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Can the ICJ ruling end the dispute between Thailand and Cambodia?

By Puangthong Pawakapan (Guest Writer)*

EXECUTIVE SUMMARY

- Cambodia has petitioned the ICJ to interpret its 1962 ruling on Preah Vihear, and decide whether it includes the territory surrounding the temple. The original ICJ ruling awarded the temple itself to Cambodia, but did not dictate ownership of the surrounding 4.6 square kilometers area around the temple which is claimed by both countries.
- Although the ruling was reached in 1962, the conflict over Preah Vihear has continued to be politicized, specifically in the context of Thailand's domestic politics. To undermine the Thaksin-backed government of Samak Sundaravej, a mass movement in Thailand led by the People's Alliance for Democracy (PAD) exploited the Preah Vihear issue to achieve their purpose in 2008.
- PAD has claimed that Cambodia's nomination of the temple for UNESCO World Heritage listing, with support from the Samak government, would result in Thailand's loss of the right to reclaim the temple in the future and her sovereignty over the disputed area surrounding the temple.

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- It has been difficult for successive Thai governments to settle the dispute with Cambodia in a bilateral manner as a result of media bias and PAD propaganda. Several border clashes have taken place which finally led Cambodia to take the dispute back to the ICJ. Cambodia has requested the court to provide a decisive interpretation of the 1962 verdict including sovereignty over the disputed area of 4.6 square kilometers surrounding the temple.
 - If the ICJ's verdict puts Thailand in a disadvantageous position, the current Yingluck government would very likely face another crisis. PAD's leaders have already urged the government and the public not to comply with a verdict that goes against Thailand. While the Yellow Shirts movement has been weakened, territorial loss is a highly sensitive issue in Thailand and has the potential to reunite all anti-Thaksin groups.
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INTRODUCTION

In 1962, the International Court of Justice (ICJ) ruled, by a vote of 9 to 3, that “the temple of Preah Vihear is situated in territory under the sovereignty of Cambodia”. While this came as a shock to the Thai people, the Thai government of Sarit Thanarat had no choice but to accept the verdict and, in response, it erected a temporary wire fence on the western and southern sides of the temple as a demarcation.

The temple issue faded into the background through the period of the Vietnam War and Cambodia’s subsequent civil war. However, the historical dispute over ownership resurfaced 46 years after the verdict when Cambodia sought to register Preah Vihear as a UNESCO World Heritage Site in 2008. Several border clashes took place and, again, the case has been sent back to the ICJ. This time it involves the temple’s surrounding area of 4.6 square kilometers. The upcoming verdict may not necessarily improve relations between the two countries, and may potentially cause another crisis in Thai politics.

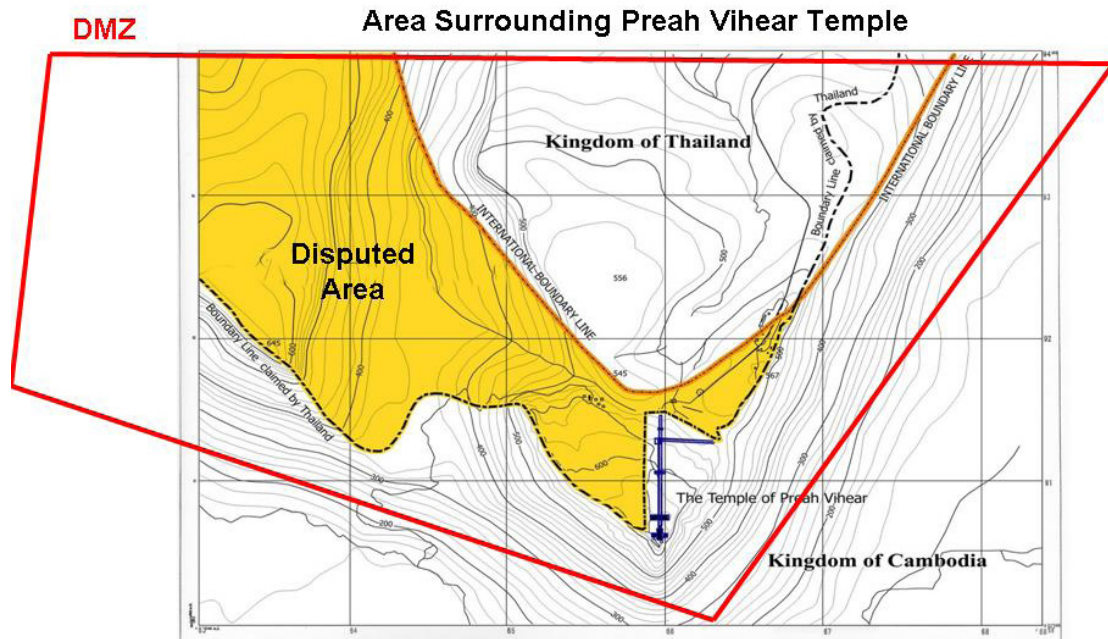
This article provides an account of how the dispute returned to haunt Thai-Cambodian relations,¹ the contentious issue currently examined by the ICJ, and the possible impact of the court’s ruling.

OVERLAPPING CLAIMS

Although the ICJ awarded the temple and the land where it is situated to Cambodia in 1962, the court did not rule on sovereignty over the temple’s surrounding area which continues to be claimed by both countries. Specifically, an area on the northern and western sides of the temple has become the most critical issue in the current conflict (refer to map). Conflicting claims based on two different pieces of evidence is now in contention: the treaties of 1904 and 1907 on the one hand, and the 1907 map—referred to by the Court as the ‘Annex I Map’—on the other. Thailand claims that the boundary is defined by clauses in the treaties, while Cambodia insists on the demarcation line shown on the map.

¹ For further discussion, see *Puangthong Pawakapan, State and Uncivil Society in Thailand at the Temple of Preah Vihear*, (Singapore: ISEAS, 2013).

Map: Disputed area adjacent to the temple of Preah Vihear.



Note: The area denoted by the bold line (DMZ) is a demilitarised zone created as part of the ICJ's provisional measure.

Source: Asian Correspondent.com <http://asiancorrespondent.com/60292/icj-decision-creates-temporary-demilitarized-zone-around-preah-vihear-temple/>

The Franco-Siamese Treaties of 1904 and 1907 stipulated that the boundary between Siam and French Indochina along the Dongrek mountain range—where the temple is situated—should follow the line of the watershed, and that a commission composed of officials appointed by the two contracting countries should map the line. However, Siam did not send a representative to the commission but allowed the French team to carry out the mapping alone. If the delimitation work had strictly followed the watershed, as stipulated in the treaties, the temple of Preah Vihear would have fallen under Thailand's sovereignty. However, the French mapping team, possibly intentionally, located the entire promontory—including the temple—within Cambodian territory. Thailand argued that the Annex I Map was invalid as the border line was not drawn in accordance with the watershed as stipulated in the treaties. The subsequent conflict is therefore a legacy of this mapping.

In its petition to the ICJ in 1959, the Cambodian government requested the court to make a ruling on the following points²:

1. To adjudge and declare that the Annex I map was drawn up and published in the name and on behalf of the Mixed Delimitation Commission set up by the Treaty of February 13, 1904, and that it “presents a treaty character” or, in other word, it is part of the treaty.
2. To adjudge and declare that the frontier line between Cambodia and Thailand is that which is marked on the Annex I Map.
3. To adjudge and declare that the temple of Preah Vihear is situated in territory under Cambodia’s sovereignty.
4. To adjudge and declare that Thailand is under an obligation to withdraw the detachments of armed forces from the temple area.
5. To adjudge and declare that Thailand must return to Cambodia the properties her authorities had earlier removed from the temple.

To the disadvantage of Thailand, there was evidence that the Siamese government “had officially requested that the French topographical officers should map the frontier region”.³ The ICJ also took into account the fact that the Thai government failed to question the validity of the Annex 1 Map despite opportunities to do so.⁴ The court thus ruled that “an acknowledgement by conduct was undoubtedly made in a very definite way”⁵ that “Thailand in 1908-1909 did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognized the line on the map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory... Both Parties, by their conduct, recognized the line and thereby in effect agreed to regard it as being the frontier line.” In addition, the court considered that “the acceptance of the Annex I map by the Parties caused the map to enter the treaty settlement and to become an integral part of it”.⁶ The Cambodian government thus argued that the ICJ supported Cambodia’s claim, and that the disputed area surrounding the temple must belong to Cambodia.

² *International Court of Justice, Reports of Judgments, Advisory Opinions and Orders, Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Judgment of 15 June 1962. 1962, p. 11.*

³ *Ibid.*, p. 20.

⁴ *Ibid.*, pp. 25-29.

⁵ *Ibid.*, p. 23.

⁶ *Ibid.*, pp. 32-33.

However, the ICJ verdict created a complication which opened the way to the ongoing problems. Despite its ruling about the map and the frontier line, the court declined to make a judgment on points 1 and 2 in Cambodia's request. It considered that "the subject of the dispute" was confined to "the sovereignty over the region of the temple of Preah Vihear".⁷ It omitted in delivering a verdict about the status of the Annex 1 Map and about the frontier line on that map. This purported omission in the court's judgment allowed Thailand to disregard the frontier line on the Annex I Map and to continue the claim that the watershed line stipulated in the 1904 and 1907 treaties was the valid frontier. Thailand thus claimed sovereignty over the area lying between the two conflicting definitions of the border.⁸

THE TEMPLE IN THAI DOMESTIC POLITICS

The current conflict over the temple and its surrounding area began in mid-2008 when the Cambodian government proposed to the World Heritage Committee (WHC) of the United Nations Economic, Social and Cultural Organisation (UNESCO) to inscribe the temple on the World Heritage list, and the Thai government of Samak Sundaravej lent its support to the proposal in the form of a Joint Communiqué which was co-signed by the Thai foreign minister Noppadon Pattama and Cambodia's Deputy Prime Minister Sok Anh on 18 June 2008. The WHC unanimously accepted the temple as a World Heritage site on 8 July.

The UNESCO application added fuel to a political firestorm that was already raging in Thailand. The People's Alliance for Democracy (PAD) accused Samak's government of forfeiting Thai dignity and sovereignty in exchange for Cambodian business concessions, and used the opportunity to discredit the government which it perceived as a proxy of the populist former Prime Minister Thaksin Shinawatra. PAD was successful in exploiting nationalism, particularly a nationalistic history of territories lost to western colonial powers. Generations of Thais since World War II have learnt from history textbooks that Thailand was unjustly forced to give up a huge amount of territory to the British and the French colonial powers in order to maintain her independence and sovereignty; the most traumatic loss was France's take-over of Laos and Cambodia. The loss of the Preah Vihear temple in the 1962 court battle was, therefore, perceived as a legacy of a deliberate plan by the French demarcation team which allowed Cambodia to inherit what should have belonged to Thailand.

Apart from exploiting bitter historical memory, PAD enlisted the help of nationalist academics in claiming that the Samak government's endorsement of the World Heritage listing would result in Thailand losing the right to recover the temple.

⁷ *Ibid.*, p. 14.

⁸ Ministry of Foreign Affairs, Thailand, *The inscription of the temple of Preah Vihear*, Bangkok, 2008, p. 2.

In addition, it was argued that Thailand had neither accepted the ICJ verdict nor accepted Cambodia's sovereignty over the temple, and that Thailand still had the right to appeal the verdict.⁹ This was despite the fact that Article 60 of the ICJ's Statute clearly stipulated that the judgment was final and without recourse to appeal; and Article 61 added that no application for revision may be made after the lapse of ten years from the date of the judgment. It should be noted that Thailand has not made any attempt to revise the case with the ICJ since 1962.

PAD's academics also asserted that Cambodia deliberately included the disputed area as the buffer zone, and that the Samak government's support for the nomination would have resulted in the loss of this territory.¹⁰ It is true that a buffer zone is required for a World Heritage site but no part of the disputed area was included in the temple's buffer zone. In fact, as a result of negotiations with Thai governments under General Surayud Chulanont and Samak, the Cambodian government agreed to exclude the 4.6 square kilometers of disputed territory from the buffer zone. Cambodia sent the revised map for Thailand to examine before the submission to the WHC meeting in July 2008. Experts from the Foreign Ministry, the Royal Survey Department, the army, and the National Security Council were involved and agreed that no part of the disputed area was taken for the temple's buffer zone.¹¹

PAD disregarded this fact, however. Moreover, it accused Samak's government of "selling the motherland" in exchange for some business deal for Thaksin in Cambodia.¹² Although PAD did not provide any evidence to substantiate its claim, this accusation has effectively dominated public understanding of the issue. This appears mainly to be because most of the Thai mass media were so anti-Thaksin that they failed to investigate the matter on their own, and thus reproduced unsubstantiated claims.

The relationship between Thailand and Cambodia deteriorated further when the Democrat Party leader Abhisit Vejjajiva became prime minister in August 2011. Abhisit had unreservedly embraced the PAD's position on the Preah Vihear temple and its surrounding area even when he was an opposition leader. His main position was to delist the temple from the World Heritage list and he opposed Cambodia's attempt to develop the area into a proper World Heritage site. He even promised the PAD in August 2010 that his government would never agree with Cambodia

⁹ "Adun chaesam khetkanchon phrawihan siang ruk dindaeng thai" [Adul exposes the Preah Vihear temple's buffer zone risks violating Thai territory], *ASTV Manager Online*, 18 July 2008 www.manager.co.th/Politics/ViewNews.aspx?NewsID=9510000084451 (accessed 20 July 2008).

¹⁰ "Sewana prasat phrawihan kangkha mikhon yubueanglang yuyaeng" [Seminar on the temple of Preah Vihear, doubt somebody is behind the scene to incite problem], *Matichon*, 30 June 2008.

¹¹ *Puangthong Pawakapan, State and Uncivil Society in Thailand at the Temple of Preah Vihear*, chapter 3.

¹² "Sap thalaengkan ruam thai-khmen wiparit chae phonprayot thapson maeo-hun sen uea" [Trashing the vicious Thai-Cambodian Joint Communiqué, Uncovering Thaksin's and Hun Sen's enormous conflict of interests], *ASTV Manager Online*, 1 July 2008 www.manager.co.th/Politics/ViewNews.aspx?NewsID=9510000077227 (accessed 29 July 2008).

to jointly develop the area of overlapping claims. Envoys were sent to oppose the listing and management plan at WHC meetings between 2009 and 2011. At its lowest point, both countries recalled their ambassadors. Border clashes between the two countries took place several times during Abhisit's premiership with the worst altercation in April 2011 when several people were killed and thousands of villagers on both sides had to flee their homes. Abhisit has rejected proposals for regional dispute mediation by the Association of Southeast Asian Nations (ASEAN) or adjudication by the ICJ.

The violence hindered Cambodia's plan to restore the temple site to meet world heritage standards. Cambodia's Prime Minister Hun Sen has also stoked antagonism by refusing to extradite Abhisit's political foe, former Thai leader Thaksin Shinawatra. Instead, the Cambodian leader provocatively appointed Thaksin as an economic and personal advisor, leading to an angry war of words between Hun Sen and Abhisit.

CONCLUSION: NERVOUS WAIT FOR THE OUTCOME

Soon after the clash on 28 April 2011, Cambodian government decided to take the dispute back to the ICJ. The country has requested the world court to interpret the 1962 ruling on the location of the border in the disputed area. Since the court had ruled that Thailand was under obligation to withdraw armed detachments from the vicinity of the temple area, Cambodia now wanted the court to rule that the vicinity of the temple should go along with the border line that appears in the Annex I Map. Thailand has urged the court not to accept Cambodia's request, stating that the court had no jurisdiction over the case.

The ICJ is expected to deliver its final decision at the end of 2013, but it is not certain that this will resolve the border dispute once and for all. On the one hand, a decision to assign the 4.6 square kilometers to Cambodia would certainly cause a public uproar in Thailand especially if Thai politics is fragile state at that time. On the other hand, the court may decline to make a ruling—saying it has no jurisdiction—in which case the area would remain disputed.

Although Prime Minister Yingluck Shinawatra successfully restored Thailand's relationship with Cambodia after her electoral victory in August 2011, the disputed area remains a thorny issue between the two countries. While Cambodian leader Hun Sen had stated clearly that Cambodia would respect the decision of the ICJ,¹³ a similar stance has not been taken on the Thai side.

¹³ "Cambodians urged to show restraint to border row", *Radio Free Asia*, 22 April 2013. <http://www.rfa.org/english/news/cambodia/temple-04222013173424.html> (accessed 16 September 2013).

In fact, in January 2013, the Yingluck government appeared to be trying to prepare the Thai public for the possible outcomes. Foreign Minister Surapong Tovichakchaikul told journalists that there were two likely results: either Thailand would lose the case or the case would go back to square one, with the dispute retaining status quo. The Thai government appeared to be contending with the second possibility. Unfortunately, most journalists had always perceived Surapong as Thaksin's puppet, and so he and the government received fierce criticism from the nationalists and the mass media for lacking the determination to protect Thailand's territory.¹⁴ Surapong amended the rhetoric and said that the government would do its best to put up a good fight.

PAD and its academics have already urged the government and the public to ignore the ICJ's ruling if it favours Cambodia. Such an eventuality would no doubt become an opportunity for anti-Thaksin movements to advance their political position. Although the Yellow Shirts movement has been weakened and split into various groups, they still hold a common objective to overthrow Thaksin's proxy government. Moreover, a territorial loss remains a highly sensitive issue for many Thais and has the potential to reunite anti-Thaksin groups. The question is how efficient such a unity will be this time around.

While PAD's political influence has diminished as seen in the resignation of its leaders in August 2013¹⁵, a territorial loss is likely to cause great resentment among Thais and may encourage PAD leaders to regroup, either in the name of PAD or in a newly created movement. The nationalists would certainly urge the government not to respect such a ruling and call on the army to send troops to protect the disputed area. If Yingluck and the army leaders comply with the ICJ, they would likely be branded as cowards and for lacking patriotism.

On the other side of the border, Cambodian leaders are not expected to sit idly but would try to assert Cambodia's sovereignty over the area should the verdict go in their favour. Another border clash is, therefore, likely to take place and ASEAN and/or the United Nation Security Council may need to assist in ending this half-century-long Thai-Cambodia conflict.

The diplomatic barbs over the temple of Phreah Vihear and its surrounding area have locked the two states in a struggle that both sides have domestic political incentives to continue. In particular, the success of the PAD's campaign to derail the temple listing was a result of the manipulation of nationalist sentiment regarding lost territories, as well as propaganda that has now come to dominate public opinion.

¹⁴ "Win or lose the point is to put up a good fight", *The Nation*, 5 January 2013. <http://www.nationmultimedia.com/opinion/Win-or-lose-the-point-is-to-put-up-a-good-fight-30197288.html> (accessed 16 September 2013).

¹⁵ "Top PAD bosses resign en masse", *Bangkok Post*, 24 August 2013. www.bangkokpost.com/news/local/366123/yellow-shirt-leaders-resigns-en-masse (accessed 16 September 2013).

The fixation with getting rid of Thaksin and his proxies meant that little attention was paid to the impact of the conflict on Thailand's international standing and relations with neighbouring countries; and has thus become an obstacle to the Thai government in settling the issue with Cambodia bilaterally and peacefully. As long as Thailand's domestic political predicament remains, the border dispute with Cambodia remains a dangerous political tool to threaten the stability of the Thai government.

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