

Preah Vihear Temple and the Thai's Misunderstanding of the World Court Judgment of 15 June 1962

By Bora Touch, Esq.
(Australia - 29 June 2008)

There are worrying signs of tension between Cambodia and Thailand over Preah Vihear temple. This could escalate into war. It is a hot issue in Thai politics and the dispute has arisen from misunderstanding of the International Court of Justice Judgment of June 1962 on the part of Thai successive governments, politicians, Thai academics with except of a few such as Dr. Charnvit Kasetsiri. The tensions have been exacerbated by incorrect and fraudulent statements made by Thai partisans.

A fraudulent statement was recently made by Thai Democrat MP Sirichok Sopha "The ICJ ruled only the temple was under Cambodia's sovereignty and Thailand obligated to hand the ruin temple to Cambodia, not soil under and surrounding the ruin": *The Nation*, 25 June 2008. This has been the Thai theme since July 1962. The Thai Foreign Affairs Statement of 25 March 2008 reinforces this theme.

More recently, a Thai Columnist Nophakhun Limsamarnphunnop writes "the issue of the surrounding areas, currently in Thailand's territory, would be complicated and the integrity of Preah Vihear complex would be compromised, given that a number of elements of the temple such as a giant reservoir and the Naga staircase are situated in Thai territory.": *The Nation* 28 June 2008.

I wish to raise two issues I hope will eradicate any misunderstanding among the Thais; There is nothing I can do with those who persist in knowingly making false statements:

1. Did the International Court of Justice ("ICJ") accept or rule as binding all Cambodian-Thai boundary maps (1907-1908) including the Annex 1 Map and the boundary line indicated on it ?
2. What is the size of the "disputed" land?

ISSUE #1: Did the International Court of Justice ("ICJ") accept or rule as binding all Cambodian-Thai boundary maps (1907-1908) including the Annex 1 Map and the boundary line indicated on it ?

At the ICJ hearing on 20 March 1962, Cambodia asked the Court to rule on (5) Final Submissions (claims) for Cambodia:

1. "To adjudge and declare that the map of the Dangrek sector (Annex I to the Memorial of Cambodia) was drawn up and published in the name and on behalf of the Mixed Delimitation Commission set up by the Treaty of 13 February 1904, that it sets forth the decisions taken by the said Commission and that, by reason of that fact and also of the subsequent agreements and conduct of the Parties, it presents a treaty character;"
2. "To adjudge and declare that the frontier line between Cambodia and Thailand, in the disputed region in the neighborhood of the Temple of Preah Vihear, is that which is marked on the map of the Commission of Delimitation between Indo-China and Siam (Annex I to the Memorial of Cambodia);"
3. "To adjudge and declare that the Temple of Preah Vihear is situated in territory under the sovereignty of the Kingdom of Cambodia";

4. *"To adjudge and declare that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed, since 1954, in Cambodian territory, in the ruins of the Temple of Preah Vihear";*

5. *"To adjudge and declare that the sculptures, stelae, fragments of monuments, sandstone model and ancient pottery which have been removed from the Temple by the Thai authorities since 1954 are to be returned to the Government of the Kingdom of Cambodia by the Government of Thailand.": ICJ Reports 1962, p. 11*

In its reply at the Court hearing, (here I only repeated two of the relevant Thailand rebuttal submissions) Thailand objected to all 5 Submissions above as follows.

1. The Annex I Map was not published in the name or on behalf of the Mixed Commission, but was prepared by the French section of the Mixed Commission alone, and published only in the name of the French section.
2. No decision of the Mixed Commission was recorded about the boundary at Preah Vihear.

In the ICJ operative provisions of the judgment of 15 June 1962, the Court accepted Thai rebuttal Submissions 1 and partially 2. The Court found/ruled that:

1. *"the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia;"*[Cambodia's Submission 3]

2. *"Thailand is 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";* [Cambodia's Submission 4]

3. *"Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia's fifth Submission which may, 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.": ICJ Reports 1962, p. 36, 37. [Cambodia's Submission 5]*

Using this as a reason, following the ICJ ruling in July 1962, the Thai Cabinet dispatched a proces verbale to the United Nations in which, in essence, Thailand formally accepted the Court ruling and provided its "understanding" of the Court ruling and that is that, according to Thailand, the ICJ found that the Temple is located in Cambodian territory, but the Court rejected the Annex 1 Map and the border line indicated on it. Thailand unilaterally drew the new boundary line as it understood: (see Map "3", Courtesy *Aide Memoire of the Royal Government of Cambodia* 1961.)

That is an incorrect understanding of the ICJ judgment by the Thais and the facts are as follows:

In Cambodia's Submission 1 (and 2) Cambodia asked the Court to accept its very precisely wording contention/claim that Annex 1 Map was published **on the authority** of the Mixed Commission for Delimitation. The Court found that the Mixed Commission did not order or approve that the Maps be made. Because of the lack of necessary technical facilities, Siamese Government asked the French Government to make the boundary Maps, including the Map in question. Four French officials three of whom were members of the first Mixed Commission established under the 1904 Treaty, were appointed to prepare the Maps. The Court held that:

"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. Being one of the series of maps of the frontier areas produced by French Government topographical experts in response to a request made by the Siamese authorities, printed and published by a Paris firm of repute, all of which was clear from the map itself, it was thus invested with an official standing; it had its own inherent technical authority; and its provenance was open and obvious. The Court must nevertheless conclude that, in its inception, and at the moment of its production, it had no binding character" : ICJ Report 1962, 21

But the lack of the Commission's authority to publish the Map was not important and it was not the relevant question. The Court held that:

.": ICJ Report 1962, 22. (emphasis added).

The Court found that this was exactly what Thailand (and Cambodia) had done; for instance, as the Court pointed out, the following facts supported that Thailand adopted the Maps: ;

- Siam's official wide circulation of the Map,
- Siam asked France for more Map copies,
- The silence of the Siamese members of the Mixed Commission, who saw the map
- The silence of the then governor Khukhan province (now Si Saket), who saw the Map.

The Parties thus accepted the map and the line on it. The Court held "*the acceptance of the Annex I map by the parties caused the map to enter the treaty settlement [1904] and to become an integral part of it [the 1904 Treaty]*". This process, according to the Court, did not involve a departure from, or violation of, the Treaty of 1904 because even if the map line diverged from the watershed line, the Map was nonetheless accepted by the parties.

The Court held, finally that "*the indication of the line of the watershed in Article 1 of the 1904 Treaty was itself no more than an obvious and convenient way of describing a frontier line objectively, though in the general terms. 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. **The Court, therefore, feels bound, as a matter of treaty interpretation, to pronounce in favor of the line as mapped in the disputed area***

Further clarity of the issue (boundary line on the Map) is seen in the Separate Declaration of 2 majority member Judges, Judge Tanaka and Judge Morelli which states "The claim as it is formulated in Cambodia's Application is directed not to the return of the Temple as such, but rather to sovereignty over the portion of territory in which the Temple is situated": ICJ Reports 1962, p 38.

It is beyond dispute. The Annex 1 Map (and the boundary line indicated on it) was ruled by the Court as valid and binding. (ICJ Annex 1 Map, attached marked "4": ICJ Reports 1962)

Both Thailand and Cambodia had accepted the Annex 1 Map and were to accept it. Case closed!

ISSUE #2: The size of the "disputed" land

The attached Maps "A" and Map "B" shows the lines of Annex 1 Map and Thai line. The "disputed" land where the temple is situated is more than 4.6 square kilometres larger than the Thailand has claimed:(see Thai internal working map attached "A", the blue writings are my additions)

From the cliff or the Temple's main sanctuary to the stone staircase (the main reservoir) is about 650m: (see Preah Vihear Temple Plan attached, courtesy Korat Magazine 2007)..

Map marked Map "B" is an internal Thai working paper. A square on the Map, as correctly pointed by the Thai official, represents 2 square kilometres (2 *tarang kilometr*, red handwriting on top, right hand side of Map "B") on the Map. If you look at the square which covers temple, you will see that from the temple's stone staircase and the grand reservoir to the boundary line shows at least 2.6 km. (Note: the writings on the French map (1:200,000 scale) in blue and pink are my additions))

(Preah Vihear Map 3 Aide Memo 1961)

VIEW OF PRAH VIHEAR.

THAI DOCUMENT OF JULY 1962.

FRONTIER ESTABLISHED UNILATERALLY BY THAILAND ON JULY 15, 1962.

PANCARTE

POINTE DE TADI
PRASATH ET TEVAK SATHAN
PRASATH N° 3
PRASATH N° 1
SALA CHATUMUK N° 2
SALA CHATUMUK

PASSAGE DE HANDEIR BAK
PALAISE
RESEAU BARBEE

100m
20m

Thai unilateral Line 1962 after the ICJ Judgment

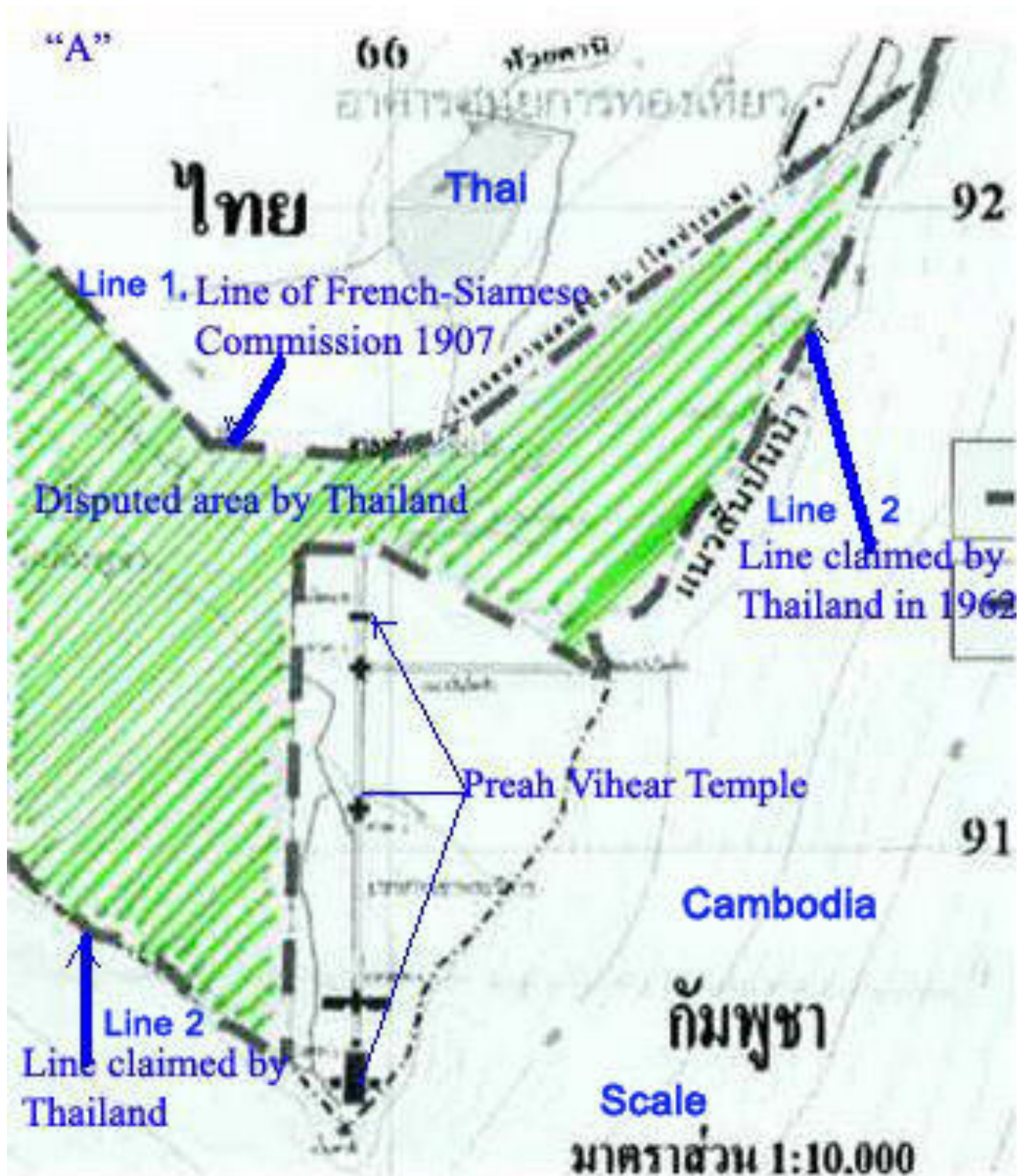
The attitude of the Thai authorities and their activities since the Court's decision of June 15, 1962, such as the refusal to comply with the decision of this high legal authority, encroachments on Cambodian territory, the laying of barbed wire along a line not in agreement with basic documents, the setting of grenade traps in Cambodian territory near the Temple, and open threats, have only served to confirm Thailand's attitude towards Cambodia, which is "to consider that law must follow the changing facts . . . facts dictated by force".

There lies the real cause of tension between Cambodia and Thailand. There lies the real obstacle to the re-establishment of normal diplomatic relations between the two countries.

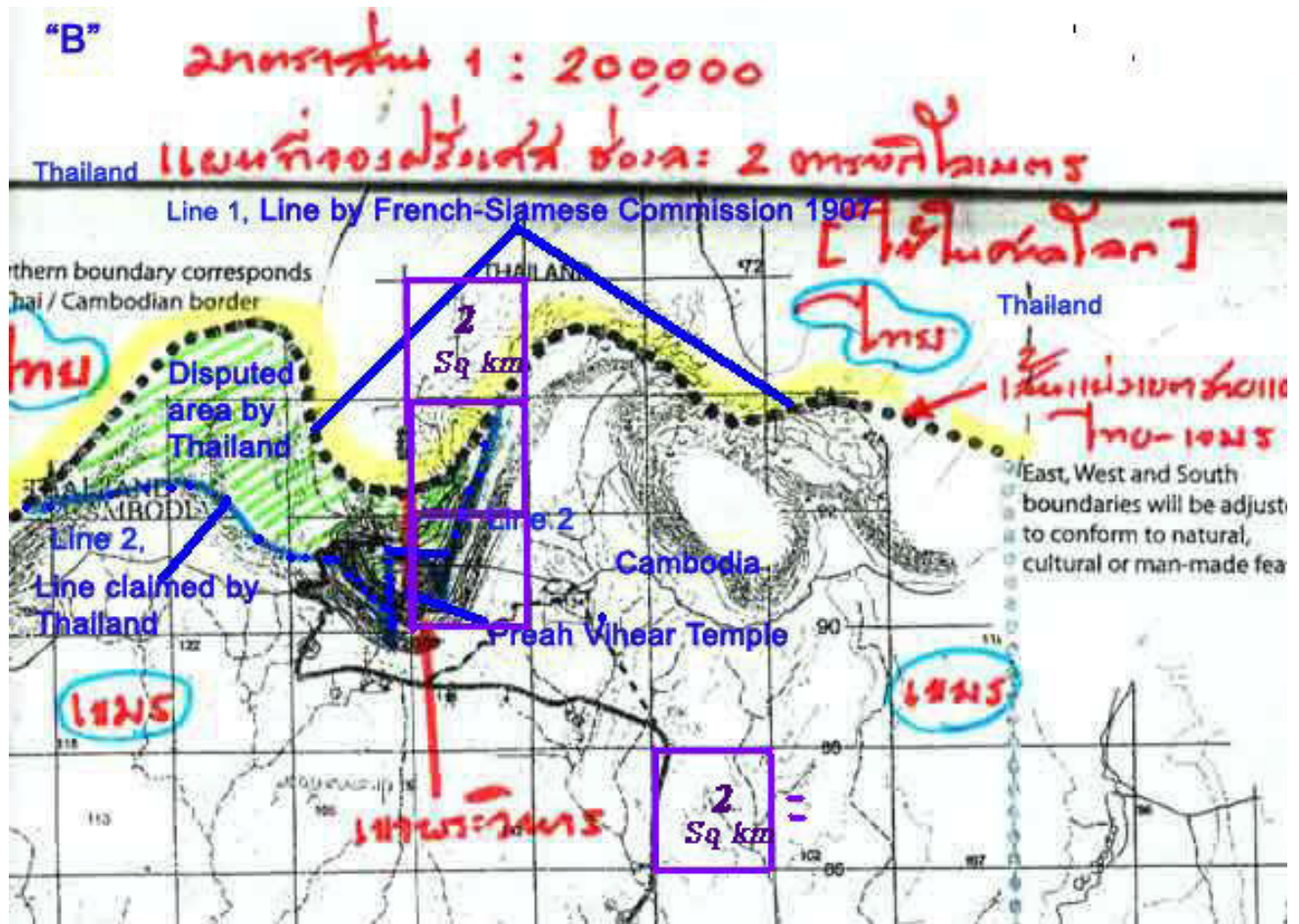
It is for Thailand to abolish this cause and raise this great obstacle, in order that peace, international security and justice may rest once again on the recognition of rights and international laws.

77

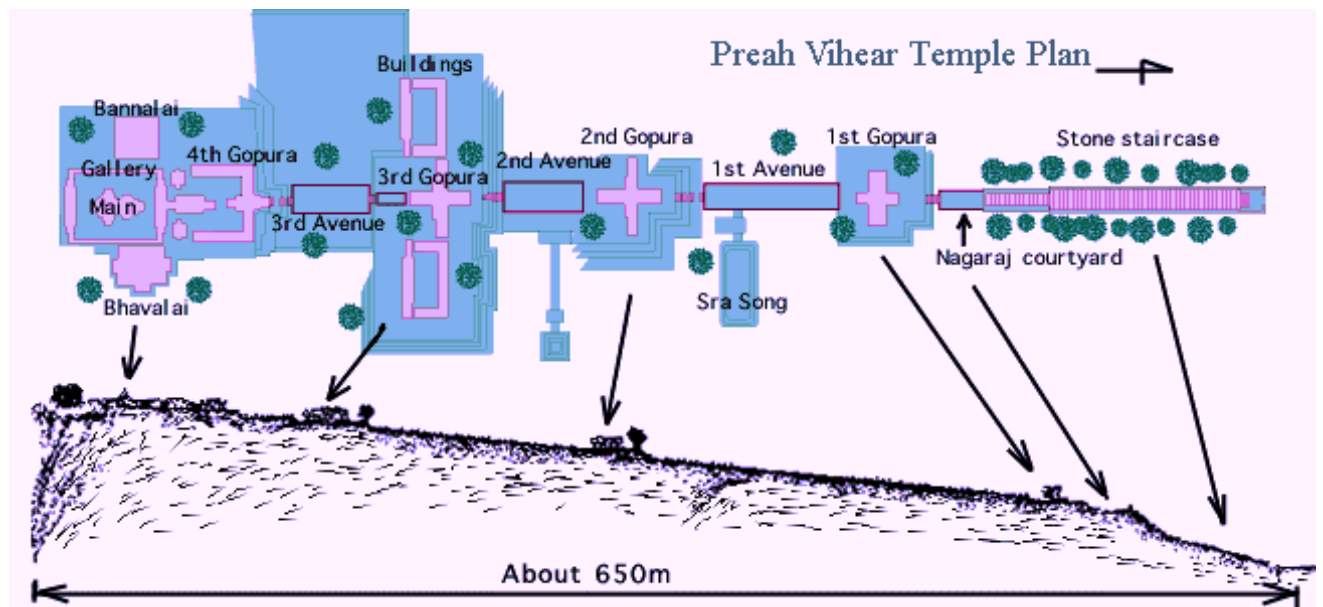
(Preah Vihear A Disputed Area))



(Preah Vihear Disputed B)



(Preah Vihear Plan 650 metres)



Thus the road (the road head) built by Thailand and the Thai Police checkpoint at the road head are therefore at least 2.6 km inside Cambodia.