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Cour internationale de Justice

LA HAYE

International Court of Justice

THE HAGUE

ANNÉE 2013

Audience publique

tenue le jeudi 18 avril 2013, à 15 heures, au Palais de la Paix,

sous la présidence de M. Tomka, président,

***en l'affaire relative à la* Demande en interprétation de l'arrêt du 15 juin 1962 en l'affaire du *Temple de Préah Vihéar (Cambodge c. Thaïlande)* (Cambodge c. Thaïlande)**

COMPTE RENDU

YEAR 2013

Public sitting

held on Thursday 18 April 2013, at 3 p.m., at the Peace Palace,

President Tomka presiding,

***in the case concerning the* Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand)* (Cambodia *v.* Thailand)**

VERBATIM RECORD

Présents : M. Tomka, président
M. Sepúlveda-Amor, vice-président
MM. Owada
Abraham
Keith
Bennouna
Skotnikov
Cançado Trindade
Yusuf
Greenwood
Mmes Xue
Donoghue
M. Gaja
Mme Sebutinde
M. Bhandari, juges
MM. Guillaume
Cot, juges *ad hoc*

M. Couvreur, greffier

Present:	President	Tomka
	Vice-President	Sepúlveda-Amor
	Judges	Owada
		Abraham
		Keith
		Bennouna
		Skotnikov
		Cançado Trindade
		Yusuf
		Greenwood
		Xue
		Donoghue
		Gaja
		Sebutinde
		Bhandari
	Judges *ad hoc*	Guillaume
		Cot
	Registrar	Couvreur

Le Gouvernement du Royaume du Cambodge est représenté par :

S. Exc. M. Hor Namhong, vice-premier ministre et ministre des affaires étrangères et de la coopération internationale,

comme agent ;

S. Exc. M. Var Kimhong, ministre d'Etat,

comme agent adjoint ;

S. Exc. M. Long Visalo, secrétaire d'Etat au ministère des affaires étrangères et de la coopération internationale,

M. Raoul Marc Jennar, expert,

S. Exc. M. Hem Saem, ambassadeur extraordinaire et plénipotentiaire du Royaume du Cambodge auprès du Royaume des Pays-Bas,

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M. Hoy Pichravuth, assistant du vice-premier ministre,

comme conseillers ;

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sir Franklin Berman, K.C.M.G., Q.C., membre du barreau d'Angleterre, membre de la Cour permanente d'arbitrage, professeur invité de droit international à l'Université d'Oxford et à l'Université de Cape Town,

M. Rodman R. Bundy, avocat à la cour d'appel de Paris, membre du barreau de New York, cabinet Eversheds LLP, Paris,

comme conseils et avocats ;

M. Guillaume Le Floch, professeur à l'Université de Rennes I,

Mme Amal Alamuddin, membre des barreaux d'Angleterre et de New York,

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as Agent;

H.E. Mr. Var Kimhong, Minister of State,

as Deputy Agent;

H.E. Mr. Long Visalo, Secretary of State at the Ministry of Foreign Affairs and International Co-operation,

Mr. Raoul Marc Jennar, Expert,

H.E. Mr. Hem Saem, Ambassador Extraordinary and Plenipotentiary of the Kingdom of Cambodia to the Kingdom of the Netherlands,

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comme agent adjoint ;

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S. Exc. M. Phongthep Thepkanjana, vice-premier ministre et ministre de l'éducation,

S. Exc. M. Sukumpol Suwanatat, A.C.M., ministre de la défense,

M. Thana Duangratana, vice-ministre rattaché au cabinet du premier ministre,

M. Sihasak Phuangketkeow, secrétaire permanent du ministère des affaires étrangères,

M. Nuttavudh Photisaro, secrétaire permanent adjoint du ministère des affaires étrangères,

Le général Nipat Thonglek, secrétaire permanent adjoint du ministère de la défense,

Le général Nopphadon Chotsiri, directeur général du service géographique royal thaïlandais, quartier général des forces armées du Royaume de Thaïlande,

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H.E. Mr. Phongthep Thepkanjana, Deputy Prime Minister and Minister of Education,

H.E. A.C.M. Sukumpol Suwanatat, Minister of Defence,

Mr. Thana Duangratana, Vice-Minister attached to the Office of the Prime Minister,

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Assistant Counsel.

Le PRESIDENT : Veuillez vous asseoir. L'audience est ouverte. La Cour se réunit aujourd'hui pour entendre le second tour de plaidoiries du Royaume du Cambodge. Je donne à présent la parole à M. Rodman Bundy pour ouvrir ce tour de plaidoiries. Vous avez la parole, Monsieur.

Mr. BUNDY: Thank you very much, Mr. President.

THE DISPUTE BETWEEN THE PARTIES OVER THE INTERPRETATION OF THE JUDGMENT AND THAILAND'S ARGUMENTS ABOUT MAPS

1. Mr. President, Members of the Court, in leading off Cambodia's second round presentation, I will address two issues that continue to divide the Parties.

2. The first concerns Thailand's assertion that there is no dispute between the Parties over the Judgment's interpretation because, for 40 years, Cambodia recognized and accepted Thailand's interpretation based on the red line appearing on the 1962 Thai Council of Ministers' map and the barbed-wire fence. This was a line of argument that was advanced by Professor Pellet yesterday morning[1]. I shall show that it is unfounded.

3. The second issue I will address concerns the arguments presented by Ms Miron about maps — specifically counsel's contention that the maps presented in the original case support the position that the vicinity of the Temple should be limited to a very narrow strip of land flanking the Temple. I will explain why that contention is misconceived as well.

4. With that introduction, Mr. President, let me turn directly to the question of the existence of a dispute over the interpretation of the Judgment.

1. The existence of a dispute

5. In my presentation on Monday, I took the Court through a large quantity of evidence showing that, following the Court's Judgment, Cambodia repeatedly took issue with Thailand's interpretation of the Judgment and its construction of a barbed-wire fence hemming in the Temple along the red line adopted by the Thai Council of Ministers. Cambodia, in those protests, viewed

[1]CR 2013/3, pp. 51-52, paras. 3-4 (Pellet).

Thailand's line as fundamentally incompatible with what the Court had decided in 1962 with respect to the frontier delimited by the Annex I map.

6. Yesterday, Professor Pellet tried to nibble away at the weight of the evidence by selecting isolated incidents, taken out of context, in order to support the assertion that Cambodia has always agreed — always agreed — with Thailand's interpretation of the Judgment. That line of attack cannot be squared with the factual record.

[Place Council of Ministers' map on the screen]

7. I start at the beginning. The origin of the dispute lay in the Council of Ministers' decision in July 1962 to limit the vicinity of the Temple along the red line, which was the second of two proposals that Thailand's experts put forward. Professor Pellet had no desire to speak about the first proposal — the yellow line. That is a matter that my colleague, Sir Franklin, will come back to later.

8. Instead, Professor Pellet made two points about the red line. First, he said that in no way was there a question of the line marking the frontier between the two countries[2]. Second, he drew attention to what he felt was the "quasi-coincidence" between Thailand's red line and the watershed line said to have been pleaded by Cambodia in the original proceedings[3].

9. As for Professor Pellet's first point — that the red line was not a boundary — it is contradicted by what Thailand itself said later.

[Enlargement of map L7017]

10. The map on the screen is an enlargement of Thailand's secret map L7017 — and it was labelled "secret" on the map — provided to Cambodia in 2007. You have seen it before. It was in tab 13 of our original folders. In the Temple area, as you can see, it shows a line that follows the Council of Ministers' red line. Now, what did Thailand say about this line? Was it a boundary or was it merely an estimate of the Temple's vicinity? The answer lies in an aide-memoire prepared by the Thai Foreign Ministry dated 17 May 2007 which addressed Cambodia's Unesco application regarding the inscription of the Temple. The relevant passage from that aide-memoire reads as follows, and you can see it on the screen. This is the Thai Ministry of Foreign Affairs speaking:

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[2]CR 2013/3, p. 53, para. 9 (Pellet).

[3]CR 2013/3, p. 54, para. 11 (Pellet).

[Place quote on the screen]

> "In this regard, the Royal Thai Government firmly states that the above-mentioned Cambodian documents cannot in any way prejudice *the existing international boundary* between Thailand and Cambodia as appeared in the map of scale 1:50,000 series L7017 (Annex VI)."[4] (Emphasis added.)

11. So, contrary to counsel's contention, it is clear that Thailand does in fact view its red line as an international boundary. But it is a boundary which cannot possibly be reconciled with the Court's Judgment, given that the Court found that it was the Annex I map line that had been accepted by Thailand as the frontier line[5].

[Tab 4.4 (1) of Thailand's folder]

12. As for Professor Pellet's second point — that Thailand's 1962 line largely coincides with the watershed line pleaded by Cambodia in the original case — this too is misleading. It is perfectly clear that Cambodia's position in the original proceedings was that the Annex I map line constituted the boundary between the Parties in the region of the Temple. The Court said as much at page 21 of its Judgment. The "watershed line" that Professor Pellet was referring to was not Cambodia's claim. It was simply a demonstration by Cambodia's experts at the time to rebut, on a technical level, the course of the watershed that had been advanced by Thailand's experts. As I pointed out on Monday, neither watershed line was considered by the Court because they were not relevant in the light of the Court's pronouncements about the status of the Annex I map line.

13. Thailand now wants the Court to believe that Cambodia agreed with Thailand's interpretation — the red line interpretation — because it lay close to Cambodia's own watershed line. Indeed, yesterday Thailand's Agent said that the *only* line that Cambodia pleaded in the original case was the watershed line appearing in Annex LXVI of its Reply in the original case[6]. With respect, that is incorrect. Cambodia, as I said, in the original case, pleaded the Annex I map line and the Court recognized that at page 21 of its Judgment. When Cambodia repeatedly protested Thailand's red line and its barbed-wire fence throughout the 1960s, this was because the

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[4]Further Written Explanations of Cambodia (FWEC), Ann. 27, p. 113.

[5]*I.C.J. Reports 1962*, p. 32.

[6]CR 2013/3, p. 16, para. 19 (Plasai).

red line bore no relation to the frontier line between the Parties depicted on the Annex I map, not because it was inconsistent with any watershed line.

14. Professor Pellet then referred to a speech that Cambodia's Foreign Minister made on 27 September 1962 before the United Nations General Assembly. Counsel argued that the Foreign Minister acknowledged that Thailand had complied with the Judgment[7]. But my good friend only cited part of the relevant passage from the speech. What counsel neglected to mention is that, right after the part that he quoted, Cambodia's Foreign Minister went on to say the following. Thailand

> "could have done so [could have complied with the Judgment] in such a way that friendly relations would have been re-established between our two nations, which Cambodia, for its part, greatly desired. Unfortunately, the deception practised by Thailand was demonstrated by its occupation, for several days, of a strip of our territory in the neighbourhood of the temple."[8]

15. The occupation, and regrettably, that occupation did not just last for a few days. It persisted throughout the 1960s and it was backed up by the barbed-wire fence and Thai armed forces. That is what led Cambodia repeatedly to protest the fence and Thailand's failure to withdraw to the frontier line depicted on the Annex I map.

16. Now my opponent next took aim at Prince Sihanouk's visit to the Temple in January 1963. Counsel referred to a United States Embassy dispatch which recorded that, when the Prince referred to the barbed-wire fence, he only described it as encroaching on Cambodian territory by "several metres", and that he would not make an issue of the matter as "these few meters were unimportant"[9].

17. What counsel failed to take into account was the context in which the Prince's visit took place. Four months earlier, in August 1962, Prince Sihanouk was already on record as complaining vigorously about the barbed wire fence[10]. In November 1962, Mr. Gussing, whom the Court might recall was the Secretary-General's representative to mediate between the two Parties, he expressed concern that the Prince's visit to the Temple might spark a border incident. Mr. Gussing, in his report, indicated that his mission, however, had been given to understand by the Thai authorities

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[7]CR 2013/3, p. 55, para. 12 (Pellet).

[8]Written Observations of Thailand (WOTh), Ann. 28, folio p. 145.

[9]CR 2013/3, p. 55, para. 13 (Pellet); WOTh, Ann. 51.

[10]WOTh, Ann. 26, p. 130.

that their soldiers, the Thai soldiers, would not interfere with the visit as long as the Prince and his entourage remained strictly within what Thailand considered to be Cambodian territory marked out by the barbed-wire fence[11]. Of course, any notion that Cambodia's territory was limited under the 1962 Judgment to the barbed-wire fence is spurious. Nonetheless, the clear implication was that there would be trouble if the Prince tried to pass beyond it.

18. Now the official retaking of the Temple by Prince Sihanouk in January 1963 was a momentous occasion in Cambodia. The Temple had been illegally occupied by Thai armed forces since 1954. And there was no desire to provoke an incident on such an important day, and the international community breathed a sigh of relief when the visit went off without incident. That is why the Prince was restrained about the barbed-wire fence while he was at the site.

19. That being said, I should point out that there is another account, apart from the US Embassy account. There is another account of the Prince's visit which may be found in Annex 6 to Cambodia's Response. That account is a contemporaneous report of the Prince's remarks to the Cambodian press when he travelled to the Temple. After observing that the occasion was an historic one in Cambodia, the Prince noted that, while Thailand had evacuated the Temple itself, it had traced a new boundary in the vicinity of the Temple with barbed wire and installed military posts that encroached on Cambodian territory in defiance of the Court's Judgment. Now, that scarcely suggests that Cambodia's Head of State accepted Thailand's unilateral interpretation of the Judgment.

20. Professor Pellet then tried to draw a parallel between Prince Sihanouk's visit to the Temple in 1963 and Prince Damrong's visit to the Temple in 1930[12]. But the attempt was entirely artificial because there was a world of difference between the two situations. Unlike Prince Damrong, Prince Sihanouk protested Thailand's barbed-wire fence before he visited the Temple, when he visited the Temple, and a number of times afterwards. And Prince Damrong, in contrast, remained silent.

21. To recall the facts that are on the record, Prince Sihanouk repeated his complaint that Thailand was refusing to recognize the frontier referred to in the Court's Judgment in

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[11] *Ibid*., Ann. 50, p. 303.

[12] CR 2013/3, p. 56, para. 16 (Pellet).

January 1965[13], November 1966[14], October 1967[15] and February 1968[16]. And that is in addition to all the other protests emanating from senior Cambodian Government officials to the same effect, a number of which I canvassed on Monday.

22. I invite the Court, once again, at its leisure, to look at the record of Cambodia's protests that we summarized in tab 10 of Monday's folder. When a State objects as many times as Cambodia did, it is not over a few metres. Moreover, Cambodia's complaints included references to the fact that the barbed-wire fence was incompatible with the Annex I Map line, and you see that if you refer to the third and fourth entries on the list in our tab 10. In the light of the totality of the record throughout the 1960s, it cannot credibly be maintained that Cambodia shared Thailand's understanding of the Judgment or that there was no dispute between the Parties. Both of the United Nations special representatives, Mr. Gussing and Mr. de Ribbing, knew there was such a dispute, diplomatic missions knew it, the press knew it and Thailand knew it. And the documents speak for themselves.

23. Now that takes care of the first ten years of Professor Pellet's 40 years of Cambodian "acceptance" of Thailand's line. There was no acceptance.

24. With the exception of a brief period from 1991-1993 when the United Nations Transitional Authority was installed in Cambodia, the next 28 years after 1969 were a period when the Temple was off-limits due to the presence of the Khmer Rouge in the area. That was from 1970 really to about 1997. And even when the Temple was temporarily open to tourists, early on in the 1990s for one or two years, Thailand made no mention at that time of its Council of Ministers line. Clearly, there was no acceptance by Cambodia of Thailand's line during this period either.

25. As I pointed out on Monday, by the late 1990s, Cambodians were able to resettle in the Temple area. A pagoda was built in 1998, a market established and hundreds of Cambodians lived

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[13]FWEC, Ann. 10, p. 36.

[14]*Ibid*., Ann. 17, p. 56.

[15]*Ibid*., Ann. 19, p. 64.

[16]*Ibid*., Ann. 23, p. 81.

in the area. And there was no protest from Thailand in 1998, 1999 or 2000, and certainly no mention of the Council of Ministers' red line.

26. In 2001, Thailand did begin to raise concerns about pollution in the Temple area; but, once again, there was no mention that Cambodia's activities were contrary to Thailand's interpretation of the Court's Judgment as set out in the Council of Ministers' resolution. Professor Pellet implied that Thailand closed access to the Temple at that time in 2001 because Cambodia's activities were taking place in Thai territory[17]. But Thailand's own documents show this to be untrue. And the Court refers to Annexes 27 to 29 of Thailand's Further Written Explanations. They explain that the entrance to the Temple was closed because of Thai complaints about pollution, not because Thailand was somehow pressing its red line map.

27. The dispute only resurfaced in 2007 when Thailand produced a copy of its L7017 map with an aide-memoire claiming, as I mentioned earlier in my remarks, that the map showed the international boundary between the two countries[18].

28. In July 2008, Cambodia protested Thailand's new map, noting that it was contrary to the Annex I Map relied on by the Court in its Judgment[19]. And for its part, Thailand protested Cambodia's reliance on the Annex I Map as delimiting the frontier in the area of the Temple. So the dispute over the Judgment's interpretation had clearly re-emerged at that time.

29. Now Thailand argues that the dispute came to life because of a map Cambodia prepared in connection with its submission to Unesco to have the Temple inscribed as a World Heritage site. Cambodia considers, on the other hand, that the dispute resurfaced because of the new Thai map. But it makes little difference which Party is right. What is clear is that there was a dispute over the meaning and scope of the Judgment. And that is what is required for the admissibility of a request for interpretation, and it is a condition that Cambodia has fully satisfied.

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[17]CR 2013/3, p. 62, para. 24 (Pellet).

[18]FWEC, Ann. 27.

[19]*Ibid*., Anns. 34 and 35.

2. Thailand's arguments about the maps

30. Mr. President, I now turn to the second part of my presentation in which I will address the use to which Thailand tries to put various maps in order to limit the vicinity of the Temple from which it has an obligation to withdraw.

[Thai tab 3.7 on the screen]

31. To accomplish this purpose, counsel focused on the map that now appears on the screen. It is a reproduction of a small part of what has been called at times the "Big Map" contained in Annex 85 *(d)* of Thailand's pleadings in the original case.

32. Ms Miron contended that this map is a veritable cartographic representation of the geographic extent of the original dispute[20]. Counsel then went on to claim that this partial reproduction of the Big Map can be considered to illustrate the "area of the Temple" as the Court understood it in 1962[21].

33. Ms Miron's first argument in support of that contention was textual. She maintained that the following passage, that I will read, taken from page 15 of the Court's Judgment supported Thailand's restricted view of the Temple's area[22]. Now that passage she cited was the following:

> "a frontier line which ran along the edge of the escarpment, or which at any rate ran to the south and east of the Temple area, would leave this area in Thailand; whereas a line running to the north, or to the north and west, would place it in Cambodia" (*I.C.J. Reports 1962*, p. 15).

34. Now, I fail to see how this passage assists counsel's argument.

35. The Court made no reference to the Annex 85 *(d)* map as limiting the disputed area in what it said in the passage I just quoted. In fact, Mr. President, the Annex 85 *(d)* map — whether the Big Map or this extract — is never mentioned in the Judgment. How Thailand can claim that the small portion of the Annex 85 *(d)* map is what the Court had in mind as the area of the Temple is a mystery.

36. The passage in the Court's Judgment also refers to lines running south and east, north, and north-west of the "Temple area" — not simply the Temple. The "Temple area" was not defined, nor confined, by the Court in this passage, and it is simply a non-sequitur to argue that the

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[20]CR 2013/3, p. 40, para. 20 (Miron).

[21]*Ibid*., p. 41, para. 24.

[22]CR 2013/3, p. 41, para. 25 (Miron).

area of the Temple referred to at page 15 of the Judgment must be Thailand's claimed area because of a map that is not once referred to in the Judgment, and that contained watershed lines that the Court never even considered it.

37. Now as I said, the Annex 85 *(d)* map covered actually a much larger area than the small portion displayed by Ms Miron. But, in fairness, I should point out that counsel purported to show the whole map on the screen.

[Tab 3.8 of Thailand's folder]

38. Mr. President, we have been rather harshly accused of falsifying maps. We deny that claim. But I would note that the original Big Map had the Annex I map line clearly depicted on it, while the image that counsel projected yesterday, which is on the screen, inexplicably deleted that line. We can, however, see from this map the scope of the territory which the Parties' arguments in the original case addressed. And, in fact, as IBRU — Thailand's experts — stated in their first report attached to Thailand's Written Observations, "the evidence before the Court mainly concerned the 7 kilometres by 12 kilometres area mapped by Professor Schermerhorn in the vicinity of the Temple"[23]. Thus, counsel's attempt to limit the "vicinity" to a tiny part of the Annex 85 *(d)* map is contradicted by Thailand's own experts.

[Go back to tab 3.7]

39. The second argument raised by counsel foreshadowed a point that Professor Pellet raised later — namely, that the area from which Thailand withdrew its troops is comparable to the area covered by the partial reproduction of the Annex 85 *(d)* map[24]. This argument does not work either. The Council of Ministers' map was not based on any reasoning whatsoever, whether the Annex 85 *(d)* map or the watershed line. There was no rationale with respect to the Judgment or the pleadings of the parties in the Council of Ministers resolution or memorandum explaining the rationale for the yellow and red lines, and there is no relation between the Council of Ministers map and Annex 85 *(d)*.

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[23]WOTh, Ann. 96, p. 669.

[24]CR 2013/3, p. 42, para. 26 (Miron).

40. Lastly, counsel found significance in the fact that the Court published this smaller extract with the volume of pleadings[25]. That may be so. But the fact remains that:

(i) the Court — as I said — did not refer to the Annex 85 *(d)* map, or the partial reproduction of it, in its Judgment, making it difficult to see how the Court could have relied on it — does not even mention it; and

(ii) to the contrary, the Court clearly said that, given the grounds on which the Court based its decision, it was unnecessary to consider whether the Annex I map line corresponded to the watershed or not[26]. In short, the watershed lines depicted on this map here — and it is the red line that Professor Pellet and Ms Miron are trying to equate with the Council of Ministers line, it is the red wavy line on the left — those watershed lines depicted on this map were completely irrelevant to the Court's decision.

41. Now that brings me to Thailand's arguments about the famous 4.6 sq km area and, in turn, to Cambodia's answer — at least on a preliminary basis — to the question that Judge Yusuf posed to the Parties yesterday.

42. Ms Miron argued that the dispute dealt with by the Court in 1962 had nothing to do with the 4.6 sq km perimeter[27]. As I shall show, the area in question arises directly out of maps that the Parties placed before the Court in the original case, and it can be identified — this area can be identified — by carrying out an exercise that Thailand's own expert in the original case, Professor Schermerhorn, recommended be done in his report attached as Annex 49 to Thailand's Counter-Memorial in the earlier case.

43. To place the matter in context, the claims of the Parties in the original case need to be recalled. As the Court observed in its Judgment, Cambodia principally relied on the line appearing on the Annex I map[28], while Thailand argued in favour of a frontier running along the edge of the escarpment south and east of the Temple[29]. This was Thailand's watershed line.

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[25]CR 2013/3, p. 42, para. 27 (Miron).

[26]*I.C.J. Reports 1962*, p. 35.

[27]CR 2013/3, p. 35, para. 5 (Miron).

[28]*I.C.J. Reports 1962*, p. 21.

[29]*Ibid.*, p. 15, and see Thailand's Submission 3 (ii), p. 12.

44. In his expert report, Professor Schermerhorn stated that he had been requested — presumably by Thailand, since he was appearing on behalf of Thailand — he had been requested to make a comparison between the watershed map of Thailand's experts and the Annex I map. After he adjusted the scales of each of these maps — the watershed map of Thailand and the Annex 1 map — after he adjusted those scales so that they matched, copies of those maps were included in his report at Annex 49. As Professor Schermerhorn then noted: "For comparison, both copies should be put on top of each other."[30] Overlay the Annex 1 map to the Thai experts watershed line map or vice versa, I confess I do not recall which way it was.

[Project map following p. 76 in Cambodia's Response]

45. That is precisely what Cambodia attempted to do on the map that was included after page 76 of its Response. A copy of that map now appears on the screen with the Annex I map line highlighted in green and the watershed line according to Thailand's experts in red. To avoid being taken to task, I hasten to note that Cambodia put the colours on this map to highlight the lines, to make them easier to see.

46. Now IBRU's second report criticizes Cambodia's approach because Cambodia did not align map sheet 3 with the registration crosses provided on map sheet 4 when it did the overlay exercise[31]. Somewhat confusingly however, Thailand's Further Written Explanations state that the registration points were not on sheet 4 but sheet 3, there is a contradiction there[32]. But be that as it may, IBRU produced its own overlay, which now appears on your screen. Once again, we have coloured the lines to make them easier to see. Annex I green, Thailand's original watershed claim red.

[Project IBRU's figure 12 map]

47. According to IBRU, a correct application of Professor Schermerhorn's procedure produces an area of 4.2 sq km not 4.6 sq km[33]. Cambodia does not dispute IBRU's calculation. But I would note in passing that it is Thailand itself that has consistently referred to the disputed

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[30]Counter-Memorial of Thailand (1961), Ann. 49 p. 435.

[31]FWETh, Ann. 46, para. 6.7.

[32]*Ibid*., para. 1.47.

[33]*Ibid*, Ann. 46, para 6.8.

area as comprising 4.6 sq km. In tab 26 of the folders, the Court will find a number of publicly available, readily accessible with a push of the button, English language reports emanating from Thai and third party sources attributing the 4.6 sq km to Thailand.

48. The important point is that on both maps — the map that we prepared after page 76 of our Response and IBRU's correction of that map — on both overlays, the Annex I map line and Thailand's watershed line intersect to the east and west. You can see that and the area in between is the area falling between the lines relied upon by the Parties in the original case. Obviously in its Judgment, the Court pronounced in favour of the frontier as mapped on the Annex I map, the green line.

49. In response to Judge Yusuf's question, therefore, in Cambodia's view, and relying on maps that were presented in the initial or original procedure, the territorial extent of the "vicinity" of the Temple mentioned in paragraph 2 of the *dispositif* has to be understood, of course, in the context of that paragraph; but it seems to us to correspond to the area lying south of the Annex I map line up to the intersection to the east and west of the Temple with Thailand's claimed watershed line. Of course, Thailand's claimed watershed line was not accepted by the Court in 1962. But that, in the original case, could be viewed as the area of overlapping claims. That is what we suggest is meant by the vicinity in paragraph 2 of the *dispositif*. But, of course, Cambodia reserves the right to supplement this answer in writing pursuant to the timetable that the President mentioned.

50. The final issue relating to the maps that I need to address concerns Thailand's claim that the Annex I map line is difficult to transpose onto a modern map of the area and on the ground. Here, I have to say, that the arguments raised by Thailand's counsel raise serious questions as to whether Thailand's real aim is to revise the original Judgment.

51. Ms Miron led off by saying that Cambodia had not produced any proof that the map said to have been attached to Cambodia's pleadings in the original case is the real Annex I map[34]. Let me try to put my friend's mind to rest on this point.

[Project Annex I map]

[34]CR 2013/3, p. 46, para. 43 (Miron).

52. Up on the screen — and I will use Ms Miron's slide of it — is indeed the real Annex I map. All you have to do is to proceed to the Court's archives, where the map can be found, and look at the reverse side of it, turn it over. Because, there is a label on the back [project on the screen] clearly indicating that this is the map that was attached as Annex I.

53. As for transposing the Annex I map line on a modern map, counsel argues that the most natural way to do this, the most natural method, would consist of identifying the watershed line since, she says, that was the intention of the authors of the map[35]. But, Mr. President, that is nothing less than a plea to revise the Judgment. If you want to use the Annex I map line, don't use the Annex I map line, turn it in now in the process of transposing it onto a modern map or on the ground, transpose it back into a watershed line, which Thailand lost in the first case.

54. It should not be necessary to recall that the Court stated with the utmost clarity that the acceptance of the Annex I map caused it to enter into the treaty settlement between the Parties and to become an integral part of it[36].

55. I apologize for repeating what I said on Monday, but Thailand's counsel have avoided dealing with the issue. Because in the Judgment, the Court also stated that there is no reason to think that the Parties attached any special importance to the line of the watershed as such, and that it was unnecessary to consider whether at Preah Vihear, the line as mapped — mapped on the Annex I map — does in fact correspond to the watershed in this vicinity[37]. To intimate now that the Annex I map should be transposed along the watershed and that it has no practical value because of the alleged difficulties in transposing it on a modern map — in other words a map that did not even exist in 1962 — is fundamentally misguided, if we are interpreting a judgment rendered in 1962.

56. All of those colourful lines that counsel displayed as a result of IBRU's attempt to transpose the Annex I map line on to different modern maps, or to make various transposition adjustments, are utterly irrelevant. The Court was not asked to transpose the line on a modern map

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[35]CR 2013/3, p. 47, para. 47 (Miron).

[36]*I.C.J. Reports 1962*, pp. 33-34.

[37]*I.C.J. Reports 1962*, p. 35.

in 1962; nor was it asked to fix the boundary on the ground. The same, with respect, holds true now. None of this, none of these brightly coloured lines, was at issue 50 years ago.

57. In 1962, the Court did not delimit the boundary. It recognized that the Parties had accepted that the frontier in the region of the Temple had already been delimited as of 1908.

58. Any problems — any problems — relating to transposing the Annex I map line on the ground may, if at all relevant, be taken up under the 2000 MOU, another instrument that postdates the Judgment, because that instrument concerns the survey and demarcation of the boundary. But none of that is germane to the present case. The real question, which Thailand has not answered, is how Thailand can be considered to have withdrawn from Cambodian territory in the vicinity of the Temple if its forces are still on Cambodia's side of the frontier line previously delimited and accepted by the Parties.

59. Mr. President, that concludes my presentation. I thank the Court for its attention, and I would ask if you could give the floor to Sir Franklin, please.

The PRESIDENT: Thank you very much, Mr. Bundy. I now give the floor to Sir Franklin Berman to continue. You have the floor, Sir.

Sir Franklin BERMAN:

THAILAND'S FAILURE TO RESPOND TO CAMBODIA'S ARGUMENTS, THE ADMISSIBILITY OF CAMBODIA'S REQUEST AND THE COURT'S TREATMENT OF THE ANNEX I MAP

1. Mr. President, you wisely admonished us yesterday to confine our second round argument to responding to the essential points made by our opponents, and to finish if possible in less time than the full ration allocated to us. I can promise you the first, and will have to do the best I can towards the second.

2. Mr. President, I do not lay claim to the eloquence of our opponents. But sometimes silences can be more eloquent than words. So I begin with two of the graver silences we observed in our opponents' extensive oral pleadings yesterday. I can only hope that you will not rule me out of order if what I am responding to is the absence of argument. But these silences are significant, and their significance needs to be exposed.

3. The first and most glaring silence is over the Council of Ministers' resolution of July 1962. The Court will remember it, Mr. Bundy has referred to it; it is the one on the implementation of the Court's 1962 Judgment. It is of course Thailand's own Council of Ministers, not ours. I can hardly be accused of not having emphasized this document, its late appearance into the light of day, or its significance for our present proceedings. So there is something quite astonishing in the almost complete absence of response from the Thai side. The document had a glancing mention by the Agent[38], by Professor Pellet[39]. Ms Miron flashed on the screen, in the middle of a dazzling array of other cartographic slides, the small map attached to the supporting text which the Council of Ministers had under discussion. But the Court heard no response to the whole series of rather damning conclusions we drew from this document, and neither did we. I cannot, as it were, go through all of the omissions; the most striking of them was the total absence of comment, as Mr. Bundy said, on the yellow line on the illustrative map, and in that context on the proposal of *two* alternative methods for implementing the Judgment — two widely differing methods — of defining what Thailand claimed to be the "vicinity" of the Temple, and in the context of the choice between those two methods the absence of any description of even the most rudimentary kind of *why* either or both of those two very different methods was indeed thought to correspond to what the Court had decided, which remains a principal element in the whole case Thailand now brings before the Court. For Ms Miron now to announce to us *ex post facto* that the more parsimonious of these two "methods" corresponds in effect to the Cambodian version of the watershed line is — shall we put it delicately? — somewhat far-fetched. But Mr. Bundy has already dealt with this. It would, however, have been helpful to have had some precise citation of exactly where in the 1962 Judgment Thailand says that the Court laid down that the boundary — which of course Thailand now says the Judgment did not establish — where Thailand says the Court laid down that the boundary should follow the Cambodian watershed line.

4. Mr. President, the Court will have to draw its own conclusions from this total failure to comment or to explain. We have set out at length — on the first occasion we had the opportunity to do so — the conclusions that arise from this crucial document. Thailand has had ample time to

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[38]CR 2013/3, p. 12, para. 8 (Plasai).

[39]CR 2013/3, pp. 53-54, paras. 6-10 (Pellet).

reply, and has chosen not to do so. I conclude by saying that we trust — and I hope that this is not an unworthy remark — that Thailand is not holding back its comments until the final session tomorrow with an eye to depriving us of our opportunity to come back on it. That really would be to deny Cambodia a legal process in due and proper form, of the kind of which the Thai Agent unjustly reproached the Court yesterday.

5. Mr. President, the second crashing omission is any argument on the meaning of withdrawal, what it means "to withdraw". [Slide 1] We pointed out on Monday that this was a cardinal question for the interpretation of the Judgment, and specifically for the interpretation of that paragraph in the *dispositif* to which Cambodia's Request for interpretation was expressly directed. We pointed out also that "withdrawal" necessarily implied a destination as well as a starting-point, and that the only reasonable way to interpret the second paragraph of the *dispositif* was as a requirement to withdraw *from* Cambodian territory *onto* Thai territory. The destination is crucial, but it received not a word of comment from our opponents yesterday. So what are we to think: do they accept our interpretation? Or do they want us to understand that the Court was perfectly content for Thailand, in implementing the Judgment, to move its "military or police forces . . ." (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 37) away from the Temple and to emplace them in some other part of Cambodian sovereign territory, somewhere else? It sounds absurd, since, as they would say in France "des deux choses, l'une"; it has to be the one or the other.

6. Connected with that is what I would call another absurdity resulting from yesterday's argument, but let us be tactful and call it a "circularity". Thailand's argument on withdrawal is: we have decided that we complied with what we want to interpret the second paragraph of the *dispositif* to mean, and because we have complied there is no dispute. It sounds like a caricature, but it is not: the Court can see that at paragraph 19 of Professor McRae's pleading yesterday morning. And it is of course connected with the assertion, an assertion which underlies the Council of Ministers' resolution, that Thailand has an untrammelled unilateral right to "determine the limits of" an area laid down but not defined by the Court. And now we have heard that assertion bolstered by the additional argument yesterday that there is no rule of international law requiring a party to consult with the other party on the implementation of a judgment binding the two of them.

To which we can only reply that there is no rule of international law either which requires the second party to accept the first party's unilateral interpretation if it is wrong.

7. I cannot fail to draw attention at this point to the stratagem Thailand's counsel use to arrive at this self-justifying result; they rewrite the terms of what the Court said. It is not the only time they do so, and I will refer to at least one other later. Thailand consistently reconstructs the second paragraph of the *dispositif* to make it read something like, "Thailand is under an obligation to withdraw any military or police forces . . . *from* the Temple or its vicinity" — and then of course you have — "on Cambodian territory". That sounds beguiling at first but it is not what the Court said; what the Court actually ordered Thailand to do was "to withdraw any military or police forces . . . *stationed by her at the Temple, or in its vicinity on Cambodian territory*" (*I.C.J. Reports 1962*, p. 37; emphasis added). The words are not the same and when you look at the words actually used, therefore, you can see that the primary function of the reference to the Temple and its vicinity was to identify which Thai elements the Court had in view — those which Thailand had at the time stationed in and around the Temple — and nobody knew exactly what they were, so the Court says "any". But the paragraph does not expressly define the destination, it leaves that to be inferred. The primary obligation, though, remains intact; it is "to withdraw" and there is nothing there to suggest or to imply that the destination of that "withdrawal" should be understood as being just a little bit on the other side of a self-defined "vicinity". And that is why, once again, Cambodia insists that, on the *dispositif as worded by the Court*, the natural meaning of "withdraw", taken in conjunction with the reference to Cambodian "territory", has to be out of Cambodia and into Thailand, and that has to be understood in turn in connection with the first paragraph and the essential reasoning which underlay *that* paragraph. We said that on Monday and there has been no Thai answer.

8. Having mentioned that one insidious rewriting of what the Court said, Mr. President, perhaps it would save time to go on at once to two others. We were told, with that categorical assurance that characterizes Thailand's pleadings, that the first and second paragraphs of the *dispositif* simply accept — and as it were, enact — Cambodia's third and fourth submissions, whereas the first and second submissions were rejected. Well they did not, and they were not.

9. [Slide 2] Let me begin with the second paragraph of the *dispositif* and the third Cambodian submission which is supposed to correspond to it. That is on the screen. What Cambodia actually asked for, and you can see that at page 11 of the Judgment, is "[t]o adjudge and declare that Thailand is under an obligation to withdraw *the detachments of armed forces it has stationed, since 1954, in Cambodian territory, in the ruins of the Temple of Preah Vihear"* (*I.C.J. Reports 1962*, p. 11; emphasis added). So, you can see at once, Mr. President, that there is a whole series of differences between that and what the Court in due course decided, and some of these differences go directly to the points Thailand has been trying to make here, notably the whole great concentrated attempt to have the case confined, *ex post facto* and without justification, to the Temple ruins and nothing more. What does Thailand want us to think: that the Court was seriously negligent in copying out Cambodia's submission from one place to another? Or could it just be that the Court was making a deliberate decision of its own, intended to have an autonomous meaning of its own *in context*, i.e., in the context of the *dispositif* of the 1962 Judgment as a whole?

10. Which brings me to the second Thai distortion, which this time I can only hope *is* purely accidental. In addition to telling the Court — wrongly — that the second paragraph was simply the Cambodian submission, Professor McRae also would have the Court accept that not only the second but also the *first* paragraph was no more than the Cambodian submission. This time there is indeed a close textual correspondence, but Professor McRae has forgotten the three key words, the three key little words, "finds in consequence" (*ibid.*, p. 37) — the three key words that link the two paragraphs together. They were not in the Cambodian submissions, they were consciously and, one must assume deliberately, added by the Court. The words are there, though, and we cannot possibly make the assumption that the Court chooses to add a phrase to the *dispositive part* of a judgment without doing so for a reason and for a purpose, and we say that the obvious reason and purpose is to link the first two paragraphs firmly together but, even more than that, to condition the sense of the *second* by reference to the *first*. Professors Crawford and McRae seemed actually to like my "symbiotically" linked, so I am happy to stay with it, and to reiterate in that context Cambodia's *formal* submission that the word "territory" as used by the Court in each of the first two paragraphs of the *dispositif* must be understood as having the same meaning in both paragraphs. We apprehend that Thailand now accepts that, which is welcome, and I refer to

paragraph 21 of Professor Pellet's pleading yesterday afternoon. But that does not dispose of the dispute between the Parties over the link between the two paragraphs, because we say that the entire logic of the two, as well as their express wording, makes the second subordinate to the first, whereas Thailand still tries still to make the second prevail over the first: back, in other words, to Thailand's whole attempt to confine the entire Judgment to the Temple ruins and their immediate surrounds; back to the Council of Ministers' arrogation to themselves of the sole right to define the "vicinity", ostensibly for withdrawal purposes, but actually for the surreptitious creation of a boundary for sovereignty purposes, as I demonstrated to the Court on Monday by a close textual analysis of the Council's decision; and then forward to the Thai maps, the ones Mr. Bundy has just referred to, which shamelessly portray a confusing series of variants of that line as the international boundary, and that is the way Thailand describes it in its Note of 2008 to the United Nations Security Council.

11. Mr. President, my next theme must be the continuing nature of the withdrawal obligation. I drew attention on Monday to Thailand's equivocation on this key issue. So far as we can see, they continue to equivocate. The closest we got to a statement of the Thai position yesterday was that, although the obligation is continuing on Day 2 after the Judgment, after "troops have withdrawn and time has elapsed, then the notion of withdrawal is no longer relevant"; and, "there may be other obligations not to enter a territory, but it is totally artificial to link it to any notion of withdrawal"[40]. So at a given moment — undefined of course — Thailand acquires what in the game of Monopoly would be called a "Get out of jail free card" because at that moment, undefined, what used to be a question of withdrawal can no longer be given a meaning, any question about it, is not withdrawal, it is execution — and of course Thailand has clearly indicated through the mouth of the Agent that it would vigorously refuse to consent to any such issue being submitted to this Court. So this is not a position, Mr. President, it is a contortion. And because Professor McRae is fixated on the question of "execution" he produces his rather sad example of a stray accidental crossing by a single Thai soldier, which demonstrates nothing more than that our opponents obstinately refuse to take on board that what we have posed is a *general* question of

[40]CR 2013/4, p. 22, para. 33 (McRae).

interpretation, and I find myself returning to the point I have had to repeat *ad nauseam* that "interpretation" is different from "execution" and logically precedes it. Unless Thailand now says plainly that it accepts the simple proposition that the withdrawal obligation — *as specifically enunciated by the Court in the context of this* dispositif — must be taken as having a continuing character, there unmistakably is a dispute between the Parties on this question, and it undeniably falls within the Court's interpretative jurisdiction.

12. So let me come finally to the last of Thailand's rewritings of the Court's *dispositif* — although this one is both more subliminal and more pervasive. Almost the whole of Thailand's pleading yesterday was constructed as an argument addressed to the text of a different 1962 Judgment, one which reads "awards the sovereignty over the Temple of Preah Vihear to Cambodia". That is the Judgment beloved of our opponents, one which is entirely limited to the Temple "ruins", "precincts" or just the ground on which the Temple stands. But it is not our Judgment. It is not what the first paragraph of the *dispositif* says, not at all, and we pointed out as long ago as the original Cambodian request for interpretation that there is not a hint in the Judgment of 1962 of the existence of a separate territorial title over the Temple which the Court then attributes to Cambodia. Yet Thailand continues to argue as if that is what the Judgment did, though they know as well as we do that the Court decided that the Temple "is situated *in territory under the sovereignty of Cambodia*" and that, because of that, the Temple appertains to Cambodia. And the Court chose also to make that its *primary* finding. That is what the Court chose to do.

13. One more distortion, Mr. President, and then I can move on to more constructive ground. Counsel for Thailand suggested to the Court yesterday that Cambodia was, inadmissibly, asking the Court to interpret the *reasoning* in the 1962 Judgment[41]. Well, that is pure invention. It shouldn't be necessary for me to put up once again the slide we showed on Monday, which compares the text of Cambodia's question with the text of the *dispositif*, but I have to do so. It is plain as a pikestaff that the question addresses itself to the *dispositif* and asks that the *dispositif* be interpreted in the light of the reasoning, so far as it is necessary to do so. Where our opponents say "reasoning" of course they mean *the Map*. I challenge them to draw the Court's attention to any place, from the

[41]CR 2013/4, p. 41, para. 42.

Request onwards, where Cambodia asks the Court to interpret the map. What Cambodia asks the Court to do is to interpret the *dispositif* in the light of the map, because the Court's treatment of the map is precisely the kind of essential reasoning which the Court said in *Cameroon* v. *Nigeria* fell within the scope of interpretation under Article 60 of the Statute and thus under the Court's duty to interpret at the request of a Party.

14. Having reached that point, Mr. President, Members of the Court, I can now return to what I had already described on Monday as the one single point on which rests Thailand's whole response to the admissibility of Cambodia's Request, i.e., that Cambodia is trying to gain now what it could not gain at the time. As I said on Monday, this argument appears in two forms but it's the same point. With the Court's leave, I won't go further into the variant that says "anything to do with a boundary (even very close to the Temple) goes beyond the dispute that had been submitted to the Court". That's just another version of the "the Court awarded sovereignty over the Temple to Cambodia" trope, which I have just dealt with. Mr. Bundy has moreover shown, by reference to contemporaneous documents, that the present disputed zone had already been delineated then, by the time of the 1962 Judgment. For my part, I have to insist on two things. The first is that, whenever our opponents get around to focusing on how *the Court itself* defined the dispute — even, if you like, the "sole dispute" — before it, before the Court, they always elide the central fact that the Court defines it as a *region*: "the subject of the dispute submitted to the Court is confined to a difference of view about sovereignty over the *region* of the Temple of Preah Vihear" (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 14; emphasis added); that is what the Court said at page 14 of the Judgment. And the second is the reason *why* the Court defines the dispute that way. Because *Thailand* — so says the Court itself — had replied to Cambodia's claims "'by affirming that the *area in question* [not the Temple] lies on the Thai side [of what] *of the common frontier* between the two countries, and is under the sovereignty of Thailand'" (*ibid.*; emphasis added), yes, the consequence of the frontier. So says the Court, and it is simply not admissible for a Party in these proceedings to try to erase the Court's conclusion in order to substitute its own.

15. The second variant of the argument, Mr. President, is the one about the map. That again comes in two forms, and we heard them both yesterday. The one says "the Court didn't rely on the

map"; the other says "in any case it decided the case on other grounds". I described the latter as "ludicrous" on Monday and nothing we heard yesterday leads me to change that description. But now I do have to devote a little more time to it than I did then, because Thailand really is guilty of indefensible selective quotation in its treatment of this matter. I am going to confine myself largely to Prince Damrong, because we all agree that that is "much the most significant" of these other matters; if the Prince Damrong incident doesn't stand up, then nor do any of the others. So let us look seriously at what the Court said in this regard.

16. The Court begins by looking generally — that is at pages 29 to 30 of the Judgment — at the whole category of administrative acts. That forms the framework for its consideration of this category of evidence. And it begins by saying:

> "It was specifically admitted by Thailand in the course of the oral hearing that if Cambodia acquired sovereignty over the Temple area [the Temple area] by virtue of the frontier settlement of 1904, she did not subsequently abandon it, nor did Thailand subsequently obtain it by any process of acquisitive prescription." (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 30.)

Note that the Court does not refer to the Temple but to the "Temple area" and it is even clearer in the French text, "zone du temple". And I cite it happily, even though it is part of the proceedings before the Court came to its Judgment, because this is *the Court* describing an element that is clearly key in its reasoning, not a case of trying — as Thailand always does — to replace what the Court said with the sayings of the Parties. And, having pinned down that admission — that is what it is — by Thailand, the Court then continues as follows: [slide 3]

> "Thailand's acts on the ground were *therefore* put forward as evidence of conduct as sovereign, sufficient to negative any suggestion that, under the 1904 Treaty settlement, Thailand *accepted a delimitation* [note the word, delimitation] having the effect of attributing the sovereignty over Preah Vihear to Cambodia. It is *therefore* [again, therefore] from this standpoint that the Court must consider and evaluate these acts. The *real question* is whether they sufficed to efface or cancel out the clear impression of *acceptance of the frontier line* at Preah Vihear to be derived from the various considerations *already discussed*." (*Ibid.*; emphasis added.)

17. And it is "in this connection", again, the Court's own words, that the Court then goes on to its two short paragraphs on Prince Damrong. That is at pages 30 to 31. The Court then goes on to discuss the "remaining relevant facts" (p. 31 again), which it does in another four paragraphs, which take us to the middle of page 32. Page 30 had given us the top and now we have the tail: [slide 4].

> "The Court will now *state the conclusions it draws from the facts as above set out*.
>
> *Even if there were any doubt as to Siam's acceptance of the map in 1908*, and hence of the frontier indicated thereon, the Court would consider, in the light of the subsequent course of events, that Thailand is now *precluded by her conduct from asserting that she did not accept it* . . .
>
> The Court however considers that Thailand *in 1908-1909* [note the dates, a long time ago, more than a century] *did accept the Annex I map as representing the outcome of the work of delimitation* [note delimitation again], and hence *recognized the line on that map as being the frontier line*, the *effect of which* is to situate Preah Vihear in Cambodian territory. The Court considers further that, looked at as a whole, Thailand's subsequent conduct *confirms and bears out her original acceptance*, and that Thailand's acts on the ground do not suffice *to negative this*. *Both Parties*, by their conduct, *recognized the line* and thereby in effect agreed to regard it as being *the frontier line*." (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, pp. 32-33.)

That is what the Court says at pages 32 to 33.

18. Mr. President, against that background, *claire comme l'eau de roche* one might say, it really is not good enough for Thailand to come to the Court and say that in 1962 what Professor Crawford called the "other consequences" were "decisive in answering the one question the Court had to answer"[42], or indeed, even worse, that Prince Damrong's visit was "a separate reason for the Judgment"[43]. Or for Professor Pellet to claim that the visit by Prince Damrong in 1930 "a constitué l'un des *arguments cruciaux* ayant conduit la Cour à reconnaître la souveraineté du Cambodge sur le temple"[44].

19. I ought just to add, Mr. President, before I forget, that we challenged Thailand on Monday to say whether their cavalier approach to the Court's treatment of the map meant that it was now Thailand's position that it could now deny that Siam had accepted the map and the line on it, with the result that both entered the Treaty settlement and became an integral part of it. Once again, not a word in reply.

20. Mr. President, I can pass now to the second form in which Thailand's one sole argument is couched, that the Court never relied on the map. This time at least it comes with a small concession attached, that the map "may" hold explanatory value in respect of the operative part of the Judgment. That, at all events, is how Thailand puts it in rather gingerly fashion in

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[42]CR 2013/3 p. 69, para. 11 (Crawford).

[43]CR 2013/3 p. 73, para. 21 (Crawford).

[44]CR 2013/3, p. 56, para. 16 (Pellet); emphasis added.

paragraph 3.33 of the Further Written Explanations, though I do not think we heard it repeated in the oral argument yesterday. What we did hear in the oral argument was something along these lines: that although we are talking about a map with a frontier line on it, this does not mean the Court looked at the line on the map; that the Court "did not adopt the map as a specification of the frontier line"[45]; that, although Thailand "was no longer able to deny . . . [w]hat the map said about *the Temple*"[46], "[i]n respect of the other question" — a separate, unrelated question, the "question of the frontier", that the map could have answered — the "map gives no answer"[47].

21. Mr. President, this is yet another farrago. So let me once again try the patience of the Court by recalling, with precision, what the Court actually said. This is not extrapolation, it is not interpretation, it is neither *intra* nor *ultra petita*, neither *sub petita* nor *super petita*, it is just a simple recapitulation of what appears in the Judgment, in other words of the way the *Court* reasoned in moving towards its conclusions in the *dispositif*. If we have omitted anything, we will happily stand corrected by our distinguished opponents. The main steps in the Court's reasoning were laid out in Cambodia's Request for interpretation, at paragraph 39, in detailed citations of the Judgment with all the references. Some of these repeat what I have already said above and it would be better for me not to repeat them once more. But we put them on the table two years ago for all to see. I want to repeat just one, which is drawn from what I said to the Court on Monday: [slide 5]

> "The Court considers 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. It cannot be said that this process involved a departure from, and even a violation of, the terms of the Treaty of 1904, wherever the map line diverged from the line of the watershed, for, as the Court sees the matter, the map (whether in all respects accurate by reference to the true watershed line or not) was accepted by the Parties in 1908 and thereafter as constituting the result of the interpretation given by the two Governments to the delimitation [note delimitation again] which the Treaty itself required. In other words, the Parties at that time adopted an interpretation of the treaty settlement which caused the map line, in so far as it may have departed from the line of the watershed, to prevail over the relevant clause of the treaty." (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, pp. 33-34.)

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[45]CR 2013/3, p. 67, para. 7 (Crawford).

[46]CR 2013/3, p. 74, para. 27 (Crawford).

[47]*Ibid.*, para. 28.

22. And now I must go back to another point I had already mentioned, while steering clear, Mr. President, of your injunction against repetition, but it is an important point, and yet another one to which Thailand has simply failed to respond. Thailand's counsel seem to think that simply by reiterating, over and over again — and I lost count in the end of the number of times — that the Court in 1962 declined to include its findings on the Annex I map in the *dispositif*, that they thereby prove that the Court refused to decide on the status of the map at all. I showed with some care on Monday what, in our submission, the Court did mean and today I have given the Court, I hope, ample citation to show the Court doing nothing other than "deciding" on the status which the Parties had given to the map, but doing so as the essential element in its reasoning, on which the *dispositif* is then duly based. If Thailand continues to insist, in the face of what the Court actually said, that "[l]a frontier . . . attend toujours . . . d'être reconnue"[48] and that there has not been "une délimitation frontalière . . . ni globalement, ni dans le secteur de Dangrek, ni dans la zone du temple"[49], if it continues to insist on that, it will show that its only real interest is to divert attention away from the terms of the Judgment as such.

23. Mr. President, I end where one should end, with the question Cambodia has put to the Court for interpretation, which Professor McRae took aim at yesterday, for a series of reasons some of which we found hard to follow. He seemed first to be objecting that the question had stayed the same throughout these proceedings, from the Request itself until today. That cannot surely be so. Had we changed our minds, one might have seen some scope for objection, but we have not. Perhaps he was mixing up the question itself with the *dispute* between the Parties that generated the question. We have indeed been discovering as these proceedings move on that the Thai position is even more extreme than we had thought, so that what I called earlier the linked series of disputes between the Parties is even more extensive than had earlier been allowed to appear. *Vide* the Council of Ministers' resolution, which we saw so late, *vide* some of the oral argument we heard yesterday. But the question for interpretation remains the same. It is unchanged. Professor McRae affected to have difficulty in understanding it. He took issue with its form, which he said was a statement more than a question. But if one looks through the smallish list of interpretation cases

[48]CR 2013/3, p. 57, para. 16 (Pellet).

[49]CR 2013/4, p. 39, para. 36 (Pellet).

brought before the Permanent Court and this Court, one can see that sometimes the applicant State asks an open question, sometimes it puts forward a proposed interpretation which it asks the Court to endorse. The Court has never had difficulty with a request in either form. Next he complains about the way he says we now try, by a ruse, to bring in the first paragraph of the *dispositif*. But the link between the first and second paragraphs has always been there and, as I noted, the question has remained the same. Thailand's approach towards interpretation in this context now seems to be, not only that you have to interpret the dispositive part of a judgment in isolation from the reasons that sustain it, but that you have to interpret each paragraph in a *dispositif* in isolation from the others. That goes against all tenets of interpretation in international law, and it makes no sense. It makes no sense in principle, and it makes no sense at all where you have paragraphs that the Court itself has explicitly linked together. I have already made my submission on behalf of Cambodia that "territory" must have the same meaning in both paragraphs, and my further submission that the interpretation in the second must be controlled by its interpretation in the first. Either Thailand agrees with both of those submissions or we definitely have a dispute about the link and the hierarchy between the two. Professor McRae accuses us of suddenly trying to manufacture a dispute over the definition of "vicinity" in the second paragraph but we have never put the matter that way, framing instead a question, very specifically, about how to understand the meaning and scope of the withdrawal obligation. In any case, Judge Yusuf has now put a penetrating question on the very subject of the interpretation of that word, to which we have given a first oral response by Mr. Bundy. We will elaborate as necessary in writing within the time-limit laid down by the Court. And, finally, Professor McRae says that our question is essentially flawed because it presupposes the answer. But I have already explained that there is nothing out of the ordinary in framing a question for interpretation by the Court in terms of a proposed interpretation which the Court is requested to endorse. And Professor McRae is only able to arrive at his own criticism by a far more severe case of question-begging than he has accused us of — in that his whole proposition depends on denial in the most outright terms that the Court decided anything at all about frontiers or the Annex I map. I have taken the Court through the relevant passages in the Judgment and shown that that approach is simply unsustainable in terms of what the Court actually said on the subject. So Professor McRae's proposition becomes one that depends entirely on

establishing an impermeable distinction between decisions of two kinds, that a "decision" placed in the operative part becomes a creature of a categorically different kind from a "decision" contained in the reasoning, even if the reasoning is, as the Court has held, "inseparable from" the *dispositif* and thus an essential part of the process of interpretation. Mr. President, that is arid formalism of the worst kind. I ask the Court to reject it, both because it denies the normal process of legal reasoning in reasoned judgments, and because it contradicts what the Court itself has said on the subject. All that Cambodia is asking the Court to do is to interpret the *dispositif* in the light of the essential reason behind it. That is a perfectly normal process which is not at all difficult to understand.

Mr. President, that concludes my pleading. Might I ask you now to give the floor to Professor Sorel.

The PRESIDENT: Thank you very much, Sir Franklin. Je passe la parole à Monsieur le professeur Jean-Marc Sorel. Vous avez la parole, Monsieur.

M. SOREL :

L'ABSENCE DE RÉPONSE PAR LA THAÏLANDE À LA QUESTION ESSENTIELLE POUR L'INTERPRÉTATION

1. Monsieur le Président, Mesdames et Messieurs les Membres de la Cour, pour tenter de répondre aux arguments présentés par la Thaïlande hier, le Cambodge souhaite inverser la présentation qui avait été faite lors des plaidoiries de lundi[50]. Alors que le Cambodge indiquait la liaison indispensable entre les motifs de l'arrêt du 15 juin 1962 et son dispositif pour en faire découler les conséquences niées par la Thaïlande, il souhaite cette fois-ci remonter le cours du fleuve et indiquer les réponses faites par la Thaïlande à ces arguments — ou plutôt l'absence de réponses — avant de parvenir à la confirmation du caractère inséparable des motifs essentiels et du dispositif de cet arrêt.

2. C'est donc tout à fait volontairement et à dessein que le Cambodge va reprendre les points déjà évoqués lors des plaidoiries précédentes, mais à la lumière de l'absence de réponses apportées

[50] CR 2013/2, p. 10 et suiv. (Sorel).

par la Thaïlande. Comme l'indiquait l'agent de la Thaïlande non sans fondements : «Le présent contentieux est nécessairement à forte intensité de faits.»[51] Mais on aimerait aussi qu'il soit à forte intensité de droit.

3. Il y a donc lieu de revenir sur l'impossibilité d'une définition unilatérale d'une frontière à l'encontre des motifs, sur l'absence de distinction pertinente entre conflit territorial et conflit frontalier, sur la signification de l'accord du 14 juin 2000, sur l'inversion par la Thaïlande du raisonnement suivi par la Cour, sur la tentation de la refonte d'un arrêt, pour constater finalement que la Thaïlande ne peut répondre à la question de la liaison entre les motifs essentiels et le dispositif, et ne peut donner une interprétation conforme à ce que la Cour a décidé avec force obligatoire en 1962.

I. L'impossibilité d'une définition unilatérale d'une frontière *à l'encontre* des motifs

4. La réponse attendue par le Cambodge à la question de la définition unilatérale d'une frontière à l'encontre des motifs de l'arrêt n'a pas été apportée. On semble simplement opposer à cette ligne unilatérale décidée par le conseil des ministres thaïlandais en 1962 — par un biais sémantique — «la demande d'inscription unilatérale du temple sur la liste du patrimoine mondial de l'Unesco»[52], sauf que le temple appartenant indiscutablement au Cambodge, cela n'avait rien de choquant.

5. Selon le professeur Pellet : «Peut-être eût-il été préférable que les deux Parties s'accordassent expressément mais, dans le contexte de l'époque, compte tenu du traumatisme créé en Thaïlande par l'arrêt, ç'eût été beaucoup demander ; du reste, à ma connaissance, aucune règle n'impose aux parties à une affaire de négocier les modalités de la mise en œuvre de l'arrêt de la Cour»[53]. Et d'ajouter qu'il aurait été possible de saisir la Cour en «incident d'exécution» dans le cadre de sa compétence éventuelle[54]. Ce passage mérite qu'on s'y arrête car : d'une part, c'est la seule réponse apportée à la définition unilatérale de la «limite» — épargnons à la Thaïlande de parler de frontière pour le moment — imposée par la Thaïlande. Rien de plus. On ne sait toujours

[51] CR 2013/3, p. 19, par. 28 (Plasai).

[52] CR 2013/3, p. 63, par. 26 (Pellet).

[53] *Ibid.*, p. 54, par. 10.

[54] *Ibid.*

pas comment, juridiquement, un Etat peut imposer une telle limite sans concertation avec son voisin, alors que l'arrêt qui a provoqué le tracé de cette limite dit l'inverse dans ses motifs ? Mais l'explication arrive car, d'autre part, et dans un style d'une rare condescendance, on nous explique que la Thaïlande était très mécontente de l'arrêt, qu'elle avait subi un «traumatisme» — ce que le Cambodge peut comprendre — et qu'il ne fallait pas lui en demander plus. Bref, cela s'appelle en langage courant un «mauvais perdant», ce qui est acceptable pour un enfant, moins pour un Eta t.
Si nous poursuivons, il nous est expliqué qu'un Etat n'a pas à négocier les modalités de l'application d'un arrêt dans lequel il a perdu. C'est exact, il n'a pas à le négocier, il doit l'appliquer. Ensuite, toujours selon le professeur Pellet, si l'Etat qui a gagné n'est pas satisfait, il peut saisir votre Cour pour un «incident d'exécution»[55], catégorie inconnue à ce jour, les seules possibilités étant, on le sait, la revision ou l'interprétation puisqu'un arrêt est définitif et sans recours. Voilà donc une série de bien étranges affirmations qui prouvent que le «monde parallèle» n'est pas forcément du côté du Cambodge. Mais sans doute est-ce pour la Thaïlande le «meilleur des mondes», donc de la science-fiction ou du moins, de l'anticipation.

6. Il n'en reste pas moins que nous ne savons toujours pas pourquoi — en dehors de l'humeur d'un Etat à un moment donné — comment un Etat peut définir une limite de son territoire à l'encontre d'un arrêt qui dit l'inverse de ce que cet Etat fait.

II. La négation de la similitude entre conflit territorial et conflit frontalier

7. Concernant l'obsession thaïlandaise de circonscrire le litige à un différend territorial n'ayant pas d'incidences frontalières, la réponse apportée est cette fois-ci tout à fait partielle. Certes Mme Miron annonce dans sa plaidoirie une démonstration sur le différend qui porterait sur la souveraineté territoriale et non sur la souveraineté frontalière[56], mais aucune démonstration de ce type n'est faite puisque le point II traite finalement de «l'identification de l'objet du différend à travers les preuves cartographiques»[57], ce qui n'est pas la même chose. Finalement, le professeur Pellet nous cite quelques exemples, mais bien isolés et d'une teneur particulière[58] :

[55] CR 2013/3, p. 54, par. 10.

[56] CR 2013/3, p. 34, par. 2 (Miron).

[57] *Ibid.*, p. 43.

[58] CR 2013/4, p. 33, par. 22 (Pellet).

l'affaire du *Plateau continental de la mer du Nord*[59] où chacun sait que seuls les principes de délimitation étaient demandés, et non la délimitation en elle-même ; l'affaire des *Parcelles frontalières*[60] où des enclaves déjà délimitées devaient être attribuées, ou encore l'affaire *Pedra Branca*[61] comprenant îles et hauts-fonds découvrants qui implique soit une absence de délimitation, soit une délimitation ultérieure selon la qualification. Mais rien, ou presque, sur cette question concernant des différends terrestres que l'on peut qualifier de «classiques», comme c'est le cas en l'espèce. Or, dans ce domaine, la jurisprudence de votre Cour est sans ambiguïté.

8. Le Cambodge a eu l'occasion de citer l'affaire du *Différend frontalier*, mais il est utile de citer de nouveau cet arrêt de 1986. Après avoir expliqué les discussions entre les parties à propos de la distinction entre conflit territorial et conflit frontalier, la Cour indique :

> «En fait, dans la très grande majorité des cas, comme en l'espèce, la distinction ainsi schématisée ne se résout pas ultimement en un contraste de genres mais exprime bien plutôt une différence de degré dans la mise en œuvre de l'opération considérée. En effet chaque délimitation, aussi étroite que soit la zone controversée que traverse le tracé, a pour conséquence de répartir les parcelles limitrophes de part et d'autre de ce tracé. En la présente affaire, il est à noter que le compromis, en son article I, vise non pas simplement une ligne à tracer mais une «zone» contestée, qu'il déclare constituée par une «bande» de territoire englobant la «région» du Béli.» (*Différend frontalier, arrêt, C.I.J. Recueil 1986*, p. 563, par. 17.)

Et c'est exactement après ce constat que la Cour indique que le résultat est nécessairement d'établir une frontière[62].

9. De même, dans l'arrêt du *Différend territorial (Jamahiriya arabe libyenne/Tchad)*, votre Cour indique :

> «Il ressort clairement des considérations ci-dessus que le différend soumis à la Cour, *qu'on le qualifie de différend territorial ou de différend frontalier*, est réglé de manière concluante par un traité auquel la Libye est une partie originelle et le Tchad une partie ayant succédé à la France. La Cour, étant parvenue à la conclusion que ce traité contient une frontière convenue, n'a pas à examiner l'histoire des «confins» revendiqués par la Libye sur la base d'un titre hérité des peuples autochtones, de l'Ordre senoussi, de l'Empire ottoman et de l'Italie. Par ailleurs, dans la présente affaire, c'est la Libye, partie originelle au traité, et non Etat successeur, qui conteste la façon dont ledit traité a réglé *la question territoriale ou de frontière*.» (*Différend*

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[59] *Plateau continental de la mer du Nord (République fédérale d'Allemagne/Pays-Bas) (République fédérale d'Allemagne/Danemark), arrêt, C.I.J. Recueil 1969*, p. 3 et suiv.

[60] *Souveraineté sur certaines parcelles frontalières (Belgique/Pays-Bas), arrêt, C.I.J. Recueil 1959*, p. 209 et suiv.

[61] *Souveraineté sur Pedra Branca/Pulau Batu Puteh, Middle Rocks et South Ledge (Malaisie/Singapour), arrêt, C.I.J. Recueil 2008*, p. 12 et suiv.

[62] Voir CR 2013/2, p. 26, par. 36 (Sorel).

territorial (Jamahiriya arabe libyenne/Tchad), arrêt, C.I.J. Recueil 1994, p. 38, par. 75 ; les italiques sont de nous.)

10. On constate à travers ces exemples que des conflits territoriaux ou frontaliers, qu'ils concernent de larges étendues, des «bandes de territoires», des «zones» ou une «région», donnent lieu à un traitement dont le résultat est bien de fixer une frontière.

III. La véritable signification de l'accord du 14 juin 2000

11. La question du mémorandum du 14 juin 2000 continue de donner lieu à un exercice de contorsionniste de la part de la Thaïlande sans qu'une réponse claire en ressorte.

12. Ainsi, le professeur Pellet nous indique que cet accord : «comme son nom l'indique, définit le cadre juridique à suivre pour la *détermination* des frontières»[63]. Encore une périphrase pour signifier une délimitation à venir. Et même si ceci peut paraître inutile, il est sans doute nécessaire devant ce refus de considérer cet accord pour ce qu'il est d'en rappeler la dénomination exacte :

MÉMORANDUM D'ACCORD ENTRE LE GOUVERNEMENT DU ROYAUME DU CAMBODGE ET LE GOUVERNEMENT DU ROYAUME DE THAÏLANDE CONCERNANT LA LEVÉE ET LA DÉMARCATION D'UNE FRONTIÈRE TERRESTRE

13. D'une autre manière, le professeur Crawford nous indique que la Cour n'aurait pas «transposé» la carte en 1962 car elle ne le pensait pas nécessaire puisque la seule question était l'appartenance du temple[64]. Là encore, on peut être surpris : il ne s'agissait pas de «transposition» mais de la reconnaissance d'une délimitation. La question de la transposition est en liaison avec l'opération de démarcation, pas de délimitation.

14. N'en déplaise à la Thaïlande[65], le Cambodge insiste effectivement et vigoureusement sur la distinction entre délimitation et démarcation, et ceci pour une raison simple. Puisque le mémorandum de 2000 est bien un traité prévoyant une *démarcation*, et puisque la Thaïlande n'estime pas que celle-ci existe à la suite de la confirmation de la Cour en 1962, peut-elle nous indiquer quelle est cette délimitation ? Car signer un accord de démarcation suppose une délimitation préexistante. Elle doit donc bien exister ? De même, d'après l'agent de la

[63] CR 2013/3, p. 59, par. 20 (Pellet) ; les italiques sont de nous.

[64] CR 2013/4, p. 10, par. 32 (Crawford).

[65] CR 2013/3, p. 62, par. 24 (Pellet).

Thaïlande[66], cet accord aurait été signé après le début d'empiétements sur le territoire thaïlandais. Il est dès lors étonnant que la Thaïlande signe peu de temps après un mémorandum, ni n'ait protesté contre la pagode construite en 1998 par le Cambodge sur un territoire qui était censé être le sien et qu'elle était censée contrôler. Beaucoup de mystères.

15. Enfin, concernant la fameuse et là aussi mystérieuse carte L7017, on nous dit désormais qu'elle n'est pas mentionnée dans l'accord du 14 juin 2000 car il ne s'agirait pas d'un document établi bilatéralement et qu'il ne se prévaudrait donc pas d'être «un titre frontalier»[67]. L'explication est bien courte, pour ne pas dire inexistante, car les documents de la Thaïlande eux-mêmes prouvent que cette carte est bien considérée comme représentant une véritable frontière comme mon collègue Rodman Bundy a pu l'indiquer.

16. Non seulement la Thaïlande persiste à ne pas répondre, où à donner des réponses partielles, aux différentes questions que le Cambodge est en droit de se poser, mais elle persiste également à inverser le raisonnement suivi par la Cour au mépris de la plus élémentaire des logiques juridiques.

IV. La continuation de l'inversion du raisonnement de la Cour par la Thaïlande

17. En effet, nous avons été abreuvés de champagne, de costumes, de saxophones servant de bornes frontalières, ou d'ambiances de visites au temple, mais pas de ce que le Cambodge attendait : des réponses précises sur la manière dont la Thaïlande peut objectivement nier la liaison entre les motifs essentiels de l'arrêt et son dispositif. A l'inverse, nous avons eu de nouveau la démonstration que des motifs secondaires auraient été essentiels.

18. Le professeur Crawford est ainsi revenu sur des faits connus : le prince Damrong, la commission de Washington, la correspondance entre 1949 et 1954, etc., qui sont autant de motifs qui, pour la Cour, sont venus *à l'appui* de son constat principal et essentiel : la carte de l'annexe I comme preuve d'une frontière acceptée par les deux parties et reconnue par la Cour. D'ailleurs le professeur Crawford nous rend service en citant un extrait de l'arrêt[68] dans lequel la Cour nous indique :

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[66] CR 2013/3, p. 13, par. 11 (Plasai).

[67] CR 2013/3, p. 60, par. 20 (Pellet).

[68] CR 2013/3, p. 72, par. 20 (Crawford).

> «Ce qui semble clair c'est ou bien que le Siam ne pensait pas en réalité posséder de titre de souveraineté — ce qui correspondrait parfaitement à l'attitude qu'il avait toujours observée et qu'il a maintenue à l'égard de l*a carte de l'annexe I et de la frontière* qu'elle indique — ou bien qu'il avait décidé de ne pas faire valoir son titre, ce qui signifierait encore une fois qu'il admettait les prétentions ou acceptait *la frontière à Préah Vihéar telle qu'elle était tracée sur la carte*.» (Affaire du *Temple de Préah Vihéar (Cambodge c. Thaïlande), fond, arrêt, C.I.J. Recueil 1962*, p. 31 ; les italiques sont de nous.)

Très clairement la Cour lie les deux solutions à l'acceptation de la carte de l'annexe I qui indique la frontière. Il devient dès lors difficile d'affirmer, d'une part, que cette carte serait quantité négligeable dans le raisonnement de la Cour et, d'autre part, qu'elle ne représenterait pas une «frontière» qui a donc bien été délimitée. Finalement, et pour reprendre le style qu'affectionne le professeur Crawford, la carte de l'annexe I serait là comme une sorte d'élément de décoration, ce serait une sorte de plume virevoltant dans les airs et se posant, au gré du vent, à un endroit ou à un autre, selon les nombreuses lignes multicolores — là aussi très esthétiques — présentées par Mme Miron. N'en déplaise une nouvelle fois à la Thaïlande, certaines plumes sont lourdes de conséquences. Mais Mme Miron, dans une approche dite «templo-centriste»[69] nous indique elle aussi, et une nouvelle fois, que la carte n'a servi qu'à prouver que le temple était du bon côté de la frontière[70]. Mais elle oublie totalement d'indiquer que la Cour a estimé que cette carte avait une valeur conventionnelle et qu'elle s'imposait même sur les traités. Les multiples cartes présentées — d'ailleurs sans intérêt pour cette affaire en interprétation — ne doivent pas faire oublier des réalités juridiques. Et s'il est vrai que «Des cartes lui [à la Cour] ont été soumises»[71], il serait bien de préciser quelle n'en a retenu qu'une.

19. En revanche, on peut être d'accord avec le professeur Crawford, l'acquiescement doit être précis et celui sur le temple pourrait ne pas concerner celui sur la carte[72]. Mais c'est l'inverse qui s'est produit : c'est l'acquiescement sur la carte qui a eu pour conséquence l'acquiescement sur le temple. Encore une fois, c'est ce fameux raisonnement inductif qui décidément est à l'œuvre.

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[69] CR 2013/3, p. 43 (Miron).

[70] *Ibid.*, p. 43-44, par. 32-35.

[71] Affaire du *Temple de Préah Vihéar (Cambodge c. Thaïlande), fond, arrêt, C.I.J. Recueil 1962*, p. 14.

[72] CR 2013/4, p. 12-13, par. 40 et s***uiv***. (Crawford).

V. La continuation de la tentation de la refonte de l'arrêt de 1962

20. La Thaïlande semble reprocher au Cambodge de vouloir partir de l'arrêt de 1962, de ne pas tenir compte de ce qui s'est passé avant, et de ne considérer les faits subséquents que comme des preuves qu'il existe bien un différend sur l'interprétation de l'arrêt de 1962. Néanmoins, elle menace aussi le Cambodge d'un florilège d'accusations allant du détournement de procédure, à l'appel masqué, en passant par la tentative de revision de l'arrêt, voire d'un abus de droit puisqu'il ne s'agirait que de «quelques mètres» à attribuer. Bref, tout sauf une interprétation. Pourtant, le Cambodge ne fait qu'exercer une possibilité qui lui est ouverte par le Statut de la Cour, à savoir demander une interprétation sur le sens et la portée d'un arrêt lorsqu'il appert que la lecture faite par les deux Etats d'un dispositif diverge. Or, cette possibilité est bien encadrée par la procédure et la jurisprudence. Non seulement elle doit porter sur ce qui a été décidé avec force obligatoire — le dispositif en liaison avec les motifs essentiels si nécessaire, et ce l'est en l'espèce — mais elle ne peut interpréter que l'arrêt tel qu'il a été rendu et ne peut bien évidemment tenir compte de la pratique subséquente, sauf justement pour déterminer l'existence d'un différend sur l'interprétation. Où est en l'espèce le détournement de procédure ? La procédure en cours opposant le Cambodge à la Thaïlande correspond en tout point à ces exigences. Une fois de plus, l'affaire de l'*Usine de Chorzów* résume parfaitement ceci : «L'interprétation n'ajoute rien à la chose jugée et ne peut avoir d'effet obligatoire que dans les limites de la décision de l'arrêt interprété … [La Cour] se borne à expliquer par l'interprétation ce qu'elle a déjà dit et jugé.» (*Interprétation des arrêts n^{os} 7 et 8 (usine de Chorzów), arrêt n^{o} 11, 1927, C.P.J.I. série A n^{o} 13*, p. 21.) C'est la raison pour laquelle le Cambodge confirme qu'il est nécessaire de s'intéresser uniquement, mais *entièrement*, à l'arrêt de 1962, et qu'il est vain et contre-productif de revenir sur ce qui s'est passé auparavant puisque la Cour ne peut interpréter que l'arrêt tel qu'il a été rendu. Dès lors, pour répondre à la question du professeur McRae : pourquoi l'arrêt du 15 juin 1962 et seulement cet arrêt ? Parce que c'est une obligation imposée par le Statut de la Cour, par sa procédure et par sa jurisprudence.

21. Au-delà, il est symptomatique de remarquer que la Thaïlande reproche au Cambodge de souhaiter une revision de l'arrêt — sans doute la réponse du berger à la bergère — puisque c'est bien une tentation qui apparaît clairement dans la démarche de la Thaïlande, justement à travers l'avalanche de cartes ou encore l'éternel retour sur la ligne de partage des eaux dont la Cour a

pourtant clairement établi qu'elle importait peu puisque les Parties ont accepté la carte de la ligne de l'annexe I comme ligne frontalière entre les deux Etats. Que cette carte corresponde ou non à la ligne de partage des eaux est un sujet qui fut débattu longuement dans la procédure initiale, que la Cour a tranché, et sur laquelle il est vain de revenir, sauf à faire perdre son temps à la Cour.

22. Cet ensemble d'absences de réponses aboutit finalement à ce qui fut notre point de départ : la liaison entre les motifs essentiels de l'arrêt et le dispositif car la Thaïlande ne démontre nullement en quoi il faudrait lire le dispositif indépendamment des motifs.

VI. L'absence d'arguments réels sur la soi-disant séparation entre les motifs et le dispositif d'un arrêt

23. Pour ne pas irriter de nouveau le professeur Pellet, je ne répéterai pas ce qui fut qualifié «d'évidences de bon sens»[73] ou de «balivernes doctrinales»[74], ce qui n'est pas très charitable pour la doctrine — dont il fait aussi partie — qui reste, certes modestement, un «moyen auxiliaire de détermination des règles de droit» selon l'article 38, par. 1 *d*), du Statut de votre Cour. Il reste qu'il aurait été souhaitable que la Thaïlande nous explique — et pas seulement en l'espèce, mais en général — pourquoi elle réfute absolument cette liaison entre les motifs essentiels et le dispositif, liaison désormais acceptée, dans le cadre de l'interprétation, par toutes les juridictions internationales, là aussi ignorées par la Thaïlande. La dénégation, aussi brillante soit-elle, ne peut remplacer l'explication, mais il faut croire que, décidément, la Thaïlande n'aime guère faire du droit.

24. On peut en revanche être d'accord pour estimer que «l'interprétation doit servir à éclairer des choses obscures et non à obscurcir des choses claires»[75], c'est même le propre de toute bonne pédagogie. Mais, en l'espèce, l'obscurité persiste et c'est bien pour cette raison que le Cambodge revient devant votre Cour. La question posée hier auquel mon collègue Rodman Bundy a répondu en est la preuve : quels sont précisément les «environs» situés en territoire cambodgien pour les deux Parties ? Il est clair que ce n'est pas clair, ou plutôt il est clair que les deux Etats n'ont pas la même compréhension des «environs» du temple situés en territoire cambodgien. L'interprétation

[73] CR 2013/4, p. 28, par. 9 (Pellet).

[74] *Ibid.*

[75] CR 2013/4, p. 29, par. 12 (Pellet).

s'impose donc car le Cambodge aimerait aussi savoir quelles sont les «environs» situés en territoire cambodgien pour la Thaïlande, à combien de mètres, et surtout sur quelles bases ces «environs» ont été définis ? *Car là est aussi la question.* Le Cambodge est capable de dire que son interprétation découle de sa compréhension de l'arrêt et que, pour cet Etat, les «environs» situés en territoire cambodgien ne peuvent correspondre qu'au constat fait par la Cour au regard de la frontière indiquée sur la carte de l'annexe I acceptée par les deux Parties, et reconnue par la Cour dans ses motifs. Mais quelle est la base sur laquelle s'appuie la délimitation des «environs» selon la Thaïlande ? Cette base semble provenir d'une hypothétique ligne de partage des eaux *que la Cour lui a refusée en 1962*. C'est du moins ce qu'il faut comprendre au travers d'une explication bien confuse masquée par un incroyable arsenal cartographique. Ou alors, il s'agit d'une ligne totalement arbitraire. Il n'y a donc que deux hypothèses possibles pour le calcul de cette limite pour la Thaïlande : la ligne refusée en 1962 ou l'invention d'une ligne arbitraire. Les deux sont inacceptables. En revanche, comme le confirme le Cambodge, il existe bien un élément objectif — *le seul élément objectif* — permettant de connaître la limite entre les deux Etats, et c'est bien la ligne de la carte de l'annexe I.

25. Selon le professeur Crawford, le Cambodge aurait des difficultés à énoncer une lecture cohérente et logique de l'arrêt car «Le Cambodge demande désormais que la ligne de la carte de l'annexe I soit considérée comme faisant partie du dispositif.»[76] Effectivement, la Thaïlande continuera à avoir des difficultés à comprendre la position du Cambodge si elle continue à lui faire dire ce qu'il n'a pas dit, à savoir qu'il demanderait que la ligne de la carte de l'annexe I soit incluse dans le dispositif. Il y a de la part de la Thaïlande cette inépuisable volonté de travestir la demande du Cambodge : il ne peut demander ce qui ne peut être, et la ligne de la carte de l'annexe I ne peut être aujourd'hui dans le dispositif puisqu'elle n'y était pas en 1962.

26. Il ne s'agit pas non plus «d'interpréter un motif à la lumière du dispositif» pour reprendre l'adroite formule du professeur Pellet[77], mais bien l'inverse, sans qu'il soit nécessaire de revenir sur cette démonstration. Et pour revenir à l'essence de la question posée, il est possible de citer un

[76] CR 2013/3, p. 66, par. 4 (Crawford) ; la traduction est du Cambodge.

[77] CR 2013/4, p. 37, par. 32 (Pellet).

passage de l'arrêt du 15 juin 1962, également cité hier par la Thaïlande[78], qui peut tout à fait l'être aujourd'hui par le Cambodge, et dans son intégralité, car rien ne s'oppose dans cet extrait à ce qui est pour lui la bonne interprétation de l'arrêt. Il résume à lui seul la plupart des questions pendantes :

> «L'objet du différend soumis à la Cour est donc limité à une contestation relative à la souveraineté dans la région du temple de Préah Vihéar. Pour trancher cette question de souveraineté territoriale, la Cour devra faire état de la frontière entre les deux Etats dans ce secteur. Des cartes lui ont été soumises et diverses considérations ont été invoquées à ce sujet. La Cour ne fera état des unes et des autres que dans la mesure où elle y trouvera les motifs de sa décision qu'elle doit rendre pour trancher le seul différend qui lui est soumis et dont l'objet vient d'être ci-dessus énoncé.» (*Temple de Préah Vihéar (Cambodge c. Thaïlande), fond, arrêt, C.I.J. Recueil 1962*, p. 14.)

L'objet du différend est une contestation relative à la *souveraineté dans la région du temple*, et non au temple seul. Pour trancher cette question territoriale, la Cour devra *faire état* de la frontière entre les deux Etats dans ce secteur, autrement dit constater quelle est la frontière entre les deux Etats. La distinction entre conflit territorial et frontalier disparaît ainsi. Cartes et considérations lui ont été soumises et l'on sait que la Cour ne retiendra qu'une carte pertinente et que les autres considérations viendront à l'appui de cette preuve. Là encore, le Cambodge acquiesce à cette affirmation car cela signifie que la Cour va bâtir son arrêt sur ces motifs dont elle retiendra le motif essentiel. Et ceci pour trancher le différend soumis, autrement dit, comme indiqué en début de citation, la contestation relative à *la souveraineté dans la région du temple de Préah Vihéar*. Je répète la Cour ne fera état de ces considérations que dans la mesure où elle y trouvera des motifs. Ceci était également l'opinion des juges Tanaka et Morelli dans leur déclaration commune puisqu'ils indiquaient : «La demande, telle qu'elle est formulée dans la requête du Cambodge, concerne, non pas la restitution du temple en tant que tel, mais plutôt la souveraineté sur la parcelle de territoire où le temple est situé.» (*Ibid.*, p. 38.) Le Cambodge n'a rien à redire à ce constat de bon sens. C'est ce que la Cour fera et c'est que le Cambodge accepte parfaitement car cela ne signifie nullement que la Cour ignore le motif essentiel sur lequel elle se basera et qui conditionne le dispositif à venir. Sans ce motif, l'arrêt tel qu'il se présente aujourd'hui n'existerait tout simplement pas.

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[78] CR 2013/4, p. 39, par. 36 (Pellet).

VII. La confirmation de la lecture cohérente de l'arrêt de 1962 par le Cambodge

27. Pour conclure, le Cambodge se permet de reprendre ce qui avait introduit ses plaidoiries, à savoir qu'il est nécessaire de résumer de nouveau simplement la manière dont le Cambodge aborde l'affaire qui est portée devant vous. Il s'agit d'interpréter le point 2 du dispositif de l'arrêt du 15 juin 1962, *à la lumière du point 1*, en liaison directe avec l'obligation pour la Thaïlande de retirer ses troupes stationnées dans le temple ou dans les «environs situés en territoire cambodgien». Dès lors, la référence au territoire du Cambodge ne peut être comprise qu'au regard de ce que la Cour a dit à propos de l'acceptation *par les deux Parties* de la carte de l'annexe I comme indiquant la ligne frontalière dans la région du temple. Ce motif fondamental indiqué par la Cour est par conséquent inséparable du dispositif. Il en découle que l'obligation d'évacuation des troupes est une obligation continue qui doit être comprise en rapport avec la ligne indiquée sur la carte de l'annexe I et que l'interprétation unilatérale et volontairement restrictive de l'arrêt par la Thaïlande ne peut donc être acceptée.

28. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, je vous remercie pour votre attention. Je vous prie, Monsieur le président, de bien vouloir donner la parole à M. le vice-premier ministre, agent du Royaume du Cambodge.

Le PRESIDENT : Merci, Monsieur le professeur. Je passe la parole à S. Exc. M. Hor Namhong, vice-premier ministre et agent du Royaume du Cambodge. Vous avez la parole, Excellence.

M. HOR NAMHONG :

CONCLUSIONS

1. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, c'est pour moi un honneur de me présenter une nouvelle fois devant votre honorable et prestigieuse juridiction pour clore les plaidoiries du Royaume du Cambodge. Avant de donner lecture des conclusions, je souhaiterais, au nom de ma délégation, remercier la Cour pour l'attention et le soin qu'elle a manifestés pour cette affaire. Le Royaume du Cambodge est particulièrement reconnaissant à la Cour d'avoir donné aux Parties en la présente instance l'occasion de pleinement s'exprimer en autorisant la production d'observations écrites et en organisant une semaine complète d'audiences.

Nos remerciements s'adressent également à Monsieur le greffier et à son équipe dont nous avons pu apprécier l'efficacité et le professionnalisme. Je profite de cette occasion pour saluer en particulier le travail des interprètes qui ont accompli un effort remarquable dont nous mesurons toute la difficulté de la tâche.

2. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, comme je l'avais indiqué lors de l'ouverture des plaidoiries le 15 avril, il me revient d'insister sur l'importance que le Cambodge accorde à la décision de la Cour qui va certainement conditionner les relations entre les deux Etats, et dont dépendent la paix et la sécurité dans la région. Car, le Cambodge est persuadé que la Cour a un rôle fondamental dans la paix entre les peuples. Sans interprétation définitive de l'arrêt du 15 juin 1962, la situation de *statu quo* qui en résulterait aurait certainement des conséquences fâcheuses qui empêcheraient d'autant la nécessité de vivre dans un environnement amical, paisible et coopératif entre les deux Etats, d'autant que la Cour doit être consciente de la manière dont la Thaïlande applique imparfaitement les mesures conservatoires décidées par votre Cour dans son ordonnance du 18 juillet 2011.

3. Comme je l'ai déjà rappelé lors de mon intervention de lundi dernier, les revendications sans fondement des 4,6 km^2 de la part de la Thaïlande confirmées dans une publication officielle du ministère thaïlandais des affaires étrangères en 2011, les occupations militaires *actuelles* de certaines portions de nos territoires, notamment à Phnom Trap, dans les environs du temple et les agressions armées consécutives à ces différends ont provoqué morts, blessés et déplacements de population. Ceci n'est plus acceptable. Il y a donc là des faits nouveaux récents qui justifient la demande en interprétation du Cambodge. J'estime que votre Cour ne doit pas l'ignorer au moment de prendre sa décision. Il en résulte que le Cambodge attend avec sérénité la décision que vous prendrez pour clore définitivement ce différend, portant exactement sur le sens et la portée de l'arrêt de 1962 qui empêche le développement de relations paisibles entre deux voisins que tout devrait rapprocher.

4. Comme M^{e} Bundy a pu l'expliquer à votre Cour en réponse à la question posée par M. le juge Yusuf, le Cambodge a toujours, depuis votre arrêt du 15 juin 1962, interprété les «environs» du temple par rapport au tracé figurant sur la carte de l'annexe I.

5. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, le Cambodge en vient maintenant aux conclusions qu'il souhaite soumettre à votre Cour. Pour cela il rappellera tout d'abord différents points conclusifs énoncés dans ses écritures et plaidoiries orales :

— Que les conclusions soumises à la Cour par chacune des deux Parties démontrent, à la lumière des faits et en eux-mêmes, que les Parties sont en désaccord sur le sens et la portée de l'arrêt de 1962 ; il y a donc bien eu un différend ;

— Que les différends entre les Parties portent tant sur l'interprétation du premier point que sur l'interprétation du deuxième point du dispositif de l'arrêt de 1962, ainsi que sur le lien inséparable entre ces deux points ;

— Que chacun desdits différends se rapporte à ce que la Cour a décidé avec force obligatoire, y compris «une divergence de vues si tel ou tel point a été décidé avec force obligatoire» (*Interprétation des arrêts n^{os} 7 et 8 (usine de Chorzów), arrêt n° 11, 1927, C.P.J.I. série A n^{o} 13,* p. 11) ;

— Que les constatations de la Cour dans l'arrêt du 15 juin 1962 sur le caractère obligatoire de la ligne de la carte de l'annexe I sont inséparables du dispositif et indispensables pour l'interprétation de l'arrêt ;

— Qu'en raison de ce que la Cour a décidé concernant le statut juridique de la carte de l'annexe I comme représentant la frontière entre les deux Etats, les expressions «en territoire relevant de la souveraineté du Cambodge» (point 1 du dispositif) et «en territoire cambodgien» (point 2 du dispositif) doivent être comprises à la lumière de cette frontière dans la région du temple de Préah Vihéar ;

— Que l'obligation de retrait énoncée dans le paragraphe 2 du dispositif doit être comprise comme une obligation continue qui s'étend à l'ensemble du territoire qui relève de la souveraineté du Cambodge ainsi défini dans la zone en litige.

6. Rejetant les conclusions du Royaume de Thaïlande, et sur la base des points qui précèdent, le Cambodge prie respectueusement la Cour, en application de l'article 60 de son Statut, de répondre à la requête du Cambodge portant sur l'interprétation de son arrêt du 15 juin 1962. Selon le Cambodge : «le temple de Préah Vihéar est situé en territoire relevant de la souveraineté du Cambodge» (point 1 du dispositif), ce qui est la conséquence juridique du fait que le temple est

situé du côté cambodgien de la frontière, telle qu'elle fut reconnue par la Cour dans son arrêt. Dès lors, l'obligation pour la Thaïlande de «retirer tous les éléments de forces armées ou de police ou autres gardes ou gardiens qu'elle a installés dans le temple ou dans ses environs situés en territoire cambodgien» (point 2 du dispositif) est une conséquence particulière de l'obligation générale et continue de respecter l'intégrité du territoire du Cambodge, territoire délimité dans la région du temple et ses environs par la ligne de la carte de l'annexe I et sur laquelle l'arrêt de la Cour est basé.

Je vous remercie, Monsieur le président, Mesdames et Messieurs les Membres de la Cour, de votre attention.

Le PRESIDENT : Je vous remercie beaucoup, Excellence. La Cour prend acte des conclusions finales dont vous venez de donner lecture au nom du Royaume du Cambodge. Le Royaume de Thaïlande présentera son second tour de plaidoiries demain, le vendredi 19 avril, de 15 heures à 17 heures.

L'audience est levée.

L'audience est levée à 16 h 55.

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