

Commentary

The 2001 MoU Between Thailand and Cambodia: Demystifying the Koh Kut Kerfuffle

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I. INTRODUCTION

A “kerfuffle” has been defined as “a humorous-sounding word for a mostly non-humorous situation: some kind of disturbance, scandal or mess. However, a kerfuffle usually isn’t 100% serious.”¹ And that is exactly what the recent public furor over the so-called “MoU 44”² has been. From late October through November 2024, there were well over a dozen articles in the *Bangkok Post* alone about this situation—often on the front page, and sometimes two articles in the same issue—with provocative headlines such as “Thai Govt Under Pressure Over Maritime Deal With Cambodia,”³ “Opposition Wants To Cancel Thaksin’s Joint Resources MoU with Cambodia,”⁴ “Key Panel

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¹ “Kerfuffle” (Vocabulary.com) <<https://www.vocabulary.com/dictionary/kerfuffle>>.

² The Thai Ministry of Foreign Affairs numbers its memoranda of understanding in reference to the Buddhist calendar. The year 2001 was year 2544 in the Buddhist era, and “MoU 44” is simply a shortened form of “MoU 2544.” The formal title of the document is “Memorandum of Understanding between the Royal Thai Government and the Royal Government of Cambodia regarding the Area of their Overlapping Maritime Claims to the Continental Shelf.” It is a two-page document of operative text with a third page as an attached map. The text pages can be found following this Commentary as Exhibit A and the attached map as Exhibit H.

³ Mongkol Bangprapa and Aekarach Sattaburuth, “Thai Govt Under Pressure Over Maritime Deal With Cambodia” *Bangkok Post* (10 November 2024) <<https://www.bangkokpost.com/thailand/special-reports/2899322/thai-govt-under-pressure-over-maritime-deal-with-cambodia>>.

⁴ Aekarach Sattaburuth, “Opposition Wants to Cancel Thaksin’s Joint Resources MoU with Cambodia” *Bangkok Post* (30 October 2024) <<https://www.bangkokpost.com/thailand/politics/2892976/opposition-wants-to-cancel-thaksins-joint-resources-mou-with-cambodia>>.

Appointment for Negotiation with Cambodia May Face Delay,”⁵ and “Activist Seeks Court Action on Thai-Cambodia MoU Deal.”⁶ While there were occasional attempts to make sense of it all, such as “MoU on Territorial Dispute with Cambodia Clarified,”⁷ perhaps the most accurate article of them all was the one that announced “Most Thais Clueless About MoU 44, Koh Kut Dispute With Cambodia: Poll.”⁸

II. CONFLICTING NEWS REPORTS

And why wouldn’t the public be “clueless,” given the avalanche of conflicting information and unfamiliar terminology. Phrases such as “overlapping maritime claims” and “joint technical committee” (JTC) were mentioned numerous times, with little or no supporting background information about what these terms really meant. Even the actual contents of the MoU remained somewhat of a mystery, given that the document itself was never published. Instead, what appeared in print were entirely second-hand comments (known in the legal world as “hearsay”⁹). That is, there were endless reports about what various people *said* the MoU said, or what the MoU did, but never did the public ever actually *see* the MoU to decide for itself what the MoU really did say or do.

For example, on 30 October 2024, the *Bangkok Post* reported that the Palang Pracharath Party wanted the prime minister to drop the MoU, claiming that “it could mean Thailand losing some if its territory” and that the document “also accepted Cambodia’s territorial claim made in 1972 to half of Koh Kut island.”¹⁰ That view was attributed to MP Thirachai Phuwanatnaranubala, head of the PPRP’s academic committee, who was then directly quoted as saying, “I have no problem with the government’s intention to discuss joint investment with Cambodia. But I will object if

⁵ Chairith Yonpiam, “Key Panel Appointment for Negotiation with Cambodia May Face Delay” *Bangkok Post* (19 November 2024) <<https://www.bangkokpost.com/thailand/general/2904318/key-panel-appointment-for-negotiation-with-cambodia-may-face-delay>>.

⁶ Chairith Yonpiam, “Activist Seeks Court Action on Thai–Cambodia MoU Deal” *Bangkok Post* (26 November 2024) <<https://www.bangkokpost.com/thailand/general/2908640/activist-seeks-court-action-on-thai-cambodia-mou-deal>>.

⁷ Mongkol Bangprapa, “MoU on Territorial Dispute with Cambodia Clarified” *Bangkok Post* (13 November 2024) <<https://www.bangkokpost.com/thailand/general/2901053/mou-on-territorial-dispute-with-cambodia-clarified>>.

⁸ “Most Thais Clueless About MoU 44, Koh Kut Dispute With Cambodia: Poll” *Bangkok Post* (17 November 2024) <<https://www.bangkokpost.com/thailand/politics/2903596/most-thais-clueless-about-mou-44-koh-kut-dispute-with-cambodia-poll>>.

⁹ Hearsay is defined as “a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” California Evidence Code §1200. A “statement” can be oral *or written* verbal expression (Cal. Evid. Code §225). Because the person (or document) who made the statement often is not in court and able to be cross-examined, hearsay is excluded as evidence unless it comes within a recognized exception (of which there are many).

¹⁰ Aekarach, “Opposition Wants to Cancel” (n 4).

the government uses the 2001 MoU as a framework for the discussions, because not only is it illegal but also results in a territorial loss for Thailand.”¹¹

On the same day, *Thai PBS World* was even more categorical in its tone. Before mentioning Mr. Thirachai, the article declared:

The party is collecting signatures from the public in support of an open letter, to be addressed to the Thai premier, expressing its rejection of MOU 44, a document signed during the Thaksin Shinawatra administration with Cambodia, under which Thailand recognises the border line, unilaterally drawn by Phnom Penh, which allows Cambodia to lay claim to half of Kut Island, off Trat province.¹²

These were all extremely serious allegations, *but were they true?* Pushback from the government was soon reported, though it, too, was primarily in the form of hearsay of what was in the MoU. Interior Minister Anutin Charnvirakul insisted that Ko Kut was Thai territory and assured the public that the MoU in question did not involve territorial concessions, but rather only outlined each country’s overlapping claims.¹³ Moreover, he added that the MoU could not be abolished without Cambodia’s consent.¹⁴ What, if any, of *this* was true? How was one to tell, given the conflicting narratives?

Clarity of the situation certainly was not helped when, a week later, the secretary-general of the Council of State said the MoU *could* be cancelled unilaterally, though doing so would be unwise as it could damage bilateral ties.¹⁵ Then, after another week, Russ Jalichandra, Vice Minister of Foreign Affairs, announced that cancelling the MoU was *not* legally feasible, with the article reporting that “failing to uphold the agreement could lead to violations, possibly resulting in lawsuits in international courts and damaging Thailand’s credibility on the global stage.”¹⁶

Even when “political analysts” were consulted for help in sorting through the discrepancies, the situation remained muddled. For example, an academic in security and international relations was quoted as saying, “Critics claim it will result in a loss of territory, but if that’s not the case, the government must clarify what the obligations are, address the implications of Cambodia’s territorial claim and resolve them so the document doesn’t impose obligations and the talks can proceed.”¹⁷ *If that’s not the case?* What, then is the case?

¹¹ *ibid* (emphasis in original).

¹² “Thai Gov Urged to Drop ‘MOU 44’ with Cambodia” *Thai PBS World* (30 October 2024) <<https://world.thaipbs.or.th/detail/thai-gov-urged-to-drop-mou-44-with-cambodia/55248>>.

¹³ “Thailand Cannot Scrap MoU44 Without Cambodia’s Okay: Anutin” *The Nation* (4 November 2024) <<https://www.nationthailand.com/news/politics/40042963>>.

¹⁴ Mongkol, “MoU Clarified” (n 7).

¹⁵ *ibid*.

¹⁶ Aekarach Sattaburuth, “Scrapping Cambodia Pact ‘Not Feasible’” *Bangkok Post* (21 November 2024) <<https://www.bangkokpost.com/thailand/general/2906297/scrapping-cambodia-pact-not-feasible>>. A slightly different version of the same article, under the heading “Scrapping MoU ‘Not Feasible,’ ” appeared in the print edition on 22 November 2024.

¹⁷ Mongkol and Aekarach, “Thai Govt Under Pressure” (n 3).

As the weeks rolled by, on 23 November 2024 it was reported that the prime minister “insists that the government is ready to explain its decision to back a Memorandum of Understanding between Thailand and Cambodia on both countries’ overlapping maritime claims in the Gulf of Thailand. A joint technical committee (JTC) is expected to be formed this month, she said.”¹⁸ *Ready to explain?* When can the public expect that?

In fairness, the government had in fact previously put out considerable positive information about its position, much of which was extremely thorough and cogent.¹⁹ However, such attempts were often drowned out by the ongoing sea of conflicting information. Furthermore, it did not help matters that, in a NIDA poll, 59% said they had no understanding of the MoU 44 and Koh Kut controversy, and of those who said they had at least some understanding, a whopping 62.85% replied they had little or no trust that the government could protect the national interest and territorial sovereignty should matters proceed under the MoU.²⁰

III. UNFAMILIAR TERMINOLOGY

But even if the government’s pronouncements were heard or read by open-minded readers, it is likely that most would still have remained somewhat confused. As suggested above, many of the terms used were simply not fully understood by most people. In the “ready to explain” paragraph above, there were three problematic phrases: “Memorandum of Understanding”; “overlapping maritime claims”; and “joint technical committee.” What *are* those things? The first two items will be addressed immediately, while the third will be discussed in section IV. B. 2., below.

A. Memorandum of Understanding

While most people probably know that a memorandum of understanding (MoU) is some sort of an agreement—at least to a defined set of facts if not also to what could amount to a binding contract—in this case the reference was specifically to MoU 44. Lack of clarity resulted not because the term itself was unfamiliar, but because how its contents were presented. The public was repeatedly told only that the MoU did this or did that (depending on who was speaking), but without ever revealing the MoU itself. Permitting the public to actually read the MoU—perhaps by providing a side-by-side

¹⁸ Aekarach Sattaburuth, “Government Willing to Explain Agreement’s Benefits” *Bangkok Post* (23 November 2024) <<https://www.bangkokpost.com/thailand/politics/2907247/government-willing-to-explain-agreements-benefits>>.

¹⁹ See, e.g., “No ‘Secret Deal’ over Koh Kut” *Bangkok Post* (12 November 2024) <<https://www.bangkokpost.com/thailand/general/2900261/no-secret-deal-over-koh-kut>>; “Thailand’s MFA Clarifies MoU 44’s Role in Thailand–Cambodia Maritime Negotiations” *The Government Public Relations Department* (13 November 2024) <<https://thailand.prd.go.th/en/content/category/detail/id/52/iid/339479>>.

²⁰ “Most Thais Clueless” (n 8).

Thai translation of the English text—would have allowed people to decide for themselves what the true facts were, or at least provide them with a better understanding of what the various parties were talking about.²¹ MoU 44 is a short and easy to read document: a mere two pages, with a one-page map as an attachment. See Exhibit A at the end of this Commentary, which contains the two-page operative text.²² (The attached map, discussed later, is Exhibit H.)

B. Overlapping Maritime Claims

And what are “overlapping maritime claims”? Without some background knowledge of what these words mean, clarity of understanding is well nigh impossible. But here’s a brief overview. Current international law says that countries that border on a sea can claim an “exclusive economic zone” (EEZ) (primarily, though not only, for fishing) of 200 nautical miles (nm) from either their shoreline or from “straight baselines” (which connect certain offshore features).²³ Moreover, countries are given an automatic “continental shelf” right to mine and extract what’s on the seafloor for at least 200 nautical miles from their shore or baselines.²⁴ While those rights are extremely beneficial to countries that border on the open sea, such as most countries in the western hemisphere and island countries in the middle of the ocean, it’s not so beneficial to countries, say, that border the Mediterranean Sea. Closer to home, at its *widest* point the Gulf of Thailand is only 304 nm across (350 miles; 560 km).²⁵ In such a case it’s simply not possible for opposite countries to actually obtain their full 200 nm, though they often claim as much. Generally, what each state ultimately gets is half of the distance to the opposing side, often determined by constructing an “equidistant” line as the boundary.²⁶

Understandably, it is beneficial for a country to try and start measuring from as far and away from its own shore as possible (to get more total sea area), but there are “rules” about where such straight baselines can be drawn, and Thailand is not alone in claiming perhaps more than the rules allow.²⁷ Suffice it to say, though, if one doesn’t

²¹ It has proven extremely difficult to find the text of MoU 44 anywhere online.

²² Exhibit A is a signed copy of the “Thai version” of the MoU, which in the title names Thailand first and has the signature page for Thailand on the left side of page 2. However, only the “Cambodia version” of the same text is available online, where Cambodia is named first in the title and whose signature area is on the left side of page 2. It can be found at: <<https://ki-media.blogspot.com/2009/11/2001-mou-with-thailand-regarding.html>>.

²³ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (LOSC) art 57.

²⁴ LOSC arts 76(1) and 77.

²⁵ “Gulf of Thailand” *Wikipedia* <https://en.wikipedia.org/wiki/Gulf_of_Thailand>.

²⁶ LOSC art 83.

²⁷ “For its part, Thailand has also advanced a lateral continental shelf claim at variance with strict equidistance.” Clive Schofield, “Unlocking the Seabed Resources of the Gulf of Thailand” (2007) 29(2) *Contemporary Southeast Asia* 286–308, 301 <<http://www.jstor.org/stable/25798832>>. See also “Straight Baseline Claim: Thailand” *Limits in the Seas No. 122* (Office of Oceans Affairs, U.S. Department of State 2000) <<https://www.state.gov/wp-content/uploads/2020/01/LIS-122.pdf>>.

claim, one doesn't get, so both Cambodia and Thailand made "claims" regarding what they consider to be their respective continental shelves in the Gulf of Thailand.

Cambodia did it first, in 1972, and Thailand did the same thing the following year. See Exhibit B,²⁸ below. Thus we have "overlapping maritime claims." And they are just that: claims. Because the boundaries of the claims overlap one another, we have a "dispute" that needs to be settled, i.e., where *should* the line separating the continental shelves of the two countries be drawn? The answer is to be decided through negotiations between the two countries involved,²⁹ though they can jointly agree to submit the matter to a third party for a decision about the boundary, such as an arbitration tribunal or an international court. But, if they cannot agree on a settlement, the dispute remains. However, in some cases countries decide to put off an agreement on the boundary itself and agree instead to jointly share the resources found within their disputed "overlapping area,"³⁰ such as Thailand has done with Malaysia in creating a Joint Development Area in the Gulf of Thailand.³¹

It is believed that there are also extensive undersea resources in a portion of the overlapping claims area (OCA) of Thailand and Cambodia.³² What to do? Exactly. *What* to do? Both sides would like to reap the riches in the Gulf of Thailand to address their increasing energy needs,³³ but over 50 years have gone by and there is still no

²⁸ From William J. Jones, "Revisiting the Cambodia–Thailand Maritime Dispute: International Law, Politics and Nationalism" (2024) 27(167) East-West Center 4 <https://www.researchgate.net/publication/385774375_Revisiting_the_Cambodia-Thailand_Maritime_Dispute_International_Law_Politics_and_Nationalism>.

²⁹ LOSC art 83.

³⁰ After writing the words "overlapping area," this author discovered that the term is deemed by some to be problematic! Pakorn Nilrapunt, secretary-general of the Council of State, has "urged the media to avoid the term 'overlapping area' and use 'claimed territory' instead. When asked if the phrase 'overlapping area' in a legal context would be detrimental to Thailand's claim, Mr. Pakorn said it could have an impact due to international law." Mongkol, "MoU Clarified" (n 7). Unfortunately, for this author going forward, it was not disclosed just what sort of "impact" in international law it might have.

³¹ See "Malaysia and Thailand Celebrate 40th Anniversary of Shared Prosperity" (*Royal Thai Embassy Kuala Lumpur*, 7 October 2019) <<https://kualalumpur.thaiembassy.org/en/content/109735-malaysia-and-thailand-celebrate-40th-anniversary-of-shared-prosperity?cate=5d7538ea15e39c1e60003438>>; "Malaysia–Thailand Joint Development Area" (*Department of Mineral Fuel*) <<https://www.dmf.go.th/bid19/annaul/o8.html>>.

³² "The Thai–Cambodian overlapping claims area is regarded as especially prospective because it encompasses the northern and eastern parts of the Pattani Trough geological structure that has yielded significant discoveries in exclusively Thai waters." Schofield, "Unlocking the Seabed Resources" (n 27) 306 (endnote 16); "It is estimated that some 11 trillion cubic feet of natural gas lies within the OCA. This is important for energy consumption and security for both countries." Jones, "Revisiting" (n 28) 8.

³³ "[B]oth states have strong incentives to reach agreement and gain access to the significant resources thought to be present in the overlapping zone. Cambodia has long sought access to offshore resources as a potential means of transforming its developing economy. . . . For its part, Thailand, as a rapidly industrializing state, has ever more pressing energy security concerns." Schofield, "Unlocking the Seabed Resources" (n 27) 303; "Put simply, Thailand faces declining natural gas production and needs to shore up its energy security. Similarly, Cambodia is totally dependent on foreign sources of energy and has been unsuccessful in developing its own industry—after more than two decades of trying." Chris Larkin, "Thailand Cambodia Overlapping Claims Area: Is a Settlement in Sight?" (*CLC Asia*, 9 February 2023) <<https://www.clc-asia.com/thailand-cambodia-overlapping-claims-area/>>.

agreement on anything. Well, that's not quite right. There *was* the MoU of 18 June 2001 (Exhibit A), which "has been aptly described as merely 'an agreement-to-agree.'"³⁴ Despite all of the recent chatter, that really is what MoU 44 is: An agreement to agree.

IV. TWO OPERATIVE DOCUMENTS

But what about Cambodia's claim area shown in Exhibit B? Doesn't it seem to claim half of Koh Kut? Well, yes, *if* one looks just at the line that Cambodia drew to establish its claimed continental shelf area. Why did Cambodia draw the line that way? We will get to that shortly, but first we need to know what the Franco–Siamese treaty of 23 March 1907 actually had to say about Koh Kut (by applying Google Translate to the French version of the treaty).³⁵

A. The Franco–Siamese Treaty of 1907

While Koh Kut is specifically mentioned in Article II, for context we also need to see Article I:

Article I

The Siamese Government cedes to France the territories of Battambang, Siemreap and Sisophon, the borders of which are defined by clause I of the delimitation protocol annexed hereto.

Article II

The French Government cedes to Siam the territories of Dan-Sai and Kratt, the borders of which are defined by clauses I & II of the said protocol, as well as all the islands situated south of Cape Lemling, up to and including Koh-Kut.

Clause I [of the Protocol]

The border between French Indo-China and Siam starts from the sea at a point located opposite the highest peak of the island of Koh-Kut. From this point it follows a North-East direction to the crest of Pnom-Krevanh. It is formally agreed that, in all cases, the eastern slopes of these mountains, including the whole of the Klong-Kopo basin, must remain in French Indo-China.

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³⁴ Clive Schofield, "Defining Areas for Joint Development in Disputed Waters," in *Recent Developments in the South China Sea Dispute* (Routledge 2014) 90 (quoting Canadian law of the sea scholar Ted McDorman) <<https://doi.org/10.4324/9781315818696-6>>.

³⁵ This author was unable to locate the treaty as a standalone item online. However, on 29 September 1961 Thailand filed the treaty as Annex No. 6 as part of its Counter-Memorial to the International Court of Justice in the Temple of Preah Vihear Case. Annex No. 6 begins on page 226 (page 58 of the PDF) <<https://www.icj-cij.org/public/files/case-related/45/9253.pdf>>.

A schematic sketch of the border described above is annexed to this protocol.

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The annexed schematic sketch of the border can be seen as Exhibit C.³⁶ Note the line that is drawn from the shore toward the direction of Koh Kut, *but does not reach the island*. “The reason for referencing high points at sea, in this case Koh Kut, was that in 1907 the area around Pnom Krvanh [sic] was undeveloped and devoid of natural or artificial points which could be referenced.”³⁷ While the treaty was concerned only with the *land* boundary, making no mention of maritime boundaries, the Cambodian government nonetheless

in 1972 took the 1907 references to Pnom Krvanh and Koh Kut’s highest point to be its maritime boundary, thus drawing a straight line into the Gulf from Pnom Krvanh. . . . Clearly, at no point did the drafters or signatories of the 1907 Franco–Siamese Treaty envision or articulate a maritime boundary. This is the primary cause of the dispute which lasts up to the present.³⁸

The above description about Cambodia’s unusual claim was first articulated in 2011 when Surakiart Sathienthai wrote (in Thai) a comprehensive 40-page analysis regarding all of the events leading up to and surrounding the adoption of the MoU 44 of 18 June 2001.³⁹ Surakiart was the perfect person to provide such an analysis as he personally signed the MoU on behalf of Thailand in his capacity as the then Minister of Foreign Affairs.⁴⁰ His booklet also contains a series of extremely informative maps, of which this author (and, I dare say, most of the public) was previously unaware.

When Cambodia announced a decree defining a revised claim to its continental shelf at a press conference on 1 July 1972, attached to the decree was a brief map used by the Cambodian Ministry of Foreign Affairs that did indeed show a line running *through* the middle of Koh Kut (see Exhibit D).⁴¹ However, on the same date, the then president of Cambodia (Lon Nol) also signed Decree 439/72/PRK, to which was attached a standard-sized nautical chart from the French Hydrographic Department that showed the continental shelf claim, but had *no line through the middle of Koh Kut*; it stopped at the eastern edge of the island and then started up again at the western edge (see Exhibit E).⁴² Even more tellingly (though difficult to read on Exhibit

³⁶ From Somjade Kongrawd, “Thailand Cambodia Maritime Disputes” (*Globalsecurity.org*, 2009) <<https://globalsecurity.org/military/library/report/2009/thailand-cambodia.pdf>> 10.

³⁷ Jones, “Revisiting” (n 28) 3.

³⁸ *ibid.*

³⁹ Surakiart Sathienthai, *Thai-Cambodian Maritime Overlap Area: Problems and Developments* (Security Studies Bulletin No. 92, Intelligence Institute, National Intelligence Agency 2011) (in Thai) <https://medias.thansettakij.com/media/pdf/2024/BjcSxq7eTLxq7QodoI85.pdf?_gl=1*uyp9qv*_ga*_MTU3NzkwODkwMi4xNjg1NDE3NjY4*_ga_5G6FRCHQN2*_MTczMDc3MTg5OC41MDcuMS4xNzMwNzcyMTc3LjI4LjAuMA>.

⁴⁰ *ibid.*

⁴¹ *ibid* 6–7.

⁴² *ibid* 6–9.

E but clearer on Exhibit F), above and below the line just to the west of the island are the English letters “Koh Kut (Siam).”⁴³

Similarly, when Cambodia announced on 12 September 1972 a decree claiming its *territorial sea*, an attached map (Exhibit F) showed an international boundary line indicated by vertical plus marks (+++++) beginning just to the left of point E1 (and *east* of Koh Kut) running southward to the line E2–E3. Moreover, there was no straight line *through* Koh Kut, and the map also displayed the previously described English words (“Koh Kut (Siam)”) indicating that the island belonged to Thailand.⁴⁴

By contrast, when Thailand asserted its own claim to a continental shelf in 1973, it followed established international law and drew a line diagonally in a southwest direction from the coastal boundary between Thailand and Cambodia, equidistant between Koh Kut and the Cambodian island of Koh Kong (see Exhibit G).⁴⁵

B. The MoU of 2001: Its Negotiation and Effect

According to Surakiat Sathienthai, the MoU of 18 June 2001:

marked the end of the negotiations that had been stalled for more than 25 years and led to the beginning of negotiations to resolve the problem with a framework for implementation, an international legal basis, and strict protection of Thailand’s position and legal status. . . . [It] creates a mechanism for negotiating the issue of overlapping maritime areas by establishing a committee to perform the duties of negotiations.⁴⁶

It might seem imprudent for this author to rely so heavily on the booklet Surakiart wrote in 2011 to explain the negotiations. Not only was he in the Thaksin Shinawatra administration—and thus subject to negative thoughts from some quarters⁴⁷—his remarks could also be seen as self-serving. Be that as it may, his booklet proved to be a treasure trove of information, much of it, apparently, previously unknown and undisclosed to the public. Should his critics wish to counter his assertions as to what occurred and why, let them now come forward with their own countervailing evidence. Until then, it is instructive to learn, in English, what he had to say as to what took place in 2001. After all, he was in a good position to know; he was actually there.

⁴³ “[I]f you look at the line to the west, you will see the English letters ‘Koh Kut (Siam),’ which indicates that Koh Kood belongs to Thailand.” *ibid* 9.

⁴⁴ *ibid* 9–10.

⁴⁵ *ibid* 12–13.

⁴⁶ *ibid* 23 (Google Translate from the Thai).

⁴⁷ “The Pheu Thai-led government’s plan to revive negotiations with Cambodia has been met with scepticism, mainly due to Thaksin and Hun Sen’s close relationship. Hun Sen’s visit to Bangkok earlier this year only renewed concerns over the controversial MoU.” “No ‘Secret Deal’ ” (n 19).

1. Two separate areas to be negotiated indivisibly as a package.

The booklet outlines in detail the various terms of the MoU, but since these are set forth verbatim in Exhibit A, the comments below will only address certain significant aspects. The second operative section of the MoU reached an agreement to split the negotiation into two parts, each involving a different geographical area.⁴⁸ As outlined by Sirakiart:

The Thai and Cambodian governments have determined the areas of overlapping maritime claims to be negotiated to conclude agreement on the delimitation of the territorial sea, continental shelf and exclusive economic zone (area above 11 degrees north latitude) and the area of overlapping maritime claims to be jointly developed (area below 11 degrees north latitude). A map of the area of overlapping claims has been prepared and attached to the Memorandum of Understanding (as shown in [Exhibit H]).⁴⁹

This section of the MoU concludes with the sentence: “It is firmly the intent of the parties to treat paragraphs (a) and (b) above as an indivisible package.”⁵⁰ This meant that *both* issues—the maritime boundaries above the 11th parallel *and* the joint development agreement below the 11th parallel—had to be agreed upon in order to move forward. This “indivisible package” clause was something that Thailand had insisted upon but Cambodia had resisted. As explained by Surakiart:

This issue is very important, especially for Thailand, because it means that the negotiations on the sharing of benefits in the joint development area, which is a major concern, will not be carried out if there is no progress in the negotiations on the maritime boundaries in the area to be delimited. The Thai side’s concern is that Cambodia prioritizes joint development over maritime boundaries because Cambodia wants to benefit from the income that will arise from the concession rights to sell oil and natural gas from the overlapping area, especially the sale to Thailand. Therefore, it wants an agreement on the joint development area to be completed as soon as possible in order to lead to joint investment in exploration and drilling.⁵¹

In short, Thailand also wanted a settlement on the boundary issues, but “[i]mplicitly understood [was] that if the two portions of the OCA were negotiated

⁴⁸ While this MoU may have been only “an agreement-to-agree,” Professor Clive Schofield felt that it was a “significant step forward” and “represent[ed] a breakthrough,” particularly in regard to joining for simultaneous consideration two distinct portions of the overlapping claims area. “This approach addresses a key drawback in joint development associated with applying a co-operative mechanism to the entirety of the area of overlapping claims to maritime jurisdiction. Arguably, such uncritical acceptance of unilateral claims, which may have little or no legal validity, confers on them an inappropriate degree of significance and legitimacy.” Schofield, “Unlocking the Seabed Resources” (n 27) 302–3.

⁴⁹ Surakiart (n 39) 24. The map (shown here as Exhibit H) appeared as Figure 9 on page 26.

⁵⁰ See Exhibit A.

⁵¹ Surakiart (n 39) 30.

separately and a deal struck on resource exploitation there would be no incentive to negotiate the difficult part of territory.”⁵² Moreover, it was thought that a separate agreement only about the joint development area (JDA) might not require the approval of the parliament, while a change in Thai territory or jurisdiction most definitely had to be approved by parliament.⁵³ There was also the worry that “the political economy group may play a role and push for an agreement on joint development to easily occur, which may cause the Thai side to lose bargaining power in the border negotiation with Cambodia.”⁵⁴ Thus, the indivisible package had “the effect of making the Thai government unable to rush to make an agreement that results in the sharing of benefits over marine natural resources.”⁵⁵ While such caution may still be prudent, there could be some change in how things will actually proceed. As Assistant Professor William J. Jones of Mahidol University International College has observed,

as a result of the recent cabinet reshuffle which took place in May 2024, Pichai Chunhavajira is the new Minister of Finance. Mr. Chunhavajira in a dual administrative role has taken over as chair of the Thai negotiating team on the OCA. It is known that Mr. Chunhavajira favors splitting the north-south OCA issue and instead directly negotiating a gas deal in the Southern portion of the OCA.⁵⁶

2. Joint Technical Committee (JTC).

In the third operative section of the MoU (Exhibit A, page 2), there was an agreement to establish a “Joint Technical Committee” composed of officials nominated separately by each country. The Committee’s authority and purpose was to “negotiate to draft an agreement on the exploration and drilling of natural resources (oil and natural gas) in the Joint Development Area and to draft an agreement on the delimitation of maritime boundaries.”⁵⁷ The key words here are “negotiate” and “*draft* an agreement.” In other words, the MoU simply sets up a “mechanism” (the Committee) to meet and try to thrash out the various differences the countries have in an effort to come to an agreement, if such is possible. The MoU itself is *not* an agreement on maritime boundaries, nor does it contain any agreement on the methods and proportions for the sharing of oil and gas benefits.⁵⁸ Rather,

the committee was established to negotiate the principles of both issues, to see what each party thinks and stands for, in order to reach an agreement. If there is a consistent stance that can lead to an agreement, each party must proceed according to the domestic legal procedures of each country, which is another step in the future. Having

⁵² Jones, “Revisiting” (n 28) 5.

⁵³ Surakiart (n 39) 31–32.

⁵⁴ *ibid* 31.

⁵⁵ *ibid* 32.

⁵⁶ Jones, “Revisiting” (n 28) 8.

⁵⁷ Surakiart (n 39) 27.

⁵⁸ *ibid*.

the Joint Technical Committee to negotiate will allow Thailand to be clearly aware of Cambodia's various stances, both in terms of law and the sharing of benefits over oil and natural gas, so that experts and all relevant Thai agencies can jointly analyze in depth the appropriate cooperation approach for the mutual benefit of both countries.⁵⁹

3. The attached map and its recognition of Thai sovereignty over Koh Kut.

Critics of the MoU have claimed that the MoU "accepted Cambodia's territorial claim made in 1972 to half of Koh Kut island,"⁶⁰ but they have failed to explain how or why this is so.⁶¹ By contrast, it can be argued that the MoU did exactly the opposite and actually acknowledged, on Cambodia's part, Thai sovereignty over the entire island. This is because Cambodia agreed in the second operative provision of the MoU to have a map attached (Exhibit H). Along the upper line of the shaded "Area to be Delimited," at the precise geographical location where Koh Kut would be, there is a small, irregular-shaped and *unshaded* "notch" that protrudes down into the shaded area that otherwise represents the Area to be Delimited. This little notch bears an extraordinary resemblance to the coastal outline of the southern part of Koh Kut, and that is exactly what it represents.⁶² As Surakiart observed in his booklet, "Although this MoU is not considered the end of the negotiations that will be binding on both countries regarding the maritime boundary, it is at least evidence showing that the current Cambodian government has accepted in writing that Thailand has sovereignty over Koh Kood."⁶³

⁵⁹ *ibid* 28.

⁶⁰ Aekarach, "Opposition Wants to Cancel" (n 4). It is true, however, that during negotiations about the MoU senior Cambodian officials did assert that at least half of Koh Kut was in Cambodian territory. But this can be discounted as just nationalistic bluster and not taken seriously as "during the official discussions with the Cambodian Prime Minister, the Cambodian Prime Minister told [Surakiart] that 'Cambodia will cancel the claims that Koh Kood is considered half Cambodian and that Koh Kood is considered Thailand, i.e. it will give up sovereignty over Koh Kood to Thailand, but do not announce it yet because it will cause political problems within Cambodia.'" (Surakiart (n 39) 34). Like Thailand, Cambodia has long used territorial disputes for its own domestic political advantage. See, e.g., P. Michael Rattanasengchanh, "The Role of Preah Vihear in Hun Sen's Nationalistic Politics, 2008–2013" (2017) 36(3) *Journal of Current Southeast Asian Affairs* 63–89 <<https://doi.org/10.1177/186810341703600303>>.

⁶¹ At least this author has not seen any such explanation.

⁶² It appears that the Thai Ministry of Foreign Affairs once had on its website, dated 6 September 2011, a document that expressly confirmed what the notch represented. Entitled "Foreign Ministry Reaffirms Koh Kut Under Thai Sovereignty," it said that the MoU "clearly indicates that Koh Kut is under the sovereignty of Thailand, which Cambodia has accepted and never challenged this fact. **This is reflected in the map attached to the said 2001 Memorandum of Understanding showing that the upper line of the overlapping claims area was drawn southwardly surrounding Koh Kut instead of crossing over it.**" (Emphasis added.) A copy of this purported MFA document is now only available from a Cambodian website: <<https://ki-media.blogspot.com/2011/09/thai-foreign-ministry-reaffirms-koh-kut.html>>.

⁶³ Surakiart (n 39) 35. To really put this matter to rest, it would, of course, be nice if Cambodia now issued a formal written statement expressly acknowledging Thai sovereignty over Koh Kut. But such a "dramatic" gesture is highly improbable, given understandable domestic political considerations. In English there is the expression "let sleeping dogs lie," and there is no reason whatsoever for the

In fact the map did a little more than just this, as it also showed “progress in the negotiations on the *starting point* of the maritime boundary from the land boundary marker that is consistent with Thailand’s position.”⁶⁴

4. The attached map and its recognition of Cambodia’s claim.

It has also been asserted that the MoU (Exhibits A and H) “results in a territorial loss for Thailand.”⁶⁵ Perhaps this is said because the attached map (Exhibit H) impliedly acknowledges Cambodia’s claim to an area of continental shelf directly west of the southern part of Koh Kut. While the MoU certainly does this, “‘claiming a right’ and ‘having a right’ are two different things.”⁶⁶ People (and countries) “claim” many things, but a claim is merely an assertion of a right. Acknowledging that another state (country) has made a claim does not at all mean that the asserted claim has merit or is accepted. States cannot have meaningful negotiations about something unless there first is an acknowledgement that there are differences of opinion to discuss, however weak the merits of one side’s claim may be.

And Cambodia’s claim of having any sort of continental shelf to the west of Koh Kut seems quite ridiculous: “With regard to the lateral delimitation, Cambodia’s claim is based on a profoundly flawed interpretation of the Franco–Siamese boundary treaty of March 1907.”⁶⁷ The likelihood that such a claim would ever be upheld by an international tribunal is infinitesimal. But without at least an acknowledgment by Thailand of the existence of Cambodia’s claim, there would be no basis for further negotiation about where the boundary should be, could be, or can be—and, hence, a continuing unresolved border dispute. In terms of risking “territorial loss,” Thailand conceded nothing in this MoU. Current rhetoric suggesting the contrary⁶⁸ is simply disingenuous.

V. CONCLUSION

Properly understood, the 2001 MoU with Cambodia was simply a way to finally “get the ball rolling” toward being able to discuss the matters at issue. It agreed to “a way forward” on how such discussions could occur: the creation of a Joint Technical Committee. And it is important to keep in mind that *nothing* that this committee might

Cambodian government to make such an announcement. When one’s “enemy” is fighting amongst itself, it’s best to keep out of it and say nothing.

⁶⁴ *ibid* (emphasis added).

⁶⁵ Aekarach, “Opposition Wants to Cancel” (n 4).

⁶⁶ Surakiart (n 39) 34.

⁶⁷ Schofield, “Unlocking the Seabed Resources” (n 27) 301.

⁶⁸ In late October 2024, PPRP executive member ML Kornkasiwat Kasemsri said, “The Palang Pracharath Party urges the prime minister to revoke the 2001 MoU as soon as possible, because a Cambodian map attached to the 2001 MoU included the sea off Trat, Koh Kut and some Thai territory. Thailand is at a disadvantage and risks territorial loss.” Aekarach, “Opposition Wants to Cancel” (n 4).

be able to finally agree upon would become effective and binding—for either country—unless and until it was approved and formally adopted by the appropriate entities of both sides.⁶⁹ For Thailand, it would require approval of, and ratification by, parliament.⁷⁰

Why, then, has there been this kerfuffle over the MoU? In a word, “politics,” pure and simple. Thaksin Shinawatra (and, by extension, “his” various successive political parties) has been deemed by some to be “too close” to Cambodia.⁷¹ Whenever “his” party is in power, relations with Cambodia seem to improve, and, conversely, worsen when it is not.⁷²

This is not the first time this particular MoU has been attacked. After Surakiart’s booklet describing the MoU was published in June 2011, on 6 September 2011 the *Bangkok Post* published an article with a photo of Democrat Party spokesman Chavanoun Intarakornalyasut holding up a map and pointing to the demarcation line along the Thai–Cambodian border. The article said he “countered a claim by former deputy premier Surakiart Sathirathai that the 2001 memorandum of understanding between Thailand and Cambodia was intended to claim Thai sovereignty over Koh Kut in Trat.”⁷³ Four paragraphs later the article continued with, “Mr. Chavanond wondered why the Thaksin administration in 2001, which had been in power for only five months, agreed to sign the MoU so quickly.”⁷⁴ Then, two paragraph later: “Mr. Chavanond said he could see no reason why Thailand should have signed the 2001 MoU which does not have any legal foundations. More importantly, the MoU could cause serious damage to Thailand.”⁷⁵ All of this language has an amazing similarity,

⁶⁹ The last operative paragraph (No. 5) explicitly states that “Subject to entry into force of the delimitation of the Parties’ respective maritime claims in the Area to be Delimited, this Memorandum of Understanding and all actions taken pursuant to this Memorandum of Understanding are without prejudice to the maritime claims of either party.” Exhibit A, page 2.

⁷⁰ Statement by Foreign Affairs Vice Minister Russ Jalichandra. The same article also reported that, according to Mr. Russ, “[t]he MoU is the best way forward and cancelling it would not eliminate Cambodia’s maritime claims.” “2001 Cambodia Document ‘Still the Best Way Forward’ ” *Bangkok Post* (13 November 2024) <<https://www.bangkokpost.com/thailand/general/2901586/2001-cambodia-document-still-the-best-way-forward>>.

⁷¹ See footnote 47.

⁷² “Relations between the two countries fluctuates between friendliness, hostility and ambivalence depending on the Thai government in power and domestic political circumstances. On a broad level, former Prime Minister Thaksin Shinawatra and former Prime Minister Hun Sen share excellent personal relations. When there is Thaksin led or backed government in power, relations between the two Kingdoms is quite good.” Jones, “Revisiting” (n 28) 7.

⁷³ Manop Thip-Osod, “Spat Flares Up Over Koh Kut Sovereignty” *Bangkok Post* (6 September 2011). At first blush, any assertion that the MoU was “was intended to claim Thai sovereignty over Koh Kut” seems to lack merit, as there is no mention of Koh Kut anywhere in the MoU itself. It is only after closely studying the attached map that one can draw the inference that, by agreeing to the map, Cambodia impliedly recognized Thai sovereignty over the entire island. See Section IV. B. 3., above.

⁷⁴ *ibid.*

⁷⁵ *ibid.*

both in content and tone, to what has been reported in late 2024! The entire 2011 article (with photo) can be seen in Exhibit J.⁷⁶

Alas, it seems as if this little kerfuffle is going to be with us for awhile longer. Early December brought the news that “the Bhumjaithai Party is supporting Pheu Thai list MP Noppadon Pattama’s proposal to hold a general debate [in parliament] over the 2001 Thailand–Cambodia memorandum of understanding (MoU) on joint development in the Gulf of Thailand.”⁷⁷ The idea was that this would be a good way “to prevent political protests,” given the threat that “Sondhi Limthongkul, a former leader of the now-defunct People’s Alliance for Democracy (PAD), would organise a protest and take people to the streets demanding the government revoke the 2001 MoU.”⁷⁸

Of course there was pushback to the idea, as “Prime Minister’s Office Minister Chousak Sirinil said such a debate is redundant as several discussions on the matter have been held already since the saga went public.”⁷⁹ While “redundant” it might well be, an editorial by the *Bangkok Post* succinctly pointed out that “[a]ttempts by the government to allay people’s fears have not so far been successful. In that case, parliament could play a crucial role. . . . Only when the government gains people’s trust that all the ODA [overlapping development area] endeavours are based on mutual benefit, without any hidden agendas, will it clear all obstacles.”⁸⁰

While this particular “debate” issue plays itself out, we can also look forward to a diverse group of people being appointed to the Joint Technical Committee⁸¹—and all the fuss most likely to ensue as a result. On 3 December 2024, the People’s Party (PP) “called on the Thai government to ensure transparency in the appointment of a joint technical committee (JTC) to negotiate with Cambodia over disputed maritime

⁷⁶ It should also be noted that 2011 was also a time of overall renewed Thai hostility toward Cambodia, as, in response to armed conflict at the border, on 28 April 2011 Cambodia filed with the International Court of Justice a “Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)” and requested provisional measures to stop the fighting at the temple. <<https://www.icj-cij.org/en/case/151>>.

⁷⁷ Mongkol Bangprapa, “Bhumjaithai Backs Sea Dispute Debate” *Bangkok Post* (2 December 2024) <<https://www.bangkokpost.com/thailand/politics/2912265/bhumjaithai-backs-sea-dispute-debate>>.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ “Let the Debate Begin” *Bangkok Post* (5 December 2024) Editorial p. 8 <<https://www.bangkokpost.com/opinion/opinion/2914240/let-the-debate-begin>>.

⁸¹ “The commander-in-chief of the Royal Thai Navy (RTN) is ready to send marine and legal officers to join the soon-to-be-set-up Joint Technical Committee (JTC) to negotiate with Cambodia to resolve the disputed maritime areas in the Gulf of Thailand. . . . Defence Minister Phumtham Wechayachai said earlier the RTN’s Hydrographic Department and various other agencies must participate in the JTC. ‘We are happy to support this because we must also thoroughly study the maritime boundary issue. Hydrographic Department officials will have technical knowledge, but if it is a legal matter, we will send our representatives from the Office of the Judge Advocate General. It depends on which type of technical officials the JTC needs,’ he said. Foreign Affairs Minister Maris Sangiampongsa spoke about the progress made in setting up the JTC, saying the government is considering adding more experts.” “Navy Chief Sending Officers to JTC” *Bangkok Post* (21 November 2024) <<https://www.bangkokpost.com/thailand/general/2905806/navy-chief-sending-officers-to-jtc>>.

areas.”⁸² It was said that “previous governments attached more importance to the border issue than to natural resources,” and PP list-MP Supachot Chalyasat said that “ ‘the public should keep an eye on the JTC panel that will be set up, and I expect to see more energy experts appointed to the committee.’ ” He also said that, for greater transparency, the government should provide background information and shareholding energy business-related information about not only the committee members, but also their spouses and children.⁸³ “ ‘People are worried about who will be appointed to the JTC. Will they seek political gain? Or will energy companies send their nominees to sit on the committee? Are those who are more qualified [to serve] being excluded?’ ”⁸⁴ (Then again, the JTC may not be formed anytime soon.⁸⁵ Truly hard to tell!)

It may well be apocryphal, but this author believes that it was the late Bernard Trink, a columnist at the *Bangkok Post*, who once said, “Bangkok’s gift to the world is that you’ll never be bored.” Truer words have never been spoken.

Suggested Bibliographic Citation:

Roth, William. “The 2001 MoU Between Thailand and Cambodia: Demystifying the Koh Kut Kerfuffle.” *Thai Legal Studies*, vol. 4, no. 2, December 2024, pp. 225–250.
<https://doi.org/10.54157/tls.277868>.

⁸² Aekarach Sattaburuth and Mongkol Bangprapa, “Transparency Sought in Cambodia Talks” *Bangkok Post* (3 December 2024) <<https://www.bangkokpost.com/thailand/general/2913422/transparency-sought-in-cambodia-talks>>. A slightly revised version of this article appeared in the print edition on 4 December 2024 under the heading “PP Urges Transparency on Forming JTC.”

⁸³ *ibid.*

⁸⁴ *ibid.*

⁸⁵ “The government has admitted that the establishment of a Joint Technical Committee (JTC) to negotiate with Cambodia on disputed maritime areas has not made any progress and is still in the process of being formed, according to Deputy Prime Minister Phumtham Wechayachai. . . . He acknowledged that there has been no progress so far, as discussions are ongoing to determine the next steps. This matter falls under the responsibility of the Ministry of Foreign Affairs, and there is no word yet of when it will be brought to a cabinet meeting.” Mongkol Bangprapa, “ ‘No Progress Made’ by JTC on Cambodia” *Bangkok Post* (7 December 2024) <<https://www.bangkokpost.com/thailand/general/2915420/no-progress-made-by-jtc-on-cambodia>>.

Exhibit A

MoU of 18 June 2001 (operative text—page 1)

**Memorandum of Understanding
between
the Royal Thai Government
and
the Royal Government of Cambodia
regarding
the Area of their Overlapping Maritime Claims
to the Continental Shelf**

The Royal Thai Government and the Royal Government of Cambodia (hereinafter referred to as the Parties):

DESIRING to strengthen further the existing bonds of traditional friendship between the two countries;

RECOGNIZING that as a result of claims made by the two countries to territorial sea, continental shelf and exclusive economic zone in the Gulf of Thailand, there exists an area of overlapping claims (*the Overlapping Claims Area*);

CONSIDERING that it is in the best interests of the two countries to agree upon an early mutually acceptable basis for exploitation of the hydrocarbon resources of the Overlapping Claims Area as soon as possible; and

TAKING NOTE of the understanding reached between their respective senior officials as reflected in the Agreed Minutes of the Informal Consultations done at Cha Am on 5 October 2000 and at Siem Reap on 21 April 2001:

HAVE AGREED AS FOLLOWS:

1. The Parties consider that it is desirable to enter into provisional arrangements of a practical nature in respect of the Overlapping Claims Area.
2. It is the intent of the Parties, through accelerated negotiation, to simultaneously:
 - (a) conclude an agreement for the joint development of the hydrocarbon resources located within the area shown in the Attachment as the Joint Development Area (*the Joint Development Treaty*); and
 - (b) agree upon a mutually acceptable delimitation of the territorial sea, continental shelf and exclusive economic zone in the area shown in the Attachment as the Area to be Delimited.

Exhibit A

MoU of 18 June 2001 (operative text—page 2)

2

It is firmly the intent of the Parties to treat the provisions of paragraphs (a) and (b) above as an indivisible package.

3. For the purpose of Article 2, there shall be established a Joint Technical Committee, comprising officials of Thailand and Cambodia to be separately nominated. The Joint Technical Committee shall be responsible for drawing up:
 - (a) the agreed terms of the Joint Development Treaty, including a mutually acceptable basis for sharing the costs and benefits of the exploitation of hydrocarbon resources located in the Joint Development Area; and
 - (b) an agreed delimitation of the territorial sea, continental shelf and exclusive economic zone between their respective current claims in the Area to be Delimited in accordance with applicable principles of international law.
4. The Joint Technical Committee shall meet regularly with a view to concluding its work in relation to these matters expeditiously. The Joint Technical Committee may establish such sub-committees as it considers appropriate.
5. Subject to entry into force of the delimitation of the Parties' respective maritime claims in the Area to be Delimited, this Memorandum of Understanding and all actions taken pursuant to this Memorandum of Understanding are without prejudice to the maritime claims of either party.

IN WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments, have signed the Present Memorandum of Understanding.

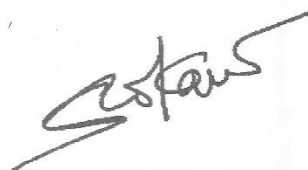
DONE in duplicate in Phnom Penh, on 18 June 2001, in English language.

FOR THE ROYAL THAI
GOVERNMENT

FOR THE ROYAL GOVERNMENT
OF CAMBODIA



(Surakiart Sathirathai)
Minister of Foreign Affairs of
the Kingdom of Thailand



(Sok An)
Senior Minister
Chairman of the Cambodian National
Petroleum Authority

Exhibit B

Continental Shelf Claims in the Gulf of Thailand

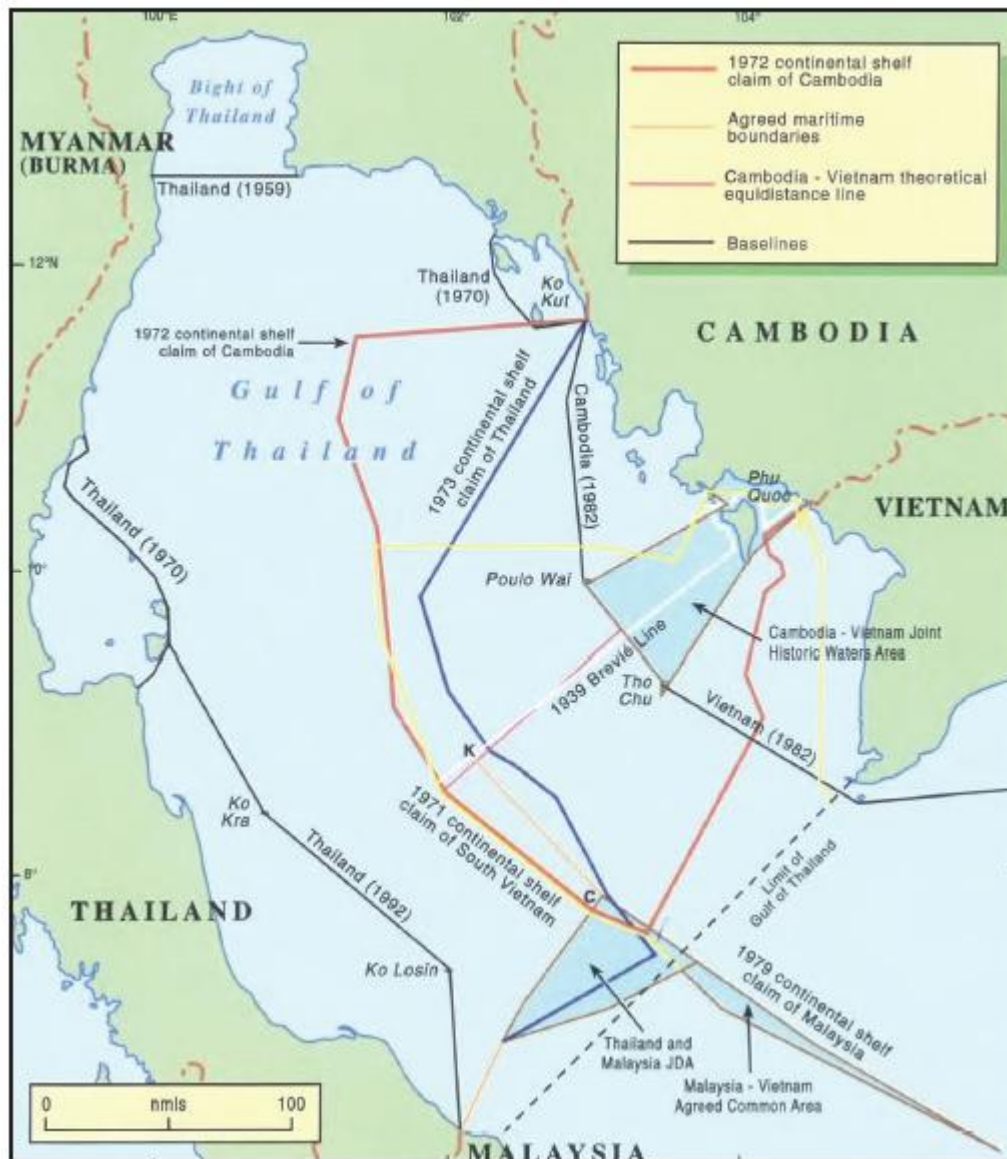


Exhibit C

Map attached to Franco-Siamese Treaty of 23 March 1907

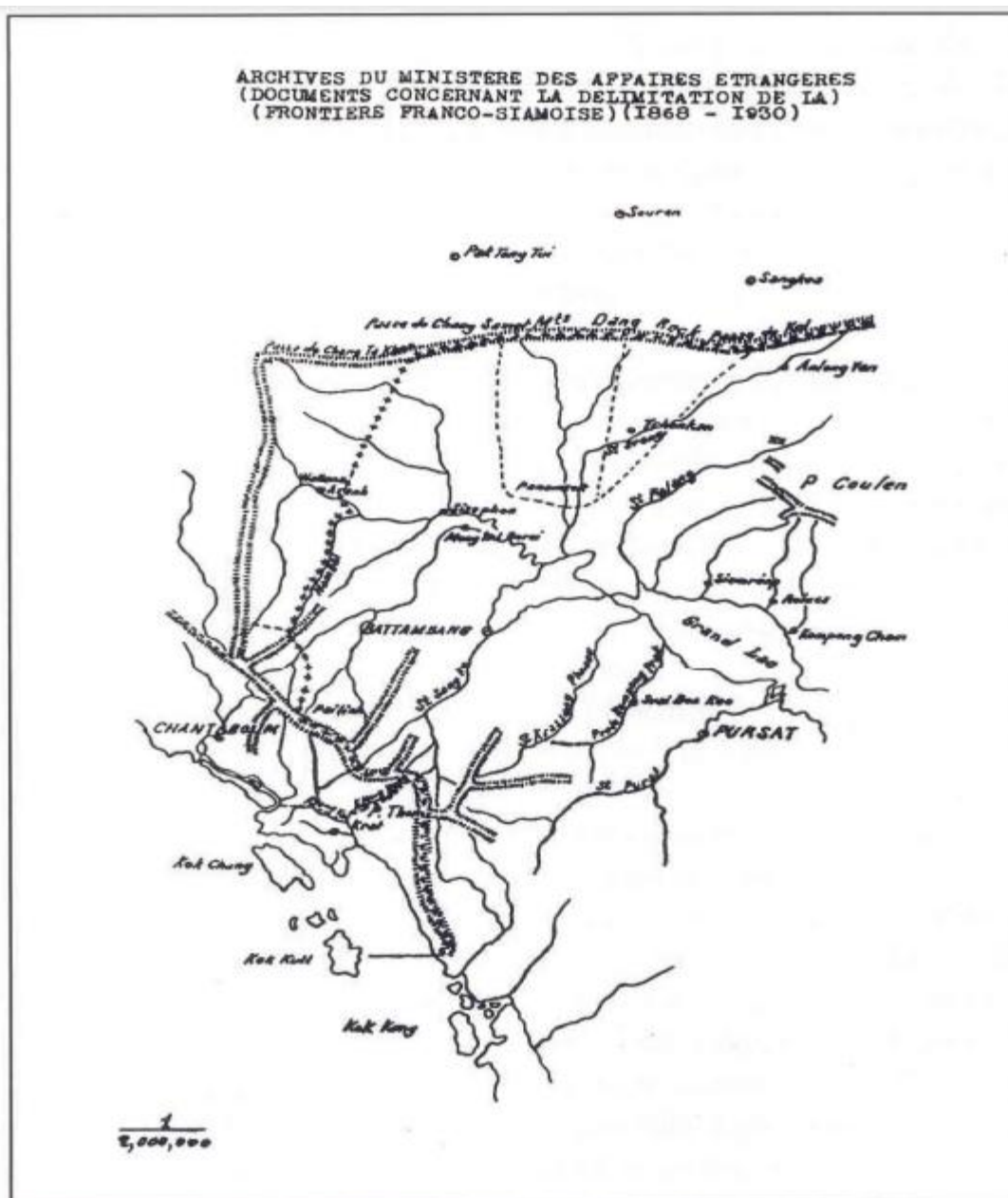
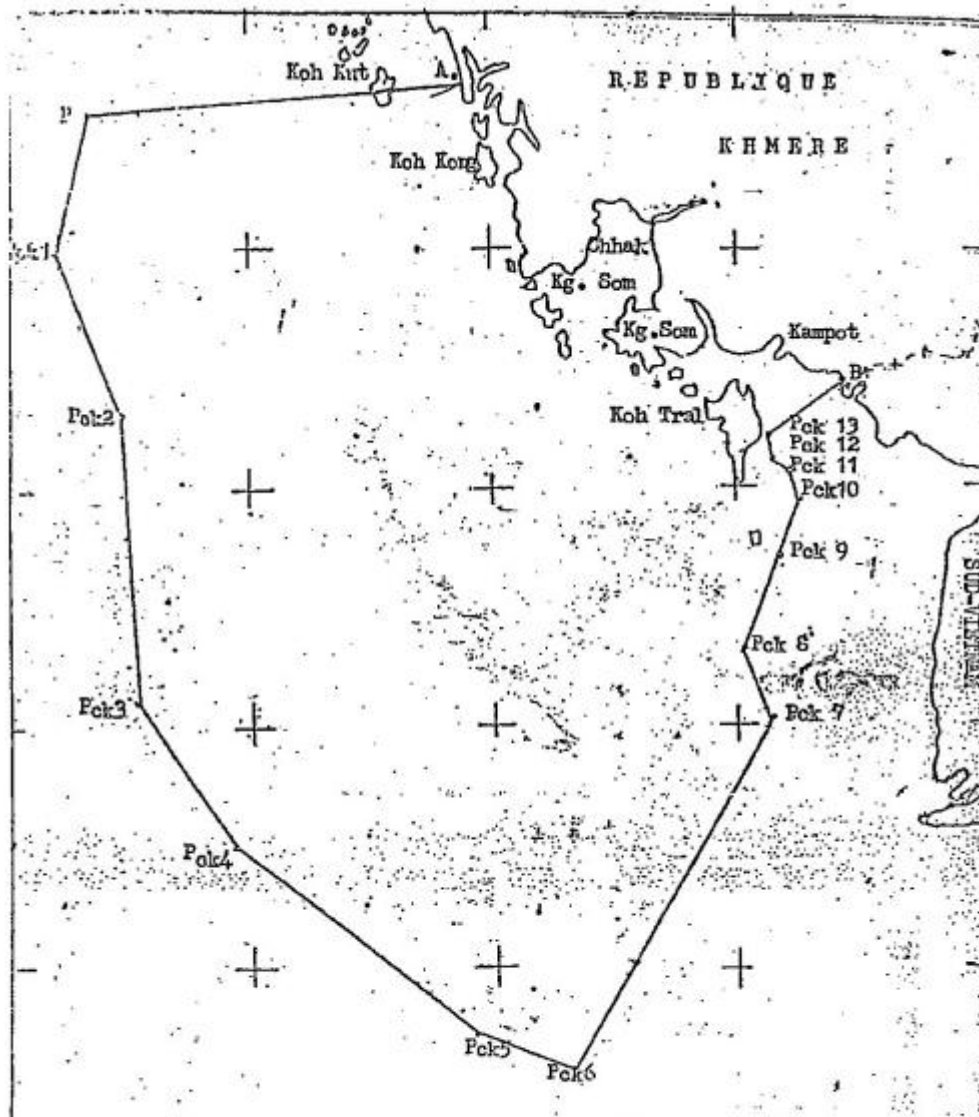


Exhibit D

Map Attached to Cambodia's 1972 Continental Shelf Claim



รูป 1 : การประกาศกำหนดเขตไหล่ทวีปของประเทศกัมพูชา⁹

Exhibit G

Map of Thailand's 1973 Continental Shelf Claim

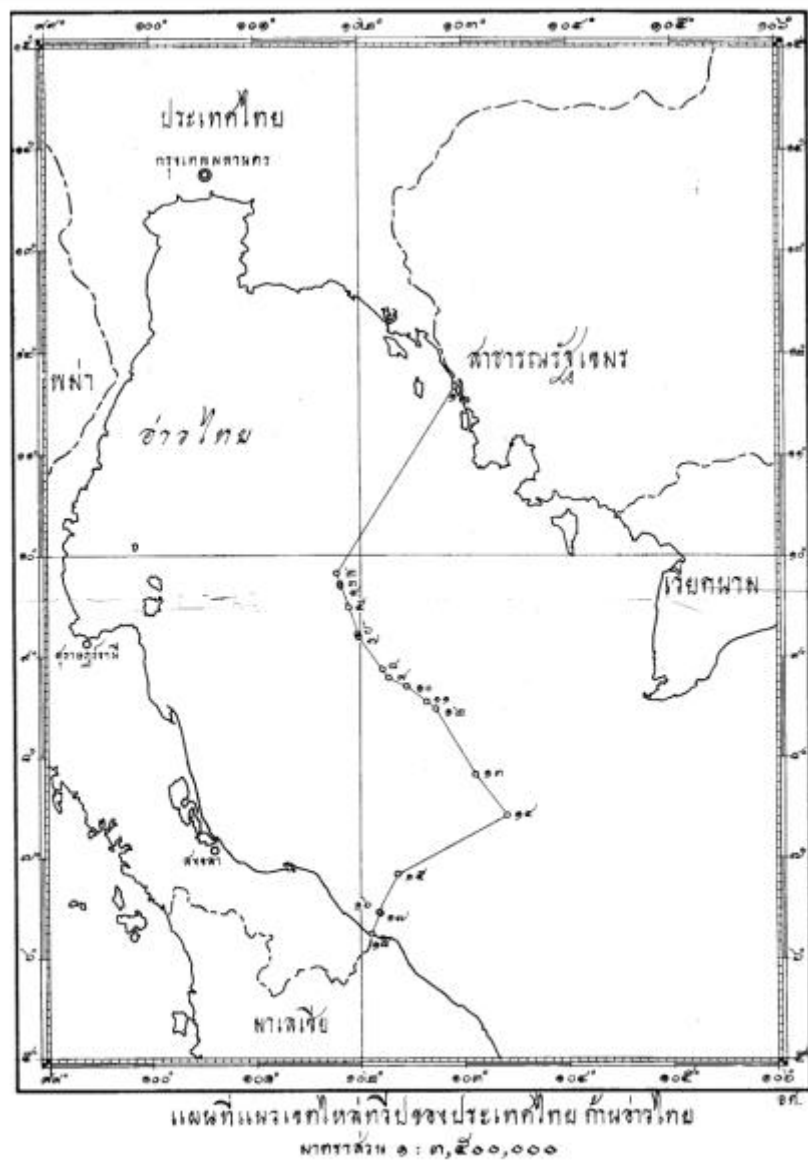
รูป 4 : การประกาศกำหนดเขตไหล่ทวีปของไทย¹⁶

Exhibit H

Map attached to MoU of 18 June 2001

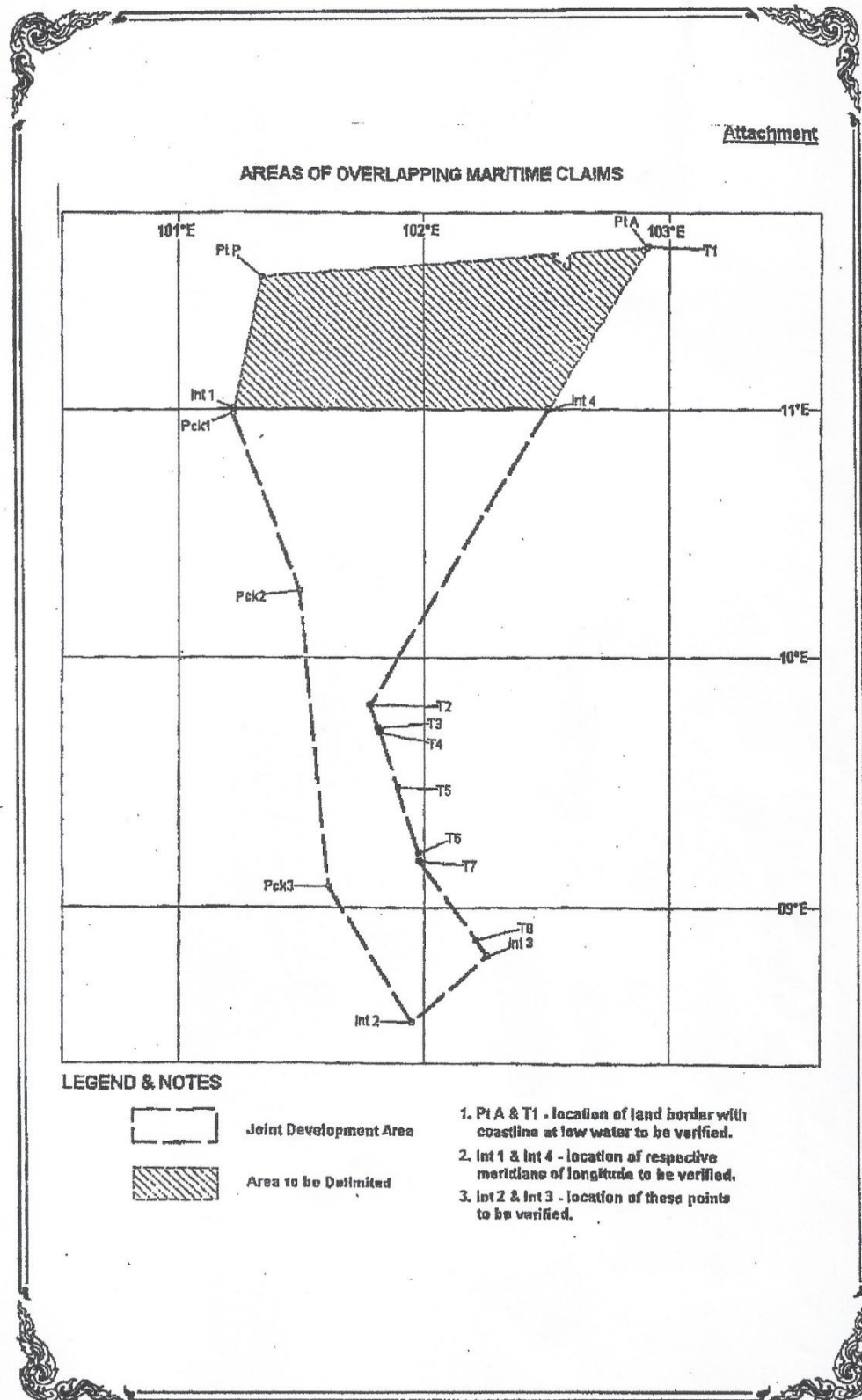


Exhibit J

Bangkok Post Article of 6 September 2011

TUESDAY, SEPTEMBER 6, 2011

Bangkok Post

MoU DISPUTE



Democrat Party spokesman Chavanond Intarakomalyasut points to the demarcation lines along the Thai-Cambodian border.

Spat flares up over Koh Kut sovereignty

MANOP THIP-OSOD

Democrat Party spokesman Chavanond Intarakomalyasut has countered a claim by former deputy premier Surakiart Sathirathai that the 2001 memorandum of understanding between Thailand and Cambodia was intended to claim Thai sovereignty over Koh Kut in Trat.

Mr Surakiart, a deputy prime minister in the Thaksin Shinawatra administration who oversaw foreign, education and cultural affairs, said the signing of the 2001 MoU was intended to assert Thai sovereignty over Koh Kut.

Mr Chavanond, a former secretary to the foreign minister during the Abhisit Vejjajiva administration, yesterday said several points mentioned by Mr Surakiart were inaccurate.

According to a statement issued by Mr Chavanond, the Thai-Cambodian negotiations over the two countries' disputed areas did not begin during the Thaksin administration. The talks between the two governments had been ongoing for more than 25 years.

Mr Chavanond wondered why the Thaksin administration in 2001, which had been in power for only five months, agreed to sign the MoU so quickly.

Mr Chavanond denied the claim that the 2001 MoU compels Cambodia to accept that Koh Kut belongs to Thailand. He said that according to historical records, including the agreement between Thailand and France in 1906, Koh

Kut clearly belongs to Thailand. Back in 1970, the Thai government also claimed a straight baseline near Koh Kut to make it clear that Koh Kut was in Thai maritime territory.

Mr Chavanond said he could see no reason why Thailand should have signed the 2001 MoU which does not have any legal foundations. More importantly, the MoU could cause serious damage to Thailand.

"As a Thai, should I question it and protect the country's interests?" Mr Chavanond wrote.

He supported dialogue on border demarcation and the sharing of marine resources for the national interest and energy security. But dialogue must be based on fairness and legal process.

He did not want to see speedy negotiations cause Thailand to unnecessarily lose out on certain interests.

Meanwhile, Energy Minister Pichai Nariphaphan said his ministry is still waiting for the Foreign Ministry to finalise the framework for a new round of talks about Thai-Cambodian disputed areas.

After that, the Energy Ministry will work on the framework for the negotiations of petroleum exploration concessions in the 27,000-square-kilometre stretch of seabed in the Thai-Cambodian disputed maritime area, which is believed to be rich in oil and gas.

He insisted that the negotiations would be transparent and accountable.