

Towards a Peaceful Settlement of the Preah Vihear Temple Dispute

Kyaw Moe Tun

ASIA PAPER
October 2011



Institute for Security &
Development Policy

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ISBN: 978-91-86635-19-0

Printed in Singapore

Distributed in Europe by:

Institute for Security and Development Policy
Västra Finnbodavägen 2, 131 30 Stockholm-Nacka, Sweden
Tel. +46-841056953; Fax. +46-86403370
Email: info@isdpeu

Distributed in North America by:

The Central Asia-Caucasus Institute
Paul H. Nitze School of Advanced International Studies
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Executive Summary

There have been periodic outbreaks of violence at the border between Cambodia and Thailand especially since the Temple of Preah Vihear was inscribed on the list of World Heritage Sites by the UNESCO World Heritage Committee in July 2008. Because of the serious armed clashes in February and April–May 2011, the border dispute, which has taken place predominantly in the vicinity of the Temple between the two countries, has grabbed the attention of ASEAN and the international community. Cambodia and Thailand have different perceptions on capabilities of the existing bilateral mechanisms to resolve the dispute.

Against this background, this paper analyzes the root causes of the border dispute. The divergence between the frontier line, drawn by France and which was never formally approved by Thailand, and the true watershed line stipulated in Article 1 of the 1904 Treaty between Siam and France, the then protectorate of Indo-China including Cambodia, created a dispute over ownership of the Temple of Preah Vihear and the 4.6 km² area of its vicinity. Eventually, Cambodia took up the case to the International Court of Justice (ICJ). The ICJ ruled that the Temple is located in territory under the sovereignty of Cambodia on June 15, 1962. However, the two sides have different interpretations on the ICJ's judgment that resulted in outbreak of armed clashes in the border area. At the request of Cambodia for indication of provisional measures and interpretation of the ICJ's judgment on June 15, 1962, the ICJ had public hearings on May 30 and 31, 2011.

Moreover, the inscription of the Temple on the list of the World Heritage Sites also worsened the conflict. UNESCO World Heritage Committee planned to consider the management plan of the Temple of Preah Vihear, submitted by Cambodia, in June 2011 at its thirty-fifth session but Thailand requested the Committee to postpone the consideration due to pending resolution of the boundary demarcation between the two countries. Thailand assumed that the area cover in the management plan might prejudice the works of demarcation in the disputed area.

This paper examines impacts of the dispute, the effectiveness of the existing bilateral mechanisms and role of ASEAN and the international

community in resolving the dispute. The dispute has affected the diplomatic ties between Cambodia and Thailand, their respective domestic politics, their peoples – especially peoples living along the border between the two countries – and the credibility of ASEAN. The diplomatic ties between Cambodia and Thailand have had their ups and downs throughout the history of their bilateral relations. The diplomatic relations between the two countries was suspended from 1958 to 1970 and was downgraded by recalling their ambassadors in November 2009. The outbreak of armed clashes caused loss of life, damage of properties, and displacement of residents and destroyed the daily life of the peoples living along the border. The border clashes resulted in increase of military build-ups and military mobilization. It has created further tension between the two sides. Moreover, politicians from both countries have exploited the conflict to put pressure on the governments. After the UNESCO World Heritage Committee inscribed the Temple of Preah Vihear on the World Heritage List in July 2008, the opposition group, People's Alliance for Democracy (PAD) of Thailand, put tremendous pressure upon its Government by inciting nationalist sentiments. This pressure resulted in the resignation of the then Foreign Minister of Thailand. On the other hand, the successful inscription further consolidated the power of Prime Minister Hun Sen in Cambodia.

Although the dispute is considered as a domestic matter of Cambodia and Thailand, the prevailing circumstances unavoidably urged the involvement of ASEAN in resolving the dispute. This is the time that its members are putting their utmost efforts to achieving the goal of building an ASEAN Community by 2015. ASEAN is taking the driving force in maintaining and promoting peace and security in the Asia Pacific region. The peaceful resolution of the dispute became a test case for ASEAN.

Cambodia considers that the existing bilateral mechanisms for resolving the conflict are not moving anywhere. However, Thailand believes that the bilateral mechanism is still working and making progress. The different perceptions toward the effectiveness of the existing bilateral mechanisms resulted from a lack of mutual trust and understanding and frustration between the two parties. In this light, it is necessary for ASEAN to be involved in the bilateral negotiations in resolving the dispute despite the constraint that ASEAN has through its principle of non-interference in

the internal affairs of ASEAN member countries as well as the lack of an effective dispute settlement mechanism.

In addition to ASEAN, the role of the international community is important for resolving the dispute. The ICJ's decision on the request of Cambodia for indication of provisional measures and interpretation of the ICJ's judgment on June 15, 1962 is crucial for resolving the dispute. With the anticipation of resistance from some domestic actors of both countries toward the decision of the ICJ, both governments should be well prepared to handle it. Consideration of the UNESCO World Heritage Committee on the management plan of the Preah Vihear Temple may create further tension between the two parties. The encouragement of the international community including the United Nations Security Council would be a complement to the efforts of the bilateral and regional processes.

With this background, the paper also spells out the possible options launched for resolving the dispute. Resolving the dispute bilaterally is the most viable option. A genuine political will, sincerity, mutual trust and confidence building measures are vital for the two countries to resolve the dispute bilaterally. Involvement of ASEAN in the process is crucial for success of the resolution of the dispute and will help the two countries in building mutual trust and avoiding misunderstanding. Bringing the issue to the United Nations Security Council for resolution should be the last option, but encouragement of the international community will be a complement to the process of the resolving the conflict to achieve a successful outcome.

The key to a successful resolution of the dispute is a genuine political will, sincerity, mutual trust and confidence. They are lacking in the case of Preah Vihear. Therefore, whatever option they pursue, both sides have to build mutual trust and confidence and come to the negotiations with a positive political will and sincerity.

Taking into account the impact of the dispute, it had to be settled quickly. Having understood that resolving this border issue was by no means an easy job to accomplish, the contentious border dispute can be settled by peaceful means through the existing bilateral mechanisms between Cambodia and Thailand based on positive political will, sincerity, mutual trust and confidence, together with the involvement of ASEAN and the encouragement of the international community.

Introduction

Cambodia has shown utmost restraint by seeking peaceful settlement through negotiations and exploring all kinds of mechanisms at all levels. However, until now the bilateral mechanism has not only settled the matter, but also widened this conflict further. [...] the Royal Government of Cambodia has submitted a request to the International Court of Justice at the Hague to provide interpretation of the 1962 Judgment on the Preah Vihear Temple.

Cambodian Prime Minister Samdech Techo Hun Sen,
Statement at the Plenary Session of the 18th ASEAN
Summit, May 7, 2011, Jakarta.

The border disputes between Thailand and Cambodia, like many other disputes, are longstanding. [...] It is simply not true that the bilateral process is not working. [...] This matter can be resolved bilaterally.

Thai Prime Minister Abhisit Vejjajiva, Intervention at the
Plenary Session of the 18th ASEAN Summit, May 7,
2011, Jakarta.

A contentious border dispute between Cambodia and Thailand resulted in outbreaks of armed clashes since 2008. Armed clashes broke out in February and between April–May 2011, with both sides blaming each other for igniting the fight. The armed clash in February took place in the disputed area of the vicinity of the Temple of Preah Vihear, known as Phra Viharn in Thailand and the clash in April–May occurred in the border area between the Cambodian province Oddar Meanchey and Surin Province of Thailand, 140 km from the Preah Vihear Temple.

This contentious border dispute was discussed at the 18th ASEAN Summit and also on the sideline meeting in Jakarta, following the escalation of tension by the exchange of fire at the disputed border area in February and April–May. It is widely reported that Prime Minister Hun Sen of Cambodia and Prime Minister Abhisit Vejjajiva of Thailand failed to resolve the conflict but that the three foreign ministers of Cambodia, Thailand, and Indonesia,

Chair of ASEAN, had agreed to hold a trilateral talks.¹ The three Foreign Ministers met on May 9, 2011 and the Minister of Foreign Affairs of Indonesia told, with regard to the outcome of the meeting, that the meeting was “better than expected.” At the meeting, the Foreign Ministers of Cambodia and Thailand agreed on a package of solutions, such as exchange of letters on the Terms of Reference of Indonesian Observer Team, convening meetings of the General Border Committee (GBC) and Joint Boundary Commission (JBC) between Cambodia and Thailand, the dispatch of a survey team before the deployment of an Indonesian Observer Team at the relevant border areas of both sides. Each side interpreted the outcome of the meeting differently. Both sides released press statements highlighting the results of the meeting differently. In the press release of the Ministry of Foreign Affairs and International Cooperation of Cambodia, it was mentioned that the meeting reaffirmed the previous statements of the ASEAN Chair and agreed on a package of solutions, consisting of six points comprised of three steps. At the press release of the Ministry of Foreign Affairs of Thailand, the withdrawal of troops from the Phra Viharn Temple and its surrounding areas before the deployment of Indonesian Observer Team was also included in the package of solutions.²

It is cleared that the Deputy Prime Minister and Minister of Foreign Affairs and International Cooperation of Cambodia, Hor Namhong, in his letter to the Minister of Foreign Affairs of Indonesia, M. R. Marty M. Natalegawa, Chair of ASEAN, on May 24, 2011, stated that “I would like to re-emphasize the indispensability of the positive response from the Government of Thailand, in order to implement the above package of solutions. It is absolutely unacceptable to act otherwise and inconsistent with the package of solutions.”³

¹ Ministry of Foreign Affairs, Kingdom of Thailand, “Press Release: Outcome of Meeting between Foreign Ministers of Thailand, Cambodia and Indonesia (10 May 2011),” <http://www.mfa.go.th/web/3035.php?id=27314> (accessed May 20, 2011); and Ministry of Foreign Affairs and International Cooperation of Cambodia, “Agreed Summary of the Deputy Prime Minister, Minister for Foreign Affairs and International Cooperation of Kingdom of Cambodia, H. E. Hor Namhong, the Minister of Foreign Affairs of the Kingdom of Thailand, H. E. Kasit Piromya, and the Minister of Foreign Affairs of the Republic of Indonesia, H. E. R. M. Marty M. Natalegawa in Jakarta on 9 May 2011,” <http://www.mfaic.gov.kh/> (accessed May 11, 2011).

² Ibid.

³ H.E. Mr. Hor Namhong, Deputy Prime Minister and Minister of Foreign Affairs and International Cooperation of the Kingdom of Thailand, letter to H.E. Dr. M. R.

The uncompromising environment has been worsened by the statement of the Thai Minister of Natural Resources and Environment, Suwit Khunkitti. He stated that the management plan of Cambodia for the Temple of Preah Vihear, inscribed in the list of World Heritage Sites in 2008, was received recently. In this regard Cambodia strongly responded calling it “a completely untrue and misleading statement” and accused him of intensifying the tension. According to the National Committee for the World Heritage of Cambodia, the management plan was duly submitted to the World Heritage Center in January 2010 and was distributed to the members of the World Heritage Committee, of which Thailand is a member, at its 34th Session in Brasilia in 2010.

Against this background of uncompromising environment, some international events relating to the dispute have been held. At the request of Cambodia, the ICJ had hearings on the indications of provisional measures pertinent to interpretation of the “Judgment of 15 June 1962 in the case concerning the Temple of Preah Vihear (Cambodia v. Thailand)” in the Hague on May 30 and 31, 2011.⁴ The 35th Session of the World Heritage Committee, at which the management plan submitted by Cambodia is planned to consider, will be held in Paris in June 2011.⁵

With this background, this paper points out the root causes of the ongoing border dispute particularly the area of the vicinity of Preah Vihear Temple together with its background. Accordingly, the paper examines the impacts of the dispute on the concerned countries and on the credibility of ASEAN, the role of domestic actors of both countries in influencing the conflict, the effectiveness of ongoing bilateral process as well as the role of ASEAN and the international community in resolving the dispute. Finally, the paper attempts to provide possible options for a way forward to solving the conflict.

The name of the temple is Preah Vihear in Cambodian and Phra Viharn in Thai. In the judgment of the International Court of Justice (ICJ) on the

Marty M. Natalegawa, Minister of Foreign Affairs of the Republic of Indonesia, May 24, 2011.

⁴ International Court of Justice, Press Release, No. 2011/18, May 19, 2011, <http://www.icj-cij.org/docket/files/151/16516.pdf> (accessed May 25, 2011).

⁵ UNESCO, World Heritage Center, “35th session of the World Heritage Committee to meet in Paris in June 2011,” <http://whc.unesco.org/en/news/728> (accessed May 25, 2011).

case concerning the Temple of Preah Vihear (Cambodia v. Thailand) and the decision of United Nations Educational, Scientific and Cultural Organizations (UNESCO) on the inscription of the Temple of Preah Vihear in the list of the World Heritage Sites, the name of the Temple is used as the Temple of Preah Vihear. In this connection, in order to avoid any confusion on the name of Temple, Preah Vihear will be used throughout this paper.

Root Causes of the Border Dispute

Temple of Preah Vihear

As Cambodia and Thailand share about 800 km long border, sovereignty over a number of areas along the border have been disputed between Cambodia and Thailand. One of them is the area of the Temple of Preah Vihear. It has grabbed the attention of the international community, particularly ASEAN. It is worth to briefly touch on the background of Preah Vihear Temple also known as “Phnom Preah Vihear (Sacred Hermitage Mountain).” The temple, partially in ruins, is located at the edge of the Dangrek Mountains range, 625 meters above the sea level in the Northern Province of Preah Vihear, bordering with the Sisaket Province of Thailand. The temple, a Khmer sanctuary and dedicated to Hindu God Shiva, was built by the Khmer kings during the peak of their empire from the ninth century to the eleventh century. This sanctuary stretches 800 meters along the north-south border. This distinguishes from other Khmer temples which usually run from east to west. The Temple consists of five successive and alternate “gopuras” and pavements heading to the main shrine, a series of courtyards, and reservoirs.⁶ This sanctuary possesses outstanding universal value based on its natural site, the quality of its architectural composition and its carved stone ornamentation.⁷ The temple has been located, in turn, in the territory of Cambodia and in the territory of Thailand during different eras depending on the superior power possessed by Khmer and Siamese kingdoms until the ruling of the International Court of Justice (ICJ) in June 1962 that “the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia.”⁸

⁶ The Office of the Council of Ministers of the Kingdom of Cambodia, “The Temple of Preah Vihear: Inscribed on the World Heritage List (UNESCO) since 2008,” May 2010, http://www.pressocm.gov.kh/beta/doc/PUB_05082010_ENG.pdf (accessed May 13, 2011).

⁷ ICOMOS, “Preah Vihear (Cambodia),” <http://whc.unesco.org/archive/2008/whc08-32com-inf8B1ADD2e.pdf> (accessed May 3, 2011).

⁸ L. P. Singh, “The Thai-Cambodia Temple Dispute,” *Asian Survey*, Vol. 2. No. 8 (Oct. 1962), p. 23, <http://www.jstor.org/stable/3023600> (accessed May 4, 2011).

The 1904 Franco–Siamese Treaty and its Contentiousness

Lasting from 802 to 1432, the Kambuja or Angkor period was a main part of the Khmer Empire. The magnificent monuments were erected in the Angkor period. However, the decadence of the Khmer Empire started late in the thirteenth century and continued until the King of Authai (Siam) conquered the Angkor in 1431. Eventually it became a tribute to the Siamese Kingdom.⁹ Since the decadence, the area of the Khmer Empire had been decreasing and some areas including the area where the temple is located were annexed by the Kingdom of Siam. With the French colonization of Indo-China, Cambodia also became a French protectorate in 1863. A crisis in 1893 involved France and Siam and forced the latter to withdraw its troops from the east of the Mekong River and to sign the Franco–Siam Treaty (1893). Subsequently, Siam renounced territorial claims on the east of the Mekong River. Later, a series of treaties between France and Siam were signed between 1902 and 1907, including a treaty signed on February 13, 1904.¹⁰

The Treaty of February 13, 1904 included provisions pertinent to the region of the eastern Dangrek mountain range where the Temple of Preah Vihear is situated. Articles 1 and 3 of the Treaty stipulate as follows:

Article 1:

The frontier between Siam and Cambodia starts, on the left shore of the Great Lake, from the mouth of the river Stung Roluos, it follows the parallel from that point in an easterly direction until it meets the river Prek Kompong Tiam, then, turning northwards, it merges with the meridian from that meeting-point as far as the Pnom Dang Rek mountain chain. From there it follows the watershed between the basins of the Nam Sen and the Mekong, on the one hand, and the Nam Moun, on the other hand, and joins the Pnom Padang chain the crest of which it follows eastwards as far as the Mekong. Upstream from that point, the Mekong remains the frontier of the Kingdom of Siam, in accordance with Article 1 of the Treaty of 3 October 1893.

⁹ George Sarton, rev. of Lawrence P. Briggs, *The Ancient Khmer Empire* (1951), *Isis*, Vol. 42, No. 3 (Oct., 1951), pp. 263–65, <http://www.jstor.org/stable/226582> (accessed May 30, 2011).

¹⁰ Barend J. Terwiel, *Thailand's Political History: From the Fall of Ayutthaya to Recent Times* (Bangkok: River Books, 2005), pp. 206–9, 218–20.

Article 3:

There shall be a delimitation of the frontiers between the Kingdom of Siam and the territories making up French Indo-China. This delimitation will be carried out by Mixed Commissions composed of officers appointed by the two contracting countries. The work will relate to the frontier determined by Articles 1 and 2, and the region lying between the Great Lake and the sea.¹¹

If the frontier lines were drawn in accordance with the true watershed line mentioned in Article 1, the Temple of Preah Vihear would have been part of Thailand. However, Article 1 did not have finality. The border line was subject to the delimitation of the frontiers to be carried out by the mixed commissions. The commission consisted of officers from both France and Siam as stipulated in Article 3.

In accordance with the 1904 Treaty, a mixed commission comprising French and Siamese officials was established duly. The commission was tasked with demarcating the mutual boundary in various areas, including the eastern part of the Dangrek range. This commission had not fully completed its operations of delimiting the frontier until the establishment of a second commission was set up under the Franco–Siam Treaty of 1907, the aim of which was to demarcate the boundary in the western sector of the Dangrek Mountain Range. The preparation and publication of maps were the concluding step of the work of delimiting the frontiers. According to Covey Oliver:

“...for the execution of this technical work, the Siamese Government, which at that time did not dispose of adequate means, had officially requested that French topographical officers should map the frontier region. It is clear from the opening paragraph of the minutes of the meeting of the First Mixed Commission on 29 November 1905 that this request had the approval of the Siamese section of the Commission, which may indeed have inspired it, for in the letter of 20 August 1908 in which the Siamese Minister in Paris communicated to his Government the eventual results of this work of mapping, he referred to “the Mixed Commission of Delimitation of the frontiers and the Siamese Commissioners’ request that the French Commissioners prepare maps of various frontiers.”¹²

¹¹ Quoted in Covey Oliver, “Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand),” *The American Journal of International Law*, Vol. 56, No. 4 (Oct., 1962), p. 1035, <http://www.jstor.org/stable/2195943> (accessed May 4, 2011).

¹² *Ibid.*, p. 1038.

Such action by the Siamese officials would force Siam to take consequence of the outcome of the work of delimiting the frontier.

The French side duly made their own arrangements to complete the work of delimitation. As a result, eleven maps were communicated to the Siamese side before the end of 1907. One of the maps covered the eastern part of the Dangrek Mountain Range and showed the border line between Siam and the French Protectorate of Cambodia. The border line deviated from the watershed line stipulated in Article 1 of the 1904 Treaty. The deviation made the whole promontory of the Dangrek Mountain Range including the area of the Temple of Preah Vihear on the side of Cambodia.¹³

However, the mixed Commission never formally approved the map also known as Annex I map, because the Commission had ceased to function before the map was published. Moreover, there was no evidence formally approved by the Siamese side. Although there was no formal acknowledgement by Siam, there were some facts that could be assumed as the acceptance of the Siamese side; Interior Minister Prince Damrong of Siam acknowledged the receipt of the maps by requesting more copies for the respective governors; the map was made available by the French authorities to all interested parties including members of the then mixed commission, some Siamese legations, and well-known geographical societies;¹⁴ Siam did not raise any query on the discrepancy between the map line and the watershed line even after 1934–1935, when Thailand conducted its own survey in the region including the area of the Preah Vihear Temple; after the survey, Thailand produced a map that showed the Temple is in the territory of Thailand but the Thai side kept using the Annex I map and other maps of France, which showed the Temple is in the Cambodian side, for official and public purposes.

There were a number of opportunities, when Thailand could raise the issue of divergence with the French authorities. A series of negotiations between France, on behalf of Indo-China, and Siam took place between 1925 and 1937 for concluding Treaties of Friendship, Commerce and Navigations between Indo-China and Siam. It would provide a general process of amendments or substitution of the previous agreements. Moreover, Prince

¹³ Ibid.

¹⁴ Cedric Thornberry, "The Temple of Preah Vihear (Cambodia v. Thailand)," *The Modern Law Review*, Vol. 26, No. 4 (July 1963), p. 449, <http://www.jstor.org/stable/1093220> (accessed May 4, 2011).

Damrong, the former Siamese Minister of Interior, had a keen interest on delimitation work. In his capacity as the President of the Royal Institute of Siam, which was responsible for the National Library and archaeological monuments, he visited the Temple of Preah Vihear in 1930. The French Resident for the adjoining Cambodia province officially received him at his arrival at the Temple, with "the French flag flying." This incident could be translated into a de facto recognition by Thailand of the sovereignty of the French Protectorate Cambodia over the Temple of Preah Vihear and its vicinity.¹⁵

A bitter lesson was learned by Siam from this series of events starting from the work of delimitation to the visit of Prince Damrong to the Temple. Siam took the risk of requesting the French side to map the boundary, and it did not check thoroughly the maps upon the receipt. Moreover, Siam took the painful consequences of not having followed-up queries on the divergence of the map line from the watershed line. The visit of Prince Damrong to the Temple became one of the significant facts drawn by the Cambodian side to enforce their argument on the ownership of the Temple and the area of its vicinity.

Settlement Agreements between France and Thailand

Rising political tension in Europe and growing military expansion of Japan in the late 1930s threatened French influence in Indo-China. Consequently, the French authorities were forced to compromise with Thailand. As France approached the Thai authorities to conclude a non-aggression pact in August 1939, the Thai side proposed to hold negotiations on border revisions in order to regain its lost territories that was the result of the 1904 and 1907 treaties. Although France and Thailand signed the pact in June 1940, there were no negotiations on the border revisions in 1940. During this period, Thailand entered into secret negotiations with Japan to permit Japanese troops to pass through the Thai territories if necessary. Thailand expected in return Japanese assistance in recapturing the territories it had lost to the French protectorate Indo-China. In responding to the French attacks on the area near the Cambodian border, Thailand invaded French Indo-China including the north-western part of Cambodia in January 1941 and captured

¹⁵ Oliver, "Case Concerning the Temple of Preah Vihear," pp. 1046f.

the disputed enclaves on the western part of the Mekong River as well as a large area of Cambodian territory.¹⁶

Encountering tremendous pressure, France had no choice but to accept Japanese intervention for the negotiation between France and Thailand, and the two sides reached an agreement in Tokyo in March 1941. According to the agreement, France permitted Thailand to keep most of the territories, including Preah Vihear.¹⁷ With the end of the Second World War in 1945, France and Thailand signed a settlement agreement in November 1946. Fearful of being named as an ally of Japan, Thailand agreed to return the territories taken under the 1941 agreement to the French protectorate Indo-China. By this, the 1941 agreement was annulled.¹⁸

It is also important to mention that a Franco-Siamese Conciliation Commission was established in 1947. It was composed of the two representatives from each side and three neutral commissioners. According to the Commission's terms of reference, it was responsible for making "recommendations on an equitable basis in regard to, any complaints or proposals for revision which Thailand might wish to make as to, inter alia, the frontier settlements of 1904 and 1907."¹⁹ Some complaints about the frontier line on a number of regions except Preah Vihear were made to the Commission by Thailand. In one instance, a map, filed with the commission by Thailand, was indicating that Preah Vihear was situated in the territory of Cambodia.²⁰ Not long after the work of the Commission was completed, the French authorities sent a note to the Thai authorities in February 1949 seeking information on the reported stationing of four Thai keepers at the Temple of Preah Vihear. Follow-up notes were sent to the Thai side in March and May 1949 and in July 1950, respectively. In these notes, France even asked for the withdrawal of the Thai keepers from the Temple. No reply came from the Thai side.²¹ This action of France made it clear that France considered Preah Vihear lay in the side of the French Protectorate.

¹⁶ Terwiel, *Thailand's Political History*, pp. 272–74.

¹⁷ Ibid.

¹⁸ Roland B. St John, "Preah Vihear and the Cambodia-Thailand Borderland," *IBRU Boundary and Security Bulletin* (January 1994), p. 64, https://www.dur.ac.uk/resources/ibru/publications/full/bsb1-4_john.pdf (accessed May 4, 2011).

¹⁹ Oliver, "Case Concerning the Temple of Preah Vihear," p. 1045.

²⁰ Ibid., pp. 1045–47.

²¹ Ibid., p. 1047.

Settlement over the Dispute at the International Court of Justice

After Cambodia regained its independence in November 1953, the country attempted to deploy keepers at the Temple of Preah Vihear to ascertain its position at the monument. However, on their arrival they encountered Thai keepers with the Thai flag flying above the Temple. Subsequently, Cambodia sent a note to the Thai Government in January 1954 seeking information. It received acknowledgement of the receipt of the letter from the Thai side but no explanation was included. A series of notes were sent by the Cambodian side to the Thai side, with no reply forthcoming. In 1958, a meeting between Cambodia and Thailand took place in Bangkok to discuss matters relating to various territorial disputes including the issue of the Temple of Preah Vihear. No result was produced at the meeting. The diplomatic relations between the two countries deteriorated and were suspended in December 1958.²²

In October 1959, the Government of Cambodia filed a case against Thailand over the sovereignty of the Temple before the International Court of Justice (ICJ). Cambodia asked the ICJ to “adjudge and declare: (i) that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed since 1954 in the ruins of the Temple of Preah Vihear; (ii) that the territorial sovereignty over the Temple of Preah Vihear belongs to the Kingdom of Cambodia.”²³ Cambodia claimed its sovereignty over the Temple before the Court by citing the treaties of 1904 and 1907 and work of delimitation that clearly showed the Temple of Preah Vihear was in the Cambodian side, emphasizing the consistent claim of its sovereignty over the monument, and pointing out Thailand’s failure to perform any acts of its sovereignty over the disputed territory.²⁴ At the time of application, Thailand had designated Preah Vihear as a national archaeological site in December 1959.²⁵

²² Ibid., pp. 1047f.

²³ International Court of Justice, “Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand),” April 18, 2011, “Generalist No. 45 – Judgments of 26 May 1961 and 15 June 1962), Vol. I, Application – Pleading, <http://www.icj-cij.org/docket/files/45/9249.pdf> (accessed June 1, 2011).

²⁴ Ibid.

²⁵ Leng Thearith, Chheang Vannarith, “Cambodia–Thailand Dispute and Its Impacts on Southeast Asian Community Construction,” *Cambodian Journal of International Affairs (CJIA)*, October 2008, p. 16. http://www.cicp.org.kh/download/CJIA/CICP_Cambodian%20Journal%20of%20International%20Affairs_Vol%201%20Number_Final.pdf (accessed April 29, 2011).

On the other hand, the Government of Thailand took the different approach. It concentrated on preliminary arguments of whether the Court had jurisdiction over the case or not. The reasons were that “the Siamese declaration of the 20th September, 1929 lapsed on the dissolution of the Permanent Court of International Justice on the 19th April, 1946, and thereafter could not be renewed,” “the Thai declaration of the 20th May, 1950 purported to do no more than renew the said declaration of the 20th September, 1929, and so was ineffective *ab initio*,” and “consequently Thailand has never accepted the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Statute,” Thailand asked the ICJ to “declare and pronounce that it has no jurisdiction to entertain the Cambodian Application of the 6th October, 1959.” However the Court unanimously rejected the Thailand’s preliminary objection.²⁶

The Court considered a number of facts. There was a divergence between the provisions stipulated in Articles 1 and 3 of the Treaty of 1904 and the Annex I Map, which was communicated to the Thai side that requested more copies. The Map had no binding character. No query was raised by the Thai side on the divergence although several occasions had been available. The Annex I Map was used by Thailand for official and public purposes. The French Resident officially received Prince Damrong at the Temple with the French flag flying. On June 15, 1962, the ICJ decided over the case of the Temple of Preah Vihear as follows:

by nine votes to three, finds that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia;
finds in consequence, by nine votes to three, that Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory;
by seven votes to five, that Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia’s fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities.²⁷

²⁶ International Court of Justice, Report of Judgments, Advisory Opinions and Orders, “Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand),” Preliminary Objections, Judgment of 26 May 1961, 1961, pp. 20–35, <http://www.icj-cij.org/docket/files/45/4857.pdf> (accessed June 1, 2011).

²⁷ International Court of Justice, Report of Judgments, Advisory Opinions and Orders, “Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand),” Merits, Judgment of 15 June 1962, 1962. <http://www.icj-cij.org/docket/files/45/4871.pdf>

However, one of the three judges dissented from the majority and held that “the treaty text more important than maps” and another judge concluded that “the ‘Annex Map’ did not have the character of an international agreement.”

According to Articles 59 and 60 of the Statute of ICJ, “The decision of the Court has no binding force except between the parties and in respect of that particular case,” and “[t]he judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.”

Following the ICJ’s ruling, a heated reaction was seen in Thailand. Thousands of students throughout the country flooded out onto the streets and demonstrated against the decision of the Court. The Minister of Interior contended that “‘we will defend our country to the last drop of our blood’ if the Cambodians attempt to take the Phra Viharn temple.” However, an announcement on June 21 by Prime Minister Sarit of Thailand that his country would honor the Judgment calmed down popular feelings. Furthermore, in his radio announcement to the nation on July 3, he said that “in spite of the profound sorrow felt by His Majesty’s Government over the fact that Thailand has not been justly treated in the present case, it is considered that, as a member of the United Nations, Thailand is bound to honor its obligations under the UN Charter. It will do so under protest and with reservations of her intrinsic rights.” Subsequently, the Thai flag and flagpole were removed, without lowering the flag, from the Temple of Preah Vihear. It has been kept in a museum.²⁸ And Thailand withdrew its troops from the Temple. Although the Temple is in the territory of Cambodia according to the Court’s judgment, the most easily reachable entry point to the Temple is located in the territory of Thailand because of its geographical location.²⁹

Such reactions prompted a question of “is the dispute over?” After the ICJ’s decision in 1962, Thailand does not claim the sovereignty over the Temple itself but a 4.6 km² area in the vicinity of the Temple. The claim is based on the Thai interpretation on the Judgment as “limited solely to the question of the sovereignty over the region of the Temple of Preah Vihear, the boundary

(accessed June 1, 2011).

²⁸ Singh, “The Thai–Cambodia Temple Dispute,” p. 26.

²⁹ Security Council Report, “Thailand/Cambodia,” February 9, 2011, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Update%20Report%209%20February%202011%20Thailand_Cambodia.pdf (accessed June 1, 2011).

line claimed by Cambodia has no legal status from the judgment.”³⁰ Having seen such reactions from the Thai side, it is indeed a relevant and reasonable question to be raised. It has been attested to by the events involving the relations between the two countries after 1962. Almost half a century after the Court’s judgment, the case has again been before the Court because of the request by the Government of Cambodia for interpretation of the Court’s judgment of 1962. Although Thailand preferred the issue to be resolved at the bilateral level with some third party involvement, namely ASEAN. There have been a number of matters that Cambodia considered forced it to bring the issue before the ICJ. These matters are discussed in the section of the effectiveness of the bilateral mechanisms to resolve the dispute.

On May 30–31, 2011, the ICJ held public hearings on Cambodia’s request for the indication of provisional measures in the case concerning the request for the Interpretation of the 1962 Judgment. At the hearings, both sides presented their arguments on the case. Cambodia put forward the reasons and validity of their request for the interpretation on the 1962 Judgment and the indication of provisional measures, whereas Thailand explained why the request does not meet the jurisdiction of the Court and the Court should not indicate provisional measures. Accordingly, Thailand asked the Court to remove the case from its “General List.”³¹ At the time of writing, a date of a public hearing for the Court’s decision has not been made known to the public yet. The decision to be made by the ICJ will be crucial for resolving the dispute.

³⁰ Security Council, “Letter dated 21 July 2008 from the Permanent Representative of Thailand to the United Nations addressed to the President of the Security Council,” S/2008/474, July 21, 2008, p. 4, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/431/93/PDF/N0843193.pdf?OpenElement> (accessed June 1, 2011).

³¹ International Court of Justice, Press Release, “Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Conclusion of the public hearings on Cambodia’s Request for the indication of provisional measures,” No. 2011/19, May 31, 2011, <http://www.icj-cij.org/docket/files/151/16536.pdf> (accessed June 1, 2011).

Inscription of the Temple on the World Heritage List

After the Judgment of the International Court of Justice, the Temple of Preah Vihear, a thorny issue in the relations between Cambodia and Thailand, had not drawn the attention of the international community until the Temple was inscribed on the World Heritage List by UNESCO on July 7, 2008.

Both Cambodia and Thailand were occupied with their own domestic struggle at different levels of seriousness after the late 1960s. Their diplomatic relations were re-established in 1970. Cambodia encountered a series of internal conflicts since 1970 – the civil war broke out in 1970; the Khmer Rouge, led by Pol Pot, took power in 1975; the invasion of Vietnam in 1978 pushed Cambodia into a full-scale civil war again; guerrilla warfare began in 1980s; under the UN supervision, a general election was held in 1993; and Prime Minister Hun Sen took control of the state.³² During the guerrilla war the Temple was occupied by the Khmer Rouge and was heavily surrounded by landmines. With the defeat of what remained of the Khmer Rouge in 1998, the Temple was reopened for the public.³³ In Thailand, a series of student demonstrations took place and political instability prevailed for the majority of the 1970s to 1980s.³⁴

After the Cambodian proposal for the inscription of the Temple of Preah Vihear on UNESCO's World Heritage List in October 2001, a calm followed. At the beginning both sides had agreed to the proposal of the inscription. The UNESCO World Heritage Committee decided to nominate the Temple of Preah Vihear a World Heritage Site at its thirty-first session in June–July 2007. The decision stipulated that:

the State Party of Cambodia and the State Party of Thailand are in full agreement that the Sacred Site of the Temple of Preah Vihear has Outstanding Universal Value and must be inscribed on the World Heritage List as soon as possible. Accordingly, Cambodia and Thailand agree that Cambodia will propose the site for formal inscription on the World Heritage List at the 32nd session of the World Heritage Committee in 2008 with the active support

³² State Department of the United States, "Kingdom of Cambodia," <http://www.state.gov/r/pa/ei/bgn/2732.htm> (accessed May 3, 2011).

³³ Leng Thearith, Chheang Vannarith, "Cambodia–Thailand Dispute and its Impacts on Southeast Asian Community Construction," pp. 17f.

³⁴ Terwiel, Thailand's Political History, pp. 281–288.

*of Thailand. [...] and recognizes that the Sacred Site of the Temple of Preah Vihear is of great international significance and has Outstanding Universal Value on the basis of criteria (i), (ii) and (iv), agrees in principle that it should be inscribed on the World Heritage List and notes that the process for inscription is in progress [...].*³⁵

In the course of inscribing the Temple on the World Heritage List, a joint communiqué regarding the inscription between Cambodia, Thailand and UNESCO was issued on June 18, 2008 and was submitted to the World Heritage Committee. According to the joint communiqué, Thailand agreed to support the inscription of the Temple on the World Heritage List at the thirty-first session of the Committee to be held in July 2008 and Cambodia accepted to nominate the Temple for the inscription to the List “without at this stage a buffer zone on the northern and western areas of the Temple.” Moreover, both sides agreed that “the inscription of the Temple of Preah Vihear on the World Heritage List shall be without prejudice to the rights of the Kingdom of Cambodia and the Kingdom of Thailand on the demarcation works of the Joint Commission for Land Boundary (JBC) of the two countries.” As a result, the nominated area for inscription was revised and confined to within the territory of Cambodia and buffer zone was limited to east and south of the Temple.³⁶

Things did not go as planned for Thailand, however, because of pressure mounted on the Thai Government from an opposition group, the People’s Alliance for Democracy (PAD). On July 7, 2008, the World Heritage Committee decided to inscribe the Temple of Preah Vihear on the World Heritage List under the criterion (i):

*Preah Vihear is an outstanding masterpiece of Khmer architecture. It is very “pure” both in plan and in the detail of its decoration” and requested the State Party of Cambodia to “submit to the World Heritage Centre by February 2010, for submission to the World Heritage Committee at its 34th session in 2010 a full Management Plan for the inscribed property, including a finalized map.*³⁷

³⁵ UNESCO World Heritage Committee, “Decisions adopted at the 31st of the World Heritage Committee, Christchurch, 2007,” pp. 153f, <http://whc.unesco.org/archive/2007/whc07-31com-24e.pdf> (accessed June 1, 2011).

³⁶ ICOMOS, “Preah Vihear (Cambodia)”.

³⁷ UNESCO World Heritage Committee, “Decisions adopted at the 32nd of the World Heritage Committee, Quebec City, 2008,” pp. 220ff, <http://whc.unesco.org/>

At the meeting, Thailand strongly objected to the decision by pointing out the unsettled border dispute of the area around the Temple and Article 11 (3) of the 1972 World Heritage Convention to which Thailand is a state party. This article stipulates that “the inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute.” Moreover, Thailand reiterated that it intends to nominate “other features of the Temple” located within Thailand for status of World Heritage and stated that “the inscription of the Temple of Preah Vihear on the World Heritage List shall no way prejudice Thailand’s rights regarding her territorial integrity and sovereignty as well as the survey and demarcation of land boundary in the area and Thailand’s legal position.”³⁸

The Committee’s decision provoked nationalist sentiments in both countries. In Cambodia, celebrations took place to coincide with the parliamentary election campaigns. However, in Thailand, PAD reacted strongly by putting more pressure on the government for its ineffective handling of the case, which led to the resignation of Foreign Minister Noppadan Patama, who headed the Thai delegation to the meeting of the thirty-second session of the World Heritage Committee. The Cambodian troops arrested three Thai nationals, who illegally crossed the border and entered into the Temple for attempting to hoist a Thai flag at the Temple. Thai troops also crossed into the territory of Cambodia on July 15, 2008.³⁹ This action prompted Cambodia to request the United Nations Security Council to convene an emergency meeting. However, it did not take place because ASEAN intervened and an agreement was reached between the two parties to solve the dispute through the existing bilateral mechanisms, the Joint Commission for Land Boundary (JBC) and the General Border Committee (GBC).

As Thailand objected to the decision of the World Heritage Committee to inscribe the Temple of Preah Vihear on the World Heritage List, the country attempted to block the consideration of the management plan at the

archive/2008/whc08-32com-24reve.pdf (accessed June 1, 2011).

³⁸ Security Council, “Letter dated 21 July 2008 from the Permanent Representative of Thailand to the United Nations addressed to the President of the Security Council,” S/2008/474, July 21, 2008, pp. 8ff.

³⁹ Mala R. Sathian, “Thailand in 2008: A Year Long of Protests,” *Jati*, Vol. 13 (December 2008), p. 73, http://umrefjournal.um.edu.my/filebank/published_article/438/069%20-%20078%20%20Mala%20Rajo%20Santhian.pdf (accessed April 29, 2011).

Committee. The Committee requested Cambodia to submit the management plan “to the World Heritage Centre by February 2010, for submission to the World Heritage Committee at its 34th session in 2010.” Accordingly, Cambodia submitted it to the Center in January 2010 according to the National Committee for the World Heritage of Cambodia. However, because of the successful attempt by Thailand, the thirty-fourth session of the Committee held in Brasilia in 2010 postponed the consideration of the management plan to the thirty-fifth session of the Committee to be held in June 2011 in Paris. The Deputy Prime Minister and Minister in Charge of the Office of the Council of Ministers of Cambodia, Sok An met the Minister of Natural Resources and Environment of Thailand, Suwit Khunkitti together with Director General of UNESCO in Paris in the last week of May 2011 on the sideline of the preparatory meeting for the meeting of the thirty-fifth session of the World Heritage Committee to finalize the agenda of the meeting. Reportedly, no agreement was reached at the meeting. Thailand proposed to postpone the consideration of the management plan at the next meeting, citing the need to finalize the border demarcation first, while Cambodia urged UNESCO to dispatch as soon as possible an expert team to assess the damage at the Temple caused by the Thailand’s attacks in February 2011 and to mobilize funds urgently for the repair and preservation of the world heritage site.⁴⁰ This issue will be a highlight at the thirty-fifth session of the Committee and remains problematic in the relations between Cambodia and Thailand.

⁴⁰ “H.E. Sok An’s Remarks about the Outcome of the Trilateral Meeting at the UNESCO Headquarters in Paris 28 05 2011,” <http://www.pressocm.gov.kh/beta/index.php?view=detail&story=552> (accessed June 1, 2011) and Ministry of Foreign Affairs, Kingdom of Thailand, “Press release: UNESCO understands Thailand’s position regarding the Phra Viharn Temple; Thailand ready to present its case to the ICJ (28 May 2011),” <http://www.mfa.go.th/web/3035.php?id=27435> (accessed May 30, 2011).

Impact of the Dispute

Based on the above discussion, it can be concluded that the dispute has rooted since the conclusion of the 1904 and the 1907 Treaties. Before Cambodia regained independence, Cambodia's protectorate power France had more bargaining power than Siam, particularly dealing with territorial matters. Paying more attention to other issues, the ownership over the Temple had not been a real issue between the two sides at that time.⁴¹ However, after Cambodia became an independent country, it has kept claiming the sovereignty over the Temple of Preah Vihear where the Thai troops were stationed.

The diplomatic ties between Cambodia and Thailand have seen ups and downs. Even before the dispute was brought before the ICJ, the diplomatic relations between Cambodia and Thailand were suspended in December 1958 after the unsuccessful negotiation over territorial matters, including the Temple. Relations were re-established in 1970. In January 2003, Cambodian demonstrators burnt the Thai Embassy and Thai owned properties in Phnom Penh under the pretext of protesting the negative comments on Khmer and Angkor Wat allegedly made by a Thai actress known as "Morning Star." The Thai government quickly and strongly responded with downgrading the diplomatic relations, closing the border checkpoints, expelling Cambodian traders and workers, and demanding a Cambodian apology. The Cambodian side took the responsibility, expressed regret for the riot and agreed to pay compensation of approximately US\$54 million for the loss of the Thai properties. More than 100 rioters were arrested and the mayor and military police chief of Phnom Penh were dismissed. Eventually, diplomatic relations were normalized and the border checkpoints were reopened.⁴² Moreover, because of the appointment of former Prime Minister Thaksin of Thailand as an economic advisor to the Prime

⁴¹ Terwiel, Thailand's Political History, pp. 206–77.

⁴² Alexander Hinton, "Khmerness and the Thai 'Other': Violence, Discourse and Symbolism in the 2003 Anti-Thai Riots in Cambodia," *Journal of Southeast Asia Studies*, Vol. 37, No. 3 (October 2006), p. 450, <http://dga.newark.rutgers.edu/~socant/Khmerness%20and%20the%20Thai%20Other.pdf> (accessed June 5, 2011).

Minister of Cambodia in November 2009, the government of Thailand expressed its displeasure in recalling its ambassador, and Cambodia reciprocated. After Thaksin announced in 2010 that he would resign as the economic advisor to the Prime Minister of Cambodia in the interest of Thailand, both countries reinstated their ambassadors in 2010.⁴³

The impact of the dispute is not confined only to diplomatic ties. After the decision by the ICJ, King Sihanouk returned the honorary degree, which he had received from the Thammasart University, because of the demand from the students of the university.⁴⁴ When the Khmer Rouge regime took power in Cambodia in 1975, many Cambodian refugees took shelter in Thailand. After the decision taken by the Government of Thailand to expel Cambodian refugees in June 1979, about 45,000 Cambodian refugees were reportedly taken to the area of the Temple of Preah Vihear, and were pushed down at gunpoint to the steep slope of the 625 meters high Dangrek Mountain Range. The foot of the cliffs was heavily covered with landmines planted by the Khmer Rouge. Many of them were killed. Legally speaking, Thailand had no obligation to assist the refugees as Thailand was not and is not a state party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol according to the United Nations High Commissioner for Refugees (UNHCR) (as of April 1, 2011).⁴⁵ From a humanitarian point of view, however, it was a different story. Yet, few have mentioned, the link between this incident and the border dispute, but the rooted nationalist sentiments may incite violence and lead to tragedy.

The ongoing border dispute has caused periodic outbreaks of fightings between the two militaries, resulting in human casualties, human displacement, destruction of property and the daily lives of people living along the border area and closure of border gates. A number of armed clashes have broken out in areas around the Temple of Preah Vihear. The latest clashes were in October 2008, in April 2009, and in February 2011. An armed conflict occurred in April–May 2011 along the border area about 140 km from the Temple. At every clash both sides have blamed the other for starting the conflict. Human casualties involved not only military personnel

⁴³ Catharin Dalpino, "Thailand in 2010," *Asian Survey*, Vol. 51, No. 1 (January/February 2011), p. 161, <http://www.jstor.org/stable/10.1525/as.2011.51.1.155> (accessed May 4, 2011).

⁴⁴ Singh, "The Thai–Cambodia Temple Dispute," p. 25.

⁴⁵ Hinton, "Khmerness and the Thai 'Other'," p. 462.

but also residents from both sides. The residents living in and around the conflict zone were evacuated. The armed clashes in February 2011 killed one civilian and a military person and injured twenty-five people in Thailand. Moreover, as many as 6000 civilians were evacuated in Thailand alone. In Cambodia, it claimed six deaths and injured seventy one people. The clash also resulted in the material damage to the Temple of Preah Vihear.⁴⁶

The dispute has encouraged both sides to reinforce their military strength along the border. The more developed infrastructure in Thailand makes it easier to mobilize troops. In July 2008 the deployment of a number of troops and mobilized weapons was much higher. The increased military build-ups in the border area escalated to further tension and armed clashes.⁴⁷ In Cambodia, the Intervention Forces Brigade Nine, consisting of five border defense regiments, and the Intervention Force Division Three were set up in the border area of Preah Vihear province. Moreover, many shelters were erected along the border for the Cambodian troops. According to the Prime Minister of Cambodia, "as our urgent priority they are for our armed forces whose duty is to station here but once we have reinforcement forces to back them up, these buildings will serve as shelters for mobile units from the rear to take their turn of duty."⁴⁸ Such military build-ups and increase of the military facilities along the border areas have resulted in further tension and mistrust between the two countries.

In addition to the impacts of the border dispute on bilateral relations and peoples, politicians of both countries have used this conflict to strengthen their position in the domestic politics. The successful inscription of the Temple of Preah Vihear on the World Heritage List in July 2008, that resulted in fierce tensions at the border near the Temple, coincided with the parliamentary election campaign in Cambodia. The Cambodian ruling party, the

⁴⁶ Ministry of Foreign Affairs, Kingdom of Thailand, "Press Release: Press Conference on the Current Situation along the Thai–Cambodian Border (February 9, 2011)," <http://www.mfa.go.th/web/3035.php?id=26537> (accessed April 29, 2011) and H. E. Dr. Hor Namhong, Deputy Prime Minister and Minister of Foreign Affairs and International Cooperation of Cambodia, "Statement at Meeting of the United Nations Security Council on February 14, 2011," <http://www.mfaic.gov.kh/> (accessed April 29, 2011).

⁴⁷ Sathian, "Thailand in 2008," p. 73.

⁴⁸ "A tour to North-West Provinces and Military Regions," Cambodia New Vision, Issue 144 (February 2010), pp. 1–6, http://www.cnv.org.kh/cnv_html_pdf/cnv_144_feb_10.pdf (accessed May 3, 2011).

Cambodian People's Party (CPP), effectively exploited this opportunity to win the people mandate at the elections. The results of the elections proved the popularity of Prime Minister Hun Sen and his party whom many Cambodians regard as champions of the Cambodian national pride. CPP won 90 out of 123 parliament seats and could form the government without a coalition for the first time since 1993.⁴⁹ The power of Prime Minister Hun Sen has been further consolidated by nationalist sentiments within the people of Cambodia.

In Thailand, PAD (known as Yellow Shirts) used the issue of the Temple of Preah Vihear to incite the Thai people to nationalist sentiments and to put pressure on the Government in 2008, resulting in the resignation of Foreign Minister Noppadon Patama in July 2008. PAD was instrumental in the formation of the Democrat-led government in the end of 2008 but PAD is now imposing enormous pressure on Prime Minister Abhisit's government. PAD is accusing the government for having failed to defend the "national territory." In January 2011, PAD organized major rallies focusing on the issue of the Temple of Preah Vihear and demanded the Government to cancel the Memorandum of Understanding with Cambodia on border demarcation signed in 2000, to withdraw from the World Heritage Committee, and to expel any Cambodian from "Thai territory." This demonstration escalated the hostilities at the border and led to deadly clashes between Cambodian and Thai troops in February 2011.⁵⁰ With tremendous pressure not only from the opposition camp but also from PAD, Prime Minister Abhisit's Democrat Party will encounter severe challenges in the parliamentary elections scheduled to be held on July 3, 2011. Many politicians in Thailand are unarguably aware of the root causes of this contentious border dispute. As such, putting blame on the incumbent government is illogical and unfair. PAD's demands are not a way to resolve the conflict, but are rather further complicating the matter, especially considering the on-going building of an ASEAN Community that is due to be completed by 2015.

⁴⁹ Caroline Hughes, "Cambodia in 2008: Consolidation in the Midst of Crisis," *Asian Survey*, Vol. 49, No. 1 (January/February 2009), pp. 206f, <http://www.jstor.org/stable/10.1525/as.2009.49.1.206> (accessed May 4, 2011).

⁵⁰ International Crisis Group, "Thailand: The Calm before Another Storm?," *Asia Briefing*, No. 121 (April 11, 2011), p. 7, <http://www.crisisgroup.org/~media/Files/asia/south-east-asia/thailand/B121-%20Thailand-%20The%20Calm%20Before%20Another%20Storm.ashx> (accessed May 20, 2011).

Furthermore, the dispute also has impacts on ASEAN. As members of ASEAN and signatories of the Treaty of Amity and Cooperation (TAC), Cambodia and Thailand have both reiterated time and again “their strong commitment to the principles contained in TAC and the ASEAN Charter, including ‘settlement of differences or disputes by peaceful means’ and ‘renunciation of the threat or use of force’.”⁵¹ The chair of ASEAN also called for ASEAN solidarity and early resolution of the dispute. At the ASEAN Summit in Jakarta in May 2011, Cambodia and Thailand expressed their commitments to “peacefully resolve their differences through political dialogue and negotiations with a view to achieving mutually acceptable solution through the fullest utilization of their existing bilateral mechanism, with appropriate engagement of Indonesia, current Chair of ASEAN” and “agreed on the text of the Terms of Reference (TOR) on the Indonesian Observers Team (IOT) in the affected areas following the incidents in February 2011.”⁵² Dispatching Indonesian observers to the affected areas was agreed in principle at the Informal Meeting of ASEAN Foreign Ministers in February 2011. However, at the time of writing, more than three months has passed, but Indonesian observers have not yet gone to the areas. In his intervention at the ASEAN Summit, Thai Prime Minister Abhisit accepted that “the issue could affect the credibility of ASEAN.”⁵³ The volatile situation at the border between the two countries is seriously threatening the ASEAN members’ goal of establishing the ASEAN Community by 2015. It is clear that the genuine political will of the concerned parties is crucial for resolving the conflict. An effective dispute settlement mechanism should be put in place in ASEAN bearing in mind the principles of ASEAN – non-inference and consensus. Otherwise, the acts of Cambodia and Thailand in dealing with the issue will have an impact on the role of ASEAN in maintaining and promoting peace and security in the Asia Pacific region.

⁵¹ Statement by the Chairman of ASEAN following the Informal Meeting of the Foreign Ministers of ASEAN, Jakarta, February 22, 2011.

⁵² Chair’s Statement of the 18th ASEAN Summit, “ASEAN Community in a Global Community of Nations,” Jakarta, May 7–8, 2011, p. 23.

⁵³ Intervention of H. E. Prime Minister Abhisit Vejjajiva of the Kingdom of Thailand responding on the Thailand–Cambodia Issue at the Plenary Session of the 18th ASEAN Summit, May 7, 2011, Jakarta, <http://www.mfa.go.th/web/3035.php?id=27302> (accessed May 15, 2011).

Effectiveness of Bilateral Mechanisms vs. the Role of the International Community, particularly ASEAN

Both Cambodia and Thailand have put their efforts to resolve the dispute since Cambodia regained independence in 1953. In 1958, the two sides held unsuccessful discussion on matters relating to territorial issues including the ownership of the Temple of Preah Vihear, resulting in seeking judgment of the ICJ on the issue of the Temple.

After the Court's ruling in 1962, no bilateral mechanism between the two countries presumably existed to deal with the border and boundary related matters until the early 1990s. This was because of the suspension of their diplomatic relations from 1958 to 1970 and the civil war in Cambodia after 1970. In order to resolve the border problems, the General Border Committee (GBC) headed by the defense ministers of Cambodia and Thailand was established in the mid-1990s.⁵⁴ The Regional Border Committee (RBC) headed by the respective regional commanders of both countries was also set up.

Moreover, regarding the demarcation of land boundary, the Joint Communiqué and Joint Statement, signed by the Foreign Ministers of Cambodia and Thailand in 1994 and 1997, respectively, paved the way for the establishment of a Joint Commission for Land Boundary. Subsequently, with the aim to help prevent border conflict and facilitate travel and cooperation of the peoples along the border, a Memorandum of Understanding between Cambodia and Thailand on the Survey and Demarcation of Land Boundary was signed on June 14, 2000.⁵⁵ This MoU resulted in the formation of the Joint Boundary Commission (JBC), co-chaired by the advisor to the government in charge of State Border Affairs of Cambodia and the Deputy Minister of

⁵⁴ Paul W. Chambers and Siegfried O. Wolf, "Image-Formation at a Nation's Edge: Thai Perceptions of its Border Dispute with Cambodia – Implications for South Asia," Heidelberg Papers in South Asian and Comparative Politics, Working Paper No. 52 (February 2010), p. 9, http://archiv.ub.uni-eidelberg.de/volltextserver/volltexte/2010/10459/pdf/HPSACP_Wolf_Chambers_final.pdf (accessed June 7, 2011).

⁵⁵ Application Instituting Proceedings, "Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)," Application of Kingdom of Cambodia, p. 6, <http://www.icj-cij.org/docket/files/151/16470.pdf> (accessed June 1, 2011).

Foreign Affairs of Thailand. Under the JBC, a Joint Technical Sub-Commission was formed to assist the work of the JBC. Three JBC meetings were held in 2008 and 2009. However, although it was urgent to convene the JBC meetings also in 2010 and 2011, no such meeting took place until the JBC meeting in Bogor, Indonesia in April 2011, which was held under the aegis of the chair of ASEAN, Indonesia. The meeting was realized because Cambodia demanded that the records of the previous three meetings should be adopted by the Thai side before convening any further JBC meetings.⁵⁶ The existing legal procedure of Thailand seemed to stall the progress of the JBC process. The reason was that Section 190 of the Constitution of Thailand clarified that such agreed minutes can be adopted after the approval of the parliament. However, at the 18th ASEAN Summit, Prime Minister Abhisit informed that "Thailand's Constitutional Court has ruled on the Agreed Minutes of previous meetings of the JBC that they need not go to the Thai Parliament." At the last meeting of the JBC held in April 2011, both sides discussed matters relating to the "dispatch of the Thai-Cambodia joint technical teams to conduct field survey work," "qualification of a company to produce Orthophoto maps," and "opening of the new international point of entry."⁵⁷ The meeting focused on the boundary issues in general rather than the specific issue. Since the formation of the JBC, the two sides have met five times including the last meeting.

A GBC meeting was planned to be held back to back with the JBC meeting in April 2011 but it did not take place. Both sides have different opinions on even convening such a meeting. Cambodia insists on signing and exchanging of letters on the Terms of Reference on Indonesian Observers Team before GBC/JBC meetings, referring to the package of solutions agreed between the Foreign Ministers of Cambodia, Thailand and Indonesia on May 8, 2011, whereas Thailand wishes to hold the next GBC meeting before signing the exchange of letters.⁵⁸ Moreover, both sides have agreed to

⁵⁶ Prime Minister Hun Sen of Cambodia, "Address at the 18th ASEAN Summit," Jakarta, May 7-8, 2011, <http://primeministerhunsen.blogspot.com/2011/05/here-followed-are-adresses-by-samdech.html> (accessed June 6, 2011).

⁵⁷ Ministry of Foreign Affairs, Kingdom of Thailand, "Press Release: JBC Meeting ends satisfactorily (9 April 2011)," <http://www.mfa.go.th/web/3035.php?id=27032> (accessed April 29, 2011).

⁵⁸ Ministry of National Defense of Cambodia, "Statement," <http://www.pressocm.gov.kh/beta/index.php?view=detail&story=425> (accessed May 24, 2011).

receive a survey team from Indonesia before the GBC meeting to pave the way for deployment of the Indonesian observer team.⁵⁹

The RBC meetings headed by the respective regional commanders of the two countries are held more frequently than the GBC. Whenever clashes broke out, the two regional commanders try to meet to secure a ceasefire. When the most recent armed clashes occurred on April 22, 140 km from the area of the Temple of Preah Vihear, it was less than two weeks after the conclusion of the JBC meeting in Indonesia. On April 28, the Fourth Military Region Commander of Cambodia and the Second Army Regional Commander of Thailand met and reached an agreement to a ceasefire. Although the ceasefire agreement was reached, the skirmishes broke out again on April 29, but ended on May 3 after concerted efforts made by the two regional commanders.⁶⁰

Whenever violence broke out in the vicinity of the Temple of Preah Vihear, Cambodia has not hesitated to bring the issue to regional or international forums in order to resolve the issue, citing the stalemate of the bilateral mechanisms. On the other hand, Thailand has repeatedly contended that the bilateral mechanism is working and making progress and that the issue can be resolved bilaterally. Against this background, both Cambodia and Thailand welcome the involvement of Indonesia as Chair of ASEAN in the bilateral process of resolving the border dispute.

The Cambodia–Thailand border dispute was discussed at the 18th ASEAN Summit in May 2011. It was the first time. Before the Summit, the informal meeting on the border dispute of ASEAN Foreign Ministers was held in February 2011. Cambodia and Thailand have already agreed in principle to receive observers from the current Chair of ASEAN, Indonesia, to avoid further armed clashes between the two countries. According to a statement made by the Chair of ASEAN following the meeting, the observers are mandated “to assist and support the parties in respecting their commitment to avoid further armed clashes between them, by observing and reporting accurately, as well as impartially on complaints of violations and submitting its findings to each party through Indonesia, current chair of

⁵⁹ Bangkok Post, “Joint teams to border ahead of GBC,” May 24, 2011, <http://www.bangkokpost.com/breakingnews/238671/survey-teams-to-border-ahead-of-gbc> (accessed June 9, 2011).

⁶⁰ Prime Minister Hun Sen, “Address at the 18th ASEAN Summit.”

ASEAN.”⁶¹ Although the mandate is somehow limited, it will give ASEAN, particularly its current chair, a role to play in resolving the border dispute. Indonesia has successfully organized the trilateral meeting of the Foreign Ministers of Cambodia, Thailand and Indonesia in Jakarta on May 9, 2011 after the ASEAN Summit. At the meeting both sides agreed ad referendum on a package of solutions regarding signing of exchange of letters, convening of the GBC/JBC meetings, and the assignment of Indonesian observer team.

However, there are some constraints with regard to how far ASEAN can be involved in resolving the issue. Many ASEAN member countries consider the dispute as domestic matters of Cambodia and Thailand. According to Article Two of the ASEAN Charter, “ASEAN and its member States shall act in accordance with the principle of non-interference in the internal affairs of ASEAN Member States.” The Charter states that “Member States shall endeavor to resolve peacefully all disputes in a timely manner through dialogue, consultation and negotiation.”⁶² Yet, ASEAN does not have an effective mechanism to solve disputes. At the 18th ASEAN Summit, however, ASEAN Foreign Ministers were asked to come up with modalities for setting up of “an ASEAN Institute for Peace and Reconciliation.” Moreover, after Indonesia’s Chairmanship of ASEAN in 2011, Cambodia will be the Chair of ASEAN for 2012. If both countries agree to keep Indonesia involved in the matter, it would not be an issue.

The role of the international community can be a complement to the bilateral and regional efforts in resolving this contentious border issue. The ICJ had public hearings on May 30–31, 2011 on Cambodia’s request for the indication of provisional measures in the case concerning the request for the Interpretation of the Judgment of June 15, 1962. The ICJ’s ruling on the indication of provisional measures and interpretation will help resolving the dispute.

At the request of Cambodia, the United Nations Security Council convened a meeting on February 14, 2011 to discuss the Cambodia–Thailand border dispute. The Security Council “called on the two sides to display

⁶¹ “Statement by the Chairman of the Association of Southeast Asian Nations (ASEAN) following the Informal Meeting of the Foreign Ministers of ASEAN,” Jakarta, February 22, 2011.

⁶² “The ASEAN Charter,” pp. 6, 23, <http://www.aseansec.org/publications/ASEAN-Charter.pdf> (accessed June 10, 2011).

maximum restraint and avoid any action that may aggravate the situation" and "urged the parties to establish a permanent ceasefire" as well as "express support for ASEAN's active efforts in this matter and encouraged the parties to continue to cooperate with the organization in this regard."⁶³ In the light of the ICJ decision on the dispute, the Security Council has an important role to play to enforce the parties concerned to strictly abide by the ICJ's decision.

In addition to the ICJ and the Security Council, UNESCO World Heritage Committee is going to consider the management plan of the Temple of Preah Vihear at its thirty-fifth session, in accordance with the decision of the thirty-fourth session of the World Heritage Committee. Thailand is requesting the Committee to postpone the consideration of the management plan until the border demarcation is finalized. However, the risks of the destruction of the Temple of Preah Vihear, which is a World Heritage Site, have drawn the attention of the Committee. Taking into account of previous experiences, the Committee's act could trigger hostilities. Therefore, the Committee should consider all the factors carefully before making any decision.

There are also some countries that could play a role in resolving this ongoing contentious border dispute. Among them are members of the Security Council such as the regional economic power China, which has "a comprehensive partnership of cooperation" with Cambodia⁶⁴ and "strategic and cooperative relations" with Thailand,⁶⁵ and the United States, which has "deepened and broadened" relations with Cambodia⁶⁶ and has designated Thailand as a "major non-NATO Ally."⁶⁷ When U.S. Secretary of State Hillary Rodham Clinton expressed her deep concern over the armed clashes between Cambodia and Thailand in April 2011 and urged both parties to "exercise restraint, refrain from provocative acts, and immediately take all

⁶³ The United Nations Security Council, "Security Council Press Statement on Cambodia-Thailand Border Situation," SC/10174, February 14, 2011, <http://www.un.org/News/Press/docs//2011/sc10174.doc.htm> (accessed May 3, 2011).

⁶⁴ Ministry of Foreign Affairs of the People's Republic of China, "Bilateral Relations," <http://www.fmprc.gov.cn/eng/wjb/zzjg/yzs/gjlb/2696/> (accessed June 10, 2011).

⁶⁵ *Ibid.*

⁶⁶ Department of State of the United States of America, "Background Note: Cambodia," <http://www.state.gov/r/pa/ei/bgn/2732.htm> (accessed May 3, 2011).

⁶⁷ *Ibid.*

necessary steps to reduce tensions and avoid further conflict,”⁶⁸ the Ministry of National Defense of Cambodia welcomed and supported her statement.⁶⁹ It can be suggested that given their strong relationship with Cambodia and Thailand that both China and the United States could have significant influence in resolving this contentious border dispute.

⁶⁸ Department of State of the United States of America, “Situation on Thailand–Cambodia Border,” Press Statement, April 25, 2011, <http://www.state.gov/secretary/rm/2011/04/161761.htm> (accessed May 3, 2011).

⁶⁹ Ministry of National Defense of Cambodia, “Statement of the Spokesman of the Ministry of National Defense,” April 26, 2011, <http://www.mfaic.gov.kh/> (accessed May 2, 2011).

Possible Options for a Way Forward to Resolving the Dispute

With regard to settlement of disputes, Article 33 of Chapter VI of the UN Charter stipulates that “[t]he parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”⁷⁰ Furthermore, Article 22 of Chapter VIII of the ASEAN Charter states that “Member States shall endeavour to resolve peacefully all dispute in timely manner through dialogue, consultation and negotiation.”⁷¹

Both Cambodia and Thailand are members of the United Nations and ASEAN. Being responsible members of the international community, there is no doubt that they are committed to abide by the aforementioned stipulations in the course of resolving the contentious border dispute. Disputes related to boundary are usually complicated and have implications for the sovereignty and territorial integrity of a country. It takes years or even decades to resolve such disputes. The ongoing border dispute of the Temple of Preah Vihear between Cambodia and Thailand is no exception. Having understood the facts and current situation pertinent to this border dispute, it is important not only for Cambodia and Thailand but also the international community to explore ways and means to at least be able to move forward in order to resolve the dispute before it becomes uncontrollable and a threat to regional peace and stability.

Three options can be considered for a way forward to resolving the border dispute. It has rightly been pointed out by Rennie Silva that since both Cambodia and Thailand are committed to resolving the border dispute, it can easily be resolved bilaterally. However, it has not yet been the right time to do so due to the prevailing unfavorable political environment

⁷⁰ Charter of the United Nations, Chapter VI: Pacific Settlement of Disputes, Article 33, <http://www.un.org/en/documents/charter/chapter6.shtml> (accessed May 3, 2011).

⁷¹ The ASEAN Charter, Chapter VIII: Settlement of Disputes, Article 22, <http://www.aseansec.org/publications/ASEAN-Charter.pdf> (accessed June 10, 2011).

in both countries.⁷² Therefore, it is vital that they put utmost efforts on creating conditions conducive to a resolution. Resolving the dispute through the bilateral mechanisms is the ideal option for both countries as well as ASEAN, since many ASEAN member countries consider the issue a domestic matter of Cambodia and Thailand. However, the issue is now before the ICJ. The decision of the Court will satisfy only one of the two parties, or maybe none. Whatever decision the Court will take, as members of the United Nations, the two countries have the duty to implement it. The domestic reaction from both countries on the decision cannot be avoided.

In order to avoid a reoccurrence of armed clashes seen so far, it is important that all stakeholders are well prepared, such as the government, the military, politicians, even the general public, in order to prevent the manipulations of some politicians that could incite negative nationalist sentiments. They would be very difficult for the two governments to handle. There are a number of boundary disputes even within members of ASEAN that have been resolved before by the ICJ. The dispute over Pedra Branca between Malaysia and Singapore and the dispute over Sipadan and Litigan Islands between Indonesia and Malaysia were referred to the ICJ in 1994 and 1997, respectively.⁷³ The two countries respected the decisions of the ICJ.

Therefore, based on the Court's decision both countries should continue their negotiations through the existing bilateral mechanisms, namely the JBC, the GBC, and the RBC, together implementing the package of solutions agreed at the meeting of the Foreign Ministers of Cambodia, Thailand and Indonesia in May 2011 as well as continuing other bilateral talks where issues like the management plan of the Temple of Preah Vihear can be addressed. In this connection, the question may arise regarding the urgent need of repair and preservation of this World Heritage Site. As long as peace and stability prevails in the border area and both parties are on the right track for resolving the conflict, the concern over the repair and preservation of the Temple can be addressed.

Cambodia has expressed her frustration on the progress of the bilateral process. The most important factor for bringing about a successful

⁷² Rennie Silva, "Stepping Back from the Brink at Preah Vihear: Cambodia and Thailand's Choice," Institute for Security and Development Policy, Policy Brief, No. 55 (February 16, 2011).

⁷³ Amitav Acharya, "Constructing a Security Community in Southeast Asia: ASEAN and the problem of regional order" (London and New York: Routledge, 2001), p. 132.

resolution of the dispute is therefore to impose confidence-building measures in order to increase mutual trust between the two parties. Meanwhile, both sides need to avoid any misunderstanding to prevent from outbreak of further armed clashes in the border area.

Involvement of ASEAN in resolving the dispute is another option. The Chair of ASEAN has been involving itself and played a facilitating role in the negotiations between Cambodia and Thailand. The participation of the ASEAN Chair should be a complement to the bilateral negotiations using existing bilateral mechanisms. At this point in time, as agreed by Cambodia, Thailand and Indonesia, it is essential to send an Indonesian observer team to the respective areas of the two countries as quickly as possible, preferably before the ICJ issues its verdict. In the light of its ruling, it is important for Cambodia and Thailand to expedite an early conclusion of the Terms of Reference on the Indonesian Observer Team. However, there is a misunderstanding between Cambodia and Thailand as to the process of implementation of the package of solutions. Cambodia understood that signing of exchange of letters among Cambodia, Thailand, and Indonesia has to come first before proceeding further, whereas Thailand wants the GBC meeting to be held as soon as possible. At this point, clarification on the implementation of the package of solutions from the Chair of ASEAN should be sought. If the process of the package of solutions is not moved forward as expected, the countries concerned will become frustrated and try to find other ways to get the work done. Moreover, the role of the Chair of ASEAN will be crucial for restoring confidence building and trust between the two parties.

While ASEAN is putting its efforts into achieving the goal of establishing the ASEAN Community by 2015 and trying to be a driving force in maintaining and promoting of peace and stability in the Asia Pacific Region, the border dispute between Cambodia and Thailand is a test case for ASEAN as to its effective handling of the situation. Members of ASEAN have to strictly abide by the principle of non-interference in the internal affairs of member countries. On the other hand, one of the two conflicting parties has vividly expressed its desire of a third party being involved in the process of resolving the dispute. Moreover, the UN Security Council has welcomed ASEAN's efforts to resolve the dispute. Therefore, ASEAN would be more effective in resolving such a dispute between the two member countries, if an effective dispute mechanism is set up within ASEAN.

There are three likely processes for resolving the conflict, these being either bilaterally with or without the involvement of ASEAN, or direct resolution by the United Nations Security Council. Many countries, especially ASEAN member countries, will not like to see the issue taken up by the Security Council. According to them, only if all available bilateral and regional processes are exhausted should the conflict be brought to the Security Council. Otherwise, the action will diminish the role and efforts of ASEAN as well as affect the integrity of ASEAN. The role of the Security Council should only be to encourage the bilateral and regional processes to be more effective.

Whatever option the countries concerned will pursue for resolving the conflict, political leaders should establish a genuine political will for successfully resolving this contentious border dispute. In order to create mutual trust, it is also important to stop words of war occasionally expressed by officials of the two governments. With genuine political will and mutual trust, the involvement of ASEAN and encouragement from the international community particularly the United States and China, the dispute will no doubt be resolved amicably through peaceful means.

Conclusion

Neighboring countries who share a common border frequently encounter boundary as well as border disputes. Cambodia and Thailand are no exception because most parts of their 800 km long border frontier have not been properly demarcated yet. Confusion over border demarcation is one of the unwanted legacies left by the colonialists in many parts of the world particularly in Asia. Such confusion has prolonged the dispute. But there are many success stories of resolving border conflicts through peaceful means.

In order to avoid heavy casualties and damage of property, a confrontational approach to resolve the contentious border dispute between Cambodia and Thailand is out of question. No matter how the conflict is to be resolved, bilaterally or in the regional and international contexts, a key issue to the successful resolution of the dispute is the existence of genuine political will, sincerity, confidence, and trust between the two governments and peoples. Even if both sides have political will, there are domestic actors who want to exploit the matter to put pressure upon the governments by whipping up nationalist sentiments for advancing their own political agenda. Furthermore, complexity on the ground, such as the question of who started the armed clashes, renders the dispute more vulnerable and easily manipulated. As such the success of the resolution of the dispute rests on the establishment of political will and sincerity by the respective governments themselves and on the introduction of confidence building measures in order to increase mutual trust between the two nations and peoples. With the combined efforts, the involvement of ASEAN and encouragement of the international community, the peaceful resolution through the existing bilateral mechanisms, based on genuine political will, sincerity, and mutual trust between the two countries, is achievable.

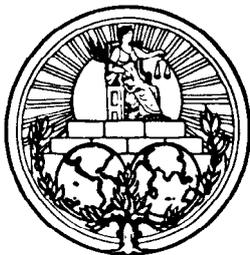
(Final manuscript submitted June 27, 2011)

The International Criminal Court in the Hague, the Netherlands, found on July 18, 2011, that "both Parties must immediately withdraw their military personnel currently present in the provisional demilitarized zone defined by it, and refrain from any military presence within that zone and from any armed activity directed at that zone." The Court upheld the 1962 judgment on the rights of the Temple in favor of Cambodia. See Appendix.

About the author

Kyaw Moe Tun holds a MBA from the International University of Japan, Japan and BA (International Relations) from the University of Yangon, Myanmar. He joined the Ministry of Foreign Affairs in November 1993 and has served in various capacities at the Ministry and the Myanmar Embassy in Jakarta and the Permanent Mission of Myanmar to the United Nations in New York. Currently, he is serving as Deputy Director at the Southeast Asia Division, Political Department of the Ministry of Foreign Affairs of Myanmar. He was a visiting research fellow at ISDP from April 27 to June 28, 2011.

Appendix 1.



INTERNATIONAL COURT OF JUSTICE

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Press Release

Unofficial

No. 2011/22

18 July 2011

Request for interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)

Request for the indication of provisional measures

The Court finds that both Parties must immediately withdraw their military personnel currently present in the provisional demilitarized zone defined by it, and refrain from any military presence within that zone and from any armed activity directed at that zone

THE HAGUE, 18 July 2011. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today gave its decision on the request for the indication of provisional measures submitted by Cambodia in the case concerning the Request for the interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand).

In its Order, the Court first unanimously rejected Thailand's request for the case introduced by Cambodia to be removed from the General List.

It then indicated various provisional measures. The Court began by stating, by eleven votes to five, that both Parties should immediately withdraw their military personnel currently present in the provisional demilitarized zone, as defined in paragraph 62 of its Order (see the illustrative sketch-map appended to the Order and to this press release), and refrain from any military presence within that zone and from any armed activity directed at it.

Having noted that the Temple area had been the scene of armed clashes between the Parties and that such clashes might reoccur, the Court decided that, in order to ensure that no irreparable damage was caused, there was an urgent need for the presence of all armed forces to be temporarily excluded from a provisional demilitarized zone around the area of the Temple.

The Court also stated, by fifteen votes to one, that Thailand should not obstruct Cambodia's free access to the Temple of Preah Vihear, or prevent it from providing fresh supplies to its non-military personnel; it said that Cambodia and Thailand should continue their co-operation within ASEAN and, in particular, allow the observers appointed by that organization to have access to the provisional demilitarized zone, and that both Parties should refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

Lastly, the Court decided, by fifteen votes to one, that each of the Parties should inform it as to its compliance with the above provisional measures and that, until the Court had rendered its judgment on the request for interpretation, it would remain seised of the matters which form the subject of the Order.

Jurisdiction and legal conditions required for the indication of provisional measures

The Court concluded (paragraphs 19 to 32 of the Order) that a dispute appeared to exist between the Parties as to the meaning or scope of its 1962 Judgment and that it therefore appeared that the Court could, pursuant to Article 60 of the Statute, entertain the request for interpretation submitted by Cambodia. Accordingly, it declared that it could not accede to the request by Thailand that the case be removed from the General List (see above) and added that there was sufficient basis for the Court to be able to indicate the provisional measures requested by Cambodia, if the necessary conditions were fulfilled. The Court then examined those conditions one by one (paras. 35 to 56), and concluded that they had been satisfied. Firstly, it considered that the rights claimed by Cambodia, as derived from the 1962 Judgment, in the light of its interpretation thereof, were plausible. Secondly, the Court considered that the provisional measures requested sought to protect the rights invoked by Cambodia in its request for interpretation and that the requisite link between the alleged rights and the measures sought was therefore established. Thirdly, it considered that there was a real and imminent risk of irreparable damage being caused to the rights claimed by Cambodia before the Court had given its final decision, and that there was urgency.

Finally, the Court recalled that orders indicating provisional measures had binding effect and thus created international legal obligations with which both Parties were required to comply. It also observed that the decision given in the present proceedings on the request for the indication of provisional measures in no way prejudged any question that the Court might have to deal with relating to the Request for interpretation.

Note: The Court's press releases do not constitute official documents. This press release is a concise summary of the decision taken by the Court, for information purposes only. A more comprehensive and detailed [summary](#) of this decision can be found in the "Cases" section of the Court's website. The history of the proceedings is presented in paragraphs 1 to 18 of the Order, the [full text](#) of which can be found in the same section of the website.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the Parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. It is assisted by a Registry. The official languages of the Court are French and English.

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SKETCH—MAP OF PROVISIONAL DEMILITARIZED ZONE IDENTIFIED BY THE COURT

This sketch-map has been prepared for illustrative purposes only

