

thousand nine hundred and seventy-three, in four copies, one of which will be placed in the archives of the Court, and the others transmitted respectively to the French Government, to the Government of New Zealand, and to the Secretary-General of the United Nations for transmission to the Security Council.

(Signed) F. AMMOUN,
Vice-President.

(Signed) S. AQUARONE,
Registrar.

Judge JIMÉNEZ DE ARÉCHAGA makes the following declaration:

I have voted in favour of the Order for the reasons stated therein, but wish to add some brief comments on the relationship between the question of the Court's jurisdiction and the indication of interim measures.

I do not believe the Court should indicate interim measures without paying due regard to the basic question of its jurisdiction to entertain the merits of the Application. A request should not be granted if it is clear, even on a prima facie appreciation, that there is no possible basis on which the Court could be competent as to the merits. The question of jurisdiction is therefore one, and perhaps the most important, among all relevant circumstances to be taken into account by a Member of the Court when voting in favour of or against a request for interim measures.

On the other hand, in view of the urgent character of the decision on provisional measures, it is obvious that the Court cannot make its answer dependent on a previous collective determination by means of a judgment of the question of its jurisdiction on the merits.

This situation places upon each Member of the Court the duty to make, at this stage, an appreciation of whether—in the light of the grounds invoked and of the other materials before him—the Court will possess jurisdiction to entertain the merits of the dispute. From a subjective point of view, such an appreciation or estimation cannot be fairly described as a mere preliminary or even cursory examination of the jurisdictional issue: on the contrary, one must be satisfied that this basic question of the Court's jurisdiction has received the fullest possible attention which one is able to give to it within the limits of time and of materials available for the purpose.

When, as in this case, the Court decides in favour of interim measures, and does not, as requested by the French Government, remove the case from the list, the parties will have the opportunity at a later stage to plead more fully on the jurisdictional question. It follows that that

question cannot be prejudged now; it is not possible to exclude *a priori*, that the further pleadings and other relevant information may change views or convictions presently held.

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The question described in the Order as that of the existence of “a legal interest in respect of these claims entitling the Court to admit the Application” (para. 24) is characterized in the operative part as one relating to the admissibility of the Application. The issue has been raised of whether New Zealand has a right of its own—as distinct from a general community interest—or has suffered, or is threatened by, real damage. As far as the power of the Court to adjudicate on the merits is concerned, the issue is whether the dispute before the Court is one “with regard to which the parties are in conflict as to their respective rights” as required by the jurisdictional clause invoked by New Zealand. The question thus appears to be a limited one linked to jurisdiction rather than to admissibility. The distinction between those two categories of questions is indicated by Sir Gerald Fitzmaurice in *I.C.J. Reports 1963*, pages 102-103, as follows:

“... the real distinction and test would seem to be whether or not the objection is based on, or arises from, the jurisdictional clause or clauses under which the jurisdiction of the tribunal is said to exist. If so, the objection is basically one of jurisdiction.”

Article 17 of the General Act provides that the disputes therein referred to shall include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice. Among the classes of legal disputes there enumerated is that concerning “the existence of any fact which, *if established*, would constitute a breach of an international obligation” (emphasis added). At the preliminary stage it would seem therefore sufficient to determine whether the parties are in conflict as to their respective rights. It would not appear necessary to enter at that stage into questions which really pertain to the merits and constitute the heart of the eventual substantive decision such as for instance the establishment of the rights of the parties or the extent of the damage resulting from radio-active fall-out.

Judge Sir Humphrey WALDOCK makes the following declaration:

I concur in the Order. I wish only to add that, in my view, the principles set out in Article 67, paragraph 7, of the Rules of Court should guide the Court in giving its decision on the next phase of the proceedings which is provided for by the present Order.