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Cour internationale de Justice

LA HAYE

International Court of Justice

THE HAGUE

ANNÉE 2013

Audience publique

tenue le lundi 15 avril 2013, à 10 heures, au Palais de la Paix,

sous la présidence de M. Tomka, président,

***en l'affaire relative à la* Demande en interprétation de l'arrêt du 15 juin 1962 en l'affaire du *Temple de Préah Vihéar (Cambodge c. Thaïlande)* (Cambodge c. Thaïlande)**

COMPTE RENDU

YEAR 2013

Public sitting

held on Monday 15 April 2013, at 10 a.m., at the Peace Palace,

President Tomka presiding,

***in the case concerning the* 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)**

VERBATIM RECORD

Présents : M. Tomka, président
M. Sepúlveda-Amor, vice-président
MM. Owada
Abraham
Keith
Bennouna
Skotnikov
Cançado Trindade
Yusuf
Greenwood
Mmes Xue
Donoghue
M. Gaja
Mme Sebutinde
M. Bhandari, juges
MM. Guillaume
Cot, juges *ad hoc*

M. Couvreur, greffier

Present:	President	Tomka
	Vice-President	Sepúlveda-Amor
	Judges	Owada
		Abraham
		Keith
		Bennouna
		Skotnikov
		Cançado Trindade
		Yusuf
		Greenwood
		Xue
		Donoghue
		Gaja
		Sebutinde
		Bhandari
	Judges *ad hoc*	Guillaume
		Cot
	Registrar	Couvreur

Le Gouvernement du Royaume du Cambodge est représenté par :

S. Exc. M. Hor Namhong, vice-premier ministre et ministre des affaires étrangères et de la coopération internationale,

comme agent ;

S. Exc. M. Var Kimhong, ministre d'Etat,

comme agent adjoint ;

S. Exc. M. Long Visalo, secrétaire d'Etat au ministère des affaires étrangères et de la coopération internationale,

M. Raoul Marc Jennar, expert,

S. Exc. M. Hem Saem, ambassadeur extraordinaire et plénipotentiaire du Royaume du Cambodge auprès du Royaume des Pays-Bas,

M. Sarun Rithea, conseiller du ministre des affaires étrangères et de la coopération internationale,

M. Hoy Pichravuth, assistant du vice-premier ministre,

comme conseillers ;

M. Jean-Marc Sorel, professeur de droit international à l'Université Paris I (Panthéon-Sorbonne),

sir Franklin Berman, K.C.M.G., Q.C., membre du barreau d'Angleterre, membre de la Cour permanente d'arbitrage, professeur invité de droit international à l'Université d'Oxford et à l'Université de Cape Town,

M. Rodman R. Bundy, avocat à la cour d'appel de Paris, membre du barreau de New York, cabinet Eversheds LLP, Paris,

comme conseils et avocats ;

M. Guillaume Le Floch, professeur à l'Université de Rennes I,

Mme Amal Alamuddin, membre des barreaux d'Angleterre et de New York,

Mme Naomi Briercliffe, *solicitor* (Angleterre et Pays de Galles), cabinet Eversheds LLP, Paris,

comme conseils.

The Government of the Kingdom of Cambodia is 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,

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,

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

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

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Le Gouvernement du Royaume de Thaïlande est représenté par :

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comme agent ;

M. Voradet Viravakin, directeur général du département des traités et des affaires juridiques du ministère des affaires étrangères,

comme agent adjoint ;

S. Exc. M. Surapong Tovichakchaikul, vice-premier ministre et ministre des affaires étrangères,

S. Exc. M. Phongthep Thepkanjana, vice-premier ministre et ministre de l'éducation,

S. Exc. M. Sukumpol Suwanatat, A.C.M., ministre de la défense,

M. Thana Duangratana, vice-ministre rattaché au cabinet du premier ministre,

M. Sihasak Phuangketkeow, secrétaire permanent du ministère des affaires étrangères,

M. Nuttavudh Photisaro, secrétaire permanent adjoint du ministère des affaires étrangères,

Le général Nipat Thonglek, secrétaire permanent adjoint du ministère de la défense,

Le général Nopphadon Chotsiri, directeur général du service géographique royal thaïlandais, quartier général des forces armées du Royaume de Thaïlande,

M. Chukiert Ratanachaichan, secrétaire général adjoint du bureau du conseil d'Etat, cabinet du premier ministre,

M. Jumpon Phansumrit, procureur expert au bureau des politiques et stratégies, bureau de l'*Attorney General*,

M. Darm Boontham, directeur de la division des frontières du département des traités et des affaires juridiques du ministère des affaires étrangères ;

*

M. James Crawford, S.C., F.B.A., professeur de droit à l'Université de Cambridge, titulaire de la chaire Whewell, membre de l'Institut de droit international, avocat,

M. Donald McRae, professeur à l'Université d'Ottawa, titulaire de la chaire Hyman Soloway, membre de la Commission du droit international, membre associé de l'Institut de droit international, membre du barreau de l'Ontario,

The Government of the Kingdom of Thailand is represented by:

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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 Phuangketkeow, 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. Chukiert 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;

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M. Thomas Grant, membre du barreau de New York, maître de recherche au Lauterpacht Centre for International Law de l'Université de Cambridge,

Mme Alina Miron, chercheur au Centre de droit international de Nanterre (CEDIN), Université Paris Ouest, Nanterre-La Défense,

comme conseils ;

M. Alastair Macdonald, M.B.E., membre honoraire de l'unité de recherche sur les frontières internationales du département de géographie de l'Université de Durham,

M. Martin Pratt, directeur de recherche à l'unité de recherche sur les frontières internationales du département de géographie de l'Université de Durham,

comme conseillers experts ;

M. Ludovic Legrand, chercheur au Centre de droit international de Nanterre (CEDIN), Université Paris Ouest, Nanterre-La Défense,

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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,

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

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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,

Assistant Counsel.

The PRESIDENT: The sitting is open.

Excellencies, distinguished guests, ladies and gentlemen, It is with great honour and joy that the Court meets today for the first time in the newly-renovated Great Hall of Justice. On this important occasion, I wish to emphasize that the renovation of the Great Hall coincides with the centennial anniversary of the Peace Palace, which opened its doors in August of 1913. This momentous occasion will be celebrated later this year, in many ways.

The Great Hall of Justice was first used by the Permanent Court of Arbitration for arbitral proceedings administered by that institution. In 1922, it became the home for judicial proceedings conducted before the Permanent Court of International Justice and, since 1946, the International Court of Justice has made it its permanent courtroom. Over the decades, countless eminent agents and counsel have appeared before these institutions; ground-breaking legal arguments have been put forward by parties; peaceful solutions and settlement of international disputes have been articulated while upholding the rules and principles of international law; and greater adherence to the international rule of law has been continuously promoted.

This room has been the breeding ground for some of the most seminal and important decisions in the field of international law during the last 90 years. The prospect of bringing a dispute to the World Court for adjudication — which should not be construed as an inimical or hostile act, as the Manila Declaration on the Peaceful Settlement of International Disputes tells us — actually serves to further the objectives of international peace, security and justice. Proceedings before the Court may contribute to diffusing tensions between disputing States and ultimately help strengthen the rule of law on the international plane. Needless to say, this room has seen its share of historical disputes over the last century and has remained a locus for the formulation of timely, well-reasoned and just legal solutions. The Great Hall of Justice — quite a suitable name, indeed!

What is more, today the Court is presented with the outcome of the first major renovation of this Hall in 100 years. In the past, minor refurbishment works had been carried out to

accommodate certain requirements of the Court's predecessor, the Permanent Court of International Justice, such as extending its bench in view of its enlarged composition. Yet, no renovation project of this magnitude had ever been envisaged prior to the recent reconfiguration and refurbishment of this Hall.

Today, the Great Hall features vastly superior working capabilities, being now equipped with first-rate and modern technical facilities, all while exhibiting a fresh and modern look. Thus, the Court is very pleased that it will continue hearing the cases submitted to it faithfully and impartially, as dictated by the noble judicial mission entrusted to it, in improved and modern working conditions. In many ways, therefore, this centennial anniversary year provides a propitious opportunity not only to reflect and meditate on the great past and history surrounding this Hall, the Palace and institutions housed in it, but also to look forward and to embrace a future in which international peace, justice and modernity can work hand in hand.

While it is no doubt important to commemorate the past, we must not forget those more immediate actors that have helped shape the present. The initiative of renovating the Great Hall of Justice was first raised by Dame Rosalyn Higgins when she was President of the Court, for which she must be heartily commended. The renovation of this Great Hall was made possible through the tireless efforts of several individuals and institutions. In this spirit, the Court extends its sincere gratitude to the Carnegie Foundation — its Board led by Dr. Bot and its Director-General Mr. Steven van Hoogstraten —, to the Dutch Government, and to the United Nations for financial support towards the achievement of this renovation project.

Warm thanks are also due to those individuals and companies that have helped create the newly-designed Great Hall, namely: the main architect, Marijke van der Wijst; the co-architect, Julian Wolse; the carpet designer, Annet Haak; the project managers, Edwin van Eeckhoven and Corne Noordam; the co-ordinator for the Carnegie Foundation, Guido Bennebroek; the company Smeulders for providing the new bench, the technical booth and the interpreters' booths; the company ERCO which designed the lighting; the company Verkaart for handling all technical aspects of the renovation; the company Du Prie for carrying out the rebuilding tasks in the Great Hall; and the company Vitra for furnishing the Great Hall.

It is to be hoped that this Great Hall of Justice — which has served for 90 years as a bastion of international peace and justice and as an incubator for the peaceful settlement of disputes — will be of further use in promoting and strengthening the international rule of law.

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Excellencies, distinguished guests, the Court meets for the first time since the passing away on 13 February 2013 of our esteemed former colleague, His Excellency Judge Pieter Kooijmans, who was a Member of the International Court of Justice from 1997 to 2006. His spouse, Mrs. Jeanne Kooijmans-Verhage, is now among us here in the Great Hall of Justice.

It was with profound sadness and sorrow that Members of the Court learnt of the death of Judge Kooijmans, which is a tremendous loss for the Netherlands, for the international legal community and for international law and justice which he served with exemplary authority and great talent. As a Judge of the International Court of Justice, he was highly respected for his moral and human qualities, his knowledge and skills. As a professional jurist, he was eminently wise, perceptive and pragmatic, possessed a remarkable sense of compromise and was widely praised for his balanced judgments.

None of us will forget the major contributions Judge Kooijmans made to the fulfilment of the Court's important mandate: he participated actively in numerous cases, offering all his experience and knowledge and thus serving the cause of international peace and justice. We will also remember the great significance he attached to human rights, which permeated all his work.

During his long and illustrious legal career Judge Kooijmans also served as a Member of the Permanent Court of Arbitration, Chairman of the Administrative Council of the Hague Academy of International Law and lecturer at the same Academy, Chairman of the Netherlands Branch of the International Law Association, Member of the Board of Editors of the Netherlands International Law Review, Professor of Public International Law at the Free University of Amsterdam and at the University of Leiden. In addition he occupied numerous other important posts.

Judge Kooijmans's political and diplomatic career was no less illustrious: we need only recall that he served first as Secretary of State and later as Minister for Foreign Affairs of the Netherlands and was appointed Minister of State.

In all the positions he held, he discharged his responsibilities with the utmost competence and professionalism. In recognition of Peter Kooijmans's outstanding service to his country, Queen Beatrix made him *Knight of the Order of the Netherlands Lion, Commander of the Order of Oranje-Nassau and Knight of the Order of the Gold Lion of the House of Nassau*.

We are keenly aware of how devoted Judge Kooijmans was to his family and we hope that Mrs. Kooijmans, his children and other close family members will be able to find support and solace in the shared memories of their departed loved one.

On behalf of Members of the Court and myself, the Registrar and Registry staff, let me extend our deepest sympathy and our heartfelt thoughts to them at this time of affliction.

May I kindly ask you to stand and observe one minute of silence in memory of Judge Peter Kooijmans.

Please be seated. Thank you.

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Le PRESIDENT : La Cour se réunit aujourd'hui pour entendre les Parties en leurs plaidoiries dans l'affaire relative à la *Demande en interprétation de l'arrêt du 15 juin 1962 en l'affaire du* Temple de Préah Vihéar (Cambodge c. Thaïlande) *(Cambodge c. Thaïlande).*

La Cour ne comptant sur le siège aucun juge de la nationalité des Parties, chacune d'elles s'est prévalue de la faculté que lui confère le paragraphe 3 de l'article 31 du Statut de désigner un juge *ad hoc*. M. Gilbert Guillaume, désigné par le Cambodge, et M. Jean-Pierre Cot, désigné par la

Thaïlande, ont été tous deux dûment installés le 30 mai 2011 comme juges *ad hoc* en l'affaire à l'ouverture des audiences sur la demande en indication de mesures conservatoires présentée par le Cambodge.

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Je rappellerai à présent les principales étapes de la procédure en l'espèce.

Le 28 avril 2011, le Royaume du Cambodge a déposé au Greffe de la Cour une requête introductive d'instance dans laquelle, se référant à l'article 60 du Statut de la Cour et à l'article 98 de son Règlement, le Cambodge demande à la Cour d'interpréter l'arrêt qu'elle a rendu le 15 juin 1962 en l'affaire du *Temple de Préah Vihéar (Cambodge c. Thaïlande)*. Le Cambodge, dans sa requête, prie notamment la Cour de dire que l'arrêt de 1962 se fonde sur l'existence préalable d'une frontière internationale reconnue entre les deux Etats et définie par la carte sur la base de laquelle la Cour a constaté la souveraineté du Cambodge sur le temple de Préah Vihéar.

Le même jour, après avoir déposé sa requête, le Cambodge, se référant à l'article 41 du Statut et à l'article 73 du Règlement, a également déposé une demande en indication de mesures conservatoires afin de «faire cesser [l]es incursions [de la Thaïlande] sur son territoire» en attendant que la Cour se prononce sur la demande en interprétation de l'arrêt de 1962.

Par ordonnance du 18 juillet 2011, la Cour, après avoir rejeté la demande de la Thaïlande tendant à obtenir la radiation de l'affaire du rôle de la Cour, a dit qu'elle avait *prima facie* compétence et indiqué certaines mesures conservatoires.

Par lettres du greffier en date du 20 juillet 2011, les Parties ont été informées que la Cour, en application de l'article 98, paragraphe 3, du Règlement, avait fixé au 21 novembre 2011 la date d'expiration du délai dans lequel la Thaïlande pourrait présenter des observations écrites sur la demande en interprétation du Cambodge.

Le 21 novembre 2011, dans le délai prescrit à cet effet, la Thaïlande a déposé ses observations écrites sur la demande en interprétation du Cambodge.

Par lettre datée du 22 novembre 2011, l'agent du Cambodge a indiqué à la Cour que son gouvernement sollicitait «un délai d'une quinzaine de jours pour étudier au préalable [l]es

observations» écrites de la Thaïlande, suivi d'un «délai de trois mois pour apporter sa réponse [auxdites] observations».

Par lettres du 24 novembre 2011, le greffier a fait savoir aux Parties que la Cour avait décidé de donner à ces dernières la possibilité de lui fournir par écrit un supplément d'information, conformément au paragraphe 4 de l'article 98 du Règlement, et avait fixé au 8 mars 2012 et au 21 juin 2012, respectivement, les dates d'expiration des délais pour le dépôt par le Cambodge et par la Thaïlande d'un tel supplément d'information. Chacune des Parties a déposé celui-ci dans le délai prescrit à cet effet.

Par lettre du 2 mars 2012, l'agent de la Thaïlande a prié la Cour de donner aux Parties la possibilité de lui fournir oralement un supplément d'information. Dans un courrier du 7 mars 2012, l'agent du Cambodge a fait savoir à la Cour que son gouvernement n'y était pas opposé.

Par lettres du 22 juin 2012, le greffier a informé les Parties que la Cour avait décidé de leur donner la possibilité de lui fournir oralement un supplément d'information, conformément au paragraphe 4 de l'article 98 du Règlement.

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Conformément au paragraphe 2 de l'article 53 de son Règlement, la Cour, après s'être renseignée auprès des Parties, a décidé de rendre accessibles au public, à l'ouverture de la procédure orale, des exemplaires des pièces de procédure et documents annexés. En outre, l'ensemble de ces documents, y compris leurs annexes, seront placés dès aujourd'hui sur le site Internet de la Cour.

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Je constate la présence à l'audience des agents, conseils et avocats des deux Parties. Conformément aux dispositions relatives à l'organisation de la procédure arrêtées par la Cour, les audiences comprendront un premier et un second tours de plaidoiries.

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Le premier tour de plaidoiries débute aujourd'hui et se terminera le mercredi 17 avril 2013. Le second tour de plaidoiries s'ouvrira le jeudi 18 avril 2013 et s'achèvera le vendredi 19 avril 2013.

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Le Royaume du Cambodge, qui est l'Etat demandeur en l'affaire, sera entendu le premier.

Etant donné mon discours de ce matin, la délégation cambodgienne peut, si c'est nécessaire, dépasser 13 heures d'une dizaine de minutes.

Je donne à présent la parole à S. Exc. M. Hor Namhong, agent du Royaume du Cambodge. Excellence, vous avez la parole.

M. HOR NAMHONG :

1. Monsieur le président, Mesdames et Messieurs de la Cour, c'est avec beaucoup d'émotion et de gravité que je me présente une nouvelle fois aujourd'hui devant vous en tant qu'agent représentant le Royaume du Cambodge.

2. Il s'agit cette fois-ci de clore la procédure qui mènera votre Cour vers sa décision finale dans l'affaire qui nous occupe. Je mesure donc la gravité de ce moment pour mon pays et je souhaite que votre juridiction puisse rendre un arrêt sur l'interprétation de l'arrêt de 1962, qui clôturera définitivement ce litige qui obscurcit depuis quelques années les relations entre notre voisin la Thaïlande. Il est temps désormais d'entretenir entre les deux pays des relations cordiales, pacifiques et animées par un esprit constructif. Le Cambodge le souhaite plus que jamais.

3. Comme il se doit, je laisserai les conseils du Cambodge répondre aux différents arguments juridiques qui ont pu être développés dans les écrits successifs de la Thaïlande. Pour ma part, il me revient de rappeler le contexte dans lequel nous nous trouvons, contexte qui nécessite que votre Cour prenne une décision d'une importance fondamentale pour la paix, l'amitié et la coopération entre les deux pays, et pour la région en général.

4. Auparavant, je souhaite remercier sincèrement la Cour pour avoir permis au Cambodge et à la Thaïlande de s'exprimer de manière conséquente durant cette procédure, car vous avez bien voulu laisser au Cambodge et à la Thaïlande un cycle complet de procédures écrite et orale,

prouvant par là même l'importance que vous attachez à l'affaire que le Cambodge a portée devant vous. Le Cambodge veut croire que ceci n'est pas dû au hasard mais résulte du sérieux des fondements sur lesquels cette affaire a été portée devant vous.

5. D'abord je souhaite rappeler rapidement pourquoi le Cambodge revient devant la Cour 50 ans après l'arrêt initial ; quelle est aujourd'hui la situation sur le terrain, notamment au regard des mesures conservatoires prononcées par votre Cour en juillet 2011 ; quelle est l'attitude de la Thaïlande vis-à-vis de cette situation ; ce que le Cambodge souhaite, et pourquoi la Cour doit se prononcer sur l'interprétation pertinente à l'issue de cette procédure.

I. RAPPEL DE L'HISTOIRE RÉCENTE

6. Pourquoi le Cambodge revient 50 ans après l'arrêt du 15 juin 1962 devant votre juridiction ? Il ne s'agit nullement pour le Cambodge d'une procédure superflue, mais bien de la nécessité qui s'est imposée de revenir devant votre Cour pour élucider la bonne interprétation à donner à l'arrêt initial afin de régler le différend portant sur le sens et la portée de l'arrêt de 1962.

7. Cette nécessité résulte, comme on le sait, d'actes d'agressions armées de la Thaïlande — alors gouvernée par le premier ministre Abhisit Vejjajiva — contre le Cambodge de 2008 à 2011 à la frontière entre les pays dans la région du temple de Préah-Vihéar, depuis que le Cambodge a réussi à faire inscrire ce temple sur la liste du patrimoine mondial de l'Unesco en 2008, en dépit d'une forte opposition de la Thaïlande. Sans ces agressions armées, le Cambodge aurait continué de jouir paisiblement de sa souveraineté dans cette région. C'est donc bien le classement de ce temple au patrimoine mondial de l'Unesco qui constitue le point de départ de ces incidents armés, ainsi que la réclamation de 4,6 km², à proximité du temple, comme ceci est explicitement mentionné dans une publication du ministère thaïlandais des affaires étrangères en décembre 2011 sous le titre «Les informations que le peuple thaï doit savoir», et ainsi que plusieurs autres publications thaïlandaises.

8. Mystérieusement, la Thaïlande, dans ses observations écrites du 21 juin 2012, semble oublier que cette série d'attaques militaires contre le Cambodge, faiblement armé, de 2008 à 2011, ponctuée de destructions — y compris celles touchant le temple lui-même — de blessés et de morts à la suite de ces agressions armées. Elle souhaite donc faire oublier la raison pour laquelle il est

nécessaire que votre juridiction se prononce sur la bonne interprétation à donner à l'arrêt de 1962. Ceci n'est guère étonnant puisque, après avoir fait ressurgir les tensions que le Cambodge pensait de l'ordre du passé, la Thaïlande feint d'ignorer qu'il existe bien un différend entre les deux Etats sur l'interprétation de l'arrêt de 1962.

9. Ce sont pourtant bien ces événements qui ont poussé le Cambodge, faute d'arrangements diplomatiques avec le Gouvernement thaïlandais à cette époque, le gouvernement de M. Abhisit Vejjajiva, à revenir devant la Cour internationale de Justice. L'attitude incohérente de la Thaïlande prouve surtout que cet Etat n'a jamais réellement accepté la solution de l'arrêt de 1962. Certes, après quelques tergiversations, la Thaïlande aurait finalement accepté l'arrêt du 15 juin 1962, mais son interprétation dudit arrêt, comme en témoignent essentiellement ses prises de position depuis 2008, prouve qu'elle a toujours cherché à en minimiser le sens et la portée. C'est bien la raison pour laquelle le Cambodge se voit obligé de poser aujourd'hui à votre juridiction la question du sens et de la portée exacte de l'arrêt de 1962.

II. LA SITUATION AUJOURD'HUI

10. Malheureusement, le Cambodge ne peut que déplorer la situation actuelle dans la région du temple de Préah Vihéar puisque les négociations bilatérales sur le retrait des troupes de la zone démilitarisée provisoire conformément aux mesures conservatoires décidées par votre juridiction le 18 juillet 2011 n'ont pas abouti, contrairement à ce que souhaite le Cambodge pour un retrait rapide et simultané. Lors des réunions du «groupe de travail conjoint» créé à la demande de la Thaïlande en décembre 2011, chargé du retrait des troupes de la zone démilitarisée provisoire, la Thaïlande trouve toujours des échappatoires pour ne pas respecter votre ordonnance du 18 juillet 2011. Il en fut ainsi lors des trois réunions entre avril et décembre 2012. En conséquence, il n'a pas été possible de mettre en place des observateurs indonésiens chargés, sous les auspices de l'ASEAN, de contrôler le retrait des troupes de la zone du temple en attendant votre jugement définitif.

11. Le Cambodge ne peut que regretter cette situation contraire à votre jurisprudence qui rend l'application des mesures provisoires obligatoire pour les deux Parties. Dans le «Livre Blanc» de la Thaïlande de décembre 2011, que le Cambodge a versé au dossier de la Cour, il est

notamment indiqué que «La Thaïlande souhaite que le Cambodge retire ses forces armées et sa population civile de la zone du temple de Phra Viharn, de la colonie, du marché et de la pagode Keo Sekkha Kiri Svara, avant que les observateurs indonésiens puissent y entrer.» Dans la décision de la Cour du 18 juillet 2011, il n'a été nullement demandé le retrait de la population vivant paisiblement dans cette zone depuis des décennies qualifiée en l'espèce d'une manière injurieuse et contraire au droit de «colonie». Cette expression de colonie veut faire accroire que le Cambodge aurait installé des populations sur un territoire thaïlandais occupé par le Cambodge et qui se situerait en dehors de sa souveraineté, alors que la population cambodgienne vivait aux abords du temple, en territoire sous la souveraineté cambodgienne.

12. En réalité, la Thaïlande continue de s'arc-bouter sur une hypothétique négociation sur la délimitation des frontières dans le cadre du «Memorandum of Understanding» (MoU) de l'an 2000. La Thaïlande fait de ce mémorandum l'instrument d'une future délimitation des frontières entre les deux Etats, alors que le MoU en question *stricto sensu* ne concerne que la démarcation — qui est différente de la délimitation — car la frontière de la région du temple de Préah Vihéar a déjà été délimitée par la carte de l'annexe I, ainsi que l'indique votre arrêt de 1962.

III. L'ATTITUDE DE LA THAÏLANDE

13. En effet, pour la Thaïlande, il n'existerait pas de différend et, selon une expression qu'elle utilise à plusieurs reprises, l'arrêt de 1962, et notamment son dispositif, serait ~~**clair comme**~~ «crystal clear». Cette affirmation quelque peu ironique est d'ailleurs dans la lignée du ton qu'elle utilise dans ses écrits où se mêlent la mauvaise foi, l'ironie et même le mépris, quand il ne s'agit pas d'arguments absurdes ou répétitifs.

14. En réalité, au-delà de ce ton, la Thaïlande essaie une nouvelle fois de refaire l'arrêt de 1962. Elle introduit des éléments de confusion dans le débat, notamment en alimentant une soi-disant querelle sur les cartes présentées ou en réfutant des affirmations qu'elle a elle-même soulevées, comme la question du périmètre de 4,6 km², revendiqué par la Thaïlande dans son «Livre Blanc» de décembre 2011 que j'ai déjà cité.

15. La vérité, Monsieur le président, Mesdames et Messieurs les Membres de la Cour, est que la Thaïlande ne sait plus comment défendre une position contradictoire et intenable et qu'elle

fait tout pour retarder un jugement que le Cambodge souhaiterait au contraire rapide de manière à éclaircir la situation. Cette stratégie du recul est bien connue de la part d'Etats dont l'argumentaire n'est guère fondé. Le refus par la Thaïlande d'accepter la présence d'observateurs indonésiens déjà évoqué va également dans ce sens.

IV. CE QUE LE CAMBODGE DEMANDE

16. Comme ceci fut exprimé dans des phases précédentes, le Cambodge souhaite aboutir à une interprétation authentique et définitive de l'arrêt de 1962. Il ne s'agit pas d'une question d'exécution de l'arrêt, il ne s'agit pas non plus d'une question de délimitation de la frontière puisque celle-ci est déjà délimitée par la carte de l'annexe I, sur laquelle s'est basée la Cour pour rendre son arrêt en 1962. Il s'agit d'une interrogation «sur le sens ***ou*** la portée» de l'arrêt du 15 juin 1962.

17. La question posée est celle de la souveraineté et de l'intégrité territoriale du Cambodge dans la zone du temple puisque l'arrêt de 1962 indique clairement que le temple de Préah Vih***é***ar est situé en territoire relevant de la souveraineté du Cambodge et qu'il demande à la Thaïlande de retirer ses troupes du temple et de ses environs situés en territoire cambodgien. Or, comment peut être compris ce retrait si ce n'est en rapport avec la seule carte — carte de l'annexe I — sur laquelle votre arrêt de 1962 s'est basé**,** pour la simple raison que celle-ci est reconnue par la Thaïlande comme étant la frontière entre les deux Etats dans cette région de temple de Préah Vih***é***ar ?

18. En clair, ce n'est pas une délimitation que le Cambodge souhaite obtenir — elle existe déjà — mais c'est une interprétation du dispositif de l'arrêt du 15 juin 1962. En essayant de créer des diversions par rapport aux questions essentielles, la Thaïlande veut faire douter la Cour du sens de la question posée.

19. Il en résulte que, pour le Cambodge, l'interprétation qui prévaut de cet arrêt est que le Cambodge est souverain sur un territoire dont les limites dans la région du temple de Préah Vihéar sont décrites dans la carte de l'annexe I sur laquelle la Cour s'est entièrement basée pour l'intégralité de la décision qu'elle a prise en 1962, et qu'il en découle bien une obligation continue dans le temps du retrait des troupes thaïlandaises jusqu'aux limites de ce territoire.

20. En conclusion, Monsieur le ***p***résident, Mesdames et Messieurs les Membres de la Cour, l'importance que le Cambodge accorde à la décision de la Cour va bien au-delà du simple périmètre concerné ; il s'agit d'un symbole très fort des relations entre les deux Etats, symbole dont dépendent la paix et la sécurité, la coexistence pacifique et amicale entre le Cambodge et la Thaïlande. Le Cambodge veut croire que la Cour, en tant qu'organe judiciaire principal des Nations Unies, a un rôle fondamental dans la paix entre les peuples. Sans interprétation de l'arrêt du 15 juin 1962, la situation de statu quo qui en résulterait aurait très probablement des conséquences fâcheuses qui empêcheraient d'autant la nécessité de vivre dans un environnement amical, paisible et coopératif entre les deux Etats. Il en résulte que le Cambodge attend impatiemment la décision que vous prendrez pour clore un chapitre conflictuel de ses relations avec son voisin, surtout dans la région du temple de Préah Vih***é***ar dont chacun connaît l'extrême importance historique, politique et culturelle pour le peuple cambodgien.

21. Des confrontations armées en 2008, 2009 et 2011 ont provoqué des dommages irréparables sur les éléments architecturaux du temple lui-même, patrimoine de l'humanité, mais elles ont entraîné surtout la perte inutile de vies humaines, des blessés ainsi que des déplacements de population. Au-delà des aspects proprement juridiques, c'est une réalité que ne peut ignorer votre Cour dont on connaît l'influence et le poids sur la conduite des Etats.

22. Monsieur le président, Mesdames et Messieurs les juges, je vous remercie pour l'attention que vous avez portée à mes propos et je vous prie de bien vouloir donner la parole au professeur Jean-Marc Sorel. Je vous en remercie.

Le PRESIDENT : Je vous remercie Monsieur le vice-premier ministre et je passe la parole au professeur Jean-Marc Sorel. Vous avez la parole, Monsieur.

M. SOREL :

1. Monsieur le ***p***résident, Mesdames et Messieurs les Membres de la Cour, c'est pour moi un très grand honneur de me présenter de nouveau devant vous au nom du Royaume du Cambodge dans le cadre de cette procédure en interprétation. Après la présentation générale de S. Exc. le vice-premier ministre, agent du Royaume du Cambodge, il me revient d'introduire la manière dont nous souhaitons répondre aux différents arguments de la Thaïlande présentés dans ses écrits, et

particulièrement dans son supplément d'informations du 21 juin 2012. Pour cela, le Cambodge va successivement indiquer dans cette brève présentation : tout d'abord, quelle est, en résumé, pour le Cambodge, la manière dont se présente *simplement* l'affaire qui est portée devant vous ; ensuite, l'impression globale ressentie par le Cambodge à la lecture des observations écrites de la Thaïlande et, notamment, les principaux arguments développés par cet Etat ; enfin, quelle est la structure de la réponse du Cambodge.

I. UNE SIMPLE QUESTION D'INTERPRÉTATION DE L'ARRÊT DE 1962

2. Alors que la Thaïlande cherche à nous plonger dans les méandres d'une argumentation complexe peu linéaire, il est nécessaire de résumer simplement la manière dont le Cambodge aborde l'affaire qui est présentée devant vous. Il s'agit d'interpréter le paragraphe 2 du dispositif de l'arrêt du 15 juin 1962, *à la lumière du paragraphe 1*, en liaison directe avec l'obligation pour la Thaïlande de retirer ses troupes stationnées dans le temple ou dans les «environs situés en territoire cambodgien». Dès lors, la référence au territoire du Cambodge ne peut être comprise qu'au regard de ce que la Cour dit à propos de l'acceptation *par les deux Parties* de la carte de l'annexe 1 comme indiquant la ligne frontalière dans la région du temple. Ce motif central, fondamental quasiment unique indiqué par votre Cour est par conséquent inséparable du dispositif. Il en découle que l'obligation d'évacuation des troupes est une obligation continue et qui doit être comprise en rapport avec la ligne indiquée sur la carte de l'annexe 1. L'interprétation unilatérale et volontairement restrictive de l'arrêt par la Thaïlande ne peut donc être acceptée. Voilà d'une manière simple et sans ambiguïté comment le Cambodge comprend le dispositif de l'arrêt de 1962. La Thaïlande est malheureusement très loin de le comprendre de la même manière et il existe donc clairement un différend sur l'interprétation de l'arrêt. Ceci ressort de la lecture des écrits de la Thaïlande.

II. QUELLE EST L'IMPRESSION ET LA COMPRÉHENSION PAR LE CAMBODGE DES ARGUMENTS DE LA THAÏLANDE ?

3. Cette impression peut être résumée par un triptyque : le ton utilisé, l'agencement des arguments et la teneur des arguments.

4. Concernant le *ton utilisé*, celui-ci est le plus souvent ironique, condescendant, voire méprisant. L'ironie qui sous-tend les observations de la Thaïlande n'est en effet pas exempte d'une certaine condescendance. Ainsi est dénoncée «la paranoïa» du Cambodge[1]. [Nous laissons au Greffe le soin d'introduire les notes et références précises dans le compte rendu de cette plaidoirie.] De même, l'ironie perce à plusieurs reprises lorsque certains arguments du Cambodge sont jugés dignes d'«Alice aux pays des merveilles»[2], et sans doute le Cambodge pourrait-il préférer «Orgueil et Préjugés» de Jane Austen comme référence caractérisant l'argumentaire de la Thaïlande. Certes, on peut y reconnaître le sens de la formule — par exemple, lorsque le «dispositif implicite» devient le «dispositif par accident»[3] — mais cette ironie ne peut suffire à masquer un argumentaire pauvre qui se cache derrière un ton détaché. Cela va plus loin lorsque le ton devient plus méprisant, notamment lorsque la Thaïlande évoque des arguments «déformés, dénaturés, non pertinents»[4] dans la réponse du Cambodge. Ceci semble plutôt démontrer la gêne de la Thaïlande pour répondre aux arguments du Cambodge, sinon il semblerait inutile de répéter, comme le fait la Thaïlande, un très grand nombre de fois le même argument.

5. L'*agencement des arguments* est tout aussi significatif. La Thaïlande estime que l'affaire à l'origine n'est pas une affaire de délimitation et que le Cambodge cherche aujourd'hui à obtenir quelque chose qu'il n'aurait pas obtenu en 1962, à savoir que la carte de l'annexe 1 est bien celle, acceptée par les deux Parties, qui définit la frontière dans la région du temple. Le leitmotiv de la Thaïlande est qu'il n'existe aucun lien entre les motifs et le dispositif, ce qui rend la carte de l'annexe 1 hors sujet et la requête irrecevable. L'impression est que l'ensemble n'est guère coordonné, que la réponse de la Thaïlande aurait pu tenir en une vingtaine de pages, et pour le moins, on aura compris que le dispositif est, pour la Thaïlande, «clair comme de l'eau de roche», ce qui n'a pas été toujours le cas depuis 1962 comme ceci sera démontré ensuite.

6. L'aspect le plus significatif tient sans doute dans la *teneur des arguments*. Globalement, la Thaïlande essaie de faire passer l'idée que le temple se trouve «naturellement» en Thaïlande

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[1] Further Written Explanations of the Kingdom of Thailand (ci-après : «FWE»), 21 juin 2012, vol. I, par. 1.15.

[2] «Alice-In-Wonderland-Like», F***WE***, 21 juin 2012, vol. I, par. 1.27.

[3] *Ibid.*, par. 2.52

[4] Voir titre C : «Misrepresentation, Distortion, Irrelevancy in Cambodia's Response», FWE, vol. I, p. 17.

même si la Cour, *par erreur*, l'a attribué au Cambodge en 1962. Et, en quelque sorte, elle signifie à la Cour que cette erreur ne doit pas être poursuivie par une interprétation de son arrêt qui définirait clairement le territoire sur lequel se trouve le temple. Pour ce faire, bizarrement, la Thaïlande arrête son historique avant 2007, mais ne dit quasiment rien des incidents armés qu'elle a provoqués en représailles à l'inscription du temple sur la liste du patrimoine mondial de l'Unesco. Ceci est bien sûr contradictoire avec un argument central de la Thaïlande selon lequel le Cambodge aurait acquiescé à la séparation opérée depuis 1962, car on peut alors se demander comment des incursions armées de sa part pourraient avoir lieu sur un territoire *qu'elle prétend être le sien et qu'elle prétend contrôler*, incursions à la base de la volonté pour le Cambodge de demander à la Cour une interprétation claire de l'arrêt de 1962, et dont témoignent les mesures conservatoires adoptées par votre Cour.

7. Au-delà, le raisonnement tortueux suivi par la Thaïlande dans ses observations du 21 novembre 2011 et son supplément d'information du 21 juin 2012 permet de distinguer trois étapes correspondant à trois lignes successives de défense. Premièrement, pour la Thaïlande, il n'existerait pas de conflit d'interprétation, mais une simple discorde sur l'application ou l'exécution de l'arrêt de 1962 et, dès lors, la Cour ne serait pas compétente et la requête serait irrecevable. Deuxièmement, néanmoins, si la Cour devait se reconnaître compétente et déclarer la requête recevable, l'interprétation ne serait pas possible car il faut opérer une lecture isolée du dispositif, ce qui rend inutile la prise en compte des motifs pour l'interprétation car ils ne sont pas *res judicata*. Au surplus, le dispositif serait sans ambiguïté pour la Thaïlande. Troisièmement enfin, si la Cour décidait finalement d'interpréter son arrêt de 1962, cette interprétation ne pourrait être que favorable à la Thaïlande car la Cour devrait reconnaître qu'il s'agit d'un conflit territorial et non d'un conflit frontalier, que dès lors la carte de l'annexe 1 n'est pas pertinente mais un autre faisceau de preuves le serait, qu'une définition unilatérale de la frontière est donc possible pour la Thaïlande, que l'accord du 14 juin 2000 existe pour régler le conflit frontalier, que le retrait des troupes thaïlandaises exigé en 1962 des environs n'aurait pas un caractère continu et, qu'enfin, le Cambodge aurait modifié le sens du différend entre sa requête et ses observations en mettant en avant désormais le paragraphe 1 du dispositif de l'arrêt de 1962 au lieu du paragraphe 2 sur lequel le Cambodge se serait initialement appuyé pour sa requête. Cela fait beaucoup. Incontestablement,

il y a une certaine fébrilité dans l'argumentaire débridé de la Thaïlande doublé d'un manque d'assurance propre à douter de sa cohérence.

8. Il paraît plus simple à la Thaïlande d'affirmer, finalement, que le Cambodge ne répond pas à ses arguments, ce qui a pour objectif d'entraîner la Cour vers une refonte de l'arrêt de 1962, autrement dit de refaire le jugement, si la Cour acceptait d'interpréter son arrêt. Or ceci est inutile car il ne s'agit pas de refaire le jugement ni même de reprendre le processus de 1959 à 1962, mais il faut partir de celui-ci. Le Cambodge a toujours affirmé que la question en débat partait de l'arrêt de 1962, et non y aboutissait. Finalement, la Thaïlande opère ainsi un magnifique renversement du raisonnement de la Cour, et a bien du mal à comprendre ce qu'est une affaire en interprétation.

9. Sur tous ces points, le Cambodge va désormais apporter des réponses appropriées selon la structuration suivante :

10. Tout d'abord, sir Franklin Berman exposera les arguments du Cambodge concernant la compétence de la Cour et la recevabilité de la requête en interprétation déposée par le Cambodge. Il démontrera que les faits établissent clairement qu'il existe une série de différends liés entre eux qui correspond strictement aux critères posés par la Cour pour l'interprétation d'un arrêt dans le cadre de l'article 60 du Statut de la Cour, et que les arguments dans les réponses de la Thaïlande ne possèdent aucune base solide au regard de l'arrêt de 1962.

11. Mon collègue Rodman Bundy prendra ensuite la parole et son exposé portera essentiellement sur deux aspects. Premièrement, il démontrera, sur la base des faits avérés dans cette affaire, qu'il existe incontestablement un différend entre les Parties sur le sens et la portée de l'arrêt de 1962. Dès lors, la requête en interprétation du Cambodge est sans conteste pleinement recevable. Deuxièmement, il discutera des différents arguments avancés par la Thaïlande dans ses observations écrites pour amoindrir l'importance de la carte de l'annexe 1 au regard de «versions différentes» de cette carte qui auraient été récemment découvertes par la Thaïlande, ainsi qu'au regard d'autres cartes qui n'ont joué aucun rôle dans l'arrêt de la Cour en 1962. Comme mon collègue le démontrera, la seule carte qui fut au centre de la décision de la Cour fut la carte produite par le Cambodge sous l'appellation d'annexe 1 dans sa requête et son mémoire lors de la procédure entre 1959 et 1962.

12. Pour clore cette journée de plaidoirie, je vous demanderai, Monsieur le président, de bien vouloir me redonner la parole cet après-midi. Il sera alors temps de revenir sur le raisonnement de la Thaïlande pour parvenir à ce qu'elle souhaite, à savoir la stricte séparation des motifs et du dispositif de l'arrêt de 1962. Le caractère pourtant inséparable des motifs et du dispositif comme il sera démontré entraîne des conséquences que la Thaïlande préfère ignorer. Il en va ainsi de l'impossible définition unilatérale d'une frontière à l'encontre des motifs, tout comme il devient impossible d'établir une claire coupure entre un conflit territorial et un conflit de délimitation, comme le souhaiterait la Thaïlande. Pour parvenir à ses fins, la Thaïlande est dans l'obligation d'inverser totalement le raisonnement de la Cour en 1962 au mépris de la plus élémentaire des logiques, et ceci dans l'objectif de provoquer une refonte insidieuse de l'arrêt de 1962, à l'opposé de la lecture constante par le Cambodge des paragraphes 1 et 2 du dispositif d'une manière simultanée.

13. Pour entamer cette démonstration, je vous prie, Monsieur le président, de bien vouloir donner la parole à mon collègue sir Franklin Berman.

Le PRESIDENT : Je vous remercie, professeur Sorel. I now give the floor to Sir Franklin Berman. Sir Franklin, you may present your pleading without any break, or you can also indicate an appropriate moment for a pause if this does not have an impact on the flow of your argument.

Sir Franklin BERMAN: Mr. President, it had been my intention to signify a point at which it might be appropriate for the Court to take a break, if that is your wish.

The PRESIDENT: Yes, thank you.

Sir Franklin BERMAN:

JURISDICTION AND ADMISSIBILITY

1. Mr. President, Members of the Court, it is with the customary sense of honour, but coupled with a heavy responsibility, that I address the Court once again on behalf of the Kingdom of Cambodia. The responsibility weighs heavily not merely because this case is of such central significance for Cambodia, and for peaceful and co-operative relations in the region, as has just

been so eloquently described by the Agent. There is a heavy responsibility as well, because a request for interpretation — and especially one brought in these hitherto unprecedented circumstances — engages in the most direct way the integrity of the Court's judicial process, and the binding and definitive character of its judgments, as laid down in the Charter of the United Nations and the Court's own Statute. I am sure that this is a theme that our distinguished opponents will accept and endorse. My fear is that we will read different consequences into it.

Interpretation under the Court's Statute

2. Mr. President, the procedure for interpretation is built into the Statute itself. It is there for a purpose. The purpose is to ensure that, if difficulties ensue in understanding and giving effect to a judgment formally pronounced by the Court, the Court itself — on the application of either party — can be moved into action once more, and the outcome of this process will be an authoritative, an authentic and, above all, a *definitive* statement of how the original judgment should be interpreted and understood. I have laid stress on "definitive" because this quality emanates from the very fact that it is *the Court* which has the duty of laying down for the parties the proper understanding that must be given to its judgment. This is the antithesis, in other words, of a renewed struggle of wills between the disputing parties over what the Court had or had not decided; it is the absolute antithesis of a situation in which one party juts its jaw, decides for itself what the judgment is to mean, and sets about compelling others to accept that interpretation.

3. Mr. President, a request for the Court to interpret its own past judgment requires no further act of consent by the parties beyond that on the basis of which the Court originally assumed jurisdiction to hear the dispute. That is important. Its importance is that it shows that this faculty to interpret constitutes an inherent part of the process by which the Court settles, with binding legal force, the dispute between the parties brought before it. To put it another way: the purpose of the process of interpretation, as laid out in Article 60 of the Statute, is to reinforce the legal situation as it results from the judgment, and to do so with all the clarity that may be needed for operational purposes. The matter was neatly and precisely put by the Permanent Court as far back as 1927 in its decision on the interpretation of its Judgments in the *Chorzów Factory* case, where the Permanent Court said:

> "the Court is of the opinion that the expression 'to construe' [in Article 60] must be understood as meaning to give a precise definition of the meaning and scope which the Court intended to give to the judgment in question" (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J. Series A, No. 13*, p. 10).

4. It is not the purpose of interpretation to re-do what the Court has already done; it is not its purpose to undo what the Court has done. I expect that our opponents will, once again, accept this cardinal proposition; they could hardly do otherwise. Or at least they may accept the proposition in theory, but then invite you, the Court, to take a different view of what it means in practice.

5. It is against this background that the Court will, at the end of the day, have to weigh the competing assertions of the Parties: Thailand's assertion (which we will demonstrate is entirely without foundation) that Cambodia's only intention in these proceedings is to inveigle the Court into deciding something which the Court deliberately did not decide in 1962; and, against that, Cambodia's assertion (which we will substantiate *inter alia* from the materials which Thailand is now seeking to put before the Court), that Thailand's whole line of argument, culminating ultimately in its final submissions, is designed to persuade the Court that its predecessors were in error in 1962, that they could not have meant what they said, and that this is the opportunity therefore for the present Court to put matters right by revising what was then decided in final and in binding form.

6. Mr. President, Cambodia has come to the sad realization that a continuation of the wrangling between the two States, which has not led to a common understanding of the 1962 Judgment and its implications over the past 50 years, is most unlikely to lead to a common understanding in future either. Moreover Cambodia has been faced in the starkest fashion in recent years by the fact that the continuation of that situation has serious implications for peace in the region, that it endangers human life and normal existence and, indeed, that it is all too prone to result in direct physical damage to the very sacred site which — so Thailand continues to insist — constituted the whole essence of what the Court was focusing on in 1962. And the Court will have seen that vividly illustrated by the slides and other materials that were put before it during the proceedings on provisional measures two years ago. ~~**[Photo-slide showing shelling damage to Temple fabric]**~~ Mr. President, that cannot be acceptable as between two civilized neighbours.

And it would no longer be possible once the Court had given its own definitive explanation of the meaning and scope of its Judgment. That is why we are here today.

7. Mr. President, let me say at this point with the utmost simple clarity: what Cambodia is seeking in these proceedings is the elucidation by the Court of the meaning and scope of its 1962 Judgment, as those terms and concepts have been consistently defined over the years by this Court and its predecessor; that and nothing more. I can state that with full authority because it is no more than a simple repetition of what Cambodia said in its Request for Interpretation and has repeated in its subsequent written observations. Having said it, I now invite our distinguished opponents, when they come to the podium, to say the same, equally clearly and equally simply; that they are not, in other words, seeking from the Court a penitent admission of past error. If they can do that, they will have become partners in the process of assisting the Court to interpret its decision in the 1962 Judgment, and that is a development that Cambodia would warmly welcome, whether or not the Parties continue to differ on what the proper interpretation of the Judgment should be.

Jurisdiction and Admissibility

8. I can now pass, Mr. President, Members of the Court, to a series of points on which I can happily say with confidence there is, not disagreement, but agreement between the Parties.

9. In the first place, and very specifically, there is no disagreement between us that Cambodia must now establish that its Request for Interpretation is admissible, and falls within the powers of the Court under the Statute. Thailand says in its Written Observations of November 2011 (para. 4.1) "This is now the proper stage for the Court to engage in a thorough analysis of Thailand's arguments relating to the admissibility of Cambodia's request." It is common ground between us, between the two Parties, that those questions were not conclusively determined by the Court's Order of 18 July 2011 granting Cambodia's request for an indication of provisional measures of protection.

Jurisdiction

10. So I begin, Mr. President, with the question of jurisdiction which I can deal with very quickly as Thailand has raised no serious question in this regard. It is well settled that the Court's

power of interpretation under Article 60 of the Statute is an automatic and inherent one, or, in the Court's own words, "[t]he jurisdiction of the Court to give an interpretation of one of its own judgments . . . is a special jurisdiction deriving directly from Article 60 of the Statute" (*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. 216, para. 43). The Court has repeated this in its Order on Provisional Measures in the present case, adding that "the Court's 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" (*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand), Order of 18 July 2011, para. 21). I need add only that it has long since been established that, if the conditions emanating from Article 60 are duly met, "the Court cannot avoid the duty incumbent upon it of interpreting the judgment in so far as necessary" (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J. Series A, No. 13*, p. 12*).* That is a further quotation from the Judgment of the Permanent Court in the Interpretation phase of the *Chorzów Factory* case.

The conditions for admissibility

11. Nor is there disagreement between the Parties that the *admissibility* of Cambodia's Request for Interpretation depends on three requirements, which must be independently satisfied:

(a) There must be a *dispute* between the Parties to a case in which the Court has given judgment.

(b) The dispute must relate to the *meaning or scope* of the Judgment.

(c) The Request must seek interpretation of what the Judgment decided *with binding force*.

Those conditions have been laid down in a long series of cases, going back once again to the decision by the Permanent Court in 1927 which I referred to a moment ago.

12. It is only necessary to add that the third condition, namely, that the Request must seek interpretation of what the Judgment decided with binding force, includes also the case in which the dispute between the Parties is over whether a particular matter has or has not been decided with

binding force and that, too, once again goes back to the Permanent Court's decision in the *Chorzów Factory* case.

Thailand contests that any of those requirements is met — which will therefore be the main focus of this part of the argument. Other issues raised by Thailand will be dealt with after that, either by me or by my co-counsel who will follow.

The existence of a dispute

13. I move now to a demonstration that there is indeed a dispute between Cambodia and Thailand over the interpretation of the 1962 Judgment, first by looking at the Court's consistent jurisprudence as to the meaning of a "dispute over interpretation", and then by identifying the materials which the Court has regularly examined in order to establish the existence of a dispute of this kind in particular cases.

14. Mr. President, the Court's classic definition of a "dispute" is so well known that it hardly needs repeating. When it comes, however, to the particular kind of dispute in question here, namely a dispute between the Parties over the meaning and scope of a judgment, it was once again laid down by the Permanent Court as far back as 1927 that

> "the Court considers that it cannot require that the dispute should have manifested itself in a formal way; according to the Court's view, 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; emphasis added).

And later in the same Judgment, the Permanent Court observed:

> "It thus becomes necessary to ascertain whether such a difference of opinion *has in fact become manifest in the present case between the two Governments*, as regards the meaning or scope of Judgments Nos. 7 and 8." (*Ibid*., p. 12; emphasis added.)

And that approach has regularly been endorsed by the present Court, which recently made plain, for example, in the *Avena* case that "'the manifestation of the existence of the dispute in a specific manner, as for instance by diplomatic negotiations, is not required' for the purposes of Article 60" (*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) and**,** the Court went on to say**,** nor is it required that "'the dispute should have manifested itself in a formal way'" (*ibid*., p. 326, para. 54).

15. Mr. President, in the face of the sharply clashing submissions that have been put before the Court in these proceedings to date, Cambodia has some difficulty in grasping on what basis Thailand can be arguing that there is "no dispute" between the two States. One could hardly have a clearer demonstration that "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" or that a difference of opinion in that regard "has in fact become manifest . . . between the two Governments", borrowing the words of the Permanent Court in 1927. So, if this claim of "no dispute" by Thailand is to be understood more as signalling an argument over whether the dispute does concern interpretation of the 1962 Judgment, in other words, over the content and subject-matter of the dispute, that will be dealt with in the next section of my presentation. For the moment, so far as we can discern any substance in the submission of "no dispute", it seems to derive from the argument that what Cambodia asserts is the dispute in this case can only be discovered from the written pleadings in these proceedings themselves, and that that is somehow inadmissible.

Establishing a "dispute" for interpretation purposes

16. That argument seems to consist of two parts: *first*, that Cambodia has in the past accepted Thailand's interpretation of the 1962 Judgment and cannot go back on that now; *second*, that the Parties' submissions in interpretation proceedings cannot themselves be used either to establish the existence of a dispute over interpretation or to define its scope.

17. The first of these two arguments is largely one of fact, and Mr. Bundy will show the Court that, as such, it is without foundation. I preface what he will have to say on the subject with only one remark and that is that no basis can be found in Article 60, or in the past judgments of the Court itself, for the notion that a party to contentious proceedings can by subsequent conduct modify or "sacrifice" the proper meaning of what the Court has decided in its judgment. The notion is fundamentally at odds with the way in which the Statute — and the Court in its turn — treat the role of authentic interpretation as being an integral and inherent part of the judicial function of the Court. That is why no further jurisdictional basis is needed, why Article 60

expresses the function of interpreting its own judgments as a duty on the part of the Court, and why the Article puts authentic interpretation by the Court itself as the counterpart to the finality of the Court's judgments which are not subject to appeal. Thailand wants to turn a judgment into something like an agreement between the litigating parties, the interpretation of which may depend on their subsequent practice, and that submission by Thailand is therefore profoundly subversive of the integrity of the judicial function. But we pointed all of that out some time ago in our own written submissions, and it has had no answer.

18. Likewise, the second argument about the use of submissions in interpretation proceedings finds no basis in the past practice of the Court either. At its highest, what Thailand says in this context is that, although Cambodia's Request did show the existence of a relevant dispute, we have shifted our position since then in order to try to construct artificially a dispute implicating the first paragraph of the *dispositif* of the 1962 Judgment as well, and Thailand chides us for having "only discovered the dispute after we had filed our Request for Interpretation" (FWETh, para. 1.6). What in fact we said in our Response was that Thailand's Written Observations "reveal the existence of an even clearer dispute regarding the meaning and scope of the 1962 Judgment" (Response of the Kingdom of Cambodia (FWEC), para. 1.7) and we then go on to explain that in detail in paragraphs 3.3-3.15 of the same written submission. Not only is it counter to logic to assert that the formal submissions put to the Court on a request for interpretation cannot be taken into account in ascertaining whether a dispute really exists, but it also flies in the face of the Court's past practice. One need only look at paragraph 29 of the recent judgment on interpretation in the *Avena* case where the Court said the following:

> "It is for the Court itself to decide whether a dispute within the meaning of Article 60 of the Statute does indeed exist . . .
>
> To this end, the Court has *in particular examined the Written Observations and further written explanations of the Parties to ascertain their views . . .*" (*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), Judgment, I.C.J. Reports 2009*, ***p. 13***, para. 29; emphasis added.)

And that is a passage we rely on as confirmation of our approach.

Subject-matter of the dispute:

(a) ***The link between the first and second paragraphs in the*** **dispositif**

19. Mr. President, I turn now to the crucial issue of the subject-matter of the dispute. The starting-point must of course be the question that Cambodia put to the Court for interpretation; it can be found in the final paragraph of Cambodia's Request for Interpretation, and in identical terms in the final paragraph of Cambodia's Response to Thailand's Written Observations, and the text, I am glad to see, is now on your screens. As the Court will observe, the question Cambodia has posed to the Court focuses squarely on the operative part of the 1962 Judgment, and specifically on the second paragraph which contains the withdrawal obligation. And to simplify the Court's examination, the full text of the operative part of the Judgment is now on your screens, and alongside it, the text of Cambodia's question. This will enable the Court to see at a glance that the second paragraph of the operative part — that is the one to which Cambodia's question is directed — does not stand on its own but is organically linked to the first paragraph: the one is the "consequence" of the other; that is what the Judgment says expressly. But the two paragraphs are symbiotically linked in a deeper way as well. Both paragraphs employ the concept "territory of Cambodia": in the first paragraph, it is that the Temple "is situated in territory under the sovereignty of Cambodia", in the second paragraph, it is that Thailand must withdraw its military and police forces, etc. stationed by her at the Temple "or in its vicinity on Cambodian territory". And Cambodia submits that the concept of "Cambodian territory" must have the same meaning in both paragraphs.

20. So what is Thailand's position over those two basic propositions? Well, Thailand rejects them both. It denies the way in which the second paragraph depends on the first, and in fact seeks to give the second paragraph pride of place, to make it into the primary element, and indeed to make the interpretation of the first paragraph depend on the second, and thus denying both the legal hierarchy between the two and denying as well how the meaning of the withdrawal obligation is coloured and determined by the sovereignty finding.

21. This represents a categorical opposition of views about the relationship between ***the*** two main paragraphs in the dispositive part of the Judgment. And Cambodia submits that it plainly

constitutes in and of itself a dispute between the Parties over the meaning and scope of the Judgment.

(b) ***The withdrawal obligation under the second paragraph of the*** **dispositif**

22. Mr. President, my next submission centres on the withdrawal obligation enunciated in the second paragraph — which as I have said is the focus of Cambodia's formal request for interpretation —, and this time on the continuing nature of that obligation. Cambodia has advanced the position throughout these proceedings that the withdrawal obligation is continuing in character; indeed we say that to construe it in that sense is the only way in which to give meaningful and practical effect to what the Court decided in 1962. As I put the matter in the oral phase of the proceedings on Provisional Measures: the fallacy behind reading this paragraph any other way is that it would allow Thailand to withdraw its troops the day after the Judgment and move them back in again a week later. That is obvious. It seems to us equally obvious that the Court could not have intended to lay itself open to a total absurdity of that kind. So Cambodia is and remains firmly of the view that the obligation laid on Thailand by the second paragraph is of a continuing character.

(b)(i) ***The continuing nature of the withdrawal obligation***

23. Thailand's position on this elementary question is however puzzling. We heard repeatedly through the mouth of counsel on the Provisional Measures application that the withdrawal obligation was "ponctuelle et instantanée" or "immédiate et instantanée" or even simply just "instantanée" *tout court*. And that is reiterated in Thailand's Written Observations of November 2011 [para. 4.25]; and there we read that the second and third paragraphs of the *dispositif* required action to be taken, and so Thailand continues "[a]s such, they are extinguished when the measures ordered therein are taken". That is a pure repetition of the "instantaneous" theory of the withdrawal obligation. It is, to be sure, glossed — though in a rather mysterious way — by the remark that follows, to the effect that Cambodia did not complain about Thai withdrawal in the aftermath of the Judgment or for a long time afterwards. Well, that is factually incorrect, as Mr. Bundy will demonstrate later, and we maintain our submission that the Court must have intended the obligation in the second paragraph to have a continuing character. But in any event, Thailand's written submissions culminate in their Further Written Explanations, and the

reference is paragraph 4.103 *(v),* with an outright denial that the withdrawal obligation is a continuing one.

24. They may have changed that view a little; that is not entirely clear. Because the Further Written Explanations continue to maintain, on the one hand, that the withdrawal obligation was one "discharged instantaneously" in 1962 [para. 4.102], and "discharged instantaneously" can only mean: it no longer exists. They do, however, precede that by a limited recognition of the continuing character of Thailand's duty to stay out of the areas in question, or at least out of certain areas; only they then seek to attribute that duty to Thailand's obligations under general international law, and these are roundly declared to be "independent of the Judgment and independent of the jurisdiction under which the Judgment was reached". It is not clear to us whether this confirms or contradicts what had been said in paragraph 3.81 of one and the same Further Written Explanations, to the effect that the Parties are in agreement that "there is an obligation for Thailand not to have troops in the area awarded by the Court to Cambodia" and, so Thailand continues, that it matters little if this obligation exists by virtue of general international law or by virtue of the particular conclusion drawn by the Court in 1962 on the basis of the general obligation. And on that basis, so Thailand says, no question of interpretation arises.

25. Mr. President, Members of the Court, that is surely disingenuous. Of course Thailand has an obligation under general international law not to invade and occupy Cambodian sovereign territory, and that is something which one imagines a law-abiding Thailand would never dream of doing. But that is not the question, any more than it was the question when the Court gave judgment in 1962; the question was, where, to what areas, does that obligation relate? Had the answer to that question been clear and undisputed between the Parties at the time, there would have been no occasion for the matter to go to the Court; nor would there have been any occasion for the Court to have to enunciate a *withdrawal* obligation. The Court gave a binding answer to that question then and we say that ***that*** answer continues to be binding now. Were Thai armed forces to make a fresh incursion into those areas, shall we say next week, after the end of this hearing, as they have done in the recent past, our complaint would not be in the form that this would be contrary to international law; obviously it would. Our complaint would be that it was in breach of the conduct required on the part of Thailand *by the 1962 Judgment*. And what can one foresee

would be the nature of Thailand's response: that it acknowledged that it was consciously disobeying the Court's Judgment but that that constituted a fresh dispute which sadly could not be brought back to the Court because Thailand no longer maintains an acceptance of jurisdiction under the Optional Clause? I have some real difficulty in imagining that. No, the response would be that there is no breach because the areas in question *are not covered by the Judgment*. And that is as clear-cut an example as one could wish of a dispute about the meaning or scope of a judgment of the Court. And it illustrates perfectly why we submit that there is an inextricable bond between the first and second paragraphs in the 1962 *dispositif*. But it also explains precisely why, in the hope of heading off that undesirable state of affairs, Cambodia now comes to the Court asking the Court to say authoritatively and definitively what the meaning and scope of the withdrawal obligation is.

26. It must be for our opponents now to say definitely whether or not they accept that the withdrawal obligation is a continuing one with continuing effect under the Judgment of the Court. If they do not accept that, then there is without any shadow of doubt a dispute on that question and one which grounds the competence of the Court to pronounce on it by way of interpretation.

(b)(ii) ***The meaning of "withdrawal"***

27. Mr. President, I want to move on now to a key point on the content of the withdrawal obligation, that is to say, the nature of withdrawal, what it means "to withdraw". Thailand seems to view that in an abstract, half-dimensional sort of way, as if it simply consisted in movement of some kind. The crucial fact is, however, that "withdrawal" necessarily means not just withdrawal *from* somewhere but withdrawal *to* somewhere else. It is not clear whether Thailand does or does not recognize this inescapable fact, because it simply fails to deal with the question. We are told over and over again with absolute assurance that in 1962 Thailand did "withdraw" and that in doing so it fulfilled and exhausted the obligation arising out of the Judgment. But we are never told what units were withdrawn, where they were at the time, or where they were moved to. The last of those three elements is the essential one: where were they moved to? Without knowing that, how can one possibly judge whether Thailand is justified in asserting that it did at the time comply? Cambodia's submission on this central point is a simple one: that by casting the withdrawal obligation within the envelope of territory — "or in its vicinity on Cambodian territory" — the

Court required all Thai units to be removed *from Cambodian territory*, and that in turn can only mean removal *into Thai territory*. Which leads inexorably back, of course, to the umbilical link between the first paragraph and the second paragraph, inasmuch as both of them are about "territory": the first is about "territory" as the fundamental postulate for the appurtenance of the Temple to Cambodia, and the second is about "territory" as the underlying spatial element behind the obligation *"in consequence"* that Thailand must withdraw. Then, of course, there is a further dispute over whether "Cambodian territory" in the second paragraph has to be understood, following the first paragraph, in terms of the Court's identification of the boundary which the two States had agreed upon for Treaty purposes, and that is equally a dispute over the meaning and scope of the Judgment. Just as the Court says in express terms that it cannot decide whether the Temple lies in territory under Cambodian sovereignty without having regard to what the frontier line is and where it runs, so there is no way of assessing the withdrawal from Cambodian sovereign territory of Thai forces emplaced there without having regard to the frontier line which divides Cambodian sovereign territory from Thai sovereign territory.

28. The fact that Thailand refuses to accept this — refuses indeed to accept any of its component parts — establishes unambiguously the existence of a dispute, or series of linked disputes, between the Parties; and it would test to breaking point even the ingenuity of our highly able opponents to deny that those disputes, as I have formulated them, are about the interpretation of what the Court decided with binding force in its 1962 Judgment.

(c) ***The status of the Annex I Map***

29. Finally, Mr. President, I will not disappoint our opponents; I will make a brief reference to something to which the Court devoted, on a conservative estimate, about 12 out of the 36 pages that constituted the 1962 Judgment. I refer, of course, to the Annex I map. I almost feel I ought to apologize for doing so, given the violent reaction that any mention of the map provokes from the Thai side. If anyone is obsessed by the Annex I map, it is Thailand, not Cambodia. All that Cambodia has attempted to do is to distil, by careful analysis, the status which the 1962 Judgment gave to the Annex I map. Thailand's indignant rejection of the notion that the Judgment gave any status at all to the Annex I map in itself creates a yet further dispute; and it is a dispute over

whether something has or has not been decided with binding force in the Judgment; and that has been established since 1927 as being a dispute of a kind which is within the Court's power of interpretation under the Statute.

30. So, to summarize: as set out in detail in paragraph 5.9 of Cambodia's Response to Thailand's Written Observations, there are at minimum three disputes between the two States in issue in the current proceedings; all three of them relate directly to the operative part of the 1962 Judgment and therefore indisputably entail interpretation of what the Court had decided with binding force in the Judgment, or — equally indisputably — they relate to whether something was decided with binding force, as foreseen in the settled jurisprudence of the Court.

Mr. President, this is a natural break in my argument. Would it suit the Court to call a recess?

The PRESIDENT: Yes, thank you very much, Sir Franklin. Indeed it is a good moment to take a pause of some ten minutes. The hearing is suspended for ten minutes.

The Court adjourned from 11.30 a.m. to 11.45 a.m.

The PRESIDENT: Please be seated. The hearing resumes and Sir Franklin may have the floor. Please proceed.

Sir Franklin BERMAN:

Thailand's position

31. Thank you, Mr. President. Before the break I had explained in summary why Cambodia's request is admissible. Thailand has no real answer to any of the points that I made. Its effort to argue the inadmissibility of Cambodia's request for interpretation rests essentially, as you heard from Professor Sorel, on two points:

(1) the status which the Judgment attributes to the Annex I map is not part of the *res judicata*; and

(2) Cambodia is seeking to gain now what it could not achieve in 1962.

32. Both arguments are fallacious, and both are largely beside the point as arguments on admissibility. But before I move on to them, let me first take the Court to a very significant

document that has only recently become available. This document is significant for so many aspects of the present proceedings that I would like to spend some time on it and, for that purpose, it might be convenient if the Members of the Court had it before them on their screens as they now have (Project Thai Annex 5). This document is Annex 5 to the Further Written Explanations filed by Thailand in June of last year. In other words, it is a Thai document and it only became available for inspection at a very late stage in the course of these proceedings on interpretation, and one can see from the cover sheet that the document was "Declassified on 26 May 2011". One can also see that reflected in the document itself which is now on your screens, where a security classification at the head and foot of each page has been struck through.

The 1962 decision of the Thai Council of Ministers

33. What the document represents is the "resolution of the Council of Ministers" on the implementation of the Court's 1962 Judgment on which Thailand has placed considerable reliance in these proceedings. More precisely, it consists of a brief note, that is the one now on your screens, dated 11 July 1962 recording a decision that had been taken by the Council of Ministers on the previous day. This is backed by a two-page document from the Minister of the Interior dated 6 July which evidently represents the paper which the Council of Ministers had for consideration at its meeting; and attached to that in turn is a small-scale map on the scale of 1:5,000 of the part of the promontory on which the Temple stands. The history of this document's eventual production is also of interest. It shows that it was not until the very close of the second round of written argument which the Court, exceptionally, has decided to order in the present proceedings that Thailand finally let the document see the light of day.

34. What does Thailand say about that? It says that the document "simply adds nothing to understanding what occurred" (FEWTh, para. 1.34). Well, once again this is surely disingenuous. Cambodia begs to differ: now that the document is available in full, we can see just how significant it is. I would like to begin by taking the Court to the page which is on your screens. This records the actual decision taken by the Council of Ministers; nothing there, as the Court will note, in the way of a reasoned determination, just a bare choice, without justification or reasoning, between two alternatives. To try to find out more, you have to go to the supporting paper which

appears on the next two pages and that is now coming up on your screen. That is the proposal that was put forward by the Minister of Interior to the Prime Minister and by him to the Council of Ministers, for decision. The supporting paper says (you can see that in the second paragraph) that it was drawn up after consultation with all of the relevant authorities who had been involved in the handling of the case, the Foreign Ministry, the Royal Thai Survey Department and, of course, the Interior Ministry itself.

35. And what does the Interior Minister propose in this paper to the Council of Ministers? Well, the paper talks, perfectly properly, about implementation, about compliance, about execution of the Court's Judgment, and about determining "the limit of the location of the vicinity of the Temple" in the context of Thailand's obligation to withdraw its forces. And that is presumably an implicit reference to the second paragraph of the *dispositif* of the Judgment which I was discussing this morning. And all of that looks very satisfactory, until you come to the end of the sentence in question, which reads "on the principle that Cambodia will only obtain the ruins of the Temple . . . and the ground on which the Temple stood".

36. And the paper then continues in the next paragraph in the beginning, ***that*** what it calls the determination of the vicinity of the Temple "may be done according to two methods, namely . . .". And it goes on to spell out the "two methods" which are illustrated on the map attached and that is on your screens now. So the two methods, one is an abstract triangular figure, starting it seems from the corner of the Temple buildings themselves; and if you look at the map on the screens, you can see the abstract nature of the figure reflected in the fact that the triangle is bounded to the north by straight lines, the yellow line and the red line. The other limits of this triangle are its two long sides to the west and to the east — and these coincide with parts of the escarpment edge — which as the Court will recognize is the self-same escarpment edge that formed part of the "watershed line" which Thailand had been advancing as the course of the frontier in the case, and which the Court had declined to uphold as representing the Treaty settlement between the two States.

37. Now we come to the second alternative, the other "method": this is the one entirely in red, it is equally an abstract figure. The document calls it not a triangle but a rectangle, though in fact, as you can see from the red lines on this sketch-map, it is still basically triangular in shape, except that this time the western boundary of the area is formed by a further arbitrary line. This is

a single straight line running due north-south, immediately flanking the Temple ruins which lie to the east. And the drafters of the document are kind enough to spare us trouble because they calculate for us the extent of the discrepancy between the areas resulting from the two "methods" — that is in the paper from the Ministry of the Interior and the discrepancy turns out to be sizeable: one of the "methods" produces an area which conveniently amputates the other "method" almost exactly in half; the actual figures are one-half a square kilometre and one-quarter of a square kilometre. So those are the two "alternatives". And which of the two "alternatives" does the Council of Ministers opt for? Well the Court will not be surprised to note that it is the small one, the half-size one.

38. Then finally, in the last paragraph of the paper (on the second page, that is, ***of*** the Ministry of Interior's paper) he and his colleagues propose — and the Prime Minister evidently endorses it because he passes the paper on to the Council of Ministers — the ~~**proposed**~~ erection of the sign boards which we have subsequently seen in Thailand's photographic exhibits which talk about "the limits of the vicinity of the Temple". The paper proposes the erection of these sign boards but it does not propose a barbed-wire fence; the barbed-wire fence was evidently something that was added by the Council of Ministers itself — and you can see that from the first page which is now on your screens — if you go back to the first page, this is the Council's decision, look towards the very end ***it says*** that in addition the barbed-wire fence should be constructed.

The implications of the 1962 decision of the Thai Council of Ministers

39. Mr. President, Members of the Court, a number of highly significant points shout out, loud and clear, from this very revealing document. Let me list some of them (and I am sure there are others as well):

(1) This is pure interpretation; what else could it be, given that it consisted in a choice between alternative methods for how to read a cited portion of the Judgment?

(2) And this interpretation is as unilateral as unilateral can be; it was after all kept secret from us (even in these proceedings) until ten months ago.

(3) It is not only interpretation but it relates to precisely that part of the Judgment on which Cambodia's present Request for Interpretation is focused, i.e., the second paragraph of the *dispositif*.

(4) It also represents proof positive of what Cambodia has said in its written argument on the subject of interpretation versus implementation: that the two are distinct, but that it is not logically possible to proceed to "implementation" except on the basis of an "interpretation".

(5) It puts paid at a stroke to the argument Thailand now advances over and over again that the Judgment is "crystal clear", that it needs no interpretation, there is no room for any interpretation. *Interpretatio cessat in claris*, as the Further Written Explanations so engagingly say; to us it seems to be more a case of *ut interpretatio non contentos adjuvet*.

(6) Moreover, Mr. President, the alternative interpretations put forward are purely arbitrary, purely abstract, as the straight lines on the map show; no justification is given for them, no explanation why they are said to correspond in spatial terms to what the Court had decided, and the two interpretations differ widely from one another, by a factor of 2:1.

(7) The choice made between the two interpretations by the Council of Ministers is equally arbitrary and abstract: no reasoning whatsoever, none of any kind.

(8) Nor is this a simple case of an administrative arrangement for withdrawal, with no intended implications for territory or an inter-State boundary. Far from it: not only, as already indicated, does it purport to be based on the "principle" that Cambodia will only "obtain" the ruins of the Temple and the ground on which it stood, but it also states with explicit clarity that the purpose of "determining the vicinity of the Temple" is "so as Cambodia *will have sovereignty* in accordance with the Judgment of the World Court". This is the pure language of the *first* paragraph of the *dispositif*; it proves graphically that Thailand has always accepted, right from the very beginning, the link that Cambodia now maintains in these proceedings, namely, the link that must exist between the first and second paragraphs of the *dispositif*, and it shows that Thailand was perfectly conscious that it was setting out to give an interpretation to the Judgment, and to give an interpretation that would encompass the first paragraph just as much as the second.

40. So what, Mr. President, Members of the Court, does Thailand now say about its own document, now that it has finally allowed us all to see it? It says — and you will find this at paragraph 1.13 of Thailand's Further Written Explanations of last June:

(a) That this was not a case of Thailand providing its own interpretation of the term "vicinity" in the 1962 Judgment and seeking to enforce it through resort to force. Well that is clearly nonsense: I have just demonstrated that this was unequivocally interpretation and that the Council of Ministers decided of its own volition to add a barbed-wire fence to the proposal that had already been put up to it; and the documents already before the Court at an earlier stage show that it was plainly evident at the time, even to outside observers, that anyone who transgressed the fence would be fired upon. What else could that be other than a unilateral decision to be imposed if necessary through resort to force?

(b) Well, says Thailand, this was not really a "boundary" but just a line of withdrawal, and the fence was there just as much to keep our own soldiers back in the one direction as to keep the Cambodians out in the other. But who "withdraws" and sets up a barbed-wire fence behind him if not to create a "boundary"? And who says that a line is to keep your own soldiers in, except by asserting that the territory within which they are to be kept is your own territory? Moreover, as I have shown, the Thai ministerial document was disarmingly plain that the intention was to mark off the area that Cambodia would "obtain" and that it was in connection with Cambodian "sovereignty" in accordance with the Court's Judgment. The Court may have noticed that the Thai Agent spoke during the proceedings on Provisional Measures of a so-called deliberate Cambodian policy "of progressively encroaching *on Thai territory* beyond the line established by the Council of Ministers in 1962"[5]. And the final conclusive touch surely lies, as we can now see with hindsight, in the Thai unilateral map of 2007 — and I have that on the screen now — which purports to show nothing less than a frontier line, and one that runs along the old watershed line *until* it reaches the Council of Ministers line, at which point the purported frontier line has a little nick, rather like a cut on the chin while shaving, before regaining the old watershed line and continuing along it. Well, Thailand makes a great fuss, of

[5] CR 2011/14, p. 11, para. 34 (Plasai).

course, about Cambodia's treatment of this map and whether the map says anything new or not. Thailand can say what it likes about the map and its origins but the document from which that nick on the map has its *origin* was kept secret until declassified in 2011 and then released in these proceedings a year later, which shows that the map was of a piece with other unilateral Thai actions designed to transmute into an artificial inter-State boundary line the effect of the Court's 1962 Judgment — a Judgment which Thailand now insists before the Court cannot be construed as having established any boundary at all in the disputed region.

(c) Which brings us inexorably back, Mr. President, to the question of interpretation. Here Thailand relents a bit — this is at the end of paragraph 1.13 by claiming that, if the former barbed-wire fence was not a boundary, it was at least "consistent with" the area the Court was focusing on; well, what is an assessment of "consistency with" the Court's focus if not a form of interpretation? But then, when it comes to the 1962 Judgment itself, and specifically to Thailand's core issue of the "vicinity" of the Temple under the second paragraph of the *dispositif*, we discover that it is not really "interpretation" at all, it is no more than an "estimate" of what the vicinity is; but it seems that that does not matter, because it is not a mere estimate, but a "good faith" estimate, and moreover one that is "solidly grounded". And then, Mr. President, Members of the Court, then we come to the really telling point: what is this "good faith estimate" "solidly grounded" in? The Thai Written Explanations tell us: it is solidly grounded in "the arguments of the Parties before the Court". That is the phrase Thailand uses at the very end of paragraph 1.13 of its Further Written Explanations, and we might pause for a moment to let its implications sink in. We have a specific term used in the dispositive part of a judgment of the Court; it creates a specific obligation for Thailand arising out of the Judgment; Thailand needs to take action to comply, and intends to take action — amongst other things by erecting a fence designed to act as a barrier; but regrettably compliance is not straightforward because the terms employed by the Court in the *dispositif* are not clear, or not sufficiently clear; so they need to be given meaning, in other words interpreted; and how does one set about giving them meaning — which, incidentally, you intend to compel others physically to respect? — one makes an "estimate", which, by the bye, is exactly one half of one's other "estimate" of what the Court meant; and on what does one

ground this "estimate"? Not on the Judgment of the Court, but on what the Parties had argued in their submissions to the Court before it came to its Judgment! It is as if the Judgment of the Court is purely evanescent: a blip on the screen, a momentary happening that then descends into the past and can be safely forgotten so that the argument between the Parties can resume again where it left off before the Court spoke.

Thailand's attempts to marginalize the Court's Judgment

41. Mr. President, this is fairly breathtaking. It contains no hint of a recognition that the pronouncement of a judgment by the Court creates a new legal situation between disputing States. Or of a recognition that, if the effects of this new legal situation need to be interpreted for practical purposes, the material for that is to be found in the Judgment itself, including, of course, the Court's reasoning. What else is the reasoning in a reasoned judgment for? But at least it does go to explain why such a large portion of the Thai argument in these proceedings is devoted to rehearsing what the Parties had been arguing to the Court before it pronounced its Judgment, and to the practice of the two States in the years after that: all part of a strategy of de-emphasizing what the Court itself had said and submerging it in a continuing power play between the two neighbouring States. And the Court will be able to see that vividly illustrated in the Further Written Explanations, at paragraph 3.109. Here we have Thailand accusing *Cambodia*, the very State seeking through these proceedings to revalidate and vindicate what the Court decided, accusing Cambodia of having the outrageous temerity to suggest that a Judgment of the Court, once handed down, has "a life of its own". Yes, Mr. President, we do say that a judgment of the Court has a life of its own, because it definitively settles the dispute between the parties which was before the Court and creates of its own force a new legal situation that is thenceforth binding on the parties. And that is why Cambodia considers itself entirely justified in recalling once again the extreme reluctance with which Thailand was eventually driven to accept in 1962 that it had to comply with the Judgment and the contortion through which it asserted that, if so, this was only because of an obligation under the United Nations Charter — not as a direct effect of the Judgment itself.

Res judicata

42. And that may be a suitable introduction, Mr. President, to Thailand's treatment of the question of *res judicata*.

43. Thailand does not disdain to rewrite Cambodia's submissions. A gross example is at paragraph 3.7 of the Further Written Explanations, which would have the reader believe that Cambodia "alleges" that the status of *res judicata* attaches to the whole of the 1962 Judgment, reasons and *dispositif* together. This is so far from the truth that I shall not bother with it further. In similar vein, Thailand's submissions seek regularly to elide what the Court has said in the past, what the Court has laid down about the status of reasons in the process of interpretation. The Court consistently says that reasons cannot be the subject of a request for interpretation *except in so far as* they are inseparable from the operative part. Conversely, if the reasons are indeed inseparable from the operative part, then they fall within the *res judicata* and thus within the interpretative jurisdiction of the Court. The *locus classicus* of course is the Request for Interpretation in the *Cameroon* v. *Nigeria* case, where the Court said:

> "These reasons are inseparable from the operative part of the Judgment and in this regard the request therefore meets the conditions laid down by Article 60 of the Statute in order for the Court to have jurisdiction to entertain a request for interpretation . . ." (*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. 36, para. 11.)

44. That is the situation here. But, unlike in the *Cameroon* v. *Nigeria* case, it is not even necessary for the Court to make a fresh assessment of the essential nature of the particular reasoning which Cambodia invokes for the proper understanding of the meaning and scope of the 1962 Judgment — that is not necessary, because the Court has already done so in 1962. As the Court said at the very outset of its reasoning, a mere two pages in to the reasoning, it could "only give a decision as to the sovereignty over the Temple area after having examined what the frontier line is" (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 17). In our submission, in Cambodia's submission, this is a plain and simple determination by the Court itself that establishing the boundary line and where it runs in the region in dispute is the essential basis for the formal decisions that will follow in due course in the dispositive part.

No alternative basis in the Judgment to the Annex I Map

45. Thailand's attempt to suggest that there was some alternative legal basis for the above other than the Annex I map is ludicrous in the light of the Judgment itself. The best that our opponents can dredge up in this connection is the well-known visit to Préah Vihéar by Prince Damrong in 1930, which indeed the Court itself referred to as the "most significant" of the series of episodes which Thailand had tried to put forward, like King Canute, against the incoming tide. I have already had the opportunity to describe to the Court, in the proceedings on provisional measures, how the Prince Damrong incident occupies no more than two paragraphs in the Judgment, in contrast to some 12 pages the Judgment devotes to the Annex I map, its origins, and to Thailand's acceptance of it. But what may matter as much as the sheer weight of material is the fact that the Court explicitly put these episodes under the rubric of attempts by Thailand to "efface or cancel out the clear impression of acceptance *of the frontier line*" or to "overrid[e] and negative[e] the consistent and undeviating attitude of the central Siamese authorities *to the frontier line as mapped*" (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 30; emphasis added). Not only that, but when the Court proceeds to evaluate Prince Damrong's visit, it does so expressly in terms of Thailand's consistent attitude *to the Annex 1 map and line* and acceptance of the frontier *as drawn on the map* — the Court will see that at pages 28 and 29 of the Judgment, which to save time, I will not read out now. So there is not a shred of support for Thailand's attempt now to assert that the Court had an alternative basis for its decision, and that all of the discussion of the Annex I map was just an interesting excursus of no lasting importance at the legal level. Quite the contrary, the Judgment treats the episode simply as further confirmation of a conclusion it had already reached about the binding nature of the boundary on the map. And the decisive element is surely the Court's own statement:

> "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 . . ." (*Ibid*., p. 22; emphasis added.)

That is at page 22 of the 1962 Judgment; I ask the Court to put it alongside the paragraph from the Further Written Explanations — which is now on your screens — the Court says **"**the real question therefore, which is the essential one in this case, Thailand says: "the map is simply not an essential part of the reasoning and thus not relevant to a request for interpretation".

46. Earlier in the Further Written Explanations — paragraph 1.8 — Thailand sets out to suggest that Cambodia has retreated from its position, now admits that the Court recognized but did not determine the Cambodia/Thailand boundary, and that in consequence there is nothing that could be part of the *res judicata* and as such available for interpretation. The situation is however perfectly simple and perfectly normal; there is no need for caricature. The Court in its Judgment was abundantly clear about what it was laying down: that it could only decide the dispute, by having regard to the boundary, that the boundary was determined by the Franco-Siamese treaty settlement, and that the acceptance of the Annex I map by the two States caused it to become part of the treaty settlement and thus binding on them. The situation is exactly similar to any disputed treaty issue that comes to the Court for settlement: it is their treaty which creates the legal obligations binding the litigating Parties, it is the Court which settles definitively the dispute between them over what their treaty obligations mean. That no more entails that the Court creates the treaty than it entails in this case that the Court determined the boundary. The treaties determined the boundary; the Court settled the argument as to what the treaties meant — and it did so *with binding force*, because that is what the Charter and the Statute say. It's as simple as that.

47. Mr. President, if what the Judgment said about the frontier and about the map is not part of the *res judicata*, then it would mean that Thailand is now free to deny that it had ever accepted the Annex I map — as the Court held — or that the Annex I map had entered into the treaty settlement as an integral part of it — as the Court also held. Well, if that is, again, Thailand's position, it ought now to say so.

Cambodia is seeking to gain now what it could not achieve in 1962

48. Mr. President, I move now to the other Thai argument that Cambodia is seeking to gain now what it could not achieve in 1962. Perhaps this is the real kernel of Thailand's argument. It seems to us to take two forms. There is the form which says: Cambodia's request goes beyond the dispute submitted to the Court in 1959, so for the Court to decide it would be *ultra petita*. Then there is the form that says, more specifically: the Court formally determined not to decide this point in 1962, so to ask the Court to decide it now goes beyond the bounds of interpretation.

49. In neither form is this a sound argument. But before I proceed to analyse it, let me make one general observation. This is that Thailand regularly accuses Cambodia, in outraged tones, of invoking parts of the Court's reasoning to explain the *res judicata*; the *dispositif*, says Thailand, is self-contained and must be interpreted as it stands. But Thailand does exactly the same thing. It cites various paragraphs in the reasoning as showing that, when the Court refers in the *dispositif* to the territory in which the Temple is situated, it means in fact only the Temple and the Temple ground; and it cites two single paragraphs at the beginning and at the end of the reasoning to show that the Court deliberately decided not to accord any formal status to the Annex I map. Where Thailand picks out a few selective quotations and tries to give overriding effect to them, our effort has been to use the whole central run of the Court's argument to illuminate an understanding of its final conclusions.

The Court's treatment of the maps

50. Let me address the classic example of this selective abstraction and confront head-on Thailand's central assertion that the Court refused in 1962 to answer the question of the status of the Annex I map that had been posed formally in Cambodia's final submissions. This is what Cambodia had asked the Court to adjudge and declare: "that the frontier line between Cambodia and Thailand, in the disputed region in the neighbourhood of the Temple of Preah Vihear, is that which is marked on the map of the Commission of Delimitation between Indo-China and Siam (Annex I to the Memorial of Cambodia)" (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 11).

And this is what the Court said:

> "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 haven *(sic)* 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." (*Ibid.*, p. 14.)

And then at the end, at page 36, the Court says, immediately before the *dispositif*:

> "Referring finally to the Submissions presented at the end of the oral proceedings, the Court, for the reasons indicated at the beginning of the present Judgment, finds that Cambodia's first and second Submissions, calling for pronouncements on the legal status of the Annex I map and on the frontier line in the disputed region, can be entertained only to the extent that they give expression to grounds, and not as claims to be dealt with in the operative provisions of the Judgment." *(I.C.J. Reports 1962*, p. 36.)

Mr. President, it defies logic to read into those two pronouncements by the Court a "refusal to decide" the question that had been put to it. The first extract, it will be noted, refers to far more than just the Annex I map, but to a whole category of evidence that had been presented to the Court, including maps in general and other, unspecified, materials as well. The Court seems simply to be saying that it will have regard, amongst this mass of material, only to that which is relevant to the issue before it. The central — indeed unique — relevance of the Annex I map is then established later on by the progression in the Court's reasoning, which Cambodia set out in detail in paragraph 39 of the Request for Interpretation. As to the second extract, the one just before the dispositive part, it is perfectly plain just from the words which the Court used that the Court was not refusing to "decide" a question, a question which, indeed, it had already stated to be the "essential" question in the case, it was simply declining to decide it in a particular way, i.e., as a formal determination in the dispositive part of its Judgment. The status of this question within the Court's reasoning was, self-evidently, left untouched, as was its "essential" place in this reasoning.

The doctrine of *ultra petita*

51. Mr. President, before I leave the question of *ultra petita*, may I make two brief comments:

— *first*, that the purpose and sense behind the doctrine of *ultra petita* is to ensure that a tribunal stays within the limits of the jurisdiction conferred upon it, so that in principle it has no application to proceedings for the Court's interpretation of its own past judgments given that this is, in the Court's own words, "a special jurisdiction deriving directly from Article 60 of the Statute"; the explication by the Court of the express wording of the 1962 *dispositif* in terms of its own reasoning at the time could not by definition be *ultra petita*;

— *secondly*, that there is in any case no warrant for undertaking, as Thailand has done, a search *aliunde* for the *petita* when the Court has itself laid down the scope and subject of the dispute, as it did here in plain and simple 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." (*I.C.J. Reports 1962*, p. 14.) Let me touch briefly on the interesting word "confined". What looks on the surface like a term of restriction is in fact a term of inclusion. When the Court finds — and this is an operative *finding*, not a piece of reasoning — that the dispute before it is to be understood as "confined" to the region of the Temple, it certainly means that the dispute does not extend beyond that *region*; but it also means that the dispute does extend to everything related to sovereignty *within* that region. Moreover the Judgment goes further; it defines for us what the Court itself decided was the Applicant's *petitum* and the Respondent's *contra-petitum*, because it says: "'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.'" (*Ibid.*, p. 14; emphasis added.) And: "'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.'" *(Ibid.)* And, having recited the *petitum* and the *contra-petitum*, the Court then links this description of the *petita* to its immediately following decision on the "subject of the dispute" by using the word "[a]ccordingly" ***(ibid.)***. "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."

52. So, the *ultra petita* argument is thus devoid of all foundation.

53. It follows, Mr. President, that the three-stage test for admissibility is amply satisfied: that there is a *dispute* (or more than one) between the Parties, which relates to the *meaning or scope* of a judgment, and the Request seeks interpretation of what the Judgment decided *with binding force*.

Thailand's new submission

54. Before concluding, I must however devote one brief moment to a further matter; a new submission by Thailand in paragraph 5.10 of its Further Written Explanations: Thailand accuses Cambodia of having maintained over the past 50 years "a strategy of claiming with growing insistence that, contrary to the terms of the Judgment, the Court decided on the boundary between the two States". This is then elaborated in the last of Thailand's formal submissions in that written document, which asks the Court in somewhat different terms to "formally declare that the 1962 Judgment does not determine that the line of the Annex I map is the boundary line between the Kingdom of Thailand and the Kingdom of Cambodia". Leaving to one side the obvious procedural objections to the introduction of a new formal submission in this manner at this very late stage, Cambodia finds itself constrained to observe that — while it can understand why the inexorable logic of the 1962 Judgment has driven Thailand to do so — this new submission asks the Court for a pronouncement covering in terms the entire length of the Annex I map, in flagrant contradiction of Thailand's whole position in these proceedings as to the limited scope of the dispute which it says was brought before the Court in 1959. Given, however, that the substance of this submission finds no basis in the terms of the Judgment itself and given, moreover, that its scope does not respond to any submission put before the Court in these proceedings by Cambodia, Cambodia will, in its closing submissions, ask the Court formally to reject Thailand's new submission, and to reiterate instead the findings of the 1962 Judgment that "[t]he Court considers 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" (*I.C.J. Reports 1962*, p. 33), and that "the Parties at that time adopted an interpretation of the treaty settlement which caused the map line, in so far as it may have departed from the line of the watershed, to prevail over the relevant clause of the treaty" (*ibid.*, p. 34).

Lapse of time

55. Mr. President, I close this oral pleading with a brief discussion of the legal effect of the lapse of time between the pronouncement of the Judgment and the lodging of Cambodia's Request for Interpretation. I can do it very briefly by putting before the Court four simple propositions:

1. The Court has now settled definitively that there is no statutory time-limit on a request for interpretation. I refer the Court to paragraph 37 of its Order on Provisional Measures in this case, which is a definitive finding, not a provisional one.
2. The claim that Cambodia has acquiesced in Thailand's unilateral interpretation, and cannot therefore come to the Court to seek the correct interpretation now, is nothing more than an attempt to introduce a time-limit by the back door.
3. Thailand's allegation that the lapse of time raises major questions as to the integrity of the interpretation process is unsupported and inexplicable; if a judgment of the Court has a legal meaning, that meaning stays fixed over time.
4. Lastly I feel bound to recall the extraordinary anomaly lying at the heart of Thailand's position in this case: that the consequence of a judgment of the International Court of Justice is that it confers on the *losing* party a unilateral right to interpret what the judgment means, to enforce that on the ground, and to dare the successful party to do something about it on pain of sacrificing the full extent of its rights deriving from the judgment.

56. Mr. President, Members of the Court, I submit therefore that no question remains as to the admissibility of Cambodia's Request.

57. That brings me to the end of my pleading. Might I ask you, Mr. President, to be good enough to give Mr. Bundy the floor.

The PRESIDENT: Thank you very much, Sir Franklin, and I invite Mr. Bundy to address the Court. You have the floor, Sir. Mr. Bundy.

Mr. BUNDY: Thank you very much, Mr. President.

THE EXISTENCE OF A DISPUTE OVER INTERPRETATION AND THE QUESTION OF MAPS

1. Mr. President, Members of the Court, it is, as always, an honour to appear before you and to represent the Kingdom of Cambodia in this important case.

Introduction

2. My task this morning is to address two issues that continue to divide the Parties.

3. The first is whether a dispute exists between the Parties as to the meaning and scope of the Judgment[6]. And, as I shall show, the factual record clearly attests to the existence of such a dispute. The dispute was already alluded to in the Court's Order on Provisional Measures, where the Court stated that "a difference of opinion or view appears to exist between them [the Parties] as to the meaning or scope of the 1962 Judgment" (*Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand), Order of 18 July 2011, para. 31). And it is conclusively demonstrated by the documentary materials that both Parties, including many documents filed by Thailand, have produced with their written pleadings following the Court's Order.

4. The second issue I shall address concerns the myriad of maps and technical arguments that Thailand has introduced in its written pleadings in an attempt to undermine the probative value of the Annex I map, or to limit artificially the area constituting the "vicinity" of the Temple within the meaning of paragraph 2 of the *dispositif*.

5. In taking aim at the Annex I map, Thailand relies on a number of maps that were not relevant to the Court's Judgment or that Thailand has only unearthed recently, and technical studies commissioned a short time ago specifically for these proceedings. None of this played the slightest role in the Court's original Judgment. In short, Thailand's new line of attack is no more than a side show designed to detract attention from the only map that does have status in this case — the Annex I map.

1. The Legal Context for Appreciating the Relevant Facts

6. Before getting into details, let me briefly place the facts in their proper legal context. It need scarcely be recalled that this is not a case aimed at reopening the merits of the dispute that the

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[6] *Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand), Order of 18 July 2011, para. 22; *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case, Judgment, I.C.J. Reports 1950*, p. 402; *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; *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J. Series A, No. 13*, p. 21.

Court decided in 1962 and it is not a case of revision. It is a case of interpretation. In such cases, three key principles must be borne in mind in assessing the factual materials that both Parties have placed before the Court in their pleadings.

7. The first principle is that post-judgment facts are only relevant in so far as they show that a dispute exists between the Parties as to the meaning or scope of the Judgment. It is obviously self-evident that a dispute over interpretation can only arise following the delivery of a judgment[7].

8. Second, as Sir Franklin noted, it is also well settled that the manifestation of the existence of a dispute in a specific manner is not required. In other words, the dispute need not have been dealt with in a formal way[8].

9. Third — and this is the other side of the coin of the first principle — post-judgment facts, and facts that did not form the basis of the original judgment, are irrelevant to the interpretation of that judgment. I think the Permanent Court put the point very succinctly in its judgment on interpretation in *Chorzów Factory* where it stated:

> "Moreover, 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.)

10. These points of principle should be uncontroversial. The only reason I have felt it necessary to mention them is because Thailand's written pleadings continuously confuse the issue.

11. On the one hand, Thailand ignores the vast quantity — and it is a vast quantity — of documentary evidence that shows that the Parties held fundamentally opposing views as to the meaning and scope of what the Court decided. But, on the other hand, Thailand shows no hesitation in referring to maps and technical matters that were either discovered long after the Judgment was rendered or which did not figure at all in that Judgment. None of these matters has any bearing on the question of interpretation now before your Court.

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[7] *Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand), *Request for the Indication of Provisional Measures*, Order of 18 July 2011, para. 37.

[8] *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J. Series A, No. 13*, pp. 10-11; Order of 18 July 2011, para. 22; *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, paras. 53-54.

2. The Existence of a Dispute Over Interpretation

12. Having discussed the legal framework, permit me now to turn to the facts that evidence the existence of a dispute between the Parties over the Judgment's interpretation.

13. In its written pleadings, Thailand repeatedly asserts that no such dispute exists. In its Written Observations, for example, Thailand claimed that the Court lacks jurisdiction because "there is no dispute between the Parties over the meaning and scope of the 1962 Judgment" (Written Observations of Thailand (WOTh), p. 293, para. 7.5). And Thailand's Further Written Explanations go further, where, our opponents allege the following:

> "The impossibility for Cambodia to identify a single document, predating its seising of the Court, in which the Parties held opposing views on the characterisation of the obligation of withdrawal shows beyond any doubt that no such dispute existed." (Further Written Explanations of Thailand (FWETh), para. 3.82.)

So, apparently we have been unable to show a single document where there is a difference of view over the withdrawal obligation.

14. Let me test that rather extravagant assertion against the documentary record. Because, I believe, Mr. President and Members of the Court, that that assertion is demonstrably wrong and that the record leaves no doubt that the Parties hold differing views over the meaning and scope of the obligation of withdrawal, and that Thailand *itself* considered the Judgment was subject to different interpretations.

(a) *The Events of the 1960s*

15. The Court rendered its original Judgment on 15 June 1962. Following the delivery of that Judgment, a series of internal events took place in Thailand that are highly relevant because they set the stage for the dispute that exists today between the Parties over the interpretation of the Judgment.

16. As Sir Franklin pointed out a short while ago, on 3 July 1962, about two weeks after the Judgment was rendered, at a meeting of the Thai Council of Ministers, Thailand's Prime Minister instructed the Minister of Interior to travel to the Temple area to give guidelines to officers on duty there to establish the limits of the Temple and its vicinity[9]. At the conclusion of its work, the expert group established by the Minister sent a memorandum to the Prime Minister dated

[9] Further Written Explanations of Thailand (FWETh), Ann. 5, p. 34.

6 July 1962, which recorded the Thai expert group's view that the determination of the vicinity of the Temple could be carried out according to two different methods. Those methods were described in the memorandum and were depicted by red and yellow lines on a map. That is the map that Sir Franklin showed you, which appears again on the screen [and in tab 6].

[6 July 1962 Thai map on screen]

17. As we have heard, on 10 July 1962, Thailand's Council of Ministers decided to adopt the second method for determining the vicinity of the Temple; the much more restrictive one.

18. The Court may recall that, on 26 May 2011, that was just four days before the opening of the oral hearings on provisional measures, Thailand submitted a number of documents. This map was one of them: it was No. 4 on the list submitted by Thailand. Surprisingly, however, this map was the only document submitted by Thailand which its counsel chose not to discuss or to display during those hearings on provisional measures. And, as we have heard, when Thailand filed its Written Observations on 21 November 2011, Thailand once again did not mention this map, or file a copy of the Council of Ministers' Resolution. It was only after Cambodia called attention to this rather striking omission that Thailand realized it had no choice but to produce the relevant documents, which it did with its Further Written Explanations in Annex 5 [included at tab 5 of the folders].

19. I think the Court will appreciate why Thailand has been so reluctant to discuss these documents when it examines the materials in question. I would make just three brief points:

— First, it is clear from the two proposals considered by the Thai Council of Ministers that Thailand's experts themselves realized that the identification of the area from which Thailand was obliged to withdraw was open to different interpretations — hence two proposals — although neither of those proposals can be reconciled with what the Court decided in its 1962 Judgment.

— Second, the Thai Council of Ministers decided on the more restrictive of the proposals (the red line). That decision was taken unilaterally without any attempt to engage Cambodia on the matter or to justify it under the Judgment. And as I shall show, Thailand's interpretation was firmly and repeatedly disputed by Cambodia; and

— Third, the Council of Ministers ordered a barbed-wire fence to be constructed along the red line, and Thai forces were instructed to respond forcibly to any violation of the red line.

20. The unilateral, and I would suggest self-serving, nature of Thailand's determination of the limits of the vicinity of the Temple was acknowledged at the time by Thailand's Deputy Prime Minister. On 12 July 1962, he stated that "the marking of the vicinity of the Temple of Phra Viharn would be done by the Royal Thai Government unilaterally" (WOTh, Ann. 17, p. 91). And it was also noted in Thailand's Further Written Explanations, which have attempted to justify that decision by arguing that, "the Thai government had to decide itself the limits of troop withdrawal" (FWETh, para. 1.13.). Why? What gave Thailand the authority to aggregate to itself such a determination that was manifestly at odds with the Court's Judgment is left unexplained in our opponent's pleadings.

21. But in any event, Cambodia's objections were made clear afterwards. And without recanvassing the details let me just highlight a number of representative examples. For convenience, we have listed them all in tab 10 of your folders — these are references to materials that are on the record in the case.

22. One month after the Thai Council of Ministers issued its resolution, Cambodia's Head of State, Prince Sihanouk, issued a press statement in which he took strong exception to the construction by Thailand of its barbed-wire fence following the red line, and the presence of Thai military personnel on Cambodian land. Let me quote what the Prince said at this time:

> "although the soldiers stationed at Preah Vihear [the Thai soldiers] have been withdrawn, the foot of the hill is surrounded by barbed wire and Thailand's Minister for the Interior has ordered his police forces to fire on anyone approaching the barbed wire. It is clear, therefore, that they [the Thais] have not given up on their objectives as regards Preah Vihear." (WOTh, Ann. 26, p. 130.)

In itself, that statement evidences a difference of views as to how Thailand had interpreted the Court's Judgment.

23. In the autumn of 1962, the Secretary-General of the United Nations appointed a personal representative, Mr. Nils Gussing, to gather information on tensions that existed between the two countries. Mr. Gussing issued a report on 25 November 1962 which recorded that Cambodia strongly disagreed with Thailand's view of the Judgment. The relevant passage in the report noted the following (tab 11) — this is from the Secretary-General's representative:

> "In Cambodia, the Preah Vihear Temple plays an extremely important role in the attitude shown towards the other Government concerned; although the case has been 'won', the Thais are criticized as being 'bad losers' and as not having accepted their defeat graciously, and the allegation is made that a part of the territory which, under the ruling of the International Court of Justice, should, in the Cambodian view, be under Cambodian sovereignty, is now fenced off . . ., with land mines placed here and there . . ." (WOTh, Ann. 32, p. 180.)

24. So it follows that, by November 1962, the Member States of the United Nations were aware of Cambodia's disagreement with the position adopted by Thailand with respect to the area that was the subject of the Court's Judgment.

25. That same month, November 1962, the French Government also evidenced its awareness of Cambodia's rejection of Thailand's position. A diplomatic despatch sent from the French Embassy in Bangkok refers to Cambodia's objection that Thailand continued to occupy an area that, according to the Annex I map line, was in Cambodian territory[10].

26. And in November of that same year, Cambodia's Ministry of Foreign Affairs issued an aide-memoire that referred to the barbed-wire fence, stating that "this limit was in complete disagreement with the Court's decision, which confirmed the frontier as it appeared on the 1907 map [the Annex I map]" (*ibid.*, Ann. 34, pp. 205 and 214). The same point was reiterated by Cambodia's Ministry of Information in December 1962[11]. Those are documents that Thailand itself submitted with its Written Observations. They clearly show a difference of view.

27. Now Prince Sihanouk visited the Temple in early January 1963, at which time he took official repossession of it. Shortly before that visit, the French Embassy again reported on Cambodia's disagreement with Thailand's interpretation of the Judgment. And as the Embassy noted, Cambodia's position with respect to the barbed-wire fence — and I quote from the French dispatch — was that it: "was placed there unilaterally by the Thai army and police with no regard to the frontier line imposed by the International Court of Justice" (*ibid.*, Ann. 41, p. 261).

28. And when Prince Sihanouk visited the Temple, he repeated Cambodia's position that Thailand had established a new frontier line in the immediate vicinity of the Temple, constructed a

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[10]Further Written Explanations of Thailand (FWETh), Ann. 33, p. 193.

[11]*Ibid.*, Ann. 38, p. 240.

barbed-wire fence around it, and erected military and police posts that encroached on Cambodian territory in contravention of the Court's Judgment[12].

29. Mr. President, what does Thailand say about these episodes? First, Thailand alleges — and I quote from their pleadings "in the aftermath of the 1962 Judgment, and clearly for a very long period afterwards, Cambodia has made no complaint as to the way paragraph 2 of the *dispositif* was implemented by Thailand." (WOTh, para. 4.25) — this is Thailand's allegation. And Thailand also argues that in January 1963, "Prince Sihanouk declared himself completely satisfied with Thailand's implementation." (*Ibid*., para. 4.32.) Now both of those assertions are directly contradicted by the facts I have just discussed.

30. Thailand also maintains that, after Prince Sihanouk's visit to the Temple — and I am quoting from Thailand's pleadings again — "never again did Cambodia claim that Thailand's compliance with the Judgment had not been completed because of the barbed-wire fence" (*ibid*., para. 4.47.). And once again, that assertion is manifestly incorrect.

31. In January 1965, Cambodia's Head of State repeated the complaint that Thailand was continuing to refuse to recognize the frontier[13]. On 23 April 1966, Cambodia's Minister for Foreign Affairs addressed letters to the Secretary-General of the United Nations and the President of the Security Council which referred to Prince Sihanouk's earlier statements complaining about the barbed-wire fence and to Thailand's failure to respect the Court's Judgment[14]. And on 11 May 1966, Cambodia sent a further letter to the Secretary-General protesting the fence[15].

32. In August 1966, the Secretary-General appointed another Special Representative (Mr. Herbert de Ribbing) to mediate between Cambodia and Thailand. In a letter dated 26 October 1966 to Mr. de Ribbing from Cambodia, Cambodia repeated its position that the Temple and its vicinity are situated in territory under the sovereignty of Cambodia according to the

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[12]Cambodia's Response (FWEC), Ann. 6.

[13]FWEC, Ann. 10.

[14]*Ibid*., Anns. 11 and 12.

[15]*Ibid*., Ann. 14.

Court's 1962 Judgment[16]. And, in November of that year, Prince Sihanouk repeated the complaint that Thailand was refusing to stop laying claim to the Temple and its surrounding area[17].

33. And the fact that the dispute between the Parties continued to persist is further evidenced in a report that Mr. de Ribbing provided to the Secretary-General of the United Nations in September 1966. That report referred to a meeting that the Special Representative had had with the Prime Minister of Cambodia, Prince Norodom Kantol, in the following way (tab 12):

> "The Prince [the Prime Minister of Cambodia] mentioned in this connection that the barbed wire fence that the Thais had put up on its side of the Temple was not even halfway between the Temple and the border line fixed by the International Court of Justice in its decision regarding Phra Viharn. Cambodia could, if it wanted, take this question to the Security Council and request the Thais to withdraw to the borderline. The Cambodian Government had preferred, however, to abide until further, in order not to have on hand still more trouble with Thailand." (WOTh, Ann. 72, p. 436.)

34. Thailand's Written Observations argue that Mr. de Ribbing's reports show that the barbed-wire fence was not a real issue and that it was never mentioned again[18]. That is clearly not true. There is the proof in the report. It is quite clear that Cambodia viewed the issue very seriously and specifically mentioned it to the Secretary-General's Special Representative. And when Mr. de Ribbing informed Thailand about Cambodia's views regarding the barbed-wire fence, Thailand's representative reacted in anger[19]. That scarcely suggests that the fence was not an issue.

35. But not only that, Cambodia continued to protest Thailand's actions in 1967. On 22 October 1967, for example, Cambodia's Head of State gave a press conference in which he drew attention to the *res judicata* effect of what the Court had decided, objected to the Thai barbed-wire fence which lay between the Temple and the proper frontier according to the Annex I map, and insisted that Thailand must return to Cambodia the land situated between Preah Vihear and the Annex I map line[20].

36. In February 1968, Prince Sihanouk delivered a further address in which he referred to the dispute in the following way:

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[16]FWEC, Ann. 16.

[17]*Ibid*., Ann. 17.

[18]WOTh, para. 4.56.

[19]*Ibid*., Ann. 72, p. 442.

[20]FWEC, Ann. 19.

> "They [the Thais] have, since 1962, revealed their bad faith by failing fully to implement the decision of the International Court of Justice. The Court ordered that the Temple and the strip of surrounding land be returned to Cambodia. And yet, the Thais have refused to surrender that land, laying barbed-wire around the edge of the Temple."[21]

37. All of the events — and I have given you a sample, but I have spared you all of them. All of these events I have discussed are supported by contemporaneous documentary evidence. That evidence shows that Thailand itself was unsure how the Judgment should be interpreted, but that it took the decision to limit the "vicinity" of the Temple as close to the Temple as possible. Afterwards, Cambodia repeatedly objected to Thailand's position and insisted that, under the Judgment, the vicinity of the Temple should extend to the Annex I map line. Cambodia's objections were made known to the Special Representatives of the Secretary-General of the United Nations, diplomatic missions and the public generally.

38. In the light of these facts, it is simply not credible for Thailand to say that "Cambodia identifies no document where it accused Thailand of not having completely complied with its obligations to withdraw" and that "[a]ll the evidence submitted by Thailand in the Written Observations remains unchallenged"[22]. It is extraordinary. The facts, Mr. President, are precisely the opposite.

(b) ***Events Between 1970 and 2007***

39. As Thailand's written pleadings acknowledge, by 1970 the security situation had deteriorated in Cambodia because of the outbreak of civil war[23]. The Temple area was one of the first areas occupied by the Khmer Rouge in the early 1970s, and one of the last from which they were driven out towards the end of the 1990s. During this period, the Temple was not an issue.

40. On 23 October 1991, the Paris Peace Agreements were signed. That process allowed the Temple temporarily to be opened to tourists. Representatives of the Parties therefore met on 7 November 1991 to agree on a number of measures to regulate tourist activity[24]. Thailand's Further Written Explanations assert that this agreement represented "consistent evidence of

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[21]FWEC, Ann. 23.

[22]FWETh, para. 3.78.

[23]WOTh, para. 4.58.

[24]*Ibid*., paras. 4.61-4.65 and Ann. 87.

sovereignty in the area Cambodia is now claiming, situated north or west of the Cabinet line" on the part of Thailand[25]. That is pure wishful thinking. At that time, there was no evidence that Thailand remained committed to its unilateral delimitation of the limits of the Temple decided by the Thai Council of Ministers in 1962. The tourist regulations agreed by the Parties make no mention of that decision or of the 1962 Thai map, or the red line. And it was Cambodia that took responsibility for clearing landmines in the area and indicating the areas where tourists could visit[26].

41. Between 1993 and 1997, the Temple was again closed due to the presence of Khmer Rouge in the area. After the Khmer Rouge had been reintegrated, Cambodians settled peacefully around the Temple on Cambodia's side of the frontier delimited by the Annex I map line.

42. In November 1998, Cambodia built a pagoda to the west of the Temple pursuant to a decision of the Ministry of Religion[27]. A market was also established near the Temple. While the pagoda and the market lay outside of the red line promulgated by Thailand in 1962, they gave rise to no Thai protest. Nor did Thailand object to the fact that Cambodia occupied the Phnom Trap hill, which is also located in the Temple's vicinity on Cambodia's side of the Annex I map line — you can see that on the Annex I map.

43. On 14 June 2000, the two Parties signed a "Memorandum of Understanding on the Survey and Demarcation of [the] Land Boundary"[28]. That instrument, as its title makes clear, provided for the conduct of joint surveys by the Parties for the demarcation of the land boundary, on the ground. It had nothing to do with the delimitation of the boundary.

44. I mention the 2000 MOU because Thailand mixes up questions of delimitation and demarcation. The MOU concerns the latter — demarcation — and is entirely irrelevant to the present case. It is undisputed that the Court was not requested to demarcate the boundary on the ground in the original case, and it is not being asked to do so in the present proceedings. Rather,

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[25]FWETh, para. 3.76.

[26]WOTh, Ann. 87, p. 513.

[27]FWEC, Ann. 24.

[28]WOTh, Ann. 91.

the meaning and scope of the Court's 1962 Judgment must be analysed in the light of what the Court said about the Annex I map, which was recognized as showing a pre-existing delimited frontier in the region of the Temple that Thailand had accepted.

45. From the late 1990s until 2007, the situation was peaceful. Cambodians continued to go about their business on Cambodia's side of the Annex I map line in the vicinity of the Temple. And Thailand did not once mention its Council of Ministers "red line".

46. The only complaints that Thailand raised came several years later when, in November 2004, Thailand sent a Note to Cambodia in which it referred to the fact that the Cambodian community around the Temple "and in its vicinity" — those were words used by Thailand at the time — and its vicinity — that community was expanding such that it then included over 700 inhabitants, and that this was affecting the "natural environment of the frontier zone"[29]. The complaint was about pollution from these people. Not a word was said about these activities being inconsistent with the Thai Council of Ministers map, which was never mentioned.

47. It is significant that Thailand considered Cambodia's activities to be taking place in the "vicinity" of the Temple. Evidently, Thailand's views at that time about the scope of the word "vicinity" were different from what it had decided unilaterally in 1962 or what it argues in these proceedings. Regrettably, however, this peaceful situation that existed between the late 1990s and 2007 began to change in 2007 ~~**because, and**~~ as a result of Thailand's reaction to Cambodia's request to UNESCO to inscribe the Temple on the World Heritage List — and that is a matter I would like to turn to next.

(c) ***The re-emergence of the dispute in 2007***

48. The re-emergence of the dispute starting in 2007 was mainly the result of political changes in Thailand.

49. When Cambodia first issued a Royal Decree in April 2006 to have the Temple site inscribed on the World Heritage List, Thailand's reaction was positive. At that time, the Prime Minister of Thailand was Thaksin Shinawatra, who was in favour of friendly relations with Cambodia.

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[29]WOTh, Ann. 93.

50. In September 2006, one month before general elections were scheduled to take place in Thailand, a coup d'état was staged against Prime Minister Thaksin. The election was cancelled and the army took control.

51. On 17 May 2007, Thailand sent Cambodia an aid- memoire concerning the inscription of the Temple on the UNESCO list[30]. In that document, Thailand complained about the zones marked out in Cambodia's submission to the World Heritage Committee to protect the Temple, and asserted — Thailand asserted — that the international boundary between Thailand and Cambodia was as depicted on a Thai map: the map was Series L7017, unilaterally prepared by Thailand and a copy of that map was attached to this May 2007 aide-memoire.

[Thai map L7017 on screen]

52. The map now appears on the screen and at tab 13 of your folders. It was a new map, marked "secret" at the top, and not one of the maps listed in the 2000 Memorandum of Understanding as a basis for the demarcation of the boundary. For the first time in decades, if we zoom in on the relevant part of the map, it showed a boundary around the Temple as it had been depicted on the Thai Council of Minister's 1962 map.

53. In 2008, the political situation in Thailand changed again following the election of a new Prime Minister. As a result, representatives of the two Governments signed a Joint Communiqué on 18 June 2008 in which Thailand supported Cambodia's proposal to inscribe the Temple on the World Heritage List[31]. That Joint Communiqué had a map attached to it which did not depict the 1962 Thai Council of Ministers line, or this line. On 7 July 2008, the World Heritage Committee formally decided to place the Temple on the list[32].

54. But unfortunately, events kept changing in Thailand. Because, on the very day — 7 July 2008 — of the World Heritage Committee's decision, Thailand's Constitutional Court declared that the signature by Thailand's Foreign Minister of the 18 June 2008 Joint Communiqué violated Thailand's Constitution and that the document was a nullity[33]. In those circumstances,

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[30]FWEC, Ann. 27.

[31]*Ibid.*, Ann. 31.

[32]*Ibid.*, Ann. 32.

[33]*Ibid.*, para. 5.

Cambodia had no option but to protest this new Thai map, which it did on 19 July 2008 in a letter sent to the President of the United Nations General Assembly. That letter stated that this new map was manifestly incompatible with the Annex I map relied on by the Court in its Judgment[34].

55. Thailand's actions at this time had the consequence of resurrecting the dispute over the Judgment's interpretation that had been dormant for many years. The fact that the dispute had re-emerged was made patently clear when Thailand subsequently sent a letter to the Security Council on 21 July 2008 in which it referred to the area adjacent to the Temple in the following way (that is at tab 14 and now on the screen). This was Thailand's letter:

> "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 the land boundary and did not in any case determine the location of the boundary between Thailand and Cambodia." (FWEC, Ann. 36.)

56. And I would suggest that if any further evidence was needed to show the existence of a dispute between the Parties over the interpretation of the Judgment, this statement provides it.

57. In summary, Mr. President, Members of the Court: in 1962 Thailand's expert group considered that the Judgment, in particular the vicinity of the Temple from which Thailand was obliged to withdraw, could be interpreted in different ways. In July 1962, Thailand issued its own unilateral interpretation of the meaning and scope of the Court's Judgment.

58. Cambodia vigorously protested that decision throughout the 1960s, and it also protested when Thailand reintroduced its "red line" in its 2007 map. For its part, in July 2008 Thailand objected to what it claimed was Cambodia's understanding of the Judgment, which was that Thailand was obliged to withdraw from the Temple and its vicinity up to the Annex I map line. I would suggest that it is clear in these circumstances that a dispute exists between the Parties regarding the meaning or scope of the Judgment and that Cambodia's request on this ground, the request for interpretation, is fully admissible.

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[34]FWEC, Ann. 34.

3. The Irrelevance of Maps Relied on by Thailand

59. Mr. President, I was now going to turn to the second part of my pleading which will be briefer and in which I will address the irrelevance to the present proceedings of the other maps and technical studies that Thailand has introduced in its written pleadings. As I said, on this I hope to be quite brief, precisely because of the lack of relevance of this material.

60. There are two aspects to this whole map business. The first concerns the technical report that the International Boundaries Research Unit, that is IBRU of Durham University — my good friends Martin Pratt and Alistair McDonald — what they prepared, dealing with what IBRU called an "Assessment of the task of translating the Cambodia-Thailand boundary depicted on the 'Annex I' map onto the ground". That was the title of the report. It was included at Annex 96 of Thailand's Written Observations. We will deal with that first and then the second aspect I shall address involves Thailand's attempt to resurrect its claim in the original case that the Annex I map does not follow the actual watershed. Thailand refers to maps prepared mainly by its own experts in the original case that played no role in the Court's Judgment. I will deal with each of these matters in turn.

(a) *Thailand's Expert Report on the Annex I Map*

61. As for the IBRU report, its purpose is to show that the Annex I map, and I am quoting from the report, "contains a number of errors which distort the line of the watershed and hence the boundary" (WOTh, Ann. 96, p. 627, para. 1). Further on in that report, the authors make a more candid admission when they state: "The aim of this report is to move beyond the debate in the *Temple* case, which focused almost entirely on a very small section of the Annex I map, and examine the map as a whole..." (*Ibid.*, para. 3.)

62. That is a rather telling description, Mr. President: "to move beyond the debate" in the original case. But the purpose of interpretation proceedings is not to move beyond what the Court considered in the original Judgment, or to examine new "facts" and arguments that were not introduced by the Parties at the time. It is to interpret what the Court actually decided in its Judgment based on materials it considered *at that time*.

63. Notwithstanding that, the IBRU report tries to discredit the Annex I map by referring to maps that Thailand apparently only recently discovered, along with satellite imagery, and a visit to

a number of sites along the boundary undertaken by the authors of the IBRU report in August 2011. All of this post-dates the Judgment. Do I need to recall what the Permanent Court said in *Chorzów Factory* that I mentioned earlier, namely, that: "the Court, when giving an interpretation, refrains from any examination of facts other than those which it 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).

64. Despite that admonition, the IBRU report gives particular emphasis to what it claims is a "revised version" of the Annex I map that it discovered when it visited the Department of Treaties and Legal Affairs in Thailand in 2011, and which is said to show changes to the contour lines and registration errors in the original Annex I map. Following that visit of the IBRU authors to Thailand, the legal team apparently looked at copies of the same sheet in archives in Paris and London, as well as at the *Institut géographique national* of Paris, where a so-called "third version" of the Annex I map was said to have been found. According to the IBRU report, it is not possible today to discover the reasons for the revised editions of this map sheet[35].

65. What is clear is that none of these versions were considered by the Court in the original proceedings or referred to in its Judgment. And, as the IBRU report itself frankly admits — and I could not have said it better myself: "Neither the registration error on the Annex I sheet nor the revised versions of the sheet appear to have been discussed at any point during the original *Temple* case."[36]

[Original Annex I map on screen]

66. Exactly, Mr. President. That is why all of this is irrelevant. The only map the Court focused on in the original case was the map that Cambodia attached as Annex I to its Application and again to its Memorial in the original case. That map is reproduced at tab 15 of your folders and is now on the screen. It is the map that the Court found Thailand had accepted, and it is the map that depicts the boundary line which the Court said both Parties agreed to regard as being the frontier line.

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[35]WOTh, Ann. 96, p. 635, para. 12.

[36]*Ibid*., p. 635, para. 13.

67. As the Court noted in its Judgment, as early as 1908-1909 Thailand "did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognized the line on *that map* [the map you see] as being the frontier line" (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 32; emphasis added).

68. Now the Court will see that the map filed by Cambodia as Annex I in the original proceedings was in poor shape. It was held together with scotch tape. Apparently for this reason, the Court had prepared a copy of the map, which is the map that is reproduced in the Court's publication of the Parties' pleadings.

[Court's Annex I map on screen]

69. That map now appears on the screen. It is also at tab 16. It is the same as the Annex I map filed by Cambodia except for the fact that a small cartouche in the top right corner of the map and two registration marks were not reproduced.

70. Now, in the original proceedings, Thailand claimed that the Annex I map in the disputed area of Preah Vihear had errors, although these assertions were not made on the basis of any "revised" versions of the Annex I map, but rather on the grounds, as Thailand argued, that the frontier line depicted on the map was not the true watershed line (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 21). But the Court flatly rejected that contention stating that the plea of error had not been made out (*ibid.*, p. 27). Still less can Thailand plead error in the present case based on newly discovered documents and arguments that never saw the light of day during the original proceedings and did not form part of the Court's Judgment.

71. Notwithstanding all of this, Thailand seeks to cast a further cloud on the Annex I map by pointing out that the map that Cambodia filed with its Request for Interpretation in these proceedings is not the same version of the map filed by Cambodia in the original proceedings[37]. But this too is a smokescreen of no relevance to the interpretation of what the Court decided in 1962.

[Place Annex I map from Cambodia's Request on screen]

[37]FWETh, para. 1.23.

72. It is well known that Cambodia's archives were destroyed during the Khmer Rouge period. Cambodia therefore turned to the *Institut géographique national* (IGN) of Paris to obtain the map, which is what it produced with its Request and which is now on the screen and at tab 17 of your folders. And I have to say that Thailand's own experts acknowledge that this version of the map, and I am quoting from the expert report, contains "largely cosmetic changes which, to an observer today, hardly justify the work involved to produce a further edition of this map"[38].

73. And similarly, the version of the Annex I map that the IBRU authors purported to have located in Thailand's archives is also without consequence. Because, once again, the IBRU Report says that this version "is essentially the same map as the Annex I map"[39].

74. So, in short, Mr. President and Members of the Court, the entire démarche introduced by Thailand regarding the Annex I map is without relevance to the case before you. The Annex I map is the Annex I map that Cambodia filed in the original case and which the Court referred to in 14 of the last 16 pages of the 1962 Judgment. And if that Annex I map has any potential technical limitations, as alleged in the IBRU Report[40], those are matters that can be raised in connection with the demarcation of the boundary pursuant to the 2000 MOU. But they are without the slightest relevance to a case that concerns the interpretation of a Judgment that was delivered, not in 2000, but in 1962.

(b) ***Other Maps Relied on by Thailand***

75. Now following the submission of its first pleading, Thailand obviously realized the shortcomings of the IBRU report, and Thailand scarcely refers to that report in their second set of pleadings. Instead, Thailand embarked on a new tactic. That tactic consists of relying on a number of other maps produced by experts during the original proceedings back in 1959-1961 showing different versions of the watershed line. Thailand's aim in revisiting these materials is to argue that these maps prepared by experts in the original proceedings somehow limit the "area" around the Temple to a very narrow strip of land consistent with the 1962 Thai Council of Ministers map[41].

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[38]IBRU Report, WOTh, Ann. 96, para. 9.

[39]*Ibid*., para. 7.

[40]WOTh, p. 286, para. 7.9.

[41]FWETh, paras. 4.45-4.63.

Now that argument has no merit whatsoever, given that the Court, in its Judgment, clearly indicated that, in the light of Thailand's acceptance of the Annex I map showing the frontier, the location of the watershed was irrelevant.

76. Permit me just to recall briefly the sequence of the Court's reasoning on this point.

77. First, after indicating that the acceptance by the Parties of the Annex I map caused the map to enter into the treaty settlement and to become an integral part of it, the Court added:

> "In other words, the Parties at that time adopted an interpretation of the treaty settlement which caused the map line, in so far as it may have departed from the line of the watershed, to prevail over the relevant clause of the treaty." (*Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 34.)

78. And second, after noting that when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality, the Court said the following:

> "The Parties in the present case must have had a reason for taking this further step. This could only have been because they regarded a watershed indication as insufficient by itself to achieve certainty and finality. It is precisely to achieve this that delimitations and map lines are resorted to." (*Ibid.*, p. 34.)

79. And finally, after pronouncing in favour of the Annex I map line as delimited and accepted by the Parties, the Court stated the following:

> "Given the grounds on which the Court bases its decision, it becomes unnecessary to consider whether, at Preah Vihear, the line as mapped does in fact correspond to the true watershed line in this vicinity, or did so correspond in 1904-1908, or, if not, how the watershed line in fact runs." (*Ibid.*, p. 35.)

80. The plain fact is that not one of the "watershed" maps to which Thailand refers in its Further Written Explanations here was mentioned in the Court's Judgment. The watershed lines they purported to depict did not need to be considered by the Court, and were not so considered, given the status of the Annex I map. And for Thailand, as it does in its Further Written Explanations, to label these materials, and I quote, these watershed materials as "The Material before the Court in Light of Which It Reached Its Decision", is fundamentally misleading[42]. These maps are ***not*** even referred to in the Judgment.

81. By the same token, Thailand's argument that the "vicinity" of the Temple considered by the Court was limited to a small area between the different watershed lines is groundless. Because if the Court did not consider such maps because they were irrelevant, they cannot possibly be used

[42]FWETh, p. 41, and paras. 2.14-2.25.

by Thailand now to show what the Court meant when it referred to Thailand's obligation to withdraw from the Temple, or in its vicinity on Cambodian territory, in paragraph 2 of the *dispositif*.

82. In fact, it is clear from the 1962 Judgment that the geographical focus of the Court was much broader than the very limited area circumscribed by Thailand on its famous Council of Ministers map. The Court's view as to the positions of the Parties was the following: Thailand asserted that the frontier line ran along the edge of the escarpment to the south and east of the Temple[43], while Cambodia principally relied on the line appearing on the Annex I map[44]. Logically, it follows that the area lying between these two lines was the disputed area and the "vicinity" of the Temple to which the Court made reference. And it is that area by the way that constitutes the famous 4.6 km² area in dispute to which Thailand's own recent government publications have referred to.

83. Now the soundness of this reasoning is confirmed by a further citation from the Judgment. Following its analysis of the evidence presented to it by the Parties, the Court concluded that it felt "bound, as a matter of treaty interpretation, to pronounce in favour of the line [Annex I map] as mapped *in the disputed area*" (*I.C.J. Reports 1962*, p. 35; emphasis added). And from that statement, it is clear that the Court considered that the disputed area to had to encompass the Annex I map line. And, in fact, even Thailand's experts — IBRU — in these proceedings, acknowledge: "The evidence before the Court mainly concern the 7 kilometres by 12 kilometres area mapped by Professor Schermerhorn [one of the experts in the original proceedings] in the vicinity [there are those words again, in the vicinity] of the Temple, a small part of the roughly 100 kilometres of boundary covered by the Annex I map" (WOTh, Ann. 96, p. 669, para. 61). So the vicinity and the focus, according to the IBRU Report in the original proceedings, was on this area of 7 by 12 km, not the small area circumscribed by the 1962 Thai Council of Ministers map.

84. And Thailand's new arguments in its last round of written pleadings aimed at bolstering its unilateral interpretation of the Judgment that it arrived at in July 1962 are unsupported given

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[43] *Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962,* p. 15.

[44] *Ibid*., p. 21.

that the Council of Ministers map does not even depict the Annex I map line, let alone the genuine vicinity of the Temple.

4. Conclusions

85. Mr. President, I come to my conclusions.

86. I think the evidence on record clearly shows that there is a dispute between the Parties over the meaning or scope of the Judgment. Even, in 1962, Thailand thought that the Judgment could be interpreted in different ways. That dispute persisted throughout the 1960s. Between 1970 and 2007, it became dormant, first because of the civil war in Cambodia, and then when Cambodians settled peacefully around the Temple and its vicinity without any protest from Thailand except for occasional complaints about pollution. The dispute only re-emerged in 2007-2008 as a result of Thailand's objections to the inscription of the Temple as a World Heritage Site, and the publication of Thailand's new "secret" map (L 7017). That map was protested by Cambodia after these incidents. This led to hostilities in the area, as the Court is aware, and ultimately to Cambodia's request for interpretation and the indication of provisional measures.

87. And Thailand's attempt now to cast aspersions on the Annex I map by "moving beyond the debate" in the original case, and relying on maps it has either recently discovered, or maps never introduced in the original case such as its Series L 7017, which Cambodia saw only in 2007 for the first time, all of that is completely irrelevant. Equally irrelevant is Thailand's attempt to limit the vicinity of the Temple by resurrecting maps that purported to show different watershed lines in the original proceedings, but which the Court neither referred to nor considered relevant in its Judgment.

88. I thank the Court very much for its attention and for the time to complete my pleading and to compete against lunch, and I would be grateful if perhaps after the lunch break, Mr. President, the floor could be given to Professor Sorel. Thank you very much.

The PRESIDENT: Thank you, Mr. Bundy. Certainly, after the lunch break. The sitting is closed. The Court will meet this afternoon at 3 o'clock.

The Court rose at 1.20 p.m.