

DECLARATION OF JUDGE *AD HOC* COT

[*Translation*]

1. I concur with the findings of the Court in its interpretation of the Judgment of 15 June 1962. The Court has been careful to adhere to a strict interpretation of the Judgment and not to look beyond what had been decided.

2. In particular, the Court has declined to rule on the status of the line on the Annex I map. It will be recalled that in 1962 the Court had expressly dismissed Cambodia's first two submissions, "calling for pronouncements on the legal status of the Annex I map and on the frontier line in the disputed region" (*I.C.J. Reports 1962*, p. 36). In its present Judgment, the Court has taken the line on the Annex I map into consideration only in order to determine the northern limit of the "vicinity" of the Temple on the Preah Vihear promontory.

3. Thus the main difficulty resided in the definition of the term "vicinity" in the second paragraph of the operative part of the 1962 Judgment. In its resolution of 10 July 1962, the Thai Council of Ministers had adopted a delimitation confining the Temple within the perimeter of the sacred area, and had had a barbed wire fence erected around the Temple. For its part, Cambodia considered that the "vicinity" of the Temple consisted of all the territory situated to the south of the Annex I map line in the disputed sector, including the neighbouring hill of Phnom Trap.

4. The Court rightly notes that the unilateral determination by one Party of the "vicinity" of the Temple cannot be imposed on the other Party. It is thus for the Court itself to carry out that determination.

5. The claim put forward by Cambodia was based on the course of the Annex I map line and encompassed a large area. It ran counter to the explicit provisions of the Judgment of 15 June 1962 by asking the Court to establish the line on the Annex I map as the boundary.

6. Furthermore, in requesting the attribution to Cambodia of a substantial area of territory, this approach went even beyond the arguments made by Cambodia's counsel in 1962. In particular, Dean Acheson, on behalf of Cambodia, observed that the hill of Phnom Trap could not be concerned by the dispute, which was limited to an area of a few hundred metres around the Temple (*I.C.J. Pleadings, Temple of Preah Vihear (Cambodia v. Thailand)*, Vol. II, pp. 145-146). He further considered that the area situated to the north-west of the Temple, the area of Phnom Trap, was not the crucial area, the disputed or "doubtful area" (*ibid.*, p. 465). He analysed the watershed line in what both he and Thailand's

counsel called “the critical, or crucial, area, the area from the bottom of the northern staircase eastward to point F” (*I.C.J. Pleadings, Temple of Preah Vihear*, p. 465). For his part, Cambodia’s Roger Pinto noted: “We must indeed never lose sight of the fact that the frontier passes some 500 metres to the north of the Temple.” (*Ibid.*, p. 189.)

7. Nonetheless, Thailand’s claim appears to me to be excessively restrictive. Thailand contends that the Temple itself is limited to the main sanctuary, and that the other elements of the Temple form its “vicinity”, enclosed by the precinct wall (CR 2013/4, pp. 29-42, paras. 13-41).

8. It is not reasonable to limit the “vicinity” of the Temple to the precinct in which it is located, as Thailand has argued. That, it appears to me, is to misunderstand the nature of Khmer temples. Khmer temples are not confined to the main temple, but consist of a set of buildings and structures, including entrance gates, “libraries”, staircases, etc. The Temple of Preah Vihear is a Khmer temple of the classic “temple-mountain” kind of the ninth century. It consists of a monumental staircase, four successive gopuras and a relatively small central sanctuary. The whole complex is surrounded by a wall enclosing the sacred area.

9. The specialist literature cited by the Parties, in particular the books and studies published by the Ecole française d’Extrême-Orient (EFEO) at the time of the delivery of the Judgment of 15 June 1962, hardly ever uses the term “vicinity” to refer to the buildings and structures located within the sacred area. Among the authors cited at the 1962 hearings (*op. cit.*, *supra*, Vol. II, pp. 468 *et seq.*) are Georges Groslier (*Promenades artistiques et archéologiques du Cambodge*), Lunet de Lajonquière (*Inventaire descriptif des monuments du Cambodge*) and George Cédès, Director of the EFEO (*Inscriptions du Cambodge*). Works contemporaneous with the hearings include those by Philippe Stern in 1952 (*Diversité et rythmes des fondations royales khmères*) and Maurice Glaize, a former curator and a collaborator of George Cédès, whose guidebook, *Les monuments du groupe d’Angkor*, published in Saigon in 1944, is still in print today. None of these works uses the term “vicinity of the temple” to describe the structures located within the sacred area of Khmer temples.

10. The precise extent of the vicinity within the meaning of the Judgment of 15 June 1962 still needs to be established. The written and oral pleadings provide some indications. They relate mainly to the identification of the watershed line. The Parties do not venture beyond the promontory on which the Temple is situated.

11. The reasoning of the 1962 Judgment defines its geographical scope. It includes the Court’s description of the Annex I map as one “on [which] was traced a frontier line . . . showing the whole Preah Vihear promontory, with the Temple area, as being on the Cambodian side” (*I.C.J. Reports 1962*, p. 21). The form of words used by the Court seems

to imply that the “Temple area” is contained within the perimeter of the promontory of Preah Vihear and does not extend beyond.

12. Noting the geographical description of the site given in 1962 and the use of the term “promontory” to refer to the feature on which the Temple is located, the Court finds that a natural understanding of the concept of the “vicinity” would correspond to the said promontory. The word “promontory” is a geographical description of the Preah Vihear site, which is clearly separated from the hill of Phnom Trap by a small valley. I concur with that conclusion.

13. The Court has declined to draw a precise line. That would have involved carrying out a delimitation operation, and thus going beyond the Court’s interpretative function in this case. It has confined itself to indicating the relevant perimeter, which concerns the entire promontory and also the valley separating the promontory of Preah Vihear from the hill of Phnom Trap. The Court makes it clear that the floor of the valley must be included in the “vicinity” in question, so as to allow access from the Cambodian plain. It adds, logically, that it is not required to rule on sovereignty over the hill of Phnom Trap.

14. It is for the Parties to implement the Judgment of 15 June 1962 in good faith and, in particular, to determine the physical boundary of the “vicinity” under Cambodian sovereignty.

15. I note that the solution adopted by the Court corresponds closely to one of the options put to the Thai Council of Ministers on 10 July 1962. It was thus a possible interpretation of the 1962 Judgment according to the views of the Thai administration at the time. And that is the interpretation given by the Court today.

*(Signed)* Jean-Pierre Cot.

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