

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

# NUCLEAR TESTS CASES

VOLUME I

(AUSTRALIA *v.* FRANCE)

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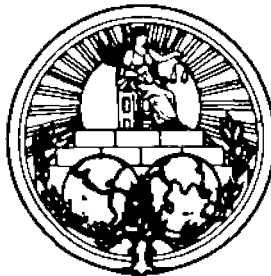
COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

# AFFAIRES DES ESSAIS NUCLÉAIRES

VOLUME I

(AUSTRALIE *c.* FRANCE)



**DOCUMENTS SUBMITTED TO THE COURT  
AFTER THE FILING OF THE MEMORIAL**

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<sup>1</sup>

EFFECTS OF ATOMIC RADIATION

*Report of the United Nations Scientific Committee  
on the Effects of Atomic Radiation*

1. By resolution 3063 (XXVIII) of 13 November 1973, the General Assembly, *inter alia*, requested the United Nations Scientific Committee on the Effects of Atomic Radiation<sup>2</sup> to meet as soon as possible in order to make a study of the most recent documents which had been or might shortly be transmitted to the Secretariat and to update, with a view to their resubmission to the Assembly, at its current session, the conclusions contained in the Committee's latest report<sup>3</sup>.

2. The Committee accordingly held a special session at Headquarters on 26 and 27 November under the chairmanship of Professor Luiz R. Caldas (Brazil). Dr. J. B. T. Aten (Belgium) and Dr. K. Edvarson (Sweden) served as Vice-Chairman and Rapporteur, respectively. In the course of that session, the Committee considered the information that it had received or that had otherwise become available to it since the adoption of its latest report to the General Assembly.

3. In the light of the third preambular paragraph of resolution 3063 (XXVIII) and in view of the fact that underground and atmospheric nuclear tests had been reported as having been carried out in the northern hemisphere, and atmospheric tests in the southern hemisphere, in both 1972 and 1973, the Committee gave particular attention to radio-active contamination of the environment by all nuclear tests, including those carried out between the end of 1970 and the time of the Committee's session. However, while most of the data on levels of radio-activity collected in 1972 were available, those relating to 1973 were more limited, so that the assessment of the 1973 levels can only be considered as preliminary.

4. The Committee noted that the estimates of the total doses to the world population to be received by the year 2000 from such long-lived radio-nuclides as strontium-90 and caesium-137 that had been given by the Committee in its latest report did not appear to require revision on the basis of the data available as at 1 January 1973. This is because the estimated increases in the doses are smaller than the uncertainties in the estimates of the total doses. The amounts of strontium-90 and caesium-137 released in the environment by nuclear tests carried out in 1971 and 1972 added slightly to the totals reported in the latest

<sup>1</sup> See p. 387, *supra*, and II, p. 417.

<sup>2</sup> The Scientific Committee was established by the General Assembly at its tenth session in 1955. Its terms of reference are set out in resolution 913 (X). It is composed of the following Member States: Argentina, Australia, Belgium, Brazil, Canada, Czechoslovakia, Egypt, France, India, Japan, Mexico, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.

<sup>3</sup> *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 25 (A/8725 and Corr.1).*

report of the Committee. While the additions of radio-activity were greater in the southern hemisphere, the total amounts produced by all tests carried out up to the end of 1972 remain much higher in the northern hemisphere<sup>1</sup>. The resulting additions to the total doses are small in the southern hemisphere and even smaller in the northern hemisphere. However, since the population of the northern hemisphere is much larger than that of the southern hemisphere, the contribution to the world population dose of these additions comes mainly from the exposures of the population of the northern hemisphere.

5. The Committee further noted that in 1972 and 1973 the short-lived radio-nuclide iodine-131 was detected for a few weeks at a number of sites in both hemispheres. In 1973 the levels, and the corresponding thyroid doses, were generally of the same magnitude as in 1972. In both years and in both hemispheres, the levels and thyroid doses were equal to or lower than those observed in the southern hemisphere in 1970 and 1971, which were referred to in the latest report of the Committee.

6. Owing to the very short period of time available to the Committee for the preparation of the special session and to the paucity of data, the Committee was unable to attempt a broader review of information, but expressed the intention of planning at its twenty-third session, to be held in October 1974, the continuation of its work of review and assessment of levels, effects and risks of radiation from all sources.

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<sup>1</sup> It might be noted here that a principal contribution to the total amounts of strontium-90 and caesium-137 present in the southern hemisphere is from transfer of material released by tests carried out in the northern hemisphere.

GENERAL ASSEMBLY RESOLUTION 3154 (XXVIII) RELATING TO THE WORK OF  
UNSCEAR, 14 DECEMBER 1973<sup>1</sup>

EFFECTS OF ATOMIC RADIATION

A

*The General Assembly*

Recalling its resolution 3063 (XXVIII) of 9 November 1973, by which it requested a special report from the United Nations Scientific Committee on the Effects of Atomic Radiation, and in view of the anxieties expressed by the representatives of various Member States concerning pollution of the environment by ionizing radiation emanating from tests of nuclear weapons,

Noting with appreciation the report submitted by the Scientific Committee<sup>2</sup>,

Noting with concern that there has been additional radio-active fall-out resulting in additions to the total doses of ionizing radiation since the Scientific Committee prepared its last report<sup>3</sup>,

Reaffirming its deep apprehension concerning the harmful consequences of nuclear weapon tests for the acceleration of the arms race and for the health of present and future generations,

1. Deplores environmental pollution by ionizing radiation from the testing of nuclear weapons;

2. Requests the United Nations Scientific Committee on the Effects of Atomic Radiation to continue its work, including its co-ordination activities, to increase knowledge of the levels and effects of atomic radiation from all sources.

2202nd plenary meeting  
14 December 1973

B

*The General Assembly,*

Recalling its resolution 913 (X) of 3 December 1955, by which it established the United Nations Scientific Committee on the Effects of Atomic Radiation, and its subsequent resolutions on the subject, in particular resolution 3063 (XXVIII) of 9 November 1973,

Reaffirming the desirability of the Scientific Committee continuing its work,

Concerned about the potentially harmful effects on present and future generations resulting from the levels of radiation to which man is exposed,

Conscious of the continued need for compiling information about atomic radiation and for analysing its effects on man and his environment,

Recalling that, as recognized in General Assembly resolution 2905 (XXVII) of 17 October 1972, the Scientific Committee can become an element of value in the United Nations Environment Programme,

Expressing regret that the Scientific Committee had very little time and information available to it in preparing for its special session,

<sup>1</sup> See pp. 387-388, *supra*, and II, p. 417.

<sup>2</sup> A/9349.

<sup>3</sup> *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 25 (A/8725 and Corr.1).*

1. *Notes with appreciation* the additional report submitted by the United Nations Scientific Committee on the Effects of Atomic Radiation<sup>1</sup>;

2. *Commends* the Scientific Committee for the valuable contributions it has made since its inception to wider knowledge and understanding of the levels and effects of atomic radiation;

3. *Requests* the Scientific Committee to continue its work, including its co-ordinating activities, to increase knowledge of the levels and effects of atomic radiation from all sources;

4. *Requests* the Scientific Committee in particular to continue at its twenty-third session, to be held in October 1974, to review and assess the levels, effects and risks of radiation from all sources and to report to the General Assembly at its twenty-ninth session;

5. *Requests* the Secretary-General to continue to provide the Scientific Committee with the assistance necessary for the conduct of its work and the dissemination of its findings to the public.

2202nd plenary meeting  
14 December 1973

C

*The General Assembly,*

*Recalling* its resolution 913 (X) of 3 December 1955, by which it established the United Nations Scientific Committee on the Effects of Atomic Radiation, and its subsequent resolutions,

*Recognizing* the valuable contribution made by the Scientific Committee to wider knowledge and understanding of the levels and effects of atomic radiation,

*Concerned* about the potentially harmful effects on present and future generations resulting from the atomic radiation to which man and natural resources are exposed,

*Noting with concern* that nuclear weapon tests are still being conducted in the atmosphere and other environments,

*Conscious* of the need for the Governments of Member States to commit themselves to giving the Scientific Committee the greatest possible co-operation in order that its work may be more effective,

*Recalling* its resolution 3063 (XXVIII) of 9 November 1973, by which it decided to consider means of enhancing the effectiveness of the Scientific Committee,

1. *Decides* to increase the membership of the United Nations Scientific Committee on the Effects of Atomic Radiation to a maximum of 20, while reaffirming the need for the members of the Committee to be represented by scientists;

2. *Invites* the Governments which desire to participate in the Scientific Committee and are able to contribute to its work to inform the President of the General Assembly, through the Secretary-General, before 15 February 1974; in the event that more than five Governments inform the President of the Assembly of their desire to become part of the Scientific Committee, the selection of the new members of the Committee will be decided by the President of the Assembly, in consultation with the chairmen of the regional groups, on the basis of an equitable geographical distribution;

3. *Urges* the Scientific Committee to request from Member States, as fre-

<sup>1</sup> A/9349.

quently as may be necessary, the detailed information which it needs to assist it in its work;

4. *Authorizes* the Scientific Committee, in response to a request by the Government of a country which is situated in an area of nuclear arms testing or which considers that it is exposed to atomic radiation by reason of such testing, to appoint a group of experts from among its members for the purpose of visiting that country, at the latter's expense, and of consulting with its scientific authorities and informing the Committee of the consultations;

5. *Urges* the specialized agencies and other United Nations bodies, and invites the non-governmental organizations in consultative status with the Economic and Social Council, to assist the Scientific Committee in its work;

6. *Requests* the Secretary-General to provide the Scientific Committee with the administrative assistance necessary for the efficient conduct of its work.

*2202nd plenary meeting*

*14 December 1973*

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TABLES OF DATA FORWARDED TO UNSCEAR BY THE  
AUSTRALIAN GOVERNMENT<sup>1</sup>

IODINE-131 IN AUSTRALIAN MILK SUPPLIES AND ESTIMATED  
THYROID DOSES FOR YOUNG CHILDREN FOLLOWING NUCLEAR  
TESTS BY FRANCE IN POLYNESIA DURING JULY  
AND AUGUST 1973

The experimental methods and analytical procedures employed in obtaining these results have been described in reports from the Australian fall-out monitoring programmes, previously provided to UNSCEAR.

Continuous monitoring of the Australian milk supplies for iodine-131 was maintained from 25 July to 23 October 1973, following the nuclear tests in Polynesia. This monitoring revealed that iodine-131 was present in the milk supplies between 14 August and 4 September.

The integrated concentrations of iodine-131 in the milk supplies, and their standard errors, are derived from the measured concentrations expressed in picocuries per litre at time of sampling. The estimated radiation doses to infant thyroid assume that the milk was consumed at the time of sampling, which was during factory processing. Sampling commonly precedes sale of milk to the public by at least a day, but might be several days after farm production. Neither the integrated concentrations, nor the doses, take account of decay of iodine-131 during these periods.

<i>Milk Supply</i>	<i>Integrated concentration of iodine 131 picocurie-days per litre</i>	<i>Radiation dose to infant thyroid millirad</i>
Adelaide	120 ± 20	1.4
Brisbane	40 ± 20	0.5
Hobart-Launceston	35 ± 20	0.4
Malanda	50 ± 20	0.6
Melbourne	45 ± 20	0.5
Perth	270 ± 30	3.1
Rockhampton	50 ± 20	0.6
Sydney	45 ± 20	0.5
Australian mean population weighted	65 ± 10	0.8

<sup>1</sup> II, p. 417.



**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**

The experimental methods and analytical procedures employed in obtaining these results have been described in reports from the Australian fall-out monitoring programmes, previously provided to UNSCEAR.

Following the nuclear tests in Polynesia, artificial radio-nuclides—mainly fresh fission products—were present in ground-level air over Australia at low levels of radioactivity between 6 and 27 August 1973, and then at extremely low activities until early October.

Continuous monitoring of fall-out deposition was maintained at 25 centres in Australia from 25 July to 23 October. Throughout this period, natural radioactivity predominated in all but a few of the daily deposits recorded. These few, which, on the statistical evidence, can be attributed unambiguously to fresh fall-out, occurred between 6 and 27 August.

The tabulated doses are upper limits as no account is taken of the effects of weathering and shielding which would reduce external doses by a factor of three to five.

<i>Centre</i>	<i>External radiation dose in millirad</i>	<i>Centre</i>	<i>External radiation dose in millirad</i>
Adelaide	0.04	Malanda	< 0.01
Alice Springs	< 0.02	Meekatharra	< 0.03
Brisbane	< 0.02	Melbourne	< 0.03
Broome	< 0.01	Onslow	< 0.01
Ceduna	< 0.01	Oodnadatta	< 0.01
Charleville	< 0.01	Perth	0.05
Cloncurry	< 0.03	Rockhampton	< 0.01
Cobar	< 0.01	Sydney	0.03
Darwin	< 0.01	Tennant Creek	< 0.02
Forrest	< 0.01	Thursday Island	< 0.01
Hobart	< 0.03	Townsville	< 0.02
Kalgoorlie	< 0.02	Wagga	0.03
Longreach	< 0.02		

Australian population-weighted mean external gamma-radiation dose 0.03 millirad

BIOLOGICAL EFFECTS OF NUCLEAR EXPLOSION FALLOUT<sup>1</sup>

*The Parliament of the Commonwealth of Australia, 1973—Parliamentary Paper No. 29*

REPORT OF MEETING BETWEEN AUSTRALIAN AND FRENCH SCIENTISTS, 7-9 MAY 1973, AT THE AUSTRALIAN ACADEMY OF SCIENCE, CANBERRA

*Present:*

*Australian side:* Sir Rutherford Robertson; Professor S. T. Butler; Dr. D. Metcalf; Professor M. J. D. White; Dr. C. H. B. Priestley (present for two sessions to discuss meteorological questions).

*French side:* M. le Professeur A. Gauvenet; Dr. D. Mechali; M. J. M. Lavie; M. A. P. Chaussard.

## REPORT OF THE AUSTRALIAN SCIENTISTS

## Section A

*This section is identical in the reports of both the Australian and French scientists*

## 1. Dose commitments

There was general agreement that the technical methods used by the Australian authorities for measuring quantities of radiation fall-out are satisfactory and are in accordance with international practice. A large degree of agreement was reached regarding the levels of dose commitment in Australia due to past French tests. The estimates of those dose commitments in millirads are as follows (for strontium-90 and caesium-137, the lower figures are preferred by the French scientists according to their method of estimation; the Australian scientists' estimates are the higher figures):

<i>Element</i>	<i>Thyroid (young children)</i>	<i>Thyroid (older children and adults)</i>	<i>Blood forming cells</i>	<i>Bone cells</i>	<i>Whole body</i>
Iodine-131 . . . . .	97	9	0	0	0
Short lived . . . . .	1.5	1.5	1.5	1.5	1.5
Strontium-90 . . . . .	0	0	4.0-6.2	5.6-8.5	0
Caesium-137 (external) . . . . .	2.0-3.0	2.0-3.0	2.0-3.0	2.0-3.0	2.0-3.0
Caesium-137 (internal) . . . . .	0.9-1.3	0.9-1.3	0.9-1.3	0.9-1.3	0.9-1.3
Carbon-14 . . . . .	0.2	0.2	0.2	0.3	0.2
<i>Total (in round figures) . . . . .</i>	<i>102-103</i>	<i>14-15</i>	<i>9-12</i>	<i>10-15</i>	<i>5-6</i>

<sup>1</sup> See pp. 170, 224-226, 476, *supra* and II, pp. 364, 417.

The estimates of the dose commitments due to all tests are as follows (the figures were provided for the meeting by an Australian government scientist; the values for the French tests are the higher values from the preceding table):

<i>Element</i>	<i>Thyroid (young children)</i>	<i>Thyroid (older children and adults)</i>	<i>Blood forming cells</i>	<i>Bone cells</i>	<i>Whole body</i>
French tests . . . . .	103	15	12	15	6
Tests by other nations. . . . .	74	54	83	96	52
<i>Total for all tests . . . . .</i>	<i>177</i>	<i>69</i>	<i>95</i>	<i>111</i>	<i>58</i>

Both delegations agree with the method which has been used to obtain these figures.

## 2. Biological effects

There was general agreement between both groups that for certain dose levels, radiation is known to cause damage in humans. However, there may be a threshold below which lower levels of radiation have no effect, the action on human beings of low doses and very low doses such as result from the tests never having been observed. Current work, for example on the phenomenon of repair by living cells of damage they have suffered at high doses of radiation, suggests that low doses may not cause cancer or genetic defects at a rate proportional to dose. Nevertheless the international authorities have prudently accepted the hypothesis of direct proportionality in order to establish accepted dose limits. Certain additional factors may operate to reduce significantly the risks below those predicted from a simple estimation based on proportionality. These include the lesser effects of certain types of radiation, radiation received at low dose rates, or over extended rather than brief time periods.

## Section B

*This section is the sole responsibility of the Australian scientists*

The Australian scientists stressed that, despite the uncertainties outlined in the above discussion of biological effects, the only prudent course in attempting to assess the overall risk to the Australian population was to assume direct proportionality of all biological effects to radiation dosage. This is the public health position taken by the United Nations Scientific Committee on the Effects of Atomic Radiation and by other recognized authorities. The Australian population is large enough that even very small linear estimates of risk, in the region of the radiation doses due to the French tests, yield finite estimates of deaths due to cancer and genetic abnormalities. The Australian scientists believe that it is necessary to accept such estimates as realistic and not to take into account notions of a hypothetical threshold dose below which damage would not occur. Assuming a linear relationship between dose received and using maximum published figures for radiation risks, it has been calculated that, as a result of past French atomic tests, a final total of 26 cases of thyroid cancer and 14 cases of leukaemia and other cancers could result in the Australian

population. The Australian scientists present believe that, as a result of the French tests that have already occurred, there could be approximately one death or serious disability in Australia from genetic causes during the first generation and 18 deaths in all subsequent generations; these are minimum estimates, and maximum estimates based on present information (see the Report of the Advisory Committee on the biological effects of ionizing radiation, US National Academy of Sciences, November 1972) would be approximately 15 times these figures.

The above figures are based on the dose commitment estimates from the French tests given in the tables in Section A. It should be noted that the report of the Academy of Science Committee estimated the steady radiation effects to Australia from French tests in the Pacific, assuming continued testing at the French site on a pattern similar to that of the past seven years, and the harm commitments given in the report must be interpreted in this light. The dose commitments for the seven years of French testing in the Pacific are included in the report. Together with the risk factors used in the report, these commitments permit a direct computation of the harm commitments to the Australian population from the past tests.

The Australian scientists drew attention to the additional harmful effects which would accrue to the Australian population as a result of the improbable event in which the explosion of a high-powered bomb was combined with quite exceptional meteorological conditions giving a high fall-out over Australia (Appendix—Academy Report).

Although the levels of radiation due to the French tests are unlikely to cause a statistically detectable increase in the frequency of cancer or genetic abnormalities in Australia, it is emphasized that there should be no unwarranted exposure to radiation. Further, with the long-lived isotopes produced as the result of nuclear explosions, the genetic effects on the Australian population, though small, are cumulative.

#### REPORT OF THE FRENCH SCIENTISTS

##### Section A

*This section is identical with Section A in the Australian report*

##### Section B

*This section is the sole responsibility of the French scientists<sup>1</sup>*

#### 1. Biological Interpretation

The risk calculated from observations made following high doses of radiation and without taking into account the various considerations described above therefore represents the upper limit of risk and not the actual risk. The actual risk may be considerably lower, it may be nil.

Moreover the French experts consider that the values for the upper limits put forward in the Australian documents are greatly overestimated for cancer (particularly for cancer of the thyroid) and leukaemia and that, even taking the hypothesis of a proportional relation without a threshold, it would nevertheless

<sup>1</sup> This is the Australian translation of the French scientists' report.

be necessary to take into account the fact that it is a question of radiation spread over a very long period of time. So far as genetic effects are concerned the values put forward follow from those given in the latest report of the UN Scientific Committee on the effects of radiation. These values represent the upper limit of risk.

The significance of the annual dose commitments resulting from the tests can be better appreciated, and in a more simple manner, by comparing them on the one hand with natural radiation and with its regional and local variations, and on the other hand, with the annual doses limits recommended by the International Commission for Radiological Protection of members of the public based on the hypothesis of permanent exposure.

The annual dose commitments resulting from the French tests and which, moreover, for the part which can be ascribed to long-lived products will be spread over many years, are about 15 millirads for the thyroid and of the order of 1 millirad or several millirads in all other cases. They are very much less than natural radiation and its variations; in fact, on an average this is 100 millirads per year and frequently is more than double that figure; the local variations are noteworthy because they sometimes vary within the same city by 1 or several dozens of millirads and that could be the case in certain large Australian cities. The annual dose commitments resulting from the tests are only about one thousandth to several thousands of the limits of annual doses recommended by the International Commission for Radiological Protection of members of the public.

## 2. Temporary unusual occurrences in the atmosphere

The two groups examined the problem posed by the existence of temporary unusual occurrences in the behaviour of the atmosphere which, as the Australian Academy of Science report indicates, could cause, for a given test, over a limited region, fall-out higher than that observed simultaneously in the surrounding areas.

For this effect to happen, the occurrence of these atmospheric peculiarities, which are moreover rare, must coincide with the simultaneous presence, in very exact locations, of radioactive cloud.

The French group presented the results of studies on experiments on this complex problem carried out in France; certain of these results have been published by the French Academy of Science.

The French experts judge that because of the relative geographic position of Australia and the test zone as well as the meteorological constraints imposed on those conducting the experiments, it is highly improbable, if not impossible, that this effect could lead to a noticeable increase in fall-out over the Australian continent.

Moreover, this phenomenon has not been observed in Australia during previous tests. As for the rare cases observed in the northern hemisphere, only a low increase (of the order of a few per cent.) in dose commitments has resulted, because of the temporary and local character of the increase in radioactivity.

## 3. Conclusions

The level of dose commitments resulting from the French tests in the Pacific, their comparison on the one hand with the natural radiation levels to which man is permanently exposed and on the other hand with the dose limits established with the greatest prudence by competent international organisations, show that the fall-out as a result of these tests can in no way constitute a danger to the health of populations.

The French experts feel that on certain points, notably on the effects of unusual meteorological occurrences, further exchanges of views based on existing documentation, could enable a better appreciation of the respective positions of the two groups.

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NOTE OF 22 JULY 1973 FROM THE AUSTRALIAN PRIME MINISTER AND MINISTER OF FOREIGN AFFAIRS TO THE FRENCH FOREIGN MINISTER<sup>1</sup>

I have the honour to communicate with you once again on the subject of the carrying out of atmospheric nuclear weapons tests by the French Government in the South Pacific.

The regrettable occasion that makes this communication necessary is known to you. It is the action of the French Government in carrying out a further atmospheric nuclear weapon test in the South Pacific Ocean on 22 July 1973.

May I recall that over the last decade the Australian Government has been at pains to convey its apprehension and concern at the conduct of these tests and that as early as April 1963 it conveyed to the French Government its deep regret at the decision which the French Government was then on the point of taking, namely, to move its nuclear testing to the Pacific area. In its Note of 3 January 1973, the Australian Government after referring to its repeated protests, indicated explicitly that, in its view, the French tests were contrary to international law and that unless the French Government could give full assurances that no further test would be carried out it would have to pursue appropriate international legal remedies.

You will be aware that the Australian Government readily accepted the proposal made by the French Government, following on its receipt of the Australian Note of 3 January 1973, that there should be discussions between the two Governments about the dispute that unfortunately exists between us. The Attorney-General of Australia visited Paris on behalf of the Australian Government to discuss the dispute with members of the French Government on 18, 19 and 20 April last. Following this, a meeting between Australian and French scientific experts took place in Australia on 7 to 9 May. However, it was clear, in the light of the stated position of the French Government that the efforts to reach a settlement of the dispute by discussion had not succeeded and would not succeed.

It was in these circumstances that the Australian Government felt constrained to institute proceedings in the International Court of Justice to place before that tribunal the issue of the legality of the carrying out of atmospheric nuclear weapons tests as conducted by the French in the South Pacific.

This action was in full accord with Article 33 of the Charter of the United Nations; judicial settlement is a recognized and highly desirable method of ensuring the peaceful settlement of disputes between States.

On 22 June 1973, the International Court of Justice disposed of the first stage of proceedings in the case.

The Court having satisfied itself after careful consideration that it was competent to hand down an order for provisional measures of protection, it made the following order:

"The Governments of Australia and France should each of them ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court or prejudice the rights of the other party in respect of the carrying out of whatever decision the Court may render in

<sup>1</sup> II, p. 423.

the case and, in particular, the French Government should avoid nuclear tests causing the deposit of radio-active fall-out on Australian territory.”

The atmospheric nuclear weapon test explosion carried out by the French Government on 22 July will cause widespread radio-active fall-out.

There is a virtual certainty that this will include the deposit of radio-active fall-out on Australian territory. The only reasonable conclusion that is open is that the French Government has decided to act in open disregard of the Order of the International Court of Justice.

In doing so, it is acting consistently with statements by the French Government to the effect that it proposes to disregard completely the Order of the Court. The Australian Government must protest in the strongest terms at this disregard of an Order of the International Court of Justice. France is a party to the Charter of the United Nations of which the Statute of the International Court of Justice is an integral part. The indifference of the French Government to its international legal responsibilities is a grave blow to the rule of law and to the cause of the peaceful settlement of disputes between nations. The Australian Government is greatly disappointed that this action should have been taken by the government of a nation which has traditionally been regarded as one of the great supporters of the cause of international peace and order. It is beside the point to assert, as the French Government has done in seeking to justify its position, that it considers that the Court lacks competence. It is beyond dispute that the Court has the jurisdiction to determine its own competence; it has, as described succinctly in the French language, the “*compétence de la compétence*”.

The Australian Government must insist that the French Government cease all further tests which are in contravention of the Order of the Court.

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NOTE OF 24 AUGUST 1973 FROM AUSTRALIAN EMBASSY, PARIS, TO FRENCH  
MINISTRY OF FOREIGN AFFAIRS<sup>1</sup>

The Australian Embassy presents its compliments to the Ministry of Foreign Affairs and has the honour to refer to the proceedings commenced by the Australian Government against the Government of France in the International Court of Justice on 9 May 1973 in connection with French nuclear weapon tests in the Pacific Ocean.

On 22 June 1973 the International Court of Justice made an Order indicating the following provisional measures:

"The Governments of Australia and France should each of them ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court or prejudice the rights of the other party in respect of the carrying out of whatever decision the Court may render in the case, and, in particular, the French Government should avoid nuclear tests causing the deposit of radio-active fall-out on Australian territory."

On 22 and 29 July and 19 August 1973 the French Government exploded nuclear devices in the atmosphere over Mururoa Atoll. Radio-active fall-out positively identified as resulting from those explosions has been deposited on Australian territory.

The attached statement summarizes the measurements of fall-out in Australia up to 23 August 1973. Schedules containing details of measurements of fall-out recorded by the Australian monitoring system are being prepared and will be conveyed to the Ministry by the Embassy as soon as they are available.

The Australian Embassy draws these facts to the attention of the Ministry of France and points out that the action of the Government of France constitutes a clear breach of the prohibition by the Court of "nuclear tests causing the deposit of radio-active fall-out on Australian territory".

The Government of Australia protests vigorously against this deliberate breach of the obligations created by the Order of the Court, and calls for an assurance from the Government of France that no further breaches of the Order of the Court will take place.

The Embassy takes this opportunity of renewing to the Ministry the assurances of its highest consideration".

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<sup>1</sup> II, p. 423.

FALL-OUT IN AUSTRALIA FROM FRENCH NUCLEAR TESTS  
IN POLYNESIA DURING 1973

*Summary of Data Available to 23 August 1973*

*The programmes to monitor fresh fission products in fall-out reaching Australia are essentially the same as those conducted in previous years:*

The 26 station network equipped for SPIEFS monitoring commenced operation on 25 July 1973:

Daily sampling of the nine major milk supplies, for iodine-131 determination, started on 25 July 1973:

Air sampling at six centres, for detection of specific short-lived fission products, has been in operation for several months.

*The air filter samples from Perth, Adelaide, Laverton (Melbourne), Richmond (Sydney) and Amberley (Brisbane), for the period 6-9 August, all contained fresh fission products: only the Townsville sample showed no evidence of fresh material for this period.*

Final results for the subsequent sampling periods, 9-13 August and 13-16 August, confirmed the presence of fresh fall-out at all six centres. The level of activity of fresh fission products in the Perth air sample for 9-13 August is the highest recorded so far in the current monitoring.

Full analysis of the data in the Laverton sample for 6-9 August gave the first positive identification of the fresh material with the explosions in Polynesia. This was supported by the data for the other four centres for that period and it is now confirmed by the results for subsequent sampling periods.

*The results from the SPIEFS monitoring measure total Beta-activity in daily fall-out deposits.*

The measured fall-out deposits show several values higher than those recorded before fresh material was detected in the air filter samples. These are taken to be fresh fall-out and the most notable are Perth on 12 August: 0.92 nanocuries of Beta-activity per square metre (NCI/M<sup>2</sup>), and Adelaide on 13 August: 0.66 NCI/M<sup>2</sup>. Earlier results from Brisbane and Sydney probably representing fresh fall-out have been recorded and there are some others of comparable magnitude, for Melbourne, Townsville and Wagga.

*The results from the survey of iodine-131 in milk supplies are tabulated as measured concentrations of iodine-131 in the milk supplies.*

As indicated by the results up to 21 August, the Perth milk supply remains contaminated with iodine-131 at very low concentration. As regards other milk supplies, results to date reveal no contamination at measurable concentrations of iodine-131.

NOTE OF 26 SEPTEMBER 1973 FROM AUSTRALIAN EMBASSY, PARIS, TO FRENCH  
MINISTRY OF FOREIGN AFFAIRS<sup>1</sup>

The Australian Embassy presents its compliments to the Ministry of Foreign Affairs and has the honour to refer to the Embassy's Note of 24 August 1973 concerning the detection on Australian territory of radio-active fall-out which had been positively identified as resulting from the explosion of nuclear devices in the atmosphere over Mururoa Atoll by the French Government.

In that Note, the Australian Government protested against action which violated Australian sovereignty, and which constituted a clear breach of the obligations created by the Order of the International Court of Justice of 22 June 1973 in the proceedings commenced by the Australian Government against the Government of France on 9 May 1973 in connection with French nuclear weapons tests in the Pacific Ocean. In the same Note the Australian Government also requested an assurance from the Government of France that no further breaches of the Order of the Court would take place. To date no reply has been received from the French Government.

The Australian Government has reason to believe that, subsequent to its Note abovementioned, the Government of France exploded nuclear devices in the atmosphere over Mururoa Atoll on 24 and 29 August. The Government of Australia protests against these additional nuclear explosions in the atmosphere.

The Australian Government has noted the withdrawal by the French Government of the notice of a danger zone in part of French Polynesia as from 15 September 1973, but the Australian Government would be grateful for an assurance that the current series of tests in French Polynesia has ended and repeats its request that no further breach of the Order of the International Court will take place.

The Australian Embassy takes this opportunity to renew to the Ministry of Foreign Affairs the assurances of its highest consideration.

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<sup>1</sup> II, p. 423.

NOTE DE L'AMBASSADE DE FRANCE À CANBERRA AU MINISTÈRE DES AFFAIRES  
ÉTRANGÈRES D'AUSTRALIE EN DATE DU 11 JUIN 1974<sup>1</sup>

Ambassade de France  
en Australie  
N° 61

L'ambassade de France présente ses compliments au ministère des affaires étrangères et a l'honneur de se référer à la conversation qu'a eue M. Van Laethem avec M. Border, le 10 juin 1974, à propos du communiqué publié à Paris le 8 juin par la Présidence de la République relatif à la remise en vigueur des mesures de sécurité de la zone d'expérimentation nucléaire du Pacifique Sud.

Le ministère des affaires étrangères voudra bien trouver ci-joint le texte de ce communiqué.

L'ambassade de France saisit cette occasion pour renouveler au ministère des affaires étrangères les assurances de sa haute considération.

*Communiqué publié à Paris le 8 juin 1974 par la Présidence de la République*

Le *Journal officiel* du 8 juin 1974 publie l'arrêté remettant en vigueur les mesures de sécurité de la zone d'expérimentation nucléaire du Pacifique Sud.

La Présidence de la République précise, à cette occasion, qu'au point où en est parvenue l'exécution de son programme de défense en moyens nucléaires la France sera en mesure de passer au stade des tirs souterrains aussitôt que la série d'expériences prévues pour cet été sera achevée.

Limités au minimum qu'impose le programme de mise au point de notre force de dissuasion, les essais atmosphériques auxquels il sera procédé cette année seront, bien entendu, menés comme précédemment, dans des conditions de totale sécurité. Leur innocuité a été confirmée par les rapports du Comité scientifique des Nations Unies dont les conclusions sont régulièrement publiées.

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<sup>1</sup> Voir p. 389, 491, *supra* et II, p. 423.

STATEMENT BY THE PRIME MINISTER OF AUSTRALIA AFTER  
FRENCH NUCLEAR WEAPONS TEST, 17 JUNE 1974<sup>1</sup>

The Prime Minister, Mr. Whitlam, said today that the Australian Government had reason to believe that the French Government had exploded a nuclear weapon device in the atmosphere over Mururoa Atoll today 17 June.

The Prime Minister said that it was a matter of deep concern to the Australian Government that the French Government had proceeded to yet another programme of nuclear testing in the Pacific, which was likely to lead to the deposit of radio-active fall-out within Australian territory. The feelings of the Australian Government and people against these tests had been made known in the past in the clearest way. Nothing had changed in the Australian attitude since last year.

The Prime Minister said:

"The fact that this further test has been held is all the more regrettable because a new French Government is now in office, and because I have sent a message to the new French President expressing the sincere desire to develop relations between our two Governments and peoples. These relations have been regrettably affected during recent years by the dispute over nuclear testing in the Pacific, which we had not sought but which had become inevitable when our repeated protests were consistently ignored."

The Australian Government had noted the French Government's statements expressing an intention to cease atmospheric testing after the present series was completed. As Senator Willesee had pointed out, these statements were a step in the right direction, but the French Government had not given the Australian Government any satisfactory commitment that further atmospheric tests would not be held. The new French Government could not claim to be in ignorance of the strong feelings of the Australian people that there should be no atmospheric test in the Pacific, or indeed anywhere.

The Prime Minister recalled that on 22 June 1973 the International Court of Justice had made an Order granting to Australia interim measures of protection which required France to refrain from conducting any further tests which might lead to the deposit of radio-active fall-out on Australian soil.

This Order of the Court had been ignored by France in 1973 and was now being ignored again. Mr. Whitlam said that he had hoped that the French Government would abide by this order and be prepared to co-operate in having this continuing dispute resolved in a responsible manner by the International Court in accordance with international law. This had not proved to be the case, but the Prime Minister reaffirmed that, for its part, Australia would continue to seek resolution of the dispute by the Court, and work vigorously elsewhere for a complete cessation of nuclear weapons testing.

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<sup>1</sup> See p. 390, *supra* and II, p. 423.

NOTE OF 18 JUNE 1974 FROM AUSTRALIAN DEPARTMENT OF FOREIGN AFFAIRS  
TO THE EMBASSY OF FRANCE<sup>1</sup>

The Department of Foreign Affairs presents its compliments to the Embassy of France and has the honour to refer to the Note of the Australian Embassy in Paris of 26 September 1973 concerning the testing by France of nuclear weapons.

The Australian Government wishes to refer also to the statement of the Prime Minister of Australia, Mr. E. G. Whitlam (issued in Canberra on 17 June 1974), that the Australian Government had reason to believe that the French Government had exploded a nuclear weapon device in the atmosphere over Mururoa Atoll on 17 June 1974.

The Australian Government views with serious concern the atmospheric testing of nuclear weapons in breach of international law and the hazards created through pollution of the environment by radio-active fall-out. The Australian Government wishes to convey its protest to the Government of France concerning this commencement by France of a further programme of nuclear tests in the Pacific area.

The Australian Government also refers to the Order granted to it on 22 June 1973 in its proceedings against France in the International Court of Justice and protests at this further disregard by the Government of France of this Order of the International Court of Justice.

The Department of Foreign Affairs avails itself of this opportunity to renew to the Embassy of France the assurances of its highest consideration.

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<sup>1</sup> II, p. 423.

MEMORANDUM OF THE SECRETARY-GENERAL OF THE UNITED NATIONS TO THE  
PERMANENT REPRESENTATIVE OF AUSTRALIA TO THE  
UNITED NATIONS, 12 JUNE 1974<sup>1</sup>

The Secretary-General presents his compliments to the Permanent Representative of Australia to the United Nations and has the honour to refer to circular letters C.N.3.1974.TREATIES-1, of 6 February 1974, and C.N.42.1974.TREATIES-2, of 1 April 1974, 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.

In this connexion, and in accordance with the request made by the Permanent Mission, the Secretary-General wishes to confirm that the following actions have been or will be taken by the Secretariat regarding the above-mentioned notification and denunciation:

- (1) The circular letters referred to in the first paragraph of this note were sent to all States Members of the United Nations and to non-member States. A copy for information was also sent to the Registrar of the International Court of Justice. Copies of the pertinent distribution lists are attached herewith for the Permanent Representative's information<sup>2</sup>.
- (2) Inasmuch as the notification and denunciation concerned affect multi-lateral treaties placed under the custody of the Secretary-General by virtue of General Assembly resolution 24 (I) of 12 February 1946, they have been registered by the Secretariat under article 2 (1) of the General Assembly Regulations to give effect to Article 102 of the Charter, on 10 January 1974 (notification by France), and 8 February 1974 (denunciation by the United Kingdom). The following entries will appear in the Statements of treaties and international agreements registered or filed and recorded with the Secretariat during the months of January and February 1974, respectively:

— "No. 2123. Pacific Settlement of International Disputes.  
General Act. Done at Geneva on 26 September 1928  
Notification

*Received on:*

10 January 1974

France

*Registered by the Secretariat on 10 January 1974.*"

— "No. 2125. Pacific Settlement of International Disputes.  
General Act. Done at Geneva on 26 September 1928  
Denunciation

*Notification received on:*

8 February 1974

United Kingdom of Great Britain and Northern Ireland  
(To take effect on 16 August 1974.)

*Registered by the Secretariat on 8 February 1974.*

<sup>1</sup> See p. 424, *supra* and II, p. 423.

<sup>2</sup> Not reproduced.

It should be noted, however, that owing to a considerable increase in the activities of the United Nations Treaty Section over the last two-year period the January 1974 and February 1974 statements of treaties registered are not expected to be issued before four or five months from now.

- (3) The above entries will also be published in the pertinent United Nations *Treaty Series* volume, along with the complete texts of the corresponding notifications made by France and the United Kingdom.
- (4) The notification and denunciation in question will also be mentioned in the publication *Multilateral treaties in respect of which the Secretary-General performs depositary functions—List of signatures, ratifications, accessions, etc., as at 31 December 1974* to be issued around April 1975.

Finally, it may be added that any declaration or objection from a government participating in the General Act of 1928 could also be registered, or published in the United Nations *Treaty Series*, as appropriate.

It is hoped that the above information satisfies the Permanent Representative's query.



CIRCULAR LETTER C.N.3.1974.TREATIES-1 OF 6 FEBRUARY 1974

PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES,  
GENERAL ACT, GENEVA, 26 SEPTEMBER 1928  
NOTIFICATION BY FRANCE<sup>1</sup>

I have the honour, upon instructions from the Secretary-General, to inform you that, on 10 January 1974 the Secretary-General received a letter from the Minister for Foreign Affairs of France stating the following:

*[Translation]* In a case dealt with by the International Court of Justice, the Government of the French Republic noted that it was contended that the 1928 General Act for the Pacific Settlement of International Disputes could, in the present circumstances, justify the exercise of jurisdiction by the Court.

On that occasion the French Government specified the reasons why it considered that view to be unfounded.

While reaffirming that position, and, accordingly, without prejudice to it, the French Government requests you, with a view to avoiding any new controversy, to take cognizance of the fact that, with respect to any State or any institution that might contend that the General Act is still in force, the present letter constitutes denunciation of that Act in conformity with Article 45 thereof.

Article 45 of the General Act provides as follows:

"1. The present General Act shall be concluded for a period of five years, dating from its entry into force.

2. It shall remain in force for further successive periods of five years in the case of Contracting Parties which do not denounce it at least six months before the expiration of the current period.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League and the non-member States referred to in Article 43.

4. A denunciation may be partial only, or may consist in notification of reservations not previously made.

5. Notwithstanding denunciation by one of the Contracting Parties concerned in a dispute, all proceedings pending at the expiration of the current period of the General Act shall be duly completed."

In this connexion it will be recalled that the General Act is one of the international instruments concluded under the auspices of the League of Nations, for which the United Nations, under resolution 24 (I) of 12 February 1946 has accepted the custody and in respect of which the Secretariat has been charged with the task of performing the functions pertaining to a Secretariat, formerly entrusted to the League of Nations.

Accept, Sir, the assurances of my highest consideration.

(Signed) Erik Suy,  
The Legal Counsel.

<sup>1</sup> See pp. 388, 393, *supra* and II, p. 423.

TELEX MESSAGE RECEIVED ON 21 DECEMBER 1973 BY THE AUSTRALIAN  
DEPARTMENT OF PRIMARY INDUSTRY FROM WALES KERVILLE PTY.  
LTD., AGENTS FOR PORT LINCOLN TUNA PROCESSORS PTY. LTD.<sup>1</sup>

We are negotiating sales of frozen tuna to various markets. Several destinations, particularly EEC countries, are calling for—

Non-radioactivity certificates,  
Mercury analysis certificates showing product under 0.7 ppm.

It is not clear whether they expect these certificates to be official Government certificates, or whether certificates by private laboratories would suffice.

Is there any provision for these types of certificates to be issued by DPI, or any manner in which private certificates resulting from proper analyses can be endorsed to make them more official.

Would appreciate your comments on this today if possible, as we are in middle of negotiations.

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<sup>1</sup> II, p. 426.

LETTER DATED 5 FEBRUARY 1974 FROM PORT LINCOLN TUNA PROCESSORS PTY.  
LTD. TO THE AUSTRALIAN DEPARTMENT OF PRIMARY INDUSTRY<sup>1</sup>

Port Lincoln Tuna Processors Pty. Ltd.  
Exporters of Frozen Seafoods

Mr. E. A. Purnell-Webb,  
The Assistant Secretary,  
Industry No. 5 (Fisheries) Division,  
Department of Primary Industry,  
CANBERRA, A.C.T. 2600

Dear Sir,

*Export of Frozen Southern Bluefin Tuna to Italy*

You will appreciate the difficulty in complying with the requirements of the Italian Government concerning the import of the above commodity.

Inter alia these call for:

- (1) Certificate of analysis of a laboratory authorized and authenticated by official authorities showing that the mercury content is not exceeding 0.7 milligrams per kilo. Such certificate of analysis must be incorporated in the sanitary certificate (certificate of condition) and it must clearly state that the analysis has been effected by means of spectrophotometer atomic absorption,  
and,
- (2) Certificate of non-radioactivity issued by a laboratory authenticated by official authorities.

Would you please be good enough to give a clear instruction to your Department in Adelaide in connection with these requirements. We anticipate that a shipment will leave early next week and would therefore appreciate your urgent attention.

(Signed) M. RAPP,  
Managing Director.

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<sup>1</sup> II, p. 426.