

Thailand and Cambodia Maritime Disputes

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Introduction

An acre of sea is worth much more than an acre of infertile land, if there is oil and gas. Thus a number of coastal states have excessive maritime claims in order to fully utilize the benefits potentially empowered by international law, including UNCLOS. In the case of Thailand and Cambodia they have claimed their maritime zones to benefit their national interest leading to a huge overlapped claimed area. However, both try to solve this problem by reaching the memorandum of understanding to negotiate the maritime delimitation and establish the joint development area (JDA).¹

These disputes were initiated by different interpretation of the Franco-Siamese boundary treaty 1907². Background fact as a matter of disputes and some arguments of both sides and the principal of delimitation, including scholar's views are given. Activities and conflicts in this area are also presented, followed by the way ahead and conclusion.

Overlapping Claimed Area

Thailand has four straight baselines and a historic bay. The first three Areas were established in 1970. Area No.1 (Upper part of the Gulf of Thailand covering Kut Island or Koh Kut, primary cause of this dispute) and No.2 (Middle part of the Gulf of Thailand) are located in the Gulf of Thailand while Area No.3 (Near the Malacca strait) is situated in the Andaman Sea. Area No. 4, the southern part of the Gulf of Thailand, was made in 1992, and a historic bay was set up at the gulf's inner part in 1959. (See map 1) Similarly, Cambodia has claimed straight baselines in the Gulf of Thailand near its coastline and joint historic waters with Vietnam. (See map 2)

The breadth of territorial waters of both countries is established at 12 nautical miles (nm) from the baseline. Contiguous zone extends to 24 nm, and 200 nm for Exclusive Economic Zone (EEZ). In terms of continental shelf, Thailand formally claimed continental shelf only in the Gulf of Thailand in 1973. Later, it was slightly changed by the joint developing area agreement with Malaysia in 1979, and the delimitation of the overlapping area agreement with Vietnam in 1997. Whereas Cambodia' has claimed her continental shelf in 1972 and 1982. In terms of EEZ, both countries may use the same lines as continental shelf was as the single line theory.³

Surprisingly, one of the Cambodian continental shelf claimed lines as mentioned, adjacent to Thai waters near Kut Island or Koh Krut of Thailand, is drawn across the main land of Kut Island (See map 2) through the gulf of Thailand before turning southward. (See map 3) This results in about 30,000 square kilometers⁴ of continental shelf overlapping claimed area and also causes overlapping downward claimed area among Thailand, Cambodia and Vietnam. (See map 4)

¹ Memorandum of Understanding Between Thailand and Cambodia regarding the Area of their Overlapping Maritime Claims to the Continental Shelf, 18 June 2001.

² Franco-Siamese boundary treaty, the Treaty of 23 March 1907, available at <http://library.lawschool.cornell.edu/cijwww/icjwww/idecisions/isummaries/ictsummary620615.htm>. See also International Boundary Study No. 40 (*Revised*) – November 23, 1966, Cambodia – Thailand Boundary available at www.law.fsu.edu/library/collection/LimitsinSeas/IBS040.pdf.

³ Statement of the representative of Iran, UNCLOS III Conference, Official Report, Volume 72, Caracas. Iran designate a single maritime boundary for both continental Shelf and EEZ. See also ICJ Reports, 1984. Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America). This would be easy to manage.

⁴ Some states there is about 27,000 square kilometers of continental shelf overlapping area.

Background of Disputes: François- Siamese Treaty 1907

In 1907, Thailand (Siam) and France signed the François- Siamese Treaty⁵ with map attached. (See map 5) Treaty reads that “France ceded to Siam, inter alia (among other things), every island south of the Cape of Lemling ‘jusque et y compris Koh Kut’ (‘as far and including Koh Kut or Kut Island’).” In addition, in cause 1 reads that “...The frontier between French Indochina and Siam *starts from the sea at a point opposite the highest point* of the island of Koh Kut. From this point it follows a north-easterly direction to the ridge of Pnom-Kreanh...” As a result, Cambodia draws its line across Koh Kut which is located within Thailand’s territory. (See map 2) While Thailand disagree with Cambodia as such Cambodian line was not justified by the Treaty but achieve an equitable solution principle according to the Law of the Sea was.

Interpretation

Thailand interprets that the Treaty aims to set up share land boundary point at shore by looking from the highest point of Kut Island to the main land.⁶ Firstly, the term “France ceded to Siam...,including Koh Kut.” means that Koh kut belong to Thailand. Cambodia, as a successor to France, has never disputed Thailand’s (or Siam’s) sovereignty over Kut island. Secondly, the wording “*Frontier starts from the sea at a point opposite* the highest point of the island of Koh Kut” and from this point it follows a north-easterly direction to the ridge of Pnom-Kreanh (mainland)” means that French and Thailand agreed that the point to be seen on the shore from the highest point of Koh Kut is the starting point for dividing land boundary at shore as an imaginary line. Moreover, as France ceded Kut Island to Siam, there is no reason to divide this island into two parts.

Furthermore, the distance from shore to Koh Kut is around 19 nm. At that time when France and Siam concluded the Treaty, the internationally accepted territorial sea limit was 3 nm. Beyond that limit was high seas. Therefore, the 1907 Treaty could not have legally automatically divided the 19 nm maritime span between Koh Kut and the end stop of the land frontier between Siam and Cambodia, which extend beyond 3 nm. In addition, France could not transfer to Cambodia, its successor to the 1907 Treaty, more rights than France itself possessed.⁷ The Permanent Court of Arbitration in the *Grisbadarna Case*⁸ states that “(w) must have recourse to the principles of law in force at that time.”

While Cambodia argued that when the Treaty stipulates that “The boundary between French Indochina and Siam leaves the sea to a point situated opposite the highest point of the Koh Kut island”, it literally means just that, that the boundary starts from the highest point of Koh Kut and ends up on the coast or the land boundary.⁹

Principles of Delimitation

For territorial sea delimitation, LOSC Article 15 reads that “... neither of the state is entitled to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.” Continental Shelf Delimitation, LOSC Article 83 reads that “states

⁵ See footnote 2.

⁶ Kriangsak Kittichaiaree, “The Law of the Sea and Maritime Boundary Delimitation in South-East Asia., 1987.”

⁷ “Nemo dat quod non habet.” No man can give another any better title than he himself has.

⁸ The *Grisbadarna Case*, the *North Atlantic Coast Fisheries Case*, 11 R. Int'l Arb. Awards 167 (1910).

⁹ Touch Bora Esq, “To His Majesty on the Boundaries Issues”, Letter to His Majesty Preah Bat Samdech Preah Norodom Sihanouk Varman, 5 June 2004, available at <http://sopat.com/v-web/portal/cms/modules.php?name=News&file=print&sid=6>.

with opposite or adjacent coasts shall be effected by agreement on the basis of international law, ...in order to achieve an equitable solution.”

Scholar/Expert's Views

Prescott and Clive view that neither Cambodia nor Thailand has claimed a maritime boundary on the basis of equidistance. In addition, Cambodia base lines and continental shelf cannot be justified by the French-Siamese Treaty. Moreover, the treaty does not mean to delimit the maritime boundary between the island of Koh Kut and the Cambodia-Thailand land boundary.¹⁰ This is similar to Valencia.¹¹ However, Prescott and Clive also gave an example of the theory equidistance lines which should draw between Koh Kut and Cambodia coastline.(See map 6) This differs from both Thailand's and Cambodia's interpretations. However, Thai interpretation is much closer to their theory.

Cambodia's claim over extended maritime jurisdiction is erroneously based on a treaty dealing with island sovereignty and land boundary issues. At the time when treaty was signed the maritime jurisdiction generally did not exceed 3nm from the coast. It also cut through Thailand's claimed internal waters.¹² Even Cambodian scholars views, Narodom Ronariddh¹³ and Khim Chun Y¹⁴, are similar.

What Leads to the Tension over the Disputed Area?

During the past ten years, Thai navy tends to enforce strict laws to implement its jurisdiction over this marine area, whereas the jurisdiction at Cambodian side is carried out by their weak marine police. The tension between the Royal Thai Navy and local Cambodian Marine Police includes disputes over fishing boats in this area. However, after potential oil and gas-bearing structures was found on Thai waters by Idemitsu, Amoco, British Gas, Chevron, Unocal etc., Cambodia followed suit in late 1997, awarding four Conditional Petroleum Agreements covering the Joint Development Area to various consortia that included Bhpbilliton, Conoco, Enterprise, Idemitsu, Inpex and Marubeni. However, commencement of exploration is dependent upon satisfactory resolution by Cambodia and Thailand on their overlapping claims to the area.¹⁵

In 2001, Cambodia and Thailand came to an agreement and signed a Memorandum of Understanding regarding the Area of their Overlapping Maritime claims to the Continental Shelf.^{16 17} Their intention was recorded to divide the overlapping area into two Area and to attempt, through further negotiations, to define maritime border for the northern Area I, designated as “the Area to be Delimited, to agree upon a treaty for joint development of the

¹⁰ Prescott, Victor and Clive Schofield, “Unlimited Maritime Boundaries of the Asian Rim in Pacific Ocean”, *Maritime Briefing*, Volume 3 No.1, p.13.

¹¹ Mark J. Valencia, *South-East Asian Seas: Oil Under Troubled Waters*, (1984)

¹² Clive Schofield, 1999: 317-323

¹³ Narodom Ronariddh, “Le Limites Du Domaine Cambodge”, 1976.

¹⁴ Khim Chun Y, “Le Limites Du Domaine Cambodge”, 1976.

¹⁵ Cambodia trade and Investment Conference Proceedings. See also Resolution of Marine Boundary Disputes , 24-25 July 2007, available at http://www.car.gov.kh/sokan/boundary_deputes_july2507_en.asp.

¹⁶ See footnote 1.

¹⁷ Kingdom of Cambodia, Ministry of Foreign Affairs and International Relation, “Official Visit by Thai Prime Minister,” available at [4/search?q=cache:-td-HUBRtqsJ:www.mfaic.gov.kh/bulletindetail.php%3Fcontentid%3D1241+UN+Thai+Cambodia+maritime+dispute+memorandun&hl=en&ct=clnk&cd=7](http://www.mfaic.gov.kh/bulletindetail.php%3Fcontentid%3D1241+UN+Thai+Cambodia+maritime+dispute+memorandun&hl=en&ct=clnk&cd=7).

hydrocarbon resources located within the southern Areas II , designated as “the Joint Development Area .”¹⁸ (See map 7)

Cambodia has previously proposed to Thailand that the costs and benefits of exploiting the hydrocarbon resources in the Joint Development Area should be shared on a 50:50 basis, and remains convinced that such an outcome would be fair, just and has properly reflected the legitimacy of each country’s maritime claim.

In 2006 Thailand and Cambodia discussed and followed up the progress of negotiations.¹⁹ ²⁰ Cambodia plans to begin drilling a number of potentially rich offshore oil and gas fields by 2008. The venture has already attracted companies including the US oil giant Chevron.²¹ Unsurprisingly, in 2007, Cambodia launched its priority policy to strengthen its naval force to protect its maritime interest.²²

Way Ahead

There are two choices for peaceful settlement of this dispute. First is to submit the case to the International Court of Justice (ICJ)²³ or International Tribunal for the Law of the Sea (ITLOS)²⁴, which may be out of control from both states. It may depend on the discretion of judges, evident and how to present such evident, Temple of Preah Vihear Case²⁵ is an example. However, Thailand is invalid in ICJ,²⁶ and would not accept ICJ. In addition, Thailand is still

¹⁸ Cambodia Conference Final Report. Cambodia Investment and Trade 2002, 15th - 16th May 2002 at Hotel Le Royal, Phnom Penh, , available at http://www.us-asean.org/Cambodia/CAM02_Report_Final.doc.

¹⁹ Department of Foreign Affairs, Thailand, “Foreign Ministry Clarifies Fact on Boundary Demarcations between Thailand-Cambodia and Thailand- Lao PDR”, Press Release No.418/2549, 15 September 2006.

²⁰ Cambodia Investment, Trade and Infrastructure November 30th - December 1st 2005 Raffles Hotel Le Royal, Phnom Penh, Kingdom of Cambodia, pp.87-88. Available at http://www.us-asean.org/Cambodia/Conference_Final_Report.doc.

²¹ “Vietnam, Cambodia to share oil resources”, Bangkok Post, http://www.bangkokpost.net/breaking_news/breakingnews.php?id=112371

²² MCOT Digital Content Online. Available at www.khum.net/news-read/490775.

²³ Its procedure as follows: only States can bring contentious matters before the ICJ for adjudication. The jurisdiction before the ICJ is based on consent. There are three basic forms of consent. First, the countries may enter into a ‘compromis’ (agreement) to refer a specific dispute to the Court. Secondly, a treaty to which both of the countries involved are parties may contain a provision referring disputes to the court. Thirdly, a State may lodge a declaration under Article 36(2) of the ICJ Statute (‘the optional clause’).

²⁴ ITLOS. Tribunal for disputes arising out of the United Nations Convention on the Law of the Sea, available at <http://www.itlos.org/>.

²⁵ ICJ. Case concerning the Temple of Preah Vihear, Judgment of 15 June 1962, available at <http://library.lawschool.cornell.edu/cijwww/icjwww/idecisions/isummaries/ictsummary620615.htm>. See also International Boundary Study No. 40 (*Revised*) – November 23, 1966, Cambodia – Thailand Boundary available at www.law.fsu.edu/library/collection/LimitsinSeas/IBS040.pdf. and Phil C.W. Chan, Chinese Journal of International Law 2004, (2):421-439, 2004, Oxford University Press , available at <http://chinesejil.oxfordjournals.org/cgi/content/abstract/3/2/42>. This case concerns boundaries between States which have long been a major source of international conflicts, and international law has adopted the principles of acquiescence and estoppel in stabilizing and adjudicating upon any such frictions. Whilst the principles have generally served their purpose, the International Court of Justice failed to apply them correctly in *Temple of Preah Vihear*, a decision that will be scrutinized herein against the essential elements of acquiescence and estoppel. Thailand’s position was that the temple was north of the watershed line specified as the Dangrek boundary by the 1904 and 1907 treaties. Cambodia based its case on the delimitation commission map which showed that the boundary in places deviated from the watershed. The Court ruled that the map of the eastern Dangrek range was valid and the temple was Cambodian.

²⁶ Statute of the International Court of Justice. ICJ, Article 36. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning. Thailand, Bolivia, Brazil, China, El Salvador, France, Guatemala, Iran, Israel, South Africa, Turkey and the United States of America have since expired and not submitted to the compulsory

outside LOSC, which makes the option of settlement thought the ICJ and ITLOS invalid.²⁷ Second is following up through negotiation for boundary delimitation and setting up JDA in Area I and JDA in Area II as case may be. In the former, it will be difficult for the policy-maker and Thai people to make decision if we have to get less than we expect, almost similar to the latter, JDA, is only temporary settlement over the dispute.

Conclusion

A considerable area of overlapping claims has resulted from Thai and Cambodian's different interpretations over the 1907 treaty and selective use of Kut island base points. Cambodia selects the highest point of Kut Island drawing straight baseline across the main land of Koh Kut Island of Thailand through the gulf of Thailand before turning southward while Thailand selects another. Although Thailand might be in the advantageous position to win this case, Thai government may not submit the case to ICJ or ITLOS. *Temple of Preah Vihear* Case has been a nightmare for Thai people. It turned to be out of control due to many unexpected factors concerned. As we now can not find a better way to solve this problem, following up to reach boundary delimitation and joint development agreement through negotiation as mentioned²⁸ should be the suitable solution for peaceful settlement of the dispute. However, it may need the art of negotiation and compromise²⁹. In the way that one can make another believe that she will benefit from what she will get. It would also need sufficient knowledge about the area in order that one can know which areas are full of oil and gas or less. However, for the present moment only the oil giants of Chevron, Amoco, British Gas, UNOCAL and BP may have this secret weapon. The clear information on resources would make negotiation much easier and avoid the bad luck which the final boundary decision may bring. Thai may end up in the wrong side of the line. Last significant question is that, in the case of joint development agreement in the Area II, as it is a temporary settlement, what shall we do after the agreement is terminated? Therefore, Thailand and Cambodia should compromise and speed up and prepare to find out the answers to solve their maritime disputes by reaching the equitable solution according to the principle and purpose of LOSC for the Area I delimitation and reaching agreement for the Area II. This would also strengthen peace, security, cooperation and friendly relations between Thailand and Cambodia and among international community.

jurisdiction of the ICJ, available at <http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicdeclarations.htm>. and at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterI/treaty4.asp#N2>.

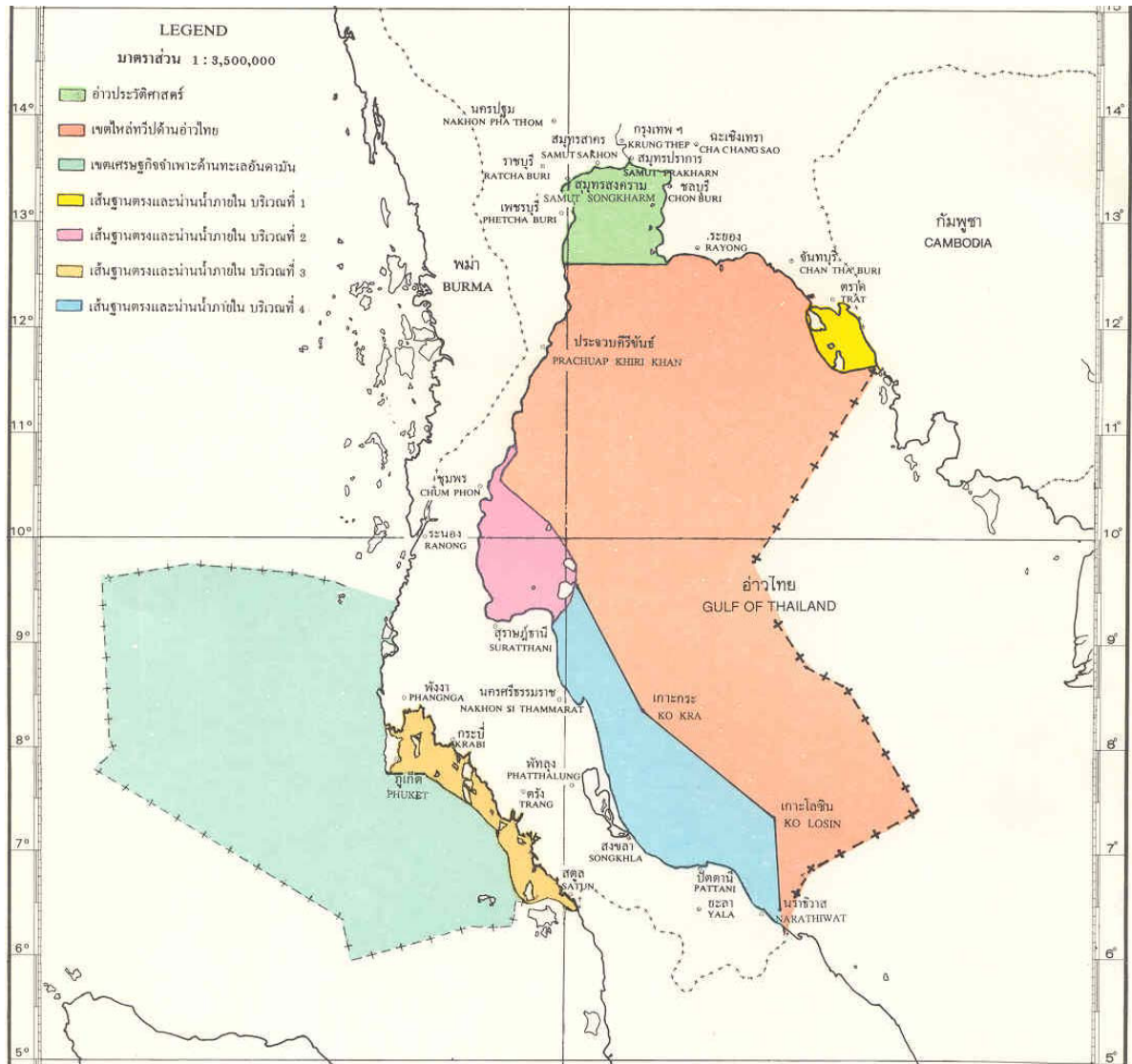
²⁷ ITLOS and LOSC article 287 refer... When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention: (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;

²⁸ Department of Foreign Affairs, Thailand, "Foreign Ministry Clarifies Fact on Boundary Demarcations between Thailand-Cambodia and Thailand- Lao PDR", Press Release No.418/2549, 15 September 2006.

²⁹ A compromise is the art of dividing a cake in such a way that everyone believes that he has got the biggest pieces.

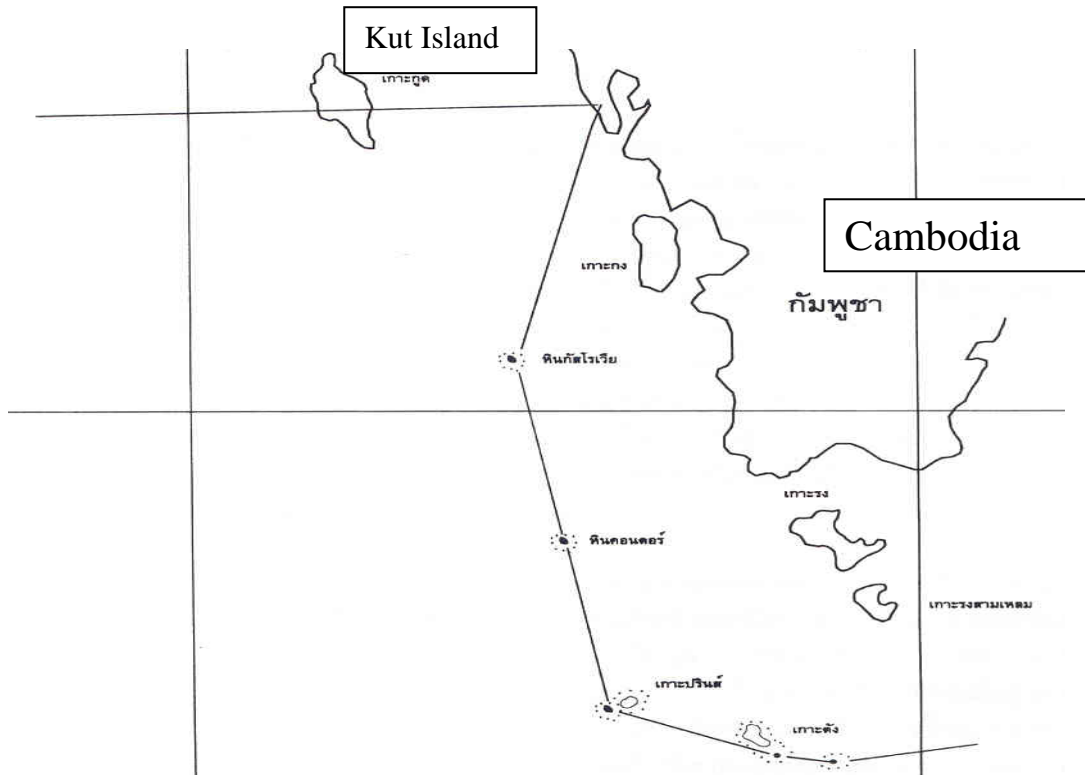
Map 1

Thailand's four straight baselines and a historic bay



Map 2

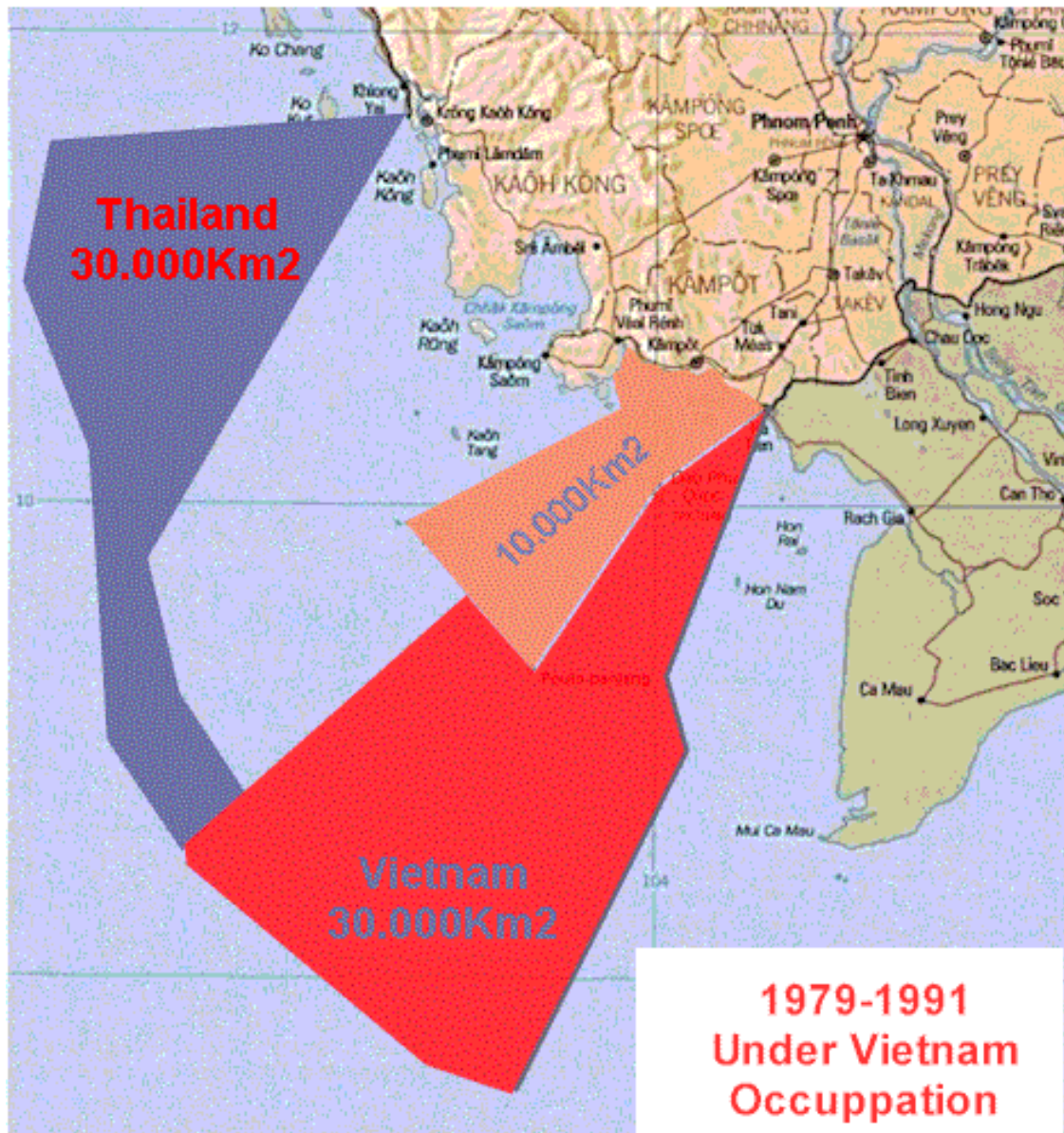
Cambodian Straight baselines claim



- รูปที่ ๒๖ เส้นฐานตรงบางส่วนตามแผนที่แนบท้ายกฤษฎีกาประกาศเขตไหล่ทวีป
ของสาธารณรัฐเขมร เมื่อปี ๒๕๑๕
- ที่มา : ดัดแปลงจากแผนที่แนบท้ายกฤษฎีกาประกาศเขตไหล่ทวีปของสาธารณรัฐเขมร
ปี ๒๕๑๕

Map 4

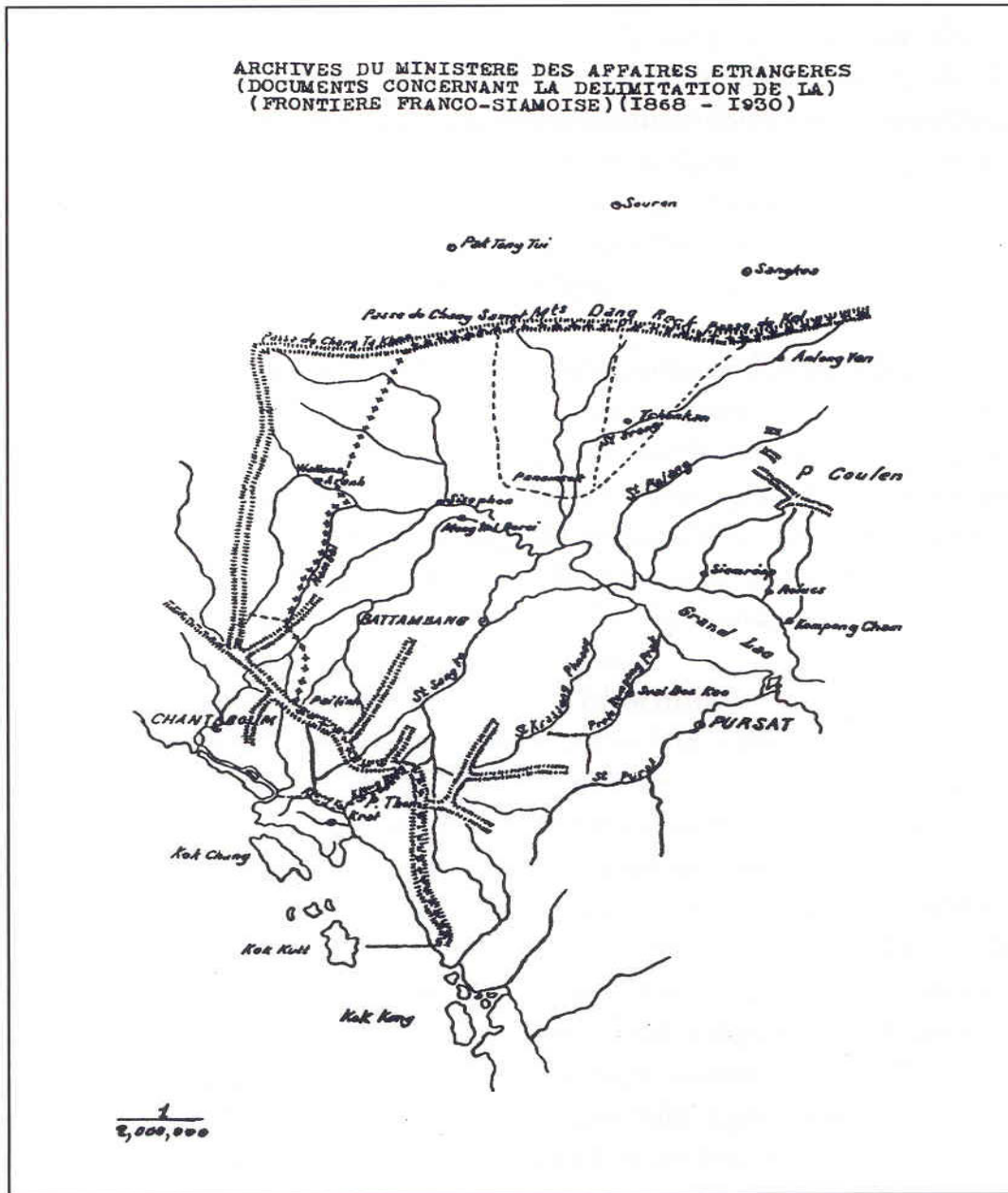
Overlapping areas Among Thailand, Cambodia and Vietnam



Source: <http://www.cfcambodge.org/Anglais/images/CarTE5Plateau.gif>

Map 5

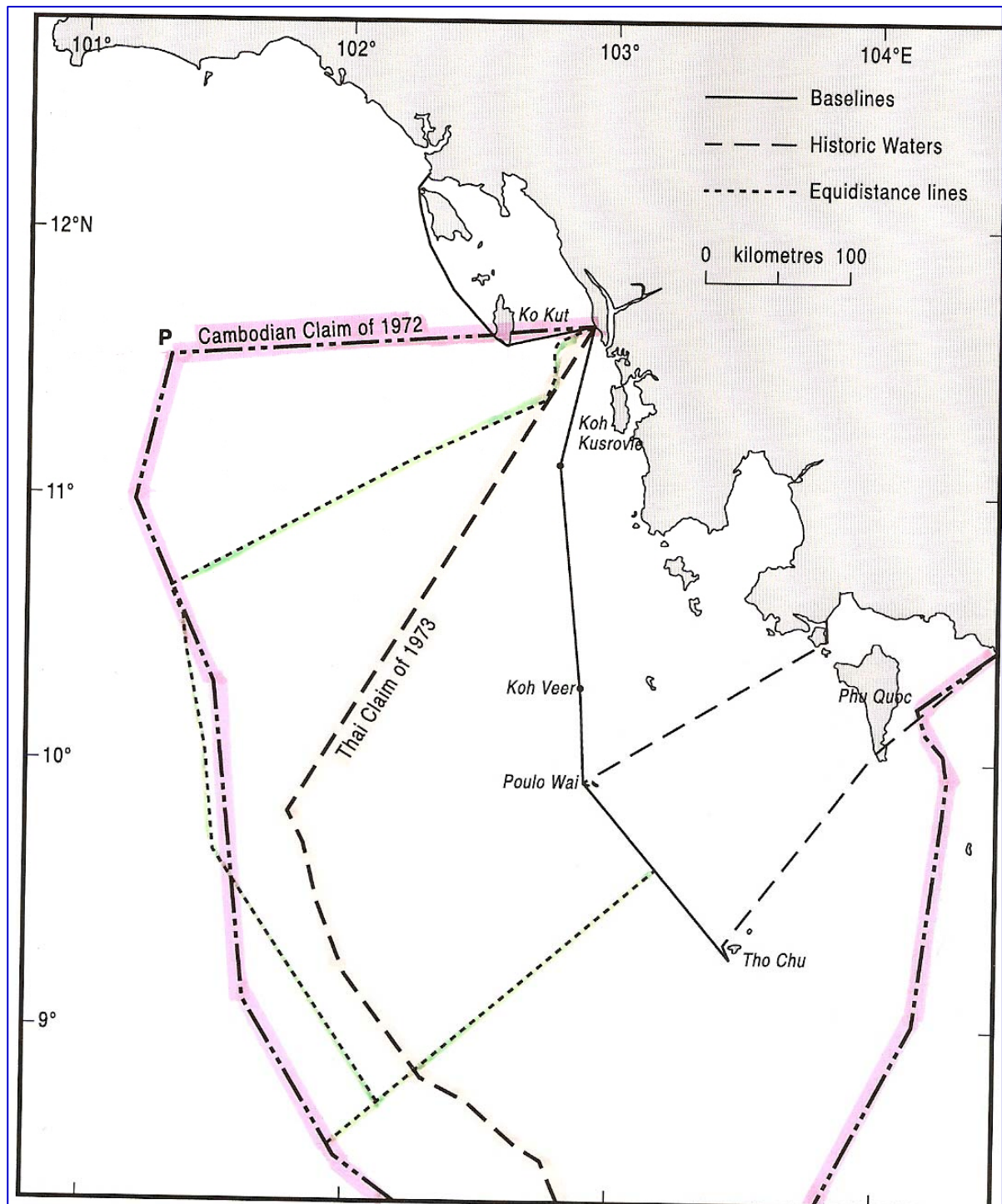
Map attached to the 1907, François- Siamese Treaty



รูปที่ ๒๕ แผนที่สังเขปแสดงเขตแดนระหว่างสยามกับอินโดจีนฝรั่งเศส
ที่มา : แผนที่แนบท้ายสัญญาว่าด้วยปักปันเขตแดนฯ ๒๔๕๐

Map 6

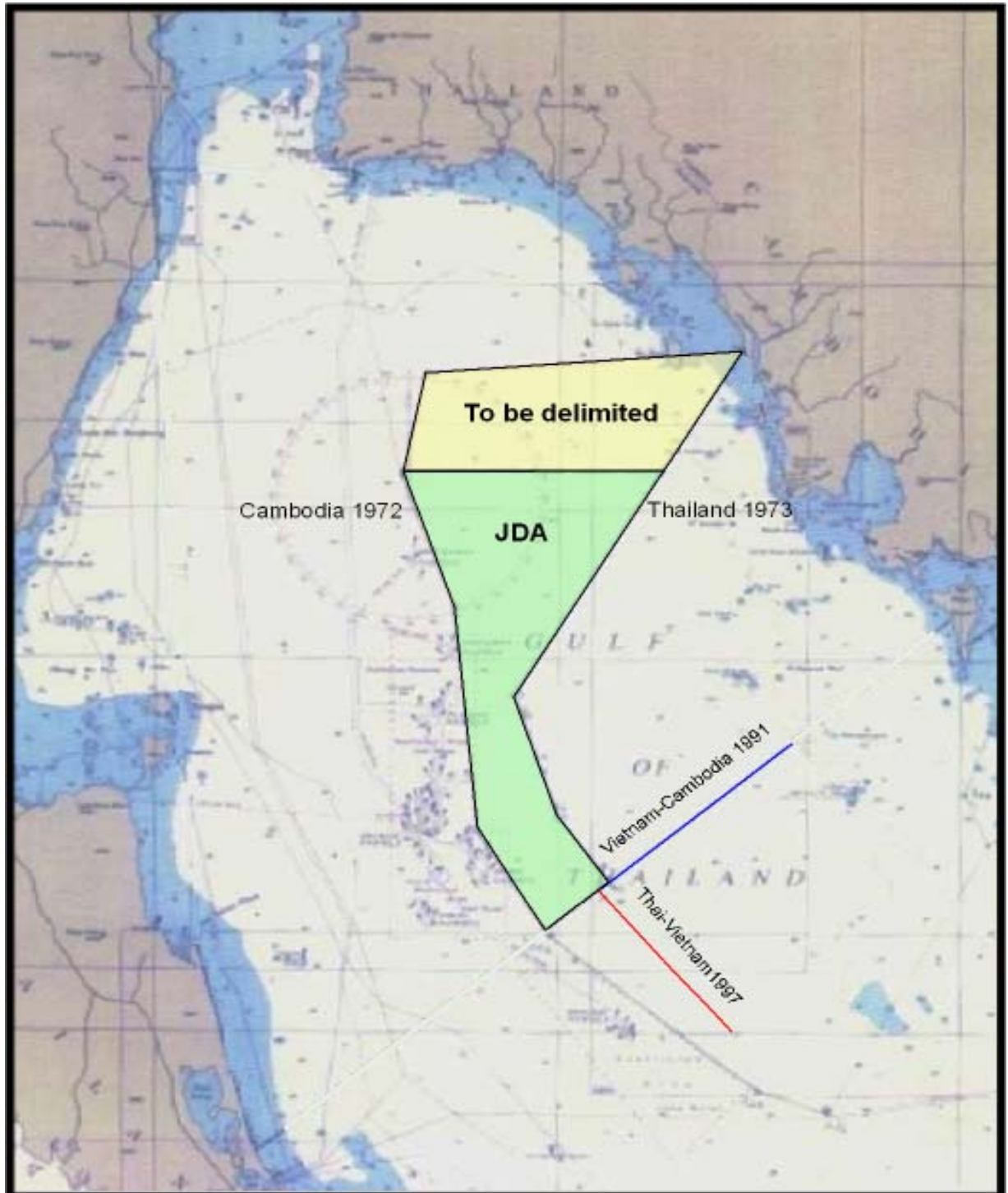
Equidistance Lines between Thailand and Cambodia
(see ----- green lines)



Source: Maritime Briefing, Prescott and Clive, P. 12.

Map 7

MOU regarding the Area of their Overlapping Maritime claims



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