

**NUCLEAR TESTS CASE (AUSTRALIA v. FRANCE)
(INTERIM PROTECTION)**

Order of 22 June 1973

The Court, by 8 votes to 6, made an Order indicating, pending its final decision in the case concerning Nuclear Tests (Australia v. France), the following provisional measures of protection:

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

As President Lachs was for health reasons unable to participate, it was Vice-President Ammoun who, in accordance with Article 45 of the Statute, presided and read out the Order. Judge Dillard was likewise absent for health reasons, and the Court was therefore composed as follows:

Vice-President Ammoun, Acting President; Judges Forster, Gros, Bengzon, Petrán, Onyeama, Ignacio-Pinto, de Castro, Morozov, Jiménez de Aréchaga, Sir Humphrey Wal-

dock, Nagendra Singh and Ruda; Judge *ad hoc* Sir Garfield Barwick.

Of the Members of the Court who voted in favour of the indication of provisional measures, Judges Jiménez de Aréchaga, Sir Humphrey Waldock, Nagendra Singh and Sir Garfield Barwick each appended a declaration. Of the judges who voted against the indication of the measures, Judges Forster, Gros, Petrán and Ignacio-Pinto each appended to the Order a dissenting opinion.

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In its Order, the Court recalls that on 9 May 1973 Australia instituted 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. The Australian Government asked the Court to adjudge and declare that the carrying out of further atmospheric nuclear weapon tests in the South Pacific Ocean was not consistent

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with applicable rules of international law, and to order that the French Republic should not carry out any further such tests. On the same date the Australian Government asked the Court to indicate interim measures of protection. In a letter from the Ambassador of France to the Netherlands, handed by him to the Registrar on 16 May 1973, the French Government stated that it considered that the Court was manifestly not competent in the case and that it could not accept the Court's jurisdiction, and that accordingly the French Government did not intend to appoint an agent, and requested the Court to remove the case from its list. A statement of the reasons which had led the French Government to these conclusions was annexed to the letter.

The Court has indicated interim measures on the basis of Article 41 of its Statute and taking into account the following considerations *inter alia*:

—the material submitted to the Court leads it to the conclusion, at the present stage of the proceedings, that the provisions invoked by the Applicant with regard to the Court's jurisdiction appear, *prima facie*, to afford a basis on which that jurisdiction might be founded;

—it cannot be assumed *a priori* that the claims of the Australian Government fall completely outside the purview of the Court's jurisdiction or that that Government may not be

able to establish a legal interest in respect of these claims entitling the Court to admit the Application;

—for the purpose of the present proceedings, it suffices to observe that the information submitted to the Court does not exclude the possibility that damage to Australia might be shown to be caused by the deposit on Australian territory of radio-active fall-out resulting from such tests and to be irreparable.

The Court then says that it is unable to accede at the present stage of the proceedings to the request made by the French Government that the case be removed from the list. However, the decision given today in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case, or any question relating to the admissibility of the Application, or relating to the merits themselves, and leaves unaffected the right of the French Government to submit arguments in respect of those questions.

The Court further decides that the written pleadings shall first be addressed to the question of the jurisdiction of the Court to entertain the dispute, and of the admissibility of the Application, and fixes 21 September 1973 as the time-limit for the Memorial of the Government of Australia and 21 December 1973 as the time-limit for the Counter-Memorial of the French Government.