

DECLARATION OF JUDGE *AD HOC* GUILLAUME

[Translation]

*Conditions for granting provisional measures — Application for interpretation — Dispute as to both the operative clause of the 1962 Judgment and parts of the reasoning — Reasoning having binding force — Jurisdiction.*

*Creation of a demilitarized zone — Situation of the Temple of Preah Vihear in this zone — Guarantees given to Cambodia.*

1. The Kingdom of Cambodia submitted to the Court an Application for interpretation of its Judgment of 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia v. Thailand)*. It accompanied this Application with a request for the indication of provisional measures, with a view to safeguarding the rights which it deems to derive from that Judgment. Thailand maintained that Cambodia's Application in fact sought revision or enforcement of the 1962 Judgment and should accordingly be removed from the Court's List as being clearly inadmissible. The Court unanimously rejected those submissions and went on to ascertain whether the conditions required to grant provisional measures were satisfied in this case.

2. The Court first recalled that it had jurisdiction to entertain a request for interpretation based on Article 60 of the Statute, provided there was a "dispute as to the meaning or scope" of a judgment rendered by it (Order, para. 21). It made clear that Article 60 did not impose any time-limit on requests for interpretation (*ibid.*, para. 37). However, it added that it "may indicate provisional measures in the context of proceedings for interpretation of a judgment only if it is satisfied that there appears *prima facie* to exist a 'dispute' within the meaning of Article 60 of the Statute" (*ibid.*, para. 21). Such a dispute may relate to the operative clause of the judgment or to the reasons, to the extent that these are inseparable from the operative clause (*ibid.*, para. 23).

3. In this case, the Court quite rightly pointed out the existence of three disputes. It noted first of all that the Parties were in disagreement on two aspects of the meaning and scope of the second paragraph of the operative clause of the 1962 Judgment regarding Thailand's evacuation from the vicinity of the temple. It further noted that they were in disagreement over "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" (*ibid.*, para. 31). It recalled in this connection that "a difference of opinion as to whether a particular point has or has not been decided with binding force . . . constitutes a case which comes within the terms of Article 60 of the Statute" (*ibid.*).

4. This key question having been settled, it remained for the Court to ascertain whether the other conditions required for granting provisional

measures were satisfied. In this connection, the Court had no difficulty in recognizing as “plausible” the rights invoked by Cambodia on the basis of the interpretation it gave to the 1962 Judgment. Nor did it have any difficulty in finding that the urgency attaching to the grant of provisional measures was present.

5. I fully subscribe to these various findings of the Court which, to my mind, will enable it to pronounce in due course on all of the submissions presented by Cambodia.

6. On the other hand, it was not easy for the Court to determine the provisional measures to be adopted, in the light of the data available to it on the armed forces present. Moreover, these measures must clearly not prejudice the merits. They therefore had to be aimed at both Parties and could have regard to neither the frontier recognized in the reasoning of the 1962 Judgment nor to Thailand’s claims, which, moreover, had varied over time.

7. This explains why the Court decided to establish a relatively extensive provisional demilitarized zone. This zone includes the sectors lying between the frontier recognized in 1962 and the lines claimed by Thailand. But it also includes territories over which Thai sovereignty is not disputed by Cambodia and Cambodian sovereignty is not disputed by Thailand. It has in fact been delimited with the sole aim of preventing the resumption of military activity within or directed at the zone.

8. This explains why the Temple itself is included in the demilitarized zone. Cambodia may nevertheless continue to station in the sectors under its sovereignty, and in particular in the Temple, the personnel required to ensure the security of persons and property (paragraph 61 of the Order), whether it be police personnel or guards or keepers. The latter must of course have the necessary weapons and ammunition. Finally, Thailand “shall not obstruct Cambodia’s free access to the Temple . . . or Cambodia’s provision of fresh supplies to its non-military personnel” who will remain there (*ibid.*, para. 69 (B) (2)).

9. I would personally have preferred the Temple itself to be excluded from the demilitarized zone. However, I felt that the most important consideration was to establish such a zone, provided the rights of Cambodia over the Temple were guaranteed. In my view, that condition has been satisfied: the Court’s Order recalls Cambodia’s sovereignty over the Temple, ensures it free access to the Temple and allows it to station personnel there, in particular the police personnel necessary to ensure the security of persons and property therein.

(Signed) Gilbert GUILLAUME.

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