

IN THE INTERNATIONAL COURT OF JUSTICE

NEW ZEALAND,

APPLICANT

V.

FRANCE,

RESPONDENT

MEMORIAL OF THE REPUBLIC OF FRANCE

COMES NOW the Republic of France and for their Memorial to the Court states the following:

STATEMENT OF LAW

1. The Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Underwater (known as the Partial Test Ban Treaty) entered into force 10 October 1963. However, France is not a party to that treaty.

2. International law is based on the principle of state sovereignty, which principle is reinforced in Article 2 (7) of the United Nations Charter affirming non-interference in matters which are essentially within the domestic jurisdiction of any state. French atmospheric testing is taking place on French soil, therefore France is justly exercising its sovereignty and the matter falls within the domestic jurisdiction of the French state.

3. The United Nations Charter (Article 51) recognizes the right of self-defense to be a cardinal attribute of sovereignty. France has a right and a responsibility to develop a nuclear deterrent force in the name of self-defense.

4. The Court is called upon to resolve existing disputes between states. France has terminated its atmospheric testing in the South Pacific region, hence no ground of dispute remains.

5. Even, if, as New Zealand has argued, Article 17 of The General Act of Arbitration for the Pacific Settlement of International Disputes (1928) is held to give the International Court of Justice jurisdiction in this case as successor to the Permanent Court of International Justice, it is nevertheless the case that Article 39 of the General

Act specifically permits reservations excluding disputes concerning questions which by international law are solely within the domestic jurisdiction of states. Both France and New Zealand's instruments of accession to the General Act included such a specific reservation.

STATEMENT OF FACT

In 1843, France established its protectorate over Tahiti and the neighboring island of Moorea. Its rule was extended in 1880 over the remaining groups of islands in the area under the name Comptoirs Français de l'Océanie. In 1957, the group of islands became the overseas territory of French Polynesia. France was not a member of the wartime U.S.-led Manhattan Project which developed the world's first nuclear explosive device. It wasn't until December 26, 1954 that the French government decided to embark on a nuclear program. The first French nuclear test was conducted then on February 13, 1960 in Algeria. France conducted 17 nuclear tests in the Sahara before moving their nuclear test program to the South Pacific, where it conducted its first nuclear test in July 1966. In 1973 France proposed some atomic tests at the Mururoa and Fangataufa Atolls, 600 miles from Tahiti and 2,500 miles from New Zealand. The tests were to be carried out in complete security. There are reports of various scientific bodies, including those of the Australian National Radiation Advisory Committee in 1967, 1969, 1971 and 1972 and of the New Zealand National Radiation Laboratory in 1972, which all concluded that the radio-active fall-out from French tests was below the damage level for public health purposes. France is not a party to any treaty or obligation that prevents them from conducting nuclear testing. France did not sign the 1963 Partial Test Ban Treaty and is not in violation of international law by conducting nuclear tests on its own territory. Furthermore, by a May 16, 1973 letter from the French Ambassador to the Netherlands to the United Nations Secretary-General, France stated that the Court was manifestly not competent in the case and that France could not therefore accept the Court's jurisdiction. Then in a January 10, 1974 letter to the Secretary-General of the United Nations from the Minister of Foreign Affairs of France, the French Government renounced the General Act of Geneva for the Pacific Settlement of International Disputes of 1928 under Article 45 of that act and withdrew France's acceptance of the compulsory jurisdiction of the Court under Article 36 (2) of the Statute of the International Court of Justice.

STATEMENT OF JURISDICTION

The Court does not have jurisdiction in this case because France does not accept the Court as competent and chooses not to participate in the case being brought. There is no basis for France to have to accept the Court as competent to decide the matter. This lack of jurisdiction is founded on three ideas.

1. This is not a matter of international law but one of national sovereignty. France asserts that the dispute is not fundamentally of a legal character but rather a purely political and military question. France's nuclear tests do not violate any existing rule of international treaty law and therefore the Court has no jurisdiction to impose a judgment.

2. The basis for jurisdiction presented by New Zealand is not valid. New Zealand sought to find the jurisdiction of the Court based on Article 17 of the General Act of Geneva for the Pacific Settlement of International Disputes of 1928 and on the declarations of New Zealand and France under Article 36 (2), the compulsory jurisdiction clause, of the International Court of Justice. France, however, has renounced (January 10, 1974) the acceptance of the compulsory jurisdiction of the Court under Article 36(2) of the Statutes of the International Court of Justice. New Zealand has, therefore, no standing to make unilateral application to the Court for relief. Moreover, even if jurisdiction under the General Act of 1928 were to be acknowledged, both New Zealand and France acceded to that treaty with expressed reservations excluding disputes concerning matters of domestic jurisdiction.

3. The Applicant's original objective of the termination of French atmospheric nuclear tests in the South Pacific has been achieved. In a communiqué which was issued by the Office of the President of the French Republic on June 8, 1974, it was announced that France was ready to move to a stage of testing where the explosions would be underground as soon as the tests planned for the summer were completed. Further statements from the French government confirmed this. Since the objective of New Zealand has been attained, there is no longer a dispute and the case no longer has merit. The Court is called upon to resolve existing disputes between states and these disputes must exist at the time the Court makes its decision. In this case, no dispute exists so the Court cannot have jurisdiction to rule on it. Under existing international law, there is no basis for Court jurisdiction, because there is no longer a dispute to be resolved. The Court does not have jurisdiction in this matter.

ARGUMENTS

I. France is not subject to the existing treaty banning atmospheric nuclear testing.

France is not a signatory to the 1963 Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Underwater. Though that treaty may have universal aspirations it does not have universal application. Under the principle of *pacta sunt servanda*, subsequently formalized in the Vienna Convention on the Law of Treaties (concluded 23 May 1969) Article 26, Every treaty in force is binding upon the parties to it and must be performed by them in good faith. Since France is not signatory to the Partial Test Ban Treaty, its actions cannot be bound by that treaty.

II. Decisions with regard to nuclear testing are matters of domestic jurisdiction.

France is exercising its sovereign rights by testing nuclear weapons in territories over which it exercises sovereign authority. The decision of whether and where to conduct French nuclear tests is a matter of domestic jurisdiction for the French government, not a matter susceptible to international regulation unless and until France accedes to the Partial Test Ban Treaty.

III. The Republic of France has both a right and a need to test nuclear weapons for self-defense.

Under Article 51 of the United Nations Charter nothing shall impair the inherent right of individual or collective self-defense. Given the nuclear capabilities of the United States, the Union of Soviet Socialist Republics, and the United Kingdom and given the history of warfare in this century, France believes it must have an independent nuclear deterrent force. While the strategic deterrence doctrine blurs the line between aggressive and defensive war, it is nevertheless the case that the development and deployment of nuclear weapons is intended to deter attack, a manifestly defensive purpose. France is testing nuclear weapons for the purpose of deterrence, a measure of self-defense, and is carrying out those tests on sovereign French territory.

IV. France does not consider the Court as competent in this case and does not accept the jurisdiction of the Court in the matter before it.

France has not violated any international law by conducting nuclear tests on territory over which it exercises sovereignty. The tests are carried out as a matter of defense preparedness and well within the definition of a sovereign state's right to self-defense. There is no violation of any international law or treaty to which France is a party. In addition, France has denounced its accession to the General Act of Geneva for the Pacific Settlement of International Disputes of 1928, and, by withdrawing its declaration under Article 36 (2) of the Statute of the International Court of Justice, no longer submits itself to the compulsory jurisdiction of the Court. As a consequence there is no basis for the Court's jurisdiction in this matter. The dispute is of a purely political and military nature - a matter of high policy and not a question of international law. France finds that the Court lacks jurisdiction in this case on multiple grounds and therefore can neither hear the case on its merits, nor accept the case on unilateral application of the Government of New Zealand, nor grant the relief requested by that Government.

V. The Treaty for the Prohibition of Nuclear Weapons in Latin America (1967) and the Treaty on the Non-Proliferation of Nuclear Weapons (1968) have no bearing on this case.

Though New Zealand seeks to invoke the Treaty of Tlatelolco, creating a nuclear weapons free zone (NWFZ) in Latin America and prohibiting the testing, use, manufacture, production, or acquisition of nuclear weapons by the Parties in the treaty zone, as a precedent in this case, such precedent is inapplicable to the present case. France has signed Additional Protocol II to the treaty, which obliges Nuclear Weapons States (NWS) to respect the denuclearization of the geographic zone and commits the NWS not to threaten or use nuclear weapons against Parties to the treaties. Accession to Protocol II, however, in no way binds France to the treaty proper or its prohibitions against nuclear testing.

In like manner, France is not a signatory to the Non-Proliferation Treaty (NPT) and is therefore not bound by that treaty's provisions, which in any case only bind nuclear weapons states not to transfer nuclear weapons to or encourage nuclear weapons development by non-nuclear-weapons states and is silent on the matter of nuclear weapons testing by nuclear weapons states.

VI. France has been scrupulous in announcing its nuclear weapons tests and in creating and policing a large zone of exclusion around the test area in order to ensure that no human beings should be in the area of high

radioactivity and dangerous nuclear fallout from the explosions. Moreover, the trace amounts of fallout reaching nearby states have not been shown to be harmful to public health.

France has scrupulously exercised due diligence in protecting human life from the dangerous effects of radioactive fallout generated by its nuclear testing by carefully defining a zone of exclusion around the nuclear test site. While the effects of radioactive nuclear fallout are still being researched, studies by UNSCEAR have been inconclusive. Reports of various scientific bodies, including those produced by the Australian National Radiation Advisory Committee in 1967, 1969, 1971 and 1972 as well as of the New Zealand National Radiation Laboratory in 1972, all concluded that the radioactive fallout from the French nuclear tests was well below the levels at which damage to human health occurs. There is no decisive proof that the fallout from the French nuclear tests has harmed the Applicant and therefore, even if the ICJ were to claim jurisdiction in this case, there would still be no grounds for granting the measures of protection requested by the Applicant.

VII. France shares the concerns expressed in the Stockholm Declaration of the United Nations Conference on the Human Environment regarding protection of the environment and the question of continued nuclear testing, especially in the atmosphere. The Stockholm Declaration, however is aspirational and expressive of a vision for the future of the world; its convictions and recommendations, while offering important guidance, are not binding on conference participants or on United Nations member states.

France acknowledges that the United Nations Conference on the Human Environment resolved to condemn nuclear weapons tests, especially those carried out in the environment and to call upon those States intending to carry out nuclear weapons tests to abandon their plans to carry out such tests since they may lead to further contamination of the environment. In recognition of these concerns, France has announced that it will cease atmospheric nuclear testing at the conclusion of the current series of tests and will thereafter conduct only underground tests. France's eventual goal is to reach a point where even underground nuclear testing becomes unnecessary. Until such time is reached, however, France insists that *raison d'etat* and national security are overriding interests that must, for the moment, take precedence over still uncertain environmental concerns.

VIII. The Government of the Republic of France has made clear that it intends to cease atmospheric nuclear testing at the conclusion of the current round of tests. Therefore the case brought by the Applicant is rendered moot. The claims of the Applicant no longer have any object and the Court no longer has any role to play. There is no longer a dispute in this case. France has clearly and repeatedly announced that it will no longer conduct atmospheric tests; therefore, the Applicant has achieved its objective of putting an end to French atmospheric nuclear tests and no further relief is necessary. Moreover, when the Applicant requests that the Court enforce the diplomatic commitments undertaken by France it asks the Court to exceed its authority. The Court, in the *Fisheries Jurisdiction* case, emphasized that, the Court, as a court of law, cannot render judgment *sub specie legis ferendae*, or anticipate the law before the legislator has laid it down. It is not the Court's role to contemplate whether France will live up to the representations and commitments it has made to New Zealand. The French government has voluntarily accepted the Applicant's objectives and is moving to comply with them. Beyond that the Court's competence cannot go.

SUMMARY AND PRAYER FOR RELIEF

France believes that New Zealand no longer has a justiciable claim before the Court. France has concluded its atmospheric nuclear testing, and there are no plans to resume such a program. Further, France believes that under applicable international law the Court has no jurisdiction in this case. France is not in violation of any laws or treaties to which it has made itself party. Additionally, France has denounced its accession to the General Act of Geneva for the Pacific Settlement of International Disputes of 1928 and has withdrawn its acceptance of Article 36 (2) of the Statute of the Court meaning that it no longer accepts the jurisdiction of the Court as compulsory *ipso facto* & in relation to any other state accepting the same obligation. In this circumstance, New Zealand is not free to apply unilaterally to the Court for relief.

France prays that the Court will abandon this case realizing that there is no longer any valid claim from New Zealand and due to a lack of jurisdiction under applicable international law.