

CASE CONCERNING THE TEMPLE OF PREAH VIHEAR (MERITS)

Judgment of 15 June 1962

Proceedings in the case concerning the Temple of Preah Vihear, between Cambodia and Thailand, were instituted on 6 October 1959 by an Application of the Government of Cambodia; the Government of Thailand having raised two preliminary objections, the Court, by its Judgment of 26 May 1961, found that it had jurisdiction.

In its Judgment on the merits the Court, by nine votes to three, found that the Temple of Preah Vihear was situated in territory under the sovereignty of Cambodia and, in consequence, that Thailand was under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory.

By seven votes to five, the Court found that Thailand was under an obligation to restore to Cambodia any sculptures, stelae, fragments of monuments, sandstone model and ancient pottery which might, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities.

Judge Tanaka and Judge Morelli appended to the Judg-

ment a Joint Declaration. Vice-President Alfaro and Judge Sir Gerald Fitzmaurice appended Separate Opinions; Judges Moreno Quintana, Wellington Koo and Sir Percy Spender appended Dissenting Opinions.

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In its Judgment, the Court found that the subject of the dispute was sovereignty over the region of the Temple of Preah Vihear. This ancient sanctuary, partially in ruins, stood on a promontory of the Dangrek range of mountains which constituted the boundary between Cambodia and Thailand. The dispute had its *fons et origo* in the boundary settlements made in the period 1904-1908 between France, then conducting the foreign relations of Indo-China, and Siam. The application of the Treaty of 13 February 1904 was, in particular, involved. That Treaty established the general character of the frontier the exact boundary of which was to be delimited by a Franco-Siamese Mixed Commission.

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In the eastern sector of the Dangrek range, in which Preah Vihear was situated, the frontier was to follow the watershed line. For the purpose of delimiting that frontier, it was agreed, at a meeting held on 2 December 1906, that the Mixed Commission should travel along the Dangrek range carrying out all the necessary reconnaissance, and that a survey officer of the French section of the Commission should survey the whole of the eastern part of the range. It had not been contested that the Presidents of the French and Siamese sections duly made this journey, in the course of which they visited the Temple of Preah Vihear. In January-February 1907, the President of the French section had reported to his Government that the frontier-line had been definitely established. It therefore seemed clear that a frontier had been surveyed and fixed, although there was no record of any decision and no reference to the Dangrek region in any minutes of the meetings of the Commission after 2 December 1906. Moreover, at the time when the Commission might have met for the purpose of winding up its work, attention was directed towards the conclusion of a further Franco-Siamese boundary treaty, the Treaty of 23 March 1907.

The final stage of the delimitation was the preparation of maps. The Siamese Government, which did not dispose of adequate technical means, had requested that French officers should map the frontier region. These maps were completed in the autumn of 1907 by a team of French officers, some of whom had been members of the Mixed Commission, and they were communicated to the Siamese Government in 1908. Amongst them was a map of the Dangrek range showing Preah Vihear on the Cambodian side. It was on that map (filed as Annex I to its Memorial) that Cambodia had principally relied in support of her claim to sovereignty over the Temple. Thailand, on the other hand, had contended that the map, not being the work of the Mixed Commission, had no binding character; that the frontier indicated on it was not the true watershed line and that the true watershed line would place the Temple in Thailand; that the map had never been accepted by Thailand or, alternatively, that if Thailand had accepted it she had done so only because of a mistaken belief that the frontier indicated corresponded with the watershed line.

The Annex I map was never formally approved by the Mixed Commission, which had ceased to function some months before its production. While there could be no reasonable doubt that it was based on the work of the surveying officers in the Dangrek sector, the Court nevertheless concluded that, in its inception, it had no binding character. It was clear from the record, however, that the maps were communicated to the Siamese Government as purporting to represent the outcome of the work of delimitation; since there was no reaction on the part of the Siamese authorities, either then or for many years, they must be held to have acquiesced. The maps were moreover communicated to the Siamese members of the Mixed Commission, who said nothing, to the

Siamese Minister of the Interior, Prince Damrong, who thanked the French Minister in Bangkok for them, and to the Siamese provincial governors, some of whom knew of Preah Vihear. If the Siamese authorities accepted the Annex I map without investigation, they could not now plead any error vitiating the reality of their consent.

The Siamese Government and later the Thai Government had raised no query about the Annex I map prior to its negotiations with Cambodia in Bangkok in 1958. But in 1934-1935 a survey had established a divergence between the map line and the true line of the watershed, and other maps had been produced showing the Temple as being in Thailand: Thailand had nevertheless continued also to use and indeed to publish maps showing Preah Vihear as lying in Cambodia. Moreover, in the course of the negotiations for the 1925 and 1937 Franco-Siamese Treaties, which confirmed the existing frontiers, and in 1947 in Washington before the Franco-Siamese Conciliation Commission, it would have been natural for Thailand to raise the matter: she did not do so. The natural inference was that she had accepted the frontier at Preah Vihear as it was drawn on the map, irrespective of its correspondence with the watershed line. Thailand had stated that having been, at all material times, in possession of Preah Vihear, she had had no need to raise the matter; she had indeed instanced the acts of her administrative authorities on the ground as evidence that she had never accepted the Annex I line at Preah Vihear. But the Court found it difficult to regard such local acts as negating the consistent attitude of the central authorities. Moreover, when in 1930 Prince Damrong, on a visit to the Temple, was officially received there by the French Resident for the adjoining Cambodian province, Siam failed to react.

From these facts, the court concluded that Thailand had accepted the Annex I map. Even if there were any doubt in this connection, Thailand was not precluded from asserting that she had not accepted it since France and Cambodia had relied upon her acceptance and she had for fifty years enjoyed such benefits as the Treaty of 1904 has conferred on her. Furthermore, the acceptance of the Annex I map caused it to enter the treaty settlement; the Parties had at that time adopted an interpretation of that settlement which caused the map line to prevail over the provisions of the Treaty and, as there was no reason to think that the Parties had attached any special importance to the line of the watershed as such, as compared with the overriding importance of a final regulation of their own frontiers, the Court considered that the interpretation to be given now would be the same.

The Court therefore felt bound to pronounce in favour of the frontier indicated on the Annex I map in the disputed area and it became unnecessary to consider whether the line as mapped did in fact correspond to the true watershed line.

For these reasons, the Court upheld the submissions of Cambodia concerning sovereignty over Preah Vihear.