

DECLARATION OF JUDGE *AD HOC* GUILLAUME

[Translation]

(1) Interpretation of second operative paragraph of 1962 Judgment requiring Thailand to withdraw from vicinity of Temple on Cambodian territory — Cambodian territory extending to north as far as line on Annex I map — Thai territory commencing beyond that line — Frontier thus fixed by Court with binding force in operative part of new Judgment — (2) Unnecessary to rule on Cambodia's submissions seeking attribution of binding force to that line more generally — (3) Obligation on Thailand to respect sovereignty of Cambodia over territory thus recognized as Cambodian — Unnecessary to decide whether Thailand's 1962 obligation to withdraw was continuing or instantaneous.

1. I agree with the Court's unanimous decision as set out in paragraphs 98 and 108 of the Judgment. I believe it useful, however, to provide some clarification of the scope of that decision.

2. I will begin by recalling that in 1962 the Court was seised, as it put it, of a "difference of view about sovereignty over the region of the Temple of Preah Vihear". The Court stated in the Judgment which it delivered at that time that "[t]o decide this question of territorial sovereignty, [it] must have regard to the frontier line between the two States" (*I.C.J. Reports 1962*, p. 14). After a long analysis that forms the core of the Judgment, the Court "pronounce[d] in favour of the line as mapped [on what it called 'the Annex I map'] in the disputed area" (*ibid.*, p. 35).

In the same Judgment, the Court observed, however, that Cambodia had initially requested it only to declare that the Temple was situated in its territory and had not asked it to fix the line of the frontier. It had presented submissions on the latter point only during the hearings. In those circumstances, the Court considered that it was unable to adjudicate on this enlargement of the original claim. Therefore it ruled on the line of the frontier only in the reasoning of its Judgment and did not do so in the operative part itself. Then on the basis of that reasoning, it concluded in the operative part:

- (1) that "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia";
- (2) "finds in consequence . . . that Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory".

Such was the Judgment whose interpretation has been sought by Cambodia under Article 60 of the Statute.

3. In light of the final submissions of Cambodia and Thailand, it is apparent that there are in this case several disputes regarding the meaning and scope of the 1962 Judgment. As the Court noted in paragraph 31 of its Order of 18 July 2011, and as it recalls in paragraph 35 of its Judgment, the differences between the Parties relate:

- (a) “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”;
- (b) “to the meaning and scope of the phrase ‘vicinity on Cambodian territory’ used in the second paragraph of the operative clause of the Judgment”;
- (c) “to the nature of the obligation imposed on Thailand . . . 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”.

4. In the present Judgment, the Court first of all dismisses the objections to jurisdiction and admissibility raised by Thailand. It then considers Cambodia’s submissions regarding the second paragraph of the operative part of the 1962 Judgment. The Court thus seeks to determine the meaning and scope of the phrase “vicinity on Cambodian territory” used in that paragraph.

5. Cambodia contends that the “vicinity of the Temple situated in Cambodian territory” corresponds to an area of approximately 4.6 square kilometres between the line on the Annex I map and the watershed line claimed by Thailand in 1962. The area so claimed includes the entirety of the promontory of Preah Vihear, the hill of Phnom Trap and the valley separating the promontory from the hill (para. 83).

6. For its part, Thailand claims that the vicinity of the Temple corresponds to the Temple itself and a narrow strip of land around the Temple, as defined in the resolution of the Thai Council of Ministers of 10 July 1962 and implemented on the ground by means of a barbed wire fence erected by Thailand in 1962. The vicinity thus defined has an area of 0.25 square kilometres (para. 84).

7. The Court has adopted an intermediate solution. It has decided that “the vicinity of the Temple situated in Cambodian territory” included the Temple itself, the promontory on which it is built and the valley separating the promontory from the hill of Phnom Trap. Accordingly, the hill of Phnom Trap did not form part of the vicinity within the meaning of the second operative paragraph of the 1962 Judgment (paragraph 98 as cited in paragraph 108).

8. The Court has further stated that “[i]n the north, the limit” of the vicinity thus defined “is the Annex I map line” (paragraph 98 as cited in paragraph 108). Cambodian territory thus extends “as far as [that] line” (para. 90). Beyond that line, Thai territory begins (*ibid.*). Therefore, in

this area the Annex I map line constitutes the frontier between the two States. As a result, Thailand was under an obligation in 1962 to withdraw the military or police forces, or other guards or keepers present in the vicinity of the Temple on Cambodian territory south of the Annex I map line, to “Thai territory” north of that line (para. 98).

9. I agree with these findings for the geographical and historical reasons set out by the Court in paragraphs 86 to 97 of the Judgment. I should add that, in adopting this interpretation of the second operative paragraph of the 1962 Judgment, the Court:

- (a) fixes in the actual operative part of its Judgment (paras. 108 and 98) the limits of the territories of Cambodia and Thailand, that is to say, the frontier between the two countries. In so doing, it accords binding force to the line on the Annex I map in the sector in question;
- (b) determines the extent of the “vicinity on Cambodian territory” in such a way that it enables Cambodia to have ready access to the Temple from the Cambodian plain by the valley separating the promontory of Preah Vihear from the hill of Phnom Trap, and thus freely to undertake its upkeep and supervision (paras. 89, 98 and 106);
- (c) leaves open the question as to whether the hill of Phnom Trap is in Cambodian territory or Thai territory (para. 97).

10. Having thus provided the required interpretation of the second operative paragraph of the 1962 Judgment, the Court did not feel that it was incumbent upon it to rule on the rest of Cambodia’s submissions as referred to in paragraph 3 above.

11. In the first place, the Court recalled that it had concluded that Cambodia’s sovereignty “extend[ed] in the north [in the vicinity of the Temple] to the Annex I map line but not beyond it” (para. 104). It found that in the operative part of its Judgment it had fixed with binding force the frontier in the sector which had been the subject of the dispute submitted to it in 1962. It was not for the Court to rule more generally on the binding force of the Annex I line outside that sector. It sufficed for it to find that it had decided the matter in the Temple sector. There was thus no need for it to rule on Cambodia’s remaining initial submissions (*ibid.*).

12. I would add that, if the Court had considered it necessary to rule on the arguments developed by Cambodia in that regard, I would for my part have been inclined to accept them. In 1962, the Court ruled clearly in the reasoning of its Judgment in favour of the Annex I line (*I.C.J. Reports 1962*, p. 35). This reasoning was inseparable from the operative part; it constituted the “condition essential” thereto (Judgment, para. 34), that is to say, the *ratio decidendi*. It is true that the reasoning did not have the executory force attaching to the operative parts of judgments, but it had the authority of *res judicata*, that is to say, binding force.

13. Finally, nor did the Court consider it necessary to decide the question of whether or not the obligation on Thailand under the 1962 Judg-

ment to withdraw from the Temple and its vicinity on Cambodian territory was of a continuing or instantaneous character. It noted that Thailand had recognized before the Court that it had an obligation to respect the integrity of Cambodian territory. It noted that this obligation “applies to any disputed territory found by the Court to be under Cambodian sovereignty” (para. 105), and hence to the “vicinity on Cambodian territory” as defined by the Court. As a result, Thailand cannot reintroduce military or police forces, or other guards or keepers, to that territory. Accordingly, it was not necessary to address the question of whether the 1962 Judgment still imposes today the same obligation on Thailand.

14. In conclusion, in the operative part of its Judgment (paras. 108 and 98), the Court has determined the extent of “the vicinity of the temple on Cambodian territory” as referred to in the second operative paragraph of the 1962 Judgment. In that same operative part, the Court has made it clear that that territory extends to the north as far as the Annex I map line. Beyond that line, Thai territory starts. The Court has thus determined the line of the frontier in the sector in question, thereby according binding force to the line on the Annex I map in that sector. It has, furthermore, clarified the extent of the vicinity of the Temple in such a way as to ensure that Cambodia has free access to the Temple from the Cambodian plain.

*(Signed)* Gilbert GUILLAUME.

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