

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.

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