



No. 35001/ 230

Royal Thai Embassy
The Hague

3 May B.E. 2556 (2013)

Sir,

With reference to the case concerning the 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) and to your letter No. 141840 dated 26 April 2013 transmitting the written response of the Kingdom of Cambodia to the question put to the Parties by Judge Yusuf at the end of the public sitting on 17 April 2013, I have the honour to hereby submit the comments of the Kingdom of Thailand on the Kingdom of Cambodia's written response as attached.

Accept, Sir, the renewed assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Virachai Plasai'.

(Virachai Plasai)
Ambassador
Agent of the Kingdom of Thailand

His Excellency
Mr. Philippe Couvreur
Registrar,
International Court of Justice,
THE HAGUE.

**Comments of the Kingdom of Thailand on the Kingdom of Cambodia's
Written Response to Judge Yusuf's Question**

1. In accordance with Article 72 of the Rules of Court and the direction of the Court of 19 April 2013, Thailand hereby provides comments on Cambodia's "Response to Judge Yusuf's Question".

2. Judge Yusuf asked the Parties to identify "the precise territorial extent that each of the Parties considers to be 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 to do so by reference to "a set of geographical coordinates" or to "one of the maps produced before the Court in the original proceedings." Cambodia has done neither, but instead has taken the opportunity to engage in a further round of irrelevant and unauthorized written pleadings.¹

3. Cambodia has not provided any "geographical coordinates" for its identification of the "vicinity" of the Temple. Instead, it has chosen to provide the Court once again with the same "map" that it prepared for the written pleadings, which consists of its own superimposition of two sketches prepared by Thailand's expert Professor Schermerhorn in the original proceedings.

4. There are a number of problems with this.

First, in paragraph 4 of its Response, Cambodia refers to "the overlap between the Annex I map line and the watershed line proposed by the Thai experts in the original proceedings" and states that this overlap is illustrated by the superimposition of Map Sheets 3 and 4. Once again, Cambodia is thus replacing the Annex I map by Map Sheet 3, assuming that they only differ in scale, and are otherwise identical. Now, as Thailand has repeatedly pointed out,² Map Sheet 3 *is not* the Annex I map. First, it is a unilateral map produced by Thailand. Second, it is an enlarged, but also a simplified re-creation of a portion of one of the versions of the Annex I map, a re-creation made by Professor

¹ In particular, paragraph 3 but also throughout Cambodia's Response to Judge Yusuf's Question.

² CR 2013/3, p. 36, paras. 7-8 and CR 2013/6, p.27, para. 16 (Miron). See also Further Written Explanations of the Kingdom of Thailand (hereafter "FWE"), para. 1.37

Schermerhorn in order to assess the accuracy of the topography of the Annex I map. The numerous stylistic differences between the Annex I map and Map Sheet 3 - for example in toponymy and the labelling of heights - are manifest even to a layman's eye. Perhaps less obvious is the fact that the relationship between the line and the topography, and thus the location of the line, is different on the two maps submitted by Cambodia. A couple of examples of these significant differences are highlighted in the attached visual comparison. (See Attachment) On the ground the differences would equate to 200-300 metres.

Second, Cambodia illegitimately distorts and misrepresents the purpose of the comparison between Map Sheet 3 and Map Sheet 4 intended by Professor Schermerhorn, as part of his expert testimony. That testimony was for purposes of establishing the true course of the watershed on that part of the promontory of Phra Viharn where the Temple was situated. It was not to transpose the Annex I map line, for the purposes of identifying a disputed area.³ The futility of superimposing the sketch maps in order to define a disputed area is all the more evident, when it is recalled that the correct method of superimposition⁴ would leave part of the Temple itself outside the "disputed area."⁵ This was pointed out by Thailand in the oral pleadings,⁶ and explains why Cambodia, after having accepted the method of overlay recommended in the IBRU's Report,⁷ has now reverted to the superimposition it presented in the Response, where the Temple signs were made to coincide.

Third, in any event, the superimposition of these sketch maps to constitute a single sketch map was never shown to the Court in 1962, nor actually referred to during the further written and oral pleadings. Thus such a superimposition today cannot be regarded as "one of the maps produced before the Court in the original proceedings".⁸

³ See also FWE, paras. 2.47 - 2.50; CR 2013/3, p. 20, para. 32 (Plasai) and p. 37, para. 12 (Miron); CR 2013/6, pp. 22 - 24, paras. 6 - 7 (Miron).

⁴ IBRU Report, "A review of maps presented in the period 1959-1962 and others prepared in 2012" [FWE, Annex 46, pp. 317-318, para. 6.7].

⁵ See also *ibid.* [FWE, Annex 46, p. 321].

⁶ CR 2013/6, p. 24, para. 7 (*tertio*) (Miron).

⁷ CR 2013/5, pp. 20-21, paras. 47-49 (Bundy).

⁸ CR 2013/6, p. 23, para. 7 (Miron).

Fourth, Cambodia's response does not identify the "precise territorial extent" of the "vicinity" of the Temple, as it understands it. The superimposition of Map Sheet 4 over Map Sheet 3 does not result in a clear indication of the topography of the area. Indeed, the result is unreadable⁹. Moreover, this "map" does not carry either a coordinate grid or a latitude/longitude graticule. It is not surprising, then, that Cambodia fails to provide any "geographical coordinates" for its notion of "vicinity".¹⁰ On the basis of the "map" it has provided with its Response, it is simply impossible to provide geographical coordinates for Cambodia's preferred area, and impossible to determine the "precise territorial extent" as requested by Judge Yusuf.

5. Since the superimposed sketch map provided by Cambodia does not on its face identify any "vicinity" of the Temple, Cambodia supplements this with its written comments, indicating that "the Court's use of the term 'vicinity' is best appreciated by the overlap between the Annex I map line and the watershed line proposed by the Thai experts in the original proceedings".¹¹ The citation for this is to Cambodia's own written pleadings in the present proceedings.¹² Nowhere does Cambodia cite to the Judgment of the Court or the pleadings of the Parties in the original proceedings to support this theory. Cambodia's notion of "vicinity" bears no relationship to what the Court decided; it remains pure conjecture.

6. Cambodia also seeks to support its view of the "vicinity" of the Temple by reference to what the IBRU experts said in their report filed by Thailand with its Written Observations.¹³ First, it is absurd to suggest that a report prepared by technical, non-legal experts in 2011 should be treated as a legal interpretation of what the Court meant in its Judgment in 1962. Second, it is rather strange that Cambodia now would seek to support its case by reference to an experts' report, the principal findings of which it has refused to address. Third, by insisting that the use of a term in passing in the experts' report has

⁹ CR 2013/6, pp. 27-28, paras. 15-18 (Miron). See also IBRU Report, "A review of maps presented in the period 1959-1962 and others prepared in 2012" [FWE, Annex 46, pp. 316-319, paras. 6.1-6.10].

¹⁰ The technical challenges of a transposition of the Annex I line were recalled in CR 2013/6, pp. 27- 30, paras. 17 - 28 (Miron).

¹¹ Cambodia's Response to Judge Yusuf's Question, para. 4.

¹² Cambodia's Response of 8 March 2012, para. 4.61.

¹³ Written Observations of the Kingdom of Thailand (hereafter "WO"), Annex 96, p. 669, para. 61.

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probative value,¹⁴ Cambodia only draws attention once again to the absence of any proof to substantiate its own concept of “vicinity”.

7. The IBRU experts were concerned with the reliability of the Annex I map as a whole, right across to the Pass of Kel in the west. In the context of this large area, they used the term “vicinity of the Temple” to describe the limited area contained in Professor Schermerhorn’s sketch maps. However, not all the area mapped by Professor Schermerhorn was in dispute in the initial proceedings¹⁵. That area was much more restricted and is illustrated on Annex 85 d (Partial Reproduction)¹⁶.

8. Thus, in seeking to link the idea of the “vicinity” of the Temple with the area of 4.6 square kilometres to the west of the Temple, Cambodia continues to ignore the evidence in the 1962 proceedings that the area to the west of the Temple was simply not in issue.¹⁷ Cambodia’s argument continues to rest on the assumption that the Court in 1962 decided something that it had not been requested to decide.

9. But, as Thailand has pointed out, none of the evidence contained in Professor Schermerhorn’s sketch maps related to the second paragraph of the *dispositif*, which was concerned with the withdrawal of troops “at the Temple, or in its vicinity on Cambodian territory”.¹⁸ The purpose of the present proceedings (assuming there were jurisdiction and that they were admissible) would be to determine the meaning of the 1962 Judgment, not to define the meaning of “vicinity” in some abstract sense. The link between the notion of “vicinity” of the Temple in the second paragraph of the *dispositif* and Professor Schermerhorn’s sketch maps is in the mind of Cambodia only; it cannot be found in the 1962 Judgment.

10. Thailand further notes that Cambodia continues to play its “cat and mouse” game with the Annex I map. For no apparent reason, Cambodia attaches a copy of an Annex I map to its Response to Judge Yusuf’s Question. It describes this in footnote 2 of its Response as the “map attached to Cambodia’s Application Instituting Proceedings in

¹⁴ See also CR 2013/5, p. 18, para. 38 (Bundy).

¹⁵ CR 2013/6, pp. 24-25, paras. 7-9 (Miron).

¹⁶ CR 2013/3, pp. 40-42, paras. 19-29 and CR 2013/6, pp. 25-26, paras. 10-13 (Miron).

¹⁷ WO, paras. 2.44-2.45; FWE, paras. 4.46 - 4.49 and CR 2013/3, pp. 39-40, para. 18 (Miron).

¹⁸ CR 2013/6, pp.35-37, paras. 17-21 (McRae).

1959". But it is not the map attached to Cambodia's application instituting these interpretation proceedings. Cambodia fails once again to explain the inconsistency in the maps it has produced before this Court, and fails to respond to the implications for this case, repeatedly pointed out by Thailand,¹⁹ of the existence of these various versions of the Annex I map. In any event, whatever version of the Annex I map Cambodia would rely on, it does not explain how the map can be used to identify the "vicinity" of the Temple, and thus to provide an answer to the question asked by Judge Yusuf.

11. In the result, in order to define "vicinity", Cambodia presents two pieces of cartographic material, one as unreliable as the other. Cambodia's attempt to identify an area constituting the vicinity of the Temple within the meaning of the second paragraph of the *dispositif* of the 1962 Judgment continues to confuse the question of (1) the area that the Court had in mind when it referred to the disputed area and (2) the area that the Court had in mind when it was ordering the withdrawal of Thai troops "at the Temple, or in its vicinity on Cambodian territory".²⁰ The only evidence in the Judgment of the meaning of "vicinity" in respect of the second paragraph is to be found in the request of Cambodia for the removal of troops from the "ruins of the Temple".²¹ Moreover, once the relevant "military or police forces, or other guards or keepers stationed by her at the Temple, or in its vicinity on Cambodian territory" were identified and had withdrawn, the idea of "vicinity" had and has no further role to play.

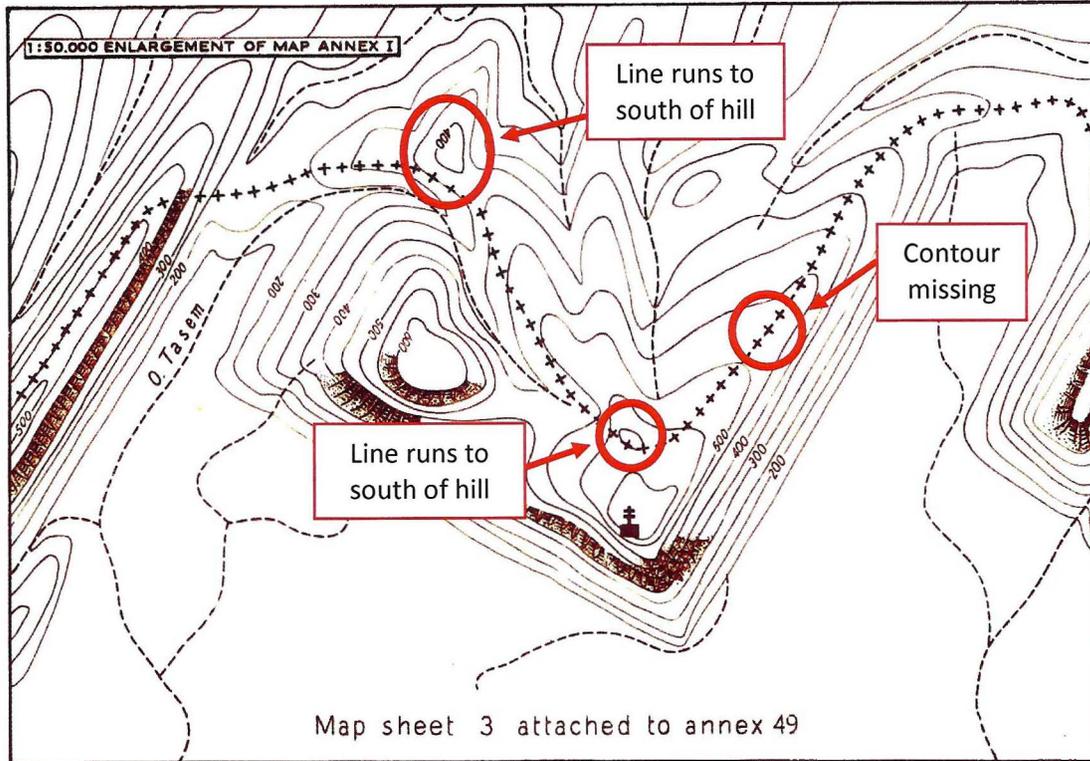
¹⁹ WO, paras. 6.18-6.24; FWE, paras. 1.22-1.25; CR 2013/3, pp. 20-21, para. 34 (Plasai); and CR 2013/6, p. 49, para. 7 (Plasai).

²⁰ CR 2013/6, pp. 35-37, paras. 17-21 (McRae).

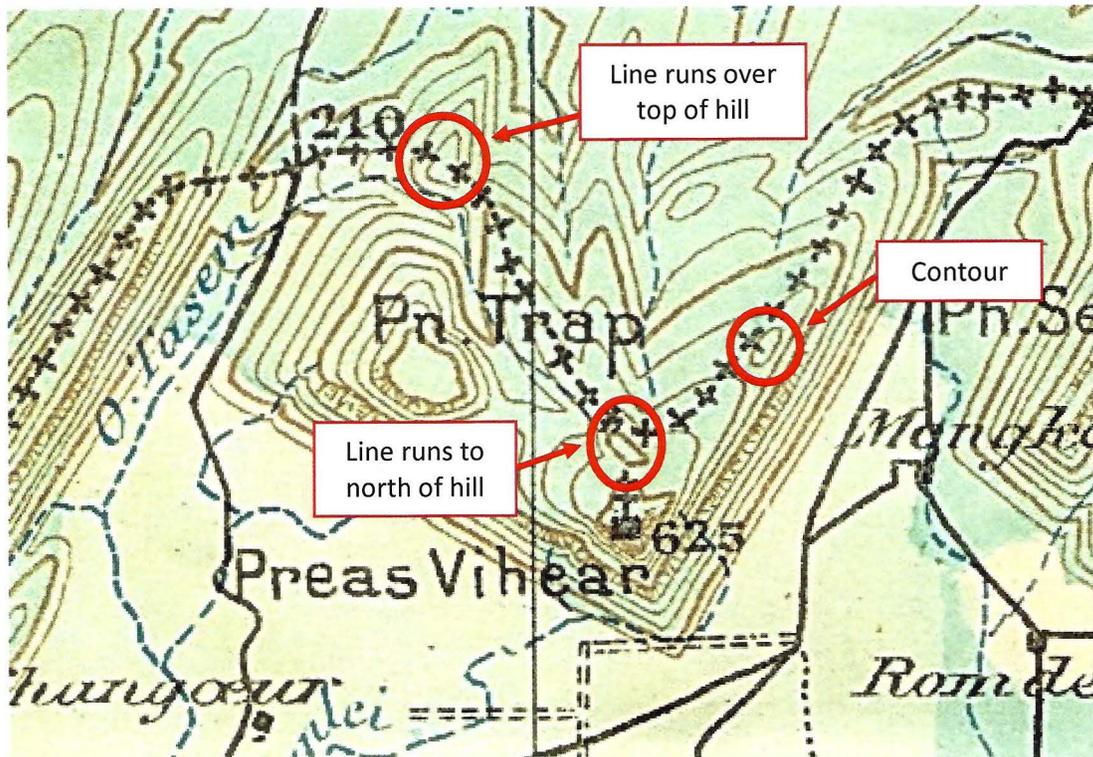
²¹ *Ibid.*

ATTACHMENT

Examples of substantive differences between Map Sheet 3 and the Annex I map submitted by Cambodia in 1959



Map Sheet 3 (reduced for comparative purposes)



Extract from Annex I map (enlarged for comparative purposes)

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