



Temple of Preah Vihear-Fall

Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Judgment of 15 June 1962: I.C. J. Reports 1962, p. 6.

In einem Grenzvertrag von 1904 war die Wasserscheide des Dang-Rek-Gebirges im Gebiet des Tempelbezirkes von Preah Vihear als Grenze zwischen Thailand (damals Siam) und dem damals französischen Kambodscha vorgesehen. Die gemäss Vertrag durch eine gemischte Kommission durchzuführende Grenzbereinigung war aber nie vollendet worden. Das strittige Tempelgebiet befand sich nach der Auffassung Thailands auf der thailändischen Seite der Wasserscheide, war jedoch in einer Karte, welche auf den Antrag der gemischten Kommission von französischen Experten erstellt worden war, als kambodschanisches Territorium eingezeichnet worden. 1907 wurde diese Karte zusammen mit andern offiziell den thailändischen Behörden übergeben und von diesen vorbehaltlos angenommen. Thailand bestritt vor dem IGH, dass aus diese Karten abgestellt werden dürfe, da das Verfahren der Kommission nicht formell abgeschlossen worden war. Die Kommission habe sich bei der Festlegung der Grenzlinie zudem geirrt. Die im Vertrag vorgesehene Wasserscheidelinie sei daher als Grenze zu betrachten.

Auszüge aus dem Urteil

Seite 22/23 “The real question, therefore, which is the essential one in this case, is whether the Parties did adopt the Annex 1 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.

Thailand denies this so far as she is concerned, representing herself as having adopted a merely passive attitude in what ensued. She maintains also that a course of conduct, involving at most a failure to object, cannot suffice to render her a consenting party to a departure at Preah Vihear from the watershed line specified by Article I of the Treaty of 1904, so great as to affect the sovereignty over the Temple area.

The Court sees the matter differently. It is clear from the record that the publication and communication of the eleven maps referred to earlier, including the Annex 1 map, was something of an occasion. This was no mere interchange between the French and Siamese Governments, though, even if it had been, it could have sufficed in law. On the contrary, the maps were given wide publicity in all technically interested quarters by being also communicated to the leading geographical societies in important countries, and to other circles regionally interested; to the Siamese legations accredited to the British, German, Russian and United States Governments; and to all the members of the Mixed Commission, French and Siamese. [...]”

Seite 23 “It has been contended on behalf of Thailand that this communication of the maps by the French authorities was, so to speak, *ex parte*, and that no formal acknowledgment of it was either requested of, or given by, Thailand. In fact, as will be seen presently, an acknowledgment by conduct was undoubtedly made in a very definite way; but even if it were otherwise, it is 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.* [...]”

Seite 30/31 “In this connection, much the most significant episode consisted of the visit paid to the Temple in 1930 by Prince Damrong, formerly Minister of the Interior, and at this time



President of the Royal Institute of Siam, charged with duties in connection with the National Library and with archaeological monuments. The visit was part of an archaeological tour made by the Prince with the permission of the King of Siam, and it clearly had a quasi-official character. When the Prince arrived at Preah Vihear, he was officially received there by the French Resident for the adjoining Cambodian province, on behalf of the Resident Superior, with the French flag flying. The Prince could not possibly have failed to see the implications of a reception of this character. A clearer affirmation of title on the French Indo-Chinese side can scarcely be imagined. It demanded a reaction. Thailand did nothing. Furthermore, when Prince Damrong on his return to Bangkok sent the French Resident some photographs of the occasion, he used language which seems to admit that France, through her Resident, had acted as the host country.

The explanations regarding Prince Damrong's visit given on behalf of Thailand have not been found convincing by the Court. Looking at the incident as a whole, it appears to have amounted to a tacit recognition by Siam of the sovereignty of Cambodia (under French Protectorate) over Preah Vihear, through a failure to react in any way, on an occasion that called for a reaction in order to affirm or preserve title in the face of an obvious rival claim. What seems clear is that either Siam did not in fact believe she had any title – and this would be wholly consistent with her attitude all along, and thereafter, to the Annex 1 map and line – or else she decided not to assert it, which again means that she accepted the French claim, or accepted the frontier at Preah Vihear as it was drawn on the map.”