SEPARATE OPINION OF JUDGE CANÇADO TRINDADE

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I. Introduction

1. I have concurred, with my vote, for the adoption today, 18 July 2011, by the International Court of Justice (I.C.J.), of the present Order of provisional measures of protection in the case of 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)*. Given the great importance that I attribute to the issues dealt with in the present Order, or else underlying it, I feel obliged to leave on the records of this transcendental case (as I perceive it) the foundations of my own personal position on them. I do so moved by a sense of duty in the exercise of the international judicial function, even more so as some of the lessons I extract from the present decision of the Court are not explicitly developed and stated in the present Order. This appears to be, in my view, a unique case, lodged again with the Court after half a century; it discloses, in my view, a series of elements for reconsideration not only of the spatial, but also the temporal dimensions, which can hardly pass unnoticed.

2. This being so, I shall develop my reflections that follow pursuant to the following sequence: *(a)* the passing of time and the *chiaroscuro* of law; *(b)* the density of time; *(c)* the temporal dimension in international law; *(d)* the search for timelessness; *(e)* from timelessness to timeliness; *(f)* the passing of time and the *chiaroscuro* of existence; *(g)* time, legal interpretation, and the nature of legal obligation; *(h)* from time to space: territory and people together (in Cambodia's and Thailand's submissions); *(i)* the effects of provisional measures of protection in the *cas d'espèce* (encompassing the protection of people in territory; the prohibition of use or threat of force; and the protection of cultural and spiritual world heritage); and *(j)* provisional measures of protection, beyond the strict territorialist approach. The way will then be paved for the presentation of my final considerations, *sub specie aeternitatis*.

II. The Passing of Time: The *Chiaroscuro* of Law

3. The case of the *Temple of Preah Vihear* brings to the fore, now in May 2011, as it did half a century ago, in 1961-1962, the multifaceted relationship between time and law, an issue which discloses the *chiaroscuro* of international law as well as, ultimately, of existence itself (cf. *infra*). One cannot assume a linear progress in the regulations of relations among States *inter se*, or among human beings *inter se*, or among States and human beings. The present requests for provisional measures and for interpretation in respect of the Judgment of this Court, of 15 June 1962, bear witness of the element of factual unpredictability of endeavours of peaceful settlement, to guard us against any assumption as to definitive progress achieved in those relations among States or among human beings, or among the former and the latter.

4. In a public sitting before this Court of half a century ago, precisely that of the morning of 5 March 1962, in the same case of the *Temple of Preah Vihear*, the learned jurist Paul Reuter (who happened to be one of the counsel for Cambodia), pondered that the passing of time is not linear, nor is it always the same either; it contains variations. For example, in his perception, "[a]t certain hours, in the splendour of the Mediterranean, time seems to have stopped its flight and maybe things are down to black and white"[1].

5. May I add, in this connection, that, to someone (like myself) from, and in, the South Atlantic, for example, the *chiaroscuro* also exists, but not so sharply distinguished as in the summer of the Mediterranean four seasons. There, in the South Atlantic, in the two — the dry and the rainy — seasons, the *chiaroscuro* evolves in greater grey shades. Yet, the *chiaroscuro* falls thereupon as well. All regions of the world have their own *chiaroscuro*, each one with its own characteristics, and the region of the Temple of Preah Vihear is no exception to that. Ancient cultures, in distinct parts of the world, grasped the mystery of the passing of time in distinct ways, as in the never-ending succession of the *chiaroscuro*.

6. The *chiaroscuro* of international law itself was, coincidentally, referred to in the public sitting of 1 March 1962, in the same case of the *Temple of Preah Vihear*; in the opening of the sitting, the then President of the Court, Judge B. Winiarski, recalled that, forty years earlier, precisely on 15 February 1922, the former Permanent Court of International Justice held its first sitting; ever since, and throughout four decades, "the element of permanency" of international justice had taken shape[2], further fostered by the acceptance by States of numerous compromissory clauses, and the fact that the successor ICJ became "the principal judicial organ of the United Nations", while remaining, within the framework of the UN, an independent judicial organ. And he added that:

> "The function of the Court is to state the law as it is; it contributes to its development, but in the manner of a judicial body, for instance when it analyses out a rule contained by implication in another, or when, having to apply a rule to a specific instance, which is always individualized and with its own clear-cut features, it gives precision to the meaning of that rule, which is sometimes surrounded by (. . .) the *chiaroscuro* of international law."[3]

7. There was only this brief reference to such *chiaroscuro* in Judge Winiarski's message in 1962; he did not elaborate on it, the reference was sufficient. Thus, four decades of operation of international justice had not removed the *chiaroscuro* of international law. Today, five other decades

[1] *I.C.J. Pleadings, Temple of Preah Vihear (Cambodia* v. *Thailand)*, Vol. II, p. 525.
[2] *Ibid.*, p. 121.
[3] *Ibid.*, p. 122.

later, that *chiaroscuro* remains present, as disclosed by the case of the *Temple of Preah Vihear* brought again before this Court. The *chiaroscuro* of law appears enmeshed with the passing of time. This is one of the aspects of the complex relationship between time and law, which, despite much that has been written on it, keeps on challenging legal thinking in our days.

III. The Density of Time

8. Turning attention to time and law, in his aforementioned *plaidoirie* of 5 March 1962, in the case of the *Temple of Preah Vihear*, Paul Reuter saw it fit to add:

> "Time exercises a powerful influence over the establishment and consolidation of legal situations . . . how does international law measure lapse of time? It is quite clear that in international law there exists no time-limit such as national bodies of law recognize . . . There are those who think that this situation constitutes an imperfection of international law. We do not at all think so. On the contrary, we think that this uncertainty gives to international law a flexibility that enables it to be adapted to the varying character of specific circumstances."[4]

9. Three such circumstances were identified by Reuter, namely: the matters at issue, the "density" of time, and the dynamics of the relations between the States concerned[5]. In his view, "[i]n the first place the length of the time-limit depends on the matters involved. There are matters in regard to which security and legal acts correspond to an imperative requirement of society"[6] (e.g., territorial or maritime spaces). It is, however, in relation to the second circumstance — the "density" of time — that Reuter devoted special attention, expressing his reflections in a language which disclosed a certain literary flair:

> "In this adaptation of circumstances, this adaptation to concrete circumstances of each species, a second element must be taken into consideration which we would be tempted to call 'the density' of time. The time of man is not the time of the stars. What constitutes the time of men is the density of real events or of potential events which might have taken place. And what makes up the density of human time assessed on the legal level is the density, the multitude of legal acts which did find or might have found room within that period.
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> In the life of nations, just like in the life of individuals, there are light years, happy years, when nothing happens and nothing can hap-

[4] *I.C.J. Pleadings, Temple of Preah Vihear (Cambodia* v. *Thailand)*, Vol. II, p. 203.
[5] Cf. *ibid.*, pp. 203-204.
[6] *Ibid.*, p. 203.

> pen. However, there are also heavy years, years full of substance. If we apply these considerations to the circumstances of this case we see that there might be light years: 1908-1925; but also heavy years: 1925, 1934-1935, 1937, 1939-1940, 1946, 1949 and we would consider therefore that this period is particularly dense."[7]

10. But as time does not cease to pass, and keeps on flowing, one could now add, half a century later, as subsequent years of particular "density", in respect of the present case of the *Temple of Preah Vihear*, those of 1961-1962, 2000, 2007-2008 and 2011. This can be confirmed by an examination of the *dossier* of the *cas d'espèce* and of the records of the recent public sittings before this Court, of 30-31 May 2011 (concerning the Joint Communiqué between Cambodia and Thailand of 14 June 2000 regarding the demarcation of their land boundary, and, particularly — for the purposes of the present provisional measures of the ICJ —, the events which preceded and promptly followed the inscription of the Temple of Preah Vihear in UNESCO's World Heritage List on 7 July 2008 — cf. *infra*). The temporal dimension, in the present case of the *Temple of Preah Vihear*, can be examined, in my understanding, from distinct angles.

11. In 1998, in the adjudication of the case *Blake* v. *Guatemala* by the Inter-American Court of Human Rights (IACtHR — merits, judgment of 24 January 1998), I deemed it fit to retake Reuter's point and to seek to develop it further. I pondered therein, *inter alia*, that:

> "The time of human beings certainly is not the time of the stars, in more than one sense. The time of the stars — I would venture to add — besides being an unfathomable mystery which has always accompanied human existence from the beginning until its end, is indifferent to legal solutions devised by the human mind; and the time of human beings, applied to their legal solutions as an element which integrates them, not seldom leads to situations which defy their own legal logic (. . .). One specific aspect, however, appears to suggest a sole point of contact, or common denominator, between them: the time of the stars is inexorable; the time of human beings, albeit only conventional, is, like that of the stars, implacable." (Para. 6.)

IV. The Temporal Dimension in International Law

12. The temporal dimension marks presence in the domain of humanities[8] in general, and of law in particular. The awareness of time, of the

[7] *I.C.J. Pleadings, Temple of Preah Vihear (Cambodia* v. *Thailand)*, Vol. II, p. 203.

[8] It has for centuries attracted the attention of philosophers and thinkers (such as, *inter alia*, Plato, Aristotle, Seneca, Saint Augustine, Plotino, Descartes, Pascal, Kant, Proust, Spinoza, Newton, Husserl, Bergson, Ricœur, among others); it has, moreover, been present

temporal dimension, is essential to the labour not only of those who seek to secure the evolution of law, but also to those concerned with ascribing to this latter foreseeability and juridical security. One is to be aware of the influence of the passage of time in the *continuation* of the rules of international law[9], as well as in the *evolution* of the rules of international law: this is not a phenomenon external to law.

13. The temporal dimension is clearly inherent to the conception of the "progressive development" of international law. By the same token, the conscious search for new juridical solutions is to presuppose the solid knowledge of solutions of the past and of the evolution of the applicable law as an open and dynamic system, capable of responding to the changing needs of regulation[10]. In effect, the temporal dimension underlies the whole domain of law in general, and of public international law in particular[11].

14. Time is inherent to law, to its interpretation and application, and to all the situations and human relations regulated by it. One of the ineluctable pitfalls of legal positivism (still very popular in the legal profession in our days) lies in its vain attempt to conceive law in general, and international law in particular, *independently* of time. Legal positivism and political "realism", with their static vision of the world, focused on the legal order or the "reality" of a given moment, have, not surprisingly, been invariably subservient to the established order, to the relations of domination and power. Neither the positivists, nor the "realists", have shown themselves capable of anticipating and understanding — and have difficulties to accept — the profound transformations of contemporary international law in the unending search for the realization of the imperatives of justice.

15. Startled by the changes occurred in the world, they have had to move or jump from one historical moment to another, entirely distinct, seeking to readjust themselves to the new empirical "reality", and then

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in modern historiography, as disclosed by the writings on the matter of, e.g., Fernand Braudel (*Ecrits sur l'histoire*, 1969), G. J. Whitrow (*Time in History*, 1988), Norbert Elias (*Über die Zeit*, 1984), among others.

[9] Cf. K. Doehring, "Die Wirkung des Zeitablaufs auf den Bestand völkerrechtlicher Regeln", *Jahrbuch 1964 der Max-Planck-Gesellschaft*, Heidelberg, 1964, pp. 70-89.

[10] A. A. Cançado Trindade, "Reflections on International Law-Making: Customary International Law and the Reconstruction of *Jus Gentium*", *International Law and Development/Le droit international et le développement* (Proceedings of the 1986 Conference of the Canadian Council on International Law/Travaux du Congrès de 1986 du Conseil canadien de droit international), Ottawa, 1986, pp. 78-81, and cf. pp. 63-81.

[11] As to this latter, illustrations can be found in the work on the so-called "intertemporal law", in the Sessions of Rome (1973) and Wiesbaden (1975) of the Institut de droit international. Cf., in particular, 55 *Annuaire de l'Institut de droit international (AIDI)* (1973), pp. 27, 33, 35-37, 48, 50, 86, 106 and 114-115; and 56 *AIDI* (1975), pp. 536-541. The debates and work of the Institut disclosed an ambivalence, antinomy or tension between the forces in favour of the evolution or transformation of the legal order and those in favour of the stability or legal security — and this was to be reflected in the cautious resolution adopted by the Institut in Wiesbaden in 1975.

trying to apply again to this latter the static scheme which they are mentally used to, once again projecting their illusion, of permanence and "inevitability", into the future, and, at times — almost in desperation — also into the past. Their basic error has been their minimization of the *principles*, as well as of the temporal dimension of social facts. They can only behold interests and advantages, and do not seem to believe in human reason, in the *recta ratio*[12], nor in the human capacity to extract lessons from the historical experience.

16. Time marks a noticeable presence in the whole domain of international procedural law. As to substantive law, the temporal dimension permeates virtually all domains of public international law, such as — to evoke a few examples — the law of treaties (regulation *pro futuro*), peaceful settlement of international disputes (settlement *pro futuro*), State succession, the international law of human rights (the notion of potential victims), international environmental law (the preventive dimension), among others. In the field of regulation of spaces (e.g., law of the sea, law of outer space), the temporal dimension stands out likewise. There is nowadays greater awareness of the need to fulfill the interests of present and future generations (with a handful of multilateral conventions in force providing for that).

17. Evolving international law, attentive to secure an element of previsibility in the conduction and regulation of the social relations subjected thereto, is itself permeated by the major enigma which permeates the existence of all subjects of law: the passage of time. If one seeks for answers to that enigma, I am afraid we can hardly find them in the domain of law, or elsewhere. Instead, some consolation for the lack of answers to that overwhelming enigma can perhaps be found in the domains of philosophy or theology.

V. The Search for Timelessness

18. The present case is, by the way, centred on the Temple of Preah Vihear, which appears to resist the onslaught of time and to be endowed with a touch of timelessness. The Temple of Preah Vihear, a monument of Khmer art, dates back to the first half of the eleventh century, and is located on a high promontory of the range of the Dangrek mountains (one of religious significance, by the border between Cambodia and Thailand). The Temple of Preah Vihear is composed of a series of sanctuaries linked

[12] The *recta ratio* was well captured and conceptualized, throughout the centuries, by Plato, Aristotle, Cicero, and Thomas Aquinas, and, subsequently, situating it in the foundations of *jus gentium* itself, by Vitoria, Suárez and Grotius.

by a system of pavements and staircases over an axis 800 metres long, rising up the mountain, and standing on the edge of a cliff 547 metres high.

19. This *millénaire* masterpiece of Khmer art and architecture was erected and used for religious purposes. It was dedicated to Shiva (one of the Hindu divine triad of Vishnu, Shiva and Brahma — cf. *infra*). It was intended to stand for time immemorial, to bring together the faithful of the region, to fulfill their spiritual needs. Temples and shrines, giving expression to different religious faiths, have been erected in times past in distinct localities in all continents, in search of timelessness, to render eternal the human faith, carved in stone to that end.

20. Writing in 1912, Max Scheler deemed it fit to point out that the construction of temples, monasteries, cathedrals, shrines of the more distant past, engaged generations of people who built them, within their communities that were to survive them, thus giving them the feeling of being inserted, in peace with themselves, into eternity, in the continuity of human generations[13]. Writing twelve years later, in 1924, Stefan Zweig regretted that, in the modern world, human beings no longer erect such temples or monuments, in an epoch of fast communications and precipitated action, when they pursue objectives which appear usually quite close. Ours is an epoch which has lost the idea of a durable image; no one, or no generation, would spend nowadays their whole life building a shrine, a temple or a cathedral. Our modern world "counts the hours with different measures, and life goes by with distinct velocities". We have

> "forgotten the art of expressing our essence in durable stones for the years which do not finish. (. . .) We are quite aware to have lost the aptitude for the infinite, (. . .) the aptitude to give shape so powerfully in one work *(obra)* to the spirit of a whole people, to the genius of an epoch."[14]

Hence the importance of preservation of such sanctuaries or temples[15], as cultural and spiritual heritage of humankind (cf. *infra*).

21. Being itself the concrete expression of human inspiration, the Temple of Preah Vihear seems now faced with the threat of human resentment (cf. *infra*). Recent developments (2007-2011) in the region of that part by the border between Cambodia and Thailand suggest that the times of human beings remain troubled and unpredictable, to a far greater extent than the times of stars. The shrines of the Temple of Preah Vihear appear now surrounded by tension, hostilities and conflict, proper of the human condition.

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[13] M. Scheler, *L'homme du ressentiment*, *op. cit. infra* note 69, p. 41.

[14] S. Zweig, *Tiempo y Mundo — Impresiones y Ensayos (1904-1940)*, Barcelona, Edit. Juventud, 1998, pp. 147-148 *[my translation]*.

[15] It has been pointed out that, in their art, there is "une jonction miraculeuse entre le temporel et l'intemporel"; G. Duby, *Le temps des cathédrales — L'art et la société, 980-1420*, Paris, Gallimard, 1979, p. 117.

VI. From Timelessness to Timeliness

22. What was meant to be a monument endowed with *timelessness*, is now again the object of contention before this Court, raising before it, *inter alia*, the issue of *timeliness*. The case of the *Temple of Preah Vihear* is now, half a century after its adjudication by the Court on 15 June 1962, brought again to the attention of the Court, by means of two requests from Cambodia, one for interpretation of the 1962 Judgment, and the other for provisional measures of protection.

23. In the first request, for interpretation, Cambodia draws attention to its timeliness. In the public sitting of 30 May 2011 before the Court, though conceding that the prolonged lapse of time, of half a century, since the Court's Judgment of 15 June 1962, render "certain aspects" of the present case "unusual", it pointed out that Article 60 of the Court's Statute (that it invoked as basis of jurisdiction of the Court in the *cas d'espèce*) contains no time-limit for such a request for interpretation. In its view, "the right to seek the assistance of the Court to resolve a dispute of that kind is not subjected to any time-limit by Article 60 of the Statute"[16].

In sustaining the timeliness of its request for interpretation, Cambodia referred to paragraphs 29-35 of the request itself, lodged with the Court on 20 April 2011, wherein it referred to tensions, hostilities and incidents occurred in the area of the Temple of Preah Vihear in 2008, 2009 and 2011 (paras. 33-35); Cambodia also invoked, in its request, Article 2 (3) and Chapter VI of the UN Charter (para. 32).

24. Thailand, in turn, in the public sitting of 30 May 2011 before the Court, stressed the consequence it beheld, of the passing of so much time, for the Cambodian requests recently lodged with the Court. While conceding that there is no time-limit in Article 60 of the Statute, it argued 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."[17]

It added that the character of the Court's "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"[18]. The fact that both Thailand and Cambodia — or, more precisely, those who have served as counsel for one and the other, in the recent public sittings before this Court — have felt compelled to address, each one in

[16] ICJ, *Compte rendu* (CR) CR 2011/13, of 30 May 2011, p. 31. And, to the same effect, CR 2011/15, of 31 May 2011, pp. 23-24.

[17] CR 2011/16, of 31 May 2011, p. 18.

[18] *Ibid.*, p. 20. And, to the same effect, CR 2011/14, of 30 May 2011, pp. 32-33 and 26.

its own way, the issue of timeliness in the circumstances of the *cas d'espèce*, seemingly startled by it, renders the present case of the *Temple of Preah Vihear*, in my view, indeed fascinating. It shows the human face of an inter-State case before the World Court.

VII. The Passing of Time: The *Chiaroscuro* of Existence

25. In effect, the present case of the *Temple of Preah Vihear* appears to contain some lessons, not so easy to grasp. As already pointed out, it enshrines the *chiaroscuro* not only of law (cf. *supra*), but also of existence itself. It suggests that we, mortals, still have to learn to live within boundaries in space and in time, so as to live in peace (mainly of mind). As to space, those boundaries which bring countries and their peoples together, rather than separate them. As to time, those which link day and night, light and darkness, life and after-life. As I have already indicated, all cultures, including the ancient ones, in distinct latitudes, grasped the mystery of the passing of time, each one in its own way.

26. As I pondered in my separate opinion in the case of *Bámaca Velásquez* v. *Guatemala*, resolved by the IACtHR (judgment on reparations, of 22 February 2002):

> "Time keeps on being a great mystery surrounding human existence. Human knowledge of the extreme frontiers of life (birth and death) continues to be limited, and such frontiers have become 'more mobile' as a consequence of the cultural changes and the technological development, what attributes an even greater responsibility to the jurists, who ought to be attentive to the ethical codes and to the cultural manifestations in evolution. (. . .) The very conscience of time is 'a very late product of human civilization' (. . .). Despite all that has been written on the subject, the very *origin* of the cultures still continues without an answer[19]; and time and space, which they seek to explain, appear ultimately as mental creations of the social conscience, which allow to conceive a unified and coherent cosmos[20]. Of the essence of cultural life are 'the perception and the awareness of time', which, in turn, constitute component elements of 'the solidarity of human generations which succeeded each other and return, repeating each other as the *stations*'[21]. Time was even considered as in the *Confessions* of Saint Augustine — as an essential aspect of the spiritual

[19] E. Cassirer, *Essai sur l'homme*, Paris, Ed. de Minuit, 1975, p. 47, and cf. p. 243.

[20] A. Y. Gurevitch, "El Tiempo como Problema de Historia Cultural", *Las Culturas y el Tiempo*, Salamanca/Paris, Ed. Sígueme/UNESCO, 1979, pp. 260-261. In this way, "converted into ruler of time", the human being "is also dominated by it" (*ibid.*, p. 261).

[21] *Ibid.*, pp. 280 and 264, and cf. p. 272.

life of the individuals and groups, as an integral part of the social conscience itself."[22] (Paras. 4-5.)

27. In fact, there is no social *milieu* wherein collective representations pertaining to its origin and to its destiny are not found. There is a spiritual legacy which is transmitted, with the passing of time, from generation to generation, conforming a "perfect spiritual continuity among generations"; hence the relevance of the conscience of living *in time*, and of the burial rites[23]. Just as the living experience of a human community develops with the continuous flux of thought and action of the individuals who compose it, there is likewise a spiritual dimension which is transmitted from an individual to another, from a generation to another, which precedes each human being and survives him, *in time*. The *passing* of time, a source of desperation to some, in fact brings the living ineluctably closer to their dead, and binds them together, and the preservation of the spiritual legacy of our predecessors constitutes a means whereby they can themselves communicate with the living, and vice-versa.

28. The living perceive time in distinct ways. Chronological time is not the same as biological time. In a life-time, time seems different for each age. Children seem to live in the moment, adults their day-to-day life, and the elderly their epoch or personal history. Biological time is not the same as psychological time. Time gives human beings, at first, innocence, gradually replaced, later, with the passing of years, by growing experience. The time of human beings nourishes them, first, with hope, and, later, with memory. The time of human beings is indeed implacable.

29. Time links the beginning and the end of human existence, rather than separates them. Time impregnates human existence of memory, and enables the search for the meaning of each moment of existence. Time appears to invite the cultivation of the study of history, and shows the ephemerous in the search for supremacy and glory. It is arguable whether life-time can be invoked as an adequate measure to approach a legal situation extending in time, and even less so to approach the nature of a legal obligation.

30. As to the relationship between the passing of time and human existence, in a couple of his many and *célèbres Letters to Lucilius*[24] (124 in

[22] Few persons, like Saint Augustine, felt with such intensity the inscrutable mystery of time. In the insurmountable pages on the matter, of Book XI of his *Confessions* (written between the years 398 to 400), to the question "what is time? ", he answered: "if no one asks me, I know it; but if I want to explain it to whoever asks me, then I do not know it" (para. 17). And he added, as to the "three times" (or "three moments in the spirit", namely, "expectation, attention and remembrance" — para. 37): the three times — past, present and future — "are in the mind and I do not see them elsewhere. The present of the past is memory. The present of the present is the vision. The present of the future is the expectation" (para. 26).

[23] E. Durkheim, *Las Formas Elementales de la Vida Religiosa*, Madrid, Alianza Ed., 1993 (reed.), pp. 393, 419, 436, 443 and 686.

[24] In particular, his *Letters*, Nos. XII, LXXVIII, CII and CXXII.

number), Seneca warns us, in his wise stoicism, that just as we have time, time has us: in our brief life-time, a few of us try to gather knowledge, while the majority tries to accumulate possessions, goods and wealth; yet, the passing of time dispossesses us of everything — Seneca lucidly concludes — and we leave this world as helpless as we entered it. Life-time is shorter than many continuing legal obligations.

VIII. Time, Legal Interpretation, and the Nature of Legal Obligation

31. This is an appropriate moment to turn attention to time, legal interpretation and the nature of legal obligation. In this connection, in the course of the proceedings before the Court concerning the request for provisional measures of protection in the present case of the *Temple of Preah Vihear*, Thailand, at a given moment of its pleadings of 30 May 2011, argued that:

> "Even in the long history of the law of nations, 50 years is a considerable time. The last two judges who participated in the *Temple* case died in 1989 — Judge Morelli on his 89th birthday, Judge Bustamante just after his 94th. Yet Cambodia would have the Court speak in a continuous present, prescribing the withdrawal of forces whose members were not born at the time, enjoining activities which, if they have occurred at all, began long after the time."[25]

32. Even taking a life-time as a measure to approach a legal situation which appears to subsist in time, are 50 years really a considerable time? In my perception, a lapse of 50 years may be seen from different angles. For a very young person, in the dawn of life-time, looking forward in time, 50 years may appear far too long a time. For an elderly person, approaching the twilight of life-time, looking back in time, 50 years may appear to have passed by very fast, to have been not so long at all. The impression I can hardly escape from, is that mere chronological time does not assist us much: it seems to conceal more than what it discloses.

33. In the long history of the law of nations, 50 years may appear a long, or not so long a time, depending on how we see them, and on what period of that history we have in mind. All will depend on the density of time (cf. *supra*) of the period at issue — whether at that period much has happened, or nothing significant has taken place at all. In any case, the work

[25] CR 2011/14, of 30 May 2011, p. 33.

undertaken in the Court by the generation of Judges Morelli and Bustamante is *linked* to the work being undertaken in the Court by the present generation of its Judges. Ours is a common mission, prolonged in time. The present Order of provisional measures of protection, which the Court is adopting today, 18 July 2011, half a century after its Judgment of 15 June 1962, in the case of the *Temple of Preah Vihear*, bears witness of this.

34. One cannot lose sight of the fact that time and space do not form part of the empirical or real world, but are rather part of our "mental constitution", of our apparatus "to grasp the world"[26], to examine and understand events that have occurred or occur and mark our lives. The perception of time was gradually devised by human beings to help them, at first, to overcome "the briefness and the unicity" of their lives; with that, living in their social environment, human beings imagined they could in a way "deceive death" itself[27]. Cultures seek to explain time and space, each one in its own way. It is widely reckoned today that cultures, in their diversity, also assist human beings to relate themselves with the outside world, to strive to understand it.

35. In so far as human knowledge is concerned, there are no final answers on law, nor on humanities, nor even on science. Law is not self-sufficient, as legal positivists, in their characteristic arrogance (symptomatic of short-sightedness), seem to assume. In my understanding, law has much to learn from other branches of human knowledge, and vice-versa. The limitations of human knowledge recommend a certain modesty as to what we do. As to law, there is a *continuing* quest for the realization of justice.

36. I have already drawn attention to the fact that both Thailand and Cambodia, in the course of the very recent proceedings before the Court in the case of the *Temple of Preah Vihear*, have shown their preoccupation with how to approach properly, each one in its own way, the issue of timeliness in the circumstances of the *cas d'espèce* (cf. *supra*). Underlying their concerns are, first, the distinct theses they uphold of legal interpretation itself, and secondly, the distinct theses that Cambodia and Thailand uphold of the existence of a *continuing*, or else an *instantaneous* obligation, respectively.

37. As to the first point, concerning legal *interpretation*, it should not pass unnoticed that both Cambodia[28] and Thailand[29] evoked, in distinct ways, *obiter dicta* of the Judgment No. 11 (of 16 December 1927) of the old Permanent Court of International Justice (PCIJ) in the case of the *Factory at Chorzów — Interpretation of Judgments Nos. 7 and 8*, in order to seek to substantiate their submissions on the matter. In fact, with

[26] K. Popper, *En Busca de un Mundo Mejor*, Barcelona, Ed. Paidós, 1996, pp. 171-173.

[27] A. Y. Gurevitch, "El Tiempo como Problema de Historia Cultural", *op. cit. supra* note 20, p. 263.

[28] CR 2011/13, of 30 May 2011, pp. 29, 34 and 36; CR 2011/15, of 31 May 2011, pp. 15, 22 and 24-25.

[29] CR 2011/14, of 30 May 2011, pp. 22-24 and 38-40.

regard to legal interpretation, in my view some precision is here called for, which I deem it fit to dwell upon in the present separate opinion. In an application for *revision* of a judgment (which is not the case here), the facts to take into account are only those set forth in the original application, which formed the object of the corresponding judgment. There could not be new or additional facts, which would fall outside the scope of revision, and would call for a new application, a new case, if the applicant State would wish to submit to the Court.

38. This is not the situation in an application for *interpretation* of a judgment. In so far as interpretation is concerned, in my understanding, one cannot make abstraction of subsequent facts, which gave rise to the different views advanced by the contending parties. Even more so when *both* parties rely upon, or refer to, such new or subsequent facts, in their submissions to the Court, as they have done in this case of the *Temple of Preah Vihear*. The Court can take such new facts into account, in order to perform faithfully its judicial function and its duty to decide on the request for interpretation lodged with it.

39. We have not yet reached this stage. We are presently taking cognizance of *provisional measures of protection*. In this respect, the considerations I have just made apply even more forcefully, in face of a situation which appears to be endowed with the prerequisites of urgency and gravity, an imminence of irreparable harm (cf. *infra*). I shall turn to this point later; for the moment, suffice it to point out that, in a request for provisional measures of protection like the present one, the Court cannot simply decline to answer the points raised before it.

40. As to the second point, concerning the *nature* of legal obligation, in its request for interpretation, of 20 April 2011, Cambodia saw it fit to refer to a "permanent situation" and an obligation endowed with a "caractère de permanence" (para. 37), and explained:

> "The obligation incumbent upon Thailand 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' (second paragraph of the operative clause) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia (. . .)." (Application instituting proceedings, p. 37, para. 45.)

41. The point was retaken by both Parties in their respective pleadings before the Court, of 30-31 May 2011, concerning the Application for provisional measures of 28 April 2011. In its submissions of 30 May 2011, Thailand retorted that the applicant State was attempting to transform into a "continuing obligation" what was "an immediate and instantaneous obligation" deriving from paragraph 2 of the *dispositif* of the Court's Judgment of 1962 in the present case of the *Temple of Preah Vihear*[30].

[30] CR 2011/14, of 30 May 2011, p. 25.

42. On the following day (public sitting of 31 May 2011), Cambodia replied that the obligation at issue was not "immediate and instantaneous", but rather *"continuous and permanent"*, because it was "the consequence of the fact that a State should not violate the territorial sovereignty of another State". To regard that obligation as "instantaneous" — Cambodia concluded, convincingly in my view — would allow the respondent State "to withdraw its troops the day after the Judgment and move them back in again a week later"[31]. In the domain of inter-State relations, when the fundamental principle of the prohibition of use or threat of force (cf. *infra*) is at stake, the corresponding obligation is, in my understanding, a continuing or permanent one, for the States concerned.

IX. From Time to Space: Territory and People Together

43. It is time now to move from my considerations on time and law to those pertaining to space and law. I can hardly develop my considerations on space without relating it to the human element of statehood: the population. In their recent submissions before the Court in the case of the *Temple of Preah Vihear*, the contending Parties themselves, Cambodia and Thailand, much to their credit, were attentive to territory *together* with people. In the public sitting of 30 May 2011, Cambodia expressed its concern with the fatal victims of, and those injured in, the armed hostilities of 15 July 2008, 4 to 7 February 2011[32], as well as with the "50 000 personnes de la population civile de la région", encompassing the "zone" of the Temple of Preah Vihear, as well as the zones of the Temples of Ta Moan and Ta Krabei, as a result of the hostilities of 22 April 2011[33]. For its part, Thailand, in its pleadings on the same day, conceded that "[d]es dizaines de milliers d'habitants de la région frontière ont été déplacés"[34].

44. In its final submissions to the Court, in the public sitting of 31 May 2011, Cambodia stated:

> "The rights which Cambodia is seeking to protect do indeed relate to the area of the Temple and to the cultural and spiritual heritage which the Temple represents, as well as the prejudice which Cambodia might suffer through the infringements of its sovereignty and territorial integrity and the threat to the lives of its population."[35]

45. Thailand, for its part, in its final submissions of the same day, argued that "events at the Ta Kwai and Ta Muen Temples are of no

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[31] CR 2011/15, of 31 May 2011, p. 18.
[32] CR 2011/13, of 30 May 2011, p. 20, and cf. pp. 44-45.
[33] Cf. *ibid.*, p. 22, and cf. p. 46.
[34] CR 2011/14, of 30 May 2011, p. 16, and cf. p. 51.
[35] CR 2011/15, of 31 May 2011, p. 15 *[translation]*.

relevance to the present proceedings", and that there was "no risk of aggravation of the dispute due to Thailand's behaviour". It added that:

> "The picture is that of two neighbouring countries sharing a common border approximately 800 kilometres 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."[36]

46. In sum, neither of the contending Parties focused on territory only; both of them took duly into account the fate of the local population. This having been so, at the end of the public sitting of the Court of 31 May 2011, I deemed it fit to put the following questions to both Parties:

> "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?"[37]

[36] CR 2011/16, of 31 May 2011, pp. 26 and 28-29.
[37] *Ibid.*, p. 32.

1. Cambodia's First Submissions

47. On 6 June 2011, Cambodia responded to my questions, including seven annexes[38] to its response[39]. At the beginning of its response, Cambodia explained that it understood my questions as referring to the displacement of the local population from, on the one hand, the area of the Temple of Preah Vihear, and, on the other hand, from other places along the border between the two States. Cambodia submitted that, since that there are no inhabitants living in the Temple itself, Cambodia understood the expression the "area of the Temple", from my questions, as the area indicated on map 5 attached to Cambodia's request for interpretation (and projected by Cambodia during the public hearing before the Court).

48. Cambodia further submitted that "the consequences of the incidents in this area have affected the villages or dwellings in the immediate proximity"[40] of the said area. It is further reiterated that, although the incidents are interconnected, Cambodia was only requesting the indication of provisional measures in the area of the Temple itself. Cambodia also explained that its response to my questions was limited to the most recent events, even though some of the displacements of the local inhabitants were sometimes "the result of incidents that took place before 22 April 2011" and that the "consequences of such displacements have been prolonged beyond 22 April". Cambodia submitted that the information provided in its response covered the period of 22 April to 5 May 2011.

49. Cambodia further submitted that, during that period, more than 50,000 persons were placed in provisional camps and 10,000 inhabitants were sheltered by their close entourage and friends in secured areas. Cambodia asserted that, during these "armed aggressions", the Cambodian Red Cross provided food supply and assisted in the reconstruction of their dwellings; and that donations from various institutions and private persons also provided assistance to the population.

50. As to the *area of the Temple of Preah Vihear* precisely, Cambodia responded that a total of 9,412 persons were displaced from three villages in the proximity[41] of the area of the Temple. Cambodia added that the inhabitants returned to their homes on 5 May 2011 and that the camps were closed also on 5 May 2011. Yet, it further contended, the local inhabitants who worked in the market at close proximity to the Temple were not able to resume their activities because the market "was destroyed

[38] The seven annexes consist of photos of the Province of Ouddor Meanchey (between 22 April and 3 May 2011) referred to in Cambodia's response, as well as a map of the area of the Temple of Preah Vihear.

[39] Réponse du Royaume du Cambodge à la question posée aux Parties par M. le juge Cançado Trindade, of 7 June 2011, pp. 1-12.

[40] In the original French text: "les conséquences des incidents dans cette zone ont touché des village [sic] ou habitations à proximité immédiate de cette zone".

[41] Cambodia referred in this regard to the map attached to its response (Annex 7).

by the combats"[42]. Cambodia contended, moreover, that 80 per cent of the local population practises agriculture for a living, and that the population density of the region is about 50 persons/km^2.

51. As to *other areas in the region*, Cambodia submitted that, in the Province of Ouddor Meanchey, 52,538 persons, who come from various villages along the border with Thailand near the Temples of Ta Moan and Ta Krabei (that is, 150 kilometres west of the area of the Temple of Preah Vihear), have been displaced. It further submitted that 52 houses in this region have been "partially or totally destroyed"[43] and that 147 (out of 194) schools have been closed, making it impossible for 39,873 students to go to school. Cambodia added that local inhabitants have lived in distinct villages established a long time ago[44]. In response to my question as to whether they have returned safely and voluntarily to their homes, Cambodia contended, moreover, that the local inhabitants have returned to their homes on 5 May 2011 and that the camps have been closed also on 5 May 2011. It added that 85 per cent of the displaced population make their living from their agricultural production[45]. Last but not least, Cambodia submitted that the population density in this region is about 28-29 persons/km^2.

2. *Thailand's First Submissions*

52. On 7 June 2011, Thailand submitted its response to my questions, and included therewith one map illustrating the location of the provinces and districts referred to in its response[46]. Thailand began by addressing the incidents *near the Temples of Ta Muen and Ta Kwai* (situated about 150 kilometres from the Temple of Preah Vihear[47]). In respect of the incidents that took place, from 22 April to 3 May 2011, in the Surin Province (where Ta Muen and Ta Kwai Temples are situated), it submitted, in response to my questions, first that Thai authorities evacuated 45,042 local inhabitants to "safe shelters" as of 22 April 2011, "[a]s a precautionary

[42] Cambodia further submitted that the local inhabitants live in the immediate proximity of the Temple of Preah Vihear and that they have settled in the village of Sra Em since its establishment in 1997, in Svay Chrum village since 1995 and in the village of Samdech Techo Hun Sen since 2009.

[43] Cambodia refers in this regard to the pictures attached to its response.

[44] Namely: 2,517 families, totalling 11,124 inhabitants, have been living in the Kok Morn village; 3,198 families, totalling 13,408 persons, have been living in the Ampil village; 1,103 families, totalling 4,913 persons, have been living in the village of Kok Khpos; 1,934 families, totalling 9,651 people, have been living in the O'Smach village; 1,493 families, amounting to 6,809 persons, have been living in the Bansay Rak village; 990 families, totalling 4,913 persons, have been living in the Kaun Kriel village; and 354 families, amounting to 1,720 people, have been living in the Trapeang Prey village.

[45] And that 52,421 hectares have been contaminated by "unexploded ordnances (UXOs)", including 8,000 hectares of cultivated land from a total of 37,093 hectares.

[46] Reply of the Kingdom of Thailand to the question put to both Parties by Judge Cançado Trindade, of 7 June 2011, pp. 1-4.

[47] Thailand uses the denomination "Temple of Phra Viharn".

measure to prevent loss of lives of the Thai population in the area around Ta Kwai and Ta Muen Temples in Surin Province". It added that on 2 May 2011 "all [inhabitants] returned safely and voluntarily to their homes" and have since then resumed their lives normally.

53. Moreover, Thailand submitted that the evacuated population came from the Phanom Dong Rak, Prasat, Kabcheung and Sangkha districts and that the majority of them were born in the region "and their families have lived there for many generations". Thailand contended that the majority of them are farmers; they cultivate rice, rubber trees, sweet potatoes, sugar cane and some of them also engage in silk worm breeding industry. Regarding the population density of the region, Thailand responds that, in the Phanom Dong Rak district, there are 116 persons/km^2, with a total population accounting for 37,197 persons; in the district of Prasat, the population of the subdistrict of Choke Na Sam is 139 persons/km^2 and of Kok Sa-ard subdistrict is 203 persons/km^2, making the total population of the Prasat district 11,423 persons; in the Kabcheung district, the population density is 105 persons/km^2, amounting to a total of 60,421 persons; and the Sangkha district has a population density of 126 persons/km^2, making the total population 127,592 persons.

54. Concerning the *Buriram Province*, which is adjacent to the Surin Province, Thailand asserted that the incidents that took place since 22 April 2011 in the area around Ta Kwai and Ta Muen Temples prompted the Thai authorities to evacuate the local population in the Ban Kruat district of the Buriram Province, which is situated about 10 kilometres from the Ta Kwai and Ta Muen Temples. Thailand submits that, "[a]s a precautionary measure to prevent loss of lives of the Thai population in the area near the site of the clashes", 7,396 local inhabitants were evacuated by Thai authorities to "safe shelters" from 22 April 2011. Thailand further submits that on 2 May 2011 "all [inhabitants] returned safely and voluntarily to their homes" and have since then resumed their lives normally.

55. It added that the local inhabitants live in the Ban Kruat district of the Buriram Province and that the "majority of [them] were born there and their families have lived in the region for many generations"; the majority of them "are farmers who cultivate rice, rubber trees, sweet potatoes, and sugar cane". It further contended that the population density of the Ban Kruat district is 136 persons/km^2, the total population amounting to 73,400 persons. Finally, as to the *incident at Phu Makhua*, situated 2.5 kilometres from the Temple of Preah Vihear, Thailand submitted that no local inhabitants were displaced, as a result of the said incident, which occurred on 26 April 2011.

3. Cambodia's Second Submissions

56. On 13 June 2011, Cambodia submitted its comments to the responses provided by Thailand to my questions put to both Parties

(cf. *supra*). Cambodia first noted that Thailand provided very little information concerning the area of the Temple of Preah Vihear itself and indicated that no population was displaced there from; in its view, that statement showed that, until recent incursions, the situation on the ground complied with the Court's 1962 Judgment concerning Cambodia's control and sovereignty over the area of the Temple. Cambodia further submitted that Thailand's response confirmed that there were incidents in the area of the Temple and at other sites, at the time of the filing of the request for provisional measures, which were needed to preserve the rights at stake and to prevent irreparable harm.

57. Moreover, Cambodia contended that, although calm had been restored and the populations had returned to their homes since 2 May 2011, yet the calm was fragile and nothing could guarantee that armed hostilities would not break out again, as they did in July 2008, October 2008, April 2009, February 2011 and April 2011. As to Thailand's account of displaced populations in an area 150 kilometres west of the Temple, Cambodia reiterated its argument that "only the incidents in the area of the Temple of Preah Vihear should be taken into account", and that "the incidents in the area 150 kilometres away from the Temple of Preah Vihear should not enter into consideration for the measures the Court might pronounce"[48].

4. Thailand's Second Submissions

58. On 14 June 2011, Thailand presented its comments to the responses provided by Cambodia to my questions put to both Parties (cf. *supra*)[49]. Thailand first submitted that some information provided in Cambodia's response was either of no relevance, or referred to incidents that occurred before 22 April 2011, thus falling outside the scope of my questions (cf. *supra*). Referring to the villages of Sra Em, Svay Chrum and Samdech Techo Hun Sen, Thailand submitted that the *only* incident outside the Ta Muen and Ta Kwai Temples area occurred after 22 April 2011 at Phu Makhua, on 26 April 2011. Thailand submits that this incident was a minor one resulting from a misunderstanding. Thailand contended that there was no link between the evacuation of the three villages referred to in Cambodia's response and the incident of 26 April 2011. Thailand thus submits that the evacuation of these villagers could not be the consequence of incidents that took place from 22 April 2011, as I inquired in the question I put to the Parties (cf. *supra*).

[48] Observations du Royaume du Cambodge sur la réponse fournie par le Royaume de Thaïlande à la question posée aux Parties par M. le juge Cançado Trindade, of 14 June 2011, pp. 1-2; Cambodia further dismissed Thailand's claim of sovereignty over the Temples of Ta Moan and Ta Krabei and argued that this stemmed from Thailand's unilateral interpretation regarding the border line in this area.

[49] Thailand enclosed one attachment to its comments.

59. Thailand further argued that Cambodia did not specify when the evacuation began or the reasons for the evacuation, and that Cambodia herself admitted that the origin of the displacement could have been the incidents that took place before 22 April 2011. Thailand submits that this,

> "together with the fact that no incident occurred anywhere within 150 kilometres of the Temple of Phra Viharn since 7 February 2011, (. . .) leads to the only plausible conclusion that (. . .) the alleged evacuation of the three villages was in fact undertaken as a result of the incidents that occurred during February 2011" [50].

In Thailand's view, this displacement fell outside the scope of the questions I posed to the Parties. Furthermore, Thailand argued that Cambodia's response concerning the establishment of the three villages confirmed its argument — made during the hearings — that villagers were put in the region only recently to serve political motives outside the scope of the current proceedings. As to Cambodia's statement that some inhabitants could not resume their work in the market, because of the latter's destruction, Thailand retorted that the market was destroyed as a result of the incidents that occurred in April 2009, thus also outside the scope of the questions I put to both Parties [51].

5. General Assessment

60. The two rounds of submissions and comments, provided by the Parties in response to my questions (cf. *supra*), clarify some of the issues underlying the present case of the *Temple of Preah Vihear*, lodged with the Court. Yet, there remain still some points of difference between the Parties. Their submissions, at first, differ in respect of the motivation or reason for the evacuation of local inhabitants. While Cambodia asserts that some of the evacuation was the consequence of incidents that took place before 22 April 2011, Thailand claims that local inhabitants were displaced as "a precautionary measure to prevent loss of lives of the Thai population" in the area near the site of the clashes [52]. Secondly, while Cambodia maintains that "only the incidents in the area of the Temple of

[50] Comments of the Kingdom of Thailand on the reply given by the Kingdom of Cambodia to the question put to both Parties by Judge Cançado Trindade, of 14 June 2011, p. 1, and cf. pp. 1-3.

[51] As to the province of Ouddor Meanchey, Thailand argued that Cambodia's reference to 52,421 hectares of land contaminated by "unexploded ordnances" (UXOs) was irrelevant to both the question and the present proceedings, since, according to its understanding, any UXOs contaminated area found in Cambodia is "the result of past conflicts in Cambodia that lasted until 1998"; *ibid.*, p. 2. Last but not least, Thailand questioned the credibility of the photographs submitted by Cambodia, since no information was provided as to the exact dates and locations where they were taken; *ibid.*

[52] Reply of the Kingdom of Thailand to the question put to both Parties by Judge Cançado Trindade, of 7 June 2011, p. 2.

Preah Vihear should be taken into account"[53] for the indication of provisional measures, in its response Thailand does not focus on incidents in the area of the Temple of Preah Vihear, but concentrates rather on displacements that took place in an area situated about 150 kilometres from the Temple of Preah Vihear[54].

61. Thirdly, as to the displaced persons themselves, Cambodia refers to 9,412 persons displaced in the area of the Temple of Preah Vihear and 52,538 displaced persons in the Province of Ouddor Meanchey; Thailand, for its part, submits that 45,042 local inhabitants were evacuated in the Surin Province, 7,396 local inhabitants were displaced in the Buriram Province and no inhabitants were displaced as a result of the incident on 26 April 2011 at Phu Makhua (situated 2.5 kilometres from the Temple of Preah Vihear). The Parties responses coincide, however, on the statement that the displaced population has returned safely and voluntarily to their homes, even though Cambodia claims that their date of return is 5 May 2011[55], while Thailand claims that they returned on 2 May 2011[56].

62. In sum and conclusion of the matter at issue, while the responses provide some clarification and the situation seems to have progressed in a positive manner, with regard to the safe and voluntary return of local inhabitants to their homes, the calm achieved remains fragile, and seems to be provisional. The ceasefire is only verbal. There are no assurances that the armed hostilities will not resume and that the population will not be displaced yet again. The ceasefire seems to be temporary, and nothing indicates that the conflict will not break out again. Accordingly, in my view, the situation in the present case requires the indication of provisional measures of protection to prevent or avoid the *further aggravation* of the dispute or situation, given its current gravity, urgency, and the risks of irreparable harm.

63. May I just observe, in this connection, that it has become almost commonplace today to evoke provisional measures of protection to prevent or avoid the "aggravation" of the dispute or situation at issue. Yet, this sounds almost tautological, given the fact that a dispute or situation which calls for provisional measures of protection is already — *per defini-*

[53] Observations du Royaume du Cambodge sur la réponse fournie par le Royaume de Thaïlande à la question posée aux Parties par M. le juge Cançado Trindade, of 14 June 2011, pp. 1-2.

[54] Cf. Comments of the Kingdom of Thailand on the reply given by the Kingdom of Cambodia to the question put to both Parties by Judge Cançado Trindade, of 14 June 2011, p. 1.

[55] It is noted, however, that in its comments to Thailand's responses, in a letter dated 13 June 2011, Cambodia claims that "calm was restored (and populations returned) as early as 2 May 2011"; Observations du Royaume du Cambodge sur la réponse fournie par le Royaume de Thaïlande à la question posée aux Parties par M. le juge Cançado Trindade, of 14 June 2011, pp. 1-2.

[56] Reply of the Kingdom of Thailand to the question put to both Parties by Judge Cançado Trindade, of 7 June 2011, p. 2.

tionem — endowed with gravity and urgency, given the probability or imminence of irreparable harm. It would thus be more accurate to evoke provisional measures of protection to prevent or avoid the *"further aggravation"* of the dispute or situation at issue.

X. The Effects of Provisional Measures of Protection in the *Cas d'Espèce*

64. International law in a way endeavours to be *anticipatory* in the regulation of social facts, so as to avoid disorder and chaos, as well as irreparable harm. What is anticipatory is law itself, and not the unwarranted recourse to force. We are here before the *raison d'être* of provisional measures of protection, to prevent and avoid irreparable harm in situations of gravity and urgency. They are endowed with a preventive character, being anticipatory in nature, looking forward in time. They disclose the preventive dimension of the safeguard of rights. Here, again, the time factor marks its presence in a notorious way.

65. As I pointed out in my lengthy dissenting opinion (105 paragraphs) in the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, pp. 165-200, provisional measures of protection, as evolved in recent years, have enabled contemporary international tribunals to secure the protection of rights in a *preventive* way, and to undertake a *continuous monitoring* (projected in time) of compliance with them, on the part of the States concerned. Here, once again, further lessons can be extracted from this case of the *Temple of Preah Vihear*, also in respect of: *(a)* the protection of people in territory; *(b)* the prohibition of use or threat of force; *(c)* the protection of cultural and spiritual world heritage. Let me turn next to these particular points.

1. The Protection of People in Territory

66. There is epistemologically no impossibility or inadequacy for provisional measures, of the kind of the ones indicated in the present Order, not to extend protection also to human life, and to cultural and spiritual world heritage (cf. *infra*). Quite on the contrary, the reassuring effects of the provisional measures indicated in the present Order are that they do extend protection not only to the territorial zone at issue, but also, by asserting the prohibition of the use or threat of force — pursuant to a fundamental principle of international law (cf. *infra*) —, to the life and personal integrity of human beings who live or happen to be in that zone or near it, as well as to the Temple of Preah Vihear itself, situated in the aforementioned zone, and all that the Temple represents.

67. The present Order of provisional measures of protection has taken due account of the concerns of both contending Parties with securing the protection of people in territory. In addition to the answers which both Parties have given to the question I put to them at the end of the public sitting of the Court of 31 May 2011 (cf. *supra*), the Parties have made sure to convey to the Court their concerns on the point at issue throughout the proceedings of the case. And the Court, in the Order it has just adopted, has taken due account of those concerns.

68. Thus, the Court acknowledged, in the present Order, Cambodia's complaints of "serious armed incidents" occurred in the area of the Temple of Preah Vihear since 22 April 2011, that caused "fatalities, injuries and the evacuation of local inhabitants" (para. 8), as well as Cambodia's warning as to the worsening of the situation, with "loss of life and human suffering as a result of those armed clashes" (para. 9). Further on, the Court again acknowledged Cambodia's complaints of "numerous armed incidents" that took place in the area of the Temple of Preah Vihear since 15 July 2008, that caused "irreparable damage to the Temple itself", part of the cultural heritage of humankind, as well as "loss of human life, bodily injuries and the displacement of local people" (para. 48)[57]. And, once again, it took note of Cambodia's warning as to the worsening of the situation, with "damage to the Temple of Preah Vihear, as well as human suffering and loss of life" (para. 50).

69. The Court, likewise, acknowledged, in the present Order, Thailand's complaints of "numerous armed incidents" occurred in the area of the Temple of Preah Vihear which caused "loss of human life, bodily injuries, the displacement of local people, and material damage" (para. 51). Having considered the submissions of both Parties as to the facts, the Court found that:

> "since 15 July 2008, armed clashes have taken place and have continued to take place in that area, in particular between 4 and 7 February 2011, leading to fatalities, injuries and the displacement of local inhabitants; (. . .) damage has been caused to the Temple and to the property associated with it" (para. 53)[58].

70. Yet, the Court's valuation or assessment of the prima facie evidence (proper to provisional measures of protection) which the Parties brought to its attention was not, in my view, satisfactory: the Court did not extract all the consequences that it could, and should, from the facts

[57] Cambodia further noted that those incidents led, on its initiative, to a meeting of the UN Security Council on 14 February 2011 (para. 48).

[58] The Court further noted that, "on 14 February 2011, the [UN] Security Council called for a permanent ceasefire to be established between the two Parties and expressed its support for ASEAN in seeking a solution to the conflict" (para. 53).

pertaining to the *protection of people* in territory. The Court's main attention was focused on *territory* itself (one of the component elements of statehood), and not so much of the *people*, which, in my perception, is the most precious constituent element of statehood. I shall turn again to this point later on (cf. items XI-XII, *infra*) in the present separate opinion.

2. The Prohibition of Use or Threat of Force

71. On a distinct line of considerations, the Court, in its present Order, indicated provisional measures to the effect that:

> "Both Parties shall immediately withdraw their military personnel currently present in the provisional demilitarized zone, as defined in paragraph 62 of the present Order, and refrain from any military presence within that zone and from any armed activity directed at that 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;
>
> . . . . . .
>
> Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve."[59]

72. Underlying the Court's decision — informing and conforming it — is the fundamental principle of the prohibition of the use or threat of force. In fact, in the corresponding reasoning of the Court in the present Order, it is clearly stated that:

> "the Charter of the United Nations imposes an obligation on all Member States of the United Nations to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; (. . .) United Nations Member States are also obliged to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered; and (. . .) both Parties are obliged, by the Charter and general international law, to respect these fundamental principles of international law"[60] (para. 66).

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[59] Resolutory points B (1), (2) and (4) of the *dispositif*.

[60] Or, in the other official language of the Court,

> "la Charte des Nations Unies fait obligation à tous les Etats Membres de l'Organisation des Nations Unies de s'abstenir dans leurs relations internationales de recourir à la menace ou à l'emploi de la force, soit contre l'intégrité territoriale ou l'indépendance politique de tout Etat, soit de toute autre manière incompatible avec les buts des Nations Unies; (. . .) les Etats membres de l'Organisation sont également tenus de régler leurs différends internationaux par des moyens pacifiques, de telle manière que

73. Due attention is rightly given by the Court to compliance with the fundamental principles of international law, as enshrined into the UN Charter (Art. 2) and reckoned in general international law, in particular that of the prohibition of use or threat of force (Art. 2 (4)), in addition to that of the peaceful settlement of disputes (Art. 2 (3)). This has in fact been a concern of the Court in recent years. Three relevant precedents can be here recalled in this connection, namely, the case of the *Frontier Dispute (Burkina Faso/Republic of Mali)* (1986), the case of the *Land and Maritime Boundary (Cameroon* v. *Nigeria)* (1996), and the case of *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* (2000).

74. In those previous three cases, the Court, in indicating provisional measures of protection, most significantly went *beyond the inter-State dimension*, in expressing its concern also for *the human persons (les personnes humaines)* in situations of risk, or vulnerability and adversity. Thus, in its Order of 10 January 1986 in the *Frontier Dispute (Burkina Faso/Republic of Mali)* case, the Chamber of the Court asserted the power, "independently of the requests submitted by the Parties", to indicate provisional measures "with a view to preventing the aggravation or extension of the dispute whenever it considers that circumstances so require" (*I.C.J. Reports 1986*, p. 9, para. 18)[61]. It can exercise such power, it added, even more so in case of "a resort to force which is irreconcilable with the principle of the peaceful settlement of international disputes", when it can adopt such provisional measures "as may conduce to the due administration of justice" (*ibid.*, p. 9, para. 19). It decided to indicate those measures, comprising the withdrawal by the Parties of their armed forces, as it was of the view that the facts at issue "expose the persons and property in the disputed area, as well as the interests of both States within that area, to serious risk of irreparable damage" (*ibid.*, p. 10, para. 21).

75. One decade later, in its Order of 15 March 1996 in the case of the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria)*, the Court pondered that:

> "the rights at issue in these proceedings are sovereign rights which the Parties claim over territory, and (. . .) these rights also concern persons; (. . .) independently of the requests for the indication of provisional measures submitted by the Parties to preserve specific rights,

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la paix et la sécurité internationales ainsi que la justice ne soient pas mises en danger; et (. . .) les deux Parties sont tenues, en vertu de la Charte et du droit international général, de respecter ces principes fondamentaux du droit international".

[61] In a notorious precedent, that of the Court's Order of 10 May 1984, in the case of *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, the Court determined that the circumstances of the case required it to indicate provisional measures, as provided by Article 41 of its Statute, without prejudging the question of its jurisdiction as to the merits (*I.C.J. Reports 1984*, p. 186, paras. 39-40).

> the Court possesses by virtue of Article 41 of the Statute the power to indicate provisional measures with a view to preventing the aggravation or extension of the dispute whenever it considers that circumstances so require (. . .); (. . .) the events that have given rise to the request, and more especially the killing of persons, have caused irreparable damage to the rights that the Parties may have over the Peninsula; (. . .) persons in the disputed area and, as a consequence, the rights of the Parties within that area are exposed to serious risk of further irreparable damage" (*I.C.J. Reports 1996 (I)*, pp. 22-23, paras. 39 and 41-42).

Accordingly, in the provisional measures it indicated, the Court determined, *inter alia*, that the Parties were to refrain from any action by their armed forces, which might prejudice the rights of each other in respect of whatever judgment the Court might render in the case, or which might "aggravate or extend" the dispute before it[62].

76. Almost half a decade later, in its Order of 1 July 2000, in the case of *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, the Court, once again, was attentive *also* to the fate of persons. It pondered that, in the *cas d'espèce*, it was "not disputed" that:

> "grave and repeated violations of human rights and international humanitarian law, including massacres and other atrocities, have been committed on the territory of the Democratic Republic of the Congo; (. . .) in the circumstances, the Court is of the opinion that persons, assets and resources present on the territory of the Congo, particularly in the area of the conflict, remain extremely vulnerable, and that there is a serious risk that the rights at issue in this case (. . .) may suffer irreparable prejudice" (*I.C.J. Reports 2000*, p. 128, paras. 42-43).

77. This being so, the Court was of the view that "independently of the requests" by the Parties for provisional measures, it was endowed, under Article 41 of the Statute, with the power to indicate such measures with a view to "preventing the aggravation or extension of the dispute" whenever it considered that the circumstances so required. In the case opposing the Democratic Republic of the Congo to Uganda, it was of the opinion that there existed "a serious risk of events occurring which might aggravate or extend the dispute or make it more difficult to resolve" (*ibid.*, para. 44). Accordingly, in the measures it indicated the Court determined that the Parties must "prevent and refrain from any action, and in particular any armed action", which might "aggravate or extend the dispute", and, furthermore: "Both Parties must, forthwith, take all measures necessary to ensure full respect within the zone of conflict for

[62] Paragraph 1 of the *dispositif*.

fundamental human rights and for the applicable provisions of humanitarian law."[63]

78. It should not pass unnoticed here that, very recently, for less than in the present case of the *Temple of Preah Vihear*, opposing Cambodia to Thailand (wherein successive armed hostilities have occurred), the Court has indicated provisional measures of protection, in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area*, opposing Costa Rica to Nicaragua (*Order of 8 March 2011, I.C.J. Reports 2011 (I)*, p. 6). In this case, competing claims between the contending Parties, and Nicaragua's intention to carry out activities in the border area, were regarded by the Court as sufficient to conform "a real and present risk of incidents liable to cause irremediable harm in the form of bodily injury or death" (*ibid.*, p. 24, para. 75), and for it, accordingly, to order provisional measures of protection.

79. The fundamental principle of international law of the prohibition of the use or threat of force has found expression on numerous occasions, before and after its insertion into the UN Charter (Article 2 (4)) at the 1945 San Francisco Conference. After its assertion at the 1907 II Hague Peace Conference, it became of nearly universal application under the 1928 General Treaty for the Renunciation of War as an Instrument of National Policy (the Briand-Kellogg Pact)[64]; following the UN Charter, the fundamental principle at issue was restated by the 1970 UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, the 1974 UN Definition of Aggression, and the 1987 UN Declaration on Enhancing the Effectiveness of the Principle of the Non-Use of Force.

80. The over-all prohibition of the use or threat of force is a cornerstone of contemporary international law. For its part, the 1997 UNESCO Declaration on the Responsibilities of the Present Generations towards the Future Generations stated (Article 9 (2)) that:

> "The present generations should spare future generations the scourge of war. To that end, they should avoid exposing future

[63] Paragraphs 1 and 3 of the *dispositif*. May it be recalled, however, that, in its subsequent Order of 10 July 2002, in the case of the *Armed Activities on the Territory of the Congo*, opposing the Democratic Republic of the Congo to Rwanda, the Court did not indicate provisional measures, as it found itself without prima facie jurisdiction to do so (*I.C.J. Reports 2002*, p. 249, para. 89), though it expressed its deep concern with "the deplorable human tragedy, loss of life, and enormous suffering" in the east of the Democratic Republic of the Congo resulting from "the continued fighting there" (*ibid.*, p. 240, para. 54).

[64] Followed, in the American continent, by the 1933 Pact Saavedra Lamas, the 1938 Declaration of Principles adopted by the Inter-American Conference of Lima, and the 1948 OAS Charter.

> generations to the harmful consequences of armed conflicts as well as all other forms of aggression and use of weapons, contrary to humanitarian principles."

The corresponding obligation, not to resort to force, or to the threat of it, is not a simple immediate or "instantaneous" obligation (whatever that may mean); it is, by definition, a continuing or permanent obligation.

81. Decisions ensuing from, and grounded on, the fundamental principle of the prohibition of the use or threat of force, such as the provisional measures of protection aforementioned, can nowadays be approached, in my perception, from a humanist perspective, proper of the contemporary *jus gentium*: this is the case of the provisional measures of protection just adopted by the Court in the present case of the *Temple of Preah Vihear*, which took into account people and territory *together*, *comme il faut*, in the circumstances of the case, keeping in mind the fundamental principles of international law of the prohibition of the use or the threat of force and of peaceful settlement of disputes. The Court should, from now onwards, in such circumstances, embrace expressly and more resolutely this approach (cf. items XI-XII, *infra*).

3. Space and Time, and the Protection of Cultural and Spiritual World Heritage

82. My considerations on space and law seem likewise permeated by time. This is also what ensues from an examination of the submissions by the contending Parties with regard to the inscription of the Temple of Preah Vihear in UNESCO's World Cultural Heritage List on 7 July 2008. In its request for interpretation (of 28 April 2011) of the Court's Judgment of 15 June 1962 in the case of the *Temple of Preah Vihear*, Cambodia stated:

> "It was therefore only from 2007, when steps were taken to have the Temple of Preah Vihear declared a World Heritage site [by UNESCO], that the issue of a territorial claim by Thailand emerged (. . .)." (Application instituting proceedings, p. 15, para. 15.)

83. And Cambodia referred, in this connection, to the recent hostilities which ensued there from:

> "the recent period has been marked by a serious deterioration in relations between them, the origin of which may be found in the opening of discussions within UNESCO to have the Temple declared a World Heritage site.
>
> The Temple was included on the List of World Heritage sites by UNESCO on 7 July 2008, despite strong opposition from Thailand. As from 15 July 2008, large numbers of Thai soldiers crossed the bor-

> der and occupied an area of Cambodian territory near the Temple, on the site of the Keo Sikha Kiri Svara Pagoda (. . .). This Pagoda was built by Cambodia in 1998 and had not previously given rise to any protest from Thailand (. . .).” (Application instituting proceedings, p. 13, paras. 13-14.)

84. Cambodia singled out, in particular, “the serious incidents of 15 July 2008” (*ibid.*, p. 15, para. 16), and added that, “[i]n these various incidents between 2008 and 2011, architectural features of the Temple have been damaged, leading to inquiries and reports by the UNESCO authorities (. . .)” (*ibid.*, p. 29, para. 35). Furthermore, in its request for provisional measures of 28 April 2011, Cambodia asked the Court to order the withdrawal of troops and the prohibition of any military activities in “the zone of the Temple of Preah Vihear”, given the urgency and the “gravity of the situation” (*ibid.*, pp. 9-11, paras. 7-9). Last but not least, Cambodia stated, in its pleadings of 30 May 2011 before the Court, that “following the designation of the Temple of Preah Vihear as a UNESCO World Heritage Site on 7 July 2008, Thailand decided to dispute that designation by force of arms within a unilaterally defined area close to the Temple”; hence the “armed incidents” which followed, on 15 July 2008, that is, “immediately after the inscription of the Temple in the World Heritage of UNESCO on 7 July 2008”[65].

85. For its part, Thailand addressed this particular issue in its pleadings before the Court, of 30-31 May 2011. Thailand began by admitting clearly and frankly, in its pleadings of 30 May 2011, that it accepts the Court’s Judgment of 15 June 1962 in the case of the *Temple of Preah Vihear*:

> “despite the fact that the Temple is a very important cultural and historical symbol for its people. This explains why the Court’s decision provoked consternation and ill feeling in Thailand at all levels of society, to the extent that for some it became a national trauma, which is still manifesting itself today in various ways.”[66]

86. In its following pleadings of 31 May 2011, turning to the inscription of the “Temple of Preah Vihear” on UNESCO’s World Cultural Heritage List, Thailand deemed it fit to add:

> “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.”[67]

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[65] CR 2011/13, of 30 May 2011, pp. 32, 39-40, para. 6. *[Translation.]*
[66] CR 2011/14, of 30 May 2011, p. 3, para. 3. *[Translation.]*
[67] CR 2011/16, of 31 May 2011, p. 26, para. 4.

87. To Thailand, thus, the inscription of the Temple of Preah Vihear on the World Cultural Heritage List of UNESCO, at the 32nd Session of the World Heritage Committee (Quebec City, 2008), became a matter of concern regarding its border with Cambodia in the area in the vicinity of the Temple. The Temple itself was in the middle of the controversy, which seems to have been reignited by the Temple's inscription in the aforementioned List of UNESCO, as a result of Cambodia's Application. Thailand expressly admitted its resentment, going back to the Court's Judgment of 15 June 1962 (cf. *supra*).

88. Here we are faced with the time element again. Resentment flows with the passing of time; it may last for a short time, months or years, or it may prolong for a much longer time, decades, passing on from one generation to another, or even centuries. History is full of examples illustrating such prolongation in time[68]. Here, again, simple chronological time does not help much in assessing each situation, as the "horizontal" approach of chronological time does not reveal the depth of the problem of resentment in each historical situation[69]. What is important here is to be attentive to the complexities of the relationship between time and law, in the settlement of international disputes.

89. It has recently been pointed out, rightly and with due sensitivity, that:

> "A travers la protection des biens culturels, ce ne sont donc pas seulement des monuments et des objets que l'on cherche à protéger, c'est la mémoire des peuples, c'est leur conscience collective, c'est leur identité, mais c'est aussi la mémoire, la conscience et l'identité de chacun des individus qui les composent. Car en vérité, nous n'existons pas en dehors de notre famille et du corps social auquel nous appartenons.
>
> Fermez les yeux et imaginez Paris sans Notre-Dame, Athènes sans le Parthénon, Gizeh sans les Pyramides, Jérusalem sans le Dôme du Rocher, la Mosquée Al-Aqsa ni le Mur des Lamentations, l'Inde sans le Taj Mahal, Pékin sans la Cité interdite, New York sans la statue de la Liberté. Ne serait-ce pas un peu de l'identité de chacun de nous qui nous serait arrachée?"[70]

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[68] Cf., e.g., Marc Ferro, *El Resentimiento en la Historia* (*Le ressentiment dans l'histoire*, 2007), Madrid, Ed. Cátedra, 2009, pp. 9-187.

[69] Cf. *ibid.*, p. 185. Some decades ago, in his endeavours to elaborate a phenomenology and sociology of resentment, Max Scheler identified factors which had to do with the structure of the society concerned, or else with the individuals within it, and the prevailing articulation of values in it, at a given historical moment; M. Scheler, *L'homme du ressentiment* (1912), Paris, Gallimard, 1933, p. 36, and cf. pp. 48, 55-57, 88-89 and 189-190.

[70] Or, in the other official language of the Court,

> "by protecting cultural property, one is attempting to protect not only monuments and objects, but a people's memory, its collective consciousness and its identity, and indeed the memory, consciousness and identity of all the individuals who make up that people. Ultimately, we do not exist outside of our families and the social frameworks to which we belong.
>
> Close your eyes and imagine Paris without Notre Dame, Athens without the Parthenon, Giza without the Pyramids, Jerusalem without the Dome of the Rock,

Other examples could be referred to the same effect, such as, *inter alia*, e.g., Moscow without the Red Square and St. Basil's Cathedral, Rio de Janeiro without the Statue of Christ the Redeemer, Samarkand without the Registan and the Gur Emir, Guatemala without Antigua and Tikal, Rome without the Coliseum, Peru without Machu-Picchu, and so forth. The examples abound, in every continent, all over the world.

90. The universal value of the Temple of Preah Vihear was brought before the attention of the World Heritage Committee (2007-2008), established by the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage[71]. The Temple of Preah Vihear was inscribed as a UNESCO World Heritage Site on 7 July 2008, at the 32nd Session of the World Heritage Committee, held in Quebec City, Canada (2-10 July 2008). The nomination of the Temple[72] had been before the World Heritage Committee also at its previous 31st Session, held in Christchurch, New Zealand (23 June to 2 July 2007), when it was evaluated[73].

91. The Temple of Preah Vihear was regarded as an outstanding masterpiece of Khmer art and architecture, disclosing the highpoint of a significant stage in human history (in the first half of the eleventh century), and the capacity of the Khmer civilization to make use of that site — one of difficult access — over a long period. Particularly impressive was con-

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the Al-Aqsa Mosque and the Wailing Wall, India without the Taj Mahal, Peking without the Forbidden City, New York without the Statue of Liberty. Would we not all have lost part of our identities?"

F. Bugnion, "La genèse de la protection juridique des biens culturels en cas de conflit armé", 86 *Revue internationale de la Croix-Rouge* (2004), note 854, p. 322.

[71] Article 8 (1). The 1972 Convention expresses its concern with the deterioration of the cultural and natural heritage, "to be preserved as part of the world heritage of mankind as a whole" (preamble, paras. 1-2 and 6). To that effect, it calls for the establishment of "an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis" (preamble, para. 8). The 1972 Convention asserts the duty of co-operation of the international community as a whole (Article 6 (1)). Moreover, each State party undertakes not to take any "deliberate measures" which "might damage directly or indirectly" the cultural and natural heritage "on the territory of other States parties" (Art. 6 (3)). The UNESCO Convention further provides for the establishment of the World Heritage List (Art. 11 (2)), and, in addition, of a list of World Heritage in Danger (as a result of various causes, including, *inter alia*, "the outbreak or the threat of an armed conflict" — Art. 11 (4)). The World Heritage Committee is also to consider requests for international assistance to property forming part of cultural or natural heritage (Art. 13 (1)). The 1972 Convention further provides for the creation of a World Heritage Fund (Art. 15).

[72] Made by Cambodia, though Thailand had sought a joint nomination.

[73] Cf. UNESCO/World Heritage, documents WHC-07/31.COM/8B-8B.1 (2007); and WHC-07/31.COM/24 (2007). For the UNESCO guidelines for the inscription on the World Heritage List and the corresponding monitoring of the properties at issue, cf. UNESCO, *Operational Guidelines for the Implementation of the World Heritage Convention*, document WHC.08/01, of January 2008, pp. 30-53, paras. 120-198.

sidered the position of the Temple on a high cliff edge site, 547 metres above the Cambodian Plain, close to the border with Thailand.

92. At the time I write this separate opinion, shortly before the adoption of the present Order of provisional measures of protection of the Court, there are 34 properties around the world that the World Heritage Committee has decided to include on the List of World Heritage in Danger, in accordance with Article 11 (4) of the 1972 UNESCO Convention. The fact that the Temple of Preah Vihear does not appear in this particular List in no way can be construed as meaning that it does not have "an outstanding universal value for purposes other than those resulting from inclusion" therein, as warned by Article 12 of the 1972 Convention.

93. This provision appears interrelated with that of Article 4 of the 1972 Convention, on the obligation of each State party to secure the protection, conservation and transmission to future generations of the cultural heritage situation in its territory. The prohibition of destruction of cultural heritage of an outstanding universal value and great relevance for humankind is arguably an obligation *erga omnes*[74].

94. The Temple, while being inscribed as a UNESCO World Heritage Site, was seen as inextricably linked to its landscape — the cultural, the spiritual and the natural dimensions appearing together. The three surrounding peaks have been taken to reflect the Hindu divine triad of Vishnu, Shiva and Brahma. The Temple of Preah Vihear was considered to have an outstanding universal value, testifying to the Khmer genius for domesticating the local territory, and adapting the construction on it to the landscape.

95. UNESCO itself has been attentive to the recent hostilities in the zone in the vicinity of the Temple of Preah Vihear. Its Special Envoy for Preah Vihear (Mr. K. Matsuura) recently met Thai and Cambodian authorities, to consider ways to safeguard the World Heritage Site of the Temple of Preah Vihear, during his visits to Bangkok and Phnom Penh between 27 February and 1 March 2011. The Special Envoy stressed the need to set up a lasting dialogue between the two States so as to create the conditions necessary for the safeguarding of the Temple of Preah Vihear, and for establishing long-term sustainable conservation of the Site[75].

XI. Provisional Measures of Protection: Beyond the Strict Territorialist Approach

96. As already pointed out, given the circumstances of the present case of the *Temple of Preah Vihear*, the gravity of the situation, the probability

[74] Cf., to this effect, F. Francioni and F. Lenzerini, "The Destruction of the Buddhas of Bamiyan and International Law", 14 *European Journal of International Law* (2003), pp. 634 and 638, and cf. p. 631.

[75] UNESCO, "*UNESCO Special Envoy for Preah Vihear Meets Thai and Cambodian Leaders*", Paris, UNESCO Press, 2 March 2011, p. 1.

or imminence of irreparable harm, and the resulting urgency, the Court has rightly indicated provisional measures of protection. To that end, it has established a provisional demilitarized zone, in the vicinity of the Temple of Preah Vihear. Yet, though the Court has taken the correct decision in the present Order, it has done so pursuant to a reductionist reasoning. In laying the grounds for its decision to order the provisional measures, the Court was attentive essentially to territory, although the case lodged with it goes well beyond it.

97. Despite the wealth of information placed before it by the Parties concerning the fate and the need of protection of *people in territory*, the Court repeatedly insisted on respect for "sovereignty" and "territorial integrity" (Order, paras. 35, 39 and 42), and on protection of "rights to sovereignty" (*ibid.*, para. 44). Instead of *bringing people and territory together*, expressly, for the purpose of protection, as in my view it should, the Court has preferred to rely on its traditional outlook, utilizing the conceptual framework and the language it is used to, and refusing to behold, and give concrete expression to, any other factors beyond territorial integrity and sovereignty. This is certainly to be regretted, as the Court should be prepared, in our days, to give proper weight to the *human factor*.

98. On an earlier occasion, in the case of the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria) (Order of 15 March 1996*, *I.C.J. Reports 1996 (I)*), as I have already pointed out[76], the Court, faced with the victimization of human beings resulting from armed conflicts of greater intensity, expressly conceded that the rights at issue concerned *also persons* (*I.C.J. Reports 1996 (I)*, p. 22, para. 39). I would say that, in those grave circumstances, they concerned, for the purpose of provisional measures of protection, *mainly persons*, human beings, who were killed.

99. In the present Order of provisional measures in the case of the *Temple of Preah Vihear*, the traditional and unsatisfactory territorialist outlook pursued by the Court leads it to state, e.g., that

> "the rights which Cambodia claims to hold under the terms of the 1962 Judgment in the area of the Temple might suffer irreparable prejudice resulting from the military activities in the area and, in particular, from the loss of life, bodily injuries and damage caused to the Temple and the property associated with it" (Order, para. 55).

Not everything can be subsumed under territorial sovereignty. The fundamental human right to life is not at all subsumed under State sovereignty. The human right not to be forcefully displaced or evacuated from one's home is not to be equated with territorial sovereignty. The Court needs to adjust its conceptual framework and its language to the new needs of

[76] Cf. paragraph 73, *supra*.

protection, when it decides to indicate or order the provisional measures requested from it.

100. If we add, to the aforementioned, the protection of cultural and spiritual world heritage (cf. *supra*), for the purposes of provisional measures, the resulting picture will appear even more complex, and the strict territorialist approach even more unsatisfactory. The *human factor* is the most prominent one here. It shows how multifaceted, in these circumstances, the protection provided by provisional measures can be. It goes well beyond State territorial sovereignty, *bringing territory, people and human values together*.

XII. Final Considerations, *Sub Specie Aeternitatis*

101. When we come to consider cultural and spiritual world heritage, there is still one remaining aspect, which I deem it fit to dwell upon, however briefly, in this separate opinion: I refer in particular to the protection of the *spiritual* needs of human beings. Such protection is brought to the fore by the safeguard of cultural and spiritual world heritage, as raised, *inter alia*, in the present case of the *Temple of Preah Vihear*. Here we come back to timelessness (cf. *supra*), and we are led, ultimately, to considerations from the perspective of eternity *(sub specie aeternitatis)*.

102. In this respect, it may be recalled that the needs of protection of people comprise all their needs, starting with the protection of the fundamental right to life in its wide dimension (i.e., the right *to live* with dignity, e.g., not to keep on being forcefully and suddenly evacuated from one's home), and also including their *spiritual* needs. In this connection, may I further recall that the judgment of 15 June 2005 (merits and reparations) of the IACtHR in the case of the *Moiwana Community* v. *Suriname*, in addressing the massacre of the N'djukas of the Moiwana village and the drama of the forced displacement of the survivors, duly valued the relationship of the N'djukas in Moiwana with their traditional land as being of "vital spiritual, cultural and material importance", also for the preservation of the "integrity and identity" of their culture[77].

103. In my extensive separate opinion appended to that judgment, I recalled what the surviving members of the Moiwana Community pointed out before the IACtHR[78], namely, that the massacre at issue perpetrated in Suriname in 1986, planned by the State, had "destroyed the cultural tradition (. . .) of the Maroon communities in Moiwana" (para. 80). Ever

[77] The Court warned that "[l]arger territorial land rights are vested in the entire people, according to N'djuka custom; community members consider such rights to exist in perpetuity and to be unalienable" (para. 86 (6)).

[78] In the public hearing of 9 September 2004.

since this has tormented them, as they were unable to give a proper burial to the mortal remains of their beloved ones (paras. 13-22). Their suffering projected itself in time, for almost two decades (paras. 24-33). In their culture, mortality had an inescapable relevance to the living, the survivors (paras. 41-46), who had duties towards their dead (paras. 47-59). Duties of the kind — I added in the same separate opinion (paras. 60-61) — were present in the origins of the law of nations itself, as pointed out, in the seventeenth century, by Hugo Grotius in Chapter XIX of Book II of his classic work *De Jure Belli ac Pacis* (1625)[79].

104. In the case of the *Moiwana Community*, I sustained in my aforementioned separate opinion the configuration, beyond moral damage, of a true *spiritual damage* (paras. 71-81), and, beyond the *right to a project of life*, I dared to identify what I termed the *right to a project of after-life*:

> "The present case of the *Moiwana Community*, in my view, takes us even further than the emerging right to the project of life. (. . .) I can visualize, in the griefs of the N'djukas of the Moiwana village, a claim to the *right to the project of after-life*, taking into account the living in the relations with their dead, altogether. International law in general, and the international law of human rights in particular, cannot remain indifferent to the spiritual manifestations of human beings (. . .). There is no cogent reason to remain in the world exclusively of the living. In the *cas d'espèce*, it appears to me that the N'djukas are certainly well entitled to cherish their project of after-life, the encounter of each of them with their ancestors, the harmonious relationship between the living and their dead. Their outlook of life and after-life embodies fundamental values (. . .)." (Paras. 67-70.)

105. I turned next to what I termed the *spiritual damage*, which I sought to elaborate conceptually as:

> "an aggravated form of moral damage, which has a direct bearing on what is most intimate to the human person, namely, her inner self, her beliefs in human destiny, her relations with their dead. This *spiritual damage* would of course not give rise to pecuniary reparations, but rather to other forms of reparation. The idea is launched herein, for the first time ever, to the best of my knowledge. (. . .) This new category of damage — as I perceive it — embodies the principle of humanity in a temporal dimension, encompassing the living in their relations with their dead, as well as the unborn, conforming the future generations. (. . .) The principle of *humanitas* has, in fact, a long historical projection, and owes much to ancient cultures (in particular

[79] Dedicated to the "right to burial", inherent to all human beings, in conformity with a precept of "virtue and humanity"; H. Grotius, *Del Derecho de la Guerra y de la Paz* [1625], Vol. III (Books II and III), Madrid, Edit. Reus, 1925, pp. 39, 43 and 45, and cf. p. 55.

to that of the Greeks), having become associated in time with the very moral and spiritual formation of human beings."[80] (Paras. 71-73.)

106. I further recalled, in my separate opinion, that the testimonial evidence produced before the IACtHR in the *cas d'espèce* indicated that, in the N'djukas cosmovision, in circumstances like those of the present case, "the living and their dead suffer together, and this has an intergenerational projection". Unlike moral damages, in my view, the *spiritual damage* was not susceptible of "quantifications", and could only be repaired, and redress be secured, by means of obligations of doing *(obligaciones de hacer)*, in the form of *satisfaction* (e.g., honouring the dead in the persons of the living) (para. 77)[81]. In fact, the expert evidence produced before the Court indeed referred expressly to "spiritually-caused illnesses"[82]. I then concluded, in my separate opinion, on this particular point, that:

"All religions devote attention to human suffering, and attempt to provide the needed transcendental support to the faithful; all religions focus on the relations between life and death, and provide distinct interpretations and explanations of human destiny and after-life[83]. Undue interferences in human beliefs — whatever religion they may be attached to — cause harm to the faithful (. . .). [S]uch harm (. . .)

[80] G. Radbruch, *Introducción a la Filosofia del Derecho*, 3rd ed., Mexico/Buenos Aires, Fondo de Cultura Económica, 1965, pp. 153-154.

[81] It should be kept in mind — I proceeded — that, in the present case of the *Moiwana Community*, as a result of the massacre of 1986,

"the whole community life in the Moiwana village was disrupted; family life was likewise disrupted, displacements took place which last until now (almost two decades later). The fate of the mortal remains of the direct victims, the non-performance of funerary rites and ceremonies, and the lack of a proper burial of the deceased, deeply disrupted the otherwise harmonious relations of the living N'djukas with their dead. The grave damage caused to them, in my view, was not only psychological, it was more than that: it was *a true spiritual damage*, which seriously affected, in their cosmovision, not only the living, but the living with their dead altogether." (Para. 78.)

Moreover,

"the resulting impunity, in the form of a generalized and sustained violence (increased by the sense of indifference of the public power to the fate of the victims) (. . .), has generated, in the members of the *Moiwana Community*, a sense of total defencelessness. This has been accompanied by their loss of faith in human justice, the loss of faith in law, the loss of faith in reason and conscience governing the world." (Para. 79.)

[82] Paragraphs 80 *(e)* and 86 (9) of the IACtHR judgment.

[83] Cf., e.g., [Various Authors], *Life after Death in World Religions*, Maryknoll, N.Y., Orbis, 1997, pp. 1-124.

> is to be duly taken into account, like other injuries, for the purpose of redress. *Spiritual damage*, like the one undergone by the members of the *Moiwana Community*, is a serious harm, requiring corresponding reparation, of the (non-pecuniary) kind I have just indicated. (. . .)
>
> The N'djukas had their right to the project of life, as well as their *right to the project of after-life*, violated, and continuously so, ever since the State-planned massacre perpetrated in the Moiwana village on 29 November 1986. They suffered material and immaterial damages, as well as spiritual damage. (. . .) In sum, the wide range of reparations ordered by the Court in the present judgment in the *Moiwana community* case (. . .) has concentrated on, and enhanced the centrality of, the position of the victims — as well as on devising a wide range of possible and adequate means of redress. In the *cas d'espèce*, the collective memory of the Maroon N'djukas is hereby duly preserved, against oblivion, honouring their dead, thus safeguarding their right to life *lato sensu*, encompassing the right to cultural identity, which finds expression in their acknowledged links of solidarity with their dead." (Paras. 81 and 91-92.)

107. In my following separate opinion in the same case of the *Moiwana Community* (interpretation of judgment, of 8 February 2006), I insisted on the need of reconstruction and preservation of cultural identity (paras. 17-24) of the members of the community, on which the *project of life and of post-life* of each member of the community much depended. In fact, the understanding has been manifested within UNESCO to the effect that the assertion and preservation of cultural identity (including that of minorities) contributes to the "liberation of the peoples"; cultural identity has thus been regarded as "a treasure which vitalizes mankind's possibilities for self-fulfillment by encouraging every people and every group to seek nurture in the past, to welcome contributions from outside compatible with their own characteristics, and so to continue the process of their own creation"[84]. In this new separate opinion, I expressed my own understanding of the pressing need to redress the *spiritual damage* caused to the N'djukas of the Moiwana Community, and to create the conditions for the prompt reconstruction of their cultural tradition (para. 19)[85].

108. In the present case of the *Temple of Preah Vihear* before the ICJ, it is indeed a pity that a temple that was built with inspiration in the first half of the eleventh century, to assist in fulfilling the religious needs of human

[84] J. Symonides, "UNESCO's Contribution to the Progressive Development of Human Rights", 5 *Max Planck Yearbook of United Nations Law* (2001), p. 317.

[85] To that end — I added —, the delimitation, demarcation, issuing of title and return of their traditional land were essential. This was "a question of survival of the cultural identity of the N'djukas, so that they may conserve their memory, at personal as well as collective levels. Only thus one will be duly giving protection to their fundamental right to life *lato sensu*, comprising their cultural identity." (Para. 20.)

beings, and which is nowadays — since the end of the first decade of the twenty-first century — regarded as integrating the world heritage of humankind, becomes now part of the bone of contention between the two bordering States concerned. This seems to display the worrisome frailty of the human condition, anywhere in the world, in that individuals appear prepared to fight each other and to kill each other in order to possess or control what was erected in times past to help human beings to understand their lives and their world, and to relate themselves to the cosmos.

109. Such relationship, by the way, is what is conveyed by the very term *religion* (deriving from the Latin *re-ligare*), assisting each human being in attaining his connection with the cosmos he barely understands, so as to find peace for himself. This leads to yet another aspect of the *cas d'espèce*, as I perceive it, to be referred to herein, in relation to the context of the Order which the Court adopts today, 18 July 2011. Religions are a complex matter, deserving of close and respectful attention; it has been suggested some decades ago that, from a social perspective, they are more complex than scientific knowledge[86].

110. The relationship, in its distinct aspects, between different religions of the world and the law of nations *(le droit des gens)* itself, has been the object of constant attention throughout the last nine decades[87]. There have been studies focused on the influence of theology in the evolution of international legal doctrine[88]. The interest on the relationship between religions and the law of nations has remained alive lately. Some recent essays look back in time, focusing on the relationship between inter-

[86] Cf. Bertrand Russell, *Science et religion* (*Religion and Science*, 1935), Paris, Gallimard, 1957, p. 8.

[87] As attested, e.g., by the thematic courses devoted to the subject by the Hague Academy of International Law, with its universalist and pluralist outlook; cf., e.g., A. Hobza, "Questions de droit international concernant les religions", 5 *Recueil des cours de l'Académie de droit international de La Haye (RCADI)* (1924) pp. 371-420; G. Goyau, "L'Eglise catholique et le droit des gens", 6 *RCADI* (1925), pp. 127-236; M. Boegner, "L'influence de la réforme sur le développement du droit international", 6 *RCADI* (1925), pp. 245-321; J. Muller-Azúa, "L'œuvre de toutes les confessions chrétiennes (Eglises) pour la paix internationale", 31 *RCADI* (1930), pp. 299-388; K. N. Jayatilleke, "The Principles of International Law in Buddhist Doctrine", 120 *RCADI* (1967), pp. 445-563; H. de Riedmatten, "Le catholicisme et le développement du droit international", 151 *RCADI* (1976), pp. 121-158; P. Weil, "Le judaïsme et le développement du droit international", 151 *RCADI* (1976), pp. 259-335; P. H. Kooijmans, "Protestantism and the Development of International Law", 152 *RCADI* (1976), pp. 87-116; M. Charfi, "L'influence de la religion dans le droit international privé des pays musulmans", 203 *RCADI* (1987), pp. 329-454.

[88] Cf., e.g., Association internationale Vitoria-Suárez, *Vitoria et Suárez — Contribution des théologiens au droit international moderne*, Paris, Pedone, 1939, pp. 7-170; A. García y García, "The Spanish School of the Sixteenth and Seventeenth Centuries: A Precursor of the Theory of Human Rights", 10 *Ratio Juris*, University of Bologna (1997), pp. 27-29; L. Getino (ed.), *Francisco de Vitoria, Sentencias de Doctrina Internacional. Antología*, Madrid, Ediciones FE, 1940, pp. 15-130; C. A. Stumpf, *The Grotian Theology of International Law — Hugo Grotius and the Moral Foundations of International Relations*, Berlin, W. de Gruyter, 2006, pp. 1-243.

national law and religions in times past[89]. Others look forward in time, centering attention on the role of religions in the progressive development of international law[90]. Still others concentrate on topical aspects of that relationship[91].

111. Here we are taken back to timelessness again. In his inspiring essay of 1948 titled *Civilization on Trial*, Arnold J. Toynbee pondered that the works of artists and men of letters have outlived the deeds of soldiers, businessmen and statesmen; statues, poems and philosophical works have counted for more than the texts of laws and treaties, and the teachings of religious prophets and saints (of distinct religions of the world) have outlasted them all, as lasting benefactors of humankind[92].

112. Toynbee beheld a "unified world", working its way towards "an equilibrium between its diverse component cultures", resulting from the "encounters" between them as well as the religions of the world[93]. He was attentive to what he wisely termed the *encounters*[94] of civilizations (and religions), and he recalled, as examples in this connection:

> "Judaism and Zoroastrianism, which sprang from an encounter between the Syrian and Babylonian civilizations; Christianity and Islam, which sprang from an encounter between the Syrian and Greek

[89] Cf., e.g., D. J. Bederman, "Religion and the Sources of International Law in Antiquity", *Religion and International Law* (eds. M. W. Janis and C. Evans), Leiden, Nijhoff, 2004, pp. 1-26; V. P. Nanda, "International Law in Ancient Hindu India", *ibid.*, pp. 51-61; H. McCoubrey, "Natural Law, Religion and the Development of International Law", *ibid.*, pp. 177-189.

[90] Cf., e.g., M. Veuthey, "Religions et droit international humanitaire: histoire et actualité d'un dialogue nécessaire", *Religions et droit international humanitaire* (Colloque de Nice, June 2007; ed. A.-S. Millet-Devalle), Paris, Pedone, 2008, pp. 9-45; P. Tavernier, "La protection de l'exercice des religions par le droit international humanitaire", *ibid.*, pp. 105-118; M. C. W. Pinto, "Reflections on the Role of Religion in International Law", *Liber Amicorum In Memoriam of Judge J. M. Ruda* (eds. C. A. Armas Barea, J. A. Barberis *et alii*), The Hague, Kluwer, 2000, pp. 25-42.

[91] Cf., e.g., T. J. Gunn, "The Complexity of Religion and the Definition of 'Religion' in International Law", *Religion and Human Rights — Critical Concepts in Religious Studies* (ed. N. Ghanea), Vol. IV, London/N.Y., Routledge, 2010, pp. 159-187; T. van Boven, "Advances and Obstacles in Building Understanding and Respect between People of Diverse Religions and Beliefs", *bid.*, pp. 469-481; K. Hashemi, *Religious Legal Traditions, International Human Rights Law and Muslim States*, Leiden, Nijhoff, 2008, pp. 135-265 (on protection of religious minorities, and rights of the child); [Various Authors], *The Religious in Responses to Mass Atrocity* (eds. T. Brudholm and T. Cushman), Cambridge University Press, 2009, pp. 1-263.

[92] A. J. Toynbee, *Civilization on Trial*, Oxford University Press, 1948, pp. 4-5, 90 and 156.

[93] *Ibid.*, pp. 158-159.

[94] Rather than "clash", as some post-moderns say in our hectic days, without giving much thought to the matter, and with their characteristic and regrettable shallowness and prejudice.

civilizations; the Mahayana form of Buddhism and Hinduism, which sprang from an encounter between the Indian and Greek civilizations."[95]

Those were just a couple of examples of religions, in a long-term perspective, which appeared within the last 4000 years. Toynbee repeatedly referred to the "historically illuminating" *encounters* between civilizations, to "the time-span" of such "encounters between civilizations", with their "long-term religious consequences", seeking to bring improvement to "the conditions of human social life on Earth"[96].

113. Cultural and spiritual heritage appears more closely related to a *human context*, rather than to the traditional State-centric context; it appears to transcend the purely inter-State dimension, that the Court is used to. I have made this point also on other occasions, in the adjudication of distinct cases lodged with the Court. For example, two weeks ago, in the Court's Order of 4 July 2011 in the case of the *Jurisdictional Immunities of the State (Germany* v. *Italy)* (intervention of Greece), I sustained, in my separate opinion, that rights of States and rights of individuals evolve *pari passu* in contemporary *jus gentium* (*I.C.J. Reports 2011 (II)*, pp. 506-530, paras. 1-61), to a greater extent than one may prima facie realize or assume.

114. In any case, beyond the States are the human beings who organize themselves socially and compose them. The State is not, and has never been, conceived as an end in itself, but rather as a means to regulate and improve the living conditions of the *societas gentium*, keeping in mind the basic *principle of humanity*, amongst other fundamental principles of the law of nations, so as to achieve the *common good*. Beyond the States, the ultimate *titulaires* of the right to the safeguard and preservation of their cultural and spiritual heritage are the collectivities of human beings concerned, or else humankind as a whole.

115. As it can be inferred from the present case of the *Temple of Preah Vihear*, we are here in the domain of superior *human values*, the protection of which is not unknown to the law of nations[97], although not sufficiently worked upon in international case law and doctrine to date. It is beyond doubt that the States, as promoters of the *common good*, are under the duty of co-operation between themselves to that end of the safeguard and preservation of the cultural and spiritual heritage. I dare to nourish the hope that both Thailand and Cambodia, with their respectable, ancient cultures, will know how to comply jointly with the provisional measures of protection indicated by the Court in the Order it has just adopted today.

116. Half a century ago, the Court's Judgment of 15 June 1962 in the case of the *Temple of Preah Vihear* expressly stated, in its *dispositif*

[95] A. J. Toynbee, *op. cit. supra* note 92, p. 159.
[96] *Ibid.*, pp. 159, 215, 218-220 and 251.
[97] Cf., over half a century ago, e.g., S. Glaser, "La protection internationale des valeurs humaines", 60 *Revue générale de droit international public* (1957), pp. 211-241.

(para. 2), 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". The Temple is and remains the reference to "its vicinity" (from Latin *vicinitas*). The *zone* set up by the Court for the purpose of the provisional measures of protection indicated in the present Order, of 18 July 2011, encompasses the territory neighbouring (*vicinus* to) the Temple.

117. For the issue of the supervision of compliance by the States concerned with the present provisional measures of protection, the Court's Order, with the demilitarized *zone* set forth herein, encompasses, in my understanding, to the effect of protection, the people living in the said zone and its surroundings, the Temple of Preah Vihear itself, and all that it represents, all that comes with it from time immemorial, nowadays regarded by UNESCO as part of the cultural and spiritual world heritage. Cultures, like human beings, are vulnerable, and need protection. The universality of international law is erected upon respect for cultural diversity. It is reassuring that, for the first time in the history of this Court, provisional measures of protection indicated or ordered by it are, as I perceive them, so meaningfully endowed with a scope of this kind. This is well in keeping with the *jus gentium* of our times.

(Signed) Antônio Augusto CANÇADO TRINDADE.