

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,  
ADVISORY OPINIONS AND ORDERS

NUCLEAR TESTS CASE  
(AUSTRALIA v. FRANCE)

APPLICATION BY FIJI FOR PERMISSION TO INTERVENE

ORDER OF 12 JULY 1973

**1973**

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,  
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DES ESSAIS NUCLÉAIRES  
(AUSTRALIE c. FRANCE)

REQUÊTE DE FIDJI À FIN D'INTERVENTION

ORDONNANCE DU 12 JUILLET 1973

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NUCLEAR TESTS CASE

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APPLICATION BY FIJI FOR PERMISSION  
TO INTERVENE

ORDER

*Present: President LACHS; Vice-President AMMOUN; Judges FORSTER, GROS, BENGZON, PETRÉN, ONYEAMA, IGNACIO-PINTO, MOROZOV, JIMÉNEZ DE ARÉCHAGA, Sir Humphrey WALDOCK, RUDA; Judge ad hoc Sir Garfield BARWICK; Registrar AQUARONE.*

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 48 and 62 of the Statute of the Court,

Having regard to Article 69 of the Rules of Court,

Having regard to the Application by Australia filed in the Registry of the Court on 9 May 1973, instituting proceedings against France in respect of a dispute concerning the holding of atmospheric tests of nuclear weapons by the French Government in the Pacific Ocean,

Having regard to the application of the Government of Fiji dated 16

May 1973 and filed in the Registry the same day, by which the Government of Fiji submits a request to the Court under the terms of Article 62 of the Statute of the Court for permission to intervene in the proceedings instituted by Australia against France,

*Makes the following Order:*

1. Whereas the application of Fiji by its very nature presupposes that the Court has jurisdiction to entertain the dispute between Australia and France and that Australia's Application against France in respect of that dispute is admissible;

2. Having regard to the position taken by the French Government in a letter dated 16 May 1973 from the Ambassador of France to the Netherlands, handed by him to the Registrar the same day, that the Court was manifestly not competent to entertain Australia's Application;

3. Having regard to the fact that by its Order dated 22 June 1973 the Court decided that the written proceedings in the case should first be addressed to the questions of the jurisdiction of the Court to entertain the dispute between Australia and France and of the admissibility of Australia's Application;

THE COURT,

by 8 votes to 5.

Decides to defer its consideration of the application of the Government of Fiji for permission to intervene in the proceedings instituted by Australia against France until it has pronounced upon the questions to which the pleadings mentioned in its Order dated 22 June 1973 are to be addressed.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twelfth day of July, one thousand nine hundred and seventy-three, in four copies, one of which will be deposited in the archives of the Court, and the others transmitted to the Government of Fiji, the Government of Australia, and the French Government, respectively.

*(Signed)* Manfred LACHS,  
President.

*(Signed)* S. AQUARONE,  
Registrar.

Judge GROS makes the following declaration :

I have voted against the deferment of the consideration of the document filed on 16 May; the question could and should have been settled immediately, and independently of the problem of the Court's jurisdiction in the case referred to in the operative paragraph of the present Order, by a finding to the effect that the document in question does not comply with the provisions of Article 62 of the Statute of the Court, concerning intervention.

Judge PETRÉN makes the following declaration :

Being of the opinion that the Court should have given its decision on the application of the Government of Fiji at the present stage of the proceedings, I have voted against the deferment of the consideration thereof to a later phase of the case.

Judge ONYEAMA makes the following declaration :

I voted against the Order because in my view the application to intervene should have been considered on its merits now and not put off; for quite apart from what is postulated by the application itself, there is the immediate question whether, in the absence of a jurisdictional link with France, Fiji can intervene in a case in which France is impleaded.

Judge IGNACIO-PINTO makes the following declaration :

I do not share the opinion of the majority of the Court to the effect that consideration of Fiji's application to intervene in the cases concerning *Nuclear Tests (Australia v. France; New Zealand v. France)* should be deferred. There is no treaty link between France and that State capable of authorizing such intervention on the latter's part.

An examination should consequently have been carried out at the present stage to determine whether the application was well-founded or not, and it is my view that deferment to a later phase of the proceedings was in no way justified; I accordingly cast a negative vote.

(Initialled) M.L.

(Initialled) S.A.