

**Report of the  
Third Ordinary Meeting of  
the Contracting Parties  
to the SPREP Convention**

*Apia, Western Samoa*

*6-7 October 1995*

November 1995

Apia, Western Samoa

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# Meeting Report

## Agenda Item 1:

### Official Opening

1. The Third Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region and Related Protocols (SPREP Convention) was convened in Apia, Western Samoa, from 6 to 7 October 1995. Representatives of the following Contracting Parties attended: Australia, Federated States of Micronesia, Fiji, France, Nauru, New Zealand, Papua New Guinea, United States of America and Western Samoa. Other SPREP Members represented as Observers were French Polynesia, Niue and Vanuatu. Also in attendance were Observers from the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and O Le Siosiomaga Society. A list of participants is at Annex 1.

2. The representative of Fiji, as outgoing Chairperson, called the meeting to order and introduced the Rev. Father Sione Uluilakeba, who led the Meeting in prayer.

3. In officially opening the Meeting, the Honorable Fa'aso'otauloa Pati, Minister of Lands, Surveys and Environment of the Government of Western Samoa, welcomed delegates on behalf of his Government. The Minister stated that this Convention provided a broad framework for regional cooperation in preventing pollution of the region's marine and coastal environments and that, despite undertakings by the Parties at the two previous meetings, there had been little progress towards implementation of the Convention's objectives. The Minister noted that especially absent, except in a few cases, were Parties' reports to the Secretariat.

4. The Minister urged delegates to take concrete action to remedy this situation and referred delegates to the Secretariat's suggestions, among them being a proposal to set up a small unit within SPREP to undertake jointly the Secretariat function of the three Conventions – Apia, SPREP and Waigani – on a cost-shared basis. The text of the Minister's address is at Annex 2.

5. The representative of Federated States of Micronesia, Mr Nascha Siren, thanked the Minister for his opening address and expressed the hope that Parties to the Convention would be successful in their deliberations.

6. The Director of SPREP, Dr Vili A. Fuavao, in his address thanked the Minister for his timely reminder of the importance of the Convention and its obligations. Some issues he raised for consideration by the Parties included the constraints to national reporting and the lack of financial and human resources in the Secretariat to administer the Convention effectively under the current arrangements. He suggested that a Conventions Unit placed within the SPREP Secretariat should prove a cost-effective measure if its costs were shared by the three Conventions for which SPREP acts as the Secretariat – the SPREP, Apia and Waigani Conventions.

7. The Director reiterated his call from the last Meeting of the Parties when he urged all SPREP Member countries to sign and accede to the Convention and for all Parties to implement their obligations under the Convention.

8. Due to unforeseen circumstances, two delegations were unable to arrive at the meeting as scheduled. Consequently, no quorum existed. The delegations present determined to call a hiatus until Saturday, 7 October, in order to give full effect to the meeting.

## Agenda Item 2:

### Appointment of Chair

9. The representative of Western Samoa, Lei'ataua Dr Kilifoti Eteuati, was appointed as Chair.

## Agenda Item 3:

### Adoption of Agenda and Working Procedures

10. The Agenda was adopted and is at Annex 3. The working hours of the Meeting were agreed as proposed by the Secretariat. The Meeting also agreed that a Drafting Committee be established comprising representatives of Australia, Fiji, France, New Zealand, United States of America and Western Samoa.

11. Under Rule 7 of the Rules of Procedure, SPREP Member countries who are Observers were invited to participate without vote.

#### **Agenda Item 4:**

##### **Report by SPREP under Rule 12 of the Rules of Procedure**

12. The Secretariat tabled its report in accordance with Rule 12 of the Rules of Procedure under which Parties were invited to:

- review implementation of the Convention and its Protocols (Article 22 of the Convention);
- consider items in accordance with Article 16 of the "Dumping" Protocol;
- consider items in accordance with Article 10 of the "Pollution Emergencies" Protocol; and
- consider other matters, including institutional arrangements, under Article 21 of the Convention.

13. The Secretariat expressed concern at the lack of response from most Contracting Parties between biennial Meetings. Little had been achieved towards implementing the Convention and its Protocols because most Parties were not complying with their obligations to provide information to the Secretariat and, in any case, the Secretariat lacked the resources to do much more than convene meetings. Parties might like to consider the establishment of a small unit within SPREP responsible for Secretariat functions for three Conventions – Apia, SPREP and Waigani – on a shared cost basis.

14. The representatives of Australia and Western Samoa informed the Meeting that their country reports had now been completed and submitted.

15. In discussing the establishment of a Unit within SPREP responsible for the Secretariat functions of the three Conventions, delegates expressed concern about the financial implications but still remained open to discussion of such a proposal which could be more fully investigated by a proposed Working Group.

16. Delegates discussed establishing the Working Group to consider ways in which implementation of the SPREP and Apia Conventions and its integration with SPREP's Work Programme could be achieved more effectively and asked the Secretariat to draft Terms of Reference for consideration by the Drafting Committee and adoption by the Meeting. The draft Terms of Reference are at Annex 4.

17. The Secretariat requested delegates to note that the SPREP Work Programme already incorporated significant activities relating to the SPREP Convention as outlined in its presentation.

18. The Parties:

- agreed that a Working Group be established to consider ways in which the SPREP and Apia Conventions could be more fully integrated into the SPREP Work Programme, recognising that one of the objectives of the SPREP Convention was to provide policy directions for SPREP's Work Programme activities;
- reinforced their commitment to the Convention and Protocols by undertaking to fulfil their obligations;
- urged eligible SPREP Member countries to accede to the Convention and Protocols;
- agreed to amend the Convention so as to transfer the Secretariat functions to SPREP; and that this would be considered for adoption at a Plenipotentiary Meeting in 1996; and
- noted the work undertaken under the SPREP Action Plan, as reported on in SPREP's Annual Reports, in implementation of provisions of the Convention and its Protocols.

#### **Agenda Item 5:**

##### **Items proposed by Contracting Parties**

19. There were no matters proposed by Contracting Parties.

#### **Agenda Item 6:**

##### **Consideration of Parties' Obligations under the Convention and Protocols**

20. Under Article 16 of the Convention (Environmental Impact Assessment) each Party is required, within its capabilities, to assess the potential effects of major projects which might affect the marine environment so that appropriate measures can be taken to prevent any substantial pollution of, or significant and harmful changes within, the Convention area. Each Party shall, where appropriate, invite public comment according to its national procedures and invite other Parties that may be affected to consult with it and submit comments. The results of these assessments shall be communicated to the Secretariat which shall make them available to interested Parties. In relation to recent developments concerning

nuclear waste dumping proposals in the Marshall Islands and nuclear testing in French Polynesia, the Meeting was invited to discuss Parties' obligations.

21. The representative of Australia spoke to a written statement expressing profound concern over the continuation by France of nuclear testing in the South Pacific and called attention to France's obligation under the Convention to conduct an Environmental Impact Assessment before commencing a major project such as nuclear testing. This statement is at Annex 5.

22. The representative of New Zealand endorsed Australia's comments. He urged France to explain the position under Article 16 of the Convention and enter into a dialogue on the non-compliance with these obligations. He circulated an information paper setting out some factual material on the legal position relating to France's environmental impact assessment obligations and to New Zealand's recent proceedings on this matter in the International Court of Justice (ICJ). This paper is at Annex 6.

23. Other delegates, whilst appreciating the continuing dialogue with France, expressed concern at the resumption of French nuclear testing. The delegates of Western Samoa, Fiji and Papua New Guinea specifically made statements of their concern.

24. The representative of France stated that under Article 2 (Definitions), the SPREP Convention did not apply to French nuclear tests in Mururoa and Fangataufa as these atolls were in 'internal seas', rather than within the Convention area.

25. Further, he added that France would not be proceeding with tests if it was not of the conviction that there would be no negative impact to humans, flora and fauna. He referred delegates' attention to France's request to the International Atomic Energy Agency (IAEA) to designate a mission of international experts to investigate the radiological effects, and to the Institut des Roches (Institute of Petrology) to draw up a geological balance sheet relating to the atolls' structure. France would also welcome the involvement in these missions of any experts from SPREP designated by the above institutions.

26. He reminded delegates of France's commitment to sign the Comprehensive Test Ban Treaty (CTBT) and to observe zero thresholds and appealed to the Parties not to proceed with emotion, given that the tests would cease within a few months. He also pointed out that no other nuclear power had been as open and transparent as had France in the conduct of its testing.

27. The representative of New Zealand noted that the Convention does apply to territory, in that the

territorial seas of State Parties are included within the 200 nautical mile zones that are part of the definition of "Convention Area". He noted that, in the absence of environmental impact assessment, no assurance could be provided that nuclear tests were not contaminating the marine environment or presenting unacceptable risks for the future. This situation is contrary to France's obligations under the Convention.

28. The representative of Australia stressed that the requirement for an EIA in accordance with Article 16 of the Convention is not satisfied by an examination of the area after the event. The representative also stressed that it is an essential requirement of Article 16(3) that a Party shall invite public comment and consideration by potentially affected Parties on the outcome of an EIA. The public aspect of an EIA is its essence.

29. The representative of Australia presented a draft Declaration for deliberation and discussion by the Parties as follows:

*"These States, Parties to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region,*

*Drawing attention to France's obligations under the Noumea [SPREP] Convention to:*

- Ensure that activities within its own jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of its national jurisdiction, and to prevent, reduce and control pollution of the Convention area from any source, including from the testing of nuclear devices,*
- Conduct a prior assessment of the potential impact on the marine environment of major projects such as nuclear tests, in consultation with other Parties who may be affected, and to make the results of these assessments available to other Parties through the SPREP organisation,*

*Agreeing that the precautionary principle of the Rio Declaration, which provides that the lack of full scientific certainty should not provide justification for activities which may cause serious or irreversible damage to the environment, applies to the provisions of the Noumea [SPREP] Convention,*

*Call on France to:*

- Immediately cease nuclear testing in the South Pacific and to give a firm and unequivocal commitment to sign and ratify the Protocols of the SPNFZ [South Pacific Nuclear Free Zone] Treaty,*
- Close its nuclear and military facilities in the South Pacific,*



- *Demonstrate its claim made in the ICJ of adherence to the precautionary principle in relation to nuclear testing by conducting a comprehensive and public environmental impact assessment in relation to nuclear testing,*
- *Make available to the international community all French scientific data and studies, and guarantee free and unfettered access for international scientific experts to visit Mururoa and Fangataufa Atolls, before, during and after any further tests, to enable an independent and comprehensive investigation of the short- and long-term environmental and health effects of nuclear testing at Mururoa and Fangataufa atolls, and on the structural integrity of the atolls,*
- *Comply with its international obligations under the Noumea [SPREP] Convention to conduct a prior assessment of the impact of any major project such as nuclear testing on the marine environmental [sic] and to inform States which may be affected and to consult with them as appropriate,*
- *Undertake long-term environmental monitoring at Mururoa and Fangataufa, the design and implementation of which should be open to international scientific scrutiny, including continuing international scientific access to the atolls, and*
- *Accept full and exclusive responsibility, including for such remediation or compensation as may be necessary, for any adverse impacts, past, present or future from French nuclear testing on the environment and health of the peoples of the South Pacific."*

30. The Declaration was supported by Australia, Federated States of Micronesia, Fiji, Nauru, New Zealand, Papua New Guinea and Western Samoa.

31. The representative of the United States of America abstained from the Declaration stating that the issues raised went beyond the specific issue of the series of nuclear tests that had been undertaken by France in the past ten months, but making clear that the abstention in no way should be interpreted as an endorsement of French action in this regard. The United States regretted France's decision to conduct an underground nuclear test at the Fangataufa test site, urged all nuclear powers to refrain from further nuclear tests and join a global moratorium. The United States' statement is at Annex 7.

32. The representative of France categorically rejected the Declaration as not being applicable within the scope of the SPREP Convention.

33. The Secretariat summarised the information available on the nuclear waste dumping proposal in the Marshall Islands.

34. Parties expressed serious concern about a development of this kind in the region and noted that more information on the specific details of the proposal was required by Parties. SPREP was asked to continue pursuing solicitation of information from the Marshall Islands about the project and SPREP suggested that it would be glad to provide assistance if asked by the Marshall Islands. In the absence of representation by the Marshall Islands at the Meeting, the Parties felt it was difficult to deal with the issue substantively at this time.

### **Agenda Item 7:**

#### **Proposed Guidelines for Standardised Format for National Reports**

35. The Second Meeting of the Parties called for a standardised format for national reports by Parties when providing information under the obligation in Article 19. The Secretariat circulated proposed reporting guidelines prior to the Meeting and invited delegates to consider and endorse these guidelines.

36. After some discussion of the guidelines, it was agreed that these be referred to the proposed Working Group with a view to improving them, in order to satisfy the reporting requirements of the SPREP and other Conventions.

### **Agenda Item 8:**

#### **Audited Financial Statements for 1993 and 1994**

37. The Meeting adopted the audited Financial Statements for 1993 and 1994 as tabled by the Secretariat. The United States of America noted for the record that it may provide further comments on the Financial Statement on return to Washington DC.

## Annex 1:

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## **Agenda Item 9:**

### **Consideration and Adoption of Budget**

38. The Secretariat presented a biennial Budget which incorporated costs for the Fourth Ordinary Meeting, as well as the shared costs of a unit within SPREP to administer the three Conventions for which it is the Secretariat – Apia, SPREP and Waigani.

39. The Parties, having considered the Budget, agreed to its adoption, except for the provision for shared costs of a unit within SPREP which was referred to the Working Group for further consideration. The Parties also noted that the contributions are voluntary. The Meeting agreed that the question of contributions to the SPREP Convention be further looked at by the Working Group.

## **Agenda Item 10:**

### **Date and Venue of Next Meeting**

40. The Meeting agreed that the Fourth Ordinary Meeting of the Parties to the SPREP Convention be held in 1997 at the same time and venue as the Tenth SPREP Meeting.

41. The Chairman also noted that SPREP would convene a Ministerial Meeting in 1996 to adopt a revision to the SPREP Action Plan and that a Plenipotentiary Meeting of the Contracting Parties could be convened at that time, in order to amend the Convention so as to transfer Secretariat functions to SPREP. The report from the Working Group could be presented for consideration at that Plenipotentiary Meeting.

## **Agenda Item 11:**

### **Adoption of Report**

42. The Meeting adopted the report.

## **Agenda Item 12:**

### **Close**

43. The Meeting was closed by Lei'ataua Dr Kilifoti Eteuati, representative of Western Samoa, who thanked the Secretariat for its efficient work and praised delegates for the manner in which they had deliberated over some sensitive issues.



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## Annex 2: Opening Address by Hon. Fa'aso'otauloa Pati, Minister of Lands, Surveys and Environment, Government of Western Samoa

Mr Chairman

Distinguished Representatives of Contracting

Parties

Distinguished Observers

Ladies and Gentlemen

On behalf of the Government of Western Samoa, it is a great honour for me to welcome you this morning to the Third Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region and Related Protocols, more commonly known by its short title of "the SPREP, or Noumea Convention".

The Convention provides a broad framework for regional cooperation in preventing pollution of our marine and coastal environments. It requires Contracting Parties to take all appropriate actions to prevent, reduce and control pollution from any source. To do this, Parties are required to undertake a number of specific measures to meet their obligations to prevent, reduce and control pollution that might come from vessels, land-based sources, sea-bed activities, toxic and hazardous waste storage, nuclear testing or atmospheric pollution.

This is the third meeting of the Contracting Parties in the five years since the Convention entered into force, not counting a special meeting in 1992 which failed to raise a quorum.

As you will have noticed from the Secretariat's report before you, it cannot be said that these meetings have achieved much, if anything, in the way of progress towards implementing the Convention's objectives.

At the two previous meetings, Parties undertook to initiate a broad range of activities aimed at strengthening the implementation of the Convention's objectives as well as promising action to meet their obligations under the Convention.

We are now gathered for the third time, at considerable expense and effort I might add, with little having been achieved despite the best intentions of the last two meetings.

It must now be time to ask ourselves whether it is worth continuing to meet like this.

In order to monitor activities designed to achieve the Convention's purposes, Parties are required to pro-

vide reports to the Secretariat. Unfortunately, this is not happening, except in isolated instances.

My government notes that the Secretariat has made some suggestions to deal with this situation, among them being a proposal to set up a small unit within SPREP to undertake jointly the Secretariat functions of three conventions, including this one on a cost-shared basis. Perhaps this is a step in the right direction. I leave that for your deliberations today along with other issues raised by your Secretariat.

But in any event, as Minister responsible for the environment in my country, I urge all of you here this morning to address these concerns in a concrete way that will ensure that the present situation is remedied.

What is at stake is the very future of a convention designed to put our region at the forefront of protecting marine and coastal areas. As things stand, it is not achieving its commendable objectives in a satisfactory or readily measurable manner.

Distinguished representatives, observers, ladies and gentlemen, my government places great significance on the location of SPREP's Headquarters in Western Samoa. This brings us considerable benefits, not least of which is your presence in our country.

We are delighted that SPREP is hosting a series of important meetings in Apia over the next ten days or so. This gives us an opportunity to meet you and you the chance to meet us. I hope during your stay you are able to experience something of our people's hospitality, our culture and the scenery of our Samoan islands.

This is the first time the Secretariat itself has hosted this series of SPREP Meetings. I know it has worked hard to put in place all the arrangements needed for you to have a productive and enjoyable meeting and I would like to express my appreciation to the Director and Staff.

Again, on behalf of Western Samoa, and the SPREP Secretariat, I wish you well in your discussions today and in the remaining meetings. Given the concerns I expressed earlier, my delegation will be following your proceedings with great interest.

It is now my great pleasure to declare open this Third Meeting of the Contracting Parties to the SPREP Convention.

Soifua.

### Annex 3: Agenda

1. Official Opening
2. Appointment of Chair
3. Adoption of Agenda and Working Procedures
4. Report by SPREP under Rule 12 of the Rules of Procedures, including:
  - Review of the Implementation of the Convention and its Protocols under Article 22
  - Consideration of items under Article 16 of the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping
  - Consideration of items under Article 10 of the Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region
  - Other items in relation to the Convention and its related Protocols considered appropriate by the Contracting Parties, including Institutional Arrangements under Article 21
5. Items proposed by Contracting Parties
6. Consideration of Parties' Obligations under the Convention and Protocols
7. Proposed Guidelines for Standardised Format for National Reports
8. Audited Financial Statements for 1993 and 1994
9. Consideration and Adoption of Budget
10. Date and Venue of Next Meeting
11. Adoption of Report
12. Close

## **Annex 4: Working Group Terms of Reference**

### **Goal:**

To consider ways in which implementation of the SPREP and Apia Conventions and integration with SPREP's Work Programme could be achieved more effectively.

### **To include:**

- (1) Practical considerations such as:
  - evaluate the "unit"/"cell" proposal by SPREP
  - discuss the best rules of procedure
  - encouragement of other eligible SPREP Members to ratify
  - standardisation of substantive reporting as required under the Convention to assist in obtaining the necessary information from Members, including appropriate frequency and level of detail of reporting
  - contributions to SPREP Convention
- (2) Legal analysis regarding necessary changes (if any) including implications of:
  - SPREP substitution as Secretariat, for SPC
  - Frequency of meetings
- (3) Come up with suggestions for plenipotentiaries on a pre-approved schedule
- (4) Other relevant considerations which may arise or be suggested by the Parties



## Annex 5: Australian Statement to the Noumea [SPREP] Convention Meeting of the Parties (Agenda Item 6)

1. As a Party to the Noumea [SPREP] Convention, the Australian Government reiterates its profound concern and dismay over the continuation by France of nuclear testing in the South Pacific, against the unambiguous and concerted opposition of the countries of the region. Australia condemns nuclear testing by any country. On Monday morning (Australian time) we learned that France had conducted a second nuclear test, this time on Fangataufa atoll. In the words of Australian Prime Minister Paul Keating, this test "ignores the understandable outrage of the international community at the French Government's first test and compounds the sense of anger felt by regional countries as a result of continued testing".

2. There are realities to be recognised when one is a coastal or island state bordering an ocean intimately shared by other coastal or island states: the inter-dependence of the states with the ocean, the economic and social value to those states of the natural resources of the ocean's environment, and the necessity for all states who share the ocean to cooperate in protecting that environment and preserving its natural resources for sustainable development.

3. For states who share the South Pacific ocean, the Noumea [SPREP] Convention is the legally binding expression of this recognition, whereby the states of the South Pacific entered into a partnership to protect collectively the environment for all. It is a partnership which acknowledges that the action of one may have serious implications for all. It is a partnership based on openness, on trust, on good faith.

4. The resumption by France of its nuclear testing program in this region, in contempt of the legitimate and deeply felt concerns of the Governments and peoples of the South Pacific, flies in the face of both the letter and the spirit of the Noumea [SPREP] Convention. In terms of the Convention, it is an act of bad faith. It further contradicts France's stated desire to act as a responsible partner in the South Pacific.

5. France undertook when it ratified the Convention to conduct environmental impact assessments of any of its major projects in the region which might affect the marine environment, so that appropriate measures could be taken to prevent pollution in the waters of the South Pacific.

6. By any standards, the explosion of a 110 kilotonne device is a major project. By any measure, such an explosion has the potential to create environmental harm on a massive scale, with dire social

and economic consequences for the people of the South Pacific.

7. In the International Court of Justice (ICJ), France claimed to be observing the precautionary principle in relation to this series of tests. This principle requires France to conduct environmental impact assessments for major projects which might affect the marine environment. Why then has France not conducted an EIA under the Convention?

8. France also claimed in the ICJ that a great deal of work on issues of environmental concern preceded all tests. If this is the case, then France must present the results of this work to the SPREP organisation, as it is obliged to under the Convention, as it agreed to do when it ratified that Convention. But their [sic] own collection of scientific data does not absolve France from its responsibility to conduct an EIA in relation to the current tests. An environmental impact assessment is not just analysis showing whether past nuclear tests have or have not caused damage. It is the detailed public assessment of the potential impact on the environment of the tests under a variety of scenarios conducted before the tests take place, it is analysis of alternatives to the action proposed, and a descriptive evaluation of measures to prevent potential environmental harm.

9. Without an environmental impact assessment, how can France know it is not in breach of other obligations it accepted when ratifying this Convention? In particular,

- its undertaking to ensure that the tests do not cause damage to the environment of other states or areas beyond the limits of its national jurisdiction,
- its undertaking to prevent, reduce and control pollution of the Convention area from any source, but particularly resulting from nuclear testing.

France must share its scientific data in relation to these tests so that we are able to know the risks these tests pose to our shared environment, and whether France is keeping the promises it made in community with us.

10. In ratifying the Convention, France purported to set a limit as to what level of radioactive pollution is tolerable under this Convention. France thereby has a duty to demonstrate that it is able to meet standards it set itself. How can France do so, and show it can do so, if it has no EIA?

11. There are no grounds exempting France from compliance with its obligations under this Convention. There is certainly no exception for military-related activities. In fact, the Convention expressly includes military activities, in its provision relating to nuclear testing.

12. France was put on notice specifically in relation to the obligations under this Convention by a meeting of fourteen South Pacific Environment Ministers held in Brisbane from 16 to 17 August this year. In a unanimous declaration, the Ministers called on France, amongst other things, to comply with its international obligations under the Noumea [SPREP] Convention to conduct a prior assessment of any major project such as nuclear testing on the marine environment. They further called on France to make its data and studies available to the international community for independent and comprehensive assessment.

13. The declaration also expressed the determination of the countries represented to keep the South Pacific free of environmental pollution by radioactive waste, and called on France to make a firm and unequivocal commitment to sign and ratify the protocols of the South Pacific Nuclear Free Zone (SPNFZ) Treaty, and thereby join its Pacific partners in ensuring:

"That the bounty and beauty of the land and sea in their region shall remain the heritage of their peoples and their descendants in perpetuity to be enjoyed by all in peace".

14. By conducting the second test on Sunday in the face of this call to honour its Noumea [SPREP] Convention obligations, and the expressed desire of South Pacific nations that their shared resource, the ocean, be protected from the hazards associated with nuclear testing, France demonstrates its disregard for its international obligations which it entered into freely, and a contempt for the wishes of its Pacific partners, the peoples who live here.

15. Australian Prime Minister Paul Keating reiterated Australia's support for that declaration's calls for France to:

- desist from further tests in the region and to close associated facilities, except those required for future environmental monitoring,
- accept full and exclusive responsibility for any adverse impacts from its testing on the Pacific environment and people,
- provide the international community with access to all scientific data it holds and to the testing sites themselves to enable an independent and comprehensive assessment of the risks involved,
- sign and ratify the protocols of the South Pacific Nuclear Free Zone Treaty,

and stated:

"Only these actions would show that France takes seriously its obligations towards those countries in our region with which it seeks good relations. If France cannot even agree to the region's reasonable requests for scientific access, it demonstrates its disregard for the interests of the South Pacific community."

16. We call on France now to demonstrate its stated commitment to act as a responsible and constructive partner in the South Pacific, by declaring before this Conference and the international community, that France accepts full and exclusive responsibility, including for such remediation and compensation as may be necessary, for any adverse impacts, past, present or future, from French nuclear testing on the environment and health of the peoples of the South Pacific.

## Annex 6: Information Paper: New Zealand Comments on Compliance with Article 16 of the Noumea [SPREP] Convention: French Nuclear Testing (Agenda Item 6)

In its documentation for this meeting on the relationship between its Work Programme activities and the Convention and Protocols, SPREP refers to discussion in the past on measures aimed at promoting regional solidarity and cooperation on environmental issues. It goes on to point to the closeness of the relationship, noting that the Convention and Protocols form a comprehensive legal framework for SPREP's Action Plan and that its Work Programme activities are focused on provisions in the treaty instruments. It also invites Contracting Parties to consider additional action that may be required for the achievement of the purpose of the Convention and Protocols.

In its proposed guidelines for a standardised format for national reports, SPREP further sets out areas where information is sought from the Parties, based on provisions of the Convention and Protocols. These include:

- action to prevent, reduce and control pollution;
- action to prevent, reduce and control pollution which might result from the testing of nuclear explosive devices;
- action to give effect to the prohibition of dumping of radioactive wastes or other radioactive matter;
- action to give effect to the prohibition of storage of radioactive wastes or other radioactive matter.

It is against this background that we take up SPREP's invitation under Agenda Item 6 to consider French nuclear testing with reference to the requirements of Article 16 of the Convention. New Zealand has had occasion to give detailed consideration to this matter very recently as part of its efforts to seek to resume its proceedings from 20 years ago against France in the International Court of Justice on the question of nuclear testing. Although the Court, in a split decision, declined on narrow procedural grounds to permit the case to be resumed, New Zealand was able to present its substantive legal arguments.

The essence of the New Zealand case was that France is under a duty at international law to protect the environment and, as part of that duty, to undertake *prior* assessment of the impact of activities that may pose a risk to the environment. In the case of the South Pacific, that legal duty is reflected

in express terms in Article 16 of the Noumea [SPREP] Convention. French nuclear testing is subject to the requirements of that provision. Nothing in the nature of an environmental impact assessment as required by Article 16 has been carried out by France.

The visits by outsiders that have been permitted to Muroroa atoll in the past, and the promise by France to maintain ongoing assessment of the atoll in the future, are no substitute for a prior environmental impact assessment. Other countries have not been given the facts that would be required to make an assessment for themselves. In the case of Fangataufa atoll, where the larger French nuclear tests have taken place including the second test only a few days ago, no independent scientific mission has even been permitted to visit and scarcely any information is available on the effects of nuclear testing on the atoll.

Only France can carry out the necessary environmental impact assessment (or EIA, for short) and demonstrate whether the fears of others concerning contamination of the marine environment are groundless. Every treaty which provides for environmental impact assessment assumes that the obligation to demonstrate that there is no risk rests on the State planning the activities.

No tests are permissible in the absence of an assessment that establishes that there is no risk to the environment. As New Zealand said at the International Court of Justice:

*An evaluation of the effects of an activity after the event such as France has been proposing in various forms is not an EIA. It is, in fact, the very antithesis of an EIA for, in the nature of things, it comes too late to give an assurance that the risk will not materialise...*

*[In] Europe, ... France has accepted quite onerous obligations to carry out Environmental Impact Assessments by way of several regional treaties.... [If] France were to conduct its nuclear testing in its European territory, would it first carry out an EIA? The answer must, of course, be "yes". It is inconceivable that France would test in Europe without first carrying out an EIA. One wonders ... why France is not prepared to accept the same obligations to its Pacific neighbours as it does to its European neighbours ...*

*How could France say in this instance that it was taking all appropriate measures to prevent, reduce and control pollution in the Convention Area, including its territorial sea, without having first carried out an Environmental Impact Assessment? How could France seriously assert that it was preventing, reducing and controlling pollution resulting from its nuclear testing activities, in the absence of such an assessment? France could not know that it was meeting these obligations if it did not first carry out an EIA.*

In its specific request to the International Court of Justice, New Zealand had asked the Court to adjudge and declare, *inter alia*, that it is unlawful for France

to conduct nuclear tests before it has undertaken an Environmental Impact Assessment according to accepted international standards, and that unless such an assessment establishes that the tests will not give rise, directly or indirectly, to radioactive contamination of the marine environment, the rights under international law of New Zealand, as well as other States, will be violated. This matter is drawn to the attention of this Meeting of the Parties to the Noumea [SPREP] Convention in order that they might discuss French nuclear testing in the context of Article 16 of the Convention and consider their reaction to it.

**Annex 7: Statement by United States (Agenda Item 6)**

The United States must abstain on this resolution.

The provisions of this resolution go beyond that which the United States is able to support.

It raises issues that go beyond the specific issue of the series of nuclear tests that have been undertaken by France in the past few months.

The position of the US in this instance no way implies or can be interpreted to apply [sic] that we endorse French actions in this regard.

I would like to recall and request inclusion in the record of this meeting that the United States

regretted France's decision to conduct an underground nuclear test at the Fangataufa Test site in the South Pacific.

At the Comprehensive Test Ban Treaty (CTBT) conference held in New York last May, all nuclear weapon states agreed to exercise "utmost restraint" in nuclear testing pending entry into force of a comprehensive test ban treaty.

We continue to urge all of the nuclear powers, including France, to refrain from further nuclear tests and to join a global moratorium as we work to complete and sign a CTBT in 1996.