

CASE CONCERNING THE DIFFERENCES BETWEEN NEW
ZEALAND AND FRANCE ARISING FROM THE *RAINBOW
WARRIOR* AFFAIR

RULING OF 6 JULY 1986 BY THE SECRETARY-GENERAL
OF THE UNITED NATIONS*

* On 19 June 1986, the Governments of France and New Zealand indicated their agreement to refer all the problems between them arising from the *Rainbow Warrior* affair to the Secretary-General of the United Nations for a ruling.

INTRODUCTION

1. On 10 July 1985 a civilian vessel, the *Rainbow Warrior*, not flying the New Zealand flag, was sunk at its moorings in Auckland Harbor, New Zealand, as a result of extensive damage caused by two high explosive devices. One person, a Netherlands citizen, Mr. Fernando Pereira, was killed as a result of this action; he drowned when the ship sank.

2. On 12 July, two agents of the French Directorate General of External Security (DGSE) were interviewed by the New Zealand Police and subsequently arrested and prosecuted. On 4 November they pleaded guilty in the District Court in Auckland, New Zealand, to charges of manslaughter and wilful damage to a ship by means of an explosive. They were sentenced to ten years' imprisonment each; they are presently serving their sentences in New Zealand prisons.

3. A communiqué issued on 22 September 1985 by the Prime Minister of France confirmed that the *Rainbow Warrior* had been sunk by agents of the DGSE upon instructions. On the same day, the Minister of External Affairs of France pointed out to the Prime Minister of New Zealand that France was ready to undertake reparations for the consequences of that action. He also declared he was ready, as the Prime Minister of New Zealand had already suggested, to meet with the Deputy Prime Minister of New Zealand on 23 and 25 September in New York. Such a meeting did take place for the purpose of discussing the possible ways to find a solution to the problems arising from the *Rainbow Warrior* affair.

4. A number of subsequent meetings took place between officials of the two countries in the months that followed, but it did not prove possible to reach a settlement.

5. In June 1986 I was formally approached by the Governments of France and New Zealand, who referred to me all the problems between them arising from the *Rainbow Warrior* affair for a ruling which both sides agreed to abide by. I then informed both Governments that I was prepared to undertake such a task. On 19 June, in Paris and in Wellington, both Governments made public announcements to that effect, and in New York on the same day I publicly confirmed that I was willing to undertake that task and to make my ruling available to the two Governments in the very near future.

PROCEDURE

I invited the two Governments to submit written statements of their positions to me. Arrangements were made for copies of each side's submission to be made available to the other. The statements are set out below.

MEMORANDUM OF THE GOVERNMENT OF NEW ZEALAND
TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

This memorandum is submitted pursuant to the agreement of 19 June 1986 between New Zealand and France that all of the problems between them arising from the *Rainbow Warrior* affair would be submitted to the Secretary-General of the United Nations for a binding ruling.

The facts

On 10 July 1985 a civilian vessel, the *Rainbow Warrior*, was sunk at its moorings in Auckland Harbour, New Zealand, as a result of extensive damage caused by two high explosive devices. One person, a Netherlands citizen, Mr. Fernando Pereira, was killed as a direct result of this action.

The attack against the *Rainbow Warrior* was carried out under official orders by a team of agents from the Directorate General of External Security, an agency of the French Government. The team of agents had previously made covert and illegal entries into New Zealand. A communiqué issued on 22 September 1985 by the then Prime Minister of France confirms France's responsibility for this action. A copy is attached as Annex A.

On 12 July 1985 two members of the French team of agents were interviewed by the New Zealand Police and subsequently arrested. They were Major Alain Mafart and Captain Dominique Prieur of the French Armed Forces. On 4 November 1985 Mafart and Prieur pleaded guilty in the District Court in Auckland to charges of manslaughter and wilful damage to a ship by means of an explosive.

Under New Zealand law the crime of manslaughter is culpable homicide and is subject to a maximum punishment of life imprisonment. Wilful damage to a ship by means of an explosive is a crime punishable by a maximum penalty of 14 years' imprisonment.

On 22 November 1985, Mafart and Prieur were each sentenced by the Chief of Justice of New Zealand to a term of 10 years' imprisonment.

A copy of the Chief Justice's statement delivered in the High Court is available if required.

The affair was formally brought to the attention of the United Nations by the Deputy Prime Minister of New Zealand, the Rt. Hon. Geoffrey Palmer, in his statement to the General Assembly on 24 September 1985 (UN Document A/40/PV.7 of 24 September).

Attempts to resolve the dispute by negotiation began in September 1985 following a meeting in New York between the New Zealand Deputy Prime Minister and the then French Minister of External Relations. Despite a number of meetings it did not prove possible to reach a settlement.

The violation of international law

The position of the New Zealand Government was first formally set out in a Diplomatic Note dated 6 September 1985 from the New Zealand Embassy in Paris to the French Ministry of External Relations. The text of the Note is attached as Annex B.

The attack against the *Rainbow Warrior* was indisputably a serious violation of basic norms of international law. More specifically, it involved a serious violation of New Zealand sovereignty and of the Charter of the United Nations.

These violations were neither accidental nor technical. International law and New Zealand's sovereignty were violated deliberately and contemptuously. There is no room for doubt that the attack was both authorised and funded at a high

level. The purpose of the operation was to prepare the ground for and to execute a criminal act of violence against property in New Zealand. This was done without regard for innocent civilians. That purpose was achieved and one of its consequences was the death of an innocent civilian.

Responsibility

The international legal responsibility of the French Government was engaged at every stage of this affair and not merely in its authorisation and initiation. In a letter of 8 August 1985 from the President of the French Republic to the Prime Minister of New Zealand (Annex C) it was stated that the incident was "a criminal attack committed on your territory and which cannot for any reason be excused". It was also stated that "I intend that this affair be treated with the greatest severity and that your country be able to count on France's full collaboration". In an exchange of letters of the same date with the French Prime Minister, the President of France spoke of the guilty being "severely punished". Copies of the texts are attached as Annex D.

Reparations sought by New Zealand

New Zealand seeks redress as follows :

(A) *Apology*

The Government of New Zealand is entitled, in accordance with international law, to a formal and unqualified apology for the violation of its sovereignty and its rights under international law.

(B) *Compensation*

The sinking of the *Rainbow Warrior* led to a deep and genuine sense of public outrage in New Zealand. It was the first time in New Zealand history that an act of international violence was committed by the armed forces of a foreign state in New Zealand territory. The sense of outrage was magnified by reason of the fact that the state responsible was a traditionally close friend and ally.

The consequent Police investigation became the largest single investigation into criminal activity that has ever taken place in New Zealand. Substantial costs were incurred by various agencies of Government including:

- the New Zealand Police
- the Department of Justice
- the Ministry of Defence
- the Ministry of Foreign Affairs
- the Department of Scientific and Industrial Research
- the Security Intelligence Service
- the Solicitor-General
- the Auckland Harbour Board.

New Zealand is entitled under international law to reimbursement by France of all costs which are a direct result of France's unlawful acts. Details of these costs are available.

New Zealand is also entitled to compensation for the violation of sovereignty and the affront and insult that that involved. The sum awarded under this heading should take account of the fact that France has refused to extradite or prosecute other persons in France responsible for carrying out the illegal and criminal act of 10 July 1985.

In respect of all the damage it has suffered, as outlined above, New Zealand (which is in no way at fault in any aspect of the affair) believes that the compensation to which it is entitled should be no less than US \$9 million.

Damage to the vessel and compensation in respect of the death of its crewman

The vessel, the *Rainbow Warrior*, was not a New Zealand ship and the dead crewman was a Netherlands citizen. New Zealand is therefore unable to assert formal standing to claim on behalf of either Greenpeace or the dead crewman. New Zealand has, however, expressed strongly to France its concern that both Greenpeace and the family of the dead man should receive fair compensation.

During the bilateral negotiations with France, New Zealand indicated that a settlement with New Zealand would only be possible if adequate compensation had been paid or if there were reasonable and binding arrangements in place that assured that this would be done.

Trade matters

By its own action and statements the Government of France has introduced trade matters into the dispute. As to the past, certain restrictive measures affecting New Zealand exports to France, which were the subject of a complaint by the Government of New Zealand to the OECD and also the subject of a complaint by New Zealand to the Director-General of GATT and a request on 7 March 1986 for consultations under Article XXII: I of the GATT, were withdrawn prior to the agreement to seek the Secretary-General's ruling. They call for no further comment. As to the future, a matter of very great concern to New Zealand is the threat made by the French External Trade Minister, M. Noir, on 3 April 1986 and reported by Reuters on 4 April 1986 (Annex E) that France might seek to link the present dispute to the question of access for New Zealand butter to the European Community. This question is due for consideration by the Council of the European Communities before 1 August 1986. M. Noir told French Radio that a total ban of New Zealand butter imports was in contemplation by France.

New Zealand has not introduced trade issues into this dispute. It has, however, no choice but to seek protection against such threats to its vital economic interests. Accordingly, New Zealand seeks a ruling that will prevent France from opposing continuing imports of New Zealand butter into the United Kingdom in 1987 and 1988 at levels proposed by the Commission of the European Communities in so far as these do not exceed those mentioned in Document COM(83)574 of 6 October 1983, that is to say, 77,000 tonnes in 1987 and 75,000 tonnes in 1988.

New Zealand also seeks a ruling that will prevent France from taking any measures which might impair the implementation of the Agreement between New Zealand and the EEC on Trade in Mutton, Lamb and Goatmeat which entered into force on 20 October 1980 (as complemented by the exchange of letters of 12 July 1984). (New Zealand Treaty Series 1980, No. 13).

*The French agents in prison
in New Zealand*

There is an important constitutional principle in New Zealand, (as in most other democratic countries), which restrains the executive branch of government from interfering for political or other purposes in judicial matters.

Decisions in New Zealand about prosecutions are not taken by Ministers and the Courts rightly accept no political interference in their consideration of cases before them.

It was for this reason that New Zealand repeatedly informed France in the early stages of the negotiations that were held that it was not open for the New Zealand Government to agree, or even negotiate, about the two prisoners in New Zealand while the cases were before the courts. This principle was steadfastly maintained by New Zealand. After the conviction and sentencing of the agents, it was acknowledged that there is power under New Zealand law for the deporta-

tion of convicted foreign prisoners. It was pointed out, however, that the New Zealand Government was wholly unwilling to exercise that power in circumstances that would give the prisoners their freedom in return for an acknowledgement by France of responsibility under international law and payment of compensation. That remains the case.

New Zealand does not accept that military personnel acting under official orders are exempt from personal responsibility for criminal acts. "Superior orders" is not a defence in New Zealand law, nor is it a defence in the legal systems of most countries. It is certainly not a defence in international law, as was clearly established in the judgements of the Nuremberg Tribunal and the post-Nuremberg war crimes trials.

Under New Zealand law the two prisoners would not be eligible to be released on parole until they had served at least 5 years. New Zealand could not countenance the release to freedom after a token sentence of persons convicted of serious crimes. This would undermine the New Zealand judicial system. It is essential to the integrity of any judicial system that persons convicted of similar offences be treated similarly.

In the course of the bilateral negotiations with France, New Zealand was ready to explore possibilities for the prisoners serving their sentences outside New Zealand.

But it has been, and remains, essential to the New Zealand position that there should be no release to freedom, that any transfer should be to custody, and that there should be a means of verifying that.

Enforcement

New Zealand is committed to the settlement of international disputes by judicial means and insisted, throughout the bilateral negotiations, that any settlement of this matter with France must contain provision for compulsory and legally binding adjudication.

New Zealand therefore requests the Secretary-General to include in his rulings provision for binding adjudication of any dispute relating to the interpretation or application of all his findings.

ANNEXES TO THE MEMORANDUM OF NEW ZEALAND

ANNEX A

Communiqué du Premier Ministre français en date du 22 septembre 1985

Le nouveau Ministre de la défense vient de s'informer des premières conclusions de l'enquête menée sur l'affaire du *Rainbow Warrior*.

J'ai tenu à vous les faire connaître immédiatement. Ces conclusions permettent désormais de cerner la vérité.

Ce sont des agents de la DCSE qui ont coulé ce bateau. Ils ont agi sur ordre. Cette vérité a été cachée au Conseiller d'Etat Tricot.

J'ai rendu compte au Président de la République de ces faits graves. Nous avons estimé que des mesures immédiates s'imposent.

Premièrement : un nouveau chef de la DCSE sera nommé dès le prochain Conseil des ministres. Il devra prioritairement réorganiser l'ensemble de ses services.

Deuxièmement : le Gouvernement est favorable à la création d'une commission d'enquête parlementaire. Les simples exécutants doivent évidemment être

mis hors de cause car il serait inacceptable d'exposer des militaires qui n'ont fait qu'obéir aux ordres et qui ont parfois accompli dans le passé pour notre pays de très dangereuses missions.

La vérité sur cette affaire est cruelle. Mais, il importe, comme je m'y suis engagé, qu'elle soit clairement et totalement établie.

ANNEX B

Note No. 1985/65 dated 6 September 1985 from the Embassy of New Zealand to France, addressed to the Ministry of External Relations of France

The Embassy of New Zealand presents its compliments to the Ministry of External Relations and has the honour to refer to the statement made on 27 August 1985 by the Prime Minister of France, M. Laurent Faibus, and to the events connected with the sinking in New Zealand on 10 July 1985 of the vessel *Rainbow Warrior*.

The Embassy is instructed to express appreciation for the Prime Minister's comment concerning France's past friendly relations with New Zealand. This comment is reciprocated by the Government of New Zealand, which has particularly valued its long sustained friendly relationship with France and continues to do so. The Government of New Zealand expresses appreciation also for the attitude of cooperation evident in such actions as have so far been taken by the French Government to further the adequate investigation of the *Rainbow Warrior* incident.

It will be understood that the New Zealand Government is nevertheless bound at this stage, in its own interests, to record formally and bring to the notice of the French Government its views on aspects of the above incident as follows:

As will have appeared from a statement made by the Prime Minister and Minister of Foreign Affairs of New Zealand, the Rt. Hon. David Lange, on 27 August 1985, it is considered by the New Zealand Government that the actions of the French Government in introducing elements of its armed forces into New Zealand under orders from the French Government and without the permission of the New Zealand Government constitute a serious derogation from New Zealand sovereignty. The Government of New Zealand is equally bound to bring formally to notice that officers of the French Armed Forces are also charged in New Zealand with serious criminal offences involving the use of force on New Zealand territory. These charges were laid by the New Zealand Police on the basis of evidence linking these and other French officers with the sinking in New Zealand of the *Rainbow Warrior*.

It will be understood, in the circumstances, that the New Zealand Government wishes to reserve its legal position and its rights of action under international law in accordance with the Charter of the United Nations with respect to both of the matters referred to above.

The Embassy of New Zealand avails itself of this opportunity to renew to the Ministry of External Relations the assurances of its highest consideration.

ANNEX C

Lettre en date du 8 août 1985 adressée par M. François Mitterrand, président de la République française, à M. David Lange, premier ministre de la Nouvelle-Zélande

Monsieur le Premier Ministre,

Les informations qui nous sont transmises nous apprennent qu'un lien existerait entre les services français et deux personnes inculpées par la justice néo-zélandaise dans l'affaire du *Rainbow Warrior*.

On ne peut qu'attendre les conclusions des enquêtes en cours pour connaître le degré d'exactitude de ces informations et quelles personnes auraient alors à répondre de leurs actes.

Cependant, je tiens dès maintenant à vous dire à quel point je réproûve, et le Gouvernement de la République avec moi, l'attentat criminel commis sur votre territoire et qu'aucune raison ne saurait excuser.

Vous savez déjà qu'en dépit de l'absence de convention entre la Nouvelle-Zélande et la France le Gouvernement français a demandé à nos services de justice et de police d'apporter leur totale coopération à ceux de vos enquêteurs qui se trouvent actuellement dans notre pays. Ordre a été donné par le Premier Ministre, M. Laurent Fabius, d'apporter toutes les facilités complémentaires possibles à vos investigations auxquelles s'ajoutent, bien entendu, les nôtres.

J'entends que cette affaire soit traitée avec la plus grande sévérité et que votre pays puisse compter sur l'entière collaboration de la France.

Croyez, Monsieur le Premier Ministre, à l'expression de ma très haute considération.

(Signé) François MITTERRAND

ANNEX D

Communiqué de l'Hôtel Matignon en date du 7 août 1988

Le Premier Ministre a reçu aujourd'hui du Président de la République la lettre suivante :

“Monsieur le Premier Ministre et cher ami,

“Je vous remercie des informations que vous m'avez communiquées au sujet du *Rainbow Warrior*.

“Je suis tout à fait d'accord avec vous pour estimer qu'il convient d'ordonner sans délai une enquête rigoureuse et je vous invite à la faire mener de telle sorte que si leur responsabilité est démontrée, les coupables, à quelque niveau qu'ils se trouvent, soient sévèrement sanctionnés.

“Croyez, Monsieur le Premier Ministre et cher ami, à l'expression de mes sentiments les meilleurs.

François MITTERRAND”

Le Premier Ministre lui a répondu ce soir dans ces termes :

“Monsieur le Président,

“Je vous ai indiqué qu'un lien avait été avancé entre deux personnes inculpées par les autorités néo-zélandaises dans l'affaire du *Rainbow Warrior* et des services français.

“Les autorités judiciaires françaises apportent dès à présent, comme c'est leur devoir, le concours sans restriction que leur ont demandé les autorités néo-zélandaises dans le cadre d'une commission rogatoire.

“Parallèlement, j'estime nécessaire de demander à une personnalité incontestable de réunir les éléments de toute nature sur cette affaire, afin de m'indiquer de la façon la plus nette si des agents, services ou autorités françaises ont pu être informés de la préparation d'un attentat criminel ou, même, y participer. Cette personnalité devra me faire connaître dans les meilleurs délais ses conclusions sur les faits et, le cas échéant, sur les responsabilités.

“Je demande au Ministre de la défense, au Ministre de l'intérieur et de la décentralisation et à leur services de lui apporter leur concours sans aucune

réserve et de lui fournir toutes les informations, de quelque nature que ce soit et sans exception aucune.

“S’il apparaissait dans le cours de son enquête administrative des faits de nature à être poursuivis pénalement en France, cette personnalité en saisirait immédiatement les autorités judiciaires françaises.

“Veuillez agréer, Monsieur le Président, l’expression de mes sentiments respectueux et dévoués.

Laurent FABIOUS”

ANNEX E

Communiqué from Reuters

PARIS, April 3, NZPA-Reuters—France’s new right-wing government is considering trade sanctions against New Zealand over its refusal to free two French secret service agents jailed for involvement in the sinking of the anti-nuclear protest ship *Rainbow Warrior*, a cabinet minister said tonight.

Foreign Trade Minister Michel Noir told French radio that one possibility was asking the European Community to ban imports of New Zealand butter.

“This is an issue which is outstanding and the government will have to make a choice. We should be ready for any possibility,” Noir said.

France has admitted responsibility for blowing up the *Rainbow Warrior*, flagship of the Greenpeace environmental movement, last July 10, but wants New Zealand to free the two agents from their 10-year jail sentences.

The New Zealand Prime Minister, Mr. Lange, says France has already begun using trade barriers, and has demanded they be lifted.

The outgoing Socialist government, defeated at the polls last month, refused to acknowledge it had imposed any sanctions. But the new government has indicated it will take a tougher line.

French importers of New Zealand products, notably sheep’s brains and wool, have complained of customs delays and failure to grant import licences.

MEMORANDUM OF THE GOVERNMENT OF THE FRENCH REPUBLIC TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

1. Following the appeal made to France and New Zealand on 31 May 1986 by the Netherlands Prime Minister, the two countries decided to submit all problems between them arising from the *Rainbow Warrior* incident to the Secretary-General of the United Nations and agreed to abide by his ruling. The agreement was announced simultaneously in Paris and in Wellington on 19 June 1986. The Secretary-General was willing to accept responsibility for this task.

As envisaged, the New Zealand Government at once set out its position in writing to the Secretary-General who kindly communicated this document to the French Government.

The purpose of this Memorandum is to set out the viewpoint of the French Government.

The facts

2. For many years, France has organised underground nuclear tests on the atoll of Mururoa in French Polynesia. These are essential for the modernisation of its defence. Following visits by French and foreign scientists, in particular in

1983 and 1984, it was established that these tests have no real consequences for the environment.

The Greenpeace movement has nevertheless pursued, for more than 15 years, campaigns of disparagement and indeed hostile action against the French nuclear tests. To this end, it has on several occasions attempted to have vessels penetrate into the waters prohibited to navigation which surround Mururoa Atoll. The National Navy has obviously opposed these illegal attempts, particularly in 1973 and 1982. The "Greenpeace" movement again planned to provoke similar incidents in 1985 by sending several vessels, including the *Rainbow Warrior*, into the neighbourhood of the French Pacific Nuclear Testing Centre.

This operation could not be carried out in accordance with the original plans due to the fact that on 10 July 1985 the *Rainbow Warrior* was destroyed at its moorings in the Port of Auckland by two explosive devices. The loss of the ship through sinking was to involve the death of a crewman of the *Rainbow Warrior*, Mr. Fernando Pereira.

3. The French authorities sought to throw light on this incident. As early as 8 August 1985, as the New Zealand Government recalls, the President of the French Republic assured New Zealand of French cooperation in this respect. Indeed, the New Zealand authorities had on 30 July requested the assistance of the French authorities in the context of the enquiry pursued by the New Zealand Police. This assistance was granted even though no agreement on mutual criminal judicial assistance existed between the two states.

Following investigations carried out in both countries and especially in France, the then French Prime Minister specifically stated on 22 September 1985 that the *Rainbow Warrior* had been "sunk under orders by agents of the Directorate-General of External Security" (DGSE). The French Minister of Defence then offered his resignation and the Director-General of the DGSE was dismissed. On the same day, the French Minister of External Relations stated to the New Zealand Prime Minister that "The French Government is of course prepared to take responsibility for reparations for the harm of various sorts resulting from this occurrence" (letter attached as Annex). He informed him moreover that the French Prime Minister was "deeply grieved that this affair should have had consequences for relations between France and New Zealand". Finally, Mr. Roland Dumas said that he was prepared, as Mr. David Lange had suggested, to meet Mr. Geoffrey Palmer, the New Zealand Deputy Prime Minister, in New York at the time of the General Assembly of the United Nations, "in order to examine on a state to state basis the conditions under which this affair could be settled".

This meeting took place on 23 and 25 September 1985 and the two Ministers "began to discuss possible courses in order to find out solutions to the problems arising from the *Rainbow Warrior* incident". Then they agreed that "representatives of the two Governments would meet . . . on this subject". In spite of a certain number of meetings, these discussions were unable to reach a successful conclusion.

4. Meanwhile, in fact, two of the agents belonging to the French team involved in the incident, Major Mafart and Captain Prieur, had been arrested in New Zealand, then sentenced on 23 November 1985 by the New Zealand Chief Justice to ten years' imprisonment. The French Government could obviously not remain indifferent to the fate of these officers and no settlement with New Zealand was possible without the release of the persons concerned. The New Zealand Government having refused to consider such release, the matters in dispute between the two countries could not be settled by negotiation and it was in these circumstances that the decision was taken to have recourse to the mediation of the Secretary-General of the United Nations.

The violation of international law and France's responsibility

5. The attack against the *Rainbow Warrior* originates in the illegal actions of the "Greenpeace" organisation. It could not moreover be understood without recalling the interventions of certain New Zealand authorities in French internal affairs, especially with respect to the nuclear tests conducted on Mururoa. These interventions all the more aroused French public opinion as they proceeded from a country which, as the New Zealand Memorandum properly stresses, was traditionally a close friend and ally.

The French Government nevertheless recognises that the attack carried out against the *Rainbow Warrior* took place in violation of the territorial sovereignty of New Zealand and that it was therefore committed in violation of international law. New Zealand consequently has a right to compensation for the harm which it directly suffered from that attack.

*Reparations sought by New Zealand**A. Apologies*

6. The violation of New Zealand territory by France did not in itself cause any material damage to New Zealand. On the other hand it may be admitted that it has caused it moral damage which, according to international law, may be compensated by the offer of regrets or apologies.

The Government of New Zealand requests the French Government to offer it such apologies. The French Government is prepared to make compensation in this manner for the moral damage suffered by New Zealand and the French Prime Minister is ready, therefore, to address to the New Zealand Prime Minister a formal and unconditional letter of apology for the attack carried out on 10 July 1985.

B. Compensation

7. The request for compensation presented by New Zealand also appears to be justified in its principle and the French Government is prepared to pay to the New Zealand Government a global, lump-sum indemnity compensating for all the damage suffered directly by New Zealand. The sum of US \$9 million put forward by the New Zealand side, however, appears in this perspective altogether excessive.

In the first instance, the indemnity owing could only compensate for the damages suffered by New Zealand (and not those suffered by the family of Mr. Fernando Pereira or by the Greenpeace organisation which will be dealt with below). On this point, moreover, the two Governments are in full agreement.

In the second instance, it could concern only the material damage suffered by New Zealand. In fact, according to constant legal precedent, in inter-state relations moral damage is compensated by the solemn recording of a breach of international law (in this sense the award brought down between France and Italy by the Permanent Court of Arbitration on 6 May 1913 in the Carthage and Manouba cases—*Reports of International Arbitral Awards*—volume XI, p. 450 and p. 464 and the Judgement brought down by the International Court of Justice on 9 April 1949 in the Corfu Channel case—*Compendium of Decisions of the Court 1949* pp. 25, 26 and 36). This being the case, the formal and unconditional offer of apologies by France compensates for the moral damage suffered by New Zealand and this damage could not in addition be the object of a pecuniary compensation.

Equally, and even if it were envisaged to proceed differently, it would be appropriate to take account in the evaluation of possible moral damage of the overall context of the affair and the grievances which France could for its part have harboured with respect to New Zealand.

There remains, therefore, only the material damage suffered by the New Zealand State as a result of the attack: clearing of the Port of Auckland, expenses arising from the Police enquiry, the trial of Major Mafart and Captain Prieur and their detention.

The French Government is prepared to reimburse New Zealand for these expenses and for its part New Zealand has declared itself prepared to furnish the details of them to the Secretary-General.

Nonetheless, France assesses that in total a compensation of US \$4 million would be a lavish calculation and that the figure of US \$9 million put forward by New Zealand is altogether exaggerated in character.

C. Damage to the vessel and compensation for the death of a member of its crew

8. The New Zealand Government, while recognising that because of the nationality of Mr. Pereira and that of the vessel *Rainbow Warrior* it is not in a position to assert formal standing to claim on behalf of individuals who have suffered harm in the wake of the events of 10 July 1985, has taken a close interest in compensation for them.

The French Government has paid to the relatives of Mr. Fernando Pereira indemnities which have been accepted by them. Mrs. Van den Boomen, common-law wife of the person concerned, has received, in addition to the indemnity of 30,000 Guilders paid by the insurers (and reimbursed to the latter by France), sums of 650,000 Francs for herself and 1,500,000 Francs for the two children who are minors, Paul and Marelle. Two sums of 75,000 Francs in compensation have in addition been paid to the father and mother of Mr. Fernando Pereira.

Furthermore, a compromise was reached on 19 December 1985 between the French State and the Stichting Greenpeace Council acting in its own name and in the name of the organisations affiliated to Greenpeace and of the owner and operators of the vessel *Rainbow Warrior*. The two parties committed themselves, under this compromise, to pursue negotiations in good faith aimed at fixing by mutual agreement the amount of the damages which the French State will agree to pay. It has, in addition, been provided that, failing agreement on this amount, the matter would be submitted to an arbitral tribunal of three members. "Responsibility for the calamity . . . not being in dispute, . . . the arbitrators who are appointed will have as their task to pronounce on the only point remaining at issue between the parties, namely the question of the amount of damages which the State will have to pay".

Since it was not possible to bring the negotiation aiming at fixing this amount to a successful conclusion, each of the parties has designated an arbitrator, namely Professor Terre for France and Judge Woodhouse for Greenpeace. Unless there is agreement between the arbitrators on a third arbitrator, it will fall to the President of the Federal Swiss Court to designate the latter.

Finally, it has been agreed that the judgement brought down by the tribunal will be binding and the French State has committed itself to execute it in six months.

The measures thus taken both as far as the family of Mr. Fernando Pereira and the Greenpeace organisation are concerned, appear in these circumstances equitable and consequently seem to meet the concerns of the New Zealand Government.

D. Situation of Major Mafart and Captain Prieur

9. The French Government considers that a settlement which is equitable and principled implies the immediate release of Major Mafart and Captain Prieur. The New Zealand Government refuses this. It considers that the persons concerned

should serve their sentence under the same conditions as any person found guilty in New Zealand of comparable offences and that any transfer from New Zealand could only be to custody.

The French Government wishes to observe in the first place that the New Zealand Government has the necessary legal means to carry out the deportation of Major Mafart and Captain Prieur by virtue of Section 22 of the New Zealand Immigration Act 1964. What is more, in his statement on 22 November 1985, the New Zealand Chief Justice, after having rejected a request for a recommendation for deportation, specifically declared that: "adequate powers exist for the Minister to act under that section of the Immigration Act and, if he so decides, to order deportation. I regard it as appropriate in the circumstances of this case that any question of deportation of the defendants should be considered by the Minister in accordance with the provisions of the Act".

On the other hand and conversely, the French Government could not ensure the execution in France of the prison sentences pronounced by the New Zealand court. Indeed, as is the case in any democratic country, a person could be imprisoned in France only by virtue of a decision taken by a French judge or in application of an international convention on the transfer of sentenced offenders (such as that concluded in the framework of the Council of Europe on 21 March 1983). Now France and New Zealand are not bound by any convention of this type and no sentence has been pronounced in France against the two officers concerned. Moreover, and taking into account that these persons acted under orders, they could not be subjected to fresh criminal prosecution after their transfer into the hands of the French authorities (*cf.* Article 327 of the French Penal Code).

Thus the New Zealand Government can deport Major Mafart and Captain Prieur to France, but, conversely, France could not imprison them.

France, moreover, is prepared, as has been stated above, to present its apologies to New Zealand and to pay it adequate compensation in reparation of damage suffered. It has compensated or will compensate the private individuals who suffered from the attack on 10 July 1985. In other words, France is ready to assume, as regards New Zealand and the victims of the incident, all responsibilities incumbent upon it, in place of the persons having acted on its behalf, as done, for example, by the British Government in respect of the United States Government when the vessel "Caroline" was destroyed by a British commando unit (*cf.* Moore—Digest of International Law 1906, paragraph 217, p. 409).

In these circumstances, the French Government considers that, both for reasons of law and in order to restore the traditional friendly relations between the two countries, it behoves the New Zealand Government to release the two officers.

E. *Trade matters*

10. The New Zealand Government claims that the French Government has introduced certain trade matters into the dispute and seeks to benefit from various guarantees in this regard.

It is a fact that the competent French services have been led during recent months to carry out various checks on certain New Zealand exports (especially as regards lambs' brains) with a view to ensuring that such goods (often difficult to preserve) meet the requirements, particularly in the veterinary and phytosanitary fields, of the applicable national and Community regulations. These checks had no connection with the dispute now submitted to the Secretary-General. In any case, they have now been terminated. In these circumstances, the French Government fails to understand why the New Zealand Government presents requests of a commercial nature in this affair. Anxious not to mix these various questions, the French Government is nevertheless prepared to reassure the New Zealand Government in this regard.

In fact, France does not intend to oppose in the Council of the Communities the continuation of imports of New Zealand butter to the United Kingdom in 1987 and 1988 at the levels which the Commission of the European Communities will propose, provided, of course, that these levels will not exceed those proposed by the Commission in 1983.

As the New Zealand Memorandum recalls, there currently exists, furthermore, an Agreement between New Zealand and the European Economic Community on Trade in Mutton, Lamb and Goatmeat which entered into force on 20 October 1980 (as complemented by the Exchange of Letters of 12 July 1984). France obviously does not intend to take any steps which might interfere with the implementation of that Agreement.

F. Arbitration

11. The New Zealand Government requests the Secretary-General to include in his decision a provision concerning compulsory settlement of any dispute which may arise between the two countries on the interpretation or implementation of the conclusions at which he arrives.

The French Government is not opposed to a compulsory arbitration procedure being put in place for the settlement of the disputes in question. Traditionally in favour of such procedures and having frequently had recourse to them in recent years, it relies on this point on the wisdom of the Secretary-General.

ANNEX TO THE MEMORANDUM OF FRANCE

Lettre, en date du 22 septembre 1985, de M. Roland Dumas, ministre des relations extérieures de la France, à M. David Lange, premier ministre de la Nouvelle-Zélande

Monsieur le Premier Ministre,

A la suite de nouvelles investigations auxquelles le Gouvernement français a fait procéder, il est apparu que l'attentat à l'encontre du *Rainbow Warrior* a été le fait d'agents des services français.

Ayant lui-même fait la lumière sur cette affaire, le Gouvernement français est bien entendu prêt à assumer la réparation des différents préjudices consécutifs à cet événement.

Comme vous l'aviez suggéré, je vous propose de rencontrer M. Palmer à New York afin d'examiner d'Etat à Etat les conditions dans lesquelles cette affaire pourrait être réglée.

Je vous prie d'agréer, Monsieur le Premier Ministre, l'expression de ma haute considération.

(Signé) Roland DUMAS.

After I had received these written statements of the New Zealand and French positions, I then made contact, through diplomatic channels, with each of the two Governments. I did so in order to satisfy myself that I had a full and complete understanding of their respective positions and to be sure that I am able to produce a ruling on all aspects of the affair which in terms of the agreement announced in Paris, Wellington and New York on 19 June, is both equitable and principled.

RULING

The issues that I need to consider are limited in number. I set out below my ruling on them which takes account of all the information available to me. My ruling is as follows:

1. *Apology*

New Zealand seeks an apology. France is prepared to give one. My ruling is that the Prime Minister of France should convey to the Prime Minister of New Zealand a formal and unqualified apology for the attack, contrary to international law, on the *Rainbow Warrior* by French service agents which took place on 10 July 1985.

2. *Compensation*

New Zealand seeks compensation for the wrong done to it and France is ready to pay some compensation. The two sides, however, are some distance apart on quantum. New Zealand has said that the figure should not be less than US \$9 million, France that it should not be more than US \$4 million. My ruling is that the French Government should pay the sum of US \$7 million to the Government of New Zealand as compensation for all the damage it has suffered.

3. *The two French service agents*

It is on this issue that the two Governments plainly had the greatest difficulty in their attempts to negotiate a solution to the whole issue on a bilateral basis before they took the decision to refer the matter to me.

The French Government seeks the immediate return of the two officers. It underlines that their imprisonment in New Zealand is not justified, taking into account in particular the fact that they acted under military orders and that France is ready to give an apology and to pay compensation to New Zealand for the damage suffered.

The New Zealand position is that the sinking of the *Rainbow Warrior* involved not only a breach of international law, but also the commission of a serious crime in New Zealand for which the two officers received a lengthy sentence from a New Zealand court. The New Zealand side states that their release to freedom would undermine the integrity of the New Zealand judicial system. In the course of bilateral negotiations with France, New Zealand was ready to explore possibilities for the prisoners serving their sentences outside New Zealand.

But it has been, and remains, essential to the New Zealand position that there should be no release to freedom, that any transfer should be to custody, and that there should be a means of verifying that.

The French response to that is that there is no basis either in international law or in French law on which the two could serve out any portion of their New Zealand sentence in France, and that they could not be subjected to new criminal proceedings after a transfer into French hands.

On this point, if I am to fulfil my mandate adequately, I must find a solution in respect of the two officers which both respects and reconciles these conflicting positions.

My ruling is as follows:

(a) The Government of New Zealand should transfer Major Alain Mafart and Captain Dominique Prieur to the French military authorities. Immediately thereafter, Major Mafart and Captain Prieur should be transferred to a French military facility on an isolated island outside of Europe for a period of three years.

(b) They should be prohibited from leaving the island for any reason, except with the mutual consent of the two Governments. They should be isolated during their assignment on the island from persons other than military or associated personnel and immediate family and friends. They should be prohibited from any contact with the press or other media whether in person or in writing or in any other manner. These conditions should be strictly complied with and appropriate action should be taken under the rules governing military discipline to enforce them.

(c) The French Government should every three months convey to the New Zealand Government and to the Secretary-General of the United Nations, through diplomatic channels, full reports on the situation of Major Mafart and Captain Prieur in terms of the two preceding paragraphs in order to allow the New Zealand Government to be sure that they are being implemented.

(d) If the New Zealand Government so requests, a visit to the French military facility in question may be made, by mutual agreement by the two Governments, by an agreed third party.

(e) I have sought information on French military facilities outside Europe. On the basis of that information, I believe that the transfer of Major Mafart and Captain Prieur to the French military facility on the isolated island of Hao in French Polynesia would best facilitate the enforcement of the conditions which I have laid down in paragraphs (a) to (d) above. My ruling is that that should be their destination immediately after their transfer.

4. *Trade issues*

The New Zealand Government has taken the position that trade issues have been imported into the affair as a result of French action, either taken or in prospect. The French Government denies that, but it has indicated that it is willing to give some undertakings relating to trade, as sought by the New Zealand Government. I therefore rule that France should:

(a) Not oppose continuing imports of New Zealand butter into the United Kingdom in 1987 and 1988 at levels proposed by the Commission of the European Communities in so far as these do not exceed those mentioned in document COM(83)574 of 6 October 1983, that is to say, 77,000 tonnes in 1987 and 75,000 tonnes in 1988; and

(b) Not take measures that might impair the implementation of the agreement between New Zealand and the European Economic

Community on Trade in Mutton, Lamb and Goatmeat which entered into force on 20 October 1980 (as complemented by the exchange of letters of 12 July 1984).

5. *Arbitration*

The New Zealand Government has argued that a mechanism should exist to ensure that any differences that may arise about the implementation of the agreements concluded as a result of my ruling can be referred for binding decision to an arbitral tribunal. The Government of France is not averse to that. My ruling is that an agreement to that effect should be concluded and provide that any dispute concerning the interpretation or application of the other agreements, which it has not been possible to resolve through the diplomatic channel, shall, at the request of either of the two Governments, be submitted to an arbitral tribunal under the following conditions:

(a) Each Government shall designate a member of the tribunal within 30 days of the date of the delivery by either Government to the other of a written request for arbitration of the dispute, and the two Governments shall, within 60 days of that date, appoint a third member of the tribunal who shall be its chairman;

(b) If, within the times prescribed, either Government fails to designate a member of the tribunal or the third member is not agreed, the Secretary-General of the United Nations shall be requested to make the necessary appointment after consultations with the two Governments by choosing the member or members of the tribunal;

(c) A majority of the members of the tribunal shall constitute a quorum and all decisions shall be made by a majority vote;

(d) The decisions of the tribunal, including all rulings concerning its constitution, procedure and jurisdiction, shall be binding on the two Governments.

6. The two Governments should conclude and bring into force as soon as possible binding agreements incorporating all of the above rulings. These agreements should provide that the undertaking relating to an apology, the payment of compensation and the transfer of Major Mafart and Captain Prieur should be implemented at the latest on 25 July 1986.

7. On one matter I find no need to make a ruling. New Zealand, in its written statement of position, has expressed concern regarding compensation for the family of the individual whose life was lost in the incident and for Greenpeace. The French statement of position contains an account of the compensation arrangements that have been made; I understand that those assurances constitute the response that New Zealand was seeking.

EXCHANGES OF LETTERS BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF FRANCE CONCERNING THE IMPLEMENTATION OF THE RULING OF 6 JULY 1986 BY THE SECRETARY-GENERAL OF THE UNITED NATIONS PERTAINING TO THE DIFFERENCES BETWEEN THE TWO GOVERNMENTS ARISING FROM THE *RAINBOW WARRIOR* AFFAIR*

ECHANGES DE LETTRES ENTRE LE GOUVERNEMENT FRANÇAIS ET LE GOUVERNEMENT NÉO-ZÉLANDAIS CONCERNANT L'APPLICATION DE LA DÉCISION DU SECRÉTAIRE GÉNÉRAL DE L'ORGANISATION DES NATIONS UNIES EN DATE DU 6 JUILLET 1986 RELATIVE AU CONTENTIEUX ENTRE LES DEUX GOUVERNEMENTS DÉCOULANT DE L'AFFAIRE DU *RAINBOW WARRIOR**

His Excellency Mr. Jacques Chirac, Prime Minister of France, to His Excellency Mr. J. G. McArthur, Ambassador of New Zealand to France

Paris, le 9 juillet 1986

Monsieur l'ambassadeur,

Soucieux de maintenir les relations étroites et amicales existant traditionnellement entre la France et la Nouvelle-Zélande, nos deux gouvernements sont, le 19 juin 1986, convenus de soumettre tous les problèmes nés entre eux de l'incident du *Rainbow Warrior* au Secrétaire général des Nations-Unies en vue d'un règlement obligatoire. A la lumière de ce règlement rendu public le 7 juillet 1986, j'ai l'honneur de vous proposer ce qui suit :

Le Premier Ministre français adressera au Premier Ministre néo-zélandais ses excuses formelles et sans réserve pour l'attentat commis en méconnaissance du droit international par des agents des services français à Auckland le 10 juillet 1985 contre le *Rainbow Warrior*.

En outre, le Gouvernement français versera au Gouvernement néo-zélandais la somme de sept millions de dollars des Etats-Unis en réparation de l'ensemble des préjudices subis par la Nouvelle-Zélande.

Le Gouvernement néo-zélandais transférera le commandant Alain Mafart et le capitaine Dominique Prieur aux autorités militaires françaises. Immédiatement après, le commandant Mafart et le capitaine Prieur seront transférés sur une installation militaire française de l'île de Hao, pour une période minimale de 3 ans.

Il leur sera interdit de quitter l'île pour quelque motif que ce soit, sauf accord entre les deux gouvernements. Leurs contacts pendant leur affectation à Hao se limiteront au personnel militaire ou assimilé et à leurs proches (famille et amis). Tout contact avec la presse ou

* Reproduced from the *New Zealand Treaty Series* 1987, No. 16. The exchanges of letters are also reproduced in the *Journal officiel de la République française* of 13 July 1986.

les autres moyens de communication, par oral, par écrit ou de toute autre manière, leur sera interdit. Ces conditions seront strictement respectées et les mesures appropriées seront prises pour en assurer la mise en œuvre conformément aux règles de la discipline militaire.

Le Gouvernement français transmettra tous les trois mois au Gouvernement néo-zélandais et au Secrétaire général des Nations Unies, par la voie diplomatique, toutes informations concernant la situation du commandant Mafart et du capitaine Prieur au regard des dispositions des deux précédents alinéas, en vue de permettre au Gouvernement néo-zélandais de s'assurer que ces dispositions sont exécutées comme convenu.

Si, le Gouvernement néo-zélandais le demande, une visite de l'installation militaire de Hao pourra, par commun accord entre les deux gouvernements, être effectuée par un tiers agréé.

Les engagements concernant les excuses, le versement de l'indemnité et le transfert du commandant Mafart et du capitaine Prieur seront exécutés au plus tard le 25 juillet 1986.

Je vous serais obligé de me faire savoir si les dispositions qui précèdent recueillent l'agrément du Gouvernement néo-zélandais. Dans ce cas, la présente lettre, ainsi que votre réponse constitueront un accord entre nos deux gouvernements, qui entrera en vigueur à compter de ce jour.

Je vous prie, Monsieur l'ambassadeur, d'agréer l'assurance de ma haute considération.

Jacques CHIRAC
Premier Ministre

His Excellency Mr. J. G. McArthur, Ambassador of New Zealand to France, to this Excellency Mr. Jacques Chirac, Prime Minister of France

New Zealand Embassy, Paris, 9 July 1986

Mr. Prime Minister,

I have the honour to refer to your letter of today's date which in the English language reads as follows:

On 19 June 1986, wishing to maintain the close and friendly relations which have traditionally existed between New Zealand and France, our two Governments agreed to refer all of the problems between them arising from the *Rainbow Warrior* affair to the Secretary-General of the United Nations for a binding ruling. In the light of that ruling, made available on 7 July 1986, I have the honour to propose the following:

The Prime Minister of France will convey to the Prime Minister of New Zealand a formal and unqualified apology for the attack, contrary to international law, on the *Rainbow Warrior* by French service agents which took place in Auckland on 10 July 1985. Furthermore, the French Government will pay the sum of US \$7 million to the Government of New Zealand as compensation for all the damage which it has suffered.

The Government of New Zealand will transfer Major Alain Mafart and Captain Dominique Prieur to the French military authorities. Immediately thereafter, Major Mafart and Captain Prieur will be transferred to a French military facility on the island of Hao for a period of not less than three years.

They will be prohibited from leaving the island for any reason, except with the mutual consent of the two Governments. They will be isolated, during their assignment in Hao, from persons other than military or associated personnel and immediate family and friends. They will be prohibited from any contact with the press or other media whether in person, in writing or in any other manner. These conditions will be strictly complied with and appropriate action will be taken under the rules governing military discipline to enforce them.

The French Government will every three months convey to the New Zealand Government and to the Secretary-General of the United Nations, through diplomatic channels, full reports on the situation of Major Mafart and Captain Prieur in terms of the two preceding paragraphs in order to allow the New Zealand Government to be sure that these paragraphs are being implemented as agreed.

If the New Zealand Government so requests, a visit to the facility on Hao may be made, by mutual agreement between the two Governments, by an agreed third party.

The undertakings relating to an apology, the payment of compensation and the transfer of Major Mafart and Captain Prieur will be implemented not later than 25 July 1986. If the foregoing is acceptable to the Government of New Zealand I would propose that the present letter and your response to that effect should constitute an agreement between our two Governments with effect from today's date.

I confirm that the contents of your letter are acceptable to the Government of New Zealand and that, accordingly, your letter and this reply will constitute an agreement between our two Governments with effect from today's date.

Please accept, Mr. Prime Minister, the assurances of my high consideration.

J. G. MCARTHUR
Ambassador

*His Excellency Mr. Jacques Chirac, Prime Minister of France, to
His Excellency Mr. J. G. McArthur, Ambassador of New Zealand
to France*

Paris, le 9 juillet 1986

Monsieur l'ambassadeur,

Soucieux de maintenir les relations étroites et amicales existant traditionnellement entre la France et la Nouvelle-Zélande, nos deux gouvernements sont, le 19 juin 1986, convenus de soumettre tous les problèmes nés entre eux de l'incident du *Rainbow Warrior* au Secrétaire général des Nations Unies en vue d'un règlement obligatoire. A la lumière de ce règlement rendu public le 7 juillet 1986, j'ai l'honneur de vous confirmer que le Gouvernement de la République française :

a) Ne s'opposera pas à la poursuite des importations de beurre néo-zélandais au Royaume-Uni en 1987 et 1988 aux niveaux proposés

par la Commission des Communautés européennes dès lors que ceux-ci ne dépassent pas ceux figurant dans le document COM(83)574 du 6 octobre 1983, c'est-à-dire 77 000 tonnes en 1987 et 75 000 tonnes en 1988;

b) Ne prendra pas de mesures qui pourraient porter atteinte à l'exécution de l'accord entre la Nouvelle-Zélande et la Communauté économique européenne sur le commerce des viandes de mouton, d'agneau et de chèvre, entré en vigueur le 20 octobre 1980 (tel que complété par l'échange de lettres du 12 juillet 1984).

Je vous serais obligé de me faire savoir si les dispositions qui précèdent recueillent l'agrément du Gouvernement néo-zélandais. Dans ce cas, la présente lettre, ainsi que votre réponse, constitueront un accord entre nos deux gouvernements, qui entrera en vigueur à compter de ce jour.

Je vous prie, Monsieur l'ambassadeur, d'agréer l'assurance de ma haute considération.

Jacques CHIRAC
Premier Ministre

His Excellency Mr. J. G. McArthur, Ambassador of New Zealand to France, to His Excellency Mr. Jacques Chirac, Prime Minister of France

New Zealand Embassy, Paris, 9 July 1986

Mr. Prime Minister,

I have the honour to refer to your letter of today's date which in the English language reads as follows:

On 19 June 1986, wishing to maintain the close and friendly relations which have traditionally existed between New Zealand and France, our two Governments agreed to refer all of the problems between them arising from the *Rainbow Warrior* affair to the Secretary-General of the United Nations for a binding ruling. In the light of that ruling, made available on 7 July 1986, I have the honour to confirm that the French Government:

- (a) will not oppose continuing imports of New Zealand butter into the United Kingdom in 1987 and 1988 at levels proposed by the Commission of the European Communities in so far as these do not exceed those mentioned in document COM(83)574 of 6 October 1983, that is to say, 77,000 tonnes in 1987 and 75,000 tonnes in 1988; and
- (b) will not take measures which might impair the implementation of the agreement between New Zealand and the European Economic Community on trade in mutton, lamb and goatmeat which entered into force on 20 October 1980 (as complemented by the exchange of letters of 12 July 1984).

If the foregoing is acceptable to the Government of New Zealand I would propose that the present letter and your response to that effect should constitute an agreement between our two Governments with effect from today's date.

I confirm that the contents of your letter are acceptable to the Government of New Zealand and that, accordingly, your letter and this

reply will constitute an agreement between our two Governments with effect from today's date.

Please accept, Mr. Prime Minister, the assurances of my high consideration.

J. G. McARTHUR
Ambassador

*His Excellency Mr. Jacques Chirac, Prime Minister of France, to
His Excellency Mr. J. G. McArthur, Ambassador of New Zealand
to France*

Paris, le 9 juillet 1986

Monsieur l'ambassadeur,

J'ai l'honneur de me référer aux deux accords conclus ce jour à la lumière du règlement opéré par le Secrétaire général des Nations Unies.

Sur la base de ce règlement, j'ai l'honneur de vous proposer en outre que tout différend relatif à l'interprétation ou à l'application de l'un ou l'autre de ces accords, qui n'aurait pu être réglé par la voie diplomatique soit, à la demande de l'un ou l'autre des deux gouvernements, soumis à un tribunal d'arbitrage dans les conditions suivantes :

a) Chaque gouvernement désignera un membre du tribunal dans les 30 jours suivant la remise par l'un des deux gouvernements à l'autre d'une demande écrite d'arbitrage du différend. Les deux gouvernements, dans les 60 jours de cette remise, nommeront un troisième membre du tribunal qui en assurera la présidence;

b) Si, dans les délais requis, l'un ou l'autre des deux gouvernements ne désigne pas un membre du tribunal ou si aucun accord n'intervient sur la nomination du troisième membre, il sera demandé au Secrétaire général des Nations Unies de procéder, après consultation des deux gouvernements, aux nominations nécessaires en choisissant le ou les membres du tribunal;

c) Le quorum sera constitué par la majorité des membres du tribunal et toutes ses décisions seront prises à la majorité des voix;

d) Les décisions du tribunal, y compris celle concernant sa constitution, sa procédure et sa compétence, seront obligatoires pour les deux gouvernements.

Je vous serais obligé de me faire savoir si les dispositions qui précèdent recueillent l'agrément du Gouvernement néo-zélandais. Dans ce cas, la présente lettre, ainsi que votre réponse, constitueront un accord entre nos deux gouvernements, qui entrera en vigueur à compter de ce jour.

Je vous prie, Monsieur l'ambassadeur, d'agréer l'assurance de ma haute considération.

Jacques CHIRAC
Premier Ministre

His Excellency Mr. J. G. McArthur, Ambassador of New Zealand to France, to His Excellency Mr. Jacques Chirac, Prime Minister of France

New Zealand Embassy, Paris, 9 July 1986

Mr. Prime Minister,

I have the honour to refer to your letter of today's date which in the English language reads as follows:

I have the honour to refer to the two agreements concluded today in the light of the ruling of the Secretary-General of the United Nations.

On the basis of that ruling, I have the honour further to propose that any dispute concerning the interpretation or application of either of these two agreements which it has not been possible to resolve through the diplomatic channel shall, at the request of either of our two Governments, be submitted to an arbitral tribunal under the following conditions:

- (a) each Government shall designate a member of the tribunal within 30 days of the date of the delivery by either Government to the other of a written request for arbitration of the dispute, and the two Governments shall, within 60 days of that date, appoint a third member of the tribunal who shall be its chairman;
- (b) if, within the times prescribed, either Government fails to designate a member of the tribunal or the third member is not agreed the Secretary-General of the United Nations shall be requested to make the necessary appointment after consultations with the two Governments by choosing the member or members of the tribunal;
- (c) a majority of the members of the tribunal shall constitute a quorum and all decisions shall be made by a majority vote;
- (d) the decisions of the tribunal, including all rulings concerning its constitution, procedure and jurisdiction, shall be binding on the two Governments.

If the foregoing is acceptable to the Government of New Zealand, I would propose that the present letter and your response to it to that effect should constitute an agreement between our two Governments with effect from today's date.

I confirm that the contents of your letter are acceptable to the Government of New Zealand and that, accordingly, your letter and this reply will constitute an agreement between our two Governments with effect from today's date.

Please accept, Mr. Prime Minister, the assurances of my high consideration.

J. G. MCARTHUR
Ambassador