

The International Court of Justice

2017

An Explanation and Example of the Memorial Brief

Hello and welcome to the International Court of Justice! This packet will serve as an important guide as you and your team create and ultimately present your Memorial, or brief, for this year's conference.

The brief may seem to be a large and daunting task, but it is nothing to worry about if handled and organized correctly. The brief will be the best preparation you can do for the conference. The effort and research your team puts in to making this document will be reflected in your presentation during committee. Furthermore, your effort now on the brief predetermines how much fun you will have at Hershey. In order for the presentations of the cases and the resulting discussions and deliberations to be extremely interesting – which they can get – both sides of each case must put in a large amount of effort. The best cases are those in which both sides are equally prepared. By participating in a well-prepared and well-executed case, you will truly experience what makes the ICJ so great: intense, passionate, intellectually-challenging debate. It is also important to remember that how you explain and argue your case can make a huge difference. In other words, the facts of the case may be in your favor, but unless you can present those facts in a convincing manner, you will not win the case.

The International Court of Justice is a court which debates international law as it applies to nations, specifically questions of jurisdiction, extradition, and sovereignty. You will win or lose your case depending on how you decide to present your facts and how you argue your interpretation of the applicable laws. Thus, the two most important sections of your brief will be the Statement of the Facts and the Pleadings. Please take the time to become familiar with the details of your case and present these sections in a concise and effective manner. Remember that brevity (as long as it is informative) is usually better.

Each ICJ team is required to submit one brief outlining their case to the Chief Justice of the ICJ, as well as present the case before the full body of Justices of the ICJ. The rules regarding the structure of the debate will be explained later, so fear not. This document will focus on the guidelines and format of your brief.

All briefs must include the following sections:

- i. Title Page (cover)
- ii. Table of Contents
- iii. Table of Authorities
- iv. Statement of Jurisdiction
- v. Questions Presented
- vi. Statement of the Facts
- vii. Summary of the Pleadings
- viii. Pleadings (the argument)
- ix. Prayer for Relief (what you hope to gain/conclusion)

Sections vi through ix must not exceed twenty pages, but it is not required for you to reach this limit. Brief, concise, comprehensive sections are recommended. Avoid “fluff” and stick to supportive or explanatory content. Most briefs average about twelve to fourteen pages. Briefs must be a minimum of ten pages. All sections should be single spaced, typed in the Times New Roman font, 12pt. Titles, however, should be Times New Roman 14pt. All pages should have a one inch (1”) margin. Please note that this may not be standard on your computer software, requiring you to manually adjust the margins.

The case dockets for this year can be found at: <http://www.ymcamun.org/> While each docket includes key sources and relevant information that you can use to complete your brief, it is by no means an exhaustive source. Please do additional research to ensure a full understanding of the history, facts, laws, and customs related to your case.

Once the briefs are completed, they should be submitted to crha@porgmun.cz no later than the designated ICJ deadline. The briefs will be provided to your officer and eventually provided to the opposing team before the Conference. Please realize the best way to complete your brief is to split it up evenly between the members of your team but still work as a group to edit and finalize your material. It is extremely important to proof-read your final document before submitting it. The deadline to submit the briefs is March 31st, 2017..

If any questions remain or come up at any point, we strongly urge you to contact the Chief Justice, Vice Chief Justice, or college advisor (by emailing crha@porgmun.cz). We will

make every effort to answer your questions; however please do not wait until the last minute to contact us. The deadline is final and will not be extended.

At the end of the Conference, the Outstanding Brief Award will be given to the team who has ultimately prepared the best brief. Note that you will not be eligible for this award if your brief has excessive typing or grammatical errors, or is submitted after the deadline.

Lastly, we must stress that a well-crafted brief and well-argued case maximize the fun you will have at the Conference. A boring and monotonous brief may result in a boring and difficult case. A lack of seriousness will result in a shallow and dissatisfying case. Do the research. Craft your arguments. Write a good brief. Prepare to debate. These are the key steps to having fun at Conference, and believe us, ICJ is a lot of fun! Please make sure you know which country you are representing as an attorney.

There have been mix ups in the past. Check and re-check the Model UN website for your country assignments. Below is a more detailed explanation of the format and composition of the brief, in addition to an example brief from a previous year. Have fun!

INTERNATIONAL COURT OF JUSTICE
JUDICIAL DISTRICT OF MUN

Name of Plaintiff,)
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-against-)
)
Name of Defendant,)
)
)
_____)

Case No. ICJ 00-2011-03

MEMORIAL IN SUPPORT OF (PLAINTIFF or DEFENDANT)

Last Name, First Name, Delegation
Last Name, First Name, Delegation
Last Name, First Name, Delegation
Last Name, First Name, Delegation
Attorneys for (Plaintiff or Defendant)

CONTENTS

Table of Authorities.....	3
Statement of Jurisdiction.....	4
Questions Presented.....	4
Statements of the Facts.....	5
Summary of the Pleadings.....	6
Pleadings.....	7
ONE SENTENCE STATEMENT THAT ASSERTS THE RELIEF	
YOU SEEK, AND WHY (IN ALL CAPS).....	7
A. First main argument.....	7
B. Second main argument.....	9
C. Third main argument.....	9
Prayer for Relief.....	11

Note you are not restricted to this specific arrangement. For example, you may have more than three main arguments. And, of course, the page numbers will refer to the pages in your specific brief.

TABLE OF AUTHORITIES

CASES

Here, all information is listed by the significance of the court. Naturally, ICJ cases hold the most weight, while cases from lesser courts in the petitioning or defending country hold secondary weight. All case material from other nations comes last.

Case & Cite..... Page in Memorial where located

STATUTES

This includes all statutes and resolutions adopted by the ICJ, the United Nations, the UN's member bodies, and the petitioning nations.

TREATIES

This includes all treaties ratified by the United Nations or universally accepted as applicable to all nations. This section also includes all treaties adopted by and between the petitioning nations.

Look for treaties between nations, sometimes these can be defining pieces of information for the decision.

MISCELLANEOUS

This includes all other sources of information relied upon in the preparation of your memorial. Do NOT cite Wikipedia. It might be helpful to understand parts of the case and locate further sources, but Wikipedia is user-generated thus not always reliable and thus NOT valid for citation in a brief to a court of law.

STATEMENT OF JURISDICTION

This is a presentation about why the ICJ is able to render a decision in the matter which is being introduced before the court. This is usually a brief statement approximately a couple of paragraphs in length. However, this can be more in-depth if one of your major arguments will be that the ICJ does not have jurisdiction in this case.

Note that each case is designed so that the Court does have jurisdiction. Otherwise, a case could be a waste of time.

QUESTIONS PRESENTED

These paragraphs should describe the major issues which are being presented before the court.

This section has two purposes:

- (a) To identify the decision that the court has to make
- (b) To frame the question(s) in such a way that it is persuasive to your arguments.

STATEMENT OF THE FACTS

This is similar to the Questions Presented, but now you are going to do it with the facts of the case. Highlight the facts which support your case. Also identify the facts which weaken your case, but place less emphasis on them, or counter them with other pieces of factual evidence. Because the dockets have few details, this section allows you to start developing the story. Do not fabricate false details or situations into this section, but take and manipulate the facts to suit your arguments. Try to use persuasive language which will help your case. Basically, put your side of the story in a good light.

SUMMARY OF THE PLEADINGS

This section is a maximum of a few paragraphs which answer the Questions Presented. Now, however, you want to use the facts and law to write persuasively and succinctly state why the court should make a decision in your favor. This section serves as a summary of your full argument, which you are about to present. Keep this section short enough that it only qualifies as a summary, and not a whole other argument.

PLEADINGS

Now this section will be the longest and probably the most confusing. It is likely the most crucial section in the entire Memorial. Just make sure you follow the structure. While you look over this page, read along in the provided brief to understand everything. The statement in bold is the same statement made in your contents table. You must then write an introduction of sorts in the format of Conclusion, Rule, Argument, Conclusion. The two Conclusions should have the same message, but they should be stated differently. If you are not familiar with this exact format, you may use something similar, but it should follow a similar

pattern. Then, in italics, you must write your first main point. Once again, use the format of Conclusion, Rule, Argument, Conclusion, this time to get out your reasoning behind your statement. You may write more than one paragraph for each, but they must remain in the CRAC order. If you have more than one Rule for an Argument, you must follow the format Rule, Argument, then Rule, Argument.

Conclusion: state the thesis you are going to prove.

Rule: state the authority or reference which proves your thesis.

Argument: apply your facts to the rule and show why the facts in your case are similar or different from the facts in the rule which you are applying.

If there is more than one rule, you would simply introduce the rule and argument for your first main point here.

Conclusion: restate your thesis/ first conclusion.

Continue in this fashion for each of your main argumentative points until you are finished. When this happens, write a small paragraph answer or response to the main bolded header.

This format is mandatory! However, you may add your own style, so long as you remain formal.

Please try to be persuasive but remain factual. A very helpful tactic is to mention laws which may not help your side, but produce a reason as to why they are not valid in this situation.

PRAYER FOR RELIEF

This section is a statement which says what you want the court to decide, should it decide in your favor. The length of this section depends on how much you would like for your client (e.g., monetary compensation), or how much you would like to compromise. It is typically at least half of a page. If you want, you may reference the relief which was provided in other cases you cited, or you may reason out the equity of your request. Please use this sample brief to get a basic idea of what you must do.

INTERNATIONAL COURT OF JUSTICE
JUDICIAL DISTRICT OF MUN

Kingdom of Cambodia,)
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-against-)
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)
Kingdom of Thailand,)
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)
_____)

Case No. ICJ 00-2013-03

MEMORIAL IN SUPPORT OF PLAINTIFF

Dabholkar, Siddhesh, Montgomery High School
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TABLE OF CONTENTS

Table of Authorities	3
Statement of Jurisdiction	4
Questions Presented.....	4-5
Statement of Facts.....	5
Summary of Pleadings.....	6
Pleadings.....	7
THE KINGDOM OF CAMBODIA DOES HAVE SOVEREIGNTY OVER THE TEMPLE OF PREAH VIHEAR, AS WELL AS THE LAND SURROUNDING IT BECAUSE PAST DOCUMENTS EXPLICITLY SHOW THAT IT IS UNDER CAMBODIA’S RULE.....	7
A. Cambodia has sovereignty over the area where the Preah-Vihear temple resides, granted to them by the previous rulers, France, of the area.	7
B. The International Court of Justice had made a final ruling in 1962, on this decision supporting Cambodia.	7-8
C. Cambodia deserves the Temple of Preah-Vihear and the area surrounding it, due to its efforts to make it a better place.....	8-9
D. The temple of Preah Vihear is part of Cambodian territory, so the surrounding area would also have to be part of the same territory	8-9
Prayer for Relief.....	10

TABLE OF AUTHORITIES

CASES

1. Case Concerning the Temple of Preah Vihear, 1962 (Cambodia v. Thailand).....7,8,9

STATUTES

1. 1991 Paris Peace Accord
2. UN Charter
3. Statute of the International Court Of Justice
4. 1969 Vienna Convention on the Law of Treaties (1974)

TREATIES

1. Franco-Siamese Treaty of 1925
2. Franco-Siamese Treaty of 1937
3. Franco-Siamese Treaty of 1904/13 February 1904 Convention
4. Franco-Siamese Treaty of 1907

MISCELLANEOUS

1. <http://www.cnn.com/2011/12/22/world/asia/thailand-cambodia-temple-dispute/index.html>
2. <http://www.cambodia.org/facts/?page=1991+Paris+Peace+Agreements>
3. <http://www.eastasiaforum.org/2011/03/01/asean-and-the-cambodia-thailand-conflict/>
4. <http://www.icj-cij.org/docket/files/151/16570.pdf> - Dissenting Opinion of Judge Al-Khasanwneh
5. <http://www.icj-cij.org/docket/files/151/16574.pdf>- Dissenting Opinion of Judge Xue
6. http://www.mapculture.org/pdf/Preah_Vihear_English.pdf
7. <http://www.icj-cij.org/docket/files/45/4871.pdf> -Reports of Judgments, Advisory Opinions and Orders, International Court of Justice - Case Concerning the Temple of Preah Vihear - Judgment of 15 June 1962

Try very hard to find and use as many good sources as possible. They are invaluable to your presentation.

STATEMENT OF JURISDICTION

The International Court of Justice has jurisdiction in this case because in Article 36 of the United Nations Charter it states, “The Security Council may, at any stage of a dispute of the nature referred to in article 33 of a situation of like nature, recommend appropriate procedures or methods of adjustments. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties. In making recommendations under this Article the Security Council should also take into consideration that the legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statue of the Court.” The legal dispute in this case is the border between Cambodia and Thailand, and also the question of sovereignty regarding Preah Vihear.

Another issue that is currently occurring in the area surrounding Preah Vihear is the growing friction and battling between the two states that has resulted in the displacement and deaths of many civilians. Due to these complications, the International Court of Justice also has the right to “investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.” This is stated in Article 34 of the UN Charter.

QUESTIONS PRESENTED

In this particular case, three important questions must be answered in order to fairly give out final judgment on the issue. The primary question is whether or not the previous 1962 ruling is adequate in solving the issues between Cambodia and Thailand. From this main point, two more questions arise: One, which map should be used in determining the sovereignty of the temple, and two, in whose control the land is actually in—does the 1962 ruling need to be interpreted further? A third question that should be addressed is what actions must take place in order to stop the violence along the border. The final question that can be addressed is the prevention of further requests for interpretation, and a final judgment on cases like this one.

The Court must answer whether or not the 1962 ruling is adequate in solving the problems between Cambodia and Thailand. Should the document even need to be interpreted? Also, which map is to be used in determining which state is sovereign over the Preah-Vihear area? In the end, the Court’s job is to determine who has territorial claims over the temple and the land surrounding it.

The second problem deals with the ongoing fighting on the border. To maintain international peace, what measures must be taken to calm tensions between the two nations?

The final problem deals with what can be done to prevent further interpretations and set a precedent in cases like this. The idea that a country can object to a settled case and territory can be unsettling, frustrating, and time-consuming to some.

Note how already the language is skewing the case in favor of this team's side. You should aim to present the case in favor of the country you are representing.

STATEMENT OF THE FACTS

On April 28, 2011 the Kingdom of Cambodia filed an application to the court requesting a clarification of the ICJ judgment on the Temple of Preah Vihear in 1962. Wary of the preservation of the Preah Vihear Temple, Cambodia points out that the shots fired across the border from Thailand in April of 2009 has significantly damaged the Temple. In February of 2011 there was another clash between the troops of Thailand and Cambodia which led to fatalities and more damage to the Temple. The fighting across the border has also led to the displacement of citizens who reside near the Temple. Afraid of further damage to the Temple of Preah Vihear, Cambodia seeks judgment over the sovereignty of the area surrounding the Temple to prevent further destruction.

Although Cambodia has not crossed into territory that is under the sovereignty of Thailand, the Thailand has crossed the border multiple times causing harm to Cambodian territory. There have also been multiple occurrences where Thai spies have crossed the border into Cambodia. Cambodia would support any solution to demilitarize the area because it would help preserve Preah Vihear, a UNESCO World Heritage Site. As a World Heritage site, it is important to protect and preserve the Temple, a sacred building that is important to the culture and tradition of Cambodia.

Thailand's ability to easily access the Temple of Preah Vihear threatens Cambodia's sovereignty there. Cambodia has not attacked Thailand for the spies sent across the border; however Cambodia believes that if the land surrounding the Temple of Preah Vihear is ruled as under the sovereignty of Cambodia, then Cambodia would not be constantly threatened by the troops in Thailand. The 1962 ICJ ruling on the Temple of Preah Vihear stated that due to Thailand's negligence of earlier claims, Cambodia was granted sovereignty of Preah Vihear. Although Thailand claims that the land surrounding the Temple is under their sovereignty, it is unclear. Cambodia and Thailand would like the ICJ to determine whose land is surrounding the Temple of Preah Vihear.

SUMMARY OF THE PLEADINGS

The first argument that the Kingdom of Cambodia makes is that it had the territory of the Preah Vihear Temple and surrounding areas, granted to it by previous rulers, France, when it decided to grant Thailand its independence. In 1904, the French (representing Cambodia) and the Siam (present-day Thailand) met at a convention, and decided to recognize the exact border line at another time at a later convention. Before that, however, the French and the Siam had noted the border was to be in the Dangrek Mountain region, and that the KOC would receive the area. In 1907, a French-Siamese Mixed Commission was signed by both parties, and the border was clearly established, recognizing that Cambodia did, in fact, have sovereignty over the disputed area. This is shown by a map that was drawn at the same time, and accepted by both parties.

The second argument that is made by The Kingdom of Cambodia, is that there has already been a precedent made on this particular issue, in 1962. Various arguments, considerations, and maps were all addressed, and the Court came to an unbiased decision (9-2 supporting Cambodia) that this area was indeed under Cambodian jurisdiction. As stated in the Statute of the International Court of Justice, any decision made by the court is final and cannot be revised after 10 years, let alone objecting. Thailand has no right to ask for further interpretation of where the area around the Temple of Preah-Vihear lies.

The third argument that the KOC makes is that Cambodia deserves to receive this area. Cambodia would like to work towards keeping the area of the Temple of Preah Vihear demilitarized. After seeing the damage done to the Temple of Preah Vihear from the previous military attacks in the area Cambodia is willing to come to a compromise with Thailand to prevent possible future military attacks on the Temple of Preah Vihear. This is shown by Cambodia's compliance and interest into adding the temple into the World Heritage List, and initiating peace talks with Thailand.

PLEADINGS

THE KINGDOM OF CAMBODIA DOES HAVE SOVEREIGNTY OVER THE TEMPLE OF PREAH VIHEAR, AS WELL AS THE LAND SURROUNDING IT BECAUSE PAST DOCUMENTS EXPLICITLY SHOW THAT IT IS UNDER CAMBODIA'S RULE

A. *Cambodia has sovereignty over the area where the Preah-Vihear temple resides, granted to them by the previous rulers, France, of the area.*

The first piece of evidence that supports this would be the Franco-Siamese Treaty of 1907, which was a byproduct of the Convention between the two parties in 1904. The treaty that was signed clearly and distinctly distinguished borders between the Kingdom of Cambodia and Thailand. In essence, this was meant to be the final series of concessions between the two parties. At the same time, they created a map. As stated in the Judgment of the International Court of Justice, "A Map (referred to by the Court as Annex I Map) shows the delineation of the border as the result of delimitation work and locates THE ENTIRE PROMONTORY OF PREAH VIHEAR, INCLUDING THE TEMPLE ZONE, WITHIN CAMBODIAN TERRITORY." This map, clearly showing the border line of the Preah-Vihear area, including the temple, should be enough to clear any disputes.

However, Thailand has since suggested that the map is not admissible because, "The Court cannot accept these contentions either on the facts or the law... during the oral proceedings that no one in Siam at that time knew anything about the Temple or would be troubling about it." It would seem that this would be enough to refute any of the claims that the Kingdom of Cambodia would make, and that the entirety of the Franco-Siamese Treaty of 1904/07 inadmissible, due to *plea of error*.

The Kingdom of Cambodia would counter, stating that, "It is an established rule of law that the plea of error cannot be allowed as an element of vitiating consent if the party advancing it contributed by its own conduct to the error." It is submitted that the Thailand's suggestion that the map is inadmissible is incorrect and made with flawed judgment. This means that the map is admissible into evidence, and the temple of Preah-Vihear and the surrounding area is Cambodian territory.

B. *The International Court of Justice had made a final ruling in 1962, on this decision supporting Cambodia.*

The judgment made in 1962, found in "Reports of Judgments, Advisory Opinions and Orders stated, "for these reasons, the court, by nine votes to three, finds that the temple of Preah-Vihear is situated in territory under the sovereignty of Cambodia." The judgment and the

interpretation of it has been the crux of many of the debates since then, on which country should inherit the area surrounding the Preah-Vihear temple. However, this clearly shows that the temple is inside territory that is under Cambodian rule.

Furthermore, in the United Nations Charter, the Statute of the International Court of Justice contains two articles which are relevant to this case.

“Article 60

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.
2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.
3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.
4. The application for revision must be made at latest within six months of the discovery of the new fact.
5. No application for revision may be made after the lapse of ten years from the date of the judgment.”

This shows that Thailand has no right to make an argument against the ruling, or revise it. Hence, any interpretation that Thailand may have is futile, the ICJ ruling would hold, and the Preah-Vihear temple and its surrounding area would be under Cambodian sovereignty.

C. Cambodia deserves the Temple of Preah-Vihear and the area surrounding it, due to its efforts to make it a better place.

Since the beginning of the 21st century, the Kingdom of Cambodia has worked to eradicate the area of violence and hatred.

“As State Party to the Convention for the Protection of the World Cultural and Natural Heritage (commonly referred to as the 1972 Convention or World Heritage Convention), since November 1991, the Kingdom of Cambodia presented to UNESCO to inscribe the SACRED SITE OF THE

TEMPLE OF PREAH VIHEAR on the World Heritage List. In a letter dated 10 October 2001, His Excellency the Prime Minister of the Kingdom of Cambodia, Samdech Akka Moha Sena Padei Techo HUN Sen, informed the Director General of UNESCO, His Excellency Mr Koïchiro MATSUURA, of the Royal Government's decision to propose this inscription. Subsequently, a complete portfolio in compliance with the Operational Guidelines of the Kingdom of Cambodia for the Implementation of the World Heritage Convention was prepared by the Ministry of Culture and Fine Arts, with the technical advice and active assistance of UNESCO (Cultural Section and Office in Phnom Penh). This portfolio was submitted to the World Heritage Center (UNESCO-Paris) on 30 January 2006."

This shows the commitment that Cambodia has to the peace-keeping of the Preah-Vihear area, and how it deserves to have the area.

D. The temple of Preah Vihear is part of Cambodian territory, so the surrounding area would also have to be part of the same territory.

In the Report of Judgment, Advisory Opinions and Orders, the court came to the conclusion that, "THE REAL QUESTION, THEREFORE, WHICH IS THE ESSENTIAL ONE IN THIS CASE, IS WHETHER THE PARTIES DID ADOPT THE ANNEX I 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"

This is quite accurate, because this explains that the question is to the actual map and the line and territory included in it.

Although Thailand would probably argue that the Temple of Preah-Vihear is much closer to itself, Judge Xue, who was one of the judges on the panel for this case, said himself, in regards to the DMZ,

"In the previous paragraphs of the present Order, the term "the area of the Temple" is consistently and repeatedly referred to by the Parties in their pleadings as well as by the Court in its own reasoning. When the relationship between the two terms "the area of the Temple" and "the PDZ" is not clarified, the specificity of the zone with its co-ordinates in place does not necessarily render the latter more easily for the implementation of the Order. Because the Court draws the PDZ without adequate knowledge of the ground situation in the territories of the Parties respectively, the defining of a PDZ, albeit provisional, on a flat map may cause unpredictable difficulties in reality to the detriment of the legitimate interests of the Parties."

If a historical artifact is under a sovereign rule, then it is only natural for one to assume that the surrounding area is also under the same rule. Not only is it more difficult for people to access an

artifact that is within the rule of another country, but it would cause more conflict and friction between the groups.

PRAYER FOR RELIEF

Should the Kingdom of Cambodia be the victor of this case, we request that Thailand accept this as the final judgment and demilitarize the border between our two states. To ensure international peace, the Kingdom of Cambodia also will remove all forces on the border. Cambodia and Thailand must cooperate together in order to protect Preah Vihear. Cambodia would also ask that there be more opportunities for both states to come to amicable terms again. This case has become an obstacle to our alliance, and we hope that after this is resolved Cambodia and Thailand work together again. Cambodia would also like to request for all maps that include the Preah Vihear region to correctly publish it according to what was judged by the International Court of Justice. By doing so, there will be less confusion, and the world will be one step closer to achieving total peace.