

SUPPLEMENTARY AGREEMENT
BETWEEN
THE GOVERNMENT OF NEW ZEALAND
AND
THE GOVERNMENT OF THE FRENCH REPUBLIC
RELATING TO
AN ARBITRAL TRIBUNAL

The Government of New Zealand and the Government of the French Republic

RECALLING the three Agreements concluded by exchanges of letters of 9 July 1986 following the ruling of the Secretary-General of the United Nations relating to the Rainbow Warrior affair;

RECALLING FURTHER that the third Agreement establishes an arbitral procedure for the settlement of any dispute concerning the interpretation or application of either of the first two Agreements which it has not been possible to settle through the diplomatic channel;

NOTING that the Government of New Zealand by diplomatic Note of 22 September 1988 requested that this procedure be used to settle such a dispute;

NOTING ALSO that in accordance with the third Agreement an Arbitral Tribunal has been constituted comprising:

Dr Eduardo Jimenez de Arechaga, Chairman of the Tribunal, appointed by the two Governments,

Sir Kenneth Keith, designated by the Government of New Zealand,

M. Jean-Denis Bredin, designated by the Government of the French Republic;

BEARING IN MIND the provisions of the third Agreement;

BELIEVING it desirable to supplement those provisions of the third Agreement relating to the functioning and procedures of the Tribunal;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

1. Subject to paragraphs 2, 3 and 4 of this Article, the composition of the Tribunal shall remain unchanged throughout the period in which it is exercising its functions.

2. In the event that either the arbitrator designated by the Government of New Zealand or the arbitrator designated by the Government of the French Republic is, for any reason, unable or unwilling to act as such, the vacancy may be filled by the Government which designated that arbitrator.

3. The proceedings of the Tribunal shall be suspended during a period of twenty days from the date on which the Tribunal has acknowledged such a vacancy. If at the end of that period the arbitrator has not been replaced by the Government which designated him the proceedings of the Tribunal shall nonetheless resume.

4. In the event that the Chairman of the Tribunal is, for any reason, unable or unwilling to act as such, he shall be replaced by agreement between the two Governments. If the two Governments are unable to agree within a period of forty days from the date on which the Tribunal has acknowledged such a vacancy, the Secretary-General of the United Nations shall be requested to make the necessary appointment after consultation with the two Governments. The proceedings of the Tribunal shall be suspended until such time as the vacancy has been filled.

ARTICLE 2

The decisions of the Tribunal shall be taken on the basis of the Agreements concluded between the Government of New Zealand and the Government of the French Republic by exchanges of letters on 9 July 1986, this Agreement and the applicable rules and principles of international law.

ARTICLE 3

1. Each Government shall, within fourteen days of the entry into force of this Agreement, appoint an Agent for the purposes of the arbitration and shall communicate the name and address of its Agent to the other Government and to the Chairman of the Tribunal.

2. Each Agent may appoint a deputy or deputies. The names and addresses of such deputies shall also be communicated to the other Government and to the Chairman of the Tribunal.

ARTICLE 4

1. The Tribunal shall meet at New York at such days and times as it may determine after consultation with the Agents.

2. The Tribunal after consultation with the Agents shall designate a Registrar and may engage such staff and secure such services and equipment as it deems necessary.

ARTICLE 5

1. The procedure shall consist of two parts: written and oral.

2. The written pleadings shall consist of:

- a) A memorial, which shall be submitted by the Government of New Zealand to the Registrar of the Tribunal and to the French Agent within eight weeks after entry into force of this Agreement;
- b) A counter-memorial, which shall be submitted by the Government of the French Republic to the Registrar of the Tribunal and the New Zealand Agent within eight weeks after the date of receipt by the French Agent of the New Zealand memorial;
- c) A reply, which shall be submitted by the Government of New Zealand to the Registrar of the Tribunal and the French Agent within four weeks after the date of receipt by the New Zealand Agent of the French counter-memorial;

d) A rejoinder, which shall be submitted by the Government of the French Republic to the Registrar of the Tribunal and the New Zealand Agent within four weeks after the date of receipt by the French Agent of the New Zealand reply;

e) Such other written material as the Tribunal may determine to be necessary.

3. The Registrar shall notify the two Agents of the address for deposit of written pleadings and other written material.

4. Each document shall be communicated in six copies.

5. The Tribunal may extend the above time limits at the request of either Government.

6. The oral hearings shall follow the written proceedings after an interval of not less than two weeks.

7. Each Government shall be represented at the oral hearings by its Agent or deputy Agent and such counsel and experts as it deems necessary for this purpose.

ARTICLE 6

Each Government shall present its written pleadings and oral submissions to the Tribunal in English or in French. All decisions of the Tribunal shall be delivered in both languages. Verbatim records of the oral proceedings shall be produced each day in the language in which each statement was delivered. The Tribunal shall arrange for such translation and interpretation services as may be necessary and shall keep a verbatim record of all oral proceedings in English and French.

ARTICLE 7

1. On completion of the proceedings the Tribunal shall render its award as soon as possible and shall forward a copy of the award, signed by the Chairman and the Registrar of the Tribunal, to the two Agents.

2. The award shall state in full the reasons for the conclusions reached.

ARTICLE 8

The identity of the Agents and counsel of the two governments, as well as the whole of the Tribunal's award, may be made public. The Tribunal may also decide, after consultation with the two Agents and giving full weight to the views of each to make public the written pleadings and the records of the oral hearings.

ARTICLE 9

Any dispute between the two Governments as to the interpretation of the award may, at the request of either Government, be referred to the Tribunal for clarification within three months after the date of receipt of the award by its Agent.

ARTICLE 10

The present agreement shall enter into force on the date of signature.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this agreement.

DONE in duplicate at New York this 14th day of February 1989, in the English and French languages, each text being equally authentic.



For the Government
of New Zealand



For the Government
of the French Republic

