputes over the Spratly Islands (“Carps among the Spratlys,” 2011).

Chang (1991) concludes that there are three main problems which result in unresolved territorial and maritime disputes over the Spratly and the Paracel Islands. First, both China and Vietnam have claimed sovereignty over the Paracels and the Spratlys based on historic records, but those historic records point out that Chinese claims are older and more substantial than Vietnam’s. Secondly, as a result of UNCLOS regulations, all the disputed areas are free for any state to survey or discover natural resources, etc. However, China had discovered these islands so much earlier than the other claimants, but Vietnam, the Philippines, and Malaysia have occurred some of these islands and asserted their claims over those islands. This causes disputes among them over unclear landmarks and the rights of assertion. Lastly, disputes over those islands affect directly economic and political factors of those claimants due to the discovery of oil and gas, and the location of strategically important military bases on those islands.

Chung (2007, pp. 64-65) uses the “two level games” framework to explain which elements influence the success or failure of attempts to resolve territorial and maritime disputes over the two island groups in the SCS. The concept of the framework is to analyse the two main elements of domestic and international factors and how they can affect the outcomes of territorial disputes. In the case of the Spratly and the Paracel archipelagos, there is a “three-level” and not a “two-level” framework, because there are more than two main factors involved. First, fishermen from the claimant countries can form lobby groups to press their own right to claim as much as possible of their country’s territorial waters and EEZ. High ranking naval and air force officers from China and several Southeast Asian states are the second factor. This is because they have argued for increasing their military budgets due to the need to effectively patrol their own claimed areas of the SCS. The last factor is multinational oil companies and multilateral non-governmental confidence-building forums. They have influenced the states’

actions and established linkages with sub-national actors for the right of oil exploration. The framework demonstrates that these multinational companies tend to establish linkages with one another to exert influence on their host governments and also their home governments to prevent the outbreak of hostilities which would damage their interests in the region.

It can explain why the territorial disputes over the Spratlys and the Paracels have not escalated into serious armed conflicts or war, even though all rival parties have rapidly increased their military capabilities. To get involved in a war is the last thing that those multinational oil companies, which generally have close relationship to their home governments, want to do (Chung, 2007). However, those claimant states have to carefully balance their attitudes and activities over their interests in the SCS with other claimants, because those attitudes or activities toward their interests in the region might greatly affect in terms of their international relation affairs among them, which might hinder a process of negotiation or agreements to resolve the dispute (Baviera, 2011). For example, the anti-Chinese protests in Vietnam against Chinese's assertiveness in the SCS has occurred several times between 2011 and 2012, after Chinese patrol ships harassed a Vietnamese seismic survey ship operating in Vietnamese waters in 2011. The Chinese aggressive attitude in its claim over the SCS has raised anger and inflamed nationalistic feelings in the Vietnamese people which has affected the two countries relations and the process of negotiation over the SCS dispute. As long as those negative feelings in Vietnamese people to China still remains, it will be difficult for the two governments to find a resolution that satisfies all parties, particularly the Vietnamese government which would face domestic pressure from its people, especially from the anti-Chinese group to do "something" about the dispute. (Hays, 2008)

Pham (2010) explains that the territorial disputes in the SCS are complicated because they emerged from a combination of various reasons: partly because of the different interpretations of the 1982 UNCLOS; partly because of the lack of institutions, and partly because of the complex multilateral nature of the issue. There is only one regional security mechanism involved in these disputes, the ASEAN Regional Forum (ARF) which was established in 1994, but both ASEAN and the ARF are still not be able to solve the disputes in the SCS.

One way of ensuring there will be no military action over disputes in the SCS region is possibly through the drawing up of a Declaration on the Conduct of Parties or DOC which has three main elements: fundamental principles for inter-state relations and dispute management; confidence-building measures, and cooperation between the parties (He, 2011 ; Pham, 2010). The main purpose of a DOC is to ensure that all parties involved will try to compromise their issues through negotiation and peaceful means instead of military actions (He, 2011). A DOC for the disputes over the SCS was officially signed in Manila (Pham, 2010) before it was signed by China and all ASEAN claimants on 4 November 2002 during the 8th ASEAN Summit in Phnom Penh, Cambodia, with the aims of reducing tensions over the disputed territory and preventing the potential use of military enforcement in the region. The DOC focuses on the parties' duties in resolving their territorial disputes by peaceful means, without resorting to the threat or use of military force, but it did not aim at providing a permanent resolution of the SCS disputes (Pham, 2010 ; Guan & Skogan, 2007). However, the DOC still might hopefully help to prevent all parties involved from using force, because it mentions clearly who the involved parties are and the agreements that they have reached, and does not allow outside parties like the U.S. to intervene; this is the main reason why China agreed to sign the DOC. The DOC did not, however, prevent parties from building up facilities on their occupied islands and thus reinforcing their presence in the Spratlys and the Paracels (Pham, 2010). Although China and the ASEAN claimants have tried to bring all involved parties to the negotiation table based on the DOC that they signed in 2002 in an attempt to minimise the risk of conflict, the tension still has remained from many failed meetings. This is because China refuses to have any multilateral discussions with other claimants and also argues that ASEAN has no role in territorial issues of the SCS. China mentions that each rival claimant should discuss with China one by one, and also rejects the involvement of outside powers-especially the U.S.- in any settlement. ASEAN argues that it is within its own framework to bring all members to consult when there is any dispute within the region, and outside powers are legitimate stakeholders, especially when a dispute seems to affect stability and security in the SCS ("Carps among the Spratlys," 2011; Thayer, 2011).

Thayer (2011) points out that the territorial and maritime disputes in the SCS have re-emerged as a pressing security issue in 2011 after Chinese's assertiveness in the region. Baviera (2011) contends that China has frequently used its armed forces to pressure and influence its important rival claimants, Vietnam and the Philippines, and often opposes any other claimants' activities or movements about the disputed areas. For example, in May 2009, China protested that Malaysia and Vietnam had made separate and joint submissions to the UN Commission on the Limits of the Continental Shelf. China also has increased and modernised its maritime enforcement capabilities which makes other claimants feel threatened by China's military; this has led to great worries for other claimants, especially the ASEAN ones. Southeast Asian claimants have acted through ASEAN to negotiate with China in the form of the DOC, but those previous meetings based on the DOC could not bring all claimants, especially China to the negotiation table. The DOC has become just a political statement for all disputants will settle their disputes peacefully and not to upset the status quo (Thayer, 2011).

Guan and Skogan (2007, p. 58) conclude that there are several obstacles that hinder the development of a code of conduct among the claimant countries. The first is when China stated that sovereignty over the SCS is indisputable. China tends to support only a non-binding multilateral code of conduct that would be limited to the Spratlys and wants to focus on dialogue and the preservation of regional stability, rather than the problem of sovereign jurisdiction. Another problem is the absence of consensus and solidarity among ASEAN nations over the SCS. Other ASEAN claimants seem to be unwilling to make concessions with regard to their territorial claims and have failed to address the problem of sovereign jurisdiction. Lastly, there is a lack of cooperation on the SCS which has resulted in persisting mistrust among ASEAN claimants. Although the tension over the SCS disputes has remained, at least the DOC has helped keep tensions down, and limited the risk of escalation into conflict and war within the region ("Carps among the Spratlys," 2011).

Apart from the DOC, a SCS Workshop has been created to deal with tensions within the region. Back in the late 1980s, tensions between the claimants had generally increased from a combination of four main factors: the end of the

Cold War and the decrease in superpower involvements in Southeast Asia, the new law of the sea (the 200-nautical-mile EEZs), oil and natural gas exploration and exploitation activities by the littoral nations in the disputed waters in the SCS; and the expansion of military capabilities (naval and air capabilities) of the SCS littoral states (Song, 2010, p.256). The potential development of tensions and conflicts in the SCS and the threat to Southeast Asian peace and stability was of concern and finally led to the SCS Workshop which was established by Indonesia's ambassador, Hasjim Djalal, a leading authority on ocean law and policy at the Third United Nations Conference on the Law of the Sea. The SCS Workshop can be used to decrease tension among parties in the SCS, and could be used as a guideline for future resolution. There have been nineteen Workshops held under the auspices of the Policy Planning and Development Agency within the Indonesian Department of Foreign Affairs, with the aims to manage conflicts by cooperation including various measures that all claimants would be comfortable to apply and increasing mutual understanding between them (Song, 2010).

Although the SCS Workshop process has been successful in setting the pace for cooperation in the region, many challenges still remain. The Workshop still faces two main obstacles: the lack of willingness or support to continue discussing non-traditional security issues (such as sea-lines of communication management, living and non-living resource management and conservation, and institutional mechanism for cooperation) and the lack of discussion of current ocean law and politics issues at the SCS Workshops (such as the need to minimise the increase of military capabilities among claimants) (Song, 2010).

To conclude, the disputes over the SCS have not been resolved because of various difficulties which hinder parties from reaching an agreement; the lack of any clear commonality of interest between possible member countries; the differences in organizational arrangements for undertaking surveillance in disputed states; and regional sensitivities to particular issues such as fishing and disputed maritime claims (Guan & Skogan, 2007). Most concerning, however, is China's military capability growth which has created anxieties and awareness among disputant states, particularly Vietnam and the Philippines. China's military has grown over time, and its claims in the SCS are by far the largest, covering a

huge U-shaped area. This makes Southeast Asian claimants keenly aware of China's naval power because these 'tiny states' feel that they are being 'pushed around': this is the reason why they need a security guarantee from other powers (Chen, 2011).

To resolve the territorial disputes in the SCS, the U.S. has supported the 2002 ASEAN-China Declaration on the Conduct of Parties in the SCS (Dillon, 2011). The U.S. tends to get involved or interferes with the territorial and maritime disputes over the Spratlys and the Paracels to stop China and its navy from dominating all the region, and the U.S. seems to be the only power capable of countering China (Emmers, 2010).

Fravel (2012, p.2) believes that the U.S. has two principal interests in the SCS disputes: access and stability. Following UNCLOS, "all countries are free to navigate, beyond any coastal states' 12 nm territorial seas", the U.S. has a powerful interest in accessing the waters of the SCS. This is because the region is wealthy in natural resources, including fisheries, and very important in terms of international trade (more than five trillion dollars' worth of trade passes through these waters annually, including more than one trillion with the U.S.), and owns fifty per cent of global oil tanker shipments pass through the SCS (Xu, 2013, p.4). To have unhindered access to the region sustains the U.S.'s ability to project military power around the world because many naval vessels from the West Coast and Japan have to pass through the SCS en route to the Indian Ocean and Persian Gulf. Thus, it is very important to the U.S. surveillance and reconnaissance activities. Another interest is in maintaining peace and stability in the Southeast Asian region because regional stability sustains both East Asian and American prosperity; any dispute in the region can greatly threaten the security of sea-lanes, reducing trade and cross-border investments (Fravel, 2012, p.3). U.S. policy toward the SCS dispute since the mid-1990s includes five important elements:

1. Peaceful resolution of disputes: "The United States strongly opposes the use or threat of force to resolve competing claims and urges all claimants to exercise restraint and to avoid destabilizing actions."
2. Peace and stability: "The United States has an abiding interest in the maintenance of peace and stability in the South China Sea."

3. Freedom of navigation: “Maintaining freedom of navigation is a fundamental interest of the United States. Unhindered navigation by all ships and aircraft in the South China Sea is essential for the peace and prosperity of the entire Asia-Pacific region, including the United States.”
4. Neutrality in disputes: “The United States takes no position on the legal merits of the competing claims to sovereignty over the various islands, reefs, atolls, and cays in the South China Sea.”
5. Respect of international principles: “The United States would, however, view with serious concern any maritime claim or restriction on maritime activity in the South China Sea that was not consistent with international law, including the 1982 UNCLOS” (Fravel, 2012, p.4).

In July 2010, at the annual meeting of the ARF, Hillary Clinton, Secretary of State, stated that the U.S. opposed the use of force by any disputants, which could affect freedom of navigation in the region under UNCLOS, urged all parties to reach an agreement on a code of conduct in the sea (Glaser, 2012), and also extended and clarified U.S. policy toward the SCS in response to the escalation of tension among the disputants by introducing new elements of the U.S. policy:

- Resolving disputes without coercion
- Support for a “collaborative diplomatic process by all claimants,” including a willingness to “facilitate initiatives and confidence building measures consistent with the [2002 Declaration on a Code of Conduct]”
- Support for drafting of a full code of conduct
- A belief that “legitimate claims to maritime space in the South China Sea should be derived solely from legitimate claims to land features” (Fravel, 2012, p.5).

However, the U.S. states that it will not take sides in the SCS dispute, the U.S. will only provide support for principled negotiations and a peaceful resolution, but not specific outcomes (Douglas, 2012). Nevertheless, some Southeast Asian states, in particular Vietnam and the Philippines, tend to seek backing or assistance from other powerful nations, particularly the U.S., to help them to deal with China at the negotiating table because China has reacted

aggressively to other claimants (Chen, 2011). For example, on 17 June 2011, Vietnam made a joint statement with the U.S. on the importance of freedom of navigation in the SCS. China responded to Vietnam by repeating that the SCS disputes should remain a matter for the disputants, not outside parties. Meanwhile, the Philippines has requested help from the U.S. as well because it feels threatened by China's aggression. Although China has not participated in any violent movement, its largest patrol ship, the 'Haixun 31', has been sent to the SCS area. China has given official reassurances to maintain peace with other claimants in the region, but its movements have dramatically caused increased tensions and debates with rival claimants (Egberink, 2011).

In fact, the U.S. and China are known as rival states, particularly in military capabilities, their rivalry has become a zero-sum game because they are always suspicious of each other's intentions. The U.S.-China rivalry in the SCS region has created pressure on both ASEAN and China in resolving the dispute, particularly when the U.S. Secretary of State, Hillary Clinton, called again on ASEAN and China to reach consensus on a binding COC at the 25th ASEAN-U.S. Dialogue in late May, 2012 (Valencia, 2012, p.5).

The strategic goal of the U.S. in Asia is to maintain stability and the status quo by deterring Chinese aggression or coercion against its Asian "allies", and to promote peace and prosperity and resolve disputes in the region (Valencia, 2012, p.2). China, on the other hand, believes that Southeast Asian disputants have tried to use the U.S. against China. China itself has also faced a strategic dilemma in trying to hold its maritime and territorial claims in the SCS while trying to follow its policy in improve relations with South Asian countries. For the U.S., it has confirmed its role in the SCS dispute that it is not an "outside power" because it is part of the Pacific family of nations with a rightful interest in freedom of navigation and access to the international commons in the region based on UNCLOS (Valencia, 2012).

Dillon (2011) also suggests that to resolve the disputes in the SCS, the region needs a "balancing alliance". Thus, to resolve territorial and maritime disputes in the SCS, ASEAN claimant states have to stand up to China and to insist on a multilateral resolution based on the provisions of UNCLOS and the

Code of Conduct specified by the Treaty of Amity and Cooperation, which China signed with other claimants in 2002. However, it is very important to consider that China is not only a neighbour to Southeast Asian countries, but also their most significant trading partner, investor, and occasional political ally. To accept fully American assistance, thus challenging China, might result in policy failure; hence balance of power involvements are necessary in this case.

If the U.S. was to interfere in the disputes, they have to be careful of its role. The ASEAN claimants should not let the U.S. get involved in the negotiation stage and anger China because the intervention of the U.S. can lead the situation to become an international one. The U.S. might be interested in getting involved in the SCS disputes because it probably wants to stop China from having a whole region, the U.S. might see that if China wins the disputes, China would become more powerful than the U.S. Vietnam and the Philippines, however, may need the U.S. as a buffer against China aggressive movements over the region, but they have to be careful that U.S. actions do not upset China, because the key to resolving the disputes of the Spratlys and the Paracels is to respect each other's needs and priorities as being crucial (Chen, 2011). Therefore, the U.S. needs to protect its position of impartiality, balances its power in the region, and needs to improve security partnership with regional states, including China to ensure that peace stability in the region still remains (Cronin & Kaplan, 2012)

There are two main elements that may help to resolve territorial and maritime disputes in the Spratly and the Paracel Islands. The first is sufficient common interests where the expectations of participants might converge. The second key element is a strong political framework that bridges the social and cultural divides, and reflects the interests of all concerned parties. The two key elements come from the norms, rules and procedures that characterise the region, which create policy formulation, capacity-building and burden sharing. Thus, to resolve territorial and maritime disputes in the SCS, the region needs a strong political framework which focuses on understanding what parties desire, whilst, providing advantages to all parties based on the first key elements (Guan & Skogan, 2007, p. 109). All parties involved should share information or be aware of the latest situation of what is happening at sea, including using surveillance and patrols to provide an operational response to any suspicious activity (Guan &

Skogan, 2007, p. 112). Most importantly, all parties have to respect the DOC in not expanding their occupation in the disputed areas, and not using force to deal with the issues. In this case, ASEAN should continue its diplomatic endeavours to resolve differences through dialogue and confidence-building measures.

Meanwhile, more workshops, seminars, and meetings of experts, researchers, and scholars, are needed to be arranged for ASEAN and all parties involved to discuss and exchange views through research to find the most effective way in resolving the disputes in the region (Pham, 2010).

In 2013, discussion of the dispute over the SCS between China and some ASEAN members will continue based on the DOC to try to use peaceful means to deal with the dispute instead of military force, including other workshops and the COC will continue to be discussed as well. However, it is difficult to predict the outcome of this dispute because it seems to depend on China's attitudes toward future meetings with ASEAN (Loy, 2012 ; Nicoll & Delaney, 2012).

The COC has not yet been achieved after many meetings with China. The Philippines invited senior officials of Brunei, Malaysia, Vietnam, and China to a special meeting to discuss the dispute over the SCS in Manila in December, 2012, but China rejected the invitation because China still maintains it has "indisputable sovereignty" over all islands, rocks and other features in the SCS, thus the meeting has been postponed indefinitely (Chalermphanupap, 2013). China still has continued to use historical and jurisprudential evidence to support its claim to the Spratly and Paracel islands ("China insists again," 2013).

To conclude, it can be understood that to resolve the dispute mainly depends on China's attitudes. The ICJ might be the most effective resolution in resolving this dispute, but the most important thing is not only other ASEAN disputants agree to submit the issue through the ICJ but China must agree to accept "internationalization" of the dispute as well (Valencia, 2012). As long as China has still rejected "internationalization" to resolve the dispute, ASEAN must have a court that has power to adjudicate disputes among its members and to be able to bring China into the negotiation stage.

ASEAN has planned to establish a new "community", an ASEAN Political-Security Community (APSC), for contributing to "peace, stability and

security” in Southeast Asia by 2015. The APSC will be created to further cooperation among ASEAN members in managing political and security issues in the region, including human trafficking, human rights abuses, an illicit drug trade, migration, an arms race, corruption, the development gap and the impact of it, ethnic clashes and intolerance, money laundering, social injustice, terrorism, transnational crimes, and territorial and maritime disputes. Some important regional disputes will be included in the APSC agenda, such as the case of the 2008 Thai-Cambodian territorial dispute over the Preah Vihear temple, and the tension between some Southeast Asian nations and China over the SCS during 2011. To resolve the SCS dispute, ASEAN will need to pursue the implementation of the DOC and discussions over the COC with China to try to reach an absolute agreement (Thayer, 2012 ; East Asian Strategic Review, 2012 ; Brata, 2013). However, the process has been slow due to the weak political commitment of ASEAN member states. The ASPC is likely to be weak in resolving disputes and maintaining peace, particularly in case of the SCS dispute, and it may have to be strengthened. The ASEAN Secretary-General needs to be given more power to not only act as a liaison-officer, but as a coordinating “minister” for ASEAN Committee and Foreign Affairs, and as an intermediary to settle the conflicts and disputes among ASEAN members (Brata, 2013, pp.1-2).

3.5 Resolved territorial and maritime disputes in Southeast Asia; Pulau Ligitan and Pulau Sipadan between Malaysia and Indonesia, and Pedra Branca/Pulau Batu Puteh between Malaysia and Singapore

There are several territorial and maritime disputes in Southeast Asia like the disputes over the South China Sea, and the territorial dispute over the Preah Vihear temple, which are still unresolved. However, there are some territorial and maritime disputes in the region which have been resolved through the International Court of Justice (or ICJ), such as the dispute over Pulau Ligitan and Pulau Sipadan between Malaysia and Indonesia, and the dispute over Pedra

Branca/Pulau Batu Puteh between Malaysia and Singapore. These two cases will be examined to try to find an effective possible resolution for other cases in the future.

3.5.1 The territorial and maritime dispute over Pulau Ligitan and Pulau Sipadan between Malaysia and Indonesia

Malaysia is one of the Southeast Asian countries which has been frequently involved in territorial and maritime disputes with its neighbours, such as the dispute over Sipadan-Ligitan with Indonesia, the dispute over Pedra Branca/Pulau Batu Puteh with Singapore, and the disputes over the Spratly Islands with China and other Southeast Asian countries. After Malaysia became independent on 31 August 1957, it announced its new map called Peta Baru Menunjukkan Sempadan Perairan dan Pelantar Benua Malaysia (New Map Showing the Territorial Waters and Continental Shelf Boundaries of Malaysia) in 1979, and officially proclaimed its EEZ on 25 April 1980. These actions have resulted in disputes with at least eight of its neighbours, including Sipadan-Ligitan with Indonesia, Pedra Branca with Singapore, Limbang, Lawas, Terusan, Rangau and Louisa Reef with Brunei, and the Spratly Islands with the Philippines, Vietnam, Brunei, China, and Taiwan. However, there were only two territorial and maritime disputes, Sipadan-Ligitan and Pedra Branca/ Pulau Batu Puteh, which have been resolved through the ICJ (Salleh, 2007 ; Salleh, Razali & Jusoff, 2009).

First of all, it is necessary to comprehend the geography of Malaysia which is one of the main factors for the state being involved in many disputes in the region. Malaysia has a total area of 330,252 square kilometres, divided into two main lands, West Malaysia or Peninsula Malaysia and East Malaysia on Borneo Island (Salleh, 2007 ; Salleh, Razali & Jusoff, 2009). The two main lands are separated by the South China Sea with a flight distance of 920 nautical miles or 1,711 kilometres and with a coastline of some 4,675 km (2,068 km for West Malaysia, and 2,607 km for East Malaysia). As a coastal state, Malaysia has faced many common boundary issues with other coastal states throughout Southeast Asia (Salleh, Razali & Jusoff, 2009, p.107). Malaysia's territorial and maritime disputes are generally located in the Gulf of Thailand, the Andaman Sea, the

Straits of Malaka, the Straits of Singapore, the South China Sea, the Sulu Sea, and the Celebes Sea (Salleh, 2007). Indonesia, on the other hand, is well-known as the largest archipelago with 13,677 islands. 6,000 islands are inhabited, and some cause territorial and maritime disputes with its neighbours; the dispute over Ligitan-Sipadan in the Celebes Sea was one of them (Briney, 2010).

The Sipadan and Ligitan archipelagos are located in the Celebes (Sulawesi) Sea off the southeastern coast of Sabah. They are about 15.5 nm apart and their combined surface area is 0.1 sq.km (Troost, 1998). Sipadan Island is much bigger than Ligitan Island with a surface area of 0.031 sq.km (7.68 acres), and rises up to 600 to 700 metres or 2,000 feet from the seabed. Sipadan is important in terms of ecology (rich in flora and fauna on the island and also marine life). Moreover, it has been a favourite place for local fishermen and legal turtle collectors coming from nearby Malaysian Dinawan to the north of Ligitan Island. Ligitan Island is located some 21 nm from the Malaysiann Tanjung Tutop of Sempurna, 12 nm east of Kapalai island, and 15 nm east of Sipadan Island. Ligitan Island is surrounded- north and south- by a group of Indonesia's islands with the nearest being 55 nm off the southern part of the Indonesian Sebatik Island, 110 nm south of Maratua Island, and about 130 nm off the northern Sulawesi group of Sangihe and Kawio Islands. However, Ligitan is not popular in terms of tourism like Sipadan; it is normally used by Malaysian fishermen as a fishing spot (Salleh, 2007, p. 149).

The dispute over Sipadan-Ligitan took more than thirty years to be resolved since it arose in 1969 (Promono, 2002). The ICJ ended the 32-year dispute over Sipadan-Ligitan islands by awarding the two disputed islands to Malaysia (Nagara, n.d.). The two countries decided to settle their dispute through the ICJ instead of the ASEAN High Council (AHC) which has never been used to resolve any dispute in the region, thus the ICJ was the last hope to completely end the dispute (Salleh, 2007). The AHC has never been used to resolve any territorial and maritime disputes in the region because it is too complicated to use. For example, the SCS dispute between China and some ASEAN members has never been submitted to the AHC in resolving the dispute, because this dispute does not only concern ASEAN members only. ASEAN disputants cannot turn their dispute with China into a dispute between China and ASEAN as a whole (Valencia, 2012). In the case of the Sipadan-Ligitan dispute between Malaysia and Singapore, they

are both ASEAN members and no outsider was involved, but the dispute between them was not about a whole region as well, thus they had to resolve their dispute by their own, while ASEAN could only provide a negotiating table for them. Before Malaysia and Indonesia submitted the dispute to the ICJ, they had had several meetings since 1969 followed by a series of negotiations. However, they failed to reach an agreement or any solution, particularly for certain delimitation points in the Celebes Sea. They also could not agree on the sovereignty status of the two islands. Importantly, the publishing in 1979 of Malaysia's new map, increased tensions between them -the map showed all the territorial waters and continental shelf boundaries (Salleh, Razali & Jusoff, 2009). The Peta Baru showed that both Sipadan and Ligitan were located within Malaysia's territorial waters and were part of Malaysia. The publishing of this map was immediately opposed by Indonesia. In 1980, Indonesia officially objected to the new map's claim over the two islands. Therefore, Malaysia responded by providing legal and historical documents of sovereignty over the two islands to counter Indonesia's protest.

However, the two countries agreed to settle their dispute through negotiation, even though there had been several failed meetings during the late 1990s (1992, 1993, and 1994), and it took them eighteen years (1980-1998) to submit the dispute to the ICJ (Salleh, 2007). After many failed meetings, Malaysia first proposed to Indonesia to refer the dispute to the ICJ instead of the AHC in 1994, which was refused by Indonesia which pointed out that Malaysia should not allow a third party like the ICJ to get involved because it did not understand the problems between them. On 2 November 1998, however, the two states finally submitted their issue to the ICJ and jointly informed the ICJ of their dispute, and notified a Special Agreement to be determined by the Court on the basis of the treaties, agreements, and other evidence that both sides could provide (Ong, 1999 ; Veldkamp, n.d.). A Special Agreement was signed by Malaysia and Indonesia in May, 1997, in Kuala Lumpur, Malaysia, under the supervision of the United Nations' ICJ (World Court) to be "final and binding". This Special Agreement came into force in May 1998, and the dispute was officially handed to the ICJ six months later (Nagara, n.d.). Four years later, on 17 December 2002, by sixteen votes to one, the ICJ decided in favour of Malaysia by using three major

considerations: titles through treaty/ convention, titles through succession, and titles through effective administration, and ruled that Sipadan and Ligitan islands belonged to Malaysia, (Salleh, 2007 ; Salleh, Razali & Jusoff, 2009).

It can be understood that the territorial and maritime disputes over Sipadan-Ligitan had emerged from the complex historical background of the dispute between the two parties (International Court of Justice, 2002). Hence, it is important to look back at the historical background of the dispute, including past treaties and conventions. In 1963, Sabah, Sarawak and Singapore, which were British colonies, joined the Federation of Malaysia. After Malaya became independent from Britain on 31 August 1957, it joined the UNCLOS I treaties of 1958 in 1960, adopted its Continental Shelf Act on 28 July 1966, and then proclaimed its 12 nm territorial sea in 1969. Malaysia had created a new boundary problem through its new of territorial waters, EEZ and continental shelves which greatly overlapped those of Indonesia's Kalimantan on the Borneo Island (Salleh, Razali & Jusoff, 2009, p. 108).

Indonesia's evidence in countering Malaysia's claim was based on a 1891 Boundary Treaty which was signed by the two colonial powers in Borneo in the 18th century. The Dutch colonial period showed that Sipadan-Ligitan were defined as being part of the Netherlands East Indies which means Indonesian territory (Nagara, n.d. ; Spadi, 2003). The 1891 Convention was a treaty between Great Britain and the Netherlands which established the 4° 10' north parallel of latitude as the dividing line between the British and the Dutch possession of the island of Borneo and the states in that island which [were] under British protection (The International Court of Justice, 2002 ; The International Court of Justice, 2003). Malaysia argued against Indonesia's evidence, particularly in the Anglo-Dutch Convention of 1891, and other evidence such as the "Internal Dutch Map", and 22 Dutch/Indonesian maps of the area between 1891 and 1992; none of which showed that Sipadan-Ligitan belonged to Dutch Borneo or Indonesia, or even showed the existence of the two islands at all (Nagara, n.d.).

The 1891 Convention became one of the main features of the Court's decision (Spadi, 2003). The Court found that the 1891 Convention could not be interpreted as establishing an allocation line determining sovereignty over the

islands out to sea or the east of the island of Sebatik. As a result it did not constitute a title on which Indonesia could find its claim to either Ligitan nor Sipadan islands, thus the Court did not accept Indonesia's contention that it retained title to the islands as successor to the Netherlands (The International Court of Justice, 2002). The Court also found that the two islands are closer to Malaysia's Sabah than to Indonesia's Kalimantan (Nagara, n.d. ; Spadi, 2003) . The Court also considered in terms of the effective display of sovereign activities over the two islands, particularly before 1969, the critical date, as a source of autonomous title to the islands (Spadi, 2003, p. 303). In this case, Indonesia's claim was based on the patrolling activity conducted by the Royal Dutch Navy between 1895 and 1928, but Indonesia referred to its claim relying on the 1891 Convention. Thus, the Court mentioned that the two archipelagos were not included in Indonesian archipelagic waters and territorial sea, while Malaysia displayed its authority over those islands based on British actions at the beginning of the 20th century (Spadi, 2003), such as having authority of North Borneo to regulate and control the collection of turtle eggs on Ligitan-Sipadan which relies on the Turtle Preservation Ordinance of 1917 (The International Court of Justice, 2002). For instance, Malaysia joined the Turtle Preservation Ordinance in 1917 which allows the state an authority in North Borneo to regulate the collection of turtle eggs by providing for a licensing system and for the creation of reserves for the collection of eggs, as its territory. The captured turtle areas are Sipadan, Ligitan, Kapalat, Mabul, Diwana, and Si-Amil, which are allowed by the District officer of Tawau (North Borneo). In 1937, Sipadan was declared, under Section 28 of the North Borneo Land Ordinance, "a reserve for the purpose of bird sanctuaries" (Spadi, 2003, p. 308). Apart from reservation activities on the two islands by Malaysia, the Court also found out more about its authority in the two islands; lighthouses on Sipadan (1962) and Ligitan (1963) had been taken over by Malaysia following its independence. The most important thing is that those activities had never been protested by Indonesia (Spadi, 2003).

It can be concluded that the Court solved the dispute over Sipadan-Ligitan between Malaysia and Indonesia by considering the natural, social character of the two islands, and most importantly, historical documents. Malaysia showed evidence that the islands (particularly Sipadan) had no use before the dispute

began in 1969, and it was able to provide more historical documents of its inhabitants and activities on both islands than Indonesia to the Court. Therefore, compared to Malaysia, Indonesia showed a lack of historical evidence of its inhabitants and activities on the two island (Nagara, n.d. ; Spadi, 2003).

3.5.2 The territorial and maritime dispute over Pedra Branca/Pulau Batu Puteh between Malaysia and Singapore

Another territorial and maritime dispute resolved through the ICJ was that between Malaysia and Singapore, over Pedra Branca/ Pulau Batu Putah. On 24 July 2003, Malaysia and Singapore jointly appealed to the Court over their dispute over three small features in the eastern entrance of the Singapore Strait- Pedra Branca/ Pulau Batu Puteh (a small rocky islet with a lighthouse); Middle Rocks, and South Ledge- to determine sovereignty rights over them (focusing on Pedra Branca) (Prayer, 2003 ; Lathrop, 2009). By joint letter dated 24 July 2003, Malaysia and Singapore notified the Registrar of a Special Agreement between the two states, signed at Putrajaya on 6 February 2003, which entered into force on 9 May 2003. They requested the Court to determine sovereignty over Pedra Branca, including the Middle Rocks and South Ledge, based on this Special Agreement (The International Court of Justice, 2008). On 23 May 2008, by determining geography, general historical background, and the history of the dispute, the Court finally decided to award Pedra Branca to Singapore by twelve votes to four, Middle Rocks to Malaysia by fifteen votes to one; and South Ledge to either state, ruling that sovereignty over the low-tide elevation belongs to the state in whose territorial waters it is located (The Hague Justice Portal, 2008 ; Lathrop, 2009 ; Hamid, 2011).

Pedra Branca/ Pulau Batu Putah is a granite island, 137 m long, 60 m wide, and covering an area of about 8,500 sq.m at low tide. It is located at the eastern entrance of the Straits of Singapore, the point where the Straits opens up into the South China Sea. It lies about 24 nm to the east of Singapore, 7.7 nm to the south of the Malaysian State of Johor, and 7.6 nm to the north of the Indonesia island of Bintan (The International Court of Justice, 2008, p.14 ; Lathrop, 2009 ; Hamid, 2011, p.336). The names Pedra Branca in Portuguese and Batu Puteh in Malay both mean “white rock” (The International Court of Justice, 2008 ; The Hague

Justice Portal, 2008). The island also has Horsburgh lighthouse which was built in the middle of the nineteenth century. Pedra Branca has strategic significance because it is located at the eastern entrance to the Straits of Singapore which has three navigational channels; North Channel, Middle Channel (the main shipping sea lane), and South Channel. Pedra Branca, Middle Rocks, and South Ledge lie between Middle Channel and South Channel. Thus, the three disputed features' location affects positively their possessor in terms of economic value because they are located in the area that is one of the world's most significant shipping lanes and one of the busiest maritime passages in the world, with almost 40% of all the world's oil trade passing through the area (The International Court of Justice, 2008; The Hague Justice Portal, 2008).

The dispute began after Malaysia published a map entitled "Territorial Waters and Continental Shelf Boundaries of Malaysia" on 21 December 1979, which showed the outer limits and coordinates of the territorial sea and continental shelf claimed by Malaysia, because this map depicted Pedra Branca and two other features as lying within Malaysia's territorial waters (The International Court of Justice, 2008 ; The Hague Justice Portal, 2008 ; Tanaka, 2008). Singapore protested about Malaysia's map in February, 1980, and also challenged Malaysia's claim over the three features, particularly Pedra Branca. There were a series of intergovernmental talks and meetings between 1993 and 1994, but there was no solution for the dispute until the issue was handed over to the Court. By historical evidence, the Court considered that Pedra Branca belonged to the Sultan of Johor's sovereignty, but by 1980 sovereignty over Pedra Branca had passed to Singapore, thus the Court gave Pedra Branca in favour of Singapore by twelve votes to four. Both the disputing countries accepted the Court's final judgment (Beckman & Schofield, 2009 ; Lathrop, 2009).

In reaching its final decision (The International Court of Justice, 2008), the Court analysed the legal status of Pedra Branca into two periods; pre- and post-1844, particularly the history of the Sultanate of Johor. Malaysia referred to the Court that the Sultanate of Johor originally had rights over Pedra Branca (Hamid, 2011). The Sultanate of Johor was established following the capture of Malacca by Portugal in 1511. Portugal dominated the area in the 1500s as a colonial power in the East Indies. In the mid-1600s, the Netherlands had taken control over

various areas in the region from Portugal, including the Sultanate of Johor. In 1795, France occupied the Netherlands which prompted Great Britain to rule in several Dutch possessions in the Malay Archipelago. In 1813, France left the Netherlands following the Anglo-Dutch Treaty of 1814, better known as the Convention of London. Thus, the British also returned the former Dutch possessions in the Malay Archipelago to the Dutch. There was competition between the two colonial powers in the Malay region, the United Kingdom and the Netherlands. In 1824, the British and the Dutch signed a treaty which established the spheres of influence of the two colonial powers in the East Indies. Thus, one part of the Sultanate of Johor (under Sultan Hussein) fell within a British sphere of influence while another part (under Sultan Abdul Rahman, Sultan Hussein's brother) fell within a Dutch sphere of influence (The International Court of Justice, 2008).

In 1914, British influence in Johor was formalized. In 1946, the Malayan Union was established (excluding Singapore), the Federated Malay States and five Unfederated Malay states, including Johor, joined together while Singapore was administered as a British Crown Colony in its own right. In 1948, the Malayan Union became the Federation of Malaya under the protection of the British. In 1957, the Federation of Malaya became independent from Britain, including Johor, while Singapore became a self-governing colony in 1958. In 1963, the Federation of Malaysia was established with Singapore, Sabah (a British North Borneo), and Sarawak, becoming independent from the British through the Federation of Malaysia on 16 September 1963. Singapore, however, left the Federation and became an independent state in 1965. As a consequence, the withdrawal of Singapore led to a series of territorial and maritime disputes over Pedra Branca or Batu Puteh (The International Court of Justice, 2008 ; Salleh, Razali & Jusoff, 2009).

After Singapore protested the Peta Baru map 1980, they had held several meetings in order to resolve the dispute. The first bilateral negotiation was in 1981 but the meeting did not bring any solution. They had held several meetings after that, in 1994, 1995 and 1996, in order to finalize the modalities of the dispute but these meetings did not reach any agreements either until they submitted the dispute to the ICJ (Salleh, Razali & Jusoff, 2009). The 1953 conduct of parties

showed the Court that the Johor Government had not claimed ownership of Pedra Branca. This evidence became one of the most important key factors for the Court's decision. The conduct of parties after 1953 showed several activities of Singapore on Pedra Branca such as the installation of its military equipment on the island, while Malaysia had no actions on the island for at least a century and it had never protested or made any response to Singapore's various sovereign activities on the island (The Hague Justice Portal, 2008 ; Hamid, 2011).

Malaysia clearly mentioned that Pedra Branca is not an island, but merely a rock which cannot generate an exclusive economic zone. Moreover, Malaysia also asked their domestic media to refer to Pedra Branca as "Batu Puteh" instead of the Malaysian name, Pulau Batu Puteh, in which "Pulau" means "island" in Malay. On the other hand, Singapore always referred to Pedra Branca as an island, and also clearly stated its claims over the territorial sea and EEZ around Pedra Branca. After Singapore had strongly stated its claim to Pedra Branca and its EEZ, the area became a sensitive issue between the two parties (Hamid, 2011).

Horsbough lighthouse, situated on Pedra Branca was one of the most important reasons for the ICJ's decision. The lighthouse was constructed between March 1850 and October 1851 by the British who played a lead role in building it by funding and planning all the construction under the direction of the Government Surveyor of Singapore, while Johor played no role in the construction. Thus, Singapore contended that the UK acquired the title to Pedra Branca in the period of 1847-1851, and had legal possession of it in connection with building the lighthouse on it (The International Court of Justice, 2008 ; Tanaka, 2008 ; Lathrop, 2009).

The ICJ examined three letters all written by the British Resident in Singapore, and an article from the Singapore Free Press dated 25 May 1843 (Tanaka, 2008), and a letter written on 12 June 1953 to the British Advisor to the Sultan of Johor. The Colonial Secretary of Singapore asked for information about the status of Pedra Branca. All the letters showed the Court that the Johor Government did claim ownership of the island. Johor's reply showed that as of 1953, Johor understood that it did not have sovereignty over Pedra Branca. As a

result, the ICJ ruled that sovereignty over Pedra Branca belonged to Singapore (The International Court of Justice, 2008).

3.6 Conclusion

Most territorial and maritime disputes in the Southeast Asian region have generally emerged from similar elements: complex historical factors from the colonial period, complex treaties and agreements made in the past, and geographical conditions. Most territorial and maritime disputes are either difficult or take a long time to be resolved. This is because the region lacks international co-operation, and a strong third party to supervise negotiations between states. Moreover, only a few disputes have been submitted through the ICJ (the dispute over Pulau Ligitan and Pulau Sipadan, and the dispute over Pedra Branca/Pulau Batu Puteh), because most Southeast Asian countries will not accept the interference of outsiders. The region actually has its own significant third party, ASEAN, which all Southeast Asian states should be able to rely on. ASEAN will finalize the ASEAN Political-Security Community (APSC) structure by 2015, to ensure that all ASEAN members will live in peace, to settle disputes in the region, and be powerful enough to regulate and enforce its decision without intervention by other powers. Although the establishment of APSC is well under way, questions have been raised over its effectiveness and ability to enforce decisions made for resolving disputes in the region. The disputes over the SCS between China and some ASEAN members is continuing and no agreement has been reached. This may be due to the fact that ASEAN has no power to make China reach a permanent agreement. Therefore, the ICJ can be seen as the last hope in resolving disputes among ASEAN members, and between ASEAN members and other states as well. For some disputes that involve many parties from different regions (such as the disputes over the SCS), it may be necessary to employ bilateral or multilateral negotiations on the world stage, because it is more effective and more acceptable to every party. However, the potential benefits from the disputed areas might, in turn, also be one of the most important obstacles to resolving the disputes. These include the strategic value of shipping lanes and oil

benefits in the SCS, and economic interests in terms of tourism and historical pride in the PreahVihear temple dispute between Thailand and Cambodia.

Chapter 4

Thailand's territorial and maritime disputes with other Southeast Asian states

4.1 Introduction

The previous chapter reviewed territorial and maritime disputes in Southeast Asia, particularly in the South China Sea. This chapter will focus specifically on both territorial and maritime disputes among Southeast Asian countries, particularly Thailand with its neighbouring states.

It can be understood that most territorial and maritime disputes, particularly in the Southeast Asian region, have arisen since the colonial era and were caused by European nations which drew up many unclear and complex land and water boundaries which exist to the present day (Wain, 2012). The announcement of the 1982 United Nations Convention on the Law of Sea (UNCLOS) is also one of the main factors that have contributed to disputes among states in the region. It has created a new juridical order for the sea with a bearing on the partition of natural resources creating more than four hundred maritime boundaries and at least twenty disputes in the South China Sea (Nguyen, 1999). Interestingly, some ASEAN member states have settled more territorial disputes than others, but none of them has settled all of their disputes yet. It can be understood that Southeast Asian nations are more likely to have temporary or practical agreements in settling their territorial disputes and it seems they prefer using a combination of discussion, consultation and formal talks, depending on political, economic, and broader security perspectives (Ramses, 2001-2002).

Thailand, which is one of the ASEAN member states, has faced many territorial and maritime disputes with its neighbours. Some of these have been resolved whilst some are still under negotiation, and yet others are still unsettled. However, the country has not been involved in disputes over the Spratly and Paracel Islands in the South China Sea, but it has faced many maritime boundary

disputes in the Gulf of Thailand with its coastal neighbouring states. The Gulf of Thailand is located in the South China Sea and is surrounded by coastal Southeast Asian countries like Thailand, Malaysia, Vietnam and Cambodia, with an approximate area of 32,000 sq km. The Gulf of Thailand contains some oil and large amounts of natural gas resources and fisheries which encourage disputes over possession in the region among the four Southeast Asian states which share the maritime boundary lines and benefits of oil and gas exploitation (Ravin, 2005 ; Wain, 2012). The overlapping claims in the Gulf of Thailand have resulted from many factors: mostly from overlapping claims over EEZs under the 1982 UNCLOS, the complex coastal geography of numerous islands, islets, and rocks where it is difficult to define the ownership of those, and the colonial era and the interpretation of colonial treaties (Schofield, 2007 ; Nguyen, 1999).

Apart from maritime border disputes in the Gulf of Thailand, Thailand has also faced many territorial boundary disputes along common borders with neighbouring countries such as Malaysia, Myanmar, Cambodia and Laos, due to historical relationships and rivalries. This is because these Southeast Asian states share a long history, including wars and the shifts in authority and dominance in the ancient region among them, along with treaties during the colonial period that created many disputes over sovereignties along common boundaries (Cady, 1966). Many of Thailand's border issues with its neighbours are still unresolved due to many obstacles such as the government lacking the funds and expertise to negotiate, and a lack of trustfulness and cooperation among disputing parties (Wain, 2012).

This chapter will examine the territorial and maritime disputes that Thailand has had with its neighbours, focusing on the maritime disputes over the Gulf of Thailand and territorial and boundary disputes along common borders between Thailand and surrounding states. Both settled and unsettled disputes will also be reviewed.

4.2 Thailand and its territorial and maritime boundary disputes in the Southeast Asian region

Ramses (2000) mentions that apart from Indonesia, Thailand has been the most successful in settling disputes with other ASEAN members. However, the country still has many border disputes that are either in the processes of negotiation or still unresolved, such as the tension over a common border with Myanmar, maritime border disputes with Cambodia over the overlapping area in the Gulf of Thailand, and the territorial dispute over the Preah Vihear temple with Cambodia. Thailand's territorial and maritime disputes have been put into two categories: settled and unsettled or ongoing disputes (Ramses, 2000, pp. 32-36 ; Ramses, 2001-2002, pp. 81-83).

- Thailand's settled border disputes:
 - A 1971 agreement between Indonesia, Malaysia, and Thailand for the establishment of a "Common point" (Tri-junction point) on the continental shelf.
 - The 1979 Memorandum of Understanding with Malaysia on the delimitation of their continental shelf boundary in the Gulf of Thailand.
 - An agreement with Myanmar (or Burma) on overlapping claims to some small features, and the delimitation of the maritime boundary in the Andaman Sea on 25 July 1980.
 - An agreement with Vietnam on the delimitation of their continental shelf and EEZ boundaries in the Gulf of Thailand to the south-west of Vietnam and to the north-east of Thailand on 9 August 1997.

- Thailand's unsettled or ongoing border disputes:
 - The overlapping claims in the Gulf of Thailand with Malaysia.
 - The land border dispute with Laos along the Mekong River. In August 1996, Thailand and Laos agreed to set up a Joint Border Committee to deal with demarcation of the common

border and to continue making progress on demarcation of their disputed area along the Mekong River.

- Maritime border dispute in the Gulf of Thailand with Cambodia; the dispute has not had any agreement yet, but the two countries have agreed to share benefits from oil and gas exploitation, and to keep the negotiation process going to reach an agreement in the future.
- The 2,400 kilometre land border dispute with Myanmar along the Moei River; there has been regular cross-fire and incursions into Thai territory. This is due to the conflict between the central Myanmar government and its minorities which cause illegal refugees to flee into Thailand and military action along the Thai-Myanmar boundary, particularly along the Moei River. They had bilateral negotiations in 1999 in managing the border disputes, and reaffirmed their commitment to turn their common border into a “border of friendship, harmony, and prosperity” (Ramses, 2000, p. 39)

4.3 Thailand’s maritime disputes in the Gulf of Thailand

Territorial and maritime disputes in the Gulf of Thailand have generally emerged from several factors such as broad geopolitical disagreement, the colonial period and the interpretation of colonial treaties, numerous small and large islands, and hydrocarbon resource deposits in the region. These elements have led the Gulf of Thailand to be host to multiple claims by the coastal Southeast Asian states of Thailand, Malaysia, Vietnam, and Cambodia (Nguyen, 1999).

The Gulf of Thailand is a restricted geographical space necessitating maritime boundary delimitation with a complex coastal geography from numerous islands, islets, and other features (Schofield, 1999). The Gulf of Thailand is a semi-enclosed arm of the South China Sea lying to the north and west of a straight

line joining Mui Ca Mau at the southern tip of the Vietnamese mainland to a point on the Malaysian coast in the vicinity of Tumpat. The region is bounded by four Southeast Asian countries from the southwest, by Malaysia (c. 10.8 nm/ 20 km), Thailand (c. 783 nm/ 1,450 km), Cambodia (c.151 nm/ 280 km), and Vietnam (c.184 nm/340 km) (Prescott, 1998, p.10 ; Snidvongs, 1998 ; Schofield, 1999 ; Schofield, 2007). Overlapping claims to maritime jurisdiction over the Gulf of Thailand resulted from 12nm breadth territorial seas and EEZ rights under the 1982 UNCLOS with small dimensions and complex coastal geography which lead to many complicated maritime boundary delimitations and maritime boundary disputes. Furthermore, the Gulf is host to abundant, rich hydrocarbon resources, and it has been considered to be the largest single marine ecosystem and one of the richest biological resources in the world. These contribute to strategic interests, particularly in terms of economic development, among the parties (Schofield, 1999 ; Schofield, 2007).

Although, the presence of large areas of hydrocarbon resources have been regarded as one of the main motivations for the disputes in the Gulf of Thailand among the four parties, it could also result in the countries choosing to cooperate for exploration and exploitation of oil and gas. Thus, it could lead to joint arrangements in managing their substantial areas of overlapping claims for the purposes of facilitating access to the sea bed hydrocarbon resources in the Gulf of Thailand (Schofield, 2007). There are some delimitations of maritime boundaries in the Gulf of Thailand, such as a territorial sea border and the relatively short, partial, section of continental shelf boundary between Malaysia and Thailand in 1979, and a delimitation concerning continental shelf and EEZ rights in the central Gulf between Thailand and Vietnam in 1997 (Charney & Alexander, 1993, pp. 1096-1098, and 2002, pp. 2683-2694) (see Table 4.1).

Table 4.1 Status of Maritime Boundary Delimitation in the Gulf of Thailand

Delimitation	Status
Cambodia-Thailand	
Territorial Sea	Unresolved
Contiguous Zone (Cambodia)-Continental Shelf/EEZ (Thailand)	Unresolved
Continental Shelf/EEZ	Unresolved
Cambodia-Vietnam	
Historic Waters	Joint Zone
Territorial Sea	Unresolved
Contiguous Zone	Unresolved
Continental Shelf/EEZ	Unresolved
Malaysia-Thailand	
Territorial Sea	Resolved
Continental Shelf/EEZ	Partially Resolved/Joint Zone
Malaysia-Vietnam	
Continental Shelf/EEZ	Joint Zone
Thailand-Vietnam	
Continental Shelf and EEZ	Resolved

(Schofield, 1999, p. 2)

4.3.1 Thailand's claim in the Gulf of Thailand

Thailand shares land territory with Cambodia, Laos, Myanmar or Burma, and Malaysia. It has maritime boundary disputes with Cambodia and Vietnam in the Gulf of Thailand (in the process of negotiation), with Myanmar in the Indian Ocean, and with Malaysia in the Andaman Sea and in the Gulf of Thailand (Ravin, 2005). Historically, Thailand is different from its surrounding neighbouring countries. In the colonial period, while Britain occupied all the areas which are part of Malaysia's territory in the present day, France occupied 'Indochina' which is the area comprising modern day Cambodia, Laos and Vietnam. Thailand, on the other hand, has been independent and was used as a 'buffer' state between competing British and French imperial interests. This has created many overlapping areas on both land and sea between Thailand and its neighbours after the colonial period, due to many boundary treaties between the colonial powers (Schofield, 1999).

Thailand claims sovereignty over islands, cays, and reefs, and controls most of the features that it claims, including a continental shelf in the Gulf of Thailand. It can be understood that Thailand's claim in the Gulf of Thailand is based on an historic rights claim. For instance, Thailand's claim in the Gulf of Thailand has been defined since the early 1970s (Nguyen & Ramses, 2011). Thailand is a party to the 1958 Conventions and a signatory to the 1982 UNCLOS (Ravin, 2005). Thus, Thailand has used UNCLOS to sustain its claim over some parts of the Gulf of Thailand (Nguyen & Ramses, 2011). Thailand has four straight baselines and an historical bay; the upper part of the Gulf of Thailand covering Kut Island or Koh Kut, the middle part of the Gulf of Thailand, in the Andaman Sea near the Malacca Strait, and the southern part of the Gulf of Thailand. The first three areas were established in 1970, while the last area was established in 1992 (Kongrawd, 2009, p. 1). On 22 September 1959, Thailand officially confirmed the juridical status of the inner part of the Gulf of Thailand. In October 1966, Thailand proclaimed 12 nm of their territorial waters and sea bed (Ravin, 2005, p. 38). Thailand formally claimed the continental shelf in the Gulf of Thailand in 1973, and EEZ in 1981 (Kongrawd, 2009, p. 1 ; Ravin, 2005). On 16 February 1988, Thailand proclaimed the EEZ adjacent to Malaysia's EEZ in the Gulf of Thailand. On 14 August 1995, Thailand claimed its contiguous zone

by a royal proclamation. On August 1997, Thailand signed the delimitation of the overlapping area agreement with Vietnam which provides the maritime boundary between Thailand and Vietnam in the relevant parts of their overlapping continental shelf claims in the Gulf of Thailand. However, this agreement has been contested by Cambodia concerning its position on the delimitation area between Thailand and Vietnam (Ravin, 2005, p. 39).

Thailand-Malaysia

Malaysia is a party to the 1982 UNCLOS; it shares a maritime boundary with Thailand in the south-western part of the Gulf of Thailand (Ravin, 2005). The boundary between Thailand and Malaysia extends for 314 miles from the Strait of Malacca in the west to the Gulf of Thailand in the east (The Geographer Office of the Geographer Bureau of Intelligence and Research, 1965, p. 2 ; U.S. Department of State, 1978). Malaysia claims an EEZ and natural prolongation of the continental shelf in the Gulf of Thailand off the northeast coast of Peninsular Malaysia (Ramses & Nguyen, 2009, pp. 334-335). Some of the maritime disputes between Thailand and Malaysia have been settled by agreements, and the unsettled area has been put under the Joint Developing Area (JDA) to continue negotiation on maritime delimitation (Ravin, 2005). In 1979, the Malaysia-Thailand Joint Development Area was argued on a territorial sea boundary and part of their potential continental shelf boundary in the Gulf of Thailand (see Figure 4.1). However, the dispute over Koh Losin (an island located 39 nm offshore in the Gulf of Thailand which is about 1.5 m (5 ft.) above high-water with a light-beacon sited on it) has yet to reach an agreement, but they have a temporary and practical solution in progress for it (Charney & Alexander, 1993 ; Nguyen, 1999 ; Schofield, 2007). Koh Losin was not considered an island after the negotiation between Thailand and Malaysia on the delimitation of the continental shelf in 1972 (Ravin, 2005).

- The Malaysia-Thailand Joint Development Area (JDA)

Malaysia and Thailand reached an agreement on the territorial sea boundary and part of their potential continental shelf boundary in the Gulf of Thailand in 1979. Because of hydrocarbon resources, the two parties compromised on those claims by agreeing to differ and proceeded with the joint

development of sea bed resources. Thus, they agreed to establish a joint administered zone encompassing the overlapping areas. On 21 February 1979, the two parties finally signed a Memorandum of Understanding (MoU) (Charney & Alexander, 1993, pp. 1107-1111). The MoU is an agreement signed by Malaysia and the Kingdom of Thailand on the establishment of the joint authority for the exploitation of the resources of the sea bed in a defined area of the continental shelf of the two countries in the Gulf of Thailand. The two governments will continue negotiations to complete the delimitation of the continental shelf boundary. The MoU mentions that if there is any structure or field of oil and gas, or any mineral deposit, extending across the boundary lines, the two governments have to communicate and exchange all information with each other to reach an agreement of how to explore and exploit, or even how to share benefits (Centre for International Law, 1979 ; United Nations, 2002). The MoU on the Joint Development Area has had a possibility to resolve the dispute peacefully, and allowed the exploration and exploitation of oil and gas resources in the Gulf of Thailand (Schofield, 1999).

Thailand-Vietnam

Vietnam has historically claimed sovereignty over island features in the Gulf of Thailand based on treaties reached during the French colonial period. Vietnam has increased its claims after the country became one of the 1982 UNCLOS parties which allows it to claim EEZ and continental shelf areas in the South China Sea, the Gulf of Thailand and the Gulf of Tonkin (Nguyen & Ramses, 2011).

In August 1997, Thailand and Vietnam reached an agreement to use a single line for delimiting both the continental shelf and EEZ along the overlapping claim areas, from the southwest of Vietnam and to the northeast of Thailand, between them in the Gulf of Thailand (Ramses & Nguyen, 2009 ; Nguyen & Ramses, 2011)

Thailand-Vietnam-Malaysia

There is a multilateral dispute of overlapping claims in the Gulf of Thailand between the three states of Malaysia, Thailand, and Vietnam. This claim

covers about 256 nm² (879 km²) based on the Thai-Vietnamese maritime boundary treaty of August 1997 (Schofield, 1999 ; Ramses & Nguyen, 2009). Before the 1997 Thai-Vietnamese treaty, the Thai-Malaysian JDA was used as a model which was related to a claim by a third state like Vietnam, particularly when Vietnam and Malaysia reached the JDA in 1992 (see Figure 4.1). The JDA seemed to be more flexible than the Thailand-Malaysia 1979 model. Under the JDA, Malaysia and Vietnam agreed to share oil and gas benefits in the Gulf of Thailand by sending Petroliam Nasional Berhad (PETRONAS) and Vietnam Oil and Gas Corporation (PETROVIETNAM) to explore and exploit hydrocarbon resources in the overlapping areas (Nguyen & Ramses, 2009, pp. 337-338). The 1997 Thailand-Vietnam agreement led the three parties, Thailand, Vietnam and Malaysia, to have trilateral talks in Hanoi, Vietnam on 24-26 February 1998. At first, Vietnam argued for a three-way split in the revenues from oil and gas production in the zone of Vietnamese overlap with the JDA. However, Thailand and Malaysia explained that Vietnam's revenues are based on the Thai-Vietnamese maritime boundary agreement in which Vietnam actually has the least occupied area in the Gulf of Thailand. Therefore, it can be understood that the agreement between those three parties has been reached because they share a common interest, particularly oil and gas exploitation which has given them a large amount of benefits. However, the three countries must continue negotiating on the area of tri-lateral disputes in the Gulf of Thailand to achieve a long-term solution for the overlapping claims areas between them (Schofield, 1999 ; Nguyen & Ramses, 2011).

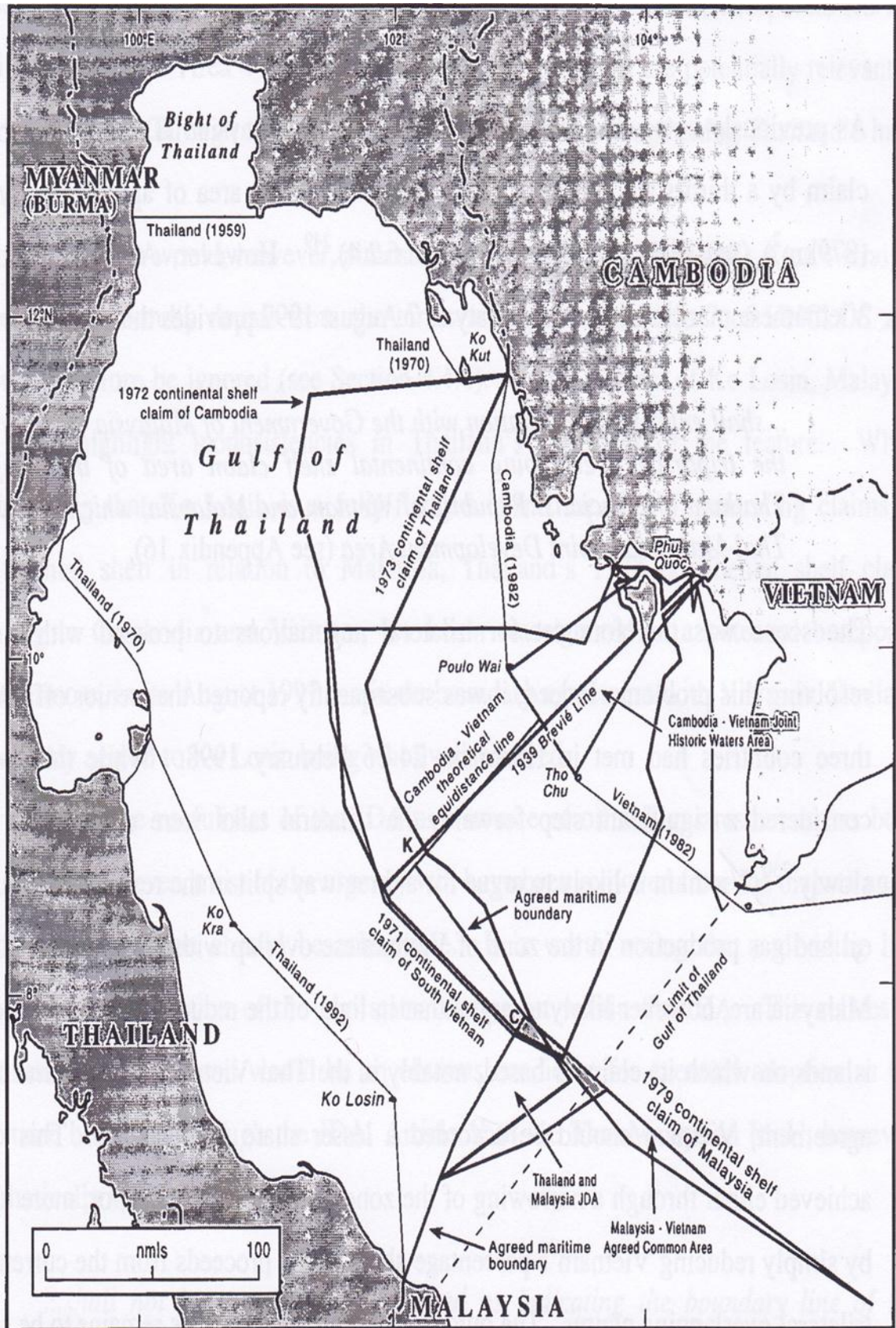


Figure 4.1: map of overlapping claims in the Gulf of Thailand (Schofield, 1999, p. 389)

Thailand-Cambodia

The disputed area between Thailand and Cambodia in the Gulf of Thailand is known as the Overlapping Claims Area (OCA) for energy exploration and untapped oil and gas reserves exploitation. The OCA is a 27,000 sq km offshore area estimated to contain up to eleven trillion cubic feet of natural gas and oil. The OCA is bounded by the Cambodian claim of 1972 (western boundary line) and the Thai claim of 1973 (eastern boundary line) (CLCASIA Political and Market Intelligence, 2010). Territorial and maritime disputes between Thailand and Cambodia have generally escalated from the consequence of treaties concluded between France (on behalf of Cambodia) and Siam (Thailand) in the latter half of the nineteenth and early twentieth centuries. The main treaty is the 1907 Franco-Siam treaty which has encouraged Cambodia to claim sovereignty over Koh Kut Island in the Gulf of Thailand (Schofield, 1999). The Franco-Siam Treaty was signed in 1907. The Treaty mentions that “the frontier between French Indochina and Siam starts from the sea at a point opposite the highest point of the Kut Island” (KI-Media, 2011). Thus, Cambodia has used this treaty to draw its line across Koh Kut which is located within Thai territory. This has been contested by the Thai government (Kongrawd, 2009). Thailand points out that the treaty mentions Koh Kut belongs to Thai territory and Cambodia as a successor to France has never disputed Thailand’s sovereignty over Kut Island (Kittichaiaree, 1987). Therefore, it can be seen that the dispute in the Gulf of Thailand between Thailand and Cambodia has escalated because the two states have applied different methods to construct their claims between their adjacent coastlines (Cambodia’s claim is regarded as an historical claim relying on the 1907 Treaty, while Thailand’s claim is regarded as a ‘realistic’ zone of its overlap continental shelf) (Schofield, 1999, p. 351).

To understand the OCA between the two countries, what has to be considered is the time that France drew up the maritime boundary in the Gulf of Thailand. Cambodia was known as the Khmer Krom Kingdom (now Southern Vietnam) dating back many centuries before being declared by the Cambodian constitution, ‘Kram Srok’, as ‘Cambodia’ in 1615 (Ravin, 2005). The French officially proclaimed Cambodia in 1686 and declared Koh Tral in the Gulf of Thailand to be part of Cambodia. Cambodia had sovereignty over many islands

such as the islands of Koh Ta Kiev (Baie), Koh Thmey (Milieu), Koh Ses (Eau), Koh Tonsay (Pic), and Koh Po (the northern Pirate) in the Gulf of Thailand in late 1865 (The Geographer Office of the Geographer Bureau of Intelligence and Research, 1965), and claimed her continental shelf in 1972 and 1982 (see Figure 4.1) (Kongrawd, 2009). For instance, after Thailand claimed delimitation of the continental shelf in 1969, Cambodia made its statement in claiming a continental shelf in the Gulf of Thailand, and allowed foreign oil companies to explore its waters by using the Franco-Siam Treaty of 1907 to state its claim in the Gulf of Thailand, which covers Koh Kut Island (Ravin, 2005).

Cambodia claims islands, cays, and reefs in the Gulf of Thailand and controls some of these features. It claims 12 nm of territorial sea, 24 nm of contiguous zone, and a 200 nm EEZ. It is very interesting that Cambodia is not one of the UNCLOS members, but it mentions that UNCLOS supports its claims to an EEZ and continental shelf areas in the Gulf of Thailand, and points out that its claim is also based on historic factors (Nguyen & Ramses, 2007, p. 307). For the Kut Island or Koh Kut (in Thai) which lies on one of Thailand's straight baselines (Kongrawd, 2009), Cambodia chose the highest point of Kut Island by drawing a straight baseline across the main land of Koh Kut Island belonging to Thailand through the Gulf of Thailand before turning southward, and dropping south, following the median line between the coastlines of the two nations (see Figure 4.1) (Chanda, 2001). It is an overlapping line that has been disputed by Thailand (Kongrawd, 2009). Moreover, Thailand points out that Cambodia does not regard Koh Kut as an island as in the definition under UNCLOS, but it sees the island as a small, isolated, barren and uninhabited feature (Ravin, 2005), which it has used to argue against Cambodia's claim over Koh Kut.

Cambodia's claim is also over that border in the Gulf of Thailand between Thailand and Vietnam. Cambodia still refers to the French 1958 Conventions, the 1982 UNCLOS (Ravin, 2005), and particularly the Franco-Siam Treaty of 1907 to claim its right over the Gulf of Thailand (Schofield, 2007). The two states never reached a proper agreement due to many important obstacles such as ideological divisions, political instability, and the lack of funds which have affected or hindered the process of negotiations between them (Schofield, 1999 ; Ravin, 2005).

However, in 2001, the two states agreed to sign a MoU for joint development of the hydrocarbon resources (Klein, 2011). A 2001 MoU between Thailand and Cambodia was outlined for settlement but the progress has been slow due to political tensions between the two governments because of the dispute over the Preah Vihear temple which lies on their common border. Thus, it can be understood that the tension over the Preah Vihear temple has blocked progress in settling the OCA dispute. Cambodia proposed that Thailand divide the disputed area in a checkerboard fashion, creating at least fourteen different blocks, and to share the revenues of those blocks equally (see Figure 4.2). This proposal was rejected by the Thai government. Thailand, on the other hand, proposed that Cambodia divide the disputed area into three strips running north-south, and to share revenues from the central area equally, while revenues from the outer areas have to be shared 80/20 to Thailand on the western side of the OCA and 80/20 to Cambodia on the eastern side of the OCA. However, Cambodia sees the Thai proposal as economically favouring Thailand rather than Cambodia because most of the exploitable hydrocarbon reserves are located towards the Thai side (CLCASIA Political and Market Intelligence, 2010 ; Klein, 2011).

Therefore, to settle the dispute, the two countries must determine clearly the border lines between them in the Gulf of Thailand (Chanda, 2001). The benefits of oil and gas exploration and exploitation in the OCA, particularly around the Kut Island, might be one of the main disputes between them, but it can be one of the main motivations to bring the two states to reach an agreement in settling the dispute as well (Kongrawd, 2009). Thailand has a high demand for oil and gas which are mostly imported from its reserves in the Gulf of Thailand and from Myanmar. From this fact, Cambodia might see this situation as being one of the key solutions to bringing Thailand to the negotiating table, and a JDA might be the only one realistic solution in this case (CLCASIA Political and Market Intelligence, 2010). In 2006, Thailand and Cambodia started following up the process of negotiation, and began to drill in a number of potential offshore oil and gas fields with foreign oil companies such as the U.S oil company Chevron in 2008 (Kongrawd, 2009, p. 4).

Thailand-Cambodia-Vietnam

The three countries have long suspected one another of surreptitiously moving border markers (Chanda, 2001). The dispute escalated in 1997 over the area of the Cambodia-Thailand-Vietnam tri-point in the Gulf of Thailand which Vietnam and Thailand had bilaterally determined as part of their maritime boundary treaty of 9 August that year. However, this treaty was protested by Cambodia in 1998 (Schofield, 1999). Cambodia complained that the 1997 agreement between Thailand and Vietnam encroached on Cambodian waters, hence no agreement between the three states has been reached yet (Ramses & Nguyen, 2009).

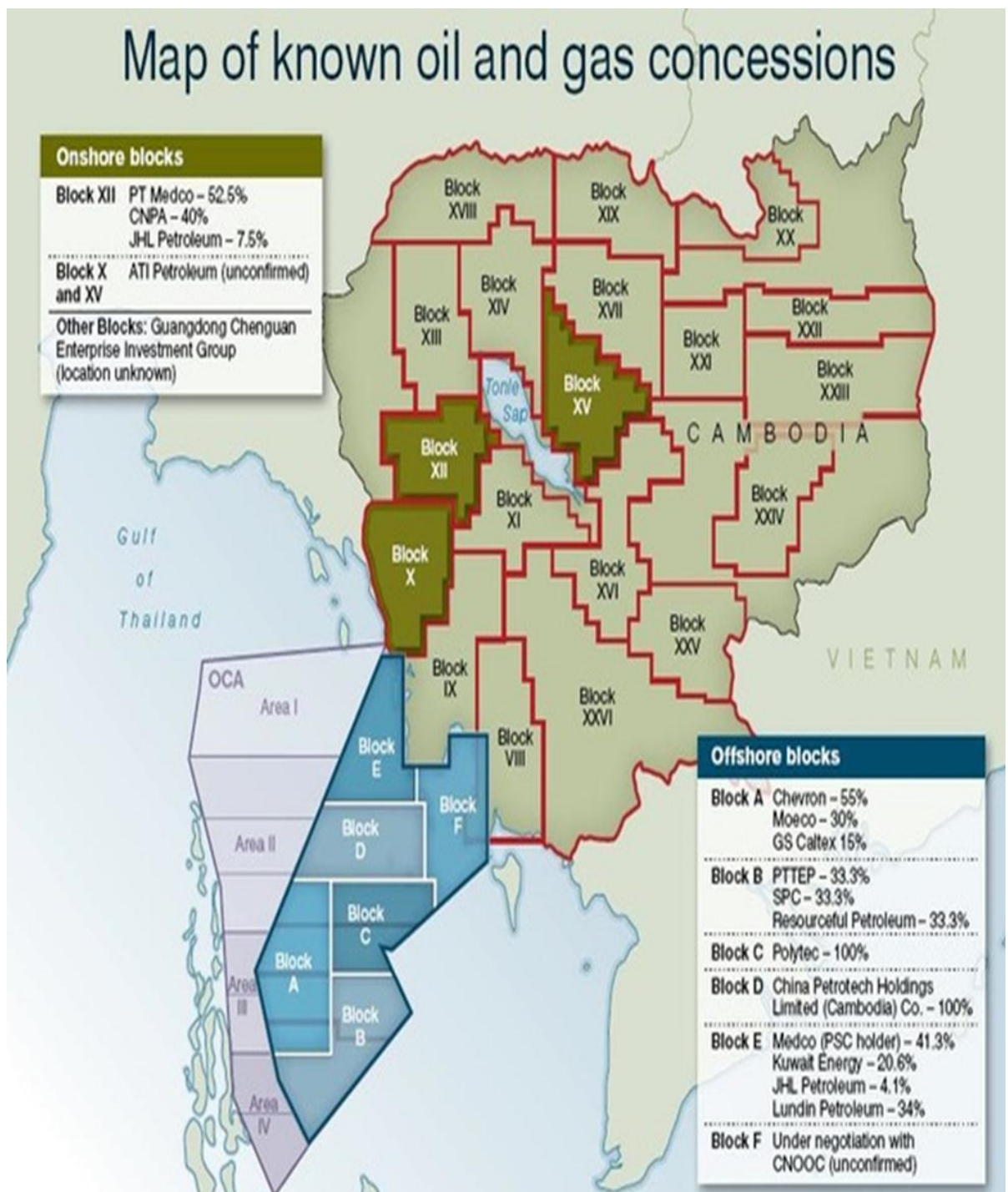


Figure 4.2: Map of known oil and gas concessions between Thailand and Cambodia in the OCA in the Gulf of Thailand (Peixe, 2011, p. 1)

4.3.2 Thailand's territorial disputes along its borders

Historically, Thailand has had long relationships and rivalries (from wars and shifts in authority since ancient times) with its border neighbours of Cambodia, Laos, Myanmar, and Malaysia. In the 13th century, the Kingdom of Sukothai (Thailand) was established and ruled most of modern day Thailand with the boundary between the Khmer (or Cambodia) in the East and Myanmar in the West, and expanded southward to the Malays of the Lower Peninsula. After the collapse of the Kingdom of Sukothai, the Thai state of Ayuthia was established in 1350. After that the Ayuthai Kingdom was destroyed by Myanmar in the 18th century after it lost the war. However, a new Thai state was settled around the Chao Phray River area and Bangkok was established in 1782 as a new capital city by the first King of the current Thai dynasty. (The Geographer Office of the Geographer Bureau of Intelligence and Research, 1965 ; Cady, 1966). As authority and power shifted in the region, many territorial disputes came about as those countries which had states which had once been under the rule of the ancient Thai Kingdom tried to claim sovereign rights over some of the territory under the treaties of the colonial powers.

Thailand-Laos

Laos is located around the middle Mekong River valley; it was a vassal of the Siamese Kingdom for more than four centuries until France colonised it in 1893. Since then it has disputed a common border along the Mekong River with Thailand (Cady, 1966). In August 1996, Laos and Thailand finally set up a Joint Border Committee chaired by the Foreign Ministers of the two countries for the purpose of settling the demarcation of the common border. However, the two states needed to have an agreement in establishing the borderline along the Mekong River which is the main long-standing territorial dispute between the two nations. Laos has continued the negotiation progress with Thailand and Cambodia in the 2000s on their border demarcation, but the process has been slow and has not yet reached an agreement because of political instability and the lack of funds and expertise among the three governments (Ramses & Nguyen, 2009).

Thailand-Malaysia

After the current Thai dynasty was established, the first King expanded the new Thai Kingdom to the Malay sultanates of Trengganu, Kedah, Kelantan, and Pattani and brought them under the rule of the new Thai Kingdom between 1824 and 1851. Thus, the Thai Kingdom and some of the Malay states came into direct territorial contact. The first boundary treaty between the Thai Kingdom and the Malay States was signed in 1869 concerning the frontier of Kedah. In the first decade of the 20th century, the Thai Kingdom claimed those four Malay states before the four states became states of the independent Federation of Malaya in 1957 and Malaysia in 1963 (The Geographer Office of the Geographer Bureau of Intelligence and Research, 1965).

The main border dispute between Thailand and Malaysia is the border of 'the Golok' which is a common borderland between the Southern part of Thailand and Malaysia with numbers of Malay-Muslims living on both sides, and sharing language, religion, and blood ties. The tension along the border has mostly resulted from the violent movements of the Malay-Muslim insurgent groups which seek independence of the ancient Pattani Kingdom (which is located in the three Thai southern provinces of Yala, Narathiwat, and Pattani in the modern day) from the Thai government, overlapping the border between the two states. This issue has still not been resolved because the Malay-Muslim insurgent groups are crossing the border between Thailand and Malaysia, and it is difficult to catch them or prevent unpredictable violent movements in these three provinces. It has also led to the religious conflict between Thai-Buddhists and Malay-Muslims in the three provinces. Bombings, daily killings of Thai-Buddhists and Thai government officers, etc. by the violent Malay-Muslim insurgent group in these provinces have frequently occurred, and more than five thousands of both Buddhist and Muslims have been killed since 2004 (Wain, 2012, pp. 46-47 ; "Thailand, Malaysia annual," 2013, p. 1). The insurgents are always crossing the border between Thailand and Malaysia, this has caused tensions between the two countries. In February, 2013, the Thai Prime Minister, Yingluck Shinawatra, visited Malaysia for the Thailand-Malaysia annual consultation on purpose of cooperation in resolving terrorism and reducing tensions along the southern

border between the two countries. After the talks with Malaysia, the joint statement has been approved by the Thai cabinet, covering with eight major topics;

1. Cooperation between the two countries to solve problems in the southern border provinces to ensure economic development and security in the border area under the agreed confidence building measures covering education, employment and businesses.
2. A plan to speed up linking Thailand's southern development plan with those of northern and eastern states of Malaysia and completing a project to build two bridges across the Kolok River bordering the two countries.
3. Promotion of trade and investment between the private sectors of the two countries in the border areas over oil, gas, energy, car manufacturing industry, rubber products and tourism as well as the establishment of a Thai-Malaysian business council.
4. Cooperation in and promotion of Halal businesses.
5. Promotion of cooperation on radio frequencies in the border areas to cope with the expansion and television and mobile telephone services.
6. The signing of an agreement over cross-border travels of the peoples and a memorandum of understanding on cooperation on youth affairs and sports between the two countries ahead of the launch of the ASEAN Economic Community in 2015.
7. Promotion of labour cooperation with an aim to enable Thais to operate restaurants in Malaysia legally.
8. A plan to speed up cooperation on: 1) Employment, human resources development and promotion of labour skill standards; 2) Immigration and screening of persons holding dual nationalities; 3) Transnational crimes; 4) Prisoners exchange; 5) A review of the extradition treaty; 6) A review of the agreement on border cooperation; 7) Suppression of

human trafficking; and 8) Transport of goods and passengers across the Thai-Malaysian border (“Thailand, Malaysia annual,” 2013, p. 1).

However, this plan has still been in the process, the insurgent attacks still have occurred regularly with numbers of deaths and injuries along the border.

Thailand-Myanmar

Thailand and Myanmar have been rival countries with a long history and many past wars. The two countries share a long border of 2,400 kilometres. Most current border issues between the two nations emerged from the ‘Burney Treaty’ which was signed in 1826 by Thailand and Britain after the colonization of Burma in 1824. This treaty established the current boundary between Thailand and Burma. The dispute over the border between Thailand and Myanmar emerged after Myanmar became independent from Britain in 1948. Thailand disagrees with the demarcation emphasising the imposition of the treaty by the British. Since then, the border clashes between their troops have been the main issue between Thailand and Myanmar (Pate, 2010). In the present day, there are many problems such as a weak central authority due to political instability, armed ethnic and religious minorities, criminal networks, and opposition groups to the Myanmar government. These problems have hindered the settlement process of the Thai-Myanmar border dispute because insurgent movements, terrorism, and crime seem to be the most important concern for the two governments, especially Thailand which wants to resolve them rather than giving consideration to delineating borders. They have also had maritime disputes in the Andaman Sea, but they signed a maritime boundary agreement in 1980. In 1987, they also agreed to demarcate the most northerly part of their onshore border, a 36-kilometres stretch of the Mea Sai and Nan Hok Rivers which was completed in 1991. In 1993, they established a Joint Boundary Committee (JBC), reached general agreement in 1997 on the demarcation of the entire border, and finally completed in 2005 (Wain, 2012 ; Pate, 2010).

Thailand-Cambodia

The land border disputes between Thailand and Cambodia have been the most acute and tension filled over the Southeast region since 2008 (Ramses & Nguyen, 2009). The two states have been historical rival states just like Thailand and Myanmar since ancient times; particularly after Cambodia became independent from the French in 1954 and was ruled by King Sihanouk in 1955 (Cady, 1966). The French had left many problems to Cambodia, especially about unclear land borders with its neighbours from the French maps during the colonial period. In the late 1990s, Cambodia frequently violated its borders with its three neighbouring countries Laos, Vietnam and, particularly, Thailand, which has led to disputes (Ramses & Nguyen, 2009).

One of the most serious territorial disputes between Thailand and Cambodia is the dispute over the sovereignty of the Preah Vihear temple. The dispute over the sovereignty of the temple occurred from a mistake on one of the French maps from the 1907 Treaty between Thailand and France which inaccurately put the temple into Cambodian's territory instead of Thailand. However, Thai authorities at that time did not reject this map until the French withdrew its authority and troops from Cambodia. Thailand occupied the temple after the French left because Thailand saw that treaties with France had been cancelled. Thailand and Cambodia had had many failed negotiations between 1954-1958, before Cambodia referred the dispute to the ICJ in October 1959, and the temple was awarded to Cambodia by the ICJ in 1962. This final judgment was protested by Thailand but it finally accepted the Court's ordered and withdrew its troops from the Preah Vihear temple and the border (Schofield, 1999, p. 308).

However, the case of the Preah Vihear dispute can be seen as one of the worst failures for the Thai government and has emotionally affected the Thai people. In Thailand's view, the final judgement of the dispute over the Preah Vihear temple by the ICJ is invalid, unfair and unacceptable for the country (Kongrawd, 2009 pp. 4-5). Moreover, after Cambodia was ruled by the Party of Democratic Kampuchea (PDK) (Khmer Rouge) between 1975 and 1979, it created more tensions between the two countries from military movements along the two states' common boundary. This prevented the Cambodian government

from continuing with their Joint Commission on Demarcation of the Land Boundary (JBC) which was held in Thailand in early July 1999 (Ramses & Nguyen, 2009). The JBC was re-discussed again on 14 February, 2012, at the Fifth Meeting of the Thai-Cambodian which was held by Thailand. At this time, the two countries finally agreed to rebuild their relationship and maintain mutual trust by allowing the Joint Survey Team to survey the disputed border (Ministry of Foreign Affairs of the Kingdom of Thailand, 2012, p. 1).

4.4 Conclusion

Thailand has shared both coastal and land border lines with its past rival neighbours such as Malaysia, Vietnam, Cambodia, Myanmar and Laos. This has created both territorial and maritime disputes between them, especially during the colonial period. The main problem of unresolved disputes is political instability in those states, which has resulted in a lack of cooperation among the parties. Moreover, those states (except Malaysia) are all developing countries, hence they tend to have economic issues which means the governments do not have enough funds or expertise to continue their negotiations to reach an agreement.

For the disputes concerning the Gulf of Thailand, there have only been three maritime boundary delimitation agreements; the Thai-Malaysian territorial sea treaty, two partial delimitations between Thailand and Malaysia, and Thailand and Vietnam, three joint zones agreements between Thailand and Malaysia, Malaysia and Vietnam, and Cambodia and Vietnam. It can be understood that the presence of many foreign oil companies such as Chevron, Amoco, British Gas, UNOCAL, and BP, has led disputes in the Gulf of Thailand to become peaceful settlements or agreements among those disputed countries, because of the large amount of revenues from these giant oil companies (Kongrawd, 2009). Unlike the disputes in the Gulf of Thailand, there is not sufficient motivation for Thailand's other border disputes to be settled quickly.

Chapter 5

A case study of the territorial dispute over sovereignty of the Preah Vihear temple and its surrounding area between Thailand and Cambodia

5.1 Introduction

The Southeast Asian region is currently involved in a number of territorial and maritime disputes as a result of past colonial boundary maps which were drawn up by European powers to divide their boundary lines of land and sea (Kingburg, 2001 ; Strachan, 2009). Those colonial authorities' maps were drawn in straight lines to connect known points or geographical coordinates, or followed features of the physical landscape, such as hills, watersheds, and bluffs: for example, the Mekong River which has been used as a boundary line to divide Thailand and Laos, and the watershed for hundreds of kilometres along the surrounding Dangrek Mountains to divide the border of the Preah Vihear temple between Thailand and Cambodia (Wain, 2012). For maritime boundaries, they are measured according to the land under the 1982 UNCLOS which have led to questions over the ownership and claims of islands, islets, EEZs, and even small, uninhabited islands and rocks (Wain, 2012). Some of these have been settled, but many of them are still unresolved or under a process of negotiation. The escalation of territorial and maritime disputes in the Southeast Asian region generally emerges from the fact that land and borders have yet to be demarcated in many parts of the region after the end of the colonial period. Thus, those Southeast Asian states need to demarcate their borders with their neighbouring states in order to prevent an escalation in hostilities between them through bilateral talks or third-party involvement (Strachan, 2009).

In terms of third-party involvement, the ICJ has played more of a role than ASEAN in resolving disputes in Southeast Asia. The ICJ is one of the six principal organs of the United Nations (UN), works as a World Court and has a

dual jurisdiction: deciding disputes that are brought to it by states and advising on legal questions at the request of organizations like the UN. The ICJ has fifteen judges which are elected by the UN General Assembly and the Security Council for a period of nine years (Strachan, 2009, p. 1). The ICJ has settled three cases of territorial and maritime disputes between Southeast Asian states: the maritime boundary dispute over Pulau Ligitan and Pulau Sipadan Islands in the Celebes Sea between Indonesia and Malaysia in 2002; the maritime boundary dispute over Pedra Branca or Pulau Batu Puteh, Middle Rocks, and South Ledge between Malaysia and Singapore in 2008; and the territorial dispute over sovereignty of the Preah Vihear temple between Thailand and Cambodia in 1962. However, among the three cases which were settled by the ICJ's judgement, only the Preah Vihear case has not yet been effectively resolved as the dispute re-emerged in 2008, driven by both domestic politics and nationalist sentiments. It is very interesting to look at this case carefully because there are other elements for escalating the dispute between the two neighbouring states, particularly historical and political factors.

The territorial dispute over the Preah Vihear temple between Thailand and Cambodia was thought to be settled after the Temple was awarded to Cambodia by the ICJ in 1962, but the dispute between the two countries emerged again in 2008 with the question of ownership over the 4.6 sq km area surrounding the temple which had not been demarcated, but had been claimed by Thailand (Strachan, 2009). Why did the ICJ fail to resolve this dispute, and why the ICJ did not demarcate the ownership of the temple's surrounding area as it did with the temple. To address these questions it is necessary to look at the roots of this dispute including the histories of both countries in terms of how their relationship has developed, and the history of the temple.

The Preah Vihear temple in Cambodian (or Phra Viharn in Thai) has been at the heart of the long-standing dispute between Thailand and Cambodia. The temple is at a site whose history dates back to the ninth century; it was used as a place of worship dedicated to the Hindu god 'Shiva'. The temple was built by one of the ancient Khmer kings, Suryavarman I (1002-1050), and he extended the area of the temple to the top of a spectacular cliff which is 623 metres above sea level (Nassoufis, 2011). The area that was not demarcated by the ICJ remains in dispute

and often results in minor armed clashes between the troops of two countries (Menas borders, 2010 ; Thayer, 2009).

In 1962 when the Court awarded the temple to Cambodia, Thailand did accept the Court's decision and withdrew its troops from the temple, but Thailand insisted that only the temple itself was under Cambodian sovereignty (Nassoufis, 2011 ; Shulman, 2012). Thailand's relations with Cambodia have remained tense as both sides struggle to achieve a permanent resolution for the dispute over the Preah Vihear temple and its surrounding area. Between 2008 and mid-2011, the relationship between the two countries greatly deteriorated with a series of border skirmishes (The Economist Intelligence Unit Limited, 2010 ; Ngoun, 2012). Tensions dramatically rose in 2008 when Cambodia applied to the United Nations Educational, Scientific and Cultural Organization (UNESCO) to list the Preah Vihear temple as a World Heritage Site because it intended to boost its tourism (Thayer, 2009).

At first, Thailand also agreed to apply for the temple to be a World Heritage Site to increase the number of tourists along the border; thus Thailand tried to have the countries jointly seek World Heritage listing for the temple, based on a 2000 Memorandum of Understanding (MOU). The reasons Thailand wanted to be participant in a joint nomination of the temple to the World Heritage Site with Cambodia was because Thailand acknowledged that the temple is an important place in terms of historical evidence of the Thai-Cambodian relationship, and has a high value to humanity. However, Cambodia made a separate application which was approved by UNESCO despite Thai objection (Nassoufis, 2011 ; Pakdeekong, 2009 ; Menas borders, 2010). Subsequently, Thailand claimed the 4.6 sq km area surrounding the temple by sending its troops to the disputed area and the border. This Thai action affected Cambodia and blocked its effort to turn the site into a tourism attraction because the main access to the temple is located on the Thai side of the border, while on the Cambodian side is a sheer cliff which makes it difficult to access the temple (Nassoufis, 2011). As a result, there have been several skirmishes, armed clashes and exchanges of fire between the two nations' troops along the border between October 2008 and April 2011.

This conflict has been the worst among ASEAN member states in decades (“Thailand cancels ceasefire talks,” 2011). The escalation of tension into several clashes between the two states’ troops along the border had threatened the credibility of ASEAN in maintaining peace and regional stability in the region (Wain, 2012). The outbreak of fighting between Thailand and Cambodia since 2008 resulted in a dramatic drop in the number of tourists and traders crossing the border, hundreds of shops being abandoned, more than tens of thousands of villagers along the border were being forced to flee their houses, and the deaths of at least twenty soldiers and civilians from both sides (“International Court rules,” 2011).

In 2011, Cambodia lodged a case with the ICJ to settle the dispute with Thailand. The ICJ ordered both countries to immediately withdraw their troops from the disputed area and to allow ASEAN’s observers to survey the disputed area to find a permanent resolution, and also declared the disputed area as a temporary demilitarized zone by eleven votes to five (“International Court rules,” 2011). However, the process of settling the dispute over the Preah Vihear temple and its surrounding area was delayed by the floods in Bangkok, Thailand in 2011, and thus a permanent settlement has not yet been reached (“ASEAN mediates,” 2011).

This chapter will provide information about the history of Thai-Cambodian relations and the Preah Vihear temple so as to understand how the relationship between both countries and the dispute over the temple has developed. The case of the territorial dispute over sovereignty of the Preah Vihear temple in 1959 and the 1962 ICJ judgement will then be examined. This chapter will then focus on the re-emergence of the dispute over the temple and its surrounding area in October 2008, examining new elements which have influenced the re-emergence of the 2008 dispute, including the roles of ASEAN, and third parties such as the ICJ, the UN, and UNESCO, in attempting to make Thailand and Cambodia reach a permanent settlement in their long-standing dispute.

5.2 The territorial dispute over sovereignty of the Preah Vihear temple between Thailand and Cambodia in the 1950s and the 1962 ICJ's decision

5.2.1 Thai-Cambodian relations before the colonial period

Thai-Cambodian relations can be seen as a “love-hate relationship” due to their rivalry since ancient times. This raises the question of how historical embeddedness influences the development of Thai-Cambodian relations and the rise in nationalism in both countries; one of the most important factors in the re-emergence of the dispute. Thailand and Cambodia share similar customs, traditions, beliefs, and ways of life, particularly in royal customs which Thailand has adopted from the ancient Cambodian kingdom (Chachavalpongpun, 2012). Thus, it is necessary to look at the ancient Cambodian or Khmer kingdom to understand the development of Thai-Cambodian love-hate relations.

The Thai-Cambodian relations has developed since the establishment of the new Khmer Empire by King Jayavarman II, which had a centre on Angkor Thom, the largest Hindu temple complex in the world, as a new capital city located 1.7 km north of the entrance to Angkor Wat (the Walls city) which was built in the early twelfth century during the peak of the Jayavarman II Empire. King Jayavarman II built the Angkor City complex, to represent the beliefs of the Hindus. During the Khmer Empire of Jayavarman VII (1181-1215 A.D.), it covered the current Cambodia, all of southern Vietnam, all of the current Laos, all of the current Thailand, and part of the current Malaysia (see Figure 5.1), while the kingdom of Thailand or Siam did not even exist in the Southeast Asian region until the mid-fourteenth century. After the death of Jayavarman VII in 1219, the kingdom at Angkor continued for about two centuries before the rise of the Thais to the west of the capital at Angkor Thom of the ancient Khmer Empire. Siamese and Khmers (Thais and Cambodians in the modern day respectively) had interacted through the exchange of culture, marriage, and trade, since the first ancient Thai Kingdom, the Sukhothai kingdom, in 1238 through to the Ayuthaya kingdom in 1351 (see Figure 5.2) (Kenneth, 2008).

In 1353, the Khmer Empire was weak enough for the neighbouring Thais to invade and occupy the city of Angkor Thom for the first time, and again in 1430-1431. Ayuthaya invaded and destroyed the Angkor kingdom (an ancient Khmer kingdom), and transformed the kingdom into one of Ayuthaya's vassals which was the end of the ancient Khmer Empire, and the city was abandoned after that and the love-hate relationship between Thailand and Cambodia began then. It can be seen clearly when the fall of the Ayuthaya kingdom in 1767 by the Burmese invaders, the Ayuthaya kingdom had been attacked by the Burmese, and had become weak, Khmers often took this opportunity to attack Ayuthaya from the east as revenge. Thus, those actions during the pre-colonial period had built feelings of mistrust and rivalry in power between the two countries (Dutt, 1996 ; Kenneth, 2008 ; Chachavalpongpun, 2012).

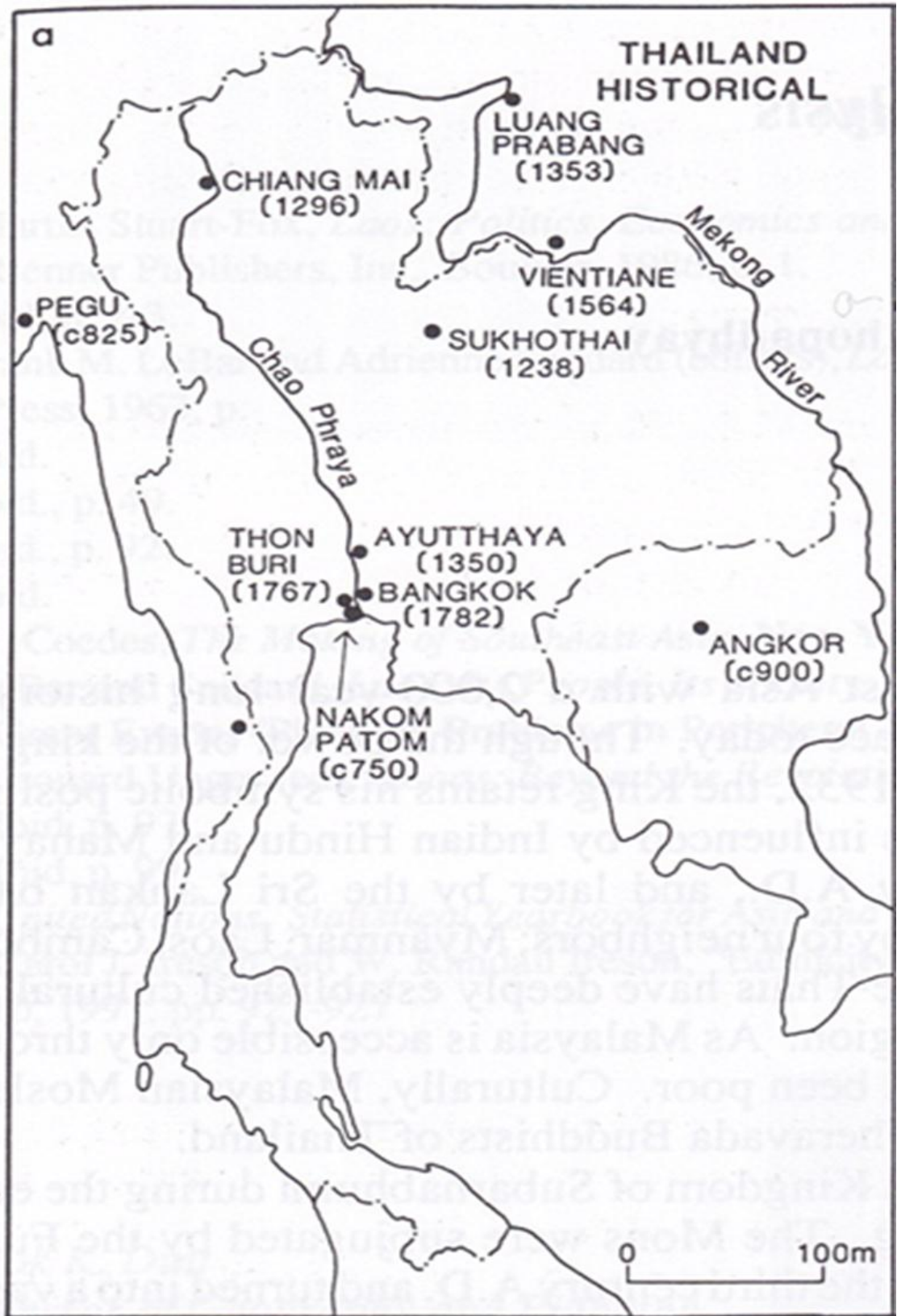


Figure 5.2: Capitals and Core Areas of Thailand and Adjacent Countries (Dutt, 1996)

5.2.2 Thailand-Cambodia relations during the colonial period and the territorial dispute over sovereignty of the Preah Vihear temple

In 1904 Siam and France had talked about a treaty to divide their territory (Cuasay, 1998). On 23th March, 1907, the 1907 Treaty was completed by Siam and France (as the protectorate of Cambodia), following the Treaty of Siam which ceded Tonle Repou, Mlou Prey, Koh Kong, and Stung Treng to Cambodia. The 1907 Treaty subsequently produced the French-Siamese Commission on the 1907 Frontier Line (see Figure 5.3) which gave sovereignty of the Preah Vihear temple to Cambodia (Kenneth, 2008). The 1907 Treaty forced Siam to return some Cambodian provinces such as Battambang, Sisophon, and Siem Reap, Mongkol Borei, and Tnot (see Figure 5.3 and 5.4), to the French protectorate of Cambodia. This has embedded a sense of nationalism over the loss of “Thai territories” among Thai people. This can be seen when Thailand claimed sovereignty over the Preah Vihear temple in the late 1950s and stated that the temple is located in its supposedly lost territories (Chachavalpongpun, 2012). From the 1907 Treaty, Siam had to return almost all Cambodian ancient territories of the sixteenth century to Cambodia (see Figures 5.3 and 5.4) (Kenneth, 2008). In 1934, Thailand contested that the temple belonged to Thailand. In 1954, Thailand occupied the temple, although the temple was claimed by Cambodia (Caldwell & Tan, 1973, p. 105 ; Kenneth, 2008).

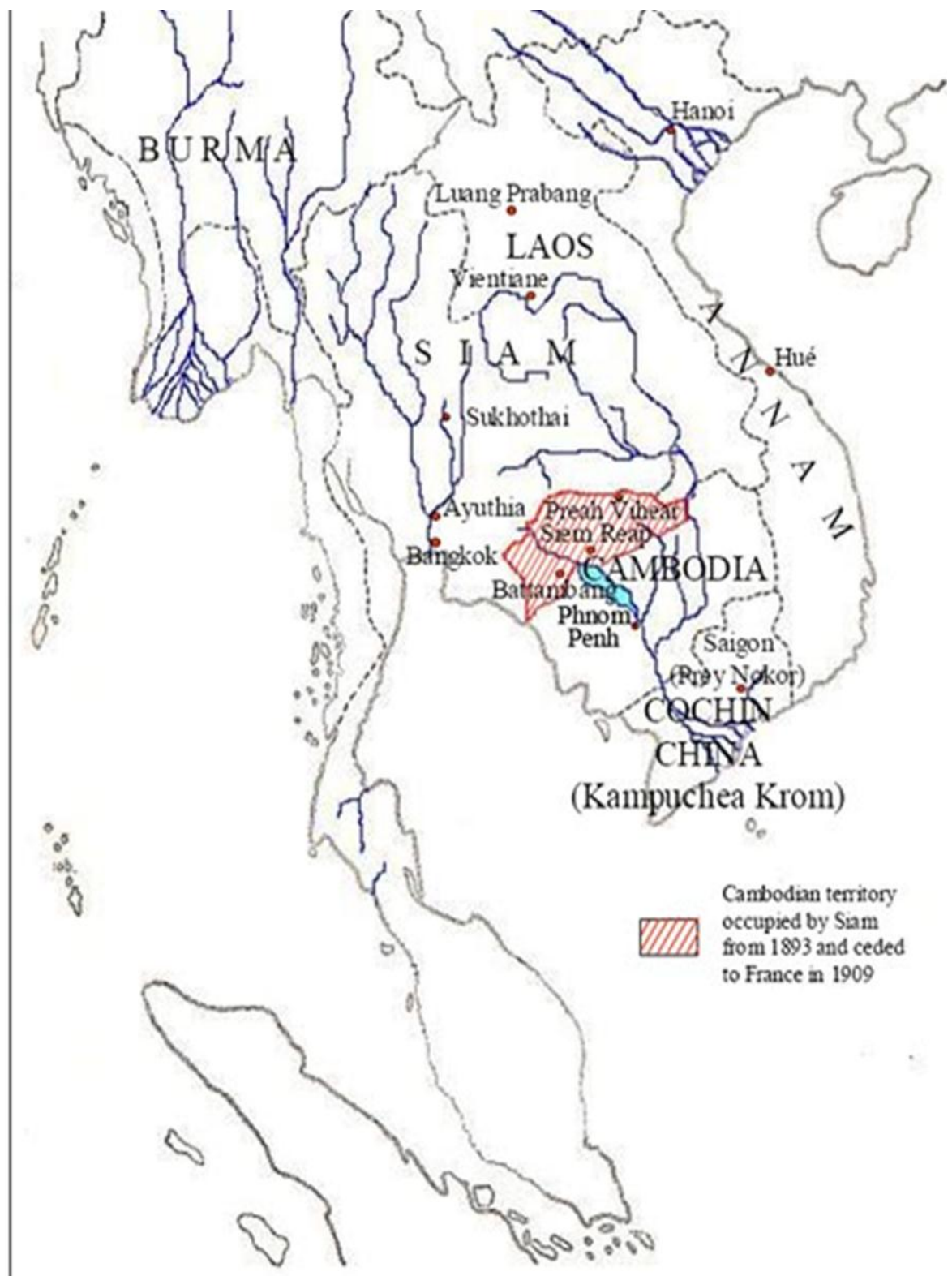


Figure 5.3: Map of Cambodia Showing the Territory That Siam Ceded To France in 1907 (Kenneth, 2008)

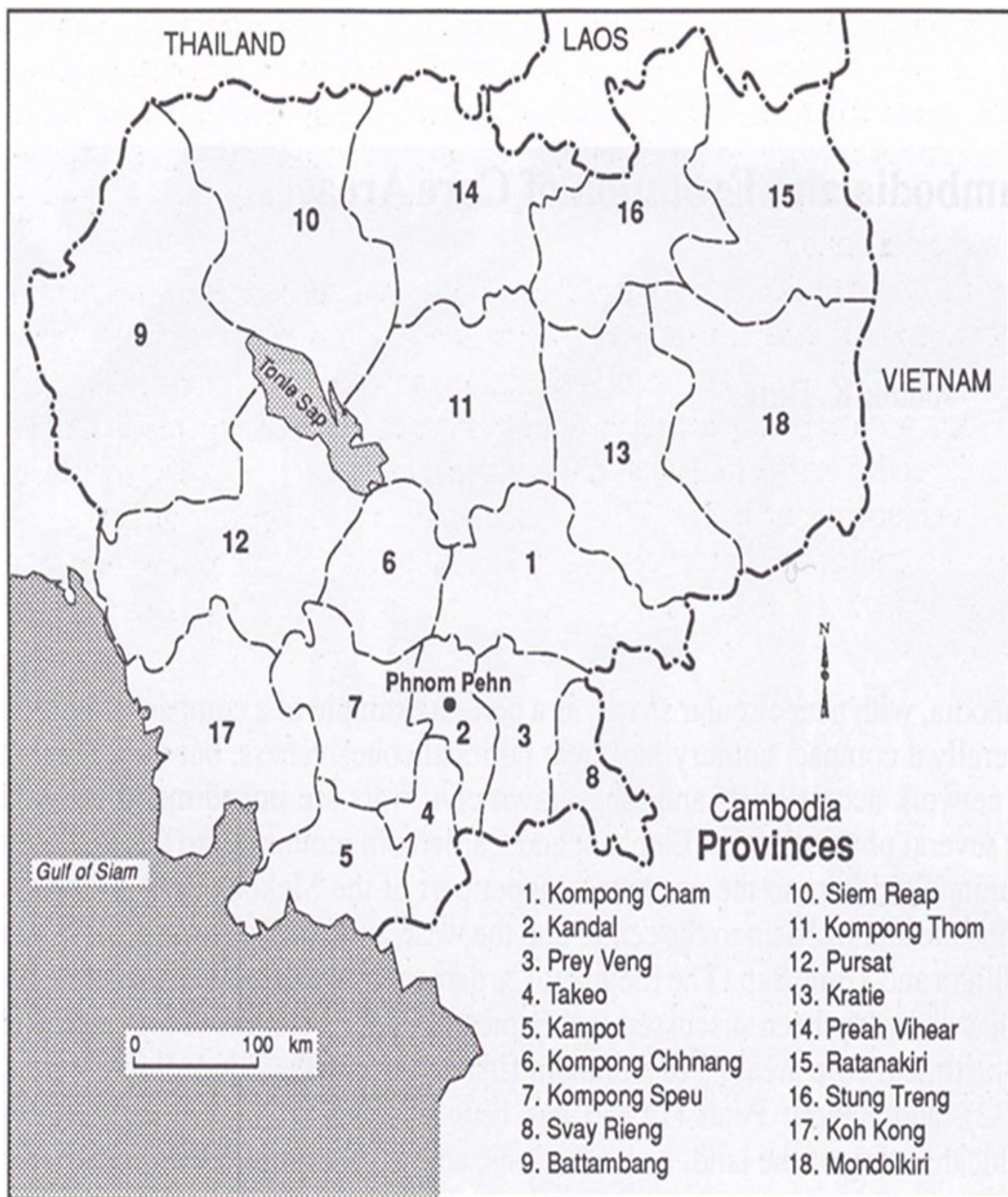


Figure 5.4: Provinces of Cambodia (Dutt, 1996)

The Preah Vihear temple is located on a spur of the Dangrek mountain chain which roughly forms the boundary line between Thailand and Cambodia (Cuasay, 1998). The Preah Vihear temple was established by Yasovarman I- a Khmer King- who ruled from 889 to 910 A.D (Kenneth, 2008). The temple was claimed by Thailand as being located in Bhumsrol village, Bueng Malu sub-district, in the Kantharalak district of the Srisaket province in eastern Thailand (see Figure 5.5). The temple itself has a series of sanctuaries linked by a system of pavements and staircases on an 800 metre north-south axis rising up the hill towards the sanctuary (Pakdeekong, 2009, p. 299). In the early eleventh century, the temple was significant in the process of expanding the Hindu faith supported by the Khmer king as a Hindu place of worship. There was no territorial issue at that time because the temple was the centre of a grand community. The territorial dispute over the sovereignty of the temple emerged from an ambiguous frontier line resulting from the 1904 and 1907 Franco-Siam Treaties. On 13 February, 1904, the 1904 Treaty was established and showed that the boundary in the eastern sector of the Dangrek mountain range followed the watershed line that would place the temple on the Thai side. On 23 March, 1907, the 1907 Treaty established the Franco-Siamese Mixed Commission for the purpose of delimiting the frontier and mapped the temple as being located in Cambodian territory (Pakdeekong, 2009).

The 1904 Treaty led to the forming of a joint commission to demarcate their mutual border-the survey team was supposed to put the temple, following the watershed border line which runs along the Dangrek mountain range, on Thailand's side. On 2 December, 1906, Captains Oum and Kerler of the Mixed Commission surveyed and fixed the section of the boundary between Kel pass and the Col de Preah Vihear Chambot, including the area of the temple. From the survey, Siam requested France to prepare frontier maps. In 1907, they drew up a map with a line deviating from the watershed and placing the temple on the Cambodian side. Eleven maps were produced and given to Thailand in 1908, one of them was the "Annex I" (see Figure 5.6) which showed the temple to be in Cambodian territory. No explanation was given for the deviation, but Thailand did not contest this mistake at that time (Caldwell, & Tan, 1973 ; Chachavalpongpun, 2012 ; Touch, 2009). Cambodia gained full independence from the French Union

in 1953 following the France-Cambodian Treaty of 1949. In 1954, Thailand occupied the temple after the withdrawal of French troops from Cambodia (Caldwell, & Tan, 1973 ; Chachavalpongpun, 2012 ; Menas borders, 2010).

Cambodia protested Thailand's occupation over the Preah Vihear temple in 1959 and asked the ICJ to rule on this case (Menas borders, 2010). On 6th October, 1959, Cambodia, under the leadership of Prince Norodom Sihanouk (1860-1904), submitted the territorial dispute over the Preah Vihear temple to the ICJ (Kenneth, 2008, p. 147), requesting judgements in five Final Submissions to the Court:

1. "To adjudge and declare that the map of the Dangrek sector (Annex I map to the Memorial of Cambodia) was drawn up and published in the name and on behalf of the Mixed Delimitation Commission set up by the Treaty of 13 February 1904, that it sets forth the decisions taken by the said Commission and that, by reason of that fact and also of the subsequent agreements and conduct of the Parties, it presents a treaty character;
2. To adjudge and declare that the frontier line between Cambodia and Thailand, in the disputed region in the neighbourhood of the Preah Vihear temple, is that which is marked on the map of the Commission of Delimitation between Indo-China and Siam (Annex I map to the Memorial of Cambodia);
3. To adjudge and declare that the Preah Vihear temple is situated in territory under the sovereignty of the Kingdom of Cambodia;
4. To adjudge and declare that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed, since 1954, in Cambodian territory, in the ruins of the temple of Preah Vihear;
5. To adjudge and declare that the sculptures, statues, fragments of monuments, sandstone model and ancient pottery which have been removed from the temple by the Thai authorities since 1954 are to be returned to the Government of the Kingdom of Cambodia by the Government of Thailand." (Pakdeekong, 2009, pp. 231-232)

As a result, the ICJ awarded the temple to Cambodia on 15th June, 1962- based on the French-Siamese Commission 1907 Frontier Line (see Figure 5.6) (Kenneth, 2008, p. 147)- by nine votes to three finding that the Preah Vihear temple was situated in territory under the sovereignty of Cambodia, and ordered Thailand to withdraw any military or police force, or other guards or keepers, which were around the temple or on Cambodia's territory. By seven votes to five, the Court found that Thailand was under an obligation to restore to Cambodia any sculptures, fragments of monuments, sandstone models and ancient pottery which might have been removed from the temple or the temple area by Thailand since the Thai occupation in 1954 (International Court of Justice, 1961 ; International Court of Justice, 1962). Thailand accepted the Court's ruling and withdrew its troops and the Thai national flag from the temple area. However, Thailand has protested to the ICJ anytime it discovered new evidence and law favouring it regaining the temple (Pakdeekong, 2009). In January 1963, Thailand finally allowed Cambodia to occupy the temple, after it had failed to protest against the inaccurate map (Annex I) because the government was unable to find new evidence to counter the Court's 1962 ruling (Chachavalpongpun, 2012 ; Cuasay, 1998).

In reaching its decision, the ICJ looked at the 1904 Treaty which created a Mixed Commission to map the territorial boundary of the region. A second Mixed Commission of Delimitation in 1907 created several maps of the region, one of which showed the whole site of the temple as being located on the Cambodian side (see Figure 5.6). This map has been respected for several decades. However, Thailand argued that the map was not binding and contained material error. The ICJ acknowledged that the map was not binding, but Thailand had not made this known in the first place even though Thailand had the power to do so (Shulman, 2012). Thailand also argued that the Annex I map was invalid because it was only prepared by one party, the Mixed Commission, and thus it was not binding on Thailand. However, the Court opposed that the map was invalid and Thailand had adopted the Annex I, which meant that Thailand had already accepted the map for a long time. This made the ICJ reject the Thai claim over the Preah Vihear temple (Touch, 2009).

As a result of losing to Cambodia, Thailand, under the leadership of the Prime Minister Field Marshal Sarit Thanarat between 1959 and 1963, provoked national sentiment in the battle to regain Thailand's lost property (Chachavalpongpun, 2012). In late 1961, he insulted Prince Sihanouk of Cambodia in a broadcast; as a result, Prince Sihanouk responded by severing diplomatic relations and closed the border (Caldwell, & Tan, 1973).

There were two main elements which the Thai military government used to embed a sense of nationalism in its people: the concept of lost territories from Siam and European powers' past treaties, and the transmission of a distorted view of history through use of state propaganda devices such as education and the media. Particularly, the concept of lost territories was used to inflame a sense of nationalism in the Thai people so as to gain their support politically. In terms of education and the media, the military government produced arbitrary textbooks and manipulated the media in order to underline their nation's greatness and belittle their neighbours. For instance, all Thai school textbooks have promoted Thai history under a royalist-nationalist theme in which Thai students learn that Thai monarchs protected the kingdom from invaders, especially Burma which has been seen as the most important enemy due to several invasions of the old Ayutthaya kingdom, while the history of how Siam ruined and destroyed Angkor, the ancient Khmer city and other kingdoms are missing in Thai textbooks. The issues of the loss of territories have also been included in the Thai history textbooks, including the loss of the Preah Vihear temple to Cambodia in 1962, and the Thai name of Phra Wihan is used as a link to Thai ownership over the temple. These Thai government actions created "inadequate history" to raise and embed a sense of nationalism in the Thai people (Chachavalpongpun, 2012). Such past Thai government actions can be questioned. In embedding a national sentiment in the Thai people through education and the media, was this to protect the kingdom's identity or to gain political support for the government's actions?

Because Thai textbooks and the media seem to encourage Thai people to deeply believe that the Preah Vihear temple belongs to Thailand, and had been stolen by Cambodia, Cambodia cannot use the history of ancient Khorm to claim sovereignty over the temple because Khmers (Cambodians) are not Khorms but Khamins. Khorms are the real inhabitants and the builders of the Preah Vihear

temple, not Khamins. The Thai government tried to justify by implication that Thai people are the true descendants of the Khorms, the original inhabitants of Thailand and builders of the Preah Vihear and Angkor. Furthermore, Thai documents always show that the temple is an ancient Hindu temple, dedicated to Shiva, one of the Hindu gods, rather than a Khmer temple. Thailand also kept using its own map in claiming sovereignty over the temple instead of the French-Siamese Commission Map of 1907 which is legal and binding, and was used as main evidence by the ICJ in making its decision in 1962, while the Thai map was not binding and not recognised by the ICJ. Thus, these gave Cambodia more legitimacy and historical claim over the temple than Thailand (Kenneth, 2008, pp. 2-3).

The relationship between them improved when Thailand and Cambodia signed a Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on the Survey and Demarcation of Land Boundary (MOU) which set up a Joint Commission on Demarcation for Land Border to resolve the boundary issue in 2000 (Thayer, 2009). The 2000 MOU focused on gathering information, comparing coordinates, and preparing for mapping, and led to bilateral talks which produced a series of agreements such as a Joint Border Committee with a joint survey team, the opening of border posts and other frontier management issues. The MOU was signed to prevent border conflicts arising out of boundary questions and to further strengthen existing friendly relations between the two countries and to cooperate in terms of tourism along their border. This cooperation led to an agreement to establish the Thai-Cambodia Joint Commission on Demarcation for Land Boundary which was entrusted with the task of placing markers in order to indicate the land boundary between the two countries (Ministry of Foreign Affairs of the Kingdom of Thailand, 2010, p.1 ; Klein, 2011, p. 1). However, the 2008 dispute over the temple's surrounding area is hard to settle because of domestic political involvement which led the issue to become more complicated and has many elements involved (Wain, 2012), including a sense of nationalism.



Figure 5.5: Map of Thai-Cambodian land border (International Crisis Group, 2011)

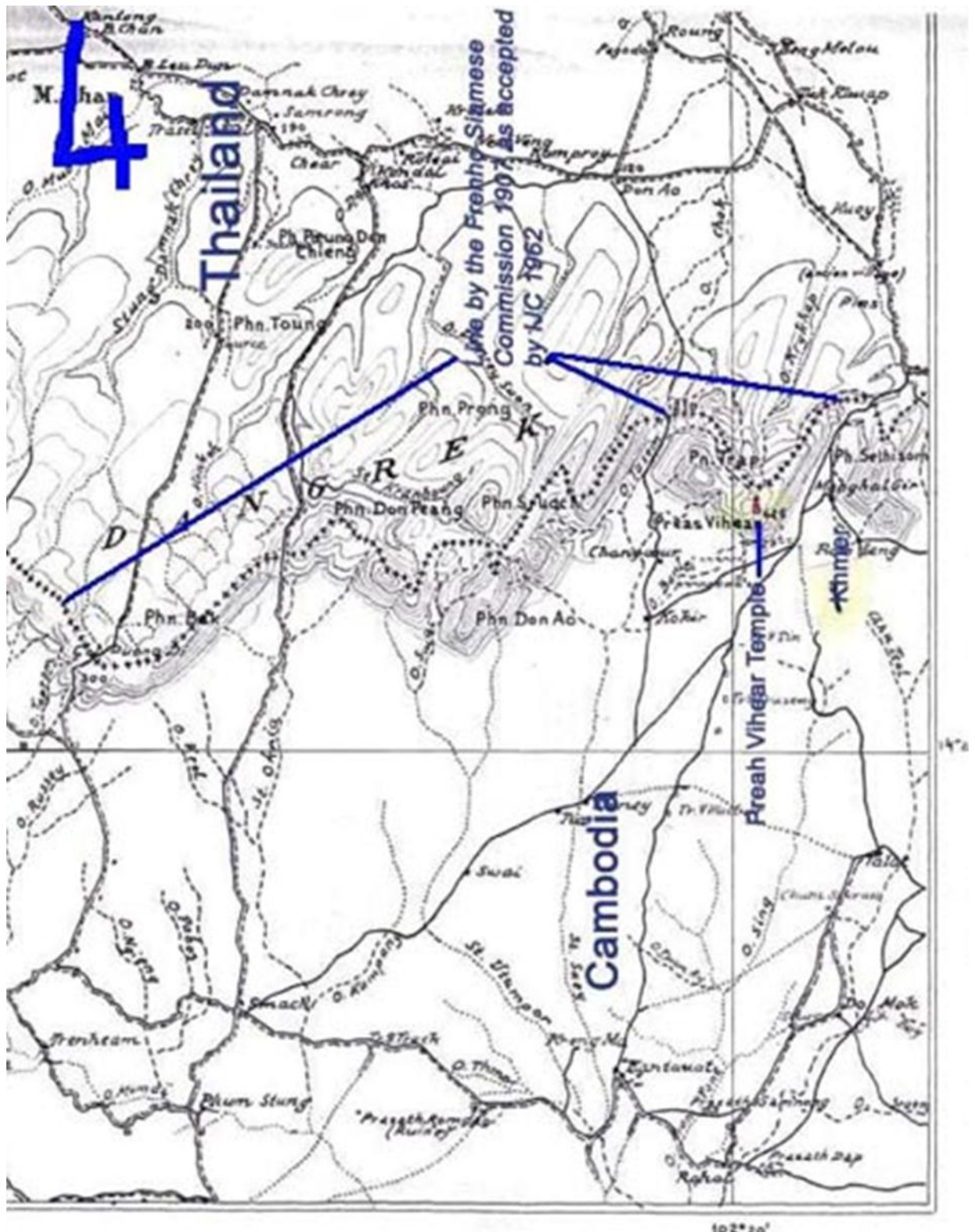


Figure 5.6: The French-Siamese Commission 1907 map (Kenneth, 2008)

5.3 The re-emergence of the territorial dispute over sovereignty of the Preah Vihear temple and its surrounding area from 2008 to 2011

The dispute in 2008 was not about the temple itself, but it was about the 4.6 sq km area surrounding the temple and some parts of the Preah Vihear National Park which are located in the Srisaket and Ubonratchanee provinces of eastern Thailand. The dispute caused damage to the temple, loss of life, and injuries to soldiers and civilians on both sides from the increase in skirmishes between 2008 and 2011 until both governments agreed to return to the ICJ in mid-2011 with Cambodia requesting an interpretation of the 1962 judgement (Shulman, 2012 ; Pakdeekong, 2009).

Does this mean that the ICJ failed in settling the Preah Vihear temple dispute in 1962? Was the Court biased or weak? It seems this was not the case as the situation after the 1962 ICJ judgement was released remained stable for more than forty years, and the ICJ's decision was based on fifteen judgements from representatives of countries with no connection to the two parties. Over the years, more than sixty-four states have accepted the Court's jurisdiction. Thus, to explain the 2008 dispute between Thailand and Cambodia the Southeast Asian region itself has to be looked at (Strachan, 2009).

Thailand and Cambodia are members of ASEAN, but they have struggled in their relationship which has resulted in a lack of clarity surrounding their shared border and the grouping influence of a sense of nationalism in their domestic politics (Johnston, 2011). The issue of the ownership of the temple in 1962 was only about the temple itself and not the land around it (Touch, 2009). It can be questioned as to why the ICJ ruled only the temple to be in Cambodian territory. Thailand used this point in its claim over the Temple's surrounding area as the ICJ has not yet mentioned the ownership of the 4.6 sq km area surrounding the temple.

The tension between them dramatically rose with the return of the military to Thai domestic politics after the military coup in September, 2006 which

overthrew the elected government of Thaksin Shinawatra who was a friend of Hun Sen, the Cambodian Prime Minister. In 2008, Thaksin's proxy People's Power Party took power, following an election victory. The new government signed a Joint Communiqué agreeing to Cambodia's listing of the Preah Vihear temple as an UNESCO World Heritage Site so as to boost its tourism. UNESCO listed the Preah Vihear temple as a World Heritage Site because of the quality of its carved stone ornamentation and architecture adapted to the natural environment, and its religious function. It sits on a cliff more than 600 metres above the surrounding plain, comprising sanctuaries linked by pavements and staircases over an 800-metre-long axis (International Crisis Group, 2011, p. 3). The temple was thus recognized as a World Heritage Site under Cambodian jurisdiction, joining the ranks of the Great Wall of China and Machu Picchu in Peru (Kurczy, 2011).

Because the Thai government under the leadership of Samak agreed to Cambodia applying for the temple to be listed with UNSECO, this raised a protest by the former People's Alliance for Democracy (PAD) or the Yellow Shirts. They seized control of Government House and closed the two airports in Bangkok because the Thai government had sold Thai territory to Cambodia, and pointed out that the disputed area belongs to Thailand not Cambodia and that they will not let Cambodia have that area around the Preah Vihear temple (Ngoun, 2012). The situation turned more serious when in, late 2008, the Thai government under the leadership of Abhisit Vejjajiva, appointed the PAD activist, Kasit Piromya, as Thai Foreign Minister. This was seen as an insult by Cambodia as he had insulted Cambodia publically in the past (Pongsudhirak, 2011). Many meetings to attempt to reduce the tension between Thailand and Cambodia failed. The two countries used the temple as a military base and the mountain top Preah Vihear temple was the scene of fierce artillery battles ("Preah Vihear, Cambodia/Thailand's," 2011). The question can be asked if they were fighting to protect their nation's identity and their historical interests or if they were fighting to protect political hegemony both domestically and internationally.

The chapter will now look at each year, from 2008 to 2011, to easily understand how the dispute developed and what happened each year before the ICJ ordered them to withdraw their troops from the disputed area.

2008

Cambodia asked international organizations to help by mentioning that the battle in 2008 threatened regional stability (“Cambodia asks UN,” 2011).

Tensions in Thai-Cambodia relations along the border were raised in July, 2008, when UNESCO approved Cambodia’s application for the Preah Vihear temple to be a World Heritage Sites and Thai nationalists learned that Thailand could lose its territory around the temple (“Border standoff over temple,” 2008 ; “Thai-Cambodian conflict,” 2011). One of the main problems is that Thailand and Cambodia share a 803km long border that has never been demarcated, which has led to many minor clashes along the border and turned into a major border dispute (Thayer, 2009).

The dispute first escalated in September, 2006 when Prime Minister Thaksin Shinawatra was overthrown by a military coup. After that, Thailand lacked a good foreign policy because Thai politicians were too preoccupied with fighting for their own political survival after Thaksin’s self-exile. The dispute shows the operation of “linkage politics”, particularly in domestic politics of both countries, especially Thailand, in influencing and shaping bilateral relations between the two countries. After Thaksin had been self-exiled from power by the Thai Army, Surayud became Prime Minister with the help of the military government and left in January, 2008. Samak Sundaravej won the national election and became the next Prime Minister with his People’s Power Party (PPP) as the new government. Samak, however, was seen as a self-proclaimed Thaksin proxy and the PPP as a reincarnation of Thaksin’s Thai Rak Thai Party which comfortably won the post-coup election of December, 2007 (Chachavalpongpun, 2009, p. 457).

Samak appointed Noppadon Pattama, Thaksin’s former lawyer, as foreign minister and improved relations with Cambodia by signing a Joint Communiqué that supported Cambodia’s application to UNESCO, which was formally approved on 7 June, 2008 (Chachavalpongpun, 2009 ; Thayer, 2009). The PAD and Abhisit and his Democrat Party condemned the government for giving some parts of Thai territory to Cambodia in order to advance Thaksin’s business interests in Cambodia. Samak and Noppadon were blamed for selling Thai

territories in exchange for personal benefits. The PAD revealed that Thaksin had signed commercial deals with Hun Sen for a development project in Cambodia's Koh Kong, and Thai support for the World Heritage listing of the temple was a part of the deal because Thaksin had planned to build a casino and entertainment complex called "Modern City" (Chachavalpongpun, 2012, p. 90). The PAD also mentioned that UNESCO's listing of the temple as a World Heritage Site had nothing to do with the dispute over sovereignty over the 4.6 sq km around the temple. The PAD had disrupted Thai-Cambodian relations after they had recovered from the anti-Thai riots in 2003 in Cambodia when a Thai actress said in a news broadcast that the Angkor Wat belongs to Thailand ("Thai-Cambodian conflict," 2011). As a result, in January, 2003, the Royal Thai Embassy was burned down by Cambodian nationalists (Chachavalpongpun, 2012). In June, 2008, the PAD rallied against the Prime Minister of the time, Samak Sundaravej, by raising nationalist sentiment over the 4.6 sq km area surrounding the temple ("Thugs templar," 2009). Thus, the Thai government sent Thai troops to the area after anti-government demonstrators made an issue of Cambodia's application over Preah Vihear to UNESCO. From this, it can be assumed that the protestors were trying to stir up nationalist sentiment to gain support from the Thai people to unseat the Prime Minister Samak, who they accused of being a proxy to the toppled ex-Prime Minister Thaksin Shinawatra ("Border standoff over temple," 2008).

In July, 2008, Thai troops entered the surrounding area of the Preah Vihear temple, staking out positions at a Buddhist temple compound nearby, occupying other minor temples in the area, the Keo Sikha Kiri Suara pagoda adjacent to the Preah Vihear and also the 4.6 sq km zone, while, on the other side of the temple, Cambodian troops also came to the compound, but they agreed to hold talks in Thailand to avoid the use of armed force ("Border standoff over temple," 2008). It can be understood that the two governments did not mean to let military force occur because they rely on each other, particularly in terms of economic interests and business involvement, even though the nationalists, particularly in Thailand, had tried to push the Thai government to use harsh methods to end the dispute. However, Samak was finally ordered to resign by the Constitutional Court on 29 September, 2009. The military influenced the National Anti-Corruption

Commission (NACC) by six votes to three to file charges against Samak and Noppadon for being “negligent” in their duties supporting the Joint Communiqué (Chachavalpongpun, 2009, p. 457).

Cambodia informed the UN about hundreds of Thai troops that had violated its territory near the Preah Vihear temple. However, Cambodia stated that it did not ask for the UN’s intervention because it tried to settle the military conflict with Thailand peacefully (“Asia-Pacific,” 2008 ; “Temple dispute steps up,” 2008). The escalation of tensions over the area around the temple caused concern to the UN Security-General, Ban Ki-moon, especially the build-up of troops on the two sides (“Secretary-General concerned,” 2008). Hun Sen would use as an opportunity to stir up nationalist sentiment among his people and gain popularity for his Cambodian People’s Party (CPP) to win re-election. Hun Sen also used this opportunity to gain support and help from ASEAN and other international organizations, to protect Cambodia from Thai military activities (Cambodia: Political outlook September, 2008).

Cambodia also raised the issue at the UN and at a meeting of ASEAN in Singapore, which led to a series of bilateral talks. On 21 July, 2008, there was a meeting between the Thai Supreme Commander and the Cambodian Minister for Defence, which ended with vague pledges to refrain from using force; on 27 July, 2008, in Siem Reap, they agreed to set up a bilateral committee to discuss troop redeployments; and on 18 August, 2008, they agreed to initiate the first-phase of troop redeployment. The two Foreign Ministers met again on 29 September, 2008, at the annual meeting of the UN General Assembly. However, all the processes of negotiations were blocked by a firefight which erupted on 3 October, 2008, at Veal Antri, in which two Thai and three Cambodian soldiers were wounded. The situation turned worse on 6 October, 2008, when two Thai paramilitary rangers lost their legs in a mine explosion. Thailand claimed that the area had been cleared previously, thus the mines that exploded were newly planted. On 13 October, 2008, Sompong Amornwiwat the Thai Deputy Prime Minister and the Foreign Minister went to Cambodia to discuss the border issue with his Cambodian counterpart, Hor Namhong. On 14 October, 2008, they agreed to hold a meeting of the Regional Border Committee and Hun Sen set a deadline of noon for Thailand to withdraw all its troops on 15 October, 2008, but there were three

armed skirmishes that broke out along the border after the deadline passed and one Cambodian, and six Thais were injured and one Thai soldier died. Hor Namhong called his Thai counterpart to discuss this clash and they both expressed regret and agreed that they had to find a peaceful means to stop border clashes. On 15 October, 2008, UNESCO reported that the temple and its surrounding area had sustained minor damage from several clashes between the two armies (International Crisis Group, 2011). On 24 October, 2008, military leaders of both countries signed an agreement to reduce tensions between them at the 11th annual meeting of the Regional Border Committee in Siem Reap, Cambodia (Thayer, 2009).

The next Prime Minister after Samak was Somchai Wongsawat, Thaksin's brother-in-law. He had held talks with Cambodia, to try to peacefully seek a permanent resolution. However, around two months after Somchai came to power, he faced a series of street demonstrations spearheaded by the PAD in front of Government House and two main airports in Bangkok in December 2008. Somchai was forced to leave power after one of his executive members was found guilty of electoral fraud and the PPP was also forced to dissolve. A hundred and eight executive members of the dissolved parties were banned from political activities for five years (Cambodia: Political outlook December, 2008 ; Chachavalpongpun, 2009 ; International Crisis Group, 2011). However, members of the PPP formed a new party, Puea Thai (For Thai) to continue their political activity. In late 2008, Abhisit became one of Thailand's youngest Prime Ministers with support from the PAD and the military. He immediately provoked nationalism among Thai people and used it against the Thaksin regime, and had a nationalistic foreign policy based on national interest with Kasit as a new foreign minister. The PAD proclaimed itself to be the defender of the nation and monarchy, while Thaksin and his cronies were seen as corrupt, immoral and disloyal to the Thai Royal family. The use of nationalist sentiment by the PAD to wage war against Thaksin's regime had led to armed clashes between Thai-Cambodian troops along the border in October, 2008 (Chachavalpongpun, 2009).

The new Thai government under the leadership of Prime Minister Abhisit Vejjajiva claimed that the disputed area surrounding of the temple belonged to Thailand and that Cambodia had encroached upon Thai soil, increasing tension. It

can be understood that Abhisit announced this even though he knew that this would upset Cambodia, because he was willing to gain public support due to mounting pressure from the PAD (Asia-monitor, 2010).

Thailand and Cambodia had started sending their troops to near the historic border temple area. The tension had dramatically increased after the announcement of Abhisit, especially when Cambodia complained that the Thai troops had crossed the border into Cambodian territory to claim the land around the temple (“Tensions grow over temple,” 2008). This affected Thailand’s reputation on the international stage as it was seen invading and being aggressive to its neighbour.

After the dispute re-emerged in 2008, a poll in Cambodia reported that 82 per cent of Cambodians thought that the government was heading in the right direction in resisting Thai troops, 92 per cent saw that it was an important issue, and 93 per cent preferred the two states to settle the disputes peacefully (International Crisis Group, 2011). From this survey, it can be understood that Cambodians think that Thailand played an aggressive role in trying to occupy the area surrounding the temple without any and, thus they supported their government fighting Thailand which was the same as what a majority of Thai people think of Cambodia as well. This increases hatred towards each other, making negotiation difficult.

2009

On 26 January, 2009, Abhisit Vejjajiva sent the new Foreign Minister, Kasit Piromya, to visit Cambodia to restart the border discussion with Hor Namhong. They agreed in principle to draw down troops in the disputed area and to hold further high-level talks at meetings of the Joint Border Committee, Defence Ministers and Prime Minister in February, 2009 (Thayer, 2009). One of the PAD leaders, Sondhi Limthongkul, however, recommended settling the dispute by force so as to protect his motherland and take back Thai territory (Chachavalpongpun, 2012).

In late March and early April, 2009, UNESCO officially conducted a “reinforced monitoring mission” to the disputed area to observe any damage

around the temple from the outbreak of fighting along the border between the two countries. Firefights between October, 2008, and April, 2009, caused damage to more than two hundred places around the Preah Vihear temple area. UNESCO asked for responsibility from the two states and for them to stop fighting on the site (Kurczy, 2011).

On 3 April, 2009, after the UNESCO team left, fighting broke out in the Field of Eagles, including the use of high calibre weapons; artillery, mortar, and grenade fire (International Crisis Group, 2011). The exchange of rockets and small arms fire from both sides suddenly occurred when two Cambodian soldiers were killed (Asian-monitor, 2009 ; The Economist Intelligence Unit Limited, 2011, February). Cambodia claimed that its troops were attacked by a Thai patrol, while the Thai army chief, Anupong Paochinda, mentioned that the two Cambodian soldiers were killed because of a misunderstanding and Thailand did not mean to kill them (Asian-monitor, 2009).

On 19 September, 2009 the PAD re-launched its nationalist campaign by rallying at the disputed border. Dozens of protesters, police, and villagers were injured in clashes after obstructing the PAD from reaching the border. Thus, Hun Sen ordered troops to shoot anyone who crossed the border (Chachavalpongpun, 2009).

The popularity of Abhisit had almost tripled from 23.3 per cent in September, 2009 to 68.6 per cent in November, 2009. Abhisit and the PAD nominated Cambodia as Thailand's enemy. The PAD used to work closely with Abhisit's Democrat Party against Thaksin, but when the Democrat Party formed a government in the late 2008 with assistance from the military, it gradually distanced itself from the PAD and the relationship between them turned worse when the PAD never received the credit that they desired (Chachavalpongpun, 2012).

On 4 November, 2009, during the ASEAN Summit in Hua Hin, Thailand, Hun Sen announced that Thaksin was appointed as his government's economic advisor. As a result, the Thai Foreign Minister recalled the ambassador to Phnom Penh to protest against Hun Sen's official appointment of Thaksin as an economic advisor describing it as "interference in Thailand's domestic affairs and (a) failure

to respect Thailand's judicial system for personal interests" (International Crisis Group, 2011 ; Chachavalpongpun, 2012).

2010

In December, 2010, Cambodian soldiers arrested seven Thais who illegally crossed the border; one was a member of parliament belonging to the governing Democrat Party, Panich Vikitsreth, and one of the PAD's core leaders, Veera Somkwamkid. Panich and four others were found guilty of illegal entry into Cambodia's territory by a Cambodian Court and given a suspended sentence before being allowed to return to Thailand in mid-January, 2011: but Veera and his secretary, Ratee, were sentenced to jail for eight years for being spies (The Economist Intelligence Unit Limited, 2011, February). After two Thais who illegally crossed the border to Cambodia were sentenced to jail, there was an increase in military activities from both sides along the border (Daniel, 2011). However, Abhisit faced street protests from the PAD over his alleged failure to defend Thai soil from Cambodian's claim ("Thai-Cambodian conflict," 2011). The Yellow Shirts protested against Abhisit outside the government office compelling the Thai government to help to release Veera. This caused relations between the PAD and the Abhisit government to deteriorate (Johnston, 2011). Meanwhile, the Cambodian Prime Minister Hun Sen requested the UN Security Council to help arrange an international conference to settle the dispute and military conflict. Cambodia claimed that Thailand threatened Cambodia by using military force first and refused to settle the dispute with Cambodia peacefully (Asia-monitor, 2010).

2011

The outbreak of fighting between the two sides suddenly occurred after the UN Security Council ordered them to have a ceasefire after the previous skirmishes ("Thai, Cambodian soldiers clash," 2011). Firing started on 4 February, 2011, in the jungle around Ta Moan and Ta Krabei temples in the north-eastern Thai province of Surin around ninety-three miles south-west of the Preah Vihear temple ("Thailand-Cambodia border dispute," 2011). The two countries and their media tried to blame each other as to who had started the battle, and they published unclear information and reports of the battle to the public to discredit

each other (“Thai border fighting,” 2011). However, no matter who started the battle first, three Thais and eight Cambodians were killed and dozens of people were injured between 4 and 7 February, 2011. This outbreak can be seen as the bloodiest fighting in nearly two decades (“Thailand-Cambodia border dispute,” 2011).

From the four-day battle, many Cambodian villagers took refuge in Siem Reap, while thousands of Thai villagers from three villages near the disputed area moved to makeshift shelters to escape artillery fire. Those Thai villagers seemed to blame the Abhisit government for not being able to keep peace with Cambodia. The battle did not only affect trading and tourism, but caused many schools to be closed and many houses were damaged and destroyed (Schearf, 2011 ; Ide, 2011). Hun Sen sent a letter to the UN Security Council calling for an emergency meeting to help end the fighting. He also mentioned in the letter that Thailand had used a full scale armed attack against Cambodia, firing into the temple and surrounding areas, and some parts of the temple had collapsed as a result of the Thai bombardment. UNESCO officials were called by Cambodia to send experts to inspect the damage to the temple after the fight, but Thailand opposed the UNESCO inspection (“Thailand, Cambodia step up,” 2011). ASEAN mentioned that this four-day outbreak of fighting not only affected the region’s stability and security, but also affected economic recovery in the region as well (Ide, 2011).

The UN Secretary-General, Ban Ki-Moon, implored both states to end the fighting and peacefully settle the dispute (“Cambodia/Thailand,” 2012). Thailand asked for bilateral talks with Cambodia, but Cambodia preferred third-party mediation because Cambodia felt like it had been bullied by Thailand (“Thailand and Cambodian troops exchange fire,” 2011). ASEAN offered to mediate between them, but the Thai government under the leadership of Abhisit mentioned that the temple had to be de-listed from the World Heritage Sites first, which Cambodia opposed. Tensions were significantly escalated due to demonstrations by an influential Thai nationalist group demanding that Abhisit should take a tougher stand in the border dispute (Corben, 2011).

Cambodia said that Thailand had tried to start the war and the fighting had damaged the temple at the centre of the skirmish. Cambodian government

spokesman, Phay Siphon, said that Thailand provoked Cambodia first by sending heavily armed troops to the disputed area because the Thai government was under pressure from nationalists (the PAD) to claim sovereignty over the 4.6 sq km. area around the temple. He believed that the PAD had demanded the Thai government reject the World Heritage status and started this issue. These claims were rejected by the Thai government, who said that Thailand was just protecting itself from Cambodian military actions along the border (Daniel, 2011).

As ASEAN members, Thailand and Cambodia signed the 1976 Treaty of Amity and Cooperation in Southeast Asia (TAC) in order to commit them to reject the use or threat of force in the relations between states and to the peaceful settlement of inter-state disputes. The main purpose of the Treaty is to avoid and prevent actions that will lead to fatalities or injuries of persons. However, between ten and twenty people were reported killed from the border fight between Thailand and Cambodia (Kesavapany, 2011).

Susilo Bambang Yudhuyono, the President of Indonesia, sent his Foreign Minister, Marty Natalegawa, to visit Cambodia and Thailand on 7 and 8 February, 2011, respectively (Kesavapany, 2011). On 8 February 2011, PAD leaders said that the Thai military should invade and force a return of Preah Vihear (“Thai-Cambodian conflict,” 2011). After ASEAN’s interlocutor, Marty Natalegawa, visited Cambodia and Thailand, the Thai government said that Thailand will accept assistance from Indonesia, but it needed approval from Thailand’s Defence Ministry (“Thailand and Cambodian troops exchange fire,” 2011). Thus, this raised the question of power in the Thai government; could it be assumed that the Thai government was under the control of the Thai Army? In this case, however, ASEAN had played an important role in bringing Thailand and Cambodia to the negotiating table to try to end the border fight between them (Chachavalpongpun, 2012). The agreement included many elements such as allowing villagers who had fled to safety to return to their villages and reopening border crossings, allowing soldiers on both sides to remain on stand-by in their bases and to encourage commanders to build a relationship and communicate if any clash occurred in the future, and Thailand had to allow ASEAN observers to ensure peace (“Cambodia, Thai commanders,” 2011). This battle has been seen as the most serious dispute between ASEAN members since the organization was established in the 1960s,

and it has tested ASEAN's ability to maintain peace and stability in the region (Padden, 2011). They agreed to accept Indonesian observers and avoid clashes along the border with an unofficial ceasefire to allow unarmed Indonesian observers to enforce the ceasefire, and to hold further bilateral talks with Indonesian participation in the future ("ASEAN mediates," 2011).

However, the ceasefire agreement process at the ASEAN meeting held by Indonesia as the head of ASEAN, was delayed by the Thai military's opposition. There was a disagreement between the Thai Foreign Ministry and the Thai military leaders which claimed that the Foreign Ministry's policy was a little bit too soft. The Thai military disagreed with allowing Indonesian observers into the disputed area; it claimed that the dispute should be resolved on a bilateral basis without third party intervention ("Thai military not participating," 2011).

In April, the two sides' troops exchanged fire again near the temple which broke the informal ceasefire agreement which Thailand and Cambodia had just signed in Indonesia. The two governments blamed each other as to who started the fighting first. Thus, the agreement to the sending of Indonesian observers to the disputed area had been slowed due to this outbreak in fighting and the disagreement of the Thai military ("Thai, Cambodian troops clash," 2011). The UN Secretary General, Ban Ki-moon, called for a ceasefire again, while the chair of ASEAN, Marty Natalegawa, also continued mediation by visiting both countries for talks. However, there was no clear explanation for the April border clashes ("Cambodia, Thailand continue border clashes," 2011), but it can be assumed that Abhisit seemed to lose control of the Thai military as it showed that the military took action along the border without informing him even after the two governments had just signed a ceasefire (Clouse, 2011).

On 28 April, 2011, gunfire along the border occurred again and thus Cambodia asked the ICJ to order Thailand to withdraw its troops and end all military activities around the disputed area. On 29 April, 2011, Cambodia asked the Court to clarify a 1962 ruling about the Preah Vihear temple after the latest clash broke out hours after a ceasefire deal ("Cambodia seeks World Court clarification," 2011). Thailand blamed Cambodia for creating the volatile situation from firing along the border on a purpose to submit the issue into the ICJ.

However, it was still not clear who had first started the fight that night. From this immediate military action, it can be assumed that high ranking Thai military commanders would escalate the crisis to provide an excuse to call off elections and to keep the government under the leadership of Abhisit which opposed Thaksin's shaking up the senior ranks ("Cambodia seeks Court," 2011).

Eighteen people died from the several clashes in late April and early May, 2011, but in late May, the tension decreased after the agreement of the Thai Defence Minister, Prawit Wongsuwon, to Cambodia's proposal of a joint survey of the 4.6 sq km. disputed area as a precondition for the holding of a border committee meeting (Views Wire, 2011).

This long-term dispute could deeply affect the region further; ASEAN's unity may be threatened because the conflict could drive ASEAN apart, particularly in terms of politics and the progress of regional cooperation. This had been a concern to many ASEAN members during the 18th annual leadership summit of the ASEAN in Jakarta, Indonesia, between 7 and 8 May, 2011, to discuss regional economic development and mutual security issues, and the dispute between Thailand and Cambodia on 7 May. The Malaysian Deputy Foreign Minister blamed Thailand for not respecting the agreement which was signed in Jakarta, and Thailand's attitude over the dispute was seen to be a threat to ASEAN's unity and an obstacle to its development. ASEAN has tried to cooperate in the negotiations between Thailand and Cambodia many times since the dispute re-emerged in 2008, but clashes still continued after those talks and the tension along the border remained. The meeting did not lead Abhisit and Hun Sen to reach a permanent agreement on the border dispute because of major differences between the two sides, and questions on who was responsible for prolonging the conflict. However, the two disputant countries, especially Thailand, formally agreed to allow Indonesia to monitor the conflict area after more than twenty people had died since early February, 2011, and to help prevent further armed force ("ASEAN leaders will discuss," 2011 ; "Thailand, Cambodia agree," 2011 ; "Thai, Cambodia leaders disagree," 2011 ; "Thai-Cambodian border dispute fuelled," 2011 ; Busbarat, 2011 ; The Economist Intelligence Unit Limited, 2011, June).

On 30 May, 2011, Cambodian Minister for Foreign Affairs, Hor Namhong, asked the ICJ to settle the territorial dispute over the surrounding area of the Preah Vihear temple by ordering Thailand to immediately withdraw its troops from Cambodian territory and to ban Thai military activity in the area, and to rule that the 4.6 sq km area around the temple is Cambodian territory. Meanwhile, Thai Foreign Minister, Kasit Piromya, with an international team of lawyers met the court after the Cambodian request, to ask the ICJ to dismiss this case. He mentioned that Thailand had never questioned the 1962 ruling, and that the ICJ had no jurisdiction in the dispute are the 4.6 sq km. area surrounding the temple (Views Wire, 2011; “Cambodia complains of Thai aggression,” 2011). Thailand had repeatedly tried to discourage Cambodia from involving any organizations such as ASEAN, the UN, UNESCO, and lastly the ICJ in this dispute. It can be assumed that Thailand wanted to resolve this dispute alone with Cambodia, without any other parties’ involvement, because Thailand believed that it is stronger than Cambodia, and Cambodia still relied on Thailand in many ways for its economy, tourism, and business investments. Thus, Thailand believed that Cambodia would accept Thailand’s proposal at the end, and Cambodia knew this which could be a reason why Cambodia kept searching for international help to use it as a buffer to deal with Thailand. Another assumption is that the Thai government, under the leadership of Abhisit, was forced by the nationalists who support him to deal with Cambodia in a tough way.

These assumptions had been proven when Abhisit asked Cambodia to withdraw all cases from international organizations, especially from the ICJ on 5 June, 2011, and asked to use bilateral talks instead. Hun Sen rejected this proposal on 6 June (Views Wire, 2011). Both governments seemed to be driven by domestic politics, and would be targets of nationalist vitriol in their own countries if they were to make genuine compromises in the dispute. This was particularly so in Thailand which had changed governments after Thaksin where Abhisit came under severe pressure from the PAD which forced that government to use a tougher approach to deal with Cambodia.

On 18 July, 2011, the ICJ ordered both sides to withdraw their troops from the temple and the surrounding areas, and asked them to cooperate with ASEAN to allow Indonesian observers into the conflict zone (Ngoun, 2012). The ICJ

ordered three main things. First, a “Provisional Demilitarized Zone” (PDZ) approximately 4.5 miles by 2.5 miles along their mountainous border to be created, by eleven to five votes, around the temple and to refrain from any military activities in that zone. Secondly, by fifteen to one votes, Thailand could not obstruct Cambodia’s free access to the temple or provision of supplies to non-military personnel, and both parties had to continue cooperation with ASEAN, in particular, to allow observers appointed by the regional grouping access to the PDZ. Lastly, by fifteen to one votes, both parties could not extend the dispute or do any activity that would make the situation become more difficult to resolve, and both parties had to inform the Court about its compliance with provisional measures. Cambodia expected that there would be a permanent ceasefire (“ICJ orders Thai-Cambodia,” 2011 ; The Economist Intelligence Unit Limited, 2011, August ; International Crisis Group, 2011). Following the Court’s order, both states withdrew their troops from a 16 sq km demilitarized zone surrounding the temple, and continued cooperation with ASEAN (EIU View Wire Asia, 2011). The ICJ also rejected Thailand’s request for an interpretation of the legal rights to the territory surrounding the Preah Vihear temple (“International Court rules,” 2011).

In July, 2011, Thailand had the first female Prime Minister in Thai history, Yingluck Shinawatra, the youngest sister of the self-exiled Prime Minister, Thaksin Shinawatra, in the national election on July, 2011, whose party had won 300 parliamentary seats out of 500. Yingluck and her Puea Thai’s victory were expected to improve relations because Hun Sen supported Thaksin who had served as an economic advisor to Hun Sen for a year between 2009 and 2010 (The Economist Intelligence Unit Limited, 2011, July ; Chachavalpongpun, 2012). It had been expected that tensions would be reduced along the border and resolutions would be made. Cambodia saw a good opportunity in dealing with the dispute with the new Thai government with understandable cooperation between them to find a peaceful resolution. Moreover, Yingluck’s victory had improved the economies in both countries, especially in the western provinces of Cambodia from investments and trading from Thais, Cambodians, and Western companies. This meant that if Thailand and Cambodia could reach an agreement to resolve the dispute, the two states would gain revenue from tourism and trading across the

border, including investment from foreign companies, which would improve the states' overall economies too. However, nationalism in both countries continued and has been one of the main obstacles to both governments reaching an agreement on the area around the Preah Vihear temple (EIU View Wire Asia, 2011).

After Yingluck won the election, there was a new clash on 16 August, 2011, some 64 km inside the border from the Preah Vihear temple. Interestingly, Hun Sen did not react angrily to this clash, and the Cambodian defence ministry stated that this clash came from terrorist groups to test unmanned reconnaissance aircraft for future terrorist activities (International Crisis Group, 2011). This showed how deep the friendship between Hun Sen and Thaksin is, and the future direction of negotiation between the two governments over the dispute as well.

On 23 September, 2011, Cambodia and Thailand withdrew all troops and complied with the ICJ's order to allow Indonesian observers to monitor the ceasefire in the area, and also agreed to a redeployment of military personnel in the PDZ surrounding the temple which will be monitored by observers from ASEAN (Asia-Pacific July, 2012). The new Thai government has made it easier for the Joint Border Committee under the 2000 MOU to resume work on surveying the disputed area and finding a favourable resolution for both states (Wain, 2012). Yingluck, and her foreign and defence ministers, went to Phnom Penh many times in September to try to improve the Thai-Cambodian relationship after Thai domestic crises had harmed their relations for many years (Chachavalpongpun, 2012). Although the relationship between the two states has generally improved, there has been no permanent settlement of the territorial dispute over the temple's surrounding area and the process was delayed by the flood crisis in Thailand (Ngoun, 2012).

5.4 Discussion

After the outbreak of hostilities in 2011, Indonesia, as the chair of ASEAN, tried to bring the Association closer by sending observers to monitor a ceasefire. The victory of Yingluck and her Party was expected to end the dispute over the

area surrounding of the temple, but this did not happen, because Thailand's capital city, Bangkok, was damaged by the worst flooding in the history in October, 2011. This meant the new government had to pay immediate attention to recovering in the capital city and this caused the process of negotiation with Cambodia to be delayed (International Crisis Group, 2011).

This dispute raises many questions. Can the 2011 ICJ's orders really solve the conflict or prevent military force in the future or are there other possible resolutions to deal with this dispute? How about the influence of the role of domestic politics in both countries on governments' decisions, especially in Thailand where domestic politics is still unstable? Also, what if Thailand has a new government which opposes Thaksin and Cambodia, then, what might happen to the process of resolving this long-standing territorial dispute between the two countries? Although, military fight has been stopped, following the ICJ's order, the dispute has not yet been permanently resolved. A new military fight along the border might occur anytime, thus it is necessary that the two states (and other parties which are involved) find answers to these questions.

This case is very difficult to resolve by an order of some international organization, because it is a very sensitive issue for Thais and Cambodians with their deep sense of nationalism (The Economist, 2008). The dispute is more than just a question of where the boundary lies; it includes historical rivalry and different constructions of history between the two states, and the ultra-nationalist movements (such as the PAD using the temple as a powerful tool to fight against Thaksin's rule and to increase their popularity and support). Like other Southeast Asian countries, Thailand and Cambodia have shared the colonial legacy of an ambiguous border and Thai people believe deeply that the temple belongs to them as is shown in their media and books (International Crisis Group, 2011; Ngoun, 2012).

The dispute over the 4.6 sq km area around the temple is a difficult case to resolve because the area has not yet been surveyed and demarcated, and no buffer zone has been proposed in registering the temple, as the surrounding area is located in Thai territory. A core zone and a buffer zone need to be established to protect the temple and to settle the border clashes (Pakdeekong, 2009, p. 235).

Furthermore, many parties such as the Thai government, the Thai military, the PAD, ASEAN, and the ICJ, have been involved in this dispute. Each of them has played different roles.

It had been a slow negotiation process as developing countries normally have political instability. Thailand has had political conflict from two sides; from those who support the ex-Prime Minister Thaksin Shinawatra and from the Democrat Party, under the leadership of Abhisit Vejjajiva, who was supported by the PAD and the Thai Army. The Cambodian leader, Hun Sen, offered Thaksin refuge and a post as economic advisor to his government. It can be assumed Hun Sen's motivation for this offer was because Hun Sen probably thought that Thaksin would somehow retake power (The Economist Intelligence Unit Limited, 2009).

It can be said that the dispute has been dramatically driven by Thai domestic politics, particularly during the Abhisit government which was weak as it was under control of the Thai military. The military is another important factor in driving Thailand into this dispute by prolonging the armed conflict, because the dispute kept the military involved in politics and justified a budget increase. The Thai military used to play an important role in Thai relations with its neighbours, but it lost its power to the Foreign Ministry in the 1990s following democratisation. With the fall of democracy after Thaksin was exiled in 2006 by the Thai military, the military reinstated its old role and took a different stance to the government. This can be seen when the military did not wait for an order from Abhisit and denied Indonesian observers (Busbarat, 2011). Also the Thai government did not give the order to open fire in 2011, but the exchange of fire immediately occurred and broke a ceasefire which both countries had just signed in Indonesia after the ASEAN meeting held by Indonesia. Moreover, when Cambodia asked the UN to settle the dispute, the Thai military immediately rejected it and mentioned that bilateral talks was the best way to resolve the dispute because it is only between Thailand and Cambodia; not other parties (Kurczy, 2011). This supports an assumption that Abhisit lacked command and control over the military and lacked in making a decision in dealing the dispute with Cambodia.

The Thai government also had a lack of control over the PAD's attitudes which always forced it to use harsh measures to counter and take Preah Vihear and its surrounding area from Cambodia, and protested against any agreement that Thailand and Cambodia tried to reach. Busbarat (2011) also notes that the nationalists, led by the PAD, successfully convinced many Thai people that the temple's joint listing lead to the loss of Thai territory over the 4.6 sq km. around the temple, because the Samak government which was believed to be Thaksin's proxy, supported Cambodia's listing of the Preah Vihear temple as a World Heritage Site in 2008. While Prime Minister Abhisit and his Democrat Party supported the PAD, PAD's manipulation of nationalist attitudes went beyond what Abhisit expected, thus the government was under pressure to be harsh towards Cambodia. From this, it can be assumed that all parties involved have their own particular interests in driving this dispute with Cambodia. The PAD gained popularity by showing that it protected Thai territory from Cambodia, thus it could persuade people to join the group, including money that people will donate to them for their activities. The Democrat Party finally became the government by using the support of the military and the PAD to protect Thailand from Thaksin's regime, and the military finally became powerful again after taking over power from Thaksin. Therefore, the dispute over the surrounding area of the Preah Vihear temple is a perfect reason to invoke nationalism in Thai people.

The Thai government had to become an aggressive claimant over the area surrounding the temple to please the military and the PAD, and Thailand also saw that Cambodia was no match for the Thai military and Cambodia knew it (Kenneth, 2008). This may be a reason why Cambodia had to seek help from international organizations like the UN to settle the dispute and to deal with Thailand's military actions along the border. Cambodia mentioned that Thailand had committed acts of violence against Cambodia. Cambodia has emphasized words such as 'violence', 'armed violence' and 'force', which raises questions about its intention. It is possible that Cambodia will try to make Thailand appear as an aggressive bully, a cruel and destructive menace to the peace and security of small, distressed Cambodia, to the ICJ and the whole world. It might intend to use sympathy at the Court to win the case, thus it may try to play the role of a small

boy being bullied by the more powerful Thailand, seeking the protection of the international organization.

Cambodia is willing to resolve the dispute by peaceful means because the dispute and military clashes have affected its tourism, one of its most important sources of revenue especially at the border, more than Thailand, (Asia-monitor, 2010). Cambodia's economy relies on Thailand for more than one quarter of its total imports (Cambodia: Political outlook September, 2008). There is also the risk for investment after several large Thai companies pulled out from Cambodia after many outbreaks of fighting. For Thailand, the main risk is the border dispute because if the dispute cannot be settled favourably, it could destabilise an increasingly fragile-looking government (Cambodia: Political outlook December, 2008).

Clashes along the border between Thailand and Cambodia challenged ASEAN to take a lead role to resolve it. They both agreed to deploy Indonesian observers, but the initiative was blocked by the Thai military which viewed it as a violation of Thai sovereignty. Thus, in this dispute, ASEAN should prepare to take more control and action to prevent open hostilities between its members to keep the region secure in the future. ASEAN is an organization of "peace-loving nations", the members have signed the TAC which is used to promote peace, everlasting amity and cooperation. ASEAN is guided by many key principles, including "non-interference" in the internal affairs of one another, settlement of differences of disputes by peaceful means and renunciation of the threat or use of force (International Crisis group, 2011). This means that ASEAN does not have absolute power to control members' actions over their disputes or to judge who is right or wrong or who owns the disputed area, while the ICJ can give a clear answer as to ownership. ASEAN is more likely to arrange negotiation for the disputed states to compromise and find a solution that favours all of them. This may be the reason why Abhisit's government seemed to not really want to cooperate with ASEAN to settle the dispute. It can be assumed that the Abhisit government and its PAD allies had seen Cambodia as a poorer, weaker and dependent neighbour, and believed that ASEAN could not provide solutions favouring Thailand, thus Thailand took tougher positions such as cutting loans for road building and closing its border for trading, to try to force Cambodia to accept

Thailand's proposals. Moreover, the Thai military was still stuck in the past in that it had more power to control the situation along the frontier, when in fact the country's foreign policy should be the main factor to settle disputes in the modern day. ASEAN has tried many ways to bring the two states to a series of negotiations because this issue was harming the region's stability and security. It could be a crucial test to prove that ASEAN is able to maintain peace in the region. ASEAN has played an important role to bring the situation under mediation and was able to bring about negotiations to discuss future resolution, even though there has not yet been a permanent resolution (Clouse, 2011).

As for the role of the ICJ in the current dispute, Thailand has opposed the intervention of the ICJ by giving reasons that the ICJ did not have jurisdiction over the question of the land boundary, thus the ICJ could not determine the land boundary, and the matter of the land boundary is still to be determined in international law (Touch, 2009, pp. 210-211). Touch (2009) argues that the ICJ actually did address the question of the land boundary and that the location of the boundary has been determined. He mentions that the ICJ had jurisdiction over both the territorial and boundary questions, and the boundary was clearly determined by the ICJ in 1962. For instance, this case could be defined as relating to both boundary and territorial disputes because Cambodia based its territorial claim on the map in Annex I, thus territorial and border disputes are interdependent and related to each other. Cambodia referred to "territorial sovereignty" over the temple, but this actually included both territorial/sovereignty and boundary claims based on the Annex I which is a boundary map between Thailand and Cambodia, and the ICJ regarded this map as the main evidence. Thus, it can be understood that the ICJ did not only award the sovereignty of the temple to Cambodia, but it included its boundary area as mentioned in the Annex I map as a frontier line between the two countries. Hence, if Thailand has already accepted the Annex I map and accepted the ICJ ruling in 1962, this means that Thailand has also accepted the boundary location on the Annex I map located in Cambodian territory. Therefore, the ICJ actually did determine the boundary between Thailand and Cambodia, including the 4.6 sq km surrounding area.

From this, the ICJ seems to have more potential as the key player in resolving territorial disputes than ASEAN or when other forms of mediation have failed, even though ASEAN had played a greater regional role in the attempt to settle territorial disputes in the Southeast Asian region, especially in the Thai-Cambodia dispute (Strachan, 2009).

Yingluck's government has been seen as a new hope in settling the long-term dispute with Cambodia, but it does not mean that the dispute will be resolved easily because we still do not know who has the absolute power- the Thai military, the government or the parliament, to guide the direction for the dispute. Yingluck is still new to politics, thus there are many doubts about her power in being able to control the Thai military or the nationalists, and questions about her brother's guilt which could be a weakness that the Democrat Party could use against her as well. Although she can compromise or come to an agreement with Cambodia about the disputed area, there will still be much criticism, particularly in favour of her brother's business interests in Cambodia as Samak and Noppadon alleged in 2008.

From the previous information, it can be seen that all Thai governments after Thaksin, had tried to have negotiations with Cambodia. Even Abhisit's government, which did not have good relations with Cambodia, also had a series of talks to resolve that dispute and to stop clashes along the border, but clashes were always occurring after the talks for no reason. It can be understood that the Thai military and the nationalists are the main major obstacle in resolving the dispute. Thus, is the sending of Indonesian observers an alternative resolution or can there be other ways to resolve this dispute in a long term?

To conclude, this dispute is about politics and nationalism with people on both sides interpreting history for their own hidden political agendas. To resolve this dispute, both sides must accept the past, move on from historical disputes, and negotiate to build a peaceful future as neighbours ("Thai-Cambodia fighting," 2011). The disputed place should be preserved for both parties, and given back to nature and the indigenous people, the two governments should cooperate equally with local communities along the border, with a freedom for people from the two neighbouring states to cross the border (Cuasay, 1998). The economic factor

could be another key are in resolving this long-term dispute. In the modern day, most countries' economies are related to one another, and affect international relations, including that of Thailand and Cambodia. For instance, if two nations can divide their economic advantages equitably, other issues become less important. In this case, if Thailand and Cambodia can keep in mind the mutual advantages of economic co-operation from border trading and tourism along the border and the temple, they can maintain their relationship as good neighbours (Pakdeekong, 2009, p. 237). Furthermore, the two governments, especially Thailand's, must provide accurate information of their history and connection to the Preah Vihear temple to their people to reduce a strong sense of nationalism so that their people to become more reasonable and considerate. If their people still have a strong sense of nationalism and deeply believe that the temple or the surrounding area belongs to their country and consider that their neighbour is an enemy without thinking or looking at the facts, whatever the two governments agree to in the future will be opposed by nationalist protestors and Thai-Cambodian relations will still not improve.

5.5 Conclusion

Thailand and Cambodia have shared a long history and relationship as neighbouring countries. It can be understood that they have shared a love-hate relationship as rival states in the past, but at the same time they are very close in terms of culture and community, and economic factors such as trading, business investment and tourism, especially along the Thai-Cambodian border. The two countries have also been victims of the colonial period like other Southeast Asian countries. Even though Thailand has never been colonized, it had to give some of its territory to a colonial power to protect the bigger area of its country. The territorial dispute over the Preah Vihear temple has resulted from the colonial period, when France occupied Cambodia and forced Thailand to return some parts to Cambodia, and drew up a map which inaccurately put the Preah Vihear temple in Cambodian territory; a mistake which Thailand did not oppose. The dispute was submitted to the ICJ, and it was awarded to Cambodia with the French map as evidence. However, the feeling of "lost Thai territory" is still found among Thai

people with the growth of a strong sense of nationalism. Thus, disputes over the 4.6 sq km. around the Preah Vihear temple have occurred regularly. When the Thai government agreed to allow Cambodia to list the temple as a World Heritage Site, it was seen by Thai people as the Thai government selling Thai territory to Cambodia for personal interests. The Thai government under the leadership of Abhisit Vejjajiva tried to occupy the surrounding area which the ICJ had failed to mention, by sending troops to the border. As a result, it destroyed many lives and affected the economies and tourism of both countries, plus stability and peace in the region as well. However, since mid-2011, Thai-Cambodian relations have improved after Thailand got a new Prime Minister, Yingluck. The current Thai government has been expected improve the relationship between the two neighbours. However, the process has been slow due to unexpected issues such as flooding in Bangkok. Negotiations to settle the dispute over the surrounding area of the Preah Vihear temple have been postponed. In 2013, Cambodia has submitted the issue to the ICJ again, and the two governments have to go to Court in April. This has put great pressure on the current Thai government because whatever decision the Court will make, it will affect the stability of the government. If the Court decides to give the surrounding area to Cambodia, the nationalist groups in Thailand will surely do something to undermine the government. However, there is some hope for the government (which now has a good relationship with Cambodia) that it can reach an agreement which favours both sides and end this long-term dispute. The two countries should try to use common economic interests and treaties based on norms and culture as a framework to settle a highly sensitive territorial issue.

Chapter 6

Conclusion

In this thesis, the primary theories of territorial and maritime disputes have been examined. Territorial and maritime disputes can occur anywhere. In different regions, territorial and maritime disputes have different characteristics; this means that each needs different means to be resolved. To settle territorial and maritime disputes effectively, policy-makers need to consider all elements that influence the emergence of a dispute. The primary studies of territorial and maritime disputes can provide only fundamental knowledge; policy-makers need to apply resolution methods that are suitable for each case.

Generally, territorial and maritime disputes are about claiming for the rights of ownership over a particular area which has an important value (strategic, ethnic, and economic values) between two (or more) states. The importance of that value, can easily lead states into the use of MIDs and war. Therefore, PRD methods such as non-binding third party methods, binding third party methods, and bilateral negotiation, have been introduced to resolve disputes and to avoid the use of MIDs and war in the modern day.

This thesis has mentioned territorial and maritime disputes in the Southeast Asian region. Most territorial and maritime disputes in this region have resulted from historic rivalry, the legacy of the colonial period, especially from European powers' complex treaties and agreements which have caused overlapping claims over many areas in the present day, and the 1982 UNCLOS. The thesis examined the maritime disputes over the SCS between China and some ASEAN states. The study found out that UNCLOS is the main cause of many disputes in the SCS because all disputants use UNCLOS to claim their area which overlaps with an area claimed by another state. The SCS disputes between China and some ASEAN member states have not yet been resolved because China which is one of the most powerful countries has rejected international interference. These disputes show that ASEAN is still too weak as a regional organization on

which Southeast Asian states should be able to rely (this can be seen especially when Vietnam and the Philippines are more likely to ask for help from the U.S. to act as a buffer to deal with China). Thus, the role and power of ASEAN has been considered in this thesis.

The disputes over the overlapping areas of the Gulf of Thailand among ASEAN members have also escalated from the consequences of the 1982 UNCLOS. The use of the 1982 UNCLOS has caused many overlapping sea areas and EEZs claims, and there is the question of who has the rightful ownership over islands, islets and other features, including natural resources. ASEAN does not play any important role in resolving these disputes. Instead, there are agreements reached by some claimants themselves through nonbinding and bilateral talks to share advantages and natural resources under the JDA.

ASEAN's role in resolving territorial and maritime disputes in the Southeast Asian region is weak. ASEAN has been expected to be able to bring all involved parties to the negotiating table to reach a permanent agreement, but ASEAN still lacks the power to do it. The ICJ has been seen to play a more important role in resolving maritime disputes in the region than ASEAN. This can be seen in the cases of Pulau Ligitan/Sipadan between Malaysia and Indonesia, and Pedra Branca/Pulau Batu Puteh between Malaysia and Singapore. The binding third party methods seem to be more effective than bilateral talks or non-binding methods, because those parties involved failed to reach an agreement in bilateral talks many times which can satisfy all of them. It was only when they submitted cases to the ICJ, and they accepted the ICJ's final judgement, that long-standing disputes were ended.

It can be acknowledged that Southeast Asia has a major problem of a lack of cooperation and a weak regional organization. ASEAN has realized the importance of improving its ability to resolve territorial and maritime disputes among member states, thus it has tried to improve its active role in the negotiation process. It has planned to establish APSC by 2015, which is expected to have more power and ability to resolve disputes in the region without any interference from outsiders.

Interestingly, the disputes in Southeast Asia always fail at the negotiation stage, particularly in the bilateral talks and non-binding third party negotiation which seems to be the first step of trying to resolve a dispute, thus binding third party methods, arbitration or adjudication, have been seen as the most effective resolution if those previous methods have failed, even though binding third party methods always seem to satisfy only one side.

For most maritime disputes in the region, those maritime disputes have not been seen to threaten the stability of the region because those disputants are able to resolve or put a dispute under the process of negotiation by themselves. Unlike maritime disputes, territorial disputes have been seen to be more harmful to the region and harder to resolve than maritime disputes due to the complexity of each case and other elements involved. After the colonial period, because most areas in the Southeast Asian region had not been demarcated, Thailand was affected because Thailand has shared long rivalries with its neighbours thus creating love-hate and untrustworthy relationships, especially with Cambodia.

Thailand has faced many territorial and maritime disputes with its neighbours, which were generally a result of the European powers' treaties during the colonial period. Some disputes have been resolved by bilateral talks or non-binding third party means, such as the dispute over the Gulf of Thailand with Malaysia on which they reached an agreement on the delimitation of the continental shelf boundary, and an agreement with Myanmar on overlapping claims in the Andaman Sea. According to the previous chapters of this thesis, Thailand has mostly reached agreements for maritime disputes, but not for land disputes. It can be assumed that it might be easier to reach an agreement over maritime disputes because these have a higher percentage of being successful in bilateral talks than territorial land disputes which are more complicated, involve ethnic values, and most of the lands and borders in the region not being demarcated after the colonial period. Furthermore, maritime disputes like that in the Gulf of Thailand between Thailand and other ASEAN members, has the economic value of oil and gas benefit, thus this can be one of the main motivations for those involved parties to try to end disputes peacefully as soon as possible so then they can gain revenues from foreign oil companies. On the other hand, territorial land disputes might need more funds, cooperation, and expertise

to demarcate overlapping areas and resolve the disputes, but most Southeast Asian countries, including Thailand, still face political instability, lack of funds, and expertise to continue their negotiations.

The thesis focused on the 2008 territorial dispute of over the 4.6 sq km area surrounding the Preah Vihear temple between Thailand and Cambodia as a case study of unresolved territorial disputes in the Southeast Asian region. The dispute over the sovereignty of the Preah Vihear temple is the main dispute between Thailand and Cambodia which has strongly affected their relations. The issue of who owns the temple is very sensitive because it is about national pride. Although the temple was awarded to Cambodia by the ICJ in 1962, Thai people still believe that they have lost their territory to Cambodia and the ICJ was unfair in considering evidence favouring Cambodia. This thought has created a strong sense of nationalism in the Thai people since then, and has continued until the present day. In 2008, the dispute was about the question of the ownership over the 4.6 sq km area surrounding the temple which had not been demarcated by the ICJ in 1962. Thailand started the dispute by sending its troops to the disputed area, claiming that the area is Thai soil and that it will not let Cambodia take it away. The problem of this dispute is that there is only one entrance to the temple which is on the Thai side and this means that Cambodia needs Thailand to allow tourists to pass Thai territory to go to the temple. This is why Thailand has played a tough role in forcing Cambodia to have bilateral talks with Thailand rather than a binding negotiation.

Because the role of ASEAN is limited by its own rules in not interfering in members' disputes, ASEAN can only offer observers to survey the disputed area which was rejected by Thailand many times, and cannot stop the firing along the border between the two sides' troops. Similarly, in the case of the SCS disputes, ASEAN also only provided talks for temporary agreements or treaties such as the DOC, and the COC, just to ensure that all involved parties will not escalate the situation into the use of military force or MIDs, and war.

To resolve the dispute, policy-makers must consider other elements, particularly historical and political factors as well. The new dispute is different from the 1962 dispute because the domestic politics of both countries, particularly

in Thailand, played an important role in escalating the dispute into the use of military force and many failed talks. The Thai military and the PAD forced the Thai government to use tough means with Cambodia and to reject binding talks, thus nationalism and the instability of the government, especially for Thailand, is the most important obstacle to resolving this dispute.

Militarisation between 2008 and 2011 along the disputed area regularly occurred due to the area having high strategic, ethnic, and economic values which led to a strong sense of nationalism, particularly in Thailand, where the nationalist groups put pressure on the Thai government to use tough means as a resolution. To resolve this dispute, the disputed area has to be demarcated. It means that both countries must allow a third party to demarcate the area fairly which is not easy to do, especially when the two countries do not yet have an agreement, and the dispute is a very sensitive issue in terms of national pride and their governments' 'must not lose face attitudes'. In particular, Thailand and Cambodia are well-known for their historic rivalry and love-hate relationship since ancient times, even though they share the same border, customs, and culture. Nationalism has been the main element in militarizing the disputes along the border and has caused many failed ceasefires. This has affected their neighbouring relations and the stability and peace of the region, and questioned ASEAN's ability to maintain peace. ASEAN has considered that the situation was too serious to not get involved, thus it tried to provide and offered talks and cooperation to resolve the dispute, which were always refused by Thailand. Apart from having a more strategic location, Thailand also considered their winning/losing records before choosing a method to resolve their dispute, thus this can be understood as to why Thailand disagreed in using binding third party methods and preferred bilateral talks with Cambodia, because Thailand had faced a bad experience of losing the ownership of the Preah Vihear temple to Cambodia in 1982 through the ICJ before. This means that both countries have considered their past winning/losing records of using PRDs to find the most favourable means for them.

After many failed meetings between Thailand and Cambodia held by ASEAN, the ICJ finally stepped up to get involved, to stop the fight and prevent the overall situation along the border from getting worse. The case has been submitted to the ICJ, and will be debated at the Court in 2013. It is interesting that

the Thai government has been expected to win by a majority of the Thai people, thus there is considerable pressure on the Thai government to prove its ability to its people. The ICJ will definitely give an absolute resolution for this case; if Thailand loses again, the Thai government might have to face strong criticism and protests from opponents, which will strongly affect the Thai government's stability and domestic politics.

There will be three options for Thailand in this case: she loses because Cambodia might refer to its ownership of the temple and provide valid historical evidence from the French colonial era; she wins because she holds the strategic location to the only entrance which is located in Thai territory and thus the Court might award the disputed area to Thailand; and the last possible result would be that the two countries need to share the 4.6 sq km area surrounding the temple and ASEAN observers would be sent to demarcate the boundaries between the two countries. However, the dispute will only be absolutely resolved when the two countries accept and not question the ICJ's judgement. For example, in the dispute over Pedra Branca/ Pulau Batu Putah between Malaysia and Singapore in which the ICJ awarded Pedra Branca to Singapore, Middle Rocks to Malaysia, and South Ledge to neither, the two states had no doubts and accepted it. This is because Malaysia and Singapore probably felt that it was fair enough to own one of each of the disputed areas. Thus, the last mentioned possibility of the Court's judgement would be the most favourable outcome for both Thailand and Cambodia. The Thai government, however, may need to provide more historical evidence to the Court, which can prove its rightful sovereignty over the Preah Vihear temple's surrounding area to ensure that it will not be in a disadvantageous position. The ICJ always looks at valid historical evidence as in the case of the 1962 Preah Vihear temple dispute. As the surrounding area of the temple has not yet been awarded to any party, there is a high probability that the Court may order the two countries to cooperate and demarcate the disputed area or even award it to one of them.

To conclude, there are two main causes of the emergence of territorial and maritime disputes in the Southeast Asian region, overlapping areas from the colonial period and the use of the 1983 UNCLOS. However, territorial and maritime disputes between Thailand and Cambodia have more causes involved:

the sense of nationalism, historic rivalry, and domestic politics. Thai-Cambodian disputes can be seen as a good case study to see how nationalism and domestic politics strongly affect international affairs. Thus, Thailand needs a good foreign policy to improve relations with its surrounding neighbours. Encouraging international trade could be one of the policy options. When the two countries or more are exchanging goods, and services across international borders or territories, they are sharing benefits which develops their economic systems, thus they are less likely to involve in disputes and tend to have more cooperation between each other when a dispute occurs. To share benefits might be the key to persuading disputants to work together in maintaining peace, and reducing the sense of historic rivalry among them. Another thing that the Thai government should consider is to improve its educational system. The Thai government should provide accurate knowledge to its people, particularly the history of the Preah Vihear temple, to ensure that Thai people will understand why Thailand lost to Cambodia at that time, thus the people will be more reasonable and open-minded. This would reduce the sense of nationalism which has been developed from inaccurate historical textbooks which always show only one side of history (for example, they show how Thailand was invaded by others but not how Thailand invaded others). It is necessary to prevent nationalism from pushing the nations into militarizing disputes with its neighbour, developing the education system, especially in history teaching, to ensure that the younger generation will receive accurate information and become more reasonable in their attitudes to neighbouring countries. In this way, Thailand can improve its relationship with its neighbouring states without prejudice from historical rivalry and help develop the ASEAN community in 2015.

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