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# The Dispute over Prea Vihear

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Seen Problems, Unseen Stakes

Panchali Saikia



**SOUTHEAST ASIA RESEARCH PROGRAMME (SEARP)**

Institute of Peace and Conflict Studies

B-7/3, Safdarjung Enclave

New Delhi 110029

91-11-4100 1900

[www.ipcs.org](http://www.ipcs.org)



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**Address:**

B 7/3 Lower Ground Floor  
Safdarjung Enclave  
New Delhi 110029  
INDIA

Tel: 91-11-4100 1900, 4165 2556,  
4165 2557,  
4165 2558, 4165 2559

Fax: (91-11) 4165 2560  
Email: [officemail@ipcs.org](mailto:officemail@ipcs.org)  
Web: [www.ipcs.org](http://www.ipcs.org)

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**About the Author**



**Panchali Saikia**

*Panchali Saikia is a Research Scholar at the Southeast Asia Research Programme, IPCS. She completed her Masters in Political Science from University of Delhi, New Delhi, a two years Post Graduate Diploma in Human Rights from Indian Institute of Human Rights, New Delhi, B.A (Hons) Political Science from Hindu College, University of Delhi, New Delhi.*

*Her primary research areas include the Security and Strategic aspects in Southeast Asia with special focus on Thailand, Connectivity between India and Southeast Asian Countries and Trans-boundary water management.*

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# The Dispute over Preah Vihear Seen Problems, Unseen Stakes

Panchali Saikia

## I INTRODUCTION

Territorial dispute may occur either in a case where one country contests the ownership over another's land/territory or a disagreement on where the frontier line is/should be. The emergence of territorial dispute has been explained by most strategists through the lens of economic and strategic interests or demographic importance which include members of ethnic or religious groups. Interstate systems such as democracy, national identity and historical contexts have also been seen as some of the root causes of such conflict.

Many such boundary lines in Southeast Asia remain unsettled today. Despite major changes in the international system, these boundaries remain as drawn as during colonial era (Robert and Raul, 2001). One of the major and starkest of them all in this region is the territorial dispute between Thailand and Cambodia which is driven by sentiments of national identity and sovereignty issue. Increase in military buildup and use of heavy artilleries during armed confrontation along the Thai-Cambodian border has drawn wide ranging debate on this long-simmering dispute. The Thai-Cambodian dispute has become a prima-facie hostile situation which occasionally escalates into violent armed conflict. This sporadic conflict has been escalated by frequent

military confrontation, evident from the exchange of fire, heavy artillery fights between Thailand and Cambodia which leaves large number of fatalities and thousands displaced along the border. Earlier this year violent armed confrontation and fighting continued for several days along the temple complex.

The dispute started first over the territorial sovereignty of the temple and later extended to a 4.6 kms area land adjacent to the temple premises. This temple popularly known as Preah Vihear in Cambodia and Khao Phra Viharn in Thailand was built in 11<sup>th</sup> and 12<sup>th</sup> century during the golden era of Khmer civilization (Supot, n.d.). This paper will use the Cambodian usages 'Preah Vihear' for a matter of convenience and does not convey any bias on part of the author.

It is argued that Cambodia has stronger competing claims over Thailand as the origin of the temple belongs to the Khmer empires but Thailand has its own claims and evidence to defend that the territory originally belongs to Thai people. The complex and distorted history, hyped nationalist sentiments and power politics have made the situation much worse and contentious to come up with a suitable solution or conclusion.

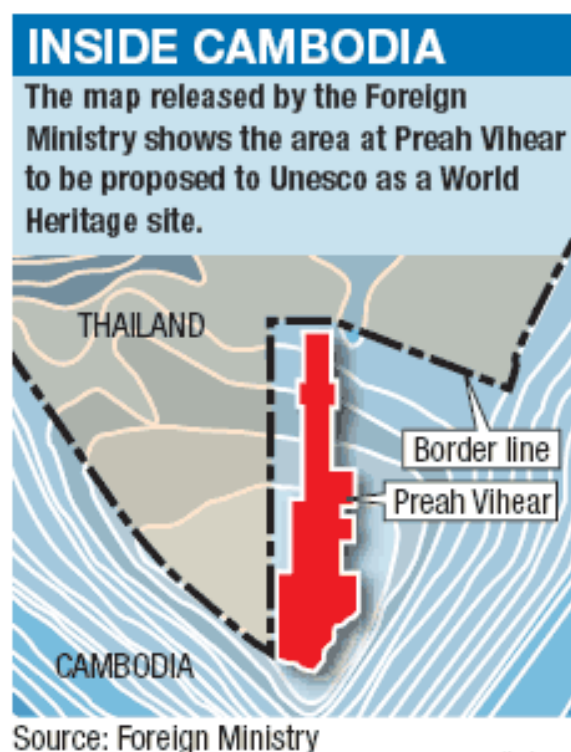
The border line between Thailand and Cambodia has not been clearly demarcated

and the agreements and treaties signed between the two countries are debatable. The question over where exactly the border between Thailand and Cambodia lies remains the crux of the dispute today. The present dispute over the boundary has also extended to the complexes of two other Hindu temples named Ta Maon and Ta Krabey, located 150kms west of the temple.

## II BOUNDARY DEMARCATION AND DELIMITATION: THE LEGAL DISPUTE

The genesis of the dispute dates back to the period of the French protectorate, and the boundary treaties of 1887 and 1893 signed between the Siamese (modern Thailand) and the French according to which the Siams had claimed the entire territory on the left bank of Mekong River (Bruc, n.d.). To avoid Thailand's domination the Cambodian king requested French protectorate status in 1863. In 1904, the Siamese and French colonial authorities ruling Cambodia signed a treaty (*Franco-Siamese Convention of 13 February 1904*) according to which the boundary line would run along the watershed along the eastern section of the Dangrek Mountain. The Dangrek was established as a boundary under the Convention signed between France and Siam signed on 7 October 1902.

Under the Article 3 of this treaty, a mixed commission was formed by the two which surveyed and stated that the boundary will run between Kel pass and the Col de Preah Chambot including the Preah Vihear temple area (Touch, Spring 2009). The mixed commission's report did not mention any reference to the Dangrek Mountain. While the commission was summing up with its final reports, alongside on 23 March 1907 Siamese and France government signed a treaty (*Treaty between France and Siam with a protocol*



Map showing the Preah Vihear temple and the border line between Thailand and Cambodia.

(Source: Chambers and Wolf, 2010 )

concerning the delimitation of frontier). Under this agreement Siam ceded the border provinces of Battambang, Sisophon and Siem Reap to the French in exchange for Dan-Sai and Krat. ('Cambodia-Thailand Boundary', 1966)

The Siamese government requested the French to do a survey and prepare a new topographical map. In 1907, the French officials had sent nearly 11 maps to the Siamese authorities. According to one of the maps produced (*filed as Annex I to its Memorial*) the boundary was outlined along the basins of Namsen and Mekong on the one hand and Nam Mou on the other. This map deviated the watershed line placing the temple under Cambodian territory ('Summary of the Judgment of 15

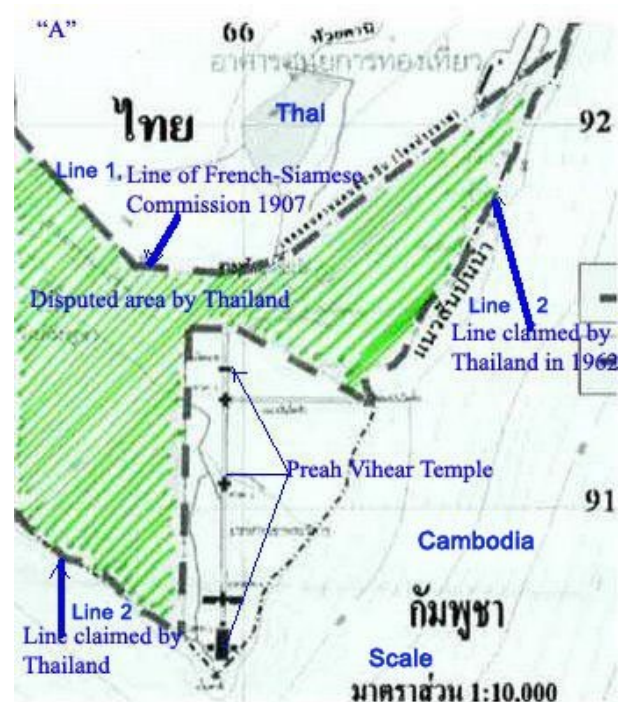
June 1962', ICJ). The Siamese challenged arguing that the map had no binding characters as it was not approved by the mixed commission.

In 1941, Thailand's (*The country's official name was Siam and later changed to Thailand in 23 June 1939*) troops seized the Battambang and Siem Reap provinces back. In 1954, they also seized and occupied the Preah Vihear territory after the withdrawal of French troops from Cambodia (Saikia, 2011).

In 1959 Cambodia referred the dispute to the International Court of Justice (ICJ) at Hague and filed a case against Thailand. The initial submission by Cambodia to the ICJ stated that Thailand should withdraw its armed forces that have been stationed in the temple premises since 1954. Second, the ownership of the Temple of Preah Vihear should belong to Cambodia.

On 15 June 1962 (*Case Concerning the Temple of Preah Vihear*) the ICJ ordered the jurisdiction in favour of Cambodia and affirmed that the judgment was based on valid maps created during the 1904 and 1907 border agreement which precisely show the temple in the Cambodian territory. It also ordered Thailand to return all the relics and antiquities such as sculptures to Cambodia. This judgment

*The ICJ concluded that the Siamese authorities could not provide a definite objection to the maps produced by the Cambodian in 1907, neither did they produced any alternate maps. The court therefore felt bound to uphold the ownership right of the temple to Cambodia.*



Map shows the temple area and the 4.6 km disputed territory along with the claimed lines by both Thailand and Cambodia.

(Source: Chambers and Wolf, 2010 )

ignited furious reactions from Thailand.

Thailand violently protested against this decision and stated that the 1907 French survey map cannot be considered final to determine the territorial ownership as it is not an official document of the border commission and it had not taken into account the mixed commission agreement reached in 1904 (*The Epoch Times*, 2011). But the ICJ concluded that the Siamese authorities could not provide a definite objection to the maps produced by the Cambodian in 1907, neither did they produced any alternate maps. The court therefore felt bound to uphold the ownership right of the temple to Cambodia.

In 1963 Cambodian under Prince Sihanouk



formally took the possession of the temple. He declared that the Thai people will be allowed to visit the temple without a visa. He permitted the Thai's to keep the temple relics despite the ICJ's order.

Any further negotiations to resolve the dispute failed as Thailand did not comply fully on the ICJ judgment. Negotiations and talks towards delimitation and demarcation of the boundary revived on track only in 1997. A Memorandum of Understanding (MoU) was signed between Thailand and Cambodia on 14 June 2000 on the survey and demarcation of the land boundary. Under this MoU a Joint Boundary Commission (JBC) was established to resolve the disputed border areas (Touch, 2009). However many more agreements and understandings came to be established, yet the dispute reignited in 2008. For instance the first-ever joint cabinet meeting in 2003, establishment of the joint panel administering the sanctuary in March 2004, could not bring any major development.

### III UNESCO WORLD HERITAGE SITE

In 2008, Cambodia proposed its intention to apply for the inscription of the Preah Vihear in the UNESCO World Heritage site list. As the temple had an ancient architecture with both cultural and religious elements the government of Thailand supported Cambodia's proposal. Once the temple is registered under the World Heritage list, UN will provide funds to develop, maintain and preserve the temple architectures. This will also increase the tourist flow and help in reviving the economy of the immediate provinces.

The application sent by Cambodia referred to an adjacent land to the temple under Cambodia's jurisdiction which was actually Thailand's territory. The Thai opposition

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party protested on this plan and argued that Cambodia had the ownership rights only over the temple and not the adjacent territory. That territory was still a subject of dispute, as Thailand had not accepted the 1962 ICJ judgment. The People's Alliance for Democracy (PAD) who was backed by the monarchs, the Thai elites and the military protested and accused the ruling government. There was widespread dissatisfaction with the government when the then- Foreign Minister of Thailand Noppodon Pattama signed a communiqué with Cambodia accepting the proposal to UNESCO in 2008 (The Constitutional Court, 2008). The oppositions claimed that Noppodon and the then-Prime Minister Sumak had business concessions with the Cambodians due to which they sacrificed the nation's sovereignty and prestige.

The internal political pressure compelled the government to withdraw its support to register Preah Vihear in the UNESCO World Heritage site list. Despite the protest and withdrawal of Thai support Cambodia went along with its decision to apply for the inscription of the temple in the heritage list and finally on July 2008 Preah Vihear was registered in the list.

#### IV DOMESTIC POLITICS AND NATIONALISM

Declaring the temple as a world heritage site resulted in a violent military clash among the troops of both the countries along the border. Both the countries stationed their troops along the border accusing each other for territorial infringement.

Strained domestic politics and intensifying nationalism in both Thailand and Cambodia inflated the situation. The dispute was and has been exploited and fomented by the political factions in both Thailand and Cambodia to dole out their own self interest ever since. Had there been no accusations and protest by the Yellow shirts in Thailand, both the countries could have enjoyed a peaceful environment. The administration of this archeological site could have not only boosted the economy of Cambodia but also Thailand. And though the temple was listed in the World Heritage site, the expected benefits have not been able to be utilized due to the frequent armed confrontation along border.

In an article titled ‘Temple of Doom: Hysteria about the Preah Vihear Temple in

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the Thai Nationalist Discourse’, Pavin Chachavalpongpun has rightly said “*Almost fifty years on, the fire of nationalism has never really abated, and it has been periodically rekindled by various [Thai] political factions to serve their own political purposes.*”

Although the government in Thailand changed in late 2008, it could not bring any positive result towards settling the dispute nor in improving the bilateral relations with Cambodia. Instead the conflict reached a new height. The new Prime Minister Abhisit Vejjajiva took an aggressive stand on the Preah Vihear dispute and stated that he would never sacrifice or compromise on his nations’ sovereignty. He rejected the proposals for any third party mediation in the dispute and emphasized that it should be settled bilaterally.

Yet, it would be wrong to state that it is only the Thai political factions that have used the dispute as a weapon of politics. The issue has been equally exploited to rally political support in the national elections by the Cambodian Prime Minister Hun Sen’s who timely manipulated the dispute to boost his and his party’s popularity (Saikia, 2011). Hun Sen’s statements and provocative approach of announcing the appointment (as a gesture of praise) of the former Thai Prime Minister Thaksin Shinawatra as his personal and economic advisor exaggerated the political situation in Bangkok.

The close cooperation between Thaksin and Hun Sen could have resulted in a settlement, but the military coup had overthrown Thaksin’s government and Abhisit took over as the new Prime Minister. Although Abhisit and his government tried to maintain a stable relationship with the Cambodians and settle the boundary dispute peacefully

through bilateral negotiation, the bitter relationship between Abhisit and his counterpart Hun Sen overshadowed any such initiatives.

## V THAILAND'S NEW GOVERNMENT AND THE BILATERAL RELATIONS

The result of the 2011 general elections in Thailand with Thaksin's Pheu Thai party coming to power under his sister Yingluck Shinawatra raises hopes for reviving the broken relationship between the two nations. However, many questions rise on the newly elected government's approach towards settling this dispute. Whether the election results will be enough to move Thailand beyond its bitter division with Cambodia is highly doubtful. With constant protest and challenges from the opposition party, will the new government succeed in addressing the power sharing challenges within the country alongside the interstate conflicts? How will Yingluck handle Thaksin's attempt to return to Thailand? Will the shadow of Thaksin and his ideas be influential or impact the new government's agenda?

Yingluck's government will face major hindrances from its opposition. The opposition party has already started to question the political legitimacy of Yingluck and her party. Thaksin's visit to Cambodia along with Yingluck in August 2011 had drawn high criticisms from the Democratic Party. Yingluck is seen not as the country's new leader but as a Thaksin's stand-in. There has been continuous debate in Bangkok that any policy or reforms formulated and implemented by the new government will have the imprints of Thaksin.

On the one hand, where there is still hope that the close ties and friendly relation between Thaksin and the Cambodian Prime Minister Hun Sen will be a positive

*ASEAN's must act soon to curb any such confrontation in future. The simmering conflict if not settled will pose major challenges to ASEAN's credibility as a regional organization. Two of the important articles in the ASEAN Charter outline the provisions for settlement of disputes.*

element for Yingluck to improve the relationship between both the countries. There is a constant fear that like her predecessors Yingluck too might sacrifice the nation's sovereignty for the sake of other bilateral benefits.

## VI ASEAN & THE PREAH VIHEAR DISPUTE

The armed conflict between these countries in February and April 2011 had aggravated tension posing a major threat to the regional peace and stability.

ASEAN must act soon to curb any such confrontation in future. The simmering conflict, if not settled, will pose a major challenge to ASEAN's credibility as a regional organization. Two of the important articles in the ASEAN Charter outline the provisions for settlement of disputes. Article 22 of the Charter states that all ASEAN member countries shall establish and maintain a dispute settlement mechanism. While, Article 23 states that the parties to a dispute can request ASEAN to provide mediation, good offices or conciliation (Historic Firsts: ASEAN Efforts on Cambodia-Thai Conflict Endorsed by UNSC, 2011).

However, ASEAN is not able to bring any



settlement to the dispute despite repeated efforts. The initiatives taken by the ASEAN Chair so far, to mediate between the two countries to settle the dispute have failed. The ASEAN chair in 2011, Indonesia had offered the two countries to send an observer team to the disputed territory. Settlement on this could not be met, as both the disputed parties did not reach any definite conclusion.

As a member of ASEAN both Thailand and Cambodia need to abide by the rule of its Treaty of Amity and Cooperation (1976). This treaty states that all ASEAN members should peacefully settle inter-state disputes and avoid use of threat of force among the states. Yet, ASEAN members have failed to abide by the principle of the peaceful settlement of dispute mechanism so far. Moreover this treaty does not provide any framework for operational prevention to address crisis situation.

Well-known historian from Thailand Morakot Jewachinda Meyer stated *"In light of the spirit of regionalism that is being forged under the banner of ASEAN, should we follow the European Union lesson of turning national heritage into common European heritage to mutually reap cross-border economic and cultural prosperity like what Germany and Poland, for example,*

*The initiatives taken by any ASEAN Chair so far to mediate between the two countries to settle the dispute have failed. ASEAN's must act soon to curb any such confrontation in future. The simmering conflict if not settled will pose major challenges to ASEAN's credibility as a regional organization.*

*have been doing?"*

Although ASEAN's mediation is necessary, under the prevailing circumstances any third party intervention will be extremely contentious.

## **VII PROVISIONAL DEMILITARIZED ZONE (PDZ)**

The dispute remains complicated by the fact that on the one hand, Phnom Penh has repeatedly requested ICJ to bring a settlement on the dispute, on the other hand, Thailand does not want any further intervention from the UN and ICJ.

In April 2011 Cambodia filed an application with the ICJ requesting the court to clarify the 1962 judgment as the boundaries were not clearly demarcated (Cambodia's Application for Interpretation by the ICJ, 2011). The ICJ issued a series of provisional measure, including the set up a provisional demilitarized zone (PDZ) around the temple (ICJ Press Release, 2011). At the same time, the court also ordered both Cambodian and Thailand to withdraw their troops from the 17.3 square kilometer demilitarised zone near the temple. The draft sent by the Cambodian government to ICJ also included the request to deploy Indonesian observers to arbitrate between Thailand and Cambodia (Cambodia's Application for Interpretation by the ICJ, 2011).

In February 2012 the ICJ ruled that both the countries should immediately remove its troops from the disputed territory. Despite the repeated orders from the ICJ, neither Cambodia nor Thailand have taken any action to implement the court's order.

In December 2011 itself the two countries

issued a joint statement in the Thai-Cambodian General Border Committee (GBC) meeting held in Phnom Penh in December 2011 to remove the troops. During the meeting Thailand agreed to Cambodia's proposal to withdraw troops from the zone and have Indonesian observers. However, till date no such development have taken place on either side of the border. On 9 July 2012, *The Bangkok Post* reported that Cambodia is going to announce the withdrawal of its troops from the PDZ near temple soon. On the contrary, the Thai Defence Minister stated that Thailand will not withdraw its troops but will redeploy. He also stated that the redeployment of the troops would be in line with the national defence plan and as required by the situation on the ground (*The Bangkok Post*, 2012).

### **VIII RESOLVING THE CONFLICT & UTILIZING THE POTENTIALS**

The domestic political rift and personal interest of the political factions in both the countries should subside before any further talks or agreements are met between the two. The battle between the state and non-states actors within Thailand is going to pose a major threat again in future aggravating the ongoing fester. Most of the facts about this dispute are unclear. Moreover, the leaders of both the countries have most of the time inflated the conflict as a matter of nation's security and prestige.

Apart from the question of sovereignty and national identity, the unseen angle is the economic benefit that can be utilized by both the countries if they peacefully settle the conflict. The temple has an easy access from Thailand and developing the north-east tourism circuit of the country will increase the tourist flow resulting in economic growth. Along with Thailand, the Cambodian provinces along the border

will gain substantially.

This temple site has immense tourism potential. The temple reflects the element of both cultural heritage and religious content of both the countries. It is one of the best examples of the Khmer architecture. People from both the sides living around the temple have close cultural and ancestral links with each other.

Local tourism and trade has suffered a lot due to this fester. The Preah Vihear province's Tourism Department and the Ministry of Tourism in Cambodia stated that the total number of visitors to the temple in 2011 fell to about 125,000 from more than 130,000 in 2010.

While tourism has been affected in the region due to conflict, the bilateral trade between the two countries has not been affected. The local small trade along the disputed border has become the real victim. Local people from both the sides are not concerned who owns the territory; the only concern for them is that the military spat affects their livelihood. Many people are displaced from their provinces and many are either injured or killed.

During the February 2011 armed conflict, both the sides used heavy weapons and artilleries. Cambodia launched multi-launch rocket systems and Thailand was accused of using cluster munitions, which has been officially banned in many countries.

The situation remains very critical and uncertain. The threat of armed conflict over the disputed territory is one of the major concerns for the people living along the border.

It is not only the territory of the Preah Vihear temple, but there are several other temple ruins which are located along the

Thai-Cambodian border which are also under dispute. For Instance, the Ta Muen Thom temple located in Surin province of Thailand, two other disputed temples Ta Muen Toch and Ta Muen. Thai troops are stationed in Ta Muen since 1998 and has a military base at Ta Muen Thom. Another major determinant that may lead to a major rift is the Sadokkokthom temple. Ta Kwai (Ta Krabey in Cambodia) 12 km east of Ta Muen Thom is also a disputed boundary (Chambers and Wolf, 2010).

Incorrect perceptions about the delimitation and demarcation of the boundary and distorted maps remain as the root cause of the occasional tensions along the border. Moreover, there is a lack of evidence on the facts and demands made by both countries involved in the dispute.

The two countries must reach an agreement and settle the disputes. Priority should be removing the armed troops from the disputed region and replace it with local police who can monitor and manage the security issues along the border. The boundary line must be reviewed and it needs to be mapped under the supervision of ASEAN observer team.

Another crucial element is management of the temple and its surrounding area. It still remains a question that even if the troops are removed and observers are stationed along the disputed zone, will these efforts influence and succeed enough to restore peace and manage the ancient archeological site.

Once the overlapping territory is declared a peaceful zone, the temple should be open for tourism Joint management and administration can be formed having both Thai and Cambodian officials, which can be supervised by the ASEAN.

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B-7/3, Safdarjung Enclave, New Delhi 110029

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