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Puangthong R. Pawakapan, *State and Uncivil Society in Thailand at the Temple of Preah Vihear*

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Reviewed by Volker Grabowsky.

Instead of being a place for peace, meditation, contemplation and prayer, the ancient Khmer temple of Prasat Preah Vihear (Phra Wihan, to the Thai) has become in recent years the object of political dispute and even military clashes between two ASEAN members: Thailand and Cambodia. The short book by Thai historian Puangthong Pawakapan is a welcome addition to the growing corpus of literature on the temple dispute which has been produced since the controversial decision by UNESCO in July 2008 to inscribe Preah Vihear on its World Heritage list. The author, who is Associate Professor in the International Relations Department of Chulalongkorn University's Faculty of Political Science, is most qualified to write on this subject as she has in the past conducted extensive research on Thai-Cambodian relations.[1] The main purpose of this well-written book, however, is not only to provide a comprehensive overview of the historical background of the conflict but also to analyse the actions, strategy, and objectives of the campaign of Thailand's People's Alliance for Democracy (PAD) to exploit the border conflict for its own anti-Thaksin agenda.

The PAD, also known as the Yellow Shirt movement, is seen in *State and Uncivil Society in Thailand* as the stakeholder mainly responsible for sowing seeds of hatred between Thais and Cambodians and derailing the successful

economic and political cooperation between the two countries in the 2000–2008 period. The PAD is portrayed as an ultra-nationalist social movement supported by various civic groups and institutions, mainly in the Thai capital Bangkok. In the first of four chapters the author tries to conceptualize the term “uncivil society” as an appropriate characterization of movements such as the PAD whose behaviour and ideology run contrary to democratic principles. Puangthong argues, correctly in my view, that “the exclusion of certain organisations from the definition of civil society is theoretically untenable because all social movements and organisations, even the Ku Klux Klan, claim that their actions are right and legitimate” (page 9). It is also a matter of fact that the same “civil movement” might be considered a progressive force when fighting communist regimes or other authoritarian dictatorships and viewed as reactionary when opposing a democratically elected government, “even though its confrontational tactics may have been the same all along” (*ibid.*). The author tries to overcome this contradiction by defining “uncivil society” as a sub-set of “civil society”. This argument is not fully convincing as even electoral democracies with a strong civil society are by no means immune to nationalism and may be pressured by public opinion in their respective countries to stage wars against neighbouring states. As European history in the nineteenth and twentieth century amply demonstrates, liberal-civic democracies sometimes seem to be less inclined to preserve peace than certain autocratic regimes which appear to be more determined to keep chauvinistic masses at bay.

The chapter entitled “The Post-Cold War Regional Integration” is based on the premise that after the end of Cambodian conflict (Third Indochina War) in 1991 it was economic cooperation and exchange that fostered improved relations between Thailand and her Indochinese neighbours, including Cambodia. The author persuasively argues that Cambodia became an important market and investment area for the Thai economy. The cross-border trade between the two countries grew impressively during the years from 1992 to 2008, with exports from Thailand exceeding imports from Cambodia by a factor of ten. However, it would be a misconception to believe

that Cambodia was an economically much weaker neighbour, one remaining largely dependent on the cooperation and assistance of Thailand. In fact, any disruption of trade between Thailand and Cambodia would harm both sides. But should that vital national interests and national pride be at stake, Thailand as well as Cambodia might be inclined to hazard the consequences of such disruption. The anti-Thai riots in Phnom Penh in January 2003, during which the Thai embassy was attacked and destroyed, were a strong signal that Thai-Cambodian relations still lacked mutual trust and understanding. The burning of the Thai embassy provoked by an inaccurate newspaper report that a famous Thai actress claimed Thai ownership over Angkor was a very serious incident. It highlighted the dark side of Cambodian ultra-nationalism grounded in an inferiority complex on the part of the Khmer vis-à-vis their more powerful Thai and Vietnamese neighbours. Many Khmer, feeling deeply ashamed by this chauvinistic outburst could only have been caught by surprise by how quickly the Thai government restored political and economic relations with Cambodia.

In the midst of a period that witnessed growing economic ties, the ghosts of Preah Vihear returned and haunted Thailand and Cambodia once again. In the third chapter of *State and Uncivil Society in Thailand* the author recalls the Franco-Siamese treaties of 13 February 1904 and 23 March 1907, stipulating that the boundary between Siam and the French protectorate of Cambodia should follow the watershed line. It was agreed that a team of four French experts should map the results of the work of the combined Siamese-French border commission. The Siamese side at that time did not possess sufficient expertise and thus had to trust the accuracy of the French cartographers. One of the eleven maps covering the entire land frontier between Siam and French Indochina was added in late autumn 1907 as Appendix I to the 1907 border treaty. It shows the borderline running slightly north of Prasat Preah Vihear. Thus “the French mapping team, possibly intentionally, located the entire promontory, including the temple, within Cambodian territory” (page 41). This map, along with the other ten maps, were obviously accepted by the Siamese side.^[2] However, it must be

stressed that the so-called Annex I Map was not a work of the joint commission set up in 1905 and that, therefore, “in its inception and at the moment of its production, it had no binding character.”[3]

In the following paragraphs the reviewer feels compelled to point out briefly four major developments related to the Preah Vihear temple complex in the five decades following the Franco-Siamese treaties of 1904 and 1907. They are not mentioned in Puangthong’s study but are of vital importance to a full understanding of the judgement of the International Court of Justice in June 1962.

First, in the period from 1907 to 1929 there was no visible presence of state authority at the site of the temple, either from the French or from the Siamese government. This situation changed in early 1930. On 29 January 1930, Somdet Krom Phraya Damrong Rachanuphap (a younger brother of King Chulalongkorn and former Minister of Interior) visited Prasat Preah Vihear together with one of his daughters and several Siamese officials drawn from the nobility. The prince, who was also a well-known expert on Thai and Southeast Asian archaeology, was greeted at Preah Vihear by the French governor of Kompong Thom and by Henri Parmentier. The famous architect and art historian Parmentier, member of the prestigious *École française d’Extrême-Orient*, led Prince Damrong personally through the temple complex and gave the Siamese guests some expert explanations. Several years later, Damrong recorded his impressions of the visit along with several photographs in his *Report on a survey of archaeological sites in Monthon Nakhòn Ratchasima* (1988 [1929]). Although he undertook his visit to Preah Vihear as a private person, Prince Damrong, who at that time held the position as chief of the Supreme State Council, was welcomed by his French hosts as a high-ranking official guest. What is more, Damrong had to swallow a “bitter pill” when the French *tricolore* was hoisted for his “welcome”. [4] As Damrong’s daughter remarked many years later, her father did not dare to protest, given the arrogant and intrusive behaviour of the French and the painful experiences of the past. [5]

Second, in 1934/35 the Siamese government of Phraya Phahon Phonphayusena sent a survey mission to investigate the border between Siam and Cambodia in the Dongrak sector and, in particular, to determine the precise borderline in the Preah Vihear area. It was discovered for the first time that the French map of 1907, known as Annex I Map, showed an erroneous borderline, placing the temple on the wrong side. The real watershed did not run north of the temple but directly below the rock on which the main sanctuary of Preah Vihear is situated. A second survey two years later confirmed this result.[6] It was evident that the French experts had made a fundamental mistake in 1907 when mapping the creek O'Tasem. The creek ran slightly further south than determined in 1907.[7] In 1937, Prasat Preah Vihear was declared national Thai cultural heritage, but only in 1939 did Luang Vichitr Vadakarn, then the director-general of the Department of Fine Arts (Krom Sinlapakòn), object to the French map of 1907. The government of Field Marshal Phibun Songkhram tried in vain to obtain a new agreement with the French authorities in Indochina. In a public declaration on 11 October 1940, the government in Bangkok unilaterally placed Prasat Preah Vihear and the territory north of the actual watershed under Thai protection. The temple was inscribed by the Department of Fine Arts as an ancient archaeological monument of Thailand. Thereafter, a small group of soldiers was sent to hoist the Thai flag over Prasat Preah Vihear.[8]

Third, after a short and victorious Thai military campaign against the French colonial troops in Indochina, the Convention of Tokyo was concluded through the mediation of Japan on 28 January 1941. The Convention envisaged the retrocession to Thailand of all territories ceded to France in 1904 and 1907. Through this stipulation Preah Vihear was placed once again under Thai sovereignty. After the war, Thailand had to return all territories that she gained during World War II, and by end of 1946 the *status quo ante* was restored.[9] However, Thai troops were not withdrawn from the Preah Vihear temple and the surrounding area. The government in

Bangkok had always assumed that both the Franco-Siamese treaty of 1904 and that of 1907 fixed the watershed as the border line in the Dongrak region. The watershed that counted in the view of the Thai was the real one not the obviously mistaken one on which the Annex I Map was based. Three years later, in 1949, France filed with the consent of the Cambodian colonial government an official complaint against Thailand. The complaint demanded the total withdrawal of Thai civilian and military personnel from Preah Vihear.[10] Thailand ignored this demand and clung to the status quo. There was no further official protest from the French side until Cambodia achieved complete independence in November 1953.

Finally, shortly thereafter the government in Phnom Penh sent three officials to monitor the temple, but they were sent back by the Thai authorities. When the Cambodian ambassador in Bangkok informed the Thai government about his government's intention to dispatch troops to Prasat Preah Vihear to take possession of the temple, an armed police unit was immediately sent to the area to prevent such action on the part of the Cambodian authorities. In spite of Cambodian protests, the status quo, with a Thai physical presence in the Preah Vihear area, remained unchallenged during the next four years.[11] It seemed that the influential governor of Siem Reap province, Dap Chuen, turned a blind eye to the Thai presence at Preah Vihear. Domestic political problems in Cambodia, along with the ascension to power of the authoritarian nationalist military regime of Marshal Sarit Thanarat in Bangkok, led to the escalation of the smouldering conflict in the summer of 1958. This escalation culminated in the severance of relations in November of the same year.[12] In October 1959, the government in Phnom Penh appealed to the International Court of Justice in the Hague to make a final decision on the sovereignty of Prasat Preah Vihear.[13]

It took almost three more years until the International Court of Justice (ICJ) pronounced a judgement on 15 June 1962. This final verdict is nicely summarized in Chapter 3 of Puangthong's study. The ICJ had to decide on the following five demands of the Cambodian government:

1. the binding character of the French map of 1907 according to international law;
2. the fixation of the Thai-Cambodian border in the Dongrak sector according to the above mentioned map;
3. the sovereignty of Cambodia over Prasat Preah Vihear;
4. the obligation of Thailand to withdraw her military forces “from the ruins of the Preah Vihear temple”;
5. the restitution of all objects of cultural value which Thailand had removed from the temple.

As to the first two demands of the Cambodian side – namely, a) to determine that the French map of 1907 had binding character according to international law and b) to define the actual border between Cambodia and Thailand in correspondence to this map – the ICJ made the decision that these two demands were beyond the jurisdiction of the Court. For the exact location of state borders have to be determined by bilateral negotiations between the concerned states. Yet, the ICJ evaluated the first two Cambodian demands indirectly, by using the validity of the French map as important evidence in its decision on the third through fifth demands of the Cambodian government.

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

The court’s majority based its arguments above all on the validity of the French map of autumn 1907 (scale 1:200,000) and also on the absence of protest on the part of the Thai authorities against this map. In the view of the majority of the judges the fact that Prince Damrong never complained against the hoisting of the French national flag during his visit of Preah

Vihear in early 1930 was interpreted as tacit consent. Because of Damrong's high-ranking position in the Siamese state apparatus, the private character of his visit – as emphasised by the Thai side – was refuted. Damrong's archaeological fact-finding mission was seen as having had an at-least “half-official” character.[14] Therefore, according to the legal principal *Qui tacit consentire videtur si loqui debuisset ac potuisset* (“He who keeps silent is held to consent if he must and can speak”), also called “estoppel” in international law, the ICJ ruled that Thailand was bound by the limitations of the frontier as fixed in the Annex I map.[15]

The dissenting opinions of those judges who rejected the Cambodian demands – forming an integral part of the ICJ judgement as a whole – strongly supported the claims of the Thai government to exercise sovereignty over Preah Vihear. The longest and most detailed dissenting opinion was given by the Australian judge, Sir Percy Spender, who did meticulous historical research by studying in depth the proceedings of the combined Franco-Siamese commission of 1904–1907. The dissenting opinions focused on the circumstance that neither Siam nor France ever departed or intended to depart from the principle of the watershed as borderline in the Dongrak sector. The expert opinion of several internationally recognised geologists from the Netherlands had proven that the watershed between the Nam Mun and the Mekong ran directly below Prasat Preah Vihear, not only in 1962 but also at the beginning of the twentieth century. Moreover, Sir Percy Spender argued that the French map was not binding according to international law as it did not bear the signatures of any high-ranking French government official.[16]

In spite of serious reservations expressed by the British judge Sir Gerald Fitzmaurice in his “Separate Opinion”, the majority of judges arrived at the conclusion: “There is, however, no reason to think that the Parties attached any special importance to the line of the watershed as such, as compared with the overriding importance, in the interests of finality, of adhering to the map line as eventually delimited and as accepted by them.”[17] At the same

time the court declined to make any judgement on the treaty character of the Annex I Map or to declare that the frontier line between Cambodia and Thailand in the neighbourhood of Preah Vihear was the line marked on the Annex I Map. This refusal was partly grounded on the fact that these first two requests were enlargements of the original claim by the Cambodian government (as Puangthong correctly notes), but the requests were also considered “too vague to allow the Court or the Government of Thailand to appreciate what are the limits of the territory claimed.”^[18] Limiting the subject of the dispute to the “sovereignty over the region of the Temple of Preah Vihear”, the ICJ decided only that the temple itself, a clearly defined small piece of land, and its “vicinity” were located “on Cambodian territory”.

Whereas Phnom Penh claimed the whole overlapping area marked by the watershed line and the line of the Annex I Map as Cambodian territory, the government in Bangkok soon produced a map with a scale of 1:50,000 delineating the border in the Preah Vihear border region. The borderline marked on that map followed the actual watershed and left only the Preah Vihear temple and its immediate surroundings on the Cambodian side of the border.^[19] In this light it was of great symbolic importance that the Thais, when withdrawing from Preah Vihear, not only took down the national flag but carried with them the whole flagpole including its socket. As Shane Strate aptly remarks in his analysis of the Thai public discourse of the late 1950s and early 1960s on the Preah Vihear dispute, the loss of the temple became a symbol of Thailand’s national humiliation by colonialist and neo-imperialist powers and institutions. The Thais clearly felt betrayed not only by their “enemies” – Cambodia and France – but also by their “friends and allies”, in particular the United States. Strate recalls that one major factor which contributed to the Cambodian legal victory in 1962 was the fact that former US Secretary of State Dean Acheson, one of the chief architects of the Cold War, became highly influential as lead counsel for Cambodia in the Hague.^[20] In a way, the United States needed Cambodia more than it needed Thailand. Since Thailand under the Sarit regime was a US vassal without any alternative options, Sihanouk’s Cambodia, which had flirted with Beijing

and Moscow since the late 1950s, was considered a much more strategically important keystone which needed to be kept in the anti-Communist camp at all costs. Without Acheson's persuasiveness the balance of power at the ICJ might have been different.

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

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

related to developing the temple of Preah Vihear as a world heritage for humanity (*mòradok lok khòng manutsayachat*). Both sides agreed at least implicitly on joint inscription of Preah Vihear on the UNESCO World Heritage List. A joint nomination made sense since parts of the wider temple complex, such as the Sa Trao pond, are either situated inside the disputed border area or even north of the Annex I Map line (pages 47 ff.).

Three years later, in talks held in 2007 and early 2008, the Cambodian government flatly rejected the idea of a joint nomination, arguing that the temple was under the sole sovereignty of Cambodia and that Thailand should make a separate nomination for archaeological sites in areas under Thai sovereignty. How can this sudden change of mind be interpreted? Why did Hun Sen and Sok Anh decide to pursue no longer the idea of Preah Vihear as transnational and trans-border joint heritage of Cambodian and Thailand? Puangthong speculates that Cambodia's decision "was clearly based on the fact that the temple legally belongs to Cambodia" (page 48). However, its legal ownership had never been questioned, either by Chuan Leekpai or by Thaksin Shinawatra. She further speculates that the Cambodians feared a Thai "desire for Cambodian territory, particularly for this cultural site" (page 49). Such fears are only understandable if we take into consideration the maximalist Cambodian legal standpoint, as expressed in an article by Cambodian lawyer Bora Touch entitled "Who Owns the Preah Vihear Temple: A Cambodian Position". This position argues that the ICJ had already determined the location of the boundary in 1962 and that any Thai move to negotiate a boundary line deviating from the line marked on the Annex I Map should be considered as an unjustified claim of Cambodian territory. One may sympathise, even as a Thai scholar, with such a maximalist position which perceives any negotiations with Thailand on the border issue as just an opportunity for the Thai side to "accept reality", in other word, to surrender to the legal position of Cambodia. It is interesting to note that Bora Touch – who of course speaks for himself and not for the Cambodian government – interprets the MoU, signed still under the Democrat Party government on 7 June 2000, as "a binding international

agreement” in which Thailand accepted the Annex I Map as the terms of reference and thus also the border line marked on that map.

Though all Thai governments after 2008, notwithstanding their political orientation, insisted that the MoU of June 2000 did not compromise Thai legal claims on the disputed area in the neighbourhood of the Preah Vihear temple, such a chain of arguments was grist for the mill of the nationalist forces in Thailand. The PAD campaign over the Preah Vihear temple dispute is discussed in the fourth and last chapter of Puangthong’s book. The author recalls the founding in early 2006 of the PAD as “a coalition of heterogenous groups with diverse and even conflicting backgrounds and interests” ranging from “a network of grassroots and mass-based civil society organisations” (page 57) to royalist, conservative, and nationalist groups, united only by the willingness to remove Prime Minister Thaksin Shinawatra and his supporters from power. Given “Cambodia’s firm refusal” (page 49) of a joint nomination, it is understandable that almost all Thai political actors became suspicious of Hun Sen’s ultimate objectives.

The military-appointed Thai government of General Surayudh Chulanont tried to persuade the Cambodian side to accept a joint Cambodian-Thai inscription of Preah Vihear as a UNESCO World Heritage site. One of the main arguments was that the only practical access to the temple was from the Thai side of the border. Besides, several smaller temples and water reservoirs were situated in the “contested zone” claimed by both countries. At the thirty-first annual meeting of the UNESCO World Heritage Committee in Christchurch, New Zealand, in 2007 the Thai government insisted on that solution. This prompted UNESCO to postpone its decision to the thirty-second annual meeting in Quebec in July 2008. But in spring 2008 the Samak Sundaravej government suddenly changed the Thai position and accepted the registration of Prasat Preah Vihear as an exclusively Cambodian World Heritage site.[21]

Samak's foreign minister, Noppadon Pattama, declared the MoU which he had negotiated with the Cambodian side an important diplomatic success, because the Cambodian government had pledged to restrict the registration of Prasat Preah Vihear to the territory immediately surrounding the temple, presenting a map to prove that no parts of the "disputed zone" were part of the deal. According to Noppadon, the "Joint Thai-Cambodian Declaration" did not imply an agreement on the border at the Preah Vihear sector. The then parliamentary opposition in Thailand, however, appealed to the Constitutional Court which decided that the "Joint Declaration" indeed had a legally binding character and therefore required parliamentary approval, according to Article 190 of the Thai constitution of 2007. As the government had failed to obtain parliamentary approval before signing the "Joint Declaration", the government needed either to seek this approval or to revoke the "Joint Declaration". Facing growing public pressure, especially from the People's Alliance for Democracy (the "Yellow Shirts"), the Samak government chose the second option. The government of Somchai Wongsawat, who succeeded Samak as prime minister in August 2008, even sent a letter to the president of the UN Security Council stating that Thailand does "not recognize [the Annex I Map] under the Memorandum of Understanding in 2000 as the basis for demarcation."^[22] In the view of Cambodian legal experts this was, however, a futile attempt to avoid eventual recognition of the Thai-Cambodian border on the basis of the French-drawn map of 1907, as the MoU of 2000 was "a binding international agreement," as mentioned above.^[23]

Although she is in general sympathetic towards the Samak and Somchai governments, Puangthong concedes that Samak made a "strategic mistake" when he appointed Nopphadon Patthama, Thaksin's personal lawyer, as foreign minister, given Thaksin's very close relations with Cambodia's Prime Minister Hun Sen (page 62). Even Thaksin himself admitted, several years later, in a rare interview with the *Bangkok Post* that Nopphadon "should not have supported Cambodia's application", concluding that "[f]rankly speaking, Thailand is at a disadvantage in this case."^[24]

Puangthong summarizes the main arguments developed by PAD leaders, activists and academic supporters in numerous publications and statements. The main focus of the PAD propaganda was the defence of Thai sovereignty over the disputed area of 4.6 square kilometres. It asserted that, if the Cambodian side started to build hotels, markets, police stations and customs facilities or even a casino in this zone, it could do so with the backing of the international community. Moreover, the Samak government was accused of having secretly abandoned Thai sovereignty over Prasat Preah Vihear—including the disputed area—in exchange for a concession from the Hun Sen government to develop a large-scale casino complex in the coastal province of Koh Kong in southwestern Cambodia (page 64).[25] This accusation was put forward by several “insiders” like Kasit Phirom, a former close aide to Thaksin and Thai ambassador to Berlin and Washington. After the demise of the Somchai government in December 2008, Kasit became foreign minister in Abhisit Vejjajiva’s Democrat-led coalition government. In his new position he pursued a more pragmatic policy vis-à-vis Cambodia, eventually becoming himself a target of PAD propaganda.[26]

The author quotes PAD leader Sondhi Limthongkul, who in February 2011 urged the Thai military to occupy Angkor Wat and use it as security for obtaining the Preah Vihear temple and its surrounding area (page 77). However, most other statements by Sondhi indicate that Thai governments willing to compromise with Cambodia rather than the Cambodian people are his targets. Revealing is the transcript of Sondhi’s famous speech of 9 May 2008, in which he explained for the first time what he called the Samak government’s “hidden agenda” on the Preah Vihear issue. Sondhi appeals repeatedly to Thai patriotism, but he does so without insulting the Cambodian people and their culture. Even Cambodian Prime Minister Hun Sen is not personally attacked, as Sondhi’s main target is the Thai government and its unwillingness to defend “national interests”.

I do not want our people, our descendants accuse him [Samak] of selling the nation only for getting advantages with regard to gas concessions, which a certain person [Thaksin] currently negotiates

with Prime Minister Hun Sen. I do not accuse him, but I do not want this to happen. I want him, our Prime Minister, to be cautious. I am sure that he loves the nation, that he loves the country. But so far he has not taken any concrete action in any of the issues which I raised. He has not yet demonstrated his love for the people ... He has allowed the Cambodians to nominate [Prasat Preah Vihear] unilaterally. This gives rise to the suspicion that he might be involved in the conspiracy to hand Prasat Preah Vihear over to Cambodia in exchange for gas concessions.[27]

What are the prospects for solving the conflict on Preah Vihear, or Phra Wihan? When the conflict started to become violent three years ago, the reviewer predicted that the Cambodian government would be tempted to use the registration of Preah Vihear as UNESCO World Heritage Site to internationalise the conflict with Thailand and thus put pressure on the Thai government to yield to the Cambodian legal viewpoint. Exactly this happened in 2011, when Phnom Penh asked the ICJ in the Hague to make a final and binding decision on the border in the vicinity of Preah Vihear sector. But for what reason should the ICJ depart from the principle that border disputes among states should be solved exclusively through bilateral negotiations? Why should the ICJ make a judgement on Cambodian demands with which it refused to deal in the operative clause of its judgement half a century ago? As Virachai Plasai, Thai representative at the ICJ hearing on 30 May 2011, aptly remarked, “reversing the logical order, Cambodia is asking the Court to interpret the reasoning in its 1962 Judgement in light of the operative part.”[28]

The Cambodian government is pushing vigorously for a quick solution. Tens, if not hundreds of thousands, of visitors are expected to visit Preah Vihear each year.[29] Before the escalation of the conflict in summer 2008, more than 60,000 tourists visited Preah Vihear from the Thai side of the border, as against fewer than 4,000 who reached the temple from the Cambodian side. That is not astonishing, given the present-day infrastructure and the natural environment. Hotels and other facilities shall be built in the wider vicinity of the temple, which comprises large parts of the zone claimed by

both countries. The Cambodian side has already created such *faits accomplis* by building a Buddhist temple (Wat Kaeo Sikkhakhirisawara) and several residential buildings in the disputed zone. It has even been reported that three hamlets with 500–600 settlers from central Cambodia were built by the Cambodian government close to the Prasat Preah Vihear on territory claimed by Thailand. These *faits accomplis* would most probably be used by any future ruling of the ICJ as a proof of “effective Cambodian control” of the 4.6-square-kilometre disputed zone, as Thai historian Suwit Thirasasawat predicted in 2010.[30]

When Puangthong R. Pawakapan finished her study, the ICJ had not yet ruled on the interpretation of the 1962 judgement at the request of the Cambodian government. She made the reasonable prediction that a decision in favour of Cambodia, i.e. assigning the whole disputed area of 4.6 square kilometres to Cambodia, would certainly cause a public uproar in Thailand and result in serious border clashes (page 87). Therefore, the court’s final decision, announced on 11 November 2013, came to the relief of both Cambodia and Thailand, as it did not leave a clear winner. The ICJ defined the whole promontory of Preah Vihear as the “vicinity” of the Preah Vihear temple which the 1962 verdict had declared as territory under Cambodian sovereignty. Cambodia can now safely claim roughly one quarter of the disputed area as her territory. The pagoda, a market and the three hamlets mentioned above are all situated in this relatively small zone immediately to the west of the temple. The road which Phnom Penh recently built to link the temple with Cambodian territory also cuts across the promontory and has to be respected by Bangkok as territory under Cambodian sovereignty as well. This certainly satisfies Phnom Penh. However, the larger part of the disputed zone, lying further to the west and including the neighbouring hill of Phnom Trap, was ruled by the ICJ as lying “outside the disputed area”. [31] Therefore, the Thai government is now entitled to claim almost three quarters of the 4.6 square kilometres as territory under Thai sovereignty in any future bilateral negotiations on the delimitation of the border in the neighbourhood of Preah Vihear.

It is not yet too late to have Prasat Preah Vihear inscribed as a joint Thai-Cambodian World Heritage Site. The UNESCO decision of June 2008 still leaves this option open, as it recognizes “that Thailand has repeatedly expressed a desire to participate in a joint nomination of the Temple of Preah Vihear and its surrounding areas” and by considering “further that archaeological research is underway which could result in new significant discoveries that might enable consideration of a possible new transboundary nomination, that would require the consent of both Cambodia and Thailand.”[32] The American anthropologist Helaine Silverman, an expert on heritage management and museum theory and practice, strongly supports the idea of a joint Cambodian-Thai management of Preah Vihear as a transborder World Heritage Site. She argues that, given the history of the conflict, UNESCO was adding fuel to the fire by allowing the temple be inscribed as the heritage of only one nation-state: “It is UNESCO’s own decision to list Preah Vihear that provoked the recent violence that has damaged the site, in contravention of the explicit goal of the World Heritage List and World Heritage Convention to promote site protection.”[33] A solution acceptable to both countries in the long run would presuppose that the temple were conferred “a *borderless* status, assisting the two countries to prepare dual access routes to the site with appropriate passport control. The UNESCO flag and the flag of both countries would fly over the site.”[34] Given the temple’s architecture, which shows a clear natural orientation towards the north, and given the fact that the easiest and most convenient access to the temple is from the Thai side, joint management of Preah Vihear still seems the best solution. In an article authored together with the German lawyer René Gralla, the reviewer proposed an Andorra-style solution for Preah Vihear. The whole disputed area of slightly less than five square kilometres would be proclaimed as the independent state of “Preah Vihear-Phra Wihan” ruled by two diarchs, namely the King of Cambodia and the King of Thailand, and harbouring a population of monks and local villagers from both sides of the Thai-Cambodian border, mostly ethnic Kui and Khmer, apart from some Lao and Thai. Such a mini-state could promote

tourism, attract foreign investors, and finally become the symbol of eternal friendship between Thailand and Cambodia.[35] A dream? Perhaps, but one that should be tried.

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Notes

1. See, for example, Puangthong Rungsawasdisab, “War and trade: Siamese Interventions in Cambodia, 1767–1851”, PhD dissertation, University of Wollongong, 1995.
2. See Anucha, *Exclusive kan müang*, pp. 51–55. In this context it should be noted that before 1884 Siam did not possess proper maps for naval and military purposes. Those maps that it had were too inaccurate for more sophisticated military purposes. Only from 1884 to 1893 was a cartographic survey of northern and northeastern Thailand undertaken by the British geographer James McCarthy, who was working for the government in Bangkok.
3. International Court of Justice, *Case Concerning the Temple of Preah Vihear*, p. 21.
4. Charnvit Kasetsiri, *Prasat khao phra wihan* [Preah Vihear Temple]. Bangkok 2008, pp. 14–24.
5. Princess Phun Phitsamai Diskul is quoted by the Taiwanese judge Wellington Koo in his “separate opinion” as follows: “It was generally known at the time that we only give the French an excuse to seize more territory by protesting. Things had been like that since they came into the river Chao Phya with their gunboats and their seizure of Chanthaburi.” Quoted from International Court of Justice, *Case Concerning the Temple of Preah Vihear*, pp. 91. See also *ibid.*, pp. 122 ff.
6. Anucha 2008, p. 84. See also International Court of Justice 1962, p. 86 (“dissenting opinion” of Taiwanese [Nationalist Chinese] judge Wellington Koo).
7. These facts were confirmed by Dutch experts like Professor Willem Schermerhorn and analysed in detail by the Australian judge Sir Percy Spender in his unusually long and haunting “dissenting opinion”. See International Court of Justice, *Case Concerning the Temple of Preah Vihear*, pp. 122 ff.
8. Duangthida, *Prasat phra wihan khwam khatyaeng talòt không sòng prathet?* Bangkok 2008, pp. 118 ff.
9. Charnvit, *Prasat khao phra wihan*, pp. 25–33.
10. Anucha, *Exclusive kan müang*, p. 57.
11. International Court of Justice, *Case Concerning the Temple of Preah Vihear*, p. 86 (“dissenting opinion” of Judge Wellington Koo).
12. *Relations between Thailand and Cambodia 1959*, p. 4. At the height of the conflict between Thailand and Cambodia Dap Chuen was accused of being part of a Thai-US plot to assassinate Prince Sihanouk in a scheme to annex Cambodia. The “pro-Thai” governor was arrested and later executed. See Ministry of Foreign Affairs 1961, p. 6. Cf. Palmer 1977.
13. See Michael Leifer, “Cambodia and Her Neighbours”, *Pacific Affairs*, Vol. 34, No. 4, pp. 361–374
14. International Court of Justice, *Case Concerning the Temple of Preah Vihear*, pp. 24ff.

15. See Sven Mißling, “A Legal View of the Case of the Temple Preah Vihear”, in *World Heritage, Angkor and Beyond: Circumstances and Implications of UNESCO Listings in Cambodia*, ed. by Brigitta Hauser-Schäublin. Göttingen: Universitätsverlag Göttingen, p. 61. Mißling points out that the very broad notion of the term “estoppel” “has often been criticized on the basis of a well-founded judicial argumentation, not only by the separate and dissenting opinions, but also by a number of scholars”.
16. Ibid., p. 118.
17. International Court of Justice, *Case Concerning the Temple of Preah Vihear*, p. 33.
18. Ibid., pp. 13 ff.
19. Bora Touch (2009, p. 222) stresses that this Thai map “only appeared as an annex to the 1962 Note when it was later published in the Foreign Affair Bulletin. This document was not published in UN official documents, nor does it exist in the UN databases.”
20. Strate 2013, p. 66.
21. Anucha, *Exclusive kan müang*, pp. 93 ff.
22. Quoted from Bora Touch 2009, pp. 226 ff.
23. See ibid., p. 226.
24. “Thaksin warns of Thai friction over temple. History of disputed Preah Vihear area is in Cambodia’s favour, says former Prime Minister”, *Bangkok Post*, 11 March 2012.
25. See also Phucatkan Editorial Board (ed.), *Prasat phra wihan*, p. 51.
26. “Kasit rules out Thai ownership”, *The Nation*, 26 December 2008.
27. Phucatkan Editorial Board 2008, p. 103.
28. ICJ proceedings, Monday, 30 May 2011, uncorrected translation.
29. Phiphop Udon, *Kòrani prasat phra wihan rawang thai-kampucha: rian khon la dan không ngoen khon la sakun* [The Dispute between Thailand and Cambodia on Prasat Phra Wihan: Two Sides of a Coin of Different Currency]. Bangkok 2008, p. 19.
30. Suwit 2010, p. 370.
31. ICJ, “Request for interpretation of the judgment of 15 June 1962 in the case concerning the temple of Preah Vihear (Cambodia v. Thailand)”, 11 November 2013, section 98.
32. UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, World Heritage Committee, Quebec City, Canada, 2–10 July 2008.
33. Silverman 2011, p. 15.
34. Ibid.
35. René Gralla and Volker Grabowsky, “Andorra-style solution beckons in Preah Vihear row”, *Bangkok Post*, 24 September 2013.

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