

The Thai-Cambodian border skirmishes in early 2011 led to the deaths of many soldiers and civilians. These disputes were the most violent clashes in 50 years for both countries after the International Court of Justice (ICJ) ruled on the Preah Vihear Temple case in 1962. Cambodia took the flaring conflict to the UN Security Council and ASEAN and requested the ICJ to interpret whether the 1962 verdict also included the disputed area around Preah Vihear Temple.

Thai-Cambodian Border Conflict: Tension Continues after Ceasefire

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The Preah Vihear Temple conflict between Thailand and Cambodia, which flared up in 2008, led to a violent clash in the disputed area near Preah Vihear Temple and Phu Makhua hill between 4th to 7th February 2011 and another near Prasat Ta Meuan along the Surin border between 22nd April to 1st May 2011.

These two skirmishes in the period of three months killed nine Thai soldiers and 2 civilians. Tens of thousands of people in Sisaket province's Kantharalak District and Surin province's Panom Dongrak District were evacuated from the areas of fighting.¹ Cambodian Prime Minister Hun Sen said that his country had lost 24 soldier and civilian lives since 2008.² Even though the casualty numbers claimed by both sides are different, the loss of lives was significant .

Conflict born out of Thai politics

These skirmishes are directly caused by Thailand's own political turmoil as the People's Alliance for Democracy (PAD) and the Democrat Party have used Cambodia's application for Preah Vihear Temple's World Heritage status in 2008 as a weapon to attack the Samak government which they believed to be under the control of their enemy, ex-Prime Minister Thaksin Shinawatra.

The PAD and the Democrat Party accused the Samak government of supporting Cambodia's move that risked losing the country's territory around the temple as well as the land on which the temple is located. The accusation was potent enough to topple Noppadon Pattama from his post as Minister of Foreign Affairs but it also catapulted the Thai-Cambodian border dispute into an out-of-control open conflict.

The ICJ ruled in 1962 that "the Preah Vihear Temple is located within the territorial sovereignty of Cambodia".³ The Thai government in 1962 complied with the ruling by fencing a quarter square

kilometers area around the temple for Cambodia while retaining the remaining area as Thai territory.⁴ Cambodia continued to dispute Thailand's interpretation of the verdict and the Thai-Cambodian Joint Border Committee (JBC) was set up to negotiate border demarcation.

This stalemate lasted for half a century until the PAD and Democrat Party began to argue that the ICJ only ruled in favour of Cambodia on the physical construction of the temple and not on border demarcation. These groups claimed that any action on Cambodia's part to utilise the area outside the temple was an invasion of Thailand's territorial integrity.

When the Democrat government succeeded the Somchai government after the dissolution of the People's Power Party, it was forced to follow the pledge it took with the PAD to block Cambodia's attempt to register the temple as a World Heritage site despite knowing full well that the registration had already been completed on 7th July 2008.⁵

The Abhisit government claimed that Cambodia could not complete the management plan for Preah Vihear Temple without a border demarcation agreement with Thailand on the 4.6 square kilometers disputed area around the temple. The government sent Suwit Khunkitti, Minister of Natural Resources and Environment to attend the World Heritage Committee meeting for two consecutive years in order to block Cambodia's management plan for the temple. In the June 2011 Paris meeting, Mr. Suwit announced that Thailand would withdraw from the World Heritage Convention in protest because the committee refused to defer the consideration of Cambodia's Preah Vihear Management Plan.

Not only did the Preah Vihear Temple conflict have no chance of resolution under the Democrat government but the situation got worse when the issues around ex-Prime Minister Thaksin were

added to the mix. The relationship between the two countries was tense and the JBC operation was stalled.

Final straw

Before the last straws broke and then led to the clashes in February 2011, there was a dispute around the sign that Cambodia put in front of Wat Keo Sikha Kiri Svava in the disputed area. The sign asserted “Here! Is the place where Thai troops invaded Cambodian territory on 15th July 2008.”

Thai authorities wanted the sign removed because they claimed that “neither Thailand nor Cambodia can produce anything to claim possession of the land.”⁶ Cambodia complied but replaced it with a sign indicating “Here! Is Cambodia.”⁷ Thai authorities again asked the second sign be removed and Cambodia complied.⁸ Thailand also demanded that Cambodia remove its national flag from the vicinity of Wat Keo Sikha Kiri Svava as well as the pagoda itself. But Cambodia did not comply with these additional demands.⁹

Tension mounted and the final straw came when Thai authorities constructed a road from in front of Wat Keo Sikha Kiri Svava to Phu Makhua hill. Cambodia demanded a halt to the construction but was ignored. Gunfire then ensued.¹⁰ Thai authorities claimed that the Cambodian army opened fire on Thai soldiers after Thailand refused to stop the road construction.¹¹

After the skirmish, Cambodia took the issue to the United Nations Security Council on 14th February 2011. The Council made a resolution requesting for a permanent ceasefire and requested Indonesia as ASEAN chair to enforce the ceasefire and find bilateral mechanism to solve the problem. One week later, ASEAN held a special high-level meeting among member states attended by each country’s Minister of Foreign

Affairs and proposed to send Indonesian observers into the disputed area.

However, Thailand declined the presence of observers until it could reach a bilateral agreement with Cambodia in the General Border Committee (GBC), chaired by the Minister of Defense of each country. Cambodia, however, refused to call a GBC meeting insisting that the Preah Vihear Temple dispute could no longer be resolved with any bilateral mechanism due to Thailand’s continued obstruction of the process.

Although the JBC was responsible for border demarcation, the Thai government had been stalling the process by putting JBC meeting minutes up for the approval of the parliament without scheduling them in the parliamentary session agenda. Even towards the end of 2010 when the matter was finally on the agenda, it was again stalled by the PAD protest in front of the parliament demanding the parliament not to approve the minutes.

To break the deadlock, the Abhisit government set up a committee to resolve the issue within 30 days but the term was extended. Finally, a Democrat Party member requested the Constitution Court to rule whether the JBC meeting minutes needed approval of the Parliament according to Section 190 (2) of the Constitution or not. The Constitution Court however rejected the request.¹² The government interpreted this ruling to mean that Parliament approval was unnecessary and then sent Thai representatives to the Joint Border Committee meeting in Bogor, Indonesia in April 2011.

The meeting, however, did not lead to any progress as it was only a procedural formality to keep the possibility of outside observers on the table.

As the diplomatic tug-of-war went on, another clash occurred near Prasat Ta Meuan which lasted longer than other clashes and caused a higher number of casualties.

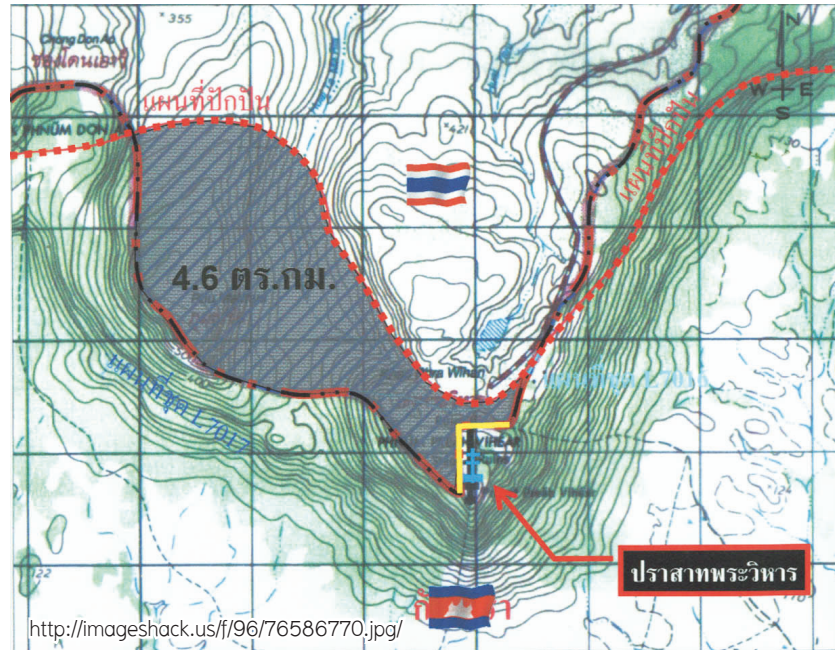
ICJ once more

As bilateral resolution seemed impossible, Cambodia requested the ICJ to interpret the 1962 ruling and issue an injunction for Thailand to pull out all troops, stop all military activities in the disputed areas and refrain from all actions which may violate Cambodia's sovereignty over the area.¹³

The ICJ on 18th July 2011 ordered both countries to pull out all troops from the 17 square kilometers court-defined demilitarised zone around the Temple, prohibited Thailand from any action which may disrupt Cambodia's non-military activities in the area and ordered the two countries to facilitate the presence of ASEAN observers in the area and refrain from any actions which may deepen the conflict.¹⁴

The court order came when Thailand was undergoing another political transition from the conservative Democrat-led government to the Pheu Thai-led government, headed by Yingluck Shinawatra who was believed to have better ties with Phnom Penh. The cross-border tension seemed to immediately ease once the Cambodian leader knew that Pheu Thai Party, under the support of ex-Prime Minister Thaksin, had won the July 2011 general elections.

The easing atmosphere also helped two Thai prisoners sentenced for espionage, Weera



Somkwamkit and Ratree Pipatpaiboon, to receive better treatment. However, these two Thais who were arrested while inspecting the disputed area in Sa Kaew province's Nong Chan village in December 2010 have yet to receive a pardon or sentence reduction.¹⁵

Future approach for the unresolved conflict

The Thai-Cambodian border conflict did not end with the Democrat Party's election defeat. The new government still has the international obligation to comply with ICJ order to pull out all troops from the designated demilitarised zone, invite Indonesian observers and end all actions which may obstruct Cambodia's management of Preah Vihear Temple.

The ICJ has yet to rule on Cambodia's request to interpret the 1962 verdict but the court is now in the process of receiving documents and arguments from both sides. The Thai government has few

options apart from presenting its argument based on the evidence and legal approach laid down since 1962. It's expected that the ICJ will make a ruling towards the end of 2012 which Thailand will be obliged to comply with. This ruling will help end the border dispute or at least lay down a clearer approach for a permanent resolution to the conflict.

Public law expert Professor Bowonsak Uwanoo has offered lessons to be learned from this issue since 2008.¹⁶ He suggested that:

(1) Whatever is spoken or done by those who officially represent the Thai State will inevitably affect the country's obligations. Such individuals should therefore think about consequences of their words before speaking. When there is a dispute, the ICJ will take all of these statements and behaviors into consideration as a reflection of the intention of each party.

(2) The government should use the Parliament to shore up its legitimacy and leverage.

(3) The Ministry of Foreign Affairs, especially its Department of Treaties and Legal Affairs, must "do more homework." It should produce a strong team of researchers who are ready to dispense more knowledge rather than just opinions.

(4) Those who adjudicate on disputes, whether the Constitution Court or the Administrative Court, must rule based on proper ruling procedures and not according to the public sentiment. Otherwise, justice and the country's international reputation will be affected.

Border conflicts such as the Thai–Cambodian dispute over the Preah Vihear Temple are results of the establishment of the nation–states which require clear definition of peoples and border demarcation while ignoring the cross–border social and cultural affinities between peoples that have been forged long before the countries were born.

The Thai border, more than 4,800 kilometers in length, has often turned Thai people into self–obsessed individuals and confrontation between 'us' and 'them.' This situation is not unlike what happens in many countries around the world such as the dispute on Splatly Islands between China and Japan, the land and water dispute between Cameroon and Nigeria and the dispute on continental shelf between Greece and Turkey.

If the heart of the Thai–Cambodian dispute is the registration of Preah Vihear Temple as a World Heritage, Thailand should deal with this issue by freeing itself from internal fights and using positive visions, perhaps in the form of a trans–boundary World Heritage site like in the case of Iguazu falls between Argentina and Brazil, so as to prevent any injury to national pride. The line which used to separate people into opposite sides in a war–waiting–to happen can then be turned into a peaceful union of the people on both sides who have to co–exist for a long time to come.

