

the terms of Article 62 of the Statute of the Court, in the *Nuclear Tests* case (*Australia v. France*), I have the honour to send you herewith three copies of the bilingual edition, printed by the Registry, of that Application.

74. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>1</sup>

30 May 1973.

I refer to my cable 30 of 16 May 1973<sup>2</sup> by which I informed you of the filing by the Government of Fiji of an Application for permission to intervene, under the terms of Article 62 of the Statute of the Court, in the *Nuclear Tests* case (*Australia v. France*).

By Article 69, paragraph 4, of the 1972 Rules of Court, I am required to transmit copies of the Application for permission to intervene to Members of the United Nations through the Secretary-General. I should accordingly be grateful if you would be so good as to communicate copies of the Application referred to above to the Members of the United Nations, for which purpose I am forwarding to you under separate cover (by airmail parcel post, marked "Attention Director, General Legal Division") 150 copies thereof.

75. THE AGENT OF AUSTRALIA TO THE REGISTRAR

31 May 1973.

I refer to the question put by Judge Gros at the hearing of 25 May 1973 (I, p. 244) in the *Nuclear Tests* case (*Australia v. France*) and to the statement by Judge Gros at the same hearing that he wished to put a further question which would be transmitted to the Agent for the Government of Australia in writing. I refer also to your letter dated 29 May 1973 forwarding the text of the further question of Judge Gros, together with an English translation made by the Registry.

I now have the honour to submit the written answers of the Government of Australia to the two questions.

*First Question:*

The question put by Judge Gros at the hearing on 25 May 1973 reads in full as follows:

«Le conseil du Gouvernement de l'Australie a indiqué à la Cour le lundi 21 mai (I, p. 187) qu'il y avait « une question sur laquelle nous réservons notre position ».

M. l'agent du Gouvernement de l'Australie peut-il indiquer quelle position est ainsi réservée; et s'il s'agit d'une réserve de position juridique qui serait un élément du différend soumis à la Cour par le Gouvernement

<sup>1</sup> A communication in the same terms was sent to the Secretary-General of the United Nations regarding the *New Zealand v. France* case.

<sup>2</sup> Not reproduced.

de l'Australie, le point a-t-il été soulevé et traité comme tel dans les entretiens à Paris, en avril 1973, entre les représentants des deux gouvernements?"

In his speech on 21 May 1973 (I, p. 187, line 22), the Solicitor-General of Australia used the expression: "This is a matter on which we reserve our position." Judge Gros has asked what position is thus reserved.

The Solicitor-General was developing the proposition that radio-active fallout on Australian soil from French tests would constitute a violation of Australian territorial sovereignty. In addition, he observed that questions might arise whether the consequences of the French tests could be in any way affected by the consideration that they represented a possibly legitimate use of French territory. The Solicitor-General argued that such use of French territory could not be legitimate. It was in the course of this submission that the Solicitor-General indicated that he did not wish to be taken as accepting the validity of an assumption on which it rests, namely that Mururoa may simply be treated like any other part of French territory and that this was a matter on which we reserved our position.

This is the reservation of position regarding which Judge Gros has framed his question. It can thus be seen to be a subsidiary matter in the legal argument relating to the merits. In the submission of the Government of Australia nothing can turn on it at the stage of interim measures.

In answer to the second part of the question put by Judge Gros, the Australian Government states that the matter thus reserved is not an element in the dispute in the sense that it is not a constituent part of the dispute. The explanation given above shows that the legal argument in question is ancillary only and if it arises at all for consideration will only do so in connection with the merits.

It may be observed that amongst the many points mentioned in the course of the discussions held in Paris in April 1973 between the representatives of the two Governments was the status of Mururoa Atoll. The French Foreign Minister took the initiative in categorically stating that under the French constitution the testing sites were French territory. The question was therefore clearly one on which the French Government has a fixed and unchangeable view.

#### *Second Question:*

The second question asked by Judge Gros, which was forwarded with your letter dated 29 May 1973, reads as follows:

"Vis-à-vis de quels Etats, en dehors de la France, le Gouvernement de l'Australie estime-t-il être lié par l'Acte général pour le règlement pacifique des différends internationaux de 1928, pour l'ensemble de l'Acte ou pour partie?"

The Government of Australia considers itself to be bound by the 1928 General Act towards those States which have acceded thereto. A list of those States as at 10 July 1944 is set forth in the League of Nations twenty-first list of *Signatures, Ratifications and Accessions in Respect of Agreements and Conventions Concluded Under the Auspices of the League of Nations*. No States have acceded to or denounced the General Act since that date.

The present answer is, of course, given without prejudice to the position in relation to any accession the continuing validity of which may be affected by special circumstances not relevant to the present case. Also, the Government of Australia does not consider itself bound by the General Act towards any other State by reason of State succession.