

LL.M Abstract

“ Methodologies for Delimiting the Adjacent Maritime Boundary between Cambodia and Thailand: A View on International Jurisprudence”

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Cambodia and Thailand have maritime boundary delimitation disputes for more than half a century over the overlapping claimed territorial sea, exclusive economic zone, and continental shelf within the Gulf of Thailand. Being situated around the semi-enclosed sea, the Gulf of Thailand, Cambodia and Thailand are adjacent states; they share a land boundary terminus on the coast and opposite states as location of the two states opposite to each other in the central part of the Gulf of Thailand. While both nations have a great interest over the resources in their claimed maritime zones, the development of those areas between the two nations has been impossible because of their unresolved maritime boundary delimitation. The overlapping area is caused by the different application of both states for delimiting their adjacent maritime boundary. Cambodia determines its adjacent maritime boundary based on the interpretation of 1907 Franco-Siamese Treaty; however, Thailand draws an angle-bisector of the straight baseline segments of the two states' baseline systems immediately offshore.¹

In addition, international law on maritime boundary delimitation provides unclear direction of principle and method to be used to determine such boundary. While the general principles and methods guiding states in the drawing of boundaries are regulated in the *1958 Geneva Conventions*, *the 1982 Law of the Sea Convention*, and customary international law which have been extensively developed by state practice and case law, they have been formulated at a high level of generality and vagueness.² Because of these generality and vagueness of the available methods, plus the unique coastal geography of the Gulf of Thailand, Cambodia and Thailand have developed their maritime claims on the adjacent maritime boundary by using different methodology.

This research concentrates on the methodologies for delimiting adjacent maritime boundary between Cambodia and Thailand, which derived from state practice and international jurisprudence. First, this study will first examine the geographical and historical background in the disputed water. Second, there will be a discussion of the current trends of maritime boundary delimitation principles

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¹ Kret No. 518/72-PRK, August 12, 1972; Clive Howard Schofield, “Maritime Boundary Delimitation in the Gulf of Thailand” (Durham University, 1999), 312, <http://etheses.dur.ac.uk/4351/> (accessed April 22, 2014).

² Churchill, Robin Rolf, and Alan Vaughan Lowe. *The Law of the Sea*. Manchester University Press, 1999, 182.

and methods, which are emerging from state practice and case law. Then, this paper will analyze which method and principle are best applicable for settling this particular case.

This study will focus on answering four questions, most frequently asked by international tribunals when dealing with maritime delimitation case. The first question is about the applicable law governing the dispute between Cambodia and Thailand. Second, it is whether the 1907 Franco-Siamese Treaty and its Protocol aim to delimit adjacent maritime boundary between the two countries? In any event, what are the applicable methods and principles for delimiting adjacent maritime boundary between Cambodian and Thailand? What factors are relevant for the delimitation process between the two littoral countries?

The research is expected to prove the application of equidistance/special circumstances for delimiting the territorial sea and equitable principle/relevant circumstances for delimiting the single maritime boundary in the exclusive economic zone and continental shelf between the two disputed states. In fact, the delimitation process between the two adjacent states' boundary should be divided into two processes. The delimitation line in the territorial sea is an equidistance line ignoring the baseline claimed by both parties. This delimitation line encompasses a radius of 12 nm from the southern part of Kut Island in order to provide Kut Island with territorial sea since it is a special circumstance in this case. Second, exclusive economic zone and continental shelf of the two countries should be delimited together as a single maritime boundary. This boundary should be delimited by the application of equitable principle/relevant circumstances. The current trend of applying equity is through corrective equity approach³, which involve three processes of delimitation: provisional equidistance line, adjustment of provisional equidistance by taking into account of the relevant circumstances, and the application of proportionality test.⁴ To be precise, the provisional equidistance line used for delimiting the exclusive economic zone and the continental shelf between Cambodia and Thailand is the strict equidistance line ignoring straight baseline systems claimed by both states and ignores Kut Island as a base point. This line, however, must be adjusted by relevant circumstances, which in this case are the general configuration of coast of the parties and the conduct of the parties. The hypothesis maritime boundary delimitation between these two countries is shown in Figure 1 below.

The law of the sea and maritime boundary delimitation generated an enormous amount of study; however, previous studies in this particular topic have been limited in scope. There are less than ten scholars interested in this field including: Norodom Ranariddh, Sarin Chhak, Khim Y,

³ Award of the Arbitral Tribunal (Bangladesh/India) (The Hague, 7th July 2014), http://www.pca-cpa.org/showpage.asp?pag_id=1376; Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Judgment of 14th March 2012, <http://www.itlos.org/index.php?id=108#c964>; Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar/Bahrain).

⁴ Yoshifumi Tanaka, "Reflections on Maritime Delimitation in the Nicaragua/Honduras Case," *Heidelberg Journal of International Law* 68, no. 4 (2008): 915.

Kittichaisaree, Victor Prescott, Clive Schofield, Mom Ravin, Somjade Kongrawd, and Hang Chuon Naron. These authors have different background, which resulted in different findings toward the problem. Some authors wrote their works for the benefit of their country rather than from the objective person perspective. Some other authors concentrated on the big picture of the issue rather than focused on the particular case. Nevertheless, two recent studies deserve special attention due to their concrete information discussed in their works, which are the work of Clive Schofield and H.E. Hang Chuon Naron.

Clive Schofield focused his study on the maritime boundary delimitation in the Gulf of Thailand. In his study, he pointed out that neither Cambodia nor Thailand has claimed a maritime boundary on the basis of equidistance. Moreover, he further stressed that the purpose of 1907 Franco-Siamese Treaty is to divide the sovereignty over the island but not for delimiting the maritime boundary between the parties. In addition, he looked at the issue not only from the legal perspective, but also from the geographer perspective. However, he failed to provide the in depth and definite solution for the problem between Cambodia and Thailand due to his large scope of study.

On the other hand, H.E. Hang Chuon Naron centered his attention on the maritime dispute between Cambodia and Thailand based on international jurisprudence. H.E. Hang suggested two processes of delimiting the overlapping maritime boundary between the two countries. First, both parties need to delimit the boundary in the territorial sea by considering the effect of the 1907 Franco-Siamese Treaty and providing half-effect to Kut Island. Second, the principle of equitable principle/relevant circumstances is applicable for delimiting exclusive economic zone and continental shelf between the disputed parties. However, the work of H.E. Hang Chuon Naron neglected the influence of state practice on maritime delimitation. He focused solely on international jurisprudence. Moreover, his recommendation for the delimitation of territorial sea between the two countries went against other scholars' idea in this field. For example, H.E. Hang Chuon Naron believed that the 1907 Franco-Siamese Treaty influences the delimitation line in the territorial sea. He applied the perpendicular line in the course of territorial sea delimitation between the two states. Furthermore, his explanation regarding the relevant circumstances was not clear and he failed to provide concrete analysis on how to apply equitable principle/relevant circumstances in delimiting the single maritime boundary.

This research is better than the previous research for two reasons. First, this research will look at the method and principle, which had been previously practiced by states and applied by international tribunals, especially those recently developed by the international tribunals. Second, this study will provide a concrete and simple explanation on how to delimit maritime boundary between Cambodia and Thailand on the adjacent boundary. Thus, this research will fill in the gap previously created by the previous scholars in this field.

This study is significant for the future development of the two states' political, social, and economical interest. When there is a lack of clarity over the limits of maritime claims, it leads to confusion and uncertainty of state's jurisdiction and sovereignty. This also retards the exploration and exploitation of natural resources, prevents the protection of living and non-living resources, and results in conflicting activities or political tensions, which pose the risk of armed clash or conflict between the two neighboring states. In addition, this study provides a meaningful contribution to the understanding of the nature of maritime dispute between Cambodia and Thailand and the suitable methodology for maritime boundary delimitation questions between the two countries so that they can move forward friendly relations and development of overlapping claimed area.

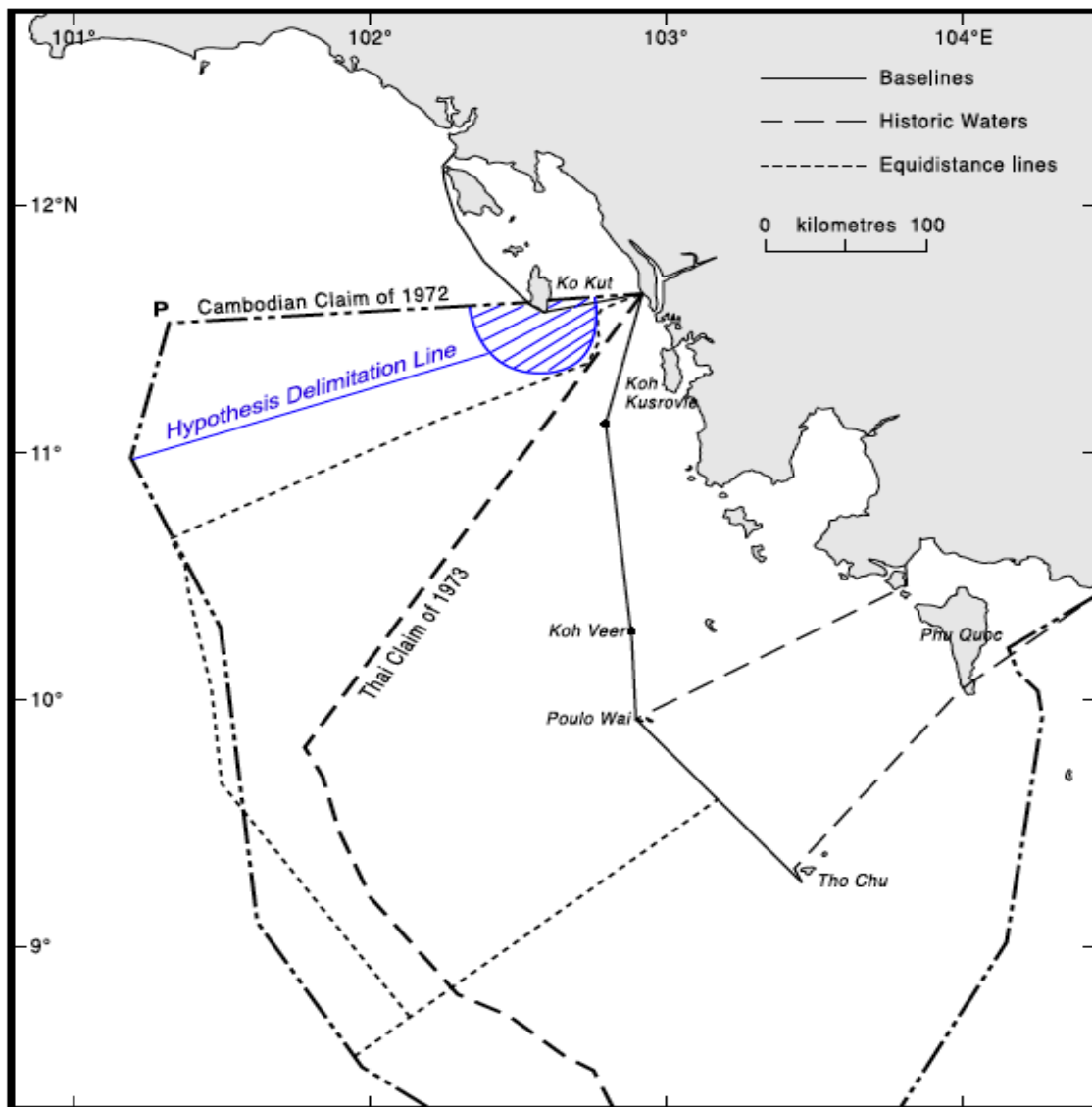


Figure 1: Hypothesis Adjacent Maritime Boundary between Cambodia and Thailand
Source: Author's adjustment of the map in Prescott & Schofield (2001)