

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

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

(CAMBODGE c. THAÏLANDE)

DEMANDE EN INDICATION
DE MESURES CONSERVATOIRES

ORDONNANCE DU 18 JUILLET 2011

2011

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

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)

REQUEST FOR THE INDICATION
OF PROVISIONAL MEASURES

ORDER OF 18 JULY 2011

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General List
No. 151REQUEST FOR INTERPRETATION
OF THE JUDGMENT OF 15 JUNE 1962 IN THE CASE
CONCERNING THE *TEMPLE OF PREAH VIHEAR*
(*CAMBODIA v. THAILAND*)(CAMBODIA *v.* THAILAND)REQUEST FOR THE INDICATION
OF PROVISIONAL MEASURES

ORDER

Present: President OWADA; Vice-President TOMKA; Judges KOROMA, AL-KHASAWNEH, SIMMA, ABRAHAM, KEITH, BENNOUNA, SKOTNIKOV, CAÑADO TRINDADE, YUSUF, GREENWOOD, XUE, DONOGHUE; Judges ad hoc GUILLAUME, COT; Registrar COUVREUR.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court,

Having regard to the Application instituting proceedings filed in the Registry on 28 April 2011 by the Kingdom of Cambodia (hereinafter “Cam-

bodia”), whereby, referring to Article 60 of the Statute of the Court and Article 98 of the Rules of Court, Cambodia requests the Court to interpret the Judgment it rendered on 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia v. Thailand)* (hereinafter the “1962 Judgment”);

Makes the following Order:

1. Whereas, in its Application, Cambodia states that, in the first paragraph of the operative clause of the 1962 Judgment, the Court declared that “the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia”; whereas it believes that the Court could not have reached such a conclusion if it had not first recognized that a legally established frontier existed between the two Parties in the area in question; whereas it implies that, in the reasoning of the 1962 Judgment, the Court considered that the two Parties had, by their conduct, recognized the line on the map in Annex I to Cambodia’s Memorial (hereinafter the “Annex I map”), a map drawn up in 1907 by the Franco-Siamese Mixed Commission, as representing the frontier between Cambodia and the Kingdom of Thailand (hereinafter “Thailand”) in the area of the Temple of Preah Vihear; and whereas it recalls that, according to the jurisprudence of the Court, while in principle any request for interpretation must relate to the operative part of the judgment, it can also relate to those reasons for the judgment which are inseparable from the operative part;

2. Whereas, in its Application, Cambodia states that, in the second paragraph of the operative clause of the 1962 Judgment, the Court declared 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”; whereas, according to Cambodia, this obligation derives from the fact that the Temple of Preah Vihear and its vicinity are situated in territory under Cambodian sovereignty, as recognized by the Court in the first paragraph of the operative clause, and “goes beyond a withdrawal from only the precincts of the Temple itself and extends to the area of the Temple in general”; and whereas Cambodia argues that the setting forth of this obligation in the operative clause of the Judgment indicates that it must be understood as a general and continuing obligation incumbent upon Thailand not to advance into Cambodian territory;

3. Whereas, according to Cambodia, Thailand believes that Cambodia’s sovereignty is confined to the Temple and does not extend to the area surrounding it, authorizing Thailand to claim sovereignty over that area and to occupy it; whereas Cambodia claims that Thailand considers that the frontier in the area of the Temple has not been recognized by the Court and has still to be determined in law; whereas Cambodia asserts that, in the first paragraph of the operative clause of the 1962 Judgment, the Court clearly refused to confine Cambodia’s sovereignty solely to the Temple, by determining the ownership of the latter “on the basis of the sovereignty over the

territory in which the Temple is situated”; and whereas a dispute therefore exists, according to Cambodia, as to the meaning and scope of the 1962 Judgment, in particular with regard to the extent of Cambodia’s sovereignty;

4. Whereas, in its Application, Cambodia maintains that the jurisdiction of the Court to entertain a request for interpretation of one of its judgments is based directly on Article 60 of the Statute, which stipulates that, “[i]n the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party”;

5. Whereas, at the end of its Application, Cambodia presents the following request:

“Given that ‘the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia’ (first paragraph of the operative clause), which is the legal consequence of the fact that the Temple is situated on the Cambodian side of the frontier, as that frontier was recognized by the Court in its Judgment, and on the basis of the facts and legal arguments set forth above, Cambodia respectfully asks the Court to adjudge and declare that:

The obligation incumbent upon Thailand to ‘withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory’ (second paragraph of the operative clause) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the area of the Temple and its vicinity by the line on the Annex I map, on which the Judgment of the Court is based”;

6. Whereas on 28 April 2011, having filed its Application, Cambodia, referring to Article 41 of the Statute and Article 73 of the Rules of Court, also submitted a request for the indication of provisional measures in order to “cause [the] incursions onto its territory [by Thailand] to cease” pending the Court’s ruling on the request for interpretation of the 1962 Judgment;

7. Whereas, in its request for the indication of provisional measures, Cambodia refers to the basis for the Court’s jurisdiction invoked in its Application (see paragraph 4 above);

8. Whereas, in the said request, Cambodia claims that, since 22 April 2011, serious armed incidents have occurred in the area of the Temple of Preah Vihear and at several locations situated along the boundary between Cambodia and Thailand, and that those incidents have caused fatalities, injuries and the evacuation of local inhabitants; and whereas Cambodia contends that Thailand is responsible for those incidents;

9. Whereas, in its request, Cambodia asserts that, if that request were to be rejected and if Thailand persisted in its conduct, the damage caused to the Temple of Preah Vihear, as well as the loss of life and human suffering as a result of those armed clashes, would become worse;

10. Whereas Cambodia adds that “[m]easures are urgently required, both to safeguard [its] rights . . . pending the Court’s decision — rights relating to its sovereignty, its territorial integrity and to the duty of non-interference incumbent upon Thailand — and to avoid aggravation of the dispute”;

11. Whereas, at the end of its request for the indication of provisional measures, Cambodia asks the Court to indicate the following provisional measures pending the delivery of its judgment on the request for interpretation:

- an immediate and unconditional withdrawal of all Thai forces from those parts of Cambodian territory situated in the area of the Temple of Preah Vihear;
- a ban on all military activity by Thailand in the area of the Temple of Preah Vihear;
- that Thailand refrain from any act or action which could interfere with the rights of Cambodia or aggravate the dispute in the principal proceedings”;

and whereas it asks the Court, on account of the gravity of the situation, to consider its request for the indication of provisional measures as a matter of urgency;

12. Whereas, on 28 April 2011, the date on which the Application and the request for the indication of provisional measures were filed in the Registry, the Registrar informed the Thai Government of the filing of these documents and forthwith sent it signed originals thereof, pursuant to Article 40, paragraph 2, of the Statute and Article 38, paragraph 4, and Article 73, paragraph 2, of the Rules of Court; and whereas the Registrar also notified the Secretary-General of the United Nations of this filing;

13. Whereas, on 4 May 2011, the Registrar informed the Parties that the Court, pursuant to Article 74, paragraph 3, of the Rules of Court, had fixed 30 May 2011 as the opening date for the oral proceedings on the request for the indication of provisional measures;

14. Whereas, pending the notification provided for by Article 40, paragraph 3, of the Statute and Article 42 of the Rules of Court by transmission of the printed bilingual text of the Application to the Members of the United Nations, the Registrar informed those States of the filing of the Application and its subject, and of the filing of the request for the indication of provisional measures;

15. Whereas, since the Court includes upon the Bench no judge of the nationality of the Parties, each of them proceeded, in exercise of the right conferred by Article 31, paragraph 3, of the Statute, to choose a judge *ad hoc* in the case; whereas Cambodia chose Mr. Gilbert Guillaume for this purpose and Thailand chose Mr. Jean-Pierre Cot;

16. Whereas, at the public hearings held on 30 and 31 May 2011, in accordance with Article 74, paragraph 3, of the Rules of Court, oral observations on the request for the indication of provisional measures were presented by:

On behalf of Cambodia: H.E. Mr. Hor Namhong, *Agent*,
Sir Franklin Berman,
Mr. Jean-Marc Sorel;

On behalf of Thailand: H.E. Mr. Virachai Plasai, *Agent*,
Mr. Alain Pellet,
Mr. James Crawford,
Mr. Donald McRae;

whereas, during the hearings, a question was put by a Member of the Court to both Parties, to which replies were given in writing after the closure of the oral proceedings; and whereas each Party submitted to the Court its comments on the replies given by the other Party to that question;

* * *

17. Whereas, at the end of its second round of oral observations, the Kingdom of Cambodia asked the Court to indicate the following provisional measures:

- “— an immediate and unconditional withdrawal of all Thai forces from those parts of Cambodian territory situated in the area of the Temple of Preah Vihear;
- a ban on all military activity by Thailand in the area of the Temple of Preah Vihear;
- that Thailand refrain from any act or action which could interfere with the rights of Cambodia or aggravate the dispute in the principal proceedings”;

18. Whereas, at the end of its second round of oral observations, the Kingdom of Thailand asked the Court,

“[i]n accordance with Article 60 of the Rules of Court and having regard to the request for the indication of provisional measures of the Kingdom of Cambodia and its oral pleadings . . . to remove the case introduced by the Kingdom of Cambodia on 28 April 2011 from the General List”;

* * *

DISPUTE AS TO THE MEANING OR SCOPE OF THE 1962 JUDGMENT AND JURISDICTION OF THE COURT

19. Whereas, when it receives a request for the indication of provisional measures in the context of proceedings for interpretation of a judgment under Article 60 of the Statute, the Court has to consider whether

the conditions laid down by that Article for the Court to entertain a request for interpretation appear to be satisfied;

20. Whereas Article 60 provides that: “The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party”; and whereas this provision is supplemented by Article 98 of the Rules of Court, paragraph 1 of which reads: “In the event of dispute as to the meaning or scope of a judgment any party may make a request for its interpretation . . .”;

21. Whereas the Court’s 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; whereas it follows that, even if the basis of jurisdiction in the original case lapses, the Court, nevertheless, by virtue of Article 60 of the Statute, may entertain a request for interpretation provided that there is a “dispute as to the meaning or scope” of any judgment rendered by it; whereas the Court may indicate provisional measures in the context of proceedings for interpretation of a judgment only if it is satisfied that there appears *prima facie* to exist a “dispute” within the meaning of Article 60 of the Statute; and whereas, at this stage, it need not satisfy itself in a definitive manner that such a dispute exists;

22. Whereas a dispute within the meaning of Article 60 of the Statute must be understood as a difference of opinion or views between the parties as to the meaning or scope of a judgment rendered by the Court; and whereas the existence of such a dispute does not require the same criteria to be fulfilled as those determining the existence of a dispute under Article 36, paragraph 2, of the Statute (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 10-12; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America), Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 325, para. 53);

23. Whereas, moreover, 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 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections (Nigeria v. Cameroon), Judgment, I.C.J. Reports 1999 (I)*, p. 35, para. 10; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America), Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 323, para. 47);

* *

24. Whereas the Court must now ascertain whether a dispute appears to exist between the Parties in the present case, within the meaning of Article 60 of the Statute;

25. Whereas Cambodia asserts that a dispute exists between the Parties as to the meaning and scope of the 1962 Judgment in three respects;

26. Whereas Cambodia argues, first, that the conclusion reached by the Court in the first paragraph of the operative clause of the 1962 Judgment, in which it asserts that the Temple “is situated in territory under the sovereignty of Cambodia”, and the conclusion which it reaches “in consequence” in the second paragraph, namely 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”, are based on the Court’s prior recognition, in the reasoning of the Judgment, of the frontier line between Cambodia and Thailand in the area of the Temple of Preah Vihear, as represented by the line on the Annex I map; and whereas, according to Cambodia, Thailand disputes this interpretation of the 1962 Judgment;

27. Whereas Cambodia maintains, secondly, that a dispute exists between the Parties as to the meaning and scope of the phrase “vicinity on Cambodian territory” used in the second paragraph of the operative clause of the 1962 Judgment to designate the area from which the Thai forces were obliged to withdraw; whereas, according to Cambodia, Thailand, believing that the frontier in the area of the Temple has not been established, is laying claim to “territory beyond the strict precincts of the Temple” and occupying that area regardless of the Judgment, in particular the second paragraph of the operative clause;

28. Whereas Cambodia argues, thirdly, that a dispute exists as to whether, as it claims, the obligation deriving from the second paragraph of the operative clause of the 1962 Judgment is of a general and continuing character, in so far as it is the consequence of the obligation incumbent upon Thailand not to infringe Cambodia’s territorial sovereignty in the area of the Temple;

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29. Whereas Thailand maintains that there is no dispute as to the meaning or scope of the 1962 Judgment; whereas it does not dispute the fact that the Temple of Preah Vihear is situated in Cambodian territory, as is recognized in the first paragraph of the operative clause of that Judgment; whereas it claims furthermore not to dispute the fact that Thailand was under an obligation, pursuant to the second paragraph of the operative clause, to withdraw its military forces from the Temple or from its vicinity in so far as those forces were situated in Cambodian territory; whereas it asserts that this “instantaneous” obligation has been fully met by Thailand and cannot give rise to an interpretative judgment; and whereas Thailand maintains, in consequence, that the Court manifestly

lacks jurisdiction “to rule on Cambodia’s request for interpretation” and, therefore, to indicate the provisional measures requested;

30. Whereas Thailand claims that the sole aim of Cambodia’s Application is to have the Court decide that the frontier between the two countries derives from the Annex I map; whereas Thailand observes that while, in the reasoning of its 1962 Judgment, the Court did indeed base itself on the Annex I map in order to decide that the Temple was situated in Cambodian territory, it did not deduce that the entire frontier in this area derived from that map; and whereas Thailand further notes that the Court clearly refused to rule, in the operative clause of its Judgment, on Cambodia’s submissions to it regarding both the legal status of the Annex I map and the frontier line in the disputed area;

*

31. Whereas, in the light of the positions adopted by the Parties, a difference of opinion or views appears to exist between them as to the meaning or scope of the 1962 Judgment; whereas this difference appears to relate, in the first place, to the meaning and scope of the phrase “vicinity on Cambodian territory” used in the second paragraph of the operative clause of the Judgment; whereas this difference of opinion or views appears to relate, next, to the nature of the obligation imposed on Thailand, in the second paragraph of the operative clause of the Judgment, to “withdraw any military or police forces, or other guards or keepers”, and, in particular, to the question of whether this obligation is of a continuing or an instantaneous character; and whereas this difference of opinion or views appears to relate, finally, to the question of whether the Judgment did or did not recognize with binding force the line shown on the Annex I map as representing the frontier between the two Parties; whereas the Permanent Court of International Justice previously had occasion to state that a difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of Article 60 of the Statute (*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);

32. Whereas a dispute thus appears to exist between the Parties as to the meaning or scope of the 1962 Judgment, and whereas it therefore appears that the Court may, pursuant to Article 60 of the Statute, entertain the request for interpretation of the said Judgment submitted by Cambodia; whereas, in consequence, the Court cannot accede to the request by Thailand that the case be removed from the General List; and whereas there is a sufficient basis for the Court to be able to indicate the provisional measures requested by Cambodia, if the necessary conditions are fulfilled;

* *

PLAUSIBLE CHARACTER OF THE ALLEGED RIGHTS
IN THE PRINCIPAL REQUEST AND LINK
BETWEEN THESE RIGHTS AND THE MEASURES REQUESTED

33. Whereas the power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights of the parties pending the decision of the Court; whereas it follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court to belong to either party; whereas the Court may exercise this power only if it is satisfied that the rights asserted by a party are at least plausible (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011 (I)*, p. 18, para. 53); and whereas, in proceedings under Article 60 of the Statute, this supposes that the rights which the party requesting provisional measures claims to derive from the judgment in question, in the light of its interpretation of that judgment, are at least plausible;

34. Whereas, moreover, a link must be established between the alleged rights and the provisional measures sought to protect them (see *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America)* (*Mexico v. United States of America*), *Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 327, para. 58); and whereas, in proceedings under Article 60 of the Statute, this supposes that there is a link between the provisional measures requested by a party and the rights which it claims to derive from the judgment in question, in the light of the interpretation it gives to that judgment;

* *

Plausible Character of the Alleged Rights in the Principal Request

35. Whereas Cambodia contends that, in order to demonstrate the plausible character of the rights which it alleges in its request for interpretation and which it is seeking to protect — namely, the right to respect for its sovereignty in the area of the Temple of Preah Vihear and, more generally, its right to territorial integrity —, it is sufficient for it to establish that the existence of these rights may reasonably be argued; and whereas Cambodia points out that these rights are plausible in a number of respects, and in particular because they were determined with binding force by a judgment of the Court;

*

36. Whereas Thailand maintains that Cambodia, in order to establish the violation of the rights it claims to possess under the 1962 Judgment, refers

to incidents that occurred at locations some distance from the Temple; whereas it asserts that, no matter how the 1962 Judgment is construed, the Court did not decide anything about such incidents or the localities where they occurred; whereas, according to Thailand, Cambodia has no plausible right under Article 60 of the Statute to obtain an interpretation in respect of those incidents; whereas, moreover, the rights invoked in the request for interpretation must be based on the facts examined in the 1962 Judgment and not on facts subsequent to that Judgment; whereas Thailand claims that the rights invoked by Cambodia in its request nonetheless concern facts which took place long after the 1962 Judgment; and whereas, therefore, according to Thailand, such rights are not plausible for the purpose of the present request for the indication of provisional measures;

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37. Whereas it should, at the outset, be made clear that Article 60 of the Statute does not impose any time-limit on requests for interpretation; whereas the Court may entertain a request for interpretation in so far as there exists a dispute as to the meaning or scope of a judgment; and whereas such a dispute can, in itself, certainly arise from facts subsequent to the delivery of that judgment;

38. Whereas, at this stage in the proceedings, the Court does not have to rule definitively on the interpretation put forward by Cambodia of the 1962 Judgment and on the rights it claims to derive therefrom; and whereas, for the purposes of considering the request for the indication of provisional measures, the Court need only determine whether those rights are at least plausible;

39. Whereas, in the operative clause of its 1962 Judgment, the Court declared in particular that the Temple of Preah Vihear was situated in territory under the sovereignty of Cambodia, and that Thailand was under an obligation to withdraw any military forces stationed at the Temple or in its vicinity on Cambodian territory; whereas the interpretation of the 1962 Judgment put forward by Cambodia in order to assert its rights — namely, the right to respect for its sovereignty in the area of the Temple of Preah Vihear and its right to territorial integrity — is that the Court was only able to reach these conclusions once it had recognized the existence of a frontier between the two States and found that the Temple and its “vicinity” were on the Cambodian side of that frontier; whereas, according to Cambodia, the phrase “vicinity on Cambodian territory” includes the area surrounding the precincts of the Temple; and whereas, consequently, in Cambodia’s opinion, Thailand has a continuing obligation not to infringe Cambodia’s sovereignty over that area;

40. Whereas the rights claimed by Cambodia, in so far as they are based on the 1962 Judgment as interpreted by Cambodia, are plausible;

41. Whereas this conclusion does not prejudice the outcome of the main proceedings; whereas it is nonetheless sufficient for the purposes of considering the present request for the indication of provisional measures;

* *

Link between the Alleged Rights and the Measures Requested

42. Whereas Cambodia maintains that the aim of the provisional measures requested is to protect rights which it invokes in its request for interpretation of the 1962 Judgment, namely, its sovereignty over the area of the Temple of Preah Vihear and, more generally, its territorial integrity; whereas it notes that Thailand's territorial claims cover the entire area of the Temple, beyond the strict precincts of the latter, and that these claims are reflected in the presence of Thai armed forces in that area, forces which Cambodia requests be withdrawn immediately and unconditionally; whereas Cambodia also asks the Court to indicate the measures requested so as to avoid an aggravation of the dispute in the principal proceedings; and whereas it is upon the rights thus asserted by Cambodia that the Court, in Cambodia's view, must focus in its consideration of the request for the indication of provisional measures;

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43. Whereas Thailand claims that Cambodia's request for the indication of provisional measures does not meet the condition whereby a link must exist between the rights which form the subject of the proceedings before the Court on the merits of the case and the provisional measures being sought; whereas Thailand asserts in particular that Cambodia's request refers to a matter that cannot be the subject of an interpretation — the status of the Annex I map — and that it is based on allegations made in respect of facts that occurred in an area remote from that of the Temple of Preah Vihear and, consequently, unrelated to the area covered by the request for interpretation;

*

44. Whereas, in proceedings on interpretation, the Court is called upon to clarify the meaning and the scope of what the Court decided with binding force in a judgment (*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru)*, Judgment, I.C.J. Reports 1950, p. 402; *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (*Tunisia v. Libyan Arab Jamahiriya*), Judgment, I.C.J. Reports 1985, p. 223, para. 56; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America)* (*Mexico v. United States of America*), Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008, p. 328, para. 63); whereas Cambodia is seeking clarification of the meaning and the scope of what the Court decided with binding force in the 1962 Judgment in the case concerning the Temple of Preah Vihear (*Cambodia v. Thailand*); whereas, in its Appli-

ation, Cambodia requests the Court to specify the meaning and scope of the operative clause of that Judgment in respect of the extent of its sovereignty in the area of the Temple (see paragraph 5 above); and whereas, in its request for the indication of provisional measures (see paragraph 11 above), Cambodia, pending the Court's final decision, is precisely seeking the protection of the rights to sovereignty over this area which it claims to derive from the operative clause of the 1962 Judgment;

45. Whereas the provisional measures sought thus aim to protect the rights that Cambodia invokes in its request for interpretation; and whereas the necessary link between the alleged rights and the measures requested is therefore established;

* * *

RISK OF IRREPARABLE PREJUDICE; URGENCY

46. Whereas the Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of the judicial proceedings (see, for example, *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America)* (*Mexico v. United States of America*), *Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 328, para. 65; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011 (I)*, p. 21, para. 63);

47. Whereas the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice may be caused to the rights in dispute before the Court has given its final decision (see, for example, *ibid.*, pp. 21-22, para. 64); and whereas the Court must consider whether, in these proceedings, such a risk exists;

* *

48. Whereas Cambodia refers to numerous armed incidents which allegedly took place as from 15 July 2008 along the frontier between the two States in the area of the Temple of Preah Vihear after the Temple was included on the UNESCO World Heritage List; whereas these armed incidents allegedly caused damage to the Temple, as well as loss of human life and bodily injuries; whereas Cambodia points out that, in a letter dated 21 July 2008 and addressed to the President of the Security Council, the Permanent Representative of Thailand to the United Nations stated that his Government claimed an area "adjacent" to the Temple of Preah Vihear and indicated that the frontier between Cambodia and Thailand in that

area was the subject of negotiations between the two States; whereas Cambodia also refers to armed incidents which are said to have taken place between the Parties in the area of the Temple in October 2008 and on 2 and 3 April 2009; whereas it adds that armed incidents occurred again between the Parties in that area between 4 and 7 February 2011; whereas Cambodia notes that these incidents led, on its initiative, to a meeting of the Security Council on 14 February 2011, where the Security Council called for a permanent ceasefire to be established between the two Parties and expressed its support for the Association of Southeast Asian Nations (hereinafter “ASEAN”) in its efforts to find a solution to the conflict; whereas Cambodia refers in this respect to the proposal by the Chair of ASEAN to send Indonesian observers into the field so as to ensure the said ceasefire, and alleges that this proposal failed because of the conditions laid down by Thailand for its acceptance; whereas Cambodia claims that further incidents took place from 22 April 2011, not only in the area of the Temple of Preah Vihear, but also along the frontier near the Temples of Ta Moan/Ta Muen and Ta Krabei/Ta Kwai, situated approximately 150 kilometres to the west of the Temple of Preah Vihear, while making it clear that these latest incidents are not included in its request for the indication of provisional measures; whereas it maintains that the incidents which took place in the area of the Temple of Preah Vihear, and which are attributable to Thailand, have not only caused irreparable damage to the Temple itself, a UNESCO World Heritage site, but above all have resulted in the loss of human life, bodily injuries and the displacement of local people; and whereas Cambodia therefore requests the Court “to indicate provisional measures in order to stop any more destruction of the Temple once and for all, to prevent further casualties, and to preserve its rights over the area of the Temple of Preah Vihear”;

49. Whereas Cambodia maintains that, while Thailand appears to be observing the oral ceasefire negotiated on 28 April 2011, several facts suggest that this situation is fragile and that there is a risk of aggravation of the dispute; and whereas it contends in particular that, since 28 April 2011, the conflict has not ceased but shifted to another frontier area, situated some 150 kilometres to the west of the area of the Temple of Preah Vihear;

50. Whereas Cambodia alleges that, if its request were to be rejected, and if Thailand persisted in its conduct, the damage to the Temple of Preah Vihear, as well as human suffering and loss of life, would become worse; and that measures are urgently required, both to safeguard the rights of Cambodia and to avoid aggravation of the dispute;

*

51. Whereas, according to Thailand, the numerous armed incidents which have taken place in the area of the Temple were provoked by the

Cambodian armed forces and caused loss of human life, bodily injuries, the displacement of local people, and material damage in Thailand's territory; whereas it claims that the Thai armed forces responded to these attacks "with restraint and proportionality", duly exercising Thailand's right to self-defence; whereas it observes in particular that, between 4 and 7 February 2011, armed incidents took place at several locations along the frontier or in Thai territory within a radius of approximately 10 kilometres from the Temple of Preah Vihear; whereas it adds that similar incidents took place between 22 April and 3 May 2011 near the Temples of Ta Krabei/Ta Kwai and Ta Moan/Ta Muen, situated 150 kilometres from the Temple of Preah Vihear, and observes that these temples, because of their distance from the Temple of Preah Vihear, are not, however, covered by the 1962 Judgment; whereas Thailand nevertheless acknowledges that, on 26 April 2011, a 20-minute exchange of fire took place between the two sides some 2 kilometres from the Temple of Preah Vihear; and whereas it maintains that the oral ceasefire of 28 April 2011 concerns the sector of the Ta Krabei/Ta Kwai and Ta Moan/Ta Muen Temples, and not that of the Temple of Preah Vihear;

52. Whereas, according to Thailand, the only incidents that Cambodia can rely on for the purposes of a provisional measure are the incidents that took place in February 2011, "almost three months before the request for provisional measures was made", the exchange of fire on 26 April 2011, which resulted in no casualties, and the other incidents in April 2011 which occurred well beyond the area to which the request for interpretation relates; whereas Thailand further maintains that a team of Indonesian observers was created to help monitor the military situation between the two States in the border area; and whereas it concludes from the foregoing that there is no real and imminent risk that irreparable prejudice may be caused to the rights in dispute;

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53. Whereas, at this stage in the proceedings, the Court is only required to consider whether the circumstances brought to its attention call for the indication of provisional measures; whereas, in this case, the Court notes that it is apparent from the case file that incidents have occurred on various occasions between the Parties in the area of the Temple of Preah Vihear; whereas it observes that, since 15 July 2008, armed clashes have taken place and have continued to take place in that area, in particular between 4 and 7 February 2011, leading to fatalities, injuries and the displacement of local inhabitants; whereas damage has been caused to the Temple and to the property associated with it; whereas the Court notes that, on 14 February 2011, the Security Council called for a permanent ceasefire to be established between the two Parties and expressed its support for ASEAN in seeking a solution to the conflict; whereas the Chair of ASEAN therefore proposed to the Parties that observers be deployed along their boundary, but whereas this proposal was not put

into effect, however, because the Parties failed to agree on how it should be implemented; and whereas, in spite of these attempts to settle the dispute peacefully, there was a further exchange of fire between the Parties on 26 April 2011 in the area of the Temple;

54. Whereas the Court observes that the existence of a ceasefire “does not . . . deprive [it] of the rights and duties pertaining to it in the case brought before it” (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996 (I)*, p. 22, para. 37); and whereas it is therefore not obliged to establish, at this stage in the proceedings, whether the oral ceasefire negotiated between the Parties’ military commanders on 28 April 2011 did or did not cover the area of the Temple of Preah Vihear;

55. Whereas the rights which Cambodia claims to hold under the terms of the 1962 Judgment in the area of the Temple might suffer irreparable prejudice resulting from the military activities in that area and, in particular, from the loss of life, bodily injuries and damage caused to the Temple and the property associated with it;

56. Whereas there are competing claims over the territory surrounding the Temple; whereas the situation in the area of the Temple of Preah Vihear remains unstable and could deteriorate; whereas, because of the persistent tensions and absence of a settlement to the conflict, there is a real and imminent risk of irreparable prejudice being caused to the rights claimed by Cambodia; and whereas there is urgency;

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57. Whereas, taking account of the conclusions it has reached above, the Court considers that it can, in this case, indicate provisional measures, as provided for in Article 41 of its Statute, and that the circumstances require it to do so;

* * *

58. Whereas the Court recalls that it has the power under its Statute to indicate measures that are in whole or in part other than those requested, or measures that are addressed to the party which has itself made the request, as Article 75, paragraph 2, of the Rules of Court expressly states, and whereas it has already exercised this power on several occasions (see, for example, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011 (I)*, pp. 24-25, para. 76);

59. Whereas, when it is indicating provisional measures for the purpose of preserving specific rights, the Court, independently of the parties’

requests, also possesses the power to indicate provisional measures with a view to preventing the aggravation or extension of the dispute whenever it considers that the circumstances so require (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Provisional Measures, Order of 15 March 1996*, *I.C.J. Reports 1996 (I)*, pp. 22-23, para. 41; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Provisional Measures, Order of 1 July 2000*, *I.C.J. Reports 2000*, p. 128, para. 44; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Provisional Measures, Order of 8 March 2011*, *I.C.J. Reports 2011 (I)*, p. 26, para. 83);

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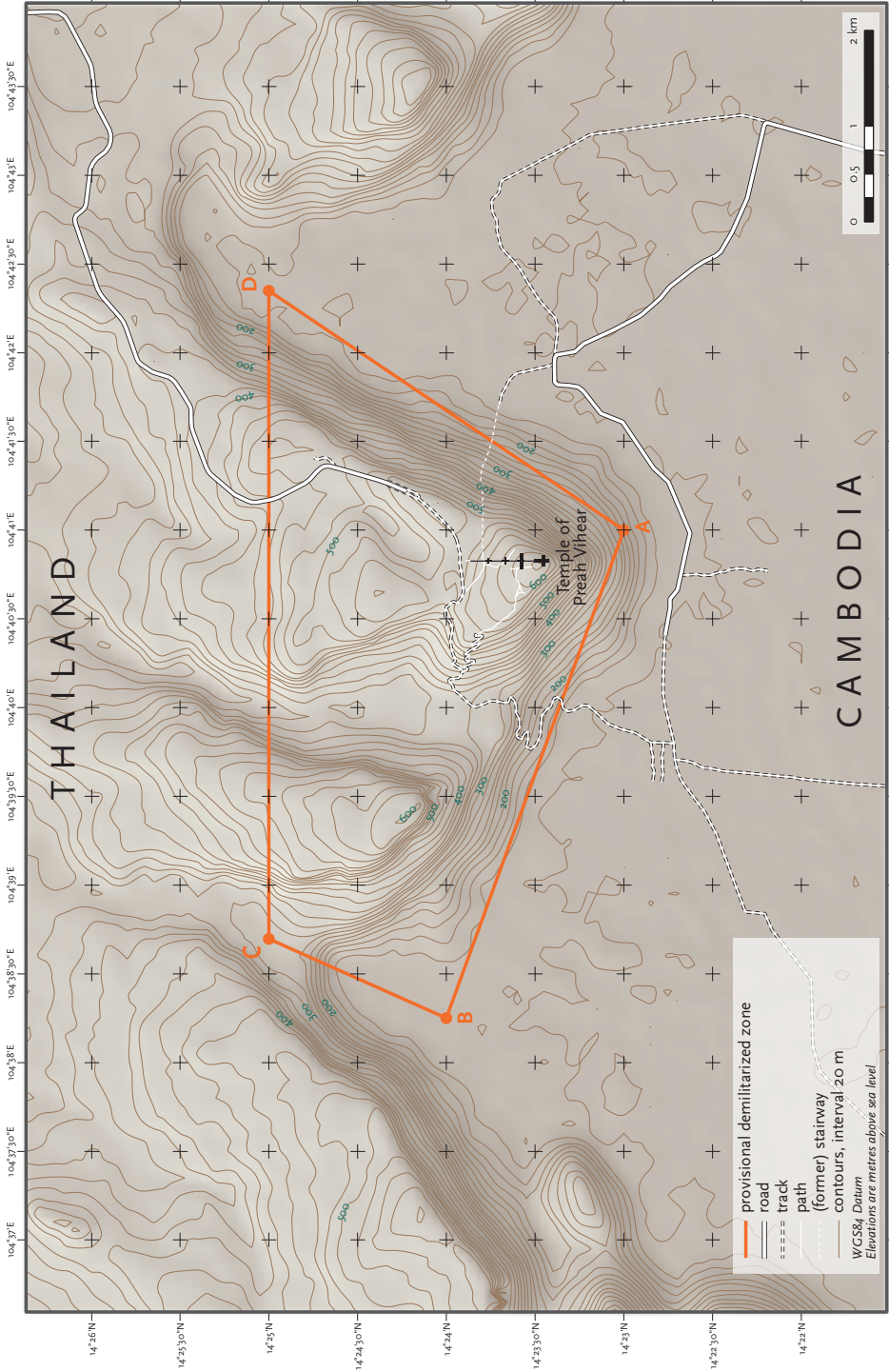
60. Whereas the Court has considered the terms of the provisional measures requested by Cambodia; whereas it does not find, in the circumstances of the case, that the measures to be indicated must be the same as or limited to those sought by Cambodia; and whereas the Court, having considered the material before it, deems it appropriate to indicate measures addressed to both Parties;

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61. Whereas the area of the Temple of Preah Vihear has been the scene of armed clashes between the Parties and whereas the Court has already found that such clashes may reoccur; whereas it is for the Court to ensure, in the context of these proceedings, that no irreparable damage is caused to persons or property in that area pending the delivery of its Judgment on the request for interpretation; whereas, moreover, in order to prevent irreparable damage from occurring, all armed forces should be provisionally excluded from a zone around the area of the Temple, without prejudice to the judgment which the Court will render on the request for interpretation submitted by Cambodia; and whereas, therefore, the Court considers it necessary, in order to protect the rights which are at issue in these proceedings, to define a zone which shall be kept provisionally free of all military personnel, without prejudice to normal administration, including the presence of non-military personnel necessary to ensure the security of persons and property;

62. Whereas this provisional demilitarized zone shall be delimited by straight lines connecting the following points, the co-ordinates of which are calculated on the basis of the WGS 84 system: point A, situated at latitude 14° 23' N and longitude 104° 41' E; point B, situated at latitude 14° 24' N and longitude 104° 38' 15" E; point C, situated at latitude 14° 25' N and longitude 104° 38' 40" E; and point D, situated at latitude 14° 25' N and longitude 104° 42' 20" E (see sketch-map below);

SKETCH-MAP OF PROVISIONAL DEMILITARIZED ZONE IDENTIFIED BY THE COURT
This sketch-map has been prepared for illustrative purposes only



63. Whereas both Parties, in order to comply with this Order, shall withdraw all military personnel currently present in the zone as thus defined; whereas both Parties shall refrain not only from any military presence within that provisional demilitarized zone, but also from any armed activity directed at the said zone;

64. Whereas, in addition, both Parties shall continue the co-operation which they have entered into within ASEAN and, in particular, allow the observers appointed by that organization to have access to the provisional demilitarized zone;

65. Whereas it is not disputed that the Temple of Preah Vihear itself belongs to Cambodia; whereas Cambodia must, in all circumstances, have free access to the Temple and must be able to provide fresh supplies to its non-military personnel; and whereas Thailand must take all necessary measures in order not to obstruct such free and uninterrupted access;

66. Whereas the Court reminds the Parties that the Charter of the United Nations imposes an obligation on all Member States of the United Nations to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; whereas the Court further recalls that United Nations Member States are also obliged to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered; and whereas both Parties are obliged, by the Charter and general international law, to respect these fundamental principles of international law;

* * *

67. Whereas the Court's orders "on provisional measures under Article 41 [of the Statute] have binding effect" (*LaGrand (Germany v. United States of America)*, Judgment, *I.C.J. Reports 2001*, p. 506, para. 109) and thus create international legal obligations with which both Parties are required to comply (see, for example, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, p. 258, para. 263);

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68. Whereas the decision given in the present proceedings on the request for the indication of provisional measures in no way prejudices any question that the Court may have to deal with relating to the request for interpretation;

* * *

69. For these reasons,

THE COURT,

(A) Unanimously,

Rejects the Kingdom of Thailand's request to remove the case introduced by the Kingdom of Cambodia on 28 April 2011 from the General List of the Court;

(B) *Indicates* the following provisional measures:

(1) By eleven votes to five,

Both Parties shall immediately withdraw their military personnel currently present in the provisional demilitarized zone, as defined in paragraph 62 of the present Order, and refrain from any military presence within that zone and from any armed activity directed at that zone;

IN FAVOUR: *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood; *Judge ad hoc* Guillaume;

AGAINST: *President* Owada; *Judges* Al-Khasawneh, Xue, Donoghue; *Judge ad hoc* Cot;

(2) By fifteen votes to one,

Thailand shall not obstruct Cambodia's free access to the Temple of Preah Vihear or Cambodia's provision of fresh supplies to its non-military personnel in the Temple;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges ad hoc* Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(3) By fifteen votes to one,

Both Parties shall continue the co-operation which they have entered into within ASEAN and, in particular, allow the observers appointed by that organization to have access to the provisional demilitarized zone;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue; *Judges ad hoc* Guillaume, Cot;

AGAINST: *Judge* Donoghue;

(4) By fifteen votes to one,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

IN FAVOUR: *President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cañado Trindade, Yusuf, Greenwood, Xue; Judges ad hoc Guillaume, Cot;*

AGAINST: *Judge Donoghue;*

(C) By fifteen votes to one,

Decides that each Party shall inform the Court as to its compliance with the above provisional measures;

IN FAVOUR: *President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cañado Trindade, Yusuf, Greenwood, Xue; Judges ad hoc Guillaume, Cot;*

AGAINST: *Judge Donoghue;*

(D) By fifteen votes to one,

Decides that, until the Court has rendered its judgment on the request for interpretation, it shall remain seised of the matters which form the subject of this Order.

IN FAVOUR: *President Owada; Vice-President Tomka; Judges Koroma, Al-Khasawneh, Simma, Abraham, Keith, Bennouna, Skotnikov, Cañado Trindade, Yusuf, Greenwood, Xue; Judges ad hoc Guillaume, Cot;*

AGAINST: *Judge Donoghue.*

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

(Signed) Hisashi OWADA,
President.

(Signed) Philippe COUVREUR,
Registrar.

President OWADA appends a dissenting opinion to the Order of the Court; Judge KOROMA appends a declaration to the Order of the Court; Judge AL-KHASAWNEH appends a dissenting opinion to the Order of the Court; Judge CAÑADO TRINDADE appends a separate opinion to the Order of the Court; Judges XUE and DONOGHUE append dissenting opinions to the Order of the Court; Judge *ad hoc* GUILLAUME appends a declaration to the Order of the Court; Judge *ad hoc* COT appends a dissenting opinion to the Order of the Court.

(Initialed) H.O.

(Initialed) Ph.C.