

“The Incident of 1911”: The Real Truth in the Temple of Preah Vihear Case

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Abstract

In 1962 the International Court of Justice (ICJ) ruled that the Temple of Preah Vihear was under the sovereignty of Cambodia. The basis for the decision was that Thailand had accepted a map that showed the temple located in Cambodia. Thailand, however, had strenuously argued to the Court that it had never accepted the map in reference to the temple. Indeed, Thailand stated that the map was “an apocryphal document, upon which no weight can be placed.” However, documents in possession of the Thai legal team at the time show quite the contrary. Recently discovered correspondence from early 1911 convincingly reveal that top officials of the Thai government knew the map located the temple in Cambodia, and, as a result, expressly chose not to make any protest regarding French activities at the temple. Now that this historical truth is known, it is an opportunity for both countries to finally depoliticize this long-simmering dispute, accept the reality that a negotiated agreement to establish an agreed upon boundary is politically unrealistic, and instead work to establish a neutral “international peace park” under the management of UNESCO.

Keywords: Phra Viharn — Peace park — Annex I map — World heritage — Joint management

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I. INTRODUCTION



Figure 1
Source: Wikimedia
Commons.

The Temple of Preah Vihear has been described as “one of the world’s masterworks of religious architecture. It’s a spiritual journey in stone, a progression of stairways, pavilions, chapels, avenues, pools, terraces, shrines, and towers, laid out along a north-south axis measuring almost a kilometer end to end.”¹ Periodically over the last 65 years, however, the governments of both Cambodia and Thailand have used the claim of rightful ownership to the temple as a means to stir nationalistic passion among its citizens.² When in 1962 the International Court of Justice (ICJ) ruled that the Temple was under the sovereignty of Cambodia,³

the outrage expressed in Thailand was extraordinarily bitter and sustained, with vows that, one day, the temple would “rightfully” be restored to Thailand.⁴ Over the years

¹ John Burgess, *Temple in the Clouds: Faith and Conflict at Preah Vihear* (River Books 2015) 9. This book is an invaluable contribution about the temple, as it combines both the archaeological history and modern events into an extremely readable and informative text.

In roman letters, the Cambodian spelling of the temple is “Preah Vihear,” while “Phra Viharn” is the Thai spelling. The latter spelling was used by Thailand in its initial pleadings to the International Court of Justice in 1960–1961 and was how the name appeared in the transcripts of Thailand’s oral arguments in 1962, suggesting that counsel used the Thai pronunciation when addressing the Court. Interestingly, just north of the temple is Thailand’s “Khao Phra Wihan National Park,” a spelling (by Wikipedia, though not the Tourism Authority of Thailand) that closely reflects how “Viharn” is actually pronounced in Thai. By contrast, the Cambodian pronunciation of Vihear appears to be vee-hear. “How to Say Preah Vihear,” Emma Saying, *YouTube*. This article will use the spelling “Preah Vihear” in conformity with common international usage and that employed by the International Court of Justice and UNESCO. For simplicity, the word “Thailand” generally is used even when reference is made to years when the country was known as “Siam,” though some exceptions are made for contextual purposes. In essence, the two words may be treated as synonyms. Also for simplicity, the word “Cambodia” is used to refer to this area of Indo-China that was under French administration prior to the country’s independence in 1953.

² See generally Shane Strate, “A Pile of Stones? Preah Vihear as a Thai Symbol of National Humiliation” (2013) 21(1) *South East Asia Research* 41–68 <<https://doi.org/10.5367/sear.2013.0139>>; P. Michael Rattanasengchanh, “The Role of Preah Vihear in Hun Sen’s Nationalistic Politics, 2008–2013” (2017) 36(3) *Journal of Current Southeast Asian Affairs* 63–89 <<https://doi.org/10.1177/186810341703600303>>.

³ *Case Concerning the Temple of Preah Vihear* (Cambodia v. Thailand) *Merits* [1962] ICJ Rep 6 <<https://icj-cij.org/public/files/case-related/45/045-19620615-JUD-01-00-EN.pdf>>.

Important Note on Pagination: The indicated URL is to a PDF of the English version of the judgment as it appears in the Court’s official bound volume of Reports for 1962. The PDF pages, however, confusingly have two page numbers on each page: those at the top of the page on the left margin (with the name of the case to the right), and a different stand-alone number at the bottom of the page on the left margin that is two numbers *less* than that of the top number. The difference occurs because the number in the headers at the top left correspond to the Court’s consecutive numbering throughout the entire year, while the numbers at the bottom of the page restart at “1” for each new case. The page numbers cited in this article for the 1962 Preah Vihear judgment are always to the *larger* number in the top header, as on a separate page the Court indicated that this judgment should be cited as beginning on page 6. The judgment itself actually begins with a “6” in the header, while the number at the bottom of the same page is a “4.”

⁴ Prime Minister Sarit Thanarat was furious with the decision, as was the whole country, but

this basic hostility has continued to flare up from time to time, depending on the political and social situation,⁵ and often has been rather vitriolic.⁶

But, in its original 1962 decision, the ICJ concluded that over the period of 1908–1909 Thailand had accepted a map (referred to as the “Annex I map”⁷) that

ultimately decided to abide by it because, in part, he knew that the judgment was final and binding, without appeal, and failure to comply could have meant sanctions against Thailand by the United Nations. But, in a radio address on 4 July 1962, he also urged his countrymen not to forget: “The Thai people will always remember that the temple of Preah Vihear was robbed from us by trickery of those who disregard honesty and justice,” and closed with “Beloved Thai brethren, one day in the future, the temple of Phra Viharn shall return to the Thai nation’s fold.” Annex 12 to Thailand’s Written Observations of 21 November 2011, filed in the *Request for Interpretation of the Judgment of 15 June 1962* case <<https://www.icj-cij.org/public/files/case-related/151/17286.pdf>> at 67–69. On 6 July 1962, Thanat Khoman, the Minister of Foreign Affairs, wrote to U Thant, the Acting Secretary-General of the United Nations, and acknowledged the Court’s 1962 decision. While stating that Thailand felt the decision was “contrary to the principles of law and justice,” he stated Thailand “will honour the obligations incumbent upon it under the said decision in fulfilment of its undertaking under Article 94 of the Charter.” Annex 14, *ibid* 77–79. However, the foreign minister went on to say that “in deciding to comply with the decision, . . . His Majesty’s Government desires to make an express reservation regarding whatever rights Thailand has, or may have in future, to recover the Temple of Phra Vihear by having recourse to any existing or subsequently applicable legal process.” *ibid* 79.

⁵ “Beginning with Prime Minister Phibun Songkhram’s irredentist campaign of 1940, the Thai have associated these ancient ruins with the legacy of Western imperialism, particularly the territory ‘lost’ to French Indochina. For Thai nationalists, the 1962 international court case that awarded sovereignty over the temple site to Cambodia is an example of neo-imperialism that is part of this legacy.” Strate, *A Pile of Stones?* (n 2) 41. A week after the United Nations inscribed the Temple as a World Heritage Site in 2008, three Thai protestors entered the temple grounds and tried to put up a Thai flag but were detained by Cambodian authorities. Shortly thereafter, armed Thai soldiers entered the area and moved to the foot of a Buddhist temple that had been built by the Cambodians. A tense standoff ensued with the Cambodian soldiers, as troops from the two sides stood just a few meters from each other, “daring the others to try something.” Burgess, *Temple* (n 1) 199.

⁶ For example, on 28 July 2008, Sondhi Limthongkul spoke at a People’s Alliance for Democracy (PAD) rally near Government House and proposed his own way of solving the Preah Vihear dispute by force. Among other things, he insisted that Thailand resign from UNESCO and

officially notify the 7 member countries of the World Heritage Committee that we would not allow them to enter our country to restore the Preah Vihear temple. They would have to fly helicopters from Cambodia to reach the temple. We would not even allow them to come out to use toilets on Thai soil. This is the only thing for us to do, and we can do it, believe me. To negotiate with a rogue country like Cambodia cannot be done with our weaknesses and as long as we still have those traitors. We have to bring about unity of the nation on this issue of Preah Vihear temple and Thai sovereignty, and then we will take this “Strength of the Land” to talk with Cambodia. This is urgent. I believe that when we implement this, the worst-case scenario would be a reversion to 1962 when Cambodia could take only the temple, but nothing else.

“Sondhi Limthongkul’s Solution to the Preah Vihear Dispute” *Prachatai English* (2 August 2008) <<https://prachatai.com/english/node/732>>.

⁷ As noted by the ICJ, a map “was filed by Cambodia as Annex I to its Memorial, and has become known in the case (and will be referred to herein) as the Annex I map.” ICJ *Merits* (n 3) 21. It covered the “Dangrek” section of the frontier and was one of 11 maps produced during the delimitation process. *ibid* 20. In the Treaty of 13 February 1904 between France (the then protecting power of Cambodia) and Siam (present day Thailand), Article 1 had provided that the border between the two countries along the Dangrek mountain chain should be the “watershed”—the line on the ground where rain falling on one side of the line would drain into Siam (to the north) and on the other side of the line into Cambodia

showed the temple located in Cambodia, and that Thailand’s later actions were consistent with this acceptance.⁸

The Court based its conclusion about acceptance in 1908–1909 on a number of factors. First, it was noted that the Thai government, at least as early as 1905, had intended that the maps which resulted from the process of delimitation would be prepared by the French, as they possessed greater cartographical skill.⁹ As a result, in 1907 this work was done in France by four French officers, three of whom had been members of the delimitation commission set up under the terms of the 1904 treaty.¹⁰ Then, in 1908, “the publication and communication of the eleven maps . . . , including the Annex I map, was somewhat of an occasion . . . [and] the maps were given wide publicity in all technically interested quarters.”¹¹ The map was seen by the Siamese members of the Mixed Commission, and

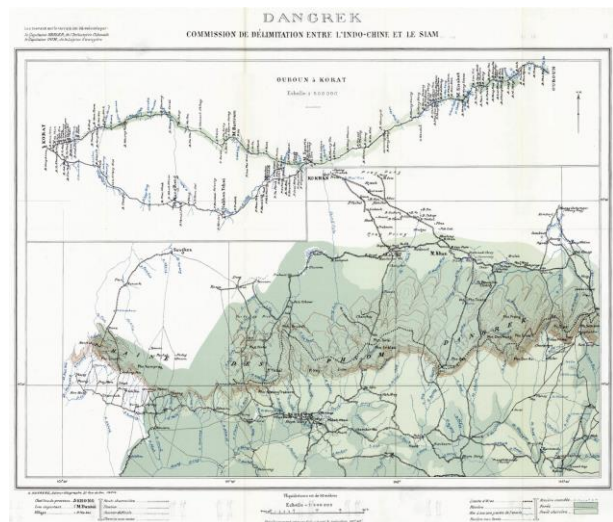


Figure 2: The original Annex I Map, reduced to 1:450,000.

Source: Annex 96 to the Written Observations of Thailand (21 November 2011), Request for Interpretation of the Judgment of 15 June 1962 <<https://www.icj-cij.org/public/files/case-related/151/17286.pdf>> at 629.

the Siamese authorities by their conduct acknowledged the receipt, and recognized the character of these maps, and what they purported to represent, [as] shown by the

(to the south). However, Article 3 of the treaty went further and provided that there “shall be a delimitation of the frontiers between the Kingdom of Siam and territories making up French Indo-China. The delimitation will be carried out by Mixed Commissions composed of officers appointed by the two contracting countries.” *ibid* 16. “Delimitation,” in a cartographic sense, means drawing a boundary line on a map based upon on field observations, whereas “demarcation” refers to the physical marking of the boundary on the ground. Burgess, *Temple* (n 1) 71.

⁸ Apart from conclusions that can be drawn from subsequent events,

[t]he Court however considers that Thailand in 1908–1909 did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognized the line on that map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory. The Court considers that, looked at as a whole, Thailand’s subsequent conduct confirms and bears out her original acceptance, and that Thailand’s acts on the ground do not suffice to negative this. Both parties, by their conduct, recognized the line and thereby in effect agreed to regard it as being the frontier line. . . . It must be asked why the Parties in this case provided for a delimitation, instead of relying on the Treaty clause indicating that the frontier line in this region would be the watershed. . . . This could only have been because they regarded a watershed indication as insufficient by itself to achieve certainty and finality. . . . Various factors support the view that the primary object of the Parties in the frontier settlements of 1904–1908 was to achieve certainty and finality.

ICJ *Merits* (n 3) 32–34.

⁹ *ibid* 20.

¹⁰ *ibid*.

¹¹ *ibid* 22–23.

action of the Minister of Interior, Prince Damrong, in thanking the French Minister in Bangkok for the maps, and in asking him for another fifteen copies of each of them for transmission to the Siamese provincial governors.¹²

The following year, in 1909, a Franco–Siamese Commission was set up to begin an official Siamese geographical service, with a primary aim being to convert the existing maps “into a handy atlas form, and to give the French and Siamese terms used in them their proper equivalents in the other languages. No suggestion that the Annex I map or line was unacceptable was made in the course of the work of this Commission.”¹³ Simply put, the Court found that the totality of the circumstances were such that if Thailand had “wished to disagree with the map or had any serious question to raise in regard to it,” it “called for some reaction, within a reasonable period, on the part of the Siamese authorities.”¹⁴

During its presentation before the Court, however, Thailand had maintained that it had never considered the map a binding document or that it had ever been used to show the actual border,¹⁵ but, instead, believed at all times that the temple was within Thailand, administered by it, and, for that reason, had no need to make any

¹² *ibid* 24.

¹³ *ibid*.

¹⁴ *ibid* 23. This basic point was significantly expanded upon in the concurring opinion of the judge from the United Kingdom, Sir Gerald Fitzmaurice. He noted that it was Siam that requested France to make the maps, and as a result,

everyone on the Siamese side relied on the skill and good faith of the French topographical officers producing the maps. There can equally be no doubt that the latter acted in complete good faith, used all their skill, and fully believed that the watershed in the Preah Vihear region ran as indicated by the Annex I line. . . . A man who consults a lawyer, doctor, architect, or other expert, is held (in the absence of fraud or negligence—not here in question) to accept the possibility that the expert may be mistaken in the advice he gives, or less than perfect in the work he does. Like all human beings, he is fallible. . . . The French officers in this case were of course fallible. They for instance (and both Parties were agreed about this) made an error over the course of the O’Tasem stream, which must have affected the whole question of how the watershed line ran in the Preah Vihear region. The authorities of French Indo-China were unaware of this error. They accepted the map as correct. Equally, the Siamese authorities, knowing the character and provenance of the map, being in a position to consult their Commissioners who had received it, or experts of their own choice, made no objection, and raised no query, in relation to a line which was clearly intended to represent and constitute the line of the frontier in this region, and which anyone looking at it must have seen at once placed Preah Vihear on the Cambodian side of the line. Today Thailand says the map was erroneous and that she was under a misapprehension about it. But the Siamese authorities of that date plainly accepted the risk that just such an error as this might in time be discovered: and whoever does that, must be held thereby also, and in advance, to have accepted such errors as do in fact eventually come to light.

Separate Opinion of Sir Gerald Fitzmaurice <<https://icj-cij.org/sites/default/files/case-related/45/045-19620615-JUD-01-03-EN.pdf>> at 57–59.

¹⁵ “Counsel for Thailand once again state that the map Annex I was never for one moment considered by Thailand a binding document. It has never been used by Thailand to show where the treaty boundary lies.” Oral Argument of M.R. Seni Pramoj (Rejoinder) 27 March 1962, ICJ Pleadings Vol. II, *Temple of Preah Vihear (Cambodia v. Thailand)* <<https://www.icj-cij.org/public/files/case-related/45/045-19620310-ORA-01-00-BI.pdf>> at 564.

protest concerning the map.¹⁶ Thailand had told the ICJ that the Annex I map was “an apocryphal document, upon which no weight can be placed.”¹⁷ However, documents in possession of the 1962 Thai legal team showed clearly that, in early 1911, members of the Thai government at the highest level knew the Annex I map located the temple in Cambodia.¹⁸ Even more tellingly, the correctness of the Annex I map in this regard was confirmed in 1911 by the man who had been the senior Siamese member of the mixed border commission charged with delimiting the boundary between Siam and then French-controlled Cambodia.¹⁹ This somewhat refuted Thailand’s allegation²⁰ in 1962 that members of the Mixed Commission had in no way authorized or approved of the sketches upon which the Annex I map was created.

¹⁶ Rejoinder of Thailand, 2 February 1962 (para 67 at 578), ICJ Pleadings Vol. II, *Temple of Preah Vihear (Cambodia v. Thailand)* <<https://www.icj-cij.org/public/files/case-related/45/9257.pdf>>:

The production of maps copied from Annex I obviously did not betoken any belief by the Government that the temple lay in Cambodian territory, for the acts of the Government throughout the period treated Phra Viharn as Thai territory. Various Thai officials concerned with the administration of the area, and the departments of the Government to which they belonged, were well aware throughout that Phra Viharn was in territory under their responsibility and treated it as subject to Thai jurisdiction. This is clearly shown by the records of governmental acts set out in paras. 62–69 of the Counter-Memorial and the Annexes there mentioned. Thailand was thus in effective and unchallenged occupation of the area, and there was no question of a territorial “claim” by her. The error as to the true position of the watershed was discovered in the Thai survey of 1934/35.

Not surprisingly, the Cambodian side strongly rejected the assertion that Thailand administered the area and introduced contrary evidence. See generally Burgess, *Temple* (n 1) 150–55.

¹⁷ Counter-Memorial of Thailand of 29 September 1961 (para 34 at 180) ICJ Pleadings Vol. II, *Temple of Preah Vihear (Cambodia v. Thailand)* <<https://www.icj-cij.org/public/files/case-related/45/9253.pdf>>. The word ‘apocryphal’ means “of doubtful authenticity” (Merriam-Webster Dictionary <<https://www.merriam-webster.com/dictionary/apocryphal>>), as Thailand had contended that the map “was the work of French mapmakers alone and cannot be accepted as a substitute for the Treaty where it departs obviously from the Treaty’s terms.” Rejoinder of Thailand (para 2) 2 February 1962 (n 16). However, Thailand did concede that the portion of the Annex I map in question most likely was based upon sketches made by the French officers responsible for mapping this portion of the Dangrek range, but maintained that this work may never have been seen by the Mixed Commission, and, in any event, was never formally adopted by the Mixed Commission. *ibid* Rejoinder at para 37.

¹⁸ See sections III and IV below. The most significant of these documents are contained in an Appendix that immediately follows this article (pages 49–68). Other documents connected with this research but not otherwise available to the public are contained as Annexes in a special “Supplemental Documents” folder on Dropbox that interested readers can access:

<https://www.dropbox.com/sh/ctwplsoswh6ck2a/AADzgSnEaZT3_K_KIPig9zpRa?dl=0>.

For reference purposes, the words “Appendix” or “Annex,” followed by a capital letter, have been added to the upper left-hand corner of the PDF documents.

¹⁹ *ibid*.

²⁰ “The allegation that Annex I, insofar as it was attributed to the Franco–Siamese Commission, was an apocryphal document is therefore clearly justified.” Rejoinder of Thailand (para 28 at 558) 2 February 1962 (n 16).

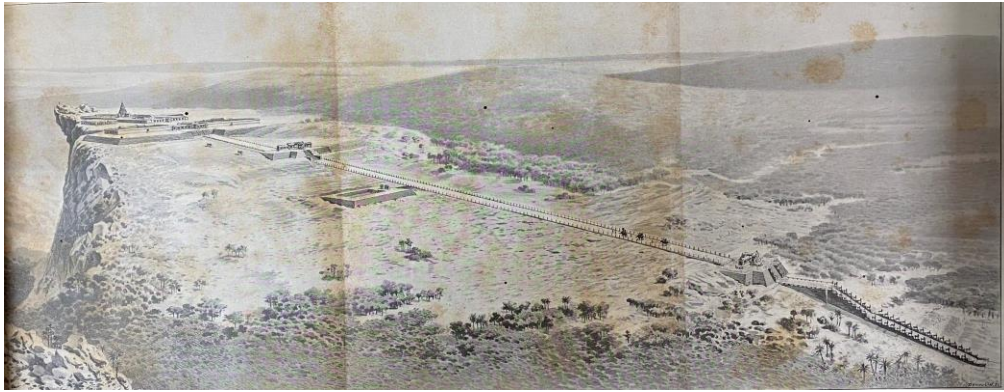


Figure 3: Panoramic 1907 “bird’s eye” sketch of Preah Vihear by Étienne Lunet de Lajonquière.

Source: *Inventaire descriptif des monuments du Cambodge*; Photographed by current author at The Siam Society, Bangkok.

However, because in March 1911 the Ministry of Interior believed that the temple was “probably in French territory,” it instructed local officials not to make any protest regarding recent activities by the French at the temple.²¹ This historical information was, in all likelihood, not known by either the Cambodians nor the ICJ.²² Had it been it would have significantly rebutted many of Thailand’s legal claims—most particularly its insistence that the map had never been “accepted” by Thailand in reference to the temple.

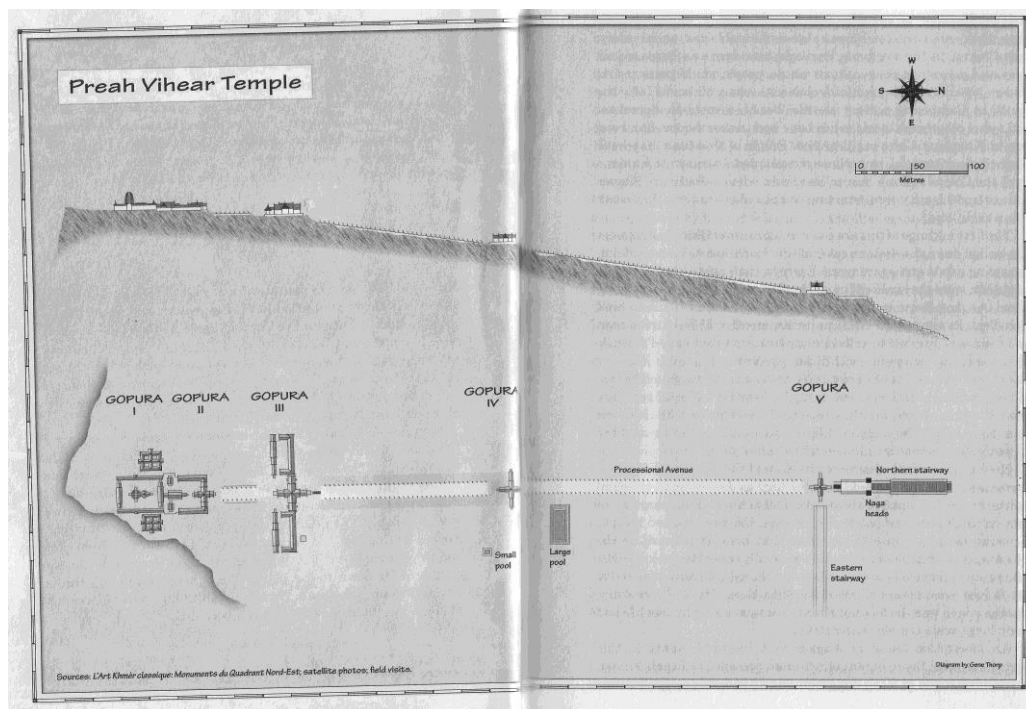


Figure 4: Drawings of Preah Vihear layout from the side and above.

Source: Scan by author from Burgess, *Temple* (n 1) 14–15.

²¹ See section III below.

²² “All through the case, the Thais kept quiet about the so-called Incident of 1911, and the Cambodians’ lawyers seem never to have found out about it. Had they known, they could doubtless have used it to their advantage.” Burgess, *Temple* (n 1) 149. The ICJ never mentioned it either.

But, before we consider this new information, it is necessary to provide some background on how these documents have now come to light, and that involves the distinguished legal figure Philip C. Jessup.

II. PROFESSOR PHILIP C. JESSUP

Philip Caryl Jessup (1897–1986) was an American law professor at Columbia University and an authority on international law.²³ Law students today, however, most likely recognize the name “Jessup” as referring to the Philip C. Jessup International Moot Court Competition, “considered the world’s largest and most prestigious moot court competition and the oldest dedicated to international law.”²⁴ The annual event attracts students from approximately 700 law schools in 100 countries and jurisdictions.²⁵

But, throughout his career, Jessup was also often retained to advise other countries on matters of international law.²⁶ And thus it was that, in late 1959, the Kingdom of Thailand requested Jessup to act as counsel for it in presenting to the International Court of Justice its case with Cambodia.²⁷ Jessup accepted the offer on 9 November 1959,²⁸ and thereafter, as counsel, received numerous documents from the Thai government to aid in the preparation of its case with Cambodia.²⁹

Jessup also “proceeded to line up other American talent for the team, notably a New York attorney named James Hyde,”³⁰ and was part of a major

²³ Encyclopedia.com <<https://www.encyclopedia.com/reference/encyclopedias-almanacs-transcripts-and-maps/jessup-philip-caryl>>; Philip C. Jessup Papers, A Finding Aid to the Collection in the Library of Congress <https://findingaids.loc.gov/exist_collections/ead3pdf/mss/2004/ms004004.pdf>.

²⁴ “Students Take Home Honors at World’s Largest Moot Court Contest after Winning U.S. Nationals,” News from Columbia Law (3 May 2012) <<https://www.law.columbia.edu/news/archive/students-take-home-honors-worlds-largest-moot-court-contest-after-winning-us-nationals>>.

²⁵ “About the Jessup” *International Law Students Association* <<https://www.ilsa.org/about-jessup/>>.

²⁶ See Part II: Legal File, 1927–1976 in Box II:50–71 of “Philip C. Jessup Papers, A Finding Aid to the Collection in the Library of Congress” <https://findingaids.loc.gov/exist_collections/ead3pdf/mss/2004/ms004004.pdf> 40–42.

²⁷ See letter of 3 November 1959 by Jessup to the foreign minister of Nicaragua, a country he was then advising in its boundary case against Honduras. Jessup wished to obtain Nicaragua’s consent to also represent Thailand, noting that he did not believe there to be any conflict of interest. Annex A, Supplemental Documents located on Dropbox: <https://www.dropbox.com/sh/ctwplsoswh6ck2a/AADzgSnEaZT3_K_KIPi9zpRa?dl=0>.

²⁸ See letter of 1 December 1959 to Jessup from Thailand’s ambassador to the United States, Visutr Arthayukti, which also outlined the financial terms of the agreement. *ibid* Annex B.

²⁹ See e.g., “List of Documents Forwarded to Professors Jessup and Hyde” (Appendix A) and “Materials to be Sent to Counsels,” Appendix B. While the page entitled “List of Documents Forwarded” consists only of one page, it is likely that the original list contained additional pages and referred to other documents. Support for this is found in other documents that are headed with a numeral in parenthesis, including numbers (4), (5), (6), and (7). The latter four are in Annex C of the Supplemental Documents (n 27).

³⁰ Burgess, *Temple* (n 1) 114.

strategy session held in Bangkok in January 1960.³¹ However, as fate would have it, in November of 1960 the United Nations Security Council and the General Assembly jointly elected³² Jessup to the International Court of Justice for a nine-year term that was due to become vacant on 5 February 1961.³³ Needless to say, this created a conflict of interest for Jessup, which resulted in his resignation as counsel for Thailand.³⁴

In a further twist of irony, the installation of the new judges to the ICJ, and the solemn declarations required of them under the ICJ Statute and Rules of Court, occurred on the morning of 10 April 1961—immediately before the first hearing by the Court of the Temple of Preah Vihear case.³⁵ After the declarations had been made, the Court's president announced that, in pursuance of Article 17 of the Statute of the Court,³⁶ Judge Jessup would not be able to participate in the decision of the case.³⁷ In his book John Burgess described what happened next: "With the oath ceremony completed, [Jessup] changed out of his robe and stepped outside the Peace Palace, where Lois [his wife] was waiting at the front steps with a rented car. He would privately express disappointment at missing the first case of his term as a judge."³⁸

Over his lifetime and after his death in 1986, Jessup and his family donated some



Figure 5: At the Peace Palace, The Hague.
Source: "Philip Caryl Jessup" (1962) 62(7) Columbia Law Review 1123–31.

³¹ Page 1 of "Proceedings and Aide-Mémoires of the Meeting of Counsel and Thai Legal Team," held at Government House in Bangkok, 18–23 January 1960, can be found in Appendix C. The entire 83-page document can be found as Annex D in the Supplemental Documents folder (n 27).

³² Article 10 section 1 of the Statute of the International Court of Justice provides that "Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected." <<https://treaties.un.org/doc/source/docs/charter-all-lang.pdf#page=23>>.

³³ See Minutes of the 909th Meeting of the United Nations Security Council, held on 16–17 November 1960 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N60/o44/71/PDF/N6004471.pdf>>.

³⁴ Copy of letter of 19 November 1960 (hand-dated) from Jessup to Thanat Khoman, the Thai Minister of Foreign Affairs. Annex E, Supplemental Documents (n 27).

³⁵ *Temple of Preah Vihear (Cambodia v. Thailand)* ICJ Press Release 1961/7 <<https://www.icj-cij.org/public/files/case-related/45/12755.pdf>>.

³⁶ "1. No member of the Court may act as agent, counsel, or advocate in any case. 2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity. 3. Any doubt on this point shall be settled by the decision of the Court."

³⁷ ICJ Press Release No. 1961/7 (n 35).

³⁸ Burgess, *Temple* (n 1) 122.

120,000 items to the Library of Congress in Washington, DC.³⁹ The materials span dates from 1574 to 1983 and take up over 394 containers measuring 157.6 feet in length (48 meters).⁴⁰ This vast collection of material consists of:

Family and general correspondence, reports and memoranda, speeches and writings, subject files, legal papers, newspaper clippings and other papers pertaining chiefly to Jessup's work with the Carnegie Endowment for International Peace, Institute of Pacific Relations, United States Department of State, United Nations Relief and Rehabilitation Administration, and International Court of Justice. Includes material relating to his World War II service in Spartanburg, S.C., and in France; and to charges made against him by Senator Joseph McCarthy and postwar loyalty and security investigations. Also includes papers of his wife, Lois Walcott Kellogg Jessup, relating to her work for the American Friends Service Committee, United States Children's Bureau, and United Nations, her travels to Africa, Latin America, and the Middle East, and to her writings.⁴¹

The material has been sorted by the Library of Congress into three parts.⁴² Part II contains a "Legal File" consisting of 22 boxes that cover the period of 1927–1976, arranged alphabetically by case name or subject.⁴³ Boxes 50 and 51 contain, among other things, material relating to "Cambodia v. Thailand ('Temple of Phra Viharn')." ⁴⁴ One of the folders contains a 26-page document entitled "The Incident of 1911,"⁴⁵ and purports to be a translation of selected internal correspondence and reports written in Thailand between the period of February to May in 1911 and provided by the Thai government to counsel in the case. While originally marked "Top Secret," this file—and others similarly marked—were among the papers that Jessup and his family donated to the Library of Congress.⁴⁶

³⁹ Jessup Papers (n 26) 2, 4.

⁴⁰ *ibid* 2.

⁴¹ *ibid*.

⁴² *ibid* 4.

⁴³ *ibid* 40.

⁴⁴ *ibid*.

⁴⁵ See Appendix D, containing the first nine (and most important) documents. The remaining documents (numbered 10 through 17) are in Annex F of the Supplemental Documents (n 27).

⁴⁶ This author inspected these documents in Washington, DC on 29–30 June 2022. At the time many "Top Secret" documents in the two boxes had previously been marked as declassified, but the "Incident of 1911" file had not been. When the author requested to scan the file to a PDF on 29 July 2022, the Manuscript Division held up the request until later in the day, during which time the U.S. State Department was contacted and authorized the declassification of the file. One can surmise, however, that the "Top Secret" designation had originally been applied to the documents by the Thai government at the time of their translation (most likely in late 1959 or early 1960), as obviously they were intended to be kept confidential within the legal team representing Thailand. As mentioned above in footnote 22, it appears that neither the Court nor the Cambodian legal team ever knew about the contents of this file.

III. THE INCIDENT OF 1911

The “Incident” pages were arranged into five sections (labeled A to E) and consisted in total of 17 items, each of which bore a number from (1) to (17).⁴⁷ The most significant items were in sections A to C, numbered from (1) to (8), as they involved correspondence between high government officials and/or ministries, as did Document (9) that begins section D. Unfortunately, reading the correspondence in the numerical order in which the documents were presented makes understanding the overall content difficult because of at least three factors: (1) the documents are not then in chronological order, (2) there are some date errors in the headings that appear on the translated documents, and (3) certain documents include detail on matters not directly relevant to the matter now at hand, and, out of order, can be distracting.

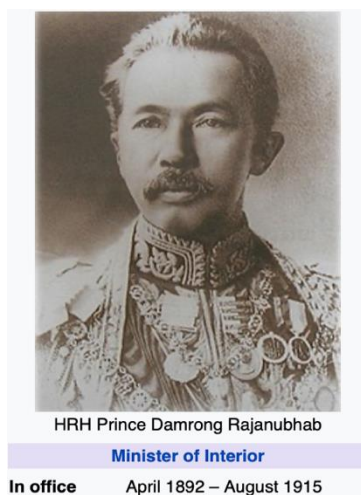


Figure 6
Source: Wikipedia.

The first nine items can be found in the Appendix that immediately follows this article. While readers may, of course, read the documents in any order they choose, this author suggests that they be read in the following sequence: (1), (5), (4), (2), (3), (6), (9), (8), and (7). The following discussion will summarize the documents in that order, and a concise four-page summary of those documents, also in that suggested sequence, is available in Appendix E.

Document (1)⁴⁸ is a letter of 24 February 1911 that Prince Damrong,⁴⁹ the Minister of the Interior, wrote to his half-brother, Prince Devawongse,⁵⁰ the Minister of Foreign Affairs. In his letter, Prince Damrong indicated he had received information that on 6 February 1911 a party of about 20 men, led by two Frenchmen, had

⁴⁷ See page 1 of “The Incident of 1911” in Appendix D.

⁴⁸ See Appendix D(1).

⁴⁹ Damrong Rajanubhab (1862–1943) was the son of King Mongkut and half-brother of King Chulalongkorn. He founded modern education and provincial administration and was considered Thailand’s leading intellectual of his generation. Because of his exceptional ability, in 1892 he was appointed the Minister of Interior, the most powerful position in the bureaucracy. Serving in this position until 1915, he modernized what had been a decentralized system of provincial administration, grouping the almost 100 provinces into only 14 “circles” and had them staffed by modern-educated young officers and royal commissioners. These efforts drastically reduced what had been often anarchical provincial autonomy. “Damrong Rajanubhab” *Encyclopedia Britannica* (27 November 2022) <<https://www.britannica.com/biography/Damrong-Rajanubhab>>; “Prince Damrong Rajanubhab” *The British Museum* <<https://www.britishmuseum.org/collection/term/BIOG9330>>. “During his twenty-three years as interior minister, the prince visited seventy of Siam’s seventy-one provinces, often traveling by oxcart, elephant, and horse.” Burgess, *Temple* (n 1) 83.

⁵⁰ Devawongse Varoprakar (1858–1923), a son of King Mongkut and the younger half-brother of King Chulalongkorn, was the Foreign Minister of Siam from 1885 to 1923. His policies enabled the kingdom to survive as an independent state. He established Siam’s first modern bureaucratic ministry, with a Western-style system of organization. “The chief characteristics of Devawongse’s foreign policy were genial accommodation and a determination that Siam should be treated as an equal by the Western countries with which the kingdom earlier had signed unequal treaties.” “Prince Devawongse Varoprakar” *Encyclopedia Britannica* (23 November 2022) <<https://www.britannica.com/biography/Prince-Devawongse-Varoprakar>>.

cleared their way to the Temple of Preah Vihear and constructed a resthouse there. The letter went on to say that a later report revealed the area cleared had been 120 x 240 meters, that there actually had been 50–60 men plus a French resident and two officers, and that the work took place between 23 January and 5 February 1911. Prince Damrong went on further to say that he understood Preah Vihear to be located in Siam⁵¹ and, to clarify the situation, felt that "the French Minister should be informed or enquiry should be made from him regarding this matter." Prince Damrong ended the letter saying that he had also written to Phya Vongsa⁵² Nuprapat, as he had been the "Chairman of the Siamese Delimitation Commission of that period."

Document (5),⁵³ written the next day on 25 February 1911, was a letter from a Mr. Westengard.⁵⁴ He was writing to Prince Devawongse, the Foreign Minister, as the Prince had forwarded to Westengard⁵⁵ a copy of Prince Damrong's original letter (Document (1)). Westengard said he was aware of the matter as the Ministry of Interior had spoken to a Mr. Ponsot,⁵⁶ who in



⁵¹ The letter itself used the phrase "in the territory of the Kingdom."

⁵² The translated letter spells the name with a capital "W," but it is spelled with a "V" in other documents, such as in the footnote on Appendix D(6).

⁵³ Appendix D(5).

⁵⁴ The reference is to Jens Westengard, a Danish–American legal scholar who, after first teaching at Harvard Law School, moved to Siam in 1903 to initially become the Assistant General Advisor to the government, later the Acting General Advisor, and from 1909 to 1915 the General Advisor. He held the rank of Minister Plenipotentiary, received numerous royal honors, and was uniformly known and referred to as "Phya Kalyan" (or "Phya Kalyana Maitri"). See Joseph H. Beale, Porter E. Sargent, A Siamese Student, and John Raeburn Green, "Jens Iverson Westengard" (1918) 32(2) *Harvard Law Review* 93–113 <<https://www.jstor.org/stable/1327639>>.

⁵⁵ "As [Westengard] came to exert an influence in the government second only to the King, every problem of internal administration and foreign diplomacy passed through his office." *ibid* 99.

⁵⁶ The reference is to Henri Ponsot, a French diplomat who, early in his career, was posted to Bangkok. Information about him during this period has been difficult to locate, but it appears at some point he may have been somewhat of an advisor to King Chulalongkorn. "A French official named Ponsot had actually been appointed by Chulalongkorn as Siamese Royal Commissioner at Battambang. That official had already talked the matter over with the King of Siam and they had decided to liquidate the whole matter, if France would give them a fair return." Lawrence Palmer Briggs, "The Treaty of March 23, 1907 between France and Siam and the Return of Battambang and Angkor to Cambodia" (1946) 5(4) *The Far Eastern Quarterly* 439, 451 <<https://doi.org/10.2307/2049791>>. In Annex No. 50 of Thailand's Rejoinder of 2 March 1962 to the ICJ, a letter in French of 17 March 1907 by Colonel Bernard, the President of the French Delimitation Commission, mentions Ponsot thusly (from Google Translate): "Ponsot, former Secretary of the Legation of France in Siam, currently Advisor to the Ministry of the Interior, had already made it possible to adopt the main provisions of the treaty and the protocols." ["Ponsot, ancien Secrétaire de la Légation de France au Siam, actuellement Conseiller au Ministère de l'Intérieur, avaient permis d'arrêter déjà les principales dispositions du traité et des protocoles."] Rejoinder of Thailand, 2 February 1962 (n 16) at 603. Ponsot's name also appears as being

turn had written a Note that Westengard now enclosed.⁵⁷ Westengard related that Ponsot's Note states, among other things, that on a map called "Dangrek" Preah Vihear is shown to be on the French side. Westengard felt that both ministries had copies of this map and suggested that Prince Devawongse, as well as the Ministry of the Interior, look at this map so as to be able to confirm the accuracy of Ponsot's statement.

Document (4),⁵⁸ also written on 25 February 1911, was the Note written by Mr. Ponsot. He stated that the French Legation had indicated that Preah Vihear was "considered by the French Authorities to be in French territory, as shown in the map drawn up by the Boundary Commission (see carton 'Dangrek')."

Document (2)⁵⁹ was sent the next day (26 February 1911) by Prince Devawongse to Prince Damrong, in reply to the latter's letter of 24 February. In it Prince Devawongse said he had conferred with Phya Kalyan [aka Westengard], who was informed by Ponsot that the French considered Preah Vihear to be in French territory as such appears on the frontier delimitation map. Prince Devawongse then asked Prince Damrong to look up the map in order to verify which side the temple was on. If the map were shown to be on the Thai side, Prince Devawongse felt that "then appropriate representations could be made" to the French, but "[i]f it is in French territory, it would be improper to make any representation to the French Minister."⁶⁰ Prince Devawongse then mentioned that he had corresponded with the Minister of Defense, as he felt this matter also concerned that Ministry and suggested that certain instructions could be sent out to local authorities.⁶¹

Document (3),⁶² dated 10 March 1911, is from the Under-Secretary of the Ministry of Interior to the Under-Secretary of the Ministry of Foreign Affairs. The letter states that the Interior Ministry had written to Phya Vongsa Nuprapat, the Minister of Agriculture, asking for verification of the location of Preah Vihear. Phya Vongsa had replied that, according to his recollection,⁶³ "Phra Viharn stood on the south-east side of the boundary range called Phanom Dangrek" as "one had to cross a big mountain before coming to another hill, on whose slope Phra Viharn stood. . . .

present, and part of the Siamese delegation, at the 2 December 1906 meeting of the Franco-Siamese Commission of Delimitation held at Angkor-Wat. See Annex H of Supplemental Documents (n 27).

⁵⁷ The Note from Mr. Ponsot is item #4, discussed next.

⁵⁸ Appendix D(4).

⁵⁹ Appendix D(2).

⁶⁰ *ibid.*

⁶¹ The final paragraph of the letter (Appendix D(2)) states that Prince Devawongse had heard back from the Ministry of Defense, "indicating certain points on which clarification should be sought from the French Minister," and that Prince Devawongse had "sent a reply to the French Minister," was enclosing for Prince Damrong "the four copies of correspondence," and would inform Prince Damrong of any reply back from the French minister. Copies of this "correspondence" have not been obtained, so it is unknown exactly what was said to the French minister. However, in light of subsequent events (see Document (6), discussed below), it seems plausible that the "certain points on which clarification should be sought" from the French were merely enquires (quite possibly those mentioned by Mr. Ponsot in his Note (Document (4)) that in no way suggested any protest—or "representation"—that questioned the propriety of the French activities at the temple.

⁶² Appendix D(3).

⁶³ The quotations are verbatim from the letter, but the quoted words are those of the Under-Secretary of the Ministry of Interior, summarizing what Phya Vongsa had written to the ministry.

According to what he had seen and could still remember, Phra Viharn was in French territory,” but, to verify, the “Phra Viharn map 1/200,000⁶⁴ should be consulted.”⁶⁵

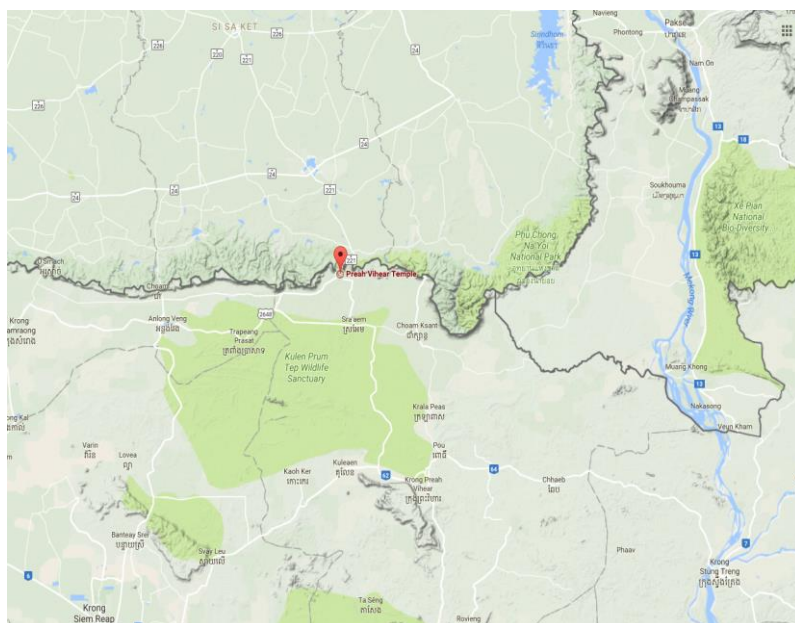


Figure 8: Map showing the Dangrek mountain range.
Source: Google Maps (terrain view).

The Interior Under-Secretary went on to relate that the map had been examined and “it was found that Phra Viharn spot was in French territory.”⁶⁶ He added that the Ministry of Interior “was afraid that Phra Viharn was probably in French territory and a telegram was therefore sent to Isarn Province instructing it to refrain from making any representation with regard to French activities at Phra Viharn.”⁶⁷ The letter

⁶⁴ This was the scale of the map, entitled “DANGREK” and included Preah Vihear, copies of which were provided in 1908 by the French to the Thai government. It was also the “Annex I” map that Cambodia submitted to the ICJ at the time it filed its case against Thailand on 6 October 1959.

⁶⁵ The original Annex I map, printed and distributed in 1908, was at the scale of 1:200000 (1 centimeter on the map = 2 kilometers on the ground) and can be viewed (in four sections) at the very end of the Court’s PDF file that begins with Cambodia’s *Application Instituting Proceedings* of 6 October 1959 <<https://www.icj-cij.org/public/files/case-related/45/9249.pdf>>. Moreover, in a report prepared for Thailand and filed in the second Preah Vihear case, it was noted that

there is a need to consider the technical limitations of a small scale map such as the Annex I map. Even if the map is accurate, the scale will define the precision with which the position of any feature on the map can be determined. The arms of the cross symbols used to mark the boundary on the Annex I map are about 0.6 millimetres wide, which is 120 metres on the ground.

Alastair Macdonald and Martin Pratt, “Assessment of the Task of Translating the Cambodia–Thailand Boundary Depicted on the ‘Annex I’ Map onto the Ground,” International Boundaries Research Unit (Durham University, October 2011) Annex 96 of the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)* (Cambodia v. Thailand) (Written Observations of Thailand) para 36 at 643 <<https://www.icj-cij.org/public/files/case-related/151/17286.pdf>>.

⁶⁶ Appendix D(3).

⁶⁷ *ibid.*

further related that Isarn Province had replied and confirmed that “in respect of clearance of Phra Viharn ground no representation has been made.”⁶⁸ The letter added that officials went to Preah Vihear after the French had left and reported that “[m]any tall trees obscuring the view of Phra Vihear were also cut down. It was thought that by so doing, the French wished to have a clearer view of Phra Viharn from the valley.”⁶⁹

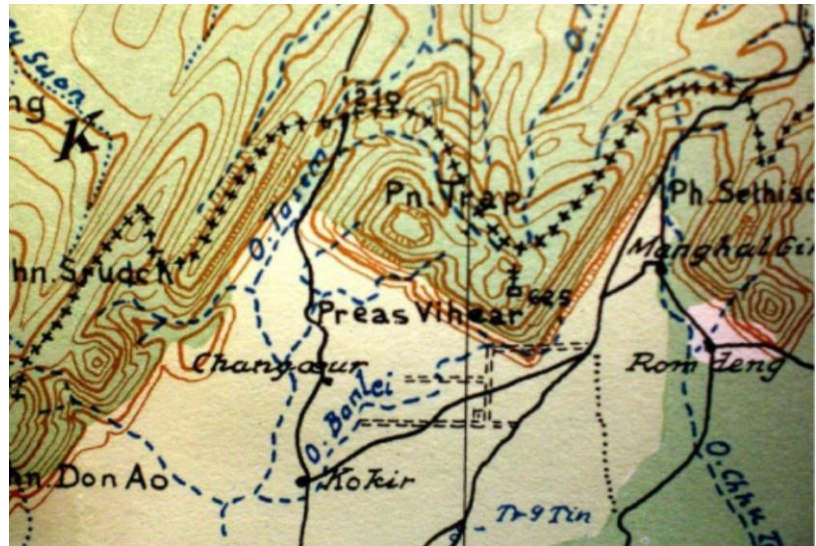


Figure 9: Enlarged portion of the relevant area from an Annex I Map that had later been revised by using enhanced colorization and displaying greater detail.

Source: Sven Mißling, “A Legal View of the Temple Preah Vihear” *OpenEdition Books* (Göttingen University Press 2015) <<https://books.openedition.org/gup/307?lang=en>>.

Document (6),⁷⁰ written nine days later on 19 March 1911,⁷¹ was a reply to the 10 March letter (#3) just described. Again, it was the two Under-Secretaries writing to one another, this time from Foreign Affairs to Interior. In it the Under-Secretary acknowledges receipt of the 10 March letter, which was then brought to the attention of Prince Devawongse, the Foreign Minister, “who said that on the information already received, there was no need to reprimand the French.”⁷²

Document (9),⁷³ written a month later on 20 April 1911, is, in turn, a ministry reply to document (6), but this time from the Deputy Under-Secretary of the Ministry of Interior (signing for the Under-Secretary) to the Under-Secretary of the Ministry of Foreign Affairs. The letter first extensively summarizes the Interior Ministry’s earlier letter of 10 March 1911, and then went on to say that Prince Damrong, the Minister of Interior, had received from Isarn Province a copy of a report by Nai Kleub and Nai

⁶⁸ *ibid.*

⁶⁹ *ibid.* It can be surmised that “the valley” refers to the vast, flat Cambodian plain that stretches south of the temple, which is located some 525 meters above the plain. The report being referenced is that of “Report No. II” and can be found as Annex F(11) in the Supplemental Documents folder <https://www.dropbox.com/sh/ctwplsoswh6ck2a/AADzgSnEaZT3_K_KIpPigzpRa?dl=0>.

⁷⁰ Appendix D(6).

⁷¹ The letter itself is dated 19 March 1911, but the header to Document (6) states a date of “March 18, 1911,” a date that also appears in the index to the file on page 1 of The Incident of 1911 file in Appendix D.

⁷² Appendix D(6).

⁷³ Appendix D(9).

Mau,⁷⁴ together with their five memoranda and four maps (ten items total),⁷⁵ all of which were now being forwarded with the present letter, with the request that they be brought to the knowledge of Prince Devawongse, the Minister of Foreign Affairs.

Document (8),⁷⁶ written another month later on 20 May 1911, is a continuation of the Ministry of Interior's earlier letter of 20 April (Document (9)), and was sent by the Under-Secretary to his counterpart at the Ministry of Foreign Affairs. It reports that the Minister of Interior (Prince Damrong) had now received yet another report from Isarn Province, this time from a Lance-Corporal In, who went up to inspect Preah Vihear. L/Cpl In reported on the dimensions of the clearing he found, as well as seeing a wooden resting place. L/Cpl In added that he was also informed by the village headman that in April one Frenchman and 20 Cambodians "came up to clear the way and also erected the resthouse."⁷⁷

Finally, Document (7),⁷⁸ dated 23 May 1911 (but with the erroneous date in the header of 18 May), is from the Under-Secretary at Foreign Affairs to his counterpart at Interior in reply to the 20 May letter (Document (8)). It simply acknowledges having seen and taken note of Interior's letter of 20 May and asks that this fact be brought to the attention of Prince Damrong. As mentioned earlier, a concise summary of each of the nine letters can be found in Appendix E.

IV. ANALYSIS

To briefly recap the legal situation, the ICJ put the issue thusly: "The real question, . . . which is the essential one in this case, is whether the Parties did adopt the Annex I map, and the line indicated on it, as representing the outcome of the work of delimitation of the frontier in the region of Preah Vihear, thereby conferring on it a binding character."⁷⁹ This was crucial, as Article I of the Treaty of 1904 had provided

⁷⁴ Document (9) mentions that these men were "the officials who had been assigned to patrol highwaymen" and "had also been instructed to make maps of Phra Viharn."

⁷⁵ The report and five memoranda referred to are Document Nos. (10) to (15) inclusive from "The Incident of 1911" file, located online as Annex F in the Supplemental Documents folder <https://www.dropbox.com/sh/ctwplsoswh6ck2a/AADzgSnEaZT3_K_KIpPi9zpRa?dl=0>.

The reports are each dated 21 April 1911, though the translation for Report No. II (Document (11)) misstates the month as being November. In the reports, "Nai Kleub" is described as a "clerk," and "Nai Mao" as a "probationer in Government Service" and also "student – recorder." The documents are fascinating to read in respect to their detail. Report No. I (Document (10)) is a summary of the day-to-day itinerary as the men traveled to Preah Vihear and back over the period of 20 February–1 March 1911. Report No. II (Document (11)), among other things, is "on reasons for and purposes of clearing of the woods by the French." Report No. III (Document (12)) is "on the Position of Ta Thao pass (or Phra Chai pass)," Report No. IV (Document (13)) is "on the position of Sra Trao (Sra: pool)," Report No. V (Document (14)) is "on the description of Don-Ao pass and on the route to Ban Don-Ao," and Report No. VI (Document (15)) is "on events around Dam Pak Ka and Chan Daeng-Chan Hom Passes." While there is mention of four maps being created, only two maps (Document nos. (16) and (17)) appear in The Incident of 1911 file (Annex F).

⁷⁶ Appendix D(8).

⁷⁷ *ibid.*

⁷⁸ Appendix D(7).

⁷⁹ ICJ *Merits* (n 3) 22.

that the border should be the watershed line⁸⁰ and it was now clear that, at least in the area of the temple, the line on the Annex I map was not the watershed.⁸¹ But Article 3 had further provided that there were to be delimitation commissions, composed, respectively, of officers from both sides,⁸² that would determine where the actual border was on a map.⁸³ However, and perhaps due to the rush of events,⁸⁴ the delimitation commission itself may never have met to give final approval of the border line in the area of the temple,⁸⁵ though it seemed clear that the resulting Annex I map must have been based on the work of the surveying officers.⁸⁶ Given this state of affairs, the Court felt the parties were free to “adopt the Annex I map, and the line indicated on it, as representing the outcome of the work of delimitation of the frontier in the region of Preah Vihear, thereby conferring on it a binding character.”⁸⁷ Thus the question became, did Thailand so adopt⁸⁸ the Annex I map?

⁸⁰ *ibid* 16–17.

⁸¹ See Report by Professor W. Schermerhorn, Dean of the International Training Center for Aerial Survey in Annex No. 46 of *Temple of Preah Vihear (Cambodia v. Thailand)* (Counter-Memorial of the Royal Government of Thailand) 432–36 <<https://icj-cij.org/public/files/case-related/45/9253.pdf>>: “It is obvious that the border line shown on the ‘annex I’ map was drawn by constructing the watershed line in accordance with the contour lines represented there. This construction was done correctly on the basis of the given contour lines. However, due to the mistake about the O’Tasem river the line of the watershed is shifted incorrectly to the north, placing the Pnom Trap mountain completely in Cambodian territory i.e. south of the border line as drawn in the ‘annex I’ map. . . . If this mistake is rectified in the ‘annex I’ map then . . . the watershed would run over the Pnom Trap mountain and go from there along the southern rim of Phra Viharn mountain to the temple.” *ibid* 435–36.

⁸² ICJ *Merits* (n 3) 17. While Article I of the Treaty of 1904 spoke of “Mixed Commissions” (plural), they were commonly viewed as a singular entity: “In due course, a Mixed Commission composed of French and Siamese members was set up, charged with the task of delimiting the eastern sector of the Dangrek range in which Preah Vihear is situated. This Mixed Commission was composed of two sections, one French and one Siamese, sitting together.” *ibid*.

⁸³ “[W]hat had to be delimited was ‘the frontiers’ between Siam and French Indo-China; . . . In consequence, the line of the frontier would, to all intents and purposes, be the line resulting from the work of delimitation, unless the delimitation were shown to be invalid.” *ibid*.

⁸⁴ “[A]ttention in both countries . . . was directed towards the conclusion of the Treaty of 23 March 1907.” *ibid* 20.

⁸⁵ “[A]fter the minutes of the meeting of the First Commission on 2 December 1906, there is no further reference whatever, in any minutes of later meetings, to the question of the frontier in the Dangrek region.” *ibid* 18.

⁸⁶ “What is certain is that the map must have had a basis of some sort, and the Court thinks there can be no reasonable doubt that it was based on the work of the surveying officers in the Dangrek sector.” *ibid* 21. And see Burgess, *Temple* (n 1) 79: “What is undisputable is that someone from the commission team visited the area and made extensive observations. The map depicts the shape of the promontory and the temple’s presence there. An elevation reading at the peak is reasonably accurate at six hundred twenty six metres. The adjacent hill is shown, as is its name, Phnom Trap. Even if not fully accurate, the map has a level of detail that would not have been possible had commission members remained on those cart tracks ten or fifteen kilometers to the north.”

⁸⁷ ICJ *Merits* (n 3) 22. As further noted by the Court, “Even if there was no delimitation of the frontier in the eastern sector of the Dangrek approved and adopted by the Mixed Commission, it was obviously open to the Governments themselves to adopt a delimitation for that region, making use of the work of the technical members of the Mixed Commissions.” *ibid*.

⁸⁸ According to the Merriam-Webster Dictionary, the verb “adopt” (n. adoption) means “to take up and practice or use,” while the verb “accept” (n. acceptance) means “to give admittance or approval to.” “Adopt” *Merriam-Webster Dictionary* <<https://www.merriam-webster.com/dictionary/adopt>>;

From what can be discerned, Thailand never in any public, formal, or official way adopted the Annex I map.⁸⁹ Thus it was left for the Court to determine whether Thailand had, nonetheless, adopted or accepted the map in some less-public way. The conclusion by the Court in 1962 that Thailand had accepted the map over the period of 1908–1909 was based almost entirely upon evidence that Thailand never complained or took issue with the correctness of the map. In the Court’s view, it was clear that:

the circumstances were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map or had any serious question to raise in regard to it. They did not do so, either then or for many years, and thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset.*⁹⁰

As explained by Burgess, “The judges were citing a principle of law: He who keeps silent is held to consent if he must and can speak.”⁹¹ In other words, Thailand now had an affirmative obligation to “speak up” if it had any objection to the map as staying silent would, in law, be deemed acceptance of it.

It has been pointed out, however, that “[d]espite the existence of acquiescence as a well-established legal tenet, one can validly question whether the principle remains ethnocentric in nature, and whether its application is appropriate in all cultural contexts.”⁹² Indeed, quoting Rosechongorn Komolsevin, “‘Asians in general, and Thais in particular, use silence as an important communication tool.’ She posits that much misunderstanding within intercultural communication is based on inadvertent ethnocentrism and lack of awareness of Thai communication culture.”⁹³ And it was for this very reason that M.R. Seni Pramoj had strongly urged the Thai legal team to assert that reality:

As for the question of Thai acquiescence, I submit that we come out with the admission that under the pressure of France’s colonial expansion, we usually played dumb and not infrequently went to the extent of playing possum. That policy of necessity was fully justified by the historical fact that out of all the countries in this part of the world

“Accept” *Merriam-Webster Dictionary* <<https://www.merriam-webster.com/dictionary/accept>>. In the context of this case, the words appear to have been used synonymously with one another.

⁸⁹ “The Government of Cambodia has not produced any express statement by the Government of Thailand that the line marked on Annex I is the correct line of the boundary.” Written Rejoinder of Thailand, 2 February 1962 (n 16) para 77 at 583; “Counsel for Thailand once again state that the map Annex I was never for one moment considered by Thailand a binding document. It has never been used by Thailand to show where the treaty boundary lies.” Oral Argument of M.R. Seni Pramoj (Rejoinder) 27 March 1962 (n 15).

⁹⁰ ICJ *Merits* (n 3) 23, Latin italics in original. “Acquiesced” is the past tense of the verb “acquiesce,” meaning “to accept, comply, or submit tacitly or passively.” “Acquiesce” *Merriam-Webster Dictionary* <<https://www.merriam-webster.com/dictionary/acquiesce>>. See also the comments from the concurring opinion of Judge Sir Gerald Fitzmaurice, at footnote 14.

⁹¹ Burgess, *Temple* (n 1) 156.

⁹² Sally Tyler, “Of Temples and Territory: The ICJ’s Preah Vihear Decision and Implications for Regional Dispute Resolution” (2016) 19(1) *University of the District of Columbia Law Review* <<https://digitalcommons.law.udc.edu/udclr/vol19/iss1/5>> 133, 146.

⁹³ *ibid.*

Thailand alone escaped clutches of colonialism.⁹⁴

This strategic approach, however, was not adopted, and, in 1967, James Hyde from the Thai legal team told an audience at Yale Law School that the Thai side realized from the beginning their weakness on the acquiescence issue. In hindsight, he felt that Thailand might have justified its silence about the map based on the geopolitical environment of the time.⁹⁵ “I would have argued at length the long history of humiliation and dismemberment which Siam had suffered at the hands of France . . . and the policy which Siam had had to maintain in order to survive of never meeting head-on French colonial imperialism.”⁹⁶

As far as it is known, in 1962 neither the Court nor the Cambodian legal team were aware of the now-revealed Incident of 1911 correspondence.⁹⁷ If it had been known, its impact in the case—and in favor of Cambodia—would have been considerable. To see why, we need to focus on the most significant portions of this correspondence.

First are the comments of Phya Vongsa, the Minister of Agriculture, who during 1904–1907 was the President (or Chairman) of the Siamese Delimitation Commission and then known as “General Mom Chatidej Udom.”⁹⁸ And what does Phya Vongsa recall? In coming to the temple, “one had to cross a big mountain before coming to another hill, on whose slope Phra Viharn stood. . . . According to what he had seen and could still remember, Phra Viharn was in French territory,” but, to verify, the “Phra Viharn map 1/200,000 should be consulted.”⁹⁹

In addition to being informed of what Phya Vongsa had remembered,¹⁰⁰ the map in question was examined and it is now quite clear that in March 1911 both the Minister of Interior and the Minister of Foreign Affairs knew that the so-called Annex I map, which the French had prepared at Siam’s request,¹⁰¹ placed the temple “in French territory”—modern-day Cambodia.¹⁰² This was extremely significant to the ministers, as they had earlier thought that some sort of “representation” should or at

⁹⁴ Observation of 19 January 1960, Annex G(1), Supplemental Documents
<https://www.dropbox.com/sh/ctwplsoswh6ck2a/AADzgSnEaZT3_K_KIpPi9zpRa?dl=0>.

⁹⁵ Burgess, *Temple* (n 1) 158–59.

⁹⁶ *ibid* 159.

⁹⁷ See footnote 22.

⁹⁸ “Phya Vongsa was formerly M.C. Chatidej Udom, chairman of the Siamese Delimitation Commission 1904–1907.” Footnote 1 in translated letter of 19 March 1911 from the Ministry of Foreign Affairs to Ministry of Interior, Appendix D(6). In the Minutes of the 2 December 1906 Meeting of the Franco–Siamese Commission of Delimitation, his name appeared as “General Mom Chatidej Udom, President.” Annex H of Supplemental Documents folder: <https://www.dropbox.com/sh/ctwplsoswh6ck2a/AADzgSnEaZT3_K_KIpPi9zpRa?dl=0>.

⁹⁹ Letter of 10 March 1911 from the Ministry of Interior to Ministry of Foreign Affairs, Appendix D(3). The Court also observed that “It has not been contested that the Presidents of the French and Siamese sections of the Commission, as representing it, duly made this journey, and that in the course of it they visited the Temple of Preah Vihear. But there is no record of any decision that they may have taken.” ICJ *Merits* (n 3) 18.

¹⁰⁰ Appendix D(3).

¹⁰¹ ICJ *Merits* (n 3) 20.

¹⁰² Letter of 10 March 1911 from the Ministry of Interior to Ministry of Foreign Affairs, Appendix D(3), and letter of 19 March 1911 from the Ministry of Foreign Affairs to Ministry of Interior, Appendix D(6).

least could be made to the French *if* the temple was in fact shown to be in Thailand.¹⁰³ Indeed, Prince Damrong initially believed that the temple was in Thailand,¹⁰⁴ which was the reason for his letter to Prince Devawongse on 24 February 1911. But when it was realized that the map actually showed the temple to be situated in Cambodia, they both felt that it would now be improper to say anything to the French about the latter's activities at the temple.¹⁰⁵ As a result, the Ministry of Interior then sent a telegram "to Isarn Province instructing it to refrain from making any representation with regard to French activities at Phra Viharn."¹⁰⁶

There is, of course, a distinction between a formal or official statement about adoption or acceptance of the Annex I map itself, which, as noted above, the Thai government apparently never did,¹⁰⁷ as contrasted to simply a mere recognition of what the map showed regarding the location of the temple. If all there had been was "mere recognition" of what the map showed, it would have been passive behavior, not dissimilar to how Thailand conducted itself in later years, i.e., by not saying or doing anything at all.¹⁰⁸ In the Incident of 1911, however, Thailand did *not* remain passive and do nothing, but instead took decisive action. A formal decision was made by the Thai government, albeit internally, to instruct local officials *not* to protest the activities by the French at the temple¹⁰⁹ *because* the map had showed the temple to be located in Cambodia.¹¹⁰ The decision not to protest is exceedingly strong evidence that the two officials—in this case Prince Damrong, the Minister of Interior, and Prince Devawongse, the Minister of Foreign Affairs—believed that the Annex I map had legal significance vis-a-vis Thailand. While perhaps begrudgingly because of where the Annex I map placed the temple, the map nevertheless was accepted by these two high governmental officials as having a determinative effect on how the foreign policy of Thailand should and would be conducted.

While the Court in 1962 decided that acceptance of the Annex I map had occurred during 1908–1909¹¹¹ due to the lack of any objection as to its accuracy within

¹⁰³ Letter of 24 February 1911 from Prince Damrong to Prince Devawongse, Appendix D(1), and letter of 26 February 1911 from Prince Devawongse to Prince Damrong, Appendix D(2).

¹⁰⁴ "I understand Phra Viharn to be in the territory of the Kingdom, and am therefore of opinion that for clarity sake the French Minister should be informed or enquiry should be made from him regarding this matter." Appendix D(1)(Prince Damrong to Prince Devawongse, 24 February 1911).

¹⁰⁵ Appendix D(3)(Interior to Foreign Affairs, 10 March 1911), and Appendix D(6)(Foreign Affairs to Interior, 19 March 1911). And see Appendix D(2) (Prince Devawongse to Prince Damrong, 26 February 1911): "If it [Preah Vihear] is in French territory, it would be improper to make any representation to the French Minister."

¹⁰⁶ Appendix D(3)(Interior to Foreign Affairs, 10 March 1911).

¹⁰⁷ See footnote 89.

¹⁰⁸ See chronology in footnote 113.

¹⁰⁹ Appendix D(3) Interior to Foreign Affairs, 10 March 1911.

¹¹⁰ "If it is in French territory, it would be improper to make any representation to the French Minister." Letter by the foreign minister, Prince Devawongse, to Prince Damrong (26 February 1911), Appendix D(2).

¹¹¹ "The Court however considers that Thailand in 1908–1909 did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognized the line on that map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory." ICJ *Merits* (n 3) 32.

a reasonable period of time,¹¹¹ the Incident of 1911 correspondence certainly provides us now with very strong and specific evidence of *actual* acceptance in 1911. The Court's confidence in the correctness of its announced dates of 1908–1909 had been bolstered significantly by Thailand's known conduct over the following 50 years, which was not to say anything about the border line at the temple despite there being numerous circumstances in which such would have been expected had there been any objection to the map.¹¹² This conduct—or, rather, the lack of it—was found to be consistent with the Court's conclusion that Thailand had actually accepted the Annex I map in 1908–1909.¹¹³

Yet the Court gives every indication that its conclusion about the 1908–1909 dates was quite “soft” and would easily have been reconsidered had Thailand actually made some protest about the map in the years following its publication. The Court noted that “Thailand had several opportunities of raising with the French authorities the question of the Annex I map,” mentioning the Treaties of Friendship of 1925 and 1937, and particularly the 1947 Franco–Siamese Conciliation Commission meeting in Washington where there “was an outstanding opportunity for Thailand to claim a rectification of the frontier at Preah Vihear on the ground that the delimitation embodied a serious error which would have caused Thailand to reject it had she known of the error in 1908–1909.”¹¹⁴ But Thailand did not.

It is, of course, quite possible that in 1911 the ministers assumed that the border line on the map represented the true watershed, in accordance with the 1904 treaty, and for that reason made no complaint at the time.¹¹⁵ Such certainly would have been understandable. But, in its own survey of the area between 1934–1935, Thailand determined that the line on the Annex I map was *not* the watershed line.¹¹⁶

¹¹¹ *ibid* 23.

¹¹² **1909:** Mixed Franco–Siamese Commission of Transcription set up to convert existing maps into atlas form, provide names in equivalent Siamese script, and create Siamese geographical service. No mention of Preah Vihear. **1925:** Friendship treaty negotiations, but no mention of Preah Vihear. **1930:** Prince Damrong visits Temple and is received by the French Resident in full dress uniform with the French flag flying from a flagpole (“A clearer affirmation of title on the French Indo–Chinese side can scarcely be imagined. It demanded a reaction. Thailand did nothing.” ICJ *Merits* [1962] (n 3) 30.) **1934–1935:** Thai cartographic survey shows Annex I line is *not* the watershed line, but this finding not conveyed to the French. **1937:** Franco–Siamese Treaty negotiations confirm existing frontiers and Royal Thai Survey Department publishes map showing Preah Vihear in Cambodia (and did so up until 1958). **1947:** Franco–Thai Conciliation Commission meets in Washington, DC to work out any revisions to the frontier settlements of 1904 and 1907; Thailand introduces a map in regard to its numerous complaints about *other* locations along the border, nothing is said about Preah Vihear, but the map shows Temple as being in Cambodia; **1958:** Thailand makes first formal objection to the Annex I map. The above dates, and their significance, can be found in the ICJ *Merits* decision of 1962 (n 3).

¹¹³ “Thailand's subsequent conduct confirms and bears out her original acceptance.” ICJ *Merits* (n 3) 33.

¹¹⁴ *ibid* 27–28.

¹¹⁵ The Court pointed out that Thailand had argued that it had never accepted the Annex I map or the border shown on it “at any rate so far as Preah Vihear is concerned, in such a way to become bound thereby; or, alternatively that, if she did accept the map, she did so only under, and because of, a mistaken belief (upon which she relied) that the map was correctly drawn to correspond with the watershed line.” *ibid* 21.

¹¹⁶ *ibid* 27.

Nevertheless, the issue was not raised. Was Thailand still “in fear of the French”?¹¹⁸ That seems unlikely, at least on the matter about the border near the temple, as in 1911 Thailand was quite prepared to contact the French on the subject.¹¹⁹ Or was there silence after 1934–1935, when Thailand now *knew* that the line was not the watershed, because the government felt bound by what the map showed, just as it had in March 1911?¹²⁰ Indeed, the fact remained that *both* countries, for many years, continued to treat the line on the map as the boundary between their respective countries—conduct that was mutually beneficial.¹²¹ Thus it was that, in 1962, the Court felt compelled to say:

Even if there were any doubt as to Siam’s acceptance of the map in 1908, and hence of the frontier indicated thereon, the Court would consider, in the light of the subsequent course of events, that Thailand is now precluded by her conduct from asserting that she did not accept it.¹²²

¹¹⁸ See Observation of M.R. Seni Pramoj, referenced at footnote 94.

¹¹⁹ Letter of 24 February 1911 from Prince Damrong to Prince Devawongse, Appendix D(1).

¹²⁰ The Court seemed to think so. It noted that “it would have been natural for Thailand to raise the matter” in connection with negotiations for the 1937 Treaty of Friendship, Commerce and Navigation “if she considered the map indicating the frontier at Preah Vihear to be incorrect.” Instead, in the same year, Thailand “produced a map of her own showing Preah Vihear as being in Cambodia. That this map may have been intended for internal military use does not seem to the Court to make it any less evidence of Thailand’s state of mind. The inference must be—particularly in regard to the 1937 occasion—that she accepted or still accepted the Annex I map, and the line it indicated, even if she believed it incorrect, even if, after her own survey of 1934–1935, she thought she knew it was incorrect.” ICJ *Merits* (n 3) 27–28.

¹²¹ Thailand “has, for fifty years, enjoyed such benefits as the Treaty of 1904 conferred on her, if only the benefit of a stable frontier. France, and through her Cambodia, relied on Thailand’s acceptance of the map.” *ibid* 32. It can be observed that “a stable frontier” is no minor thing. The east–west Dangrek mountain range is 320 km long (200 miles). “Dangrêk Mountains” *Encyclopedia Britannica* <<https://www.britannica.com/place/Cambodia>>. Had the Court ruled that Thailand should have sovereignty over the temple because its watershed turned out actually to be in Thailand, presumably that would then permit *either* party to claim that this or that place along the entire length of the Dangrek range was not properly delimited on the map, and that the “real” watershed needed to be conclusively determined. Indeed, M.R. Seni Pramoj expressed a related fear of how the Court’s judgment could impact the entire Dangrek range. In arguing on behalf of Thailand that the proper subject of the 1962 case was *only* sovereignty over the temple itself, and not the surrounding area or the boundary line as indicated on the Annex I map, he noted that “if the Court pronounces judgment on the basis of Annex I, the Court must necessarily uphold the frontier line as drawn on the other maps in the same series as well.” Oral Argument of 7 March 1962, ICJ Pleadings, Vol. II, *Temple of Preah Vihear (Cambodia v. Thailand)*, <<https://www.icj-cij.org/public/files/case-related/45/045-19620310-ORA-01-00-BI.pdf>> at 216. Even today there is still no agreement as to exactly where the watershed line is at Preah Vihear, and it is doubtful that anyone would wish that same confusion to exist along all 320 km of the border.

¹²² ICJ *Merits* (n 3) 32. The Court was asserting the doctrine of *estoppel*, which “operates so as to preclude a party from denying before a tribunal the truth of a statement of fact made previously by that party to another whereby that other has acted to his detriment or the party making the statement has secured some benefit.” Derek W. Bowett, “Estoppel Before International Tribunals and its Relation to Acquiescence” (1957) 33 *British Yearbook of International Law* (1957) 176. In this case, the “statement of fact made previously” really was the *absence* of any statement—the “acquiescence”—which, under the circumstances, the Court found to be tantamount to Thailand having said it accepted the Annex I map. As observed by the Court, Thailand “has, for fifty years, enjoyed such benefits as the Treaty of 1904 conferred on her, if only the benefit of a stable frontier. France, and through her Cambodia, relied on Thailand’s acceptance of the map.” ICJ *Merits* (n 3) 32. As such, “it is immaterial whether or not this

One other matter should be noted. While Thailand's conduct over the years consisted primarily of the *absence* of any complaint or comment regarding the map, there was at least one instance of actual public conduct that tended to support the Court's conclusion of an early acceptance of the map. In January 1930, Prince Damrong, who was then the President of the Royal Institute of Siam,¹²³ visited the temple as part an archeological tour.¹²⁴ Following his return to Bangkok, he sent a letter to the French ambassador and enclosed some photographs of the occasion. The letter begins with, "I visited Kao Pra Vihan last January. There three French officials welcomed me. We visited the place and took several pictures. I had told them that on my return, I would have these photos reproduced to send them as a souvenir."¹²⁵ After providing the names and positions of the three officials, the letter concluded thusly: "Please send these three albums to these three officials. Finally, I take this opportunity to thank the French Authorities in Cambodia for sending these officials to welcome me."¹²⁶ The Court said that, in the letter, Prince Damrong had used "language which seems to admit that France, through her Resident, had acted as the host country."¹²⁷

Why did Prince Damrong write as he did? Perhaps it was because he had remembered The Incident of 1911, from which he had learned three things: (1) the President of the Siam Delimitation Commission had himself visited the temple and thought it was "in French territory,"¹²⁸ (2) the French thought the same thing,¹²⁹ and (3) the Annex I map of the Dangrek range clearly showed that the temple was indeed so located.¹³⁰ Whatever the reason, and whatever the *real* date of acceptance might actually have been, The Incident of 1911 certainly refutes the argument, made in 1962, that Thailand *never* considered the Annex I map to be a binding document.¹³¹

And, after 50 years, it now seems that Thailand is no longer seeking return of the grounds of the temple itself.¹³² The adjacent area, however, remains in serious

reliance was based on a belief that the map was correct. It is not now open to Thailand, while continuing to claim and enjoy the benefits of the settlement, to deny that she was ever a consenting party to it." *ibid.*

¹²³ ICJ *Merits* (n 3) 30. The prince ceased being Minister of Interior in 1915 (footnote 49).

¹²⁴ *ibid.* And see footnote 113, which describes the circumstances in 1930 and the Court's comments.

¹²⁵ The translated letter in French appears as "Annexe VIII" of Cambodia's Application Instituting Proceedings (6 October 1959) at 96 <<https://icj-cij.org/public/files/case-related/45/9249.pdf>>. It, and a Google translation into English, appear as Annex K in the Supplemental Documents folder: <https://www.dropbox.com/sh/ctwplsoswh6ck2a/AADzgSnEaZT3_K_KIpPi9zpRa?dl=0>.

¹²⁶ Annex K, *ibid.*

¹²⁷ ICJ *Merits* (n 3) 30.

¹²⁸ Appendix D(3).

¹²⁹ Note from Mr. Ponsot on 25 February 1911, Appendix D(4). The Note was forwarded by Mr. Westengard to Prince Devawongse on the same date (Appendix D(5)) and the contents made known to Prince Damrong in Prince Devawongse's letter to Prince Damrong on 26 February 1911 (Appendix D(2)).

¹³⁰ *ibid.*

¹³¹ "Counsel for Thailand once again state that the map Annex I was never for one moment considered by Thailand a binding document. It has never been used by Thailand to show where the treaty boundary lies." Oral Argument of M.R. Seni Pramoj (Rejoinder) 27 March 1962 (n 15).

¹³² "As for the future, Thailand has repeatedly re-affirmed that it does not seek to reverse the Court's determination that the Temple belongs to Cambodia." Further Written Explanations of Thailand, Vol. 1, para 4.100 at 215 (21 June 2012) *Request for Interpretation of the Judgment of 15 June 1962 in the*

dispute and in need of a comprehensive settlement. But before discussing that aspect in Part VI, the Conclusion, it would be helpful to first briefly summarize the events surrounding the return of the temple case to the ICJ.

V. THE REQUEST FOR INTERPRETATION AND ITS AFTERMATH

Armed conflict once again broke out at and around the temple in the late 2000s and early 2010s.¹³³ On 28 April 2011, Cambodia filed with the ICJ a “Request for Interpretation of the Judgment of 15 June 1962” and requested provisional measures to stop the fighting at the temple.¹³⁴

When Cambodia filed its original case with the ICJ in 1959 it had not asked for a determination of the boundary line. Rather, it had requested “that the territorial sovereignty over the Temple of Preah Vihear belongs to the Kingdom of Cambodia” and “that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed since 1954 in the ruins of the Temple of Preah Vihear.”¹³⁵

The Court’s judgment in 1962 gave Cambodia precisely what it had asked for in 1959: “that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia.”¹³⁶ While the entire rationale of the Court’s opinion was that Thailand had accepted the line drawn on the Annex I map as the boundary,¹³⁷ Cambodia, as just mentioned, had not initially requested the Court to give a judgment regarding the actual boundary line.¹³⁸ It could have done so, but had not, and the Court agreed with Thailand’s March 1962 objection after Cambodia asked to enlarge the scope of its original filing.¹³⁹

The second paragraph of the Court’s judgment in 1962 declared “that Thailand is under an obligation to withdraw any military or police forces, other guards or keepers, stationed by her at the Temple, or in the vicinity on Cambodian territory.”¹⁴⁰ The ambiguity was in the phrase “vicinity on Cambodia territory,” as what, precisely, was the area of the “vicinity”? Whatever the “vicinity” was, it was Cambodian, but how

Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) accessible from <<https://icj-cij.org/en/case/151>>.

¹³³ See generally Burgess, *Temple* (Chapter 12: “A Conflict Reborn”) (n 1) 193–203.

¹³⁴ An “Overview” of the case and links to its documents can be found on the ICJ website: <<https://www.icj-cij.org/en/case/151>>. In the event of a dispute over the meaning or scope of a previous judgement, the court always retains jurisdiction to clarify the matter (ICJ Statute, art 60).

¹³⁵ Application Instituting Proceedings (6 October 1959) *Case Concerning the Temple of Preah Vihear* (Cambodia v. Thailand) <<https://www.icj-cij.org/en/case/45>>; <<https://www.icj-cij.org/public/files/case-related/45/9249.pdf>> at 15.

¹³⁶ ICJ *Merits* (n 3) 36.

¹³⁷ *ibid* 32: “The Court however considers that Thailand in 1908–1909 did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognized the line on that map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory.”

¹³⁸ Application Instituting Proceedings (n 135).

¹³⁹ See ICJ *Merits* (n 3) 11, 13–14, 36.

¹⁴⁰ *ibid* 37.

extensive was it?¹⁴¹

Thailand claimed that the “vicinity” was the area immediately surrounding the footprint of the temple,¹⁴² while Cambodia claimed that the “vicinity” was the entire area—some 4.6 kilometers, referred to as the “disputed area”—that was south of the Annex I map line.¹⁴³

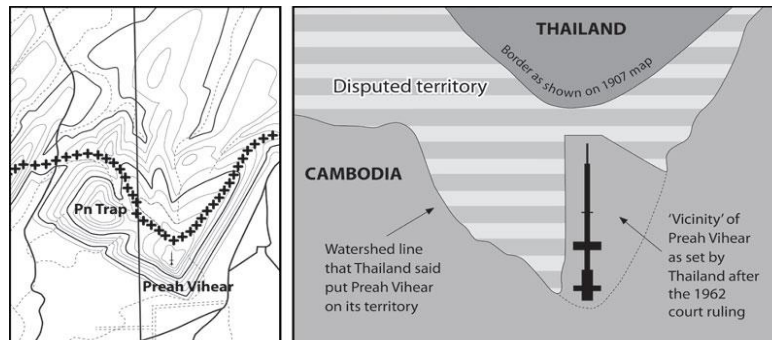


Figure 10: Maps showing each country’s respective argument as to what is meant by the “vicinity” of Preah Vihear (Left: Cambodia; Right: Thailand).

Source: Michelle Vachon, “Temple on High” *The Cambodia Daily* (25 July 2015) <<https://english.cambodiadaily.com/lifestyle/temple-on-high-89297/>>.

In its judgment of 11 November 2013, the Court rejected both definitions, ruling instead that the “vicinity” was the entire geologic promontory on which the temple was located.¹⁴⁴ The effect of this was to enlarge the area that Cambodia could definitively identify as its own territory, but, as the Court was bound by the parameters of the limited scope of its 1962 judgment,¹⁴⁵ the Court would once again not pronounce upon the question of the actual location of the entire boundary line.¹⁴⁶ Instead, it was left up to the parties—Cambodia and Thailand—“to implement the judgment of the Court in good faith. It is of the essence of that obligation that it does not permit either party to

¹⁴¹ This was a striking ambiguity in the judgment, as the ICJ generally is meticulous in addressing every minute detail and had just done so in its opinion. This author surmises, however, that the ambiguity might well have been intentional. The Court had rejected Cambodia’s attempt in 1962 to enlarge its original submissions of 1959 to include a determination of the boundary line, undoubtedly because the request had come so late in the proceedings. But, by leaving the word “vicinity” ambiguous, the Court may have assumed, or at least hoped, that after a judgment which was limited in scope to what Cambodia had originally requested—the sovereignty of the temple—Thailand would then graciously accept the line on the map as being the actual boundary. After all, the earlier “acceptance” by Thailand of that boundary line was the very rationale on which the Court had based its decision that the temple thus belonged to Cambodia. If such was the Court’s hope, it turned out to be quite illusory.

¹⁴² See *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear* (Cambodia v. Thailand) *Judgment* [2013] ICJ Rep 311–12 (para 84) <<https://www.icj-cij.org/public/files/case-related/151/151-20131111-JUD-01-00-EN.pdf>>.

¹⁴³ *ibid* 311 (para 83).

¹⁴⁴ *ibid* 313–14 (para 89). The Court defined the promontory area in Paragraph 98 of its judgment on page 315.

¹⁴⁵ *ibid* 306 (para 66): “Accordingly [under Article 60 of the ICJ Statute], the Court must keep strictly within the limits of the original judgment and cannot question matters that were settled therein with binding force, nor can it provide answers to questions the Court did not decide in the original judgment.”

¹⁴⁶ Referring to the 1962 judgment, “the Court did not address the issue of sovereignty over Phnom Trap, or any other area beyond the limits of the promontory of Preah Vihear.” *ibid* 315 (para 97).

impose a unilateral solution.”¹⁴⁷

There are, however, two intractable problems that make the achievement of a negotiated settlement of the actual boundary line realistically impossible. First, there is the severe difficulty of accurately determining where a portion of the Annex I map line itself would actually be on the ground.¹⁴⁸ As pointed out in an extensive report prepared by the International Boundaries Research Unit of Durham University and submitted by Thailand as Annex 96 to its submission of 21 November 2011:

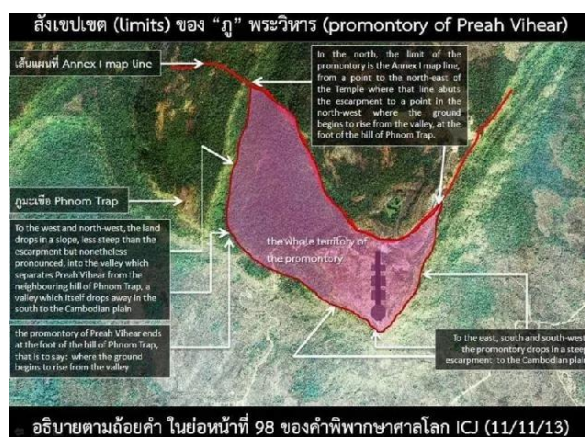


Figure 11: Map illustrating the “vicinity” of the temple as it was defined in paragraph 98 of the 2013 ICJ opinion.

Source: Sanook.com <<https://www.sanook.com/news/1308513/gallery/378026/>>.

However, if it transpires that the Annex I boundary line has to be transformed onto the landscape, then we would—reluctantly—recommend that a segmented transformation method be used. To achieve this, agreement would have to be reached with Cambodia over the common points to be used. The result would probably be a search by each side for the most advantageous points to produce the greatest territorial gain, and there would be no scientific grounds for determining who was right. No matter which common points are chosen, the boundary would only coincide with the watershed in a handful of places—and in some areas it would lie several kilometres from the watershed.¹⁴⁹

Second, and most importantly, from a political standpoint it is impossible now for either side to agree to any sort of compromise line as doing so would be seen as “giving away” territory each side believes is rightfully theirs. Cambodia continues to claim it properly should have *all* of the area south of the Annex I line (as that was, after all, the underlying rationale of the Court’s opinion in 1962 when it declared that Cambodia had sovereignty over the temple).¹⁵⁰ By contrast, Thailand continues to rely on the narrow scope of the actual judgments of 1962 and 2013, and is unwilling to give

¹⁴⁷ *ibid* 316 (para 99).

¹⁴⁸ The Court, in defining the scope of the “vicinity” of the temple, said: “In the north, *the limit of the promontory is the Annex I map line*, from a point to the north-east of the Temple where that line abuts the escarpment to a point in the north-west where the ground begins to rise from the valley, at the foot of the hill of Phnom Trap.” *ibid* 315 (para 98), emphasis added. See Figure 11, above.

¹⁴⁹ “Assessment of the Task of Translating the Cambodia–Thailand Boundary Depicted on the ‘Annex I’ Map onto the Ground” <<https://www.icj-cij.org/public/files/case-related/151/17286.pdf>> (para 63 at 670). The Court was well aware of the practical difficulties involved in transposing the Annex I map line onto a precise location on the ground, but said that it “cannot now, in the exercise of jurisdiction under Article 60 to interpret the 1962 Judgment, deal with a matter which was not addressed by that Judgment.” ICJ *Interpretation* (n 142) at 316 (para 99). The Court, however, then stated that all parties to an ICJ case “have an obligation to implement the judgment of the Court in good faith. It is of the essence of that obligation that it does not permit either party to impose a unilateral solution.” *ibid*.

¹⁵⁰ “[T]he Annex I map played a central role in the reasoning of the Court.” ICJ *Interpretation* (n 142) at 308 (para 77).

up “even just one square inch”¹⁵¹ of Thai territory to Cambodia. In short, the remaining “disputed area” (which is now minus the entire promontory by virtue of the 2013 decision) will remain disputed in perpetuity.¹⁵²

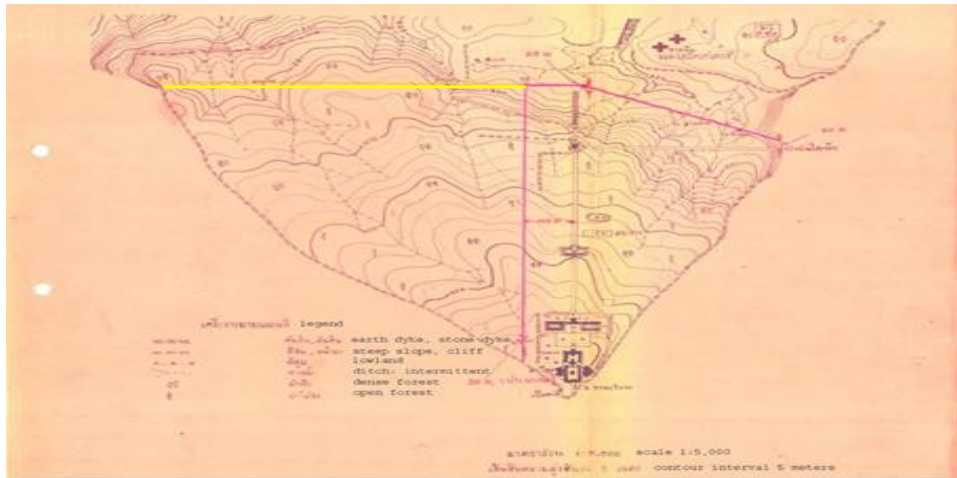


Figure 12: Attachment to 6 July 1962 letter of Ministry of Interior to the Thai Prime Minister suggesting two definitions of “vicinity”: a triangular-shaped area extending to the left side escarpment of approximately $\frac{1}{2}$ sq. km (yellow line, enhanced here for greater clarity, expanding the area westward), and a rectangular-shaped area around the Temple of approximately $\frac{1}{4}$ sq. km (red line).

Source: Annex 5 to the Further Written Explanations of the Kingdom of Thailand (21 June 2012), ICJ Interpretation <<https://www.icj-cij.org/public/files/case-related/151/17294.pdf>> at 36.

¹⁵¹ Protestors at the Ministry of Defense. “Bangkok Rocked by Protests: As It Happened” *Khaosod English* (11 November 2013) <<https://www.khaosodenglish.com/politics/2013/11/11/1384154117/>>. This basic sentiment appears to have originated from a news conference in 1958. Reporters were wondering “whether it was prudent to jeopardize trade and risk possible military conflict over a few square kilometres of territory” and one reporter asked the then Minister of Interior, Praphas Charusatthien, “‘Is not commerce and trade more important? Preah Vihear is just a pile of stones.’” Praphas replied, “‘I will never allow one stone of Thai territory to be surrendered.’” Strate, “Pile of Stones?” (n 2) 42. According to Strate, “From the perspective of the Thai state, Preah Vihear’s importance has less to do with its architectural or religious significance than its connection to the ‘lost territories’ and the legacy of Western imperialism in Thailand.” *ibid* 43.

¹⁵² While the Court’s description of the “vicinity” of Preah Vihear in its paragraph 98 may seem precise, its implementation would involve transposing the Annex I line onto the ground—not an easy task (see footnote 149). But assuming this task could be accomplished, the area would include a significant portion northwest of the temple up until the westward Annex I line intersected with the foot of the hill of Phnom Trap. (See Figure 11.) Interestingly, Judge ad hoc Jean-Pierre Cot (appointed by Thailand) said in his concurring declaration that “I note that the solution adopted by the Court corresponds closely to one of the options put to the Thai Council of Ministers on 10 July 1962 [see the enhanced yellow line in Figure 12]. It was thus a possible interpretation of the 1962 Judgment according to the views of the Thai administration at the time. And that is the interpretation given by the Court today.” ICJ Interpretation (n 142) at 151 (para 15) <<https://www.icj-cij.org/public/files/case-related/151/151-20131111-JUD-01-04-EN.pdf>>. However, such option by the Thai government—which resulted in an almost perfect triangle of land—seems difficult to reconcile with the shape of the Court-defined promontory illustrated in Figure 11. Moreover, the resulting odd shape of the now-defined promontory is somewhat difficult to match with the Court’s simpler description in 1962: “the main Temple buildings stand in the apex of a triangular piece of high ground jutting out into the plain.” ICJ Merits (n 3) 15.

Other areas along the border with Cambodia, however, including some with “overlapping claims,” appear to enjoy a much more cordial relationship. See Wassana Nanuam, “Cambodian Border Growing Clearer” *Bangkok Post* (2 September 2022) <<https://www.bangkokpost.com/thailand/general/2382191/cambodian-border-growing-clearer>>.

VI. CONCLUSION

How, then, do we break free of this serious conundrum? This author has previously written that “[r]ather than continue arguing endlessly about which country owns the disputed area, a much better approach would be for both countries to immediately agree that it is something akin to an ‘international peace park,’¹⁵³ with neither side claiming ‘sovereignty.’”¹⁵⁴ Given the fact that the temple is now a World Heritage Site—and most easily accessible from Thailand—in 2011 this author expanded further on how some sort of “peace park” could be implemented:

Why not negotiate toward a joint management area, under the oversight of Unesco, into which visitors from both countries could freely enter, see the temple and its surrounding areas, and then return the same day to the country from which they came? It need not be a border crossing, and no need for a marked border, but only signs that read: “Welcome to the Preah Vihear Historical Park, a Unesco World Heritage Site.” (Or maybe, on the Thai side, the sign could read, “Welcome to the Phra Viharn Historical Park.”) To exit, visitors would follow signs that said either “To Thailand” or “To Cambodia” and, at the respective document checking posts, a sign would simply say, “Leaving the Preah Vihear (Phra Viharn) Historical Park. Thank You for Visiting.” As for maps, both countries could continue to draw their respective boundary lines as they see fit, though it would make more sense to just have the lines end at the junction with the line surrounding the historical park, leaving the “real” boundary lines inside disputed.¹⁵⁵

Indeed, is a defined “border” truly necessary? The boundary in the temple area has for well over 100 years been in dispute, but for most of that time the people on both sides have co-existed in relative peace. Moreover, the delimitation and demarcation of land boundaries is largely a Western (and “colonial”) concept.¹⁵⁶ As Canadian scholar Andreas Buss pointed out in a 2010 article about Preah Vihear and

¹⁵³ For a brief, but insightful, overview of the concept of an international peace park, see Jurgen Brauer, “Border Politics: Finding the Answer in a ‘Park of Peace’” *Bangkok Post* (1 July 2008) available at <<https://ln5.sync.com/dl/39d7efedo/zt47xu2z-3q5b8jtp-r3wfg4p3-hgin3q22/view/doc/6266150600009>>. The following day, in its editorial, the *Bangkok Post* endorsed this idea of a peace park in regard to the Preah Vihear situation. A reprint of the editorial appeared on page 21 of the July–August issue of *AsiaView* and can be downloaded and viewed from <<https://ln5.sync.com/dl/3bd8a0170/fgu b9iru-yzj8kp9g-cgh3fbx4-qzsxe4zj/view/default/6266150830009>>.

¹⁵⁴ William Roth, “The Preah Vihear Temple Dispute: A Way Out of the Impasse” *Bangkok Post* (22 July 2008). The idea of some sort of joint management of the temple area to obviate the need for a precise boundary determination is by no means a new one. Indeed, during the August 1958 negotiations in Bangkok between Cambodia and Thailand, the U.S. ambassador to Thailand, U. Alexis Johnson, suggested in a private meeting with Son Sann, the Cambodian foreign minister, the idea of putting the issue of sovereignty on hold and agreeing instead to joint development. Johnson also met with General Thanom Kittikachorn, the Thai Prime Minister, to urge that a settlement with Cambodia be found. However, “he got no pledge from Thanom to do anything more than Thailand had already done. ‘Major factor in Thai attitude is basic chauvinism, particularly vis a vis Cambodia,’ Johnson told Washington.” Burgess, *Temple* (n 1) 107. A statement released in Phnom Penh on 7 October 1959, the day after proceedings were instituted at the ICJ against Thailand, Cambodia said it was proceeding in court as, after three months, Thailand had made no reply to Cambodia’s offer of joint administration. *ibid* 108.

¹⁵⁵ William Roth, “Negotiate Toward Success, Not Stalemate” *Bangkok Post* (19 February 2011).

¹⁵⁶ *ibid*.

regional customary law, “Traditionally, the king was a king over people rather than over a defined area of territory; territorial jurisdiction could not be strictly defined by permanent boundaries, but was characterised by fluidity and flexibility, dependent on the power of the central government.”¹⁵⁷

While Professor Jurgen Brauer has written that, even in a peace park, “political borders do need to be defined, if only to establish jurisdiction over access and property rights, disposition in cases of crime and so on,” he adds that “these are purely functional issues with a practical view to enhancing preservation and development, not foreign policy issues of the highest order.”¹⁵⁸ But why not just leave the actual boundary line in dispute? Thailand already has with Malaysia a mutually beneficial Joint Development Area in the Gulf of Thailand consisting of an area with overlapping maritime territorial claims but no agreed upon boundary.¹⁵⁹ And Thailand and Cambodia have recently agreed to hold talks to discuss joint development within their 26,000 sq. km overlapping claims area in the Gulf of Thailand, and Cambodia’s mining and energy minister has proposed that the countries follow the model set by the Malaysia–Thailand Joint Development Area.¹⁶⁰ If the two governments can jointly develop water for their mutual benefit, then why not jointly develop land as well?

As for the size and location of the World Heritage management area, there is much to be said for having it include not only the temple itself and the promontory, but part of Thailand as well, including all of the remaining so-called disputed area. A 2008 article in the *Bangkok Post* pointed out that World Heritage sites should consist of its nucleus, and a core zone and buffer zone that should be circular. “The temple’s surroundings located in Thai territory, including the site of ancient communities at the foot of the Phnom Dong Rek mountain range, stone carvings on the Pha Mor I-Daeng cliff, stone-cutting sources and the Sa Trao reservoir, are also important and should go together with the sanctuary.”¹⁶¹

Following the Court’s 2013 decision in the *Interpretation* case, this author

¹⁵⁷ Andreas Buss, “The *Preah Vihear* Case and Regional Customary Law” (2010) 9(1) Chinese Journal of International Law 111, 124 <<https://doi.org/10.1093/chinesejil/jmp038>>.

¹⁵⁸ Brauer, “Border Politics” (n 153).

¹⁵⁹ See “Malaysia and Thailand Celebrate 40th Anniversary of Shared Prosperity” *Royal Thai Embassy Kuala Lumpur* (7 October 2019) <<https://kualalumpur.thaiembassy.org/en/content/109735-malaysia-and-thailand-celebrate-40th-anniversary-of-shared-prosperity?cate=5d7538ea15e39c1e60003438>>; “Malaysia–Thailand Joint Development Area” <<https://www.dmf.go.th/bid19/annaul/o8.html>>.

¹⁶⁰ “Sea Riches Prompt New Talks” *Bangkok Post* (14 September 1922) <<https://www.bangkokpost.com/thailand/general/2390876/sea-riches-prompt-new-talks>>; Wassana Nanuam, “Joint Gulf Plan Moves Closer” *Bangkok Post* (5 January 2023) News 1 <<https://www.bangkokpost.com/thailand/general/2475454/joint-gulf-plan-moves-closer>>. An editorial in the *Bangkok Post* strongly supported the reopening of talks “as a good sign for the energy security of both countries amid the global energy crisis,” but urged that the talks be limited to economic cooperation and not address territorial sovereignty lest it “bring about domestic political turbulence in the two countries.” “Care Vital For Energy Deal” *Bangkok Post* (20 September 2022) <<https://www.bangkokpost.com/opinion/opinion/2395843/care-vital-for-energy-deal>>.

¹⁶¹ Pichaya Svasti, “A Fine Line” *Bangkok Post* (22 May 2008), republished as “Preah Vihear: An Overview” *Southeast Asian Archaeology* (23 May 2008) <<https://www.southeastasianarchaeology.com/2008/05/23/preah-vihear-an-overview/>>. See also UNESCO’s Operational Guidelines concerning buffer zones in its World Heritage Compendium (subdivision 2.2.6.2) <https://whc.unesco.org/en/compendium/action=list&id_faqs_themes=1528&extracts=131>.

noted that the area around Preah Vihear could easily remain a flashpoint unless both sides accepted that only some sort of mutual compromise was the way forward. “Continuing to insist on having 100% of the remaining disputed area, by either country, will do nothing but ensure at least another 51 years of needless tension and lost development opportunities.”¹⁶¹

Now that the “real truth” is known—that top officials of the Thai government in 1911 knew that the map they relied on to mark their border with France showed the temple to be on the Cambodian side, and, as a result, gave specific instructions to local officials *not* to complain about French activities there—perhaps it is finally time for the current Thai government, and its people, to accept the same thing and “move on.” Move on to establish an international peace park encompassing the entire area around Preah Vihear, all under the management and control of UNESCO. The Thai government currently is desirous for increased tourism and income, and what better way to advance this goal than to, once again, reopen the gate and allow travelers to easily access the temple via the existing roads and national park already in Sisaket, Thailand.¹⁶² The temple is, after all, a World Heritage site. It deserves to be seen.

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[Addendum of 23 August 2024]

While not mentioned in this article, it should be noted that two of the three dissenting judges in the 1962 case expressly remarked on the *lack* of evidence of specific conduct by Thailand that somehow indicated Cambodian sovereignty. Judge Moreno Quintana: “There has been no conclusive evidence showing any tacit recognition by Thailand of the alleged Cambodian sovereignty over the area in question. It is the facts, clear facts, which must be taken into account.” 1962 ICJ Rep at 67; Judge Wellington Koo: “In the present case I have examined the evidence and found no statement or declaration of any kind by Siam or Thailand which recognizes, or can be considered to recognize, Cambodia’s title to sovereignty over the Temple area. As to conduct, far from implying any acceptance of the Annex I map, she has consistently indicated a belief on her part throughout the past decades that the area in question continues to belong to her own sovereignty.” 1962 ICJ Rep at 96 (para 44).

¹⁶¹ William Roth, “Preah Vihear Decision is Not the End of Territorial Row” *Bangkok Post* (18 November 2013) <<http://www.bangkokpost.com/print/380347/>>.

¹⁶² “Khao Phra Viharn National Park” *Tourism Authority of Thailand* <<https://www.tourismthailand.org/Attraction/khao-phra-viharn-national-park>>.

“The Incident of 1911”: The Real Truth in the Temple of Preah Vihear Case

APPENDIX

- A. List of Documents Forwarded to Professors Jessup and Hyde (one page)
- B. Materials to be Sent to Counsels (one page)
- C. First Page of Proceedings and Aide-Mémoires of the Meeting of Counsel and Thai Team (Government House, Bangkok, 18–23 January 1960)
- D. The Incident of 1911 Correspondence [Items (1) to (9)] (12 pages)
- E. Summary of The Incident of 1911 Correspondence (four pages)

Appendix A

LIST OF DOCUMENTS FORWARDED TO

Professors Jessup and Hyde c/o Thai Embassy, Washington.

- (1) Proceedings and Aide-Mémoires of the Meeting of Counsel and Thai Legal Team, Bangkok, 18-23 January 1960.
(With annexes and the Aide-Mémoire of a close session on Saturday 23 January 1960.)
- (2) Procès-Verbaux of the Thai-Cambodian negotiations of August 18 - September 3, 1958, including
 - a. The plenary session of 18 August, 1958,
 - b. The Meeting of the First Commission on 18 August, 1958,
 - c. The Meeting of the First Commission on 19 August, 1958,
 - d. The Meeting of the First Commission on 21 August, 1958,
 - e. The Meeting of the First Commission on 22 August, 1958,
 - f. The Meeting of the First Commission on 23 August, 1958,
 - g. The Meeting of the First Commission on 29 August, 1958,
 - h. The Meeting of the First Commission on 30 August, 1958,
 - i. The Meeting of the First Commission on 1 September, 1958,
 - j. The plenary session of 2 September, 1958,
 - k. The Meeting of the First Commission on 3 September, 1958,
 - l. Report submitted by the First Commission to the Plenary Session.
- (3) Note on the Question of Preah Vihear, distributed by the Cambodian Permanent Mission to the United Nations, prior to the 1958 Thai-Cambodian negotiations.

Appendix B

~~TOP SECRET~~

MATERIALS TO BE SENT TO COUNSELS

LIST NO. I

- A. Documents (4), (5), (6) and (7)
- B. Addendum to the Proceedings and Aide-Mémoires of Counsels' Meeting in Bangkok.
- C. Memorandum submitted by M.R. Seni Pramoj.

LIST NO. II

- I. Franco-Siamese Boundary Commissions and their sequence.
- II. Extracts from Lunet de Lajonquière.
- III. The Incident of 1911.
- IV. Franco-Siamese Commission of Conciliation.

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Appendix C

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Proceedings and Aide-Mémoires
of the Meeting of Counsel and Thai Legal Team
The Temple of Phra Viharn Case

At the Government House, 18-23 January, 1960.

Participants of the Meeting were:

From abroad:

1. Sir Frank Soskice
2. M. Marcel Slusny
3. Mr. J.G. Le Quesne
4. Mr. David S. Downs
5. Professor Philip C. Jessup
6. Professor James M. Hyde.

From the Committee:

1. Phya Attakaree Nibbond
2. M.R. Seni Framoj
3. Colonel Chinda Na Songkhla
4. Colonel Suke Perunawin
5. Major General Busrintra Pakdikul
6. Major Poonpon Asannachinda.

From the Ministry
of Foreign Affairs:

1. His Excellency the Minister of Foreign Affairs
2. His Excellency Direck Jayanama
3. Dr. Konthi Suphamonkhon
4. His Excellency Dr. Cheed Sreshtaputra
5. Mr. Chapikorn Sreshtaputra
6. Dr. Sompong Sucharitkul.

Professor Jessup and Professor Hyde arrived from the United States on January 20, Ambassador Direck arrived from the Hague on January 22 bringing with him copies of the Memorial. Phya Attakaree Nibbond was absent owing to sudden illness. Mr. Sakol Vanabriksha of the Legal Department of the Ministry of Foreign Affairs and Mr. Poonpol Tewit of the Committee were present. Sir Frank Soskice acted as Chairman of the Meeting and Mr. Sompong Sucharitkul as its secretary.

Appendix D

III. THE INCIDENT OF 1911.~~TOP SECRET~~A. Prince Damrong's impression that Phra Viharn was in Thai territory, and evidence of inspection by Thai authorities.

- (1) Letter of February 24, 1911 from Prince Damrong to Prince Devawongse.
- (2) Letter of February 26, 1911 from Prince Devawongse to Prince Damrong.
- (3) Letter of March 10, 1911 from Phya Sri Sahadhep to Phya Bhibhat Kosa.

B. Consulting the Oum Map.

- (4) Note of February 25, 1911 by M. Ponsot.
- (5) Letter of February 25, 1911 from Mr. Westengard to Prince Devawongse.
- (6) Letter of March 18, 1911 from Phya Bhibhat Kosa to Phya Sri Sahadhep.

C. Report from the Provincial Police Division.

- (7) Letter of May 18, 1911 from Phya Bhibhat Kosa to Phya Sri Sahadhep.
- (8) Letter of May 20, 1911 from Deputy Under-Secretary of the Ministry of Interior to Phya Bhibhat Kosa.

D. Nai Kleub and Nai Mao's reports.

- (9) Covering letter of April 20, 1911 from the Deputy Under-Secretary of the Ministry of Interior to Phya Bhibhat Kosa.
- (10) Report No. I.
- (11) Report No. II.
- (12) Report No. III.
- (13) Report No. IV.
- (14) Report V.
- (15) Report VI.

~~TOP SECRET~~E. Maps.

- (16) Mount Phra Viharn.
- (17) Sra Trao.

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Appendix D

(1) Letter of February 24, 1911 from Prince Damrong to Prince Devawongse.Translation

No. 204/10823

Ministry of Interior
February 24, R.E. 129 (1911).

To His Royal Highness Krom Luang Devawongse Varopakar, Minister of Foreign Affairs.

I beg to report that I am in receipt of a telegram No. 343 of February 15, R.E. 129 (1911) from Phra Bhiromraja, Deputy Governor General of Isarn Province, stating that Khun Pradit Yuddhakarn, Deputy Governor of Changwad Khukhan, had received a report from Luang Sema, District Officer of Bung Malu, to the effect that on the 6th of this month, a party of about 20 men led by two Frenchmen, whose names were not known, cleared the way towards Phra Viharn and built a resthouse there. Khun Pradit Yuddhakarn thereupon instructed the Deputy Sheriff of Amphur Uttum-porn and Nai Krot, Yokrabat (who, among other things, used to do the work of a public prosecutor), as appeared from the telegram, to conduct an enquiry as to the purposes of the French in clearing the way in that direction; whether they cleared the way on a pre-existing route or made a new one; and, whether the resthouse was built for temporary or permanent purposes. Later on, I received a telegram No. 348 of February 19, R.E. 129 (1911) from Phya Bhiromraja, informing me that he had received a report from Thao tan, Deputy Sheriff of Amphur Kanthararak, to the effect that the French cleared Phra Viharn ground over an area of 3 sen (120 metres) wide and 6 sen (240 metres) long. They also cemented the back wall of the ruins on the fifth tier, and with pieces of wood, 2 kam (approximately 40 centimetres in diameter) and over 6 sork (3 metres) long, built an object 1 sork (250 centimetres) thick and 2 sork (500 centimetres) high. According to the findings of the enquiry made, one French resident and two officers and 50 to 60 men were engaged in the clearing work, which had started on January 23, R.E. 129 (1911), and they left on February 5 of the same year. It was reported that Phra Bhiromraja, who had sent officers to patrol highwaymen, also asked them to make a map of the area in question at the same time.

In this connection, I understand Phra Viharn to be in the territory of the Kingdom, and am therefore of opinion that for clarity sake the French Minister should be informed or enquiry should be made from him regarding this matter. As for my part, I have written to Phya Wongsa Nuprapat, Chairman of the Siamese Delimitation Commission of that period.

I have the honour to be
Your Royal Highness's
Most obedient servant,

(Signed) Damrong

Minister of Interior.

Appendix D

(2) Letter of February 26, 1911 from Prince Devawongse to Prince Damrong.Translation

No. 272/11400

Foreign Office

February 26, R.E. 129 (1911).

To His Royal Highness Krom Luang Damrong Rajanubharb, Minister of Interior.

In acknowledgement of the receipt of Your Royal Highness's letter No. 204/10823 of the 24th instant regarding clearance of the way to Phra Viharn and building of a resthouse in that area by a party of 20 men led by two Frenchmen, in which Your Royal Highness, understanding Phra Viharn to be in the territory of the Kingdom, considered that for clarity sake the French Minister should be informed or enquiry should be made from him regarding this matter, I have already conferred with Phya Kalyanemaitri, who was informed by Monsieur Ponsot that Phra Viharn was considered by the French to be in French territory as appeared from the frontier delimitation map. In the part called Dang Rek, please look up and verify from the map on which side of the frontier Phra Viharn lies. If it is in Thai territory, then appropriate representations could be made. If it is in French territory, it would be improper to make any representation to the French Minister. Perhaps, the local authorities were merely reporting French activities on the frontier and not French intrusion into our territory.

This might, however, be the same party as the one contemplated in the French Minister's Note of the 16th instant stating that the Governor General had assigned Capitaine Pierre of the Colonial Infantry Battalion and another French officer by the name of Maillard of the same Battalion to carry out cadastral survey in Savannaket, and requesting permission to cross the Mekong with the view to examining a geodesic point already marked within the Kingdom, and that instruction be given to facilitate such operation.

I am of opinion that the matter concerns the Ministry of Defence and have therefore written to His Royal Highness Krom-mun Nakorn Chaisri Suradej, asking him to send out instructions to the local authorities, if he does not think it objectionable.

Now that I have received a reply from the Ministry of Defence indicating certain points on which clarification should be sought from the French Minister, I have therefore sent a reply to the French Minister, the contents of which you will find in the four copies of correspondence enclosed. Upon receipt of a reply from the French Minister, Your Royal Highness will be informed of its contents.

I have the honour to be
Your Royal Highness's
Most obedient servant,

(Signed) Devawongse Varopakarn.

Appendix D

- (3) Letter of March 10, 1911 from Phya Sri Sahadhep to Phya Bhibhat Kosa.

Translation

No. 216/12368

Ministry of Interior,
March 10, R.E. 129 (1911).

From the Under-Secretary of the Ministry of Interior to Phya Bhibhat Kosa, Under-Secretary of the Ministry of Foreign Affairs.

With reference to a letter of the Ministry of Interior No. 204/10823, dated February 24, R.E. 129 (1911) regarding clearance of the way in order to clear Phra Viharn ground and building of a resthouse in that area, from which it appeared that one French resident, two officers, and about 50 to 60 men were engaged in the work from January 23 to February 5, R.E. 129 (1911), the Ministry of Interior later wrote to Phya Vongsa Nupraphat, Minister of Agriculture asking him to verify whether Phra Viharn, which formed the subject of the telegram from Isarn Province, was in fact in the territory of the Kingdom or in French territory and to report the result of his finding to the Ministry of Interior. Phya Vongsa Nuprabhat therefore wrote to the Ministry of Interior pointing out that, according to his recollection, Phra Viharn stood on the south-east side of the boundary range called Phanom Dangrek, because travelling to Phra Viharn from within the territory of the Kingdom one had to cross a big mountain before coming to another hill, on whose slope Phra Viharn stood. This hill was situated in a prominent place. On its summit there was a vast unsheltered ground overlooking the valley of the town of Maluphrai and the Lake was visible as far as the eye could see. The mountain range ran like a wall. On the south-east side there was a deep and abrupt precipice, thus making it impossible to climb straight up from French territory, except by crossing the various passes already named in that map and then entering the territory of the Kingdom before ascending to Phra Viharn. According to what he had seen

and ...

Appendix D(3)

2.

and could still remember, Phra Viharn was in French territory. In order to verify as to whether Phra Viharn was in the territory of the Kingdom or in French territory, Phra Viharn map 1/200,000 should be consulted. Having taken note of Phya Vongsa Nuprapat's letter and having examined the map, it was found that Phra Viharn spot was in French territory. Accordingly, the Ministry of Interior was afraid that Phra Viharn was probably in French territory and a telegram was therefore sent to Isarn Province instructing it to refrain from making any representation with regard to French activities at Phra Viharn. The Ministry of Interior later received a telegram No. 371 of March 5, R.E. 129 (1911) from Isarn Province stating that in respect of clearance of Phra Viharn ground no representation had been made, only a posse of officials was sent to patrol highwaymen and at the same time to make a map. These officials had returned and reported that when they were at Phra Viharn they met none of the French, who had all left. They saw only a trace of lime on the back wall of the top tier of Phra Viharn, on the top of which was a woodwork 4 by 6 sork (2 by 3 metres) in dimension, in the form of a pig stie. There was also a hollow brickwork seemingly for installing a flag pole. Many tall trees obscuring the view of Phra Viharn were also cut down. It was thought that by so doing, the French wished to have a clearer view of Phra Viharn from the valley.

I shall be grateful if the foregoing will be brought to the knowledge of His Royal Highness the Minister of Foreign Affairs.

I have the honour to be,

Your obedient servant,

(Signed) Phya Sri Sahadhep

Under Secretary.

Appendix D

(4)

Note

re geodetic work undertaken by French Officers along the frontier and in Siamese territory.

Two cases have been reported to the Ministry of Interior, one from Ubon with regard to a geodetic signal made at the Préas Vihear (telegram dated the 19th of February), another from Ban Deua Makheng with regard to a party of three Officers who entered in the district of Muang Muk, "to complete surveying" work which had been started last year." (telegram from Ban Deua Makheng dated the 18th of February).

In answer to a communication about both facts, the French Legation has answered:-

With regard to the geodetic work along the Cambodian frontier, which was to be completed this year, a communication has been sent directly to the Ministry of Interior on the 16th of September 1909 and acknowledged by a letter from Phya Sri Sahadheb dated the 29th. Capitaine Benoit has in consequence started from the Saidao, in Monthon Chantaburi, from which place reports have been sent in due time. The same Capitaine Benoit has followed the frontier line, but as most of the highest points used for geodesy are to be found in French territory, he had no occasion to cross over to Siamese territory, although permission had been asked for. Besides, with regard to Préas Vihear, it is considered by the French Authorities to be in French territory, as shown in the map drawn up by the Boundary Commission (see carton "Dangrek").

With regard to the work undertaken in the district of Savannaket, the last reference made to it by the French Legation was by a letter addressed to H.R.H. the Minister for Foreign Affairs on the 16th of February present year. But the work referred to, which is now carried out by Captain Pierre, has been first mentioned in a letter from the French Legation to the Foreign Office dated the 15th of November 1907, which was acknowledged on the 23rd of November.

The geodetic points referred to, since that date are:-
Pon Kasat (Muk Dahan); Pon Phan, south, (That Panom); Pon Lang Ka, (Sanisburi); Pon Kham, (Kemmarat); Pon Phan, north, (Sakon Lakon); Pon Campa, (Sakon Lakon).

The work is under regular progress, and the French Legation express the hope that some assistance would be given to the French Officers if it should happen to be necessary.

Feb. 25, 1911

(Signed) H.P.

Ponsot

Appendix D

- (5) Letter of February 25, 1911 from Mr. Westengard to Prince Devawongse.

Office of the General Adviser.
Bangkok. February 25, 1911.

Dear Prince Devawongse,

I have duly received your letter of yesterday's date, forwarding a letter from Prince Damrong about the party of French officers who have come to execute some works within Siamese territory.

I have already heard of this matter, because the Ministry of the Interior has spoken to Mr Ponsot. He has now drawn up a note which I enclose herewith. This note covers several points:-

1. The subject matter of Prince Damrong's letter of yesterday's date is a place called Phra Vihan (Preas Vihear). The question which has arisen is whether or not it is in French or Siamese territory. Mr Ponsot states that on the map called "Dangrek" it appears that this place is on the French side of the line. You and the Ministry of the Interior doubtless have copies of this map and you will be able to confirm the statement.

2. Mr Ponsot mentions the question of Muang Muk. The previous correspondence between the Foreign Office and the Mahadhai shows that the latter has been informed about this matter.

3. There remains the case of Sawannaket. This is the subject of the French Minister's letter to you dated the 16th instant which you have duly reported to the War Department. I note that you will inform the Ministry of the Interior as soon as you have a reply from the War Department.

I trust that with this information before you you will be able to reply to the letter of Prince Damrong which covers only the first of these three points. In examining the map I venture to remind you that the boundary was described as the watershed. This does not necessarily mean the highest point. It is a line along which the streams divide into those running north and those running south. (see the last sentence of Section I of the Boundary Protocol annexed to the Treaty of March 23, 1907).

Faithfully yours,

(Signed) Kalyan

N.B. Kalyan was the first Phya Kalyan, formerly Mr. Westengard, an American Adviser, who, in 1908, drafted a letter acknowledging receipt of two series of maps, one of which covered the Dangrek.

Appendix D

- (6) Letter of March 18, 1911 from Phya Bhibhat Kosa to Phya Sri Sahadhep.

Translation

No. 284/12012

Ministry of Foreign Affairs,
19, March R.E. 129 (1911).

Phya Bhibhat Kosa to Phya Sri Sahadhep, Under-Secretary of the Ministry of Interior.

I have received your letter No. 216/12368 dated 10th of this month concerning clearance of the way towards Phra Viharn in order to clear Phra Viharn ground and construction of a rest house by the French and the Ministry of Interior sending a letter to enquire from Phya Vongsa Nuprapat,¹ the Minister of Agriculture, whether Phra Viharn, according to the information contained in Isarn Province's telegram, was situated within the Kingdom (of Thailand) or within French territory. Phya Vongsa Nuprapat wrote to the Ministry of Interior explaining that, so far as he could recollect, Phra Viharn might be within the French boundary and that for the sake of certainty as to whether Phra Viharn was situated within the Kingdom or within French territory, the map of Phra Viharn 1/200,000 should be consulted. Having examined the map and finding that Phra Viharn was marked within the French territory, a telegram was sent to Isarn Province directing reticence in this matter for the time being. I have brought the above to the knowledge of His Royal Highness Krom Luang Devawongse Varoprakar who said that on the information already received, there was no need to reprimand the French.

Please inform His Royal Highness Krom Luang Samrong Rajanubhab, the Minister of Interior.

I have the honour to be,

Sir,

Your obedient servant,

(Signed) Phya Bhibhat Kosa

1. Phya Vongsa was formerly M.C. Chatidej Udom, chairman of the Siamese Delimitation Commission, 1904-1907.

Appendix D

(7) Letter of May 18, 1911 from Phya Bhibhat Kosa to Phya Sri Sahadhep.

Translation-

No. 75/1998

Ministry of Foreign Affairs,
23rd May B.E. 130 (1911).

From Phya Bhibhat Kosa to Phya Sri Sahadhep, Under-Secretary of the Ministry of **Interior**.

I have received and taken note of your letter No. 61/1755 dated the 20th of this month stating that a telegram has been received from Phya Chol Buranurak, Governor General of Isarn Province, to the effect that Lance-Corporal In went up to inspect Mount Viharn of Kanthararak District in Changwad Khukhan and saw a trace of clearing of 7 sen (284.48 metres) long and 2 sen (81.28 metres) wide. He also saw a square wooden structure, 4 wah (8.13 metres) high and 1 wah 2 sork (3.4 metres) wide, which could be used as a resting place. He further enquired from the village-headman in that village, who told him that, in the month of April of this year, one Frenchman and 20 Cambodians came to clear the way and also erected the resthouse. I thank you very much for the above information.

Please bring the above to the knowledge of H.R.H. Kromluang Damrong Rachanuphap, Minister of Interior.

I have the honour to be,

Sir,

Your obedient servant,

(Signed) Bhibhat Kosa

Under-Secretary.

Appendix D

- (8) Letter of May 20, 1911 from Deputy Under-Secretary of the Ministry of Interior to Phya Bhikhat Kosa.

Translation

No. 61/1755

Ministry of Interior,

20th May R.E. 130 (1911).

From Deputy Under-Secretary of the Ministry of Interior to Phya Bhikhat Kosa, Under-Secretary of the Ministry of Foreign Affairs.

In continuation of the letter of the Ministry of Interior No. 25/463 dated the 20th April R.E. 130 (1911) concerning the French clearing the way to Phra Viharn, on the edge of the boundary of Isarn Province, H.R.H. the Minister of Interior has now received a telegram No. 51 dated the 16th May R.E. 130 (1911) from Phya Chol Buranurak, Governor General of Isarn Province stating that, on the 10th of this month, Phya Chol Buranurak had received a report of the Provincial Police Division, to the effect that Lance-Corporal In who went up to inspect Mount Phra Viharn of Kantharalak District in Changwad Khukhan, Isarn Province saw a trace of clearing of 7 son (284.48 metres) long and 2 son (81.28 metres) wide. He also saw a square wooden structure, 4 wah (8.13 metres) high and 2 wah 2 sork (3.4 metres) wide, which could be used as a resting place. He further enquired from the village-headman in that village, who told him that, in the month of April of this year, one Frenchman and 20 Cambodians came up to clear the way and also erected the resthouse.

I am instructed to inform you of the contents of this telegram.

Please bring the above to the knowledge of H.R.H. the Minister of Foreign Affairs.

I have the honour to be,

Sir,

Your obedient servant,

(Signed) Sri Sahadhep

Deputy Under-Secretary.

Appendix D

- (9) Letter of April 20, 1911 from the Deputy Under-Secretary of the Ministry of Interior to Phya Bhibhat Kosa.

Translation

Ministry of Foreign Affairs. Dated 21st April
R.E. 130 (1911). No. 679.

No. 25/643

Ministry of Interior,
20, April R.E. 130 (1911).

The Deputy Under-Secretary of the Ministry of Interior to Phya Bhibhat Kosa, Under-Secretary of the Ministry of Foreign Affairs.

Pursuant to the Ministry of Interior's Note No. 216/12368 dated 10, March R.E. 129 (1911) concerning clearance of the way towards Phra Viharn in order to clear Phra Viharn ground and construction of a rest house by the French, and stating that the Ministry of Interior had sent a letter to enquire from Phya Vongsa Nuprapat about this matter, who replied that according to the geographical position he had seen and from what he could recollect at that time, Phra Viharn was within the French boundary and that^{the} Ministry of Interior, having examined the map and finding that Phra Viharn was marked within the French boundary, sent a telegram to Isarn Province directing that as regards what the French might do at Phra Viharn, the provincial authorities were to do nothing about it and were not to reprimand them but to maintain reticence, Isarn Province replied by telegram that it did not reprimand the French about what they had done at Phra Viharn but that the officials who had been assigned to patrol highwaymen had also been instructed to make maps of Phra Viharn, the contents of which appear in the above Note. His Royal Highness, the Minister of Interior has now received a Note No. 346/8190, dated 18 March R.E. 129(1911) from Isarn Province, with which was enclosed a copy of a report by Nai Kleub and Nai Mau, the officials who were sent out to patrol highwaymen, 5

memoranda ...

Appendix D(9)

2.

memoranda of explanations together with 4 maps, altogether amounting to 10 items. H.R.H., therefore, commanded me to send all the 10 items together with this Note to Your Excellency.

Please bring the above to the knowledge of His Royal Highness, the Minister of Foreign Affairs.

(Signed) Deputy Under-Secretary
signing for Under-Secretary.

[Appendix E]

Summary of The Incident of 1911 Correspondence

Item Number	Date	From—To	Content Summary
1	24 February 1911	Prince Damrong to Prince Devawongse	<p>—Received information that on 6 February a party of about 20 men, led by two Frenchmen cleared their way to PV [Preah Vihear] and constructed a resthouse.</p> <p>—Later report indicated that area cleared was 120 x 240 meters, that there had been 50-60 men, a French resident and two officers, and work was done between 23 January and 5 February.</p> <p>—I believe PV is in Thailand so for clarity the French Minister should be informed or enquiry made about this matter.</p> <p>—Have written to Phya Wongsu Nuprapat, who had been Chairman of the Siamese Delimitation Commission.</p>
5	25 February 1911	Westengard [Phya Kalyan], General Advisor, to Prince Devawongse	<p>—Received your forwarding of 24 Feb. letter from Prince Damrong.</p> <p>—Am aware of matter as Interior spoke to Mr. Ponsot and he composed a Note which I enclose.</p> <p>—Ponsit indicates PV is shown on French side of Dangrek map line.</p> <p>—You and Interior should have map and thus able to confirm PV location.</p>
4	25 February 1911	Note from Mr. Ponsot	The French Legation indicated that French authorities consider PV to be in French territory, as shown on the Dangrek map drawn up by the Boundary Commission.

Item Number	Date	From—To	Content Summary
2	26 February 1911	Prince Devawongse to Prince Damrong	<p>—Have conferred with Phya Kalyan, who was told by Ponsot that PV is considered by the French to be in French territory as appears on the frontier delimitation map.</p> <p>—Please look up map and verify which side PV is on.</p> <p>—If PV is in Thailand, “then appropriate representations could be made.” —“If it is in French territory, it would be improper to make any representation to the French Minister.”</p> <p>—This matter concerns the Ministry of Defense and I have written to HRH there.</p>
3	10 March 1911	Ministry of Interior to Foreign Affairs	<p>Ministry of Interior has written to Phya Vongsa Nuprapat, Minister of Agriculture, asking for verification of PV location. Vongsa has replied that, according to his recollection, to reach PV “one had to cross a big mountain before coming to another hill, on whose slope Phra Viharn stood. . . . According to what he had seen and could still remember, Phra Viharn was in French territory” but, to verify, the “Phra Viharn map 1/200,000 should be consulted.”</p> <p>—Having examined the map, “it was found that Phra Viharn spot was in French territory.”</p> <p>—The Ministry of Interior “was afraid that Phra Viharn was probably in French territory and a telegram was therefore sent to Isarn Province instructing it to refrain from making any representation with regard to French activities at Phra Viharn.”</p> <p>—Isarn Province confirms that “in respect of clearance of Phra Viharn ground no representation has been made.”</p> <p>—Officials went to PV after French had left. “Many tall trees obscuring the view of Phra Vihear were also cut down. It was thought that by so doing, the French wished to have a clearer view of Phra Viharn from the valley.”</p>

Item Number	Date	From—To	Content Summary
6	19 March 1911	Ministry of Foreign Affairs to Interior	Received your letter of 10 March and brought its contents to the attention of Prince Devawonse, “who said that on the information already received, there was no need to reprimand the French.”
9	20 April 1911	Ministry of Interior to Foreign Affairs	—Summarized the letter of 10 March. —The Minister of Interior has received from Isarn Province a copy of a report by Nai Kleub and Nai Mau, together with their five memoranda and four maps, all of which are herewith being forwarded to you. Please advise the Minister of Foreign Affairs.
8	20 May 1911	Ministry of Interior to Foreign Affairs	In continuation of our letter of 20 April, the Minister of Interior has now received a report from Isarn Province that Lance-Corporal In went up to inspect PV and saw a trace of a clearing 284.48 meters long and 81.28 meters wide, and saw a wooden resting place. L/Cpl In was also informed by the village headman that in April one Frenchman and 20 Cambodians “came up to clear the way and also erected the resthouse.”
7	23 May 1911 [incorrect heading of 18 May]	Ministry of Foreign Affairs to Interior	Have seen and taken note of your letter of 20 May.

Item Number	Date	From—To	Content Summary
			Reports of 21 April 1911 by Nai Mao and Nai Kleub to Ministry of Interior
10		Report I	Itinerary of 10-day trip from Ubol Province to PV and back (20 February to 1 March 1911)
11		Report II [Incorrect translated date of November]	Reasons for, and purposes of, the French clearing trees at PV and description of their construction; no evidence of intention to use for troops or battlefield.
12		Report III	The Ta Thao Pass
13		Report IV	The position of the Trao Pool at PV
14		Report V	Description of Don-Ao Pass and the route to Ban Don-Ao
15		Report VI	Events around Don Pak Ka and Chan Daeng-Chao Hom Passes
16			Sketch map of PV
17			Sketch map of Trao Pool at PV