

Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of PreahVihear (Cambodia v. Thailand)

1. Introduction

On 11th November 2013, the International Court of Justice (ICJ) delivered its judgment in a contentious case between Cambodia and Thailand.¹ This judgment involved an interpretation of a previous judgment between the two parties, delivered by the ICJ in 1962.

2. History of the Dispute & the Factual Background of the Case

The proceedings in 1962 emerged out of a territorial dispute between the two parties regarding sovereignty over the *Temple of PreahVihear*.² Cambodia and Siam (as Thailand was then known) had concluded a Treaty wherein it was agreed that the frontier in that region was to 'follow the watershed line between the basins of two sets of rivers' flowing in that area. A mixed commission, established under the Treaty for preparing maps that demarcated the frontiers had in 1907 published a map, according to which the temple laid Cambodian Territory. The said map was communicated to Thailand, but it was never formally accepted on account of the commission ceasing to function.³ Thailand had occupied the Temple premises in 1954 to which Cambodia had raised objections. Since negotiations between the two parties bore no fruit, Cambodia invoked the jurisdiction of the ICJ.⁴ In the course of those proceedings, Cambodia relied on that Map referred to above (which, in the judgment is referred to as the "Annex I map") and contended that

¹ *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of PreahVihear (Cambodia v. Thailand) (Cambodia v. Thailand)*, judgment available at: <<http://www.icj-cij.org/docket/files/151/17704.pdf>> last accessed on 22 November 2013.

² The Temple of PreahVihear is situated on a promontory of the same name in the eastern part of the Dangrek range of mountains. The disputed lands were located in a terrain which in a general way constituted the boundary between the two countries.

³ *Temple of PreahVihear (Cambodia v. Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 21.

⁴ *Request for Interpretation of the Judgment of 15 June 1962*, note 1, at 16.

Thailand had accepted the boundary therein in accordance with the Treaty settlement.

Thailand resisted this contention and argued that the boundary between the two States followed the watershed line, as provided under the 1904 Treaty and that hence the temple belonged to Thailand. The ICJ accepted the contention of Cambodia and held that Thailand had accepted Annex I map “as representing the outcome of the work of delimitation, and hence recognized the line on that map as being the frontier line”.⁵ The operative part of the judgment was:

“The Court,

[1] ...finds that the Temple of PreahVihear is situated in territory under the sovereignty of Cambodia;

Finds in consequence

[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;

[3] ...that Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia’s fifth submission...”⁶

Though under protest, the Thai Council of Ministers (The TCM) devised a plan for complying with the judgment and a line that the TCM considered to be the limits of the frontier was drawn and forces were withdrawn to a point behind it. Meanwhile, in 1997, Cambodia and Thailand jointly established the Thai-Cambodian Joint Commission on “Demarcation for Land Boundary” for completing the demarcation of frontier line.⁷

The dispute concerning the *PreahVihear* stood rested for a while, until in 2007, when Cambodia applied to the UNESCO World Heritage Committee to

⁵ See note 3, p.32.

⁶ *Ibid*, pp. 36 – 37.

⁷ *Request for Interpretation of the Judgment of 15 June 1962*, note.1, at 24.

include the *PreahVihear* in the World Heritage List.⁸ As a part of that application, Cambodia had presented a map to the Committee, which provided a lay out of the temple and the lands near it.⁹ That map depicted the entire promontory of *PreahVihear* and a hill to the west of the promontory as located within the Cambodian Territory. Thailand was quick to respond to this by way of an *aide-memoire* sent to Cambodia and to the World Heritage Committee, with which it attached its own map that projected its understanding of the international boundary. Following World heritage Status being granted to the temple a number of armed incidents took place in the border area close to the temple.

3. The Issues before the Court

There arose a difference of opinion between the parties on whether in the 1962 judgment, the court had conclusively determined that the line indicated in Annex I map indicated the boundary between the two countries: According to Cambodia it did and that in consequence of this determination, the phrases “situated in territory under the sovereignty of Cambodia”¹⁰and “its vicinity on Cambodian territory”¹¹was to be understood with reference to the line indicated in the Annex 1 map. Hence, Thailand was to withdraw from the “area of the temple and its vicinity on the Cambodian territory” beyond the aforesaid line and this obligation was of a continuing character. Based on these grounds, Cambodia applied to invoke the jurisdiction of the Court under Article 60 of the ICJ Statute.¹²

Thailand on the other hand denied the existence of any dispute within the meaning of Article 60 of the Statute. It was asserted that Cambodia had accepted (or at least did not protest) that the judgment was complied with

⁸ The World Heritage List was established under the provisions of the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage.

⁹ The Buffer Zone is “the area surrounding the nominated property which was complementary legal restrictions placed on land use, aimed at giving an added layer of protection to the property.

¹⁰ See Para 1 of the operative paragraph of the judgment, *Supra* n.3.

¹¹ See Para 2 of the operative paragraph of the judgment, *Supra* n.3.

¹² Article 60 of the ICJ Statute reads as follows: “The judgment [of the ICJ] is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.”

when Thailand had withdrawn its troops beyond the TCM line. According to Thailand, the developments that surrounded the application for World heritage status was only reflective of a territorial dispute which had existed for long. It was pointed out that the 1962 judgment had not dealt with the delimitation issue and that the operative portion of the judgment had not made any pronouncement on this point and hence dispute concerning territory could not be a subject matter of the proceedings under Article 60. Thailand also pointed out that the expression “vicinity of the temple” was left unexplained by the court and so it was entitled to unilaterally determine the meaning of that expression¹³ Accordingly, Thailand called for a dismissal of the application and a declaration that the 1962 judgment had not determined the boundary line between the two countries.¹⁴

There were thus, 2 issues before the Court: (i) Whether the application was maintainable; and (ii) Did the 1962 judgment make any conclusive determination of the boundaries between the two countries.

4. The Decision of the Court

(i) On maintainability, scope and matters that could be considered

On this issue, the court observed that it was clear that there was indeed a dispute between the two parties with respect to the second question: that both the parties could not agree on whether the court had made a pronouncement on the issue of delimitation.

Recalling the judgment and observation of the Court at the stage of *provisional* measures,¹⁵ the court held that “*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 Article 60 of the Statute*”.¹⁶ It was pointed out by the court that the conduct of the parties both before the court and before the World Heritage Committee clearly brought out the

¹³ *Request for Interpretation of the Judgment of 15 June 1962*, note 1, ¶ 40 & 41.

¹⁴ *Ibid.*, ¶47.

¹⁵ *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),

¹⁶ *Ibid.* at 31.

difference in opinion: That Cambodia had understood the judgment to mean that Annex I map represented the frontier line between the two countries while Thailand did not agree with this.¹⁷ The Court thus found a need to interpret the operative paragraphs of the 1962 judgment and the legal effect of the court's observations on the Annex I map line.¹⁸ However, the court made it clear that since this was a proceeding under Article 60, the Court was to keep strictly within the limits of the previous judgment and facts or factors not considered previously would have to be left out.¹⁹ It was also pointed out that the way the parties to the dispute had framed the issue would not be binding on the court.²⁰ Further, since Thailand had contended that the principle of *non ultra petita* (which the court acknowledged was a firm part of the Court's jurisprudence) had applied to this case, it was held that the pleadings and oral submissions in the 1962 case were also relevant to the present proceedings, as that would indicate what the disputes were, the scope of that proceeding and the evidence that was adduced by the parties.²¹ However, it was reiterated that that the principle would not justify an interpretation that ran counter to the terms of the 1962 judgment as Article 60 did not give the court such a power.²²

Cambodia had made an argument that the headnote of the 1962 judgment had indicated that the court had determined the course of the frontier between the parties. However, it was held by the court that Article 95, paragraph 1, of the Rules of Court had made it clear that the headnote was not 'one of the elements' of the judgment and that its purpose was only to give the reader a general indication of the points that would be decided by the judgment and that it did not constitute an authoritative summary of the judgment.²³

(ii) The Substantive question

¹⁷ *Request for Interpretation of the Judgment of 15 June 1962, Supra* n.1, at 56

¹⁸ *Ibid.*

¹⁹ *Ibid.*, at 66.

²⁰ *Request for Interpretation of the Judgment of 15 June 1962, Supra* n.1, at 67.

²² *Request for Interpretation of the Judgment of 15 June 1962, Supra* n.1, at 71.

²³ *Request for Interpretation of the Judgment of 15 June 1962, Supra* n.1, at 73.

According to Cambodia, the first and second paragraphs of the operative portions were “sympiotically linked”: that in the first para it was held that the temple was “situated in the territory under the sovereignty of Cambodia” and the finding in the second paragraph (that Thailand was to withdraw its personal “at the temple or in its vicinity in on Cambodian territory”) was in consequence of that finding. It was also contented that both these findings were based on the determination that Annex I map indicated the frontiers between the countries

Thailand resisted these contentions and argued that the issue before the court in 1962 was territorial sovereignty and not delimitation and hence that the court had only decided that the temple fell within Cambodian territory and the relevance of Annex I map was only to evidence that the temple was in Cambodian territory. Thailand further argued that it would have been contrary to the principle of *non ultrapetita* for the court to have decided on the issue of the boundary line as Cambodia had made no such request for a ruling on the map²⁴ Thus, according to Thailand, the 1962 judgment had decided merely that Cambodia has sovereignty over that small parcel of land on which the temple stood (as identified by the TCM later) and that the judgment had not dealt with sovereignty over the remainder of the lands. It was argued that the obligation imposed by the judgment to withdraw was discharged with the withdrawal of the forces behind the line identified by TCM and that Cambodia had accepted that line when Prince Sihanouk visited the Temple in 1963.²⁵ It was contended that the delimitation of the frontier was yet to be accomplished and the Memorandum of Understanding between the parties in 1997 had provided the mechanism for that.

Thailand placed reliance on the conduct of parties subsequent to the judgment to further its case that there was no dispute and to further its interpretation of the judgment. The court, however, held that a judgment could not be interpreted in the same way as a treaty is and hence the principle that conduct

²⁴ *Request for Interpretation of the Judgment of 15 June 1962, Supra* n.1, at 61.

²⁵ On 5 January 1963, the Head of State of Cambodia, Prince Sihanouk, and a large party of Cambodian officials and monks, as well as diplomatic representatives of other States, visited the Temple. During the course of this visit, they remained within the area enclosed by the barbed wire fence. *See Ibid*, at 23.

of the parties to a treaty was relevant in interpreting it (as enshrined in Article 31, paragraph 3 (b), of the 1969 Vienna Convention on the Law of Treaties) was not applicable here. It was observed that “A judgment of the Court derived its binding force from the Statute of the Court and the interpretation of a judgment was a matter of ascertaining what the Court decided, not what the parties subsequently believed it had decided” ²⁶ and hence that “The meaning and scope of a judgment of the Court cannot, therefore, be affected by conduct of the parties occurring after that judgment has been given”.²⁷

With these considerations in the background, the court, regarding the 1962 judgment, concluded that (1) the court was dealing with a dispute regarding *only* on the area on which the temple was located²⁸; (2) that it had not done a delimitation exercise in 1962;²⁹ (3) That Annex I map was however of relevance and that It played a central role in the reasoning of the court.³⁰; and (4) that Thailand had in 1908 and by way of subsequent conduct, accepted the line on Annex I map as representing the frontier between the two countries.³¹

The Court stated that the operative paragraphs had to be read as a whole (as the findings in the second and third paras are expressly stated to be the consequences following from the decision in the first para.)³² The court noted that the meaning of the first paragraph was clear and that the issue before the court was only the meaning of the second paragraph: i.e. which was that territory from which Thailand had to withdraw its forces.³³ The Court decided that the answer to this question had to be determined by considering the evidence before the court in the 1962 proceedings regarding the locations at which these personal stood. That evidence indicated that the police personal were not anywhere near the vicinity of the temple (except for a solitary temple guard) but near a point between the line on Annex I map and the line which

²⁶ *Request for Interpretation of the Judgment of 15 June 1962*, note 1, at 75.

²⁷ *Ibid.*

²⁸ *Request for Interpretation of the Judgment of 15 June 1962*, note 1, at 76 & 78.

²⁹ *Ibid.*

³⁰ *Request for Interpretation of the Judgment of 15 June 1962*, note 1, at 77 & 78.

³¹ *Ibid.*

³² *Request for Interpretation of the Judgment of 15 June 1962*, note.1, at 79.

³³ *Request for Interpretation of the Judgment of 15 June 1962*, note 1, at 80 & 81.

Cambodia maintained to be the watershed line.³⁴ Accordingly, the court held that, the withdrawal of police personal indicated in the judgment must have referred to the personal so stationed (as there was no evidence of any other Thai personal stationed anywhere else). Thus “the term “vicinity on Cambodian territory” was to be construed as extending at least to the area where the police detachment was stationed at the time of the original proceedings.”³⁵ For these reasons, the line identified by the TCM was rejected by the Court. However, Cambodia’s interpretation regarding the extent of territory was also not fully accepted by the Court as it was found that the territory claimed by Cambodia as continuous to the *Preah Vihear* was of distinct geographical identity. Further, it was also pointed out that Cambodia’s interpretation depended identifying the location of the points at which the Annex I map line intersected with the watershed line advocated by Thailand, but in the 1962 Judgment, the Court made clear that it was not concerned with the location of the watershed and did not decide where the watershed lay.³⁶

Taking all these factors together, the court reached the conclusion that the expression “vicinity [of the Temple] on Cambodian territory” as decided by the court in 1962 applied to territory outside the promontory of *Preah Vihear* and not to any other territory beyond the limits of the promontory.³⁷ On facts the court then determined the extent of territory from which Thailand was to withdraw its forces. The court pointed out that the parties had an obligation to implement the judgment of the court in good faith and that it was the essence of that obligation that unilateral solutions could not be imposed by any party.³⁸

Regarding the relationship between the second and third paragraphs, the court concluded that they had together imposed obligations with respect to an area of territory which extended beyond the Temple itself. It was concluded that terms “vicinity [of the Temple] on Cambodian territory”, in the second

³⁴ *Request for Interpretation of the Judgment of 15 June 1962*, note 1, at 87 & 88.

³⁵ *Request for Interpretation of the Judgment of 15 June 1962*, *Supra* n.1, The Court also found various geographical features to be supporting this conclusion (see paras 89 & 90).

³⁶ *Ibid*, at 91 to 96.

³⁷ *Request for Interpretation of the Judgment of 15 June 1962*, note 1, at 97.

³⁸ *Request for Interpretation of the Judgment of 15 June 1962*, note 1, at 99.

paragraph, and “area of the Temple”, in the third paragraph, referred to the same small parcel of territory and that obligations which the Court imposed in respect of that parcel of territory were stated to be a consequence of the finding in the first paragraph.

“Accordingly, the Court concludes that the territorial scope of the three operative paragraphs is the same: the finding in the first paragraph that “the Temple of PreahVihear is situated in territory under the sovereignty of Cambodia” must be taken as referring, like the second and third paragraphs, to the promontory of PreahVihear, within the limits described in paragraph 98 of the present Judgment.”³⁹

In the light of this finding, the Court concluded that it was not necessary to address the question whether the 1962 Judgment determined with binding force the boundary line between Cambodia and Thailand.⁴⁰ It was also held that there was no need to determine whether the obligation to withdraw was a continuous one as Thailand had accepted its general and continuing obligation to respect the integrity of the Cambodian territory. It was also pointed out that once a dispute regarding territory was resolved, each party had to fulfill the obligation to respect territorial sovereignty in good faith and to settle all dispute by way of peaceful means.⁴¹

In conclusion ,the Court reiterated that the first operative paragraph of the 1962 Judgment determined that Cambodia had sovereignty over the whole territory of the promontory of PreahVihear and that consequence, the second operative paragraph required Thailand to withdraw from that territory the Thai military or police forces, or other guards or keepers, that were stationed there.⁴²

³⁹ *Request for Interpretation of the Judgment of 15 June 1962*, note 1, at 103.

⁴⁰ *Request for Interpretation of the Judgment of 15 June 1962*, note 1, at 94.

⁴¹ *Request for Interpretation of the Judgment of 15 June 1962*, note 1 at 105.

⁴² *Request for Interpretation of the Judgment of 15 June 1962*, note n.1, at 107 and 108.