

DECLARATION OF VICE-PRESIDENT SCHWEBEL

While concurring with the Court's disposition of the substance of the Requests of New Zealand, I have reservations about some of the procedures which have been followed.

In my view, it was obvious from the outset that New Zealand was entitled to move in pursuance of the express authorization provided by the Court in paragraph 63 of its Judgment of 20 December 1974 in the *Nuclear Tests (New Zealand v. France)* case. Claims that there could be no case, that New Zealand could act only to seek the interpretation or revision of the Judgment or to bring a new case, that there was no room for appointment of agents or a judge *ad hoc*, that the President was not entitled to exercise his authority under the Rules of Court to call upon the Parties to act in such a way as would enable any order the Court might make on the request for provisional measures to have its appropriate effects, and that the Court could not have oral hearings, accordingly were misplaced. The action of New Zealand was singular, in pursuance of a singular provision in the Court's Judgment of 20 December 1974. But France's reaction was in my view tantamount to an objection to the admissibility of New Zealand's Requests, and should have been so treated.

In the end, and in the essentials, the Court did assimilate France's objections to New Zealand's Requests to an objection to admissibility, in so far as it seated the Judge *ad hoc* designated by New Zealand, and held oral hearings at which the Parties submitted their arguments on the threshold question put by the Court to them. Whatever the reservations expressed, it is plain that when fifteen judges gathered in their robes in the Great Hall of Justice of the Peace Palace, and when Judge *ad hoc* Sir Geoffrey Palmer took his oath of office, the Members of the Court did not meet, Pirandello style, in search of a courtroom or a case, but conducted an oral hearing on a phase of a case.

(Signed) Stephen SCHWEBEL.
