SEPARATE OPINION OF JUDGE CANÇADO TRINDADE

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I. Introduction

1. I have concurred, with my vote, for the adoption by the International Court of Justice (ICJ), of the present *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)* [hereinafter *Temple of Preah Vihear*]. Although I stand in agreement with the Court's decision, not all the considerations that I regard as supporting it are explicitly developed and stated in the present interpretation of judgment. Given the great importance that I attach to them, I feel obliged to leave on the records the foundations of my own personal position thereon. I do so moved by a sense of duty in the exercise of the international judicial function.

2. I shall first dwell upon the essence of the resurfaced dispute before the Court, and then proceed to a couple of terminological and hermeneutic precisions. Next, I shall briefly recall the incidents (2007-2011) leading to Cambodia's concomitant requests for provisional measures of protection and for interpretation of the 1962 Judgment, and the parties' submissions as to the compliance with the Court's Order on provisional measures of protection. I shall do so on the basis of the Parties' submissions to the Court, in the course of the proceedings pertaining to the present interpretation of judgment.

3. After recalling the fundamental principles of international law at issue, I shall dwell upon the ineluctable relationship between *motifs* and *dispositif*. To this effect, I shall: first, proceed to an overview of the relevant case law of the Hague Court (PCIJ and ICJ) on the matter; secondly, I shall refer to the presence of reason and persuasion in the exercise of legal reasoning; and, thirdly, I shall stress the acknowledgment, throughout the centuries, of the relevance of sound legal reasoning, bearing witness to the close relationship between *motifs* and *dispositif*. The way will then be paved, last but not least, to the presentation of my concluding observations.

II. Essence of the Resurfaced Dispute before the Court

4. To start with, may I point out that the Parties themselves, in their submissions to the Court, addressed the essence of the resurfaced dispute before the ICJ, in the course of the proceedings pertaining to the present interpretation of judgment. Thus, in its oral arguments (of 15 April 2013) before the Court, Cambodia stated, as to the factual context, projected in time, of the dispute opposing it to Thailand, that:

> "Between 1970 and 2007, it became dormant, first because of the civil war in Cambodia, and then when Cambodians settled peacefully

around the Temple and its vicinity without any protest from Thailand except for occasional complaints about pollution. The dispute only re-emerged in 2007-2008 as a result of Thailand's objections to the inscription of the Temple as a World Heritage Site [of UNESCO], and the publication of Thailand's new 'secret' map (. . .). That map was protested by Cambodia after these incidents."[1]

5. In its Application instituting proceedings (of 28 April 2011), Cambodia further contended that

"Following the Paris Accords of 1991, the final ending of the conflict with the Khmer Rouge movement in 1998 and the consolidation of an effective, democratic government in Cambodia able to conduct normal and peaceful relations with its neighbours and beyond, steps were taken to initiate a bilateral process between Cambodia and Thailand which, had it functioned in the way that Cambodia hoped, would have led to a stable situation being established, whereby the implementation of the Court's 1962 Judgment would have been entirely possible. The principal means of achieving that was the process of demarcating the boundary between the two States (. . .). Had that process been successfully completed, as Cambodia wished, it would have removed *ipso facto* the possibility of a dispute such as that concerning interpretation of the territorial régime in the particular area where the Temple of Preah Vihear is situated. It was only following Thailand's opposition to the process of including the Temple on UNESCO's list of World Heritage sites in 2008 that it became clear to Cambodia that the demarcation process had no realistic chance of being completed without a clear and authorized interpretation from the Court as to the meaning and scope of the 1962 Judgment. Cambodia does not believe that the Court can look unfavourably on the fact that Cambodia explored every bilateral possibility before reaching the conclusion that a fundamentally different interpretation existed between itself and its neighbour as to the meaning and scope of the 1962 Judgment, which could only be settled by means of this request for interpretation."[2]

6. Both in its Application[3], as well as in its Response (of 8 March 2012)[4], Cambodia insisted on the point that only from 2007 (with the initiative to have the Temple of Preah Vihear declared a World

[1] Compte rendu (CR) 2013/1, of 15 April 2013, p. 74, para. 86.
[2] Application instituting proceedings, filed by Cambodia on 28 April 2011, p. 25, para. 30.
[3] *Ibid.*, paras. 12, 15 and 17.
[4] Response of Cambodia, paras. 2.9, 2.23, 2.90-2.91, 2.104 and 4.60.

Heritage site by UNESCO) and from 2008 (with the inclusion of the Temple in the World Heritage sites) onwards, the present dispute resurfaced; the Parties themselves reckoned that they differed in terms of their understanding of the Court's Judgment of 1962. For its part, Thailand, in its written observations of 21 November 2011[5], observed that the Court's Judgment of 1962, in deciding the question of sovereignty over the Temple of Preah Vihear, which it accepted, created a situation to be taken into account for the process of delimitation and demarcation of its common border with Cambodia, of the area surrounding the Temple.

7. Thailand further pointed out that in 2004 a joint Thai-Cambodian Council of Ministers had met in Bangkok to consider submitting a "joint nomination" to include the Temple on the UNESCO World Heritage List, but, "later that year, without informing Thailand, Cambodia made a unilateral request to UNESCO to list the Temple as a World Heritage Site"[6]. In its further written explanations (of 21 June 2012), Thailand added that Cambodia thereby hoped "to extend the meaning of the word 'vicinity'", found in the *dispositif* (para. 2) of the Court's Judgment of 1962, so as to put the Temple on UNESCO's World Heritage List and "to get around the indispensable co-operation of Thailand"[7].

8. Both Cambodia and Thailand retook their arguments in the oral phase (April 2013) of the proceedings before the Court. Cambodia contended that the registration of the Temple as a UNESCO World Heritage site was the starting-point for the "acts of armed aggression carried out by Thailand", against "a poorly armed Cambodia"[8]. Thailand, for its part, argued that Cambodia's "unilateral request for inscription of the Temple on the UNESCO World Heritage List in 2007 once again poisoned the situation"[9].

9. Besides the ICJ, the dispute at issue was also taken to the attention of the UN Security Council. It clearly flows from the arguments of the contending Parties in their letters of July 2008 to the President of the Security Council (Mr. Le Luong Minh) that their differences were expressed shortly after the inclusion of the Temple of Preah Vihear — upon the initiative of Cambodia — on the list of UNESCO World Heritage Sites. Thus, in its letter of 19 July 2008 to the President of the Security Council, the Permanent Mission of Cambodia to the United Nations complained of the "Thai military provocation" in seeking to

[5] Written observations of Thailand, paras. 4.69, 4.75, 4.110 and 7.1.
[6] *Ibid.*, para. 1.21.
[7] Further written explanations of Thailand, para. 5.5.
[8] CR 2013/1, of 15 April 2013, pp. 17-18, paras. 7-8. Cambodia further argued that Thailand had "never truly accepted the solution in the 1962 Judgment" of the Court (*ibid.*, p. 18, para. 9).
[9] CR 2013/3, of 17 April 2013, p. 63, para. 26.

create a *de facto* "overlapping area" which "legally does not exist on Cambodia soil", in breach of Cambodia's "sovereignty and territorial integrity"[10].

10. Thailand, for its part, in the letter of its Permanent Mission to the United Nations of 21 July 2008 to the President of the Security Council, after stating that the 1962 ruling of the ICJ "did not in any case determine the location of the boundary between Thailand and Cambodia", argued that "the issue before the ICJ in this case was limited solely to the question of the sovereignty over the region of the Temple of Preah Vihear" and that "the location of the boundary line in the area adjacent to the Temple of Preah Vihear is still to be determined by both countries in accordance with international law"[11].

11. It ensues, from the position of the two contending Parties (cf. also *infra*), that the present case of the *Temple of Preah Vihear* is not a case of delimitation, nor of demarcation, of frontier, but rather a case of territorial sovereignty. The ICJ Judgment of 15 June 1962 speaks indistinctly of "sovereignty over the region of the Temple of Preah Vihear"[12], of "sovereignty over the Temple area"[13], or else of "sovereignty over the Temple"[14] itself. The 1962 Judgment reiterates the interchangeable use of the terms "disputed region", "sovereignty over Preah Vihear", and "the Temple or Temple area"[15]. One cannot avoid the impression that a couple of terminological and hermeneutic precisions are called for (cf. *infra*).

12. Before turning to that, may I just add that, in my perception, this is a case of territorial sovereignty to be exercised to secure the safety of local populations under the respective jurisdictions of the two contending States, in the light of basic principles of international law, such as those of peaceful settlement of international disputes and of the prohibition of the threat or use of force (cf. Section VII, *infra*); it is, furthermore, a case of territorial sovereignty to be exercised by the State concerned, in cooperation with the other State concerned, as parties to the World Heritage Convention, for the preservation of the Temple at issue as part of the world heritage (reckoned as such in the UNESCO List) and to the (cultural) benefit of humankind.

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[10] Application instituting proceedings, Annex 2, pp. 42, 44.

[11] *Ibid.*, Annex 4, p. 86. Thailand added that

> "the inscription of the Temple of Preah Vihear on the World Heritage List shall in no way prejudice Thailand's rights regarding her territorial integrity and sovereignty as well as the survey and demarcation of land boundary in the area and Thailand's legal position" (*ibid.*, p. 88).

[12] *Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 14 (last paragraph).

[13] *Ibid.*, p. 17 (first paragraph), and cf. p. 29 (first paragraph).

[14] *Ibid.*, p. 21 (second paragraph).

[15] *Ibid.*, p. 36 (three paragraphs).

III. A Couple of Terminological and Hermeneutic Precisions

13. At this stage, may I briefly dwell upon a couple of terminological and hermeneutic precisions, to clarify further the essence of this resurfaced dispute before the Court, which appears to defy the passing of time. In the *dispositif* of its Judgment of 15 June 1962 the Court found that "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia" (para. 1); it further found, in consequence, 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" (para. 2)[16].

14. The first resolutory point of the *dispositif* leaves it clear that the dispute before it concerns territorial sovereignty, rather than delimitation or demarcation of frontier. As to the second resolutory point of the *dispositif*, one might have hoped that it would not have been somewhat vague, as it appears in the use of the term "vicinity", in indicating wherefrom Thai troops had to withdraw. Yet, this may have been done on purpose by the Court half a century ago.

15. The Court may well have decided to use a term not too narrowly circumscribed. Had the Court held the obligation to withdraw military troops or police forces precisely only as to the ground where the Temple, or its "ruins", stood, this could have led to a stricter interpretation that Thai troops could still be stationed right outside, or around, the walls of the Temple. This would have been impracticable, in hindering the access to the Temple of Cambodian non-military personnel. Thus, in my perception, while in its 1962 Judgment the Court did not precisely define the scope of the "vicinity" of the Temple, it seems important that the term "vicinity" be understood to comprise what is essential to guarantee the free access in and out of the Temple itself, the freedom of movement in and out of the Temple of non-military Cambodian personnel.

16. Furthermore, it seems likewise relevant that the term "vicinity", used in the second resolutory point of the *dispositif*, be understood also to describe the scope of the obligation to withdraw troops or police force in pursuance, on the part of both parties, of the fundamental principle of the prohibition of the threat or use of force, in the Temple itself, or in its "vicinity". It is somewhat ironical that it was the inscription by UNESCO of the Temple of Preah Vihear in the World Heritage List that led to the conflicts provoking the resurfacing of the present dispute before the ICJ, centred on the term "vicinity" as well as the obligation of "withdrawal" of military or police forces.

[16] *I.C.J. Reports 1962*, pp. 36-37.

17. The etymological origins of the verb "to withdraw/se retirer" go back to the late twelfth and the thirteenth centuries (from the Latin *retrahere*, to retract/se retirer). From then onwards, the verb is recorded to have been used in the sense of "to remove oneself from", or "to draw oneself away from", a place or a position[17]; the verb came to be used in respect of distinct situations, among which that of territorial sovereignty — not delimitation or demarcation of territory — as in the present resurfaced dispute before the Court, opposing Cambodia to Thailand. This is corroborated by the *dispositif* of the 1962 Judgment of the ICJ in the case of the *Temple of Preah Vihear (supra)*.

18. In the present interpretation of judgment, the ICJ has rightly pondered that

> "[o]nce a dispute regarding territorial sovereignty has been resolved and uncertainty removed, each party must fulfil in good faith the obligation which all States have to respect the territorial integrity of all other States. Likewise, the Parties have a duty to settle any dispute between them by peaceful means" (Judgment, para. 105).

In this connection, the Court has taken note that Thailand has commendably accepted that it has a *continuing obligation* to respect the integrity of Cambodian territory (*ibid.*, paras. 51 and 105), including that of the promontory of Preah Vihear.

IV. The Incidents (2007-2011) Leading to Cambodia's Requests for Provisional Measures of Protection and for Interpretation of the 1962 Judgment

19. A series of incidents, which took place in the period of 2007-2011 and prompted Cambodia's Requests for provisional measures of protection and for interpretation of the 1962 Judgment of the ICJ, are reported in its Application instituting proceedings, of 28 April 2011. On 17 May 2007 the Thai Prime Minister protested at Cambodia's zoning plan (issued on 10 November 2006) as part of its proposal to declare the Temple a

[17] Cf. *Dictionnaire historique de la langue française* (ed. Alain Rey), 3rd ed. Paris, Dictionnaires Le Robert, 2000, p. 1921; *The Oxford English Dictionary* (eds. J. A. Simpson and E. S. C. Weiner), 2nd ed., Vol. XX, Oxford, Clarendon Press, 1989, p. 450; *Barnhart Dictionary of Etymology* (eds. R. K. Barnhart and S. Steinmetz), N.Y., H. W. Wilson Co., 1988, p. 1241; *Dictionnaire étymologique et historique du français* (eds. J. Dubois, H. Mitterand and A. Dauzat), Paris, Larousse, 2007, p. 717; *The New Shorter Oxford English Dictionary on Historical Principles* (ed. L. Brown), Vol. 2, Oxford, Clarendon Press, 1993, p. 3704; *Legal Thesaurus* (ed. W. C. Burton), N.Y./London, Macmillan Publs., 1980, p. 514; *Vocabulaire juridique* (ed. G. Cornu), 8th ed., Paris, Association Henri Capitant/PUF, 2007, pp. 827-828; *Black's Law Dictionary* (ed. B. A. Garner), 9th ed., St. Paul/Mn., West/Thomson Reuters, 2009, p. 1739.

UNESCO World Heritage site. With the opening of discussions within UNESCO to have the Temple declared a World Heritage site, there followed a deterioration in relations between the two States concerned. As from 15 July 2008, "large numbers of Thai soldiers crossed the border and occupied an area of Cambodian territory near the Temple, on the site of the Keo Sikha Kiri Svara Pagoda"[18].

20. Thailand, likewise, in its written observations of 21 November 2011, acknowledged the occurrence of those incidents as from 2007[19]. Thailand contended that there was no evidence of non-compliance on its part of the Court's Judgment of 1962. In its perception,"[T]he border incidents that have occurred over recent years result from Cambodia seeking to assert authority over an area much greater than they have been content with in the past"[20].

21. The controversy over territorial sovereignty had indeed reemerged, and [this time] reached the UN Security Council on 21 July 2008[21]. In his letter of that date to the President of the UN Security Council (Mr. Le Luong Minh), the Permanent Representative of Thailand to the United Nations stated that the issue that had originally been brought before the ICJ for its Judgment of 1962 had been "limited solely to the question of the sovereignty over the region of the Temple of Preah Vihear", and not the determination of the boundary line in the "area adjacent to the Temple"; this latter still remained "to be determined by both countries in accordance with international law"[22].

22. Three months later, the President of the Security Council was informed by Cambodia's representative at the United Nations that "Thai troops [had] once again crossed the frontier at three locations" (Keo Sikha Kiri Svara Pagoda, Veal Intry and the hill of Phnom Trap, "inside Cambodian territory"), and had "opened fire on Cambodian soldiers", causing the death of two of them and injuries in two others (incident of 15 October 2008)[23]. Another armed incident of the kind occurred on 3 April 2009 (in Phnom Trap, Tasem and Veal Intry), in "the immediate vicinity of the Temple", causing damage in "the area around the Temple", including the stairway leading to it[24].

23. In the following year, the UN Secretary-General (Mr. Ban Ki-moon) offered (on 20 August 2010) his help to resolve the dispute between Cam-

[18] Application instituting proceedings, pp. 13 and 15, paras. 13-16.
[19] Thailand referred to facts going back to 2004-2005; cf. written observations of Thailand, pp. 13-14, paras. 1.26-1.27.
[20] *Ibid.*, p. 15, para. 1.30.
[21] Application instituting proceedings, p. 21, para. 25.
[22] *Ibid.*, Annex 4, p. 86, para. 4.1.
[23] *Ibid.*, p. 27, para. 33.
[24] *Ibid.*, para. 34.

bodia and Thailand[25], but unfortunately, from 4 to 7 February 2011, Thai troops, using "heavy artillery and fragmentation shells", caused "many casualties among the Cambodian armed forces and civilians", as well as "material damage to the Temple itself", leading to the Security Council's urging of a "permanent ceasefire" on 14 February 2011; the applicant State draws particular attention to the Security Council's statement of that date[26]. That UN Press Release was issued by the President of the Security Council (Mrs. Maria Luiza Ribeiro Viotti) on 14 February 2011, containing the following statement on the Cambodia/Thailand border situation:

> "The members of the Security Council were briefed by Under-Secretary-General B. Lynn Pascoe and by the Minister for Foreign Affairs of Indonesia, and Chair of the Association of South-East Asian Nations (ASEAN), Marty Natalegawa, on the situation on the border between Cambodia and Thailand.
>
> The members of the Security Council also heard from the Deputy Prime Minister and Minister for Foreign Affairs of Cambodia, Hor Namhong, and Minister for Foreign Affairs of Thailand, Kasit Piromya.
>
> The members of the Security Council expressed their grave concern about the recent armed clashes between Cambodia and Thailand.
>
> The members of the Security Council called on the two sides to display maximum restraint and avoid any action that may aggravate the situation. The members of the Security Council further urged the parties to establish a permanent ceasefire, and to implement it fully and resolve the situation peacefully and through effective dialogue.
>
> The members of the Security Council expressed support for ASEAN's active efforts in this matter and encouraged the parties to continue to co-operate with the organization in this regard. They welcomed the upcoming Meeting of Ministers for Foreign Affairs of ASEAN on 22 February."[27]

24. In its Application instituting proceedings, Cambodia referred to the incidents of early February 2011 as "a serious threat to peace and security in the region", as again stressed by the UN Secretary-General (Mr. Ban Ki-moon)[28]. The concern of UNESCO, for its part, expressed in the Report of 26 May 2009 of the UNESCO World Heritage Committee, was with strengthening "the protection and management of the World Heritage property" (cf. Annex 12). As further reported by Cambodia in its Application:

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[25] Application instituting proceedings, cf. Annex 8, UN Press Release of 20 August 2010, p. 151.

[26] *Ibid.*, p. 27, para. 34.

[27] *Ibid.*, Annex 9, UN Press Release of 14 February 2011, p. 152. [English official translation.]

[28] *Ibid.*, p. 29, para. 34.

> "In these various incidents between 2008 and 2011, architectural features of the Temple have been damaged, leading to inquiries and reports by the UNESCO authorities, which have recommended the convening of an international co-ordinating committee, as envisaged in the decision to list the site. (. . .) Following the serious incidents in early February 2011, the Director-General of UNESCO, Mrs. Irina Bokova, decided to send a mission to the site, together with a special envoy in the person of the former UNESCO Director-General, Mr. Koïchiro Matsuura."[29]

UNESCO's initiative, among others[30], purported to assess *in loco* the state of the Temple of Preah Vihear.

25. Another UN press release, of 23 April 2011, expressed the grave concern of the UN Secretary-General (Mr. Ban Ki-moon) with the new clashes between Cambodia and Thailand along their "common border":

> "United Nations Secretary-General Ban Ki-moon is troubled by reports of renewed fighting in the past two days between Cambodian and Thai troops along the two countries' common border, which has reportedly claimed numerous lives from both sides, said his spokesperson on Saturday.
>
> 'He had been encouraged by the initial signs of progress in regional efforts to strengthen bilateral mechanisms for dealing with the dispute between the two neighbours', the spokesperson added. 'The Secretary-General calls on both sides to exercise maximum restraint and to take immediate measures to put in place an effective and verifiable ceasefire.'
>
> Mr. Ban 'also believes the dispute cannot be resolved by military means and urges Cambodia and Thailand to engage in serious dialogue to find a lasting solution'.
>
> According to reports, six people died on Friday as a result of fighting along the border between Thailand and Cambodia, despite the ceasefire negotiated in February. Three Thai and three Cambodian soldiers lost their lives in these clashes and a further 19 — 13 Thais and six Cambodians — were injured.
>
> Thailand and Cambodia hold each other responsible for the gunfire, which took place close to the Temples of Ta Moan and Ta Krabei, some 150 km south-west of the Temple of Preah Vihear, where armed clashes claimed 11 lives two months ago, between 4 and 7 February."[31]

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[29] Application instituting proceedings, para. 35; and cf. *ibid.*, Annex 12, pp. 161-173.

[30] E.g., the European Parliament, likewise, adopted a resolution, on 17 February 2011, on the border clashes between Thailand and Cambodia (cf. *ibid.*, Annex 13, pp. 175-179).

[31] UN Press Release of 23 April 2011, reproduced in *ibid.*, Annex 11, p. 159. [English official translation.]

26. The situation brought to the knowledge of the Court on 28 April 2011 (for interpretation of its 1962 Judgment) was thus clearly that of a dispute, in my perception concerning mainly the *withdrawal* of forces from the Temple or its vicinity, in the light of general principles of international law, such as those of the prohibition of the threat or use of force, and of peaceful settlement of international disputes. The Cambodian Request for interpretation is ineluctably intermingled with the Cambodian Request for provisional measures, both having been prompted by the events which have occurred (as from 2007, and culminating in early 2011) in the Temple area and its vicinity.

27. Those incidents are to be much regretted. As I pondered in my separate opinion, in the Court's Order (of 18 July 2011) of provisional measures of protection in the *cas d'espèce*,

> "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 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." (*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), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, pp. 603-604, para. 108.)

V. The Provisional Measures of Protection of the ICJ of 2011

28. As a consequence of the eruption of armed hostilities between Thailand and Cambodia *(supra)*, the ICJ convened public sittings on 30 and 31 May 2011, and shortly afterwards issued its Order of provisional measures of protection, on 18 July 2011. In the present interpretation of judgment that the Court has just issued, it expressly refers (Judgment, para. 35) to its Order of provisional measures of 18 July 2011, related as it is to Cambodia's Request for interpretation of the 1962 Judgment, even though delivered without prejudice to the ICJ's present interpretation of judgment. The two Requests were lodged together with the Court by the applicant State. In the present interpretation of judgment, the ICJ has taken note of its Order of provisional measures (*ibid.*,

paras. 29 and 35-36), in order to address the Request for interpretation; it has thus made it clear that the two concomitant Requests cannot make abstraction of each other.

29. In its Order of provisional measures of 18 July 2011, the Court determined, as from the basic principle of the prohibition of the threat or use of force, enshrined into the UN Charter, the creation of a "provisional demilitarized zone" around the Temple of Preah Vihear and in the proximities of the frontier between the two countries, and the immediate withdrawal of their military personnel, and the guarantee of free access to the Temple of those in charge of supplies to the non-military personnel present therein. It further determined the retaking and pursuance of negotiations between them, aiming at the peaceful settlement of the dispute, so as not to allow its aggravation.

30. In my separate opinion, I endorsed the correct determination by the ICJ of the unprecedented creation of a "provisional demilitarized zone", whereby it seeks to protect, in my understanding, not only the territory at issue, but also the populations that live thereon, as well as the set of monuments found therein, conforming the Temple of Preah Vihear. This latter integrates, as from 2008, by decision of the World Heritage Committee of UNESCO, its World Heritage List, which constitutes the cultural and spiritual heritage of humankind (*I.C.J. Reports 2011 (II)*, pp. 588-598, paras. 66-95).

31. Beyond the classic territorialist outlook, I proceeded in my separate opinion, lies the *human factor*, calling for the protection, by the measures indicated or ordered by the ICJ, of the rights to life and personal integrity of the members of the local population, as well as the cultural and spiritual heritage of human kind (*ibid.*, pp. 598-606, paras. 96-113). Underlying this jurisprudential construction, I added, is the *principle of humanity*, orienting the search for improvement of the conditions of living of the population and the realization of the common good (*ibid.*, p. 606, paras. 114-115), in the ambit of the new *jus gentium* of our times (*ibid.*, p. 607, para. 117)[32]. In situations of the kind, one cannot consider the territory making abstraction of the local populations (and their cultural and spiritual heritage), who, in my view, constitute the most precious component of statehood.

32. In its aforementioned provisional measures of protection, the ICJ took into due account not only the territory at issue, but, jointly, the people on territory, i.e., the *protection of the population on territory*. In my aforementioned separate opinion, I pondered that, beyond the States, are

[32] And cf., for a comprehensive study, A. A. Cançado Trindade, *International Law for Humankind — Towards a New Jus Gentium*, 2nd ed., The Hague, Martinus Nijhoff/The Hague Academy of International Law, 2013, pp. 1-726.

the human beings who compose them (*I.C.J. Reports 2011 (I)*, p. 606, para. 114). In a case of this kind, seemingly only territorial, there is epistemologically no inadequacy to extend protection also to human life, and to the cultural and spiritual world heritage (the Temple of Preah Vihear), thus avoiding a *spiritual damage* (*ibid.*, p. 588, para. 66) — as I sought to conceptualize this latter in 2005, within the Inter-American Court of Human Rights (IACtHR), in my separate opinion in the case of the *Moiwana Community* v. *Suriname* (judgment of 15 June 2005).

33. In my separate opinion in the Court's Order of 18 July 2011 in the present case of the *Temple of Preah Vihear*, I deemed it fit to warn that, in effect, not everything in the *cas d'espèce* can be subsumed under territorial sovereignty (*I.C.J. Reports 2011 (II)*, p. 599, para. 99), as the provisional measures indicated by the Court encompassed the human rights to life and to personal integrity, as well as cultural and spiritual world heritage. In sum, the Court's Order went "well beyond State territorial sovereignty, *bringing territory, people and human values together*" (*ibid.*, p. 600, para. 100), well in keeping with the *jus gentium* of our times (*ibid.*, pp. 606-607, paras. 115 and 117).

VI. The Parties' Submissions as to the Compliance with the Order of the ICJ on Provisional Measures of Protection

34. As I have already mentioned, in my perception the Requests for provisional measures of protection and for interpretation of the 1962 Judgment appear interrelated (para. 28, *supra*). In all likelihood the Request for interpretation would not have been lodged with the Court if the aforementioned armed hostilities between Thailand and Cambodia had not occurred. Such armed hostilities form the factual context which originated the Request for interpretation as well as the Request for provisional measures of protection, and rendered necessary the adoption of those measures by the Court.

35. As from the Court's Order of 18 July 2011, the contending Parties were faced with the duty to comply with it, binding as such protective measures are. It should not pass unnoticed that, in the course of the proceedings before the ICJ as to the Request for interpretation, both Thailand and Cambodia deemed it fit to present to the Court their views concerning compliance with the Court's provisional measures[33]. The pre-

[33] They did so in compliance with resolutory point (C) of the ICJ's Order of 18 July 2011, in their correspondence sent to the Court, after its Order, from July 2011 until July 2012.

paredness of the Parties to do so is commendable, and significant, and should have been so acknowledged by the Court in the present Judgment in the case of the *Temple of Preah Vihear*, that the Court has just adopted.

36. The oral arguments of the two Parties, in the course of the proceedings of mid-April 2013 on the Request for interpretation, are revealing. Thailand expressed its understanding that the "most important purpose" which led to the adoption by the Court of its Order on provisional measures of protection was:

> "to prevent a recurrence of the loss of human life which unfortunately had taken place in the area. The Order also noted allegations of damage to property. Since the adoption of the Order, the ceasefire in the area, which Thailand and Cambodia had adopted before the Order, has continued. There has been no recurrence of armed incidents or loss of life; and there has been no damage to property. (. . .) [T]he situation on the ground is consistent with the purposes of the Order." [34]

37. Cambodia stated that it ascribed to the decision (on interpretation) that the Court was to render much importance, as it would "condition the relations between the two States", on which "depend the peace and security in the region" [35]. Thailand reiterated the "reality on the ground", after the Court's Order of provisional measures of protection, "is that the border is peaceful and calm, consistent with the intent of the Court's Order" [36]. Cambodia, for its part, submitted a different version of the facts, in pointing out that

> "bilateral negotiations on the withdrawal of troops from the Provisional Demilitarized Zone, in accordance with the provisional measures decided on by this Court on 18 July 2011, have failed (. . .). As a result, it has not been possible to put in place the Indonesian observers responsible, under the auspices of ASEAN, for monitoring the withdrawal of troops from the Temple area pending your final judgment." [37]

VII. The States' Duties to Refrain from the Threat or Use of Force and to Reach a Peaceful Settlement of the Dispute at Issue

38. I have already pointed out that, in the *cas d'espèce*, the dispute opposing Thailand to Cambodia concerns mainly the *withdrawal* of forces

[34] CR 2013/3, of 17 April 2013, pp. 22-23, para. 39.
[35] CR 2013/5, of 18 April 2013, p. 48.
[36] CR 2013/6, of 19 April 2013, p. 51.
[37] CR 2013/1, of 15 April 2013, pp. 18-19, para. 10. Cambodia further argued that the armed incidents by the border were "provoked" by Thailand as "reprisals to the inscription of the Temple in the World Heritage List of UNESCO" (*ibid.*, pp. 23-24, para. 6).

from the Temple or its vicinity, keeping in mind the general principles of international law of the prohibition of the threat or use of force, and of peaceful settlement of international disputes (para. 26, *supra*). In its present interpretation of judgment, that the Court has just adopted, it rightfully draws attention to *the principles of the Charter of the United Nations* (Judgment, para. 106), in particular those of importance in the present case of the *Temple of Preah Vihear* (cf. *supra*).

39. In fact, on other recent occasions the ICJ has likewise asserted, e.g., the State's duty of co-operation and peaceful settlement, in its Judgments in the case concerning *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)* (*I.C.J. Reports 2010 (I)*, pp. 105-106, para. 281); in the *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* case (*I.C.J. Reports 2010 (II)*, pp. 691-692, paras. 163-164); and in the case of the *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)* (*I.C.J. Reports 2011 (II)*, p. 644). In this last case, the ICJ *emphasized* that

> "the 1995 Interim Accord places the Parties under a duty to negotiate in good faith under the auspices of the Secretary-General of the United Nations pursuant to the pertinent Security Council resolutions with a view to reaching agreement on the difference described in those resolutions" (*ibid.*, p. 692, para. 166).

40. Such duty of peaceful settlement grows in importance in face of threats of, or actual recourse to, the use of force, in breach of a fundamental principle enshrined into Article 2 (4) of the UN Charter. The ICJ is "the principal judicial organ of the United Nations" (Article 92 of the Charter, and Article 1 of the Statute). Its Statute forms an *integral* part of the UN Charter. The ICJ is thus bound to make sure, in the settlement of inter-State disputes lodged with it, that the contending Parties abide by the fundamental principles enshrined into the UN Charter, such as those of non-use of force (Article 2 (4)) and of peaceful settlement of international disputes (Article 2 (3)).

41. The Court not only has an *inherent* faculty to do so, in the exercise of its functions; in effect, it is *bound* to do so, to secure compliance by States with the general principles of international law. May it be recalled that, almost four decades ago, the ICJ pondered, in its Judgment of 20 December 1974 in the *Nuclear Tests (Australia* v. *France)* case, that

> "the Court possesses an inherent jurisdiction enabling it to take such action as may be required (. . .). Such inherent jurisdiction (. . .) derives from the mere existence of the Court as a judicial organ established by the consent of States, and is conferred upon it in order that its basic judicial functions may be safeguarded."[38]

[38] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, pp. 259-260.

42. As to the significance of the general principles of international law, of prohibition of use or threat of force and of peaceful settlement of disputes, enshrined into the UN Charter (Article 2 (4) and (3)), suffice it here, in the present separate opinion, to refer to my considerations already developed in my previous separate opinion in the Court's Order (of 18 July 2011) in the present case of the *Temple of Preah Vihear*[39]. Earlier on, on six other occasions so far, I have likewise drawn attention to the relevance of general principles[40]. The necessary attention to those principles brings us closer to the domain of superior [higher] *human values*, to be safeguarded, not sufficiently worked upon in international case law and doctrine. It is, ultimately, those principles that inform and conform the applicable norms, and ultimately any legal system.

VIII. The Ineluctable Relationship between *Motifs* and *Dispositif*

43. Another particular issue that comes to the fore in the *cas d'espèce* is the relationship of the resolutory points of a judgment (in the *dispositif*) with the corresponding *motifs*. May it be recalled that, in its Judgment of 15 June 1962 in the present case of the *Temple of Preah Vihear*, the ICJ stated:

> "Referring finally to the Submissions presented at the end of the oral proceedings, the Court, for the reasons indicated at the beginning of the present Judgment, finds that Cambodia's first and second Submissions, calling for pronouncements on the legal status of the Annex I map and on the frontier line in the disputed region, can be entertained only to the extent that they give expression to grounds, and not as

[39] *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), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, separate opinion of Judge Cançado Trindade, paras. 72-81 and 114-115.

[40] Namely, in my separate opinion (paras. 8-113 and 191-217) in the case of the *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay) (I.C.J. Reports 2010 (I))*; in my separate opinion (paras. 177-211) in the Advisory Opinion on the *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (I.C.J. Reports 2010 (II))*; in my separate opinion (paras. 93-106) in the *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* case *(I.C.J. Reports 2010 (II))*; in my dissenting opinion (paras. 79-87) in the case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation) (I.C.J. Reports 2011 (I))*; in my separate opinion (paras. 28-51 and 82-100) in the Advisory Opinion on a *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development (I.C.J. Reports 2012 (I))*; and in my separate opinion (paras. 74-76) in the *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* case *(I.C.J. Reports 2012 (I))*.

> claims to be dealt with in the operative provisions of the Judgment. It finds on the other hand that Thailand, after having stated her own claim concerning sovereignty over Preah Vihear, confined herself in her Submissions at the end of the oral proceedings to arguments and denials opposing the contentions of the other Party, leaving it to the Court to word as it sees fit the reasons on which its Judgment is based.
>
> In the presence of the claims submitted to the Court by Cambodia and Thailand, respectively, concerning the sovereignty over Preah Vihear thus in dispute between these two States, the Court finds in favour of Cambodia in accordance with her third Submission. It also finds in favour of Cambodia as regards the fourth Submission concerning the withdrawal of the detachments of armed forces." (*I.C.J. Reports 1962*, p. 36.)

44. The Court then found that: (1) "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia"; and, in consequence, that: (2) "Thailand is under an obligation to withdraw any military or police forces, or other guards of keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory" (*ibid.*, pp. 36-37). Before laying down the resolutory points, the ICJ made a cross-reference to the reasons which led it to decide the way it did. This is not the first time that the relationship between such reasons and the resolutory points comes to the fore.

1. Overview of the Case Law of the Hague Court (PCIJ and ICJ) on the Matter

45. In fact, already in its time, the Permanent Court of International Justice (PCIJ) dwelt upon the matter at issue. Thus, in the case of the *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*, opposing Germany to Poland, the PCIJ observed that a difference of opinion should exist between the contending Parties as to the points, "decided with binding force", in the judgment at issue, for a request for interpretation be lodged with it under Article 60 of the Statute. Having said so, the PCIJ added:

> "That does not imply that it must be beyond dispute that the point the meaning of which is questioned is related to a part of the judgment having binding force. A difference of opinion as to whether a particular point has or has not been decided with binding force also constitutes a case which comes within the terms of the provision in question, and the Court cannot avoid the duty incumbent upon it of interpreting the judgment in so far as necessary, in order to adjudicate upon such a difference of opinion." (*Judgment No. 11, 1927, P.C.I.J., Series A, No. 13.*, pp. 11-12.)

46. In other words, the Court is not to restrict itself only to the operative part of the judgment, making abstraction of all its reasoning which led to it

and supports it. The Court is to bear it in mind, and take it into account whenever needed. Only in this way can it produce a proper interpretation clarifying — as it said — "the true meaning and scope" of its judgment at issue (*P.C.I.J., Series A No. 13*, p. 14). *Motifs* and *dispositif* cannot simply be dissociated from each other; they go together, the former setting the grounds on which the latter was established. Already at the time of the PCIJ, in the late twenties, this was the prevailing understanding on this particular point.

47. Years later, the ICJ, in its Judgment of 27 November 1950 on *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia* v. *Peru)*, stated that a request for interpretation of a judgment must aim solely at obtaining clarification on "the meaning and the scope of what the Court has decided with binding force" (*I.C.J. Reports 1950*, p. 402). In my view, if the operative part is not clear enough, the Court, in providing the interpretation requested, has to take into account the reasons set forth in the corresponding *motifs*.

48. The Court had the occasion to do this, half a century later, in its Judgment of 25 March 1999, on the *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon)*. The Court identified the reasons, set forth in the motifs (in two paragraphs of the previous judgment) which provided the grounds for the operative part of the judgment at issue, and were thus "inseparable" from that operative part (*I.C.J. Reports 1999 (I)*, p. 36, para. 11). The ICJ had warned that any request for interpretation (under Article 60 of the Statute) "must relate to the operative part of the judgment" and can only concern "the reasons for the judgment" in so far as "these are inseparable from the operative part" (*ibid.*, p. 36, para. 10).

49. Earlier on, in its Judgment of 10 December 1985 on the *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya)*, the ICJ recalled (*I.C.J. Reports 1985*, pp. 217-218, para. 46) the *célèbre obiter dictum* of the PCIJ in the *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)* case (cf. *supra*). Recently, in its Judgment of 19 January 2009 on the *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America)*, the ICJ referred to its *jurisprudence constante (supra)* in respect of requests for interpretation of judgments (*I.C.J. Reports 2009*, p. 10, para. 21). In sum, in my perception, there is indeed an ineluctable relationship between *motifs* and *dispositif*. Such relationship has not passed unnoticed in expert writing along the years[41].

[41] Cf., e.g., L. Cavaré, "Les recours en interprétation et en appréciation de la légalité devant les tribunaux internationaux", 15 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (1954), p. 488; E. Zoller, "Observations sur la révision et l'interprétation des sentences arbitrales", 24 *Annuaire français de droit international* (1978), p. 343; E. Decaux, "L'arrêt du 10 décembre 1985 de la Cour internationale de Justice sur la demande en revi-

2. Reason and Persuasion

50. Half a decade ago, in another international jurisdiction, I had the occasion, in my separate opinion appended to the interpretation of judgment of 2 August 2008 of the Inter-American Court of Human Rights (IACtHR), in the case of the *Prison of Castro-Castro* v. *Peru*, to ponder that *reason and persuasion* go together with the verdict. Resolutory points cannot be dissociated from the Court's reasoning which provides their foundations. Already in Aeschylus's *Eumenides* (458 BC), Athena felt the need — in announcing the creation, forever, of the *Areios Pagos* — to provide explanation for judicial decisions and to persuade as to their rightness. All international tribunals of our times devote their labour also to reason and persuasion in respect of their own judgments; the *meaning* and *extent* of their decisions can only be properly appreciated in the light of their reasoning — which brings to the fore the ineluctable subjective element of the judges' thinking (paras. 38-39, 41-42, 44 and 46).

51. The ICJ has been faced with this matter in the present interpretation of judgment, which it has just delivered, in the case of the *Temple of Preah Vihear*. In my understanding, the reasons which substantiate a resolutory point reached at by an international tribunal are regularly expounded in the *motifs* of its judgment at issue. There would be no sense in attempting to "separate" such *motifs* from the corresponding *dispositif*, and taking into account only this latter. The two go together. Is there any judgment where the operative part stands on its own? Not at all; this latter is regularly supported by the *motifs*. In saying what the law is (i.e., in exercising its *juris dictio*), an international tribunal is bound to determine the applicable law, and to expound its own understanding of the applicable law and of its application in the *cas d'espèce*. We are here, once again, faced with *reason and persuasion*.

3. The Everlasting Acknowledgment of the Relevance of Sound Legal Reasoning

52. The relevance of sound legal reasoning has been duly acknowledged since ancient times. In effect, the exercise of legal reasoning (i.e., the elaboration of the *motifs*/*la motivation*) has historical roots which go back, e.g., to ancient Roman law. In his fragments, Ulpian (*circa* 170-228 AD) took

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sion et en interprétation de l'arrêt du 24 février 1982 en l'affaire du *Plateau continental*", 31 *Annuaire français de droit international* (1985), p. 338; P. Dumberry, "Le recours en interprétation des arrêts de la Cour internationale de Justice et des sentences arbitrales", 13 *Revue québécoise de droit international* (2000), pp. 213 and 220; S. Rosenne, *Interpretation, Revision and Other Recourse from International Judgments and Awards*, Leiden, Martinus Nijhoff, 2007, pp. 94-95, 98-100 and 108-111.

juris-prudencia (from the verb *providere*) as referring to the *knowledge of what is just and unjust*; in dispensing justice, *jurisprudencia* was understood as teaching how justice was to be realized, besides showing that the procedure had been well followed[42]. His writings altogether, undertaken in the period 211-222 AD, are believed to have considerably contributed to Justinian's *Digest* (the main volume of his *Corpus Juris Civilis*, 529 to 534 AD)[43], providing not less than a third of its contents.

53. As from Ulpian's teaching, the *Digest* rendered certain maxims widespread, such as *"justitia est constans et perpetua voluntas suum cuique tribuere"* ("justice is the constant and perpetual will to give everyone his due"); or else, *"honeste vivere, alterum non laedere, suum cuique tribuere"* ("to live honourably, to harm no one, to give each one his due"). *Jurisprudencia* developed, elaborating on general principles; it started arising attention, having assumed a certain creative (Praetorian) role. Legal reasoning kept on attracting increasing attention in modern times, amidst widespread acknowledgment of its relevance.

54. The elaboration of sound legal reasoning, for its part, sought coherence and harmony, so as to avoid contradictions. It did not amount to a syllogism, nor did it exhaust itself in the simple identification of the applicable norms. It went further than that, encompassing interpretation, and recourse to sources of law (including principles, doctrine, and equity), bearing in mind human values[44]. Prudence played its role, in *jurisprudencia*. In such elaboration of sound legal reasoning, we are faced, once more, with reason and persuasion.

55. One can speak of the object of a judicial decision in two senses, namely: in a strictly procedural sense, it amounts to what has actually been decided (the *dispositif*); and in a material or substantial sense, it encompasses also what formed the matter of the *contentieux*. The judgment itself, in my understanding, encompasses not only the decision reached by the international tribunal (the *dispositif*), but also the reasoning of this latter, the indication of the sources of law it resorts to, the fundamental principles it relies upon, and other considerations that it deems fit to develop (the *motifs*). In effect, to my mind, *motifs* and *dispositif* form an organic, inseparable whole.

56. The issue became object of special attention in the legal doctrine of the nineteenth century, which upheld the view that the *dispositif* is to be

[42] J.-P. Andrieux, *Histoire de la jurisprudence — Les avatars du droit prétorien*, Paris, Vuibert, 2012, pp. 11, 13-14, 19, 23 and 161; and cf. pp. 241, 263, 281 and 284.

[43] Cf. T. Honoré, *Justinian's Digest: Character and Compilation*, Oxford University Press, 2010, pp. 5, 53, 74, 103, 119 and 142.

[44] Cf. [Various Authors], *Le raisonnement juridique* (ed. P. Deumier), Paris, Dalloz, 2013, pp. 25, 31, 33, 75, 95-98, 101, 109-110, 240, 246 and 268.

approached together with the reasoning (the *motifs*) which give support to it. This understanding then prevailed in civil procedural law (in countries of that legal tradition), before being transposed into the international legal procedure. According to an account of one of its exponents,

> "According to the well-known teaching of Savigny, the judgment is a sole and inseparable whole; there is, between the foundations and the *dispositif*, a relationship so intimate that ones and the other can never be dismembered if one does not wish to denaturalize the logical and juridical unity of the decision. This was the dominant idea in the last century (. . .)."[45]

57. With the passing of time, however, under the influence of legal positivism, a more simplistic view came to prevail, to the effect that only the *dispositif* forms the object of a judicial decision[46]. This argument sought to shift attention onto the terms of a judgment which were binding; it overvalued them, making abstraction of the other parts of the judgment. It was as if the operative part of a judgment could be severed from the other parts of it, and become binding by itself, independently of the whole reasoning developed by the tribunal in its support. It is not surprising that this superficial view became widespread, as it did not require much thinking.

58. Positivists, for example, tend characteristically to be very dogmatic in stating and insisting that the binding effect of a judgment attaches only to its operative part, i.e., its resolutory points, and does not extend to its reasoning. This is a strictly formalistic approach. The *res judicata* is thus brought into the picture, minimizing the reasoning supporting it. This is what — to recall but one illustration of this outlook — Judge Dionisio Anzilotti upheld in his dissenting opinion in the aforementioned case *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*; yet, as a learned jurist, Anzilotti, after so asserting, conceded:

> "When I say that only the terms of a judgment are binding, I do not mean that only what is actually written in the operative part constitutes the Court's decision. On the contrary, it is certain that it is almost always necessary to refer to the statement of reasons to understand clearly the operative part and above all to ascertain the *causa petendi*." (*Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 24, para. 2.)

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[45] E. J. Couture, *Fundamentos do Direito Processual Civil*, São Paulo, Saraiva, 1946, pp. 354-355; E. J. Couture, *Fundamentos del Derecho Procesal Civil*, 4th ed., Montevideo/Buenos Aires, Ed. B de F, 2002, p. 347 [my own translation].

[46] E. J. Couture, *Fundamentos do Direito . . .*, *op. cit. supra* note 45, pp. 355 and 358; *Fundamentos del Derecho . . .*, *op. cit. supra* note 45, pp. 348 and 350.

59. The reasoning or the *motifs* of a judgment can be freely resorted to, in the interpretation of any point or passage of the *dispositif* which requires clarification; in fact, it will be hardly possible to determine the exact scope of a *dispositif* without taking into account the reasoning (the *motifs*). They may indeed appear inseparable from each other, and there are even the *dispositifs* that deem it fit to make express cross-references to corresponding paragraphs of the *motifs*[47]. In the present interpretation of judgment, for example, resolutory point No. 2 of the *dispositif* expressly refers to paragraph 97 of the *motifs*.

60. Legal reasoning is not simply an intellectual output (of logic), as the search for justice is also moved by experience and social equity. As already indicated, the function of the judge is not reduced simply to produce syllogisms, far from it: jurisprudential construction goes further than that, it resorts to all available sources of law, it has a latitude of choice, it matches the facts with the applicable norms, and it tells what the law is, in the exercise of *juris dictio*. Legal reasoning counts on the subjective element of the judge's thinking.

61. In this respect, over half a century ago Piero Calamandrei used to recall that s*ententia* derives from *sentiment*, as indicated by etymology. He further warned that the subjects of law *(sujets de droit)* are not transformed into a *dossier* (as hinted by bureaucratic indifference), but remain "living persons". In legal reasoning, electronic machines will never replace human beings. The requisite of providing the *motifs (la motivation)* appears as the "rationalization of the sense of justice"[48]. The reasoning *(motifs)* of a judgment is thus important, besides being pedagogical: it "serves to demonstrate that the judgment is just, and why it is just"[49]. *Sententia* emanates from human conscience, moved by the sense of justice.

IX. Concluding Observations

62. I have now come to my concluding observations. It is not my intention to reiterate here the considerations I developed, in my separate opinion in the ICJ's Order of provisional measures of protection, of 18 July

[47] E. J. Couture, *Fundamentos do Direito* . . ., *op. cit. supra* note 45, pp. 357 and 360; *Fundamentos del Derecho* . . ., *op. cit. supra* note 45, pp. 349 and 351.

[48] P. Calamandrei, *Proceso y Democracia*, Buenos Aires, Ed. Jurídicas Europa-América, 1960, pp. 67, 80-81 and 125.

[49] *Ibid.*, pp. 116-117, and cf. p. 81.

2011, on the perennial issue of *time and law*[50]. In the present separate opinion, I now limit myself to refer to my reflections developed therein, with only one additional point. We all live and work *within time*, and the acceptance of the passing of time is one of the greatest challenges of human existence. In the present interpretation of judgment, the Court addressed with timidity (Judgment, para. 75) the effects of facts subsequent to the original judgment upon the requested interpretation of judgment. This requires, in my perception, a clarification.

63. In its present interpretation of judgment in the case of the *Temple of Preah Vihear*, the ICJ has repeatedly taken note of the facts, subsequent to its original Judgment of 1962 in the *cas d'espèce*, which have been brought to its attention by the contending Parties[51]. And it could not have done otherwise. Having done so, it undertook the exercise of providing the requested interpretation of the original 1962 Judgment, focusing on its *dispositif* together with the corresponding *motifs*. It stated that, in determining the meaning and scope of the resolutory points (or the *dispositif*) of the original 1962 Judgment, it had regard to the corresponding *motifs*, to the extent that its own pertinent reasoning shed light on the *dispositif* (*ibid.*, para. 68). It then clarified the meaning of the "vicinity" of the Temple of Preah Vihear (*ibid.*, paras. 97-98).

64. Already in its provisional measures of protection indicated in its Order of 18 July 2011 in the present case of the *Temple of Preah Vihear*, the Court — as I pointed out in my previous separate opinion — *brought together territory, people and human values*, well in keeping with the *jus gentium* of our times (*I.C.J. Reports 2011 (II)*, paras. 100, 114-115 and 117). And today, 11 November 2013, it does so again in the present interpretation of judgment, wherein it has deemed it fit to assert that

> "As is clear from the record of both the present proceedings and those of 1959-1962, the Temple of Preah Vihear is a site of religious and cultural significance for the peoples of the region and is now listed by UNESCO as a world heritage site (. . .). In this respect, the Court recalls that under Article 6 of the [1972] World Heritage Convention, to which both States are parties, Cambodia and Thailand must cooperate between themselves and with the international community in the protection of the site as a world heritage. In addition, each State is under an obligation not to take 'any deliberate measures which might damage directly or indirectly' such heritage." (Judgment, para. 106.)

[50] I have also dwelt upon this issue in my dissenting opinion (paras. 46-64 and 74-77) in the case of *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal) (I.C.J. Reports 2009)* followed by my separate opinion in the same case (paras. 145-157) *(I.C.J. Reports 2012 (II))*.

[51] Cf., to this effect, paragraphs 25, 39-40, 43-44 and 106 of the present Judgment.

65. In a proper inter-temporal dimension, the Court, in my perception, has thus endorsed the ongoing process of *humanization* of international law — to which I have been endeavouring to contribute, successively within two distinct international jurisdictions, since the mid-nineties[52]. A parallel between the Judgment of 1962 and the present interpretation of judgment of 2013 in the case of the *Temple of Preah Vihear* gives clear testimony of that. By giving its due to the preservation of world cultural heritage, parallel to the safeguard of territorial sovereignty, the Court is contributing to the avoidance of a *spiritual damage* (cf. paras. 32-33, *supra*).

66. It does so at the same time that it draws attention to the relevance of *general principles of international law*, such as of prohibition of use or threat of force and of peaceful settlement of disputes (paras. 38-39, *supra*). The necessary attention to those principles brings us closer to the domain of higher *human values*[53], shared by the international community as a whole. It is, ultimately, those principles that inform and conform the applicable norms. Without them, there is ultimately no legal system at all; hence their utmost importance, at both international and domestic levels.

67. After all, it is the fundamental principles that confer cohesion, coherence and legitimacy, and the ineluctable axiological dimension, to every legal system. In effect, general principles permeate the whole international legal order; they conform their *substratum*, being consubstantial to it. They give expression to the idea of an *objective justice*, above the will of individual States. They indicate, at last, the *status conscientiae* reached by the international community as a whole.

(Signed) Antônio Augusto CANÇADO TRINDADE.

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[52] For an account of my endeavours in this respect, in the international case law, from 1997-1998 onwards, cf. A. A. Cançado Trindade, *Los Tribunales Internacionales Contemporáneos y la Humanización del Derecho Internacional*, Buenos Aires, Edit. Ad-Hoc, 2013, pp. 163-185; and cf., earlier on, e.g., A. A. Cançado Trindade, "A Emancipação do Ser Humano como Sujeito do Direito Internacional e os Limites da Razão de Estado", 6/7 *Revista da Faculdade de Direito da Universidade do Estado do Rio de Janeiro* (1998-1999), pp. 425-434; A. A. Cançado Trindade, *A Humanização do Direito Internacional*, Belo Horizonte/Brazil, Edit. Del Rey, 2006, pp. 3-409.

[53] I have further dwelt upon the importance of fundamental *human values* in my dissenting opinion (paras. 32-40) in the case of the *Jurisdictional Immunities of the State (Germany* v. *Italy) (I.C.J. Reports 2012 (I))*.