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The Thai-Cambodian Border Dispute and the Strength of Adjudication over Negotiations

Laila Khalid Hussain Hassanein

British University in Egypt, School of Business Administration, Economics, and Political Science.

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Abstract: In 2008, fighting broke out between the Thai and the Cambodian militaries after a centuries long dispute over the Preah Vihear Temple and the surrounding hill of Phnom Trap. The temple, built in the 10th century AD under the Khmer Kingdom, has been under the sovereignty of several kingdoms across the years, until the Franco-Siamese Treaty in 1867. Other historical events helped shape the conflict in 2008, such as colonial French mapping and the Cambodian independence. Several tactics were used to resolve this conflict, such as negotiations, adjudication, and mediation. The purpose of this paper is to explore the causes, and evaluate the strategies used.
The nature of protracted conflicts such as the Thai-Cambodian border dispute make it a challenge to evaluate the success of conflict resolution. However, by defining the mandates of each strategy used, the paper concludes why negotiations and sports diplomacy did not work, and adjudication and mediation provided a decrease in hostility. The paper argues that due to the identity issues rooted in the Thai-Cambodian conflict, only third-party interference could halt the violence.
To do so, the first section is dedicated to the causes of the conflict, using a four-part typology. It includes a brief historical overview and timeline of the conflict. The second section is dedicated to exploring the different conflict resolution measures used and evaluating each according to their specified mandate. The identity issues are emphasised throughout andare finally used as a conclusion to debate the effect it might have on future Thai-Cambodian relations.

Keywords: Southeast Asia, Negotiations, Adjudication.

1 Introduction

In 2008, fighting broke out between the Thai and the Cambodian militaries after a centuries-long dispute over the PreahVihear Temple and the surrounding hill of Phnom Trap. The temple, built in the 10th century AD under the Khmer Kingdom, has been under the sovereignty of several kingdoms across the years, until the Franco-Siamese Treaty in 1867. Other historical events in the following century helped shape the conflict in 2008, such as colonial French mapping and the Cambodian independence. Several tactics were used to resolve this conflict, such as negotiations, adjudication, and mediation. The purpose of this paper is to explore the causes, and evaluate the strategies used.
The nature of protracted conflicts such as the Thai-Cambodian border dispute makes it a challenge to evaluate the success of conflict resolution. However, by defining the mandates of each strategy used, the paper can determine why negotiations and sports diplomacy did not work, and adjudication provided a decrease in hostility. The paper argues that due to the identity issues rooted in the Thai-Cambodian conflict, only third-party interference could halt the violence.
To do so, the first section will be dedicated to the causes of the conflict, using a four-part typology: background causes, mobilisation strategies, triggers and catalysts. It will include a brief historical overview. The second section will be dedicated to exploring the different conflict resolution measures used and evaluating each according to their specified mandate. This section will divide these measures not chronologically, but by bilateralism and multilateralism. The identity issues will be emphasisedthroughoutand will be finally used as a conclusion to debate the effect it might have on future Thai-Cambodian relations.

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2 ConceptualFrameworks

The four-part typology used in this paper, designed to explain the causes of armed conflict, was designed by David Dessler in 1994. Background causes or channels are found at the group level of analysis and are determined by the political structure and distribution of power. Mobilisation strategy, or targets, ischaracterised by the political behaviour of leaders and how they try to gain legitimacy for their actions. Triggers are the factors that determine the timing of the conflict, and why it started at a specific time and not another. Catalysts are the factors that determine the intensity and the duration of the conflict (17).

3 Causes

The dispute over the PreahVihear temple and its vicinity can be traced back to the mid-nineteenth1 and early twentieth centuries. It originated with the 1907 French mapping of the Thai-Cambodian territories as part of a bilateral treaty with a map drawn in 1904, as there were no exact demarcations. The ambiguous nature of the borderlines became increasingly problematic with the Cambodian independence in 1953, as Thailand occupied the temple a year later. Cambodia had taken the issue to the International Court of Justice, which ruled in its favour in 1962. Thailand was forced to withdraw its troops, although they protested that the map bore no resemblance to the natural terrain. Although both countries signed a Memorandum of Understanding in the year 2000, the conflict was aggrandized again in 2008 with clashes on the border when Cambodia's request to list the temple as World Heritage site was accepted by the United Nations Educational Scientific and Cultural Organisation (UNESCO). (Borrell, 2013; Hinton, 2006; Hughes, 2009; Lee, 2014; Singh, 1962; Sothirak, 2013). As such, one can consider the World Heritage site request as a trigger for the eruption of violence in 2008, although it is not the cause of the dispute itself.

The political behaviour and objectives within both disputants also mobilised the conflict. Post-coup d'etat opposition party in Thailand, the People's Alliance for Democracy (PAD), needed to reassert its nationalist tendencies to gain popular support by claiming their (the Thai people) rights to territorial integrity. They opposed Bangkok's cooperation with the International Court of Justice (ICJ) judgement in 1962 and the Cambodian request to list the temple as World Heritage site (7). Bangkok's consent can be attributed to the People Power Party (PPP), the government's ruling party, wanting to preserve economic cooperation with Cambodia2. The Cambodian People's Party (CPP) exploited the dispute to win national elections and takeover the national legislature as well(Strate, 2013; Thayer, 2009). Hence, although it is a protracted social conflict, one must question the reason behind the difficulty to resolve such disputes. This strain can be due to the identity dimension it entails, or it can be pertaining to the politicians' needs to garner support through exploiting nationalist sentiments. One then assumes that the violence could have been avoided had the CPP and the PAD not brought it to public discourse as part of their agenda, which led to both their militaries intervening, as both governments were aware of the consequences of their rhetoric.

Yet, there is literature on the dispute that positions the identity dimension above the politicisation. The concept of simulacrum is introduced to the map, that it "is no longer an inanimate object, […] acquired its own soul." This provides that any attempt to smear the territory or the demarcation is even more problematic as usual, that will lead to violence as a hyperreality (of the map) was created "to which people are emotionally attached" (8). The public discourse prior to the conflict also reflected how deep the identity schism between the two countries was entrenched. The Thais would call the Cambodians dogs, and warn their children not to be reincarnated as a Khmer in their next life. In retaliation, the Cambodians would accuse the Thais of being leeches that "suck the blood of other countries" (6). One can then assume that the CPP and the PAD had not reignited the fire of nationalism that was not alight prior to their attempts, but rather saw an opportunity where these sentiments were already so present and so strong to the extent that it only needed a small push to be resuscitated, and hence beneficial to their political interests of power.

The cluster munitions used by the Thais and the army stations installed by the Cambodians in the temple (3), the casualties and displacement caused by the fighting (Lee, 2014; Sothirak, 2013) were catalysts for the conflict that determined its intensity and duration.

4 Conflict Resolution Attempts

4.1 Bilateral Approaches

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Bilateral negotiations began with two rounds of meetings between the Thai supreme commander and the Cambodian minister of defence, to set a bilateral committee that will redeploy the troops. However, its progress was interrupted by the outbreak of gunfighting once again (13). Afterwards, the Thai deputy prime minister and foreign minister met with his Cambodian counterpart to host a Regional Border Committee meeting, which was hindered by Hun Sen delivering an ultimatum1 that preordained that Cambodia will not provide any concessions (12). The fighting didnot stop, and there were fatalities and wounded personnel on both sides (Montlake, 2008; Mydans, 2008). This caused both disputants to express their regret and galvanise the Joint Commission on Demarcation for Land Border and held an emergency Regional Border Committee meeting (20). Yet, this did not halt either party from reinforcing their troops or doubling their military budget(Assosciated Press, 2008; Madra, 2008).The bilateral negotiations efforts have clearly failed as their declared mandate, which is to reduce military tensions, was not achieved.

Another Regional Border Committee was held where both militaries agreed to a ceasefire (15). Both Prime Ministers held conciliatory meetings (2), which paved the path for a Joint Border Committee meeting where both parties adhered to the Memorandum of Understanding of 2000 for further discussions and to decrease troops in disputed areas(10). This proved to be problematic, however, due to the inner turmoil in Thailand at the time, among other complications. The inner turmoil in Bangkok was due to Cambodia hiring Thaksin, the former prime minister of Thailand who was ousted by a coup d'état in 2006, as an economic adviser (5). Thailand considered this interference in its internal affairs (18). The Joint Border Committee also faced the physical problem of the demarcation process itself, where the border posts installed in 1907 were difficult to locate (18). The bilateral approach in general seemed to have fewer chances of success due to the mixed signals sent to the Cambodians by the Thai government, where they were both opting for diplomatic measures while threatening the use of military force (18). One then assumes that these difficulties arising caused Cambodia to resort to multilateral approaches. It can be concluded that all bilateral issues failed to resolve the conflict, although they managed to decrease hostilities temporarily.

4.2 Multilateral Approaches

In February of 2011, Cambodia thought it best to resort to multilateral approaches to resolve the conflict for several reasons. Namely, their fear of military aggression of the 1950s to be repeated(Prachatai, 2008; Singh, 1962). This fear is logical to coincide with the PAD's emergence as an opposition party that was so adamant on the issue of territorial integrity. Another reason is the vague nature of Thai policy, which confused the Cambodians. The Thais were looking forward to oil and gas exploration and cooperation, but they were also sending troops and reconsidering all diplomatic ties with Cambodia(Hughes, 2009; Sothirak, 2013; Strate, 2013). This was also reflected in Thailand's inconsistent position on the World Heritage site request and approval(Borrell, 2013; Lee, 2014; Sothirak, 2013; Strate, 2013; Wipatayotin, Preah Vihear 'won't be on WHC agenda' , 2013; Wipatayotin, Tansubhapol, & Bangprapa, Thailand to oppose temple plan, 2013). It is also assumed that another reason is the general concern for regional peace, where further border clashes or escalation of the confrontations pose a threat to the security of mainland Southeast Asia (4).

The international community responded after heavy fighting in early 2011,with the United Nations Security Council (UNSC) calling on both countries to cease their fire and withdraw their troops from the disputed area. They were also requested to refer to the Association of Southeast Asian Nations (ASEAN) via dialogue. The chair of ASEAN, Indonesia at the time, hosted an informal meeting where all foreign ministers were included. It was concluded with Indonesian preparation to send observers who will monitor the troop withdrawal and demilitarise the disputed area. This was in an attempt to revive negotiations, but the ASEAN mission never commenced (18) ; (4). Therefore, the first attempts at multilateralism clearly failed, as neither ceasefire was achieved nor the demilitarisation, which were clearly the goals of the involvement of ASEAN and the Indonesian monitors.

In the same year (2011), Cambodia requested the reinterpretation of the ICJ's judgement in 1962. Before the court gave its ruling, both parties were urged through a provision to a ceasefire and demilitarisation of the area. The court gave its judgement in November of 2013 that elongated the temple's vicinity to the whole of the promontory. Although that exceeds the amount of land Thailand claimed, it still did not include the hill of Phnom Trap, as declared by Cambodia(ICJ, 2013; Lee, 2014; Sothirak, 2013; Strate, 2013). Hence, one must be critical of the result of such an adjudication, as although it cleared the misconceptions and misinterpretations of the 1962 judgement, it did not help with the demarcation process of the disputed area, which is not the temple itself, but the area surrounding it.

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5 Conclusions

Although most negotiation attempts are not tackled in most of the literature that discusses this conflict, the paper examined them through applying content analysis on the native periodical to Thailand, and other well-known periodicals, throughout the period of two months from October to November 2008.The paper has then used official documents from the United Nations Security Council and the International Court of Justice to derive the multilateral approaches used to manage the conflict. Although the map remains an anomaly to both countries, and the sovereignty over that piece of land is still disputed, one argues that the multilateral approaches succeeded as they decreased armed hostilities completely, even if political tensions still exist.

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