

Analysis of the Preah Vihear Temple Dispute in the Perspective of International Law on the Acquisition of State Territorial Sovereignty

Darminto Hartono¹, Anisyah Rani²

darmintohart@gmail.com, anisyahr07@gmail.com

^{1,2}Faculty of Law, Diponegoro University

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Abstract

The Preah Vihear Temple dispute between Thailand and Cambodia is one of the most complex examples of border conflicts in Southeast Asia, which have lasted for more than six decades. The dispute stemmed from differences in interpretation of French colonial maps and claims of sovereignty over the area around the temple. The International Court of Justice (ICJ) in 1962 designated the Preah Vihear Temple as part of Cambodian territory, but tensions continued until finally in 2013, the ICJ reaffirmed Cambodia's sovereignty over the entire temple grounds. This study analyzes the dispute from the perspective of international law on the acquisition of territorial sovereignty, highlighting the principles of estoppel, acquiescence, and uti possidetis juris. It was found that settlement through international adjudication mechanisms provides strong legal legitimacy to Cambodia's claims, while affirming the importance of respect for the boundaries of colonial heritage in accordance with the principles of international law. This dispute also highlights the need to protect the world's cultural heritage in the midst of conflicts between countries.

1. Introduction

Territory is one of the main requirements for the recognition of a country (Uma, 2021). With this territory, the state has the right to exercise sovereignty over people, objects, or events or legal acts within the territory of the state (Sefriani, 2022). Although a state has sovereignty over its territory, it is obliged not to use it for actions that are detrimental to other countries and actions that endanger international peace and security (Article 7 of the Draft United

Nations Declaration on the Rights and Obligations of States. 1949). A state is also obliged not to recognize territories acquired by violence (Article 12 of the Draft United Nations Declaration on the Rights and Obligations of States 1949). Some of these obligations show that the territory of the country is also related to the international legal order in maintaining peace between countries. The territory of a country generally includes the land area, waters, seabed and the land underneath, as well as the air space above it obtained through the acquisition of territory.

Territorial acquisition in international law refers to the process by which a country acquires control of a territory legally through a mechanism recognized by international law (Fauni, Rendra, Farihy,Zakiyah, 2024). Upon the acquisition of the territory, the determination of the territory by the state occurs when the state is formed as a condition for the formation of a state. The determination of the territory also includes determining the borders of a country. A border is a line formed by nature or the territory of a country that is geographically directly adjacent to the territory of other countries (Septarina, 2014). Borders have two functions for a country, an inward function for the regulation of national government and law, and an outward function related to international relations (Septarina, 2024). Therefore, the step of determining the borders of a country is very important in maintaining sovereignty and rights of sovereignty between bordering countries (Kapahe, 2021).

In the course of its run, there is often a redetermination of the territory or boundaries of a country after a country is formed (Septarina, 2014). This determination often causes territorial disputes between countries. Territorial disputes are often found in countries that were once colonial colonies, such as in countries in the Southeast Asian region. The main cause is the state boundary line which is the result of the demarcation of the colonial era, where unilateral restrictions made by the colonial state are often considered to be contrary to the understanding shared by the people of the disputed country (Pattinusa, 2021). Although the colonial system has ended after World War II, and the formation of international organizations to resolve territorial disputes such as the International Court of Justice (ICJ), this issue remains a polemic for the parties to the dispute. This is due to the ICJ which can determine the territory or boundaries of a country neutrally, so that the former colonial demarcation is increasingly attractive to be 'contested' by former colonial countries before independence (Mishra, 2016). An example of a territorial dispute case that is the border of a country in Southeast Asia is the Preah Vihear Temple dispute between Cambodia and Thailand. This dispute has been going on for more than 60 years, namely from 1953 to 2013.

This territorial dispute was caused by a disagreement between the Thai

government and the Cambodian government, until this case was finally brought to the ICJ. The case began with Cambodia complaining that Thailand had occupied part of its territory surrounding the ruins of Preah Vihear Temple, and asking the International Court of Justice to declare that territorial sovereignty over the temple was under Cambodian rule and withdraw Thai control (International Court of Justice, 2013). Until finally in 1962 the ICJ decided this case with the Preah Vihear Temple area being a territory of Cambodia. However, the situation remained heated for 50 years. Because the Thai side regained control of the area around the temple with its military forces, as a result of the registration of the Preah Vihear temple to UNESCO in 2008 (International Court of Justice, 2013). This is the background for the Cambodian side to apply for a reinterpretation of the ICJ decision in 1963. The ICJ then stated that the Cambodian side does not only have territorial sovereignty over the temple, but also the area around the Preah Vihear temple which was previously disputed by both sides. This dispute has its own uniqueness, because the ICJ uses several principles of international law in deciding this case such as estoppel, acquiescence, and the process of determining territory by adjudication.

With this background, the author formulates the problems to be researched, namely: What is the case of the position of the Preah Vihear temple dispute between Thailand and Cambodia? How does Cambodia's sovereignty over the Preah Vihear Temple be viewed in terms of how the territory was acquired under international law? What are the principles of international law that are the basis for the determination of sovereignty over Preah Vihear Temple? This study aims to comprehensively examine the Preah Vihear Temple dispute, as well as analyze the foundations of international law that strengthen Cambodia's claim of sovereignty over the territory, both through theories of territorial acquisition and the principles of international law.

2. Research Method

The author uses the writing method in this scientific article with normative juridical research, where legal research is carried out by examining literature related to law¹⁴. This approach is used to analyze the rules of international law that govern the acquisition of a country's territory, as well as its application in the dispute between Thailand and Cambodia over the Preah Vihear Temple. The author examines the 1962 International Court of Justice (ICJ) decision and its interpretation in 2013, as well as examines principles in international law such as estoppel, acquiescence, and adjudication. The author tries to explain how international law plays a role in determining sovereignty over the disputed territory

3. Results and Discussion

Preah Vihear Temple Dispute Position Case between Thailand and Cambodia

The Preah Vihear Temple Complex is located in the Dângrêk Mountains region, which stretches between Preah Vihear Province in Cambodia and Kantharalak District in Sisaket Province in Thailand, with a total area of about 4.6 km². According to the Cambodian side, this temple was built by kings of the Khmer ethnicity, who are the ancestors of the Cambodian nation. Meanwhile, Thailand argues that the area around the temple is not legally owned by any country, as the boundary line in the area was formed accidentally during the French colonial period. Geographically, the location of Preah Vihear Temple is in the strategic border zone between the two countries. But from an architectural point of view, the temple shows strong characteristics of the classical Khmer building style that is synonymous with Cambodian cultural heritage (Peter Tzeng, 2000).

After gaining its independence in 1953, Cambodia began to raise the issue of ownership of the disputed Preah Vihear Temple with Thailand. Tensions between the two countries escalated as Thailand deployed its troops to the temple grounds and brought a number of statues and historical objects from the complex to its territory. After diplomatic settlement efforts were unsuccessful, the two countries agreed to take the case to the International Court of Justice (ICJ).

In this case, Cambodia based its argument on the Annex I Map prepared by the French colonial authorities in 1907. Some of the mapmakers were members of the Mixed Commission formed under the Boundary Treaty between France and Siam (Thailand) signed on February 13, 1904²⁴. In the map, the Dângrêk Mountains area is part of Cambodia. In contrast, Thailand rejected the validity of the map on the grounds that it was not drawn up by a legitimate joint commission, and that the boundaries used in the map referred to an erroneous watershed line. According to Thailand, if the correct watershed line is used, the position of Preah Vihear Temple will be within Thai territory (Martin Dixon, Robert McCorquodale, 2000)

The International Court of Justice opinion in the ICJ in its ruling stated that although the maps in Annex I Map have technical accuracy in terms of topography, they essentially do not have legally binding force at the time of their creation. Nevertheless, the Court used this map as the basis for the decision because when the map was communicated by the French authorities to the Siamese Government, no response or objection was submitted.

This absence of reaction was interpreted as a form of tacit acceptance by the Siamese Government of the contents of the map. In addition, on various occasions afterwards, the Thai Government also did not raise any objections related to the position of Preah Vihear Temple as listed on the map. The Court stated that it was no longer relevant to test whether the watershed lines in Annex I Map had been accurately drawn up or not. This view became a point of continued disagreement on the part of the Thai side, which still insisted that there had been a mistake in the drawing of the boundary line which was not substantially examined by the Court

(Pradana, 2020).

In a ruling issued on June 15, 1962, the ICJ declared that sovereignty over the Preah Vihear Temple was in the hands of Cambodia, and Thailand was obliged to withdraw troops and guards from the temple grounds and areas under Cambodian jurisdiction. The International Court of Justice's decision is final and binding, meaning it cannot be appealed by the parties. The basis for the ICJ's consideration in issuing this ruling refers to the map compiled by the Commission of Delimitation, which was formed through an agreement between the French Government and the Kingdom of Siam during the colonial period. However, the Court did not explicitly establish a detailed boundary line between the two countries in its ruling (Prabandari, Resen, Parameswari, 2024)

Conflict over the area around Preah Vihear Temple resurfaced in 2008 when Cambodia formally applied to UNESCO to recognize the area as a world heritage. The filing sparked opposition from Thai nationalist groups, who saw the move as a unilateral claim to disputed territory. As a result, tensions have increased with the deployment of military forces by both countries on the border, as well as the evacuation of civilians from the affected areas. The first armed contact between Thai and Cambodian forces occurred in August 2008, but was soon followed by an attempt at de-escalation through the withdrawal of some troops from the border zone. Although it briefly subsided, tensions resurfaced in late 2008 and continued until 2011. Clashes at the border are becoming more frequent, including fighting that resulted in fatalities in 2010 and early 2011.

The armed incident reflects the impact of the International Court of Justice indecisiveness in reviewing the validity of the watershed line used in the Annex I Map. This ambiguity creates an open space for debate between Thailand and Cambodia over disputed territorial boundaries. Under Article 94 of the Charter of the United Nations (UN), Thai military actions entering the territory set out in the map can be considered a violation of the International Court of Justice ruling, and open up opportunities for Cambodia to raise the issue with the UN Security Council.

In its Decision delivered on November 11, 2013, the Court concluded that there was a dispute between the Parties regarding the meaning and the 1962 Decision. The Court then turned to the interpretation of the 1962 Decision. The Court noted that the main dispute between the Parties relates to the territorial scope of the second operative paragraph, i.e. the extent of the area around Preah Vihear Temple in question.

The Court held that, based on the reasoning in the 1962 Judgment, seen in the context of the arguments in the original proceedings, the second operative paragraph of the 1962 Judgment required Thailand to withdraw all its personnel from the Preah Vihear cape area occupied by Thai personnel at the time. Therefore, the Court concluded that the term "around in Cambodia's territory" should be interpreted to include at least the area where the police unit was stationed at the time of the initial proceedings. The court then identifies and determines the boundaries of the territory.

Next, the Court examines the relationship between the second operative paragraph and the other operative sections. The Court held that the territorial scope of the three operative paragraphs was the same: the finding in the first paragraph that the Preah Vihear Temple was located in an area under Cambodian sovereignty should be considered to refer, as the second and third paragraphs do, to the area of the Preah Vihear cape. In the end, Cambodia has full sovereignty over the Preah Vihear temple and the surrounding area. And until now there are no more problems regarding the control of this area, both from Cambodia and Thailand after more than half a century of conflict.

An Analysis of Cambodia's Sovereignty over the Preah Vihear Temple in the Way of Territorial Acquisition According to International Law

In international law, several recognized ways to acquire territory within a country. In this case, there is a way to acquire the Preah Vihear Temple area by Cambodia, namely through a court decision, as well as an attempt to acquire the area with prescription and occupation.

Cambodia's recognition of the Preah Vihear area through court rulings, or adjudication, is the main means of acquiring the territory used. Recognition by adjudication is clearly seen with Cambodia submitting this case to the International Court of Justice (ICJ). The filing of this case refers to Annex I Map which depicts the territory of the Temple in Cambodia, in accordance with the Franco-Siamese (Thailand) agreement that divides the territory based on watersheds.

Although Thailand considered Annex I Map to be erroneous in its depiction of watersheds, the ICJ granted full sovereignty to Cambodia in a 1962 ruling, as there was no Thai objection to the erroneous Annex I Map. The results of the ICJ's 2013 ruling on the interpretation of previous ICJ rulings also gave Cambodia the legality to control the area around the shrine by adjudication.

In the case of Preah Vihear, the acquisition of territory by prescription could not be fully applied to Cambodia, given Thailand's active objections to the existence of a temple on the territory claimed to be part of its watershed line. This objection shows that there is no element of "no protest" that is the main condition of the prescription, where conditions such as continuous occupation of territory have been met. Because the area of this temple used to be included in the administrative territory of France which was colonial Cambodia. Thailand has also argued that the area around the temple is a terra nullius because it was unclear during the colonial period. However, this argument is weak because the territory was administratively controlled by France as colonial Cambodia with the mapping on Annex I Map.

International Legal Principles Underlying the Determination of Sovereignty over Preah Vihear Temple

Cambodia's 'victory' over the Preah Vihear temple grounds is based on several principles in international law. These principles are such as Estoppel, Acquiescence, and Uti possidetis juris. The majority opinion of the judges of the International Court

of Justice is based on the principle of Estoppel, where Thailand's failure to declare its impartiality on such an occasion deprives Thailand of the right to declare that it is not bound by the maps in Annex I Map. The majority of the judges concluded that it was no longer important to decide whether the watershed line used in the map as Annex I Map corresponded to the actual circumstances. On the principle of acquiescence itself, the international court considers that Thailand did not make a statement of objection to the Annex I map which has errors in the watershed as previously agreed.

In addition, Cambodia's strength can be reviewed from *uti possidetis juris*, which is the boundaries of the new country that must follow the territorial boundaries of the countries that once occupied it. In this case, Cambodia, which is a former colony of France, has the right to follow the territorial boundaries that are pre-determined. So that Annex I map can be used in determining the boundaries of Cambodia itself. Moreover, talking about the finality of the decision of the International Court in this case is final and binding as stipulated in Article 94 of the UN Charter. This means Thailand cannot reject the ICJ's ruling and actions contrary to the ruling are considered a violation of international obligations.

4. Conclusion

The Preah Vihear Temple dispute between Thailand and Cambodia is rooted in differences in interpretations of the history of territorial boundaries due to the legacy of colonialism. Although the International Court of Justice has ruled that the Preah Vihear Temple and the surrounding area are part of Cambodia, tensions remain due to the reclaims and political dynamics of the two countries. Analysis based on international law shows that the ICJ's ruling is based on the principles of estoppel, acquiescence, and *uti possidetis juris*, thus strengthening the legitimacy of Cambodia's claims. Settlement through international adjudication has proven effective in providing legal certainty for territorial sovereignty, while affirming the importance of protecting the world's cultural heritage in the midst of border conflicts.

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