

**11 NOVEMBER 2013**

**JUDGMENT**

**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)**

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

**(CAMBODGE *c.* THAÏLANDE)**

**11 NOVEMBRE 2013**

**ARRÊT**

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**REQUEST FOR INTERPRETATION OF THE JUDGMENT OF 15 JUNE 1962  
IN THE CASE CONCERNING THE *TEMPLE OF PREAH VIHEAR*  
(*CAMBODIA v. THAILAND*)**

**(*CAMBODIA v. THAILAND*)**

*Historical background.*

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*Jurisdiction and admissibility.*

*Article 60 of the Statute of the Court — Conditions of jurisdiction — Existence of a dispute — Dispute as to the meaning or scope of Judgment of 15 June 1962 — Subject-matter of the current dispute — Characterization of Annex I map line — Extent of area of Temple of Preah Vihear — Meaning and scope of phrases “territory under the sovereignty of Cambodia” and “vicinity on Cambodian territory” contained in operative part — Nature of Thailand’s obligation to withdraw its personnel — Question of admissibility — Purpose of request must be limited to interpretation — Need to interpret second operative paragraph of the 1962 Judgment and legal effect of the Court’s statements regarding Annex 1 map line — Request for interpretation found admissible.*

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*Interpretation of the 1962 Judgment.*

*Role of the Court under Article 60 of the Statute — Relationship between operative clause and reasoning in original judgment — Role of pleadings, evidence and submissions of Parties in original case — Principle of non ultra petita — Nature and purpose of headnote — Conduct of the parties occurring after original judgment given.*

*Principal features of the 1962 Judgment.*

*Role of Annex I map in reasoning of the Court — Submissions of the Parties — Subject-matter of the dispute before the Court — Court concerned with question of sovereignty over the Temple area and not frontier delimitation.*

*Operative part of the 1962 Judgment.*

*First operative paragraph of the 1962 Judgment clear in meaning — Temple situated in territory under sovereignty of Cambodia — Scope of this operative paragraph to be assessed in light of the Court's examination of the second and third operative paragraphs.*

*Second operative paragraph of the 1962 Judgment — No express indication of territory from which Thailand was required to withdraw — Term “vicinity on Cambodian territory” to be construed as extending at least to area where Thai personnel stationed — 1962 Thai Council of Ministers' line — Natural understanding of concept of “vicinity” of Temple in view of geographical context — Phnom Trap outside Temple area — 1962 Judgment required Thailand to withdraw from whole territory of promontory of Preah Vihear.*

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*Determination of boundary line between Cambodia and Thailand beyond scope of 1962 Judgment — Not necessary for the Court to consider whether Thailand's obligation to withdraw is a continuing one — Territorial integrity of a State must be respected.*

*Temple of Preah Vihear a UNESCO world heritage site — Cambodia and Thailand must co-operate to protect the site — Each State under obligation not to take any deliberate measures which might damage Temple — Access to Temple from the Cambodian plain to be ensured.*

## **JUDGMENT**

*Present: President TOMKA; Vice-President SEPÚLVEDA-AMOR; Judges OWADA, ABRAHAM, KEITH, BENNOUNA, SKOTNIKOV, CAÑADO TRINDADE, YUSUF, GREENWOOD, XUE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI; Judges ad hoc GUILLAUME, COT; Registrar COUVREUR.*

In the case concerning the Request for interpretation of the Judgment of 15 June 1962,

*between*

the Kingdom of Cambodia,

represented by

H.E. Mr. Hor Namhong, Deputy Prime Minister and Minister for Foreign Affairs and International Co-operation,

as Agent;

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

as Deputy Agent;

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

Mr. Raoul Marc Jennar, Expert,

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

H.E. Mr. Sarun Rithea, Adviser to the Minister for Foreign Affairs and International Co-operation,

Mr. Hoy Pichravuth, Assistant to the Deputy Prime Minister,

as Advisers;

Mr. Jean-Marc Sorel, Professor of International Law at the University of Paris I (Panthéon-Sorbonne),

Sir Franklin Berman, K.C.M.G., Q.C., member of the English Bar, member of the Permanent Court of Arbitration, Visiting Professor of International Law at Oxford University and the University of Cape Town,

Mr. Rodman R. Bundy, *avocat à la cour d'appel de Paris*, member of the New York Bar, Eversheds LLP (Paris),

as Counsel and Advocates;

Mr. Guillaume Le Floch, Professor at the University of Rennes 1,

Ms Amal Alamuddin, member of the English and the New York Bars,

Ms Naomi Briercliffe, solicitor (England and Wales), Eversheds LLP (Paris),

as Counsel;

*and*

the Kingdom of Thailand,

represented by

H.E. Mr. Virachai Plasai, Ambassador Extraordinary and Plenipotentiary of the Kingdom of Thailand to the Kingdom of the Netherlands,

as Agent;

Mr. Voradet Viravakin, Director-General, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs,

as Deputy Agent;

H.E. Mr. Surapong Tovichakchaikul, Deputy Prime Minister and Minister for Foreign Affairs,

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

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

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

Mr. Sihasak Phuanketkeow, Permanent Secretary, Ministry of Foreign Affairs,

Mr. Nuttavudh Photisaro, Deputy Permanent Secretary, Ministry of Foreign Affairs,

General Nipat Thonglek, Deputy Permanent Secretary, Ministry of Defence,

Lieutenant General Nopphadon Chotsiri, Director-General, Royal Thai Survey Department, Royal Thai Armed Forces Headquarters,

Mr. Chukiart Ratanachaichan, Deputy-Secretary-General, Office of the Council of State, Office of the Prime Minister,

Mr. Jumpon Phansumrit, Expert Public Prosecutor, Office of Policy and Strategy, Office of the Attorney General,

Mr. Darm Boontham, Director, Boundary Division, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs;

Mr. James Crawford, S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, member of the Institut de droit international, Barrister,

Mr. Donald McRae, Hyman Soloway Professor, University of Ottawa, Member of the International Law Commission, associate member of the Institut de droit international, member of the Ontario Bar,

Mr. Alain Pellet, Professor at the University Paris Ouest, Nanterre-La Défense, President of the Société française pour le droit international, associate member of the Institut de droit international,

Mr. Thomas Grant, member of the New York Bar, Senior Research Associate, Lauterpacht Centre for International Law, University of Cambridge,

Ms Alina Miron, Researcher, Centre de droit international de Nanterre (CEDIN), University Paris Ouest, Nanterre-La Défense,

as Counsel;

Mr. Alastair Macdonald, M.B.E., Honorary Fellow, International Boundaries Research Unit, Department of Geography, Durham University,

Mr. Martin Pratt, Director of Research, International Boundaries Research Unit, Department of Geography, Durham University,

as Expert Advisers;

Mr. Ludovic Legrand, Researcher, Centre de droit international de Nanterre (CEDIN), University Paris Ouest, Nanterre-La Défense,

as Assistant Counsel,

THE COURT,

composed as above,

after deliberation,

*delivers the following Judgment:*

1. On 28 April 2011, the Kingdom of Cambodia (hereinafter “Cambodia”) filed in the Registry of the Court an Application instituting proceedings in which, referring to Article 60 of the Statute of the Court and Article 98 of the Rules of Court, Cambodia requests the Court to interpret the Judgment which it delivered on 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia v. Thailand)* (hereinafter the “1962 Judgment”). Cambodia on the same day, referring to Article 41 of the Statute and Article 73 of the Rules of Court, also filed a request for the indication of provisional measures in order to “cause [the] incursions [by Thailand] onto its territory to cease”.

2. In accordance with Article 40, paragraph 2, of the Statute, the Registrar communicated the Application forthwith to the Government of the Kingdom of Thailand (hereinafter “Thailand”); and, pursuant to paragraph 3 of that Article, all other States entitled to appear before the Court were notified of the Application. Pursuant to Article 73, paragraph 2, of the Rules of Court, the Registrar transmitted a certified copy of the request for the indication of provisional measures to Thailand.

3. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party exercised its right, conferred by Article 31, paragraph 3, of the Statute, to choose a judge *ad hoc* to sit in the case; Cambodia chose Mr. Gilbert Guillaume, and Thailand Mr. Jean-Pierre Cot.

4. By an Order of 18 July 2011, the Court, after rejecting Thailand's request for the case to be removed from the General List of the Court, indicated the following provisional measures:

- “(1) Both Parties shall immediately withdraw their military personnel currently present in the provisional demilitarized zone, as defined in paragraph 62 of the present Order, and refrain from any military presence within that zone and from any armed activity directed at that zone;
- (2) Thailand shall not obstruct Cambodia's free access to the Temple of Preah Vihear or Cambodia's provision of fresh supplies to its non-military personnel in the Temple;
- (3) Both Parties shall continue the co-operation which they have entered into within ASEAN and, in particular, allow the observers appointed by that organization to have access to the provisional demilitarized zone;
- (4) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.” (*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, I.C.J. Reports 2011 (II)*, pp. 555-556, para. 69, points B.1 to 4 of the operative part.)

It further decided that “each Party shall inform the Court as to its compliance with the above provisional measures” and that, “until the Court has rendered its judgment on the request for interpretation, it shall remain seised of the matters which form the subject of this Order” (*ibid.*, points C and D of the operative part).

5. Thailand filed written observations on Cambodia's Request for interpretation within the time-limit fixed by the Court for that purpose, in accordance with Article 98, paragraph 3, of the Rules of Court.

6. The Court decided to afford the Parties the opportunity of furnishing further written explanations, pursuant to Article 98, paragraph 4, of the Rules of Court. Each of the Parties filed such further explanations within the time-limits prescribed by the Court.

7. The Court also decided, in response to a request from Thailand to which Cambodia did not object, to give the Parties an opportunity to provide further oral explanations under Article 98, paragraph 4, of the Rules of Court.



8. In accordance with Article 53, paragraph 2, of the Rules of Court, the Court decided, after ascertaining the views of the Parties, that copies of the pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings.

9. Public hearings were held from 15 to 19 April 2013, at which the Court heard the oral arguments and replies of:

*For Cambodia:* H.E. Mr. Hor Namhong,  
Mr. Jean-Marc Sorel,  
Sir Franklin Berman,  
Mr. Rodman Bundy.

*For Thailand:* H.E. Mr. Virachai Plasai,  
Mr. Donald McRae,  
Ms Alina Miron,  
Mr. Alain Pellet,  
Mr. James Crawford.

10. At the hearings, a Member of the Court put a question to the Parties, to which replies were given orally and in writing, in accordance with Article 61, paragraph 4, of the Rules of Court. Pursuant to Article 72 of the Rules of Court, each Party presented written observations on the written replies received from the other.

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11. In the Application, Cambodia presented the following claims:

“Given that ‘the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia’ (first paragraph of the operative clause [of the 1962 Judgment]), which is the legal consequence of the fact that the Temple is situated on the Cambodian side of the frontier, as that frontier was recognized by the Court in its Judgment, and on the basis of the facts and arguments set forth above, Cambodia respectfully asks the Court to adjudge and declare that:

The obligation incumbent upon Thailand to ‘withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory’ (second paragraph of the operative clause [of the 1962 Judgment]) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the region of the Temple and its vicinity by the line on the Annex I map, on which the Judgment of the Court is based.”

12. In the written proceedings, the Parties made the following submissions:

*On behalf of the Government of Cambodia,*

in the further explanations presented on 8 March 2012:

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

- (i) that the submissions made to the Court by each of the two Parties show, both in the light of the facts and in themselves, that the Parties are in disagreement regarding the meaning and scope of the 1962 Judgment;
- (ii) that the disputes between the Parties concern both the first and second paragraphs of the *dispositif* of the 1962 Judgment, as well as the link between those two paragraphs;
- (iii) that the dispute relating to the first paragraph concerns the meaning and scope of the Court’s use of the term ‘territory’ (‘is situated in territory under the sovereignty of Cambodia’), particularly in connection with the Court’s decisions regarding the legal status of the Annex I map as representing the frontier between the two States;
- (iv) that the dispute relating to the second paragraph concerns the meaning and scope of the Court’s use of the terms ‘vicinity’ and ‘territory’ (‘at the Temple, or in its vicinity on Cambodian territory’);
- (v) that the dispute relating to the link between the two paragraphs relates to the question of whether the second paragraph must be read in the light of the first paragraph, or whether the particular terms employed by the Court in the second paragraph must be read as seeking to limit the general scope of the first paragraph;
- (vi) that each of those disputes concerns matters decided by the Court with binding force in the Judgment;
- (vii) that on account of the terms used and given the context (specifically, the Court’s decision concerning the legal status of the Annex I map as representing the frontier between the two States), the first paragraph of the *dispositif* must be understood as determining, with binding force, that all of the disputed area that lies on the Cambodian side of the line on the Annex I map — including, therefore, the Temple of Preah Vihear itself — is to be regarded as falling under Cambodian sovereignty;
- (viii) that on account of the terms used and given the context (particularly the expression ‘in consequence’ linking it to the first paragraph), the second paragraph of the *dispositif* must be understood as representing a

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

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

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

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

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

*On behalf of the Government of Thailand,*

in the written observations presented on 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 the 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;
- in the further alternative, 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.”

in the further explanations presented on 21 June 2012:

“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.”

13. At the oral proceedings, the following final submissions were presented by the Parties:

*On behalf of the Government of Cambodia,*

at the hearing of 18 April 2013:

- “— Rejecting the submissions of the Kingdom of Thailand, and on the basis of the foregoing, Cambodia respectfully asks the Court, under Article 60 of its Statute, to respond to Cambodia’s request for interpretation of its Judgment of 15 June 1962.
- In Cambodia’s view: ‘the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia’ (first paragraph of the operative clause), which is the legal consequence of the fact that the Temple is situated on the Cambodian side of the frontier, as that frontier was recognized by the Court in its Judgment. Therefore, the obligation incumbent upon Thailand to ‘withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory’ (second paragraph of the operative clause) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the region of the Temple and its vicinity by the line on the Annex I map, on which the Judgment of the Court is based.”

*On behalf of the Government of Thailand,*

at the hearing of 19 April 2013:

“In accordance with Article 60 of the Rules of Court and having regard to the Request for Interpretation of the Kingdom of Cambodia and its written and oral pleadings, and in view of the written and oral pleadings of the Kingdom of Thailand, 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 with binding force the boundary line between the Kingdom of Thailand and the Kingdom of Cambodia, nor does it fix the limit of the vicinity of the Temple.”

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## **I. HISTORICAL BACKGROUND**

14. The Temple of Preah Vihear is situated on a promontory of the same name in the eastern part of the Dangrek range of mountains, “which, in a general way, constitutes the boundary between the two countries in this region — Cambodia to the south and Thailand to the north” (*Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 15).

15. On 13 February 1904, France (of which Cambodia was then a protectorate) and Siam (as Thailand was then called) concluded a treaty (hereinafter the “1904 Treaty”) which specified that the frontier in the Dangrek sector was to follow the watershed line “between the basins of the Nam Sen and the Mekong, on the one hand, and the Nam Moun, on the other hand”. The 1904 Treaty provided for the establishment of Mixed Commissions composed of officers appointed by the two Parties and responsible for delimiting the frontier between the two territories. The first Mixed Commission was thus established in 1904. The final stage of the operation of delimitation was to be the preparation and publication of maps, a task assigned to a team of four French officers,

three of whom had been members of the Mixed Commission. In 1907, that team prepared a series of 11 maps covering a large part of the frontiers between Siam and French Indo-China (of which Cambodia formed part). In particular, it drew up a map entitled “Dangrek — Commission of Delimitation between Indo-China and Siam”, on which the frontier passed to the north of Preah Vihear, thus leaving the Temple in Cambodia. That map was duly communicated to the Siamese Government in 1908, but was never approved by the Mixed Commission which had ceased to function some months before the production of the map (see *Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 21).

16. Following Cambodia’s independence on 9 November 1953, Thailand occupied the Temple of Preah Vihear in 1954. Negotiations between the parties regarding the Temple were unsuccessful and, on 6 October 1959, Cambodia seised the Court by unilateral application. Thailand filed preliminary objections to the jurisdiction of the Court.

17. In its Judgment of 26 May 1961 on Thailand’s preliminary objections, the Court found that it had jurisdiction to entertain the dispute concerning the *Temple of Preah Vihear (Cambodia v. Thailand)* and set out the subject-matter of that dispute in the following terms:

“In the present case, Cambodia alleges a violation on the part of Thailand of Cambodia’s territorial sovereignty over the region of the Temple of Preah Vihear and its precincts. Thailand replies by affirming that the area in question lies on the Thai side of the common frontier between the two countries, and is under the sovereignty of Thailand. This is a dispute about territorial sovereignty.” (*I.C.J. Reports 1961*, p. 22.)

18. During the merits phase, Cambodia relied upon the map referred to in paragraph 15 above, which was annexed to its pleadings and was referred to as the “Annex I map”. Cambodia argued that this map had been accepted by Thailand and had entered into the treaty settlement, thereby becoming binding on the two States. According to Cambodia, the line shown on the map (hereinafter “the Annex I map line”) had thus become the frontier between the two States. Thailand denied that it had accepted the Annex I map, or that the map had otherwise become binding upon it, and maintained that the boundary between the two States followed the watershed line, as provided in the text of the 1904 Treaty, with the result, according to Thailand, that the Temple lay in Thai territory (cf. *Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 21).

19. In the 1959 Application and its Memorial, Cambodia asked the Court to rule: (1) that Thailand was under an obligation to withdraw the detachments of its armed forces stationed in the ruins of the Temple of Preah Vihear and (2) that the territorial sovereignty over the Temple of Preah Vihear belonged to Cambodia (*ibid.*, p. 9). In its final submissions presented at the conclusion of the oral proceedings in 1962, however, Cambodia went further, asking the Court to rule: (1) that the Annex I map had been drawn up and published in the name and on behalf of the Mixed Commission set up by the 1904 Treaty, that it set forth the decisions taken by the said

Commission and that, by reason of that fact and also of the subsequent agreements and conduct of the Parties, it presented a treaty character; (2) that the frontier line between Cambodia and Thailand, in the disputed region in the neighbourhood of the Temple, was the Annex I map line; (3) that the Temple of Preah Vihear was situated in territory under Cambodian sovereignty; (4) that Thailand was under an obligation to withdraw the detachments of armed forces it had stationed since 1954 in Cambodian territory in the ruins of the Temple; and (5) that Thailand must return property removed from the Temple since 1954 (*Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 11).

20. In its Judgment on the merits, delivered on 15 June 1962, the Court stated that “the subject of the dispute submitted to the Court [was] confined to a difference of view about sovereignty over the region of the Temple of Preah Vihear” (*Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 14). For that reason, the Court concluded that Cambodia’s first and second final submissions could 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” (*ibid.*, p. 36). In its reasoning, the Court stated that, in 1908-1909, Thailand had accepted the Annex I map “as representing the outcome of the work of delimitation, and hence recognized the line on that map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory” (*ibid.*, p. 32).

21. The operative part of the Judgment reads as follows:

“The Court,

[1] by nine votes to three, finds that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia;

finds in consequence

[2] by nine votes to three, 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;

[3] by seven votes to five, 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.” (*Ibid.*, pp. 36-37.)

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

23. On 5 January 1963, the Head of State of Cambodia, Prince Sihanouk, and a large party of Cambodian officials and monks, as well as diplomatic representatives of other States, visited the Temple. During the course of this visit, they remained within the area enclosed by the barbed wire fence. The events of this period are considered in paragraphs 38 to 42 below.

24. On 21 June 1997, the Parties established the “Thai-Cambodian Joint Commission on Demarcation for Land Boundary”, entrusting it with the task “of placing markers in order to indicate the land boundary between the two countries”. On 14 June 2000, they concluded a “Memorandum of Understanding on the Survey and Demarcation of the Land Boundary” (hereinafter the “Memorandum of Understanding”), which provided for the demarcation of the frontier line between the two States and included, in particular, the terms of reference for the work of the Thai-Cambodian Joint Commission on Demarcation for Land Boundary.

25. In 2007, Cambodia requested that the UNESCO World Heritage Committee inscribe the site of the Temple of Preah Vihear on the World Heritage List established under the provisions of the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage (hereinafter the “World Heritage Convention”). To that end, it communicated to the Committee, in accordance with the Guidelines for the Implementation of the World Heritage Convention adopted by the Committee, a map depicting the site of the property. Cambodia included on the map what it considered to be the course of the frontier separating it from Thailand, the actual site of the monument and a buffer zone (described in the Committee’s Guidelines as “an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property”). According to that map, the entire promontory of Preah Vihear, as well as the hill of Phnom Trap<sup>1</sup> immediately to the west of the promontory, were within Cambodian territory.

26. On 17 May 2007, Thailand contested that map by means of an aide-memoire, which it sent to Cambodia and to the World Heritage Committee, to which it attached its own map showing the international boundary between the two States as following the line drawn on the map attached to the 1962 Resolution of the Thai Council of Ministers (see paragraph 22 above).

27. On 7 July 2008, the World Heritage Committee decided to inscribe the site of the Temple of Preah Vihear on the World Heritage List, albeit with what the Committee described as “a revised graphic plan of the property”, which excluded the area disputed between Cambodia and Thailand.

28. Following the Temple’s inscription on that List, a number of armed incidents took place in the border area close to the Temple. On 14 February 2011, the United Nations Security Council called for a permanent ceasefire to be established and expressed its support for the efforts of the

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<sup>1</sup>In the original proceedings, and in the 1962 Judgment, the spelling used was “Pnom”. However, the spelling “Phnom” is the one generally used today. It has therefore been employed in the present Judgment.



Association of South-East Asian Nations (“ASEAN”) to find a solution to the conflict. The Chair of ASEAN, Indonesia, was subsequently invited by Cambodia and by Thailand to send observers to the affected border areas so as to avoid further armed clashes. This invitation was welcomed by the Foreign Ministers of ASEAN and their representatives but was not acted upon.

29. It is recalled that, on 28 April 2011, Cambodia filed a Request for interpretation of the 1962 Judgment, together with a request for the indication of provisional measures (see paragraph 1 above). In its Order of 18 July 2011 on provisional measures, the Court found that there existed, *prima facie*, a dispute within the meaning of Article 60 of the Statute and indicated provisional measures which, in particular, required both Parties to withdraw their military personnel from a “provisional demilitarized zone” around the Temple, as defined by the Court (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 537) (see paragraph 4 above).

## II. JURISDICTION AND ADMISSIBILITY

30. The Court will first determine whether it has jurisdiction over the Request for interpretation submitted by Cambodia and, if so, whether this Request is admissible.

### 1. Jurisdiction of the Court under Article 60 of the Statute

31. Cambodia submitted its Request for interpretation pursuant to Article 60 of the Statute of the Court (see paragraph 29 above). That Article provides that

“The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.”

This provision is supplemented by Article 98, paragraph 1, of the Rules of Court, which stipulates that “[i]n the event of dispute as to the meaning or scope of a judgment any party may make a request for its interpretation . . .”. Further, Article 98, paragraph 2, of the Rules of Court, requires a party to indicate in its request for interpretation “the precise point or points in dispute as to the meaning or scope of the judgment”.

32. The Court begins by recalling that “[its] jurisdiction on the basis of Article 60 of the Statute is not preconditioned by the existence of any other basis of jurisdiction as between the parties to the original case” and that “by virtue of Article 60 of the Statute, [the Court] may entertain a request for interpretation provided that there is a ‘dispute as to the meaning or scope’ of any judgment rendered by it” (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 542, para. 21; *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, paras. 44 and 46; *Judgment, I.C.J. Reports 2009*, p. 9, paras. 15-16).

33. The Court also recalls that, while the English text of Article 60 uses the term “dispute”, which also appears in the English text of Article 36, paragraph 2, of the Statute, the French text of Article 60 uses the term “contestation”, which has a broader meaning than “différend”, the term used in the French text of Article 36, paragraph 2. The Court further recalls that “a dispute within the meaning of Article 60 of the Statute must be understood as a difference of opinion or views between the parties as to the meaning or scope of a judgment rendered by the Court” (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 542, para. 22). As the Court has previously confirmed, the existence of a dispute under Article 60 of the Statute “does not require the same criteria to be fulfilled as those determining the existence of a dispute under Article 36, paragraph 2, of the Statute” (*ibid.*; see also *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 10-12; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America), Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 325, para. 53). Furthermore, it is not required that a dispute as to the meaning and scope of a judgment “should have manifested itself in a formal way; . . . it should be sufficient if the two Governments have in fact shown themselves as holding opposite views in regard to the meaning or scope of a judgment of the Court” (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 11; see also *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985*, pp. 217-218, para. 46; *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*, pp. 325-326, para. 54).

34. In accordance with the jurisprudence of the Court, “a dispute within the meaning of Article 60 of the Statute must relate to the operative clause of the judgment in question and cannot concern the reasons for the judgment except in so far as these are inseparable from the operative clause” (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 542, para. 23; see also *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections (Nigeria v. Cameroon), Judgment, I.C.J. Reports 1999 (I)*, p. 35, para. 10; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America), Provisional Measures, Order of 16 July 2008, I.C.J. Reports 2008*, p. 323, para. 47) or, in the words of the Permanent Court, constitute “a condition essential to the Court’s decision” (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 20). That said, “a difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of Article 60 of the Statute” (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 544, para. 31; see also *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 11-12).

35. In its Order on provisional measures in the present case, the Court observed that “a difference of opinion or views appears to exist between [the Parties] as to the meaning or scope of the 1962 Judgment” and that “this difference appears to relate” to three specific aspects of that Judgment:

“in the first place, to the meaning and scope of the phrase ‘vicinity on Cambodian territory’ used in the second paragraph of the operative clause of the Judgment . . . next, to the nature of the obligation imposed on Thailand, in the second paragraph of the operative clause of the Judgment, to ‘withdraw any military or police forces, or other guards or keepers’, and, in particular, to the question of whether this obligation is of a continuing or an instantaneous character; and . . . 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 . . .” (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, p. 544, para. 31).

36. The Court stated, however, that the decision rendered on the request for the indication of provisional measures “in no way prejudice[d] any question that the Court may have to deal with relating to the Request for interpretation” (*ibid.*, p. 554, para. 68). Accordingly, the Court must at this stage determine whether a dispute indeed exists between the Parties as to the meaning or scope of the operative clause of the 1962 Judgment, and, if so, identify the precise point or points that require interpretation. The Court will address these two questions in turn.

#### **A. The existence of a dispute**

37. Cambodia maintains that the Parties are in dispute as to the meaning and scope of the 1962 Judgment, specifically in the following respects: (a) whether the Court in the 1962 Judgment did or did not recognize with binding force the Annex I map line as constituting the frontier between the two Parties in the area of the Temple; (b) whether or not the meaning and scope of the phrase “situated in territory under the sovereignty of Cambodia” and the phrase “its vicinity on Cambodian territory” included, respectively, in the first and second paragraphs of the operative clause of the 1962 Judgment, must be understood by reference to the line depicted on the Annex I map which the Court “recognized” as constituting the frontier between the Parties in the area of the Temple; and (c) whether or not Thailand’s obligation to withdraw from the area of “the Temple [and] its vicinity on Cambodian territory”, deriving from the second paragraph of the operative clause, is of a continuing character.

38. Cambodia asserts that this dispute emerged immediately after the 1962 Judgment. In particular, Cambodia maintains that, immediately after the 1962 Judgment and throughout the 1960s, it continually protested against Thailand’s unilateral determination, in July 1962, of the “vicinity of the Temple” (as manifested by the barbed wire fence and notices erected by Thailand), and against Thailand’s view that the geographical scope of its obligation to withdraw under the 1962 Judgment was limited to the ruins of the Temple and the ground on which the Temple stood. Cambodia emphasizes that in those protests it expressed its view that this unilateral determination by Thailand was incompatible with the 1962 Judgment.

39. Cambodia acknowledges that it made no protests either during the period of armed conflicts in Cambodia or during the succeeding years when, according to Cambodia, Thailand refrained from imposing its unilateral determination of the vicinity of the Temple. Nonetheless, Cambodia contends that the dispute between the Parties concerning this issue re-emerged in 2007-2008, following Cambodia's request for the inscription of the site of the Temple on the UNESCO World Heritage List, and continued until the time of its Request for interpretation. Cambodia argues that this dispute is evidenced by a series of incidents which occurred in the vicinity of the Temple after 2008 and into early 2011, as well as by certain events and statements of the Parties following Cambodia's request for the inscription of the site of the Temple on the UNESCO World Heritage List in 2007. In particular, Cambodia refers to the statements made by each Party in their respective correspondence with the United Nations in the context of Cambodia's complaint concerning the alleged incursions of Thai forces into Cambodian territory in the area of the Temple.

40. For its part, Thailand denies the existence of a dispute within the meaning of Article 60 of the Statute, since the language of the 1962 Judgment is clear and in need of no interpretation. Thailand asserts that Cambodia accepted (or, at least, did not contest) that Thailand had implemented the 1962 Judgment by withdrawing to the Thai Council of Ministers' line. According to Thailand, the events and statements relied upon by Cambodia in respect of the period following Cambodia's request for the inscription of the site of the Temple on the UNESCO World Heritage List reflect only an ongoing delimitation dispute between the Parties. Noting that this delimitation dispute was not part of the dispute before the Court in 1962 and that the Court had expressly declined to pronounce upon it in the operative part of the 1962 Judgment, Thailand argues that this issue cannot be brought before the Court today in the context of proceedings under Article 60 of the Statute.

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41. The Court observes that the events and statements dating from the period immediately following the 1962 Judgment clearly demonstrate that Thailand was of the view that the Court had left the term "vicinity of the Temple" in the second operative paragraph undefined and that Thailand could thus determine unilaterally the limits of that "vicinity". In particular, this position is reflected in the 1962 Resolution of the Thai Council of Ministers which determined the

"location of the limit of the vicinity of the [Temple], from which Thailand has the obligation to withdraw police forces, guards or keepers, on the principle that Cambodia will only obtain the ruins of the [Temple] and the ground on which the Temple stood".

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

42. Contrary to Thailand’s assertions, the record before the Court shows that Cambodia did not accept Thailand’s withdrawal as fully implementing the 1962 Judgment. Rather, Cambodia protested the Thai presence on territory which, according to Cambodia, the 1962 Judgment had recognized as Cambodian. Cambodia also complained that the barbed wire fence erected by Thailand “encroach[ed] fairly significantly” upon that territory in contravention of the Court’s Judgment. In particular, the Ministry of Foreign Affairs of Cambodia in an aide-memoire issued in November 1962 stated, *inter alia*, that “this limit [of the temple zone]”, marked with barbed wire, “was in complete disagreement with the Court’s decision which confirmed the frontier as it appeared on the 1907 [Annex I] map”.

43. This divergence of views reappeared in the Parties’ correspondence following Cambodia’s request for the inscription of the site of the Temple on the UNESCO World Heritage List in 2007-2008. For instance, on 17 May 2007, the Thai Ministry of Foreign Affairs sent an aide-memoire to the Cambodian Minister for Foreign Affairs and the World Heritage Committee, objecting to “Cambodia’s nomination file . . . in particular, the delineation of the indicative boundary line, the monumental zone, and the development zone” depicted on the map attached to the file which, in Thailand’s view, implied “the exercise of Cambodian sovereignty in the area where [the two] countries assert different claims on boundary line”. Thailand further contended that this depiction “cannot in any way prejudice the existing international boundary between Thailand and Cambodia” as it appeared in Thailand’s own map series L7017.

44. On 18 and 19 July 2008, Cambodia sent letters to the President of the Security Council and the President of the General Assembly of the United Nations, stating *inter alia* that “[o]n 15 July 2008, about 50 Thai soldiers crossed into . . . Cambodia’s territory about 300 meters from the Temple of Preah Vihear”. Cambodia asserted that “[t]aking into account [the 1962 Judgment of the Court], the only map which legally delimits the border in the area of the Temple of Preah Vihear is the ‘Annex I map’ based on which the Court made its judgment”.

In response, Thailand, in a letter sent on 21 July 2008 to the President of the Security Council, stated *inter alia* that “the area adjacent to the Temple of Preah Vihear . . . is part of Thailand’s territory” and that “Thailand’s position in this regard is fully consistent with the [1962 Judgment], which Thailand has fully and duly implemented”. Thailand further stated that

“Cambodia’s territorial claim in this area is based on Cambodia’s unilateral understanding of the said ICJ Judgment that a boundary line was determined by the Court in this Judgment. Thailand *contests* this unilateral understanding since the ICJ ruled in this case that it did not have jurisdiction over the question of land boundary

and did not in any case determine the location of the boundary between Thailand and Cambodia . . . Taking into account Article 59 of the Statute of the ICJ and the fact that the issue before the ICJ in this case was limited solely to the question of sovereignty over the region of the Temple of Preah Vihear, the boundary line claimed by Cambodia has no legal status from the Judgment.” (Emphasis added.)

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

## **B. Subject-matter of the dispute before the Court**

46. In its final submissions Cambodia expressed the view that

“‘[t]he Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia’ (first paragraph of the operative clause), which is the legal consequence of the fact that the Temple is situated on the Cambodian side of the frontier, as that frontier was recognized by the Court in its Judgment. Therefore, the obligation incumbent upon Thailand to ‘withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory’ (second paragraph of the operative clause) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the area of the Temple and its vicinity by the line of the Annex I map, on which the Judgment of the Court is based.”

47. In its final submissions, Thailand requested 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 with binding force the boundary line between the Kingdom of Thailand and the Kingdom of Cambodia, nor does it fix the limit of the vicinity of the Temple”.

48. The Court observes that both Parties accept that there is a disagreement between them as to whether or not the Court, in the 1962 Judgment, decided with binding force that the Annex I map line represents the frontier between them in the area of the Temple. The Parties' divergence of views on this issue is further reflected in their positions expressed in the events and statements analysed above (see paragraphs 41-44) and clarified in the course of the present proceedings. Contrary to Thailand's assertions concerning the Court's lack of jurisdiction in this regard, the Court reiterates that "a difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of Article 60 of the Statute" (see paragraph 34 above).

49. Further, the Court considers that the Parties' positions, expressed during the period following the 1962 Judgment as well as that following Cambodia's request to have the site of the Temple inscribed on the World Heritage List (see paragraphs 41-44 above) and in the course of the present proceedings, also reveal their divergent views as to the meaning and scope of the phrase "vicinity on Cambodian territory" in the second operative paragraph of the 1962 Judgment and the relationship between that paragraph and the Court's finding, in the first operative paragraph, that the Temple is situated in "territory under the sovereignty of Cambodia". Cambodia maintains that the Annex I map line necessarily determines the meaning and scope of the operative clause since the Court's recognition of that line as representing the frontier between the Parties in the Temple area constituted the "essential" reason underlying its conclusions therein. By contrast, Thailand asserts that the Court's reasoning concerning the Annex I map line cannot be seen as "essential" and that it is therefore neither necessary nor possible to resort to that reasoning in order to elucidate the meaning and scope of the operative clause of the 1962 Judgment. Rather, Thailand asserts that the terms "territory" and "vicinity" were not explicitly defined by the Court and should be interpreted as strictly confined to the grounds on which the Temple stands and its immediate surroundings — the "Temple area", as defined by the 1962 Resolution of the Thai Council of Ministers.

50. Finally, the Court turns to the contention that the Parties disagree about the nature of Thailand's obligation to withdraw from "the Temple [and] its vicinity on Cambodian territory", deriving from the second paragraph of the operative clause of the 1962 Judgment. The correspondence of the Parties surrounding the inscription of the site of the Temple on the World Heritage List, and the armed clashes that took place in the border area close to the Temple (see paragraph 28 above), reveal that the Parties disagreed, prior to the filing of Cambodia's Request for interpretation, about where Thai personnel could lawfully be located in the light of the 1962 Judgment. That difference of views has been confirmed by the written and oral arguments of the Parties in the present proceedings.

51. According to Cambodia, Thailand's obligation to withdraw relates to an area which the Judgment had placed under Cambodia's sovereignty and must consequently be understood as having a continuing character, in line with the general principle of respect for territorial sovereignty and integrity of States. Thus, in its final submissions, Cambodia claims that Thailand's obligation to withdraw "is a particular consequence of the general and continuing obligation to respect the

integrity of the territory of Cambodia” (see paragraph 13 above). Thailand accepts that it has a “general and continuing obligation” under international law to respect the sovereignty and territorial integrity of Cambodia. However, it rejects Cambodia’s assertion that “the obligation to withdraw as specified in the [1962] Judgment has the same character”. Rather, Thailand maintains that this latter obligation applied to its relations with Cambodia only “in respect of one place at one time” and that it fully discharged that obligation once it withdrew from the vicinity of the Temple in accordance with the 1962 Resolution of the Thai Council of Ministers.

52. In the light of the above considerations, the Court concludes that the dispute between the Parties as to the meaning and scope of the 1962 Judgment relates to three specific aspects thereof. First, there is a dispute over whether the 1962 Judgment did or did not decide with binding force that the line depicted on the Annex I map constitutes the frontier between the Parties in the area of the Temple. Secondly, there is a closely related dispute concerning the meaning and scope of the phrase “vicinity on Cambodian territory”, referred to in the second operative paragraph of the 1962 Judgment, a paragraph which the Court stated was a consequence of the finding, in the first operative paragraph, that the Temple is situated in “territory under the sovereignty of Cambodia”. Lastly, there is a dispute regarding the nature of Thailand’s obligation to withdraw imposed by the second paragraph of the operative part.

## **2. Admissibility of Cambodia’s Request for interpretation**

53. Thailand maintains that Cambodia’s Request for interpretation is inadmissible since its real purpose is not to obtain the Court’s interpretation of the 1962 Judgment but, rather, to obtain the Court’s ruling on the Parties’ delimitation dispute in the area of the Temple by having the Court recognize with binding force that the Annex I map line constitutes their common frontier in that area. Thailand recalls that the Court explicitly refused to pronounce on the Parties’ common frontier in the Temple area in 1962 and asserts that it is therefore barred from determining this question now, through the interpretation of the 1962 Judgment.

54. Cambodia insists that it is not requesting the Court to delimit any boundary between the Parties on the basis of the Annex I map. Rather, it is “merely asking the Court to explain the findings that it reached in its 1962 Judgment . . . in particular as regards the relationship between those findings and the meaning and scope of the *dispositif* of the Judgment”.



55. The Court recalls that the process of interpretation is premised upon the “primacy of the principle of *res judicata*” which “must be maintained” (*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)*, pp. 36-37, para. 12). Accordingly, as the Court has previously held:

“[t]he 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. Any other construction of Article 60 of the Statute would nullify the provision of the article that the judgment is final and without appeal.” (*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru)*, *Judgment, I.C.J. Reports 1950*, p. 402; *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)*, pp. 36-37, para. 12.)

56. Having regard to the Parties’ divergent views over the meaning and scope of the 1962 Judgment, identified above (see paragraph 52), the Court considers that there is a need for the interpretation of the second operative paragraph of the 1962 Judgment and of the legal effect of what the Court said regarding the Annex I map line. Within these limits, Cambodia’s Request is admissible. Nevertheless, in line with the Court’s previous observation on this matter, in as far as Cambodia’s Request for interpretation “may go further, and seek ‘to obtain an answer to questions not [decided with binding force]’, or to achieve a revision of the Judgment, no effect can be given to it” (*Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya)*, *Judgment, I.C.J. Reports 1985*, p. 223, para. 56).

### **3. Conclusion**

57. In the light of the foregoing, the Court concludes that a dispute exists between the Parties as to the meaning and scope of the 1962 Judgment pursuant to Article 60 of the Statute. Accordingly, the Court has jurisdiction to entertain Cambodia’s Request for interpretation of the 1962 Judgment, and the Request is admissible.

## **III. THE INTERPRETATION OF THE 1962 JUDGMENT**

58. The Court now turns to the interpretation of the 1962 Judgment.

### **1. Positions of the Parties**

59. Cambodia maintains that the first and second operative paragraphs of the Judgment are “symbiotically linked”: in the first paragraph, the Court held that the Temple was “situated in territory under the sovereignty of Cambodia”, while in the second paragraph it found, in

consequence, that Thailand was required to withdraw the personnel which it had stationed “at the Temple, or in its vicinity on Cambodian territory”. According to Cambodia, the requirement to withdraw, in the second operative paragraph, can only be understood as a requirement that Thailand should withdraw the personnel from the Temple, and the Cambodian territory in its vicinity, to Thai territory and that the Cambodian territory referred to in the second operative paragraph coincides with the territory identified as being under Cambodian sovereignty in the first operative paragraph. In Cambodia’s view, the obligation to withdraw has a continuing character, in the sense that the requirement that Thailand withdraw its forces implied an obligation not to return them at any future time to the Cambodian territory identified in the Judgment.

60. For Cambodia, these findings in the operative part are the consequence of the Court’s determination, in the reasoning of the 1962 Judgment, that the Annex I map line constituted the frontier between the Parties in the region of the Temple (see paragraph 20 above). Cambodia maintains that this part of the reasoning stated a condition essential for the findings contained in the operative part of the 1962 Judgment and thus has binding force. Accordingly, the area of territory to which the Court referred, in the first operative paragraph, and from which, in the second operative paragraph, it required Thailand to withdraw, extended beyond the confines of the Temple itself and included all of the land in the disputed area up to the Annex I map line. Cambodia considers that this area encompasses the whole promontory of Preah Vihear and the hill of Phnom Trap as far north as the Annex I map line. Cambodia rejects the Thai Council of Ministers’ line (see paragraph 22 above) as a unilateral action which ran counter to the reasoning of the 1962 Judgment. According to Cambodia, the practice of the Parties since 1962 has no relevance for the interpretation of the 1962 Judgment, although it denies that its conduct amounted to acceptance of Thailand’s interpretation of the 1962 Judgment. Cambodia maintains that the Memorandum of Understanding deals only with the demarcation of the frontier, thereby implying that delimitation of the frontier has already occurred.

61. Thailand maintains that the dispute which was before the Court in 1962 concerned territorial sovereignty, not delimitation of a frontier, and that the 1962 Judgment decided only that the Temple fell under the sovereignty of Cambodia. The Annex I map was significant only as evidence of whether the Temple lay in Cambodian territory and did not serve the purpose of defining the boundary, a task which had to be carried out by agreement between the Parties. In Thailand’s view, it would have been contrary to the principle *non ultra petita* for the Court to have ruled upon the boundary line, since Cambodia had not included any request for a ruling on the map in its original submissions and the Court had declined to entertain the new submissions which Cambodia had advanced at the end of the oral proceedings.

62. Thailand also argues that more than one version of the Annex I map is in existence and that the different versions contain important discrepancies. In addition, Thailand claims that there are important deficiencies in the Annex I map, including topographical and positioning errors, that it is imprecise and that it departs in significant respects from the watershed line stipulated in the 1904 Treaty. According to Thailand, it would be impossible to transpose the Annex I map line onto a modern map without more information.

63. In any case, Thailand contends, the Annex I map was only one of the reasons on which the Judgment was based, since the Court also relied upon entirely distinct grounds, in particular, the visit to the Temple in 1930 by Prince Damrong of Thailand, which the Court described as “significant” and considered to be recognition by Thailand of the sovereignty of Cambodia (then a protectorate of France) over the Temple (*I.C.J. Reports 1962*, pp. 30-31). Thailand concludes that the 1962 Judgment decided only that Cambodia had sovereignty over the small parcel of land on which the ruins of the Temple are located, the area which was later depicted on the map attached to the 1962 Resolution of the Thai Council of Ministers. According to Thailand, the Judgment did not deal with sovereignty over the remainder of the Preah Vihear promontory or the hill of Phnom Trap.

64. Thailand denies that the obligation to withdraw in the second operative paragraph of the 1962 Judgment has a continuing character, in the sense suggested by Cambodia. Thailand argues that it discharged its obligation when it withdrew its personnel behind the Council of Ministers’ line and that Cambodia accepted that line when Prince Sihanouk visited the Temple in 1963 (see paragraph 23 above). Thereafter, the obligation not to enter Cambodian territory was derived not from the 1962 Judgment but from the duty, arising under general international law, of one State to respect the territorial integrity of another.

65. Thailand concludes that the delimitation of the frontier in the relevant area remains to be accomplished and that the Memorandum of Understanding provides the mechanism for the Parties to undertake that task.

## **2. The role of the Court under Article 60 of the Statute**

66. The Court begins by recalling that its role under Article 60 of the Statute is to clarify the meaning and scope of what the Court decided in the judgment which it is requested to interpret (*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru)*, *I.C.J. Reports 1950*, p. 402). Accordingly, the Court must keep strictly within the limits of the original judgment and cannot question matters that were settled therein with binding force, nor can it provide answers to questions the Court did not decide in the original judgment.

67. While the existence of a dispute between the parties regarding the original judgment is a prerequisite for interpretation under Article 60 of the Statute, the way in which that dispute is formulated by one or both of the parties is not binding on the Court. As the Permanent Court of International Justice explained:

“the Court does not consider itself as bound simply to reply ‘yes’ or ‘no’ to the propositions formulated in the submissions of [the Applicant]. It adopts this attitude because, for the purpose of the interpretation of a judgment, it cannot be bound by formulae chosen by the Parties concerned, but must be able to take an unhampered decision.” (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*, *Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 15-16.)

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

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

70. Thailand argues that the principle of *non ultra petita* precluded the Court from going beyond the submissions of the Parties and that the 1962 Judgment must be interpreted accordingly.

71. The principle of *non ultra petita* is well established in the jurisprudence of the Court (*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia/Peru)*, Judgment, I.C.J. Reports 1950, p. 402; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, pp. 18-19, para. 43) and is one reason why the claims contained in the final submissions of the Parties in the original case are of relevance in interpreting the 1962 Judgment. Nevertheless, that principle cannot justify an interpretation which runs counter to the terms of the 1962 Judgment. The Court in 1962 necessarily made an assessment of the scope of the *petitum* before it; Article 60 of the Statute does not give the Court the power today to substitute a different assessment for that made at the time of the Judgment.

72. Cambodia suggests that the headnote to the 1962 Judgment demonstrated that the Judgment determined the course of the frontier in the relevant area.

73. Under Article 95, paragraph 1, of the Rules of Court (Article 74, paragraph 1, of the Rules of Court of 1946 applicable in 1962), the headnote is not one of the elements of the Judgment and it does not form part thereof. Moreover, the purpose of the headnote is only to give the reader a general indication of the points examined in a judgment; it does not constitute an authoritative summary of what the Court has actually decided. The Court does not consider that the headnote to the 1962 Judgment assists in resolving the questions of interpretation raised in the present proceedings.

74. Thailand makes extensive reference to the conduct of the Parties between 15 June 1962, when the Judgment was delivered, and 2007-2008, when the present dispute may be said to have crystallized. The principal purpose for which Thailand refers to that conduct is in connection with its argument that there is no dispute, within the meaning of Article 60, between the Parties, an issue to which that conduct is of course relevant (see paragraphs 38-45 above). However, Thailand suggests that this conduct is also relevant to the interpretation of the Judgment.

75. A judgment of the Court cannot be equated to a treaty, an instrument which derives its binding force and content from the consent of the contracting States and the interpretation of which may be affected by the subsequent conduct of those States, as provided by the principle stated in

Article 31, paragraph 3 (b), of the 1969 Vienna Convention on the Law of Treaties. A judgment of the Court derives its binding force from the Statute of the Court and the interpretation of a judgment is a matter of ascertaining what the Court decided, not what the parties subsequently believed it had decided. The meaning and scope of a judgment of the Court cannot, therefore, be affected by conduct of the parties occurring after that judgment has been given.

More generally, as the Permanent Court of International Justice made clear,

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

### **3. The principal features of the 1962 Judgment**

76. Three features of the 1962 Judgment stand out when that Judgment is read in the light of the considerations set out above. First, the Court considered that it was dealing with a dispute regarding territorial sovereignty over the area in which the Temple was located and that it was not engaged in delimiting the frontier. Thus, the Court, referring back to its 1961 Judgment on Preliminary Objections (*Temple of Preah Vihear (Cambodia v. Thailand), I.C.J. Reports 1961, p. 22*, quoted in paragraph 17 above), defined the matter before it in the following terms:

“Accordingly, the subject of the dispute submitted to the Court is confined to a difference of view about sovereignty over the region of the Temple of Preah Vihear. To decide this question of territorial sovereignty, the Court must have regard to the frontier line between the two States in this sector. Maps have been submitted to it and various considerations have been advanced in this connection. The Court will have regard to each of these only to such extent as it may find in them reasons for the decision it has to give in order to settle the sole dispute submitted to it, the subject of which has just been stated.” (*I.C.J. Reports 1962, p. 14.*)

This characterization of the dispute as one regarding sovereignty over a defined area of territory, rather than boundary delimitation, is also evident in the Court’s decision 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” (*ibid.*, p. 36).

No mention was made of either the Annex I map or the location of the frontier in the operative part. No map was attached to the Judgment, nor did the Court make any comment on the difficulties of transposition of the Annex I map line, a matter which had been discussed by the Parties during the 1962 proceedings and which would have been of obvious importance in a judgment on delimitation of the frontier.

77. Secondly, however, the Annex I map played a central role in the reasoning of the Court. After reviewing the history of the map and its relationship with the 1904 Treaty, the Court stated:

“The real question, therefore, which is the essential one in this case, is whether the Parties did adopt the Annex I map, and the line indicated on it, as representing the outcome of the work of delimitation of the frontier in the region of Preah Vihear, thereby conferring on it a binding character.” (*I.C.J. Reports 1962*, p. 22.)

It then considered the conduct of the Parties with regard to the map and other practice, including the visit of Prince Damrong to the Temple in 1930, when he was received by the French authorities. Although the Court considered that the circumstances of Prince Damrong’s visit were such as to amount to “a tacit recognition by Siam of the sovereignty of Cambodia (under French Protectorate) over Preah Vihear” (*ibid.*, p. 31), that incident, together with Thailand’s other conduct subsequent to 1908-1909, was treated primarily as confirmation of the earlier acceptance by Thailand of the Annex I map line. The Court stated:

“Even if there were any doubt as to Siam’s acceptance of the map in 1908, and hence of the frontier indicated thereon, the Court would consider, in the light of subsequent events, that Thailand is now precluded by her conduct from asserting that she did not accept it . . .

The Court however considers that Thailand in 1908-1909 did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognized the line on that map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory. The Court considers further that, looked at as a whole, Thailand’s subsequent conduct confirms and bears out her original acceptance, and that Thailand’s acts on the ground do not suffice to negative this. Both Parties, by their conduct, recognized the line and thereby in effect agreed to regard it as being the frontier line.” (*Ibid.*, pp. 32-33.)

The Court went on to state that “the acceptance of the Annex I map by the Parties caused the map to enter the treaty settlement and to become an integral part of it” (*ibid.*, p. 33) and concluded that it “therefore, feels bound, as a matter of treaty interpretation, to pronounce in favour of the line as mapped in the disputed area” (*ibid.*, p. 35).

78. Thirdly, in defining the dispute before it (in the passage quoted in paragraph 76 above), the Court made clear that it was concerned only with sovereignty in the “region of the Temple of Preah Vihear”.

That this region comprised only a small area is apparent from the 1962 proceedings. Thus, counsel for Cambodia stated:

“As I shall have occasion to remind the Court more than once, the area in dispute in these proceedings is very small indeed. A variation of half a mile, or even less, would place the Temple wholly on one side or the other of the frontier.” (*I.C.J. Pleadings, Temple of Preah Vihear*, Vol. II, p. 145.)

Later in the hearings, counsel for Cambodia observed that “the Court and counsel will have spent pretty much the entire month of March discussing an area of land hardly a kilometre in breadth” (*ibid.*, Vol. II, p. 464) and subsequently referred to “a frontier area of less than two or three square kilometres” (*ibid.*, Vol. II, p. 473). These statements were not contradicted during the 1962 proceedings.

The Judgment shows that the Court considered that the disputed area was a small one. Immediately after the passage in which it defined the dispute as one regarding sovereignty over the region of the Temple, the Court described that region in the following terms:

“The Temple of Preah Vihear . . . stands on a promontory of the same name, belonging to the eastern sector of the Dangrek range of mountains which, in a general way, constitutes the boundary between the two countries in this region — Cambodia to the south and Thailand to the north. Considerable portions of this range consist of a high cliff-like escarpment rising abruptly above the Cambodian plain. This is the situation at Preah Vihear itself, where the main Temple buildings stand in the apex of a triangular piece of high ground jutting out into the plain.” (*I.C.J. Reports 1962*, p. 15.)

While the Annex I map deals with a part of the frontier region more than 100 km in extent, the Court made clear that it had to pronounce upon it only “in the disputed area” (*ibid.*, p. 35).

#### **4. The operative part of the 1962 Judgment**

79. In the light of these elements in the reasoning of the 1962 Judgment, the Court will now turn to the operative part of that Judgment, the text of which is reproduced in paragraph 21 above. The findings set out in the second and third paragraphs are expressly stated to be consequences following from the decision in the first operative paragraph. It follows that the three operative paragraphs have to be considered as a whole; the task of ascertaining their meaning and scope cannot be reduced to an exercise of construing individual words or phrases in isolation.

##### **A. The first operative paragraph**

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

## **B. The second operative paragraph**

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

82. During the hearings in the present proceedings, a Member of the Court put the following question to the Parties:

“What is the precise territorial extent that each of the Parties considers as the ‘vicinity’ of the Temple of Preah Vihear ‘on Cambodian territory’ referred to in the second paragraph of the *dispositif* of the Court’s Judgment of 1962?”

and requested that each Party provide a set of geographical co-ordinates or refer to one of the maps produced in the 1962 proceedings.

83. In its response, Cambodia maintained that “the Court’s use of the term ‘vicinity’ can best be appreciated in the light of the overlap between the Annex I map line and the watershed line proposed by the Thai experts in the original proceedings”. As indicated on the map annexed to Cambodia’s response, the area between these two lines includes the entirety of the promontory of Preah Vihear and the hill of Phnom Trap. The Annex I map line is shown as the northern limit of this area. The western and eastern limits of the area identified by Cambodia consist of the points where the Annex I map line and the watershed line advocated by Thailand intersect. Cambodia accepts Thailand’s estimate that this area measures approximately 4.6 square kilometres.

84. Thailand responded to the question by stating that “[i]n 1962, the ‘vicinity’ of the Temple was identified by the Council of Ministers for the purposes of the withdrawal of the Thai troops who were stationed there”. The 1962 Resolution of the Thai Council of Ministers was based upon a report, which outlined two possible methods for determining the extent of the “vicinity [of the Temple] on Cambodian territory”. The Resolution chose the second of these methods, which involved confining the Temple within an area bounded, to the south and east, by the escarpment and, to the west, north and north-east, by a line close to the Temple. That line (referred to in paragraph 22, above, as the “Thai Council of Ministers’ line”) consisted of three segments. The first segment began at the south-western part of the escarpment and ran north in a straight line, parallel to, and a few metres to the west of, the Temple buildings, until it reached a point a few metres north of the most northern part of the Temple buildings. The second segment ran east from



this point in a straight line until it reached a point just north of the eastern extreme of this part of the Temple. The third segment ran south-east from that point, broadly following the course of a feature known as the Broken Stairway (which was described in the report as falling within the vicinity of the Temple) until it reached the eastern escarpment. The report estimated the area enclosed within these limits as approximately 0.25 square kilometres. Following the adoption of the Resolution, Thailand erected a barbed wire fence along the Council of Ministers' line and put up signs stating that "the vicinity of the Temple of Phra Viharn does not extend beyond this limit".

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

86. The only such evidence was given by Professor Ackermann, who was called by Thailand as an expert and witness and who had visited the Temple for several days in July 1961 in the course of preparing a report to be submitted in the proceedings. Under cross-examination by counsel for Cambodia, Professor Ackermann testified that, during that visit, the only people he had seen at the Preah Vihear promontory were a detachment of Thai frontier police and one Temple guard. He stated that the police had been stationed in blockhouses at a camp located to the north-east of the Temple, while the guard had lived in a separate house a short distance to the west of the police camp (*I.C.J. Pleadings, Temple of Preah Vihear*, Vol. II, pp. 401-402)<sup>2</sup>.

87. The location of the police station was subsequently confirmed by counsel for Thailand, according to whom the police camp was located south of the Annex I map line but north of a line which Cambodia maintained was the watershed line (*ibid.*, Vol. II, p. 559). During the 1962 proceedings, Cambodia had advanced an alternative argument that if, contrary to its primary position, the boundary was required to follow the watershed rather than the Annex I map line, then it was this Cambodian line which represented the watershed and not the watershed line advocated by Thailand (to which reference has already been made). In the event, the Court found that it was unnecessary to consider the location of the watershed in the area of the Temple (*Judgment, I.C.J. Reports 1962*, p. 35). Nevertheless, the reference to that line in the speech by counsel for Thailand is significant, because, as Thailand has stated in the current proceedings, the Thai Council of Ministers' line follows a course very close to that of the watershed line advanced by Cambodia in 1962. It is apparent, therefore, that the Thai police detachment was stationed at a location north of the line subsequently drawn by the 1962 Resolution of the Thai Council of Ministers and thus outside what Thailand considers to be the "vicinity [of the Temple] on Cambodian territory".

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<sup>2</sup>Professor Ackermann indicated these locations on a map shown to the Court. A copy of the map, entitled "Annex 85 (d)", is enclosed at the end of Volume II of the 1962 Pleadings.

88. When the Court required Thailand to withdraw military or police forces, guards or keepers which it had stationed in the Temple, or in the vicinity of the Temple on Cambodian territory, it must have intended that obligation to apply to the police detachment referred to by Professor Ackermann, since, except for the solitary Temple guard (who seems to have been living near the police camp), there was no evidence of the presence of any other Thai personnel anywhere near the Temple. Accordingly, the term “vicinity on Cambodian territory” has to be construed as extending at least to the area where the police detachment was stationed at the time of the original proceedings. Since that area lies north of the Thai Council of Ministers’ line, that line cannot represent the correct interpretation of the territorial scope of the second operative paragraph as Thailand contends.

89. That conclusion is confirmed by a number of other factors. As the Court emphasized in its description of the area around the Temple (*Judgment, I.C.J. Reports 1962*, p. 15), the Temple is located on an easily identifiable geographical feature. This feature is a promontory. In the east, south and south-west, the promontory descends by a steep escarpment to the Cambodian plain. In the west and north-west, the ground drops into what Professor Ackermann described in his evidence as a “valley . . . between the Pnom Trap mountain and the Phra Vihear mountain” (*I.C.J. Pleadings, Temple of Preah Vihear*, Vol. II, p. 385). It is through this valley that access to the Temple from the Cambodian plain can most easily be obtained. The hill of Phnom Trap rises from the western side of this valley. A natural understanding of the concept of the “vicinity” of the Temple would extend to the entirety of the Preah Vihear promontory.

90. Furthermore, the Court’s reasoning regarding the significance of the Annex I map (considered in paragraph 77 above) shows that the Court considered that Cambodia’s territory extended in the north as far as, but no farther than, the Annex I map line. Although Professor Ackermann did not give any estimate of the distances between the various places on the promontory to which he referred in his evidence, it is clear that, for example, the police post which he identified was only a very short distance to the south of the nearest point on the Annex I map line.

91. The Court was therefore dealing with a small area with clearly defined geographical limits to the east, south, west and north-west, and bounded in the north by what the Court had stated in its reasoning was the limit of Cambodian territory. In these circumstances, the Court considers that the territorial scope of the second operative paragraph must be construed as extending to the whole of the promontory, rather than being confined to the part of it chosen by the Thai Council of Ministers in 1962.

92. Turning to the position of Cambodia, the Court is also unable to accept its interpretation of “vicinity”. In its answer to the question put by a Member of the Court (see paragraph 83 above), Cambodia maintained that the vicinity includes not only the promontory of Preah Vihear but also the hill of Phnom Trap. There are several reasons why the Court considers that this is not the correct interpretation of the second operative paragraph.

93. First, Phnom Trap and the promontory of Preah Vihear are distinct geographical features which are clearly shown as separate on the maps used in the 1962 proceedings and, in particular, on the Annex I map, which was the only map to which the Court made more than passing reference in the Judgment.

94. Secondly, there are certain indications in the record of the 1962 proceedings that Cambodia did not treat Phnom Trap as falling within the “region of the Temple” or “Temple area” (the terms used by the Court in defining the scope of the dispute before it). Thus, a former Cambodian provincial governor, Mr. Suon Bonn, who was called as a witness by Cambodia, testified that Preah Vihear had formed part of his province (*I.C.J. Pleadings, Temple of Preah Vihear*, Vol. II, p. 333), but that he thought that Phnom Trap belonged to a neighbouring province (*ibid.*, p. 434). Moreover, as explained in paragraph 78 above, in referring to the area with which the Court was concerned, counsel for Cambodia spoke of its dimensions in terms which would be too small to encompass, at the same time, Phnom Trap as well as the promontory of Preah Vihear (*ibid.*, pp. 464 and 473). He also stated that Phnom Trap was not part of the “crucial area” with which the Court was concerned (*ibid.*, p. 465).

95. Thirdly, there was no evidence before the Court of any Thai military or police presence on Phnom Trap in 1962 and no suggestion that Phnom Trap was relevant to Cambodia’s claim that Thailand should be required to withdraw its forces.

96. Lastly, Cambodia’s interpretation depends upon identifying the location of the points at which the Annex I map line intersects with the watershed line advocated by Thailand. Yet, in the 1962 Judgment, the Court made clear that it was not concerned with the location of the watershed and did not decide where the watershed lay (*I.C.J. Reports 1962*, p. 35). It is, therefore, implausible to suggest that the Court had the watershed line in mind when it used the term “vicinity”.

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

98. From the reasoning in the 1962 Judgment, seen in the light of the pleadings in the original proceedings, it appears that the limits of the promontory of Preah Vihear, to the south of the Annex I map line, consist of natural features. To the east, south and south-west, the

promontory drops in a steep escarpment to the Cambodian plain. The Parties were in agreement in 1962 that this escarpment, and the land at its foot, were under Cambodian sovereignty in any event. To the west and north-west, the land drops in a slope, less steep than the escarpment but nonetheless pronounced, into the valley which separates Preah Vihear from the neighbouring hill of Phnom Trap, a valley which itself drops away in the south to the Cambodian plain (see paragraph 89 above). For the reasons already given (see paragraphs 92-97 above), the Court considers that Phnom Trap lay outside the disputed area and the 1962 Judgment did not address the question whether it was located in Thai or Cambodian territory. Accordingly, the Court considers that the promontory of Preah Vihear ends at the foot of the hill of Phnom Trap, that is to say: where the ground begins to rise from the valley.

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

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

99. The Court notes Thailand's argument about the difficulty of transposing the Annex I map and thus of ascertaining the precise location on the ground of the Annex I map line in the area described in the preceding paragraph. The 1962 Judgment did not, however, address that question and the Court cannot now, in the exercise of its jurisdiction under Article 60 to interpret the 1962 Judgment, deal with a matter which was not addressed by that Judgment. Nevertheless, the parties to a case before the Court have an obligation to implement the judgment of the Court in good faith. It is of the essence of that obligation that it does not permit either party to impose a unilateral solution.

### **C. The relationship between the second operative paragraph and the rest of the operative part**

100. The Court has already stated (see paragraph 79 above) that the three paragraphs of the operative part of the 1962 Judgment have to be considered as a whole. Having determined the meaning and scope of the second paragraph, the Court now turns to the relationship between that paragraph and the other two paragraphs of the operative part. While there is no dispute between the Parties regarding the third operative paragraph, it is nonetheless relevant to the extent that it sheds light on the meaning and scope of the rest of the operative part.

101. The scope of the operative part of a judgment of the Court is necessarily bound up with the scope of the dispute before the Court. The 1962 Judgment defined the dispute which was then before the Court as one concerning "sovereignty over the *region* of the Temple of Preah Vihear" (*I.C.J. Reports 1962*, p. 14; emphasis added). It was entirely consistent with this view of the dispute that the Court, having decided in the first operative paragraph of the Judgment that the Temple was located in territory under the sovereignty of Cambodia, determined, as a consequence of that finding, that Thailand was under an obligation to withdraw its forces and other personnel stationed "at the Temple, or in its *vicinity* on Cambodian territory" and to restore objects removed from "the Temple or *the Temple area*" (emphasis added). The second and third operative

paragraphs each, therefore, imposed obligations with respect to an area of territory which extended beyond the Temple itself. The second operative paragraph expressly described this area as Cambodian territory. The third operative paragraph did not do so but the Court considers that such a description was implicit; an obligation to restore artefacts taken from the “area of the Temple” would be a logical consequence of a finding of sovereignty only to the extent that the area in question was covered by that finding.

102. The area with which the Court was concerned in the original proceedings, as has already been explained (see paragraph 78 above), is small and bounded, except to the north, by readily identifiable geographical features. In these circumstances, the Court considers that the terms “vicinity [of the Temple] on Cambodian territory”, in the second paragraph, and “area of the Temple”, in the third paragraph, refer to the same small parcel of territory. The obligations which the Court imposed in respect of that parcel of territory were stated to be a consequence of the finding in the first paragraph. In view of the characteristics of the dispute which confronted the Court in 1962 — in particular, the nature of the submissions of each Party — the obligations imposed by the second and third paragraphs would be a logical consequence of the finding of sovereignty in the first operative paragraph only if the territory referred to in the first paragraph corresponded to the territory referred to in the second and third paragraphs.

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

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

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

106. These obligations, which derive from the principles of the Charter of the United Nations, are of particular importance in the present context. As is clear from the record of both the present proceedings and those of 1959-1962, the Temple of Preah Vihear is a site of religious and cultural significance for the peoples of the region and is now listed by UNESCO as a world heritage site (see paragraphs 25-27 above). In this respect, the Court recalls that under Article 6 of the World Heritage Convention, to which both States are parties, Cambodia and Thailand must co-operate between themselves and with the international community in the protection of the site as a world heritage. In addition, each State is under an obligation not to “take any deliberate measures which might damage directly or indirectly” such heritage. In the context of these obligations, the Court wishes to emphasize the importance of ensuring access to the Temple from the Cambodian plain.

## 5. Conclusions

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

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108. For these reasons,

THE COURT,

(1) Unanimously,

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

(2) Unanimously,

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

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

*(Signed)* Peter TOMKA,  
President.

*(Signed)* Philippe COUVREUR,  
Registrar.

Judges OWADA, BENNOUNA and GAJA append a joint declaration to the Judgment of the Court; Judge CANÇADO TRINDADE appends a separate opinion to the Judgment of the Court; Judges *ad hoc* GUILLAUME and COT append declarations to the Judgment of the Court.

*(Initialed)* P. T.

*(Initialed)* Ph. C.

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