
Revisiting the Cambodia-Thailand Maritime Dispute: International Law, Politics and Nationalism

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ABSTRACT This article analyzes the historical and continuing Cambodia-Thailand maritime dispute in the Overlapping Claims Area of the Gulf of Thailand, first looking into the history of the dispute to identify primary sticking points that have led to the five decade deadlock and then considering current politics, attendant risks and possibilities of finding a solution to the deadlock. The author argues that policy makers have a historic opportunity to seize the moment by using large amounts of political capital accumulated in the elections last year to break the longstanding impasse. Policy makers must pay heed to nationalisms in both countries to lessen the risks of negotiation failure. If policy makers stick to international law as the basis of their negotiations and of the narrative they present to their publics, and push forward with territorial claims that provide for equitable distribution of the disputed area's 11 trillion cubic meters of natural gas, both countries could achieve energy security in the short and medium term.

Keywords: Maritime Disputes, Gulf of Thailand, Natural Resources, Law of the Sea, UNCLOS

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Introduction

The Gulf of Thailand is a small semi-encircled sea which covers roughly 302,000 sq. km. and is an extension of the South China Sea. Four littoral Southeast Asian states claim parts of the Gulf. These claims include territorial seas of 12 miles, contiguous zones, continental shelves and exclusive economic zones (EEZ) in accordance with the 1983 United Nations Convention on the Law of the Seas (UNCLOS). Due to the size of the Gulf of Thailand many claims overlap.

The geography of the Gulf of Thailand does not lend itself to easy demarcation and delimitation of territory. The Gulf’s many islands lead to diverse territorial baselines, complicating agreement on territorial boundaries. Furthermore, the Gulf’s seabed is uneven, thus not lending itself to simple and equitable solutions for resource extraction. That being said, there are large assessed natural gas and oil deposits in the Overlapping Claims Area (OCA). This presents opportunities and costs to both parties to find a resolution to this decades-long dispute. On the one hand both countries are facing energy supply and demand issues that are pushing the claimants towards negotiation. But due to the uneven seabed geography, negotiations over those resources will be bitter.

Most maritime boundary claims between littoral states other than Cambodia and Thailand have been settled. The first boundary settlement was between Malaysia and Thailand in 1979 with

the final disposition settled in 1990.¹ The final agreement delimited the southern overlapping claim between Malaysia and Thailand establishing the Joint Development Area and its legal entity, the Joint Development Authority (JDA). The JDA is the authority responsible for exploitation of natural resources, which are shared on a 50/50 basis.²

The second agreement was between Thailand and Vietnam concluded in 1997, which delimited the continental shelf and EEZs between the states, thus establishing the first delimitation in the Gulf of Thailand since the entry into force of UNCLOS.³ Cambodia and Vietnam signed their first boundary agreement, the Agreement on Historic Waters of Vietnam and Kampuchea, in 1982. Further negotiation led in 2019 to two treaties that delimited 86 percent of the parties’ territorial boundaries, leaving only 14 percent outstanding.⁴

This paper will begin with a background of the maritime dispute. The paper will then analyze areas of serious disagreement surrounding territorial claims in the northern OCA, exploring pathways forward based in international law via the United Nations Convention on the Law of the Seas and Vienna Convention of 1958. Lastly, the author will hone in on current political and economic situations that may allow for breaking of the five decades long impasse. The policy implications of this approach involve navigating nationalisms of both countries by grounding policymakers

Table 1: Littoral countries in the Gulf of Thailand their Maritime Agreements

| Overlapping Claim Countries | Year Settled | Agreement | Outcome |
|-----------------------------|--------------|---|--|
| Malaysia-Thailand | 1979, 1990 | MOU (Joint Development Area) | 50-50 split of resources in Joint Development Area. HQ in Kuala Lumpur and 1st CEO of JDA corporation a Thai |
| Thailand-Vietnam | 1997 | Delimitation of Continental Shelf and EEZ | Agreed boundary is the straight line from point ‘C’ (7° 49’ 00”N; 103° 2’ 30”E) |
| Malaysia-Vietnam | 1992 | MOU (Joint Development Area) | Delimitation of Continental Shelf and natural resource allocation |
| Cambodia-Vietnam | 1982, 2005 | Agreement | Delimitation of 86% of boundaries |

in the public narrative of international law and equitable solutions as laid down in other cases involving the North Sea and East Timor.

**Colonialism’s Lasting Presence:
Interpretations of the 1907 Franco-
Siamese Treaties and the Maritime
Dispute**

The current Cambodia Thailand Maritime Dispute can be traced back to different interpretations of the Franco-Siamese Treaty of 1907.⁵ The Treaty states that “the frontier of between French Indo-China and Siam starts from the sea at a point opposite the highest point of the island of Koh Kut. From this point it follows a north-easterly direction to the ridge of Pnom Krevanh.”⁶ The colloquial interpretation was that Siam cedes everything south of Cape Lemling.⁷ Based on its interpretation of the “highest point of the island of Koh Kut,” Cambodia drew its delimitation line straight through the center of Koh Kut Island.ⁱ

***Cambodia’s Interpretation of the
1907 Franco-Siamese Treaties***

In the presidential decree of Jan. 1, 1972, Cambodia declared its continental shelf, which is adjacent to Thailand. Later on Feb. 12, 1972 there was a second decree which claimed Cambodia’s maritime claim along the same line as previously. Cambodia drew the demarcation line from the Thai-Cambodia border on the coast nearly directly west through Koh Kut island, while the Thai government draws the line from the border in a southwest direction, well south of Koh Kut island, which gives more maritime territory to Thailand.

Scholars and practitioners view the Cambodian interpretation of the 1907 treaty as odd and perhaps radical. First, the claim is not in conformity with the treaty’s annex, which states that the territory of the Kingdom of Siam and French Indo-China begin from the highest point of Koh

Kut across the sea northeasterly to Pnom Krvanh. This would be the terminus point of the boundary between the two legal entities on *land*, but there is no reference to sea boundaries. Cambodia in the presidential decrees of 1972 used the referent point of Koh Kut to claim its maritime boundary which included its continental shelf (Jan. 1, 1972 Decree) and territorial sea (Feb. 12, 1972 Decree).⁸

The reason for referencing high points at sea, in this case Koh Kut, was that in 1907 the area around Pnom Krvanh was undeveloped and devoid of natural or artificial points which could be referenced. That said, the 1907 Treaties made no mention of maritime boundaries, yet the Cambodia government in 1972 took the 1907 references to Pnom Krvanh and Koh Kut’s highest point to be its maritime boundary, thus drawing a straight line into the Gulf from Pnom Krvanh.⁹ The original French version of the text in Clause 1 of the annex to the 1907 Treaty cited the “line demonstrating the projection of the point situated on the highest peak of Koh Kut for the purpose of determining the point on the Khmer-Siam land frontier” (translated from original French).¹⁰ Clearly, at no point did the drafters or signatories of the 1907 Franco-Siamese Treaty envision or articulate a maritime boundary. This is the primary cause of the dispute which lasts up to the present.

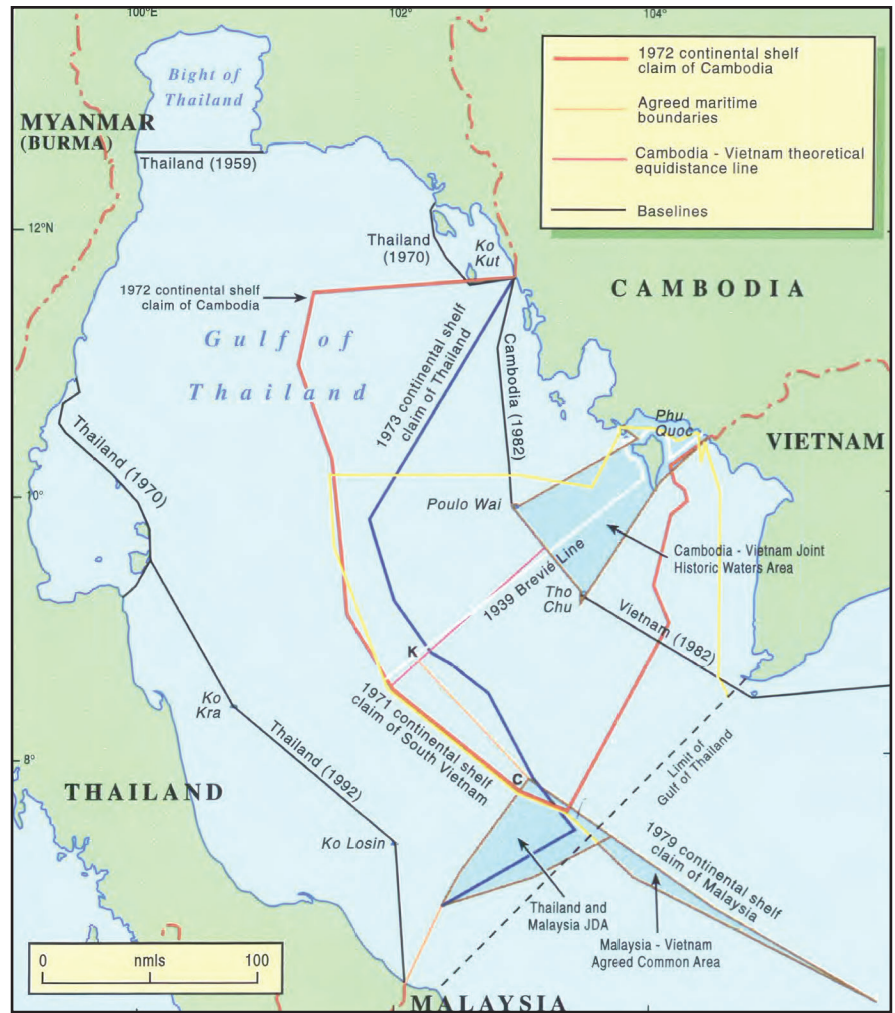
Colonial Legacy in International Law

An important legal question arises in the context of colonialism: why is Cambodia bound by treaty obligations made under a colonial regime? The answer can be found in two international treaties. The first is the Vienna Convention on Succession of States in respect of Treaties. In international law there is an overriding principle covering territorial regimes arising from colonialism which dates back to the recession of the Spanish Empire in South America. The principle of *Uti possidetis* was established during early decolonization in the

“Scholars and practitioners view the Cambodian interpretation of the 1907 treaty as odd and perhaps radical.”

ⁱ Whilst this is a territorial claim with roots in colonial history, Thailand was never formally colonized by any foreign power and remained the only independent territory in Southeast Asia throughout the colonial era.

Map of the Conflicting Thai-Cambodian Territorial Claims¹¹



19th century and recognized by the International Court of Justice in *Burkina Faso v. Republic of Mali*.¹² *Uti possidetis* states that colonial territorial boundaries upon independence become international frontiers. The logic behind this is twofold. First, territories gain independence from a single or the same sovereign. Second, continuity was necessary for clarity and stability in international affairs and the smooth conduct of relations between states during the messy era of decolonization, when most of the world gained independence.¹³ The Vienna Convention of 1978 states that a bilateral treaty in effect at the date of succession is considered in effect if both states agree to or conduct their relations according to the treaty.¹⁴ As Cambodia and Thailand have

carried on relations in accordance with the colonial treaty, it is binding on both parties according to customary and international law.

The second is the Vienna Convention on the Law of Treaties of 1969. There are two primary treaty articles which are applicable to this case, Article 27 and 29. Article 27 of the Treaty articulates that international law principle of *Pacta sunt Servanda*. Simply put, this states that it is incumbent on states to carry out and perform their duties in good faith with regard to their treaty obligations. Article 29 states that “unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.”¹⁵ Given the intent of the Franco-Siamese Treaties was to

delimit land and not maritime boundaries there is no conflict with the 1969 Treaty, hence binding character on both claimant states.

Resolving the Dispute: UNCLOS and the 2001 Memorandum of Understanding

The overarching international legal framework for resolving overlapping claims lies in UNCLOS. This section will outline relevant UNCLOS articles and advance possible legal principles from customary practice which may help guide the resolution to the dispute.

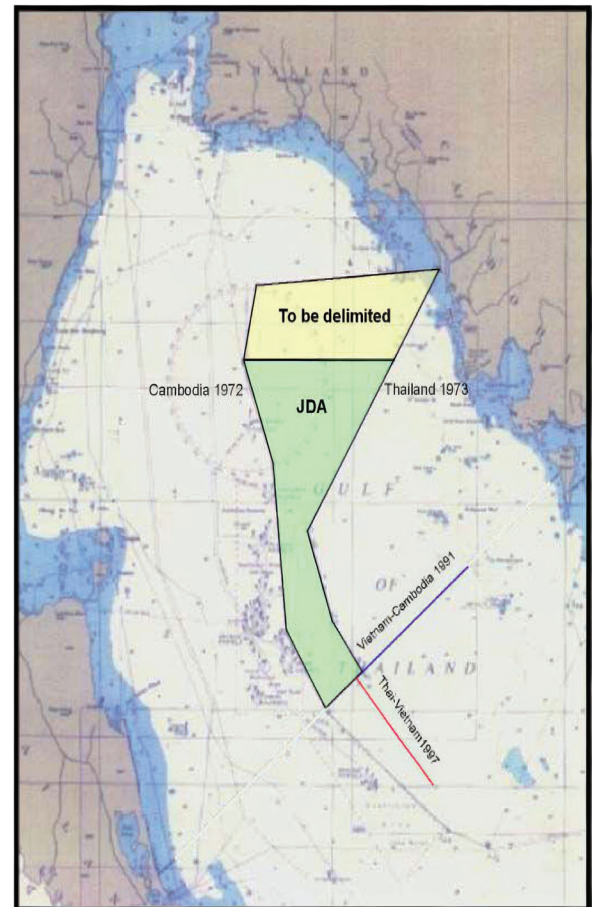
Schofield has previously outlined that Article 15 calls for a median line in order to delimit territories contrary to the “existence of historic title or special circumstances.” Further, Articles 74.1 and 83.1 reference delimitation of the continental shelf and EEZ without any reference to methods. It does, however, mention the principle of “achieving an equitable solution.”¹⁶ Articles 74.3 and 84.3 seek to commit parties to interim agreements on delimitation of the continental shelf and EEZ by stating

Pending agreement...the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of a final agreement. Such agreements shall be without prejudice to the final delimitation.¹⁷

Lastly, Article 123 indicates an obligation to cooperate in settling disputes with regard to enclosed or semi-enclosed seas.¹⁸ With this framework in mind one can trace the dispute back to the 2001 Memorandum of Understanding regarding the Area of their Overlapping Claims to the Continental Shelf.¹⁹ The MoU has at its core a few important principles. First, the overlapping claims north and south of 11 degrees latitude are

conjoined and must be negotiated in parallel. The 11-degree line divides disputed territorial seas, which extend 12 nautical miles off the coast, from the broader area delimited for natural resource exploitation. The importance of this principle is twofold. The first, is that the MOU conjoins sovereignty issues with natural resources and negotiation to create some degree of political leverage. Implicitly understood is that if the two portions of the OCA were negotiated separately and a deal struck on resource exploitation there would be no incentive to negotiate the difficult part of territory. Second, given that there is no termination clause, if any party wishes to terminate the MoU, this must be agreed to by both parties jointly in accordance with the Vienna Convention on Law of

Map Highlighting the Disputed Areaⁱⁱ



ⁱⁱ The important takeaway is the upper portion of the map and is the current sticking point regarding the 2001 MOU (Source: Left Map from 2001 MOU; Right Globalsecurity.org).

Treaties. Last, the conclusion of negotiations must be inclusive of areas north and south of the 11th latitude—i.e., the entirety of the OCA.²⁰

There is no single equidistance method which is parsimonious, but the Equi-Area/Ratio method, which is similar to the Euclidean Allocation, may work best for the Cambodia-Thailand dispute. Both countries have islands that are at once adjunct and opposite to one another.²¹ Regardless of the equidistance method utilized, delimiting the northern portion of the OCA is absolutely essential.

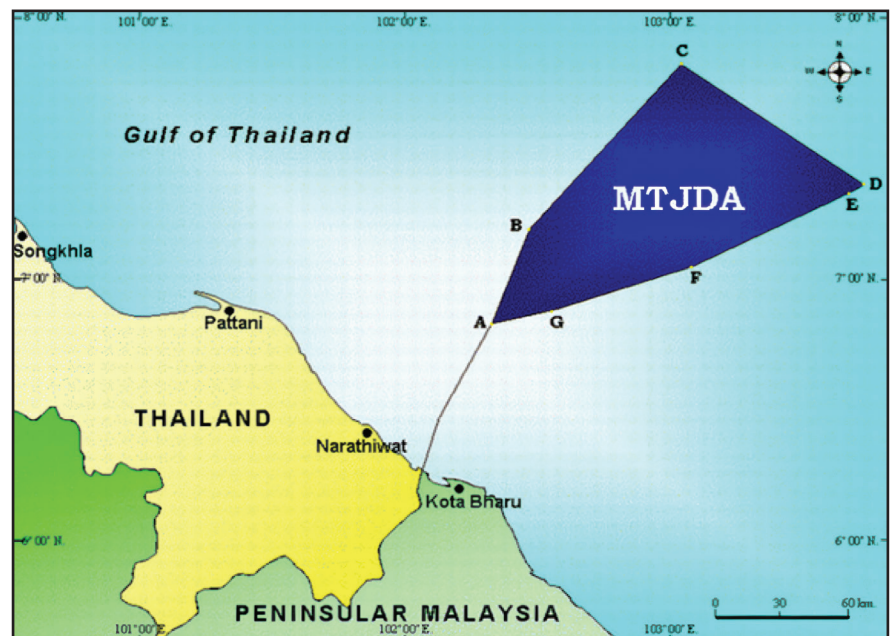
“The Cambodian priority has been to develop the joint area with an eye towards natural resource sharing whilst putting the maritime boundary issue aside. The Thai approach has been to discuss and eventually reach an agreement, starting with the delimitation of the territorial sea.”

The Malaysia-Thailand Joint Development Area
Schofield has argued that previous agreements in the Gulf of Thailand, owing to its limited area, have been not based on delimiting boundaries as a first step but rather natural resource allocation via joint development areas, with delimitation following.²² This was the case with the Malaysia-Thailand OCA, where agreements on natural resources were negotiated prior to formal delimitation. In 1979 there were two treaties which concluded boundaries of both countries’ territorial seas and contiguous zones which encompassed 40 nautical miles from the agreed baseline. There was still disagreement over delimitation of the continental shelf. The

second agreement in the 1979 Malaysia-Thailand Agreement established the MTJA (Malaysia-Thailand Joint Authority). The MTJA was the organization in charge of management of exploration and exploitation of natural resources within the JDA. Another 11 years passed until both countries could conclude an agreement which distributed oil and gas resources based on a 50/50 split and a 50-year tariff free period.²³ Included was the understanding that negotiations of delimitation of the continental shelf would be ongoing and continuous. If no agreement could be reached in the 50 years of natural resource extraction and monetary sharing, the MTJA would continue to manage natural resource extraction until a final conclusion could be reached between the parties.²⁴

This model is indeed applicable to the Cambodia-Thailand dispute. The main sticking point, however, is in the resolution of the territorial sea issue, which is a necessary minimum for finding a basis point for the overall OCA. The problem lies in the disparate positions taken by the two parties since the signing of the 2001 MoU. The Cambodian priority has been to develop the joint area with an eye towards natural resource sharing whilst putting the maritime boundary issue aside.

Malaysia-Thailand Joint Development Area



“There have been two primary factors inhibiting both the resolution of the maritime dispute but also the conduct of negotiations in general: nationalisms in both countries and political instability in Thailand.”

The Thai approach has been to discuss and eventually reach an agreement, starting with the delimitation of the territorial sea. This position has at its center an agreed-upon reference point for starting discussion of the OCA in its entirety.²⁵ The crucial divergence in these disparate positions begins with the interpretation by Cambodia of the 1907 Koh Kut referent point. Furthermore, officially there have been only three meetings between the parties since 2001.

Impediments to Resolving the Dispute: Nationalism and Political Instability

There have been two primary factors inhibiting both the resolution of the maritime dispute but also the conduct of negotiations in general: nationalisms in both countries and political instability in Thailand.

Relations between the two countries fluctuates between friendliness, hostility and ambivalence depending on the Thai government in power and domestic political circumstances.

On a broad level, former Prime Minister Thaksin Shinawatra and former Prime Minister Hun Sen share excellent personal relations. When there is Thaksin led or backed government in power, relations between the two Kingdoms is quite good. This was evidenced not only by them frequenting the golf course together. After Thaksin toppled the first military coup of 2007, Cambodia appointed him as a special economic advisor, to the irritation of Thai authorities.²⁶ Furthermore, Hun Sen made a personal visit to Thaksin three days after his release from the hospital following his return to Thailand after his self-imposed decade plus exile.²⁷

Nationalisms in Cambodia and Thailand

On Jan. 30, 2003 riots broke out in the capital Phnom Penh which resulted in the torching of the Thai embassy.²⁸ The reason for the anti-Thai riot was the allegation that a Thai actress claimed Angkor Wat was in fact a Thai heritage site.²⁹ The likely reason for the incident, which resulted in

the Thai embassy being burned, lies in Cambodia's national politics. The Cambodian political elite (i.e. Hun Sen and his Cambodian People's Party) tend to play the nationalism card prior to elections to whip up support for the ruling party by vilifying a vulnerable “other,” playing to Khmer nationalist sentiment.³⁰ This is a common theme in Cambodian national politics. Another incident flared up in the runup to the 2023 national elections. The Cambodian government stoked nationalist sentiment with allegations of cultural appropriation by Thai authorities of Muay Thai (Thai kickboxing) prior to the Asian Games. The Cambodian government claimed that Muay Thai was in fact Cambodian and could be found in the ancient practice of “Kun Khmer,” thus alleging Thai theft of Khmer heritage.³¹ The political nature of this can be seen from the fact that after the successful election of Hun Sen's son Hun Manet and the forming of a Puea Thai (Thaksin Shinawatra backed) government in Thailand in 2023, the Cambodian PM was the first to telephone congratulations to new Thai PM Srettha Thavisin.³²

The biggest impediment on the Thai side to a negotiated settlement of the territorial dispute comes from Thai nationalism and those who are opposed to Thaksin Shinawatra. Within weeks of the resumption of OCA negotiations, fierce Thaksin critic and member of the former government Paiboon Nititawan lodged a complaint with the Ombudsman asking for a petition to the Constitutional Court on the grounds that the 2001 MOU is against constitutional provisions.³³ The complaint is based on the current junta constitution, which states that any agreement which deals with Thai territory must have parliamentary approval. Mr. Nititawan's, a lawyer by training, interpretation is that the MOU is a legal treaty and deals with Thai territory, hence is illegal and must be voided or passed by parliamentary action. Given the Constitutional Courts verdicts of the past on any issue which favors or is brought by the now former government, it would be reasonable for the court to take up the case. If this is so, we can expect a long process indeed.

Lastly, as a result of the recent cabinet reshuffle which took place in May 2024, Pichai Chunhavanajira is the new Minister of Finance. Mr. Chunhavanajira in a dual administrative role has taken over as chair of the Thai negotiating team on the OCA. It is known that Mr. Chunhavanajira favors splitting the north-south OCA issue and instead directly negotiating a gas deal in the Southern portion of the OCA. Allegations have surfaced of a conflict of interests as Mr. Chunhavanajira is Chairman of the Board of Bangchak Corporation, a large Thai energy firm.³⁴ Incidentally, Bangchak has been granted exploration rights in the southern OCA and would stand to benefit handsomely if a deal can be struck. If nationalism is stoked on the grounds that Thailand is giving up territory at the behest of someone with a conflict of interests, a potent and unstable mix of legal and political troubles may be on the horizon.

Natural Gas and Oil Production in the Gulf of Thailand

It is estimated that some 11 trillion cubic feet of natural gas lies within the OCA. This is important for energy consumption and security for both countries. Thailand's natural gas production peaked in 2014 with 4073 million standard cubic feet per day (MMSCFD) of domestic natural gas production. This fell to 3204 MMSCFD by 2021.³⁷ Thailand's natural gas consumption fell slightly during the COVID pandemic, but has recovered and is trending back up again. The shortfall in domestic production has been made up by in two ways, the first being imports of expensive LNG to the tune of 1512 MMSCFD of natural gas by 2021. Second, Thailand's energy giant PTTEP has increased output in its Bongkot field, but this has not stopped the decline in production from the Malaysia-Thailand Joint Development Area (MTJDA).³⁸

Considering that Thailand has ASEAN's largest petrochemical industry and the primary feedstock for Thailand's refineries is domestic production, Thailand needs to find a replacement

for long-term energy security as prices continue to rise post-COVID.³⁹ Thailand also depends on natural gas for some 60 percent of its electricity generation with annual growth of some 6.3 percent.⁴⁰ Thailand's Department of Mineral Resources expects LNG imports to increase from 5.2 million tons to 26 million tons by 2027.⁴¹

Meanwhile, in Cambodia the government's much touted plans to develop a domestic oil industry by 2012 have completely failed.⁴² This led leading Singaporean hydrocarbon developers to completely leave the country by 2021 seeing no possibility for any production in Cambodia.⁴³ The failure of Cambodia's energy production to materialize has led to a policy of banking on hydropower and other renewables.⁴⁴ The primary impediment to steady hydropower production is upstream in the headwaters of the Mekong River, which is consistently disrupted by China's dams and lack of notification of flow restriction.⁴⁵ Put together there is a strong economic incentive to find a political solution to the energy shortfalls of both countries in the medium to long term. The latter period of the previous government under General Prayut Chan-o-cha saw a turn in policy to one of negotiating over natural resources without the northern section, and this appears to be carrying over into the new Thai government led by PM Srettha Thavisin.⁴⁶ Whether the Thai government can decouple the northern and southern portions of the OCA remain to be seen. Possible trajectories are to terminate the MOU on the willingness of both countries and simply negotiate over natural resources. This will face fierce pushback from the Thai bureaucracy and possibly spark nationalist outcries, reminiscent of the Preah Vihear protests a decade ago.⁴⁷

Conclusion

This article has taken a historical approach to understanding the underlying problems and positions of parties in the Cambodia-Thailand Maritime Dispute. The dispute stems from a faulty interpretation of the 1907 Franco-Siamese Trea-

ties which were politicized in 1972 when Kampuchean President Lon Nol issued a presidential decree claiming maritime areas in the Gulf of Thailand which were not in accordance with the treaties. The dispute continues to the present with the primary sticking point being the refusal of the Cambodian side to negotiate the northern territorial sea boundary and holding to its position of negotiating natural resource exploitation.

This is not say the Thai side has not been a player in the deadlock, nor is Thailand's politics stable. But given the political capital Thaksin Shinawatra has upon his return to Thailand among Thailand's conservative elite, his excellent relations with Hun Sen, and both countries' needs for energy security, the time may be ripe for finally unlocking natural resources in the Gulf of Thailand.

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¹⁸ UNCLOS Article 123 clearly states, “States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization: “(a) to co-ordinate the management, conservation, exploration and exploitation of the living resources of the sea; (b) to co-ordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment; (c) to co-ordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area; (d) to invite, as appropriate, other interested States or international organizations to co-operate with them in the furtherance of the provisions of this article” (UNCLOS Article 123). With regard to the Cambodia Thailand dispute this is of clear interest, as the Gulf of Thailand clearly falls within this category of body of water.

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