

**APPLICATION FOR PERMISSION TO
INTERVENE SUBMITTED BY THE
GOVERNMENT OF FIJI**

16 May 1973.

I have the honour pursuant to Article 69 of the Rules to submit to the International Court of Justice an Application¹ on behalf of Fiji for permission to intervene under the terms of Article 62 of the Statute in the case concerning Nuclear Tests (*Australia v. France*).

1. DESCRIPTION OF THE CASE

As indicated above the case to which this Application for permission to intervene relates is the case concerning Nuclear Tests (*Australia v. France*) instituted by an Application dated 9 May 1973. In that case the Australian Government has asked the Court to adjudge and declare that for the reasons stated in the Australian Application, or any of them, or for any other reason that the Court deems to be relevant the carrying out of further atmospheric nuclear weapon tests in the South Pacific Ocean is not consistent with applicable rules of International Law, and to order that France shall not carry out any further such tests.

2. STATEMENT OF LAW AND FACT JUSTIFYING INTERVENTION

Facts relating to the programme of atmospheric nuclear weapon testing by the French Government in the South Pacific are set out in the Australian Application. References are made in particular to paragraphs 2-7 and to paragraphs 22-47. It is not thought necessary in this Application to repeat the more general facts set out in the Australian Application relating to the programme of atmospheric nuclear weapons tests conducted by France at its Pacific Tests Centre. However, it is proposed to set out the facts which are specifically relevant to this Application.

As a consequence of the French programme of atmospheric nuclear weapon testing radioactive fallout has been deposited on Fiji territory, including its waters, giving rise to measurable concentrations of radionuclides in food-stuffs and in man and has therefore resulted in additional radiation doses to persons living in Fiji.

Details of the fallout on Fiji territory resulting from the atmospheric nuclear weapon tests conducted by France at its Pacific Tests Centre are contained in the quarterly reports and annual summaries on environmental radioactivity published by the New Zealand National Radiation Laboratory. Data in these reports show that Fiji has had deposited on its territory fresh fission products during the period within which France has conducted those tests. These products constitute a hazard to the health of the people of Fiji and to their environment. For example, the quarterly report of July-Septem-

¹ II, p. 357.

ber 1971 records that the concentration of fresh fission products in the air at Nadi on the west coast of Fiji rose to as high as 73.5 picocuries per cubic metre on 17 September 1966. The average level of fresh fission products in the air in Fiji for the period 1966 to 1971 is set out in the following table.

<i>Air Activity — pCi/m³ Average for the Monitoring Period*</i>					
<i>Pacific Islands</i>	<i>1966</i>	<i>1967</i>	<i>1968</i>	<i>1970</i>	<i>1971</i>
Nadi, Fiji	1.39	0.38	0.97	0.56	0.58
Suva, Fiji	**	0.37	1.22	0.62	0.82

* Monitoring period covers the period during which nuclear testing conducted and for approximately 3 months afterwards.

** No monitoring recorded.

These reports also show that specific short-lived radionuclides were measured in Fiji. For example, in 1966 the integrated concentration of iodine-131 in the fresh milk supply in Suva, the capital city of Fiji, ranged up to 15,000 picocurie-days per litre. This level was among the highest in that year for countries in the southern hemisphere as reported in the 1969 report for the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR).

A matter of particular concern to the Government of Fiji is the possibility of "blow back" referred to in paragraph 29 of the Australian Application. The high levels of fallout recorded in Fiji in 1966 are attributed to such an occurrence.

Another matter of concern is the danger caused by radioactive deposits on the natural living resources of the waters of Fiji and the surrounding seas, especially fish, which constitute a vital source of food supply to the people of Fiji.

Since it became an independent nation on 10 October 1970, the Government of Fiji has taken great trouble to point out to the French Government its growing apprehension and concern at the conduct of these tests. The Government of Fiji has specifically protested to the French Government on two occasions. On 27 June 1971 a protest was made to the French Government through the French Ambassador in London. Again, on 20 April 1972, it protested to the French Government calling for an end to its programme of atmospheric nuclear weapon tests in the Pacific. In addition, every available opportunity has been taken to raise the issue in the United Nations as well as in regional conferences and meetings of the Pacific leaders.

Details of these are as follows:

1. Fiji joined with the heads of Government from Tonga, Western Samoa, Cook Islands, Nauru, Australia and New Zealand at the first meeting of the South Pacific Forum, held in Wellington on 7 August 1971, appealing to the French Government to make the then current test series the last in the Pacific area.
2. The Fiji Permanent Representative to the United Nations, Mr. Semesa Sikivou, made a reference protesting against the French nuclear weapon

testing in the Pacific in the course of his address in the General Debate, 26th General Assembly, of the United Nations on 4 October 1971.

3. Fiji co-sponsored with New Zealand and other States resolution 3 (I) of the United Nations Conference on the Human Environment held at Stockholm from 5-16 June 1972 condemning nuclear weapon tests, especially those carried out in the atmosphere, and calling upon those States intending to carry out nuclear weapon tests to abandon their plans to carry out such tests since they may lead to further contamination of the environment.
4. Fiji was instrumental in including the condemnation of French nuclear weapon testing in a report by the Special Committee of the United Nations General Assembly on the situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, on 7 July 1972.
5. Fiji co-sponsored with Australia, New Zealand and other States United Nations General Assembly resolution 2934 (XXVII) of 29 November 1972 on the "Urgent need for suspension of nuclear and thermonuclear tests".
6. The Deputy Prime Minister of Fiji, Ratu Sir Edward Cakobau, made reference condemning the French weapon tests in his address in the General Debate of the United Nations General Assembly on 10 October 1972.
7. The Fiji representative, Mr. S. Nandan, delivered a statement in the First Committee of the United Nations General Assembly on 19 November 1972, urging the French Government to call a definitive halt to their atmospheric nuclear weapon tests in the Pacific.

To strengthen its opposition to these tests the Fiji Government on 14 June 1972 imposed a ban on the landing and overflight by French military aircraft and on calls by French naval vessels which might be connected with the tests.

Fiji public opinion has also voiced its strong opposition to the continuation by France of its testing programme. The fears of the public have been heightened by the proximity of the tests centre and a heightened awareness of scientific knowledge on the possible harmful effects of the increased doses of radioactivity to which the Fiji population is exposed as a result of these tests.

It will be evident from the facts set out above that Fiji is affected by French conduct at least as much as Australia and that similar legal considerations affect its position.

Moreover, because it must be assumed on the basis of past experience that any future tests will give rise to radioactive fallout over Fiji territory, thus resulting in additional radiation doses to the entire Fiji population, Fiji has a particular concern in these proceedings.

On this basis, the Government of Fiji seeks the permission of the Court to intervene in the case described above in accordance with Article 62 of the Statute.

The Government of Fiji expresses the hope that the Court will reach a decision to permit the Government of Fiji to intervene in time for it to appear and participate in the hearings on the provisional measures of protection requested by the Government of Australia.

The Government of Fiji has informed the Government of Australia of

its intention to intervene in this case. The Government of Australia has raised no objection thereto on the understanding that the filing by Fiji of this Application at the present time will not prejudice any arrangements that may have been made for the expeditious hearing of the Australian request for provisional measures of protection.

(Signed) D. McLOUGHLIN,
Agent for the Government of Fiji.

**-ANNEX TO THE APPLICATION FOR PERMISSION
TO INTERVENE**

*1. Aide-Mémoire Addressed to French Government Through the
French Ambassador in London on 1 June 1971*

AIDE-MÉMOIRE

The Government of Fiji has learned with surprise and regret that the Government of France has notified certain other Governments in the region of the establishment of a danger zone consequent upon the resumption of nuclear testing in the South Pacific.

The Government of Fiji is strongly opposed to the testing of nuclear weapons, especially in the atmosphere. It is particularly concerned to learn that tests are to be resumed in the South Pacific region, because of the consequent risk of contamination of the atmosphere and also of the sea from which Pacific Islanders derive much of their food. In this connection the Government of Fiji regards any increases in levels of radioactivity, no matter how small, as undesirable and potentially hazardous to health. It does not accept that there can be any justification for subjecting the peoples of the South Pacific, against their will, to any such increases, whether or not the increases are within the so-called "permissible levels".

The Government of Fiji regards this resumption of nuclear testing as being especially regrettable at a time when world attention is being focussed on the problems of environmental management and the control of pollution, and when preparations are being made for a major international conference on the human environment under the auspices of the United Nations.

London,
1 June 1971.

*2. Memorandum Addressed to French Government Through the
French Ambassador in Wellington on 20 April 1972*

MEMORANDUM

The Government of Fiji made representations to the French Government in June 1971 about the carrying out of nuclear tests in the atmosphere above Mururoa Atoll in the Tuamotu group of islands. It was also associated with representations made by the Government of New Zealand in August 1971 on

behalf of all the participants in the South Pacific Forum, in which an urgent appeal was addressed to the French Government that the then current test series should be the last in the Pacific area.

The Government of Fiji must therefore deplore that the French Government has chosen to disregard once again the widely expressed opposition to the testing. It views with deep disappointment and concern the French Government's intention to resume the testing of nuclear devices in the Pacific atmosphere later this year.

In its previous representations to the French Government, the Government of Fiji drew attention to the potential hazards that these tests in the Pacific pose to health and safety and to the marine life which is a vital element in island subsistence and economy. It notes that, despite assurances about the precautions taken to ensure the inoffensiveness of these explosions to life and the environment, the French Government continues to conduct them at a point on the earth's surface which is as far removed as possible from the mass of its own territory and population.

The Government of Fiji wishes to urge the French Government to reconsider its intention before embarking on further wilful pollution of the Pacific environment, and to call a definitive halt to its programme of atmospheric nuclear tests in this region.

Department of Foreign Affairs,
Prime Minister's Office,
Suva.

20 April 1972.

*3. Extract from the Communiqué Issued on 7 August 1971 at the
Conclusion of the First Meeting of the South Pacific Forum*

During the course of the discussion attention was drawn to the forthcoming series of nuclear tests to be conducted by France in the South Pacific. Participants expressed deep regret that atmospheric tests of nuclear weapons continued to be held in the Islands of French Polynesia despite the Partial Test Ban Treaty and the protests repeatedly made by a number of the countries attending as well as other Pacific countries. They expressed their concern at the potential hazards that atmospheric tests pose to health and safety and to marine life which is a vital element in the Island's subsistence and economy and addressed an urgent appeal to the Government of France that the current test series should be the last in the Pacific area. The Forum requested the New Zealand Government to transmit this appeal to the French Government.

*4. Extract from Address by Fiji Permanent Representative
to the United Nations, Mr. Semesa Sikivou, in the
General Debate, 26th General Assembly, of the United
Nations on 4 October 1971*

A natural consequence of the importance of the sea to Fiji's people has been our deep concern, in common with many other Pacific nations—and indeed with other member States, great and small whose distinguished

representatives have spoken before me on this subject—concern at the renewal by France in 1971 of atmospheric nuclear testing on Mururoa Atoll. On this occasion our independent status enabled us for the first time to protest in our own right at the contamination of the atmosphere and of the sea which these tests must cause, and at the subjection of the peoples of the South Pacific, against their will to increases in the levels of radioactivity which, no matter how small, must be regarded as potentially hazardous to health. Fiji also associated herself with a joint protest made by our friends on behalf of all independent South Pacific countries following a resolution at a meeting of *Pacific Heads of Government held in Wellington in August*. We are therefore gratified that the French Government has now seen fit to call a halt to these tests. We are confident that France, which has in so many ways demonstrated her concern for the less privileged nations, will be sufficiently sensitive to the feelings which the tests have aroused that she will make this halt permanent and final. At a time when problems of pollution and environmental management are increasingly occupying the attention of the world, and when the vast majority of States have subscribed to the Partial Test Ban Treaty of 1963, we are sure that the members of this Assembly will not wish to see our confidence misplaced.

5. *Resolution 3 (I) Adopted by the United Nations Conference on the Human Environment, Stockholm, 5 to 16 June 1972*

[See Annex 19 to the Australian Request for the Indication of Interim Measures of Protection, p. 132, supra]

6. *Extract from Report by the Special Committee of the United Nations General Assembly on the Situation with Respect to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples dated 7 July 1972*

The Special Committee strongly condemns the blatant disregard of world public opinion by the Government of France in resuming nuclear atmospheric testing in the vicinity of Mururoa Atoll, some 500 miles north-west of Pitcairn. The Special Committee calls upon that Government to desist forthwith from engaging in such activities which endanger the life and the environment of the peoples of the region.

7. *United Nations General Assembly Resolution 2934 A-C (XXVII) of 29 November 1972 on the "Urgent Need for Suspension of Nuclear and Thermonuclear Tests"*

[See Annex 21 to the Australian Request for the Indication of Interim Measures of Protection, p. 139, *supra*

8. *Extract from Address of the Deputy Prime Minister of Fiji, Ratu Sir Edward Cakobau, in the General Debate of the United Nations General Assembly of 10 October 1972*

A subject which is closely allied to the question of international security to the environment, and to the law of the sea, to which I have already referred is that of nuclear testing. Ever since Fiji has had the opportunity of making its voice heard in the international community it has protested against the carrying out of nuclear tests in the atmosphere and particularly the atmosphere of the Pacific Ocean.

It is a source of great regret, Mr. President, that it must record that these protests, which have been echoed by many of our friends in this Assembly and notably during this session by my colleagues from Australia and New Zealand have gone unheeded. This year France has again exploded a number of nuclear devices on Mururoa Atoll.

We are assured that these tests produce little radiation. They are said to be harmless. This being so, Mr. President, many countries in Fiji's part of the world question why France needs to conduct them at a point on the earth's surface which is as far removed as possible from the mass of its own territory and population.

The tests are contrary to the terms of the Partial Test Ban Treaty to which the vast majority of the members of this Organization, including Fiji, has subscribed. It is true that France is not a party to it and that there are other countries who also continue to test in the atmosphere. At a time when wider agreements are being sought for complete disarmament and for a cessation of all nuclear testing, the activities of countries which persist in testing nuclear devices in the atmosphere must be repugnant to the international community as a whole. We will not relax our efforts, in concert with other like-minded nations, to persuade those responsible to bring their programmes of destruction to an end. In this regard, Mr. President, we strongly support and commend an initiative jointly taken by our neighbours, Australia and New Zealand, to bring the question of nuclear testing before this Assembly with a view to banning all such activity, especially in the South Pacific.

*9. Extract from Statement by the Fiji Representative,
Mr. S. Nandan, in the First Committee of the United
Nations General Assembly on 19 November 1972*

My delegation's intervention on this occasion will be confined to Item 32 of the Agenda, entitled "Urgent Need for Suspension of Nuclear and Thermo-nuclear Tests".

It is some nine years now since the Partial Test Ban Treaty, banning all tests in the atmosphere, in outer space and under water, was signed in 1963. It is therefore most disappointing to note that some major States with nuclear capabilities have still not become parties to this Treaty. Since 1963 the world has been striving for a comprehensive ban on all nuclear tests, which it is hoped would pave the way for the eventual elimination of all nuclear weapon stockpiles. It is a matter of great regret that little progress has been made towards the achievement of a comprehensive test ban treaty. Fiji is very much aware that in this day and age, given the destructive capabilities of nuclear weapons, no nation, however small or remote, can be expected to be spared in the event of a nuclear holocaust. It is with this in view that my delegation welcomes this opportunity to add its plea to the universal demand for the establishment of a safer world for all mankind through general and complete disarmament.

The Partial Test Ban Treaty of 1963, to which my country is a party, is an epitome of world-wide opinion against the testing of nuclear devices in the atmosphere, in outer space and under water. This universal concern of man to safeguard himself and his environment against the dangers of nuclear contamination was echoed again as recently as June this year at the Conference on the Human Environment in Stockholm by the adoption of Principle 26 of the Declaration on the Human Environment, which states without qualifications or conditions that

"man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement in the relevant international organs, on the elimination and complete destruction of such weapons."

In addition, the Conference also adopted a resolution condemning nuclear weapon tests, especially those carried out in the atmosphere, and called upon those States intending to carry out nuclear weapon tests to abandon their plans to carry out such tests, as they might lead to further contamination of the environment.

It is ironical, however, that that plea of a unique international gathering at Stockholm should have been celebrated only a few days after the Conference ended, by the beginning of the 1972 series of French nuclear tests in the Mururoa Atoll in the South Pacific. Those tests were carried out in defiance of world opinion and in disregard of the protests of the countries bordering the Pacific Ocean. The Government of Fiji has individually and collectively with other States in the South Pacific region, whose environment is most immediately involved, made urgent appeals to the French Government to desist from its wilful pollution of the South Pacific. Fiji does not stand alone on this issue. It is one which has an impact on the whole of the Pacific region and most of the countries and territories of that region have made their attitude unmistakably plain. The delegations of New Zealand and Australia

have, in their statements on this issue, already referred to the various collective protests made by the South Pacific countries.

Protests from individual bodies and persons throughout the Pacific region are loud, strong and clear, and they will continue as long as the tests do. The protests of the States comprising the association of South-East Asian nations and that of the Andean group of States of Latin America have also been referred to, and I do not wish to repeat them. However, the most deplorable fact is that the French Government chose to ignore completely the widely expressed opposition to the testing and deliberately carried out its series of atmospheric tests in June and July of this year in the Mururoa Atoll in the South Pacific.

The dangers of atomic radiation are well known. A very useful review of the health hazards from the environmental radiation is to be found in the most recent report of the UN Scientific Committee on the Effects of Atomic Radiation (A/8/8725, Supplement No. 25). It is equally well known that the explosion of nuclear devices in the atmosphere generates large quantities of radioactive isotopes in the human environment. Those isotopes, when absorbed in the human body lead to a measurable increase in the radiation dosage to the organs of the body. My delegation submits that it should be recognized that there is a risk of induced disease or disability from even the lowest levels of exposure to radiation. That consideration is of particular significance to the peoples of the South Pacific that are being increasingly exposed to radiation by the wilful acts of one permanent member of this organization which crosses the earth's surface to conduct its tests in our surroundings.

In case it should be said that our apprehension over health hazards is unfounded, I should like to refer this Committee to but one example in the Report of the Scientific Committee. In paragraph 14 of that Report the Scientific Committee unequivocally records a significant increase in radioactive iodine levels in milk in the Southern Hemisphere after each of the 1970 and 1971 series of French tests in the Pacific. That Report is not up to date, of course, as it does not take into account the 1972 series of French tests. I might mention that in high doses radioactive iodine causes thyroid tumours, especially in infants.

The Government of Fiji has already drawn the attention of the French Government to the potential hazards which these tests in the Pacific pose to health and safety and to the marine life which is a vital element in island subsistence and economy. It is no comfort to us, the peoples of the Pacific, to observe that despite the assurances about the precautions taken to minimize the ill effects of these explosions to life and to the environment, the French Government continues to conduct them at a point on the earth's surface as far removed as possible from the mass of its own native soil and people. We have no doubts of the adverse domestic reaction that would be generated if these tests were conducted closer to France.

My delegation views with deep disappointment and concern recent reports in the world press emanating from Paris, indicating that France is planning a new series of nuclear tests in the Pacific. The London *Sunday Times* of 8 September 1972, for instance, reported that the bombs to be exploded in the new series would be considerably larger than the nuclear devices the test explosions of which caused world-wide protests earlier this year. That information on a further series of tests is confirmed by an article which appeared in a Paris magazine of 6 November 1972, and was written by one

General Paul Rigail, who is reported to be in charge of atomic affairs at the French General Staff Headquarters. To the knowledge of my delegation no official denials of those reports have been made.

Fiji would therefore like once again to urge the Government of France to reconsider before further wilfully polluting the Pacific environment, and to call a definitive halt to its programme of atmospheric tests in the Pacific region. In view of the reports of a further series of tests, the adoption of the draft resolution contained in Document A/C.1/L.611 is even more imperative. Fiji is a co-sponsor of that draft resolution, which was so ably presented to this Committee on 26 September 1972, by the representative of New Zealand, on behalf of its 13 co-sponsors from the Pacific region. Since that draft resolution is a regional effort it is not surprising that the tests in the Pacific are specifically mentioned. The draft does, however, stress the desirability of bringing to a halt all nuclear weapon testing in the atmosphere and in other environments everywhere in the world. We should like to make it clear, however, that the delegation of Fiji would strongly oppose any attempts to delete the reference to the Pacific tests from this draft resolution, for it cannot be denied that only recently tests have been conducted in the Pacific.
