

Annex 1 to GEN 95/79

**INTERNATIONAL COURT OF JUSTICE**

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**NUCLEAR TESTS  
(NEW ZEALAND v. FRANCE)**

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**APPLICATION  
FOR PERMISSION TO INTERVENE  
UNDER THE TERMS OF ARTICLE 62 OF THE STATUTE  
SUBMITTED BY THE  
GOVERNMENT OF AUSTRALIA**

23 AUGUST 1995

23 August 1995

I have the honour as the Agent for Australia to submit to the International Court of Justice the present Application for permission to intervene, under the terms of Article 62 of the Statute, in the case concerning *Nuclear Tests (New Zealand v. France)*.

2. Article 69, paragraph 2, of the Rules of Court adopted on 6 May 1946, as amended on 10 May 1972, provides that an application for permission to intervene under the terms of Article 62 of the Statute shall contain:

- a description of the case;
- a statement of law and of fact justifying intervention; and
- a list of the documents in support of the application, which documents shall be attached.

Article 81, paragraph 2, of the Rules of Court adopted on 14 April 1978 provides that an application for permission to intervene under the terms of Article 62 of the Statute shall state the name of an agent, shall specify the case to which it relates, and shall set out:

- (a) the interest of a legal nature which the State applying to intervene considers may be affected by the decision in that case;
- (b) the precise object of the intervention;
- (c) any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case.

Paragraph 3 of that Article provides that the application shall also contain a list of the documents in support, which documents shall be attached.

3. Although the Preamble to the 1978 Rules provides that any case submitted to the Court before 1 July 1978, or any phase of such a case, shall continue to be governed by the Rules in force before that date, for the convenience of the Court the present Application sets out the matters required by the 1978 Rules, in addition to the matters required by the earlier rules.

## 2.

**I. SPECIFICATION AND DESCRIPTION OF THE CASE  
TO WHICH THE APPLICATION RELATES**

4. Proceedings in the case concerning *Nuclear Tests (New Zealand v. France)* were commenced by New Zealand by an Application instituting proceedings of 9 May 1973. A judgment was given by the Court in these proceedings on 20 December 1974<sup>2</sup>. Details of the prior procedural history of the case are given in paragraphs 1-14 of that judgment.

5. The judgment of 20 December 1974 was given after arguments on the questions of the jurisdiction of the Court to entertain the dispute and the admissibility of the Application. New Zealand had filed a Memorial and presented oral arguments on these questions. The French Government did not appoint an agent, did not file a Counter-Memorial and was not represented at the hearings. However, in a letter to the Registrar of 16 May 1973, France had stated that it considered that the Court was not competent in the case.

6. In its judgment of 20 December 1974, the Court found it unnecessary to decide the questions of jurisdiction and admissibility. The Court found that France, through certain unilateral statements, had given an undertaking possessing legal effect to the international community to hold no further atmospheric nuclear tests in the South Pacific<sup>3</sup>. In view of this, the Court found "that the claim of New Zealand no longer has any object and that the Court is therefore not called upon to give a decision thereon"<sup>4</sup>.

7. In paragraph 63 of that judgment, the Court said:

"Once the Court has found that a State has entered into a commitment concerning its future conduct it is not the Court's function to contemplate that it will not comply with it. However, the Court observes that if the basis of this Judgment were to be affected, the Applicant could request an examination of the situation in accordance with the provisions of the Statute; the denunciation by France, by letter dated 2 January 1974, of the General Act for the Pacific Settlement of International Disputes, which is relied on as a basis of jurisdiction in the present case, cannot

<sup>2</sup> *I.C.J. Reports 1974*, p. 457.

<sup>3</sup> *Ibid.*, at pp. 474-475 (paragraphs 52-55).

<sup>4</sup> *Ibid.*, at p. 478 (paragraph 65).

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constitute by itself an obstacle to the presentation of such a request.”

8. The Government of Australia was advised, by a letter from the Registrar of the Court dated 21 August 1995, that on that date New Zealand submitted to the Court a Request for an Examination of the Situation “arising out of a proposed action announced by France which will, if carried out, affect the basis of the Judgment rendered by the Court on 20 December 1974 in the *Nuclear Tests Case (New Zealand v. France)*”. The letter indicates that:

“The request refers to a media statement of 13 June 1995 by President Chirac ‘which said that France would conduct a final series of eight nuclear weapons tests in the South Pacific starting in September 1995’. New Zealand states that the request is made ‘under the right granted to New Zealand in paragraph 63 of the Judgment of 20 December 1974.’”

9. The letter indicates further that New Zealand requests the Court to indicate certain further provisional measures.

10. By this present Application, Australia seeks permission to intervene under the terms of Article 62 of the Statute in any further proceedings in this case. In particular, in addition to proceedings related to the merits of the claim brought by New Zealand against France, Australia requests permission to intervene in proceedings relating to the New Zealand request for the indication of further provisional measures. Australia reserves any rights which it may also have pursuant to Article 63 of the Statute to intervene in relation to any aspects of the proceedings in the case.

## II. STATEMENT OF LAW AND FACT JUSTIFYING THE INTERVENTION

(1) The rights under international law invoked by New Zealand in these proceedings

11. New Zealand’s Application instituting proceedings of 9 May 1973 concluded with a request to 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

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international law, and that these rights will be violated by any further such tests.”<sup>5</sup>

12. The Registrar's letter of 21 August 1995 indicates that New Zealand now asks the Court to adjudge and declare:

“(i) that the conduct of the proposed nuclear tests will constitute a violation of the rights under international law of New Zealand, as well as of other States; further or in the alternative;

(ii) that it is unlawful for France to conduct such nuclear tests before it has undertaken an Environmental Impact Assessment according to accepted international standards. Unless such an assessment establishes that the tests will not give rise, directly or indirectly, to radioactive contamination of the marine environment the rights under international law of New Zealand, as well as the rights of other States, will be violated.”

13. That letter indicates further that New Zealand asserts “that the rights for which it seeks protection ‘all fall within the scope of the rights invoked by New Zealand in paragraph 28 of the 1973 Application’”. Paragraph 28 of the 1973 Application referred to five different “heads” of legal rights. These were described as:

- (a) the rights of all members of the international community, including New Zealand, that no nuclear tests that give rise to radioactive fallout be conducted;
- (b) the rights of all members of the international community, including New Zealand, to the preservation from unjustified artificial radioactive contamination of the terrestrial, maritime and aerial environment and, in particular, of the environment of the region in which the tests are conducted and in which New Zealand, the Cook Islands, Niue and the Tokelau Islands are situated;
- (c) the right of New Zealand 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;

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<sup>5</sup> *I.C.J. Pleadings, Nuclear Tests*, Vol. II, p. 1, at p. 9.

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- (d) the right of New Zealand that no radioactive material, having entered 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, cause harm, including apprehension, anxiety and concern, to the people and Government of New Zealand and of the Cook Islands, Niue and the Tokelau Islands;
- (e) the right of New Zealand 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.<sup>6</sup>

These five heads of rights were set out again in full in New Zealand's Request of 14 May 1973 for the indication of interim measures<sup>7</sup>, and in New Zealand's Memorial of November 1973<sup>8</sup>. However, the Registrar's letter of 21 August 1995 adds that New Zealand says that at the present time it "seeks recognition only of those rights that would be adversely affected by entry into the marine environment of radioactive material in consequence of the further tests to be carried out at Mururoa or Fangataufa Atolls, and of its entitlement to the protection and benefit of a properly conducted Environmental Impact Assessment".

14. Thus, it is the rights claimed by New Zealand under heads (a)-(e) above which formed the subject-matter of the 1973 Application of New Zealand, and which at present form the subject matter of the New Zealand claim.

(2) The *erga omnes* character of certain of the rights invoked by New Zealand

15. It is immediately apparent that whereas heads (c), (d) and (e) each refer solely to a "right of New Zealand", heads (a) and (b) invoke "the rights of all members of the international community, including New Zealand". In its Memorial of November 1973, New Zealand explained this difference, saying:

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<sup>6</sup> *Ibid.*, at p. 8.

<sup>7</sup> *I.C.J. Pleadings, Nuclear Tests*, Vol. II, p. 47, at p. 49 (paragraph 2).

<sup>8</sup> *I.C.J. Pleadings, Nuclear Tests*, Vol. II, p. 143, at pp. 203-204 (paragraph 190).

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"The rights asserted under heads (a) and (b) fall into a different category from these under heads (c), (d) and (e). The rights listed under (a) and (b) are shared in the sense that their violation in relation to any one nation will necessarily involve a violation of the same rights vested in other members of the international community. The degree of attention which individual countries are prepared to give to the protection of these rights and the degree of anxiety displayed in the event of their violation may, and obviously does, vary. Yet the rights are the same for all. They reflect a community interest in the protection of the security, life and health of all peoples and in the preservation of the global environment. The rights are held in common and the corresponding obligation imposed on France (and on any other nuclear power) is owed in equal measure to New Zealand and to every other member of the international community. It is an obligation *erga omnes*."<sup>9</sup>

New Zealand added that:

"The rights in (c), (d) and (e) are not shared in that sense. New Zealand is not, of course, the sole possessor of the right, which derives from its sovereignty, to control the level of radioactivity in its territory, territorial waters and air space or of the right not to have harm caused to it and its people as a result of the entry into those areas of radioactive debris from nuclear testing. Nor, obviously, is New Zealand the only nation whose citizens are entitled to exercise well-established freedoms of the high seas. Yet it cannot be said that the nuclear testing which France has undertaken in the past, and may undertake in the future, will necessarily involve the violation of the same rights possessed by all other countries. ... If radioactive debris from French testing does not enter the territory, territorial waters or air space of a particular country (or at any rate cannot be detected) its rights under heads (c) and (d) will not be affected by what has occurred at Mururoa. ... Whether or not the French action will involve a violation of the high seas rights of any particular country will depend on whether or not its citizens have occasion to attempt to exercise high seas freedoms in the vicinity of Mururoa. ..."<sup>10</sup>

<sup>9</sup> *Ibid.*, at p. 204 (paragraph 191).

<sup>10</sup> *Ibid.*, at pp. 204-205 (paragraphs 192-193).

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16. The New Zealand Memorial then referred<sup>11</sup> to the passage in the judgment in the case concerning the *Barcelona Traction, Light and Power Company, Limited*<sup>12</sup> in which the Court said:

“... an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.”

The New Zealand Memorial suggested<sup>13</sup> that this passage was “especially pertinent” to the rights claimed by New Zealand under heads (a) and (b) referred to above. It went on to say that:

“In the submission of the Government of New Zealand, the principle stated in that passage concerning obligations owed to the whole of the international community is directly applicable to the protection of the right to inherit a world in which nuclear testing in the atmosphere does not take place and of the right to the preservation of the environment from unjustified artificial radioactive contamination. As already noted, these rights for which New Zealand seeks protection reflect community interests and they are shared. The obligation not to undertake nuclear testing which gives rise to radioactive fallout—like the obligations stemming from the outlawing of aggression and genocide and from the law relating to the protection of human rights—is owed to the international community as a whole. In the words used by the Court, ‘all States have a legal interest in its observance’.”<sup>14</sup>

It added that:

“On the basis of the doctrine stated by the Court in the *Barcelona Traction* case every member of the international community must have a legal interest in the community rights which New Zealand has invoked and which the present proceedings seek to protect. That alone would be

<sup>11</sup> *Ibid.*, at p. 207 (paragraph 199).

<sup>12</sup> *I.C.J. Reports 1970*, p. 3, at p. 32 (paragraph 33).

<sup>13</sup> *I.C.J. Pleadings, Nuclear Tests*, Vol. II, p. 143, at p. 209 (paragraph 206).

<sup>14</sup> *Ibid.*, at pp. 209-210 (paragraph 207).



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sufficient to give New Zealand standing to take legal action to protect those rights. Additionally, however, New Zealand is specially affected by the violation of those rights and its legal interest in their protection is correspondingly strengthened.”<sup>15</sup>

17. On 10 July 1974, during the oral arguments on jurisdiction and admissibility, Dr Finlay added on behalf of New Zealand:

“... Nuclear testing of the kind carried out by France inevitably produces results in areas beyond the limits of national jurisdiction. In that sense, and in a broader sense as well, the common heritage of mankind is affected. If New Zealand is correct in its contention that French actions inevitably conflict with international environmental law—and this is also a matter for the merits phase—then the obligation imposed by that law is, once again, of a universal character, an obligation *erga omnes*.

The Court's observations in the *Barcelona Traction* case are, I submit, precisely applicable to the protection of the right to live in a world in which nuclear tests in the atmosphere do not take place and of the right to the preservation of the environment from unjustified radioactive contamination. Those rights are of a kind that, in the words of the Court, all States can be held to have an interest in their protection and in the observance of the corresponding obligation.

...

A closer examination of the nature of obligations *erga omnes* might perhaps lead to the conclusion that within this category of obligations there is a further distinction to be drawn. What I am suggesting is that certain obligations, by their very nature, are owed to the whole of the international community, and it makes no sense to conceive of them as sets of obligations owed, on a bilateral basis, to each member of that community. In other cases this is not true.

...

If this kind of distinction, reflected in Article 60, paragraph 2, of the Vienna Convention on the Law of

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<sup>15</sup> *Ibid.*, at p. 211 (paragraph 211).

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Treaties, is to be drawn within the category of obligations *erga omnes*, then the universal obligations which, in New Zealand's submission, France violates by continuing its programme of atmospheric nuclear testing in the Pacific, are plainly in the first, rather than the second, sub-category. ... The duty to refrain from nuclear weapons tests giving rise to radio-active fall-out and the duty to avoid the unjustified artificial radio-active contamination of the global environment are wholly lacking in any bilateral character and cannot be conceived of or stated in bilateral terms."<sup>16</sup>

(3) The interest of a legal nature which Australia considers may be affected by a decision in this case

18. If, as New Zealand claims, the rights under heads (a) and (b) are of an *erga omnes* character in the sense described above, it necessarily follows that the New Zealand claim against France puts in issue the rights of *all* States, including Australia. Assuming that France is subject to the corresponding *erga omnes* obligations invoked by New Zealand (a matter which will fall to be determined by the Court at the merits stage of the proceedings), Australia, in common with New Zealand and all other States, has—in the words of the Court in the *Barcelona Traction* case—a “legal interest” in their observance by France.

19. As indicated above, New Zealand argues that these obligations “by their very nature, are owed to the whole of the international community, and it makes no sense to conceive of them as sets of obligations owed, on a bilateral basis, to each member of that community”<sup>17</sup>. If so, it must follow that a decision by the Court on the merits of the New Zealand claim would not be a decision as to bilateral rights and obligations of France and New Zealand, capable of being considered in isolation from identical bilateral rights and obligations existing as between France and every other member of the international community. Rather, a determination of the New Zealand claim would of itself inevitably entail a determination of the obligations of France vis-à-vis the members of the international community as a whole, including Australia; and of the

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<sup>16</sup> *I.C.J. Pleadings, Nuclear Tests*, Vol. II, p. 247, at pp. 264-266.

<sup>17</sup> See paragraph 17 above.

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corresponding rights of the international community as a whole, including Australia.

20. This is not to suggest that New Zealand in bringing the claim is purporting to represent and speak on behalf of the international community as a whole. The *dispute* which forms the basis of the proceedings, and which New Zealand asks the Court to determine, is a bilateral dispute between New Zealand and France. Other States may or may not agree with New Zealand that the proposed conduct of France would violate an *erga omnes* obligation under international law. Furthermore, by virtue of Article 59 of the Statute, it is only the parties to the case, and not the international community as a whole, which would be bound by the judgment of the Court. However, while the *dispute* between New Zealand and France is bilateral, it remains the case that in determining the merits of the New Zealand claim, the Court would necessarily be required to pronounce on the rights of all States. The legal interests of every member of the international community, even of those States not bound by the judgment, are thus "affected" or "*en cause*" within the meaning of Article 62 of the Statute<sup>18</sup>.

21. The situation in the present instance is very different from that in cases in which the Court has refused requests for permission to intervene pursuant to Article 62. In the *Continental Shelf* case between Tunisia and the Libyan Arab Jamahiriya<sup>19</sup>, as in the *Continental Shelf* case between the Libyan Arab Jamahiriya and Malta<sup>20</sup>, the relevant interest of a legal nature of the State seeking to intervene was particular to that State, and was distinct from the legal interest of either of the parties to the case. A decision of the Court on the matters in issue in those cases did not involve a decision directly upon the interest of the State seeking to intervene. On the other hand, in the instant case, in relation to the rights under heads (a) and (b) invoked by New Zealand, Australia's own legal interest as a member of the international community is identical to the legal interest of New Zealand. Insofar as it relates to rights under heads (a) and (b), the New Zealand claim puts *directly in issue* Australia's legal rights as a member of the international community vis-à-vis France, in the

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<sup>18</sup> See *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, p. 92, at p. 130 (paragraph 90).

<sup>19</sup> *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application for Permission to Intervene, Judgment, I.C.J. Reports 1981*, p. 3.

<sup>20</sup> *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 3.

same way and to the same extent that it puts in issue the rights of New Zealand, and of all other members of the international community.

22. In another case, in which one of the parties claimed the existence of an objective legal régime that would apply not only to both parties but also to a third State which was not a party to the case, the Chamber of the Court found that the third State had an interest of a legal nature which may be affected for the purposes of Article 62 of the Statute<sup>21</sup>. Australia considers that the same reasoning must apply in a case such as the present. Where a party to a case invokes obligations, a breach of which gives rise to responsibility not only to that State but also to a third State which is not a party, that third State must be considered as having an interest of a legal nature which is *en cause* for the purposes of Article 62. Where the relevant obligation is an obligation *erga omnes*, this means that every State has an "interest of a legal nature which may be affected by the decision in the case", and is entitled to seek permission to intervene under the terms of Article 62 of the Statute. In practice, it is of course not to be expected that every State *will* seek permission to intervene. As New Zealand observed in its Memorial of November 1973: "The degree of attention which individual countries are prepared to give to the protection of these rights and the degree of anxiety displayed in the event of their violation may, and obviously does, vary. Yet the rights are the same for all."<sup>22</sup> Australia as a State in the South Pacific region clearly has a particular interest in the observance by France of the *erga omnes* obligations invoked by New Zealand. However, Australia considers that such special interest is not required by Article 62 of the Statute as a prerequisite for intervention.

23. The situation in a case such as this is analogous to a case in which a State brings proceedings alleging that another State has violated a multilateral treaty obligation, being an obligation the breach of which gives rise to responsibility vis-à-vis every other State Party to the treaty. In such a case, the *dispute* is bilateral, and only the two parties will be bound by the decision of the Court. Nonetheless, the interests of all States Parties to the treaty will be *en cause*, as is reflected in the provision made by Article 63 of the Statute. If the treaty involved is a treaty to which all, or nearly all, States in the world are parties,

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<sup>21</sup> See *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, p. 92, at pp. 120-122 (paragraphs 70-72).

<sup>22</sup> See paragraph 15 above.

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every such State will have a right to intervene pursuant to Article 63, even if in practice probably not every such State would avail itself of that right.

24. Just as Australia's legal interest will be *en cause* in any proceedings relating to the merits of the New Zealand claim, that legal interest will similarly be *en cause* in proceedings relating to the indication of provisional measures. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object to preserve the respective rights of the parties pending the decision of the Court. As the legal interest of all members of the international community in the observance of *erga omnes* obligations is the same, that legal interest of every State will be affected equally by a decision whether or not to indicate such measures. Any provisional measures indicated by the Court would have the effect of preserving the rights not only of New Zealand, but of all States. In the present instance, Australia seeks permission to intervene in support of New Zealand's application for the indication of provisional measures because, in the absence of such measures, the effect of the proposed nuclear tests on the rights of the international community as a whole will be irretrievable.

25. While it is for the Court itself to decide upon any request for permission to intervene<sup>23</sup>, the Court has indicated that it does not consider that it has any general discretion to accept or reject a request for permission to intervene under Article 62 simply for reasons of policy. The Court has indicated that its task is, rather, to determine the admissibility or otherwise of the request by reference to the relevant provisions of the Statute<sup>24</sup>. Australia submits that, in principle, permission should not be refused once the requirements of Article 62 have been established. This is particularly so in cases involving a claim of a breach of an *erga omnes* obligation. Reference has already been made to the analogy between intervention under Article 62 in such cases and intervention under Article 63<sup>25</sup>. Under Article 63, intervention is as of right.

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<sup>23</sup> Article 62, paragraph 2, of the Statute.

<sup>24</sup> *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application for Permission to Intervene, Judgment, I.C.J. Reports 1981, p. 3, at p. 12 (paragraph 17); Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984, p. 3, at p. 9 (paragraph 12).*

<sup>25</sup> See paragraph 23 above.

### III. THE PRECISE OBJECT OF THE INTERVENTION

#### (1) The legal issues in respect of which Australia seeks to intervene

26. Australia recognises that if it is permitted to intervene in respect of its interest of a legal nature which may be affected, this does not mean that the Court will also permit it to "make excursions into other aspects of the case" brought by New Zealand against France.<sup>26</sup>

27. As indicated above, the New Zealand claim puts in issue five heads of rights under international law. As regards heads (c), (d) and (e), as New Zealand said in its Memorial of November 1973:

"... If radioactive debris from French testing does not enter the territory, territorial waters or air space of a particular country (or at any rate cannot be detected) its rights under heads (c) and (d) will not be affected by what has occurred at Mururoa. ... Whether or not the French action will involve a violation of the high seas rights of any particular country will depend on whether or not its citizens have occasion to attempt to exercise high seas freedoms in the vicinity of Mururoa. ..."<sup>27</sup>

In this Application for permission to intervene, Australia does not rely on any "legal interest" of its own, for the purposes of Article 62 of the Statute, in the question whether there has been any breach of the rights of New Zealand under heads (c), (d) and (e).

28. Nor does Australia seek to intervene in these proceedings under Article 62 in order to argue that there has been a breach of the rights of *Australia* under heads (c), (d) and (e). To do so would be, in effect, to seek to become an additional party to the proceedings, and to tack on a new case and so have Australia's own claim against France adjudicated by the Court in the course of the proceedings brought by New Zealand.<sup>28</sup> The Court will not need to be

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<sup>26</sup> See *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, p. 92, at p. 116 (paragraph 58).

<sup>27</sup> See paragraph 15 above.

<sup>28</sup> An intervener is not necessarily precluded from itself becoming a party to case, and from introducing its own claims into the proceedings. In the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, p. 92, at pp. 133-135 (paragraphs 97-99), the Chamber of the Court considered that an intervener may become a party to a case with the consent of the original parties. Australia submits that it is unnecessary to consider whether there are

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reminded that on the same day that proceedings were commenced by New Zealand against France in 1973, proceedings were also commenced by Australia in the case concerning *Nuclear Tests (Australia v. France)*.<sup>29</sup> However, unlike the 1973 Application of New Zealand, which complains of nuclear testing generally, and is not confined solely to *atmospheric* testing, the 1973 Application of Australia specifically requested the Court to adjudge and declare that "the carrying out of further *atmospheric* nuclear weapon tests in the South Pacific Ocean is not consistent with applicable rules of international law".<sup>30</sup> Australia accepts that it could not request the Court to resume those proceedings brought by Australia, which were expressly confined by Australia to the issue of *atmospheric* nuclear tests, in order to seek a determination of the legality of the proposed *underground* tests by France. The position of Australia is thus entirely different to that of New Zealand.

29. Australia's proposed intervention would thus be confined solely to those aspects of the case which concern the rights asserted by New Zealand under heads (a) and (b). In deciding the merits of the New Zealand claim, insofar as it concerns those rights, the Court would be called upon to determine whether under customary international law France has *erga omnes* obligations of the kind claimed by New Zealand, and whether those obligations have been breached by the conduct of France complained of by New Zealand. For the reasons given in paragraphs 18-25 above, Australia has a legal interest in both of these questions, and seeks permission to intervene in order to present arguments to the Court on them. Similarly, Australia requests permission to intervene in proceedings relating to the indication of provisional measures only in relation to the issue of whether such measures should be indicated for the preservation of the rights under heads (a) and (b).

30. In short, the purpose of Australia's proposed intervention is not to ask the Court to decide anything which it would not decide in the absence of that intervention. Australia requests permission to intervene merely to enable it to state its views on certain of the matters which already form part of New Zealand's claim, in order to protect or safeguard Australia's interests of a legal nature by ensuring that they are not "affected" by a decision of the Court

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other circumstances in which a State intervening under Article 62 of the Statute may become a party to the case or introduce new issues into the proceedings, since this is not Australia's intention in the present instance.

<sup>29</sup> See *I.C.J. Pleadings, Nuclear Tests*, Vol. I, p. 1.

<sup>30</sup> *Ibid.*, at pp. 14-15 (emphasis added).

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without Australia being heard.<sup>31</sup> Australia's proposed intervention to argue in favour of the indication of provisional measures is for the same purpose.

31. It is not appropriate at this stage, before this Application for permission to intervene has been decided, for Australia to set out in detail the arguments that it would present on the merits of the New Zealand claim if its request for permission to intervene were granted. However, it would seem useful if not necessary for Australia to indicate in advance the position it proposes to take. Australia would be pleased to comply with any request by the Court for any further information it may desire on Australia's position to assist it in its consideration of this Application for permission to intervene.

32. If granted permission to intervene, Australia's position will be that the underground nuclear tests proposed to be conducted by France in the South Pacific will constitute a breach of the obligations of France under customary international law. The following paragraphs indicate briefly the principal contentions of law and fact on which this conclusion is based.

(2) Australia's position on the legal issues in respect of which it seeks to intervene

33. Australia will argue that under international law all States are subject to the following *erga omnes* obligations:

- (1) the obligation not to conduct underground nuclear testing, which will lead to, or which risks, the immediate or future introduction of radioactive material into the marine environment, particularly into the marine environment beyond areas under the jurisdiction of the State conducting the activity; and
- (2) the obligation not to conduct underground nuclear testing, which may cause significant and harmful changes to the marine environment, particularly to the marine environment beyond areas under the jurisdiction of the State conducting the activity, in the absence of a prior and adequate environmental impact assessment.

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<sup>31</sup> See *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, p. 92, at p. 130 (paragraph 90).



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Australia will contend that these *erga omnes* obligations are owed to both present and future generations and that these are obligations to which the precautionary principle applies.<sup>32</sup>

34. Australia will argue that these specific obligations are reflective of certain more general rules of customary international law. These general rules are themselves reflected in various international instruments. In relation to the marine environment, Part XII of the 1982 United Nations Convention on the Law of the Sea ("UNCLOS")<sup>33</sup> which deals with "Protection and Preservation of the Marine Environment"<sup>34</sup>, contains provisions which reflect these rules. France made a declaration upon its signature of this Convention on 10 December 1992, paragraph 1 of which stated that:

"Les dispositions de la Convention relatives au statut des différents espaces maritimes et au régime juridique des utilisations et de la protection du milieu marin confirment et consolident les règles générales du droit de la mer et autorisent donc la République française à ne pas reconnaître comme lui étant opposables les actes ou règlements étrangers qui ne seraient pas conformes à ces règles générales."<sup>35</sup>

Australia will contend that France has thus itself acknowledged that the principles of international law from which these specific obligations derive form

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<sup>32</sup> The "precautionary principle", a principle which forms part the preamble to the Convention on Biological Diversity (Rio de Janeiro, 5 June 1992) to which both Australia and France are parties, is that where there is a threat of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimise such threat. Article 130r of the European Community Treaty (as amended by the Treaty on European Union (Maastricht, 7 February 1992)), to which France is a party, unequivocally provides for the precautionary principle to form the basis of European Union environmental protection.

<sup>33</sup> Montego Bay, 10 December 1982. UNCLOS entered into force both generally and for Australia on 16 November 1994. This Convention has been signed, but not ratified, by France.

<sup>34</sup> The provisions of particular relevance are Articles 1, 192, 194 and 204-207. These are reproduced in Annex 1 to this Application.

<sup>35</sup> See *Traités multilatéraux déposés auprès du Secrétaire Général, État au 31 décembre 1994*, ST/LEG/SER.E/13, at p. 893 (reproduced in Annex 2 to this Application). For an English translation, see *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 1994*, ST/LEG/SER.E/13, at p. 858 (reproduced in Annex 3 to this Application): "The provisions of the Convention relating to the status of the different maritime spaces and to the legal régime of the uses and protection of the marine environment confirm and consolidate the general rules of the law of the sea and thus entitle the French Republic not to recognize as enforceable against it any foreign laws or regulations that are not in conformity with those general rules."

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part of "les règles générales du droit de la mer", that is, part of customary international law.

35. Australia will argue further that draft Articles 1, 2, 12 and 14 provisionally adopted by the International Law Commission in 1994 in relation to International Liability for Injurious Consequences of Acts Not Prohibited by International Law<sup>36</sup> are also reflective of the customary international law principles from which these specific obligations derive, particularly the second obligation referred to in paragraph 33 above. Australia will also contend that Article 16 of the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region ("the Nouméa Convention")<sup>37</sup> is treaty commitment of regional application reflecting customary international law as it relates to that second obligation concerning environmental impact assessment. The Nouméa Convention was concluded on 25 November 1986 and entered into force both generally and for Australia, New Zealand and France on 22 August 1990. France is therefore bound vis-à-vis both Australia and New Zealand not only by the rule of customary international law reflected in that Convention, but by the Convention itself. Under Article 16, each Party to the Nouméa Convention is obliged, within its capabilities, to assess the potential effects of major projects which might affect the marine environment and to communicate the results of these assessments to the South Pacific Commission.<sup>38</sup>

(3) Australia's position on the facts relevant to the legal issues in respect of which it seeks to intervene

36. Between 1975 and 1991 France exploded some 134 nuclear devices at the bottom of shafts beneath Mururoa and Fangataufa. 126 underground nuclear tests were conducted at Mururoa and 8 at Fangataufa. The most recent underground nuclear explosion in the South Pacific took place at Mururoa on 15 July 1991. As a result these past underground tests, Mururoa and Fangataufa are already repositories of very large quantities of radioactive material. The explosion cavities under Mururoa and Fangataufa are, in effect, high-level nuclear storage sites. Australia will contend that further underground nuclear

<sup>36</sup> See A/CN.4/L.498/Add.2, 15 July 1994, reproduced in Annex 4 to this Application.

<sup>37</sup> The text of the Convention is reproduced in *International Legal Materials*, Vol. 26, 1987, p. 38.

<sup>38</sup> Articles 1, 2 and 16 of the Nouméa Convention are reproduced in Annex 5 to this Application.

## 18.

tests will add significantly to the accumulation of radioactive material at Mururoa and Fangataufa. Australia will also contend that the proposed eight tests will contribute to, and through their impact on the structural integrity of the atolls may accelerate, the release of radioactive materials into the marine environment, including into the marine environment beyond areas under the jurisdiction of France.

37. In the 1980s France sought to reduce continuing international concerns over its underground nuclear tests in the South Pacific by allowing independent scientific research missions access to Mururoa atoll. The scientists taking part in these missions were well respected and of international stature. They were led by M. Haroun Tazieff (1982), Mr Hugh Atkinson (1983) and Commander Jacques-Yves Cousteau (1987) respectively. Time constraints and restrictions on access to the atoll severely limited the scope of these studies and the information obtained was, thus, in each case, only of a preliminary nature. The International Atomic Energy Agency also conducted two radiological sampling exercises of marine organisms in the vicinity of Mururoa in 1991 and 1994. Both studies were designed as intercomparison exercises, to check the consistency of analysis on the same samples between participating laboratories, and not as studies of the environmental impact of nuclear testing at the Mururoa atoll. No independent scientific mission has been permitted to visit Fangataufa atoll.

38. If granted permission to intervene, Australia will contend that the independent scientific investigations which have been conducted to date at or near Mururoa have not alleviated international concerns about the impact of underground nuclear testing at the atoll on the marine environment. On the contrary, although far from complete or comprehensive, the accumulation of information and studies now available to the international community raises serious concerns about the effects of the further underground nuclear tests proposed by the Government of France. These concerns can only be satisfactorily resolved by a prior and adequate assessment of the environmental impact of past and proposed tests at Mururoa.

## 19.

39. Australia will argue that all three independent scientific missions that visited Mururoa in the 1980s agreed that long-term leakage of radioactive material from the nuclear test sites below the atoll will occur, but none had access to sufficient data to estimate reliably the time scale involved. Radioactive material deposited in the underground cavities and fractured rock produced by nuclear explosions can be expected to be leached by water infiltrating into the fractures. Water circulates through and saturates the geological structure of atolls such as Mururoa and Fangataufa. This water flow can provide a vehicle for leaching radioisotopes from the underground test sites. The speed at which this leaching will occur depends on the types and solubility of radioisotopes, the permeability and temperature of the rock, the degree of faulting and fracturing in the rocks and other factors. When leakage does occur, if indeed it is not already taking place, there is the potential for adverse effects on the marine environment in the vicinity of the atolls and in the wider region through the ocean currents and the movement of contaminated marine species. Radionuclides released into the water are concentrated as they pass through the marine ecosystem, affecting highly migratory species including tuna on which people of the South Pacific rely for sustenance and trade.

40. The Australian position will be that the available evidence also indicates that significant physical damage to Mururoa atoll has occurred as a result of underground nuclear explosions. All three international scientific missions in the 1980s reported fissuring of the limestone cap of the atoll. There is general acceptance both amongst the French authorities and independent scientists that these fissures have, at least in part, been due to the effects of past nuclear testing. Subsidence of the atoll surface due to compaction of the limestone cap arising from testing has affected the north east and south west of the atoll. There is also evidence of a number of submarine slides from the edge of the limestone cap having occurred as a result of nuclear testing. Further submarine slides could facilitate the movement of soluble radioisotopes through the limestone cap and into the marine environment by removing the outer, relatively low-permeability, layers of the atoll.

41. Australia will also argue that there is insufficient evidence available to the international scientific community to rule out the possibility of a major rupturing of Mururoa atoll as a result of the further nuclear tests proposed by the Government of France. Serious collapse or fissuring of the atoll could greatly

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accelerate the release of significant quantities of the radioactive material stored therein with potentially serious adverse consequences for the marine environment. Past testing has affected the structure of the atolls in a way which is likely to increase the longer-term potential for leakage of radioactive material into the marine environment. Further nuclear tests are likely to have a further impact on the structure of the atoll with consequent acceleration of the release of radioactive material. This will increase the likelihood of adverse effects on the marine environment.

42. Australia will further contend that although most of the radioisotopes produced in an underground nuclear test are initially confined in the explosion cavities, such tests also involve a significant risk of immediate release of radioisotopes into the atmosphere and, in the case of Mururoa and Fangataufa, into the marine environment. Very high pressures are generated during a nuclear explosion and immediate release of radioactive gases and vapours can occur through fissures in the rock or test shaft to the surface—a phenomenon known as venting. Even in the best circumstances, some radioactivity produced by underground nuclear explosions can escape into the atmosphere. Seepage of gases subsequent to nuclear tests and drill-back sampling can also release quantities of radioactive material. Venting of radioactive gases and vapours from underground nuclear tests has taken place in the United States of America and the former Soviet Union. Such venting is known to have occurred at Mururoa. Occurrence of venting, however minor, is an indication that direct pathways exist from the underground test sites to the atmosphere and marine environment.

43. It will be Australia's contention that although there have been a number of international investigations and reports, no adequate environmental impact assessment has been done which would enable the question of the impact of further underground nuclear tests on the marine environment of the South Pacific to be answered with authority. There is a need for further independent and comprehensive scientific studies of the environmental impacts of nuclear testing at Mururoa and Fangataufa. This need is based on:

- concerns about the cumulative effects of underground nuclear testing, particularly on the structural integrity of Mururoa and Fangataufa, which could open up additional pathways for the release of radioactive material into the marine environment; and

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- the lack of internationally available data and assessments to permit a comprehensive and independent analysis of the release rates of radioactivity from the atoll into the surrounding ocean.

44. The need for an adequate environmental impact assessment prior to any further underground nuclear tests at Mururoa and Fangataufa was strongly expressed by a report prepared by Australian scientists in a range of relevant disciplines for a meeting of South Pacific Environment Ministers held in Brisbane, Australia, on 16 and 17 August 1995. The report comments:

"More information is required to define and understand the structural integrity of the atolls and to assess the timing and scale of any leakage of radioactivity. The French authorities have a considerable data base of geoscientific, environmental and other relevant information, built up over two decades of monitoring in French Polynesia. France should release this (currently confidential) information to the international scientific community for independent consideration and analysis as a matter of priority. Moreover, it should allow international scientists to have unfettered access to the atolls before, during and after the proposed program of eight tests, to obtain independent samples and conduct experiments. In the longer term, there is a need to continue to monitor the atolls, and international scientists should be allowed to participate in, and publish outcomes of, such long-term monitoring activities."<sup>39</sup>

45. Additionally, Australia will argue that an isolated atoll or small group of atolls, including the water within the lagoon comprising the atoll, constitutes not "land", but a "marine feature" which forms part of the marine environment. The limestone and other rock structures of these atolls are permeated or overlain by water. They cannot be considered as land in any normal sense. Accordingly, harm to Mururoa or Fangataufa itself constitutes harm to the marine environment. On this basis, damage to the marine environment is direct and is already occurring.

<sup>39</sup> *The Impact of Nuclear Testing at Mururoa and Fangataufa*, paper drafted by an informal scientific advisory group convened by the Chief Scientist, Department of the Prime Minister and Cabinet, for the South Pacific Environment Ministers Meeting, Brisbane, August 1995, at p. 2.

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46. By a marine feature is meant an area of land and water which as a result of climatic conditions or geographical position has marine characteristics. For instance, it has been argued that the Rann of Kutch, which might be described as an area of salt desert that for periods of the year is largely covered by sea water and monsoonal floods, is a marine feature<sup>40</sup>. The notion that the division between land and sea is not simply a matter of determining what is dry land is well illustrated by the *Fisheries case*,<sup>41</sup> in which this Court had to consider the relationship of part of the coast of the mainland of Norway to the islands, islets, rocks and reefs in that coastal zone. In the Court's view, in the situation of the coastal zone in dispute in that case, the "coast of the mainland does not constitute ... a clear dividing line between land and sea. What matters, what really constitutes the Norwegian coast line, is the outer line of the 'skjærgaard'".<sup>42</sup> Mururoa atoll is an example of the converse situation, where the dry land of the atoll does not mark the dividing line between sea and land.

47. In the light of these facts, Australia will argue that the proposed underground nuclear tests by France will lead to, and will risk, the immediate or future introduction of radioactive material into the marine environment, including into the marine environment beyond areas under the jurisdiction of France. Furthermore, Australia will argue that although the proposed underground nuclear tests may cause significant and harmful changes to the marine environment, particularly to the marine environment beyond areas under the jurisdiction of France, there has been no prior adequate environmental impact assessment by France.

## IV. BASIS OF JURISDICTION

48. Article 81, paragraph 2 (c), of the Rules of Court adopted on 14 April 1978 provides that an application for permission to intervene under the terms of Article 62 of the Statute shall set out "any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case".

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<sup>40</sup> See the *Indo-Pakistan Western Boundary (Rann of Kutch) Case (India v. Pakistan)* (19 February 1968), *International Law Reports*, Vol. 50, p. 2, at pp. 20-21, 30-34, 390, 470.

<sup>41</sup> *I.C.J. Reports* 1951, p. 116.

<sup>42</sup> *Ibid.*, at p. 127.

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However, this requirement is not included in the Rules in force prior to 1 July 1978, and does not reflect any provision of the Statute. The absence of any such jurisdictional link between an intervener and a party to the case is no bar to permission being given to an intervention, at least, in circumstances such as the present in which Australia is not seeking to become a party to the case, and is not seeking to tack on a new case and so have its own claims adjudicated by the Court<sup>43</sup>. As Australia considers that it is not required to do so, it does not rely on any jurisdictional link between itself and the parties to the case to justify its intervention in these proceedings.

## V. DOCUMENTS IN SUPPORT OF THE APPLICATION

49. The following is a list of the documents in support of this Application, which documents are attached hereto:

- (1) United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, Articles 1, 192, 194 and 204-207
- (2) Declaration of the Republic of France upon signature of the 1982 United Nations Convention on the Law of the Sea, *Traités multilatéraux déposés auprès du Secrétaire Général, État au 31 décembre 1994*, ST/LEG/SER.E/13, p. 893
- (3) English translation of (2) above, *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 1994*, ST/LEG/SER.E/13, p. 858
- (4) International Law Commission, Draft articles on international liability for injurious consequences arising out of acts not prohibited by international law, A/CN.4/L.498/Add.2, 15 July 1994
- (5) Convention for the Protection of the Natural Resources and Environment of the South Pacific Region / Convention sur la protection des ressources naturelles et de l'environnement de la région du Pacifique sud, Nouméa, 24 November 1986, Articles 1, 2 and 16

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<sup>43</sup> See *Land, Island and Maritime Frontier Dispute (El Salvador/ Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, p.92, at pp. 133-135 (paragraphs 97-101).



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**VI. CONCLUSION**

50. For the reasons set out above, Australia respectfully requests the Court to permit it to intervene under the terms of Article 62 of the Statute in the proceedings brought by New Zealand against France.

A handwritten signature in black ink, appearing to read 'Gavan Griffith', written in a cursive style.**GAVAN GRIFFITH**

Agent of the Government of Australia



# The Law of the Sea

**Official Text  
of the United Nations Convention  
on the Law of the Sea  
with Annexes and Index**

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**Final Act  
of the Third United Nations Conference  
on the Law of the Sea**

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**Introductory Material  
on the Convention  
and the Conference**



**United Nations  
New York, 1983**

## PART I

### INTRODUCTION

#### Article 1 Use of terms and scope

##### 1. For the purposes of this Convention:

(1) "Area" means the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;

(2) "Authority" means the International Sea-Bed Authority;

(3) "activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area;

(4) "pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

(5) (a) "dumping" means:

(i) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;

(ii) any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea;

(b) "dumping" does not include:

(i) the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;

(ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.

2. (1) "States Parties" means States which have consented to be bound by this Convention and for which this Convention is in force.

(2) This Convention applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1(b), (c), (d), (e) and (f), which become Parties to this Convention in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

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PART XII  
PROTECTION AND PRESERVATION OF THE  
MARINE ENVIRONMENT

SECTION 1. GENERAL PROVISIONS

*Article 192*

*General obligation*

States have the obligation to protect and preserve the marine environment.

*Article 193*

*Sovereign right of States to exploit their natural resources*

States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.

*Article 194*

*Measures to prevent, reduce and control pollution of the  
marine environment*

1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.

2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.

3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, *inter alia*, those designed to minimize to the fullest possible extent:

- (a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;
- (b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;
- (c) pollution from installations and devices used in exploration or exploitation of the natural resources of the sea-bed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;
- (d) pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating

*Convention: arts. 195-199*

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the design, construction, equipment, operation and manning of such installations or devices.

4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.

5. The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

*Article 195**Duty not to transfer damage or hazards or transform one type of pollution into another*

In taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.

*Article 196**Use of technologies or introduction of alien or new species*

1. States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto.

2. This article does not affect the application of this Convention regarding the prevention, reduction and control of pollution of the marine environment.

**SECTION 2. GLOBAL AND REGIONAL CO-OPERATION***Article 197**Co-operation on a global or regional basis*

States shall co-operate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

*Article 198**Notification of imminent or actual damage*

When a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations.

*Article 199**Contingency plans against pollution*

In the cases referred to in article 198, States in the area affected, in accordance with their capabilities, and the competent international organizations

AS

Convention: arts. 204-207

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- (a) the allocation of appropriate funds and technical assistance; and
- (b) the utilization of their specialized services.

## SECTION 4. MONITORING AND ENVIRONMENTAL ASSESSMENT

### *Article 204*

#### *Monitoring of the risks or effects of pollution*

1. States shall, consistent with the rights of other States, endeavour, as far as practicable, directly or through the competent international organizations, to observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution of the marine environment.
2. In particular, States shall keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment.

### *Article 205*

#### *Publication of reports*

States shall publish reports of the results obtained pursuant to article 204 or provide such reports at appropriate intervals to the competent international organizations, which should make them available to all States.

### *Article 206*

#### *Assessment of potential effects of activities*

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.

## SECTION 5. INTERNATIONAL RULES AND NATIONAL LEGISLATION TO PREVENT, REDUCE AND CONTROL POLLUTION OF THE MARINE ENVIRONMENT

### *Article 207*

#### *Pollution from land-based sources*

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.
2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
3. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.

4. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from land-based sources, taking into account characteristic regional features, the economic capacity of developing States and their need for economic development. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

5. Laws, regulations, measures, rules, standards and recommended practices and procedures referred to in paragraphs 1, 2 and 4 shall include those designed to minimize, to the fullest extent possible, the release of toxic, harmful or noxious substances, especially those which are persistent, into the marine environment.

*Article 208*

*Pollution from sea-bed activities subject to national jurisdiction*

1. Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with sea-bed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.

3. Such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures.

4. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.

5. States, acting especially through competent international organizations or diplomatic conference, shall establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment referred to in paragraph 1. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

*Article 209*

*Pollution from activities in the Area*

1. International rules, regulations and procedures shall be established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area. Such rules, regulations and procedures shall be re-examined from time to time as necessary.

2. Subject to the relevant provisions of this section, States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be. The requirements of such laws and regulations shall be no less effective than the international rules, regulations and procedures referred to in paragraph 1.

*Article 210*

*Pollution by dumping*

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.

ANNEX 2

A7

ST/LEG/SER/E/13

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**TRAITÉS MULTILATÉRAUX  
DÉPOSÉS AUPRÈS  
DU SECRÉTAIRE GÉNÉRAL**

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**État au 31 décembre 1994**



NATIONS UNIES

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## XXL6 : Droit de la mer — Convention de 1982

## 4. CONVENTION DES NATIONS UNIES SUR LE DROIT DE LA MER

*Conclue à Montego Bay (Jamaïque) le 10 décembre 1982*

**ENTRÉE EN VIGUEUR :**  
**ENREGISTREMENT :**  
**TEXTE :**

16 novembre 1994, conformément au paragraphe premier de l'article 308.  
16 novembre 1994.

Doc. A/CONF.62/122 et Corr. 1 à 11 et notifications dépositaires C.N.236.1984.TREATIES-7 du 5 octobre 1984 (procès-verbal de rectification des textes originaux anglais et espagnol); C.N.202.1985.TREATIES-17 du 23 août 1985 (procès-verbal de rectification du texte original anglais), C.N.17.1986.TREATIES-1 du 7 avril 1986 (procès-verbal de rectification de l'original anglais, arabe, chinois, français et espagnol de l'Acte Final) et C.N.166.1993.TREATIES-4 du 9 août 1993 (procès-verbal de rectification de l'original anglais, arabe, chinois, français et espagnol de l'Acte Final).

**ÉTAT :**

Signataires : 158. Parties : 70.

*Note :* La Convention a été adoptée par la Troisième Conférence des Nations Unies sur le droit de la mer et ouverte à la signature, ainsi que l'Acte Final de la Conférence, à Montego Bay (Jamaïque) le 10 décembre 1982. La Conférence, convoquée en vertu de la résolution 3067 (XXVIII)<sup>1</sup> adoptée par l'Assemblée générale le 16 novembre 1973<sup>1</sup>, s'est tenue comme suit :

Première session : Siège de l'Organisation des Nations Unies, New York, 3 au 15 décembre 1973;

Seconde session : Parque Central, Caracas, 20 juin au 29 août 1974;

Troisième session : Office des Nations Unies à Genève, 17 mars au 9 mai 1975;

Quatrième session : Siège de l'Organisation des Nations Unies, New York, 15 mars au 7 mai 1976;

Cinquième session : Siège de l'Organisation des Nations Unies, New York, 2 août au 17 septembre 1976;

Sixième session : Siège de l'Organisation des Nations Unies, New York, 23 mai au 15 juillet 1977;

Septième session : Office des Nations Unies à Genève, 28 mars au 19 mai 1978;

Reprise de la septième session : Siège de l'Organisation des Nations Unies, New York, 21 août au 15 septembre 1978;

Huitième session : Office des Nations Unies à Genève, 19 mars au 27 avril 1979;

Reprise de la huitième session : Siège de l'Organisation des Nations Unies, New York, 19 juillet au 24 août 1979;

Neuvième session : Siège de l'Organisation des Nations Unies, New York, 3 mars au 4 avril 1980;

Reprise de la neuvième session : Office des Nations Unies à Genève, 28 juillet au 29 août 1980;

Dixième session : Siège de l'Organisation des Nations Unies, New York, 9 mars au 24 avril 1981;

Reprise de la dixième session : Office des Nations Unies à Genève, 3 au 28 août 1981;

Onzième session : Siège de l'Organisation des Nations Unies, New York, 8 mars au 30 avril 1982;

Reprise de la onzième session : Siège de l'Organisation des Nations Unies, New York;

Dernière Partie de la onzième session : Montego Bay (Jamaïque) 6 au 10 décembre 1982.

La Conférence a également adopté un acte final<sup>2</sup> et y annexées, neuf résolutions et une déclaration interprétative. Le texte de l'Acte final a été reproduit sous la cote A/CONF.62/121 et Corr. 1 à 8.

Participant <sup>3</sup>	Signature, succession (d)	Ratification, confirmation formelle (c), adhésion (a), succession (d)	Participant	Signature, succession (d)	Ratification, confirmation formelle (c), adhésion (a), succession (d)
Afghanistan .....	18 mars 1983		Brazil .....	10 déc 1982	21 déc 1988
Afrique du Sud .....	5 déc 1984		Brunéi Darussalam ..	5 déc 1984	
Algérie .....	10 déc 1982		Bulgarie .....	10 déc 1982	
Allemagne .....		14 oct 1994 a	Burkina Faso .....	10 déc 1982	
Angola .....	10 déc 1982	5 déc 1990	Burundi .....	10 déc 1982	
Antigua-et-Barbuda	7 févr 1983	2 févr 1989	Cambodge .....	1 juil 1983	
Arabie saoudite .....	7 déc 1984		Cameroun .....	10 déc 1982	19 nov 1985
Argentine .....	5 oct 1984		Canada .....	10 déc 1982	
Australie .....	10 déc 1982	5 oct 1994	Cap-Vert .....	10 déc 1982	10 août 1987
Autriche .....	10 déc 1982		Chili .....	10 déc 1982	
Bahamas .....	10 déc 1982	29 juil 1983	Chine .....	10 déc 1982	
Bahreïn .....	10 déc 1982	30 mai 1985	Chypre .....	10 déc 1982	12 déc 1988
Bangladesh .....	10 déc 1982		Colombie .....	10 déc 1982	
Barbade .....	10 déc 1982	12 oct 1993	Communauté européenne	7 déc 1984	
Bélarus .....	10 déc 1982		Comores .....	6 déc 1984	21 juin 1994
Belgique .....	5 déc 1984		Congo .....	10 déc 1982	
Belize .....	10 déc 1982	13 août 1983	Costa Rica .....	10 déc 1982	21 sept 1992
Bénin .....	30 août 1983		Côte d'Ivoire .....	10 déc 1982	26 mars 1984
Bhoutan .....	10 déc 1982		Cuba .....	10 déc 1982	15 août 1984
Bolivie .....	27 nov 1984		Danemark .....	10 déc 1982	
Bosnie-Herzégovine		12 janv 1994 d	Djibouti .....	10 déc 1982	8 oct 1991
Botswana .....	5 déc 1984	2 mai 1990	Dominique .....	28 mars 1983	24 oct 1991

## A.L.L.O. : LISTE DE SIGNATURES — Convention de 1982

Participants	Signature, succession (d)	Ratification, confirmation formelle (c), adhésion (a), succession (d)	Participants	Signature, succession (d)	Ratification, confirmation formelle (c), adhésion (a), succession (d)
Égypte	10 déc 1982	26 août 1983	Myanmar	10 déc 1982	
El Salvador	5 déc 1984		Nambie	10 déc 1982	18 avr 1983
Emirats arabes unis	10 déc 1982		Nauru	10 déc 1982	
Espagne	4 déc 1984		Népal	10 déc 1982	
Ethiopie	10 déc 1982		Nicaragua	9 déc 1984	
Fédération de Russie	10 déc 1982		Niger	10 déc 1982	
Fidji	10 déc 1982	10 déc 1982	Nigeria	10 déc 1982	14 août 1986
Finlande	10 déc 1982		Niue	5 déc 1984	
France	10 déc 1982		Norvège	10 déc 1982	
Gabon	10 déc 1982		Nouvelle-Zélande	10 déc 1982	
Gambie	10 déc 1982	22 mai 1984	Oman	1 juil 1983	17 août 1989
Ghana	10 déc 1982	7 juin 1983	Ouganda	10 déc 1982	9 nov 1990
Grèce	10 déc 1982		Pakistan	10 déc 1982	
Grenade	10 déc 1982	25 avr 1991	Panama	10 déc 1982	
Guatemala	8 juil 1983		Papouasie-Nouvelle-Guinée	10 déc 1982	
Guinée	4 oct 1984	6 sept 1985	Paraguay	10 déc 1982	26 sept 1986
Guinée-Bissau	10 déc 1982	25 août 1986	Pays-Bas	10 déc 1982	
Guinée équatoriale	30 janv 1984		Philippines	10 déc 1982	8 mai 1984
Guyana	10 déc 1982	16 nov 1993	Pologne	10 déc 1982	
Haïti	10 déc 1982		Portugal	10 déc 1982	
Honduras	10 déc 1982	5 oct 1993	Qatar	27 nov 1984	
Hongrie	10 déc 1982		République centrafricaine	4 déc 1984	
Iles Cook	10 déc 1982		République de Corée	14 mars 1983	
Iles Marshall		9 août 1991 e	République populaire démocratique de Corée	10 déc 1982	
Iles Salomon			République démocratique populaire lao	10 déc 1982	
Inde	10 déc 1982		République dominicaine	10 déc 1982	
Indonésie	10 déc 1982	3 févr 1986	République-Unie de Tanzanie	10 déc 1982	30 sep 1985
Iran (République islamique d')	10 déc 1982		République tchèque	22 févr 1993 d	
Iraq	10 déc 1982	30 juil 1985	Roumanie	10 déc 1982	
Irlande	10 déc 1982		Rwanda	10 déc 1982	
Islande	10 déc 1982	21 juin 1985	Sainte-Lucie	10 déc 1982	27 mars 1985
Italie	7 déc 1984		Saint-Kitts-et-Nevis	7 déc 1984	7 janv 1993
Jamahiriya arabe libyenne	3 déc 1984		Saint-Vincent-et-Grenadines	10 déc 1982	1 oct 1993
Jamaïque	10 déc 1982	21 mars 1983	Samoa	28 sept 1984	
Japon	7 févr 1983		Sao Tomé-et-Principe	13 juil 1983	3 nov 1987
Kenya	10 déc 1982	2 mars 1989	Sénégal	10 déc 1982	25 oct 1984
Koweït	10 déc 1982	2 mai 1986	Seychelles	10 déc 1982	16 sept 1991
Lesotho	10 déc 1982		Sierra Leone	10 déc 1982	12 dec 1994
l'ex-République yougoslave de Macédoine		19 août 1994 d	Singapour	10 déc 1982	17 nov 1994
Liban	7 déc 1984		Slovaquie	28 mai 1993 d	
Libéria	10 déc 1982		Somalie	10 déc 1982	24 juil 1989
Liechtenstein	30 nov 1984		Soudan	10 déc 1982	23 janv 1985
Luxembourg	5 déc 1984		Sri Lanka	10 déc 1982	19 juil 1994
Madagascar	25 févr 1983		Suède	10 déc 1982	
Malaisie	10 déc 1982		Suriname	10 déc 1982	
Malawi	7 déc 1984		Swaziland	18 janv 1984	
Maldives	10 déc 1982		Suisse	17 oct 1984	
Mali	19 oct 1983	16 juil 1985	Tchad	10 déc 1982	
Malte	10 déc 1982	20 mai 1993	Thaïlande	10 déc 1982	
Maroc	10 déc 1982		Togo	10 déc 1982	16 avr 1985
Maurice	10 déc 1982	4 nov 1994	Trinité-et-Tobago	10 déc 1982	25 avr 1986
Mauritanie	10 déc 1982		Tunisie	10 déc 1982	24 avr 1985
Mexique	10 déc 1982	18 mars 1983	Tuvalu	10 déc 1982	
Micronésie (États fédérés de)		29 avr 1991 a			
Monaco	10 déc 1982				
Mongolie	10 déc 1982				
Mozambique	10 déc 1982				

## XXL6 : Droit de la mer — Convention de 1982

Participants <sup>3</sup>	Signature, succession (d)	Ratification, confirmation formelle (c), adhésion (a), succession (d)	Participant	Signature, succession (d)	Ratification, confirmation formelle (c), adhésion (a), succession (d)
Ukraine .....	10 déc 1982		Yougoslavie .....	10 déc 1982	5 mai 1986
Uruguay .....	10 déc 1982	10 déc 1992	Zaire .....	22 août 1983	17 févr 1989
Vanuatu .....	10 déc 1982		Zambie .....	10 déc 1982	7 mars 1985
Viet Nam .....	10 déc 1982	25 juil 1994	Zimbabwe .....	10 déc 1982	24 févr 1993
Yémen <sup>6</sup> .....	10 déc 1982	21 juil 1987			

## Déclarations

(En l'absence d'indication précédant le texte, la date de réception est celle de la ratification, de la confirmation formelle, de l'adhésion ou de la succession. Pour les objections, voir ci-après.)

## AFRIQUE DU SUD

Conformément aux dispositions de l'article 310 de la Convention, le Gouvernement sud-africain déclare que la signature de ladite Convention par l'Afrique du Sud n'implique aucunement que cette dernière reconnaisse le Conseil des Nations Unies pour la Namibie ou sa compétence pour agir au nom du Sud-Ouest africain (Namibie).

## ALGÉRIE

Lors de la signature :

"Le Gouvernement algérien considère que la signature de l'Acte final et de la Convention des Nations Unies sur le droit de la mer par l'Algérie n'implique pas de changement dans sa position relative à la non-reconnaissance d'autres parties signataires, ni d'obligation de collaboration dans quelque domaine que ce soit avec lesdites parties."

## ALLEMAGNE

Déclarations :

La République fédérale d'Allemagne rappelle qu'en tant que membre de la communauté européenne, elle a transféré à celle-ci compétence qu'elle a transféré à celle-ci compétence pour certaines matières dont traite la Convention. Elle fera en temps voulu une déclaration précisant la nature et l'étendue de la compétence qu'elle a transférée à la Communauté en application des dispositions de l'annexe IX de la Convention.

Pour la République fédérale d'Allemagne, la relation existant entre la partie XI de la Convention des Nations Unies sur le droit de la mer du 10 décembre 1982 et l'Accord en date du 28 juillet relatif à l'application de la partie XI de la Convention des Nations Unies sur le droit de la mer, telle qu'elle est prévue à l'article 2 1) dudit accord est fondamentale.

En l'absence de tout autre moyen de règlement pacifique qui aurait la préférence du Gouvernement de la République fédérale d'Allemagne, ce dernier juge utile de choisir l'un des moyens ci-après pour le règlement des différends relatifs à l'interprétation ou à l'application des deux Conventions sur le droit de la mer, dans l'ordre suivant :

1. Le Tribunal international du droit de la mer constitué conformément à l'annexe VI;
2. Un tribunal arbitral spécial constitué conformément à l'annexe VIII;
3. La Cour internationale de Justice.

Également en l'absence de tout autre moyen de règlement pacifique, le Gouvernement de la République fédérale d'Allemagne reconnaît à partir de ce jour la compétence d'un tribunal spécial pour connaître de tout différend concernant l'interprétation ou l'application de la Convention sur le droit de la mer relatif à la pêche, à la protection et la préservation du milieu

marin, à la recherche scientifique marine et à la navigation, ainsi qu'à la pollution par les navires et par immersion.

Se référant aux déclarations similaires qu'il a faites pendant la troisième Conférence des Nations Unies sur le droit de la mer, le Gouvernement de la République fédérale d'Allemagne, à la lumière des déclarations que les États ont déjà faites ou doivent encore faire à l'occasion de leur signature ou de leur ratification de la Convention sur le droit de la mer, ou encore de leur adhésion à celle-ci, déclare ce qui suit :

Mer territoriale, eaux archipélagiques, détroits

Les dispositions relatives à la mer territoriale constituent d'une manière générale un ensemble de règles qui allient le souci légitime des États côtiers de protéger leur souveraineté et celui de la communauté internationale d'assurer le libre passage des navires. Le droit de porter la largeur de la mer territoriale à 12 milles marins accroît sensiblement l'importance que revêt le droit de passage inoffensif dans la mer territoriale de tous les navires, y compris des navires de guerre, de commerce et de pêche; il s'agit là d'un droit fondamental de la communauté des nations.

Aucune des dispositions de la Convention, qui jusqu'à nouvel ordre, reflète le droit international existant n'habilite un État côtier à subordonner le passage inoffensif d'une catégorie quelconque de navires étrangers à un consentement ou une notification préalable.

Pour qu'on reconnaisse à un État côtier le droit d'étendre la largeur de la mer territoriale, il faut au préalable qu'il admette le droit de passage en transit par les détroits utilisés pour la navigation internationale. L'article 38 ne limite le droit de passage en transit que dans les cas où il existe une route de commodité comparable du point de vue de la navigation et des caractéristiques hydrographiques, ce qui englobe l'aspect économique des transports maritimes.

En vertu de la Convention, le passage archipélagique n'est pas subordonné à la désignation par les États archipels de voies de circulation ou de routes aériennes, dans la mesure où l'archipel comprend des routes servant normalement à la navigation internationale.

Zone économique exclusive

Dans la zone économique exclusive, nouvelle notion de droit international, les États côtiers auront une juridiction et des droits précis sur les ressources. Tous les autres États continueront de jouir des libertés de navigation et de survol de la haute mer ainsi que de la liberté d'utiliser la mer à toutes les autres fins internationalement licites. Ils la feront de manière pacifique, c'est-à-dire conformément aux principes énoncés dans la Charte des Nations Unies.

L'exercice de ces droits ne saurait donc porter atteinte à la sécurité de l'État côtier ni affecter ses droits et obligations en

## XXL6 : Droit de la mer — Convention de 1982

choisit le tribunal arbitral spécial constitué conformément à l'annexe VIII. L'URSS reconnaît la compétence du tribunal international du droit de la mer prévue à l'article 292 pour les questions relatives à la prompte mainlevée de l'immobilisation d'un navire ou la prompte mise en liberté de son équipage.

2. L'Union des Républiques socialistes soviétiques déclare que, conformément à l'article 298 de la Convention, elle n'accepte aucune des procédures obligatoires aboutissant à des décisions obligatoires en ce qui concerne les différends relatifs à la délimitation de zones maritimes, les différends relatifs à des activités militaires et les différends pour lesquels le Conseil de sécurité de l'Organisation des Nations Unies exerce les fonctions qui lui sont conférées par la Charte des Nations Unies.

## FINLANDE

Lors de la signature :

Le Gouvernement finlandais considère que l'exception au régime de passage en transit dans les détroits, qui est prévue à l'alinéa c) de l'article 35 de la Convention, s'applique au détroit entre la Finlande (les Åland) et la Suède. Comme le passage dans ce détroit est réglementé par une convention internationale existant de longue date et toujours en vigueur, le régime juridique actuel de ce détroit ne sera pas affecté par l'entrée en vigueur de la Convention.

En ce qui concerne les parties de la Convention qui ont trait au passage inoffensif dans la mer territoriale, le Gouvernement finlandais a l'intention de continuer d'appliquer le régime actuellement en vigueur au passage dans la mer territoriale finlandaise des navires de guerre étrangers et des autres navires d'État utilisés à des fins non commerciales, ce régime étant pleinement compatible avec la Convention.

## FRANCE

Lors de la signature :

1. Les dispositions de la Convention relatives au statut des différents espaces maritimes et au régime juridique des utilisations et de la protection du milieu marin confirment et consolident les règles générales du droit de la mer et autorisent donc la République française à ne pas reconnaître comme lui étant opposables les actes ou règlements étrangers qui ne seraient pas conformes à ces règles générales.

2. Les dispositions de la Convention relatives à la zone des fonds marins au-delà de la limite de la juridiction nationale présentent des insuffisances et des imperfections notables concernant l'exploration et l'exploitation de ces fonds qu'il sera nécessaire de corriger grâce à l'adoption par la Commission préparatoire de projets de règles, règlements et procédures de nature à permettre la mise sur pied et le fonctionnement effectif de l'Autorité internationale des fonds marins.

A cette fin, tous les efforts devront être déployés au sein de la Commission préparatoire pour parvenir à un accord général au fond selon la procédure prévue à l'article 37 du règlement intérieur de la troisième Conférence des Nations Unies sur le droit de la mer.

3. En ce qui concerne l'article 140, la signature par la France de la Convention ne peut être interprétée comme impliquant une modification de sa position à l'égard de la résolution 1514 (XV).

4. Les dispositions du paragraphe 2 de l'article 230 de la Convention n'excluent pas à l'égard des responsables de navires étrangers le recours à des mesures provisoires ou conservatoires telles que l'immobilisation du navire. Elles n'excluent pas davantage le prononcé de peines autres que pécuniaires pour tout acte délibéré et grave générateur de pollution."

## GRÈCE

Lors de la signature :

*Déclaration d'interprétation concernant les détroits :*

La présente déclaration concerne les dispositions de la partie III intitulée "Détroits servant à la navigation internationale" et, plus particulièrement, l'application dans la pratique des articles 36, 38, 41 et 42 de la Convention sur le droit de la mer. Dans les zones où il existe un grand nombre de très assez espacés qui créent un grand nombre de détroits différents, mais qui desservent en fait une seule et même route servant à la navigation internationale, l'interprétation de la Grèce est que l'État côtier intéressé a la responsabilité de désigner la route ou les routes, à travers ces différents détroits, que les navires et les aéronefs des pays tiers peuvent emprunter dans l'exercice du droit de passage en transit, de manière à ce que, d'une part, les exigences de la navigation et du survol internationaux soient satisfaites et que, d'autre part, les critères minimaux de sécurité pour les navires et les aéronefs en transit ainsi que pour ceux de l'État côtier soient remplis.

## GUINÉE

Lors de la signature :

"Le Gouvernement de la République de Guinée se réserve le droit d'interpréter tout article de la Convention dans le contexte et en tenant dûment compte de la souveraineté de la Guinée et de son intégrité territoriale telle qu'elle s'applique à la terre, à l'espace et à la mer."

## GUINÉE-BISSAU

"Le Gouvernement de la République de Guinée-Bissau déclare qu'en ce qui concerne l'article 287 sur le choix d'une procédure pour le règlement des différends relatifs à l'interprétation ou à l'application de la Convention des Nations Unies sur le Droit de la Mer, il n'accepte pas la juridiction de la Cour Internationale de Justice, et qu'en conséquence il ne l'acceptera pas non plus pour ce qui est des articles 297 et 298."

## IRAN (RÉPUBLIQUE ISLAMIQUE D')

Lors de la signature :

*Déclaration d'interprétation :*

Conformément à l'article 310 de la Convention sur le droit de la mer, le Gouvernement de la République islamique d'Iran saisit l'occasion solennelle de la signature de la Convention pour consigner son "interprétation" de certaines dispositions de la Convention. Il soumet essentiellement ces déclarations dans l'intention d'éviter dans l'avenir toute interprétation éventuelle des articles de la Convention qui soit incompatible avec l'intention initiale et les positions précédentes de la République islamique d'Iran ou qui ne soit pas en harmonie avec ses lois et règlements nationaux.

L'interprétation de la République islamique d'Iran est donc la suivante :

- 1) Bien que l'intention recherchée soit de faire de la Convention un instrument d'application générale et de caractère normatif, certaines de ses dispositions sont simplement issues d'un effort de compromis et ne visent pas nécessairement à codifier les coutumes ou les usages (la pratique) existant déjà et considérés comme ayant un caractère obligatoire. Par conséquent, il semble naturel et conforme à l'article 34 de la Convention de Vienne de 1969 sur le droit des traités que la Convention sur le droit de la mer ne crée de droits contractuels que pour les États parties à cette Convention.

Les considérations ci-dessus s'appliquent particulièrement (mais non exclusivement) à ce qui suit :

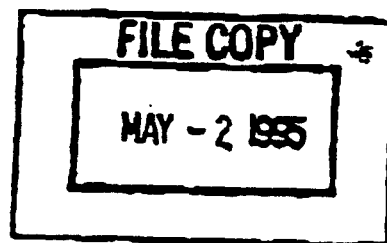
ANNEX 3

A12

ST/LEG/SER/E/13

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# MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL

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Status as at 31 December 1994



UNITED NATIONS

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## XXI.6: Law of the Sea — 1982 Convention

## 6. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Concluded at Montego Bay, Jamaica, on 10 December 1982

**ENTRY INTO FORCE:** 16 November 1994, in accordance with article 308 (1).

**REGISTRATION:** 16 November 1994.

**TEXT:**

Doc. A/CONF.62/122 and Corr. 1 to 11; depositary notifications C.N.236.1984.TREATIES-7 of 5 October 1984 (procès-verbal of rectification of the English and Spanish authentic texts); C.N.202.1985.TREATIES-17 of 23 August 1985 (procès-verbal of rectification of the original English text); C.N.17.1986.TREATIES-1 of 7 April 1986 and C.N.166.1993.TREATIES-4 of 9 August 1993 (procès-verbal of rectification of the original Arabic, Chinese, English, French and Spanish texts of the Final Act).

**STATUS:** Signatories: 158. Parties: 70.

*Note:* The Convention was adopted by the Third United Nations Conference on the Law of the Sea and opened for signature, together with the Final Act of the Conference, at Montego Bay, Jamaica, on 10 December 1982. The Conference was convened pursuant to resolution 3067 (XXVIII)<sup>1</sup> adopted by the General Assembly on 16 November 1973. The Conference held eleven sessions, from 1973 to 1982, as follows:

- First session: United Nations Headquarters, New York, 3 to 15 December 1973;
- Second session: Parque Central, Caracas, 20 June to 29 August 1974;
- Third session: United Nations Office at Geneva, 17 March to 9 May 1975;
- Fourth session: United Nations Headquarters, New York, 15 March to 7 May 1976;
- Fifth session: United Nations Headquarters, New York, 2 August to 17 September 1976;
- Sixth session: United Nations Headquarters, New York, 23 May to 15 July 1977;
- Seventh session: United Nations Office at Geneva, 28 March to 19 May 1978;
- Resumed seventh session: United Nations Headquarters, New York, 21 August to 15 September 1978;
- Eighth session: United Nations Office at Geneva, 19 March to 27 April 1979;
- Resumed eighth session: United Nations Headquarters, New York, 19 July to 24 August 1979;
- Ninth session: United Nations Headquarters, New York, 3 March to 4 April 1980;
- Resumed ninth session: United Nations Office at Geneva, 28 July to 29 August 1980;
- Tenth session: United Nations Headquarters, New York, 9 March to 24 April 1981;
- Resumed tenth session: United Nations Office at Geneva, 3 to 28 August 1981;
- Eleventh session: United Nations Headquarters, New York, 8 March to 30 April 1982;
- Resumed eleventh session: United Nations Headquarters, New York, 22 to 24 September 1982;
- Final Part of the eleventh session: Montego Bay, Jamaica, 6 to 10 December 1982.

The Conference also adopted a Final Act<sup>2</sup> with, annexed thereto, nine resolutions and a statement of understanding. The text of the Final Act has been reproduced as document A/CONF.62/121 and Corr. 1 to 8.

Participant <sup>3</sup>	Signature, succession (d)	Ratification, formal confirmation (c), accession (a), succession (d)	Participant	Signature, succession (d)	Ratification, formal confirmation (c), accession (a), succession (d)
Afghanistan	18 Mar 1983		Burundi	10 Dec 1982	
Algeria	10 Dec 1982		Cambodia	1 Jul 1983	
Angola	10 Dec 1982	5 Dec 1990	Cameroon	10 Dec 1982	19 Nov 1985
Antigua and Barbuda	7 Feb 1983	2 Feb 1989	Canada	10 Dec 1982	
Argentina	5 Oct 1984		Cape Verde	10 Dec 1982	10 Aug 1987
Australia	10 Dec 1982	5 Oct 1994	Central African Republic	4 Dec 1984	
Austria	10 Dec 1982		Chad	10 Dec 1982	
Bahamas	10 Dec 1982	29 Jul 1983	Chile	10 Dec 1982	
Bahrain	10 Dec 1982	30 May 1985	China	10 Dec 1982	
Bangladesh	10 Dec 1982		Colombia	10 Dec 1982	
Barbados	10 Dec 1982	12 Oct 1993	Comoros	6 Dec 1984	21 Jun 1994
Belarus	10 Dec 1982		Congo	10 Dec 1982	
Belgium	5 Dec 1984		Cook Islands	10 Dec 1982	
Belize	10 Dec 1982	13 Aug 1983	Costa Rica	10 Dec 1982	21 Sep 1992
Benin	30 Aug 1983		Côte d'Ivoire	10 Dec 1982	26 Mar 1984
Bhutan	10 Dec 1982		Cuba	10 Dec 1982	15 Aug 1984
Bolivia	27 Nov 1984		Cyprus	10 Dec 1982	12 Dec 1988
Bosnia and Herzegovina		12 Jan 1994 <sup>d</sup>	Czech Republic <sup>4</sup>	22 Feb 1993 <sup>d</sup>	
Botswana	5 Dec 1984	2 May 1990	Democratic People's Republic of Korea	10 Dec 1982	
Brazil	10 Dec 1982	22 Dec 1988	Denmark	10 Dec 1982	
Brunei Darussalam	5 Dec 1984		Djibouti	10 Dec 1982	8 Oct 1991
Bulgaria	10 Dec 1982		Dominica	28 Mar 1983	24 Oct 1991
Burkina Faso	10 Dec 1982				

## XXI.4: Law of the Sea — 1982 Convention

Participant <sup>3</sup>	Signature, succession (d)	Ratification, formal confirmation (c), accession (a), succession (d)	Participant	Signature, succession (d)	Ratification, formal confirmation (c), accession (a), succession (d)
Dominican Republic	10 Dec 1982		Nauru	10 Dec 1982	
Egypt	10 Dec 1982	26 Aug 1983	Nepal	10 Dec 1982	
El Salvador	5 Dec 1984		Netherlands	10 Dec 1982	
Equatorial Guinea	30 Jan 1984		New Zealand	10 Dec 1982	
Ethiopia	10 Dec 1982		Nicaragua	9 Dec 1984	
European Community	7 Dec 1984		Niger	10 Dec 1982	
Fiji	10 Dec 1982	10 Dec 1982	Nigeria	10 Dec 1982	14 Aug 1986
Finland	10 Dec 1982		Niue	5 Dec 1984	
France	10 Dec 1982		Norway	10 Dec 1982	
Gabon	10 Dec 1982		Oman	1 Jul 1983	17 Aug 1989
Gambia	10 Dec 1982	22 May 1984	Pakistan	10 Dec 1982	
Germany		14 Oct 1994 <sup>a</sup>	Panama	10 Dec 1982	
Ghana	10 Dec 1982	7 Jun 1983	Papua New Guinea	10 Dec 1982	
Greece	10 Dec 1982		Paraguay	10 Dec 1982	26 Sep 1986
Grenada	10 Dec 1982	25 Apr 1991	Philippines	10 Dec 1982	8 May 1984
Guatemala	8 Jul 1983		Poland	10 Dec 1982	
Guinea	4 Oct 1984	6 Sep 1985	Portugal	10 Dec 1982	
Guinea-Bissau	10 Dec 1982	24 Aug 1986	Qatar	27 Nov 1984	
Guyana	10 Dec 1982	16 Nov 1993	Republic of Korea	14 Mar 1983	
Haiti	10 Dec 1982		Romania	10 Dec 1982	
Honduras	10 Dec 1982	5 Oct 1993	Russian Federation	10 Dec 1982	
Hungary	10 Dec 1982		Rwanda	10 Dec 1982	
Iceland	10 Dec 1982	21 Jun 1985	Saint Kitts and Nevis	7 Dec 1984	7 Jan 1993
India	10 Dec 1982		Saint Lucia	10 Dec 1982	27 Mar 1985
Indonesia	10 Dec 1982	3 Feb 1986	Saint Vincent and the Grenadines	10 Dec 1982	1 Oct 1993
Iran (Islamic Republic of)	10 Dec 1982		Samoa	28 Sep 1984	
Iraq	10 Dec 1982	30 Jul 1985	Sao Tome and Principe	13 Jul 1983	3 Nov 1987
Ireland	10 Dec 1982		Saudi Arabia	7 Dec 1984	
Italy	7 Dec 1984		Senegal	10 Dec 1982	25 Oct 1984
Jamaica	10 Dec 1982	21 Mar 1983	Seychelles	10 Dec 1982	16 Sep 1991
Japan	7 Feb 1983		Sierra Leone	10 Dec 1982	12 Dec 1994
Kenya	10 Dec 1982	2 Mar 1989	Singapore	10 Dec 1982	17 Nov 1994
Kuwait	10 Dec 1982	2 May 1985	Slovakia <sup>4</sup>	28 May 1993 <sup>d</sup>	
Lao People's Democratic Republic	10 Dec 1982		Solomon Islands	10 Dec 1982	
Lebanon	7 Dec 1984		Somalia	10 Dec 1982	24 Jul 1989
Lesotho	10 Dec 1982		South Africa	5 Dec 1984	
Liberia	10 Dec 1982		Spain	4 Dec 1984	
Libyan Arab Jamahiriya	3 Dec 1984		Sri Lanka	10 Dec 1982	19 Jul 1994
Liechtenstein	30 Nov 1984		Sudan	10 Dec 1982	23 Jan 1985
Luxembourg	5 Dec 1984		Suriname	10 Dec 1982	
Madagascar	25 Feb 1983		Swaziland	18 Jan 1984	
Malawi	7 Dec 1984		Sweden	10 Dec 1982	
Malaysia	10 Dec 1982		Switzerland	17 Oct 1984	
Maldives	10 Dec 1982		Thailand	10 Dec 1982	
Mali	19 Oct 1983	16 Jul 1985	the former Yugoslav Republic of Macedonia		19 Aug 1994 <sup>d</sup>
Malta	10 Dec 1982	20 May 1993	Togo	10 Dec 1982	16 Apr 1985
Marshall Islands		9 Aug 1991 <sup>a</sup>	Trinidad and Tobago	10 Dec 1982	25 Apr 1986
Mauritania	10 Dec 1982		Tunisia	10 Dec 1982	24 Apr 1985
Mauritius	10 Dec 1982	4 Nov 1994	Tuvalu	10 Dec 1982	
Mexico	10 Dec 1982	18 Mar 1983	Uganda	10 Dec 1982	9 Nov 1990
Micronesia (Federated States of)		29 Apr 1991 <sup>a</sup>	Ukraine	10 Dec 1982	
Monaco	10 Dec 1982		United Arab Emirates	10 Dec 1982	
Mongolia	10 Dec 1982		United Republic of Tanzania	10 Dec 1982	30 Sep 1985
Morocco	10 Dec 1982		Uruguay	10 Dec 1982	10 Dec 1992
Mozambique	10 Dec 1982		Vanuatu	10 Dec 1982	
Myanmar	10 Dec 1982		Viet Nam	10 Dec 1982	25 Jul 1994
Namibia	10 Dec 1982	18 Apr 1983	Yemen <sup>6</sup>	10 Dec 1982	21 Jul 1987
			Yugoslavia	10 Dec 1982	5 May 1986

## XXI.6) Law of the Sea — 1982 Convention

Participant <sup>3</sup>	Signature, succession (d)	Ratification, formal confirmation (c), accession (a), succession (d)	Participant	Signature, succession (d)	Ratification, formal confirmation (c), accession (a), succession (d)
Zaire .....	22 Aug 1983	17 Feb 1989	Zimbabwe .....	10 Dec 1982	24 Feb 1993
Zambia .....	10 Dec 1982	7 Mar 1983			

*Declarations*

*(Unless otherwise indicated, the declarations were made upon ratification, formal confirmation, accession or succession. For objections thereto, see hereinafter.)*

**ALGERIA***Upon signature:*

It is the view of the Government of Algeria that its signing the Final Act and the United Nations Convention on the Law of the Sea does not entail any change in its position on the non-recognition of certain other signatories, nor any obligation to co-operate in any field whatsoever with those signatories.

**ANGOLA***Upon signature:*

The Government of the People's Republic of Angola reserves the right to interpret any and all articles of the Convention in the context of and with due regard to Angolan Sovereignty and territorial integrity as it applies to land, space and sea. Details of these interpretations will be placed on record at the time of ratification of the Convention.

The present signature is without prejudice to the position taken by the Government of Angola or to be taken by it on the Convention at the time of ratification."

**ARGENTINA***Upon signature:*

The signing of the Convention by the Argentine Government does not imply acceptance of the Final Act of the Third United Nations Conference on the Law of the Sea. In that regard, the Argentine Republic, as in its written statement of 8 December 1982 (A/CONF.62/WS/35), places on record its reservation to the effect that resolution III in annex I to the final Act, in no way affects the "Question of the Falkland Islands (Malvinas)", which is governed by the following specific resolutions of the General Assembly: 2065 (XX), 3160 (XXVIII), 3149, 3779 and 3812, adopted within the framework of the decolonization process.

In this connection, and bearing in mind that the Malvinas and the South Sandwich and South Georgia Islands form an integral part of Argentine territory, the Argentine Government declares that it neither recognizes nor will it recognize the title of any other State, community or entity or the exercise by it of any right of maritime jurisdiction which is claimed to be protected under any interpretation of resolution III that violates the rights of Argentina over the Malvinas and the South Sandwich and South Georgia Islands and their respective maritime zones. Consequently, it likewise neither recognizes nor will recognize and will consider null and void any activity or measure that may be carried out or adopted without its consent with regard to this question, which the Argentine Government considers to be of major importance.

The Argentine Government will accordingly interpret the occurrence of acts of the kind referred to above as contrary to the aforementioned resolutions adopted by the United Nations, the paramount objective of which is the peaceful settlement of the sovereignty dispute concerning the islands by means of bilateral negotiations and through the good offices of the Secretary-General of the United Nations.

Furthermore, it is the understanding of the Argentine Republic that, whereas the Final Act states in paragraph 42 that the Convention "together with resolutions I to IV, (forms) an integral whole", it is merely describing the procedure that was followed at the Conference to avoid a series of separate votes on the Convention and the resolutions. The Convention itself clearly establishes in article 318 that only the Annexes form an integral part of the Convention; thus, any other instrument or document, even one adopted by the Conference, does not form an integral part of the United Nations Convention on the Law of the Sea.

**BELARUS***Upon signature:*

1. The Byelorussian Soviet Socialist Republic declares that, in accordance with article 287 of the United Nations Convention on the Law of the Sea, it accepts, as the basic means for the settlement of disputes concerning the interpretation or application of the Convention, an arbitral tribunal constituted in accordance with Annex VII. For the consideration of questions relating to fisheries, the protection and preservation of the marine environment, marine scientific research and navigation, including pollution from vessels and by dumping, the Byelorussian Soviet Socialist Republic chooses a special arbitral tribunal constituted in accordance with Annex VIII. The Byelorussian Soviet Socialist Republic recognizes the competence of the International Tribunal for the Law of the Sea in relation to questions of the prompt release of detained vessels or their crews, as envisaged in article 292.

2. The Byelorussian Soviet Socialist Republic declares that, in accordance with article 298 of the Convention, it does not accept compulsory procedures entailing binding decisions in the consideration of disputes concerned with the delimitation of marine limits, disputes relating to military activity and disputes in relation to which the United Nations Security Council performs functions entrusted to it under the United Nations Charter.

**BELGIUM***Upon signature:*

The Government of the Kingdom of Belgium has decided to sign the United Nations Convention on the Law of the Sea because the Convention has a very large number of positive features and achieves a compromise on them which is acceptable to most States. Nevertheless, with regard to the status of maritime space, it regrets that the concept of equity, adopted for the delimitation of the continental shelf and the exclusive economic zone, was not applied again in the provisions for delimiting the territorial sea. It welcomes, however, the distinctions established by the Convention between the nature of the rights which riparian States exercise over their territorial sea, on the one hand, and over the continental shelf and their exclusive economic zone, on the other.

It is common knowledge that the Belgian Government cannot declare itself also satisfied with certain provisions of the



## XXI.6: Law of the Sea — 1982 Convention

## FRANCE

*Upon signature:*

1. The provisions of the Convention relating to the status of the different maritime spaces and to the legal régime of the uses and protection of the marine environment confirm and consolidate the general rules of the law of the sea and thus entitle the French Republic not to recognize as enforceable against it any foreign laws or regulations that are not in conformity with those general rules.

2. The provisions of the Convention relating to the area of the sea-bed and ocean floor beyond the limits of national jurisdiction show considerable deficiencies and flaws with respect to the exploration and exploitation of the said area which will require rectification through the adoption by the Preparatory Commission of draft rules, regulations and procedures to ensure the establishment and effective functioning of the International Sea-Bed Authority.

To this end, all efforts must be made within the Preparatory Commission to reach general agreement on any matter of substance, in accordance with the procedure set out in rule 37 of the rules of procedure of the Third United Nations Conference on the Law of the Sea.

3. With reference to article 140, the signing of the Convention by France shall not be interpreted as implying any change in its position in respect of resolution 1514 (XV).

4. The provisions of article 230, paragraph 2, of the Convention shall not preclude interim or preventive measures against the parties responsible for the operation of foreign vessels, such as immobilization of the vessel. They shall also not preclude the imposition of penalties other than monetary penalties for any willful and serious act which causes pollution.

## GERMANY

*Statements:*

The Federal Republic of Germany recalls that, as a Member of the European Community, it has transferred competence to the Community in respect of certain matters governed by the Convention. A detailed declaration on the nature and extent of the competence transferred to the European Community will be made in due course in accordance with the provisions of Annex IX of the Convention.

For the Federal Republic of Germany the link between Part IX of the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement of 28 July 1994 relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea as foreseen in article 2 (1) of that Agreement is fundamental.

In the absence of any other peaceful means, which would be given preference by the Government of the Federal Republic of Germany, that Government considers it useful to choose one of the following means for the settlement of disputes concerning the interpretation or application of the two Conventions, as it is free to do under article 287 of the Convention on the Law of the Sea, in the following order:

1. the International Tribunal for the Law of the Sea established in accordance with Annex VI;
2. a special arbitral tribunal constituted in accordance with Annex VIII;
3. the International Court of Justice.

Also in the absence of any other peaceful means, the Government of the Federal Republic of Germany hereby recognizes as of today the validity of special arbitration for any dispute concerning the interpretation or application of the Convention on the Law of the Sea relating to fisheries, protection and preservation of the marine environment, marine scientific

research and navigation, including pollution from vessels and by dumping.

With reference to similar declarations made by the Government of the Federal Republic of Germany during the Third United Nations Conference on the Law of the Sea, the Government of the Federal Republic of Germany, in the light of declarations already made or yet to be made by States upon signature, ratification or accession to the Convention on the Law of the Sea declares as follows:

*Territorial Sea, Archipelagic Waters, Straits*

The provisions on the territorial sea represent in general a set of rules reconciling the legitimate desire of coastal States to protect their sovereignty and that of the international community to exercise the right of passage. The right to extend the breadth of the territorial sea up to 12 nautical miles will significantly increase the importance of the right of innocent passage through the territorial sea for all ships including warships, merchant ships and fishing vessels; this is a fundamental right of the community of nations.

None of the provisions of the Convention, which in so far reflect existing international law, can be regarded as entitling the coastal State to make the innocent passage of any specific category of foreign ships dependent on prior consent or notification.

A prerequisite for the recognition of the coastal State's right to extend the territorial sea is the régime of transit passage through straits used for international navigation. Article 38 limits the right of transit passage only in cases where a route of similar convenience exists in respect of navigational and hydrographical characteristics, which include the economic aspect of shipping.

According to the provisions of the Convention, archipelagic sea-lane passage is not dependent on the designation by the archipelagic States of specific sea-lanes or air routes in so far as there are existing routes through the archipelago normally used for international navigation.

*Exclusive Economic Zone*

In the exclusive economic zone, which is a new concept of international law, coastal States will be granted precise resource-related rights and jurisdiction. All other States will continue to enjoy the high seas freedoms of navigation and oversight and of all other international lawful uses of the sea. These uses will be exercised in a peaceful manner, and that is, in accordance with the principles embodied in the Charter of the United Nations.

The exercise of these rights can therefore not be construed as affecting the security of the coastal State or affecting its rights and obligations under international law. Accordingly, the notion of a 200-mile zone of general rights of sovereignty and jurisdiction of the coastal State cannot be sustained either in general international law or under the relevant provisions of the Convention.

In articles 56 and 58 a careful and delicate balance has been struck between the interests of the coastal State and the freedoms and rights of all other States. This balance includes the reference contained in article 58, paragraph 2, to articles 88 to 115 which apply to the exclusive economic zone in so far as they are not incompatible with Part V. Nothing in Part V is incompatible with article 89 which invalidates claims of sovereignty.

According to the Convention, the coastal State does not enjoy residual rights in the exclusive economic zone. In particular, the rights and jurisdiction of the coastal State in such zone do not include the rights to obtain notification of military exercises or manoeuvres or to authorize them.

Apart from artificial islands, the coastal State enjoys the right in the exclusive economic zone to authorize, construct, operate

## ANNEX 4

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UNITED  
NATIONS

A



## General Assembly

Distr.  
LIMITEDA/CN.4/L.498/Add.2  
15 July 1994ENGLISH  
Original: ENGLISHINTERNATIONAL LAW COMMISSION  
Forty-fifth session  
2 May-22 July 1994DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION  
ON THE WORK OF ITS FORTY-SIXTH SESSIONRapporteur: Mr. Peter KABATSI

## Chapter V

INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES  
OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW

## CONTENTS

Addendum

- C. Draft articles on international liability for injurious consequences arising out of acts not prohibited by international law
1. Text of the draft articles provisionally adopted by the Commission so far on first reading

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page 2

- C. Draft articles on international liability for injurious consequences arising out of acts not prohibited by international law ...
1. Text of the draft articles provisionally adopted by the Commission so far on first reading ...
- The text of the draft articles provisionally adopted so far by the Commission are reproduced below.

[CHAPTER I  
GENERAL PROVISIONS]

Article 1

Scope of the present articles

The present articles apply to activities not prohibited by international law and carried out in the territory or otherwise under the jurisdiction or control of a State which involve a risk of causing significant transboundary harm through their physical consequences.

Article 2

Use of terms

For the purposes of the present articles:

- (a) "risk of causing significant transboundary harm" encompasses a low probability of causing disastrous harm and a high probability of causing other significant harm;
- (b) "transboundary harm" means harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin, whether or not the States concerned share a common border;
- (c) "State of origin" means the State in the territory or otherwise under the jurisdiction or control of which the activities referred to in article 1 are carried out.

\* \* \*  
[CHAPTER II  
PREVENTION]

Article 11

Prior authorization

States shall ensure that activities referred to in article 1 are not carried out in their territory or otherwise under their jurisdiction or control without their prior authorization. Such authorization shall also be required in case a major change is planned which may transform an activity into one referred to in article 1.

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page 3

### Article 12

#### Risk assessment

Before taking a decision to authorize an activity referred to in article 1, a State shall ensure that an assessment is undertaken of the risk of such activity. Such an assessment shall include an evaluation of the possible impact of that activity on persons or property as well as in the environment of other States.

### Article 13

#### Pre-existing activities

If a State, having assumed the obligations contained in these articles, ascertains that an activity involving a risk of causing significant transboundary harm is already being carried out in its territory or otherwise under its jurisdiction or control without the authorization as required by article 11, it shall direct those responsible for carrying out the activity that they must obtain the necessary authorization. Pending authorization, the State may permit the continuation of the activity in question at its own risk.

### Article 14\*

#### Measures to prevent or minimize the risk

States shall take legislative, administrative or other actions to ensure that all appropriate measures are adopted to prevent or minimize the risk of transboundary harm of activities referred to in article 1.

### Article 14 bis [20 bis]

#### Non-transference of risk

In taking measures to prevent or minimize a risk of causing significant transboundary harm, States shall ensure that the risk is not simply transferred, directly or indirectly, from one area to another or transformed from one type of risk into another.

### Article 15

#### Notification and information

1. If the assessment referred to in article 12 indicates a risk of causing significant transboundary harm, the State of origin shall notify without delay

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\* The expression "prevent or minimize the risk" of transboundary harm in this and other articles will be reconsidered in the light of the decision by the Commission as to whether the concept of prevention includes, in addition to measures aimed at preventing or minimizing the risk of occurrence of an accident, measures taken after the occurrence of an accident to prevent or minimize the harm caused.

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page 4

the States likely to be affected and shall transmit to them the available technical and other relevant information on which the assessment is based and an indication of a reasonable time within which a response is required.

2. Where it subsequently comes to the knowledge of the State of origin that there are other States likely to be affected, it shall notify them without delay.

#### Article 16

##### Exchange of information

While the activity is being carried out, the States concerned shall exchange in a timely manner all information relevant to preventing or minimizing the risk of causing significant transboundary harm.

#### Article 16 bis

##### Information to the public

States shall, whenever possible and by such means as are appropriate, provide their own public likely to be affected by an activity referred to in article 1 with information relating to that activity, the risk involved and the harm which might result and ascertain their views.

#### Article 17

##### National security and industrial secrets

Data and information vital to the national security of the State of origin or to the protection of industrial secrets may be withheld, but the State of origin shall cooperate in good faith with the other States concerned in providing as much information as can be provided under the circumstances.

#### Article 18

##### Consultations on preventive measures

1. The States concerned shall enter into consultations, at the request of any of them and without delay, with a view to achieving acceptable solutions regarding measures to be adopted in order to prevent or minimize the risk of causing significant transboundary harm, and cooperate in the implementation of these measures.
2. States shall seek solutions based on an equitable balance of interests in the light of article 20.
3. If the consultations referred to in paragraph 1 fail to produce an agreed solution the State of origin shall nevertheless take into account the interests of States likely to be affected and may proceed with the activity at its own risk, without prejudice to the right of any State withholding its

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page 5

agreement to pursue such rights as it may have under these articles or otherwise.

Article 19

Rights of the State likely to be affected

1. When no notification has been given of an activity conducted in the territory or otherwise under the jurisdiction or control of a State, any other State which has serious reason to believe that the activity has created a risk of causing it significant harm may require consultations under article 18.
2. The State requiring consultations shall provide technical assessment setting forth the reasons for such belief. If the activity is found to be one of those referred to in article 1, the State requiring consultations may claim an equitable share of the cost of the assessment from the State of origin.

Article 20

Factors involved in an equitable balance of interests

In order to achieve an equitable balance of interests as referred to in paragraph 2 of article 18, the States concerned shall take into account all relevant factors and circumstances, including:

- (a) the degree of risk of significant transboundary harm and the availability of means of preventing or minimizing such risk or of repairing the harm;
- (b) the importance of the activity, taking into account its overall advantages of a social, economic and technical character for the State of origin in relation to the potential harm for the States likely to be affected;
- (c) the risk of significant harm to the environment and the availability of means of preventing or minimizing such risk or restoring the environment;
- (d) the economic viability of the activity in relation to the costs of prevention demanded by the States likely to be affected and to the possibility of carrying out the activity elsewhere or by other means or replacing it with an alternative activity;
- (e) the degree to which the States likely to be affected are prepared to contribute to the costs of prevention;
- (f) the standards of protection which the States likely to be affected apply to the same or comparable activities and the standards applied in comparable regional or international practice.

## ANNEX 5

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**SOUTH PACIFIC REGION: CONVENTION FOR THE PROTECTION OF THE NATURAL RESOURCES AND ENVIRONMENT OF THE SOUTH PACIFIC REGION\***  
 [Done at Noumea, New Caledonia, November 25, 1986]  
 +Cite as 26 I.L.M. 38 (1987)+

I.L.M. Background/Content Summary

The Convention evolved over more than four years from recommendations made as early as 1982 at the Conference on the Human Environment in the South Pacific, the Thirteenth South Pacific Forum, and the Twenty Second South Pacific Conference. From 1983 through 1985, four meetings of experts were held in the South Pacific Commission Headquarters, following which the Secretary-General of the South Pacific Commission convened the High Level Conference on the Protection of the Natural Resources and Environment of the South Pacific Region, held at the South Pacific Commission Headquarters, Noumea, New Caledonia, November 17-25, 1986. From November 17-23, senior officials met to draft the texts of the Convention, the Protocol concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region, and the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping. A plenipotentiary meeting followed on November 24-25, at which the three above-mentioned instruments were adopted. Governments whose representatives were invited to attend were: Australia, Cook Islands, Micronesia, Fiji, France, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, United Kingdom, United States, Vanuatu and Western Samoa. It was the understanding of the Conference that the Convention will be open to signature by these same invitees. All except Niue, Solomon Islands and United Kingdom attended the Conference.

Preamble

Articles

- 1 Geographic Coverage [South Pacific Region]
- 2 Definitions
- 3 Addition to the Convention Area [notification; objection]
- 4 General Provisions
- 5 General Obligations [prevent, reduce and control pollution]
- 6 Pollution from Vessels
- 7 Pollution from Land-Based Sources
- 8 Pollution from Sea-Bed Activities
- 9 Airborne Pollution

\*[Reproduced from the text provided to International Legal Materials by the U.S. Department of State. On November 25, 1986, Cook Islands, France, Marshall Islands, New Zealand, Palau, United States and Western Samoa became signatories to the Convention and Protocols.

[The text of the Convention begins at I.L.M. page 41. The Protocol concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region begins at I.L.M. page 59. The Protocol for the Prevention of Pollution of the South Pacific Region by Dumping begins at I.L.M. page 65.]

HAVE AGREED AS FOLLOWS:Article 1GEOGRAPHICAL COVERAGE

1. This Convention shall apply to the South Pacific Region, hereinafter referred to as "the Convention Area" as defined in paragraph (a) of article 2.

2. Except as may be otherwise provided in any Protocol to this Convention, the Convention Area shall not include internal waters or archipelagic waters of the Parties as defined in accordance with international law.

Article 2DEFINITIONS

For the purposes of this Convention and its Protocols unless otherwise defined in any such Protocol:

(a) the "Convention Area" shall comprise:

(i) the 200 nautical mile zones established in accordance with international law off:

American Samoa	Northern Mariana Islands
Australia (East Coast and Islands to eastward including Macquarie Island)	
Cook Islands	Palau
Federated States of Micronesia	Papua New Guinea
Fiji	Pitcairn Islands
French Polynesia	Solomon Islands
Guam	Tokelau
Kiribati	Tonga
Marshall Islands	Tuvalu
Nauru	Vanuatu
New Caledonia and Dependencies	Wallis and Futuna
New Zealand	Western Samoa
Niue	

(ii) those areas of high seas which are enclosed from all sides by the 200 nautical mile zones referred to in sub-paragraph (i);

(iii) areas of the Pacific Ocean which have been included in the Convention Area pursuant to article 3;

(b) "dumping" means:

- any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;



- any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea;

"dumping" does not include:

- the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;

- placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention;

(c) "wastes or other matter" means material and substances of any kind, form or description;

(d) the following wastes or other matter shall be considered to be non-radioactive: sewage sludge, dredge spoil, fly ash, agricultural wastes, construction materials, vessels, artificial reef building materials and other such materials, provided that they have not been contaminated with radio nuclides of anthropogenic origin (except dispersed global fallout from nuclear weapons testing), nor are potential sources of naturally occurring radio nuclides for commercial purposes, nor have been enriched in natural or artificial radio nuclides;

if there is a question as to whether the material to be dumped should be considered non-radioactive, for the purposes of this Convention, such material shall not be dumped unless the appropriate national authority of the proposed dumper confirms that such dumping would not exceed the individual and collective dose limits of the International Atomic Energy Agency general principles for the exemption of radiation sources and practices from regulatory control. The national authority shall also take into account the relevant recommendations, standards and guidelines developed by the International Atomic Energy Agency;

(e) "vessels" and "aircraft" means waterborne or airborne craft of any type whatsoever. This expression includes air cushioned craft and floating craft, whether self-propelled or not;

(f) "pollution" means the introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries) which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

in applying this definition to the Convention obligations, the Parties shall use their best endeavours to comply with the appropriate standards and recommendations established by competent international organisations, including the International Atomic Energy Agency;

(g) "Organisation" means the South Pacific Commission;

- (h) "Director" means the Director of the South Pacific Bureau for Economic Co-operation.

Article 3

ADDITION TO THE CONVENTION AREA

Any Party may add areas under its jurisdiction within the Pacific Ocean between the Tropic of Cancer and 50 degrees South latitude and between 130 degrees East longitude and 120 degrees West longitude to the Convention Area. Such addition shall be notified to the Depositary who shall promptly notify the other Parties and the Organisation. Such areas shall be incorporated within the Convention Area ninety days after notification to the Parties by the Depositary, provided there has been no objection to the proposal to add new areas by any Party affected by that proposal. If there is any such objection the Parties concerned will consult with a view to resolving the matter.

Article 4

GENERAL PROVISIONS

1. The Parties shall endeavour to conclude bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection, development and management of the marine and coastal environment of the Convention Area. Such agreements shall be consistent with this Convention and in accordance with international law. Copies of such agreements shall be communicated to the Organisation and through it to all Parties to this Convention.
2. Nothing in this Convention or its Protocols shall be deemed to affect obligations assumed by a Party under agreements previously concluded.
3. Nothing in this Convention and its Protocols shall be construed to prejudice or affect the interpretation and application of any provision or term in the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.
4. This Convention and its Protocols shall be construed in accordance with international law relating to their subject matter.
5. Nothing in this Convention and its Protocols shall prejudice the present or future claims and legal views of any Party concerning the nature and extent of maritime jurisdiction.
6. Nothing in this Convention shall affect the sovereign right of States to exploit, develop and manage their own natural resources pursuant to their own policies, taking into account their duty to protect and preserve the environment. Each Party shall ensure that activities within its jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of its national jurisdiction.

Article 5

GENERAL OBLIGATIONS

1. The Parties shall endeavour, either individually or jointly, to take all appropriate measures in conformity with international law and in

soon as feasible, such other countries and territories and the Organisation of any measures it has itself taken to reduce or control pollution or the threat thereof.

#### Article 16

##### ENVIRONMENTAL IMPACT ASSESSMENT

1. The Parties agree to develop and maintain, with the assistance of competent global, regional and sub-regional organisations as requested, technical guidelines and legislation giving adequate emphasis to environmental and social factors to facilitate balanced development of their natural resources and planning of their major projects which might affect the marine environment in such a way as to prevent or minimise harmful impacts on the Convention Area.

2. Each Party shall, within its capabilities, assess the potential effects of such projects on the marine environment, so that appropriate measures can be taken to prevent any substantial pollution of, or significant and harmful changes within, the Convention Area.

3. With respect to the assessment referred to in paragraph 2, each Party shall, where appropriate, invite:

- (a) public comment according to its national procedures,
- (b) other Parties that may be affected to consult with it and submit comments.

The results of these assessments shall be communicated to the Organisation, which shall make them available to interested Parties.

#### Article 17

##### SCIENTIFIC AND TECHNICAL CO-OPERATION

1. The Parties shall co-operate, either directly or with the assistance of competent global, regional and sub-regional organisations, in scientific research, environmental monitoring, and the exchange of data and other scientific and technical information related to the purposes of the Convention.

2. In addition, the Parties shall, for the purposes of this Convention, develop and co-ordinate research and monitoring programmes relating to the Convention Area and co-operate, as far as practicable, in the establishment and implementation of regional, sub-regional and international research programmes.

#### Article 18

##### TECHNICAL AND OTHER ASSISTANCE

The Parties undertake to co-operate, directly and when appropriate through the competent global, regional and sub-regional organisations, in the provision to other Parties of technical and other assistance in

CONVENTION SUR LA PROTECTION  
DES RESSOURCES NATURELLES ET DE L'ENVIRONNEMENT  
DE LA REGION DU PACIFIQUE SUD

LES PARTIES,

PLEINEMENT CONSCIENTES de la valeur économique et sociale des ressources naturelles du milieu marin de la région du Pacifique Sud;

PRENANT EN CONSIDERATION les traditions et les cultures des peuples du Pacifique, dont les coutumes et usages sont la manifestation;

CONSCIENTES de la responsabilité qui leur incombe de sauvegarder leur patrimoine naturel dans l'intérêt et pour l'agrément des générations actuelles et à venir;

RECONNAISSANT les caractéristiques hydrologiques, géologiques et écologiques particulières de la région qui exige des soins particuliers et une gestion éclairée;

Article premierZONE D'APPLICATION

1. La présente Convention s'applique à la région du Pacifique Sud, ci-après dénommée "zone d'application de la Convention", telle qu'elle est définie au paragraphe a) de l'article 2.

2. Sauf disposition contraire de l'un quelconque des protocoles à la présente Convention, la zone d'application de la Convention ne comprend pas les eaux intérieures ni les eaux archipélagiques des Parties définies conformément au droit international.

Article 2DEFINITIONS

Aux fins de la présente Convention et de ses protocoles, et sauf disposition contraire de l'un quelconque de ces protocoles :

a) On entend par "zone d'application de la Convention":

1) les zones des 200 milles marins établies conformément au droit international, au large de :

Iles Cook	Papouasie-Nouvelle-Guinée
Australie (Côte est et îles de la côte est, y compris l'île Macquarie)	
Etats Fédérés de Micronésie	Polynésie française
Fidji	Île Pitcairn
Guam	Iles Salomon
Kiribati	Samoa américaines
Iles Mariannes du Nord	Samoa-Occidentale
Iles Marshall	Tokelau
Nauru	Tonga
Niue	Tuvalu
Nouvelle-Calédonie et dépendances	Vanuatu
Nouvelle-Zélande	Wallis et Futuna
Palau	

- ii) les zones de haute mer enclavées dans les zones des 200 milles marins visées à l'alinéa i) ci-dessus;
- iii) les zones de l'océan Pacifique qui ont été incluses dans la zone d'application de la Convention conformément à l'article 3;

b) On entend par "immersion" :

- tout rejet délibéré dans la mer de déchets et autres matières à partir de navires, aéronefs, plates-formes ou autres ouvrages placés en mer;
- tout sabordage en mer de navires, aéronefs, plates-formes ou autres ouvrages placés en mer;

Le terme "immersion" ne vise pas :

- le rejet de déchets ou autres matières résultant ou provenant de l'exploitation normale de navires, aéronefs, plates-formes et autres ouvrages placés en mer, ainsi que de leur équipement, à l'exception des déchets ou autres matières transportés par ou transbordés sur des navires, aéronefs, plates-formes ou autres ouvrages placés en mer qui sont utilisés pour l'immersion de ces matières ou provenant du traitement de tels déchets ou autres matières à bord desdits navires, aéronefs, plates-formes ou ouvrages;
- le dépôt de matières à des fins autres que leur simple élimination sous réserve qu'un tel dépôt ne soit pas incompatible avec l'objet de la présente Convention;

- c) On entend par "déchets et autres matières" les matériaux et substances de tout type, de toute forme et de toute nature;
- d) Les déchets ou autres matières suivants sont considérés comme non radioactifs : boues d'égout, déblais de dragage, cendres volantes, déchets agricoles, matériaux de construction, navires, matériaux utilisés pour la création de barrières artificielles et autres matériaux semblables qui n'ont pas été contaminés par des radionucléides d'origine artificielle (sauf les retombées planétaires dispersés résultant de l'expérimentation d'armes nucléaires), ne sont pas des sources potentielles de radionucléides d'origine naturelle utilisée à des fins commerciales et n'ont pas été enrichies en radionucléides naturels ou artificiels;

s'il y a un doute quant au caractère non radioactif des matières à immerger, aux fins de la présente Convention, elles ne peuvent être immergées sauf si l'autorité nationale compétente du pays envisageant cette opération confirme que l'immersion ne dépasserait pas les limites de doses collectives et individuelles figurant dans les principes généraux définies par l'Agence internationale pour l'énergie atomique en matière de dispense de vérification réglementaires pour les utilisations et sources de rayonnements. L'autorité nationale tient également compte des recommandations, normes et directives mises au point par l'Agence internationale pour l'énergie atomique en la matière.



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- e) On entend par "navires et aéronefs" les véhicules circulant sur l'eau ou dans l'air de quelque type que ce soit, y compris les véhicules sur coussin d'air et les engins flottants auto-propulsés ou non;
- f) On entend par "pollution" l'introduction directe ou indirecte par l'homme dans le milieu marin (y compris les estuaires) de substances ou d'énergie lorsqu'elle a ou peut avoir des effets nuisibles tels que : dommages aux ressources biologiques et à la faune et la flore marines, risques pour la santé de l'homme, entraves aux activités maritimes, y compris la pêche et les autres utilisations légitimes de la mer, altération de la qualité de l'eau de mer du point de vue de son utilisation et dégradation des valeurs d'agrément;

Aux fins d'application de cette définition aux obligations prévues par la présente Convention, les Parties s'efforcent de se conformer aux normes et recommandations appropriées des organisations internationales compétentes et notamment de l'Agence internationale de l'énergie atomique;

- g) On entend par "Organisation" la Commission du Pacifique Sud;
- h) On entend par "Directeur", le directeur du Bureau de coopération économique du Pacifique Sud.

2. Lorsqu'une Partie a connaissance d'un cas dans lequel la zone d'application de la Convention est en danger imminent d'être polluée ou a été polluée, elle en informe sans délai les autres pays et territoires qu'elle estime susceptibles d'être touchés par cette pollution ainsi que l'Organisation. En outre, elle informe, dès qu'elle est en mesure de le faire, ces pays et territoires ainsi que l'Organisation de toute mesure prise par elle pour réduire ou combattre la pollution ou le risque de pollution.

#### Article 16

##### EVALUATION DE L'IMPACT SUR L'ENVIRONNEMENT

1. Les Parties conviennent d'élaborer et de tenir à jour, le cas échéant avec l'assistance des organisations mondiales, régionales compétentes, des directives techniques et des législations donnant le poids qu'il convient aux facteurs écologiques et sociaux en vue de faciliter une mise en valeur équilibrée de leurs ressources naturelles et de planifier leurs grands projets qui pourraient avoir une incidence sur le milieu marin, de manière à empêcher ou minimiser les effets néfastes de ceux-ci dans la zone d'application de la Convention.

2. Chaque Partie évalue, en fonction de ses capacités, les effets potentiels de ces projets sur le milieu marin, afin que des mesures appropriées puissent être prises pour prévenir toute pollution importante ou modification significative et nuisible du milieu marin de la zone d'application de la Convention.

3. En ce qui concerne les évaluations visées au paragraphe 2, chaque Partie invite, le cas échéant :

- a) le public à formuler des observations conformément à ses procédures nationales de consultation;
- b) les autres Parties qui peuvent être touchées à se concerter avec elle et à soumettre des remarques.

Les résultats de ces évaluations sont communiqués à l'Organisation qui les met à la disposition des Parties intéressées.

#### Article 17

#### COOPERATION SCIENTIFIQUE ET TECHNIQUE

1. Les Parties coopèrent directement entre elles ou avec le concours des organisations mondiales, régionales et sous-régionales compétentes, dans les domaines de la recherche scientifique, de la surveillance de l'environnement et de l'échange de données et autres renseignements scientifiques et techniques relatifs aux objectifs de la présente Convention.

2. En outre, aux fins de la présente Convention, les Parties élaborent et coordonnent des programmes de recherche et de surveillance relatifs à la zone d'application de la Convention et coopèrent entre elles, dans la mesure du possible, à l'établissement et à la mise en oeuvre de programmes de recherche régionaux, sous-régionaux et internationaux.



AMBASSADOR

EMBASSY OF AUSTRALIA  
THE HAGUE

23 Aug 95

His Excellency Dr Eduardo Valencia-Ospina  
Registrar  
International Court of Justice  
Peace Palace  
2517 KJ THE HAGUE

Your Excellency,

I have the honour to refer to your letter of 21 August 1995, indicating that New Zealand has submitted to the Court a request for an examination of the situation "arising out of a proposed action announced by France which will, if carried out, affect the basis of the judgement rendered by the Court on 20 December 1974 in the nuclear tests case (New Zealand v. France)". Your letter states further that New Zealand requests the Court to indicate certain provisional measures.

I have the honour to transmit to you an application by the Government of Australia for permission to intervene in those proceedings under the terms of article 62 of the statute of the Court.

The Government of Australia has appointed Dr Gavan Griffith, QC, Solicitor-General of Australia, as its agent, and I certify that the signature on the application is that of Dr Griffith.

I have the honour finally to advise that the address for service is this Embassy.

Accept, Your Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'M.C. Tate', with a long horizontal flourish extending to the right.

The Hon M.C. Tate  
Ambassador to the Netherlands



SOLICITOR-GENERAL OF AUSTRALIA  
Fax No: 61-6-250 5950

23 August 1995

Your Excellency

I have the honour to refer to the Application dated today by the Government of Australia for permission to intervene under the terms of Article 62 of the Statute in proceedings in the *Nuclear Tests Case (New Zealand v. France)*, following the submission to the Court by New Zealand of a Request for an Examination of the Situation and a request for the indication of further interim measures.

Australia would wish to make clear its desire for an opportunity to appear as intervener during proceedings relating to the New Zealand request for the indication of provisional measures. Australia respectfully requests the Court to permit it to argue its application for permission to intervene at a sufficiently early time to make this possible if permission to intervene is granted.

At the same time, Australia would not desire by the circumstances of the intervention to give rise to inappropriate or significant delay in the hearing of the New Zealand request for provisional measures.

In this context, it may be useful to indicate in advance that Australia is prepared actively to cooperate in respect of whichever procedures the Court may decide to adopt to meet the exigencies of the situation of urgency. For example, Australia would be prepared to accept a position whereby it would be permitted to make submissions to the Court in respect of its application for permission to intervene prior to the hearing of the New Zealand request for the indication of provisional measures on the basis that the Court might not be in a position to rule on the matter of its intervention until after the New Zealand application for provisional measures is heard. Of course, in that situation Australia also would desire to place before the Court a short submission on the matter of interim measures, so that its views would be before the Court in its consideration of the New Zealand request.

In summary, Australia would wish to assure the Court of its anxious cooperation to ensure that a situation of avoidable delay does not arise by reason of its intervention.

Please accept, Sir, the assurances of my highest consideration.

Agent for the Government of Australia

His Excellency Eduardo Valencia-Ospina  
Registrar  
International Court of Justice  
Peace Palace  
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