

REGIONAL FOCUS & CONTROVERSIES

Who Owns the Preah Vihear Temple? *A Cambodian Position*

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1. Introduction

The issue of the ownership of the Preah Vihear Temple¹ (Temple), which, it will be argued was settled by the International Court of Justice (ICJ) in 1962, was reignited recently following a successful application by Cambodia to have the Temple listed on the UNESCO World Heritage List. On 15 July 2008, Thai armed forces occupied the land surrounding the Temple. Thai troops have been occupying ever since. On 3 October 2008, armed clashes between the Cambodian and Thai armies occurred in three different places around the Temple. The military situation is still tense.²

The territorial dispute over the region of the Temple has been longstanding. In October 1959, following unsuccessful negotiations between the two countries, Cambodia commenced proceedings against Thailand (Proceedings) in the ICJ.³ In the

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¹ For historical discussion of the Temple, See Charles Spinks, *The Khmer Temple of Prah Vihar*, The Australian National University (1959); John Black, *The Lofty Sanctuary of Khao Phra Vivar*, XLIV The Journal of Siam Society, Pt 1, (Apr. 1956), 1-33. Etienne Aymonier, *Khmer Heritage in Thailand*, WHITE LOTUS 241-257 (1999).

² Raoul Jennar, *The Truth of Trust and Confidence shall be verified* (Oct. 22, 2008), available at <http://msnpvk.com/documentations.htm> (last visited on Jan. 7, 2009) Thai army shelled the area near the "disputed" area: "Reactions of the Spokesman of the Ministry of Foreign Affairs: Will send a diplomatic Protest Note even if Thailand apologizes," KOHSANTPHEAP NEWSPAPER, Feb. 17, 2009; "Thais Give Apology Letter to Hun Sen After Shelling 'Error,'" CAMBODIA DAILY, Feb. 20, 2009. Sam Rith, *S'pore minister says ASEAN can help solve Preah Vihear dispute*, PHNOM PENH POST, Feb. 26, 2009; Nopporn Wong-Anan, *Thai, Cambodian PMs meet as border tension eases*, REUTERS, Feb. 27, 2009.

³ Official Summary of the Judgment of 15 June 1962. *Case Concerning the Temple of Preah Vihear (Merits)* Judgment of 15 June 1962, available at <http://www.I.C.J-cij.org/docket/index.php?sum=284&code=ct&p1=3&p2=3&case=45&k=46&p3=5> (last visited on Jan. 12, 2009) and for the whole decision, *Case Concerning the Temple of Preah Vihear (Cambodia v Thailand)* 1962 I.C.J.6 ("I.C.J Report (Merits) hereafter"); 56 AM. J. INT'L L. 4, 1033-1053 (Oct. 1962).

Proceedings, the ICJ ruled on the ownership of the Temple and its surrounds and the Judgment states that that the Temple and its surrounds are within Cambodian territory.⁴

Thailand is now asserting that in the Proceedings the ICJ did not address the question of the land boundary nor did it determine the location of the land boundary and, as such, this is a matter yet to be determined under international law.⁵

This paper will argue that the ICJ did, in fact, address the question of the land boundary and that the location of the boundary has been determined.

2. The ICJ Judgment

The Temple is located on a high promontory of the Dangrek mountains which form part of the boundary between Thailand and Cambodia. On 13 February 1904, France (Cambodia, the French Protectorate) and Siam (as Thailand was then known) entered into a treaty (Treaty)⁶ which stipulated, in Article 1, that the boundary was to follow the watershed along the eastern section of the Dangrek mountains.⁷ By virtue of Article 3 of the Treaty, a Franco-Siamese mixed commission (Mixed Commission) was set up to carry out the actual delimitation of the boundary.⁸ By the instructions of the Mixed

⁴ *Id* at 37; “The Preah Vihear Temple Case,” in Abdulgaffar Peang-Meth, *Cambodia and the United Nations: Comparative Foreign Policies Under Four Regimes*, PhD Dissertation, The University of Michigan 278 (1980); Phil Chan, *acquiescence/Estoppel in International Boundaries: Temple of Preah Vihear Revisited*, 3 CHINESE J. INT’L L. 426 (2004); *Note Sur la Question de Preah Vihear*, Mission Permanente du Cambodge au Nation Unies; *Note on the Question of Preah Vihear*, Royal Embassy of Cambodia, Canberra, Australia (Jan. 1958).

⁵ Letter of 21 July 2008 of the Permanent Representative of Thailand to the President of the UN Security Council, S/2008/474, 1-9.

⁶ The Cambodian-Thai Boundary is governed by two treaties, (1) *Franco-Siamese Convention of 13 February 1904, Treaty Between France and Siam*, Mar. 23, 1907. *Recueil des Actes du Gouvernement Cambodgien* 123 (1920). All relevant sections of the Franco-Siamese treaties and protocols (1867-1937) relating to the Thai-Khmer boundary were re-printed in: Victor Prescott, *A Study of the Delineation of the Thai-Cambodian Boundary*. Canberra: Office of National Assessments 123-127 (1985). Important to note that before the 1907 Treaty was entered into, the Khmer King pressed for the return of some of the provinces which had been taken by Siam before the French arrival: “We insist on the former natural limits of the Khmer Kingdom which, prior to the Siamese invasion, included on Siam’s side the provinces of Battambang, Siem Reap, Stung Treng, Tonle Ropov, M’lou Prey, Kuckhan [Sisaket], Prey Sar, Soren [Surin], Sankeac [Sangkha], Neang Rong [Buriram], Nokoreach Seima [Kora], beyond the Phnom Dangrek Mountain, Koh Kong, Krat and Chantabor [Chantaburi] touching upon Bacnam [paknam] and the Kingdom of Champassac,” “Letter of the King of Cambodia HM Sisowath to the French Colonial Governor to Cambodia” (Nov. 5, 1906), I.C.J Reports (Pleadings), 479-480.

⁷ *Id.* Article 1 of the 1904 Treaty provides that the boundary “...follows the line of the watershed between the basins of the Nam Sen and the Mekong Rivers on the one hand and that of the Nam Moun on the other, and rejoins the Phnom Padang range, of which it follows the crest eastwards until it reaches the Mekong...”

⁸ For general discussion of the Khmer-Thai boundary, See Sarin Chhak, *La Frontière khméro-thaïlandaise* (DACTYLOGRAPHIÉE ed., THÈSE DE DROIT PUBLIC, 1966); and SARIN CHHAK, *LE TRACE DE LA FRONTIERE CAMBODGIENNE AVEC LE LAOS ET LE SUD-VIETNAM*, Thesis Pour la Doctorate de Sciences Politiques, Faculte de Droit et des Sciences et