

# AFFIRMING CAMBODIA'S SOVEREIGNTY OVER “STONES” THAT “EXPRESS” “OUR ESSENCE”<sup>1</sup>:

## ICJ's Interpretation of Its Judgment in the Temple of Preah Vihear Case

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RAVINDRA PRATAP<sup>2</sup>

*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.<sup>3</sup> 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.<sup>4</sup> Nevertheless, seen in the context of ICJ*

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1 See Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Provisional Measures, Order of 18 July 2011) (separate opinion of Judge Cançado Trindade), ¶ 20 [hereinafter Separate opinion of Judge Cançado Trindade on Provisional Measures] (quoting STEFAN ZWEIF, TIEMPO Y MUNDO — IMPRESIONES Y ENSAYOS (1904-1940) 147–48 (Barcelona, Edit. Juventud, 1998)).

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

3 See, e.g., Stuart White, *ICJ Ruling Delayed: Thai Gov't*, PHNOM PENH POST, Oct. 14, 2013 (reporting that “intense” fighting in 2011 resulted in 18 deaths and thousands displaced); Vong Sokheng, *Preah Vihear Temple under Repair*, PHNOM PENH POST, Mar. 12, 2014.

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.*

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## 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,<sup>5</sup> Cambodia became a protectorate of France.<sup>6</sup> 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

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5 See generally DAVID P. CHANDLER, A HISTORY OF CAMBODIA (2000).

6 2013 Temple Judgment, *supra* note 4, ¶ 15.

Temple of Preah Vihear was situated in Cambodian territory.<sup>7</sup> 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.<sup>8</sup>

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-memoire*, which it sent to Cambodia.<sup>9</sup> Thailand claimed that Cambodia "purported to define the area of its listing in a way that included a significant portion of Thai territory."<sup>10</sup> Following the Temple's inscription on the World Heritage List, Thailand

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7 Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. 6 (June 15) at 32 [hereinafter 1962 Temple Judgment]. On the Temple decision, see generally Peter Cuasay, *Borders on the Fantastic: Mimesis, Violence, and Landscape at the Temple of Preah Vihear*, 32:4 MODERN ASIAN STUD. 849 (1998), available at [www.academia.edu/235574/Borders\\_on\\_the\\_Fantastic](http://www.academia.edu/235574/Borders_on_the_Fantastic); L.P. Singh, *The Thai-Cambodian Temple Dispute*, 2 ASIAN SURVEY 23 (1962).

8 1962 Temple Judgment, *supra* note 7, at 36-37 (emphasis added).

9 See Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 2011 I.C.J. (Cambodia's Application of Apr. 28, 2011, Instituting Proceedings), ¶ 13 [hereinafter Cambodia's Application].

10 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. (Written Observations of the Kingdom of Thailand of 21 Nov. 2011), ¶ 1.21 [hereinafter Thailand's Written Observations]. See also CR 2013/1 (Oral Proceedings of Apr. 15, 2013), ¶ 7 (Hor Namhong).

withdrew from the World Heritage Convention<sup>11</sup> 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,<sup>12</sup> and on April 28, 2011, Cambodia filed a request with the ICJ for interpretation of the 1962 Judgment.<sup>13</sup>

## 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[.]”<sup>14</sup> 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.<sup>15</sup>

## 3. PRINCIPAL ARGUMENTS OF THE PARTIES

The principal arguments of the parties concerned their varying characteriza-

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11 See, e.g., Ron Corben, *Thailand Withdraws from World Heritage Convention over Temple Dispute*, VOA, June 25, 2011.

12 On July 19, 2008, Cambodia brought the matter to the Security Council. On August 20, 2010, U.N. Secretary-General Mr Ban Ki-moon offered his help in resolving the dispute. See Cambodia’s Application, *supra* note 9, Annex 8 at 151 (U.N. Press Release of August 20, 2010). On February 17, 2011, the European Parliament adopted a resolution on the border clashes. See EUR. PARL. RES. P7\_TA-PROV (2011) 0072 (Feb. 17, 2011) (calling “on both countries to respect the 1962 judgment of the International Court of Justice and to reach a peaceful settlement of the dispute regarding the border area close to the Preah Vihear temple”).

13 Cambodia’s Application, *supra* note 9, Annex 2 at 42-43.

14 Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) 2011 I.C.J. 537 (Provisional Measures, Order of 18 July 2011), at 555 [hereinafter Provisional Measures Order].

15 *But see* Provisional Measures Order (dissenting opinion of Judge Owada), ¶ 11; *id.* (dissenting opinion of Judge Donoghue), ¶ 7 *et seq.*; *id.* (dissenting opinion of Judge Xue), at 75. See also Kate Shulman, *The Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand): The ICJ Orders Sweeping Provisional Measures to Prevent Armed Conflict at the Expense of Sovereignty*, 20 TULANE J. INT’L & COMP. L. 555 (2012).

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.<sup>16</sup> 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.<sup>17</sup> Consequently, in Thailand’s view, there was a dispute concerning the “execution—not the interpretation—of the Judgment.”<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup> 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,<sup>21</sup> for Cambodia, the obligation was a continuing one.<sup>22</sup>

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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.

18 CR 2013/6 (Oral Proceedings of Apr. 19, 2013), ¶ 9 (Pellet).

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).

21 CR 2011/14 (Oral Proceedings of May 30, 2011), ¶ 7 (Pellet).

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,<sup>23</sup> which the Court refused to do in 1962.<sup>24</sup> 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.<sup>25</sup>

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).<sup>26</sup> 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.<sup>27</sup> 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*.<sup>28</sup>

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.<sup>29</sup> 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,<sup>30</sup> and clearly indicated in the grounds of the Judgment that determine the proper interpretation of the operative clause.<sup>31</sup> Cambodia considered these reasons to be inseparable from the operative part of the 1962 Judgment,<sup>32</sup> of which it was seeking an authentic and definitive interpretation.<sup>33</sup>

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23 Thailand’s Written Observations, *supra* note 10, ¶ 4.104 *et seq.*

24 CR 2013/4 (Oral Proceedings of Apr. 17, 2013), ¶ 2 (McRae).

25 CR 2013/3 (Oral Proceedings of Apr. 17, 2013), ¶ 27–28 (Crawford).

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.

31 CR 2013/1 (Oral Proceedings of Apr. 15, 2013), ¶ 5 (Sorel).

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<sup>34</sup> as part of its reasoning and as a piece of evidence testifying to its acceptance by Thailand.<sup>35</sup> 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,<sup>36</sup> their meaning or scope may not be determined in isolation from a ground that is inseparable from the judgment.<sup>37</sup>

#### 4. JURISDICTION OF THE COURT

The ICJ exercises its jurisdiction to interpret its judgments under Article 60 of its Statute.<sup>38</sup> The Court's jurisdiction to interpret its judgment "is a special jurisdiction."<sup>39</sup> Article 60 requires the existence of a dispute as to the

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34 See 1962 Temple Judgment, *supra* note 7, at 17.

35 See *id.* at 26, 32-33.

36 See, e.g., Application of the Convention of 1902 governing the Guardianship of Infants (Netherlands v. Sweden), 1958 I.C.J. 55 (Judgment of November 28), at 62.

37 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), 1999 I.C.J. 31 (Judgment of March 25), at 35, ¶ 10 [hereinafter Nigeria v. Cameroon Interpretation Judgment].

38 Article 60 states: "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." 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 (Wolftrum ed., 2012); SHABTAI ROSENNE, INTERPRETATION, REVISION, AND OTHER RECOURS 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).

39 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) 1985 I.C.J. 192 (Judgment of December 10), at 216, ¶ 43 [hereinafter Tunisia v. Libya Interpretation Judgment].

meaning or scope of the judgment to be interpreted.<sup>40</sup> There is no time limit on interpretation requests.<sup>41</sup>

#### 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.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> 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.”<sup>45</sup> 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[.]”<sup>46</sup> Reasons “serve as aids in the interpretation of what is contained in the operative part.”<sup>47</sup> 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.<sup>48</sup>

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

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40 Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru), 1950 I.C.J. Reports 395 (Judgment of November 27), at 402 [hereinafter Colombia v. Peru Interpretation Judgment]; Tunisia v. Libya Interpretation Judgment, *supra* note 39, 216-17, ¶ 44; Nigeria v. Cameroon Interpretation Judgment, at 36, ¶ 12; 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), 2009 I.C.J. 3 (Judgment of January 19), at 10, ¶ 21 [hereinafter Mexico v. US Interpretation Judgment].

41 Provisional Measures Order, *supra* note 14, ¶ 37.

42 *Id.* ¶ 22.

43 *Id.* ¶ 34.

44 Nigeria v. Cameroon Interpretation Judgment, *supra* note 37, at 36, ¶ 11.

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.

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 Cañçado Trindade), ¶ 46.

47 MANLEY O. HUDSON, THE PERMANENT COURT OF INTERNATIONAL JUSTICE 420 (1934).

48 CR 2013/2 (Oral Proceedings of Apr. 15, 2013), ¶ 5 (Sorel).

under Article 60 of the Statute.<sup>49</sup> However, there is no requirement that the dispute manifest itself in a specific manner or in a formal way.<sup>50</sup> 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.<sup>51</sup> Obviously, a dispute over interpretation can only arise following the delivery of a judgment.<sup>52</sup> 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."<sup>53</sup>

#### 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,<sup>54</sup> 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.<sup>55</sup> Thailand submitted that the Annex I map and boundary line are not mentioned in the *dispositive*.<sup>56</sup>

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

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49 Further, *see generally* *Mavrommatis Palestine Concessions* (Greece v. Great Britain) 1924 P.C.I.J. (ser. A) No. 2 (Judgment of 30 August 1924), at II; *Interpretation of Judgments Nos. 7 and 8 (Chorzów Factory)*, 1927 P.C.I.J. 3 (ser. A) No. 13, (Judgment No. 11 of Dec. 16), at 10-11 [hereinafter *Chorzów Factory Interpretation of Judgments*]; *Columbia v. Peru Interpretation Judgment*, *supra* note 40, at 402; *Interpretation of the Peace Treaties with Bulgaria, Hungary and Romania*, 1950 I.C.J. 65 (Advisory Opinion of 30 March), at 74; *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, 1962 I.C.J. 319 (Preliminary Objections Judgment of 21 December), at 328; Gerhard Hafner, *Some Legal Aspects of International Disputes*, 104 J. INT'L L. & DIPLOMACY 65 (2005); Robert Jennings, *Reflections on the Term "Dispute,"* in *ESSAYS IN HONOUR OF WANG TIEYA* 401 (Ronald St. John MacDonald ed., 1993).

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.

51 *Chorzów Factory Interpretation of Judgments*, *supra* note 49, at II.

52 Provisional Measures Order, *supra* note 14, ¶ 37.

53 *Id.* ¶ 31.

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.

55 *Id.* ¶ 13 (Berman).

56 CR 2013/6 (Oral Proceedings of Apr. 19, 2013), ¶ 2 (McRae).

Judgment's second operative paragraph; and (c) dispute regarding the nature of Thailand's obligation to withdraw imposed by the second operative paragraph.<sup>57</sup> 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.<sup>58</sup>

### 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.<sup>59</sup>

Cambodia accepted Thailand's estimate that the disputed area measured approximately 4.6 square kilometres.<sup>60</sup> Cambodia submitted that the concept of "Cambodian territory" must have the same meaning in both the first and second operative paragraphs.<sup>61</sup> 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.<sup>62</sup> To Cambodia, "withdrawal" necessarily meant not just withdrawal *from* somewhere but withdrawal *to* somewhere else.<sup>63</sup> To Thailand, the Court did not need to stipulate withdrawal *to* somewhere given the "one question" it had to decide.<sup>64</sup> 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.<sup>65</sup> Interpretation of a judgment is not alteration

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57 See 2013 Temple Judgment, *supra* note 4, ¶ 52.

58 See *id.* ¶ 67.

59 See *id.* ¶ 81.

60 See *id.* ¶ 83.

61 CR 2013/1 (Oral Proceedings of Apr. 15, 2013), ¶ 19 (Berman).

62 CR 2013/4 (Oral Proceedings of Apr. 17, 2013), ¶ 39 (Mc Rae).

63 CR 2013/1 (Oral Proceedings of Apr. 15, 2013), ¶ 27 (Berman).

64 CR 2013/6 (Oral Proceedings of Apr. 19, 2013), ¶ 21 (Crawford).

65 See *Nigeria v. Cameroon Interpretation Judgment*, *supra* note 37, at 31.

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.<sup>66</sup> Cambodia argued that the relevant grounds employed by the Court for its 1962 Judgment constituted *res judicata*.<sup>67</sup> 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*.<sup>68</sup>

The Court recalled that the process of interpreting a judgment is premised on the “primacy of the principle of *res judicata*.”<sup>69</sup> Interpretation may properly add nothing to the decision, which has acquired the force of *res judicata*.<sup>70</sup> 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

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66 See B. A. GARNER, BLACK’S LAW DICTIONARY 1425 (2009).

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), ¶¶ I.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 seize 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.

69 2013 Temple Judgment, *supra* note 4, ¶ 55. See also ROSENNE, III LAW AND PRACTICE OF THE INTERNATIONAL COURT OF JUSTICE: 1920-1996, 1669 (1997); Nigeria v. Cameroon Interpretation Judgment, *supra* note 37, ¶ 12; 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), 1999 I.C.J. 31 (Judgment of March 25) (Dissenting Opinion of Judge Koroma), at 52.

70 Chorzów Factory Interpretation of Judgments, *supra* note 49, at 21.

to its reasoning.<sup>71</sup> The Court therefore disagreed with Cambodia that its 1962 reasoning was also *res judicata*.

## 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.<sup>72</sup> 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.<sup>73</sup> Thailand argued that Cambodia was attempting to give the notion of "vicinity" a role and life it never had in the pleadings in 1962.<sup>74</sup>

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.<sup>75</sup> Cambodia also submitted that the maps and technical studies that Thailand had introduced in its written pleadings subsequent to the 1962 proceedings were irrelevant.<sup>76</sup>

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.<sup>77</sup> The Court therefore accepted Cambodia's view on the relevance of pleadings to an interpretation dispute.

## 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

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71 Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland and the French Republic, Decision of 14 March 1978, *RIAA*, Vol. XVIII, at 365, ¶ 28; Dispute concerning the Frontier Line between Boundary Post 62 and Mount Fitzroy (Argentina v. Chile), Arbitral Award of 21 October 1994, RGDIP, 1996, at 551, ¶ 70.

72 Thailand's Written Observations, *supra* note 10, ¶ I.II.

73 *Id.* ¶¶ 2.15, 5.27.

74 CR 2013/6 (Oral Proceedings of Apr. 19, 2013), ¶ 3 (McRae).

75 CR 2013/5 (Oral Proceedings of Apr. 18, 2013), ¶¶ 30, 31 (Bundy).

76 CR 2013/1 (Oral Proceedings of Apr. 15, 2013), ¶ 59 (Bundy).

77 2013 Temple Judgment, *supra* note 4, ¶ 69.

the statutory clauses unless the wording is inconsistent with such interpretations.<sup>78</sup>

Cambodia suggested that the headnote to the 1962 Judgment demonstrated that the Judgment determined the course of the frontier in the relevant area.<sup>79</sup> 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.*<sup>80</sup>

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.<sup>81</sup> 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.<sup>82</sup> 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 I map had not been adopted in 1962 as the basis for locating their boundary, and that es-

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78 See generally GERALD DWORKIN, *ODGERS' CONSTRUCTION OF DEEDS AND STATUTES* 311 *et seq.* (1967); RAVINDRA PRATAAP, *INTERPRETATION OF STATUTES: A READER* (2010), ch. 2.

79 CR 2013/2 (Oral Proceedings of Apr. 15, 2013), ¶ 25 (Sorel).

80 1962 Temple Judgment, at 6 (italics in the original).

81 2013 Temple Judgment, *supra* note 4, ¶ 73.

82 See generally Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679, entered into force Jan. 27, 1980, art. 31(c); Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Vol. I, 1971 I.C.J. at 16-345; RICHARD GARDINER, *TREATY INTERPRETATION* (2010); Draft conclusions I-5 provisionally adopted by the Drafting Committee at the sixty-fifth session of the International Law Commission, 24 May 2013.

tablishing the boundary was an outstanding subject in 2000 when the parties signed a Memorandum of Understanding (MoU) for it.<sup>83</sup> According to Thailand, “what Cambodia seeks, in truth, is not an interpretation of the 1962 Judgment but an interpretation of the MoU.”<sup>84</sup> In Thailand’s view, the parties’ conduct subsequent to the pronouncement of the Judgment demonstrated their common understanding of its meaning and scope.<sup>85</sup>

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.<sup>86</sup> 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.<sup>87</sup>

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.<sup>88</sup> The Court added that no abstraction of subsequent facts can be made when interpreting a judgment.<sup>89</sup> 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.<sup>90</sup> The Court thus interpreted the jural relations of Cambodia and Thailand arising out of the

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83 Thailand’s Written Observations, *supra* note 10, ¶ 5.41 *et seq.*

84 *Id.* ¶ 5.45.

85 CR 2013/3 (Oral Proceedings of Apr. 17, 2013), ¶ I (Pellet).

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, ¶ I07. 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.” Separate opinion of Judge Cançado Trindade on Provisional Measures, *supra* note 1, ¶ 16.

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.<sup>91</sup> 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.<sup>92</sup> Nevertheless, the Court did not say that the 1962 Judgment treated Phnom Trap as part of Thailand.<sup>93</sup> While considering that Cambodia's territory extended in the north as far as, but no farther than, the Annex I map line,<sup>94</sup> 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.<sup>95</sup>

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.<sup>96</sup> The Court also did not address the question whether the obligation imposed on Thailand by the second operative paragraph was a continuing obligation.<sup>97</sup> 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.<sup>98</sup>

## 7. CONCLUSION

Potential for interpretation is inherent in any text, including the text of this Judgment. Although Thailand variedly 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

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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.

98 On compliance with ICJ judgments *see generally* CONSTANZE SCHULTE, COMPLIANCE WITH DECISIONS OF THE INTERNATIONAL COURT OF JUSTICE (2004) (noting that most ICJ decisions result in compliance); Heather L. Jones, *Why Comply? An Analysis of Trends in Compliance with Judgments of the International Court of Justice since Nicaragua*, 12 CHI-KENT J. INT'L & COMP. L. 58 (2012) (concluding that judgments entailing compromise or allowing for cooperative efforts are more easily implemented); Aloysius P. Llamzon, *Jurisdiction and Compliance in Recent Decisions of the International Court of Justice*, 18 EURO. J. INT'L L. 815 (2008) (concluding that the ICJ has largely been successful at finding a workable equilibrium); Colter Paulson, *Compliance with Final Judgments of the International Court of Justice Since 1987*, 98 AM. J. INT'L L. 434 (2004).

delivery when Thailand stated to the United Nations its legal rights to recover the Temple.<sup>99</sup> The Court's interpretation has not resolved important issues, mainly the boundary dispute,<sup>100</sup> 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-

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99 See Cambodia's Application, *supra* note 9, Annex I: 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.<sup>101</sup>

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

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101 See, e.g., Vong Sokheng, *Preah Vihear Temple Under Repair*, PHNOM PENH POST, Mar. 12, 2014. Cambodia submitted to the Court that without “an interpretation of the Judgment of 15 June 1962, the resultant maintenance of the status quo would be very likely to have unfortunate consequences...” CR 2013/I (Oral Proceedings of Apr. 15, 2013), ¶ 20 (Hor Namhong). Following the pronouncement of the Judgment, Cambodia stated that “the verdict will bring peace to the border area” and Thailand “instructed its military officers to maintain peace along the border.” <http://myoceanic.wordpress.com/2013/11/12/preah-vihear-temple-reaction-of-cambodia-and-thailand-after-11-november-icj-ruling/> (last accessed on Aug. 19, 2014). Regarding the effectiveness of ICJ judgments in resolving territorial disputes, see generally Joseph Sinde Warioba, *Monitoring Compliance with and Enforcement of Binding Decisions of International Courts*, in 5 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 41 (Armin von Bogdandy & Rüdiger Wolfrum eds., 2001) (concluding that I.C.J. judgments are the basis for the maintenance of peace and security); John A. Vasquez, *Mapping the Probability of War and Analyzing the Possibility of Peace: The Role of Territorial Disputes*, 18 CONFLICT MGMT & PEACE SCI. 145 (2001); Krista E. Wiegand & Emilia Justyna Powell, *Past Experience, Quest for the Best Forum, and Peaceful Attempts to Resolve Territorial Disputes*, 55 J. CONFLICT RESOL. (2011). But see, e.g., Saksith Saiyasombut & Siam Voices, *Thailand's Senate Amnesty Debate, and the Preah Vihear Ruling*, ASIAN CORRESPONDENT, Nov. 11, 2013, at <http://asiancorrespondent.com/115639/live-blog-icj-preah-vihear-ruling-and-senate-debate-on-amnesty-bill/> (last accessed on 16 July 2014), reporting that:

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 Pwakistan, *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.<sup>102</sup>

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.<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup> It is these principles that formed the basis of the Court's reasoning in its decision to indicate provisional measures<sup>106</sup>—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.

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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.

103 2013 Temple Judgment, *supra* note 4, ¶ 105. On good faith obligation, *see* U.N. Charter, art. 2.2. *See also* The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., U.N. Doc. A/RES/25/2625 (1970) (providing in part: "Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law."); Rights of Nationals of the United States of America in Morocco (France v. United States of America), 1952 I.C.J. 176 (Judgment of August 27), at 212; Nuclear Tests (New Zealand v. France), 1974 I.C.J. 457 (Judgment of December 20), at 473, ¶ 49; Border and Transborder Armed Actions (Nicaragua v. Honduras) 1988 I.C.J. 69 (Judgment on Jurisdiction and Admissibility), at 105, ¶ 94; Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 1996 ICJ 226 (July 8), ¶ F of *dispositif* 2; BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 105 (1953); SIR GERALD FITZMAURICE, *The Law and Procedure of the International Court of Justice, 1951–54: General Principles and Sources of Law*, 30 BRIT. Y.B. INT'L L. 53 (1953); GEORG SCHWARZENBERGER, *The Fundamental Principles of International Law*, 87 HAGUE RECUEIL 290 (1955); M. LACHS, *Some Thoughts on the Role of Good Faith in International Law*, in DECLARATION ON PRINCIPLES: A QUEST FOR UNIVERSAL PEACE 47 (Rober J. Akkerman et al. eds., 1977); SHABTAI ROSENNE, DEVELOPMENTS IN THE LAW OF TREATIES 1945–1988, 135 (1989); JOHN F. O'CONNOR, GOOD FAITH IN INTERNATIONAL LAW (1991).

104 2013 Temple Judgment, *supra* note 4, ¶ 106.

105 The Court emphasized the principle of peaceful settlement of disputes in its decisions in Pulp Mills on the River Uruguay (Argentina v. Uruguay) 2010 I.C.J. 14 (Judgment of April 20), ¶ 281; Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo), 2010 I.C.J. 639 (Judgment of November 30), ¶¶ 163–64; Application of the Interim Accord of 13 September 1995 (the Former Yugoslav Republic of Macedonia v. Greece) 2011 I.C.J. 644 (Judgment of December 5), ¶ 166. *See also* the Provisional Measures Order, *supra* note 14, ¶¶ 63, 66. *See also generally* C.G. WEERAMANTRY, *The Function of the International Court of Justice in the Development of International Law*, 10 LEIDEN J. INT'L L. 309 (1997).

106 Provisional Measures Order, *supra* note 14, ¶ 66.