

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE
TEMPLE OF PREAH VIHEAR
(CAMBODIA *v.* THAILAND)
MERITS

JUDGMENT OF 15 JUNE 1962

1962

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU TEMPLE DE
PRÉAH VIHÉAR
(CAMBODGE *c.* THAÏLANDE)
FOND

ARRÊT DU 15 JUIN 1962

This Judgment should be cited as follows:

*“Case concerning the Temple of Preah Vihear
(Cambodia v. Thailand), Merits,
Judgment of 15 June 1962: I.C.J. Reports 1962, p. 6.”*

Le présent arrêt doit être cité comme suit:

*« Affaire du temple de Préah Vihéar
(Cambodge c. Thaïlande), Fond,
Arrêt du 15 juin 1962: C. I. J. Recueil 1962, p. 6. »*

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INTERNATIONAL COURT OF JUSTICE

 YEAR 1962

 15 June 1962

 CASE CONCERNING THE
 TEMPLE OF PREAH VIHEAR
(CAMBODIA *v.* THAILAND)

MERITS

Territorial sovereignty.—Title deriving from treaty.—Treaty clauses establishing frontier along watershed line as delimited by Mixed Commission of Parties.—Uncertain character of resulting delimitation in disputed area.—Eventual production by experts of one Party, at the request of the other, of a map.—Non-binding character of map at moment of its production.—Subsequent acceptance by conduct of map and frontier line by other Party.—Legal effect of silence as implying consent.—Alleged non-correspondence of map line with true watershed line.—Acceptance of risk of errors.—Subsequent conduct confirming original acceptance and precluding a denial of it.—Effect of subsequent treaties confirming existing frontiers and as evidence of Parties' desire for frontier stability and finality.—Interpretation of treaty settlement considered as a whole, including map.

JUDGMENT

Present: President WINIARSKI; Vice-President ALFARO; Judges BASDEVANT, BADAWI, MORENO QUINTANA, WELLINGTON KOO, Sir Percy SPENDER, Sir Gerald FITZMAURICE, KORETSKY, TANAKA, BUSTAMANTE Y RIVERO, MORELLI; Registrar GARNIER-COIGNET.

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In the case concerning the Temple of Preah Vihear,

between

the Kingdom of Cambodia,

represented by

H.E. Truong Cang, Member of the *Haut Conseil du Trône*,
as Agent,

and by

H.E. Ouk Chhoum, Minister Counsellor at the Cambodian
Embassy in France,

assisted by

Hon. Dean Acheson, Member of the Bar of the Supreme Court of
the United States of America,

M. Roger Pinto, Professor at the Paris Law Faculty,

M. Paul Reuter, Professor at the Paris Law Faculty,
as Counsel,

and by

Mr. Brice M. Clagett, Member of the Bar of the United States
Court of Appeals for the District of Columbia,
as Legal Adviser,

Colonel Ngin Karet, Director of the Survey Department of the
Royal Khmer Armed Forces,
as Expert Adviser,

M. Chan Youran,

as General Secretary of the Delegation,

M. Chem Snguon,

as Deputy General Secretary of the Delegation,

and

the Kingdom of Thailand,

represented by

H.S.H. Prince Vongsamahip Jayankura, Ambassador of Thai-
land to the Netherlands,

as Agent,

assisted by

Mr. Seni Pramoj, Member of the Thai Bar,

M. Henri Rolin, Honorary Professor of the Free University of
Brussels, Advocate at the Court of Appeal of Brussels,

The Rt. Hon. Sir Frank Soskice, Q.C., M.P., former Attorney-
General of England,

Mr. James Nevins Hyde, Member of the Bar of the State of New
York and Member of the Bar of the Supreme Court of the
United States of America,

M. Marcel Slusny, Advocate at the Court of Appeal of Brussels,
Lecturer at the Free University of Brussels,

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Mr. J. G. Le Quesne, Member of the English Bar,
as Advocates and Counsel,

and by

Lieutenant-General Busrindre Bhakdikul, Director-General,
Royal Thai Survey Department, Ministry of Defence,

Mr. Suk Perunavin, Deputy Under-Secretary in the Office of the
Prime Minister,

Mr. Chinda Na Songkhla, Deputy Secretary-General of the Civil
Service Commission,

Lieutenant-Colonel Phoon Phon Asanachinta, Lecturer, School of
Surveying, Royal Thai Survey Department, Ministry of
Defence,

as Expert Advisers,

and by

Mr. Chapikorn Sreshthaputra, Chief of the Legal Division, Treaty
and Legal Department, Ministry of Foreign Affairs,

Mr. David S. Downs, Solicitor, Supreme Court of Judicature,
England,

as Juridical Advisers,

THE COURT,

composed as above,

delivers the following Judgment :

By its Judgment of 26 May 1961, the Court rejected the first preliminary objection of the Government of Thailand and found that it had jurisdiction to adjudicate upon the dispute submitted to it on 6 October 1959 by the Application of the Government of Cambodia.

By Order of the same date, the Court fixed the time-limits for the further pleadings. The case became ready for hearing on the filing of the last pleading on 2 February 1962.

Public hearings were held on the following dates: 1-3 March, 5 March, 7-10 March, 12-13 March, 15-17 March, 19-24 March and 26-31 March 1962. At these hearings the Court heard oral arguments and replies by M. Truong Cang, Mr. Dean Acheson, M. Roger Pinto and M. Paul Reuter on behalf of the Government of Cambodia, and by Prince Vongsamahip Jayankura, Mr. Seni Pramroj, M. Henri Rolin, Sir Frank Soskice and Mr. James Nevins Hyde on behalf of the Government of Thailand.

At the hearings from 15 to 20 March 1962, the Court heard the evidence of the witnesses and experts, called by each of the Parties, in reply to questions put to them in examination and cross-exami-

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nation on behalf of the Parties and by Members of the Court. The following persons gave evidence:

called by the Government of Cambodia:

M. Suon Bonn, former Governor of Kompong Thom, Inspector of Political and Administrative Affairs in the Ministry of the Interior of Cambodia, as witness;

called by the Government of Thailand:

Professor Willem Schermerhorn, Dean of the International Training Center for Aerial Survey, Delft, and Director of the Consulting Department of the Center, as expert;

Mr. Friedrich E. Ackermann, Dipl. Ing., Lecturer at the International Training Center for Aerial Survey, Delft, and member of the Consulting Department of the Center, as witness and expert;

Mr. Herman Theodoor Verstappen, geomorphologist, Head of the Geological Section of the International Training Center for Aerial Survey, Delft, as expert.

At the hearing held on 19 March 1962, the Court withdrew and reassembled in private to attend, in the presence of the representatives of the Parties, the showing of a film of the place in dispute filed by Cambodia. During the projection of the film and with the authorization of the President, M. Suon Bonn gave brief indications relating to points of fact.

In the course of the written proceedings, the following Submissions were presented by the Parties:

On behalf of the Government of Cambodia,

in the Application and in the Memorial:

"May it please the Court to adjudge and declare, whether the Kingdom of Thailand appears or not:

(1) that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed since 1954 in the ruins of the Temple of Preah Vihear;

(2) that the territorial sovereignty over the Temple of Preah Vihear belongs to the Kingdom of Cambodia";

in the Reply:

"May it please the Court:

I.—To reject the submissions presented by the Kingdom of Thailand in its Counter-Memorial, subject, in particular, to the presentation, if necessary, of any other grounds for the rejection of any further submissions that may be presented by the Kingdom of Thailand;

II.—To find in favour of the submissions contained in its Application instituting proceedings and in its Memorial.

To adjudge and declare

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- 1.—That the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed since 1954 in the ruins of the Temple of Preah Vihear;
- 2.—That the territorial sovereignty over the Temple of Preah Vihear belongs to the Kingdom of Cambodia.”

On behalf of the Government of Thailand,

in the Counter-Memorial:

“The Government of Thailand submits:

(1) that the claims of the Kingdom of Cambodia formulated in the Application and the Memorial are not sustainable and should be rejected;

(2) that Phra Viharn is in Thai territory: and the Court is respectfully asked so to adjudge and declare.”

During the oral proceedings, Counsel for Thailand asked, at the close of the hearing of 13 March 1962, to be allowed to defer formulating the Final Submissions on behalf of Thailand until after the evidence of witnesses and experts. The Agent for Cambodia was requested to express his views on the matter and declared that he relied entirely on the justice and wisdom of the Court. The Court, after having deliberated, granted the authorization requested, it being understood that, after the evidence of witnesses and experts and before the filing of the Final Submissions of Thailand, the Agent for Cambodia might file such modifications to his own Submissions as he wished to make after having heard the evidence.

The Submissions presented by the Parties during the oral proceedings and in particular after the foregoing decision were as follows:

On behalf of the Government of Cambodia:

A. Submissions read at the hearing of 5 March 1962

“May it please the Court:

1. To adjudge and declare that the frontier line between Cambodia and Thailand, in the Dangrek sector, is that which is marked on the map of the Commission of Delimitation between Indo-China and Siam (Annex I to the Memorial of Cambodia);

2. To adjudge and declare that the Temple of Preah Vihear is situated in territory under the sovereignty of the Kingdom of Cambodia;

3. To adjudge and declare that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed since 1954, in Cambodian territory, in the ruins of the Temple of Preah Vihear;

4. To adjudge and declare that the sculptures, stelae, fragments of monuments, sandstone model and ancient pottery which have been removed from the Temple by the Thai authorities since 1954 are to be returned to the Government of the Kingdom of Cambodia by the Government of Thailand.”

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B. Submissions, entitled Final Submissions, read at the hearing of 20 March 1962

“May it please the Court:

1. To adjudge and declare that the map of the Dangrek sector (Annex I to the Memorial of Cambodia) was drawn up and published in the name and on behalf of the Mixed Delimitation Commission set up by the Treaty of 13 February 1904, that it sets forth the decisions taken by the said Commission and that, by reason of that fact and also of the subsequent agreements and conduct of the Parties, it presents a treaty character;

2. To adjudge and declare that the frontier line between Cambodia and Thailand, in the disputed region in the neighborhood of the Temple of Preah Vihear, is that which is marked on the map of the Commission of Delimitation between Indo-China and Siam (Annex I to the Memorial of Cambodia);

3. To adjudge and declare that the Temple of Preah Vihear is situated in territory under the sovereignty of the Kingdom of Cambodia;

4. To adjudge and declare that the Kingdom of Thailand is under an obligation to withdraw the detachments of armed forces it has stationed, since 1954, in Cambodian territory, in the ruins of the Temple of Preah Vihear;

5. To adjudge and declare that the sculptures, stelae, fragments of monuments, sandstone model and ancient pottery which have been removed from the Temple by the Thai authorities since 1954 are to be returned to the Government of the Kingdom of Cambodia by the Government of Thailand.”

On behalf of the Government of Thailand:

A. Submissions read at the hearing of 20 March 1962

“With respect to the Submissions presented by the Government of Cambodia on the 5th March, 1962, the Government of Thailand respectfully presents the following as its Submissions to the Court:

1. The Court is asked not to entertain the claims put forward by Cambodia in paragraphs 1 and 4 of the Submissions presented on Monday, 5th March, by the Agent for the Government of Cambodia, on the ground that both those claims are put forward too late and were not included as claims which the Government of Cambodia wished to present to the Court in the Application instituting these proceedings or in the course of the written pleadings and were for the first time put forward by the Agent for Cambodia when he formulated Cambodia's conclusions.

It is therefore submitted that these claims should not now be entertained by the Court.

2. Alternatively,

In regard to the first of the said claims Thailand submits the following conclusions:

- (i) The map Annex I has not been proved to be a document binding on the Parties whether by virtue of the Treaty of 1904 or otherwise.

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- (ii) Thailand and Cambodia have not in fact treated the frontier marked out on Annex I as the frontier between Thailand and Cambodia in the Dang Rek region.
- (iii) For the above reasons, the frontier line marked on Annex I ought not to be substituted for the existing boundary line in fact observed and accepted by the two Parties in the Dang Rek range.
- (iv) Even, therefore, if the Court, contrary to the submission of Thailand, thinks it proper to entertain the said claim (1) now put forward by Cambodia, Thailand submits that on the merits this claim is not well founded and ought to be rejected.

3. Thailand submits the following further conclusions in answer to Submissions 2 and 3 put forward by Cambodia:

- (i) Abundant evidence has been given that at all material times Thailand has exercised full sovereignty in the area of the Temple to the exclusion of Cambodia. Alternatively, if, which is denied, Cambodia in any sense carried out any administrative functions in the said area, such acts were sporadic and inconclusive, and in no sense such as to negative or qualify the full exercise of sovereignty in the said area by Thailand.
- (ii) The watershed in the said area substantially corresponds with the cliff edge running round Phra Viharn and constitutes the treaty boundary in the said area as laid down by the Treaty of 1904.
- (iii) To the extent that the cliff edge does not precisely correspond with the watershed as shown by the configuration of the ground in the area, the divergencies are minimal and should be disregarded.
- (iv) The general nature of the area allows access from Thailand to the Temple, whereas access from Cambodia involves the scaling of the high cliff from the Cambodian plain.
- (v) There is no room in the circumstances of the present case for the application in favour of Cambodia of any of the doctrines prayed in aid by Counsel for Cambodia, whether acquiescence, estoppel or prescription.
- (vi) Cambodia ought not in any event now to be allowed by the Court to put forward a claim based on prescription not having anywhere in her pleadings or until the very end of her oral argument put forward any such claim.
- (vii) The evidence in favour of Cambodia is in any event wholly inadequate to support any prescriptive title in Cambodia.

Cambodia's second and third Submissions ought therefore to be rejected.

4. Further and in the alternative with regard to Cambodia's fourth Submission, it is submitted that this Submission, even if entertained by the Court, is wholly unsupported by evidence, and the claim put forward by Cambodia in its fourth Submission is accordingly unsustainable."

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B. Revised Submissions presented on 20 March 1962 after the hearing

“With respect to the revised Submissions presented by the Government of Cambodia on the 20th March 1962, the Government of Thailand respectfully submits the following Submissions to the Court:

I. *With regard to the first claim of the revised Submissions:*

1. The whole of the evidence before the Court shows that the map of the sector of the Dang Rek which is Annex I to the Memorial of Cambodia was not prepared or published either in the name or on behalf of the Mixed Commission of Delimitation set up under the Treaty of the 13th February, 1904; but, whereas the said Mixed Commission consisted of a French Commission and a Siamese Commission, the said Annex I was prepared by members of the French Commission alone and published only in the name of the French Commission.

2. The French officers who prepared the said Annex I had no authority to give any official or final interpretation of the decisions of the said Mixed Commission, still less of the intentions of the said Mixed Commission at points at which no decision had been recorded.

3. No decision of the said Mixed Commission was recorded about the boundary at Phra Viharn. If the said Mixed Commission did reach such a decision, that decision is not correctly represented on the said Annex I, but was a decision that in the Phra Viharn area the boundary should coincide with the cliff edge.

4. There was no subsequent agreement of the parties attributing a bilateral or conventional character to the said Annex I.

5. The conduct of the parties, so far from attributing any conventional character to the said Annex I, shows that the Parties have not treated the line marked on the said Annex I as the boundary in the Dang Rek; Thailand has remained in undisputed possession of all the territory at the top of the Dang Rek. Wherever there is a cliff edge in the Dang Rek the edge of the cliff is, and has been, accepted as constituting the watershed boundary established in this region by Article I of the said Treaty of 1904.

6. Even if the said Annex I were to be regarded as possessing a conventional character, the boundary line marked on it would not be binding on the parties when proved—as it has been in the disputed area—to be based on an inaccurate survey of the terrain.

II. *With regard to the second claim of the revised Submissions:*

1. The Court is asked not to entertain the claim, because:

(i) the claim to a region ‘in the neighbourhood of the temple of Phra Viharn’ constitutes an enlargement of the claim presented by the Government of Cambodia in the Application instituting these proceedings and throughout the written pleadings;

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(ii) the terms of the claim are too vague to allow either the Court or the Government of Thailand to appreciate what are the limits of the territory claimed.

2. Alternatively, the Government of Thailand repeats paragraph 3 of its submissions presented at the sitting of the Court on the 20th March, 1962.

III. *With regard to the third and fourth claims of the revised Submissions:*

The Government of Thailand repeats paragraph 3 of its submissions presented at the sitting of the Court on the 20th March, 1962.

IV. *With regard to the fifth claim of the revised Submissions:*

1. The Court is asked not to entertain this claim, because it constitutes an enlargement of the claim presented by the Government of Cambodia in the Application instituting these proceedings and throughout the written pleadings.

2. Alternatively, the rejection of the first, second and third claims of the revised Submissions must involve the rejection of this claim.

3. Alternatively, this claim should be restricted to any objects of the kinds specified in the claim proved by the evidence before the Court to have been removed from the temple since 1954 by the Thai authorities."

* * *

In its Judgment of 26 May 1961, by which it upheld its jurisdiction to adjudicate upon the dispute submitted to it by the Application filed by the Government of Cambodia on 6 October 1959, the Court described in the following terms the subject of the dispute:

"In the present case, Cambodia alleges a violation on the part of Thailand of Cambodia's territorial sovereignty over the region of the Temple of Preah Vihear and its precincts. Thailand replies by affirming that the area in question lies on the Thai side of the common frontier between the two countries, and is under the sovereignty of Thailand. This is a dispute about territorial sovereignty."

Accordingly, the subject of the dispute submitted to the Court is confined to a difference of view about sovereignty over the region of the Temple of Preah Vihear. To decide this question of territorial sovereignty, the Court must have regard to the frontier line between the two States in this sector. Maps haven been submitted to it and various considerations have been advanced in this connection. The Court will have regard to each of these only to such extent as it may find in them reasons for the decision it has to give in order to settle the sole dispute submitted to it, the subject of which has just been stated.

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* * *

The Temple of Preah Vihear is an ancient sanctuary and shrine situated on the borders of Thailand and Cambodia. Although now partially in ruins, this Temple has considerable artistic and archaeological interest, and is still used as a place of pilgrimage. It stands on a promontory of the same name, belonging to the eastern sector of the Dangrek range of mountains which, in a general way, constitutes the boundary between the two countries in this region—Cambodia to the south and Thailand to the north. Considerable portions of this range consist of a high cliff-like escarpment rising abruptly above the Cambodian plain. This is the situation at Preah Vihear itself, where the main Temple buildings stand in the apex of a triangular piece of high ground jutting out into the plain. From the edge of the escarpment, the general inclination of the ground in the northerly direction is downwards to the Nam Moun river, which is in Thailand.

It will be apparent from the description just given that a frontier line which ran along the edge of the escarpment, or which at any rate ran to the south and east of the Temple area, would leave this area in Thailand; whereas a line running to the north, or to the north and west, would place it in Cambodia.

Thailand has urged that the edge of this escarpment constitutes the natural and obvious line for a frontier in this region. In support of this view Thailand has referred to the documentary evidence indicative of the desire of the Parties to establish frontiers which would not only be "natural", but visible and unmistakable—such as rivers, mountain ranges, and hence escarpments, where they exist.

The desire of the Parties for a natural and visible frontier could have been met by almost any line which followed a recognizable course along the main chain of the Dangrek range. It could have been a crest line, a watershed line or an escarpment line (where an escarpment existed, which was far from always being the case). As will be seen presently, the Parties provided for a watershed line. In so doing, they must be presumed to have realized that such a line would not necessarily, in any particular locality, be the same line as the line of the crest or escarpment. They cannot therefore be presumed to have intended that, wherever an escarpment existed, the frontier must lie along it, irrespective of all other considerations.

The Parties have also relied on other arguments of a physical, historical, religious and archaeological character, but the Court is unable to regard them as legally decisive.

* * *

As concerns the burden of proof, it must be pointed out that though, from the formal standpoint, Cambodia is the plaintiff,

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having instituted the proceedings, Thailand also is a claimant because of the claim which was presented by her in the second Submission of the Counter-Memorial and which relates to the sovereignty over the same piece of territory. Both Cambodia and Thailand base their respective claims on a series of facts and contentions which are asserted or put forward by one Party or the other. The burden of proof in respect of these will of course lie on the Party asserting or putting them forward.

* * *

Until Cambodia attained her independence in 1953 she was part of French Indo-China, and her foreign relations—like those of the rest of French Indo-China—were conducted by France as the protecting Power. It is common ground between the Parties that the present dispute has its *fons et origo* in the boundary settlements made in the period 1904-1908, between France and Siam (as Thailand was then called) and, in particular, that the sovereignty over Preah Vihear depends upon a boundary treaty dated 13 February 1904, and upon events subsequent to that date. The Court is therefore not called upon to go into the situation that existed between the Parties prior to the Treaty of 1904.

The relevant provisions of the Treaty of 13 February 1904, which regulated *inter alia* the frontier in the eastern Dangrek region, were as follows:

[Translation by the Registry]

“Article 1

The frontier between Siam and Cambodia starts, on the left shore of the Great Lake, from the mouth of the river Stung Roluos, it follows the parallel from that point in an easterly direction until it meets the river Prek Kompong Tiam, then, turning northwards, it merges with the meridian from that meeting-point as far as the Pnom Dang Rek mountain chain. From there it follows the watershed between the basins of the Nam Sen and the Mekong, on the one hand, and the Nam Moun, on the other hand, and joins the Pnom Padang chain the crest of which it follows eastwards as far as the Mekong. Upstream from that point, the Mekong remains the frontier of the Kingdom of Siam, in accordance with Article 1 of the Treaty of 3 October 1893.”

“Article 3

There shall be a delimitation of the frontiers between the Kingdom of Siam and the territories making up French Indo-China. This delimitation will be carried out by Mixed Commissions composed of officers appointed by the two contracting countries. The work will relate to the frontier determined by Articles 1 and 2, and the region lying between the Great Lake and the sea.”

It will be seen, in the first place, that these articles make no mention of Preah Vihear as such. It is for this reason that the Court

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can only give a decision as to the sovereignty over the Temple area after having examined what the frontier line is. Secondly, whereas the general character of the frontier established by Article 1 was, along the Dangrek range, to be a watershed line, the exact course of this frontier was, by virtue of Article 3, to be delimited by a Franco-Siamese Mixed Commission. It is to be observed, moreover, that what had to be delimited was "the frontiers" between Siam and French Indo-China; and although this delimitation had, *prima facie*, to be carried out by reference to the criterion indicated in Article 1, the purpose of it was to establish the actual line of the frontier. In consequence, the line of the frontier would, to all intents and purposes, be the line resulting from the work of delimitation, unless the delimitation were shown to be invalid.

* * *

In due course, a Mixed Commission composed of French and Siamese members was set up, charged with the task of delimiting the frontier in various districts, including the eastern sector of the Dangrek range in which Preah Vihear is situated. This Mixed Commission was composed of two sections, one French and one Siamese, sitting together—one consisting of French topographical and administrative officers under a French president, and the other of Siamese members under a Siamese president. So far as the frontier in the Dangrek range was concerned, the task of this Mixed Commission was confined to the eastern sector (roughly east of the Pass of Kel) in which Preah Vihear is situated. At this time the western sector of the Dangrek lay wholly in Thailand. It was only when a further boundary settlement, under a treaty dated 23 March 1907, brought within Cambodia various districts abutting on the western Dangrek sector, that the latter became a frontier region. The task of delimiting the frontier in this latter region was given to a second Mixed Commission set up under the 1907 Treaty.

The Mixed Commission set up under the Treaty of 1904 held its first meeting in January 1905, but did not reach that part of its operations that concerned the frontier along the eastern sector of the Dangrek range until December 1906, although it appears from the minutes of the Commission's meeting of 2 December 1906 that one of the French members of the Commission, Captain Tixier, had passed along the Dangrek in February 1905. At the meeting of 2 December 1906, held at Angkor-Wat, it was agreed that the Commission should ascend the Dangrek from the Cambodian plain by the Pass of Kel, which lies westwards of Preah Vihear, and travel eastwards along the range by the same route (or along the same line) as had been reconnoitred by Captain Tixier in 1905 ("*le tracé qu'a reconnu ... le capitaine Tixier*"). It was stated that all the

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necessary reconnaissance between this route and the crest line (to which it ran roughly parallel) could be carried out by this method, since the route was, at the most, only ten to fifteen kilometres from the crest, on the Siamese side. It has not been contested that the Presidents of the French and Siamese sections of the Commission, as representing it, duly made this journey, and that in the course of it they visited the Temple of Preah Vihear. But there is no record of any decision that they may have taken.

At this same meeting of 2 December 1906, it was also agreed that another of the members of the French section of the Commission, Captain Oum, should, starting at the eastern end, survey the whole of the eastern part of the Dangrek range, in which Preah Vihear is situated, and that he would leave for this purpose the next day.

It is thus clear that the Mixed Commission fully intended to delimit the frontier in this sector of the Dangrek and that it took all the necessary steps to put the work of delimitation in hand. The work must have been accomplished, for at the end of January 1907 the French Minister at Bangkok reported to the Minister of Foreign Affairs in Paris that he had been formally notified by the President of the French section of the Mixed Commission that the whole work of delimitation had been finished without incident, and that the frontier line had been definitely established, except in the region of Siem Reap. Furthermore, in a report on the whole work of delimitation, dated 20 February 1907, destined for his own Government, the President said that: "All along the Dangrek and as far as the Mekong, the fixing of the frontier could not have involved any difficulty." Mention may also be made of a map produced by Thailand, recently prepared by the Royal Thai Survey Department, Bangkok, tracing in the Dangrek the "Route followed by the Mixed Commission of 1904".

It seems clear therefore that a frontier was surveyed and fixed; but the question is what was that frontier (in particular in the region of Preah Vihear), by whom was it fixed, in what way, and upon whose instructions? The difficulty in answering these questions lies in the fact that, after the minutes of the meeting of the First Commission on 2 December 1906, there is no further reference whatever, in any minutes of later meetings, to the question of the frontier in the Dangrek region.

It appears that at about this time the Commission had in substance finished its work on the ground and was awaiting the reports and provisional maps of the survey officers (Captain Oum and others). These reports and maps would not be available until February-March 1907 when, in normal circumstances, another meeting of the Commission would have been held to consider them. It appears that a meeting had been provisionally fixed for 8 March.

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That it was certainly the intention to call one, can be seen from a despatch from the French Minister in Bangkok to the Minister of Foreign Affairs in Paris, dated 23 February 1907, covering the report from Colonel Bernard, President of the French section of the Commission. The Minister, in his despatch, said: "The maps indicating the frontier can be brought up to date in a fairly short time and the plenary meeting of the French and Siamese Commissioners will probably be held before 15 March." No meeting apparently ever took place. In the meantime the two Governments had entered into negotiations for a further boundary treaty. This treaty was signed on 23 March 1907, and provided for exchanges of territory and a comprehensive regulation of all those frontiers not covered by the previous treaty settlement of 1904.

A second Mixed Commission of Delimitation was then set up under the Treaty of 1907. As already mentioned, part of its task was to delimit that sector of the Dangrek region not having come within the ambit of the First Commission, namely from the Pass of Kel westwards, and therefore not including Preah Vihear which lay to the east. There was in fact some overlapping of the work of the two Commissions in the Kel region, but this overlapping did not extend to Preah Vihear. There is, however, evidence in the records of the Second Commission that, at or near the Pass of Kel, the line drawn by this Commission joined up with an already existing line proceeding eastwards to the Temple area and beyond. There is no definite indication as to what this line was, or how it had come to be established; but the presumption that it was in some manner or other the outcome of the survey work which the First Commission had put in hand, and which the President of its French section, in his report of 20 February 1907, stated to have been accomplished without difficulty is, in the circumstances, overwhelmingly strong. The Court has noted that although, under Article IV of the Treaty of 1907, the task of the Second Mixed Commission was to delimit the "new frontiers" established by that Treaty, the Commission also had the task, under Clause III of the Protocol attached to the Treaty, of delimiting all that part of the frontier defined in Clause I of the Protocol. This latter provision related to the entire Dangrek range from a point in its western half to the eastern continuation of the Dangrek, the Pnom Padang range, as far as the River Mekong. Therefore, had the eastern Dangrek and Pnom Padang sectors not already been delimited by the first (1904) Mixed Commission, it would have been the duty of the second (1907) Commission to do this work. This Commission did not do it, apart from the overlap (not extending to Preah Vihear) already mentioned, and therefore the presumption must be that it had already been done.

The First Mixed Commission apparently did not hold any formal meeting after 19 January 1907. It must not be forgotten that, at the time when such a meeting might have been held for the purpose of winding up the work of the Commission, attention in both countries, on the part of those who were specially qualified to act and speak on their behalf in these matters, was directed towards the conclusion of the Treaty of 23 March 1907. Their chief concern, particularly in the case of Colonel Bernard, could hardly have been the formal completion of the results of the delimitation they had carried out.

The final stage of the operation of delimitation was the preparation and publication of maps. For the execution of this technical work, the Siamese Government, which at that time did not dispose of adequate means, had officially requested that French topographical officers should map the frontier region. It is clear from the opening paragraph of the minutes of the meeting of the first Mixed Commission on 29 November 1905 that this request had the approval of the Siamese section of the Commission, which may indeed have inspired it, for in the letter of 20 August 1908 in which the Siamese Minister in Paris communicated to his Government the eventual results of this work of mapping, he referred to "the Mixed Commission of Delimitation of the frontiers and the Siamese Commissioners' request that the French Commissioners prepare maps of various frontiers". That this was the deliberate policy of the Siamese authorities is also shown by the fact that in the second (1907) Mixed Commission, the French members of the Commission were equally requested by their Siamese colleagues to carry out cartographical work, as can be seen from the minutes of the meeting of 6 June 1908.

The French Government duly arranged for the work to be done by a team of four French officers, three of whom, Captains Tixier, Kerler and de Batz, had been members of the first Mixed Commission. This team worked under the general direction of Colonel Bernard, and in the late autumn of 1907 it completed a series of eleven maps covering a large part of the frontiers between Siam and French Indo-China, including those portions that are material in the present case. The maps were printed and published by a well-known French cartographical firm, H. Barrère.

The eleven maps were in due course communicated to the Siamese Government, as being the maps requested by the latter, and the Court will consider later the circumstances of that communication and the deductions to be drawn from it. Three of the maps had been overtaken by events, inasmuch as the former frontier areas they showed had, by virtue of the Treaty of March 1907, now become situated wholly in Cambodia. Siam was not therefore called upon either to accept or reject them. Her interest in the other maps remained. Amongst these was one of that part of the Dangrek

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range in which the Temple is situated, and on it was traced a frontier line purporting to be the outcome of the work of delimitation and showing the whole Preah Vihear promontory, with the Temple area, as being on the Cambodian side. If therefore the delimitation carried out in respect of the Eastern Dangrek sector established or was intended to establish a watershed line, this map purported to show such a line. This map was filed by Cambodia as Annex I to its Memorial, and has become known in the case (and will be referred to herein) as the Annex I map.

It is on this map that Cambodia principally relies in support of her claim to sovereignty over the Temple. Thailand, on the other hand, contests any claim based on this map, on the following grounds: first, that the map was not the work of the Mixed Commission, and had therefore no binding character; secondly, that at Preah Vihear the map embodied a material error, not explicable on the basis of any exercise of discretionary powers of adaptation which the Commission may have possessed. This error, according to Thailand's contention, was that the frontier line indicated on the map was not the true watershed line in this vicinity, and that a line drawn in accordance with the true watershed line would have placed, and would now place, the Temple area in Thailand. It is further contended by Thailand that she never accepted this map or the frontier line indicated on it, at any rate so far as Preah Vihear is concerned, in such a way as to become bound thereby; or, alternatively that, if she did accept the map, she did so only under, and because of, a mistaken belief (upon which she relied) that the map line was correctly drawn to correspond with the watershed line.

The Court will, for the moment, confine itself to the first of these contentions, based on an argument which the Court considers to be correct, namely that the map was never formally approved by the first Mixed Commission as such, since that Commission had ceased to function some months before the production of the map. The record does not show whether the map and the line were based on any decisions or instructions given by the Commission to the surveying officers while it was still functioning. What is certain is that the map must have had a basis of some sort, and the Court thinks there can be no reasonable doubt that it was based on the work of the surveying officers in the Dangrek sector. Being one of the series of maps of the frontier areas produced by French Government topographical experts in response to a request made by the Siamese authorities, printed and published by a Paris firm of repute, all of which was clear from the map itself, it was thus invested with an official standing; it had its own inherent technical authority; and its provenance was open and obvious. The Court must nevertheless conclude that, in its inception, and at the moment of its production, it had no binding character.

* * *

Thailand has argued that in the absence of any delimitation approved and adopted by the Mixed Commission, or based on its instructions, the line of the frontier must necessarily—by virtue of Article 1 of the Treaty of 1904—follow strictly the line of the true watershed, and that this line, at Preah Vihear, would place the Temple in Thailand. While admitting that the Mixed Commission had a certain discretion to depart from the watershed line in order to avoid anomalies, and to take account of certain purely local considerations, Thailand contends that any departure such as to place Preah Vihear in Cambodia would have far exceeded the scope of any discretionary powers the Mixed Commission could have had authority to exercise without specific reference to the Governments.

Whatever substance these contentions may have, taken by themselves, the Court considers that they do not meet the real issues here involved. Even if there was no delimitation of the frontier in the eastern sector of the Dangrek approved and adopted by the Mixed Commission, it was obviously open to the Governments themselves to adopt a delimitation for that region, making use of the work of the technical members of the Mixed Commission. As regards any departures from the watershed line which any such delimitation embodied—since, according to Thailand's own contention, the delimitation indicated on the Annex I map was not the Mixed Commission's—there is no point in discussing whether such departures as may have occurred at Preah Vihear fell within the Commission's discretionary powers or not. The point is that it was certainly within the power of the Governments to adopt such departures.

The real question, therefore, which is the essential one in this case, is whether the Parties did adopt the Annex I map, and the line indicated on it, as representing the outcome of the work of delimitation of the frontier in the region of Preah Vihear, thereby conferring on it a binding character.

Thailand denies this so far as she is concerned, representing herself as having adopted a merely passive attitude in what ensued. She maintains also that a course of conduct, involving at most a failure to object, cannot suffice to render her a consenting party to a departure at Preah Vihear from the watershed line specified by Article 1 of the Treaty of 1904, so great as to affect the sovereignty over the Temple area.

The Court sees the matter differently. It is clear from the record that the publication and communication of the eleven maps referred

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to earlier, including the Annex I map, was something of an occasion. This was no mere interchange between the French and Siamese Governments, though, even if it had been, it could have sufficed in law. On the contrary, the maps were given wide publicity in all technically interested quarters by being also communicated to the leading geographical societies in important countries, and to other circles regionally interested; to the Siamese legations accredited to the British, German, Russian and United States Governments; and to all the members of the Mixed Commission, French and Siamese. The full original distribution consisted of about one hundred and sixty sets of eleven maps each. Fifty sets of this distribution were allocated to the Siamese Government. That the Annex I map was communicated as purporting to represent the outcome of the work of delimitation is clear from the letter from the Siamese Minister in Paris to the Minister of Foreign Affairs in Bangkok, dated 20 August 1908, in which he said that "regarding the Mixed Commission of Delimitation of the frontiers and the Siamese Commissioners' request that the French Commissioners prepare maps of various frontiers, the French Commissioners have now finished their work". He added that a series of maps had been brought to him in order that he might forward them to the Siamese Minister of Foreign Affairs. He went on to give a list of the eleven maps, including the map of the Dangrek region—fifty sheets of each. He ended by saying that he was keeping two sheets of each map for his Legation and was sending one sheet of each to the Legations in London, Berlin, Russia and the United States of America.

It has been contended on behalf of Thailand that this communication of the maps by the French authorities was, so to speak, *ex parte*, and that no formal acknowledgment of it was either requested of, or given by, Thailand. In fact, as will be seen presently, an acknowledgment by conduct was undoubtedly made in a very definite way; but even if it were otherwise, it is clear that the circumstances were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map or had any serious question to raise in regard to it. They did not do so, either then or for many years, and thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset.*

So far as the Annex I map is concerned, it was not merely the circumstances of the communication of this and the other maps that called for some reaction from the Siamese side, if reaction there was to be; there were also indications on the face of the map sheet which required a reaction if the Siamese authorities had any reason to contend that the map did not represent the outcome of

the work of delimitation. The map—together with the other maps—was, as already stated, communicated to the Siamese members of the Mixed Commission. These must necessarily have known (and through them the Siamese Government must have known) that this map could not have represented anything formally adopted by the Mixed Commission, and therefore they could not possibly have been deceived by the title of the map, namely, “Dangrek—Commission of Delimitation between Indo-China and Siam” into supposing that it was purporting to be a production of the Mixed Commission as such. Alternatively, if the Siamese members of the Commission did suppose otherwise, this could only have been because, though without recording them, the Mixed Commission had in fact taken some decisions on which the map was based; and of any such decisions the Siamese members of the Commission would of course have been aware.

The Siamese members of the Commission must also have seen the notice appearing in the top left-hand corner of the map sheet to the effect that the work on the ground had been carried out by Captains Kerler and Oum. They would have known, since they were present at the meeting of the Commission held on 2 December 1906, that Captain Oum had then been instructed to carry out the survey of the eastern sector of the Dangrek range, covering Preah Vihear, and that he was to leave the next day to take up this assignment. They said nothing—either then or later—to suggest that the map did not represent the outcome of the work of delimitation or that it was in any way inaccurate.

That the Siamese authorities by their conduct acknowledged the receipt, and recognized the character, of these maps, and what they purported to represent, is shown by the action of the Minister of the Interior, Prince Damrong, in thanking the French Minister in Bangkok for the maps, and in asking him for another fifteen copies of each of them for transmission to the Siamese provincial Governors.

Further evidence is afforded by the proceedings of the subsequent Commission of Transcription which met in Bangkok in March of the following year, 1909, and for some months thereafter. This was a mixed Franco-Siamese Commission set up by the Parties with the object of getting an official Siamese geographical service started, through a consolidation of all the work of the two Mixed Commissions of 1904 and 1907. A primary aim was to convert the existing maps into handy atlas form, and to give the French and Siamese terms used in them their proper equivalents in the other languages. No suggestion that the Annex I map or line was unacceptable was made in the course of the work of this Commission.

* * *

It was claimed on behalf of Thailand that the maps received from Paris were only seen by minor officials who had no expertise in cartography, and would know nothing about the Temple of Preah Vihear. Indeed it was suggested during the oral proceedings that no one in Siam at that time knew anything about the Temple or would be troubling about it.

The Court cannot accept these contentions either on the facts or the law. If the Siamese authorities did show these maps only to minor officials, they clearly acted at their own risk, and the claim of Thailand could not, on the international plane, derive any assistance from that fact. But the history of the matter, as set out above, shows clearly that the maps were seen by such persons as Prince Devawongse, the Foreign Minister, Prince Damrong, the Minister of the Interior, the Siamese members of the First Mixed Commission, the Siamese members of the Commission of Transcription; and it must also be assumed that the Annex I map was seen by the Governor of Khukhan province, the Siamese province adjoining the Preah Vihear region on the northern side, who must have been amongst those for whom extra copies were requested by Prince Damrong. None of these persons was a minor official. All or most had local knowledge. Some must have had knowledge of the Dangrek region. It is clear from the documentation in the case that Prince Damrong took a keen personal interest in the work of delimitation, and had a profound knowledge of archaeological monuments. It is not conceivable that the Governor of Khukhan province, of which Preah Vihear formed part up to the 1904 settlement, was ignorant of its existence.

In any case this particular contention of Thailand's is decisively disproved by a document deposited by Thailand herself, according to which the Temple was in 1899 "re-discovered" by the Siamese Prince Sanphasit, accompanied by some fifteen to twenty officials and local dignitaries, including, it seems, the then Governor and Deputy-Governor of Khukhan. It thus appears that only nine years previous to the receipt of the Annex I map by the Siamese authorities, a considerable number of persons having high official standing in Siam knew of Preah Vihear.

The Court moreover considers that there is no legal foundation for the consequence it is attempted to deduce from the fact that no one in Thailand at that time may have known of the importance of the Temple or have been troubling about it. Frontier rectifications cannot in law be claimed on the ground that a frontier area has turned out to have an importance not known or suspected when the frontier was established.

* * *

It follows from the preceding findings that the Siamese authorities in due course received the Annex I map and that they accepted it. Now, however, it is contended on behalf of Thailand, so far as the disputed area of Preah Vihear is concerned, that an error was committed, an error of which the Siamese authorities were unaware at the time when they accepted the map.

It is an established rule of law that the plea of error cannot be allowed as an element vitiating consent if the party advancing it contributed by its own conduct to the error, or could have avoided it, or if the circumstances were such as to put that party on notice of a possible error. The Court considers that the character and qualifications of the persons who saw the Annex I map on the Siamese side would alone make it difficult for Thailand to plead error in law. These persons included the members of the very Commission of Delimitation within whose competence this sector of the frontier had lain. But even apart from this, the Court thinks that there were other circumstances relating to the Annex I map which make the plea of error difficult to receive.

An inspection indicates that the map itself drew such pointed attention to the Preah Vihear region that no interested person, nor anyone charged with the duty of scrutinizing it, could have failed to see what the map was purporting to do in respect of that region. If, as Thailand has argued, the geographical configuration of the place is such as to make it obvious to anyone who has been there that the watershed must lie along the line of the escarpment (a fact which, if true, must have been no less evident in 1908), then the map made it quite plain that the Annex I line did not follow the escarpment in this region since it was plainly drawn appreciably to the north of the whole Preah Vihear promontory. Nobody looking at the map could be under any misapprehension about that.

Next, the map marked Preah Vihear itself quite clearly as lying on the Cambodian side of the line, using for the Temple a symbol which seems to indicate a rough plan of the building and its stairways.

It would thus seem that, to anyone who considered that the line of the watershed at Preah Vihear ought to follow the line of the escarpment, or whose duty it was to scrutinize the map, there was everything in the Annex I map to put him upon enquiry. Furthermore, as has already been pointed out, the Siamese Government knew or must be presumed to have known, through the Siamese members of the Mixed Commission, that the Annex I map had never been formally adopted by the Commission. The Siamese authorities knew it was the work of French topographical officers to whom they had themselves entrusted the work of producing the

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maps. They accepted it without any independent investigation, and cannot therefore now plead any error vitiating the reality of their consent. The Court concludes therefore that the plea of error has not been made out.

* * *

The Court will now consider the events subsequent to the period 1904-1909.

The Siamese authorities did not raise any query about the Annex I map as between themselves and France or Cambodia, or expressly repudiate it as such, until the 1958 negotiations in Bangkok, when, *inter alia*, the question of Preah Vihear came under discussion between Thailand and Cambodia. Nor was any question raised even after 1934-1935, when Thailand carried out a survey of her own in this region, and this survey had, in Thailand's view, established a divergence between the map line and the true line of the watershed—a divergence having the effect of placing the Temple in Cambodia. Although, after this date, Thailand eventually produced some maps of her own showing Preah Vihear as being in Thailand, she continued, even for public and official purposes, to use the Annex I map, or other maps showing Preah Vihear as lying in Cambodia, without raising any query about the matter (her explanations as to this will be considered presently). Moreover, the Court finds it difficult to overlook such a fact as, for instance, that in 1937, even after Thailand's own survey in 1934-1935, and in the same year as the conclusion of a treaty with France in which, as will be seen, the established common frontiers were reaffirmed, the Siamese Royal Survey Department produced a map showing Preah Vihear as lying in Cambodia.

Thailand had several opportunities of raising with the French authorities the question of the Annex I map. There were first of all the negotiations for the 1925 and 1937 Treaties of Friendship, Commerce and Navigation between France, on behalf of Indo-China, and Siam. These Treaties, although they provided for a general process of revision or replacement of previous Agreements, excluded from this process the existing frontiers as they had been established under the Boundary Settlements of 1893, 1904 and 1907. Thereby, and in certain more positive provisions, the Parties confirmed the existing frontiers, whatever they were. These were occasions (particularly in regard to the negotiations for the 1937 Treaty, which occurred only two years after Thailand's own survey of the frontier regions had disclosed, in her belief, a serious divergence between the map line and the watershed line at Preah Vihear) on which it would have been natural for Thailand to raise the matter, if she considered the map indicating the frontier at Preah Vihear to be

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incorrect—occasions on which she could and should have done so if that was her belief. She did not do so and she even, as has been seen, produced a map of her own in 1937 showing Preah Vihear as being in Cambodia. That this map may have been intended for internal military use does not seem to the Court to make it any less evidence of Thailand's state of mind. The inference must be—particularly in regard to the 1937 occasion—that she accepted or still accepted the Annex I map, and the line it indicated, even if she believed it incorrect, even if, after her own survey of 1934-1935, she thought she knew it was incorrect.

Thailand having temporarily come into possession of certain parts of Cambodia, including Preah Vihear, in 1941, the Ministry of Information of Thailand published a work entitled "Thailand during national reconstruction" in which it was stated in relation to Preah Vihear that it had now been "retaken" for Thailand. This has been represented by Thailand as being an error on the part of a minor official. Nevertheless, similar language, suggesting that Thailand had been in possession of Preah Vihear only since about 1940, was used by representatives of Thailand in the territorial negotiations that took place between Thailand and Cambodia at Bangkok in 1958.

After the war, by a Settlement Agreement of November 1946 with France, Thailand accepted a reversion to the *status quo ante* 1941. It is Thailand's contention that this reversion to the *status quo* did not affect Preah Vihear because Thailand already had sovereignty over it before the war. The Court need not discuss this contention, for whether Thailand did have such sovereignty is precisely what is in issue in these proceedings. The important point is that, in consequence of the war events, France agreed to set up a Franco-Siamese Conciliation Commission consisting of the two representatives of the Parties and three neutral Commissioners, whose terms of reference were specifically to go into, and make recommendations on an equitable basis in regard to, any complaints or proposals for revision which Thailand might wish to make as to, *inter alia*, the frontier settlements of 1904 and 1907. The Commission met in 1947 in Washington, and here therefore was an outstanding opportunity for Thailand to claim a rectification of the frontier at Preah Vihear on the ground that the delimitation embodied a serious error which would have caused Thailand to reject it had she known of the error in 1908-1909. In fact, although Thailand made complaints about the frontier line in a considerable number of regions, she made none about Preah Vihear. She even (12 May 1947) filed with the Commission a map showing Preah Vihear as lying in Cambodia. Thailand contends that this involved no adverse implications as regards her claim to the Temple, because

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the Temple area was not in issue before the Commission, that it was other regions that were under discussion, and that it was in relation to these that the map was used. But it is precisely the fact that Thailand had raised these other questions, but not that of Preah Vihear, which requires explanation; for, everything else apart, Thailand was by this time well aware, from certain local happenings in relation to the Temple, to be mentioned presently, that France regarded Preah Vihear as being in Cambodian territory—even if this had not already and long since been obvious from the frontier line itself, as mapped by the French authorities and communicated to the Siamese Government in 1908. The natural inference from Thailand's failure to mention Preah Vihear on this occasion is, again, that she did not do so because she accepted the frontier at this point as it was drawn on the map, irrespective of its correspondence with the watershed line.

As regards the use of a map showing Preah Vihear as lying in Cambodia, Thailand maintains that this was for purely cartographical reasons, that there were no other maps, or none that were so convenient, or none of the right scale for the occasion. The Court does not find this explanation convincing. Thailand could have used the map but could also have entered some kind of reservation with France as to its correctness. This she did not do.

As regards her failure even to raise the question of the map as such until 1958, Thailand states that this was because she was, at all material times, in possession of Preah Vihear; therefore she had no need to raise the matter. She indeed instances her acts on the ground as evidence that she never accepted the Annex I line at Preah Vihear at all, and contends that if she never accepted it she clearly had no need to repudiate it, and that no adverse conclusions can be drawn from her failure to do so. The acceptability of this explanation must obviously depend on whether in fact it is the case that Thailand's conduct on the ground affords *ex post facto* evidence sufficient to show that she never accepted the Annex I line in 1908 in respect of Preah Vihear, and considered herself at all material times to have the sovereignty over the Temple area.

* * *

The Court has considered the evidence furnished by Thailand of acts of an administrative character performed by her officials at or relative to Preah Vihear. France, and subsequently Cambodia,

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in view of her title founded on the Treaty of 1904, performed only a very few routine acts of administration in this small, deserted area. It was specifically admitted by Thailand in the course of the oral hearing that if Cambodia acquired sovereignty over the Temple area by virtue of the frontier settlement of 1904, she did not subsequently abandon it, nor did Thailand subsequently obtain it by any process of acquisitive prescription. Thailand's acts on the ground were therefore put forward as evidence of conduct as sovereign, sufficient to negate any suggestion that, under the 1904 Treaty settlement, Thailand accepted a delimitation having the effect of attributing the sovereignty over Preah Vihear to Cambodia. It is therefore from this standpoint that the Court must consider and evaluate these acts. The real question is whether they sufficed to efface or cancel out the clear impression of acceptance of the frontier line at Preah Vihear to be derived from the various considerations already discussed.

With one or two important exceptions to be mentioned presently, the acts concerned were exclusively the acts of local, provincial, authorities. To the extent that these activities took place, it is not clear that they had reference to the summit of Mount Preah Vihear and the Temple area itself, rather than to places somewhere in the vicinity. But however that may be, the Court finds it difficult to regard such local acts as overriding and negating the consistent and undeviating attitude of the central Siamese authorities to the frontier line as mapped.

In this connection, much the most significant episode consisted of the visit paid to the Temple in 1930 by Prince Damrong, formerly Minister of the Interior, and at this time President of the Royal Institute of Siam, charged with duties in connection with the National Library and with archaeological monuments. The visit was part of an archaeological tour made by the Prince with the permission of the King of Siam, and it clearly had a quasi-official character. When the Prince arrived at Preah Vihear, he was officially received there by the French Resident for the adjoining Cambodian province, on behalf of the Resident Superior, with the French flag flying. The Prince could not possibly have failed to see the implications of a reception of this character. A clearer affirmation of title on the French Indo-Chinese side can scarcely be imagined. It demanded a reaction. Thailand did nothing. Furthermore, when Prince Damrong on his return to Bangkok sent the French Resident some photographs of the occasion, he used language which seems to admit that France, through her Resident, had acted as the host country.

The explanations regarding Prince Damrong's visit given on behalf of Thailand have not been found convincing by the Court. Looking at the incident as a whole, it appears to have amounted

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to a tacit recognition by Siam of the sovereignty of Cambodia (under French Protectorate) over Preah Vihear, through a failure to react in any way, on an occasion that called for a reaction in order to affirm or preserve title in the face of an obvious rival claim. What seems clear is that either Siam did not in fact believe she had any title—and this would be wholly consistent with her attitude all along, and thereafter, to the Annex I map and line—or else she decided not to assert it, which again means that she accepted the French claim, or accepted the frontier at Preah Vihear as it was drawn on the map.

* * *

The remaining relevant facts must now be stated. In February 1949, not long after the conclusion of the proceedings of the Franco-Siamese Conciliation Commission, in the course of which, as has been seen, Thailand did not raise the question of Preah Vihear, France addressed a Note to the Government of Thailand stating that a report had been received of the stationing of four Siamese keepers at the Temple, and asking for information. There was no reply to this Note, nor to a follow-up Note of March 1949. In May 1949, France sent a further Note, setting out briefly, but quite explicitly, the grounds on which she considered Preah Vihear to be in Cambodia, and pointing out that a map produced by Thailand herself had recognized this fact. The withdrawal of the keepers was requested. Although there was an error in this Note, the significance of the latter was that it contained an unequivocal assertion of sovereignty. This French Note also received no reply. In July 1950, a further Note was sent. This too remained unanswered.

In these circumstances Cambodia, on attaining her independence in 1953, proposed, for her part, to send keepers or guards to the Temple, in the assertion or maintenance of her position. However, finding that Thai keepers were already there, the Cambodian keepers withdrew, and Cambodia sent a Note dated January 1954 to the Government of Thailand asking for information. This received a mere acknowledgment, but no explanation. Nor was there, even then, any formal affirmation of Thailand's claim. At the end of March 1954, the Government of Cambodia, drawing attention to the fact that no substantive reply to its previous Note had been received, notified the Government of Thailand that it now proposed to replace the previously withdrawn Cambodian keepers or guards by some Cambodian troops. In this Note Cambodia specifically referred to the justification of the Cambodian claim contained in the French Note of May 1949. This Cambodian Note also was not

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answered. However, the Cambodian troops were not in fact sent; and in June 1954, Cambodia addressed to Thailand a further Note stating that, as information had been received to the effect that Thai troops were already in occupation, the despatch of the Cambodian troops had been suspended in order not to aggravate the situation. The Note went on to ask that Thailand should either withdraw her troops or furnish Cambodia with her views on the matter. This Note equally received no reply. But the Thai "troops" (the Court understands that they are in fact a police force) remained. Again, therefore, it would seem that Thailand, while taking certain local action, was not prepared to deny the French and Cambodian claim at the diplomatic level.

No further diplomatic correspondence was produced to the Court; but eventually, in 1958, a conference was held at Bangkok between Thailand and Cambodia, to discuss various territorial matters in dispute between the Parties, including that of Preah Vihear. The representative of Thailand having declined to discuss the legal aspects of the matter, the negotiations broke down and Cambodia instituted the present proceedings.

* * *

The Court will now state the conclusions it draws from the facts as above set out.

Even if there were any doubt as to Siam's acceptance of the map in 1908, and hence of the frontier indicated thereon, the Court would consider, in the light of the subsequent course of events, that Thailand is now precluded by her conduct from asserting that she did not accept it. She has, for fifty years, enjoyed such benefits as the Treaty of 1904 conferred on her, if only the benefit of a stable frontier. France, and through her Cambodia, relied on Thailand's acceptance of the map. Since neither side can plead error, it is immaterial whether or not this reliance was based on a belief that the map was correct. It is not now open to Thailand, while continuing to claim and enjoy the benefits of the settlement, to deny that she was ever a consenting party to it.

The Court however considers that Thailand in 1908-1909 did accept the 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, the effect of which is to situate Preah Vihear in Cambodian territory. The Court considers further that, looked at

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as a whole, Thailand's subsequent conduct confirms and bears out her original acceptance, and that Thailand's acts on the ground do not suffice to negative this. Both Parties, by their conduct, recognized the line and thereby in effect agreed to regard it as being the frontier line.

* * *

The Court must now consider two further matters. Thailand contends that since 1908, and at any rate up to her own 1934-1935 survey, she believed that the map line and watershed line coincided, and therefore that if she accepted the map line, she did so only in that belief. It is evident that such a contention would be quite inconsistent with Thailand's equally strongly advanced contention that these acts in the concrete exercise of sovereignty evidenced her belief that she had sovereignty over the Temple area: for if Thailand was truly under a misapprehension about the Annex I line—if she really believed it indicated the correct watershed line—then she must have believed that, on the basis of the map and her acceptance of it, the Temple area lay rightfully in Cambodia. If she had such a belief—and such a belief is implicit in any plea that she had accepted the Annex I map only because she thought it was correct—then her acts on the ground would have to be regarded as deliberate violations of the sovereignty which (on the basis of the assumptions above stated) she must be presumed to have thought Cambodia to possess. The conclusion is that Thailand cannot allege that she was under any misapprehension in accepting the Annex I line, for this is wholly inconsistent with the reason she gives for her acts on the ground, namely that she believed her self to possess sovereignty in this area.

It may be added that even if Thailand's plea of misapprehension could, in principle, be accepted, it should have been advanced shortly after Thailand's own survey of the disputed region was carried out in 1934-1935. Since then Thailand could not have been under any misapprehension.

* * *

There is finally one further aspect of the case with which the Court feels it necessary to deal. The Court considers that the acceptance of the Annex I map by the Parties caused the map to enter the treaty settlement and to become an integral part of it. It cannot be said that this process involved a departure from, and

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even a violation of, the terms of the Treaty of 1904, wherever the map line diverged from the line of the watershed, for, as the Court sees the matter, the map (whether in all respects accurate by reference to the true watershed line or not) was accepted by the Parties in 1908 and thereafter as constituting the result of the interpretation given by the two Governments to the delimitation which the Treaty itself required. In other words, the Parties at that time adopted an interpretation of the treaty settlement which caused the map line, in so far as it may have departed from the line of the watershed, to prevail over the relevant clause of the treaty. Even if, however, the Court were called upon to deal with the matter now as one solely of ordinary treaty interpretation, it considers that the interpretation to be given would be the same, for the following reasons.

In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question, and its rectification claimed, whenever any inaccuracy by reference to a clause in the parent treaty is discovered. Such a process could continue indefinitely, and finality would never be reached so long as possible errors still remained to be discovered. Such a frontier, so far from being stable, would be completely precarious. It must be asked why the Parties in this case provided for a delimitation, instead of relying on the Treaty clause indicating that the frontier line in this region would be the watershed. There are boundary treaties which do no more than refer to a watershed line, or to a crest line, and which make no provision for any delimitation in addition. The Parties in the present case must have had a reason for taking this further step. This could only have been because they regarded a watershed indication as insufficient by itself to achieve certainty and finality. It is precisely to achieve this that delimitations and map lines are resorted to.

Various factors support the view that the primary object of the Parties in the frontier settlements of 1904-1908 was to achieve certainty and finality. From the evidence furnished to the Court, and from the statements of the Parties themselves, it is clear that the whole question of Siam's very long frontiers with French Indo-China had, in the period prior to 1904, been a cause of uncertainty, trouble and friction, engendering what was described in one contemporary document placed before the Court as a state of "growing tension" in the relations between Siam and France. The Court thinks it legitimate to conclude that an important, not to say a

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paramount object of the settlements of the 1904-1908 period (which brought about a comprehensive regulation of all outstanding frontier questions between the two countries), was to put an end to this state of tension and to achieve frontier stability on a basis of certainty and finality.

In the Franco-Siamese Boundary Treaty of 23 March 1907, the Parties recited in the preamble that they were desirous "of ensuring the final regulation of all questions relating to the common frontiers of Indo-China and Siam". A further token of the same object is to be found in the desire, of which the documentation contains ample evidence, and which was evinced by both Parties, for natural and visible frontiers. Even if, as the Court stated earlier, this is not in itself a reason for holding that the frontier must follow a natural and visible line, it does support the view that the Parties wanted certainty and finality by means of natural and visible lines.

The same view is strongly supported by the Parties' attitude over frontiers in the 1925 and 1937 Treaties. By specifically excluding frontiers from the process of revision of previous treaties, which the 1925 and 1937 Treaties otherwise effected, the Parties bore witness to the paramount importance they attached to finality in this field. Their attitude in 1925 and 1937 can properly be taken as evidence that they equally desired finality in the 1904-1908 period.

The indication of the line of the watershed in Article 1 of the 1904 Treaty was itself no more than an obvious and convenient way of describing a frontier line objectively, though in general terms. There is, however, no reason to think that the Parties attached any special importance to the line of the watershed as such, as compared with the overriding importance, in the interests of finality, of adhering to the map line as eventually delimited and as accepted by them. The Court, therefore, feels bound, as a matter of treaty interpretation, to pronounce in favour of the line as mapped in the disputed area.

* * *

Given the grounds on which the Court bases its decision, it becomes unnecessary to consider whether, at Preah Vihear, the line as mapped does in fact correspond to the true watershed line in this vicinity, or did so correspond in 1904-1908, or, if not, how the watershed line in fact runs.

* * *

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 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.

As regards the fifth Submission of Cambodia concerning restitution, the Court considers that the request made in it does not represent any extension of Cambodia's original claim (in which case it would have been irreceivable at the stage at which it was first advanced). Rather is it, like the fourth Submission, implicit in, and consequential on, the claim of sovereignty itself. On the other hand, no concrete evidence has been placed before the Court showing in any positive way that objects of the kind mentioned in this Submission have in fact been removed by Thailand from the Temple or Temple area since Thailand's occupation of it in 1954. It is true that Thailand has not so much denied the allegation as contended that it is irreceivable. In the circumstances, however, the question of restitution is one on which the Court can only give a finding of principle in favour of Cambodia, without relating it to any particular objects.

For these reasons,

THE COURT,

by nine votes to three,

finds that the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia;

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finds in consequence,

by nine votes to three,

that Thailand is under an obligation to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory;

by seven votes to five,

that Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia's fifth Submission which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this fifteenth day of June, one thousand nine hundred and sixty-two, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Kingdom of Cambodia and to the Government of the Kingdom of Thailand, respectively.

(Signed) B. WINIARSKI,
President.

(Signed) GARNIER-COIGNET,
Registrar.

Judge TANAKA and Judge MORELLI make the following Joint Declaration:

We wish to make clear the reason why, to our great regret, we were unable to concur in the majority opinion on the clause of the operative provisions of the Judgment concerning the restoration by Thailand to Cambodia of any objects which may have been removed from the Temple.

The fact that we voted against this clause of the operative provisions is in no way connected with the foundation of Cambodia's claim for the restoration of the objects in question. We did so because we think that the Court should have refrained from pronouncing on that claim since, having been made for the first time in the Submissions filed by Cambodia on 5 March 1962, it must be considered to be out of time.

The claim as it is formulated in Cambodia's Application is directed not to the return of the Temple as such, but rather to sovereignty over the portion of territory in which the Temple is situated. It is directed, further, to one of the consequences flowing from Cambodian sovereignty over the said portion of territory, that is to say, Thailand's obligation to withdraw the detachments of armed forces it had stationed there, this consequence being explicitly indicated by Cambodia in its Application.

The other possible consequence of Cambodian sovereignty over the portion of territory in which the Temple is situated, namely, Thailand's obligation to restore to Cambodia any objects that may have been removed from the Temple, is a consequence that is not indicated in the Application. A claim for the return of the said objects cannot be considered to be implicitly contained in the claim presented by Cambodia in its Application, that claim having, as has been stated above, a completely different subject.

It is only if the claim by Cambodia had had directly as its subject the return of the Temple that it would have been possible, but then only through a liberal construction of such a claim, to consider that that claim was concerned also with objects which, having formed part of the Temple prior to the Application, had, also prior to the Application, been removed from the Temple.

Vice-President ALFARO and Judge Sir Gerald FITZMAURICE append to the Judgment of the Court statements of their Separate Opinions.

Judges MORENO QUINTANA, WELLINGTON KOO and Sir Percy SPENDER append to the Judgment of the Court statements of their Dissenting Opinions.

(Initialled) B. W.

(Initialled) G.-C.