



INTERNATIONAL COURT OF JUSTICE

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Summary

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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)

Summary of the Judgment of 11 November 2013

Chronology of the procedure (paras. 1-13)

The Court recalls that on 28 April 2011 Cambodia filed in the Registry an Application instituting proceedings against Thailand, whereby, referring to Article 60 of the Statute and Article 98 of the Rules of Court, it requested the Court to interpret the Judgment delivered by the Court on 15 June 1962 in the case concerning Temple of Preah Vihear (Cambodia v. Thailand).

On the same day, after filing its Application, Cambodia, referring to Article 41 of the Statute and Article 73 of the Rules of Court, also filed in the Registry of the Court a Request for the indication of provisional measures in order to “cause [the] incursions [by Thailand] onto its territory to cease”. On 18 July 2011, the Court issued an Order indicating provisional measures to both Parties.

I. HISTORICAL BACKGROUND (paras. 14-29)

The Court recalls that the Temple of Preah Vihear is situated on a promontory of the same name in the eastern part of the Dangrek range of mountains, “which, in a general way, constitutes the boundary between the two countries in this region — Cambodia to the south and Thailand to the north”.

On 13 February 1904, France (of which Cambodia was then a protectorate) and Siam (as Thailand was then called) concluded a treaty which specified that the frontier in the Dangrek sector was to follow the watershed line. The 1904 Treaty provided for the establishment of Mixed Commissions composed of officers appointed by the two Parties and responsible for delimiting the frontier between the two territories. The first Mixed Commission was thus established in 1904. The final stage of the operation of delimitation was to be the preparation and publication of maps, a task assigned to a team of four French officers, three of whom had been members of the Mixed Commission. In 1907, that team prepared a series of 11 maps covering a large part of the frontiers between Siam and French Indo-China (of which Cambodia formed part). In particular, it drew up a map entitled “Dangrek — Commission of Delimitation between Indo-China and Siam”, on which the frontier passed to the north of Preah Vihear, thus leaving the Temple in Cambodia.

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

During the merits phase of the proceedings, Cambodia relied upon the above-mentioned map entitled "Dangrek — Commission of Delimitation between Indo-China and Siam", which was annexed to its pleadings and was referred to as the "Annex I map". Cambodia argued that this map had been accepted by Thailand and had entered into the treaty settlement, thereby becoming binding on the two States. According to Cambodia, the line shown on the Annex I map had thus become the frontier between the two States. Thailand denied that it had accepted the Annex I map, or that the map had otherwise become binding upon it, and maintained that the boundary between the two States followed the watershed line, as provided in the text of the 1904 Treaty, with the result, according to Thailand, that the Temple lay in Thai territory.

The Court recalls that the operative part of the 1962 Judgment reads as follows:

"The Court,

finds that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia;

finds in consequence, that Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory; and

that Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia's fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities."

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

II. JURISDICTION AND ADMISSIBILITY (paras. 30-57)

1. Jurisdiction of the Court under Article 60 of the Statute (paras. 31-52)

The Court begins by recalling that "[its] jurisdiction on the basis of Article 60 of the Statute is not preconditioned by the existence of any other basis of jurisdiction as between the parties to the original case" and that "by virtue of Article 60 of the Statute, [the Court] may entertain a request for interpretation provided that there is a 'dispute as to the meaning or scope' of any judgment rendered by it".

In accordance with the jurisprudence of the Court, "a dispute within the meaning of Article 60 of the Statute must relate to the operative clause of the judgment in question and cannot concern the reasons for the judgment except in so far as these are inseparable from the operative clause". That said, "a difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of Article 60 of the Statute".

A. The existence of a dispute (paras. 37-45)

The Court observes that the events and statements dating from the period immediately following the 1962 Judgment clearly demonstrate that Thailand was of the view that the Court had left the term “vicinity of the Temple” in the second operative paragraph undefined and that Thailand could thus determine unilaterally the limits of that “vicinity”. In particular, this position is reflected in the 1962 Resolution of the Thai Council of Ministers which determined the “location of the limit of the vicinity of the [Temple], from which Thailand has the obligation to withdraw police forces, guards or keepers”.

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

Contrary to Thailand’s assertions, the record before the Court shows that Cambodia did not accept Thailand’s withdrawal as fully implementing the 1962 Judgment. Rather, Cambodia protested the Thai presence on territory which, according to Cambodia, the 1962 Judgment had recognized as Cambodian. Cambodia also complained that the barbed wire fence erected by Thailand “encroach[ed] fairly significantly” upon that territory in contravention of the Court’s Judgment.

This divergence of views reappeared in the Parties’ correspondence following Cambodia’s request for the inscription of the site of the Temple on the UNESCO World Heritage List in 2007-2008.

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

B. Subject-matter of the dispute before the Court (paras. 46-52)

The Court considers that the Parties’ positions, expressed during the period following the 1962 Judgment as well as that following Cambodia’s request to have the site of the Temple inscribed on the World Heritage List and in the course of the present proceedings, reveal that the dispute between the Parties as to the meaning and scope of the 1962 Judgment relates to three specific aspects thereof. First, there is a dispute over whether the 1962 Judgment did or did not decide with binding force that the line depicted on the Annex I map constitutes the frontier between the Parties in the area of the Temple. Secondly, there is a closely related dispute concerning the meaning and scope of the phrase “vicinity on Cambodian territory”, referred to in the second operative paragraph of the 1962 Judgment, a paragraph which the Court stated was a consequence of the finding, in the first operative paragraph, that the Temple is situated in “territory under the sovereignty of Cambodia”. Lastly, there is a dispute regarding the nature of Thailand’s obligation to withdraw imposed by the second paragraph of the operative part.

2. Admissibility of Cambodia’s Request for interpretation (paras. 53-56)

Having regard to the Parties’ divergent views over the meaning and scope of the 1962 Judgment, identified above, the Court considers that there is a need for the interpretation of the second operative paragraph of the 1962 Judgment and of the legal effect of what the Court said regarding the Annex I map line. Within these limits, Cambodia’s Request is admissible.

3. Conclusion (para. 57)

In the light of the foregoing, the Court concludes that it has jurisdiction to entertain Cambodia's Request for interpretation of the 1962 Judgment and that the Request is admissible.

III. THE INTERPRETATION OF THE 1962 JUDGMENT (paras. 58-107)

The Court then turns to the interpretation of the 1962 Judgment.

1. Positions of the Parties (paras. 59-65)

The Court begins by summarizing the positions expressed by the Parties in the course of the proceedings.

2. The role of the Court under Article 60 of the Statute (paras. 66-75)

The Court recalls that its role under Article 60 of the Statute is to clarify the meaning and scope of what the Court decided in the judgment which it is requested to interpret. Accordingly, the Court must keep strictly within the limits of the original judgment and cannot question matters that were settled therein with binding force, nor can it provide answers to questions the Court did not decide in the original judgment.

In determining the meaning and scope of the operative clause of the original 1962 Judgment, the Court, in accordance with its practice, will have regard to the reasoning of that Judgment to the extent that it sheds light on the proper interpretation of the operative clause.

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

Further, the Court recalls that the meaning and scope of a judgment of the Court cannot be affected by conduct of the parties occurring after that judgment has been given. More generally, "the Court, when giving an interpretation, refrains from any examination of facts other than those which it has considered in the judgment under interpretation".

3. The principal features of the 1962 Judgment (paras. 76-78)

Three features of the 1962 Judgment stand out when that Judgment is read in the light of the considerations set out above. First, the Court considered that it was dealing with a dispute regarding territorial sovereignty over the area in which the Temple was located and that it was not engaged in delimiting the frontier. No mention was made in the 1962 Judgment of either the Annex I map or the location of the frontier in the operative part. No map was attached to the Judgment, nor did the Court make any comment on the difficulties of transposition of the Annex I map line, a matter which had been discussed by the Parties during the 1962 proceedings and which would have been of obvious importance in a judgment on delimitation of the frontier.

Secondly, however, the Annex I map played a central role in the reasoning of the Court. The Court went on to state that "the acceptance of the Annex I map by the Parties caused the map to enter the treaty settlement and to become an integral part of it" and concluded that it "therefore, feels bound, as a matter of treaty interpretation, to pronounce in favour of the line as mapped in the disputed area".

Thirdly, in defining the dispute before it, the Court made clear that it was concerned only with sovereignty in the “region of the Temple of Preah Vihear”.

The Judgment shows that the Court considered that the disputed area was a small one.

4. The operative part of the 1962 Judgment (paras. 79-106)

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

A. The first operative paragraph (para. 80)

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

B. The second operative paragraph (paras. 81-99)

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

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

The only such evidence was given by Professor Ackermann, who was called by Thailand as an expert and witness and who had visited the Temple for several days in July 1961 in the course of preparing a report to be submitted in the proceedings. Professor Ackermann testified that, during that visit, the only people he had seen at the Preah Vihear promontory were a detachment of Thai frontier police and one Temple guard. He stated that the police had been stationed in blockhouses at a camp located to the north-east of the Temple, while the guard had lived in a separate house a short distance to the west of the police camp.

The location of the police station was subsequently confirmed by counsel for Thailand, according to whom the police camp was located south of the Annex I map line but north of a line which Cambodia maintained was the watershed line.

When the Court required Thailand to withdraw military or police forces, guards or keepers which it had stationed in the Temple, or in the vicinity of the Temple on Cambodian territory, it must have intended that obligation to apply to the police detachment referred to by Professor Ackermann, since, except for the solitary Temple guard, there was no evidence of the

presence of any other Thai personnel anywhere near the Temple. Accordingly, the term “vicinity on Cambodian territory” has to be construed as extending at least to the area where the police detachment was stationed at the time of the original proceedings. Since that area lies north of the Thai Council of Ministers’ line, that line cannot represent the correct interpretation of the territorial scope of the second operative paragraph as Thailand contends.

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

Furthermore, the Court’s reasoning regarding the significance of the Annex I map shows that the Court considered that Cambodia’s territory extended in the north as far as, but no farther than, the Annex I map line. The Court was therefore dealing with a small area with clearly defined geographical limits to the east, south, west and north-west, and bounded in the north by what the Court had stated in its reasoning was the limit of Cambodian territory. In these circumstances, the Court considers that the territorial scope of the second operative paragraph must be construed as extending to the whole of the promontory, rather than being confined to the part of it chosen by the Thai Council of Ministers in 1962.

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

First, Phnom Trap and the promontory of Preah Vihear are distinct geographical features which are clearly shown as separate on the maps used in the 1962 proceedings and, in particular, on the Annex I map, which was the only map to which the Court made more than passing reference in the Judgment. Secondly, there are certain indications in the record of the 1962 proceedings that Cambodia did not treat Phnom Trap as falling within the “region of the Temple” or “Temple area” (the terms used by the Court in defining the scope of the dispute before it). Thirdly, there was no evidence before the Court of any Thai military or police presence on Phnom Trap in 1962 and no suggestion that Phnom Trap was relevant to Cambodia’s claim that Thailand should be required to withdraw its forces. Lastly, Cambodia’s interpretation depends upon identifying the location of the points at which the Annex I map line intersects with the watershed line advocated by Thailand. Yet, in the 1962 Judgment, the Court made clear that it was not concerned with the location of the watershed and did not decide where the watershed lay. It is, therefore, implausible to suggest that the Court had the watershed line in mind when it used the term “vicinity”.

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

In paragraph 98 of the Judgment, the Court states the following: From the reasoning in the 1962 Judgment, seen in the light of the pleadings in the original proceedings, it appears that the limits of the promontory of Preah Vihear, to the south of the Annex I map line, consist of natural features. To the east, south and south-west, the promontory drops in a steep escarpment to the Cambodian plain. The Parties were in agreement in 1962 that this escarpment, and the land at its foot, were under Cambodian sovereignty in any event. To the west and north-west, the land drops in a slope, less steep than the escarpment but nonetheless pronounced, into the valley which separates Preah Vihear from the neighbouring hill of Phnom Trap, a valley which itself drops away in the south to the Cambodian plain. For the reasons already given, the Court considers that Phnom Trap lay outside the disputed area and the 1962 Judgment did not address the question whether it was located in Thai or Cambodian territory. Accordingly, the Court considers that the promontory of Preah Vihear ends at the foot of the hill of Phnom Trap, that is to say: where the ground begins to rise from the valley.

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

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

C. The relationship between the second operative paragraph and the rest of the operative part (paras. 100-106)

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

The Court, having decided in the first operative paragraph of the 1962 Judgment that the Temple was located in territory under the sovereignty of Cambodia, determined, as a consequence of that finding, that Thailand was under an obligation to withdraw its forces and other personnel stationed “at the Temple, or in its vicinity on Cambodian territory” and to restore objects removed from “the Temple or the Temple area” (emphasis added). The second and third operative paragraphs each, therefore, imposed obligations with respect to an area of territory which extended beyond the Temple itself. The second operative paragraph expressly described this area as Cambodian territory. The third operative paragraph did not do so but the Court considers that such a description was implicit; an obligation to restore artefacts taken from the “area of the Temple” would be a logical consequence of a finding of sovereignty only to the extent that the area in question was covered by that finding.

The Court considers that the terms “vicinity [of the Temple] on Cambodian territory”, in the second paragraph, and “area of the Temple”, in the third paragraph, refer to the same small parcel of territory. The obligations which the Court imposed in respect of that parcel of territory were stated to be a consequence of the finding in the first paragraph. The obligations imposed by the second and third paragraphs would be a logical consequence of the finding of sovereignty in the first operative paragraph only if the territory referred to in the first paragraph corresponded to the territory referred to in the second and third paragraphs.

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

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

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

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

5. Conclusions (para. 107)

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

Operative paragraph (para. 108)

For these reasons,

THE COURT,

(1) Unanimously,

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

(2) Unanimously,

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

Judges Owada, Bennouna and Gaja append a joint declaration to the Judgment of the Court; Judge Cançado Trindade appends a separate opinion to the Judgment of the Court; Judges ad hoc Guillaume and Cot append declarations to the Judgment of the Court.

Joint declaration of Judges Owada, Bennouna and Gaja

The Court's jurisdiction to interpret one of its Judgments under Article 60 of the Statute only extends to matters that were previously decided with binding force. These matters are generally indicated in the operative part of judgments, but may also be included in reasons that are "inseparable" from the operative part, when this is not self-standing and contains an express or implicit reference to those reasons. "Essential" reasons, namely those on which the operative part is based, cannot be assimilated to "inseparable" reasons, as the Court appears to do. 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. It cannot extend to matters that were not so submitted. Naturally, essential reasons may be resorted to in so far as they contribute to clarify the operative part of a judgment.

Separate opinion of Judge Cañado Trindade

1. Judge Cañado Trindade begins his Separate Opinion, composed of nine parts, by pointing out that, given the great importance that he attaches to the matters dealt with by the Court in the present Interpretation of Judgment, or else underlying it, he feels obliged to leave on the records of this case of the Temple of Preah Vihear the foundations of his own personal position on them. He does so moved by "a sense of duty in the exercise of the international judicial function" (part I). This being so, he first addresses "the essence of the resurfaced dispute" before the Court (part II).

2. After recapitulating the arguments of the contending Parties in the course of the present proceedings, he ponders that the case of the Temple of Preah Vihear is not one of delimitation, nor of demarcation, of frontier, but rather a case of territorial sovereignty (in respect of the Temple "region" or "area), to be exercised to secure the safety of local populations under the respective jurisdictions of the two contending States, in the light of basic principles of international law, such as those of peaceful settlement of international disputes and of the prohibition of the threat or use of force (part V).

3. Furthermore, this is a case — he adds — of territorial sovereignty to be exercised by the State concerned for the preservation of the Temple at issue as part of the world heritage (reckoned as such in the UNESCO List), to the (cultural) benefit of humankind (para. 12). After proceeding to a couple of "terminological and hermeneutic precisions" (e.g., as to the term "vicinity", and the verb "to withdraw from" — part III), he examines the Parties' submissions concerning the incidents (in 2007-2011, taken to the attention of the U.N. Security Council) which led to Cambodia's concomitant requests for Provisional Measures of Protection and for Interpretation of the Court's 1962 Judgment in the case of the Temple of Preah Vihear (part IV).

4. He then recalls (part V) that, by its Order of Provisional Measures of 18.07.2011, the Court determined, as from the basic principle of the prohibition of the threat or use of force, enshrined into the U.N. Charter, the creation of a "provisional demilitarized zone" around the Temple of Preah Vihear and in the proximities of the frontier between the two countries, and the immediate withdrawal of their military personnel, and the guarantee of free access to the Temple of those in charge of supplies to the non-military personnel present therein. He further recalls that, in his Separate Opinion appended to that Order of 2011, he endorsed the unprecedented creation of that "provisional demilitarized zone", which sought to protect, in his understanding, "not only the territory at issue, but also the populations that live thereon, as well as the set of monuments found therein, conforming the Temple of Preah Vihear", which came to integrate, as from 2008, — by decision of the World Heritage Committee of UNESCO, — its World Heritage List, which constitutes the cultural and spiritual heritage of humankind (para. 30). Judge Cañado Trindade adds that,

“[b]eyond the classic territorialist outlook (...) lies the human factor, calling for the protection, by the measures indicated or ordered by the ICJ, of the rights to life and personal integrity of the members of the local population, as well as the cultural and spiritual heritage of human kind (...). Underlying this jurisprudential construction, (...) is the principle of humanity, orienting the search for improvement of the conditions of living of the population and the realization of the common good (...), in the ambit of the new jus gentium of our times (...). In situations of the kind, one cannot consider the territory making abstraction of the local populations (and their cultural and spiritual heritage), who, in my view, constitute the most precious component of statehood.

In its aforementioned Provisional Measures of Protection, the ICJ took into due account not only the territory at issue, but, jointly, the people on territory, i.e., the protection of the population on territory” (paras. 31-32).

5. Ever since, the Parties have presented submissions as to the compliance with the Court’s Order of 2011, on Provisional Measures of Protection, as also recapitulated by Judge Cançado Trindade (part VI). In sequence, he addresses the States’ duties to refrain from the threat or use of force and to reach a peaceful settlement of the dispute at issue (part VII), and ponders that the ICJ, in the exercise of its functions in the peaceful settlement of international disputes, is bound to secure compliance by States with the general principles of international law, enshrined into the U.N. Charter; after all, its Statute forms an integral part of the U.N. Charter (paras. 40-41). And he adds that

“The necessary attention to those principles brings us closer to the domain of superior human values, to be safeguarded, not sufficiently worked upon in international case-law and doctrine. It is, ultimately, those principles that inform and conform the applicable norms, and ultimately any legal system” (para 42).

6. From then onwards, Judge Cançado Trindade concentrates his reflections on the “ineluctable relationship between motifs and dispositif” in a Judgment of an international tribunal (part VIII). In this respect, he proceeds first to an overview of the case-law of the Hague Court (PCIJ and ICJ) on the matter (paras. 45-49), and then addresses the interplay between reason and persuasion (paras. 50-51 and 54) as well as the “everlasting acknowledgment of the relevance of sound legal reasoning”. In this connection, he observes that

“the exercise of legal reasoning (i.e., the elaboration of the motifs/la motivation) has historical roots which go back, e.g., to ancient Roman law. In his fragments, Ulpian (circa 170-228 A.D.) took juris-prudencia (from the verb providere) as referring to the knowledge of what is just and unjust; in dispensing justice, jurisprudencia was understood as teaching how justice was to be realized, besides showing that the procedure had been well followed. His writings altogether, undertaken in the period 211-222 A.D., are believed to have considerably contributed to Justinian’s Digest (the main volume of his Corpus Juris Civilis, 529-534) (...)” (para. 52).

7. The elaboration of sound legal reasoning, for its part, sought coherence and harmony; in Judge Cançado Trindade’s understanding, it “did not amount to a syllogism, nor did it exhaust itself in the simple identification of the applicable norms. It went further than that, encompassing interpretation, and recourse to sources of law (including principles, doctrine, and equity), bearing in mind human values. Prudence played its role, in juris-prudencia” (para. 54). The Judgment of an international tribunal in our days, in his understanding, “encompasses not only the decision reached by the international tribunal (the dispositif), but also the reasoning of this latter, the indication of the sources of law it resorts to, the fundamental principles it relies upon, and other considerations that it deems fit to develop (the motifs)”; in effect, to his mind, “motifs and dispositif form an organic, inseparable whole” (para. 55).

8. The issue became object of special attention, — he proceeds, — in the legal doctrine of the XIXth century, which upheld the view that “the dispositif is to be approached together with the reasoning (the motifs)” which give support to it. This understanding then “prevailed in civil procedural law (in countries of that legal tradition), before being transposed into the international legal procedure” (para. 56). With the passing of time, however, under the influence of legal positivism, — Judge Cançado Trindade adds, — “a more simplistic view came to prevail”, to the effect that only the dispositif formed the object of a judicial decision, as if the operative part of a judgment could be severed from the other parts of it, and become binding by itself, “independently of the whole reasoning developed by the tribunal in its support”. Judge Cançado Trindade comments critically that “[i]t is not surprising that this superficial view became widespread, as it did not require much thinking” (para. 57). In his own assessment, this was a “strictly formalistic approach”; the res judicata was thus brought into the picture, “minimizing the reasoning supporting it” (para. 58).

9. Judge Cançado Trindade holds that the reasoning or the motifs of a judgment “can be freely resorted to, in the interpretation of any point or passage of the dispositif which requires clarification; in fact, it will be hardly possible to determine the exact scope of a dispositif without taking into account the reasoning (the motifs)”. They may indeed appear “inseparable from each other”, and there are “even the dispositifs that deem it fit to make express crossreferences to corresponding paragraphs of the motifs”. In the present Interpretation of Judgment, for example, “resolatory point n. 2 of the dispositif expressly refers to paragraph 98 of the motifs” (para. 59). Judge Cançado Trindade then expresses his conception that

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

10. He further recalls that, over half a century ago, P. Calamandrei used to point out that sententia derives from sentiment, as indicated by etymology. Judge Cançado Trindade adds that the subjects of law (sujets de droit) are not transformed into a dossier (as hinted by bureaucratic indifference); they remain “living persons”. The requisite of providing the motifs (la motivation) appears as reasoning a “sense of justice”. It is, moreover, pedagogical, in seeking to show that the judgment at issue is just, and why it is so. To Judge Cançado Trindade, “[s]ententia emanates from human conscience, moved by the sense of justice” (para. 61).

11. Last but not least, Judge Cançado Trindade, moving to his concluding observations (part IX), refers to the considerations he developed in his previous Separate Opinion in the Court’s Order of 18.07.2011 of Provisional Measures of Protection in the present case of the Temple of Preah Vihear, on the perennial issue of time and Law; after all, “[w]e all live and work within time, and the acceptance of the passing of time is one of the greatest challenges of human existence” (para. 62). In the present Interpretation of Judgment, — he adds, — the Court has “repeatedly taken note of the facts, subsequent to its original Judgment of 1962 in the cas d’espèce, which have been brought to its attention by the contending Parties”, — and “it could not have done otherwise” (para. 63).

12. In doing so, the Court undertook the exercise of providing the requested Interpretation of the original 1962 Judgment, “focusing on its dispositif together with the corresponding motifs”, to the extent that its own pertinent reasoning shed light on the dispositif; it then clarified the meaning of the “vicinity” of the Temple of Preah Vihear. Already in its Provisional Measures of 18.07.2011 in the present case of the Temple of Preah Vihear, the Court, in bringing together territory, people

and human values (cf. supra) in a “proper inter-temporal dimension”, thus endorsed, in his perception, “the on-going process of humanization of international law” (para. 65).

13. A parallel between the Judgment of 1962 and the present Interpretation of Judgment of 2013, he proceeds, gives clear testimony of that. And Judge Cançado Trindade then concludes that, by

“giving its due to the preservation of world cultural heritage, parallel to the safeguard of territorial sovereignty, the Court is contributing to the avoidance of a spiritual damage (...).

It does so at the same time that it draws attention to the relevance of general principles of international law (...). The necessary attention to those principles brings us closer to the domain of higher human values, shared by the international community as a whole. (...) [I]t is the fundamental principles that (...) give expression to the idea of an objective justice, above the will of individual States. They indicate, at last, the status conscientiae reached by the international community as a whole” (paras. 65-67).

Declaration of Judge ad hoc Guillaume

In his declaration, Judge ad hoc Guillaume agrees with the Court’s unanimous decision and explains its scope.

He begins by recalling that the second operative paragraph of the 1962 Judgment required Thailand to withdraw any civilian or military personnel stationed by it at the Temple or “in its vicinity on Cambodian territory”. He notes that, in its new Judgment, the Court has provided the interpretation to be given to this latter phrase.

The Court first decided that, in the vicinity of the Temple, Cambodian territory extends to the north as far as the line on the Annex I map, and that Thai territory begins beyond that line. The Court thus determined the line of the frontier between the two States in the sector concerned. It did so with binding force, having ruled in that respect in the actual operative part of its Judgment (paragraphs 108 and 98).

Secondly, in that same operative part (paragraphs 108 and 98), the Court determined the extent of the vicinity of the Temple on Cambodian territory in such a way that Cambodia will have free access to the Temple from the plain by the valley separating the Preah Vihear promontory from the hill of Phnom Trap (paragraphs 89, 98 and 106).

Having settled the dispute between the Parties regarding the meaning to be given to the second operative paragraph of the 1962 Judgment, the Court held that it was unnecessary for it to rule on the other disputes between Cambodia and Thailand.

Thus, having accorded binding force to the Annex I frontier line in the Preah Vihear sector, the Court was not required to rule on Cambodia’s submissions regarding, more generally, the binding force of that line as representing the frontier between the Parties: those submissions had been accepted in the Temple sector, the only one to which the 1962 dispute related.

Having, moreover, recognized the territorial sovereignty of Cambodia over the vicinity of the Temple, the Court accordingly concluded that Thailand was under a duty in general international law to respect that sovereignty and was not entitled unilaterally to send civilian or military personnel into Cambodian territory. It was therefore unnecessary for the Court to determine whether the obligation to withdraw as imposed in 1962 was of a continuing or instantaneous nature.

In short, the Judgment has fixed with binding force the line of the frontier between the two States in the Temple sector, and has made it clear what is to be understood by the “vicinity of the Temple” on Cambodian territory within the meaning of the 1962 Judgment.

Declaration of Judge ad hoc Cot

Judge ad hoc Cot notes that the Court has adhered to a strict conception of the interpretation of the Judgment of 1962. In particular, the Court has declined to rule on the status of the line on the Annex I map. It has taken that line into consideration only in order to determine the perimeter of the vicinity of the Temple and it has refused to carry out any delimitation operation.

The Court has considered that the term “vicinity” of the Temple in the operative part corresponds to the rocky promontory on which the Temple is located. It has therefore logically refused to rule on sovereignty beyond this limited perimeter and, in particular, on the status of the neighbouring hill of Phnom Trap. Judge ad hoc Cot agrees with this analysis.

The solution adopted by the Court corresponds closely to one of the options put to the Thai Council of Ministers on 10 July 1962. It was at the time one of the possible interpretations of the Judgment according to the views of the Thai administration. That is the interpretation given by the Court today.
