

**WAGING PEACE: ASEAN AND
THE THAI-CAMBODIAN BORDER CONFLICT**

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WAGING PEACE: ASEAN AND THE THAI-CAMBODIAN BORDER CONFLICT

EXECUTIVE SUMMARY

Border clashes between Thailand and Cambodia that caused dozens of casualties and displaced thousands have challenged the Association of South East Asian Nations (ASEAN) to finally turn its rhetoric on peace and security into action. Cambodia's successful attempt to list the Preah Vihear temple as a World Heritage Site came against the backdrop of turmoil in Thai politics after the 2006 coup that deposed Prime Minister Thaksin Shinawatra. Thai pro-establishment movements used this issue to whip up nationalist sentiments against Cambodia as they tried to topple the Thaksin-backed government. The emotionally-charged campaigns halted border demarcation and sparked a bilateral conflict. In early 2011, the dispute turned into the most violent clash yet between ASEAN's members, testing its historical commitment to non-aggression and prompting it to get involved. This has raised expectations that it might live up to its stated aspiration to keep peace in its own region. As yet, however, while its engagement set important precedents, it has no significant achievements. More robust diplomacy and leadership are still needed.

The resurgence of a largely forgotten 50-year dispute into an active armed conflict was related to two events: the colour-coded struggle in Thailand between the pro-establishment "Yellow Shirts" and the pro-Thaksin "Red Shirts" sparked after Thaksin's ouster in the September 2006 coup; and the decision of Cambodia to register Preah Vihear as a World Heritage Site, which UNESCO accepted in July 2008. In Cambodia, the listing was occasion for national joy and Khmer pride. In Thailand, the ultra-nationalist Yellow Shirts used it to argue that Thaksin's proxy administration led by Prime Minister Samak Sundaravej had sold out their motherland and committed treason. It became a powerful weapon to further their agenda, forcing the foreign minister to resign and destabilising the government. They successfully portrayed backing for the listing as a move to further Thaksin's business interests, despite this policy having been supported by the previous military-installed administration. Until the Yellow Shirts' attacks, bureaucrats on both sides had seen the listing as a mutual tourism bonanza.

The frontier became increasingly militarised and tense. Border survey and demarcation ground to a halt, as it be-

came too dangerous to field joint teams. At the same time, political turmoil in Thailand led to a high turnover of foreign ministers and other senior officials. Nationalist lawsuits, controversial court rulings and constitutional provisions hamstrung the efforts of officials to negotiate and poisoned the bilateral relationship. Frustrated by this inaction and these obstructionist tactics, Cambodia's prime minister, Hun Sen, often lashed out and on one occasion appointed Thaksin as an adviser – an episode that was the political low point of a troubled period.

Despite the warning signs between 2008 and 2010, passivity rather than active peacemaking was the "ASEAN way". After the outbreak of hostilities in 2011, the UN Security Council set a precedent by referring the issue back to ASEAN and its then chair, Indonesia, which showed how energetic and bold leadership could bring the association closer to what [some of] its supporters wished it might be. ASEAN broke more new ground after both sides agreed to receive teams of Indonesian observers to monitor a ceasefire.

Thailand's civilian leaders initially agreed to the deployment but backtracked after its military resisted, claiming the observers would undermine sovereignty, a sign that the post-coup struggle for power is unresolved. Cambodia approved them in May, but Indonesia would not dispatch its monitors until both sides signed on. The election of Yingluck Shinawatra as Thailand's prime minister in July 2011 was expected to be a turning point, but was not. Even a ruling by the International Court of Justice (ICJ) that ordered the creation of a provisional demilitarised zone around the temple and called on ASEAN to monitor a troop withdrawal did not remove political obstacles. Then in October, Thailand was crippled by the worst flooding in living memory, leaving the government overwhelmed. With the waters now subsiding, Thailand and Cambodia need to recommit to complying with the ICJ decision as soon as possible.

ASEAN aimed to stop hostilities and restart negotiations when it took up the border issue in early 2011. While there has been no fighting on the border since May, the ceasefires in place are mostly verbal and unsigned. Until

troops are verifiably withdrawn and diplomats resume negotiations, this conflict is not over. But in trying to resolve it, ASEAN, under Indonesia's leadership, has laid out a methodology for dealing with future disputes. If it wants to fulfil its stated goal of taking responsibility for its own peace and security, it needs to use its existing mechanisms at the first sign of trouble and not just rely on an activist chair. The Thai-Cambodian conflict remains an active challenge for ASEAN, which must achieve a certifiable peace on this disputed border if it wishes to keep its own region secure in the future.

Bangkok/Jakarta/Brussels, 6 December 2011

WAGING PEACE: ASEAN AND THE THAI-CAMBODIAN BORDER CONFLICT

I. INTRODUCTION

The conflict between Thailand and Cambodia is centred on the eleventh-century Preah Vihear temple.¹ When it erupted into serious violence in early 2011, it tested the capacity of the Association of Southeast Asian Nations (ASEAN) as never before to resolve conflicts among its own members. ASEAN defines itself as an organisation of “peace-loving nations”.² The founding Bangkok Declaration of 8 August 1967 commits it to “promote regional peace and stability”. Not a binding treaty, its intent was to create a forum in which the anti-communist countries of the region could consult.³ The follow-on 1976 Treaty of Amity and Cooperation (TAC) developed by the original five founding members, including Thailand, was “to promote perpetual peace, everlasting amity and cooperation”. The organisation is guided by a number of key principles including “non-interference in the internal affairs of one another”, “settlement of differences or disputes by peaceful means” and “renunciation of the threat or use of force”. Cambodia signed the treaty on 23 January 1995, four years before its admission to membership.⁴

ASEAN has, to date, encouraged restraint but failed to resolve the conflict over Preah Vihear. Despite efforts by the organisation’s 2011 chair, Indonesia, to step in as mediator, national interests, especially in Thailand, took precedence over regional harmony. To this day, none of the basic issues have been resolved, but the process has boosted those who wish to see a more proactive organisation in the field of peace and security and further eroded

the sanctity of the concept of non-interference in internal affairs. It has become clear that at least some members are willing to promote the idea of locally-mediated solutions as a compromise between doing nothing and going outside the region – for example, to the UN Security Council. The Preah Vihear dispute thus has become more than a question of where the boundary lies. How it is eventually resolved will have major implications for the role of ASEAN itself.

Another ASEAN member, Indonesia, saw its own national interests as served by playing a third-party mediating role, thus advancing its desire for a more prominent international role. Its long-retired diplomats had played a key role in the 1991 Cambodian peace agreement and brokered the 1996 deal between the Philippines government and the Moro National Liberation Front, as well as facilitated a two-decades-long process of managing conflict in the South China Sea. Its current generation of officials has tried to build on this history of involvement in regional security issues. In 2008, Indonesian President Susilo Bambang Yudhoyono created the Bali Democracy Forum to promote Asia-wide debate and showcase the country’s recent democratisation experience. Indonesia has also tried to engage on Myanmar, make progress in bringing China closer to ASEAN on disputed ocean boundaries and, in the wake of the Arab Spring, offer lessons learned to countries in transition as far afield as Egypt. While much of this has been unofficial “track two” diplomacy, a success in the Thai-Cambodian conflict could give it even more confidence and greater ambitions.

After the first pitched battle in February 2011 between the two militaries, Cambodia took its case to the Security Council, which gave ASEAN an unprecedented referral to take the lead on resolving the conflict.⁵ That same month, the regional grouping’s foreign ministers set another precedent by agreeing to deploy Indonesia observers under the ASEAN banner to a conflict zone in its own neighbourhood. As this initiative stalled and the second round of clashes broke out, Cambodia sought the intervention of the International Court of Justice (ICJ) in The Hague, request-

¹ The temple is internationally known as Preah Vihear in English, the term used in this report. In Thai it is known as Phra Viharn [ปราสาทพระวิหาร].

² “Treaty of Amity and Cooperation in Southeast Asia”, ASEAN, 24 February 1976, preamble. ASEAN’s ten member states are Indonesia, Malaysia, the Philippines, Singapore, Thailand – the five founding members – Brunei, Cambodia, Laos, Myanmar and Vietnam.

³ Walter Woon, “Keynote speech”, CIL-KSIL-SILS Conference 2011, Singapore, 20 April 2011.

⁴ Ibid, Articles 1-2. “Declaration on the Admission of the Kingdom of Cambodia into the Association of Southeast Asian Nations”, 30 April 1999.

⁵ This was the first referral by the Security Council to ASEAN as a regional organisation.

ing an interpretation of its 1962 judgment as well as an order for temporary measures that might stop the fighting. In July the ICJ expeditiously ordered creation of a provisional demilitarised zone and ruled that both sides should withdraw their soldiers from this area around the temple and cooperate with ASEAN to allow deployment of the organisation's observers to that zone.⁶

But the momentum toward a solution that had the potential to set ASEAN on a more activist path than its founders ever envisaged was halted by a combination in Thailand of an uncooperative military and an election that made the incumbents risk averse ahead of the July poll. As the new administration of Yingluck Shinawatra was finding its way on this policy issue and others, the country was inundated by record monsoonal rains that caused unprecedented floods and put all international issues to the side. While resolution of the conflict has stalled, the fundamental question remains: has the Preah Vihear dispute changed the way ASEAN looks at itself or increased its capacity for conflict resolution?

This report analyses the politics of the conflict and the role of ASEAN since the resumption of open hostilities in February 2011. It treats events as they directly relate to this diplomatic history but is not intended to be a detailed examination of either Thai or Cambodian domestic politics in this period. It is based on fieldwork in the border provinces of Si Sa Ket, Surin and Ubon Ratchathani on the Thai side, as well as Cambodia's Preah Vihear and Oddar Meanchey. Extensive interviews were also conducted in Bangkok, Canberra, The Hague, Jakarta, New York, Phnom Penh, and Singapore. It is intended neither to pass judgment on where the border should be nor to assign blame for the 2011 fighting. Access to officials in the capitals as well as soldiers on the frontlines was not always equal or complete, making it impossible to definitively distinguish claim from counterclaim.

II. THE ORIGINS OF A SMALL WAR

Some still see the origins of this conflict in centuries of rivalry between the two kingdoms, reaching as far back as the sacking of Cambodia's Angkor Wat temple in 1431 by forces of Siam, now Thailand. Historical rivalry aside, it was mainly the ultra-nationalist movements that ignited the border conflict by using the Preah Vihear dispute as a powerful tool to wage domestic political battles against the pro-Thaksin government.⁷ The nationalists have been rallying around the myths that Thailand still owns the temple and hence strongly oppose Cambodia's listing of it as a World Heritage site.

A. OWNERSHIP AND RESENTMENT OVER PREAH VIHEAR

Like many South East Asian countries, Thailand and Cambodia still share a colonial legacy of an ambiguous border.⁸ In 1954, Thai troops occupied and claimed Preah Vihear, located about 400km north of Phnom Penh. Five years later, Cambodia took Thailand to the ICJ on the basis of colonial-era treaties and other documents in an attempt to regain what it regarded as part of its cultural heritage, arguing that the temple was inextricably linked to its Angkor Wat complex, 140km to the south west.⁹ In 1962, the ICJ ruled that the temple was "situated in territory under

⁷ Crisis Group interview, diplomat, Phnom Penh, 19 May 2011. For previous Crisis Group reporting on Thailand's political crisis, see Asia Briefing N°121, *Thailand: The Calm before Another Storm?*, 11 April 2011; Asia Report N°192, *Bridging Thailand's Deep Divide*, 5 July 2010; and Asia Report N°82, *Thailand: Calming the Political Turmoil*, 22 September 2008; as well as "Conflict Risk Alert: Thailand", 30 April 2010.

⁸ Additional border disputes between South East Asian nations include Cambodia and Vietnam (Dak Jerman/Dak Duyt, Dak Dang/Dak Huyt, the La Drang area and the islands of Baie/Koh Ta Kiev, Milieu/Koh Thmey, Eau/Koh Ses, Pic/Koh Thonsáy and the Northern Pirates/Koh Po); Myanmar and Thailand (Doi Lang, Three Pagodas Pass); Indonesia and Malaysia (Karang Unarang, Ligitan and Sipadan, Ambalat); Indonesia and Timor-Leste (Citrana, Bijael Sunaen, Memo and Pulau Batek/Fatu Sinaí); Malaysia and the Philippines (Sabah/North Borneo); Philippines and Vietnam (Macclesfield Bank); and Vietnam, Philippines, Malaysia and Brunei (Spratly Islands). See David Lee, "Historical Survey of Borders in Southeast Asia", in James Clad, Sean M. McDonald, and Bruce Vaughn (eds.), *The Borderlands of Southeast Asia: Geopolitics, Terrorism, and Globalization* (Washington D.C., 2011), pp. 59-88.

⁹ Complete documents for this case can be found on the ICJ website under "contentious cases" (www.icj-cij.org). Thailand initially argued the court had no jurisdiction to hear this case, but the court ruled unanimously that it did. "Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Preliminary Objections, Judgment of 26 May 1961: ICJ Reports 1961, p. 17.

⁶ "Request for interpretation of the judgment of 15 June 1962 in the case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Request for the Indication of Provisional Measures", order, ICJ, 18 July 2011.

the sovereignty of Cambodia”, mostly on the basis of a Franco-Siamese 1908 map that clearly showed the temple within the Cambodian border. It said Thailand had an obligation to withdraw troops, police or guards from the temple “or in its vicinity” as well as return objects from the area taken by its authorities. Thailand acknowledged the judgment and soon withdrew its troops and police. It has been government policy ever since that the temple complex is in Cambodia.¹⁰

Nearly 50 years later, however, nationalists still argue the court should not have used the legal principle of estoppel – bar to the use of contradictory words or acts in asserting a claim or right against another – to reject Thailand’s claim to the temple.¹¹ The court found that Thais had used the 1908 map without complaint for decades, even though, with respect to the temple, it may have been inconsistent with 1904 and 1907 treaties that said demarcation of the border was supposed to be based on the watershed line of the Dangrek mountain range. Thailand, the court ruled, could not change its mind years later and reject the validity of the map it had long accepted in an attempt to win the case, because this would harm Cambodia’s interests.¹²

Although the ICJ clearly determined the ownership of the Preah Vihear temple, the frontier around the cliff-top site remains in dispute. The process to determine the border began after the signing of a 2000 memorandum of understanding governing demarcation of the entire land border.¹³ A century ago, French and Siamese authorities never marked the border around the temple with pillars, in what was then a remote and uninhabited region, as they had done right down to the sea for the frontier hundreds of kilometres to the west.¹⁴ This ambiguity created compet-

ing claims that are unresolved to this day. Cambodia says that this part of the border should be demarcated on the basis of the 1908 map. Thailand counters that it should be done on the basis of a combination of the temple complex’s perimeter and the watershed line of the Dangrek mountain range used for the rest of the border. This difference creates what Thais often call the “disputed 4.6 sq km” and what Cambodians call “an integral part” of their territory.¹⁵

The conflict has festered primarily because this cartographical ambiguity has been exploited by those with a particular political agenda to undermine their Thaksin-aligned opponents. “Thais still feel cheated. They still believe the temple is theirs”, said a retired general. “It is not a rational thing, but it is the reality”, said former Foreign Minister Kasit Piromya, noting that although he accepts the 1962 ruling, he still thinks the use of estoppel was evidence of poor reasoning.¹⁶ Such establishment figure attitudes reinforce and give greater legitimacy to the sense of grievance expressed by ardent nationalists over these maps and judgments.¹⁷

B. WORLD HERITAGE LISTING FOR PREAH VIHEAR

Cambodia first proposed to the UN Education, Scientific and Cultural Organisation (UNESCO) in 2001 that Preah Vihear be added to the World Heritage list for properties of outstanding cultural or natural value. The temple, dedicated to the Hindu god Shiva, is said to be exceptional because of the quality of its carved stone ornamentation and architecture, adapted to the natural environment, and religious function. Set on a cliff more than 600 metres above the surrounding plain, it comprises a series of sanctuaries linked by pavements and staircases over an 800-metre-long axis.¹⁸

¹⁰“Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)”, merits, judgment of 15 June 1962, ICJ Reports, 1962, p. 36; press briefing on Thailand’s pleadings before the ICJ, Thai foreign ministry, 16 June 2011.

¹¹ *Merriam-Webster’s Dictionary of Law*, 2006, online, <http://dictionary.findlaw.com/>. Crisis Group interview, Panthep Phua-phongphan, People’s Alliance for Democracy (PAD) spokesman, Bangkok, 3 October 2011.

¹² ICJ 1962 judgment, op. cit., p. 32.

¹³“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 the Land Boundary”, 14 June 2000. The Cambodian signatory, Var Kim Hong, is still his country’s most senior official in border negotiations. The PAD says the 2000 memorandum of understanding was not approved by parliament and should be revoked. “Seeking people’s consensus to demand the prime minister to take responsibility”, press statement, 5 February 2011, www.manager.co.th/Politics/ViewNews.aspx?NewsID=9540000015928.

¹⁴ They delineated five sectors, approximately 600km from the sea with 73 border posts, in 1908-1909, then redid them in 1919-1920, with each post having its own map to describe its location. Preah Vihear is in sector six. Crisis Group interview, Var

Kim Hong, senior minister in charge of border affairs, Phnom Penh, 6 October 2011.

¹⁵“Thai Foreign Ministry’s Permanent Secretary Virasakdi Futrakul press briefing”, foreign ministry, 20 June 2008; “The Temple of Preah Vihear inscribed on the World Heritage List (UNESCO) since 2008”, Office of the Council of Ministers, Phnom Penh, May 2010.

¹⁶ Crisis Group interviews, retired Thai general, Bangkok, 2 June 2011; Kasit Piromya, 30 September 2011.

¹⁷ The objections are not based on international law, accepted principles of map-making or a dispassionate reading of Thai history. Charnvit Kasetsiri, *Bad History, Bad Education, and Bad ASEAN Neighbour Relations* (Bangkok, 2008); Crisis Group interview, Surachart Bamrungsuk, political scientist, Chulalongkorn University, Bangkok, 7 June 2011.

¹⁸ It is an ancient but not active Hindu temple. Cambodia and Thailand are predominantly Buddhist nations, and there is no

On 25 March 2004, then Thai Foreign Minister Surakiart Sathirathai and Cambodian Deputy Prime Minister Sok An agreed that “the joint development of Preah Vihear Temple would be a symbol of the long-lasting friendship, based on mutual benefits and understanding, between the two countries”. A survey of the border to collect data for demarcation would be done simultaneously with the temple’s restoration and joint development.¹⁹ It was the first time Thailand and Cambodia had tried to use common economic interests and cultural treaties as the framework for settling a highly sensitive territorial issue.²⁰

Thailand’s proposal for the joint-listing of Preah Vihear was rejected by Cambodia as it believed the temple ownership was clear. Bangkok then compromised and agreed to give its support for a listing while both sides sorted out the issue of the management of the 4.6 sq km.²¹ The World Heritage Committee agreed in principle to Cambodia’s request in 2007 and began to prepare for the listing. At this meeting, the process had the “active support” of the Thai government, then a military-backed administration set up after the September 2006 coup that toppled Thaksin.²² However, Thailand presented a map claiming the 4.6 sq km around the temple, including land through which a new access road would be built.²³

Thailand’s policy to support Cambodia’s listing was unchanged after Thaksin proxy Samak Sundaravej and the People Power Party (PPP) won the December 2007 elections. The new Thai foreign minister, Noppadon Pattama, followed the line of his predecessor. But to those watch-

ing closely, it was already clear that there might be problems. On 25-26 March 2008, UNESCO pushed ahead with a technical meeting on Preah Vihear in Paris, even though a Thai delegation did not attend. An observer present reported that the Cambodians were not thinking through the issues and “would appear to be deluded if they believe that the current dossier will be accepted without major revisions that will require lengthy negotiations with the Thai government”.²⁴

After Sok An and Noppadon met in Paris on 22 May 2008 to discuss the listing, cooperation seemed to be on track. They prepared a joint communiqué that agreed Thailand would support Cambodia at the World Heritage Committee meeting in Quebec in July, provided the disputed 4.6 sq km was taken out of the listing documents. Their agreement also spelled out that listing would not prejudice any future border demarcation.²⁵

In June, the two countries finally signed the communiqué formalising the May agreement, but the People’s Alliance for Democracy (PAD), also known as the Yellow Shirts, deliberately stoked nationalist outrage in Bangkok, claiming that Thailand risked losing its territory as a result of it. Noppadon, who had been Thaksin’s lawyer, came under intense personal attack, including claims that he was advancing the business interests of the former leader. He argued that he had acted with the backing of the cabinet, the National Security Council and the then army chief. The white paper prepared by the foreign ministry but not published, explained that the listing covered only the temple buildings and would not affect Thailand’s rights regarding the boundary, but such measured arguments could not extinguish the often irrational political firestorm the PAD had ignited.²⁶

religious dimension to this dispute. “The Temple of Preah Vihear inscribed”, op. cit.

¹⁹ “The Meeting on Thailand-Cambodia Joint Development of Preah Vihear Temple”, press statement, Thai foreign ministry, 25 March 2004.

²⁰ Puangthong Pawakapan, “From Cooperation to Disintegration; the Roles of State and Uncivil Society in Thailand at the Temple of Preah Vihear”, unpublished research paper, written while undertaking a fellowship at the Walter Shorenstein Asia Pacific Research Center, Stanford University, May 2011, chapter 3.

²¹ Crisis Group interview, Noppadon Pattama, former Thai foreign minister, 29 August 2011.

²² The official record clearly states the bilateral nature of the proposal: “The State Party of Cambodia and the State Party of Thailand are in full agreement that the Sacred Site of the Temple of Preah Vihear has Outstanding Universal Value and must be inscribed on the World Heritage List as soon as possible. Accordingly, Cambodia and Thailand agree that Cambodia will propose the site for formal inscription on the World Heritage List at the 32nd session of the World Heritage Committee in 2008 with the active support of Thailand”. See Decision: 31 COM 8B.24, pp. 153-154, of “Decisions adopted at the 31st Session of the World Heritage Committee (Christchurch, 2007) WHC-07/31.COM/24, 31 July 2007.

²³ “The Temple of Preah Vihear inscribed”, op. cit., p. 8.

²⁴ “UNESCO – Preah Vihear Technical Meeting in Paris”, U.S. embassy Paris cable, 26 March 2008, as published by WikiLeaks.

²⁵ Crisis Group interview, Noppadon Pattama, former Thai foreign minister, Bangkok, 29 August 2011. Buffer zones around the temple area that were required by the joint management plan were to be established after a joint survey. Paragraph five clearly states: “The inscription of the Temple of Preah Vihear on the World Heritage List shall be without prejudice to the rights of the Kingdom of Cambodia and the Kingdom of Thailand on the demarcation works of the Joint Commission for Land Boundary (JBC) of the two countries”. See “Joint communiqué of Thailand, Cambodia and UNESCO”, 18 June 2008 (The meeting actually took place on 22 May).

²⁶ “ประเด็นปราสาทพระวิหาร”, โบนเดลข่าว, กระทรวงต่างประเทศ, 11 มิถุนายน 2554 [“On the issue of the Preah Vihear”, press release, Thai foreign ministry, 10 June 2008]. The white paper was posted on the foreign ministry web site but later withdrawn. “Ministry of Foreign Affairs publishes a White Paper on the registration of

When the listing became official on 8 July 2008, Cambodians greeted the news with outbursts of joy. Many had stayed up all night for the announcement, demonstrating a level of devotion generally only accorded major sporting events. The delegation returned to Phnom Penh as national heroes and was feted in stadiums. Songs were even written about the listing, which was welcomed as a mark of international respect for a country lacking in self-confidence. At the end of the month, the Cambodian People's Party (CPP) overwhelmingly won the election and returned for another five years in power.²⁷ But over the coming months, the temple and its surroundings started to look more and more like a battleground.

III. VIOLENCE AND TENSIONS ON THE BORDER

The listing ushered in a long period of bilateral political conflict, from the middle of 2008 until the beginning of 2011. The ultra-nationalist PAD made use of the boundary dispute to wage anti-government campaigns, heightening tension at the border. As conflict escalated, small armed clashes resulted, bringing demarcation of the border to a halt.

A. FROM DIPLOMATIC TO ARMED CONFLICT

Ahead of the listing of Preah Vihear in July 2008, tensions increased. Both armies sent troops to the frontier and occupied other minor temples in the area. Thai soldiers occupied the Keo Sikha Kiri Svava pagoda adjacent to Preah Vihear and within the 4.6 sq km area. Thai nationalist protesters marching to the temple clashed with locals who resented that politicking had closed public access to Preah Vihear, harming their livelihoods.²⁸ In August, Thai soldiers occupied the Ta Moan complex, about 150km to the west, building a temporary fence around the Hindu ruins.²⁹ Cambodia responded by occupying the Ta Krabei temple, about thirteen km east of Ta Moan, sending 70 soldiers to the previously non-militarised site.³⁰ In turn, Thailand dispatched 35 rangers to the area. In the next weeks, there were low-level confrontations between patrols, although troops later withdrew.³¹ The Thai army accused Cambodian soldiers of trying to provoke it in order to elevate the profile of the dispute after Phnom Penh

Preah Vihear as a World Heritage site", press release, Thai foreign ministry, 26 June 2008.

²⁷ Crisis Group interview, senior Cambodian government official, Phnom Penh, 7 October 2011. The temple dispute was not a major domestic issue in Cambodia and given the dominance of Hun Sen's party, it was marginal to its victory. Carlyle A. Thayer, "The Cambodian People's Party Consolidates Power" in Daljit Singh (ed.), *Southeast Asian Affairs 2009* (Singapore, 2009), p. 88. The entire cabinet was reappointed. "Cambodian parliament endorses new cabinet", Associated Press, 25 September 2008.

²⁸ "สลดคนไทยปะทะกันเองเจ็บอื้อ พันธมิตรฝ่ายม็อบศรีสะเกษใช้ไม้ฟาดปาขวดถึงเลือด", มติชนออนไลน์, 17 กรกฎาคม 2554 ["Sad! Thais clash with Thais as PAD and Sisaket protesters violently fight with wooden sticks and bottles"], Matichon Online, 17 July 2008.

²⁹ The Ta Moan temple complex, also sometimes spelled Ta Mone, has three parts: Ta Moan, Great Ta Moan, and Small Ta Moan. Crisis Group interview, Var Kim Hong, senior minister in charge of border affairs, Phnom Penh, 6 October 2011; "Cambodia-Thailand border: Cambodia withdrawing most troops, preparing diplomatic efforts, still concerned about remaining Thai troops", U.S. embassy Phnom Penh cable, 15 August 2008, as published by WikiLeaks.

³⁰ Ta Krabei, sometimes also spelled Ta Krabey, is known in Thai as Ta Kwai (ปราสาทคากวาย) Ta Moan is known as Ta Muen (ปราสาทตามือน) in Thai. See also "DAS Marciel Discusses ASEAN, Burma and Border issues in meetings with Thai MFA and Surin", U.S. embassy Bangkok cable, 18 September 2008, as published by WikiLeaks.

³¹ Cambodian Defence Minister Tea Banh celebrated the Khmer New Year at Ta Moan on 12 April 2009. See "The Temples of Ta Moan and Ta Krabei belong to Cambodia de jure and de facto now under attack by invading Thai troops", video, council of ministers office, Cambodia, 3 May 2011.

failed in July to have the UN Security Council intervene.³² At this time, there was no fighting around these temples.

The first clash after the listing occurred on 3 October with an exchange of rifle and rocket fire that wounded one Cambodian and two Thai soldiers. Cambodia, in a letter of protest, said the incident could lead to “very grave consequences, including full-scale armed hostility”. An official later recalled how thousands of Cambodians fled the skirmish, traumatised already by decades of war. It was a sharp reversal of the joy that had followed the World Heritage listing.³³

After this clash, Hun Sen told the then Thai foreign minister, Sompong Amornvivat, on 13 October that the ICJ was the best way to resolve the dispute but that Thai troops had to leave the Veal Intry (Field of Eagles) area two kilometres from Preah Vihear within 48 hours or “war will be waged”.³⁴ The Thai public was preoccupied with domestic political drama and temporarily overlooked the tense situation on the border.³⁵ The next day Cambodian Foreign Minister Hor Namhong called his Thai counterpart to thank him for the “restrained tone” of his public statements, but on 15 October the two armies again exchanged rocket-propelled grenades and mortars as well as machine-gun and other small-arms fire over an apparent misunderstanding about a Thai troop rotation. Border commanders quickly calmed their frontline subordinates and agreed to more joint patrols.³⁶

By late October 2008, the Thai military believed that Cambodia had an estimated 2,800 troops around the Preah Vihear temple facing its 600. Hun Sen also had his people solidly behind the government on this issue. A national poll conducted that month found that 82 per cent of Cambodians thought the country was heading in the right direction. A later poll reported 97 per cent of respondents re-

garded the temple as an important issue, and 93 per cent felt it was “likely” the dispute would be resolved peacefully.³⁷

In late March and early April 2009, UNESCO officials conducted a “reinforced monitoring mission” to the Preah Vihear temple as part of regular supervision of the World Heritage site. It found damage to the temple from the 15 October 2008 fire to be relatively minor but that “the continuous presence of troops around the property entails a risk of possible further incidents”.³⁸ On 3 April, immediately after the team left, fighting broke out in the Field of Eagles, the same location as the October clashes, after apparent disagreements between troops over access to the disputed area. Higher-calibre weapons were used, including exchanges of artillery, mortar and grenade fire, and the casualties proportionally increased, with at least one Thai and two Cambodian soldiers killed.³⁹

Despite the clashes, the armies kept talking to each other. General Anupong toured Preah Vihear in May 2009 as the guest of the Cambodian deputy commander-in-chief, General Chea Dara. During the visit, Chea Dara called Hun Sen on his mobile telephone, and, in a rare occurrence, Anupong spoke with the prime minister for approximately two minutes about the “4.6 sq km” around the temple.⁴⁰ Hun Sen announced troop reductions ahead of a visit to Phnom Penh in August by the Thai supreme commander, General Songkitti Jaggabatar. The Thais regarded the move as posturing, noting that Cambodia had 5,000 troops on the border to their 3,000.⁴¹ Publicly, Hun Sen proposed a cut of 50 per cent, and Songkitti said Thailand would do the same. The Thai general declared: “I would like to clarify again that there will be no more problems

³² “Thai-Cambodian border dispute: Thai claim Cambodian violation of sovereignty”, U.S. embassy Bangkok cable, 19 September 2008, as published by WikiLeaks. See also Section V below.

³³ “Border Incident between Thai and Cambodian Troops”, press statement, Thai foreign ministry, 3 October 2008; “Cambodia warns Thailand after border clash”, Reuters, 4 October 2008. Crisis Group interview, senior Cambodian official, Phnom Penh, 7 October 2011.

³⁴ “Khmer PM gives Thailand border ultimatum”, Xinhua, 14 October 2008.

³⁵ “Minor clashes erupt along Thai borders with Cambodia and Burma”, U.S. embassy Bangkok cable, 6 October 2008, as published by WikiLeaks.

³⁶ “Thai and Cambodian troops clash near disputed Preah Vihear area”, U.S. embassy Bangkok cable, 15 October 2008, as published by WikiLeaks.

³⁷ “Thailand committed to peaceful resolution for border dispute with Cambodia”, U.S. embassy Bangkok cable, 24 October 2008, as published by WikiLeaks. The first nationwide poll, conducted with 2,000 face-to-face interviews, had a margin of error of +/- 2.8 per cent and a response rate of 96 per cent; the second, conducted with 1,600 face-to-face interviews, had a margin of error of +/- 2.5 per cent and a response rate of 86 per cent. “Survey of Cambodian Public Opinion”, International Republican Institute, 22 October-25 November 2008, 31 July-26 August 2009.

³⁸ “State of conservation of World Heritage properties inscribed on the World Heritage List”, UNESCO, WHC-09/33.COM/7B. Add, 29 May 2009, p. 90.

³⁹ “April 3 morning clash on Thai-Cambodian border at Preah Vihear”, U.S. embassy Phnom Penh cable, 3 April 2009, as published by Wikileaks. “Cambodia-Thailand border clash leaves three dead”, Agence France-Presse, 3 April 2009.

⁴⁰ Wassana Nanuam, “Anupong, Hun Sen stress need for peace”, *Bangkok Post*, 23 May 2009.

⁴¹ “Cambodia to reduce troops at the border temple”, Agence France-Presse, 22 August 2009. “Thai-Cambodian border dispute: Thai army assesses no reduction in Cambodian troops at Preah Vihear”, U.S. embassy Bangkok cable, 28 August 2009 as published by WikiLeaks.

between Thailand and Cambodia. The border will not be the cause of any further disputes".⁴²

B. FRUSTRATING NEGOTIATIONS; STALLED PROGRESS

Between the listing and the fighting in February 2011 there were many occasions for the two sides to talk. The prime ministers met either in each other's capital or on the sidelines of regional forums. Foreign ministers had the same opportunities, as well as an annual set piece Thailand-Cambodia Joint Commission for Bilateral Cooperation (JC) session. The Joint Border Committee (JBC), created by the 2000 memorandum of understanding, was below the foreign minister level and headed by technocrat co-chairs, with multi-agency and military members. Its job was to demarcate the land frontier and deal with other border management issues. One of its major tasks was to locate the 73 colonial-era boundary pillars, some two dozen of which were missing.⁴³ In parallel, the defence ministers headed the military-oriented General Border Committee (GBC) created under a 1995 agreement that also set up a "peacekeeping committee" chaired by the two military commanders; both met annually.⁴⁴ Three regional committees, led by border-area commanders, met twice a year. All included relevant interior ministry, police, customs, intelligence and foreign ministry officials.

After violence flared in October 2008, progress slowed at all these levels, and Cambodian officials soon began to get frustrated with the "on-again-off-again" nature of bilateral talks. In early November 2008, the JBC met for the first time since August 2004 and again sketched out the lines of the disagreements. The Thai side had a new co-chair Vasin Teeravechyan, a soft-spoken retired diplomat.

⁴² Sam Rith, "Army brass from both nations say temple hostilities are over for good", *The Phnom Penh Post*, 25 August 2009. With the exception of two minor incidents in January and April 2010, the prophecy held for eighteen months. "ทหารไทยถกด่วนมีมติถอนตัวจากจุดปะทะ", *คมชัดลึก*, 24 มกราคม 2553 ["Thai army held urgent talk to retreat from clash site", *Komchadluek*, 24 January 2011]; Sopheng Cheang, "Cambodia reports clash with Thai troops on border", Associated Press, 24 January 2010; "Cambodian, Thai troops clash on border", Agence France-Presse, 17 April 2010; เขมรถอนกำลังออกจากพื้นที่พิพาทหลังปะทะเดือด", *คมชัดลึก*, 18 เมษายน 2553 ["Cambodian troops retreat from disputed area after clashes", *Komchadluek*, 18 April 2010].

⁴³ Crisis Group interviews, senior Thai foreign ministry officials, Bangkok, 7 June, 28 September 2011; Var Kim Hong, Phnom Penh, 6 October 2011.

⁴⁴ On the Cambodian side, it was co-signed by General Tea Banh, who is still defence minister. "Agreement Between The Government of The Kingdom of Thailand and The Government of The Kingdom of Cambodia on The Establishment of Border Committees", Phnom Penh, 26 September 1995.

The Thais wanted to negotiate on the poorly delineated parts of the border on the basis of the 1904 and 1907 Franco-Siamese treaties that used the watershed principle; the Cambodians wanted to use the 1908 map, on which the borderline was not always the watershed, and other documents.⁴⁵ Cambodia threatened to involve the Security Council or the ICJ if there was insufficient progress. The Thais warned that if their public opinion turned against Cambodia over the temple dispute, the Joint Development Area projects in the Gulf of Thailand would not go ahead. A senior official said Cambodia would have to decide whether it wanted to share the "hundreds of millions of dollars" from cooperation in the gulf or have the right to build "a parking lot near Preah Vihear in the disputed 4.6 sq km area".⁴⁶

Both sides agreed on what needed to be done to restart the stalled demarcation process, but time was wasted arguing about whether to use the Khmer or Thai name for the temple in the official minutes. These talks concluded with a declaration that joint survey teams would begin to demarcate the border around the temple in mid-December.⁴⁷ Other bilateral meetings were also taking place.⁴⁸

The next JBC meeting was held in February 2009, nearly two months after the PPP-led government collapsed, and the new coalition led by the pro-establishment Democrat Party was formed. Yet, the survey teams approved in November had still not begun demarcation by the time the JBC met again, in April 2009. The April meeting was said

⁴⁵ The 1904 and 1907 treaties resulted in the commission of delimitation that created the 1908 map of the Dangrek (Preah Vihear) sector six. There are other maps showing the locations of each of the 73 pillars in sectors one through five. These French-Thai documents were first made in 1908-1909 and redone in 1919-1920, when stone pillars were replaced with concrete ones. Crisis Group interviews, senior Thai foreign ministry official, Bangkok, 28 September 2011; Var Kim Hong, senior minister in charge of border affairs, Phnom Penh, 6 October 2011.

⁴⁶ "Ambassador raises UNGA resolutions, Thai-Cambodia, and ASEAN with MFA Permsec Virasakdi", U.S. embassy Bangkok cable, 13 November 2008, as published by Wikileaks.

⁴⁷ The Thai delegation said its parliament had only approved the Thai name, Phra Viharn, and it would need to consult the legislature before proceeding. Crisis Group interviews, senior Thai foreign ministry official, Bangkok, 28 September 2011; Var Kim Hong, senior minister in charge of border affairs, Phnom Penh, 6 October 2011. "Progress in Thai-Cambodian border talks", U.S. embassy Bangkok cable, 14 November 2008, as published by WikiLeaks.

⁴⁸ This reassured some diplomats: "The two sides appear committed to resolving the border dispute through diplomatic, peaceful means and seem to recognise that further clashes would do both sides no good". "Thai-Cambodian border dispute: Joint Border Commission talks friendly but inconclusive", U.S. embassy Bangkok cable, 6 February 2009, as published by WikiLeaks.

to have achieved “significant progress” just because the parties signed the disputed minutes from the two previous sessions. At the technical level, there was agreement on the production of maps, boundary pillar surveys and the English translation of survey reports.⁴⁹ The two countries decided not to mention the name of the temple at all; instead, they referred to the area around it as “sector six”, as it was known among cartographers. After that encounter, however, the JBC did not meet again for two years, because the Thai side could not approve minutes of these three meetings (see below).⁵⁰ Without agreed minutes, Cambodia thought a further session would be useless.⁵¹

Bilateral diplomacy came to a standstill because the approval of the minutes, apparently a minor matter, became a highly politicised issue in Thailand. The PAD ally-turned-foreign minister, Kasit Piromya, admitted that the approval was delayed primarily due to the nationalist campaigns of the Yellow Shirts, as politicians feared PAD law suits if they voted on them.⁵² While it broke with the PAD’s line, Foreign Minister Kasit’s policy towards the Preah Vihear issue exacerbated the tension with Cambodia. He replaced the JBC co-chair, Vasin, with another retired diplomat, Asda Jayanama, widely known for his fierce critique against Thaksin and who had once appeared on a platform with the PAD. Some saw his appointment as a hostile gesture towards Cambodia and an indication that Kasit had no intention of resolving the issue.⁵³

When the border negotiations became mired in hardline politics, no one dared argue in public how the problems might be resolved. While nationalist in public, Kasit privately acknowledged the need for compromise on land and sea borders, with the promise of peace and mutual economic gain “eventually winning the day”. The biggest challenges were fixing the location of the last boundary pillar on the coast, which would determine the sea boundary in the Gulf of Thailand, and the frontier near Preah Vihear.⁵⁴

⁴⁹ “Press Briefing Note on the Occasion of the Special Session of the Thai-Cambodian Joint Commission on Demarcation for Land Boundary, Phnom Penh, 6-7 April 2009”, Thai foreign ministry, 8 April 2009.

⁵⁰ Crisis Group interviews, senior Thai foreign ministry official, Bangkok, 28 September 2011; Var Kim Hong, senior minister in charge of border affairs, Phnom Penh, 6 October 2011; senior Thai foreign ministry official, Bangkok, 28 September 2011. It was fifteen months before the legislature began to consider the three sets of minutes. Supalak Ganjanakhundee, “PAD appeared as panel set to examine border issue”, *The Nation*, 2 November 2010.

⁵¹ Crisis Group interview, Var Kim Hong, senior minister in charge of border affairs, Phnom Penh, 6 October 2011.

⁵² Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011. “Letter from Minister of Foreign Affairs of Thailand Kasit Piromya to Deputy Prime Minister and Minister of Foreign Affairs of Vietnam Pham Gia Khiem”, no. 1202/604, Thai foreign ministry, 19 August 2010. “Cambodia withdraws troops; Still waits for Thai movement on Preah Vihear”, U.S. embassy Phnom Penh cable, 28 August 2009, as published by WikiLeaks.

⁵³ Kasit had spoken out against Thaksin at PAD rallies. Supalak Ganjanakhundee. “Diplomat chosen to lead Thai-Cambodia border body”, *The Nation*, 1 December 2010. Crisis Group interview, Puangthong Pawakapan, political scientist, Chulalongkorn University, Bangkok, 29 September 2011.

⁵⁴ A senior Thai foreign ministry official and former negotiator said it was the prime minister’s job to explain that border negotiations involved give and take: “You give away one area to gain another. We did this with Malaysia because, geographically, sometimes the border doesn’t make sense. This is the way borders are demarcated. The process needs to be explained and properly understood”. Crisis Group interview, Bangkok, 7 June 2011. “Thailand: Ambassador engages FM Kasit on US-Thai relations, DPRK, Burma, Cambodia, Lao Hmong, Viktor Bout”, U.S. embassy Bangkok cable, 7 August 2009, as published by WikiLeaks.

IV. THE ROLE OF THAI POLITICAL VOLATILITY

Each Thai administration from 2008 to 2011 had an inward focus because of the country's political volatility. Changes in leaders and ministers, as well as the turnover of key working-level officials, also made bilateral policymaking difficult. Problematic interpretations of the constitution added to diplomatic inertia. Finally, Cambodia's decision to bring Thaksin into the equation triggered a response that temporarily severed diplomatic relations.

A. THE WORLD HERITAGE LISTING, LEGAL BATTLES AND DOMESTIC POLITICS

From the day Samak and the PPP took office in January 2008, their elected government was opposed by the pro-establishment movements because it was seen as a Thaksin proxy. The anti-Thaksin PAD went back onto the streets in March, with its nationalist rhetoric of "rescuing the nation" and "revering the monarchy".⁵⁵ It sought to topple the government, and the Preah Vihear temple issue was one means to this end. In this cause, the PAD was in league with the formal parliamentary opposition. After Noppadon signed the June 2008 joint communiqué formalising Thailand's support for the World Heritage listing, the Democrat Party moved a no-confidence motion against Samak and seven other cabinet ministers, including Noppadon, alleging broad mismanagement and serving the interests of former politicians (ie, Thaksin). The foreign minister was accused of acting in haste in making the agreement with Cambodia and putting Thailand at risk of losing territory. The motion was defeated on party lines.⁵⁶

Noppadon had signed the communiqué after receiving advice that it was not a treaty. Article 190 of the constitution requires parliament to approve all treaties that cause a change to Thai territories or create extensive social and economic impacts.⁵⁷ The PAD filed a complaint at the Central Administrative Court against him and the rest of the

cabinet on this basis, essentially asking the court to prohibit the government from supporting the listing. On 27 June, the court granted an injunction to halt any use of the 17 June 2008 cabinet resolution that endorsed the signing of the communiqué.⁵⁸ The ruling set an important legal precedent for further bilateral talks, as it in effect made signing anything related to the border potentially highly controversial and politicised. A Thai foreign ministry official said the tools of international law could have been used to resolve any bilateral differences and negotiate such agreements, but "the crux of the problem is the pressure on the government from the military and the PAD. If there was no PAD, everything would have gone smoothly".⁵⁹

The PAD had also filed a criminal complaint with the National Anti-Corruption Commission (NACC). It asked that the entire cabinet and six other senior government officials be investigated under Section 119 of the criminal code for undermining the independence of the state (punishable by death), as well as under Section 157 for wrongful or dishonest exercise of authority by an official that causes personal harm (punishable by up to ten years in prison). Four of the most senior foreign ministry officials were named.⁶⁰

Under the constitution, parliament has wide latitude to interpret whether a treaty impacts Thai territory or sovereign rights. It is supposed to deliberate within 60 days of receiving such a request. This provision had been created as a reaction to Thaksin having signed free trade agreements without legislative approval.⁶¹ As the PAD attacked the government, it used Preah Vihear as a weapon of opportunity and Article 190 as a good place for a constitutional ambush.

Noppadon had tried to explain that Thailand should not consider the communiqué a treaty, as neither UNESCO nor Cambodia did. But court rulings were political victo-

⁵⁵ Kitti Prasirtsuk, "Thailand in 2008: Crises Continued", *Asian Survey*, vol. 49, no. 1 (January/February 2009), pp. 174-184.

⁵⁶ Ron Corben, "Thai prime minister survives no-confidence motion", *Voice of America*, 27 June 2008.

⁵⁷ Crisis Group interview, Noppadon Pattama, former Thai foreign minister, Bangkok, 29 August 2011. Article 190 states in part: "A treaty which provides for a change in the Thai territories or extra-territorial areas over which Thailand has sovereign rights or has jurisdiction in accordance therewith or in accordance with international law or requires the enactment of an Act for the implementation thereof or has extensive impacts on national economic or social security or generates material commitments in trade, investment or budgets of the country, must be approved by the National Assembly".

⁵⁸ On 1 July, the House speaker submitted a request to the Constitutional Court to rule whether the joint communiqué was unconstitutional in accordance with Article 190 of the constitution. The judges decided on 8 July that it violated Article 190 as no parliamentary approval was sought before it was signed. They ruled that the joint communiqué was a treaty that "may" cause a change in Thai territory. "Verdict on Preah Vihear Case", decision of the Constitutional Court, 8 July 2008; also see the *Royal Gazette*, vol. 123 Section 108 A, pp. 1-60, 10 October 2008.

⁵⁹ Crisis Group interview, senior Thai foreign ministry official, Bangkok, 28 September 2011.

⁶⁰ The U.S. ambassador to Thailand reported that "the PAD appears willing to use any tool at its disposal to keep the government off-balance, or even bring it down". "Thai Government's Foes Call for Criminal Charges Against Cabinet", U.S. embassy Bangkok cable, 14 July 2008, as published by WikiLeaks.

⁶¹ Thaksin signed such agreements with Australia, India, and New Zealand, as well as a multilateral agreement between ASEAN and China.

ries by conservative activist judges that also emboldened his opponents.⁶² Foreign ministry officials still dispute the court's reasoning, arguing the judges ignored a provision in the communiqué that said it did not affect border talks.⁶³ Given that the courts are widely regarded as part of the anti-Thaksin establishment and were politicised in this period, it may have been less mere oversight than deliberate intent to rule against a government seen as a proxy for the former leader.

As part of the establishment's efforts to subvert an elected government, the PAD, in collaboration with sympathisers in the palace, other royalists, NGOs, media and academia, stepped up a nationalist scare campaign around Preah Vihear that exploited deep-rooted nationalism against the pro-Thaksin government and Cambodia. At this point, the long-standing policy shifted: Thailand began calling the listing "unilateral" and told UNESCO it objected to it because the border around the temple was unresolved.⁶⁴ Opponents of the Samak government took to the streets, increasing the pressure. Exhausted and frustrated, Noppadon returned from the UNESCO meeting and resigned on 10 July in an effort to save the government.⁶⁵

The NACC voted on 29 September to file criminal charges against Samak and Noppadon for their role in the June 2008 joint communiqué. They were found negligent under the less serious charges of wrongful or dishonest exercise of authority. The same commission then announced on 13 November that it had found Samak and 28 cabinet ministers guilty of violating Article 190 of the constitution for endorsing the joint communiqué without parliamentary approval.⁶⁶

The use of Article 190 and the PAD's legal tactics have had a corrosive effect on Thai diplomacy. The wide interpretation sanctioned by the courts has politicised all international negotiations and made ministers and officials reluctant to approve or sign anything. It has created a deep asymmetry with neighbours, reversing the common practice within ASEAN of executives negotiating and parliaments approving final agreements and greatly harmed Thailand's regional influence and image.⁶⁷

On 11 February 2011, parliament approved a government-proposed amendment to Article 190 stipulating that an organic law be enacted within one year to specify the types of treaties requiring approval as well as to provide a negotiation framework and procedures for signing.⁶⁸ Foreign Minister Kasit told the UN this removed uncertainties in the treaty process and showed seriousness to restart talks, but it was a belated token effort that did not resolve the ambiguity. In March, legislators, who still had not approved the minutes, asked the Constitutional Court whether they needed to do this after all.⁶⁹ On 29 March, the court rejected the request for advice.⁷⁰ In April, the cabinet decided that the minutes were not a treaty in the sense of Article 190, did not require approval and were the prime minister's responsibility as negotiations were ongoing. After years in which the need for the parliamentary green light had been stressed, the minutes were then withdrawn. Thai officials said all this embittered their neighbours: "Publi-

⁶² Crisis Group interview, Noppadon Pattama, former Thai foreign minister, Bangkok, 29 August 2011.

⁶³ Crisis group interview, senior Thai foreign ministry official, Bangkok, 28 September 2011.

⁶⁴ The listing of a site is by the World Heritage Committee and not by the nominator, and although Cambodia's nomination was criticised by Thailand as "unilateral", only the country in which a site is located has the right to nominate a site and the ownership of the temple is clear after the 1962 ICJ decision.

⁶⁵ Puangthong Pawakapan, *op. cit.*, chapter 4. "Statement by His Excellency Mr. Noppadon Pattama, Minister for Foreign Affairs of Thailand and head of the Thai delegation to the thirty-second session of the World Heritage Committee Quebec City, Canada", 7 July 2008. Crisis Group interview, Noppadon Pattama, former Thai foreign minister, Bangkok, 29 August 2011; Supalak Ganjanakhundee, "Noppadon resigns", *The Nation*, 10 July 2008.

⁶⁶ On the same day as the initial NACC action, Thai headlines carried Hun Sen's alleged comments threatening to shoot any Thai, civilian or military, who crossed the border, and to tear up any Thai map used in border negotiation talks. "Thailand: Preah Vihear in play again as both a domestic issue and irritant in Thai-Cambodian relations", U.S. embassy Bangkok cable,

30 September 2009. "Progress in Thai-Cambodian Border Talks", U.S. embassy Bangkok cable, 14 November 2008, as published by WikiLeaks.

⁶⁷ When Cambodia later lodged a complaint with UNESCO alleging Thailand's military had damaged Preah Vihear, a senior Thai foreign ministry official believed no response could be written without parliamentary approval. "Thai Parliament approves framework agreement to address border dispute with Cambodia", U.S. embassy Bangkok cable, 29 October 2008, as published by WikiLeaks. Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011.

⁶⁸ "รัฐธรรมนูญแห่งราชอาณาจักรไทย แก้ไขเพิ่มเติม (ฉบับที่ 2) พุทธศักราช 2554", ราชกิจจานุเบกษา, 4 มีนาคม 2554 ["Amendment of the Constitution of the Kingdom of Thailand (no. 2) 2011", *Royal Gazette*, 4 March 2011].

⁶⁹ "Statement by His Excellency Mr. Kasit Piromya, Minister of Foreign Affairs of Thailand, at the United Nations Security Council, New York, 14 February 2011", press release, Thai foreign ministry, 16 February 2011. Supalak Ganjanakhundee. "Petition to court may delay JBC meeting", *The Nation*, 29 March 2011.

⁷⁰ On the grounds that debate had not reached a stage where a decision had been made and so it did not have the authority to rule on the matter. "Court hands JBC minutes back to parliament," *The Nation*, 30 March 2011.

cally, the Cambodians say they understand our constitutional process, but in private they scream at us”.⁷¹

B. POLITICAL TURMOIL AND TURNOVER

Turmoil on the Thai political scene created an unhelpful turnover of senior officials at a time when tensions were rising on the border. Following the World Heritage listing and Foreign Minister Noppadon’s resignation, Prime Minister Samak telephoned the most senior official of the foreign ministry on 24 July 2008 to explain that the two countries’ foreign ministers would meet in Siem Reap in four days’ time to discuss Preah Vihear – only Thailand did not have a foreign minister. The permanent secretary, Virasakdi Futrakul, asked whether there would be a minister by then and was told: “I’ll find someone ...” The country’s top career diplomat was left uncertain if Samak was referring to a new minister or just a representative. Three days later, King Bhumibol endorsed the appointment of Tej Bunnag, a royalist, former ambassador to the U.S. and then adviser on the king’s staff. He became the third of six men who would hold the position in 2008.⁷² Despite the turnover, Thailand rotated into the ASEAN chair in July and assumed the responsibility of hosting the annual regional summit in December.

While Noppadon said he resigned to save the government, the actual effect was the opposite. His scalp only bolstered criticism of the government, further destabilising it. In parliament, the then opposition and Democrat Party leader Abhisit Vejjajiva led the charge,⁷³ as national politics hurtled toward a new low. Any optimism on the Preah Vihear issue seemed misplaced. On 25 August PAD protesters in Bangkok occupied the Government House and the state television station. Elsewhere in the country they occupied airports and stopped trains. At Government House they fought with police who tried to evict them, and

the opposition called for the parliament to be dissolved. Border talks planned for 29 August were cancelled.⁷⁴

Clashes between government supporters and opponents left one killed and 42 injured, leading Samak to declare a state of emergency on 2 September. The new foreign minister, Tej Bunnag, resigned the next day, after one month in office, saying he could no longer serve following the deadly violence. On 8 September, a retired ministry official, Saroj Chavanaviraj, was appointed the year’s fourth foreign minister. The next day, the Constitutional Court ruled Samak had violated the constitution by the trivial indiscretion of accepting payments while in office for a cookery show and disqualified him from office. After a short caretaker administration, he was replaced on 17 September by the ill-fated Somchai Wongsawat, Thaksin’s brother-in-law. The new premier appointed the then caretaker justice minister and veteran politician Sompong Amornvivat, who had been in line for the leader’s job, to serve concurrently as foreign minister and deputy prime minister.⁷⁵

In late November, the PAD shut down Bangkok’s two main airports, as it stepped up its campaign to force the PPP-led government from power. At this critical moment, on 2 December, the Constitutional Court handed down a ruling that dissolved the PPP and two smaller parties on grounds that their executive members were involved in electoral fraud. Prime Minister Somchai, along with 108 executive members of the dissolved parties, was banned from politics for five years.

In a military-supported backroom deal, the Democrat Party’s Abhisit came to power on 17 December 2008. The change in government meant talks and joint activities with Cambodia were again put on hold, as the new cabinet had to grant fresh authority to proceed with negotiations.⁷⁶

Given his record of blunt remarks while prominent in the then anti-government PAD, there were some doubts that Kasit would help with the border dispute. Some two months before his appointment, he had called Hun Sen a “thug”

⁷¹ Piyanart Srivalo “JBC minutes withdrawn from parliament check,” *The Nation*, 12 April 2011. Crisis Group interview, Thai foreign ministry official, Bangkok, 7 June 2011.

⁷² “Preah Vihear: Thais claim July 28 ministers’ meeting planned, Cambodia withdrawing UNSC push”, U.S. embassy Bangkok cable, 24 July 2008, as published by WikiLeaks. Since the signing of the landmark 2000 memorandum of understanding, Thailand’s foreign ministers have been Surin Pitsuwan (1997-2001, now ASEAN Secretary General); Surakiart Sathirathai (2001-2005); Kantathi Suphamongkhon (2005-2006); Nitya Pibulsonggram (2006-2008); Noppadon Pattama, Tej Bunnag, Saroj Chavanaviraj and Sompong Amornvivat (2008); Kasit Piromya (2008-2011); and Surapong Tovichakchaikul (2011-). Hor Namhong has been Cambodia’s foreign minister since 1998.

⁷³ Crisis Group interview, Noppadon Pattama, former Thai foreign minister, Bangkok, 29 August 2011; Puangthong Pawakapan, “Abhisit’s view is an obstacle to the final border settlement”, *The Nation*, 15 February 2011.

⁷⁴ “Enhancing the U.S.-Cambodia military relationship”, U.S. embassy Phnom Penh cable, 29 August 2008, as published by WikiLeaks.

⁷⁵ See Crisis Group Report, *Thailand: Calming the Political Turmoil*, op. cit., pp. 2-4. “Thailand’s king endorses new foreign minister”, Thai News Agency, 8 September 2008. “Thai caretaker justice minister to become foreign minister”, Xinhua, 23 September 2008.

⁷⁶ “Ambassador engages new Thai FM Kasit on ASEAN, Burma, Cambodia, Bout, The South, refugees, IPR and CL”, U.S. embassy Bangkok cable, 29 December 2008, as published by WikiLeaks.

(*kui*) on a television talk show.⁷⁷ To some, Abhisit's choice of a passionately anti-Thaksin minister was revealing about his foreign policy priorities. A Thai political scientist observed: "Abhisit was ready to sacrifice the relationship with Cambodia for his own domestic gain".⁷⁸ On 26 January, Kasit went to Cambodia to meet his counterpart, Hor Namhong, and they promised to hold a JBC the following month, as well as defence minister talks on withdrawing troops. Talks on the overlapping claims in the Gulf of Thailand would then follow in March.⁷⁹

The new Democrat-led government, like its immediate predecessors, had to operate in a volatile atmosphere. In February, tens of thousands of pro-Thaksin "Red Shirts", formally known as the United Front for Democracy against Dictatorship (UDD) took to the streets of Bangkok and, among other demands, called for parliament's dissolution and Kasit's resignation. In April, they stepped up the campaign, demanding the resignation of Privy Council members believed to be the coup's masterminds and threatening to derail the 10-12 April ASEAN summit in Pattaya. On 9 April, Abhisit told the nation he was determined to host the meeting, security was tight, and all leaders had confirmed attendance.⁸⁰ On 11 April, Red Shirt protesters crashed the summit, causing evacuation of the region's senior leaders and the meeting's cancellation. The incident was damaging for Thailand and ASEAN.⁸¹

In 2010, the temple and border issues faded into the background as the UDD again went into the streets of Bangkok, this time with a single demand: dissolve the parliament. The crackdown in April and May led to the deaths of more than 90 people – the most violent political confrontation between the government and demonstrators in Thai history.⁸²

⁷⁷ "Thai-Cambodian border dispute: Thai FM Kasit's visit to Cambodia produces optimistic statements", U.S. embassy Bangkok cable, 27 January 2009, as published by WikiLeaks. The translation of Kasit's comments was, "[i]t is widely known that in Thailand, we have good diplomatic norms for thousands years, so that we don't act like thugs like Hun Sen. We don't play that game". The original in Thai can be viewed at www.youtube.com/watch?v=_UCimgmIDs&feature=player_embedded.

⁷⁸ Crisis Group interview, Puangthong Pawakapan, political scientist, Chulalongkorn University, Bangkok, 29 September 2011.

⁷⁹ "Foreign Minister warmly welcomed on an official visit to Cambodia", press release, Thai foreign ministry, 28 January 2009.

⁸⁰ "Gist of Prime Minister's Statement on the Current Political Situation", press release, Thai foreign ministry, 10 April 2009.

⁸¹ For a first-hand account, see posting of former Singapore Foreign Minister George Yeo, "Aborted Summit in Pattaya", <http://beyondsg.typepad.com>, 13 April 2009.

⁸² See Crisis Group Report, *Bridging Thailand's Deep Divide*, op. cit.

During this period, leaders of the two Thaksin-aligned governments took decisions on the run as they fought for their political survival under a barrage of establishment attacks, including by nationalists on the temple issue. The turnover of senior officials aggravated the relationship with Cambodia. The border negotiations lost momentum, as those leading them waited for decisions from an often distracted cabinet. Officials in Bangkok waited for elected superiors to confirm their appointments or marked time expecting to be replaced. Negotiating positions were in flux and took longer to develop. When the Democrats took over, Cambodia suddenly had a hostile counterpart in what had been for most of the previous decade an increasingly productive bilateral relationship. In Phnom Penh, by contrast, the same officials have held their jobs for decades, and policies have remained unchanged throughout the frontier talks and listing. These dynamics explain why Cambodia lost patience with solving matters bilaterally and pushed to take its case to international institutions.

C. CAMBODIA INTERVENES: THAKSIN AS ADVISER

Since first coming to office in January 2001, Thaksin Shinawatra has been omnipresent in Thai politics, whether in power, sidelined by the 2006 coup or living abroad in self-imposed exile to escape prosecution. His formal involvement with Cambodia for a time as the government's adviser had a predictably negative impact on bilateral relations in parallel to the border conflict. Cambodian Prime Minister Hun Sen came late to the fifteenth ASEAN summit on 23 October 2009 in Hua Hin, Thailand, and then announced Thaksin would be his personal economics adviser. Unapologetic about offending his hosts, he compared Thaksin to Aung San Suu Kyi, the imprisoned democracy leader in Myanmar. The appointment was a bold move that Thailand could not ignore. Then Foreign Minister Kasit later said, "it was intentionally provocative and interference in Thai politics".⁸³

Thai diplomacy went into overdrive. Deputy Prime Minister Suthep Thaugsuban and senior military officers met Hun Sen on the sidelines of the summit for two and a half hours on 24 October to try to de-escalate the rhetoric. After that failed, and despite the Thai aversion to "internationalising" the issue, Kasit approached ASEAN countries, China and even the U.S., asking them to pressure Hun Sen. Kasit said that the Cambodian leader was damaging ASEAN by trying to split the Vietnamese and Laotian delegations from those supporting Thailand.⁸⁴ The bilateral

⁸³ Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011.

⁸⁴ "Thailand-Cambodia spat: RTG recalls ambassador to protest Hun Sen's naming of Thaksin as adviser", U.S. embassy Bang-

dispute was causing disharmony in the organisation, as its meetings were used as battlegrounds for a proxy war.

The spat further fractured bilateral relations and scuttled border negotiations. The day after Thaksin's appointment was made official, Bangkok recalled its ambassador and denounced the act as "interference in Thailand's domestic affairs and (a) failure to respect Thailand's judicial system. It puts personal interest and relations before the national interests of the two countries". On 6 November, Kasit announced Thailand's intention to terminate the mostly inactive 2001 memorandum of understanding – the negotiating framework for joint oil and gas exploration in the area of overlapping claims in the gulf.⁸⁵

Severing bilateral ties was popular domestically in Thailand; a poll showed the struggling prime minister's support tripling after the decision. In Cambodia, voters had long been behind Hun Sen on this issue. Domestic politics made it difficult for either side to give way, but the border remained calm.⁸⁶

It took a few months for the situation to be defused and cooler heads to prevail. Thaksin visited Cambodia and on 12 November delivered a speech to the Cambodian business community and officials in which he advocated his "prosperity neighbour" foreign policy and accused his domestic political opponents of "false patriotism".⁸⁷ Thailand had requested his extradition the day before; it was rejected as a "politically motivated proceeding". Phnom Penh stated that it was the consequence of the coup that resulted in

his removal from the post of Prime Minister, "while he was OVERWHELMINGLY and DEMOCRATICALLY [emphasis in original] elected by the Thai people".⁸⁸

On the same day as the speech, a Thai engineer was arrested in Cambodia for allegedly leaking details of Thaksin's flights, and the foreign ministry ordered a Thai embassy first secretary to leave within 48 hours. Bangkok then expelled an equivalent Cambodian diplomat. The engineer was sentenced to seven years in jail, and Thaksin returned to Cambodia on 13 December to claim credit for his stage-managed release with a royal pardon.⁸⁹

In April 2010, Abhisit and Hun Sen met on the sidelines of the Mekong River Commission summit in Hua Hin, the same city where this confrontation had started. Word soon leaked that the two countries were friends again, and Thaksin was on the way out.⁹⁰ Nine months after his appointment, the ousted leader resigned from his posts as Hun Sen's personal and economics adviser.⁹¹ By then Hun Sen knew it had been a miscalculation. As a diplomat noted, "Cambodia needs a good relationship with Thailand. It is not in their interests to aggravate them".⁹²

kok cable, 6 November 2009, as published by WikiLeaks. Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011.

⁸⁵ "Royal Thai Government's Position Regarding the Recent Appointment of Pol. Lt. Col. Thaksin Shinawatra as Adviser to the Royal Government of Cambodia", press statement, Thai foreign ministry, 5 November 2009. "Termination of the Memorandum of Understanding between the Royal Thai Government and the Royal Government of Cambodia regarding the Area of their Overlapping Maritime Claims to the Continental Shelf", press release, Thai foreign ministry, 6 November 2009. While the cabinet approved this in principle on 10 November, it was never formalised and was still under consideration when the Democrat Party lost power in July 2011. Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011.

⁸⁶ "Poll shows surge in support for Abhisit", *The Nation*, 7 November 2009. However, the Thai army chief cancelled a "sports day" to avoid "unpleasant images" of troops from both sides playing volleyball as if nothing had happened. Wassana Nanuam, "Army scraps sports day at border," *The Bangkok Post*, 17 November 2009.

⁸⁷ The complete November 2009 speech and subsequent conference in English was broadcast live and is available in fifteen parts under the title "Thaksin Shinawatra Speech Press Conference", www.youtube.com.

⁸⁸ The capitalised text is in the original diplomatic note of 11 November 2009 from the Cambodian foreign ministry to the Thai embassy that is reproduced in full in "Cambodian position on the extradition of H.E Thaksin Shinawatra", information bulletin, Cambodian embassy Malaysia, no. 11, November 2009.

⁸⁹ "Flare up with Phnom Penh intensifies", *The Nation*, 13 November 2009. Seth Mydans, "Thaksin back in Cambodia to see release of Thai man held for spying", *The New York Times*, 14 December 2009.

⁹⁰ Crisis Group interview, diplomat, Bangkok, 3 October 2011.

⁹¹ Sopheng Cheang, "Cambodia: Thai ex-PM resigns as adviser", Associated Press, 23 August 2010.

⁹² Crisis Group interview, diplomat, Phnom Penh, 19 May 2011.

V. ASEAN'S PASSIVITY IN A "BILATERAL" DISPUTE

From July 2008 until February 2011, when fierce fighting broke out, there were numerous opportunities for ASEAN to intervene. It did not, because its members were reticent to get involved in "internal affairs"; the country chairing the organisation was reluctant or unable to lead; and Thailand resisted "internationalisation" of the dispute. A chance to prevent deadly violence was thus lost.⁹³

Hun Sen called his Thai counterpart, Samak, on 16 July 2008, as tensions escalated, and later wrote to ask that Thai forces be withdrawn from the Keo Sikha Kiri Svava pagoda.⁹⁴ After this did not take place, Cambodia asked the Security Council for an urgent meeting while its ally, Vietnam, was in the chair. In contrast to the position it would take three years later, ASEAN quickly intervened to stop the Council discussing the conflict and urged that it be returned to existing bilateral forums.⁹⁵ Rather than back Cambodia, Vietnam fell in line with ASEAN to keep the UN out. The Council did not meet, after Thailand said ASEAN had given its support to bilateral negotiations through the GBC. The U.S. also saw no need for action in New York.⁹⁶ Singapore's foreign minister, George Yeo, cast Cambodia's appeal to the Council as a threat to the regional body's credibility: "If the parties concerned are too quick to resort to the [Council], this would do harm to ASEAN's standing and may actually make the resolution of the issue more difficult".⁹⁷ Indonesia took a different position in 2011.

From time to time during this period, the suggestion of a role for ASEAN did come up. After the ASEAN Charter was created in late 2008, a High Level Legal Experts'

Group on Follow-Up to the ASEAN Charter (HLEG) was tasked to develop a dispute settlement mechanism. Following a speech to this group on 8 October 2009, Kasit was widely "misquoted" as wishing to bring a proposal for neutral third-party mediation of the border dispute to the approaching summit. Kasit said five days after his comments that he had been misunderstood and clarified that his position was the solution to this conflict would be achieved through bilateral negotiations. "This issue should not be internationalised nor raised within the ASEAN framework as agreed to by both countries".⁹⁸ But any consensus of ASEAN non-intervention soon weakened.

Once bilateral tensions spiked in November 2009 following Thaksin's appointment as Hun Sen's adviser, Thailand appeared to be more open to quiet international mediation. As part of a strategy to increase its global profile, Indonesia conducted shuttle diplomacy that was welcomed by Bangkok.⁹⁹ On the margins of the Asia-Pacific Economic Cooperation (APEC) leaders meeting on 15 November, President Susilo Bambang Yudhoyono invited Abhisit and Kasit to meet with him and his new foreign minister, Marty Natalegawa. The Indonesians then met with Hun Sen and Hor Namhong, after which Yudhoyono instructed Natalegawa to serve as his interlocutor and pass messages between the two countries.¹⁰⁰ Kasit later said the basic Thai message was that if Cambodia stopped "misbehaving" and abandoned Thaksin, the bilateral relationship would revert to where it was before his appointment.¹⁰¹

At the end of 2009, as Vietnam prepared to take the chairmanship of ASEAN for twelve months, Thai politicians started to again turn on themselves.¹⁰² During the street battles in Bangkok in April-May 2010, the temple and border disputes took a backseat but did not go away. After Abhisit reportedly told PAD protesters outside the UNESCO office in Bangkok in August that he was prepared to use force, if necessary, over the dispute, the war of words flared again.¹⁰³ Hun Sen wrote to the UN Security Council president on 8 August 2010, saying the bilateral

⁹³ The Thai-Cambodia border clashes were not the first violation of the ASEAN Treaty of Amity and Cooperation (TAC). Three Thai villagers were killed in artillery exchanges between the Thai and Myanmar armies in 2001. See Larry Jagan, "Clashes flare on Thai-Burma border", BBC News, 11 February 2001.

⁹⁴ The full text of the letter is reproduced in "Preah Vihear: Tensions still high as face-off continues", U.S. embassy Phnom Penh cable, 17 July 2008, as published by WikiLeaks.

⁹⁵ "Letter dated 18 July 2008 from the Permanent Representative of Cambodia to the United Nations addressed to the President of the Security Council", UNSC S/2008/470, 18 July 2008. "Letter dated 22 July 2008 from the Permanent Representative of Thailand to the United Nations addressed to the President of the Security Council", S/2008/478, 22 July 2008.

⁹⁶ Crisis Group interview, diplomat, New York, 18 July 2011. "Letter dated 22 July 2008", op. cit. "Preah Vihear: Thais express strong appreciation for U.S. support in UNSC; seek bilateral meeting with Cambodia early next week", U.S. embassy Bangkok cable, 24 July 2008, as published by WikiLeaks.

⁹⁷ "Letter dated 22 July 2008", op. cit., Annex II.

⁹⁸ "Ministry of Foreign Affairs clarifies misquote on Thai-Cambodian border issue", press release, Thai foreign ministry, 13 October 2009.

⁹⁹ Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011.

¹⁰⁰ "Foreign Minister has busy schedule on final day of APEC meetings", press release, Thai foreign ministry, 15 November 2009.

¹⁰¹ Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011.

¹⁰² See Crisis Group Report, *Bridging Thailand's Deep Divide*, op. cit.

¹⁰³ Marwaan Macan-Markar, "Temple row sours Thai-Cambodian ties - again", Inter Press Service, 30 July 2010; Zoe Daniel, "Thailand accused of threats over temple dispute", ABC News, 9 August 2010.

mechanism was not working anymore. The next day he cast the net even wider to encourage international mediation: “We need to resort to multilateral mechanisms. We call upon the ASEAN member countries, the UN and other countries including the country members of the Paris Peace Accords”.¹⁰⁴

On 14 August, the Cambodian foreign minister wrote asking his Vietnamese counterpart Pham Gia Khiem, as ASEAN chair, to invoke the group’s charter and mediate the dispute.¹⁰⁵ Khiem asked for Kasit’s views, and the Thai minister replied five days later that “despite perceptions of tension, bilateral communications between Thailand and Cambodia continue unabated through various channels and mechanisms”. It was “business as usual” on the border; “the bilateral process should continue to proceed, as was the general will of the ASEAN family when we discussed this issue two years ago”. This was enough for Vietnam to take no further action.¹⁰⁶

This period was a series of missed opportunities for preventive diplomacy,¹⁰⁷ a classic case of a direct conflict between states in which timely negotiation, enquiry, mediation or conciliation should have been undertaken but was not. ASEAN appeared to consider that its rhetoric applied to others but not itself. It has traditionally played down its border conflicts as minor incidents and boasted that since founding no two members have had a “large-scale war”.¹⁰⁸

This allowed it to focus on Asia-wide issues such as the South China Sea. But the Thai-Cambodian conflict revealed the premise on which the attitude was based as flawed. In reality, its charter had internal conflict resolution mechanisms that were too hard to invoke (see below).¹⁰⁹ Its outward focus, combined with the non-intervention doctrine derived from the TAC, blurred the line between international and internal conflict, creating a threshold for concerted preventive diplomacy that was too high. It took dozens of casualties and tens of thousands of displaced persons to shock it into action in 2011 that it could well have taken as the conflict simmered.

¹⁰⁴“Cambodia’s Appeal for International Conference on Border Issue with Thailand”, Information Bulletin, Cambodian embassy Malaysia, August 2010. The states participating in the Paris Conference in October 1991 that reached an agreement on a Comprehensive Political Settlement of the Cambodia Conflict were Australia, Brunei, Cambodia, Canada, China, France, India, Indonesia, Japan, Laos, Malaysia, the Philippines, Singapore, Thailand, the Soviet Union, UK, U.S., Vietnam and Yugoslavia.

¹⁰⁵“Hor Namhong’s Letter to Vietnamese Foreign Minister and ASEAN Chair”, Cambodian foreign ministry, 14 August 2010. Article 32(c) states that one of the chair’s roles is to “ensure an effective and timely response to urgent issues or crisis situations affecting ASEAN, including providing its good offices and such other arrangements to immediately address these concerns”.

¹⁰⁶“Letter from Minister of Foreign Affairs of Thailand Kasit Piromya to Deputy Prime Minister and Minister of Foreign Affairs of Vietnam Pham Gia Khiem”, no. 1202/604, Thai foreign ministry, 19 August 2010. Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011.

¹⁰⁷The ASEAN Regional Forum (ARF) defined preventive diplomacy in July 2001 as any diplomatic or political action taken by states to prevent disputes or conflicts threatening regional peace and stability; prevent them escalating into armed confrontation; and anything done to minimise the impact of such regional conflicts. “ASEAN Regional Forum Concept and Principles of Preventative Diplomacy”, ARF, 25 July 2001.

¹⁰⁸“Striving Together: ASEAN & The UN”, United Nations, 2010, p. 2.

¹⁰⁹Inspired by Chapter IV of the TAC that prescribes a ministerial “High Council” to resolve disputes that “disturb regional peace and harmony”, the “ASEAN Troika”, was initiated established in July 1997 on an ad hoc basis to play a facilitation role with regard to the internal conflict in Cambodia. It was created, after Cambodia’s accession into ASEAN was agreed in principle, but it had yet to be fully approved. The membership of the troika was Indonesia, the Philippines and Thailand. Though guidelines were drawn up in 2000, the mechanism was never used again. TAC, op. cit.; “Political Cooperation”, ASEAN, www.asean.org. “The ASEAN Troika”, terms of reference, Bangkok, 24-25 July 2000.

VI. CONFRONTATION AND ASEAN INTERVENTION IN 2011

While the pattern of behaviour of the two sides remained familiar, the conflict escalated to an unprecedented level of violence in 2011. The UN Security Council, which has long encouraged regional organisations to be involved in peaceful settlement of disputes, set an important precedent by delegating responsibility for resolving a conflict to ASEAN for the first time.¹¹⁰ That was not an immediate success, as the Thai military led the resistance to the new role, and fighting spread beyond the disputed temple. But the conflict became firmly embedded in the international system. It was headline news at the May 2011 ASEAN summit and made another appearance at the ICJ. A change in government in Thailand helped calm the frontier, but the conflict was not definitively resolved, and ASEAN ended the year with this unfinished business still on the regional agenda.

A. OUTBREAK OF HOSTILITIES

Tensions began to rise on the border soon after Thai troops left the Kao Sikha Kiri Svava pagoda near Preah Vihear on 1 December 2010, following negotiation of troop readjustment with Cambodia. Thai military had been occupying the site since July 2008.¹¹¹ While there, they had carved on a stone “this land belongs to Thailand”. When Cambodian troops took over the site, they inscribed on another stone “Here is the land that belongs to Cambodia. Thais invaded on 15 July 2008. They moved out at 10:30 pm on 1 December 2010”. After the Thai defence minister, Prawit Wongsuwan, complained, Hun Sen instructed it be changed to: “Here is the Cambodian land”. After further negotiations between regional commanders, all the stone inscriptions were removed on 27 January, but that same day the Thai prime minister upset his counterpart by complaining about the flying of the Cambodian flag over the pagoda. “Demanding flag removal from the (Buddhist) pagoda is tantamount to declaring war with Cambodia removing the flag as they demanded ... is like stripping away the Cambodian soul”, Hun Sen said.¹¹²

¹¹⁰“Cooperation between the United Nations and regional organizations in maintaining international peace and security”, UNSC S/RES/1631, 17 October 2005.

¹¹¹ The pagoda and an adjacent market were built by Cambodian tourism authorities in 1998 in the 4.6 sq km area before it became an issue and before the 2000 memorandum of understanding prohibited such construction without the consent of both parties. “The vicinity of the Temple of Preah Vihear”, video, op. cit.

¹¹² Hun Sen, “Selected Comments at the Graduation and Diploma Conferment of Norton University”, unofficial translation, *Cambodia New Vision*, 7 February 2011.

Around the same time, the PAD-allied Thai nationalists made a provocative trip, in what some perceived as an attempt to attract attention for a PAD rally scheduled for the next month. On 29 December 2010, seven crossed into Cambodia’s Banteay Meanchey province opposite Thailand’s Sa Kaeo, more than 200km west of Preah Vihear.¹¹³ This was not an isolated act of a few fringe radicals; it was suspected of having government support. Among the group was a Democrat member of parliament, Panich Vikitsreth, a good friend of Abhisit’s and Kasit’s former vice foreign minister.¹¹⁴ During the illegal crossing he was seen in a video recording telephoning to ask his secretary to relay to Abhisit’s office that they had crossed into Cambodia.¹¹⁵ While five, including Panich, were given suspended sentences for trespassing in mid-January, Veera Somkhwamkid of the Yellow Shirt-aligned, ultranationalist Thai Patriots Network and his secretary, Ratre Phiphatthanaphaibul, received eight- and six-year jail sentences respectively for illegal entry, trespassing on a military area and espionage.¹¹⁶

Since 2009, civilian contractors had been building access roads to the temple through the contested 4.6 sq km as part of Cambodia’s plan to link the site with Angkor Wat in Siem Reap.¹¹⁷ In late January 2011, the Thai military began using heavy equipment to build a spur towards the Kao Sikha Kiri Svava pagoda from Highway 221, which runs from the provincial capital Si Sa Ket to a border checkpoint west of the temple.¹¹⁸ Cambodia protested and asked for construction to stop, but to heed to such a request would have been de facto recognition that the 4.6 sq km was Cambodian territory.¹¹⁹ Ros Borath, president of the official Cambodian National Committee for World Heritage, said the Thai project violated the World Heritage Convention, the 2000 border demarcation memorandum of understanding and even Thailand’s national park regulations. Cambodia later released a video showing Thai

¹¹³ The crossing was recorded by multiple video cameras and can be viewed on www.youtube.com.

¹¹⁴ Supalak Ganjanakhundee, “The money guy on Thaksin’s trail”, *The Nation*, 3 May 2009.

¹¹⁵ For an account in English, see www.bangkokpost.com/learning/learning-from-news/214360/risky-business.

¹¹⁶ See Crisis Group Briefing, *Thailand: The Calm before Another Storm?*, op. cit., pp. 7-8. Hun Sen was said to have told Yingluck he might consider a sentence reduction for the jailed nationalists as part of the 12 May 2012 celebrations of King Norodom Sihamoni’s birthday. “Hun Sen may seek to cut Veera, Ratre terms”, *The Nation*, 5 October 2011.

¹¹⁷ “The Temple of Preah Vihear inscribed on the World Heritage List (UNESCO) since 2008”, Office of the Council of Ministers, Phnom Penh, May 2010, pp. 68-71.

¹¹⁸ It connects with Cambodian Highway 62 and Tbaeng Meanchey, the provincial capital of Preah Vihear.

¹¹⁹ Crisis Group interview, senior Thai military officer, Bangkok, 22 November 2011.

tanks positioned behind the construction crew, with their gun barrels pointed at Preah Vihear, and said this violated the 1954 Hague Convention on the protection of cultural heritage in wartime.¹²⁰

Indonesia had taken over the ASEAN chairmanship on 1 January without a mention of this conflict. When the foreign ministers met for retreat on the Indonesian island of Lombok that month, the year's priorities were said to be promoting the 2015 ASEAN Community, maintaining a "conducive regional environment" and establishing the new global role for the organisation after 2015.¹²¹ But the regional agenda was about to be ambushed by the unresolved dispute that would come to define Indonesia's time as chair.

On the morning of 4 February, only 150km from Preah Vihear, Hor Namhong and Kasit held a ministerial-level Joint Commission meeting in Siem Reap without mentioning the growing troubles at Preah Vihear. Kasit was visiting the activist Veera in a Phnom Penh jail when hostilities broke out that afternoon.¹²² Cambodian Defence Minister Tea Banh was said to have called Defence Minister Prawit that day asking him to halt construction. Prawit responded that if the Thais were to stop, Cambodia would likewise need to cease construction of its access road. After years of brinkmanship, it was difficult for either side to step back. During the phone conversation, Prawit received a report from the Thai military that its bulldozer was being fired upon with rifles and rocket-propelled grenades.¹²³ The skirmish quickly escalated after heavy weapons began to be used.

Cambodia later told the Security Council that at around three pm approximately 300 Thai troops attacked its soldiers in the vicinity of Khmum, 500 metres from the Preah Vihear temple staircase, and at the nearby Field of Eagles area and Phnom Trap hill. Shortly afterwards, Thailand reported that Cambodian troops opened fire on a Thai mili-

tary post at Phu Ma Khua with mortars, rocket-propelled grenades, recoilless rifles, long-range artillery and multi-launcher rockets. They reportedly also used the temple grounds as a fire base to later attack another military post at Pha Mor I Dang.¹²⁴ Between the incidents, several artillery shells were fired by Cambodian troops into Phum Saron village in Si Sa Ket Province of Thailand, located about five km from the border.

Hun Sen's account of how the fighting stopped that day is worth reviewing as much for how these leaders communicate with one another as for what was allegedly said. That evening, he said, Prawit called his Cambodian counterpart, Tea Banh, who was with him. As neither Hun Sen nor Prawit spoke good English, Tea Banh talked with his counterpart in Thai. They agreed to stop fighting in ten minutes, and Hun Sen said it ceased in seven. As it flared again later that evening, a Thai general and Hun Sen's 33-year-old West Point-educated son, Major General Hun Manet, exchanged English text messages. Hun Sen said General Nipat Thonglek, the senior army officer who formerly headed the border affairs department, and Hun Manet acted as go-betweens.¹²⁵ If Thais stopped fighting, so would Cambodians.

A new truce was set for nine pm, but Thai tank movements set off more fighting, and more messages were sent. Around ten pm, Nipat said the border was calm and conveyed the thanks of Lieutenant General Thawatchai Samutsakhon, commander of the Second Army Region covering the North East. After three more shells were fired, the Thais sent a text apology at 11:15 pm.¹²⁶

Neither side has good statistics on the number and types of munitions used in these incidents that lasted for three days.¹²⁷ The toll on civilians was slight only because the area is sparsely populated. While the shots may have been intended for military targets, they were sometimes poorly

¹²⁰ "Thai military road construction desecrates the Temple of Preah Vihear, a World Heritage Site", Office of the Council of Ministers, Phnom Penh, April 2011.

¹²¹ See "Announcement Speech on Indonesia's Chairmanship of ASEAN in 2011", seventeenth ASEAN Summit, 30 October 2010; "Indonesia's Vision as the 2011 ASEAN's Chair", press statement, Indonesian foreign ministry, 5 January 2011. "ASEAN Foreign Ministers Discuss ASEAN's Role in the Region and at a Global Level", press statement, Indonesian foreign ministry, 17 January 2011.

¹²² Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011.

¹²³ "อภิสิทธิ์โทรบันคิมูน เขมรละเมิดใช้พระวิหารอังก่อไทย", มติชน, 9 กุมภาพันธ์ 2554 ["Abhisit calls Ban Ki-moon, complaining Cambodia uses Preah Vihear [as a base] to attack Thailand", *Matichon*, 9 February 2011]; "มาร์คโทรบันคิมูน", คม ชัด ลึก, 9 กุมภาพันธ์ 2554 ["Mark calls Ban Ki-moon", *Kom Chad Luek*, 9 February 2011].

¹²⁴ "Annex to the letter dated 5 February 2011 from the Permanent Representative of Cambodia to the United Nations addressed to the President of the Security Council", UN Security Council, S/2011/56, 7 February 2011. "Annex to the letter dated 5 February 2011 from the Chargé d'affaires a.i. of the Permanent Mission of Thailand to the United Nations addressed to the President of the Security Council", UN Security Council, S/2011/57, 7 February 2011.

¹²⁵ The Thai military based in Bangkok believed that as Hun Manet could enforce ceasefire agreements, he was directly in charge of troops involved in the fighting. Field commanders perceived him merely as a messenger, with his father in charge. Crisis Group interviews, senior Thai military officers, 17 November, 22 November 2011.

¹²⁶ Hun Sen, "Selected Comments", op. cit.

¹²⁷ Crisis Group interviews, Siphon Phay, secretary of state, spokesman, Phnom Penh, 19 May 2011; diplomat, Bangkok, 3 June 2011.

aimed or went astray. The Preah Vihear temple itself was slightly damaged, which if intentional violated international humanitarian law. A nearby blue and white distinctive emblem marking culture property was punctured by shrapnel. The Cambodian government said four soldiers and one police officer were killed, 13,000 people were temporarily displaced and six houses were damaged.¹²⁸

This round of fighting saw Thailand condemned internationally for the first known use of cluster munitions since a 2008 convention came into force in August 2010.¹²⁹ Neither Thailand nor Cambodia is a party to it, but Indonesia, though only a signatory, has committed to encouraging others to join the treaty. Thailand denied the allegation and said it used “dual purpose improved conventional munitions”, not “cluster munitions”.¹³⁰ The physical evidence contradicted its diplomatic wordplay. The official demining agency, the Cambodian Mine Action Centre (CMAC), found that during the February fighting the Thai army fired several thousand projectiles within a 182 sq km area, including M42 cluster sub-munitions from 155mm artillery shells. Unexploded casings and sub-munitions were found by experts in areas around the temple that had been cleared of mines from earlier wars.¹³¹ When fighting spread in April to the Ta Krebei temple 150km to the west of the February incidents, there was no record of use of cluster munitions, which some regard as a small victory for the convention and the pressure applied on Thailand.¹³²

While it defended its own military response as “restrained and proportional”, Thailand decried Cambodia’s use of Russian-designed BM-21 122mm rockets that “struck at

targets indiscriminately”.¹³³ Some of these fell on the village of Phum Saron late on 4 February, sending residents scrambling for ill-maintained bunkers built by the army after past skirmishes. When they emerged, villagers found houses, schools and Buddhist monasteries damaged and a neighbour decapitated by shrapnel.¹³⁴ The areas hit were all near or adjacent to former or occupied army bases or weapons positions. Students at the Phum Saron Wittaya high school taking part in a sports competition on the football pitch when the shooting began were evacuated, but two hours later three shells fell on the empty field, library, classrooms and infirmary. Since 2010, this school was part of the “ASEAN buffer schools program”, meant to increase regional awareness and, *inter alia*, give students the opportunity to learn Khmer.¹³⁵

After further fighting on the morning of 5 February, field commanders met at Chong Sa-ngam Pass in Thailand’s Si Sa Ket province and agreed to another ceasefire. This was broken, and there were more artillery exchanges on the evening of 6 February. Hun Sen called on the Security Council to convene an urgent meeting to address “Thailand’s aggression”.¹³⁶ More than a skirmish under tense circumstances, Abhisit said, the night assault using illumination flares had been planned well in advance as part of a Cambodian strategy with the “political objective of internationalising what is essentially a bilateral issue while bilateral negotiations are still ongoing”. The speed with which letters from his Cambodian counterpart were reaching the Council, he wrote, was proof of “the premeditated nature of the attacks and unfriendly intention”. On the Thai side, this round of skirmishes left two sol-

¹²⁸ Crisis Group interviews, Cambodian soldiers, Preah Vihear temple, 21 May 2011. “Cambodian-Thai Border Clash Damage/Casualty Summary”, Cambodian government presentation, 19 May 2011.

¹²⁹ A total of 108 countries have signed the Convention on Cluster Munitions banning the use, production, stockpiling and transfer of cluster munitions, 51 of which have ratified it.

¹³⁰ “CMC condemns Thai use of cluster munitions in Cambodia”, press release, Cluster Munition Coalition, 6 April 2011. “Statement by H.E. Mr. Dimas Samodra Rum Ambassador of the Republic of Indonesia to Lebanon/Head of Indonesian Delegation at the Second Meeting of State Parties to the Convention of Cluster Munitions”, Beirut, 12 September 2011. “Thailand refutes CMC’s claim on its use of cluster bombs”, press release, Thai foreign ministry, 8 April 2011.

¹³¹ “The Recent Use of Cluster Munitions by Thailand Against Cambodia”, summary note, CMAC, 10 February 2011. The Thai army suspended use of the French-made Caesar 155mm self-propelled howitzer and M198 shells after the cluster munitions allegations. Wassana Nanuam, “Army insists cluster bombs were not used”, *Bangkok Post*, 10 April 2011.

¹³² Crisis Group interview, Heng Ratana, director general, CMAC, Phnom Penh, 5 October 2011.

¹³³ “Thailand refutes CMC’s claim”, *op. cit.* Cambodian army fears that the BM-21 might be considered a cluster-munitions weapon are said to be behind its opposition to the convention. Crisis Group interview, senior Cambodian government official, Phnom Penh, 7 October 2011.

¹³⁴ Crisis Group interviews, residents, Phum Saron, 11 June 2011. There is no standard system for the transliteration of Thai names into English. Phum Saron is sometimes referred in government documents as Phrom Srol.

¹³⁵ Crisis Group interview, teacher, Phum Saron, 11 June 2011; “Summary of Damages to Phum Saron Wittaya School after the military clash”, brochure, Phum Saron Wittaya School, 22 February 2011.

¹³⁶ “Annex to the letter dated 7 February 2011 from the Chargé d’affaires a.i. of the Permanent Mission of Thailand to the United Nations addressed to the President of the Security Council”, UN SC S/2011/59, 7 February 2011. “Annex to the letter dated 6 February 2011 from the Permanent Representative of Cambodia to the United Nations addressed to the President of the Security Council”, UN Security Council, S/2011/58, 7 February 2011.

diers and two civilians dead and temporarily displaced approximately 20,000 villagers.¹³⁷

Building roads with army engineers across a tense, militarised, undemarcated, and disputed border was deliberately provocative. The Cambodian road had been under construction for more than a year as part of published plans to develop Preah Vihear. The orders to start the Thai road in January were said to have come from the army chief, General Prayuth Chan-ocha.¹³⁸ Despite this, the PAD's public comments and the military's private ones were consistent in blaming the Cambodians. PAD leader Sondhi Limthongkul said the confrontation was created to give Hun Manet battle experience; Thai military sources said it was a tactic to allay criticism over his rapid promotion to major general.¹³⁹ This claim, often repeated, made it as far as the talking points of Thai diplomats in New York.¹⁴⁰ In Phnom Penh, such theories were dismissed as "far-fetched", as his role and that of the anti-terrorism unit he leads were unclear.¹⁴¹ Hun Manet keeps a low profile, and many cannot see how he benefited. "We don't see anything that [indicates] Hun Manet is leading the charge, except in Thai newspaper reports", said a diplomat.¹⁴²

B. ASEAN STEPS UP

This intra-ASEAN "war" was attracting increasing international attention.¹⁴³ Though concerned that the Security

Council had too often been drawn into internal affairs of UN member states, several countries on the Council agreed that it was exactly the kind of threat to international security the UN body had been set up to address.¹⁴⁴ It first informally discussed the conflict on 7 February. Council President Maria Luiza Viotti (Brazil) later told the media members had acknowledged the flurry of letters from the two governments, expressed concern, called for a ceasefire and urged a peaceful resolution. The Council was ready to reconvene depending on the outcome of shuttle diplomacy Indonesia's foreign minister, Natalegawa, was then conducting. He met his Cambodian counterpart in Phnom Penh on 7 February, his Thai colleague in Bangkok the following day, then called Viotti, who briefed the Council. The UN Secretary-General personally phoned both prime ministers to urge restraint.¹⁴⁵

The Council then decided to hold a "private meeting" that allowed the three non-members to attend and speak without leaving a public record. This also meant no legally binding resolution would come out of the meeting. Some in the Thai foreign ministry felt they were being punished by Russia, which was "peeved" by the November 2010 extradition of arms trader Victor Bout to the U.S. An "ASEAN option" was at hand that would allow the Council to reserve its rights as venue of last resort, however, and it was the regional grouping's good luck to have Indonesia as its chair, ready to take a leadership role.¹⁴⁶ Natalegawa was a known and respected figure from his time as his country's permanent representative to the UN and representative on the Council in 2007-2008. This boosted confidence in the decision to return the dispute to the region. "They wouldn't have been as comfortable had Brunei or Laos been trying to do this", an official said.¹⁴⁷

Natalegawa made three points to the Council. First, both sides wanted to settle the dispute peacefully, and this was consistent with their ASEAN obligations. Secondly, the situation needed to be stabilised on the ground, as the clashes demonstrated poor communications and, at least, different perceptions about what was taking place. To this end, a higher level of political commitment to the cease-

¹³⁷ "Annex to the letter dated 7 February 2011", op. cit.; "Statement by His Excellency Mr. Kasit Piromya, Minister of Foreign Affairs of Thailand, at the United Nations Security Council, New York, 14 February 2011", press release, Thai foreign ministry, 16 February 2011.

¹³⁸ วาสนา นาน่วม "ลับลวงพราง: ตอนศึกพระวิหาร" (กรุงเทพฯ, 2554), หน้า 86 [Wassana Nanuam, *Secret, Deceit, Disguise: The Fight over Preah Vihear* (Bangkok, 2011), p.86].

¹³⁹ "Hun Sen's eldest son a key man in border fighting", *The Nation*, 8 February 2011.

¹⁴⁰ Crisis Group email correspondence, diplomat, New York, 22 May 2011.

¹⁴¹ Manet participated in the 22 February foreign ministers meeting in Jakarta and 7-8 April JBC meeting in Bogor at the request of the Thai side. A diplomat who asked him about this quoted him as saying, "I went to Jakarta, as the Thais asked for me to go because the Thais think I will tell my father everything, but it doesn't work that way". Crisis Group interviews, diplomats, Phnom Penh, 23-24 May 2011.

¹⁴² Michelle Fitzpatrick, "Cambodian ruler's son enjoys rapid rise" Agence France-Presse, 20 February 2011. Crisis Group interview, Phnom Penh, 23 May 2011.

¹⁴³ Hun Sen called it a "small war or a large-scale clash". See "Selected Comments", op. cit.; Zoe Daniel, "Cambodia appeals to UN over temple 'war'", ABC News, 8 February 2011; Cheang Sokha and Vong Sokheng, "Cambodia, Thailand at 'war': PM", *The Phnom Penh Post*, 10 February 2011; "Cambodian PM

calls border clashes with Thailand 'real war'", ANTARA News/Xinhua-OANA, 10 February 2011.

¹⁴⁴ Crisis Group interview, diplomat, UN Security Council member state, New York, 18 July 2011.

¹⁴⁵ "Update Report No. 1 Thailand/Cambodia", Security Council, 9 February 2011. "UNESCO to Assess Damage to Hindu temple caused by Thai-Cambodian clashes", press release, UN, 8 February 2011.

¹⁴⁶ Crisis Group interviews, senior Thai foreign ministry official, Bangkok, 7 June 2011; diplomats, New York, 18-19 July 2011. Crisis Group email correspondence, Walter Woon, former member, ASEAN High-Level Task Force, 15 August 2011.

¹⁴⁷ Crisis Group interview, diplomat, UN Security Council member state, New York, 18 July 2011.

fire was required. Thirdly, he had come away with the impression that “we have all been here before”, especially the debate about “either/or choices” with regard to bilateral or international solutions. The border would be demarcated bilaterally, but ASEAN facilitation, with Council support, could be invaluable to help create conditions for such talks and ensure that the parties respected the outcome.¹⁴⁸

The Council’s 14 February meeting had no surprises; the resulting statement predictably called on the parties to “display maximum restraint”, “establish a permanent ceasefire” and “resolve the situation peacefully and through effective dialogue”. It also welcomed the planned Jakarta meeting of ASEAN foreign ministers to discuss the issue.¹⁴⁹ This was not a clear diplomatic victory for either party: Thailand failed to block the Council from taking up the issue; Cambodia’s unrealistic plea for a UN observer force was rejected.¹⁵⁰ But three precedents were set: the Council had met on the long-running dispute, discussed a conflict between ASEAN members and referred the dispute back to the regional body.

C. FINDING COMMON GROUND

The three foreign ministers went back to their capitals and prepared to meet their ASEAN counterparts in Jakarta. Stepping off the plane in Phnom Penh on 16 February, Hor Namhong spoke of an eight-hour exchange of grenade and mortar fire at the border the previous evening. Though its call for UN military observers had been rejected, Cambodia continued to insist on the need for outside witnesses at the border. In the first mention of a regional monitoring team, he told the assembled reporters that the latest clash showed ASEAN had to send observers quickly.¹⁵¹ The Thai foreign ministry initially responded that this proposal would be “shot down” in Jakarta. Hun Sen later claimed it was Hor Namhong who came to Jakarta and proposed to Natalegawa on 21 February that Indonesia send observers. But on the eve of the meeting, the

Thai ministry acknowledged Indonesian observers were an issue for discussion.¹⁵² It seemed the outcome was pre-cooked and observers were on the way.

ASEAN Secretary-General Surin Pitsuwan said the 22 February meeting was historic, as the group’s foreign ministers had never before discussed a conflict between two member states.¹⁵³ The objectives of the meeting were threefold; encourage the parties to commit to peaceful settlement of the dispute using the ASEAN Charter and TAC; ensure respect for the ceasefire; and create the environment for resumption of negotiations.¹⁵⁴ It seemed to end with no surprises and four explicit outcomes: Cambodia and Thailand would stop fighting; Indonesia would send observers; the two countries would resume bilateral negotiations; and Indonesia would continue to play a facilitating role.¹⁵⁵ Directly after the meeting, Kasit briefed journalists back home by telephone that Indonesian observers would be invited and would draw on Thailand’s own experiences in observing the Aceh peace agreement in Indonesia and peacekeeping in East Timor to finalise terms of reference.¹⁵⁶

While the language about the two sides reconciling their differences was boilerplate, the meeting broke new ground. The carefully crafted diplomatic description of Indonesia as “current Chair of ASEAN” gave a durable facilitator’s role to Jakarta rather than suggesting it would rotate to a subsequent chair. This meant Indonesia’s responsibilities could be extended beyond 31 December 2011, when it will hand the chairmanship to Cambodia. “This was the price paid to secure Thailand’s agreement”, said a diplomat.¹⁵⁷ Phnom Penh was also already thinking beyond the term of the just started chairmanship. Hun Sen said, “Indonesia now plays a significant role in the region, and therefore Indonesia should continue this role”.¹⁵⁸ This diplomatic manoeuvre meant the 2008 charter worked indirectly rather than by being formally invoked. It did not create a court or force a direct settlement, but it gave Natalegawa the cover

¹⁴⁸ “Statement by H.E. Dr. R.M. Marty M. Natalegawa, foreign minister of the Republic of Indonesia, Chair of ASEAN before the Security Council of the United Nations”, Indonesian Foreign Ministry, 14 February 2011.

¹⁴⁹ “Security Council Press Statement on the Cambodia-Thailand border situation”, UNSC SC/10174, 14 February 2011.

¹⁵⁰ In part because members thought its language on a Thai “war of aggression” was an exaggeration. Crisis Group interview, diplomat, UN Security Council member state, New York, 18 July 2011.

¹⁵¹ “Statement of the Ministry of Foreign Affairs and International Cooperation of Cambodia Concerning Renewed Armed Provocation by Thailand”, press release, Cambodian foreign ministry, 16 February 2011. Neou Vannarin and Phann Ana, “Gov’t to seek ASEAN border observers”, *The Cambodia Daily*, 17 February 2011.

¹⁵² Thanida Tansubhapol, “Cambodia turns to ASEAN”, *Bangkok Post*, 17 February 2011. Cheang Sokha, “ASEAN brokers observer deal”, *The Phnom Penh Post*, 23 February 2011. “Thailand ready for the Informal ASEAN Ministerial Meeting”, press release, Thai foreign ministry, 22 February 2011.

¹⁵³ “ASEAN secretary-general cites progress in Thai-Cambodian resolution”, *The Jakarta Post*, 5 May 2011.

¹⁵⁴ “Statement by H.E. Dr. R.M. Marty M. Natalegawa”, op. cit.

¹⁵⁵ “Statement by the Chairman of the Association of Southeast Asian Nations following the Informal Meeting of the Foreign Ministers of ASEAN”, joint communiqué, 22 February 2011.

¹⁵⁶ “Foreign Minister gives phone-in interview on the Informal ASEAN Foreign Minister Meeting”, press release, Thai foreign ministry, 23 February 2011.

¹⁵⁷ Crisis Group interview, diplomat, Jakarta, 2 August 2011.

¹⁵⁸ Vong Sokheng, “Hun Sen lauds Indonesia talks”, *The Phnom Penh Post*, 25 February 2011.

to push the disputants to settle, whether ultimately on the basis of ASEAN's Charter, the TAC or the UN Charter.¹⁵⁹

Another notable aspect of this "informal" meeting of "foreign ministers" was that only five of ten principals showed up for ASEAN's seminal conflict resolution moment. Five sent deputies or other senior officials. The relatively low-ranking attendance was blamed by some on prior commitments. Others thought it was more likely the absent ministers were nervous that the new interventionist procedure might one day be turned on their countries, so they chose to stay away. Natalegawa himself later noted that ASEAN's new role made some uncomfortable.¹⁶⁰

The meeting pushed against the sensitive boundaries of the non-interference doctrine, as it laid the groundwork for the first ever security monitoring mission from one member country to another under the ASEAN banner. The joint communiqué welcomed the "invitation by both Cambodia and Thailand for observers from Indonesia, current Chair of ASEAN, to respective side[s] of the affected areas of the Cambodia-Thailand border, to observe the commitment by both sides to avoid further armed clashes between them".¹⁶¹ There appeared to be no ambiguity on this at the time. Participants left with the understanding that Thailand had agreed to the deployment.¹⁶² The strategy was not without risk for the regional organisation and its largest member. If the conflict were ever to return to the Security Council, it would be regarded as a failure of Indonesia's leadership and a deep blow to ASEAN's credibility.¹⁶³

D. THAI RESISTANCE

Signs of what would turn out to be months of resistance from Thailand and evidence of growing frustration from Cambodia emerged a little over a week later. The Cambodian leader publicly called for the rapid deployment of

observers, not to resolve the dispute, he said, but to determine which side had shot first. "If you are not a thief, don't be afraid of the police", he added. Shortly after these comments, Thailand said it had received the terms of reference from Indonesia and had "in principle" no objections. They would be discussed at the next GBC meeting, then scheduled for late March.¹⁶⁴

In a series of exchanges and meetings facilitated by Indonesia, the three countries continued to negotiate the terms of reference for the observer mission.¹⁶⁵ In a familiar pattern, the talks quickly stalled on seemingly trivial issues, such as what the group would be called. At various points, Thailand requested that the observers be designated a "survey team" rather than "observer team", not wear uniforms or military insignia and the soldiers be accredited as "diplomats" to their respective Indonesian missions. Three locations in Cambodia and four in Thailand were agreed for their "area of coverage", although all were distant from the border. Cambodia accepted each of the seven changes proposed by Thailand within 24 hours, only to then be presented with a new demand.¹⁶⁶ After Thailand demanded Cambodia withdraw its troops unilaterally before observers could deploy, talks deadlocked in late April. Indonesia would not send its personnel without a signed agreement.¹⁶⁷

The Thai military was clearly uncomfortable with Indonesia's role. When it was proposed that Bogor, Indonesia be the venue for the military-led GBC meeting in March, the army balked, and the session was postponed indefinitely. The Thai army commander, General Prayuth, said his senior officers would not attend: "We won't go. We don't want the meeting to be held in a third country. Soldiers of the two countries are very close to each other. Talks should be between soldiers of the two countries only, and a third party should not be involved".¹⁶⁸

A civilian-led JBC meeting was later held in Bogor in early April. Indonesia's facilitation was said to go little beyond providing a venue, warm welcome and refreshments, but it did restart a bilateral mechanism that had been stalled since April 2009. Cambodia wanted to play up Natalegawa's supporting role and Thailand to minimise it. The only

¹⁵⁹ Crisis Group email correspondence, Walter Woon, former member, ASEAN High-Level Task Force, 15 August 2011.

¹⁶⁰ The foreign ministers represented the two parties, as well as Indonesia, Lao PDR and Singapore. Crisis Group interviews, Indonesian foreign ministry official, Jakarta, 13 May 2011; ASEAN adviser, Jakarta, 27 February 2011. Marty Natalegawa, "JFCC Discussion", Jakarta Foreign Correspondents Club, 5 August 2011.

¹⁶¹ The full mandate for the observers is "to assist and support the parties in respecting their commitment to avoid further armed clashes between them, by observing and reporting accurately, as well as impartially on complaints of violations and submitting its findings to each party through Indonesia, current Chair of ASEAN". "Statement by the Chairman", joint communiqué, 22 February 2011, op. cit.

¹⁶² Crisis Group interview, Indonesian foreign ministry official, Jakarta 13 May 2011.

¹⁶³ Kavi Chongkittavorn, "Jakarta's leadership hinges on Thai-Cambodian peace", *The Nation*, 28 February 2011.

¹⁶⁴ Cheang Sokha, "Send border observers now: PM", *The Phnom Penh Post*, 4 March 2011. "Latest progress made by the Foreign Ministry concerning Thai-Cambodian relations", press release, Thai foreign ministry, 7 March 2011.

¹⁶⁵ "Terms of Reference (TOR) on the Indonesian Observers Team (IOT), Invited by the Kingdom of Cambodia and the Kingdom of Thailand, to [the] Respective Sides of the Affected Areas of the Cambodia-Thailand border", 28 April 2011.

¹⁶⁶ Hor Namhong, oral testimony, International Court of Justice, 30 May 2011, p. 12.

¹⁶⁷ Crisis Group interview, diplomat, Phnom Penh, 24 May 2011.

¹⁶⁸ Wassana Nanuam, "'No' to GBC meeting in Indonesia", *The Bangkok Post*, 22 March 2011.

substantive outcome was an agreement about opening one new border gate.¹⁶⁹

As resistance grew, the prospect of Indonesian observers on the border became increasingly uncertain. Why did Thailand so publicly agree to observers in Jakarta in February, then apparently reverse its decision? The proposal for observers was not a surprise, and Kasit said he went to the February meeting with National Security Council approval to accept observers. That nine-member body includes the prime minister and defence minister.¹⁷⁰ When Thailand backtracked, some said it showed two things: first, that the military still calls the shots in Thai politics; and secondly, how uncoordinated policymaking is, with the prime minister, foreign minister, defence ministry, armed forces and army headquarters constantly contradicting each other. In the absence of a clear national policy, decisions seem to be made according to the interests of one group or another.¹⁷¹ With five separate headquarters in Bangkok, no secure email system and a paper-based bureaucracy, it is difficult for the Thai military to develop and coordinate border policy between the different elements responsible or involved.¹⁷²

Kasit said he was unaware at the time of the “division of labour” between the Supreme Command, which was responsible for the border affairs department, and the army, which commanded the troops manning the frontier, but resolving this conflict was the defence minister’s responsibility. General Songkitti was said to be concerned that the deployment of foreign observers might violate Thai sovereign rights and to feel that Thailand was being punished for a dispute it did not start. Civilian supremacy was something the military was still struggling with, but Kasit said he told it, “if you don’t want Indonesia, then you can have the [UN] blue helmets. Which one do you want? This was hard politics”.¹⁷³

Some believe nationalist politicians under the Yellow Shirts’ influence got to the military after the plans for observers were agreed and announced.¹⁷⁴ A retired senior officer justified the resistance by saying that nationalism

ran deep in the armed forces, and no army liked to see soldiers from other countries on its soil. The Thai military sent observers to oversee the peace agreement in Aceh but was not willing to receive Indonesian monitors. An active duty senior officer stressed there is no legal basis for such an observer team, but the binding ASEAN Charter provides one. A senior foreign ministry official added that an agreement such as that on 22 February meant there was no breach of sovereignty; signed terms of reference were all that was needed for a legal deployment.¹⁷⁵

Thailand has never said it would not allow the deployment of observers, just that terms of reference were still under discussion. The three foreign ministers met in Jakarta in early April to discuss the document. Bangkok had insisted that the Indonesian observers must be unarmed and considered “diplomats”, be outside the 4.6 sq km area, strictly follow its recommendations and undertake no action that would be contrary to the constitution or violate Thailand’s sovereignty.¹⁷⁶ In the background was the anticipated election the prime minister was soon to call. With the vocal PAD demonstrators still camping outside Government House, Abhisit was even less likely to advance any policy that might attract nationalist backlash and undermine his Democrat Party’s popularity.

Why was Thailand so willing to flout ASEAN’s wishes? Some argue that the Abhisit government and its PAD allies underestimated the importance of economic relationships with neighbouring countries and still perceived Cambodia as a poorer, weaker and dependent neighbour.¹⁷⁷ Thai negotiators wanted to take tougher positions, threatening to cut loans for road building and close border posts to trade, that would have made Cambodia more defiant.¹⁷⁸ The military was also trapped in the past, seeing this border as the frontline it controlled during the Indochina wars and was reluctant to return responsibility for this part of the country’s foreign policy to civilians.¹⁷⁹

¹⁶⁹ Crisis Group interviews, Thai foreign ministry official, Bangkok, 7 June 2011; Var Kim Hong, senior minister in charge of border affairs, Phnom Penh, 6 October 2011. Cheang Sokha, “Indonesia talks yield little border progress”, *The Phnom Penh Post*, 11 April 2011.

¹⁷⁰ Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011.

¹⁷¹ Crisis Group interview, diplomat, Bangkok, 3 June 2011.

¹⁷² Crisis Group interview, John Blaxland, senior fellow, Australian National University, Canberra, 23 June 2011.

¹⁷³ Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011.

¹⁷⁴ Crisis Group interview, senior Thai foreign ministry official, Bangkok, 7 June 2011.

¹⁷⁵ Crisis Group interviews, retired Thai general, Bangkok, 2 June 2011; senior Thai military officer, Bangkok, 6 June 2011; senior Thai foreign ministry official, Bangkok, 28 September 2011.

¹⁷⁶ “Meetings of the Thai-Cambodian Joint Commission on the Demarcation for Land Boundary (JBC) and the General Border Committee (GBC)”, press release, Thai foreign ministry, 8 April 2011. “JBC Meeting ends satisfactorily”, press release, Thai foreign ministry, 10 April 2011.

¹⁷⁷ Puangthong Pawakapan, op. cit., chapter 2.

¹⁷⁸ Thai firms used these highways to export goods via Vietnamese ports. Cambodian unhusked rice was processed for re-export as high-yielding Thai product, and the North East had become accustomed to cheap Cambodian labour. Crisis Group interview, senior Thai foreign ministry official, Bangkok, 7 June 2011.

¹⁷⁹ Crisis Group interview, Pavin Chachavalpongun, researcher, Singapore, 24 May 2011.

E. THE CONFLICT SPREADS

At dawn on 22 April, fighting broke out in the area of the Ta Moan and Ta Krabei temples. Cambodian troops, who had been occupying Ta Krabei since September 2008, were building a new road to the temple as well as concrete bunkers nearby. Soldiers who had been ordered to occupy the area to assert Cambodia's claim fired on a Thai patrol, and fighting quickly escalated and spread to Ta Moan, which had been under Thai army control for some time but was reoccupied.¹⁸⁰ Unlike Ta Krabei, it is well marked on Thai road maps and with road signs.¹⁸¹ Hor Namhong blamed Thailand for starting the attack, using mortar and artillery fire. The Thais countered that Cambodia had used similar weapons against them. The clash began after a Thai patrol encountered Cambodian soldiers constructing bunkers near the Ta Krabei ruins. Thailand said it did not shoot first, and the fighting started after its soldiers informed the Cambodians they were invading Thai territory. A local ceasefire was established within hours, but fighting briefly resumed a half hour later. Sporadic clashes continued for more than a week.¹⁸²

This fighting raised concerns, as it was outside ASEAN's February mandate that only involved dispatching observers around Preah Vihear. Despite the lesser historical significance of the area, thousands of civilians on the border were affected and ASEAN's image was further undermined, as its February engagement appeared ineffectual. Cambodia said more than 50,000 Thai artillery shells were fired up to twenty km inside its border between 22 April and 5 May.¹⁸³ Another eight Cambodian and three Thai soldiers were killed, while dozens of troops and civilians were injured on both sides. Thai authorities said nearly 10,000 civilians were displaced; Cambodian figures were that more than 45,000 people were displaced, and 40 houses and one school were damaged.¹⁸⁴ The fighting attracted extensive international attention, with Thailand accused of "going rogue" and its political turmoil described as "dam-

aging regional stability".¹⁸⁵ Hun Sen soon after started referring to the fighting as a "large scale war".¹⁸⁶

In the war of words after each incident, both sides tried to take the moral high ground. Frontline troops gave accounts of a disconcerting lack of fire control. Officers alleged their opponents violated international humanitarian law, such as by targeting civilians or basing forces in places of religious or cultural significance, sometimes while they themselves were standing in a temporary base in a Buddhist temple.¹⁸⁷

Some Cambodian homes adjacent to military bases were destroyed by inaccurate artillery fire. Poorly guided Cambodian weapons such as the BM-21 hit homes, and shrapnel maimed children and destroyed livelihoods. When one Cambodian tank crewman was asked what he fired at, he casually waved his hand to the west and said, "just Thailand". Thai artillery is said to have been more accurate and to have scored direct hits on some key roads, as it fired on pre-calibrated targets and used aerial surveillance.¹⁸⁸ The better-equipped and provisioned Thai army, however, was sometimes excessive in its response. A Cambodian officer recorded on the wall of his bunker 820 artillery shells, mortars, and grenades fired over his borderline post on 24 April. Asked to respond to this claim, a Thai on the other side said, "if they shoot five times, then maybe we would give them five back ... or maybe eleven".¹⁸⁹ Fortunately, most Cambodian civilians in the area had gone to evacuation centres, thus minimising casualties.

Individual Cambodian soldiers have links from the days when the Thai army backed the Khmer Rouge after Vietnam invaded. Those fighters were later incorporated into Cambodian border units.¹⁹⁰ But it is not hard to find enmity rather than amity among soldiers. At a Ta Krabei "friendship day" on 20 May 2011, troops from both sides drank Thai beer, Khmer whisky and played French bowls in the disputed temple's ruins, but some commanders were

¹⁸⁰ Crisis Group interviews, Cambodian army officer, Ta Krabei, 20 May 2011; Thai army officer, Ta Moan, 5 June 2011; senior Thai military officer, 17 November 2011.

¹⁸¹ "Road Map of Northeastern Thailand", ThinkNet, seventh edition, 2011.

¹⁸² "Annex to the letter dated 22 April 2011 from the Permanent Representative of Cambodia to the United Nations addressed to the President of the Security Council", S/2011/264, UN Security Council, 25 April 2011.

¹⁸³ "The Temples of Ta Moan and Ta Krabei belong to Cambodia de jure and de facto now under attack by invading Thai troops", video, council of ministers office, Cambodia, 3 May 2011.

¹⁸⁴ "Cambodian-Thai Border Clash Damage/Casualty Summary", Cambodian government presentation, 19 May 2011.

¹⁸⁵ "Thailand going rogue", *The Wall Street Journal*, 26 April 2011.

¹⁸⁶ "Selected press briefing after the 18th ASEAN Summit in Jakarta, Indonesia", *Cambodia New Vision*, 8 May 2011.

¹⁸⁷ Crisis Group interviews, Cambodian soldiers, Preah Vihear, Ta Moan, Ta Krabei, 20-21 May 2011; Thai soldiers, Si Sa Ket and Surin provinces, 4-5 June, 2011; Thai officer, Ta Moan, 5 June 2011.

¹⁸⁸ Crisis Group interviews, villagers, Dong Rak district, 20 May 2011; organic farmer, Surin province, 5 June 2011; Cambodian soldier, Preah Vihear, 21 May 2011; foreign military attaché, Bangkok, 3 June 2011; Crisis Group observation, Ta Moan, 20 May 2011.

¹⁸⁹ Crisis Group interviews, Cambodian officer, Dong Rak district, 20 May 2011; Thai officer, Ta Moan, 5 June 2011.

¹⁹⁰ Crisis Group interviews, Cambodia soldiers, Banteay Meanchey and Preah Vihear provinces, 20-21 May 2011.

not talking. “I was ordered by my leaders to join this, but I didn’t want to”, said a Cambodian officer standing apart from the festivities. A Thai ranger of the same rank who was at this event was seen two weeks later in an army camp on his side distributing t-shirts with an image of the temple and the slogan “We are the conquerors of Ta Kwai [Ta Krabei]; the property of Siam”.¹⁹¹ A peer complained Cambodian soldiers were dishonourable, as they had shot his men in the back. Boredom also prevailed, and Cambodians were frustrated with the hardship of the deployment: “I miss my family; I want to go home. When are the Indonesian observers getting here?”¹⁹²

F. THE CONFLICT DOMINATES THE ASEAN SUMMIT

The war of words reignited ahead of the ASEAN Summit in Jakarta. On 3 May, Cambodia signed a letter of acceptance to deploy observers. Indonesia’s defence minister said they were ready to go but could not be sent, as the Thai cabinet had not yet given a green light. The problem, he noted, was opposition from the Thai army and domestic politics: “Thailand will be having an election in June [and] that has made [it] difficult for us to go the border”. On 6 May, before heading to the weekend summit, Abhisit requested a royal decree to dissolve parliament. As the country prepared for an election campaign, the foreign minister said the government’s active participation in the various bilateral forums showed it was not to blame for the delays, but by this point nobody seemed to believe it.¹⁹³

At the summit, Hun Sen complained openly to fellow leaders that it was “irrational and unacceptable” that Thailand would not sign the observer agreement until Cambodian troops were withdrawn from land Cambodians regarded as their own. It did not have the “goodwill”, he added, to either accept observers or settle the dispute. After such direct language, the Thai media accused Cambodian leaders of displaying “poor manners” and “a thuggish attitude” at the annual meeting generally known more for elaborate theatrics and karaoke singing than political brawling.¹⁹⁴

The conflict grabbed headlines throughout the summit; Abhisit accepted that the issue could affect the credibility of ASEAN. It was also fracturing ASEAN solidarity. Malaysia’s deputy foreign minister said Thailand had not kept the February agreement, and this had caused the April skirmishes. Indonesia’s president took the unusual step of asking the foreign ministers of the two countries to stay behind an extra day to try to make progress with Natalegawa’s facilitation. Such engagement was not welcomed by all. Describing its initiative, the Indonesian foreign minister told visitors his country had an ambitious agenda for ASEAN, with the goal of “waging peace”, because “the risk of doing nothing was greater than the risk of trying something that failed”. In Singapore at almost the same time, outgoing Foreign Minister George Yeo remarked to a diplomat that the organisation should not be the regional referee, but rather should stay on the sidelines of the conflict and avoid the risk of failure.¹⁹⁵

The result of the extra day of diplomacy on 9 May was a “package solution”, providing that steps would be taken in clusters. It mapped out measures to be taken, for example, with an exchange of letters on observers and announcement of new GBC/JBC meetings on day one. Five days later the observers would be dispatched, and the GBC/JBC meetings held. Within ten days, the observers would be fully deployed, and there would be follow-up on the meetings. The ministers were to return to their capitals and “positively recommend the above package of solutions to their respective governments for their early approval”.¹⁹⁶ The next day, Hor Namhong wrote to Natalegawa, copying all ASEAN foreign ministers, and accepted the agreement. Before lunchtime, however, Kasit had called his Indonesian counterpart to say Thailand could not agree until Cambodia withdrew its troops. Natalegawa politely rebuffed Kasit, citing concerns that any change at this stage could disadvantage Cambodia, which had already signed the terms of reference. The parties were back to square one in less than 24 hours.¹⁹⁷

¹⁹¹ Crisis Group interview, Thai officer, Ta Moan, 5 June 2011. Crisis Group translation.

¹⁹² Crisis Group interviews, Thai officer, Ta Moan, 5 June 2011; Cambodian officer, Preah Vihear temple, 21 May 2011.

¹⁹³ Hun Sen, “Implementation of the ASEAN Charter and Roadmap for ASEAN Community”, speech to the eighteenth ASEAN summit, 7 May 2011. Purnomo Yusgiantoro, remarks to the Jakarta Foreign Correspondent’s Club, 4 May 2011. “Foreign Minister speaks about his meeting with international legal advisers on Phra Viharn case”, press release, Thai foreign ministry, 6 May 2011.

¹⁹⁴ Hun Sen, “Implementation of the ASEAN Charter and Roadmap”, op. cit. “Cambodia’s diplomatic shenanigans”, *The Nation*, 9 May 2011.

¹⁹⁵ Tom Allard and Karuni Rompies, “Dispute threatens ASEAN”, *The Sydney Morning Herald*, 9 May 2011. “Malaysia blames Thailand over Cambodia border clash”, Agence France-Presse, 9 May 2011. “Press Briefing during the 18th ASEAN Summit in Jakarta, Unofficial Translation of Selected Comments, 8 May 2011”, *Cambodia New Vision*, no. 159, May 2011. Crisis Group interviews, diplomat, Jakarta, May 2011; diplomat, Singapore, May 2011.

¹⁹⁶ Zubaidah Nazeer, “Border spat: ‘Package solution’ mooted”, *The Straits Times*, 10 May 2011. “Agreed Summary”, record of meeting of Cambodian, Indonesian, and Thai foreign ministers, 9 May 2011.

¹⁹⁷ “Letter from Hor Namhong to Marty Natalegawa”, Cambodian foreign ministry; “Letter from Marty Natalegawa to Hor Namhong and Kasit Piromya”, Indonesian foreign ministry; Crisis Group interview, diplomat, Jakarta, 10 May 2011.

Conventional wisdom among diplomats following the dispute closely was unanimous that Indonesian observers would never be deployed on the border, and not much was expected while the Thai election campaign was underway. But there were still concerns. The U.S. quietly told Thailand to be mindful of how its actions would impact ASEAN;¹⁹⁸ it is not clear, however, who, if anyone, was listening to that message.

G. BACK IN COURT

Frustrated by the lack of progress, Cambodia had been quietly working for some months to open a new diplomatic and legal front. Hor Namhong had made two visits to Paris in April that had raised eyebrows in the region.¹⁹⁹ On 28 April, six days after the fresh fighting, Cambodia filed an application requesting the ICJ to interpret its 1962 judgment.²⁰⁰ The Thai military said the fighting was provoked in order to bring the case to the court, but Cambodia as a previous litigant always had standing to make such a request.²⁰¹ The court scheduled hearings for 30-31 May.

Cambodia's "lawfare" could be seen as an attempt to redress the size imbalance between the disputants, as well as an acknowledgement that ASEAN's mediation and bilateral talks were going nowhere. The asymmetry was on show in the courtroom, where Thailand fielded a team of international lawyers much larger than Cambodia's.²⁰² The plaintiff asked for a ruling on the border's location, as well as provisional measures, including a directive for immediate and unconditional withdrawal of all Thai forces from near the temple; and a ban on Thai military activity in the area; as well as for Thailand to refrain from action that could interfere with Cambodia's rights or aggravate the dispute.²⁰³

On 18 July, the court unanimously rejected Thailand's long-standing argument that it had no jurisdiction. It then decided on the following "provisional measures."²⁰⁴ First, by an eleven to five vote, it ruled that both parties must

immediately withdraw their military personnel from a "provisional demilitarised zone" (PDZ) it created around the temple and refrain from any military presence or armed activity directed at that zone. By a vote of fifteen to one, it ruled that Thailand must not obstruct Cambodia's free access to the temple or the provision of supplies to non-military personnel; and both parties must continue cooperation with ASEAN and, in particular, allow the observers appointed by the regional grouping access to the PDZ. By the same vote, it said both parties were obliged to refrain from any action that might aggravate or extend the dispute and make it more difficult to resolve; and decided that each party should inform the court about its compliance with the provisional measures. Lastly, the court said it would remain "seized" of the matter until its final ruling.²⁰⁵

The full nature and scope of this decision will be difficult to assess until hearings on the merits have been heard. The court could ultimately decide not to rule on the border. Nevertheless, Kasit, now Thailand's caretaker foreign minister, praised the decision as "fair to both parties" and said they would "urgently initiate negotiations" for a withdrawal. As the court had gone beyond the request of Cambodia, the official response from Phnom Penh was initially muted, which confused some in the capital, but on 22 July Hun Sen welcomed the decision in a press conference, noted its legally binding nature and indicated support for a simultaneous and quick withdrawal. "The decision is a slap in the face of Thailand. The Court's decision is not a joke. Both Abhisit and Yingluck must honour the ICJ decision", he said.²⁰⁶

Hun Sen added that according to the court's order, Indonesian observers would supervise more than seventeen sq km, which meant their terms of reference negotiated in April and the package solution agreed on 9 May were "obsolete". In less than a week, Cambodia's foreign minister had circulated new draft guidelines to the ASEAN foreign ministers, pursuant to which the Indonesian Observer Team (IOT) would report through the ASEAN chair to the ICJ and the two parties and remain in place until 30 days after a final ruling from the court.²⁰⁷ While recognis-

¹⁹⁸ Crisis Group interviews, diplomats, Bangkok, Jakarta, Phnom Penh, May-June 2011; U.S. diplomat, May 2011.

¹⁹⁹ Crisis Group interview, diplomat, Jakarta, 10 May 2011.

²⁰⁰ "Cambodia files an Application requesting interpretation of the Judgment rendered by the Court on 15 June 1962 in the case concerning the Temple of Preah Vihear (Cambodia v. Thailand) and also asks for the urgent indication of provisional measures", press release, ICJ, 2 May 2011.

²⁰¹ Crisis Group interview, senior Thai military officer, Bangkok, 22 November 2011.

²⁰² Crisis Group interview, diplomat, The Hague, 21 October 2011.

²⁰³ Hor Namhong, oral testimony, ICJ, 31 May 2011.

²⁰⁴ The Court's orders on provisional measures under Article 41 of its statute have binding effect and create international legal obligations with which both parties are required to comply.

²⁰⁵ "Request for interpretation of the judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Request for the Indication of Provisional Measures", order, ICJ, 18 July 2011.

²⁰⁶ Daniel Ten Kate and Anuchit Nguyen, "Thailand to comply with Cambodian temple DMZ imposed by UN", Bloomberg, 18 July 2011. Crisis Group interviews, journalist, diplomat, Phnom Penh, 5, 7 October 2011. "Hun Sen: Thailand must honour the court decision; Indonesian observers are a must", press statement, Press and Quick Reaction Unit, 22 July 2011.

²⁰⁷ "Selected Press Briefing and Conference by Prime Minister Samdech Techo Hun Sen to Explain Cambodia's Stance on the International Court of Justice (ICJ) Ruling", unofficial translation, *Cambodia New Vision*, 22 July 2011. "Letter from Hor

ing more observers might be necessary, Indonesia did not want this to become an excuse for additional delays. It was said to be ready to immediately deploy squads of fifteen on each side as proposed in April and to make a case for supplementing them to deal with the larger area only after they were on the ground.²⁰⁸

The court reinforced ASEAN's role by tasking it as its de facto eyes on the ground and making it the primary interlocutor for resolution of the dispute.²⁰⁹ But this empowerment applies to only part of the border conflict. The judgment reiterated the court's position that it can only interpret the facts of the 1962 Preah Vihear case. This means that though other incidents took place between 22 April and 3 May 2011 near the Ta Krabei temple and Ta Moan complex, these temples, because of their distance from Preah Vihear, are not covered by either the 1962 judgment or the 2011 temporary measures.²¹⁰ ASEAN's mandate to send observers is similarly restricted to the area around Preah Vihear.²¹¹ Even if implemented, the observers and the temporary measures are only a partial response to a larger problem. ASEAN would need to engage in more negotiations to discuss extending the terms of reference of the IOT to cover border areas where hostilities could potentially erupt.

H. THE THAI ELECTION

Between the case going to court and the temporary measures judgment, Thailand held a general election. The campaign was something of a referendum on how Thais wanted their country – suffering from five years of political polarisation since the 2006 coup – to be ruled. The Pheu Thai party, led by Thaksin's younger sister Yingluck, pledged to improve relations with Cambodia and turn a "battlefield into a marketplace".²¹² Aware that her statement

might be exploited by ultra-nationalists to question her loyalty, she told voters that Thailand's interest would not be compromised by such a policy.²¹³ During the campaign, a deputy prime minister under Thaksin from the Thai Rak Thai party suggested the personal bonds with leaders in Cambodia were still strong, and bilateral disputes could be resolved easily if a Pheu Thai government was elected. Waving his handset, he said they still had each other's mobile numbers.²¹⁴

In the most prominent use of Preah Vihear in the campaign, the leader of the nationalist-leaning Social Action Party, Suwit Khunkitti, who led the Thai delegation at UNESCO meetings, tried unsuccessfully to exploit the conflict. While at negotiations in Paris in the middle of the campaign, he withdrew Thailand, a World Heritage Committee member, from the governing convention, saying the step was necessary to defend Thai territory, a move applauded by the PAD. Kasit said that Suwit had initially been authorised only to walk out of the meeting. The affair appeared to pay no dividend as Suwit's party failed to win a single seat in the elections.²¹⁵

When the Thaksin-backed Pheu Thai Party decisively defeated the Democrat Party on 3 July, the bilateral mood changed overnight. In keeping close to Thaksin, Hun Sen had long bet on Pheu Thai winning and hoped for a more productive relationship. All problems would be peacefully resolved, and relations would now enter a "new era", he said. "Our people and armies along the border, either Cambodian or Thai, are happy with the electoral outcomes". Nevertheless, Cambodia still had to wait for the Thai parliamentary process to grind forward before it had an official interlocutor. A month after the election, the new government was formed.²¹⁶

Namhong to Marty Natalegawa", Cambodian foreign ministry, Phnom Penh, 27 July 2011. "Agreement between the Kingdom of Cambodia, the Kingdom of Thailand and the Republic of Indonesia, the current Chair of ASEAN on the dispatch and functioning of the Indonesian Observer teams", second draft, 27 July 2011.

²⁰⁸ Crisis Group interview, diplomat, Phnom Penh, 7 October 2011.

²⁰⁹ Crisis Group email correspondence, Walter Woon, former member, ASEAN High-Level Task Force, 24 October 2011.

²¹⁰ Buried in its text is also an acknowledgment from Thailand that while a twenty-minute exchange of fire took place some 2km from Preah Vihear on 26 April 2011, the oral ceasefire of 28 April covers only the Ta Krabei and Ta Moan sectors and not Preah Vihear.

²¹¹ Crisis Group interview, diplomat, Phnom Penh, 24 May 2011.

²¹² The so-called "marketplace policy" has been part of Thai foreign policy rhetoric since the 1988-1991 government of Chatchai Choonhavan. Pavin Chachavalpongpun, op. cit., p. 250.

²¹³ Yingluck Shinawatra, campaign speech, Si Sa Ket, 29 June 2011. This is the border province most affected by fighting around Preah Vihear. Many local residents support the Pheu Thai party and disagree with the PAD.

²¹⁴ Crisis Group interview, Chitchai Wannasathit, former deputy prime minister, Ubon Ratchathani, 4 June 2011.

²¹⁵ "Government to pull out of WHC", *Bangkok Post*, 26 June 2011. Crisis Group interview, Kasit Piromya, former foreign minister, Bangkok, 30 September 2011. The Yingluck administration reversed the withdrawal. "Govt reverses WHC pull-out", *Bangkok Post*, 14 October 2011.

²¹⁶ The Pheu Thai party won an absolute parliamentary majority, 265 of 500 seats, leaving the Democrat Party with only 159. "Hun Sen maneuvers over possible Thaksin visit", U.S. embassy Phnom Penh cable, 30 October 2009, as published by WikiLeaks. "Constructing the Takhmao Bridge at Kandal Province", unofficial translation of selected comments, 6 July 2011, *Cambodia New Vision*, no. 161, July 2011. Parliament voted 296 to three to elect Yingluck as Thailand's 28th prime minister; 197 mostly opposition members abstained. "PM-designate seeks time to prove her abilities", *The Nation*, 6 August 2011.

The other significant aspect of the election was the weak showing by the PAD, which claimed that without comprehensive political reform, an election was a waste and called on its supporters to vote “no” in protest against “dirty politics”. The newly-founded New Politics Party, splitting from the PAD to field candidates, did not make it into parliament.²¹⁷ Support for PAD had been visibly waning, as it struggled to keep protester numbers up at its rally site near Government House. Going overboard with its nationalist campaign and fierce attack against the Democrat Party appears to have been a major cause for the PAD’s declining popularity. The Yellow Shirts, however, still haunt policymakers, not because of any overwhelming popular support but because of their threats to file lawsuits against politicians and officials they deem to have committed treason.²¹⁸

I. WHERE ARE THE OBSERVERS?

As the transition moved forward, years of tension evaporated. The Yingluck government was said to be “in love with Hun Sen”.²¹⁹ Cambodia was at the end of its “nightmare”.²²⁰ The U-turn in rhetoric was startling. An unmanned surveillance drone that Thailand denied belonged to it crashed in Cambodia on 16 August some 64km inside the border from Preah Vihear. Rather than angrily denounce a violation of sovereignty, the Cambodian defence ministry released a much criticised statement that “this crash may be the work of a certain terrorist group to test unmanned reconnaissance aircraft for future terrorist activities”.²²¹ In her 23 August keynote policy speech to parliament, Yingluck pledged to advance unity and cooperation between ASEAN members. One of her objectives, she said, was to “promote knowledge and better understanding among Thai people on [the] boundary issue”.²²²

While there were many warm words from the new administration, however, there were few actions to truly measure its sincerity. The government was afflicted by the same

policy incoherence. Defence Minister General Yuthasak Sasiprapa said Indonesian observers might not be needed at all, then days later described them as “crucial”. The new foreign minister, Surapong Towichakchaikul, said there would be no decision before the prime minister’s visit to Cambodia on 15 September.²²³

That visit then made the situation more ambiguous. Some officials in Phnom Penh were concerned that she spoke of an “adjustment” of troops rather than a “withdrawal”, when discussing the ICJ’s July order. Two weeks later, Thai foreign ministry officials were using the word “re-deployment”. “Who is the boss? Is it the Thai military, the government or the parliament?”, asked the cabinet spokesman.²²⁴ Two days later, Thaksin himself passed through town and met Hun Sen, casting more doubt on who really was in charge in Bangkok. Hun Sen described him as an “eternal friend”.²²⁵ To make the symbolic bonds even more obvious, the Cambodian prime minister a week later played a football match in a red shirt with pro-Thaksin politicians and other local officials.²²⁶ Yingluck’s lack of firmness on the temple issue has fed open scepticism in Phnom Penh that her government can control the Thai military. This scepticism was reinforced by the annual October reshuffle of the top brass that left intact the army’s mostly anti-Thaksin, pro-royal command arrangements, including General Prayuth.²²⁷

Indonesia is being patient. Even if observers are never deployed, it may still partially realise its objectives, if hostilities do not resume and negotiations restart. Soon after the ICJ’s July decision, Natalegawa issued a statement welcoming that the order reinforced the country’s role as a facilitator. After Yingluck’s 12 September state visit, President Yuhdoyono publicly stressed process rather than results: “Indonesia as the ASEAN Chair has contin-

²¹⁷ The PAD’s “vote no” campaign similarly failed to make an impact. Voting is compulsory in Thailand; the “no” option gives voters a choice other than to void a ballot. In 2007, 2.85 per cent cast a “no vote” on the party list and 4.58 per cent in the constituency vote. In 2011, the numbers were 2.72 per cent and 4.03 per cent respectively. Election Commission of Thailand.

²¹⁸ Crisis Group interview, Panthep Phuaphongphan, PAD spokesman, Bangkok, 3 October 2011.

²¹⁹ Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011.

²²⁰ “Cambodia sees end of ‘nightmare’ Thai relations”, Agence France-Presse, 11 August 2011.

²²¹ “Statement of the Ministry of Defence,” press statement, Cambodian foreign ministry, 18 August 2011.

²²² Yingluck Shinawatra, inaugural speech to parliament, 23 August 2011.

²²³ “Thailand says Indonesian observers not needed in disputed Cambodia border area”, *The Bangkok Post*, 20 August 2011; “Indonesia a ‘crucial observer’ in dispute”, *The Bangkok Post*, 23 August 2011. “Cambodia cabinet to discuss border issues after Thai PM’s visit”, *The Nation*, 14 September 2011.

²²⁴ Crisis Group interviews, senior foreign ministry official, Bangkok, 3 October 2011; Siphon Phay, secretary of state, spokesman, Phnom Penh, 6 October 2011.

²²⁵ It has not always been so. Thaksin is said to have been one of the backers of a failed 1994 coup attempt against Hun Sen. Brad Adams, “Cambodia: July 1997: Shock and Aftermath”, *The Phnom Penh Post*, 27 July 2007.

²²⁶ “Thai ex-PM meets Cambodian leader”, Agence France-Presse, 17 September 2011. “Cambodian PM scores in football diplomacy with Thailand”, Agence France-Presse, 24 September 2011.

²²⁷ Crisis Group interview, Prince Thomico Sisowath, private secretary to King Sihamoni, Phnom Penh, 7 October 2011. John Cole and Steve Sciacitano, “Machinations behind Thai military movements”, *Asia Times Online*, 6 October 2011.

ued to tell the UN, especially the Security Council, that this problem can be resolved at the level of ASEAN, primarily by Thailand and Cambodia. Indonesia as the Chair of ASEAN will be part of that process".²²⁸ But the fallout from this conflict, unless ASEAN succeeds in resolving it, could be a higher likelihood of external intervention when security issues arise in future.²²⁹

On 23 September, Cambodian Defence Minister Tea Banh met his new Thai counterpart, Yuthasak, in Phnom Penh and signalled a troop withdrawal was imminent. "We have agreed to comply with the ICJ's order and to allow Indonesian observers to monitor the ceasefire at the area", Tea Banh said after a 30-minute meeting. No date for the troop withdrawal was set, as both sides would discuss this at the GBC in November.²³⁰ More than four months after the ICJ decision, the parties are still negotiating new terms for them. Cambodia told ASEAN partners during a meeting with the UN Secretary-General that it was ready to withdraw troops from the PDZ at any time, support deployment of Indonesian observers and restart bilateral negotiations. In Bangkok, officials acknowledged that talks were underway about replacing troops with police, and military officers said that the country, as a UN member, was compelled to comply with the court's ruling.²³¹ Commanders said there had been a scheduled rotation of Thai troops in October but no withdrawal.²³² Discussion on implementation of the ICJ orders had been scheduled to be discussed at the GBC in November, after the Thai parliament deliberated the government's plan, as required by Article 179 of the constitution, but both meetings were delayed by the floods.²³³

²²⁸ Chair's Statement, eighteenth ASEAN Regional Forum, 23 July 2011. "Indonesia Berkomitmen Penyelesaian Damai Konflik Thailand-Kamboja", press release, president's office, 12 September 2011.

²²⁹ Michael Vatikiotis, "Return of Foreign Forces to S-E Asia A Security Worry", *The Straits Times*, 18 November 2011.

²³⁰ "Defence Ministers agreed on troop exit", *The Bangkok Post*, 24 September 2011.

²³¹ "Statement made by Cambodia during the ASEAN Foreign Ministers' Meeting with the UN Secretary-General and President of UN General Assembly at the UN Headquarters", New York, 27 September 2011. Crisis Group interviews, senior Thai foreign ministry official, Bangkok, 28 September 2011; senior military officer, Bangkok, 3 November 2011. The court's judgments are final, without appeal. Article 60, ICJ Statute. In the case that a state party does not comply with the ICJ's decision, other state parties may bring the matter to the Security Council. Article 94 (2), UN Charter.

²³² Crisis Group interview, senior Thai military officer, 17 November 2011.

²³³ Crisis Group interview, senior Thai foreign ministry official, Bangkok, 4 October 2011. Article 179 states: "In the case where there is an important problem in the administration of State affairs in regard to which the Council of Ministers deems it ad-

Some said that General Songkitti was the obstacle on the Thai side to accepting observers.²³⁴ But the military's position did not change either with the new government or when he retired in the annual October reshuffle. Its concerns over "sovereignty" seem institutional rather than personal, although some field commanders say observers could benefit the Thai military, as they would give it someone to complain to about the alleged "unscrupulous" behaviour of Cambodian border troops.²³⁵ Songkitti's successor, General Thanasak Patimapakorn, is said to be ready to talk and accept deployment of the observers after a cabinet resolution *and* parliamentary endorsement. But those involved in the negotiations said the inertia was due to legislators' fear of a PAD backlash and possible prosecution under Section 157 of the criminal code, which had been used against the Samak government.²³⁶

In September, Bandit Sotipalalit, who replaced Asda Jayanama as Thailand's JBC co-chair, stressed he had no authority to unilaterally change the boundary and that every detail of discussions with his Cambodian counterpart would have to be reported to the parliament in accordance with Article 190 of the constitution.²³⁷ In Phnom Penh, the Cambodian co-chair lamented that he had learned of his new counterpart's appointment in the media but noted he was under instructions from the prime minister to attend a new JBC meeting wherever it might be.²³⁸

The fledgling Yingluck government was at the point of addressing these issues when it was overwhelmed by the massive flooding that hit Thailand in October. Even the headquarters of the armed forces was inundated by more than a metre of water, adding to confusion and delay. With so many in the capital affected, it was impossible to transact business with any government agency.²³⁹ Some

visible to take the opinion of members of the House of Representatives and senators, the Prime Minister may give a notice to the President of the National Assembly requesting that a general debate be held at a joint sitting of the National Assembly. In such case, no resolution shall be passed by the National Assembly on the issue put in the debate".

²³⁴ Crisis Group email correspondence, diplomat, Bangkok, 11 October 2011. Crisis Group interview, Kasit Piromya, former Thai foreign minister, Bangkok, 30 September 2011.

²³⁵ Crisis Group interview, senior Thai military officer, 17 November 2011.

²³⁶ This meant they wanted the cover of parliamentary approval under Article 179 of the constitution before moving forward. Crisis Group interview, senior military officer, Bangkok, 3 November 2011.

²³⁷ "Politics may make border demarcation tough: Bandit", *The Nation*, 26 September 2011.

²³⁸ Crisis Group interview, Var Kim Hong, senior minister in charge of border affairs, Phnom Penh, 6 October 2011.

²³⁹ "Fear and confusion grip Bangkok as Thailand's government struggles to manage flood message", Associated Press, 14 October 2011; Crisis Group interview, military official, Bangkok,

argued that the prime minister's weak response to the biggest natural disaster in living memory had eroded her electoral support; at the same time, thousands of soldiers rescuing flood victims in dire situation helped boost the popularity of the armed forces.²⁴⁰ Sitting by the flooded banks of the Mekong River, a Cambodian official expressed empathy and frustration: "So their constitutional process took a while, and they had to appoint their ministers, replace the JBC head and reshuffle the military. Then there were the floods. Okay, we've been patient. But how long can this go on for?"²⁴¹

J. WHAT NEXT?

Deploying the observers is logistically easy but politically hard. In November, Thai leaders were going in circles on the issue. A joint parliamentary session was held on 15 November to discuss implementation of the ICJ decision according to the Constitution's Article 179, under which parliament would be informed of and could debate the government's plans and actions but without voting. Foreign Minister Surapong requested it be held behind close door so as not to harm bilateral relations. The minister told the session that, as a UN member, Thailand was obliged to comply with the provisional measures. The judgment was fair, he said, if observed by both countries, and Thailand would not be disadvantaged. If it failed to comply, however, Cambodia could return to the UN and request an intervention that could further harm Bangkok's reputation.²⁴² The parliamentary debate highlighted ongoing differences and the gridlock that is the PAD's legacy. Some senators wanted to invoke Article 190 to require a vote on treaties, even though the immediate issue was only endorsement of a negotiating framework for GBC discussion of observers. This, they argued, would give officials better cover; even a PAD-aligned senator said such a measure would pass.²⁴³

The foreign ministry and the military were in disagreement on the issue. The diplomats worried about setting a bad precedent and preferred to rely on Article 179. The terms of reference for observers, they argued, are well below a treaty, and since they relate to fulfilling existing obligations

under the UN Charter have no impact on sovereignty.²⁴⁴ Military officers supported the senator's suggestion to invoke Article 190. Supreme Commander General Thanasak, like his predecessor, took a hard line. He still had reservations that complying with the provisional measures would impact Thai sovereignty. In his view, it amounted to a "de facto loss of territory". He insisted that the military needed approval from both the cabinet and parliament before discussing this matter at the GBC. Without them, the military would not feel compelled to follow the ICJ's order.²⁴⁵

The GBC meeting, already postponed to December due to the floods, is likely to be further delayed by the same manufactured legal dispute that has crippled bilateral talks for three years. Senior army commanders involved in the GBC talks align themselves with nationalist politicians rather than the foreign ministry, viewing haste as dangerous for all officials involved.²⁴⁶ Without a government determined to resolve this issue, the ICJ's decision has not been complied with, Thailand's international standing suffers, and Cambodia tells the ICJ and Indonesia that it has done everything necessary to comply with the court order.²⁴⁷

With the border situation calm for now, ASEAN leaders at their nineteenth summit, in Bali 17-19 November, were easily able to side step the Thai-Cambodian conflict. The written communiqué from the session called on both countries to solve the dispute by using "their existing bilateral mechanism with the appropriate engagement of the current Chair of ASEAN". This in effect endorsed an ongoing role for Indonesia, but a low profile one. The leaders also noted the "importance" of the ICJ's July 2011 order on provisional measures, which included cooperation within ASEAN. While not forgotten, the issue was where many ASEAN members wanted it to be: no longer headline news but rather relegated to three sentences on paragraph 145 of the communiqué.²⁴⁸

Yingluck was more fortunate than her immediate predecessor, as unlike at ASEAN's May meeting, the Cambodian delegation did not bring up the subject during official events. The Thai and Cambodian leaders did not even

2 November 2011; Crisis Group email correspondence, diplomat, Bangkok, 4 November 2011.

²⁴⁰ Wassana Nanuam, "Brickbats last year, bouquets now", *The Bangkok Post*, 10 November 2011.

²⁴¹ Crisis Group interview, senior Cambodian official, Phnom Penh, 7 October 2011.

²⁴² "สุรพงษ์ ชีวมติศาลโลกถอนกำลัง", *กรุงเทพธุรกิจ*, 16 พฤศจิกายน 2554 ["Surapong stated ICJ demand troops be withdrawn", *Krungthep Thurakit*, 16 November 2011].

²⁴³ Crisis Group interview, Khamnoon Sitthisaman, senator, Bangkok, 16 November 2011.

²⁴⁴ Crisis Group interview, senior foreign ministry official, Bangkok, 16 November 2011.

²⁴⁵ Thai Supreme Commander General Thanasak Patimaprakorn, news conference, Bangkok, 22 November 2011. Crisis Group translation from recording.

²⁴⁶ Crisis Group interview, senior military commander, Bangkok, 16 November 2011.

²⁴⁷ Crisis Group email correspondence, Phay Siphon, government spokesman, Phnom Penh, 12 November 2011.

²⁴⁸ "Chair's Statement of the 19th ASEAN Summit", Bali, 17 November 2011.

hold a bilateral meeting.²⁴⁹ In stark contrast to the confrontation with Abhisit in Jakarta in May, Hun Sen helped give the border conflict a low-profile by ignoring it in all fifteen of his formal speeches in and around the event.²⁵⁰ The prime minister, who had never missed an opportunity to attack the previous Thai government, removed the issue of the border conflict from his talking points, which months before he had called a “large-scale war”.²⁵¹ The silence at the top makes for a clear message to all those below that there is “officially” no conflict.

Nevertheless, there is still no formal ceasefire, and after the ICJ rejected Thailand’s request to dismiss its re-interpretation of the 1962 ruling, the Preah Vihear case is still pending. Before a final judgment on the merits, dates will need to be set for written and oral proceedings.²⁵² Though parties have the ability to influence, in their own interests, the speed by which a case moves through the system, a final ruling could be some years away given the court’s caseload.²⁵³ The decision the ICJ eventually renders may also be a very narrow legal judgment that does not resolve the conflict.

Some in Thailand argue that Cambodia’s best course would be to withdraw the case and agree on a joint development area around the temple as border talks continue. This is at best wishful thinking and at worst verges on hypocrisy when it comes from PAD-aligned politicians or the military.²⁵⁴ Noppadon, the former foreign minister and now Pheu Thai party adviser, said the Thai government would not readily take on the pain that must be involved in clearing up the problems created by the PAD and the Demo-

crat Party.²⁵⁵ For its part, Cambodia has the moral high ground in the conflict and will not readily surrender it.²⁵⁶

²⁴⁹ Supalak Ganjanakhundee, “Yingluck’s Charm Goes a Long Way in Indonesia”, *The Nation*, 24 November 2011.

²⁵⁰ “Speeches Delivered by Samdech Techo Hun Sen during the 19th ASEAN Summit, ASEAN +3 Summit, ASEAN-U.S. Summit, ASEAN UN Summit and Summits with Individual Partner in Bali, Indonesia”; “Speeches Delivered by Samdech Techo Hun Sen during the Third Mekong-Japan Summit”; and “Speeches delivered by Samdech Techo Hun Sen during the 6th East Asia Summits in Bali, Indonesia”, *Cambodia New Vision*, 19 November 2011.

²⁵¹ For example, the 2011 fighting left thousands of items of unexploded ordnance in Cambodia, but the prime minister never mentioned this in his speech to a conference on the anti-personnel mine convention in Phnom Penh later in November. “Opening Statement”, 27 November 2011.

²⁵² Crisis Group email correspondence, information department, ICJ, The Hague, 9 November 2011.

²⁵³ Crisis Group interview, diplomat, The Hague, 21 October 2011.

²⁵⁴ Crisis Group interviews, Khamnoon Sitthisaman, senator, Bangkok, 16 November 2011; senior Thai military officer, 17 November 2011.

²⁵⁵ Crisis Group interview, Noppadon Pattama, former foreign minister, 29 August 2011.

²⁵⁶ Crisis Group interview, diplomat, Phnom Penh, 7 October 2011.

VII. CONCLUSION: DID ASEAN SUCCEED?

Indonesia set two benchmarks for success in its ASEAN-sponsored facilitation: it aimed to end hostilities, then to encourage the resumption of negotiations.²⁵⁷ It also wanted to deploy observers, but that step was tactical, not fundamental. How can the two benchmarks be measured and verified?

First, hostilities will not truly have been ended until there is a written ceasefire and observers are present to witness the withdrawal of troops as mandated by ASEAN and ordered by the ICJ. With a history of broken verbal ceasefires, the existing gentlemen's agreements between front-line commanders is insufficient. As Natalegawa noted in February, a stronger pact involving higher-level political and military leaders should be sought. Observers should be prepared to stay until the two countries agree on the border around Preah Vihear through a treaty that is properly approved by both countries. Cambodia and Vietnam have set a target of 2012 to finish demarcating their border.²⁵⁸ Given the seriousness of the Preah Vihear conflict, the same urgency should be applied to the frontier with Thailand.

Secondly, negotiations need to produce actions as well as words. The JBC's joint survey teams must be able to go back to all sectors, especially around Preah Vihear, to do their work. Their progress can be measured in demarcated boundaries, published maps and signed agreements. The dispatch of surveyors has a dual purpose; it would also demonstrate that hostilities have ceased, as their work cannot be done in a battle zone. A resumed survey would reset the clock to June 2008, before the World Heritage listing and initial outbreak of fighting. It would also be a solid and verifiable indicator that the first benchmark set by Indonesia had been met.

With hindsight, it is clear ASEAN waited too long to intervene. The Singapore chair had a difficult call to make in 2008, as there had not yet been any violence. The bilateral option still had credibility in a way it no longer does. Of course, Thailand, as the chair from mid-2008 through 2009, could not act in a dispute to which it was party. Vietnam in 2010, however, should have shown more concern. ASEAN, if it is to do better in future cases, needs to focus more on the substance of being a community, not just the form. The threshold to intervene in such conflicts needs to be much lower. The deployment of troops by a mem-

ber state to the border of another member state should be an obvious trigger for a political intervention.

Indonesia's peacemaking efforts should be encouraged and continued as this conflict is not over. On its own terms, Indonesia may not have succeeded, but it may well yet reach its objectives as it continues mediation beyond the end of its chairmanship. In the meantime, its role could have a calming effect. ASEAN did not have a realistic option to do nothing or recuse itself when two members violated its own fundamental documents treaty and charter in 2011, but it was lucky that Jakarta was in the chair when major hostilities erupted. Not all members were comfortable with such activism from the organisation's largest member, but if Indonesia successfully deploys observers, it would be tangible evidence that ASEAN can be responsible for its own peace and security. In the meantime, a valuable precedent has been set that gives ASEAN a model for how to respond when tensions next arise. The challenge will be not to allow this to be forgotten or sidelined as the ASEAN Troika experiment was. Another difficulty will be maintaining momentum with Cambodia now in the chair and actively playing the matter down.

To fulfil its potential, ASEAN needs to do what it has already said it wants to achieve in terms of providing for its own peace and security, only with a greater sense of urgency and clarity of purpose. In July 2011, its leaders announced they would "enhance its capacity to ensure greater peace, security and stability in the region, including on conflict management and resolution".²⁵⁹ This builds on the 2009 Political-Security Community Blueprint that called for a strategy to prevent disputes and conflicts from arising between members "that could potentially pose a threat to regional peace and stability".²⁶⁰ To this end, plans are underway to set up the ASEAN Institute for Peace and Reconciliation (AIPR), the terms of reference for which are to be finalised by the twentieth summit in Cambodia in July 2012. Senior officials still view it as more a vehicle for research and training than for active peacemaking.²⁶¹ To make a difference, the new body will have to be conceived in much bolder terms.

The Thai-Cambodian border conflict underlines that ASEAN should be prepared to take more pre-emptive and urgent action to prevent open hostilities between member states. Its foreign ministers in special session need to put more political force behind their collective decisions. It cannot

²⁵⁷ Marty Natalegawa, "JFCC Discussion", op. cit.

²⁵⁸ Crisis Group interview, Var Kim Hong, senior minister in charge of border affairs, Phnom Penh, 6 October 2011.

²⁵⁹ "ASEAN Community in a Global Community of Nations", chair's statement, eighteenth ASEAN summit, Jakarta, 8 May 2011.

²⁶⁰ "ASEAN Political-Security Community Blueprint", ASEAN Secretariat, June 2009, p. 10.

²⁶¹ Crisis Group email correspondence, ASEAN adviser, 9 November 2011.

count on always being fortunate enough to have a chair willing to give peacemaking a chance, as Indonesia has been in 2011. It needs to devise ways to intervene not dependent on annual rotation. The blueprint calls for the new institute to develop a pool of regional experts to assist in conflict management and resolution.²⁶² That is constructive, but rather than create merely a think tank, ASEAN should do more to develop its own envoys from the ranks of its serving and ex-officials, while using the institute as its secretariat for regional peacemaking. This is not a new concept – in effect the words are already on ASEAN’s own books – but the regional organisation must still demonstrate its determination to succeed in conflict prevention and resolution.

Bangkok/Jakarta/Brussels, 6 December 2011

²⁶²“Blueprint”, op. cit.; see Section B.2.2., vii.

APPENDIX A

MAP OF THAI-CAMBODIAN LAND BORDER



APPENDIX B

KEY FIGURES IN THAI-CAMBODIAN BORDER DISPUTE

Sompong Amornvivat

Thai foreign minister (September-December 2008)

Sok An

Cambodian deputy prime minister (since 2004)

Tej Bunnag

Thai foreign minister (July-September 2008)

Prayuth Chan-ocha, General

Thai army commander (since 2010)

Saraj Chavanaviraj

Thai foreign minister (September 2008)

Chea Dara, General

Deputy commander of the Cambodian armed forces (since 2010)

Virasakdi Futrakul

Former permanent secretary of Thai foreign ministry (2007-2009)

Songkitti Jaggabatara, General

Supreme commander of the Thai armed forces (2008-2011)

Asda Jayanama

Thai co-chair, Joint Boundary Commission (2010-2011)

Hun Manet, Major General

Son of the Cambodian Prime Minister Hun Sen and deputy commander of Cambodian armed forces' infantry division (since 2011)

Hor Namhong

Cambodian foreign minister (since 1998) and deputy prime minister (since 2004)

Marty Natalegawa

Indonesian foreign minister (since 2009)

Boonsrang Niumpradit, General

Supreme commander of the Thai armed forces (2006-2008)

Anupong Paochinda, General

Thai army commander (2007-2010)

Thanasak Patimapakorn, General

Supreme commander of the Thai armed forces (since 2011)

Noppadon Pattama

Thai foreign minister (February-July 2008)

Kasit Piromya

Thai foreign minister (2008-2011)

Surin Pitsuwan

ASEAN secretary general (since 2007)

Yuthasak Sasiprapa, General

Thai defence minister (since 2011)

Surakiart Sathirathai

Thai foreign minister (2001-2005)

Hun Sen

Cambodian prime minister (since 1985)

Thaksin Shinawatra

Thai prime minister (2001-2006)

Yingluck Shinawatra

Thai prime minister (Since 2011)

Veera Somkhwamkid

Leader, ultra-nationalist Thai Patriots Network

Bandit Sotipalalit

Thai co-chair, Joint Boundary Commission (since 2011)

Samak Sundaravej

Thai prime minister (January-September 2008)

Vasin Teeravechyan

Thai co-chair, Joint Boundary Commission (2008-2010)

Suthep Thaugsuban

Thai deputy prime minister (2008-2011)

Nipat Thonglek, General

Former director, Border Affairs, Thai Armed Forces HQ

Surapong Tovichakchaikul

Thai foreign minister (since 2011)

Abhisit Vejjajiva

Thai prime minister (2008-2011)

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North East Asia

- China's Thirst for Oil*, Asia Report N°153, 9 June 2008 (also available in Chinese).
- South Korea's Elections: A Shift to the Right*, Asia Briefing N°77, 30 June 2008.
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- China's Growing Role in UN Peacekeeping*, Asia Report N°166, 17 April 2009 (also available in Chinese).
- North Korea's Chemical and Biological Weapons Programs*, Asia Report N°167, 18 June 2009.
- North Korea's Nuclear and Missile Programs*, Asia Report N°168, 18 June 2009.
- North Korea: Getting Back to Talks*, Asia Report N°169, 18 June 2009.

- China's Myanmar Dilemma*, Asia Report N°177, 14 September 2009 (also available in Chinese).
- Shades of Red: China's Debate over North Korea*, Asia Report N°179, 2 November 2009 (also available in Chinese).
- The Iran Nuclear Issue: The View from Beijing*, Asia Briefing N°100, 17 February 2010 (also available in Chinese).
- North Korea under Tightening Sanctions*, Asia Briefing N°101, 15 March 2010.
- China's Myanmar Strategy: Elections, Ethnic Politics and Economics*, Asia Briefing N°112, 21 September 2010 (also available in Chinese).
- North Korea: The Risks of War in the Yellow Sea*, Asia Report N°198, 23 December 2010.
- China and Inter-Korean Clashes in the Yellow Sea*, Asia Report N°200, 27 January 2011 (also available in Chinese).
- Strangers at Home: North Koreans in the South*, Asia Report N°208, 14 July 2011 (also available in Korean).
- South Korea: The Shifting Sands of Security Policy*, Asia Briefing N°130, 1 December 2011.

South Asia

- After Bhutto's Murder: A Way Forward for Pakistan*, Asia Briefing N°74, 2 January 2008.
- Afghanistan: The Need for International Resolve*, Asia Report N°145, 6 February 2008.
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- Nepal's Election: A Peaceful Revolution?*, Asia Report N°155, 3 July 2008 (also available in Nepali).
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- Reforming Pakistan's Police*, Asia Report N°157, 14 July 2008.

- Taliban Propaganda: Winning the War of Words?*, Asia Report N°158, 24 July 2008.
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- India and Sri Lanka after the LTTE*, Asia Report N°206, 23 June 2011.
- The Insurgency in Afghanistan's Heartland*, Asia Report N°207, 27 June 2011.
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- Reforming Pakistan's Prison System*, Asia Report N°212, 12 October 2011.
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- Timor-Leste: Security Sector Reform*, Asia Report N°143, 17 January 2008 (also available in Tetum).
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- Myanmar: Major Reform Underway*, Asia Briefing N°127, 22 September 2011 (also available in Burmese).
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- Timor-Leste's Veterans: An Unfinished Struggle?*, Asia Briefing N°129, 18 November 2011.
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Former Board Members who maintain an association with Crisis Group, and whose advice and support are called on (to the extent consistent with any other office they may be holding at the time).

Martti Ahtisaari Chairman Emeritus	Mong Joon Chung	Timothy Ong	Grigory Yavlinski
George Mitchell Chairman Emeritus	Pat Cox	Olara Otunnu	Uta Zapf
HRH Prince Turki al-Faisal	Gianfranco Dell'Alba	Lord (Christopher) Patten	Ernesto Zedillo
Hushang Ansary	Jacques Delors	Shimon Peres	
Óscar Arias	Alain Destexhe	Victor Pinchuk	
Ersin Arıoğlu	Mou-Shih Ding	Surin Pitsuwan	
Richard Armitage	Gernot Erlor	Cyril Ramaphosa	
Diego Arria	Marika Fahlén	Fidel V. Ramos	
Zainab Bangura	Stanley Fischer	George Robertson	
Shlomo Ben-Ami	Malcolm Fraser	Michel Rocard	
Christoph Bertram	I.K. Gujral	Volker Rüehe	
Alan Blinken	Max Jakobson	Mohamed Sahnoun	
Lakhdar Brahimi	James V. Kimsey	Salim A. Salim	
Zbigniew Brzezinski	Aleksander Kwasniewski	Douglas Schoen	
Kim Campbell	Todung Mulya Lubis	Christian Schwarz-Schilling	
Jorge Castañeda	Allan J. MacEachen	Michael Sohlman	
Naresh Chandra	Graça Machel	Thorvald Stoltenberg	
Eugene Chien	Nobuo Matsunaga	Leo Tindemans	
Joaquim Alberto Chissano	Barbara McDougall	Ed van Thijn	
Victor Chu	Matthew McHugh	Simone Veil	
	Miklós Németh	Shirley Williams	
	Christine Ockrent		