

The possibilities for Thailand to defy an injunction or a verdict by the International Court of Justice (ICJ) over the Preah Vihear case is very low as the court – the top judicial body of the United Nations – has many instruments and tools to enforce its ruling.

As long as Thailand accepts the court's jurisdiction or is not in a position to avoid it, the country will have to comply with the court ruling.

A recent announcement by Defence Minister Prawit Wongsuwan that Thailand would not comply with any ICJ injunction for withdrawal of Thai troops is misleading, unrealistic and might damage Thailand's international reputation.

The minister said the court has no authority to rule on the case but he did not offer sufficient legal arguments to back up the rationale behind his defiance.

Based on the 1962 judgement on the Preah Vihear case, Cambodia has requested the ICJ to clarify whether Thailand has adequately complied with the court ruling. Phnom Penh has also pleaded with the court to impose provisional measures to ban Thai military activities.

Thailand is arguing that the country has fully complied with the ruling and the court would no longer have authority to force the country to do anything more.

Cambodia says it is simply asking the court to clarify the ruling in accordance with the article 60 of the court statute so that the jurisdiction is a derivation of the article.

The question of the ICJ's jurisdiction is a legal technicality, which is too complicated for a military officer to make an offhand comment. Let the legal experts on both sides raise the question before the court and leave it to the court to decide whether it has jurisdiction to rule on the case.

Thailand Cannot Duck World Court Verdict

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If the court really has no jurisdiction, it would be fine for Thailand to maintain the status quo of the border arrangement with Cambodia.

However, if the court does have jurisdiction, Thailand cannot hold the position any longer that it would not comply with the court's injunction or verdict.

Whenever the ICJ delivers its verdict, it is binding on the parties to comply. If one of the parties to a dispute does not comply, the other party can ask the UN Security Council to enforce the verdict.

The Security Council, which is the most powerful body of the UN, is authorised to make recommendations and take measures to enforce the ruling.

Sometimes, the UN body takes time to enforce the ICJ verdict, but it does eventually. The case of Lake Chad, involving Nigeria and Cameroon, for example, was ruled by the court in favour of Cameroon in 2002 but the case was not settled until 2006.

When Nigeria refused to adhere to the verdict and withdraw its troops from the disputed area, then UN Secretary-General Kofi Annan used his good offices to mediate a settlement of the dispute in line with the court ruling.

The UN called a series of tripartite summits of the two conflicting parties, who agreed to set up a joint committee to handle the boundary demarcation. With the supervision of the UN, Nigeria eventually agreed to withdraw its troops from the disputed area of Lake Chad and the Bakassi peninsular and returned the territory to Cameroon in 2006. Follow-up work and demarcation of boundary are being undertaken which are expected to be completed next year.

Studies by prominent legal experts Panat Tasneeyanond, Prasit Pivavatnapanich and Vipon Kititansasorchai found that many other cases under the ICJ ruling could be settled successfully although it takes time. The parties, partly or fully, complied with the court ruling because as long as they are members of the UN, they cannot be in total defiance.

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