CHAPTER-5
"THAILAND AND NEIGHBOURING COUNTRIES BETWEEN 2000-2008: [CASE STUDY OF THAILAND - CAMBODIA RELATIONS WITH SPECIAL REFERENCE TO PRASAT PRE AH VIHEAR TEMPLE]"
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The National Flag of the Royal Kingdom of Thailand

The National Flag of the Royal Preah Reacheanachdk Kampuchea

[Kingdom of Cambodia]

N.B: The name of the country Burma was the UNION OF BURMA till 1988. After 1988, the name changed to UNION OF MYANMAR. In this chapter, therefore, the country is addressed as Burma till 1988, and Myanmar after 1988.

HISTORICAL FACTS

Proper Name - Prasat Preah Vihear

In Khmer Language called as: Prasat Preah Vihea;

In Thai Language called as : Prasat Phra Wihan .

Architectural styles: Banteay Srei style and others

Date of the Current Structure: 11th to 12th Centuries AD.

Reigning Deity of the Prasat Preah Vihear: Lord Shiva, the Traditional Hindu God.

Creator : King Suryavarman I and Suryavarman II.

History: It is an ancient Hindu temple built during the reign of the Khmer Empire. It is exactly situated atop a 525-metre (1,722 ft) cliff in the Dangrek Mountains. It is situated in the Preah Vihear province, of Cambodia.
The Historical Burden of Cambodia

Politics in Cambodia have always been subject to quite complex conditions. The recent history of the country is widely characterized by an overall instability of political and social institutions and by numerous confrontations. There have been neither resilient liberal and/or democratic structures nor traditions of a willingness to share power. Instead, a "winner-takes-all political culture based on endemic distrust" has narrowed the space for balanced policies, consensus in decision-making processes, and participation rights for political minorities. The consequence had, until the 1990s, been violence, something still part of the general political awareness. Particularly, the knowledge of nearly 30 years of genocide and war, including the civil war did shape the behaviour of the politicians in terms of their competition for power and their (un-willingness to cooperate in virtually all public spheres of society and economics. The significance of leaders and leadership has always been preeminent. Undoubtedly, the domestic politics of Cambodia strongly depend on the experiences of the various leaders who have had alliances, coalitions, hostilities, warlike battles, etc. with each other. Due to the fundamental lack of social confidence in general, very personalized forms of governance replaced formal institutions. Four major regime changes between 1970 and 1993 can be regarded as both the reason for and consequence of that. Beyond these endogenous factors, exogenous influence has also contributed in intensifying the Cambodian conflicts. Since the 1960s, international powers have perceived Cambodia as a place, where they had to safeguard their strategic interests. After the France decolonized its Indochinese possessions, only partly by choice, Cambodia was pulled into the Vietnam War by all belligerents. In 1970, General Lon Nol toppled the Cambodian head of state, Prince Norodom Sihanouk, who had tried to sustain the neutrality of Cambodia. After the United States withdrew their forces from Vietnam, Cambodia and Laos, the American-backed regime in Phnom Penh collapsed in 1975 and was replaced by the nationalist-Maoist

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Khmer Rouge, which gained support from the People's Republic of China [PRC]. Their terror ended eventually in 1979 when Vietnam, termed as a close ally of the Soviet Union succeeded in a short war against the Democratic Kampuchea regime.

In the 1980s, the Cambodian civil war continued with international support on both the sides. The resistance groups in western Cambodia were mainly backed by China, Thailand, and the US whereas the new regime in Phnom Penh, since the end of 1984 led by Prime Minister Hun Sen heavily depended on the military support of Vietnam as well as financial and technical assistance from the Soviet Union and the whole of the Eastern Bloc. Until the end of the bipolar world order there was not a visible peaceful solution for Cambodia. Following two decades in which the country was turned into a battlefield, the peacekeeping in Cambodia was supposed to be accomplished with enormous international, mainly Western support.

The euphoria at the end of the Cold War was strong: It was devoutly believed that a continuing "third wave of democratization" in all former socialist states would cause the "end of history". Cambodia was the first area in the third wave of democratization where Western support was supposed to have transformed a failed state into a liberal democracy. The United Nations Transitional Authority in Cambodia (UNTAC), at that time the most expensive UN mission ever created, was charged with helping Cambodia to conduct general elections to the National Assembly, which adopted a new constitution in 1993. Interestingly, even today, the constitution of Cambodia appears quite modern. It reflects the values of a liberal democracy, including human rights, the rule of law, and the separation of powers. But the reality of Cambodian politics has not changed at all. Immediately after the first UN organized elections of 1993, which the post-communist Cambodian People's Party (CPP) lost, it

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337 This occurred in the early 1990s. However, Cambodia was not the first attempt at external democracy promotion by the West: After World War II, West Germany and Japan emerged successfully from fascist rule through the enforcement and active assistance of the United States.
became obvious that power still primarily depended on the barrel of a gun. The winner of the 1993 elections, Royalist party FUNCINPEC (Front Uni National pour un Cambodge Independant, Neutre, Pacifique, et Cooperatif), was forced into a coalition government with the CPP, which still controlled the state administration and most military units. In 1997, then Second Prime Minister Hun Sen started a bloody coup d’etat to destroy the power resources of the FUNCINPEC and to reinstate his sole leadership. More violent eruptions took place during the 1998 elections which indeed did put Hun Sen and his party in an unchallenged dominating position. Since then, democratic principles have been continuously weakened, considerably reducing the scope of action for oppositional politicians and civil society actors.

After the decline of the Khmer Empire in the 15th century, Cambodia experienced continuous internal dynastic power struggles that went hand in hand with the emergence of more powerful neighbors, namely Siam (Thailand) and Dai Viet (Vietnam). The influence of both countries on Cambodia has continued to shape the foreign relations of Cambodia during the Cold War period and beyond. Although Cambodia has enjoyed domestic and regional stability during the last decade, these conflicts between Cambodia and Thailand since 2008 over the ownership of Preah Vihear temple and adjacent boundary lines have dominated the media coverage in both countries and around the world. Politicians, legal experts, scholars and the general public have offered various accounts and explanation on the conflict. Interestingly, many a recent scholarship on Cambodian-Thai diplomatic relations too tends to focus mainly on the Preah Vihear and Cambodia-Thai border conflict. Cambodia dominated large parts of Thailand from the ninth to the twelfth centuries. Four hundred years is little more than a moment in the life of a region with a recorded history of several millennia. But the remnants of Khmer rule still dot the Cambodia-Thailand borderland, especially in Esarn, as Northeast Thailand is known. In fact, apart from Angkor Wat and its neighbouring temples, the most spectacular
remaining Khmer sanctuaries are found in the border region between Cambodia and Thailand.  

Many scholars have suggested that "nationalism" and "historical antagonism" are the main elements of the relations between the two countries, which culminated into this dispute. While some scholars have recognized that relations between the two countries are tied to domestic issues, especially on the Thai side, analyses have been limited to focusing on contemporary Thai politics only. Earlier works on relations between Cambodia and Thailand were confined only to a specific periods (e.g. during Khmer Rouge period, or during the Third Indochina War period in the 1980s). Since the end of World War II to the present, several antagonistic regimes have taken power in Cambodia and to a lesser extent, in Thailand as well. Although it is necessary to point out the existence of nationalism and historical antagonism as factors in the relations of these two countries, it proposes that one can only have a deeper understanding of the issue by treating Cambodia and Thailand not as two unitary states, but as two countries each comprising various domestic political forces competing for control in their own respective state. In other words, relations between the two countries should be understood not simply as "Cambodian - Thai" as such, but as relations between different political forces wielding powers in both countries. In doing so, the research employs the 'Social Conflict Analysis' proposed by Lee Jones, who suggested that "rather than seeing states as unitary actors responding to or securitizing threats, [...] we should analyze the way in which potential security issues are viewed by different societal forces operating upon and within the state and understand security policy as the outcome of power struggles between these forces. Different societal groups always evaluate potential security issues in relation to their own interests, ideologies, and strategies". Relations between Cambodia and Thailand during the last six decades should therefore be examined by looking at the domestic forces that competed with each other for

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the control of power in both Cambodia and Thailand, and accordingly, their foreign policies should be understood as products of interests, ideologies, and strategies of each government, rather than simply of historically-bound nationalism between the two states. Neither were the relations simply determined by international realpolitik as realists would argue. This approach does not ignore the international forces that might shape the foreign policies of states. Yet, unlike in the realist paradigm, the "social conflict" analysis does not view the international structure or threat as objectively defined. Instead, it takes into accounts who wield the power and how they define security or threat according to their own interests, ideologies, and strategies. Another argument that could be projected is that the international pressure and the domestic forces sometimes create a dilemma for the state in carrying out their foreign policies. When that happens, it is usually the case that the domestic forces are prioritized. Therefore, instead of viewing Cambodian-Thai diplomatic relations as simply between two unitary states, one should "pinpoint" and "reveal" the two states and understand as to which group wields the power in each country and how they are responsible for foreign policy decision-making, and finally how the domestic power struggle of different groups can shape the relations of the two countries.

The end of World War II witnessed more pressing nationalist movements in many parts of Southeast Asia. In the case of Cambodia, the return of the French after a brief Japanese occupation interlude (March - October 1945) was met with little resistance. Nevertheless, to appease any possible uprising, the French felt it was necessary to accommodate the Cambodian political sentiment by allowing the first national election, which was held in June 1946. This first election and the subsequent ones until 1955 had paved the way for politicians in the Democratic Party to dominate the political landscape in Cambodia. Initially led by Prince Yuthevong, and eventually by non-royal Khmer intellectuals, the Democrats represented a political force in Cambodia which pushed for independence from France, and harbored anti-Vietnamese sentiments. For instance, they resented the fact that the French had invested more on education
in Saigon than in Cambodia and also allowed the Vietnamese to take civil servant positions in Cambodia, as well as laborers in the rubber plantations.

History of Preah Vihear

King Yasovarman, son of King Indravarman, who reigned from 889 to about 910, was an important king in the Angkorean rule of modern Cambodia [or the ancient Kambuja]. His inscriptions and his buildings suggest that he wanted to do more than his father did and to focus Cambodia around a royal city. Yasodharapura, the "city" of Angkor, bore his name until it was abandoned in the 1500s. The first official action of Yasovarman appears to have been to endow "a hundred" religious hermitages, equipping each with a royal rest house and a set of regulations.340 The spread of the inscriptions suggests that Kambuja-desa was becoming a recognized concept as well as an ideal. Soon after this, Yasovarman honored his parents by building four brick temples, now known as Lolei, on an island he had built in the middle of the reservoir build by his father. At the northeast corner of the reservoir, a time-honored direction in Cambodian religious thinking, he built a raised highway running northwest toward the area sixteen kilometers (ten miles) away from where he planned to establish his capital city. This area now houses the Angkor complex.

Yasovarman's choice of Angkor was probably influenced by his plan to build his own temple-mountain there on the summit of a natural hill. The choices available to him included a hill (Phnom Krom) that was too close to the Tonle Sap and another (Phnom Bok) that was too far away. He constructed small temples on these two hills, however, and built his main temple on the hill known today as Phnom Bakheng and then as phnom kandal ("central mountain"), which still lies close to the center of the Angkor complex.

The Sdok Kak Thorn inscription tells us that Yasovarman "established the royal city of Sri Yasodharapura and brought the devaraja from Hariharalaya to


this city. He then erected a central mountain (*phnom kandat*). Yasovarman's mountain was not identified as Phnom Bakheng until the 1930s. In conception and execution, it is far more grandiose than any of his father's monuments. Its symbolism has been studied in detail by Jean Filliozat, who has shown that the number of levels, statues, towers, and stairways, when read separately and together, correspond to various numbers, particularly 33 and 108, endowed by Indian religion with metaphysical significance. In some cases, pilgrims approaching the monument would be able to catch this allusion by counting the number of towers they could see.\(^{344}\) To the east of Phnom Bakheng, Yasovarman built a reservoir, the Yasodharatataka, roughly 6.5 kilometers (four miles) long and three kilometers (two miles) wide. Along its southern shore he had monasteries built for sects that honored Lord Siva, Lord Vishnu, and the Lord Buddha. Elsewhere, throughout his kingdom, he ordered temples built on natural hills, the most notable being Preah Vihear, on the edge of the precipice that nowadays forms part of the frontier between Cambodia and Thailand.\(^{345}\)

The flurry of these contradictory activities in the field of foreign relations suggests instability at the court that is reflected in the frequent moves the king made, his premature abdication, and his unwillingness or inability to remain at peace with the Thai, who unsuccessfully laid siege to Lovek in 1587, a date confirmed by an inscription from southeastern Cambodia.\(^{346}\) The subsequent Cambodian diplomatic maneuvering is a guide, which seems likely that these sixteenth-century moves were attempts by the king to remain in power despite the existence of the heavily armed, more popular relatives and in the face of threats from Ayutthaya [in modern Thailand] and the surprisingly powerful Lao


\(^{345}\) See John Black, *The Lofty Sanctuary of Khao Prah Vihar* (Bangkok, 1976).

states to the north. By 1593 Thai prepared for a new campaign against Lovek, which forced the Cambodian king to look overseas for help. He appealed to the Spanish governor-general of the Philippines, even promising to convert to Christianity, if sufficient aid were forthcoming. Before his letter had been acted on, however, the king and his young son fled north to southern Laos, and another son was placed in charge of the defense of Lovek. The city of Lovek, however fell in 1594. Although Cambodian military forces were often as strong as those of the Thai throughout most of the seventeenth century, and although European traders were often attracted to Cambodia almost as strongly as they were to Ayutthaya at this time, Thai and Cambodian historiography and Cambodian legend interpret the capture of Lovek as a turning point in Cambodian history, ushering in centuries of Cambodian weakness and intermittent Thai hegemony. The facts of the case as they appear in European sources are more nuanced than this, but the belief is still strong on both sides of the poorly demarcated border that a traumatic event (for the Cambodians) had taken place. The popular legend of preah ko preah kaev, first published in fragmentary form by a French scholar in the 1860s, is helpful on this point and is worth examining in detail. According to the legend, the citadel of Lovek was so large that no horse could gallop around it. Inside were two statues, preah ko ("sacred cow") and preah kaev ("sacred precious stone"). Inside the bellies of these statues, "there were sacred books, in gold, where one could learn formulae, and books where one could learn about anything in the world. . . . Now the king of Siam wanted to have the statues, so he raised an army and came to fight the Cambodian king."348 The legend then relates an incident contained in the chronicles as well. Thai cannon fired silver coins, rather than shells, into the bamboo hedges that served as fortifications of Lovek. Thus, when the Thai retreated, the Cambodians cut down the hedges to get at the coins and had no

347 K. 809, from Prasat Kandol Dom, JIC, Vol. 1, p. 43.
defenses when the Thai returned in the following year to assault the city. When they had won, the Thai carried off the two statues to Siam. After opening up their bellies, the legend tells us, they were able to take the books which were hidden there and study their contents. For this reason they became superior in knowledge to the Cambodians, and for this reason the Cambodians are ignorant, and lack people to do what is necessary for themselves, unlike other countries.

Although keyed to the capture of Lovek, the legend may in fact be related to the long-term collapse of Angkor and perhaps to the relationships that had developed between Siam and Cambodia by the nineteenth century, when the legend emerged in the historical record. The temptation to prefer the earlier collapse as the source for the legend may spring from the robust between the metaphors of the legend and what it is as known to have happened, i.e., the slow transfer of regalia, documents, customs, and learned men from Angkor of Cambodia to Ayutthaya of Thailand in the period between the death of Jayavarman VII and the Thai invasions of the fifteenth century. Given this historical incident, it can be argued that the statue of preah ko is a metaphor for the Indian heritage of Cambodia and clearly represents Nandin, the mount of Lord Shiva. The less precisely described preah kaev is a metaphor for Buddhist legitimacy, embodied by a Buddha image like the one taken from Vientiane by the Thai in the 1820s and known as a preah kaev, enshrined in the temple of Bangkok; a replica is housed in the so-called Silver Pagoda in Phnom Penh too. The seepage of literary skills from Cambodia to Siam and the increasing power of the Thai from the seventeenth century onward are ingredients in the legend which, like that of the leper king may contain a collective memory of real occurrences half-hidden by a metaphorical frame of reference. The Cambodian scholar Ang Choulean, in his discussion of this legend, has called it "partially historic, mostly legend, but above all totally coherent."349 The myth, in other words, may have been used by many Cambodians to explain the weakness of

Cambodia vis-a-vis the Thai, in terms of its unmeritorious behavior (read 'chasing after the coins') and its former strength in terms of palladia that could be taken away. The closing years of the sixteenth century, when the capture of Lovek took place, are well documented in European sources, evidencing some amount of truth in it. These years were marked by Spanish imperialism in Cambodia, directed from the Philippines and orchestrated largely by two adventurers named Bias Ruiz and Diego de Veloso. Their exploits illuminate three themes that were to remain important in the Cambodian history. The first was the susceptibility to blandishments of the king and promises on the part of visitors who came, as it were, from outer space. Both Spaniards were honored with bureaucratic titles and given sruk to govern and princesses for wives. The second theme was the revolution in warfare brought on by the introduction of firearms, particularly naval cannon, which played a major part in all subsequent Cambodian wars. Because they were masters of a new technology, Ruiz and Veloso were able to terrorize local people just as their contemporaries could in Spanish America, while accompanied by fewer than a hundred men. The third theme was that by the end of the sixteenth century the Cambodian king and his courtiers had become entangled in the outside world, symbolized at the time by the multitude of foreign traders residing in Lovek and Phnom Penh. European writers thus, emphasized the importance of these people and the foreign residential quarters at Lovek. These included separate quarters for Chinese, Japanese, Arabs, Spanish, and Portuguese as well as traders from the Indonesian archipelago; they were joined briefly in the seventeenth century by traders from Holland and Great Britain. The traders worked through officials close to the king and members of the royal family, as well as through their compatriots. In the seventeenth century, according to the Dutch sources, foreign traders were required to live in specific areas of the new capital, Udong, reserved for them

and to deal with the Cambodian government only through appointed representatives, or *shabandar*. This pattern may have originated in China and also applied in Siam. Its presence at Lovek in the depths of the so-called decline of Cambodia, like other bits of data, suggests that the kingdom was by no means dead.

The Spanish missionary San Antonio also left an account of the closing years of the sixteenth century, which includes the adventures of Ruiz and Veloso. His account is often illuminating and occasionally comic, as when he attributes the construction of the temples at Angkor to the Jews, echoing local disbelief in Cambodian technology. ⁵ He was also convinced that Spain should colonize the kingdom for religious and commercial reasons, and this may have led him to exaggerate the value of its resources, as French visitors were to do in the 1860s. His impressions of prosperity may have sprung from the fact that visitors were forced by the absence of overland communication to limit their observations of Cambodia to the relatively rich and populated areas along the Mekong north of Phnom Penh, an area that was still one of the most prosperous in Cambodia when it was studied four hundred years later by Jean Delvert. ²⁰ The goods that San Antonio saw included gold, silver, precious stones, silk and cotton cloth, incense, lacquer, ivory, rice, fruit, elephants, buffalo, and rhinoceros. The last was valued for its horns, skin, blood, and teeth as a "subtle antidote for a number of illnesses, particularly those of the heart," a reference to the Chinese belief that rhinoceros by-products were effective as aphrodisiacs. San Antonio stressed that Cambodia was prosperous because it was a gateway to Laos which, almost unknown to Europeans, was assumed to be some sort of El Dorado. He closed his discussion of Cambodia's prosperity with a passage that might seem to have been lifted from *Hansel and Gretel*, echoing the *preah ko preah keo* myth while altering the villains: 'There are so many precious things in Cambodia that when the king [recently] fled to Laos, he scattered gold and

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silver coins, for a number of days, along the road so that the Siamese would be too busy gathering them up to capture him." San Antonio also remarked that the country contained only two classes of people, the rich and the poor: The Cambodians recognize only one king. Among them there are nobles and commoners. All the nobles have several wives, the number depending on how rich they are. High ranking women are white and beautiful; those of the common people are brown. These women work the soil while their husbands make war. . The nobles dress in silk and fine cotton and gauze. The Nobles travel in litters, which people carry on their shoulders, while the common people travel by cart, on buffalo, and on horseback. They pay to the principal officials, and to the king, one-tenth of the value of all goods taken from the sea and land. The slave-owning, non-mercantile middle class noted by Zhou Daguan seems to have diminished in importance, although there is evidence from legal codes and at least one chronicle that it continued to exist. It is possible that its place was taken in Cambodian society to a large extent by foreign traders and semi-urban hangers-on, while ethnic Khmer remained primarily rice farmers, officials, members of the sangha, and gatherers of primary produce. San Antonio's contempt for the sangha seems to have exceeded his curiosity. As so often happens in the Cambodian history, the rice farmers are omitted from the record. In the interior Cambodia, and from the kompong, villages were linked to the trading capitals by economic relationships, by taxation, and by the social mobility provided by the sangha, thereby the villagers were leading their lives at ease. This has in fact allowed the kingship and other institutions in Cambodia to flourish, else they would have withered on the vine. However, the most interesting factor is that in terms of impression, these major actors remained


invisible and their voices remained unheard. In the early seventeenth century, Cambodia became a maritime kingdom, with the prosperity of its elite dependent on seaborne overseas trade conducted in large part by the European traders, Chinese, and ethnic Malays operating out of Sumatra and Sulawesi. Japanese and European visitors, the Dutch, English, and the Portuguese also left records of this period, which are useful as they corroborate and supplement to the existing Cambodian chronicles. These people were also involved in factionalism at the court and in plotting among themselves. Thus, it is evident that the ancient Cambodia, or Kambuja was vibrant and in terms of influence had overshadowed or somewhat similar to the Siam in many ways.

Preah Vihear, known as Khao Phra Viharn in Thailand, is one of the great achievements of Khmer architecture and certainly one of the most impressive temples in Southeast Asia. It crowns a triangular promontory in the Dangrek Mountains some six hundred meters above sea level on the modern-day border between Cambodia and Thailand. While most Khmer sanctuaries face east, Preah Vihear faces north toward the highlands which form a part of modern Thailand. At the top of the sanctuary, a sheer precipice drops off to the plains of Cambodia which stretch south to the distant horizon. The background and location of Preah Vihear makes it an integral part of any discussion of the contemporary borderland in this troubled area of the world. Even though Siamese forces repeatedly invaded Cambodia after the fifteenth century, the present border dispute actually dates from the period of the French protectorate. In the Franco-Thai treaties of 1887 and 1893, the government of Siam renounced all territorial claims on the left bank of the Mekong River, including the islands located in the river. Through a later series of treaties concluded in 1902-1907, Siam also ceded to France the border provinces of Battambang, Sisophon and Siem Reap. As for Preah Vihear, the 1904 convention described the frontier in the Dangrek Mountains as the watershed between the basins of the Nam Sen and the Mekong, on the one hand, and the

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Nam Moun, on the other, and provided for a mixed commission to mark the border. Thailand, as Siam was by then called, took advantage of World War II to regain some of the territory it had earlier lost. The Thai army invaded northwestern Cambodia in 1941, and after fierce fighting, took control of Battambang and Siem Reap provinces with the exception of the French garrisons at Angkor Wat and Siem Reap town. The Thai takeover was legitimised with Japanese backing in a peace treaty signed in Tokyo in March 1941. Through this agreement, France agreed to return to Thailand most of the territory, including Preah Vihear, earlier ceded by the latter in the pacts of 1904 and 1907. In supplementary letters exchanged at the time, representatives of France and Thailand assured the Japanese government that neither would join a combination hostile to Japan. In turn, the Japanese government agreed to guarantee the new frontier. With the termination of hostilities in 1945, the Tokyo convention was subsequently overturned; and in the 1946 Treaty of Washington, Thailand returned the border provinces it had seized five years earlier. In 1953, the government of Thailand, under the pretext of strengthening its border defences, established a police post in the Dangrek Mountains just north of Preah Vihear and hoisted the Thai flag over the sanctuary. When protracted negotiations from 1954 to 1958 failed to produce a positive result, the Cambodian government in October 1959 instituted legal proceedings against Thailand before the International Court of Justice. In October 1961, the dispute led to a suspension of diplomatic relations and the closing of the Thai-Cambodian border. Preah Vihear remained under Thai occupation until the early 1960's when the International Court of Justice upheld Cambodian sovereignty.

Legal Framework of the ICJ: Case of Cambodia v. Thailand regarding Preah Vihear Temple

The International Court of Justice is the primary judicial organ of the United Nations. One of its main functions is to settle legal disputes submitted to it by states.\textsuperscript{363} In 1959 in response to Thailand's continued occupation of Preah Vihear Temple and the failed negotiations between the two countries, Cambodia initiated proceedings before the ICJ.\textsuperscript{364} The issue before the court was whether Cambodia or Thailand had territorial sovereignty over the region of the Temple of Preah Vihear. In deciding this issue, the court applied the doctrines of acquiescence and estoppel and essentially gave legal effect to a map that at its inception had no binding character. While maps do not, of themselves, conclusively determine a territorial boundary, they may be determinant evidence of the location of a boundary if the map has been integrated as part of a treaty between the relevant states.\textsuperscript{365} It was the acceptance or acquiescence by Thailand of the map delineating the boundary that rendered it a part of the treaty itself and thereby bound both states.\textsuperscript{366} The Court, on the basis of the doctrine of estoppel, also decided Thailand was precluded from denying the legality of the map fifty years later - irrespective of its possible incorrectness. Because this map placed the temple in Cambodian territory, the court held that the Temple of Preah Vihear was situated in territory under the sovereignty of Cambodia and that Thailand was obligated to withdraw any military or police forces stationed at the Temple or in its vicinity on Cambodian territory.

**Background Facts of the ICJ Cambodia v/s Thailand**

Although the background facts of the opinion are lengthy and highly detailed, they are crucial to having a proper understanding of the reasoning behind the decision of the majority. The facts are essentially split into two

\textsuperscript{366} Ibid.,
\textsuperscript{357} Ibid.,
\textsuperscript{368} Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. 6.
sections: a) The treaties and commissions that occurred between 1904 and 1909
and b) The events post-1909 up until the time the case was brought before the
ICJ in 1959.

Treaties and Commissions between 1904-1909

On February 13, 1904 a treaty was established between Thailand (then Siam) and Cambodia (then a French protectorate) to arrive at a new boundary settlement. Both parties agreed that sovereignty over Preah Vihear depended on this treaty and upon events subsequent to that date. Article 1 of this treaty stated that the frontier between Thailand and Cambodia would follow the watershed between the basins on the Nam Sen and Mekong Rivers on the one hand and the Nam Moun River, on the other hand. If the watershed principle had been followed, the Temple would have been situated in Thailand. However, Article 3 of the treaty provided for a delimitation of the frontier to be carried out by a Mixed Commission (First Mixed Commission) composed of members of both countries. The First Mixed Commission was to survey the area and produce a final determination of the frontier, the last intended step being the signing by all commissioners of a map on which the frontier had been fixed. The court reasoned that although Article 1 said the watershed line should be followed, this was merely a reference point, and that the purpose of Article 3 was to establish the actual and final line of the frontier.

On November 29, 1905 the First Commission under the Treaty of 1904 was formed and held their first meeting. They were charged with the task of delimiting the frontier on the sector of the Dangrek where Preah Vihear was located. It was made clear from the minutes of the meeting that the Thai (Siamese) government, which lacked the technical expertise for the production of maps, officially requested that French topographical officers to map the

369 Ibid., p. 16; "Siam" and "Thailand" will be used interchangeably as will "Cambodia" and "France".
370 Ibid.,
371 Ibid.,
373 Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. 6, p. 17.
374 Ibid.,
frontier region. On December 2, 1906 another Mixed Commission meeting was held, in which the route and method of delimitation was specified, and it was agreed that a French member of the Commission would depart the next day to survey and map the area. The court saw this meeting as a clear intention by the Commission to delimit the region, as it had taken all the necessary steps to do so. Under normal conditions another meeting would have been held to analyze and approve of the provisional maps from the work on the ground, but there is no further reference to any later meeting by the First Commission. There is evidence that the delimitation work for the First Mixed Commission was completed, however, because the French Minister notified the Minister of Foreign Affairs in Paris that the work was complete in January of 1907. In the fall of 1907, maps were printed and published. The map of the disputed eastern Dangrek region placed the whole promontory and the Temple on the Cambodian side. These maps were given to the Thai government who thanked the French Minister and asked for another 15 copies to distribute to the Thai provincial Governors. However, because the First Commission had ceased to function before production of the map was formally approved the court found the map was not binding. Cambodia still relied heavily on this map (referred in ICJ as Annex 1 map) even given its initially nonbinding character. Meanwhile, a Second Mixed Commission was formed on March 23, 1907 and a Third Mixed Commission was formed in March of 1909. The Second Commission was created to cover the frontier not covered in the First Commission, essentially to delimit new frontiers. The region where Preah Vihear is located was not delimited, the presumption being that both countries recognized that the First Commission had done so already. The Third Commission was formed to consolidate the first two commissions. During this time many Thai government officials had seen and reviewed the ICJ Annex 1 map, and Thailand never

375 Ibid.,
376 Ibid.,
377 Ibid., p. 18
378 Ibid.,
379 Ibid., p. 24.
objected to or suggested that the line was unacceptable. That would have been an opportune time to object, and that has proved detrimental for Thailand in her claim of the Temple.

Before the Court, Cambodian representatives argued that Cambodian sovereignty over Preah Vihear was clear from three separate but related viewpoints. Citing the convention of 1904 and the treaty of 1907, the spokesmen for Cambodia first argued that the applicable international agreements delimiting the frontier between Cambodia and Thailand clearly placed the temple of Preah Vihear in the chain of the Dangrek Mountains belonging to Cambodia. In addition, they emphasised that Cambodia had never abandoned its sovereignty over the territory in question and, on the contrary, had always continued, by virtue of the title established by the treaties, to exercise effectively therein its territorial powers. Finally, they pointed out that Thailand had not performed any acts of sovereignty in the disputed territory which might be considered to displace the sovereignty of Cambodia as established by the cited treaties and thereafter effectively exercised. Taking a completely different tact, the government of Thailand concentrated its preliminary arguments on the issue of whether or not the International Court of Justice had jurisdiction in the case. Arguing that an earlier Siamese declaration recognising the compulsory jurisdiction of the Permanent Court of International Justice had lapsed with the dissolution of that body in 1946, Thailand concluded that the International Court of Justice was without jurisdiction in the case because Thailand had never accepted the compulsory jurisdiction of the successor to the Permanent Court of International Justice. The Thai representatives argued further that the jurisdiction of the Court in the case, if it existed, could only rest upon the consent of the government of Thailand and such consent could not be derived or inferred from the application of the government of Cambodia. In consequence, the preliminary arguments of the Thai government asked the Court to declare

380 Ibid., p. 24
that it had no jurisdiction over the issue of the sovereignty of Preah Vihear which the Cambodian government had brought before the Court\textsuperscript{382}. The Cambodian government responded to the Thai objections in a relatively brief set of observations which added little to its opening arguments. The Thai government, in turn, developed a longer counter-memorial which challenged the core of the Cambodian case. Supported by a variety of annexes, the counter-memorial of Thailand concluded that the boundary between Cambodia and Thailand, as specified in the 1904 convention, was clearly the watershed in the region of Preah Vihear which was the cliff edge fringing the promontory on which the sanctuary stands. Preah Vihear was plainly therefore located on Thai territory. In addition, the representatives of Thailand argued strongly that it was the Thai government which had exercised, without challenge or interruption, complete, unqualified, and exclusive sovereign jurisdiction over the disputed territory. The ensuing replies and rejoinders on the part of both governments added little new insight to the arguments outlined above.

**Events of Post-1909**

Between 1909 and 1958 Thai authorities never questioned the referred ICJ Annex 1 map even though they had many opportunities to do so. First, when Prince Damrong of Thailand made a "quasi-official" visit to the temple in 1930, they did not react to being officially received by the French Resident of Cambodia with the French flag flying high.\textsuperscript{384} Second, Thailand conducted its own surveys between 1934 -1935, finding that the true watershed line placed the Temple in Thailand. Despite this finding, Thailand continued to rely on and publish maps indicating Preah Vihear's location on the Cambodian side of the border.\textsuperscript{385} Third, during negotiations with Cambodia concerning the 1925 and

\textsuperscript{382} International Court of Justice (1962a) "Case Concerning the Temple of Preah Vihear (Cambodia v Thailand), Pleadings, Oral Arguments, Documents", 2 vols., vol. I: Application-Pleadings, pp. 133-152.


1937 Franco-Siamese treaties over frontiers, Thailand did not raise the matter. Lastly, in 1947 Thailand failed to raise the issue before a Franco-Siamese Conciliation Commission, which would have been an appropriate time to claim a rectification.\footnote{Ibid.,} Thailand waited until 1958 to raise the issue in a conference held in Bangkok to discuss territorial issues. Thailand did temporarily come into possession of the temple in 1941, but after the war Thailand accepted a settlement agreement that reverted the land back to the status quo pre-1941.\footnote{Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. 6, p. 28.} However, they continued to occupy the temple claiming they had sovereignty over the temple before the war. Between 1949 and 1954 Cambodia sent 7 protest notes to Thailand regarding their occupation of the Temple. Thailand responded to only one out of the seven notes with mere acknowledgment of receipt but with no explanation or justification for the troop (police) presence at the temple.\footnote{Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. 6, p. 31.} 

**Majority decision and some terms used in the ICJ**

While accepting the view of Thailand that the Annex 1 map was not binding and that the area on which the Temple of Preah Vihear is located would have belonged to Thailand, if the border line had been drawn in accordance with Article 1 of the 1904 treaty, the decision of the court was based on a different set of questions, namely whether the map had been accepted by the parties in such a way as to become an integral part of the treaty and prevail over the clause in Article 1 and also whether this precluded Thailand from contesting their acceptance.\footnote{Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. 6, p. 6.}

1. **Aquiescence and Estoppel** - Acquiescence and estoppel often go hand in hand, but the doctrines are distinct. In international law, acquiescence denotes consent and concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances where protest would be called for. The role of acquiescence can directly affect the outcome of cases and is therefore quite

powerful. In this case it influenced the deviation from the express words of a treaty and the change of a land boundary. The principle of estoppel operates to prevent a State contesting before the Court from presenting a situation contrary to a clear and unequivocal representation previously made by it to another State. The representation can be express or implied, but as a result the other State must have relied on the representation to their detriment or the State making the representation must have secured some benefit or advantage for itself.\textsuperscript{392} Estoppel is essentially a means of excluding a denial that might be "correct"; it prevents the assertion of what might in fact be true.\textsuperscript{34} Estoppel often stems from an acquiescing conduct, which fulfills the unequivocal representation element, as the court found here, but one does not necessarily lead to the other.

In case of ICJ case of Cambodia v/s Thailand, even though the map was not binding, the Court analyzed the conduct of Thailand, and found that its failure to protest for over 50 years amounted to consent/acquiescence. They followed the principle of \textit{qui facet consentire videtur si lowui debuisset ac potuisset} (he who keeps silent is assumed to consent if he must and can speak).\textsuperscript{393} The maps were given wide publicity and disseminated to many of Thailand’s own government officials and also to British, German, Russian, and United States governments. Thailand also requested more maps and they had ample opportunities to speak up between 1909 and 1958 but remained silent. The Annex 1 map clearly showed the Temple in Cambodian territory so as to put on notice a person who expected the watershed line to have been followed. Therefore, Thailand could not claim they did not know of the error. Even if Thailand never formally acknowledged or accepted the map, its conduct amounted to a direct acceptance. It is indeed quite clear that if the Thais wished to disagree with the map or had any serious questions to raise, "they did not do so, either then or for many years, and thereby must be held to have

\textsuperscript{392} Ibid.,
acquiesced." The effect of acquiescence in this case was that the express provision in article 1 of the treaty of 1904 was overridden by the boundary line created in the Annex 1 map. The court also used the estoppel doctrine and found that acceptance of Thailand, or lack of objection to the maps, established grounds for precluding Thailand from asserting its non-acceptance in court fifty years later. The acquiescence of Thailand fulfilled the element of a clear and unequivocal recognition of the map and Thailand benefited from its recognition because it created border stability. A major consideration that the court took into account was the notion that the primary purpose of establishing this frontier was to achieve stability and finality. They found it would have been impossible to do so if the line so established could at any moment be called into question and its rectification claimed.\textsuperscript{395} This is another reason why the court precluded Thailand from denying the depiction of the Annex I map.

Critiques of the ICJ Majority Decision can be enumerated as the following:

1. **Text of Treaty Trumps the Map** - Three judges - Moreno Quintana, Wellington Koo, and Sir Percy Spender - dissented from the majority opinion. Judge Quintana argued that Article 1 of the Treaty of 1904 constituted legal title to sovereignty over the temple area. The frontier delimitation work prescribed in Article 3 was no more than the physical implementation of the watershed requirement stated in Article 1.\textsuperscript{396} He referenced the Treaty of Versailles which states the rule that "when there is a discrepancy concerning a frontier delimitation between the text of a treaty and maps, it is the text and not the maps which is final."\textsuperscript{397} In other words, he argued that the principles of estoppel and acquiescence were inapplicable in this case because the terms of the treaty, following the actual course of the watershed line, was the true intention of the parties.

\textsuperscript{396} Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. 6, p. 67.
\textsuperscript{397} Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. 6, p. 68.
2. ICJ Majority's "broad" interpretation of acquiescence/estoppels - Many argue that the use of acquiescence and estoppel in international law, especially broad interpretations, should be used with caution as they are terms that are open to misuse. A narrow definition requires that the State who advances the argument of acquiescence and estoppel has suffered certain detriment by relying on the conduct of the silence of another, and that this conduct or silence must have been made voluntarily. The ICJ applied a wide definition, which simply suggests that a State cannot claim a right which is contrary to its own previous declaration, conduct or silence. Interestingly, in more recent cases, such as the *Gulf of Maine Case* of 1984, the ICJ has adopted a more restrictive approach. The notion of acquiescence is open to dispute because the nature of silence and inaction can be interpreted in many ways. There are two competing maxims with respect to acquiescence. The ICJ applied the maxim, "he who keeps silent is held to consent". The contradicting maxim is, "he who keeps silent is held neither to deny or accept". Judge Spender in his dissent would not deduce from Thailand's silence any intention to be bound by the map. Furthermore, because the map was produced by French cartographers in Paris and was never approved by the Mixed Commission, it was made unilaterally and not binding in any way to Thailand, especially because she never made any statement indicating her acceptance or recognition of the frontier line marked on the map. Applying a broad definition, Thailand never voluntarily accepted this unilateral map therefore there was no acquiescence. With respect to estoppel, some would argue Cambodia never relied on the representation implicit in Thailand's silence to her own detriment, nor did Thailand derive any special advantage from making the representation, therefore an essential element of estoppel is missing. The dissent of Judge Spendor also notes that Cambodia did not rely on any conduct by Thailand in relation to the Annex 1 map; Cambodia (France)

relied solely upon the accuracy and surveys of her own cartographers and
topographical officers. Also, Thailand did not gain any advantage. Whatever
benefit Thailand may have arguably received from the stability of the frontiers
marked on the maps, she was entitled to under the Treaty of 1904 and the
delimitation work of the first Mixed Commission. In fact, it is argued that
Thailand's continued presence and administrative activity in the area of Preah
Vihear many years after the publication of the map should have caused the
charges of acquiescence and estoppel to be laid squarely against Cambodia and
not Thailand.\textsuperscript{402} Thailand built roads to the foot of the Temple, Thai revenue
officers collected taxes on the rice fields nearby, and an official inventory of
ancient monuments, including Preah Vihear, was taken by the Thai government
in 1931. At no time did the Cambodian/French government lodge any protests
against these activities.

3. Context of Colonialism and De-colonialism - Another criticism of the ICJ
majority opinion was its failure to take into consideration the inequality of
bargaining power between Thailand and Cambodia, then under the protectorate
of France. It is argued that if Thailand's acquiescence was due to coercion in
any way, then their silence was not voluntary and thus the doctrine of
acquiescence could not be upheld. Thailand was one of the few non-colonized
Asian countries, so if she felt constantly threatened by colonization, her silence
is justified. The majority relied heavily on the visit by Prince Damrong, saying it
was "quasi-official" in nature and emphasizing the fact that the French flag was
displayed, and that Thailand did not protest being received by Cambodia. Judge
Koo contested the finding of the majority in his dissent, stating that the visit by
the Prince was private in nature and not endorsed by the Thai government. The
Prince held no ministerial rank at the time. But more importantly, because this
was a period of colonial expansion, and Thailand was a relatively weak non-
colonised Asiatic state, she must have naturally felt compelled to yield to

\textsuperscript{402} Chan, P., *Acquiescence/Estoppel in International Boundaries: Temple of Preah Vihear
foreign pressures in order to protect herself against colonization.404 This was the common experience of most Asiatic States in their intercourse with the Occidental Powers during this time.405 In reinforcing his position, Judge Koo pointed to the period of growing decolonization after World War II and the effect the balancing of powers had on the actions of Thailand. Thus, as soon as the relative positions of Thailand and French Indo-China became less unbalanced, it was actually the silence of France upon the stationing of the Thai guard-post which further indicated Cambodian acquiescence rather than Thai. According to Judge Koo, the Majority's reliance upon Thailand's failure to protest on the occasion of the visit by Prince Damrong completely ignores the threat of French colonialism that Thailand was under. This is not suitable or desirable, as it does not promote good faith, reliance, or confidence in international relations, which the principles of acquiescence and estoppel are precisely intended to protect.407

**Political Framework behind the border dispute**

The political framework of the border dispute between Cambodia and Thailand is more operational today than the legal framework, but much harder to substantiate with facts. Thailand argues that even if the Temple itself is under Cambodian sovereignty, the ICJ decision did not decide ownership of the area surrounding the Temple. The dispute gained new life when Cambodia petitioned UNESCO to inscribe Preah Vihear as a World Heritage Site in 2008. By mid-July approximately 1500 combined Thai and Cambodian troops had been stationed along the border.408 Armed clashes in October of 2008, April of 2009, January of 2010, and April of 2010 have led to injuries and deaths. Many argue that Cambodia and Thailand have used the conflict to their political advantage. The dispute has stirred up nationalist emotions in an already sensitive political

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404 Ibid.,
405 Ibid.,
406 Ibid.,
climate in both countries. Furthermore, the media, often controlled by the state, plays a vital role in sensationalizing the conflict.

Thailand was dealing with power struggles at the elite level during the time leading up to the Preah Vihear Temple dispute. Prime Minister Phibun Songkram fended off two coup attempts by former leader Pridi Banomyong. The second attempt, in 1951, resulted in intense fighting between the Navy on one side, and the Army, Police and eventually the Air Force on the other. Royal Thai Navy (RTN) sailors apprehended Phibun and held him captive onboard a combatant vessel. After the fighting broke out, the Thai Air Force intervened and sank three Navy ships, including the one Phibun was held on. He escaped by swimming to shore. Phibun was driven into exile by Field Marshall Sarit Thanarat in 1957. Sarit used the issue of U.S. influence in Thailand to rally nationalist support prior to his coup d'etat against Phibun. While Sarit was in charge, he appointed two acting Prime Ministers before taking formal control in 1958 and ruling as a military dictator. He would lead Thailand until his death in 1963. Sarit believed in "benevolent despotism" but was also cognizant of "the need of [sic] popular support." It would seem that amidst these power struggles, the Preah Vihear Temple could have been used by rival politicians to rally domestic support. This does not appear to have been the case. At the elite level, as well as among the Thai population, there seemed to be unanimity that the Thai government should pursue Thailand's claims to the Preah Vihear Temple. Thailand was essentially a unitary actor in this case. One Thai Member of Parliament was an exception. He suggested just handing Preah Vihear over in the interest of international relations and trade. This politician was widely denounced and Thai newspapers accused him of "...wanting to sell out his country." His was a rare view and did not represent any kind of power

412 Shane Strate, "The Lost Territories: The Role of Trauma and Humiliation in the Formation of
struggle. Observers of Thai politics argue that nationalism and defense of territorial integrity are strongest at the elite level. Lennox Mills writes, "[nationalism pervades every stratum of society, although it is strongest in the ruling class.]" Of Thai foreign policy in general, Panitan Wattanayagom writes: "[f]or the Thai elite, maintaining independence, sovereignty, and territorial integrity is considered the central security objective." In this light, the Preah Vihear Temple dispute reflected the legitimate foreign policy concerns of leaders in Thailand. The political elite were not the only force acting in the dispute. The Thai population and media organizations pressured Thai leaders to act. For example, when the Cambodian government brought the case before the ICJ, there was public outcry in Thailand. Grass roots campaigners called for donations to aid Thailand's legal case. The Thai government set up a special committee to handle the donations, but this was in reaction to something the population came up with on its own. When the ICJ released its judgment on Preah Vihear, it sparked outrage at all levels in Thailand. Thai leaders decried the decision while students demonstrated throughout the country. Thamasaat University withdrew Norodom Sihanouk's honorary degree. However, after a short period of deliberation, Prime Minister Sarit stated that Thailand would abide by the court ruling. While his decision was contrary to the wishes of the Thai people, no rival political entities emerged to make an issue of the way he handled it. Exploitation of the issue in Thailand by political leaders does not appear to be responsible for Thailand's behavior. The issue was important at all levels of Thai society, but there is no indication that political leaders used it to


rally political support against another faction, despite the fact that at least one leader had used other foreign policy issues for domestic political gain. This was most likely because there was no real difference in opinion on how the issue should be handled. There was virtual unanimity on the righteousness of Thailand's case.

**Intense Nationalism as a factor in the claim of the Temple both by Thailand and Cambodia -**

**For Thailand** Many people believe that nationalism in Thailand has become a highly destructive force. Since 2007, in their campaign to topple the governments that emerged from the post-2006 coup elections, which ousted Prime Minister Thaksin Shinawatra, the opposition parties have claimed to represent the "true face" of Thai nationalism as a way to garner political support. Thai society is deeply polarized between those who support former Prime Minister Thaksin and want him to stage a political comeback and those who loathe his leadership style and mistrust the motives of the government led by his party.

Thaksin ran a populist campaign and garnered much support from the rural and agricultural sector of Thailand when he was Prime Minister in 2000. But he was later overthrown in the coup of 2006. His government faced allegations of electoral fraud, corruption, authoritarianism, and muzzling of the press. Thaksin was accused of tax evasion and selling national assets to international investors so he fled the country. Thaksin returned to Thailand after the People's Power Party (PPP), which he supported, won the post-coup elections in 2007 over the opposition. This is also when Cambodia decided to register Preah Vihear as a World Heritage Site and informed Thailand of their plans. Although Thaksin was not officially in power, Noppadon Pattama, Thaksin's former laywer, was Thai Foreign Minister at the time. Noppodon signed a joint communique with Cambodia, signaling the parties' intent to

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cooperate in a joint attempt to have the Temple listed as a World Heritage Site.\footnote{Ibid.}

A week later anti-Thaksin protests held at the border led Cambodia to close the border crossing to Preah Vihear. Soon after, the Thai Constitutional Court declared the joint communiqué unconstitutional. As a result Noppodton was forced to resign.\footnote{Ibid.} The destabilization continued in 2008 when PPP's Prime Minister Samak Sundaravej was removed on corruption charges. Thaksin's brother-in-law, Somchai Wongsawat, was then voted into power. But the Constitutional Court removed him from office on charges of PPP election fraud. Members of Parliament then allegedly formed an anti-PPP/anti-Thaksin coalition and in 2008 elected Abhisit Vejjajiva, of the Democrat Party, as the new Prime Minister of Thailand. Thailand had four different Prime Ministers in a span of three years.

The volatile state of Thai internal politics is one of the principal reasons the border dispute has inflated and become such a prominent issue. In fact, marking Thaksin as a factor, many scholars argue that Abhisit would not have come to power if it were not for the accusation of the anti-Thaksin parties against the pro-Thaksin PPP of selling out the country and attacking Thaksin's loyalty to Thailand. The conflict can inevitably be traced back to 2007 when the pro-Thaksin government initially supported Cambodia's bid to list the temple.\footnote{Ibid.}

In Thailand, the judgement of the Court provoked violent protests and a virulent press campaign. Students throughout the country, acting with government approval, rejected the verdict of the Court; and in Bangkok, thousands of young people staged a colourful march in which they proclaimed their intent to protect Khao Phra Viharn (Preah Vihear). Students at Thammasart University in Bangkok demanded that the name of Cambodian Prince Sihanouk be removed from the rolls of the University and insisted that an honorary degree conferred on him be withdrawn. Prince Sihanouk later complied with this request returning the degree through the Indonesian embassy. Tempers

eventually cooled, and in late June 1962, the prime minister of Thailand announced that his government would honour its obligations under the United Nations Charter. While Thailand surrendered its sovereignty over Preah Vihear some three weeks later, it was noteworthy that the Thai flag and flagpole were removed from the temple in a standing position and later placed in a Thai museum. This refusal to lower the Thai flag was viewed by contemporary observers as an indication that Thailand remained determined to return its standard to Preah Vihear at a later date.423

**For Cambodia** - Many Cambodians feel that the Preah Vihear border dispute stems from Thailand's domestic political instability, but many people also believe that the Cambodian government, though arguably more stable, benefits from the dispute as well. For example, the timing of the UNESCO meeting and the listing of the Temple as a World Heritage Site was the same month as the Cambodian election for Prime Minister, in which Hun Sen, who has been in power since 1979, was running. Most Cambodians have vivid memories of the day the Temple became a World Heritage Site.424 There were parties everywhere and people celebrating in the streets. National TV stations featured stars, traditional Khmer performances, and fireworks shows in celebration of the event. On July 14th the government organized a concert in Phnom Penh's Olympic Stadium hosted by Deputy Prime Minister Sok An. The general sentiment was that Hun Sen had protected the temple and Cambodian sovereignty from being taken away by Thailand. The successful inscription of the temple on the list of UNESCO sites was publicized to voters as a result of Hun Sen's charismatic leadership.425 Whether he did this intentionally or not, Cambodian nationalism was very high during this time and Hun Sen acknowledged this and continues to support Preah Vihear belonging to Cambodia. The dispute is not always a "hot issue" but does seem to resurface at

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opportune times. In promoting a nationalistic election theme it helped to be able to point to an aggressor and Hun Sen used the Preah Vihear issue to portray himself as a strong leader responsible for uniting Cambodia against Thai aggression. Of course it did not help diplomatic relations between the two nations when in 2009, Hun Sen appointed Thaksin as his economic advisor. Thailand's protest leaders believed that actions of Hun Sen intentionally showed hostility toward Thailand, its government, and its people. This issue also propelled both sides to defend themselves and publicly denounce their allegedly predatory neighbor.

**The special Role of the Media** - The media plays a large role in influencing public perception, inciting nationalism play out. The repercussions of publishing/airing false stories are often quoted as dangerous. There is no better example than that of Thai actress Suvanant Kongying, who was accused of claiming that Angkor Wat was the property of Thailand. That misquote immediately stirred up a sense of nationalism. Hun Sen was quoted as saying, "Suvanant is not even worth a blade of grass at Angkor". After a day of flag burning and anti-Thai chanting, a crowd gathered at the Thai embassy where rocks were thrown and the embassy was eventually set on fire. Some would argue that the anger of Hun Sen was not so much about protecting Cambodian dignity, but that the circumstances surrounding the outburst were of more importance. The Cambodian general election was around the corner so a conflict with Thailand could have been used to favor his political allies and undermine his opponents. Another example of how the media effectively promotes nationalism is through their many fundraisers for Cambodian soldiers, which they air on local Cambodian TV stations. The programs show images of soldiers at the border, protecting Cambodia from the "enemy", and they show images of poor families or homeless people who have nothing, but still contribute because they believe in the Cambodian cause. These are powerful

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427 Ibid...

428 One of the main TV stations is owned by Hun Sen's daughter.
images that Cambodians of all socio-economic and educational backgrounds can relate to. Whether or not the money actually gets to the soldiers is a different story. Judging by soldiers’ dinner of only rice and fish paste and their insistence to support you do so directly, it seems as though the fundraising does not directly support the soldiers.\textsuperscript{429} Both countries also use the media to create the illusion that they are advancing and taking stands on important issues. Critics would argue that they talk the talk but rarely walk the walk. More often than not, the contents of news articles are misleading, contradictory, or just plain lies. If Cambodian and Thai citizens can not trust what they read in the newspapers or hear on the radio or television, then what are they supposed to believe? The blind faith in the media by the majority of the population serves the governments on both sides well and is another way of creating nationalist sentiment and mistrust of the other side.

Some of the possible Recommendations for resolving the issue between Cambodia and Thailand were -

A. Third Party Intervention - One of the most natural solutions to the border dispute, from a legal perspective, is that Cambodia seeks to enforce the ICJ decision and force Thailand to remove their troops. In theory, the ICJ does produce a binding ruling on parties that agree to submit to the ruling of the court. All UN members have a duty to comply with decisions of the Court involving them and if parties do not comply, the issue may be taken before the Security Council.\textsuperscript{43} Cambodia could petition the United Nations Security Council whose role it is to enforce ICJ decisions. However, in practice the powers of ICJ have been limited by the unwillingness of the losing party to abide by the ruling of the Court, and unwillingness to impose consequences by the UN Security Council. There is also always the concern that a third party will be biased against one of the parties or inclined to help the other. At the same time it makes sense for a third party to be involved where the two parties do not

\textsuperscript{430} Interview with soldier at Preah Vihear


seem to be able to agree on anything. However, it is imperative that two prime ministers [of both Cambodia and Thailand], who have obtained political support and backing by vilifying the other, cannot possibly come to an agreement without letting down their constituents, and thereby losing their support and consequently their political power. Bringing in a neutral third party such as the United Nations Security Council or the Association of South East Asian Nations (ASEAN) do makes sense and is necessary where the parties cannot admit they are wrong in order to save their face. Thus far, Thailand has been more vocal in her rejection of third party mediation, probably because the ICJ ruled against her in 1962. However, Thailand has valid and strong arguments against that ruling too.

B. UNESCO's role in registering World Heritage Sites - The UNESCO World Heritage Convention was adopted in 1972 and was intended to identify, protect, and preserve cultural and natural heritage sites of outstanding universal value around the world. Although some safeguards are in place, absent from the selection criteria and nomination process at large is any mechanism for dealing with sites that are the source of, or otherwise involved in political debate. UNESCO seems to have paid little attention to the potential for armed conflict that resulted from the listing of Preah Vihear as a Cambodian World Heritage Site. Although it may be too late in the case of Preah Vihear, UNESCO should add a formal provision dealing with political unrest surrounding site selection and management. Sites should not be listed as being World Heritage Sites if they will result in political unrest. Such a provision would have been useful this past July as both countries geared up for the World Heritage Committee meeting in Brazil. Instead of using the opportunity to openly discuss the situation, however, Thailand proclaimed that they would oppose management plan of Cambodia long before the meeting even began. They protested the management scheme and even threatened to withdraw from

UNESCO if the Cambodian plan was approved. There were demonstrations against the management plan and rising tension along the border. There should be an explicit mechanism to address this type of political conflict in the World Heritage Convention guidelines and maybe even an arbitral body to resolve conflicts as they arise during the nomination and selection process.434

C. Joint Border Commission - If countries negotiate a solution to their boundary dispute it is almost certain that there will be a compromise and both countries will benefit. When a dispute is settled in court there is the possibility that one country will win and the other party will lose.435 For this reason a joint border commission seems like a plausible and likely solution to the dispute between Cambodia and Thailand. In 1999, Cambodia and Thailand's foreign ministers agreed to establish a Thai-Cambodian Joint Border Commission (JBC) charged with demarcating the area near Preah Vihear. Both sides expressed optimism that the border conflicts could be resolved. The problem is that it is now 2010, meetings have been sporadic, and its creation seems to have been more for posterity than to actually progress in setting a mutually acceptable border. In 2008 the JBC met and again, both sides said they were committed to a peaceful and just solution without further delay. But in 2009 the JBC met and Cambodia and Thailand failed to agree on issues of border demarcation and consequently could not sign a memorandum of understanding concerning key points discussed in the meeting.437 Finally, in 2010, recent articles state that the JCB meetings could be further delayed while the Thai government sets up a joint panel to study the minutes of the previous meetings. It is unclear why the JCB, which is such an important mechanism to achieve a solution, is moving so

434 Ibid.,
437 Ibid.,
438 Ibid.,
slowly. It can most likely be attributed to a lack of urgency by both parties who clearly benefit from the conflict.

D. Addressing Broader Societal Issues - In general, broader societal problems need to be addressed in both countries. The links may seem attenuated, but there is no question that better education, an independent media, and access to information will produce well-rounded citizens, less likely to be manipulated by nationalism and more inclined to participate in politics. This would in turn promote and create more democratic space and put pressure on both governments to be responsible leaders. Of course these are not problems that can be fixed overnight, but the implementation of rigorous educational policies and professional development for teachers, a national access-to-information campaign, and laws ensuring freedom of the press and consequences for those who violate that right will have a far-reaching and positive effect on political participation and democracy.

Thus, it is quite clear that there are viable options available to Cambodia and Thailand to solve their border dispute, the Joint Border Commission being the most likely to work and easiest to implement since it has already been created. However, until the political hostility between Cambodia and Thailand subsides, neither country has any incentive to seriously address the issue. If anything, the Preah Vihear dispute demonstrates the importance of good governance and the need for democratic elections and stronger political parties. Thailand cannot continue to rely on nationalism to garner political power and overturn its opposition party. What is indeed required is an open and fair democratic election. Cambodia, which, has arguably turned into a one-party state, needs to support and nurture its other political parties. If there is no strong opposition party and no meaningful dialogue, the party in power tends to usurp power and behaves more like a dictator. Hun Sen and the Cambodian People's Party are free to use the Temple to maintain power instead of focusing their energy on governing effectively. Hopefully the two nations can come together before their nationalistic rhetoric leads to serious violence at the border. Until then, development partners, civil society, and NGOs must continue to work
together to educate their citizens, hold the media accountable and promote political participation and good governance. Perhaps with pressure from their own citizens, the two countries can come to a meaningful and truly bi-lateral agreement.

After Cambodia had won its independence in the early 1950's, disputes over unsettled boundaries, cross-border operations, and shelling across the border had frequently disturbed Thai-Cambodian relations. The years that followed the Court's decision on Preah Vihear showed no sign of peace either in media circles or along the border between the two countries. Charges and counter-charges of border violations, shellings, bombings, and looting were the order of the day. Both states produced white papers to sway public opinion. The borderland problem was also complicated by dissident groups in both countries. Khmer communists operated against the Phnom Penh government from inside Thai territory while Thai communists sought sanctuary in Cambodia. These problems persisted during the Democratic Kampucheean period, 1975-1978. And they only intensified after the Vietnamese invasion of Cambodia in late 1978 concentrated a volatile melange of refugees and resistance forces along the Thai border. After an extended period of occupation by Khmer Rouge forces, Preah Vihear was finally reopened to tourists from the Thai side of the border in early 1992. In a unique arrangement for a sanctuary located in Cambodia, tourists wanting to visit the ruins had to apply for entry permits from Thai provincial authorities who were also responsible for providing security as well as the necessary facilities for tourists. In addition, a regular train service was organized from Bangkok for those wanting to visit the sanctuary, and Thai authorities expressed interest in renovating the ruins. The combination of these acts was reminiscent of the legal case for sovereignty earlier developed by Thailand in its counter-memorial before the Court where it argued that it had been exercising effective jurisdiction up to that time. This impression was only

439 Bangkok Post, March 15, 1992
441 Bangkok Post, December 5, 1991.
heightened by the occasional publication of contemporary maps in Thailand which clearly show Preah Vihear, marked Khao Phra Viharn on such maps, to be situated on the Thai side of the border. For example, the route map in a recent Bangkok Airways inflight magazine depicted, of the dozens of ancient Khmer temples on the Cambodia - Thailand borderland, only the sanctuary of Khao Phra Viharn. The map clearly located it on the Thai side of the border. If the question of the sovereignty of Preah Vihear would again be raised in the future, Thailand would appear to be less vulnerable than in the past to the charge that it had accepted and even published maps showing Preah Vihear as part of Cambodia.

**Border Clashes declassified**

Border clashes between Thailand and Cambodia that caused dozens of casualties and displaced thousands have challenged the Association of South East Asian Nations (ASEAN) to finally turn its rhetoric on peace and security into action. Cambodia's successful attempt to list the Preah Vihear temple as a World Heritage Site came against the backdrop of turmoil in Thai politics after the 2006 coup that deposed Prime Minister Thaksin Shinawatra. Thai pro-establishment movements used this issue to whip up nationalist sentiments against Cambodia as they tried to topple the Thaksin-backed government. The emotionally-charged campaigns halted border demarcation and sparked a bilateral conflict. In early 2011, the dispute turned into the most violent clash yet between ASEAN's members, testing its historical commitment to non-aggression and prompting it to get involved. This has raised expectations that it might live up to its stated aspiration to keep peace in its own region. As yet, however, while its engagement set important precedents, it has no significant achievements. More robust diplomacy and leadership are still needed.

The resurgence of a largely forgotten 50-year dispute into an active armed conflict was related to two events: the colour-coded struggle in Thailand between the pro-establishment "Yellow Shirts" and the pro-Thaksin "Red Shirts" sparked after Thaksin's ouster in the September 2006 coup; and the decision of Cambodia to register Preah Vihear as a World Heritage Site, which
UNESCO accepted in July 2008. In Cambodia, the listing was occasion for national joy and Khmer pride. In Thailand, the ultra-nationalist Yellow Shirts used it to argue that Thaksin's proxy administration led by Prime Minister Samak Sundaravej had sold out their motherland and committed treason. It became a powerful weapon to further their agenda, forcing the foreign minister to resign and destabilising the government. They successfully portrayed backing for the listing as a move to further Thaksin's business interests, despite this policy having been supported by the previous military-installed administration. Until the Yellow Shirts' attacks, bureaucrats on both sides had seen the listing as a mutual tourism bonanza.

The frontier became increasingly militarised and tense. Border survey and demarcation ground to a halt, as it became too dangerous to field joint teams. At the same time, political turmoil in Thailand led to a high turnover of foreign ministers and other senior officials. Nationalist lawsuits, controversial court rulings and constitutional provisions hamstrung the efforts of officials to negotiate and poisoned the bilateral relationship. Frustrated by this inaction and these obstructionist tactics, Cambodia's prime minister, Hun Sen, often lashed out and on one occasion appointed Thaksin as an adviser - an episode that was the political low point of a troubled period.

Despite the warning signs between 2008 and 2010, passivity rather than active peacemaking was the "ASEAN way". After the outbreak of hostilities in 2011, the UN Security Council set a precedent by referring the issue back to ASEAN and its then chair, Indonesia, which showed how energetic and bold leadership could bring the association closer to what [some of] its supporters wished it might be. ASEAN broke more new ground after both sides agreed to receive teams of Indonesian observers to monitor a ceasefire.

The civilian leaders of Thailand initially agreed to the deployment but backtracked after its military resisted, claiming the observers would undermine sovereignty, a sign that the post-coup struggle for power is unresolved. Cambodia approved them in May, but Indonesia would not dispatch its monitors until both sides signed on. The election of Yingluck Shinawatra as the prime
minister of Thailand in July 2011 was expected to be a turning point, but was not. Even a ruling by the International Court of Justice (ICJ) that ordered the creation of a provisional demilitarised zone around the temple and called on ASEAN to monitor a troop withdrawal did not remove political obstacles. In October, 2011, Thailand was crippled by the worst flooding in living memory, leaving the government overwhelmed. With the waters now subsiding, Thailand and Cambodia need to recommit to complying with the ICJ decision as soon as possible.

While ASEAN is supposedly aimed at stopping hostilities and restart negotiations when it took up the border issue in early 2011, it could do little in this matter. While there has been no fighting on the border since May, 2011 the ceasefires in place are mostly verbal and unsigned. Until troops are verifiably withdrawn and diplomats resume negotiations, this conflict is not over. But in trying to resolve it, ASEAN, under the Indonesian leadership, has laid out a methodology for dealing with future disputes. If it wants to fulfil its stated goal of taking responsibility for its own peace and security, it needs to use its existing mechanisms at the first sign of trouble and not just rely on an activist chair. The Thai-Cambodian conflict remains an active challenge for ASEAN, which must achieve a certifiable peace on this disputed border if it wishes to keep its own region secure in the future. In the end, Preah Vihear is probably the most successful of all Khmer monuments in creating a sense of religious awe, the real objective of these sanctuaries. The design and location of the shrine combine to create an air of sensuality unequalled in any other Khmer sanctuary. This is particularly true at the beginning of the day when the unrestored ruins of Preah Vihear rise above the early morning mists in all their majesty. It may be for these reasons, as much as any other, that Preah Vihear remains at the heart of the wider borderland issue which divides Cambodia and Thailand.

In the final analysis, the dispute between Thailand and Cambodia over the Preah Vihear Temple and surrounding territory also has implications for regional stability and the legitimacy of (Association of Southeast Asian Nations)
ASEAN. Both countries are members of the organization. In 2009, Amitav Acharya wrote that the Preah Vihear Temple dispute is "perhaps the most serious threat to ASEAN's inter-mural peace."\textsuperscript{443} ASEAN did not exist when the original dispute occurred. Now that bilateral negotiations have again proved ineffective, the current dispute represents an opportunity for the organization to help resolve the issue. Specifically, in Thailand, political factions use the Preah Vihear issue to delegitimize their political opponents and gather support. In Cambodia, Prime Minister Hun Sen uses the issue to further consolidate his leadership. While there are inputs from both countries causing the Preah Vihear conflict, most of the analysis places more blame on the Thai side. Pavin Chachavalpongponp, who has written a recent account of the dispute, writes that the People's Alliance for Democracy (PAD), composed of "a coalition of royalists, Bangkok elites, factions in the military and powerful business interests" seized on the Preah Vihear issue, for domestic political gain.\textsuperscript{444} James Ockey presents a similar argument. He writes that Thai and Cambodian governments had come to an accord regarding the Preah Vihear Temple and that the disagreement did not begin until the People's PAD made it into a political issue. It was not, "...an irritant in Thai- Cambodian relations, until the PAD decided to take up the issue to gain nationalist support for its cause."\textsuperscript{445} Another analyst of Thai politics, Kitti Prasirtsuk also writes, "...the dispute over the Preah Vihear Temple has reemerged, this time very much linked to domestic politics in both Thailand and Cambodia."\textsuperscript{446}


On the Cambodian side, the Preah Vihear Temple dispute is also included in the analysis of domestic politics. It can be argued that Cambodian Prime Mister Hun Sen uses the dispute to appeal to the nationalism of the Cambodian people. According to Carlyle Thayer, the explanation for Cambodia’s behavior is the fact that the United Nations Education, Scientific, and Cultural, Organization (UNESCO) listing and ensuing fallout occurred in an election year. While Hun Sen manipulated and benefited from the issue, he was in part compelled to respond to the Thai deployment of troops by sending Cambodian military forces to Preah Vihear. Caroline Hughes presents a similar argument and adds that the military elite of Cambodia benefit from the controversy as they can claim more territory for their forces and lobby for a larger share of Cambodia’s budget. Analysts who discuss the Preah Vihear Temple issue, as it relates to regional or inter-ASEAN politics, also credit domestic political problems as the cause. Amitav Acharya discusses the portion of the territory surrounding Preah Vihear that is still in dispute. He writes that factions within Thailand used the issue to attack the Samak administration while Cambodia leader Hun Sen provoked nationalism for his own gain. Donald Weatherbee and Catharine Dalpino present similar arguments. While the Preah Vihear Temple issue is linked to the domestic politics in each country, this thesis evaluates the role of domestic politics at different points in the dispute. It examines the domestic political situations in each country when Preah Vihear was a subject of dispute in the 1950s and 1960s and most recently. Additionally, this thesis briefly surveys periods of time when domestic political turmoil did not lead to conflict or dispute over Preah Vihear.

After Cambodia gained independence from France in 1953, the Thai leaders believed that Preah Vihear belonged to Thailand. When Thailand lost the world court decision, the wound of "loss" was reopened. According to Chachavalpongpun, the loss of Preah Vihear to Cambodia was particularly painful because it was a loss to a weaker nation that used to be its protectorate. Shane Strate, who describes the widespread anger in Thailand, writes that the Thai Generals threatened to fight to the death over Preah Vihear. While the Thai government did not go to war over the temple, ample evidence exists to demonstrate that it did not accept the decision in good faith. The opinion in Cambodia, however, was different. According to Alexander Hinton, the Cambodian people believed the Preah Vihear Temple and surrounding territory rightfully belonged to Cambodia. The ICJ decision represented a great victory over a neighbor that has historically mistreated and dominated them. The history also relates to another theme, which is the importance of Cambodia's archeological heritage. According to Hinton, when France replaced Thailand (and Vietnam) as the dominant power in Cambodia, the colonial administrators sought to cultivate a sense of Cambodian national identity. To do so, they preserved and promoted Cambodia's ancient temples, most notably Angkor Wat. Cambodia's ancient temples became an important part of Cambodia's national character and culture. According to Caroline Hughes, exploitation of Cambodia's archaeological heritage is a common tactic of the ruling party. David Chandler also links nationalism in Cambodia to archaeological heritage. In his analysis, the current Preah Vihear Temple dispute is a resurfacing of the tension associated with the 2003 anti-Thai riots in Phnom Penh.

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454 Ibid, p. 446.
The riots occurred when the Cambodian press erroneously reported that a popular Thai actress claimed that Angkor Wat (Cambodia's national symbol) should belong to Thailand.

On both the Thai and Cambodian sides, the Preah Vihear Temple issue seems to evoke an emotional response. Some in Thailand reacted emotionally to the threat of losing territory. Some in Cambodia reacted emotionally to threats to their national heritage. It is possible that this factor is independent of the particular domestic political situation in each country and salient enough to cause conflict. However, the history is constant and the dispute is not. Instigations from Thailand was evident, however, by abiding by the ICJ [International Court of Justice] verdict, the political leadership of Thailand has certainly demonstrated political maturity. It is further interesting to note that even when both the nations are members of ASEAN, efforts in resolving this dispute was being negligible, thus attesting the fact that the Heads of the Nation indeed becomes the deciding factor in case of bilateral relations.

The next chapter is going to analyse another bilateral relation of Thailand with one of her neighbouring country, viz., Myanmar.

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