

CASE CONCERNING THE TEMPLE OF PREAH VIHEAR: CAMBODIA V. THAILAND

THE Temple of Preah Vihear is an ancient shrine situated on the borders of Thailand and Cambodia. The temple and the grounds are of considerable artistic and archaeological interest, and are potentially important militarily. The natural boundary between the two countries in this region is formed by the high Dangrek Range, which, in the area of Preah Vihear, rises abruptly out of the Cambodian Plain forming a cliff-like escarpment from which the land then descends to the north into Thailand. The temple is situated on a promontory at the edge of the escarpment overlooking the Cambodian Plain to the south.

The present boundary is the result of treaties which were negotiated in 1904-07 and which determined that the line was generally to follow a specified watershed in this area. The watershed line at Preah Vihear followed the edge of the escarpment, with the natural result geographically of enclosing the temple within Thailand.

However, the maps which were later produced by a French firm, at the request of the Siamese Government, deviated from the watershed line at Preah Vihear so that the temple was shown as being in Cambodia which, until 1953, was a part of French Indo-China. This deviation apparently went unnoticed by Thailand.

In 1949, the French Government protested on learning that Thai troops had been stationed at Preah Vihear. No explanation resulted and Cambodia, having become independent in 1953, instituted the present proceeding before the International Court of Justice in 1959, asking that it be declared the sovereign of the area in question.

The Court ruled in favor of Cambodia by a vote of nine to three.¹ The result at first seems anomalous since it is contrary to the original provision of the treaty, and since the deviation from the watershed was probably due to a topographical mistake. Nevertheless, the Court justified its decision on either of two alternative bases:

¹ Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, [1962] I.C.J. Rep. 6; Note, 56 AM. J. INT'L L. 1033 (1962); Note, 11 INT'L & COMP. L.Q. 1183 (1962). For a note on the preliminary objections phase of the case see 1961 DUKE L.J. 539.

(1) that the two countries adopted the maps at the time of their publishing as officially delimiting the international boundary; and (2) that the concept of preclusion now prevents Thailand from claiming sovereignty over the territory.

As the facts were reported by the Court, the maps were never specifically adopted by the Mixed Boundary Commission,² for that body was dissolved before the maps were published. Copies were delivered to the central government of Thailand, however, and there could have been no doubt that the maps purported to be the outcome of the Commission's work. Although Thailand did not expressly recognize the validity of the maps, the Court concluded that the circumstances were such as to impose on Thailand a duty to inspect the maps, and a failure to protest was to be taken as a tacit adoption. This conclusion was based on the concept of "acquiescence" which protects a country having taken a position adverse to the interest of another, where the other fails to protest within a reasonable time.³ The theory is that the first country may have relied on its own position and the other country ought to be estopped to contest the result at a later time. This is said to be "an essential requirement of stability" in the international sphere.⁴ Acquiescence may have relevance either with respect to changes in the status of international rights and customs, or with respect to modification of treaties, as in the instant case.⁵ However, for the acquiescence to be effective, it must be under circumstances from which consent on the part of the adversely affected nation could reasonably be inferred.

Thailand's duty to inspect the maps also prevented it from claiming that any adoption at the time of publication was vitiated by the undetected error. A plea of error will not be allowed in international law where the parties could have avoided it, and here the circumstances were such as to put Thailand on notice of possible error.⁶

²This commission was established by France and Thailand and given the responsibility of surveying a boundary line pursuant to the terms of the treaty.

³MacGibbon, *Estoppel in International Law*, 7 INT'L & COMP. L.Q. 468, 501 (1958).

⁴Lauterpacht, *Sovereignty Over Submarine Areas*, 1950 BRIT. YB. INT'L L. 376, 395-96.

⁵MacGibbon, *supra* note 3, at 501-02.

⁶[1962] I.C.J. Rep. at 26.

An interesting procedural point arose in connection with the plea of error. The World Court is apparently unwilling to allow parties to make inconsistent pleadings. In this case the Court found a claim that Thailand had mistakenly thought that the map line comported with the watershed line a Preah Vihear to be inconsistent

Since the Court concluded that Thailand had adopted the maps in 1908-09, thus making them a part of the treaty, and since this conclusion was strengthened by Thailand's continued use of the maps over a long period of time, as well as other events,⁷ the Court found it unnecessary to develop the preclusion theory. Nevertheless it was asserted as an adequate basis for decision even if Thailand had never adopted the maps. "Preclusion" in international law is the process by which one nation acquires sovereignty over an area by long possession adverse to the real sovereign.⁸ In this case the basis of preclusion would be the assertion of sovereignty in the publication of the maps by Cambodia, and continued acts in relation to the temple amounting to a continued claim to ownership. Thus, in the view of the evidence taken by the Court, Cambodia could now claim the temple even if it be conceded that Thailand could have properly asserted sovereignty just subsequent to the events of 1908-9.

with its contention that it had performed acts of sovereignty on the grounds. That is, if Thailand had mistakenly believed the map line to be correct, then it would also have believed (albeit mistakenly) that Cambodia was the true sovereign; whereas, its contentions relating to acts of sovereignty on the grounds were aimed at showing that Thailand believed *itself* to be the sovereign during the disputed period. Thus, the plea of error was unavailable procedurally and it was unnecessary to actually decide the merits of the contention.

⁷ An episode which was regarded as particularly significant was a visit to the temple in 1930 by Prince Damrong of Siam. The visit was occasioned by an archaeological tour undertaken by the Prince as part of his official responsibilities. At Preah Vihear he was received by a French official with the French flag flying. The Court regarded this as a clear affirmation of French-Cambodian title; yet it brought no reaction from Thailand. [1962] I.C.J. Rep. at 30.

⁸ O'Connell, *International Law and Boundary Disputes*, 54 Am. Soc. Int'l Law Proc. 77, 79 (1960).