

76. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

1^{er} juin 1973.

Me référant à ma lettre du 29 mai 1973 à laquelle j'avais joint le compte rendu de l'audience publique tenue par la Cour le 25 mai 1973 en l'affaire des *Essais nucléaires (Australie c. France)* ainsi que le texte d'une question de M. Gros posée par écrit à l'agent du Gouvernement australien, j'ai l'honneur de faire tenir à Votre Excellence copie de la réponse faite par l'agent du Gouvernement australien et, à toutes fins utiles, une traduction française de cette réponse, établie par le Greffe.

77. THE CO-AGENT OF NEW ZEALAND TO THE REGISTRAR

1 June 1973.

In accordance with your letter of 29 May addressed to the Agent of the Government of New Zealand, I have the honour to transmit herewith the answer to the question put to the representatives of New Zealand by Judge Sir Humphrey Waldoek at the hearing of 25 May.

Answer to the Question Put to the Representatives of New Zealand by Judge Sir Humphrey Waldoek at the Hearing of 25 May (p. 141, supra)

Judge Sir Humphrey Waldoek asks for an explanation of the position of the New Zealand Government regarding the status today of the provisions of the 1928 General Act, and of New Zealand's Instruments of Accession to that Act, which relate to the Council of the League of Nations. It will be convenient to deal first with the relevant provisions of the General Act itself, and then with those of New Zealand's Instruments of Accession.

There are two provisions of the General Act which relate to the Council of the League. Article 6, paragraph (i), provides that the appointment of members of a conciliation commission shall, on the request of the parties concerned, be entrusted to the Acting President of the Council of the League of Nations. Article 43 empowers the Council of the League of Nations to invite States not members of the League to accede to the General Act.

In his statement made to the Court on 25 May, the New Zealand Agent observed, in reference to the second of these provisions, that the Council's power to invite non-members of the League to accede to the General Act "will obviously have lapsed". In the view of the New Zealand Government, this will also be true of the powers entrusted to the President of the League Council pursuant to Article 6 of the General Act.

The considerations on which this view mainly depends are the demise of the League itself, the absence of any action—whether taken in a United Nations context or otherwise—to effect or recognize a transfer of the powers reposed in the League Council and its acting President, and the decision of the United Nations General Assembly in 1949 to establish a revised General Act, which would confer powers on United Nations organs, but would leave undisturbed the provisions and operation of the 1928 Act.

In the view of the New Zealand Government, therefore, Article 43 and Article

6 of the General Act, in so far as they purport to entrust powers to the League Council and to its acting President, are now without effect. These are aspects of the impairment of the efficacy of the General Act, which the United Nations General Assembly recognized without adopting the view that the Act had lost its force.

There would appear to be ample justification for the position taken by the General Assembly—and by the parties themselves through their involvement in the Assembly's proceedings. In particular, as the New Zealand Agent noted in his statement to the Court, there are numerous instances in which League treaties have survived the lapse of the power to invite adherence; and the powers entrusted to the acting President of the League Council were not central to the procedure for appointing members of conciliation commissions.

New Zealand's Instrument of Accession to the General Act contained two reservations—numbered respectively (2) and (3) and set out in Annex V to the Application—which relate to the Council of the League of Nations. In broad terms, these stipulations reserved to New Zealand a power to require, in certain circumstances, that the operation of the procedures laid down in the Act be suspended in favour of the procedures provided by the League Covenant.

The New Zealand Government of course recognizes that the impairment of the efficacy of the General Act, which stems from the demise of the League of Nations, extends to reservations that specifically relate to the League. The maintenance of such reservations does not disturb the balance of advantage in relations with other parties; for it is the Court, not the author of the reservations, which determines their meaning.

Among the reasons for maintaining the reservations are the following: they reflect an unchanging New Zealand policy; their wording is in keeping with the frame of reference in the text of the General Act itself; and no change in circumstances can have caused these reservations to become incompatible with the continued operation of the treaty instrument to which they relate.

As the 1948 and 1949 debates in the General Assembly have shown, parties which had attached the same or similar reservations to their accessions to the General Act have not doubted the continuing force of these accessions since 1946. This has been true even of parties such as the United Kingdom and New Zealand which retained political doubts stemming from the fact that the Act lay outside the Covenant and Charter systems. The same position has been taken in relation to those declarations of acceptance of the compulsory jurisdiction of the Permanent Court of International Justice which were subject to a reservation relating to the Council of the League.

For the reasons mentioned, it was submitted to the Court at the hearing of 25 May that it was not necessary for New Zealand at the present stage of the proceedings to urge any particular view of the exact effect of its reservations. Indeed, the New Zealand Government believes that, in these proceedings, it will never become necessary to resolve that question. With this qualification, it may be helpful to indicate that the New Zealand Government inclines to the view that the reservations relating to the League must now be regarded as without legal effect.

The grounds for this view are those already adduced in relation to the question of the proper construction of Articles 6 and 43 of the General Act. The very facts that the League Council no longer exists, and that no action has been taken—through the United Nations or otherwise—to effect or recognize a transfer of the Council's functions to a corresponding United Nations body, would seem to militate against any attempt to provide the reservations with a United Nations connotation. At the same time, the New Zealand Government

would not be concerned to resist such a construction if it were urged in a bi-lateral context by another party, because that construction would accord with the spirit in which the reservations were made and have been maintained.

78. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE FRANCE

4 juin 1973.

Me référant à ma lettre du 29 mai 1973 à laquelle j'avais joint le compte rendu des audiences publiques que la Cour a tenues les 24 et 25 mai 1973 dans l'affaire des *Essais nucléaires (Nouvelle-Zélande c. France)*, j'ai l'honneur d'adresser à Votre Excellence copie de la réponse écrite faite par le coagent du Gouvernement néo-zélandais à la question posée par sir Humphrey Waldock à l'audience du 25 mai.

Je transmets en outre à Votre Excellence, à toutes fins utiles, la traduction française de cette réponse, établie par le Greffe.

79. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN¹

5 juin 1973.

J'ai adressé à Votre Excellence, avec ma lettre du 22 mai 1973, le texte imprimé de la requête par laquelle le Gouvernement australien a introduit le 9 mai une instance contre la France (affaire des *Essais nucléaires*) et j'ai en outre fait tenir à Votre Excellence, par ma lettre du 23 mai 1973, le texte imprimé de la requête par laquelle le Gouvernement néo-zélandais a introduit le 9 mai une instance contre la France (affaire des *Essais nucléaires*).

J'ai l'honneur d'envoyer ci-joint à Votre Excellence, à toutes fins utiles, un exemplaire des requêtes à fin d'intervention aux termes de l'article 62 du Statut de la Cour que le Gouvernement de Fidji a déposées les 16 et 18 mai 1973 dans les deux affaires relatives aux *Essais nucléaires*.

80. THE AGENT OF AUSTRALIA TO THE REGISTRAR

18 June 1973.

I have the honour to refer to the proceedings in the *Nuclear Tests* case (*Australia v. France*). I have the honour, further, to refer to the request for provisional measures of protection lodged on 9 May 1973 by the Government of Australia in those proceedings and to the oral statements in support of that request put on behalf of the Government of Australia at the hearings of 21, 22, 23 and 25 May 1973. In that request and in those statements the Australian

¹ Une communication analogue a été adressé aux autres Etats Membres des Nations Unies et aux Etats non membres des Nations Unies.