

## Case Comments

### Decisions of International Foreign Tribunals

#### International Court of Justice

##### AUSTRALIA AND NEW ZEALAND V. FRANCE

On May 9, 1973, Australia and New Zealand filed in the Registry of the International Court of Justice applications instituting proceedings against France, arising out of the further atmospheric nuclear tests proposed to be conducted by France in the South Pacific region.

The Australian Government asks the Court to declare that 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 the French Government shall not carry out any such tests. Australia founds the jurisdiction of the Court, for the purpose of these proceedings, on Article 17 of the General Act for the Pacific Settlement of International Disputes, 1928, read together with Articles 36, paragraph 1, and 37 of the Statute of the Court; and, alternatively, on Article 36, paragraph 2, of the Statute, under which both Australia and France have made declarations. The Australian Government has at the same time filed in the Registry a request for the indication of provisional measures to the effect that the French Government should desist from any further nuclear tests pending the judgment of the Court.

The Government of New Zealand asks the Court to adjudge that the conduct by the French Government of nuclear tests in the South Pacific region that give rise to radioactive fallout constitutes a violation of New Zealand's rights under international law, and that these rights will be violated by any further tests. New Zealand founds the jurisdiction of the court, for the purpose of the proceedings, on Articles 36, paragraph 1, and 37 of the Statute of the Court and on Article 17 of the General Act for the

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\*B.A. (1940) and LL.B. (1942), Tulane University; member, American, Inter-American, Louisiana State, New Orleans (member, Executive Committee) and Federal Bar Associations, American Judicature Society and Maritime Law Association; president (1972- ), New Orleans Chapter, Federal Bar Association; president (1957-1959), Phi Delta Phi International Legal Fraternity.

Pacific Settlement of International Disputes, done at Geneva, 1928; and, in the alternative, on Article 36, paragraphs 2 and 5, of the Statute of the Court. On May 14, 1973 New Zealand filed a request for the indication by the Court of interim measures of protection to the effect that France should refrain from conducting any further nuclear tests which give rise to radioactive fallout while the case is pending before the Court.

#### PAKISTAN VS INDIA

On May 11, 1973, Pakistan filed in the Registry of the International Court of Justice an application instituting proceedings against India, as a result of a number of Pakistan nationals taken prisoner by the Indian armed forces in 1971 and now held in India, and it is alleged that it appears from a joint statement put out on April 17, 1973 by India and Bangla-Desh that the Indian Government proposes to hand these prisoners over to the Government of Bangla-Desh, and that the latter intends to try them for acts of genocide and crimes against humanity.

The Government of Pakistan contends, *inter alia*, that (a) it has the exclusive right to exercise jurisdiction over the persons in question, by virtue of the Convention on the Prevention and Punishment of the Crime of Genocide adopted in Geneva on December 9, 1948; (b) the allegations against the prisoners are related to acts of genocide, and that the concept of "crimes against humanity" or "war crimes" is not applicable; and (c) there is no ground in international law to justify handing them over to Bangla-Desh for trial.

At the same time, Pakistan filed in the Registry a request for the indication by the Court of the interim measures of protection to the effect that (a) the process of repatriation of prisoners of war and civilian internees should not be interrupted by virtue of charges of genocide against a certain number of them; and (b) the detainees charged with acts of genocide should not be transferred to Bangla-Desh for trial pending the judgment of the Court.

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On May 16, 1973, the French Ambassador to the Netherlands submitted to the Registrar two letters informing the Court that, as it had notified the Australian and New Zealand Governments, it considered the Court was manifestly not competent in the cases and it could not accept its jurisdiction, and that it accordingly did not intend to appoint an Agent. The French Government requested the Court to remove the cases from its list, and further stated that it was thus the French Government's view that the question of indicating interim measures of protection did not arise.

Hearings in the *Nuclear Tests* cases opened at the Peace Palace on Monday, May 21 at 3 p.m. The Court first heard argument from the representatives of Australia.

In accordance with Article 31 of the Statute of the Court, the Right Honorable Sir Garfield Barwick, G.C.M.G., Chief Justice of the High Court of Australia, has been chosen by the Australian Government and the New Zealand Government to sit as Judge *ad hoc* in their respective cases. At the beginning of the hearing of May 21, he made the solemn declaration provided for by Article 20 of the Statute of the Court.

Applications for permission to intervene in the two cases, under the terms of Article 62 of the Statute, have been filed in the Registry with reference to Article 69 of the Rules of Court on behalf of the Government of Fiji, which has appointed Mr. D. McLoughlin as its Agent.