CORRESPONDENCE

(AUSTRALIA *v.* FRANCE;

NEW ZEALAND *v.* FRANCE)

1. THE AMBASSADOR OF AUSTRALIA TO THE NETHERLANDS TO THE REGISTRAR

9 May 1973.

I have the honour to transmit to you an Application[1] instituting proceedings in the International Court of Justice by Australia against the French Republic. The Government of Australia has appointed Mr. Patrick Brazil, an officer of the Australian Attorney-General's Department, as its agent, and I certify that the signature on the application is the signature of Mr. Brazil.

I have been appointed as Co-Agent.

In accordance with Article 38 (5) of the Rules of Court[2], I have the honour to state that the address for service of the agents is this Embassy.

(Signed) L. D. THOMSON.

2. THE AGENT OF AUSTRALIA TO THE PRESIDENT

9 May 1973.

I have the honour to refer to the Application dated 9 May 1973 by the Government of Australia instituting proceedings against the French Government and to the Request[3] lodged on the same day for the laying down of provisional measures to be adopted by the French Government pursuant to Article 33 of the General Act for the Pacific Settlement of Disputes 1928 and in accordance with Article 41 of the Statute of the Court.

In view of the extreme urgency of the matter, may I respectfully request you, as President of the Court, to consider the possibility of sending a telegram to the French Minister for Foreign Affairs, drawing his attention to paragraph 3 of Article 33 of the General Act and suggesting to him the desirability, pending the judgment of the Court in this case, of continuing the suspension of further atmospheric nuclear testing to which the French Government agreed for the duration of the diplomatic negotiations recently concluded and in which the Australian Government hoped to secure a settlement which would have avoided the need to institute the present proceedings.

Your Excellency will recall that requests comparable to this were made to the President of the Permanent Court of International Justice in the *Case concerning the Administration of the Prince of Piess* (*Series E, No. 9*, p. 165, n. 1) and to the President of the International Court of Justice in the *Anglo-Iranian Oil Co.* case (*I.C.J. Pleadings*, p. 704).

(Signed) P. BRAZIL.

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[1] **I**, pp. 3-39.
[2] Rules of Court as amended on 10 May 1972, *I.C.J. Acts and Documents No. 2.*
[3] **I**, pp. 43-146.

3. THE AGENT OF AUSTRALIA TO THE REGISTRAR

9 May 1973.

I have the honour to refer again to the Application dated 9 May 1973, by which Australia is instituting proceedings against the French Republic.

The Australian Government considers that it possesses, and it intends to exercise, the right to choose a Judge under Article 31 of the Statute of the Court, and I wish hereby to notify the Registrar of the Court to this effect. The person chosen by the Australian Government to sit as Judge in the case is the Right Honourable Sir Garfield Edward John Barwick, PC, GCMG, Chief Justice of the High Court of Australia.

4. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

(télégramme)

9 mai 1973.

Ai honneur communiquer à Votre Excellence que Gouvernement australien a fait déposer ce jour au Greffe une requête contre Gouvernement français concernant poursuite essais nucléaires dans océan Pacifique Sud et se référant à article 17 Acte général pour règlement pacifique différends internationaux de 1928 et subsidiairement à article 36 paragraphe 2 Statut Cour. Cour est priée « To adjudge and declare that for the above-mentioned reasons or any of them or for any other reason that the Court deems to be relevant the carrying out of further atmospheric nuclear weapon tests in the South Pacific Ocean is not consistent with applicable rules of international law and to order that the French Republic shall not carry out any further such tests ». Ai également honneur informer Votre Excellence que Gouvernement australien a présenté même jour une demande indication mesures conservatoires aux termes articles 41 Statut et 66 Règlement. Demande conclut comme suit: « In the light of the foregoing considerations Australia submits that this is a proper and necessary case for the Court to exercise its power to lay down or indicate provisional measures of protection. The measures which Australia respectfully requests are simple and are directly and exclusively related to the rights for which Australia seeks protection in these proceedings. The provisional measures should be that the French Government should desist from any further atmospheric nuclear tests pending the Judgment of the Court in this case. » Texte requête et demande indication mesures conservatoires vous seront expédiés ce jour par exprès.

5. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

(télégramme)

9 mai 1973.

Me référant télégramme et lettre ce jour concernant requête Gouvernement australien ai honneur communiquer Votre Excellence que ce gouvernement aux

termes article 31 Statut a désigné sir Garfield Barwick président Haute Cour d'Australie pour siéger en qualité juge *ad hoc*. Se référant article 3 Règlement Cour attacherait prix à connaître par voie télégraphique opinion Gouvernement français.

6. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

9 mai 1973.

Comme suite à mes télégrammes de ce jour, j'ai l'honneur de confirmer à Votre Excellence que le Gouvernement de l'Australie a déposé au Greffe de la Cour internationale de Justice une requête introduisant contre le Gouvernement de la République française une instance relative à la poursuite des essais atmosphériques d'armes nucléaires dans l'océan Pacifique Sud.

Votre Excellence voudra bien trouver ci-joint copie certifiée conforme de ladite requête. Je lui en ferai prochainement parvenir d'autres exemplaires, dans l'édition en anglais et en français qui sera établie par les soins du Greffe aux fins des communications à effectuer en conformité de l'article 40, paragraphes 2 et 3, du Statut de la Cour.

Je joins également à la présente lettre copies certifiées conformes d'une lettre de l'ambassadeur d'Australie aux Pays-Bas concernant la désignation d'un agent et d'un coagent du Gouvernement australien, et d'une lettre de l'agent du Gouvernement australien concernant la désignation par ce gouvernement d'un juge *ad hoc*. Par l'un des télégrammes ci-dessus mentionnés, j'ai fait connaître à Votre Excellence que, se référant à l'article 3 du Règlement, la Cour attachait du prix à connaître par voie télégraphique l'opinion du Gouvernement français en ce qui concerne la désignation d'un juge *ad hoc* par le Gouvernement australien.

Je joins enfin à la présente lettre copie certifiée conforme de la demande en indication de mesures conservatoires présentée au nom du Gouvernement australien le 9 mai 1973 aux termes des articles 41 du Statut et 66 du Règlement de la Cour, demande dont j'enverrai prochainement à Votre Excellence une traduction en français, sans caractère officiel, établie par les soins du Greffe.

Je saisis cette occasion pour attirer l'attention de Votre Excellence sur l'article 38 du Règlement de la Cour qui dispose (paragraphe 3) que la partie contre laquelle la requête est déposée et à laquelle elle est communiquée doit, en accusant la réception de cette communication, ou sinon le plus tôt possible, faire connaître à la Cour le nom de son agent et que, aux termes du paragraphe 5 de cet article, la désignation de l'agent doit être accompagnée de l'indication du domicile élu au siège de la Cour et auquel seront adressées toutes les communications relatives à l'affaire en cause.

(Signé) S. AQUARONE.

7. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

(telegram)

9 May 1973.

With reference Article 40, paragraph 3, of Statute have honour inform you that on 9 May Australia filed *(a)* Application instituting proceedings against

France asking the Court to adjudge and declare that "The carrying out of further atmospheric nuclear tests in the South Pacific Ocean is not consistent with applicable rules of international law and to order that the French Republic shall not carry out any further such tests". *(b)* Request for the indication of interim measures of protection in accordance with Articles 41 of Statute and 66 of New Rules. Measures requested are that the French Government should desist from any further atmospheric nuclear tests pending the judgment of the Court.

8. THE AMBASSADOR OF NEW ZEALAND TO THE NETHERLANDS TO THE REGISTRAR

9 May 1973.

I have the honour to submit to the International Court of Justice an Application[1] instituting proceedings on behalf of New Zealand against France in respect of a dispute concerning the legality of nuclear testing in the Pacific region that gives rise to radioactive fallout.

Paragraph 10 of the Application indicates that New Zealand intends to seek interim measures of protection in this case. I expect that the request for interim measures of protection will be submitted to the Court, at the latest, on Monday 14 May 1973.

In accordance with Article 38 (2) of the Court's Rules, the New Zealand Government has appointed Professor R. Q. Quentin-Baxter as its Agent in this case. I have been appointed as Co-Agent.

In reliance on Article 31 (3) of the Statute of the Court, New Zealand wishes to nominate the Right Honourable Sir Garfield Barwick, GCMG, Chief Justice of the High Court of Australia, as Judge *ad hoc*.

The address for service of the Agents of the New Zealand Government is the New Zealand Embassy, 18 Lange Voorhout, The Hague.

(Signed) H. V. ROBERTS.

9. THE AGENT OF NEW ZEALAND TO THE PRESIDENT

9 May 1973.

I have the honour to refer to the Application of 9 May 1973 by which New Zealand instituted proceedings against France.

I have also the honour to call attention to paragraph 10 of the Application, and to the covering letter to the Registrar, in which it is stated that the New Zealand Government will seek interim measures of protection pending the final disposition of this case, and that the request is expected to be filed, at latest, on Monday, 14 May. The rights, the interim protection of which will be sought, are those stated in paragraph 28 of the Application.

[1] See pp. 3-45, *supra*.

On behalf of the New Zealand Government I would respectfully submit to Your Excellency that you consider suggesting to the French Minister for Foreign Affairs that, pending consideration of the matter by the Court, it is desirable that France should not conduct nuclear tests giving rise to radioactive fallout. In making this submission, I am mindful of the need to ensure that the Court is in a position to give an effective decision, and of the urgency of the matter in the light of the declared intention of the French Government to continue with its programme of nuclear testing in the South Pacific region.

I understand that the Agent of the Government of Australia, which has instituted comparable proceedings against France, has, in a letter of today's date, addressed a similar request to you.

(Signed) R. Q. QUENTIN-BAXTER.

10. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

(télégramme)

9 mai 1973.

Ai honneur communiquer Votre Excellence que Gouvernement néo-zélandais a fait déposer ce jour au Greffe une requête contre Gouvernement français concernant essais nucléaires dans région Pacifique Sud et se référant à article 17 Acte général pour règlement pacifique différends internationaux de 1928 et subsidiairement à article 36 paragraphes 2 et 5 Statut Cour. Cour est priée «To adjudge and declare that the conduct by the French Government of nuclear tests in the South Pacific Region that give rise to radioactive fallout constitutes a violation of New Zealand's rights under international law and that these rights will be violated by any further such tests ». Texte requête vous sera expédié ce jour par exprès.

11. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

(télégramme)

9 mai 1973.

[Même texte que n° 5 ci-dessus.]

12. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

9 mai 1973.

Comme suite à mes télégrammes de ce jour, j'ai l'honneur de confirmer à Votre Excellence que le Gouvernement de la Nouvelle-Zélande a déposé au Greffe de la Cour internationale de Justice une requête introduisant contre le

Gouvernement de la République française une instance relative aux essais nucléaires effectués dans la région du Pacifique Sud.

Votre Excellence voudra bien trouver ci-joint copie certifiée conforme de ladite requête. Je lui en ferai prochainement parvenir d'autres exemplaires dans l'édition en anglais et en français qui sera établie par les soins du Greffe aux fins des communications à effectuer en conformité de l'article 40, paragraphes 2 et 3, du Statut de la Cour.

Je joins également à la présente lettre copie certifiée conforme d'une lettre de l'ambassadeur de Nouvelle-Zélande aux Pays-Bas concernant notamment la désignation d'un agent et d'un coagent du Gouvernement néo-zélandais, ainsi que la désignation par ce gouvernement d'un juge *ad hoc*. Par l'un des télégrammes ci-dessus mentionnés, j'ai fait connaître à Votre Excellence que, se référant à l'article 3 du Règlement, la Cour attachait du prix à connaître par voie télégraphique l'opinion du Gouvernement français en ce qui concerne la désignation d'un juge *ad hoc* par le Gouvernement néo-zélandais.

Je saisis cette occasion pour attirer l'attention de Votre Excellence sur l'article 38 du Règlement de la Cour qui dispose (paragraphe 3) que la partie contre laquelle la requête est déposée et à laquelle elle est communiquée doit, en accusant la réception de cette communication, ou sinon le plus tôt possible, faire connaître à la Cour le nom de son agent et que, aux termes du paragraphe 5 de cet article, la désignation de l'agent doit être accompagnée de l'indication du domicile élu au siège de la Cour et auquel seront adressées toutes les communications relatives à l'affaire en cause.

13. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

(telegram)

9 May 1973.

With reference Article 40, paragraph 3, of Statute have honour inform you that on 9 May New Zealand filed an Application instituting proceedings against France and asking the Court to adjudge and declare "That the conduct by the French Government of nuclear tests in the South Pacific Region that give rise to radioactive fallout constitutes a violation of New Zealand's rights under international law, and that these rights will be violated by any further such tests".

14. THE REGISTRAR TO THE CO-AGENT OF AUSTRALIA

10 May 1973.

I have the honour to acknowledge the receipt of the letter of 9 May 1973 whereby Your Excellency transmitted to the International Court of Justice an Application on behalf of the Government of Australia instituting proceedings against France and informed me of the appointment of Mr. Patrick Brazil as the Agent, and of Your Excellency as the Co-Agent, of the Government of Australia for the purpose of the proceedings. It has been duly noted that the address for service is the Australian Embassy in The Hague.

15. THE REGISTRAR TO THE AGENT OF AUSTRALIA

10 May 1973.

I have the honour to acknowledge the receipt on 9 May 1973 of a request by the Australian Government for the indication of provisional measures in the proceedings instituted against France by the Australian Government's Application of the same date. The French Government was immediately informed by telegram of the filing of this request and a certified copy was at the same time dispatched to the Minister for Foreign Affairs of France.

16. THE REGISTRAR TO THE CO-AGENT OF NEW ZEALAND

10 May 1973.

I have the honour to acknowledge the receipt of the letter of 9 May 1973 whereby Your Excellency transmitted to the International Court of Justice an Application instituting proceedings on behalf of New Zealand against France, advised me of the intention of New Zealand to seek interim measures of protection in the case, and informed me that the New Zealand Government had appointed Professor R. Q. Quentin-Baxter as its Agent for the proceedings and yourself as Co-Agent. It has been duly noted that the address for service is the New Zealand Embassy in The Hague.

Your Excellency further notified me by the same letter that, in reliance on Article 31, paragraph 3, of the Statute of the Court, New Zealand wished to nominate the Right Honourable Sir Garfield Barwick, GCMG, Chief Justice of the High Court of Australia, as Judge *ad hoc*. I have the honour to inform you that this notification has been communicated to the French Government in accordance with Article 3, paragraph 1, of the Rules of Court.

17. THE PRIME MINISTER AND MINISTER FOR FOREIGN AFFAIRS OF FIJI TO THE REGISTRAR

Suva, 10 May 1973.

I have the honour to advise that the Government of Fiji intends to make application[1] for permission to intervene under the terms of Article 62 of the Statute of the Court in Applications instituting proceedings on behalf of the Governments of Australia and New Zealand against the French Republic in respect of disputes concerning the legality of nuclear testing in the atmosphere in the Pacific region.

I have the further honour to inform you in accordance with Article 38 (4) of the Court's Rules that the Fiji Government has appointed Mr. Donald McLoughlin, as its Agent in this case. I verify that the signature "D. McLoughlin" appearing below is that of Mr. Donald McLoughlin the Agent of the Fiji Government in this case.

The address for service of the Agent of the Fiji Government is: c/o Australian Embassy, Koninginnegracht 23, The Hague.

(Signed) K. K. T. MARA.

[1] See Nos. 29, 37 and 42, *infra*.

18. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

14 May 1973.

I have the honour to submit a request[1] for interim measures of protection in the case commenced by New Zealand against France by the Application filed on 9 May 1973. The filing of the request today was foreshadowed in paragraph 10 of the Application and in my letter of 9 May 1973 to you.

You will note that the Request refers in paragraph 36 to Reports of the National Radiation Laboratory, relevant issues of which are listed in Annex VII. The Reports are not annexed to the request; sufficient copies will however be available should the Court wish to refer to them[2].

19. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

(télégramme)

14 mai 1973.

Me référant mon télegramme 9 mai ai honneur communiquer à Votre Excellence que dans affaire *Essais nucléaires* Gouvernement néo-zélandais a fait déposer ce jour au Greffe demande indication mesures conservatoires aux termes articles 41 et 48 Statut et 66 Règlement. Alinéa final ainsi conçu: « New Zealand submits that in the light of the considerations set out above the Court should exercise its power to lay down and indicate interim measures to protect the rights of New Zealand set out in paragraph 2 above. The measure which New Zealand requests to protect those rights is that France refrain from conducting any further nuclear tests that give rise to radioactive fallout while the Court is seized of the case. » Texte vous sera expédié ce jour par exprès.

20. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

14 mai 1973.

Comme suite à mon télégramme de ce jour, j'ai l'honneur de confirmer à Votre Excellence que le Gouvernement néo-zélandais a fait déposer ce jour au Greffe de la Cour internationale de Justice, aux termes des articles 41 et 48 du Statut et 66 du Règlement de la Cour, une demande en indication de mesures conservatoires dans l'affaire des *Essais nucléaires (Nouvelle-Zélande c. France)*.

Je joins à la présente lettre copie certifiée conforme de cette demande en indication de mesures conservatoires et d'une lettre de couverture du coagent du Gouvernement néo-zélandais. J'enverrai prochainement à Votre Excellence une traduction en français sans caractère officiel, établie par les soins du Greffe, de ladite demande.

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[1] See pp. 49-86, *supra*.

[2] Not reproduced.

21. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

(telegram)

14 May 1973.

Have honour inform you that on 14 May New Zealand filed request for the indication of interim measures of protection in accordance with Articles 41 and 48 of Statute and 66 of New Rules. Measures requested are that France should refrain from conducting any further nuclear tests that give rise to radioactive fallout while the Court is seised of the case.

22. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

(télégramme)

14 mai 1973.

Me référant à mes télégrammes et à ma lettre du 9 mai sur l'instance introduite par l'Australie contre la France et en particulier à la demande en indication de mesures conservatoires j'ai l'honneur de faire savoir à Votre Excellence: 1) que le Président a fixé au 16 mai la date expiration du délai dans lequel conformément article 3 du Règlement Votre Gouvernement peut faire connaître son opinion sur la notification de l'Australie concernant désignation d'un juge *ad hoc* (voir mon second télégramme du 9 mai); 2) que conformément à article 66 paragraphe 8 du Règlement de 1972 le Président se propose de convoquer la Cour pour audience publique le lundi 21 mai à 15 heures pour donner aux Parties la possibilité de faire entendre leurs observations sur la demande en indication mesures conservatoires. Le Président de la Cour exprime l'espoir que les gouvernements intéressés tiendront compte du fait que la question est *sub judice* devant la Cour. Communication identique adressée aujourd'hui au Gouvernement australien.

23. THE REGISTRAR TO THE AGENT OF AUSTRALIA

14 May 1973.

I have the honour to refer to your letter of 9 May addressed to the President of the Court in respect of the case concerning *Nuclear Tests* (*Australia* v. *France*). I have the honour to state that the President has directed me to inform the Government of France and the Government of Australia that he expresses the hope that the Governments concerned in these proceedings will take into account the fact that the matter is now *sub judice* before the Court.

I have the further honour to inform you that the President proposes to convene the Court for public hearings commencing on Monday, 21 May 1973, at 3 p.m. at the Peace Palace, The Hague, to afford the parties an opportunity of presenting their observations on the request of Australia for the indication of interim measures of protection, pursuant to Article 66, paragraph 8, of the 1972 Rules of Court, I also have the honour to inform you that the President of the Court has fixed 16 May as the time-limit under Article 3 of the Rules within

which the Government of France may submit its views on the notification of choice of a judge *ad hoc* contained in your letter to me of 9 May.

I enclose a copy of the telegram I have today despatched to the French Minister for Foreign Affairs concerning the matters mentioned above, together with an official English translation thereof.

24. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

(télégramme)

15 mai 1973.

Me référant mes télégrammes et ma lettre du 9 mai sur l'instance introduite par Nouvelle-Zélande contre France et mon télégramme hier concernant demande en indication mesures conservatoires présentée par Nouvelle-Zélande ai honneur faire savoir Votre Excellence : 1) que le Président a fixé au 16 mai la date expiration du délai dans lequel conformément article 3 du Règlement votre gouvernement peut faire connaître son opinion sur la notification de la Nouvelle-Zélande concernant désignation d'un juge *ad hoc* (voir mon second télégramme du 9 mai); 2) que conformément à article 66 paragraphe 8 du Règlement de 1972 la Cour tiendra en temps voulu des audiences publiques pour donner aux parties la possibilité de faire entendre leurs observations sur demande en indication mesures conservatoires et qu'on envisage que ces audiences suivront immédiatement les audiences tenues dans affaire *Australie c. France*. Le Président de la Cour réitère l'espoir exprimé dans mon télégramme hier concernant le fait que la question est maintenant *sub judice* devant la Cour. Communication analogue adressée aujourd'hui au Gouvernement néo-zélandais.

25. THE REGISTRAR TO THE AGENT OF NEW ZEALAND

15 May 1973.

I have the honour to acknowledge receipt of your letter of 14 May, received in the Registry the same day, enclosing a request by the Government of New Zealand for the indication of interim measures of protection in the *Nuclear Tests* case (*New Zealand* v. *France*).

With reference to your letter of 9 May addressed to the President of the Court, I have the honour to state that the President has directed me to inform the Government of France and the Government of New Zealand that he expresses the hope that the Governments concerned in these proceedings will take into account the fact that the matter is now *sub judice* before the Court.

I have the honour also to inform you that the President of the Court has fixed 16 May as the time-limit under Article 3 of the Rules of Court within which the Government of France may submit its views on the notification of choice of a judge *ad hoc* contained in your letter to me of 9 May.

The Court will in due course hold public hearings to afford the parties to these proceedings the opportunity of presenting their observations on the request by the Government of New Zealand for the indication of interim

measures of protection. As you will be aware, the Government of Australia has filed a request for the indication of interim measures of protection in respect of the proceedings it has instituted against France. The President proposes to convene the Court for public hearings in respect of that request commencing on Monday, 21 May, at 3 p.m. It is contemplated that the public hearings in respect of the request of the Government of New Zealand will open immediately following the close of the hearings in the *Australia* v. *France* case.

I enclose a copy of a telegram I have today despatched to the French Minister for Foreign Affairs, an extract from a telegram despatched yesterday to the French Minister for Foreign Affairs, and an unofficial English translation of these texts.

26. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

15 May 1973.

I have the honour to deliver to you, in accordance with my letter to you of 14 May with which was submitted the New Zealand request for interim measures of protection, four copies of each of the Reports of the New Zealand National Radiation Laboratory, as listed on the last page of Annex VII to the request. In addition there are four copies of the first report (DXRL F1) which is referred to on the first page of Annex VII to the request. This report is entitled *Fallout in New Zealand: Results to June 1961.*

These copies[1] are supplied against the possibility that Members of the Court or interested parties may wish to refer to them.

27. L'AMBASSADEUR DE FRANCE AUX PAYS-BAS AU GREFFIER[2]

16 mai 1973.

Par télégramme du 10 mai 1973 vous avez bien voulu faire savoir au ministre des affaires étrangères que le Gouvernement de l'Australie avait déposé au Greffe de la Cour internationale de Justice une requête introductive d'instance contre le Gouvernement de la République française au sujet des expériences nucléaires françaises dans le Pacifique.

Le Gouvernement de la République a noté que le Gouvernement australien avait cru pouvoir fonder cette requête, d'une part, sur la déclaration en date du 20 mai 1966 par laquelle le Gouvernement de la République a accepté la juridiction obligatoire de la Cour et, d'autre part, sur l'article 17 de l'Acte général pour le règlement pacifique des différends internationaux en date du 26 septembre 1928.

J'ai l'honneur, au nom du Gouvernement de la République française, de rappeler que la compétence de la Cour internationale de Justice est fondée sur le consentement des Etats à se soumettre à sa juridiction.

Or, par sa déclaration du 20 mai 1966, le Gouvernement de la République a

[1] Not reproduced.

[2] La même communication a été adressée au Greffier au sujet de l'affaire *Nouvelle-Zélande c. France.*

exclu de son acceptation de la juridiction obligatoire de la Cour les « différends concernant des activités se rapportant à la défense nationale » (déclaration, paragraphe 3).

La Cour aura certainement observé que ce membre de phrase constitue la différence essentielle de ce texte par rapport à la déclaration française antérieure, en date du 10 juillet 1959.

Or il n'est pas contestable que les expériences nucléaires françaises dans le Pacifique, que le Gouvernement australien considère comme illicites, font partie d'un programme de mise au point d'un armement nucléaire et constituent donc une de ces activitées se rapportant à la défense nationale que la déclaration française de 1966 a entendu exclure.

Le Gouvernement de la République souligne qu'en présence de cette volonté formellement exprimée de soustraire à l'examen de la Cour les différends concernant des activités se rapportant à la défense nationale, aucune conclusion inverse quant à son consentement à la compétence de la Cour pour de tels litiges ne saurait être tirée de l'Acte général de 1928.

Ainsi qu'il ressort de la note ci-jointe, il est manifeste que le statut actuel de l'Acte général d'arbitrage et l'attitude à son égard des parties intéressées, en premier lieu de la France, interdisent de considérer qu'il existerait sur ce fondement, de la part de la France, cette volonté clairement exprimée d'accepter la compétence de la Cour que celle-ci, selon une jurisprudence constante, estime indispensable, pour exercer sa juridiction. Bien au contraire, l'incompétence de la Cour sur la base de l'Acte de 1928 est également démontrée, soit que ledit acte soit reconnu comme n'étant plus en vigueur, soit que son manque d'effectivité et la désuétude dans laquelle il est tombé depuis la disparition du système de la SdN interdisent de le faire prévaloir sur une volonté clairement et postérieurement exprimée dans la déclaration qu'a faite le Gouvernement de la République sur la base de l'article 36, paragraphe 2, du Statut de la Cour.

Je vous serais donc reconnaissant de bien vouloir faire savoir à Monsieur le Président et à Messieurs les juges de la Cour internationale de Justice qu'ainsi qu'il en a averti le Gouvernement australien, le Gouvernement de la République estime que la Cour n'a manifestement pas compétence dans cette affaire et qu'il ne peut accepter sa juridiction.

Il n'a, en conséquence, pas l'intention de désigner un agent et demande respectueusement à la Cour de bien vouloir ordonner que cette affaire soit rayée de son rôle.

De ce fait, de l'avis de mon gouvernement, la question de la désignation d'un juge *ad hoc* par le Gouvernement australien ne se pose pas, non plus que celle de l'indication de mesures conservatoires.

(Signé) J. SENARD.

Annexe

Le Gouvernement français considère que l'Acte général d'arbitrage ne peut servir de fondement à la compétence de la Cour pour délibérer du recours de l'Australie et de la Nouvelle-Zélande contre les essais nucléaires français soit que cet Acte soit reconnu comme n'étant plus en vigueur, soit que son manque d'effectivité et la désuétude dans laquelle il est tombé depuis la disparition du système de la Société des Nations interdisent de le faire prévaloir sur la volonté

clairement et postérieurement exprimée dans la déclaration facultative du 20 mai 1966, faite par le Gouvernement français, sur la base de l'article 36, paragraphe 2, du Statut de la Cour.

I. DÉFAUT ACTUEL DE VALIDITÉ DE L'ACTE GÉNÉRAL D'ARBITRAGE

Le défaut actuel de validité de l'Acte général se déduit des éléments suivants:

1. *L'Acte de Genève était une partie intégrante du système de la SdN* dans la mesure où le règlement pacifique des différends internationaux devait nécessairement, dans ce système, accompagner la sécurité collective et le désarmement. A cette intégration idéologique correspondait une liaison intime entre l'Acte et les structures de la SdN: avec la Cour permanente de Justice internationale, évidemment, mais aussi avec le Conseil de la SdN, le Secrétaire général de celle-ci, les Etats membres de l'Organisation ou encore son siège.

Ces liens étaient encore accusés par certaines mentions des acceptations de l'Acte par l'Australie et la Nouvelle-Zélande qui réservaient la compétence de la Cour permanente pour des différends dont pourrait s'occuper le Conseil de la SdN. En termes moins contraignants, la déclaration française réservait également la compétence de ce dernier organe. De même, les acceptations de l'Australie et de la Nouvelle-Zélande excluaient les litiges avec les Etats non membres de la SdN.

Cette intégration de l'Acte dans la structure de la SdN est apparue si intime qu'après la disparition de l'organisation de Genève on a reconnu qu'il fallait procéder à une révision de l'Acte pour substituer des mentions nouvelles à celles qui se référaient à un système disparu, celui de la SdN. Il n'a donc pas été jugé suffisant de substituer la Cour internationale de Justice à la Cour permanente de Justice internationale, ce qui était déjà réalisé par l'article 37 du Statut de la Cour, pour que l'Acte puisse continuer de fonctionner normalement. La méthode choisie a été celle de l'élaboration d'un Acte révisé, comportant des signataires nouveaux indépendants des anciens.

2. *Certes, le vote de l'Assemblée générale des Nations Unies et l'ouverture à la signature d'un Acte révisé* ne se sont pas accompagnés de l'affirmation nette et claire que l'Acte primitif était caduc. Mais ce vote et cet Acte révisé ont ajouté encore au poids des arguments permettant de refuser que l'on puisse en 1973 invoquer l'Acte de 1928 comme manifestation d'une volonté claire d'un Etat de consentir à la juridiction de la Cour internationale de Justice.

a) Au cours de la discussion devant l'Assemblée générale des Nations Unies, les pays socialistes, et notamment l'URSS, se sont exprimés d'une manière très critique à l'égard de l'Acte de 1928. Pour l'URSS, cet Acte qui « en pratique n'a jamais été appliqué, n'a qu'une valeur négligeable » (M. Tsarapkine, 27e session de la Commission politique spéciale). Le projet de résolution qui tend à le « ressusciter » est « contraire aux principes de la Charte ». L'Acte est « un instrument malheureux et périmé de la SdN ». Les autres pays socialistes expriment des jugements semblables sous une forme plus modérée (notamment M. Katz Suchy pour la Pologne).

Le Canada et l'Australie ne prennent pas de position notable sur ce sujet.

Le délégué néo-zélandais « sans être sceptique ni vouloir faire de l'obstruction, mais en se bornant à la simple prudence à l'égard des projets de résolution proposés par la Commission intérimaire, suggère que « l'efficacité première » de l'Acte général de 1928, à laquelle se réfère la première résolution, fasse l'objet d'un complément d'études du point de vue historique ». Aussi propose-t-il que ces projets soient envoyés à l'examen de la quatrième session de l'Assemblée.

Le délégué belge s'y oppose en faisant remarquer que le projet de résolution

tendant à rendre son efficacité première à l'Acte général de 1928 n'impliquera de la part de l'Assemblée générale ni approbation, ni désapprobation des dispositions de cet instrument. L'Assemblée se bornera à faire préparer un texte révisé ouvert à l'adhésion des Etats afin de leur permettre de rétablir de leur plein gré la validité de cet Acte.

Du reste la délégation belge déclare par ailleurs que « l'Acte de 1928 est toujours en vigueur » mais que « toutefois son autorité se trouve diminuée du fait de la disparition de certains rouages ». L'Acte de 1928, « bien que toujours théoriquement valide, est devenu en grande partie inapplicable » (Assemblée 1948, troisième session, doc. A/605).

Le Royaume-Uni rappelle que sa délégation a donné son accord au projet de résolution étant entendu qu'il ne comportait aucune approbation de l'Acte général par l'Assemblée et que la Commission avait reconnu qu'il s'agissait seulement de régulariser officiellement des modifications rendues nécessaires par la disparition de la SdN.

Le délégué de la France (M. P.-O. Lapie) déclare que l'Acte « est un document précieux que l'on a hérité de la SdN et dont il faut seulement modifier les termes pour l'adapter à la nouvelle organisation ».

Les mots qui reviennent comme un leitmotiv sont: redonner à l'Acte son efficacité première *(to restore to its original efficacy)*.

b) En conclusion de ce débat, l'Assemblée générale a adopté une résolution visant à « restituer à l'Acte son efficacité première » et affirmant que « ces amendements ne joueront qu'entre les Etats ayant adhéré à l'Acte général ainsi révisé et, partant, ne porteront pas atteinte aux droits des Etats qui, parties à l'Acte tel qu'il a été établi le 26 septembre 1928, entendraient s'en prévaloir *dans la mesure où il pourrait jouer* » (résolution 268 A (III) du 28 août 1949).

Cette résolution est intéressante à plusieurs titres:

— L'expression « dans la mesure où il (l'Acte) pourrait jouer » est fort dubitative. C'est une évidence, en effet, que de dire qu'*un accord ne peut être* invoqué que dans la mesure où il peut jouer. Cela n'a de sens que si par là on veut exprimer quelque doute sur ce jeu éventuel. De plus, c'est au conditionnel qu'est exprimée l'éventualité d'une invocation de l'Acte de 1928 et de sa valeur au moment de cette invocation.

— La résolution prévoit que l'Acte pourrait éventuellement jouer si les Parties entendaient s'en prévaloir. La condition est donc que l'accord se fasse entre les Parties pour que l'Acte puisse jouer. Cette condition n'existe pas dans le cas présent.

— D'autre part, si l'Acte de 1928 était encore en vigueur au moment où l'Acte révisé a été conclu, on a quelque peine à comprendre le passage plus haut cité de la résolution de l'Assemblée générale selon lequel les amendements « ne joueront qu'entre les Etats ayant adhéré à l'Acte général révisé ».

En effet, comme l'a fait remarquer le juge *ad hoc* Armand-Ugon dans son opinion dissidente à propos de l'affaire de la *Barcelona Traction* (*Recueil des arrêts 1964*, p. 156):

> « La lettre *c)* de la résolution indique les amendements à apporter aux articles 17, 18, 19, 20, 23, 28, 30, 33, 34, 36, 37 et 41 où les mots « C.P.J.I. » doivent être remplacés par « C.I.J. ». Un tel précédent démontre, sans aucun doute, que l'Assemblée générale n'a pas cru qu'elle pouvait faire application de l'article 37 du Statut de la Cour quant aux dispositions de l'Acte général visant la Cour permanente: pour le transfert à la Cour internationale de la juridiction accordée à la Cour permanente, un nouvel accord était indispensable, ce qui signifiait que l'article 37 ne jouait pas. »

Comme, d'autre part, l'article 37 du Statut de la Cour est très précis, il ne peut y avoir qu'une raison à l'anomalie signalée par le juge Armand-Ugon: c'est que l'Assemblée générale n'était pas certaine que l'Acte de 1928, au moment où elle délibérait au sujet de la révision, fût encore en vigueur.

3. *L'examen des positions prises par les juridictions internationales et de la conduite des Etats* ajoute de nouvelles raisons de conclure au défaut actuel de validité de l'Acte de 1928.

A)

En ce qui concerne la Cour internationale de Justice, elle avait l'occasion de trancher ce point à propos de l'affaire des *Emprunts norvégiens*.

Le juge Basdevant en a indiqué la raison avec la plus grande clarté dans son opinion dissidente, tout en prenant parti pour la validité de l'Acte de 1928:

> « Rien ne permet de penser que cet Acte général doive échapper à l'attention de la Cour. A aucun moment il n'est apparu que le Gouvernement français ait renoncé à s'en prévaloir. Eût-il gardé le silence que la Cour « dont la mission est de régler conformément au droit international les différends qui lui sont soumis » ne saurait l'ignorer. Lorsqu'il s'agit de statuer sur sa compétence et surtout de statuer sur la portée d'une exception à sa compétence obligatoire dont le principe a été admis entre les Parties, la Cour doit par elle-même rechercher avec tous les moyens dont elle dispose quel est le droit. En une matière où une telle recherche s'imposait moins impérativement à elle, la Cour permanente n'a pas reculé devant celle-ci, déclarant que, dans l'accomplissement de sa tâche de connaître elle-même le droit international, elle (...) a étendu ses recherches à tous précédents, doctrines et faits qui lui étaient accessibles et qui auraient, le cas échéant, pu révéler l'existence d'un des principes du droit international visés par le compromis. » (*C.P.J.I., arrêts, n° 9*, p. 31.)

Ce point lui paraissant établi, le juge Basdevant affirme que la Cour n'avait pas le droit de faire prévaloir la clause plus restrictive contenue dans la déclaration française de 1949, faite sur la base de l'article 36, paragraphe 2, du Statut, sur l'attribution plus large de compétence réalisée par l'Acte général de 1928 et la déclaration française qui l'accompagnait.

On ne peut douter que le juge Basdevant n'ait exposé à ses collègues son argumentation selon laquelle la Cour avait le devoir, si elle considérait que sa compétence était fondée à ce titre, de prendre position sur ce point alors même qu'il n'avait pas été invoqué par le Gouvernement français. Du reste cette opinion paraît partagée par sir Hersch Lauterpacht (voir son opinion individuelle, *C.P.J.I., arrêts, n° 9*, p. 61).

Mais la Cour n'a pas suivi le juge Basdevant. Elle a fait état de ce que l'Acte général n'avait pas été expressément invoqué par le Gouvernement français comme fondement de sa requête. Il est difficile de croire que la Cour aurait écarté aussi sommairement ce fondement de sa compétence s'il avait fourni à celle-ci une base manifeste.

De plus, non seulement le juge Basdevant n'a pas été suivi par la Cour sur ce point, mais encore sa thèse sur la validité de l'Acte général, qui aurait eu cependant une valeur décisive pour le litige à trancher, n'a même pas paru mériter d'être discutée dans aucune des opinions séparées ou dissidentes exprimées par ses collègues.

Or le recours de l'Australie et de la Nouvelle-Zélande contre la France présente un problème analogue: celui des rapports entre l'acceptation large de la C.P.J.I.

par l'Acte de 1928 et l'acceptation postérieure plus restreinte de la compétence de la Cour internationale de Justice sur la base de l'article 36, paragraphe 2 — les seules différences venant de ce que l'Acte général est formellement invoqué par les requérants, mais aussi que près de vingt années additionnelles sont venues accuser la désuétude de l'Acte de 1928.

B) La conduite des Etats depuis l'effondrement du système de la SdN

a) Le premier point à noter dans la conduite des Etats parties à l'Acte de 1928 a trait à ces formalités qui marquent la « vie » d'un traité: adhésion, réserves, modification des réserves, retraits, etc. Or depuis les premières années de la seconde guerre mondiale, c'est-à-dire depuis que la faillite du système de la SdN est apparue manifeste, on ne peut plus rien signaler dans ce domaine.

En effet, les dernières manifestations de volontés étatiques à propos de l'Acte sont, à notre connaissance, les protestations d'un certain nombre de pays, en 1940, contre des réserves à l'Acte général introduites en septembre et décembre 1939 respectivement par l'Australie et le Canada, alors que la période de validité de l'Acte ne se terminait qu'en août 1944.

C'est sur ces réserves de l'Australie et du Canada et sur les protestations qu'elles ont provoquées que se clôt la relation de la vie du traité en question. En particulier, l'Australie et le Canada n'ont pas éprouvé, à l'égard de l'Acte, le besoin de régulariser leurs réserves de 1939 comme ils l'ont fait pour celles émises à l'égard de leurs déclarations facultatives. Pour ces dernières, ils se mettent en règle dès 1940. En revanche, en août 1944, ils s'abstiennent de régulariser leurs dénonciations partielles de 1939.

En conséquence, ce serait le silence des Etats qui constituerait l'argument en faveur du maintien en vigueur d'un texte qui, par ce silence même, se trouverait reconduit de cinq ans en cinq ans. Ce silence total en 1944, 1949, 1954, 1959, 1964, 1969, silence observé par la France, mais aussi par l'Australie et la Nouvelle-Zélande comme du reste par les autres Etats parties à l'Acte, serait ainsi présenté comme une volonté de reconduction de l'Acte sans modification aucune.

Une telle affirmation est contraire au bon sens.

b) Il serait d'autant plus absurde de voir une volonté de reconduction pure et simple de l'Acte dans cette absence totale, de la part de quelque Etat que ce soit, de toute mesure se rapportant à lui que, simultanément, on constate un très vif intérêt pour la matière du règlement pacifique des différends. L'absence de démarche se rapportant à l'Acte fait donc contraste avec ce qui est fait par ailleurs par les Etats dans ce domaine, soit qu'ils choisissent d'accéder à l'Acte révisé, soit que, en bien plus grand nombre, ils préfèrent fixer par des déclarations unilatérales l'étendue de leur acceptation de la juridiction de la Cour.

L'Australie et la Nouvelle-Zélande, comme la France, appartiennent à la catégorie des pays qui ont accepté unilatéralement la compétence de la Cour internationale mais n'ont pas accédé à l'Acte révisé.

Les deux décisions sont intéressantes pour notre propos.

En premier lieu, si l'Acte de 1928 était encore en vigueur après la seconde guerre mondiale et notamment au moment où l'Acte révisé était ouvert à la signature, le refus des pays en question de devenir parties à ce dernier Acte serait malaisé à expliquer.

Comme les deux Actes ont des contenus identiques en ce qui concerne l'étendue des obligations de soumettre les différends à des modes de règlement pacifiques et comme le second Acte ne diffère du premier que dans la mesure où il substitue des organes des Nations Unies en activité aux organes disparus de la

SdN, bref dans la mesure où il est mieux adapté à la conjoncture, on ne voit pas pourquoi des pays auraient préféré la version qui reliait leurs engagements, par hypothèse semblables dans les deux cas, à des structures inexistantes.

Au contraire, le refus de s'engager dans le cadre de l'Acte nouveau prenait toute sa valeur si l'Acte primitif était caduc.

Mais la pratique des Etats à l'égard des déclarations sur la base de l'article 36 est également importante pour juger de la validité de l'Acte. Plus exactement, il faut tenir compte de la position prise par les Etats en ce qui concerne leurs réserves à leurs déclarations facultatives, d'une part, et à leur acceptation de l'Acte général, de l'autre.

Tant que l'Acte général est manifestement en vigueur, les réserves à la compétence de la Cour sur l'une et l'autre bases sont toujours semblables. Comme le dit très bien le juge Hudson, après avoir indiqué le nombre des déclarations unilatérales:

> « L'Acte général (...) a aussi pour objet de conférer à la Cour compétence pour les litiges mentionnés à l'article 36 du Statut » (article 17); « mais le Chapitre II de l'Acte contenant cette disposition n'a pas été accepté par aucun membre de la SdN qui n'ait aussi fait une déclaration au titre de l'article 36 ». (Hudson, *The Permanent Court of International Justice*, p. 405.)

Pour la France, en 1931, ce sont même deux articles d'une même loi qui autorisent la ratification de l'acceptation de l'Acte général et de la clause facultative de l'article 36, paragraphe 2. Ainsi les liens entre les deux modes de soumission des différends à un règlement pacifique se trouvaient particulièrement soulignés.

Autre preuve de la cohérence nécessaire entre les deux fondements de la compétence de la Cour: quelques années plus tard, lorsque le système de la SdN paraît près de s'effondrer et lorsque la guerre d'agression de la part des puissances de l'Axe est considérée comme imminente, on constate que les parties à l'Acte général émettent deux sortes de réserves tout à fait semblables, les unes se rapportant à la clause facultative et les autres à l'Acte général. Ainsi, la France, le Royaume-Uni, la Nouvelle-Zélande et l'Inde émettent leurs réserves à l'Acte au début de 1939, pour respecter le délai de six mois avant l'expiration de la période quinquennale de validité de l'Acte qui tombe au mois d'août. Ces pays ne procèdent pas immédiatement à la modification de leurs réserves à leurs déclarations facultatives parce que les périodes de validité de celles-ci ne sont point expirées. Mais ils passent outre à cette objection quand la guerre survient. Invoquant le changement de circonstances, la France, le Royaume-Uni et la Nouvelle-Zélande modifient leurs réserves à leur déclaration facultative pour en mettre le texte en harmonie avec celui de leurs réserves à l'Acte général.

L'Australie et le Canada, qui n'avaient pas suivi la Grande-Bretagne dans sa dénonciation partielle de l'Acte général au début de 1939, envoient quasi simultanément les deux sortes de réserves nouvelles, accusant parfaitement la similitude nécessaire des deux fondements de la compétence de la Cour.

Pour souligner encore l'étroite interdépendance des deux démarches, les dénonciations partielles de ces deux pays se contentent, pour leur justification, de renvoyer aux considérations énoncées dans leurs modifications de leurs déclarations sur la base de l'article 36, paragraphe 2.

Mais, depuis 1940, le parallélisme est rompu. Alors que les Etats parties à l'Acte de 1928 continuent de rédiger avec un soin extrême leurs déclarations sur la base de l'article 36, modifiant fréquemment leurs réserves, parfois en plusieurs

fois dans une année, et rendant généralement ces réserves plus restrictives, ils *paraissent se désintéresser totalement de la très large compétence qu'ils seraient* supposés consentir à la Cour sur la base de l'Acte général d'arbitrage. Ils semblent insensibles aux divergences entre ces deux attributions de juridiction.

Cela s'entend des pays qui sont parties à l'Acte général de 1928. Pour ceux, au contraire, qui accèdent à l'Acte révisé, le principe de parallélisme ne se dément pas. C'est ainsi que les conditions dans lesquelles la Belgique, le Luxembourg, le Danemark, la Norvège et la Suède acceptent la compétence de la Cour selon l'une et l'autre méthodes sont identiques.

Ainsi le contraste entre le désintérêt total marqué par les parties à l'Acte de 1928 pour le maintien d'une cohérence entre les divers cas de compétence qu'ils reconnaissent à la Cour ne peut s'expliquer que par le sentiment que l'Acte de 1928 avait perdu sa validité.

Dans ces conditions, on comprend la raison pour laquelle, dans l'affaire des *Emprunts norvégiens*, le Gouvernement français, qui cherchait à prouver la compétence de la Cour, s'est borné à évoquer très brièvement l'Acte général sans l'invoquer expressément comme fondement de sa demande. La validité de l'Acte lui eût permis cependant d'écarter l'exception que la Norvège allait tirer de la clause de réciprocité jouant à propos de la déclaration française. D'autre part, le fait même que son agent le mentionne montre que l'argument n'a pas échappé au Gouvernement français.

Enfin, l'ancienneté d'un texte n'était visiblement pas considérée, en elle-même, comme un obstacle à son invocation, puisque le Gouvernement français fait expressément appel à la deuxième convention de La Haye de 1907 concernant la limitation de l'emploi de la force pour le recouvrement des dettes contractuelles. On ne peut donc expliquer la position française à l'égard de l'Acte de 1928 que par la conviction qu'il était, en 1955, tombé en désuétude.

En conclusion, l'Acte, qui semble n'avoir jamais été appliqué à un cas concret alors qu'il était en vigueur, est tombé, après l'effondrement du système de la SdN, dans une désuétude si marquée que le silence des Etats à son endroit, bien *loin de signifier une volonté tacite de reconduction intégrale*, n'a dénoté qu'une indifférence si profonde que même une dénonciation formelle paraissait superfétatoire.

II. Hypothèse selon laquelle l'Acte général d'arbitrage n'aurait pas totalement perdu sa validité à l'heure actuelle

Si l'Acte n'avait pas perdu toute validité, le Gouvernement français ferait valoir:

a) qu'il ne s'applique pas dans ses rapports avec l'Australie et la Nouvelle-Zélande;

b) qu'il ne s'applique pas dans des hypothèses exclues par sa déclaration unilatérale d'acceptation de la compétence de la Cour internationale de Justice sur la base de l'article 36, paragraphe 2.

1. Non application dans les rapports entre la France, l'Australie et la Nouvelle-Zélande

a) Le Gouvernement français observerait que si l'Acte était en vigueur il existerait, quant à la portée des réserves de l'Australie et de la Nouvelle-Zélande, une incertitude tout à l'avantage de ces deux pays et donc inacceptable.

Lorsque l'Australie et la Nouvelle-Zélande ont accédé à l'Acte général, elles l'ont fait en assortissant leur acceptation d'un certain nombre de réserves.

Parmi celles-ci, l'une vise des litiges qui seraient portés devant le Conseil de la SdN. On peut juger que l'Australie et la Nouvelle-Zélande attachaient une grande importance à ces réserves par le fait que, dès que le Conseil de la SdN a été remplacé par le Conseil de sécurité dans le dispositif international de règlement des différends ou situations politiques, ces deux pays ont introduit dans leurs acceptations de la compétence de la Cour internationale de Justice une réserve semblable en ce qui concerne les questions devant le Conseil de sécurité. Or, il est bien clair qu'à l'heure actuelle la partie de la réserve australienne ou néo-zélandaise relative au Conseil de la SdN dans le cadre de l'Acte de 1928 est caduque. Mais les autres Etats parties à l'Acte sont dans l'ignorance des conséquences que l'Australie ou la Nouvelle-Zélande voudrait faire jouer à cette caducité partielle. Si l'un de ces pays était attrait devant la Cour, il pourrait soutenir que la condition essentielle de son consentement à être lié ayant disparu, son consentement a disparu lui aussi. Si, au contraire, il trouvait expédient d'invoquer l'Acte pour attraire un autre pays, il serait alors amené à minimiser la valeur de ces réserves et à faire valoir que leur caducité laisse intacte la valeur de son acceptation. Mais, par là, se trouverait créée une situation entièrement à son avantage qui découlerait de ce que l'on voudrait continuer de considérer comme valide une pièce d'un dispositif complexe, l'Acte général, alors que les autres éléments de ce dispositif (la SdN) ont disparu.

De même l'Australie et la Nouvelle-Zélande ont précisé, dans leurs acceptations de l'Acte général d'arbitrage, qu'elles excluront les litiges avec des Etats parties à l'Acte mais non membres de la SdN.

Cette réserve avait un sens fort clair tant qu'il existait une SdN. Depuis que la SdN a disparu et qu'aucun pays ne peut être dit « membre de la SdN », la clause a pris une valeur fort ambiguë. Il est loisible à l'Australie et à la Nouvelle-Zélande de déclarer que cette clause ne peut passer pour exclure la France qui « n'est plus », mais qui « était », membre de la SdN. Ou bien ces pays pourraient choisir d'affirmer que cette clause dénote un lien avec la SdN si intime que l'acceptation tout entière est caduque dès lors que la disparition de la SdN empêche plusieurs de ses dispositions essentielles de jouer.

On rejoint ainsi la conclusion plus haut tirée quant aux avantages inacceptables qui découleraient pour l'Australie et la Nouvelle-Zélande d'un prétendu maintien en vigueur de l'Acte général d'arbitrage.

b) Si l'Acte était considéré comme valide, il serait, dans le cas de l'Australie, invoqué par un pays dont la dernière mesure prise expressément à l'égard de cet Acte a consisté à le violer de manière patente.

En effet, alors que l'approche de la seconde guerre mondiale amenait la France à dénoncer partiellement son acceptation de l'Acte dans les délais prescrits par celui-ci, l'Australie, par sa dénonciation partielle avec effet immédiat de septembre 1939, s'affranchissait des dispositions de l'Acte relatives aux modifications des réserves. Il n'est pas besoin d'insister sur le caractère essentiel, dans le système de l'Acte général, de la clause sur la non-modification des réserves en cours de période quinquennale (article 45). De plus, l'Australie s'est abstenue de se mettre en règle avec cette disposition de l'Acte alors qu'elle eût pu aisément le faire en 1944.

Le Gouvernement n'a pas protesté contre cette attitude australienne, notamment en raison des événements qui ont affecté fondamentalement le statut de l'Acte général: la guerre, d'abord, puis la disparition de la SdN. Du reste, même les pays qui ont protesté en 1939 contre les dénonciations partielles de l'Australie et du Canada ont jugé inutile de répéter leurs protestations après la guerre, tant l'Acte lui-même désormais et non plus telle de ses dispositions, paraissait inapplicable. Mais si on prétend demander au Gouvernement français

d'observer un accord dont les autres se sont affranchis, il fera valoir qu'il ne s'estime pas tenu de respecter un traité que l'Australie ne respecte plus elle-même depuis une date fort reculée. Outre que la Constitution française prévoit que les engagements souscrits par traité s'entendent sous réserve de leur application par l'autre partie, le principe de la réciprocité s'applique très généralement au droit des traités.

2. Non-applicabilité dans des hypothèses exclues par la déclaration française sur la base de l'article 36, paragraphe 2, du Statut de la Cour

Dans l'hypothèse où l'Acte n'aurait pas perdu toute validité, le problème des rapports entre le consentement donné à la juridiction de la Cour à travers l'Acte général et par déclaration sur la base de l'article 36, paragraphe 2, se ramènerait à un problème de relations entre deux actes conventionnels successifs portant sur la même matière.

A cet égard, on pourrait d'abord observer qu'il existe une différence importante entre une situation de ce type qui se serait produite du temps de la SdN et la situation survenant à l'heure actuelle. En effet, dans le système de l'ONU, le statut de la Cour fait partie intégrante de la Charte, alors que celui de la Cour permanente ne faisait pas partie intégrante du Pacte. Or, l'article 103 prévoit qu'en cas de conflit entre les obligations des Membres des Nations Unies en vertu de la Charte et leurs obligations en vertu de tout autre accord international, les premières prévaudront. Les obligations assumées au titre de l'article 36 du Statut doivent donc prévaloir sur celles de l'Accord de 1928.

Même si cette prééminence sur l'Acte de 1928 de la rencontre des deux volontés exprimées par les deux déclarations au titre de l'article 36, paragraphe 2, n'était pas considérée comme découlant de l'article 103 de la Charte, on serait ramené au problème ordinaire d'un traité postérieur portant sur la même matière qu'un accord antérieur dans les relations entre les mêmes pays.

Certes, il ne s'agit pas de prétendre que, lorsqu'un traité quelconque contient une clause attribuant compétence à la Cour internationale de Justice, un Etat partie à ce traité peut automatiquement s'affranchir de cette clause en modifiant ses réserves à la compétence de la Cour sur la base de l'article 36, paragraphe 2.

Le cas analysé est sensiblement différent. Il s'agit, avec l'Acte de 1928, non pas d'une convention comportant, pour les litiges relatifs à l'application de ses dispositions, une clause conférant compétence à la Cour, mais d'un texte dont l'objet exclusif est le règlement pacifique des différends et notamment son règlement judiciaire. La partie de l'Acte relative au règlement judiciaire serait, du reste, si cet Acte subsistait, d'autant plus importante à l'heure actuelle que les dispositions relatives à la conciliation ne peuvent plus fonctionner par suite de la disparition du Conseil de la SdN et donc de son président, dont le rôle était prévu à l'article 6. On ne peut donc présenter la position française comme impliquant la possibilité d'annuler les clauses de règlement des différends de toutes les conventions signées par la France qui prévoient la compétence de la Cour internationale de Justice.

La position française est ainsi bien circonscrite. Elle consiste à faire ressortir le manque d'effectivité et la désuétude dans laquelle l'Acte est tombé depuis la seconde guerre mondiale et à souligner, par contraste avec la totale négligence des Etats à l'égard de l'Acte général, le soin minutieux apporté par les parties à la rédaction de leurs déclarations sur la base de l'article 36, paragraphe 2.

La préoccupation de donner leur effet utile à ces déclarations doit conduire à considérer que leur effet doit s'appliquer également à la compétence de la Cour sur la base de l'Acte général dans l'hypothèse où un pays cherche à évoquer le texte de 1928.

A ce raisonnement, on peut objecter qu'il permettrait de tourner les dispositions de l'Acte de 1928 quant au moment où peut prendre effet un élargissement du champ des réserves. En effet, l'Acte général (par son article 45 dont l'Australie s'est affranchie comme il a été rappelé ci-dessus) ne prévoit cet élargissement des réserves que sous forme de dénonciation partielle, communiquée six mois au moins avant la fin d'une période quinquennale de validité de l'Acte et prenant effet au début de la période quinquennale suivante.

Mais la préoccupation de donner son effet utile aux réserves dont les pays parties à l'Acte de 1928 ont assorti leur déclaration unilatérale d'acceptation de la compétence de la Cour peut fort bien se concilier avec le respect sur ce point de l'Acte général: il suffit de considérer que les nouvelles réserves en question ont pris effet, en ce qui concerne la compétence de la Cour sur la base de l'Acte général au moment où se terminait une période quinquennale de validité de celui-ci.

La Cour, qui, dans l'affaire du *Temple de Préah Vihéar*, a considéré que le renouvellement d'une déclaration d'acceptation de la compétence de la Cour permanente, effectuée au moment où cette Cour n'existait plus, pouvait s'interpréter comme signifiant acceptation de la compétence de la Cour internationale, ne devrait pas voir de difficulté à admettre ce qui paraît l'intention évidente des parties, à savoir que celles qui ont limité leur consentement à la compétence de la Cour par leurs déclarations unilatérales entendaient clairement que ces réserves s'appliquent aussi à l'Acte général pour autant que, contrairement au sentiment général, cet Acte serait considéré comme encore valide.

28. THE REGISTRAR TO THE AGENT OF AUSTRALIA[1]

16 May 1973.

I have the honour to send you herewith a certified copy of a letter and Annex thereto filed in the Registry today by the French Ambassador at The Hague, relating to the *Nuclear Tests* case (*Australia* v. *France*).

29. THE AGENT OF FIJI TO THE REGISTRAR

16 May 1973.

I have the honour pursuant to Article 69 of the Rules to submit to the International Court of Justice an Application[2] on behalf of the Government of Fiji for permission to intervene under the terms of Article 62 of the Statute in the case concerning *Nuclear Tests* (*Australia* v. *France*).

I have the further honour to inform you, in accordance with Article 38 (4) of the Rules that the Fiji Government has appointed me as its Agent in this case.

The address for service of the Agent of the Fiji Government is: c/o the Australian Embassy, Koninginnegracht 23, The Hague.

(Signed) D. McLOUGHLIN.

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[1] A communication in the same terms was sent to the Agent of New Zealand.

[2] I, pp. 149-152.

30. THE REGISTRAR TO THE AGENT OF AUSTRALIA[1]

16 May 1973.

I have the honour to inform you that the Government of Fiji has today filed in the Registry of the Court an Application, under the terms of Article 62 of the Statute of the Court, for permission to intervene in the *Nuclear Tests* case (*Australia* v. *France*). In accordance with Article 69, paragraph 3, of the 1972 Rules of Court, I send you herewith a certified copy of the Application in question, and of the two letters accompanying it.

31. LE GREFFIER À L'AMBASSADEUR DE FRANCE AUX PAYS-BAS[2]

Le 17 mai 1973.

J'ai l'honneur d'accuser la réception de la lettre, accompagnée d'une note, que vous m'avez remise hier en mains propres relativement à l'instance introduite devant la Cour internationale de Justice par l'Australie contre la République française au sujet des expériences nucléaires françaises dans le Pacifique.

Cette communication a été portée à la connaissance des membres de la Cour et copie en a été adressée au Gouvernement australien.

32. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

(télégramme)

17 mai 1973.

Me référant mon télégramme 9 mai relatif à requête Australie ai honneur informer Votre Excellence que Cour tiendra audience lundi 21 mai à 15 heures.

33. THE REGISTRAR TO THE AGENT OF AUSTRALIA[3]

17 May 1973.

Article 65 of the 1972 Rules of Court provides, in paragraph 1, that a verbatim record shall be made by the Registrar of every hearing, in the official language of the Court which has been used, and (para. 4) that copies of the transcript thereof shall be circulated to the parties. The rule further provides that the parties

[1] A similar communication was sent to the Minister for Foreign Affairs of France.

[2] La même communication a été adressée à l'ambassadeur de France aux Pays-Bas au sujet de l'affaire *Nouvelle-Zélande c. France*.

[3] A communication in the same terms was sent to the Agent of New Zealand and similar communications were sent to the Agents before the opening of the oral proceedings on jurisdiction and admissibility in both cases.

"may, under the supervision of the Court, correct the transcripts of the speeches and statements made on their behalf, but in no case may such corrections affect the sense and bearing of the statement".

The transcript of the oral proceedings to be held to hear the observations of the Parties on Australia's request for the indication of interim measures of protection in the *Nuclear Tests* case (*Australia* v. *France*) will be made available the same day.

In order to facilitate any supervision which the Court may feel it proper to exercise, and in order not to delay the Court's consideration of the request for the indication of interim measures of protection, any correction or revision which Agents, counsel or advocates may wish to make to the transcript should be handed to the Registrar's secretary as early as possible on the day following the sitting. In any event, corrections should be handed in, in respect of the transcript of the hearing of Monday afternoon, not later than 12 noon on Wednesday, and in respect of subsequent days' hearings, not later than 6 p.m. on the day following the hearing.

34. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

17 mai 1973.

Me référant à ma lettre du 14 mai 1973, j'ai l'honneur de communiquer ci-joint à Votre Excellence, pour son information:

1. La traduction française, établie par les soins du Greffe, de la demande en indication de mesures conservatoires présentée le 14 mai 1973 par le Gouvernement néo-zélandais dans l'affaire des *Essais nucléaires (Nouvelle-Zélande c. France)*.

2. La traduction française, établie par les soins du Greffe, et, selon le cas, la version française officielle des annexes jointes à cette demande en indication de mesures conservatoires.

J'ajoute que le coagent du Gouvernement néo-zélandais a déposé quatre exemplaires de chacun des rapports mentionnés à l'annexe VII à la demande dont il s'agit. Ces documents peuvent être consultés au Greffe.

35. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE[1]

18 mai 1973.

Me référant à mon télégramme du 14 mai 1973, j'ai l'honneur d'adresser ci-joint à Votre Excellence, pour son information, le texte d'une lettre[2] qui a été adressée au Président de la Cour par l'agent de l'Australie le 9 mai 1973. J'y joins à toutes fins utiles la traduction française.

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[1] Une communication analogue a été adressée au ministre des affaires étrangères de France au sujet de l'affaire *Nouvelle-Zélande c. France*.

[2] Voir ci-dessus n° 2.

36. THE AGENT OF FIJI TO THE REGISTRAR

18 May 1973.

I have the honour to refer to my letter of 16 May submitting to the International Court of Justice an Application on behalf of the Government of Fiji for permission to intervene under the terms of Article 62 of the Statute in the case concerning *Nuclear Tests* (*Australia* v. *France*) and informing you that in accordance with Article 38 (4) of the Rules that the Fiji Government has appointed me as its Agent in this case.

I now have the further honour to inform you that the Fiji Government has appointed the Fiji High Commissioner in London as its Co-Agent in this case.

The address for service of the Agent of the Fiji Government remains

c/o the Australian Embassy,
Koninginnegracht 23,
The Hague.

37. THE AGENT OF FIJI TO THE REGISTRAR

18 May 1973.

I have the honour to refer to my letter of 16 May submitting to the International Court of Justice an Application on behalf of the Government of Fiji for permission to intervene under the terms of Article 62 of the Statute in the case concerning *Nuclear Tests* (*Australia* v. *France*).

I have the further honour to now submit an Annex for attachment to that Application containing a list of documents relied upon in support of that Application together with copies of those documents[1].

It is appreciated that these documents should have been attached to the Application but I regret that for technical reasons that was not possible.

38. THE REGISTRAR TO THE AGENT OF FIJI

18 May 1973.

I have the honour to acknowledge receipt of your letter of 16 May, received in the Registry the same day, enclosing an Application by the Government of Fiji for permission to intervene under the terms of Article 62 of the Statute in the *Nuclear Tests* case (*Australia* v. *France*).

In accordance with Article 69, paragraph 3, of the 1972 Rules of Court, the President has fixed 29 May as the time-limit for the written observations of the Parties to the case on the Application of Fiji to intervene.

I have the honour also to acknowledge receipt of your letter of 18 May, informing me that the Fiji Government has appointed the High Commissioner of Fiji in London as Co-Agent in this case. Due note has been taken of this information.

[1] I, pp. 153-159.

39. THE REGISTRAR TO THE AGENT OF AUSTRALIA[1]

18 May 1973.

With reference to my letter of 16 May enclosing a certified copy of the Application by Fiji for permission to intervene under the terms of Article 62 of the Statute of the Court in the *Nuclear Tests* case (*Australia* v. *France*), I have the honour to send you herewith a certified copy of a letter I have today received from the Agent of Fiji and of the Annex enclosed with that letter.

40. THE REGISTRAR TO THE AGENT OF AUSTRALIA[1]

18 May 1973.

With reference to my letter of 16 May, with which I enclosed a certified copy of an Application by the Government of Fiji for permission to intervene in the *Nuclear Tests* case (*Australia* v *France*) under the terms of Article 62 of the Statute, I have the honour to inform you that the President of the Court has fixed 29 May 1973 as the time-limit for the written observations of the Parties on the Application pursuant to Article 69, paragraph 3, of the 1972 Rules of Court.

41. THE AGENT OF FIJI TO THE REGISTRAR

18 May 1973.

I have the honour pursuant to Article 69 of the Rules to submit to the International Court of Justice an Application[2] on behalf of the Government of Fiji for permission to intervene under the terms of Article 62 of the Statute in the case concerning *Nuclear Tests* (*New Zealand* v. *France*).

I have the further honour to inform you, in accordance with Article 38 (4) of the Rules that the Fiji Government has appointed me as its Agent in this case, and the Fiji High Commissioner in London as Co-Agent.

The address for service of the Agent of the Fiji Government is: c/o the Australian Embassy, Koninginnegracht 23, The Hague.

42. THE REGISTRAR TO THE AGENT OF NEW ZEALAND[1]

18 May 1973.

I have the honour to inform you that the Government of Fiji has today filed in the Registry of the Court an Application, under the terms of Article 62 of the Statute of the Court, for permission to intervene in the *Nuclear Tests* case (*New Zealand* v. *France*). In accordance with Article 69, paragraph 3, of the

[1] A similar communication was sent to the Minister for Foreign Affairs of France.
[2] See pp. 89-94, *supra*.

1972 Rules of Court, I send you herewith a certified copy of the Application in question, and of the letter accompanying it.

In accordance with Article 69, paragraph 3, of the 1972 Rules of Court, the President has fixed 31 May 1973 as the time-limit for the written observations of the Parties on this Application.

43. THE REGISTRAR TO THE AGENT OF AUSTRALIA

18 May 1973.

I have the honour to confirm the information already conveyed to you by telephone, namely that the oral proceedings to hear the observations of the Parties on the request by Australia for the indication of interim measures in the *Nuclear Tests* case (*Australia* v. *France*) will open at 3 p.m. on Monday, 21 May.

I refer to Article 48, paragraph 3, of the 1972 Rules of Court, and enquire whether the Government of Australia would have any objection to the documents before the Court at this stage in the case, namely the request for the indication of interim measures of protection and the communications received from the Government of France, being made accessible to the public with effect from the opening of the oral proceedings concerning the question of interim measures of protection.

44. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

(télégramme)

18 mai 1973.

Me référant article 48 paragraphe 3 nouveau Règlement Cour ai honneur solliciter avis Votre Excellence sur communication éventuelle au public à partir 21 mai des demandes en indication mesures conservatoires déposées par Australie 9 mai et par Nouvelle-Zélande 14 mai et des lettres avec annexe remises par ambassadeur France 16 mai.

45. THE AGENT OF AUSTRALIA TO THE REGISTRAR

19 May 1973.

I have the honour to refer to your letter dated 18 May 1973 confirming that the oral proceedings to hear the observations of the Parties on the request by Australia for the indication of interim measures in the *Nuclear Tests* case (*Australia* v. *France*) will be open at 3 p.m. on Monday, 21 May.

The second paragraph of the letter refers to Article 48, paragraph 3, of the 1972 Rules of Court. In that connection, I wish to confirm that the Government of Australia would not have any objection to the request for the indication of interim measures of protection being made accessible to the public with effect from the opening of oral proceedings.

Your letter refers to the question of the distribution of the communications received from the Government of France also being made accessible to the public at the same time. The Government of Australia completely reserves its position in relation to these communications and to distribution of any further documents from the Government of France that do not accord with the regular procedures of the Court.

46. L'AMBASSADEUR DE FRANCE AUX PAYS-BAS AU GREFFIER

21 mai 1973.

Par un télégramme en date du 18 mai 1973 vous avez bien voulu demander au ministre des affaires étrangères de la République française s'il avait objection à ce que soient communiquées au public les demandes australienne et néo-zélandaise en indication de mesures conservatoires et nos lettres avec annexe en date du 16 mai.

J'ai l'honneur de vous faire savoir que le Gouvernement français ainsi qu'il l'a indiqué dans sa lettre du 16 mai n'a pas l'intention de se faire représenter dans ces affaires pour lesquelles la Cour n'a pas compétence.

En conséquence n'étant pas partie à cette affaire il ne saurait donner un avis sur la base de l'article 48, paragraphe 3, du Règlement de la Cour.

47. THE REGISTRAR TO THE AGENT OF FIJI

21 May 1973.

I have the honour to acknowledge receipt of your letter of 18 May, with which you enclosed an Annex containing copies of documents in support of the Application of the Government of Fiji for permission to intervene in the *Nuclear Tests* case (*Australia* v. *France*).

48. THE REGISTRAR TO THE AGENT OF FIJI

21 May 1973.

I have the honour to acknowledge receipt of your letter of 18 May, received in the Registry on the same day, enclosing an Application by the Government of Fiji for permission to intervene under the terms of Article 62 of the Statute in the *Nuclear Tests* case (*New Zealand* v. *France*). Due note has been taken of your appointment as Agent and of the High Commissioner of Fiji in London as Co-Agent.

As I informed you orally on 18 May, the President has fixed 31 May as the time-limit for the written observations of the Parties to the case on the Application of Fiji in accordance with Article 69, paragraph 3, of the Rules of Court.

49. THE AGENT OF AUSTRALIA TO THE REGISTRAR

21 May 1973.

As you are aware Australia has filed a request for provisional measures of protection. References are made in paragraphs 46, 60 and 64 of the request to the Report of November 1972 of an Advisory Committee on the biological effects of ionizing radiation appointed by the National Academy of Sciences of the United States. The full title of the Report is *The Effects on Populations of Exposure to Low Levels of Ionizing Radiation.* Attached herewith is one copy of the Report[1]. In addition, 15 copies of the Report are being forwarded to you separately in case they may be of assistance for purposes of reference.

50. THE AGENT OF AUSTRALIA TO THE REGISTRAR

22 May 1973.

I have the honour to refer to my discussion with you on 21 May 1973 concerning the reports of the meeting between Australian and French scientists which took place in Australia on 7-9 May 1973.

Attached is a copy of the document[2] on the meetings issued by the Australian scientists concerned. It will be noted that it consists of three parts:

(i) A section A, which is identical with section A of the report issued by the French scientists.
(ii) Section B of the Australian scientists' report, which is the sole responsibility of the Australian scientists, and
(iii) Section B of the French scientists' report, which is the sole responsibility of the French scientists.

51. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

(télégramme)

22 mai 1973.

Me référant instance introduite par Nouvelle-Zélande contre France ai honneur faire savoir Votre Excellence que Cour a fixé ouverture des audiences publiques au jeudi 24 mai à 10 heures.

52. THE REGISTRAR TO THE AGENT OF AUSTRALIA

22 May 1973.

I have the honour to acknowledge receipt of your letter of 19 May in reply to my enquiry of 18 May concerning the possibility of making certain documents

[1] Not reproduced. See I, p. 176.
[2] I, pp. 540-544, *and* No. 149, *infra.*

in the *Nuclear Tests* case (*Australia* v. *France*) accessible to the public. I also have the honour to send you herewith a copy of a letter received yesterday from the Ambassador of France to the Netherlands with reference to a similar enquiry which I addressed to the French Government.

53. THE REGISTRAR TO THE AGENT OF NEW ZEALAND

22 May 1973.

With reference to Article 48, paragraph 3, of the 1972 Rules of Court, I have the honour to enquire whether the Government of New Zealand would have any objection to the text of the request for the indication of interim measures of protection in the *Nuclear Tests* case (*New Zealand* v. *France*), and of the communication from the Ambassador of France of 16 May, being made accessible to the public with effect from the opening of the oral proceedings on the New Zealand request.

I have the honour also to send you herewith a copy of a letter received yesterday from the French Ambassador in reply to a similar enquiry addressed to the French Government by telegram, relating both to this case and to the proceedings instituted by Australia against France.

54. THE AGENT OF AUSTRALIA TO THE REGISTRAR

22 May 1973.

I have the honour to refer to your letter dated 18 May 1973 referring to an Application by the Government of Fiji for permission to intervene in the *Nuclear Tests* case (*Australia* v. *France*) under the terms of Article 62 of the Statute. The letter stated that the President of the Court has fixed 29 May 1973 as the time-limit for the written observations of the Parties on the Application pursuant to Article 69, paragraph 3, of the 1972 Rules.

The Government of Australia has no objection to the Application being granted.

55. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS[1]

22 May 1973.

I refer to my cable of 9 May 1973 by which I informed you of the filing by the Government of Australia of an Application instituting proceedings against the French Republic in respect of a dispute concerning French nuclear tests in the South Pacific Ocean (*Nuclear Tests* case), and a request for the indication of interim measures of protection in that case; I now have the honour to inform you that I am forwarding to you under separate cover (by airmail parcel post,

[1] A similar communication was sent to the Secretary-General of the United Nations regarding the *New Zealand* v. *France* case.

marked "Attention Director, General Legal Division") 150 copies of the Application referred to.

I would be grateful if, in accordance with Article 40, paragraph 3, of the Statute of the Court, you would be good enough to inform the Members of the United Nations of the filing of this Application.

56. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN[1]

22 mai 1973.

Le 9 mai 1973 a été déposée au Greffe de la Cour internationale de Justice, au nom de l'Australie, une requête par laquelle le Gouvernement australien introduit contre la France une instance en l'affaire des *Essais nucléaires*.

J'ai l'honneur, à toutes fins utiles, de transmettre ci-joint à votre Excellence un exemplaire de cette requête.

57. THE REGISTRAR TO THE AGENT OF AUSTRALIA[2]

23 May 1973.

I have the honour to transmit herewith for your information three copies of the bilingual edition, printed by the Registry, of the Application of the Government of Australia in the *Nuclear Tests* case.

58. THE AGENT OF AUSTRALIA TO THE REGISTRAR

23 May 1973.

I have the honour to refer to Article 56, paragraph 2, of the 1972 Rules and to the final formal submission made on behalf of the Government of Australia at the public sitting held today, 23 May 1973[3] in the *Nuclear Tests* case *(Request for the Indication of Provisional Measures of Protection) (Australia* v. *France)*.

I attach a written copy of the final submission signed by me as Agent for the Government of Australia.

Request for the Indication of Provisional Measures of Protection

Final Submission of the Government of Australia

The final submission of the Government of Australia is that the Court, acting

[1] Cette communication a été adressée, pour chacune des deux affaires, aux Etats Membres des Nations Unies et aux Etats non membres des Nations Unies admis à ester devant la Cour.

[2] Similar communications were sent to the Agent of New Zealand regarding the *New Zealand* v. *France* case and to the Minister for Foreign Affairs of France regarding both cases.

[3] I, p. 228.

under Article 33 of the General Act and Article 41 of the Statute of the Court, should lay down provisional measures which require the French Government to desist from carrying out further atmospheric nuclear tests in the South Pacific pending the judgment in this case.

59. THE AGENT OF NEW ZEALAND TO THE REGISTRAR

23 May 1973.

I have the honour to refer to your letter of 18 May 1973 in which you advised me that the Government of Fiji had filed an Application for permission to intervene in the *Nuclear Tests* case (*New Zealand* v. *France*). I set out below the brief observations of my Government on the Application made by Fiji.

The final paragraph of the Application made by the Government of Fiji states that the New Zealand Government has been informed of the intentions of the Fiji Government and has indicated that it has no objections. I am glad to be able to confirm this information. The New Zealand Government believes that, for the reasons set out in its Application, the Government of Fiji has a substantial interest in the proceedings instituted by New Zealand and fully understands its wish to intervene in these proceedings.

60. THE AGENT OF NEW ZEALAND TO THE REGISTRAR

23 May 1973.

I have the honour to refer to your letter of 22 May 1973 in which you ask whether the Government of New Zealand would have any objection to the text of the request for the indication of interim measures of protection in the *Nuclear Tests* case (*New Zealand* v. *France*) being made accessible to the public with effect from the opening of the oral hearings on the New Zealand request. I have the honour to inform you that the New Zealand Government has no objection to that action.

Your letter also refers to the communication from the Ambassador of France on 16 May. The Government of New Zealand reserves its position as to the applicability of Rule 48(3) to that document and as to the making of it accessible to the public.

61. THE AGENT OF FIJI TO THE REGISTRAR [1]

23 May 1973.

I have the honour to refer to my letter of 18 May advising you of the appointment by the Government of the Fiji High Commissioner in London as Co-Agent in the case concerning *Nuclear Tests* (*Australia* v. *France*).

[1] A communication in the same terms was sent to the Registrar regarding the *New Zealand* v. *France* case.

I now have the honour of advising that the name of the Fiji High Commissioner in London, the Co-Agent of the Government of Fiji in this case, is H.E. Mr. Josua Rasilai Rabukawaqa, MVO, MBE.

Confirmation of the appointment is being sent from Ratu Sir Kamisese Mara, the Prime Minister and Minister for Foreign Affairs of Fiji.

62. THE AGENT OF AUSTRALIA TO THE REGISTRAR

24 May 1973.

I have the honour to refer to your oral inquiry whether, as a matter of courtesy, copies could be made available of the reports of the National Radiation Advisory Committee referred to on page 30 of the printed Application in the *Nuclear Tests* case (*Australia* v. *France*).

Attached is one copy of each of the reports[1] referred to.

Paragraph 63[2] of the request for provisional measures makes reference to the report of the Australian Academy of Science tabled by the Prime Minister of Australia in the Australian Parliament on 1 May 1973. For convenience, I attach a copy of that report[1].

63. THE REGISTRAR TO THE AGENT OF FIJI[3]

25 May 1973.

I refer to my letter of 18 May, by which I informed you of the time-limit fixed by the President, pursuant to Article 69, paragraph 3, of the Rules of Court, for the observations of the Parties to the *Nuclear Tests* case (*Australia* v. *France*) on the Application of Fiji to intervene in that case. I now have the honour to send you herewith a certified copy of a letter dated 22 May from the Agent of Australia concerning the Application of Fiji.

64. THE PRIME MINISTER AND MINISTER FOR FOREIGN AFFAIRS OF FIJI TO THE REGISTRAR

Suva, 24 May 1973.

I have the honour to refer to my letter of 10 May advising you of the intention of the Government of Fiji to make Applications for permission to intervene under the terms of Article 62 of the Statute of the Court in the cases concerning *Nuclear Tests* (*Australia* v. *France*) and (*New Zealand* v. *France*).

I have the further honour to refer to the letters of 18 May in which the Agent of the Fiji Government, Mr. Donald McLoughlin, informed you that the Fiji

[1] Not reproduced.

[2] **I**, pp. 54-55.

[3] Similar communications were sent to the Agent of Fiji regarding the *New Zealand* v. *France* case and to the Minister for Foreign Affairs of France regarding both cases.

Government has appointed the Fiji High Commissioner in London as its Co-Agent in these cases. I now have the further honour to confirm that appointment.

The address for services of the Agent of the Government of Fiji remains care the Australian Embassy, Koninginnegracht 23, The Hague.

65. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE [1]

25 mai 1973.

J'ai l'honneur d'adresser ci-joint à Votre Excellence un exemplaire corrigé et un exemplaire non corrigé du compte rendu des audiences publiques que la Cour a tenues les 21, 22 et 23 mai 1973 en l'affaire des *Essais nucléaires (Australie c. France)*.

Je transmets en outre à Votre Excellence, à toutes fins utiles, la traduction en français de ces comptes rendus. Je me permets de souligner que cette traduction est dépourvue de caractère officiel.

66. THE AGENT OF NEW ZEALAND TO THE REGISTRAR

25 May 1973.

At the conclusion of the oral statements [2] made on behalf of New Zealand in support of its request for interim measures of protection in the *Nuclear Tests* case (*New Zealand* v. *France*), I have the honour to advise you that New Zealand's final submission is:

> "that the Court, acting under Article 33 of the General Act for the Pacific Settlement of International Disputes or, alternatively, under Article 41 of its Statute, should lay down or indicate that France, while the Court is seized of the case, refrain from conducting any further nuclear tests that give rise to radioactive fallout."

67. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

28 mai 1973.

J'ai l'honneur de porter à votre connaissance que l'agent du Gouvernement australien dans l'affaire des *Essais nucléaires (Australie c. France)* a déposé au Greffe de la Cour les documents suivants auxquels l'Australie s'est référée dans ses écritures ou en plaidoirie:

1. Un rapport établi en novembre 1972 par le Comité consultatif sur les effets biologiques des rayonnements ionisants, nommé par l'Académie des sciences

[1] La même communication a été adressée au ministre des affaires étrangères de France au sujet de l'affaire *Nouvelle-Zélande c. France* et des communications analogues lui ont été adressées à l'occasion des procédures orales sur la compétence et la recevabilité.

[2] See p. 140, *supra*.

des Etats-Unis; ce rapport a pour titre *The Effects on Population of Exposure to Low Levels of Ionizing Radiation.*

2. Le rapport des savants australiens sur les entretiens qu'ils ont eus en Australie du 7 au 9 mai 1973 avec des savants français; ce document contient trois sections:
   — une section A (identique à la section A du rapport établi par les savants français);
   — une section B rédigée sous la seule responsabilité des savants australiens;
   — le texte de la section B du rapport établi par les savants français et rédigé sous leur seule responsabilité.
3. Les rapports du Comité consultatif national australien sur les radiations, publiés en mars 1967, décembre 1967, mars 1969, mars 1971 et juillet 1972.
4. Un rapport de l'Académie des sciences d'Australie présenté par le Premier ministre d'Australie au Parlement le 1er mai 1973.

Ces documents peuvent être consultés au Greffe de la Cour.

68. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE[1]

29 mai 1973.

Me référant à mon télégramme du 18 mai 1973 relatif à la communication de certaines pièces en l'affaire des *Essais nucléaires (Australie c. France)*, j'ai l'honneur de porter à la connaissance de Votre Excellence la réponse que j'ai reçue de l'agent du Gouvernement australien sur ce sujet. J'adresse ci-joint à Votre Excellence copie de sa lettre en date du 19 mai dernier, ainsi que, à toutes fins utiles, une traduction française établie par le Greffe.

69. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE[1]

29 mai 1973.

J'ai l'honneur d'adresser ci-joint à Votre Excellence, conformément à l'article 56, paragraphe 2, du Règlement de la Cour, copie de la conclusion finale que l'agent du Gouvernement australien en l'affaire des *Essais nucléaires (Australie c. France)* a lue à l'audience publique du 23 mai 1973 et dont il m'a communiqué le texte écrit. Je fais également tenir à Votre Excellence, à toutes fins utiles, une traduction française de sa communication.

70. THE REGISTRAR TO THE AGENT OF AUSTRALIA

29 May 1973.

I refer to the statement by Judge Gros at the hearing of 25 May (**I**, p. 244) in the *Nuclear Tests* case (*Australia* v. *France*), that he wished to put a further question, and would transmit it to you in writing.

[1] La même communication a été adressée au ministre des affaires étrangères de France au sujet de l'affaire *Nouvelle-Zélande c. France.*

I now have the honour to send you herewith the text of the question of Judge Gros, together with an English translation made by the Registry. The Court has decided that it would wish the answer to this question to be given in writing.

Question posée par M. Gros à M. l'agent du Gouvernement de l'Australie, le 28 mai 1973

Vis-à-vis de quels Etats, en dehors de la France, le Gouvernement de l'Australie estime-t-il être lié par l'Acte général pour le règlement pacifique des différends internationaux de 1928, pour l'ensemble de l'Acte ou pour partie?

71. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

29 mai 1973.

J'ai l'honneur d'adresser ci-joint à Votre Excellence un exemplaire du compte rendu de l'audience tenue par la Cour le 25 mai 1973 en l'affaire des *Essais nucléaires (Australie c. France)*. Je transmets en outre à Votre Excellence, à toutes fins utiles, la traduction en français de ce compte rendu. Je me permets de souligner que cette traduction est dépourvue de caractère officiel.

Me référant en outre à la déclaration faite par M. Gros à la fin de l'audience (I, p. 244) je prie Votre Excellence de bien vouloir trouver ci-joint le texte de la question que M. Gros a posée par écrit à l'agent du Gouvernement australien.

72. THE REGISTRAR TO THE AGENT OF NEW ZEALAND

29 May 1973.

I refer to the question put to the representatives of New Zealand by Judge Sir Humphrey Waldock at the hearing of 25 May (p. 141, *supra*), and have the honour to inform you that the Court has decided that it would wish the answer to this question to be made in writing.

73. THE REGISTRAR TO THE AGENT OF AUSTRALIA [1]

29 May 1973.

Further to my letter of 16 May 1973, with which I sent you a certified copy of the Application of the Government of Fiji for permission to intervene, under

[1] Similar communications were sent to the Agent of New Zealand regarding the *New Zealand* v. *France* case and to the Minister for Foreign Affairs of France regarding both cases.

the terms of Article 62 of the Statute of the Court, in the *Nuclear Tests* case (*Australia* v. *France*), I have the honour to send you herewith three copies of the bilingual edition, printed by the Registry, of that Application.

74. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS[1]

30 May 1973.

I refer to my cable 30 of 16 May 1973[2] by which I informed you of the filing by the Government of Fiji of an Application for permission to intervene, under the terms of Article 62 of the Statute of the Court, in the *Nuclear Tests* case (*Australia* v. *France*).

By Article 69, paragraph 4, of the 1972 Rules of Court, I am required to transmit copies of the Application for permission to intervene to Members of the United Nations through the Secretary-General. I should accordingly be grateful if you would be so good as to communicate copies of the Application referred to above to the Members of the United Nations, for which purpose I am forwarding to you under separate cover (by airmail parcel post, marked "Attention Director, General Legal Division") 150 copies thereof.

75. THE AGENT OF AUSTRALIA TO THE REGISTRAR

31 May 1973.

I refer to the question put by Judge Gros at the hearing of 25 May 1973 (I, p. 244) in the *Nuclear Tests* case (*Australia* v. *France*) and to the statement by Judge Gros at the same hearing that he wished to put a further question which would be transmitted to the Agent for the Government of Australia in writing. I refer also to your letter dated 29 May 1973 forwarding the text of the further question of Judge Gros, together with an English translation made by the Registry.

I now have the honour to submit the written answers of the Government of Australia to the two questions.

First Question:

The question put by Judge Gros at the hearing on 25 May 1973 reads in full as follows:

> "Le conseil du Gouvernement de l'Australie a indiqué à la Cour le lundi 21 mai (I, p. 187) qu'il y avait « une question sur laquelle nous réservons notre position ».
>
> M. l'agent du Gouvernement de l'Australie peut-il indiquer quelle position est ainsi réservée; et s'il s'agit d'une réserve de position juridique qui serait un élément du différend soumis à la Cour par le Gouvernement

[1] A communication in the same terms was sent to the Secretary-General of the United Nations regarding the *New Zealand* v. *France* case.

[2] Not reproduced.

de l'Australie, le point a-t-il été soulevé et traité comme tel dans les entretiens à Paris, en avril 1973, entre les représentants des deux gouvernements?"

In his speech on 21 May 1973 (I, p. 187, line 22), the Solicitor-General of Australia used the expression: "This is a matter on which we reserve our position." Judge Gros has asked what position is thus reserved.

The Solicitor-General was developing the proposition that radio-active fall-out on Australian soil from French tests would constitute a violation of Australian territorial sovereignty. In addition, he observed that questions might arise whether the consequences of the French tests could be in any way affected by the consideration that they represented a possibly legitimate use of French territory. The Solicitor-General argued that such use of French territory could not be legitimate. It was in the course of this submission that the Solicitor-General indicated that he did not wish to be taken as accepting the validity of an assumption on which it rests, namely that Mururoa may simply be treated like any other part of French territory and that this was a matter on which we reserved our position.

This is the reservation of position regarding which Judge Gros has framed his question. It can thus be seen to be a subsidiary matter in the legal argument relating to the merits. In the submission of the Government of Australia nothing can turn on it at the stage of interim measures.

In answer to the second part of the question put by Judge Gros, the Australian Government states that the matter thus reserved is not an element in the dispute in the sense that it is not a constituent part of the dispute. The explanation given above shows that the legal argument in question is ancillary only and if it arises at all for consideration will only do so in connection with the merits.

It may be observed that amongst the many points mentioned in the course of the discussions held in Paris in April 1973 between the representatives of the two Governments was the status of Mururoa Atoll. The French Foreign Minister took the initiative in categorically stating that under the French constitution the testing sites were French territory. The question was therefore clearly one on which the French Government has a fixed and unchangeable view.

Second Question:

The second question asked by Judge Gros, which was forwarded with your letter dated 29 May 1973, reads as follows:

> "Vis-à-vis de quels Etats, en dehors de la France, le Gouvernement de l'Australie estime-t-il être lié par l'Acte général pour le règlement pacifique des différends internationaux de 1928, pour l'ensemble de l'Acte ou pour partie?"

The Government of Australia considers itself to be bound by the 1928 General Act towards those States which have acceded thereto. A list of those States as at 10 July 1944 is set forth in the League of Nations twenty-first list of *Signatures, Ratifications and Accessions in Respect of Agreements and Conventions Concluded Under the Auspices of the League of Nations*. No States have acceded to or denounced the General Act since that date.

The present answer is, of course, given without prejudice to the position in relation to any accession the continuing validity of which may be affected by special circumstances not relevant to the present case. Also, the Government of Australia does not consider itself bound by the General Act towards any other State by reason of State succession.

76. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

1er juin 1973.

Me référant à ma lettre du 29 mai 1973 à laquelle j'avais joint le compte rendu de l'audience publique tenue par la Cour le 25 mai 1973 en l'affaire des *Essais nucléaires (Australie c. France)* ainsi que le texte d'une question de M. Gros posée par écrit à l'agent du Gouvernement australien, j'ai l'honneur de faire tenir à Votre Excellence copie de la réponse faite par l'agent du Gouvernement australien et, à toutes fins utiles, une traduction française de cette réponse, établie par le Greffe.

77. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

1 June 1973.

In accordance with your letter of 29 May addressed to the Agent of the Government of New Zealand, I have the honour to transmit herewith the answer to the question put to the representatives of New Zealand by Judge Sir Humphrey Waldock at the hearing of 25 May.

Answer to the Question Put to the Representatives of New Zealand by Judge Sir Humphrey Waldock at the Hearing of 25 May (*p. 141*, supra)

Judge Sir Humphrey Waldock asks for an explanation of the position of the New Zealand Government regarding the status today of the provisions of the 1928 General Act, and of New Zealand's Instruments of Accession to that Act, which relate to the Council of the League of Nations. It will be convenient to deal first with the relevant provisions of the General Act itself, and then with those of New Zealand's Instruments of Accession.

There are two provisions of the General Act which relate to the Council of the League. Article 6, paragraph (i), provides that the appointment of members of a conciliation commission shall, on the request of the parties concerned, be entrusted to the Acting President of the Council of the League of Nations. Article 43 empowers the Council of the League of Nations to invite States not members of the League to accede to the General Act.

In his statement made to the Court on 25 May, the New Zealand Agent observed, in reference to the second of these provisions, that the Council's power to invite non-members of the League to accede to the General Act "will obviously have lapsed". In the view of the New Zealand Government, this will also be true of the powers entrusted to the President of the League Council pursuant to Article 6 of the General Act.

The considerations on which this view mainly depends are the demise of the League itself, the absence of any action—whether taken in a United Nations context or otherwise—to effect or recognize a transfer of the powers reposed in the League Council and its acting President, and the decision of the United Nations General Assembly in 1949 to establish a revised General Act, which would confer powers on United Nations organs, but would leave undisturbed the provisions and operation of the 1928 Act.

In the view of the New Zealand Government, therefore, Article 43 and Article

6 of the General Act, in so far as they purport to entrust powers to the League Council and to its acting President, are now without effect. These are aspects of the impairment of the efficacy of the General Act, which the United Nations General Assembly recognized without adopting the view that the Act had lost its force.

There would appear to be ample justification for the position taken by the General Assembly—and by the parties themselves through their involvement in the Assembly's proceedings. In particular, as the New Zealand Agent noted in his statement to the Court, there are numerous instances in which League treaties have survived the lapse of the power to invite adherence; and the powers entrusted to the acting President of the League Council were not central to the procedure for appointing members of conciliation commissions.

New Zealand's Instrument of Accession to the General Act contained two reservations—numbered respectively (2) and (3) and set out in Annex V to the Application—which relate to the Council of the League of Nations. In broad terms, these stipulations reserved to New Zealand a power to require, in certain circumstances, that the operation of the procedures laid down in the Act be suspended in favour of the procedures provided by the League Covenant.

The New Zealand Government of course recognizes that the impairment of the efficacy of the General Act, which stems from the demise of the League of Nations, extends to reservations that specifically relate to the League. The maintenance of such reservations does not disturb the balance of advantage in relations with other parties; for it is the Court, not the author of the reservations, which determines their meaning.

Among the reasons for maintaining the reservations are the following: they reflect an unchanging New Zealand policy; their wording is in keeping with the frame of reference in the text of the General Act itself; and no change in circumstances can have caused these reservations to become incompatible with the continued operation of the treaty instrument to which they relate.

As the 1948 and 1949 debates in the General Assembly have shown, parties which had attached the same or similar reservations to their accessions to the General Act have not doubted the continuing force of these accessions since 1946. This has been true even of parties such as the United Kingdom and New Zealand which retained political doubts stemming from the fact that the Act lay outside the Covenant and Charter systems. The same position has been taken in relation to those declarations of acceptance of the compulsory jurisdiction of the Permanent Court of International Justice which were subject to a reservation relating to the Council of the League.

For the reasons mentioned, it was submitted to the Court at the hearing of 25 May that it was not necessary for New Zealand at the present stage of the proceedings to urge any particular view of the exact effect of its reservations. Indeed, the New Zealand Government believes that, in these proceedings, it will never become necessary to resolve that question. With this qualification, it may be helpful to indicate that the New Zealand Government inclines to the view that the reservations relating to the League must now be regarded as without legal effect.

The grounds for this view are those already adduced in relation to the question of the proper construction of Articles 6 and 43 of the General Act. The very facts that the League Council no longer exists, and that no action has been taken—through the United Nations or otherwise—to effect or recognize a transfer of the Council's functions to a corresponding United Nations body, would seem to militate against any attempt to provide the reservations with a United Nations connotation. At the same time, the New Zealand Government

would not be concerned to resist such a construction if it were urged in a bilateral context by another party, because that construction would accord with the spirit in which the reservations were made and have been maintained.

78. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

4 juin 1973.

Me référant à ma lettre du 29 mai 1973 à laquelle j'avais joint le compte rendu des audiences publiques que la Cour a tenues les 24 et 25 mai 1973 dans l'affaire des *Essais nucléaires (Nouvelle-Zélande c. France)*, j'ai l'honneur d'adresser à Votre Excellence copie de la réponse écrite faite par le coagent du Gouvernement néo-zélandais à la question posée par sir Humphrey Waldock à l'audience du 25 mai.

Je transmets en outre à Votre Excellence, à toutes fins utiles, la traduction française de cette réponse, établie par le Greffe.

79. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN[1]

5 juin 1973.

J'ai adressé à Votre Excellence, avec ma lettre du 22 mai 1973, le texte imprimé de la requête par laquelle le Gouvernement australien a introduit le 9 mai une instance contre la France (affaire des *Essais nucléaires*) et j'ai en outre fait tenir à Votre Excellence, par ma lettre du 23 mai 1973, le texte imprimé de la requête par laquelle le Gouvernement néo-zélandais a introduit le 9 mai une instance contre la France (affaire des *Essais nucléaires*).

J'ai l'honneur d'envoyer ci-joint à Votre Excellence, à toutes fins utiles, un exemplaire des requêtes à fin d'intervention aux termes de l'article 62 du Statut de la Cour que le Gouvernement de Fidji a déposées les 16 et 18 mai 1973 dans les deux affaires relatives aux *Essais nucléaires*.

80. THE AGENT OF AUSTRALIA TO THE REGISTRAR

18 June 1973.

I have the honour to refer to the proceedings in the *Nuclear Tests* case (*Australia* v. *France*). I have the honour, further, to refer to the request for provisional measures of protection lodged on 9 May 1973 by the Government of Australia in those proceedings and to the oral statements in support of that request put on behalf of the Government of Australia at the hearings of 21, 22, 23 and 25 May 1973. In that request and in those statements the Australian

[1] Une communication analogue a été adressé aux autres Etats Membres des Nations Unies et aux Etats non membres des Nations Unies.

Government drew attention to the urgency of the request for provisional measures of protection.

I now have the honour to draw to the attention of the Court the attached news item which indicates the imminence of the commencement of a further series of atmospheric nuclear explosions by the French Government at its tests centre in the South Pacific Ocean. The item consists of a report that appeared in the "*Défense*" section of *Le Monde* of 17-18 June 1973[1]. Reference is made in the report to the movement from the port of Papeete between 12 and 16 June of six French Navy vessels attached to the nuclear tests programme. The report goes on to state, *inter alia*, that according to some sources ("*informations*"), the tests numbering three or four, could commence as from 24 June 1973. Similar reports have been published in Australian newspapers.

81. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

19 juin 1973.

J'ai l'honneur de faire tenir ci-joint à Votre Excellence copie d'une communication que l'agent du Gouvernement australien en l'affaire des *Essais nucléaires (Australie c. France)* m'a remise le 18 juin 1973.

82. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE[2]

(télégramme)

20 juin 1973.

Ai honneur faire connaître à Votre Excellence que l'ordonnance de la Cour sur demande mesures conservatoires en l'affaire des *Essais nucléaires (Australie c. France)* sera lue en séance publique le vendredi 22 juin à 10 h. 30.

83. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE[3]

(télégramme)

22 juin 1973.

Ai honneur faire connaître à Votre Excellence que la Cour a rendu aujourd'hui ordonnance sur demande australienne indication mesures conservatoires dans affaire *Essais nucléaires*. Suit citation dispositif:

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[1] Not reproduced.

[2] La même communication a été adressée au ministre des affaires étrangères de France au sujet de l'affaire *Nouvelle-Zélande c. France* (séance publique prévue pour le 22 juin 1973, 16 heures).

[3] Une communication analogue a été adressée au ministre des affaires étrangères de France au sujet de l'affaire *Nouvelle-Zélande c. France* (voir *C.I.J. Recueil 1973*, p. 142).

[Voir *C.I.J. Recueil 1973*, p. 106.]

Exemplaire officiel ordonnance expédié aujourd'hui par courrier aérien exprès à Votre Excellence.

84. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE[1]

22 juin 1973.

Par exprès

Me référant à mon télégramme de ce jour, portant à la connaissance de Votre Excellence le texte du dispositif de l'ordonnance rendue par la Cour sur la demande en indication de mesures conservatoires présentée en l'affaire des *Essais nucléaires (Australie c. France)*, j'ai l'honneur de transmettre ci-joint à Votre Excellence un exemplaire[2] officiel de cette ordonnance.

85. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS[3]

(telegram)

22 June 1973.

Have honour inform you Court by Order of 22 June indicated interim measures of protection in *Nuclear Tests* case instituted by Australia against France. Copy Order airmailed to you today for transmission Security Council pursuant Statute Article 41, paragraph 2.

86. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS[3]

22 June 1973.

I have the honour, in accordance with Article 41, paragraph 2, of the Statute of the Court, to send you herewith an official copy, for transmission to the Security Council, of an Order of today's date by which the Court, following the request dated 9 May 1973 of the Government of Australia, indicated interim measures of protection in the *Nuclear Tests* case (*Australia* v. *France*).

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[1] La même communication a été adressée au ministre des affaires étrangères de France au sujet de l'affaire *Nouvelle-Zélande c. France*.

[2] Les autres exemplaires officiels des deux ordonnances ont été remis aux agents de l'Australie et de la Nouvelle-Zélande à l'occasion de l'audience publique du même jour.

[3] A communication in the same terms was sent to the Secretary-General of the United Nations regarding the *New Zealand* v. *France* case.

87. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR[1]

22 June 1973.

I have the honour to refer to your cable of 9 May 1973 to the Secretary-General informing him that on 9 May 1973 an Application was filed by Australia instituting proceedings against the French Republic in respect of a dispute concerning French nuclear tests in the South Pacific Ocean (*Nuclear Tests* case), and a request for the indication of interim measures of protection in that case, and to your letter of 22 May 1973 informing him of the transmission of 150 copies of the Application with the request that he inform member States of its filing.

In accordance with Article 40, paragraph 3, of the Statute of the International Court of Justice, the Secretary-General has notified the Members of the United Nations of this Application. A copy of the circular note[2] in English and French is enclosed. It is my understanding that you will have notified directly the other States entitled to appear before the Court.

(Signed) Constantin A. STAVROPOULOS.

88. THE REGISTRAR TO THE AGENT OF AUSTRALIA[3]

25 June 1973.

I refer to the Order made by the Court on 22 June 1973 in the *Nuclear Tests* case (*Australia* v. *France*), by which, *inter alia*, the Court fixed time-limits for the Memorial of the Government of Australia and the Counter-Memorial of the French Government on the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of the Application. In this connection, I have the honour to send you herewith for your information a note concerning the printing of pleadings, together with a copy of the Registry's *Rules for the Preparation of Typed and Printed Texts* referred to therein.

Nuclear Tests case (Australia v. *France)*

Note for the Parties Concerning Printing of Pleadings

1. Article 43, paragraph 1, of the Rules of Court provides that the original of every pleading shall be signed by the agent and filed in the Registry, accompanied by the number of copies required by the Registry, but without prejudice to an increase in that number should the need arise later. The Rules no longer require that pleadings be printed, but if a party contemplates filing printed pleadings, consideration should be given to the arrangement described

[1] A similar communication was sent to the Registrar regarding the *New Zealand* v. *France* case.

[2] Not reproduced.

[3] A communication in the same terms was sent to the Agent of New Zealand.

in paragraphs 3 ff. below. In the present case the number of copies of pleadings to be filed in the first instance is 125.

2. In a footnote to Article 43 the Agents of the parties are requested to ascertain from the Registry the usual format of the pleadings. The purpose is to secure a certain degree of uniformity in the presentation of the pleadings, thus facilitating their handling and study. Enclosed herewith is a copy of the Registry's *Rules for the Preparation of Typed and Printed Texts*, together with examples of past pleadings. The Court has instructed the Registrar to stress most particularly that pleadings sent to him should be in the format 19 × 26 cm. (7″ × 10″).

3. In paragraph 4 of Article 43 it is provided that the Registrar may, at the request of a party and at the cost of that party, arrange for the printing of pleadings. Such printing, which is done under the responsibility of the party, is entrusted to one of the printers who habitually work for the Court and are thus fully familiar with the usual presentation and typography of the Court's documents.

4. After the termination of a case, the Registry reproduces the pleadings in the Court's *Pleadings, Oral Arguments, Documents* series of publications. If the arrangement described in paragraph 3 of this note is followed, the Registry is prepared to bear half the cost of simple typesetting of the pleading in question at the normal rate current between the Court and the printer selected. By cost of simple typesetting is to be understood the cost of typesetting proper, but excluding all supplementary charges such as for author's corrections, overtime, footnotes or marginal notes, setting in tables or columns, inset plates or engravings, etc.

5. In respect of an annex which is not published in the *Pleadings, Oral Arguments, Documents* series the Registry does not share in the cost of typesetting. This applies *inter alia* to any text in a language other than English or French; similarly, if the same text is reproduced more than once as an annex by the parties in the course of the same proceedings, the Registry bears its part of the cost once only.

6. If a party considers that it is in its interest to avail itself of the possibility thus offered, it is for it to make its own arrangements with the printer direct, particularly as regards the date by which, having regard to the time-limit fixed by the Order and the length of the text to be printed, the manuscript is to be delivered to the printer. The staff of the Registry are not concerned in these arrangements and do not undertake the proof reading or see to the insertion of author's corrections.

7. The amount due by the Registry is paid direct by it to the printer, after the invoice and the printed text have both been checked; the party concerned is kept informed. The type is kept at the printers at the Court's expense and is deemed to belong to the Court.

89. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

27 June 1973.

I am directed by the Secretary-General to acknowledge the receipt of your letters of 22 June 1973 transmitting, in accordance with Article 41, paragraph 2, of the Statute of the International Court of Justice, official copies of the two Orders issued by the Court on 22 June in the *Nuclear Tests* cases.

90. THE PRIME MINISTER OF AUSTRALIA TO THE VICE-PRESIDENT

Canberra, 27 June 1973.

Confidential

I have the honour to refer to the request of the Court for a report from the Australian Government on the words attributed to me in an article in the London *Times* on 22 June last[1].

The circumstances out of which that article arose have been stated to the Court by the Australian Co-agent in his letter of this date. My remarks were purely speculative, were made in the course of an informal talk to lawyers and were certainly not intended for publication.

I wish to express to the Court my personal regret at any embarrassment which the Court may have suffered as a result of my remarks.

(Signed) E. G. WHITLAM.

91. THE CO-AGENT OF AUSTRALIA TO THE REGISTRAR

27 June 1973.

Confidential

I have the honour to refer to the request of the Court for a report from the Australian Government on the words attributed to the Australian Prime Minister by an article in the London *Times* of 22 June last[1]. The article reports that the Prime Minister had told a meeting in Melbourne that he understood that the International Court of Justice had upheld by eight votes to six the petition presented by Australia and New Zealand objecting to the French nuclear tests in the Pacific.

The article originated from remarks made by the Prime Minister in informally replying on behalf of the guests to the toast proposed in their honour at the Solicitors Annual Dinner in Melbourne on Thursday night 21 June. He was not speaking from notes.

He indicated at the time that his remarks were off the record and not for publication. A few members of the press were present and reported them. The report of what he said in the London *Times* however is quite inaccurate and conveys the wrong impression. What he actually said was "the majority in our favour, they say, is going to be eight to six".

This statement was no more than speculative comment by a lawyer to lawyers and it would certainly have been so understood by the lawyers present. A view was current among Australian advisers, of which the Prime Minister was aware, that the decision could be in Australia's favour but by a small majority. By the time the comments were made, it was known that two members of the Court were ill and that they probably would not take part in the decision.

There was a great deal of speculation by the press in Australia and elsewhere in the days preceding the delivery of the Court's decision as to the likely outcome of the proceedings. These reports, some of which preceded the Prime Minister's statement, speculated in some instances that Australia would win but by a narrow margin.

[1] See p. 393, *supra*.

I trust that this letter will be sufficient to indicate to the Court the circumstances out of which the London *Times* article arose. I am forwarding with this letter a copy of a letter which the Prime Minister has today written to the Vice-President of the Court.

92. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

29 June 1973.

I have the honour to refer to your cables of 16 and 18 May 1973 respectively to the Secretary-General informing him of the filing by the Government of Fiji of an Application for permission to intervene, under the terms of Article 62 of the Statute of the Court, in the *Nuclear Tests* cases (*Australia* v. *France*) and (*New Zealand* v. *France*) respectively, and to your letters of 30 May 1973 informing him of the transmission of 300 copies of the Application with the request that he inform Member States of its filing.

In accordance with Article 69, paragraph 4, of the 1972 Rules of Court, the Secretary-General has notified the Members of the United Nations of this Application. A copy of the circular note[1] in English and French is enclosed. It is my understanding that you will have notified directly the other States entitled to appear before the Court.

93. THE REGISTRAR TO THE DIRECTOR OF THE GENERAL LEGAL DIVISION OF THE UNITED NATIONS

(telegram)

3 July 1973.

Re *Nuclear Tests* printed Orders for Security Council are being sent by Flight PA 167 arriving 10.20 July 4th. Airway bill No. 39258100.

94. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN[2]

6 juillet 1973.

Le Greffier de la Cour internationale de Justice a l'honneur de transmettre, sous ce pli, un exemplaire de l'ordonnance rendue par la Cour le 22 juin 1973 sur la demande en indication de mesures conservatoires présentée par le Gouvernement australien en l'affaire des *Essais nucléaires*.

D'autres exemplaires seront expédiés ultérieurement par la voie ordinaire.

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[1] Not reproduced.

[2] Cette communication a été adressée, pour chacune des deux affaires, aux Etats Membres des Nations Unies et aux Etats non membres des Nations Unies admis à ester devant la Cour.

95. THE DIRECTOR OF THE GENERAL LEGAL DIVISION OF THE UNITED NATIONS TO THE REGISTRAR

10 July 1973.

I am enclosing for your information Security Council document S/10962[1] in all languages containing the Secretary-General's note under cover of which limited copies of the Court's Order indicating interim measures of protection in the *Nuclear Tests* cases were circulated to all Members of the United Nations. Offset copies of the mimeographed version of the Orders were previously communicated to members of the Security Council under cover of a note verbale dated 28 June 1973. A copy of this note[1] is also enclosed.

I wish to thank you very much for making the printed copies available so quickly.

(Signed) Blaine SLOAN.

96. THE AGENT OF FIJI TO THE REGISTRAR

(telegram)

11 July 1973.

Further to my telephone discussions of 3rd 6th and 9th instant I confirm that Fiji Government disturbed at delay in being heard in support of its Applications to intervene in *Nuclear Tests* cases. Grateful if dates could be fixed for hearing of Fiji in support of those Applications in terms of Article 69 of Rules.

97. THE DEPUTY-REGISTRAR TO THE AGENT OF FIJI[2]

13 July 1973.

I have the honour, with reference to the Applications of the Government of Fiji to intervene in the cases concerning *Nuclear Tests* (*Australia* v. *France*; *New Zealand* v. *France*) to confirm that the Court on 12 July 1973 made separate Orders[3] in this connection and to enclose official copies of them.

(Signed) W. TAIT.

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[1] Not reproduced.

[2] Similar communications were sent to the Agents of Australia and New Zealand and to the Minister for Foreign Affairs of France.

[3] *I.C.J. Reports 1973*, pp. 320 and 324.

98. LE GREFFIER ADJOINT AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN[1]

20 juillet 1973.

Le Greffier ajoint de la Cour internationale de Justice a l'honneur de transmettre, sous ce pli, un exemplaire de l'ordonnance rendue par la Cour le 12 juillet 1973 au sujet de la requête à fin d'intervention déposée par le Gouvernement de Fidji dans l'affaire des *Essais nucléaires (Australie c. France)*.

D'autres exemplaires seront expédiés ultérieurement par la voie ordinaire.

99. LE GREFFIER À L'AMBASSADEUR DE BELGIQUE AUX PAYS-BAS[2]

24 juillet 1973.

Dans la requête par laquelle l'Australie a introduit une instance contre la France dans l'affaire des *Essais nucléaires*, requête dont j'ai eu l'honneur d'adresser copie à Votre Excellence avec ma lettre du 22 mai 1973, le demandeur a invoqué l'Acte général pour le règlement pacifique des différends internationaux, fait à Genève le 26 septembre 1928, pour fonder la compétence de la Cour.

Je prie Votre Excellence de bien vouloir considérer que la présente communication constitue la notification prévue à l'article 63 du Statut de la Cour.

J'ai l'honneur de faire tenir ci-joint à Votre Excellence, pour son information, le texte d'une communication du 16 mai 1973 émanant du Gouvernement français, les comptes rendus des audiences tenues par la Cour les 21, 22, 23 et 25 mai 1973 au sujet d'une demande en indication de mesures conservatoires présentée par l'Australie, ainsi que le texte d'une réponse que l'agent de l'Australie a faite par écrit à des questions posées par un membre de la Cour.

100. THE REGISTRAR TO THE AGENT OF AUSTRALIA[3]

9 August 1973.

I have the honour to send you herewith for your information a copy of a notification under Article 63 of the Statute of the Court in connection with the *Nuclear Tests* case (*Australia* v. *France*) which has been despatched to the States enumerated in the list[4] enclosed.

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[1] La même communication a été adressée, pour chacune des deux affaires, aux Etats Membres des Nations Unies et aux Etats non membres des Nations Unies admis à ester devant la Cour.

[2] La même communication a été adressée, pour chacune des deux affaires, aux Etats suivants: Canada, Danemark, Ethiopie, Finlande, Grèce, Inde, Irlande, Italie, Luxembourg, Norvège, Pays-Bas, Pérou, Royaume-Uni, Suède, Suisse et Turquie. Elle a également été adressée à la Nouvelle-Zélande pour l'affaire *Australie c. France* et à l'Australie pour l'affaire *Nouvelle-Zélande c. France*.

[3] Communications in the same terms were sent to the Agent of New Zealand and to the Minister for Foreign Affairs of France.

[4] Not reproduced. See footnote 2, *supra*.

101. THE CO-AGENT OF AUSTRALIA TO THE PRESIDENT

10 August 1973.

I have the honour to refer to the Order of 22 June 1973 in which the Court decided "that the written proceedings shall first be addressed to the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of the application". The Court fixed 21 September 1973 for the Memorial of the Government of Australia.

The Government of Australia regrets to have to inform the Court that although its Memorial is under active preparation the range of matters which are involved in a consideration of the admissibility of the application in addition to those relating to the jurisdiction of the Court proves to be such as to make it impossible for the Government of Australia to meet the time-limit of 21 September 1973. Accordingly, the Government of Australia, pursuant to Article 40 (4) of the Rules, requests the Court to extend this time-limit to 21 December 1973.

102. THE CO-AGENT OF AUSTRALIA TO THE REGISTRAR

13 August 1973.

As you will recall, on 10 August 1973 His Excellency the President of the Court was good enough to receive me in connection with the application which I transmitted to you on that day for an extension until 21 December 1973 of the date for the delivery of the Australian Memorial on questions of jurisdiction and admissibility. In the course of that meeting, His Excellency the President invited me to ascertain whether the Government of Australia might be able to suggest a date earlier than that mentioned in the application.

Having now had an opportunity to consult my Government in Canberra, the advice which I have received is that the Government will need the full period which it has proposed if it is to be able to produce a Memorial which covers the many substantial issues involved and, in particular, those of admissibility. These, as was indicated in making the application of 10 August, were not foreseen when the Government of Australia was originally asked to indicate the time which it would require for a Memorial on jurisdiction.

Due to the dimensions of the task and the pressure of commitments which the Court will fully appreciate, Counsel have advised the Government that it is not practicable for them to complete their drafts, carry out the necessary consultations amongst themselves (which are considerably extended and complicated by the distances involved) and allow time for printing before 21 December.

This assessment has been made on the basis that the text of the Memorial should be ready for delivery to the printer approximately four weeks prior to 21 December. In these circumstances, if it were of assistance to the Court, the Australian Government could lodge with the Court a number of xeroxed copies of this text at the time it is delivered to the printer, that is to say, on or about 23 November.

The Government of Australia fully shares the Court's wish that this case should proceed expeditiously and will continue to do all it can, as it has in the past, to assist the Court to deal with each stage of the case in the minimum appropriate time.

103. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

16 août 1973.

Par exprès

Me référant à l'ordonnance rendue par la Cour le 22 juin 1973 en l'affaire des *Essais nucléaires (Australie c. France)*, qui fixait notamment au 21 septembre 1973 la date d'expiration du délai pour le dépôt du mémoire du Gouvernement australien, j'ai l'honneur de transmettre ci-joint à Votre Excellence les photocopies de deux communications de l'ambassadeur et coagent du Gouvernement australien, datées du 10 août et du 13 août 1973, adressées respectivement au Président de la Cour et à moi-même, et demandant le report au 21 décembre 1973 de la date limite susvisée. Une traduction en français de ces deux communications est également jointe.

Aux fins de l'article 40, paragraphes 4 et 5, du Règlement de la Cour en vigueur depuis le 1er septembre 1972, le Président de la Cour serait très reconnaissant à Votre Excellence de bien vouloir, si elle le juge utile, faire connaître son opinion sur la demande formulée par le Gouvernement australien, au plus tard le 23 août 1973.

104. CONSOLIDATED REPORT ON PREMATURE DISCLOSURES

16 August 1973-12 September 1974.

1. This report recapitulates the information received by the Court from its First Secretary in charge of information, with regard to the disclosures of 20-22 June 1973 during the interim measures of protection phase of the *Nuclear Tests* case (*Australia* v. *France*). This information has already appeared in several interim reports, i.e., those of 16 August and 9 November 1973, and 21 January, 22 March, 22 May and 12 September 1974.

2. As in the interim reports, the intention in the present report is to state facts, without however drawing any conclusions from them. It will be confined to the information and documents which reached the Registry between May 1973 and October 1974. Those items which appear likely to be able to shed light on the subject are listed in chronological order within the general context of the development of the proceedings. Except as otherwise stated, the dates mentioned are given in official western European time.

A. Oral Proceedings and Deliberation (25 May-20 June 1973)

3. On Friday, 25 May 1973, the Court held its final hearings on the requests for the indication of interim measures of protection. One point should be made for the purpose of this report. Judge Dillard, who had entered hospital the afternoon of the previous day, was not present. Journalists in The Hague were aware that he was ill even before the President announced the fact at the sitting (I, p. 245). Nonetheless on 20 and 21 June the Ghana News Agency, the *Ghanaian Times*, the *Irish Times*, the *Auckland Star*, the Wellington *Evening Post* and the *Wanganui Herald* were still referring to a Bench of 15 Members plus a judge *ad hoc* (see also *The Australian*, Canberra, and *Canberra Times*, 22 June; *Mercury*, Hobart, and *The Age*, Melbourne, 23 June). On the other hand, the

London correspondent of the New Zealand Press Association reported that Judge Dillard would probably not take part in the final vote; his despatch, published in the Wellington *Evening Post* on 22 June, was based on "informed sources in The Hague" with which he had been in contact on 21 June (European time).

4. The Court began its deliberation on 29 May. On Saturday, 2 June, while it was still deliberating, the *NRC Handelsblad* (Rotterdam) carried an article whose penultimate paragraph reads as follows *[translation]*:

> "The decision of the International Court of Justice will not be able to prevent Paris from carrying out the tests. What is interesting is that the Court's decision is likely to be determined on highly political lines. According to one source, it is probable that the Russian, French and Swedish judges and the three judges from black Africa will vote against the Australian request for a temporary stay of the tests. This means a 9-6 decision. It is hardly a clear majority."

5. A few days later, on Wednesday, 6 June, the President of the Court was admitted to hospital. Diplomatic circles in The Hague were aware of this by the working week of 12-15 June. Judging by the articles referred to in paragraph 3 above and by an Agence France-Presse despatch quoted in *Le Monde* on the evening of 21 June (in the issue bearing, as is customary, the date of the following day, 22 June), the news seems only belatedly to have reached the press. The London correspondent of the New Zealand Press Association appears to have been the first to indicate, in the *Auckland Star* and Wellington *Evening Post* for 21 June, that the President was ill, and that the decision in the *Nuclear Tests* cases might be read out by the Vice-President. He reiterated this in the *Evening Post* the following day, referring to "informed sources" and adding that "Court sources" had declined to say whether the President would be present or not. The information he relied on dated from 20 and 21 June (European time).

6. During the working week 12-15 June in The Hague and Canberra, rumour had it that the Court was "very divided".

7. On the morning of Wednesday, 13 June, the Vice-President received the Agent of Australia and gave him reason to expect delivery of the decision on 21 or 22 June, or early the following week. On the evening of Sunday, 17 June (i.e., on 18 June, Australian time), the *Sydney Morning Herald* published the following item:

> "From our diplomatic correspondent, Canberra. The International Court of Justice is expected to hand down [its decision] late this week... Failing action late this week, the judgment will certainly be handed down early next week according to Government sources in Canberra... In the event of the Australian and New Zealand Governments meeting success with their application for an interim prohibition order, the International Court would then set down a time-table for a full hearing of the case later this year."

On the morning of Monday, 18 June *Radio Australia News*, a bulletin issued in London by the News and Information Bureau of Canberra House, reported:

> "Radio Australia's Canberra office says the Government thinks the Court will probably hand down its decision late next week."

That afternoon the *ANP News Bulletin* issued in The Hague carried the following report:

> "Canberra, June 18. The International Court of Justice at The Hague was expected to give its ruling later this week on Australia's application for an injunction against French nuclear tests in the South Pacific, Government sources said today... The sources said the Attorney-General's Department had not been given definite advice but it was believed the Court's decision would come on Friday."

On the evening of the same day the London *Evening Standard* reprinted the first sentence of the above quotation almost word for word, while in Australia the *Canberra Times* (dated 19 June) wrote:

> "In Canberra the Attorney-General's Department was reported yesterday to expect the International Court's ruling this week, possibly on Friday."

Similar information, according to which the Court would "give its decision this week or early next week", had been made public in New Zealand during the night of 17-18 June, i.e., on 18 June, New Zealand time (*ANP News Bulletin*, The Hague, 18 June, afternoon; *Mercury*, Hobart, and *Canberra Times*, 19 June; *The Times*, London, 20 June; *New Zealand Herald*, Auckland, 21 June).

8. On 14 June the Registry had announced by Press Communiqué No. 73/19 that the Court would hold a public hearing on Tuesday, 19 June in the pending case concerning *Trial of Pakistani Prisoners of War*. On the morning of Monday, 18 June, the Court decided to defer that hearing for one week, with a view to reading its Orders in *Nuclear Tests* at public sittings on Friday, 22 June. The decision to defer the hearing in *Trial of Pakistani Prisoners of War* was immediately communicated to the Parties concerned and made public in the early evening by Press Communiqué No. 73/20. On the following morning, 19 June, the *ANP News Bulletin* wrote:

> "The Hague, June 18. The International Court of Justice today announced that it had postponed tomorrow's sitting on the case between India and Pakistan concerning the *Trial of Pakistani Prisoners of War* until next Tuesday 'on account of its programme of work'... No further explanation was given, but informed sources here said it looked as if the Court had come under pressure from the French decision to go ahead with the nuclear tests. It was clear, they said, that the granting of an interim injunction against France by the Court would not make sense if it came after a further series of South Pacific tests. Assuming that French press reports of a further series of nuclear tests by France in the South Pacific this coming weekend were correct it was obvious that the Court would have to give a ruling before that date. This lent credence to Canberra and Wellington reports that the Court might decide to give a ruling on Friday."

On the evening of 19 June (i.e., the morning of Wednesday, 20 June, Australian time), the *Canberra Times* wrote:

> "The Hague, Tuesday (AAP-Reuter). Speculation that the World Court may soon give priority to the issue of French nuclear testing in the Pacific has been boosted by the Court's postponement of a scheduled hearing today... Court officials and the Australian Embassy in The Hague had no comment on reports from Australia and New Zealand that the Court would probably give its ruling this Friday on their application for an interim injunction to stop the tests."

On the same day these two sentences also appeared practically word for word

in the Hobart *Mercury*. The first of them also appeared in the *Sydney Morning Herald*, while *The Age* of Melbourne wrote, giving the same source:

> "The International Court of Justice is thought to be preparing an early decision... The Court announced yesterday it was postponing by a week the hearing on *[Trial of Pakistani Prisoners of War]*... Observers in The Hague said the Court appeared to have been put under pressure by France's apparent decision to go ahead with the tests."

Shortly afterwards, a report was transmitted by the Ghana News Agency (20 June) and reproduced in practically identical terms by the *Ghanaian Times* (21 June):

> "The Hague... The International Court of Justice is thought to have speeded up its deliberations over the upcoming French nuclear tests following reports that the series of blasts are imminent. The judges are expected to deliver their verdict by the end of this week or at the latest the beginning of next on the Australian and New Zealand Governments' appeal for the Court to issue an injunction to halt the tests, according to well-informed sources here. Meanwhile, a strict official blackout has been imposed on news of the deliberations of the Court's 15 judges, plus Australia's Sir Garfield Barwick as an *ad hoc* judge, who began to consider the case on May 28."

The first and last sentences above also appeared, with minor changes, in the *Irish Times* of 21 June.

B. Final Vote and Reading of the Orders (20-22 June 1973)

9. As a preliminary to an examination of the rumours which were circulating shortly before the Court gave its decisions[1] on the requests for the indication of interim measures of protection, it will be as well to fix the precise chronology of the events of Wednesday, 20 June. Towards 12.30 p.m. on that day the Court voted on the Order in the Australian case and decided that the public sitting for the reading of the Order would take place on 22 June in the morning. At about 5.30 p.m. it voted on the New Zealand Order and decided to have it read out on the afternoon of 22 June. The news of the date of the public sitting was conveyed as soon as possible to the Parties and telephoned to the appropriate journalists from 4 p.m. onwards. Press Communiqué No. 73/21, announcing the date, was issued after 6 p.m. However, by that time various rumours, separately or in combination, had begun to circulate or had been revived.

10. One of these was far from new (see para. 6 above) and alleged that, as the Court was very evenly divided, the majority, whatever it might be, would be small. By Wednesday, 20 June, it was circulating in London. A despatch from the London correspondent of the New Zealand Press Association was published in almost identical terms on the morning of 21 June (i.e., late afternoon of 21 June by New Zealand time) in the Wellington *Evening Post*, the *Auckland Star* and the *Wanganui Herald*:

> "London, June 20. The World Court in The Hague will hand down its decision on the Australian request for an interim judgment halting the

[1] The Order in the Australian case was read on Friday, 22 June, at 10.30 a.m. (7.30 p.m., Sydney time) and that in the New Zealand case at 4 p.m. (3 a.m. on 23 June by Auckland time).

> French nuclear tests in the Pacific, on Friday morning at 10.30 a.m...., a Court source said today... According to informed sources in The Hague, the Court is split over whether to grant an injunction or not. These sources said that possibly the decision would hinge on only a single vote among the 16 judges... There is a possibility that the Australian and New Zealand rulings will be different although this is not rated as a probability by observers in The Hague. If the decision is favourable to Australia and New Zealand—in other words, if the injunction is granted—it is thought that the dissenting opinions could vary in each case."

It cropped up once more in the *Sydney Morning Herald* on the evening of Thursday, 21 June (i.e., on the morning of 22 June, Australian time):

> "London, Thursday. Only a slender voting margin by World Court Judges on Australia's application is expected in The Hague tomorrow. Hague sources said today that whatever the decision it was far from unanimous."

11. A second rumour alleged that the Court would request France to suspend testing. It had been given currency at an earlier stage by the Rotterdam *NRC Handelsblad* (see para. 4 above) and was rife in The Hague at least as early as Tuesday, 19 June, and in London before 6 p.m. on Wednesday, 20 June; this was subsequently confirmed by the Wellington *Evening Post*, on 23 June:

> "London, June 22... The Hague decision, given only 25 minutes after the Court began, came as no surprise. The Hague and London sources had said for the past two days the result would be in Australia's favour..."

On the other hand, it should be noted that on the morning of Thursday, 21 June, certain circles in Brussels were under the impression that the French viewpoint would prevail. Similarly, a few days later:

> "The Court's verdict caused some consternation in diplomatic circles in The Hague and among both Dutch and foreign journalists, who, after weeks of French lobbying, expected that the Court would declare itself incompetent to deal with the issue." (*Bulletin*, Sydney, 30 June.)

12. Australian press forecasts, which had previously been vague and tentative (e.g., *Sydney Morning Herald*, 15 May), multiplied and took on greater precision as from the evening of 20 June (i.e., the morning of Thursday, 21 June, Australian time) and continued the following day:

> "Officials in Canberra believe that the International Court will hand down its judgment on the Australian application within the next few days... The Government's legal advisers are confident that the Court will grant the Australian application." (*The Age*, Melbourne, 21 June.)
>
> "Canberra... The Government's legal advisers are confident that the Court will grant the Australian application when it gives its decision at 8.30 p.m. Melbourne time tomorrow." (*The Age*, Melbourne, 21 June (a different edition); similar text in *The Age*, 22 June.)
>
> "Canberra... Reports reaching Canberra last night[1] said that the decision was 'favourable to Australia', but officials pointed out that this was open to a number of interpretations. Sources here believed that the Court might not grant the injunction but might express sympathy for the Australian protests against the French tests." (*Mercury*, Hobart, 22 June.)

[1] I.e., on the morning of Thursday, 21 June, European time.

"If the Australian Government is reading the signs correctly, the International Court of Justice in The Hague will call on France tonight to suspend its nuclear test programme in the Pacific. All the advice reaching Canberra suggests that the Court's decision on the Australian and New Zealand applications for an interim injunction... will be handed down within 24 hours. Legal and diplomatic optimism similarly runs strongly in favour of the Court's 15 judges upholding the application." (*The Australian*, Canberra, 22 June.)

"Canberra... The International Court will announce its interim decision tonight Australian time. Australian officials are confident the Court will grant an interim injunction calling on the French to stop their nuclear test programme." (*Daily Telegraph*, Sydney, 22 June.)

"Senator Murphy was guarded today in his comments on the possible decision by the Court. He said it still remained to be seen what decision the International Court would make. Senator Murphy pointed out that any further action by the Australian Government could be taken only in the light of the Court's decision. 'This is the highest tribunal in the world', he said. 'If the French do ignore it, then it is up to the trade unions and the citizens of the world to make their feelings known'." (*Daily Mirror*, Sydney, 22 June, late afternoon Australian time.)

"Sydney (AP)... Anticipating the verdict Attorney-General Senator Lionel Murphy, who presented Australia's case to the Court a month ago, said in Canberra yesterday: 'The Court is the highest tribunal in the world. If the French ignore it, then it is up to the trade unions and citizens of the world to make their feelings known'." (*Bangkok Post*, 23 June.)

13. On the morning of Thursday, 21 June, the France-Inter service of French radio and subsequently a report from the Agence France-Presse correspondent at The Hague forecast a successful outcome for the requests. By the end of the afternoon and on the following morning, that report was broadcast as hard news by the French-speaking radio-station Europe No. 1, by German-speaking Swiss radio, and by a Spanish-language programme picked up in the Netherlands. It was also taken up by evening and morning papers:

"*La Cour internationale de Justice demanderait à la France de surseoir à ses expérimentations*... C'est vendredi 22 juin que la Cour internationale de Justice (C.I.J.) rendra en audience publique sa décision dans l'affaire des *Essais nucléaires* français dans le Pacifique. Selon l'agence France-Presse, on s'attend d'après des informations de source sûre que la Cour demandera à la France de surseoir à ces essais." (*Le Monde*, Paris, edition issued 21 June but dated 22 June.)

"*La Cour internationale de La Haye demanderait la suspension des essais atomiques français.* La Haye, 21 juin (AFP). La Cour internationale de Justice demandera vendredi à la France de surseoir à ses essais nucléaires dans le Pacifique, apprend-on de sources sûres. Au palais de la Paix toutefois, on continue d'observer le black-out le plus strict concernant la prise de position du tribunal." (*Le Soir*, Brussels, edition issued 21 June but dated 22 June).

"A La Haye. On apprenait de bonne source le 21 que la décision qui sera lue dans la matinée du 22 demandera à la France de suspendre ses essais nucléaires dans le Pacifique." (*L'Information latine*, Paris, 22 June.)

"Paris, June 21... Tomorrow, the International Court of Justice at The Hague is expected to make public its verdict on the application by

Australia and New Zealand to have the tests stopped; and the French News Agency has reported, quoting sources in the Dutch capital, that France will be asked to suspend the explosions." (*Financial Times*, London, 22 June.)

14. A third rumour circulating before the Orders were read out was that the Court had taken its decision by eight votes to six. This had been virtually forecast in the Rotterdam *NRC Handelsblad* for 2 June (see para. 4 above) and was a subject of conversation in The Hague as from Tuesday, 19 June. In London, some press agencies appear to have had a presentiment of this as early as Wednesday, 20 June:

"*Sources tip 8-6 vote by World Court in favour of NZ case.* NZPA Staff Correspondent... London, June 21. The World Court Judges are believed to be 8-6 in favour of granting an interim injunction halting French atmospheric nuclear tests in the Pacific, according to informed sources in The Hague today... The sources emphasised however that the situation could change before the final decision on the New Zealand case is handed down at 4 p.m. tomorrow... The decision on the Australian Application for an interim judgment which will be handed down at 10.30 p.m. tomorrow,... is believed to be similarly in the balance... Court sources refused to comment on what the situation would be if there was a 7-7 tied vote in the Court... While Court sources would not rule out the possibility of the Australian and New Zealand judgments being different—for example, one being granted and the other turned down—informed sources said this was highly unlikely. It is thought, however, that the reasons for granting or turning down the requests for injunctions could be couched in very different terms." (*Evening Post*, Wellington, 22 June.)

"AAP, Auckland, Friday... Meanwhile, sources in The Hague believe Australia may have won its World Court case against France by a two-vote margin... The World Court Judges will announce their decision officially later today." (*Sun*, Sydney, 22 June.)

"London, June 22... a London source last night said the margin would be two..." (*Evening Post*, Wellington, 23 June.)

15. Meanwhile the Australian Prime Minister paid an eight-hour visit to Melbourne, and there, on the morning of Thursday, 21 June (or rather in the evening, Australian time), he made certain remarks during a dinner:

"*We've won N-test case: PM.* The Prime Minister (Mr. Whitlam) said last night that Australia would win its appeal to the International Court of Justice by a majority of eight votes to six. Mr. Whitlam said he had been told the Court would make a decision within 22 hours. The Prime Minister made the prediction while addressing the annual dinner of the Victorian Law Institute. He said: 'On the matter of the High Court, I am told a decision will be given in about 22 hours from now. The majority in our favour is going to be eight to six.' When asked to elaborate on his comments after the dinner, Mr. Whitlam refused to comment, and said his remarks were off the record. The dinner was attended by several hundred members of the Law Institute, including several prominent judges. While making the prediction that the Court would vote eight to six, Mr. Whitlam placed his hand over a microphone. The microphone was being monitored by an ABC reporter." (*The Age*, Melbourne, 22 June.)

Another edition of the same issue of *The Age* gave the same information under

a slightly different headline: "We'll win N-test case 8-6: Whitlam." It did not mention that the speaker had placed his hand over the microphone or that he was opposed to his remarks being published. Other reports of the incident appeared elsewhere:

> "*World Court win is forecast. Majority of 8-6, says Whitlam.* Melbourne, Thursday. The Prime Minister, Mr. Whitlam, forecast tonight that the International Court of Justice would find in Australia's favour on the French nuclear tests issue. Mr. Whitlam, who was addressing the Law Institute of Victoria's annual dinner, said: 'I am told the decision will be given about 22 hours from now. The majority in our favour is going to be 8-6.' He gave his forecast before the 470 lawyers present. When questioned later by reporters, Mr. Whitlam said: 'That is off the record'." (*Sydney Morning Herald*, 22 June.)
>
> "*Australia wins World Court case.* The International Court of Justice has voted in Australia's favour against French nuclear testing in the Pacific. The Prime Minister, Mr. Whitlam, said in Melbourne last night the voting was eight to six. The Court is due to hand down its decision at The Hague tonight. Mr. Whitlam was speaking at the annual dinner of the Law Institute of Victoria." (*The Australian*, Canberra, 22 June.)

A summary in similar terms appeared in the *Canberra Times* for the same date under the headline: "PM tips Court result". The news was also put out by a Sydney television station, which added that the Prime Minister appeared very confident of what he said and that no doubt he had reason to be, for who would have informed him of the voting and its result but the judge *ad hoc*. This particular rumour was later denied, and the television station apologized (see para. 19 below).

16. Mr. Whitlam's statement, which was thus published by the Australian press on the evening of 21 June (European time), reached New Zealand and Europe the following day, even before the Court had announced its decision:

> "Meantime, World Court Judges are believed to be 8-6 in favour of granting an interim injunction halting the tests. The decision on the Australian application for an interim judgment will be handed down at 9.30 New Zealand time tonight. Australian Prime Minister Mr. Whitlam has predicted Australia will win its appeal to the International High Court by 8-6." (*Auckland Star*, 22 June.)
>
> "*French nuclear tests: World Court verdict—P.M.* The International Court of Justice is believed to have found in favour of Australia and New Zealand in their appeals against the French nuclear tests in the Pacific. The Australian Prime Minister, Mr. Gough Whitlam, said last night that he understood that the judges of the World Court had voted eight to six in favour of Australia and New Zealand's appeal. Mr. Whitlam, who was addressing the Law Institute of Victoria in Melbourne, said he had been told that the Court's decision could be expected later today." (*Radio Australia News*, London, 22 June.)
>
> "*Our Melbourne Correspondent writes*: Mr. Gough Whitlam, the Australian Prime Minister, told a meeting here tonight that he understood the International Court of Justice had upheld by eight votes to six the petition presented by Australia and New Zealand objecting to the French nuclear tests in the Pacific." (*The Times*, London, 22 June.)

The Times news item also appeared almost word for word in the *Irish Times* on the same day under the heading "Australia wins tests petition" and with

"*Times* Service, Reuter" given as the source. On 23 June Mr. Whitlam's statement was again mentioned in two articles in non-Australian newspapers:

> "London, 22 June... Prime Minister Gough Whitlam was another to forecast a correct outcome." (*Evening Post*, Wellington, 23 June.)
>
> "Sydney (AP). Australia had already drawn up further anti-French protest plans in anticipation of winning its case before the International Court of Justice against France's nuclear testing in the Pacific, it was unofficially reported yesterday... The Court's decision was given yesterday at The Hague. Australia was confident of winning its case. Prime Minister Gough Whitlam Thursday predicted a 8-6 majority by the Court in favour of issuing an interim injunction against France, calling for a suspension of the planned tests on Mururoa Atoll." (*Bangkok Post*, 23 June.)

C. After the Pronouncement

17. After the Orders had been read out in public, the Registry naturally declined to answer anyone who endeavoured to discover how those Judges had voted who had not appended separate or dissenting opinions:

> "[Court][1] officials said they could not reveal how the remaining [six] judges voted." (*The Age*, Melbourne, *Sydney Morning Herald* and *West Australian*, Perth, 23 June.)

Pursuing the line of its article of 2 June (see para. 4 above), the *NRC Handelsblad* appearing on the evening of Friday, 22 June, said *[translation]*:

> "It may be surmised that the other two judges voting against were the Russian Morozov and the Nigerian Onyeama."

The speculations of others took a different tack. For example:

> "France needed to swing only one vote last week to have tied the Court's decision with the possibility that the Acting President, Lebanon's Judge Ammoun, would give the casting vote in France's favour." (*The Australian*, Canberra, 2 July.)

18. Several journalists were under the mistaken impression that the Court had communicated the texts of its Orders to the Parties before they were read out in public, and in this they saw an explanation of the statements reported above. Others expressed surprise at what they considered to be the result of leaks.

> "On s'est étonné à La Haye de ce que le Premier ministre australien ait pu faire état des dispositions de l'ordonnance et de la répartition exacte des votes, la veille du jour où cette ordonnance a été rendue en audience publique à La Haye." (*Le Monde*, Paris, 24-25 June.)
>
> "Quatre des six juges qui ont opté pour le rejet de la requête australienne se sont fait connaître... Une question a intrigué: « Qui sont les deux autres? » On finira par le savoir: n'y a-t-il pas eu déjà des fuites, le 21 juin, sur les délibérations de la Cour?" (*L'Express*, Paris, 25 June-1 July.)
>
> "The 8-6 vote in Australia's favour confirming that there was a prima facie case for the Court's jurisdiction was much closer than anyone could

[1] The words in square brackets appeared in *The Age* and *West Australian*, but not in the *Sydney Morning Herald*.

have expected—presumably France thought it was fighting a lost cause—and provides some vital pointers to the future. First of all, it seems that the Court's decisions can be predicted with accuracy sometime in advance. Just how Mr. Whitlam knew at least 24 hours before the announcement was made both the result of case and the voting pattern will have to remain speculation but it is obvious that leaks are made on political lines. Those hours of advance warning could have been vital in the preparation of Australia's next diplomatic initiative particularly as it was widely thought that the H-bomb trigger could be tested at Mururoa Atoll that weekend." (*The Australian*, Canberra, 2 July.)

19. Mr. Whitlam had the opportunity of putting the record straight before the Australian Parliament:

"Mr. *Killen*. My question, which I address to the Prime Minister, concerns the judgment given by the International Court of Justice relating to this country's application for an injunction to restrain France from nuclear testing. Does the honourable gentleman agree that his release of what appeared to be the details of the judgment in advance of the actual release by the Court has put the Chief Justice of the High Court of Australia, who sat on the International Court, in a very difficult position—one of embarrassment. If the honourable gentleman does acknowledge that, will he detail to the House the circumstances whereby he became acquainted with the details of the Court's judgment?

Mr. *Whitlam*. I did not become aware of the Court's judgment before it was delivered. I regret reports of a passing remark I made as a lawyer, among lawyers, at a legal dinner in speculating, as lawyers do, on the possible close outcome of this case. One television commentator even said that there could be no doubt that I had got information from Australia's representative on the Court, as he described him—the Chief Justice of Australia. I had not received any information from the Chief Justice directly or indirectly as to the result of the voting by the Court. In fact, I had had no communication with the Chief Justice between the time that I asked him whether he would accept nomination as judge *ad hoc* and some days after the publication of the Court's judgment when he wrote to me personally. I might add that the television station has apologised to the Chief Justice for this newscast." (Australia, *House of Representatives, Daily Hansard*, 12 September 1973, p. 833; see also *The Australian*, Canberra, 13 September 1973.)

20. The Court's Press Communiqués Nos. 73/30 and 74/2 issued on 8 August 1973 and 26 March 1974 respectively were reproduced or referred to in: *I.C.J. Yearbook 1972-1973*, p. 142; *I.C.J. Yearbook 1973-1974*, pp. 127-128; *I.C.J. Reports 1974*, pp. 273, 293-296 and 298; *ANP News Bulletin*, The Hague, 9 August 1973 and 26 March 1974; *Bulletin of Legal Developments*, London, 1 September 1973 and 18 April 1974; *Guardian*, *Radio Australia News*, London, Ghana News Agency and *Sydney Morning Herald*, 9 August 1973; *Annuaire français de droit international*, 1973, pp. 250-253; *Le Monde*, Paris, 20-21 January 1974; *The Australian*, Canberra, 28 March 1974; *Le Monde diplomatique*, Paris, April 1974; *International Legal Materials*, Washington, May 1974; *International Lawyer*, Chicago, July 1974; France, *Assemblée nationale, Journal officiel*, 9 March and 20 July 1974, pp. 1086-1089 and 3571-3572; United Nations, *Official Records of the General Assembly, Twenty-ninth Session, Sixth Committee, Summary Records*, 1466th Meeting, para. 16; etc.

105. LE CHARGÉ D'AFFAIRES A.I. DE FRANCE AUX PAYS-BAS AU GREFFIER

23 août 1973.

Par lettre en date du 16 août 1973, vous avez bien voulu informer le ministère des affaires étrangères de la République française de la demande du Gouvernement australien tendant au report jusqu'au 21 décembre 1973 de la date d'expiration du délai pour le dépôt de son « mémoire ».

Vous avez bien voulu également faire savoir que M. le Président de la Cour internationale de Justice, en application de l'article 40 (paragraphes 4 et 5) du Règlement de la Cour, serait reconnaissant au Gouvernement français de faire connaître, s'il le juge utile, son opinion sur ladite demande formulée par le Gouvernement australien, au plus tard le 23 août 1973.

Ainsi que je vous en ai informé officiellement lors de notre entretien de ce matin, 23 août, j'ai l'honneur de vous confirmer, par la présente lettre, que le Gouvernement français, ayant dénié la compétence de la Cour internationale de Justice dans cette affaire, par lettre en date du 16 mai 1973, ne saurait exprimer une opinion sur ladite demande australienne, en fonction de l'article 40 (paragraphes 4 et 5) du Règlement de la Cour.

(Signé) Pierre GIACOBBI.

106. THE REGISTRAR TO THE CO-AGENT OF AUSTRALIA

23 August 1973.

I have the honour to refer to your letters of 10 and 13 August concerning the time-limit fixed for the Memorial of the Government of Australia in the *Nuclear Tests* case (*Australia* v. *France*), copies of which letters were transmitted by me to the French Government. I have the honour to inform you that the Chargé d'affaires a.i. of the French Embassy in The Hague called on me this morning and conveyed to me the information confirmed in the letter of which a copy is enclosed herewith, and which was received in the Registry this afternoon. I also enclose a copy of an unofficial English translation of the letter in question.

107. THE REGISTRAR TO THE CO-AGENT OF AUSTRALIA [1]

28 August 1973.

I have the honour to confirm the information already communicated to you by telephone, namely that by an Order [2] of today's date the President of the Court has extended the time-limit for the filing of the Memorial of the Government of Australia in the *Nuclear Tests* case (*Australia* v. *France*) on the questions of the jurisdiction of the Court and of the admissibility of the Application, from 21 September 1973 to 23 November 1973. The time-limit for the filing of the

[1] A similar communication was sent to the Minister for Foreign Affairs of France.
[2] *I.C.J. Reports 1973*, p. 335.

Counter-Memorial of the French Government has been extended from 21 December 1973 to 19 April 1974.

The sealed copy of the Order and further copies will be sent to you in due course.

108. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

28 August 1973.

I have the honour, in confirmation of my call on His Excellency the President of the Court yesterday, to refer to the Court's Order of 22 June 1973 in which the Court fixed 21 September 1973 for the Memorial of the Government of New Zealand.

The Government of New Zealand, while anxious to minimize delays in accordance with the revised Rules of Court, would wish to take into account the request by the Government of Australia for an extension of time as well as the Court's presumed wish that common limits be set for both the New Zealand and Australian cases.

The Government of New Zealand therefore requests the Court, in accordance with Article 40 (4) of the Rules of Court, to extend the time-limit for the filing of its Memorial on jurisdiction and admissibility by six weeks to 2 November 1973.

109. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

28 août 1973.

Par exprès

Me référant à l'ordonnance rendue par la Cour le 22 juin 1973 en l'affaire des *Essais nucléaires (Nouvelle-Zélande c. France)*, qui fixait notamment au 21 septembre 1973 la date d'expiration du délai pour le dépôt du mémoire du Gouvernement néo-zélandais, j'ai l'honneur de transmettre ci-joint à Votre Excellence une photocopie d'une lettre de l'ambassadeur et coagent du Gouvernement néo-zélandais en date du 28 août 1973, demandant le report au 2 novembre 1973 de la date limite susvisée. Une traduction en français de cette communication est également jointe.

Aux fins de l'article 40, paragraphes 4 et 5, du Règlement de la Cour en vigueur depuis le 1er septembre 1972, le Président de la Cour serait très reconnaissant à Votre Excellence de bien vouloir, si elle le juge utile, faire connaître son opinion sur la demande formulée par le Gouvernement néo-zélandais, au plus tard le 4 septembre 1973.

110. L'AMBASSADEUR DE FRANCE AUX PAYS-BAS AU GREFFIER

4 septembre 1973.

Par lettre en date du 28 août 1973, vous avez bien voulu informer le ministère des affaires étrangères de la République française de la demande du Gouver-

nement néo-zélandais tendant au report jusqu'au 2 novembre 1973 de la date d'expiration du délai pour le dépôt de son « mémoire ».

Vous avez bien voulu également faire savoir que M. le Président de la Cour internationale de Justice, en application de l'article 40 (paragraphes 4 et 5) du Règlement de la Cour, serait reconnaissant au Gouvernement français de faire connaître, s'il le juge utile, son opinion sur ladite demande formulée par le Gouvernement néo-zélandais, au plus tard le 4 septembre 1973.

J'ai l'honneur de vous confirmer, par la présente lettre, que le Gouvernement français, ayant dénié la compétence de la Cour internationale de Justice dans cette affaire, par lettre en date du 16 mai 1973, ne saurait exprimer une opinion sur ladite demande néo-zélandaise, en fonction de l'article 40 (paragraphes 4 et 5) du Règlement de la Cour.

111. THE REGISTRAR TO THE CO-AGENT OF NEW ZEALAND

6 September 1973.

I have the honour to refer to your letter of 28 August 1973 concerning the time-limit fixed for the Memorial of the Government of New Zealand in the *Nuclear Tests* case (*New Zealand* v. *France*), a copy of which was transmitted by me to the French Government. I have the honour to inform you that a letter from the French Ambassador, dated 4 September 1973, of which a copy is enclosed herewith, was received in the Registry today. I also enclose a copy of an unofficial English translation of the letter in question.

112. THE REGISTRAR TO THE CO-AGENT OF NEW ZEALAND [1]

6 September 1973.

I have the honour the confirm the information already communicated to you by telephone, namely that by an Order [2] of today's date the President of the Court has extended the time-limit for the filing of the Memorial of the Government of New Zealand in the *Nuclear Tests* case (*New Zealand* v. *France*) on the questions of the jurisdiction of the Court and of the admissibility of the Application, from 21 September 1973 to 2 November 1973. The time-limit for the filing of the Counter-Memorial of the French Government has been extended from 21 December 1973 to 22 March 1974.

The sealed copy of the Order and further copies will be sent to you in due course.

113. REPORT BY THE REGISTRAR TO THE PRESIDENT

10 September 1973.

In compliance with your request concerning the possibility of leakage of information through members of the Registry, raised in connection with the

[1] A similar communication was sent to the Minister for Foreign Affairs of France.
[2] *I.C.J. Reports 1973*, p. 341.

statement in the Dutch press on 2 June 1973 of the position of a number of Judges in the *Nuclear Test* case (*Australia* v. *France*) and subsequent disclosures in the press, culminating in the statement of the Australian Prime Minister, reported in *The Times* of 22 June, I have carried out an investigation, the result of which has confirmed my conviction that all members of the staff, permanent or temporary, are fully conscious of the confidential nature of any information they obtain in the course of their duties. I am satisfied that the possibility of indiscretion on the part of any of them can be reasonably excluded and reiterate my certainty that all the staff are completely trustworthy.

114. THE CO-AGENT OF AUSTRALIA TO THE REGISTRAR

19 September 1973.

Although the Members of the Court will no doubt be aware from statements made in the press that the French Government has conducted atmospheric nuclear tests on Mururoa Atoll subsequent to the date of the indication of provisional measures by the Court on 22 June 1973, I have been instructed to ask you formally to bring to the notice of the Court the following information.

On 22 and 29 July 1973 respectively the French Government exploded two small nuclear devices in the atmosphere above Mururoa Atoll. Detection devices on the territory of Australia began to register fresh fall-out throughout Australia beginning during the period 6 to 9 August. This is the period in which the arrival of fresh fall-out in Australia from the July tests would be expected in the light of meteorological and other factors.

Analysis of the short-lived radio-active products in the samples has positively identified the fall-out with the French explosions in Polynesia.

The Government of Australia has reason to believe that three further nuclear devices were exploded over Mururoa Atoll on 19, 25 and 29 August 1973.

It is apparent that as a result of the explosion of the devices the French Government has caused the deposit of radio-active fall-out on Australian territory.

In the opinion of the Government of Australia the conduct of the French Government constitutes a clear and deliberate breach of the Order of the Court of 22 June 1973.

The Government of Australia proposes to bring the information in this letter to the attention of the Secretary-General of the United Nations.

115. LE GREFFIER ADJOINT AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

20 septembre 1973.

J'ai l'honneur de transmettre ci-joint à Votre Excellence une photocopie de la lettre que le coagent du Gouvernement australien dans l'affaire des *Essais nucléaires (Australie c. France)* m'a adressée le 19 septembre 1973. Elle est accompagnée, à toutes fins utiles, d'une traduction en français.

116. THE DEPUTY-REGISTRAR TO THE CO-AGENT OF AUSTRALIA

20 September 1973.

I have the honour to acknowledge receipt of Your Excellency's letter of 19 September 1973, referring to the Order of the Court dated 22 June 1973 in the *Nuclear Tests* case (*Australia* v. *France*), and setting out certain information which Your Excellency's Government desires to bring to the notice of the Court. The contents of your letter have been communicated to the Members of the Court.

117. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

21 September 1973.

I have been instructed by my Government to bring to the notice of the Court certain information relevant to the question of the observance of the Court's Order of 22 June 1973 made following the request by New Zealand for interim measures of protection in the *Nuclear Tests* case (*New Zealand* v. *France*).

On 22 and 29 July 1973 the French Government exploded two small nuclear devices in the atmosphere above Mururoa. The New Zealand Government has reason to believe that three further nuclear devices were exploded above Mururoa on 19, 25 and 29 August 1973.

The New Zealand system of monitoring levels of radioactivity involves the taking of samples in New Zealand, the Cook Islands and Niue. Analysis of a number of recent samples has established conclusively the presence of radioactive fallout from the French nuclear devices exploded above Mururoa. It is accordingly the view of the New Zealand Government that there has been a clear breach by the French Government of the Court's Order of 22 June 1973.

I have also been instructed to advise the Court, with reference to that portion of its Order of 22 June 1973 referring to the taking of action of any kind which might aggravate or extend the dispute submitted to the Court, that on 4 July, by two decrees published in the Official Journal of the French Republic on 8 July, the French Government purported to create a "security zone" on the high seas around Mururoa to a distance of 60 nautical miles contiguous to the territorial sea. The decrees purported to suspend maritime navigation in that zone from 11 July 1973 until further notice. On 18 July and again on 15 August, New Zealand citizens on vessels which were not of French nationality and which were on the high seas in the vicinity of Mururoa, were apprehended by the French authorities and subsequently taken against their will to French territory and detained there for a period of days before being permitted to return to New Zealand.

My Government intends to bring the information in this letter to the attention of the Secretary-General of the United Nations.

118. LE GREFFIER ADJOINT AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

21 septembre 1973.

J'ai l'honneur de transmettre ci-joint à Votre Excellence une photocopie de la lettre que le coagent du Gouvernement néo-zélandais dans l'affaire des

Essais nucléaires (Nouvelle-Zélande c. *France)* a adressée ce jour au Greffier de la Cour. Elle est accompagnée, à toutes fins utiles, d'un traduction en français.

119. THE DEPUTY-REGISTRAR TO THE CO-AGENT OF NEW ZEALAND

21 September 1973.

I have the honour to acknowledge receipt of Your Excellency's letter of 21 September 1973, referring to the Order of the Court dated 22 June 1973 in the *Nuclear Tests* case (*New Zealand* v. *France*), and setting out certain information which Your Excellency's Government desires to bring to the notice of the Court. The contents of your letter have been communicated to the Members of the Court.

120. L'AMBASSADEUR DE FRANCE AUX PAYS-BAS AU PRÉSIDENT

4 octobre 1973.

J'ai l'honneur de vous faire savoir que le Gouvernement français ne saurait considérer comme le satisfaisant le communiqué publié le 8 août 1973[1] par le Greffe de la Cour au sujet des déclarations faites par le Premier ministre australien vingt-quatre heures avant que la Cour ne rende son ordonnance sur les mesures conservatoires dans l'affaire des essais nucléaires.

En effet, d'après ce communiqué, le Gouvernement australien aurait « donné une explication », indiqué « que les nouvelles parues dans la presse ne correspondaient pas exactement à la nature de la déclaration faite » et exprimé « des regrets... pour la situation embarrassante dans laquelle la Cour avait pu se trouver ».

Le Gouvernement français est d'accord avec la Cour pour regretter une indiscrétion, qui lui paraît sans précédent dans l'histoire de cette haute juridiction internationale.

Mais ce gouvernement observe de plus qu'une « situation embarrassante » de la Cour n'intéresse pas seulement celle-ci mais tous les Etats qui sont parties à son Statut. Or ceux-ci n'ont même pas eu communication de « l'explication » donnée par le Gouvernement australien. De ce fait, on ne saurait dire qu'il ait été mis fin à la « situation embarrassante » en question.

Le Gouvernement français souhaite donc, en tant qu'Etat-partie au Statut de la Cour, être exactement informé des circonstances dans lesquelles s'est produite l'indiscrétion dont il s'agit, et des mesures prises par la Cour à l'égard du ou des responsables de celle-ci.

Ayant laissé s'écouler, depuis les faits en question, un délai suffisamment long pour que la Cour ait pu mener son enquête et en tirer les conclusions correspondantes, il s'attend à recevoir une prompte réponse à sa demande.

[1] *C.I.J. Annuaire 1972-1973*, p. 143-144.

121. THE REGISTRAR TO THE AGENT OF AUSTRALIA

1 November 1973.

I have the honour to send you herewith a copy of a letter dated 4 October 1973, addressed by the Ambassador of France at The Hague to the President of the Court, received in the Registry on 26 October 1973, together with a copy of an unofficial translation thereof prepared by the Registry.

122. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

1 November 1973.

I have the honour to submit, in connection with the *Nuclear Tests* case (*New Zealand* v. *France*), the Memorial[1] of the Government of New Zealand on jurisdiction and admissibility. 30 copies of the Memorial are delivered herewith.

123. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

1er novembre 1973.

Conformément à l'article 43 du Statut de la Cour et à l'article 43 du Règlement, j'ai l'honneur de transmettre ci-joint à Votre Excellence copie certifiée conforme du mémoire du Gouvernement néo-zélandais sur la compétence de la Cour pour connaître du différend et la recevabilité de la requête dans l'affaire des *Essais nucléaires (Nouvelle-Zélande c. France)*, déposé ce jour au Greffe.

124. THE AGENT OF AUSTRALIA TO THE REGISTRAR

23 November 1973.

I have the honour to refer to the proceedings in the *Nuclear Tests* case (*Australia* v. *France*) and to the Memorial[2] of Australia filed in the proceedings on 23 November 1973. I refer also to the footnotes appearing on pages 354, 358 and 366 of the Memorial (**I**) in each of which it was stated that certain material would be lodged with the Registrar.

I now have the honour to forward the materials[3] in question, in the form of appendices to this letter.

The materials consist of:

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[1] See pp. 145-246, *supra*.
[2] I, pp. 249-380.
[3] Not reproduced.

A. *The notification dated 14 July 1971 from the Government of Barbados concerning the General Act for the Pacific Settlement of International Disputes.*

Reference is made in footnote two on page 354 of the Memorial (I) to a notification dated 14 July 1971 from the Government of Barbados concerning the General Act for the Pacific Settlement of International Disputes, 1928. I attach a photocopy of the notification in question (Appendix A). The photocopy is taken from the copy received by the Australian Permanent Mission to the United Nations, New York.

B & C. *Correspondence with Fiji concerning another Treaty concluded under the auspices of the League of Nations.*

Reference is made in footnote one on page 358 of the Memorial (I) to correspondence concerning the receiving of a declaration of succession by the Government of Fiji in respect of the Special Protocol concerning Statelessness. Attached is a photocopy of the correspondence, consisting of the following items:

(i) Letter dated 1 November 1972 to the First Secretary, Permanent Mission of Fiji to United Nations, from the Acting Chief of the Treaty Section, Office of Legal Affairs, United Nations (Appendix B).
(ii) Note dated 7 February 1973 from the Secretary-General of the United Nations to the Permanent representative of Fiji to the United Nations (Appendix C).

The photocopies have been taken from copies made available by the Department of Foreign Affairs, Prime Minister's Office, Fiji.

D. *The resolution of the Territorial Assembly of New Caledonia of 13 June 1973.*

Reference is made in footnote one on page 366 of the Memorial (I) to the text of a resolution of the Territorial Assembly of New Caledonia of 13 June 1973 declaring the opposition of the Assembly to all nuclear tests. Attached is a copy of the resolution (Appendix D). It consists of a photocopy of the official text of the resolution.

125. THE AGENT OF AUSTRALIA TO THE REGISTRAR

23 November 1973.

I refer to the proceedings in the *Nuclear Tests* case (*Australia* v. *France*) and to the Memorial of the Government of Australia lodged in the proceedings on 23 November 1973.

I refer also to Article 48, paragraph 2, of the 1972 Rules of Court, which is to the effect that the Court or the President may, after obtaining the views of the parties, decide that the pleadings and annexed documents in a particular case shall be made available to the Government of any Member of the United Nations, or of any State which is entitled to appear before the Court.

I now have the honour to submit the view of the Government of Australia on the question of the availability of pleadings in the present proceedings. It is convenient to submit that view at this stage, rather than to await particular requests by Governments coming within paragraph 2 of Article 48.

In the view of the Government of Australia there would be no objection to the pleadings and annexed documents being made available to any such Government requesting them.

126. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

23 November 1973.

I have the honour to refer to my letter of 1 November, enclosing one signed copy and thirty photo-copies of the Memorial of the Government of New Zealand on the questions of the jurisdiction of the Court and the admissibility of the Application in the *Nuclear Tests* case (*New Zealand* v. *France*).

In accordance with Article 43 of the Rules of Court, I have the honour to transmit 125 printed copies of the Memorial.

127. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

23 November 1973.

I have the honour to refer to the Memorial of the Government of New Zealand on the questions of the jurisdiction of the Court and the admissibility of the Application in the *Nuclear Tests* case (*New Zealand* v. *France*), which was submitted to the Court on 1 November 1973.

In footnote 3 to paragraph 66 of the Memorial [1] reference is made to a document entitled *Imperial Conference, 1930. The General Act for the Pacific Settlement of International Disputes*". I have the honour to transmit herewith, in accordance with Article 47 of the Rules of Court, nine photo-copies of this document. These photo-copies omit from the original document the text of the General Act which has already been included in the New Zealand Memorial at Annex 1 [2]. The photo-copies [3] reproduce *Correspondence Between His Majesty's Government in the United Kingdom and His Majesty's Government in the Dominions*", to which footnote 3 to paragraph 66 of the Memorial makes reference.

128. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

23 November 1973.

I have the honour to refer to the Memorial of the Government of New Zealand on the questions of the jurisdiction of the Court and the admissibility of the Application in the *Nuclear Tests* case (*New Zealand* v. *France*), which was submitted to the Court on 1 November 1973.

Annex XIII of the Memorial contains the text of a New Zealand Note of 1 October 1973 which was addressed to the French Ministry of Foreign Affairs. A note [4] from the French Ministry of Foreign Affairs of 5 October 1973 in reply to the New Zealand Note was received in Wellington too late for inclusion in the Memorial. The Government of New Zealand has thought it proper to advise

[1] See p. 161, *supra*.
[2] See p. 214, *supra*.
[3] Not reproduced.
[4] See p. 297, *supra*.

the Court of the existence of the French reply and to make copies of it available to the Court. Attached to this letter are 30 copies of the Note of 5 October 1973 of the French Ministry of Foreign Affairs.

129. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

23 novembre 1973.

Conformément à l'article 43 du Statut de la Cour et à l'article 43 du Règlement, j'ai l'honneur de transmettre ci-joint à Votre Excellence copie certifiée conforme du mémoire du Gouvernement australien sur les questions de compétence et de recevabilité dans l'affaire des *Essais nucléaires (Australie c. France)*, déposé ce jour au Greffe.

Je joins également à cet envoi le texte de deux lettres que l'agent du Gouvernement australien m'a remises aujourd'hui. L'une d'elles concerne le dépôt de certaines pièces citées dans les annexes au mémoire australien. Ces pièces se trouvent au Greffe où elle peuvent être consultées.

Le Gouvernement français ayant la possibilité de déposer un contre-mémoire dans un délai qui expire le 19 avril 1974, je me permets de signaler à Votre Excellence, en application de l'article 43, paragraphe 1, du Règlement, que le nombre d'exemplaires requis par le Greffe est de cent vingt-cinq. L'impression de cette pièce n'est pas nécessaire.

130. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGERES DE FRANCE

26 novembre 1973.

J'ai transmis à Votre Excellence, avec ma lettre du 1er novembre 1973, copie certifiée conforme du mémoire sur la compétence et la recevabilité déposé par le Gouvernement néo-zélandais dans l'affaire des *Essais nucléaires (Nouvelle-Zélande c. France)*.

Le texte imprimé de ce mémoire m'est parvenu depuis lors et j'ai l'honneur d'en faire tenir un exemplaire à Votre Excellence, pour sa commodité.

Le Gouvernement français ayant la possibilité de déposer un contre-mémoire dans un délai qui expire le 22 mars 1974, je saisis cette occasion pour signaler à Votre Excellence, en application de l'article 43, paragraphe 1, du Règlement, que le nombre d'exemplaires requis par le Greffe est de cent vingt-cinq. L'impression de cette pièce n'est pas nécessaire.

131. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

30 novembre 1973.

J'ai l'honneur d'adresser ci-joint à Votre Excellence la photocopie d'une lettre[1] que le coagent du Gouvernement néo-zélandais dans l'affaire des

[1] Voir nº 127 ci-dessus.

Essais nucléaires (Nouvelle-Zélande c. France) m'a envoyée le 23 novembre 1973. Le document qui y est mentionné se trouve au Greffe où il peut être consulté.

132. LE GREFFIER ADJOINT AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

20 décembre 1973.

J'ai l'honneur d'adresser ci-joint à Votre Excellence la photocopie d'une lettre [1] que le coagent du Gouvernement néo-zélandais dans l'affaire des *Essais nucléaires (Nouvelle-Zélande c. France)* m'a envoyée le 23 novembre 1973. Je vous adresse également un exemplaire de la note jointe à cette communication.

La lettre et la note seront transmises par mes soins à MM. les membres de la Cour si vous ne soulevez pas d'objection. Dans le cas contraire, c'est la Cour qui décidera.

133. THE DEPUTY-REGISTRAR TO THE CO-AGENT OF NEW ZEALAND

21 December 1973.

I refer to your letter of 23 November 1973, with which you enclosed 30 copies of a Note from the French Ministry of Foreign Affairs dated 5 October 1973; it is noted that this communication was received too late for it to be annexed to the Memorial filed by the Government of New Zealand in the *Nuclear Tests* case. I have transmitted a copy of your letter and of its enclosure to the French Government, and if no objection is received from that quarter, the Note of 5 October 1973 will be communicated to Members of the Court. In the event of objection being made, it will be for the Court to decide.

134. SOME COMMENTS BY THE PRESIDENT

4 January 1974.

As the Court is soon to reassemble I think it proper to recapitulate certain elements already submitted to my colleagues, and to lay before them some additional information concerning action which I have taken in connection with the premature disclosures of the Court's decision in the *Nuclear Tests* cases. In view of the serious concern felt by the Court I thought it my duty to do what I could to establish, if possible, whether there had, in fact, been a leakage of information from the Court and, if so, in what circumstances this had occurred. I pursued the matter from the day the Court recessed in July until the end of August and resumed it immediately upon my return from the United Nations, on 16 October. As the Court is aware, I called for and had circulated a number of reports prepared in the Registry and I myself took a number of steps designed to throw light on what had occurred.

Although this was not the first occasion on which reports appeared forecasting the result of a decision of the Court, the worldwide interest in the *Nuclear Tests*

[1] Voir n° 128 ci-dessus.

cases accentuated the gravity of the disclosures in this instance. While the Court was still deliberating, press reports appeared which went far beyond what could be viewed as factual reporting or admissible commentary on a case which is *sub judice*, for they entered the sphere where secrecy must be maintained in order to safeguard the proper functioning of the machinery of justice and respect for the Court. However, important as this is in itself, it has not been my primary concern of the action taken. Even more essential was to ascertain how the information had been obtained and if it had come from channels close to the Court and, in particular, whether there could have been a leak, which in the particular circumstances may have been aggravated by the wide publicity of the printed word. Thus the first step was to collect all the reports that appeared during the critical period. This was done in two stages (16 August 1973 and 9 November 1973 [1]). Though the reports did not claim to be exhaustive, they contained most of the essential information and covered press reports from all continents. They wisely refrained from drawing conclusions, leaving Members of the Court to draw their own.

Even more important was the statement made by the Head of a Government, party to one of the cases. The press reports following Mr. Whitlam's statement have been included in the compilations referred to above.

In the light of the facts collected it has become clear that the following matters relating to the proceedings and their results were revealed prior to their having been made public by the Court:

(1) the date or dates on which the Court would issue the Orders;
(2) the general substance of the Orders;
(3) how many Judges would take part in the vote;
(4) the size of the majority.

As to (1), on 18 June and on the following days reports appeared in the press indicating the date of the reading of the Orders in the *Nuclear Tests* cases as being Friday, 22 June (which was the date fixed by the Court but not yet revealed), and speculating on the reason for the postponement of the hearing in the *Prisoners of War* case. Some of these reports referred to the Attorney-General's Department in Canberra. Of course press clippings did not reach The Hague until a few days later but Members of the Court were able to get some idea of what was happening from the 18 and 19 June issues of the *ANP News Bulletin* [2]. Finally, the Registry published the proposed date for the reading of the two Orders by a press communiqué released in the late afternoon of 20 June. Reports preceding that communiqué may have been based on speculation or have been deduced from other factors, but once the communiqué was published the whole problem ceased to exist. No deduction regarding this question could however have produced other information relating to the Court's decision.

As to (2), (3) and (4), the question becomes more important and serious. It is therefore on these three disclosures—made so frequently—that our efforts had to concentrate and in particular on:

(i) the statement of the Prime Minister of Australia;
(ii) press reports prior to and independent of the Australian Prime Minister's statement;
(iii) the possible relationship between (i) and (ii).

[1] See pp. 386-395, *supra*.
[2] See pp. 387, 388, *supra*.

The matter has been pursued both within the Court and outside.

I requested the Registrar to carry out an investigation concerning the possibility of leakage of information through members of the Registry[1].

In addition it was brought to my attention that the possible decision of the Court and the composition of the majority and minority were the subject of discussion on numerous occasions outside the Court. A few days prior to the reading of the Order its substance was being discussed together with the anticipated majority. The figures 9-6 were frequently mentioned and, in discussions on the evening preceding the issue of the Order, the figures 8-6, and in one or two cases, the figures 8-7. However, it was impossible to identify the source of these rumours. All efforts in this respect, discreet as they had to be, did not supply any valuable information.

There was one more question. It will be recalled that the first disclosure was published as early as 2 June 1973, while the Court was still deliberating, in *NRC Handelsblad*[2]:

> "According to one source, it is probable that the Russian, French and Swedish judges and the three judges from black Africa will vote against the Australian request for a temporary stay of the tests. This means a 9-6 decision."

As is well known, journalists are very reluctant to disclose their sources, if any. I cannot fail to regret that this first disclosure, made as early as three weeks before the Order was issued, was not brought to the notice of the Court at the time, but only on 16 August.

In the observations submitted by Members of the Court on this question, which have been circulated, a number of suggestions were put forward as to particular steps which might be taken. Some of these have been pursued; others, it has seemed to me, are better left for any consideration which the Court may wish to give them when it next meets.

It appears to me that the Court may wish to discuss the following questions:

1. What further action should be taken by the Court?
2. What further steps can be taken for the future to preserve the secrecy of the Court's deliberations?
3. Are any additional safeguards necessary in respect of the handling of confidential matters and documents?

135. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

31 janvier 1974.

Lors de la conversation que le Président de la Cour internationale de Justice a eue le 28 novembre 1973 avec Son Excellence l'ambassadeur de France aux Pays-Bas, il a indiqué que la Cour s'occupait de la question qui faisait l'objet de la communication du Gouvernement français en date du 4 octobre 1973 et qu'elle en discuterait lorsqu'elle se réunirait à la mi-janvier.

Tenant compte du fait que c'est contre la France que l'Australie a engagé une

[1] See p. 398, *supra*.
[2] See p. 387, *supra*.

instance relative à des essais nucléaires dans l'océan Pacifique, la Cour désire qu'il soit porté à la connaissance de Votre Excellence qu'elle a examiné la question dont il s'agit lors des séances qu'elle a tenues ce mois-ci. Après avoir étudié les résultats des recherches ordonnées par elle le 22 juin 1973, elle a conclu que les diverses enquêtes faites jusqu'à présent ne lui permettaient pas d'identifier l'origine précise des informations sur lesquelles se fondaient les déclarations parues dans la presse et prédisant l'issue de son délibéré.

La Cour a décidé en conséquence de procéder à d'autres enquêtes.

C'est sur la suggestion de Son Excellence l'ambassadeur de France aux Pays-Bas que j'ai l'honneur d'adresser la présente lettre à Votre Excellence, pour la mettre au courant de ce qui précède.

136. THE REGISTRAR TO THE AGENT OF AUSTRALIA

31 January 1974.

I have the honour to send you herewith a copy of a letter of today's date which I have addressed to the Minister for Foreign Affairs of France, and a copy of an unofficial English translation thereof.

137. LE CHARGÉ D'AFFAIRES A.I. D'ARGENTINE AUX PAYS-BAS

11 février 1974.

Urgent

Au nom du Gouvernement argentin — et en vertu de l'article 48, paragraphe 2, du Règlement de la Cour — j'ai l'honneur de vous prier de bien vouloir me faire parvenir les pièces de procédure relatives aux affaires des *Essais nucléaires* concernant la France *versus* l'Australie et la France *versus* la Nouvelle-Zélande (« Atoll de Mururoa »).

Dans le cas où cette sollicitude impliquerait des frais, l'ambassade les ferait arriver à la Cour.

(Signé) Mario CAMPORA.

138. THE DEPUTY-REGISTRAR TO THE AGENT OF NEW ZEALAND[1]

15 February 1974.

I have the honour to inform you that the Government of Argentina has asked that the pleadings in the *Nuclear Tests* case (*New Zealand* v. *France*) be made available to it. Pursuant to Article 48, paragraph 2, of the Rules of Court, I have the honour to request you to inform me whether the Government of New Zealand has any objection to the request of the Government of Argentina being acceded to.

[1] A similar communication was sent to the Minister for Foreign Affairs of France.

139. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

21 February 1974.

I have the honour to acknowledge receipt of your letter of 15 February, addressed to the Agent, concerning a request by the Government of Argentina that the pleadings in the *Nuclear Tests* case (*New Zealand* v. *France*) be made available to it.

The Government of New Zealand has no objection to the request of the Government of Argentina being acceded to.

140. THE AGENT OF AUSTRALIA TO THE REGISTRAR

Canberra, 28 February 1974.

I have the honour to refer to the Court's request for assistance from the Australian Government on the subject of statements published in the press and speculating about a possible favourable result to Australia on the application for interim measures in the *Nuclear Tests* cases.

The Australian Government is happy to give what assistance it can to the Court on this particular matter. In doing so, it is acting in accordance with its long maintained support for the Court's standing and authority; evidenced, for example, by the initiatives of the Australian Government as early as 1947 in relation to the adoption of resolution 171 (II) of the United Nations General Assembly on the need for greater use by the United Nations and its organs of the International Court of Justice.

During the recent conversations with the Agent and Co-Agent on 7 and 8 February 1974, clarification was sought and given to the Court of the circumstances surrounding the statement made by the Prime Minister at a gathering of lawyers in Australia in Melbourne on Thursday night, 21 June 1973.

As was promptly explained to the Court by the Prime Minister in a communication dated 27 June 1973, these remarks were purely speculative and were made in the course of an informal after-dinner talk to lawyers. At the time the Prime Minister indicated that his remarks were not for publication. No source of concrete information was relied upon nor did any exist. The reference by the Prime Minister to the figures of 8 to 6 was speculation based on an assessment current among Australian advisers; the figures were an expression of the view that the decision could be in Australia's favour but by a small majority, which was part of the assessment.

Before the institution of the proceedings by Australia on 9 May 1973, consideration was given by Australia's advisers, as in the circumstances was natural and indeed inevitable, to the possible outcome of those proceedings. The view was then taken that Australia might reasonably hope to obtain a decision in its favour both on interim measures and at later stages. At the conclusion of the oral hearing Australia's legal advisers entertained a "cautious optimism" that there might be a narrow majority in Australia's favour. A possible decision of 8 Judges to 6 began to be considered when it was rumoured that two of the Judges were ill. The publication of the Court's decision revealed that this division, the only one consistent in the circumstances with a narrow majority, happened to be accurate. It will be recalled that one of the Judges concerned had, for reasons of illness, been unable to participate in the latter stages of the oral

hearing. The possibility of the President not being able to participate in the decision because of illness could be inferred from the fact that Vice-President Ammoun, acting for the President, consulted with the Agent on 13 June 1973 on certain questions relating to the conduct of the proceedings.

The Court will no doubt recall that the proceedings aroused the most intense interest. Speculation and rumour as to what the Court's ultimate decision might be was widespread, including speculation as to the possibility of a division of opinion among the Judges. This included, in particular, speculation and rumour in press and diplomatic circles centred in The Hague, which in a number of instances referred to the possible numerical division of Judges; the figures of 8 to 6 were mentioned in those circles. The Court itself has referred in the recent conversations to the article dated 2 June 1973 appearing in the Dutch *NRC Handelsblad*[1] which contains the statement "This means a 9 to 6 division". The Australian Government only mentions this article as an illustration of the extent to which press speculation of what the Court's decision might be had extended as at 2 June of last year. It is no doubt possible that the passage mentioned could have afforded a basis for that speculation in press and diplomatic circles centred in The Hague already referred to which contained reference to a possible judicial division of 8 to 6. Such press and diplomatic speculation and rumour had come to the notice of the Australian Embassy at The Hague on and after 19 June of last year. The Australian Government regrets its inability to assist the Court as to the sources upon which that press and diplomatic speculation relied beyond what it has already conveyed by its Agent and Co-Agent to the Court during the recent conversations and in this letter. In particular, the Australian Government would wish to state that it is unaware of the source, if any, relied upon in the article of 2 June 1973 to which the Court referred it.

Reference was made in the recent conversations to a statement discouraging public speculation made by the Attorney-General shortly before the decision was given; and further details were promised.

In answer to numerous press, radio and television inquiries made to his Office on 21 and 22 June 1973 (Australian time), the Attorney-General stated that no-one would know the result until the Court gave (i.e., published) its decision. This answer was reflected, e.g., in the Sydney *Daily Mirror* of 22 June[2] which quoted the Attorney-General as follows:

> "He said it still remained to be seen what decision the International Court would make."

Further assistance has also been requested by the President concerning press attributions of certain matters to official sources in Australia in the days immediately preceding the decision.

In this connection, the Government calls attention to the statement made by the Agent in the recent conversations to the effect that there is in Australia neither an official or semi-official press nor even a favoured newspaper. Thus, Australian press references to government "sources" are not official or authoritative in any respect; often they are no more than a journalistic device to add apparent weight to journalistic reports. I would like to confirm again that, as mentioned in the recent conversations, there was no background press briefing during the period leading up to the publication of the decision by the Court relating either to the likely date of publication of or to the margin by which a decision might be reached. It was also pointed out in those conversations that no

[1] See p. 387, *supra*.
[2] See p. 391, *supra*.

member of the Australian legal team made any statement to the press about the possible outcome of the case.

I now turn to the particular instances of press attributions mentioned by the President and Judge Sir Humphrey Waldock. In endeavouring to furnish the information requested of it the Australian Government would point out that it is compelled to a considerable degree to rely upon its judgment of what probably had occurred. This follows from the fact that what has been sought of it are its views upon the writings of journalists. This is a matter over which the Government, in the circumstances existing in Australia, has no control direct or indirect. The Australian Government has indicated in its written communications to the Court and orally through its Agent and Co-Agent, the exact nature of what it said.

The various matters raised by the President and Judge Sir Humphrey Waldock are dealt with in paragraphs *(a)* to *(d)* below:

(a) A report in the *Bangkok Post* dated 23 June 1973[1] was mentioned in which appears a statement attributed by the reporter to the Attorney-General. This statement is introduced by the words "Anticipating the verdict, Attorney-General... said". The word "Anticipating" is the language of the newspaper concerned and not that of the Attorney-General. It is important that that should be understood. The phrase was not used by the Attorney-General. The text makes that clear. The Attorney-General was not forecasting, and at no time forecast, any result. He was answering questions as to what might happen if a decision were given in Australia's favour. The Court will, of course, bear in mind that, from the publication of the fact of the launching of its proceedings in the press, continuous inquiry has been made of the Australian Government as to various possibilities that might occur. After the French Government's attitude to the proceedings became known, many of these inquiries were directed to what might happen should the Court rule in Australia's favour. The Australian Government has at all times endeavoured to deal with these inquiries in a manner consistent at once with the Court's standing and authority and Australia's attitude to it and its responsibilities to the Australian people.

(b) A question has also been asked concerning a report in *The Age* of 21 June 1973[2]. The question asked is whether the speculations of legal advisers were known to exist and were the subject of gossip as to their substance.

Any person conversant with Australian conditions would realise as a matter of course that the legal advisers would endeavour to form some assessment of the outcome. It would seem that the article reflects journalistic gossip about what that assessment might be.

(c) A further question is asked, namely, that, if there was no Government or official source, where did the press get their information, as legal issues were involved with which the average journalist would hardly be familiar. With the greatest respect, it may be incorrect to think that expert journalists, trained to cover complex national and international issues, would not be able to follow the general legal issues involved and, drawing on whatever sources were available from overseas, to form an impression of what the Australian official position might be. No doubt the Court will bear in mind in this connection that the oral argument was widely attended by journalists and was widely reported, and that the substance of the declarations sought

[1] See p. 391, *supra*.
[2] See p. 390, *supra*.

by both the Australian and New Zealand Governments is readily comprehensible to laymen. It is further pointed out that Australian newspapers do have access to Hague sources. The Court will recall that the Agent drew to the Court's attention, during the course of the recent conversations, a report in the Sydney *Sun* of 22 June 1973[1] (Australian time) which contains the following passage:

> "Meanwhile sources in The Hague believe Australia may have won its World Court case against France by a two-vote margin."

This report is byelined "AAP, Auckland, Friday". The possibility is not altogether to be dismissed that the Australian Associated Press correspondent may have been aware of the publication of 2 June 1973 in the *NRC Handelsblad* to which reference has already been made by the Court.

(d) Questions have also been asked in particular as to the references in the Australian press to the date on which the decision would be given. One press report referred, in particular, to information supplied by the Attorney-General's Department (*Canberra Times*, 19 June[2]). It has been confirmed that no such statement was issued by the Attorney-General's Department. It was true that, at that time within Government circles in Canberra, there was an expectancy that the Court would, on a matter that under its Rules it is required to treat as a matter of urgency, hand down its decision in the near future.

The Australian Government trusts that the comments it has been able to provide on the matter of press reports, both in the general and in the particular, are of assistance to the Court. In providing these and other comments in the detail it has, the Government has gone beyond what would normally be expected of a sovereign Government. It has done so solely because it has heeded the request of the President for assistance on a matter which affects the standing of the judicial institution of the International Court of Justice.

The Australian Government would observe that it does not regard either the recent conversations with the Court by the Agent and Co-Agent at The Hague or the contents of this answer to the Court's request as being in any way a response by it to the letter to the Court from the French Ambassador to The Hague dated 4 October 1973.

The Australian Government has not been informed whether a further public statement might be made by the Court on this subject. If such a statement were to be made, the Australian Government would appreciate appropriate notice of the matter; and it would in that connexion reserve its right to draw if necessary on the matters referred to herein and in its previous oral and written communications to the Court in order publicly to clarify its position.

141. LE DIRECTEUR DES AFFAIRES JURIDIQUES DU MINISTÈRE DES AFFAIRES ÉTRANGÈRES DE FRANCE AU GREFFIER

Paris, 5 mars 1974.

J'ai l'honneur d'accuser réception de votre lettre du 15 février, par laquelle vous me demandez de vous faire savoir, conformément aux dispositions de

[1] See p. 392, *supra*.
[2] See p. 388, *supra*.

l'article 48, paragraphe 2, du Règlement de la Cour, si le Gouvernement français verrait des objections à ce que la République argentine reçoive communication des pièces de procédure dans les affaires des essais nucléaires.

Me référant à la lettre qui vous a été remise le 16 mai 1973, j'ai l'honneur de vous indiquer que le Gouvernement français, ayant dénié la compétence de la Cour dans cette affaire, ne saurait exprimer une opinion sur la demande formulée par la République argentine.

(Signé) Guy DE LACHARRIÈRE.

142. LE GREFFIER AU CHARGÉ D'AFFAIRES A.I. D'ARGENTINE AUX PAYS-BAS

7 mars 1974.

Me référant à votre lettre du 11 février 1974, j'ai l'honneur de vous faire connaître qu'en application de l'article 48, paragraphe 2, du Règlement de la Cour le Président a décidé de tenir à la disposition du Gouvernement argentin les pièces de procédure dans les affaires des *Essais nucléaires (Australie c. France* et *Nouvelle-Zélande c. France)*.

En conséquence, je vous adresse ci-joint, en un exemplaire, les demandes en indication de mesures conservatoires présentées respectivement par l'Australie et la Nouvelle-Zélande les 9 et 14 mai 1973 et les mémoires australien et néo-zélandais portant sur la compétence de la Cour et la recevabilité des requêtes en l'espèce.

Je crois bien faire en vous faisant également remettre trois exemplaires de la traduction de ces documents en français. Me référant à l'article 42, paragraphe 4, du Règlement de la Cour aux termes duquel « le Greffier n'est pas tenu d'établir la traduction des pièces de procédure », je me permets de préciser que ces traductions, établies par les soins du Greffe à l'usage intérieur de la Cour, ne présentent aucun caractère officiel.

143. THE REGISTRAR TO THE AGENT OF AUSTRALIA [1]

7 March 1974.

I refer to your letter of 23 November 1973, by which you were good enough to give a standing consent on behalf of the Government of Australia for requests for communication of the pleadings in the *Nuclear Tests* case to any State entitled to appear before the Court to be acceded to. I now have the honour to inform you that such a request has been made by the Government of Argentina and that the President of the Court has decided that the pleadings may be made available to that Government in accordance with Article 48, paragraph 2, of the Rules of Court.

[1] Similar communications were sent to the Co-Agent of New Zealand regarding the *New Zealand* v. *France* case and to the Minister for Foreign Affairs of France regarding both cases.

144. THE PRESIDENT TO THE PRIME MINISTER OF AUSTRALIA

27 March 1974.

I have the honour to refer to the letter dated 27 June 1973 which Your Excellency addressed to my colleague Judge Ammoun, Vice-President and at the time Acting President of the Court, in connection with the Court's request for a report from the Australian Government on the words attributed to Your Excellency in an article in the London *Times*. The Court has now decided that two documents communicated to the Court and furnishing explanations of this matter should be communicated to the French Government, and the letter from Your Excellency to which I have referred is one of the documents. Although the subject-matter of this letter has already been made public, it was considered appropriate that Your Excellency should be informed of the Court's decision before the text of the letter was supplied to the French Government, which will be done by the end of this week.

(Signed) Manfred LACHS.

145. THE REGISTRAR TO THE CO-AGENT OF AUSTRALIA

29 March 1974.

On the instructions of the Court, and with reference to Communiqué 74/2 issued by the Registry on 26 March [1], a copy of which I handed to Your Excellency on 22 March, I have the honour to transmit to Your Excellency herewith for the information of the Government of Australia the text (in English and French) of a resolution adopted by the Court on 24 January 1974 [2].

146. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

29 mars 1974.

Me référant à ma lettre du 31 janvier 1974, j'ai l'honneur d'adresser à Votre Excellence le texte du communiqué de presse [3] reproduisant la résolution adoptée par la Cour internationale de Justice le 21 mars 1974 et de lui faire tenir, sur l'instruction de la Cour, les documents suivants:

1. La lettre adressée au Greffier de la Cour le 27 juin 1973 par le coagent de l'Australie (texte original anglais et traduction française);
2. La lettre adressée au Vice-Président de la Cour par le Premier ministre d'Australie le 27 juin 1973 et jointe à la précédente (texte original anglais et traduction française);
3. Le texte d'une déclaration de l'*Attorney-General* d'Australie, le sénateur Murphy, telle qu'elle est rapportée dans le *Daily Mirror* [4] de Sydney du 22 juin

[1] *I.C.J. Yearbook 1973-1974*, pp. 127-128.
[2] Not reproduced.
[3] *C.I.J. Annuaire 1973-1974*, p. 129-130.
[4] Voir ci-dessus p. 391.

1973 et que l'agent de l'Australie considère comme une déclaration gouvernementale autorisée (texte original anglais et traduction française);

4. Le texte de la résolution adoptée par la Cour le 24 janvier 1974[1].

J'appelle en outre l'attention de Votre Excellence sur le fait que le *Hansard* australien, rapportant les débats du 12 septembre 1973[2] à la Chambre des représentants, contient le texte d'une question posée au Premier ministre au sujet de l'affaire des *Essais nucléaires* et de la réponse que celui-ci y a apportée.

147. THE REGISTRAR TO THE CO-AGENT OF NEW ZEALAND

29 March 1974.

I have the honour to confirm the information already conveyed to Your Excellency orally, namely that no Counter-Memorial has been filed by the Government of the French Republic in the *Nuclear Tests* case (*New Zealand* v. *France*) within the time-limit (22 March 1974) fixed therefor by the Court's Order of 22 June 1973, as varied by the President's Order of 6 September 1973, and that the case is therefore ready for hearing. The Government of New Zealand will be informed in due course of the date fixed by the Court or the President, pursuant to Article 51 of the 1972 Rules of Court, for the commencement of the oral proceedings in the case.

148. THE REGISTRAR TO THE CO-AGENT OF AUSTRALIA

2 April 1974.

I have the honour to send Your Excellency herewith a copy of a letter dated 29 March 1974 which, on the instructions of the Court, I despatched to the Minister for Foreign Affairs of the French Republic, together with an unofficial English translation thereof.

149. THE AGENT OF AUSTRALIA TO THE REGISTRAR

Canberra, 10 April 1974.

I have the honour to refer to the proceedings in the *Nuclear Tests* case (*Australia* v. *France*) and to the Order by the Court dated 22 June 1973 that the written proceedings in the case shall first be addressed to the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of the Application. It seems possible that these questions will become ready for hearing in the near future.

In these circumstances I have the honour to refer to the following published materials which have become available since the Australian Memorial was filed in the Registry and to which the Parties or the Court may wish to refer during

[1] Non reproduite.

[2] Voir ci-dessus p. 395.

the oral hearing. Copies of these materials[1] are being conveyed to the Registry for the convenience of Judges.

(a) Report of the Special Session of the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) held in New York on 26 and 27 November 1973; and

(b) Resolution 3154 (XXVIII) relating to the work of UNSCEAR adopted by the United Nations General Assembly on 14 December 1973.

I refer also to the letter dated 19 September 1973 from the Co-Agent concerning the positive identification of the deposit of radio-active fall-out on Australian territory from nuclear tests explosions conducted by the French Government at its Pacific Tests Centre in July and August 1973. I now annex certified copies of the following tables[2] of data forwarded to UNSCEAR for the purpose of its Special Session held on 26 and 27 November 1973:

(a) *Iodine-131 in Australian milk supplies and estimated thyroid doses for young children following nuclear tests by France in Polynesia in July and August 1973*; and

(b) *Estimated external gamma-radiation dose to the whole body from fall-out over Australia following nuclear tests by France in Polynesia during July and August 1973.*

Copies of these tables were also forwarded, by diplomatic channels, to the other Party to the proceedings.

Finally, I wish to refer to my letter dated 22 May 1973 annexing the reports of the meeting between Australian and French scientists which took place in Canberra on 7-9 May 1973. The reports have been tabled and printed as a Parliamentary Paper of the Australian Parliament, and I am taking the opportunity of forwarding copies of the printed reports for the convenience of Judges[3].

150. THE PRIME MINISTER OF AUSTRALIA TO THE PRESIDENT

Canberra, 11 April 1974.

I have the honour to acknowledge the receipt of your letter dated 27 March 1974.

The action taken by the Court in relation to my letter dated 27 June 1973 to your colleague, Judge Ammoun, Vice-President and at the time Acting President of the Court, has been noted.

151. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

18 avril 1974.

J'ai l'honneur d'adresser ci-joint à Votre Excellence la photocopie d'une lettre que l'agent du Gouvernement australien dans l'affaire des *Essais nucléaires*

[1] I, pp. 533-537.
[2] I, pp. 538 and 539.
[3] I, p. 540 and No. 50, *supra*.

(Australie c. France) m'a envoyée le 10 avril 1974 et que je viens de recevoir. Je vous adresse également un exemplaire des documents joints à cette communication.

La lettre et les documents joints seront transmis par mes soins à MM. les membres de la Cour si vous ne soulevez pas d'objection. Dans le cas contraire, c'est la Cour qui décidera.

152. THE CO-AGENT OF AUSTRALIA TO THE REGISTRAR

19 April 1974.

I have the honour to request that a copy of the Memorial on Questions of Jurisdiction and Admissibility in the *Nuclear Tests* case (*New Zealand* v. *France*), submitted by the Government of New Zealand on 2 November 1973 in response to the Order of the International Court of Justice, should be made available to me at your earliest convenience.

153. THE DEPUTY-REGISTRAR TO THE AGENT OF AUSTRALIA

20 April 1974.

I have the honour to inform you that no Counter-Memorial has been filed by the Government of the French Republic in the *Nuclear Tests* case (*Australia* v. *France*) within the time-limit (19 April 1974) fixed therefor by the Court's Order of 22 June 1973, as varied by the President's Order of 28 August 1973, and that the case is therefore ready for hearing. The Government of Australia will be informed in due course of the date fixed by the Court or the President, pursuant to Article 51 of the 1972 Rules of Court, for the commencement of the oral proceedings in the case.

154. THE REGISTRAR TO THE AGENT OF AUSTRALIA

22 April 1974.

I have the honour to acknowledge receipt of your letter of 10 April, received in the Registry on 17 April, and enclosing copies of certain documentary material; I note that this material has become available since the filing of the Australian Memorial on jurisdiction and admissibility in the *Nuclear Tests* case, and that you consider that the Parties or the Court may wish to refer to it during the oral proceedings in the case. A copy of your letter and of the material referred to has been transmitted to the French Government, and if no objection is received from that quarter, the documents will be communicated to Members of the Court, who have been informed of the contents of your letter. In the event of objection being made, it will be for the Court to decide.

155. THE REGISTRAR TO THE AGENT OF NEW ZEALAND [1]

22 April 1974.

I have the honour to inform you that the Government of Australia has asked that the pleadings and annexed documents in the *Nuclear Tests* case (*New Zealand* v. *France*) be made available to it pursuant to Article 48, paragraph 2, of the 1972 Rules of Court. I would therefore be grateful if you could inform me as soon as possible whether the Government of New Zealand has any objection to the request of the Government of Australia being acceded to.

156. THE CO-AGENT OF NEW ZEALAND TO THE RFGISTRAR

25 April 1974.

I have the honour to acknowledge your letter of 22 April concerning the request of the Government of Australia for the pleadings and annexed documents in the *Nuclear Tests* case (*New Zealand* v. *France*) and to inform you that the Government of New Zealand has no objection to the request of the Government of Australia being acceded to.

157. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

25 April 1974.

I have the honour, on behalf of the Government of New Zealand, to request that the pleadings and annexed documents in the *Nuclear Tests* case (*Australia* v. *France*) be made available to it pursuant to Article 48, paragraph 2, of the 1972 Rules of Court.

158. THE CO-AGENT OF AUSTRALIA TO THE REGISTRAR

26 April 1974.

I have the honour to advise you that, in view of the expiration of my appointment as Australian Ambassador to the Netherlands, the Government of Australia has appointed Mr. F. J. Blakeney, CBE, Ambassador Designate for Australia to the Netherlands, as Co-Agent in the *Nuclear Tests* case (*Australia* v. *France*) to replace me.

159. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

2 mai 1974.

J'ai l'honneur de faire connaître à Votre Excellence que le Gouvernement de la Nouvelle-Zélande a demandé à recevoir communication des pièces de procédure dans l'affaire des *Essais nucléaires (Australie c. France)*.

[1] A similar communication was sent to the Minister for Foreign Affairs of France.

Me référant à l'article 48, paragraphe 2, du Règlement de la Cour, je serais reconnaissant à Votre Excellence de bien vouloir m'indiquer, dans les meilleurs délais, si elle voit des objections à ce que ces pièces soient tenues à la disposition de ce gouvernement.

160. THE REGISTRAR TO THE CO-AGENT OF NEW ZEALAND [1]

6 June 1974.

I refer to the request made in Your Excellency's letter of 25 April last, that the pleadings and annexed documents in the *Nuclear Tests* case (*Australia* v. *France*) may be made available to the Government of New Zealand pursuant to Article 48, paragraph 2, of the Rules of Court. I have the honour to inform you that the President of the Court has decided that the pleadings and annexed documents may be made available to Your Excellency's Government. I therefore enclose a copy of the Memorial on jurisdiction and admissibility filed by the Government of Australia; no Counter-Memorial has been filed by the French Government.

161. THE REGISTRAR TO THE AGENT OF AUSTRALIA [2]

6 June 1974.

I refer to your letter of 23 November 1973, by which you informed me of your Government's absence of objection to the pleadings and annexed documents in the *Nuclear Tests* case (*Australia* v. *France*) being made available under Article 48, paragraph 2, of the Rules of Court to any of the Governments referred to in that paragraph which may request them. I now have the honour to inform you that the President has decided to accede to a request made by the Government of New Zealand for the pleadings and annexed documents in the case to be made available to it.

162. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE [3]

Le 7 juin 1974.

Me référant à ma lettre du 2 mai 1974 par laquelle je faisais part à Votre Excellence du désir exprimé par le Gouvernement de la Nouvelle-Zélande de

[1] A communication in the same terms was sent to the Co-Agent of Australia in the *New Zealand* v. *France* case

[2] A similar communication was sent to the Co-Agent of New Zealand regarding the *New Zealand* v. *France* case.

[3] La même communication a été adressée au ministre des affaires étrangères de France au sujet de l'affaire *Nouvelle-Zélande c. France*.

recevoir communication des pièces de procédure dans l'affaire des *Essais nucléaires* (*Australie c. France*), j'ai l'honneur de faire connaître à Votre Excellence que le Président de la Cour a décidé, conformément à l'article 48, paragraphe 2, du Règlement, que ces pièces seraient tenues à la disposition de ce gouvernement.

163. *LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE*

(télégramme)

21 juin 1974.

Me référant affaire *Essais nucléaires (Australie c. France)* ai honneur faire savoir Votre Excellence que ouverture plaidoiries est fixée au 4 juillet 1974.

164. THE REGISTRAR TO THE AGENT OF AUSTRALIA [1]

25 June 1974.

I refer to Article 48, paragraph 3, of the Rules of Court, which provides for the pleadings and annexed documents in a case being made accessible to the public, with the consent of the parties, before the termination of the case, and would be grateful if you would inform me whether the Government of Australia would have any objection to its Memorial on jurisdiction and admissibility in the *Nuclear Tests* case (*Australia* v. *France*) being made accessible to the public with effect from 3 July 1974.

165. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

26 June 1974.

I have the honour to acknowledge receipt of your letter of 25 June, addressed to the Agent of the Government of New Zealand, which in referring to Article 48, paragraph 3, of the Rules of Court, asks whether the Government of New Zealand would have any objection to its Memorial on jurisdiction and admissibility in the *Nuclear Tests* case (*New Zealand* v. *France*) being made available to the public with effect from 3 July 1974.

The Government of New Zealand has no objection to its Memorial being made accessible to the public as from that date.

[1] Similar communications were sent to the Agent of New Zealand regarding the *New Zealand* v. *France* case and to the Minister for Foreign Affairs of France regarding both cases.

166. THE REGISTRAR TO THE AGENT OF AUSTRALIA [1]

28 June 1974.

Further to my recent telephone conversation with the Co-Agent, I have the honour to confirm that the Court has fixed Thursday, 4 July 1974, as the date on which the presentation of oral argument will begin on the questions of the jurisdiction of the Court and the admissibility of the Applications in the cases concerning *Nuclear Tests* (*Australia* v. *France*; *New Zealand* v. *France*), and has decided to hear first, beginning at 10 a.m. on the above date, the arguments to be presented on behalf of Australia.

167. THE AGENT OF AUSTRALIA TO THE REGISTRAR

1 July 1974.

I have the honour to refer to your letter of 25 June 1974 asking whether the Government of Australia would have any objection to its Memorial on jurisdiction and admissibility in the *Nuclear Tests* case (*Australia* v. *France*) being made accessible to the public with effect from 3 July 1974.

The Government of Australia has no such objection and gives its consent to its Memorial being made accessible from that date.

168. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

3 juillet 1974.

Me référant à ma lettre du 25 juin 1974 relative à la mise à la disposition du public, à dater du 3 juillet 1974, des mémoires déposés par les Gouvernements australien et néo-zélandais dans la présente phase des affaires des *Essais nucléaires*, j'ai l'honneur de faire tenir à Votre Excellence copie des réponses que m'ont adressées à ce sujet le coagent du Gouvernement néo-zélandais et l'agent du Gouvernement australien, les 26 juin et 1er juillet respectivement, et j'y joins, à toutes fins utiles, une traduction en français de ces communications établie par le Greffe.

169. THE AGENT OF AUSTRALIA TO THE REGISTRAR

3 July 1974.

I have the honour to refer to paragraph 426 [2] of the Australian Memorial on jurisdiction and admissibility in the *Nuclear Tests* case (*Australia* v. *France*) in which reference is made to the letter dated 19 September 1973 on behalf of the Government of Australia to the Acting Registrar concerning the conducting

[1] A communication in the same terms was sent to the Agent of New Zealand.
[2] I, p. 330.

by the French Government of five nuclear tests after 22 June 1973 which led to fall-out of radio-active material on Australian territory. The Acting Registrar in a letter dated 20 September 1973 stated that the contents of the letter had been communicated to Members of the Court. In this connexion, I desire to submit copies of the diplomatic protests[1] made by the Government of Australia on 22 July, 24 August and 26 September 1973 in respect of the 1973 tests.

170. THE AGENT OF AUSTRALIA TO THE REGISTRAR

3 July 1974.

I have the honour to refer to the hearing of oral argument on the questions of jurisdiction and admissibility of the Application in the case concerning *Nuclear Tests* (*Australia* v. *France*) to commence at 10 a.m. on 4 July next. In that connexion, I submit herewith certain materials[2] that have become available since the filing of the Australian Memorial on jurisdiction and admissibility.

I have the honour to forward herewith, as Attachment 1, a Note dated 11 June 1974 from the French Embassy, Canberra, to the Australian Department of Foreign Affairs. The Note refers to the public communiqué published in Paris on 8 June 1974 by the Office of the President of France relating to the French decree reactivating security measures in the South Pacific Test Zone.

I also forward herewith, as Attachment 2, the copy of the communiqué that is attached to that Note.

I also have the honour to forward herewith, as Attachment 3, a copy of the public statement issued by the Prime Minister of Australia on 17 June 1974 concerning the explosion by the French Government of a nuclear device in the atmosphere over Mururoa Atoll on 17 June 1974.

I also forward herewith, as Attachment 4, a certified copy of a Note dated 18 June 1974 from the Australian Department of Foreign Affairs to the French Embassy, Canberra, protesting to the Government of France in respect of the commencement by France of a further program of nuclear tests in the Pacific area.

I also forward herewith, as Attachment 5, a memorandum from the Secretary-General of the United Nations to the Permanent Representative of Australia to the United Nations concerning respectively "a notification by France and the denunciation by the United Kingdom of Great Britain and Northern Ireland in respect of the General Act on the Pacific Settlement of International Disputes done at Geneva on 26 September 1928".

The following document referred to in the Secretary-General's memorandum is also forwarded herewith—United Nations circular letter C.N.3. 1974. TREATIES-1, of 6 February 1974, containing a translation of the French notification (attached hereto as Attachment 6).

In addition to submitting the above-mentioned materials, I refer to the following materials[3] which are parts of publications readily available. Copies of these can be forwarded for the convenience of Members of the Court if that is desired:

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[1] I, pp. 545-549.
[2] I, pp. 550-554.
[3] Not reproduced.

(a) *St. Meld. nr. 32* (1949) being a Norwegian Parliamentary Paper concerning Norway's participation in the United Nations Second Special General Assembly and in the first part of the Third Ordinary General Assembly session. The following is a translation from the Norwegian of a passage appearing on page 33 concerning the 1949 revision of the 1928 General Act:

> "The changes from the 1928 General Act comprise changes in the references in the General Act to the different organs of the League to corresponding references to the organs of the United Nations. It is accepted that the General Act in its new form will be binding only for those States which become party to it. The General Act itself will remain valid in the old form—in so far as it is still applicable—between the original parties not acceding to the General Act as revised."

(b) The proposal by the Swedish King-in-Council, No. *105 of 10 March 1950*, submitted to the Swedish Parliament concerning the question of Swedish accession to the Revised General Act. The following are translations from the Swedish of passages relating to the 1928 General Act:

> "Through the dissolution of the League of Nations and the Permanent Court of International Justice which pursuant to the 1928 General Act were given certain functions, the said Act—though still valid to the associated States—has lost its effectiveness to a large extent."
>
> "In the resolution by which the amended General Act was adopted by the General Assembly it is stated that the altered wording is applicable only between States acceding to said Act and implies no changed rights for States which acceded to the 1928 General Act and which want to refer to still valid parts of said Act."
>
> "It is for the King-in-Council to decide if and at what period of time Sweden should cancel the 1928 General Act on acceding to the Revised General Act."

(c) The Danish notification of 22 April 1952 of adherence to the Revised General Act (Bekendtg relse om Danmarks tiltraedelse af den af De Forenede Nationers plenarforsamling den 28. april 1949 vedtagne reviderede generalakt angaende fredelig bilaeggelse af mellemfolkelige tvistigheder). The following is a translation of the second paragraph of an explanatory note appearing on page 27:

> "The General Act of 26 September 1928, which was made public through the notification of 19 June 1930 by the Ministry of Foreign Affairs, is still applicable for those States which have adhered to this instrument only."

171. THE AGENT OF NEW ZEALAND TO THE REGISTRAR

3 July 1974.

With reference to the forthcoming hearing in the *Nuclear Tests* case (*New Zealand* v. *France*) I have the honour to enclose copies of correspondence ex-

changed between the New Zealand and French Governments after the filing of the New Zealand Memorial and to the contents of which we shall wish to refer in the course of our statements to the Court during the forthcoming hearing. Attached is a certified copy, together with thirty additional copies, of each of the following documents[1]:

(a) Note of 10 June 1974 from the French Embassy to the New Zealand Ministry of Foreign Affairs;
(b) Letter of 11 June 1974 from the New Zealand Prime Minister to the President of France;
(c) Note of 17 June 1974 from the New Zealand Embassy to the French Ministry of Foreign Affairs;

I also enclose a Report[2] prepared by the New Zealand National Radiation Laboratory on Fallout from the Nuclear Weapons Tests conducted by France in the South Pacific during July and August 1973. This document, which was issued in November 1973 after the filing of the New Zealand Memorial, and which is available to the public in New Zealand, is in the same series as documents previously submitted to the Court. It is now being filed in order that the information available from this source should be as up to date as possible.

172. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE[3]

4 juillet 1974.

J'ai l'honneur de vous faire tenir ci-joint deux lettres avec annexes que l'agent du Gouvernement australien dans l'affaire des *Essais nucléaires (Australie c. France)* m'a adressées le 3 juillet 1974.

173. THE AGENT OF NEW ZEALAND TO THE REGISTRAR

8 July 1974.

With reference to the forthcoming hearing in the *Nuclear Tests* case (*New Zealand* v. *France*) and to my letter of 3 July, I have the honour to enclose a certified copy, together with thirty additional copies, of a letter from the President of France to the Prime Minister of New Zealand[4] dated 1 July 1974 and delivered in Wellington on 5 July 1974. This letter, to which we shall wish to refer in the course of statements to the Court during the forthcoming hearing, is an addition to the diplomatic correspondence attached to my previous letter.

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[1] See pp. 298-301, *supra*.
[2] See pp. 302-333, *supra*.
[3] Une lettre analogue a été adressée au ministre des affaires étrangères de France au sujet de l'affaire *Nouvelle-Zélande c. France*.
[4] See p. 334, *supra*.

174. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

9 juillet 1974.

J'ai l'honneur de faire tenir ci-joint à Votre Excellence une lettre que l'agent du Gouvernement néo-zélandais dans l'affaire des *Essais nucléaires (Nouvelle-Zélande c. France)* m'a adressée le 8 juillet 1974, transmettant copie d'une lettre du Président de la République française au Premier ministre de Nouvelle-Zélande en date du 1er juillet 1974.

175. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

(télégramme)

9 juillet 1974.

Me référant affaire *Essais nucléaires (Nouvelle-Zélande c. France)* ai honneur faire savoir Votre Excellence que ouverture plaidoiries est fixée au 10 juillet 1974 à 10 heures.

176. THE AGENT OF AUSTRALIA TO THE REGISTRAR

9 July 1974.

I have the honour to refer to the hearing of the questions of jurisdiction and admissibility of the Application in the case concerning *Nuclear Tests* (*Australia* v. *France*).

I have this morning received by cable from Canberra the texts of the following two documents [1], copies of which are enclosed:

(a) A copy of a telex message received on 21 December 1973 by the Australian Department of Primary Industry concerning non-radioactivity certificates for tuna exports; and

(b) A copy of a letter dated 5 February 1974 from Port Lincoln Tuna Processors Pty Ltd to the Australian Department of Primary Industry.

These shed light on a matter which has arisen since the filing of the Australian Memorial in November 1973 and to which the Solicitor-General wishes to refer in his speech this afternoon. They have only now come to hand after extensive investigations.

177. THE AGENT OF AUSTRALIA TO THE REGISTRAR

9 July 1974.

I have the honour to refer to Article 56, paragraph 2, of the 1972 Rules and to the final formal submissions made on behalf of the Government of Australia

[1] I, pp. 556-557.

at the public sitting held today, 9 July 1974 [1] in the *Nuclear Tests* case (*Australia* v. *France*).

I have the honour to attach a written copy of the final submissions signed by me as Agent for the Government of Australia.

Jurisdiction of the Court and admissibility

FINAL SUBMISSIONS OF THE GOVERNMENT OF AUSTRALIA

The final submissions of the Government of Australia are that:

(a) the Court has jurisdiction to entertain the dispute the subject of the Application filed by the Government of Australia on 9 May 1973; and
(b) the Application is admissible

and that accordingly the Government of Australia is entitled to a declaration and judgment that the Court has full competence to proceed to entertain the Application by Australia on the Merits of the dispute.

178. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

10 juillet 1974.

J'ai l'honneur de faire tenir à Votre Excellence une lettre, accompagnée de deux annexes, que l'agent du Gouvernement australien dans l'affaire des *Essais nucléaires (Australie c. France)* m'a adressée le 9 juillet 1974.

179. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

10 juillet 1974.

J'ai l'honneur d'adresser ci-joint à Votre Excellence, conformément à l'article 56, paragraphe 2, du Règlement de la Cour, copie des conclusions finales que l'agent du Gouvernement australien en l'affaire des *Essais nucléaires (Australie c. France)* a lues à l'audience publique du 9 juillet 1974 et dont il m'a communiqué le texte écrit. Je fais également tenir à Votre Excellence, à toutes fins utiles, une traduction française de ces conclusions.

180. THE AGENT OF NEW ZEALAND TO THE REGISTRAR

11 July 1974.

At the conclusion of the oral statements [2] presented by New Zealand at the hearing in the *Nuclear Tests* case (*New Zealand* v. *France*) on the questions of jurisdiction of the Court to entertain the dispute and of the admissibility of our Application, I have the honour to advise you that the final submissions of the Government of New Zealand are as follows:

[1] I, p. 523.
[2] See p. 290, *supra*.

The Government of New Zealand is entitled to a declaration and judgment that

(a) the Court has jurisdiction to entertain the Application filed by New Zealand and to deal with the merits of the dispute; and

(b) the Application is admissible.

181. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

11 juillet 1974.

J'ai l'honneur d'adresser ci-joint à Votre Excellence, conformément à l'article 56, paragraphe 2, du Règlement de la Cour, copie de la conclusion finale que l'agent du Gouvernement néo-zélandais en l'affaire des *Essais nucléaires (Nouvelle-Zélande c. France)* a lue à l'audience publique du 11 juillet 1974 et dont il m'a communiqué le texte écrit. Je fais également tenir à Votre Excellence, à toutes fins utiles, une traduction française de sa communication.

182. THE REGISTRAR TO THE EDITOR OF "THE TIMES", LONDON

11 July 1974.

The report in your columns (July 10) of the recent official visit paid by the Secretary-General of the United Nations, Dr. Waldheim, to the International Court of Justice includes the statement that "Although, in accordance with Dr. Waldheim's request, no information has been given about his talks at the Court, or with various Dutch officials and Queen Juliana, it is believed that one of the main topics has been the competence of the Court and the refusal of France to recognize its jurisdiction over nuclear tests."

I am directed by the President of the Court at once to make it clear that the "belief" referred to in the passage quoted above is without any foundation whatever. It is indeed inconceivable that the Court should even contemplate issues arising in pending cases being the subject of discussion outside the proceedings in those cases. To link together an official visit of the Secretary-General of the United Nations to the Court, which coincided with public hearings in two cases, and issues arising in those cases, is wholly unwarranted.

I trust that you will therefore take any steps necessary to correct the erroneous and invidious impression given by the above-mentioned report.

183. THE REGISTRAR TO THE AGENT OF AUSTRALIA [1]

12 July 1974.

I have the honour to transmit to you herewith a copy of a letter which I addressed on 11 July 1974 to the Editor of *The Times*.

[1] Similar communications were sent to the Agent of New Zealand, the Minister for Foreign Affairs of France and the Secretary-General of the United Nations.

184. LE DIRECTEUR DES AFFAIRES JURIDIQUES DU MINISTÈRE DES AFFAIRES ÉTRANGÈRES DE FRANCE AU GREFFIER

Paris, 12 juillet 1974.

Par lettre du 25 juin 1974, vous avez bien voulu me demander si le Gouvernement français aurait des objections à ce que soient rendus accessibles au public à dater du 3 juillet 1974 les mémoires déposés par les Gouvernements australien et néo-zélandais sur la compétence de la Cour et la recevabilité de la requête dans les deux affaires dites les *Essais nucléaires*.

Ainsi que vous le savez, le Gouvernement français n'est pas partie à ces affaires pour lesquelles il estime que la Cour n'a pas compétence.

En conséquence, il ne saurait donner un avis ni formuler des objections sur la base de l'article 48, paragraphe 3, du Règlement de la Cour.

185. THE AGENT OF NEW ZEALAND TO THE REGISTRAR

15 July 1974.

On behalf of the Government of New Zealand I have the honour to answer the questions, connected with the issue of admissibility, put to it by Judge Sir Humphrey Waldock at the hearing on 11 July 1974[1] in the *Nuclear Tests* case (*New Zealand* v. *France*). The questions relate to aspects of two of the five separate rights which New Zealand contends are violated by nuclear testing undertaken by the French Government in the South Pacific region.

I would preface the answers by recalling the understanding of the Government of New Zealand, stated both in the Memorial and at the oral hearings, in relation to admissibility. That understanding, which we believe also to be reflected in the questions, is that the Court at this stage of the proceedings is concerned with an issue of a preliminary character, that is to say, with one which, while it may be related to the merits of the dispute between New Zealand and France, is distinct from and anterior to the merits. (I refer to paragraph 4 of the New Zealand Memorial[2] and to the Attorney-General's statement to the Court on 10 July 1974, p. 262, *supra*.)

The first question relates to the third of the categories of rights which New Zealand claims is violated, that is to say, the right that

> no radioactive material enter the territory of New Zealand, the Cook Islands, Niue, or the Tokelau Islands, including their air space and territorial waters, as a result of nuclear testing.

In the first part of the question, we are asked whether we "consider that every transmission by natural causes of chemical or other matter from one State into another State's territory, air-space or territorial sea automatically constitutes in itself a legal cause of action in international law without the need to establish anything more... Do (we) draw a line, and if so where, between a deposit or dispersion of matter within another State which is unlawful and one which

[1] See p. 291, *supra*.
[2] See p. 145, *supra*.

has to be tolerated as merely an incident of the industrialisation or technological development of modern society?"

We do not consider that every transmission of the kind described from one territory to another constitutes in itself a legal cause of action. A line does have to be drawn between different types of intrusion into areas over which another State has sovereignty; and, as new activities arise and different dangers are perceived, that line may have to be extended. It will not, however, in the Applicant's view, be necessary for the Court, when it comes to the merits stage of these proceedings, to fix the exact line between lawful and unlawful transmissions, as the present case falls clearly within the latter category. One of the principal factors to be taken into account in the present case is that the intrusion complained of, and the activity which gives rise to it, are condemned by the international community. This condemnation of nuclear testing in the atmosphere is based on the dangers to mankind presented by the proliferation of nuclear weapons, by its harmful consequences for the health of present and future generations of mankind, and by the contamination of man's environment by radioactive substances. Moreover, the consequence of the intrusion is to interfere with the power of the New Zealand Government both to control exposure to radiation from artificial sources and to ensure that any increased radiation level is justified in terms of benefits that would not otherwise be received.

The second part of the question asks whether we consider that harm or the potentiality of harm is a *sine qua non* for establishing the breach of an international obligation in such cases. While, as noted in the preceding paragraph, harm or the potentiality of harm is relevant to the condemnation by the international community of nuclear testing in the atmosphere, we do not consider that harm or the potentiality of harm is an element that the law requires to be proved in order to establish the breach of an international obligation under this head. We would note however that we do, under another head, plead that harm does result from this activity.

The second question concerns the fifth of the categories of rights which New Zealand claims is violated, that is to say, the right to

> freedom of the high seas, including freedom of navigation and overflight and the freedom to explore and exploit the resources of the sea and the seabed, without interference or detriment resulting from nuclear testing.

We are asked whether we draw any line between lawful and unlawful interferences with the freedom of the seas for military purposes in time of peace, and, if so, what line. Do we, for example, draw a legal distinction between the declaration of a temporary submarine exercise area or temporary missile testing area and a declaration of a temporary nuclear testing zone? If so, what are the elements considered to make an interference with the freedom of the seas of such a temporary kind unlawful?

There is no doubt that States may lawfully use the high seas for certain traditional military purposes of the kind referred to in the question—submarine exercises, missile testing, gunnery practice and so on. This is, however, an activity that confers on States no special rights in relation to other users of the high seas, but imposes a duty on them to see that those other users are not hurt. This duty should not be confused with a right to exclude the ships and aircraft of other States. The New Zealand position is that there is no such right; that the law does not recognise the subordination of freedom of navigation and overflight and fishing to military uses of the high seas.

If, however, there are circumstances in which international law recognises

a right, vested in a State wishing to conduct military activities on the high seas, to exclude other shipping and aircraft from the area, then those circumstances must be defined according to the principle of reasonable user. That principle of customary international law is enshrined in Article 2 of the 1958 Geneva Convention on the High Seas which, after setting out a non-exhaustive list of high seas freedoms, states:

> These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

There are, in New Zealand's submission, compelling reasons for concluding that the closure of areas of the high seas to shipping and aircraft in order to allow atmospheric nuclear tests to be undertaken fails to meet this test. There is a sharp distinction between the use of the high seas for atmospheric testing and for submarine exercises, missile testing and other traditional military uses. There are differences between the two cases of both degree and kind as to the nature of the interference with the freedom of other States. First, the area of the high seas in which the freedoms of other States are affected by a State conducting atmospheric nuclear tests is normally substantially larger than the areas covered by zones declared for traditional military uses. As noted in the New Zealand Application of 9 May 1973 instituting these proceedings (paragraph 20[1]), the Dangerous Zones for aircraft around Mururoa have on occasions encompassed an area of well over a million square nautical miles. Secondly, the duration of the interference with the exercise of high seas freedoms or other States is substantially longer; in each year since 1966 that it has conducted atmospheric tests at Mururoa France has appropriated a portion of the South Pacific to its own use for a period of from one to several months. Thirdly, atmospheric nuclear tests may leave a permanent mark on the marine environment and marine resources which all may exploit; this is not true of submarine exercises, missile tests, gunnery practice or any of the other traditional military uses of the high seas.

The distinctions made in the last paragraph proceed on the assumption that international law recognizes a strictly limited right to restrict shipping and aircraft from an area used for military activities. It is to be noted, however, that France claims a much larger right. The decrees of 4 July 1973 (set out in Annex XII of the Memorial[2]) speak explicitly of suspending maritime navigation and they purport to confer authority to enforce that suspension. Acting under those decrees, France has in effect treated areas of the high seas as if they were subject to its sovereignty, in particular by the exercise of police powers over foreign ships and persons in the area. International law gives no vestige of authority for such a claim.

Finally, there is another and absolute sense in which the use of the high seas for the purposes of nuclear testing must be distinguished from its use for military traditional purposes. The use of the high seas for a purpose which is condemned by the international community can never be a reasonable or a legitimate use. The extension of this activity from the territory of France to territory which is the common property of all nations simply adds a further dimension to the wrongfulness of French action.

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[1] See p. 6, *supra*.
[2] See p. 244, *supra* and I, pp. 363-364.

186. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

17 juillet 1974.

Me référant à ma lettre du 12 juillet 1974 à laquelle j'avais joint le compte rendu de l'audience publique tenue par la Cour le 11 juillet dans l'affaire des *Essais nucléaires (Nouvelle-Zélande c. France)*, j'ai l'honneur d'adresser à Votre Excellence copie de la réponse écrite faite le 15 juillet par l'agent du Gouvernement néo-zélandais à la question posée par sir Humphrey Waldock à l'audience dont il s'agit (p. 291 ci-dessus). Une traduction en français vous en sera envoyée, à toutes fins utiles, dès que faire se pourra.

187. THE REGISTRAR TO THE AGENT OF AUSTRALIA

26 July 1974.

In response to your recent enquiry, I have the honour to confirm what has already been conveyed by telephone to the Australian Embassy, namely, that I am instructed to inform you that the Court has no objection to the Australian Government tabling its Memorial on jurisdiction and admissibility in the *Nuclear Tests* case (*Australia* v. *France*) in the Australian Parliament.

188. THE REGISTRAR TO THE AGENT OF AUSTRALIA [1]

29 July 1974.

I have the honour, with reference to the proceedings on jurisdiction and admissibility in the *Nuclear Tests* case (*Australia* v. *France*), to communicate to you herewith a copy of a letter dated 12 July 1974 which I have received from the French Government.

189. THE CO-AGENT OF AUSTRALIA TO THE REGISTRAR

29 August 1974.

I have the honour to refer to the indication of provisional measures of protection by the Court on 22 June 1973 in the *Nuclear Tests Case* (*Australia* v. *France*) and to the letter dated 19 September 1973 from the Co-Agent for the Government of Australia informing the Court of the conduct by the French Government of a series of atmospheric nuclear tests above Mururoa Atoll in July and August 1973, causing identifiable fall-out in Australian territory in breach of the Order of 22 June.

I have been instructed to ask you to bring the following information formally to the notice of the Court.

[1] A communication in the same terms was sent to the Agent of New Zealand.

The Government of Australia has reason to believe that on 17 June and 8 July 1974 respectively (Australian time), the French Government conducted two further tests above Mururoa Atoll. The Court was informed of these tests during the recent oral proceedings from 4 to 11 July 1974 relating to the questions of the jurisdiction of the Court and of admissibility. The 15 August edition of *Le Monde* has quoted "a good source" in Paris as indicating that the test of 17 June had a yield of five kiloton and that the test of 8 July had a yield of 150 kiloton.

The Government of Australia has reason to believe that four further nuclear devices were exploded by the French Government at its Pacific Tests Centre on 18 and 26 July and on 15 and 25 August 1974 respectively (Australian time). The prohibited and dangerous zones proclaimed for the purpose of conducting this year's series of tests are still in force, and therefore further explosions this year may be undertaken.

Detection devices on the territory of Australia began to register fresh fall-out throughout Australia on 21 July 1974. Analysis of the short-lived radioactive products detected by the Australian Government monitoring programme has positively identified the fall-out with this year's French explosions in Polynesia. Those explosions are estimated to have committed the Australian population to date to additional radiation doses, due to fresh fission products, which are about five times greater than the doses incurred by the Australian population from the whole of the 1973 French tests.

It is clear therefore that, as a result of this year's explosions, the French Government has caused further deposit of radioactive fall-out on Australian territory. In the opinion of the Government of Australia, the conduct of the French Government constitutes a further clear and deliberate breach of the Order of 22 June 1973.

It is proposed to bring the information in this letter to the attention of the Secretary-General of the United Nations.

190. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

30 août 1974.

J'ai l'honneur de transmettre ci-joint à Votre Excellence une photocopie de la lettre que le coagent du Gouvernement australien dans l'affaire des *Essais nucléaires (Australie c. France)* m'a adressée le 29 août 1974. Elle est accompagnée, à toutes fins utiles, d'une traduction en français.

191. THE AGENT OF FIJI TO THE REGISTRAR

Swanbourne, 10 September 1974.

I have the honour to refer to my letters of 16 and 18 May 1973 respectively submitting Applications on behalf of the Government of Fiji for permission to intervene under the terms of Article 62 of the Statute in the cases concerning *Nuclear Tests* (*Australia* v. *France*) and (*New Zealand* v. *France*).

I have the further honour to request, in accordance with Article 48 (2) of the Rules of Court, that the Government of Fiji should have made available to

it the pleadings and annexed documents relating to those cases, particularly those relating to jurisdiction and admissibility.

192. L'AMBASSADEUR DU PÉROU AUX PAYS-BAS AU PRÉSIDENT

16 septembre 1974.

Tengo a honra dirigirme a Vuestra Excelencia para solicitarle a nombre del Gobierno de mi país, que de acuerdo al paragrafo segundo del artículo 48 del Reglamento de la Corte Internacional de Justicia, adoptado el 6 de mayo de 1946 y modificado el 10 de mayo de 1972, tenga a bien acordar que el Relator de esa Ilustrada Corte ponga a disposición del Gobierno del Perú las piezas del procedimiento del Caso sobre *Ensayos Nucleares* que siguen Australia y Nueva Zelandia contra Francia.

(Signé) Juan DE LA PIEDRA V.

193. THE AGENT OF AUSTRALIA TO THE REGISTRAR

Canberra, 27 September 1974.

I refer to my letter to you dated 31 May 1973 forwarding the written answers of the Government of Australia to two questions put by Judge Gros in the *Nuclear Tests* case (*Australia* v. *France*). The second question asked to what States Australia regarded itself as bound by the General Act for the Pacific Settlement of International Disputes, 1928.

The Australian Government has recently been informed by the United Nations Secretariat of a "Notification of Succession by Pakistan" in relation to the 1928 General Act. I would be grateful if you would ascertain from the Members of the Court whether there would be any objection if the Australian Government, in taking action with regard to this notification, were to make a reference to the relevant part of my reply dated 31 May 1973. That part of the reply reads as follows:

> "The second question asked by Judge Gros, which was forwarded with your letter dated 29 May 1973, reads as follows:
>
> 'Vis-à-vis de quels Etats, en dehors de la France, le Gouvernement de l'Australie estime-t-il être lié par l'Acte général pour le règlement pacifique des différends internationaux de 1928, pour l'ensemble de l'Acte ou pour partie?'
>
> The Government of Australia considers itself to be bound by the 1928 General Act towards those States which have acceded thereto. A list of those States as at 10 July 1974 is set forth in the League of Nations twenty-first list of *Signatures, Ratifications and Accessions in Respect of Agreements and Conventions Concluded Under the Auspices of the League of Nations.* No States have acceded to or denounced the General Act since that date.
>
> The present answer is, of course, given without prejudice to the position in relation to any accession the continuing validity of which may be affected

by special circumstances not relevant to the present case. Also, the Government of Australia does not consider itself bound by the General Act towards any other State by reason of State succession."

194. THE REGISTRAR TO THE PERMANENT REPRESENTATIVE OF FIJI TO THE UNITED NATIONS [1]

11 October 1974.

I have the honour to refer to a letter addressed to me on 10 September 1974 by Mr. D. McLoughlin, the Agent appointed by the Government of Fiji in respect of its Application to intervene in the *Nuclear Tests* cases (*Australia* v. *France*; *New Zealand* v. *France*). By that letter the Government of Fiji requests that, in accordance with Article 48, paragraph 2, of the Rules of Court, the pleadings and annexed documents in these cases, particularly those relating to jurisdiction and admissibility, may be made available to it.

I have the honour to inform Your Excellency that the Court, having consulted the Parties to the cases, has decided that the request made by Fiji as a Member of the United Nations should be acceded to. Copies of the pleadings so far filed will therefore be sent to your Government.

195. THE REGISTRAR TO THE AGENT OF AUSTRALIA

16 October 1974.

I have the honour to refer to your letter of 27 September 1974, by which you enquire whether the Court would have any objection to the Australian Government making a reference, in another context, to part of a written reply given by the Australian Government to a written question put by a Member of the Court during the oral proceedings on the questions of jurisdiction and admissibility in the *Nuclear Tests* case (*Australia* v. *France*).

Having laid the matter before the Court, I now have the honour to inform you that the Court considers that questions put during the oral proceedings, and the replies thereto, are in principle in the public domain, pursuant to Article 46 of the Statute of the Court, which provides that "The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted". The fact that the written form may have been adopted for convenience does not affect the fact that such questions and replies form part of the oral proceedings, so that the principle of Article 46 of the Statute applies equally to written questions and replies.

Accordingly, the Court can have no objection to the Australian Government referring to or quoting the replies given by it to questions put by Members of the Court during the recent oral proceedings.

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[1] This communication followed an exchange of correspondence similar to that concerning a request to the same effect by Argentina (see Nos. 138, 139, 141, *supra*).

196. THE CHARGE D'AFFAIRES A.I. OF INDIA IN THE NETHERLANDS TO THE REGISTRAR

23 October 1974.

From a perusal of the *Yearbook* of the International Court of Justice for 1972-73, it has come to the notice of the Government of India that pursuant to Article 63, paragraph 1, of the Statute, the International Court of Justice notified the parties to the General Act for the Pacific settlement of international disputes of 1928, concerning the filing by Australia and New Zealand, respectively, of two applications in their cases *(Nuclear Tests)* against France. Both the applicants sought to found the jurisdiction of the Court upon Article 17 of the General Act of 1928. The Government of India do not appear to have received any such notification under Article 63 (1) of the Statute nor indeed they should have received one. To make our position clear beyond any doubt, I have been directed by the Government of India to inform the Court that in so far as the 1928 General Act is concerned, the Government of India have never regarded themselves bound by this Act since India's independence in 1947, whether by succession or otherwise. Accordingly, India has never been and is not a party to the 1928 General Act ever since her independence.

197. THE REGISTRAR TO THE CHARGE D'AFFAIRES A.I. OF INDIA IN THE NETHERLANDS

29 October 1974.

I have the honour to acknowledge receipt of your letter of 23 October, concerning the notification issued in the *Nuclear Tests* cases (*Australia* v. *France*; *New Zealand* v. *France*) under Article 63 of the Statute in respect of the General Act for the Pacific Settlement of International Disputes, done at Geneva on 26 September 1928. As explained in the Court's *Yearbook* (1972/1973, p. 140) the States to which this notification was addressed were those States, other than the Parties to the proceedings, listed in the relevant documents of the League of Nations as being parties to the General Act, and which were still in existence.

A notification was thus addressed to the Government of India, which is included in the League of Nations list (*Official Journal, Special Supplement No. 193*, Geneva 1944, p. 47) as having acceded to the General Act on 21 May 1931. It is noted from your letter that the Government of India have never regarded themselves as bound by the General Act since India's independence in 1947, whether by succession or otherwise; this information has been laid before the Members of the Court.

I am concerned that the notification under Article 63 does not appear to have reached the Government of India. According to my records, it was transmitted to the Minister of External Affairs of India, New Delhi (the channel of communication indicated by the Government of India for communications made under the Statute of the Court) by letter dated 24 July 1973. I enclose a copy of the communication for the information of your Government, and would be glad to know whether you would wish me to institute an enquiry through the Netherlands postal authorities into the fate of the original communication.

198. THE REGISTRAR TO THE AMBASSADOR OF PERU TO THE NETHERLANDS [1]

31 October 1974.

Further to my letter of 4 October concerning the request made by Your Excellency's Government under Article 48, paragraph 2, of the Rules of Court, for the pleadings and annexed documents in the *Nuclear Tests* cases (*Australia* v. *France*; *New Zealand* v. *France*) to be made available to it, I have the honour to inform you that the President of the Court, after consulting the Parties, has decided that this request should be acceded to. Copies of the pleadings so far filed are therefore being sent to Your Excellency under separate cover.

199. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

1 November 1974.

I have the honour to refer to my letter of 21 September 1973 in which I informed the Court of the conduct by France of a series of nuclear tests in the atmosphere above Mururoa between 22 July and 29 August 1973. My letter drew attention to the fact that these tests resulted in the deposit of radioactive fallout on New Zealand territory and, in the view of the New Zealand Government, constituted a clear breach of the Court's Order of 22 June 1973 in the *Nuclear Tests* case (*New Zealand* v. *France*).

I have now been instructed by my Government to bring to the notice of the Court the following further information relevant to the question of the observance of the Court's Order of 22 June 1973.

The New Zealand Government has reason to believe that between 16 June and 14 September 1974 (GMT) the French Government exploded seven nuclear devices in the atmosphere above Mururoa. Analysis undertaken in New Zealand of levels of radioactivity has established conclusively that the nuclear devices exploded above Mururoa resulted in the deposit of radioactive fallout in New Zealand, the Cook Islands and Niue. Fallout levels recorded for the 1974 test series have been significantly higher than those measured in 1972 and 1973.

In the opinion of the New Zealand Government this conduct by the French Government constitutes a further clear breach of the Court's Order of 22 June 1973. Moreover, no public statement by any representative of the French Government and no communication by the French authorities to the New Zealand authorities has provided any assurance that further such breaches of the Court's Order will not occur in the future.

My Government intends to bring the information in this letter to the attention of the Secretary-General of the United Nations.

200. LE GREFFIER À L'AMBASSADEUR DE FRANCE AUX PAYS-BAS

1er novembre 1974.

J'ai l'honneur d'adresser ci-joint à Votre Excellence une lettre que le coagent du Gouvernement néo-zélandais en l'affaire des *Essais nucléaires (Nouvelle-*

[1] This communication followed an exchange of correspondence similar to that concerning a request to the same effect by Argentina (see Nos. 138, 139, 141, *supra*).

Zélande c. France) vient de me remettre aujourd'hui. Il m'a également remis un communiqué de presse dont Votre Excellence voudra bien trouver le texte ci-joint.

Je me permets de faire appel à l'entremise de Votre Excellence pour la transmission du présent pli à Monsieur le ministre des affaires étrangères car je crains que, dans cette période de perturbations postales, une lettre envoyée par la voie normale ne parvienne pas à destination en temps voulu.

Press Statement of 1 November 1974 by the Rt. Hon. W. E. Rowling, Prime Minister of New Zealand

Commenting today on recent public statements by the French Ministers of Foreign Affairs and Defence on the future of the French programme of nuclear testing, the Prime Minister, the Rt. Hon. W. E. Rowling, said that it had been known for some time that France was planning to move its nuclear tests underground.

> "The recent statements have confirmed that. The most recent of all—by the French Minister of Defence in the middle of last month—indicates that the French Government appears to have abandoned any intention of conducting atmospheric tests in 1975. The New Zealand Government will, of course, continue to seek an end to the testing of nuclear weapons by any country in any environment. The curtailment of atmospheric testing represents some advance towards our goal and we have noted with satisfaction the French plans to move their tests underground. New Zealanders and the peoples of neighbouring countries will all be glad to learn that in 1975 the South Pacific will be spared this form of pollution. It should, however, be clearly understood that nothing said by the French Government, whether to New Zealand or to the international community at large, has amounted to an assurance that there will be no further atmospheric nuclear tests in the South Pacific. The option of further atmospheric tests has been left open. Until we have an assurance that nuclear testing of this kind is finished for good, the dispute between New Zealand and France persists and the proceedings before the International Court of Justice, which constitute an attempt to resolve that dispute by legal means, remain as important as ever."

Mr. Rowling added that while governmental comment had to be somewhat restricted while the case was before the International Court he hoped that the Court's judgment on the questions of jurisdiction and admissibility which it was now considering might be available reasonably soon.

201. THE REGISTRAR TO THE CO-AGENT OF NEW ZEALAND

4 November 1974.

I have the honour to refer to the enquiry made by Your Excellency as to whether the Court would have any objection to the Government of New Zealand making public its Memorial on jurisdiction and admissibility in the *Nuclear Tests* case (*New Zealand* v. *France*). I have the honour to inform Your Excellency that, in the circumstances of this case, the Court will have no objection.

202. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE [1]

4 novembre 1974.

Me référant à ma lettre du 25 juin 1974 relative à la mise à la disposition du public des mémoires sur la compétence et la recevabilité dans les affaires des *Essais nucléaires*, me référant en outre à ma lettre du 3 juillet 1974 et à la communication du Directeur des affaires juridiques en date du 12 juillet 1974, j'ai l'honneur de faire savoir à Votre Excellence que, le Gouvernement australien ayant demandé à ce que son mémoire soit rendu accessible au Parlement australien, la Cour n'a pas vu d'objection à faire droit à cette demande.

203. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

4 novembre 1974.

J'ai l'honneur de porter à la connaissance de Votre Excellence à toutes fins utiles que l'agent de l'Australie dans l'affaire des *Essais nucléaires (Australie c. France)* a prié la Cour de dire si elle verrait des inconvénients à ce que le Gouvernement australien utilise, pour répondre à une demande de renseignement du Secrétariat de l'Organisation des Nations Unies, un passage de la réponse écrite qu'il a faite le 31 mai 1973 à une question écrite d'un membre de la Cour, réponse dont le texte a été transmis à Votre Excellence le 1er juin 1973.

La Cour a estimé que, si la question et la réponse avaient été formulées oralement, elles auraient incontestablement fait partie des plaidoiries auxquelles l'article 46 du Statut confère un caractère public et que la forme écrite qui a été employée pour des raisons de commodité ne leur enlevait pas ce caractère. La Cour n'a donc pas vu d'objection à ce que le Gouvernement australien cite un passage de la réponse écrite dont il s'agit.

204. THE CO-AGENT OF AUSTRALIA TO THE REGISTRAR

11 November 1974.

I have the honour to refer to my letter of 29 August 1974 in which I informed the Court of the commencement by the French Government of a series of atmospheric nuclear tests above Mururoa Atoll in 1974 causing identifiable fall-out in Australian territory in breach of the Order of the Court of 22 June 1973. The letter of 29 August referred to the explosion by the French Government of six nuclear devices in the period of June to August 1974.

I have been instructed by the Australian Government to bring the following further relevant information to the notice of the Court.

The Australian Government has reason to believe that a seventh nuclear device was exploded by the French Government above Mururoa on 15 Sep-

[1] Une communication analogue a été adressée au ministre des affaires étrangères de France au sujet de l'affaire *Nouvelle Zélande c. France*.

tember 1974 (Australian time). It appears that this explosion was the last explosion to be conducted by the French Government in its 1974 series.

Monitoring of fresh fission product fall-out over Australia as a result of the 1974 tests in the South Pacific Ocean is still in progress. I am instructed to point out that the explosions are estimated to have committed the Australian population to date to additional radiation doses, due to fresh fission products, which are more than ten times greater than the doses incurred by the Australian population from the whole of the 1973 French tests.

In the opinion of the Government of Australia, the explosion of 15 September by the French Government constitutes yet another clear and deliberate breach of the Order of 22 June 1973. In addition, the Australian Government has not received from the French Government, either by way of public statements from the French authorities or in the form of communications by the French authorities to the Australian authorities, any assurance that further such tests will not be conducted in the future. Australia's position in this regard therefore remains that indicated to the Court by the Attorney-General on 4 July last (*I*, pp. 389-390).

My Government intends to bring the information contained in this letter to the attention of the Secretary-General of the United Nations.

205. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

13 novembre 1974.

J'ai l'honneur d'adresser ci-joint à Votre Excellence une lettre que m'a remise le coagent du Gouvernement australien en l'affaire des *Essais nucléaires (Australie c. France)*. Il m'a également remis le texte d'une question posée au Sénat d'Australie et de la réponse que l'*Attorney-General*, M. Murphy, y a donnée. Votre Excellence voudra bien trouver ce texte ci-joint.

Nuclear Tests Case: Senate Question and Answer
26 September 1974

The following question was addressed to the Attorney-General, Senator the Hon. Lionel Murphy, QC, in the Senate on 26 September 1974:

> "I ask the Leader of the Government in the Senate whether he has seen newsagency reports that the French Foreign Minister announced in the UN General Assembly on 23 September last that France has finished atmospheric nuclear testing and would conduct further experiments underground. Is this true? Also, is Australia still pursuing its proceedings in the International Court of Justice concerning atmospheric nuclear tests by France?"

The Attorney-General answered as follows:

> "From the reports I have received it appears that what the French Foreign Minister actually said was 'We have now reached a stage in our nuclear technology that makes it possible for us to continue our program by underground testing, and we have taken steps to do so as early as next year'. Honourable Senators will note that this statement falls far short of a

commitment or undertaking that there will be no more atmospheric tests conducted by the French Government at its Pacific Tests Centre. Radioactive fall-out has now been positively identified as resulting from the latest series of French tests. The Government has protested against this action by the French Government which is in breach of the Order of the International Court of Justice on 22 June 1973.

There is a basic distinction between an assertion that steps are being taken to continue the testing program by underground testing as early as next year and an assurance that no further atmospheric tests will take place. It seems that the Government of France, while apparently taking a step in the right direction, is still reserving to itself the right to carry out atmospheric nuclear tests. In legal terms, Australia has nothing from the French Government which protects it against any further atmospheric tests should the French Government subsequently decide to hold them. The judicial proceedings are therefore as relevant and as important as when the Australian Application was filed in May 1973. The stage reached in those proceedings is that, after the presentation of major argument on behalf of the Australian Government on the questions of jurisdiction and admissibility, the Court is considering its judgment on these questions.

I specially want to assure Honourable Senators that, so far as the Australian Government is concerned, there is no basis for a report which I understand is being carried by some of the news agencies and which quotes 'normally well-informed sources' as saying that Australia and New Zealand may ask the International Court to strike the case off its roll in the light of the French Foreign Minister's statement. The New Zealand Government no doubt can speak for itself on the matter."

206. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

(télégramme)

16 décembre 1974.

Ai honneur faire connaître à Votre Excellence que les arrêts de la Cour dans affaires des *Essais nucléaires (Australie c. France* et *Nouvelle-Zélande c. France)* seront lus en séance publique le vendredi 20 décembre à 15 heures.

207. THE REGISTRAR TO THE CO-AGENT OF AUSTRALIA [1]

17 December 1974.

I have the honour to confirm the information communicated to Your Excellency orally yesterday, that the Court will hold a public sitting at three o'clock in the afternoon of Friday, 20 December 1974, for the reading of two Judgments in the *Nuclear Tests* cases, the first of these Judgments being that relating to the proceedings instituted by Australia against France.

[1] A similar communication was sent to the Co-Agent of New Zealand.

208. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE [1]

(télégramme)

20 décembre 1974.

Ai honneur faire connaître à Votre Excellence que la Cour a rendu aujourd'hui arrêt dans affaire *Essais nucléaires* introduite par Australie. Suit citation dispositif.

[Voir *C.I.J. Recueil 1974*, p. 272.]

La Cour a pris en outre une ordonnance concernant requête Fidji à fin d'intervention. Citation dispositif.

[Voir *C.I.J. Recueil 1974*, p. 531.]

Exemplaires officiels arrêt et ordonnance remis ce jour ambassade de France à La Haye.

209. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE [2]

20 décembre 1974.

Me référant à mon télégramme de ce jour, portant à la connaissance de Votre Excellence le texte du dispositif de l'arrêt rendu par la Cour en l'affaire des *Essais nucléaires (Australie c. France)*, j'ai l'honneur de transmettre ci-joint à Votre Excellence un exemplaire officiel [3] de cet arrêt.

210. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE [2]

20 décembre 1974.

Me référant à mon télégramme de ce jour, portant à la connaissance de Votre Excellence le texte du dispositif de l'ordonnance prise par la Cour au sujet de la requête par laquelle le Gouvernement fidjien avait demandé à intervenir dans l'affaire des *Essais nucléaires (Australie c. France)*, j'ai l'honneur de transmettre ci-joint à Votre Excellence un exemplaire officiel [4] de cette ordonnance.

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[1] Une communication analogue a été adressée au ministre des affaires étrangères de France au sujet de l'affaire *Nouvelle-Zélande c. France* (voir *C.I.J. Recueil 1974*, p. 478 et 536).

[2] La même communication a été adressée au ministre des affaires étrangères de France au sujet de l'affaire *Nouvelle-Zélande c. France*.

[3] Les autres exemplaires officiels des deux arrêts ont été remis aux agents de l'Australie et de la Nouvelle-Zélande à l'occasion de l'audience publique du même jour.

[4] Les autres exemplaires officiels des deux ordonnances ont été remis aux agents de Fidji, de l'Australie et de la Nouvelle-Zélande à l'occasion de l'audience publique du même jour.

211. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

(telegram)

20 December 1974.

Court today gave two Judgments in *Nuclear Tests* cases (*Australia* v. *France* and *New Zealand* v. *France*). Operative clause which is identical in two cases save for name of applicant State reads:

[see *I.C.J. Reports 1974*, pp. 272 and 478].

In each Judgment Court refers to its Order of 22 June 1973 in the case, indicating provisional measures pending its final decision in the proceedings and states: "It follows that such Order ceases to be operative upon the delivery of the present Judgment, and that the provisional measures lapse at the same time". Court today also made two Orders in same cases on Applications by Fiji for permission to intervene finding that Applications lapsed and that no further action thereon was called for on part of the Court.

212. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE [1]

22 janvier 1975.

Le Greffier de la Cour internationale de Justice a l'honneur de transmettre, sous ce pli, un exemplaire de chacun des deux arrêts rendus par la Cour le 20 décembre 1974 dans les affaires relatives aux *Essais nucléaires (Australie c. France; Nouvelle-Zélande c. France)* ainsi qu'un exemplaire de chacune des deux ordonnances rendues par la Cour le même jour au sujet de la requête à fin d'intervention déposée par le Gouvernement de Fidji dans ces affaires.

D'autres exemplaires seront expédiés ultérieurement par la voie ordinaire.

213. THE REGISTRAR TO THE AMBASSADOR OF AUSTRALIA TO THE NETHERLANDS

8 September 1977.

I have the honour to refer to the letter which Mr. P. Brazil, then Agent of the Government of Australia in the case concerning *Nuclear Tests* (*Australia* v. *France*), addressed to me on 28 February 1974 (a copy of which is appended hereto for your convenience) and, on the Court's instructions, to inform Your Excellency that the Court has decided to publish the text of that letter in the "Correspondence" section of the volumes of *Pleadings, Oral Arguments, Documents* devoted to the case, printing of which is at present in hand.

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[1] Une communication analogue a été adressé aux autres Etats Membres des Nations Unies et aux Etats non membres des Nations Unies admis à ester devant la Cour.

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