



Temple of Preah Vihear (Cambodia v. Thailand)

ARGUED: 21 November 2021

DECIDED: 21 November 2021

1 The Majority opinion was signed by and agreed by Justice Cargile of Egypt, Justice Gibson of Japan, Justice
2 Gil of Kuwait, Justice Kazor of Bangladesh, Justice Krone of Fiji, Justice Mendoza of Estonia, Justice Mounts of
3 Japan, Justice Potterf of Fiji, Justice Tibbs of Germany, Justice Utz of Serbia, Justice Robson of Kazakhstan, and
4 Justice Rook of Turkmenistan.

5 The Temple Preah Vihear was built by Suryavarman I, king of the Khmer Empire located in Cambodia.
6 The Franco Siamese Treaty of 1904 was signed and ratified by the Kingdom of Siam, now Thailand, and France,
7 acting as the legitimate foreign policy setting force for Cambodia, agreed to create borders that followed the natural
8 watershed line. The treaty established the Mixed Delimitation Commission that met from 31 January 1904 until 19
9 January 1907. The commission placed the Temple Preah Vihear within the borders of what is now the Kingdom of
10 Cambodia. On 23 March 1907, the Siamese and French governments negotiated a treaty that rendered the borders
11 between the Great Lake and the Dngrk Region where the Temple is located. The treaty did not define the boundary
12 lines between the Dngrk Region as set by the 1904 treaty. After Cambodia's independence from France in 1953,
13 Thailand sent military forces to occupy the temple.

14 The Court is tasked with addressing two questions: First, whether the territorial sovereignty over the Temple
15 of Preah Vihear belongs to the Kingdom of Cambodia or the Kingdom of Thailand. Second, is Thailand obligated
16 to remove their armed troops from the region.

17 It is important to initially address the jurisdiction of the Court to hear and decide this case. Article 36 of
18 the Statute of the Court addresses what cases may be decided. Cambodia, in pursuant to Section 2 of Article 36,
19 recognized the compulsory *ipso facto* jurisdiction of this Court in all legal disputes concerning a wide range of topics,
20 including international treaties. Cambodia made such a declaration to this Court on 19 September 1957.

21 Thailand has not made such a declaration to this Court, and objected to this Court's jurisdiction to hear
22 this case on 23 May 1960. Thailand had previously recognized the compulsory jurisdiction of the Permanent Court
23 of International Justice in 1929, which was reauthorized every ten years, with the most recent declaration made on
24 20 May 1950. Thailand has argued that their language in the 1950 declaration is meaningless in light of the Court's
25 decision in the case of the *Aerial Incident of July 27th, 1955 (Israel v. Bulgaria)*. It is not denied by Thailand that
26 the 1950 declaration did not apply to the jurisdiction of the present Court. The language of the 1950 declaration is
27 understood to accept the compulsory *ipso facto* jurisdiction of this Court since Thailand is a member of the United
28 Nations beginning in 1946, and the Permanent Court of International Justice was dissolved the same year. This
29 Court entered a Judgement on 26 May 1961 stating that our opinion in *Israel v. Bulgaria* in 1955 has no application
30 to this case, and Thailand has recognized the compulsory *ipso facto* jurisdiction of the present Court.

31 The opinion and explanation of the court is as follows:

32 The Court is ruling to uphold the 1907 map drawn by the mixed commission as legally binding. The mixed
33 commission was created as a result of Article 3 of the Franco-Siamese Treaty of 1904, which was agreed upon by
34 Cambodia and Thailand. This decision thus enforces that the Temple of Preah Vihear lies within the borders of
35 Cambodia. The Court has made this ruling based on the following series of facts.

36 It is essential to first note that Thailand agreed to Article 3 of the Franco Siamese Treaty of 1904 which
37 stated that, "There shall be a delimitation of the frontiers between the Kingdom of Siam and the territories making
38 up French Indo-China. This delimitation will be carried out by Mixed Commissions composed of officers appointed
39 by the two contracting countries." Thailand agreed to provide the power to the French to survey the area and run the
40 commission. The map made in 1907 does place the Temple of Preah Vihear within Cambodia's borders. Thailand

41 never responded to the map, despite the country receiving multiple notifications about its creation. The lack of
42 response also means that there were no objections raised against the 1907 mixed commission map. Typically, the
43 Court would refrain from finding silence as a binding agreement to a treaty or a proposed map agreement. However,
44 in this case it would appear that Thailand was actively complacent in the 1907 map created by the mixed commission.
45 Thailand argued that the Court should not take the country's silence as an agreement to the 1907 map, especially
46 considering the later acts of moving troops into the area and holding administrative control over the region. As the
47 Court will discuss later, Thailand's involvement in the region is in violation of the United Nations Charter Article 2
48 Paragraph 4. The Court thus does not find this prohibited involvement as a convincing reason to ignore Thailand's
49 silence on the issue. Thailand had many years to respond and reject the 1907 map, but action was never taken. The
50 Court thus finds Thailand to be complacent in the 1907 mixed commission's map.

51 It is also important to note that since the creation of the 1907 map, the Kingdom of Thailand has redrawn
52 maps and corrected other border disputes, but has still continued to acknowledge that the Temple of Preah Vihear
53 lies within Cambodia. For example, in 1937, after Thailand conducted their own survey of the region in 1934-
54 1935, Thailand reaffirmed their acknowledgement of the Cambodia and Thailand border. The Siamese Royal Survey
55 Department created a map that placed Preah Vihear in Cambodia. These facts are hard for the Court to ignore in
56 this case. The Court finds that it is not simply the case that Thailand was silent on the issue of the location of the
57 Temple, but that the country itself has drawn maps that acknowledge its location within Cambodia. The Kingdom
58 of Thailand claims that the drawing of and agreement to the map created in 1937 was an oversight on the part of
59 the government. The Court does not find this point convincing. Cambodia also rightfully points out that they are
60 not to blame for an error of this nature. Whether this was an actual error or not, administrative oversights are not a
61 rationale to provide countries with authority over territories. Due to the fact that Thailand has acknowledged that
62 the Temple of Preah Vihear is within Cambodia, the Court continues to affirm our decision that the map produced
63 by the Mixed Commission in 1907 is legally-binding.

64 It is also important to consider the proposed border plans from both Cambodia and Thailand. Thailand
65 argued that it is important to acknowledge the natural frontiers; however, failed to expound on the importance of
66 adhering to natural barriers such as the watershed and Dngrk Mountains, which have both been used historically
67 to establish national borders. The Court's decision to disregard the natural complexity of the region stems from
68 the lack of cohesion between any proposed boundaries of sovereignty with the natural restrictions of the Dngrk
69 Mountains. The 1907 Mixed Commission's border, does not provide a natural access point to the Temple of Preah
70 Vihear; however, the purview of the Court solely deals with the territorial sovereignty over Temple, not access. Thus,
71 the Court reaffirms the authority of the 1907 Mixed Commission.

72 Thailand claims that its administrative tasks carried out in the region cement their territorial claims. These
73 tasks include taxation, sanitation measures, and the appointment of temple guardians. However, there are many
74 actions taken by the French and Cambodian governments which put the argument of tacit consent into question.
75 First, the presence of a French Residential Officer makes it unlikely that there was no administration of the region.
76 Furthermore, a French flag flying over the Preah Vihear during a diplomatic meeting would have provided an ample
77 platform to reexamine the ownership of the temple through another commission. While France's imperial power
78 may have dissuaded the Kingdom of Thailand from requesting a commission at the time of the meeting, a future
79 request for settling the boundaries in the area may have still gone forward as they did in 1925, 1937, and 1946.
80 Finally, the request by the French colonial government for the Thai government to remove their appointed guardians
81 in 1949, does not show total disregard for Cambodian administration of the region. Simply, the claims of Thailand's
82 administrative actions in the region do not uphold the claims of territorial control.

83 Whether the administrative actions were taken on a purely local level or at a local level guided by national
84 policy does not matter when it comes to a breach of borders in this case. Taking administrative action on a local may
85 constitute a local understanding of the ownership of the land but cannot logically be extended to an international
86 recognition of the same border. On the other hand, Thailand's argument that local administration was carried out
87 with the consent of the national government- would directly contradict national policy according to maps drawn and
88 recognized by the Royal Geographical Service in 1937. This argument is therefore not persuasive.

89 According to the longstanding principle of sovereignty in international law, even if another country is not
90 carrying out all administrative tasks in the region, other countries are not allowed to move in and take control of
91 the region and claim it as their own. A precedent allowing for creeping administrative control of different areas
92 would legitimize aggressive and capable states in the future. The movement of troops constitutes a violation of the
93 United Nations Charter Article 2 paragraph 4, "All Members shall refrain in their international relations from the
94 threat or use of force against the territorial integrity or political independence of any State, or in any other manner

95 inconsistent with the Purposes of the United Nations.”

96 Therefore, the court orders the following:

97 First, that Cambodia shall have full possession and sovereignty over the disputed area, including the territory
98 on which the Temple of Preah Vihear is located. There shall be adequate time given to the Thai troops stationed
99 within the region to leave.

100 Second, the border shall be drawn to the specifications of the 1907 Mixed Commission report to the Kingdom
101 of Thailand, which demonstrated the legally-binding boundary between Cambodia and Thailand in accordance with
102 Article 3 of the Franco Siamese Treaty of 1904.

103 Third, the Court advocates for the allowance of the free movement of both Thai and Cambodian citizens to
104 the sacred temple, as not to deprive the citizens from an area of cultural and religious significance.

105 Last, the Court would highly recommend engaging in bilateral negotiations, including but not limited to
106 the creation of a commission, between these two nations to address any future territorial disputes, including the
107 possibility of joint administration over the temple. As well, a commission could determine which artifacts, if any,
108 should be returned to the temple or if they should remain in the possession of the Kingdom of Thailand. If an
109 agreement involving these two subjects can not be reached due to incompetence, ignorance, or other incapacities,
110 the International Court of Justice would be open to settling any such dispute.

Signed By



Justice Austin Rook



Justice Sydney Robson



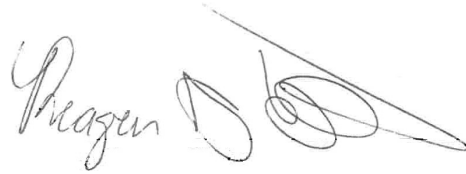
Justice Mackenze Gibson




Justice Aaron Mounts



Justice Anthony Mendoza



Justice Reagen Tibbs



Justice Jeremy Utz



Justice Eden Gil



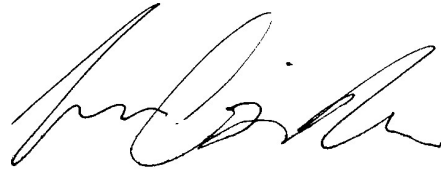
Justice Jack Krone



Justice Elizabeth Potterf



Justice Josephine Kazor



Justice Lane Cargile