11 NOVEMBER 2013

JUDGMENT

REQUEST FOR INTERPRETATION OF THE JUDGMENT OF 15 JUNE 1962 IN THE CASE CONCERNING THE *TEMPLE OF PREAH VIHEAR (CAMBODIA* v. *THAILAND)*

(CAMBODIA *v.* THAILAND)

DEMANDE EN INTERPRÉTATION DE L'ARRÊT DU 15 JUIN 1962 EN L'AFFAIRE DU *TEMPLE DE PRÉAH VIHÉAR (CAMBODGE c. THAÏLANDE)*

(CAMBODGE c. THAÏLANDE)

11 NOVEMBRE 2013

ARRÊT

TABLE OF CONTENTS

INTERNATIONAL COURT OF JUSTICE

YEAR 2013

2013
11 November
General List
No. 151

11 November 2013

REQUEST FOR INTERPRETATION OF THE JUDGMENT OF 15 JUNE 1962 IN THE CASE CONCERNING THE *TEMPLE OF PREAH VIHEAR (CAMBODIA* v. *THAILAND)*

(CAMBODIA *v.* THAILAND)

Historical background.

*

Jurisdiction and admissibility.

Article 60 of the Statute of the Court — Conditions of jurisdiction — Existence of a dispute — Dispute as to the meaning or scope of Judgment of 15 June 1962 — Subject-matter of the current dispute — Characterization of Annex I map line — Extent of area of Temple of Preah Vihear — Meaning and scope of phrases "territory under the sovereignty of Cambodia" and "vicinity on Cambodian territory" contained in operative part — Nature of Thailand's obligation to withdraw its personnel — Question of admissibility — Purpose of request must be limited to interpretation — Need to interpret second operative paragraph of the 1962 Judgment and legal effect of the Court's statements regarding Annex 1 map line — Request for interpretation found admissible.

*

Interpretation of the 1962 Judgment.

Role of the Court under Article 60 of the Statute — Relationship between operative clause and reasoning in original judgment — Role of pleadings, evidence and submissions of Parties in original case — Principle of non ultra petita *— Nature and purpose of headnote — Conduct of the parties occurring after original judgment given.*

Principal features of the 1962 Judgment.

Role of Annex I map in reasoning of the Court — Submissions of the Parties — Subject-matter of the dispute before the Court — Court concerned with question of sovereignty over the Temple area and not frontier delimitation.

Operative part of the 1962 Judgment.

First operative paragraph of the 1962 Judgment clear in meaning — Temple situated in territory under sovereignty of Cambodia — Scope of this operative paragraph to be assessed in light of the Court's examination of the second and third operative paragraphs.

Second operative paragraph of the 1962 Judgment — No express indication of territory from which Thailand was required to withdraw — Term "vicinity on Cambodian territory" to be construed as extending at least to area where Thai personnel stationed — 1962 Thai Council of Ministers' line — Natural understanding of concept of "vicinity" of Temple in view of geographical context — Phnom Trap outside Temple area — 1962 Judgment required Thailand to withdraw from whole territory of promontory of Preah Vihear.

Operative part of the 1962 Judgment to be considered as a whole — Territorial scope of the three operative paragraphs is the same.

Determination of boundary line between Cambodia and Thailand beyond scope of 1962 Judgment — Not necessary for the Court to consider whether Thailand's obligation to withdraw is a continuing one — Territorial integrity of a State must be respected.

Temple of Preah Vihear a UNESCO world heritage site — Cambodia and Thailand must co-operate to protect the site — Each State under obligation not to take any deliberate measures which might damage Temple — Access to Temple from the Cambodian plain to be ensured.

JUDGMENT

Present: *President* TOMKA; *Vice-President* SEPÚLVEDA-AMOR; *Judges* OWADA, ABRAHAM, KEITH, BENNOUNA, SKOTNIKOV, CANÇADO TRINDADE, YUSUF, GREENWOOD, XUE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI; *Judges* ad hoc GUILLAUME, COT; *Registrar* COUVREUR.

In the case concerning the Request for interpretation of the Judgment of 15 June 1962,

between

the Kingdom of Cambodia,

represented by

H.E. Mr. Hor Namhong, Deputy Prime Minister and Minister for Foreign Affairs and International Co-operation,

as Agent;

H.E. Mr. Var Kimhong, Minister of State,

as Deputy Agent;

H.E. Mr. Long Visalo, Secretary of State at the Ministry of Foreign Affairs and International Co-operation,

Mr. Raoul Marc Jennar, Expert,

H.E. Mr. Hem Saem, Ambassador Extraordinary and Plenipotentiary of the Kingdom of Cambodia to the Kingdom of the Netherlands,

H.E. Mr. Sarun Rithea, Adviser to the Minister for Foreign Affairs and International Co-operation,

Mr. Hoy Pichravuth, Assistant to the Deputy Prime Minister,

as Advisers;

Mr. Jean-Marc Sorel, Professor of International Law at the University of Paris I (Panthéon-Sorbonne),

Sir Franklin Berman, K.C.M.G., Q.C., member of the English Bar, member of the Permanent Court of Arbitration, Visiting Professor of International Law at Oxford University and the University of Cape Town,

Mr. Rodman R. Bundy, *avocat à la cour d'appel de Paris*, member of the New York Bar, Eversheds LLP (Paris),

as Counsel and Advocates;

Mr. Guillaume Le Floch, Professor at the University of Rennes 1,

Ms Amal Alamuddin, member of the English and the New York Bars,

Ms Naomi Briercliffe, solicitor (England and Wales), Eversheds LLP (Paris),

as Counsel;

and

the Kingdom of Thailand,

represented by

H.E. Mr. Virachai Plasai, Ambassador Extraordinary and Plenipotentiary of the Kingdom of Thailand to the Kingdom of the Netherlands,

as Agent;

Mr. Voradet Viravakin, Director-General, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs,

as Deputy Agent;

H.E. Mr. Surapong Tovichakchaikul, Deputy Prime Minister and Minister for Foreign Affairs,

H.E. Mr. Phongthep Thepkanjana, Deputy Prime Minister and Minister of Education,

H.E. A.C.M. Sukumpol Suwanatat, Minister of Defence,

Mr. Thana Duangratana, Vice-Minister attached to the Office of the Prime Minister,

Mr. Sihasak Phuangketkeow, Permanent Secretary, Ministry of Foreign Affairs,

Mr. Nuttavudh Photisaro, Deputy Permanent Secretary, Ministry of Foreign Affairs,

General Nipat Thonglek, Deputy Permanent Secretary, Ministry of Defence,

Lieutenant General Nopphadon Chotsiri, Director-General, Royal Thai Survey Department, Royal Thai Armed Forces Headquarters,

Mr. Chukiert Ratanachaichan, Deputy-Secretary-General, Office of the Council of State, Office of the Prime Minister,

Mr. Jumpon Phansumrit, Expert Public Prosecutor, Office of Policy and Strategy, Office of the Attorney General,

Mr. Darm Boontham, Director, Boundary Division, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs;

Mr. James Crawford, S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, member of the Institut de droit international, Barrister,

Mr. Donald McRae, Hyman Soloway Professor, University of Ottawa, Member of the International Law Commission, associate member of the Institut de droit international, member of the Ontario Bar,

Mr. Alain Pellet, Professor at the University Paris Ouest, Nanterre-La Défense, President of the Société française pour le droit international, associate member of the Institut de droit international,

Mr. Thomas Grant, member of the New York Bar, Senior Research Associate, Lauterpacht Centre for International Law, University of Cambridge,

Ms Alina Miron, Researcher, Centre de droit international de Nanterre (CEDIN), University Paris Ouest, Nanterre-La Défense,

as Counsel;

Mr. Alastair Macdonald, M.B.E., Honorary Fellow, International Boundaries Research Unit, Department of Geography, Durham University,

Mr. Martin Pratt, Director of Research, International Boundaries Research Unit, Department of Geography, Durham University,

as Expert Advisers;

Mr. Ludovic Legrand, Researcher, Centre de droit international de Nanterre (CEDIN), University Paris Ouest, Nanterre-La Défense,

as Assistant Counsel,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 28 April 2011, the Kingdom of Cambodia (hereinafter "Cambodia") filed in the Registry of the Court an Application instituting proceedings in which, referring to Article 60 of the Statute of the Court and Article 98 of the Rules of Court, Cambodia requests the Court to interpret the Judgment which it delivered on 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand)* (hereinafter the "1962 Judgment"). Cambodia on the same day, referring to Article 41 of the Statute and Article 73 of the Rules of Court, also filed a request for the indication of provisional measures in order to "cause [the] incursions [by Thailand] onto its territory to cease".

2. In accordance with Article 40, paragraph 2, of the Statute, the Registrar communicated the Application forthwith to the Government of the Kingdom of Thailand (hereinafter "Thailand"); and, pursuant to paragraph 3 of that Article, all other States entitled to appear before the Court were notified of the Application. Pursuant to Article 73, paragraph 2, of the Rules of Court, the Registrar transmitted a certified copy of the request for the indication of provisional measures to Thailand.

3. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party exercised its right, conferred by Article 31, paragraph 3, of the Statute, to choose a judge *ad hoc* to sit in the case; Cambodia chose Mr. Gilbert Guillaume, and Thailand Mr. Jean-Pierre Cot.

4. By an Order of 18 July 2011, the Court, after rejecting Thailand's request for the case to be removed from the General List of the Court, indicated the following provisional measures:

> "(1) Both Parties shall immediately withdraw their military personnel currently present in the provisional demilitarized zone, as defined in paragraph 62 of the present Order, and refrain from any military presence within that zone and from any armed activity directed at that zone;
>
> (2) Thailand shall not obstruct Cambodia's free access to the Temple of Preah Vihear or Cambodia's provision of fresh supplies to its non-military personnel in the Temple;
>
> (3) Both Parties shall continue the co-operation which they have entered into within ASEAN and, in particular, allow the observers appointed by that organization to have access to the provisional demilitarized zone;
>
> (4) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve." (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning* the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand), Provisional Measures, I.C.J. Reports 2011 (II)*, pp. 555-556, para. 69, points B.1 to 4 of the operative part.)

It further decided that "each Party shall inform the Court as to its compliance with the above provisional measures" and that, "until the Court has rendered its judgment on the request for interpretation, it shall remain seised of the matters which form the subject of this Order" (*ibid.*, points C and D of the operative part).

5. Thailand filed written observations on Cambodia's Request for interpretation within the time-limit fixed by the Court for that purpose, in accordance with Article 98, paragraph 3, of the Rules of Court.

6. The Court decided to afford the Parties the opportunity of furnishing further written explanations, pursuant to Article 98, paragraph 4, of the Rules of Court. Each of the Parties filed such further explanations within the time-limits prescribed by the Court.

7. The Court also decided, in response to a request from Thailand to which Cambodia did not object, to give the Parties an opportunity to provide further oral explanations under Article 98, paragraph 4, of the Rules of Court.

8. In accordance with Article 53, paragraph 2, of the Rules of Court, the Court decided, after ascertaining the views of the Parties, that copies of the pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings.

9. Public hearings were held from 15 to 19 April 2013, at which the Court heard the oral arguments and replies of:

For Cambodia: H.E. Mr. Hor Namhong,
Mr. Jean-Marc Sorel,
Sir Franklin Berman,
Mr. Rodman Bundy.

For Thailand: H.E. Mr. Virachai Plasai,
Mr. Donald McRae,
Ms Alina Miron,
Mr. Alain Pellet,
Mr. James Crawford.

10. At the hearings, a Member of the Court put a question to the Parties, to which replies were given orally and in writing, in accordance with Article 61, paragraph 4, of the Rules of Court. Pursuant to Article 72 of the Rules of Court, each Party presented written observations on the written replies received from the other.

*

11. In the Application, Cambodia presented the following claims:

> "Given that 'the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia' (first paragraph of the operative clause [of the 1962 Judgment]), which is the legal consequence of the fact that the Temple is situated on the Cambodian side of the frontier, as that frontier was recognized by the Court in its Judgment, and on the basis of the facts and arguments set forth above, Cambodia respectfully asks the Court to adjudge and declare that:
>
> The obligation incumbent upon Thailand to 'withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory' (second paragraph of the operative clause [of the 1962 Judgment]) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the region of the Temple and its vicinity by the line on the Annex I map, on which the Judgment of the Court is based."

12. In the written proceedings, the Parties made the following submissions:

On behalf of the Government of Cambodia,

in the further explanations presented on 8 March 2012:

> "On the basis of the facts and arguments set out in its Application for interpretation and in this Response, Cambodia respectfully asks the Court to adjudge and declare:
>
> (i) that the submissions made to the Court by each of the two Parties show, both in the light of the facts and in themselves, that the Parties are in disagreement regarding the meaning and scope of the 1962 Judgment;
>
> (ii) that the disputes between the Parties concern both the first and second paragraphs of the *dispositif* of the 1962 Judgment, as well as the link between those two paragraphs;
>
> (iii) that the dispute relating to the first paragraph concerns the meaning and scope of the Court's use of the term 'territory' ('is situated in territory under the sovereignty of Cambodia'), particularly in connection with the Court's decisions regarding the legal status of the Annex I map as representing the frontier between the two States;
>
> (iv) that the dispute relating to the second paragraph concerns the meaning and scope of the Court's use of the terms 'vicinity' and 'territory' ('at the Temple, or in its vicinity on Cambodian territory');
>
> (v) that the dispute relating to the link between the two paragraphs relates to the question of whether the second paragraph must be read in the light of the first paragraph, or whether the particular terms employed by the Court in the second paragraph must be read as seeking to limit the general scope of the first paragraph;
>
> (vi) that each of those disputes concerns matters decided by the Court with binding force in the Judgment;
>
> (vii) that on account of the terms used and given the context (specifically, the Court's decision concerning the legal status of the Annex I map as representing the frontier between the two States), the first paragraph of the *dispositif* must be understood as determining, with binding force, that all of the disputed area that lies on the Cambodian side of the line on the Annex I map — including, therefore, the Temple of Preah Vihear itself — is to be regarded as falling under Cambodian sovereignty;
>
> (viii) that on account of the terms used and given the context (particularly the expression 'in consequence' linking it to the first paragraph), the second paragraph of the *dispositif* must be understood as representing a

particular consequence stemming from the decision taken in the first paragraph, implying that the scope of the second paragraph, both in space and in time, must be understood in the light of the first paragraph;

(ix) that on account of the terms used and given the context (particularly the link with the first paragraph, of which it is a 'consequence'), the second paragraph of the *dispositif* must be understood as imposing on Thailand both an explicit obligation to withdraw immediately to its own territory all military or police forces stationed at the Temple or at nearby sites at that time and an implicit obligation not to send those forces — or similar forces — back to the Temple or to nearby sites in the Temple area, which must, on account of the terms used in the first paragraph of the *dispositif*, be regarded as Cambodia's sovereign territory.

On that basis, Cambodia respectfully asks the Court, under Article 60 of its Statute, to respond to the question concerning the interpretation of its Judgment of 15 June 1962 set out in paragraph 45 of the Application for interpretation filed on 28 April 2011, namely:

> 'Given that "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia" (first paragraph of the operative clause), which is the legal consequence of the fact that the Temple is situated on the Cambodian side of the frontier, as that frontier was recognized by the Court in its Judgment, and on the basis of the facts and arguments set forth above, Cambodia respectfully asks the Court to adjudge and declare that:
>
> The obligation incumbent upon Thailand to "withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory" (second paragraph of the operative clause) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the region of the Temple and its vicinity by the line on the Annex I map, on which the Judgment of the Court is based.'"

On behalf of the Government of Thailand,

in the written observations presented on 21 November 2011:

> "The Kingdom of Thailand requests the Court to adjudge and declare:

— that the Request of the Kingdom of Cambodia asking the Court to interpret the Judgment of 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand)* under Article 60 of the Statute of the Court does not satisfy the conditions laid down in that Article and that, consequently, the Court has no jurisdiction to respond to the Request and/or that the Request is inadmissible;

— in the alternative, that there are no grounds to grant Cambodia's Request to construe the Judgment and that there is no reason to interpret the Judgment of 1962;

— in the further alternative, that the 1962 Judgment does not determine that the line on the Annex I map is the boundary line between the Kingdom of Thailand and the Kingdom of Cambodia."

in the further explanations presented on 21 June 2012:

"In view of the reasons given above and its Written Observations of 21 November 2011, the Kingdom of Thailand requests the Court to adjudge and declare:

— that the Request of the Kingdom of Cambodia asking the Court to interpret the Judgment of 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand)* under Article 60 of the Statute of the Court does not satisfy the conditions laid down in that Article and that, consequently, the Court has no jurisdiction to respond to that Request and/or that the Request is inadmissible;

— in the alternative, that there are no grounds to grant Cambodia's Request to construe the Judgment and that there is no reason to interpret the Judgment of 1962; and

— to formally declare that the 1962 Judgment does not determine that the line on the Annex I map is the boundary line between the Kingdom of Thailand and the Kingdom of Cambodia."

13. At the oral proceedings, the following final submissions were presented by the Parties:

On behalf of the Government of Cambodia,

at the hearing of 18 April 2013:

"— Rejecting the submissions of the Kingdom of Thailand, and on the basis of the foregoing, Cambodia respectfully asks the Court, under Article 60 of its Statute, to respond to Cambodia's request for interpretation of its Judgment of 15 June 1962.

— In Cambodia's view: 'the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia' (first paragraph of the operative clause), which is the legal consequence of the fact that the Temple is situated on the Cambodian side of the frontier, as that frontier was recognized by the Court in its Judgment. Therefore, the obligation incumbent upon Thailand to 'withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory' (second paragraph of the operative clause) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the region of the Temple and its vicinity by the line on the Annex I map, on which the Judgment of the Court is based."

On behalf of the Government of Thailand,

at the hearing of 19 April 2013:

> "In accordance with Article 60 of the Rules of Court and having regard to the Request for Interpretation of the Kingdom of Cambodia and its written and oral pleadings, and in view of the written and oral pleadings of the Kingdom of Thailand, the Kingdom of Thailand requests the Court to adjudge and declare:
>
> — that the Request of the Kingdom of Cambodia asking the Court to interpret the Judgment of 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand)* under Article 60 of the Statute of the Court does not satisfy the conditions laid down in that Article and that, consequently, the Court has no jurisdiction to respond to that Request and/or that the Request is inadmissible;
>
> — in the alternative, that there are no grounds to grant Cambodia's Request to construe the Judgment and that there is no reason to interpret the Judgment of 1962; and
>
> — to formally declare that the 1962 Judgment does not determine with binding force the boundary line between the Kingdom of Thailand and the Kingdom of Cambodia, nor does it fix the limit of the vicinity of the Temple."

*

* *

I. HISTORICAL BACKGROUND

14. The Temple of Preah Vihear is situated on a promontory of the same name in the eastern part of the Dangrek range of mountains, "which, in a general way, constitutes the boundary between the two countries in this region — Cambodia to the south and Thailand to the north" (*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 15).

15. On 13 February 1904, France (of which Cambodia was then a protectorate) and Siam (as Thailand was then called) concluded a treaty (hereinafter the "1904 Treaty") which specified that the frontier in the Dangrek sector was to follow the watershed line "between the basins of the Nam Sen and the Mekong, on the one hand, and the Nam Moun, on the other hand". The 1904 Treaty provided for the establishment of Mixed Commissions composed of officers appointed by the two Parties and responsible for delimiting the frontier between the two territories. The first Mixed Commission was thus established in 1904. The final stage of the operation of delimitation was to be the preparation and publication of maps, a task assigned to a team of four French officers,

three of whom had been members of the Mixed Commission. In 1907, that team prepared a series of 11 maps covering a large part of the frontiers between Siam and French Indo-China (of which Cambodia formed part). In particular, it drew up a map entitled "Dangrek — Commission of Delimitation between Indo-China and Siam", on which the frontier passed to the north of Preah Vihear, thus leaving the Temple in Cambodia. That map was duly communicated to the Siamese Government in 1908, but was never approved by the Mixed Commission which had ceased to function some months before the production of the map (see *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 21).

16. Following Cambodia's independence on 9 November 1953, Thailand occupied the Temple of Preah Vihear in 1954. Negotiations between the parties regarding the Temple were unsuccessful and, on 6 October 1959, Cambodia seised the Court by unilateral application. Thailand filed preliminary objections to the jurisdiction of the Court.

17. In its Judgment of 26 May 1961 on Thailand's preliminary objections, the Court found that it had jurisdiction to entertain the dispute concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand)* and set out the subject-matter of that dispute in the following terms:

> "In the present case, Cambodia alleges a violation on the part of Thailand of Cambodia's territorial sovereignty over the region of the Temple of Preah Vihear and its precincts. Thailand replies by affirming that the area in question lies on the Thai side of the common frontier between the two countries, and is under the sovereignty of Thailand. This is a dispute about territorial sovereignty." (*I.C.J. Reports 1961*, p. 22.)

18. During the merits phase, Cambodia relied upon the map referred to in paragraph 15 above, which was annexed to its pleadings and was referred to as the "Annex I map". Cambodia argued that this map had been accepted by Thailand and had entered into the treaty settlement, thereby becoming binding on the two States. According to Cambodia, the line shown on the map (hereinafter "the Annex I map line") had thus become the frontier between the two States. Thailand denied that it had accepted the Annex I map, or that the map had otherwise become binding upon it, and maintained that the boundary between the two States followed the watershed line, as provided in the text of the 1904 Treaty, with the result, according to Thailand, that the Temple lay in Thai territory (cf. *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 21).

19. In the 1959 Application and its Memorial, Cambodia asked the Court to rule: (1) that Thailand was under an obligation to withdraw the detachments of its armed forces stationed in the ruins of the Temple of Preah Vihear and (2) that the territorial sovereignty over the Temple of Preah Vihear belonged to Cambodia (*ibid.*, p. 9). In its final submissions presented at the conclusion of the oral proceedings in 1962, however, Cambodia went further, asking the Court to rule: (1) that the Annex I map had been drawn up and published in the name and on behalf of the Mixed Commission set up by the 1904 Treaty, that it set forth the decisions taken by the said

Commission and that, by reason of that fact and also of the subsequent agreements and conduct of the Parties, it presented a treaty character; (2) that the frontier line between Cambodia and Thailand, in the disputed region in the neighbourhood of the Temple, was the Annex I map line; (3) that the Temple of Preah Vihear was situated in territory under Cambodian sovereignty; (4) that Thailand was under an obligation to withdraw the detachments of armed forces it had stationed since 1954 in Cambodian territory in the ruins of the Temple; and (5) that Thailand must return property removed from the Temple since 1954 (*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 11).

20. In its Judgment on the merits, delivered on 15 June 1962, the Court stated that "the subject of the dispute submitted to the Court [was] confined to a difference of view about sovereignty over the region of the Temple of Preah Vihear" (*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 14). For that reason, the Court concluded that Cambodia's first and second final submissions could be entertained "only to the extent that they give expression to grounds, and not as claims to be dealt with in the operative provisions of the Judgment" (*ibid.*, p. 36). In its reasoning, the Court stated that, in 1908-1909, Thailand had accepted the Annex I map "as representing the outcome of the work of delimitation, and hence recognized the line on that map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory" (*ibid.*, p. 32).

21. The operative part of the Judgment reads as follows:

> "The Court,
>
> [1] by nine votes to three, finds that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia;
>
> finds in consequence
>
> [2] by nine votes to three, that Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory;
>
> [3] by seven votes to five, that Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia's fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities." (*Ibid.*, pp. 36-37.)

22. Following the delivery of the 1962 Judgment, Thailand withdrew from the Temple buildings. It erected a barbed wire fence which divided the Temple ruins from the rest of the promontory of Preah Vihear. This fence followed the course of a line (hereinafter sometimes referred to as the "Thai Council of Ministers' line") depicted on the map attached to a resolution, adopted by the Council of Ministers of Thailand on 10 July 1962 but not made public until the present proceedings. By that resolution, the Thai Council of Ministers fixed what it considered to be the limits of the area from which Thailand was required to withdraw.

23. On 5 January 1963, the Head of State of Cambodia, Prince Sihanouk, and a large party of Cambodian officials and monks, as well as diplomatic representatives of other States, visited the Temple. During the course of this visit, they remained within the area enclosed by the barbed wire fence. The events of this period are considered in paragraphs 38 to 42 below.

24. On 21 June 1997, the Parties established the "Thai-Cambodian Joint Commission on Demarcation for Land Boundary", entrusting it with the task "of placing markers in order to indicate the land boundary between the two countries". On 14 June 2000, they concluded a "Memorandum of Understanding on the Survey and Demarcation of the Land Boundary" (hereinafter the "Memorandum of Understanding"), which provided for the demarcation of the frontier line between the two States and included, in particular, the terms of reference for the work of the Thai-Cambodian Joint Commission on Demarcation for Land Boundary.

25. In 2007, Cambodia requested that the UNESCO World Heritage Committee inscribe the site of the Temple of Preah Vihear on the World Heritage List established under the provisions of the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage (hereinafter the "World Heritage Convention"). To that end, it communicated to the Committee, in accordance with the Guidelines for the Implementation of the World Heritage Convention adopted by the Committee, a map depicting the site of the property. Cambodia included on the map what it considered to be the course of the frontier separating it from Thailand, the actual site of the monument and a buffer zone (described in the Committee's Guidelines as "an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property"). According to that map, the entire promontory of Preah Vihear, as well as the hill of Phnom Trap[1] immediately to the west of the promontory, were within Cambodian territory.

26. On 17 May 2007, Thailand contested that map by means of an aide-memoire, which it sent to Cambodia and to the World Heritage Committee, to which it attached its own map showing the international boundary between the two States as following the line drawn on the map attached to the 1962 Resolution of the Thai Council of Ministers (see paragraph 22 above).

27. On 7 July 2008, the World Heritage Committee decided to inscribe the site of the Temple of Preah Vihear on the World Heritage List, albeit with what the Committee described as "a revised graphic plan of the property", which excluded the area disputed between Cambodia and Thailand.

28. Following the Temple's inscription on that List, a number of armed incidents took place in the border area close to the Temple. On 14 February 2011, the United Nations Security Council called for a permanent ceasefire to be established and expressed its support for the efforts of the

[1] In the original proceedings, and in the 1962 Judgment, the spelling used was "Pnom". However, the spelling "Phnom" is the one generally used today. It has therefore been employed in the present Judgment.

Association of South-East Asian Nations ("ASEAN") to find a solution to the conflict. The Chair of ASEAN, Indonesia, was subsequently invited by Cambodia and by Thailand to send observers to the affected border areas so as to avoid further armed clashes. This invitation was welcomed by the Foreign Ministers of ASEAN and their representatives but was not acted upon.

29. It is recalled that, on 28 April 2011, Cambodia filed a Request for interpretation of the 1962 Judgment, together with a request for the indication of provisional measures (see paragraph 1 above). In its Order of 18 July 2011 on provisional measures, the Court found that there existed, prima facie, a dispute within the meaning of Article 60 of the Statute and indicated provisional measures which, in particular, required both Parties to withdraw their military personnel from a "provisional demilitarized zone" around the Temple, as defined by the Court (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning* the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 537) (see paragraph 4 above).

II. JURISDICTION AND ADMISSIBILITY

30. The Court will first determine whether it has jurisdiction over the Request for interpretation submitted by Cambodia and, if so, whether this Request is admissible.

1. Jurisdiction of the Court under Article 60 of the Statute

31. Cambodia submitted its Request for interpretation pursuant to Article 60 of the Statute of the Court (see paragraph 29 above). That Article provides that

> "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."

This provision is supplemented by Article 98, paragraph 1, of the Rules of Court, which stipulates that "[i]n the event of dispute as to the meaning or scope of a judgment any party may make a request for its interpretation . . .". Further, Article 98, paragraph 2, of the Rules of Court, requires a party to indicate in its request for interpretation "the precise point or points in dispute as to the meaning or scope of the judgment".

32. The Court begins by recalling that "[its] jurisdiction on the basis of Article 60 of the Statute is not preconditioned by the existence of any other basis of jurisdiction as between the parties to the original case" and that "by virtue of Article 60 of the Statute, [the Court] may entertain a request for interpretation provided that there is a 'dispute as to the meaning or scope' of any judgment rendered by it" (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning* the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 542, para. 21; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America), Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 323, paras. 44 and 46; *Judgment, I.C.J. Reports 2009*, p. 9, paras. 15-16).

33. The Court also recalls that, while the English text of Article 60 uses the term "dispute", which also appears in the English text of Article 36, paragraph 2, of the Statute, the French text of Article 60 uses the term "contestation", which has a broader meaning than "différend", the term used in the French text of Article 36, paragraph 2. The Court further recalls that "a dispute within the meaning of Article 60 of the Statute must be understood as a difference of opinion or views between the parties as to the meaning or scope of a judgment rendered by the Court" (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning* the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 542, para. 22). As the Court has previously confirmed, the existence of a dispute under Article 60 of the Statute "does not require the same criteria to be fulfilled as those determining the existence of a dispute under Article 36, paragraph 2, of the Statute" (*ibid.*; see also *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 10-12; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America), Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 325, para. 53). Furthermore, it is not required that a dispute as to the meaning and scope of a judgment "should have manifested itself in a formal way; . . . it should be sufficient if the two Governments have in fact shown themselves as holding opposite views in regard to the meaning or scope of a judgment of the Court" (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 11; see also *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985*, pp. 217-218, para. 46; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America), Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, pp. 325-326, para. 54).

34. In accordance with the jurisprudence of the Court, "a dispute within the meaning of Article 60 of the Statute must relate to the operative clause of the judgment in question and cannot concern the reasons for the judgment except in so far as these are inseparable from the operative clause" (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning* the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 542, para. 23; see also *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment, I.C.J. Reports 1999 (I)*, p. 35, para. 10; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America), Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 323, para. 47) or, in the words of the Permanent Court, constitute "a condition essential to the Court's decision" (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 20). That said, "a difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of Article 60 of the Statute" (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning* the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 544, para. 31; see also *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 11-12).

35. In its Order on provisional measures in the present case, the Court observed that "a difference of opinion or views appears to exist between [the Parties] as to the meaning or scope of the 1962 Judgment" and that "this difference appears to relate" to three specific aspects of that Judgment:

> "in the first place, to the meaning and scope of the phrase 'vicinity on Cambodian territory' used in the second paragraph of the operative clause of the Judgment . . . next, to the nature of the obligation imposed on Thailand, in the second paragraph of the operative clause of the Judgment, to 'withdraw any military or police forces, or other guards or keepers', and, in particular, to the question of whether this obligation is of a continuing or an instantaneous character; and . . . finally, to the question of whether the Judgment did or did not recognize with binding force the line shown on the Annex I map as representing the frontier between the two Parties . . ." (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning* the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 544, para. 31).

36. The Court stated, however, that the decision rendered on the request for the indication of provisional measures "in no way prejudge[d] any question that the Court may have to deal with relating to the Request for interpretation" (*ibid.*, p. 554, para. 68). Accordingly, the Court must at this stage determine whether a dispute indeed exists between the Parties as to the meaning or scope of the operative clause of the 1962 Judgment, and, if so, identify the precise point or points that require interpretation. The Court will address these two questions in turn.

A. The existence of a dispute

37. Cambodia maintains that the Parties are in dispute as to the meaning and scope of the 1962 Judgment, specifically in the following respects: *(a)* whether the Court in the 1962 Judgment did or did not recognize with binding force the Annex I map line as constituting the frontier between the two Parties in the area of the Temple; *(b)* whether or not the meaning and scope of the phrase "situated in territory under the sovereignty of Cambodia" and the phrase "its vicinity on Cambodian territory" included, respectively, in the first and second paragraphs of the operative clause of the 1962 Judgment, must be understood by reference to the line depicted on the Annex I map which the Court "recognized" as constituting the frontier between the Parties in the area of the Temple; and *(c)* whether or not Thailand's obligation to withdraw from the area of "the Temple [and] its vicinity on Cambodian territory", deriving from the second paragraph of the operative clause, is of a continuing character.

38. Cambodia asserts that this dispute emerged immediately after the 1962 Judgment. In particular, Cambodia maintains that, immediately after the 1962 Judgment and throughout the 1960s, it continually protested against Thailand's unilateral determination, in July 1962, of the "vicinity of the Temple" (as manifested by the barbed wire fence and notices erected by Thailand), and against Thailand's view that the geographical scope of its obligation to withdraw under the 1962 Judgment was limited to the ruins of the Temple and the ground on which the Temple stood. Cambodia emphasizes that in those protests it expressed its view that this unilateral determination by Thailand was incompatible with the 1962 Judgment.

39. Cambodia acknowledges that it made no protests either during the period of armed conflicts in Cambodia or during the succeeding years when, according to Cambodia, Thailand refrained from imposing its unilateral determination of the vicinity of the Temple. Nonetheless, Cambodia contends that the dispute between the Parties concerning this issue re-emerged in 2007-2008, following Cambodia's request for the inscription of the site of the Temple on the UNESCO World Heritage List, and continued until the time of its Request for interpretation. Cambodia argues that this dispute is evidenced by a series of incidents which occurred in the vicinity of the Temple after 2008 and into early 2011, as well as by certain events and statements of the Parties following Cambodia's request for the inscription of the site of the Temple on the UNESCO World Heritage List in 2007. In particular, Cambodia refers to the statements made by each Party in their respective correspondence with the United Nations in the context of Cambodia's complaint concerning the alleged incursions of Thai forces into Cambodian territory in the area of the Temple.

40. For its part, Thailand denies the existence of a dispute within the meaning of Article 60 of the Statute, since the language of the 1962 Judgment is clear and in need of no interpretation. Thailand asserts that Cambodia accepted (or, at least, did not contest) that Thailand had implemented the 1962 Judgment by withdrawing to the Thai Council of Ministers' line. According to Thailand, the events and statements relied upon by Cambodia in respect of the period following Cambodia's request for the inscription of the site of the Temple on the UNESCO World Heritage List reflect only an ongoing delimitation dispute between the Parties. Noting that this delimitation dispute was not part of the dispute before the Court in 1962 and that the Court had expressly declined to pronounce upon it in the operative part of the 1962 Judgment, Thailand argues that this issue cannot be brought before the Court today in the context of proceedings under Article 60 of the Statute.

*

41. The Court observes that the events and statements dating from the period immediately following the 1962 Judgment clearly demonstrate that Thailand was of the view that the Court had left the term "vicinity of the Temple" in the second operative paragraph undefined and that Thailand could thus determine unilaterally the limits of that "vicinity". In particular, this position is reflected in the 1962 Resolution of the Thai Council of Ministers which determined the

> "location of the limit of the vicinity of the [Temple], from which Thailand has the obligation to withdraw police forces, guards or keepers, on the principle that Cambodia will only obtain the ruins of the [Temple] and the ground on which the Temple stood".

In implementation of this decision, Thailand erected a barbed wire fence on the ground along the line determined by the Resolution, and posted signs stating that "the vicinity of the Temple of [Preah Vihear] does not extend beyond this limit".

42. Contrary to Thailand's assertions, the record before the Court shows that Cambodia did not accept Thailand's withdrawal as fully implementing the 1962 Judgment. Rather, Cambodia protested the Thai presence on territory which, according to Cambodia, the 1962 Judgment had recognized as Cambodian. Cambodia also complained that the barbed wire fence erected by Thailand "encroach[ed] fairly significantly" upon that territory in contravention of the Court's Judgment. In particular, the Ministry of Foreign Affairs of Cambodia in an aide-memoire issued in November 1962 stated, *inter alia*, that "this limit [of the temple zone]", marked with barbed wire, "was in complete disagreement with the Court's decision which confirmed the frontier as it appeared on the 1907 [Annex I] map".

43. This divergence of views reappeared in the Parties' correspondence following Cambodia's request for the inscription of the site of the Temple on the UNESCO World Heritage List in 2007-2008. For instance, on 17 May 2007, the Thai Ministry of Foreign Affairs sent an aide-memoire to the Cambodian Minister for Foreign Affairs and the World Heritage Committee, objecting to "Cambodia's nomination file . . . in particular, the delineation of the indicative boundary line, the monumental zone, and the development zone" depicted on the map attached to the file which, in Thailand's view, implied "the exercise of Cambodian sovereignty in the area where [the two] countries assert different claims on boundary line". Thailand further contended that this depiction "cannot in any way prejudice the existing international boundary between Thailand and Cambodia" as it appeared in Thailand's own map series L7017.

44. On 18 and 19 July 2008, Cambodia sent letters to the President of the Security Council and the President of the General Assembly of the United Nations, stating *inter alia* that "[o]n 15 July 2008, about 50 Thai soldiers crossed into . . . Cambodia's territory about 300 meters from the Temple of Preah Vihear". Cambodia asserted that "[t]aking into account [the 1962 Judgment of the Court], the only map which legally delimits the border in the area of the Temple of Preah Vihear is the 'Annex I map' based on which the Court made its judgment".

In response, Thailand, in a letter sent on 21 July 2008 to the President of the Security Council, stated *inter alia* that "the area adjacent to the Temple of Preah Vihear . . . is part of Thailand's territory" and that "Thailand's position in this regard is fully consistent with the [1962 Judgment], which Thailand has fully and duly implemented". Thailand further stated that

> "Cambodia's territorial claim in this area is based on Cambodia's unilateral understanding of the said ICJ Judgment that a boundary line was determined by the Court in this Judgment. Thailand *contests* this unilateral understanding since the ICJ ruled in this case that it did not have jurisdiction over the question of land boundary

> and did not in any case determine the location of the boundary between Thailand and Cambodia . . . Taking into account Article 59 of the Statute of the ICJ and the fact that the issue before the ICJ in this case was limited solely to the question of sovereignty over the region of the Temple of Preah Vihear, the boundary line claimed by Cambodia has no legal status from the Judgment." (Emphasis added.)

45. In the opinion of the Court, these events and statements clearly demonstrate that at the time Cambodia filed its Request for interpretation the Parties had a dispute as to the meaning and scope of the 1962 Judgment. The Court now turns to the precise subject-matter of this dispute in order to ascertain whether it falls within the scope of the Court's jurisdiction under Article 60 of the Statute.

B. Subject-matter of the dispute before the Court

46. In its final submissions Cambodia expressed the view that

> "'[t]he Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia' (first paragraph of the operative clause), which is the legal consequence of the fact that the Temple is situated on the Cambodian side of the frontier, as that frontier was recognized by the Court in its Judgment. Therefore, the obligation incumbent upon Thailand to 'withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory' (second paragraph of the operative clause) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the area of the Temple and its vicinity by the line of the Annex I map, on which the Judgment of the Court is based."

47. In its final submissions, Thailand requested the Court to adjudge and declare that

"— the Request of the Kingdom of Cambodia asking the Court to interpret the Judgment of 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand)* under Article 60 of the Statute of the Court does not satisfy the conditions laid down in that Article and that, consequently, the Court has no jurisdiction to respond to that Request and/or that the Request is inadmissible;

— in the alternative, that there are no grounds to grant Cambodia's Request to construe the Judgment and that there is no reason to interpret the Judgment of 1962; and

— to formally declare that the 1962 Judgment does not determine with binding force the boundary line between the Kingdom of Thailand and the Kingdom of Cambodia, nor does it fix the limit of the vicinity of the Temple".

*

48. The Court observes that both Parties accept that there is a disagreement between them as to whether or not the Court, in the 1962 Judgment, decided with binding force that the Annex I map line represents the frontier between them in the area of the Temple. The Parties' divergence of views on this issue is further reflected in their positions expressed in the events and statements analysed above (see paragraphs 41-44) and clarified in the course of the present proceedings. Contrary to Thailand's assertions concerning the Court's lack of jurisdiction in this regard, the Court reiterates that "a difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of Article 60 of the Statute" (see paragraph 34 above).

49. Further, the Court considers that the Parties' positions, expressed during the period following the 1962 Judgment as well as that following Cambodia's request to have the site of the Temple inscribed on the World Heritage List (see paragraphs 41-44 above) and in the course of the present proceedings, also reveal their divergent views as to the meaning and scope of the phrase "vicinity on Cambodian territory" in the second operative paragraph of the 1962 Judgment and the relationship between that paragraph and the Court's finding, in the first operative paragraph, that the Temple is situated in "territory under the sovereignty of Cambodia". Cambodia maintains that the Annex I map line necessarily determines the meaning and scope of the operative clause since the Court's recognition of that line as representing the frontier between the Parties in the Temple area constituted the "essential" reason underlying its conclusions therein. By contrast, Thailand asserts that the Court's reasoning concerning the Annex I map line cannot be seen as "essential" and that it is therefore neither necessary nor possible to resort to that reasoning in order to elucidate the meaning and scope of the operative clause of the 1962 Judgment. Rather, Thailand asserts that the terms "territory" and "vicinity" were not explicitly defined by the Court and should be interpreted as strictly confined to the grounds on which the Temple stands and its immediate surroundings — the "Temple area", as defined by the 1962 Resolution of the Thai Council of Ministers.

50. Finally, the Court turns to the contention that the Parties disagree about the nature of Thailand's obligation to withdraw from "the Temple [and] its vicinity on Cambodian territory", deriving from the second paragraph of the operative clause of the 1962 Judgment. The correspondence of the Parties surrounding the inscription of the site of the Temple on the World Heritage List, and the armed clashes that took place in the border area close to the Temple (see paragraph 28 above), reveal that the Parties disagreed, prior to the filing of Cambodia's Request for interpretation, about where Thai personnel could lawfully be located in the light of the 1962 Judgment. That difference of views has been confirmed by the written and oral arguments of the Parties in the present proceedings.

51. According to Cambodia, Thailand's obligation to withdraw relates to an area which the Judgment had placed under Cambodia's sovereignty and must consequently be understood as having a continuing character, in line with the general principle of respect for territorial sovereignty and integrity of States. Thus, in its final submissions, Cambodia claims that Thailand's obligation to withdraw "is a particular consequence of the general and continuing obligation to respect the

integrity of the territory of Cambodia" (see paragraph 13 above). Thailand accepts that it has a "general and continuing obligation" under international law to respect the sovereignty and territorial integrity of Cambodia. However, it rejects Cambodia's assertion that "the obligation to withdraw as specified in the [1962] Judgment has the same character". Rather, Thailand maintains that this latter obligation applied to its relations with Cambodia only "in respect of one place at one time" and that it fully discharged that obligation once it withdrew from the vicinity of the Temple in accordance with the 1962 Resolution of the Thai Council of Ministers.

52. In the light of the above considerations, the Court concludes that the dispute between the Parties as to the meaning and scope of the 1962 Judgment relates to three specific aspects thereof. First, there is a dispute over whether the 1962 Judgment did or did not decide with binding force that the line depicted on the Annex I map constitutes the frontier between the Parties in the area of the Temple. Secondly, there is a closely related dispute concerning the meaning and scope of the phrase "vicinity on Cambodian territory", referred to in the second operative paragraph of the 1962 Judgment, a paragraph which the Court stated was a consequence of the finding, in the first operative paragraph, that the Temple is situated in "territory under the sovereignty of Cambodia". Lastly, there is a dispute regarding the nature of Thailand's obligation to withdraw imposed by the second paragraph of the operative part.

2. Admissibility of Cambodia's Request for interpretation

53. Thailand maintains that Cambodia's Request for interpretation is inadmissible since its real purpose is not to obtain the Court's interpretation of the 1962 Judgment but, rather, to obtain the Court's ruling on the Parties' delimitation dispute in the area of the Temple by having the Court recognize with binding force that the Annex I map line constitutes their common frontier in that area. Thailand recalls that the Court explicitly refused to pronounce on the Parties' common frontier in the Temple area in 1962 and asserts that it is therefore barred from determining this question now, through the interpretation of the 1962 Judgment.

54. Cambodia insists that it is not requesting the Court to delimit any boundary between the Parties on the basis of the Annex I map. Rather, it is "merely asking the Court to explain the findings that it reached in its 1962 Judgment . . . in particular as regards the relationship between those findings and the meaning and scope of the *dispositif* of the Judgment".

*

55. The Court recalls that the process of interpretation is premised upon the "primacy of the principle of *res judicata*" which "must be maintained" (*Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment, I.C.J. Reports 1999 (I)*, pp. 36-37, para. 12). Accordingly, as the Court has previously held:

> "[t]he real purpose of the request must be to obtain an interpretation of the judgment. This signifies that its object must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force, and not to obtain an answer to questions not so decided. Any other construction of Article 60 of the Statute would nullify the provision of the article that the judgment is final and without appeal." (*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia* v. *Peru), Judgment, I.C.J. Reports 1950*, p. 402; *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment, I.C.J. Reports 1999 (I)*, pp. 36-37, para. 12.)

56. Having regard to the Parties' divergent views over the meaning and scope of the 1962 Judgment, identified above (see paragraph 52), the Court considers that there is a need for the interpretation of the second operative paragraph of the 1962 Judgment and of the legal effect of what the Court said regarding the Annex I map line. Within these limits, Cambodia's Request is admissible. Nevertheless, in line with the Court's previous observation on this matter, in as far as Cambodia's Request for interpretation "may go further, and seek 'to obtain an answer to questions not [decided with binding force]', or to achieve a revision of the Judgment, no effect can be given to it" (*Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985*, p. 223, para. 56).

3. Conclusion

57. In the light of the foregoing, the Court concludes that a dispute exists between the Parties as to the meaning and scope of the 1962 Judgment pursuant to Article 60 of the Statute. Accordingly, the Court has jurisdiction to entertain Cambodia's Request for interpretation of the 1962 Judgment, and the Request is admissible.

III. THE INTERPRETATION OF THE 1962 JUDGMENT

58. The Court now turns to the interpretation of the 1962 Judgment.

1. Positions of the Parties

59. Cambodia maintains that the first and second operative paragraphs of the Judgment are "symbiotically linked": in the first paragraph, the Court held that the Temple was "situated in territory under the sovereignty of Cambodia", while in the second paragraph it found, in

consequence, that Thailand was required to withdraw the personnel which it had stationed "at the Temple, or in its vicinity on Cambodian territory". According to Cambodia, the requirement to withdraw, in the second operative paragraph, can only be understood as a requirement that Thailand should withdraw the personnel from the Temple, and the Cambodian territory in its vicinity, to Thai territory and that the Cambodian territory referred to in the second operative paragraph coincides with the territory identified as being under Cambodian sovereignty in the first operative paragraph. In Cambodia's view, the obligation to withdraw has a continuing character, in the sense that the requirement that Thailand withdraw its forces implied an obligation not to return them at any future time to the Cambodian territory identified in the Judgment.

60. For Cambodia, these findings in the operative part are the consequence of the Court's determination, in the reasoning of the 1962 Judgment, that the Annex I map line constituted the frontier between the Parties in the region of the Temple (see paragraph 20 above). Cambodia maintains that this part of the reasoning stated a condition essential for the findings contained in the operative part of the 1962 Judgment and thus has binding force. Accordingly, the area of territory to which the Court referred, in the first operative paragraph, and from which, in the second operative paragraph, it required Thailand to withdraw, extended beyond the confines of the Temple itself and included all of the land in the disputed area up to the Annex I map line. Cambodia considers that this area encompasses the whole promontory of Preah Vihear and the hill of Phnom Trap as far north as the Annex I map line. Cambodia rejects the Thai Council of Ministers' line (see paragraph 22 above) as a unilateral action which ran counter to the reasoning of the 1962 Judgment. According to Cambodia, the practice of the Parties since 1962 has no relevance for the interpretation of the 1962 Judgment, although it denies that its conduct amounted to acceptance of Thailand's interpretation of the 1962 Judgment. Cambodia maintains that the Memorandum of Understanding deals only with the demarcation of the frontier, thereby implying that delimitation of the frontier has already occurred.

61. Thailand maintains that the dispute which was before the Court in 1962 concerned territorial sovereignty, not delimitation of a frontier, and that the 1962 Judgment decided only that the Temple fell under the sovereignty of Cambodia. The Annex I map was significant only as evidence of whether the Temple lay in Cambodian territory and did not serve the purpose of defining the boundary, a task which had to be carried out by agreement between the Parties. In Thailand's view, it would have been contrary to the principle *non ultra petita* for the Court to have ruled upon the boundary line, since Cambodia had not included any request for a ruling on the map in its original submissions and the Court had declined to entertain the new submissions which Cambodia had advanced at the end of the oral proceedings.

62. Thailand also argues that more than one version of the Annex I map is in existence and that the different versions contain important discrepancies. In addition, Thailand claims that there are important deficiencies in the Annex I map, including topographical and positioning errors, that it is imprecise and that it departs in significant respects from the watershed line stipulated in the 1904 Treaty. According to Thailand, it would be impossible to transpose the Annex I map line onto a modern map without more information.

63. In any case, Thailand contends, the Annex I map was only one of the reasons on which the Judgment was based, since the Court also relied upon entirely distinct grounds, in particular, the visit to the Temple in 1930 by Prince Damrong of Thailand, which the Court described as "significant" and considered to be recognition by Thailand of the sovereignty of Cambodia (then a protectorate of France) over the Temple (*I.C.J. Reports 1962*, pp. 30-31). Thailand concludes that the 1962 Judgment decided only that Cambodia had sovereignty over the small parcel of land on which the ruins of the Temple are located, the area which was later depicted on the map attached to the 1962 Resolution of the Thai Council of Ministers. According to Thailand, the Judgment did not deal with sovereignty over the remainder of the Preah Vihear promontory or the hill of Phnom Trap.

64. Thailand denies that the obligation to withdraw in the second operative paragraph of the 1962 Judgment has a continuing character, in the sense suggested by Cambodia. Thailand argues that it discharged its obligation when it withdrew its personnel behind the Council of Ministers' line and that Cambodia accepted that line when Prince Sihanouk visited the Temple in 1963 (see paragraph 23 above). Thereafter, the obligation not to enter Cambodian territory was derived not from the 1962 Judgment but from the duty, arising under general international law, of one State to respect the territorial integrity of another.

65. Thailand concludes that the delimitation of the frontier in the relevant area remains to be accomplished and that the Memorandum of Understanding provides the mechanism for the Parties to undertake that task.

2. The role of the Court under Article 60 of the Statute

66. The Court begins by recalling that its role under Article 60 of the Statute is to clarify the meaning and scope of what the Court decided in the judgment which it is requested to interpret (*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia* v. *Peru), I.C.J. Reports 1950*, p. 402). Accordingly, the Court must keep strictly within the limits of the original judgment and cannot question matters that were settled therein with binding force, nor can it provide answers to questions the Court did not decide in the original judgment.

67. While the existence of a dispute between the parties regarding the original judgment is a prerequisite for interpretation under Article 60 of the Statute, the way in which that dispute is formulated by one or both of the parties is not binding on the Court. As the Permanent Court of International Justice explained:

> "the Court does not consider itself as bound simply to reply 'yes' or 'no' to the propositions formulated in the submissions of [the Applicant]. It adopts this attitude because, for the purpose of the interpretation of a judgment, it cannot be bound by formulae chosen by the Parties concerned, but must be able to take an unhampered decision." (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 15-16.)

68. In determining the meaning and scope of the operative clause of the original Judgment, the Court, in accordance with its practice, will have regard to the reasoning of that Judgment to the extent that it sheds light on the proper interpretation of the operative clause.

69. The pleadings and the record of the oral proceedings in 1962 are also relevant to the interpretation of the Judgment, as they show what evidence was, or was not, before the Court and how the issues before it were formulated by each Party.

70. Thailand argues that the principle of *non ultra petita* precluded the Court from going beyond the submissions of the Parties and that the 1962 Judgment must be interpreted accordingly.

71. The principle of *non ultra petita* is well established in the jurisprudence of the Court (*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia/Peru), Judgment, I.C.J. Reports 1950*, p. 402; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002*, pp. 18-19, para. 43) and is one reason why the claims contained in the final submissions of the Parties in the original case are of relevance in interpreting the 1962 Judgment. Nevertheless, that principle cannot justify an interpretation which runs counter to the terms of the 1962 Judgment. The Court in 1962 necessarily made an assessment of the scope of the *petitum* before it; Article 60 of the Statute does not give the Court the power today to substitute a different assessment for that made at the time of the Judgment.

72. Cambodia suggests that the headnote to the 1962 Judgment demonstrated that the Judgment determined the course of the frontier in the relevant area.

73. Under Article 95, paragraph 1, of the Rules of Court (Article 74, paragraph 1, of the Rules of Court of 1946 applicable in 1962), the headnote is not one of the elements of the Judgment and it does not form part thereof. Moreover, the purpose of the headnote is only to give the reader a general indication of the points examined in a judgment; it does not constitute an authoritative summary of what the Court has actually decided. The Court does not consider that the headnote to the 1962 Judgment assists in resolving the questions of interpretation raised in the present proceedings.

74. Thailand makes extensive reference to the conduct of the Parties between 15 June 1962, when the Judgment was delivered, and 2007-2008, when the present dispute may be said to have crystallized. The principal purpose for which Thailand refers to that conduct is in connection with its argument that there is no dispute, within the meaning of Article 60, between the Parties, an issue to which that conduct is of course relevant (see paragraphs 38-45 above). However, Thailand suggests that this conduct is also relevant to the interpretation of the Judgment.

75. A judgment of the Court cannot be equated to a treaty, an instrument which derives its binding force and content from the consent of the contracting States and the interpretation of which may be affected by the subsequent conduct of those States, as provided by the principle stated in

Article 31, paragraph 3 *(b)*, of the 1969 Vienna Convention on the Law of Treaties. A judgment of the Court derives its binding force from the Statute of the Court and the interpretation of a judgment is a matter of ascertaining what the Court decided, not what the parties subsequently believed it had decided. The meaning and scope of a judgment of the Court cannot, therefore, be affected by conduct of the parties occurring after that judgment has been given.

More generally, as the Permanent Court of International Justice made clear,

> "the Court, when giving an interpretation, refrains from any examination of facts other than those which it has considered in the judgment under interpretation, and consequently all facts subsequent to that judgment" (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 21).

3. The principal features of the 1962 Judgment

76. Three features of the 1962 Judgment stand out when that Judgment is read in the light of the considerations set out above. First, the Court considered that it was dealing with a dispute regarding territorial sovereignty over the area in which the Temple was located and that it was not engaged in delimiting the frontier. Thus, the Court, referring back to its 1961 Judgment on Preliminary Objections (*Temple of Preah Vihear (Cambodia* v. *Thailand), I.C.J. Reports 1961*, p. 22, quoted in paragraph 17 above), defined the matter before it in the following terms:

> "Accordingly, the subject of the dispute submitted to the Court is confined to a difference of view about sovereignty over the region of the Temple of Preah Vihear. To decide this question of territorial sovereignty, the Court must have regard to the frontier line between the two States in this sector. Maps have been submitted to it and various considerations have been advanced in this connection. The Court will have regard to each of these only to such extent as it may find in them reasons for the decision it has to give in order to settle the sole dispute submitted to it, the subject of which has just been stated." (*I.C.J. Reports 1962*, p. 14.)

This characterization of the dispute as one regarding sovereignty over a defined area of territory, rather than boundary delimitation, is also evident in the Court's decision that:

> "Cambodia's first and second Submissions, calling for pronouncements on the legal status of the Annex I map and on the frontier line in the disputed region, can be entertained only to the extent that they give expression to grounds, and not as claims to be dealt with in the operative provisions of the Judgment" (*ibid.*, p. 36).

No mention was made of either the Annex I map or the location of the frontier in the operative part. No map was attached to the Judgment, nor did the Court make any comment on the difficulties of transposition of the Annex I map line, a matter which had been discussed by the Parties during the 1962 proceedings and which would have been of obvious importance in a judgment on delimitation of the frontier.

77. Secondly, however, the Annex I map played a central role in the reasoning of the Court. After reviewing the history of the map and its relationship with the 1904 Treaty, the Court stated:

> "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." (*I.C.J. Reports 1962*, p. 22.)

It then considered the conduct of the Parties with regard to the map and other practice, including the visit of Prince Damrong to the Temple in 1930, when he was received by the French authorities. Although the Court considered that the circumstances of Prince Damrong's visit were such as to amount to "a tacit recognition by Siam of the sovereignty of Cambodia (under French Protectorate) over Preah Vihear" (*ibid*., p. 31), that incident, together with Thailand's other conduct subsequent to 1908-1909, was treated primarily as confirmation of the earlier acceptance by Thailand of the Annex I map line. The Court stated:

> "Even if there were any doubt as to Siam's acceptance of the map in 1908, and hence of the frontier indicated thereon, the Court would consider, in the light of subsequent events, that Thailand is now precluded by her conduct from asserting that she did not accept it . . .
>
> The Court however considers that Thailand in 1908-1909 did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognized the line on that map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory. The Court considers further that, looked at as a whole, Thailand's subsequent conduct confirms and bears out her original acceptance, and that Thailand's acts on the ground do not suffice to negative this. Both Parties, by their conduct, recognized the line and thereby in effect agreed to regard it as being the frontier line." (*Ibid.*, pp. 32-33.)

The Court went on to state that "the acceptance of the Annex I map by the Parties caused the map to enter the treaty settlement and to become an integral part of it" (*ibid.*, p. 33) and concluded that it "therefore, feels bound, as a matter of treaty interpretation, to pronounce in favour of the line as mapped in the disputed area" (*ibid.*, p. 35).

78. Thirdly, in defining the dispute before it (in the passage quoted in paragraph 76 above), the Court made clear that it was concerned only with sovereignty in the "region of the Temple of Preah Vihear".

That this region comprised only a small area is apparent from the 1962 proceedings. Thus, counsel for Cambodia stated:

> "As I shall have occasion to remind the Court more than once, the area in dispute in these proceedings is very small indeed. A variation of half a mile, or even less, would place the Temple wholly on one side or the other of the frontier." (*I.C.J. Pleadings, Temple of Preah Vihear*, Vol. II, p. 145.)

Later in the hearings, counsel for Cambodia observed that "the Court and counsel will have spent pretty much the entire month of March discussing an area of land hardly a kilometre in breadth" (*ibid.*, Vol. II, p. 464) and subsequently referred to "a frontier area of less than two or three square kilometres" (*ibid.*, Vol. II, p. 473). These statements were not contradicted during the 1962 proceedings.

The Judgment shows that the Court considered that the disputed area was a small one. Immediately after the passage in which it defined the dispute as one regarding sovereignty over the region of the Temple, the Court described that region in the following terms:

> "The Temple of Preah Vihear . . . stands on a promontory of the same name, belonging to the eastern sector of the Dangrek range of mountains which, in a general way, constitutes the boundary between the two countries in this region — Cambodia to the south and Thailand to the north. Considerable portions of this range consist of a high cliff-like escarpment rising abruptly above the Cambodian plain. This is the situation at Preah Vihear itself, where the main Temple buildings stand in the apex of a triangular piece of high ground jutting out into the plain." (*I.C.J. Reports 1962*, p. 15.)

While the Annex I map deals with a part of the frontier region more than 100 km in extent, the Court made clear that it had to pronounce upon it only "in the disputed area" (*ibid.*, p. 35).

4. The operative part of the 1962 Judgment

79. In the light of these elements in the reasoning of the 1962 Judgment, the Court will now turn to the operative part of that Judgment, the text of which is reproduced in paragraph 21 above. The findings set out in the second and third paragraphs are expressly stated to be consequences following from the decision in the first operative paragraph. It follows that the three operative paragraphs have to be considered as a whole; the task of ascertaining their meaning and scope cannot be reduced to an exercise of construing individual words or phrases in isolation.

A. The first operative paragraph

80. The Court considers that the meaning of the first operative paragraph is clear. In that paragraph, the Court ruled on Cambodia's principal claim by finding that the Temple was situated in territory under the sovereignty of Cambodia. It will, however, be necessary to return to the scope of this paragraph once the Court has examined the second and third operative paragraphs.

B. The second operative paragraph

81. The principal dispute between the Parties concerns the second operative paragraph. In that paragraph, the Court required, as a consequence of the decision in the first operative paragraph, the withdrawal of Thai military or police forces, or other guards or keepers "stationed by her at the Temple, or in its vicinity on Cambodian territory". The second operative paragraph did not indicate expressly the Cambodian territory from which Thailand was required to withdraw its personnel, nor did it state to where those personnel had to be withdrawn. The only context in which the paragraph refers to an area of territory — "the Temple, or its vicinity on Cambodian territory" — was in indicating which of its personnel Thailand was under an obligation to withdraw, namely those whom it had stationed in that area.

82. During the hearings in the present proceedings, a Member of the Court put the following question to the Parties:

> "What is the precise territorial extent that each of the Parties considers as the 'vicinity' of the Temple of Preah Vihear 'on Cambodian territory' referred to in the second paragraph of the *dispositif* of the Court's Judgment of 1962?"

and requested that each Party provide a set of geographical co-ordinates or refer to one of the maps produced in the 1962 proceedings.

83. In its response, Cambodia maintained that "the Court's use of the term 'vicinity' can best be appreciated in the light of the overlap between the Annex I map line and the watershed line proposed by the Thai experts in the original proceedings". As indicated on the map annexed to Cambodia's response, the area between these two lines includes the entirety of the promontory of Preah Vihear and the hill of Phnom Trap. The Annex I map line is shown as the northern limit of this area. The western and eastern limits of the area identified by Cambodia consist of the points where the Annex I map line and the watershed line advocated by Thailand intersect. Cambodia accepts Thailand's estimate that this area measures approximately 4.6 square kilometres.

84. Thailand responded to the question by stating that "[i]n 1962, the 'vicinity' of the Temple was identified by the Council of Ministers for the purposes of the withdrawal of the Thai troops who were stationed there". The 1962 Resolution of the Thai Council of Ministers was based upon a report, which outlined two possible methods for determining the extent of the "vicinity [of the Temple] on Cambodian territory". The Resolution chose the second of these methods, which involved confining the Temple within an area bounded, to the south and east, by the escarpment and, to the west, north and north-east, by a line close to the Temple. That line (referred to in paragraph 22, above, as the "Thai Council of Ministers' line") consisted of three segments. The first segment began at the south-western part of the escarpment and ran north in a straight line, parallel to, and a few metres to the west of, the Temple buildings, until it reached a point a few metres north of the most northern part of the Temple buildings. The second segment ran east from

this point in a straight line until it reached a point just north of the eastern extreme of this part of the Temple. The third segment ran south-east from that point, broadly following the course of a feature known as the Broken Stairway (which was described in the report as falling within the vicinity of the Temple) until it reached the eastern escarpment. The report estimated the area enclosed within these limits as approximately 0.25 square kilometres. Following the adoption of the Resolution, Thailand erected a barbed wire fence along the Council of Ministers' line and put up signs stating that "the vicinity of the Temple of Phra Viharn does not extend beyond this limit".

85. Since the second operative paragraph of the 1962 Judgment required Thailand to withdraw "any [of its] military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory", the Court considers that it must begin by examining the evidence that was before the Court in 1962 regarding the locations at which such Thai personnel were stationed.

86. The only such evidence was given by Professor Ackermann, who was called by Thailand as an expert and witness and who had visited the Temple for several days in July 1961 in the course of preparing a report to be submitted in the proceedings. Under cross-examination by counsel for Cambodia, Professor Ackermann testified that, during that visit, the only people he had seen at the Preah Vihear promontory were a detachment of Thai frontier police and one Temple guard. He stated that the police had been stationed in blockhouses at a camp located to the north-east of the Temple, while the guard had lived in a separate house a short distance to the west of the police camp (*I.C.J. Pleadings, Temple of Preah Vihear*, Vol. II, pp. 401-402)[2].

87. The location of the police station was subsequently confirmed by counsel for Thailand, according to whom the police camp was located south of the Annex I map line but north of a line which Cambodia maintained was the watershed line (*ibid.*, Vol. II, p. 559). During the 1962 proceedings, Cambodia had advanced an alternative argument that if, contrary to its primary position, the boundary was required to follow the watershed rather than the Annex I map line, then it was this Cambodian line which represented the watershed and not the watershed line advocated by Thailand (to which reference has already been made). In the event, the Court found that it was unnecessary to consider the location of the watershed in the area of the Temple (*Judgment, I.C.J. Reports 1962*, p. 35). Nevertheless, the reference to that line in the speech by counsel for Thailand is significant, because, as Thailand has stated in the current proceedings, the Thai Council of Ministers' line follows a course very close to that of the watershed line advanced by Cambodia in 1962. It is apparent, therefore, that the Thai police detachment was stationed at a location north of the line subsequently drawn by the 1962 Resolution of the Thai Council of Ministers and thus outside what Thailand considers to be the "vicinity [of the Temple] on Cambodian territory".

[2]Professor Ackermann indicated these locations on a map shown to the Court. A copy of the map, entitled "Annex 85 *(d)*", is enclosed at the end of Volume II of the 1962 Pleadings.

88. When the Court required Thailand to withdraw military or police forces, guards or keepers which it had stationed in the Temple, or in the vicinity of the Temple on Cambodian territory, it must have intended that obligation to apply to the police detachment referred to by Professor Ackermann, since, except for the solitary Temple guard (who seems to have been living near the police camp), there was no evidence of the presence of any other Thai personnel anywhere near the Temple. Accordingly, the term "vicinity on Cambodian territory" has to be construed as extending at least to the area where the police detachment was stationed at the time of the original proceedings. Since that area lies north of the Thai Council of Ministers' line, that line cannot represent the correct interpretation of the territorial scope of the second operative paragraph as Thailand contends.

89. That conclusion is confirmed by a number of other factors. As the Court emphasized in its description of the area around the Temple (*Judgment, I.C.J. Reports 1962*, p. 15), the Temple is located on an easily identifiable geographical feature. This feature is a promontory. In the east, south and south-west, the promontory descends by a steep escarpment to the Cambodian plain. In the west and north-west, the ground drops into what Professor Ackermann described in his evidence as a "valley . . . between the Pnom Trap mountain and the Phra Viharn mountain" (*I.C.J. Pleadings, Temple of Preah Vihear*, Vol. II, p. 385). It is through this valley that access to the Temple from the Cambodian plain can most easily be obtained. The hill of Phnom Trap rises from the western side of this valley. A natural understanding of the concept of the "vicinity" of the Temple would extend to the entirety of the Preah Vihear promontory.

90. Furthermore, the Court's reasoning regarding the significance of the Annex I map (considered in paragraph 77 above) shows that the Court considered that Cambodia's territory extended in the north as far as, but no farther than, the Annex I map line. Although Professor Ackermann did not give any estimate of the distances between the various places on the promontory to which he referred in his evidence, it is clear that, for example, the police post which he identified was only a very short distance to the south of the nearest point on the Annex I map line.

91. The Court was therefore dealing with a small area with clearly defined geographical limits to the east, south, west and north-west, and bounded in the north by what the Court had stated in its reasoning was the limit of Cambodian territory. In these circumstances, the Court considers that the territorial scope of the second operative paragraph must be construed as extending to the whole of the promontory, rather than being confined to the part of it chosen by the Thai Council of Ministers in 1962.

92. Turning to the position of Cambodia, the Court is also unable to accept its interpretation of "vicinity". In its answer to the question put by a Member of the Court (see paragraph 83 above), Cambodia maintained that the vicinity includes not only the promontory of Preah Vihear but also the hill of Phnom Trap. There are several reasons why the Court considers that this is not the correct interpretation of the second operative paragraph.

93. First, Phnom Trap and the promontory of Preah Vihear are distinct geographical features which are clearly shown as separate on the maps used in the 1962 proceedings and, in particular, on the Annex I map, which was the only map to which the Court made more than passing reference in the Judgment.

94. Secondly, there are certain indications in the record of the 1962 proceedings that Cambodia did not treat Phnom Trap as falling within the "region of the Temple" or "Temple area" (the terms used by the Court in defining the scope of the dispute before it). Thus, a former Cambodian provincial governor, Mr. Suon Bonn, who was called as a witness by Cambodia, testified that Preah Vihear had formed part of his province (*I.C.J. Pleadings, Temple of Preah Vihear*, Vol. II, p. 333), but that he thought that Phnom Trap belonged to a neighbouring province (*ibid.*, p. 434). Moreover, as explained in paragraph 78 above, in referring to the area with which the Court was concerned, counsel for Cambodia spoke of its dimensions in terms which would be too small to encompass, at the same time, Phnom Trap as well as the promontory of Preah Vihear (*ibid.*, pp. 464 and 473). He also stated that Phnom Trap was not part of the "crucial area" with which the Court was concerned (*ibid.*, p. 465).

95. Thirdly, there was no evidence before the Court of any Thai military or police presence on Phnom Trap in 1962 and no suggestion that Phnom Trap was relevant to Cambodia's claim that Thailand should be required to withdraw its forces.

96. Lastly, Cambodia's interpretation depends upon identifying the location of the points at which the Annex I map line intersects with the watershed line advocated by Thailand. Yet, in the 1962 Judgment, the Court made clear that it was not concerned with the location of the watershed and did not decide where the watershed lay (*I.C.J. Reports 1962*, p. 35). It is, therefore, implausible to suggest that the Court had the watershed line in mind when it used the term "vicinity".

97. While no one of these considerations is conclusive in itself, taken together they lead the Court to conclude that, in 1962, the Court did not have this wider area in mind and, accordingly, that it did not intend the term "vicinity [of the Temple] on Cambodian territory" to be understood as applicable to territory outside the promontory of Preah Vihear. That is not to say that the 1962 Judgment treated Phnom Trap as part of Thailand; the Court did not address the issue of sovereignty over Phnom Trap, or any other area beyond the limits of the promontory of Preah Vihear.

98. From the reasoning in the 1962 Judgment, seen in the light of the pleadings in the original proceedings, it appears that the limits of the promontory of Preah Vihear, to the south of the Annex I map line, consist of natural features. To the east, south and south-west, the

promontory drops in a steep escarpment to the Cambodian plain. The Parties were in agreement in 1962 that this escarpment, and the land at its foot, were under Cambodian sovereignty in any event. To the west and north-west, the land drops in a slope, less steep than the escarpment but nonetheless pronounced, into the valley which separates Preah Vihear from the neighbouring hill of Phnom Trap, a valley which itself drops away in the south to the Cambodian plain (see paragraph 89 above). For the reasons already given (see paragraphs 92-97 above), the Court considers that Phnom Trap lay outside the disputed area and the 1962 Judgment did not address the question whether it was located in Thai or Cambodian territory. Accordingly, the Court considers that the promontory of Preah Vihear ends at the foot of the hill of Phnom Trap, that is to say: where the ground begins to rise from the valley.

In the north, the limit of the promontory is the Annex I map line, from a point to the north-east of the Temple where that line abuts the escarpment to a point in the north-west where the ground begins to rise from the valley, at the foot of the hill of Phnom Trap.

The Court considers that the second operative paragraph of the 1962 Judgment required Thailand to withdraw from the whole territory of the promontory, thus defined, to Thai territory any Thai personnel stationed on that promontory.

99. The Court notes Thailand's argument about the difficulty of transposing the Annex I map and thus of ascertaining the precise location on the ground of the Annex I map line in the area described in the preceding paragraph. The 1962 Judgment did not, however, address that question and the Court cannot now, in the exercise of its jurisdiction under Article 60 to interpret the 1962 Judgment, deal with a matter which was not addressed by that Judgment. Nevertheless, the parties to a case before the Court have an obligation to implement the judgment of the Court in good faith. It is of the essence of that obligation that it does not permit either party to impose a unilateral solution.

C. The relationship between the second operative paragraph and the rest of the operative part

100. The Court has already stated (see paragraph 79 above) that the three paragraphs of the operative part of the 1962 Judgment have to be considered as a whole. Having determined the meaning and scope of the second paragraph, the Court now turns to the relationship between that paragraph and the other two paragraphs of the operative part. While there is no dispute between the Parties regarding the third operative paragraph, it is nonetheless relevant to the extent that it sheds light on the meaning and scope of the rest of the operative part.

101. The scope of the operative part of a judgment of the Court is necessarily bound up with the scope of the dispute before the Court. The 1962 Judgment defined the dispute which was then before the Court as one concerning "sovereignty over the *region* of the Temple of Preah Vihear" (*I.C.J. Reports 1962*, p. 14; emphasis added). It was entirely consistent with this view of the dispute that the Court, having decided in the first operative paragraph of the Judgment that the Temple was located in territory under the sovereignty of Cambodia, determined, as a consequence of that finding, that Thailand was under an obligation to withdraw its forces and other personnel stationed "at the Temple, or in its *vicinity* on Cambodian territory" and to restore objects removed from "the Temple or *the Temple area*" (emphasis added). The second and third operative

paragraphs each, therefore, imposed obligations with respect to an area of territory which extended beyond the Temple itself. The second operative paragraph expressly described this area as Cambodian territory. The third operative paragraph did not do so but the Court considers that such a description was implicit; an obligation to restore artefacts taken from the "area of the Temple" would be a logical consequence of a finding of sovereignty only to the extent that the area in question was covered by that finding.

102. The area with which the Court was concerned in the original proceedings, as has already been explained (see paragraph 78 above), is small and bounded, except to the north, by readily identifiable geographical features. In these circumstances, the Court considers that the terms "vicinity [of the Temple] on Cambodian territory", in the second paragraph, and "area of the Temple", in the third paragraph, refer to the same small parcel of territory. The obligations which the Court imposed in respect of that parcel of territory were stated to be a consequence of the finding in the first paragraph. In view of the characteristics of the dispute which confronted the Court in 1962 — in particular, the nature of the submissions of each Party — the obligations imposed by the second and third paragraphs would be a logical consequence of the finding of sovereignty in the first operative paragraph only if the territory referred to in the first paragraph corresponded to the territory referred to in the second and third paragraphs.

103. Accordingly, the Court concludes that the territorial scope of the three operative paragraphs is the same: the finding in the first paragraph that "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia" must be taken as referring, like the second and third paragraphs, to the promontory of Preah Vihear, within the limits described in paragraph 98 of the present Judgment.

104. In these circumstances, the Court does not consider it necessary further to address the question whether the 1962 Judgment determined with binding force the boundary line between Cambodia and Thailand. In a dispute concerned only with sovereignty over the promontory of Preah Vihear, the Court concluded that that promontory, extending in the north to the Annex I map line but not beyond it, was under Cambodian sovereignty. That was the issue which was in dispute in 1962 and which the Court considers to be at the heart of the present dispute over interpretation of the 1962 Judgment.

105. Nor is it necessary for the Court to address the question whether the obligation imposed on Thailand by the second operative paragraph was a continuing obligation, in the sense maintained by Cambodia. In the present proceedings, Thailand has accepted that it has a general and continuing legal obligation to respect the integrity of Cambodian territory, which applies to any disputed territory found by the Court to be under Cambodian sovereignty. Once a dispute regarding territorial sovereignty has been resolved and uncertainty removed, each party must fulfil in good faith the obligation which all States have to respect the territorial integrity of all other States. Likewise, the Parties have a duty to settle any dispute between them by peaceful means.

106. These obligations, which derive from the principles of the Charter of the United Nations, are of particular importance in the present context. As is clear from the record of both the present proceedings and those of 1959-1962, the Temple of Preah Vihear is a site of religious and cultural significance for the peoples of the region and is now listed by UNESCO as a world heritage site (see paragraphs 25-27 above). In this respect, the Court recalls that under Article 6 of the World Heritage Convention, to which both States are parties, Cambodia and Thailand must co-operate between themselves and with the international community in the protection of the site as a world heritage. In addition, each State is under an obligation not to "take any deliberate measures which might damage directly or indirectly" such heritage. In the context of these obligations, the Court wishes to emphasize the importance of ensuring access to the Temple from the Cambodian plain.

5. Conclusions

107. The Court therefore concludes that the first operative paragraph of the 1962 Judgment determined that Cambodia had sovereignty over the whole territory of the promontory of Preah Vihear, as defined in paragraph 98 of the present Judgment, and that, in consequence, the second operative paragraph required Thailand to withdraw from that territory the Thai military or police forces, or other guards or keepers, that were stationed there.

*

* *

108. For these reasons,

THE COURT,

(1) Unanimously,

Finds that it has jurisdiction under Article 60 of the Statute to entertain the Request for interpretation of the 1962 Judgment presented by Cambodia, and that this Request is admissible;

(2) Unanimously,

Declares, by way of interpretation, that the Judgment of 15 June 1962 decided that Cambodia had sovereignty over the whole territory of the promontory of Preah Vihear, as defined in paragraph 98 of the present Judgment, and that, in consequence, Thailand was under an obligation to withdraw from that territory the Thai military or police forces, or other guards or keepers, that were stationed there.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this eleventh day of November, two thousand and thirteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand, respectively.

(Signed) Peter TOMKA,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judges OWADA, BENNOUNA and GAJA append a joint declaration to the Judgment of the Court; Judge CANÇADO TRINDADE appends a separate opinion to the Judgment of the Court; Judges *ad hoc* GUILLAUME and COT append declarations to the Judgment of the Court.

(Initialled) P. T.

(Initialled) Ph. C.

JOINT DECLARATION OF JUDGES OWADA, BENNOUNA AND GAJA

1. The Court's jurisdiction to interpret a judgment under Article 60 of the Statute only extends to matters that were decided by the Court with binding force. These matters are generally included in the *dispositif*. The text of the Judgment recalls that, according to the Court's jurisprudence, a request for interpretation "cannot concern the reasons for the judgment except in so far as these are inseparable from the operative clause" (Judgment, see paragraph 34).

Reasons are "inseparable" when the operative part of the Judgment is not self-standing and contains an express or implicit reference to these reasons. An example of reasons that were considered inseparable from the operative part may be found in *Nigeria* v. *Cameroon*, where the Court resorted to examining the reasons in order to elucidate what it had meant by saying in the *dispositif* of a previous judgment that it "reject[ed] the sixth preliminary objection" (*Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment*, *I.C.J. Reports 1999 (I)*, p. 36, para. 11). A further example of inseparable reasons is offered by the current Judgment, in which the second operative paragraph asserts Cambodia's "sovereignty over . . . the promontory of Preah Vihear, as defined in paragraph 98 of the present Judgment".

2. "Inseparable" reasons are not the same as "essential" reasons, to which the Permanent Court referred in the *Chorzów Factory* case as those constituting "a condition essential to the Court's decision" (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 20). "Essential" reasons are those on which the *dispositif* is based. They may sustain the operative part of the judgment even if this is self-standing.

Assimilating "essential" or fundamental reasons to "inseparable" reasons, as the Court appears to do in paragraph 34 of its Judgment, in order to define what the Court has decided with binding force could imply that States parties to a case find themselves bound by pronouncements on matters that were not submitted to the Court and that may even lie beyond the Court's jurisdiction. Unlike the settlement of disputes in a municipal law system, the judicial settlement under international law rests on the consent of the parties. What is binding in a judgment has to be determined on the basis of the jurisdiction conferred by the parties to the Court and of their submissions in the case in hand. Certainly, the parties to judicial proceedings accept that the Court addresses all the questions that it considers necessary in order to reach its conclusions. However, they do not accept to be bound by decisions on issues that they have not submitted to the Court's jurisdiction.

3. In the 1962 case, the Court had found that "Cambodia's first and second Submissions, calling for pronouncements on the legal status of the Annex I map and on the frontier line in the disputed region, can be entertained only to the extent that they give expression to grounds, and not as claims to be dealt with in the operative provisions of the Judgment" (*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 36). It seems clear that the Court said that it could not decide on these issues with binding force. It would be unreasonable to consider that what could not be part of the *dispositif* according to the Court was nevertheless binding because it provided essential reasons for the operative part.

4. While in our opinion essential reasons cannot *per se* be the object of a request for interpretation under Article 60 of the Statute, they may naturally be resorted to in so far as they contribute to clarify the operative part of a judgment (see paragraph 68 of the present Judgment).

(Signed) Hisashi OWADA.

(Signed) Mohamed BENNOUNA.

(Signed) Giorgio GAJA.

_____

SEPARATE OPINION OF JUDGE CANÇADO TRINDADE

Paragraphs

I. INTRODUCTION

1. I have concurred, with my vote, for the adoption by the International Court of Justice (ICJ), of the present Interpretation of Judgment in the case of the *Temple of Preah Vihear* (Cambodia *versus* Thailand). Although I stand in agreement with the Court's decision, not all the considerations that I regard as supporting it are explicitly developed and stated in the present Interpretation of Judgment. Given the great importance that I attach to them, I feel obliged to leave on the records the foundations of my own personal position thereon. I do so moved by a sense of duty in the exercise of the international judicial function.

2. I shall first dwell upon the essence of the resurfaced dispute before the Court, and then proceed to a couple of terminological and hermeneutic precisions. Next, I shall briefly recall the incidents (2007-2011) leading to Cambodia's concomitant requests for Provisional Measures of Protection and for Interpretation of the 1962 Judgment, and the parties' submissions as to the

compliance with the Court's Order on Provisional Measures of Protection. I shall do so on the basis of the parties' submissions to the Court, in the course of the proceedings pertaining to the present Interpretation of Judgment.

3. After recalling the fundamental principles of international law at issue, I shall dwell upon the ineluctable relationship between *motifs* and *dispositif*. To this effect, I shall: first, proceed to an overview of the relevant case-law of the Hague Court (PCIJ and ICJ) on the matter; secondly, I shall refer to the presence of reason and persuasion in the exercise of legal reasoning; and, thirdly, I shall stress the acknowledgment, throughout the centuries, of the relevance of sound legal reasoning, bearing witness to the close relationship between *motifs* and *dispositif*. The way will then be paved, last but not least, to the presentation of my concluding observations.

II. Essence of the Resurfaced Dispute before the Court

4. To start with, may I point out that the contending parties themselves, in their submissions to the Court, addressed the essence of the resurfaced dispute before the ICJ, in the course of the proceedings pertaining to the present Interpretation of Judgment. Thus, in its oral arguments (of 15.04.2013) before the Court, Cambodia stated, as to the factual context, projected in time, of the dispute opposing it to Thailand, that

> [...] "Between 1970 and 2007, it became dormant, first because of the civil war in Cambodia, and then when Cambodians settled peacefully around the Temple and its vicinity without any protest from Thailand except for occasional complaints about pollution. The dispute only re-emerged in 2007-2008 as a result of Thailand's objections to the inscription of the Temple as a World Heritage Site [of UNESCO], and the publication of Thailand's new 'secret' map (...). That map was protested by Cambodia after these incidents"[1].

5. In its *Application Instituting Proceedings* (of 28.04.2011), Cambodia further contended that

> "Following the Paris Accords of 1991, the final ending of the conflict with the Khmer Rouge movement in 1998 and the consolidation of an effective, democratic Government in Cambodia able to conduct normal and peaceful relations with its neighbours and beyond, steps were taken to initiate a bilateral process between Cambodia and Thailand which, had it functioned in the way that Cambodia hoped, would have led to a stable situation being established, whereby the implementation of the Court's 1962 Judgment would have been entirely possible. The principal means of achieving that was the process of demarcating the boundary between the two States (...). Had that process been successfully completed, as Cambodia wished, it would have removed *ipso facto* the possibility of a dispute such as that concerning interpretation of the territorial régime in the particular area where the Temple of Preah Vihear is situated. It was only following Thailand's opposition to the process of including the Temple on UNESCO's list of World Heritage sites in 2008 that it became clear to Cambodia that the demarcation process had no realistic chance of being completed without a clear and authorized interpretation from the Court as to the meaning and scope of the 1962 Judgment. Cambodia does not believe that the Court can look unfavourably on the fact that Cambodia explored every bilateral possibility before reaching the conclusion that a fundamentally different interpretation existed between itself and its neighbour as to the meaning and scope of the 1962 Judgment, which could only be settled by means of this request for interpretation"[2].

---

[1] Public sitting of 15.04.2013, ICJ doc. CR 2013/1, p. 74, para. 86.

[2] ICJ, *Application Instituting Proceedings*, filed by Cambodia on 28.04.2011, p. 25, para. 30.

6. Both in its *Application*[3], as well as in its *Response* (of 08.03.2012)[4], Cambodia insisted on the point that only from 2007 (with the initiative to have the Temple of Preah Vihear declared a World Heritage Site by UNESCO) and from 2008 (with the inclusion of the Temple in the World Heritage sites) onwards, the present dispute resurfaced; the parties themselves reckoned that they differed in terms of their understanding of the Court's Judgment of 1962. For its part, Thailand, in its *Written Observations* of 21.11.2011[5], observed that the Court's Judgment of 1962, in deciding the question of sovereignty over the Temple of Preah Vihear, — which it accepted, — created a situation to be taken into account for the process of delimitation and demarcation of its common border with Cambodia, of the area surrounding the Temple.

7. Thailand further pointed out that in 2004 a joint Thai-Cambodian Council of Ministers had met in Bangkok to consider submitting a "joint nomination" to include the Temple on the UNESCO World Heritage List, but, "later that year, without informing Thailand, Cambodia made a unilateral request to UNESCO to list the Temple as a World Heritage Site"[6]. In its *Further Written Explanations* (of 21.06.2012), Thailand added that Cambodia thereby hoped "to extend the meaning of the word 'vicinity'", found in the *dispositif* (para. 2) of the Court's Judgment of 1962, so as to put the Temple on UNESCO's World Heritage List and "to get around the indispensable cooperation of Thailand"[7].

8. Both Cambodia and Thailand retook their arguments in the oral phase (April 2013) of the proceedings before the Court. Cambodia contended that the registration of the Temple as a UNESCO World Heritage Site was the starting-point for the "acts of armed aggression carried out by Thailand", against "a poorly armed Cambodia"[8]. Thailand, for its part, argued that Cambodia's "unilateral request for inscription of the Temple on the UNESCO World Heritage List in 2007 once again poisoned the situation"[9].

9. Besides the ICJ, the dispute at issue was also taken to the attention of the U.N. Security Council. It clearly flows from the arguments of the contending parties in their letters of July 2008 to the President of the Security Council (Mr. Le Luong Minh) that their differences were expressed shortly after the inclusion of the Temple of Preah Vihear — upon the initiative of Cambodia — on the list of UNESCO World Heritage Sites. Thus, in its letter of 19.07.2008 to the President of the Security Council, the Permanent Mission of Cambodia to the United Nations complained of the "Thai military provocation" in seeking to create a *de facto* "overlapping area" which "legally does not exist on Cambodia soil", in breach of Cambodia's "sovereignty and territorial integrity"[10].

10. Thailand, for its part, in the letter of its Permanent Mission to the United Nations of 21.07.2008 to the President of the Security Council, after stating that the 1962 ruling of the ICJ "did not in any case determine the location of the boundary between Thailand and Cambodia",

---

[3]Paragraphs 12, 15 and 17.

[4]Paragraphs 2.9, 2.23, 2.90-2.91, 2.104 and 4.60.

[5]Paragraphs 4.69, 4.75, 4.110 and 7.1.

[6]Paragraph 1.21.

[7]Paragraph 5.5.

[8]Public sitting of 15.04.2013, ICJ doc. CR 2013/1, pp. 17-18, paras. 7-8. Cambodia further argued that Thailand had "never truly accepted the solution in the 1962 Judgment" of the Court; *ibid*., p. 18, para. 9.

[9]Public sitting of 17.04.2013, ICJ doc. CR 2013/3, p. 63, para. 26.

[10]ICJ, *Application Instituting Proceedings*, filed by Cambodia on 28.04.2011, Annex 2, pp. 42-43.

argued that "the issue before the ICJ in this case was limited solely to the question of the sovereignty over the region of the Temple of Preah Vihear" and that "the location of the boundary line in the area adjacent to the Temple of Preah Vihear is still to be determined by both countries in accordance with international law"[11].

11. It ensues, from the position of the two contending parties (cf. also *infra*), that the present case of the *Temple of Preah Vihear* is not a case of delimitation, nor of demarcation, of frontier, but rather a case of territorial sovereignty. The ICJ Judgment of 15.06.1962 speaks indistinctly of "sovereignty over the region of the Temple of Preah Vihear"[12], of "sovereignty over the Temple area"[13], or else of "sovereignty over the Temple"[14] itself. The 1962 Judgment reiterates the interchangeable use of the terms "disputed region", "sovereignty over Preah Vihear", and "the Temple or Temple area"[15]. One cannot avoid the impression that a couple of terminological and hermeneutic precisions are called for (cf. *infra*).

12. Before turning to that, may I just add that, in my perception, this is a case of territorial sovereignty to be exercised to secure the safety of local populations under the respective jurisdictions of the two contending States, in the light of basic principles of international law, such as those of peaceful settlement of international disputes and of the prohibition of the threat or use of force (cf. section VII, *infra*); it is, furthermore, a case of territorial sovereignty to be exercised by the State concerned, in cooperation with the other State concerned, as parties to the World Heritage Convention, for the preservation of the Temple at issue as part of the world heritage (reckoned as such in the UNESCO List), to the (cultural) benefit of humankind.

III. A COUPLE OF TERMINOLOGICAL AND HERMENEUTIC PRECISIONS

13. At this stage, may I briefly dwell upon a couple of terminological and hermeneutic precisions, to clarify further the essence of this resurfaced dispute before the Court, which appears to defy the passing of time. In the *dispositif* of its Judgment of 15.06.1962, the Court found that "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia" (para. 1); it further found, in consequence, that "Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory" (para. 2)[16].

14. The first resolutory point of the *dispositif* leaves it clear that the dispute before it concerns territorial sovereignty, rather than delimitation or demarcation of frontier. As to the second resolutory point of the *dispositif*, one might have hoped that it would not have been somewhat vague, as it appears in the use of the term "vicinity", in indicating wherefrom Thai troops had to withdraw. Yet, this may have been done on purpose by the Court half a century ago.

15. The Court may well have decided to use a term not too narrowly circumscribed. Had the Court held the obligation to withdraw military troops or police forces precisely only as to the ground where the Temple, or its "ruins", stood, this could have led to a stricter interpretation that Thai troops could still be stationed right outside, or around, the walls of the Temple. This would

---

[11] *Ibid*., Annex 4, p. 86. Thailand added that "the inscription of the Temple of Preah Vihear on the World Heritage List shall in no way prejudice Thailand's rights regarding her territorial integrity and sovereignty as well as the survey and demarcation of land boundary in the area and Thailand's legal position"; *ibid*., p. 88.

[12] Last paragraph of page 14 of the Judgment.

[13] First paragraph of page 17 of the Judgment, and cf. also first paragraph of page 29 of the Judgment.

[14] Second paragraph of page 21 of the Judgment.

[15] Three paragraphs of page 36 of the Judgment.

[16] *ICJ Reports* (1962) pp. 36-37.

have been impracticable, in hindering the access to the Temple of Cambodian non-military personnel. Thus, in my perception, while in its 1962 Judgment the Court did not precisely define the scope of the "vicinity" of the Temple, it seems important that the term "vicinity" be understood to comprise what is essential to guarantee the free access in and out of the Temple itself, the freedom of movement in and out of the Temple of non-military Cambodian personnel.

16. Furthermore, it seems likewise relevant that the term "vicinity", used in the second resolutory point of the *dispositif*, be understood also to describe the scope of the obligation to withdraw troops or police force in pursuance, on the part of both parties, of the fundamental principle of the prohibition of the threat or use of force, in the Temple itself, or in its "vicinity". It is somewhat ironical that it was the inscription by UNESCO of the Temple of Preah Vihear in the World Heritage list that led to the conflicts provoking the resurfacing of the present dispute before the ICJ, centred on the term "vicinity" as well as the obligation of "withdrawal" of military or police forces.

17. The etymological origins of the verb "*to withdraw*/*se retirer*" go back to the late XIIth and the XIIIth centuries (from the Latin *retrahere*, to retract/*se retirer*). From then onwards, the verb is recorded to have been used in the sense of "to remove oneself from", or "to draw oneself away from", a place or a position[17]; the verb came to be used in respect of distinct situations, among which that of territorial sovereignty, — not delimitation or demarcation of territory, — as in the present resurfaced dispute before the Court, opposing Cambodia to Thailand. This is corroborated by the *dispositif* of the 1962 Judgment of the ICJ in the case of the *Temple of Preah Vihear* (*supra*).

18. In the present Interpretation of Judgment, the ICJ has rightly pondered that "[o]nce a dispute regarding territorial sovereignty has been resolved and uncertainty removed, each party must fulfil in good faith the obligation which all States have to respect the territorial integrity of all other States. Likewise, the Parties have a duty to settle any dispute between them by peaceful means" (para. 105). In this connection, the Court has taken note that Thailand has commendably accepted that it has a *continuing obligation* to respect the integrity of Cambodian territory (paras. 51 and 105), including that of the promontory of Preah Vihear.

IV. THE INCIDENTS (2007-2011) LEADING TO CAMBODIA'S REQUESTS FOR PROVISIONAL MEASURES OF PROTECTION AND FOR INTERPRETATION OF THE 1962 JUDGMENT

19. A series of incidents, which took place in the period of 2007-2011 and prompted Cambodia's requests for provisional measures of protection and for interpretation of the 1962 Judgment of the ICJ, are reported in its *Application Instituting Proceedings*, of 28.04.2011. On 17.05.2007 the Thai Prime Minister protested at Cambodia's zoning plan (issued on 10.11.2006) as part of its proposal to declare the Temple a UNESCO World Heritage site. With the opening of discussions within UNESCO to have the Temple declared a World Heritage site, there followed a deterioration in relations between the two States concerned. As from 15.07.2008, "large numbers of Thai soldiers crossed the border and occupied an area of Cambodian territory near the Temple, on the site of the Keo Sikha Kiri Svara Pagoda"[18].

---

[17]Cf. *Dictionnaire Historique de la langue française* (ed. Alain Rey), 3rd ed., Paris, Dictionnaires Le Robert, 2000, p. 1921; *The Oxford English Dictionary* (eds. J.A. Simpson and E.S.C. Weiner), 2nd ed., vol. XX, Oxford, Clarendon Press, 1989, p. 450; *Barnhart Dictionary of Etymology* (eds. R.K. Barnhart and S. Steinmetz), N.Y., H.W. Wilson Co., 1988, p. 1241; *Dictionnaire étymologique et historique du français* (eds. J. Dubois, H. Mitterand and A. Dauzat), Paris, Larousse, 2007, p. 717; *The New Shorter Oxford English Dictionnary on Historical Principles* (ed. L. Brown), vol. 2, Oxford, Clarendon Press, 1993, p. 3704; *Legal Thesaurus* (ed. W.C. Burton), N.Y./London, MacMillan Publs., 1980, p. 514; *Vocabulaire juridique* (ed. G. Cornu), 8th ed., Paris, Association H. Capitant/PUF, 2007, pp. 827-828; *Black's Law Dictionary* (ed. B.A. Garner), 9th ed., St. Paul/Mn., West/Thomson Reuters, 2009, p. 1739.

[18]ICJ, *Application Instituting Proceedings*, filed by Cambodia on 28.04.2011, pp. 13 and 15, paras. 13-16.

20. Thailand, likewise, in its *Written Observations* of 21.11.2011, acknowledged the occurrence of those incidents as from 2007[19]. Thailand contended that there was no evidence of non-compliance on its part of the Court's Judgment of 1962. In its perception,

> "(...) The border incidents that have occurred over recent years result from Cambodia seeking to assert authority over an area much greater than they have been content with in the past"[20].

21. The controversy over territorial sovereignty had indeed reemerged, and this time reached the U.N. Security Council on 21.07.2008[21]. In his letter of that date to the President of the U.N. Security Council (Mr. Le Luong Minh), the Permanent Representative of Thailand to the United Nations stated that the issue that had originally been brought before the ICJ for its Judgment of 1962 had been "limited solely to the question of the sovereignty over the region of the Temple of Preah Vihear", and not the determination of the boundary line in the "area adjacent to the Temple"; this latter still remained "to be determined by both countries in accordance with international law"[22].

22. Three months later, the President of the Security Council was informed by Cambodia's representative at the United Nations that "Thai troops [had] once again crossed the frontier at three locations" (Keo Sikha Kiri Svara Pagoda, Veal Intry and the hill of Phnom Trap, "inside Cambodian territory"), and had "opened fire on Cambodian soldiers", causing the death of two of them and injuries in two others (incident of 15.10.2008)[23]. Another armed incident of the kind occurred on 03.04.2009 (in Phnom Trap, Tasem and Veal Intry), in "the immediate vicinity of the Temple", causing damage in "the area around the Temple", including the stairway leading to it[24].

23. In the following year, the U.N. Secretary-General (Mr. Ban Ki-moon) offered (on 20.08.2010) his help to resolve the dispute between Cambodia and Thailand[25], but unfortunately, from 04 to 07.02.2011, Thai troops, using "heavy artillery and fragmentation shells", caused "many casualties among the Cambodian armed forces and civilians", as well as "material damage to the Temple itself", — leading to the Security Council's urging of a "permanent ceasefire" on 14.02.2011; the applicant State draws particular attention to the Security Council's statement of that date[26]. That U.N. Press Release was issued by the President of the Security Council (Mrs. Maria Luiza Ribeiro Viotti) on 14.02.2011, containing the following statement on the Cambodia/Thailand border situation:

> "Les membres du Conseil de sécurité ont entendu un exposé sur la situation à la frontière entre le Cambodge et la Thaïlande, présenté par le Secrétaire général adjoint, M. Lynn Pascoe, et par le ministre des affaires étrangères de l'Indonésie et président de l'Association des nations de l'Asie du Sud-Est (ANASE), M. Marty Natalegawa.
>
> Les membres du Conseil ont également entendu le vice-premier ministre et ministre des affaires étrangères du Cambodge, M. Hor Namhong, et le ministre des affaires étrangères de la Thaïlande, M. Kasit Piromya.

---

[19] Thailand referred to facts going back to 2004-2005; cf. ICJ, *Written Observations of the Kingdom of Thailand*, of 21.11.2011, pp. 13-14, paras. 1.26-1.27.

[20] *Ibid*., p. 15, para. 1.30.

[21] Cf. ICJ, *Application Instituting Proceedings*, *op. cit. supra* n. (18), p. 21, para. 25.

[22] Cf. *ibid*., Annex 4, p. 86, para. 4.1.

[23] *Ibid*., p. 27, para. 33.

[24] *Ibid*., p. 27, para. 34.

[25] Cf. U.N. Press Release of that date, *in ibid*., Annex 8, p. 151.

[26] *Ibid*., p. 27, para. 34.

> Les membres du Conseil se sont dits très préoccupés par les affrontements armés qui ont opposé récemment le Cambodge et la Thaïlande.
>
> Les membres du Conseil ont demandé aux deux parties de faire preuve de la plus grande retenue et d'éviter toute action qui pourrait aggraver la situation. Ils ont en outre engagé les parties à déclarer un cessez-le-feu permanent et à le respecter scrupuleusement, et à régler la situation par des moyens pacifiques dans le cadre d'un dialogue constructif.
>
> Les membres du Conseil ont dit appuyer l'action résolue que l'ANASE mène à cet égard et ont invité les parties à continuer de coopérer avec l'organisation. Ils ont accueilli favorablement la prochaine réunion des ministres des affaires étrangères de l'ANASE qui se tiendra le 22 février"[27].

24. In its *Application Instituting Proceedings*, Cambodia referred to the incidents of early February 2011 as "a serious threat to peace and security in the region", as again stressed by the U.N. Secretary-General (Mr. Ban Ki-moon)[28]. The concern of UNESCO, for its part, expressed in the Report of 26.05.2009 of the UNESCO World Heritage Committee, was with strengthening "the protection and management of the World Heritage property" (cf. Annex 12). As further reported by Cambodia in its *Application*,

> "In these various incidents between 2008 and 2011, architectural features of the Temple have been damaged, leading to inquiries and reports by the UNESCO authorities, which have recommended the convening of an international co-ordinating committee, as envisaged in the decision to list the site. (...) Following the serious incidents in early February 2011, the Director-General of UNESCO, Mrs. Irina Bokova, decided to send a mission to the site, together with a special envoy in the person of the former UNESCO Director-General, Mr. Koïchiro Matsuura"[29].

UNESCO's initiative, — among others[30], — purported to assess *in loco* the state of the Temple of Preah Vihear.

---

[27] U.N. Press Release reproduced *in ibid*., Annex 9, p. 153. [English official translation:]

> "The members of the Security Council were briefed by Under-Secretary-General B. Lynn Pascoe and by the Minister for Foreign Affairs of Indonesia, and Chair of the Association of South-East Asian Nations (ASEAN), Marty Natalegawa, on the situation on the border between Cambodia and Thailand.
>
> The members of the Security Council also heard from the Deputy Prime Minister and Minister for Foreign Affairs of Cambodia, Hor Namhong, and Minister for Foreign Affairs of Thailand, Kasit Piromya.
>
> The members of the Security Council expressed their grave concern about the recent armed clashes between Cambodia and Thailand.
>
> The members of the Security Council called on the two sides to display maximum restraint and avoid any action that may aggravate the situation. The members of the Security Council further urged the parties to establish a permanent ceasefire, and to implement it fully and resolve the situation peacefully and through effective dialogue.
>
> The members of the Security Council expressed support for ASEAN's active efforts in this matter and encouraged the parties to continue to co-operate with the organization in this regard. They welcomed the upcoming Meeting of Ministers for Foreign Affairs of ASEAN on 22 February" (*in ibid*., p.152).

[28] *In ibid*., p. 29, para. 34.

[29] Cf. *ibid*., p. 29, para. 35; and cf. *ibid*., Annex 12, pp. 161-173.

[30] E.g., the European Parliament, likewise, adopted a resolution, on 17.02.2011, on the border clashes between Thailand and Cambodia; cf. *ibid*., Annex 13, pp. 175-179.

25. Another U.N. Press Release, of 23.04.2011, expressed the grave concern of the U.N. Secretary-General (Mr. Ban Ki-moon) with the new clashes between Cambodia and Thailand along their "common border":

> "Le Secrétaire général des Nations Unies, Ban Ki-moon, est préoccupé par les informations faisant état de nouveaux combats ces deux derniers jours entre des troupes cambodgiennes et thaïlandaises à la frontière entre les deux pays, qui auraient fait plusieurs morts des deux côtés, a déclaré samedi son porte-parole.
>
> 'Il avait été encouragé par les signes initiaux de progrès dans les efforts régionaux pour renforcer les mécanismes bilatéraux destinés à gérer le différend entre les deux voisins', a ajouté le porte-parole. 'Le Secrétaire général appelle les deux parties à exercer le maximum de retenue et à prendre des mesures immédiates pour mettre en place un cessez-le-feu effectif et vérifiable'.
>
> Ban Ki-moon 'estime également que le différend ne peut pas être résolu par des moyens militaires et appelle le Cambodge et la Thaïlande à entamer un dialogue sérieux pour trouver une solution durable'.
>
> Selon la presse, des accrochages ont fait six morts vendredi à la frontière entre la Thaïlande et le Cambodge en dépit d'un cessez-le-feu négocié en février. Trois soldats thaïlandais et trois soldats cambodgiens ont trouvé la mort dans ces affrontements et dix-neuf autres — treize Thaïlandais et six Cambodgiens — ont été blessés.
>
> Thaïlande et Cambodge se sont rejeté la responsabilité de cette fusillade, qui a eu lieu autour des temples de Ta Moan et Ta Krabei, à quelque 150 km au sud-ouest du temple de Préah Vihéar où un conflit armé avait fait onze morts il y a deux mois, du 4 au 7 février"[31].

26. The situation brought to the knowledge of the Court on 28.04.2011 (for interpretation of its 1962 Judgment) was thus clearly that of a dispute, in my perception concerning mainly the *withdrawal* of forces from the Temple or its vicinity, in the light of general principles of international law, such as those of the prohibition of the threat or use of force, and of peaceful settlement of international disputes. The Cambodian request for interpretation is ineluctably intermingled with the Cambodian request for provisional measures, both having been prompted by the events which have occurred (as from 2007, and culminating in early 2011) in the Temple area and its vicinity.

---

[31] U.N. Press Release reproduced *in ibid*., Annex 11, p. 158. [English official translation:]

> "United Nations Secretary General Ban Ki-moon is troubled by reports of renewed fighting in the past two days between Cambodian and Thai troops along the two countries' common border, which has reportedly claimed numerous lives from both sides, said his spokesperson on Saturday.
>
> 'He had been encouraged by the initial signs of progress in regional efforts to strengthen bilateral mechanisms for dealing with the dispute between the two neighbours', the spokesperson added. 'The Secretary General calls on both sides to exercise maximum restraint and to take immediate measures to put in place an effective and verifiable ceasefire'.
>
> Mr. Ban 'also believes the dispute cannot be resolved by military means and urges Cambodia and Thailand to engage in serious dialogue to find a lasting solution'.
>
> According to reports, six people died on Friday as a result of fighting along the border between Thailand and Cambodia, despite the ceasefire negotiated in February. Three Thai and three Cambodian soldiers lost their lives in these clashes and a further 19 — 13 Thais and six Cambodians — were injured.
>
> Thailand and Cambodia hold each other responsible for the gunfire, which took place close to the temples of Ta Moan and Ta Krabei, some 150 km south-west of the Temple of Preah Vihear, where armed clashes claimed 11 lives two months ago, between 4 and 7 February" (*ibid*., p. 159).

27. Those incidents are to be much regretted. As I pondered in my Separate Opinion, in the Court's Order (of 18.07.2011) of provisional measures of protection in the *cas d'espèce*,

> "In the present case of the *Temple of Preah Vihear* before the ICJ, it is indeed a pity that a Temple that was built with inspiration in the first half of the XIth century, to assist in fulfilling the religious needs of human beings, and which is nowadays — since the end of the first decade of the XXIst century — regarded as integrating the world heritage of humankind, becomes now part of the bone of contention between the two bordering States concerned. This seems to display the worrisome frailty of the human condition, anywhere in the world, in that individuals appear prepared to fight each other and to kill each other in order to possess or control what was erected in times past to help human beings to understand their lives and their world, and to relate themselves to the cosmos" (para. 108).

V. THE PROVISIONAL MEASURES OF PROTECTION OF THE ICJ OF 2011

28. As a consequence of the eruption of armed hostilities between Thailand and Cambodia (*supra*), the ICJ convened public sittings on 30 and 31.05.2011, and shortly afterwards issued its Order of Provisional Measures of Protection, on 18.07.2011. In the present Interpretation of Judgment that the Court has just issued, it expressly refers (para. 35) to its Order of Provisional Measures of 18.07.2011, related as it is to Cambodia's request for Interpretation of the 1962 Judgment, even though delivered without prejudice to the ICJ's present Interpretation of Judgment. The two requests were lodged together with the Court by the applicant State. In the present Interpretation of Judgment, the ICJ has taken note of its Order of Provisional Measures (paras. 29 and 35-36), in order to address the request for Interpretation; it has thus made it clear that the two concomitant requests cannot make abstraction of each other.

29. In its Order of Provisional Measures of 18.07.2011, the Court determined, as from the basic principle of the prohibition of the threat or use of force, enshrined into the U.N. Charter, the creation of a "provisional demilitarized zone" around the Temple of Preah Vihear and in the proximities of the frontier between the two countries, and the immediate withdrawal of their military personnel, and the guarantee of free access to the Temple of those in charge of supplies to the non-military personnel present therein. It further determined the retaking and pursuance of negotiations between them, aiming at the peaceful settlement of the dispute, so as not to allow its aggravation.

30. In my Separate Opinion, I endorsed the correct determination by the ICJ of the unprecedented creation of a "provisional demilitarized zone", whereby it seeks to protect, in my understanding, not only the territory at issue, but also the populations that live thereon, as well as the set of monuments found therein, conforming the Temple of Preah Vihear. This latter integrates, as from 2008, — by decision of the World Heritage Committee of UNESCO, — its World Heritage List, which constitutes the cultural and spiritual heritage of humankind (paras. 66-95).

31. Beyond the classic territorialist outlook, — I proceeded in my Separate Opinion, — lies the *human factor*, calling for the protection, by the measures indicated or ordered by the ICJ, of the rights to life and personal integrity of the members of the local population, as well as the cultural and spiritual heritage of human kind (paras. 96-113). Underlying this jurisprudential construction, — I added, — is the *principle of humanity*, orienting the search for improvement of the conditions of living of the population and the realization of the common good (paras. 114-115), in the ambit of the new *jus gentium* of our times (para. 117)[32]. In situations of the kind, one cannot consider the territory making abstraction of the local populations (and their cultural and spiritual heritage), who, in my view, constitute the most precious component of statehood.

---

[32] And cf., for a comprehensive study, A.A. Cançado Trindade, *International Law for Humankind — Towards a New Jus Gentium*, 2nd ed., The Hague, Nijhoff/The Hague Academy of International Law, 2013, pp. 1-726.

32. In its aforementioned Provisional Measures of Protection, the ICJ took into due account not only the territory at issue, but, jointly, the people on territory, i.e., the *protection of the population on territory*. In my aforementioned Separate Opinion, I pondered that, beyond the States, are the human beings who compose them (para. 114). In a case of this kind, seemingly only territorial, there is epistemologically no inadequacy to extend protection also to human life, and to the cultural and spiritual world heritage (the Temple of Preah Vihear), thus avoiding a *spiritual damage* (para. 66), — as I sought to conceptualize this latter in 2005, within the Inter-American Court of Human Rights (IACtHR), in my Separate Opinion in the case of the *Moiwana Community versus Suriname* (Judgment of 15.06.2005).

33. In my Separate Opinion in the Court's Order of 18.07.2011 in the present case of the *Temple of Preah Vihear*, I deemed it fit to warn that, in effect, not everything in the *cas d'espèce* can be subsumed under territorial sovereignty (para. 99), as the provisional measures indicated by the Court encompassed the human rights to life and to personal integrity, as well as cultural and spiritual world heritage. In sum, the Court's Order went "well beyond State territorial sovereignty, *bringing territory, people and human values together*" (para. 100), well in keeping with the *jus gentium* of our times (paras. 115 and 117).

VI. The Parties' Submissions as to the Compliance with the Order of the ICJ on Provisional Measures of Protection

34. As I have already mentioned, in my perception the requests for provisional measures of protection and for interpretation of the 1962 Judgment appear interrelated (para. 28, *supra*). In all likelihood the request for interpretation would not have been lodged with the Court if the aforementioned armed hostilities between Thailand and Cambodia had not occurred. Such armed hostilities form the factual context which originated the request for interpretation as well as the request for provisional measures of protection, and rendered necessary the adoption of those measures by the Court.

35. As from the Court's Order of 18.07.2011, the contending parties were faced with the duty to comply with it, binding as such protective measures are. It should not pass unnoticed that, in the course of the proceedings before the ICJ as to the request for interpretation, both Thailand and Cambodia deemed it fit to present to the Court their views concerning compliance with the Court's provisional measures[33]. The preparedness of the parties to do so is commendable, and significant, and should have been so acknowledged by the Court in the present Judgment in the case of the *Temple of Preah Vihear*, that the Court has just adopted.

36. The oral arguments of the two parties, in the course of the proceedings of mid-April 2013 on the request for interpretation, are revealing. Thailand expressed its understanding that the "most important purpose" which led to the adoption by the Court of its Order on provisional measures of protection was

> "to prevent a recurrence of the loss of human life which unfortunately had taken place in the area. The Order also noted allegations of damage to property. Since the adoption of the Order, the ceasefire in the area, which Thailand and Cambodia had adopted before the Order, has continued. There has been no recurrence of armed incidents or loss of life; and there has been no damage to property. [...T]he situation on the ground is consistent with the purposes of the Order"[34].

---

[33] They did so in compliance with resolutory point (C) of the ICJ's Order of 18.07.2011, in their correspondence sent to the Court, after its Order, from July 2011 until July 2012.

[34] Public sitting of 17.04.2013, ICJ doc. *Compte rendu* [CR] 2013/3, pp. 22-23, para. 39.

37. Cambodia stated that it ascribed to the decision (on interpretation) that the Court was to render much importance, as it would condition "the relations between the two States", on which "depend [the] peace and security in the region"[35]. Thailand reiterated the "reality on the ground", after the Court's Order of provisional measures of protection, "is that the border is peaceful and calm, consistent with the intent of the Court's Order"[36]. Cambodia, for its part, submitted a different version of the facts, in pointing out that

> "les négociations bilatérales sur le retrait des troupes de la zone démilitarisée provisoire conformément aux mesures conservatoires décidées par votre juridiction le 18 juillet 2011 n'ont pas abouti (...). En conséquence, il n'a pas été possible de mettre en place des observateurs indonésiens chargés, sous les auspices de l'ASEAN, de contrôler le retrait des troupes de la zone du temple en attendant votre jugement définitif"[37].

VII. THE STATES' DUTIES TO REFRAIN FROM THE THREAT OR USE OF FORCE AND TO REACH A PEACEFUL SETTLEMENT OF THE DISPUTE AT ISSUE

38. I have already pointed out that, in the *cas d'espèce*, the dispute opposing Thailand to Cambodia concerns mainly the *withdrawal* of forces from the Temple or its vicinity, keeping in mind the general principles of international law of the prohibition of the threat or use of force, and of peaceful settlement of international disputes (para. 26, *supra*). In its present Interpretation of Judgment, that the Court has just adopted, it rightfully draws attention to *the principles of the Charter of the United Nations* (para. 106), in particular those of importance in the present case of the *Temple of Preah Vihear* (cf. section VII, *supra*).

39. In fact, on other recent occasions the ICJ has likewise asserted, e.g., the State's duty of co-operation and peaceful settlement, in its Judgments in the case concerning *Pulp Mills on the River Uruguay* (of 20.04.2010, para. 281) opposing Argentina to Uruguay; in the *A.S. Diallo* case (merits, of 30.11.2010, paras. 163-164) opposing Guinea to D.R. Congo; and in the case of the *Application of the 1995 Interim Accord* (of 05.12.2011), opposing the Former Yugoslav Republic of Macedonia to Greece. In this last case, the ICJ *emphasized* that

> "the 1995 Interim Accord places the Parties under a duty to negotiate in good faith under the auspices of the Secretary-General of the United Nations pursuant to the pertinent Security Council resolutions with a view to reaching agreement on the difference described in those resolutions" (para. 166).

40. Such duty of peaceful settlement grows in importance in face of threats of, or actual recourse to, the use of force, in breach of a fundamental principle enshrined into Article 2(4) of the U.N. Charter. The ICJ is "the principal judicial organ of the United Nations" (Article 92 of the Charter, and Article 1 of the Statute). Its Statute forms an *integral* part of the U.N. Charter. The ICJ is thus bound to make sure, in the settlement of inter-State disputes lodged with it, that the contending parties abide by the fundamental principles enshrined into the U.N. Charter, such as those of non-use of force (Article 2(4)) and of peaceful settlement of international disputes (Article 2(3)).

---

[35]Public sitting of 18.04.2013, ICJ doc. CR 2013/5, p. 48.

[36]Public sitting of 19.04.2013, ICJ doc. CR 2013/6, p. 51.

[37]Public sitting of 15.04.2013, ICJ doc. CR 2013/1, pp. 18-19 **[cf.]**, para. 10. Cambodia further argued that the armed incidents by the border were "provoked" by Thailand as "reprisals to the inscription of the Temple in the World Heritage List of UNESCO"; *ibid*., pp. 23-24, para. 6.

41. The Court not only has an *inherent* faculty to do so, in the exercise of its functions; in effect, it is *bound* to do so, to secure compliance by States with the general principles of international law. May it be recalled that, almost four decades ago, the ICJ pondered, in its Judgment of 20.12.1974 in the *Nuclear Tests* case (Australia *versus* France), that

> "The Court possesses an inherent jurisdiction enabling it to take such action as may be required (...). Such inherent jurisdiction (...) derives from the mere existence of the Court as a judicial organ established by the consent of States, and is conferred upon it in order that its basic judicial functions may be safeguarded"[38].

42. As to the significance of the general principles of international law, of prohibition of use or threat of force and of peaceful settlement of disputes, enshrined into the U.N. Charter (Article 2(4) and (3)), suffice it here, in the present Separate Opinion, to refer to my considerations already developed in my previous Separate Opinion in the Court's Order (of 18.07.2011) in the present case of the *Temple of Preah Vihear*[39]. Earlier on, on six other occasions so far, I have likewise drawn attention to the relevance of general principles[40]. The necessary attention to those principles brings us closer to the domain of superior *human values*, to be safeguarded, not sufficiently worked upon in international case-law and doctrine. It is, ultimately, those principles that inform and conform the applicable norms, and ultimately any legal system.

VIII. THE INELUCTABLE RELATIONSHIP BETWEEN *MOTIFS* AND *DISPOSITIF*

43. Another particular issue that comes to the fore in the *cas d'espèce* is the relationship of the resolutory points of a judgment (in the *dispositif*) with the corresponding *motifs*. May it be recalled that, in its Judgment of 15.06.1962 in the present case of the *Temple of Preah Vihear*, the ICJ stated:

> "Referring finally to the Submissions presented at the end of the oral proceedings, the Court, for the reasons indicated at the beginning of the present Judgment, finds that Cambodia's first and second Submissions, calling for pronouncements on the legal status of the Annex I map and on the frontier line in the disputed region, can be entertained only to the extent that they give expression to grounds, and not as claims to be dealt with in the operative provisions of the Judgment. It finds on the other hand that Thailand, after having stated her own claim concerning sovereignty over Preah Vihear, confined herself in her Submissions at the end of the oral proceedings to arguments and denials opposing the contentions of the other Party, leaving it to the Court to word as it sees fit the reasons on which its Judgment is based.
>
> In the presence of the claims submitted to the Court by Cambodia and Thailand, respectively, concerning the sovereignty over Preah Vihear thus in dispute between these two States, the Court finds in favour of Cambodia in accordance with her third Submission. It also finds in favour of Cambodia as regards the fourth Submission concerning the withdrawal of the detachments of armed forces" (p. 36).

---

[38] *ICJ Reports* (1974) pp. 259-260.

[39] Paragraphs 72-81 and 114-115.

[40] Namely, in my Separate Opinion (paras. 8-113 and 191-217) in the case of the *Pulp Mills* (Judgment of 20.04.2010); in my Separate Opinion (paras. 177-211) in the Advisory Opinion on the Declaration of Independence of Kosovo (of 22.07.2010); in my Separate Opinion (paras. 93-106) in the *A.S. Diallo* case (merits, Judgment of 30.11.2010); in my Dissenting Opinion (paras. 79-87) in the case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Judgment of 01.04.2011); in my Separate Opinion (paras. 28-51 and 82-100) in the Advisory Opinion on a *Judgment of the ILO Administrative Tribunal upon a Complaint Filed against IFAD* (of 01.02.2012); and in my Separate Opinion (paras. 74-76) in the *A.S. Diallo* case (reparations, Judgment of 19.06.2012).

44. The Court then found that: 1) "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia"; and, in consequence, that: 2) "Thailand is under an obligation to withdraw any military or police forces, or other guards of keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory" (…) (pp. 36-37). Before laying down the resolutory points, the ICJ made a cross-reference to the reasons which led it to decide the way it did. This is not the first time that the relationship between such reasons and the resolutory points comes to the fore.

1. Overview of the Case-Law of The Hague Court (PCIJ and ICJ) on the Matter

45. In fact, already in its time, the Permanent Court of International Justice (PCIJ) dwelt upon the matter at issue. Thus, in the case of the *Chorzów Factory — Interpretation of Judgments ns. 7 and 8* (of 16.12.1927), opposing Germany to Poland, the PCIJ observed that a difference of opinion should exist between the contending parties as to the points, "decided with binding force", in the judgment at issue, for a request for interpretation be lodged with it under Article 60 of the Statute. Having said so, the PCIJ added:

> "That does not imply that it must be beyond dispute that the point the meaning of which is questioned is related to a part of the judgment having binding force. A difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of the provision in question, and the Court cannot avoid the duty incumbent upon it of interpreting the judgment in so far as necessary, in order to adjudicate upon such a difference of opinion" (pp. 11-12).

46. In other words, the Court is not to restrict itself only to the operative part of the judgment, making abstraction of all its reasoning which led to it and supports it. The Court is to bear it in mind, and take it into account whenever needed. Only in this way it can produce a proper interpretation clarifying — as it said — "the true meaning and scope" of its judgment at issue (p. 14). *Motifs* and *dispositif* cannot simply be dissociated from each other; they go together, the former setting the grounds on which the latter was established. Already at the time of the PCIJ, in the late twenties, this was the prevailing understanding on this particular point.

47. Years later, the ICJ, in its Judgment of 27.11.1950 on Request for Interpretation in the *Asylum* case, opposing Colombia to Peru, stated that a request for interpretation of a judgment must aim solely at obtaining clarification on "the meaning and the scope of what the Court has decided with binding force" (p. 402). In my view, if the operative part is not clear enough, the Court, in providing the interpretation requested, has to take into account the reasons set forth in the corresponding *motifs*.

48. The Court had the occasion to do this, half a century later, in its Judgment of 25.03.1999, on the Request for Interpretation in the case of the *Land and Maritime Boundary between Cameroon and Nigeria*. The Court identified the reasons, set forth in the motifs (in two paragraphs of the previous judgment) which provided the grounds for the operative part of the judgment at issue, and were thus "inseparable" from that operative part (para. 11). The ICJ had warned that any request for interpretation (under Article 60 of the Statute) "must relate to the operative part of the judgment" and can only concern "the reasons for the judgment" in so far as "these are inseparable from the operative part" (para. 10).

49. Earlier on, in its Judgment (of 10.12.1985) on the Application for Revision and Interpretation in the case concerning the *Continental Shelf* (Tunisia *versus* Libya), the ICJ recalled (para. 46) the *célèbre obiter dictum* of the PCIJ in the *Chorzów Factory* (Interpretation) case (*supra*). Recently, in its Judgment of 19.01.2009 on the Request for Interpretation in the case of

Avena and Other Mexican Nationals (Mexico *versus* United States), the ICJ referred to its *jurisprudence constante* (*supra*) in respect of requests for interpretation of judgments (para. 21). In sum, in my perception, there is indeed an ineluctable relationship between *motifs* and *dispositif*. Such relationship has not passed unnoticed in expert writing along the years[41].

2. Reason and Persuasion

50. Half a decade ago, in another international jurisdiction, I had the occasion, in my Separate Opinion appended to the Interpretation of Judgment of 02.08.2008 of the Inter-American Court of Human Rights (IACtHR), in the case of the *Prison of Castro-Castro versus Peru*, to ponder that *reason and persuasion* go together with the verdict. Resolutory points cannot be dissociated from the Court's reasoning which provides their foundations. Already in Aeschylus's *Eumenides* (458 b.C.), Athenea felt the need — in announcing the creation, forever, of the *Areios Pagos* — to provide explanation for judicial decisions and to persuade as to their rightness. All international tribunals of our times devote their labour also to reason and persuasion in respect of their own judgments; the *meaning* and *extent* of their decisions can only be properly appreciated in the light of their reasoning, — which brings to the fore the ineluctable subjective element of the judges' thinking (paras. 38-39, 41-42, 44 and 46).

51. The ICJ has been faced with this matter in the present Interpretation of Judgment, which it has just delivered, in the case of the *Temple of Preah Vihear*. In my understanding, the reasons which substantiate a resolutory point reached at by an international tribunal are regularly expounded in the *motifs* of its judgment at issue. There would be no sense in attempting to "separate" such *motifs* from the corresponding *dispositif*, and taking into account only this latter. The two go together. Is there any judgment where the operative part stands on its own? Not at all; this latter is regularly supported by the *motifs*. In saying what the Law is (i.e., in exercising its *juris dictio*), an international tribunal is bound to determine the applicable law, and to expound its own understanding of the applicable law and of its application in the *cas d'espèce*. We are here, once again, faced with *reason and persuasion*.

3. The Everlasting Acknowledgment of the Relevance of Sound Legal Reasoning

52. The relevance of sound legal reasoning has been duly acknowledged since ancient times. In effect, the exercise of legal reasoning (i.e., the elaboration of the *motifs*/*la motivation*) has historical roots which go back, e.g., to ancient Roman law. In his fragments, Ulpian (*circa* 170-228 A.D.) took *juris-prudencia* (from the verb *providere*) as referring to the *knowledge of what is just and unjust*; in dispensing justice, *jurisprudencia* was understood as teaching how justice was to be realized, besides showing that the procedure had been well followed[42]. His writings altogether, undertaken in the period 211-222 A.D., are believed to have considerably contributed to Justinian's *Digest* (the main volume of his *Corpus Juris Civilis*, 538-534)[43], providing not less than a third of its contents.

---

[41]Cf., e.g., L. Cavaré, "Les recours en interprétation et en appréciation de la légalité devant les tribunaux internationaux", 15 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (1954) p. 488; E. Zoller, "Observations sur la révision et l'interprétation des sentences arbitrales", 24 *Annuaire français de Droit international* (1978) p. 343; E. Decaux, "L'arrêt du 10.12.1985 de la Cour Internationale de Justice sur la demande en révision et en interprétation de l'arrêt du 24.02.1982 en l'affaire du *Plateau continental*", 31 *Annuaire français de Droit international* (1985) p. 338; P. Dumberry, "Le recours en interprétation des arrêts de la Cour Internationale de Justice et des sentences arbitrales", 13 *Revue québécoise de droit international* (2000) pp. 213 and 220; S. Rosenne, *Interpretation, Revision and Other Recourse from International Judgments and Awards*, Leiden, Nijhoff, 2007, pp. 94-95, 98-100 and 108-111.

[42]J.-P. Andrieux, *Histoire de la jurisprudence — Les avatars du droit prétorien*, Paris, Vuibert, 2012, pp. 11, 13-14, 19, 23 and 161, and cf. pp. 241, 263, 281 and 284.

[43]Cf. T. Honoré, *Justinian's Digest: Character and Compilation*, Oxford, Oxford University Press, 2010, pp. 5, 53, 74, 103, 119 and 142.

53. As from Ulpian's teaching, the *Digest* rendered certain maxims widespread, such as "*justitia est constans et perpetua voluntas suum cuique tribuere*" ("justice is the constant and perpetual will to give every one his due"); or else, "*honeste vivere, alterum non laedere, suum cuique tribuere*" ("to live honourably, to harm no one, to give each one his due"). *Jurisprudencia* developed, elaborating on general principles; it started arousing attention, having assumed a certain creative (praetorian) role. Legal reasoning kept on attracting increasing attention in modern times, amidst widespread acknowledgment of its relevance.

54. The elaboration of sound legal reasoning, for its part, sought coherence and harmony, so as to avoid contradictions. It did not amount to a syllogism, nor did it exhaust itself in the simple identification of the applicable norms. It went further than that, encompassing interpretation, and recourse to sources of law (including principles, doctrine, and equity), bearing in mind human values[44]. Prudence played its role, in *juris-prudencia*. In such elaboration of sound legal reasoning, we are faced, once more, with reason and persuasion.

55. One can speak of the object of a judicial decision in two senses, namely: in a strictly procedural sense, it amounts to what has actually been decided (the *dispositif*); and in a material or substantial sense, it encompasses also what formed the matter of the *contentieux*. The judgment itself, in my understanding, encompasses not only the decision reached by the international tribunal (the *dispositif*), but also the reasoning of this latter, the indication of the sources of law it resorts to, the fundamental principles it relies upon, and other considerations that it deems fit to develop (the *motifs*). In effect, to my mind, *motifs* and *dispositif* form an organic, inseparable whole.

56. The issue became object of special attention in the legal doctrine of the XIXth century, which upheld the view that the *dispositif* is to be approached together with the reasoning (the *motifs*) which give support to it. This understanding then prevailed in civil procedural law (in countries of that legal tradition), before being transposed into the international legal procedure. According to an account of one of its exponents,

> "According to the well-known teaching of Savigny, the judgment is a sole and inseparable whole; there is, between the foundations and the *dispositif*, a relationship so intimate that ones and the other can never be dismembered if one does not wish to denaturalize the logical and juridical unity of the decision. This was the dominant idea in the last century (...)"[45].

57. With the passing of time, however, under the influence of legal positivism, a more simplistic view came to prevail, to the effect that only the *dispositif* forms the object of a judicial decision[46]. This argument sought to shift attention onto the terms of a judgment which were binding; it overvalued them, making abstraction of the other parts of the judgment. It was as if the operative part of a judgment could be severed from the other parts of it, and become binding by itself, independently of the whole reasoning developed by the tribunal in its support. It is not surprising that this superficial view became widespread, as it did not require much thinking.

58. Positivists, for example, tend characteristically to be very dogmatic in stating and insisting that the binding effect of a judgment attaches only to its operative part, i.e., its resolutory points, and does not extend to its reasoning. This is a strictly formalistic approach. The *res judicata* is thus brought into the picture, minimizing the reasoning supporting it. This is what, —

---

[44]Cf. [Various Authors,] *Le raisonnement juridique* (ed. P. Deumier), Paris, Dalloz, 2013, pp. 25, 31, 33, 75, 95-98, 101, 109-110, 240, 246 and 268.

[45] E.J. Couture, *Fundamentos do Direito Processual Civil*, São Paulo, Saraiva, 1946, pp. 354-355; E.J. Couture, *Fundamentos del Derecho Procesal Civil*, 4ª ed., Montevideo/Buenos Aires, Edit. B de F, 2002, p. 347 [my own translation].

[46]E.J. Couture, *Fundamentos do Direito...*, *op. cit. supra* n. (45), pp. 355 and 358; E.J. Couture, *Fundamentos del Derecho...*, *op. cit. supra* n. (45), pp. 348 and 350.

to recall but one illustration of this outlook, — Judge Anzilotti upheld in his Dissenting Opinion in the aforementioned case of the *Chorzów Factory — Interpretation of Judgments ns. 7 and 8* (1927); yet, as a learned jurist, Dionisio Anzilotti, after so asserting, conceded:

> "When I say that only the terms of a judgment are binding, I do not mean that only what is actually written in the operative part constitutes the Court's decision. On the contrary, it is certain that it is almost always necessary to refer to the statement of reasons to understand clearly the operative part and above all to ascertain the *causa petendi*" (p. 24, para. 2).

59. The reasoning or the *motifs* of a judgment can be freely resorted to, in the interpretation of any point or passage of the *dispositif* which requires clarification; in fact, it will be hardly possible to determine the exact scope of a *dispositif* without taking into account the reasoning (the *motifs*). They may indeed appear inseparable from each other, and there are even the *dispositifs* that deem it fit to make express cross-references to corresponding paragraphs of the *motifs*[47]. In the present Interpretation of Judgment, for example, resolutory point n. 2 of the *dispositif* expressly refers to paragraph 98 of the *motifs*.

60. Legal reasoning is not simply an intellectual output (of logic), as the search for justice is also moved by experience and social equity. As already indicated, the function of the judge is not reduced simply to produce syllogisms, far from it: jurisprudential construction goes further than that, it resorts to all available sources of law, it has a latitude of choice, it matches the facts with the applicable norms, and it tells what the Law is, in the exercise of *juris dictio*. Legal reasoning counts on the subjective element of the judge's thinking.

61. In this respect, over half a century ago Piero Calamandrei used to recall that s*ententia* derives from *sentiment*, as indicated by etymology. He further warned that the subjects of law (*sujets de droit*) are not transformed into a *dossier* (as hinted by bureaucratic indifference), but remain "living persons". In legal reasoning, electronic machines will never replace human beings. The requisite of providing the *motifs* (*la motivation*) appears as the "rationalization of the sense of justice"[48]. The reasoning (*motifs*) of a judgment is thus important, besides being pedagogical: it "serves to demonstrate that the judgment is just, and why it is just"[49]. *Sententia* emanates from human conscience, moved by the sense of justice.

IX. CONCLUDING OBSERVATIONS

62. I have now come to my concluding observations. It is not my intention to reiterate here the considerations I developed, in my Separate Opinion in the ICJ's Order of Provisional Measures of Protection, of 18.07.2011, on the perennial issue of *time and Law*[50]. In the present Separate Opinion, I now limit myself to refer to my reflections developed therein, with only one additional point. We all live and work *within time*, and the acceptance of the passing of time is one of the greatest challenges of human existence. In the present Interpretation of Judgment, the Court addressed with timidity (para. 75) the effects of facts subsequent to the original judgment upon the requested Interpretation of Judgment. This requires, in my perception, a clarification.

---

[47] E.J. Couture, *Fundamentos do Direito*..., *op. cit. supra* n. (45), pp. 357 and 360; E.J. Couture, *Fundamentos del Derecho*..., *op. cit. supra* n. (45), pp. 349 and 351.

[48] P. Calamandrei, *Proceso y Democracia*, Buenos Aires, Edic. Jurídicas Europa-América, 1960, pp. 67, 80-81 and 125.

[49] *Ibid*., pp. 116-117, and cf. p. 81.

[50] I have also dwelt upon this issue in my Dissenting Opinion (paras. 46-64 and 74-77) in the case of *Questions Relating to the Obligation to Prosecute or Extradite* (Order of 28.05.2009), followed by my Separate Opinion (paras. 145-157) in the same case (merits, Judgment of 20.07.2012).

63. In its present Interpretation of Judgment in the case of the *Temple of Preah Vihear*, the ICJ has repeatedly taken note of the facts, subsequent to its original Judgment of 1962 in the *cas d'espèce*, which have been brought to its attention by the contending parties[51]. And it could not have done otherwise. Having done so, it undertook the exercise of providing the requested Interpretation of the original 1962 Judgment, focusing on its *dispositif* together with the corresponding *motifs*. It stated that, in determining the meaning and scope of the resolutory points (or the *dispositif*) of the original 1962 Judgment, it had regard to the corresponding *motifs*, to the extent that its own pertinent reasoning shed light on the *dispositif* (para. 68). It then clarified the meaning of the "vicinity" of the Temple of Preah Vihear (paras. 97-98).

64. Already in its Provisional Measures of Protection indicated in its Order of 18.07.2011 in the present case of the *Temple of Preah Vihear*, the Court, — as I pointed out in my previous Separate Opinion, — *brought together territory, people and human values*, well in keeping with the *jus gentium* of our times (paras. 100, 114-115 and 117). And today, 11.11.2013, it does so again in the present Interpretation of Judgment, wherein it has deemed it fit to assert that

> "(...) As is clear from the record of both the present proceedings and those of 1959-1962, the Temple of Preah Vihear is a site of religious and cultural significance for the peoples of the region and is now listed by UNESCO as a world heritage site (...). In this respect, the Court recalls that under Article 6 of the [1972] World Heritage Convention, to which both States are parties, Cambodia and Thailand must co-operate between themselves and with the international community in the protection of the site as a world heritage. In addition, each State is under an obligation not to 'take any deliberate measures which might damage directly or indirectly' such heritage" (para. 106)

65. In a proper inter-temporal dimension, the Court, in my perception, has thus endorsed the on-going process of *humanization* of international law, — to which I have been endeavouring to contribute, successively within two distinct international jurisdictions, since the mid-nineties[52]. A parallel between the Judgment of 1962 and the present Interpretation of Judgment of 2013 in the case of the *Temple of Preah Vihear* gives clear testimony of that. By giving its due to the preservation of world cultural heritage, parallel to the safeguard of territorial sovereignty, the Court is contributing to the avoidance of a *spiritual damage* (cf. paras. 32-33, *supra*).

66. It does so at the same time that it draws attention to the relevance of *general principles of international law*, such as of prohibition of use or threat of force and of peaceful settlement of disputes (paras. 38-39, *supra*). The necessary attention to those principles brings us closer to the domain of higher *human values*[53], shared by the international community as a whole. It is, ultimately, those principles that inform and conform the applicable norms. Without them, there is ultimately no legal system at all; hence their utmost importance, at both international and domestic levels.

---

[51]Cf., to this effect, paragraphs 25, 39-40, 43-44 and 106 of the present Interpretation of Judgment.

[52]For an account of my endeavours in this respect, in the international case-law, from 1997-1998 onwards, cf. A.A. Cançado Trindade, *Los Tribunales Internacionales Contemporáneos y la Humanización del Derecho Internacional*, Buenos Aires, Edit. Ad-Hoc, 2013, pp. 163-185; and cf., earlier on, e.g., A.A. Cançado Trindade, "A Emancipação do Ser Humano como Sujeito do Direito Internacional e os Limites da Razão de Estado", 6/7 *Revista da Faculdade de Direito da Universidade do Estado do Rio de Janeiro* (1998-1999) pp. 425-434; A.A. Cançado Trindade, *A Humanização do Direito Internacional*, Belo Horizonte/Brazil, Edit. Del Rey, 2006, pp. 3-409.

[53]I have further dwelt upon the importance of fundamental *human values* in my Dissenting Opinion (paras. 32-40) in the case of the *Jurisdictional Immunities of the State* (Judgment of 03.02.2012).

67. After all, it is the fundamental principles that confer cohesion, coherence and legitimacy, and the ineluctable axiological dimension, to every legal system. In effect, general principles permeate the whole international legal order; they conform their *substratum*, being consubstantial to it. They give expression to the idea of an *objective justice*, above the will of individual States. They indicate, at last, the *status conscientiae* reached by the international community as a whole.

(Signed) Antônio Augusto CANÇADO TRINDADE.

DÉCLARATION DE M. LE JUGE *AD HOC* GUILLAUME

1) Interprétation du point 2 du dispositif de l'arrêt de 1962 imposant à la Thaïlande une obligation d'évacuation des environs du temple situés en territoire cambodgien — Territoire cambodgien s'étendant au nord jusqu'à la ligne de la carte de l'annexe 1 — Territoire thaïlandais commençant au-delà de cette ligne — Frontière ainsi fixée par la Cour avec force obligatoire dans le dispositif de son nouvel arrêt — 2) Non-lieu à statuer sur les conclusions du Cambodge tendant à ce que force obligatoire soit reconnue de manière plus générale à cette ligne — 3) Obligation de la Thaïlande de respecter la souveraineté du Cambodge sur le territoire ainsi reconnu cambodgien — Non-lieu à statuer sur la question de savoir si l'obligation d'évacuation mise à la charge de la Thaïlande en 1962 avait un caractère continu ou instantané.

1. Je souscris à la décision unanime de la Cour telle que figurant aux paragraphes 98 et 108 de l'arrêt. Je pense cependant utile de préciser quelque peu la portée de cette décision.

2. Je rappellerai tout d'abord qu'en 1962 la Cour était saisie, selon ses propres termes, d'une contestation entre le Cambodge et la Thaïlande «relative à la souveraineté dans la région du temple de Préah Vihéar». Elle précise dans l'arrêt rendu alors que «[p]our trancher cette question de souveraineté territoriale, [elle] devra faire état de la frontière entre les deux Etats» (*C.I.J. Recueil 1962*, p. 14). Après une longue analyse qui forme l'essentiel du jugement, la Cour «se prononc[e] en faveur de la frontière indiquée sur la carte [dite carte de l'annexe 1] pour la zone litigieuse» (*ibid.*, p. 35).

Dans le même arrêt, la Cour observe cependant qu'initialement le Cambodge lui avait seulement demandé de juger que le temple était sur son territoire et ne lui avait pas demandé de fixer la frontière. Il n'avait présenté de conclusions à cet effet qu'au cours des audiences. Dans ces conditions, la Cour a estimé ne pouvoir statuer sur cette extension de la demande primitive. Elle ne s'est donc prononcée sur la frontière que dans les motifs de son arrêt et ne l'a pas fait dans le dispositif lui-même. Puis sur la base de ces motifs, elle a conclu dans le dispositif :

1) que «le temple de Préah Vihéar est situé en territoire relevant de la souveraineté du Cambodge» ;

2) «dit en conséquence … que la Thaïlande est tenue de retirer tous les éléments de forces armées ou de police ou autres gardes ou gardiens qu'elle a installés dans le temple ou dans ses environs situés en territoire cambodgien».

Tel était l'arrêt dont le Cambodge a sollicité l'interprétation en vertu de l'article 60 du Statut.

3. Au vu des conclusions finales du Cambodge et de la Thaïlande, il apparaît qu'il existe en l'espèce plusieurs contestations sur le sens et la portée de l'arrêt de 1962. Comme la Cour l'a noté au paragraphe 31 de son ordonnance du 18 juillet 2011, et comme elle le rappelle au paragraphe 35 de son arrêt, les divergences entre les Parties portent :

a) «sur la question de savoir si l'arrêt a ou non reconnu avec force obligatoire la ligne tracée sur la carte de l'annexe 1 comme représentant la frontière» ;

b) «sur le sens et la portée de l'expression «environs situés en territoire cambodgien» utilisée au deuxième [point] du dispositif de l'arrêt» ;

c) «sur la nature de l'obligation imposée à la Thaïlande … de «retirer tous les éléments de forces armées ou de police ou autres gardes ou gardiens», et notamment sur le point de savoir si cette obligation est de caractère continu ou instantané».

4. Dans le présent arrêt, la Cour écarte tout d'abord les exceptions d'incompétence et d'irrecevabilité soulevée par la Thaïlande. Puis elle se penche sur les conclusions du Cambodge concernant le point 2 du dispositif de l'arrêt de 1962. Elle cherche donc à déterminer le sens et la portée de l'expression «environs situés en territoire cambodgien» utilisée dans ce point.

5. Le Cambodge soutient que les «environs du temple situés en territoire cambodgien» correspondent à une zone d'environ 4,6 kilomètres carrés comprise entre la ligne de la carte de l'annexe 1 et la ligne de partage des eaux selon le tracé revendiqué en 1962 par la Thaïlande. La zone ainsi revendiquée comprend l'intégralité de l'éperon de Préah Vihéar, la colline de Phnom Trap et la vallée séparant l'éperon de la colline (paragraphe 83).

6. La Thaïlande prétend, pour sa part, que les environs du temple correspondent au temple lui-même et à une bande étroite de terrain entourant l'édifice, tels que définis dans la résolution du conseil des ministres thaïlandais du 10 juillet 1962 et concrétisés sur le terrain par une clôture de barbelés érigée par ses soins en 1962. Les environs ainsi définis ont une surface d'environ 0,25 kilomètre carré (paragraphe 84).

7. La Cour a adopté une solution intermédiaire. Elle a décidé que les «environs du temple en territoire cambodgien» comprenaient le temple lui-même, l'éperon sur lequel il est construit et la vallée séparant cet éperon de la colline de Phnom Trap. Il en résulte que cette dernière ne fait pas partie des environs au sens du point 2 de l'arrêt de 1962 (paragraphe 98 repris au paragraphe 108).

8. La Cour a en outre précisé qu'«[A]u nord, la limite» des environs ainsi définis «est la ligne de la carte de l'annexe 1» (paragraphe 98 repris au paragraphe 108). Le territoire cambodgien s'étend donc «jusqu'à [cette] ligne» (paragraphe 90). Au-delà commence le territoire thaïlandais (*ibid.*). La ligne de la carte de l'annexe 1 constitue donc dans cette zone la frontière entre les deux Etats. De ce fait la Thaïlande était tenue en 1962 de retirer les forces armées et de police et autres gardes ou gardiens qui se trouvaient dans les environs du temple en territoire cambodgien au sud de la ligne de la carte de l'annexe 1 pour les ramener «jusqu'à son propre territoire» au nord de cette ligne (paragraphe 98)**.**

9. Je souscris à ces conclusions pour les raisons géographiques et historiques exposées par la Cour aux paragraphes 86 à 97 de l'arrêt. J'ajouterai qu'en adoptant cette interprétation du point 2 de l'arrêt de 1962, la Cour :

a) fixe dans le dispositif même de son arrêt (paragraphes 108 et 98) les limites des territoires cambodgien et thaïlandais, c'est-à-dire la frontière entre les deux pays. De ce fait elle reconnaît force obligatoire à la ligne de la carte de l'annexe 1 dans le secteur concerné ;

b) détermine l'étendue des «environs situés en territoire cambodgien» dans des conditions telles qu'elle permet au Cambodge d'avoir aisément accès au temple depuis la plaine cambodgienne par la vallée séparant l'éperon de Préah Vihéar de la colline de Phnom Trap et d'en assurer ainsi librement l'entretien et la surveillance (paragraphes 89, 98 et 106) ;

c) ne tranche pas la question de savoir si la colline de Phnom Trap se trouve en territoire cambodgien ou en territoire thaïlandais (paragraphe 97).

10. Ayant ainsi fourni l'interprétation requise du point 2 du dispositif de l'arrêt de 1962, la Cour n'a pas cru devoir se prononcer sur les autres conclusions du Cambodge mentionnées au paragraphe 3 ci-dessus.

11. En premier lieu, la Cour a rappelé qu'elle avait jugé que la souveraineté du Cambodge «s'étend au nord [dans les environs du temple] jusqu'à la ligne de la carte de l'annexe 1, mais pas au-delà» (paragraphe 104). Elle a constaté qu'elle avait fixé avec force obligatoire dans le dispositif de son arrêt la frontière entre les deux Etats dans le secteur ayant fait l'objet du différend qui lui avait été soumis en 1962. Il ne lui appartenait pas de se prononcer de manière plus générale sur la force obligatoire de la ligne de l'annexe 1 en dehors de ce secteur. Il lui suffisait de constater qu'elle avait tranché la question dans le secteur du temple. Il n'y avait donc pas lieu pour elle de statuer sur le surplus des premières conclusions du Cambodge (*ibid.*).

12. J'ajouterai que, si la Cour avait estimé nécessaire de se prononcer sur l'argumentation développée à cet égard par le Cambodge, j'aurai eu pour ma part tendance à l'accueillir. En effet la Cour s'était en 1962 clairement prononcée dans les motifs de son arrêt en faveur de la frontière indiquée sur la carte de l'annexe 1 (*C.I.J. Recueil 1962*, p. 35). Ce motif était inséparable du dispositif, il en constituait la «condition absolue» (paragraphe 34) c'est-à-dire la *ratio decidendi*. Ce motif n'avait certes pas la force exécutoire qui s'attache au dispositif des arrêts, mais il avait l'autorité de la chose jugée, c'est-à-dire force obligatoire.

13. En dernier lieu, la Cour n'a pas davantage jugé nécessaire de trancher la question de savoir si l'obligation imposée à la Thaïlande par l'arrêt de 1962 d'évacuer le temple et ses environs en territoire cambodgien avait un caractère continu ou instantané. Elle a observé que la Thaïlande avait reconnu devant la Cour qu'elle est dans l'obligation de respecter l'intégrité du territoire cambodgien. Elle a relevé que cette obligation «s'applique à tout territoire en litige dont la Cour a jugé qu'il relevait de la souveraineté du Cambodge» (paragraphe 105), donc aux «environs du temple en territoire cambodgien» tels que définis par la Cour. De ce fait la Thaïlande ne peut y réintroduire forces armées ou de police, gardes ou gardiens. Dès lors il n'y avait pas lieu de s'interroger sur la question de savoir si l'arrêt de 1962 impose encore aujourd'hui à la Thaïlande cette même obligation.

14. En définitive, la Cour a fixé dans le dispositif de son arrêt (paragraphes 108 et 98) l'étendue des «environs du temple en territoire cambodgien» visés au point 2 de l'arrêt de 1962. Elle a précisé dans ce même dispositif que ce territoire s'étend au nord jusqu'à la ligne de la carte de l'annexe 1. Au-delà commence le territoire thaïlandais. La Cour a ainsi fixé la frontière entre les deux Etats dans le secteur en cause et reconnu de ce fait force obligatoire à la ligne de la carte de l'annexe 1 dans ce secteur. Elle a en outre précisé l'étendue des environs du temple dans des conditions permettant de garantir au Cambodge le libre accès à ce dernier depuis la plaine cambodgienne.

(Signé) Gilbert GUILLAUME.

DÉCLARATION DE M. LE JUGE *AD HOC* COT

1. Je suis d'accord avec les conclusions de la Cour dans son interprétation de l'arrêt du 15 juin 1962. La Cour a veillé à s'en tenir à une interprétation stricte dudit arrêt et à ne pas aller au-delà de ce qui avait été décidé.

2. En particulier, la Cour a refusé de se prononcer sur le statut de la ligne de la carte de l'annexe I. On rappellera qu'en 1962, la Cour avait explicitement rejeté les deux premières conclusions du Cambodge, «priant la Cour de se prononcer sur le statut juridique de la carte de l'annexe I et sur la ligne frontière dans la région contestée» (*C.I.J. Recueil 1962*, p. 36). Dans le présent arrêt, la Cour n'a pris en considération la ligne de la carte de l'annexe I que pour déterminer la limite nord des «environs» du temple, situés sur l'éperon de Préah Vihéar.

3. La difficulté principale tenait en effet à la définition du terme «environs» dans le paragraphe 2 du dispositif de l'arrêt de 1962. Le conseil des ministres de la Thaïlande, dans sa décision du 10 juillet 1962, avait adopté une délimitation enserrant le temple dans le périmètre de l'enceinte sacrée et avait fait édifier une clôture de barbelés autour du temple. Le Cambodge, de son côté, estimait que les «environs» du temple comprenaient tout le territoire situé au sud de la ligne de la carte de l'annexe I dans le secteur disputé, y compris la colline voisine de Phnom Trap.

4. La Cour note à juste titre que la détermination unilatérale par une Partie des «environs» du temple ne saurait s'imposer à l'autre Partie. Il lui appartient donc de procéder elle-même à cette détermination.

5. La thèse avancée par le Cambodge reposait sur le tracé de la ligne de la carte de l'annexe I et s'étendait sur une zone importante. Elle allait à l'encontre des dispositions explicites de l'arrêt du 15 juin 1962 en demandant à la Cour de consacrer le caractère de frontière de la ligne de la carte de l'annexe I.

6. De plus, en demandant l'attribution au Cambodge d'une zone substantielle de territoire, cette conception allait au-delà même des thèses plaidées par les conseils du Cambodge en 1962. En particulier, Dean Acheson, plaidant pour le Cambodge, observait que la colline de Phnom Trap ne saurait être concernée par le différend, qui se circonscrit à une zone de quelques centaines de mètres autour du temple (*C.I.J. Mémoires, Temple de Préah Vihéar,* vol. II, p. 145-146). Il considérait aussi que la zone située au nord-ouest du temple, la zone de Phnom Trap, n'était pas la zone cruciale, la zone contestée ou «doubtful area» (*ibid.,* p. 465). Il analysait la ligne de partage des eaux dans ce qu'il appelait avec les conseils de la Thaïlande «the critical, or crucial, area, the area from the bottom of the northern staircase eastward to point F.» (*Ibid.*) Roger Pinto, conseil pour le Cambodge, notait de son côté : «Nous ne devons jamais perdre de vue, en effet, que la frontière passe à quelques 500 mètres au nord du temple.» (*Ibid.,* vol. II, p. 189).

7. Pour autant, la demande de la Thaïlande me paraît restrictive à l'excès. La Thaïlande prétendait que le temple proprement dit se limitait au sanctuaire principal et que les autres éléments du temple en constituaient les «environs» clôturés par le mur d'enceinte (CR 2013/4, p. 29-42, par. 13-41)**.**

8. Il n'est pas raisonnable de limiter les «environs» du temple à l'enceinte dans laquelle se trouve le temple, comme l'a plaidé la Thaïlande. C'est, me semble-t-il, faire un contresens sur la notion de temple khmer. Le temple khmer ne se limite pas au temple principal, mais comprend un ensemble d'édifices et de constructions, dont les portails d'accès, les «bibliothèques», les escaliers, etc. Le temple de Préah Vihéar est un temple khmer de type «temple-montagne» classique du IX^{e} siècle. Il comprend un escalier monumental, quatre gopuras successives et un sanctuaire central de dimensions relativement modestes. Le tout est entouré d'un mur délimitant l'enceinte sacrée.

9. La littérature spécialisée citée par les Parties, en particulier les ouvrages et études publiés par l'Ecole française d'Extrême-Orient à l'époque où l'arrêt du 15 juin 1962 a été rendu, n'utilisent guère le terme «environs» pour désigner les édifices et constructions se trouvant à l'intérieur de l'enceinte sacrée. Parmi les auteurs mentionnés lors de la procédure orale en 1962 (*op. cit.*, vol. II, p. 468 et suiv.), on peut citer Georges Groslier (*Promenades artistiques et archéologiques du Cambodge*), Lunet de la Jonquière (*Inventaire descriptif des monuments du Cambodge*), Georges Coedès, directeur de l'E.F.E.O., dans ses *Inscriptions du Cambodge*. Parmi les travaux contemporains des plaidoiries, on citera Philippe Stern en 1952 (*Diversité et rythmes des fondations royales khmères*) ou Maurice Glaize, ancien conservateur et collaborateur de Georges Coedès dont le guide, *Les monuments du groupe d'Angkor,* publié à Saigon en 1944, est toujours réédité. Ces ouvrages n'utilisent pas les termes «environs du temple» pour qualifier les constructions se trouvant à l'intérieur de l'enceinte sacrée des temples khmers.

10. Reste à préciser les contours des «environs» au sens de l'arrêt du 15 juin 1962. Les plaidoiries écrites et orales offrent quelques éléments. Elles portent principalement sur l'identification de la ligne de partage des eaux. Les Parties ne s'aventurent pas au-delà du promontoire sur lequel est situé le temple.

11. Les motifs de l'arrêt de 1962 en précisent la portée géographique. On relèvera la description par la Cour de la carte de l'annexe I, «carte portant le tracé d'une frontière … qui situait tout l'éperon de Préah Vihéar, zone du temple comprise, en territoire cambodgien» ou, dans le texte anglais faisant foi, «showing the whole PreahVihear promontory, with the Temple area, as being on the Cambodian side» (*C.I.J. Recueil 1962*, p. 21). La formulation de la Cour semble impliquer que la «zone du temple» ou le «Temple area» serait comprise dans le périmètre de l'éperon ou du promontoire de Préah Vihéar et ne s'étendrait pas au-delà.

12. Notant la description géographique du site faite en 1962 et la qualification d'«éperon» pour désigner le promontoire sur lequel se trouve le temple, la Cour considère que le sens naturel du terme «environs» correspondait audit éperon. Le terme «éperon» décrit la caractéristique géographique du promontoire de Préah Vihéar, nettement séparé de la colline de Phnom Trap par un petit col. Je souscris à cette conclusion.

13. La Cour refuse de tracer une ligne précise. C'eût été s'engager dans une opération de délimitation, allant ainsi au-delà de la fonction d'interprétation qui est la sienne dans cette affaire. Elle se limite à indiquer le périmètre concerné, qui concerne tout l'éperon ainsi que le col qui sépare l'éperon de Préah Vihéar de la colline de Phnom Trap. Elle précise que le replat du col doit être compris dans les «environs» en question, afin d'assurer l'accès au temple à partir de la plaine cambodgienne. Elle ajoute logiquement qu'elle n'a pas à se prononcer sur la souveraineté sur la colline de Phnom Trap.

14. Il appartient aux Parties d'exécuter l'arrêt du 15 juin 1962 de bonne foi et en particulier de matérialiser la limite des «environs» se trouvant sous souveraineté du Cambodge.

15. J'observe que la solution décidée par la Cour correspond à peu de choses près à l'une des options proposées au conseil des ministres thaïlandais le 10 juillet 1962. Il s'agissait donc d'une interprétation possible de l'arrêt de 1962 selon les vues de l'administration thaïlandaise de l'époque. C'est celle que la Cour consacre aujourd'hui.

(Signé) Jean-Pierre COT.

JOINT DECLARATION OF JUDGES OWADA, BENNOUNA AND GAJA

1. The Court's jurisdiction to interpret a judgment under Article 60 of the Statute only extends to matters that were decided by the Court with binding force. These matters are generally included in the *dispositif*. The text of the Judgment recalls that, according to the Court's jurisprudence, a request for interpretation "cannot concern the reasons for the judgment except in so far as these are inseparable from the operative clause" (Judgment, see paragraph 34).

Reasons are "inseparable" when the operative part of the Judgment is not self-standing and contains an express or implicit reference to these reasons. An example of reasons that were considered inseparable from the operative part may be found in *Nigeria* v. *Cameroon*, where the Court resorted to examining the reasons in order to elucidate what it had meant by saying in the *dispositif* of a previous judgment that it "reject[ed] the sixth preliminary objection" (*Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment, I.C.J. Reports 1999 (I)*, p. 36, para. 11). A further example of inseparable reasons is offered by the current Judgment, in which the second operative paragraph asserts Cambodia's "sovereignty over . . . the promontory of Preah Vihear, as defined in paragraph 98 of the present Judgment".

2. "Inseparable" reasons are not the same as "essential" reasons, to which the Permanent Court referred in the *Chorzów Factory* case as those constituting "a condition essential to the Court's decision" (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 20). "Essential" reasons are those on which the *dispositif* is based. They may sustain the operative part of the judgment even if this is self-standing.

Assimilating "essential" or fundamental reasons to "inseparable" reasons, as the Court appears to do in paragraph 34 of its Judgment, in order to define what the Court has decided with binding force could imply that States parties to a case find themselves bound by pronouncements on matters that were not submitted to the Court and that may even lie beyond the Court's jurisdiction. Unlike the settlement of disputes in a municipal law system, the judicial settlement under international law rests on the consent of the parties. What is binding in a judgment has to be determined on the basis of the jurisdiction conferred by the parties to the Court and of their submissions in the case in hand. Certainly, the parties

to judicial proceedings accept that the Court addresses all the questions that it considers necessary in order to reach its conclusions. However, they do not accept to be bound by decisions on issues that they have not submitted to the Court's jurisdiction.

3. In the 1962 case, the Court had found that

> "Cambodia's first and second Submissions, calling for pronouncements on the legal status of the Annex I map and on the frontier line in the disputed region, can be entertained only to the extent that they give expression to grounds, and not as claims to be dealt with in the operative provisions of the Judgment" (*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 36).

It seems clear that the Court said that it could not decide on these issues with binding force. It would be unreasonable to consider that what could not be part of the *dispositif* according to the Court was nevertheless binding because it provided essential reasons for the operative part.

4. While in our opinion essential reasons cannot *per se* be the object of a request for interpretation under Article 60 of the Statute, they may naturally be resorted to in so far as they contribute to clarify the operative part of a judgment (see paragraph 68 of the present Judgment).

(*Signed*) Hisashi Owada.
(*Signed*) Mohamed Bennouna.
(*Signed*) Giorgio Gaja.

SEPARATE OPINION OF JUDGE CANÇADO TRINDADE

TABLE OF CONTENTS

*

I. Introduction

1. I have concurred, with my vote, for the adoption by the International Court of Justice (ICJ), of the present *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)* [hereinafter *Temple of Preah Vihear*]. Although I stand in agreement with the Court's decision, not all the considerations that I regard as supporting it are explicitly developed and stated in the present interpretation of judgment. Given the great importance that I attach to them, I feel obliged to leave on the records the foundations of my own personal position thereon. I do so moved by a sense of duty in the exercise of the international judicial function.

2. I shall first dwell upon the essence of the resurfaced dispute before the Court, and then proceed to a couple of terminological and hermeneutic precisions. Next, I shall briefly recall the incidents (2007-2011) leading to Cambodia's concomitant requests for provisional measures of protection and for interpretation of the 1962 Judgment, and the parties' submissions as to the compliance with the Court's Order on provisional measures of protection. I shall do so on the basis of the Parties' submissions to the Court, in the course of the proceedings pertaining to the present interpretation of judgment.

3. After recalling the fundamental principles of international law at issue, I shall dwell upon the ineluctable relationship between *motifs* and *dispositif*. To this effect, I shall: first, proceed to an overview of the relevant case law of the Hague Court (PCIJ and ICJ) on the matter; secondly, I shall refer to the presence of reason and persuasion in the exercise of legal reasoning; and, thirdly, I shall stress the acknowledgment, throughout the centuries, of the relevance of sound legal reasoning, bearing witness to the close relationship between *motifs* and *dispositif*. The way will then be paved, last but not least, to the presentation of my concluding observations.

II. Essence of the Resurfaced Dispute before the Court

4. To start with, may I point out that the Parties themselves, in their submissions to the Court, addressed the essence of the resurfaced dispute before the ICJ, in the course of the proceedings pertaining to the present interpretation of judgment. Thus, in its oral arguments (of 15 April 2013) before the Court, Cambodia stated, as to the factual context, projected in time, of the dispute opposing it to Thailand, that:

> "Between 1970 and 2007, it became dormant, first because of the civil war in Cambodia, and then when Cambodians settled peacefully

around the Temple and its vicinity without any protest from Thailand except for occasional complaints about pollution. The dispute only re-emerged in 2007-2008 as a result of Thailand's objections to the inscription of the Temple as a World Heritage Site [of UNESCO], and the publication of Thailand's new 'secret' map (. . .). That map was protested by Cambodia after these incidents."[1]

5. In its Application instituting proceedings (of 28 April 2011), Cambodia further contended that

"Following the Paris Accords of 1991, the final ending of the conflict with the Khmer Rouge movement in 1998 and the consolidation of an effective, democratic government in Cambodia able to conduct normal and peaceful relations with its neighbours and beyond, steps were taken to initiate a bilateral process between Cambodia and Thailand which, had it functioned in the way that Cambodia hoped, would have led to a stable situation being established, whereby the implementation of the Court's 1962 Judgment would have been entirely possible. The principal means of achieving that was the process of demarcating the boundary between the two States (. . .). Had that process been successfully completed, as Cambodia wished, it would have removed *ipso facto* the possibility of a dispute such as that concerning interpretation of the territorial régime in the particular area where the Temple of Preah Vihear is situated. It was only following Thailand's opposition to the process of including the Temple on UNESCO's list of World Heritage sites in 2008 that it became clear to Cambodia that the demarcation process had no realistic chance of being completed without a clear and authorized interpretation from the Court as to the meaning and scope of the 1962 Judgment. Cambodia does not believe that the Court can look unfavourably on the fact that Cambodia explored every bilateral possibility before reaching the conclusion that a fundamentally different interpretation existed between itself and its neighbour as to the meaning and scope of the 1962 Judgment, which could only be settled by means of this request for interpretation."[2]

6. Both in its Application[3], as well as in its Response (of 8 March 2012)[4], Cambodia insisted on the point that only from 2007 (with the initiative to have the Temple of Preah Vihear declared a World

[1] Compte rendu (CR) 2013/1, of 15 April 2013, p. 74, para. 86.
[2] Application instituting proceedings, filed by Cambodia on 28 April 2011, p. 25, para. 30.
[3] *Ibid.*, paras. 12, 15 and 17.
[4] Response of Cambodia, paras. 2.9, 2.23, 2.90-2.91, 2.104 and 4.60.

Heritage site by UNESCO) and from 2008 (with the inclusion of the Temple in the World Heritage sites) onwards, the present dispute resurfaced; the Parties themselves reckoned that they differed in terms of their understanding of the Court's Judgment of 1962. For its part, Thailand, in its written observations of 21 November 2011[5], observed that the Court's Judgment of 1962, in deciding the question of sovereignty over the Temple of Preah Vihear, which it accepted, created a situation to be taken into account for the process of delimitation and demarcation of its common border with Cambodia, of the area surrounding the Temple.

7. Thailand further pointed out that in 2004 a joint Thai-Cambodian Council of Ministers had met in Bangkok to consider submitting a "joint nomination" to include the Temple on the UNESCO World Heritage List, but, "later that year, without informing Thailand, Cambodia made a unilateral request to UNESCO to list the Temple as a World Heritage Site"[6]. In its further written explanations (of 21 June 2012), Thailand added that Cambodia thereby hoped "to extend the meaning of the word 'vicinity'", found in the *dispositif* (para. 2) of the Court's Judgment of 1962, so as to put the Temple on UNESCO's World Heritage List and "to get around the indispensable co-operation of Thailand"[7].

8. Both Cambodia and Thailand retook their arguments in the oral phase (April 2013) of the proceedings before the Court. Cambodia contended that the registration of the Temple as a UNESCO World Heritage site was the starting-point for the "acts of armed aggression carried out by Thailand", against "a poorly armed Cambodia"[8]. Thailand, for its part, argued that Cambodia's "unilateral request for inscription of the Temple on the UNESCO World Heritage List in 2007 once again poisoned the situation"[9].

9. Besides the ICJ, the dispute at issue was also taken to the attention of the UN Security Council. It clearly flows from the arguments of the contending Parties in their letters of July 2008 to the President of the Security Council (Mr. Le Luong Minh) that their differences were expressed shortly after the inclusion of the Temple of Preah Vihear — upon the initiative of Cambodia — on the list of UNESCO World Heritage Sites. Thus, in its letter of 19 July 2008 to the President of the Security Council, the Permanent Mission of Cambodia to the United Nations complained of the "Thai military provocation" in seeking to

[5] Written observations of Thailand, paras. 4.69, 4.75, 4.110 and 7.1.
[6] *Ibid.*, para. 1.21.
[7] Further written explanations of Thailand, para. 5.5.
[8] CR 2013/1, of 15 April 2013, pp. 17-18, paras. 7-8. Cambodia further argued that Thailand had "never truly accepted the solution in the 1962 Judgment" of the Court (*ibid.*, p. 18, para. 9).
[9] CR 2013/3, of 17 April 2013, p. 63, para. 26.

create a *de facto* "overlapping area" which "legally does not exist on Cambodia soil", in breach of Cambodia's "sovereignty and territorial integrity"[10].

10. Thailand, for its part, in the letter of its Permanent Mission to the United Nations of 21 July 2008 to the President of the Security Council, after stating that the 1962 ruling of the ICJ "did not in any case determine the location of the boundary between Thailand and Cambodia", argued that "the issue before the ICJ in this case was limited solely to the question of the sovereignty over the region of the Temple of Preah Vihear" and that "the location of the boundary line in the area adjacent to the Temple of Preah Vihear is still to be determined by both countries in accordance with international law"[11].

11. It ensues, from the position of the two contending Parties (cf. also *infra*), that the present case of the *Temple of Preah Vihear* is not a case of delimitation, nor of demarcation, of frontier, but rather a case of territorial sovereignty. The ICJ Judgment of 15 June 1962 speaks indistinctly of "sovereignty over the region of the Temple of Preah Vihear"[12], of "sovereignty over the Temple area"[13], or else of "sovereignty over the Temple"[14] itself. The 1962 Judgment reiterates the interchangeable use of the terms "disputed region", "sovereignty over Preah Vihear", and "the Temple or Temple area"[15]. One cannot avoid the impression that a couple of terminological and hermeneutic precisions are called for (cf. *infra*).

12. Before turning to that, may I just add that, in my perception, this is a case of territorial sovereignty to be exercised to secure the safety of local populations under the respective jurisdictions of the two contending States, in the light of basic principles of international law, such as those of peaceful settlement of international disputes and of the prohibition of the threat or use of force (cf. Section VII, *infra*); it is, furthermore, a case of territorial sovereignty to be exercised by the State concerned, in cooperation with the other State concerned, as parties to the World Heritage Convention, for the preservation of the Temple at issue as part of the world heritage (reckoned as such in the UNESCO List) and to the (cultural) benefit of humankind.

---

[10] Application instituting proceedings, Annex 2, pp. 42, 44.

[11] *Ibid.*, Annex 4, p. 86. Thailand added that

> "the inscription of the Temple of Preah Vihear on the World Heritage List shall in no way prejudice Thailand's rights regarding her territorial integrity and sovereignty as well as the survey and demarcation of land boundary in the area and Thailand's legal position" (*ibid.*, p. 88).

[12] *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 14 (last paragraph).

[13] *Ibid.*, p. 17 (first paragraph), and cf. p. 29 (first paragraph).

[14] *Ibid.*, p. 21 (second paragraph).

[15] *Ibid.*, p. 36 (three paragraphs).

III. A Couple of Terminological and Hermeneutic Precisions

13. At this stage, may I briefly dwell upon a couple of terminological and hermeneutic precisions, to clarify further the essence of this resurfaced dispute before the Court, which appears to defy the passing of time. In the *dispositif* of its Judgment of 15 June 1962 the Court found that "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia" (para. 1); it further found, in consequence, that "Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory" (para. 2)[16].

14. The first resolutory point of the *dispositif* leaves it clear that the dispute before it concerns territorial sovereignty, rather than delimitation or demarcation of frontier. As to the second resolutory point of the *dispositif*, one might have hoped that it would not have been somewhat vague, as it appears in the use of the term "vicinity", in indicating wherefrom Thai troops had to withdraw. Yet, this may have been done on purpose by the Court half a century ago.

15. The Court may well have decided to use a term not too narrowly circumscribed. Had the Court held the obligation to withdraw military troops or police forces precisely only as to the ground where the Temple, or its "ruins", stood, this could have led to a stricter interpretation that Thai troops could still be stationed right outside, or around, the walls of the Temple. This would have been impracticable, in hindering the access to the Temple of Cambodian non-military personnel. Thus, in my perception, while in its 1962 Judgment the Court did not precisely define the scope of the "vicinity" of the Temple, it seems important that the term "vicinity" be understood to comprise what is essential to guarantee the free access in and out of the Temple itself, the freedom of movement in and out of the Temple of non-military Cambodian personnel.

16. Furthermore, it seems likewise relevant that the term "vicinity", used in the second resolutory point of the *dispositif*, be understood also to describe the scope of the obligation to withdraw troops or police force in pursuance, on the part of both parties, of the fundamental principle of the prohibition of the threat or use of force, in the Temple itself, or in its "vicinity". It is somewhat ironical that it was the inscription by UNESCO of the Temple of Preah Vihear in the World Heritage List that led to the conflicts provoking the resurfacing of the present dispute before the ICJ, centred on the term "vicinity" as well as the obligation of "withdrawal" of military or police forces.

[16] *I.C.J. Reports 1962*, pp. 36-37.

17. The etymological origins of the verb "to withdraw/se retirer" go back to the late twelfth and the thirteenth centuries (from the Latin *retrahere*, to retract/se retirer). From then onwards, the verb is recorded to have been used in the sense of "to remove oneself from", or "to draw oneself away from", a place or a position[17]; the verb came to be used in respect of distinct situations, among which that of territorial sovereignty — not delimitation or demarcation of territory — as in the present resurfaced dispute before the Court, opposing Cambodia to Thailand. This is corroborated by the *dispositif* of the 1962 Judgment of the ICJ in the case of the *Temple of Preah Vihear (supra)*.

18. In the present interpretation of judgment, the ICJ has rightly pondered that

> "[o]nce a dispute regarding territorial sovereignty has been resolved and uncertainty removed, each party must fulfil in good faith the obligation which all States have to respect the territorial integrity of all other States. Likewise, the Parties have a duty to settle any dispute between them by peaceful means" (Judgment, para. 105).

In this connection, the Court has taken note that Thailand has commendably accepted that it has a *continuing obligation* to respect the integrity of Cambodian territory (*ibid.*, paras. 51 and 105), including that of the promontory of Preah Vihear.

IV. The Incidents (2007-2011) Leading to Cambodia's Requests for Provisional Measures of Protection and for Interpretation of the 1962 Judgment

19. A series of incidents, which took place in the period of 2007-2011 and prompted Cambodia's Requests for provisional measures of protection and for interpretation of the 1962 Judgment of the ICJ, are reported in its Application instituting proceedings, of 28 April 2011. On 17 May 2007 the Thai Prime Minister protested at Cambodia's zoning plan (issued on 10 November 2006) as part of its proposal to declare the Temple a

[17] Cf. *Dictionnaire historique de la langue française* (ed. Alain Rey), 3rd ed. Paris, Dictionnaires Le Robert, 2000, p. 1921; *The Oxford English Dictionary* (eds. J. A. Simpson and E. S. C. Weiner), 2nd ed., Vol. XX, Oxford, Clarendon Press, 1989, p. 450; *Barnhart Dictionary of Etymology* (eds. R. K. Barnhart and S. Steinmetz), N.Y., H. W. Wilson Co., 1988, p. 1241; *Dictionnaire étymologique et historique du français* (eds. J. Dubois, H. Mitterand and A. Dauzat), Paris, Larousse, 2007, p. 717; *The New Shorter Oxford English Dictionary on Historical Principles* (ed. L. Brown), Vol. 2, Oxford, Clarendon Press, 1993, p. 3704; *Legal Thesaurus* (ed. W. C. Burton), N.Y./London, Macmillan Publs., 1980, p. 514; *Vocabulaire juridique* (ed. G. Cornu), 8th ed., Paris, Association Henri Capitant/PUF, 2007, pp. 827-828; *Black's Law Dictionary* (ed. B. A. Garner), 9th ed., St. Paul/Mn., West/Thomson Reuters, 2009, p. 1739.

UNESCO World Heritage site. With the opening of discussions within UNESCO to have the Temple declared a World Heritage site, there followed a deterioration in relations between the two States concerned. As from 15 July 2008, "large numbers of Thai soldiers crossed the border and occupied an area of Cambodian territory near the Temple, on the site of the Keo Sikha Kiri Svara Pagoda"[18].

20. Thailand, likewise, in its written observations of 21 November 2011, acknowledged the occurrence of those incidents as from 2007[19]. Thailand contended that there was no evidence of non-compliance on its part of the Court's Judgment of 1962. In its perception,"[T]he border incidents that have occurred over recent years result from Cambodia seeking to assert authority over an area much greater than they have been content with in the past"[20].

21. The controversy over territorial sovereignty had indeed reemerged, and [this time] reached the UN Security Council on 21 July 2008[21]. In his letter of that date to the President of the UN Security Council (Mr. Le Luong Minh), the Permanent Representative of Thailand to the United Nations stated that the issue that had originally been brought before the ICJ for its Judgment of 1962 had been "limited solely to the question of the sovereignty over the region of the Temple of Preah Vihear", and not the determination of the boundary line in the "area adjacent to the Temple"; this latter still remained "to be determined by both countries in accordance with international law"[22].

22. Three months later, the President of the Security Council was informed by Cambodia's representative at the United Nations that "Thai troops [had] once again crossed the frontier at three locations" (Keo Sikha Kiri Svara Pagoda, Veal Intry and the hill of Phnom Trap, "inside Cambodian territory"), and had "opened fire on Cambodian soldiers", causing the death of two of them and injuries in two others (incident of 15 October 2008)[23]. Another armed incident of the kind occurred on 3 April 2009 (in Phnom Trap, Tasem and Veal Intry), in "the immediate vicinity of the Temple", causing damage in "the area around the Temple", including the stairway leading to it[24].

23. In the following year, the UN Secretary-General (Mr. Ban Ki-moon) offered (on 20 August 2010) his help to resolve the dispute between Cam-

[18] Application instituting proceedings, pp. 13 and 15, paras. 13-16.
[19] Thailand referred to facts going back to 2004-2005; cf. written observations of Thailand, pp. 13-14, paras. 1.26-1.27.
[20] *Ibid.*, p. 15, para. 1.30.
[21] Application instituting proceedings, p. 21, para. 25.
[22] *Ibid.*, Annex 4, p. 86, para. 4.1.
[23] *Ibid.*, p. 27, para. 33.
[24] *Ibid.*, para. 34.

bodia and Thailand[25], but unfortunately, from 4 to 7 February 2011, Thai troops, using "heavy artillery and fragmentation shells", caused "many casualties among the Cambodian armed forces and civilians", as well as "material damage to the Temple itself", leading to the Security Council's urging of a "permanent ceasefire" on 14 February 2011; the applicant State draws particular attention to the Security Council's statement of that date[26]. That UN Press Release was issued by the President of the Security Council (Mrs. Maria Luiza Ribeiro Viotti) on 14 February 2011, containing the following statement on the Cambodia/Thailand border situation:

> "The members of the Security Council were briefed by Under-Secretary-General B. Lynn Pascoe and by the Minister for Foreign Affairs of Indonesia, and Chair of the Association of South-East Asian Nations (ASEAN), Marty Natalegawa, on the situation on the border between Cambodia and Thailand.
>
> The members of the Security Council also heard from the Deputy Prime Minister and Minister for Foreign Affairs of Cambodia, Hor Namhong, and Minister for Foreign Affairs of Thailand, Kasit Piromya.
>
> The members of the Security Council expressed their grave concern about the recent armed clashes between Cambodia and Thailand.
>
> The members of the Security Council called on the two sides to display maximum restraint and avoid any action that may aggravate the situation. The members of the Security Council further urged the parties to establish a permanent ceasefire, and to implement it fully and resolve the situation peacefully and through effective dialogue.
>
> The members of the Security Council expressed support for ASEAN's active efforts in this matter and encouraged the parties to continue to co-operate with the organization in this regard. They welcomed the upcoming Meeting of Ministers for Foreign Affairs of ASEAN on 22 February."[27]

24. In its Application instituting proceedings, Cambodia referred to the incidents of early February 2011 as "a serious threat to peace and security in the region", as again stressed by the UN Secretary-General (Mr. Ban Ki-moon)[28]. The concern of UNESCO, for its part, expressed in the Report of 26 May 2009 of the UNESCO World Heritage Committee, was with strengthening "the protection and management of the World Heritage property" (cf. Annex 12). As further reported by Cambodia in its Application:

[25] Application instituting proceedings, cf. Annex 8, UN Press Release of 20 August 2010, p. 151.

[26] *Ibid.*, p. 27, para. 34.

[27] *Ibid.*, Annex 9, UN Press Release of 14 February 2011, p. 152. [English official translation.]

[28] *Ibid.*, p. 29, para. 34.

> "In these various incidents between 2008 and 2011, architectural features of the Temple have been damaged, leading to inquiries and reports by the UNESCO authorities, which have recommended the convening of an international co-ordinating committee, as envisaged in the decision to list the site. (. . .) Following the serious incidents in early February 2011, the Director-General of UNESCO, Mrs. Irina Bokova, decided to send a mission to the site, together with a special envoy in the person of the former UNESCO Director-General, Mr. Koïchiro Matsuura."[29]

UNESCO's initiative, among others[30], purported to assess *in loco* the state of the Temple of Preah Vihear.

25. Another UN press release, of 23 April 2011, expressed the grave concern of the UN Secretary-General (Mr. Ban Ki-moon) with the new clashes between Cambodia and Thailand along their "common border":

> "United Nations Secretary-General Ban Ki-moon is troubled by reports of renewed fighting in the past two days between Cambodian and Thai troops along the two countries' common border, which has reportedly claimed numerous lives from both sides, said his spokesperson on Saturday.
>
> 'He had been encouraged by the initial signs of progress in regional efforts to strengthen bilateral mechanisms for dealing with the dispute between the two neighbours', the spokesperson added. 'The Secretary-General calls on both sides to exercise maximum restraint and to take immediate measures to put in place an effective and verifiable ceasefire.'
>
> Mr. Ban 'also believes the dispute cannot be resolved by military means and urges Cambodia and Thailand to engage in serious dialogue to find a lasting solution'.
>
> According to reports, six people died on Friday as a result of fighting along the border between Thailand and Cambodia, despite the ceasefire negotiated in February. Three Thai and three Cambodian soldiers lost their lives in these clashes and a further 19 — 13 Thais and six Cambodians — were injured.
>
> Thailand and Cambodia hold each other responsible for the gunfire, which took place close to the Temples of Ta Moan and Ta Krabei, some 150 km south-west of the Temple of Preah Vihear, where armed clashes claimed 11 lives two months ago, between 4 and 7 February."[31]

[29] Application instituting proceedings, para. 35; and cf. *ibid.*, Annex 12, pp. 161-173.

[30] E.g., the European Parliament, likewise, adopted a resolution, on 17 February 2011, on the border clashes between Thailand and Cambodia (cf. *ibid.*, Annex 13, pp. 175-179).

[31] UN Press Release of 23 April 2011, reproduced in *ibid.*, Annex 11, p. 159. [English official translation.]

26. The situation brought to the knowledge of the Court on 28 April 2011 (for interpretation of its 1962 Judgment) was thus clearly that of a dispute, in my perception concerning mainly the *withdrawal* of forces from the Temple or its vicinity, in the light of general principles of international law, such as those of the prohibition of the threat or use of force, and of peaceful settlement of international disputes. The Cambodian Request for interpretation is ineluctably intermingled with the Cambodian Request for provisional measures, both having been prompted by the events which have occurred (as from 2007, and culminating in early 2011) in the Temple area and its vicinity.

27. Those incidents are to be much regretted. As I pondered in my separate opinion, in the Court's Order (of 18 July 2011) of provisional measures of protection in the *cas d'espèce*,

> "In the present case of the *Temple of Preah Vihear* before the ICJ, it is indeed a pity that a temple that was built with inspiration in the first half of the eleventh century, to assist in fulfilling the religious needs of human beings, and which is nowadays — since the end of the first decade of the twenty-first century — regarded as integrating the world heritage of humankind, becomes now part of the bone of contention between the two bordering States concerned. This seems to display the worrisome frailty of the human condition, anywhere in the world, in that individuals appear prepared to fight each other and to kill each other in order to possess or control what was erected in times past to help human beings to understand their lives and their world, and to relate themselves to the cosmos." (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, pp. 603-604, para. 108.)

V. The Provisional Measures of Protection of the ICJ of 2011

28. As a consequence of the eruption of armed hostilities between Thailand and Cambodia *(supra)*, the ICJ convened public sittings on 30 and 31 May 2011, and shortly afterwards issued its Order of provisional measures of protection, on 18 July 2011. In the present interpretation of judgment that the Court has just issued, it expressly refers (Judgment, para. 35) to its Order of provisional measures of 18 July 2011, related as it is to Cambodia's Request for interpretation of the 1962 Judgment, even though delivered without prejudice to the ICJ's present interpretation of judgment. The two Requests were lodged together with the Court by the applicant State. In the present interpretation of judgment, the ICJ has taken note of its Order of provisional measures (*ibid.*,

paras. 29 and 35-36), in order to address the Request for interpretation; it has thus made it clear that the two concomitant Requests cannot make abstraction of each other.

29. In its Order of provisional measures of 18 July 2011, the Court determined, as from the basic principle of the prohibition of the threat or use of force, enshrined into the UN Charter, the creation of a "provisional demilitarized zone" around the Temple of Preah Vihear and in the proximities of the frontier between the two countries, and the immediate withdrawal of their military personnel, and the guarantee of free access to the Temple of those in charge of supplies to the non-military personnel present therein. It further determined the retaking and pursuance of negotiations between them, aiming at the peaceful settlement of the dispute, so as not to allow its aggravation.

30. In my separate opinion, I endorsed the correct determination by the ICJ of the unprecedented creation of a "provisional demilitarized zone", whereby it seeks to protect, in my understanding, not only the territory at issue, but also the populations that live thereon, as well as the set of monuments found therein, conforming the Temple of Preah Vihear. This latter integrates, as from 2008, by decision of the World Heritage Committee of UNESCO, its World Heritage List, which constitutes the cultural and spiritual heritage of humankind (*I.C.J. Reports 2011 (II)*, pp. 588-598, paras. 66-95).

31. Beyond the classic territorialist outlook, I proceeded in my separate opinion, lies the *human factor*, calling for the protection, by the measures indicated or ordered by the ICJ, of the rights to life and personal integrity of the members of the local population, as well as the cultural and spiritual heritage of human kind (*ibid.*, pp. 598-606, paras. 96-113). Underlying this jurisprudential construction, I added, is the *principle of humanity*, orienting the search for improvement of the conditions of living of the population and the realization of the common good (*ibid.*, p. 606, paras. 114-115), in the ambit of the new *jus gentium* of our times (*ibid.*, p. 607, para. 117)[32]. In situations of the kind, one cannot consider the territory making abstraction of the local populations (and their cultural and spiritual heritage), who, in my view, constitute the most precious component of statehood.

32. In its aforementioned provisional measures of protection, the ICJ took into due account not only the territory at issue, but, jointly, the people on territory, i.e., the *protection of the population on territory*. In my aforementioned separate opinion, I pondered that, beyond the States, are

[32] And cf., for a comprehensive study, A. A. Cançado Trindade, *International Law for Humankind — Towards a New Jus Gentium*, 2nd ed., The Hague, Martinus Nijhoff/The Hague Academy of International Law, 2013, pp. 1-726.

the human beings who compose them (*I.C.J. Reports 2011 (I)*, p. 606, para. 114). In a case of this kind, seemingly only territorial, there is epistemologically no inadequacy to extend protection also to human life, and to the cultural and spiritual world heritage (the Temple of Preah Vihear), thus avoiding a *spiritual damage* (*ibid.*, p. 588, para. 66) — as I sought to conceptualize this latter in 2005, within the Inter-American Court of Human Rights (IACtHR), in my separate opinion in the case of the *Moiwana Community* v. *Suriname* (judgment of 15 June 2005).

33. In my separate opinion in the Court's Order of 18 July 2011 in the present case of the *Temple of Preah Vihear*, I deemed it fit to warn that, in effect, not everything in the *cas d'espèce* can be subsumed under territorial sovereignty (*I.C.J. Reports 2011 (II)*, p. 599, para. 99), as the provisional measures indicated by the Court encompassed the human rights to life and to personal integrity, as well as cultural and spiritual world heritage. In sum, the Court's Order went "well beyond State territorial sovereignty, *bringing territory, people and human values together*" (*ibid.*, p. 600, para. 100), well in keeping with the *jus gentium* of our times (*ibid.*, pp. 606-607, paras. 115 and 117).

VI. The Parties' Submissions as to the Compliance with the Order of the ICJ on Provisional Measures of Protection

34. As I have already mentioned, in my perception the Requests for provisional measures of protection and for interpretation of the 1962 Judgment appear interrelated (para. 28, *supra*). In all likelihood the Request for interpretation would not have been lodged with the Court if the aforementioned armed hostilities between Thailand and Cambodia had not occurred. Such armed hostilities form the factual context which originated the Request for interpretation as well as the Request for provisional measures of protection, and rendered necessary the adoption of those measures by the Court.

35. As from the Court's Order of 18 July 2011, the contending Parties were faced with the duty to comply with it, binding as such protective measures are. It should not pass unnoticed that, in the course of the proceedings before the ICJ as to the Request for interpretation, both Thailand and Cambodia deemed it fit to present to the Court their views concerning compliance with the Court's provisional measures[33]. The pre-

[33] They did so in compliance with resolutory point (C) of the ICJ's Order of 18 July 2011, in their correspondence sent to the Court, after its Order, from July 2011 until July 2012.

paredness of the Parties to do so is commendable, and significant, and should have been so acknowledged by the Court in the present Judgment in the case of the *Temple of Preah Vihear*, that the Court has just adopted.

36. The oral arguments of the two Parties, in the course of the proceedings of mid-April 2013 on the Request for interpretation, are revealing. Thailand expressed its understanding that the "most important purpose" which led to the adoption by the Court of its Order on provisional measures of protection was:

> "to prevent a recurrence of the loss of human life which unfortunately had taken place in the area. The Order also noted allegations of damage to property. Since the adoption of the Order, the ceasefire in the area, which Thailand and Cambodia had adopted before the Order, has continued. There has been no recurrence of armed incidents or loss of life; and there has been no damage to property. (. . .) [T]he situation on the ground is consistent with the purposes of the Order." [34]

37. Cambodia stated that it ascribed to the decision (on interpretation) that the Court was to render much importance, as it would "condition the relations between the two States", on which "depend the peace and security in the region" [35]. Thailand reiterated the "reality on the ground", after the Court's Order of provisional measures of protection, "is that the border is peaceful and calm, consistent with the intent of the Court's Order" [36]. Cambodia, for its part, submitted a different version of the facts, in pointing out that

> "bilateral negotiations on the withdrawal of troops from the Provisional Demilitarized Zone, in accordance with the provisional measures decided on by this Court on 18 July 2011, have failed (. . .). As a result, it has not been possible to put in place the Indonesian observers responsible, under the auspices of ASEAN, for monitoring the withdrawal of troops from the Temple area pending your final judgment." [37]

VII. The States' Duties to Refrain from the Threat or Use of Force and to Reach a Peaceful Settlement of the Dispute at Issue

38. I have already pointed out that, in the *cas d'espèce*, the dispute opposing Thailand to Cambodia concerns mainly the *withdrawal* of forces

[34] CR 2013/3, of 17 April 2013, pp. 22-23, para. 39.
[35] CR 2013/5, of 18 April 2013, p. 48.
[36] CR 2013/6, of 19 April 2013, p. 51.
[37] CR 2013/1, of 15 April 2013, pp. 18-19, para. 10. Cambodia further argued that the armed incidents by the border were "provoked" by Thailand as "reprisals to the inscription of the Temple in the World Heritage List of UNESCO" (*ibid.*, pp. 23-24, para. 6).

from the Temple or its vicinity, keeping in mind the general principles of international law of the prohibition of the threat or use of force, and of peaceful settlement of international disputes (para. 26, *supra*). In its present interpretation of judgment, that the Court has just adopted, it rightfully draws attention to *the principles of the Charter of the United Nations* (Judgment, para. 106), in particular those of importance in the present case of the *Temple of Preah Vihear* (cf. *supra*).

39. In fact, on other recent occasions the ICJ has likewise asserted, e.g., the State's duty of co-operation and peaceful settlement, in its Judgments in the case concerning *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)* (*I.C.J. Reports 2010 (I)*, pp. 105-106, para. 281); in the *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* case (*I.C.J. Reports 2010 (II)*, pp. 691-692, paras. 163-164); and in the case of the *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)* (*I.C.J. Reports 2011 (II)*, p. 644). In this last case, the ICJ *emphasized* that

> "the 1995 Interim Accord places the Parties under a duty to negotiate in good faith under the auspices of the Secretary-General of the United Nations pursuant to the pertinent Security Council resolutions with a view to reaching agreement on the difference described in those resolutions" (*ibid.*, p. 692, para. 166).

40. Such duty of peaceful settlement grows in importance in face of threats of, or actual recourse to, the use of force, in breach of a fundamental principle enshrined into Article 2 (4) of the UN Charter. The ICJ is "the principal judicial organ of the United Nations" (Article 92 of the Charter, and Article 1 of the Statute). Its Statute forms an *integral* part of the UN Charter. The ICJ is thus bound to make sure, in the settlement of inter-State disputes lodged with it, that the contending Parties abide by the fundamental principles enshrined into the UN Charter, such as those of non-use of force (Article 2 (4)) and of peaceful settlement of international disputes (Article 2 (3)).

41. The Court not only has an *inherent* faculty to do so, in the exercise of its functions; in effect, it is *bound* to do so, to secure compliance by States with the general principles of international law. May it be recalled that, almost four decades ago, the ICJ pondered, in its Judgment of 20 December 1974 in the *Nuclear Tests (Australia* v. *France)* case, that

> "the Court possesses an inherent jurisdiction enabling it to take such action as may be required (. . .). Such inherent jurisdiction (. . .) derives from the mere existence of the Court as a judicial organ established by the consent of States, and is conferred upon it in order that its basic judicial functions may be safeguarded."[38]

[38] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, pp. 259-260.

42. As to the significance of the general principles of international law, of prohibition of use or threat of force and of peaceful settlement of disputes, enshrined into the UN Charter (Article 2 (4) and (3)), suffice it here, in the present separate opinion, to refer to my considerations already developed in my previous separate opinion in the Court's Order (of 18 July 2011) in the present case of the *Temple of Preah Vihear*[39]. Earlier on, on six other occasions so far, I have likewise drawn attention to the relevance of general principles[40]. The necessary attention to those principles brings us closer to the domain of superior [higher] *human values*, to be safeguarded, not sufficiently worked upon in international case law and doctrine. It is, ultimately, those principles that inform and conform the applicable norms, and ultimately any legal system.

VIII. The Ineluctable Relationship between *Motifs* and *Dispositif*

43. Another particular issue that comes to the fore in the *cas d'espèce* is the relationship of the resolutory points of a judgment (in the *dispositif*) with the corresponding *motifs*. May it be recalled that, in its Judgment of 15 June 1962 in the present case of the *Temple of Preah Vihear*, the ICJ stated:

> "Referring finally to the Submissions presented at the end of the oral proceedings, the Court, for the reasons indicated at the beginning of the present Judgment, finds that Cambodia's first and second Submissions, calling for pronouncements on the legal status of the Annex I map and on the frontier line in the disputed region, can be entertained only to the extent that they give expression to grounds, and not as

[39] *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, separate opinion of Judge Cançado Trindade, paras. 72-81 and 114-115.

[40] Namely, in my separate opinion (paras. 8-113 and 191-217) in the case of the *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay) (I.C.J. Reports 2010 (I))*; in my separate opinion (paras. 177-211) in the Advisory Opinion on the *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (I.C.J. Reports 2010 (II))*; in my separate opinion (paras. 93-106) in the *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* case *(I.C.J. Reports 2010 (II))*; in my dissenting opinion (paras. 79-87) in the case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation) (I.C.J. Reports 2011 (I))*; in my separate opinion (paras. 28-51 and 82-100) in the Advisory Opinion on a *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development (I.C.J. Reports 2012 (I))*; and in my separate opinion (paras. 74-76) in the *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* case *(I.C.J. Reports 2012 (I))*.

claims to be dealt with in the operative provisions of the Judgment. It finds on the other hand that Thailand, after having stated her own claim concerning sovereignty over Preah Vihear, confined herself in her Submissions at the end of the oral proceedings to arguments and denials opposing the contentions of the other Party, leaving it to the Court to word as it sees fit the reasons on which its Judgment is based.

In the presence of the claims submitted to the Court by Cambodia and Thailand, respectively, concerning the sovereignty over Preah Vihear thus in dispute between these two States, the Court finds in favour of Cambodia in accordance with her third Submission. It also finds in favour of Cambodia as regards the fourth Submission concerning the withdrawal of the detachments of armed forces." (*I.C.J. Reports 1962*, p. 36.)

44. The Court then found that: (1) "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia"; and, in consequence, that: (2) "Thailand is under an obligation to withdraw any military or police forces, or other guards of keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory" (*ibid.*, pp. 36-37). Before laying down the resolutory points, the ICJ made a cross-reference to the reasons which led it to decide the way it did. This is not the first time that the relationship between such reasons and the resolutory points comes to the fore.

1. Overview of the Case Law of the Hague Court (PCIJ and ICJ) on the Matter

45. In fact, already in its time, the Permanent Court of International Justice (PCIJ) dwelt upon the matter at issue. Thus, in the case of the *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*, opposing Germany to Poland, the PCIJ observed that a difference of opinion should exist between the contending Parties as to the points, "decided with binding force", in the judgment at issue, for a request for interpretation be lodged with it under Article 60 of the Statute. Having said so, the PCIJ added:

> "That does not imply that it must be beyond dispute that the point the meaning of which is questioned is related to a part of the judgment having binding force. A difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of the provision in question, and the Court cannot avoid the duty incumbent upon it of interpreting the judgment in so far as necessary, in order to adjudicate upon such a difference of opinion." (*Judgment No. 11, 1927, P.C.I.J., Series A, No. 13.*, pp. 11-12.)

46. In other words, the Court is not to restrict itself only to the operative part of the judgment, making abstraction of all its reasoning which led to it

and supports it. The Court is to bear it in mind, and take it into account whenever needed. Only in this way can it produce a proper interpretation clarifying — as it said — "the true meaning and scope" of its judgment at issue (*P.C.I.J., Series A No. 13*, p. 14). *Motifs* and *dispositif* cannot simply be dissociated from each other; they go together, the former setting the grounds on which the latter was established. Already at the time of the PCIJ, in the late twenties, this was the prevailing understanding on this particular point.

47. Years later, the ICJ, in its Judgment of 27 November 1950 on *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia* v. *Peru)*, stated that a request for interpretation of a judgment must aim solely at obtaining clarification on "the meaning and the scope of what the Court has decided with binding force" (*I.C.J. Reports 1950*, p. 402). In my view, if the operative part is not clear enough, the Court, in providing the interpretation requested, has to take into account the reasons set forth in the corresponding *motifs*.

48. The Court had the occasion to do this, half a century later, in its Judgment of 25 March 1999, on the *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon)*. The Court identified the reasons, set forth in the motifs (in two paragraphs of the previous judgment) which provided the grounds for the operative part of the judgment at issue, and were thus "inseparable" from that operative part (*I.C.J. Reports 1999 (I)*, p. 36, para. 11). The ICJ had warned that any request for interpretation (under Article 60 of the Statute) "must relate to the operative part of the judgment" and can only concern "the reasons for the judgment" in so far as "these are inseparable from the operative part" (*ibid.*, p. 36, para. 10).

49. Earlier on, in its Judgment of 10 December 1985 on the *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya)*, the ICJ recalled (*I.C.J. Reports 1985*, pp. 217-218, para. 46) the *célèbre obiter dictum* of the PCIJ in the *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)* case (cf. *supra*). Recently, in its Judgment of 19 January 2009 on the *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America)*, the ICJ referred to its *jurisprudence constante (supra)* in respect of requests for interpretation of judgments (*I.C.J. Reports 2009*, p. 10, para. 21). In sum, in my perception, there is indeed an ineluctable relationship between *motifs* and *dispositif*. Such relationship has not passed unnoticed in expert writing along the years[41].

[41] Cf., e.g., L. Cavaré, "Les recours en interprétation et en appréciation de la légalité devant les tribunaux internationaux", 15 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (1954), p. 488; E. Zoller, "Observations sur la révision et l'interprétation des sentences arbitrales", 24 *Annuaire français de droit international* (1978), p. 343; E. Decaux, "L'arrêt du 10 décembre 1985 de la Cour internationale de Justice sur la demande en revi-

2. Reason and Persuasion

50. Half a decade ago, in another international jurisdiction, I had the occasion, in my separate opinion appended to the interpretation of judgment of 2 August 2008 of the Inter-American Court of Human Rights (IACtHR), in the case of the *Prison of Castro-Castro* v. *Peru*, to ponder that *reason and persuasion* go together with the verdict. Resolutory points cannot be dissociated from the Court's reasoning which provides their foundations. Already in Aeschylus's *Eumenides* (458 BC), Athena felt the need — in announcing the creation, forever, of the *Areios Pagos* — to provide explanation for judicial decisions and to persuade as to their rightness. All international tribunals of our times devote their labour also to reason and persuasion in respect of their own judgments; the *meaning* and *extent* of their decisions can only be properly appreciated in the light of their reasoning — which brings to the fore the ineluctable subjective element of the judges' thinking (paras. 38-39, 41-42, 44 and 46).

51. The ICJ has been faced with this matter in the present interpretation of judgment, which it has just delivered, in the case of the *Temple of Preah Vihear*. In my understanding, the reasons which substantiate a resolutory point reached at by an international tribunal are regularly expounded in the *motifs* of its judgment at issue. There would be no sense in attempting to "separate" such *motifs* from the corresponding *dispositif*, and taking into account only this latter. The two go together. Is there any judgment where the operative part stands on its own? Not at all; this latter is regularly supported by the *motifs*. In saying what the law is (i.e., in exercising its *juris dictio*), an international tribunal is bound to determine the applicable law, and to expound its own understanding of the applicable law and of its application in the *cas d'espèce*. We are here, once again, faced with *reason and persuasion*.

3. The Everlasting Acknowledgment of the Relevance of Sound Legal Reasoning

52. The relevance of sound legal reasoning has been duly acknowledged since ancient times. In effect, the exercise of legal reasoning (i.e., the elaboration of the *motifs/la motivation*) has historical roots which go back, e.g., to ancient Roman law. In his fragments, Ulpian (*circa* 170-228 AD) took

sion et en interprétation de l'arrêt du 24 février 1982 en l'affaire du *Plateau continental*", 31 *Annuaire français de droit international* (1985), p. 338; P. Dumberry, "Le recours en interprétation des arrêts de la Cour internationale de Justice et des sentences arbitrales", 13 *Revue québécoise de droit international* (2000), pp. 213 and 220; S. Rosenne, *Interpretation, Revision and Other Recourse from International Judgments and Awards*, Leiden, Martinus Nijhoff, 2007, pp. 94-95, 98-100 and 108-111.

juris-prudencia (from the verb *providere*) as referring to the *knowledge of what is just and unjust*; in dispensing justice, *jurisprudencia* was understood as teaching how justice was to be realized, besides showing that the procedure had been well followed[42]. His writings altogether, undertaken in the period 211-222 AD, are believed to have considerably contributed to Justinian's *Digest* (the main volume of his *Corpus Juris Civilis*, 529 to 534 AD)[43], providing not less than a third of its contents.

53. As from Ulpian's teaching, the *Digest* rendered certain maxims widespread, such as *"justitia est constans et perpetua voluntas suum cuique tribuere"* ("justice is the constant and perpetual will to give everyone his due"); or else, *"honeste vivere, alterum non laedere, suum cuique tribuere"* ("to live honourably, to harm no one, to give each one his due"). *Jurisprudencia* developed, elaborating on general principles; it started arising attention, having assumed a certain creative (Praetorian) role. Legal reasoning kept on attracting increasing attention in modern times, amidst widespread acknowledgment of its relevance.

54. The elaboration of sound legal reasoning, for its part, sought coherence and harmony, so as to avoid contradictions. It did not amount to a syllogism, nor did it exhaust itself in the simple identification of the applicable norms. It went further than that, encompassing interpretation, and recourse to sources of law (including principles, doctrine, and equity), bearing in mind human values[44]. Prudence played its role, in *jurisprudencia*. In such elaboration of sound legal reasoning, we are faced, once more, with reason and persuasion.

55. One can speak of the object of a judicial decision in two senses, namely: in a strictly procedural sense, it amounts to what has actually been decided (the *dispositif*); and in a material or substantial sense, it encompasses also what formed the matter of the *contentieux*. The judgment itself, in my understanding, encompasses not only the decision reached by the international tribunal (the *dispositif*), but also the reasoning of this latter, the indication of the sources of law it resorts to, the fundamental principles it relies upon, and other considerations that it deems fit to develop (the *motifs*). In effect, to my mind, *motifs* and *dispositif* form an organic, inseparable whole.

56. The issue became object of special attention in the legal doctrine of the nineteenth century, which upheld the view that the *dispositif* is to be

[42] J.-P. Andrieux, *Histoire de la jurisprudence — Les avatars du droit prétorien*, Paris, Vuibert, 2012, pp. 11, 13-14, 19, 23 and 161; and cf. pp. 241, 263, 281 and 284.

[43] Cf. T. Honoré, *Justinian's Digest: Character and Compilation*, Oxford University Press, 2010, pp. 5, 53, 74, 103, 119 and 142.

[44] Cf. [Various Authors], *Le raisonnement juridique* (ed. P. Deumier), Paris, Dalloz, 2013, pp. 25, 31, 33, 75, 95-98, 101, 109-110, 240, 246 and 268.

approached together with the reasoning (the *motifs*) which give support to it. This understanding then prevailed in civil procedural law (in countries of that legal tradition), before being transposed into the international legal procedure. According to an account of one of its exponents,

> "According to the well-known teaching of Savigny, the judgment is a sole and inseparable whole; there is, between the foundations and the *dispositif*, a relationship so intimate that ones and the other can never be dismembered if one does not wish to denaturalize the logical and juridical unity of the decision. This was the dominant idea in the last century (. . .)."[45]

57. With the passing of time, however, under the influence of legal positivism, a more simplistic view came to prevail, to the effect that only the *dispositif* forms the object of a judicial decision[46]. This argument sought to shift attention onto the terms of a judgment which were binding; it overvalued them, making abstraction of the other parts of the judgment. It was as if the operative part of a judgment could be severed from the other parts of it, and become binding by itself, independently of the whole reasoning developed by the tribunal in its support. It is not surprising that this superficial view became widespread, as it did not require much thinking.

58. Positivists, for example, tend characteristically to be very dogmatic in stating and insisting that the binding effect of a judgment attaches only to its operative part, i.e., its resolutory points, and does not extend to its reasoning. This is a strictly formalistic approach. The *res judicata* is thus brought into the picture, minimizing the reasoning supporting it. This is what — to recall but one illustration of this outlook — Judge Dionisio Anzilotti upheld in his dissenting opinion in the aforementioned case *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*; yet, as a learned jurist, Anzilotti, after so asserting, conceded:

> "When I say that only the terms of a judgment are binding, I do not mean that only what is actually written in the operative part constitutes the Court's decision. On the contrary, it is certain that it is almost always necessary to refer to the statement of reasons to understand clearly the operative part and above all to ascertain the *causa petendi*." (*Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 24, para. 2.)

[45] E. J. Couture, *Fundamentos do Direito Processual Civil*, São Paulo, Saraiva, 1946, pp. 354-355; E. J. Couture, *Fundamentos del Derecho Procesal Civil*, 4th ed., Montevideo/Buenos Aires, Ed. B de F, 2002, p. 347 [my own translation].

[46] E. J. Couture, *Fundamentos do Direito . . .*, *op. cit. supra* note 45, pp. 355 and 358; *Fundamentos del Derecho . . .*, *op. cit. supra* note 45, pp. 348 and 350.

59. The reasoning or the *motifs* of a judgment can be freely resorted to, in the interpretation of any point or passage of the *dispositif* which requires clarification; in fact, it will be hardly possible to determine the exact scope of a *dispositif* without taking into account the reasoning (the *motifs*). They may indeed appear inseparable from each other, and there are even the *dispositifs* that deem it fit to make express cross-references to corresponding paragraphs of the *motifs*[47]. In the present interpretation of judgment, for example, resolutory point No. 2 of the *dispositif* expressly refers to paragraph 97 of the *motifs*.

60. Legal reasoning is not simply an intellectual output (of logic), as the search for justice is also moved by experience and social equity. As already indicated, the function of the judge is not reduced simply to produce syllogisms, far from it: jurisprudential construction goes further than that, it resorts to all available sources of law, it has a latitude of choice, it matches the facts with the applicable norms, and it tells what the law is, in the exercise of *juris dictio*. Legal reasoning counts on the subjective element of the judge's thinking.

61. In this respect, over half a century ago Piero Calamandrei used to recall that s*ententia* derives from *sentiment*, as indicated by etymology. He further warned that the subjects of law *(sujets de droit)* are not transformed into a *dossier* (as hinted by bureaucratic indifference), but remain "living persons". In legal reasoning, electronic machines will never replace human beings. The requisite of providing the *motifs (la motivation)* appears as the "rationalization of the sense of justice"[48]. The reasoning *(motifs)* of a judgment is thus important, besides being pedagogical: it "serves to demonstrate that the judgment is just, and why it is just"[49]. *Sententia* emanates from human conscience, moved by the sense of justice.

IX. Concluding Observations

62. I have now come to my concluding observations. It is not my intention to reiterate here the considerations I developed, in my separate opinion in the ICJ's Order of provisional measures of protection, of 18 July

[47] E. J. Couture, *Fundamentos do Direito* . . ., *op. cit. supra* note 45, pp. 357 and 360; *Fundamentos del Derecho* . . ., *op. cit. supra* note 45, pp. 349 and 351.

[48] P. Calamandrei, *Proceso y Democracia*, Buenos Aires, Ed. Jurídicas Europa-América, 1960, pp. 67, 80-81 and 125.

[49] *Ibid.*, pp. 116-117, and cf. p. 81.

2011, on the perennial issue of *time and law*[50]. In the present separate opinion, I now limit myself to refer to my reflections developed therein, with only one additional point. We all live and work *within time*, and the acceptance of the passing of time is one of the greatest challenges of human existence. In the present interpretation of judgment, the Court addressed with timidity (Judgment, para. 75) the effects of facts subsequent to the original judgment upon the requested interpretation of judgment. This requires, in my perception, a clarification.

63. In its present interpretation of judgment in the case of the *Temple of Preah Vihear*, the ICJ has repeatedly taken note of the facts, subsequent to its original Judgment of 1962 in the *cas d'espèce*, which have been brought to its attention by the contending Parties[51]. And it could not have done otherwise. Having done so, it undertook the exercise of providing the requested interpretation of the original 1962 Judgment, focusing on its *dispositif* together with the corresponding *motifs*. It stated that, in determining the meaning and scope of the resolutory points (or the *dispositif*) of the original 1962 Judgment, it had regard to the corresponding *motifs*, to the extent that its own pertinent reasoning shed light on the *dispositif* (*ibid.*, para. 68). It then clarified the meaning of the "vicinity" of the Temple of Preah Vihear (*ibid.*, paras. 97-98).

64. Already in its provisional measures of protection indicated in its Order of 18 July 2011 in the present case of the *Temple of Preah Vihear*, the Court — as I pointed out in my previous separate opinion — *brought together territory, people and human values*, well in keeping with the *jus gentium* of our times (*I.C.J. Reports 2011 (II)*, paras. 100, 114-115 and 117). And today, 11 November 2013, it does so again in the present interpretation of judgment, wherein it has deemed it fit to assert that

> "As is clear from the record of both the present proceedings and those of 1959-1962, the Temple of Preah Vihear is a site of religious and cultural significance for the peoples of the region and is now listed by UNESCO as a world heritage site (. . .). In this respect, the Court recalls that under Article 6 of the [1972] World Heritage Convention, to which both States are parties, Cambodia and Thailand must cooperate between themselves and with the international community in the protection of the site as a world heritage. In addition, each State is under an obligation not to take 'any deliberate measures which might damage directly or indirectly' such heritage." (Judgment, para. 106.)

[50] I have also dwelt upon this issue in my dissenting opinion (paras. 46-64 and 74-77) in the case of *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal) (I.C.J. Reports 2009)* followed by my separate opinion in the same case (paras. 145-157) *(I.C.J. Reports 2012 (II))*.

[51] Cf., to this effect, paragraphs 25, 39-40, 43-44 and 106 of the present Judgment.

65. In a proper inter-temporal dimension, the Court, in my perception, has thus endorsed the ongoing process of *humanization* of international law — to which I have been endeavouring to contribute, successively within two distinct international jurisdictions, since the mid-nineties[52]. A parallel between the Judgment of 1962 and the present interpretation of judgment of 2013 in the case of the *Temple of Preah Vihear* gives clear testimony of that. By giving its due to the preservation of world cultural heritage, parallel to the safeguard of territorial sovereignty, the Court is contributing to the avoidance of a *spiritual damage* (cf. paras. 32-33, *supra*).

66. It does so at the same time that it draws attention to the relevance of *general principles of international law*, such as of prohibition of use or threat of force and of peaceful settlement of disputes (paras. 38-39, *supra*). The necessary attention to those principles brings us closer to the domain of higher *human values*[53], shared by the international community as a whole. It is, ultimately, those principles that inform and conform the applicable norms. Without them, there is ultimately no legal system at all; hence their utmost importance, at both international and domestic levels.

67. After all, it is the fundamental principles that confer cohesion, coherence and legitimacy, and the ineluctable axiological dimension, to every legal system. In effect, general principles permeate the whole international legal order; they conform their *substratum*, being consubstantial to it. They give expression to the idea of an *objective justice*, above the will of individual States. They indicate, at last, the *status conscientiae* reached by the international community as a whole.

(Signed) Antônio Augusto CANÇADO TRINDADE.

---

[52] For an account of my endeavours in this respect, in the international case law, from 1997-1998 onwards, cf. A. A. Cançado Trindade, *Los Tribunales Internacionales Contemporáneos y la Humanización del Derecho Internacional*, Buenos Aires, Edit. Ad-Hoc, 2013, pp. 163-185; and cf., earlier on, e.g., A. A. Cançado Trindade, "A Emancipação do Ser Humano como Sujeito do Direito Internacional e os Limites da Razão de Estado", 6/7 *Revista da Faculdade de Direito da Universidade do Estado do Rio de Janeiro* (1998-1999), pp. 425-434; A. A. Cançado Trindade, *A Humanização do Direito Internacional*, Belo Horizonte/Brazil, Edit. Del Rey, 2006, pp. 3-409.

[53] I have further dwelt upon the importance of fundamental *human values* in my dissenting opinion (paras. 32-40) in the case of the *Jurisdictional Immunities of the State (Germany* v. *Italy) (I.C.J. Reports 2012 (I))*.

DECLARATION OF JUDGE *AD HOC* GUILLAUME

[Translation]

(1) Interpretation of second operative paragraph of 1962 Judgment requiring Thailand to withdraw from vicinity of Temple on Cambodian territory — Cambodian territory extending to north as far as line on Annex I map — Thai territory commencing beyond that line — Frontier thus fixed by Court with binding force in operative part of new Judgment — (2) Unnecessary to rule on Cambodia's submissions seeking attribution of binding force to that line more generally — (3) Obligation on Thailand to respect sovereignty of Cambodia over territory thus recognized as Cambodian — Unnecessary to decide whether Thailand's 1962 obligation to withdraw was continuing or instantaneous.

1. I agree with the Court's unanimous decision as set out in paragraphs 98 and 108 of the Judgment. I believe it useful, however, to provide some clarification of the scope of that decision.

2. I will begin by recalling that in 1962 the Court was seised, as it put it, of a "difference of view about sovereignty over the region of the Temple of Preah Vihear". The Court stated in the Judgment which it delivered at that time that "[t]o decide this question of territorial sovereignty, [it] must have regard to the frontier line between the two States" (*I.C.J. Reports 1962*, p. 14). After a long analysis that forms the core of the Judgment, the Court "pronounce[d] in favour of the line as mapped [on what it called 'the Annex I map'] in the disputed area" (*ibid.*, p. 35).

In the same Judgment, the Court observed, however, that Cambodia had initially requested it only to declare that the Temple was situated in its territory and had not asked it to fix the line of the frontier. It had presented submissions on the latter point only during the hearings. In those circumstances, the Court considered that it was unable to adjudicate on this enlargement of the original claim. Therefore it ruled on the line of the frontier only in the reasoning of its Judgment and did not do so in the operative part itself. Then on the basis of that reasoning, it concluded in the operative part:

(1) that "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia";
(2) "finds in consequence . . . that Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory".

Such was the Judgment whose interpretation has been sought by Cambodia under Article 60 of the Statute.

3. In light of the final submissions of Cambodia and Thailand, it is apparent that there are in this case several disputes regarding the meaning and scope of the 1962 Judgment. As the Court noted in paragraph 31 of its Order of 18 July 2011, and as it recalls in paragraph 35 of its Judgment, the differences between the Parties relate:

(a) "to the question of whether the Judgment did or did not recognize with binding force the line shown on the Annex I map as representing the frontier between the two Parties";

(b) "to the meaning and scope of the phrase 'vicinity on Cambodian territory' used in the second paragraph of the operative clause of the Judgment";

(c) "to the nature of the obligation imposed on Thailand . . . to 'withdraw any military or police forces, or other guards or keepers', and, in particular, to the question of whether this obligation is of a continuing or an instantaneous character".

4. In the present Judgment, the Court first of all dismisses the objections to jurisdiction and admissibility raised by Thailand. It then considers Cambodia's submissions regarding the second paragraph of the operative part of the 1962 Judgment. The Court thus seeks to determine the meaning and scope of the phrase "vicinity on Cambodian territory" used in that paragraph.

5. Cambodia contends that the "vicinity of the Temple situated in Cambodian territory" corresponds to an area of approximately 4.6 square kilometres between the line on the Annex I map and the watershed line claimed by Thailand in 1962. The area so claimed includes the entirety of the promontory of Preah Vihear, the hill of Phnom Trap and the valley separating the promontory from the hill (para. 83).

6. For its part, Thailand claims that the vicinity of the Temple corresponds to the Temple itself and a narrow strip of land around the Temple, as defined in the resolution of the Thai Council of Ministers of 10 July 1962 and implemented on the ground by means of a barbed wire fence erected by Thailand in 1962. The vicinity thus defined has an area of 0.25 square kilometres (para. 84).

7. The Court has adopted an intermediate solution. It has decided that "the vicinity of the Temple situated in Cambodian territory" included the Temple itself, the promontory on which it is built and the valley separating the promontory from the hill of Phnom Trap. Accordingly, the hill of Phnom Trap did not form part of the vicinity within the meaning of the second operative paragraph of the 1962 Judgment (paragraph 98 as cited in paragraph 108).

8. The Court has further stated that "[i]n the north, the limit" of the vicinity thus defined "is the Annex I map line" (paragraph 98 as cited in paragraph 108). Cambodian territory thus extends "as far as [that] line" (para. 90). Beyond that line, Thai territory begins *(ibid.)*. Therefore, in

this area the Annex I map line constitutes the frontier between the two States. As a result, Thailand was under an obligation in 1962 to withdraw the military or police forces, or other guards or keepers present in the vicinity of the Temple on Cambodian territory south of the Annex I map line, to "Thai territory" north of that line (para. 98).

9. I agree with these findings for the geographical and historical reasons set out by the Court in paragraphs 86 to 97 of the Judgment. I should add that, in adopting this interpretation of the second operative paragraph of the 1962 Judgment, the Court:

(a) fixes in the actual operative part of its Judgment (paras. 108 and 98) the limits of the territories of Cambodia and Thailand, that is to say, the frontier between the two countries. In so doing, it accords binding force to the line on the Annex I map in the sector in question;

(b) determines the extent of the "vicinity on Cambodian territory" in such a way that it enables Cambodia to have ready access to the Temple from the Cambodian plain by the valley separating the promontory of Preah Vihear from the hill of Phnom Trap, and thus freely to undertake its upkeep and supervision (paras. 89, 98 and 106);

(c) leaves open the question as to whether the hill of Phnom Trap is in Cambodian territory or Thai territory (para. 97).

10. Having thus provided the required interpretation of the second operative paragraph of the 1962 Judgment, the Court did not feel that it was incumbent upon it to rule on the rest of Cambodia's submissions as referred to in paragraph 3 above.

11. In the first place, the Court recalled that it had concluded that Cambodia's sovereignty "extend[ed] in the north [in the vicinity of the Temple] to the Annex I map line but not beyond it" (para. 104). It found that in the operative part of its Judgment it had fixed with binding force the frontier in the sector which had been the subject of the dispute submitted to it in 1962. It was not for the Court to rule more generally on the binding force of the Annex I line outside that sector. It sufficed for it to find that it had decided the matter in the Temple sector. There was thus no need for it to rule on Cambodia's remaining initial submissions *(ibid.)*.

12. I would add that, if the Court had considered it necessary to rule on the arguments developed by Cambodia in that regard, I would for my part have been inclined to accept them. In 1962, the Court ruled clearly in the reasoning of its Judgment in favour of the Annex I line (*I.C.J. Reports 1962*, p. 35). This reasoning was inseparable from the operative part; it constituted the "condition essential" thereto (Judgment, para. 34), that is to say, the *ratio decidendi*. It is true that the reasoning did not have the executory force attaching to the operative parts of judgments, but it had the authority of *res judicata*, that is to say, binding force.

13. Finally, nor did the Court consider it necessary to decide the question of whether or not the obligation on Thailand under the 1962 Judg-

ment to withdraw from the Temple and its vicinity on Cambodian territory was of a continuing or instantaneous character. It noted that Thailand had recognized before the Court that it had an obligation to respect the integrity of Cambodian territory. It noted that this obligation "applies to any disputed territory found by the Court to be under Cambodian sovereignty" (para. 105), and hence to the "vicinity on Cambodian territory" as defined by the Court. As a result, Thailand cannot reintroduce military or police forces, or other guards or keepers, to that territory. Accordingly, it was not necessary to address the question of whether the 1962 Judgment still imposes today the same obligation on Thailand.

14. In conclusion, in the operative part of its Judgment (paras. 108 and 98), the Court has determined the extent of "the vicinity of the temple on Cambodian territory" as referred to in the second operative paragraph of the 1962 Judgment. In that same operative part, the Court has made it clear that that territory extends to the north as far as the Annex I map line. Beyond that line, Thai territory starts. The Court has thus determined the line of the frontier in the sector in question, thereby according binding force to the line on the Annex I map in that sector. It has, furthermore, clarified the extent of the vicinity of the Temple in such a way as to ensure that Cambodia has free access to the Temple from the Cambodian plain.

(Signed) Gilbert GUILLAUME.

DECLARATION OF JUDGE *AD HOC* COT

[Translation]

1. I concur with the findings of the Court in its interpretation of the Judgment of 15 June 1962. The Court has been careful to adhere to a strict interpretation of the Judgment and not to look beyond what had been decided.

2. In particular, the Court has declined to rule on the status of the line on the Annex I map. It will be recalled that in 1962 the Court had expressly dismissed Cambodia's first two submissions, "calling for pronouncements on the legal status of the Annex I map and on the frontier line in the disputed region" (*I.C.J. Reports 1962*, p. 36). In its present Judgment, the Court has taken the line on the Annex I map into consideration only in order to determine the northern limit of the "vicinity" of the Temple on the Preah Vihear promontory.

3. Thus the main difficulty resided in the definition of the term "vicinity" in the second paragraph of the operative part of the 1962 Judgment. In its resolution of 10 July 1962, the Thai Council of Ministers had adopted a delimitation confining the Temple within the perimeter of the sacred area, and had had a barbed wire fence erected around the Temple. For its part, Cambodia considered that the "vicinity" of the Temple consisted of all the territory situated to the south of the Annex I map line in the disputed sector, including the neighbouring hill of Phnom Trap.

4. The Court rightly notes that the unilateral determination by one Party of the "vicinity" of the Temple cannot be imposed on the other Party. It is thus for the Court itself to carry out that determination.

5. The claim put forward by Cambodia was based on the course of the Annex I map line and encompassed a large area. It ran counter to the explicit provisions of the Judgment of 15 June 1962 by asking the Court to establish the line on the Annex I map as the boundary.

6. Furthermore, in requesting the attribution to Cambodia of a substantial area of territory, this approach went even beyond the arguments made by Cambodia's counsel in 1962. In particular, Dean Acheson, on behalf of Cambodia, observed that the hill of Phnom Trap could not be concerned by the dispute, which was limited to an area of a few hundred metres around the Temple (*I.C.J. Pleadings, Temple of Preah Vihear (Cambodia* v. *Thailand)*, Vol. II, pp. 145-146). He further considered that the area situated to the north-west of the Temple, the area of Phnom Trap, was not the crucial area, the disputed or "doubtful area" (*ibid.*, p. 465). He analysed the watershed line in what both he and Thailand's

counsel called "the critical, or crucial, area, the area from the bottom of the northern staircase eastward to point F" (*I.C.J. Pleadings, Temple of Preah Vihear*, p. 465). For his part, Cambodia's Roger Pinto noted: "We must indeed never lose sight of the fact that the frontier passes some 500 metres to the north of the Temple." (*Ibid.*, p. 189.)

7. Nonetheless, Thailand's claim appears to me to be excessively restrictive. Thailand contends that the Temple itself is limited to the main sanctuary, and that the other elements of the Temple form its "vicinity", enclosed by the precinct wall (CR 2013/4, pp. 29-42, paras. 13-41).

8. It is not reasonable to limit the "vicinity" of the Temple to the precinct in which it is located, as Thailand has argued. That, it appears to me, is to misunderstand the nature of Khmer temples. Khmer temples are not confined to the main temple, but consist of a set of buildings and structures, including entrance gates, "libraries", staircases, etc. The Temple of Preah Vihear is a Khmer temple of the classic "temple-mountain" kind of the ninth century. It consists of a monumental staircase, four successive gopuras and a relatively small central sanctuary. The whole complex is surrounded by a wall enclosing the sacred area.

9. The specialist literature cited by the Parties, in particular the books and studies published by the Ecole française d'Extrême-Orient (EFEO) at the time of the delivery of the Judgment of 15 June 1962, hardly ever uses the term "vicinity" to refer to the buildings and structures located within the sacred area. Among the authors cited at the 1962 hearings (*op. cit., supra*, Vol. II, pp. 468 *et seq.*) are Georges Groslier *(Promenades artistiques et archéologiques du Cambodge)*, Lunet de Lajonquière *(Inventaire descriptif des monuments du Cambodge)* and George Cœdès, Director of the EFEO *(Inscriptions du Cambodge)*. Works contemporaneous with the hearings include those by Philippe Stern in 1952 *(Diversité et rythmes des fondations royales khmères)* and Maurice Glaize, a former curator and a collaborator of George Cœdès, whose guidebook, *Les monuments du groupe d'Angkor*, published in Saigon in 1944, is still in print today. None of these works uses the term "vicinity of the temple" to describe the structures located within the sacred area of Khmer temples.

10. The precise extent of the vicinity within the meaning of the Judgment of 15 June 1962 still needs to be established. The written and oral pleadings provide some indications. They relate mainly to the identification of the watershed line. The Parties do not venture beyond the promontory on which the Temple is situated.

11. The reasoning of the 1962 Judgment defines its geographical scope. It includes the Court's description of the Annex I map as one "on [which] was traced a frontier line . . . showing the whole Preah Vihear promontory, with the Temple area, as being on the Cambodian side" (*I.C.J. Reports 1962*, p. 21). The form of words used by the Court seems

to imply that the "Temple area" is contained within the perimeter of the promontory of Preah Vihear and does not extend beyond.

12. Noting the geographical description of the site given in 1962 and the use of the term "promontory" to refer to the feature on which the Temple is located, the Court finds that a natural understanding of the concept of the "vicinity" would correspond to the said promontory. The word "promontory" is a geographical description of the Preah Vihear site, which is clearly separated from the hill of Phnom Trap by a small valley. I concur with that conclusion.

13. The Court has declined to draw a precise line. That would have involved carrying out a delimitation operation, and thus going beyond the Court's interpretative function in this case. It has confined itself to indicating the relevant perimeter, which concerns the entire promontory and also the valley separating the promontory of Preah Vihear from the hill of Phnom Trap. The Court makes it clear that the floor of the valley must be included in the "vicinity" in question, so as to allow access from the Cambodian plain. It adds, logically, that it is not required to rule on sovereignty over the hill of Phnom Trap.

14. It is for the Parties to implement the Judgment of 15 June 1962 in good faith and, in particular, to determine the physical boundary of the "vicinity" under Cambodian sovereignty.

15. I note that the solution adopted by the Court corresponds closely to one of the options put to the Thai Council of Ministers on 10 July 1962. It was thus a possible interpretation of the 1962 Judgment according to the views of the Thai administration at the time. And that is the interpretation given by the Court today.

(Signed) Jean-Pierre COT.