INTERNATIONAL COURT OF JUSTICE

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)*

RESPONSE OF THE KINGDOM OF CAMBODIA

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CHAPTER 1

INTRODUCTION

1.1. These Observations have been submitted in accordance with the decision by the Court referred to in the Registry's letter dated 24 November 2011. They represent Cambodia's Response to Thailand's extensive Observations of 21 November 2011 ("the Observations" or "the Thai Observations"), which were submitted by Thailand in response to Cambodia's Request for interpretation ("the Request" or "the Application"), lodged with the Court on 28 April 2011. Out of respect for the Court, this Response will be more concise, and limited to the essential issues on which the Parties have differing views, with particular emphasis on the question of interpretation that Cambodia has submitted to the Court. In other words, Cambodia does not intend to respond to all of the allegations made by Thailand, the majority of which were repeated in a muddled manner throughout those Observations. The fact that it is not responding directly to each of Thailand's arguments or allegations cannot, however, be interpreted as recognition that the arguments or allegations in question are well-founded.

1.2. For reasons best known to itself, Thailand also annexed to its Observations numerous documents which would be better suited to new proceedings on the merits than interpretation proceedings. What is more, those extensive annexes are of no relevance to the question of interpretation before the Court. Cambodia does not intend to follow suit and will, to a large extent, rely on the information contained in the documents annexed to the Thai Observations. Those documents will be supplemented where necessary in order to provide a sufficiently precise picture of the facts. That is the purpose of the documents in Volume 2 of this Response.

1.3. Cambodia considers it necessary, at the outset, to draw attention to certain unusual and troubling aspects of this case which have emerged from both the oral arguments in respect of the Request for the indication of provisional measures and now the Thai Observations.

(i) These proceedings concern a Request for interpretation made by the Party that won the initial case (i.e., Cambodia) against the losing Party (i.e., Thailand), the latter having been extremely reluctant to accept the Judgment of the Court at the time — and remaining so today — as can be seen from Thailand's conduct and declarations during the period in question.

2 (ii) The losing Party claims that it is entitled to interpret the effects that the Court's Judgment has on it and to impose that interpretation, by force, on the ground, and then to claim, on that basis, that there is no dispute.

(iii) That unilateral interpretation is being brandished before the Court as the product of a formal decision taken, it seems, by Thailand's Council of Ministers following the Court's 1962 Judgment. However, that decision has not been annexed to the Thai documents in these proceedings, has not been communicated to Cambodia, and has not even been made public. While Thailand did produce a unilateral map in 1962, which was submitted prior to the oral arguments at the time of Cambodia's Request for the indication of provisional measures and was intended to reflect the decision taken by the Council of Ministers, Thailand has not relied on that map in its Observations. Moreover, in 2007 Thailand published a new map, marked "SECRET", which was materially different from that used in the initial proceedings of 1959-62 and covered more territory on the basis of a new "watershed" line.

(iv) The Thai Observations are merely a scarcely veiled attempt to convince the Court that it committed an error in 1962 and that this should be corrected in 2012, notably by revising or reconsidering the Judgment under the guise of interpreting it.

1.4. Thailand's conclusions appear on pages 281-286 of its Observations. Thailand's three main conclusions are: *(a)* that there is no dispute between it and Cambodia as regards either the first or the second paragraph of the *dispositif* of the Judgment of the Court of 15 June 1962 ("the 1962 Judgment"); *(b)* that the 1962 Judgment had in no way established that the line on the map in Annex I represented the frontier between Cambodia and Thailand, whether in the vicinity of the Temple of Preah Vihear or more generally; and *(c)* that the Court should also take account of the fact that the line on the map in Annex I has technical failings that would make it difficult to transpose on the ground.

3 1.5. All of these main conclusions are, to varying degrees, erroneous, distorted or irrelevant to these proceedings before the Court. Before responding in detail, Cambodia considers it necessary to make a number of general observations.

A. Cambodia's Request

1.6. Cambodia asks that the Court consider the substance of its Application as submitted to the Court, not as reinterpreted by Thailand for its own purposes. Consequently, when Cambodia asserts that it is seeking not the revision or enforcement of the 1962 Judgment, but rather an authentic interpretation of the Judgment, that should be regarded as the sole purpose of these proceedings.

1.7. Cambodia reasserts the substance of its Request as submitted to the Court on 28 April 2011, while pointing out that the Thai Observations reveal the existence of an even clearer dispute regarding the meaning and scope of the 1962 Judgment[1]. Moreover, the Application contains detailed and reasoned arguments in support of Cambodia's Request for the interpretation of the Judgment. The primary objective of this Response is, therefore, to refute the objections raised by Thailand, not to restate the arguments already set out in the Application.

B. Thailand's confusion

1.8. Certain fundamental misunderstandings are reiterated in the Thai Observations, revealing (among other things) a simple inability to comprehend the relationship between the interpretation of a judgment and other issues that may arise in relation to that judgment. Moreover, Thailand confuses the identification of an existing frontier with its delimitation or demarcation on the ground. Some of these misunderstandings are largely of a procedural nature, while others relate more to the substance of the case.

4 #### 1. Interpretation and execution are not the same thing

1.9. The existence of a dispute between parties regarding the interpretation of a judgment rendered by the Court in a contentious case may simply become apparent in the course of verbal or written communication. The dispute may, therefore, be a direct result of an exchange of views or declarations serving to show the parties' differing perceptions as to the meaning and scope of that

[1] See paras. 3.3-3.15, *infra*.

judgment or the demands that it makes of the parties. However, the existence of such a dispute may also become apparent in an indirect way when one or both parties (or a party considering that it has the right to do so) take(s) action of some kind, claiming to be complying with the requirements laid down by the Court. Examples of these two scenarios can be found in this case and will be addressed further in Chapter 2. Consequently, such a situation may give rise to both a question of interpretation and a question of execution. That said, the fact that these two questions arise simultaneously in relation to the same subject-matter does not alter their essential nature: a question of interpretation remains a question of interpretation, and a question of execution remains a question of execution. It does not take vast amounts of logic to understand that the faithful and necessary implementation of a judgment presupposes a precise and appropriate understanding of what that judgment means and requires[2]. We should remember, therefore, what Cambodia stated in its Application[3]:

> "Cambodia wishes to make it very clear that, through this Application, it is in no way seeking any means of forced compliance with the 1962 Judgment. As will be explained below, Cambodia is only seeking an explanation from the Court itself of the real significance of the meaning and scope of its Judgment, within the limit laid down by Article 60 of the Statute, which would be binding on Cambodia and Thailand and could then serve as a basis for a final resolution of this dispute through negotiation or any other peaceful means."[4]

1.10. In other words, Thailand cannot escape the mechanism laid down in Article 60 of the Statute of the Court, much less the rights that Article 60 affords a party in a case before the Court, by unilaterally re-characterizing Cambodia's Application without any justification. Cambodia takes this opportunity solemnly to reassert the substance of paragraph 31 of its Application, as set out above. The Court's interpretation will indeed form the starting-point for execution, but the interpretation will not take the place of execution. If the Court agrees to interpret the Judgment in the way that Cambodia wishes, it will be implemented by peaceful means on the basis of a mutual agreement that is already in existence: the Memorandum of Understanding of 14 June 2000 ("the MoU") on the demarcation of the frontier between the two States. Consequently, Cambodia requests that the Court provide an authentic interpretation of its Judgment in the hope — and hoping, too, for good faith on the part of its neighbour — that an appropriate mutual understanding of the Judgment will open the door to the final resolution of the recurrent implementation problems seen since the Court rendered that Judgment.

[1.11.] Be that as it may, Thailand's understanding of Cambodia's Application is confused and contradictory. At times, it accuses Cambodia of seeking the enforcement of the 1962 Judgment, rather than an interpretation of it. At other times, it accuses Cambodia of an underhand attempt to have the Court issue a decision favourable to Cambodia that it did not manage to obtain at the time. Not only are these two arguments different from one another, they contradict each other. It would be entirely irrational for Cambodia to seek the enforcement of the Judgment if its meaning and scope and the implications thereof were in dispute. Conversely, given that the meaning, scope and implications of the Judgment are in dispute, requesting clarification of the disputed issues cannot, by definition, constitute an application aimed at obtaining new decisions on matters that the Court has not previously ruled on. As has already been stated, Thailand's

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[2]In effect, Thailand accepts this, as it seeks to insinuate that the Judgment was implemented with the consent of the two Parties, so the Parties cannot be in dispute regarding its interpretation. This will be discussed in Chap. 2, *infra*.

[3]Application, para. 31.

[4]See also para. 17 of the Application: "It has become obvious to Cambodia that, as long as this difference of interpretation persists and remains unresolved, there is unlikely to be any prospect of achieving a mutually agreed solution within the framework of bilateral negotiations." Thailand's argument, in paras. 4.71-4.72 of the Observations, that the reiteration of this explicit objective of Cambodia's Application indicates the precise opposite is simply bizarre.

position on the issue of execution versus interpretation is extremely worrying, given its profound implications. Indeed, it appears that Thailand is basing its position on the following reasoning: *(a)* the Judgment requires Thailand to interpret its effects; *(b)* Thailand has, in fact, decided on its interpretation of the effects of the Judgment and has imposed that interpretation on the ground[5]; and *(c)* consequently, everything that follows is a matter of execution or implementation and cannot relate to interpretation. That confusion is remarkable. One can see that such a line of reasoning would doubtless be appropriate in giving substance to a case in which a party interprets a judgment in bad faith or, in the most extreme of situations, a case in which a party knowingly decides to defy a judgment under the guise of an interpretation. Where such a proposition is advanced by the losing party in proceedings before the Court, the implications are particularly shocking.

6 **2. An interpretation is not an appeal or a revision**

1.11. Thailand's position contains a major internal contradiction: even where it seeks to encourage the Court to conduct a legal assessment of the conduct of the Parties following the Judgment, Thailand seeks at the same time to limit the scope of the Judgment by referring to submissions made by the Parties prior to the Judgment at the written and oral stages. More than one third of the Thai Observations are devoted to detailed analysis — step by step — of the successive submissions made by the Parties, culminating in the 1962 Judgment. The purpose of this exegesis remains unclear. In the context of appeal or revision proceedings, it is conceivable that a court's decision might be challenged on the basis that it was *ultra petita*. However, a party cannot challenge a judgment by the International Court of Justice on the basis that it was *ultra petita*, be it 50 years after the fact or later, and certainly not in response to a request for interpretation. The judgment is what it is. Its scope and reasonableness are not subject to *ex post facto* assessment by the parties. The objective of a request for interpretation is to ask what the Court wanted to say, not what the parties want to have the Court say.

1.12. Moreover, a judgment by the Court is final and is not subject to appeal. When drafting its judgments, it falls to the Court — and the Court alone — to determine the issues that need to be taken into account, the issues that need to be resolved before it can arrive at its final decision, and the manner in which it will handle those issues in the *dispositif* of its judgment. It falls to the Court — and the Court alone — to determine the grounds underlying its judgment and the terms in which those grounds are explained in the judgment. In so doing, the Court must also determine, where necessary, the extent to which it should follow the arguments employed by the parties in their submissions[6]. Cambodia is relying on the Court's clear grounds in *South West Africa*, in which reference was made to "the recognized right of the Court, implicit in paragraph 2 of Article 53 of its Statute, to select *proprio motu* the basis of its decision"[7]. So, to sum up, the Judgment of the Court stands alone. It is autonomous and must be interpreted on its own terms, not with reference to external sources. This principle applies in full to the scope of the Judgment, as well as to the interpretation of its specific grounds and other elements contained therein. If the true
7 intention of Thailand's argument is to claim that in 1962 the Court made an error or went too far, that is quite simply inadmissible.

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[5]See Chap. 2, *infra*.

[6]The Court may choose to base its judgments on arguments not raised by the parties. See, for example, *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, p. 180, para. 37, in which reference is made (citing *Application of the Convention of 1902 Governing the Guardianship of Infants, Judgment, I.C.J. Reports 1958*, p. 62) to the Court's "freedom to select the ground on which it will base its judgment". See also *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, separate opinion of Judge *ad hoc* Franck, p. 654, para. 7.

[7]*South West Africa (Ethiopia* v. *South Africa), Second Phase, Judgment, I.C.J. Reports 1966*, p. 19, para. 8. See Chap. 4, *infra*.

3. Events subsequent to the Judgment cannot alter the meaning or scope of the Judgment

1.13. Additionally, in the light of the Thai Observations, it is clearly necessary for Cambodia to return, in these proceedings, to the question of the relevance of facts subsequent to the issuing of the 1962 Judgment. During the oral argument at the time of Cambodia's Request for the indication of provisional measures, it was accepted by the Parties that (apart from the existence of a dispute) facts subsequent to the Judgment do not constitute relevant substantive aspects of the case for the purposes of the interpretation. The Court is respectfully invited to consult the two Parties' oral arguments on this matter during the proceedings relating to the provisional measures[8]. However, Thailand would appear to have altered its position in its Observations, necessitating a discussion of this issue in Chapter 2.

1.14. Thailand appears, in its Observations, to take the view that subsequent actions by one or other of the Parties serve to deprive Cambodia of its right to request that the Court issue a binding interpretation of its Judgment.

1.15. That is evidently not the case. A decision by the Court — a legal act — is taken and incorporated in the Judgment[9] solemnly rendered by the Court. Neither its meaning nor its scope can be altered by anybody's subsequent conduct. As was pointed out by Cambodia in its Application for interpretation[10], the objective of interpretation proceedings is to preserve the legal situation resulting from the judgment itself. This stems both from the wording of Article 60 and from its position in the Statute. As S. Rosenne underscores perfectly, "a judgment in interpretation cannot consider new facts arising or becoming known after the principal judgment"[11]. As Thailand asserted during the oral proceedings, that was established by the Permanent Court, which held that "the Court, when giving an interpretation, refrains from any examination of the facts other than those which it has considered in the judgment under interpretation, and consequently all facts subsequent to that judgment"[12].

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1.17. It follows — and this is regarded as a fundamental principle — that no act undertaken individually by one party, or jointly by both parties, is able, in law, to alter in any way the "meaning or scope of a judgment" issued in contentious proceedings between those parties, and that constitutes the basis of Article 60 of the Statute, from which this Cambodian Request stems. There is no scope in the Statute of the Court for an interpretation of a judgment to be in any way affected, or even conditioned, by the subsequent conduct of the parties, on a basis analogous to that under Article 31 (3) *(b)* of the Vienna Convention on the Law of Treaties. That is in no way surprising, given that the Vienna Convention concerns instruments established by parties for their own ends, the legal force of which stems from agreements between the parties, while a judgment of the Court is a fundamentally different legal instrument. Once a judgment has been issued by the Court, the rights of the parties to which the judgment relates are unalterable. There is no appeal, and there is no procedure for requesting that the judgment be re-examined, except in the limited list

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[8]CR 2011/15, p. 25, para. 15 (Berman). See also the Application, para. 28. For the Thai position, see CR 2011/14, p. 39, paras. 16-17 (Crawford).

[9]See *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment, I.C.J. Reports 1999 (I)*, p. 31.

[10]Application, para. 28.

[11]S. Rosenne, *The Law and Practice of the International Court*, Vol. I, "The Court and the United Nations", 1920-2005, Chap. 28, p. 1613. Previous decisions by the Court and the Permanent Court of International Justice on this subject are addressed in Chap. 4, *infra*.

[12]*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 21, cited by Thailand in CR 2011/14, p. 39, para. 16 (Crawford).

of cases set out in Article 61 of the Statute of the Court. The judgment may be correctly implemented, or it may not, but this will have no impact whatsoever on the rights and obligations resulting from the judgment itself. Thus, even a formal agreement between the parties for the purpose of governing their future relations as regards matters covered by the Court's judgment is unable retroactively to alter the legal effects of the judgment itself — notwithstanding that the agreement may create a new régime of rights and obligations for the parties in question.

4. Recognition of a pre-existing frontier is not delimitation or demarcation

1.18. On a number of occasions, the Observations state, in accusatory tones, that Cambodia's arguments are based on the (erroneous) premise that the Court, in its 1962 Judgment, neither "established" nor "delimited" a shared frontier between the two States on the basis of the Annex I map for the area at issue in this dispute. Such an argument clearly does not feature in Cambodia's submissions in these proceedings[13]. Cambodia prefers to refer to the contents of paragraph 39 of the Application, in which it lists, verbatim, the various passages leading to the conclusions of the
9 1962 Judgment. These are the essential elements of the reasoning that led to the recognition of Cambodia's sovereignty over the Temple, showing that the Annex I map[14] had acquired binding force between Thailand and Cambodia. In other words, the Court recognized (with binding force) a frontier which did not acquire legal status as a result of the Judgment, but instead already existed in law. Given the significance of that recognition in terms of the Court's reasoning, Cambodia considers that the relevant grounds employed by the Court constitute *res judicata*.

[1.18.] Cambodia has never taken the view (a position that would be illogical and impracticable) that the prior existence of a legally established frontier renders pointless the appropriate demarcation of that frontier. In that case, there would be no point in engaging in the bilateral process established by the Joint Communiqué of 1997 and the MoU described in paragraphs 18 to 20 of the Application. However, demarcation presupposes prior identification of the frontier line, and in the region in question there is a logical need to use as a basis the legal situation set out in the Judgment of the Court. There is no evidence to the contrary in the instruments on which the demarcation process is based, and Thailand's argument seeking to insinuate that Cambodia sacrificed the legal benefits derived from the Judgment of the Court when it concluded the MoU is devoid of any credibility[15].

5. The missing argument

1.19. Thailand devotes a large part of its Observations to establishing that the *dispositif* of the Judgment did not contain explicit grounds relating to the binding force of the frontier line on the Annex I map. Cambodia can only concur, since that exposition is entirely superfluous. However, as the Court has already ruled in this case, at the provisional measures stage, following

[13]Thailand has been misled by the Registry's English translations of paras. 4 and 10 of the Application. In fact, the phrase which is used in para. 4 of the Application is "à la recherche de la ligne qui devait constituer la frontière" ("to the search for the line that was to constitute the frontier"), and that same phrase is used in para. 10 of the Application.

[14]Thailand's argument that the Ann. I map used in the proceedings is not the same as that received by Thailand in 1908 is of no importance.

[15]See paras. 2.70-2.81, *infra*. See also paras. 4.78-4.83.

the Court's earlier decisions in *Cameroon* v. *Nigeria* and *Avena*, a request for interpretation "cannot concern the reasons for the judgment except in so far as these are inseparable from the operative part"[16].

10 1.21. However, Thailand does not respond to that argument in any way. It provides no basis for its simplistic argument that the map has no status in these proceedings, a position that is particularly awkward for Thailand in light of its statements in the original case, where it said that "[t]he issue in this case is a map, Annex I"[17] and "[t]he central issue in this case has become a map, Annex I"[18].

1.22. Nor, contrary to the Court's explicit assertion (as highlighted by Cambodia in its Application), does Thailand attempt to explain why the Annex I map is not an essential issue or why it is separate from the *dispositif*. It is unable to produce any arguments in support of that position[19]. Instead, Thailand prefers to have recourse to the simplistic argument that Cambodia "misconstrues the reasons"[20] and that there are "other reasons" which "equally supported the Judgment"[21], without managing to identify them.

1.23. In this case, the Court was explicit in its conclusions and as regards the essential reasoning that led to those conclusions. It expressly states that "the Court can only give a decision as to the sovereignty over the Temple area after having examined what the boundary line is"[22]. It expressly states that the "essential" question in this case is "whether the Parties did adopt the Annex I map, and the line indicated on it, as representing the outcome of the work of delimitation of the frontier in the region of Preah Vihear, thereby conferring on it a binding character"[23]. It expressly states that "[t]he 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"[24]. Nevertheless, Thailand continues to assert that the Court did not "grant any status to the Annex I line"[25] in 1962. That position — which has conditioned both Thailand's diplomatic position and its actions on the ground — is the reason why there is now a dispute before the Court regarding the interpretation of its Judgment.

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[16]*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), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011*, p. 2, para. 1. *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment, I.C.J. Reports 1999 (I)*, p. 35, para. 10.

[17]CR 1962, p. 272 (Hyde).

[18]CR 1962, p. 273 (Hyde).

[19]Remarkably, Thailand simply indicates, in para. 4.92 of its Observations, that "the reasons in themselves cannot be the object of an interpretation under Article 60". This argument is followed by a footnote directing the reader to para. 4.82. Para. 4.82 then simply cites *Cameroon* v. *Nigeria*, indicating that a request for interpretation "cannot concern the reasons for the judgment except in so far as these are inseparable from the operative part" (*I.C.J. Reports 1999 (I)*, p. 35).

[20]Thai Observations, para. 5.26.

[21]*Ibid.*, para. 5.40.

[22]*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, pp. 16-17. See also the Thai Observations, p. 46, para. 2.47.

[23]*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 22.

[24]*Ibid.*, p. 33.

[25]Thai Observations, p. 16, para. 1.34.

11 **6. Summary**

1.24. The Thai Observations contain a large number of misunderstandings and omissions: interpretation is confused with execution; recognition of an existing frontier is confused with its demarcation and delimitation; and interpretation proceedings are confused with appeals and revision. And as regards omissions, they fail to explain why — despite the Court's explicit reference to the Annex I map as a basis for its Judgment — the positioning of the line in the relevant area is not an "essential" issue. What is more serious, however, is the fact that Thailand, in its Observations, also seeks to suggest that, seised of a request for interpretation, the Court's opinion on its own judgment should be conditioned by what the Parties thought or did, both before and after the judgment was issued. This is a genuine attempt to interfere with the integrity and independence of the Court's judicial function for the benefit of States appearing before it. This is unacceptable. And yet, this has been the primary Thai position in this case since the Judgment was rendered in 1962.

C. Scheme of the Response

1.25. The arguments on the merits will be presented in the following manner.

1.26. Chapter 2 will be devoted to the facts of the case and will show, largely using documents produced by Thailand itself, that the Thai Observations offer a particularly truncated view of the events that followed the Judgment of the Court, disregarding Cambodia's repeated protests regarding Thailand's claims.

1.27. Chapter 3 will show that, on the basis of the criterion established in the judgments of the Court and of its predecessor, all the conditions are fulfilled for the Court to exercise its power to interpret a judgment. It will show, following detailed analysis of Thailand's legal position as revealed for the first time in its Observations, that the dispute between the two States regarding the interpretation of the 1962 Judgment is far more significant than was envisaged when Cambodia requested provisional measures.

1.28. Chapter 4 contains the main arguments concerning the necessary interpretation of the 1962 Judgment. This will analyse the link between the *dispositif* of a judgment and the underlying reasoning, taking account of the case law of the Court and the practices of international tribunals,
12 and then showing that the essential element — indeed the sole element — of the reasoning serving as the basis for the grounds set out by the Court in the *dispositif* of the 1962 Judgment cannot be ignored. It will conclude by indicating the correct interpretation to be given to the meaning and scope of the first and second paragraphs of the *dispositif*. Finally, it will deal with the erroneous interpretations which Thailand is seeking to give to the Judgment.

1.29. Chapter 5 contains Cambodia's final submissions and will show, on the basis of the Thai Observations taken as a whole (particularly as regards Thailand's deliberate attempt to contest the Annex I map retrospectively), that Thailand's principal objective is to lodge a kind of appeal against the Court's 1962 Judgment in a manner which is incompatible with the Statute of the Court.

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CHAPTER 2

FACTS SHOWING THAT CAMBODIA HAS NEVER ACCEPTED THAILAND'S UNILATERAL INTERPRETATION

A. Introduction

2.1. In this chapter, Cambodia will look at various facts demonstrating the behaviour of the Parties as regards the area around the Temple of Preah Vihear following the 1962 Judgment. There are two reasons why it is of fundamental importance to go back to this period. Firstly, Thailand has provided a largely truncated and prejudicial presentation of the facts of the case, seeking to show that there is no dispute between the Parties as regards the interpretation of the Court's Judgment. Consequently, Cambodia is obliged, first of all, to re-establish the truth of the matter. Secondly, an accurate presentation of the facts of the case after 1962 clearly shows the manner in which each Party believes the Judgment should be interpreted.

2.2. The reality of the situation is that Cambodia and Thailand are currently in dispute as to the meaning and scope of the 1962 Judgment[26]. However, a very large part of the Thai Observations and the annexes thereto seeks to show that, in the years that followed the 1962 Judgment, there was no real dispute between the Parties, which would render inadmissible this Application for an interpretation by the Court.

2.3. The legal scope of this argument will be examined in Chapters 3 and 4. The aim of this chapter is to show that, in the absence of any legal basis, the argument is contradicted by the very facts presented by Thailand. The analysis that follows will, to a very large extent, be based on the documents provided by Thailand (supplemented by Cambodia where this is necessary in the interests of precision and concision). It will show that the events that followed the Judgment clearly establish that the Parties are in dispute as to the meaning and scope of the Judgment.

2.4. Ignoring what the Court said in its Order indicating provisional measures, Thailand maintains that there is no dispute[27] and that it is Cambodia which "is now calling into question a
14 *status quo* which endured for a very long time and which rests on a common understanding of Thailand and Cambodia of the obligations arising from the 1962 Judgment"[28].

2.5. Following a scarcely veiled amendment of its legal arguments, Thailand fails to ask the relevant question — namely whether the Parties are in dispute as to the meaning and scope of the Court's decision — and instead endeavours to show that Thailand "complied" with that Judgment and "implemented it", and that Cambodia has recognized that compliance by Thailand[29]. Thus, as far as Thailand is concerned, "there is no present day dispute between Cambodia and Thailand over compliance with the 1962 Judgment"[30].

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[26] As the Court shows, prima facie, in its Order of 18 July 2011: *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), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011*, p. 8, para. 31.

[27] Thai Observations, p. 123, Sec. A, and p. 283, para. 7.5.

[28] *Ibid.*, p. 135, para. 4.31.

[29] *Ibid.*, para. 4.32.

[30] *Ibid.*, p. 9, para. 1.18.

2.6. Cambodia does not believe that Thailand has acted in conformity with the Judgment of the Court or correctly implemented it. However, these proceedings do not concern the implementation or enforcement of the Judgment. They concern its interpretation. In that respect, the central questions also concern the meaning and geographical scope of what the Court decided in the first two paragraphs of the *dispositif*, in the light of what the Court decided regarding the scope of the Annex I map, as well as the fact that the obligation on Thailand to withdraw its troops is a permanent one. The question of the implementation of the Judgment is different, since it consists of determining where such an obligation should apply. That is not a question that Cambodia is asking the Court to rule on in this case.

2.7. The Thai Observations indicate that approximately one month after the Court rendered its Judgment, Thailand's Council of Ministers took a decision regarding the area covered by the obligation to withdraw its troops under the second paragraph of the *dispositif* of the Judgment. Cambodia drew the Court's attention, in Chapter 1 of its Response, to the surprising and revealing way in which Thailand has refrained from divulging the contents of the Resolution of the Council of Ministers or (despite the importance that Thailand has attributed to it in these proceedings) including it in the 758 pages of documents submitted to the Court as annexes to its Observations. Thailand now claims that the barbed wire placed all along a very narrow perimeter around the Temple was put there in order to implement the Resolution of the Council of Ministers — in other words, that this was a physical manifestation of Thailand's unilateral interpretation of the meaning and scope of the Judgment of the Court. Cambodia has never accepted Thailand's unilateral actions. On the contrary, Cambodia, on a large number of occasions, protested vigorously against this state of affairs, which did not reflect the Court's decision. This situation lasted until the beginning of the 1970s, when an internal armed conflict broke out in Cambodia.

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2.8. Following the resumption of normal political life in Cambodia at the beginning of the 1990s, this ceased to be an issue. Cambodia exercised sovereignty over the Temple and the areas close to the Cambodian side of the line indicated on the Annex I map, including Phnom Trap hill. Cambodian citizens residing in this area established markets and constructed a pagoda in 1998. It was not until a number of years later that Thailand voiced concerns regarding the environmental impact of these activities, and it never indicated that these were incompatible with its unilateral delimitation of the "vicinity" of the Temple as defined since the 1962 Judgment.

2.9. It was only in 2007-2008, when Thailand objected to Cambodia's request to have the Temple placed on UNESCO's World Heritage List, that the dispute resurfaced and Thailand began to protest against Cambodia's presence on what it considered to be Thai territory around the Temple. In support of its claims, Thailand unilaterally produced a new map which purported to show a frontier around the Temple, thereby demonstrating Thailand's interpretation of the Judgment. Cambodia protested, asserting that the map in question had no legal value and had not been approved by the bilateral working group under the framework of the Memorandum of Understanding of 14 June 2000. However, Thai troops occupied areas close to the Temple where Cambodians were engaged in peaceful activities, and armed incidents took place. As the Court is aware, further incidents took place in 2011, leading Cambodia to submit its Request for interpretation and its Request for the indication of provisional measures in order to resolve the dispute.

2.10. These various events are described in the paragraphs below.

B. Legal importance of the facts subsequent to the Judgment

2.11. Before proceeding with the examination of the relevant facts subsequent to the Judgment in the context of Cambodia's Request for interpretation, it is important to describe the legal context in which these events should be analysed. As pointed out in Chapter 1, any
16 interpretation of the Court's 1962 Judgment must necessarily be based on the factual elements that the Court had at its disposal when it delivered its Judgment.

2.12. However, Thailand has included new elements and expert reports in its Written Observations with the aim of revisiting issues relating to the Annex I map, which constitutes an essential aspect of the Judgment of the Court. Thailand maintains that the Annex I map contained defects such as recording and positional errors, as well as topographical errors and scaling problems[31]. Thailand has also included what it describes as a revised version of the map, which it claims to have discovered recently, 50 years after the Court rendered its Judgment[32].

2.13. None of these new elements, or the arguments raised by Thailand with a view to calling the Annex I map into question, is relevant in this case. Thailand had a great many opportunities to raise the issue of the Annex I map during the main case, and it did so, to the point where this became *the* central issue, as Thailand's counsel acknowledged during the oral proceedings. The Court noted that Thailand had accepted the map as it was at the time, not another version[33].

2.14. In its Judgment on the *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*, the Permanent Court made its position on this point very clear. It observed, in particular:

> "Moreover, the Court, when giving an interpretation, refrains from any examination of facts other than those which it has considered in the judgment under interpretation, and consequently all facts subsequent to that judgment. Similarly, the Court abstains from any consideration of the effect which the judgment to be construed might exercise upon submissions made by the Parties in another case or otherwise brought to its knowledge. It confines itself to explaining, by an interpretation, that upon which it has already passed judgment."[34]

2.15. Moreover, during the hearings on provisional measures, Thailand did not hesitate to cite that paragraph in order to exclude all facts subsequent to the Judgment[35]. And yet, Thailand is now openly contradicting itself by referring to a "version" of the Annex I map that it has just discovered.

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[31] See, in general, Chap. VI of the Thai Observations.

[32] *Ibid.*, paras. 6.18 *et seq.*

[33] *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 32. As Cambodia will explain, the grounds set forth by the Court in its Judgment in respect of the status of the Ann. I map cannot be separated from the operative part of the Judgment in question (see Chap. 4, *infra*).

[34] *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 21.

[35] CR 2011/14, p. 39, para. 16 (Crawford).

17 2.16. Thus, Thailand's new line of defence clearly resembles an attempt to persuade the Court to revise its Judgment, or, as it were, a form of appeal against it[36]. This is clearly inadmissible and manifestly runs counter to the purpose of these proceedings. Neither does this case concern issues relating to the demarcation of the frontier near the Temple, or the issue of how the Annex I map should best be transposed on the ground. None of these issues was examined by the Court in 1962.

2.17. A distinction should be made, in this respect, between the facts that the Court had at its disposal when it issued its Judgment in 1962 and the events that followed the Judgment. As Cambodia explained in the hearings at the time of its Request for the indication of provisional measures[37], the former may be relevant in order to determine the meaning and scope of the Judgment of the Court. In contrast, the latter are relevant only in order to determine whether the Parties are in dispute as to the meaning and scope of the Judgment of the Court and in order to determine the nature of that dispute. It goes without saying that a dispute regarding the interpretation of a judgment by the Court cannot arise until after that judgment has been rendered. As the Court made perfectly clear in its Order indicating provisional measures in this case:

> "such a dispute can, in itself, certainly arise from facts subsequent to the delivery of that judgment"[38].

2.18. It should also be pointed out, by way of comparison, that one of the reasons why Colombia's Request for interpretation was not accepted in the *Asylum Case* was the fact that Colombia submitted its Request for interpretation on the very day that the Judgment was issued. As the Court noted in its Judgment interpreting that case:

> "the very date of the Colombian Government's request for interpretation shows that such a dispute could not possibly have arisen in any way whatever"[39].

2.19. It is true that, as regards the existence of a dispute regarding the interpretation of a judgment within the meaning of Article 60 of the Statute, the Court said:

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> "Obviously, one cannot treat as a dispute, in the sense of that provision, the mere fact that one Party finds the judgment obscure when the other considers it to be perfectly clear. A dispute requires a divergence of views between the parties on definite points; Article 79, paragraph 2 [now, Article 98, paragraph 2], of the Rules confirms this condition by stating that the application for interpretation 'shall specify the precise point or points in dispute'."[40]

However, as Cambodia pointed out in its Application (paragraph 23), that is not the case here.

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[36] See paras. 5.1-5.6, *infra.*

[37] CR 2011/15, pp. 24-25, para. 15 (Berman).

[38] *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), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011,* p. 10, para. 37.

[39] *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia* v. *Peru), Judgment, I.C.J. Reports 1950,* p. 403.

[40] *Ibid.*

2.20. Documents submitted by Thailand itself in this case show that, one month after the Judgment, Thailand's Council of Ministers adopted a Resolution (dated 10 July 1962) in which it drew a line around the Temple beyond which it considered that Thailand had an obligation to withdraw its military forces. Prior to the hearings on the Request for the indication of provisional measures, Thailand submitted to the Court a map showing the line drawn in the Resolution of the Council of Ministers. However, Thailand made no reference to that map either during those hearings or in its Written Observations. Neither has Thailand produced the Resolution adopted by the Council of Ministers, a document which, in Cambodia's view, should have been produced by Thailand in the interests of coherence. For ease of reference, a copy of the map in question appears after page 23, where that map is examined in greater detail.

2.21. Thailand's reluctance to refer to its own map is understandable and could explain why the Resolution of the Council of Ministers has not been produced either. For what it shows is the Thai Government's unilateral interpretation of the geographical scope of the 1962 Judgment shortly after that Judgment had been issued. Thailand then implemented its decision on the ground by laying barbed wire all along the perimeter (marked in pink on the map) and threatening any Cambodian who crossed that line with reprisals.

2.22. As we will see in the next section, Cambodia protested against that line, as well as the barbed wire used to mark it, as soon as it became aware of it. In Cambodia's view, by reducing the "vicinity" of the Temple to such a small area, and one that bore no relation to the frontier line indicated on the Annex I map, on which the Court's decision was based, Thailand fundamentally misinterpreted (and incorrectly implemented) the first and second paragraphs of the *dispositif* of the Judgment of the Court.

19 2.23. The dispute continued throughout the 1960s. From 1970 to 1998, as Thailand expressly acknowledges in its Observations, there are no relevant events to point to regarding the issue of the Temple area, notably on account of the internal armed conflict in Cambodia. Between the beginning of the 1990s and 2007, the dispute disappeared, because Thailand no longer relied on the line indicated on the map used by the Council of Ministers, which had been marked with barbed wire. Cambodia administered the vicinity of the Temple in a peaceful manner, including the Phnom Trap area, constructing a pagoda and establishing markets. This did not elicit any reaction from Thailand, other than criticism of the alleged environmental impact of the Cambodian activities. However, the dispute resurfaced in 2007-2008, when Cambodia asked for the Temple to be placed on UNESCO's World Heritage List and Thailand produced a new map (marked "SECRET") indicating a new line around the Temple that ran closer to it — and was completely different from the "watershed line" submitted in the main case — and granted even more territory to Thailand.

2.24. Thus, as Cambodia stated in its Application, this case concerning the interpretation of the 1962 Judgment is not, therefore, simply a case of one Party considering the Judgment to be obscure, while the other regards it as clear. The dispute between the Parties is based on concrete elements: it concerns a documented position adopted by Thailand in respect of the territorial scope of the Judgment, both in maps and on the ground, and the fact that Cambodia has never accepted that position, neither when it was first adopted nor following the recent resurgence of the dispute.

2.25. Under Article 60 of the Statute, it is not necessary for the dispute to have arisen in a particular manner. It is simply a question of whether the Parties have shown themselves to hold differing views regarding the meaning or scope of one or more points in the Judgment which were decided with binding force. As the Permanent Court asserted:

> "In so far as concerns the word 'dispute', the Court observes that, according to the tenor of Article 60 of the Statute, the manifestation of the existence of the dispute in a specific manner, as for instance by diplomatic negotiations, is not required. It would no doubt be desirable that a State should not proceed to take as serious a step as summoning another State to appear before the Court without having previously, within reasonable limits, endeavoured to make it quite clear that a difference of views is in question which has not been capable of being otherwise overcome. But in view of the wording of the article, the Court considers that it cannot require that the dispute should have manifested itself in a formal way; according to the Court's view, it should be
20 sufficient if the two Governments have in fact shown themselves as holding opposite views in regard to the meaning or scope of a judgment of the Court."[41]

The Permanent Court goes on to explain:

> "In order that a difference of opinion should become the subject of a request for an interpretation under Article 60 of the Statute, there must therefore exist a difference of opinion between the Parties as to those points in the judgment in question which have been decided with binding force. That does not imply that it must be beyond dispute that the point the meaning of which is questioned is related to a part of the judgment having binding force. A difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of the provision in question, and the Court cannot avoid the duty incumbent upon it of interpreting the judgment in so far as necessary, in order to adjudicate upon such a difference of opinion."[42]

As we will see, the documentation clearly shows that such a dispute continues to exist.

C. Thailand's unilateral interpretation of the Judgment and Cambodia's reaction

1. Events from 1962 to 1970

2.26. In its Written Observations, Thailand asserts that "in the aftermath of the 1962 Judgment, and clearly for a long period afterwards, Cambodia has made no complaint as to the way paragraph 2 of the *dispositif* was implemented by Thailand"[43]. According to Thailand:

> "Successful implementation of the judgment speaks for the agreement of the Parties on its meaning and scope, and therefore for the absence of any dispute that may require interpretation."[44]

In the same vein, Thailand claims:

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[41] *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 10-11.

[42] *Ibid.*, pp. 11-12.

[43] Thai Observations, p. 132, para. 4.25.

[44] *Ibid.*, p. 125, para. 4.11. Thailand claims that "it is hard to conceive that a judgment that has been implemented, especially if it has been implemented a very long time ago, should reveal all of a sudden uncertainties or contradictions" (*ibid.*, p. 133, para. 4.27).

"The subsequent consolidation of the factual situation resulting from Thailand's implementation confirms that the Parties shared a common understanding of the obligations resulting from the Judgment."[45]

21 2.27. Thailand's claims that Cambodia did not complain about Thailand's implementation of the Judgment and that the Parties had the same understanding of the obligations that the Judgment placed on Thailand are manifestly erroneous and are contradicted by numerous documents submitted by Thailand itself as annexes to its Written Observations, as well as documents submitted by Cambodia as annexes to this Response.

2.28. The Judgment was delivered on 15 June 1962. Shortly afterwards, Thailand's Deputy Prime Minister and Minister for Defence (General Kittikachorn) made an overtly bellicose declaration, already raising serious questions as to Thailand's willingness to respect the Judgment, particularly as regards the withdrawal of its troops from the area around the Temple:

"The Government ordered border police units to immediately open fire on anyone attempting to enter that area, which belongs to Thailand and has always belonged to it."[46]

2.29. A similar declaration was made by Thailand's Prime Minister, Marshal Sarit Thanarat, on 18 June 1962. His speech was reported as follows:

"I had already ordered reinforcements for the police guarding Preah Vihear. Thailand retains sovereignty over the Temple of Preah Vihear, the Prime Minister confirmed. I had also ordered that a military company be ready to respond to any violation of Thailand's sovereignty."[47]

2.30. Cambodia reacted immediately. In a declaration made the following day, Cambodia expressed its profound regret at Thailand's refusal to respect its obligation to "withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory" in accordance with the Judgment of the Court[48].

2.31. Several days later, Thailand's Prime Minister made a more conciliatory declaration, asserting that Thailand was ready to respect the Judgment, but at the same time distorting the words that the Court had actually used:

22 "If [there is a] dispute over judgment, only plaintiff has right [to] ask World Court ruling. Suppose we agree [to] give up Khao Phra Viharn Temple. *What is extent of Temple vicinity?* Court calls only for turning over Temple."[49]

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[45] *Ibid.*, p. 134, para. 4.30.

[46] *Ibid.*, Ann. 9, p. 53.

[47] Press conference given by Thailand's Prime Minister, AKP, 18 June 1962, Ann. 1.

[48] Ann. 2. See also Ann. 3, the remarks made by Prince Sihanouk on 22 June 1962, in which he observed that Cambodia had shown patience, as the Judgment could not be appealed, and that Thailand would eventually have to respect its obligations.

[49] Thai Observations, Ann. 10, p. 58; emphasis added by Cambodia.

This question, which has not been answered to this day, remains the essence of the dispute between the Parties and the essential issue at the heart of the Request for interpretation in Cambodia's Application.

2.32. On 6 July 1962, Thailand sent a letter to the acting Secretary-General of the United Nations in which it stated that, despite disagreeing with the Court's decision, Thailand intended to respect its obligations in accordance with Article 94 of the Charter of the United Nations. However, at the same time, Thailand protested against the decision and reserved the right to recover the Temple in the future by means of recourse to all existing legal processes and any others that might be established subsequently[50]. Thailand then continued to assert that it rejected the Judgment of the Court and had handed over sovereignty over the Temple solely on account of its obligation resulting from Article 94 of the Charter, and not on the basis of what the Court had decided[51]. However, that meant that there was still no answer to the question of the area in the vicinity of the Temple in Cambodian territory from which Thailand was obliged to withdraw.

2.33. At this point, it is worth noting that the various documents produced by Thailand in these proceedings show that it has sought from the outset to establish its own truth, both in its relations with the rest of the world — including the Special Representative of the Secretary-General of the United Nations — and by maintaining a distinction between respect for its obligations resulting from Article 94 of the Charter of the United Nations (which it ultimately felt compelled to abide by) and the implementation of the Judgment of the Court (which it refused to do). This in itself casts doubt, at the very least, on Thailand's central argument in this case — that it complied with the Judgment. However, out of sheer sophism, Thailand should now explain why, to this day, it regards the Judgment as a series of instructions, the interpretation of which should be confined to a very limited sphere, rather than seeking, in good faith, to interpret that Judgment as it stands, in order to arrive at an understanding of the scope and meaning of what the Court explicitly and implicitly decided.

23 2.34. The fact that Thailand sought unilaterally to determine the "vicinity" of the Temple which was to be handed over to Cambodia was confirmed by Thailand's Deputy Prime Minister on 12 July 1962, when he indicated that "the marking of the vicinity of the Temple of Phra Viharn would be done by the Royal Thai Government unilaterally". The Deputy Prime Minister then added that "the Government had already decided the limit, which was 20 metres from the Temple's naga staircase towards the main road, two roads paralleling the Temple's stairs at 100 metres [and] at the back, 30 metres from the broken staircase at the steep cliff"[52]. According to Thailand's Written Observations, these actions constituted "measures necessary to comply with the Judgment"[53]. It is clear that this unilateral delimitation cannot have been based on the Judgment of the Court and was instead based on the decision taken by the Council of Ministers several days later.

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[50] *Ibid.*, Ann. 14, p. 79:

> "His Majesty's Government desires to make an express reservation regarding whatever rights Thailand has, or may have in future, to recover the Temple of Phra Viharn by having recourse to any existing or subsequently applicable legal process, and to register a protest against the decision of the International Court of Justice awarding the Temple of Phra Viharn to Cambodia."

[51] *Ibid.*, Ann. 71, p. 425.

[52] *Ibid.*, Ann. 17, p. 91.

[53] *Ibid.*, p. 135, para. 4.31.

2.35. Thailand's interpretation of the meaning of the word "vicinity" is reflected in the map that follows. The United States embassy in Bangkok reported the following in a telegram dated 16 July 1962:

> "Thais reportedly used barbed wire [to] mark off approximately 166 rais (one rai equals 1,600 square metres) land surrounding Cambodia in compliance with ICJ decision."[54]

2.36. The line on the map resulting from the Resolution of the Council of Ministers of 10 July 1962 cannot be reconciled with the Judgment of the Court and hardly represents an appropriate "legal process" for the recovery of areas situated in Cambodian territory according to the Judgment of the Court. The second map which follows this page is taken from Thailand's Counter-Memorial in the main case. This map was prepared by the Thai expert in order to show the path of the line on the Annex I map in the Temple area at a scale of 1:50,000[55]. As we will see when we compare this map with the map used by Thailand's Council of Ministers, the line on the Annex I map, which, according to the Court, was accepted by Thailand, forms a "U" shape to the north, east and west of the Temple, leaving the areas to the south of that line in Cambodian territory.

2.37. By contrast, the map used for the Resolution of the Council of Ministers does not show the line on the Annex I map. The pink lines to the east and west of the Temple are firmly in Cambodian territory when this is compared with the line on the Annex I map. In fact, the pink lines drawn by Thailand end in the south and east at points which, according to Thailand's arguments in the main case, were situated on the watershed line. However, that supposed watershed line was not judged to be relevant on account of Thailand's acceptance of the line on the Annex I map, as is clearly stated in the Judgment of the Court[56].

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2.38. As Cambodia has indicated, the Thai police were authorized to respond immediately in the event that anyone failed to observe the line that it had unilaterally defined. A telegram sent to Washington by the United States embassy in Phnom Penh on 16 July 1962 summarized the contents of an article that appeared in the Cambodian publication "Réalités". It stated that Thailand had "accepted" the Judgment reluctantly and that Thailand could be expected to respond to any violation of the line that it had conceived. By contrast, it indicated that Cambodia had not concentrated its troops in the vicinity of the Temple, instead sending only a few guards[57].

2.39. On 14 August 1962, Prince Norodom Sihanouk issued a press statement in which he made reference to armed incidents provoked by Thailand close to the Temple and objected to Thailand's unilateral decision to construct a barbed wire fence in Cambodian territory:

> "Having indicated those reasons, I will state once again that the Thai aggressors currently remain on our land. And what is more, although the soldiers stationed at Preah Vihear have been withdrawn, the foot of the hill is surrounded by barbed wire

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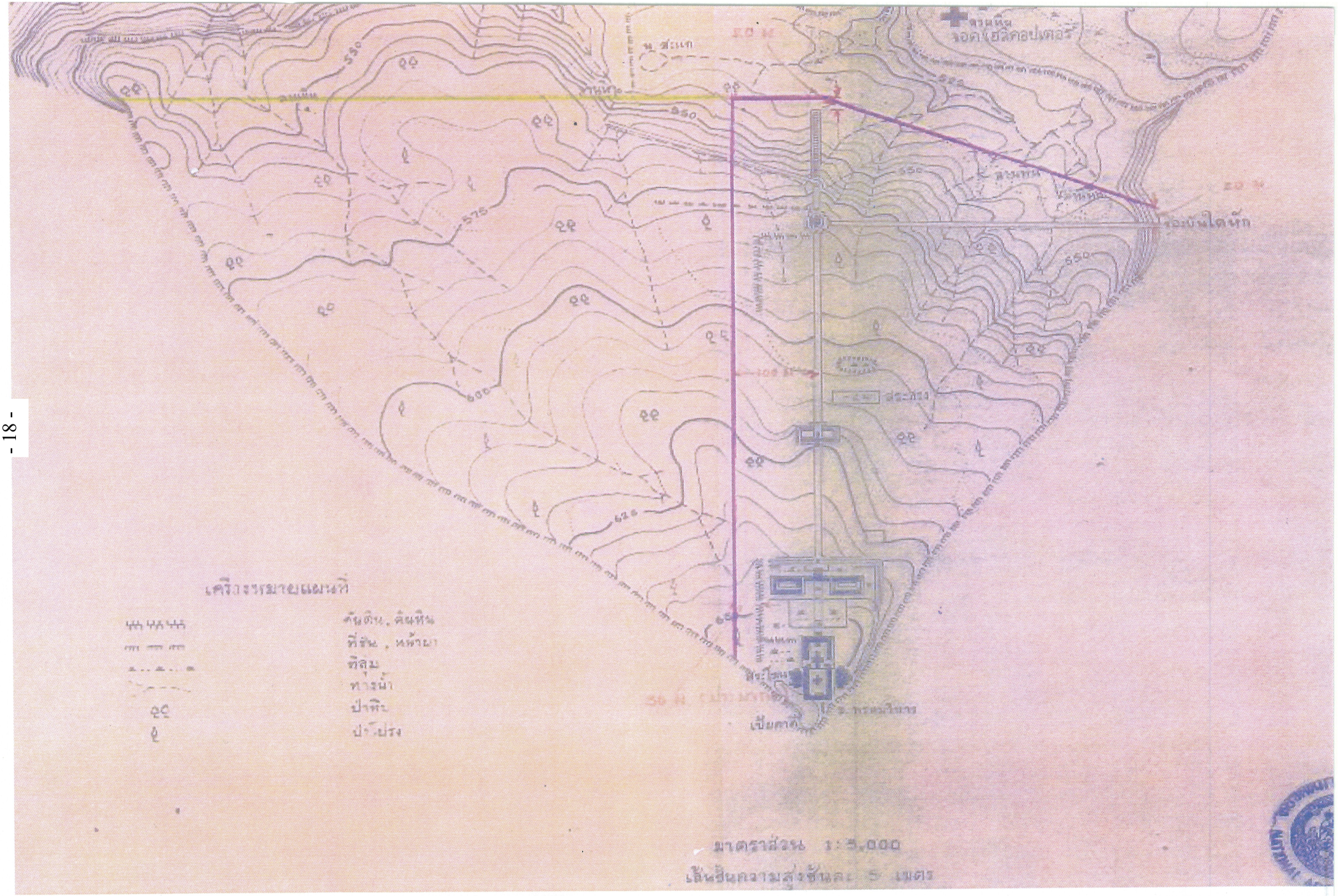
[54] *Ibid.*, Ann. 19, p. 99.

[55] It should be noted that the Ann. I map had a scale of 1:200,000.

[56] *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 33. In its Observations (pp. 200-201), Thailand has again produced, in this regard, a truncated quotation taken from the Judgment. Cambodia highlighted that fact in its Application for interpretation, but Thailand has nevertheless repeated that omission.

[57] Thai Observations, Ann. 20, p. 103.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จอดเฮลิคอปเตอร์
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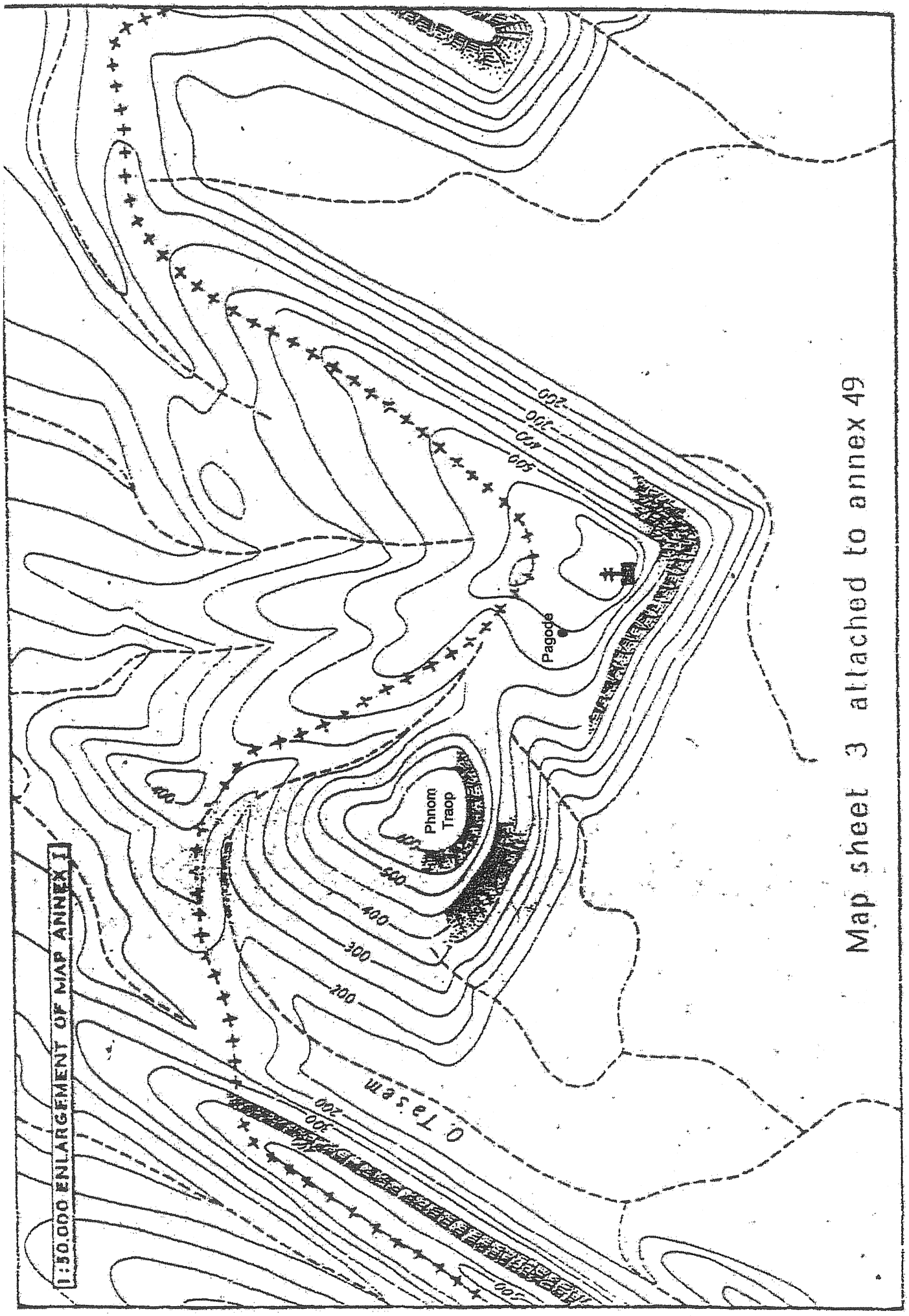
1:50.000 ENLARGEMENT OF MAP ANNEX 1
Phnom Traop
Pagoda
Map sheet 3 attached to annex 49

> and Thailand's Minister for the Interior has ordered his police forces to fire on anyone approaching that barbed wire. It is clear, therefore, that they have not given up on their objectives as regards Preah Vihear."[58]

2.40. That was the first in a long series of Cambodian complaints concerning Thailand's unilateral interpretation of the scope of the Judgment. Contrary to Thailand's assertions in its Written Observations, that declaration cannot be regarded as recognition by Cambodia of Thailand's implementation of the Judgment.

2.41. A significant illustration of the manner in which Thailand views the facts of the case can be seen from its assertion that Cambodia's Minister for Foreign Affairs accepted, in a speech to the General Assembly of the United Nations on 27 September 1962, that Thailand had "complied with the Court's decision"[59]. In fact, the meaning of that brief extract from the declaration by the Minister for Foreign Affairs, which has been taken out of context, is somewhat different from the way that Thailand would like it to be understood. This was a declaration made during a "general debate" by the General Assembly, which, as any informed observer knows, takes the form of a quick overview of world events. The text shows that the Minister for Foreign Affairs alluded primarily to Thailand's rejection of the Judgment of the Court, and then its reluctance and partial acceptance, but not to the question of the implementation of the Judgment on the ground. At that time, Thailand had indeed withdrawn from the Temple itself, thereby complying with some of its obligations resulting from the Judgment. However, Thailand had not withdrawn from the "vicinity" of the Temple as required under the second paragraph of the *dispositif*, so Thailand did not observe the line on the Annex I map in the Temple area. The paragraph following that cited by Thailand shows that Prince Sihanouk still had no plans to visit the Temple and Cambodia was still wondering whether Thailand would allow him to do so without interference.

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2.42. These persisting uncertainties can be seen in the report by Mr. Nils Gussing, who had been appointed the personal representative of the Secretary-General of the United Nations with a view to gathering information on the problems between Cambodia and Thailand[60]. Mr. Gussing produced his first report on those issues on 25 November 1962[61]. Thailand maintains that Mr. Gussing had observed that issues of delimitation and demarcation were bound to arise in the Dangrek region, "since the Judgment had not provided for them"[62]. However, Thailand's Observations do not mention the fact that Mr. Gussing also made reference to Cambodia's disagreement with Thailand's unilateral interpretation of the Judgment of the Court and the laying of barbed wire on the ground:

> "In Cambodia, the Preah Vihear Temple plays an extremely important role in the attitude shown towards the other Government concerned: although the case has been 'won', the Thais are criticized as being 'bad losers' and as not having accepted their defeat graciously, *and the allegation is made that a part of the territory which, under the ruling of the International Court of Justice, should, in the Cambodian view,*

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[58] *Ibid.*, Ann. 26, p. 130.

[59] Thai Observations, p. 141, para. 4.37, and p. 246, para. 5.67; see also Ann. 28, p. 145.

[60] *Ibid.*, pp. 142-143, para. 4.39; see also Ann. 30.

[61] *Ibid.*, Ann. 32, pp. 173-188.

[62] *Ibid.*, p. 144, para. 4.40.

> *be under Cambodian sovereignty, is now fenced off by barbed wire, with land mines placed here and there*, fears being expressed that a major incident may break out when Prince Sihanouk undertakes a visit to the Temple towards mid-December of this year."[63]

26 2.43. It is clear, therefore, that as of November 1962, the Member States of the United Nations had been informed of Cambodia's fundamental disagreement with the position adopted by Thailand in the area in which the Judgment was to be implemented. Thailand's Written Observations do not explain how this can be reconciled with Thailand's assertion that the Parties are not in dispute regarding the meaning and scope of the Judgment.

2.44. The French Government, among others, was manifestly aware of Cambodia's rejection of the Thai position. This can clearly be seen from a report by the French embassy in Bangkok dated 26 November 1962:

> "However, Mr. GUSSING is not without concern on this point, since Prince SIHANOUK told him that, although the Thais had indeed evacuated the Temple, they continued to occupy an area that, according to the map in Annex III *(sic)*, was in Cambodian territory. Consequently, he feared that this could result in a fresh dispute between the two countries and that the Prince's upcoming visit to the Temple could trigger it. This apprehension seems, to me, to be justified, since, as I emphasized in my analysis of the Judgment of the Court in The Hague in telegram no. 495/AS of 4 October 1962 to the Department, the ruling contains a number of imprecisions which could cause the debate to start up again."[64]

2.45. Cambodia's rejection of Thailand's unilateral action was also referred to in an aide-memoire published in November 1962 by the Cambodian Ministry of Foreign Affairs on relations between Cambodia and Thailand. The relevant passage reads as follows:

> "On July 15, 1962, General [Praphat] Charusathien, Thai Interior Minister, went in person to Preah Vihear to delimit the temple zone with a line of barbed wire. It later appeared that this delimitation was in complete disagreement with the Court's decision, which confirmed the frontier as it appeared on the 1907 map."[65]

> "The attitude of the Thai authorities and their activities since the Court's decision of June 15, 1962, such as the refusal to comply with the decision of this high legal authority, encroachments on Cambodian territory, the laying of barbed wire along a line not in agreement with basic documents, the setting of grenade traps in Cambodian territory near the Temple, and open threats, have only served to confirm Thailand's attitude towards Cambodia, which is 'to consider that law must follow the changing facts . . . facts dictated by force'."[66]

27 2.46. One month later, Cambodia's Ministry of Information indicated that Prince Sihanouk was of the same opinion, since he too had expressed Cambodia's hope that the Parties would finally begin the process of normalizing the relations that had been broken off in 1961:

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[63] *Ibid.*, Ann. 32, p. 180; emphasis added by Cambodia.

[64] *Ibid.*, Ann. 33, p. 193.

[65] *Ibid.*, Ann. 34, p. 205 and p. 214.

[66] *Ibid.*, p. 207 and p. 214; see also Ann. 4 for the original French version.

> "After noting that the Thai authorities had not entirely complied with the Judgment of the International Court of Justice, having erected barbed wire that infringes Khmer territory, the Prince emphasized once again '*our ardent desire to normalize relations with our neighbours*'."[67]

2.47. It was in this context that Prince Sihanouk visited the Temple on 5 January 1963. Prior to that visit, there were concerns in international circles that this would provoke an incident, given that Thailand had threatened to respond to any violation of the unilateral frontier that it had established around the Temple. The United Nations mission headed by Mr. Gussing called on the Parties to show restraint during the visit by Prince Sihanouk. At the same time, Cambodia clearly stated that this was not to be regarded as acceptance of the barbed wire fence:

> "The Cambodian Government objects to 'these threatening measures, which prepare the justification for a violation deliberately provoked by the Thai authorities themselves', and calls, in particular, on the Secretary-General of the United Nations, 'reaffirming that the access route that will be used on 5 January is located entirely within Khmer territory and that respect for the frontier will extend to the network of barbed wire surrounding the Temple, which was placed there unilaterally by the Thai police and army with no regard for the frontier line imposed by the International Court of Justice'. This communiqué adds that Cambodia reserves the right to refer this issue of the violation of the Court's decision of 15 June 1962 to the United Nations."[68]

2.48. Thailand's Written Observations attach importance to the fact that Prince Sihanouk did not venture beyond the barbed wire in the course of his visit and the fact that he supposedly said, on that occasion, that he would not make an issue of that matter, "as these few metres are unimportant"[69]. Thailand also asserts that, following that visit, Cambodia ceased protesting against Thailand's implementation of the Judgment on account of the barbed wire[70].

28 2.49. These claims do not stand up to close scrutiny of the facts. Logically enough, the Prince did not venture beyond the barbed wire in order to avoid any kind of incident on the day of a major celebration in Cambodia. Moreover, Cambodia was doing everything it could to allow the United Nations mission headed by Mr. Gussing to operate as smoothly as possible, given that the aim of the mission was to reduce tensions. The international community expressed relief, noting that the visit had passed off without incident as regards the security issues in the region. However, that can in no way be regarded as Cambodia relinquishing its firmly held position that the unilateral frontier line established by Thailand in the immediate vicinity of the Temple was not in conformity with the Judgment of the Court. That position is very clear if one looks at the words used by Prince Sihanouk when he visited the Temple, a statement that Thailand chose not to include in its Observations:

> "The Thais have, after a great deal of prevarication and stalling tactics, finally evacuated PREAH VIHEAR. Unfortunately, that has not prevented them from 'making up for that loss' by means of other expansionist activities: they have, to our detriment, established a new frontier line in the immediate vicinity of PREAH VIHEAR. They

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[67] Thai Observations, Ann. 38, p. 240.

[68] *Ibid.*, Ann. 41, p. 261. A copy of the declaration, as it appeared in an AKP despatch dated 2 January 1963, is reproduced in Ann. 5. The United States embassy highlighted the fact that Cambodia also reserved its rights in respect of Thailand's "violation" of the Judgment by means of the laying of barbed wire "in defiance of the border line laid down by ICJ". Thai Observations, Ann. 43, p. 269.

[69] *Ibid.*, p. 148, para. 4.45, and Ann. 51, p. 315.

[70] *Ibid.*, p. 149, para. 4.47.

have, in particular, erected barbed wire and set up military and police posts which, in several places, encroach fairly significantly on our territory, thereby flouting the Judgment of the ICJ."[71]

2.50. The documents produced by Thailand in relation to the period after the visit show beyond doubt that Cambodia continued to protest against Thailand's actions and that the assertion in the Thai Observations that Cambodia ceased to protest is entirely without foundation. This also attests to the fact that Cambodia considered the Judgment of the Court to be clear[72].

2.51. For example, on 5 January 1965 Cambodia's Head of State, while expressing regret at the fact that Mr. Gussing's mission had come to an end, remarked that Thailand was again persisting with its refusal to recognize the frontier that had existed since the Court issued its Judgment[73].

2.52. Again as regards Cambodia's repeated objections to Thailand's unilateral interpretation of the Judgment, the Cambodian Minister for Foreign Affairs sent a letter, on 23 April 1966, to the President of the Security Council, in which he protested at both Thai aggression in Khmer territory and the barbed wire. To stress that point, that letter repeated the assertions made by Prince Sihanouk in January 1963[74].

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2.53. The Thai Observations claim that the explicit reference in 1966 to the declaration by Prince Sihanouk in 1963 was "anachronistic" and that "no real concern existed with respect to the implementation of the judgment"[75]. However, Cambodia would not have recalled its objections to the barbed wire if it thought that the issue was unimportant. On the contrary, it is clear that Cambodia continued to take the view expressed by Prince Sihanouk in 1963. Moreover, the fact that Cambodia was contemplating referring the issue to the Security Council under Article 94 of the Charter shows that Thailand's understanding of the Judgment resulted in real concern as regards its scope and unilateral implementation.

2.54. On 27 May 1966, in a subsequent letter addressed to the Secretary-General of the United Nations, Cambodia reiterated its opposition to the barbed wire laid around the Temple by Thailand[76].

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[71]Main points of the speech by Prince Sihanouk at Choam Ksan, AKP, 6 January 1963, Ann. 6; underlined as per the original. See also the AKP report of 7 January 1963, Ann. 7.

[72]Speech by the Khmer delegation to the Sixth Committee of the United Nations, AKP, 6 January 1964, Ann. 8. See also Ann. 9, an aerogramme from the American embassy in Phnom Penh indicating that Cambodia was continuing to rely on that same Ann. I map.

[73]Prince Sihanouk on "Cambodia's relationship with Thailand", 5 January 1965, Ann. 10.

[74]Ann. 11; see also the Thai Observations, Ann. 65, p. 399. An identical letter, dated 23 April 1966, had been sent to the Secretary-General of the United Nations, Ann. 12. See also Ann. 13, the French version of Thailand's Ann. 62.

[75]Thai Observations, p. 153, para. 4.54, and p. 155, para. 4.55.

[76]See Ann. 14: Letter no. 2345 from Cambodia's Permanent Representative to the Secretary-General of the United Nations, dated 27 May 1966.

2.55. In August 1966, the Secretary-General of the United Nations appointed another personal representative (Mr. Herbert de Ribbing) as mediator between the two States[77]. In the course of that mediation, Thailand's high representative refused, on various occasions, to reconsider Thailand's objections to the Judgment of the Court, insisted that the evacuation of the Temple corresponded to compliance with Article 94 of the Charter (but not compliance with the Judgment) and rejected Cambodia's protests regarding the erection of barbed wire, regarding them as Cambodia again laying claim to Thai territory. Thailand also raised the possibility of submitting an application with a view to having the Judgment revised under Article 61 of the Statute[78].

2.56. In light of the Judgment of the Court, none of these propositions was acceptable to Cambodia. There were no new facts justifying such a revision, and ultimately, after the representative of the United Nations had expressed doubts regarding the value of such proceedings, Thailand decided not to pursue this course of action.

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2.57. On 26 October 1966, the Cambodian Minister for Foreign Affairs sent a letter to Mr. de Ribbing insisting once again that: "According to the Judgment of the International Court of Justice of 15 June 1962, the Temple of Preah Vihear and its vicinity are situated in territory under the sovereignty of Cambodia."[79] This declaration was followed, on 9 November 1966, by another unequivocal message from Prince Sihanouk, in which he complained that Thailand was still refusing to abandon its claims to the Temple and the surrounding region:

> "And Thailand, for its part, refuses to stop laying claim to our Temple of Preah Vihear *and the surrounding region*."[80]

2.58. The significance of this issue was such that Mr. de Ribbing made reference to it in a note to the Secretary-General on 13 December 1966, in which he gave an account of his meeting with the Cambodian Prime Minister on 30 August 1966, where the issue of the barbed wire was again raised.

> "The Prince mentioned in this connection that the barbed wire fence that the Thais had put up on its side of the Temple was not even halfway between the Temple and the border line fixed by the International Court of Justice in its decision regarding Phra Viharn. Cambodia could, if it wanted, take this question to the Security Council and request the Thais to withdraw to the borderline. The Cambodian Government had preferred, however, to abide until further, in order not to have on hand still more trouble with Thailand."[81]

2.59. By contrast, the Thai positions as communicated to Mr. de Ribbing consisted of assertions that the Court had not ruled on the frontier in the vicinity of the Temple and that Thailand had complied with the Judgment — a Judgment which Thailand, as represented by its

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[77]Thai Observations, Ann. 70.

[78]Ann. 15: *Pro memoria* dated 10 October 1966.

[79]Ann. 16.

[80]Ann. 17, p. 796; emphasis added by Cambodia. Message from Prince Sihanouk dated 9 November 1966.

[81]Thai Observations, Ann. 72, p. 436.

Minister for Foreign Affairs, was persistently refusing to accept. When he reported Cambodia's protests against the barbed wire, Mr. de Ribbing provoked the ire of Thailand's Minister for Foreign Affairs, who responded vigorously that Cambodia wanted "another piece of our land"[82]. At no point, however, did Thailand explain the basis on which it had unilaterally decided to erect that barbed wire or explain how that position could be reconciled with the *dispositif* of the Judgment or the essential grounds on which that *dispositif* was based.

31 2.60. Consequently, it is clear that, until 1966, Cambodia never stopped protesting against Thailand's interpretation of the meaning and scope of its obligations resulting from the Judgment of the Court and that the Parties were in dispute on that matter.

2.61. The Thai Observations appear to take the view that the claims made by Cambodia in 1966 were isolated and of no real significance. According to Thailand, "Mr. de Ribbing's reports show that the barbed-wire fence was not a real issue in the relations between the Parties, and it was never mentioned again"[83].

2.62. This allegation is false for two reasons. Firstly, as can clearly be seen from the documents cited above, Cambodia attributed very considerable significance to Thailand's unilateral demarcation of the region around the Temple. And secondly, Cambodia continued to protest against the barbed wire fence, even after the end of Mr. de Ribbing's mission, insisting on respect for the frontier lines contained in the Franco-Thai agreements of 1904, 1907 and 1946, as well as the Judgment of the Court[84].

2.63. On 22 October 1967, during a press conference, Cambodia's Head of State explicitly referred to the barbed wire, as well as Thailand's inability to respect the Judgment of the Court as regards the region around the Temple located in Cambodian territory:

> "Aside from the fact that the International Court of Justice in The Hague has already issued a ruling and there is no going back on decisions made with the force of *res judicata*, the country's territorial integrity should not be brought into question. All around Preah Vihear, the Thais have, by laying barbed wire around it, kept the strip of land that runs between the base of the Temple and the frontier, which lies a few metres away as intended by the treaties reaffirmed by the decision of the International Court of Justice. There is no question of their being accorded any further advantages in the interests of being kind and facilitating the re-establishment of relations with them.

[82] *Ibid.*, p. 442.

[83] Thai Observations, p. 156, para. 4.56.

[84] Ann. 18: Memorandum on the actual situation with regard to the negotiations of the UN Mission to Cambodia and Thailand, 2 March 1967.

> On the contrary, the Thais must return to us the land situated between the ruins of Preah Vihear and the frontier line."[85]

32 2.64. The documents just cited show clearly that Thailand's argument that the Parties are not in dispute as to the meaning and scope of the Judgment is not tenable. On numerous occasions, Cambodia has clearly expressed its disagreement not only with Thailand's interpretation of the meaning to be attributed to the Judgment, but also with the erection of the barbed wire, which takes away a part of Cambodian territory, that area lying in the vicinity of the Temple as defined by the Annex I map.

2. Events between 1970 and 2007

2.65. The Thai Observations indicate that in 1970 "the situation in Cambodia had become increasingly difficult because of fighting between internal factions and Viet Cong into Cambodian territory, in particular in the Dangrek Mountains and the Phra Viharn area"[86]. The internal situation in Cambodia, as well as the very significant tensions experienced in the region in general on account of the cold war, meant that issues relating to the Temple were of only secondary importance.

2.66. Following the signing of the Peace Agreements on 23 October 1991, the area in question remained under the control of the Cambodian faction of the Khmer Rouge, which refused to implement those agreements, until peace was restored in 1998[87]. There is no evidence — prior to 2007, at least — that Thailand subsequently sought to impose its unilateral demarcation of the vicinity of the Temple as provided for by the Resolution of the Council of Ministers of 10 July 1962.

2.67. In 1998, Cambodia constructed a market in front of the historic staircase and a pagoda (the Keo Sikha Kiri Svara Pagoda) to the west of the vicinity of the Temple, while maintaining a presence in the area around Phnom Trap hill[88]. The position of the pagoda can be seen on the map opposite. Despite the fact that this site is situated to the west of Thailand's unilateral frontier line, as decided by the Council of Ministers in July 1962, Thailand did not protest. It should be pointed out that the market, the pagoda and Phnom Trap hill are all located firmly in Cambodian territory according to the Annex I map.

33 2.68. Since Thailand was no longer asserting its claims to the frontier around the Temple that it had unilaterally delimited in 1962, the Parties agreed to establish a Joint Commission in order to

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[85]Press conference of 22 October 1967, "The words of Samdech Preah Norodom Sihanouk", edited by the Minister for Information, 1967, Ann. 19. See also Anns. 20, 21 and 22, in which Cambodia's concerns are expressed regarding Thailand's attitude. See also the address given by Prince Sihanouk at Russey, near Preah Vihear, on 21 February 1968, "The words of Samdech Preah Norodom Sihanouk", edited by the Minister for Information, 1968, Ann. 23:

> "Since then, the Thais have tried, by a whole range of means, to retake that sanctuary. They have, since 1962, revealed their bad faith by failing fully to implement the decision of the International Court of Justice. That decision ordered that the Temple and the strip of land around it be returned to Cambodia. And yet, the Thais have refused to surrender that land, laying barbed wire around the edge of the Temple."

[86]Thai Observations, p. 157, para. 4.58. See also Ann. 82, p. 489, and Ann. 84, p. 499.

[87]*Ibid.*, Ann. 87, p. 511.

[88]Ann. 24.

demarcate their land frontiers. At the first meeting of the Joint Commission, which took place from 30 June to 2 July 1999, various recommendations were discussed, as well as a draft "Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on the Survey and Demarcation of Land Boundary".

2.69. The minutes of that meeting show that the Parties were in agreement on the fact that the frontier had already been delimited. Thailand confirmed "that it had no intention whatsoever of changing the existing boundary between Thailand and Cambodia"[89]. For its part, Cambodia declared that the frontier had been delimited by the Agreement between France and Siam signed in 1904 and the Franco-Thai Treaty of 1907, which include maps to a scale of 1:200,000. The two Parties also pledged not to violate the existing frontier in any way.

2.70. On 14 June 2000, the Parties concluded a "Memorandum of Understanding on the Survey and Demarcation of Land Boundary"[90]. As its title and contents clearly indicate, the MoU was not concerned with questions of delimitation: it provided for the conduct of land surveys and for the demarcation of the land frontier between the two States, with this technical exercise to be carried out in a more in-depth manner by a Joint Technical Subcommission tasked, in particular, with locating the 73 markers set out by the Franco-Siamese Joint Commission in 1908-1909 and 1919-1920.

2.71. The Thai Observations claim that the "talisman" of Cambodia's Application for interpretation is the fact that "a precise tracing of the boundary belongs to the *res judicata* of the 1962 Judgment"[91]. It is also significant, according to Thailand, that the MoU makes no reference to the 1962 Judgment, which, Thailand claims, it would have had to do if the frontier in the Temple area had already been delimited[92]. In the light of these claims, Thailand even goes so far as to assert that Cambodia is, in reality, seeking an interpretation of the MoU, not an interpretation of the 1962 Judgment[93].

34 2.72. These claims are wide of the mark. The MoU concerns issues that were not intended to be resolved by the Court when it rendered its Judgment, and the MoU is of no relevance as regards Cambodia's Request for interpretation. There was no question of the Court being responsible for studying and demarcating the "precise path" of the frontier in the original case. There is no reason why this should be any different in the present proceedings. The issue of the meaning and scope of the reference, in the first paragraph of the *dispositif*, to the Temple being in Cambodian territory and the obligation, under the second paragraph, for Thailand to withdraw from the vicinity of the Temple must be analysed in the light of what the Court said in its Judgment regarding the line on the Annex I map, not in relation to any issues of demarcation.

2.73. Article I of the MoU provides that the demarcation of the land frontier will be conducted jointly on the basis of certain instruments. These are the same instruments and maps

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[89]Ann. 25: Agreed minutes of the "Thai-Cambodian Joint Commission on Demarcation for Land Boundary", Bangkok, 30 June to 2 July 1999.

[90]Thai Observations, Ann. 91, p. 545.

[91]*Ibid.*, p. 226, para. 5.41.

[92]*Ibid.*, p. 228, paras. 5.43 and 5.44.

[93]*Ibid.*, p. 229, para. 5.45.

(including the Annex I map) that the Court had used in its 1962 Judgment. Those same instruments were referred to once again in the Terms of Reference agreed by the Parties in 2003 in order to implement the MoU[94]. Consequently, it was pointless to refer to the Judgment of the Court in the MoU.

2.74. Cambodia is in no way seeking any revision of the MoU. The reality of the situation is that the MoU did not exist in 1962. It concerns an issue different from that decided by the Court in 1962 and is of no relevance as regards the questions of interpretation that the Court has now been asked to rule on.

2.75. The most important thing to note as regards that period is the fact that not only did Cambodia construct a market and a pagoda in the vicinity of the Temple without any protests by Thailand in the ten years that followed their construction, but Cambodians were living in that area and visiting the pagoda without Thailand complaining at all.

2.76. It was not until late 2004 that Thailand began to show some signs of concern regarding these activities. On 25 November 2004, Thailand sent Cambodia a note stating that, following a visit to the vicinity of the Temple, it had noted that the Cambodian community was growing at an alarming rate[95]. The note indicated that the Cambodian community had grown from approximately 90 families (365 inhabitants) in March 2004 to 165 families (733 inhabitants) in November, and
35 that numerous houses, huts, shelters and kiosks had been constructed "all over the area from the footstep of the Temple to its top *and in its vicinity*"[96]. It should be emphasized that these activities were fully in line with the Court's 1962 Judgment, given that they took place in the Temple and in its vicinity in Cambodia's sovereign territory to the south of the line on the Annex I map.

2.77. The Thai note clearly shows not only that Thailand was aware of the existence of this community as of the beginning of March 2004, but also that it failed to protest against any encroachment on its territory. Likewise, the concerns expressed by Thailand in November related to the pace of expansion and the environmental consequences that this new community could have, and certainly not to the infringement of the unilateral boundary around the Temple that Thailand had declared in 1962 — an issue that is not mentioned in the note. The note reads:

> "Such expansion, with permanent structures, not only affects the natural environment of the frontier zone but also creates plenty of problems ranging from unpleasant landscapes and scenery to inappropriate management of waste disposal and wastewater. Moreover, the Thai communities living on lower grounds are suffering from polluted wastewater draining from the said area."[97]

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[94]Ann. 26: Terms of Reference and Master Plan for Joint Survey and Demarcation of Land Boundary between the Kingdom of Cambodia and the Kingdom of Thailand.

[95]Thai Observations, Ann. 93, p. 579.

[96]*Ibid.*; emphasis added by Cambodia.

[97]*Ibid.*

2.78. The note also states that these activities were considered by Thailand to be contrary to Article V of the MoU of 2004 *(sic)* — an Article providing that the Parties may not implement any measures capable of giving rise to environmental changes in the frontier area[98].

2.79. It should be pointed out that Thailand regarded all of these activities as taking place in the vicinity of the Temple. This was the same word that the Court had used in the second paragraph of the *dispositif* of the 1962 Judgment. Whereas the Thai Observations seek to reduce the geographical scope of the term "vicinity" by making reference to various definitions found in dictionaries[99] — to which Thailand adds its own gloss — Thailand has in fact regarded the vicinity of the Temple as encompassing the entire area around the Temple where Cambodians were living and working. Cambodia's Application for interpretation concerns that area.

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2.80. Thailand sent Cambodia an identical letter on 8 March 2005[100]. Again, that letter protested exclusively about the environmental impact on the area around the Temple of Preah Vihear, not about any violation of the Thai Resolution of 1962.

2.81. So, up to 2006, Thailand no longer protested about violations of the area around the Temple that it had delimited in 1962, while Cambodians had established themselves, without incident, in the vicinity of the Temple on the Cambodian side of the line on the Annex I map. While the Parties still had to work together to demarcate the land frontier, the vicinity of the Temple was not the source of any serious incidents. Unfortunately, that situation did not last.

3. Resurgence of the dispute in 2007

2.82. The dispute resumed in 2007, when Thailand opposed Cambodia's request, made on the basis of a Cambodian royal decree dated 19 April 2006, that UNESCO's World Heritage Committee place the Temple of Preah Vihear on the World Heritage List.

2.83. Thailand's attitude regarding Cambodia's application to UNESCO should be seen in the light of the internal political situation in Thailand at that time. Indeed, Thailand had initially supported Cambodia's application. Thaksin Shinawatra, Prime Minister of Thailand from 2001 to 2006, was in favour of a policy of détente towards Cambodia. Support for the Temple's inclusion on the World Heritage List was, therefore, in line with the foreign policy of the Thai Government.

2.84. However, on 19 September 2006, one month before a general election in Thailand, a coup d'état was staged against Thaksin Shinawatra. Following that coup d'état, the general election was cancelled and the Thai army took control of the country. The military remained in power until the end of 2007.

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[98]Thai Observations, Ann. 93, p. 579.

[99]See, for example, the Thai Observations, pp. 98-99, paras. 3.39-3.43, and Anns. 103 and 104.

[100]*Ibid.*, Ann. 94, p. 589.

37 2.85. On 17 May 2007, during that period under military rule, Thailand sent Cambodia an aide-memoire concerning its application to have UNESCO place the Temple of Preah Vihear on the World Heritage List[101].

2.86. In its aide-memoire, Thailand challenged the map of the area that Cambodia had prepared for its application to the World Heritage Committee with a view to having the Temple protected. Thailand also produced, for the first time, a new map (Series L7017) to a scale of 1:50,000 purporting to show a frontier line around the Temple and its vicinity. A copy of the map in question can be found on the following page. As regards the frontier line appearing on the map, Thailand declared:

> "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."

2.87. The new Thai map entirely contradicted the previous agreements concluded by technical experts from Cambodia and Thailand, who had worked on issues of demarcation in accordance with the MoU of 2000. On numerous occasions, representatives of the Parties had — as evidenced by agreed minutes — agreed on the maps that were to be used for the purposes of demarcation. Thus, the minutes of 29-30 September 2003 specifically referred to maps prepared by US agencies with series Nos. L708, L7011 and L7016[102]. No mention was made of Series L7017, on which the new Thai map was based. Identical agreements were concluded at the technical level at meetings held in February 2004[103] and July 2004[104], as well as in technical instructions for the location of various markers on the frontier.

2.88. What is more, it transpires that not only did Thailand use a map (Series L7017) that had not been agreed, it also unilaterally drew a frontier line around the Temple that did not appear on the original American map. The frontier line on the map was not based on the Annex I map described in the 1962 Judgment and in no way reflected the vicinity of the Temple as it results therefrom. It also showed a new and more extreme position as regards the watershed line (demonstrating, moreover, the fluctuating nature of the Thai position), which the Court had not
38 considered relevant in its Judgment, and Thailand sought to link that new watershed line with the line established in 1962 by the Resolution of the Council of Ministers. Once again, this shows Thailand's unilateral interpretation of the manner in which the Judgment of the Court should be interpreted as regards the area around the Temple, and that despite the fact that Thailand had not raised this issue for several decades.

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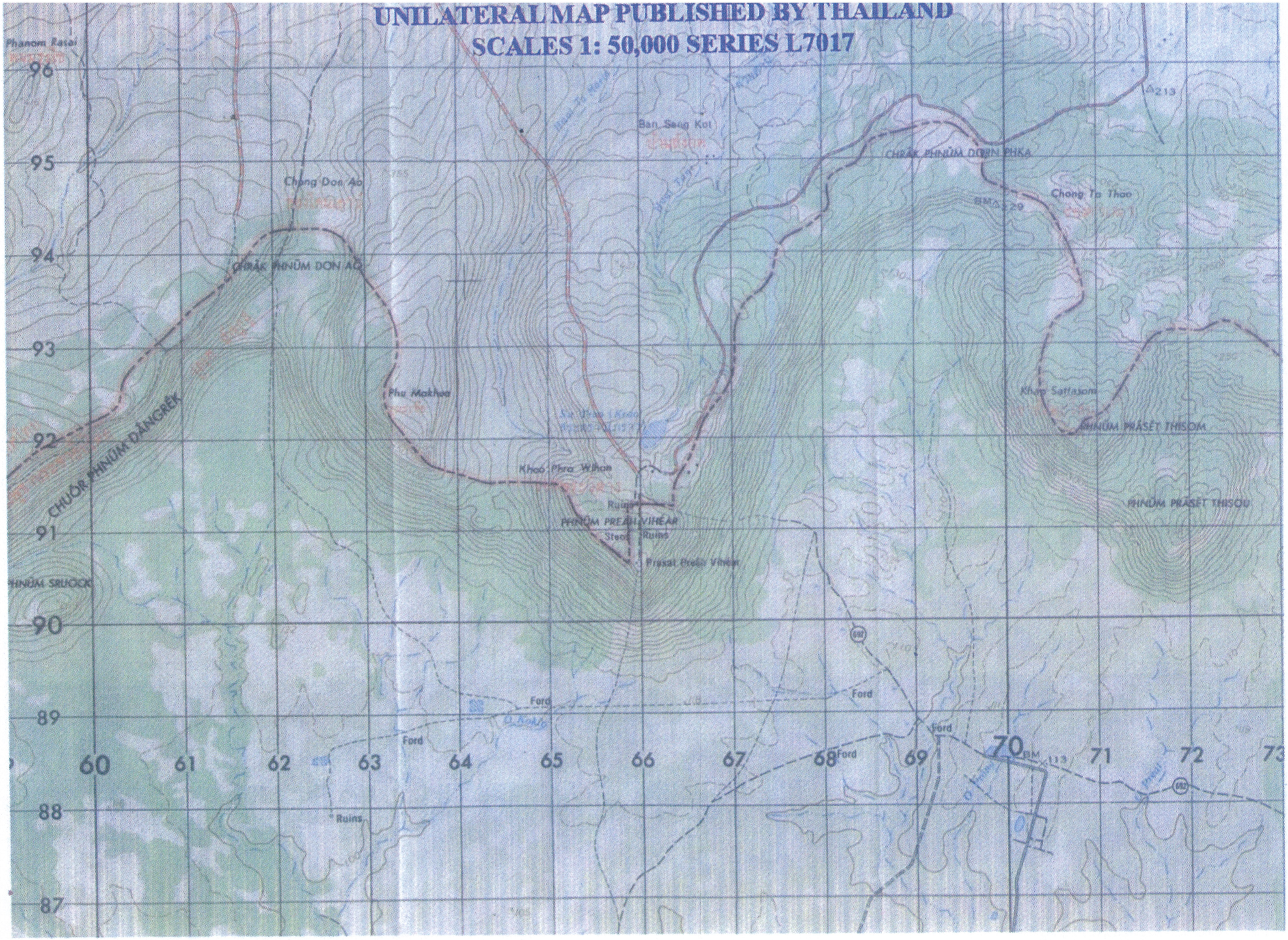
[101] Thailand did not submit a copy of that aide-memoire with its Written Observations. However, a copy can be found in Ann. 27 to this Response.

[102] Ann. 28: Agreed minutes of the first discussion of Cambodian and Thai technical officers, Phnom Penh, 29-30 September 2003.

[103] Ann. 29.

[104] Ann. 30.


UNILATERAL MAP PUBLISHED BY THAILAND
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Chong Ta Thao
Khao Sattasom
PHNÚM PRÁSET THISOM
Khao Phra Wihan
Ruins
PHNÚM PRÉAH VIHEAR
Stone Ruins
Prasat Preah Vihear
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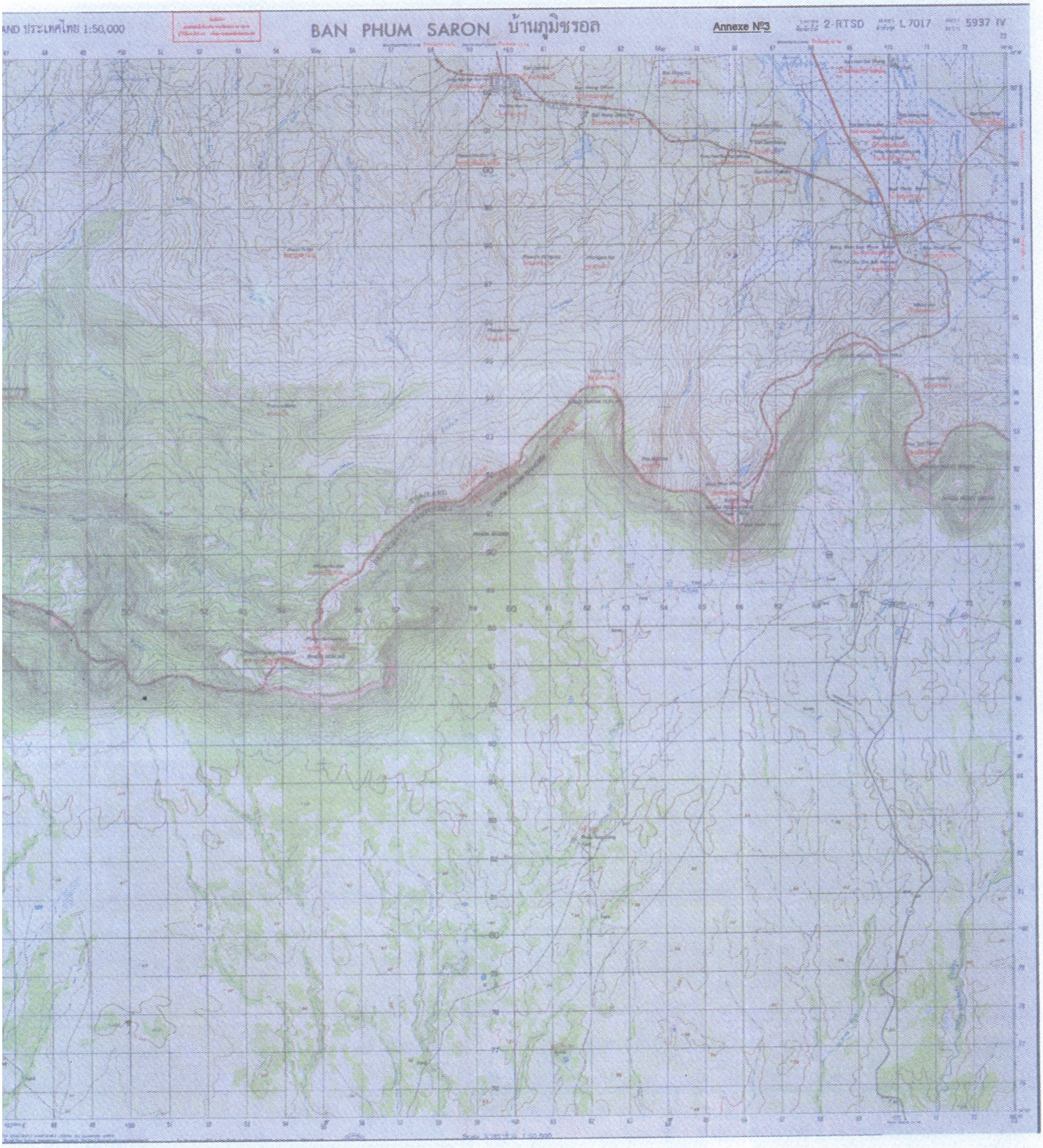
BAN PHUM SARON บ้านภูมิชรอก
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2.89. Despite this unfortunate development, Thailand's position regarding Cambodia's application to UNESCO was to change again in 2008 following the election of Prime Minister Sundaravej, who was a political ally of Thaksin Shinawatra and wanted to pursue the same policy as his predecessor as regards Cambodia. Consequently, on 18 June 2008 Thailand's Minister for Foreign Affairs signed a joint communiqué with Cambodia in Paris expressing Thailand's renewed support for Cambodia's application to have the Temple placed on UNESCO's World Heritage List, while at the same time reserving the rights of the Parties as regards the demarcation of the land frontier by the Joint Commission[105].

2.90. On 7 July 2008, the World Heritage Committee formally decided to place the Temple of Preah Vihear on UNESCO's World Heritage List[106].

2.91. The placing of the Temple on UNESCO's World Heritage List triggered a resurgence in the nationalist movement in Thailand. Shortly before the World Heritage Committee made its decision, an administrative court in Thailand issued an injunction suspending the effects of the above-mentioned joint communiqué. This is referred to in paragraph 5 of the World Heritage Committee's decision.

2.92. On the day of the adoption of UNESCO's decision, Thailand's Constitutional Court declared that the Minister for Foreign Affairs had violated the Constitution by signing the communiqué supporting Cambodia's application to UNESCO[107]. It was clear, therefore, that Thailand would adopt a firmer position on the issue of the Temple and its vicinity.

39 2.93. In these circumstances, Cambodia had no option but to show its firm opposition to the new Thai map by means of a letter sent to the President of the General Assembly on 19 July 2008[108]. That letter criticized Thai soldiers' incursion into Cambodian territory — notably the site of the Keo Sikha Kiri Svara Pagoda, which is situated some 300 metres from the Temple — on 15 July 2008. Cambodia's letter also criticized the new Thai map in that it was manifestly incompatible with the Annex I map used by the Court in its 1962 Judgment and challenged Thailand's claim that the Cambodian pagoda had been constructed in Thai territory.

2.94. In its Observations, Thailand asserts that Cambodia pretended not to have been aware of Thailand's interpretation of the Judgment prior to the publication of the new Thai map in 2007. Thailand states: "As far as the Temple is concerned, the map only illustrates the placement of the 1962 barbed-wire fence. From the beginning, Cambodia knew precisely where the barbed-wire fence was located."[109] Thailand also adds that "for more than forty years, Cambodia did not dispute Thailand's implementation of the 1962 Judgment"[110].

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[105] Ann. 31: Joint communiqué of 18 June 2008.

[106] Ann. 32.

[107] Ann. 33. An English translation of the decision of Thailand's Constitutional Court can be found here: http://eajlg.org/sites/default/files/EAJLG%20Second%20Issue%20Constitutional%20Court%20Ruling_0.pdf.

[108] Ann. 34. A letter using the same language had been sent to the President of the Security Council on 18 July 2008 (Ann. 35).

[109] Thai Observations, p. 162, para. 4.67.

[110] *Ibid.*, p. 163, para. 4.69.

2.95. As explained earlier in the chapter, Cambodia was indeed aware of the existence of the barbed wire during the 1960s. Contrary to the Thai claim, Cambodia protested on numerous occasions against that barbed wire and against Thailand's interpretation of the Judgment of the Court. That is clear from the documentation submitted in this case. Thailand also glosses over the fact that, for a number of years, it made no reference to the barbed wire or the Resolution of the Thai Council of Ministers of 10 July 1962. It was not until 2004 and 2005 that Thailand began to complain about Cambodia's increasing presence in the Temple area. However, Thai criticism at that time related exclusively to the environmental consequences of such activities; Thailand did not protest that such activities were inconsistent with the Resolution of the Council of Ministers or the barbed wire.

2.96. By producing a new map in 2007 which shows a frontier around the Temple based on the line established by the Council of Ministers in 1962, and by repudiating the joint communiqué signed on 28 June 2008, Thailand reawakened a dispute that had been forgotten for a number of
40 years. It is clear, however, that the re-emergence of this dispute is closely related to internal political changes affecting Thailand.

2.97. The resurgence of the dispute between the Parties regarding the meaning and scope of the 1962 Judgment became entirely evident when Thailand sent a letter to the President of the Security Council on 21 July 2008 concerning "the area adjacent to the Temple of Preah Vihear"[111]. After maintaining that the pagoda in question is situated in Thai territory, the letter states:

> "Cambodia's territorial claim in this area is based on Cambodia's unilateral understanding of the said ICJ Judgment that a boundary line was determined by the Court in this Judgment. Thailand contests this unilateral understanding since the ICJ ruled in this case that it did not have jurisdiction over the question of the land boundary and did not in any case determine the location of the boundary between Thailand and Cambodia."

2.98. As we can see, Thailand protested against what it considered to be Cambodia's "unilateral interpretation" of the Court's 1962 Judgment. Cambodia, for its part, had already protested in writing against Thailand's unilateral interpretation as contained in the Resolution of the Council of Ministers of 1962 and, more recently, the new Thai map produced in 2007. That being the case, the Parties are clearly in dispute as to the meaning and scope of the Judgment, under the terms of Article 60 of the Statute.

2.99. During the oral arguments at the provisional measures stage, the Court took note of the incidents that had occurred at the Temple and in its vicinity after 2008. Further incidents took place at the beginning of 2011. Given the situation, and since it was clear that the Parties had differing views as to the meaning and scope of the Judgment, Cambodia submitted a Request for interpretation of the Judgment, as well as a Request for the indication of provisional measures.

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[111] Ann. 36.

D. Conclusions

2.100. The conclusions in Thailand's Observations repeat the argument that Thailand has complied with the 1962 Judgment and that the Parties are not in dispute regarding the implementation of that Judgment[112]. Thailand also maintains that it has, since 1962, withdrawn from the vicinity of the Temple in accordance with the Judgment and that the Cambodian Request contradicts its own previous position[113].

41 2.101. This chapter has shown that these claims are contradicted by the facts of the case.

2.102. In July 1962, Thailand unilaterally determined the area of the vicinity of the Temple from which it was required to withdraw on the basis of a Resolution of the Thai Council of Ministers (which has not been produced, despite the fact that the map forms part of the documentation in the present proceedings). Barbed wire was laid down in order to indicate Thailand's interpretation of the Judgment on the ground. Cambodia protested against these actions on numerous occasions during the 1960s, considering that they ran counter to its interpretation of the Judgment.

2.103. This then ceased to be an issue for a number of years, initially on account of the internal problems in Cambodia, and then because Thailand stopped threatening to apply the unilateral demarcation drawn up in 1962. The Cambodians who established themselves in the vicinity of the Temple, on the Cambodian side of the line on the Annex I map, constructed a pagoda, as well as markets. Thailand itself referred to these activities as taking place in the vicinity of the Temple.

2.104. The dispute did not resurface until 2007-08, when, in reaction to Cambodia's proposal that the Temple be placed on UNESCO's World Heritage List, Thailand produced a new map which showed the area around the Temple according to its own interpretation of the 1962 Judgment. Moreover, the dispute has worsened as a result of political changes in Thailand. Cambodia protested again in 2008, and Thailand recognized that the Parties differed in terms of their understanding of what the Court had decided in 1962.

2.105. It follows that Thailand's claims that (i) the Parties are not in dispute at all regarding the interpretation of the Judgment and (ii) Cambodia has consistently accepted that Thailand correctly implemented the Judgment are manifestly erroneous. The documentation compiled by Cambodia in these proceedings leaves no room for doubt as regards the fact that the Parties are clearly in dispute in respect of the meaning and scope of the Judgment of the Court. It is that dispute which Cambodia asks the Court to rule on in this case.

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[112] Thai Observations, p. 281, para. 7.1.

[113] *Ibid.*, p. 285, para. 7.8.

CHAPTER 3

JURISDICTION AND ADMISSIBILITY: ALL OF THE CONDITIONS GOVERNING THE COURT'S ABILITY TO INTERPRET A JUDGMENT ARE MET

3.1. It is necessary to determine whether Cambodia's Request is admissible, so as to allow the Court to interpret its Judgment, as well as to ascertain whether that Request falls within the Court's jurisdiction. It is also necessary to determine which interpretation of the 1962 Judgment is correct. The first point (jurisdiction and admissibility) will be addressed in this chapter, while the second (the interpretation of the meaning and scope of the 1962 Judgment) will be addressed in Chapter 4.

3.2. It is universally accepted that there are two fundamental conditions governing the Court's ability to interpret one of its judgments:

(i) there needs to be a dispute as to the meaning and scope of a judgment by the Court;

(ii) the objective of the request must be to obtain an interpretation of the judgment[114].

A. There is a dispute as to the meaning and scope of a judgment by the Court

1. Existence of a dispute

3.3. Cambodia indicated, in paragraph 5 of the Application, three points where the two States are in disagreement regarding the meaning and/or scope of the 1962 Judgment. The existence of these disputes is then shown in paragraphs 12-17 and 24-25 of the Application. There is no doubt, in the light of the Thai Observations, that Thailand is in dispute with Cambodia regarding the three points detailed in paragraph 5 of the Application.

3.4. In its Order indicating provisional measures, the Court stated, in the following terms, its view as to the nature of the issues on which the Parties were in dispute as regards the interpretation of the 1962 Judgment:

43 "Whereas, in the light of the positions adopted by the Parties, a difference of opinion or views appears to exist between them as to the meaning or scope of the 1962 Judgment; whereas this difference appears to relate, in the first place, to the meaning and scope of the phrase 'vicinity on Cambodian territory' used in the second paragraph of the operative clause of the Judgment; whereas this difference of opinion or views appears to relate, next, to the nature of the obligation imposed on Thailand, in the second paragraph of the operative clause of the Judgment, to 'withdraw any military or police forces, or other guards or keepers', and, in particular,

[114] *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 10; *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia* v. *Peru), Judgment, I.C.J. Reports 1950*, p. 402; *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985*, p. 217, para. 44.

> to the question of whether this obligation is of a continuing or an instantaneous character; and whereas this difference of opinion or views appears to relate, finally, to the question of whether the Judgment did or did not recognize with binding force the line shown on the Annex I map as representing the frontier between the two Parties."[115]

3.5. Thailand now asserts that this assessment was merely provisional and valid solely in the specific context of the Request for the indication of provisional measures. Cambodia does not contest that fact. As the Court recognizes, that assessment stems from the positions developed by the Parties before it. When it made its Order indicating provisional measures, the Court had not yet taken note of Thailand's Written Observations, which set out in full Thailand's position as regards its interpretation of the meaning and scope of the Judgment. Moreover, Cambodia only learned of that position at the same time. In a situation characterized, thus far, by a Thai policy of *faits accomplis*, rather than constructive diplomatic exchanges, it was only very recently that Cambodia was presented with a full account of what Thailand claims the correct interpretation of the Judgment should be and, in particular, the grounds on which that Thai position is based. Cambodia now concludes, having studied the Thai Observations, that those Observations are evidence of a dispute between the Parties that is even more fundamental than that described in Cambodia's Application. To be precise, they reveal, as shown in Chapter 2, that the Parties are clearly in dispute as to the meaning of the terms of the first and second paragraphs of the *dispositif*, particularly in respect to the manner in which the terms chosen by the Court should be understood in respect of the Annex I map in the vicinity of the Temple of Preah Vihear.

3.6. These issues will be addressed in greater detail, with reference to passages in the Application and the Thai Observations, in Chapter 4, *infra*.

44 **2. The dispute concerns the meaning and scope of the 1962 Judgment**

3.7. Notwithstanding the arguments set out in the previous chapter, Thailand asserts that either there is, in reality, no dispute, or the dispute does not concern the *dispositif* of the Judgment. It advances three arguments in support of these assertions:

(i) Cambodia has accepted Thailand's implementation of the Judgment, so that there is in reality no difference of views between the two States regarding its interpretation;

(ii) there is, in any case, no dispute as to the meaning and scope of what was decided in the Judgment;

(iii) it is not possible for there to be a dispute as to the meaning or scope of something that the Court did not decide — namely the delimitation of the frontier between the two countries.

3.8. Each of these three arguments is erroneous both in fact and in law, as will be shown below.

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[115] *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), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011*, p. 8, para. 31.

3.9. In its Observations, Thailand — while denying that the Court is competent to consider the Application — asserts that the Parties are not in dispute as to the meaning and scope of the 1962 Judgment[116], given that the *dispositif* is "crystal-clear"[117]. This manifestly does not mean that Thailand accepts the interpretation of the Judgment set out by Cambodia in paragraphs 36-43 of the Application. Given the very lengthy treatment of that issue in Chapter IV of the Observations, the understanding must be that, if Thailand accepts that the two countries are in dispute, that dispute does not relate to the meaning or scope of the first or second paragraphs of the *dispositif* of the Judgment. The Court will note immediately the negative manner in which Thailand formulates that assertion, in so far as it completely ignores Cambodia's exposition, both in the Application itself[118] and in its oral arguments at the time of the Request for the indication of provisional measures[119], even though certain elements of the Court's reasoning are in fact "inseparable from"[120] the *dispositif* of a judgment, such that they can themselves be the subject of a request for interpretation. Thailand also ignores the Court's consistent assertion that a dispute concerning the question of whether a particular point has or has not been decided with binding force also constitutes a case falling within the scope of Article 60 of the Statute[121].

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3.10. Thailand ultimately focuses all of its efforts on seeking to defend the position that the purpose of the 1962 Judgment was merely to grant Cambodia sovereignty — defined in the narrowest sense — over the Temple of Preah Vihear, and the Temple alone. However, that argument is not tenable in any way. It does not stand up to a literal reading of the first paragraph of the *dispositif*, which unequivocally provides that the Temple "is situated *in territory under the sovereignty of Cambodia*" (emphasis added by Cambodia). That assertion cannot simply be dismissed as if it were a momentary aberration on the part of the Court, a momentary lapse in concentration, given that it stems from the overall scheme of the Judgment[122], as will be shown below. Thailand's obsessive attempt to transform this paragraph of the *dispositif* into an assertion restricted to the physical outline of the Temple itself indicates, at the very least, that the Parties are in direct dispute regarding this fundamental element of the *dispositif* of the Judgment, namely both the meaning and the scope of the Court's use of the phrase "in territory".

3.11. Cambodia considers that, in terms of its general scheme, the logic of the Judgment develops on the basis of the structure set out below, which contains references to specific parts of the text of the Judgment:

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[116]Thai Observations, p. 283, para. 7.5.

[117]*Ibid*., para. 4.75.

[118]Application, paras. 39-41.

[119]CR 2011/15, pp. 20-23, para. 9 (Berman).

[120]See also the reference to reasoning as an "essential step" leading to the conclusions in the operative clause. See *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Honduras for Permission to Intervene, Judgment, 4 May 2011*, p. 20, para. 54, and p. 24, para. 70.

[121]See *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), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011*, p. 8, para. 31, which rightly refers to the decision of the Permanent Court of International Justice in *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 11-12.

[122]See also the joint dissenting opinion of Judges Tanaka and Morelli:

> "The claim as it is formulated in Cambodia's Application is directed not to the return of the Temple as such, but rather to sovereignty over the portion of territory in which the Temple is situated. It is directed, further, to one of the consequences flowing from Cambodian sovereignty over the said portion of territory . . ." (*I.C.J. Reports 1962*, p. 38.)

(i) the dispute referred to the Court is a dispute concerning sovereignty (Judgment; p. 12);

(ii) in order to resolve that dispute over sovereignty, the Court is required to take account of the frontier between the two Parties in the sector in question (Judgment; pp. 14-15);

46 (iii) following an exhaustive examination of the documentation and diplomatic history relating to that frontier issue, the Court concludes that the two Parties have accepted the line on the Annex I map as the frontier line, with the result that the Parties are required to use that line in the context of their treaty settlement (Judgment; pp. 30-31);

(iv) given that the Temple is situated on the Cambodian side of that frontier line, it is therefore situated in territory under the sovereignty of Cambodia (Judgment; p. 17 and p. 34);

(v) this has a number of specific consequences — firstly, the withdrawal of troops and foreign officials from the vicinity of the Temple, and secondly, the return of objects that have been removed (Judgment; p. 35).

3.12. Thailand clearly cannot bring itself to recognize — let alone accept — this irresistible logic. There is a very simple reason for that. Firstly, it would, at a stroke, destroy the argument that the Court confined itself to attributing sovereignty over the Temple, or (at the very most) a narrow strip of territory on which it stands: "Accordingly, 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. To decide this question of *territorial sovereignty*, the Court must have regard to the frontier line between the two States in this *sector*."[123] Secondly, because the Court asserts, in wholly unambiguous terms, that the conclusion it reached as regards the status of the Temple (and the consequences of that conclusion) *stem* from the fact of having established, in law, the course of that frontier, which is accepted by the two States and binding upon them: "It is for this reason[124] that the Court can only give a decision as to the sovereignty over the Temple area after having examined what the frontier line is."[125] Finally (and above all), given the position adopted by Thailand before the Court, the Court has explicitly, and in very clear terms, ruled on the Annex I map: "The Court however considers that Thailand in 1908-1909 did accept the Annex I map as representing the outcome of the work of delimitation, 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 . . . Both Parties, by their conduct, recognized the line and thereby in effect agreed to regard it as being
47 the frontier line . . . 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."[126]

3.13. These conclusions by the Court cannot be placed to one side like an *obiter dictum* or grounds that are purely accessory to the *dispositif* of the Judgment, since they play a full part in what the Court decided in the first paragraph of the *dispositif*. It cannot be claimed that there was no link whatsoever between the Court's ruling on the status of the Temple and its explicit assertion

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[123] *I.C.J. Reports 1962*, Judgment, p. 14; emphasis added by Cambodia.

[124] Namely, the fact that the Treaty does not mention the Temple of Preah Vihear as such.

[125] *Ibid.*, pp. 16-17; emphasis added by Cambodia.

[126] *Ibid.*, pp. 32-33 (emphasis added by Cambodia). The Court based its earlier ruling on the acceptance of the Ann. I map as an essential element of the case: "The real question, therefore, which is the essential one in this case, is whether the Parties did adopt the Ann. I map, and the line indicated on it, as representing the outcome of the work of delimitation of the frontier in the region of Preah Vihear, thereby conferring on it a binding character." (*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 22.)

regarding the positioning of the frontier line in the sector in which the Temple is situated. Thus, this decision is, as Cambodia noted in its Application[127], a perfect example of reasons that are "inseparable from the operative part", as the Court held in *Nigeria* v. *Cameroon*[128]. However, there is not the slightest indication that this decision by the Court was limited to a tiny area of land solely around the Temple. Any interpretation of the 1962 Judgment that sought to assert that the Court's conclusions regarding the status of the Annex I map — as reflected in the Court's conclusions regarding Cambodian territory in the first paragraph of the *dispositif* — had no effect other than as regards the Temple itself, and consequently had no impact on the corresponding obligation to withdraw troops as set out in the second paragraph of the *dispositif*, would be entirely at odds with the Judgment's coherent approach to the Annex I map.

3.14. As Cambodia indicated in its Application, the wording of the first paragraph of the *dispositif* clearly shows that "the Court does not attribute sovereignty over the Temple to Cambodia, but recognizes that sovereignty as an automatic consequence of the fact that the Temple is situated in territory under the sovereignty of Cambodia, as determined in the reasoning of the decision on the basis of the Annex I map. In other words, the Court recognizes that there is no separate title to the Temple other than that which already exists to Cambodia's sovereign territory."[129]

3.15. It is doubtless because of Thailand's inability to escape the irresistible logic of the foregoing that it has, improbably[130], relied on the technical defects in the Annex I map, while well aware that almost all of those defects are located some distance from the Temple. This attempt to induce the Court by subterfuge to revise the 1962 Judgment will be discussed below.

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3.16. Cambodia thus maintains that the pleadings in this case show beyond any doubt: (i) that Cambodia and Thailand are in dispute as to the meaning and scope of the manner in which the Court used the phrases "in territory under the sovereignty of Cambodia" in the first paragraph of the *dispositif* of the 1962 Judgment and "its vicinity on Cambodian territory" in the second paragraph; (ii) that they are also in dispute as to the significance of that issue as regards the meaning and scope of the corresponding obligation to withdraw troops as set out in the second paragraph of the *dispositif* of the 1962 Judgment, particularly the issue of whether that obligation is of a permanent or instantaneous character; (iii) that they are also in dispute as to the question of whether the Judgment did or did not recognize with binding force the line on the Annex I map as representing the frontier between the two Parties in the region of the Temple. All of these disputes concern questions of interpretation, meaning that the Court is competent to interpret the Judgment under Article 60 of the Statute as requested by Cambodia.

3.17. As regards the first dispute, over the meaning of the terms "territory" and "vicinity", it is undeniable that the Court, having chosen to use the wording "in territory under the sovereignty of Cambodia" in the first paragraph of the *dispositif* and the wording "at the Temple, or in its vicinity on Cambodian territory" in the second paragraph of the *dispositif*, has not provided a

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[127] Application, para. 40.

[128] *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment, I.C.J. Reports 1999 (I)*, p. 35, para. 10.

[129] Application, para. 38.

[130] Thai Observations, Chap. VI.

precise definition of that wording. Thailand claims to have corrected the Judgment by providing its own very restrictive definitions, which it has developed on the basis of highly complex reasoning that has never been communicated to Cambodia before[131]. Cambodia (basing its position on the wording of the Judgment) understands the two phrases in a broader sense. This, in itself, represents a clear dispute between the two States regarding the first and second paragraphs of the *dispositif*. Thailand is seeking, moreover, to explicate the meaning and scope of the first paragraph of the *dispositif* by subjecting it to its own reading of the second paragraph of the *dispositif*, a reading that is not only impossible given the wording of the Judgment, but also directly contradicted by the Court's explicit indication that the second paragraph stems from the first, and not vice versa. That means that the two States are, clearly, also in dispute regarding the second paragraph of the *dispositif*. It also follows that they are in dispute as to the correct interpretation of the link between those two paragraphs. All of those disputes — the existence of which has now been undeniably established by the formal Observations submitted to the Court by the Parties in these proceedings — concern the interpretation of what the Court actually decided with the force of *res judicata*. Nor, finally, does Thailand contest the existence of a dispute between the Parties on the question of whether the Judgment did or did not recognize with binding force the line indicated on the Annex I map[132]. In Cambodia's view, this is also a dispute which, according to the decisions of the Court and the Permanent Court, falls within the scope of interpretation proceedings under Article 60 of the Statute.

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B. The Request is admissible

1. The Request is not time-barred, and Cambodia has never renounced its right to request an interpretation

3.18. In the great majority of the cases that are brought before the Court, the request for interpretation is submitted not long after the judgment itself. Where that does not happen, certain practices may (as in this case) be established between the parties to the dispute in the interval between the judgment and the request for interpretation. However, that in no way alters the essential judicial nature of interpretation proceedings. For similar reasons, it is not possible, either under the Statute or as a general principle, to construct on the basis of the actions — and, above all, omissions — of the applicant a purported "renunciation" of the right to request an interpretation guaranteed by Article 60 of the Statute. To derive from the Statute of the Court a concept that would make it possible for a State to renounce its rights would be to introduce a disguised time-limit on Article 60, contrary to what the Court has decided[133].

3.19. Thailand has even gone so far as to assert that "in this particular case, tardiness poses major challenges to the integrity of Article 60 procedure"[134], claiming that this renders the entire procedure "inadmissible". The precise basis for that assertion is never explained, but Cambodia infers that it stems from the following two propositions: subsequent events show that there is, in reality, no relevant dispute between the Parties, but in any case, even if there was a dispute, those subsequent events are such that Cambodia has in some way renounced or lost its rights under

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[131] *Ibid.*, pp. 95-111.

[132] *Ibid.*, p. 207.

[133] *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), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011*, p. 10, para. 37.

[134] Thai Observations, para. 4.29.

Article 60 of the Statute. The link between these two propositions remains unclear, but Cambodia maintains that these arguments are totally misconceived. The second proposition (i.e., the supposed renunciation of rights) is not only wrong in law, but also based on a misrepresentation of
50 the facts, as was shown in Chapter 2. Consequently, Thailand's entire argument has no basis whatever in law.

3.20. Once it has been acknowledged — and the Court has already so ruled in its Order indicating provisional measures — that the right to request the interpretation of a judgment is not subject to any time-limit, the Court is then tasked with determining the legal situation that existed at the time of the judgment itself. The Court is not tasked, in the context of a request for interpretation, with ruling on the actions of the parties subsequent to the judgment, other than for the purpose of determining whether there is a dispute. Were the Court to take any account of the legal impact of the parties' subsequent conduct (as Thailand requests), that would raise separate issues and would necessitate specific consent in order for the Court to have competence in that matter — as Thailand would undoubtedly be quick to point out. However, that conduct cannot alter the meaning of the judgment that was rendered or a party's right to request its interpretation.

3.21. Hence, the argument regarding the renunciation of rights can find no basis — or even food for thought — in the language of Article 60 of the Statute. Article 60 is (as Cambodia pointed out in its Application[135]) worded in imperative terms. The argument is, moreover, based on two factual assumptions: that Cambodia accepted Thailand's actions as the correct implementation of the Judgment; or, at the very least, that the MoU on the demarcation of the frontier presupposes an interpretation of the Judgment which is at odds with that currently advanced by Cambodia in this case. However, as has already been shown in Chapter 2 of this Response, each of these factual assertions is entirely unfounded, even on the basis of the documentation produced by Thailand. Cambodia would add that, even if *(quod non)* the rights contained in Article 60 of the Statute could be extinguished in this way, that would not be the case here.

2. Cambodia's Application does not seek to resubmit a request that has already been declared inadmissible

3.22. Thailand's response to Cambodia's Request is based entirely — or almost entirely — on the brief passage in the 1962 Judgment in which the Court refuses to respond to the first and second submissions made by Cambodia at the end of the oral proceedings. This gives rise, in turn, to a discussion regarding the passage in which the Court (just as briefly) considers the relevance of
51 maps in an earlier part of the Judgment. The passages in question deserve to be reproduced in full:

> "Accordingly, 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. To decide this question of territorial sovereignty, the Court must have regard to the frontier line between the two States in this sector. Maps have been submitted to it and various considerations have been advanced in this connection. The Court will have regard to each of these only to such extent as it may find in them reasons for the decision it has to give in order to settle the sole dispute submitted to it, the subject of which has just been stated."[136]

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[135] Paras. 26 *et seq.*

[136] *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 14.

> "Referring finally to the Submissions presented at the end of the oral proceedings, the Court, for the reasons indicated at the beginning of the present Judgment, finds that Cambodia's first and second Submissions, calling for pronouncements on the legal status of the Annex I map and on the frontier line in the disputed region, can be entertained only to the extent that they give expression to grounds, and not as claims to be dealt with in the operative provisions of the Judgment. It finds on the other hand that Thailand, after having stated her own claim concerning sovereignty over Preah Vihear, confined herself in her Submissions at the end of the oral proceedings to arguments and denials opposing the contentions of the other Party, leaving it to the Court to word as it sees fit the reasons on which its Judgment is based."[137]

3.23. In the light of the foregoing, the conclusion must be that the Court's refusal formally to rule on the two Cambodian submissions in question was the consequence of a purely procedural problem stemming from the fact that these arguments had not been made prior to the hearing and were objected to by Thailand on the basis that they had been submitted too late[138]. This does not mean that there was any objection to the Court's competence to address the merits of the matter, given that the Court's jurisdiction in this case was derived from declarations made under the optional clause by both Parties[139]. It seems clear that the issue which the Court had in mind in the two passages was one and the same, namely the role of the maps ("and various considerations") submitted in respect of the frontier line that the Court ruled that it had to "have regard to". Thailand itself presented the Court with a number of maps in the course of the proceedings, seeking to show that the Temple had been placed on the Thai side of the frontier. The issue of the status of the Annex I map was therefore debated in full before the Court and the two Parties set out extensive arguments in this respect.

52 3.24. Finally, it is clear that those passages do not show the Court refusing to rule on the "maps and other considerations", or indeed refusing to take account of Cambodia's (or Thailand's) submissions in that respect. Instead, those passages simply indicate the form in which the Court decided to take them into account — i.e., not as official submissions, but as "grounds" or "reasons". Indeed, the final sentence of the passage cited above implies that the Court's conclusions regarding those maps and considerations constitute the grounds on which its Judgment is based. This is in line with the Court's explicit indication that the Parties' acceptance of the Annex I map was the essential issue in this case.

3.25. Thus, Cambodia maintains, on the basis of a simple analysis of the language used by the Court, that the statements made by the latter in respect of the Annex I map are indeed "inseparable" from its decision on the dispute brought before it as set out in the *dispositif*. Without such statements, the first paragraph of the *dispositif* would simply not have been possible, and certainly not in the form in which the Court, having duly deliberated, chose to word it. This is only a small step (one which Thailand appears incapable of taking) from recognizing that Cambodia's current request for interpretation does not seek to resubmit a request that has already been declared inadmissible in the 1962 Judgment. Thus Cambodia is merely asking the Court to explain the findings that it reached in its 1962 Judgment. It asks the Court to do so in particular as regards the relationship between those findings and the meaning and scope of the *dispositif* of the Judgment.

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[137] *Ibid.*, p. 36.

[138] *Ibid.*, p. 11. It also appears implicit that the procedural objection to this late submission was based on the argument that the impact of these submissions went beyond the bounds of the proceedings as initially brought by Cambodia.

[139] See Application, paras. 3-4.

CHAPTER 4

THE NECESSARY INTERPRETATION OF THE REQUEST SUBMITTED BY CAMBODIA

4.1. Thailand's Observations prima facie present a multiplicity of arguments for the dismissal of Cambodia's request for interpretation. However, it should be noted that, on the one hand, that multiplicity masks significant overlap and repetition, while, on the other hand, the links between those arguments lack the legal logic necessary to demonstrate their relevance. For that reason, Cambodia wishes, in this chapter, to respond to those Observations, structuring its arguments in a simple and transparent manner on the basis of a logical approach. The chapter will look, in turn, at the necessary construction of the *dispositif* in the light of the essential grounds of the Judgment of 15 June 1962, and then at the meaning and scope of that Judgment in the context of the interpretation requested by Cambodia.

A. Construction of the *dispositif* in light of the essential grounds of the Judgment of 15 June 1962

1. The function of a judgment's reasoning

4.2. It is generally acknowledged that certain grounds in the reasoning have the force of *res judicata* where they represent an essential precondition for the decision contained in the *dispositif*, and that is the case far beyond the confines of the present proceedings[140].

4.3. One of the recurrent arguments in Thailand's Observations concerns the issue of *res judicata*. The argument is simple: since the issue of the status of the Annex I map — and consequently that of the delimitation of the frontier — is addressed outside the *dispositif* of the Judgment of 15 June 1962, and thus outside the mandatory prescriptions of the Judgment, that part of the Judgment (i.e., its grounds) does not have binding force and cannot be used in the interpretation of the Judgment. Thailand seeks, on the basis of a celebrated decision (a decision
54 cited, moreover, by Cambodia in its Application[141]), to show that Cambodia is attempting to obtain an interpretation of an aspect that is unconnected with the *dispositif*[142].

4.4. Numerous misunderstandings and simplistic comparisons follow on from that argument. The misunderstandings relate not only to the issue of whether the Judgment's grounds are of a binding character or not, but also — and this is another issue — to the issue of the need to interpret the *dispositif* in the light of the essential grounds of the Judgment, regardless of whether those grounds have binding force in their own right. In its Order of 18 July 2011, the Court indicates, *inter alia*, that the question of whether the Judgment did or did not recognize with binding force the line shown on the Annex I map as representing the frontier between the two Parties, and the question of whether a particular point has or has not been decided with binding force, constitute

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[140]This is, in particular, a view shared almost unanimously by doctrine and jurisprudence alike. See, in particular: G. Abi-Saab, *Les exceptions préliminaires dans la procédure de la Cour internationale*, Paris, Pedone, 1967, p. 247; S. Rosenne, *The Law and Practice of the International Court*, Leyden, A.W. Sitjhoff, 1965, V.II, p. 627; Ch. de Visscher, *Aspects récents du droit procédural de la C.I.J.*, Paris, Pedone, 1966, p. 180; and M. Bos, "The Interpretation of International Judicial Decisions", *Revista Española de Derecho Internacional*, pp. 11-50 (1981-1), p. 13.

[141]Thai Observations, pp. 168-169, paras. 4.75 and 4.77: *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia* v. *Peru), Judgment, I.C.J. Reports 1950*, p. 395. Case cited in Cambodia's Application, paras. 22-23.

[142]Thai Observations, pp. 166-169, paras. 4.73-4.78.

questions that come within the terms of Article 60 of the Statute of the Court[143]. From Cambodia's perspective, these aspects are of fundamental importance, given that they determine how the 1962 Judgment should be construed and allow a response to the earlier questions posed by the Court in respect of the dispute, namely what is meant by the "vicinity" of the Temple in territory under the sovereignty of Cambodia and what should be understood by Thailand's obligation to evacuate its troops from the Temple and its "vicinity", as indicated in the first and second paragraphs of the *dispositif*. It is these aspects that Cambodia now wishes to address.

4.5. Firstly, it is necessary to recall the general function of the reasoning in a judgment in order to understand the context. Traditionally, the reasoning in a judicial decision comprises the body of reasons of fact or law that govern the terms of the *dispositif*. Moreover, the requirement that judicial decisions be reasoned, which now applies to all international courts and tribunals, is the only one that exists in this form in international law. Article 56 (1) of the Statute of the Court could not be clearer or more direct: "The judgment shall state the reasons on which it is based." And Article 95 (1) of the Rules prescribes in detail the manner in which the reasoning of a judgment is to be structured, stating that it must include, in particular, a "statement of the facts" and "reasons in point of law". This distinction between a simple statement of the facts and the reasons described as being "in point of law" is not without significance and must be understood in the context of the 1962 Judgment.

4.6. It follows that the reasoning is not merely a possibility, an option or an area of freedom that judges can make use of as they see fit, but rather a mandatory stage in the decision which, if present, serves a function that cannot be dismissed as being of no importance, or even non-existent, as Thailand would have the Court believe.

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4.7. The role of reasoning for an international court is well known and scarcely differs from that seen in national courts where such reasoning is present: it reassures the parties that the court has not exceeded its competence, explains to the losing State the reasons for its defeat and potentially sets out the rules in law that will guide States and courts in the future. The act of reasoning is therefore important for the understanding, communication, acceptance or implementation of judicial decisions. In practice, reasoning aids understanding of the judicial act because it explains it, and it can aid the interpretation of an act because it provides justification for it.

4.8. Although, in theory, it is possible for a decision not to have reasoning, there can be no reasoning without a decision, for the reasoning exists only in relation to the decision that it justifies. In other words, the reasoning in a judicial act does not stand alone and is merely the preliminary to the *dispositif*, never an end in itself. That requires, at the very least, a rational link between the grounds and the *dispositif*. For that reason, as explained above, in Article 95 (1) of its Rules the Court requires, and distinguishes between, a statement of the facts and the grounds of law. While the statement of the facts simply serves as support for a line of argument, grounds of law, by contrast, serve as a basis for the reasoning that leads to the *dispositif*. The reasoning does not (in itself) constitute a norm; rather, it is composed of facts and norms that justify or explain how the Court has arrived at the individual norm constituted by the decision. The decision can thus be seen both as a process and as an outcome, although that outcome cannot be understood or interpreted without account being taken of the process.

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[143] *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), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011*, p. 8, para. 31.

4.9. Since the reasoning is an essential element, it cannot be ignored in the way that Thailand would like. Cambodia will thus demonstrate the centrality of the reasoning in the Judgment of 15 June 1962, not only because *the grounds of law are indispensable for the reading of the* dispositif *of the Judgment*, for its understanding and for its interpretation, in that they shed light on the question of how the "vicinity" of the Temple should be understood, but also because those grounds ultimately boil down to a central, if not *single*, ground of law which, because it stands alone, is necessarily the pillar underpinning the Court's reasoning. Moreover, that ground has an *intrinsic normative value* which the Court clearly makes explicit in according to the Annex I map the actual weight of a treaty, confirming the inviolability of the frontier recognized through that map. Given the normative character of the single ground of the 1962 Judgment, the latter's *dispositif* cannot be understood and interpreted if that ground is ignored. However, regardless of
56 the weight accorded to the central ground in the 1962 Judgment, it is, in any event, indispensable — indeed essential — to the construction of the *dispositif*.

2. An essential ground having a binding normative value

(a) *An essential ground*

4.10. As Cambodia will show below, it is now widely acknowledged by international courts that the "essential" grounds underpinning a judicial decision must be taken into account when interpreting the *dispositif*. In the present case, there is every reason to consider that the ground regarding the binding character for the Parties of the Annex I map is "essential", simply because it is central and stands alone. If, in 1962, the Court chose, in its reasons, to elucidate a single, unique aspect in order to arrive at its solution, it was because the Court indeed regarded that aspect as "essential". Otherwise, what would it have based its decision on?

4.11. The Judgment of 15 June 1962 is constructed in a relatively straightforward way. After recalling the facts surrounding the beginning of the dispute and the proceedings (pp. 6-14), the Court states:

> "To decide this question of territorial sovereignty, the Court must have regard to the frontier line between the two States in this sector." (P. 14.)

4.12. And that is exactly what the Court then does throughout the grounds that follow, which can be said to amount simply to "a" ground, so striking is its uniqueness. On pages 15 to 32 of the Judgment[144] the Court sets out the entire historical background to the delimitation of the frontier underlying its acceptance by Thailand, as well as the *effectivités* relating to that acceptance. The Court uses the following pages (pp. 32-35) to conclude its reasoning on the basis of the ground previously set forth.

4.13. It can thus be readily seen that the 1962 Judgment contains no surplus or secondary grounds that the Court could have considered and rejected. The Court goes straight to the point, relying on a single ground. By the same token, the Court's extended argument cannot conceivably be treated as a series of *obiter dicta*. Nor can it be seen as a restatement of a principle or general rule necessary for purposes of the *ratio decidendi*. It is, in reality, the unique and necessary core of the Court's exposition. The Court itself admits as much in the 1962 Judgment:

57 > "The real question, therefore, which is the *essential* one in this case, is whether the Parties did adopt the Annex I map, and the line indicated on it, as representing the

[144] In a Judgment with a total of 37 pages.

> outcome of the work of delimitation of the frontier in the region of Preah Vihear, thereby *conferring on it a binding character*." (P. 22; emphasis added by Cambodia; *op. cit.*, footnote 126.)

Thailand's undenied acceptance of the frontier in the Annex I map is the primary ground underpinning the decision and means, as the Court makes clear, that it is irrelevant whether the frontier corresponds to the watershed line. The Court accordingly concludes:

> "Given the grounds on which the Court bases its decision, it becomes unnecessary to consider whether, at Preah Vihear, the line as mapped does in fact correspond to the true watershed line in this vicinity, or did so correspond in 1904-1908, or, if not, how the watershed line in fact runs." (P. 35.)

This is a sentence which Thailand persists, unacceptably, in citing out of context[145].

4.14. The Court's choice of grounds is the result of the freedom that it enjoys. In the Judgment of 18 July 1966 in *South West Africa*, reference was made to:

> "the recognized right of the Court, implicit in paragraph 2 of Article 53 of its Statute, to select *proprio motu* the basis of its decision"[146].

That choice is in no sense a random one, but is the result of a logical construction leading to the *dispositif* and of a clear awareness of the finality sought by the Court — as it makes clear in the 1962 Judgment:

> "In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question, and its rectification claimed, whenever any inaccuracy by reference to a clause in the parent treaty is discovered." (P. 34.)

The scope deriving from the Judgment is thus perfectly defined: it is to give stability and finality to the frontier between the two States in the Temple sector situated in territory under the sovereignty of Cambodia. However, by repeatedly calling this into question, Thailand is adopting an attitude that is the precise opposite of what the Court sought to achieve in 1962.

58 4.15. The choice of the central and essential ground in the 1962 Judgment was therefore a considered one, the meaning and scope of which were intended to bring the dispute to a definitive end by recognizing Cambodia's sovereignty over the territory where the Temple is situated *on the basis of a frontier recognized as being definitively established*. Thus the Judgment's formal reasoning and the practical reasoning underlying it come together and merge. They represent the core of the *ratio decidendi*, the reason for the decision (or the decisive reason), the essential ground, or key element in the decision[147].

4.16. The Court's reasoning always takes into consideration the arguments of the losing party. Objective grounds thus take account of the difference between the infringement of a rule and the wrongful conduct of the State in question. That is how Cambodia understands an aspect of

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[145]Thai Observations, pp. 200-201, para. 5.12. Application of Cambodia, para. 16.

[146]*South West Africa (Ethiopia* v. *South Africa), Second Phase, Judgment, I.C.J. Reports 1966*, p. 19, para. 8.

[147]G. Cornu, *Vocabulaire juridique*, Paris, PUF, third edition, 2002, pp. 725-726.

which Thailand makes great play[148]: the fact that the Court excluded submissions made by Cambodia at the oral stage which could have been addressed in the *dispositif stricto sensu* of the 1962 Judgment[149]. Over and above the fact that the Court sometimes chooses among the parties' submissions in order to respond with precision to the questions put to it[150], it should be noted that Cambodia's four submissions (and five final submissions) are included in their entirety in the Judgment of 15 June 1962. Although the *dispositif* addresses only the three points regarding sovereignty over the territory in which the Temple is located, the evacuation of troops and the return of objects, the Judgment quite simply makes the issue of the binding force of the Annex I map an integral part of its reasoning. In other words, far from excluding that submission, the Court
59 instead makes it the sole basis for its reasoning in the grounds, rightly considering that nothing can be decided without it[151]. We will see that the Court even grants Cambodia's request to have that map accorded treaty status, despite the fact that the submission in question, which was made at the final hearing, could theoretically have been rejected. In the same way, the Court included in the *dispositif* the precise terms of the Cambodian submission asking the Court to adjudge and declare that "the Temple of Preah Vihear is situated in territory under the sovereignty of the Kingdom of Cambodia"[152].

4.17. Cambodia does not deny that the question of the frontier was not the central issue in the dispute to which its submissions related. However, the Court decided that, in order to resolve the dispute, it was necessary to determine where the frontier lies in the region of the Temple, and Thailand cannot ignore that fact. Just as a frontier is the basis for a State's territory, it is also the basis for the Judgment, the decisions in the Judgment being based on the frontier. This can also be

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[148]Thai Observations, p. 63, para. 2.68, and pp. 68-69, para. 2.72.

[149]At the hearing on 5 March 1962, Cambodia asked the Court, in its first submission: "To adjudge and declare that the frontier line between Cambodia and Thailand, in the Dangrek sector, is that which is marked on the map of the Commission of Delimitation between Indo-China and Siam (Annex I to the Memorial of Cambodia)" (*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 10). In its first and second final submissions, made at the hearing on 20 March 1962, Cambodia asked the Court:

> "1. To adjudge and declare that the map of the Dangrek sector (Annex I to the Memorial of Cambodia) was drawn up and published in the name and on behalf of the Mixed Delimitation Commission set up by the Treaty of 13 February 1904, that it sets forth the decisions taken by the said Commission and that, by reason of that fact and also of the subsequent agreements and conduct of the Parties, it presents a treaty character; 2. To adjudge and declare that the frontier line between Cambodia and Thailand, in the disputed region in the neighbourhood of the Temple of Preah Vihear, is that which is marked on the map of the Commission of Delimitation between Indo-China and Siam (Annex I to the Memorial of Cambodia)" (*ibid.*, p. 11).

[150]In this respect, the joint declaration by Judges Tanaka and Morelli following the Judgment of 15 June 1962 is instructive. The judges consider that the Court should have rejected Cambodia's submission concerning the restoration of objects on account of it having been made late, on the same basis as the submission concerning the issue of the Ann. I map. In support of their position, the judges state: "The claim as it is formulated in Cambodia's Application is directed *not to the return of the Temple as such, but rather to sovereignty over the portion of territory in which the Temple is situated.*" (p. 38; emphasis added by Cambodia) They add: "It is only if the claim by Cambodia had had directly as its subject the return of the Temple that it would have been possible, but then only through a liberal construction of such a claim, to consider that that claim was concerned also with objects which, having formed part of the Temple prior to the Application, had, also prior to the Application, been removed from the Temple." (P. 38.) So, it was indeed because those judges considered that Cambodia's Request did not strictly concern the Temple itself, but rather the territory on which it stands, that they disagreed as regards the inclusion of the submission concerning the return of objects. For its part, the Court did not hesitate to include this submission in the operative clause, despite it, too, having been made late.

[151]Moreover, the Court does not intend to dismiss those submissions in its 1962 Judgment. Rather, the Court states that "[the first two submissions] can be entertained only to the extent that they give expression to grounds, and not as claims to be dealt with in the operative provisions of the Judgment" (p. 36). This in no way means that the operative clause cannot be read in the light of this essential ground when it is necessary to interpret its meaning and scope.

[152]*Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 11.

seen if we assume a hypothetical scenario: Had Cambodia not made any additional submissions asking the Court to rule on the Annex I map, would that have altered the meaning of the Judgment? Obviously not, since, in order to determine the sovereignty of the territory in which the Temple was located, it would in any case have been necessary to determine the location of the frontier. Without addressing that issue, the Court would have been unable to respond to the Application. Hence, the Court clearly did intend to address that issue.

4.18. In the 1962 Judgment, it is therefore impossible to separate the essential ground from the *dispositif* when interpreting the latter. Moreover, while Cambodia has always interpreted the Judgment on that basis, Thailand does likewise, basing its position on its opposition to that ground, which it rejects or evades. Moreover, Thailand wishes to read the *dispositif* of the 1962 Judgment in a way that incorporates the entire process, with the exception of the precise grounds of the Judgment — a curious exclusion, causing it considerably to restrict both the scope of the Judgment and its practical effect.

(b) ***A ground with binding normative value***

4.19. The grounds underlying a judicial decision do not all have the same value. As we have shown, in distinguishing between the "statement of the facts" and "reasons in point of law", the Rules of Court (Article 95 (1)) imply that "facts" cannot, in themselves, constitute "reasons" and instead provide support for such reasons. A hierarchy must also be established within those
60 "reasons in point of law" on the basis of their significance and importance for the *dispositif*. While some grounds may simply represent a restatement of a rule of law necessary for the reasoning, it may also be that grounds of law are stated with the aim of providing direct support for the *dispositif*. This is indeed how the essential ground relied on by the Court in its Judgment of 15 June 1962 should be understood.

4.20. In its Judgment of 15 June 1962, the Court states, when drawing conclusions from its earlier exposition:

> "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." (P. 33.)

It further notes that, in the event of any discrepancy:

> "the map line [prevails] over the relevant clause of the treaty" (p. 34).

4.21. The Court considers that map to have treaty value, which must, by definition, be regarded as binding. An analysis of the essential ground set forth by the Court thus leads to the conclusion that that ground has a clear normative and indeed a binding value. The fact that this aspect does not feature in the *dispositif* cannot deprive it of its normative and binding value, since this represents a finding by the Court — recognition of the binding nature of a relationship between the two States — the validity of which predates the Judgment, constitutes the basis for that Judgment and must, of course, continue to apply following that Judgment.

That position adopted by the Court in 1962 corresponds to its desire to stabilize the frontier. The case law of the Court is very consistent on this point, as we shall see below. In the *Territorial Dispute* between Chad and Libya, the Court stressed — with reference, moreover, to the Judgment of 15 June 1962 — that:

> "Once agreed, the boundary stands, for any other approach would vitiate the fundamental principle of the stability of boundaries, the importance of which has been repeatedly emphasized by the Court (*Temple of Preah Vihear, I.C.J. Reports 1962*, p. 34; *Aegean Sea Continental Shelf, I.C.J. Reports 1978*, p. 36)."[153]

The Court provides confirmation of that fact in *Territorial and Maritime Dispute* (*Nicaragua* v. *Colombia*):

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> "The Court recalls that it is a principle of international law that a territorial régime established by treaty 'achieves a permanence which the treaty itself does not necessarily enjoy' and the continued existence of that régime is not dependent upon the continuing life of the treaty under which the régime is agreed (*Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 37, paras. 72-73)."[154]

It is easy to see that this durability attached to the frontier is made all the more imperative by the fact that, in the present case, the delimitation does not stem from a treaty that has ceased to be applicable.

4.22. Contrary to a confusion maintained by Thailand, the Court did not delimit the frontier in 1962, instead recognizing an existing frontier as binding the Parties[155]. The binding force of the Annex I map, an issue discussed by the Court in paragraph 31 of its Order of 18 July 2011, exists because that binding force exists independently of the Judgment itself, and the Court recognizes it as a pre-existing delimitation. That is the sole and essential purpose of the reasoning, allowing the Court to ascertain in whose territory the Temple is located, and where the limits of that territory lie.

4.23. The Court made a *decision* prior to the *dispositif* of the Judgment, the decision concerning the treaty value of the Annex I map. It was on the basis of that decision that the Court constructed the *dispositif*. That was not simply an opinion, but rather what is typically termed a decisional ground, a form of implied *dispositif*, because the decision is an inevitable consequence of that sole normative ground and cannot exist without it. At the very least, the finding that the Annex I map is binding as between the Parties has the force of a decision by the Court. Otherwise, the *dispositif* would be purely arbitrary, since it would be unclear why the Temple was on the Cambodian side of the frontier and how far from the vicinity of the Temple Thailand had to withdraw its troops.

4.24. This analysis should be read in light of Thailand's assertions in its Observations that Cambodia is seeking to have the Court declare that the line on the Annex I map "constitutes a
62 boundary binding on the two parties"; or that "in fact the Court did not recognize any boundary" in

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[153] *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 37, para. 72.

[154] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 861, para. 89.

[155] That clearly distinguishes this case from those in which the Court is asked to delimit (or specify) the frontier itself. In *Cameroon* v. *Nigeria*, the Republic of Cameroon asked the Court, in particular, to "specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea" (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 318, para. 25 *(f)*). In *Frontier Dispute (Benin/Niger)*, Benin and Niger asked the Court, by means of a special agreement, to determine in particular "the course of the boundary between the Republic of Benin and the Republic of Niger in the River Niger sector" (*Frontier Dispute (Benin/Niger), Judgment, I.C.J. Reports 2005*, p. 95, para. 2).

1962, since this is something that the Court had "deliberately refused to do"[156]. The Court did not render that frontier line on the Annex I map binding; rather, the Court found that the line was already binding prior to the proceedings, and remained binding. That line was thus a kind of "prerequisite", which enabled the Court to determine where the Temple was located and how far Cambodia's territory extended. There was no reason for this to be indicated in the *dispositif*, since, if the frontier line on the Annex I map already separated the two States in a binding manner, the Temple was necessarily situated on the Cambodian side of the line.

4.25. Consequently, it is also difficult to imagine, as Thailand asserts[157], that the Court simply used the Annex I map to ascertain the location of the Temple, relying on it merely as a piece of evidence, without attributing any greater significance to it. In that case, there would have been no point in the Court asserting with such force the binding treaty character of that map, which even prevailed over the relevant treaty provisions in the event of any discrepancy.

4.26. There is therefore no need for Cambodia to claim something that is already set out clearly in the Judgment itself, namely the fact that there is a binding frontier line between the two States in the region of the Temple and that this stems from the line marked on the Annex I map. Cambodia is simply asking the Court to interpret the Judgment in the light of that fact — which is something that will in any event continue to exist, regardless of the interpretation currently requested.

4.27. Moreover, whatever value may be attributed to the central reasoning of the 1962 Judgment, it is clearly impossible to interpret the *dispositif* without that essential ground. Thailand provides no refutation of that fact, which has been established in explicit statements by the Court[158]. That link now lies at the heart of an abundance of international case law.

B. Construing the *dispositif* in light of the essential grounds: extensive and consistent case law across international courts

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1. The necessary reading of the *dispositif* in the light of the essential ground in the 1962 Judgment

4.28. A standard form of wording is used by the Court to establish the link between the grounds and the *dispositif* of a judgment: "For these reasons, the Court [decides]". That simple phrase implies that there is no radical division between the grounds and the *dispositif*. It is not even uncommon to see a general restatement of the grounds in the *dispositif* itself[159] — or even

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[156]Thai Observations, p. 5, paras. 1.10-1.11, as well as the presentation of Cambodia's "five errors", pp. 195 *et seq.*, paras. 5.6 *et seq.*

[157]*Ibid.*, pp. 111-118, paras. 3.67-3.81.

[158]See paras. 1.20-1.23, *supra*.

[159]Thus, in the operative clause of its Judgment of 5 February 1970 in *Barcelona Traction*, the Court referred directly to the grounds: "Accordingly, The Court rejects the Belgian Government's claim by fifteen votes to one, twelve votes of the majority being based on the reasons set out in the present Judgment." (*Barcelona Traction, Light and Power Company, Limited (Belgium* v. *Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 51, para. 103.) In its Judgment of 17 December 2002 in *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, the Court ruled in favour of Malaysia, stating: "Given the circumstances of the case, and in particular in view of the evidence furnished by the Parties, the Court concludes that Malaysia has title to Ligitan and Sipadan on the basis of the *effectivités* referred to above." (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, pp. 685-686, para. 149.) Then comes the operative clause, in which it states: "For these reasons, The Court, By sixteen votes to one, *Finds* that sovereignty over Pulau Ligitan and Pulau Sipadan belongs to Malaysia." (*Ibid.*, p. 686, para. 150.)

direct references in the *dispositif* to paragraphs containing grounds relating to points of law, which can thus be regarded as having become an integral part of the decision[160]. There are numerous possibilities. It follows that the dividing line between the two elements of a judgment is a porous one, which is a logical consequence of the link between the two. Certain grounds, by virtue of their reiteration or direct citation, or simply as a result of their being indispensable for the relevant reading of the *dispositif*, thereby acquire the force of *res judicata* or are directly covered by the force of *res judicata*.

4.29. It follows that the *dispositif* cannot be read in isolation and does not authorize Thailand to implement the Judgment in a manner that is not envisaged by the Judgment as a whole and even runs counter to the grounds set forth therein. Otherwise, the grounds would be entirely pointless and the Court could issue a judgment simply by setting out the *dispositif*. However, the requirement, as indicated in the Statute of the Court, that judgments contain reasoning means that such an approach is not possible. In its Application, Cambodia states that it is the line on the Annex I map on which the Judgment "is based"[161]. That is a reference not to an obligation contained in the *dispositif*, but rather to an obligation that predates the final decision by the Court. The Court took a decision prior to the *dispositif*, the decision to "base" its ruling on that line,
64 without the support of which the *dispositif* cannot be construed correctly. In Cambodia's view, it is therefore possible to consider that, as regards the interpretation of the Judgment, this essential ground also has the force of *res judicata* — or at least the force of a Court decision — in the sense that the Court has confirmed the existence of an obligation binding on the Parties which supports all of the obligations set out in the *dispositif*.

4.30. Consequently, any ground of the decision that does not exceed the "scope" of the *dispositif* can be used for the purposes of interpretation. Not only does the essential ground of the 1962 Judgment fall within the "scope" of the *dispositif*, it is the only ground capable of making sense of the "scope" and "meaning" of that Judgment.

2. Case law which began under the Permanent Court of International Justice and has continued under the present Court

4.31. As indicated above, the sole purpose of a request for interpretation is to have the Court specify the intention it had when taking a decision by explaining or clarifying that decision. Thus, in the *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*, the Permanent Court stated:

> "The interpretation adds nothing to the decision, which has acquired the force of *res judicata*, and can only have binding force within the limits of what was decided in the judgment construed . . . [The Court] confines itself to explaining, by an interpretation, that upon which it has already passed judgment."[162]

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[160] In the Judgment of 11 September 1992 in *El Salvador/Honduras*, the Chamber of the Court systematically refers, in each of the paragraphs of the operative clause, to the specific reasoning in the Judgment. For example: "For the reasons set out in the present Judgment, in particular paragraphs 68 to 103 thereof, The Chamber, Unanimously, *Decides* that . . ." (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, p. 610, para. 425; see also *ibid.*, p. 611, para. 426, p. 612, para. 427, p. 613, para. 428, p. 614, para. 429, p. 615, paras. 430-431, and p. 616, para. 432.)

[161] Application of Cambodia, para. 45.

[162] *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 21.

Consequently, when seised of a request for interpretation of a judgment, the Court must confine itself solely to explaining the meaning and scope of that which has been decided with binding force in the judgment. This fundamental principle established by the Permanent Court[163] is systematically reiterated by the present Court[164].

4.32. Consequently, the interpretation can only relate to those passages of the decision that have the force of *res judicata* — primarily, of course, the *dispositif*. Although the interpretation must look at the *dispositif*, it cannot be limited to that. Thus certain grounds of the decision may be taken into account. In its Opinion in the *Polish Postal Service in Danzig*, the Permanent Court endeavoured to highlight the links between the grounds and the *dispositif*. In so doing, it stated that
65 the reasons contained in a decision which "go beyond the scope of the operative part, have no binding force as between the Parties concerned"[165]. Hence, conversely, reasons that do not go beyond the scope of the *dispositif* may be of a binding character. On the other hand, *obiter dicta* and surplus reasons cannot be taken into consideration in the context of a request for interpretation. However, the Permanent Court also indicated that:

> "all the parts of a judgment concerning the points in dispute explain and complete each other and are to be taken into account in order to determine the precise meaning and scope of the operative portion"[166].

4.33. The grounds providing the necessary support for the *dispositif* must therefore be taken into account in the context of a request for interpretation. That was what the Permanent Court ruled in the *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*. Having indicated that a request for interpretation must relate to elements decided with binding force, the Permanent Court immediately specified:

> "That does not imply that it must be beyond dispute that the point the meaning of which is questioned is related to a part of the judgment having binding force. A difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of the provision in

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[163] *Ibid.*, p. 11.

[164] *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia* v. *Peru), Judgment, I.C.J. Reports 1950*, p. 402; *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985*, p. 218, para. 46, and p. 223, para. 56; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America), Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 328, para. 63; *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), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011*, para. 44.

[165] *Polish Postal Service in Danzig, Advisory Opinion, 1925, P.C.I.J., Series B, No. 11*, pp. 29-30.

[166] *Ibid.*, p. 30. In that case before the Permanent Court, Professor Verzijl stated:

> "The interpretations of the legal situation contained in these decisions are all of equal value, regardless of whether, from a formal point of view, they are part of the 'grounds' or the 'operative clause' of the judgment, provided solely that they are not — to borrow a term from Anglo-Saxon case law — mere *obiter dicta*. The genuine binding interpretative force of rulings of that kind also covers all of their essential elements, where the arbitrator or judge sought to formulate his/her opinion on the situation in law." (*Ibid., Documents of Procedure, P.C.I.J., Series C, No. 8*, p. 446.) *[Translation]*

The decisions referred to here are those that are of declaratory character, including interpretative judgments.

> question, and the Court cannot avoid the duty incumbent upon it of interpreting the judgment in so far as necessary, in order to adjudicate upon such a difference of opinion."[167]

In other words, the dispute need not necessarily relate exclusively to the sole part of the judgment that is regarded as having binding force, namely the *dispositif*. It can also relate to grounds that explain and complete the *dispositif*. In the case in question, the Permanent Court considered that:

> "the fact that the grounds for the judgment contain a passage which one of the Parties construes as a reservation (the effect of which would be to restrict the binding force of Judgment No. 7) or as affirming a right inconsistent with the situation at law which the other Party considers as established with binding force, allows of the Court's being validly requested to give an interpretation fixing the true meaning and scope of the judgment in question"[168].

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4.34. The present Court asserts even more clearly, in the context of the request for interpretation of the Judgment of 11 June 1998 in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria*, that:

> "any request for interpretation must relate to the operative part of the judgment and cannot concern the reasons for the judgment except in so far as these are inseparable from the operative part"[169].

That has been repeated by the Court on two occasions. First, in the *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America),* the Court recalled that:

> "a request for interpretation must relate to a dispute between the parties relating to the meaning or scope of the operative part of the judgment and cannot concern the reasons for the judgment except in so far as these are inseparable from the operative part"[170].

And then, in the Order indicating provisional measures in the present case, the Court again made it clear that:

> "it is established that a dispute within the meaning of Article 60 of the Statute must relate to the operative clause of the judgment in question and cannot concern the reasons for the judgment except in so far as these are inseparable from the operative clause"[171].

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[167] *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 11-12; *op. cit.*, para. 2.25, *supra*.

[168] *Ibid.*, p. 14.

[169] *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment, I.C.J. Reports 1999 (I)*, p. 35, para. 10.

[170] *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America), Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 323, para. 47.

[171] *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), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011*, para. 23.

The link between the reasons and the *dispositif* is asserted, *mutatis mutandis*, in other cases which do not relate specifically to the issue of interpretation but which address that aspect. Thus, in the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, the Court states:

> "70. The Court observes that the reasoning contained in paragraphs 306-319 of the 2007 Judgment, which was an essential step leading to the *dispositif* of that Judgment, is also unequivocal on this point . . . Without such reasoning, it may be difficult to understand why the Court did not fix an endpoint in its decision. With this reasoning, the decision made by the Court in its 2007 Judgment leaves no room for any alternative interpretation."[172]

67 4.35. It follows indisputably from the case law of the Court that interpretation of the meaning and scope of the *dispositif* may require that reference be had to the grounds where these form the necessary basis for that *dispositif*[173]. Moreover, reference is consistently made to this principle in arbitral awards, as well as in the case law of a number of international courts.

3. Case law that has spread to arbitral tribunals and other international courts

4.36. Whether one looks at arbitral tribunals or international courts, the principles established as regards the interpretation of judicial decisions remain the same. In various awards and judgments, arbitrators and judges have reiterated that, in the context of a request for interpretation, it falls to them to identify those elements of the decision that are of a binding character and consequently, where necessary, to interpret the decision's grounds.

4.37. Indeed, there are numerous arbitral awards that proceed in this manner. It should be noted, first of all, that the Permanent Court of Arbitration insisted on the links between grounds and *dispositif* in *The Pious Fund of the Californias*. In its view:

> "all the parts of a judgment or decree concerning the points debated in the dispute enlighten and mutually supplement each other, and . . . they all serve to render precise the meaning and the bearing of the *dispositive* . . . to determine the points upon which there is *res judicata* and which therefore cannot be put in question"[174].

4.38. More recently, basing its ruling on the interpretative Judgment of the Permanent Court in the *Factory at Chorzów* case, the court of arbitration, addressing a request for an interpretation of its award in the *Delimitation of the Continental Shelf between the United Kingdom and France*, indicated:

> "[that it] considers it to be well settled that in international proceedings the authority of *res judicata*, that is the binding force of the decision, attaches in principle only to the provisions of its *dispositif* and not to its reasoning. In the opinion of the Court, it is equally clear that, having regard to the close links that exist between the reasoning

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[172] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Honduras for Permission to Intervene, Judgment, 4 May 2011*, para. 70; *op. cit.*, footnote 120, p. 45.

[173] This is a very widely held view among judges and in legal literature. See, for example: S. Torres Bernárdez, "A propos de l'interprétation et de la révision des arrêts de la Cour internationale de Justice", in *Le droit international à l'heure de sa codification: études en l'honneur de Roberto Ago*, Milan, Giuffrè, 1987, Vol. III, p. 469; and L. Cavaré, "Les recours en interprétation et en appréciation de la légalité devant les tribunaux internationaux", *ZaöRV*, pp. 482-520 (1954), p. 488.

[174] *The Pious Fund of the Californias (United States of America* v. *United Mexican States)*, Arbitral Award of 24 October 1902, *Reports of International Arbitral Awards (RIAA)*, Vol. IX, p. 12.

> of a decision and the provisions of its *dispositif*, recourse may in principle be had to the reasoning in order to elucidate the meaning and scope of the *dispositif*. From this
68 it follows that under certain conditions and within certain limits, the reasoning in a decision may properly be invoked as a ground for requesting an interpretation of provisions of its *dispositif*."[175]

Similarly, the arbitral tribunal in the *Laguna del Desierto* case stated:

> "The force *of res judicata* of an international award applies, primarily, to its operative part, i.e., the part in which the Court rules on the dispute and states the rights and obligations of the parties. The legal precedents have also established that the provisions of the preambular part, which are the logically necessary antecedents of the operative provisions, are equally binding."[176]

In support of that statement, the tribunal referred directly to the interpretative Judgment of the Permanent Court in the *Factory at Chorzów* and to the interpretative decision of the court of arbitration in the *Delimitation of the Continental Shelf between the United Kingdom and France*[177].

4.39. The case law of arbitral courts and tribunals, supported by the case law of the Court, clearly shows that the grounds can be taken into consideration in order to shed light on the meaning and scope of the decision made in the *dispositif*. Moreover, in its decision interpreting the award in the *Delimitation of the Continental Shelf between the United Kingdom and France*, the court of arbitration stated that:

> "if findings in the reasoning constitute a condition essential to the decision given in the *dispositif*, these findings are to be considered as included amongst the points settled with binding force in the decision"[178].

4.40. Thus, in these various examples, arbitral tribunals have no hesitation, not only in linking the construction of the *dispositif* with the judgment's essential grounds, but also in conferring on those grounds a binding force attaching to them an authority equivalent to that of *res judicata*. Other international courts have arrived at the same conclusion.

4.41. The same is true of the Court of Justice of the European Union. Thus the Court of Justice of the ECSC affirmed at a very early stage that the parts of a text that can be the subject of interpretation can obviously only be:

> "those which express the decision of the Court on the matter submitted to it: the operative part and such of the grounds as determine it and are essential for that

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[175] *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland and the French Republic*, Decision of 14 March 1978, *RIAA*, Vol. XVIII, p. 365, para. 28.

[176] *Dispute concerning the Frontier Line between Boundary Post 62 and Mount Fitzroy (Argentina* v. *Chile)*, Arbitral Award of 21 October 1994, *RGDIP*, 1996, p. 551, para. 70.

[177] *Ibid.*

[178] *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland and the French Republic*, Decision of 14 March 1978, *RIAA*, Vol. XVIII, p. 366, para. 28.

69 purpose; those are the parts of the judgment which constitute the actual decision. On the other hand, the Court is not called upon to interpret ancillary matter which supplements or explains those basic grounds."[179]

4.42. Moreover, when examining that first request for interpretation of a judgment by the Court of Justice of the ECSC, Advocate General Lagrange based his opinion, to a very large extent, on the interpretative Judgment of the Permanent Court in the *Factory at Chorzów*. He insisted, in particular, that the Court had acknowledged in that decision that "it was within its jurisdiction, where appropriate, to give a ruling on the question of whether one or other part of the judgment did or did not have binding force"[180].

In *Willame* v. *Commission*, the Court further stated:

> "In order to decide whether the operative part of a judgment is or is not ambiguous or obscure, it should be read together with the applicant's conclusions and the statement of the grounds of the said judgment."[181]

4.43. In other words, although the request for interpretation must concern a point with the force of *res judicata*, in determining whether the *dispositif* is ambiguous or obscure, the court must take account of all elements of the dispute that resulted in the judgment that is to be interpreted.

This has since become something of a leitmotif occurring repeatedly in the case law of the Court. By way of illustration, in *Maindiaux et al.* v. *Economic and Social Committee* and *Diezler et al.*, the Court of Justice affirmed that:

> "an application for interpretation must essentially seek an interpretation of the operative part together with the essential grounds"[182].

It is easy to see, without providing an excessive number of references[183], that the Court of Justice of the European Union is in line with the case law of the International Court of Justice and of arbitral tribunals. Just like the Permanent Court and the present Court, the Court of Justice of the European Union can thus decide which parts of a judgment — some of which may be of a **70** binding character — must be read, in addition to the actual *dispositif*, in order to understand the judgment. The Court is thus perfectly entitled to take the essential grounds into consideration in the context of a request for interpretation.

4.44. For its part, the European Court of Human Rights follows the case law of the other courts in this respect. In its judgment interpreting the judgment in *Ringeisen*, the Court declares that, when it is seised of an application for an interpretation:

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[179] *ASSIDER* v. *High Authority of the ECSC*, 5/55, *ECR* 1954-1955, p. 278.

[180] *Ibid.*, p. 290.

[181] *Willame* v. *Commission*, 110/63, *ECR* 1966, p. 419.

[182] *Maindiaux et al.* v. *Economic and Social Committee* and *Diezler et al.*, 146 and 431/85, *ECR* 1988, p. 2003, para. 6.

[183] For their part, the Advocates General frequently refer to this requirement in their opinions. In *High Authority* v. *Collotti*, for example, Advocate General Roemer affirmed that "the case-law of the Court has already decided that not only the operative part of the judgment but also the grounds forming the basis of the judgment may be the subject of an application for interpretation" (Opinion in *High Authority* v. *Collotti*, 70/63 *bis*, *ECR* 1965, p. 361). And in *José Alvarez* v. *European Parliament*, Advocate General van Themaat indicated that it is possible to take account of "those paragraphs of the judgment which explain and thus determine the operative part" (Opinion in *José Alvarez* v. *European Parliament – Interpretation*, 206/81 *bis*, *ECR* 1983, p. 2876).

> "it goes no further than to clarify the meaning and scope which it intended to give to a previous decision which issued from its own deliberations, specifying if need be what it thereby decided with binding force"[184].

4.45. Referring expressly to that judgment, the Inter-American Court of Human Rights, in its first decision on a request for interpretation, stated, in turn:

> "The interpretation of a judgment involves not only precisely defining the text of the operative parts of the judgment, but also specifying its scope, meaning and purpose, based on the considerations of the judgments."[185]

Since then, that Court, which frequently receives applications for the interpretation of its judgments, has had the opportunity to refine its case law. Thus, in *Loayza Tamayo*, it states:

> "The request or petition for interpretation of a judgment may not be used as a means of challenging it, but must be made for the sole purpose of working out the meaning of the decision when one of the parties maintains that the text of its operative paragraphs or its consideranda is unclear or imprecise, provided those consideranda affect that operative paragraph."[186]

This consideration has since formed part of all of the Court's interpretative judgments[187].

71 4.46. Given that the grounds of the Judgment of 15 June 1962 are essentially devoted to the central issue of the determination of the frontier line between the Parties in the Temple sector, it is scarcely conceivable that any reading of the Judgment could deny this reality. Contrary to what Thailand asserts throughout its Observations of 21 November 2011, the Court could not have decided in 1962 that the Temple fell within Cambodia's sovereignty without having first established the extent of the territory in which the Temple is situated. To recognize one (the Temple) and deny the other (the recognized line between the two States) is to separate two logical elements which are unable to exist independently of each other. However, that is what Thailand is seeking to show by artificially separating the *dispositif* from the essential grounds of the Judgment. In so doing, it is not only challenging and contradicting the work of the Court, but also ignoring the inherent overall logic of the Judgment.

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[184] *Ringeisen* v. *Austria (Interpretation of the Judgment of 22 June 1972)*, 26 June 1973, ECHR, Series A, No. 16, p. 13.

[185] *Case of Velásquez-Rodríguez* v. *Honduras*, interpretation of the judgment on reparations and costs, Judgment of 17 August 1990, I/A Ct. HR, Series C, No. 9, para. 26.

[186] *Case of Loayza Tamayo* v. *Peru*, interpretation of Judgment of 17 September 1997, Order of 8 March 1998, I/A Ct. HR, Series C, No. 47, para. 16.

[187] See, recently: *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller")* v. *Peru*, interpretation of the judgment on preliminary objections, merits, reparations and costs, Judgment of 24 November 2009, I/A Ct. HR, Series C, No. 198, para. 11; *Case of Rosendo Cantú et al.* v. *Mexico*, interpretation of the judgment on preliminary objections, merits, reparations and costs, Judgment of 15 May 2011, I/A Ct. HR, Series C, No. 225, para. 10; *Case of Salvador Chiriboga* v. *Ecuador*, interpretation of the judgment on reparations and costs, Judgment of 29 August 2011, I/A Ct. HR, Series C, No. 230, para. 11; *Case of Abrill Alosilla et al.* v. *Peru*, interpretation of the judgment on preliminary objections, merits, reparations and costs, Judgment of 21 November 2011, I/A Ct. HR, Series C, No. 235, para. 10.

C. Meaning and scope of the Judgment of 15 June 1962

1. The interpretation requested by Cambodia

4.47. The interpretation of a judicial decision involves a logic conveyed, in the case of the International Court of Justice, by the wording of Article 60 of its Statute: it is necessary to clarify the "meaning and scope" of the judgment that the Court is asked to interpret so that the parties understand the implied — and sometimes implicit — logic of the judgment. Consequently, an interpretation is not a static reading of the *dispositif*, but rather a case of deciphering its deeper meaning, projecting that meaning beyond the confines of the text in order to determine the consequences. The *meaning* of the Judgment of 15 June 1962 concerns the question of whose territory the Temple of Preah Vihear is located in, which entails the question of where exactly the Thai troops have to withdraw to when evacuating that territory. Its *scope* is to bring to an end a dispute between two States by establishing a boundary between their two territories as a result of the placement of the Temple in territory that is under the sovereignty of one of the Parties. That is the only way that it is possible to know where exactly the Thai troops have a continuing obligation to withdraw to. As Cambodia has indicated and will demonstrate below, the fact that this is termed a "territorial" dispute changes nothing. Every territory has a boundary, and every decision on a territory entails the siting of a boundary.

4.48. Cambodia thus considers that the purpose of the Judgment of 15 June 1962 was definitively to bring to an end the dispute between the Parties. The interpretation of the Judgment, by giving it practical effect (that is to say, by giving the *dispositif* a *meaning* and *scope* that prevents the matters decided by it from remaining inoperative), will allow the Parties to resolve this
72 dispute definitively and then proceed with the implementation of the Judgment in accordance with the Court's interpretation. In Cambodia's view, this is not just possible, but indispensable.

4.49. Contrary to Thailand's claims, Cambodia is not seeking, via the Court's interpretation of the 1962 Judgment, to have the Court delimit the frontier. That delimitation has already been carried out, and the Court recognized that fact in 1962 in a manner that requires the Parties to respect that obligation. The 1962 Judgment merely implies negotiations to determine the precise course of the frontier, not to delimit it. The demarcation and marking out of the frontier is the task of the MoU of 14 June 2000.

4.50. By the same token, Cambodia is certainly not asking the Court to take a decision regarding the entire frontier in the Dangrek region as depicted in the Annex I map. Cambodia is limiting its Request for interpretation to the disputed area. Thailand is effectively seeking to deny the existence of any dispute regarding the first paragraph of the *dispositif* of the 1962 Judgment, explaining that the Court would otherwise have ruled on the entire frontier in the Dangrek region in 1962. Cambodia considers that there is indeed a dispute as to the interpretation of the first paragraph of the *dispositif*, and that this relates solely to the area at issue. The Court "finds that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia". In Cambodia's view, the necessary interpretation of the first paragraph of that *dispositif* cannot relate solely to the perimeter of the Temple itself, limited to its strict precincts. The Court not only finds that the Temple belongs to Cambodia, but also states that it is situated in "territory" which is under the "sovereignty of Cambodia". The practical effect of such a statement is that an area of territory extends beyond the confines of the Temple itself, an area of territory that must correspond to the boundaries established by the Court in its grounds on the basis of the Annex I map.

4.51. The Court accordingly draws the logical conclusion — "in consequence" — that Thailand is obliged to "withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory" (second paragraph of the *dispositif* of the 1962 Judgment). Here, too, the Court makes important points, since it indicates that those Thai forces must withdraw from the Temple "or its vicinity" — a statement which, in Cambodia's view, would have been pointless had the Court intended to limit that withdrawal to the precincts of the Temple. The Court also specifies that the vicinity of the Temple is "on Cambodian territory", which clearly links the second paragraph of the *dispositif* with the first paragraph. Again, there would have been no need to specify that had it not been the territory under the sovereignty of Cambodia corresponding to that defined in the grounds of the Judgment.

73 4.52. Since the obligation to withdraw Thai forces relates to an area that is under Cambodian sovereignty, this must be a continuing obligation. To reduce that to an immediate obligation would render the Judgment of the Court totally illogical. How is it possible to imagine that such an obligation could be effective only at the time the Judgment was delivered in 1962? The principle of respect for territorial integrity means that foreign forces must permanently withdraw from an area of land in respect of which the world's highest international court has decided that the land in question belongs to another State (here, Cambodia), withdrawing behind a line recognized by the Court. Put very simply, the obligation to withdraw must — by definition — be a continuing obligation, given that it applies to territory that is under the sovereignty of Cambodia. By denying that reality, Thailand is confusing[188] what it regards as the general application of the principle of territorial integrity with the special case in which that obligation is dictated by a specific decision taken by the Court.

4.53. Cambodia wishes to emphasize that Thailand has, it seems, clearly never accepted the loss of the Temple following the 1962 Judgment. Its construction of the Judgment follows on from that. Prevented from contesting Cambodia's ownership of the Temple, it has derived a reading of the Judgment which entirely denies the consequences entailed by that Judgment. That reading, which can be described as "minimalist", not only fails to correspond in any way to what the Court decided in its *dispositif* in 1962, but also means that the Judgment is impossible to implement in practice. It is for that reason that Cambodia, faced with an interpretation of the 1962 Judgment that differs radically from its own, has requested that the Court indicate the correct interpretation.

2. Thailand's incorrect interpretation of the Judgment

4.54. As Cambodia has shown, there is a need in this case for the Court to interpret the Judgment of 15 June 1962. That necessary and desired interpretation can be effected only by means of a comprehensive construction of the *dispositif*, including its essential grounds. In order to arrive at the interpretation that Cambodia considers to be the correct one, the Court must dismiss the counter-arguments put forward by Thailand and find its interpretation to be without merit. It is on those issues that Cambodia will now focus.

74 #### (a) *Interpreting is not revising*

4.55. The Court is competent, the Application is admissible, and the interpretation is possible and necessary. Cambodia considers this to be a genuine request for interpretation. It is simply a request for an interpretation, not for a revision of the 1962 Judgment. The objective is thus not to "reinterpret" on the basis of the original proceedings, but to interpret the *dispositif* on the basis of

[188] Thai Observations, pp. 233-238, paras. 5.50-5.56.

what the Court decided. In this case, by refusing to accept the interpretation that is inherent in the Judgment, Thailand is seeking to have the 1962 Judgment "revised". Its Observations show that it is going back over the entire process, right back to (and even beyond) Cambodia's Application in 1959, thereby essentially implying that the Court erred in its Judgment of 15 June 1962, so that the only way for Thailand to turn that situation to its advantage is to strictly isolate the *dispositif* from its essential grounds in order to reconstruct its own grounds and convince the Court that that represents a possible reading of the Judgment. This amounts to a disguised attempt to persuade the Court that there were facts that were not taken into account when the Court considered the case between 1959 and 1962. What Thailand clearly wants is not to have the Judgment interpreted by the Court under Article 60, but to have it revised under Article 61 of the Statute of the Court. That is, of course, completely impossible and unrealistic.

4.56. Nevertheless, Thailand has gone back over the case from the beginning, insisting, *a contrario*, on an interpretation consistent with — except for the strict perimeter of the Temple — what it sought to achieve in 1959-62 and which the Court rejected. Thus what Thailand is effectively saying is that, either the Court should not provide an interpretation at all, so that Thailand can impose its own unilateral interpretation of the Judgment, or that the Court should do so by revisiting all the elements of the proceedings between 1959 and 1962. It is clear that the interpretation can relate only to the period from 15 June 1962 with a view to analysing the Judgment as rendered on that date, and can take account of later events solely to the extent that they demonstrate the existence of a dispute, not as subsequent practices serving as a basis for the Court's interpretation[189]. It is not possible to rewrite the Judgment of 15 June 1962.

4.57. Thailand's reinterpretation of the facts can clearly be seen in the way that it seeks to go
75 back over the meaning of terms used in the course of proceedings between 1959 and 1962, despite the fact that, as Thailand itself admits, the only terms that should be taken into account are those used in the *dispositif* of the Judgment, namely "territory", "vicinity" and "area". Moreover, Thailand insists that the issue concerned the "ruins of the Temple"[190], which would imply that what it repeatedly refers to as "the sole dispute" concerned only the perimeter of those "ruins". However, that is not relevant, and relates only to the state of disrepair of the sanctuary, not to the perimeter *stricto sensu*. Talk of the "ruins of Pompeii" relates not to their perimeter, but to the state of conservation of the site. It is necessary, therefore, to escape from this semantic argument, in which every word is dissected, where everybody can find whatever they want with the aid of extracts from the appropriate dictionary. It is clear, for example, that the term "vicinity" has several meanings. The only meaning that counts is the one that the Court intended.

4.58. Nevertheless, Thailand's sole response, ever since the process of including the Temple on UNESCO's World Heritage List began, has been to assert, in an avowedly unilateral manner, that it has always regarded the boundary of its territory as lying at the very edge of the Temple. This is both contrary to the facts[191] and legally misconceived, since that delimitation conflicts directly with the grounds of the Judgment of 15 June 1962. Thus Thailand has embarked on a kind of double denial of the 1962 Judgment, refusing to construe the *dispositif* in the light of its essential grounds and interpreting it in a manner that *runs counter* to those same essential grounds.

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[189]"Moreover, the Court, when giving an interpretation, refrains from any examination of facts other than those which it has considered in the judgment under interpretation, and consequently all facts subsequent to that judgment." (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 21), *op. cit.*, para. 2.14.

[190]Thai Observations. See the whole of Chap. 2, pp. 19-76, paras. 2.1-2.80, where reference is made repeatedly to the "ruins of the Temple".

[191]See paras. 2.86-2.97, *supra.*

(b) ***The lack of precision regarding the disputed area, according to Thailand***

4.59. Thailand downplays the wording of the first paragraph of the *dispositif* of 1962, namely the fact that the Temple is situated in territory "under the sovereignty of Cambodia". It thereby totally refuses to accept the overall sense of the Judgment, its practical effect and its implied scope. Thailand argues, by contrast, that a new dispute began in 2007, regarding the delimitation of a disputed area measuring 4.6 sq km. In its view, "Cambodia has failed to identify the further area from which it now contends the 1962 Judgment obliged Thailand to withdraw" [192]. This is an attempt to sow confusion in the minds of the judges.

4.60. In 1962, given that the Judgment concerned a territorial dispute regarding sovereignty over the Temple, it was necessary to establish the location of the frontier in order to determine
76 where the Temple was situated, to whom it belonged and behind which sovereign perimeter the troops of the State that did not have sovereignty were required to withdraw. Consequently, the Court was faced with a Temple that it had to place in the territory of one of the States, and it responded by recognizing that a frontier existed and that, *on the basis of that frontier*, the Temple belonged to Cambodia. It was concerned, therefore, with the question of the location of the frontier, not with defining an area belonging to Cambodia or Thailand, although it is clear that the dispute relates only to a limited perimeter. The contested area that Thailand now regards as a new dispute is simply the one between the frontier claimed by Thailand and the frontier in the Annex I map that the Court recognized as pertinent in 1962. Shortly after the Judgment, and then again from 2007, there was disagreement regarding the perimeter of the territory in question on account of incursions by Thai troops following the Temple's inclusion on UNESCO's World Heritage List. To assert that this is a new dispute is to ignore the history of the dispute and the geography of the region in question.

4.61. In reality, two conflicting interpretations come together in that disputed area. The area is bordered to the north by the line on the Annex I map and ends in the east and west at the points where the line on the Annex I map meets the frontier claimed by Thailand.

4.62. In its Application for interpretation (paragraph 44), Cambodia stressed that Thailand's obligation to withdraw its troops and other armed forces from the vicinity of the Temple under the second paragraph of the *dispositif* applied to all of Cambodia's territory in the Temple area, including the area of around 4.6 sq km that is unilaterally and arbitrarily claimed by Thailand. Indeed, that was the area at the centre of the debate in the initial case. As Cambodia has indicated, the interpretation of the Judgment of the Court must be based on the facts that were relevant at the time of the Court's ruling.

4.63. It is useful to remind the Court that Cambodia's position was based on the frontier line indicated on the Annex I map, which placed the Temple of Preah Vihear and its vicinity in Cambodian territory. By contrast, the Thai position was that the frontier should follow the watershed line, which resulted, according to Thailand, in the Temple area being situated in Thai territory.

4.64. In support of that position, Thailand presented the findings of its expert, Dr. Schermerhorn, who limited himself to identifying the watershed line in that area. In his expert
77 report, contained in Annex 49 to Thailand's Counter-Memorial, Dr. Schermerhorn included both

the Annex I map for the Temple area and his own map showing the supposed watershed line, both to a scale of 1:50,000. As he indicated, it was possible to superimpose one map on the other in order to compare them.

4.65. The map on the following page shows the comparison made by Dr. Schermerhorn by superimposing one map on the other. The line highlighted in green is the line on the Annex I map, while the line highlighted in red shows the position of the watershed line according to Thailand. To the east and west of the Temple, the two lines meet. In the middle, however, there is an area where the two lines diverge. That corresponds to the 4.6 sq km which was at the centre of the dispute in the initial case and remains disputed today.

4.66. In its Judgment, the Court clearly ruled in favour of the line on the Annex I map. The watershed line relied on by Thailand was judged irrelevant. The present dispute concerns the interpretation of the Judgment of the Court on account of Thailand's refusal to recognize the binding force attached to the line on the Annex I map in the vicinity of the Temple, and of Thailand's unilateral action in establishing a frontier around the Temple that takes no account of that line whatsoever.

(c) ***The distinction, according to Thailand, between a territorial dispute and a frontier dispute***

4.67. Thailand insists, in its Observations, on the need to distinguish between a territorial dispute — as seen in the proceedings leading to the 1962 Judgment — and a dispute relating directly to a frontier[193]. This distinction, albeit possibly significant as regards the manner in which a court approaches a dispute, and thus the method used in seeking the truth, cannot disguise the fact that the end-result must be regarded as comparable, or even similar.

4.68. Indeed, as Thailand points out[194], the Court was not asked to rule directly on the issue of the frontier in 1962. Cambodia does not contest that at all. However, the two Parties' interpretations differ as regards the consequences of the recognition, in the 1962 Judgment, of the line on the Annex I map. In Thailand's view, the reference to the Annex I map is simply evidence
78 that the Temple is situated in Cambodia. In Cambodia's view, the Court did not rule on the question of the frontier, but rather highlighted the fact that the border already existed prior to the case in order to rule on the dispute brought before it, which is not the same thing. Thailand is therefore relying on a position that defies reality — claiming that, the conflict having been "solely" territorial in 1962, the Court could not have recognized the boundaries of the two territories. This ignores a fairly simple reality, namely that when the Court rules on a territorial dispute, it necessarily ends up delimiting the claims of the two States, which it simply carries out more directly — and doubtless in a somewhat different manner — if asked to rule specifically on the question of the frontier. The fact that the question and the method are different does not mean that the outcome cannot be the same. Territorial boundaries must exist, since otherwise States could not know the extent of their territories, and in this case Thailand could not know the extent of its obligation to withdraw troops.

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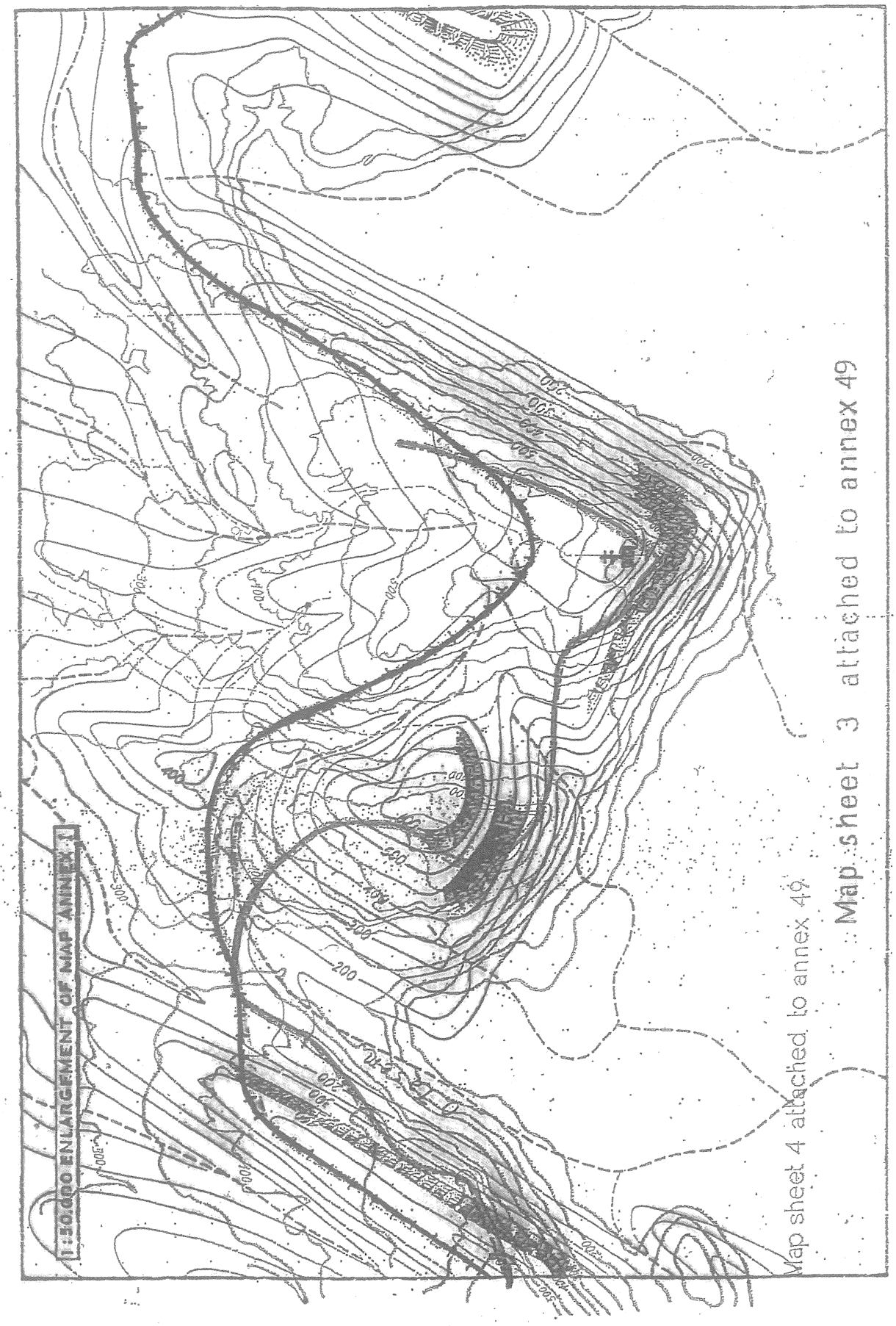
[192]Thai Observations, p. 244, para. 5.64.

[193]Thai Observations. See, in particular, pp. 214-218, paras. 5.27-5.32.

[194]*Ibid.*, p. 77, para. 2.80.


1:50.000 REDUCTION OF MAP SHEETS 1 AND 2 OF ANNEX 49
1:30.000 ENLARGEMENT OF MAP ANNEX 1
Map sheet 4 attached to annex 49
Map sheet 3 attached to annex 49

4.69. The Court itself has on several occasions had cause to highlight the coincidence of outcomes for these two supposedly different types of dispute. Thus, in the *Frontier Dispute*, the Court states:

> "The Parties have argued at length over how the present dispute is to be classified in terms of a distinction sometimes made by legal writers between 'frontier disputes' or 'delimitation disputes', and 'disputes as to attribution of territory'. According to this distinction, the former refer to delimitation operations affecting what has been described as 'a portion of land which is not geographically autonomous' whereas the object of the latter is the attribution of sovereignty over the whole of a geographical entity . . . In fact, however, in the great majority of cases, including this one, the distinction outlined above is not so much a difference in kind but rather a difference of degree as to the way the operation in question is carried out. The effect of any delimitation, no matter how small the disputed area crossed by the line, is an apportionment of the areas of land lying on either side of the line . . . Moreover, *the effect of any judicial decision rendered either in a dispute as to attribution of territory or in a delimitation dispute, is necessarily to establish a frontier*. It is not without interest that certain recent codifying conventions have used formulae such as a treaty which 'establishes a boundary' or a 'boundary established by a treaty' to cover both delimitation treaties and treaties ceding or attributing territory (cf. Vienna Convention on the Law of Treaties, Art. 62; Vienna Convention on Succession of States in respect of Treaties, Art. 11)."[195]

4.70. Similarly, in the *Territorial Dispute*, the Court draws no distinction between a territorial dispute and a frontier dispute.

> "75. It will be evident from the preceding discussion that the dispute before the Court, *whether described as a territorial dispute or a boundary dispute*, is conclusively determined by a Treaty to which Libya is an original party and Chad a party in succession to France. The Court's conclusion that the Treaty contains an agreed boundary renders it unnecessary to consider the history of the 'Borderlands' claimed by Libya on the basis of title inherited from the indigenous people, the Senoussi Order, the Ottoman Empire and Italy."[196]

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4.71. It is interesting, therefore, to note that the two cases referred to above are described in different ways (*Frontier Dispute* for the former and *Territorial Dispute* for the latter), but the Court overrides that distinction in arriving at solutions that it considers similar, regardless of the way the disputes are described.

4.72. In the above extract from the Judgment in the *Frontier Dispute*, the Court further states that the "effect of any delimitation, no matter how small the disputed area crossed by the line, is an apportionment of the areas of land lying on either side of the line"[197]. It is thus worth noting that in the present case the disputed area is also limited in size, encompassing approximately 4.6 sq km. Thailand asserts, on the basis of that fact, that the "vicinity [of the Temple] on Cambodian territory" (second paragraph of the *dispositif* of the 1962 Judgment) must be limited solely to the

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[195] *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 563, para. 17; emphasis added by Cambodia.

[196] *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 38, para. 75; emphasis added by Cambodia.

[197] *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 563, para. 17.

strict precincts of the Temple. However, in an area as limited in size as this, the "vicinity" can certainly coincide with the confines of that area, for they are never very far from one another. Thailand likewise notes that Cambodia often used the expression "parcelle de territoire" ["portion of territory"] during the initial proceedings between 1959 and 1962[198]. Not only would it be pointless to look once again at all the possible meanings that could be attributed to this expression, but logic dictates that the disputed area is indeed a "portion of territory" in the eyes of a State with a total area of more than 180,000 sq km.

4.73. Whether as a result of the irrelevance of the limited nature of the disputed area or the irrelevance of the distinction between territorial disputes and frontier disputes, there would appear to be nothing preventing the Court from interpreting the dispute before it in a manner consistent with its established case law.

(d) ***Thailand's establishment of a unilateral frontier following the 1962 Judgment***

4.74. There appears, moreover, to be a remarkable contradiction in the Thai argument. Thus Thailand asserts, on the one hand, that no frontier resulted from the 1962 Judgment, but also, on the other hand, that this absence of a recognized frontier allows it to establish one unilaterally. But this
80 argument varies, sometimes appearing to admit the possibility of a sort of "nomadic frontier", a concept rejected by international law and by the Court, which has always favoured stable and precise frontiers[199]. As regards the barbed wire erected following the 1962 Judgment, Thailand asserts that "the barbed-wire fence was intended to show the extent of the area over which the Court declared Cambodia had sovereignty and not a boundary on which the Court had decided"[200]. Thailand thus seeks, by that assertion, to give credence to the notion that there is no existing frontier between the two States, a stance that recalls a previous dispute before the Court[201]. That is to make nonsense of the difference between the absence of a frontier and a frontier explicitly recognized as the basis for the *dispositif* of the 1962 Judgment, without the recognition of which no solution would have been possible. Moreover, Thailand itself repeatedly recognized the existence of a frontier in the Preah Vihear region during the proceedings before the Court between 1959 and 1962[202].

4.75. However, Thailand does not appear sure of that argument, since it does recognize that it has established a frontier and done so in a unilateral manner[203]. What it presents as the line behind which it withdrew its troops after 1962 "in accordance with" the Judgment of the Court rapidly becomes a frontier, since it considers that the territory beyond the barbed wire is its own. Thus Thailand, by supposedly complying with the second paragraph of the *dispositif* of the Judgment, has in reality established a unilateral frontier, since its recent claims following the incidents observed since 2007 show that it considers its territorial integrity to be violated beyond that point. Thus, as regards the inclusion of the Temple on UNESCO's World Heritage List, it indicates that this includes "a significant portion of Thai territory" or "areas of Thai territory"[204].

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[198]Thai Observations, p. 91, paras. 3.24-3.25.

[199]See para. 4.21, *infra (sic)*.

[200]Thai Observations, p. 185, para. 4.105.

[201]This was one of the main arguments used by Libya in its case against Chad (*Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 13, para. 17 (point 1 of Libya's submissions).

[202]Thailand says so itself in its Observations, citing an extract from the oral argument of one of its counsel (Henri Rolin) in 1962, in which he states that the frontier, "aside from Phra Viharn, has for the past [50] years never given rise to any difficulty" (Thai Observations, p. 76, para. 2.78).

[203]*Ibid.*, particularly pp. 7-8, para. 1.14.

[204]*Ibid.*, p. 11, para. 1.21.

And yet, this is indeed the area in question. Thus Thailand does indeed understand the 1962 Judgment as establishing a "frontier", even if it does not agree with Cambodia on the position of that frontier. And Thailand certainly did not regard the second paragraph as being of secondary importance — contrary to its assertions — given that the signs erected subsequently, to which it refers, show that to be the case[205]. At the very least, Thailand has indeed interpreted the *dispositif* of the 1962 Judgment in a specific sense.

4.76. Not only did Thailand indeed understand the 1962 Judgment as establishing a frontier in the region of the Temple, it decided, being unhappy with the frontier implied by the Judgment,
81 that it would unilaterally establish that frontier, *going against* the grounds of the Judgment. So, having accepted the 1962 Judgment by means of a letter dated 6 July 1962 — undeniably tinged with scepticism — to the Secretary-General of the United Nations, Thailand immediately marked out the line in question in an extremely restrictive manner by laying down barbed wire[206]. Quite apart from the constant protests by Cambodia, which has never accepted that interpretation[207], it is astonishing that, in the modern age, with international relations already having evolved to the point where States were subject to mutually agreed and peaceful rules, Thailand did not consider it strange to be *unilaterally* establishing a frontier, without dialogue, or a proposal of dialogue, with the neighbour directly involved in the dispute. Unless this stemmed from the bizarre justification of wanting to implement the 1962 Judgment immediately? Thus Thailand has no hesitation in asserting in this regard: "And although Cambodia expressed reservations, unilateral implementation appeared not only as more realistic but also better than delayed implementation."[208]

4.77. If one wished to summarize Thailand's understanding of the 1962 Judgment, one could do so as follows: according to Thailand, it was able to establish a frontier unilaterally because the Court did not recognize an "international" frontier (and that while initially asserting that the barbed wire did not constitute a frontier). That amounts to an admission that there was no frontier at all, either before or after the 1962 Judgment. The notion that there was no frontier is thus a reading of the Judgment that entirely disregards the Court's reasoning and even runs counter to it. What is more, even in the absence of a frontier, nothing allowed Thailand to establish one unilaterally. Finally, the unilateral frontier established by Thailand after 1962 has fluctuated according to its claims, and has not remained in the same place over time[209].

(e) ***Thailand's confusion between the delimitation and demarcation of the frontier***

4.78. How can Thailand seek to impose its own unilateral interpretation of the 1962 Judgment with the aid of a map — unknown to Cambodia until recently — showing Cambodian territory as being limited strictly to the precincts of the Temple[210], despite having accepted an agreement dated 14 June 2000 (i.e., the MoU) which is based on the legal instruments that give rise to the Annex I map and which takes the form of a simple agreement on the "survey
82 and demarcation" of the frontier? The lack of coherence in Thailand's attitude is manifest here.

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[205] *Ibid.*, pp. 7-8, para. 1.14.

[206] That line is between 20 and 100 metres from the edge of the Temple, as Thailand recognizes. Thai Observations, pp. 138-139, para. 4.35, footnote 259. See paras. 2.34 and 2.35, *supra*.

[207] Paras. 2.26-2.65.

[208] Thai Observations, pp. 144-145, para. 4.41.

[209] See paras. 2.34-2.37 and paras. 2.87-2.89, *supra*.

[210] See Map L7017, paras. 2.87-2.89, *supra*.

4.79. In this respect, Thailand repeatedly confuses delimitation of the frontier with its demarcation. On several occasions, it has used the two expressions interchangeably (or simultaneously) in support of the notion that the dispute concerns both the delimitation and the demarcation of the frontier between the two States. That is not the case at all. Thus, Thailand asserts, for example: "Rather than treating the area as one in which the boundary has to be determined, as it did in the MoU, Cambodia now wants to treat the area as if it had already been delimited by the Court in 1962."[211] Two errors have crept into this assertion: firstly, Cambodia asserts not that the Court delimited the frontier in 1962, but that it recognized a pre-existing frontier line between the Parties; and secondly, the MoU does not seek to "determine" the frontier, merely to make it clear by demarcating it and marking it out. There are many examples of such confusion, notably where Thailand asserts that the 1962 Judgment "created a situation to be taken into account in the *delimitation and demarcation* process"[212], that the delimitation and demarcation of the frontier "can only have a salutary effect upon the relations of the Parties in border area"[213], or that "Cambodia recognized that the promontory of Phra Viharn was part of the area *to be delimited*"[214]. The delimitation is effective and was recognized as being binding on the Parties by the 1962 Judgment. As for demarcation, that is a process initiated by means of the MoU which will hopefully be able to continue following the interpretation by the Court.

4.80. Another of Thailand's arguments concerns the absence of any reference to the 1962 Judgment — and thus the Annex I map — in the MoU[215]. Besides the fact that this argument involves recognition that a delimitation process has already been carried out, it ignores several significant aspects. Firstly, Article I of the MoU cites the instruments on which that agreement is to be based for the purposes of effecting the demarcation. It is clear that those instruments are *entirely identical* to those that the Court took into account when it recognized the line on the Annex I map as the frontier between the two States. It would therefore seem difficult to derive different legal conclusions from those instruments.

4.81. Events subsequent to the signing of the MoU in 2000 reinforce the sense that Thailand has in no way given the impression of being involved in a process of delimitation of the frontier.
83 Thus Thailand's protests prior to 2007 concerning the building work and settlements in the disputed area referred solely, on the basis of Article V of the MoU, to the protection of the environment, not to any violation of its sovereign territory[216], as Thailand itself acknowledges[217].

4.82. It follows that the MoU of 14 June 2000 can in no way be regarded as an agreement concerning the *delimitation* of the frontier between the two States, since that frontier had already been delimited and the Court had recognized the validity of that frontier. Moreover, the very name makes it perfectly clear that the agreement acts in support of other instruments, being simply a means of implementation for the demarcation of a frontier that has already been delimited. Consequently, contrary to Thailand's claims, there can be no confusion between this Application for interpretation and the MoU. Thus Thailand appears to suggest that the Application serves only to clarify what exactly the MoU is supposed to do, which would render the Application pointless[218].

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[211]Thai Observations, p. 11, para. 1.22.

[212]*Ibid.*, p. 188, para. 4.110; emphasis added by Cambodia.

[213]*Ibid.*

[214]*Ibid.*, p. 190, para. 4.114; emphasis added by Cambodia. See also pp. 229-230, para. 5.45.

[215]*Ibid.*, particularly pp. 10-11, para. 1.20, and p. 190, para. 4.112.

[216]See paras. 2.78-2.81, *supra.*

[217]Thai Observations, p. 245, para. 5.65.

[218]*Ibid.*, pp. 227 *et seq.*, paras. 5.42 *et seq.*

To this end, Thailand has added a final chapter to its Observations[219], which, in Cambodia's view, serves absolutely no purpose. Thailand is seeking to show the apparent impossibility of transposing the line of the Annex I map on the ground. This question is *ultra petita*, since the Application for interpretation submitted by Cambodia concerns the correct reading of the *dispositif* in the light of the essential grounds of the 1962 Judgment — in other words, in light of the Annex I map as the boundary between the two Parties — so as to ascertain the extent of its territory. This in no way concerns the transposition of the line or its demarcation. That aspect could be addressed later by the Parties once the Court has interpreted the 1962 Judgment, but does not form part of this Application. It is also clear to Cambodia that the frontier to which the MoU relates extends far beyond the disputed area, but that the Court is being asked to rule solely on the territory in the disputed area.

84 4.83. The issue, then, is not that of the transposition of the line of the Annex I map on the ground, but rather the recognition of that line as the delimited frontier between the two States. The expert report commissioned by Thailand changes nothing in that respect, since it is clear, in any case, that no expert report can reconcile in that way the map unilaterally drawn up by Thailand and the line on the Annex I map recognized by the Court in 1962.

(f) ***Thailand's obligation to withdraw is a continuing one***

4.84. Thailand has criticized the question posed by Cambodia on the merits, basing its position, in particular, on the absence of a difference of opinion between the Parties regarding the obligation to withdraw under the second paragraph of the *dispositif*. According to Thailand, "it can hardly be argued that there is any dispute between them on this point"[220]. Cambodia relies on the consistent case law of the Court — as recalled, moreover, in this Response — regarding the various ways, other than direct diplomatic exchanges, that a dispute can manifest itself in questions of interpretation. What is even more remarkable is that Thailand has not, itself, managed to determine whether or not the obligation is a continuing one. In paragraph 4.88 it employs a simple assumption for the purposes of its argument. In paragraph 5.50, however, it criticizes that assumption as an incorrect interpretation of the Judgment, while in paragraph 5.51 it states that it has duly withdrawn its troops "*thereby satisfying its obligation* under the second paragraph of the *dispositif*" (emphasis added by Cambodia). That appears to be a laborious and convoluted way of saying that Thailand does not regard its obligation as a continuing obligation. It would have been simpler for Thailand to have admitted that expressly.

4.85. Thailand then embarks, in paragraphs 5.54 to 5.56 of its Observations, on the development of a somewhat similar argument as regards the theory of State responsibility. Cambodia does not consider it necessary to respond to those arguments in an exhaustive manner. The majority of them consist in a reiteration of Thailand's claim that the obligation to withdraw (second paragraph of the *dispositif*) is an instantaneous obligation, not a continuing one. Cambodia is not in agreement on that point; hence a dispute exists on that issue. As regards the remainder, those arguments are merely a manifestation of Thailand's reluctance to make the primary distinction between interpretation and compliance (or between interpretation and execution). Those distinctions have already been debated at length in this Response. It is quite clear that the
85 violation of an international obligation will have consequences in terms of State responsibility. That is elementary. Moreover, a State can violate an international obligation unintentionally or inadvertently, for example when a State makes a mistake — that is to say, when it adopts an incorrect interpretation of the nature, consequences or scope of its international obligations. That is the raison d'être of the international dispute resolution system, and the International Court of

[219] *Ibid.*, Chap. VI, pp. 257-279.

[220] Thai Observations, p. 175, para. 4.88.

Justice in particular. Consequently, the circumstances surrounding a violation are immaterial, since it remains a violation. It was for that reason that the International Law Commission deliberately decided to remove the concepts of *culpa* and *dolus* from its Draft Articles on State Responsibility. However, this elementary analysis does not alter the fact that, even if a State may have violated an international obligation as a result of its incorrect interpretation, the incorrect interpretation and the violation (i.e., the incorrect implementation) are different things. Moreover, having the correct interpretation of a disputed obligation affirmed in a binding manner must be the most effective means of averting any future violations. That is the situation in this case. Cambodia could not have been clearer as regards its objectives in these proceedings, namely to obtain an authoritative interpretation by the Court regarding the meaning and scope of the obligations stemming from the 1962 Judgment. Issues relating to the violation of those obligations over time (whether in the past, present or future) and the potential consequences of any violation in terms of State responsibility are different issues and should be addressed on another occasion and by different means.

4.86. A similar view can be taken of Thailand's somewhat contemptuous claim that the obligation to withdraw set out in the second paragraph of the *dispositif* did not have "perpetual life, with a perpetual guarantee in the form of Article 60 of the Statute" (paragraph 5.51).

4.87. Cambodia further contends that Thailand's argument that the obligation set out in the second paragraph of the *dispositif* is instantaneous is without any foundation, since that would have absurd consequences. According to Thailand, the legal consequence of that element of the *dispositif* of the 1962 Judgment was exhausted as soon as the forces stationed in the area in question withdrew following the issuance of the Judgment. In Cambodia's view, there is not a shadow of a doubt that, at that time, the stationing of military troops and other forces in the Temple or its vicinity was central to the concerns of the Court. The absurdity of Thailand's argument is such that it would mean troops being withdrawn one day and then put back in the same place the following day on the basis that the obligation in the second paragraph had been satisfied the previous day and, as a result of being so satisfied, had exhausted all of its legal force.

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4.88. Cambodia asserts, on the contrary, that there is a close link between the meaning of the first and second paragraphs of the *dispositif*, since, from a textual perspective, the word "territory" is used in each paragraph, and there is also the explicit indication that the second paragraph is a consequence of the first. Given that the first paragraph undeniably has continuing — and even perpetual — legal force, the same must be true of the second.

4.89. Consequently, this is a question that relates essentially to the "meaning and scope" of the Court's *dispositif*. To the extent that it is necessary to have reference to the second paragraph and seek an implied meaning of that paragraph that is not set out directly, Cambodia maintains that that it is necessary to ascertain that meaning in order, in all good faith, to give that paragraph and the *dispositif* as a whole the effect intended.

4.90. If one looks at Thailand's denials in their entirety, as Cambodia stressed in its Application[221], Thailand claims that in 1962 the Court somehow recognized Cambodia's ownership of a temple situated in Thai territory. For, separating the Temple from the surrounding territory indicates to the Court that the Temple is not situated in territory under the sovereignty of Cambodia; instead, the Cambodian Temple is situated in territory under the sovereignty of Thailand. And yet, the Court clearly indicated in 1962 "that the Temple of Preah Vihear is situated in *territory under the sovereignty of Cambodia*" (first paragraph of the *dispositif*; emphasis added

[221] Application of Cambodia, para. 25. See also CR 2011/13, p. 40, para. 7 (Sorel).

by Cambodia) and "finds in consequence . . . that Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or *in its vicinity on Cambodian territory*" (second paragraph of the *dispositif*; emphasis added by Cambodia). The terms of that finding are clearly far removed from Thailand's interpretation of the 1962 Judgment.

CHAPTER 5

CONCLUSIONS

5.1. Cambodia feels it necessary to conclude this Response by drawing the Court's attention, once again, to the fact that Thailand, while accusing Cambodia of seeking to have the Court take a decision on an issue that has never been decided previously, continually attempts to push the Court towards the revision of the 1962 Judgment. Numerous assertions provide confirmation of such attempts. While the Court certainly cannot allow itself to be led down this path, it is necessary to look again at the attempts made in this respect.

5.2. Firstly, the length of Thailand's Observations, including the (107) documents annexed thereto, corresponds to written arguments at the merits stage of a contentious case before the Court. Most of those documents are irrelevant in the context of interpretation proceedings under Article 60 of the Statute. They could be helpful, were the Court considering the initial case, as it did between 1959 and 1962, but that is manifestly not the case here.

5.3. Then, the manner in which the Observations introduce the question of the *ultra petita* rule — doing so in a way that suggests unequivocally that this is (in Thailand's view) a relevant issue as regards the 1962 Judgment — is remarkable. The statement in paragraph 2.52 of the Observations that "it is indeed one thing to claim that Thailand recognized that the Temple was situated south of a boundary line and quite another thing to allege that it had accepted a line traced on the basis of contour lines and rivers erroneously depicted on a map" can only be understood as an assertion that it is inappropriate to rule on the case on that basis and that the Court was therefore wrong to do so. The implications of that assertion are undeniable. That surprising line of argument is then supported by the whole of the section beginning with paragraph 3.22, which looks in detail (and in a laborious manner) at Cambodia's Observations during the arguments on the merits in the original case, despite the fact that the arguments of the parties prior to a judgment are then subsumed in the judgment of the Court. That sequence culminates in the following passage in paragraph 3.32, which deserves to be reproduced in full: "The reference to the 'Temple area' could only be a reference to an area in close proximity to the Temple — the Temple precincts — otherwise the Court could again be subject to the accusation of deciding *ultra petita*. It clearly did not do that." The word "again" is particularly revealing. This is no more or less than a threat
88 directed at the Court indicating that it is authorized to interpret the Judgment in one way only (i.e., the way that Thailand interprets it), otherwise it will (again) exceed its powers under the Statute (the implication being that it has already done so in 1962). Leaving aside the evident contempt for the Court, there is simply no way of understanding that line of argument as being justified by the wording of Article 60, which clearly stipulates that in the event of a dispute as to the meaning or scope of a judgment, the Court will decide. It falls, therefore, to the Court to provide an interpretation. This is, therefore, in Thailand's view, an invitation to the Court to take this opportunity to correct the situation by revisiting the decision that it took in 1962.

5.4. Finally, account should be taken, above all, of the highly detailed manner in which the Observations address the Annex I map and its supposed technical failings. As Cambodia has already had cause to emphasize, an entire section of those Observations (spanning 24 pages), supported by a 48-page technical study that Thailand has conducted specifically for this purpose, is devoted to the following proposition: "To establish the Annex I map as the authoritative basis for tracing the boundary line would therefore give rise to further disputes between the Parties, rather than solve the present one."[222] Even if this political argument were correct (which it is not) and

[222]Thai Observations, p. 286, para. 7.9.

pertinent (which it is not), it stems, in any event, from a technical study carried out in 2011, rather than being based on those available in 1962, when the Court delivered its Judgment, and is certainly not based on those of the Parties and their experts at the time when the line was first established and then accepted by the two States. Moreover, this argument concerns almost all of the Dangrek sector covered by the Annex I map, that is to say, not only territory in proximity to the Temple, but also areas that lie some physical distance from the Temple. What is Thailand seeking to achieve by this demonstration? Its aim is clearly to attack the validity and status of the Annex I map as a whole. This attempt *a posteriori* can only be understood as a vain attempt to have the Court now say that it should never have based its 1962 decision on the map, despite the fact that, as the Court decided, the two States had already agreed on that frontier. In other words, the objective is to have the Court revisit its 1962 decision, even if it cannot formally revise its Judgment.

5.5. This is in effect an attempt to have a judgment revised in the light of subsequent events no less than 40 years after the expiry of the deadline for such proceedings under Article 61 of the Statute. Thailand's Observations are thus full of references to the same supposed technical imperfections in the Annex I map that Thailand detailed during the proceedings before the Court that led to the 1962 Judgment. Thailand has already sought to prove that the Annex I map is defective and could create problems as regards transposition on the ground. That argument was made at the time in Thailand's written pleadings[223] and oral arguments[224]. Hence this issue was indeed brought before the Court in 1962.

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5.6. The Court, however, simply failed to regard that argument as relevant when reaching its decision. It did not address, or even mention, that aspect in its Judgment. On the contrary, the Court attributed binding value to the map. And that was the map used by the Court when recognizing the validity of the frontier between the two States in the sector at issue[225].

5.7. Thailand now asserts (paragraph 6.24) that the errors in the map at that time were such that it would be illogical to think that Thailand could have accepted that map as establishing the frontier. In other words, the Court was wrong to decide that Thailand had accepted that map. And Thailand is doubtless expecting that the error will now be corrected.

5.8. The following submissions of Cambodia in these proceedings are, by contrast with those of Thailand, voluntarily and rigorously limited to issues relevant to the interpretation requested from the Court as defined in the Application.

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[223] *I.C.J. Pleadings, Temple of Preah Vihear*, "Rejoinder of the Royal Government of Thailand", Vol. I, p. 597, para. 112, footnote 1, pp. 597-598 ("the inaccuracy of the physical features, such as contour lines, streams or rivers, marked on Annex I makes it very difficult to transpose the boundary line to a modern map"), and para. 112. See also the Thai Observations, paras. 210-211.

[224] CR 1962, p. 213 (which states that Ann. I would render the Cambodian title complete "if . . . the tracing of the frontier on it had not been based on physical data wrongly indicated by the topographical officers Oum and Kerler"; p. 273 ("material error, the inaccuracy of Annex I"); pp. 274-275 ("As Counsel . . . observed for themselves the terrain and as they then turned their eyes to Annex I, the frontier marked on Annex I at once raised a very real issue."); pp. 284-285

> ("Professor Schermerhorn has stated that his report shows that the Annex I map is in error regarding the mapping of the O Tasem river, which error affects the location of the watershed of Annex I in a decisive way. And he added [that] 'In talking about Annex I map being in error, it is self-evident that we mean a major error . . . when testing the line on Annex I in relation to the true topographical line, he concluded that it reflected a major error judged by the technical means of map-making in 1900 to 1910, as well as by the present methods of photogrammetry.").

[225] *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 14.

5.9. On the basis of the facts and arguments set out in its Application for interpretation and in this Response, Cambodia respectfully asks the Court to adjudge and declare:

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(i) that the submissions made to the Court by each of the two Parties show, both in the light of the facts and in themselves, that the Parties are in disagreement regarding the meaning and scope of the 1962 Judgment;

(ii) that the disputes between the Parties concern both the first and second paragraphs of the *dispositif* of the 1962 Judgment, as well as the link between those two paragraphs;

(iii) that the dispute relating to the first paragraph concerns the meaning and scope of the Court's use of the term "territory" ("is situated in territory under the sovereignty of Cambodia"), particularly in connection with the Court's decisions regarding the legal status of the Annex I map as representing the frontier between the two States;

(iv) that the dispute relating to the second paragraph concerns the meaning and scope of the Court's use of the terms "vicinity" and "territory" ("at the Temple, or in its vicinity on Cambodian territory");

(v) that the dispute relating to the link between the two paragraphs relates to the question of whether the second paragraph must be read in the light of the first paragraph, or whether the particular terms employed by the Court in the second paragraph must be read as seeking to limit the general scope of the first paragraph;

(vi) that each of those disputes concerns matters decided by the Court with binding force in the Judgment;

(vii) that on account of the terms used and given the context (specifically, the Court's decision concerning the legal status of the Annex I map as representing the frontier between the two States), the first paragraph of the *dispositif* must be understood as determining, with binding force, that all of the disputed area that lies on the Cambodian side of the line on the Annex I map — including, therefore, the Temple of Preah Vihear itself — is to be regarded as falling under Cambodian sovereignty;

(viii) that on account of the terms used and given the context (particularly the expression "in consequence" linking it to the first paragraph), the second paragraph of the *dispositif* must

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be understood as representing a particular consequence stemming from the decision taken in the first paragraph, implying that the scope of the second paragraph, both in space and in time, must be understood in the light of the first paragraph;

(ix) that on account of the terms used and given the context (particularly the link with the first paragraph, of which it is a "consequence"), the second paragraph of the *dispositif* must be understood as imposing on Thailand both an explicit obligation to withdraw immediately to its own territory all military or police forces stationed at the Temple or at nearby sites at that time and an implicit obligation not to send those forces — or similar forces — back to the Temple or to nearby sites in the Temple area, which must, on account of the terms used in the first paragraph of the *dispositif*, be regarded as Cambodia's sovereign territory.

On that basis, Cambodia respectfully asks the Court, under Article 60 of its Statute, to respond to the question concerning the interpretation of its Judgment of 15 June 1962 set out in paragraph 45 of the Application for interpretation filed on 28 April 2011, namely:

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

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

Mr. HOR Namhong,
Agent of the Kingdom of Cambodia.

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