

INTERNATIONAL COURT OF JUSTICE

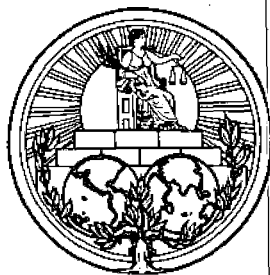
PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

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

(General List No. 45—Judgments of 26 May 1961 and
15 June 1962)

VOLUME II

Oral Arguments.—Documents.—Correspondence



MINUTES OF THE HEARING HELD FROM
 I TO 31 MARCH 1962 AND ON
 15 JUNE 1962

YEAR 1962

FIRST PUBLIC HEARING (I III 62, 10.30 a.m.)

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

Also present:

For the Government of Cambodia:

H.E. TRUONG CANG, Member of the *Haut Conseil du Trône*, *as Agent*;

H.E. OUK CHHOUM, Minister-Counsellor at the Royal 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*;

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, *General Secretary* of the Delegation;

M. CHEM SNGUON, *Deputy General Secretary* of the Delegation.

For the Government of Thailand:

H.S.H. Prince VONGSAMAHIP JAYANKURA, Ambassador of Thailand to the Netherlands, *as Agent*;

assisted by:

M. 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,

Mr. J. G. LE QUESNE, Member of the English Bar,

as Advocates and Counsel ;

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

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 PRESIDENT opened the hearing and made the following speech :

"The Court is assembled today to consider, in its second phase, the dispute which has arisen between the Kingdom of Cambodia and the Kingdom of Thailand concerning the Temple of Preah Vihear.

However, before opening the oral proceedings in this case, I should like to address myself to a day which is outstanding in the history of international law, the 15th of February 1922. On that day, forty years ago, in this same great court-room, the Permanent Court of International Justice held its first sitting, to which the presence of the Queen of the Netherlands and of eminent Netherlands and foreign public figures gave a special distinction.

While the settlement of disputes between States by arbitration has its origins in antiquity, and while it rendered great services and in particular contributed to defining the rules of international law, it is in fact only with the establishment of the Permanent Court as a body of independent judges ready at all times to perform their task that the institution of international justice became truly permanent and readily accessible to all States desirous of recourse to it for the settlement of their legal disputes. The originality and importance of the element of permanency cannot be overstressed; to it is owed the fact that the Permanent Court of International Justice became an institution in the real sense of the term.

It has been said that institutionalization implies a belief in the all-importance of external instrumentalities. But if this is to be taken also to mean coercion, those in the League of Nations who set up the Permanent Court realized that the only way to succeed was to have confidence in States. The permanent nature of the Court made possible acceptance of its compulsory jurisdiction, but through the ingenious

device of the optional clause such acceptance remained freely given and within the limitations set by the accepting State. This solution has been criticized, but it has been found to be the only possible one in the present state of international law, and it was endorsed by the Statute of the new Court. More than that, the idea has made progress, and in several hundred bilateral and multilateral treaties States have accepted the compulsory jurisdiction of the Court for disputes arising out of the application and interpretation of those treaties. While the Charter leaves to the parties to a dispute the choice of the peaceful means with a view to its settlement, the Security Council, in the appropriate circumstances, is required also to 'take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice'.

In its twenty years of activity, the Permanent Court delivered some dozens of decisions in contentious cases and in advisory proceedings, and these decisions are authoritative in the field of international law. The cataclysm of the Second World War put the Court to a difficult test, but did not destroy it; and, when the war was over, if the United Nations decided to replace the Permanent Court by a new Court, that was for reasons of a practical nature. The Charter provided that the Statute of the new Court should be based upon the Statute of the Permanent Court of International Justice, and the modifications were not fundamental. The system of partial renewal of the Court better secures its unity and that esprit de corps which welds into a single sense the personal responsibility of the Judges and that of the Court. The Statute of the Court now forms an integral part of the Charter, and the Court is 'the principal judicial organ of the United Nations', while remaining, within the framework of the Organization, an independent judicial body. As the Permanent Court had said on a number of occasions, the Court is first and foremost the organ of international law; the new Statute emphasizes this, prescribing that the function of the Court 'is to decide in accordance with international law such disputes as are submitted to it'.

The present Court has since the beginning been conscious of the need to maintain a continuity of tradition, case law and methods of work. Its first President was Judge Guerrero, the last President of the former Court. It adopted the rules of the former Court, with a few modifications of minor importance, and even its external forms. Above all, without being bound by *stare decisis* as a principle or rule, it often seeks guidance in the body of decisions of the former Court, and the result is a remarkable unity of precedent, an important factor in the development of international law.

The function of the Court is to state the law as it is; it contributes to its development, but in the manner of a judicial body, for instance when it analyses out a rule contained by implication in another, or when, having to apply a rule to a specific instance, which is always individualized and with its own clear-cut features, it gives precision to the meaning of that rule, which is sometimes surrounded by what the great jurist, Vittorio Scialoja, called, without intending the expression critically, the *chiaroscuro* of international law. Recently it has also been rightly said that there are problems of international law which cannot be studied without referring to the decisions of both Courts.

In a period such as the present, the function of the Court is sometimes a particularly arduous one, but it must not be forgotten that alongside rules in evolution that are part of customary or treaty law, above all those taken over from private law, there are almost immutable rules and principles which are necessary because they meet the deep-seated needs of the international community and of which von Liszt said in his positivist construct that they constitute *den festen Grundstock des ungeschriebenen Völkerrechts, seine ältesten, wichtigsten, heiligsten Bestand* (the firm foundation of the unwritten law of nations, its oldest, most important, and most sacred core).

It would seem that forty years of operation of a permanent international tribunal justify all reasonable hopes."

The President recalled that the Court was at present dealing with the case of the Temple of Preah Vihear between Cambodia and Thailand and that proceedings were instituted by an application of the Government of Cambodia filed with the Registry on 6 October 1959. The Government of Thailand had raised preliminary objections to the competence of the Court, which were not upheld by the Court in its Judgment of 26 May 1961. The pleadings have thereafter been filed by the Parties within the time-limits prescribed, and the case became ready for hearing on 2 February 1962.

The President regretted to announce that for reasons of health Judge Córdova and Judge Spiropoulos are prevented from taking part in the consideration of the present case.

Judge Jessup has stated that, in pursuance of Article 17 of the Statute, he will not be able to participate in the decision of this case.

Judge Badawi is detained by indisposition and will be unable to be present at this hearing.

The President noted the presence in Court of the Agents of the Parties and their Counsel and Advocates, and called upon the Agent for the Government of Cambodia.

M. TRUONG CANG made the statement reproduced in the Annex¹.

The PRESIDENT called upon Mr. Dean Acheson.

Mr. Dean ACHESON began the speech reproduced in the Annex².

(The Court adjourned from 12.50 p.m. to 4 p.m.)

The PRESIDENT called upon Mr. Dean Acheson.

Mr. Dean ACHESON concluded the speech reproduced in the Annex³.

(The Court rose at 5.52 p.m.)

(Signed) B. WINIARSKI,
President.

(Signed) GARNIER-COIGNET,
Registrar.

¹ See pp. 137-138.

² See pp. 139-149.

³ See pp. 149-160.