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CR 2011/16

Cour internationale de Justice

LA HAYE

International Court of Justice

THE HAGUE

ANNÉE 2011

Audience publique

tenue le mardi 31 mai 2011, à 17 heures, au Palais de la Paix,

sous la présidence de M. Owada, président,

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

COMPTE RENDU

YEAR 2011

Public sitting

held on Tuesday 31 May 2011, at 5 p.m., at the Peace Palace,

President Owada presiding,

***in the case concerning the* Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand)* (Cambodia *v.* Thailand)**

VERBATIM RECORD

Présents : M. Owada, président
M. Tomka, vice-président
MM. Koroma
Al-Khasawneh
Simma
Abraham
Keith
Bennouna
Skotnikov
Cançado Trindade
Yusuf
Greenwood
Mmes Xue
Donoghue, juges
MM. Guillaume
Cot, juges *ad hoc*

M. Couvreur, greffier

Present:	President	Owada
	Vice-President	Tomka
	Judges	Koroma
		Al-Khasawneh
		Simma
		Abraham
		Keith
		Bennouna
		Skotnikov
		Cançado Trindade
		Yusuf
		Greenwood
		Xue
		Donoghue
	Judges *ad hoc*	Guillaume
		Cot
	Registrar	Couvreur

Le Gouvernement du Royaume du Cambodge est représenté par :

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

comme agent ;

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

comme agent adjoint ;

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

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

M. Sarun Rithea, assistant du vice-premier ministre,

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

comme conseillers ;

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

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

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

comme conseils ;

M. Guillaume Le Floch, professeur à l'Université de Rennes 1,

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

Mme Ivrea Degeaive.

The Government of the Kingdom of Cambodia is represented by:

H.E. Mr. Hor Namhong, Deputy Prime Minister and Minister for Foreign Affairs and International Co-operation,

as Agent;

H.E. Mr. Var Kimhong, Minister of State,

as Deputy Agent;

H.E. Mr. Long Visalo, Secretary of State at the Ministry of Foreign Affairs and International Co-operation,

H.E. Mr. Hem Saem, Ambassador Extraordinary and Plenipotentiary of the Kingdom of Cambodia to the Kingdom of the Netherlands,

Mr. Sarun Rithea, Assistant to the Deputy Prime Minister,

Mr. Hoy Pichravuth, Assistant to the Deputy Prime Minister,

as Advisers;

Mr. Jean-Marc Sorel, Professor of International Law at the University of Paris I (Panthéon-Sorbonne),

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Mr. Guillaume Le Floch, Professor at the University of Rennes 1,

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

Ms Ivrea Degeaive.

Le Gouvernement du Royaume de Thaïlande est représenté par :

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comme agent ;

M. Ittiporn Boonpracong, directeur général du département des traités et des affaires juridiques du ministère des affaires étrangères,

comme agent adjoint ;

S. Exc. M. Kasit Piromya, ministre des affaires étrangères ;

M. Chavanond Intarakomalyasut, secrétaire auprès du ministre des affaires étrangères, ministère des affaires étrangères,

S. Exc. M. Asda Jayanama, conseiller auprès du ministère des affaires étrangères, président de la commission mixte thaïlando-cambodgienne sur la démarcation de la frontière terrestre (partie thaïlandaise), envoyé spécial de la Thaïlande chargé des questions relatives au Temple de Phra Viharn,

M. Theerakun Niyom, secrétaire permanent du ministère des affaires étrangères,

M. Thani Thongphakdi, directeur général du département de l'information du ministère des affaires étrangères,

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

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

M. Chatri Archjananan, directeur de la division des affaires juridiques au département des traités et des affaires juridiques du ministère des affaires étrangères,

Mme Wasana Honboonheum, directrice de la division des frontières au département des traités et des affaires juridiques du ministère des affaires étrangères,

comme conseillers ;

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

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

The Government of the Kingdom of Thailand is represented by:

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as Agent;

Mr. Ittiporn Boonpracong, Director-General, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs,

as Deputy Agent;

H.E. Mr. Kasit Piromya, Minister for Foreign Affairs;

Mr. Chavanond Intarakomalyasut, Secretary to the Minister for Foreign Affairs, Ministry of Foreign Affairs,

H.E. Mr. Asda Jayanama, Adviser to the Ministry of Foreign Affairs, Chairman of the Thai-Cambodian Joint Commission on Demarcation for Land Boundary (Thai side), Special Envoy of Thailand on Matters concerning the Temple of Phra Viharn,

Mr. Theerakun Niyom, Permanent Secretary, Ministry of Foreign Affairs,

Mr. Thani Thongphakdi, Director-General, Department of Information, Ministry of Foreign Affairs,

Lieutenant-General Nopphadon Chotsiri, Director-General, Royal Thai Survey Department, Royal Thai Armed Force Headquarters,

Mr. Chukiert Ratanachaichan, Deputy-Secretary-General, Office of the Council of State, Office of the Prime Minister,

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

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

as Counsel.

The PRESIDENT : Please be seated. The sitting is open. The Court meets this afternoon to hear the second round of oral observations of the Kingdom of Thailand. I believe that the first speaker on the list is Professor Alain Pellet. You have the floor.

M. PELLET : Merci beaucoup, Monsieur le président.

LA REQUÊTE DU CAMBODGE EN INTERPRÉTATION EST UN TROMPE-L'ŒIL

1. Monsieur le président, Mesdames et Messieurs les juges, le calendrier des audiences que vous avez fixé ne permet guère à l'Etat défendeur de répondre réellement aux arguments du demandeur et encourage les répétitions plus qu'il ne permet de les éviter. Nous ferons cependant de notre mieux pour respecter les directives de l'article 60, paragraphe 1, du Règlement et des instructions de procédure VI et XI mais … *ad impossibilem nemo tenetur* !

2. Pour ma part, je reviendrai sur les problèmes de compétence insurmontables auxquels se heurte la requête en interprétation du Cambodge tandis que mon compère James Crawford traitera des questions plus spécifiquement liées à la demande en indication de mesures conservatoires.

3. Dans un premier temps, je répondrai à quelques points particuliers abordés ce matin par nos amis de l'autre côté de la barre, et auxquels nous n'avons pas, ou pas complètement, répondu par avance dans nos présentations d'hier après-midi. Puis, dans un second temps, je récapitulerai nos positions sur l'incompétence manifeste de la Cour pour se prononcer sur la requête en interprétation que le Cambodge lui a soumise — sans me réfugier derrière le fait que «cela va de soi» comme l'a fait hier avec quelque insouciance mon éminent contradicteur, même si, assurément, «the matter speaks for itself»[1] — mais ce qui va sans dire va encore mieux en le disant !

A. Sur quelques points particuliers

4. D'abord donc, quelques remarques cursives sur trois points particuliers abordés plus spécialement ce matin par les avocats du Cambodge — principalement sir Franklin Berman, tandis que le professeur Sorel sera l'interlocuteur privilégié du professeur Crawford.

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[1] CR 2011/13, p. 35, par. 19 (Berman), à deux reprises.

5. Première remarque : elle est spécifique, mais elle porte sur l'approche générale de mon éminent contradicteur. Il proclame, je cite, «There is no room left for argument as to whether the rights [established by a Judgment in favour of the successful Party] *exist*, only as to whether there is a real dispute over their interpretation.»[2] Les choses sont moins simples : il ne suffit pas qu'une partie affirme que l'arrêt lui confère des droits ; il faut encore convaincre la Cour — qui a le dernier mot en la matière[3] — qu'effectivement l'arrêt lui confère les droits qu'elle prétend en tirer et que ces droits appellent une interprétation.

6. *Deuxième remarque spécifique* — mais du même ordre : je note l'extraordinaire propension de sir Franklin à vouloir renvoyer à la phase sur le fond (the merits stage) — c'est-à-dire en l'espèce, celle de l'interprétation — quantité de problèmes que nous avons soulevés[4]. C'est une façon élégante mais un peu cavalière de mettre la charrue avant les bœufs :

— la Cour ne peut indiquer de mesures conservatoires que si elle a, *prima facie*, compétence pour examiner l'affaire au principal — en l'espèce, pour interpréter l'arrêt de 1962 ;

— c'est à la Cour elle-même qu'il appartient de le déterminer, c'est-à-dire de vérifier que les conditions de l'article 60 sont remplies *prima facie*[5] ;

— ce qui oblige à se demander s'il existe un différend réel entre les Parties sur le sens à donner à l'arrêt — ou plutôt sur les éléments de celui-ci figurant dans le dispositif ;

— la réponse est fermement négative pour les raisons que j'ai exposées hier et sur lesquelles je vais revenir dans un instant.

[Projection n° 1 : points 1 et 2 du dispositif (F et E).]

7. *Troisième et dernière observation particulière* — mais la plus importante peut-être : la Partie cambodgienne fait grand cas des liens existant entre les différents points du dispositif (en tout cas du point 1 et du point 2 — puisque en ce qui concerne le point 3, il n'est pas concerné par la demande cambodgienne. Nos contradicteurs font tellement de cas de ce point, que sir Franklin va jusqu'à m'accuser (très poliment) d'avoir truqué la présentation du dispositif de l'arrêt en

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[2] CR 2011/15, p. 17, par. 2 (Berman)

[3] CR 2011/14, p. 22, par. 3 (Pellet).

[4] Voir notamment CR 2013/11, p. 30-31, par. 13 (Berman) ; p. 35, par. 35 ; CR 2011/15, p. 17-18, par. 4.

[5] *Demande en interprétation de l'arrêt du 31 mars 2004 en l'affaire* Avena et autres ressortissants mexicains (Mexique c. Etats-Unis d'Amérique) *(Mexique c. Etats-Unis d'Amérique), mesures conservatoires, ordonnance du 16 juillet 2008, C.I.J. Recueil 2008*, p. 323, par. 45.

omettant l'expression «en conséquence» dans la projection que j'en avais faite[6] — j'avoue que je ne m'en étais pas aperçu et, que consultée, notre technicienne m'a dit que c'était à cause du manque de place sur l'écran ! Toutes mes excuses sir Franklin ! Bien sûr qu'il y a «en conséquence» entre les points 1 et 2 du dispositif. Mais il est difficile d'en tirer tout ce que nos contradicteurs y mettent (et ils y mettent beaucoup ! C'est même dans cet «en conséquence» qu'ils semblent placer tous leurs espoirs[7] !) :

— donc, la Cour dit, dans un premier temps que «le temple de Préah Vihéar est situé en territoire relevant de la souveraineté du Cambodge» (mais elle ne dit pas où passe la frontière dans la zone sur laquelle le temple est situé), elle dit juste le temple est au Cambodge, et ;

— dans un second temps, elle tire de cette première constatation la *conséquence* (oui, oui, bien sûr, le mot y est, la conséquence) que la Thaïlande est tenue de retirer tous les éléments de ses forces «qu'elle a installés dans le temple ou dans ses environs situés en territoire cambodgien».

8. Il ne fait assurément aucun doute que cette seconde décision est bien la conséquence de la première : si le temple avait relevé de la souveraineté de la Thaïlande, on ne voit pas pourquoi celle-ci eût dû retirer ses forces (sous réserve des exigences du droit des conflits armés — mais ce n'était pas le problème). Par ailleurs, la formule utilisée par la Cour établit qu'il y a des environs du temple situés en territoire thaïlandais comme il y a des environs du temple en territoire cambodgien, ce qui implique que la frontière passe non loin du temple mais, que ce soit isolément ou en combinaison avec le point précédant du dispositif, la Cour ne dit toujours pas où serait située la frontière même dans cette zone. Oui, Monsieur le président, les deux points du dispositif sont liés : le second est la conséquence du premier et le premier la base nécessaire du second mais sans que ni l'un ni l'autre puisse s'analyser en, ni reposer sur, la fixation de la frontière : ils impliquent tous deux qu'il y a une frontière, ils ne fixent celle-ci ni l'un ni l'autre. Et la formule utilisée dans le paragraphe 45 de la requête doit être prise pour ce qu'elle est, une astuce d'avocat, «trouvaille» qui égare le lecteur pendant quelques secondes mais qui ne justifie en aucune manière la compétence de la Cour en l'espèce : certes, le retrait des forces thaïlandaises est «une conséquence particulière» de la souveraineté cambodgienne sur le temple mais ceci est sans rapport avec le tracé

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[6] CR 2011/15, p. 23, par. 10 (Berman).

[7] Requête, par. 10 et 36.

de la frontière et il y a un *non sequitur* évident entre cette constatation et la fin de la conclusion cambodgienne selon laquelle le retrait serait «une conséquence particulière de l'obligation générale et continue de respecter l'intégrité … du Cambodge [dont il n'est question nulle part dans l'arrêt], territoire délimité dans la région du temple et ses environs par la ligne de la carte de l'annexe 1 sur laquelle l'arrêt de la Cour est basé», et son dispositif parfaitement muet : il est reproduit derrière moi dans son intégralité cette fois — du moins pour ses points 1 et 2, et cela est facile à vérifier...

[Fin de la projection 1.]

B. L'incompétence manifeste de la Cour pour se prononcer sur la requête cambodgienne

9. Monsieur le président, après ces remarques ponctuelles, j'en arrive à quelques considérations plus générales en vue de résumer le raisonnement qui donne inévitablement à penser que la Cour est manifestement incompétente pour se prononcer sur la requête, prétendument en interprétation, du Royaume du Cambodge. Ce raisonnement peut s'articuler en dix propositions — chacune très brève rassurez-vous.

10. 1) En 1959, le Cambodge a introduit «devant la Cour une instance contre le Gouvernement du Royaume de Thaïlande relative à la souveraineté territoriale sur le temple de Préah Vihéar» (*Temple de Préah Vihéar (Cambodge c. Thaïlande), exceptions préliminaires, arrêt, C.I.J. Recueil 1961*, p. 19) ; par son arrêt du 26 mai 1961, la Cour a reconnu qu'elle avait compétence pour se prononcer *sur cette demande*[8] (pas sur autre chose...) et, dans son arrêt au fond du 15 juin 1962, elle a rappelé que tel était l'unique objet du différend[9] ; et elle a dit — c'est le premier point du dispositif que je viens de lire — «que le temple de Préah Vihéar est situé en territoire relevant de la souveraineté du Cambodge» (*Temple de Préah Vihéar (Cambodge c. Thaïlande), fond, arrêt, C.I.J. Recueil 1962*, p. 36).

11. 2) En revanche, et c'est ma deuxième proposition, bien que le Cambodge eût tardivement formulé des conclusions à ces fins[10], la Cour a expressément refusé de se prononcer, dans le dispositif de l'arrêt, «sur le statut juridique de la carte de l'annexe I et sur la ligne frontière

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[8] Voir *Temple de Préah Vihéar (Cambodge c. Thaïlande), exceptions préliminaires, arrêt, C.I.J. Recueil 1961*, p. 22 et 35.

[9] *Temple de Préah Vihéar (Cambodge c. Thaïlande), fond, arrêt, C.I.J. Recueil 1962*, p. 14.

[10] *Ibid.*, p. 11.

dans la région contestée»[11]. En conséquence, il est clair que la Cour n'a rien décidé quant à l'emplacement de la frontière que ce soit en général ou dans les environs du temple — tout ce que l'on sait à cet égard, du fait de la rédaction du point 2 du dispositif, est qu'elle considérait qu'il y avait des «environs situés en territoire cambodgien»[12] et, *a contrario* mais, à mon avis, très évidemment, qu'il y avait donc aussi des «environs» situés en territoire thaïlandais. Mais l'arrêt ne dit rien quant à leur limite respective.

12. 3) Bien sûr, dans les motifs, la Cour se fonde, entre autres arguments, sur l'acceptation par la Thaïlande, de la «carte de l'annexe I», mais cela reste un motif ; or — j'ai largement développé ce point hier[13] — on ne peut recourir aux motifs, même ceux qui sont le support indispensable du dispositif, que pour interpréter un dispositif obscur ; celui de l'arrêt de 1962 est parfaitement clair et se suffit à lui-même. En outre, en aucune manière, on ne peut remonter du dispositif aux motifs — qui n'ont pas l'autorité de la chose jugée et ne peuvent, de ce fait, être l'objet d'une requête en interprétation. Le Cambodge en est bien conscient comme en témoignent les formules alambiquées qu'il utilise pour tenter de vous convaincre, Mesdames et Messieurs de la Cour, de vous prêter à sa subtile mais vaine manœuvre.

13. 4) Bien qu'elle ne se fût pas réjouie de la décision de la Cour, la Thaïlande a très rapidement reconnu que le temple était situé en territoire relevant de la souveraineté du Cambodge[14] (et elle n'est jamais revenue sur cette reconnaissance) ; en conséquence, elle a retiré ses troupes du temple et de ses environs situés en territoire cambodgien, s'acquittant ainsi des obligations lui incombant en vertu de l'arrêt.

14. 5) *Mutatis mutandis*, on peut d'ailleurs transposer aux faits qui ont suivi le prononcé de l'arrêt le raisonnement même qu'a suivi la Cour pour décider que le temple de Phra Viharn relevait de la souveraineté cambodgienne :

— pendant plus d'un demi-siècle, chacune des Parties a contrôlé effectivement une partie des «environs» du temple ;

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[11] *Ibid.*, p. 36.

[12] *Ibid.*, p. 37.

[13] CR 2011/14, p. 28-30, par. 19-22.

[14] Ministry of Foreign Affairs, Thailand, Note to the UN Secretary-General after the Judgment (6 July 1962) ; voir aussi UN document circulating the letter of 6 July 1962 (12 July 1962) (Thaïlande, dossier des juges, document n° 3). En ce sens : CR 2011/13, p. 29, par. 11 (Berman).

— on ne saurait contester que le retrait des forces thaïes en application du point 2 du dispositif de l'arrêt et la construction d'une barrière et d'un point de passage «ont constitué — et je reprends des petits passages de l'arrêt de 1962 — un événement d'une certaine importance» (*Temple de Préah Vihéar (Cambodge c. Thaïlande), fond, arrêt, C.I.J. Recueil 1962*, p. 23) ; or, en dépit d'incidents sporadiques dans les années 1960, les autorités cambodgiennes n'ont pas protesté — encore une citation de 1962— «pendant de nombreuses années et l'on doit, de ce fait, conclure à leur acquiescement. *Qui tacet consentire videtur si loqui debuisset ac potuisset*» *(ibid.)* (mes dons pour les langues, fussent-elles mortes, sont presqu'aussi éclatants que ceux du professeur Crawford !) ;

[Projection n° 2 : photo de la visite du prince Sihanouk au temple de Phrah Viharn (5 janvier 1963).]

— et il n'est pas jusqu'à une visite princière qui n'appelle le même genre de comparaison ; la Thaïlande peut en effet se prévaloir de la visite effectuée par le prince Sihanouk le 5 janvier 1963, au même titre que le Cambodge l'avait pu de celle du prince Damrong en 1930[15] : à son arrivée au temple, le prince Sihanouk n'a pu ignorer la clôture érigée près du temple, et derrière laquelle étaient massés des journalistes et des gardes thaïs[16] ;

— j'ajoute qu'il est certainement vrai qu'à partir de l'inscription du temple par l'Unesco sur la liste du patrimoine mondial, le Cambodge a réalisé que l'arrangement dont il s'était accommodé durant tant d'années posait des problèmes car il ne lui permettait pas de présenter un plan de gestion complet, comportant une carte finalisée, comme le lui demande le Comité du patrimoine mondial[17] ; mais «[o]n ne saurait en droit réclamer des rectifications de frontière pour le motif qu'une région frontière se révélerait présenter une importance inconnue et insoupçonnée au moment de l'établissement de la frontière» (*ibid.*, p. 25) ;

en d'autres termes, tous les arguments qui ont bénéficié au Cambodge en 1962 peuvent, on le voit, être invoqués à l'encontre de la thèse qu'il soutient aujourd'hui devant vous.

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[15] *Temple de Préah Vihéar (Cambodge c. Thaïlande), fond, arrêt, C.I.J. Recueil 1962*, p. 30.

[16] Voir «Sihanouk Leaves Guard at Temple» (*Bangkok Post*, 7 January 1963) ou «Peaceful Overture Held in Cambodia at Disputed Shrine» (*New York Times*, 8 January 1963).

[17] Voir le paragraphe 16 du document n° 20 reproduit dans le dossier des juges de la Thaïlande, document n° 20 (Décisions adoptées à la 32e session du comité du patrimoine mondial (Québec 2-10 juillet 2008) (doc. 32 COM 8B.102, doc. revisé, 31 mars 2009).

[Fin de la projection n° 2.]

15. 6) Sixième proposition : il est résulté de tout cela une situation sur le terrain que chacun pouvait constater et qui, de l'aveu du Cambodge, a été acceptée, *de facto* en tout cas, par les deux Parties puisque, écrit-il, «rien ne laissait présager, jusqu'à une période récente [il précise qu'il s'agit de l'année 2008[18]], que la Thaïlande interpréterait cet arrêt d'une manière qui diverge de l'interprétation que le Cambodge en a toujours faite»[19]. Sir Franklin en était également convaincu[20] hier même si, ce matin, il semble ne plus l'être[21].

16. 7) Au demeurant, il ne s'agit là, pour la Thaïlande, que d'un argument supplémentaire, mais superfétatoire : quand bien même cet arrangement sur le terrain ne refléterait pas la «bonne» frontière dans la zone du temple, ceci n'aurait strictement aucune incidence sur la compétence, ou plutôt l'incompétence, de la Cour pour se prononcer sur la requête du Cambodge en interprétation de l'arrêt de 1962 : cela montrerait qu'il existe un différend persistant sur la frontière mais, comme la Cour, dans l'arrêt de 1962, ne s'est pas prononcée sur le tracé de la frontière, il est impossible d'interpréter l'arrêt sur ce point (le seul qui fasse problème...) et l'on ne peut même pas vraiment parler de requête en exécution de l'arrêt — comme je l'ai dit hier[22], il s'agit plutôt d'une tentative de faire appel devant la Cour d'aujourd'hui contre le refus délibéré de la Cour d'hier (ou plutôt d'avant-hier) de se prononcer sur le tracé de la frontière.

[Projection n° 3 : article premier du MoU du 14 juin 2000.]

17. 8) Au reste, qu'il existe un différend entre les Parties sur le tracé de leur frontière commune — de *toute* leur frontière commune, y compris dans la zone du temple, cela ne fait aucun doute. Et c'est la raison pour laquelle les Parties ont conclu, le 14 juin 2000, le «Memorandum of Understanding» sur le relevé et la démarcation de la frontière qui reprend les choses à la base et, de façon fort significative, ne mentionne pas l'arrêt de 1962 parmi les documents que la commission mixte est appelée à prendre en considération pour s'acquitter de son travail — l'article 1er de cet accord est projeté à l'écran. C'est dire à nouveau, et de manière éclatante, que les deux Parties

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[18] Requête, par. 12, 17, 25 et 30 et CR 2011/13, p. 15-16 (Hor), p. 31, par. 14 (Berman), p. 39, par. 6 (Sorel).

[19] Requête, par. 27.

[20] CR 2011/13, p. 31, par. 14 (Berman).

[21] CR 2011/15, p. 18, par. 6 (Berman).

[22] CR 2011/14, p. 32, par. 29.

étaient et sont conscientes que l'arrêt n'est pas un instrument de délimitation de la frontière — y compris dans la zone du temple.

18. Les deux intervenants de ce matin ont uni leurs efforts pour conjurer cette conclusion. Sir Franklin a attiré l'attention sur l'objet de l'accord : la *démarcation* (et non la délimitation) de la frontière[23]. Certes ! Mais pour pouvoir être démarquée, il faut qu'elle ait été délimitée au préalable ; la liste (limitative) du matériau documentaire et cartographique que les Parties s'accordent à considérer comme ayant effectué cette délimitation n'inclut pas l'arrêt de 1961. Et ce n'est pas une réponse d'affirmer — comme le fait Jean-Marc Sorel — qu'«il n'est nul besoin de citer dans ce cadre [«ce cadre, c'est le MoU»] l'arrêt puisque les instruments juridiques cités dans cet accord sont identiques à ceux utilisés par la Cour et ne peuvent donc faire parvenir les Etats qu'à la même conclusion»[24]. C'est là une position bien absolue de ce qu'est la «vérité juridique» ; mais surtout il faut se demander ce que signifie l'expression «la même conclusion» ? Si elle veut dire que la frontière à tracer doit laisser le temple au Cambodge, c'est certainement le cas ne fût-ce que parce qu'il y a là une vérité judiciaire qui ne peut être remise en cause aujourd'hui. En revanche, dès lors que ce résultat est atteint et que le temple est au Cambodge, rien n'interdit à la commission mixte d'analyser le matériau cartographique et documentaire à sa disposition différemment de la Cour dans les motifs de l'arrêt.

19. 9) En somme, les Parties sont en désaccord sur l'emplacement de leur frontière commune à la fois dans cette zone et très loin du temple ; mais ce désaccord n'est pas lié à ce qui a été décidé dans l'arrêt de 1962 — il ne décide rien sur le tracé de la frontière ; il porte, au contraire — le désaccord entre les deux Etats — sur ce qui n'y a *pas* été décidé dans l'arrêt de 1962.

20. 10) Dixième et dernier point de ce décalogue : l'article 60 du Statut étant la seule base de compétence invoquée par le Cambodge, votre incompétence, Mesdames et Messieurs les juges, pour vous prononcer sur sa prétendue requête en interprétation, est manifeste et, par ricochet, cela exclut aussi, *prima facie*, que vous indiquiez les mesures conservatoires demandées par le

[23] CR 2011/15, p. 12, par. 6 (Sorel) et p. 19, par. 7 (Berman).

[24] CR 2011/15, p. 12, par. 6 (Sorel).

Cambodge et cela conduit inéluctablement à la conclusion que l'affaire doit être rayée de votre rôle[25].

21. Il y a d'autres raisons à ceci. Mon excellent collègue et ami, le professeur Crawford va les aborder brièvement avec votre permission, Monsieur le président. Je vous remercie très vivement de votre écoute.

The PRESIDENT: I thank Professor Alain Pellet for his pleadings. Now, I invite Professor James Crawford to take the floor.

Mr. CRAWFORD:

1. Mr. President, Members of the Court, in this brief presentation I will deal with Cambodia's case for provisional measures as developed in these hearings. Specifically, I will do three things: first, I will show again the disabling disparity between the Application for interpretation and the Request for provisional measures. Secondly, I will summarily show that the six requirements for provisional measures are not satisfied here. Finally, I will show the clear contradiction at the heart of the Cambodian Request.

The disparity between the Application and the Request

2. Mr. President, Members of the Court, counsel for Cambodia this morning completely failed to understand the point I was making yesterday about the relationship between Articles 41 and 60 or the relevance of the fact that 50 years nearly have passed since your Judgment of 1962. Mr. President, I do not know about you, but I would like that 50 years back — I would like to start over. But I cannot have them back, and neither can Cambodia, even under Article 60. It is not that there is any time-limit, expressed or implied, in Article 60; that is obvious, even to me. It is that an interpretation goes back to the text of the Judgment; whereas a request for provisional measures relates to the future conduct of normally both parties. There is a tension between the two, which becomes ever more acute as time passes. In what he said today, about provisional measures,

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[25] Voir *Licéité de l'emploi de la force (Yougoslavie c. Espagne), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II)*, p. 773, par. 35 ; *Licéité de l'emploi de la force (Yougoslavie c. Etats-Unis d'Amérique), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II)*, p. 925, par. 29), *Demande d'examen de la situation au titre du paragraphe 63 de l'arrêt rendu par la Cour le 20 décembre 1974 dans l'affaire des* Essais nucléaires (Nouvelle-Zélande c. France) *(Nouvelle-Zélande c. France), ordonnance du 22 septembre 1995, C.I.J. Recueil 1995*, p. 306, par. 66.

Professor Sorel completely failed to address this problem. Sir Franklin Berman did address it, but only in the context of jurisdiction to interpret; not provisional measures. It is the latter which need discussing here.

3. I invite the Court to read carefully the provisional measures Request sought by Cambodia; and to ask yourselves whether and how those measures relate to the interpretation sought. In the ordinary case — where a Court has apparent jurisdiction over the merits of the dispute — the provisional measures sought will fall within the scope of that jurisdiction, with a view to protecting rights pending the merits decision. It is true that ancillary measures may be ordered, e.g., non-aggravation of the dispute, but you have made it clear that these will only be ordered as an adjunct to provisional measures and not as free-standing items. Here, Cambodia's provisional measures Request either (A) anticipates a favourable decision on the question of interpretation; or (B) does not relate to the question of interpretation as such at all. The point can be emphasized by reference to the *Avena* case, the only case where the Court, on a request for interpretation, ordered provisional measures. Sir Franklin Berman said yesterday, that he would "be guided by the approach that the Court has recently taken in the *Avena* case"[26], which he said was "similar to the present case"[27][28]. In truth it was a very special case, quite unlike the present. I can count at least five differences.

4. The first thing, it was a death penalty case, by definition involving irreparable harm. Secondly, there was little delay: interpretation was sought soon after *Avena* I; Mexico did not wait for 50 years, by which stage, even the United States procedures for death penalty cases would have been finished. Thirdly, it concerned the fate of prisoners specifically named in the *dispositif* in *Avena* I. In *Avena* I, you decided on the merits both on the United States general obligation under the Consular Convention and also on the specific obligations with regards those named prisoners[29]. You did the latter in paragraph 9 of the *dispositif* in *Avena* I. It was that element and that element

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[26]CR 2011/13, p. 24, para. 2 (Berman).

[27]*Ibid*.

[28]CR 2001/13, p. 30, para. 12.

[29]Case concerning *Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004*, p. 72, para. 153 (9); ("*Avena* I").

alone of the *dispositif* which Mexico, in *Avena* II, said required interpretation[30]. There was an obvious link. Unlike the present case, it was not a request for interpretation of reasoning, of *motifs*. There was the closest possible link between the prisoners, consistently protected by the Court, and the *dispositif* in *Avena* I. That is the third, and we say crucial, difference.

5. Fourthly, in *Avena* there was agreement between the parties as to the facts, and no disagreement as to jurisdiction[31]. To have denied provisional measures in respect of convicted death row inmates specifically covered by the *dispositif* in *Avena* I could not have been justified.

6. Fifthly, the Parties in *Avena* II never joined issue over the relation between Articles 41 and 60. The matter was hardly argued at all.

7. And, then, in the end, in *Avena* II, look what you did! You found that there was no difference of interpretation which you could resolve under Article 60[32]. It follows that there was no disputed right to protect.

8. Mr. President, Members of the Court, it is a mark of desperation to rely on *Avena* as similar to the present case. It holds that provisional measures can be granted in cases commenced under Article 60, but we do not deny that. What we do say is that the character of your interpretation jurisdiction is such that provisional measures will only be available in special cases, especially when a lengthy period has elapsed since the first judgment, especially when — as also here — the interpretation on which Thailand has based its application of the Judgment has long been known.

Cambodia's case for provisional measures

9. Mr. President, Members of the Court, I turn now to the six requirements that must be met, for you to grant provisional measures.

10. First, there must be a dispute concerning interpretation. That means that in the present case, the dispute must concern the 1962 Judgment. Your jurisdiction is not jurisdiction over the merits forever, including the merits of any new legal situation which that judgment creates. It is

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[30]Application instituting proceedings, 5 June 2008.

[31]See, e.g., CR 2008/15, p. 59, para. 3 (Bellinger).

[32]*Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America), Judgment, I.C.J. Reports 2009*, p. 21, para. 61 (1); ("*Avena* II").

significant that the Agent for Cambodia spoke at great length about a dispute which emerged in 2008[33]. That makes all the more clear that Cambodia, is in truth, seeking the adjudication of a new dispute, which makes Cambodia's Application one concerning enforcement.

11. But, second, it is not enough to say there is a dispute. It must be a dispute which, prima facie, falls within your jurisdiction.

12. Professor Pellet has already dealt with that question as it relates to the underlying request for interpretation[34]. It follows from what he said that there is no prima facie jurisdiction here.

13. Third, the party seeking measures must show there is a sufficient link between the measures requested and the rights to be protected.

14. Not much was said on the requirement of a link today. I responded yesterday on that point, and will not repeat what I said then[35]. The only point is that Cambodia again avoids the problem presented by its request on a request. When it tries to show that its requested measures would have a link, it said nothing to show that these measures would have the only link that could be sufficient: i.e., a link to the matter which you might properly be asked to adjudicate under Article 60 — a dispute over interpretation of the 1962 Judgment.

15. In this context, I want to say a word about new facts. Sir Franklin accepts that new facts are irrelevant to the substantive claim for interpretation[36]. I accept — and did so expressly yesterday — that whether there is a question in dispute over interpretation can only be determined by reference to facts subsequent to the Judgment[37]. That brings us to his third category — facts relevant to provisional measures. Obviously, one needs to establish urgency in order to get provisional measures at all, but one also needs to establish a link to the basis of claim, and here lies the difficulty. The longer the time which has elapsed, the more attenuated that link must be.

16. Fourth, Cambodia must establish the plausibility of the putative right it seeks to protect.

17. Sir Franklin yesterday seemed to argue that, in a request for provisional measures based on Article 60, the plausibility requirement does not exist. In the normal or typical case provisional

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[33]CR 2011/13, pp. 20-23 (Hor).

[34]CR/2011/16, p. 11, para. 6 (Pellet).

[35]CR 2011/14, p. 37, para. 12 (Crawford).

[36]CR 2011/15, p. 25, para. 15 (Berman).

[37]CR 2011/14, p. 39, para. 19 (Crawford).

measures, he said, are requested before the Court has reached a judgment on the merits. The present case, he said, is not like that. The merits have been established[38]. They have been "settled with binding effect"[39]. He said much the same thing this morning[40].

18. Mr. President, Members of the Court, if nothing else, this is an open acknowledgement of what Cambodia in truth seeks by making its request for provisional measures. To say that all the rights relevant in the present case have already been settled by the Judgment, is to say that the present case is an action for enforcement.

19. This morning Sir Franklin accepted the distinction between interpretation and enforcement, but he simply assured the Court, by reference to the terms of the Application, that only interpretation is sought. Whether or not that is true for the Application for interpretation, it is most certainly not true of the Request for provisional measures.

20. Fifth, the situation in which the measures have been requested must be urgent. Professor Sorel suggested yesterday morning that the urgency is connected to the risk of irreparable harm[41]. But urgency is, of course, a separate requirement, connected though it may be. I would only say that Thailand's interpretation of the 1962 Judgment has been known to Cambodia for a considerable period — indeed, from the point, a month after the Judgment, when Thailand indicated its intention to accept the result and made known, through the United Nations, the manner in which it would implement it. The Cabinet Decision may have been confidential — not unusual for cabinet decisions —, but the content of the Decision was immediately published in the Thai Foreign Ministry newsletter and communicated to the United Nations Secretary-General[42]. Subsequently, the fact that the decision had been made and its essential parameters were published in a variety of forms including in the Thai map, annexed to the Request for interpretation as Annex 3. It is simply not the case that the position was kept as a surprise until recently.

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[38]CR2011/13, p. 30, para. 13 (Berman).

[39]*Ibid.*

[40]CR 2011/15, p. 25, para. 16 (Berman).

[41]CR 2011/13, p. 42, para. 10 (Sorel).

[42]Judges' folder, tab 2: *Foreign Affairs Bulletin*, Vol. 1, No. 6 (June-July 1962); Letter of Foreign Minister of the Kingdom of Thailand to the Secretary-General of the United Nations, 12 July 1962. Cf. CR 2011/14, p. 10, para. 2 (Plasai).

21. Sixth, there is the risk of irreparable harm. I dealt with this yesterday, and given that it was scarcely mentioned this morning, I have nothing to add.

Concluding observations

22. Mr. President, Members of the Court, the indispensable requirement for a request for interpretation is that there be a difference of interpretation in respect of something the Court actually decided. A request cannot be granted if there is no such difference. It is striking in this regard, that Sir Franklin said yesterday that "Thailand did after all, however reluctantly, accept the Court's Judgment and did, after all, acknowledge its binding force"[43]. Now, nowhere in your Statute does it say that a party must accept a judgment of the Court with enthusiasm. If Thailand was "reluctant" in 1962 the reason, perhaps, could be found in some of the positions the Court took. The Court never faced up to the fact that the Temple lies manifestly on the Thai side of the watershed[44]. Sir Gerald Fitzmaurice, to be fair, did so. The Court held, on flimsy evidence, that a treaty line had been displaced by conduct[45]. The Court held that a Prince behaving as an ever-polite tourist had consented to the sovereignty of a foreign power[46]. But, whatever its misgivings, Thailand accepted the Judgment. As Sir Franklin observed, Thailand "acknowledge[d] its binding force"[47]. If Thailand accepted the result and accepted the result as binding, then where is the question of interpretation.

23. In his pleading this morning, Professor Sorel contended that it was not the intention of Cambodia to obtain a provisional judgment on the merits[48]. But what Professor Sorel contends the intention is behind Cambodia's argument is not what matters; what matters is what Cambodia has actually requested by way of provisional measures. In the present case, Cambodia has presented the Court with a request, in which the Court would have to decide what constitutes the "area of the Temple"; the Court could not grant the requested measures without deciding that question, and to

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[43]CR 2011/13, p. 29, para. 11 (Berman).

[44]See dissenting opinion of Judge Sir Percy Spender, *I.C.J. Reports 1962*, pp. 122-124; dissenting opinion of Judge Wellington Koo, *I.C.J. Reports 1962*, p. 98, paras. 50-51; separate opinion of Judge Sir Gerald Fitzmaurice, *I.C.J. Reports 1962*, p. 55.

[45]See dissenting opinion of Judge Sir Percy Spender, *I.C.J. Reports 1962*, pp. 122-124.

[46]*Ibid.*, pp. 30-31.

[47]CR 2011/13, p. 29, para. 11 (Berman).

[48]CR 2011/15, pp. 15-16, para. 10 (Sorel).

do so would have the precise effect of prejudging the case that the Court determined that the boundary was settled on the basis of the Annex I map line. Thailand's objection that an award of provisional measures in this case would involve prejudging the merits still stands.

24. Mr. President, Members of the Court, as we have shown, Cambodia now advances a case theory that would overstep the bounds of interpretation and which is unsupported by your jurisprudence on Article 60[49]. Cambodia supposes that its rather unspecific allusions suggesting that the recent disputes along the boundary are directly related to the Temple will cover up the deficiencies in that claim. It apparently hopes to obtain at the provisional measures stage — before the case has been properly pleaded — a result which it suspects it will not reach at the merits stage. It asks you to exceed the proper bounds of Article 41. This, with the respect, you should decline to do

25. Mr. President, Members of the Court, I referred at the outset of my presentation yesterday to the contradiction at the heart of Cambodia's request. Actually, there were two contradictions. One I referred to yesterday, is as follows. If this Request concerns interpretation of what was said in 1962 then it is not new, and if it is new then it is not interpretation[50]. Cambodia completely failed to address that problem this morning. But there is a second contradiction, revealed by the contradiction between counsel yesterday as to whether Thailand accepts your decision of 1962 or not. Sir Franklin said we do[51], Professor Sorel said we do not[52]. They cannot have it both ways, you might think! But what if we did *not* accept it? That would reinforce the point that this is in truth a misguided attempt at an action for enforcement. Are we to be penalized in terms of Article 60 because we did accept the Judgment? Surely not. Yet counsel needs us to accept the Judgment for the purposes of avoiding the characterization of this case as an enforcement case, and thereby sustaining your jurisdiction in that respect — while at the same time they need us to reject the Judgment in order to sustain there is a dispute over an element of the *dispositif* in another respect.

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[49]CR 2011/14, pp. 28-29, para. 19 (Pellet).

[50]CR 2011/14, p. 44, para. 26 (Crawford).

[51]CR 2011/13, p. 29, para. 10 (Berman).

[52]CR 2011/13, pp. 39-40, paras. 6-7 (Sorel).

26. Mr. President, Members of the Court, in this way too, Cambodia's case is confused and contradictory. In respect of provisional measures it does not satisfy the criteria for such measures, notably in light of the fact that the only basis of claim is a request for interpretation of an ancient text.

Mr. President, Members of the Court, thank you for your attention. Mr. President, I would ask you to call upon the Agent of Thailand to close Thailand's case.

The PRESIDENT: I thank Professor James Crawford for his presentation. Now I am inviting to the floor, His Excellency, Ambassador Virachai Plasai, Agent of Thailand, to make his concluding statement.

Mr. PLASAI:

Introduction

1. Mr. President, distinguished Members of the Court, allow me to conclude by highlighting two key words that encapsulate Thailand's position towards the subject before us here and the overall relations with Cambodia which flow from Thailand's fundamental commitment to justice and peace that I elaborated yesterday. They are: (1) consistency and (2) sincerity. I will elaborate them in turn.

Consistency

2. First, Thailand has been consistent in her position. That position is simply that Thailand did accept the Court's Judgment in 1962 and fully complied with it and Cambodia herself did accept that Thailand has given full compliance with the decision. You heard Professor Pellet's reference to Prince Sihanouk.

3. Thailand has also been consistent in her position that the Court in 1962 did not rule on the boundary line. That question was left to be mutually determined in accordance with international law. And as things stand, that question is to be determined, and is being determined, under the existing bilateral mechanism subsequently and mutually established by both countries under the 2000 Memorandum of Understanding. Pending demarcation of the boundary, we have been

consistently adhering to the Thai Cabinet line of 1962. We did not change our position about the boundary in 2007 — nor any other time for that matter — as alleged by Cambodia.

4. Thailand has also been consistent in her position regarding inscription of the Temple of Phra Viharn on the World Heritage List. The Temple requires a buffer zone as a World Heritage site, and that can only be found in Thai territory. We understand that, and have always been ready and willing to undertake a joint nomination with Cambodia. It is Cambodia's constant refusal of such joint undertaking that is the root cause of the problems that have arisen over the inscription. As the timeline approaches and the prospect is still uncertain, a "conflict by design" triggering the indication of an artificial provisional measures by the Court as a backdoor to clear the area for the much-desired buffer zone to be included in the management plan at the World Heritage Committee meeting at the end of next month, is a strategy that Thailand understandably resists.

Sincerity

5. Mr. President, I now turn to the second fundamental position that Thailand has held dear in all her dealings with Cambodia, that is sincerity. To portray the relationship between Thailand and Cambodia in terms of unequal power relationship is wrong and disingenuous. The picture is that of two neighbouring countries sharing a common border approximately 800 km long where people engage in peaceful activities every day throughout the year. This is the fact between peoples of Thailand and Cambodia — the fact that has not and will not change.

6. Therefore, it was regrettable to hear a repeated Cambodian narrative of the weak against the strong.

7. In this connection, I will deal with some of the Cambodian allegations made yesterday and this morning that simply have no basis.

8. First, there is no such thing as a "secret" map as dramatically claimed by Cambodia's counsel. Thailand has neither secret designs nor territorial ambitions against Cambodia. We only want to keep what is strictly ours under international law, and are ready to resume with good faith and sincerity our bilateral boundary negotiation with Cambodia as soon as possible. It is important to stress once more that the issue of the boundary is not the subject-matter of the 1962 Judgment, nor does it concern our current proceedings today.

9. Second, the so-called Pagoda was not built in 1996 or 1998 as claimed by Cambodia's counsel. It was built years later. And this has been subject to constant protests from Thailand at both local and diplomatic levels.

10. Third, Cambodia counsel's attempt to portray Thailand as trigger-happy bent on damaging the Temple was untruthful and obscured the fact that Cambodia stationed her troops in the Temple, using it as a military base to attack Thailand in contravention of the 1954 Hague Convention. Thailand merely acted in self-defence in accordance with the principles of proportionality and directed only at locations from where Cambodia launched attacks. And here lies an interesting inconsistency in Cambodia's position. On one hand, the Cambodian Prime Minister confirmed at the ASEAN Summit meeting in Jakarta on 8 May 2011 that there were no Cambodian troops at the Temple, despite photos pointing to the contrary. On the other hand, Cambodia's counsel yesterday did not dispute the existence of Cambodian soldiers at the Temple when he argued in favour of Cambodia's refusal to calls for demilitarization of the Temple. Let me be clear, this is not about the Judgment. This is not about reclaiming the Temple. It is about the respect for the 1954 Hague Convention to which Cambodia is a party. Above all, it is a matter of common sense. The Temple must not be a military base.

11. Fourth, consistent with Thailand's commitment to peace, Thailand has been actively participating in disarmament negotiations, including on the Convention relating to Cluster Munitions, although Thailand is not yet party to it. From this basis, Thailand did not use cluster munitions according to her understanding of the term. In this regard, it is interesting to note in parallel Cambodia's past record in disarmament. In 2008, it was reported to the IXth Meeting of States Parties of the landmine prohibition Convention, to which both Cambodia and Thailand are parties, that newly planted anti-personnel landmines have been used against Thai soldiers in Thai territory near the Temple of Phra Viharn in October 2008.

12. Fifth, Cambodia's counsel claimed that the Thai Parliament completed its internal process concerning the JBC Agreed Minutes on 1 May 2011, and that it was completed only because Cambodia had filed its request for interpretation on 28 April. The fact is that the internal legal process of Thailand was completed on 19 April 2011. This was widely reported by the press. On the same day Cambodian senior officials including the Deputy Agent of Cambodia, who is

present here, gave a press interview acknowledging this fact. This was well before Cambodia filed the Request.

13. Sixth, Thailand's domestic politics has nothing to do with the issue before us today as claimed by Cambodia's counsel. Thailand is a functioning democracy with a parliamentary system. Matters relating to sovereignty are strictly regulated by the Parliament as in many other countries. There is nothing extraordinary about this. Raising the issue of Thailand's political situation by Cambodia cannot be seen other than as a desperate attempt to put together different, unconnected things. Worse, it is irrelevant to the case and to the reality on the ground.

14. Seventh, the Cambodian civilians living in the immediate surrounding area of the Temple have not been living there for a long time, as Cambodia would have the Court believe[53]. They were put there on purpose only recently to serve political motives that are entirely outside the scope of these proceedings.

15. Eighth, there is no risk of aggravation of the dispute due to Thailand's behaviour, as Cambodia's counsel attempted yesterday to have the Court believe[54]. The reality is that, as all the armed incidents that took place were initiated — or sometimes even predicted — by Cambodia itself, any aggression could only happen if Cambodia decided to do so.

16. Ninth, Cambodia's counsel accused Thailand of moving the conflict away from the Phra Viharn Temple to the Ta Kwai and Ta Muen Temples, situated about 150 km away, because of the 28 April ceasefire, a ceasefire that Thailand only accepted because the present proceedings was initiated at the Court by Cambodia the same day[55]. The fact is that, first, the 28 April local ceasefire concerns the sector of the Ta Kwai and Ta Muen Temples, not the Phra Viharn Temple. How could Thailand, presumably to circumvent a ceasefire, start conflict in a location for which that very ceasefire has been agreed? Moreover, the ceasefire was concluded locally at 08.05 hours local time, that is, 03.05 hours in the morning in The Hague, whereas the Cambodian Request was filed at the Court around 17.00 hours local time on the same day, that is some 14 hours after the ceasefire. Cambodia simply contradicts itself in its attempt to mislead the Court. Let me stress that

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[53]CR 2011/13, p. 44, para. 14 (Sorel).

[54]*Ibid.*, pp. 45-48, paras. 15-19.

[55]*Ibid*., p. 45, para. 17.

Thailand agreed to the 28 April ceasefire in good faith, regardless of any legal proceedings, only to see it violated some 11 hours after Cambodia filed their Application, as if an urgency by design was somehow required to justify the latter's provisional measure request. In any case, as Professor McRae showed the Court yesterday, events at the Ta Kwai and Ta Muen Temples are of no relevance to the present proceedings.

17. In fact, it was Cambodia, not Thailand, who moved the conflict away from the Temple of Phra Viharn to this new location.

[Beginning of slide 3][56]

This is because the situation at Phra Viharn seems to have returned to normality after the February clashes. As shown in these pictures taken as recently as 25 May this year – some six days ago, Mr. President, officers and soldiers of both sides have maintained close working and social contacts. Thailand is committed to maintaining this positive atmosphere.

[End of Slide 3]

At the same time, contrary to Cambodia's assertion, the ASEAN process of ceasefire negotiations was progressing well, and the bilateral boundary negotiations under the JBC could resume by the last week of April when the Thai internal process for the three previous agreed minutes was completed. In this context, Cambodia needed to find something else to portray urgency justifying its provisional measure request.

18. Tenth, Cambodia's counsel this morning referred to the incident of 26 April 2011 which had been mentioned by Professor McRae yesterday. Indeed, Professor Sorel seemed grateful for Thailand mentioning this incident because finally, Cambodia was able to link the Temple area with a recent incident that might justify the ordering of provisional measures. But, this simply shows the bankruptcy in Cambodia's position. Up until this morning Cambodia had just made vague allusions about incidents in the Temple area, implying that all of the incidents of April-May 2011 occurred there. When it was explained to the Court that this was not so, Professor Sorel, clutching at straws, tried to give the impression that what Cambodia had apparently overlooked was in fact

[56]See the judges' folder, tab 26.

central to its case. But, none of this gets away from the essential point that Cambodia has simply not made a case for any urgency in respect of its request for provisional measures.

19. The best that Cambodia has been able to do, as we heard again from Professor Sorel this morning, is to paint a vague picture of the past incidents near the Temple of Pra Viharn being a precipitator of incidents elsewhere in the country. Then, the fact of incidents elsewhere in the country means that it is likely that there will be future incidents at the Temple — some kind of perverse reverse loop that justifies the Court in awarding provisional measures in respect of the area of the Temple. But all of this is conjecture, not based on facts. A real analysis of the facts would ask questions about why Cambodian troops were moved from the Temple of Pra Viharn area to Ta Muen and Ta Kwai just before the attacks by Cambodian troops against Thai forces occurred.

20. But, of course, Mr. President, none of this sort of conjecture about the relationship of incidents in one part of the country with the possibility of incidents in another part of the country is of assistance to you in deciding this case. The Court cannot order provisional measures in respect of the Temple area on the basis of some kind of supposition that conflict elsewhere in respect of different temples and a different boundary creates a likelihood of irreparable harm in the area of the Temple.

21. Eleventh, Cambodia's counsel asked this morning what appears to him to be a simple question: why a peace-loving country like Thailand did not resort to the United Nations mechanism if she sees herself as the victim of Cambodia's alleged armed aggression? I would then reply in what appears to be a simple explanation. First, the right of self defence is an inherent right, exercised in the face of instant and overwhelming necessity. In any case, when deemed necessary, Thailand immediately reported to the Security Council of the United Nations. The Court is fully informed by my letter dated 26 May 2011 of the two letters of our Prime Minister and Foreign Ministers to the United Nations Security Council reporting the situation in early February.

22. Mr. President, distinguished Members of the Court, at the end of these observations on Cambodia's request for provisional measures, you are left with two simple things to decide:

Are the events relied on sufficient to establish an urgent need to protect rights in dispute from irreparable harm pending the outcome of the interpretation requested?

Is there prima facie jurisdiction in this case for the Court to entertain a request for provisional measures?

In respect of the former, Thailand has demonstrated that there is no basis on which provisional measures could be ordered in this case.

In respect of the latter, Thailand has demonstrated that there is no dispute between the Parties over the meaning or scope of the Judgment of 1962. The request for interpretation is an attempt to get the Court to determine something that was not decided in 1962. On that basis, not only is there no prima facie jurisdiction, there is simply no justification for moving on to any question of interpretation.

23. Mr. President, I will now place on record Thailand's submissions:

Final submission

24. In accordance with Article 60 of the Rules of Court and having regard to the Request for the indication of provisional measures of the Kingdom of Cambodia and its oral pleadings, the Kingdom of Thailand respectfully requests the Court to remove the case introduced by the Kingdom of Cambodia on 28 April 2011 from the General List.

25. Mr. President, distinguished Members of the Court, to conclude our participation in this stage of oral proceedings, I wish to extend, on behalf of the Royal Thai Government, our appreciation to you, Mr. President, and each of the distinguished Members of the Court, for your kind attention to our presentations. May I also offer our thanks to the Court's Registrar, his staff and to the interpreters and translators.

26. Finally, I would also like to thank publicly the skilful counsel and all the members of our delegation. Thank you, Mr. President.

The PRESIDENT: I thank His Excellency, Ambassador Virachai Plasai, Agent of Thailand for his concluding statement, including the final submission. This brings the present series of sittings to an end. But before closing, one Member of the Court wishes to put a question to both of the Parties. I shall now give the floor to Judge Cançado Trindade. I call upon Judge Cançado Trindade.

M. le juge CANÇADO TRINDADE : Merci, Monsieur le président.

Dans la demande en indication de mesures conservatoires objet de la présente procédure, il est notamment indiqué que les incidents qui se sont produits depuis le 22 avril 2011 dans «la zone du temple de Préah Vihéar» ainsi qu'en d'autres lieux situés le long de la frontière entre les deux Etats parties au différend ont provoqué des «morts, blessés et évacuations de populations».

Les Parties peuvent-elles donner à la Cour de plus amples informations concernant le déplacement de ces populations ? Combien d'habitants ont été déplacés ? Ceux-ci ont-ils pu retourner en toute sécurité et volontairement dans leurs foyers ? Où dans la région sont-ils installés ? Y sont-ils installés depuis longtemps ? Quel est leur mode de vie ? Quelle est la densité de population dans la région ?

Pour préserver l'équilibre linguistique de la Cour, je me permets de poser la même question aux Parties en anglais.

In the present request for the indication of provisional measures by the Court, it is stated, *inter alia*, that, as a result of the incidents occurred since 22 April 2011 in "the area of the Temple of Preah Vihear", as well as at other places along the boundary between the two contending States, "fatalities, injuries and the displacement of local inhabitants" were caused.

What further information can be provided by the Parties to the Court about such displaced local inhabitants? How many inhabitants were displaced? Have they safely and voluntarily returned to their homes? Whereabouts do they live in the region? Have they been settled there for a long time? What is their *modus vivendi*? What is the population density of the region?

Thank you very much, Mr. President.

The PRESIDENT: Thank you, Judge Cançado Trindade.

The text of the questions will be sent to the Parties as soon as possible. The Parties are invited to provide their written replies to the questions by Tuesday 7 June at 6 p.m. at the latest.

In addition, Article 72 of the Rules of the Court provides that any written reply by a party to a question put under Article 61, or supplied by a party under Article 62 of these Rules, received by the Court after the closure of the oral proceedings shall be communicated to the other party which shall be given the opportunity of commenting upon it. Now, in accordance with this rule, the other

party is given this opportunity to offer comments, and that deadline is set for Tuesday 14 June 2011 at 6 p.m. at the latest.

It remains for me to thank the representatives of the two Parties for the assistance they have given the Court by their oral observations in the course of these four hearings. I ask the Agents to remain at the Court's disposal.

The Court will render its Order on the request for the indication of provisional measures as soon as possible. The date on which this Order will be delivered at a public sitting will be duly communicated to the Agents of the Parties.

As the Court has no other business before it today, the sitting is now closed.

The Court rose at 6.15 p.m.

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