CASE #2: NUCLEAR WEAPONS TESTING(Australia v. France, 1973-1974)

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INTERNATIONAL COURT OF JUSTICE

TABLE OF CONTENT

1. INTRODUCTION

2. HISTORICAL ORIGINS OF FRENCH NUCLEAR TESTING (1945–1962)

    2.1 POST-WAR NUCLEAR DEVELOPMENT

    2.2 EARLY NUCLEAR TESTING IN ALGERIA

3. ESTABLISHMENT OF THE PACIFIC NUCLEAR TESTING CENTRE (1962–1966)

    3.1 SELECTION OF FRENCH POLYNESIA

    3.2 CONSTRUCTION OF TESTING FACILITIES

4. ATMOSPHERIC NUCLEAR TESTING IN THE PACIFIC (1966–1972)

    4.1 THE FIRST NUCLEAR EXPLOSIONS

    4.2 DEVELOPMENT OF THERMONUCLEAR WEAPONS

5. RADIOACTIVE FALLOUT AND ENVIRONMENTAL CONCERNS (1966–1973)

    5.1 THE SPREAD OF RADIOACTIVE MATERIALS

    5.2 AUSTRALIAN SCIENTIFIC MONITORING

5.3 DISAGREEMENTS OVER HEALTH RISKS

6. INTERNATIONAL AGREEMENTS AND ENVIRONMENTAL RESPONSIBILITY (1963–1972)

6.1 THE PARTIAL NUCLEAR TEST BAN TREATY

6.2 THE STOCKHOLM DECLARATION

7. AUSTRALIAN DIPLOMATIC PROTESTS (1972–1973)

7.1 FORMAL DIPLOMATIC EXCHANGES

7.2 FAILURE OF BILATERAL NEGOTIATIONS

8. INTERNATIONAL COURT OF JUSTICE PROCEEDINGS (1973)

8.1 AUSTRALIA'S APPLICATION

8.2 FRANCE'S REJECTION OF JURISDICTION

8.3 THE ICJ'S PROVISIONAL MEASURES

9. CONTINUED TESTING AND THE UNRESOLVED DISPUTE (1973–1974)

10. KEY TERMS AND DEFINITIONS

11. ICJ PROCEDURE TIPS

1.INTRODUCTION

The international dispute on French nuclear weapons being tested in the South Pacific represents the conflict between national sovereignty and environmental responsibility and how one government's actions can affect another's. Starting in 1966, France began conducting repeated atmospheric nuclear explosions in South West France in its Polynesia (many small islands) to strengthen its military. However, Australia had concerns regarding the radioactive fallouts caused by these nuclear explosions and how it could possibly reach its territory and potentially cause harm to its citizens and environment. Although Australia has brought this issue up before to the ICJ in 1973, this disagreement began years prior with France’s development of nuclear weapons and creating testing facilities in the Pacific. **The main issue is whether France had the legal right to conduct nuclear explosions within its own territory if it is putting other nations at risk (APPLICANT: FRANCE, RESPONDENT: AUSTRALIA).**

2. HISTORICAL ORIGINS OF FRENCH NUCLEAR TESTING (1945-1962)

2.1 Post War Nuclear Development

After World War II, nuclear weapons became one of the main sources of military power and global influence. On the 18th of October, 1945, France created the Commissariat à l'énergie atomique (CEA, which is an organization in charge of nuclear research and technological development. During the 1950s, France had further developed its nuclear programme to become less reliant on other countries for its own national defense. The Suez Crisis of 1956 showcases this perfectly as it demonstrated France’s need for more strategic independence. Nuclear Weapons became an important part of France’s national defense during President Charles de Gaulle’s presidency.

2.2 Early Nuclear Testing in Algeria

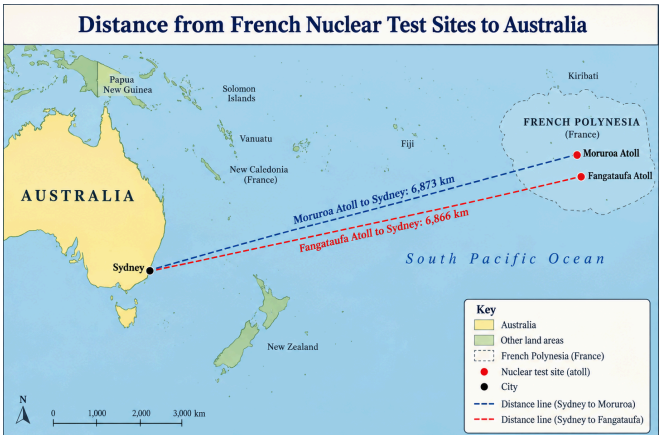
On the 13th of February, 1960, France conducted its first ever successful nuclear weapon explosion near Reggane in the Algerian Sahar. This explosion was known as the Gerboise Bleue (Blue Jerboa, and it made France the fourth country in the world to successfully test a nuclear weapon. Furthermore, France carried on with conducting atmospheric and underground nuclear tests to further develop its nuclear dominance. However, an issue arose once Algeria gained independence from France in July of 1962. This independence made maintaining French testing

facilities in Algeria specifically testing in the Algerian Sahar more difficult. France was temporarily allowed to continue testing under existing agreements, so it began searching for another location where it could continue nuclear development in the long term.

3. Establishment of the Pacific Nuclear Testing Center (1962-1966)

3.1 Selection of French Polynesia

In 1962, France selected two islands in French Polynesia called Moruroa and Fangataufa, as locations to continue conducting nuclear testing after Algeria gained its independence from France. The French Polynesia is multiple groups of islands located in the South Pacific controlled by France, which includes Tahiti and several other smaller islands. Moruroa and Fangataufa are part of the Tuamotu Archipelago (a group of around 80 islands in French Polynesia), which are around 1,200 km Southeast of Tahiti (a populated island).



French Position: France considered Moruroa and Fangataufa suitable nuclear testing locations due to them being isolated from population centers.

Regional Concerns: Australia and other Pacific countries were concerned whether radioactive materials could travel beyond Moruroa and Fangataufa even though the islands were separated and had a large distance from other territories.

3.2 Construction of Testing Facilities

France created the Centre d'expérimentation du Pacifique (CEP), which is a military testing centre in charge of actually conducting the nuclear explosions and monitoring how they impact neighboring nations and their overall effects. Beginning in 1963, France created the necessary infrastructure to conduct nuclear testing across French Polynesia. France established military bases, airfields, ports, scientific labs, and monitoring stations to ensure nuclear testing went smoothly and was monitored correctly by the CEP. Moruroa and Fangataufa were the main nuclear testing locations, whilst Hao Atoll and Tahiti supported transportation of resources and other operations. The construction and involved workers required significant funding, showcasing France’s need for independence. By 1966, France had

all necessary infrastructure, facilities, and workers to begin atmospheric nuclear testing.

4. Atmospheric Nuclear Testing in the Pacific (1966-1972)

4.1 The First Nuclear Explosions

On the second of July, 1966, France conducted its first ever atmospheric nuclear test at Moruro, after years of preparation, it was named Aldébaran. This was one of many nuclear tests that would occur in French Polynesia. Another nuclear test followed right after Aldébaran on July 19, 1966. These nuclear tests used detonating devices to detonate nuclear devices above the Earth's surface using aircrafts or balloons. These nuclear devices emitted huge amounts of radioactives substances into the atmosphere, even potentially extending beyond French Polynesia as the radioactive particles could travel through wind and atmospheric circulation.

4.2 Development of Thermonuclear Weapons

On the 24th of August, 1968, France conducted its first thermonuclear weapons test on Fangataufa, called Canopus. This explosion had an estimated yield of approximately 2.6 Megatons, making it much more powerful than the nuclear tests prior such as the ones in 1966. Thermonuclear weapons use nuclear fusion

instead of fission like older nuclear weapons which makes them much more powerful. This test played a significant role in the development of France's military power and nuclear deterrent, but the increased power of these explosions raised more concerns regarding the increased radioactive fallout that could be released upon the environment.

5. Radioactive Fallout and Environmental Concerns (1966-1973)

5.1 The Spread of Radioactive Materials

Atmospheric nuclear explosions can be detrimental to the environment as they release radioactive particles that travel long distances through wind and general atmospheric circulation. These substances return to the Earth's surface through rain or particles settling from the atmosphere. Certain weather conditions can cause radioactive fallout to spread hundreds or thousands of kilometers from the explosion. Radioactive substances can harm the environment through contaminating soil, water supplies, and agriculture. However, just detecting or identifying these radioactive materials doesn't necessarily mean that the radiation levels are high enough to cause illnesses or deaths.

5.2 Australian Scientific Monitoring

After France started its nuclear testing in 1966, Australian scientists were concerned about its safety, so they monitored air, rainfall, and agricultural products for radioactive fallout. In December of 1966, research published inside *Nature*'s scientific journal confirmed that fallout from French tests had reached Australia. In March 1973, the Australian Atomic Energy Commission released further reports showing that radiation exposure from France nuclear tests between 1964-1972, could cause potential long term health risks.

5.3 Disagreements Over Health Risks

Australia argued that the mere presence of a radioactive fallout showed that the French nuclear testing can affect countries outside of its territory (French Polynesia). Australian Officials also argue that exposing citizens to radioactive substances without their consent could potentially violate international law. France on the other hand, had disagreed, emphasizing that their tests followed the proper safety precautions and posed no threat or risk. The dispute therefore focused on the environmental effects of the tests and whether they actually violated international law.

6. International Agreements and Environmental Responsibility

6.1 The Partial Nuclear Test Ban Treaty

On the 5th of August, 1963, a Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water began signing countries into it. The treaty banned countries that joined it from conducting any nuclear explosions in these types of environments because of the increasing concerns about radioactive contamination being spread beyond a country's borders.

Australia's Position: Australia joined the treaty and condemned atmospheric nuclear testing.

France's Position: France didn't join the treaty, meaning it was not directly required to follow its rules, and is not required to discontinue their nuclear tests.

6.2 The Stockholm Declaration

In June of 1972, the United Nations Conference on the Human Environment adopted a group of important principles regarding environmental protection and responsibilities of states, called the Stockholm Declaration. The most important principle for this case is principle 21 which recognizes that countries have the sovereign right to conduct activities within their own territory but they also have the responsibility to prevent environmental damage to other countries.

7. Australian Diplomatic Protests and Failed Negotiations (1972-1973)

7.1 Formal Diplomatic Exchanges

After the Prime Minister of Australia Gough Whitlam was elected in December 1972, Australia had a larger diplomatic opposition to the French nuclear testing in the atmosphere. On the 3rd of January, 1973, the Australian government formally requested that France ends its atmospheric nuclear tests within the South Pacific because of its impact on Australia.

French Response: On February 7, 1973, France continued its nuclear testing programme as it did not violate international law and disagreed with Australia to end their testing permanently.

Australian Response: Australia disagreed with France and continued to argue that their nuclear testing programme was unlawful.

7.2 Failure of Bilateral Negotiations

In April 1973, Australian Attorney General Lionel Murphy traveled to Paris to meet with the French government representatives and discuss their nuclear testing programme. In Paris, Australia wanted France to end their nuclear testing programme permanently, but France defended its programme's legality and emphasized its importance for the French military. These negotiations didn't end up with an agreement, which meant that both countries disagreed over whether France's nuclear tests violated international law. Australia decided to bring this dispute to the international court.

8. International Court of Justice Proceedings (1973)

8.1 Australia's Application

On May 9th, 1973, Australia officially took the case against France to the International Court of Justice (ICJ). Australia argued that the radioactive fallout entered Australia without its consent, which could potentially violate international law. Australia also argued that nuclear testing in the South Pacific could interfere with aircraft travelling and ships, in international areas.

8.2 France's Rejection of Jurisdiction

On May 16, 1973, France rejected the ICJ's jurisdiction, arguing that the ICJ didn't have legal authority over this dispute.

8.3 The ICJ's Provisional Measures

On June 22, 1973, the ICJ issued temporary orders telling France to avoid nuclear tests that would cause radioactive fallout to reach Australia. These orders were put into place to temporarily pause the conflict without deciding if France actually violated international law.

9. Continued Testing and the Unresolved Dispute (1973-1974)

France continued atmospheric nuclear testing in 1973 despite the ICJ's temporary order. Australian scientists found even more radioactive fallout, so on November 13, 1973, Australia submitted its Memorial, which is a formal document showing all evidence and legal arguments.

France continued nuclear testing in June 1974, and in response, Australian Prime Minister Gough Whitlam publicly criticized the nuclear programme on June 17.

Although France suggested that 1974 might be its final year of atmospheric testing, the dispute remained unresolved as of July 1, 1974.

10. Key Terms:

Atmospheric Nuclear Testing: Nuclear devices exploded at or above the earth's surface, which may release radioactive materials into the atmosphere.

Radioactive Fallout: Radioactive particles created during nuclear explosions that may be transported through the atmosphere and eventually deposited on the land or water.

Transboundary Environmental Harm: Environmental damage originating in the territory of one country but affecting the environment of another country.

State Sovereignty: The authority of a country to govern activities in its territory, subject to applicable international obligations.

Customary International Law: Rules that become law through widespread state practice and the belief that such practices are legally required.

Jurisdiction: The authority of a court or other legal body to make decisions and judgments.

Provisional Measures: Provisional measures are like emergency rules the Court can make to protect someone's rights while a case is still being decided; temporary orders.

State Responsibility: The responsibility of a State for violating an international obligation.

French Polynesia: Groups of islands in the South Pacific, controlled by France.

11. ICJ PROCEDURE TIPS

OBJECTIONS:

TYPES OF OBJECTION	**MEANING**
Ambiguous, confusing, misleading, vague, unintelligible :	The question must be clarified and precise enough for the witness to answer properly.
Argumentative :	The question makes an argument rather than asking a question.
Facts not in evidence :	The question assumes something as true for which no evidence has been shown.
Badgering :	Counsel is antagonizing the witness to provoke a response, either by asking questions without allowing the witness to answer or by openly mocking the witness.
Compound question :	Multiple questions asked as one point
Repetitive :	Repeating points
Hearsay :	The witness does not know the answer personally but heard it from another; information that the witness hasn't witnessed or experienced.
Relevance :	The question is not about the issues in the trial.
Mischaracterization :	When the advocate distorts what the witness said
Asked and Answered :	When the attorney repeats a question that has already been answered
Lack of Foundation :	When an advocate asks a question without establishing context
Speculation :	For if a WITNESS is making assumptions

Stipulation Example:

A stipulation is a document with facts that both countries agree are true (min 4).

JOINT STIPULATION OF FACTS

The Applicant (The Commonwealth of Australia) and the Respondent (The French Republic), by and through their respective agents, hereby agree and stipulate to the following facts for the purposes of the proceedings before the International Court of Justice:

1. Fact 1
2. Fact 2
3. Fact 3
4. Fact 4
5. Fact 5

Signed and submitted jointly this ___ day of _____, 2026.

This is prepared IN THE COMMISSION.

Evidence Sheet Example:

An evidence sheet is a sheet of facts/evidence that supports your party' s argument (min 5).

EVIDENCE DOCUMENT

Case: Nuclear Tests (Australia v. France, 1973–1974)

1. Radioactive Fallout Reaching Australia (1966)

Date / Source:

Evidence:

Website:

2. The Partial Nuclear Test Ban Treaty (1963)

Date / Source:

Evidence:

Website:

You can also just put the evidence and website next to each other in a list in a blank document.

SOURCES FOR BG PAPER:

ICJ Case Documents: https://www.icj-cij.org/case/58
ICJ Court Statute: https://www.un.org/en/about-us/un-charter/statute-of-the-international-court-of-justice
United Nations Charter: https://www.un.org/en/about-us/un-charter/full-text
Nuclear Test Ban Treaty: https://treaties.un.org/Pages/showDetails.aspx?clang=_en&objid=08000002801313d9
Stockholm Environmental Declaration: https://wedocs.unep.org/handle/20.500.11822/30829
Nature Fallout Research: https://www.nature.com/articles/2121562a0
Australian Radiation Report: https://apo.ansto.gov.au/items/aeb3b687-ab2c-76a5-e053-150a9d89d

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Australian Prime Minister Statement:

https://pmtranscripts.pmc.gov.au/release/transcript-3302