

**The International Court of Justice**

**Of the**

**American Model United Nations**

(November 24, 1974)

Nuclear Test Case

New Zealand v. France

PRESENT: *President* President Alonzo, *Vice President* Vice President Vogl, Justices: Bulson, Bruton, Dres  
Franklin, Honda, Hynar, Klemesrud, Laiu, Scherbakoff, Stapleton, Verschage

*The Court,  
Composed as above,  
Delivers the following Judgment*

1.1. New Zealand cites the Treaty Banning Nuclear Weapons in Outer Space and Underwater (1963) to establish sovereignty violation through which France can be held accountable. France and New Zealand acknowledge signatory to these treaties. France maintains they are not bound to any signatory to that prevents them from conducting nuclear testing.

2.2. New Zealand cites the General Act of Arbitration for the Pacific International Disputes (1928) Article 17 to establish that the ICJ has jurisdiction in lieu of the Statute of the Permanent Court of International Justice. New Zealand does not believe the court is competent to rule based on this article.

3.3. New Zealand cites Statute of the Court Article 36, Statute of the International Court of Justice Chapter 1, article 2.1 to establish jurisdiction of the ICJ in matters covering infringement of sovereignty. France does not infringe on the statute and UN charter.

4.4. France informs the court that they have formed a nuclear testing and cease atmospheric nuclear testing and cease a is a moot point and that New Zealand has no standing in this case.

For these reasons,  
The Court,

*Finds* that the Treaty Banning Nuclear Weapons Test i that andand Underwater (1963) citedand Underwater (1963) cited by New Zeand Underwater (1963) cited by signatorysignatory to the treaty. However, the Court does have the jurisdiction and issignatory to the treaty. rulerule on matters concerning the dispute of sovereignty between New Zrule on matters concerning the d underunder the UN Charter Chapter 1, Article 1 & 2 and Chapter 14under the UN Charter Chapter 1, Article the International Court of Justice Article 36, b, c.

The Court,

*Finds* that France infringed upon the sovereignty ofNew Zealand through the pra that France infringed upon atmosphericatmospheric nuclear testingatmospheric nuclear testing, atmospheric nuclear testing, which resu withinwithinwithin New Zealand s sovereign territory. The Court cites Trail Smelter Arbitration casecase of 1941 betwcase of 1941 between the Unicase of 1941 between the United States of Amer sovereigntysovereignty includes not only vital rights, but also the responsibility to respect the territory of other sovereign States.

TheThe Court recommends that France takThe Court recommends that France take moThe Court recomm spreadspread of radioactive nuclear fallout to surrouspread of radioactive nuclear fallout to surrounding sta prevent infringement upon the sovereignty of other nations.

The Court supports France s decision to terminate its atmospheric testing.

IN FAVOR: *Vice President* Vogl, Justices: Dresen, Buls Vogl, Justices: Dresen, Bulson, Klemesrud, Laiu, Scherbakoff, Verschage

AGAINST: *President* Alonzo, *Justices* Burton, Honda, and Stapleton

*President* Alonzo and *Justices* Burton and Stapleton append a dissenting opinion.

*Justice* Honda appends a dissenting opinion.

Dissenting Opinion of *President* Alonzo and *Justices* Burton and Stapleton

In that the Court has legitimately established jurisdiction for the present case, the resulting decision comes down to the balancing of one claim of state sovereignty versus another. Neither New Zealand nor France dispute the actual presence of debris and fallout within the atmospheric and aquatic territory of New Zealand. Such presence of debris and fallout does constitute a violation, whether intentional or not, to the sovereignty of New Zealand. However, to require France to abolish and/or restrict its development of nuclear testing programs or to require that France relocate so as to conduct testing in another area constitutes a violation of France s sovereign power to

develop programs for the purposes of national defense and to use its own territory within a capacity that it deems fit. The sovereign rights of New Zealand and France must be balanced and considered against each other.

In an attempt to persuade the Court in its favor, the government of New Zealand has cited several international treaties and/or statutes or charters relevant to international law including the *Treaty Banning Nuclear Weapon Tests in Atmosphere, in Outer Space and Under Water* (1963) and what it deems to be relevant portions of the *Charter of the United Nations* and *Statute of the International Court of Justice*. New Zealand maintains that such legal documentation and the jurisdiction of the Court over such legal documentation should hold the actions of France accountable to these same standards of international law and respect for the sovereignty of the territory of New Zealand.

France counters first that there is no basis of jurisdiction for the Court in this present matter in that the French government is either 1) not a signatory to the treaties addressed by New Zealand or 2) has submitted a statement of reservations with regard to an element addressed within international law. France maintains that since it has not within its own sovereign powers given its consent to join such treaties or be bound by such law that it may act within its own sovereignty and participate within actions that appear to violate the norms of international law claimed by New Zealand within the present case. France further holds that by choosing the specific location for the testing which has been conducted that efforts were made to select a territorial location controlled by its government and yet was geographically located within a region which would significantly limit the potential harm to other locations within the world.

Although the Court does disagree with the position of France with regard to our competency to adjudicate the current case, it cannot be contested that France has acted within its own powers of sovereignty and has given good faith attention to limit the effects of its nuclear testing upon the sovereignty of another state. Having located its nuclear testing programs some twenty five hundred miles from New Zealand expresses such good faith actions.

The Court's function, therefore, must be to determine which state's claim of sovereignty carries more merit. Yes debris and fallout, occurring as a result of France's testing programs, has been found within the sovereign territory of New Zealand. However, New Zealand has failed to show how such presence of debris and fallout has affected or will effect the full scope of New Zealand from enjoying full function of the resources found within its sovereign territory. France should not be punished in any capacity for a violation that has not actually harmed nor been shown to eventually harm the territory of New Zealand. France has an overriding sovereign right, as does New Zealand if it is so inclined, to develop programs for the defense of its interests.

We, therefore, respectfully disagree with our colleagues on the majority position in that New Zealand has not established a significant basis for the Court to rule in its favor. We further contend that since France is not a signatory to the treaties in question and that France has expressed reservations to other aspects of law deemed significant on the part

of New Zealand, it is irresponsible for the Court to provide any form of punishment, declaration, or recommendation to France with regard to the future of its development of programs for defense conducted within its own sovereign territory.

#### Dissenting Opinion of Justice Honda

While agreeing with Justices Alonzo, Burton, and Stapleton, that the Court has not established a significant basis in its favor, the question of whether or not there was a violation of New Zealand's sovereignty—intentional or otherwise—remains. The Memorial submitted by France has claimed that a number of violations, including the New Zealand National Laboratory including the New Zealand National Laboratory's radioactive fallout from the French nuclear tests was well below the levels at which damage to human health occurs. In fact, when offering testimony before the Court, the Advocate from New Zealand did not deny that the tests were truly detrimental to its environmental, ecological, and human well-being that constitute a violation of sovereignty, according to Chapter 1, Article 2.1, of the UN Convention concerning the rights to protect its land and people. The mere fact that the tests took place 2,500 miles north of New Zealand's territorial waters, not that New Zealand has no territorial claims that far north (for commercial interests are the same), it cannot be established that there was a violation of New Zealand's sovereignty.