



**THE PREAH VIHEAR DISPUTE: THE ROLE OF ASEAN  
MECHANISMS AND NORMS IN SETTLEMENT  
ATTEMPTS**

**BY**

**SONGKIAT KULWUTHIVILAS**

**A THESIS SUBMITTED IN PARTIAL  
FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE  
OF MASTER OF ARTS (ASEAN STUDIES)  
PRIDI BANOMYONG INTERNATIONAL COLLEGE  
THAMMASAT UNIVERSITY  
ACADEMIC YEAR 2021  
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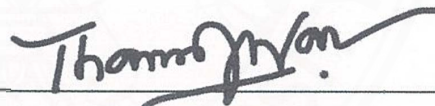
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THE PREAH VIHEAR DISPUTE: THE ROLE OF ASEAN MECHANISMS AND  
NORMS IN SETTLEMENT ATTEMPTS

was approved as partial fulfillment of the requirements for  
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## ABSTRACT

This thesis studied the ASEAN framework for addressing territorial dispute between Cambodia and Thailand over the Preah Vihear Temple. In February 2011, the two nations' military forces engaged in a severe skirmish. ASEAN sought to resolve the conflict via its original framework, the ASEAN Ministerial Meeting, but military troops clashed once again in April 2011. This incident demonstrated ASEAN's failure, and hence this thesis examined the reasons of ASEAN's failure. The thesis identifies two primary reasons for ASEAN's failure: the first was the noncooperation of ASEAN members and violations of the ASEAN Way by political actors in the two-nation pursuing their own political goals and propagating nationalism and wound history. The second problem was the inadequacy of ASEAN's mechanisms and norms. ASEAN has never settled a disagreement using official processes such as the High Council. Additionally, ASEAN lacks the necessary powers for enforcing or disciplining member states. Another impediment to ASEAN's operations is the principle of non-interference in domestic affairs, as shown by Thailand's refusal to accept the observation team. For these reasons, ASEAN is still a long way from fully establishing a security community.

**Keywords:** ASEAN, Conflict management, Preah Vihear Temple

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Finally, I hope that my thesis will be beneficial material for future scholars who are interested in ASEAN collaboration to enhance and establish new concepts and theories for reflecting on the problem and finding ways to better our region, Southeast Asia.

Songkiat Kulwuthivilas

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- 1.2 Research Questions
- 1.3 Research Objectives
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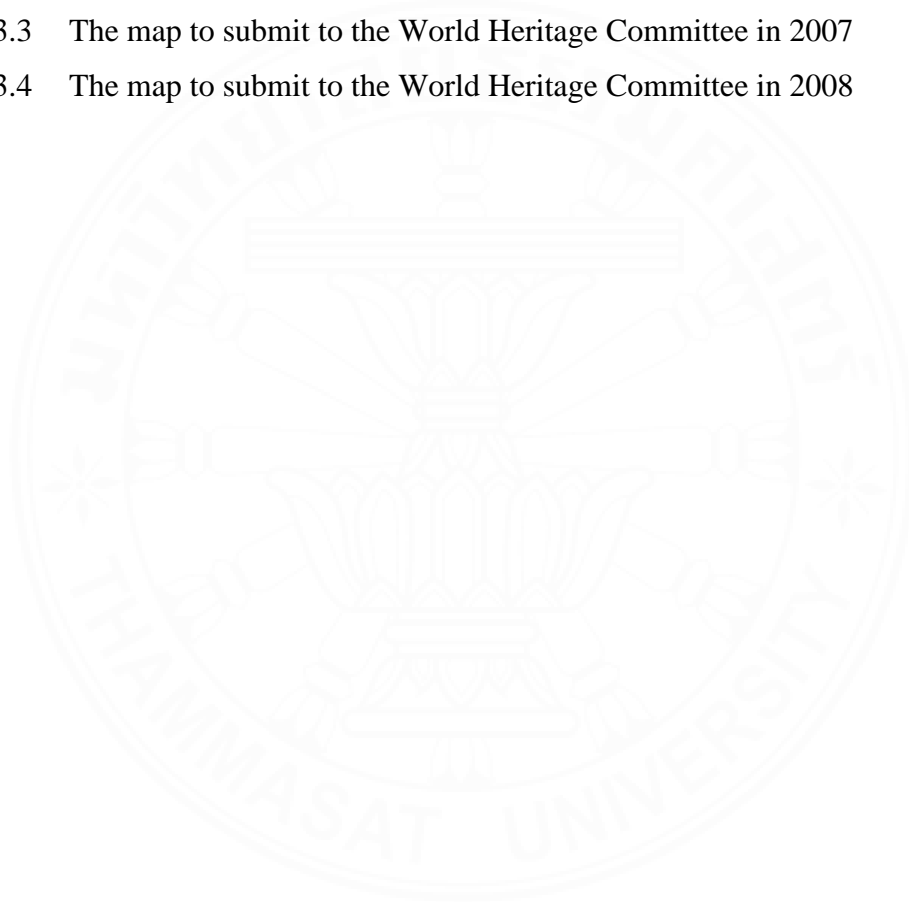
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## **CHAPTER 1**

### **INTRODUCTION**

#### **1.1 Problem and Significance**

The current version of the Cambodia-Thailand conflict over the Preah Vihear Site started in 1954 when Thailand deployed soldiers to seize the temple after France withdrew its forces from Indochina. The Cambodian government addressed letters to Thailand asking that they leave the temple, but Thailand consistently disregarded their demands. Finally, in 1959, Cambodia severed diplomatic ties with Thailand and brought the issue to the International Court of Justice (ICJ) in The Hague (Shrestha, 2013, p.13). The ICJ declared on June 15, 1962, that the temple of Preah Vihear was located in Cambodian territory by a vote of nine to three. Thailand agreed to cede control of the temple to Cambodia and withdrew its soldiers. On the other hand, Thailand continued to claim the areas immediately around the temple and has done so ever since. The issue remains unresolved since the two nations have distinct sources of evidence to claim ownership over Preah Vihear Temple and the surrounding region (Puangthong, 2013, p.41-42).

Preah Vihear Temple became a source of worry 46 years later, in 2008, when Cambodia tried to declare the ancient temple, including the disputed area surrounding the temple (4.6 km<sup>2</sup>), as a World Heritage Site. Thailand, predictably, opposed Cambodia's effort. Even after Cambodia decided not to include the disputed site in its World Heritage nomination, Thailand opposed Cambodia's request. It caused widespread discontent throughout Cambodia. When the two nations boosted their force presence in the region, tensions immediately increased. Finally, in 2011, the two nations' military forces fought severely, resulting in fatalities, injuries, a halt in tourism, and significant damage to both countries. As a result, Cambodia brought the issue back to the ICJ on April 28 that year, asking that the ICJ order Thai soldiers out of the region and interpret the 1962 decision based on the position of the boundary in the disputed territory (Puangthong, 2013, p.85).

ASEAN tried to serve as a mediator for the two nations and minimize the regional crisis in February 2011. Indonesia, as ASEAN's chair, summoned a meeting

of foreign ministers to reach a resolution. And at last, the two countries reached an agreement on a cease-fire, with Indonesian monitors stationed in the disputed zone (International Crisis Group, 2011, p.19-20). ASEAN seemed to be able to handle the issue on behalf of its member nations. However, ASEAN's efforts were futile since the two countries military forces resumed combat in April. Cambodia brought its case to the ICJ at the time to establish a better dispute-resolution system. As a consequence, the goal of this thesis is to determine why ASEAN was unable to resolve the Cambodia-Thailand border conflict and how ASEAN's mechanisms may be enhanced.

The Preah Vihear Dispute is also a unique challenge for ASEAN because it arose from an internal conflict between ASEAN members following the ASEAN nations' decision to deepen their integration as a community by 2015 (Bali Concord II, 2003) and the launch of the ASEAN Charter (2008) as a regional constitution. Furthermore, ASEAN was founded in 1967 to live in peace with one another, resolve conflicts amicably rather than via force, and cooperate for shared goals, according to the ASEAN founding document, the Bangkok Declaration (Severino, 2008, p.2). A dispute between members puts these ASEAN goals and objectives in jeopardy. It demonstrates that ASEAN and its institutions are still inadequate to preserve regional peace and security. This may not be ASEAN's final disagreement; therefore, can ASEAN handle the next crisis any better than it did the Preah Vihear issue in 2011?

## **1.2 Research Questions**

1. What role did ASEAN play in resolving the Preah Vihear conflict, and what methods were used?
2. Why was ASEAN unable to resolve the Preah Vihear conflict?

## **1.3 Research Objectives**

1. This research will study ASEAN's role, mechanisms and norms in its attempt to settle the Preah Vihear dispute.

2. This research aims to ascertain the factors that contributed to ASEAN's inability to resolve the Preah Vihear conflict.

#### 1.4 Literature Review

There will be two collections of related literature. The first category has anything to do with the Preah Vihear conflict or discusses it explicitly.

**Charnvit Kasetsiri, Pou Sothirak and Pavin Chachavalpongpun** (2013) wrote of the abuse of history and overlap of domestic politics into Thai-Cambodian relations.

History is crucial in Thai-Cambodian ties. The violent confrontation between Thailand and Cambodia is based on historical revisionism. Both nations have had awful experiences in their past, which have led to hate and suspicion of one another. In Thailand's case, it had terrible experiences losing territory during the colonial period; therefore, the loss of Prasat Phra Wihan (Preah Vihear Temple) to Cambodia reignited historical hatred toward its neighbour.

On the other hand, Cambodia has a painful history of Thai invasions and interference; hence, Cambodia negatively views Thailand as the historical invader. State education and the media have helped to keep this embedded history alive, replicated, and polished. The political elites of both countries continue to utilize history as a political weapon to further their current political goals (p.16-17). The instance of Preah Vihear exemplifies the fragility of Thailand-Cambodia ties. The sense of hostility and suspicion from each country's history has not been laid to rest but has instead been fanned. Thailand's domestic instability has harmed its relations with Cambodia, as various factions have continued to utilize this neighbour as a political pawn. It has seemed as if Thai and Cambodian officials have exploited their turbulent history, resurrecting old controversies as bilateral ties wax and wane (p.45).

The Thai domestic political crisis spilt over into Thai-Cambodian relations, establishing the circumstances for a hostile relationship. Anti-Thaksin forces used the Preah Vihear issue to destabilize Thaksin-backed administrations. In the end, both countries decided that armed force to settle the conflict was their last option. This jeopardized bilateral relations between Cambodia and Thailand, as well

as ASEAN's overall peace and stability. The conflict, created mainly by the repercussions from Thai domestic political infighting, drew widespread criticism and instilled patriotic views in Cambodians and Thais. Furthermore, the boundary issue has resurrected the question of Preah Vihear's ownership, causing Cambodia to petition the International Court of Justice (ICJ) to reconsider the 1962 judgement (p.46).

**Puangthong R. Pawakapan** (2013) noted earlier plans for cooperation in tourism and the overlap of Thai domestic politics.

Thailand-Cambodia collaboration on the Preah Vihear temple is consistent with Thailand's aim to establish itself as a regional economic hub and leader. Although the public perception of the temple dispute is that it is a matter of territorial sovereignty, Thailand's collaboration with Cambodia on the World Heritage site nomination comes from Thailand's cross-border tourist policy, which evolved into a significant component of regional integration policy under the auspices of the Greater Mekong Subregion (GMS) and the Ayeyawaddy-Chaopraya-Mekong Economic Cooperation Strategy (ACMECS). However, the People's Alliance for Democracy's (PAD) ultra-nationalist movement fought directly against Thailand's post-Cold War policy in the area. Rather than serving as a symbol of friendship, the temple became a focal point of hostility between Thailand and Cambodia. PAD's attempt to derail the temple listing was successful partly because it distorted conservative-nationalist history over the lost regions. The PAD campaign polarized Thai society and brought the country dangerously close to conflict with Cambodia.

The second group of literature emphasizes the ASEAN's participation and strategies for resolving the Preah Vihear issue. ASEAN principles, norms, regionalism and the security community are also mentioned here.

**International Crisis Group** (2011) criticized ASEAN's lack of preparation and inexperience.

The Thai-Cambodian border dispute highlights the need for ASEAN to prevent open conflicts between member nations. Its Foreign Ministers must put more political weight behind their collective judgments in the extraordinary session. It can't always depend on having a chair ready to give peacemaking a go, as Indonesia did in 2011. It must create methods of intervening that are not dependent on the yearly cycle

of ASEAN Chairmanship. In addition to employing the ASEAN Secretariat for regional peacemaking, ASEAN should do more to create its own specialists to help in conflict management and resolution.

**Donald E. Weatherbee** (2005) carefully described and then criticized the “ASEAN Way.”

The term “ASEAN Way” refers to what proponents of ASEAN assert is Southeast Asia’s unique approach to interstate relations. It is predicated on the assumption of a shared interest in the maintenance of a harmonious, peaceful and prosperous regional order. In the ASEAN Way, it is assumed that nations in Southeast Asia would work together since they have adopted comparable moral standards for themselves. The ASEAN Way is characterized by mutual respect for sovereign power and abstinence from force against one another. Two Indonesian terms have formed part of ASEAN’s diplomatic lexicon to describe how ASEAN interests are managed: *musjawarah*, which means “consultation,” and *mufakat*, which means “consensus.” It is not a technique for resolving problems. It is a strategy for resolving a dispute that relies on informal amicable discussions in structurally unstructured environments rather than adversarial tactics in legally grounded institutions.

The ASEAN Way’s application to intra-ASEAN disputes and ASEAN’s foreign ties serves two strategic objectives. The first is to avoid allowing bilateral conflicts between ASEAN members to jeopardize regional stability and ASEAN’s functioning. The second is to avoid allowing ASEAN-non-ASEAN relations to have a detrimental effect on intra-ASEAN relations.

**Eero Palmujoki** (2001) mentions the concept of security in ASEAN.

Two historical causes have shaped the ASEAN security structure that is evolving. The first element is the Cold War, and the second is the desire to stabilize Southeast Asia’s post-colonial ties. ASEAN’s initial two texts provide the foundational principles for ASEAN and have evolved into the ASEAN member states’ code of conduct. To begin, the 1967 Bangkok Declaration shows an endeavour to preserve regional peace and stability. Second, the Declaration of the Zone of Peace, Freedom, and Neutrality (ZOPFAN) was declared in 1971, and it emphasizes respecting each state’s sovereignty and territorial integrity, not using force, peacefully resolving disputes, equal rights and self-determination, and not intervening in the

internal affairs of other states. This is what the ZOPFAN means. During the Cold War, ZOPFAN also worked hard to keep Southeast Asia safe (p.63).

ASEAN's need to preserve the collective and national security of its members became obvious in 1975, when communists seized complete control of Indochina. Throughout Vietnam's occupation of Cambodia from 1979 to 1991, ASEAN fought aggressively to safeguard Southeast Asian stability by using international diplomatic and economic pressure on Vietnam to withdraw its forces from Cambodia. Thus, the Cambodian example shows how ASEAN's foreign relations are based on the idea of collective security and how ASEAN collaboration is based on rules and institutions. (p.63-64).

The ASEAN cooperation notion of security is not the sum of the security postures of the member states; on the contrary, it shows an institutionalistic concern for the overall ASEAN cooperation, rather than the security interests of individual members. Therefore, ASEAN's primary security responsibility has always been focused on ASEAN's internal relations and regional security issues. The main determinants of security and peace in the ASEAN region are the economic growth and social stability of the member states (p.64).

ASEAN's security policy also places a premium on national sovereignty. The 1980s anti-Vietnam War opposition exemplifies the emphasis on national sovereignty. During the 1990s, ASEAN embraced the security concept of constructive engagement, which placed a premium on state sovereignty. In the US reconciliation with Communist China, the USA served as a role model for the notion of constructive engagement. The concept's central premise is to strengthen economic and political connections while simultaneously promoting American political principles and free markets in order to influence China and foster peaceful collaboration. ASEAN also use this notion but does not aim to enforce political beliefs. This idea explains why ASEAN places a premium on non-intervention in political and social matters (p.64-65). Former dictatorships such as Myanmar demonstrate the value of a positive engagement strategy.

**Lee Jones** (2012) points out the frequent intervention in ASEAN states despite the hallowed principle of non-interference.

During the Cold War, the ASEAN elite devised the concept of non-interference in order to defend the capitalist socio-economic order and oppose communism. ASEAN employed this approach to resolve interstate conflicts and to shield internal communist movements from external backing. During that time, ASEAN member states welcomed Western engagement and assistance with their own state-building endeavours. However, after the Cold War, the situation shifted, with ASEAN society became more diverse and the economic and geopolitical environment became more flexible and complicated. Non-interference was still employed to limit the extent of political conflict and to safeguard state sovereignty against the West's new interventions. However, ASEAN continued to meddle in the internal affairs of some member nations, such as Cambodia and Burma. In 1997, ASEAN intervened in Cambodia to reinstate the coalition government. ASEAN encouraged political transformation in Burma via the lens of constructive engagement (p.212-213).

Following the 1997–2008 financial crisis end for the next decade, ASEAN placed a premium on good governance, democracy, and human rights in rehabilitating ASEAN's image. When internal or bilateral crises jeopardize the ASEAN nations' domestic or international status, central ASEAN states now routinely advocate for regional governance, regardless of non-interference. The Thai-Cambodia border dispute is an excellent example of ASEAN's proactive participation in seeking to resolve the conflict (p.214-215).

Although ASEAN states have frequently interfered in the internal affairs of other Southeast Asian states, the principle of non-interference remains critical as a technology of power for the dominant social forces within ASEAN states to limit the scope of political conflicts and maintain particular forms of social, economic, and political order.

**Sudkanueng Nivesratana** (2005) mentioned ASEAN political and security cooperation in her research.

The fundamental objective of this study is to trace the growth of ASEAN political and security cooperation and the essential role that collaboration played in establishing the ASEAN Security Community. Since the 1967 Bangkok Declaration, ASEAN has issued numerous declarations, treaties, and agreements, including the Zone of Peace, Freedom, and Neutrality (ZOPFAN), the Treaty of Amity and



Cooperation (TAC), and the ASEAN Concord, all of which have aided in the consolidation of ASEAN's political and security cooperation and have also become ASEAN's fundamental principles. Throughout the Cold War, two forces (internal and external) affected the growth of ASEAN's political and security cooperation. Internally, member nations sought to reduce domestic and regional conflict and to improve their negotiating position with the superpower. Externally, the roles or policies of the big powers, including the United States of America, China, and the Soviet Union, had a significant impact on ASEAN (p.140-141). For instance, the US's diminished participation during the Vietnam War created a power vacuum in this region.

ASEAN expanded its organization in the post-Cold War period with the entrance of the Indochina nations and Burma in order to foster regional harmony and safeguard Southeast Asia's peace and stability. Nonetheless, the ASEAN expansion has inevitable negative consequences. It was not simple to reach consensus amongst old and new members due to the group's diverse political regimes and beliefs and the members' various degrees of economic and social development and historical histories. Additionally, there were additional obstacles to ASEAN political and security cooperation, including terrorism and human rights concerns; nonetheless, these obstacles drove ASEAN ahead and bolstered the ASEAN Security Community's credibility as a viable functioning arrangement (p.142-143).

Nonetheless, two major impediments to ASEAN political cooperation and the establishment of a security community exist. To begin, the restriction of the principle of non-interference makes it more difficult for members to resolve domestic concerns that impact regional security, such as human rights violations. Second, the interstate conflict between ASEAN countries occurs far too frequently (p.145).

**Alan Collins** (2003) summarized achieving security in the ASEAN Way.

The ASEAN Way refers to ASEAN's informal, consensus-based decision-making process and the ultimate significance of public unity (p.131). The casual style of the ASEAN Way is defined by three rules. The first is that decision-making is accomplished by reaching an agreement. The second is that if no compromise can be reached, the matter is put on hold. The third is that members are willing to put the interests of the group ahead of their own (p.133).

The ASEAN Way is based on the idea of non-interference. Non-interference prevents ASEAN members from openly criticizing one other, particularly when it comes to human rights violations. State elites have assisted each other in some situations in order to consolidate power and establish legitimacy for their respective regimes. This may be observed in a number of ways, such as when ASEAN countries first disregarded the Peoples' Power rebellion in the Philippines in 1986, therefore indirectly supporting the Marcos dictatorship, or when ASEAN members failed to respond to the military crackdown in Thailand in 1992. As a consequence, ASEAN member states have some confidence in their capacity to manage internal security concerns, knowing that their neighbors are unlikely to interfere. As a consequence, the region's elites have more resources to devote to their own stability and security, which they often do harshly (p.138-139).

Because its different state elites were unwilling to relinquish a non-interference strategy that had served them well for more than thirty years of the association's existence, ASEAN rejected flexible participation and constructive intervention. Since 1967, the Bangkok Declaration has included the notion of non-interference into ASEAN norms of conduct. This means that state elites may build and run their countries without fear of their neighbors exploiting internal weaknesses, such as ethnic separatist demands or communist insurgencies during the Cold War. As a result, among the state elites, at least a minimum level of shared security has been attained (p.153).

## **1.5 Theoretical and Conceptual Frameworks**

### **1.5.1 Linkage Politics**

The linkage politics of James N. Rosenau (1969) serves as the initial theoretical and conceptual foundation for this thesis. He was particularly interested in the dynamics of international politics and the intersection of home and foreign policy. This theory might explain for the factors that led to the Thailand-Cambodia dispute over Preah Vihear Temple, namely how both countries' internal politics impacted their relationship. Therefore, linkage politics is a term that refers to the process of describing and evaluating the interdependence and connectivity of national and

international systems. On one side of the border, a phenomenon may cross or connect to feelings on the other. Thus, a connection is any recurring pattern of behaviour that starts in one system and is responded to in another.

The first stage of connection as an output and the final stage of linkage as an input will be categorized according to their location within a polity (national political system) or in its external environment (international system). The policy outputs are defined as those behavioural sequences that begin inside a polity and are either supported or culminated by its environment, whereas the environmental inputs are defined as those behavioural sequences in the external environment that the polity outputs generate. Similarly, environmental output is a sequence of behaviors that originate from the external environment of the government and continue or terminate within the government, while government input is a sequence of behaviors that originate from within the government and are maintained or terminated by environmental output. (p.45).

Rosenau classified the linkage processes into three types (p.46):

“1. A penetrative process happens when people of one polity engage in the political system of another, sharing authority with the penetrated polity. Foreign aid missions, subversive cadres, international organization staff, and corporate representatives are all examples of this process.

2. A reactive process is the polar opposite of a penetrative one. It is created rather than shared authority by recurrent and similar boundary-crossing reactions.

3. An emulative process occurs when political activities in one country are observed and replicated in another.”

The components of linkage frameworks are the polities themselves (internal factors) and external environments (external factors). As for the polities or internal factors, Rosenau categorized them into four groups with 24 types overall (p.51-52):

“1. Actors are any actual persons or groups who engage in the specified set of activities. There are seven kinds of actors:

- 1.1 Executive officials
- 1.2 Legislative officials

- 1.3 Civilian bureaucrats
- 1.4 Military bureaucrats
- 1.5 Political parties
- 1.6 Interest groups
- 1.7 Elite groups

2. Attitudes are mental-emotional states which guide the behaviour of actors. Rosenau specified three kinds of attitudes:

- 2.1 Ideology
- 2.2 Political culture
- 2.3 Public opinion

3. Institutions are stylized patterns or structures of inter-personal relationships through which the activities can be performed. There are eight kinds of institutions:

- 3.1 Executive Branches
- 3.2 Legislatures
- 3.3 Bureaucracies
- 3.4 Military Establishments
- 3.5 Elections
- 3.6 Party Systems
- 3.7 Communications Systems
- 3.8 Social Institutions

4. Processes are interactive relationships with describable patterns through time. There are six kinds of processes:

- 4.1 Socialization and Recruitment
- 4.2 Interest Articulation
- 4.3 Interest Aggregation
- 4.4 Policy-Making
- 4.5 Policy Administration
- 4.6 Integrative-Disintegrative”

As for the external factors in the international system, Rosenau categorized them into six groups (p.61-62):

“1. The Contiguous Environment encompasses all neighbouring polities and their interactions, which may include conflicts, ancient rivalries, and longstanding friendships.

2. The Regional Environment is expanded to encompass the whole region within which a specific polity resides. The region’s size can range from tiny areas (such as Central America or Indochina) to largely continental areas (such as Southeast Asia) to whole continents (such as Europe, Asia). This environment is situated between the immediate and remote surroundings with which polities must interact.

3. The Cold War Environment was defined by political and military tensions between Western Bloc powers (the United States, NATO allies, and others) and Eastern Bloc powers (Soviet Union). These conflicts defined the world’s superpowers and their blocs’ relationships.

4. The Racial Environment encompasses all the external expectations, trends, and conflicts that develop as a result of racial or ethnic group relations.

5. The Resource Environment is comprised of all activities that contribute to the creation, processing, and utilization of commodities and services in any polity’s external universe.

6. The Organizational Environment: As international organizations have grown in size, governments have been forced to pay increasing attention to institutionalized patterns of behaviour in their environment. This concept encompasses all organizations with a structure and personnel distinct from the polities to which they belong, such as the United Nations (UN) and the International Court of Justice (ICJ); however, it excludes the numerous alliances and agreements with elaborate rules for interaction and cooperation, such as NATO”.

In conclusion, the theory of linkage politics may be used to explain the occurrence of the Thailand-Cambodia dispute (2008-2011). Domestic politics in both countries shaped the war and contributed to its complexity in resolving. Preah Vihear’s dispute is a result of the interaction between (internal) polities and the (external) environment. Cambodia and Thailand share an external environment, and as previously said, this is a contiguous environment. This has led to territorial disputes

for a century and the disputes still continue to this day. Moreover, the Preah Vihear Temple is important for nationalistic sense of two countries and is also the painful history however the political actors of two countries exploited a nationalist ideology to further their political interests in the Preah Vihear Temple dispute.

### **1.5.2 Security Community**

The security community serves as the thesis's second theoretical and conceptual framework. This thesis will examine ASEAN's position and the tools open to it for resolving this dispute and establishing a comprehensive political and security community (APSC). The security community serves as a crucial conceptual framework for analyzing ASEAN's attempt to resolve the Preah Vihear dispute. Additionally, ASEAN's inability to resolve this disagreement might cast doubt on the idea of the security community.

Karl W. Deutsch established the notion of the security community in the 1950s when World War II memories were still raw, and the Cold War threatened to erupt; as a result, Deutsch investigated various ways to eliminate war. In his article "Political Community in the North Atlantic Area" (as cited in Nelsen and Stubb, 1994), he presented the notion of a security community, which he believed might obviate the need for conflict and resolve disputes via alternative means. A security community is defined as a group of people who have become integrated, with integration defined as the development of a sense of community accompanied by formal or informal institutions and practices that are sufficiently strong and widespread to ensure reasonably certain peaceful change among group members over an extended period of time. Deutsch desired to adapt this human social component to the nation-state level.

The security community is divided into two types:

An amalgamation occurs when two or more separate entities unite into a single, bigger entity under shared governance. A well-known merged country is the United States of America. An integrated security community must meet 12 requirements to be successful. (Deutsch, 1957 as cited in Nelsen and Stubb, 1994, p.138):

- 1.1 "mutual compatibility of main values
- 1.2 a distinctive way of life

- 1.3 expectations of stronger economic ties or gains
- 1.4 a marked increase in political and administrative capabilities of at least some participating units
- 1.5 superior economic growth on the part of at least some participating units
- 1.6 unbroken links of social communication
- 1.7 a broadening of the political elite
- 1.8 mobility of persons
- 1.9 a multiplicity of ranges of communication and transaction
- 1.10 balance in the flows of communications and transactions between the political units
- 1.11 a not too infrequent interchange of group roles
- 1.12 considerable mutual predictability”

2. The pluralistic security community retains the legal independence of separate governments, and their units can form a security community without being merged. Thus it has two or more supreme decision-making centres. The combined territory of the United States and Canada is an example. For the pluralistic security community, there are three conditions to succeed (Deutsch, 1957 as cited in Nelsen and Stubb, 1994, p.140-141):

- 2.1 “the compatibility of major values relevant to political decision-making
- 2.2 the capacity of the participating political units or governments to respond to each others' needs, messages, and actions quickly, adequately, and without resort to violence
- 2.3 mutual predictability of behaviour”

The concept of a security community, according to Acharya (2009, p.21-22), is different from that of an alliance or a defense community. The need of avoiding conflict must be differentiated from the necessity of collective defense. A security community focuses on a collection of nations' relationship of peace and stability, rather than how they could collectively connect to other states or events. Furthermore, because a security community is founded on shared norms regarding the

use of force, regional coalitions of weak states, such as ASEAN, the Gulf Cooperation Council, or the Economic Community of West African States, will find it difficult to develop self-sufficient collective security systems.

According to Deutsch's theory, ASEAN would be a pluralistic security community because ten independent nation-state governments can form an ASEAN security community without being merged. However, a significant obstacle to ASEAN's theory is the region's internal disputes, such as the Preah Vihear dispute, in which two ASEAN member states chose to use force against one another rather than work out a peaceful settlement. Such instances contradict the security community's stated goal of eradicating conflict. Thus, this thesis uses this concept to provide a baseline against which we can assess whether ASEAN can really evolve into a security community or if it can remain a political community without integration.

## **1.6 Research Methodology**

Secondary sources such as academic books, research papers, journal articles, and news stories from respected websites will be utilized extensively in this study. Primary sources such as the Asean Declaration, the ASEAN political-security plan, and the Treaty of Amity and Cooperation in Southeast Asia (TAC) are also reviewed in the data analysis process.



## **CHAPTER 2**

### **THE EVOLUTION OF ASEAN DISPUTE SETTLEMENT MECHANISMS**

This chapter will review the evolution of ASEAN roles, norms and mechanisms to settle disputes in Southeast Asia since the founding of ASEAN in 1967 until the present day. Although the Preah Vihear dispute was a serious conflict between ASEAN members, it was certainly not the first conflict that happened in the region. ASEAN has been challenged by both internal and external conflicts throughout its 50 years, so it has created many norms and mechanisms and has taken action to deal with these conflicts. Thus, it is a necessity to study the evolution of this function in ASEAN in order to more deeply understand its norms and mechanisms before focusing on the Preah Vihear dispute in the next chapter.

This chapter will divide the evolution of ASEAN dispute settlement into three periods. The first period is previous to the establishment of ASEAN when Southeast Asian nation-states were still being created and were confronted with tension and distrust from their neighbor countries over territorial disputes. Those disputes were like time bombs that Western countries had left in their colonies. Although there were earlier attempts at cooperation among nation-states in Southeast Asia such as the Association of South East Asia (ASA) and Maphilindo (the cooperation of Malaya, the Philippines and Indonesia), these attempts always failed. The establishment of ASEAN in 1967 was an important key to build cooperation and trust in this highly divisive region.

The second period begins in 1967, with the formation of ASEAN. During this time, ASEAN agreements, mechanisms, and norms for regional peace and stability, such as the Bangkok Declaration and the Treaty of Amity and Cooperation (TAC), served to mediate tensions and distrust among ASEAN members. Nonetheless, ASEAN members were quickly confronted with the communist threat during the Cold War Period, which had a significant impact on ASEAN's role and integration.

The third period is from the end of the Cold War to the present day. In this period, ASEAN expanded membership to cover socialist nations while it also integrated more mechanisms to build ASEAN as a complete regional organization or a “Concert of Southeast Asian Nations.” The milestone of ASEAN integration took place in 1998 at an ASEAN Summit in Hanoi, Vietnam. ASEAN members decided to move ahead with more efficient regional integration and to establish an ASEAN Community. Following that, ASEAN developed a number of legal instruments to help build its community, the most important of which is the ASEAN Charter, which serves as a solid foundation for achieving the ASEAN Community by providing legal status and an institutional framework for ASEAN. The resolution of disputes is also mentioned in the ASEAN Charter, where it mentions ASEAN's legal role in resolving disputes.

## **2.1 Conflicts in Southeast Asia before the establishment of ASEAN in 1967**

The dynamics of great power competition engulfed Southeast Asian nations. Each nation had its own way to survive. Thailand and the Philippines decided to stay with the Western Bloc. In September of 1954, these two countries formed an anti-communism organization in the region, Southeast Asia Treaty Organization (SEATO), along with the United States, France, Great Britain, New Zealand, Australia, and Pakistan. SEATO only had a few formal functions. It had no military forces of its own, but each year it hosted joint military exercises for member states. The SEATO defense treaty only called for consultation, leaving each nation to respond to internal threats on its own. SEATO, unlike the North Atlantic Treaty Organization (NATO), had no independent mechanisms for gathering intelligence or deploying military forces, so the potential for collective action was necessarily limited. After members began to withdraw from the organization in the early 1970s, it was finally dissolved on June 30, 1977 (United States Department of State).

Indonesia and Myanmar were not aligned with any major power bloc. In the Bandung Conference of Asian and African states in 1955, Indonesian leader Sukarno was an important actor to promote nonalignment. The conference resulted in the Non-Aligned Movement, which established a distinct identity for countries that

did not want to be clients of either the USSR or the USA during the Cold War (Vickers, 2013, p.130). The Bandung principle, which emphasized political self-determination, mutual respect for sovereignty, non-aggression, non-interference in internal affairs, and equality, was then developed by these nations (Weatherbee, 2005, p.62). Myanmar also joined the Bandung Conference because it had to balance Western countries and China. Thus, Myanmar could contract with Western countries to balance China's support for the communist party of Myanmar (Jirasawas, p.19-20). However, after a coup d'état by General Ne Win in 1962, Myanmar launched the "Burmese Way to Socialism" in which the military expropriated private businesses and pursued an economic isolation policy from the region's international politics (Weatherbee, 2005, p.58).

Vietnam was in the Communist Bloc which was supported by the USSR and the People's Republic of China (PRC). The Vietnamese Communist Party had an important strategy to oppose French colonial rule and launched an independence movement which was led by Ho Chi Minh. The First Indochina War, between French forces and Vietnamese independence movement forces or Viet Minh, began on 19 December 1946. The United States did not join the war directly, but provided financial assistance to the French. After the end of the Chinese Civil War in 1949, the PRC also provided the Vietnamese both material and technical assistance. The Battle of Dien Bien Phu began in March 1954, and it was the last major battle between the French and the Vietnamese. Finally, the French were defeated in May 1954 and the Viet Minh victory led directly to the Geneva Conference in July, wherein the Viet Minh gained control of northern Vietnam down to the 17th parallel and an American-backed state was established in the south (Osborne, 1997 p.165-166). Although the Vietnamese were successful in driving the French out of their country, they now faced a confrontation with the United States, which had decided to bolster a state in Southern Vietnam as part of their global strategy to contain Communism. This marked the start of the Second Indochina War or "Vietnam War."

Both types of conflicts in Southeast Asia were important factors for each S.E. Asian nation to distrust its neighbors and these were great obstacles to building cooperation in this region. Nevertheless, there were attempts at cooperation among nation-states in Southeast Asia. The Association of South East Asia (ASA) and

Maphilindo (the cooperation of Malaya, the Philippines and Indonesia) mentioned above, had been earlier efforts at international cooperation in this region. ASA was established on 31 July 1961, at a meeting of the foreign ministers from Malaya, the Philippines and Thailand. The ASA was not directed against the communist bloc like SEATO, but intended to improve the welfare of the respective nations through economic and cultural cooperation. ASA had a plan to initiate several projects such as a multilateral trade and navigation agreement, moderation of visa requirements, tourism promotion, a reduced rate for press telegrams, technical cooperation, student exchange and inauguration of a through rail service between Bangkok and Kuala Lumpur. Moreover, ASA also planned to establish an ASA fund to finance ASA projects (Tarling, 2006, p.111-113). ASA operated its organization for two years only. The Philippines broke diplomatic relations with Malaya because the formation of Malaysia in 1963 included the former British territory of North Borneo (Sabah), to which the Philippines had a claim. This made cooperation among members impossible and finally ASA was dissolved.

Then the Philippines continued to look for a new cooperation group which could serve their interests, so they worked to establish Maphilindo, a loose confederation of three independent states of Malay ethno-linguistic stock (Malaysia, the Philippines and Indonesia). The organization aimed to restore and strengthen the Malay people's historic unity and common heritage, as well as to bring them closer political, economic, and cultural ties. Moreover, Maphilindo was used as a forum to find a solution to the controversy surrounding Malaysia's impending formation. The Summit Conference of Maphilindo took place in Manila on 31 July 1963, and three national leaders, Sukarno, Macapagal and Rahman, agreed that there should be referendums in Sarawak and North Borneo for a choice on joining the Federation of Malaysia (Acharya, 2012, p.154). At the end of the day, Sarawak and North Borneo joined with Malaya and officially created the Federation of Malaysia on 16 September 1963. Thus, Indonesian leader Sukarno declared a policy of *konfrontasi* or Confrontation against Malaysia, while the Philippines also refused to recognize the government of Malaysia and recalled the Philippine Ambassador in Kuala Lumpur (Fernandez, 2007, p.55). Suddenly, the cooperation of Maphilindo crumbled.

Although ASA and Maphilindo were not successful as regional organizations, both cooperation groups were significant for the foundation of ASEAN, because ASA was one of the first local initiatives to start building Southeast Asian cooperation in economic and cultural issues. Maphilindo, on the other hand, was one of the first attempts to find regional solutions to regional problems. Moreover, Maphilindo was also a pioneer of some key ASEAN principles, such as the principle of *musyawarah* or consultation, which was central to ASEAN's approach to regional cooperation (Acharya, 2012, p.155). Thus, ASA and Maphilindo were not completely useless, because their ideas and principles were adapted to create ASEAN.

## **2.2 The emergence of ASEAN in 1967 and creation of regional norms and mechanisms**

The Philippines and Malaysia reestablished consular relations in August 1964 after the two leaders met in Phnom Penh. However their relationship was still unstable and insecure. Ferdinand Marcos became the new President of the Philippines in 1965 and he issued a communiqué with Malaysia in 1966 raising their consulates to embassies (Fernandez, 2007, p.55). In Indonesia, Sukarno lost his presidential powers to the army, led by General Suharto, in 1965. Suharto became acting president in 1967 and finally, the People's Consultative Assembly of Indonesia appointed him as the president in March 1968. The fall of Sukarno and his regime meant that the violent policy of *Konfrontasi* against Malaysia was also terminated. Although Suharto officially retained a nonaligned foreign policy, he accepted strong assistance from the USA and broke diplomatic relations with PRC while systematically executing members of the Indonesian Communist Party (KPI) (Weatherbee, 2005, p.67). These two phenomena brought the giant Southeast Asian country into the anticommunist group, thus establishing a good atmosphere for diplomatic talks and cooperation among the nations of Southeast Asia who shared that viewpoint.

There were two necessary factors to create the regional cooperation group. The first was the escalation of the Second Indochina War, also known as the "Vietnam War," which had far-reaching but uncertain regional consequences. By the

end of 1967, there were around 500,000 American troops in Vietnam (Westheider, 2007, p.20) and there was no sign of an end to the war. This war thus had an enormous impact on regional security and stability.

The second necessary factor was the integration of post-Sukarno Indonesia into a regional order to ensure that violent policies such as Indonesian Konfrontasi or the use of force to resolve disputes would not occur in Southeast Asia again, and that such conflicts would be resolved peacefully. Moreover, genuine collaboration among group members could dispel the assumed need for domination by one country over others in the region (Weatherbee, 2005, p.68). These were the fundamental principles of ASEAN emerging.

### **2.2.1 The Founding of ASEAN (Bangkok Declaration)**

On August 8, 1967, in Bangkok, Thailand, five foreign ministers from Indonesia, Malaysia, the Philippines, Singapore, and Thailand signed a document establishing the Association of Southeast Asian Nations (ASEAN). The document they signed was called the ASEAN Declaration, and it became known as the "Bangkok Declaration" after they signed it. It stated ASEAN's goals and objectives:

1. "To accelerate the economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of South-East Asian Nations;
2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationships among countries of the region and in adherence to the principles of the United Nations Charter;
3. To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields;

4. To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;
5. To collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communication facilities and the raising of the living standards of their peoples;
6. To promote South-East Asian studies;
7. To maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.”

(ASEAN Secretariat, 1967)

In addition, the ASEAN Declaration also set up working groups in four levels. The first and highest level was the Annual Meeting of Foreign Ministers. The second level was a Standing Committee to carry on the work of the Association in between Foreign Ministers' Meetings. The third level consisted of ad-hoc and permanent committees of specialists and officials on specific subjects. The final level was a National Secretariat in each member country to carry out the work of the Association on its behalf and to service the Annual or Special Meetings of Foreign Ministers, the Standing Committee, and any other committees that may be established in the future (ASEAN Secretariat, 1967).

The success of establishing ASEAN was from the common interests of the five nations. The first point of interest was the peaceful resolution of disputes and problems between Southeast Asian countries. The second goal was to protect the region from the Cold War's conflicts and tensions. The third was mutual assurance that no member state would interfere in the domestic affairs of another. The fourth was the cooperative development of the regional economy (Severino, 2008, p.6). In the early years, the ASEAN Declaration served as a guide for members to reach peaceful settlements of intra-regional disputes by fostering and strengthening mutual



trust and understanding among members. Collaboration among members thus was a key to build trust and prevent conflicts leading to the use of force. Furthermore, each member nation could derive national benefits from ASEAN. For example, Indonesia used ASEAN to support the New Order regime of Suharto and his national development plan. While Indonesia may view ASEAN in general as a forum for expressing Indonesia's leadership in Southeast Asia (Acharya, 2012, p.157). Malaysia could use ASEAN to build a satisfactory relationship with Indonesia (Tarling, 2013, p.140). Singapore could use its ASEAN membership to gain acceptance as a member of Southeast Asia and to play a larger role in influencing other ASEAN members on issues of mutual interest (Acharya, 2009, p.59).

At the beginning of the association, ASEAN had not created any legal and institutional means to deal with conflict. ASEAN followed Maphilindo principles based on the Indonesian words *musyawarah* “consultations” and *mufakat* “consensus” and these became the norms for ASEAN’s informal and non-legalistic style of conflict management. To avoid and settle disputes, ASEAN used the annual ASEAN Ministerial Meeting (AMM: the meeting of ASEAN foreign ministers) as a forum for members to consult and make decisions. AMM has been the original and functional mechanism for dispute settlement since establishing ASEAN under the norms of consultations and consensus. These norms assist ASEAN in reducing disagreements and reaching compromises on the meaning and scope of the legal-rational principles at stake (Acharya, 2009, p.55). Thus, these norms are the foundation of ASEAN’s diplomatic relations and have become the “ASEAN Way” to share common interests in maintaining a peaceful and stable regional order.

ASEAN confronted the first challenge when the dispute between Malaysia and the Philippines over Sabah came back again in March 1968. Malaysia found that Filipino leader Ferdinand Marcos was supporting military training in Corregidor Island to stage a rebellion and eventual occupation of Sabah under the codename Merdeka (Fernandez, p.55). Malaysia thus suspended diplomatic relations with the Philippines in June 1968. ASEAN feared this dispute would destroy it, just like the previous collaboration groups ASA and Maphilindo. Therefore, Thailand and Indonesia played a crucial role in dealing with this dispute. Thailand hosted a meeting in Bangkok between senior officials of Malaysia and Philippines in June



1968, however this meeting broke down. At the second AMM hosted by Indonesia in August 1968, Adam Malik, Indonesian foreign minister, called an informal meeting of the Malaysia and Philippine foreign ministers at his residence. At the end of the meeting, the two nations agreed to avoid provoking each other for six months. In 1969, Malaysia was the host of the AMM; however it refused to convene the meeting, and to sit down with the Philippines. Indonesia therefore sent Sunarso, Secretary-General of the Indonesian ASEAN office, to Malaysia for talks with Malaysian leaders in March 1969. At the end of the day, Malaysia agreed to change its decision and it called the AMM in December 1969, while the Philippines agreed to not bring up the Sabah issue in the meeting. Finally, Malaysia and the Philippines resumed diplomatic relations at the AMM, although the dispute still existed (Acharya, 2009, p.59-61).

The Sabah dispute is thus a good example of the ASEAN style of dispute management. ASEAN used informal diplomacy and consultation among members to cool down and to postpone any actions on the dispute, leaving it unresolved. Certainly at that time ASEAN had not the legal and institutional principles to settle the conflict. In this case, Thailand and Indonesia offered their good offices to try to reconcile Malaysia and the Philippines. In addition, the ASEAN meeting provided an important channel of communication between Malaysia and the Philippines. Without ASEAN, the Sabah conflict would definitely have expanded violently. Finally, the result of these events clearly showed that the shared intentions of ASEAN member nations to truly use ASEAN to promote regional peace and stability would strengthen ASEAN beyond its short-lived precursors. Also, such stability encouraged further integration through regional collaboration. Interestingly, the technique of postponing and deferring issues rather than searching for final and absolute solutions is still the ASEAN approach.

### **2.2.2 The Declaration of ASEAN Concord (Bali Concord I) and the Treaty of Amity and Cooperation (TAC)**

In 1975, the political and security landscape in Southeast Asia was totally transformed by events in Indochina which also deeply affected the integration of ASEAN. In April 1975, Communist North Vietnamese triumphed over the Americans and South Vietnamese, thus ending the Second Indochina War (Vietnam

War). North Vietnam, therefore, was able to establish the unified Socialist Republic of Vietnam. In Cambodia, the communist party or Khmer Rouge, supported by the PRC, overthrew the American-supported Lon Nol regime on 17 April 1975 and established the horrors of Democratic Kampuchea. In Laos, the Laotian communist Pathet Lao, supported by Vietnam and the USSR, also defeated the royal government and removed the monarchy to create the Lao People's Democratic Republic in December 1975.

In such a new and threatening situation, ASEAN worried that the new Vietnamese regime, backed up by the USSR, would not stop expanding its hegemony in Indochina. Clearly, ASEAN had to find a way to deal with this problem. At the national level, each country tried to balance the political tension between Vietnam and the PRC. The Sino-Soviet conflict and the official establishing of relations between the PRC and the US in the early 1970s were factors leading each nation in Southeast Asia to improve relations with the PRC, in order to balance Soviet-Vietnamese hegemony. Malaysia was the first country in ASEAN to officially restore relations with the PRC in 1974, In 1975, the Philippines and Thailand were added to the list. Indonesia and Singapore did not follow these three countries but they also began to develop unofficial relations with the PRC (Weatherbee, 2005, p.71-72).

At the regional level, ASEAN saw clearly that it needed more integration to build regional resilience. Since its establishment in 1967, ASEAN had not developed official and legal norms and mechanisms, and it still lacked a working framework to integrate the region. ASEAN leaders had never attended meetings together. However, the communist victories were such an urgent issue for ASEAN that the first ASEAN heads of government meeting (Summit meeting) was held in February 1976 in Bali, Indonesia, in search of greater cooperation. The leaders endorsed two important political documents in the pursuit of collective political security at the meeting (Weatherbee, 2005, p.73). The first was the Declaration of ASEAN Concord (Bali Concord I), which aimed to promote peace, progress, prosperity, and the welfare of member states' peoples, as well as to consolidate ASEAN's achievements and expand cooperation in the economic, social, cultural, and political fields. "ASEAN cooperation shall take into account, among other things, the

following objectives and principles in the pursuit of political stability," the document stated:

1. "The stability of each member state and of the ASEAN region is an essential contribution to international peace and security. Each member state resolves to eliminate threats posed by subversion to its stability, thus strengthening national and ASEAN resilience.
2. Member states, individually and collectively, shall take active steps for the early establishment of the Zone of Peace, Freedom and Neutrality.
3. The elimination of poverty, hunger, disease and illiteracy is a primary concern of member states. They shall therefore intensify cooperation in economic and social development, with particular emphasis on the promotion of social justice and on the improvement of the living standards of their peoples.
4. Natural disasters and other major calamities can retard the pace of development of member states. They shall extend, within their capabilities, assistance for relief of member states in distress.
5. Member states shall take cooperative action in their national and regional development programs, utilizing as far as possible the resources available in the ASEAN region to broaden the complement of their respective economies.
6. Member states, in the spirit of ASEAN solidarity, shall rely exclusively on peaceful processes in the settlement of intra-regional differences.
7. Member states shall strive, individually and collectively, to create conditions conducive to the promotion of peaceful cooperation among the nations of Southeast Asia on the basis of mutual respect and mutual benefit.

8. Member states shall vigorously develop an awareness of regional identity and exert all efforts to create a strong ASEAN community, respected by all and respecting all nations on the basis of mutually advantageous relationships, and in accordance with the principles of self-determination, sovereign equality and non-interference in the internal affairs of nations”

(ASEAN Secretariat, 1976).

In addition, this declaration also stated that programs of action were to be the framework of ASEAN cooperation in political, economic, security, social, cultural and information dimensions. The framework of regional stability and dispute settlement were motives for such recommended actions as:

1. “Meeting of the Heads of Government of the member states as and when necessary.
2. Signing of the Treaty of Amity and Cooperation in Southeast Asia.
3. Settlement of intra-regional disputes by peaceful means as soon as possible.
4. Immediate consideration of initial steps towards recognition of and respect for the Zone of Peace, Freedom and Neutrality wherever possible.
5. Improvement of ASEAN machinery to strengthen political cooperation.
6. Study on how to develop judicial cooperation including the possibility of an ASEAN Extradition Treaty.
7. Strengthening of political solidarity by promoting the harmonization of views, coordinating positions and, where possible and desirable, taking common actions.”

(ASEAN Secretariat, 1976).

Finally, one of the key points in the Declaration of ASEAN Concord was the establishment of the ASEAN Secretariat, which served as a central administrative organ to improve the efficiency of ASEAN organization coordination and the effective implementation of ASEAN projects and activities. The ASEAN Secretariat was headquartered in Jakarta, Indonesia. In summary, the ASEAN Concord Declaration demonstrated a shared desire to build official patterns of the regional institute a decade after its establishment. As a result, this was a critical step toward promoting stronger political and economic collaboration within ASEAN.

The second document was the Treaty of Amity and Cooperation in Southeast Asia (TAC), which was a legal instrument designed to promote perpetual peace, everlasting amity, and cooperation among ASEAN peoples, contributing to their strength, solidarity, and closer relationship. TAC was like the constitution of ASEAN at that time. The contents of TAC generally emphasize building amity and cooperation among members. Moreover, when there were disputes between members, TAC also offered a peaceful way to settle them. The fundamental principles and norms of ASEAN were the clear in TAC Chapter I, Article 2, that stated:

1. “Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations;
2. The right of every State to lead its national existence free from external interference, subversion or coercion;
3. Non-interference in the internal affairs of one another;
4. Settlement of differences or disputes by peaceful means;
5. Renunciation of the threat or use of force;
6. Effective cooperation among themselves”

(ASEAN Secretariat, 1976)

Furthermore, TAC also mentions the settlement of disputes in Chapter IV, Articles 13-17:

“Article 13

The High Contracting Parties shall have the determination and good faith to prevent disputes from arising. In case disputes on matters directly affecting them should arise, especially disputes likely to disturb regional peace and harmony, they shall refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations.”

“Article 14

To settle disputes through regional processes, the High Contracting Parties shall constitute, as a continuing body, a High Council comprising a Representative at ministerial level from each of the High Contracting Parties to take cognizance of the existence of disputes or situations likely to disturb regional peace and harmony.”

“Article 15

In the event no solution is reached through direct negotiations, the High Council shall take cognizance of the dispute or the situation and shall recommend to the parties in dispute appropriate means of settlement such as good offices, mediation, inquiry or conciliation. The High Council may however offer its good offices, or upon agreement of the parties in dispute, constitute itself into a committee of mediation, inquiry or conciliation. When deemed necessary, the High Council shall recommend appropriate measures for the prevention of deterioration of the dispute or the situation.”

“Article 16

The foregoing provision of this Chapter shall not apply to a dispute unless all the parties to the dispute agree to their application to that dispute. However, this shall not preclude the other High Contracting Parties not party to the dispute from offering all possible assistance to settle the said dispute. Parties

to the dispute should be well disposed towards such offers of assistance.”

“Article 17

Nothing in this Treaty shall preclude recourse to the modes of peaceful settlement contained in Article 33(1) of the Charter of the United Nations. The High Contracting Parties which are parties to a dispute should be encouraged to take initiatives to solve it by friendly negotiations before resorting to the other procedures provided for in the Charter of the United Nations. ”

(ASEAN Secretariat, 1976)

According to TAC, ASEAN was hoping Southeast Asia would be a peaceful region. However, disputes among members happened quite regularly. When each dispute took place, ASEAN worked urgently for a peaceful settlement. In this context, ASEAN created an official dispute mechanism which was the High Council described in Articles 14-16 of TAC. The High Council is designed to settle disputes in which the bilateral settlement efforts of members has already failed. The High Council is composed of ministerial-level members from each contractual party who suggest acceptable dispute resolution mechanisms such as good offices, mediation, inquiry, or conciliation. However, since being created as part of TAC in 1976, the High Council have never been called. It turns out that ASEAN members don't want other members involved in their internal affairs, even though a bilateral conflict between members could easily expand to a regional conflict (Thepchatree, 2013, p.25-26).

TAC confirmed ASEAN as an intergovernmental organization that values member states' independence, sovereignty, equality, territorial integrity, and national identity. The principle of non-interference in the internal affairs of members was a foundation of ASEAN integration. As noted above, this attitude basically arose from the bitter historical background of almost every country in Southeast Asia being occupied by European countries so they did not want such domination from foreign countries again. Similarly, in the Cold War each nation wanted to avoid military intervention from the Great Powers (Ramcharan, 2000 as cited in Sudkanueng, 2005,

p.29). ASEAN used this principle of non-interference to manage interstate conflicts and to insulate domestic communist movements from external support (Jones, 2012, p.212). Finally, TAC marked the success of ASEAN integration at that time, and thus the principles of TAC were the foundations for all following ASEAN political mechanisms and decision-making.

In conclusion, for its first 8 years ASEAN did not have any official norms and principles to deal with its frequent regional disputes. Thus ASEAN used informal diplomatic relations and influences to mediate disputes, under the norms of consultation and consensus. These were the unique character of ASEAN, called the “ASEAN Way,” in which its member states preferred informal friendly negotiations in structurally loose settings (Weatherbee, 2005, p.121). The ASEAN Way was thus an essential foundation of ASEAN’s very existence, although it was often confronted with problems which damaged the reputation of the organization.

In 1975, communists won victories in Indochina were a great new challenge for ASEAN and they became a significant motive for ASEAN to further integrate itself as a formal regional institute. This was the context of the first Summit meeting in Bali, Indonesia, where ASEAN produced two important documents. The first one was the Declaration ASEAN Concord (Bali Concord I) which gave more details of the formal principle of collaboration for achieving ASEAN purposes to promote peace, progress, prosperity and the welfare of the peoples of member states. Moreover, the establishment of the Secretariat-General of ASEAN and an ASEAN Secretariat office in Jakarta, Indonesia gave ASEAN the physical symbols of a regional institution. Finally, the TAC formalized ASEAN norms to build peace, security and stability in this region. One of the important ASEAN norms was non-interference in members’ internal affairs, which built greater trust among members because it guaranteed that internal issues of each country such as suppression of communist movements, would not be interfered with by other countries. So each member state enjoyed a measure of confidence in preserving its national sovereignty. A mechanism of dispute settlement was also created from TAC, the High Council, which, as noted above, has never been used. ASEAN member states still prefer the informal diplomatic consultations and the AMM as a forum to find solutions. Last but not least, these norms and the AMM mechanism have been major factors to help



ASEAN successfully survive the Cold War and they have become the foundations of integration and cooperation into the future.

### **2.3 ASEAN from the post-Cold War to the regional community in 2015**

The end of the Cold War in 1991 was an extremely important political landscape change in Southeast Asia. ASEAN member nations changed their attitudes and foreign policies from fear of Vietnam and the communist threat to seeking new directions for coexistence with the communists and, at the same time, further integration of ASEAN for regional peace and prosperity.

The communist nations Cambodia, Laos and Vietnam also had to struggle with consolidating their revolutions, along with the dissolution of the Soviet Union. These phenomena promoted a new sense of regionalism throughout South East Asia. For about a decade, ASEAN members enjoyed national economic growth while boycotting and pressuring Vietnam to withdraw its troops from Cambodia. Success in this goal made them more confident in the potential of ASEAN to integrate further, following the end of the Cold War.

#### **2.3.1 Singapore Declaration of 1992 and ASEAN Enlargement**

The ASEAN Summit Meeting in Singapore in 1992 was the first meeting after the end of the Cold War. In this meeting, ASEAN leaders discussed new ways of cooperation and integration in the future. Following the meeting, they issued the Singapore Declaration of 1992, which revealed ASEAN's new goals and objectives:

1. “ASEAN shall move towards a higher plane of political and economic cooperation to secure regional peace and prosperity;
2. ASEAN shall constantly seek to safeguard its collective interests in response to the formation of large and powerful economic groupings among the developed countries, in particular through the promotion of an open international

economic regime and by stimulating economic cooperation in the region;

3. ASEAN shall seek avenues to engage member states in new areas of cooperation in security matters; and
4. ASEAN shall forge a closer relationship based on friendship and cooperation with the Indochinese countries, following the settlement in Cambodia.”

(ASEAN Secretariat, 1992)

ASEAN intended to increase economic and political cooperation, according to the Singapore Declaration. A document on an ASEAN Free Trade Area or AFTA, was signed with the goal of achieving economic integration by eliminating tariffs and non-tariff barriers within ASEAN by 1992. ASEAN was influenced by advances toward integration in Europe where the member nations of the European Community agreed to form the European Union (EU), leading to the creation of the single European currency in 1992. European integration encouraged ASEAN member nations, who had enjoyed good economic growth over the previous decade, to begin their own economic integration including “the strengthening of national and ASEAN economic resilience, and the development of the national economies of Member States by expanding investment and production opportunities, trade, and foreign exchange earnings” (ASEAN Secretariat, 1992).

In terms of political and security cooperation, although the communist threat was gone, ASEAN was confronted with a new challenge. ASEAN members were concerned that the region's power vacuum would lead to new types of conflicts and rivalry involving external powers. In 1990, the Soviet Union withdrew its naval and air units stationed in Cam Ranh Bay, Vietnam, while the United States reduced its troops in Southeast Asia following the loss of US bases in the Philippines in 1992. The Soviet withdrawal and cutting back the US military gave a chance for the new powers such as China, Japan and India to contend for influence in this region instead. Especially, China was expanding its naval power in the South China Sea, which might be a new threat to ASEAN sovereignty. For this reason, ASEAN was looking to the new multilateral framework which included the external regional

nations, especially in the Asia-Pacific region. ASEAN would be the center or at least a key player of the forum for balancing the power and building the security and stability in this region (Acharya, 2009, p.193-195).

Finally, in 1993, ASEAN established the ASEAN Regional Forum (ARF) as an annual meeting or forum between ASEAN foreign ministers and dialogue partners such as China, Japan, Russia, South Korea, and the United States. ARF's mission is to "promote constructive dialogue and consultation on political and security issues of mutual interest and concern" (ASEAN Secretariat, 1993). Furthermore, ARF provides security and stability in the Asia Pacific region through a three-point process. The first is the promotion of confidence-building measures, the second is the development of preventive diplomacy mechanisms, and the final is the development of conflict resolution strategies (Collins, 2003, p.173).

Beside their concern for security and stability in the region, ASEAN aimed to enlarge its membership from 6 to all 10 nations in the region: the concept of "One Southeast Asia" (Acharya, 2012, p.214). After the end of the Cold War, there was an opportunity for the communist bloc in Southeast Asia (Cambodia, Laos and Vietnam) as well as the military dictatorship Myanmar, to drop some of their opposition to regional co-operation and join ASEAN. These four countries consequently derived many benefits as members of ASEAN. Since the invasion of Cambodia, Vietnam had been cut off from the international community and had had to rely on the Soviet Union for military and economic assistance. However, following the dissolution of the Soviet Union in 1991, Vietnam's political and economic policies had to change in order to deal with the international community.

Since 1986, Vietnam has been reforming its economy under the Doi Moi policy, with the goal of creating a socialist-oriented market economy. In the political arena, Vietnam also had already begun to withdraw its forces from Cambodia since 1986, while restoring its relations with ASEAN members, China and the USA. In 1992, Vietnam accepted the Treaty of Amity and Cooperation and became an ASEAN observer. In 1995, Vietnam became ASEAN's seventh member.

As an ASEAN member Vietnam gained considerable benefits. Firstly, Vietnam had some disputes with Southeast Asian nations, and now they could deal with these issues on an intra-ASEAN level, prevent any interference from

external powers. Moreover, Vietnam could now use ASEAN as the framework within which to deal with external states such as China, Japan, India and the USA on economic and security issues.

The situation of Laos was very similar to that of Vietnam, in that after the dissolution of the Soviet Union, Laos also had to build new foreign relationships. Finally, Laos was admitted into ASEAN in July 1997 (Sudkanueng, 2005, p.81-85). Laos, as a member nation, sought assistance from other members in human resource development and cooperation in other areas of national development, as well as investment in economic infrastructure. This was a straightforward and direct approach to improving relations with ASEAN members.

Myanmar had been ruled by a military regime since 1962. In August 1988, there were large and widespread protests in Myanmar, known as the “8-8-88 Uprising.” But the protests terminated on September 1989 by a bloody military coup in which more than a thousand protestors were killed. Burma's military declared martial law and took power as the State Law and Order Restoration Council or SLORC.

In May 1990, the military rejected the election results, which showed that the National League for Democracy (NLD) had won the general election by a landslide, and placed the NLD's leader, Aung San Suu Kyi, under house arrest. The reaction among the Western countries was sanctions and boycotts against Myanmar.

Although the Western countries isolated Myanmar, ASEAN members still associated with the country, expected Myanmar to join them as a member. ASEAN argued that due to their principle of non-interference, Burmese internal affairs were not an obstacle to them joining ASEAN. At this point, ASEAN developed its "constructive engagement" strategy as a means of improving economic relations with Myanmar while maintaining regional stability. ASEAN engaged Myanmar fully in the economic realm while treading lightly in the political realm. Moreover, ASEAN believed that constructive engagement could encourage democratic processes, human rights and political reformation in Myanmar (Masilamani and Peterson, 2014). From the Burmese viewpoint, membership in ASEAN could support and protect the military dictatorship while at the same time it

was a way to deal with the international community and to enhance Burmese economic development (Sudkanueng, 2005, p.86). Finally, after a long process, Myanmar joined ASEAN in 1997. However, the membership of Myanmar would make waves for ASEAN in the future.

Cambodia was exhausted by civil war, revolution, foreign domination, and political instability since the 1960s. After Vietnamese forces withdrew from Cambodia in the late 1980s, Cambodia faced severe internal conflict between its various political groups. However, ASEAN members together with the United Nations (UN) took the initiative to push for peace in Cambodia. Eventually, they were successful when the four main Cambodian political factions signed the Paris Peace Accords in 1991.

According to this agreement, the UN would operate a peacekeeping force in Cambodia until they could hold an election. That Cambodian national election was held in May 1993 and the result eventually was a coalition government between Prince Norodom Ranariddh and Hun Sen, who served as co-prime ministers. After the Paris Peace Accords and the election of 1993, Cambodia was finally safe for aid and infrastructure investment from foreign countries, and this was a chance for ASEAN members to participate with Cambodians in Cambodia as business partners.

Joining ASEAN would support the Cambodian economy and its infrastructural development, while Cambodia could use ASEAN as a forum for dealing with the regional partners. It seemed that the process of Cambodia joining ASEAN would be quite smooth, and ASEAN expected Cambodia to gain full membership in 1997, together with Laos and Myanmar. However, in July 1997, a coup led by Hun Sen deposed Ranariddh who went into exile to Paris. ASEAN was surprised by this situation, and so decided to postpone the membership of Cambodia while pressuring Hun Sen to restore the coalition government and allow Ranariddh to return to Cambodia safely. After another election, more trouble focused on Hun Sen, and strong Vietnamese support, ASEAN accepted Cambodia in 1999.

According to ASEAN, the inclusion of Cambodia, Laos, Myanmar, and Vietnam fulfilled the organization's goal of including all Southeast Asian nation states. The new members accepted ASEAN norms and principles such as non-

interference, consultation and consensus, and they also signed the TAC as a regional code of conduct and a common framework for wider regional cooperation.

In this period, ASEAN's dispute settlement mechanisms did not improve or increase, because ASEAN believed in the effectiveness of the TAC, by which ASEAN could limit disputes among member nations to the regional level while it could prevent the intervention of external nations. After the Cold War, ASEAN was highly self-confident that it could deal with all the regional issues and completely function as the regional organization. The success of ASEAN in enlarging its membership and more deeply integrating their economic and politic cooperation with groupings such as AFTA and ARF seemed to show the healthy development of ASEAN; nevertheless, ASEAN ran into several problems after enlarging the membership. The new members (so called "CLMV countries") were at a significantly lower economic level than the older ASEAN members. For example, in 1997, the GDP per capita of Laos and Vietnam were 339 USD and 353 USD only. On the contrary, the GDP per capita of Thailand and Singapore were 2,552 USD and 26,892 USD. The difference in economic development was one of the new obstacles to ASEAN integration, so ASEAN learned it would take time for the new members to narrow the economic and development gap.

As for the political issues, some countries like Cambodia and Myanmar still had serious internal political problems which ASEAN had to work hard to deal with, because they affected ASEAN's image quite negatively. The Burmese military government severely violated their citizens' human rights, especially the political opposition of the government. Myanmar was isolated by the Western countries but ASEAN had accepted Myanmar as a member, so ASEAN was also under pressure from the international community. It seemed that Myanmar was ASEAN's greatest challenge. On the other hand, the Myanmar military regime used ASEAN as the protection since they were comfortable with the principle of non-interference in their internal affairs. As a result, despite the fact that ASEAN had successfully completed its expansion following the Cold War's end, it still had to deal with these new problems, which severely challenged its existing dispute mechanisms.

### **2.3.2 Economic crisis and ASEAN Vision 2020**

ASEAN's ambition to be the regional organization of Southeast Asia was disrupted by the financial crisis of 1997. Before this, Southeast Asian nations had enjoyed economic growth which attracted foreign investment and created a property boom. However it also created an enormous economic bubble. The crisis began in Thailand in July 1997, when the Thai government floated its currency instead of fixing the exchange rate, causing several Thai businesses and financial institutions to collapse because of their existing foreign debt. At the same time the Stock Exchange of Thailand (SET) collapsed from a peak of 1,753.73 in 1994 to a low of 207.31 in 1998. Then the crisis spread widely throughout the region, devastating financial systems in ASEAN member nations, and also South Korea. In this way the financial crisis clearly revealed ASEAN's financial weaknesses and proved that in fact ASEAN was not capable of dealing with such regional or global problems. When the crisis took place in 1997, ASEAN could not assist its members and abandoned each nation to solve the crisis in its own way. For example, the Indonesian and Thai governments accepted massive financial aid from the International Monetary Fund (IMF) and agreed to reform their economic structures. The crisis also marked the end of the 32-year Suharto era in Indonesia.

The financial crisis forced ASEAN member nations to reconsider its role and integration. The existing agreements and mechanisms were not enough for ASEAN to function as an efficient regional organization capable of dealing with such regional issues and challenges in the interest of its members. Therefore, ASEAN aimed to integrate more deeply, strengthening its agreements and mechanisms in order to cope with these kinds of challenges in the future, and this was the beginning point of the ASEAN community.

In December 1997, at the ASEAN informal summit in Kuala Lumpur, ASEAN leaders agreed to "ASEAN Vision 2020" which was a long-term vision to achieve by the year 2020. This document codified a commitment among ASEAN members to push forward with more efficient regional integration, conceiving of ASEAN as "a concert of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies" (ASEAN Secretariat, 1997).



For regional security and particularly for dispute settlement, ASEAN Vision 2020 aimed at the following targets:

1. “ASEAN, by the year 2020, [has] established a peaceful and stable [region] where each nation is at peace with itself and where the causes for conflict have been eliminated, through abiding respect for justice and the rule of law and through the strengthening of national and regional resilience.
2. In 2020, the territorial and other disputes are resolved by peaceful means.
3. ASEAN leaders envision the Treaty of Amity and Cooperation in Southeast Asia (TAC) functioning fully as a binding code of conduct for its governments and peoples, to which other states with interests in the region adhere.”

(ASEAN Secretariat, 1997)

ASEAN Vision 2020 became the organization's long-term integration goal. The TAC would continue to serve as the region's code of conduct, while the High Council would serve as the formal dispute-resolution mechanism. According to Article 15 of the TAC, “the High Council will take cognizance of a dispute or situation and will recommend appropriate means of settlement to the parties in the dispute, such as good offices, mediation, inquiry, or conciliation” (ASEAN Secretariat, 1976). Despite the fact that the High Council had never been used, ASEAN continued to emphasize it as the only genuine dispute resolution mechanism. In order for the High Council to deal with actual conflicts in the future, ASEAN therefore established the “Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia” on 23 July, 2001. This document clearly indicates the functions and framework of the High Council, which is comprised of one ministerial-level representative from each ASEAN member nation, but it also accepts representatives from each of the High Contracting Parties, which are states outside of Southeast Asia that are directly involved in the dispute. The Chairperson of the High



Council comes from the country which is Chair of ASEAN at that time, or from another country chosen by the High Council. A country wishing to use the High Council's dispute-resolution procedure has to send a written communication which gives a detailed statement of the dispute, the parties to the dispute, and the claims made, to each member of the High Council. The Chair of the High Council will call the members to a meeting to find the best solution and the decision-making will be by consensus of all members at the meeting (ASEAN Secretariat, 2001).

These Rules show that at that time ASEAN did not ignore the regional security although the Cold War had terminated in 1992. ASEAN also emphasized TAC as a code of conduct for every nation member and wanted to strengthen the dispute settlement mechanisms. However there is doubt about the function of the High Council. Although ASEAN specified the High Council as its premiere dispute settlement mechanism, the Council would only work if the parties to the dispute agreed with its procedures. According to Rule 9, "Unless written confirmation has been received from all parties to the dispute in accordance with Rule 8, the High Council may not proceed any further on the matter," and Rule 19 mentions that "All decisions of the High Council shall be taken by consensus at a duly convened meeting" (ASEAN Secretariat, 2001). These two rules show that if the parties to the dispute do not submit a written agreement to the High Council, it cannot proceed. Even if the parties agree and cooperate with the High Council, in the end the decisions of the Council have to be by consensus of all parties. If one member of the High Council is not satisfied with the dispute settlement, the High Council cannot settle the dispute. Moreover, the function of the High Council has to be based on the principles of TAC which includes the principle of not interfering in one another's internal affairs. Thus any party to a dispute can therefore deny the High Council's decision, if it feels that the Council has intervened in its internal affairs. In conclusion, the High Council functions as the official forum to reconcile the disputants and to compromise between the parties. However it has no juridical power to judge and to force the parties to accept its decision-making.

### **2.3.3 The Declaration of ASEAN Concord II (Bali Concord II)**

Becoming a Regional Community was the next step of ASEAN's integration. The financial crisis of 1997 and regional security issues such as the

terrorist Bali bombing and the SARS epidemic in 2002 showed the weakness of ASEAN in dealing with such crises. ASEAN therefore sought more integration and cooperation among members by initiating the ASEAN Community to cope with regional-level problems in the future. ASEAN Vision 2020 aimed at fuller integration and this led to the concept of ASEAN Community in 2020 . The ASEAN Summit Meeting at Bali in 2003 was the origin of the regional community. This meeting created “the Declaration of ASEAN Concord II” (Bali Concord II), which laid out the formation of the ASEAN Community by building the three pillars of cooperation: 1. “the ASEAN Security Community” (ASC), 2. “the ASEAN Economic Community” (AEC), and 3. “the ASEAN Socio-Cultural Community” (ASCC). Peaceful dispute settlement was specified in the ASEAN Security Community (ASC) pillar, so this thesis will focus on the details of the Security Community only. The character of ASC is explained in the Bali Concord II text, which consists of 12 articles. There are 4 articles relate to ASEAN norms and dispute settlement mechanisms, as follows:

1. “The ASEAN Security Community shall abide by the UN Charter and other principles of international law and uphold ASEAN’s principles of non-interference, consensus-based decision-making, national and regional resilience, respect for national sovereignty, the renunciation of the threat or the use of force, and peaceful settlement of differences and disputes.
2. Existing ASEAN political instruments such as the Declaration on ZOPFAN (Zone of Peace, Freedom and Neutrality), the TAC (Treaty of Amity and Cooperation in Southeast Asia), and the SEANWFZ (Southeast Asian Nuclear Weapon Free Zone Treaty) shall continue to play a pivotal role in the area of confidence-building measures, preventive diplomacy and the approaches to conflict resolution.
3. The High Council of the TAC shall be an important component in the ASEAN Security Community since it

reflects ASEAN's commitment to resolve all differences, disputes and conflicts peacefully.

4. ASEAN shall explore innovative ways to increase its security and establish modalities for the ASEAN Security Community, which include, inter alia, the following elements: norms-setting, conflict prevention, approaches to conflict resolution, and post-conflict peace building.”

(ASEAN Secretariat, 2003)

These articles demonstrate that ASEAN's original norms and principles, such as non-interference and consensus-based decision-making, are still used in the ASC. Moreover, the TAC and the High Council are still important as legal documents and dispute settlement mechanism in ASC. The new innovative ways of dispute settlement in ASC which make ASEAN look more systematic are the four elements of “norm-setting, conflict prevention, conflict resolution approaches, and post-conflict peace building”. These elements are discussed in greater detail in the ASC Plan of Action.

#### **2.3.4 ASEAN Security Community Plan of Action and Blueprint**

The ASC Plan of Action is a fundamental document that outlines the steps necessary to accomplish the ASEAN Security Community's goals. The four elements in the ASC Plan of Action are:

##### **“Norm-setting”**

“Norms are shaped and shared with the goal of establishing a common standard of good behavior among ASEAN Community members; consolidating and bolstering ASEAN's unity, cohesiveness, and harmony (the ‘we feeling’); and contribute towards the development of a democratic, tolerant, participatory, and transparent community throughout Southeast Asia. The following key concepts will govern these normative activities:

1. Non-alignment;
2. Fostering of peace-oriented attitudes in ASEAN member countries;

3. Conflict resolution through non-violent means;
4. Renunciation of nuclear weapons and other weapons of mass destruction and avoidance of arms races in Southeast Asia; and
5. Renunciation of the threat or the use of force.

ASEAN Member Countries shall therefore engage in such activities as strengthening the ASEAN Declaration of 1967, the Zone of Peace, Freedom and Neutrality (ZOPFAN), the TAC and the Treaty of the Southeast Asian Nuclear Weapon-Free Zone (SEANWFZ), developing regional legal frameworks, and establishing a Code of Conduct in the South China Sea.”

#### “Conflict Prevention”

“Based on the principles contained in the TAC, which is the key code of conduct governing relations between states and diplomatic instrument for the promotion of peace, security and stability in the region, the objectives of conflict prevention shall be:

1. To strengthen confidence and trust within the Community;
2. To mitigate tensions and prevent disputes from arising between or among member countries as well as between member countries and non-ASEAN countries; and
3. To prevent the escalation of existing disputes.

ASEAN member countries shall enhance security cooperation by strengthening confidence-building measures; carrying out preventive diplomacy; resolving outstanding regional issues; as well as enhancing cooperation on non-traditional security issues.”

#### “Conflict Resolution”

“It is important that any disputes and conflicts involving ASEAN member countries be resolved in a peaceful way and in the spirit of promoting peace, security and stability in the region. While continuing to use national, bilateral and international mechanisms, ASEAN member countries shall attempt to use the existing regional dispute settlement mechanisms and processes in

the political and security areas and work towards innovative modalities including arrangements to maintain regional peace and security so as to better serve their own, as well as collective interests of all members for peace and security.”

“Post-conflict Peace Building”

“Post-conflict peace building seeks to create the conditions necessary for a sustainable peace in conflict-torn areas and to prevent the resurgence of conflict. It is a process involving broad-based inter-agency cooperation and coordination across a wide range of issues. ASEAN activities related to post-conflict peace building shall include the establishment of appropriate mechanisms and mobilization of resources. As an ASEAN family, members should assist each other in post-conflict peace building efforts, such as humanitarian relief assistance, reconstruction and rehabilitation.”

(ASEAN Secretariat, 2004)

The ASEAN Security Community Plan of Action shows the ASEAN desire to see a stable, peaceful and harmonious community in this region. The TAC is still the important norm to prevent conflicts, while if a conflict does occur among members, ASEAN attempts to limit and to manage the conflict within the regional level. Not limiting itself to peaceful settlement, ASEAN also works to ameliorate the effects on members after the conflict. Therefore we can see that the four elements are the important fundamental to build ASC.

As its next step ASEAN added the political issues to the ASEAN Security Pillar so the ASEAN Security Community (ASC) became the ASEAN Political and Security Community (APSC). The ASEAN Political-Security Community Blueprint, which provided a roadmap and timetable for establishing the APSC by 2015, is another important document for its development.

Conflict prevention and management is mentioned in the APSC Blueprint, in Articles B1 and B2 . Briefly, Article B1 describes how to prevent conflicts and to strengthen confidence-building measures. The meeting of ASEAN Defense Ministers (ADMM) and military officers can strengthen confidence-building measures. ASEAN also promotes “bilateral exchanges and cooperation between defense officials and exchange visits between military training institutions to promote

trust and mutual understanding.” Moreover, ASEAN will build up “the necessary institutional framework to strengthen the ASEAN Regional Forum (ARF) process in support of the ASEAN Political-Security Community (APSC)”. Conflict resolution and peaceful settlement of disputes was also mentioned in article B2 of the Blueprint. ASEAN still promotes the TAC which provides for “peaceful settlement of disputes at all times through friendly negotiations and by refraining from the threat or use of force to settle disputes.” ASEAN always intends to improve its existing dispute settlement mechanisms and also tries to establish more appropriate and effective dispute settlement mechanisms. In fact, ASEAN has established an “ASEAN Institute for Peace and Reconciliation (AIPR)” as a permanent institution to do research activities on peace, conflict management and conflict resolution (ASEAN Secretariat, 2009).

According to the ASPC Blueprint, various dispute settlement mechanisms would be developed by ASEAN to support the ASEAN Security and Political Community 2015. The above-mentioned ASEAN Institute for Peace and Reconciliation (AIPR) is a good example of how important dispute settlement is to ASEAN. They clearly see the need for a special institute to work as a think tank for dealing with disputes or conflicts. Therefore, in ASPC not only will the governmental sections deal with a given conflict, the AIPR will offer support and a forum to manage the conflict. However, it is too early to evaluate the AIPR's accomplishments because it was only established in December 2013, or two years after the Preah Vihear dispute, so we cannot discuss an AIPR role in this thesis.

In conclusion, establishing the ASEAN Security and Political Community 2015 forced ASEAN to initiate some new and innovative methods of dispute settlement, based on the four elements of “norms-setting, conflict prevention, conflict resolution, and post-conflict peace building.” For norms-setting, ASEAN referred to its legal documents such as the ASEAN Declaration of 1967 and the TAC, to build an ASEAN code of conduct that every member nation has to follow in order to maintain peace in the region. For conflict prevention, ASEAN works to build familiarity, such as the ASEAN Defense Ministers meetings (ADMM), something that can build trust among these crucial groups within each member nation. For conflict resolution, ASEAN hopes to limit conflict among members by using existing

mechanisms such as the ASEAN Ministerial Meeting (AMM) and the High Council in the TAC. Moreover, ASEAN also created the new institute, the AIPR, for gaining expertise in peacekeeping, conflict management, and conflict resolution. For post-conflict peace building, ASEAN will attempt to completely defuse the conflict and make sure it will not re-ignite in the future. ASEAN will also provide basic services and assistance to conflict victims. These are the targets of ASEAN to complete the building of its political and security community. However it is too early to say whether ASEAN can accomplish this goal, because since the Bali Concord II in 2003 and starting its Political-Security Community in 2015, ASEAN has been almost overwhelmed by several major security problems such as the South China Sea dispute and democracy and human right violations in Myanmar. The Preah Vihear dispute which took place in 2011 was also one of those challenges, and it will be discussed in the next chapter of this thesis.

### **2.3.5 The ASEAN Charter and its Enhanced dispute Settlement Mechanism**

Beside establishing the ASEAN Community in 2015, ASEAN also created the ASEAN Charter as its fundamental legal instrument in 2007. This was an important step in ASEAN's integration because since its beginning in 1967, ASEAN had never had a formal charter, and most agreements relied on informal processes and personal relationships (Severino, 2008, p.106). However, after ASEAN member nations decided to form the Regional Community according to the Bali Concord II, it was necessary to set up a constitution, the legal and institutional framework for transforming ASEAN into a legal international organization with a rule-based organizational structure that could operate effectively and efficiently (Acharya, 2009, p.267). For these reasons the ASEAN Charter was written up and became effective in 2008 after ratification by all member nations. The ASEAN Charter retains its defining early principles which are still important to unite members.

Settlement of disputes is always a significant issue, so it is contained in Chapter VIII of the ASEAN Charter. Disputes are classified into two major types. The first type is economic disputes, which will be resolved through the ASEAN Protocol on Enhanced Dispute Settlement Mechanism, According to Paragraph 3, Article 24. The second type is political disputes which are also



classified into two types: disputes with interpretation and disputes without interpretation. The disputes with interpretation relate to arbitral and/or judicial processes. The International Court of Justice (ICJ) and the Permanent Court of Arbitration (PCA) are some samples of organizations which settle disputes with interpretation. Disputes without interpretation are referred by the ASEAN Charter to the TAC and its procedures under Paragraph 2, Article 24, as at least one possible instrument to resolve the dispute peacefully. A classic example of dispute without interpretation is the clash between Cambodian and Thai forces in the Preah Vihear dispute of 2011. In that case, ASEAN attempted to stop the violence only, but did not attempt to arbitrate this territorial dispute by interpreting the various treaties and legal documents. Moreover, according to Paragraph 2, Article 23: (“Good Offices, Conciliation and Mediation,”) ASEAN specifies if both parties to the dispute request it, the Chairman of ASEAN or the Secretary-General of ASEAN will provide the aforementioned services. Here, the new detail of ASEAN dispute settlement is assigning the mediating role to the Chairman or the Secretary-General of ASEAN. Finally, if the dispute cannot be resolved, it will be referred to the ASEAN Summit for a decision under Article 26. (ASEAN Secretariat, 2008).

The ASEAN dispute settlement mechanisms; especially the good offices, conciliation and mediation, are explained more in the Charter’s Dispute Settlement Mechanism Protocol (DSMP). This document is in Article 25 of the Charter, which explains that “where not otherwise specifically provided, appropriate dispute settlement mechanisms, including arbitration, shall be established for disputes which concern the interpretation or application of this Charter” (ASEAN Secretariat, The ASEAN Charter). ASEAN established this Protocol to settle disputes by using an arbitral process. This was the first time for ASEAN to create a settlement mechanism by arbitration. The arbitrators must be experts who have experience in law, and the arbitral process will take place at the Secretariat of ASEAN in Jakarta. The decision of the arbitral tribunal is final and binding on the parties to the dispute, according to Article 15 of the Protocol. Before requiring the arbitral process, ASEAN expects the parties to make their best efforts to resolve the dispute through bilateral consultation. Furthermore, they can request that a third party, such as ASEAN's Chairman or Secretary-General, provide good offices, conciliation, or mediation. However, if these



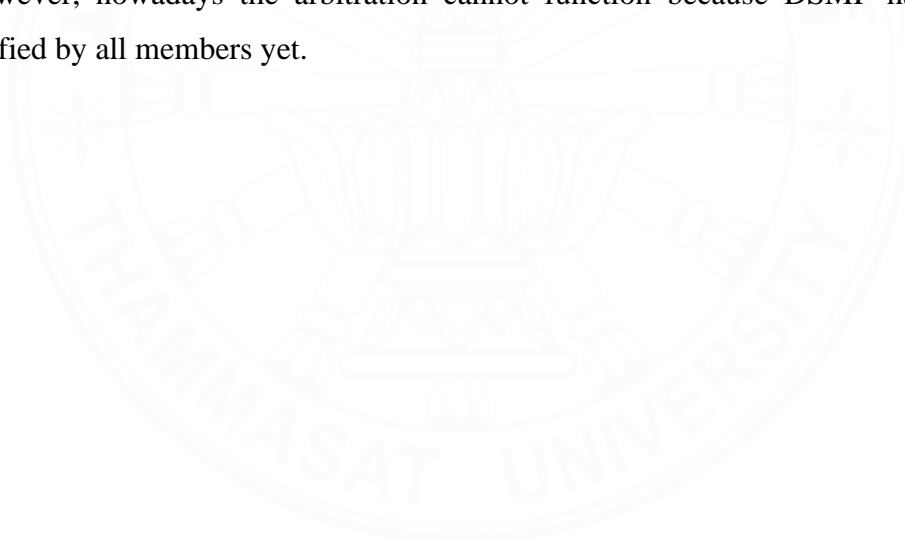
dispute settlement processes fail, the parties can request arbitration by sending a notice to the Secretary-General of ASEAN. If one of the parties to the dispute does not agree with establishing an arbitral tribunal, the other party may refer the dispute to the ASEAN Coordination Council which is comprised of the ASEAN Foreign Ministers. The ASEAN Coordination Council may direct the parties to resolve their dispute through good offices, conciliation, mediation, or arbitration, according to Article 9 of the Protocol. Finally, if the ASEAN Coordination Council cannot agree on how to resolve the dispute, either party may refer the matter to the ASEAN Summit. (ASEAN Secretariat, 2010).

These are the dispute settlement processes in cases of disputes with interpretation, according to the DSMP. This protocol improves ASEAN dispute settlement from the informal process of consultation to the more formal process of arbitration. Unfortunately, this protocol is not in force yet because every ASEAN member state has to ratify it, and only six member states (Brunei, Cambodia, Indonesia, Laos, Thailand and Vietnam) had done so, as of 2016. This protocol could possibly challenge the national interest of an ASEAN member state, so some states have not ratified it yet. It seems that fundamentally, ASEAN member states still do not trust each other enough. Especially, they are concerned about intervention from other members, and this remains the ultimate challenge to the ASEAN Security and Political Community. This situation will remain until ASEAN becomes a genuine community, some time into the future.

Moreover, the efficiency of the arbitration is doubted because the member states prefer the traditional, informal way to settle disputes. In fact, the High Council in the TAC has never been used is enough to prove that the ASEAN Way is still important no matter how far ASEAN has integrated into a Regional Community. In addition, the principle of non- interference in the internal affairs of another member still remains in the Charter, and this principle will always be available for any member to block arbitration.

The ASEAN Charter transformed ASEAN from “a non-binding political association” to “an international organization with a legal personality and rule-based organization” (Acharya, 2009, p.267). The Charter was created to support the ASEAN Community, so the previous traditional principles such as reliance on

peaceful dispute resolution, non-interference in other members' internal affairs, etc. are still used and mentioned in the Charter as the principles of ASEAN. Settlement of dispute is in Chapter VIII, and it specifies that the Chairman of ASEAN or the Secretary-General of ASEAN works if the parties to the dispute request it, to provide good offices, conciliation or mediation. If the dispute cannot be resolved, it will be referred to the ASEAN Summit for a decision. Moreover, the ASEAN Charter classifies the disputes into two major types: the first is economic disputes, which will be resolved through the ASEAN Protocol on Enhanced Dispute Settlement Mechanism. The second type is political disputes further classified into two sub-types. The first one is dispute without interpretation, to be settled by the mechanism of the TAC which is the High Council. The second one is the dispute with interpretation. ASEAN created "the Protocol to the ASEAN Charter on Dispute Settlement Mechanism" (DSMP) to deal with this kind of dispute by using the arbitral process. However, nowadays the arbitration cannot function because DSMP has not been ratified by all members yet.



### **CHAPTER 3**

## **THE PREAH VIHEAR DISPUTE AND THE EFFORTS OF ASEAN TO SETTLE IT**

The Preah Vihear Temple was an 11th-century Hindu temple. After nine hundred years, the Temple and its environs became the site of a fatal territorial conflict between Cambodia and Thailand. This chapter will summarize the dispute's history, which started in the nineteenth century with a bilateral agreement between the governments of Siam (formerly known as Thailand) and French Indochina to delimit the line and create a map of it. The issue began when the two countries presented evidence in support of their claims to Preah Vihear Temple. The chapter next discusses the first Preah Vihear Dispute, which occurred in 1954, when Thailand sent troops to take the Temple. Cambodia objected to Thailand's occupation and requested that they evacuate their soldiers; Thailand, however, did not comply with this request. Cambodia eventually severed diplomatic ties with Thailand and brought the dispute to The Hague's International Court of Justice (ICJ) in 1959.

The chapter's primary focus is on the second Preah Vihear Dispute, which started in 2007 when Cambodia sought to register the Preah Vihear Temple as a UNESCO World Heritage Site, which includes the disputed territory around the Temple (4.6 km<sup>2</sup>). Thailand strongly rejected Cambodia's plan. Even when Cambodia agreed to exclude the contested region from its World Heritage nomination, Thailand refused. This created widespread discontent in Cambodia, and tensions were heightened when the two nations strengthened their army presence in the area. Finally, in 2011, the two military forces engaged in a severe conflict, resulting in fatalities, injuries, the suspension of tourism, and significant damage to both nations. As a result, Cambodia brought the matter back to the ICJ on 28 April that year, demanding that the ICJ order Thai forces out of the region and interpret the 1962 ruling in light of the disputed territory's boundary position. This chapter will clearly explain why the Preah Vihear Dispute erupted again this second time.

Another important topic in this chapter is the role of ASEAN in dealing with the dispute. The clash of Cambodian and Thai armed forces in 2011 affected the

Southeast Asian security system; therefore, ASEAN had to intervene to preserve regional security and stability by using its norms and mechanisms. Indonesia was the Chair of ASEAN at the time, and much effort was made by the chairman. Nevertheless, in the end, ASEAN failed to settle the dispute because Thailand and Cambodia began to clash with each other again.

Despite this unsatisfactory result, ASEAN proved that it was prepared to intervene and attempt to stop the fighting. This chapter will thus review the role of ASEAN in attempting to settle the dispute, focusing on the mechanisms used.

### **3.1 Historical background of the Preah Vihear Dispute**

To deeply understand the Preah Vihear Dispute we have to look back to the 19th century when Siam and French Indochina had bilateral agreements to delimit the boundary and to produce a map. This agreement marked the birth of Siam as a modern state, and it set the boundary line between Thailand and Cambodia up to the present time. Eventually, the first Preah Vihear Dispute broke out in 1954 when both Cambodia and Thailand tried to claim the Preah Vihear Temple. The two nations used historical documents to claim the Temple, and in the end, this dispute was taken to the International Court of Justice (ICJ) in 1959. However, the verdict of the ICJ in 1962 eventually led to the Second Preah Vihear conflict in 2008.

#### **3.1.1 Beginning of the boundary between Thailand and Cambodia**

The boundary between Thailand and Cambodia, which was being worked out in the late 19th century, was a result of colonialism. For understanding the indigenous concept of territory and boundary of Southeast Asian states, a classic source is Thongchai Winichakul, *Siam Mapped* (1994). Thongchai (p.24-27) pointed out that the ancient Southeast Asian states were not based on real geography. Instead, they were based on the sacred topography or religious cosmography mentioned in religious scripture and manuscripts such as the *Triphum*. In this ancient concept of territory, Siam could be bordered by Lumbini in Nepal where the birthplace of Buddha is and Sri Lanka where the Buddha's tooth relic is found. These examples show that in the ancient idea of territory, Siam could be adjacent to India without

being bordered by Myanmar. As for the boundaries, the rulers had no clear idea of imaginary boundary lines dividing all the states, as in the Western concept. They only knew that their land was bordered by their neighbor kingdom but could not fix where the boundary was. For example, the boundary between Siam and Burma consisted of tracts of mountains and forest, but this was an unclear and unimportant area that could not be said to belong to either nation (Thongchai, p.64).

Moreover, the sovereignty of ancient states in Southeast Asia was unique and different from that of modern states. The supreme state had sovereignty over tributary states in a hierarchy of interstate relations. The local rulers of smaller states or chiefs of tiny townships were submissive to other dominant leaders who had more power. The pattern of these relationships prevailed all the way up the pyramid to the most powerful king of the realm. This pattern applied to the relationship between Siam and its tributary states such as Lanna, Lan Xang and Pattani. The tributary states had to send missions of tribute payment to the supreme overlord regularly, while the overlord would honor a tributary ruler with gifts of greater value. The tributary rulers also had their own sovereignty over their land and other smaller entities, although this was sometimes interfered with by the supreme overlord. In some cases, the tribute state had to pay tribute to more than one supreme state, resulting in shared sovereignty by two supreme states. Cambodia was an example of such shared sovereignty. After the Khmer Empire declined in the 14 century, it became a tribute state of Siam. However, in the 17th century, Vietnam grew stronger and demanded submission from Cambodia. Cambodia thus had to pay tribute to both Siam and Vietnam for its survival, and ultimately it was unclear to whom the sovereignty of Cambodia belonged (Thongchai, p.81-84). These traditional concepts of territory and sovereignty in the ancient era were very different and complicated for Western nations when they began to occupy land in Southeast Asia.

The coming of the colonial nations such as France and the United Kingdom in the 19th century brought the European concept of the nation-state, which had to clearly specify the sovereignty, population and territory of each state. The boundary was thus essential in order to fix the territory of each nation-state. Siam was confronted with this new concept when the British Empire gained a victory over Burma in the First Anglo-Burmese War of 1826 and annexed Tenasserim Province (in

southern Burma) to the British Empire. It was the first time that Siam bordered on a Western nation. Thus a British envoy went to the Siamese court to negotiate the boundary between Siam and the British Empire (Thongchai, p.64). This was the beginning point of creating boundaries between Siam and Western possessions, although the process of delimitation would last for many years. Normally, the delimitation of a boundary required the creation of a mixed commission of both nations to survey and delimit the frontier. After that, they would set up boundary stones to divide the territory and then publish a map.

Cambodia had been the tributary or vassal state of Siam since the decline of the Khmer Empire in the 14th century. French troops conquered the southern region of Vietnam and formed Cochinchina in 1862. Then, they moved toward Cambodia, and in 1863, France was able to force Cambodian King Norodom to accept the status of a French protectorate, so this was the first time Siam was confronted by the French threat. Siam's conflict with France over the territory around the Mekong River became a war in 1893. Then two French gunboats sailed into the Chao Phraya River and threatened the Palace in Bangkok. In the end, Siam agreed to cede the Lao territories east of the Mekong to France (Duangthida, 2008, p.51-52). Then, France occupied the Siamese town of Chantaburi for almost ten years, so on 13 February 1904, Siam concluded a treaty with France which ceded the lands on the western side of the Mekong River to France and returned Chantaburi to Siam. According to this 1904 treaty, both countries would establish a mixed commission to precisely delimit the frontier between French Indochina and Siam. Importantly, this treaty specified that wherever possible, watershed lines would be used as boundaries. This commission spent about three years establishing the frontier between French Indochina and Siam, including the Dangrek Mountains, where the Preah Vihear Temple is located. The Siamese government requested France to publish the resulting maps for Siam, and finally, they were published (Onanong et al., 2011, p.325-331).

After France withdrew their troops from Chantaburi, they occupied another Siamese town, Trat, instead. For this reason, Siam opened negotiation with France again and signed a new treaty on 23 March 1907. While Siam ceded Siem Reap, Battambang and Sisophon to French Indochina, France returned Dan Sai, Trat and islands south of Laem Sing and Ko Kut island to Siam. Moreover, they formed

the second mixed commission for delimitation of the frontier between French Indochina and Siam, which set the new frontier with 75 landmarks from Sa-Ngam, Si Saket to Klong Yai, Trat (Onanong et al., p.337-338).

The boundary between Thailand and Cambodia was set by the Siamese-French Treaties of 1904 and 1907. Preah Vihear Temple was located on a promontory of the Dangrek Mountain range, which was the frontier of Thailand and Cambodia. However, there is not any record from any mixed commission of delimitation which mentions sovereignty over Preah Vihear Temple. The Siamese-French Treaty of 1904 specified that the watershed ridge of the Dangrek Mountain range would be Cambodia's northern border, and this should put Preah Vihear Temple and its promontory under the sovereignty of Thailand. However, it seems that for the Preah Vihear Temple, an exception was made. Fernand Bernard, the president of the French wing of the commission, remarked at a commission meeting at Angkor Wat that the commission felt free to depart from treaty language in certain places based on practical considerations (Burgess, 2015, p.73-74). This might be the reason why Preah Vihear Temple was not delimited by the watershed. The evidence to support this case was the series of maps published in 1907 after the commission had finished its job. One of the maps (named "Dangrek") showed the Temple, including the promontory it is on, to be south of a curving borderline, thus clearly on the Cambodian side. The Siamese government never disagreed with or disputed this error, and in fact, they even asked the French side to publish more maps for them.

### **3.1.2 The first Preah Vihear Temple Dispute (1954-1962)**

Siam negotiated with French Indochina to delimit its boundary in order for Siam to preserve its independence during the colonial period. However, these territorial treaties became a time bomb for Cambodia and Thailand later. In the late 1930s, Thailand (changing name from Siam in 1939) under administration by Field Marshal Plaek Phibunsongkhram who seemed to be in favour of fascism, promoted the ideologies of ultranationalism and extremely reformed the Thai culture in order to accelerate Thailand's modernization. The Thai government created the idea of the Great kingdom of Thai people who had emigrated from the Altai Mountains in Mongolia and northern China. Thai people settled in the present land of Thailand and expanded their territory in the mainland of Southeast Asia. Unfortunately, Thailand



was threatened by France and the United Kingdom in the colonial time and unwillingly ceded some territory to the Western nations for preserving its independence. Losing the territory was a historical wound for the Thai people and this story was a successful tool of Plaek's government to promote nationalism for claiming the land back. During World War II, France was invaded by Nazi Germany and formed the Vichy government in 1940. The weakness of France was an opportunity for Thailand to send a troop to seize the land back in October 1940. Finally, by the mediation of Japan, Thailand successfully took Battambang, Siem Reap, Preah Vihear, Champassak and Sainyabuli back from France. Two nations signed the Tokyo Convention in May 1941 for peace. The Preah Vihear Temple also belonged to Thailand at that time (Thamrongsak, 2013, p.95-100).

After Japanese surrendering in 1945, Thailand as the Japanese ally signed the Washington Accord in to return the territory back to France however Thai troop still occupied the Preah Vihear Temple. France confronted with resistance of the independent movement in Indochina so it did not concern issue of the Preah Vihear Temple. After France withdrew from Indochina and Cambodia became independent on November 1953, the Cambodian government of Prince Norodom Sihanouk sent correspondence to the Thai government requesting them to vacate the Temple. Instead, in 1956 Thailand constructed a border police station near the Temple and flew a Thai national flag at the temple complex to proclaim authority over it. After many failed negotiations, in 1959, Cambodia broke diplomatic relations with Thailand and took the case to the International Court of Justice (ICJ) at The Hague (Shrestha, 2013, p.17).

Cambodia and Thailand both claimed sovereignty over the Preah Vihear temple. The Cambodian side claimed the Temple by referring to a 1907 map that showed Preah Vihear and its cliff belonging to French Indochina. The Thai side referred to the Siamese-French Treaty of 1904 in which the watershed line was the mechanism to delimit the borderline between Siam and French Indochina. Preah Vihear Temple was on the north of the watershed line; therefore, it should belong to Thailand. Moreover, Thailand argued that the 1907 map was published unilaterally by the French side only and never had agreement from the Thai side. However, on 15 June 1962, by nine votes to three, the ICJ found that the Temple of Preah Vihear was



situated in territory under the sovereignty of Cambodia. Moreover, the court also ordered Thailand to withdraw its forces stationed at the Temple and in its vicinity and to return to Cambodia any objects removed from the Temple (International Court of Justice, 1962).

Although Thailand emphasized that the borderline between Cambodia and Thailand corresponded to the watershed line according to Siamese-French Treaty in 1904, the court felt that the 1907 map and the borderline indicated on it were the outcomes of frontier delimitation work, and in their view, the treaty was the framework which set up the mixed commission of delimitation with the final result of the map. The court considered that Thailand could not refuse this map or claim it was created by unilateral French acts without Siamese consent because the Siamese government asked the French to publish 11 maps, and after that gave them to the leading geographical societies in important countries, to the Siamese legations in the UK, Germany, Russia and the USA, and to all the members of the Mixed Commission. These actions showed that Siam, in fact, approved of these 11 maps. Moreover, if the borderline on a map was incorrect from the treaty in 1904, the Siamese government had to oppose it and attempt to talk with the French to edit it. However, since publishing 11 maps in 1907, Siam had never raised this issue for negotiations with France; therefore, they must be held to have acquiesced.

Other Siamese actions implying acceptance of French sovereignty over Preah Vihear Temple include the visit to the Temple in 1930 by Prince Damrong. He was a former Minister of the Interior and, at the time, was the president of the Royal Institute of Siam. When he arrived at the Temple, the French officers took him on a tour of the Temple, which had the French flag flying above it. Although Thailand argued that this visit was a private trip, the court did not accept that because he was approved by the King of Siam before travelling, so the trip clearly had a quasi-official character. Moreover, he did not react at all when he saw the French flag flying over the Temple; therefore, Siam demonstrated clear and complete acceptance of French sovereignty over the Temple (Borwornsak, 2008, p.101-109). For these reasons, the court judged that Preah Vihear Temple belonged to Cambodia.

After the verdict of ICJ, the two nations reacted in different ways. In Cambodia, people celebrated, and a national holiday was declared. On 5 January

1963, Prince Sihanouk led his government ministers and ambassadors to Preah Vihear Temple for a ceremony. They had to go up to the Temple by a long steep stairway, instead of using the northern approach, which was more comfortable but had to be entered from the Thai side. The climax of the ceremony was raising the Cambodian flag over Preah Vihear Temple (Burgess, p.171-174).

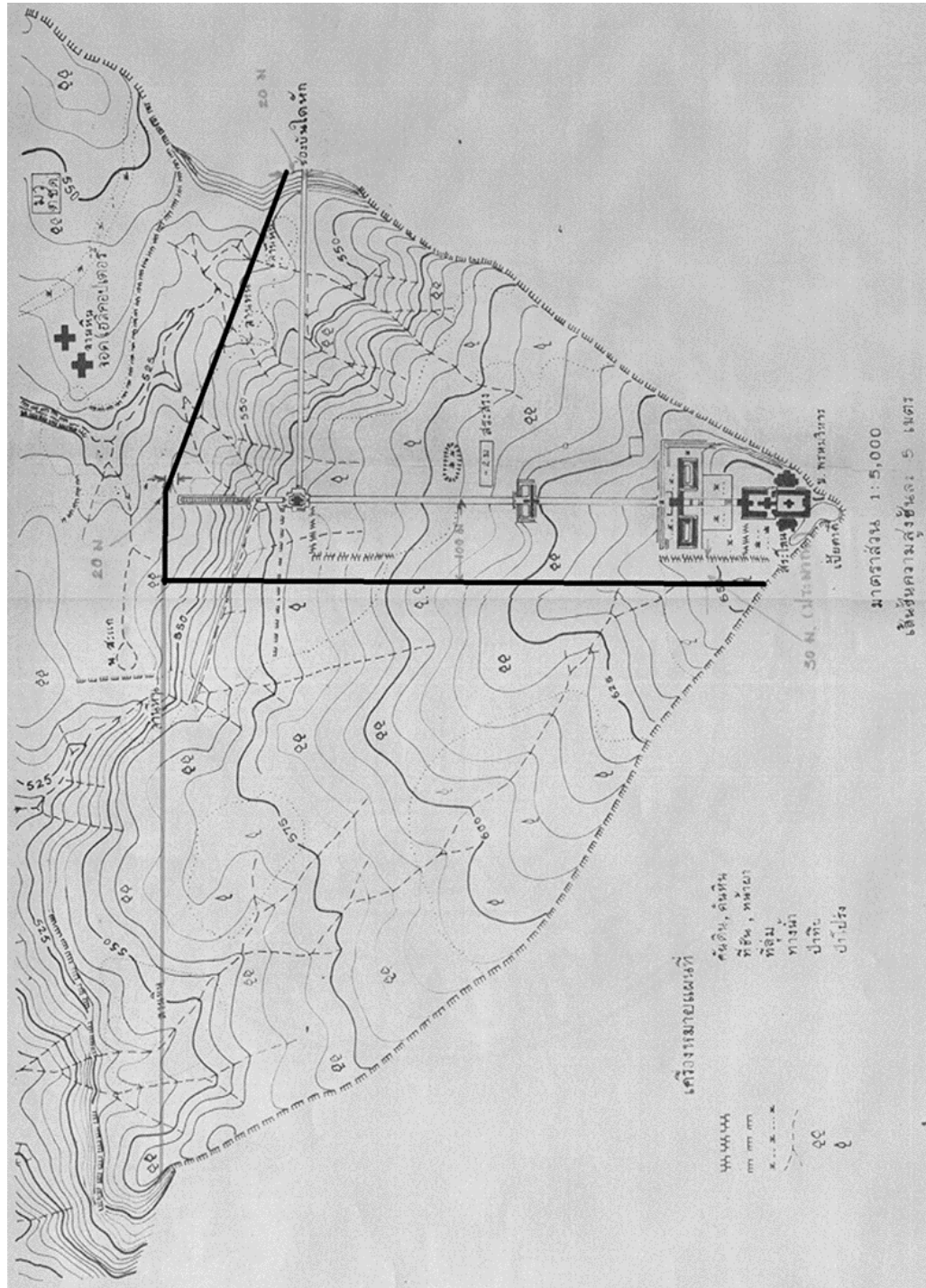
In Thailand, they felt disappointed and bitter about the verdict. Thailand was in the American anti-communist alliance so Thai prime minister Sarit complained to the USA. He also barred Polish ships from Thai ports and Poles were refused visas because the president of the ICJ was Polish. The Thai military government encouraged popular demonstrations against the verdict. The attitude of the Thai government soon softened because it realized that to defy the ICJ decision or to use force against Cambodia would give Thailand a bad reputation in the United Nations. In the end, Sarit made a declaration with a tear in his eye to accept the decision, but that one day in the future Preah Vihear Temple would be returned to Thailand (Burgess, p.164-167).

Also, the Thai cabinet unwillingly agreed to Cambodian sovereignty over Preah Vihear Temple; however it still holds the watershed as the borderline so it unilaterally drew a new borderline that cut through the vicinity of the Temple (see Figure 3.1 on page 58) and built a barbed-wire fence on the new borderline to limit access to the Temple (Burgess, p.168-170).

In conclusion, the decision of ICJ was clear to give the Temple sovereignty to Cambodia; however the vicinity of the Temple was vague since the court did not clearly specify it. Until today Cambodia still holds the borderline from the 1907 map, while Thailand uses its own map, which follows the watershed as the borderline. Therefore, besides the Temple, there are overlapping territorial claims around 4.6 km<sup>2</sup> (see Figure 3.2 on page 59) when comparing the two maps. The vicinity of Preah Vihear Temple and the 4.6 km<sup>2</sup> disputed area would re-appear as a major problem for the two countries in the future.

Figure 3.1

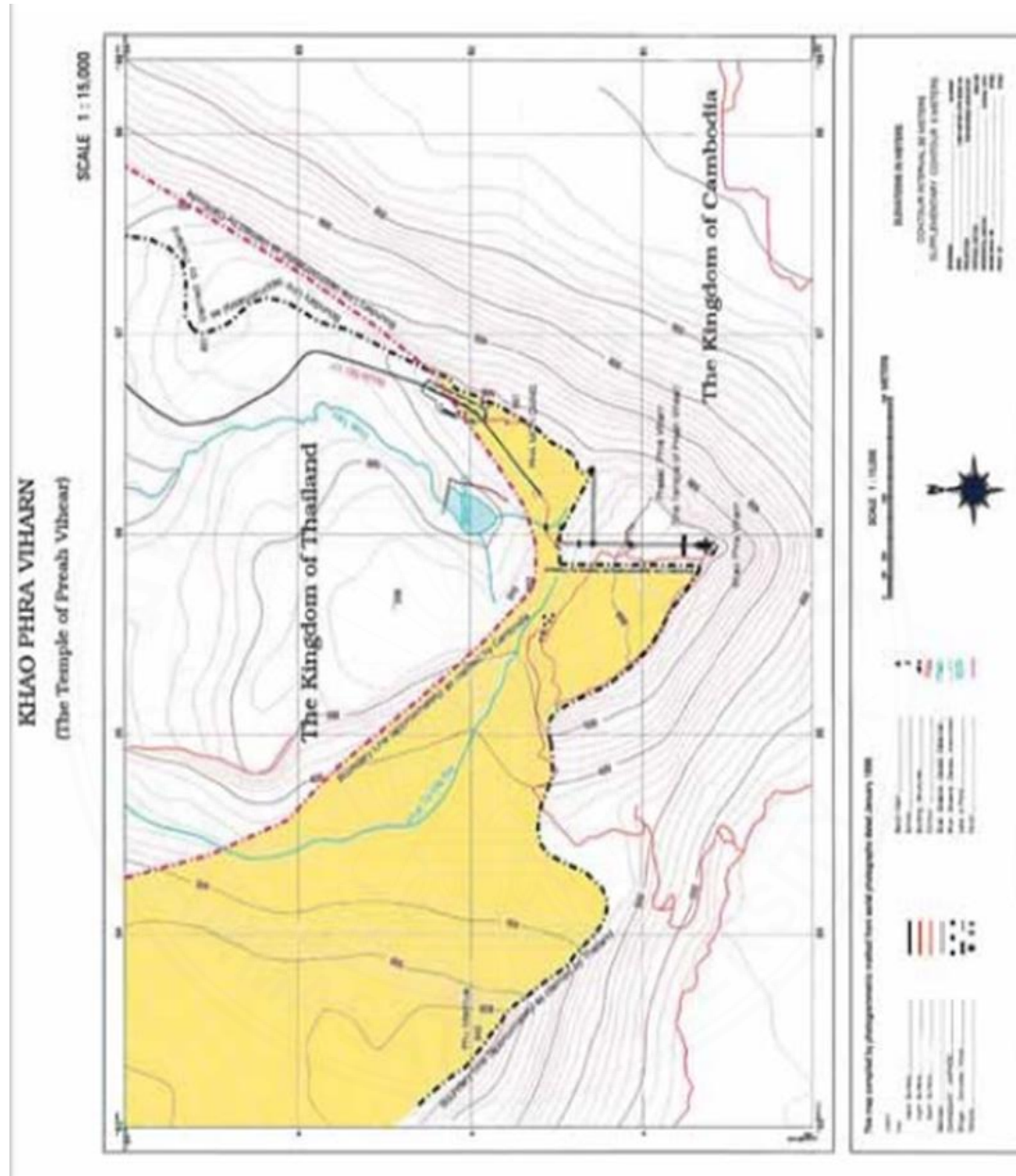
The vicinity of the Preah Vihear Temple by the resolution of Thai cabinet in 1962



*Note.* This map shows the border line (solid line) between Thailand and Cambodia; and the vicinity of the Preah Vihear Temple which were unilaterally defined by the resolution of Thai cabinet in 1962. From *Historical record epic of Khao Phra Viharn*, by Noppadon Pattama, 2016, p.30.

Figure 3.2

The dispute area around 4.6 km<sup>2</sup> between Thailand and Cambodia



*Note.* This map show the dispute area (yellow area) around 4.6 km<sup>2</sup> between Thailand and Cambodia. From *The Temple of Preah Vihear*, by Council of Ministers (Cambodia), 2008, ([https://www.mfaic.gov.kh/wp-content/uploads/2016/10/Inscription-PVH-in-WH-List\\_-05-2008\\_ENG.pdf](https://www.mfaic.gov.kh/wp-content/uploads/2016/10/Inscription-PVH-in-WH-List_-05-2008_ENG.pdf))



### **3.2 The Second Preah Vihear Temple Dispute (2008-2011)**

After the decision of the ICJ in 1962, it seemed that the Preah Vihear Temple Dispute slowly faded away from the attention of both nations. Cambodia was confronted with political turmoil and a civil war since 1967, which killed almost two million Cambodians. The Preah Vihear Temple was used as a bunker during that time; however, luckily, there was only minor damage from the war (Burgess, p.177).

Thailand was engaged in the anti-communist campaign and national security. Losing the Preah Vihear Temple to Cambodia in 1962 was prominent in Thai historical textbooks, but the immediate issue of the Communist threat, especially from Vietnam, was a priority. After the end of the Cold War, the relations between Cambodia and Thailand improved. Thai prime minister Chatichai Choonhavan initiated a policy of changing from battlefield to marketplace for the Indochina countries. This policy showed that Thailand had changed its attitude toward its neighbouring countries, from enemies to economic and diplomatic partners.

Cambodian politics also improved after all Cambodian political groups agreed to the Paris Peace Accords in 1991 to restore Cambodia's Kingdom and arrange a general election in 1993 (Puangthong, 2013, p.30-32). Cambodia needed foreign investment to restore its country after the long and decimating civil war, so this was an opportunity for Thailand to invest in business and governmental projects in Cambodia. Preah Vihear Temple was opened for tourists again in 1992 (Duangthida, 2008 p.128) so Thai people could visit the Temple through the main northern entrance. The atmosphere of cooperation and friendship between Cambodia and Thailand was going well, although there were riots in January 2003 during which the Thai Embassy in Phnom Penh was burned (Weatherbee, 2005, p.214). Although this showed an underlying tension between the two countries, relations were severed for only two months and came back quickly to normal.

The tourist industry brought a lot of income to Cambodia, around 9% of GDP in 2008. Angkor Wat in Siem Reap was the successful model of a tourist attraction and was registered as a World Heritage Site in 1992. The income from the tourist industry was essential to develop the infrastructure of the city and to upgrade the quality of Cambodian life (Puangthong, p.81-82). For this reason, the Cambodian

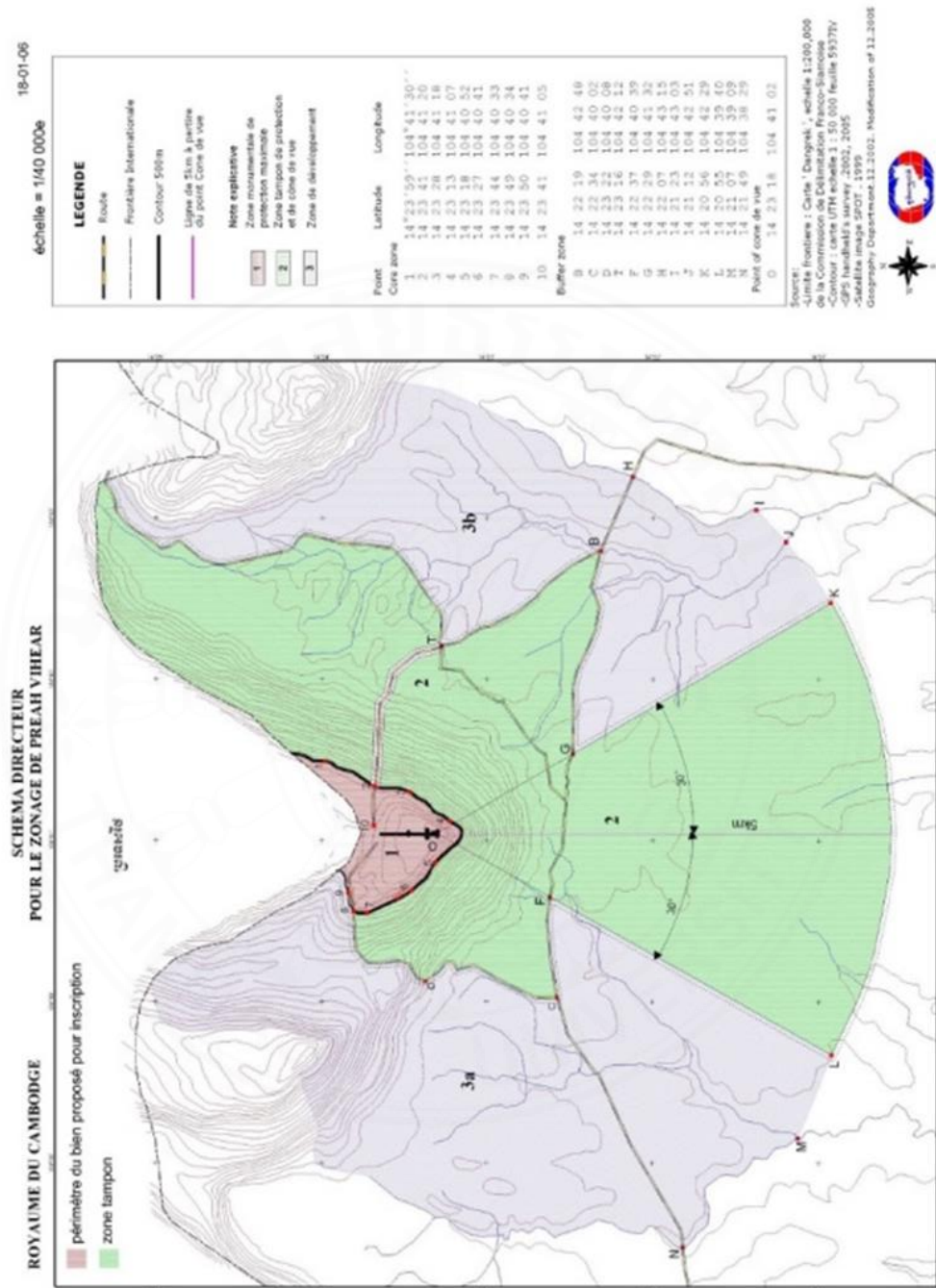
government used the Siem Reap model to expand the tourism industry to other provinces. Preah Vihear Temple was thus in the government plan to develop and register the Temple as a World Heritage Site. However, the Cambodian attempt to register the Temple as the World Heritage Site in 2007 was the cause of reviving the dispute between Cambodia and Thailand again after forty-six years of fading away. The dispute violently exploded into a clash of military forces, and in the end, it was again taken to the International Court of Justice (ICJ) in 2011.

### **3.2.1 Registering the Preah Vihear Temple as a World Heritage Site**

Registering the Temple of Preah Vihear as a World Heritage Site was a target for Cambodia to promote this powerful tourist attraction to earn income to develop Preah Vihear Province. At first the Thai government of premier Thaksin Shinawatra also supported the plan to register the Temple but pointed out it would have to be co-registration by both countries because, besides the Temple, there were other structures on the Thai side that were closely related to the Temple's elaborate approaches from the north (Thai) side, such as twin stupas and an ancient Khmer pool. And of course it is far more comfortable for tourists to enter the Temple from the Thai side. Therefore, in 2003 the Cambodian and Thai governments agreed to establish a joint committee to propose guidelines for developing the Temple and its surrounding areas, based on mutual interest.

However a problem arose in 2007 when Cambodia changed its approach and submitted a nomination to the World Heritage Committee without consulting Thailand. Cambodia also attached a map (see Figure 3.3, page 62) that included the 4.6 km<sup>2</sup> disputed area as a buffer zone of the World Heritage site. Thailand had to oppose the Cambodian plan because allowing Cambodia to pursue the World Heritage listing without any objection from Thailand would imply that Thailand accepted the disputed area as Cambodian territory. Moreover, Thailand argued that the nomination should have been jointly submitted by two countries because even with past rulings, a large part of the extensive Preah Vihear approach and landscaping is situated well within Thailand. Nevertheless, Cambodia rejected the idea of joint nomination because the Temple clearly belonged to Cambodia from the ICJ decision of 1962, so cooperation with Thailand might give a sense of

Figure 3.3  
The map to submit the World Heritage Committee in 2007



*Note.* The map was used by Cambodia to submit the World Heritage Committee in 2007. Map showed the World Heritage Site Zone (No.1) and the buffer zone (No.2) which included the 4.6 km<sup>2</sup> disputed area. From *Historical record epic of Khao Phra Viharn*, by Noppadon Pattama, 2016, p.54

ownership of the Temple to Thailand, something which Cambodia did not wish to encourage (Puangthong, p.88-90).

Moreover, Thai politics was the other factor for Cambodia to change its mind. The anti-Thaksin movement in Thailand had been destabilizing politics since 2005 and ended in the coup d'état of 2006. The joint committee was affected, delaying the process of developing the Temple and its surrounding area. Cambodia thus decided to pursue the nomination by itself.

In the 31st session of the World Heritage Committee in Christchurch, New Zealand, Cambodia nominated the Preah Vihear Temple as a World Heritage Site. However Thailand strongly lobbied the committee to postpone a decision to the 32nd session next year. Thailand claimed that it was necessary for Thailand and Cambodia to work out the management of the disputed area which would be used as a buffer and development zone. In the end, Cambodia, Thailand and the World Heritage Committee mutually agreed that Preah Vihear Temple had to be inscribed on the World Heritage List as soon as possible. The two countries agreed that Cambodia would propose the site for formal inscription on the World Heritage List at the 32nd session in 2008, with the active support of Thailand (World Heritage Convention, UNESCO, 2007).

According to this agreement, Thailand did not oppose the Cambodian attempt to nominate Preah Vihear Temple as a World Heritage Site. However, Thailand was concerned about the disputed area which Cambodia had included in the map to UNESCO. The World Heritage Committee understood this situation and therefore asked the two countries to negotiate that issue and submit an application next year with support from Thailand.

In December 2007, the Thai People Power Party won the general election, and Samak Sundaravej became the new Thai prime minister. Unfortunately, this government was seen by its opponents as close to former PM Thaksin Shinawatra. The government followed the last junta government in negotiating with Cambodia. Cambodia rejected the proposal from Thailand to reduce the size of the monument zone in a map. UNESCO offered to mediate the problem between Cambodia and Thailand at their headquarters in Paris and a meeting was held on 22 May 2008. At the meeting, Thailand agreed to support Cambodia to register Preah



Vihear Temple on the World Heritage List, while Cambodia agreed to exclude the area surrounding the Temple from their map. They agreed to make a new map that would specify the temple building only to register as World Heritage Site. The surrounding area on the east and south of the Temple would be a buffer zone under Cambodian authority, while both countries would mutually make a management plan for the area north and west of the Temple (the disputed area) until the results of the work of the Joint Commission for Land Boundary (JBC) would be complete (Noppadon, 2016, p.75).

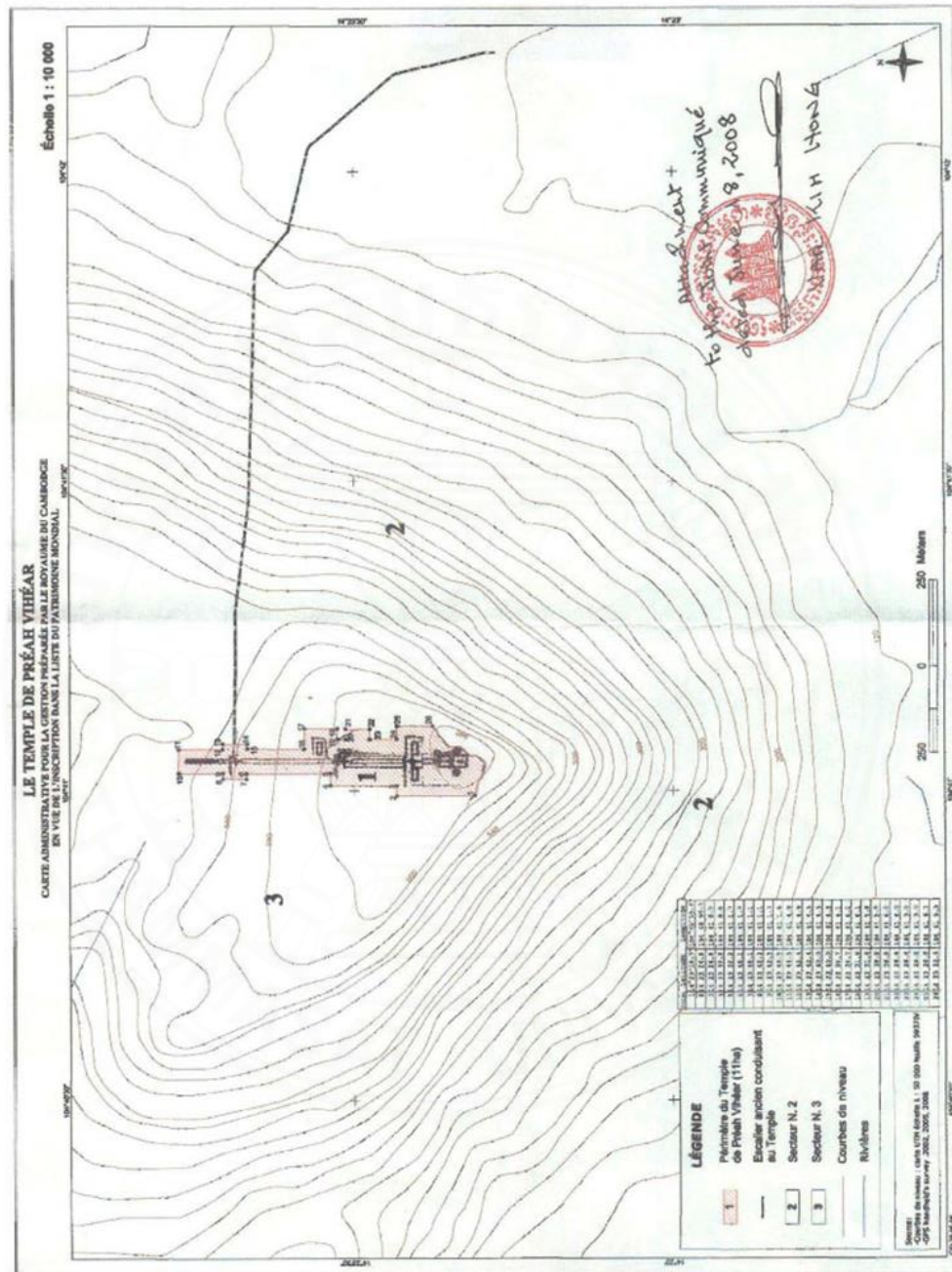
After the meeting, the three parties wrote a draft of Joint Communiqué to be approved by the national governments. Then Cambodia sent a new map to Thailand which included the temple building only (see Figure 3.4, page 65). In Thailand, the new map was forwarded to the Royal Thai Survey Department and the Office of the National Security Council to verify before submitting to the cabinet (Noppadon, p.79-80). After the Thai cabinet approved the Joint Communiqué and new map, the Joint Communiqué was officially signed with Cambodia and UNESCO on 18 June 2008. Finally, in the 32nd session of the World Heritage Committee in Quebec City, Canada, the committee approved Preah Vihear Temple as a World Heritage Site on 7 July 2008.

It seemed that this story had a happy ending because the Cambodian and Thai governments mutually cooperated to find a solution; but on the contrary, it led to an even more violent dispute. The domestic politics of both countries was the crucial factor.

In Thailand, the signing of the Joint Communiqué gave a big opportunity for the Anti-Thaksin group, the People's Alliance for Democracy (PAD or Yellow Shirts). Working together with the Democrat Party, they took this issue to overthrow Samak's government. They incited the masses to protest that the government was losing national territory again because it approved the Joint Communiqué which they said was a legal document to commit Thailand to accept Cambodian sovereignty over Preah Vihear Temple and the surrounding area. They claimed that although the ICJ judged that the Temple belonged to Cambodia in 1962, Thailand had never accepted the decision and still preserved the right to revise the judgment. Moreover, they sued the government for violating the constitution because

Figure 3.4

The map to submit the World Heritage Committee in 2008



*Note.* The map was used by Cambodia to submit the World Heritage Committee in 2008 which included the building of Preah Vihear Temple only as the World Heritage Site Zone (No.1), the Cambodian buffer zone (No.2) and mutual management zone (No.3). From *Historical record epic of Khao Phra Viharn*, by Noppadon Pattama, 2016, p.78.

all international treaties had to be approved by the parliament, and the Joint Communiqué was equal to an international treaty (Wanwipa, M.L., 2010, p.24-26). They took this issue to the Administrative Court to temporarily suppress the Joint Communiqué. The court approved an interim injunction on this issue on 27 June 2008; Thailand had to follow the juridical order by informing Cambodia and the World Heritage Committee. In Quebec, Thailand opposed inscribing the Preah Vihear Temple on the World Heritage List.

The PAD political group successfully used the bitter story of losing territory to incite a nationalist movement. They criticized the government as a traitor to the nation, serving Cambodian interests and the business benefits of Thaksin in Cambodia. They also proposed the idea of using force to occupy the Temple again for the prestige of the nation (Charnvit et al., 2013, p.27-28). In parliament, the opposition Democrat Party brought a no-confidence motion against the government and supported the nationalist movement by the PAD. They also criticized the government, saying that approving the Joint Communiqué caused Thailand to lose the right to revise the ICJ judgment. He also claimed that Preah Vihear Temple should belong to the Thai side and there was no 4.6km<sup>2</sup> disputed area because in reality, this area belonged to Thailand by reference to the watershed (Puangthong, p.130).

Overall the PAD and the Democrat Party successfully incited the protest against government and Thaksin's regime by using extreme nationalism and the discourse of losing national territory. Lastly, Samak's premiership was terminated by the decision of the Constitutional Court on 9 September 2008 due to his employment with a culinary television program. Then, the parliament chose Somchai Wongsawat, Thaksin's brother-in-law as prime minister however he was also removed from premiership by the verdict of the Constitutional Court in December 2008 (Askew, 2010, p.37-41).

Cambodian Prime Minister Hun Sen enjoyed the success of registering Preah Vihear Temple as a World Heritage Site, while his party overwhelmingly won the 2008 general election by using the Temple as the major campaign issue. However, he was unhappy with the Thai PAD and Democrat Party, which used the temple issue as a political tool to overthrow the Thai government. He saw that the PAD and Democrat Party were obstructing Cambodia's attempt to

register the Temple even though it belonged to Cambodia according to the ICJ decision of 1962. Besides the obstructing, they were threatening the Cambodian sovereignty in the disputed area and trying to steal Preah Vihear Temple from Cambodia. Moreover, Hun Sen was also deeply insulted by them. The former Thai ambassador and one of the PAD activists, Kasit Piromya, appeared on a TV political talk show and strongly insulted Hun Sen. Amazingly, Kasit was appointed Foreign Affairs Minister in Abhisit's cabinet (Charnvit et al., p.28).

For all these reasons, Hun Sen did not trust Abhisit's government and this was a big obstacle for the two countries to cooperate and to settle the dispute during the premiership of Abhisit. The tension was heightened when the two countries increased the numbers of their troops in the disputed area.

### **3.2.2 Clashing of Cambodian and Thai armed forces**

The nationalist trend of both countries was heightened and was a cause of increasing the numbers of their troops in the disputed area. There were clashes of the two countries' armed forces several times during 2008-2011. The first clash took place near Preah Vihear Temple on October 2008. Thai and Cambodian soldiers exchanged gunfire which left one Cambodian soldier dead and four wounded, and two Thai soldiers wounded (CNN, 2008, October 15). After this clash, the two countries used bilateral negotiations to settle the dispute. Cambodian and Thai army commanders met each other at Siem Reap during 23-24 October while Cambodian Prime Minister Hun Sen talked with Thai Prime Minister Somchai Wongsawat when they were in Beijing. The two leaders agreed to avoid military incidents in the disputed area while they would use bilateral mechanisms to settle the dispute (Minister for Foreign Affairs (Thailand), 2011, p.50).

On 17 December 2008, Abhisit Vejjajiva became the new Thai Prime Minister so Hun Sen stated on the Cambodian media that he wanted to see Abhisit to discuss the dispute and seek Thai cooperation. However, four months later on April 2009, another military clash took place near the Temple which again killed soldiers: two Cambodians and one Thai.

The two countries worked to control these incidents. Hun Sen said, "I regard the fighting yesterday as an incident, not a war," while the Thai Defense

Minister also said, “It was an accident, a misunderstanding among officials on the ground, which is common when you are closely positioned.” (Reuters, 2009).

Moreover, the two countries arranged an extraordinary meeting of the Joint Commission for Land Boundaries (JBC) during 6-7 April in Phnom Penh. The JBC agreed the two countries would withdraw troops from Wat Keo Sekha Kirsvarak which was in the disputed area (Minister for Foreign Affairs (Thailand), p.51). The Thai side had just formed a new government so Cambodia gave it time before continuing the negotiations of the two leaders.

Another heavy military gunfire exchange took place during 4-7 February 2011. The incident happened when Thai army engineers attempted to build a road and bridge in the disputed area and Cambodian soldiers started to fire on them. The two countries’ forces then used heavy weapons such as artillery, rockets and mortars to fire on each other for four days. The toll was eight people of both sides killed and several houses damaged in Phum Saron village of Sisaket Province Thailand, while some part of Preah Vihear Temple was also damaged (Puangthong, p.154).

In this conflict, the two governments could not control the clashes by bilateral negotiation and mechanisms so on 5 February Cambodia took the conflict to the United Nations Security Council (UNSC) for an emergency meeting to help end the fighting. Cambodia decided to take this dispute to an international level because it was displeased with the Thai government’s insincerity in trying to settle the dispute since 2009. Two months before the clash in December 2010, Cambodia charged seven Thai politicians and nationalist activists who had illegally crossed into the disputed border area. One of them was a representative of the Democrat party who was taking a video while in the disputed area. In the video, he said that Prime Minister Abhisit knew about his “secret” mission to the disputed area. A Cambodian court sentenced two of the intruders to up to eight years in prison while a suspended sentence was given to the others (Puangthong, p.152-153). Cambodia concluded that the Thai side was not sincere and was still using this issue for domestic political benefit so Cambodia decided to seek help from another international organization.

Cambodia wanted the UNSC to deploy an international mediating force at Preah Vihear Temple: however, after a closed-door meeting; the UNSC



declared a permanent ceasefire and restraints on using force to aggravate the conflict, and asked both countries to cooperate with ASEAN to settle the dispute (Shrestha, p.53). Although ASEAN attempted to settle the dispute, yet another clash of the two armed forces took place again during 22 April - 4 May. This time the clash spread to other disputed areas at Ta Moan and Ta Krabei Temple, around 150 km. west of Preah Vihear Temple, and eight Cambodian and three Thai soldiers were killed, while dozens of troops and civilians were injured on both sides (International Crisis Group, p.18). Finally, Cambodia took the conflict to ICJ again on 28 April to request that the ICJ order the Thai troops out of the disputed area and to interpret the 1962 decision on the location of the border in the disputed area.

### **3.2.3 Back to the International Court of Justice**

The Preah Vihear Temple dispute came back to the ICJ again. As mentioned above, the ICJ decision of 1962 awarded sovereignty over the Temple to Cambodia. However the area close to the Temple (the “vicinity”) was vague since the court did not clearly delimit it. Cambodia and Thailand both still claimed sovereignty over the vicinity, which was 4.6 km<sup>2</sup>. Cambodia asked the ICJ to interpret the judgment of 1962 to specify the vicinity of the Temple and for measures to stop the assaults from Thailand. Thailand rebutted this Cambodian request to ICJ and requested the court not accept the case. However, on 18 July 2011, the court decided that it had authority to interpret the judgment. As a measure to stop the clashes, the court specified a provisional demilitarized zone from which Cambodia and Thailand should withdraw their troops and refrain from any military presence and any armed activity (International Court of Justice, 2011). This demilitarized zone was around 17.3 km<sup>2</sup>; however this zone included the disputed area and some area of Thai sovereignty, so it seemed that Thailand would be at a disadvantage in military and security activities.

After the ICJ decision of in July 2011, the tension between Cambodia and Thailand decreased because of the change in Thai leader from Abhisit Vejjajiva to Yingluck Shinawatra, Thaksin’s sister. Relations between the two countries became good again. On 24 September 2011, there was the football diplomacy match between the Thai ruling party and Cambodian government officials, military leaders and businessmen in Phnom Penh. Cambodian prime minister Hun Sen

said “the nightmare era is clearly over. Today we can see an event showing deep changes in relations: the change from the battlefield to development, the change from the battlefield to trade and politics, the change from the sound of gunfire to the sound of music and a friendly football match, like today” (The Cambodia Daily, 2011).

Clearly the change in Thai government led directly to the extreme change in relations with Cambodia, from an enemy to a friend, and clearly the private relations between the two leaders were the key to this improvement. Although relations had improved so much, there would be further confrontations with the ICJ decision of 2013.

After two years of deliberations, on 11 November 2013 the ICJ rendered a unanimous decision that in interpreting the judgment of 1962, Cambodia had sovereignty over the whole territory of the promontory of Preah Vihear, as defined in paragraph 98 of the present judgment, and that, in consequence, Thailand was obliged to withdraw from that territory any of its military or police forces, or other guards or keepers, that were stationed there (International Court of Justice, 2013) .

In this decision of November 2013, the court interpreted the vicinity of Preah Vihear Temple only, and it refused to judge the sovereignty over other disputed areas as requested by Cambodia because these were not part of the 1962 decision. The court specified that the vicinity of Preah Vihear Temple was the whole territory of the promontory of Preah Vihear which was given a geographical definition in Paragraph 98:

“From the reasoning in the 1962 Judgment, seen in the light of the pleadings in the original proceedings, it appears that the limits of the promontory of Preah Vihear, to the south of the Annex I map line, consist of natural features. To the east, south and south-west, the promontory drops in a steep escarpment to the Cambodian plain. The Parties were in agreement in 1962 that these escarpments, and the land at its foot, were under Cambodian sovereignty in any event. To the west and north-west, the land drops in a slope, less steep than the escarpment

but nonetheless pronounced, into the valley which separates Preah Vihear from the neighboring hill of Phnom Trap, a valley which itself drops away in the south to the Cambodian plain (see Paragraph 89 above). For the reasons already given (see Paragraphs 92-97 above), the Court considers that Phnom Trap lay outside the disputed area and the 1962 Judgment did not address the question whether it was located in Thai or Cambodian territory. Accordingly, the Court considers that the promontory of Preah Vihear ends at the foot of the hill of Phnom Trap, that is to say: where the ground begins to rise from the valley.

In the north, the limit of the promontory is the Annex I map line, from a point to the north-east of the Temple where that line abuts the escarpment to a point in the north-west where the ground begins to rise from the valley, at the foot of the hill of Phnom Trap.

The Court considers that the second operative paragraph of the 1962 Judgment required Thailand to withdraw from the whole territory of the promontory, thus defined, to Thai territory any Thai personnel stationed on that promontory”

(International Court of Justice, 2013)

The territory of the Preah Vihear Temple was the whole territory of the promontory so the vicinity of the Temple was wider than the vicinity which had been unilaterally defined by the Thai cabinet in 1962. However it did not cover all of the 4.6 km<sup>2</sup> disputed area. In the view of Thai nationalists, Thailand might lose territory to Cambodia again because Thailand had been adhering to the new border line drawn by the Thai cabinet after the 1962 ICJ decision.

Ultimately this thesis cannot absolutely define the vicinity of Preah Vihear Temple. It can only be defined when the two countries' boundary commissions meet in the future and agree to survey this geographic area and together draw a clear boundary line. Although the court had already defined the vicinity of



Preah Vihear, in reality the two nations have to work from the real geographic area and it will take a long time to complete this process.

The Cambodian side was happy with the 2013 ICJ decision because it now knows that the whole promontory of Preah Vihear belongs to it. For the Thai side, at least it did not lose all of the 4.6 km<sup>2</sup> disputed area to Cambodia, and the ICJ did not judge that the Annex 1 map (published in 1907) had any legal effect on Thailand. After this 2013 decision, there were no violent reactions from either country. In Thailand, the new anti-government movement, People's Democratic Reform Committee (PDRC) could not use this issue to overthrow Yingluck's government. The two governments declared they would pay special attention to maintain and strengthen friendly relations and good cooperation between them.

### **3.3 The role of ASEAN to settle the dispute**

ASEAN also took action to settle the Preah Vihear dispute. This section will study the role of ASEAN and its mechanisms to settle the dispute, and thus answer one of the thesis research questions. The Preah Vihear dispute was a great challenge to ASEAN in the 21st century after its members had decided to integrate deeply as a regional community by 2015 and had launched the ASEAN Charter (2008) as a regional constitution. ASEAN norms and mechanisms to settle the dispute were mentioned in Chapter 2 of this thesis which described the Treaty of Amity and Cooperation in Southeast Asia (TAC) as a code of conduct to build peace, security and stability in the region, while the ASEAN Charter is a founding instrument which also contains some detail on dispute settlement. This section has two parts. The first is the role of ASEAN before the armed clashes in 2011. The second is the role of ASEAN at the UNSC and in attempting to settle the dispute.

#### **3.3.1 The role of ASEAN before the clashes of 2011**

The second Preah Vihear dispute took place in 2008. When tensions between Cambodia and Thailand were heightened in 2008, ASEAN did not ignore the situation. Cambodia had requested intervention by the UNSC but ASEAN quickly intervened to stop the UNSC involvement and urged that it be returned to the

bilateral level because international intervention would damage ASEAN's credibility and reputation (International Crisis Group, p.14). They argued it was too early to use the international level to resolve the dispute, while Thailand argued that ASEAN had given its support to bilateral negotiations, so this dispute should not be considered by the UNSC. Singaporean Foreign Affairs Minister George Yeo, as the chair of ASEAN issued the following statement:

“We urged both sides to exercise utmost restraint and resolve this issue amicably, in the spirit of ASEAN solidarity and good neighborliness. We hope the General Border Commission (GBC) between Thailand and Cambodia which will be meeting tomorrow, and other bilateral talks, will find a way to defuse the situation. Both sides affirmed that they would abide by their ASEAN and international obligations and exert their utmost efforts to find a peaceful solution to the issue. Recognizing the importance of maintaining peace and stability in the region, the ASEAN Foreign Ministers also decided to offer its facilities to be placed at the disposal of Cambodia and Thailand, in the event that they felt the need for further support to find an early resolution to the issue.”

(National Archives of Singapore, 2008)

According to this statement, ASEAN believed that the two countries could negotiate and use bilateral mechanisms such as the General Border Commission (GBC) to manage the dispute. It was thus not necessary for ASEAN to intervene directly in this dispute, however the chair of ASEAN would be pleased to help both countries in case they could not negotiate with each other. Thus in 2008 this was the first attempt of ASEAN to manage the dispute. However, by ASEAN rules it could not do anything more until it received a request from the disputant members. Cambodia and Thailand were urged to use the bilateral mechanisms although Cambodia wanted to take the issue to the international level.

In 2009 Thailand was the Chair of ASEAN, and therefore it did not take this dispute to the ASEAN forum although Cambodia requested the issue be discussed at the ASEAN Summit Meeting. In 2009, they were still using bilateral mechanisms such as GBC and JBC to resolve the dispute. However, in 2010 Vietnam was the Chair of ASEAN. PM Hun Sen had good relations with Vietnam and asked Vietnamese Foreign Affairs Minister Pham Gia Khiem to bring up the dispute at ASEAN meetings and to act as a mediator to settle it. Subsequently, the Vietnamese Foreign Affairs Ministry issued a statement hoping the two countries would address the dispute over Preah Vihear Temple using peaceful dialogue in line with international law and would reach a lasting agreement between the two countries. In the role of mediator, Vietnam had to consult with other ASEAN members first (Worley). Thailand promptly refused Vietnam's proposal because the Thai standpoint was bilateral negotiation only, and it did not want a third party to join this issue, especially not Vietnam. It did not trust Vietnam because of the good relationships between Hun Sen and the Vietnamese government so it feared a disadvantage. When Thailand refused the proposal, Vietnam could not take further action on the dispute, because of the principle of consensus (Amador, J.S. & J.A. Teodoro, 2016, p.13).

The International Crisis Group (2011, p.15) criticized ASEAN for missing the opportunity of preventive diplomacy by negotiation, enquiry, mediation or conciliation during 2008-2010 to stop the military clashes and the chance to avoid dozens of casualties and tens of thousands of displaced persons. They tried to block ASEAN into action in 2011. The role of ASEAN before the 2011 clashes was limited, although it was successful in taking the issue back from the international level. ASEAN showed its concern about this dispute but it could not take any action until there was a request from both member parties. Thailand consistently blocked any ASEAN initiative. If ASEAN had had more options or more authority, or if Thailand had accepted a mediator, clashes of the two armed forces would not have continued, and this dispute would not have been taken back to the international level.

### **3.3.2 The role of ASEAN after armed forces clashes**

In February 2011, Cambodian and Thai armed forces had their most severe clash, causing much death, injury and damage on both sides. This action was the first time that ASEAN members used military force against each other and

breaking the ASEAN record and aspiration that there had been no war between ASEAN members since ASEAN was established in 1967 (International Crisis Group, p.15). Fighting between Cambodia and Thailand broke the obligations of signing the TAC to seek peaceful settlement of disputes and renounce the threat or use force (Severino, 2008, p.15). Furthermore, they were damaging the credibility of ASEAN to form a political and security community by 2015. Therefore, Indonesia as the Chair of ASEAN in 2011 had to intervene in this dispute to preserve regional security.

After the armed clash, Cambodia sent a letter to the United Nations Security Council (UNSC), requesting them to manage the conflict. Suddenly, Indonesia took action to help settle the dispute as a third party. This was because Indonesia, as the Chair of ASEAN, worried that if the UNSC approved the deployment of an international mediating force in the disputed area, it would destroy the stability in the region, and seriously damage the credibility of ASEAN. As a first step, Indonesian Minister for Foreign Affairs Marty Natalegawa visited Phnom Penh and Bangkok during 7-8 February to talk with the two governments, and then he reported back to the UNSC. Then on 14 February, he joined the closed-door meeting of the Security Council in New York together with the Cambodian and Thai Foreign Affairs Ministers. At the meeting, he convinced the Council to leave the dispute issue back at the regional level and gave them three ASEAN objectives:

1. “ASEAN will call for, and, indeed provide strong encouragement for, both concerned parties to continue to commit to the peaceful settlement of disputes and renunciation of the use and threat of use of force, as provided for in the Treaty of Amity and Cooperation and the ASEAN Charter;
2. ASEAN will support the efforts of the two parties to respect the ceasefire. Enhanced communications may need to be introduced;
3. ASEAN will work to ensure a conducive climate for the resumption of negotiations between the two sides. ASEAN

may facilitate such talks and be informed by the parties concerned on the general outline of its progress”.

(ASEAN Secretariat, 2011)

ASEAN also referred to Article 52, Chapter VIII (Regional Arrangement) of the United Nations Charter to rightfully take the dispute back to the regional level. Finally, the UNSC decided to leave the issue back at the regional level by supporting ASEAN and encouraging Cambodia and Thailand to cooperate with ASEAN. Moreover, the UNSC called on both countries to display maximum restraint and avoid any action that may aggravate the situation, establish a permanent ceasefire, and implement it fully and resolve the situation peacefully and through effective dialogue (Security Council, 2011). It seemed that ASEAN was successful in keeping the dispute at the regional level, however credit is primarily due to Indonesian Foreign Minister, Marty Natalegawa who so successfully convinced the UNSC. Natalegawa had been the permanent representative of Indonesia to the United Nations and the president of the Security Council during 2007-2008, the UNSC was confident in his experience to deal with this dispute, especially in his current position the Chair of ASEAN. The International Crisis Group (p.19) commented that it was lucky for ASEAN in 2011 that Indonesia was the Chair because it had more efficiency and readiness to deal with this dispute, as compared with Laos or Brunei, which might not be ready to take a leadership role in this situation.

Indonesia as Chair of ASEAN was following Article 23 of the ASEAN Charter to provide good offices or mediation. This was the first time for ASEAN to refer the Charter in an issue of dispute settlement. ASEAN decided to use the ASEAN Ministerial Meeting (AMM) as the mechanism to settle the Preah Vihear dispute, based on the principles of consultation and consensus. Indonesia called a foreign minister meeting for 22 February in Jakarta, and ASEAN Secretary-General Surin Pitsuwan said that the 22 February meeting was historic, as the group’s foreign ministers had never before discussed a conflict between two member states. However, there were only 5 of 10 foreign ministers to join the meeting and the other five nations were represented by deputies or other high officers (International Crisis Group, p.20-21). Remarkably, some countries’ ministers did not join the historic

meeting perhaps because they might not want to get involved in this dispute which could expand into a regional dispute. Also, this meeting would set the standard for ASEAN dispute settlement in the future, so if ministers attended the meeting, it might show their support for this new procedure and that might limit them, or be used against them in the future. At the meeting, they decided that first, Indonesia as the Chair of ASEAN would send its observers to both sides of the affected areas on the Cambodia-Thailand border, to assist and support the two nations in respecting their ASEAN commitments to avoid further armed clashes between them. The observers were to report on complaints and violations and submit their findings to each nation through Indonesia. Second, Indonesia supported the bilateral mechanisms of both countries and offered to be the host of the Thai-Cambodian Joint Commission on the Demarcation for Land Boundaries (JCB) and the General Border Committee (GBC) meetings. Finally, Indonesia would still continue ASEAN's efforts to settle this dispute even though its term as chair would terminate at the end of 2011 (ASEAN Secretariat, 2011).

Thus, Indonesia once again showed its leadership by dealing with this dispute on behalf of ASEAN. Indonesia was relying on its experience in welcoming observers from ASEAN member states in Timor-Leste in 1999 and in Aceh in 2003-2005. Moreover, it realized that when its term as ASEAN Chair terminated at the end of 2011, Cambodia would become the next Chair in 2012. Therefore Indonesia had to continue to monitor this dispute for continuity, and to reduce any temptation by Cambodia to abuse its position.

The use of observers was a new innovation for this region which might be considered a challenge to some states' national security, or to the principle of non-interference in the internal affairs of other members. However, Indonesia pushed forward the plan for the observers and started to draft the terms of reference (TOR). It planned to send 30 military and civilian observers to the disputed area, 15 observers to each country. The observers would be stationed in the disputed area only 6 months. Cambodia approved this plan quickly and requested the observers be stationed in the disputed area as soon as possible. At first, Thailand seemed to accept the Indonesian idea; however, one week after the meeting, Thailand began to disagree with this plan. Thailand, especially the military and the PAD, opposed the Indonesian

observer plan because it was interference in Thai domestic affairs and sovereignty. Thai commander-in-chief, General Prayut refused to join the GBC meeting in Indonesia because this was an issue between Cambodian and Thai soldiers so he did not want a third party involved in this issue. The Thai PAD and the nationalist movement went to the embassy of Indonesia to submit a letter objecting to the sending of Indonesian observers. They worried that observers would cause Thailand to lose its rights to claim the disputed territory, and furthermore Indonesia was intruding on Thai sovereignty (MGR Online, 2011, March 10).

At an ASEAN meeting in February 2011, Thailand accepted the Indonesian idea because it was pressured by ASEAN, but they still felt uncomfortable to see foreign soldiers in their land, while the government worried that accepting Indonesian observers would be opposed by PAD and the nationalist movement, which could affect the popularity of the Democrat Party in the upcoming general election. However, they realized that if they did not agree with ASEAN efforts, it would damage their national credibility and image in international politics.

Thailand thus decided to delay the TOR (terms of reference) by editing the details. For example, it requested that the observers be designated a “survey team” rather than an “observer team,” and they should not wear uniforms or military insignia. Also the Indonesian soldiers should be accredited as “diplomats” to their respective Indonesian missions. After editing such details of TOR, Thailand accepted it but then suddenly demanded Cambodia withdraw its troops unilaterally before observers could be deployed. Cambodia absolutely refused this demand so the attempt of ASEAN came to a deadlock in April 2011 (International Crisis Group, p.21).

In April 2011, ASEAN called a meeting of the JBC at Bogor, Indonesia however the GBC meeting was postponed because Thai military did not want to attend a meeting in a third country. Thus the Indonesian observer plan was dead. The tension and confrontation of the two countries’ troops thus remained and finally, the two armed forces clashed again in late April. This time, Cambodia requested the protection of the ICJ instead.

This re-occurrence of clashes in April showed the failure and inefficiency of ASEAN mechanisms to settle the dispute. Indonesia as Chair of



ASEAN could not force Thailand to accept the observer plan because it would be contrary to the principle of non-interference in a member's internal affairs, as per Article 2 of the ASEAN Charter. However, Indonesia did not give up attempting to settle the dispute.

In the ASEAN Summit Meeting in May 2011, Cambodian PM Hun Sen took this issue to the meeting and harshly complained about Thailand which did not have the good will to accept the Indonesian observers and did not have any will to settle this border dispute (MGR Online, 2011, May 7). Thai PM Abhisit replied that Thailand still aimed to settle the dispute peacefully by using available mechanisms and did not want this issue to affect the credibility of ASEAN. That ASEAN Summit meeting degenerated into a war of words between the Cambodian and Thai leaders. However Indonesia as the Chair of ASEAN attempted to mediate the dispute once again by arranging a meeting of Cambodian, Indonesian and Thai leaders on 8 May and the Foreign Ministers on 9 May (International Crisis Group, 2011, p.24). These tri-meetings were also a new diplomatic innovation for ASEAN by Indonesia, initiated for the goal of waging peace in this region, despite the concerns by some member states that this intractable bilateral dispute might expand into a regional dispute.

At the tri-leaders meeting, ASEAN failed again to achieve any breakthrough to settle the dispute. Cambodia and Thailand still refused to back down from their sets of opposing conditions. However, the three leaders mutually agreed to the meeting of the three Foreign Ministers next day. At the meeting Natalegawa offered a "package solution": once Thailand approved the terms of reference (TOR) for the deployment of an Indonesian observer team to the disputed area. This offer was the homework for Thai and Cambodian foreign ministers to take back to their governments. The next day, after coming back from Indonesia, Cambodia accepted this offer rapidly, while Thailand still stood on its point that Cambodia had to withdraw its troops first before Thailand would accept the offer. Thailand refused the offer from ASEAN once again. It was making a security crisis in the region and was diminishing the credibility of ASEAN as the regional architecture (International Crisis Group, 2011 p.25).



Although ASEAN failed to settle the dispute this second time, its mission to preserve the peace in the region was not finished yet. On 18 July, the ICJ gave its decision on provisional measures at Preah Vihear by defining the provisional demilitarized zone (PDZ) from which Cambodia and Thailand should withdraw their troops and refrain from any military presence and any armed activity within that zone. Moreover, the court encouraged Cambodia and Thailand to continue their efforts at cooperation within ASEAN and, in particular, allow the observers appointed by that organization to have access to the provisional demilitarized zone (International Court of Justice, 2011). After this decision of the ICJ, Cambodia and Thailand slowly withdrew their troops from the PDZ and replaced them with police and civilian security guards instead. It seemed that ASEAN had new hope again to push forward the Indonesian observers with such strong support from the ICJ's verdict, while Yingluck won the Thai general election in July 2011 and became the new Thai Prime Minister, so the political atmosphere of two countries was better. On 23 July, ASEAN made a statement to support Indonesia, chair of ASEAN, to continue to undertake consultations with Cambodia and Thailand on the dispute, including on the early assignment of the Indonesian Observer team (ASEAN Secretariat, 2012, p.91). On 21 December, the GBC meeting took place again and the two countries' ministers of defense approved the proposal of withdrawing troops and deploying the observers, and established a Joint Working Group to set a date for the deployment. In 2012, Cambodia became Chair of ASEAN. Marty Natalegawa told Hor Namhong that Indonesia was still ready to send the observers (Phnom Penh Post, 2012, July 20). Amazingly, the statement of ASEAN Ministers Meeting at Phnom Penh in January 2012 did not mention the dispute issue at all. Perhaps the relations between the two countries had improved enough for the two governments to return to bilateral mechanisms again so there was no longer any need to raise this issue to the regional level.

Cambodia and Thailand mutually agreed to withdraw their troops. However the issue of Indonesian observers was the most important issue for Thai internal security. Although Thailand seemed to agree to the proposal of Indonesian observers, in fact, it attempted to avoid dealing with this issue. The Thai government claimed that Indonesian observers had to be approved by the Thai government so

considerable time had to be spent on this process. At the same time the Thai military leader stated that Indonesian observers might no longer be needed because the border situation had improved so much (Bangkok Post, 2012).

The Indonesian observers plan was a hot potato for Yingluck's government. Although she attempted to build a good relationship with Cambodia, she did not want to open an opportunity for her political opponents to use this issue against her, as they had done with Samak's government in 2008. Moreover, the Thai military was still concerned about internal security and did not agree with this proposal, and Yingluck did not want to have trouble with the military which might overthrow her government by coup d'état. For all of these reasons, ASEAN never did deploy the Indonesian observers to the dispute site.

To summarize, ASEAN seriously attempted to settle the Preah Vihear dispute. At first, it believed that bilateral negotiations could be effective. When it was clear they were not, Indonesia as Chair of ASEAN took the role of third party mediator, referring to Article 23 of the ASEAN Charter. ASEAN was able to keep the dispute at the regional level, and used the ASEAN Ministerial Meeting (AMM) to approve sending Indonesian observers to be stationed at the disputed area. However, this plan was refused by Thailand. After another armed clash Indonesia attempted a second time to mediate the dispute by calling meetings of Cambodia, Thailand and Indonesia where Indonesia attempted to convince Thailand to accept Indonesian observers, but the Thais still disagreed. The ICJ decided Cambodia and Thailand should continue their cooperation within ASEAN and allow the observers into the disputed zone. In the end Thailand still delayed and avoided the issue, so that ASEAN failed to deploy the observers and to stop the armed clashes.

The role of ASEAN in the Preah Vihear dispute was significant for ASEAN's integration. It was the first attempt of ASEAN to settle an armed conflict among member states. ASEAN used its available mechanisms and norms by initiating a plan of deploying observers and meetings between disputants with ASEAN as mediator, which challenged the principle of non-interference in internal affairs. This action may become the standard to settle disputes among member states in member states the future. Indonesia successfully demonstrated its leadership as Chair of ASEAN, and its genuine concern for peace, stability and security in the

region, beyond narrow national interest. On the contrary, although it is one of the ASEAN founders, Thailand did not cooperate with ASEAN. Thai political elites were clearly more concerned for their own interests than for the region and its credibility. Credit must be given to Indonesian Foreign Minister Marty Natalegawa who played such an important role and devoted so much effort to deal with this dispute. He certainly had the respect of international organizations such as UNSC and ICJ, and this was to the credit of ASEAN. However, ASEAN failed to settle the dispute, further clashes occurred, and Cambodia asked the ICJ to protect it instead. This reflected the reality that ASEAN was powerless to force its member states to stop military confrontation and come back to negotiations. Although ASEAN initiated several legal documents and mechanisms such as TAC and the ASEAN Charter and dreamed to build a regional community, in practice it was still unable to maintain peace and stability in the region.

If we study the role of ASEAN in settlement attempts in this chapter, we will find that there are two important factors in ASEAN's failure to settle the Preah Vihear dispute. First is the domestic politics of the two disputing countries, especially Thai politics, that were obstacles to ASEAN. Second is the inefficient mechanisms, principles and organizational format of ASEAN. These two factors will be deeply analyzed and discussed under political theories in the next chapter.

## **CHAPTER 4**

### **AN ANALYZE OF THE FAILURE OF ASEAN TO SETTLE THE PREAH VIHEAR DISPUTE**

The failure of ASEAN to resolve the Preah Vihear Dispute will be examined in this chapter. We studied and reviewed the Preah Vihear Temple Dispute since 2008 and ASEAN's efforts to resolve it in Chapter 3 and discovered two major reasons for the dispute's failure to be resolved. The first was Cambodian and Thai domestic politics. Political actors exploited the Preah Vihear Temple issue for political gain while refusing to work with ASEAN to resolve the dispute. In 2008, Cambodian Prime Minister Hun Sen used the registration of the Preah Vihear Temple as a World Heritage Site as part of his election campaign. This issue was used by an anti-government movement (PAD) and an opposing party in Thailand to overthrow the government. As a consequence, this chapter will examine the influence of two states' domestic politics on ASEAN's actions. James Rosenau's theory of linkage politics will serve as a framework for explaining the connections between domestic, bilateral, and regional politics.

The inefficiency of ASEAN mechanisms and norms was the second factor, with the principle of non-interference in members' internal affairs being the most significant barrier. This chapter will examine and critique ASEAN's mechanisms and norms for not resolving the conflict. The security community by Karl Deutsch is the theory to refer to this topic. His approach influenced Europe's post-World War II integration, which successfully avoided a repeat of the conflict. In 2015, ASEAN also aimed to strengthen its political and security community (APSC). However, the clashes between Cambodian and Thai armed forces and ASEAN's failure to resolve the dispute may call into question the concept of a security community and raise the question of whether ASEAN can develop into a true security community.

## **4.1 The domestic politics of Cambodia and Thailand**

The internal politics of Cambodia and Thailand had a significant role in preventing ASEAN from resolving the conflict. In this section, we will concentrate on the domestic politics of both nations as they pertain to the Preah Vihear Dispute. We can observe the political actors who had a crucial influence in determining Cambodia-Thailand relationships.

### **4.1.1 The domestic politics of Cambodia**

Cambodia had faced a civil war, political conflict, and dilemma since 1970, which was a cause of changing its regimes many times and killing approximately three to four million people. On 7 January 1979, Vietnamese troops invaded Cambodia and overthrew the Khmer Rouge regime. Then, it established the People's Republic of Kampuchea (PRK), with Heng Samrin as the Chief of State of a new regime. PRK was opposed and did not be recognized by the United Nations, China, and Western Bloc. Hun Sen was one of the top-ranking PRK officials appointed as the deputy prime minister and foreign minister. Then, he rose to the premiership in January 1985 (Chandler, 2008, p.277). Since then, he has been in power as a leader of the Cambodian government, although Cambodia changed its regime from a socialist republic to a constitutional monarchy.

The general election in 2008 was challenging Hun Sen and his government because he was strongly criticized for corruption, failure to tackle poverty, social injustice, and human rights violations. These allegations negatively affected his popularity, especially in an urban area like Phnom Penh. For preserving the power and popularity, registering the Preah Vihear Temple as the World Heritage Site was chosen on one of his electoral campaigns, although some territory surrounding the ancient building still disputed with Thailand and the conflict might arise (Strangio, 2014, p.114-115). If the Temple were successfully added to the list of the world heritage sites, it would be the second world heritage site in Cambodia after Angkor Wat in 1992. Cambodian people have a sense of pride and awareness of the glory of the Khmer Empire in the past. The ancient stone temples like Angkor Wat are the best existent evidence of the glory of Khmer civilization. Charnvit (2009, p.90-96)

remarked that Angkor Wat, the ancient stone temple, had been used as a national symbol of Cambodia since it was the French colony. Cambodia changed the design of the national flag many times depended on the regime at that time, but every regime kept a depiction of Angkor Wat in a flag. Angkor Wat became the important symbol of the nation, so Charnvit defined Cambodian nationalism as the Stone Temple Nationalism.

Besides the Angkor Wat in Siem Reap, the Preah Vihear Temple became the second important stone temple in the Cambodian nationalistic sense because this Temple had been occupied by Thailand before the International Court of Justice decided the Temple belonged to Cambodia in 1962. This was the victory moment of the nation to take the pride and symbol of the nation back from the great enemy. For the historical attitude, Cambodian people have a negative attitude to Thailand and look at it as an invader and robber (Klairung, 2017, p.177-179). By designating the Preah Vihear Temple as a World History Site, Hun Sen increased his reputation as a patriot or national hero who was safeguarding and conserving the national heritage.

Secondly, from the economic perspective, registering the Preah Vihear Temple as the world heritage site will cause the subsidy from UNESCO to renovate the archaeological site and to build infrastructure in Preah Vihear province, which is one of the poorest provinces in Cambodia (Asian Development Bank, 2014, p.27). In Siem Reap, the first world heritage site in Cambodia, Angkor Wat is the successful economic development model by tourism in Cambodia, contributing 6% of GDP in 2008 (OECD, 2018, p.198). For this reason, the Preah Vihear Temple as the world heritage site would bring income from tourism and investment to improve infrastructure and quality of life in Preah Vihear province. Absolutely, Hun Sen and CPP would claim this contribution which changed Preah Vihear from a poor province to a tourist province.

On 7 July 2008, or around three weeks before polling day, the World Heritage Committee decided to add Preah Vihear Temple to the World Heritage Site list. Hence, the huge celebration and concert took place in Phnom Penh, which was the success of Hun Sen's government to show the Khmer heritage and pride to the world. Hun Sen became a hero-like figure due to his obstinacy in

opposing Thailand's false claims to the Temple (Rattanasengchanh, 2017, p.82). Cause of using the nationalistic campaign, his party overwhelmingly won the election with 90 of 123 seats in the National Assembly. Even in Phnom Penh, a political stronghold of Rainsy, CPP successfully got seven seats of 12 (COMFREL, 2008, p.101). This was the first time CPP to absolutely control the parliament since changing the national regime in 1993. However, the campaign's debut heightened tensions between Cambodia and Thailand. Hun Sen placed a premium on his political benefits above the ramifications for bilateral ties and regional stability. Although the International Court of Justice declared the Preah Vihear Temple complex to be Cambodian sovereignty in 1962, the area around the Temple remains contested with Thailand and is now being demarcated by the Joint Boundary Commission (JBC). Additionally, the Cambodian people's historical attitude toward Thailand is unfavourable, making this a delicate subject that may easily spark a confrontation between the two nations. The clashes between Cambodian and Thai military forces were, therefore, the consequence of Hun Sen pursuing political advantage and popularity at the expense of the unresolved issue.

#### **4.1.2 The domestic politics of Thailand**

Thai politics is more complicated than Cambodian politics due to the increased number of political actors vying for power and trying to destabilize their opponents, which has been the source of political unrest since 2005 and coup d'état in 2006. We can widely divide the political actors in Thailand into two groups. The first is Thaksin's group which consist of Thaksin and his political party, the Thai Rak Thai Party (TRT). TRT members established a new political party called the People's Power Party (PPP) when the TRT was disbanded in 2007. The supporters of Thaksin also formed the United Front for Democracy Against Dictatorship (UDD) or Red Shirts to oppose the Yellow Shirts (PAD) as well as military rule. The main objective of this group was to return to power again. The second is the Anti-Thaksin group which consist of the People's Alliance for Democracy (PAD), Democrat Party and Army. This group attempted to get rid of Thaksin's authoritarianism by inciting the protest against government and suing him and his partisans on allegations of corruption (Baker and Pasuk, p.393-395).



Although the Anti-Thaksin group was successfully overthrowing Thaksin's government in 2006, Thaksin's group returned to power again in 2008. Samak Sundaravej, Thaksin's political ally, was the People's Power Party (PPP) leader for the general election in December 2007. The public opinion remained favourable to Thaksin and his populist policies, so the PPP won 233 of 480 parliamentary seats (BBC, December 23, 2007) despite the opposition's revision of the rule to restrict it. Samak became the prime minister and appointed Thaksin's confidants to join a cabinet. Noppadon Pattama, the former legal advisor of Thaksin, was appointed as the foreign minister, and Somchai Wongsawat, Thaksin's brother-in-law, was appointed as the deputy prime minister (Reuters, February 2, 2008). For this reason, the Anti-Thaksin group looked the Samak's government as the puppet of Thaksin, so they had to find a way to overthrow the government again.

Coincidentally, Cambodia was registering the Preah Vihear Temple as the World Heritage Site during that time, so the Anti-Thaksin group took this issue as a pretext to get rid of their opposition. This was the beginning of linkage Cambodia to Thai politics, affecting the relationship between the two countries and the regional security. The story of the conflict of both countries was already mentioned in chapter 3, so in this chapter will find what issues link to Cambodia each Thai political actor took for overthrowing their opponents. After the World Heritage Committee postponed Cambodia's registration of the Preah Vihear Temple in 2007, the country reached a mutual arrangement with Thailand. Thai Foreign Minister Noppadon Pattama began negotiations with Cambodia to amend papers that covered the disputed area. He persuaded Cambodia to omit the disputed region and register just the archaeological site, and as a result, they signed the Joint Communiqué in favour of Cambodia. However, signing the Joint Communiqué provided the Anti-Thaksin faction with enough chance to exploit this issue to topple the government; thus, Cambodia became engaged in Thai politics.

Cambodia's achievement in registering the Preah Vihear Temple as a UNESCO World Heritage Site fueled the Thai public outrage against the government. This presented the PAD with the greatest chance to defame and depose their political adversary. They were aware that Thailand had the painful experience of being threatened by France and the UK in the nineteenth century and had grudgingly



given some territory to them in order to maintain its independence. This painful past was indelibly etched into a history textbook and became ingrained in the Thai people's collective consciousness (Charnvit, p.38-40). Additionally, the Preah Vihear Temple case in 1962 was included in a history textbook as the most recent instance of territorial loss which the Thai prime minister Sarit Thanarat gave a hope for Thai patriots on his radio address stated, "We shall take the Phrah Wihan (Preah Vihear) back one day" (Duangthida, 2008, p.133). As a result, the the Anti-Thaksin group utilized the narrative of territorial loss and patriotic ideology to motivate protestors and labelled the government as a traitor or "selling the country." They accused Thailand's government of signing the Joint Communiqué in return for Thaksin's business deal in Cambodia, which may result in a territorial loss (Wanwipa, M.L., 2011, p.94-102).

Unsurprisingly, the Anti-Thaksin group effectively mobilised the populace to topple the government via the use of a patriotic campaign. It intensified its protests against Samak's administration, eventually seizing the government house on 26 August 2008. Samak refused to quit or dissolve parliament; nevertheless, on 9 September 2008, Thailand's Constitutional Court terminated his premiership due to his employment with a culinary television program that violated the constitution. While Samak was deposed, the parliament, led by the PPP, chose Somchai Wongsawat, Thaksin's brother-in-law, as prime minister, ensuring that the PAD maintained its campaign to destabilize Thaksin's government. They seized two Bangkok airports between 24 November and 3 December 2008 in order to exert pressure on the government. Later, the Constitutional Court dissolved the PPP and two government coalition parties on allegations of electoral fraud; as a result, Somchai was removed from his position as premier (Askew, 2010, p.37-41). Following the decision, the Democrat Party, headed by Abhisit Vejjajiva, established a successful administration in its place, while the PAD called off a protest.

When Abhisit Vejjajiva became the new prime minister, it was time for Thaksin's group to revenge and counterattack. Its political objective was to retaliate and depose Abhisit's administration in order to reclaim power. Coincidentally, it looked like Thaksin used the Cambodian-Thai relationship crisis to destabilize Abhisit's government. Hun Sen described Thaksin as an eternal friend, and

he would give a residence in Cambodia to Thaksin if he ever came there (Reuter, October 22, 2009). He appointed Thaksin as his personal adviser and economic adviser of the Cambodian government in November 2009 and invited him to visit Cambodia (The Economist, November 14, 2009). Thaksin accepted this invitation and came there to see Hun Sen and his supporters from Thailand who had crossed border to Cambodia. In the viewpoint of Abhisit's government, appointing Thaksin by the Cambodian government seemed to interfere with Thai internal affairs, so it struck Cambodia back by recalling its ambassador in Phnom Penh and demoting a diplomatic level. Cambodia also did in the same way and ignored intimidation of withdrawing for financial aid from Thailand (MGR Online, 5, 2009). Unquestionably, Thaksin had a role in the deterioration of the relationship between the two countries as well as the environment conducive to amicable settlement.

#### **4.1.3 The impact of domestic politics on the ASEAN dispute settlement**

This section examines the influence of domestic politics on ASEAN conflict resolution. The Linkage Politics Theory of James N. Rosenau is used to illustrate the connection between domestic politics and foreign relations and regional stability. Domestic political variables, according to this idea, can influence bilateral and regional international relations. Thailand and Cambodia both share geographical regions and contiguous borders, referred to be contiguous factors (Rosenau, 1969, p.45). As a result, political developments in one nation might affect another. In Cambodian politics, Prime Minister Hun Sen faces opposition from those who seek to attack, criticize official corruption, and patronage networks (Seni, p.60-61) . These charges will undoubtedly have an impact on popularity. Thus, Hun Sen's aim was to preserve his control via the 2008 elections. Before the election, one of the significant policies was registering Preah Vihear Temple as a UNESCO World Heritage Site. However, there is a dispute between Cambodia and Thailand over the Preah Vihear Temple, which might jeopardize the relationship between the two nations.

Thailand has been riven by political turmoil and power struggles since 2006, dividing political actors into anti-Thaksin factions led by the PAD, the Democrats Party, and the military. They seek to depose the Samak's government, widely regarded as Thaksin Shinawatra's choice, by using a nationalistic campaign to blame them for the loss of territory following the Joint Communiqué with Cambodia.

The controversy succeeded in igniting nationalism and uniting the populace against the government. Thailand's embrace of such nationalist measures, on the other hand, aggravated relations with Cambodia. It is fostering prejudices and negative sentiments between the two nations of political actors, posing a significant obstacle to resolving disputes (Puangthong, 2013, p.163-164).

Domestic politics of Cambodia and Thailand are inextricably linked and have an impact on their relationship, which is consistent with Linkage Politics Theory (Rosenau, p.51-52). Political actors are motivated by the desire to maintain their own political power and to eliminate political adversaries. It employs nationalism as an ideology to excite and reclaim support from the populace. As a result, the Preah Vihear Temple was utilized as a nationalist political instrument during this time. The ancient stone temples in Cambodia exemplifies the Khmer Empire's earlier glorious. This Temple has been embroiled in a territorial conflict with Thailand. It eventually reaches the International Court of Justice, where the ICJ rules that the Temple belongs to Cambodia. It is comparable to Cambodia's historic triumph over Thailand. The Temple in Thailand has had a terrible history of land loss. As a result, the inscription of the Preah Vihear Temple on the UNESCO World Heritage List may result in Thailand losing territory. Cambodia's war with Thailand is the outcome of political actors pursuing nationalist objectives while oblivious to the negative implications of international relations.

The conflict between the two ASEAN member states that use forces and weapons will affect ASEAN's image and regional stability. Although ASEAN has made efforts to push for regional cooperation and aims to restore to the ASEAN Community in 2015, where the political and security community is one of the pillars of the ASEAN Community, conflicts on the border between Cambodia and Thailand in February 2011 challenged ASEAN's role in resolving the conflict. As mentioned, ASEAN's role in conflict resolution efforts was already mentioned in Chapter 3. Indonesia, as ASEAN Chairman at the time, held a meeting of ASEAN Foreign Ministers. ASEAN Foreign Ministers' Meeting (AMM) was a tool for resolving conflicts, which the meeting resolved to send a panel of observers into the disputed area. However, Thailand later rejected the resolution, resulting in ASEAN failing to settle the conflict and bringing it to another conflict in April 2011.

The major obstacle to ASEAN operation is Cambodian and Thai internal politics, where political actors have used the Preah Vihear Temple to reawaken nationalism for political advantage, regardless of the effect on bilateral ties and regional stability. This conduct violates one of ASEAN's basic values stated in TAC, which is "to establish and deepen traditional, cultural, and historical connections of friendship, good neighborliness, and cooperation" (ASEAN Secretariat, 1967). Additionally, this move violates the ASEAN Way, which stresses informal diplomacy among member nations via dialogue and agreement, which is critical for building confidence and resolving conflicts peacefully.

Additionally, ASEAN member nations face internal challenges such as human rights violations, undemocratic practices, and conflicts and disagreements among member states, such as territorial disputes between Thailand and Cambodia or the South China Sea dispute. Historically, ASEAN has adhered to the concept of non-interference in member nations' internal affairs, as outlined in the Treaty of Amity and Cooperation in Southeast Asia (TAC) and the ASEAN Charter. Consequently, many of the region's issues have been avoided informally to preserve the region's political environment and ties among member nations; in other words, ASEAN countries have preferred to brush the issue under the rug (Woon, 2016, p.184). The case of the Preah Vihear Temple was taken to the ICJ and had a verdict in 1962; nevertheless, the dispute continues. Cambodia and Thailand had eschewed formal methods of dispute resolution such as mediation, conciliation, and arbitration. The two countries selected a bilateral framework for consultation and emphasized collaboration. The Preah Vihear Temple has been transformed into a tourist attraction. Although it is under Cambodian control, tourists may usually enter through Thailand, making a win-win approach for boosting tourism and wealth in both nations while concealing the conflict (Puangthong, p.86). Unfortunately, the border gate to Preah Vihear Temple was permanently closed after the rise of nationalism and conflict in 2008. Cambodia already built a road to the Temple directly, so it does not need assistance and facility from the Thai side.

In the ASEAN Way, the attitudes and relationships of leaders play an important role in building cooperation in the region. In the case of the Preah Vihear Temple conflict between Cambodia and Thailand, it is a difficult conflict to resolve

because of the distrust between the two leaders. Hun Sen has been unhappy with the Anti-Thaksin groups in the wake of nationalists opposed to the registration of Cambodia's Preah Vihear Temple. Hun Sen has also been attacked and insulted by anti-Thaksin groups as a thug and a gangster (Charnvit et al., 2013, p.28). Insulting Hun Sen will inevitably upset Hun Sen against anti-Thaksin groups (Chachavalpongpun, 2011, p.1033). Therefore, when the anti-Thaksin group came to power in Thailand, with Abhisit as prime minister, it was impossible to bond with each other in a tight and trusting manner. On the other hand, Thailand's leadership transition from Abhisit Vejjajiva to Yingluck Shinawatra, Thaksin's sister, in August 2011 demonstrated that leaders' personal views and connections are critical in fostering regional peace. The conflict between the militaries of the two countries and the tensions that erupted in early 2011 have been resolved. Thailand's relations with Cambodia have improved. Yingluck visited Cambodia in September of the same year to meet with Hun Sen. The two countries agreed to re-establish a bilateral framework for resolving the conflict. Additionally, representatives of the Pheu Thai Party and the UDD visited Cambodia to play a friendly football game with the Cambodian authorities. Hun Sen also took part in this game. He described the relationship problem between Cambodia and Thailand under Abhisit's administration as a nightmare that had now ended (Cambodia Daily, September 26, 2011). As a result, we can see that the views and personal connections of a country's leaders are critical in fostering a climate of reconciliation. ASEAN did not need to deploy observers into contentious regions after the spirit of reconciliation between member countries was restored. In other words, member countries reintroduced the ASEAN Way after three years of being broken by political players pursuing their own goals regardless of the effect on ASEAN stability.

To summarize, ASEAN has made considerable efforts to mediate between Cambodia and Thailand. However, ASEAN faces obstacles posed by Cambodian and Thai domestic politics. Political actors in both countries seek political advantage by using the disputed Preah Vihear Temple dispute between Cambodia and Thailand as a political tool and instilling nationalism to accomplish their objectives. Generally, in the ASEAN Way, member states avoid bringing up sensitive issues or difficult-to-resolve disputes that could jeopardize ASEAN's international relations and

stability. However, in the case of the Preah Vihear Temple, political actors chose to disregard the ASEAN way out of political expediency. As Hun Sen has demonstrated, he wishes to win the Cambodian elections. Anti-Thaksin groups seek to destabilize Samak and Thaksin's regime. Thaksin wishes to exact revenge on political adversaries and reclaim power by incorporating Cambodia into his strategy. ASEAN has established itself as a central figure in conflict resolution negotiations. It is based on ASEAN-focused consultations between member states. At first glance, it appears as though ASEAN has succeeded in peacefully resolving disputes through the plan to send a panel of observers to the disputed area. However, Thailand later rejected the plan due to the persistence of political conflict and nationalism. As a result, cooperation with ASEAN may affect political popularity. Meanwhile, Thailand's military regards it as an intrusion into internal affairs. ASEAN is unable to continue operations because of Thailand's rejection of ASEAN's offer, so the armed clashes resumed in April 2011. The domestic political factors, particularly in Thailand, are a significant obstacle to ASEAN's work, which includes building trust among states and settling disputes peacefully.

## **4.2 The inefficiency of ASEAN mechanisms and norms**

Apart from the internal politics of Cambodia and Thailand impeding ASEAN's efforts in resolving disputes, it seems to be another reason for ASEAN's failure to settle the Cambodia-Thailand issue. This section critiques the ASEAN dispute settlement mechanisms, citing ineffective norms as a reason for failing to resolve the Preah Vihear Temple issue. Additionally, it raised doubts about ASEAN's eventual success in establishing a security community that would use Karl Deutsch's security community theory as a framework for critique.

### **4.2.1 ASEAN dispute settlement mechanisms**

Chapter 2 examined the history and evolution of ASEAN dispute resolution procedures from their beginning to the present. It is discovered that ASEAN's mechanisms developed from informal forms during the organization's early phases of formation to formal mechanisms through diplomatic and adjudicative



techniques. The 1976 Treaty of Amity and Cooperation (TAC) defines the mechanisms for settling disputes among ASEAN member nations. The following provisions are critical to this treaty's content: respect for sovereignty, equality, and territorial integrity; non-interference in internal affairs; peaceful settlement; the use or threat of force; and encouragement of interoperable cooperation (ASEAN Secretariat, 1976). Another element of the TAC is to resolve disputes via the establishment of a High Council comprised of ministerial representatives from member nations. Disputed member states may seek the establishment of the High Council for the purpose of resolving disputes by submitting written letters to the co-contracting members notifying them of the dispute. The High Council will advise the disputing parties on suitable methods of resolution, including good offices, mediation, investigation, or conciliation. However, if the disputed parties do not agree to the formation of the High Council, they will be unable to do so (Amer, 2009 ,p.10-12). Additionally, according to rule 19 of the procedure of the High Council, the decision-making process must be approved by consensus of the High Council's members. As a consequence, the outcome cannot be released if any national member objects to the high council's decision or recommendations. The Dispute Resolution System established by the formation of the High Council is an ASEAN formal dispute settlement mechanism based on diplomatic dispute resolution in accordance with the United Nations Charter, but it also intervenes in the ASEAN method of being consensus. However, from ASEAN's inception in 1967 and the TAC's implementation in 1976, the High Council has never been established or utilized to settle conflicts, owing to the fact that member nations are more likely to have informal dispute resolution mechanisms (Weatherbee, 2005, p.127-128) ASEAN member nations are motivated by their national interests, in other words, the political elite's interests (Haacke, 2003, p.215). As a result, it is worried that such procedures violate its sovereignty and national interests excessively. The High Council has never been utilized and seems to be little more than a forensic instrument intended to bolster ASEAN's security image.

Informal diplomatic mechanisms popularly focus on dialogue and consultation between member states and give member nations greater peace of mind and trust in ASEAN's work. Because each ASEAN nation has its own internal



problems, and all ASEAN nations (except Thailand) have become colonies of Western countries, they do not want foreigners to influence or dominate their nations again. As a result, formal diplomatic mechanisms can make member states uncomfortable and feel foreign countries interfere with their domestic affairs (Tarling, 2013, p.133). The unofficial mechanism is an organizational culture that has been around since the establishment of ASEAN in 1967, as seen by Thailand's minister of foreign affairs at the time, Thanat Khoman, invited foreign ministers from Malaysia, Indonesia, Singapore, and the Philippines to play golf and discuss the establishment of the Southeast Asian Inter-State Cooperation Organization in Bangsaen seaside town under a friendly atmosphere that achieved the results of the Bangkok Declaration, the birthplace of ASEAN (Severino, 2006, p.1-2). Even at the time, members had disputes between them, such as Malaysia-Philippines in the North Borneo dispute, where diplomatic relations were cut from 1968-1969. ASEAN under Indonesia and Thailand played an informal diplomatic role to persuade Malaysia-Philippines back to negotiate peacefully. Philippine President Ferdinand Marcos thus pledged to dismiss claims over North Borneo for the unity, strength, and prosperity of all of A S E A N (Acharya, 2009, p.60-61). However, the dispute between Malaysia and the Philippines in the North Borneo case remains. With the ASEAN way, member states have chosen not to bring up difficult issues and may impact international relations and regional stability. Therefore, we can see the effectiveness of ASEAN's informal diplomatic mechanisms that member states have acknowledged as key to building cooperation and stabilization in the region.

In a dispute between Cambodia and Thailand, ASEAN has unavoidably selected an informal diplomatic system that emphasizes discussion and consultations among member nations. Since 2008, ASEAN has been engaged in conflicts between Cambodia and Thailand. As tensions between the two countries grew, troops on both sides clashed in the disputed region. ASEAN, whose chairman at the time was Singapore, utilized the ASEAN Foreign Ministers' Conference (AMM) as a mechanism to mediate disagreements, with the meeting expecting Cambodia and Thailand to use bilateral channels to settle their differences. Meanwhile, there are plans to form the ASEAN Contact Group to assist Cambodia and Thailand in adopting peaceful conflict settlement. Despite the fact that many member states

backed the idea, it was not unanimous; thus it was dismissed. As can be seen, ASEAN has utilized the AMM in discussions among foreign ministers to try to settle issues and keep them from growing. Initially, ASEAN thought that bilateral procedures could be maintained. Since all member nations must accept it by agreement, the ASEAN Way seems to impede conflict settlement. As a result, the plan to form the Contact Group was not implemented (Natalegawa, 2018, p.32).

The proposal was brushed aside because of confidence in bilateral mechanisms that it could be implemented, and the parties, especially Thailand, did not want third parties to be directly involved in the dispute. ASEAN's expectation that bilateral mechanisms would help resolve disputes and ward off the contact group proposal is erroneous. As a result, ASEAN misses out on the chance to avoid or restrict the escalation of conflicts into violence. Internal political reasons in both nations have exacerbated the dispute between Cambodia and Thailand. Hun Sen and Abhisit's dispute has stalled the bilateral mechanism and escalated the issue to a confrontation of military troops in February 2011. This time, Cambodia lodged a protest with the United Nations Security Council, which seems to be more effective than ASEAN (International Crisis Group, 2011, p.17-18).

Cambodia's submission to the global and cross-ASEAN regional level has significant implications for ASEAN's confidence in resolving disputes. Instead, Cambodia filed a complaint with a global organization. However, as ASEAN chairman in 2011, Indonesia played an important role in bringing the dispute back to the region instead. After the conflict between Cambodian and Thai troops, ASEAN had become an intermediary in mediation and dispute resolution. Marty Natalegawa, Indonesia's foreign minister, has travelled to Bangkok and Phnom Penh to meet with foreign ministers of both nations to acknowledge the situation and find a way for the two nations to resolve disputes peacefully. ASEAN had also achieved diplomatic success in convincing the UNSC to bring the Cambodia-Thailand conflict back to the regional stage, allowing ASEAN to act to resolve disputes. ASEAN continued to use informal mechanisms focused on dialogue and consultation between member states using AMM to work together to find a solution. At this meeting, ASEAN had a consensus for Cambodia and Thailand to end the fighting, and both countries must return to bilateral negotiations. Meanwhile, as ASEAN chairman, Indonesia would

serve as a facilitator for negotiations for both nations and send Indonesian observers to the disputed area. At first, ASEAN's unofficial dispute resolution mechanism succeeded in convincing all parties to return to peace talks, as seen from the ceasefire of the two national forces and the JBC meeting held in Indonesia instead (Natalegawa, 2018, p.44). However, Thailand later changed its stance on ASEAN resolutions. In particular, the proposal to send observers to disputed areas. This was seen as an interference in Thailand's internal affairs. Domestic political interests are an important factor in Thailand's transformation. When Thailand disapproved of the proposal, ASEAN was unable to continue its operations. The conflicts between the two forces re-emerged in April 2011 (International Crisis Group, p.31). It is a reflection of the failure and inefficiency of ASEAN's dispute resolution mechanisms.

What these events demonstrate is why the informal diplomatic procedures approved by member states and effectively executed resulted in the adoption or issue of many significant ASEAN policies, but failed in the case of the Cambodia and Thailand conflicts. When the conflicts between Malaysia and the Philippines in North Borneo are compared to the dispute between Cambodia and Thailand over the Preah Vihear Temple, it is discovered that the disputes are comparable to territorial disputes in which the parties claim ownership of the territory. ASEAN has established an informal diplomatic channel for member nations to communicate in order to foster a pleasant atmosphere for conflict settlement. However, what distinguishes any country is the collaboration of its political leaders. In the case of Malaysia and the Philippines, both countries' political leaders have a similar desire to stabilize the region, seeing communism as a more serious common danger. It is simpler to resolve conflicts and rekindle connections. On the other hand, in the case of Cambodia and Thailand, political leaders lack a shared commitment to regional security and prosperity, and therefore do not work fully with ASEAN. Political interests seem to take precedence for political leaders in both countries, particularly in Thailand. Thailand first accepted ASEAN's requirements because it needed to fulfill its UNSC commitments and did not want the issue to return to the world arena, therefore adopting ASEAN's suggestions. However, when Thai political players saw ASEAN recommendations as a danger to their political interests, they decided not to comply, citing the principle of non-interference in internal affairs

(Turecsányi and Kříž, 2017, p.100-101). As a result, it is clear that ASEAN's diplomatic procedures will be successful only if member nations collaborate and share a shared commitment to the region's interests and stability.

Another weakness of ASEAN's diplomatic mechanisms is the lack of measures for enforcing or punishing member nations that violate or fail to comply with ASEAN accords. As a result of the fact that it is primarily positioned as an organization to encourage cooperation rather than as a supranational organization (Yunling, 2019, p.18). As can be seen, Thailand has rejected ASEAN observer requests in the past. In the end, ASEAN was unable to compel or pressure Thailand to comply, causing the dispute to escalate subsequently. The dispute was thus brought to the ICJ. The TAC, a treaty critical to resolving disputes, states in Article 16 at the end that "Parties to the dispute should be well disposed towards such offers of assistance" (ASEAN Secretariat, 1976). The above statement implies that ASEAN requests cooperation for disputed member states to be open to assistance. This is a speech that seems to compromise following the ASEAN way. Meanwhile, ASEAN Charter Article 20(4) says that those who gravely breach the Charter or fail to comply may refer the issue to the ASEAN Summit for resolution. Although the ASEAN Summit is a gathering of member nations' government leaders and is the apex body for ASEAN policymaking. Finally, the ASEAN Summit shall adhere to the consultation and consensus norms outlined in Article 20 of the ASEAN Charter (ASEAN Secretariat, 2008). It is a hierarchical organizational structure intended to resemble that of an intergovernmental organization. Each member state has equal decision-making authority, and all decisions must be unanimous. As a result, ASEAN's mechanical efficiency and decision-making involve diplomatically relying on each member country to recognize the shared interests and avoid being embroiled or distracted by individual interests. As a result, in ASEAN culture, the mechanism for coercing or penalizing member countries is almost impossible (Collins, 2013, p.151).

To summarize, the diplomatic process for settling ASEAN conflicts consists of two figures. The TAC's first official mechanism is the High Council, which makes recommendations to the disputed parties about suitable mechanisms for resolving disputes, such as good offices, mediation, inquiry, or conciliation. The High Council method, on the other hand, was never implemented. It was deemed too formal

and systematic by ASEAN member nations. Concerns were expressed that the instrument could infringe on sovereignty and national interests. At the same time, establishing a High Council may breed animosity among the disputed parties against other member countries if decision-making is deemed unacceptable by any disputed party. As a result, several ASEAN countries avoid procedures that might jeopardize regional goodwill and cooperation. The informal mechanism is the second kind. AMM is a mechanism for resolving regional conflicts or issues that ASEAN has utilized since the organization's inception in 1967. Member states agree to such procedures that emphasize dialogue and arrive at consensus-based recommendations or conclusions. However, in the case of Cambodia-Thailand disputes, the effectiveness of ASEAN conflict resolution mechanisms has been insufficient because the intergovernmental ASEAN structure and norms give member states equal decision-making authority, and decisions must be made through consultation and consensus. ASEAN member nations are cosmopolitan, political, and have internal issues. As a result, member countries often prioritize their own national interests or the interests of political elites above the region's common interests, as shown in Thailand in 2011. Political actors are anxious to lose political interests if they cooperate with ASEAN in resolving disputes with Cambodia. As a consequence, Thailand rejected ASEAN's proposal, citing the TAC's and ASEAN Charter's policy of non-interference in internal matters. Thailand's case demonstrates the ASEAN's failure to implement procedures for resolving disputes that need member states' agreement first, even though the central problem concerns regional stability. On the other side, ASEAN lacks tools for enforcing or punishing member nations that do not adhere to decision-making processes. ASEAN's sole option is to refer the issue to the ASEAN Summit for discussion. Of course, the ASEAN Summit must also be founded on dialogue and agreement, which eventually needs a compromise solution to guarantee the member nations' satisfaction. As a result, ASEAN mechanisms can only function successfully if member nations collaborate and have a shared commitment to the region's interests and stability (Acharya, 2009, p.86-87).

#### **4.2.2 Principle of non-interference in the internal affairs**

The dispute between Cambodia and Thailand led to edging the forces in February 2011. Indonesia, as ASEAN chairman, has used the AMM in

consultations to resolve disputes, concluding that the two nations will withdraw troops from disputed areas to reduce confrontation. Indonesia also plans to send a panel of observers into the disputed area. However, the ASEAN proposal was rejected by the Thai side because the Thai side claimed that the ASEAN proposal had violated and interfered with Thailand's internal affairs. Therefore, ASEAN was unable to continue its operations. The above events reflect that the principle of non-interference in internal affairs is another obstacle to ASEAN's resolve to resolve the dispute.

The non-interference principle in internal affairs has been heavily criticized as an important part of ASEAN's inefficient work or problem-solving in the region. The principle of non-interference in ASEAN's domestic affairs was created by ASEAN elites to support the survival of countries in liberal capitalism and to counter communism during the Cold War (Jones, 2012, p.212). To be clear, ASEAN member states face sensitive domestic issues, such as the Moro Muslim insurgency in Mindanao, the Philippines, the Aceh independence movement in Indonesia, and Thailand's military authoritarian state. As a result, ASEAN member states place a premium on national security and interests (Palmujoki, 2001, p.64-65). During the Cold War, however, the threat from communism posed a common security threat to ASEAN member states. ASEAN must find principles in which its sovereignty and national interests will not be interfered with or undermined by other member states to gain trust among member states and stabilize the organization. It was, therefore, the principle of non-interference in internal affairs and was contained in writing in the TAC, and since then, it has been contained in several ASEAN mutual security agreements, including ASEAN Charter citing it in article 2.

While the principle of non-interference in internal affairs has been instrumental in ASEAN's success in fostering trust and stability among member states, it has prevented ASEAN from addressing regional issues such as human rights violations, domestic political issues, and coups. Numerous issues that emerge, even if they are domestic in nature, may have a regional impact. For example, take Myanmar, which has been governed by a military dictatorship since 1962. The country has committed grave human rights abuses and imprisoned political activists, one of whom, Aung San Suu Kyi, has been sanctioned by the Western world. When Myanmar became a member of ASEAN in 1997, ASEAN's reputation was tarnished,



and ASEAN was unable to interfere in Myanmar's issues (Weatherbee, 2005, p.227). This is an example of the concept of non-interference in domestic matters, which has contributed to ASEAN's reputation as an ineffectual organization for resolving regional issues. In the case of a conflict between Cambodia and Thailand, it is determined that the principle acts as a barrier, escalating the disagreement between the two countries in April 2011 or even in 2008, when the dispute between Cambodia and Thailand began. If ASEAN can act timely in the two countries, it will be able to avert the crisis from escalating (Turcsányi and Kříž, 2017, p.104). This concept calls into question ASEAN's image as a force for regional peace and stability, as well as its ability to create a strong political and security community.

However, asserting that ASEAN has never intervened in the internal affairs of any country seems implausible since ASEAN has sometimes skipped this principle. Without a doubt, ASEAN involvement can only occur with the agreement or permission of its members. For instance, ASEAN's involvement in assisting victims of the 2008 Cyclonic Nargis disaster was recognized as an ASEAN success in promoting the well-being and livelihood of ASEAN peoples. Myanmar was devastated by Cyclone Nargis on May 2-3, 2008; estimated losses total four billion US dollars, up to 140,000 people killed, and more than 2.4 million people need immediate healing and help (Kamal et al., 2010, p.9). As previously stated, Myanmar was ruled by a junta, which pursued an isolationist policy, restricting international assistance. As a result, ASEAN interfered in Myanmar, organizing and persuading the Burmese military regime to accept international assistance. The ASEAN, the United Nations, and Myanmar formed the Tripartite Core Group. Additionally, ASEAN has sent medical teams from member nations and donated rice for humanitarian assistance and disaster relief. ASEAN has garnered worldwide acclaim for its ability to act as a go-between for the United Nations and the Burmese military junta, facilitating disaster assistance in a timely manner. Additionally, Western countries sanctioned Myanmar, and there were concerns of Western nations and international organizations assuming control or exerting influence over Myanmar. On the other hand, Myanmar placed a higher premium on ASEAN, enabling ASEAN to act as an intermediary and cooperate with Myanmar. Even though ASEAN has traditionally focused on and adhered to the concept of non-interference in member state's internal affairs, ASEAN



may meddle in member states' internal affairs in this instance. It must, however, be authorized by member nations. This demonstrates that ASEAN is successful in promoting peace and enhancing the well-being and livelihoods of ASEAN people when member nations are committed to cooperating with ASEAN (Collins, 2013, p.151). This is in contrast to Thailand's position on the Preah Vihear Temple. Thailand distrusts ASEAN monitors and prioritizes national sovereignty and political interests of political players above regional objectives.

In conclusion, ASEAN's policy of non-interference in internal matters was established to safeguard member nations' interests and sovereignty. Additionally, it fosters confidence and trust among member nations. This contributes to the organization's stability. However, this concept renders ASEAN ineffective in its work and in resolving regional problems, such as the Cambodia-Thailand border conflict. When ASEAN decided to deploy an observer panel into the disputed area, Thailand objected, claiming that the plan constituted an interference into the country's internal affairs. When this occurred, ASEAN was unable to continue its work, and the dispute subsequently worsened. ASEAN has also succeeded in meddling with domestic issues, although this needs the agreement of member nations, as in the instance of Myanmar, which was devastated by Cyclone Nargis in 2008 and ASEAN intervened to force Myanmar to accept international assistance. However, ASEAN has successfully resolved issues that emerge in the area in a minority of cases, such as Myanmar. Member nations continue to prioritize national interests above the region's shared interests and stability. The concept of non-interference in domestic matters continues to be a stumbling block to ASEAN integration and function. There have been suggestions to amend the principles in order to improve ASEAN's efficiency. Surin Pitsuwan, a former Minister of Foreign Affairs and ASEAN Secretary-General, once proposed the concept of Flexible Engagement to encourage ASEAN member states to engage in constructive dialogue and idea exchange on issues deemed mutually beneficial or affecting ASEAN member states' social and economic relations and stability (Acharya, 2012, p.176). The idea seems to benefit ASEAN by guaranteeing its effectiveness, and it is not too severe in terms of undermining the diplomatic environment between member nations.

### 4.2.3 Towards the ASEAN Security Community?

This session will examine ASEAN's effectiveness in establishing the Southeast Asian Security Community, since the disagreement between Cambodia and Thailand has escalated into conflicts with forces on both sides poses a threat to ASEAN stability and security. Although ASEAN attempted to establish a framework for resolving disagreements, it failed, and the issue escalated to the point that Cambodia was forced to seek protection from the ICJ. The event posed a challenge to ASEAN integration's goal of establishing a security community in which the region's nations could live peacefully and resolve disputes amicably. According to Karl W. Deutsch's Security Community Concept (1957, as cited in Nelsen and Stubb, 1994, p.122-123), establishing a security community can help prevent war by requiring people to develop a sense of community or to recognize common problems that must be resolved peacefully, with the institution acting as a practitioner with sufficient power and strength. Deutsch (as cited in Nelsen and Stubb, 1994, p.126) said that a sense of community may develop when individuals have a 'we feeling: trust, an understanding of who 'us' is, and considerations are made with 'us' in mind. It may see ASEAN as a pluralistic security community, according to this theory. Each state retains its sovereignty within this state-integrated security community. Among the critical criteria are the following (Deutsch, 1957 as cited in Nelsen and Stubb, 1994, p.140): “(1) Consistent fundamental principles; (2) Responsiveness to one another's needs. Whether news or action, capable of giving sufficient help and avoiding interfacial conflict, and (3) capable of forecasting the behavior of one another in any direction”.

When Deutsch's theory was applied to the formation of the ASEAN Community, it was revealed that ASEAN was co-founded by five countries: Thailand, Malaysia, Singapore, Indonesia, and the Philippines. They all share similar values that will protect them against communism and other nations' political domination. Simultaneously, they seek economic, social, cultural, scientific, technical, and administrative cooperation to promote regional peace, culminating in ASEAN's formation in 1967. As shown by the dispute between Malaysia and the Philippines over North Borneo, which endangers regional security and stability, those ASEAN nations quickly respond to one another's demands. Thailand and Indonesia played a

critical role in facilitating the bilateral negotiations between Malaysia and the Philippines successfully and in the aftermath of Vietnam's 1979 invasion of Cambodia, which directly affected Thailand's security. ASEAN member states quickly released a statement asking the UN to take up the Cambodia issue and pressing the Vietnamese government to withdraw its soldiers from Cambodia (Leifer, 1989, p.100-101). Additionally, ASEAN's five founding members quite have political, governance, and economic systems similarly. As a result, they can predict one another's behaviour. Additionally, the TAC's policy of non-interference in internal affairs assures member nations that their sovereignty and national interests would be safeguarded, especially via consultation and consensual decision-making (Acharya, 2009, p.71). As a consequence, the ASEAN's five original members successfully merged. However, it is not yet Deutsch's theoretically complete security community because of a lack of in-depth collaboration, as shown just three times of the Summit Meeting in the association's first two decades (in 1976, 1977, and 1987). Additionally, a lack of community promotes a feeling of belonging and mutual trust, which is beneficial to the region overall. Rather than that, each state retains sovereignty and safeguards its national interests. As a result, the early stages of ASEAN integration was a diplomatic forum or cooperation rather than establishing a political community or institution.

Following the end of the Cold War in the 1990s, a surge of global economic and security integration occurred, culminating in the establishment of the European Union and the North American Free Trade Agreement (NAFTA) (Weatherbee, 2019, p.144). Additionally, nations have been confronted with new kinds of non-traditional security threats, including terrorism, transnational crime, human trafficking, disaster management, diseases, and environmental concerns (Caballero-Anthony, 2016, p.5-6). These problems are widespread and have a fast effect. A state cannot survive on its own; it must collaborate with other governments or non-state actors. As a consequence, ASEAN's member nations must rethink the organization's orientation to conform to the global environment. As the ASEAN Summit Meeting in 1992 demonstrated, the Singapore Declaration was made to further political and economic cooperation in order to ensure regional peace and prosperity. The conference raised ASEAN's institutions and organizational structure

to a higher level of formality. Every three years, it establishes a leadership agenda. Simultaneously, it raised the ASEAN secretary to the equivalent of ministerial rank, conferring upon him the authority to consult, coordinate, and manage ASEAN. Additionally, as shown by the expanded platform of the ASEAN Economic Minister Meeting, ASEAN member nations are increasingly focused on economic cooperation (Weatherbee, 2005, p.95-96). The major economic integration achievement in the 1990s was the creation of the ASEAN Free Trade Zone (AFTA), which started tax reductions in 1992. For security issue, the ASEAN Regional Forum (ARF) was formed in 1994 as a consultative forum to develop ways to enhance trust, develop preventative diplomacy, resolve disputes, and offer a platform for practical collaboration.

Another important aspect of ASEAN in the post-Cold War era was the opening up of new members in the region, including Cambodia, Laos, Myanmar, and Vietnam (CLMV), to fulfil ASEAN's goal of building peace, stability, and stability, as well as improving economic growth, social progress, and cultural development in Southeast Asia. However, the economic and political gaps between the existing and new members were a major obstacle to ASEAN integration and unity. The Myanmar case is a prominent example; Myanmar was under a military dictatorship that violated human rights against activists and was sanctioned by Western nations. Myanmar's accession to ASEAN in 1997 thus damaged ASEAN's image and credibility. This was evident in 2006 when Myanmar's term of ASEAN Chair was reached. Of course, ASEAN was under pressure from Western nations such as the United States and the European Union to refuse to attend meetings and enter into agreements with ASEAN. ASEAN delayed its hosting of Myanmar and instead made the Philippines as a Chair (Renshaw, 2013, p.41).

Following the Cold War in the 1990s, member nations attempted to transform ASEAN into an international political organization and deepen collaboration, as shown by AFTA and ARF, as well as the expansion of member states to ten. It is critical for ASEAN's integration in this era. ASEAN is confident in its ability to integrate 10 member countries into one. Each country, however, was unique economically, politically, socially, and culturally. When stated in Deutsch's ideas, ASEAN aims to integrate the shared issues of the post-Cold War world in

which no country can exist alone. They are interdependent, which is why ASEAN sought to position itself as the region's architecture. Adopting a new member country, on the other hand, seems to be impeding the development of a feeling of community, owing to differences in the domestic political systems and strategic conceptions between the original member and the new member countries. As a result, CLMV may not instantly establish a shared identity with the original member. On the other side, ASEAN integration has been delayed or halted as a result of consensus decision-making. CLMV groups frequently exercise their right to veto proposals that they believe would be detrimental to their own national interests or political elites, as evidenced by the draft ASEAN Charter, which includes a reference to the establishment of human rights commissions, which CLMV groups have opposed (Weatherbee, 2009, p.300). As a consequence, the ASEAN Charter's human rights procedures lacked a defined function definition, rendering the created human rights authorities ineffectual in safeguarding ASEAN citizens' human rights (Hsien-Li, 2011, p.256).

ASEAN's aim and confidence in establishing political and economic cooperation in the 1990s collapsed in 1997, when ASEAN member nations faced an economic crisis. This demonstrates that ASEAN integration was ineffective at assisting member nations during times of crisis. As a result, it contradicts Deutsch's assertion that one state must react promptly to the demands of the other and offer sufficient aid. As a result, after the onset of the economic crisis. ASEAN's approach to increased collaboration must be reconsidered, resulting in the concept of an in-depth rebuilding that would result in the establishment of the ASEAN Community. At the 2003 ASEAN Summit in Bali, Indonesia, ASEAN member states adopted the Declaration of ASEAN Concord II, or Bali Concord II, expediting the establishment of the ASEAN Community in 2020, comprised of three pillars: “the ASEAN Security Community (ASC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASCC)” (Weatherbee, 2019, p.177). The blueprint was then repurposed into a plan for the formation of a community, relocating the community's founding date to 2015. Additionally, in 2007, member nations approved the ASEAN Charter, which functions similarly to ASEAN's constitution. It serves as ASEAN's legal framework and organizational structure. Along with codifying

ASEAN's previous beliefs, principles, and practices as official practices of member states, it has been updated and a new system established to define the extent of ASEAN's duties and tasks. As a result, the ASEAN Charter is critical in transforming ASEAN into a legally recognized institution (Acharya, 2009, p.267).

The ASEAN Security Community is an attempt to elevate to an official regional institute through a set of regulations or the ASEAN Charter and the multilateral cooperation of member states in dealing with security threats or common issues such as terrorism, transnational crime, trafficking, and drug trafficking, as well as catastrophic issues, through annual meetings ranging from operations officers to ministerial and government leaders. In the framework of the security community, the ASEAN Summit Meeting is the most important. Security concerns or disagreements that cannot be resolved will be referred to the leaders for assessment and resolution. Since 1967, the ministerial forum known as the ASEAN Foreign Ministers' Meeting (AMM) has been at the core of ASEAN's policy formulation and execution. ASEAN has utilized the AMM platform to settle a dispute between Cambodia and Thailand. The ASEAN Defence Ministers Meeting (ADMM) is a gathering of regional defence and security ministers to promote regional peace and stability via discussion mechanisms and security cooperation, as well as to develop and maintain mutual confidence. According to Amitav Acharya's opinion, frequent meetings are used not only to resolve issues and make decisions together but also to acclimate political elites to one another, which is part of what makes ASEAN member states feel "us," friendliness and closeness together, bringing a certain level of cohesion (Pichaarpa, 2017, p.236 ).

The dispute between Cambodia and Thailand, which sparked a reaction from forces, presented a significant obstacle to the establishment of a political-security community. Although ASEAN served as a mediator and organization for resolving disputes, it was ineffective. As a result, it contradicts Deutsch's assertion that the security community must settle the problem peacefully. When the example of Cambodia-Thailand ties is examined, it is discovered that a major limitation in the establishment of a political-security community is due to the two countries' absence of a sense of community or we-feeling. As can be observed, many political actors exploited sensitive problems that might jeopardize the two



countries' ties and jeopardize ASEAN's stability and integration for their own political gain, rather than considering the region's shared interests.

As shown in Thailand, the PAD and Democrat Party have used the Preah Vihear temple issue to reawaken nationalism in the aim of eradicating political opponents Prime Minister Samak Sundaravej and the Thaksin Shinawatra faction as national traitor. Meanwhile, Thaksin has utilized Cambodian-Thai crisis relationship as a platform for political movement in an attempt to undermine and destabilize Abhisit Vejjajiva's administration. In Cambodia, Hun Sen has used the World Heritage Site at Preah Vihear temple, which remains disputed with Thailand, as the focal point of his political campaign to reawaken nationalism and boost his popularity. These examples demonstrate that the political elites in Cambodia and Thailand lack the feeling of community necessary to foster trust and avoid bringing up sensitive topics that might destabilize relationships. Additionally, the conflict between Cambodia and Thailand reflects concerns and mistrust of ASEAN's work, risking national sovereignty, as evidenced by the Thai military's refusal to attend the GBC meeting in Indonesia or their rejection of a proposal to send a panel of observers to the disputed area in accordance with the AMM's resolutions. Thai military considered that conflicts should use bilateral mechanisms rather than allowing third parties to mediate or intervene internally. It reflects that members continue to emphasise national state sovereignty over the regional security community. Although ASEAN seeks to build integration through meetings and consultations to see common issues and interests, it seems that those integrations are not effective enough to create a sense of community if political actors do not cooperate or adjust policies to facilitate mutual trust.

At the level of common people, there is a weaker sense of community than at the level of political elites and civil servants, because ASEAN citizens interact less than political elites and civil servants, who have annual meetings where they can interact and become acquainted and have a stronger sense of "we-feeling" than common peoples. When ties between Cambodia and Thailand were used to explain the feeling of community among ordinary people, it was discovered that both countries' citizens had a poor sense of community. On the other side, there is an negative attitude toward one another, which hinders the development of a feeling of community. The tension between Cambodia and Thailand is partially a result of



historical prejudices that lead citizens of both countries to interact negatively. It is derived from each nation's historical texts. For instance, in terms of historical biases, Cambodia's historical viewpoint has portrayed Thailand as the invader and thief of the Khmer people's great land and culture (Santi, 2009, p.4-5). Thus, in the case of the 2003 burning of the Thailand Embassy in Phnom Penh or the Preah Vihear Temple controversy, it is part of the Cambodian nationalist consciousness to regard Thailand as an adversary, as is the social media debate over whether Thailand stole Cambodian culture, such as architecture, boxing and Khon (Ramayana Dance) (Khaosod English, June 7, 2016). From Thailand's historical viewpoint, Cambodia is seen as a subordinate or vassal state. However, when Thailand was weak anytime, Cambodia always retaliated.

Can ASEAN achieve a community of security under Deutsch's vision? Taking into account the fact that ASEAN is still in the process of establishing an ASEAN Community. Theoretically, ASEAN could legally establish the organization as a completely international political institution, with various integrations and cooperation, through regular meetings and consultations. However, the efficacy of the procedures established by ASEAN, such as the processes described in the ASEAN Charter and TAC, remains in question when they are actually applied in the Cambodian and Thai conflicts. As a result, it was unable to implement it in 2011. Even the ASEAN Intergovernmental Commission on Human Rights (AICHR) has been accused of being a paper tiger incapable of safeguarding ASEAN people's human rights. This is evident in the case of Myanmar's Rohingya refugees. Thus, many security problems that ASEAN cannot solve or mechanisms cannot work effectively are due to those mechanisms affecting the sovereignty of member states. ASEAN has always maintained a policy of non-interference in internal affairs. Therefore, it is not possible to force member states to comply. This seems to be a weakness of ASEAN, since it resolves issues slowly or occasionally not at all.

Additionally, establishing a security community requires a shared sense of community. However, in the framework of ASEAN, a feeling of community remains low. At the top political and civil service levels, it was discovered that contact between member states continued owing to the framework of the yearly obligations to attend discussions ranging from operational officers to summit level.

Meeting regularly provides an excellent chance to develop trust and foster a feeling of community. However, political elite players are concerned about the execution of policies for political benefit that may jeopardize ASEAN stability. As a result, political elite groups should avoid politicizing programs or bringing up sensitive foreign relations problems for political benefit. Simultaneously, internal conflicts between member countries, like territorial disputes, may be resolved via bilateral and multilateral diplomatic discussion, by the ASEAN Way, which emphasizes consultation over confrontation or the creation of feuds.

The feeling of community is weaker at the common level than it is among political elites and officials. The ASEAN Charter, on the other hand, promotes ASEAN as a people-centered organization. Indeed, not yet; ASEAN is also a political elite-led institution. The populace has not yet been fully engaged and concentrated in order to create a feeling of community. The state continues to send policies down to the populace, as shown by pushing citizens to learn about other nations' flags, capitals, national flowers, and greetings, among other things. However, such education seems shallow and is not enough to make sense of community. On the other hand, historical textbooks have not been adjusted to reflect ASEAN's integrations. Additionally, people are biased and suspicious of their neighbours, seeing them as hostile or undeveloped. This is incompatible with the establishment of a community, which necessitates the harmony (the "we feeling") among its members. The Preah Vihear Dispute between 2008 and 2011 showed how historical prejudice may result in violence. It is evident that ASEAN is still far from building a security community completely.

## **CHAPTER 5**

### **CONCLUSIONS AND RECOMMENDATIONS**

#### **5.1 Conclusions**

This thesis examined the ASEAN framework for resolving disputes in the 2008-2011 Preah Vihear Temple issue between Cambodia and Thailand. To begin, this thesis examined the development of ASEAN conflict resolution. The Association of Southeast Asian Nations (ASEAN) was founded in 1967. ASEAN established rules and procedures to adapt to the global environment; nevertheless, ASEAN has retained the ASEAN Way to safeguard the national interests and sovereignty of ASEAN members or political elites. This thesis separates the history of ASEAN conflict resolution into three distinct eras.

The first era begins prior to ASEAN's formation in 1967. Southeast Asian nation-states were still forming and faced hostility and suspicion from their neighbouring nations over territorial issues. There was a dispute between Malaysia and Indonesia, which sparked the Indonesian president Sukarno's Konfrontasi policy. Additionally, Malaysia and the Philippines had a territorial dispute over North Borneo, or Sabah. Although Southeast Asia's countries tried to form cooperative organizations such as ASA and Maphilindo, previous cooperation efforts were thwarted by territorial disputes and mistrust among nation-states.

The second era began with the emergence of ASEAN in 1967. Due to the Vietnam War, which affected the region's security, five foreign ministers from Indonesia, Malaysia, the Philippines, Singapore, and Thailand signed the ASEAN Declaration (Bangkok Declaration) to create the ASEAN on 8 August 1967. This document aimed to promote regional peace and stability. Besides, the ASEAN Foreign Ministerial Meeting (AMM) was used to be the mechanism to avoid and settle the dispute by the norm of consultations and consensus. These norms are the elements of ASEAN's diplomatic relations and become the "ASEAN Way" to share a common interest in a peaceful and stable regional order. However, the communist successes in Indochina in 1975 had a profound effect on ASEAN, and in February

1976, state members convened the first ASEAN heads of government conference (Summit meeting). ASEAN established the Treaty of Amity and Cooperation in Southeast Asia (TAC) during this conference, which serves as a code of conduct for maintaining peace and resolving disputes amicably. TAC mentioned the official dispute resolution system, the High Council, but this mechanism has never been used. TAC also mentioned the idea of non-interference in internal matters, which was a fundamental element of ASEAN's attempt to build trust among its members.

The third period started in 1991, with the conclusion of the Cold War. As the global environment shifted, ASEAN was forced to explore new forms of integration and collaboration in the sake of regional peace and development. As a result, ASEAN convened the 1992 Singapore Summit Meeting. ASEAN aimed to deepen economic and political integration. ASEAN achieved an agreement on a Free Trade Area, or AFTA. ASEAN created the ASEAN Regional Forum (ARF) in 1993 to facilitate political and security cooperation between ASEAN foreign ministers and dialogue partners. Additionally, membership expansion was a significant milestone during this period in order to achieve the organization's vision of "One Southeast Asia." Former communist bloc countries such as Cambodia, Laos, and Vietnam, as well as military dictatorship country like Myanmar, joined ASEAN and embraced ASEAN's norms and principles during this period, despite the significant economic and political divide between the founding and new members.

ASEAN was certain that it would be the regional core, but its ambitions waned after the 1997 financial crisis. ASEAN lacked the capacity to cope with crises. As a result, ASEAN's position and integration must be reconsidered. ASEAN established ASEAN Vision 2020 as a long-term strategy for advancing regional integration. At the 2003 Bali Summit, ASEAN agreed to construct the Community by 2020 using a three-pillared approach to cooperation: "ASEAN Security Community (ASC), ASEAN Economic Community (AEC), and ASEAN Socio-Cultural Community (ASCC)". ASEAN developed a strategy and a blueprint for achieving its objective. The TAC is also a critical document for avoiding conflict and resolving disputes peacefully in the ASC plan.

Apart from the Community aim, ASEAN adopted the Charter in 2007 as the essential instrument for ASEAN's transformation from a non-binding political

association to a legally recognized international organization with a rule-based structure. ASEAN included into the Charter its informal principles of consultation and consensus, including the concept of non-interference in internal affairs. ASEAN continues to stress the TAC as the mechanism for resolving disputes. Additionally, ASEAN established the ASEAN Charter on Dispute Settlement Mechanism, which serves as a tool for resolving disputes that need interpretation or an arbitral procedure.

The next chapter examines the Preah Vihear Temple Dispute and ASEAN's involvement in settling it, which is the thesis' principal focus. The Preah Vihear Temple dispute is a border dispute between Cambodia and Thailand over an 11th-century Hindu temple and its surrounding area. To deeply understand the Preah Vihear Dispute we have to look back to the 19th century when Siam and France had the bilateral treaties to delimit the boundary and to produce a map. This agreement specified that watershed lines would be used as boundaries however the case of the Preah Vihear Temple was an exception which belonged to French Indochina. It seemed that Siam also recognized this exception without a veto. During World War II, Thailand (changing name from Siam in 1939) under administration by Field Marshal Plaek Phibunsongkhram promoted the ideologies of ultranationalism and created the discord of losing territory as the historical wound. Thailand successfully seized the land back from France, including the Preah Vihear Temple. After the end of World War II, Thailand had to return the territory to France but the Preah Vihear Temple was still occupied by the Thai side. After Cambodia became independent from France, it sent correspondence to the Thai government requesting them to vacate the Temple but Thailand refused. Finally, it filed a complaint with the International Court of Justice (ICJ). On 15 June 1962, the International Court of Justice determined, by a majority of nine to three, that the Temple of Preah Vihear was located inside Cambodian territory. The ICJ's judgment to grant Cambodia sovereignty over the Temple was clear; nevertheless, the Temple's immediate vicinity was ambiguous. The court made no mention of the Temple's location. As a result, there was a ticking time bomb of violence in 2008 between Cambodia and Thailand.

Forty-five years later, Cambodia submitted a nomination to the World Heritage Committee for the Preah Vihear Temple. Initially, Cambodia and Thailand agreed to co-register the Preah Vihear Temple and its surroundings as a World

Heritage Site; however, Cambodia changed its mind in 2007 and registered independently. Cambodia attached a map designating the 4.6 km<sup>2</sup> disputed area as a buffer zone for the World Heritage site, forcing Thailand to object to Cambodia's proposal. The World Heritage Committee tabled this proposal and directed the two nations to resolve the matter and make an application next year with Thailand's backing. As a result, two nations returned to resolve this issue. Thai Prime Minister Samak Sundaravej appointed Noppadon Pattama, his foreign minister, to conduct negotiations with Cambodia. Thailand backed Cambodia's registration of the Preah Vihear Temple but omitted the Temple's disputed area. Finally, two nations agreed on a revised plan that eliminated the disputed area and drafted a Joint Communiqué for approval by the governments of the two countries. Thailand's Royal Thai Survey Department and the Office of the National Security Council validated this document prior to it being approved by the cabinet. Two nations signed the Joint Communiqué pledging their support for Cambodia's development strategy. Finally, the Preah Vihear Temple was recognized as a UNESCO World Heritage Site on 7 July 2008.

Following Noppadon Pattama's signature of the Joint Communiqué, Thai anti-government forces used this issue to attempt to overthrow the government. Thailand has been stuck in a political impasse since 2005, when the country's political actors were split into two groups. The first group includes former Prime Minister Thaksin Shinawatra, who ruled Thailand from 2001 to 2006 until being deposed in a September 2006 coup. The second faction is the Anti-Thaksin movement, comprised of the People's Alliance for Democracy (PAD), the Democratic Party, and the military. Samak Sundaravej, who was seen as Thaksin's candidate by the Anti-Thaksin faction, won the 2007 general election and became Prime Minister. The Anti-Thaksin group condemned the signing of the Joint Communiqué as a reason for Thailand to relinquish the dispute area to Cambodia. Additionally, the PAD accused the Thai government of trading land for Thaksin's economic gain in Cambodia, implying that the government was the traitor. These allegations stoked nationalism and mobilized demonstrators to effectively topple the government. Moreover, the Anti-Thaksin group insulted the Cambodia leader, Hun Sen as a crazy, vagrant gangster of Southeast Asia and the slave of Thaksin.

The Anti-Thaksin faction eventually succeeded in overthrowing Thaksin's government, and Abhisit Vejjajiva, the head of the Democrat Party, was appointed Prime Minister in its place. However, its nationalistic campaign exacerbated tensions in relations with Cambodia, obliterating any possibility of resolving the dispute amicably and prompting them to increase their troop presence in the disputed area. Finally, the large-scale confrontation of military forces occurred in February 2011. Cambodia brought the issue to the United Nations Security Council (UNSC), however the UNSC requested that both nations work with ASEAN to resolve it. Although ASEAN intervened to resolve the conflict, the two countries engaged in military conflict again in April 2011. Cambodia reintroduced the issue to the International Court of Justice at this time, requesting that the 1962 decision be interpreted to define the Temple's location and to impose measures to halt Thailand's attacks. The ICJ ruled on 11 November 2013 that, in interpreting the 1962 decision, Cambodia held jurisdiction over the whole area of the Preah Vihear promontory and Thailand was required to withdraw.

ASEAN also intervened in the Preah Vihear conflict. It started operating in 2008, when tensions between Cambodia and Thailand seemed to be growing. ASEAN proposed the Contact Group, but since it lacked consensual agreement, it was rejected. When clashing military forces occurred in February 2011 and Cambodia petitioned the UNSC to resolve the matter, Indonesia, as Chair of ASEAN, attended the UNSC meeting and effectively brought the issue back to the regional level. ASEAN resolved the issue via its original process, the ASEAN Ministerial Meeting (AMM). They agreed at the conference to deploy Indonesian observers to both sides of the disputed area in order to help and support the two countries in adhering to their ASEAN commitments and avoiding future military conflicts. Indonesia endorsed both nations' bilateral procedures and volunteered to host the Thai-Cambodian Joint Commission on Land Boundary Demarcation (JCB) and General Border Committee (GBC) sessions.

Cambodia and Thailand first accepted ASEAN proposals, however Thailand later vetoed the observers plan. Thai military played a critical role in opposing this proposal, which seemed to infringe on Thai sovereignty. Additionally, it pushed firmly on resolving bilateral disputes without the involvement of a third party,



exerting pressure on Prime Minister Abhisit to reject the proposal. ASEAN was unable to provide observers to maintain peace, and clashes of military forces resumed in April 2011. ASEAN tried to resolve the issue once again by convening a meeting between Cambodian and Thai leaders and the Indonesian president in order to convince them to accept ASEAN's offer. Thailand has, however, maintained its refusal of the third party. Finally, ASEAN was unable to resolve the Cambodia-Thailand conflict.

The next chapter is an analysis of the failure of ASEAN to settle the Preah Vihear dispute. There are two major reasons for the dispute's failure to be resolved. The first was Cambodian and Thai domestic politics. Political actors exploited the Preah Vihear Temple issue for political gain while refusing to work with ASEAN to resolve the dispute. The Linkage Politics Theory of James N. Rosenau is used to illustrate the connection between domestic politics and foreign relations and regional stability. Generally, in the ASEAN Way, member states avoid bringing up sensitive issues or difficult-to-resolve disputes that could jeopardize ASEAN's international relations and stability. Cambodia and Thailand still have territorial disputes. Moreover, the two countries also have a historical wound and negative attitude toward each other so it is quite simple for conflict to arise. In the case of the Preah Vihear Temple, political actors chose to disregard the ASEAN way out of political expediency.

In Cambodia, Hun Sen took the registration of the Preah Vihear Temple as the World Heritage Site to launch a nationalistic campaign for recalling his popularity in the general election in 2008 although some territory surrounding the ancient building still disputed with Thailand and the conflict might arise. In the end, Hun Sen overwhelmingly won the election but the tension between Cambodia and Thailand rose.

In Thailand, several political actors attempted to compete for political power and overthrew their rivals. Cambodia was pulled into Thailand's political game. The Anti-Thaksin consists of the PAD, Democrat Party and Army. They seek to depose the government's Samak, widely regarded as Thaksin Shinawatra's choice, by using a nationalistic campaign to blame them for the loss of territory following the

Joint Communiqué with Cambodia. Unsurprisingly, the Anti-Thaksin group effectively mobilised the populace to topple the government.

ASEAN has established itself as a central figure in conflict resolution negotiations. It is based on ASEAN-focused consultations between member states. At first glance, it appears as though ASEAN has succeeded in peacefully resolving disputes through the plan to send a panel of observers to the disputed area. However, Thailand later rejected the plan due to the persistence of political conflict and nationalism. As a result, cooperation with ASEAN may affect political popularity. Meanwhile, Thailand's military regards it as an intrusion into internal affairs. ASEAN is unable to continue operations because of Thailand's rejection of ASEAN's offer, so the armed clashes resumed in April 2011. The domestic political factors, particularly in Thailand, are a significant obstacle to ASEAN's work, which includes building trust among states and settling disputes peacefully.

The second reason for ASEAN's failure to settle the Cambodia-Thailand issue is the inefficiency of ASEAN mechanisms and norms. The diplomatic process for settling ASEAN conflicts consists of two figures. The TAC's first official mechanism is the High Council, which makes recommendations to the disputed parties about suitable mechanisms for resolving disputes, such as good offices, mediation, inquiry, or conciliation. The High Council method, on the other hand, was never implemented because this mechanism could infringe on sovereignty and national interests so several ASEAN countries avoid procedures that might jeopardize regional goodwill and cooperation. The Preah Vihear dispute was not used the High Council to settle it.

ASEAN used AMM as the informal mechanism to settle this dispute however the effectiveness of ASEAN conflict resolution mechanisms has been insufficient because the intergovernmental ASEAN structure and norms give member states equal decision-making authority, and decisions must be made through consultation and consensus. Thailand's case demonstrates the ASEAN's failure to implement procedures for resolving disputes that need member states' agreement first, even though the central problem concerns regional stability. On the other side, ASEAN lacks tools for enforcing or punishing member nations that do not adhere to decision-making processes. ASEAN's sole option is to refer the issue to the ASEAN

Summit for discussion. Of course, the ASEAN Summit must also be founded on dialogue and agreement, which eventually needs a compromise solution to guarantee the member nations' satisfaction. As a result, ASEAN mechanisms can only function successfully if member nations collaborate and have a shared commitment to the region's interests and stability.

Then, the norm of the non-interference in the internal affairs. ASEAN created this norm to safeguard member nations' interests and sovereignty. Additionally, it fosters confidence and trust among member nations. This contributes to the organization's stability. However, this concept renders ASEAN ineffective in its work and in resolving regional problems, such as the Cambodia-Thailand border conflict. When ASEAN decided to deploy an observer panel into the disputed area, Thailand objected, claiming that the plan constituted an interference into the country's internal affairs. When this occurred, ASEAN was unable to continue its work, and the dispute subsequently worsened.

The dispute between Cambodia and Thailand posed a challenge to ASEAN integration's goal of establishing a security community in which the region's nations could live peacefully and resolve disputes amicably. Deutsch's Security Community Concept are used for examining ASEAN's effectiveness in establishing the Southeast Asian Security Community. ASEAN could legally establish the organization as a completely international political institution, with various integrations and cooperation, through regular meetings and consultations. However, the efficacy of the procedures established by ASEAN, such as the processes described in the ASEAN Charter and TAC, remains in question when they are applied in the Cambodian and Thai conflicts. Many security problems that ASEAN cannot solve or mechanisms cannot work effectively are due to those mechanisms affecting the sovereignty of member states. ASEAN has always maintained a policy of non-interference in internal affairs. Therefore, it is not possible to force member states to comply. This seems to be a weakness of ASEAN, since it resolves issues slowly or occasionally not at all.

Moreover, the dispute between Cambodia and Thailand, which sparked a reaction from forces, presented a significant obstacle to the establishment of a political-security community due to the two countries' absence of a sense of

community or we-feeling. As can be observed, many political actors exploited sensitive problems that might jeopardize the two countries' ties and jeopardize ASEAN's stability and integration for their own political gain, rather than considering the region's shared interests. At the level of common people, they still have a negative attitude toward one another, which hinders the development of a feeling of community. The tension between Cambodia and Thailand is partially a result of historical prejudices that lead citizens of both countries to interact negatively. Therefore, this is evident that ASEAN is still far from building a security community completely.

## 5.2 Recommendations

This thesis showed the two factors of failure of ASEAN to settle the Preah Vihear dispute. The first one is the domestic politics in two countries in which the political actors exploited the Preah Vihear Temple issue for political gain while refusing to work with ASEAN to resolve the dispute. Each ASEAN member state still has a dispute and antagonistic attitude toward its neighbour countries. The Preah Vihear Dispute serves as an illustration of this issue, which undermines member nations' confidence and ASEAN stability. To prevent a conflict, political players must avoid pursuing their political interests by seizing on a contentious or sensitive subject and fostering nationalism, which might threaten ties among member nations and stability in a region. Moreover, the remaining disputes should be resolved amicably via a bilateral method. Political actors should play a critical role in sustaining and fostering an environment of peace and trust among ASEAN member nations, which aligns with the ASEAN Way that focuses on having member states consult and avoid confronting or creating feuds.

The second factor is the inefficiency of ASEAN mechanisms and norms. ASEAN created and developed the dispute settlement mechanisms from informal to formal form. However, since ASEAN's inception in 1967, no formal institution such as the High Council in the TAC has been implemented. As the ASEAN Security Community, it is therefore time for member nations to utilize the formal dispute resolution mechanism, the High Council, to enhance conflict

management. The High Council may become desirable as a substitute for the International Court of Justice. Another impediment to ASEAN's functioning is the non-interference in internal affairs norm. To address this obstacle, the researcher would want to draw on Surin Pitsuwan's notion of Flexible Engagement. This notion enables ASEAN to address internal issues or policies affecting its members. For stability and prosperity in this region, ASEAN sometimes skips this norm and intervenes in some big domestic issues that may impact ASEAN.

Additionally, the Preah Vihear Dispute demonstrates that ASEAN is still a long way from becoming a fully integrated security community. Community spirit remains poor. The researcher recommended that it should begin by changing national history textbooks that are divisive toward neighboring nations, with the goal of fostering a communal understanding of peaceful coexistence and a focus on community interests. Later on, it will promote cultural and linguistic education among the peoples of ASEAN member nations. This covers student and educational staff exchanges at the elementary, middle, and high school levels. Learning about culture and language enables individuals to have a better understanding of member states and fosters a feeling of familiarity. Finally, by making more space available and assisting the people sector in its activities. Previously, ASEAN has been seen as a place where political leaders and civil employees formulate policy without consultation with the general population. However, since 2005, the ASEAN Civil Society Conference (ACSC) has met alongside the ASEAN Peoples' Forum (APF), a civil society network organization seeking to participate in ASEAN's main decision-making processes. However, member nations do not always respond positively to ACSC/APF meetings. This demonstrates that ASEAN lacks sufficient room for its people, who are crucial in the community's development.

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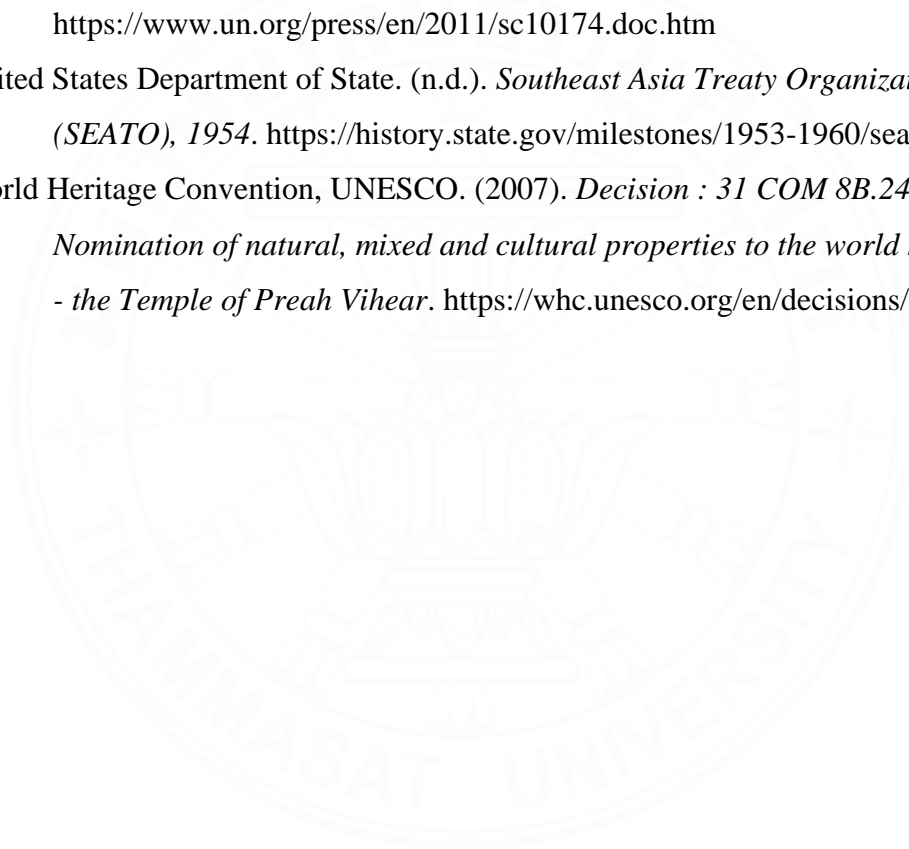
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