AFFIRMING CAMBODIA’S SOVEREIGNTY OVER “STONES” THAT “EXPRESS” “OUR ESSENCE”¹: ICJ’s Interpretation of Its Judgment in the Temple of Preah Vihear Case

RAVINDRA PRATAP²

The eleventh-century Preah Vihear Temple is a key monument of the Khmer Empire. It mainly represents the home of Shiva, a key Hindu god. It gives its name to Cambodia’s Preah Vihear province and, as a listed UNESCO World Heritage site, is an important source of tourist income for Cambodia. But the Temple area is also one of several areas where Cambodia and Thailand disagree on the location of their border.

In its Judgment of June 15, 1962, the International Court of Justice (ICJ) ruled that the Temple complex falls within Cambodian territory. Dispute nevertheless continued about possession of the surrounding area, leading to periodic border skirmishes between 2008 and 2011 that resulted in deaths on both sides, displacement of Cambodian villagers, and temple damage.³ At the request of Cambodia, in 2013 the ICJ interpreted its 1962 judgment. This interpretation helped to maintain international peace and security in the region by clarifying that Cambodia has sovereignty over the whole territory of the promontory of Preah Vihear and that Thailand is under an obligation to withdraw its military or other forces from that territory.⁴ Nevertheless, seen in the context of ICJ


² Visiting Faculty of Law, South Asian University, New Delhi, <ravindrapratap@hotmail.com>. I am extremely grateful to Anne Heindel and Shannon Maree Torrens, for comments and suggestions. All errors, of course, remain mine.


⁴ See Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 2013 I.C.J. (Judgment of Nov. 11), ¶ 107 [hereinafter 2013 Temple Judgment].
judgments in comparable disputes, the text of the Judgment is not without a source of potential disagreement that could become a possible excuse for non-compliance with the Judgment and consequently a possible future source of conflict between the two countries.

1. HISTORICAL AND FACTUAL BACKGROUND ..................................................80
2. PROVISIONAL MEASURES .............................................................................82
3. PRINCIPAL ARGUMENTS OF THE PARTIES .........................................82
   3.1. “Implementation” Versus “Interpretation” Dispute ................................83
   3.2. “Boundary” Versus “Interpretation” Dispute .........................................84
4. JURISDICTION OF THE COURT ................................................................85
   4.1. The Dispute Relating to the Operative Clause of the Judgment ..........86
   4.2. The Dispute As to the Meaning or Scope of the Judgment ...............87
   4.3. Principal Dispute Between Cambodia and Thailand ...........................88
5. PROCESS OF INTERPRETATION .................................................................88
   5.1. Res Judicata .................................................................................................89
   5.2. Pleadings ......................................................................................................90
   5.3. Headnote ......................................................................................................90
   5.4. Subsequent Practice ....................................................................................91
6. INTERPRETATION .........................................................................................92
7. CONCLUSION ..................................................................................................93

I. HISTORICAL AND FACTUAL BACKGROUND

Cambodia derives its name from the Sanskrit word Kambuja. After being an Indianized kingdom for over 600 years as the Khmer Empire, Cambodia became a protectorate of France. In 1904, France concluded a treaty with Siam (Thailand) for delimitation of the boundary between Cambodia and Thailand by a delimitation commission. The commission prepared and published maps accepted by Thailand and recognized the line on one of the maps as the frontier line, the effect of which was to situate Preah Vihear in Cambodian territory.

Following Cambodia’s independence on November 9, 1953, Thailand occupied the Temple in 1954. On October 6, 1959, Cambodia seized the International Court of Justice with the dispute, relying on a commission map annexed to its pleadings (Annex I map). The 1962 ICJ Judgment decided that the

---

6 2013 Temple Judgment, supra note 4, ¶ 15.
Temple of Preah Vihear was situated in Cambodian territory. The operative part of the 1962 Judgment read as follows:

The Court, [1] by nine votes to three, finds that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia; finds in consequence [2] by nine votes to three, that Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory; [3] by seven votes to five, that Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia’s fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities.8

Following the 1962 Judgment, Thailand withdrew from the Temple. On 21 June 1997, the two countries established the “Thai-Cambodian Joint Commission on Demarcation for Land Boundary” for indicating the land boundary between the two countries. Despite holding three meetings, the Commission could not fulfill its task.

In 2007, Cambodia requested the UNESCO World Heritage Committee to inscribe the site of the Temple on the World Heritage List, providing it a map depicting the site. It is unclear whether it was the Annex I map. On May 17, 2007, Thailand contested this map by means of an aide-mémoire, which it sent to Cambodia.9 Thailand claimed that Cambodia “purported to define the area of its listing in a way that included a significant portion of Thai territory.”10

Following the Temple’s inscription on the World Heritage List, Thailand

---

8 1962 Temple Judgment, supra note 7, at 36-37 (emphasis added).
withdrew from the World Heritage Convention and a number of armed incidents took place in the border area close to the Temple. On February 14, 2011, the United Nations Security Council called for a permanent ceasefire, and on April 28, 2011, Cambodia filed a request with the ICJ for interpretation of the 1962 Judgment.

2. PROVISIONAL MEASURES

The same day that Cambodia filed its application, it also filed a request for the indication of provisional measures. By its Order of July 18, 2011, the Court preliminarily indicated in part that “both Parties shall immediately withdraw their military personnel currently present in the provisional demilitarized zone”; “Thailand shall not obstruct Cambodia’s free access to the Temple of Preah Vihear or Cambodia’s provision of fresh supplies to its non-military personnel in the Temple”; and “[b]oth Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.” The Court took these measures to prevent irreparable damage to persons or property in the Temple area pending the delivery of its judgment on the request for interpretation by ensuring that the parties respect the fundamental principles of international law, particularly the U.N. Charter principles of non-use of force and peaceful settlement of disputes.

3. PRINCIPAL ARGUMENTS OF THE PARTIES

The principal arguments of the parties concerned their varying characteriza-
tion of the disputes between them, namely issues of implementation, boundaries and interpretation.

3.1. “Implementation” Versus “Interpretation” Dispute

Thailand denied the existence of a dispute between the Parties within the meaning of the ICJ Statute by arguing that the language of the 1962 Judgment is clear and in need of no interpretation. It argued that Cambodia could not identify a single document in which the Parties held opposing views on the characterization of Thailand’s obligation of withdrawal. Consequently, in Thailand’s view, there was a dispute concerning the “execution—not the interpretation—of the Judgment.”

Cambodia countered by pointing out a memorandum to the Thai Prime Minister, dated July 6, 1962, which recorded a Thai expert group’s view that the determination of the “vicinity” of the Temple could be made in two different ways. Cambodia therefore submitted that Thailand itself was unsure how the Judgment should be interpreted but had decided to limit its recognition of the “vicinity” of the Temple to as close to the Temple as possible. Cambodia repeatedly objected to Thailand’s position and insisted that the vicinity of the Temple should extend to the Annex I map line. As indicated above, Cambodia had annexed this map to its pleadings in the 1962 case.

A related dispute concerned the scope of Thailand’s obligation to withdraw. While to Thailand, the second paragraph of the dispositif of the Judgment imposed an instantaneous obligation to withdrawal of its forces from the area around the Temple, for Cambodia, the obligation was a continuing one.

---

16 Thailand’s Written Observations, supra note 10, ¶ 7.5. See ICJ Statute, art. 60 (“The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.”).
17 Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 2012 I.C.J. (Further Written Explanations of the Kingdom of Thailand of June 21, 2012), ¶ 3.82.
19 CR 2013/1 (Oral Proceedings of Apr. 15, 2013), ¶ 16 (Bundy). Thailand tried to underplay the importance of this by arguing that “there is nothing extraordinary in the fact that two methods were envisaged for this purpose: since the Court had not addressed the issue under this aspect, it was necessary to define ‘the vicinity of the Temple’, pending a final determination of the frontier, without any obligation to apply a particular method.” CR 2013/3 (Oral Proceedings of Apr. 17, 2013), ¶ 10 (Pellet).
20 See, e.g., CR 2013/1 (Oral Proceedings of Apr. 15, 2013), ¶ 37 (Bundy).
22 CR 2011/15 (Oral Proceedings of May 31, 2011), ¶ 4 (Berman). In the Order indicating provisional measures, one judge expressed the view that when the principle of prohibition of the use or threat of force is at stake, the obligation of withdrawal of Thai forces is a continuing or permanent one. Separate opinion of Judge Cançado Trindade on Provisional Measures, supra note 1, ¶¶ 42, 80.
3.2. “Boundary” Versus “Interpretation” Dispute

Thailand argued that Cambodia’s request for interpretation was inadmissible since its real purpose was not to obtain the Court’s interpretation of the 1962 Judgment, but to obtain the Court’s ruling on the parties’ delimitation dispute in the area of the Temple by having the Court recognize that the Annex I map line constitutes their boundary in that area, which the Court refused to do in 1962. Thailand believed that in 1962 the Court had considered the map only with regard to what the map said about Temple, not about the frontier.

Thailand submitted that the territory that Cambodia claimed as its own since 2007 could not be considered in “the vicinity of the Temple,” because in Cambodia’s original ICJ Application, it claimed neither an area of that size nor a specific frontier, and the Court was unable to rule *ultra petita* (beyond those matters that it had been requested to address). Thailand further argued that the 4.6 square km that Cambodia claimed in 2007 was only necessary for the management of the Temple as a World Heritage Site in the absence of co-operation on the part of Thailand. In other words, Thailand submitted that there was a new delimitation/boundary dispute between the parties and not a dispute over the interpretation of the second paragraph of the 1962 *dispositif*.

Cambodia insisted that it was not requesting the Court to delimit the boundary between the Parties on the basis of the Annex I map. Instead, Cambodia submitted that in 1962 it had pleaded the Annex I map line and the Court had recognized it. In Cambodia’s view, 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 it claimed was recognized as showing a pre-existing delimited frontier in the region of the Temple that Thailand had previously accepted, and clearly indicated in the grounds of the Judgment that determine the proper interpretation of the operative clause. Cambodia considered these reasons to be inseparable from the operative part of the 1962 Judgment, of which it was seeking an authentic and definitive interpretation.

23 Thailand’s Written Observations, *supra* note 10, ¶ 4.104 et seq.
26 Id. ¶ 15 (Plasai).
27 Id. ¶ 28 (Pellet).
28 Id. ¶¶ 15, 19 (McRae).
29 CR 2013/5 (Oral Proceedings of Apr. 18, 2013), ¶ 13 (Bundy).
30 CR 2013/1 (Oral Proceedings of Apr. 15, 2013), ¶ 44 (Bundy); Cambodia’s Application, *supra* note 9, ¶ 39.
32 Cambodia’s Application, *supra* note 9, ¶ 41.
33 CR 2013/1 (Oral Proceedings of Apr. 15, 2013), ¶ 16 (Hor Namhong).
It appears from the 1962 Judgment that the Court had used the Annex I map as part of its reasoning and as a piece of evidence testifying to its acceptance by Thailand. While the Court did infer that Thailand did not object to Preah Vihear lying on the Cambodian side because it accepted the frontier at Preah Vihear as shown on the map, Cambodia did not make a claim that the map-shown frontier line was the boundary in the disputed region. Cambodia did, however, make submissions for the Court’s pronouncement on the legal status of the map and on the frontier line in the disputed region, which the Court entertained as grounds for deciding the claim of sovereignty over the Temple, but not as separate claims. As a consequence, in 1962 the Court did not decide whether or not the line on the Annex I map was the boundary line between the two countries and, consequently, it could not be a matter of interpretation in 2013. While the Court is free to select the grounds of its judgments, their meaning or scope may not be determined in isolation from a ground that is inseparable from the judgment.

4. JURISDICTION OF THE COURT

The ICJ exercises its jurisdiction to interpret its judgments under Article 60 of its Statute. The Court’s jurisdiction to interpret its judgment “is a special jurisdiction.” Article 60 requires the existence of a dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.” Article 98(1) of the Rules of Court provide that “[i]n the event of dispute as to the meaning or scope of a judgment any party may make a request for its interpretation . . . “. Article 98(2) requires a party to indicate in its request for interpretation “the precise point or points in dispute as to the meaning or scope of the judgment.” See also generally The Statute of the International Court of Justice: Commentary 1469 et seq. (Zimmermann et al. eds., 2012); V Max Planck Encyclopedia of Public International Law 482 (Wolfmann ed., 2012); Shabtai Rosenne, Interpretation, Revision, and Other Recourses from International Judgments and Awards (2007); Velásquez Rodríguez Case, Judgment of August 17, 1990 (Interpretation of Compensatory Damages (art. 67 American Convention on Human Rights)), Inter-Am. Ct. H.R. (Ser. C) No. 9 (1990), ¶ 26; Reisman, Nullity and Revision: The Review and Enforcement of International Judgments and Awards 212 (1971); Kazimierz Grzybowski, Interpretation of Decisions of International Tribunals, 35 Am. J. Int’l L. 482 (1941).
meaning or scope of the judgment to be interpreted.\textsuperscript{40} There is no time limit on interpretation requests.\textsuperscript{41}

### 4.1. The Dispute Relating to the Operative Clause of the Judgment

The existence of an interpretation dispute under Article 60 of the Statute does not require the same criteria to be fulfilled as in the case of a new dispute under Article 36(2) of the ICJ Statute.\textsuperscript{42} A dispute within the meaning of Article 60 must relate to the operative clause of the judgment and cannot concern the reasons for the judgment, except for those reasons that are inseparable from the operative clause.\textsuperscript{43} When reasons are found to be inseparable from the operative part of the judgment, a request for interpretation will be found to meet the conditions stated in Article 60 of the Statute.\textsuperscript{44} Reasons for a judgment are inseparable from its operative part when the operative part “is not self-standing and contains an express or implicit reference to these reasons.”\textsuperscript{45} Reasons and the operative part “cannot simply be dissociated from each other; they go together, the former setting the grounds on which the latter was established[.].”\textsuperscript{46} Reasons “serve as aids in the interpretation of what is contained in the operative part.”\textsuperscript{47} Cambodia submitted that if the grounds serve no purpose, a State can do whatever it wants solely on the basis of its own understanding of the operative part.\textsuperscript{48}

The existence of a dispute is required for the Court to find it has jurisdiction

\begin{footnotes}
\item[41] Provisional Measures Order, supra note 14, ¶ 37.
\item[42] Id. ¶ 22.
\item[43] Id. ¶ 34.
\item[44] Nigeria v. Cameroon Interpretation Judgment, supra note 37, at 36, ¶ 11.
\item[45] Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 2013 I.C.J. (Judgment of Nov. 11) (Joint Declaration of Judges Owada, Bennouna and Gaja), ¶ 1. In the declaration, the judges distinguish between inseparable and essential reasons: “‘Essential’ reasons are those on which the dispositif is based. They may sustain the operative part of the judgment even if this is self-standing.” Id. ¶ 2.
\item[46] Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 2013 I.C.J. (Judgment of Nov. 11) (separate Opinion of Judge Cançado Trindade), ¶ 46.
\item[47] Manley O. Hudson, The Permanent Court of International Justice 420 (1934).
\end{footnotes}
under Article 60 of the Statute.\textsuperscript{49} However, there is no requirement that the dispute manifest itself in a specific manner or in a formal way.\textsuperscript{50} It is sufficient to establish the existence of a dispute if the parties are holding opposite views on the meaning or scope of a judgment.\textsuperscript{51} Obviously, a dispute over interpretation can only arise following the delivery of a judgment.\textsuperscript{52} In this case, Cambodia and Thailand's dispute was apparently recognized 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.”\textsuperscript{53}

4.2. The Dispute As to the Meaning or Scope of the Judgment

The requisite dispute between the parties must be about the meaning or scope of the judgment. Arguing that acquiescence regarding the map resulted in acquiescence regarding the Temple,\textsuperscript{54} Cambodia asked the Court to interpret the dispositive of the Judgment in the light of the map because the Court's treatment of the map in the 1962 Judgment was essential reasoning, and thus falls within the Court's jurisdiction under Article 60.\textsuperscript{55} Thailand submitted that the Annex I map and boundary line are not mentioned in the dispositive.\textsuperscript{56}

The Court found that the dispute between the parties comprised three specific aspects: (a) dispute over whether the 1962 Judgment did or did not decide with binding force that the line depicted on the Annex I map constitutes the frontier between them in the area of the Temple; (b) dispute concerning the meaning and scope of the phrase “in the vicinity on Cambodian territory” in the


\textsuperscript{50} 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), 2008 I.C.J. 311 (Provisional Measures, Order of July 16), at 325–26, ¶ 54.

\textsuperscript{51} Chorzów Factory Interpretation of Judgments, supra note 49, at II.

\textsuperscript{52} Provisional Measures Order, supra note 14, ¶ 37.

\textsuperscript{53} Id. ¶ 31.

\textsuperscript{54} CR 2013/5 (Oral Proceedings of Apr. 18, 2013), ¶ 19 (Sorel). Thailand acquiesced to the map by its conduct of not objecting to it despite several opportunities it had for doing so. Thailand acquiesced to the map before the 1962 Judgment and regarding the sovereignty, as clarified by the 2013 Judgment, over the whole territory of the promontory of Preah Vihear.

\textsuperscript{55} Id. ¶ 13 (Berman).

\textsuperscript{56} CR 2013/6 (Oral Proceedings of Apr. 19, 2013), ¶ 2 (McRae).
The Court clarified that while the existence of a dispute between the parties regarding the original judgment is a prerequisite for interpretation under Article 60 of the Statute, the way in which that dispute is formulated by one or both of the parties is not binding on the Court.\(^\text{58}\)

### 4.3. Principal Dispute Between Cambodia and Thailand

The principal dispute was about the nature and extent of the Thailand’s obligation to withdraw from the area of the Temple. While the second operative paragraph of the 1962 Judgment expressly required the withdrawal of Thai forces “stationed by her at the Temple, or in its vicinity on Cambodian territory,” it did not indicate expressly the Cambodian territory from which Thailand was required to withdraw its personnel nor did it state to where those personnel had to be withdrawn.\(^\text{59}\)

Cambodia accepted Thailand’s estimate that the disputed area measured approximately 4.6 square kilometres.\(^\text{60}\) Cambodia submitted that the concept of “Cambodian territory” must have the same meaning in both the first and second operative paragraphs.\(^\text{61}\) Thailand submitted that the meaning of “vicinity” in the second operative paragraph could not be ascertained by looking at the meaning of “territory” in the first operative paragraph.\(^\text{62}\) To Cambodia, “withdrawal” necessarily meant not just withdrawal from somewhere but withdrawal to somewhere else.\(^\text{63}\) To Thailand, the Court did not need to stipulate withdrawal to somewhere given the “one question” it had to decide.\(^\text{64}\) Clearly, it was this dispute the resolution of which was critical for the maintenance of international peace and security in the region.

### 5. PROCESS OF INTERPRETATION

The ICJ is not duty bound to interpret a judgment where it does not consider that it has jurisdiction to do so.\(^\text{65}\) Interpretation of a judgment is not alteration...
of the judgment. In the process of its interpretation in this case, the Court deliberated the relevance of the following legal considerations: res judicata, pleadings, headnotes, and subsequent practice.

5.1. Res Judicata

Literally meaning “a thing adjudicated,” res judicata is an affirmative defence that bars the same parties from re-litigating the same claim. Cambodia argued that the relevant grounds employed by the Court for its 1962 Judgment constituted res judicata. Thailand contended:

Allowing the reasons of the 1962 Judgment to be the autonomous object of a Request for interpretation, when no ambiguity exists in the dispositif of that Judgment and when this Request has a larger scope than the one of that dispositif, would be to fly in the face of the principle of res judicata.

The Court recalled that the process of interpreting a judgment is premised on the “primacy of the principle of res judicata.” Interpretation may properly add nothing to the decision, which has acquired the force of res judicata. According to international practice, the authority of res judicata attaches in principle only to a judgment’s operative part, i.e., the part in which the Court rules on the dispute and states the rights and obligations of the parties and not

67 Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) 2013 I.C.J. (March 8 Response of the Kingdom of Cambodia), ¶ 1.18, 4.2 [hereinafter Response of the Kingdom of Cambodia]. Cambodia elaborated that if what the Judgment said about the frontier and about the map is not res judicata, then Thailand is free to deny that it had ever accepted the Annex I map. CR 2013/1 (Oral Proceedings of Apr. 15, 2013), ¶ 47 (Berman). Moreover, while the res judicata is the final decision, it is not the only decision. CR 2013/2 (Oral Proceedings of Apr. 15, 2013), ¶ 16 (Sorel).
68 Thailand’s Written Observations, supra note 10, ¶ 4.93. Thailand also argued that “[t]he exceptional possibility for a State unilaterally to seise the Court under Article 60 of the Statute must not be diverted into an attempt to impair the res judicata of the main judgment.” Id. ¶ 4.73.
70 Chorzów Factory Interpretation of Judgments, supra note 49, at 21.
to its reasoning. The Court therefore disagreed with Cambodia that its 1962 reasoning was also \textit{res judicata}.

\subsection*{5.2. Pleadings}

Pleadings are the authentic written positions of the disputants to the Court.

Thailand claimed that Cambodia asserted that the map was annexed to the Judgment of the Court; however, it was merely annexed to Cambodia’s pleadings before the Court. Moreover, Cambodia may not now deviate from what it had stated in its 1961 pleadings, which were concerned only with the issue of which state had sovereignty over the Temple. Thailand argued that Cambodia was attempting to give the notion of “vicinity” a role and life it never had in the pleadings in 1962.

Cambodia submitted that Thailand had used various maps, contained in Annex 85 (d) of Thailand’s pleadings in the 1962 case, to limit the vicinity of the Temple from which it had an obligation to withdraw. Cambodia also submitted that the maps and technical studies that Thailand had introduced in its written pleadings subsequent to the 1962 proceedings were irrelevant.

The Court found that the pleadings and the record of the oral proceedings in 1962 were relevant to the interpretation of the Judgment, as they show what evidence was or was not before the Court and how the issues before it were formulated by each party. The Court therefore accepted Cambodia’s view on the relevance of pleadings to an interpretation dispute.

\subsection*{5.3. Headnote}

Headnotes have been variedly used by municipal courts and tribunals in interpreting statutes. They are usually prefixed to sections and operate as preambles to them. They have served to explain doubtful expressions, but not to override clear words. At best, headings have been regarded as key to the interpretation of

\begin{itemize}
  \item[72] Thailand’s Written Observations, \textit{supra} note 10, \(\S\) 1.11.
  \item[73] \textit{Id.} \(\S\) 2.15, 5.27.
  \item[74] CR 2013/6 (Oral Proceedings of Apr. 19, 2013), \(\S\) 3 (McRae).
  \item[75] CR 2013/5 (Oral Proceedings of Apr. 18, 2013), \(\S\) 30, 31 (Bundy).
  \item[76] CR 2013/1 (Oral Proceedings of Apr. 15, 2013), \(\S\) 59 (Bundy).
  \item[77] 2013 Temple Judgment, \textit{supra} note 4, \(\S\) 69.
\end{itemize}
the statutory clauses unless the wording is inconsistent with such interpretations.  

Cambodia suggested that the headnote to the 1962 Judgment demonstrated that the Judgment determined the course of the frontier in the relevant area. The headnote said:

Territorial sovereignty.—Title deriving from treaty.—Treaty clauses establishing frontier along watershed line as delimited by Mixed Commission of Parties.—Uncertain character of resulting delimitation in disputed area.—Eventual production by experts of one Party, at the request of the other, of a map.—Non-binding character of map at moment of its production—Subsequent acceptance by conduct of map and frontier line by other Party.—Legal effect of silence as implying consent.—Alleged non-correspondence of map line with true watershed line.—Acceptance of risk of errors.—Subsequent conduct confirming original acceptance and precluding a denial of it.—Effect of subsequent treaties confirming existing frontiers and as evidence of Parties' desire for frontier stability and finality.—Interpretation of treaty settlement considered as a whole, including map.

The Court clarified that the headnote is only indicative of the points examined in a judgment and is neither one of the elements of the judgment nor constitutive of an authoritative summary of the matter of its decision. The Court therefore did not consider that the headnote to the 1962 Judgment could assist it in resolving the contested matter of interpretation before it.

5.4. Subsequent Practice

The relevance of subsequent practice in treaty interpretation is well known. In its arguments, Thailand relied extensively on the conduct of the parties subsequent to the date of the 1962 Judgment and until 2008. Thailand submitted that the conduct of the parties indicated that the Annex 1 map had not been adopted in 1962 as the basis for locating their boundary, and that es-

---

78 See generally Gerald Dworkin, ODGERS’ CONSTRUCTION OF DEEDS AND STATUTES 311 et seq. (1967); Ravindra Pratap, INTERPRETATION OF STATUTES: A READER (2010), ch. 2.
80 1962 Temple Judgment, at 6 (italics in the original).
81 2013 Temple Judgment, supra note 4, ¶ 73.
tablishing the boundary was an outstanding subject in 2000 when the parties signed a Memorandum of Understanding (MoU) for it. According to Thailand, “what Cambodia seeks, in truth, is not an interpretation of the 1962 Judgment but an interpretation of the MoU.” In Thailand’s view, the parties’ conduct subsequent to the pronouncement of the Judgment demonstrated their common understanding of its meaning and scope.

Cambodia, on the other hand, argued that subsequent practices may be taken into account to the extent that they demonstrate the existence of a dispute, but they may not serve as a basis for the Court’s interpretation. Cambodia submitted that no basis can be found in Article 60, or in the past judgments of the Court, 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 Court clarified that a judgment of the ICJ cannot be equated with a treaty, which results from the consent of the contracting States and the interpretation of which may be affected by their subsequent conduct. The Court added that no abstraction of subsequent facts can be made when interpreting a judgment. Thus, the Court agreed with Cambodia that subsequent facts may serve to determine whether a dispute exists between the parties over interpretation of the operative part of a judgment, but have no relevance in determining the meaning or scope of the judgment.

6. INTERPRETATION

The Court interpreted the first operative paragraph of its 1962 Judgment to mean that Cambodia had sovereignty over the whole territory of the promontory of Preah Vihear and that, in consequence, the second operative paragraph required Thailand to withdraw from that territory the Thai military or police forces, or other guards or keepers, who were stationed there. In his Separate Opinion, Judge Cançado Trindade observed that the term “vicinity” be understood also to describe the scope of the obligation to withdraw troops or police force in pursuance of the fundamental principle of the prohibition of the threat or use of force in the Temple itself or in its “vicinity.”

83 Thailand’s Written Observations, supra note 10, ¶ 5.41 et seq.
84 Id. ¶ 5.45.
86 Response of the Kingdom of Cambodia, supra note 67, ¶ 4.56.
87 CR 2013/1 (Oral Proceedings of Apr. 15, 2013), ¶ 17 (Berman).
88 2013 Temple Judgment, supra note 4, ¶ 75.
89 Separate opinion of Judge Cançado Trindade on Provisional Measures, supra note 1, ¶ 38.
90 2013 Temple Judgment, supra note 4, ¶ 107. In his Separate Opinion, Judge Cançado Trindade observed that the term “vicinity” be understood also to describe the scope of the obligation to withdraw troops or police force in pursuance of the fundamental principle of the prohibition of the threat or use of force in the Temple itself or in its “vicinity.”
1962 Judgment.

In making this determination, the Court considered that the territorial scope of the second operative paragraph must not be confined to the part of the promontory chosen by the Thai Council of Ministers in 1962. The Court was also unable to accept Cambodia’s interpretation of “vicinity,” which included not only the promontory of Preah Vihear but also the hill of Phnom Trap. Nevertheless, the Court did not say that the 1962 Judgment treated Phnom Trap as part of Thailand. While considering that Cambodia’s territory extended in the north as far as, but no farther than, the Annex I map line, the Court noted Thailand’s argument about the difficulty of ascertaining the precise location on the ground of the Annex I map line in the area.

The Court did not consider it necessary to address the question whether the 1962 Judgment determined with binding force the boundary line between Cambodia and Thailand. The Court also did not address the question whether the obligation imposed on Thailand by the second operative paragraph was a continuing obligation. Thus, seen in the context of ICJ judgments in comparable disputes, the text of the Judgment is not without a source of potential disagreement that could become a possible excuse for non-compliance with the Judgment and consequently a possible future source of conflict between the two countries.

7. CONCLUSION

Potential for interpretation is inherent in any text, including the text of this Judgment. Although Thailand variably denied the existence of an interpretation dispute in these proceedings, potential conflict between the Parties over interpretation of the 1962 Judgment first appeared less than a month after its

---

91 2013 Temple Judgment, supra note 4, ¶ 91.
92 See id., ¶ 92.
93 See id., ¶ 97.
94 See id., ¶ 90.
95 See id., ¶ 99.
96 See id., ¶ 104.
97 See id., ¶ 105.
delivery when Thailand stated to the United Nations its legal rights to recover the Temple.99 The Court’s interpretation has not resolved important issues, mainly the boundary dispute,100 the settlement of which is most important for an enduring normalization of relations between Cambodia and Thailand. Nevertheless, thus far the Court’s interpretation has contributed to the mainte-

99 See Cambodia’s Application, supra note 9, Annex 1: Letter of 6 July 1962 Sent by Thailand’s Minister for Foreign Affairs to the Secretary-General of the United Nations (stating, “I wish to inform you that, in deciding to comply with the decision … His Majesty’s Government desires to make an express reservation regarding whatever rights Thailand has, or may have in the future, to recover the Temple … by having recourse to any existing or subsequently applicable legal process[.]”).

100 See, e.g., Staff, Partial Victory at the ICJ, Phnom Penh Post, Nov. 11, 2013 (noting that the ICJ “took pains to specify that the 1962 decision dealt with only a “small area” surrounding the temple” and that “[t]he decision leaves unanswered the question of sovereignty over the remainder of the 4.6-square-kilometre area forming the heart of the long-running dispute between Cambodia and Thailand”).
nance of international peace and security, with the border situation remaining calm since the Judgment was delivered.\(^{101}\)

The Court’s exercise of its interpretation jurisdiction in this case was consistent with its well-developed jurisprudence that requires the existence of a dispute about the meaning or scope of a judgment arising out of its operative part and inseparable reasoning. The Court found that the authority of res judicata of a judgment attaches to its operative part and not to its reasoning. It found the relevance of pleadings as they show evidence on record of the Court and formulation of the issues by each party to the dispute. But the Court found no relevance of both the headnote to the 1962 Judgment and the subsequent practice of the parties in

---


The ICJ’s ruling confused most people at first—so much so that initial reactions were sparse—but it became clear that we’re back where we started at the original 1962 ruling, since the ICJ only ruled on a little piece of land next to the Preah Vihear temple in favor of Cambodia. That means the rest of the disputed 4.6 sqkm area is still up for debate and both countries are told to work it out. In a way, it is a ruling that many could live with (except for the Thai ultra-nationalists who have rejected anything from the ICJ before already) and it is up to Phnom Penh and Bangkok to calmly dissect the ruling and come up with a solution together—the failure to do so was why both countries ended up at the ICJ in the first place.

See also Kenneth T. So, *Preah Vihear: A Khmer Heritage*, at [www.cambodia.org/Preah_Vihear/?history=A+Khmer+Heritage](http://www.cambodia.org/Preah_Vihear/?history=A+Khmer+Heritage) (last accessed on Aug 19, 2014) (arguing: “Thailand never protested against the [1962] verdict; [h]owever, over the years Thailand has unilaterally redrawn the map that contradicts the ICJ judgment.”); Puangthong Pwakapan, *Can the ICJ Ruling End the Dispute Between Thailand and Cambodia?*, Institute of Southeast Asian Studies (Sept 26, 2013), available at [www.iseas.edu.sg/documents/publication/iseas_perspective2013_53_can_the_icj_ruling_end_the_dispute.pdf](http://www.iseas.edu.sg/documents/publication/iseas_perspective2013_53_can_the_icj_ruling_end_the_dispute.pdf) (arguing that compliance with the ruling is likely to be subject to domestic Thai political pressures); Stuart White, *Temple Ruling Eyed Warily*, PHNOM PENH POST, Oct. 1, 2013.
determining the meaning or scope of the Judgment. This was the sixth occasion for the ICJ to interpret its judgments.\footnote{102} In the Court's view, once a dispute regarding territorial sovereignty has been resolved, each party must fulfill in good faith the obligation to respect the territorial integrity of other States.\footnote{103} The Court underscored the importance of international cooperation between Cambodia and Thailand, and with the international community, in the protection of the Preah Vihear site as world heritage and work to preserve the temple.\footnote{104} Above all, the Court underscored that the disputants must abide by the fundamental principles of non-use of force and peaceful settlement of international disputes.\footnote{105} It is these principles that formed the basis of the Court's reasoning in its decision to indicate provisional measures\footnote{106} —even in the midst of arguments that the Court was not empowered to take those measures. These principles remain critical for less powerful countries as they look to international judicial bodies for the resolution of disputes of this nature.

\footnote{102} The other cases were: Interpretation of the Judgment No. 3 (Treaty of Neuilly, Article 179, Annex, ¶ 4) (Bulgaria v. Greece) 1925 P.C.I.J. 3 (ser. A) No. 4; Nigeria v. Cameroon Interpretation Judgment, supra note 37, Chorzów Factory Interpretation of Judgments, supra note 49; Columbia v. Peru Interpretation Judgment, supra note 40; Tunisia v. Libya Interpretation Judgment, supra note 39; Mexico v. US Interpretation Judgment, supra note 40.


\footnote{104} 2013 Temple Judgment, supra note 4, ¶ 106.


\footnote{106} Provisional Measures Order, supra note 14, ¶ 66.