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Volker Grabowsky, Sok Udom Deth

► To cite this version:

Volker Grabowsky, Sok Udom Deth. Heritage and Nationalism in the Preah Vihear Dispute Voices from Cambodia. Discourses on the Preah Vihear Conflict. [Research Report] EFEO, Ecole française d'Extrême-Orient; Université de Hambourg. 2016. ⟨hal-01963845⟩

HAL Id: hal-01963845

<https://hal.science/hal-01963845v1>

Submitted on 21 Dec 2018

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Heritage and Nationalism in the Preah Vihear Dispute

**by Volker Grabowsky
(University of Hamburg)**

Followed by a response to 'Heritage and Nationalism in
the Preah Vihear Dispute'

Voices from Cambodia. Discourses on the Preah Vihear Conflict

**by Sok Udom Deth
(Zaman University, Cambodia)**

Heritage and Nationalism in the Preah Vihear Dispute

Volker Grabowsky (University of Hamburg)

On 7 July 2008, the UNESCO World Heritage Committee announced at its 32nd Session (held in Quebec) its decision to put the temple complex of Preah Vihear on the World Heritage list as the property of Cambodia. The nomination included only the actual temple buildings and their immediate surroundings but not the whole area of the sacred site which is much larger and extends into an area disputed between Cambodia and Thailand, and even beyond into Thai territory. The decision was greeted with joy everywhere in Cambodia but met with strong opposition in Thailand. Only three days later, on 10 July 2008, Thai Foreign Minister Nopphadon Patthama declared his resignation.

The late re-discovery of the temple more than a century ago indicates the geographical isolation of the frontier on both sides of the Dangrek (Thai: Dongrak) mountain range. The Siamese state, which had conquered the whole region in the last quarter of the eighteenth century, exercised only a nominal control over this border land by the end of the nineteenth century. With the introduction of a centralized system of administration, along the lines which the European colonial powers had implemented in their Southeast Asian possessions, Siam also took over the Western concept of a territorial state with clearly defined borders. Not long after the very existence of Preah Vihear had come to the attention of both the Siamese elite and French colonial administrators in Cambodia, two border treaties were concluded between France and Siam in February 1904 and March 1907, stipulating that the new boundary between Siam and the French protectorate of Cambodia should follow the watershed line in the Dangrek mountain range. A map drawn by French cartographers based on a survey of the mixed Siamese-French border commission was added in late autumn 1908 as Appendix I to the 1907 border treaty. It shows the borderline slightly north of Prasat Preah Vihear, thus leaving the entire temple within Cambodian territory. The divergence of this borderline running from the actual watershed line and following the edge of the cliff-like escarpment at Preah Vihear has evolved into a dispute of ownership, culminating in nationalist discourses about heritage.

Preah Vihear as a heritage site

The “UNESCO Convention concerning the protection of the world cultural and natural heritage”, adopted in Paris on 16 November 1972, provides in Article 1 a rather narrow definition of “cultural heritage”, restricting it to monuments such as architectural works, groups of separate or connected buildings, and archaeological sites. Not included in this definition are the intangible and quite often invisible practices of cultural heritage, such as language, rites and beliefs, popular songs, oral traditions, literature, and festive events.¹ With the start of the new millennium, however, the UNESCO has broadened its scope of world cultural heritage by establishing a “Representative List of the Intangible Cultural Heritage of Humanity”.

¹ UNESCO, *Convention concerning the protection of the world cultural and natural heritage*, adopted by the General Conference at this seventeenth session, Paris, 16 November 1972, p. 2, in: <http://whc.unesco.org/archive/convention-en.pdf>.

The global dimension of heritage is recognized in the 1972 UNESCO Convention, which deplores the insufficient and incomplete ability of nations to protect their material heritage from “deterioration or disappearance” and emphasizes “that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole.” (Quoted from Hahn 2011, p. 10). With all its humanistic ideals and charitable goals, the Convention was still inspired by an essentialist notion of culture “as something confining and static which had been developed and maintained by certain societies and indigenous groups over a long time and, as such, was now threatened”, as Hauser-Schäublin aptly remarks (2011, p. 38). She emphasizes that the idea of an authentic culture which can be ascribed to a certain group of people who can claim exclusive ownership has been challenged during the last couple of decades. The temple complex of Preah Vihear, it may be argued, is an excellent case study to exemplify the transnational character of monumental heritage sites.

The French explorer and linguist Étienne Aymonier, the first European on record who visited Preah Vihear, observed that the temple had a special cultural significance only for the Kui people, the original inhabitants in the southern section of the Khorat Plateau and in the upper part of the lowland plain of northern Cambodia. Though originally built by Khmer kings of the Angkorean Empire a millennium ago, there is no evidence for any strong connection of Preah Vihear with the political and cultural complex of the Cambodian lowlands, at least until French colonial rule. It was French scholars like Groslier and Parmentier who defined Preah Vihear as one of the most important monuments of the classical ancient Khmer art and part of the national cultural heritage of Cambodia. Like Angkor and other monument sites, Preah Vihear became a symbol of an ethnic-based Cambodian nation. In this vein, the nation’s geo-body (Thongchai Winichakul) would ideally be determined by the distribution of the ruins of ancient Khmer stone monuments. It is not without reason that the silhouette of Angkor Wat became the central symbol of the Cambodian national flag under successive royalist, militarist and Communist regimes. In view of the fact that archaeological sites from the Angkorean period are scattered throughout northeastern and eastern Thailand, such identification of ancient Khmer architecture with Khmer ethnicity and Cambodian national identity inevitably collides with Thai nationalism. The Thais, on their part, developed a concept of Thainess which incorporates the monument sites of the ancient Khmer empire in present-day Thailand as part of their own cultural heritage. In the heydays of Thai nationalism, in the 1930s and 1940s, nationalist ideologues like Luang Vichitr Vadakarn claimed that the Thai were the true heirs of Khmer civilization, whereas the present-day Cambodian were either “not the same people” compared to the ancient Khmers or only their degenerated descendants. It is against this background that the Thai-Cambodian dispute over the ownership of Preah Vihear in the late 1950s and early 1960s and its renewed outbreak in 2008 has to be judged.

The historical background of the conflict

In the period from 1907 to 1929 there was no visible presence of state authority, neither from the French nor from the Siamese government. Visits of Cambodian or French officials from Kompong Thom province, to which the Dangrek sector near Preah Vihear belonged, are not documented. But also the Siamese side could only claim a few sporadic visits from the district seat of Kantharalak, situated fifteen kilometers north of the temple complex. It is

reported that the inhabitants of a small village situated in the vicinity of Prasat Preah Vihear continued to pay taxes to the provincial authorities of Khukhan (later: Sisaket) province. During the whole period from 1907 to 1929, Prasat Preah Vihear was not given any remarkable publicity in Siamese, Cambodian or French media. This situation changed in January 1930 when Prince Damrong Rachanuphap, a younger brother of the late king Chulalongkorn and a well-known expert in the archaeology of Southeast Asia, visited Prasat Preah Vihear together with one of his daughters and several Siamese officials drawn from the nobility. There the prince was greeted by the French governor of Kompong Thom and by the famous architect and art historian Henri Parmentier who had made two earlier field trips to the temple in 1924 and 1929. In spite of the private nature of Prince Damrong's visit, the French hosted the French tricolore for welcoming the Siamese guests.

In 1934/35 the Siamese government of Phot Phahonyothin sent a survey mission to investigate the border in the Dangrek mountain range and, in particular, to determine the precise borderline in the Preah Vihear area. It was discovered for the first time that the French map of 1907 (also called "Annex 1 map") showed an erroneous borderline placing the temple on the wrong side. The real watershed was not running north of the temple but directly below the cliff on which the main sanctuary of Preah Vihear is situated.² It lasted until 1939 when Luang Vichitr Vadakarn, then the Director-General of the Department of Fine Arts (Krom Sinlapakòn), objected to the Annex 1 map. The government of Field Marshal Phibun Songkhram tried in vain to obtain a new agreement with the French authorities in Indochina. In a public declaration on 11 October 1940, the government in Bangkok unilaterally placed Prasat Preah Vihear and the territory north of the actual watershed under Thai protection. In the same year, the temple was inscribed by the Department of Fine Arts as an ancient archaeological monument of Thailand. Thereafter, a small group of soldiers was sent to hoist the Thai flag over the temple.

After a short and victorious military campaign against the French colonial troops in Indochina, on 28 January 1941 the Convention of Tokyo stipulated the retrocession to Thailand of all territories ceded to France in 1904 and 1907. Preah Vihear was placed once again under Thai sovereignty. After the war, Thailand had to return all territories that it obtained during World War II and by the end of 1946 the *status quo ante* was restored. However, the Thai forces were not withdrawn from the surroundings of the Preah Vihear temple. Three years later, in 1949, France filed with the consent of the Cambodian colonial government an official complaint against Thailand. The complaint demanded the total withdrawal of the Thai civilian and military personnel from Preah Vihear. Thailand ignored this demand and clung to the status quo. There was no further official protest from the French side until the release of Cambodia into complete independence in November 1953. In spite of strong Cambodian protests in January 1954, the status quo with Thai physical presence in the Preah Vihear area remained unchallenged during the next four years. Due to domestic political problems in Cambodia and fostered by the ascension to power of the authoritarian nationalist military regime of Marshal Sarit Thanarat in Bangkok, the smoldering conflict escalated in the summer of 1958 and culminated in the severance of relations in November of the same year.

² See also International Court of Justice 1962, p. 86 ("dissenting opinion" of Taiwanese (National Chinese) judge Wellington Koo).

In October 1959, the government in Phnom Penh appealed to the International Court of Justice in The Hague to make a final decision on the sovereignty of Prasat Preah Vihear. It took almost three more years until the International Court of Justice (ICJ) delivered a judgment. It is important to know that the Preah Vihear Case was probably one of the most complicated and most contested cases about which the ICJ had to render a judgment. The ICJ had to decide on the following five demands of the Cambodian government:

1. The binding character of the French map of 1908 according to international law;
2. The fixation of the Thai-Cambodian border in the Dangrek sector according to the above mentioned map;
3. The sovereignty of Cambodia over Prasat Preah Vihear;
4. The obligation of Thailand to withdraw its military forces “from the ruins of the Preah Vihear temple”;
5. The restitution of all objects of cultural value which Thailand had removed from the temple.

As to the first two demands of Cambodia – namely, a) to determine that the French map of 1908 had binding character according to international law, and b) to define the actual border between Cambodia and Thailand in correspondence to this map – the ICJ ruled that these two demands were beyond the jurisdiction of the Court, as the exact location of state borders has to be determined by bilateral negotiations between the concerned states. Yet, the ICJ evaluated the first two Cambodian demands indirectly, by using the validity of the French map as important evidence in its decision on the third through fifth demands of the Cambodian government.

With nine to three votes in favour of Cambodia, the ICJ decided on its third and fourth demands. It stipulated that a) Preah Vihear was situated on “territory under the sovereignty of Cambodia”, and b) that Thailand was obliged to withdraw from the temple and its “vicinity” all military and police forces as well as other security personnel. The ICJ ruled by seven to five votes that Thailand was obliged to restore to Cambodia all artefacts which had been removed from the temple or its surroundings since 1954.

The court’s majority based its arguments above all on the validity of the French map from the fall of 1908 (scale 1:200,000) and also on the absence of protest on the part of the Thai authorities against this map. In the view of the majority of the judges, the fact that Prince Damrong did not complain against the hoisting of the French national flag during his visit of Preah Vihear in early 1930 was interpreted as a tacit consent. Because of Damrong’s high-ranking position in the Siamese state apparatus, the private character of his visit – emphasized by the Thai side – was refuted. Damrong’s archaeological fact-finding mission was seen as an at-least half-official visit. Therefore, according to the legal principal *Qui tacit consentire videtur si loqui debuisset ac potuisset* (“He who keeps silent is held to consent if he must and can speak”), also called “estoppel” in international law, the ICJ ruled that Thailand had to accept the frontier as fixed in the Annex I map.

Whereas Phnom Penh claimed the whole overlapping area marked by the watershed line and the line of the Annex I Map as Cambodian territory, the government in Bangkok soon produced a map with a scale of 1:50,000 delineating the border in the Preah Vihear frontier

region. The borderline marked on that map followed the actual watershed and left only the Preah Vihear temple and its immediate surroundings on the Cambodian side of the border. In this light it was of great symbolic importance that the Thais, when withdrawing from Preah Vihear, not only took down the national flag but carried with them the whole flagpole including its socket. As Shane Strate aptly remarks in his analysis of the Thai public discourse of the late 1950s and early 1960s on the Preah Vihear dispute, the loss of the temple became a symbol of Thailand's national humiliation by colonialist and neo-imperialist powers and institutions. The Thais clearly felt betrayed not only by their "enemies" – Cambodia and France – but also by their "friends and allies", in particular the United States. Strate recalls that one major factor which contributed to the Cambodian legal victory in 1962 was the fact that former US Secretary of State Dean Acheson, one of the chief architects of the Cold War, became highly influential as lead counsel for Cambodia in The Hague.³ In a way, the United States needed Cambodia more than it needed Thailand. Since Thailand under the Sarit regime was a US vassal without any alternative options, Sihanouk's Cambodia, which had flirted with Beijing and Moscow since the late 1950s, was considered a much more strategically important keystone which needed to be kept in the anti-Communist camp at all costs. Without Acheson's persuasiveness the balance of power at the ICJ might have been different.

In the years and decades following the ICJ's ruling, the Thai and Cambodian governments failed to undertake, through bilateral negotiations, a final delineation of their 800-kilometer-long border, including the Preah Vihear section. This failure was basically due to the political developments in Cambodia. In 1970, Cambodia became a sideshow in the second Indochina War. During two decades of civil war, foreign intervention and murderous revolution, several Cambodian regimes and resistance movements became dependent on Thai political, military, and humanitarian support. They reluctantly accepted a *modus vivendi* which allowed the Thai largely unrestricted access to the temple complex. A new situation occurred in 1997 after the Khmer Rouge, who had held their Preah Vihear stronghold over many years, surrendered and full peace was restored in Cambodia.

Preah Vihear as UNESCO World Cultural Heritage Site

At the beginning of the last decade Cambodia and Thailand were seriously planning to put the contested temple on the UNESCO World Heritage List. On 7 June 2000, the governments in Phnom Penh and Bangkok – the latter still under Prime Minister Chuan Leekpai of the Democrat Party – signed a Memorandum of Understanding (MoU) "on the Survey and Demarcation of the Land Boundary" which sought to pave the way for a solution of the Preah Vihear dispute and other unresolved border problems. A Joint Boundary Commission was set up for that purpose. From 2002 until 2007 there was an ongoing discussion between the two sides on whether Thailand should consent to Cambodia's decision to nominate Prasat Preah Vihear as a Cambodian World Heritage site or whether the temple should be jointly nominated by Thailand and Cambodia. At a meeting in Bangkok on 25 March 2004, a joint committee, headed by Cambodian deputy Prime Minister Sok Anh and Thai Foreign Minister Surakiat Sathirathai, agreed on a number of basic principles for the resolution to solve all major problems related to the temple of Preah Vihear as a world heritage of

³ Strate, Shane, "A pile of stones? Preah Vihear as a Thai symbol of National Humiliation", *South East Asia Research*, Vol. 21, No. 1, 2013, p. 66.

humanity. Both sides agreed at least implicitly on a joint inscription of Preah Vihear on the UNESCO World Heritage List.

Three years later, in talks held in 2007 and early 2008, the Cambodian government flatly rejected the idea of a joint nomination, arguing that the temple was under the sole sovereignty of Cambodia and that Thailand should make a separate nomination for archaeological sites in areas under Thai sovereignty. How can this sudden change of mind be interpreted? Why did Hun Sen and Sok Anh decide to no longer pursue the idea of Preah Vihear as a transnational and trans-border joint heritage of Cambodia and Thailand? Puangthong speculates that Cambodia's decision "was clearly based on the fact that the temple legally belongs to Cambodia". Its legal ownership, however, had never been questioned, neither by Chuan Leekpai nor by Thaksin Shinawatra. Puangthong further surmises that the Cambodians feared a Thai "desire for Cambodian territory, particularly for this cultural site" (Puangthong 2013, p. 48f.). Such fears are only understandable if we take into consideration the maximalist Cambodian legal standpoint, as expressed in an article by Cambodian lawyer Bora Touch (2009). This position claims that the ICJ had already determined the location of the boundary in 1962 and that any Thai move to negotiate a boundary line deviating from the line marked on the Annex I Map should be considered as an unjustified claim of Cambodian territory.

The military-appointed Thai government of General Surayudh Chulanont tried to persuade the Cambodian side to accept a joint Cambodian-Thai inscription of Preah Vihear as a UNESCO World Heritage site. One of the main arguments was that the only practical access to the temple was from the Thai side of the border. Besides, several smaller temples and water reservoirs were situated in the contested zone claimed by both countries. At the thirty-first annual meeting of the UNESCO World Heritage Committee in Christchurch, New Zealand, in 2007 the Thai government insisted on that solution. This prompted the UNESCO to postpone its decision to the thirty-second annual meeting in Quebec in July 2008. But in spring 2008 the Samak Sundaravej government suddenly changed the Thai position and accepted the registration of Prasat Preah Vihear as an exclusively Cambodian World Heritage site.

Samak's Foreign Minister, Noppadon Pattama, declared the MoU which he had negotiated with the Cambodian side an important diplomatic success, because the Cambodian government had pledged to restrict the registration of Prasat Preah Vihear to the territory immediately surrounding the temple, presenting a map to prove that no parts of the "disputed zone" were part of the deal. The parliamentary opposition in Thailand nonetheless appealed to the Constitutional Court which decided that the "Joint Declaration" did indeed have a legally binding character and therefore required parliamentary approval, according to Article 190 of the Thai constitution of 2007. As the government had failed to obtain parliamentary approval before signing the "Joint Declaration", the government needed to either seek this approval or revoke the "Joint Declaration". Facing growing public pressure, especially from the People's Alliance for Democracy, the Samak government chose the second option.

The Preah Vihear debate in Thailand

The following section will discuss how the conflict was perceived in Thai civil society and how it was exploited by the contending political factions for their respective political agendas. Numerous publications have appeared in Thailand since the escalation of the temple dispute in 2008. They mirror a controversial public debate in Thailand which has as much to do with Thai-Cambodian relations, concepts of national sovereignty and cultural heritage as with domestic Thai politics. They may roughly be divided into four groups reflecting four different approaches to a solution of the Preah Vihear dispute. The first approach adopts a “hard-line” attitude demanding that any Thai government should stick to an uncompromising stance in the defence of Thailand’s legal position which had not changed since 1962. This approach has most strongly been advocated by the “People’s Alliance for Democracy” (PAD), the so-called Yellow Shirt movement, considered “ultra-nationalist” by its enemies. It is supported by several other sectors of Thai civil society, such as the Thai Patriotic Network and the Buddhist sectarian movement Santi Asoke. The second, more flexible approach favours compromises with the Cambodian side to reach an end of the deadlock, although, if feasible, not at the expense of Thai sovereignty over the disputed area of 4.6 km². The second tendency is supported with variations by the main political parties, including the Democrats and the majority of the pro-Thaksin “Phüa Thai Party”. A third approach is supported by radical, anti-nationalistic intellectuals and a small minority of the Thai public. It advocates Thai acceptance of the Cambodian legal position as an unavoidable price which the Thai people have to pay to live in peace with their eastern neighbor. Finally, a fourth approach argues that any long-lasting solution to the Preah Vihear dispute should, above all, take into account the legitimate interests of the local people on both sides of the border. This approach is anti-nationalistic as well but it is not pro-Cambodian as it refutes the exclusive ownership of any of the two nation-states – Thailand *and* Cambodia – over the temple complex.

Approach 1: “Anti-Thaksin nationalists”

Despite the fact that all Thai governments after 2008, independent from their political orientation, insisted that the MoU of June 2000 did not compromise Thai legal claims on the disputed area in the neighbourhood of the Preah Vihear temple, such a chain of arguments was grist to the mill of the nationalist forces in Thailand. One of the first major publications appeared only a few months after the first military clashes following the nomination of the Preah Vihear temple as a UNESCO World Heritage site of Cambodia. It was edited in 2008 by the Editorial Board of *Phuchatkan* (Manager), a newspaper group founded by media-mogul Sondhi Limthongkul, one of the top leaders of the PAD. This publication takes a decidedly nationalist standpoint with regards to the sovereignty over Prasat Preah Vihear, as is clearly visible on the book cover which shows the Thai national flag flying over the temple ruins – instead of the Cambodian flag as is the reality.

The anonymous authors of this book accuse the Samak government of unilaterally abandoning Thailand’s claims on Prasat Preah Vihear, a claim to which all Thai governments since 1962 had abided. Furthermore, Cambodia, now encouraged by the decision of the UNESCO, would be tempted to enforce its sovereignty over the 4.6 km² large disputed zone as well. If the Cambodian side wanted to build hotels, markets, police stations and customs facilities or even a casino in this zone, it could do so with the backing of the international community. Furthermore, the Samak government was accused of having secretly abandoned

Thai sovereignty over Prasat Preah Vihear – including the disputed area – in exchange for a concession from the Hun Sen government to develop a large-scale casino complex in the coastal province of Koh Kong in southwestern Cambodia.⁴ This accusation was put forward by several insiders like Kasit Phirom, a former close aide to Thaksin and Thai ambassador to Berlin and Washington. After the demise of the Somchai government in December 2008, Kasit became foreign minister in Abhisit Vejjajiva's Democrat-led coalition government. In his new position he pursued a more pragmatic policy vis-à-vis Cambodia, eventually becoming himself a target of PAD propaganda which tried to force the Abhisit administration to revoke the MoU of 2000, as it would provide Phnom Penh with a pretext to intrude into the disputed zone.

Approach 2: The Realists and Pragmatics

One of the most prominent proponents of a realistic and pragmatic approach towards a solution of the temple dispute is Professor Bowornsak Uwanno, member of the Thai Royal Institute and one of the leading Thai law experts. From 1988 to 1990 Achan Bowornsak was part of the young advisor team of Prime Minister Chatichai Chunnhawan; thereafter he worked for various governments as legal advisor. Though he is not specialized in international law, he felt an obligation to inform the Thai public about the complex legal situation which resulted from the 1962 ICJ verdict, as most Thai experts in international law remained silent. Already in July 2008 he published a volume which included a collection of key sources, including a Thai translation of the 1962 ICJ judgment and a comprehensive analysis by the editor. Bowornsak's political position is that of a Thai patriotism which is based on the recognition of the reality. The author states that the Thai people should accept the 1962 judgment though painful as this may be for many of them. Instead of dreaming to regain the Preah Vihear temple itself, Thai diplomacy should concentrate on defending Thailand's claims on the "disputed zone". Therefore, the book cover does not show – unlike the Phuchatkan publication presented above – the national flag of Thailand flying over the ruins of Preah Vihear but the national flag of Cambodia as is the reality of today.

Approach 3: Philo-Cambodian Anti-Nationalists

Charnvit Kasetsiri is one of the most influential Thai historians of today. The former rector of Thammasat University is a harsh critic of an ethnic Thai nationalism. For this reason he has been campaigning for quite a while to abandon the country's official name "Thailand" and replace it by the old name Siam. In the Preah Vihear debate, Charnvit, together with a number of other Thai intellectuals, adopts a decidedly anti-nationalistic perspective.

Charnvit claims that King Chulalongkorn had concluded the border treaties with England and France for national interest. This great monarch considered the "loss" of Malay, Lao, and Cambodian territories as necessary – and even inevitable – sacrifices to ensure the independence and sovereignty of Siam. Only the nationalist regime of Marshal Phibun Songkhram, which emerged not long after the abolition of the absolute monarchy and changed the country's name to "Thailand" in 1939, initiated a discourse on so-called "territorial losses" of Siam in order to achieve acceptance of a chauvinistic and expansionist foreign policy. In the wake of this discourse even ancient Khmer temples such as Prasat

⁴ Phuchatkan Editorial Board (ed.), 2008, p. 51. See also Puangthong 2013, p. 64.

Preah Vihear were “discovered” as Thai cultural heritage. The campaign of the PAD and the Democrat Party, Charnvit underscores, is part of a dubious tradition of anti-Khmer Thai chauvinism.

In a later book publication (2009) Charnvit expands his arguments outlined above. Advocating a “broad and open-minded new form of nationalism” which he also calls “popular nationalism”, Charnvit proposes his solution of the “deadlock” in the Preah Vihear controversy. Among four possible scenarios he rejects two as either unrealistic or dangerous, namely, a new appeal of Thailand to the ICJ to revoke its 1962 judgment, and the military occupation of Prasat Preah Vihear and the disputed area. A third alternative, i.e., negotiations on the basis of the Thai-Cambodian MOU of June 2000, would be more reasonable. The preferred solution, however, is the fourth alternative: the acceptance of a new way of thinking based on the relinquishing of all territorial claims in the Preah Vihear area. In other words, the Thai people should accept without reservation the Cambodian sovereignty over the temple and the disputed zone.

Approach 4: The perspective of the indigenous people

It should be stressed that a rejection of Thai nationalism in the Preah Vihear controversy does not necessarily mean a support of the Cambodian legal viewpoint. The respected Thai archaeologist Sisak Vallibhotama, whose pioneering role in the study of the Khmer and Lao in the pre- and early history of northeast Thailand is widely acknowledged, emphasizes that the ruling elites in Bangkok and Phnom Penh were never genuinely interested in Prasat Preah Vihear, but for the local Kui and Khmer people living on both sides of the Dangrek mountain range this sanctuary has always been of vital importance. Therefore, any solution of the conflict should in the first place address the needs of the local population, not those of the national elites in Thailand and Cambodia. Sisak shares with the PAD his distaste of the Thaksin regime but disagrees with the latter’s defence of the nation state. He is a proponent of a decentralized Thailand which acknowledges the country’s variety of cultures, ethnic groups, religious traditions and historical experiences. In this respect he also shares some of Charnvit’s ideals but in contrast to Charnvit, Sisak seems more interested in the rediscovery of regional cultures, rather than favouring any “deconstruction” of Thainess.

When the public debate on the Preah Vihear dispute reached its first peak in 2008, Sisak published his booklet *Khao Phra Wihan: A Time Bomb from the Colonial Period*. Sisak’s point of departure is the polycentric structure of the pre-modern Mandala state system in Southeast Asia. In this theoretical framework he studies the relationship between the political and cultural centers of the Khmer and, later on, the Siamese empires and their vassal states in a vast area which nowadays is northeast Thailand, central and southern Laos and northeastern Cambodia. Sisak sees the significance of Preah Vihear – the ancient temple as well as the community which once surrounded it – in its social and cultural relationship with other communities in the Khorat plateau which for centuries had been “no man’s land”.

Perspectives of a solution of the Preah Vihear problem

What are the prospects for solving the conflict surrounding Preah Vihear, or Phra Wihan? When the dispute started to become violent three years ago, I predicted that the Cambodian

government would be tempted to use the registration of Preah Vihear as a UNESCO World Heritage Site to internationalize the conflict with Thailand and thus put pressure on the Thai government to yield to the Cambodian legal viewpoint. Exactly this happened in 2011, when Phnom Penh asked the ICJ in The Hague to make a final and binding decision on the border in the vicinity of the Preah Vihear sector.

The court's final decision, announced on 11 November 2013, came to the relief of both Cambodia and Thailand, as it did not leave a clear winner. The ICJ defined the whole promontory of Preah Vihear as the "vicinity" of the Preah Vihear temple, which the 1962 verdict had declared as territory under Cambodian sovereignty. Cambodia can now safely claim roughly one quarter of the disputed area as its territory. The pagoda and a cluster of houses built for the families of Cambodian soldiers stationed near Preah Vihear are all situated in this relatively small zone immediately to the west of the temple. The serpentine road which the Cambodian built in 2010 with Chinese help to link the temple with Cambodian territory also cuts across the promontory and has to be respected by Bangkok as territory under Cambodian sovereignty, as well. This certainly satisfies Phnom Penh. However, the larger part of the disputed zone, lying further to the west and including the neighboring hill of Phnom Trap, was ruled by the ICJ as lying "outside the disputed area".⁵ Therefore, the Thai government is now entitled to claim almost three quarters of the 4.6 square kilometers as territory under Thai sovereignty in any future bilateral negotiations on the delimitation of the border in the neighborhood of Preah Vihear.

It is not yet too late to have Prasat Preah Vihear inscribed as a joint Thai-Cambodian World Heritage Site. The UNESCO decision of June 2008 still leaves this option open, as it recognizes "that Thailand has repeatedly expressed a desire to participate in a joint nomination of the Temple of Preah Vihear and its surrounding areas" and by considering "further that archaeological research is underway which could result in new significant discoveries that might enable consideration of a possible new transboundary nomination which would require the consent of both Cambodia and Thailand."⁶ The American anthropologist Helaine Silverman, an expert on heritage management and museum theory and practice, strongly supports the idea of a joint Cambodian-Thai management of Preah Vihear as a transborder World Heritage Site. She stresses that, given the history of the conflict, UNESCO was adding fuel to the fire by allowing the temple to be inscribed as the heritage of only one nation-state. A solution acceptable to both countries in the long run would presuppose that the temple is given "a *borderless* status, assisting the two countries to prepare dual access routes to the site with appropriate passport control. The UNESCO flag and the flag of both countries would fly over the site" (Silverman 2011, p. 15.). Given the temple's architecture, which shows a clear natural orientation towards the north, and given the fact that the easiest and most convenient access to the temple is from the Thai side, joint management of Preah Vihear still seems the best solution. Several Thai scholars also point at the UNESCO rules calling for a sufficiently large management area of World Heritage sites. In the case of Preah Vihear such a management area would have to include not only

⁵ ICJ, "Request for interpretation of the judgment of 15 June 1962 in the case concerning the temple of Preah Vihear (Cambodia v. Thailand)", 11 November 2013, section 98.

⁶ UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, World Heritage Committee, Quebec City, Canada, 2–10 July 2008.

parts of the “disputed zone” but also some areas within Thailand, such as Sa Trao, Sathup Khu (“Twin Stupa”), and the pre-historic pictorial engravings at the Mò-I-Daeng cliff.

The German lawyer Dr René Gralla has come forward with an ingenious idea proposing an Andorra-style solution for Preah Vihear. The whole disputed area of slightly less than five square kilometers would be proclaimed as the independent state of “Preah Vihear-Phra Wihan” ruled by two diarchs, namely the King of Cambodia and the King of Thailand, harbouring a population of monks and local villagers from both sides of the Thai-Cambodian border, mostly ethnic Kui and Khmer, apart from some Lao and Thai. Such a mini-state could promote tourism, attract foreign investors, and finally become the symbol of eternal friendship between Thailand and Cambodia.⁷ A dream? Perhaps, but one that should be tried.

⁷ René Gralla and Volker Grabowsky, “Andorra-style solution beckons in Preah Vihear row”, in: *Bangkok Post*, 24 September 2013.

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A response to ‘Heritage and Nationalism in the Preah Vihear Dispute’

Voices from Cambodia. Discourses on the Preah Vihear Conflict

Sok Udom Deth (Zaman University, Cambodia)

As Prof. Grabowsky suggested, “The decision [by UNESCO to inscribe Preah Vihear temple as a World Heritage Site] was greeted with joy everywhere in Cambodia but met with strong opposition in Thailand.” Yet, unlike in Thailand where plural voices and different propositions existed over the issue of the Preah Vihear conflict, in Cambodia, there has been a relatively more unanimous discourse on the Preah Vihear conflict: that Preah Vihear temple and the roughly 4.6 sq. km. disputed area undoubtedly belong to Cambodia, and Thailand should once and for all renounce its claim over the temple and the disputed territory. Nonetheless, certain nuanced differences/emphases do exist among different political factions and various social groups in Cambodia, depending on their political background, affiliation and/or interests. This section of the paper discusses such differences and proposes an alternative solution to the conflict.

Views from Cambodia

To the majority of (if not all) Cambodians, Preah Vihear temple has always been a Khmer temple, built by several Khmer kings at different times during the Khmer Empire era between the 9th and the 13th centuries (there is even a Khmer rap song describing the chronology of the temple construction during the different reigns of Khmer kings). The fact that the Western parts of Cambodia (including where Preah Vihear temple is located) had fallen under Siamese (old name for Thailand) control between the 18th and mid-20th centuries became less pronounced as a historical point of reference. More importantly, the International Court of Justice’s (ICJ) 1962 verdict declaring the temple “and its vicinity area” under Cambodia’s sovereign demonstrated to Cambodians that Cambodia had always been the rightful owner of the temple and over the disputed territory. Such a view is supported by notable Khmer scholars, including Touch Bora (lawyer based in Australia), Sorn Samnang (President of Cambodian Historians Association), and Sok Touch (Rector of Khemarak University). Technicality and any possible legality related to the watershed line which deviates from the boundary line as shown in the Appendix I to the 1907 border treaty (that would have possibly put the temple under Thailand’s sovereignty) has not appeared in any public discussion in Cambodia. To the Cambodian government and the Cambodian public in general, any Thai claim contrary to such an understanding is viewed as an “invasionist” position and would confirm many Cambodians’ suspicion of Thailand’s “unending ambition to steal Cambodian land.”

During the climax of the conflict between Cambodia and Thailand under PM Abhisit between late 2008 and 2011, nationalist rhetoric intensified in both countries. Diplomatic press releases, the media, and comments expressed by users on social-networking sites reflected mutual dislike and distrust between the two nations. News and analyses about the border conflict between Cambodia and Thailand dominated the media in both countries

with varying degrees of bias on both sides. During this period, one could be forgiven for thinking that Cambodia and Thailand had always been enemies since time immemorial.

Different groups in Cambodia have used to Preah Vihear issue to highlight their own positions and, as much as possible, advance their own interests. The Cambodian government led by PM Hun Sen's Cambodian People's Party, for instance, did not forgo the opportunity in giving itself the credit of successfully enlisting the temple as a World Heritage Site, and as the protector of Cambodian territory and sovereignty after conflict with Thailand ensued. For example, the Cambodian government erected a sign at the entrance to the Preah Vihear temple that reads: "I have pride to be born as Khmer." As John D. Ciociari pointed out:

The Cambodian government also seized on the issue for political gain. Stoking resentment of Thailand is not difficult in Cambodia, where many people resent what they perceive as a Thai sense of superiority [...] Hun Sen and other members of his Cambodian People's Party used the Preah Vihear dispute to rally nationalist support in the run-up to national elections in late July.

Not wanting to lose out politically from the Preah Vihear conflict, opposition leader Kem Sokha travelled to the temple region in late January 2009 and brought donations to the soldiers stationing along the border, but was denied access to the temple. The highest-ranking field commander in Preah Vihear, Srey Deuk, then remarked: "It is their right to distribute gifts, but, in any case, the soldiers do not want gifts from HRP [Human Rights Party]. They know it is the opposition party" (Phnom Penh Post, 5/11/09). For his part, Sokha reckoned that "This kind of political discrimination is regrettable. The soldiers belong to the nation, not one political party."

Likewise, PM Hun Sen's strong posturing against Thailand also came under fire among his critics, for his supposed hypocrisy about his close relationship with Vietnam. For instance, a commentator on a Youtube video of the Premier's speech wrote:

Why Hun Sen is so strong a leader to fight the Thais while he is a puppet of the Vietnamese? Something wrong with the brain cells! The Vietnamese fish and come to Cambodia freely while Hun Sen declares no one millimeter of land is lost to Thailand. That is right. No one millimeter of land lost on the Western border but millions of millimeters of land lost to Vietnamese who can claim freely and no questions asked. (*sic*)

His view is certainly a widely-shared one among many critics of the Cambodian government. Not surprisingly, opposition leaders share such views as well.

Interestingly, besides political discourses, corporate opportunism wishing to exploit nationalistic sentiment could also be seen with the production of *Cambodia Beer* (a new beer brand by *Khmer Brewery*), which features the iconic façade of Preah Vihear temple as its logo.

Among civil society groups, a think-tank that most closely monitored Cambodia-Thailand conflict was the Cambodian Institute for Cooperation and Peace (CICP), especially when former Industry Minister and Ambassador to Japan, Pou Sothirak, became its Executive Director. Frequent guest speakers to the organization were Thai scholars Charnvit Kasetsiri and Pavin Chachavalpunpong. These three former fellows at ISEAS of the National University of Singapore eventually co-authored a book titled *Preah Vihear: A Guide to the Thai Cambodian Conflict and its Solutions*, published in 2013, in which they proposed that “The most suitable compromise would be a return to bilateral negotiations, with ASEAN (Indonesia) as an observer, and willingness on both sides to accept the ICJ’s decision, whatever they may be” (Kasetsiri *et al*, 2013, p. 90).

Other organizations in Cambodia such as the Cambodian Center for Human Rights (CCHR) and the Cambodian Human Rights and Development Association (ADHOC), on the other hand, emphasize more on the issues of alleged abuses or disproportionate use of force by Thai authority or individuals on Cambodian migrant workers or loggers. At times, they have also called for peaceful solutions to the Cambodian-Thai conflict.

Anecdotal findings from an ongoing research by Kimly Ngoun, a Cambodian doctoral student at the Australian National University, titled “Understanding Khmer Nationalism in the Preah Vihear Temple Conflict with Thailand: The State, the City, and the Border” seem to suggest that Cambodians living along the border region may be holding less nationalistic sentiments against Thailand. In fact, some interviewees were even reportedly making a joke by thanking Thailand (and the Preah Vihear conflict) for bringing the attention and the ensuing development projects (such as national road pavement and economic opportunities) to Preah Vihear province, once a remote region of the country.

Solution(s) to the conflict

The latest ICJ’s interpretation in November 2013 of the 1962 verdict has further confirmed that Cambodia has the legal ownership over the temple and at least a certain part of the disputed area. Since Cambodia is currently already holding effective control over the temple, any suggestion that the temple should be co-managed by both Cambodia and Thailand would meet strong opposition in Cambodia, and no political leaders in Cambodia (from both the incumbent government and the opposition party) would agree to such an arrangement. In addition, the ruling Thai military junta has not made an open protest to the ICJ’s interpretation. What remains unresolved, however, is the question over sovereignty of the area beyond the promontory over which the temple sits on. Since the latest coup in Thailand last year, question over the implementation of the ICJ’s decision has not been brought up in formal meetings between the two governments, despite Cambodia’s occasional pledges to raise the issue with Thailand – to the chagrin of many Cambodians who believe that Cambodia has full sovereignty over the whole disputed area and that Thailand should simply abandon its claim to the contrary.

John Ciorciari, Assistant Professor of Public Policy at the Gerald R. Ford School of Public Policy of the University of Michigan opined that:

[The] flexibility [of the ICJ's ruling] also has its role. The exercise of caution on setting strict boundaries and deciding on Phnom Trap has helped insulate the Court from charges of overreach. It has also enabled both sides to claim a partial victory [...] A more decisive ruling in favor of Cambodia would have risked a significant backlash in Thailand.

While Cambodia now has a stronger legal claim to the ownership of the Preah Vihear temple itself, its sovereignty over the whole disputed area is in question. At this point, it seems unrealistic that either side can convince the other for its sole control over the disputed territory, especially over Phnom Trap region. While leaving the issue un-discussed may maintain the non-conflict status quo, a long-term solution will have to result from a sincere negotiation between both sides of how to manage the disputed territory. An idea would be to develop a "Zone of Peace" in the disputed area, through which visitors from the Thai side may have access to the Preah Vihear temple, which Thailand should now accept that the ICJ has already made its case that Cambodia is its legal owner.

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