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Lundi 15 avril 2013 à 15 heures

Monday 15 April 2013 at 3 p.m.

10 The PRESIDENT: Please be seated. The sitting is open, and we shall hear the continuation of the first round of oral argument of the Kingdom of Cambodia. I now give the floor to Professor Sorel. You have the floor, Sir.

Mr. SOREL:

A COHERENT AND LOGICAL READING OF THE JUDGMENT OF 15 JUNE 1962

1. Mr. President, Members of the Court, it falls to me to conclude today's oral argument with an explanation of what doubtless lies at the heart of Thailand's objections to Cambodia's Application, namely the question of whether or not the operative part of the Judgment of 15 June 1962 should be read in isolation; that has various consequences, and it is precisely those consequences that have brought Cambodia before the Court. Cambodia would like to stress once again that it wishes to confine itself strictly to the responses — or lack of responses — in the Further Written Explanations of Thailand of 21 June 2012. For that, it is necessary to return, first of all, to the general reasoning followed by Thailand, or rather the obscurities that punctuate that reasoning (I). Cambodia will show how the grounds cannot be separated from an objective reading of the operative clause of the 1962 Judgment (II). Reading the operative clause in conjunction with the essential grounds of the Judgment has three consequences. Firstly, it renders impossible a unilateral definition of any frontier line *in opposition* to those grounds (III). Secondly, it also makes it impossible to draw a distinction between a territorial dispute and a frontier dispute (IV). And thirdly, it reveals the true meaning of the agreement of 14 June 2000 (V). It will then be time to ask how Thailand can justify such a denial of reality. It does so by inverting the deductive reasoning followed by the Court, employing instead an inductive form of reasoning which has been entirely and artificially remodelled by Thailand (VI), yearning once again to recast the 1962 Judgment (VII). Cambodia concludes that such reasoning is incoherent, whereas from its Application onwards, Cambodia has adopted a consistent reading of the first and second paragraphs of the operative clause of the 1962 Judgment, linking the necessarily permanent evacuation of the Thai troops from the *vicinity* of the Temple with the sovereignty and territorial integrity that is fully and clearly accorded to Cambodia by the operative part of the Judgment (VIII).

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I. The obscurities in Thailand's general reasoning

2. Before I respond to Thailand's observations, it is perhaps useful to provide a brief summary of the general tenor of Thailand's reasoning, a remodelling of disparate arguments that is scarcely coherent.

3. According to Thailand, the operative clause of the 1962 Judgment should be read on its own, independently of the grounds. In contrast, the entire proceedings from 1959 to 1962 should be revisited in order to determine what the Court wished to say. However, it would seem easier simply to read the grounds in order to determine what the Court wished to say, since that part of the Judgment summarizes the reasoning followed by the Court, as well as its understanding of the procedure followed and the arguments put forward.

4. Thailand's reasoning would result in the grounds of a judgment serving no purpose. One might wonder, then, why they exist at all, and why national courts are increasingly providing reasoning in their judgments — mirroring what the Court has done from the outset — in order to make their decisions more transparent and more accessible to litigants.

5. The logic employed by Thailand in its reasoning seeks, of course, to justify Thailand's own attitude and its own interpretation of the 1962 Judgment. If the grounds serve no purpose, a State can do whatever it wants, purely on the basis of its own understanding of the operative part. Hence Thailand can unilaterally determine that its territorial boundary lies immediately adjacent to the Temple according to its interpretation of the operative clause of the Judgment — an interpretation which differs from that of Cambodia. At the very least, then, there are conflicting interpretations. Above all, though, Thailand can do that *in spite of the grounds* of the Judgment, since it accords them no significance. Thus, Thailand entirely disregards the majority of the Judgment as if it did not exist, deciding that there is no frontier line resulting from the Judgment, so it can draw the frontier however it likes.

6. It is true that the Court does not deal with the frontier in the operative clause; Cambodia does not dispute that at all. It deals with Cambodia's territory. And that territory, like all State territory, must have substance and boundaries. The Court did not place the Temple simply anywhere at random, but in Cambodian territory. Logically, the Parties to the dispute must thus

12 conclude not only that the Temple is indeed situated in Cambodia, but also that they must know the extent of the territory in which the Temple has been placed — in other words, where the boundaries of that territory lie. To reduce that response to a simple territorial dispute, which — in Thailand's understanding — should be distinguished clearly from a frontier dispute, is an illusion. Ignoring that reality means ignoring the reasoning followed by the Court in reaching its conclusion — i.e., ignoring the grounds of the Judgment. And since Thailand is seeking to give us a theory lesson on this matter, it should note that the grounds of a judgment precede the operative part, justifying and explaining it, and not the other way around.

7. This reasoning by Thailand is made all the more incongruous by the fact that, in 2000, it finally accepted the logic of the 1962 Judgment by signing an agreement providing for the *demarcation* of the frontier between the two States, notably in the region of the Temple. It thereby recognized, *ipso facto*, that a frontier already existed, since a frontier must be delimited before it can be demarcated and marked out, following the reasoning employed by the Court in 1962, when the Court itself recognized that such a delimitation existed and had been accepted by the two States. There is a distinct absence of coherence in Thailand's reasoning, which I will now illustrate by means of various observations.

II. Thailand denies that the grounds and the operative clause are inseparable

8. To briefly summarize Thailand's argument, the Court is unable to respond to Cambodia's request for interpretation, and if it does so, that response cannot be in the affirmative, since Cambodia's argument is not tenable, as it is requesting an interpretation of something that is not *res judicata* — in other words, something that does not feature in the operative part of the 1962 Judgment. Thailand is clearly referring here to the question of the recognition of the line on the Annex I map as the frontier line. However, in Cambodia's view, the Court merely recognized a frontier that already existed and was binding before the Judgment was delivered, a recognition that was clearly indicated in the grounds of the Judgment, which determine the proper interpretation of the operative clause; without that, the solution arrived at can have no foundation.

9. In order to arrive at the desired result, Thailand launches into a theoretical exposition on the structure of a judgment, seeking to show that the force of *res judicata* is circumscribed by the

initial dispute and the *petitum*, which appears pointless given that Cambodia does not deny that

13 fact. My colleague Sir Franklin Berman has already indicated the nature, in the eyes of the Court at the time, of Cambodia's *petitum* and Thailand's *contra-petitum* in 1959. Nevertheless, Thailand explains[1] [we will again leave it to the Registry to insert specific footnotes and references in the verbatim record of these oral arguments] that a judgment comprises four parts[2]. This explanation naturally contains some elements that are correct — albeit judgments are more commonly considered to comprise three parts[3] — but seems to imply that the grounds consist solely of the arguments of the parties. But the grounds also contain, above all, the reasoning of the Court, which allows the operative part to be understood. Thus, the arguments of the parties are selected and used solely in order to construct the Court's reasoning — a reasoning which leads logically to the operative part. Doctrine is unanimous in recognizing that reasoning "[constitutes] the Court's presentation of the legal arguments *that have led it to reach its conclusions*"[4] *[translation by the Registry]* and that the text of a judgment "includes an operative part and grounds *which support it*"[5] *[translation by the Registry]*. Asserting that the grounds merely represent a summary of the arguments of the parties ignores the real structure of the judgments of the Court and the essence of its reasoning. Whether Thailand likes it or not, the reasoning of a judgment is not a mere

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[1]FWETh, Vol. I, para. 3.8.

[2]Namely:

(1) the subject-matter of the dispute as defined by the Court on the basis of the submissions of the parties;

(2) the response to the submissions by the parties, which establishes the *petitum*;

(3) the arguments of the parties in the grounds;

(4) the response by the Court in the operative part.

[3]Thus, in her commentary on Art. 95 of the Rules of Court, Geneviève Guyomar states: "The judgments of the Court comprise three parts: an introduction [names of the judges and the representatives of the parties, stages of the proceedings and submissions of the parties], the grounds and the operative part" *[translation by the Registry]*, *Commentaire du Règlement de la Cour internationale de justice, Interprétation et pratique*, Pedone, Paris, 1983, p. 600. The same is true of the explanatory booklet produced by the Court itself (5th edition, 2004, pp. 70-71), which says that judgments are divided into three parts. It also states that "the grounds for the Court's decision [is the part] where those matters of fact and law that have led the Court to its decision are set forth in detail and the arguments of the parties are given careful and balanced consideration" (p. 71). Doctrine is unanimous on this point, also dividing judgments into three parts (presentation of the case, the facts and the proceedings; reasoning; operative part). See, in particular: P. Daillier, M. Forteau and A. Pellet, *Droit international public*, LGDJ, Paris, 8th edition, 2009, p. 1005, para. 547.

[4]P.-M. Dupuy and Y. Kerbrat, *Droit international public*, Dalloz, Paris, 11th edition, 2012, p. 659, para. 556; emphasis added.

[5]J. Combacau and S. Sur, *Droit international public*, Montchrestien, Paris, 10th edition, 2012, p. 602; emphasis added. As regards Anglo-Saxon doctrine, Hersch Lauterpacht states that an "absence of reasons — or of adequate reasons — unavoidably creates the impression of arbitrariness" in *The Development of International Law by the International Court*, Stevens, London, 1958, p. 39.

possibility, an option without consequences; it is an obligation referred to in simple terms and without ambiguity in Article 56, paragraph 1, of the Statute of the Court: "The judgment shall state the reasons on which it is based." The Court has repeatedly confirmed that fact — as it did, for

14 example, in its Opinion of 12 July 1973, in which it stated that it is "of the essence of judicial decisions that they should be reasoned"[6] (*Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 210, para. 94). Finally, it should be noted that Article 95, paragraph 1, of the Rules of Court requires, in particular, that judgments contain "reasons in point of law"[7].

10. Moreover, Thailand — doubtless involuntarily — has done Cambodia a favour by citing the case between Nicaragua and Colombia (to which Cambodia has already referred[8]) in order to show that the use of grounds serves only to allow the Court's decisions to be understood, as Cambodia is entirely in agreement with that proposition and seeks nothing more. Indeed, the Judgment of 4 May 2011 regarding Honduras's request for permission to intervene is perfectly clear. While the Court indicates, in paragraph 69, that the operative part "indisputably has the force of *res judicata*" (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Honduras for Permission to Intervene, Judgment, I.C.J. Reports 2011*, para. 69), it then states in paragraph 70 of the Judgment — which Thailand cites in a truncated manner[9] — that the reasoning contained in the 2007 Judgment "was an essential step leading to the *dispositif* of that Judgment", before detailing the specific points that it set out in that reasoning, thereby showing the Applicant that they are clear, and then concluding as follows:

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> "Without such reasoning, *it may be difficult to understand* why the Court did not fix an endpoint in its decision. *With this reasoning*, the decision made by the Court in its 2007 Judgment *leaves no room for any alternative interpretation*." (*Ibid.*, para. 70; emphasis added.)

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[6]For Judge Higgins, reasoning is an "essential step in the judicial process" (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, dissenting opinion of Judge Higgins, p. 584, para. 9).

[7]G. Guyomar states, in this regard, that "the grounds allow the meaning and scope of the operative part to be determined with as much precision as possible" *[translation by the Registry]*, *op. cit.*, p. 601.

[8]FWEC, Vol. I, p. 66, para. 4.34.

[9]FWETh, Vol. I, para. 3.35.

11. That is exactly what Cambodia is seeking and indicates in its Application, namely that without such reasoning, to use the Court's words, "it may be difficult to understand" what is the territory in which the Temple is situated and what constitutes the "vicinity" of the Temple, and that, "with this reasoning", the decision made in 1962 in the operative clause "leaves no room",

15 according to Cambodia, "for any alternative interpretation". Above all, though, the Court thereby shows, without any ambiguity, that a decision in an operative clause cannot be authoritative or understood unless it is supported by grounds justifying it, to which the parties are therefore required to refer in order to understand the precise meaning of the operative clause. Those grounds are binding not because they are *res judicata*, but because they are indispensable to the understanding of the operative part[10].

12. This is not a recent addition to the case law of the Court, going back to the Opinion delivered in the case of the *Polish Postal Service in Danzig*[11]. That is probably why Thailand seems to wish to ignore the decisions of the Court to which Cambodia has referred, in which the Court explains in clear and simple terms the importance of the essential grounds of a judgment for the interpretation of that judgment. Cambodia takes the opportunity, in this regard, to recall a citation from the case between Cameroon and Nigeria concerning a request for interpretation:

> "any request for interpretation must relate to the operative part of the judgment and cannot concern the reasons for the judgment except in so far as these are inseparable from the operative part"[12].

Finally, it should also be noted that this is exactly what the Court said in its Order of 18 July 2011 in the present case:

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[10] S. Rosenne indicates the following with regard to this case: "The *Temple of Preah Vihear (Merits)* case illustrates that the operative provision of a judgment may also, where appropriate, contain, in addition to its main finding, consequential dispositions even if the relevant submission was not expressly made in the original claim, provided that the addition is implicit in and consequential upon a finding in favour of a party's principal claim and is not an extension of the subject of the original claim" (*The Law and Practice of the International Court, 1920-2005*, Martinus Nijhoff Publishers, Leiden/Boston, 2005, Vol. III, pp. 1531-1532).

[11] "[A]ll the parts of a judgment concerning the points in dispute explain and complete each other and are to be taken into account in order to determine the precise meaning and scope of the operative portion" (*Polish Postal Service in Danzig, Advisory Opinion, 1925, P.C.I.J., Series B, No. 11*, p. 30; cited in FWEC, Vol. I, p. 65, para. 4.32).

[12] *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 (cited in FWEC, Vol. I, p. 66, para. 4.34). A similar statement is made in the case of 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)*: "a request for interpretation must relate to a dispute between the parties relating to the meaning or scope of the operative part of the judgment and cannot concern the reasons for the judgment except in so far as these are inseparable from the operative part" (*Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 323, para. 47; cited in FWEC, Vol. I, p. 66, para. 4.34).

> "it is established that 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*, para. 23).

16 In contrast, it is a pity that Thailand has completely ignored — sweeping it aside with a stroke of the pen[13] — the case law of the arbitral tribunals and other international courts cited by Cambodia[14], which unanimously attributes to the grounds the value that the Court has conferred on them from the outset. Thailand would doubtless prefer to ignore this general trend in proceedings, as initiated by this Court[15], which has become a truly unifying principle among international courts when they are called upon to interpret their own decisions.

13. This logical observation also appears to be fully supported by doctrine. The following text concerning the scope of a judgment of the Court appears in an excellent French manual of international law:

> "It is *binding* and *final* and has the force of *res judicata* . . . That legal force is indisputably attached to the operative part of the judgment. It is accepted that it *also extends to those elements of the reasoning which are essential to justify the operative part.*"[16] *[Translation by the Registry.]*

It follows that it is the Court which decides what is binding and indispensable to the reading and understanding of a judgment, in accordance with the importance that it attaches to the grounds supporting the operative clause.

14. In reality, Thailand wishes above all to insinuate that a judgment is made up of distinct parts that are unconnected to one another. In other words, the Court sets out a reasoning, before moving on to its decision in the operative clause, without establishing any connection between those two elements. Nothing could be further from the truth, but this is undoubtedly the reason why Thailand reacts so heatedly[17] to the manner in which Cambodia explains the link between the

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[13]FWETh, para. 3.33.

[14]FWEC, Vol. I, pp. 67-71, paras. 4.36-4.46. This passage cited examples of arbitral awards and decisions of the Court of Justice of the European Union, the European Court of Human Rights and the Inter-American Court of Human Rights.

[15]For example, in his opinion in the case of *ASSIDER* v. *High Authority of the ECSC*, Advocate General Lagrange based his opinion, to a very large extent, on the interpretative Judgment of the Permanent Court in the *Factory at Chorzów* case (5/55, *ECR* 1954-1955, p. 290).

[16]P. Daillier, M. Forteau and A. Pellet, *Droit international public*, LGDJ, Paris, 8th edition, 2009, *op. cit.*, para. 547, p. 1005 (in the second sentence, emphasis added).

[17]See FWETh, paras. 3.21-3.25.

grounds and the operative clause, using terms found in scholarly writings such as "decisional grounds" and "implied *dispositif*". In the present case, Thailand pretends to believe that Cambodia

17 has created new categories of legal reasoning, whereas these are no more than terms used in doctrine to express a certain reality. It is for doctrine — and not for the Court — to synthesize legal realities, and there is no need to become agitated over or, *a fortiori*, to denounce as a legal revolution something which simply denotes a meaningful and indisputable reality: the link between the essential grounds of a decision and the operative clause resulting from those grounds.

15. In any event, contrary to what Thailand claims[18], the aim of this analysis is not to create new law, but simply to indicate that the Court may recognize law that existed before the case was brought and incorporate it into its reasoning, and that is indeed what it did in this case: it does not create anything; it recognizes the validity of what has already been created, namely a frontier drawn on a map accepted by both Parties.

16. Thailand therefore seems to imply that the Court cannot evolve, that it must remain firmly within a fixed framework. Whether Thailand likes it or not, the world changes, and the Court's jurisprudence shows a remarkable adaptability to changes in the law and in how that law should be understood and applied. In the present case, however, Cambodia is not prompting any legal innovation: it is not saying that the grounds are *res judicata*, it is saying that some of the grounds entail obligations for the Parties simply because the Court recognizes an obligation that existed prior to its decision, an obligation that will inform the decision taken by the Court. Moreover, taking account of these pre-existing obligations, whatever their nature, is indispensable to the reading and understanding of the operative clause. It is a question of the *ratio decidendi*, i.e., the essential reason for deciding. If the act of judging is indeed the act of deciding a result, then that is the consequence of decisions taken during the reasoning process in order to arrive at that result. Thailand is clearly confused between the "decisions" and the "*res judicata*", just as it is confused between the "ground" for deciding and the final decision: while the *res judicata* is the *final decision*, it is not the *only decision*.

[18] See FWETh, para. 3.22.

17. This is exactly how the expression "the force of a decision by the Court" — also contested by Thailand[19] — which is, moreover, akin to what are termed "decisional grounds", should be understood. Cambodia has never claimed this to be "*res judicata*", but simply "decided

18 by the Court", that is to say that the Court recognizes — "decides" — that a pre-existing obligation between the Parties is valid. Once again, it is not a question of creating new law, but rather of recognizing law that already exists.

18. Writers have devoted entire works to the question of "the force of a decision by the Court", particularly in international law[20]. The subject of those works was of course much broader than — and even different from — our own case. Nonetheless, they do not overlook the Court's jurisprudence, considering, amongst other things, that orders indicating provisional measures have always enjoyed the force of a decision by the Court[21], prior to the Court declaring in the *LaGrand* Judgment that such orders have binding effect[22]. That Judgment, moreover, enabled the Court to clarify certain new aspects of the law, since — as it indicates — it had never before ruled on the legal effects of those orders[23].

19. What does this mean in the context of our case? It means that the Court possesses not only an *implied power* but also an *inherent* one to interpret all the facts and treaties presented to it during a case and to decide for itself what will constitute its grounds; that those grounds represent a series of decisions aimed at reaching a solution; that every decision taken in this context has a force, without which it would not be possible to achieve the binding force of *res judicata* contained in the operative clause. Consequently, Cambodia is not claiming that the grounds have the force of *res judicata*, but that they do possess, by virtue of the decisions and interpretations which they entail in the Court's reasoning, the force *of a decision by the Court*, thus enabling the operative part, which would otherwise find itself without foundation, to have the force of *res judicata*. We

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[19]See, in particular, FWETh, paras. 3.21 and 3.22.

[20]Hervé Ascensio: *L'autorité de la chose décidée en droit international*, typewritten thesis, University of Paris X-Nanterre, 4 December 1997, 690 pages. See also: Roger Gérard Schwartzenberg, *L'autorité de la chose décidée*, LGDJ, Paris, 1969, 452 pages.

[21]Hervé Ascensio: *ibid*., pp. 313-314.

[22]*LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, pp. 498-506, paras. 92-109.

[23]"Neither the Permanent Court of International Justice, nor the present Court to date, has been called upon to determine the legal effects of orders made under Article 41 of the Statute." (*Ibid*., para. 98.)

are not passing with impunity from "non-law" to law, from optional to compulsory. The nuances are more subtle, and any decision made preliminary to a final judgment cannot be dismissed on the pretext that it occurs before the final operative clause, given that afterwards — that is to say, when the Judgment has to be put into practice — it becomes indispensable.

19 20. Were this not the case, it would mean that the Court reasons by trial and error, by intuition — in other words, in an inductive manner — before making the final decision, which is, moreover, the view that Thailand takes of the Court's work, as we shall see (in section VI). However, the decision is never taken in this way; it is substantiated, justified, based on a reasoning built on certainties, and not on trial and error or uncertainties. That the foundations are no longer visible when the house is finished is to be expected. But the fact remains that those foundations were needed in order to build the walls and that, without them, the house would collapse.

21. Contrary to what Thailand implies, there is nothing recent or revolutionary about this. Cambodia wishes to recall in this respect that, in the case concerning the *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*, the Permanent Court indicated:

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> "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 insofar as necessary, in order to adjudicate upon such a difference of opinion." (*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; emphasis added.)[24]

Particular attention should be drawn to the fact that the Permanent Court distinguishes between the part "having binding force" — in other words, the force of *res judicata* — and the points "decided with binding force", which are clearly the elements contained in the grounds of the Judgment. It appears, therefore, that in the view of the Permanent Court, this Court may take *decisions having binding force in the grounds*, decisions which may require elucidation and which support the part having the force of *res judicata*. They can therefore be characterized as grounds having "the force

[24]Cited in FWEC, Vol. 1, p. 65, para. 4.33.

of a decision by the Court". Even the dissenting opinion of Judge Anzilotti in the same case does not run counter to this view, since he was able to affirm:

[Document No. 20 in the judges' folder]

> "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*. But, at all events, it is the operative part which contains the Court's binding decision and which, consequently, may form the subject of a request for an interpretation." (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, dissenting opinion of Judge Anzilotti; emphasis added.)

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22. The final thing that Thailand seems to contest is that the Court has the freedom to choose its grounds, and here too Thailand feigns misunderstanding. In its Response[25], Cambodia simply meant that the Court had chosen, in its 1962 Judgment, to present the Annex I map as being a relevant and essential component of its decision, and not that the Court was free to choose any ground whatsoever.

23. However, the Court did choose to present the Annex I map as a relevant and essential component. Contrary to what is insinuated by Thailand, which states that "the Annex I map is itself subject to interpretation"[26], Cambodia does not claim that the map must be interpreted; it states that, in order to interpret the operative clause and to ascertain what makes up the territory of Cambodia and where the "vicinity" ends, it is necessary to *take account* of the map which, in the grounds, explains the decision of the Court. Thailand thus creates a situation of ongoing confusion with its attempts to have us believe that it is the map which must be "interpreted" and that it is the map which is therefore at the centre of this interpretation, whereas Cambodia only wishes, once again, to point out to the Court the elements which the Court itself considered indispensable in order to respond to the question put to it in 1962. The map is a component of the reasoning, it is not to be "interpreted" itself; rather, it is the entire reasoning which should be interpreted.

24. Just as Cambodia does not ask for the Annex I map to be "interpreted", nor does it ask for the frontier deriving from that map to be "interpreted". At the risk of appearing repetitive, it must be recalled that, in 1962, the Court recognizes — but does not create — a frontier which

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[25]FWEC, Vol. 1, paras. 4.14-4.18.

[26]See FWETh, para. 3.33.

already exists and which both Parties have *already* accepted. Consequently, it is not necessary to hold forth about the binding nature of the frontier line or of the associated map (the latter having a conventional character, as indicated by the Court in 1962), since the Court considered those to be

21 established back in 1962. And as Thailand is so fond of statistics, it should be recalled that, in its 1962 reasoning, the Court uses the word "frontier"[27] (in French) on more than 120 occasions and makes around 20 references to the Annex I map[28]. This is not at issue, and the figures speak for themselves. On the other hand, the Court attaches little importance to the other grounds that Thailand would have us believe are essential, as we shall see (in para. 43).

25. In order to demonstrate the fundamental importance of the question of the frontier and the Annex I map in the Court's 1962 reasoning, it is simply possible to refer to the headnote published by the Court itself — under the authority and with the authorization of its President — at the start of the Judgment. In the present case, the headnote of the Judgment of 15 June 1962[29] is particularly significant. You can see it now on your screens.

[Document No. 9 on the screen]

> *"Territorial sovereignty — Title deriving from treaty — Treaty clauses establishing frontier along watershed line as delimited by Mixed Commission of Parties — Uncertain character of resulting delimitation in disputed area — Eventual production by experts of one Party, at the request of the other, of a map — Non-binding character of map at moment of its production — Subsequent acceptance by conduct of map and frontier line by other Party — Legal effe[c]t of silence as implying consent — Alleged non-correspondence of map line with true watershed line — Acceptance of risk of errors — Subsequent conduct confirming original acceptance and precluding a denial of it — Effect of subsequent treaties confirming existing frontiers and as evidence of Parties' desire for frontier stability and finality — Interpretation of treaty settlement considered as a whole, including map."*

There is no need to repeat it, but the headnote, which summarizes the Judgment that follows, leaves no ambiguity regarding the sense of its reasoning. It refers, *inter alia*, to the Parties' acceptance of the Annex I map and of the frontier, and to the subsequent conduct which precludes a denial of such a position, and mentions, in particular, that the Court will proceed to the *interpretation* of the treaty settlement considered as a whole, "including map". It is noteworthy

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[27]The term "frontier" (in French) appears 128 times in the reasoning (including the submissions of the Parties), as counted by Cambodia.

[28]Twenty-three times, not including the submissions, as counted by Cambodia.

[29]*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 6.

that this summary — *which does not even mention the Temple* — is *devoted entirely* to what will be the essential ground of the Court's decision. In Cambodia's view, this does not appear to require any further comment; the summary speaks for itself. 22

26. Cambodia is thus not asking the Court in the present proceedings to determine a frontier, but to declare that the vicinity of the Temple situated in Cambodian territory corresponds to the line on the Annex I map, in accordance with an interpretation taking account of the *effet utile* — in the sense of an interpretation which can be implemented *effectively* — which must be given to the operative part of the 1962 Judgment. Therefore, it is not a *delimitation*, but rather an *interpretation* that is requested.

27. By strictly separating the grounds from the operative clause, Thailand is ultimately unable to supply the "missing link" in its reasoning, just as in 1962, the contradictions in its argument were apparent to the judges. It thus explains that, in 1962, the Court did not consider it necessary to define the territory of Cambodia — and consequently "the vicinity" of the Temple — in order to "understand and implement the Judgment"[30], and that the delimitation of the frontier was not therefore necessary for "the adoption and implementation of the Judgment"[31]. This appears quite extraordinary, since it is tantamount to admitting that, in 1962, the Court found that an area of Cambodian territory existed and that the Temple was situated in that territory, but considered that it was unnecessary to say where the boundaries of that territory were in order to "understand and implement the Judgment". Why would the Court only go halfway, thereby creating an uncertain situation both for it and above all for the Parties? The Court's decision would be reduced to this simplified form. In substance, it would have said to Cambodia: "The Temple belongs to you, it is situated in your territory, but we are not telling you what the boundaries of that territory are". In fact, the Court considered that that territory had already been delimited and that it was not necessary to define it further, which seems to Cambodia to be the most plausible interpretation and above all the interpretation that is most consistent with the importance attached by the Court to the stability and integrity of State territories in its jurisprudence. In any event, the Court cannot have left the Parties in a situation of uncertainty.

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[30] See FWETh, para. 3.53.

[31] *Ibid.*

There are several consequences deriving from this relationship between the grounds and the operative clause.

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III. The impossibility of unilaterally defining a frontier *in opposition to* the grounds

28. This is the first consequence. In 1962, just after the Judgment, Thailand decided unilaterally to define the boundary of its territory in the immediate proximity of the Temple and did so by adopting a minimalist interpretation of the operative clause. With no apparent legal basis, it again asserts today that the "Thai government had to decide itself the limits of troop withdrawal"[32]. Hence the ensuing resolution of the Council of Ministers and the subsequent laying of barbed wire. As my colleagues pointed out this morning, the operative clause of the 1962 Judgment was at the time not "crystal clear" in Thailand's view, and this is very clearly indicated by Thailand's hesitations and the interpretations considered by it in 1962. Thailand's unilateral interpretation is today presented as being obvious, whereas, on the contrary, it demonstrates the confusion between several options and the uncertainties with regard to the interpretation of the 1962 Judgment.

29. Above all, what emerges clearly is Thailand's threefold error in this process. First, it does not know how to interpret the operative clause of the Judgment. Secondly, it ultimately decides to fix a boundary unilaterally, without any consultation with Cambodia, which would seem to be a violation of a basic and unalterable rule: a frontier is fixed by two parties at the very least, except of course in the event of conquest or imperial domination, but those days are gone and that was certainly not the aim of the proceedings before the Court. Thirdly, Thailand fixes that boundary *in opposition to the grounds* of the Judgment, which is contrary to the most basic interpretation of the 1962 Judgment. That being the case, what competence does a State have to define the boundary of a territory unilaterally, on the basis of a Judgment *which says something different and without consulting the other State*? Thailand provides no credible answer to this key question.

30. Thailand simply seems to explain that, ultimately, it is not a frontier but merely a limit corresponding to the line behind which the troops must withdraw, the reason being that the frontier

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[32]See FWETh, para. 1.13. This does not prevent Thailand from considering that it is "unimaginable for a State to be required to unilaterally demarcate a boundary" (FWETh, para. 3.57).

still has to be delimited under the agreement signed with Cambodia in 2000, as my colleague
24 Sir Franklin pointed out this morning. Apart from the fact that it will be necessary to return to the meaning of that agreement, which Thailand continually misrepresents (see paras. 37 to 39 below), and which is in no way an agreement aimed at delimiting a frontier, Thailand still does not explain why it draws this limit in a manner contrary to the grounds of the Judgment, or how a State can, unilaterally and without consultation, determine such a limit, even a temporary limit, which it in fact intends to make a frontier. How can Thailand's determination to impose it at all costs not be seen as an attempt to establish a true frontier line, in spite of its denials?[33] How can we consider that the famous sign installed by Thailand to indicate that limit was symbolic?[34] In other words, how could we imagine that, on the other side of that sign, we were not in a different State?

31. In the Advisory Opinion of 9 July 2004 regarding the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, your Court was faced with the question of a temporary barrier which closely resembled a frontier. And, while noting the assurances given concerning the temporary nature of the construction of that wall, the Court stated:

> "it nevertheless cannot remain indifferent to certain fears expressed to it that the route of the wall will prejudge the future frontier between Israel and Palestine, and the fear that Israel may integrate the settlements and their means of access. The Court considers that the construction of the wall and its associated régime create a 'fait accompli' on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto annexation*." (*I.C.J. Reports 2004 (I)*, p. 184, para. 121; emphasis added.)

Cambodia, admittedly in a very different context, might also have reason to fear that the barbed wire barrier put up by Thailand constitutes de facto annexation of a part of its territory and symbolizes a frontier more than a mere separation.

32. The mystery remains, therefore, and it would be logical for Thailand to explain to us the legal reasoning by which it can ignore the grounds of the Judgment and replace them with its own "grounds". Since the Court found that the frontier had already been agreed before 1962, would it not have been logical, simple and, above all, in keeping with the law, to decide to withdraw the troops from the vicinity of the Temple as far as that line? Contrary to what Thailand contends,

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[33] See FWETh, para. 3.58.

[34] *Ibid.*, para. 3.59.

Cambodia does not say that, in 1962, the question raised concerned the frontier; it says that in
25 order to answer the question of the ownership of the Temple, it was necessary to know where the frontier passed, that that is indeed the main point discussed in the grounds of the Judgment, and that this cannot be ignored by Thailand, whereas Thailand seeks to apply the Judgment according to what *the Court does not say and ignores what it does say*. There is then, at the very least, a problem concerning the interpretation of the Judgment.

33. To put it clearly and succinctly, Thailand refuses to take account of the line on the Annex I map as representing the frontier, whereas the Court obliges it to do so by the binding character it gives to the recognition of that boundary in its grounds, but Thailand is also unable to justify the other line that it chooses, save in the light of its failure in the 1962 Judgment, since beyond the Temple itself, it defines that boundary according to what it was seeking in 1962. However, among the solutions that your Court can adopt, it is clear that Thailand cannot obtain — as it wishes, or as it seems to wish —, on the basis of your interpretation, the line defined by the Thai Council of Ministers in 1962, since that line runs counter to the grounds of the Judgment. How could your Court, solely on the basis of an interpretation of the operative clause of the Judgment, decide that the frontier line unilaterally defined by Thailand according to what it wished to obtain in 1962 — and which it did not obtain — can be recognized as resulting from the Judgment? That is impossible, and certain to say the least, which nonetheless demonstrates to what extent Thailand adopts a reasoning that is out of touch with reality.

IV. The denial of the similarity between a territorial dispute and a frontier dispute

34. This brings me to another consequence, the question of the denial of the similarity between a territorial dispute and a frontier dispute. In its Further Written Explanations, Thailand makes another attempt to draw a clear distinction between a dispute as to attribution of territory and a delimitation or frontier dispute. In fact, Thailand seeks repeatedly to demonstrate that the 1962 Judgment is restricted to the sole dispute[35] concerning sovereignty over the Temple, and therefore to a dispute over territorial sovereignty and not boundary delimitation[36].

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[35]See FWETh, para. 2.28 in particular.

[36]*Ibid*., para. 2.29.

35. Cambodia must repeat yet again, as mentioned in its written explanations[37], that it is not seeking to alter the sense of the dispute in 1962, and that it is not claiming that solely a frontier
26 dispute was then involved. What Cambodia is claiming, however, and it does so on the basis of jurisprudence of the Court which is completely ignored by Thailand, is that the nature of the dispute does not in practice alter the concrete result that may be arrived at. A dispute relating to the delimitation of a frontier leads directly to the fixing of that frontier, but a dispute concerning the attribution of territories likewise inevitably leads to the establishment or recognition of a boundary. No doubt it is possible to make a distinction as to how a court will establish its method, but not as to the concrete result which will be achieved. Otherwise, that would mean that a court attributes territories without defining the boundaries of those territories, which would only lead to an imperfect settlement of a dispute, leaving the parties in the greatest of uncertainty following a judgment.

36. The jurisprudence of your Court, which is forgotten by Thailand, constantly recalls this common-sense observation and the identical outcomes of these two types of dispute. In this regard, Cambodia will merely recall the relevant sentence of the Judgment of your Court in the case concerning the *Frontier Dispute*:

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> "the effect of any judicial decision rendered either in a dispute as to attribution of territory or in a delimitation dispute, *is necessarily to establish a frontier*" (*Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986,* p. 563, para. 17; emphasis added)[38].

In this case, Thailand seems to take offence at Cambodia claiming that the Court was concerned to ascertain where the frontier passed in order to determine who had sovereignty over the area in dispute in which the Temple was situated[39]; however, this does not mean that it will not define the area in question but that, in the process, it will be led to concern itself with the frontier in order to derive the area from it.

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[37]FWEC, Vol. 1, paras. 4.67 to 4.73.

[38]Cited in FWEC, 8 March 2012, Vol. 1, para. 4.69.

[39]See FWETh, para. 4.88 in particular.

37. In addition, Thailand claims not only that Cambodia reduces this solely to a frontier dispute, but also that Cambodia wishes to extend its territory following the Temple's inclusion on UNESCO's World Heritage List[40]. However, this is an inversion of history, since Thailand's armed aggression resumed just at that time, that is to say when the Preah Vihear Temple was included on the List in 2008. Consequently, how is it possible to accuse Cambodia of wanting to extend its territory if one invades Cambodia's territory oneself? Once again it is a strange argument, since that would mean that Thailand *all of sudden* realizes that Cambodia was peacefully exercising its sovereignty over a portion of territory that Thailand now considers to be its own. It will be clear to all, in fact, that Cambodia, at the time of the Temple's inclusion on UNESCO's World Heritage List, was only exercising its sovereign competence over its own territory, which had not been disputed by Thailand previously. But it is also plain to see that the question of the Temple's inclusion on UNESCO's World Heritage List has been dealt with very little by Thailand, as if that State wanted its "excesses" in that context to be forgotten, excesses which are, however, the reason for Cambodia's Application and for the request for the indication of provisional measures. It is true that as part of Thailand's attempts to make its arguments coherent, these are episodes that it prefers to forget.

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V. The true meaning of the agreement of 14 June 2000

38. This is another consequence. As my colleague Rodman Bundy pointed out, Thailand is forced, in order to achieve its objectives, to misrepresent the meaning — which is nonetheless clear — of the agreement of 14 June 2000 between the two States regarding their common frontier[41]. That agreement relates to the *demarcation* of the frontier, but Thailand insinuates that it concerns the *delimitation* of the frontier. This is certainly a crude tactic and is repeated on a

[40]See *ibid.*, para. 5.5.

[41]Moreover, Thailand appears to consider the Memorandum of Understanding of 14 June 2000 solely in the context of associated issues (such as pollution, the expansion of a market and the issue of people settling locally) and fails to mention the fundamental aim of that agreement, which is the demarcation of the frontier. See FWETh, para. 3.75.

28 number of occasions with a view to creating confusion by assimilating the two operations[42], above all with the aim of persuading the Court that the frontier has yet to be delimited, whereas in reality it simply needs to be demarcated.

39. What, ultimately, is the meaning that Thailand attributes to this agreement? It regards it as an agreement that will delimit the frontier, as if no such legal act had existed prior to 2000 — and, above all, as if the Court had said nothing regarding that frontier in its 1962 Judgment. Thus, Thailand considers that, if a frontier dispute exists, the agreement of 14 June 2000 must be applied and the Court cannot take its place[43].

40. It is clear that Thailand is having considerable trouble piecing together its own history, including its recent history. Indeed, Thailand forgets that this agreement was concluded at a time of peace, when Thailand accepted Cambodia's understanding of the 1962 Judgment — in other words, when Thailand was still back behind the perimeter delimited by the frontier on the Annex I map. This agreement, as we know, provides for account to be taken of the maps resulting from the process carried out between 1904 and 1907 — specifically those with a scale of 1:200,000, including the Annex I map[44]. However, doubtless in order to fend off counter-arguments on this point, Thailand also asserts that in 2007 Cambodia rejected the process provided for under the agreement[45]. That assertion is entirely unfounded, with the minutes of a succession of meetings proving that this was not the case. To put it plainly, Cambodia was forced to wait for Thailand's national bodies to approve every single communiqué, and that approval never materialized, on account of internal dissension or a desire to block the process. Ultimately, every meeting served to confirm that the process was at a standstill in the absence of that support at national level, so it was in fact Thailand, reacting to what was probably regarded as an error, that ensured that the process

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[42]See FWETh, particularly para. 3.76, where Thailand misleadingly refers to the "boundary delimitation and demarcation" provided for by the Memorandum of Understanding, despite it relating only to demarcation. The same is true of para. 3.79, where it asserts its readiness to engage, "in good faith", in negotiations with Cambodia "for the delimitation and demarcation of the whole boundary". In para. 4.83, Thailand reasserts that the Memorandum of Understanding is a delimitation agreement aimed at "fixing the entire boundary". In paras. 3.88 and 3.89, although Thailand recognizes the existence of a frontier dispute with Cambodia, it considers that this will be resolved in the context of the Memorandum of Understanding. In para. 5.4, Thailand again asserts that "delimitation" is a matter for the Memorandum of Understanding.

[43]*Ibid.*, para. 3.88.

[44]Art. 1 of the Memorandum of Understanding and Art. 1.1.3 of the Terms of Reference and Master Plan for the Joint Survey and Demarcation of Land Boundary between the Kingdom of Cambodia and the Kingdom of Thailand. See AC, 28 April 2011, Ann. VI.

[45]See FWETh, para. 4.83.

did not move forward. Thailand says nothing about the reasons why the process has dragged on for

29 more than 10 years, waiting for the supposed support of its parliament, which never comes, and says nothing about the civil authorities' apparent inability to control the quasi-autonomous military authorities in the region of the Temple. Sadly, this situation appears to be repeating itself as regards the implementation of the provisional demilitarized zone imposed by the Court in its Order of 18 July 2011, as Cambodia's Agent pointed out.

41. This agreement does indeed pose problems for Thailand, as it is the logical consequence of Cambodia's interpretation of the 1962 Judgment. Moreover, the agreement itself makes no reference to the unilateral map produced by Thailand in 2007 reflecting the position of its Council of Ministers in 1962. The famous L7017 map (tab 13 in the judges' folder), which Thailand says pre-dates the agreement, claiming that it dates from 1978 and was given to Cambodia in 2005[46] (but which Cambodia was unaware of until 2007), is not mentioned in the agreement of 14 June 2000. That is strange, when the maps with a scale of 1:200,000 — including the one termed the "Annex I map" before the Court — do feature in the list of maps relevant to the agreement. Thailand would need to explain to us — and *Cambodia puts that clear and precise question to Thailand directly*, hoping for a response when these oral arguments resume — how it is that the map in question, which supposedly reflects its consistent position and was purportedly drawn up in 1978, 22 years before the signing of the agreement in 2000, does not feature in that agreement. Thailand should at least have noticed that fact if its claims were as consistent as it makes out[47]. This series of contradictions leaves us perplexed as to the date, basis and function that Thailand wishes to attribute to that map. The only plausible explanation appears to be Thailand's inconsistency, with Thailand protesting immediately after the 1962 Judgment, then for a long time accepting the Judgment on the basis of Cambodia's interpretation of it, and then protesting again when the process of placing the Temple on UNESCO's World Heritage List began — a volte-face that led Cambodia to bring the case back before the Court.

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[46]See FWETh, paras. 1.32, 1.33 and 3.66.

[47]Thailand tells us, in particular, that this map shows the barbed wire boundary and represents the "status quo" in the absence of the "agreed delimitation and demarcation of the boundary". See FWETh, para. 3.66.

30 42. Thus we are to some extent "off topic", as although Cambodia asserts that the Court recognized the existence of a frontier in its 1962 Judgment, it is certainly not asking the Court to concern itself with the demarcation on the ground which would result from that today, all the more so since the agreement was concluded almost 40 years later and thus has no bearing on the interpretation of the 1962 Judgment, but simply demonstrates the practice subsequent to the Judgment and shows that, in the absence of a common understanding of it, there is indeed an issue of interpretation. There is no incoherence on the part of Cambodia in this case[48]: Cambodia confirms here that what occurred prior to the rendering of the Judgment is irrelevant as regards its interpretation, and what occurred after the Judgment can serve only to demonstrate the existence of a dispute, as my colleague Rodman Bundy explained earlier. What are we left with? *We are left with the 1962 Judgment; the whole Judgment and nothing but the Judgment* to enable the Court to arrive at a logical interpretation of its operative clause.

How did Thailand arrive at this strange argument?

VI. Thailand's inversion of the deductive reasoning in the 1962 Judgment in favour of an inductive process

43. This is certainly one of the most pernicious aspects of Thailand's line of argument, for it has to be discovered by reading between the lines, and is not readily apparent, but has to be inferred. In effect, Thailand constantly inverts the Court's reasoning so as to detract from the importance of its essential ground. Whereas the Court reasons deductively — in other words, it assembles the elements which will enable it to deduce the correct solution and reach its decision — Thailand would have us believe that, on the contrary, this Court employed an inductive process: in other words, it decided that the Temple belonged to Cambodia and then constructed its reasoning on the basis of that premise. Inverting the Court's reasoning process in this way has the advantage for Thailand of signifying that the line on the Annex I map was not a decisive element, but simply served to confirm the Court's decision, and that the Court could in 1962 have done without it altogether.

[48] FWETh, para. 1.20.

31 44. Thailand thus claims that the map was used solely because it places the Temple on the Cambodian side[49], whereas the converse was the case: the Court recognized the existence of a frontier and accordingly concluded that the Temple was located within Cambodia. Thailand, if you will, argues that the Court gave the Temple to Cambodia on the basis of certain scant evidence — the visit by Prince Damrong in 1930[50], the 1947 Washington Commission[51], Thailand's attitude (which it admits to have been inappropriate) in response to the presence of France on the site of the Temple[52], etc. — evidence which was in reality complementary and not decisive, and in regard to which the Court moreover stated that it confirmed Thailand's attitude to what the Court describes as the "essential question[53]", namely the acceptance by the Parties of the Annex I map as representing the frontier between the two States. However, Thailand's contention is that the Court *suddenly* noticed that the Temple was located on the correct side of a frontier map, thereby confirming what it felt intuitively[54], and that the Court relied on other reasons, independently of the Annex I map, in reaching its reply to the issue of the Temple's sovereignty[55]. As my colleague Sir Franklin pointed out this morning, that proves, at the very least, that Thailand, contrary to its stated intention of establishing a strict separation between the grounds and the operative part, *also cites grounds itself* in order to explain the latter, but in so doing diverts attention from the essential ground by invoking secondary ones. This approach is clearly summarized in Thailand's statement: "take away the Annex I map, and the same result is achieved: the Temple is in Cambodian territory"[56]. Which amounts to saying that the Court took account of a number of matters, but at no point did it concern itself with the location of the frontier, except in order to convince itself *in fine* that its intuitive solution was correct. That, however, is not what we are told by the Judgment's headnote (see above, para. 25), which was established by the Court and which, unfortunately for

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[49]FWETh, para. 4.28, point 2.

[50]*Ibid.*, paras. 4.17 and 4.18.

[51]*Ibid.*, para. 4.20.

[52]*Ibid.*, paras. 4.21 and 4.22.

[53]*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 22.

[54]Thus Thailand asserts that the Court used the Annex I map solely to determine where the Temple was located, but not to determine "the course of the frontier", FWETh, para. 4.31.

[55]FWETh, para. 4.23.

[56]See *ibid.*, para. 4.24. See also para. 4.25: "the other reasons besides the map line were conclusive and independent".

32 Thailand, refers only to the question of the conventional determination of the frontier and to the map, but *nowhere* to the famous decisive evidence relied on by Thailand.

45. Similarly, Thailand tells us that Cambodia claims that the line on the Annex I map "confirms" the *dispositif*[57]. Apart from the fact that Thailand is making Cambodia say something that it never presented in this way, the map does not *confirm*, but *explains* it. Once again, Thailand confuses the cause and its consequences — the deductive and the inductive. To claim that the map "confirms" the *dispositif* amounts to saying that it was the final link enabling a definitive solution to be reached that had started out as an intuition. However, if as Cambodia believes, the map *explains and justifies* the operative clause, then that map is indeed the starting-point for the deductive process which would lead the Court to its solution in 1962. The Court does not start from a result and then proceed to justify it — to confirm it. On the contrary, it arrives at the result by way of a reasoning process which explains it. That is the essence of the judicial syllogism, which makes the reasoning an explanation, a justification, but above all a process of *deduction* by means of a demonstration which takes account of the purpose, in the teleological sense, of the rule to be interpreted[58]. However, Thailand appears to favour a fixed and unrealistic vision of an inverted reasoning process, ignoring the underlying grounds for the solution reached by the Court and overlooking the fact that the governing principle which emerges from the 1962 Judgment is the need for the stability of frontiers and respect for territorial integrity.

46. Not only is Thailand's argument artificial and self-serving, it also amounts to saying that, looked at in this way, a decision by the Court lacks any solid foundation, is of a purely intuitive nature and visibly arbitrary. It thus also reflects a lack of respect for the work of the Court.

47. Clearly, it is not simply by chance that Thailand seeks to invert the Court's reasoning in 1962: the aim is to instil doubt as to the Court's approach to the matter and, if you will, to imply
33 that the Judgment needs to be rewritten, even though, strictly speaking, this cannot be done, although it could emerge from the interpretation to be adopted by this Court.

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[57]FWETh, para. 4.87.

[58]On the Court's method of reasoning, Maurice Mendelson states the following: "the sometimes rather mysterious process that bears the compendious name 'judicial reasoning'. Even if there is no provision of treaty or customary law directly in point, the Court has been adept at drawing logical deductions, reasoning by analogy or rejecting analogies, discovering implied terms, taking a teleological viewpoint, and so on", "The International Court of Justice and the Source of International Law", *Mélanges Jennings*, Cambridge, CUP, 1996, pp. 79-80.

VII. The wish to rewrite the 1962 Judgment

48. Thailand knows perfectly well that the process of interpreting the 1962 Judgment can in no circumstances lead to that Judgment being rewritten, and that the task of this Court is to clarify for the Parties its meaning and scope. Nonetheless, through an accumulation of a whole series of elements, Thailand attempts, once again, to challenge the process which took place between 1959 and 1962, and does not hesitate to revisit facts prior to that period, whereas, as we are all aware, the Court can only take account of the decision as it has existed since 15 June 1962.

49. In order to do this, and surprising us yet again, Thailand draws a distinction between the process which took place between 1959 and 1962, on which it places great emphasis, admonishing Cambodia for ignoring it[59], and the Judgment itself, of which it seeks to rely solely on the "crystal clear" operative clause, entirely ignoring the latter's underlying grounds. Yet another curious exclusion of this "missing link", despite the fact that the Judgment — the whole Judgment — is a single, self-sufficient entity.

50. That, however, is not the position taken by Thailand, which, time and again, revisits matters discussed before the Court rendered its decision. There is thus a pointless discussion of the number of metres between the northern exit of the Temple and the frontier, or of the correspondence between the line of the frontier and the watershed line, or of the various maps produced between 1908 and 1962, etc.[60]. All of this is beside the point, since in 1962, this Court said to us in substance: never mind where the watershed lies, since both Parties have accepted that the frontier passes through a certain place shown on the Annex I map[61]. In this regard, we can, moreover, consult the documents produced by the Court itself at the time when it rendered judgment. Thus — and even though this is not an official document, although nonetheless emanating from the Registry of the Court — the final part of the Communiqué summarizing the Judgment is significant:

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[59]FWETh, para. 1.20.

[60]See *ibid.*, in particular paras. 4.33 to 4.73.

[61]Once again, in support of this argument, Thailand gives a truncated citation from the Judgment (FWETh, para. 4.39), the same truncated quote given previously. See Application of the Kingdom of Cambodia, 28 April 2011, para. 16.

[Document No. 22 on the screen]

> "The Court therefore felt bound to pronounce in favour of the frontier indicated on the Annex I map in the disputed area and it became unnecessary to consider whether the line as mapped did in fact correspond to the true watershed line.
>
> For these reasons, the Court upheld the submissions of Cambodia concerning sovereignty over Preah Vihear."[62]

It is noteworthy that the solution set out in the final paragraph derives entirely from the preceding one, which refers to the frontier, the Annex I map and the "disputed area", while the concluding paragraph cites "Preah Vihear" as a place, an area, *without even referring again to the Temple*. That, moroever, confirms Cambodia's belief, as has already been pointed out by my colleague Rodman Bundy, that it serves no purpose whatever today to reopen the debate on the watershed line, since this Court must take as its starting-point what was decided in 1962. And that is indeed the difference between Cambodia and Thailand: Cambodia starts from 1962, whereas Thailand wishes to start from 1904 in order to *revisit* 1962. And as Thailand says little about what has happened since 1962, and still less since 2007, we may conclude that, for Thailand, history stops with its failure in 1962.

51. However, Thailand goes further, implying that a revision of the Judgment would have been possible if the necessary conditions had been met (for it knows perfectly well that this is no longer possible), and cites documents found recently in the archives of the French Foreign Ministry[63]. While it is true that, legally, it can take the matter no further, in this way it seeks to cast doubt on the correctness of what was decided in 1962.

52. That intention doubtless appears most clearly in Thailand's final submission at the close of its Further Written Explanations, where it requests the Court "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"[64]. Thailand is here asking the Court to dismiss a claim that Cambodia has not made, since it has never claimed that the Court had "formally" declared this *in its operative clause*. On the other hand, Cambodia indeed confirms that

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[62]Communiqué 62/16 of 15 June 1962, Summary of Judgments, *Consultative Opinions and Orders of the International Court of Justice, 1948-1991*, ST/LEG/SER.F/1, p. 79.

[63]FWETh, para. 4.52.

[64]Submissions, FWETh, p. 225.

it considers that the Court recognized the validity of that frontier, and thus *made a "formal" statement to that effect — in its reasoning*. If Thailand's submission is indeed an assertion that the dismissal which it seeks relates to the entire Judgment — that is to say the grounds and the operative clause, and not simply the latter [the "decision"] — in accordance with the literal meaning of the submission, then that submission must be *clearly rejected*[65]. This new submission could be likened to a form of counter-claim — if that were possible, which is not the case. It is, above all, once again Thailand's way of making Cambodia appear to be claiming more than it is in fact asking for, thus misrepresenting the basis of the Application, since Thailand's submission concerns the *entire* Annex I map, whereas Cambodia has always confined its Application to the disputed area alone. Similarly, according to Thailand, Cambodia is asking for the Annex I map to be "incorporated into the *dispositif*"[66], which" is in no way the case. Even if it so wished, it would of course be impossible. As Cambodia has explained at length, it is simply asking the Court to interpret the operative clause of the 1962 Judgment in light of the essential grounds — in fact *the* essential ground — of its Judgment. Those grounds recognize the existence of a frontier *already delimited and accepted* by both Parties, the Court having taken the view in 1962 that the Annex I map had become an integral part of the treaty process and thus carried treaty force. It would therefore be strange indeed if the Court were to "formally declare" — to use Thailand's expression — that the Judgment *as a whole* does not indicate such a frontier line.

VIII. Cambodia has consistently read paragraphs 1 and 2 of the operative clause in combination

53. I now come to my final point, Mr. President, Members of the Court, namely the fact that Cambodia has consistently relied on a combined reading of paragraphs 1 and 2 of the operative

36 clause. One of the arguments developed by Thailand in a number of places has been that there is a contradiction between Cambodia's initial Application, which is said to have related solely to paragraph 2 of the operative clause, and its subsequent arguments, which are claimed to have

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[65]As Richard Plender makes clear, the distinction is, however, necessary: "Article 59 of the International Court of Justice Statute refers to the binding force of the 'decision' ('*décision*' as opposed to the Judgment '*arrêt*') which is 'final and without appeal' by virtue of Article 60." "Procedure in the European Courts: comparisons and proposals", *RCADI*, 1977, Vol. 267, p. 316.

[66]FWETh, para. 4.8.

introduced a different dispute, relating to paragraph 1 of that same clause. Thus, according to Thailand, in its Response of 8 March 2012, Cambodia changed its position, since the Application of 28 April 2011 focused on paragraph 2 of the operative clause, whereas Cambodia was now seeking to resolve a dispute based on paragraph 1 of that clause, which showed a lack of consistency[67]. Moreover, again according to Thailand, Cambodia was now requesting a decision only on the map in the disputed area, which was a change of position, since it had previously requested a decision on the entire Annex I map[68]. That is of course totally untrue, since Cambodia has always requested an interpretation on the disputed area, and not beyond[69]. Even if Cambodia so wished, the Court could anyway not do so. This is yet another attempt to have you believe that Cambodia is constantly submitting new claims that bear no relation to the operative clause of the 1962 Judgment, as is reflected in the question of "4.6 sq km", which Thailand claims to be a new dispute, when in fact it was Thailand itself which sought to define the dispute by reference to such a perimeter[70] — or again the argument that the Application concerned the implementation of a judgment and not its interpretation[71].

54. What Cambodia is seeking to do is precisely to link paragraphs 1 and 2 of the operative clause in order to establish a global interpretation of that clause on the basis of its underlying reasoning. The operative clause must be read as a whole, whereas Thailand's reading is aimed at denying the "consequences" logically drawn by the Court from its finding in the first paragraph — as my colleague Sir Franklin has already pointed out. Thailand thus seeks to minimize the link between the clause's two paragraphs and too often ignores the expression "in consequence", which

[67]See FWETh, in particular para. 3.47.

[68]*Ibid.*, in particular para. 1.7.

[69]In its Application of 28 April 2011, Cambodia states that its request for interpretation concerns: "[the] territory . . . 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", para. 45.

[70]*Book concerning the Temple of Preah Vihear, published by the Thai Ministry of Foreign Affairs in December 2011*, p. 35.

[71]See FWETh, para. 4.82.

37 creates the link between the two[72]. This is, however, a recurrent phenomenon; when it occurred in oral argument at the provisional measures stage, we were told that it was a simple mistake[73], but one which is clearly being repeated — a practice both significant, and also disturbing.

55. In any event, the two paragraphs are clearly inseparable, and that is what the Court indicated in the logic of its reasoning in the second paragraph: the troops must be withdrawn in a continuous manner from the "vicinity" of the Temple situated under Cambodian sovereignty, in other words as far as the boundary between the two States, and more precisely as far as Thai territory. For the notion of withdrawal clearly includes that of *removal* as far as a certain point, as was explained this morning. Remaining in an area adjacent to the Temple is not withdrawal from the "vicinity". How can we determine that boundary, how can we ascertain up to what point such *removal* must be carried out? The sole *objective* element in the Judgment which enables us to determine the end-point of the territory under Cambodian sovereignty on which the Temple is located and the starting-point of Thai territory is *precisely the line on the Annex I map*, which this Court recognizes as the relevant boundary accepted by both States. It is thus not possible to overlook that line, or to understand the 1962 Judgment without taking it into account. Otherwise, it becomes impossible to determine up to where this *removal*, or *withdrawal*, must be effected, and the Judgment ceases to be properly comprehensible. This is a clear reply to Thailand's criticism that Cambodia has failed to answer the question of the meaning of the term "vicinity"[74]. As Cambodia has pointed out in its Response[75], it is pointless to seek out various meanings of the term in a multiplicity of dictionaries, for the only meaning that counts is the one that the Court wished to give it and, in Cambodia's view, that meaning is inevitably bound up with the totality of what the Court found and decided in its 1962 Judgment, and in particular the order that Thai troops be removed to beyond a specific limit, that of the territory under Cambodian sovereignty.

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[72]See FWETh, paras. 4.98 and 4.99.

[73]CR 2011/16, p. 12 (Pellet).

[74]See FWETh, para. 1.17

[75]FWEC, Vol. 1, para. 4.57.

38 56. So there you have it, Mr. President, Members of the Court, that is how Cambodia understands and interprets your Judgment of 15 June 1962. It understands and interprets it in a way that is logical, consistent and in accordance with a process of deductive reasoning based on a body of findings, interpretations and successive decisions, culminating in the operative clause. Clearly, Thailand does not understand it in the same way and, at the very least, is bound to admit that there exists a dispute over the interpretation of your Judgment. It will be for this Court to give the correct interpretation, the only possible one, and it is with full confidence that Cambodia places its reliance on the wisdom of the Court. I thank you, Mr. President, Members of the Court, for the lengthy attention that you have been kind enough to give to the arguments put before you by Cambodia.

The PRESIDENT: Thank you, Professor Sorel.

That brings an end to the first round of oral argument of the Kingdom of Cambodia. The Court will meet again on 17 April, at 10 a.m., to hear the first round of oral argument of the Kingdom of Thailand. The sitting is closed.

The Court rose at 4.25 p.m.

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