INTERNATIONAL COURT OF JUSTICE

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)

FURTHER WRITTEN EXPLANATIONS OF THE KINGDOM OF THAILAND

21 JUNE 2012

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CHAPTER I
INTRODUCTION

1.1 These Further Written Explanations are filed by the Kingdom of Thailand in accordance with the decision of the Court, pursuant to Article 98(4) of the Rules of Court, communicated to the Parties by letter of 24 November 2011. They comment on the arguments made by the Kingdom of Cambodia in its Response of 8 March 2012.

1.2 In these Explanations, Thailand will show that Cambodia's Request for interpretation cannot be entertained by the Court and that even if it were to be entertained, it could not be sustained. Interpretation under Article 60 of the Statute of the Court is confined to determining the meaning or scope of the *res judicata* of the judgment being interpreted. Cambodia's Request, by contrast, seeks an interpretation of what was not part of the *res judicata* of the 1962 Judgment. It is an attempt under the guise of interpretation to have the Court rule on a present day boundary dispute between the Parties.

A. Cambodia's Response to Thailand's Written Observations

1. The Critical Changes in Cambodia's Position

1.3 Cambodia's submission of 8 March 2012, purportedly a response to Thailand's Written Observations of 21 November

2011, responds only partially and spasmodically to Thailand's arguments, while distorting, misrepresenting or ignoring many of them. But ultimately it turns out to be a modification of the essence of Cambodia's Request for interpretation.

1.4 In its Request for interpretation dated 28 April 2011, Cambodia focused on paragraph 2 of the *dispositif* of the 1962 Judgment, and the obligation of Thailand to withdraw its troops stationed "at the Temple or in its vicinity on Cambodian territory" which Cambodia claimed resulted from "the general and continuing obligation to respect the integrity of the territory of Cambodia" as defined by the Annex I map line[1]. Now, the focus has shifted. Perhaps lacking confidence in the coherence of an argument that links paragraph 2 of the *dispositif* to the Annex I map line, Cambodia now tries to find a dispute on the basis of paragraph 1 of the *dispositif*.

1.5 The dispute between the Parties justifying the Request for interpretation, Cambodia now claims, relates to both paragraphs of the *dispositif* [2], and in particular to paragraph 1 over the meaning of the term "territory" and its link to the Annex I map line as the boundary between the two Parties. Thus, Cambodia seeks to link the two paragraphs in its Request for interpretation, a link that has the objective of asking the

[1] *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), Application Instituting Proceedings*, 28 April 2011, para. 45.

[2] *Réponse du Royaume du Cambodge*, 8 March 2012 (hereafter "Response"), para. 5.9 (ii).

Court to make a determination about the Annex I map line as the boundary between the two Parties.

1.6 Apart from Cambodia's extraordinary claim that it only discovered the dispute after it had filed its Request for interpretation[3], this new claim does not escape the incoherence of Cambodia's initial claim; indeed, it only deepens that incoherence. The question put to the Court in the 28 April 2011 Request does not ask the Court to interpret paragraph 1 of the *dispositif*. It treats paragraph 1 as a starting assumption – *"Etant donné"*[4]. Now, Cambodia specifically asks the Court to adjudge and declare a particular interpretation of paragraph 1[5]. By contrast, Cambodia ends its Response by reverting to the formal request it made in its Application, as if that is the sole question for interpretation. But, that formal request did not include the interpretation of paragraph 1. So, at this stage of the proceedings Cambodia's Request for interpretation is in complete disarray.

1.7 Cambodia further distances itself from what it has formally claimed in its Request for interpretation of 28 April 2011, by now arguing that it is not asking that the Annex I map line is the boundary between the Parties, but rather that a part of

[3] Response, para. 1.7. See also para. 3.44 below.

[4] *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), Application Instituting Proceedings*, 28 April 2011, para. 45.

[5] Response, para. 5.9 (vii).

the Annex I map line was determined by the Court in 1962 to be the boundary. In its Response, Cambodia says:

> *"(...) le Cambodge ne demande aucunement que la Cour prenne une décision concernant l'intégralité de la frontière décrite par la carte de l'annexe I dans la région des Dangrek. Le Cambodge circonscrit sa demande en interprétation à la zone en litige."*[6]

This is a remarkable modification of the hitherto Cambodian argument that the Court had accepted the Annex I map line as the boundary between the two States. Yet Cambodia, struggling to find support for its new argument on a truncated Annex I map line (purportedly part of the *res judicata* of the 1962 Judgment), points to references by the Court to the Annex I map line but Cambodia does not explain why the Court would have given status to a partial line. Nor, on the basis of Cambodia's initial Request and its arguments on the issue of provisional measures did the Court understand Cambodia as referring to a truncated portion of the Annex I map line. Referring to what it saw as a potential dispute between the Parties, the Court said:

> "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;"[7]

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[6] *Ibid.*, para. 4.50.

[7] *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*, para. 31.

Cambodia's new position throws its Request for interpretation into further confusion.

1.8 Cambodia then distances itself even more from its initial Request by claiming that in fact the Court in 1962 did not determine the existence of a boundary. It simply recognized a pre-existing boundary[8]. If this is no more than the legal conceit that the law exists and a court just declares what is already the case, then it is simply a meaningless and unnecessary diversion. But if Cambodia really means that the Court did not decide that the Annex I map line was the boundary, it just recognized an existing fact, then this undermines Cambodia's whole argument that what the Court said about the Annex I map line was part of the *res judicata* – and by the same token it undermines Cambodia's argument that there exists a justiciable dispute on this issue between the Parties. If the Court was simply recognizing something that was already binding then what the Court said about the Annex I map line could not itself have been a binding determination. A consideration, a reason, or one of the reasons maybe, but not something that is made binding by the Court and therefore not something that could be part of the *res judicata*. In short, Cambodia's own argument constitutes a denial of its claim.

[8] Response, first paragraph 1.18 (pp. 8-9) and para. 4.22.

2. CAMBODIA'S THEORY OF INSEPARABLE REASONS

1.9 In order to justify its claim that the Court must look beyond the *dispositif* itself in order to interpret the 1962 Judgment, Cambodia develops a novel, and completely untenable, approach to the question of how reasons for the decision of the Court are inseparable from the actual decision of the Court as set out in the *dispositif*. Cambodia has to do this because in this case it is not the *dispositif* but rather the reasons that Cambodia wants the Court to interpret. From a lengthy, although irrelevant, disquisition on the importance of reasons to judicial decision-making[9], Cambodia jumps to the conclusion that what Cambodia regards as the most important reason for a decision must *ipso facto* be inseparable from the decision itself; it is the "*motif décisoire*"[10] and automatically part of the *res judicata* regardless of whether it is included in the *dispositif*[11]. Indeed, to give this fiction credibility, Cambodia invokes in aid the concept of a "*dispositif implicite*"[12]. The "*motif décisoire*" becomes a form of "*dispositif implicite*" and in this way what is no more than a reason for the decision magically becomes part of the *dispositif*.

1.10 But saying something is so does not make it so. A reason does not become part of the *dispositif* by calling it a

[9] *Ibid.*, paras. 4.5-4.16.

[10] *Ibid.*, para. 4.23.

[11] *Ibid.*, para. 4.18.

[12] *Ibid.*, para. 4.23.

"*motif décisoire*" or saying it is part of a "*dispositif implicite*"[13]. And Cambodia's arguments all miss an essential point. Reasons are only referred to if what is said in the *dispositif* cannot be understood without reference to those reasons. They cannot be referred to merely for the purpose of interpreting the reasons. As will be pointed out later in these Explanations[14], Cambodia has simply not made the case that any need exists to refer to the reasons in order to interpret the 1962 Judgment. That the Temple is on Cambodian territory and that Thailand had an obligation to withdraw its troops under paragraphs 1 and 2 of the *dispositif* are perfectly clear. There is no need to have resort to reasons.

3. THAILAND'S ALLEGED RESORT TO UNILATERALISM

1.11 Throughout its Response, Cambodia makes the allegation that Thailand has acted unilaterally. Many of Cambodia's claims about unilateralism relate to the way in which Thailand implemented the 1962 Judgment. Cambodia complains that Thailand acted reluctantly, that it abided by its obligations under the United Nations Charter rather than accepting the Judgment[15], that its note to the United Nations Secretary-General contained a reservation about regaining the

[13] *Ibid*.

[14] See paras. 3.7-3.37 below. See also paras. 3.38-3.87 below.

[15] Response, para. 2.33.

Temple by legal means in the future[16], and that it erected a barbed-wire fence indicating the limit of the Temple vicinity[17].

1.12 Yet in all of its fulminations against Thai "unilateralism", Cambodia overlooks the essential elements of what happened following the 1962 Judgment. As Counsel for Thailand pointed out in the oral hearings on provisional measures, a State has to implement a judgment of the Court; it does not have to accept it with enthusiasm[18]. And Thailand did implement the 1962 Judgment. It accepted that the Temple was on Cambodian territory and it withdrew its troops.

1.13 As Thailand also pointed out in its Written Observations[19], accepting the Judgment was a politically unpopular move in Thailand, and in certain quarters still remains so today. Nevertheless, it is important to put this in context. It was not a case, as Cambodia claims, of Thailand providing its own interpretation of the term "vicinity" in the 1962 Judgment and seeking to enforce it through resort to force. Faced with a decision requiring it to withdraw troops stationed "at the Temple or in its vicinity on Cambodian territory" the Thai government had to decide itself the limits of troop

[16] *Ibid.*, para. 2.32.

[17] *Ibid*., paras. 2.22-2.23, 2.39 and 2.42.

[18] *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,* 31 May 2011, CR 2011/16, p. 23, para. 22 (Mr. James Crawford).

[19] The Written Observations of the Kingdom of Thailand, 21 November 2011 (hereafter "WO"), para. 1.13.

withdrawal. On 10 July 1962 the Thai Council of Ministers adopted a resolution on how to implement the Judgment[20]; Thai troops were withdrawn and a barbed-wire fence, following the line set out in the resolution (the Cabinet line), was erected. This indicated the area from which the troops had been excluded – a warning signal to both Thai and Cambodian troops. Indeed, the barbed-wire fence was explicit recognition by Thailand that the Temple was in Cambodian territory. Thus, instead of Thailand unilaterally creating a boundary with the barbed-wire fence as Cambodia claims, Thailand had implemented the Judgment and this was the result that third party observers clearly understood Thailand's withdrawal to have achieved[21]. In fact, although the barbed-wire fence was not a boundary, and it disappeared in any event after a number of years, it was consistent with the area the Court was focusing on in its consideration of the case as reflected in the map of the Temple area published by the Court[22]. On that basis the barbed-wire fence was not only a good faith estimate of the "vicinity" of the Temple on Cambodian territory, it was an estimate solidly grounded in the arguments of the Parties before the Court[23].

1.14 Furthermore, what really rankled with Cambodia was Thailand's reservation in its letter to the United Nations

[20] Resolution of the Council of Ministers of the Kingdom of Thailand of 10 July 1962 [Annex 5 to the Further Written Explanations of the Kingdom of Thailand, 21 June 2012 (hereafter "FWE")].

[21] WO, paras. 4.35-4.37.

[22] See paras. 2.24-2.25 below.

[23] See paras. 4.97 and 4.44-4.60 below. See also paras. 4.61-4.69 below.

Secretary-General about regaining the Temple in the future by legal means[24]. Cambodian authorities regularly accused Thailand of imaginary attempts to regain the Temple[25]. The withdrawal of the reservation, as well as the requirement that Thailand declare that it recognized boundaries claimed by Cambodia[26], were elevated by Cambodia into imperative conditions for the resumption of diplomatic relations between the two countries[27].

1.15 This paranoia about Thailand regaining the Temple continues to be evident in Cambodia's suggestion that Thailand has never really accepted the 1962 Judgment. It draws a distinction in its Response between Thailand accepting its obligations under the United Nations Charter but not accepting the Judgment of the Court[28]. Yet, this is a distinction without a difference, a false distinction. Judgments of the Court are binding by virtue of Article 94 of the United Nations Charter.

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[24] Response, paras. 2.39 and 2.57.

[25] WO, paras. 4.52-4.55. In the same vein, the declarations made in 1968, on the occasion of the annual celebration of the Judgment and of Prince Sihanouk visit to the Temple: (French Embassy in Cambodia, Note to the Minister of Foreign Affairs of France, 17 June 1968 [Annex 11 to FWE]). See also Annex 20 to Response, Vol. 2, p. 563.

[26] It was one of the constant elements of Cambodia's foreign policy in the 1960s to demand that States recognize Cambodia's boundaries; for an account of States having made these declarations, see United States Embassy in Bangkok, Airgram to the Department of State, "Cambodian Chronology", No. A-363, 3 July 1969 [Annex 12 to FWE].

[27] Interview with Prince Sihanouk, in *The Christian Science Monitor*, 28 July 1967, "Sihanouk jealous of borders". [Annex 9 to FWE]. See also WO, para. 4.56.

[28] Response, para. 2.33.

So, when a State complies with a judgment because of Article 94, it is accepting that the judgment is binding on it. And when it implements that judgment, as Thailand did by withdrawing its troops from the Temple and its vicinity on Cambodian territory, it is complying with its obligation under Article 94 and any claim that the Judgment has not been applied is simply without any foundation.

B. The Gaps in Cambodia's Response

1.16 What is particularly surprising about the Cambodian Response is its failure to address, or its summary dismissal of, substantial parts of Thailand's Written Observations. Hiding behind the affectation that out of respect for the Court it will be concise and limit itself to the essential points of divergence between the Parties[29], Cambodia has simply evaded dealing with substantive issues raised by Thailand. Cambodia's silence, or its peremptory dismissal of arguments without any analysis, can only be an indication that it has no counter arguments to make and thus is unable to contest the Thai position.

1. CAMBODIA IGNORES THAILAND'S ANALYSIS OF THE 1962 JUDGMENT

1.17 Rather than respond to Thailand's analysis of the meaning of the 1962 Judgment, Cambodia chooses to ignore

[29] *Ibid.*, para. 1.1.

that analysis, asserting dismissively that Thailand is seeking a revision of the Judgment[30]. Thailand's treatment of what the term "vicinity" means in the context of the Judgment as a whole, is met with the response that *"le terme 'environs' possède plusieurs sens"*[31]. And while Cambodia asserts the obvious, *"[s]eul compte celui que la Cour a souhaité lui donner,"*[32] Cambodia fails to provide any basis whatsoever for determining what the Court in fact meant. If the meaning of paragraph 2 of the *dispositif* to the 1962 Judgment really is an open question, then it does not suffice for Cambodia to say that the term vicinity *"possède plusieurs sens"*; Cambodia must instead be able to say by reference to the Judgment and in light of the original proceedings, what the Court meant in fact. On the basis of the Judgment and the pleadings of the Parties, Thailand has demonstrated the ambit of what the Court decided. Cambodia has not. Apart from an unsupported affirmation that the Judgment encompassed the whole area to the south of the Annex I map line, Cambodia simply has no argument on this point.

2. CAMBODIA DENIES THE RELEVANCE OF AN ANALYSIS OF THE POSITIONS OF THE PARTIES BEFORE THE COURT IN 1962

1.18 One of the more astonishing aspects of Cambodia's Response is the denial that the arguments of the Parties in 1962

[30] Response, para. 4.55.

[31] *Ibid*., para. 4.57.

[32] *Ibid*.

are relevant to determining the meaning of the Judgment[33]. From the elementary, and therefore hardly worth stating, proposition that it is the Court itself that decides upon its reasons, Cambodia leaps to the completely untenable position that the arguments of the Parties before the Court are not relevant in seeking to understand the Judgment of the Court[34]. Indeed, Cambodia works itself into a rhetorical frenzy when it claims that reference by Thailand to the arguments of the Parties and certain subsequent developments constitute *"une véritable tentative de détournement de l'intégrité et de l'indépendance de la fonction juridictionelle de la Cour"*[35].

1.19 Cambodia's position is wrong in principle and it leads to a manifest absurdity. Judgments of the Court do not exist in isolation. They are the culmination of a process in which Parties make claims and support them with arguments. Those arguments are thus an important, indeed critical, part of the context in which judicial decisions are made. In order to understand a judgment, one must understand the claim that was being made and the arguments made to support that claim. All of this is so basic that Thailand is reluctant to have to set it forth. But, in face of Cambodia's confused claim that the Court's judgment "*est autonome et doit être interprété selon ses propres*

[33] *Ibid.*, second paragraph 1.11 (p.6) and para. 1.12. See also paras. 2.12-2.13 below.

[34] *Ibid*., second paragraph 1.11 (p. 6) and para. 1.12.

[35] *Ibid*., para. 1.24.

termes et non pas par référence à des sources externes"[36] it has been essential to do so[37].

1.20 In fact, Cambodia's arguments at this point border on the incoherent. It argues that what has occurred before the Judgment, in particular the pleadings of the Parties, is not relevant to its interpretation[38]. Then, it also says that facts occurring after the Judgment are not relevant because invoking them would alter the meaning and scope of the Judgment[39]. But, if what occurred before the Judgment is irrelevant to its interpretation and what occurred after the Judgment is also irrelevant, what is left? A judgment sitting in splendid isolation with no guidance at all as to its interpretation?

1.21 In short, Cambodia's argument that the 1962 Judgment cannot be interpreted by reference to the arguments of the Parties is completely without merit. An understanding of the arguments of the Parties is indispensable to understanding what has been decided and hence to an understanding of the *res judicata*. Cambodia's failure to engage with Thailand's analysis of the arguments of the Parties means that Thailand's arguments[40] rest uncontradicted.

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[36] *Ibid.*, para. 1.12.

[37] See paras. 3.7-3.15 below.

[38] Response, second paragraph 1.11 (p. 6), paras. 1.12 and 4.55-4.56.

[39] *Ibid*., paras. 1.13-1.17 and 2.11-2.15.

[40] WO, paras. 2.20-2.65.

3. CAMBODIA IGNORES THAILAND'S ANALYSIS OF THE ANNEX I MAPS

1.22 Cambodia dismisses Thailand's arguments about the various versions of the Annex I map and the impossibility of transposing the line on any of the versions of the Annex I map onto the ground. For Cambodia, this falls into the category of developments occurring after the Judgment that in Cambodia's view can have no relevance to the interpretation of the 1962 Judgment[41].

1.23 Cambodia's failure to respond to the questions raised by the Annex I maps indicates its embarrassment on this issue. Indeed, Cambodia has not explained why the version of the map that it submitted in its Request for interpretation as *Carte annexée no. 1* of the *Annexes cartographiques* is not the version of the Annex I map submitted by Cambodia in the 1962 proceedings and to which the Court was presumably referring in the 1962 Judgment[42]. And Cambodia's silence is even more puzzling since Cambodia asserts in its Response that in 1962, *"La Cour a constaté que la Thaïlande avait accepté la carte telle qu'elle était à l'époque, et non pas dans une autre version."*[43] Why would Cambodia submit to the Court in the present proceedings a version of the Annex I map which it

[41] Response, paras. 2.11-2.15.

[42] WO, footnote 597.

[43] Response, para. 2.13. (Footnote omitted)

subsequently claims in its Response Thailand had not assented to?

1.24 In any event this is not a case of a recently found map as Cambodia would like to characterize the matter[44]. There have always been different versions of the Annex I map. Hence Cambodia's argument about subsequent developments simply misses the mark. The essential point is that if the dispute in 1962 had been a boundary dispute, the existence of different versions of the Annex I map would have been a critical and central issue. The case would have been pleaded differently. That the existence of different versions of the Annex I map was not seen as critical is evidenced by Cambodia's filing in the present proceedings of a version of the map which has on it a line that is substantially different from the line on the Annex I map filed by Cambodia in the original proceedings and referred to in the 1962 Judgment. Cambodia's own actions confirm that the 1962 Judgment was not about a boundary. The point has nothing to do with developments subsequent to the Judgment.

1.25 Moreover, silence on the Annex I maps also means that Cambodia has simply not provided any response to the argument that the impossibility of transposing the line on any of the versions of the Annex I map onto the ground is a further indication that the Court was not giving authoritative status to the map line as a definitive boundary. Cambodia's implicit

[44] *Ibid*., para. 2.15.

assumption that the Court in 1962 was doing more than determining sovereignty over the Temple and was granting binding status to a map line that cannot be fixed on the ground is simply not supported either by the record before the Court or the decision of the Court. In 1962 the Court rejected Cambodia's request that it give authoritative status to the Annex I map line, and it clearly rejected that for good reason[45].

C. Misrepresentation, Distortion and Irrelevancy in Cambodia's Response

1.26 Cambodia seeks to divert attention from its failure to address key arguments in Thailand's Written Observations by mischaracterizing many of Thailand's positions, distorting what Thailand has said and introducing matters that are simply not relevant to the issues before the Court. Some of Cambodia's assertions are so patently incorrect that just stating them highlights their error. Others suggest a deeper misreading of Thailand's Written Observations.

1.27 The claim that the term "ruins" of the Temple was a statement about their state of repair and not a way of describing the subject matter of what was in issue in the French protest notes of 1949 and the Cambodian notes of 1954 and the claim brought to the Court in 1959[46] can be easily rejected. Nothing

[45] WO, paras. 3.11-3.13, 4.97-4.103 and 5.8-5.10. See also Chapter III of FWE.

[46] WO, paras 2.1-2.9.

in the records suggests that this is true. The "ruins of the Temple" was the way in which France and then Cambodia described the feature over which sovereignty was disputed. Equally the claim that the Court's rejection in 1962 of the Cambodian requests to give authoritative status to the Annex I map line was simply a matter of form or procedure[47] is a proposition of Alice-in-Wonderland-like proportions. Essentially, Cambodia is saying that the Court found it unnecessary to include a decision on the Annex I map line in the *dispositif*, because it had already decided the matter in its reasons. But, if matters can be decided with the force of *res judicata* in the reasons for judgment, what is the point of having a *dispositif* at all? Simply to state the Cambodian hypothesis is to highlight its absurdity. Reasons can be referred to in interpreting a judgment in order to understand what was decided in the *dispositif*, not because they are independently binding decisions of the Court. Moreover, the reasons also provide an important opportunity for a court to indicate what it is not deciding. Cambodia's proposition that reasons are part of the *res judicata* would deny the Court this important tool of the judicial process.

1.28 Cambodia's repeated assertions that Thailand is seeking a revision or reconsideration of the 1962 Judgment[48] ignores that it was Cambodia that brought this case before the Court. Thailand is seeking nothing other than a determination that

[47] Response, para. 3.23.

[48] *Ibid*., paras. 1.23, 4.55-4.56 and 5.1-5.7.

Cambodia is wrong in alleging that the Court decided a boundary on the basis of the Annex I map. Thailand is simply asserting in defence that there is no dispute over the meaning or scope of what was decided in the 1962 Judgment and thus no issue for interpretation – propositions that in no way constitute a request for revision.

1.29 Cambodia implies that the length of Thailand's Written Observations shows disrespect for the Court[49]. This is a *non sequitur* that is advanced simply to obscure the fact that Cambodia has failed to respond to key parts of the Thai argument and wants to divert attention from its own failure. Diversion of attention from the real issues in this case seems equally to be the reason for Cambodia's excursus into the domestic politics of Thailand in recent years[50]. None of this is relevant to the question of interpretation raised before the Court.

1.30 The allegation of disrespect, which Cambodia is fond of making, reaches its height of absurdity with the suggestion that by the use of the word "again" in paragraph 3.32 of Thailand's Written Observations Thailand was somehow making a blatant threat to the Court that it must interpret the Judgment in the way Thailand proposes[51]. The statement that "the Court could again be subject to the accusation of deciding *ultra petita*" on which Cambodia focuses referred back to the argument in paragraph 3.30

[49] *Ibid*., paras. 1.1 and 5.2-5.3.

[50] *Ibid*., paras. 2.82-2.98.

[51] *Ibid*., para. 5.3.

that indicated that the Court would not have made a decision covering more than had been requested because this would violate the *non ultra petita* principle. The point in each instance was that it was not logical to assume that a Court would expand the scope of its decision in contravention of the *non ultra petita* principle. Since the link between the two paragraphs where the argument is made is obvious and the grammatical structure of the two arguments is not complicated, the only conclusion to be drawn is that this was a deliberate misreading of Thailand's Written Observations by Cambodia in order to make a rather distasteful allegation of impropriety.

1.31 Cambodia also seeks to gain rhetorical advantage from referring to what it describes as the "secret map" allegedly disclosed for the first time during UNESCO discussions[52]. Counsel for Cambodia first mentioned this in the oral proceedings in the provisional measures application. Referring to a line that Cambodia had drawn on a map it submitted as Annex 5 to its *Annexes cartographiques*, counsel for Cambodia said that it was a line tabled by Thailand before the World Heritage Committee in 2007 and that the line had stamped on it the word "SECRET"[53]. Then, in its Response, Cambodia claimed that in 2007 Thailand published a new map that was

[52] *Ibid*., para. 1.3 (iii).

[53] *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,* 30 May 2011, CR 2011/13, p. 27, para. 6 (Sir Franklin Berman).

stamped "SECRET"[54]. But, while Cambodia has shown what it says is a line from this allegedly "secret map", it has never indicated what is the allegedly secret map from which the line is drawn. Cambodia must have got the line from somewhere.

1.32 Thailand has frankly been at a loss to know what map Cambodia has been talking about. No map was published by Thailand in 2007, let alone a map marked as secret. Thailand can only assume that the map being referred to by Cambodia is Map Series L 7017, Edition-2 RTSD, Sheet 5937 IV, a map prepared by the Royal Thai Survey Department[55]. That map has on it a line that resembles the 1962 Cabinet line[56]. But this map was originally produced in 1978, not 2007. And it is not a secret map. It has a notation on it in Thai that contains the word "Restricted", but it is a widely circulated not a "SECRET" map.

1.33 It is also a map that Cambodia has[57]. Indeed, it was provided by Thailand to Cambodia in 2005 and appears in

[54] Response, para. 1.3 (iii).

[55] Map Series L 7017, Sheet 5937 IV, was revised photogrammatically by updating detail on the base map from an aerial photograph dated December 1984; map information as of 1985, printed in October 1988. See Royal Thai Survey Department, Map Series L 7017, Ban Phum Saron, Sheet 5937 IV, 2nd Edition, October 1988 [Annex 53 to FWE].

[56] See para. 1.13 above.

[57] Cambodia reproduced part of this map, identifying it as L7017 in its letters to the Security Council on 18 July and 19 July 2008 (See Annexes 34 and 35 to Response).

Annex 94 to Thailand's Written Observations[58]. Furthermore, the line that appears on Map Series L 7017 is a line that has been known to Cambodia since 1962. It follows the barbed-wire fence of 1962 implementing the Cabinet line. So surprise and outrage by Cambodia are completely contrived. At one level, Cambodia's claim is nothing but a hullabaloo of no consequence. At another level it is part of the distortion and misrepresentation by Cambodia that is endemic in this case.

1.34 Equally Cambodia seeks to make much of an alleged attempt by Thailand to avoid producing the resolution of the Council of Ministers in 1962 leading to the withdrawal of Thai troops from the Temple and the erection of the barbed-wire fence[59]. But as the record of the resolution shows[60] the formal recitation of the Council of Ministers resolution that Cambodia so badly wanted to see simply adds nothing to understanding what occurred. Producing the record of the resolution of the Council of Ministers has added no further insight and Cambodia's obsession with it has been a pointless diversion.

1.35 Further, while Cambodia is evidently reluctant to respond to Thailand's arguments about the Annex I map, it has

[58] Minister of Foreign Affairs of the Kingdom of Thailand, Note to Advisor to the Royal Government of Cambodia in Charge of State Border Affairs and Co-Chairman of the Cambodia-Thailand Joint Boundary Commission, No. 0803/192, 8 March 2005 [Annex 94 to WO].

[59] Response, paras. 1.3 (iii) and 2.20.

[60] See Resolution of the Council of Ministers of the Kingdom of Thailand of 10 July 1962 [Annex 5 to FWE]

no hesitation in invoking maps in ways that are highly problematic. In its Written Observations[61], Thailand pointed out how Cambodia had stated, in its Request for interpretation, that the 1962 Court had annexed the Annex I map to its Judgment and that the Court had "adopted" what Cambodia refers to as the "Enlargement of Map Annex 1". Neither statement is true.

1.36 Cambodia does not provide any explanation in its Response for the misrepresentation in its Request for interpretation, but it reproduces the "Enlargement of Map Annex 1" again with its Response, altered again but still not corresponding to what had been produced in the original proceedings. This curious, and continuous, effort of cartographical deception by Cambodia deserves retelling in order to explain what Cambodia is seeking to achieve by such misrepresentation.

1.37 On 18 July 2008, in its letter to the United Nations Security Council complaining about alleged violations of its sovereignty by Thailand[62], Cambodia attached a map which it described as "'the Annex I map' (…) used by the International Court of Justice (ICJ) to adjudicate the conflict between Cambodia and Thailand over the Temple of Preah Vihear in June 1962". Cambodia included the same map in its letter to the Security Council of 19 July 2008[63], this time describing the map

[61] WO, para. 1.11.

[62] Annex 35 to Response.

[63] Annex 34 to Response.

as "the enlargement of 'Annex I map'". In fact, what Cambodia attached to both letters was Map Sheet 3 of Annex 49 to Thailand's Counter-Memorial in the original proceedings. This was a map prepared by the International Training Centre for Aerial Survey in Delft (I.T.C.)[64] and was an enlargement to a scale of 1:50,000, not of the Annex I map itself but part of the Annex I map representing an area of 4 cm × 6 cm of the original. In fact, rather than being the map "used by the International Court of Justice (ICJ) to adjudicate the conflict" over the Temple, Map Sheet 3 was hardly referred to in the oral pleadings of the Parties and not at all by the Court in its Judgment. It was not a map that was either annexed to the Judgment or adopted by the Court.

1.38 Moreover, what Cambodia presented to the Security Council was not the map sheet that was actually filed with the Court in the 1962 proceedings; it was a map on which Cambodia had made some additions. The words, "Thailand" and "Cambodia" and the words "Boundary Line" were added. And there was a further notation added "Pagoda occupied by Thai army" with a line to a dot apparently meant to represent the pagoda. None of these appeared on the original Map Sheet 3,

[64] In the original proceedings, Thailand hired experts, Professor W. Schermerhorn, Director of the Consulting Department and Dean of the International Training Centre (I.T.C.) and Professor Schermerhorn's assistant, Mr. F.E. Ackermann to determine the location of the watershed in the Kao Phra Viharn area. After an investigation on the ground, the experts produced a report entitled "Report by Professor W. Schermerhorn, 1961", which was filed as Annex 49 to Counter-Memorial of the Royal Government of Thailand (hereafter "Thailand's Counter-Memorial"). Four map sheets were annexed to this report.

and so the suggestion that this was the map "used by the International Court of Justice" to adjudicate the conflict over the Temple, was completely wrong and misleading.

1.39 Map Sheet 3 was again what Cambodia misrepresented as the Annex I map in its Request for interpretation. It appears on the second page of *Annexe cartographique no. 2* to Cambodia's Request, and is entitled "Enlargement of Map Annex 1 adopted by ICJ – 1962"[65]. This is the map to which Thailand drew the Court's attention in its Written Observations[66]. Further, this map had been again doctored, going beyond what had been done for the Security Council. The words Thailand and Cambodia had disappeared and the words "Boundary Line" had become "International Boundary Line". Further, the words "Phnum Trap", and "the Temple of Preah Vihear" and a larger symbol for the Temple than that appearing on the original Map Sheet 3 were also added. The spot indicating the pagoda was retained, together with the word "Pagoda", but the words "occupied by Thai army" disappeared. However, the words "ADOPTED BY ICJ, 1962" were added[67]. None of these words or features had been depicted on the original of Map Sheet 3. The map sheet is not a "*carte de la*

[65] *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), Application Instituting Proceedings*, 28 April 2011, *Annexe cartographique no.* 2.

[66] See para. 1.35 above.

[67] The same words are also found on the version of the map that appears in *Annexe cartographique no. 7*.

Cour" as Cambodia would have this Court believe[68] and it was never "adopted" by the Court in 1962.

1.40 Map Sheet 3 reappears in Cambodia's Response on the page immediately preceding page 24. But perhaps chastened by Thailand drawing attention in its Written Observations to Cambodia's corruption of the map Cambodia modifies Map Sheet 3 once more. Gone is the reference to the map as having been adopted by the Court, gone is the reference to the "International Boundary Line", the symbol for the Temple is reduced to its original size, and the map is described as Map Sheet 3 from Annex 49. The map, Cambodia says, is "*tirée du contre-mémoire thaïlandais dans l'affaire principale*", and "*[c]ette carte avait été préparée par l'expert thaïlandais*"[69].

1.41 But, what Cambodia provides in its Response is still not Map Sheet 3 as it was presented to the Court in 1962 in Annex 49. It is still a doctored version of that map. The words "Phnum Trap" still appear on the map, but this time spelt "Phnom Traop". The word "Pagoda", this time spelt "*Pagode*", and the spot apparently marking the pagoda are still there. None of these appeared in the original.

[68] *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), Application Instituting Proceedings*, 28 April 2011, para. 5 (2).

[69] Response, para. 2.36.

1.42 What did Cambodia hope to gain by misrepresenting Map Sheet 3 as the Annex I map? Claiming, when it knew it was incorrect, that Map Sheet 3 was the map used by the Court to adjudicate the dispute over the Temple, adding nomenclature and features to a map as if they were there in the original – the name of a hilltop which was of no concern in the original proceedings and is not identified on the map as it was presented in those proceedings and the word "Pagoda" when there was no such structure there in 1962 and thus could not have appeared on the original map.

1.43 There is no explanation in Cambodia's Response for this continued corruption of Map Sheet 3[70]. But, Cambodia's objective is clear. By adding these features to a map represented as the Annex I map that was before the Court in 1962, Cambodia is seeking to give the impression that the Court in 1962 was focusing on these features, rather than focusing on the Temple, which in fact it was. And, when Cambodia switched tactics in the Response and pointed out that this was in fact a Thai map, drawn by Thailand's expert, it suits Cambodia's case to pretend that Thailand had produced a map on which the pagoda and the Pnom Trap hilltop were identified because that would be evidence that Thailand in 1962 was focusing on areas removed from the Temple and its precincts, which of course it was not.

[70] Remarkably, Map Sheet 3 has been distorted by Cambodia at least 8 times in its pleadings in this case – 6 times in its Request for interpretation and twice in its Response. See also paras. 2.16-2.19 below.

1.44 Such cartographic manipulation is easily exposed. It demonstrates the lengths to which Cambodia has to go in its attempt to portray the 1962 proceedings as dealing with something that they were not.

1.45 This is not the end of Cambodia's cartographical deception. On the page immediately preceding page 77 of the Response Cambodia reproduces a map which purports to illustrate "*une comparaison effectuée par le Dr. Schermerhorn après superposition des deux cartes*"[71]. The Response explains that the green line on the map represents the Annex I map line and the red line represents the watershed line, and that the lines overlap to both the east and west of the Temple. The Cambodian Response then states,

> "*Cependant, dans la partie centrale, il y a une zone délimitée où les deux lignes divergent. Cela correspond aux 4,6 km^2 qui étaient au centre du litige dans l'affaire initiale et qui demeurent litigieux aujourd'hui.*"[72]

The impression is clear. Cambodia has produced a map purportedly drawn by Professor Schermerhorn showing a 4.6 sq km area in dispute. This, Cambodia claims, was the area in dispute before the Court in 1962 and it remains the area in dispute today.

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[71] Response, para. 4.65.

[72] *Ibid*.

1.46 The problem with all of this is that none of it is true. Professor Schermerhorn had included the I.T.C.-prepared Map Sheets 3 and 4, together with his report in Annex 49 to Thailand's Counter-Memorial. Map Sheet 4 was a reduction of Map Sheets 1 and 2 of Annex 49 to a scale of 1:50,000 and Map Sheet 3 was an enlargement of the corresponding area on the Annex I map to the same scale of 1:50,000[73]. The maps had been used by Professor Schermerhorn to show how the error in the watershed on the Annex I map had been caused by the erroneous inclusion of the O'Tasem stream[74]. He did not use them to illustrate any area in dispute or to compare any boundary lines or claims. Although Professor Schermerhorn had said that superimposition of the maps was possible[75], his purpose was to compare the topographic features on the maps and he did not superimpose the maps himself either in his report or in his testimony before the Court. And he did not provide the Court with a copy of a map showing the two maps superimposed.

1.47 So the map on the page immediately preceding page 77 of Cambodia's Response is a map drawn by Cambodia today. It is not, as Cambodia claims, Professor Schermerhorn's map.

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[73] The four sheets of Annex 49 to Thailand's Counter-Memorial have been reproduced in their original size in the present proceedings: Map Sheet 1 [Annex 47 to FWE]; Map Sheet 2 [Annex 48 to FWE]; Map Sheet 3 [Annex 49 to FWE]; Map Sheet 4 [Annex 50 to FWE].

[74] *I.C.J. Pleadings, Temple of Preah Vihear*, "Report by Professor W. Schermerhorn, 1961", *Counter-Memorial of the Royal Government of Thailand*, Annex 49, Vol. I, pp. 434-436.

[75] *Ibid*., p. 435.

And although Cambodia may claim that it is just doing what Professor Schermerhorn said could be done, that also would not be true. Certainly Cambodia has taken Map Sheet 3 and superimposed it over Map Sheet 4. But, in doing so Cambodia has ignored the registration points on Map Sheet 3 which were to be aligned with the corners on Map Sheet 4, instead using the Temple as a common point on each map. And then Cambodia has added colour and shading to its new map, characteristics of neither of Professor Schermerhorn's maps. Minor, harmless changes Cambodia might claim. But they have two important consequences. First, they give the impression that the 4.6 sq km area there displayed was what the Court was focusing on, and second, they move the Annex I map line towards Thailand. Cambodia has not produced a map that is the result of doing what Professor Schermerhorn said should be done, and it cannot claim that this was Professor Schermerhorn's map.

1.48 So the claim that the map on the page immediately preceding page 77 of Cambodia's Response illustrates "*une comparaison effectuée par le Dr. Schermerhorn après superposition des deux cartes*"[76] is simply untrue. It is a corruption of what Professor Schermerhorn said could be done and it is used by Cambodia to do something that Professor Schermerhorn did not do. Professor Schermerhorn did not draw the attention of the Court to a zone created by the overlap of the Annex I map line and the watershed line. He did not identify a

[76] Response, para. 4.65.

4.6 sq km area between the lines. The measurement of 4.6 sq km was nowhere raised before the Court in 1962. There was no such disputed area "*au centre du litige dans l'affaire initiale*"[77] as Cambodia would have the Court believe. There was nothing in the pleadings in 1962 about a 4.6 sq km area and nothing about it in the Judgment. All of this is a present day invention of Cambodia, which by sleight of hand is trying to make it look as if there was a well understood disputed area in 1962. And, a curious consequence of all this is that in its haste to distort Cambodia did not realize the effect of what it had done, because Cambodia's inaccurate superimposition of Map Sheets 3 and 4 had the consequence of displacing the undisputed Temple into a disputed area! Yet in its Request for interpretation as illustrated in *Annexe cartographique no. 6*, Cambodia places the Temple outside the so-called 4.6 sq km disputed area.

1.49 Cambodia's Response, like its Request, has to be read with extreme caution. What is asserted as fact is not always so and what is implied is frequently the opposite of the reality. Distortion, obfuscation and the shifting sands of what constitutes the question for interpretation all indicate that Cambodia's request in this case lacks any foundation.

[77] *Ibid*.

D. Outline of These Further Written Explanations

1.50 In Chapter II, Thailand will show that the subject matter of the dispute in 1962 is different from the subject matter of the dispute that is the basis for Cambodia's Request for interpretation. In 1962 the dispute was about sovereignty over the Temple and the ground on which it stood – the Temple area. The dispute that Cambodia brought to the Court in 2011 under the guise of interpretation is about the boundary between the Parties and the status of the Annex I map line, which Cambodia claims to be the boundary. The fact that the subject matters of the two disputes differ means that there is no question of interpretation for the Court.

1.51 In Chapter III, Thailand will respond to Cambodia's arguments in support of the Court having jurisdiction to interpret the 1962 Judgment. Thailand will show that there is no dispute over the meaning or scope of the Judgment and that Cambodia has confused the reasons for the Judgment and what has been decided with the force of *res judicata*. The request made to the Court to determine that the Annex I map line is the boundary between the Parties cannot be brought within the framework of an Article 60 interpretation. The Parties are in dispute over the location of the boundary between them, but that dispute does not arise out of the 1962 Judgment and cannot be resolved through an interpretation of what the Court actually decided in that Judgment.

1.52 In Chapter IV, Thailand will show that even if the Court were to accept that there is an admissible claim in this case, the 1962 Judgment is clear and in no need of interpretation. The Annex I map line was not the essential and inseparable reason for the decision of the Court in 1962. It was not the only reason supporting the decision that the Temple was on Cambodian territory. Furthermore, it provides no guidance in determining what the Court meant when it required Thailand to withdraw its troops stationed "at the Temple or in its vicinity on Cambodian territory". The 1962 Judgment is clear and it simply does not support Cambodia's claim.

1.53 In Chapter V, Thailand's conclusions will be set out.

CHAPTER II
THE DIFFERING SUBJECT MATTERS OF THE DISPUTES

2.1 The essence of Cambodia's position is that the Court should interpret the 1962 Judgment to mean that the Court then was making a definitive determination that the Annex I map line is the boundary between the Parties[78]. But whether it can obtain such an interpretation depends initially on whether the question put is in fact a question of interpretation of the 1962 Judgment. In other words, the subject matter of the Request for interpretation has to be within the bounds of the subject matter of the dispute that resulted in the Judgment that Cambodia now seeks to have interpreted.

2.2 However, an analysis of the subject matter of the dispute in 1962 and the subject matter of the dispute that Cambodia has now brought before the Court by means of a request for interpretation shows that they are not in fact the same. Cambodia is seeking to use the 1962 decision as a vehicle for achieving a determination on a quite different matter. On that basis alone the Cambodian Request does not meet the requirements of Article 60 for an interpretation by the Court.

[78] *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), Application Instituting Proceedings*, 28 April 2011, para. 45. See also Response, para. 5.9.

A. The 1962 Dispute

2.3 In its Written Observations of 21 November 2011, Thailand reviewed the origins of the dispute before the Court in 1962, the pleadings of the Parties and what the Court decided. From that review the nature and subject matter of the dispute became clear. It is not proposed to repeat what was said in those Written Observations, but rather to focus on the key elements of that analysis in order to highlight what was before the Court and what the Court actually decided.

2.4 Cambodia has failed to respond to Thailand's analysis of the 1962 dispute, preferring to take refuge behind a claim of irrelevance, according to which nothing in the claims made by the Parties in 1962 or their arguments in support of those claims can be taken into account in order to understand what the Court decided[79]. The result of Cambodia's silence is that it never presents a clear picture of what the 1962 case was about, but leaves a blurred and misleading impression that whatever else the case was about, it was in reality about the boundary between the two countries. But Cambodia does nothing to substantiate this. All it does is to quote selectively extracts from the decision of the Court isolating them from the broader context of the decision and the subject matter of the dispute as set out in the pleadings of the Parties and on which the decision is grounded.

[79] Response, second paragraph 1.11 (p.6) and para. 1.12.

2.5 Cambodia's reticence cannot obscure what is crystal clear; the 1962 dispute was about one thing, but the 2011 claim by Cambodia, under the guise of a request for interpretation, is about something else. And, this lack of connection between the dispute of 1962 and the dispute of today means that there is no basis on which a request for an interpretation can be made.

1. THE DISPUTE PLACED BEFORE THE COURT IN 1962

2.6 As Thailand has pointed out in its Written Observations[80], the dispute brought to the Court in 1959 had its origin in complaints made by the French colonial authorities in 1949 about the presence of Siamese troops in the "ruins of the Temple of Preah Vihear". That complaint was taken up five years later by an independent Cambodia, and in 1959 Cambodia brought the matter to the Court asking for the withdrawal of Thai troops from "the ruins of the Temple of Preah Vihear", and a declaration that "territorial sovereignty over the Temple of Preah Vihear belongs to the Kingdom of Cambodia"[81]. There was nothing in this request to the Court about a boundary between the two Parties. In the preliminary objections phase the Court defined the dispute as one involving "territorial sovereignty over the region of the Temple of Preah Vihear and its precincts"[82].

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[80] WO, paras. 2.3-2.5.

[81] *I.C.J. Pleadings, Temple of Preah Vihear*, *Application*, Vol. I, p. 15.

[82] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Preliminary Objections, Judgment of 26 May 1961, I.C.J. Reports 1961*, p. 22.

2.7 Thus, by the time the proceedings on the merits began, there was little doubt that the subject matter of the dispute before the Court was sovereignty over the Temple.

2. THE ARGUMENTS OF THE PARTIES

2.8 The written pleadings of the Parties continued in the same vein. Cambodia was requesting the Court to determine sovereignty over the Temple[83]. This was the focus of the arguments of counsel in the first round of oral pleadings. The central issue was the Temple (*"ce que revendique le Cambodge, c'est le temple"*)[84] and throughout their arguments counsel for Cambodia insisted that it was sovereignty over the Temple that was being claimed. These were the arguments to which counsel for Thailand responded, and they too treated the dispute as over the Temple.

2.9 Moreover, the Annex I map was used by Cambodia's counsel in their oral pleadings always in relation to the location of the Temple[85]. It, like the visit of Prince Damrong, was said to be evidence of Thailand's recognition that the Temple was subject to the sovereignty of Cambodia[86]. There was no

[83] WO, paras. 2.26 and 2.30.

[84] *Ibid*., para. 2.40.

[85] *Ibid*., paras. 2.59-2.65.

[86] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, pp. 30-31.

discussion by counsel about the validity of the Annex I map line as a boundary independently of the Temple. Moreover, counsel for both sides showed little interest in the precise location of the Annex I map line, and when they did mention it they expressed varying views about it. Lack of any common understanding of the location of the line did not perturb them, as it would have done if the issue had been whether it was the boundary. The key point was that the Temple lay on the Cambodian side of the map line, and according to the Court the Annex I map was a clear assertion of sovereignty over the Temple to which Thailand had not objected, when it should have[87].

2.10 At the end of the first round of oral pleadings, Cambodia produced a reformulated claim[88]. This new claim asked the Court to declare that the frontier line between Thailand and Cambodia in the Dangrek sector was the line on the Annex I map. This seemed to provide a new definition of the dispute, expanding its scope from territorial sovereignty over the Temple and its precincts, to a dispute over a boundary. At the end of the oral phase, Cambodia revised its claim yet again, this time narrowing the request for a determination that the Annex I map line was a boundary to the "disputed region in the neighborhood of the Temple of Preah Vihear", and requesting a declaration that the Annex I map represented a decision of the Commission and had a treaty character[89].

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[87] *Ibid.*, pp. 27-28.

[88] *Ibid.*, p. 10.

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

2.11 Notwithstanding the new and broader claim put forward by Cambodia at the end of the first round of oral pleadings, in the second round of oral pleadings counsel for Cambodia did not change their essential approach to the case. No new arguments were introduced to support a boundary claim as opposed to a sovereignty claim. They continued to argue the case as if it were about sovereignty over the Temple and its precincts. They focused on the Temple, on Thailand's alleged recognition of Cambodian sovereignty over the Temple, and showed no real interest in defending the Annex I map line as a boundary apart from the claim that Thailand had acquiesced in it.

2.12 Because Cambodia has refused in its Response to engage on the way the dispute was articulated in the pleadings of the Parties in 1962, it is difficult to understand exactly how it would characterize the subject matter of the 1962 dispute. Cambodia does not provide any arguments to show why Thailand's analysis of the pleadings of the Parties is wrong – just that it is irrelevant. Instead Cambodia takes statements from the Judgment of the Court, isolates them from their context and treats them as if they must be definitive of what the Court was deciding[90].

[90] Response, para. 3.12.

2.13 Thus, putting aside the Cambodian claim of irrelevance, there has been no challenge to Thailand's account of the subject matter of the 1962 dispute as identified in the pleadings of the Parties at the time. But, if Thailand is right on the way the subject matter was identified – which it is – and Cambodia is wrong on the question of relevance – which it is – then Cambodia has provided no framework for understanding what the Court decided in 1962. That is the reason that Cambodia's reliance on individual statements plucked out of the Judgment is completely misplaced. Seen in context, including the context of what was argued by the Parties, those statements simply do not carry the meaning that Cambodia ascribes to them[91].

3. THE MATERIAL BEFORE THE COURT IN LIGHT OF WHICH IT REACHED ITS DECISION

2.14 As Thailand's Written Observations demonstrated on the basis of the 1962 pleadings, the extent of territory to be adjudicated by the Court was confined to a small portion of territory on which the Temple lay – the ground of the Temple[92]. The cartographic material, either submitted in the course of 1962 written proceedings or displayed in the courtroom during the hearings, underpins and complements Thailand's demonstration that the 1962 Judgment has a restrictive territorial scope. Both in the Request for interpretation and in the Response, Cambodia made such a distorted use of the

[91] See paras. 4.10-4.25 below.

[92] WO, paras. 2.40-2.46.

cartographic material of the original proceedings[93] that a meticulous presentation of it is now indispensable to reestablish the true picture.

2.15 As recalled above[94], Thailand filed in Annex 49 to its Counter-Memorial in the original proceedings four maps: Map Sheets 1[95] and 2[96] were large-scale (1:10,000) maps prepared by the I.T.C., providing detailed topographical information for a segment of 4 cm × 6 cm of the Annex I map. The purpose of this expert evidence was to identify the watershed for the areas represented on that segment. Furthermore, I.T.C. was requested to make a comparison of the topographical features appearing on Map Sheets 1 and 2 and on the corresponding segment of the Annex I map. As the I.T.C. Report explained, the two maps differed so much in scale, that a direct comparison was hardly possible. "Consequently one map was reduced and the other one enlarged"[97]. The enlargement of the segment of the Annex I map was represented in Map Sheet 3 of Annex 49[98]. The reduction of Map Sheets 1 and 2 is represented in Map Sheet 4 of Annex 49[99], which was a transparent sheet that could be

[93] See paras. 1.35-1.48 above. See also WO, para. 1.11.

[94] See para. 1.46 and footnotes 64 and 73 above.

[95] Map Sheet 1 reproduced as [Annex 47 to FWE].

[96] Map Sheet 2 reproduced as [Annex 48 to FWE].

[97] *I.C.J. Pleadings, Temple of Preah Vihear,* "Report by Professor W. Schermerhorn, 1961", *Counter-Memorial of the Royal Government of Thailand,* Annex 49, Vol. I, p. 435.

[98] Map Sheet 3 reproduced as [Annex 49 to FWE].

[99] Map Sheet 4 reproduced as [Annex 50 to FWE].

superimposed on Map Sheet 3 in order to better view the discrepancies in the topographical features.

2.16 Map Sheet 3, hardly referred to in the original proceedings, has been extensively used and misused by Cambodia in the present proceedings. So far Cambodia has presented no less than eight versions of this Map Sheet 3[100]. Thailand has already pointed out Cambodia's cartographic fallacies[101]. They are not only wrong, they also mislead. In the Request for interpretation, Cambodia claimed that Map Sheet 3 was "adopted by the ICJ – 1962"[102]. How can Cambodia pretend that a map produced by the experts commissioned by Thailand, which does not appear and is never mentioned in the Judgment, is a map "adopted by the ICJ"? In fact, Map Sheet 3 was seen of no particular relevance either by the Court or by the Parties. During the hearings, the Parties' references to this sheet can be counted on the fingers of one hand[103]. And, the Court

[100] *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), Application Instituting Proceedings*, 28 April 2011, *Annexes cartographiques* nos. 2 (two versions), 5, 6, 7, 8 and Response, map on the page immediately preceding page 24 and map on the page immediately preceding page 77.

[101] See paras. 1.35-1.48 above. See also WO, para. 1.11.

[102] This was the title of *Annexe cartographique no. 2*. An annotation below the title that reads "ADOPTED BY ICJ, 1962" appears on the map itself, in *Annexe cartographique no. 2* (second page) and *Annexe cartographique no. 7*.

[103] *I.C.J. Pleadings, Temple of Preah Vihear, Oral Arguments,* Vol. II, pp. 276, 380, 467, 616 and 617.

did not even consider it necessary to annex this sheet to the published record of the pleadings[104].

2.17 The Court had indeed good reasons to deny Map Sheet 3 any relevance: first, the experts' intention in producing this sheet was to identify, by comparison with Map Sheet 4, the topographical inaccuracies appearing on the corresponding segment of the Annex I Map. While Map Sheet 4 provided a fairly accurate representation of the topography of those areas, Map Sheet 3 reproduced the significant errors appearing on Annex I map. The purpose of the overlay of those sheets was precisely to identify those errors[105]. Needless to say the Court had no reason to publish a map whose stated purpose was to denounce topographical errors. And it did not do so. To the contrary, it chose to publish Map Sheet 4, the topographical accuracy of which was reliable. Of course, Cambodia conceals all of this.

2.18 Moreover, Cambodia asserts that Map Sheet 3 is "an enlargement of the area of the Temple"[106], thus implying that this sheet covers the area in dispute in the original proceedings.

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[104] The choice of the maps to be annexed to the published record of the pleadings was not insignificant (see para. 2.25 below).

[105] And not to define the area in dispute, as Cambodia would now want the Court to believe (see paras. 1.45-1.48 above and 2.47-2.49 below). See also *International Boundaries Research Unit, Durham University*, "A review of maps presented in the period 1959-1962 and others prepared in 2012", *June 2012* (hereafter "IBRU Review"), paras. 6.1-6.6 [Annex 46 to FWE].

[106] *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), Application Instituting Proceedings*, 28 April 2011, para. 5 (2).

This too is incorrect. First, the map is not an "enlargement of the Temple area", but of a segment of the Annex I map corresponding to the areas represented upon Map Sheets 1 and 2 of Thailand's Counter-Memorial[107]. Second, as will be seen in the following paragraphs[108], the "Temple area" and the regions appearing on Map Sheet 3 are by no means identical under the terms of the Judgment.

2.19 Cambodia's sudden interest in Map Sheet 3 contrasts with the fact that it completely ignored the map in the original proceedings. When it received the map sheets attached to Annex 49 to Thailand's Counter-Memorial, Cambodia retained an American firm of photogeologists, Doeringsfeld, Amuedo and Ivey (D.A.I.), to comment on them. D.A.I. was only interested in Map Sheet 2 of Annex 49, making several changes to it[109]. The outcome was then submitted by Cambodia as Annex LXVI *c* to its Reply and referred to as the "D.A.I. revised

[107] See para. 2.15 above.

[108] See paras. 2.21-2.25 below.

[109] The D.A.I. Report specifies: "The firm of Doeringsfeld, Amuedo and Ivey conducted a study in October 1961 to determine the location of the watershed in the area of the Temple of Preah Vihear. The results of this study are shown on a map attached as Annex *c* to this report. The map represents a revision of the map entitled "Phra Viharn Map Sheet 2," prepared by the consulting department of the I.T.C. school of Delft, The Netherlands, and attached to Annex No. 49 to the Counter-Memorial of the Royal Government of Thailand." (*I.C.J. Pleadings, Temple of Preah Vihear*, "Rapport de MM. DOERINGSFELD, AMUEDO ET IVEY", *Réplique du Gouvernement du Royaume du Cambodge*, Annex LXVI *a*, Vol. I, p. 540). For the changes made by D.A.I. to Annex 49 Map Sheet 2, see IBRU Review, paras. 4.1-4.3 [Annex 46 to FWE].

map"[110]. There was hardly a word in the Reply about this map and similarly, Map Sheet 3 was essentially ignored during the hearings.

2.20 During the hearings, a map known as the "big map" (sometimes referred to as the "large map") was displayed in the Court [111]. This map was an optically made enlargement of Map Sheets 1 and 2 of Annex 49[112]. The "big map" was introduced into the oral hearings by Thailand's counsel, James Hyde, and was presumably intended to allow the Court to follow more easily the arguments of counsel on both sides[113]. The Court ordered that a partial reproduction of this "big map" be made on its original scale of 1: 2,000 and lodged in the back cover of the pleadings[114].

2.21 This cartographic material before the Court provides some indicia of what was meant by the term "Temple area",

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[110] Cambodia in fact produced several identical maps, which were numbered differently (see IBRU Review, footnote 12 [Annex 46 to FWE]). A copy, labelled "Annexe LXVI *(c)"* on the upper right hand corner, is reproduced as [Annex 51 to FWE].

[111] Annex 85 *d*, Map on the scale of 1:2,000 prepared by the International Training Centre for Aerial Survey (*I.C.J. Pleadings, Temple of Preah Vihear*, *Oral Arguments*, Vol. II, p. 713); see also a photograph of the "big map" taken at the International Court of Justice on 30 May 2012 [Annex 45 to FWE].

[112] For explanations of the way the "big map" was produced, see IBRU Review, paras. 5.1-5.3 [Annex 46 to FWE].

[113] *I.C.J. Pleadings, Temple of Preah Vihear*, *Oral Arguments*, Vol. II, pp. 273-274. See also IBRU Review, paras. 5.1-5.3 [Annex 46 to FWE].

[114] The partial reproduction in the cover pocket has the same annex number as the "big map" (Annex 85 *d*). This partial reproduction is an extract on the same scale as the "big map" [Annex 52 to FWE].

which was used frequently in the case to describe the subject matter of the dispute[115]. Although neither the Parties nor the Court provided a precise definition of the "Temple area" by coordinates or topographical details, several indications appearing on the maps or in discussion of the maps during the hearings effectively identify that area. A closer look at the Annex 49 maps highlights the fact that the Parties and the Court were indeed focusing their attention upon a very restricted area. Map Sheet 2 of Annex 49 and the D.A.I. versions of it[116], both of which showed half of Map Sheets 3 and 4, and thus only a tiny part of the Annex I map, were at the centre of the discussions between experts and counsel[117]. By contrast, the larger area represented on Map Sheet 1 was not seen as directly relevant.

[115] WO, paras. 3.47-3.59.

[116] See para. 2.19 above.

[117] *I.C.J. Pleadings, Temple of Preah Vihear*, *Oral Arguments*, vol. II, pp. 291, 367-393, 397-399, 404-409, 414, 416-418, 458, 465-466 and 614-616.

2.22 Now, it cannot even be said that the "Temple area" is the area represented on Map Sheet 2 [reproduced on the page on the right]. This sheet has in its centre the Phra Viharn promontory and gives some topographical details for areas beyond. A quick look to this sheet, however, makes clear that the Temple area cannot be larger than the Phra Viharn promontory. It is in fact smaller[118]. And it clearly does not extend to the Pnom Trap hilltop. On Map Sheet 2, the Pnom Trap hilltop is barely, and at best only partially, visible, being relegated somewhere to the extreme left margin. This cartographic detail further confirms Thailand's point made in its Written Observations on the basis of an analysis of the pleadings – the Pnom Trap area was never in contention[119]. This exclusion of Pnom Trap from what was being discussed in 1962 is of particular importance in the present proceedings, since Cambodia repeatedly claims that the Pnom Trap hilltop is part of the territory determined by the Court in 1962 to be under its sovereignty[120].

2.23 The Court also shared this narrow conception of the Temple area but adopted a more restricted understanding, since

[118] See paras. 2.23-2.24 below.

[119] It is indeed this area that Mr. Acheson, Counsel for Cambodia, insisted was not the "crucial area" in the case submitted to the Court (*I.C.J. Pleadings, Temple of Preah Vihear, Oral Arguments*, Vol. II, pp. 464-465 (Mr. Dean Acheson, 22 March 1962). See also WO, paras. 2.44-2.45.

[120] See para. 2.49 below.

Map Sheet 2 attached to Annex No. 49 to Thailand's
Counter-Memorial, 8 September 1961
(Reproduced in the original size as Annex 48
in the Map Annexes to FWE)

the Judgment itself identifies the Temple area as being smaller than the promontory, referring to: "[a map]…showing the whole Preah Vihear promontory, *with the Temple area*"[121]. It follows that, if for cartographers the Temple area roughly coincided with the promontory on which the Temple stands, for the Court the "Temple area" was even more limited than that, being something less than the promontory.

2.24 What the Court in fact meant by the "Temple area" is found in the opening paragraphs of the Judgment:

> "It will be apparent from the description just given that a frontier line which ran along the edge of the escarpment, or which at any rate ran to the south and east of the *Temple area*, would leave this area in Thailand; whereas a line running to the north, or to the north and west, would place it in Cambodia."[122]

This is a description of the area situated between the watershed lines as identified by the Parties[123], and it is the area that appears in Annex 85 *d* (Partial Reproduction) [on the page on the right] which was published by the Court[124].

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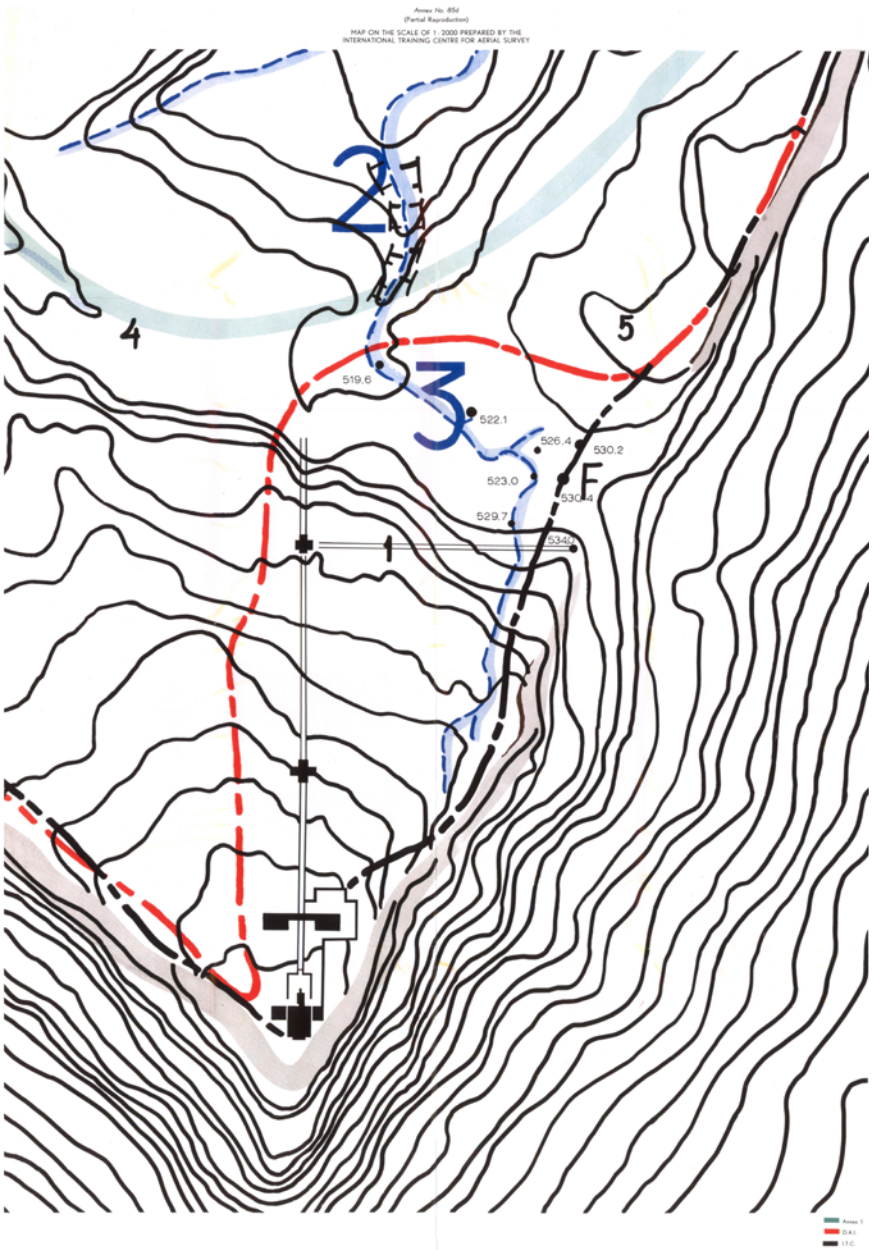
[121] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 21. (Emphasis added). See also WO, paras. 3.52-3.54.

[122] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p 15. (Emphasis added).

[123] See also paras. 4.44-4.69 below.

[124] See Annex No. 85 *d* (Partial Reproduction), Map on the scale of 1:2,000, prepared by the International Training Centre for Aerial Survey, 1962 [Annex 52 to FWE]. See also para. 2.20 above.

Annex No. 85 *d* (Partial Reproduction),
Map on the scale of 1:2,000 prepared by
the International Training Centre for Aerial Survey, 1962
(Reproduced in the original size as Annex 52
in the Map Annexes to FWE)



2.25 It is clear, then, that Annex 85 *d* (Partial Reproduction) is a cartographical representation of what the Court understood by the term "Temple area". And this conclusion is reinforced by at least two further important reasons.

- First, the Annex 85 *d* map is a partial reproduction, published by the Court itself, of the "big map" which had been displayed in the courtroom throughout the hearings. As pointed out above, the "big map" represented a much larger area, including to the west of Pnom Trap[125]. To be more precise, this partial reproduction covers 0.9 m × 0.6 m of a 3 m × 4.5 m map. This is about 4 per cent of the "big map". Since the "big map" covers, on a much larger scale, an area correponding to that of Map Sheet 3[126], the selection by the Court of this tiny segment of the "big map" to represent the "Temple area" squarely contradicts Cambodia's claim in the present proceedings that the "Temple area" was the one it portrayed on its fabricated versions of Map Sheet 3.

- Second, the Court considered it necessary to annex this partial reproduction of the "big map" to the published record of the pleadings, whereas for most of the maps presented to the Court it did not[127]. It is important in this connection to recall the Registry's note that "[o]f the maps annexed to the pleadings,

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[125] See IBRU Review, paras. 5.1-5.2. [Annex 46 to FWE]

[126] *Ibid*., para. 5.1.

[127] Out of the 61 maps or sketches produced during the 1962 proceedings, only 6 maps or sketches were published by the Court with the pleadings (Annex I to the Application instituting proceedings, Annex 7 *b*, Annex 12 *b* and Map Sheet 4 of Annex 49 to Thailand's Counter-Memorial, Annex 74 to the Rejoinder and Annex 85 *d* (Partial Reproduction) submitted during the hearings).

filed in the Registry by the Parties, *only those which the Court deemed necessary for an understanding of the Judgment of 15 June 1962 have been reproduced in the present edition*"[128]. The Court deemed the publication of this cartographic representation necessary precisely because it depicts the geographical scope of the Judgment.

4. THE DECISION OF THE COURT IN 1962

2.26 As Thailand pointed out in its Written Observations[129], in deciding the case on the merits, the Court adopted the approach to the subject matter of the dispute that it had taken at the jurisdictional phase. It quoted its statement in its Judgment on preliminary objections that the dispute concerned "territorial sovereignty over the region of the Temple of Preah Vihear and its precincts" and said,

> "Accordingly, the subject of the dispute (…) is confined to a difference of view about sovereignty over the region of the Temple of Preah Vihear."[130]

And the Court continued to define the dispute in this narrow way, even up to the point at which it delivered its Judgment. The conclusions set out by the Court in its Judgment just before the *dispositif* are preceded by the words "In the presence of the

[128] See *I.C.J. Pleadings, Temple of Preah Vihear*, Vol. I, p. IX, footnote 1 and Vol. II, p. VII, footnote 1. (Emphasis added).

[129] WO, para. 3.15.

[130] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 14.

claims submitted to the Court by Cambodia and Thailand, respectively, concerning sovereignty over Preah Vihear"[131] – precisely the subject matter of the dispute it had defined earlier.

2.27 At the same time, the Court had made very clear what it was not deciding. It declined to make rulings on the first two of Cambodia's final submissions, which had been designed specifically to have the Court rule on the status of the Annex I map line as a boundary. And the reason for this was very clear. The Court had said that to decide the question of territorial sovereignty – which was territorial sovereignty in respect of the Temple – it would "have regard to" – not "decide on" – the frontier line between the two States in this sector[132]. And for this purpose it was considering the maps submitted to it, but "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"[133]. The "sole dispute", the Court had made clear, was the dispute concerning sovereignty over the Temple.

2.28 Indeed, the Court's language here is revealing. The "sole" dispute that it had to decide was sovereignty over the Temple. It did not have to decide any other disputes. The first and second final submissions of Cambodia were about other disputes – whether the Annex I map was of treaty character, and whether the line on the Annex I map constituted the frontier line

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

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

[133] *Ibid.*

between the Parties. In short, these other disputes were not part of the subject matter of the dispute before the Court and the Court did not decide them.

2.29 It thus appears clearly that the dispute submitted to the Court in 1962 was, by its very nature, a dispute of territorial sovereignty, not of boundary delimitation. In fact, Cambodia itself admits this in the present proceedings:

> "*Effectivement, la Cour n'était pas appelée à trancher directement la question de la frontière en 1962, comme le rappelle la Thaïlande.*"[134]

Yet, Cambodia attempts to downplay the consequences of this obvious qualification of the dispute by asserting that, all in all, territorial sovereignty disputes and boundary delimitation disputes are identical in result[135]. However, this proposition is not necessarily or even generally true: while the Court had indeed understood that boundary delimitation results in attribution of sovereignty over the adjacent portions of territory[136], it never enunciated that the reverse also follows. And indeed it could hardly be said that every attribution of territory results *ipso facto* in a delimitation of boundaries between the Parties to the dispute.

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[134] Response, para. 4.68.

[135] *Ibid*., paras. 4.67-4.71.

[136] *Frontier Dispute, Judgment, I.C.J. Reports 1986*, p. 563, para. 17.

2.30 And Cambodia's approach of turning a territorial dispute automatically into a boundary dispute is even more devoid of merit in a case where the portion of territory adjudicated by the Court is so exiguous, as in the case of the Temple. Cambodia states that exiguity in relation to a portion of territory is relative and depends on how magnified a lens is focused on that portion of territory:

> "*La Thaïlande note, dans le même sens, que le Cambodge a souvent utilisé l'expression 'parcelle de territoire' lors de l'affaire en 1959-1962. Outre qu'il serait vain une nouvelle fois de rechercher tous les sens que l'on peut donner à cette expression, la logique impose que la zone en litige est bien 'une parcelle de territoire' au regard d'un Etat de plus de 180.000 km*^{2}."[137]

This is pure sophism, since the 180,000 sq km territory was not in dispute in 1962 and so it could not have been a reference point for determining what was meant by a "portion of territory". Moreover, it is a gratuitous sophism. Cambodia is simply evading the task of defining the "*parcelle de territoire*" in question. It postulates defining the portion of territory as "mission impossible", instead of searching in the 1962 Judgment and pleadings for arguments or evidence supporting its position or simply addressing Thailand's arguments in the Written Observations on this point[138]. Of course, it does not do so, because it cannot.

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[137] Response, para. 4.72.

[138] WO, paras. 2.23-2.25.

2.31 And when Cambodia does attempt to rebut Thailand's arguments about the area that was actually in dispute in 1962, Cambodia's Response is not without irony. In attempting to show that the issue in dispute was not the Temple, but sovereignty over a much broader Temple area, Cambodia twice quotes the declaration of Judges Tanaka and Morelli[139]. In concluding that Cambodia's claim on restitution of cultural objects was inadmissible, on the ground that it was not implicit in the Application, the Judges said:

> "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."[140]

The dispute as submitted in the Application, Judges Tanaka and Morelli insisted, was about territorial sovereignty and not about restitution of the Temple as a cultural object.

2.32 But, while it invokes this declaration in support of its position, Cambodia loses sight of the fact that the two Judges point at the same time to the exiguity of the portion of territory in dispute, since they identify it as "the portion of territory in which the Temple is situated" ("*la parcelle de territoire où le*

[139] Response, footnotes 122 and 150.

[140] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Joint declaration of Judges Tanaka and Morelli, I.C.J. Reports 1962,* p. 38.

temple est situé"). In short, what Judges Tanaka and Morelli were saying supports the Thai, not the Cambodian, position.

2.33 The same view of the geographical scope of the dispute submitted to the Court appears in Judge Moreno Quintana's dissenting opinion where he said: "The present case is concerned with sovereignty over a portion of territory on which are situated the ruins of a temple known as *Preah Vihear*."[141] And then he went on to say "it is the question of the sovereignty over the temple that is put to the Court, and no other"[142].

2.34 Thailand's demonstration that the territory adjudicated in 1962 was very small and limited to the ground on which the Temple stood thus stands unchallenged by Cambodia. It is further confirmed by the cartographic material put before the Court in 1962[143], by the significant choice made by the Court to extract from the "big map" and publish only that part focusing upon the Temple, and by the Court's identification, in the Judgment itself, of the Temple area as being that part of the promontory contained between the Thai and Cambodian watershed lines as they were presented to the Court[144]. In advancing its interpretation, Thailand simply relies on the text of the Judgment and on what the Parties were arguing in the

[141] *Ibid., Dissenting Opinion of Judge Moreno Quintana, I.C.J. Reports 1962*, p. 67. (Emphasis original).

[142] *Ibid.*, p. 73.

[143] See paras. 2.15-2.22 above.

[144] See paras. 2.23-2.24 above.

1962 pleadings as reinforced by Annex 85 *d* (Partial Reproduction). Instead of discussing these arguments, Cambodia brings forward frivolous charges against Thailand of *mala fide* interpretation and application of the Judgment[145].

B. The 2011 Dispute

2.35 Cambodia never defines the subject matter of the present dispute clearly. Both its argumentation and its request to the Court are elliptical as if it does not want to come out and say clearly what the dispute is about. In paragraph 3.16 of the Response Cambodia appears to identify the dispute between the Parties as:

> "*(1) le sens et la portée de la façon dont la Cour a utilisé les expressions 'en territoire relevant de la souveraineté du Cambodge' dans le premier paragraphe, et 'ses environs situés en territoire cambodgien' dans le deuxième paragraphe du dispositif de l'arrêt de 1962; (2) qu'ils ont en outre un différend quant à l'importance que revêt cette question sur le sens et la portée de l'obligation corrélative de retrait des troupes énoncée dans le deuxième paragraphe du dispositif de l'arrêt de 1962, en particulier pour savoir si cette obligation a un caractère permanent ou instantané; (3) qu'ils ont de plus un différend sur la question de savoir si l'arrêt a ou n'a pas reconnu avec force obligatoire la ligne indiquée sur la carte de l'annexe I comme représentant la frontière entre les deux parties dans la région du Temple.*"[146]

[145] Response, para. 2.33.

[146] *Ibid.*, para. 3.16.

There seem, however, to be three alleged disputes here: a dispute over the meaning of phrases in paragraph 1 of the *dispositif*; a dispute over the obligation to withdraw troops; and finally a dispute over whether the Annex I map line constitutes the boundary.

2.36 Why does Cambodia have to obfuscate the subject matter of the dispute before the Court in this way? The real object of its Request to the Court, which reflects the subject matter of the dispute for Cambodia, is to gain a determination that the Annex I map line is the boundary between the Parties. But Cambodia knows that if its Request were worded as clearly and simply as that, then it would become all too clear that this is not a matter involving the interpretation of the 1962 Judgment. There is no reference to the Annex I map line in the *dispositif*, and so Cambodia constructs its Request in the guise of a question about something which the *dispositif* did address, but this only gets Cambodia into deeper confusion, because nothing which the *dispositif* actually addressed is in dispute. The entire ruse ultimately fails, because, in the end, Cambodia has no choice but to unmask its real objective, which is to have the Annex I map line declared the boundary.

2.37 A similar strategy is found in Cambodia's formulation of the question for interpretation in its application instituting these proceedings. The subject matter of the case is seemingly found in Cambodia's Request to the Court to adjudge and declare that:

> "*L'obligation pour la Thaïlande de 'retirer tous les éléments de forces armées ou de police ou autres gardes ou gardiens qu'elle a installés dans le temple ou dans ses environs situés en territoire cambodgien' (point 2 du dispositif) est une conséquence particulière de l'obligation générale et continue de respecter l'intégrité du territoire du Cambodge, territoire délimité dans la région du Temple et ses environs par la ligne de la carte de l'annexe 1 sur laquelle l'arrêt de la Cour est basé.*"[147]

Notwithstanding the requirement in Article 98 of the Rules of Court that in a request for interpretation "the precise point or points in dispute as to the meaning or scope of the judgment shall be indicated", Cambodia's Request is a model of obscurity. It asks the Court to declare that the obligation on Thailand to withdraw its troops in accordance with paragraph 2 of the *dispositif* is a particular consequence of the general and continuing obligation to respect the sovereignty of Cambodia, and it seemingly asks the Court to declare that the territory referred to in that paragraph is that defined by the Annex I map line.

2.38 On this basis, the subject matter of the "dispute" before the Court is first a question that seems little more than hypothetical about the conceptual basis on which the 1962 Judgment concluded that Thailand had an obligation to withdraw its troops stationed at the Temple and in its vicinity. It is hypothetical because nothing really turns on it. Whether the

[147] *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), Application Instituting Proceedings*, 28 April 2011, para. 45.

obligation to withdraw was based on a general and continuing obligation to respect the sovereignty of Cambodia, or had some other basis, is really irrelevant. Thailand had an obligation under paragraph 2 to withdraw its troops and it did so. Thus, it is difficult to see what the subject matter of a dispute in this instance could be.

2.39 The second aspect of the Request for interpretation is the statement that the Cambodian territory from which Thailand had to withdraw its troops was defined by the Annex I map line which constitutes the boundary between Cambodia and Thailand. What this appears to be is a request to the Court to determine that the area from which Thai troops had to withdraw was defined by the Annex I map line. The difficulty with such a request, of course, is that paragraph 2 does not stipulate the withdrawal of Thai troops from Cambodian territory as defined by the Annex I map line – it requires the withdrawal of troops "stationed at the Temple and in its vicinity on Cambodian territory."

2.40 In order to try and finesse this fundamental flaw in its Request for interpretation, Cambodia adds a preamble to its Request,

> "*Etant donné '(...) que le temple de Préah-Vihéar est situé en territoire relevant de la souveraineté du Cambodge' (point 1 du dispositif), ce qui est la conséquence juridique du fait que le Temple est situé du côté cambodgien de la frontière telle qu'elle fut*

reconnue par la Cour dans son arrêt…"[148]

Thus, according to Cambodia, in carrying out its interpretative task, the Court must take as a starting assumption that in 1962 the Court determined that a boundary existed between the Parties. In essence, in its initial request Cambodia requires the Court to assume what it is really asking the Court to decide – that in 1962 the Court determined that the Annex I map line was the boundary.

2.41 Nonetheless, manipulate the wording however it likes in its Request for interpretation, Cambodia cannot obscure the fact that the subject matter of the present case is whether the court in 1962 concluded with the effect of *res judicata* that the Annex I map line was the boundary between the Parties.

2.42 In its Response, perhaps sensing the implausibility of linking its attempt to have the Court make a determination about the Annex I map line on the basis of an alleged dispute over paragraph 2 of the *dispositif*, and now alleging that Thailand's troops had not withdrawn after all, Cambodia has changed tack. The preamble to its Request for interpretation, which focuses on paragraph 1 of the *dispositif*, takes on a new importance. Rather than treating paragraph 1 as an assumption that the Court must make, Cambodia now claims that a dispute exists over paragraph 1 that, along with the dispute over paragraph 2, provides the basis for the Request for interpretation.

[148] *Ibid*.

2.43 Indeed, paragraph 5.9 of Cambodia's Response contains a litany of matters that it seeks the Court to decide. But behind them all and revealed in sub-section (vii) is the real issue for Cambodia:

> "*le paragraphe premier du dispositif doit être compris comme determinant, avec force obligatoire, que toutes les zones en litige se trouvant au côté cambodgien de la ligne de la carte annexe I – y inclus donc le Temple de Préah Vihéar lui-même – sont à regarder comme relevant de la souveraineté cambodgienne.*"[149]

The statement is revealing. It identifies precisely what Cambodia sees as the subject matter of the present dispute. It is a request for the Court to determine by way of interpretation that the Annex I map line is the boundary between the Parties. The Temple has become secondary – what is really at stake is the Annex I map line boundary. And, the interpretation of paragraph 2 is revealed simply as a device. It is a way of getting the real issue concerning Cambodia – the present day dispute over the location of the boundary – before the Court.

C. The Lack of Coincidence between the 1962 and the 2011 Disputes

2.44 A question of interpretation can only arise if the matter to be interpreted relates to what was decided by the Court with

[149] Response, para. 5.9 (vii).

the force of *res judicata* in the dispute that was before it[150]. If the question put to the Court in a request for interpretation – the subject matter of the request for interpretation – is not related to the question that the Court decided in its earlier judgment there is no basis for interpretation. Article 60 permits only interpretation of the meaning or scope of what was decided in the judgment being interpreted. The 1962 dispute was about sovereignty over the Temple of Phra Viharn. The present day Request to the Court is about Cambodia's claim that the line on the Annex I map is the boundary between the Parties. The subject matter of the Request for interpretation is just not the same as the subject matter of the 1962 dispute[151].

2.45 While refusing to engage with the definition of the portion of territory ("*parcelle de territoire*") adjudicated by the Court in 1962, on the basis of the documentation then before the Court, Cambodia does not hesitate to re-create a version of a portion of territory in light of its present day wishes to administer the Temple as a World Heritage site. It postulates that the area in dispute in 1962 and the one it claims now are identical, and calls them both the Temple area ("*zone du Temple*")[152]. Yet, the techniques employed to convince the Court that these areas are the same are anachronisms and cartographic fallacies.

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[150] *Request for Interpretation of the Judgment of November 20th, 1950, in the asylum case, Judgment of November 27th, 1950, I.C.J. Reports 1950,* p. 402.

[151] See paras. 2.6-2.7, 2.26-2.34 above and 3.55-3.64 and 3.83-3.86 below.

[152] Response, paras. 2.23, 2.78-2.80, 2.97 and 4.62-4.66.

2.46 It is easy to demonstrate that the area in dispute in 1962 and the area claimed by Cambodia to be so today are not identical in their geographical extent. The only thing they seem to have in common is that Cambodia considers them to be small: it claimed they were so in 1962[153]; it puts forward the same argument today[154]. But the small portion of territory of 1962 has somehow grown in the intervening 50 years, and who knows whether it will stop there.

2.47 As shown earlier in these Explanations[155], Cambodia's Response defines the area it considers to be now in dispute as amounting to 4.6 sq km. But such a 4.6 sq km area is the result of a creative exercise in cartography. The map inserted in the Response on the page immediately preceding page 77 is Cambodia's creation. This map did not exist in 1962 nor was the area it depicts regarded as the disputed area in the original proceedings. Not once did the so-called 4.6 sq km disputed area appear in the 1962 pleadings. Cambodia goes so far as to attribute to Thailand the creation of this "disputed area"[156], but

[153] WO, para. 2.43.

[154] "*Ceci permet de souligner, qu'en l'espèce, la zone en litige concerne également* un territoire restreint *d'environ 4,6 km*^{2}" (Response, para. 4.72.) (Emphasis added). See also *ibid*., para. 4.62.

[155] See paras. 1.45-1.48 above.

[156] *"Dans sa Requête en Interprétation (para. 44), le Cambodge a souligné que l'obligation pour la Thaïlande de retirer ses troupes et autres forces armées des environs du Temple, en application du deuxième paragraphe du dispositif, s'appliquait à l'ensemble du territoire cambodgien dans la zone du Temple, y compris la zone revendiquée par la Thaïlande au sein d'un périmètre représentant environ 4,6 km*^{2}*,* qui fut unilatéralement et arbitrairement déterminée par elle." (Response, para. 4.62). (Emphasis added).

it never identifies a statement in the 1962 proceedings, either of Thailand, or of its own, referring to such an area. Moreover, the method used by Cambodia for creating this new map of a 4.6 sq km disputed area is technically flawed and cartographically misleading. The area results from an inaccurate superimposition of Map Sheet 3 on Map Sheet 4 and then some misleading colouring and shading to give the impression that in 1962 the Court was focusing on this as a "disputed area"[157].

2.48 Cambodia describes in the following way its cartographic representation of a 4.6 sq km allegedly "*au centre du litige dans l'affaire initiale*":

> "*La ligne surlignée en vert est la ligne sur la carte de l'annexe I ; la ligne surlignée en rouge montre le positionnement de la ligne de partage des eaux selon la Thaïlande.* A l'est et à l'ouest du Temple, les deux lignes se rejoignent. Cependant, dans la partie centrale, il y a une zone délimitée où les deux lignes divergent. *Cela correspond aux 4,6 km^2 qui étaient au centre du litige dans l'affaire initiale et qui demeurent litigieux aujourd'hui*."[158]

But the area thus described is by no means identical to the Temple area in dispute in 1962. The cartographic representation of the Temple area in 1962 corresponds to a small fragment of

[157] See IBRU Review, paras. 6.7-6.8 [Annex 46 to FWE]. See also paras. 1.45-1.48 above.

[158] Response, para. 4.65 (Emphasis added).

Map Sheet 2 of Annex 49 to Thailand's Counter-Memorial[159]. Cambodia's corrupted 2012 map covers both Map Sheets 1 and 2 of Annex 49, thus extending far west from the Temple area. The lack of coincidence between the area upon which the Court itself focused in 1962 and the area Cambodia is now claiming is even more striking when comparing the territory represented in the partial reproduction of Annex 85 *d*[160] and Cambodia's 2012 map. The partial reproduction of Annex 85 *d* covers indeed an area less than 2 cm × 2 cm in Cambodia's map and only 4 per cent of the "big map".

2.49 That the area claimed today is different from the one in dispute in 1962 is further confirmed by the fact that the Pnom Trap hilltop, repeatedly referred to in Cambodia's Response[161] as being included in the 4.6 sq km area, was explicitly excluded by Cambodia itself from the territory to be adjudicated in 1962[162]. It is significant that Cambodia, lacking evidence in the 1962 pleadings supporting its claims in respect of the geographical extent of the dispute, now has to fabricate it, by adding both the emplacement of the pagoda and the name Pnom Trap on the map it produced on the page immediately preceding page 24 of the Response, a map allegedly "*tirée du contre-mémoire thaïlandais dans l'affaire principale*"[163]. It appears

[159] See paras. 2.21-2.25 above.

[160] See paras. 2.24-2.25 above.

[161] Response, paras. 2.8, 2.23 and 2.67.

[162] WO, paras. 2.44-2.45. See also para. 2.22 above.

[163] Response, para. 2.36.

thus that the two maps Cambodia presented as proof of the coincidence in the geographical extent of the 1962 and 2011 disputes (immediately preceding pages 24 and 77 of the Response) have in fact been misrepresented in order to give the impression that Cambodia's claim of today is precisely what was before the Court in 1962[164].

2.50 In light of all of this, Cambodia's assertion that the "*4,6 km^2 (...) étaient au centre du litige dans l'affaire initiale et (...) demeurent litigieux aujourd'hui*"[165] is utterly groundless.

2.51 This lack of correlation between the 1962 dispute and the dispute of today poses a problem for Cambodia in this case. In order to find a link between the subject matter of the 1962 dispute and the 2011 "dispute", Cambodia, has to pretend that there were two disputes before the Court in 1962: one involved the Temple and the other involved the boundary. In its Response, Cambodia draws a totally artificial distinction between meaning and scope in Article 60 in order to say that the meaning of the 1962 Judgment is that the Temple is in Cambodian territory, but the scope of the Judgment is that it resolves the boundary between the Parties[166]. The aim of the Judgment, Cambodia claims, was to put an end definitively to

[164] See paras. 1.40-1.48 above.

[165] *Ibid*., para. 4.65. See also paras. 2.36, 4.60 and 4.62.

[166] *Ibid*., para. 4.47.

the dispute between the Parties[167], by which Cambodia means both disputes.

2.52 And Cambodia can make this claim that there were effectively two disputes because it has treated as irrelevant the way the Parties, including Cambodia itself, had defined the dispute before the Court in 1962, which shows definitively that the dispute submitted to the Court and argued by counsel was that of sovereignty over the Temple. But more than that, Cambodia ignores the actual wording used by the Court in its Judgment. When the Court refuses to rule on the question of whether the Annex I map line is the frontier line because it is not part of the "sole dispute" submitted to it how can Cambodia claim that the Court did precisely what it said it was not doing? Under Cambodia's theory the Court having explicitly refused to make a determination that the Annex I map line was the boundary between the Parties, somehow inadvertently did so in its reasons. The *dispositif implicite* turns out to be a *dispositif par accident*!

2.53 And because it ignores what the dispute before the Court in 1962 was about in fact, Cambodia is able to extract from the judgment words that in isolation are aimed at suggesting that the Court was deciding on the boundary[168]. But in light of the express statements of the Court about what it was deciding – that its statements about the Annex I map line were statements

[167] *Ibid.*, para. 4.48.

[168] *Ibid*., para. 3.12.

about its reasons for reaching its decision on the "sole dispute" before it – then Cambodia's position cannot stand. The Court looked at maps to see if they could find in them reasons for the decision. It is this confusion of the reasons for a decision and the actual decision of the Court in 1962 that permeates the whole of Cambodia's argument. For Cambodia reasons are binding decisions in themselves and this allows Cambodia to conclude that reasons automatically become part of the *res judicata*.

2.54 But for the reasons elaborated on later in these Explanations, there can be no question about the meaning of "territory" in paragraph 1 of the *dispositif* or about its geographical scope, because there is no dispute over the fact that the Temple is on Cambodian territory. And no question arises over the meaning of paragraph 2, because Thailand's obligation to withdraw troops stationed "at the Temple or in its vicinity on Cambodian territory" is not contested. Whether Thailand did withdraw, (and in fact there is no real dispute over whether it did) is a question of fact. It is a question of the implementation of the 1962 Judgment not a question of its interpretation.

2.55 In reality, Cambodia's claim is about something different; about whether the boundary between Thailand and Cambodia is defined by the Annex I map. That was not the subject matter of the dispute in 1962, nor was it a matter on which the Court ruled.

CHAPTER III
JURISDICTION AND ADMISSIBILITY

3.1 Cambodia's Response, in particular its Chapter 3, shows that the Parties share a common approach to assessing the conditions for the exercise by the Court of its jurisdiction under Article 60 of the Statute, the same jurisprudence being quoted therein[169] and in Thailand's Written Observations[170]. Both States agree that two cumulative conditions must be met:

- a dispute must exist between the parties; and
- the subject matter of this dispute must solely bear on the meaning or scope of a previous judgment.

3.2 Obviously, Thailand and Cambodia do not agree on the effect of the application of these conditions to the case *sub judice*. In particular, contrary to Cambodia's views, Thailand considers that the disputes existing today between Thailand and Cambodia do not bear upon the meaning and scope of the 1962 Judgment. It is also of the view that Cambodia's Request aims at obtaining now what the Court declined to adjudge in 1962.

3.3 For its part, Cambodia glosses over a third condition relating to admissibility, namely that the request for interpretation must not aim at obtaining answers to questions not decided with binding force. The imperative words used by the

[169] Response, footnote 114.

[170] WO, para. 4.4.

Court underline that this condition is as "*universellement admis*"[171] as the previous ones:

> "The real purpose of the request *must be* to obtain an interpretation of the judgment. This signifies that its object *must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force*, and not to obtain an answer to questions not so decided."[172]

3.4 Instead of demonstrating that its Request conforms to this third requirement, Cambodia provides answers to arguments on admissibility that Thailand has never put forward, namely that the Applicant would be barred from introducing its request on grounds of tardiness or a renunciation to its right to request an interpretation of the Judgment[173]. This is not Thailand's case and paragraph 4.29 of the Written Observations, on which Cambodia fastens, could hardly be clearer[174]. If Thailand maintains that Cambodia's Request for interpretation "poses major challenges to the integrity" of proceedings under Article 60[175], this is so not for procedural reasons such as tardiness

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[171] Response, para. 3.2.

[172] *Request for Interpretation of the Judgment of November 20th, 1950, in the asylum case*, *Judgment of November 27th*, *1950, I.C.J. Reports 1950*, p. 402 (Emphasis added); quoted in *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*, p. 36, para. 12.

[173] Response, paras. 3.18-3.21.

[174] "The tardiness of the Request is not in itself a cause of inadmissibility, and it is recognised that a dispute within the meaning of Article 60 of the Statute can arise from facts subsequent to the delivery of a judgment; the Court noted this in its 18 July Order." (WO, para. 4.29).

[175] WO, para. 4.29.

(although it makes the case more delicate), but for very substantial reasons. As Thailand has shown in its Written Observations and will again summarize in Section B of this Chapter, Cambodia is seeking now to have the Court introduce, in the *dispositif* of the judgment on interpretation, issues that the Court expressly refused to adjudge in 1962. Section A will demonstrate that Cambodia seeks to do so under the fallacious pretext of uncertainty and disagreement between the Parties as to the meaning of certain words in the *dispositif*.

3.5 It falls to the Court to assess, on an objective basis, whether these conditions are fulfilled. Pure assertions cannot serve as reasoning; it is not enough for Cambodia to declare that it is so for its Request to be declared admissible[176]. Moreover, the Court has not yet "decided" anything on this point and *now* is the right time for the Court to make its assessment[177]. Despite Cambodia's contentions to the contrary, which display a peculiar conception of what constitutes a "decision" of the Court[178], the Order on provisional measures does not bar Thailand from putting forward arguments and facts relating to the existence or not of a dispute on the meaning or scope of the 1962 Judgment.

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[176] Cambodia states: "*[L]orsque le Cambodge affirme ne pas chercher à obtenir la révision ou l'exécution de l'arrêt de 1962, mais au contraire à obtenir l'interprétation authentique de l'arrêt, cela doit être considéré comme étant l'objet unique de la présente procédure.*" (Response, para. 1.6).

[177] Thailand explained this in its WO, paras. 4.1-4.6.

[178] Response, paras. 1.19, 2.4, 3.4-3.5 and 3.20.

A. No Dispute over the Meaning or Scope of the Judgment

3.6 Cambodia is well aware that the 1962 *dispositif* contains no finding on the status of the Annex I map and on its boundary with Thailand, and for good reason[179]. Since the real purpose of its Request is to have the Court decide now upon these questions[180], Cambodia must engage in flights of imagination in defining the so-called disputes over the meaning of the *dispositif* (2.). In order to make a connection with the issues that lie at the heart of its Request, Cambodia keeps repeating, as a mantra, that the Annex I map and the boundary line drawn upon it constitute the sole reason upon which the 1962 Court based its findings, that they are consequently inseparable from the *dispositif* and, then it further infers, that they enjoy *res judicata* status[181]. Cambodia unfolds a conception of the theory of inseparability annihilating the distinction between the reasons and the *dispositif* and disconnects completely the *res judicata* from the claims of the Parties and the subject matter of the initial dispute (1.).

1. IDENTIFYING THE *RES JUDICATA*

3.7 Cambodia alleges that the status of *res judicata* attaches to the whole of the 1962 Judgment, reasons and *dispositif* together: first, it states that the Judgment is founded on a single

[179] See paras. 3.91-3.101 below.

[180] Response, para. 3.16 (3). See also *ibid*., second paragraph 1.18 (p. 9) and para. 4.60. See also paras. 2.35-2.43 above.

[181] Response, paras. 1.19-1.23, 4.2-4.4 and 4.10-4.27.

reason – the legal status of the Annex I map and of the line on the map[182], then it postulates that this reason has binding legal status[183]. This conception rests upon several erroneous postulates on the legal status of reasons[184] and is unusually extensive as to the scope of *res judicata*, playing down the differences between the different parts that constitute a judgment.

(a) Res Judicata *Is Circumscribed by the Initial Dispute and the* Petitum

3.8 It is necessary to circumscribe more precisely the scope of the *res judicata* in relation to the different parts of a judgment. For this purpose, the composition and the function of a judicial decision have to be scrutinized. A judgment is the Court's reasoned response adjudging between opposite claims of the parties in respect of a well-defined subject matter. In more technical terms:

- the subject matter submitted to the Court must be deemed to be the dispute as defined by the Court on the basis of the claims of the parties[185];

- the claims of the parties correspond to the *petitum*;

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[182] *Ibid.*, para. 4.9. This view is wrong: see paras. 4.11-4.25 below.

[183] Response, paras. 4.19-4.27.

[184] See paras. 3.16-3.25 below.

[185] "The subject-matter of a dispute brought before the Court is delimited by the claims submitted to it by the parties." (*Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*, *Judgment*, *I.C.J.,* 3 February 2012, para. 39).

- the arguments of the parties to the reasons of the judgment;

- the response of the Court to the *dispositif*.

3.9 The determination of the scope of *res judicata* in the context of a request for interpretation under Article 60 of the Statute rests on the interplay between these elements. It is admitted in judicial decisions and in the writings of the most highly qualified publicists, that *res judicata* results in general from the conjunction of three elements, which must be identical in the two proceedings submitted before the Court: same parties, same *causa petendi*, same *petitum*[186]. The identity of parties is not contested in the present case.

3.10 While it is not always easy to distinguish between the *petitum* and the *causa petendi*, mostly because the parties' *petita* mix up real claims and arguments[187], it is generally admitted that:

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[186] M. Anzilotti, Dissenting Opinion, *Interpretation of Judgments Nos. 7 and 8 (The Chorzów Factory), Judgment No. 11, 1927, P.C.I.J. Series A, No. 13*, p. 23; S. Rosenne, "*Res judicata:* Some Recent Decisions of the International Court of Justice", *Brit. Y.B. Int'l L.*, vol. 28, 1951, p. 366; C. Santulli, *Droit du contentieux international*, Montchrestien, 2005, p. 474, para. 819.

[187] Cambodia's claims on pp. 90-91 of the Response are a particularly striking example. For the Court criticizing the confusion often introduced by the Parties, see *Fisheries Jurisdiction (Spain v. Canada), Jurisdiction of the Court*, *Judgment, I.C.J. Reports* 1998, p. 449, para. 32 (quoted at para. 3.100 below); see also *Fisheries, Judgment, I.C.J. Reports* 1951, p. 126; *Minquiers and Ecrehos, Judgment, I.C.J. Reports* 1953, p. 52; *Nottebohm, Second Phase, Judgment, I.C.J. Reports* 1955, p. 16; or *Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports* 1974, p. 262, para. 29.

> "*[S]elon une définition classique, l'objet ou les conclusions répondent à la question 'que demande le requérant' (quoi), tandis que la cause ou les moyens constituent le fondement juridique par lequel le plaideur justifie sa demande et répondent à la question 'pourquoi'.*"[188]

3.11 It follows that a distinction must be made, both on a conceptual and a formal level, between the arguments of the parties, reflecting the *causa petendi*, to which the Court responds in the reasoning of its judgment[189], and their final claims, reflecting the *petitum*, to which the Court responds in the *dispositif*. "Running somewhat parallel to a distinction between arguments and conclusions in the pleadings of the parties is a distinction between *motifs* and *dispositif* in the judgment of the Court."[190]

3.12 This distinction, which Cambodia tries to obscure[191], is of paramount importance in order for the Court to avoid any pronouncement of *ultra petita*, which would be a violation of a principle of cardinal importance in international litigation: the principle of consent to jurisdiction:

> "*Il ne fait aucun doute que les juridictions internationales doivent respecter l'objet de l'instance,*

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[188] L. Brant, *L'autorité de la chose jugée en droit international public*, L.G.D.J. Paris, 2003, pp. 117-118. (Footnotes omitted).

[189] However, the Court is not under an obligation to answer each argument of the parties. See para. 3.23 below.

[190] M. Shahabuddeen, *Precedent in the World Court*, Cambridge University Press, 1996, p. 161.

[191] See paras. 3.21-3.22 below.

> *conformément à ce qui est précisé par la demande des parties. C'est à la demande que l'on doit se référer pour déterminer les limites objectives de la chose jugée.*"[192]
>
> "*L'objet de la chose jugée ne saurait être plus large que celui du différend soumis à la Cour, tel qu'il est désigné par les conclusions des parties et, le cas échéant, par le compromis*."[193]

3.13 Cambodia is obviously uncomfortable with the chapter in Thailand's Written Observations dealing with the pleadings in the original proceedings. It complains of their length and alleges their lack of relevance to the present proceedings, putting forward various implausible arguments such as that a judgment is a self-standing document[194], that the pleadings of the parties are "*sources externes*"[195] and that "*l'argument d'une ou de l'autre partie avant un jugement devient subsumé par l'arrêt de la Cour*"[196], without explaining the ins and outs of this "subsumption" theory. Cambodia feigns wondering what Thailand's purpose behind these developments may be, suggesting a concealed attempt by Thailand to appeal against the 1962 Judgment on grounds that it would be *ultra petita*[197].

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[192] L. Brant, *L'autorité de la chose jugée en droit international public*, L.G.D.J. Paris, 2003, p. 124.

[193] E. Griesel, "*Res judicata*: l'autorité de la chose jugée en droit international", in *Mélanges Georges Perrin*, Payot, Lausanne, 1984, p. 148.

[194] Response, para. 1.12.

[195] *Ibid*.

[196] *Ibid*., para. 5.3.

[197] *Ibid*., second paragraph 1.11 (p. 6) and para. 1.12.

3.14 And yet, there is nothing obscure in Thailand's reasons for discussing the pleadings of the parties in the original dispute: their purpose is precisely to establish the subject matter of the 1962 dispute, as the Parties defined it in their written and oral pleadings. These pleadings also serve the purpose of identifying the admissible *petita*, those that remained within the limits of the dispute as initially submitted in contrast with the one that Cambodia introduced at the eleventh hour, transforming the dispute beyond recognition[198]. The aim is not to criticise the Court's findings on grounds of *ultra petita*[199]. It is on the contrary to establish the parameters (*petita*) that are the respective admissible claims of the Parties within which the Court's *res judicata* findings were made. The pleadings are indispensable for ascertaining the meaning and scope of the 1962 Judgment and their recapitulation becomes imperative in proceedings on interpretation introduced half a century later, before a Court whose composition is necessarily different from the initial one. Cambodia could have avoided this feigned perplexity – in reality a misrepresentation of Thailand's intentions – simply by reading paragraph 2.21 of the Written Observations, where this simple purpose is stated[200].

[198] See paras. 3.91-3.101 below.

[199] Response, para. 5.3. See also para. 1.30 above.

[200] Paragraph 2.21 of WO reads as follows: "It is a generally recognized principle that the Court cannot adjudge beyond the claims of the Parties found admissible by the Court (the *non ultra petita* rule). Therefore, the assessment of the *petitum* in 1962 is necessary in order to understand the extent of the 1962 *res judicata*, and it is at the same time relevant for an appreciation of the admissibility of the Request for interpretation. A rigorous assessment of the subject matter and of the limits of the *petitum* of the Claimant is needed to determine the extent of the *res judicata* in the 1962 Judgment, which Cambodia seeks to put into question". (Footnote omitted).

3.15 There is no hidden purpose on the part of Thailand. The review of the subject matter of the initial dispute – sovereignty over the Temple – and the assessment of its limited geographical scope makes all too obvious the discrepancy between the scope of the initial dispute and the matter now before the Court, particularly in light of the extended area Cambodia now asks the Court to adjudge[201]. This lack of identity between the two disputes is indeed fatal to Cambodia's Request for interpretation, since it evidences how much, conceptually and geographically, this Request attempts to obtain answers to questions deliberately not decided with binding force by the Court in 1962.

(b) Res Judicata*,* Dispositif *and Reasons*

3.16 It is in the *dispositif* that the Court responds to the final *petita*, at least those which it has found to be admissible, that is those formulated within the limits of the subject matter of the dispute as initially submitted to it. By responding this way, the Court settles, with binding force, the dispute submitted to it. It follows that, in essence, the *res judicata* of a judgment, and therefore the scope of the parties' obligations to implement, are to be found in the *dispositif*[202].

[201] See paras. 2.44-2.55 above.

[202] See para. 3.42 below.

3.17 That the *res judicata* does not extend to all parts of a judgment results, *inter alia,* from Article 59 of the Statute of the Court, which determines, in negative terms, the scope of the binding force of a judicial decision (*l'autorité relative de la chose jugée*):

> "The decision of the Court has no binding force except between the parties and in respect of that particular case."

3.18 It is then obvious that since the phrase "that particular case" refers to the *petita* formulated within the limits of the subject matter of the dispute initially submitted, the binding force of a judgment extends only to the *dispositif*, which responds to the *petita*. The reasons in a judgment, which mainly respond to the parties' arguments made in support of "that particular case", cannot be contained within the *res judicata*. A different solution would mean that the parties would be bound, by virtue of *res judicata*, to apply the legal principles and conclusions of the Court to settle the particular dispute submitted to it, to all their other disputes, closely or remotely connected to the initial one[203].

3.19 This cannot be the case in the international system, where there is no rule of binding precedent and where the

[203] This does not necessarily mean that the principles applied by the Court in one case would not apply in another case if the circumstances call for their application – but this is irrelevant for the determination of the scope of a request for interpretation.

judicial settlement of disputes is conditioned by States' consent. As the Permanent Court of International Justice explained:

> "[T]he object of Article 59 [of the Statute] is simply to prevent legal principles accepted by the Court in a particular case from being binding also upon other States *or in other disputes*."[204]

3.20 Hence the basic principle, affirmed by the Permanent Court of International Justice and confirmed by the International Court of Justice, that the *res judicata* does not extend to the reasons for a judgment:

> "[I]t is certain that the reasons contained in a decision, at least in so far as they go beyond the scope of the operative part, have no binding force as between the Parties concerned. (…) [T]he Court is unable to see any ground for extending the binding force attaching to the declaratory judgment on the point decided to reasons which were only intended to explain the declaration contained in the operative portion of this judgment and all the more so if these reasons relate to points of law on which the High Commissioner was not asked to give a decision."[205]

3.21 Cambodia is loath to accept this basic proposition. The fact that, in its Response, it calls in aid novel categories of judicial reasoning, unknown to the classical literature on

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[204] *Interpretation of Judgments Nos. 7 and 8 (The Chorzów Factory), Judgment No. 11, 1927, P.C.I.J. Series A, No. 13*, p. 21. (Emphasis added). See also *South West Africa, Second Phase, Judgment, I.C.J. Reports* 1966, p. 37, para. 59.

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

international litigation, speaks to its embarrassment. The *dispositif implicite* and the *motifs décisoires* are examples of such novel categories. Paragraph 4.23 of the Response is symptomatic of the confused and confusing argumentation Cambodia advances in order to slip surreptitiously into the *dispositif* the reasons for the 1962 Judgment; it affirms that the question of the status of the Annex I map was *decided* by the Court in the form of a *motif décisoire* or, alternatively, a *dispositif implicite*[206]. On this imaginative basis, it reaches the conclusion that the part of the 1962 Judgment referring to the status of the map "*possède l'autorité de chose decidée*"[207] – "decided", not "adjudicated".

3.22 This conclusion is based on a multi-layered fallacy:

- *First*, it assumes that the Court can take decisions on the substance of the dispute submitted to it independently of the *dispositif*, thus mixing up the arguments with the decision.

- *Second*, it postulates that these so-called "decisions" are generally binding on the parties, by virtue of the *autorité de*

[206] These concepts were developed by Professor E. Jouannet, to apply in international litigation. Her conclusions are however distorted by Cambodia's Response, since Professor Jouannet considered that these concepts would be limited to the Court's declarations of admissibility of certain claims, and declarations found in the reasons of the judgment on the merits ("*La motivation ou le mystère de la boîte noire*", in J.M. Sorel and H. Ruiz Fabri (eds.), *La motivation des décisions des juridictions internationales*, Paris, Pedone, 2008, pp. 251-285, esp. pp. 261-262). Cambodia prefers not to cite this article, although part of the analysis in Chapter 4 of the Response is clearly inspired by it. The reason may be that a non-partisan reading of Professor Jouannet's article leads to the conclusion that her argument and the examples provided therein do not in fact support Cambodia's case.

[207] Response, para. 4.23.

la chose decidée, since otherwise the *dispositif* of the judgment would presumably become arbitrary[208]. This statement is questionable on several grounds: first, judgments are not endowed with any "*autorité de la chose decidée*", a court's mission being to apply existing law, and not unilaterally to create new law. Moreover, it directly contradicts the axiom that the legal principles identified and applied by the Court to a particular dispute are not binding for the settlement of other disputes, even between the same parties[209].

- *Third*, it equates *autorité de la chose décidée* and *autorité de la chose jugée*, in the hope that this substitution would give Cambodia access to the proceedings under Article 60, for which the *autorité de la chose jugée* is a *sine qua non* condition.

3.23 Three other arguments support the conclusion that the reasons do not, *per se*, enjoy *res judicata* effect. The first, to which Cambodia makes reference without nonetheless perceiving or clarifying the consequences[210], is linked to the principle of freedom of the judges to choose the reasons upon which they base their decision. The existence of this freedom cannot be questioned. It explains why the Court may, at times,

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[208] "*Pour le moins, cette reconnaissance de la valeur obligatoire de la carte de l'annexe I entre les Parties possède l'autorité de chose décidée. A défaut, le dispositif serait purement arbitraire*." (*ibid*.)

[209] See para. 3.19 above.

[210] Response, footnote 6 and para. 4.14. Cambodia's analysis, in particular on second paragraph 1.11 (p. 6) and para. 1.12 of the Response, denotes confusion between arguments and submissions.

raise issues *proprio motu* and substitute its own reasons for those advanced by the parties. However, this freedom can only exist if, in so doing, the Court does not make findings binding on the parties. Assuming, *ab absurdo*, that the Court could bind States by means of its reasons, this would imply that it can, at its option, decide *ultra petita*, adjudge claims that the parties did not submit to it, and settle disputes for which the parties did not give their consent.

3.24 The second argument relates to the Court's deliberating and voting procedure: it is not rare that the necessary majority for adopting a *dispositif* is reached with some of the judges voting in favour, although they disagree with the reasoning or at least with part of it. This means they reached the same conclusion, although following a different path. Their vote in favour only illustrates their agreement with the conclusion and should not be interpreted to apply to the parts of the judgment with which they disagreed; in such a case, on the basis of Cambodia's novel theory of "*motifs décisoires*", the parties would be bound by a minority "decision".

3.25 Third, the reasons also provide an important opportunity for a court or tribunal to indicate what it is *not* deciding. It makes no sense to suggest that the decision of the Court not to decide something is nonetheless a binding decision and part of the *res judicata*. Cambodia's proposition that reasons are part of the *res judicata* would carry this consequence and effectively deprive the Court of the power not to decide.

(c) Res Judicata *and the Proceedings on Interpretation*

3.26 These considerations are fully valid when it comes to establishing the scope of the *res judicata* for the purposes of proceedings on the interpretation of a judgment[211]. They are indeed reflected in the jurisprudence on the admissibility of requests for interpretation:

> "[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."[212]

3.27 The authorities on which Cambodia relies are clear that the interpretive value of reasoning, such as it is, does not extend beyond the scope of the judgment. The Permanent Court in *Interpretation of Judgments Nos. 7 and 8 (Chorzów Factory)* said as follows:

> "The interpretation adds nothing to the decision, which has acquired the force of *res judicata,* and can only have

[211] See also WO, paras. 4.79-4.84.

[212] *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. (Emphasis added). See also *Interpretation of Judgments Nos. 7 and 8 (The Chorzów Factory), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 11; *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.

> binding force within the limits of what was decided in the judgment construed."[213]

3.28 But Cambodia asks for an interpretation of something outside the *dispositif* and expressly excluded from it – the Annex I map – in order to define "the limits of what was decided". The question, as now formulated by Cambodia, is to define the scope of the obligation to withdraw from the Temple, or from its vicinity on Cambodian territory; but Cambodia relies, to answer that question, on a reason for the Judgment, which, as the Permanent Court understood Article 60, cannot be interpreted to change that scope. The problem is that Cambodia believes that the Annex I map identifies the Temple area. This is a problem, firstly, because Cambodia gives no satisfactory explanation of how the map would do so; secondly, because Cambodia's position runs contrary to what the Court said about the Temple area[214]. An interpretation, whether of the Annex I map or of any other evidence, cannot change the meaning or scope of the Judgment[215].

3.29 Through paraphrasing and selective quotation from the decided cases, Cambodia attempts to overthrow this understanding of the relation between reasoning and decision.

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[213] *Interpretation of Judgments Nos. 7 and 8 (The Chorzów Factory), Judgment No. 11, 1927, P.C.I.J. Series A, No. 13*, p. 21, quoted in Response, para. 4.31.

[214] See paras. 2.23-2.25 above.

[215] See paras. 4.29-4.30 below.

Quoting the Permanent Court again, in the *Polish Postal Service in Danzig* case, Cambodia writes:

> "*Certains motifs sont en effet susceptibles d'être pris en compte. Dans son avis sur le Service postal polonais à Dantzig, la Cour permanente s'est attachée à mettre en exergue les liens qui unissent les motifs au dispositif. Elle a de la sorte précisé que les motifs contenus dans une décision qui 'dépassent la portée du dispositif, n'ont pas force obligatoire entre les Parties intéressées.'* A contrario*, le constat est que les motifs qui ne dépassent pas la portée du dispositif peuvent revêtir ce caractère obligatoire.*"[216]

3.30 So, as Cambodia would have it, there are two positions: there are reasons which exceed the scope of the *dispositif* and thus cannot have obligatory force; and there are reasons which "*[a] contrario*" *do not* exceed the *dispositif* and which thus can be vested with binding character. But Cambodia here mischaracterizes the Permanent Court's view. The way the Permanent Court saw it, the potential function of *motifs* was not a simple matter of two positions, one the exact opposite of the other. The Permanent Court was clear that even a reason which falls within the scope of the judgment does not necessarily do so in its totality. A court may adduce certain evidence, or set out certain reasons, which support the operative part, and *to the extent that they fall within the scope of the operative part,* they might have obligatory force; but not to the extent that they fall beyond that scope. The Permanent Court, in fact, said as follows:

[216] Response, para. 4.32.

> "Now, it is certain that the reasons contained in a decision, *at least in so far as* they go beyond the scope of the operative part, have no binding force as between the Parties concerned."[217]

3.31 Cambodia omitted the limiting clause "at least in so far as". The limiting clause is indispensable to understanding the principle as expressed by the Permanent Court. The Permanent Court's point was not that there are some reasons which fall within the scope of the operative part and others which do not. The point, instead, was that a reason might be subject to interpretation, "in so far as" it does not go beyond the scope of the operative part. There thus exists a limit on the *res judicata* effect of reasons. The limit is the scope of the operative part.

3.32 This analysis applies to the inseparable reasons also. Regarding the Annex I map, two possibilities are presented:

> (i) the map is simply not an essential part of the reasoning and thus not relevant to a request for interpretation (this being the position which Thailand maintains); or
>
> (ii) the map is subject to interpretation, but not for any and all purposes: it may be considered only in so far as whatever information it might convey falls within the scope of the *dispositif*.

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

Even if the other considerations which equally supported the Judgment were ignored, and the Annex I map had been the sole consideration, then the value of the map for interpreting the Judgment is still limited by this principle. It could be used to interpret the Judgment within the scope of the *dispositif* – but not beyond.

3.33 Cambodia sets out extensive quotations from various courts and tribunals to show that elements of the reasoning of a decision may constitute part of the *res judicata* of the case[218]. But this is a basic proposition. It is not controversial and hardly needs extensive proof. What is needed is an explanation of how the Court, in interpreting a judgment under Article 60, is to identify that which is obligatory from that which is not. Cambodia pays little attention to this problem. Instead, Cambodia confuses the distinction between the explanatory value of certain elements of the reasoning in a judgment and the obligatory force of the *dispositif*. That a reason holds explanatory value does not mean that it is binding. Confusion between these two concepts leads Cambodia to insist that the Annex I map is itself subject to interpretation when, at most, the map might, in principle, hold explanatory value in respect of the operative part.

3.34 But Cambodia does not show what that explanatory value would be. The operative part is clear: the territory on

[218] Response, paras. 4.38-4.45.

which the Temple is situated and from which Thailand had to withdraw is in Cambodia. This needs no explanation. The question is not just whether the Annex I map explains the operative part; it is, further, whether the Annex I map is needed to explain something ambiguous in the operative part. As Thailand has shown above, there is nothing ambiguous to be explained.

3.35 The Court has recently had the occasion to confirm this aspect, in its Judgment on the Honduras's request for intervention in the *Nicaragua* v. *Colombia* case. The Court first analysed the text of the operative clause, "which indisputably has the force of *res judicata*"[219]. Afterwards, the Court referred to the reasons which were "an essential step leading to the *dispositif* of that Judgment"[220], but this was only because "[w]ithout such reasoning, it may be difficult to understand why the Court did not fix an endpoint in its decision"[221].

3.36 It follows that when Cambodia invokes the inseparability argument in support of its Request for interpretation, this does not exempt it from establishing the existence of a dispute with Thailand over the meaning of the 1962 *dispositif*. The inseparable reasons are not in themselves *res judicata*; they acquire this quality when they are essential not for the

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[219] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Honduras for Permission to Intervene, I.C.J. Judgment, 4 May 2011*, para. 69.

[220] *Ibid*., para. 70.

[221] *Ibid*.

establishment of the *dispositif*, but for its *interpretation* and for that purpose only and to that extent only. The inseparable reasons are thus *res judicata* when and because they alone can shed a light upon the uncertainties in the *dispositif* and only for that purpose. But they cannot constitute by themselves, and independently of any dispute over the *dispositif*, the subject of a request for interpretation[222].

3.37 In the present case, no such uncertainty exists. Not only is the *dispositif* crystal clear[223], but there is and has been no dispute between Thailand and Cambodia as to its meaning or scope.

2. The Alleged Dispute over the Interpretation of the Judgment

3.38 Cambodia's definition of the dispute appears on page 48 of the Response:

> "*Le Cambodge soutient donc que les pièces de procédure en la présente affaire démontrent sans aucune ambiguïté que le Cambodge et la Thaïlande ont un différend sur (1) le sens et la portée de la façon dont la Cour a utilisé les expressions 'en territoire relevant de la souveraineté du Cambodge' dans le premier paragraphe, et 'ses environs situés en territoire*

[222] *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.

[223] WO, paras. 3.5-3.10 and 4.16-4.25.

cambodgien' dans le deuxième paragraphe du dispositif de l'arrêt de 1962; (2) qu'ils ont en outre un différend quant à l'importance que revêt cette question sur le sens et la portée de l'obligation corrélative de retrait des troupes énoncée dans le deuxième paragraphe du dispositif de l'arrêt de 1962, en particulier pour savoir si cette obligation a un caractère permanent ou instantané; (3) qu'ils ont de plus un différend sur la question de savoir si l'arrêt a ou n'a pas reconnu avec force obligatoire la ligne indiquée sur la carte de l'annexe I comme représentant la frontière entre les deux parties dans la région du Temple."[224]

3.39 Before discussing each of these points in turn, it is in order to make some general remarks on Cambodia's mode of argumentation.

(a) General Remarks on Cambodia's Approach to Demonstrating Its Case

3.40 In the first place, it must be noted that Cambodia dismisses on two grounds the analysis in the Written Observations showing that for nearly half a century the implementation by Thailand of the Court's Judgment did not reveal any dispute over its interpretation since it created no difficulty between the Parties. First, it alleges that the facts were not accurately presented by Thailand[225] and second, it challenges the relevance of any facts prior to 2007 for

[224] Response, para. 3.16.

[225] *Ibid*., para. 2.1.

establishing the absence of a dispute over the meaning or scope of the Judgment[226].

3.41 Still, the relevance of these facts is obvious: it is tautological to underline that if Cambodia did not dispute implementation by Thailand, this means it agreed that Thailand was in conformity with the Judgment[227]. The inescapable conclusion is that there was no dispute between the Parties over its interpretation.

3.42 However, for its Request for interpretation to be admissible it is for Cambodia to show that the Parties did have a dispute over the *interpretation* of the *dispositif before* the lodging of the dispute. And it is indeed axiomatic that the obligation of implementation relates to the operative part of a judgment and not to its reasons:

> "The Court notes (…) that to implement a decision is to apply its operative part."[228]

3.43 If Cambodia disputed Thailand's implementation of the Judgment and intended to put this alleged misapplication of the Judgment forward in order to establish the existence of disagreement over its scope, it must demonstrate that it disputed

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[226] *Ibid*., paras. 1.13-1.17.

[227] It must be recalled that a dispute as to the *implementation* of a judgment differs from a dispute over the interpretation (WO, paras. 4.70-4.72).

[228] *Interhandel Case (Switzerland* v. *United States of America), Judgment, I.C.J. Reports* 1959, p. 28.

the implementation of either paragraph 1 or 2 of the *dispositif*[229]. However, Cambodia does not discharge this burden in its Response. Cambodia's truncated factual record does not contain instances where its highest authorities seriously put into question Thailand's recognition of Cambodia's sovereignty over the Temple or the withdrawal of Thai troops[230]. The facts Cambodia puts forward to demonstrate the long existence of a dispute relate to the delimitation and demarcation of the boundary between the Parties. Thailand does not deny the existence of such a dispute[231]. But it is so manifestly outside the scope of the *res judicata* that it need not be dealt with here. It simply demonstrates, by contrast, how much Cambodia is at pains to establish the existence of a dispute – and especially a dispute predating the Cambodian Request for interpretation – on the interpretation of paragraphs 1 and 2 of the *dispositif*.

3.44 Another flaw in Cambodia's mode of argumentation is its paradoxical reliance on the present proceedings in order to define and prove the existence of a dispute between the Parties. But, by definition, the dispute on which Cambodia relies must have *preceded* the application instituting these proceedings. This notwithstanding, Cambodia's method is to search for a dispute in proceedings that are the consequence of its claim that

[229] Cambodia's Response makes no reference to paragraph 3. It must be inferred that, even according to Cambodia, there is no dispute on this point.

[230] Groundless accusations of Thailand disputing this sovereignty could be heard from time to time (WO, paras. 4.38, 4.71 and 5.70).

[231] WO, paras. 4.104-4.115. See also paras. 2.35-2.43 above.

a dispute exists![232] Furthermore, Cambodia relies on Thailand's Written Observations not only for establishing the existence of a dispute, but also for expanding its scope. Thus it explains, in Chapter 3 of its Response, that it

> "*démontrera, après une analyse détaillée de la position juridique thaïlandaise* révélée pour la première fois dans les Observations*, que le différend entre les deux Etats sur l'interprétation de l'arrêt de 1962 est bien plus significatif que cela avait été envisagé au stade de la demande cambodgienne de mesures conservatoires.*"[233]

3.45 It was unclear in the Request which are the paragraphs of the 1962 *dispositif* whose meaning is disputed between the Parties and there has been no clarification since[234]. Cambodia now adds further confusion, in pointing to a so-called dispute over the meaning of "territory" in paragraphs 1 and 2 of the *dispositif*[235].

3.46 Having made these general remarks, it is appropriate to examine in some detail each of the three points which, according to Cambodia, would constitute the subject matter of the dispute.

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[232] Response, para. 3.3 ("*…à la lumière des Observations thaïlandaises…*"); para. 3.5 ("*Sur la base de son étude des Observations de la Thaïlande,…*"); para. 3.16 ("*Le Cambodge soutient donc que les pièces de procédure en la présente affaire démontrent…*").

[233] *Ibid*., para. 1.27. (Emphasis added). See also *ibid*., paras. 3.5 and 3.10.

[234] WO, paras. 4.12-4.14.

[235] Response, para. 3.5.

(b) The Request to Interpret the Notion of "Territory" in Paragraphs 1 and 2 of the Dispositif

3.47 The reason for Cambodia to enlarge its Request is obvious; Thailand noted in its Written Observations that Cambodia had not alleged any dispute over the meaning of paragraph 1 of the *dispositif*[236], and showed that paragraph 1 of the *dispositif* had an autonomous territorial meaning and scope[237], the other two paragraphs being consequential upon the first. It thus became clear that the absence of any identification by Cambodia of a dispute on the first paragraph of the *dispositif* would be fatal to its Request, since no interpretation could be required of the geographical meaning and scope of the Judgment – the territorial dimension being limited to paragraph 1 alone. Hence the eleventh hour laborious designation of a dispute on the meaning of "territory" in paragraphs 1 *and* 2 of the *dispositif*.

3.48 Another way of linking paragraphs 1 and 2 is for Cambodia to rewrite paragraph 1 and to introduce "vicinity" into it:

> "*De l'avis du Cambodge, en réduisant les 'environs' du Temple à une zone si étroite, qui n'avait aucun rapport avec la ligne frontalière indiquée sur la carte de l'annexe I sur laquelle la décision de la Cour se fondait, la Thaïlande a fondamentalement mal interprété (et mal*

[236] WO, para. 4.21.

[237] *Ibid.*, paras. 4.16-4.20.

appliqué) les premier et second paragraphes du dispositif de l'arrêt de la Cour."[238]

3.49 The twining of both points is telling:

- there is no dispute between the Parties over the meaning of paragraph 1 of the *dispositif*: Thailand does not challenge that "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia" and, of course, Cambodia accepts this too;

- there is no dispute over the meaning of paragraph 2 of the *dispositif*: Thailand has withdrawn her "military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory";

- there is no need to use paragraph 1 to interpret paragraph 2 of the *dispositif*;

- nor is there any need to use paragraph 2 to interpret paragraph 1 of the *dispositif*;

and yet, Cambodia artificially mixes up both paragraphs in order to fabricate a dispute on the interpretation of "the *dispositif*".

3.50 Moreover, instead of identifying a dispute with Thailand over the meaning of paragraph 1 of the *dispositif*, Cambodia uses the word "territory" as a pretext for incorporating the reasoning into the *dispositif*[239] and for claiming that the Court

[238] Response, para. 2.22.

[239] *Ibid*., para. 3.13.

in fact effected delimitation on the basis of the Annex I map[240]. Chapter IV of these Explanations will demonstrate that this reconstruction of the *dispositif* is untenable. For the purposes of the present Chapter, suffice it to note that at no point in its Response does Cambodia point to facts subsequent to the Judgment showing that Thailand has not recognized its sovereignty over the Temple or would have limited it in any way. And this alone was the object of paragraph 1 of the *dispositif*[241].

3.51 Additionally, even if it were the case that Thailand had not drawn the proper consequences from the 1962 Judgment, this would not be a problem of *interpretation* of the Judgment, but of its implementation, for which Article 60 of the Statute does not provide any jurisdiction of the Court[242].

3.52 Cambodia can hardly escape the impasse created by its tortuous attempt to identify ambiguities and disputes in a crystalclear *dispositif*. The contradictions in paragraph 3.17 of the Response – where it admits that the Court did not precisely define the "territory" as used in paragraphs 1 and 2 of the *dispositif* and still asks for its interpretation – display

[240] *Ibid*., first paragraph 1.18 (p. 8).

[241] WO, paras. 3.5-3.66.

[242] *Ibid.*, paras. 4.70-4.72.

Cambodia's embarrassment[243]. Presumably, Cambodia was expecting a geographical definition of this word[244], that is the identification of its boundaries, and consequently its delimitation[245]. But this is not what the Court decided to do: it adhered strictly to the question it was asked: to which of the Parties did sovereignty over the Temple belong? And it drew two consequences: the withdrawal of the Thai forces stationed "at the Temple, or in its vicinity on Cambodian territory" (paragraph 2) and the restitution to Cambodia of the objects which "may have been removed from the Temple or the Temple area by the Thai authorities" since 1954 (paragraph 3).

3.53 Paragraph 3 is not at issue in the present proceedings. As to paragraph 2, Thailand agrees with Cambodia that the Court felt no need to define the geographical scope of the vicinity of the Temple just as it did not define what constituted Cambodian territory in paragraph 1. The Court considered that this was not necessary in order to understand and implement the Judgment[246]. It follows that no such definition can be requested

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[243] "*Concernant le premier différend sur la signification des termes 'territoire' et 'environs', il est indéniable que la Cour, après avoir choisi d'utiliser les termes 'en territoire relevant de la souveraineté du Cambodge' dans le premier paragraphe du dispositif, et les termes 'dans le Temple ou dans ses environs situés en territoire cambodgien' dans le deuxième paragraphe du dispositif, n'en a pas donné une définition précise.*" (Response, para. 3.17).

[244] Cambodia had indeed asked for such a definition and seems unable to accept the Court's dismissal of this submission (WO, paras. 3.33, 4.76-4.78 and 4.85-4.86. See also paras. 3.91-3.109 below).

[245] Response, para. 4.47.

[246] See paras. 4.26-4.73 below.

and expected from the present proceedings on interpretation. The absence of delimitation further confirms Thailand's remark that the delimitation of the boundary was not a *necessary* condition for the adoption and the implementation of the Judgment[247].

(c) The Request to Interpret the Notion of "Vicinity"

3.54 "Vicinity of the Temple" is no more in dispute than is the expression "Cambodian territory". Thailand's Written Observations demonstrated that these words were not intended to contain findings of territorial sovereignty in favour of Cambodia[248]. Its territorial scope was limited to the pronouncement on sovereignty contained in paragraph 1. Any disagreement between the Parties as to the *delimitation* of the areas in proximity to the Temple cannot be a disagreement on paragraph 2 of the *dispositif*, since the subject matter of this item was simply to draw the consequences of the main finding in paragraph 1 and to state an evident obligation to withdraw troops, in order for Cambodia to take possession of the Temple.

(i) Cambodia's Conflated Claims on Boundary Delimitation and the Extent of "Vicinity"

3.55 Cambodia is now arguing that Thailand's withdrawal was not complete, because the Thai troops did not draw back

[247] WO, paras. 3.67-3.80 and 4.41.

[248] *Ibid*., paras. 3.9-3.10, 3.27-3.28 and 3.38-3.46.

north of the Annex I map line[249]. Cambodia defines thus "vicinity" in paragraph 2 of the *dispositif* in relation to the Annex I map line, but this position is a *non sequitur*.

3.56 The *non sequitur* derives from the absence in the 1962 Judgement of any definition of "vicinity" in relation to the Annex I map line. The lack of such definition in the 1962 Judgment renders Cambodia's Request inadmissible, even in the absence of the Court's explicit refusal to rule upon the delimitation of the boundary and the status of the Annex I map, in the region of the Temple or elsewhere in the Dangrek range represented on the map[250].

3.57 The Court imposed upon Thailand the 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 order for Cambodia to be able to enjoy sovereignty the Court had recognized in paragraph 1. That was the function of paragraph 2 of the *dispositif*. The Court did not oblige Thailand to withdraw north of the Annex I map line[251]. Neither did the Court ask it to demarcate the boundary in accordance with the Annex I map line. If the issue of demarcation had been in question, the *dispositif* would have been addressed to both Parties, and not just to Thailand, since it

[249] Response, para. 2.41.

[250] See paras. 3.88-3.101 below.

[251] See para. 2.39 above.

is unimaginable for a State to be required to unilaterally demarcate a boundary.

3.58 Cambodia is then missing the point by asserting, repeatedly, that the barbed-wire fence effected a demarcation of the boundary at variance with the Annex I map line[252]. Thailand's purpose, in establishing the barbed-wire fence, was not to demarcate any boundary, but to indicate the limit of the "vicinity" of the Temple, which troops on both sides were not to cross. The placement of the barbed-wire fence and of the wooden signs was justified by the necessity for Thailand to allow Cambodia to enjoy sovereignty over the Temple. They ensured that there was no intrusion by Thai troops back into an area from which they had withdrawn.

3.59 It is also revealing that none of the wooden signs installed by Thailand with the barbed-wire fence signalled any boundary. They simply indicated the limit of the vicinity of the Temple: on the sign facing Thailand, it was written in the Thai and the English languages "BEYOND THIS POINT LIES THE VICINITY OF THE TEMPLE OF PHRA VIHARN"; and on the sign facing Cambodia, in the Khmer and the French languages "*LES ENVIRONS DU TEMPLE DE PHRA VIHARN NE S'ETENDENT PAS AU DELA DE CETTE LIMITE*"[253]. No mention of the entrance into or exit from a country.

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[252] Response, paras. 2.47, 2.51, 2.62-2.63, 2.66 and 2.68.

[253] See also WO, para. 4.35; for pictures of the signs, see [Annex 40 to WO and Annex 6 to FWE].

3.60 This understanding is confirmed by the record of the resolution of the Council of Ministers, asked for by Cambodia so insistently:

> "The meeting considered the matter and was of the view that the determination of the vicinity of the Temple of Phra Viharn, so as Cambodia will have sovereignty in accordance with the Judgment of the World Court"[254].

3.61 Cambodia's position moreover rests upon several anachronisms: its claim is for the Court to recognize that the northern limit of the "vicinity" in paragraph 2 of the *dispositif* is identical with the boundary between the countries, and are both determined by the Annex I map line. Cambodia must have realized however that the "vicinity" of something cannot indefinitely extend to the east and to the west. In order to overcome this difficulty, Cambodia put forward the putative 4.6 sq km area, which as it happens essentially coincides with the additional area it wishes to administer as part of the Temple as a World Heritage site. One problem for Cambodia is however that the 4.6 sq km area was never mentioned in the 1962 proceedings. This fact alone casts a doubt over Cambodia's claim that it was this putative 4.6 sq km area which the Court had in mind when it referred to the "vicinity" of the Temple in paragraph 2 of the *dispositif*. Cambodia's claim is wholly unsupported, since the area in dispute in 1962 was much

[254] Resolution of the Council of Ministers of the Kingdom of Thailand of 10 July 1962, [Annex 5 to FWE].

less extensive than the 4.6 sq km Cambodia is now claiming[255]. And the non-adventitious coincidence between the area Cambodia claims now to be in dispute and the area it wishes to administer as part of the World Heritage site makes its Request for interpretation all the more tenuous.

3.62 Other anachronisms disrupt Cambodia's argumentation: one example is its insistence upon a Thai Note Verbale of 25 November 2004, in which the term "vicinity" of the Temple was used, in reference to places where the Cambodian communities were expanding at an alarming rate[256]. Presumably, Cambodia intends to show, on the basis of this sole example, that the concept of "vicinity" in the *dispositif* of the Judgment concerns all these areas[257]. These pages of the Response highlight however serious shortcomings in Cambodia's analysis:

- contrary to the profession of faith it proclaimed a few pages earlier[258], Cambodia appeals to facts and documents subsequent to the Judgment in order to shed light upon its meaning;

- Cambodia purports to establish Thailand's interpretation of the term "vicinity" in paragraph 2 of the

[255] See paras. 2.47-2.50 above. See also paras. 4.42-4.69 below.

[256] Response, paras. 2.76-2.81. The Note Verbale is reproduced in Annex 93 to WO.

[257] "*Ce qui mérite d'être relevé est que la Thaïlande considérait toutes ces activités comme ayant lieu dans les environs du Temple. Or, c'est le même mot que la Cour a utilisé dans le paragraphe 2 du dispositif de l'arrêt de 1962*." (Response, para. 2.79).

[258] Response, paras. 1.13-1.17.

dispositif on the basis of a single document, which does not even refer to the Judgment;

- Cambodia disconnects completely the term "vicinity" from its context and the obligation on Thailand to withdraw its troops in order to endow it with a new and completely novel meaning[259].

3.63 Moreover, taken on its own merits, Cambodia's justification for treating this putative 4.6 sq km area as the "vicinity" of the Temple is confused and confusing. For instance, in Cambodia's presentation, the area of the Keo Sikha Kiri Svara Pagoda, while a few hundred metres from the Temple, is situated "*à l'ouest des environs*"[260]; whereas the Pnom Trap hilltop, some kilometres further away, is included *in* the vicinity of the Temple[261]. *A l'ouest des environs* is outside the "vicinity" of the Temple.

3.64 Thus it is clear that Cambodia's assertion of a dispute with Thailand over the concept of "vicinity" in paragraph 2 of the *dispositif* is just a way of disguising its claim over the delimitation of the boundary according to the Annex I map line,

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[259] "*[L]a Thaïlande a en fait bien considéré les environs du Temple comme incluant toute la zone autour du Temple où les Cambodgiens vivaient et travaillaient."* (Response, para. 2.79).

[260] "*En 1998, le Cambodge a construit un marché devant l'escalier historique et une pagode (la Pagode Keo Sikha KiriSvara) à l'ouest des environs du Temple tout en étant présent dans la zone autour de la colline de Phnom Trap.*" (Response, para. 2.67).

[261] "*Le Cambodge administrait pacifiquement les environs du Temple, y compris la zone du Phnom Trap, en construisant notamment une pagode et en établissant des marchés.*" (Response, para. 2.23).

a claim which formulated directly is inadmissible[262]. The fact that the two States have a dispute over the delimitation of the boundary in the area of the Temple, as well as elsewhere, does not relieve Cambodia from its obligation to demonstrate that it has a dispute with Thailand over the withdrawal of troops from the Temple, or from its vicinity on Cambodian territory. Cambodia's Response does not discharge this obligation any more than the Request did.

(ii) Cambodia's Distortions of the Factual Record

3.65 It is a fact that every time Cambodia points to disagreements over the "vicinity" of the Temple, either in the 1960s[263] or since 2001[264], it only identifies disagreements over the delimitation of the boundary in this area[265]. Even for the recent period, which presumably prompted its Request for interpretation, Cambodia significantly attributes the "*résurgence du différend*"[266] to the display by Thailand of a so-called "secret" map whose boundary line was not based upon the

[262] See paras. 3.106-3.109 below.

[263] Response, para. 2.49 (the quotation from Prince Sihanouk's speech refers to the boundary: "*ils ont tracé à notre détriment une nouvelle ligne frontalière dans les environs de PREAH VIHEAR même*."). The same idea is reflected in the examples given in paras. 2.50-2.52, 2.58 and 2.63 of the Response.

[264] Cambodia refers to 2007 as the date of "*résurgence du différend*" (Response, paras. 2.82-2.99), but this is a misrepresentation of the factual record (see paras. 3.66-3.79 below).

[265] See para. 3.88 below.

[266] Response, paras. 2.82-2.99.

Annex I map line[267]. In Cambodia's own words[268], that is the cause of the present day dispute.

3.66 This map had nothing in it that was secret to Cambodia[269]. It simply depicted the Cabinet line essentially illustrated on the ground by the barbed-wire fence, with which Cambodia had fully been acquainted since 1962. It was equally the cartographic representation of the *status quo* in the area, in the absence of an agreed delimitation and demarcation of the boundary. As was shown in the Written Observations[270] and as further developed below, this *status quo* lasted until around 2001-2003.

3.67 Cambodia's sweeping attempts to modify the *status quo* prompted Thailand's reactions, as the following paragraphs demonstrate. Cambodia's assertions that Thailand has not protested these modifications[271] are not to be relied on.

3.68 In 1962, the Thai Council of Ministers decided that the establishment of a barbed-wire fence and the erection of the wooden signs indicating the limit of the vicinity of the Temple

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[267] *Ibid*., para. 2.88.

[268] "*En produisant une nouvelle carte en 2007, montrant une frontière autour du Temple qui se basait sur la ligne définie par le Conseil des Ministres en 1962, et en abrogeant le Communiqué conjoint signé le 28 juin 2008, la Thaïlande a fait renaître un différend oublié depuis plusieurs années*." (Response, para. 2.96.)

[269] A copy of the map was sent to Cambodia in 2005 (see para. 1.33 above).

[270] WO, paras. 4.60-4.69.

[271] Response, paras. 2.81, 2.88 and 2.95.

were necessary for implementing the Judgment[272]. And although Cambodia's politicians mistakenly considered the barbed-wire fence to effect a demarcation of the boundary at variance with the Annex I map line, they considered this to be a *de minimis* issue, since the difference was only of a few metres[273], and "these few meters are [sic] unimportant"[274]. Cambodia, now able to exercise its sovereignty over the Temple, declared itself satisfied with the implementation as soon as September 1962[275]. Apart from the obscure incident in 1966[276], when the Temple was the scene of armed-clashes and when the Cambodian authorities accused Thailand of "forcibly

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[272] Paragraphs 3.58-3.60 above recall the real functions of these installations.

[273] See Prince Sihanouk's statement: "*les Thaïlandais ont conservé, en la bordant de fils de fer barbelés, la bande de terrain qui s'étend entre les assises du Temple et* la frontière qui passe à quelques mètres de là *comme l'ont voulu les traités confirmés par la décision de la Cour internationale de justice. Il n'est pas question pour leur être agréable et pour faciliter la reprise des relations avec eux de leur accorder de nouveaux avantages*." (Response, para. 2.63 (Emphasis added)). See also the examples of similar statements in WO, para. 4.56.

[274] WO, para. 4.45. Cambodia refers to this statement in para. 2.48 of the Response.

[275] See Cambodia's Foreign Minister's declaration, made before the General Assembly of the United Nations, in WO, para. 4.37. Cambodia is attempting now to minimize the scope of this declaration (Response, para. 2.41, but the fact is that twice during his short statement, H.E. Mr. Huot Sambath acknowledged Thailand's compliance: "the Thai Government (…) complied with the Court's decision. (…). Preah Vihear has been restored to us" (United Nations, *Official Records of the General Assembly*, *Seventeenth Session, Plenary Meetings,* 1134th Meeting, p. 174, paras. 91-93 [Annex 28 to WO]. Examples of similar declarations are given in WO, paras. 4.46-4.49. Cambodia's satisfaction with the implementation of Thailand was again confirmed in 1964 by a communication from the United Nations Office in Phnom Penh (see Narasimhan, "Cable to the Secretary-General of the United Nations", 10 August 1964 [Annex 7 to FWE].

[276] The involvement of Thai forces in this incident was not established (WO, para. 4.52).

reoccupying" it[277], Cambodian authorities never again complained of any failure on the part of Thai forces to withdraw. Even this 1966 episode demonstrates that Cambodia considered at the time that Thailand had withdrawn from the Temple, since the accusation was that Thailand had *reoccupied* it. In 1968, Cambodia's Prime Minister equally expressed satisfaction in a declaration made on the occasion of a celebration of the 1962 Judgment:

> "*Bien que le gouvernement thaïlandais, contraint et forcé par la décision du 15 juin 1962 de la Cour Internationale de Justice* ait, *au demeurant de fort mauvaise grâce,* retiré ses forces de Preah Vihear*, la Thaïlande ne cesse pas pour autant de jeter son dévolu sur ce temple que gardent et défendent avec un courage digne d'admiration nos forces armées et guette qu'une occasion favorable se présente pour s'en emparer à nouveau*."[278]

3.69 This is a clear recognition by the Cambodian Prime Minister that – graciously or not, this is not the question – Thailand did withdraw its forces from the Temple and its vicinity.

3.70 After the resumption of diplomatic relations, Cambodia even requested Thailand to give its assistance to defend the

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[277] WO, para. 4.53.

[278] "*Déclaration de M. Penn Nouth, Président du Conseil des Ministres*", reported in French Embassy in Cambodia, Note to the Minister of Foreign Affairs of France, 17 June 1968 [Annex 11 to FWE]. (Emphasis added).

Temple against the Khmer Rouge and Vietnamese forces[279]. Since 1975, the Temple was occupied by the Khmer Rouge and heavy artillery was installed inside[280]. In the 1990s, the reopening of the Temple for tourism was possible only due to Thailand's cooperation[281].

3.71 Misrepresenting Thailand's statements[282], Cambodia asserts that the 1970-1998 period is of no relevance for the present case. This is not so. In the periods 1991-1993 and 1998-2001, the Temple was accessible to tourists mainly from the Thai side. Reports from that period underline the spirit of cooperation between the local authorities. As already noted in the Written Observations, an agreement was reached[283] allowing for the opening of the Temple to the public[284]. This *modus vivendi* functioned well between 1990 and 2001. If the Temple

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[279] WO, paras. 4.57-4.58. For further evidence, see *Washington Post*, 11 July 1970, "Thai Troops Reported Guarding Threatened Temple in Cambodia" [Annex 13 to FWE]; *The Guardian*, 6 November 1974, "Cambodia's temple outpost" [Annex 14 to FWE].

[280] *New York Times*, 23 May 1975, "Thais Report Cambodian Reds Overrun a Cliff-Top Shrine", [Annex 15 to FWE]; French Embassy in Thailand, Note *No. 88/AS* to the Minister of Foreign Affairs of France, 28 January 1977 [Annex16 to FWE].

[281] WO, paras. 4.60-4.65.

[282] In the Response, Cambodia, attributing to Thailand similar conclusions, asserts that: "*De 1970 à 1998, ainsi que le reconnaît expressément la Thaïlande dans ses Observations, aucun fait pertinent n'est à signaler concernant la question de la zone du Temple, en raison notamment du conflit armé interne au Cambodge.*" (Response, para. 2.23). Thailand in fact referred to the period 1975-1990 (WO, para. 4.59). The 1991-1998 period is, by contrast, of relevance for the reasons put forward in WO, paras. 4.60-4.67.

[283] WO, paras. 4.60-4.65.

[284] For the modalities of this *modus vivendi*, see *Bangkok Post*, 2 August 1998, "Tourists flock to Preah Vihear" [Annex 21to FWE].

was closed between 1993 and 1998, this was due again to the internal conflict within Cambodia. In 1998, after the last Khmer Rouge in the Temple surrendered[285], the Temple was again opened to tourists[286] following the modalities used for the 1990 opening, and access was granted to the Temple from the Thai side across the iron bridge on the Takhop/Tani stream. It must be recalled that this bridge is situated some 100 metres from the northern staircase of the Temple[287]. Despite this short distance separating the bridge and the gate from the northern staircase of the Temple, there was no challenge of Thai sovereignty over that location for half a century after the Court's Judgment. The bridge and the iron gate with it had been built by the Thai authorities[288] and were regularly maintained by them. The signs before the bridge and the gate were always written in the Thai language only[289]. Since 1991, the bridge and the gate had been the principal access route through Thailand to and from the

[285] See *Bangkok Post*, 30 March 1998, "Historic temple said to be under govt hold" [Annex 17 to FWE]; *Bangkok Post*, 1 April 1998, "Hun Sen troops take Preah Vihear" [Annex 18 to FWE].

[286] *Bangkok Post*, 26 July 1998, "Ancient Khmer temple to reopen to visitors Aug 1" [Annex 19 to FWE].

[287] WO, para. 4.62. See also Royal Thai Survey Department, Sketch of 1991 arrangements for tourism, 17 November 2011 [Annex 99 to WO].

[288] A Photograph of the Ceremony to mark the Trial Opening of the Phra Viharn Promontory for Archeological Site Visits and Studies, 1 August 1998 [Annex 20 to FWE]. See also Affidavit of Lieutenant General Surapon Rueksumran, 9 November 2011 [Annex 97 to WO].

[289] See the photographs taken in 1998 (A Photograph of the Ceremony to mark the Trial Opening of the Phra Viharn Promontory for Archeological Site Visits and Studies, 1 August 1998 [Annex 20 to FWE]) and in 2001 (Photographs of the Iron Gate and the Iron Bridge at Takhop/Tani stream, taken on 17 December 2001 [Annex 25 to FWE]).

Temple site[290]. Thai sovereignty over the bridge has been challenged only recently.

3.72 Despite the success of this 3-year trial opening, a 2001 attempt to transform the temporary, local agreement into an international one[291] prompted adverse reactions among some of the political class in Phnom Penh. Its initiator from the Cambodian side, the Director General So Mara in the Cambodian Ministry of Tourism, was eventually fired for having signed an arrangement with Thailand[292]. From around that period, Cambodia decided to follow another agenda for the administration of the Temple, for which the perpetuation of the

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[290] *Ibid*. In the same vein, a 2003 note of Thai provincial authorities summarized the situation as follows: "As for the iron staircase and the iron gate built across a limit canal, they were built with the budget of the Si Sa Ket Provincial Administrative Organization and were formerly used to facilitate the flows of incoming and outgoing tourists, with regular opening and closing time for tourists. Mr. Pakdi Ratanapol, Inspector-General of the Ministry of Interior, who came to follow up on the consideration of the request for the opening of the Phra Viharn Promontory for tourism purposes, has been informed of the above-mentioned matter. He suggested that the iron gate be dismantled so as to build a good image and bring about an atmosphere of friendly relations between the two countries. However, at present, the iron gate is shut and no one can enter or exit through it." (Kantharalak District Office, Note No. Sor Kor 0318/36 to the Governor of Si Sa Ket Province: Inquiry about the situation in the area of Pha Mor I Dang, dated 5 February B.E. 2546 (2003), [Annex 38 to FWE]). See also Si Sa Ket Province, Memorandum No. Sor Kor 0017.3/ : Closure of the path leading up to the Temple of Phra Viharn, dated 20 December B.E. 2544 (2001) [Annex 26 to FWE].

[291] For the text of the failed agreement, see Records of the Meeting on Cooperation on Tourism Development of Khao Phra Viharn between H.E. Mr. Somsak Thepsutin, Minister to the Prime Minister's Office and Chairman of the Board of Directors of the Tourism Authority of Thailand, and H.E. Mr. So Mara, Director General, Ministry of Tourism of Cambodia, 1 June 2001, [Annex 22 to FWE].

[292] See *Bangkok Post*, 25 July 2001, "Minister erases proof of talks on temple's 'lease'" [Annex 23 to FWE].

modus vivendi which had lasted since 1991 was deemed by Cambodia to be no longer suitable. Cambodia then initiated intensive construction works for a road allowing access from the plain below, and intensified the development of construction near the Temple[293], while setting into motion the procedures for the inscription of the Temple on the World Heritage List.

3.73 In December 2001, due to lack of cooperation from the Cambodian side in addressing Thailand's concerns about the pollution of the Takhop/Tani stream, as well as the extension at an alarming rate of the settlement of the Cambodian population in the area, the Thai authorities decided to temporarily close access through the iron gate and bridge over the Takhop/Tani stream[294]. Despite the efforts made by Thai central officials and the local authorities from both countries to ensure clearance of the area of landmines and a proposal for the development of suitable sanitary structures, the reopening of the entrance from

[293] See Ministry of Foreign Affairs of Thailand, Telegram to the Royal Thai Embassy in Phnom Penh, 5 April B.E. 2545 (2002) [Annex 33 to FWE].

[294] Si Sa Ket Province, Memorandum No. Sor Kor 0017.3/ : Closure of the path leading up to the Temple of Phra Viharn, dated 20 December B.E. 2544 (2001) [Annex 26 to FWE]; Kantharalak District Office, Note No. Sor Kor 0318/36 to the Governor of Si Sa Ket Province: Inquiry about the situation in the area of Pha Mor I Dang, dated 5 February B.E. 2546 (2003) [Annex 38 to FWE]; *Bangkok Post*, 23 December 2001, "Army closes stairway to old temple" [Annex 27 to FWE]; *Bangkok Post*, 24 December 2001, "Temple still blocked as settlers stay" [Annex 28 to FWE]; *Bangkok Post*, 14 January 2002, "Health concern leads to closure of temple" [Annex 29 to FWE]; *Bangkok Post*, 16 January 2002, "Vendors in clean-up drive at Khmer ruins" [Annex 30 to FWE]; *The Cambodia Daily*, 30-31 March 2002, "Cambodia Determined to Find Own Route to Development in Preah Vehear" [sic] [Annex 32 to FWE].

the Thai side did not occur in 2002[295]. The Cambodian mood had become much less cooperative than in the past[296].

3.74 While environmental concerns were the main reasons prompting the suspension by the local authorities of the *modus vivendi*, Cambodia's progressive attempts since 2001 to modify the *status quo* led the local authorities to report the issue to Bangkok:

> "A *wat* has also been constructed in the area of the Broken Stairway, where the junction of country limit is still unclear and the definite apportioning of area has not yet been done."[297]

3.75 Since 2001, the meetings of the Thai-Cambodian Joint Commission on Demarcation for Land Boundary thus had to address the problems created by progressive Cambodian occupation of the area[298]. The development of

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[295] *Bangkok Post*, 7 March 2002, "Landmines to be cleared" [Annex 31 to FWE]; *Bangkok Post*, 3 November 2002, "Chavalit backs new Preah Vihear gateway" [Annex 34 to FWE]; *Bangkok Post*, 13 November 2002, "Push to open temple, border pass together" [Annex 35 to FWE]; *Bangkok Post*, 17 January 2003, "New border posts planned, hours extended to boost trade" [Annex 37 to FWE].

[296] *Bangkok Post*, 9 December 2002, "Ruins still closed to all visitors" [Annex 36 to FWE].

[297] Kantharalak District Office, Note No. Sor Kor 0318/36 to the Governor of Si Sa Ket Province: Inquiry about the situation in the area of Pha Mor I Dang, dated 5 February B.E. 2546 (2003) [Annex 38 to FWE].

[298] See Ministry of Foreign Affairs, Note No. Kor Tor 0603/1165 to the Governor of Si Sa Ket Province: Solving the Problems of Kiosks Selling Goods and Wastewater Disposal in the Area of the Temple of Phra Viharn, dated 11 December B.E. 2544 (2001) [Annex 24 to FWE].

a pagoda[299], the extension of the market and the construction of the road encroaching on Thai territory[300] rendered the situation critical. It was thus reported in February 2003 that:

> "The problem of alleged encroachment by Khmer vendors certainly is more difficult to address than that of ensuring waste treatment facilities on the Cambodian side of the border. It underlines the need for the two sides to clear up grey areas that exist at far too many spots along the common border. Hence the demarcation committee must go about its business very carefully. Proper demarcation will prevent the recurrence of problems which inevitably strain relations at the local level, weakening the foundation for further communications. Improper demarcation will have the reverse effect, harming both sides."[301]

The provincial authorities called upon the central authorities to address the impact of Cambodian settlement on future

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[299] Cambodia is again distorting reality: what it emphatically calls a *pagoda* is in fact no more than a small *wat* – a small structure, used as a place of religious worship, containing a Buddha image and a very small living quarter for monks (see Photographs of the Keo Sikha Kiri Svara Pagoda, taken during 2006-2010 [Annex 44 to FWE]. Moreover, Cambodia claims that the Keo Sikha Kiri Svara Pagoda was built in 1998 (Response, paras. 2.8 and 2.67). Annex 24 to Cambodia's Response encloses a ministerial decision, dated 2 November 1998, authorizing its setting up, with no specification as to its emplacement. The actual installment was later (see Ministry of Foreign Affairs of Thailand, Telegram to the Royal Thai Embassy in Phnom Penh, 5 April B.E. 2545 (2002) [Annex 33 to FWE]; *Bangkok Post*, 22 February 2003, "Cambodians 'encroach' on Thai soil" [Annex 41 to FWE].

[300] For protest by Thailand against the construction of this road encroaching upon Thai territory, see Adviser to the Minister of Foreign Affairs and Co-Chairman of the Thailand-Cambodia Joint Boundary Commission, Note to Adviser to the Royal Government of Cambodia in Charge of State Border Affairs and Co-Chairman of the Cambodia-Thailand Joint Boundary Commission, No. 0803/192, 8 March 2005 [Annex 94 to WO].

[301] *Bangkok Post*, 20 February 2003, "Clear borders would help end temple row" [Annex 40 to FWE]. See also *Bangkok Post*, 22 February 2003, "Cambodians 'encroach' on Thai soil" [Annex 41 to FWE].

demarcation of the boundary[302]. The Joint Boundary Commission was then tasked to address complaints of such encroachment:

> "The Thai and Cambodian border demarcation committee will survey the border area at Preah Vihear temple on Thursday, to try to define the border line following complaints of encroachment by Khmer vendors."[303]

On 31 May – 1 June 2003, a joint Thai-Cambodian Cabinet meeting attended by, *inter alia*, the Cambodian Deputy Prime Minister (Mr. HOR Namhong), took place at Siem Reap and Ubon Ratchatani[304]. The reopening of the Temple[305] took place to coincide with this meeting. On the same occasion, the two sides also agreed on the joint development of the Temple of Phra Viharn. However, the 2007-2008 tensions led to the prolonged closure of the path leading up to the Temple from the Thai side.

3.76 Against this background, it is clear that Cambodia takes liberties with the facts stating that it is only by the end of 2004

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[302] Kantharalak District Office, Note No. Sor Kor 0318/36 to the Governor of Si Sa Ket Province: Inquiry about the situation in the area of Pha Mor I Dang, dated 5 February B.E. 2546 (2003) [Annex 38 to FWE]

[303] *Bangkok Post*, 18 February 2003, "Border Talks" [Annex 39 to FWE].

[304] See Department of East Asian Affairs, Ministry of Foreign Affairs of Thailand, The Thai-Cambodian Joint Cabinet Retreat, 31 May – 1 June 2003, dated 4 June 2003 [Annex 43 to FWE].

[305] See Photographs of the Opening Ceremony of the Phra Viharn Promontory Border Area Point of Entry for the Purpose of Tourism, taken on 31 May 2003 [Annex 42 to FWE].

that Thailand "*a commencé à montrer quelques signes d'inquiétude sur ces activités*"[306] or that "*jusqu'en 2006, la Thaïlande n'a plus protesté à propos d'éventuelles violations de la zone autour du Temple*"[307]. The factual record is against Cambodia's assertions. Thailand provided consistent evidence of its exercise of sovereignty in the areas Cambodia is now claiming, situated north or west of the Cabinet line[308]. For its part, Cambodia has submitted no evidence of its having had undisputed control over the areas it is now claiming. When Cambodia's activities encroached upon its territory, Thailand promptly protested and called on Cambodia to resolve the issue of boundary delimitation and demarcation by means of negotiations[309].

3.77 The truth is that the two States do indeed have a boundary dispute that resurfaces now and then. But this dispute has never been qualified as a dispute over the withdrawal of Thai troops. Significantly, while Cambodia invokes disputes over the "vicinity" from which Thai troops had to withdraw, it

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[306] Response, para. 2.76; see also *ibid*., paras. 2.8 and 2.23.

[307] *Ibid*., para. 2.81.

[308] WO, paras. 4.60-4.69. See also paras. 3.68-3.75 above.

[309] WO, paras. 1.26-1.27. See also Adviser to the Minister of Foreign Affairs and Co-Chairman of the Thailand-Cambodia Joint Boundary Commission, Note to Adviser to the Royal Government of Cambodia in Charge of State Border Affairs and Co-Chairman of the Cambodia-Thailand Joint Boundary Commission, No. 0803/1015, 25 November 2004 [Annex 93 to WO] and Adviser to the Minister of Foreign Affairs and Co-Chairman of the Thailand-Cambodia Joint Boundary Commission, Note to Adviser to the Royal Government of Cambodia in Charge of State Border Affairs and Co-Chairman of the Cambodia-Thailand Joint Boundary Commission, No. 0803/192, 8 March 2005[Annex 94 to WO].

cannot in fact identify one single document pointing to disagreement over the withdrawal of Thai troops. On the contrary, its officials openly recognized that Thailand had returned the Temple and withdrawn its forces[310]. This nonetheless does not prevent Cambodia from stating in the Response:

> "*A l'époque, la Thaïlande s'était en effet retirée du Temple lui-même et avait donc obtempéré à une partie de ses obligations découlant de l'arrêt. Cependant, la Thaïlande ne s'était pas retirée des 'environs' du Temple comme elle en avait l'obligation d'après le paragraphe 2 du dispositif.*"[311]

3.78 This is pure *petitio principii* and Cambodia identifies no document where it accused Thailand of not having completely complied with its obligation to withdraw. All the evidence submitted by Thailand in the Written Observations remains unchallenged. And third States' military representatives were able to visit the area and certify the reality of the complete withdrawal of Thai forces[312]. It is only now, for the purposes of ensuring access to the Court under Article 60, that Cambodia makes a complaint. This does not demonstrate the existence of a dispute between the Parties over the meaning of paragraph 2 of the *dispositif* of the Judgment; it demonstrates the contrary.

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[310] See para. 3.68 above.

[311] Response, para. 2.41.

[312] T. C. White, "Report on a trip to the Temple of Preah Vihear undertaken from 14-18 April 1968", 25 April 1968 [Annex 10 to FWE].

3.79 Once again, Cambodia's portrayal of the facts is carefully tailored to meet its claim in this case. In the region of the Temple, the dispute has several particularities: first, Cambodia has been proclaiming, in the aftermath of the Judgment, and sporadically ever since that the Court decided the boundary between the two Parties. This is in blatant disregard of the Court's express refusal to do so. Thailand will revert to this aspect of paramount importance for the present proceedings[313]. Second, Cambodia's assessment of the location of the boundary has undergone considerable change since the 1962 proceedings with Cambodia's line migrating further and further north[314]. Thailand, by contrast, has maintained a consistent territorial claim outside the Temple area since 1962 and has always shown readiness to engage in good faith negotiations with Cambodia for the delimitation and demarcation of the whole boundary. This is the true factual background.

3.80 The legal background is even clearer: Thailand has never denied – and does not deny – the existence of disputes over boundary delimitation, but it maintains that these are not eligible for adjudication under Article 60 of the Statute.

[313] See paras. 3.92-3.101 below. See also WO, paras. 4.96-4.103.

[314] See paras. 4.54-4.59 below.

(iii) The Alleged Dispute over the Meaning and Scope of the Correlative Obligation to Withdraw Thai Forces from the Temple and Its Vicinity on Cambodian Territory (Paragraph 2 of the Dispositif*)*

3.81 Concerning the continuous or instantaneous character of the obligation to withdraw, Cambodia's Response does not bring any further evidence of opposing views between Cambodia and Thailand articulated before the seising of the Court. Cambodia's highly artificial, academic inquiry into the nature of the obligation contained in paragraph 2 of the *dispositif* was concocted in the process of the drafting of the Request for interpretation and further developed on the basis of the statements made during the provisional measures pleadings and in Thailand's Written Observations. The fact that these pleadings show that Thailand does not share Cambodia's analysis changes nothing in practice: the Parties agree that there is an obligation for Thailand not to have troops in the area awarded by the Court to Cambodia. On this point there is agreement, and it matters little if this obligation exists by virtue of general international law or by virtue of the particular conclusion drawn by the Court in 1962 on the basis of the general obligation. The content of the obligation is identical in the two cases, and no question of interpretation arises.

3.82 For the purposes of evaluating the existence of a dispute between the Parties on this point, it suffices to note that Cambodia's Request for interpretation and the Response do not

identify a single document proving that the Parties held opposing views on the question, prior to the seising of the Court. It is significant that Chapter 3 of the Response, dealing with the existence of a dispute, does not contain a single paragraph purporting to evidence any opposition of views between Cambodia and Thailand on the instantaneous/continuous character of the obligation to withdraw prior to the present proceedings. Cambodia only analysed the nature of the obligation to withdraw at the very end of its Response[315], devoting five paragraphs to a rebuttal of Thailand's analysis in the Written Observations. The impossibility for Cambodia to identify a single document, predating its seising of the Court, in which the Parties held opposing views on the characterization of the obligation of withdrawal shows beyond any doubt that no such dispute existed.

(d) The Alleged Dispute on the Recognition of the Binding Force of the Annex I Map as the Boundary between the Parties in the Area of the Temple

3.83 Interestingly, Cambodia shows itself incapable of linking the third element of the dispute between the Parties to any of the three paragraphs of the 1962 Judgment:

[315] Response, paras. 4.84-4.86.

> "*ils [Cambodia and Thailand] ont de plus un différend sur la question de savoir si l'arrêt a ou n'a pas reconnu avec force obligatoire la ligne indiquée sur la carte de l'annexe I comme représentant la frontière entre les deux parties dans la région du Temple*."[316]

3.84 This claim lies on a double conjuring trick:

- on the one hand, Cambodia does not identify any part of the *dispositif* to which this issue could be related;

- on the other hand Cambodia omits to recall that the Court had plainly rejected that very same claim in the 1962 Judgment.

3.85 It might therefore not be superfluous to quote again this part of the Judgment:

> "Referring finally to the Submissions presented at the end of the oral proceedings, the Court (…) 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."[317]

It is simply untenable to allege that, on the occasion of a request for interpretation, the Court could pass a judgment on a point on which it expressly refused to adjudicate in the original judgment.

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[316] *Ibid*., para. 3.16.

[317] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962,* p. 36. (Emphasis added).

3.86 A straightforward reading of the 1962 Judgment makes it obvious that the status of the map and the delimitation of the boundary are outside what had been decided *res judicata* by the Court in 1962. Contrary to Cambodia's allegation[318], there is not the slightest uncertainty as to whether or not these points were decided with binding force – they were not. There is no room for doubt in this respect on a *bona fide* reading of the Judgment. On the contrary, these questions were purposely left outside. Cambodia is abusing its right to introduce a request for interpretation of the Judgment in the sense that it uses it to call into question the *res judicata* principle.

3.87 It is therefore apparent that, absent any dispute over the interpretation of any of the three paragraphs of the *dispositif* of the 1962 Judgment, the Court has no jurisdiction under Article 60 of its Statute to interpret this Judgment.

B. The Dismissal of Cambodia's New Claims in the Original Proceedings

3.88 This being said, Thailand has no difficulty accepting that it has a dispute with Cambodia on several issues, including that of the course of the boundary line between the Parties. But that line having not been decided by the Court in 1962 cannot be adjudicated in 2012 or 2013 through a proceeding on

[318] Response, paras. 2.25 and 4.4.

interpretation. In other words, there is indeed a dispute between the Parties on their boundary line, but this is a new dispute which is distinct from the original proceedings and it belongs to the two States – not to the Court – to settle it by peaceful means. This is precisely what they envisaged in their Memorandum of Understanding of 14 June 2000:

> "The survey and demarcation of land boundary between the Kingdom of Thailand and the Kingdom of Cambodia shall be jointly conducted."[319]

3.89 Moreover, it is revealing that this agreement:

- does not hint at any disagreement between the Parties as to the interpretation of the 1962 Judgment;

- mentions *among others* the "maps which are the results of demarcation works" of the previous Commissions of Delimitation of the Boundary between Indo-China and Siam, but without mentioning the Annex I map expressly or giving it any special role or status.

3.90 It is therefore apparent that, out of the three disputes identified in the Response[320], only the third, which is at the heart of Cambodia's Request and Response, is a real one; it concerns the question of the delimitation of the boundary[321]. Cambodia

[319] Article I of the 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, 14 June 2000 (hereafter "MoU") [Annex 91 to WO].

[320] See para. 3.38 above.

[321] See paras. 2.35-2.43 above.

does not attempt to conceal it and makes clear that its so-called question on the meaning of "territory" concerns in fact the *delimitation* of the boundary between the Parties. Similarly, the question relating to the "vicinity of the Temple" is equated by Cambodia with that of the boundary, since it identifies the said "vicinity" as all the territory under Cambodian sovereignty south *of the Annex I map line*[322]. And Cambodia clearly explains that the judgment it calls on the Court to give through the "interpretation" of the 1962 Judgment will be implemented following the process of the MoU, a treaty whose object precisely is the survey and demarcation of the boundary between Thailand and Cambodia[323]. This question is obviously inadmissible: as already explained above[324], the Court expressly rejected this same Cambodian claim in 1962; its repetition does not make it admissible now. Had Cambodia asked the Court this very same question in 1963, the Court would have undeniably considered it inadmissible. The fact that Cambodia addresses it half a century later, when the factual situation on the ground and the legal context between the Parties have changed considerably, does not make it any less inadmissible. Cambodia's new claims relating to the boundary and the status of the Annex I map having already been considered in 1962 (1.),

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[322] Response, paras. 2.22, 2.41 and 2.64.

[323] "*Si la Cour accepte d'interpréter dans le sens que le Cambodge souhaite, l'exécution de l'arrêt se fera selon des moyens pacifiques, sur la base d'un accord commun qui existe déjà: le* Memorandum of Understanding *du 14 juin 2000 (ci-après MoU) sur la démarcation de la frontière entre les deux États.*" (Response, para. 1.10). For Thailand's objections to this misuse of the Court, see WO, paras. 4.111-4.115.

[324] See paras. 3.85-3.86 above.

the Court declared them inadmissible then and the same legal consequence must flow in the present proceedings (2.).

1. The Court's Consideration in 1962 of Cambodia's New Claims in Respect of the Boundary and the Annex I Map

3.91 In its Written Observations, Thailand has retraced the broad lines and main points of the 1961-1962 pleadings in order better to explain the reasons that led the Court to reject Cambodia's claims on the status of the Annex I map and the delimitation of the boundary[325]. Cambodia expressed its discontent with this approach[326]. The reason is evident, since delving into the pleadings makes apparent that "the Court was only called upon to decide on the sovereignty over the Temple and on the two claims put forward by Cambodia for the withdrawal of the Thai military personnel and the return of cultural objects. The Court was not called on to decide on the boundary line between the Parties and was only invited in the pleadings to use the Annex I map as a piece of evidence of Cambodia's sovereignty over the Temple"[327].

3.92 When, at a very late stage of the original proceedings (the end of the first oral round on the merits), Cambodia submitted its claims on the status of the Annex I map and on the delimitation of the boundary, Thailand promptly opposed

[325] WO, paras. 2.1-2.80.

[326] See para. 3.13 above.

[327] WO, para. 2.80.

them[328]. The extension of the geographical scope of the initial request was objectively evident to anyone; but there was also a fundamental alteration of the nature of the dispute: it would have turned a dispute over sovereignty in respect of a well-defined location, into a dispute on delimitation of this territory, the extent of which would be impossible to determine. For these reasons, Thailand asserted a *fin de non-recevoir*[329], a position which was accepted by the Court.

3.93 It does not escape Cambodia's notice that this is fatal to its Request; hence, it now vacillates between open denial, minimization and self-contradiction.

3.94 Paragraph 1.22 of the Response is an example (among others) of the first posture, that of "open denial": "*la Thaïlande ne cherche pas non plus à expliquer pourquoi la carte de l'annexe I n'est pas essentielle, ou pourquoi elle est séparée des éléments du dispositif.*"[330] It is as though Cambodia had not noted that a very important part of the Written Observations is devoted to explaining why the Annex I map is by no means essential, nor indeed necessary, to explain the meaning and scope of the three paragraphs contained in the *dispositif* of the Judgment and the consequences flowing from this situation. In

[328] *Ibid*., paras. 2.66-2.79.

[329] *I.C.J. Pleadings, Temple of Preah Vihear, Oral Arguments*, Vol. II, p. 218 (Mr. Seni Pramoj, 7 March 1962); p. 271 (Mr. Henri Rolin, 9 March 1962); pp. 566–568 (Mr. Henri Rolin, 28 March 1962); and p. 567 (Mr. Henri Rolin, 28 March 1962); see also WO, paras. 2.66-2.79.

[330] Response, para. 1.22. See also paras. 1.24, 2.33 and 3.13.

this respect, Cambodia should read Chapter II of the Written Observations describing in some detail:

- the *petitum* in the main proceedings[331];

- Thailand's subsequent opposition to the introduction of the new Cambodian claims[332]; and

- the reasons why the Court unambiguously dismissed these claims[333].

3.95 In other passages of its Response, Cambodia acknowledges that the Court dismissed its claims concerning the boundary and the Annex I map but undertakes to minimize, not to say to empty of any significance, the scope of the Court's position, by reducing it to a pure procedural issue:

> "*A la lumière de ce qui précède, il faut en déduire que* le refus de la Cour de se prononcer formellement sur les deux conclusions cambodgiennes en question *est la conséquence d'un* problème purement procédural *qui découle du fait que ces arguments n'avaient pas été présentés avant l'audience, et ont été confrontés à une objection de la part de la Thaïlande sur le fondement qu'ils avaient été soumis trop tard."*[334]

3.96 In reality, the reasons which led the Court to ignore the two questions now raised by Cambodia (status of the map, identification and therefore delimitation of the boundary) in the *dispositif* are by no means procedural, but substantive. The

[331] WO, paras. 2.66-2.68, 2.71 and 2.74.

[332] *Ibid.*, paras. 2.69-2.70 and 2.75.

[333] *Ibid.*, paras. 4.97-4.103.

[334] Response, para. 3.23. (Emphasis added).

Cambodian claims in this respect were dismissed not because they were formulated at a late stage, but because, submitted at a late stage, they represented an impermissible extension of the initial Application:

> "the subject of the dispute submitted to the Court [as defined in the judgment on the Cambodian preliminary objections of 26 May 1961] 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."[335]

In so doing the Court accepted Thailand's claim according to which:

> "The Court is asked not to entertain this [Cambodia's new] claim, because it constitutes an enlargement of the claim presented by the Government of Cambodia in the Application instituting these proceedings and throughout the written pleadings."[336]

3.97 Significantly, the Court dealt differently with these requests on the one hand and those on return of objects allegedly taken from the Temple on the other hand, although they were

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[335] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 14.

[336] *Ibid.*

submitted at the same stage of proceedings[337]. For its part, Thailand had requested the Court to consider not only the claims referring to the boundary[338], but also that on the return of cultural objects as being an "enlargement" of the claims presented in the Application. However, the Court did not treat them in the same way. The reason for such differential treatment is that the latter were implicitly contained in the initial request, whereas the claim concerning the delimitation of the boundary was an extension of the subject matter of the Application[339]. As a consequence, the claim concerning the restoration of the objects supposedly taken from the Temple in paragraph 3 of the *dispositif* was granted, while, by contrast, the Courts expressly declined to make pronouncements with the force of *res judicata* "on the legal status of the Annex 1 map and on the frontier line in the disputed region".

3.98 Last but not least, in other parts of its Response, Cambodia grossly contradicts itself. Thus, while it vigorously denies in the body of the text of its Response, that its request concerning the Annex I map and the delimitation of the boundary were an extension of initial claims[340], it concedes the opposite in the corresponding footnote:

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[337] WO, paras. 2.68-2.69.

[338] *Ibid*., para. 2.69; and see *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 36 for the differential treatment by the Court of these objections to extension of the initial claims.

[339] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 36.

[340] Quoted in para. 3.95 above.

> "*Il apparaît également implicite que l'objection procédurale sur cette soumission tardive soit basée sur l'argument selon lequel les conséquences de ces conclusions outrepassèrent le cadre du litige tel qu'initié au départ par le Cambodge.*"[341]

3.99 This second explanation is the correct one – and is by no means implicit: this is exactly what the Court said at page 14 of the Judgment[342]. And this is the only explanation of the fact that the Court decided to address them only in the non-operative part of the Judgment. Contrary to Cambodia's apparent opinion, this position is not a whim on the part of the Court's as to the form it chose for adjudging those claims[343]: the distinction between reasons and *dispositif* is not merely formal and entails consequences as far as the *res judicata* principle is concerned[344].

3.100 In particular, there is no such thing as a "*dispositif implicite*"[345]. On the contrary, the distinction between reasons and *dispositif* is well established in the case law of the Court:

> "… the Court will distinguish between the dispute itself and arguments used by the parties to sustain their respective submissions on the dispute:

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[341] Response, para. 3.23, footnote 138.

[342] Quoted in para. 3.96 above.

[343] Response, paras. 3.24 and 4.23.

[344] See paras. 3.16-3.25 above.

[345] Response, para. 4.23.

> "The Court has ... repeatedly exercised the power to exclude, when necessary, certain contentions or arguments which were advanced by a party as part of the submissions, but which were regarded by the Court, not as indications *of what the party was asking the Court to decide, but as reasons advanced why the Court should decide in the sense contended for by that party*." (*Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports* 1974, p. 262, para. 29; see also cases concerning *Fisheries, Judgment, I.C.J. Reports* 1951, p. 126; *Minquiers and Ecrehos, Judgment, I.C.J. Reports* 1953, p. 52; *Nottebohm, Second Phase, Judgment, I.C.J. Reports* 1955, p. 16.)."[346]

3.101 In its 1962 Judgment, the Court deliberately and expressly refused to include in the *dispositif* the Cambodian claims which now form the subject matter of the Cambodia's Request for interpretation. It clearly cannot address these claims in the present proceedings.

2. LEGAL CONSEQUENCES OF THE COURT'S DISMISSAL OF CAMBODIA'S NEW CLAIMS

3.102 The inadmissibility of Cambodia's new claims decided by the Court in 1962 in full conformity with its constant case law (*(a)*) results in a lack of jurisdiction in the Court to examine Cambodia's claim today (*(b)*).

[346] *Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court*, *Judgment, I.C.J. Reports 1998*, p. 449, para. 32. (Emphasis added).

(a) Consequences in the Original Proceedings

3.103 It is well established in the case law of the Court that new claims formulated by the Parties in the course of the proceedings are inadmissible if they change the character of the dispute. Thus, in the case concerning the *Société commerciale de Belgique*, the Permanent Court stated:

> "The Court has not failed to consider the question whether the Statute and Rules of Court authorize the parties to transform the character of a case as profoundly as the Belgian Government has done in this case.
>
> It is to be observed that the liberty accorded to the parties to amend their submissions up to the end of the oral proceedings must be construed reasonably and without infringing the terms of Article 40 of the Statute and Article 32, paragraph 2, of the Rules which provide that the Application must indicate the subject of the dispute. The Court has not hitherto had occasion to determine the limits of this liberty, but it is clear that the Court cannot, in principle, allow a dispute brought before it by application to be transformed by amendments in the submissions into another dispute which is different in character."[347]

3.104 This has also been the constant position of the present Court. In the *Arrest Warrant* case, the Court noted:

> "that, in accordance with settled jurisprudence, it 'cannot, in principle, allow a dispute brought before it by application to be transformed by amendments in the

[347] *Société commerciale de Belgique, Judgment, 1939, P. C. I. J., Series A/B, No. 78,* p. 173; see also: *Prince von Pless Administration, Order of 4 February 1933, P.C.I.J., Series A/B, No. 52*, p. 14.

> submissions into another dispute which is different in character' *(Société commerciale de Belgique, Judgment, 1939, P. C. I. J., Series A/B, No. 78,* p. 173 ; cf. *Military and Paramilitary Activities against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I. C. J. Reports 1984,* p. 427, para. 80; see also *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I. C. J. Reports 1992,* pp. 264-267, in particular paras. 69 and 70)."[348]

And, in its 2007 Judgment in *Nicaragua* v. *Honduras*, it gave a very detailed explanation in this respect:

> "108. The Court notes that
>
> > "[t]here is no doubt that it is for the Applicant, in its Application, to present to the Court the dispute with which it wishes to seise the Court and to set out the claims which it is submitting to it" (*Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, p. 447, para. 29).
>
> Article 40, paragraph 1, of the Statute of the Court requires moreover that the 'subject of the dispute' be indicated in the Application; and Article 38, paragraph 2, of the Rules of Court requires 'the precise nature of the claim' to be specified in the Application. In a number of instances in the past the Court has had occasion to refer to these provisions. It has characterized them as 'essential from the point of view of legal security and the good administration of justice' and, on this basis, the Court held inadmissible certain new claims, formulated during the course of proceedings, which, if they had been entertained, would have transformed the subject of the

[348] *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002,* p. 16, para. 36.

dispute originally brought before it under the terms of the Application (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992,* p. 267, para. 69; *Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, p. 447, para. 29; see also *Prince von Pless Administration, Order of 4 February 1933, P.C.I.J., Series A/B, No. 52*, p. 14, and *Société Commerciale de Belgique, Judgment, 1939, P.C.I.J., Series A/B, No. 78*, p. 173).

109. The Court observes that, from a formal point of view, the claim relating to sovereignty over the islands in the maritime area in dispute, as presented in the final submissions of Nicaragua, is a new claim in relation to the claims presented in the Application and in the written pleadings.

110. However, the mere fact that a claim is new is not in itself decisive for the issue of admissibility. In order to determine whether a new claim introduced during the course of the proceedings is admissible the Court will need to consider whether,

> 'although formally a new claim, the claim in question can be considered as included in the original claim in substance' (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Prelim nary Objections, Judgment, I.C.J. Reports 1992*, pp. 265-266, para. 65).

For this purpose, to find that the new claim, as a matter of substance, has been included in the original claim, it is not sufficient that there should be links between them of a general nature. Moreover,

> "[a]n additional claim must have been implicit in the application (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 36) or must arise 'directly out of the question which is the subject-matter of that Application' (*Fisheries Jurisdiction (Federal Republic of Germany* v.

> *Iceland), Merits, I.C.J. Reports 1974*, p. 203, para. 72)" (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 266, para. 67)."[349]

3.105 Such inadmissible claims, which change the very character of the case, cannot be considered to be part of the matters decided with binding force regardless of what they are related to in the judgment[350]. In declaring inadmissible, on this ground, Cambodia's new claims concerning the Annex I map and the delimitation of the boundary between the Parties, the Court has excluded these claims from the *res judicata*.

(b) Consequences for the Present Proceedings

3.106 Cambodia repeats in 2011-2012[351] the submissions relating to the status of the map and the delimitation of the boundary which it unsuccessfully made in 1962 and which were declared inadmissible by the Court at the time. The Court today has no jurisdiction to enter into a discussion of these matters through a request for interpretation, since, by definition such matters do not bear upon what has been decided with the effect

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[349] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, pp. 695-696, paras. 108-110.

[350] They are not what Prof. Jouannet calls "*motifs décisoires*" (see footnote 206 above).

[351] *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), Application Instituting Proceedings*, 28 April 2011, paras. 39, 42 and 44; and Response, first and second paragraphs 1.18.

of *res judicata,* precisely because the Court declined to decide on them. Indeed Cambodia's attempt itself appears as a *détournement de procédure*, since it uses the procedure of interpretation in order to appeal the Court's clear declaration of inadmissibility of its late submission in 1962 – while it is fully conscious that the Court today would have no jurisdiction to decide on such a submission.

3.107 This is all the more striking since not only does the *dispositif* of the 1962 Judgment contains no finding relating to the submissions in question, but also the Court took care to refuse explicitly to adjudicate these inadmissible claims.

3.108 Subsequent to the Judgment, Cambodia was loath to admit the Court's clear-cut refusal to adjudicate its claims on the status of the Annex I map and the delimitation of the boundary. To the contrary, the official discourse, targeted towards national as well as international public opinion, propagated the false perception that the Court had decided the question of boundaries. This is evident in numerous declarations made by Cambodian officials at the rostrum of the General Assembly of the United Nations, in their statements during the discussions held in Phnom Penh with United Nations mediators or foreign diplomats, or in the articles published in national newspapers considered to be the official voice of the Cambodian Government[352]. Most interestingly, Cambodian propaganda

[352] See the documents referred to in WO, paras. 4.104-4.107.

gradually expanded the scope of the Court's imaginary decision on the boundary: in 1962-1963, the Court was said to have decided about the boundary in the area of the Temple only[353]. In 1964, when Cambodia was fully engaged in its quest for formal declarations by third States of recognition of its boundaries, the Court was said to have confirmed the whole boundary between Thailand and Cambodia[354]. In 2011, this perception seems to have undergone another change, since the Court is called to confirm the boundary for a putative 4.6 sq km area[355].

3.109 In fact, after the reading of the Judgment, Cambodia seemed to forget what was the subject matter of the dispute it had itself submitted to the Court and on which the Court had decided. In Cambodia's opinion (or desire…), the Judgment started to have a life of its own, quite disconnected from the case submitted to the Court. There is therefore some irony in Cambodia's alleging: "*A ce stade, il est significatif d'observer qu'il ressort des différentes pièces produites par la Thaïlande dans cette procédure que celle-ci a cherché, dès le début, à créer sa propre vérité*."[356] At least for internal consumption, the Judgment became for Cambodia a founding myth, which it propagated internationally. Maybe "truth rarely catches up with

[353] Declarations referred to in WO, paras. 4.38 and 4.56. See also Response, *Aide-Mémoire on Khmero-Thai Relations*, 28 November 1962, p. 22 (Annex 4 to the Response).

[354] Examples are provided in WO, para. 4.107.

[355] See paras. 2.44-2.45 and 3.61 above.

[356] Response, para. 2.33.

legend"[357]. The Court has however now the opportunity to re-establish the judicial truth in its own right, by declaring Cambodia's Request for interpretation inadmissible on the grounds that the 1962 Judgment did not determine the boundary between the two States, but only sovereignty over the Temple.

[357] Stefan Zweig, *Amerigo. A Comedy of Errors in History*, Ishy Press International, 2010, p. 67.

CHAPTER IV
THE CLEAR MEANING OF THE 1962 JUDGMENT

4.1 As explained in the preceding Chapter, the conditions required for the Court to exercise jurisdiction over a request for interpretation do not exist in the present case and Cambodia has failed to state an admissible request. In the present Chapter, Thailand makes submissions, in the alternative, on the question of interpretation in the event that the Court were to reach the merits of Cambodia's request.

4.2 The present Chapter recalls the clear meaning of the 1962 Judgment. It is a Judgment of clearly defined scope, and its meaning is beyond doubt. Cambodia, however, insists that the clear meaning, as expressed in the *dispositif,* cannot be understood on its own. According to Cambodia, a "*dispositif implicite*" is to be discovered in the reasoning of the Court[358]. More specifically, on Cambodia's theory of interpretation, the "*dispositif implicite*", which is not "*une obligation existant dans le dispositif*" but, instead, "*une obligation qui préexiste à la decision finale de la Cour*", indicated that Cambodia possesses sovereignty over certain geographical areas, outside the area which the Parties addressed in their pleadings in 1962[359]. Cambodia argues that one reason in particular – the Annex I map line – was essential to and inseparable from the *dispositif*; and, for that reason, is part of the

[358] Response, para. 4.23.

[359] *Ibid*., paras. 4.29 and 4.47-4.53.

res judicata of the case[360]. It is by referring to this one reason that Cambodia insists that the Court today declare that the Court in 1962 decided sovereignty over certain areas beyond the promontory of Phra Viharn.

4.3 In the present Chapter, after recalling the plain meaning of the *dispositif* (A.), Thailand will recall once more the reasons which led the Court to reach the decision it did in 1962; and the Court's clear understanding that the Annex I map line was not the essential or inseparable reason for its decision (B.). Even if the Court's consideration of the Annex I map line in 1962 were to be examined in clinical isolation – i.e., even if the Court's consideration of other evidence of sovereignty were ignored and the Court's explanations of why it was considering the map line were ignored – Cambodia's interpretation faces a further, and insuperable, problem: the map line does not support Cambodia's exorbitant interpretation of the geographical parameters of the area from which Thailand was obliged to withdraw. As Thailand will recall below (C.), though the map line is not the only consideration which supported the conclusion that the Temple is situated in Cambodia, that conclusion is the only conclusion which the map line supported. Cambodia, however, insists that the map line supports certain further conclusions; Thailand will explain below (D.) why Cambodia's assertion that the 1962 Judgment used the map line to reach a general determination as to Cambodian sovereignty, including over

[360] *Ibid*., paras. 4.10-4.27. See also *ibid.*, first paragraph 1.18 (pp. 8-9).

places which were beyond the scope of the pleadings and which were never considered by the Court, is untenable. Finally, in the event that a question or questions of interpretation are found to have been presented in Cambodia's pleadings (Thailand firmly maintains that no question of interpretation has been presented), Thailand sets out at the conclusion of this Chapter (E.) the proper interpretation of the 1962 Judgment.

A. The *Dispositif* and Its Clear Meaning

4.4 The *dispositif* of the 1962 Judgment is in a simple form. It contains one principal determination, followed by two consequential determinations. It is the principal determination – which the Court set out in paragraph 1 – and its main consequence – which the Court set out in paragraph 2 – which Cambodia asserts are unclear. To recall once more, the *dispositif* of the 1962 Judgment is as follows:

> "The Court,
> (…)
> finds that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia;
> finds in consequence,
> (…)
> that Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory;
> (…)
> that Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia's fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954,

have been removed from the Temple or the Temple area by the Thai authorities."[361]

And in the French language:

"*La Cour,*
(...)
dit que le temple de Préah Vihéar est situé en territoire relevant de la souveraineté du Cambodge;
dit en conséquence,
(...)
que la Thaïlande est tenue de retirer tous les éléments de forces armées ou de police ou autres gardes ou gardiens qu'elle a installés dans le temple ou dans ses environs situés en territoire cambodgien;
(...)
que la Thaïlande est tenue de restituer au Cambodge tous objets des catégories spécifiées dans la cinquième conclusion du Cambodge qui, depuis la date de l'occupation du temple par la Thaïlande en 1954, auraient pu être enlevés du temple ou de la zone du temple par les autorités thaïlandaises."[362]

4.5 As Thailand has set out in Chapter III above, these paragraphs present no question of interpretation. Cambodia had instituted proceedings to obtain an answer to a question which, though fiercely contested at the time, was perfectly straightforward: which of the two States had sovereignty over the Temple of Phra Viharn? Nobody at the time thought that the question entailed an answer requiring fine gradations or nuances of meaning. The Temple would be found to be in Cambodia; or it would be found to be in Thailand. Those were the

[361] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, pp. 36-37.

[362] *Ibid*.

possibilities, and the Parties in 1962 directed their pleadings, and the Court directed its reasoning, to resolve which it would be.

4.6 The answer, that the Temple is in Cambodian territory, is given in paragraph 1 of the *dispositif*. This led to a further determination. Thailand was obliged to withdraw from the Temple and its vicinity on Cambodian territory. The Court understood the further determination to be a consequence of the answer to the question of sovereignty. Thus the Court determined that there was an obligation to withdraw arising "in consequence" of the determination as to sovereignty. As Thailand has set out in detail in Chapter II above and will consider further in Section C below, there was no need to say what this meant: the Parties' pleadings indicated the geographical scope of the area in dispute. Moreover, the origin of the dispute was the stationing of Thai personnel in a place – the "ruins of the Temple of Preah Vihear"[363] – which France, and its successor, Cambodia understood to be beyond the sovereignty of Thailand. This is how the subject matter of the dispute was defined in 1962, and that subject matter, as far as the Parties and the Court were concerned, was clear.

4.7 Thailand will return at the end of the present Chapter to consider these points which Cambodia, under its blurred reading of the 1962 Judgment, insists require interpretation in more

[363] *I.C.J. Pleadings, Temple of Preah Vihear*, *Application*, Vol. I, p. 15.

detail. As suggested by the plain text, the meaning of each paragraph of the *dispositif,* though now contested by Cambodia, is in truth clear.

B. The Reasoning Which Led the Court to Determine Sovereignty over the Temple

4.8 Contrary to the way Cambodia claims to read the Judgment, the meaning of the *dispositif* is no less clear when one recalls the reasoning which led the Court to determine sovereignty over the Temple. Central to Cambodia's claim is the assertion that the reasons for the Judgment have the effect of considerably expanding the plain meaning of the *dispositif*. Cambodia asserts that one reason in particular – the Annex I map line – must be incorporated into the *dispositif* and thus, by definition, to the binding part of the Judgment. Under Cambodia's view, the Judgment must be understood not just as concerning territorial sovereignty over the Temple (though this was the subject matter of the original dispute), but also as concerning other places and other territorial differences. That Cambodia in effect would have the Court adopt a new judgment in respect of those places and differences is all the more surprising, in light of the clear and limited definition of the original dispute. This was the dispute which Cambodia itself defined in 1961 as concerning "*une parcelle du territoire cambodgien, sise dans la province de Kompong-Thom, où se trouvent les ruines d'un saint monastère, le temple de Préah*

Vihéar"[364]; and which the Court, likewise, understood as being "with regard to the territorial sovereignty over the Temple of Preah Vihear"[365]. In effect, Cambodia seeks, through the mechanism of interpretation under Article 60 of the Statute, to transform a reason into a binding determination of the Court – in respect of a subject matter which the Court at the time of the original proceedings determined as falling outside the definition of the dispute[366].

4.9 As noted in Chapter III above, the jurisdiction to interpret a judgment may include the jurisdiction, exceptionally, to interpret reasons for the judgment. This more extensive interpretative faculty is available, however, only in respect of reasons which are essential to or inseparable from the *dispositif* and which are necessary to clarify an uncertainty as to its meaning. Moreover, as also noted in Chapter III above[367], even when a reason is essential to or inseparable from the *dispositif* and it is necessary to consider that reason in order to clarify an uncertainty as to the meaning of the *dispositif,* the Court may interpret the reason only insofar as it is inseparable from the *dispositif* and does not exceed its scope. The reason cannot be used to obtain a new holding not contained within the original

[364] *I.C.J. Pleadings, Temple of Preah Vihear, Oral Arguments (Preliminary Objections),* Vol. II, p. 41 (H.E. Mr. Truong Cang, 11 April 1961). Also *ibid*., Application, Vol. 1, p. 4.

[365] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Preliminary Objections, Judgment of 26 May 1961, I.C.J. Reports 1961,* p. 19.

[366] See paras. 3.28-3.36 above.

[367] See paras. 3.18-3.19 and 3.28-3.32 above.

judgment. A question which must be answered when a Party demands an interpretation of a reason, therefore, is whether the reason addressed in that demand constitutes an essential or inseparable reason; and, moreover, whether the requested interpretation of the reason remains within the scope of the *dispositif.*

4.10 Before recalling why the Annex I map line was not essential to or inseparable from the *dispositif,* nor necessary to clarify its meaning, it is important to correct a serious fault in how Cambodia reads the Judgment. As noted in Chapter II above, Cambodia takes isolated statements from the reasoning of the Judgment and treats them as if they are all that is needed, in order to know what the Court decided[368]. A judgment is not however a series of disconnected statements[369]. There are two aspects of the 1962 Judgment which Cambodia ignores but which are important, globally, to the Court's reasoning. First, Thailand will recall (1.) that, in the 1962 Judgment, the Court expressly indicated the reason why it had to entertain any consideration besides the treaty text: the treaty text, in which all territorial issues between the Parties were supposed to have been

[368] Response, para. 3.12.

[369] A point Cambodia seems to accept when it relies on the *Pious Fund* case, but fails to apply. The Tribunal in that case said: "[T]outes les parties *d'un jugement ou d'un arrêt concernant les points débattus au litige s'éclairent et se complètent mutuellement et (...) servent toutes à préciser le sens et la portée du dispositif, à déterminer les points sur lesquels il y a chose jugée*." (The Pious Fund of Carifornias *(United States of America* v. *Mexico),* arbitral award of 24 Oct 1902, *RIAA*, Vol. IX, p. 12, quoted in Response, para. 4.37. (Emphasis added)). To the same effect, see *Danzig case, P.C.I.J., Series B, No. 11*, 1925, pp. 29-30.

settled, said nothing about sovereignty over the Temple of Phra Viharn. The Court examined a range of considerations besides the treaty text (2. and 3.). As Thailand will further recall (4.), the Court, in light of the considerations which it examined, expressly indicated that it did not need the Annex I map to answer the question of sovereignty over Phra Viharn: the same result would have been reached on the basis of the other considerations. Cambodia has attempted, by ignoring them, to disconnect these aspects of the Court's reasoning from everything else in the Judgment. Thailand therefore must now connect them back together again.

1. THE TREATY TEXT AND WHY THE COURT CONSIDERED OTHER REASONS

4.11 The Court, at page 16 of the 1962 Judgment, quoted in full Articles 1 and 3 of the 1904 Treaty[370]. These were the

[370] Convention between Siam and France modifying the Stipulations of the Treaty of the 3 October 1893, regarding Territorial Boundaries and other Arrangements, signed at Paris, on 13 February 1904. The Court referred to it as the "1904 Treaty", which will be used throughout these Explanations.

"Article 1

The frontier between Siam and Cambodia starts, on the left shore of the Great Lake, from the mouth of the river Stung Roluos, it follows the parallel from that point in an easterly direction until it meets the river Prek Kompong Tiam, then, turning northwards, it merges with the meridian from that meeting-point as far as the Pnom Dang Rek mountain chain. From there it follows the watershed between the basins of the Nam Sen and the Mekong, on the one hand, and the Nam Moun, on the other hand, and joins the Pnom Padang chain the crest of which it follows eastwards as far as the Mekong. Upstream from that point, the Mekong remains the frontier of the Kingdom of Siam, in accordance with Article 1 of the Treaty of 3 October 1893."

treaty provisions delimiting the eastern Dangrek sector. It was the text of those provisions that the Court identified as the starting point for its investigation. An express statement in the Treaty would have settled the matter. Considering the treaty text, however, the Court discovered that the Treaty had nothing to say about the Temple: "these articles [Articles 1 and 3 of the 1904 Treaty] make no mention of [the Temple] as such"[371]. The Court then said that it was because of the absence of an explicit answer to the question of sovereignty over the Temple in the treaty text that it would examine evidence outside the treaty text[372]. This explanation is important to understanding the examination by the Court which followed. The Court was not examining other evidence for its own sake, but, rather, to find an answer to the specific question which the 1904 Treaty had not given. The Treaty contained no reference to the disputed Temple, and for this reason the Court undertook a wider examination.

4.12 Of course, the Treaty did say, in terms, what the frontier between the two States was. This was the delimitation provision, which the Court quoted, and which identified the

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"Article 3

There shall be a delimitation of the frontiers between the Kingdom of Siam and the territories making up French Indo-China. This delimitation will be carried out by Mixed Commissions composed of officers appointed by the two contracting countries. The work will relate to the frontier determined by Articles 1 and 2, and the region lying between the Great Lake and the sea." (*Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962,* p. 16).

[371] *Ibid*.

[372] *Ibid*., pp. 16-17.

Parties' frontier in the Dangrek Range as the line of the watershed. There was no omission in the Treaty on that point. This is in contrast to the question of sovereignty over the Temple – which the Court sought, first, to answer by examining the text. It is clear, when one recalls the treaty text – and the Court's explanation of why it examined evidence outside the treaty text – that the Court was concentrating on the question of sovereignty over the Temple, not on any other question.

4.13 Thailand already has noted that the Court was explicit that any consideration adduced in the Judgment was for the purpose of finding "reasons for the decision *it has to give* in order to settle the sole dispute submitted to it"[373]. Cambodia ignores this statement. Reading the Judgment as if the Court had not limited its reasoning to "the sole dispute submitted", Cambodia argues that the Annex I map is a reason for settling *other disputes*. Moreover, Cambodia ignores the Court's explanation as to why the Court had to entertain any consideration beyond the treaty text: the treaty had given no answer to the question of sovereignty, and so the answer had to be found elsewhere. By ignoring the explanation, Cambodia arrives at an erroneous conclusion in respect of the Court's analysis of the Annex I map.

4.14 Cambodia quotes the Court's statement that "the acceptance of the Annex I map by the Parties caused the map to

[373] *Ibid.,* p. 14. (Emphasis added). See also WO, para. 5.48.

enter the treaty settlement and to become an integral part of it"[374]. Severing this statement from the Court's explanation of why it had to examine evidence beyond the treaty text, Cambodia insists that the Court thus incorporated the boundary depicted on the map into the 1904 Treaty. But incorporating a general territorial settlement into the 1904 Treaty was *not* the effect that the Court was achieving: "under the 1904 Treaty settlement, Thailand accepted a delimitation *having the effect of attributing the sovereignty over Preah Vihear to Cambodia*"[375]. The Court's sole purpose in finding that the Parties' acceptance had "caused the map to enter the treaty settlement" was the purpose that the Court here identified. The Court had been asked to decide which State held sovereignty over the Temple but, in respect of that question, the text was silent; and, so, the Court needed to turn its consideration elsewhere. Cambodia's disjointed reading of the Judgment leads Cambodia to take positions which contradict the Court's explanations of its own reasoning. Cambodia substitutes what it wishes the Court to have done for what the Court itself explained it did.

4.15 The fallacy in Cambodia's reading of the Judgment is further exposed by considering a counter-factual hypothesis. If the 1904 Treaty had stated, in terms, which State had

[374] Response, para 1.23. See also *ibid*., paras. 3.12 and 4.20 and *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), Application Instituting Proceedings*, 28 April 2011, para. 39.

[375] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962,* p. 30. (Emphasis added).

sovereignty over Phra Viharn, then, according to the Court's own explanation, there would have been no reason to inquire further. The Court's inquiry into sovereignty over the Temple would have ended there. Because the Treaty had nothing to say on this point, and the Parties required the point to be settled, the Court considered other reasons to settle it. Under Cambodia's reading of the Judgment, however, the search for the answer to the question of sovereignty was not the purpose of the Court's reasoning but, rather, an invitation to answer various other questions. The Court itself was clear that this was not the case: the absence of an explicit answer to the question of sovereignty in the Treaty did not change the question, which remained that "as to the sovereignty over the Temple area"[376], the subject matter of "the sole dispute submitted to it"[377].

4.16 It was the absence of an answer in the treaty text to the sole question posed which led the Court to examine other reasons. Before turning to the Court's express statement that reasons besides the Annex I map required the same answer to that question, Thailand will briefly review the other reasons, which, astonishingly, Cambodia asserts Thailand in the present proceedings has never identified!

[376] *Ibid.*, p. 17.

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

2. THE MISSING PRINCE IN CAMBODIA'S RESPONSE

4.17 While Cambodia acknowledges that Thailand has drawn attention to the fact that the Court had other reasons for reaching the conclusion that it did in the *dispositif* besides the Annex I map line, Cambodia asserts that Thailand did so "*tout en ne réussissant pas à les identifier*"[378]. This is a difficult assertion to understand – for Thailand did identify the other reasons. The main example is a famous one; the Court called it "much the most significant episode"[379]. As Thailand in the Written Observations has already set out the independent significance of Prince Damrong's visit[380] and did so as well in the oral proceedings for provisional measures[381], it here simply summarizes the main points and draws attention to Cambodia's failure to address the matter.

4.18 Prince Damrong of Siam, in 1930, was a visitor at the Temple, and was received there by French officials. The latter expressed the French claim to sovereignty in various ways. The former did not object to France's conduct or, evidently, to any aspect of his reception. According to the Court,

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[378] Response, para. 1.22.

[379] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962,* p. 30.

[380] WO, paras. 5.37-5.39.

[381] *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,* 30 May 2011, CR 2011/14, pp. 35-36, paras. 9-10 (Mr. James Crawford).

> "The Prince could not possibly have failed to see the implications of a reception of this character. A clearer affirmation of title on the French Indo-Chinese side can scarcely be imagined."[382]

This incident, in the reasoning of the Court, "amounted to a tacit recognition by Siam of the sovereignty of Cambodia (under French Protectorate) over Preah Vihear"[383]. Sovereignty over the Temple was the question which the Court had to answer. According to the Court, the Prince's visit answered it.

3. THE COURT'S FURTHER REASONS

4.19 If more than this were needed, there were also a number of further reasons which the Court examined, and which, like the visit of Prince Damrong, allowed the Court to conclude that Thailand had recognized French sovereignty over the Temple. The main examples may be set out briefly.

4.20 One example was the post-war territorial settlement. A Franco-Siamese Conciliation Commission was convened after World War II to settle a number of outstanding territorial questions between Thailand and France. The Court considered Thailand's conduct during the meetings of the Commission in Washington in 1947 to have been revealing:

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[382] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962,* p. 30.

[383] *Ibid.*, pp. 30-31.

> "In fact, although Thailand made complaints about the frontier line in a considerable number of regions, she made none *about Preah Vihear*. She even (12 May 1947) filed with the Commission a map *showing Preah Vihear* as lying in Cambodia."[384]

The Court observed in 1962 that Thailand in 1947 had had an "outstanding opportunity"[385] to raise the matter of the Temple but it had not. Far from protesting French claims, Thailand filed a map with the Commission confirming those claims.

4.21 There had also been wartime statements of Thailand concerning the Temple. The Court noted that Thailand had reported that it had "retaken" the Temple in 1941[386]. But the territorial changes of 1941 were reversed after the war. Thus, on the basis of Thailand's wartime statements, the Temple was a place over which Thailand had "temporarily come into possession" – and which before that had been French and after that was French once more.

4.22 Finally, there was the chain of correspondence between Thailand and France, and later Thailand and Cambodia, in which the Temple was directly in issue and Thailand failed to respond in any way to deny the other State's claim to sovereignty over that place. France transmitted notes concerning the Temple to Thailand in 1949. According to the Court, the last of these notes in particular "contained an

[384] *Ibid*, p. 28. (Emphasis added).

[385] *Ibid.*

[386] *Ibid.*

unequivocal assertion of sovereignty" over the Temple[387]. The Court said that Thailand replied to none of the French notes; nor did it respond to any of a series of notes on the same subject transmitted by Cambodia after independence[388]. According to the Court, French and Cambodian sovereignty having been expressed in an "unequivocal assertion," Thailand's continued silence was in itself decisive.

4. What the Court Said about These Other Reasons

4.23 The Court thus was clear why it needed to consider other reasons – i.e., to find an answer to the question of sovereignty over the Temple, which had not been answered in the treaty text[389] – and clear as well what those other reasons were[390]. Moreover, the Court was clear that the other reasons which it considered in the Judgment led, independently of the Annex I map line, to the answer to the question of sovereignty.

4.24 As already discussed above in the present Chapter[391], one of the other reasons which supported the Judgment was Thailand's participation in talks after World War II in respect of rectifications of the frontier. Thailand during the talks had raised objections in respect of sovereignty over "other regions",

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[387] *Ibid.,* p. 31.

[388] *Ibid.*, pp. 31-32.

[389] See paras. 4.11-4.16 above.

[390] See paras. 4.17-4.22 above.

[391] See paras. 4.19-4.21 above.

but not in respect of France's exercise of sovereignty over the Temple[392]. The Court identified this practice as highly relevant. Here are the exact terms the Court used to address the practice:

> "But it is precisely the fact that Thailand had raised these other questions, but not that of Preah Vihear, which requires explanation; for, *everything else apart,* Thailand was by this time well aware, from certain local happenings in relation to the Temple, to be mentioned presently, that France regarded Preah Vihear as being in Cambodian territory – *even if this had not already and long since been obvious from the frontier line itself*, as mapped by the French authorities and communicated to the Siamese Government in 1908."[393]

The Court thus was explicit that the other evidence was independent and conclusive. "Everything else apart" – setting aside, e.g., the Annex I map and its line – Thailand was on notice as to the French claim to sovereignty over the Temple of Phra Viharn. To leave no doubt as to its understanding on the point, the Court further observed that France's sovereignty was clear even if the Annex I map itself "had not already and long since [made it] obvious". Take away the Annex I map, and the same result is achieved: the Temple is in Cambodian territory. The map line made this obvious – but "even if this had not", and even putting the map and everything else aside – the matter was just as much settled.

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[392] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 29.

[393] *Ibid.* (Emphasis added).

4.25 The Court's reasons were abundantly clear: the other reasons besides the map line were conclusive and independent. Cambodia, however, takes particular phrases from the Judgment in isolation concerning the Annex I map line and insists that the Court meant the map line to be incorporated into the *dispositif* and thus was, in the Court's understanding, essential to and inseparable from the *dispositif*. Cambodia's theory is that the Annex I map line was the essential basis for the *dispositif*. But, as far as the Court was concerned, the map line was not the essential basis for the *dispositif*. Cambodia thus not only demands that the Court today elevate an element of the reasoning to the status of *res judicata* – which in 1962 the Court explicitly refused to do – but it also ignores the Court's reasoning which makes clear that the Annex I map line was not essential to the Judgment. "[E]verything else apart", Thailand was "well aware" of the French claim to the Temple. A reason which the Court went out of its way to describe like this was not "essential" to the *dispositif*. To impose that reason on the *dispositif* and thereby expand the territorial scope of the Judgment would be to revise the Judgment, not to interpret it.

C. The Temple and Its Precincts as the Exclusive Subject Matter of the Original Proceedings

4.26 Even if one were to ignore the reasoning of the Court and, instead, to treat the Annex I map line as the "essential" and "inseparable" reason leading to the *dispositif* in 1962, there still remains a fatal flaw in Cambodia's logic. Cambodia would take

the Annex I map line – which was relevant to the only subject matter in dispute in 1962 – and apply it to a different, considerably wider, subject matter. As noted in Chapter III above, a reason may be considered "in so far as" it is inseparable from the *dispositif*, but it may not be used to go further and impose solutions which were not part of the *dispositif*[394]. Sovereignty over the territory in which the Temple is situated – not sovereignty over the territory in the wider border region – was the subject matter of the dispute in 1962. Accordingly, the Court's reasoning was addressed to that subject matter. Under a request for interpretation, the Court's reasoning might be used to elucidate *that* subject (assuming that the *dispositif* was unclear about that subject, which in the 1962 Judgment it was not); but the reasoning cannot be used to create a new decision with the effect of *res judicata* outside the bounds of the original dispute. This is all the more so, when the ruling which the requesting party seeks today the Court in 1962 expressly excluded from the *dispositif*. It is a flawed logic of interpretation to use reasons in a judgment to arrive at new conclusions in respect of another subject matter.

4.27 Several specific considerations serve as reminders that the sole concern of the 1962 Judgment was the question of sovereignty over the Temple and its precincts. First, as recalled in Chapter II above, the Parties were interested only in the Temple and, accordingly, examined the map as evidence of

[394] See paras. 3.18-3.19 and 3.28-3.32 above.

which State holds sovereignty over it; the pleadings defined the scope of the dispute, and it was within that scope that the Court confined its reasoning and the *dispositif* alike[395]. Moreover, the Court was well aware in 1962 that it was not settling a general territorial dispute or setting down a frontier line; it was settling the specific dispute over sovereignty over the Temple, as submitted to it by the Parties. The Court's understanding of the limited subject matter of the dispute is not merely to be inferred from the Judgment. The Court expressed its understanding repeatedly.

4.28 Thailand now will recall the following points:

(1.) the Judgment contained a limiting clause which identified the limited purpose of the Court's analysis of the "various considerations" which were advanced in the proceedings;

(2.) the Court stated with clarity that, in so far as the Annex I map line was relevant to the dispute, it was because the symbol thereon representing the Temple showed the Temple to be in Cambodia;

(3.) though the Court made clear that the true course of the watershed did not need to be identified in order to determine the question of sovereignty, the Parties' respective views about the watershed indicated that they were in agreement as to the geographical scope of the subject matter of their dispute and

[395] See paras. 2.8-2.11 and 2.26-2.30 above.

provided the Court with a solid basis for its decision in that respect; and

(4.) Thailand has demonstrated in the present proceedings that the various versions of the Annex I map contain serious discrepancies which would make it impossible to transpose the map line onto the ground objectively, and, thus, the Annex I map line, though it provided evidence, in the Court's view opposable to Thailand, to show which State had sovereignty over the Temple, did not serve – and could not have served – the purpose of defining the boundary.

1. THE COURT'S LIMITING CLAUSE

4.29 Thailand drew attention in its Written Observations to the passage where the Court explained that it would refer to maps and other evidence for the limited purpose of deciding the case as submitted[396]. To recall, the Court said as follows:

> "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, (...)"[397]

[396] WO, para. 5.48.

[397] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 14. (Emphasis added).

Thus, the Annex I map was only one of a number of maps – to be precise, one of 61 maps[398]– and maps were not the only considerations advanced to answer the question. But whatever the significance of any one map, or of any of the "various considerations" to which the Court had regard, the Court expressly limited their purpose to "settl[ing] the sole dispute submitted to it." These words of the Court are not to be taken in isolation: they applied to *each* of the "[m]aps (…) submitted" and to *each* of the "various considerations (…) advanced". Insofar as the Court had regard to any particular map or to any particular consideration, this was "only to such extent" that the map or the consideration, like the other maps or the other considerations, might be relevant to the question of sovereignty over the Temple. Cambodia ignores all of this when it now asserts that the 1962 Judgment is about a single map, the Annex I map[399], and that that one map was used as a reason for settling questions of sovereignty elsewhere[400].

4.30 Cambodia's Response provides no other explanation for this part of the Court's reasoning. If anything, Cambodia would appear to agree with it. According to Cambodia, "*[l]a motivation d'un acte juridictionnel n'existe pas en elle-même, ce n'est que le préfixe à un dispositif, jamais une fin en soi.*"[401] Accepting that the reasoning is something that precedes the

[398] See footnote 127 above.

[399] Response, para. 1.21.

[400] *Ibid*., paras. 2.8 and 2.67.

[401] *Ibid*., para. 4.8.

dispositif, and never an end in itself, Cambodia seems to acknowledge the Court's limiting clause. The Annex I map, like all the other considerations identified by the Court, was relevant "only to such extent" as it helped settle the question of sovereignty over the Temple.

2. CLARITY OF THE TEMPLE'S LOCATION ON THE ANNEX I MAP

4.31 Thailand addressed in its Written Observations the Court's explanation as to why Siam's reception of the Annex I map (or of some version of it)[402] was material to the question which the Court had to answer[403]. To repeat the main point:

> "...the map marked Preah Vihear itself quite clearly as lying on the Cambodian side of the line, using for the Temple a symbol which seems to indicate a rough plan of the building and its stairways."[404]

This is why the map had probative value in the dispute. It marked the Temple clearly, and it marked the Temple as in Cambodian territory. Defects in the map – in particular the question of whether it correctly depicted the watershed line adopted by the Parties under the 1904 Treaty – did not reduce its probative value. The Court's reasoning on this point makes

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[402] Multiple versions of the Annex I map exist, and Siam in 1908 did not receive the version of the Annex I map which Cambodia submitted in the 1962 proceedings. Material differences exist between these two versions (see WO, paras. 6.18-6.24).

[403] WO, para. 5.16.

[404] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 26.

sense, so long as one understands why the Court examined the map. The Court examined the map to answer the one question which the Court had to answer. The Court did not examine it to determine the course of the frontier.

4.32 It is further indicative of the Court's understanding of the subject matter of the case that it understood "Preah Vihear" to be synonymous with the place marked using the temple symbol[405]. The decision was not about a general region but, instead, about the place marked using that symbol. The Court's reasons are subject to interpretation, if at all, only to the extent that they are inseparable from the decision as to sovereignty over that place.

3. The Watershed Line in the 1962 Proceedings

4.33 In connection with the watershed line, there is a further indication in the 1962 proceedings that the question addressed by the Court was a limited one. The Parties were concerned only with showing on which side of the Temple the watershed ran, not with defining its location elsewhere, and, in any event, Cambodia agreed with Thailand that the watershed line defined the Parties' boundary line. Moreover, in areas which Cambodia now claims form the subject matter of a dispute, the Parties, when they had regard for those areas in passing (and it was only in passing that they regarded those areas at all), were in close alignment as to the location of the watershed line. Cambodia's

[405] *Ibid*.

pleadings and the Court's analysis also aligned closely with the manner in which Thailand, after the Judgment, implemented its terms on the ground.

4.34 As recalled above[406], Article 1 of the 1904 Treaty stipulated the watershed to be the boundary between the Parties. Both Parties in 1962 recognized that a clear determination as to the location of the boundary at the Temple would settle the matter of sovereignty in a single step. It is unsurprising, therefore, that the Parties fell into sharp contention over the location of the watershed.

4.35 As Thailand will recall (*(a)*)[407], the Court concluded, however, that whether or not the Annex I map line at the Temple corresponded to the watershed did not need to be decided – and, moreover, it was unnecessary for the Court to determine the true watershed at all[408]. That the Court did not need to determine the watershed at the Temple provides yet another indication that Thailand's various acts and omissions constituted, in the Court's understanding, independent and conclusive evidence that Thailand recognized French, and later Cambodian, sovereignty over the Temple. It, moreover, indicates again the specific and narrow focus of the Judgment on the question of sovereignty.

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[406] See footnote 370 above.

[407] See paras. 4.37-4.41 below.

[408] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 35.

4.36 As Thailand will show (*(b)*)[409], when considering Cambodia's present day attempt to expand the subject matter of the 1962 Judgment, the Parties' views at that time in respect of the watershed are revealing as well. Each Party devoted considerable effort to placing the watershed line on the side of the Temple facing the other Party's territory. If the line was on the south side (which faced Cambodia), then the Temple belonged to Thailand; if the line was on the north side (which faced Thailand), then the Temple belonged to Cambodia. Of course, none of this argumentation would have made sense, if the Parties had not agreed that the watershed line was their boundary. As Thailand will further show, the differences that Cambodia has raised in the present proceedings did not exist between the Parties in 1962. The Parties in 1962 largely agreed as to the location of the watershed in other areas; and their disagreement as to the watershed at the Temple, while identifying the area that was in dispute, arose out of their disagreement over sovereignty over the Temple, a matter that is not in issue here.

(a) The Irrelevance of the True Course of the Watershed to the Judgment

4.37 Thailand in its Written Observations recalled that the Court concluded that it was unnecessary to determine whether

[409] See paras. 4.42-4.69 below.

or not the Annex I map line followed the true watershed[410]. Cambodia in its Response fails to respond to what Thailand said about the significance of this conclusion; and, moreover, in alluding to the watershed in a very different connection[411], Cambodia errs in reporting what the Court actually said.

4.38 To recall in summary, Article 1 of the 1904 Treaty defines the frontier between the two States as the watershed[412]. The Court cannot be interpreted as having been indifferent as to the Parties' intentions when entering into a treaty. Therefore, recalling that the Court said it was unnecessary to consider the true course of the watershed line, it is untenable to say that the Court was examining the Annex I map as an expression of the 1904 Treaty – other than for the limited purpose of ascertaining whether Thailand had recognized Cambodia's sovereignty over the Temple. Cambodia fails to address this point.

4.39 Cambodia also confuses what the Court concluded about the watershed line. According to Cambodia, "[*l*]*a ligne de partage des eaux* soutenue par la Thaïlande *fut jugée non pertinente*"[413]. The Court however did not say that the watershed line as "*soutenue par la Thaïlande*" was not pertinent. It is important to recall what the Court said:

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[410] WO, paras. 5.18-5.21.

[411] Response, para. 4.66.

[412] Quoted in footnote 370 above.

[413] Response, para. 4.66. (Emphasis added).

> "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."[414]

By interpolating into the Court's statement the phrase "*la ligne (...) soutenue par la Thaïlande*", Cambodia gives the impression that the Court there was addressing a claim by Thailand. Of course, to address a claim implies, in turn, either acceptance or rejection of that claim; a tribunal properly seised of a claim does not say that it is "*non pertinente*". What Cambodia seems to wish the reader to think, however, is just that the Court addressed a Thai claim line, and then rejected that claim line. Cambodia's interpolation tends to serve Cambodia's purpose. Cambodia asserts that two divergent lines on two different maps might be conjoined to illustrate a present day disputed area[415]. In truth, however, the Court said that whether or not "the line as mapped" (not the line as "*soutenue par la Thaïlande*") corresponded in fact to the true watershed was unnecessary to the question of sovereignty. Cambodia's comparison of two lines on two maps therefore does not correspond to what the Court considered relevant in 1962.

4.40 Moreover, it was not only unnecessary to determine whether a line or lines as mapped corresponded to the true

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[414] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 35.

[415] See Response, para. 4.65 and the map on the page immediately preceding page 77. See also paras. 1.45-1.48 and 2.47-2.51 above.

watershed; it was also unnecessary to determine "how the watershed line in fact runs"[416]. Under Cambodia's interpretation of the Judgment, this would be inexplicable. According to Cambodia, the Court adopted a map line, which purported to represent the watershed line[417], yet also said that it was "unnecessary" to decide where the watershed line in fact runs. What the Court in truth said was that "[g]iven the grounds on which the Court bases its decision," it became unnecessary to pinpoint the watershed. The grounds on which the Court based its decision were the various considerations, recalled above[418], and those grounds, as the Court said, were sufficient to answer the question of sovereignty, "…even if this had not already and long since been obvious from the frontier line itself"[419]. The several considerations, each of which itself was conclusive as to the question of sovereignty, gave the answer to the sole question in dispute. According to the Court, Thailand's acts and omissions made clear that Thailand recognized that sovereignty over the Temple belonged to another State.

4.41 This was the answer given by the Court, in response to the Parties' respective views about the watershed, which they had advanced, as they pertained to the dispute, in their respective attempts to establish sovereignty over the Temple.

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[416] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 35.

[417] See paras. 4.44-4.45 below.

[418] See paras. 4.17-4.22 above.

[419] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 29.

Thailand now will consider Cambodia's present contentions, which in at least two important respects contradict Cambodia's understanding about the watershed in the original proceedings.

(b) The Relevance of the Parties' Respective Views about the Watershed

4.42 In the present proceedings, Cambodia's conception of the boundary line allegedly determined by the Court is confused and confusing. On the one hand, Cambodia claims that the Court established a boundary line, while, on the other hand, it alleges that the Court did not look into the relationship between this line and the topography on the ground. Cambodia thus not only erroneously asserts that the Court decided on a boundary, but it also implies that in doing so, the Court was indifferent to whether such boundary followed a watershed, as it could be identified on the ground (the "topographical watershed"[420] or the "true watershed" as the Court calls it[421]), whether this boundary was in conformity with the intention of the authors of

[420] The term was used in the 1962 proceedings in order to designate the watershed identified by the experts of both Parties, as determined by contour lines and by local survey (see *I.C.J. Pleadings, Temple of Preah Vihear*, *Oral Arguments*, Vol. II, p. 281).

[421] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, pp. 21-22 and 34.

the 1904 Treaty[422] or with the Annex I map[423]; and whether the boundary was in line with the geographical, social and historic realities on the ground[424].

4.43 On two considerations, it is clear that Cambodia's thesis lacks any validity whatsoever. First, as already addressed in Chapter III above, the claim that the Court decided in 1962, with force of *res judicata*, the boundary between Thailand and Cambodia in the Dangrek range is untenable[425]. Second, by disconnecting the boundary line from the watershed, Cambodia in the present proceedings completely contradicts the position it put forward in the main case. The present section addresses the contradiction between Cambodia's present view about the boundary and its position concerning the watershed in 1962.

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[422] This intention is established by the text of Article 1 of the 1904 Treaty (see footnote 370 above). It is confirmed by French records showing that Colonel Bernard, the French Chairman of the Commission of delimitation under the 1904 Treaty, when planning survey work in the Dangrek region, intended to identify and record the watershed line that was to constitute the boundary: "*Je me propose donc de lever <u>au nord</u> des Dang Reck un cheminement aussi précis que possible, appuyé sur un grand nombre de points déterminés astronomiquement. Je partirai des divers sommets de ce cheminement pour aller au moyen de simples itinéraires, aussi courts que possible, jusqu'à la ligne de partage des eaux que doit former la frontière. Je déterminerai ainsi la ligne frontière par <u>points</u>. Les cartes dont je dispose ne me permettent pas de fixer d'une façon plus certaine le programme de nos travaux*." (Emphasis original) (Commandant Bernard, Letter to the Consul of France, 11 December 1904 [Annex 1 to FWE]).

[423] The map as drawn indeed confirms that the intention of the cartographer who produced it was to depict a boundary following the watershed (*International Boundaries Research Unit, Durham University,* "Assessment of the task of translating the Cambodia-Thailand boundary depicted on the 'Annex I' map onto the ground", *October 2011*, para. 40. [Annex 96 to WO].

[424] Response, paras. 2.37, 2.88 and 4.13.

[425] See paras. 3.90-3.92 above.

4.44 In the original proceedings, Cambodia's case was that its "title to sovereignty [was] established by the treaties"[426], and in particular by Article 1 of the 1904 Treaty. Cambodia called this text "fundamental for the purposes of the settlement of the present dispute"[427]. It must be recalled that Article 1 of the 1904 Treaty provided that, in the relevant region, the boundary follows the watershed[428]. Moreover, in referring to the Annex I map as evidence of sovereignty over the Temple, Cambodia never contended that the line appearing upon it was not to illustrate the watershed or that it in any way contradicted the treaty provisions[429]. On the contrary, Cambodia insisted that "*le traité de 1904 (...) dispose que dans la chaîne des Dangrek la frontière doit suivre la ligne de partage des eaux*"[430] and concluded that "*la ligne de partage des eaux situe le temple du côté cambodgien de la frontière*"[431]. The Court consequently

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[426] *I.C.J. Pleadings, Temple of Preah Vihear, Application*, Vol. I, p. 5.

[427] *Ibid*. See also *I.C.J. Pleadings, Temple of Preah Vihear, Réplique du Gouvernement du Royaume du Cambodge*, Vol. I, p. 441, para. 8 and p. 442, para. 9.

[428] See footnote 370 above.

[429] See *I.C.J. Pleadings, Temple of Preah Vihear, Application*, Vol. I, p. 5, para. 4; *ibid.*, *Réplique du Gouvernement du Royaume du Cambodge*, Vol. I, p. 439, para. 4; *ibid*., *Oral Arguments*, Vol. II, p. 147 (Mr. Dean Acheson, 1 March 1962). For an expert assessment, see *International Boundaries Research Unit, Durham University,* "Assessment of the task of translating the Cambodia-Thailand boundary depicted on the 'Annex I' map onto the ground", *October 2011*, paras. 1 and 40 [Annex 96 to WO].

[430] *I.C.J. Pleadings, Temple of Preah Vihear, Réplique du Gouvernement du Royaume du Cambodge*, Vol. I, p. 443, para. 10.

[431] *Ibid.*, p. 439, para. 4. Thailand submitted an expert report in response in its Rejoinder (*ibid*., *Rejoinder of the Royal Government of Thailand*, Annex 75 *a*, Vol. I, pp. 679-683).

acknowledged that "the general character of the frontier established by Article I was, along the Dangrek range, to be a watershed line"[432].

4.45 In this respect, Thailand and Cambodia had no difference of view during the 1961-1962 proceedings. The Parties disagreed on the location of the watershed in the Temple area, but not that the watershed was their boundary. Thailand argued that the watershed in the Temple area was at the cliff edge; Cambodia insisted that it was different; alternatively, Cambodia argued that, if in 1961 the watershed indeed was at the cliff edge, this had not been the case in 1904, when it was situated somewhere north of the Temple. Thus, the challenge became for the Parties to identify the topographical watershed, not only as it was in 1962, but also as it had been in 1904-1907.

4.46 A reminder is in order here. During the 1962 proceedings, the Parties differed sharply as to the location of the watershed but as to its location *in the Temple area only*. And it must be recalled that the geographical scope of this Temple area was limited to a portion of land comprising one part only of the promontory on which the Temple stands[433]. This was the area in respect of which the Parties endeavoured to show that the topographical watershed passed north or south of the Temple ruins. Thus the area in dispute turned out to be the area

[432] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 17.

[433] See paras. 2.22-2.25 above.

contained between the two watershed lines as appearing on Annex 85 *d* (Partial Reproduction).

4.47 In contrast, the Parties showed little interest in areas beyond. In fact, the expert evidence submitted by Thailand focused almost exclusively on the Temple and its precincts, with some examination as well of certain terrain features east and west of the Temple[434]. In particular, Thailand wished to show how a stream (the O'Tasem) was depicted erroneously on the Annex I map and how this led, in turn, to an erroneous depiction of the watershed at the Temple and its precincts[435]. But all in all, the expert evidence submitted by Thailand covered only a 4 cm × 6 cm portion of the Annex I map.

4.48 Cambodia further narrowed down the area which was the focal point of its attention on the Annex I map. The experts commissioned by Cambodia made no comment on Map Sheet 1 of Annex 49 to Thailand's Counter-Memorial[436], except to say that they agreed with the I.T.C. assessment of the course of the watershed as depicted on that map sheet[437]. The watershed as agreed by experts from both sides thus put the Pnom Trap hilltop in Thailand. During the hearings, counsel for Cambodia

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[434] This is represented on Map Sheets 1 and 2 of Annex 49 (paras. 2.20-2.22 above). See also Map Sheet 1 [Annex 47 to FWE] and Map Sheet 2 [Annex 48 to FWE].

[435] *I.C.J. Pleadings, Temple of Preah Vihear, Counter-Memorial of the Royal Government of Thailand,* Annex 49*,* Vol. I*,* p. 435, para. 4.

[436] See Map Sheet 1 [Annex 47 to FWE].

[437] *I.C.J. Pleadings, Temple of Preah Vihear, Réplique du Gouvernement du Royaume du Cambodge*, Annex LXVI *a,* Vol. I*,* p. 541.

conceded again that the course of the stream O'Tasem was erroneously depicted[438], but, affirming that the area of Pnom Trap was not in dispute, dismissed the possibility that the error had any consequence for Cambodia's case[439]. For Cambodia now to claim that that area was adjudicated in 1962 is to contradict its own original understanding of the subject matter of the dispute as well as of the geographical scope of the disputed area[440].

4.49 The fact is, in the original proceedings, Cambodia's experts examined only Map Sheet 2 of Annex 49 with any special care[441]. In sharp contrast to Cambodia's dismissal at the time of any detailed consideration of areas to the west as irrelevant, Cambodia was very much interested in the area of Map Sheet 2. On that map sheet, Cambodia's experts made some revisions. The result of the revisions, visible on the maps lodged as *Annexe LXVI c* to Cambodia's Reply[442], was roughly consistent with the watershed identified by Thailand's experts, but with a notable difference at the Temple. Rather than showing the proposed watershed line south of the Temple, the

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[438] *I.C.J. Pleadings, Temple of Preah Vihear*, *Oral Arguments*, Vol. II, p. 464 (Mr. Dean Acheson, 22 March 1962).

[439] "But this area, north-west of the Temple, *is not the crucial area*." (Emphasis added). (*I.C.J. Pleadings, Temple of Preah Vihear*, *Oral Arguments*, Vol. II, p. 465) (Mr. Dean Acheson, 22 March 1962). See also WO, para. 2.44.

[440] See paras. 2.8-2.13 and 2.21-2.25. See also paras. 2.26-2.34 above.

[441] See Annex LXVI *c* to Cambodia's Reply (reproduced as Annex 51 to FWE). See also para. 2.19 above.

[442] The technical accuracy of these revisions is questionable (see IBRU Review, para. 4.10 [Annex 46 to FWE]).

map (as revised by Cambodia's experts) showed the line to be to the north.

4.50 Apart from this expert evidence to support Cambodia's assertion that "*la ligne de partage des eaux situe le temple du côté cambodgien de la frontière*"[443], counsel for Cambodia argued at length that it was possible that the topographical watershed *in the Temple area* had changed between 1907 and 1959[444]. Dean Acheson's cross-examination of Thailand's experts was directed to support this hypothesis[445]. Acheson further relied on various travellers' accounts and other evidence suggesting the existence of a stream the effect of which was, by a narrow margin, to situate the Temple on the Cambodian side of the watershed[446].

4.51 Seen in retrospect, Cambodia's stance does not seem unsound. The Court, in the 1962 Judgment, noted that the Commission of Delimitation was due to travel through the Dangrek range[447] and determined that "the Presidents of the

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[443] *I.C.J. Pleadings, Temple of Preah Vihear, Réplique du Gouvernement du Royaume du Cambodge*, Vol. I, p. 439, para. 4. Thailand submitted an expert report in response in its Rejoinder (*ibid*., *Rejoinder of the Royal Government of Thailand,* Annex 75 *a*, Vol. I, pp. 679-683).

[444] *I.C.J. Pleadings, Temple of Preah Vihear, Oral Arguments*, Vol. II, pp. 465-467 (Mr. Dean Acheson, 22 March 1962).

[445] *Ibid*., pp. 425-432.

[446] *Ibid*., pp. 466-473 (Mr. Dean Acheson, 22 March 1962).

[447] "At the meeting of 2 December 1906, held at Angkor-Wat, it was agreed that the Commission should ascend the Dangrek from the Cambodian plain by the Pass of Kel, which lies westwards of Preah Vihear, and travel eastwards along the range by the same route (or along the same line) as had been reconnoitred by Captain Tixier in 1905 ("*le tracé qu'a reconnu ... le*

French and Siamese sections of the Commission, as representing it, duly made this journey and that in the course of it they visited the Temple of Preah Vihear"[448]. However, as the Court further noted, "there is no record of any decision that they may have taken"[449].

4.52 Documents recently found by Thailand in the Archives of the French Ministry of Foreign Affairs not only confirm the fact that the Presidents of the Commission went to the Temple, but they also give an idea of the decision they reached on that occasion. The documents reported a test, in which French members of the Commission of Delimitation under the 1904 Treaty examined the way the water would drain in the Temple area. This test of "water drainage" *("écoulement des eaux")* led them to the conclusion that the Temple was on the French side of the watershed and that the boundary ran a few metres north of the Temple, a result which attributed the Temple to France. The test and its result are mentioned in a 1930 letter from the French Minister to Siam addressed to the French Ministry of Foreign Affairs:

> "*Le traité de 1907 porte en effet que la frontière entre le Siam et le Cambodge suivra la ligne de partage des eaux de la Chaîne des Dangrek. La Commission chargée de délimiter sur place la frontière déclara, après une*

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capitaine Tixier")." (*Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 17).

[448] *Ibid.*, p. 18.

[449] *Ibid*.

> *longue discussion, que Pra Vihear était situé sur le versant sud quoique le plateau qui le porte fût incliné vers le nord parce que les eaux d'écoulement, après avoir pris cette direction font le tour dudit plateau et finalement se dirigent vers le sud*. Elle fit donc passer la frontière à quelques mètres plus au nord. *Il est très fâcheux que les procès-verbaux de la Commission n'aient pu être retrouvés nulle part en Indochine et que l'explication ci-dessus ne résulte que d'une tradition orale. M. Petithuguenin à son passage à Bangkok me l'a d'ailleurs confirmée de la façon la plus nette. Il était attaché à la Commission en qualité d'interprète et se rappelle que, de guerre lasse, ne pouvant convaincre les Siamois de la justesse de leurs dires, les membres français de la Commission ont fait répandre de l'eau à terre et ont fait constater à leurs collègues la direction qu'elle prenait.*"[450]

4.53 It appears from this text that, according to French records, the Delimitation Commission took the view that the watershed in the Temple area passed a few metres north of the Temple, but the Procès-verbal of this particular meeting of the Commission was never found.

4.54 In any case, France, and Cambodia subsequently, relied upon this empirical test locating the watershed, and thus the boundary, a few metres north of the Temple. It was for that reason that the French committee receiving Prince Damrong in 1930 constructed a temporary shelter and placed a flag pole

[450] French Legation to Siam, Letter to the Minister of Foreign Affairs of France, 14 February 1930, pp. 2-3. (Emphasis added) [Annex 2 to FWE].

flying the French flag some 20 metres from the northern staircase of the Temple[451].

4.55 Cambodia perpetuated the understanding inherent in France's conduct. While preparing the case before the Court, Cambodia's Agent requested from the French authorities the documents of the 1904 and 1907 Delimitation Commissions. As an internal note of the *Services des archives diplomatiques et de la documentation* sets out, France could not provide Cambodia with all the documents relating to the work of the Commissions since some of them were missing, including the one relating to the "water drainage" test at the Temple. As the French authorities commented in 1958:

> "*Ce fait est d'autant plus regrettable que la situation géographique des ruines du temple a posé à la 'Commission BERNARD' un délicat problème de délimitation. D'après le traité de 1904, la frontière suivait la ligne de partage des eaux, qui ne se traduit pas en l'occurrence sur le terrain par la ligne de faite [sic] de la chaîne des Dangrek, si bien que le temple se trouve du côté du Siam, au nord, dans une situation d'accès facilitée par une montée lente du terrain, alors que du côté sud il domine en abrupt de plusieurs centaines de mètres la plaine cambodgienne. Pour convaincre les Siamois, il avait été nécessaire à l'époque de se livrer à*

[451] *I.C.J. Pleadings, Temple of Preah Vihear,* "Affidavit of M.C. Phun Phitsamai Diskul, dated 9 June 1961", *Counter-Memorial of the Royal Government of Thailand*, Annex 39 *f*, Vol. I, p. 402. See also Photographs of Prince Damrong's visit to the Temple of Phra Viharn (1930), filed as Annex VIIIbis of Cambodia's 1959 Application [Annex 1 to WO]; and Royal Thai Survey Department, Sketch showing the location of the French flag pole in 1930, 17 November 2011 [Annex 98 to WO]. For an additional photograph taken at this event, see [Annex 3 to FWE].

> *une expérience d'écoulement des eaux sur le terrain même, et cette expérience, dont le procès-verbal manque, n'est connue que par le souvenir d'un des délégués français*."[452]

4.56 Cambodia was certainly aware of the "water drainage" test and it would have been on this basis that right before it instituted the original proceedings, it recognised the boundary as being a few metres north of the Temple, at the place where the French had planted the flag in 1930:

> "Patrols were sent to the temple daily by a detachment of Damruots (guards) stationed about *200 metres north of the entrance (that is, in Thai territory*)."[453]

In acknowledging that a detachment "stationed about 200 metres north of the entrance" to the Temple was stationed *in Thai territory*, Cambodia, like France, was affirming that the boundary was indeed certainly less than 200 metres from the Temple.

4.57 Cambodia then re-affirmed this position during the 1962 pleadings, and actually made it more precise, by specifying that the boundary was located at a point some *20 metres* from the northern staircase. In Cambodia's own words, the boundary was located at nearly the exact place where the French had

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[452] Service des Archives Diplomatiques et de la Documentation, No. 390 ARD/ar, *Note pour le Directeur général des affaires politiques*, 13 December 1958 [Annex 4 to FWE].

[453] Permanent Mission of Cambodia to the United Nations, *Note on the Question of Preah Vihear*, circa 1958, p. 9, para. 6) c). (Emphasis added) [Annex 3 to WO].

planted the flag in 1930, when Prince Damrong visited the Temple:

> "*On comprend que* le drapeau français ait été hissé à la frontière *entre le Siam et le Cambodge, sans qu'il soit nécessaire de tenter une autre explication de ce fait*."[454]

The flag can be seen from the photographs taken on that occasion, filed by Cambodia as Annex VIII bis of its 1959 Application. As can be seen, the flag pole was indeed some 20 metres from the staircase[455].

4.58 This was the reception of the Siamese Prince with the "French flag flying" which the Court stressed was so significant an assertion of sovereignty by France and recognition by Siam[456]. As a corollary, the same high significance would attach to the French reception of the Prince, if it were to be adduced as evidence of where the boundary is to be found at that location: the choice of the place for the flag was not arbitrary; the French intended to show the limits between France's and Siam's sovereignties at the Temple, on the basis of their belief that the Delimitation Commission had settled the boundary a few metres north of the Temple. The purport of the Prince's reception was therefore to strengthen the French claim

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[454] *I.C.J. Pleadings, Temple of Preah Vihear, Réplique du Gouvernement du Royaume du Cambodge*, Vol. I, p. 465. (Emphasis added).

[455] Photographs of Prince Damrong's visit to the Temple of Phra Viharn (1930), filed as Annex VIIIbis of Cambodia's 1959 Application [Annex 1 to WO]. See also Annex 3 to FWE.

[456] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 30.

of sovereignty over the Temple, while reaffirming at the same time that the boundary at that location was just about 20 metres north of the Temple[457]. Cambodia, having relied on these events in the 1962 proceedings, cannot now claim that the boundary marked by France in that way at that location migrated in the intervening years to the north.

4.59 This is the context within which the Court's conclusion that Thailand "accepted the French claim, or accepted the frontier at Preah Vihear as it was drawn on the map"[458] must be understood. Cambodia accuses Thailand of quoting this conclusion out of context[459], but the Written Observations did nothing of the sort. The relevant context is what the Parties were arguing in 1962; not what Cambodia would like to argue today. In particular, in 1962, the Parties were arguing about watersheds on that part of the Phra Viharn promontory containing the Temple; and about events at the Temple steps.

4.60 Against this background, it is untenable to assert that the Court made any determination about the relationship between the watershed and the boundary as a whole. The Court found that it was unnecessary to determine whether or not the Annex I map line followed the true watershed and refused to adjudge between the various watershed lines presented to it at the

[457] French Legation to Siam, Letter to the Minister of Foreign Affairs of France, 14 February 1930 [Annex 2 to FWE].

[458] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 31.

[459] Response, para. 4.13.

Temple area, just as the Court found it was unnecessary to determine whether there had really been a change in the topographical watershed between 1907 and 1959. The Court's decision as to sovereignty over the Temple thus had to rest on reasons other than the true course of the watershed in the Temple area, in regard to which experts and counsel from both sides were so sharply in contention. As for the other areas in which the topographical watershed[460] did not coincide with the Annex I map line[461], the Court simply did not consider those areas.

4.61 In fact, Cambodia's own conduct subsequent to the Judgment showed that it continued to rely upon the watershed as the boundary, and treated the boundary as running a few metres north of the Temple. Complaining of the barbed-wire fence, Cambodia's Prime Minister declared in 1966 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"[462]. The fence to

[460] Cambodia would call this in the present proceedings "*ligne de partage des eaux* soutenue par la Thaïlande", forgetting that its own experts in the original proceedings agreed on a considerable part of the areas represented on Map Sheet 2 of Annex 49 [Annex 48 to FWE].

[461] The IBRU experts showed that this is the case for significant portions of the Annex I map (*International Boundaries Research Unit, Durham University,* "Assessment of the task of translating the Cambodia-Thailand boundary depicted on the 'Annex I' map onto the ground", *October 2011*, pp. 12-17, paras. 24-35. [Annex 96 to WO]).

[462] Herbert de Ribbing, Note to the Secretary-General, "Report by the Special Representative on his First Visit to Cambodia and Thailand and First Contact with their High Authorities", 13 September 1966, p. 6, para. 10. (Emphasis added) [Annex 72 to WO].

which the Prime Minister referred was 20 metres north of the Temple[463]. If the fence had been even considerably less than halfway to the border line – say not even *one third* of the way – then this still placed the frontier well within 200 metres of the Temple – a placement perfectly consistent with Cambodia's earlier acknowledgment in 1958 that, at 200 metres north, one was already in Thai territory.

4.62 In fact, when the Prime Minister's statement about the fence is examined further, it is obvious that Cambodia had a precise idea of what was the border line. In the same statement, the Prime Minister said that the border line was to follow the watershed:

> "Referring to the idea of the demarcation in more detail of the border, the Prince said that as far as he could see this was not at all necessary, the *watershed being nearly everywhere the clear and easily perceptible frontier*. Furthermore, it might have the effect '*de remettre en cause*' the question of the border."[464]

The Prime Minister's identification of the watershed as the frontier indeed is consistent with the position which Cambodia took during the original proceedings. During those proceedings, the only watershed line Cambodia had presented in the "Temple

[463] See Resolution of the Council of Ministers of the Kingdom of Thailand of 10 July 1962 [Annex 5 to FWE].

[464] Herbert de Ribbing, Note to the Secretary-General, "Report by the Special Representative on his First Visit to Cambodia and Thailand and First Contact with their High Authorities", 13 September 1966, p. 8, para. 11. (Emphasis added) [Annex 72 to WO].

area" was the one depicted on the "D.A.I. revised map"[465]. In presenting Cambodia's position to the mediator appointed by the Secretary-General to deal with issues between Cambodia and Thailand[466], the Prime Minister was referring to the same watershed as the one put by Cambodia before the Court which ran some metres north and west of the location of the barbed-wire fence.

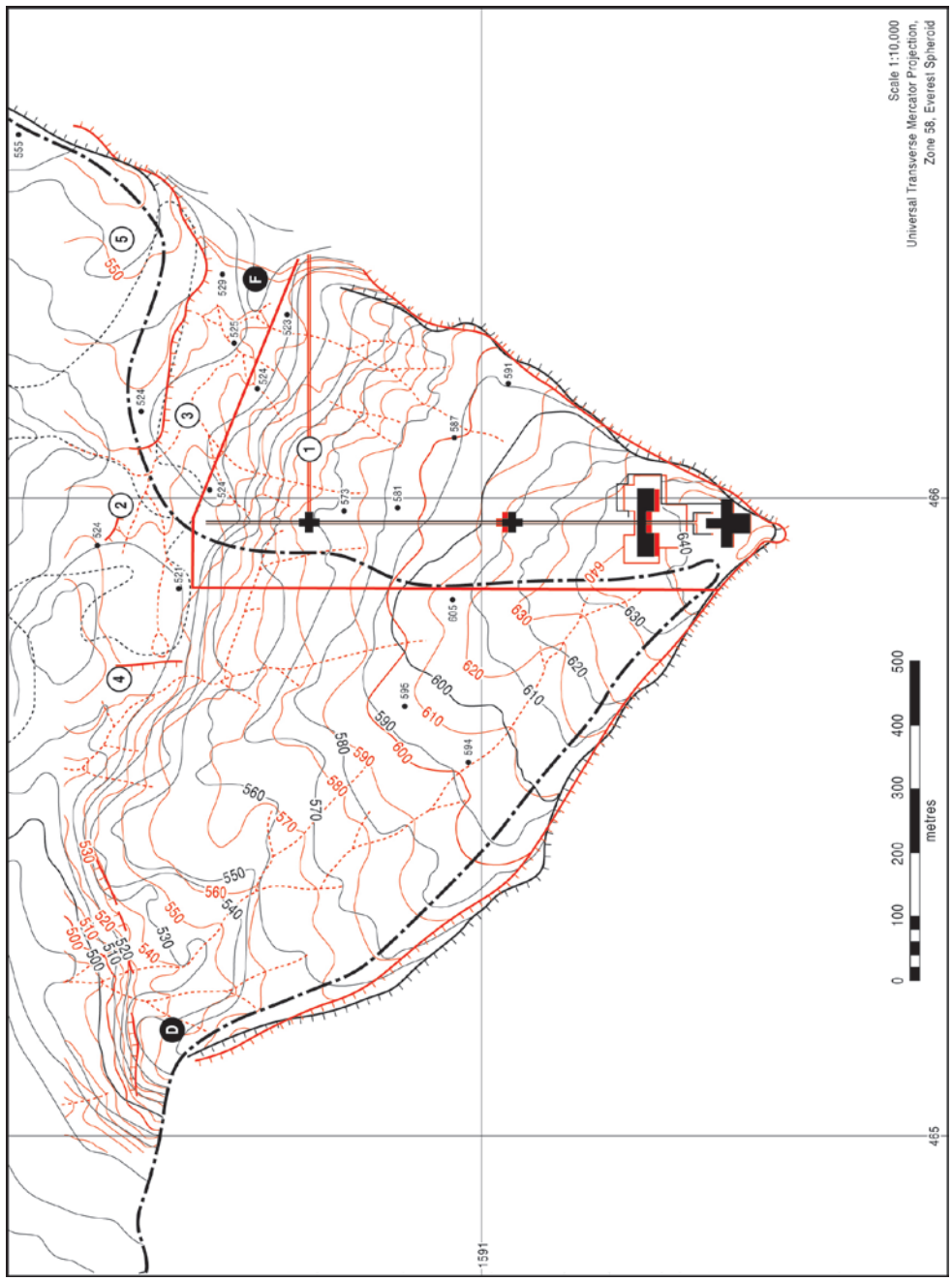
4.63 The map on the right page illustrates the distance between the Cambodian watershed line and the Thai Cabinet line. As can be seen, the Cabinet line and the watershed as understood by Cambodia are separated by only a very short distance. The distance from the Cabinet line to the northern staircase is indeed only a few metres.

4.64 Prince Sihanouk's observations about the barbed-wire fence further confirm that any discrepancy between the Cambodian-claimed border line and the Cabinet line was only a matter of metres:

[465] See Carte annexée au Rapport de MM. Doeringsfeld, Amuedo et Ivey (Annexe 2), filed as Annex LXVI *c* to Cambodia's Reply, 23 October 1961 [Annex 51 to FWE]. See also footnote 109 above.

[466] See WO, paras. 4.39, 4.42 and 4.56.

IBRU's comparison of selected features from
the DAI revised ITC map (black) and selected features from
the Cabinet line map (red)
(Figure 17 from Annex 46 to FWE)



> "When he mentioned the Thai construction of the barbed-wire area, he described it as Thai encroachment by *several meters on Cambodian territory* awarded it by the International Court of Justice."[467]

4.65 Prince Sihanouk did not say exactly how many metres the barbed-wire fence differed from Cambodia's claimed boundary, but he was speaking in terms of a minor difference only. Thus, depending on the mood and on the state of bilateral relations with Thailand, he sometimes dismissed the matter, saying that "these few meters were unimportant"[468]; or he sometimes demanded, it seems, that these few metres be rectified:

> "*Tout autour de Préah Vihéar, les Thaïlandais ont conservé, en la bordant de fils de fer barbelés*, la bande de terrain qui s'étend entre les assises de temple et la frontière qui passe à quelques mètres de là *comme l'ont voulu les traités confirmés par la décision de la Cour internationale de justice. Il n'est pas question pour leur être agréable et pour faciliter la reprise des relations avec eux de leur accorder de nouveaux avantages*."[469]

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[467] United States Embassy in Phnom Penh, Airgram to Department of State, "Cambodian Official Reoccupation of Preah Vihear", No. A-325, 10 January 1963, p. 5. (Emphasis added) [Annex 51 to WO]. See also the examples of similar records in WO, paras. 4.45-4.49.

[468] United States Embassy in Phnom Penh, Airgram to Department of State, "Cambodian Official Reoccupation of Preah Vihear", No. A-325, 10 January 1963 [Annex 51 to WO]. Cambodia is referring to this declaration, see Response, para. 2.48. See also WO, paras. 4.45-4.49.

[469] *Compte-rendu de la conférence de presse du Prince Sihanouk du 22 octobre 1967*. (Emphasis added) [Annex 19 to the Response]. Quoted also in the Response, para. 2.63.

4.66 Faced with Cambodia's Request for interpretation, one initially might think that Cambodia now approaches the Court to claim this *"bande de terrain"*, thus transforming what had been a *de minimis* issue immediately after the Judgment into an essential issue half a century later. But the *"bande de terrain"* is not the focus of Cambodia's modern claim. Cambodia, instead, today claims that a putative 4.6 sq km area had been "*au centre du litige dans l'affaire initiale*"[470]. This gives Cambodia's Request for interpretation another dimension. The problem for Cambodia's Request is that the putative 4.6 sq km area is no more an admissible subject matter under a request for interpretation, for that putative area is devoid of any link whatsoever to the 1962 Judgment[471].

4.67 Cambodia's present claims are clearly at variance with France's and Cambodia's own understanding of the location of the boundary throughout the past century. Contrary to Cambodia's unsupported assertions[472], the situation on the ground remained consistent with this understanding of a boundary situated very close to the ruins of the Temple. Even in the period 1990-2003, when the Temple was periodically opened again to the public, the boundary was perceived to be situated some 20 metres from the northern staircase, where the French reception committee had greeted Prince Damrong and

[470] Response, para. 4.65.

[471] See paras. 1.45-1.48, 2.47-2.50 and 3.61 above.

[472] Response, paras. 2.66-2.68.

where the French flag had flown back in 1930[473]. This is where a Thai control post and a ticketing office were installed[474]. Some 100 metres to the north, the bridge over the stream crossed by Prince Damrong in 1930, the Takhop/Tani stream, became a point of passage through Thailand for tourist access to the Temple[475].

4.68 When Cambodia's past positions are recalled – in which Cambodia has accepted that the boundary follows the watershed and is situated a few metres north of the Temple – it becomes clear why Cambodia is eager for the Court to confer a benediction upon the Annex I map line, but not at all interested in the Court considering where in fact on the terrain that line might run[476]. Cambodia's present position is irreconcilable with what it pleaded in the original proceedings and with the position it took in the half-century following the Judgment. The Request for interpretation is in truth an expansion of territorial claims.

4.69 If the Court were to consider Cambodia's Request for interpretation to be admissible, then the positions of the Parties as expressed during the 1962 proceedings could not be ignored when deciding the merits. These positions were clear:

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[473] See also para. 4.54 above.

[474] See Royal Thai Survey Department, Sketch of 1991 arrangements for tourism, 17 November 2011 [Annex 99 to WO].

[475] See para. 3.71 above.

[476] "*Il est indiscutable que la Cour n'avait pas à étudier et à démarquer le 'tracé précis' de la frontière dans l'affaire à l'origine. Il n'y a aucune raison qu'il en soit autrement dans l'instance en cours*." (Response, para. 2.72).

Cambodia and Thailand agreed that the watershed defined the boundary in the Dangrek range; they even agreed as to the location of the watershed in most of the areas represented on Map Sheets 1 and 2 of Annex 49 to Thailand's Counter-Memorial. What they differed about was the location of the watershed in the Temple area. In any case, Cambodia's claim in respect of sovereignty over the Temple was that at the Temple, the boundary was situated a few metres to the north, at the place where the French had planted the flag in 1930 and received Prince Damrong. In the light of the Parties' common view about the geographical scope of the subject matter of their dispute, the Court did not have to go any further[477].

4. CAMBODIA'S ADMISSION THAT THE CONFLICTING VERSIONS OF THE ANNEX I MAPS AND LINES DO NOT AFFECT THE 1962 JUDGMENT

4.70 Cambodia has no response to the expert evidence concerning conflicting versions of the Annex I maps and lines – except to admit that whether or not "*la carte de l'annexe I utilisée durant la procédure ne serait pas la même que celle reçue par la Thaïlande en 1908* est sans importance"[478]. This is a significant admission, for it reflects the true scope and

[477] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962,* p. 15 and Annex 85 *d* (Partial Reproduction), Map on the scale of 1:2,000 prepared by the International Training Centre for Aerial Survey, 1962 [Annex 52 to FWE]. See also paras. 2.24-2.25 above.

[478] Response, footnote 14. (Emphasis added).

meaning of the 1962 Judgment. The Judgment determined sovereignty over the Temple, a matter elucidated by the relative position of the Temple symbol and the Annex I map line; it did not settle other territorial claims. To determine sovereignty over the Temple, the relative position of the Temple and the line, as Thailand noted earlier in this Chapter[479], is all that the Court needed to know. The Court did not need to determine the exact course of a line, correlating to identifiable points on the terrain. Indeed, its exact course "*est sans importance*".

4.71 The discrepancies between the differing versions of the Annex I maps and their lines (Cambodia does not deny the discrepancies) make all the more clear, in retrospect, what the Court expressed in the terms of the Judgment itself. The interpretative value of the map (whichever version was utilised in 1962) was restricted to the sole question actually decided by the Court. The differing versions and their differing lines agree that the Temple falls on the Cambodian side of the frontier; but would have produced conflicting outcomes if they had been used to fix the frontier along precise coordinates.

4.72 Cambodia must have realized the arbitrary character of the invitation it addresses to the Court. It is for this reason that it claims that the precise determination of the boundary would be a matter for demarcation. Thailand submitted an expert report underlining the technical difficulties and the political choices

[479] See paras. 4.31-4.32 above.

that would have to be made in any attempt to effect a mathematical transposition of the line[480]. Cambodia rejects all these questions, declaring them pointless ("*inutiles*").

4.73 Cambodia's only answer to Thailand's evidence and reasoning in respect of the Annex I map is to say that, once the line on that map is adopted, all that is left is a straightforward exercise of demarcation. But, whatever the ease or difficulty of demarcation as such, Thailand has shown that the choice of the method for transposing the Annex I map line (if the Court were to say that that line must be adopted today, then it must be transposed onto a reliable modern map of the terrain) is not at all straightforward. The choice of transposition method has an enormous impact upon the location of the boundary. For Cambodia to dismiss Thailand's objections about the Annex I map with vague allusions to the simplicity of demarcation is nothing short of frivolous. It would appear that Cambodia's purpose, in truth, is to obtain a largely abstract pronouncement elevating the status of the Annex I map line, which Cambodia then could invoke, to widen the scope of its territorial claims in the framework of UNESCO inscription and in the negotiations under the MoU. Such a pronouncement would add neither legal nor political certainty to the Parties' relations.

[480] WO, paras. 6.25-6.29.

D. Cambodia's Groundless Interpretation

4.74 Cambodia in the present proceedings has identified no question of interpretation subject to the Court's jurisdiction under Article 60 of its Statute. If, nevertheless, the Court were to determine that a question of interpretation exists[481], then it would be necessary to answer the question by reference to what the Court in 1962 decided. The first step toward identifying the proper interpretation is to respond to the interpretation which Cambodia has requested. Independently of Cambodia's failure to identify any part of the *res judicata* of the Judgment which requires interpretation, Cambodia's requested interpretation is manifestly flawed.

4.75 Cambodia asserts that an interpretation is needed of the geographical scope of the obligations set out in paragraph 1 and paragraph 2 of the *dispositif*. As noted in Chapter I above, Cambodia's Request for interpretation is now in a state of disarray, which results in particular from the confused presentation of claims in the Response in respect of the first two paragraphs of the *dispositif*[482]. Thailand, however, will address Cambodia's Request, as far as possible, on its own terms.

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[481] 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*, para. 31.

[482] See para. 1.6 above.

4.76 According to Cambodia, Thailand must today withdraw from various places outside the Temple area examined by the Court in 1962, including, for example, the neighbourhood of the Keo Sikha Kiri Svara Pagoda and of the Pnom Trap hilltop, neither of which is situated in the area which concerned the Parties and the Court in 1962[483]. According to Cambodia, under the proper interpretation of the *dispositif,* these areas nevertheless fall within the geographical scope of the obligations established by the Court. Cambodia would arrive at its interpretation of the Judgment by referring to the Annex I map line. Cambodia says as follows:

> "*[P]our définir le territoire sous la souveraineté duquel se trouve le Temple il aurait de toutes façons fallu déterminer où se trouve la frontière*."[484]

Two related points comprise Cambodia's position. First, Cambodia contends that the Court adopted the Annex I map line as the definitive representation of the international frontier in the entire sector; it is thus Cambodia's contention that only by giving the map line precedence over all other considerations can one "*déterminer où se trouve la frontière*". And, second, Cambodia contends that only by determining where the frontier is found can one determine the geographical scope of the *dispositif:* "*pour définir le territoire*" on which the Temple is situated "*il aurait de toutes façons fallu déterminer où se trouve la frontière*".

[483] See paras. 2.22-2.25 and 4.42-4.69 above.

[484] Response, para. 4.17.

4.77 Neither of these contentions is supportable. The Court did not adopt the Annex I map line and certainly not as a comprehensive territorial settlement. Moreover, the Annex I map line, in any event, does not define the perimeters of the Temple area. Before turning to Cambodia's contention that the Annex I map line somehow defines the "*territoire sous la souveraineté duquel se trouve le Temple*", it is necessary to address the interpretation by which Cambodia would treat the Annex I map line as a judicially-adopted frontier.

1. CAMBODIA'S OSCILLATING CLAIM THAT THE ANNEX I MAP LINE IS *RES JUDICATA*

4.78 Cambodia oscillates between affirming and denying that it seeks an interpretation that the Court in 1962 adopted the Annex I map line as part of the *res judicata* of the case. As pointed out in Chapter II above, this renders obscure what Cambodia is requesting for interpretation in respect of the Annex I map line. Cambodia has good reason to avoid a clear and consistent expression of its request. It is an exorbitant request with no basis in the 1962 Judgment.

4.79 Cambodia suggests repeatedly that it does not ask for an interpretation concerning the Annex I map line. For example, Cambodia says:

> "*Cette affaire ne porte pas non plus sur une question relative à la démarcation de la frontière à proximité du Temple, ou comment il serait souhaitable de transposer la carte de l'annexe I sur le terrain*."[485]

Later, Cambodia says as follows:

> "*[L]e Cambodge ne demande aucunement que la Cour prenne une décision concernant l'intégralité de la frontière décrite par la carte de l'annexe I dans la région des Dangrek. Le Cambodge circonscrit sa demande en interprétation à la zone en litige*."[486]

For Cambodia to say that it "*circonscrit sa demande en interprétation à la zone en litige*" is problematic, for the Request for interpretation is a request to define that putative zone. The circularity of Cambodia's would-be limiting principle is a defect in Cambodia's Request which Thailand will address in more detail below[487].

4.80 Almost in the same breath as it disclaims any interest in whether the Judgment did, or did not, adopt the Annex I map line, Cambodia says that the present dispute is over that very question. Cambodia says that this is a dispute over whether "*(3) (...) l'arrêt a ou n'a pas reconnu avec force obligatoire la ligne indiquée sur la carte de l'annexe I comme représentant la frontière entre les deux parties dans la région du Temple*"[488].

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[485] *Ibid.*, para. 2.16.

[486] *Ibid*., para. 4.50.

[487] See para. 4.90 below.

[488] Response, para. 3.16.

According to Cambodia, Thailand's position that the Annex I map line is not binding "*est la raison pour laquelle il existe un différend (...) devant la Cour aujourd'hui*"[489]. Cambodia further says that:

> "*[L]e paragraphe premier du dispositif doit être compris comme determinant, avec force obligatoire, que toutes les zones en litige se trouvant au côté cambodgien de la ligne de la carte annexe I – y inclus donc le Temple de Préah Vihéar lui-même – sont à regarder comme relevant de la souveraineté cambodgienne*; (...)"[490]

Apart from the Temple itself, the "*zones en litige*" to which Cambodia here refers are the ill-defined areas claimed by Cambodia today but which, as Thailand has shown[491], had nothing to do with the 1962 proceedings.

4.81 Cambodia refers to statements from the time of the 1962 Judgment, in which Cambodia expressed its view that the Judgment "imposed" the map line on the Parties. For example, Cambodia quotes an *aide-mémoire* of its Foreign Ministry from November 1962, saying that Thailand's "*délimitation* [around the Temple] *était en complet désaccord avec la décision de la Cour de La Haye qui confirme la frontière portée sur la carte de 1907*"[492]. Another contemporary document, quoted in the Response, accused Thailand of "*mépris du tracé frontalier*

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[489] *Ibid*., para 1.23.

[490] *Ibid*., para. 5.9.

[491] See paras. 2.44-2.55 above.

[492] Response, para. 2.45.

imposé par La Cour"[493]. These are statements of its own, which Cambodia relies on today, in order to identify what it asserts is the proper interpretation of the Judgment. They make clear that Cambodia today is seeking a judgment that the "map of 1907" constitutes a "frontier line imposed by the Court."

4.82 Thailand noted in its Written Observations that Cambodia in the present proceedings is not requesting an interpretation of the 1962 Judgment but, rather, in truth, has presented to the Court a complaint concerning the implementation of the Judgment[494] – and a request for interpretation of the MoU of 14 June 2000[495]. Cambodia is quite clear on both points. It repeatedly accuses Thailand of having failed fully to implement the Judgment: according to Cambodia, "[t]oday, the question remains that of the violation of Cambodia's sovereignty by incursions and the presence of Thai military forces in the area of the Temple and its vicinity"[496]. And Cambodia is clear that it intends to use the judgment which it now requests from the Court in order to impose on the MoU an interpretation which contradicts the plain meaning of that bilateral instrument. For example, Cambodia expressly rejects Thailand's communication to the President of the Security Council of 21 July 2008 in which Thailand reiterated the plain

[493] *Ibid*., para. 2.47.

[494] WO, paras. 4.71-4.72 and 5.57-5.58.

[495] *Ibid*., para. 5.45.

[496] *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), Application Instituting Proceedings*, 28 April 2011, para. 8.

meaning of the MoU. To quote Cambodia's paraphrase of Thailand's letter, Thailand in the letter observed, *inter alia,* that:

> "[T]he boundary line 'in the area adjacent to the Temple of Preah Vihear' is still to be determined; and (…) *the Joint Boundary Commission provided for by the MoU is responsible for doing so*."[497]

Cambodia goes on to contend, in the same paragraph of its Request, "[o]n the contrary (...) the Court did indeed confirm and validate that boundary"[498]. Cambodia hereby instigated a dispute over the interpretation of the MoU, which it now asks the Court to settle.

4.83 In its Response, Cambodia again casts the interpretation of the MoU in question. Cambodia accuses Thailand of "insinuating" ("*insinuer*") that "*le Cambodge a sacrifié le bénéfice juridique de l'arrêt de la Cour en concluant le MoU*"[499]. Thailand neither says nor insinuates any such thing. The 1962 Judgment indicated that Cambodia has sovereignty over the Temple. Thailand has been abundantly clear in the present proceedings that nothing since 1962 has changed the

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[497] *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), Application Instituting Proceedings*, 28 April 2011, para. 16, quoting and paraphrasing letter to the President of the Security Council from the Ambassador and Permanent Representative of Thailand to the United Nations dated 21 July 2008, reprinted in Cambodia's Request for Interpretation, *Annexes documentaires, Annexe no. 4*, p. 3. (Emphasis added).

[498] *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), Application Instituting Proceedings*, 28 April 2011, para. 16.

[499] Response, second paragraph 1.18 (p. 9).

fact that Cambodia holds sovereignty over the Temple, including the MoU. The MoU does, however, establish a process for fixing the entire boundary[500]. It would have made no sense for the Parties to agree to do this if the boundary already had been fixed. The adoption of the MoU thus is one further indication of the Parties' understanding, evidently shared between them until Cambodia rejected it in 2007, that the Judgment did not adopt the Annex I map line as a demarcation or delimitation[501]. Cambodia today however requests that the Court impose the Annex I map line, regardless of the subject matter of the original dispute and regardless of the Court's reasoning as to how it reached a settlement of that dispute.

4.84 Thailand already has shown the initial, and fatal, flaw in Cambodia's request: the Court's reasoning is clear that the Annex I map line was not adopted as part of the *res judicata* of the case[502]. Cambodia has not retreated from its map line claim, but, instead, only asserted it the more insistently.

2. THE ANNEX I MAP LINE ADDS NOTHING TO THE CLEAR MEANING OF THE *DISPOSITIF*

4.85 A further problem with Cambodia's Request is that the Annex I map, even if it were adopted, would not resolve the

[500] Articles II-IV of the MoU (See Annex 91 to WO).

[501] As it does in respect of all its arguments so far in the present proceedings, Thailand maintains in its entirety its position, set out in WO, in respect of the MoU: WO, paras. 5.42-5.45.

[502] See para. 3.85 above.

difference which Cambodia asserts has arisen. To base a request for interpretation on a reason, rather than the *dispositif,* the requesting party must identify something which needs to be interpreted – and, more specifically, something which that reason would enable the Court to interpret. As Thailand has shown, there is nothing in the *dispositif* of the 1962 Judgment which requires interpretation[503]. As will be considered here, moreover, the Annex I map line, which Cambodia insists be imposed as the final expression of the frontier, provides nothing to answer the question which Cambodia claims the *dispositif* left unanswered.

4.86 Cambodia is emphatic that the Annex I map would clarify the *dispositif*. Cambodia contends in particular that the Court, purportedly adopting the Annex I map line, in so doing fixed the specific area of the Temple. According to Cambodia, this area was a "*territoire qui ne peut correspondre qu'aux limites fixées par la Cour dans ses motifs* sur la base de la carte de l'annexe I"[504]; and the Annex I map permitted the Court to know "*sur quel territoire se situe le Temple, et jusqu'où s'étend ce territoire*"[505]. With these convoluted formulations,

[503] See paras. 4.4-4.7 above.

[504] Response, para. 4.50. (Emphasis added). See also *ibid*., para. 4.9: "*une valeur normative intrinsèque*" and that the map is indispensable "*à la lecture du dispositif (...*) [*et*] *à sa comprehension et à son interpretation*" in respect of "*ce qu'il faut comprendre comme étant les 'environs' du Temple*"; and para. 4.51: "*Là encore, aucune précision n'aurait été nécessaire s'il ne s'était agi du territoire relevant de la souveraineté du Cambodge correspondant à celui défini dans les motifs de l'arrêt*".

[505] *Ibid*., para. 4.22.

Cambodia has posited a non-existent problem – the geographical definition of "*un territoire*" subject to the 1962 Judgment – and then advanced a device – the Annex I map line – which would not solve the problem, even if it existed.

4.87 If the Annex I map line is the "only" ("*le seul*") way to understand the meaning and scope of the Judgment[506], then Cambodia must identify something, communicated by the map line taken on its own, which discloses something about the *dispositif* which is not already clear. To be sure, the line confirms the main determination set out in the *dispositif*: the Temple is in Cambodia. Neither Party questions that determination. But to say that the Annex I map line confirms the *dispositif* is not an interpretation: it is repetition. What Cambodia maintains is something different. Cambodia maintains that there is a question as to the geographical scope of the *dispositif* and that the line answers *that* question.

4.88 Yet, inexplicably, Cambodia elsewhere in the Response concedes that the Court was not concerned with defining the Temple vicinity but, instead, only with knowing where the frontier line was, in order to assign sovereignty over the Temple to one State or the other:

> "*[L]a Cour est confrontée à un Temple qu'il faut placer sur le territoire d'un Etat et elle répond en reconnaissant qu'il existe une frontière et,* qu'en fonction de cette frontière*, le Temple appartient au Cambodge. Son souci*

[506] *Ibid*., para. 4.30.

> *est alors de savoir où se situe la frontière et non de définir une zone qui appartiendrait au Cambodge ou à la Thaïlande, même s'il est clair que le différend ne porte que sur un périmètre restreint*."[507]

In light of Cambodia's contention today that it was part of the *res judicata* of the 1962 Judgment that the Court defined a wider zone, this is a striking admission. Cambodia admits that the Court had no concern in 1962 with defining "*une zone qui appartiendrait au Cambodge ou à la Thaïlande*". To acknowledge that sovereignty over the Temple was adjudicated "*en fonction de cette frontière*" is to acknowledge the limited purpose for which the Court considered the frontier. It was not to "define a zone which belonged to" one State or the other that the Court considered the frontier. Cambodia's statement that the Court was not concerned with defining a zone[508] is impossible to reconcile with Cambodia's present request to "*définir une zone*".

4.89 Thailand has already pointed out above that the original dispute concerning the Temple had nothing to do with a putative 4.6 sq km zone that consists mostly of territory somewhere to the west of the promontory on part of which the Temple area is situated. The putative zone is a recent construction[509]. Cambodia however insists that such a zone was already explicitly the subject of dispute in 1962:

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[507] Response, para. 4.60. (Emphasis original).

[508] *Ibid*.

[509] See paras. 1.45-1.48 above.

> "*Cette zone en litige que la Thaïlande considère aujourd'hui comme un nouveau différend n'est autre que le périmètre circonscrit entre les revendications thaïlandaises et la limite de la carte de l'annexe I reconnue par la Cour comme pertinente en 1962*."[510]

This is a putative zone which Cambodia says "peut être *définie*"[511] by intersecting lines on two map sheets presented in the 1962 proceedings[512]. But what "*revendications thaïlandaises*" is Cambodia here referring to? In 1962, there were no Thai claims subject to the Court's jurisdiction concerning a 4.6 sq km zone. Such a zone had no place in the arguments presented by the Parties to the Court in 1962; played no part in the Court's reasoning in the Judgment; and was not defined, either explicitly or by implication, in the *dispositif*. And what intersecting lines is Cambodia referring to? As noted above[513], the true course of the watershed line was unnecessary to settle the dispute. *A fortiori,* where this line ran, or where it might have intersected another line drawn on another map, was not a consideration relevant to the question of sovereignty over the Temple.

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[510] Response, para. 4.60.

[511] *Ibid*., para. 4.61. (Emphasis added).

[512] Map Sheets 3 and 4 attached to Annex 49 to Thailand's Counter-Memorial [Annexes 49 and 50 to FWE].

[513] See paras. 4.37-4.41 above.

4.90 Finally, to return to a point touched on briefly above[514], Thailand observes that Cambodia's postulate of the Temple area is circular. As noted above, Cambodia asserts at times that it is not asking for "*une décision concernant l'intégralité de la frontière décrite par la carte de l'annexe I dans la région des Dangrek*"; it is asking for a decision concerning only *part* of the frontier[515]. Likewise, Cambodia asserts that it is not asking for an interpretation in respect of an unlimited zone in dispute, but, rather, in respect only of a circumscribed zone: "*Le Cambodge circonscrit sa demande en interprétation à la zone en litige*"[516]. But how does Cambodia propose to define the "*zone en litige*"? It is all very well for Cambodia to say that it circumscribes its Request for interpretation by alluding to a putative zone, but, unless such a zone can be given precise expression, by reference to evidence, Cambodia's request is not "*circonscrite*". Thailand has shown what zone was in truth the subject of the 1962 proceedings, and Thailand has done so by a careful examination of the Judgment and of the pleadings of both the Parties in the original proceedings[517]. The most Cambodia can say to define a putative zone is to assert that its request is circumscribed because the Court recognized the Annex I map line as binding and the map line defines the zone[518].

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[514] See para. 4.79 above.

[515] Response, para. 4.50, see also paras. 1.7 and 4.79 above.

[516] *Ibid*.

[517] See paras. 2.8-2.34 above.

[518] Response, paras. 4.60 and 4.68.

4.91 An insoluble dilemma in Cambodia's Request is that Cambodia purports to limit a putative zone by referring to a segment of the line; and it purports to limit the segment of the line by referring to the putative zone. This is no use at all in ascertaining the subject matter of a request to the Court. It is indicative of the vague and potentially expansive scope of Cambodia's claim that Cambodia is unable to identify any language in the 1962 Judgment that would limit the putative disputed area which Cambodia insists was adjudicated at that time. When Cambodia says that "*la logique impose que la zone en litige est bien 'une parcelle de territoire'* au regard d'un Etat de plus de 180,000 km^2"[519], this seems to be as close as Cambodia gets to setting a limit on the area: it is an area that Cambodia tries to describe by invoking the entire 180,000 sq km which comprises the Kingdom of Cambodia! The Court in 1962 certainly was not adjudicating a general dispute as to sovereignty over any and all parcels of Cambodian territory.

E. The Proper Interpretation of the 1962 Judgment

4.92 The Court in 1962 did not address any question of the geographical scope of the dispute, for the Parties saw no need to raise such a question. The geographical scope of the dispute was clear in light of the original written and oral proceedings[520]. The "portion of territory" over which sovereignty was in dispute – and surrounding areas over which it was not in dispute – were

[519] *Ibid*., para. 4.72. (Emphasis added).

[520] See paras. 2.8-2.25 above.

identified by both Parties a number of times, and the Parties largely concurred both in their affirmative and their negative identifications. The subject matter which the Court finally addressed in the *dispositif* thus needed no further elaboration. It is an unusual request, and a difficult task fifty years later, to find in the 1962 Judgment an answer to a question which Cambodia alleges only recently has arisen and which, on extensive evidence from the 1962 record, had already been answered by the Parties themselves. With the difficulty in mind, and preserving its objection to jurisdiction and admissibility, Thailand now sets out its views as to the proper interpretation of the Judgment.

1. THE TERRITORIAL SCOPE OF THE *DISPOSITIF*

4.93 Cambodia's central claim is that the *dispositif* requires interpretation in order to identify its territorial scope. Thailand repeats that no such interpretation is needed. If, however, the Court were to conclude that any ambiguity exists on that point, then it is necessary that such ambiguity be resolved in accordance with the 1962 Judgment. This takes us again to paragraphs 1 and 2 of the *dispositif* – in particular to the language in paragraphs 1 and 2 concerning territorial scope, which is the language Cambodia insists must be interpreted. The relevant language in paragraph 1 is that the Temple is situated "in territory under the sovereignty of Cambodia". The relevant language in paragraph 2 is that the obligation was to withdraw forces stationed "at the Temple, or in its vicinity on

Cambodian territory"[521]. Paragraph 1 answers the principal question which Cambodia had posed in the 1962 proceedings. It answers the question which State has sovereignty over the territory in which the Temple is situated.

4.94 The Court's determination of the principal question in paragraph 1 – that of sovereignty over the Temple, of course – as Cambodia has repeatedly recalled in the present proceedings – concerned a "territory". What Cambodia has failed to accept is that the territory in which the Temple is situated cannot exceed the scope of the case as argued in 1962. The case was limited to a specific area – namely, that part of the promontory of Phra Viharn on which the Temple was situated[522]. Thailand in the present submission has recalled the clarity with which the Parties identified that – and that only – as the area subject to the dispute[523]; and the clarity with which the Court understood the same point as well[524].

4.95 In paragraph 2 of the *dispositif,* the Court went on to identify the principal consequence of the determination of Cambodian sovereignty over the Temple – namely, Thailand's obligation to withdraw. As this was an obligation which Thailand then would have to implement immediately on the

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[521] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962,* pp. 36-37.

[522] See paras. 2.23-2.25 above.

[523] See paras. 2.14-2.25 above. See also WO, paras. 2.40-2.46.

[524] See paras. 2.26-2.34 above. See also WO, paras. 3.52-3.54.

ground, the Court in paragraph 2 identified more precisely the geographical area subject to the obligation – "the Temple or (…) its vicinity on Cambodian territory". The limitations of the case as pleaded, of course, apply as much to paragraph 2 as to paragraph 1. So the "vicinity" to which paragraph 2 referred could not go beyond what was argued in 1962, any more than could the expression, as used in paragraph 1, "territory under the sovereignty of Cambodia".

4.96 The *dispositif* tells us another important thing about the "vicinity". The obligation under paragraph 2 to withdraw was not an obligation to withdraw from the "vicinity" without qualification. The Court was deliberate and specific about this. The obligation to withdraw was an obligation to withdraw from "the vicinity *on Cambodian territory*". The qualifying clause "on Cambodian territory" in paragraph 2 would have been meaningless, unless the vicinity, as understood by the Court in 1962, comprised territory of both States. There is a vicinity "on Cambodian territory"; and there is a vicinity on Thai territory. As the vicinity could not exceed the scope of the pleaded case, and the pleaded case did not exceed the geographical limit of that part of the promontory on which the Temple is situated, it follows that that area contains both Cambodian territory and Thai territory. Of course, if one were referring to "territory under the sovereignty of Cambodia" in general parlance – i.e., if one extracted that expression from the *dispositif* and considered it in isolation from the proceedings – then it could mean something potentially much wider. It could mean *any* territory

under the sovereignty of Cambodia; or, for that matter, *all the* territory under the sovereignty of Cambodia. The Court's task, however, was not to define Cambodia's territorial entitlement as a whole. Its task was to decide which of two States has sovereignty over the Temple. This was a dispute about sovereignty over the Temple, and that is the subject matter which the Court decided.

4.97 The meaning of the words in the *dispositif* of the 1962 Judgment cannot be expanded to decide matters beyond the scope of the case as pleaded. Indeed, the geographical scope of the pleaded case is bounded by the respective watershed lines as argued by the Parties, and as illustrated on Annex 85 *d* (Partial Reproduction), and then implemented on the ground by Thailand in July 1962 in accordance with the Cabinet line.

2. THE INSTANTANEOUS CHARACTER OF THE OBLIGATION TO WITHDRAW

4.98 Cambodia contends that the obligation to withdraw from the Temple and its vicinity, set out in the second paragraph of the *dispositif,* is "*étroitement liée*" to the first paragraph, the paragraph establishing that the Temple belongs to Cambodia[525]. But Cambodia offers no explanation of why the former is "*étroitement liée*" to the latter. Cambodia simply contends,

[525] Response, para. 4.88.

further, that, because the two paragraphs both contain the word "territory", and because the first paragraph has a "*force juridique continue*", the second paragraph, "*indéniablement*", must also set out a continuing obligation[526]. This is a *non sequitur*. Even if two obligations are closely connected, this says nothing at all as to their temporal aspect.

4.99 As for the putative connection which Cambodia says now is an essential condition to understanding the meaning of the *dispositif* as a whole, this introduces a mysterious element, apparently existing in the interstices of paragraphs 1 and 2, but adding no apparent meaning to the plain text. The Court was clear about what it was deciding; the Temple belonged to Cambodia, and there followed from this an obligation on the part of Thailand to withdraw personnel who had been stationed there. Thailand withdrew, and the obligation set out in paragraph 2 thus was discharged.

4.100 This poses a problem for Cambodia. It is true that the obligation set out by the Court in 1962 implies that the Court hoped that its Judgment would achieve a lasting result in respect of the Temple and its precincts. An obligation to withdraw is not an invitation to come back. But Cambodia needs a device to rescue its Request from the limits of Article 60 jurisdiction. Cambodia knows full well that Thailand withdrew from the Temple and its vicinity on Cambodian territory as the Parties

[526] *Ibid*.

understood that area in 1962; its highest officials noted the fact[527]. As for the future, Thailand has repeatedly re-affirmed that it does not seek to reverse the Court's determination that the Temple belongs to Cambodia. The general international law obligation on the Parties to respect one another's territorial integrity is certainly a continuing obligation, but that obligation has never been in doubt.

4.101 Paragraph 2 states a particular consequence stemming from the application of this general international law obligation to the finding in paragraph 1. The general obligation, of course, was not an obligation created by the Court in 1962; it existed for both Parties long before their dispute. It is an obligation independent of the Judgment and independent of the jurisdiction under which the Judgment was reached. However desirable it might be for the Court to have jurisdiction to adjudicate any dispute arising out of allegations of breach of that obligation, the Statute of the Court remains. Under the Statute, the Court had jurisdiction to adjudicate a particular dispute raised by Cambodia against Thailand in 1959, and it has the continuing jurisdiction to construe its Judgment upon the request of any party, in the event of dispute as to its meaning or scope. A dispute as to places which were beyond the scope of the Judgment and as to events taking place decades after the Judgment does not fall within that jurisdiction. The continuing character of the general international law obligation does not

[527] WO, paras. 4.32, 4.45-4.49, 5.66-5.68 and 5.79.

embed itself within the Judgment of the Court so as to extend a limited 1962 jurisdiction to a much wider category of disputes along an indefinite time line. If it did so, then any dispute in which a territorial entitlement was settled would create, as if by judicial autogenesis, an authority both to supervise the implementation of the entitlement and to adjudicate new territorial disputes between the Parties. That is not what Article 60 says or means.

4.102 Thailand maintains its position, as set out in the Written Observations, that the obligation to withdraw was an obligation discharged instantaneously upon Thailand's implementation of the Judgment in 1962[528]. Thailand notes in closing only that Cambodia's convoluted argument about the temporal character of obligation is revealing: it is tantamount to an admission that Thailand indeed withdrew in 1962 as required and that the instantaneous obligation set out in paragraph 2 thus was discharged in full at that time and in accordance with the Court's determination that sovereignty over the Temple belonged to Cambodia.

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4.103 The main points of Chapter IV above may be summarized as follows:

[528] *Ibid.*, paras. 5.50-5.56.

(i) No question of interpretation arises in respect of the Judgment of 1962. As Thailand has shown, the meaning of the *dispositif* was and remains clear.

(ii) The Annex I map line was not an essential and even less an inseparable reason for the *dispositif*.

(iii) Even if it were the case that a question of interpretation arose in respect of the *dispositif*, and even if the Annex I map line were an essential and inseparable reason for the *dispositif*, the Annex I map line does not answer the question which Cambodia asserts has arisen; the Annex I map line did not define any disputed geographical area between the Parties.

(iv) The "territory" in Cambodia in which the Temple is located, as referred to by the Court in the *dispositif*, is the part of the promontory of Phra Viharn, which the Court specifically examined on the basis of the Parties' pleadings in the 1962 proceedings and from which Thailand withdrew its forces when implementing the Judgment.

(v) The obligation of Thailand under paragraph 2 of the 1962 Judgment to "withdraw any military or police forces, or other guards or keepers" from that area was an obligation of an instantaneous character which Thailand discharged after the Judgment.

(vi) The line drawn on the Annex I map:

(a) was not examined by the Court for purposes of determining its accuracy as a representation of a general delimitation;

(b) did not need to be examined in order for the Court to reach the conclusions contained in the operative part of its Judgment; and

(c) was expressly excluded from the operative part.

(vii) For these reasons, the Annex I map line was not part of the *res judicata* of the case and, *a fortiori*, is not binding in respect of territorial questions outside the area to which paragraphs 1 and 2 of the *dispositif* referred.

CHAPTER V
SOME CONCLUSIONS

5.1 *Interpretatio cessat in claris*. This is the core principle governing the present case.

5.2 In its 1962 Judgment, the Court found "that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia". This is clear; it does not call for any interpretation. And, "in consequence," the Court also found "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". This too is clear; this too does not call for interpretation.

5.3 This clarity makes it impossible for Cambodia to adopt a submission which identifies in straightforward terms any coherent request for interpretation. As a result, Cambodia is obliged to contrive a complicated and convoluted question:

> "*L'obligation pour la Thaïlande de 'retirer tous les éléments de forces armées ou de police ou autres gardes ou gardiens qu'elle a installés dans le temple ou dans ses environs situés en territoire cambodgien' (point 2 du dispositif) est une conséquence particulière de l'obligation générale et continue de respecter l'intégrité du territoire du Cambodge, territoire délimité dans la région du Temple et ses environs par la ligne de la carte de l'annexe 1 sur laquelle l'arrêt de la Cour est basé*."[529]

[529] *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), Application Instituting Proceedings*, 28 April 2011, para. 45. See also Response, para. 5.9.

5.4 There can be no doubt that:

(i) the second paragraph "is a particular consequence" of the first paragraph ("in consequence, the Court (…) finds that Thailand is under an obligation to withdraw");

(ii) Thailand had 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";

(iii) there is indeed a "general and continuing obligation to respect the integrity of the territory of Cambodia", but this obligation exists totally independently of the 1962 Judgment;

(iv) by no means did the Judgment delimit the "Cambodian territory (…) in the area of the Temple and its vicinity";

(v) *a fortiori*, it was not delimited "by the line on the Annex I map"; the delimitation process is a matter for the Parties as agreed in the MoU of 14 June 2000;

(vi) nor can it be said that "the Judgment of the Court is based" on that map and;

(vii) even if it were – *quod non* –, this would be one of the reasons for the *dispositif*, not something decided *res judicata* by the Court;

(viii) nor can it be said that it is an essential reason, inseparable from the decision: it is one among other grounds

since the Court expressly noted that the decision would have been the same even without the Annex I map[530]; and

(ix) even if it were such a reason, the Court cannot have recourse to it since the *dispositif* stands by itself and it is already clear.

5.5 The only reason Cambodia has manufactured this contrived Request is its hope to extend the meaning of the word "vicinity" found in paragraph 2 of the *dispositif* of the Judgment in relation with its plan to have the Temple put on the UNESCO's World Heritage List and to get around the indispensable cooperation of Thailand (which does not refuse it as a matter of principle, but not unconditionally as Cambodia would like). Moreover, Cambodia tries to take this opportunity in order to significantly – if not enormously – expand the scope of the 1962 Judgment.

5.6 The dispute brought by Cambodia before the Court was clearly defined in the 1961 Judgment on preliminary objections as being "a dispute about territorial sovereignty"[531] in respect of the Temple. In its 1962 Judgment, the Court reiterated that:

> "…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

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[530] See *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 29.

[531] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Preliminary Objections, Judgment of 26 May 1961, I.C.J. Reports 1961*, p. 22.

> question of territorial sovereignty, the Court must have regard to the frontier line between the two States in this sector."[532]

5.7 Indeed, the Court "had regard" to the Annex I map – which is *not* the version of the map annexed by Cambodia to its Request for interpretation[533] – in order to determine sovereignty over the Temple, but by no means did the Court decide, in addition, that the line on that map was the boundary between the Parties. Moreover, the plain text of the Judgment shows that the Court was concerned only with a very small parcel of territory on which the Temple stands. The Parties were perfectly clear about this: they had no doubt at the time about what was in dispute.

5.8 A particularly telling item of evidence of this very limited territorial scope of the dispute submitted to the Court is the partial reproduction in the published volume of the pleadings of the "big map" which was at the centre of the debates of the Parties before the Court[534]. This partial reproduction depicts an area that is fully compatible with the area defined by the Cabinet

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[532] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 14.

[533] *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), Application Instituting Proceedings*, 28 April 2011, *Annexes cartographiques*, *Carte annexée no. 1*.

[534] See *I.C.J. Pleadings*, *Temple of Preah Vihear*, *Oral Arguments,* Vol. II, pp. 273, 274, 277, 283, 357, 358, 360, 363, 391, 393, 401, 404,414, 420, 434, 437, 460, 469, 601 and 621. See also Annex 85 *d* (Partial Reproduction), Map on the scale of 1:2,000 prepared by the International Training Centre for Aerial Survey, 1962 [Annex 52 to FWE].

line adopted by the Royal Thai Government to implement the 1962 Judgment.

5.9 In any case, the Court could not decide now, through a judgment on a request for interpretation, what it expressly refused to decide in its Judgment on the merits in 1962 when it squarely refused to pronounce itself "on the legal status of the Annex I map and on the frontier line in the disputed region"[535]. Consequently, the Cambodian Request for interpretation is clearly inadmissible.

5.10 However, the fact remains that Cambodia has had, since 1962, a strategy of claiming with growing insistence that, contrary to the terms of the Judgment, the Court decided on the boundary between the two States (and more often than not, Cambodia has claimed that it was so in a very large zone going much beyond the area of the Temple and, in some declarations, extending to the whole boundary between them). Therefore, if the Court were to enter into the question artificially raised by Cambodia, and which has nothing to do with interpreting the 1962 Judgment, Thailand would ask the Court to put an end to Cambodia's exploitation of the Judgment by confirming, in the operative part of its judgment in the present proceedings, that the Court did not decide, in 1962, on the boundary between the Parties.

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[535] *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962*, p. 36; see also p. 14.

SUBMISSIONS

In view of the reasons given above and its Written Observations of 21 November 2011, the Kingdom of Thailand requests the Court to adjudge and declare:

- that the Request of the Kingdom of Cambodia asking the Court to interpret the Judgment of 15 June 1962 in the *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand)* under Article 60 of the Statute of the Court does not satisfy the conditions laid down in that Article and that, consequently, the Court has no jurisdiction to respond to that Request and/or that the Request is inadmissible;

- in the alternative, that there are no grounds to grant Cambodia's Request to construe the Judgment and that there is no reason to interpret the Judgment of 1962; and

- to formally declare that the 1962 Judgment does not determine that the line on the Annex I map is the boundary line between the Kingdom of Thailand and the Kingdom of Cambodia.

The Hague, 21 June B.E. 2555 (2012)

(Virachai Plasai)
Agent of the Kingdom of Thailand
before the International Court of Justice

Certification

I hereby certify that the documents annexed to these Further Written Explanations are true copies of and conform to the original documents and that the translations provided by the Kingdom of Thailand are accurate.

The Hague, 21 June B.E 2555 (2012)

(Virachai Plasai)
Agent of the Kingdom of Thailand
before the International Court of Justice

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Annex 14 *The Guardian*, 6 November 1974, "Cambodia's temple outpost"

Annex 15 *New York Times*, 23 May 1975, "Thais Report Cambodian Reds Overrun a Cliff-Top Shrine"

Annex 16 French Embassy in Thailand, Note *No. 88/AS* to the Minister of Foreign Affairs of France, 28 January 1977

Annex 17 *Bangkok Post*, 30 March 1998, "Historic temple said to be under govt hold"

Annex 18 *Bangkok Post*, 1 April 1998, "Hun Sen troops take Preah Vihear"

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Annex 21 *Bangkok Post*, 2 August 1998, "Tourists flock to Preah Vihear"

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Annex 23 *Bangkok Post*, 25 July 2001, "Minister erases proof of talks on temple's 'lease'"

Annex 24 Ministry of Foreign Affairs of Thailand, Note No. Kor Tor 0603/1165 to the Governor of Si Sa Ket Province: Solving the Problems of Kiosks Selling Goods and Wastewater Disposal in the Area of the Temple of Phra Viharn, dated 11 December B.E. 2544 (2001) (Declassified on 12 June 2012)

Annex 51 Carte annexée au Rapport de MM. Doeringsfeld, Amuedo et Ivey (Annexe 2), filed as Annex LXVI *c* to Cambodia's Reply, 23 October 1961

Annex 52 Annex No. 85 *d* (Partial Reproduction), Map on the scale of 1:2,000 prepared by the International Training Centre for Aerial Survey, 1962

Annex 53 Royal Thai Survey Department, *Series L 7017 map, Ban Phum Saron (sheet 5937 IV)*, 2nd Edition, October 1988

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