

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

18 May 1973.

I have the honour pursuant to Article 69 of the Rules to submit to the International Court of Justice an Application on behalf of Fiji for permission to intervene under the terms of Article 62 of the Statute in the case concerning Nuclear Tests (*New Zealand v. France*)<sup>1</sup>.

### 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 (*New Zealand v. France*) instituted by an Application dated 9 May 1973. In that case the New Zealand Government has asked the Court to *adjudge and declare* 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 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 New Zealand Application. References are made in particular to paragraphs 2-10 and to paragraphs 12-23. It is not thought necessary in this Application to repeat the more general facts set out in the New Zealand 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-September 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.

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<sup>1</sup> See p. 361, *infra*.

*Air Activity—pCi/m<sup>3</sup> Average for the Monitoring Period\**

<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 13 of the New Zealand 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 1 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 joined with the heads of Government of Western Samoa, Tonga and the Cook Islands and representatives of the Governments of Niue and the Gilbert and Ellice Islands, in a unanimous resolution of the Pacific Island Producers Association on 14 June 1972 protesting against the French Government's decision to proceed with further nuclear tests on Mururoa Atoll and urging the French Government to call a definitive halt to its nuclear tests programme in the region.
5. 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.
6. Fiji joined with the Governments of Tonga, Western Samoa, Cook Islands, Nauru, Australia and New Zealand on 14 September 1972 at the conclusion of the third meeting of the South Pacific Forum expressing their unanimous concern at the French Government's continuation of nuclear testing in the South Pacific.
7. 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".
8. The Deputy Prime Minister of Fiji, Ratu Sir Edward Cakobau, made reference condemning the French nuclear weapon tests in his address in the General Debate of the United Nations General Assembly on 10 October 1972.
9. 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.
10. Fiji joined with the heads of Government of Tonga, Western Samoa, Cook Islands, Nauru, Australia and New Zealand on 19 April 1973 at the conclusion of the Fourth Meeting of the South Pacific Forum in urging the French Government to bring about an immediate halt to all testing in the area.

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 New Zealand 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 New Zealand.

The Government of Fiji has informed the Government of New Zealand of its intention to intervene in this case. The Government of New Zealand 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 New Zealand request for provisional measures of protection.

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

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**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*

[See No. 1 in the Annex to the Fiji Application for Permission to Intervene in the  
Australia v. France case, I, p. 153]

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

[See No. 2 in the Annex to the Fiji Application For Permission to Intervene in the  
Australia v. France case, I, p. 153]

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

[See No. 3 in the Annex to the Fiji Application for Permission to Intervene in the  
Australia v. France case, I, p. 154]

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*

[See No. 4 in the Annex to the Fiji Application for Permission to Intervene in the  
Australia v. France case, I, p. 154]

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, I, p. 132]

6. *Resolution Adopted by a Meeting of the Pacific Island Producers  
Association on 14 June 1972*

[See Annex IV to the New Zealand Request for the Indication of Interim Measures  
of Protection, p. 72, supra]

7. *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*

[See No. 6 in the Annex to the Fiji Application for Permission to Intervene in the  
Australia v. France case, I, p. 155]

8. *Extract from the Communiqué Issued on 14 September 1972 at the Conclusion of the Third Meeting of the South Pacific Forum*  
[See Annex IV to the New Zealand Request for the Indication of Interim Measures of Protection, p. 74, supra]
  
  9. *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, I, p. 139]
  
  10. *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*  
[See No. 8 in the Annex to the Fiji Application for Permission to Intervene in the Australia v. France case, I, p. 156]
  
  11. *Extract from Statement by the Fiji Representative, Mr. S. Nandan, in the First Committee of the United Nations General Assembly on 19 November 1972*  
[See No. 9 in the Annex to the Fiji Application for Permission to Intervene in the Australia v. France case, I, p. 157]
  
  12. *Extract from the Communiqué Issued on 19 April 1973 at the Conclusion of the Fourth Meeting of the South Pacific Forum*  
[See Annex IV to the New Zealand Request for the Indication of Interim Measures of Protection, p. 75, supra]
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