APPLICATION

INSTITUTING PROCEEDINGS

AGAINST

THE FRENCH REPUBLIC

(Requesting the Respondent to accept the jurisdiction of the Court pursuant to Article 36, paragraph 1, of the Statute of the Court and Article 38, paragraph 5, of the Rules of Court)

submitted on 24 April 2014

by

THE REPUBLIC OF THE MARSHALL ISLANDS

to

THE INTERNATIONAL COURT OF JUSTICE

re

obligation to pursue in good faith and conclude negotiations
leading to nuclear disarmament

Table of Contents

I. INTRODUCTION AND SUMMARY 3

II. FACTS 8

A. The Five Nuclear Weapon States Parties to the NPT 8

B. The Nine States Possessing Nuclear Weapons 8

C. France and the Nuclear Arms Race 9

1. Early Nuclear History 9

2. The Current French Nuclear Arsenal 10

3. Nuclear Policy, Doctrine and Expenditure 12

4. Current Plans for Modernization and Qualitative Improvements of the French Nuclear Arsenal 12

D. France and Nuclear Disarmament 13

1. History and General Policy Regarding Negotiation of Nuclear Disarmament 13

2. Opposition to Negotiation of a Nuclear Weapons Convention 14

III. THE LAW 17

A. Article VI of the NPT 17

B. Customary International Law 18

C. Good Faith 20

IV. OBLIGATIONS BREACHED BY FRANCE 22

A. Breach of Article VI of the NPT 22

B. Breach of Customary International Law 23

C. Breach of the Obligation to Perform Its Obligations in Good Faith 23

V. JURISDICTION OF THE COURT 25

VI. FINAL OBSERVATIONS 25

REMEDIES 26

To the Registrar, International Court of Justice.

The Undersigned, being duly authorized by the Government of the Republic of the Marshall Islands, state as follows:

I. INTRODUCTION AND SUMMARY

1. It is a most fundamental legal and moral principle that bargains should be kept. This is embedded in international law through the principle of *pacta sunt servanda*.[1] The bargain which this Application concerns is that embodied in the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (hereafter "the Treaty" or "the NPT"),[2] whereby each non-nuclear-weapon State ("NNWS") has agreed not to acquire nuclear weapons and each NPT nuclear-weapon State has agreed to negotiate their elimination.

2. This Application is not an attempt to re-open the question of the legality of nuclear weapons addressed by this Court in its Advisory Opinion of 8 July 1996 on the *Legality of the Threat or Use of Nuclear Weapons*.[3] Rather, the focus of this Application is the failure to fulfil the obligations enshrined in Article VI of the NPT and customary international law; and particularly the failure of the NPT nuclear-weapon States to keep their part of the strategic bargain and do what the Court *unanimously* called for based on its analysis of Article VI, namely "pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control".[4]

3. In its Advisory Opinion, the Court observed that "[t]he destructive power of nuclear weapons cannot be contained in either space or time" and that such weapons "have the potential to destroy all civilization and the entire ecosystem of the planet".[5] It acknowledged "the unique characteristics of nuclear weapons, and in particular their destructive capacity, their capacity to cause untold human suffering, and their ability to cause damage to generations to come".[6]

4. Unless the required negotiations, aimed at reaching the required conclusions, take place, we shall continue to face the very real prospect of the "devastation that would be visited upon all mankind by a nuclear war".[7] We shall also continue to face the possibility, even the

---

[1] Expressed in Article 26 of the Vienna Convention on the Law of Treaties 1969.

[2] 729 UNTS 161.

[3] *I.C.J. Reports 1996*, p. 226.

[4] *Id.*, para. 105, point 2F.

[5] *Id.*, para. 35.

[6] *Id.*, para. 36.

[7] NPT preamble, 2nd recital.

likelihood, of nuclear weapons being used by accident, miscalculation or design,[8] and of their proliferation. As Nobel Peace Laureate Sir Joseph Rotblat pointed out: "If some nations – including the most powerful militarily – say that they need nuclear weapons for their security, then such security cannot be denied to other countries which really feel insecure. Proliferation of nuclear weapons is the logical consequence of this nuclear policy".[9]

5. In its Advisory Opinion, the Court observed: "In the long run, international law, and with it the stability of the international order which it is intended to govern, are bound to suffer from the continuing difference of views with regard to the legal status of weapons as deadly as nuclear weapons".[10] A coherent legal system cannot countenance its own destruction or that of the community whose activities it seeks to regulate.[11] That is why fulfilment of the obligation "to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control" is so important.

6. Equally, a coherent and civilized legal system cannot tolerate unacceptable harm to humanity. A lawful and sustainable world order is predicated on a civilizational right to survival rooted in "the principles of humanity"[12] and "elementary considerations of humanity"[13]

---

[8] In 1996 Lord Carver, former UK Chief of the Defence Staff (the professional head of the UK's armed forces and the principal military adviser to the Secretary of State for Defence and to the UK Government) stated that "the indefinite deployment of nuclear weapons carries a high risk of their ultimate use - intentionally, by accident or inadvertence". *See* Hansard, HL Deb, 28 Oct 1996, vol. 575, cols. 134.

[9] Joseph Rotblat, "Science and Nuclear Weapons: Where Do We Go From Here?" The Blackaby Papers, No. 5, December 2004, p. 7.

[10] *Supra*, n. 3, para. 98.

[11] As B.S. Chimni has stated, "No legal system can confer on any of its members the right to annihilate the community which engenders it and whose activities it seeks to regulate". B.S. Chimni, "Nuclear Weapons and International Law: Some Reflections", in International Law in Transition: Essays in Memory of Judge Nagendra Singh, 1992, p. 142. Quoted by Judge Weeramantry in Section V.1 of his Dissenting Opinion in the Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, *supra*, n. 3, at p. 522; *see also* the Dissenting Opinion of Judge Shahabuddeen, *id.*, p. 393: "Thus, however far-reaching may be the rights conferred by sovereignty, those rights cannot extend beyond the framework within which sovereignty itself exists; in particular, they cannot violate the framework. The framework shuts out the right of a State to embark on a course of action which would dismantle the basis of the framework by putting an end to civilization and annihilating mankind".

[12] From the Martens Clause as expressed in Article 1, paragraph 2 of Protocol I 1977 Additional to the Geneva Conventions 1949: "In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience".

[13] *Corfu Channel case, Judgment of April 9th, 1949, I.C.J. Reports 1949*, p. 22.

which help to shape an emerging "law of humanity",[14] the international law for humankind of which the nuclear disarmament obligation is a key element. Yet it is now 68 years since the very first United Nations General Assembly Resolution sought to put in motion the elimination from national arsenals of nuclear and other weapons of mass destruction,[15] almost 45 years since the NPT entered into force and nearly 20 years since the Court delivered its Advisory Opinion. The long delay in fulfilling the obligations enshrined in Article VI of the NPT and customary international law constitutes a flagrant denial of human justice.[16]

7. Inspired and guided by these principles and values, this is an Application against the French Republic ("France"), an NPT nuclear-weapon State. The underlying claims, described in more detail herein, are that France is: (i) in continuing breach of its obligations under Article VI of the NPT, including specifically its obligation to pursue in good faith negotiations to cease the nuclear arms race at an early date, as well as to pursue in good faith negotiations leading to nuclear disarmament in all its aspects under strict and effective international control; (ii) in continuing breach of customary international law with respect to the same obligations; and (iii) in continuing breach of its obligation to perform its international legal obligations in good faith.

8. The Applicant herein is the Republic of the Marshall Islands (the "Marshall Islands" or "RMI" or "Applicant"). The Applicant is an NNWS Party to the Treaty. It acceded to the Treaty as a Party on 30 January 1995, and has continued to be a Party to it since that time.

9. While cessation of the nuclear arms race and nuclear disarmament are vitally important objectives for the entire international community, the Marshall Islands has a particular awareness of the dire consequences of nuclear weapons. The Marshall Islands was the location of repeated nuclear weapons testing from 1946 to 1958, during the time that the international community had placed it under the trusteeship of the United States ("U.S."). [17] During those 12

---

[14] *See e.g.* the Opinion of the Tribunal in the *Einsatzgruppen Case* (1948): "[An] evaluation of international right and wrong, which heretofore existed only in the heart of mankind, has now been written into the books of men as the law of humanity. This law is not restricted to events of war. It envisages the protection of humanity at all times". *United States of America v. Otto Ohlendorf, et al,* Military Tribunal II, Case No. 9 (1948), in *Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10*, Vol. IV, Nuernberg, October 1946 – April 1940 (U.S. Government Printing Office, 1950-872486), p. 497, *available at* http://www.loc.gov/rr/frd/Military_Law/pdf/NT_war-criminals_Vol-IV.pdf.

[15] A/RES/1(I), 24 January 1946.

[16] *Cf.* Judge Cançado Trindade's remarks in para. 145 of his Separate Opinion in *Questions Relating to the Obligation to Prosecute or Extradite* (*Belgium v. Senegal*), *I.C.J. Reports 2012*, pp. 544-548; especially at para. 145 where he contrasts "the brief time of human beings (*vita brevis*) and the often prolonged time of human justice".

[17] Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Calin Georgescu; Addendum, Mission to the Marshall Islands (27-30 March 2012) and the United States of America (24-27 April 2012): 3 September 2012, Doc. A/HRC/21/48/Add.1.

years, 67 nuclear weapons of varying explosive power were detonated in the Marshall Islands, at varying distances from human population. [18] According to the 3 September 2012 Report of Calin Georgescu, a Special Rapporteur to the UN Human Rights Council, the devastating adverse impact on the Marshall Islands of those nuclear substances and wastes continues to this day.[19] The Special Rapporteur concludes that "the harm suffered by the Marshallese people has resulted in an increased global understanding of the movement of radionuclides through marine and terrestrial environments", and urges the international community to "learn from the Marshallese experience with nuclear contamination, particularly the…understanding of the relationship between radioiodine and thyroid cancer".[20]

10. With regard to the RMI's interest in bringing this Application to the Court, the following should be added. It is well known that over recent years the RMI has been preoccupied with combating the extremely harmful consequences that the effects of climate change have for its very survival. While focusing on the problem of climate change, the RMI has come to realize that it cannot ignore the other major threat to its survival: the ongoing threat posed by the existence of large arsenals of nuclear weapons the use of which, according to the Court, "seems scarcely reconcilable with respect for […] requirements [of the principles and rules of law applicable in armed conflict]".[21] It is obvious that the RMI's participation in the common struggle against climate change needs to lead to firm commitments by all States, which commitments must include not only moral, but also legal obligations aimed at realizing concrete, clear-cut goals in order to remove the threat of devastation caused by continued reliance on the use of fossil fuel energy sources. It is from this perspective of striving to reach agreement on such commitments in the struggle against climate change that the RMI has concluded that it is no longer acceptable simply to be a party to the NPT while the NPT nuclear-weapon States are refusing even to begin negotiations that will lead to total nuclear disarmament. This Application seeks to ensure that the legal obligations undertaken 21 years ago by France in the context of the NPT do indeed deliver the promised result.

11. One of the reasons why the RMI became a Party to the NPT is that this Treaty is the key instrument of the international community for ridding the world of nuclear weapons.[22] The Treaty contains the solemn promise and legal obligation of the nuclear weapon States to sit

---

[18] *Id.*, paras. 1-18.

[19] *Id.*, para. 19.

[20] *Id.*, para. 66(b).

[21] *Supra*, n. 3, para. 95.

[22] At the UN High-Level Meeting on Nuclear Disarmament, 26 September 2013, Hon. Mr. Phillip Muller, Minister of Foreign Affairs, Republic of the Marshall Islands, stated that the RMI's "deeper purpose" is "that no nation and people should ever have to bear witness to the burden of exposure to the devastating impacts of nuclear weapons", http://www.un.org/en/ga/68/meetings/nucleardisarmament/pdf/MH_en.pdf.

down and negotiate towards total nuclear disarmament. That promise has been broken and that obligation has not been met.

12. Article VI of the Treaty states, in its entirety, as follows:

> Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.[23]

13. As previously stated, the Court concluded its Advisory Opinion of 8 July 1996 by *unanimously* holding that "[t]here exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control". [24]

14. More than two decades after becoming a party to the NPT, France maintains and continuously modernizes its nuclear arsenal.

15. France has not pursued in good faith negotiations to cease the nuclear arms race at an early date through comprehensive nuclear disarmament or other measures, and instead is taking actions to improve its nuclear weapons systems and to maintain them for the indefinite future.

16. Similarly, France has not fulfilled its obligation to pursue in good faith negotiations leading to nuclear disarmament in all its aspects under strict and effective international control and instead has opposed the efforts of the great majority of non-nuclear-weapon States to initiate such negotiations.

17. These obligations are not limited to the Parties to the Treaty, but also apply to all States as a matter of customary international law.

18. Further, the obligation of a State to perform its legal obligations in good faith, whether arising under a treaty or pursuant to customary international law, is itself a legal obligation which France has breached.

---

[23] *Supra*, n. 2.

[24] *Supra*, n. 3, para. 105, point 2F.

II. FACTS

A. The Five Nuclear Weapon States Parties to the NPT

19. The U.S. was the first country in the world to develop and test nuclear weapons. The U.S. used nuclear weapons in warfare on the Japanese cities of Hiroshima and Nagasaki on 6 August 1945 and 9 August 1945 respectively. The U.S. was the sole possessor of nuclear weapons in the world until the Soviet Union tested its first nuclear weapon on 29 August 1949.[25] In 1952, the UK tested its first nuclear weapon. In 1960, France tested its first nuclear weapon. In 1964, China tested its first nuclear weapon.

20. In the 1960s, negotiations eventuated in agreement on the Nuclear Non-Proliferation Treaty. The U.S., Russia, the UK, France and China, all Parties to the NPT, are the only States meeting the Treaty's definition of a "nuclear-weapon State" for "the purposes of this Treaty".[26]

21. The Treaty was opened for signature on 1 July 1968, and entered into force on 5 March 1970. France acceded to the Treaty on 3 August 1992, and became a Party to it.

B. The Nine States Possessing Nuclear Weapons

22. In addition to the five NPT nuclear-weapon States, four non-NPT States are known to possess nuclear weapons: India, Pakistan, Israel and the Democratic People's Republic of Korea ("DPRK").[27]

23. According to the Stockholm International Peace Research Institute ("SIPRI"), the individual and collective world nuclear forces as of January, 2013, were as follows:

---

[25] For matters occurring prior to 1991 this Application refers to the Soviet Union. For matters occurring during or after 1991, including the current status of the obligations under the NPT, this Application refers to the Russian Federation or Russia, as the successor state to the Soviet Union's obligations under the NPT.

[26] Article IX.3 of the NPT provides: "For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967".

[27] *See infra*, n. 69.

World nuclear forces, January 2013[28]

(All figures are approximate)

Country	Year of first nuclear test	Deployed Warheads[a]	Other Warheads[b]	Total Inventory
United States	1945	2,150[c]	5,550	~7 700[d]
Russia	1949	~1,800	6,700[e]	~8 500[f]
United Kingdom	1952	160	65	225
France	1960	~290	~10	~300
China	1964		~250	~250
India	1974		90-110	90-110
Pakistan	1998		100-120	100-120
Israel			~80	~80
North Korea	2006			6-8?
Total		**~4,400**	**~12,865**	**~17,270**

[a] 'Deployed' means warheads placed on missiles or located on bases with operational forces.
[b] These are warheads in reserve, awaiting dismantlement or that require some preparation (*e.g.* assembly or loading on launchers) before they become fully operationally available.
[c] In addition to strategic warheads, this figure includes nearly 200 non-strategic (tactical) nuclear weapons deployed in Europe.
[d] This figure includes the U.S. Department of Defense nuclear stockpile of c. 4650 warheads and another c. 3000 retired warheads that are awaiting dismantlement.
[e] This figure includes c. 700 warheads for nuclear-powered ballistic missile submarines (SSBNs) in overhaul and bombers, 2000 non-strategic nuclear weapons for use by short-range naval, air force and air defense forces, and c. 4000 retired warheads awaiting dismantlement.
[f] This includes a military stockpile of c. 4500 nuclear warheads and another c. 4000 retired warheads await dismantlement.

C. France and the Nuclear Arms Race

1. Early Nuclear History

24. Following its first nuclear test in 1960, France quickly built up its nuclear forces to a high in the early 1990s of over 500 nuclear warheads. During that build-up, France added

[28] Shannon N. Kile, "World Nuclear Forces", SIPRI Yearbook 2013 (Oxford University Press: Oxford, 2013). The question mark (?) against North Korea's total inventory is in the original.

land, air and sea components - a nuclear triad - to its nuclear forces.[29]

2. The Current French Nuclear Arsenal

25. France currently maintains a dual component nuclear force—air and sea. Its previous land component was deactivated, culminating with the medium-range ballistic missiles in silos at Plateau d'Albion, which were deactivated in 1996.[30]

26. Its air component has both land-based and carrier-based nuclear-capable aircraft, and it has four *Triomphant*-class submarines that deploy ballistic missiles.[31]

27. The French nuclear arsenal is estimated at approximately 300 nuclear warheads with 290 that are either deployed or operationally available for deployment.[32] The French nuclear delivery vehicles are aircraft-based cruise missiles and submarine-based ballistic missiles.[33]

28. As of 2012, the operational warheads in the French nuclear arsenal were broken down as follows:[34]

---

[29] *See* Hans Kristensen, "France", in Ray Acheson, ed., Assuring Destruction Forever: Nuclear Weapon Modernization Around the World (Reaching Critical Will – a project of the Women's International League for Peace and Freedom, 2012), p. 27, http://www.reachingcriticalwill.org/images/documents/Publications/modernization/assuring-destruction-forever.pdf.

[30] *Id.*

[31] S. Kile et al., "World nuclear forces", in SIPRI Yearbook 2011, Stockholm International Peace Research, *available at* http://www.sipri.org/yearbook/2011/files/SIPRIYB1107-07A.pdf; Ministere De La Defense, SNLE Le Triomphant (S 616), 28 December 2011, *available at* http://www.defense.gouv.fr/marine/decouverte/equipements-moyens-materiel-militaire/sous-marins/sous-marins-nucleaire-lanceurs-d-engins/snle-le-triomphant-s-616.

[32] Hans Kristensen, "France", in Ray Acheson, ed., Still assuring destruction forever (Reaching Critical Will – a project of the Women's International League for Peace and Freedom, 2013), p. 8 ("Still assuring destruction"), http://www.reachingcriticalwill.org/images/documents/Publications/modernization/still-assuring-destruction-forever.pdf; Speech by Nicolas Sarkozy, President of the French Republic, Presentation of Le Terrible in Cherbourg, 21 March 2008, p. 8; English version *available at* http://www.diplomatie.gouv.fr/en/IMG/pdf/Speech_by_Nicolas_Sarkozy__presentation_of_Le_Terrible_submarine.pdf.

[33] Still assuring destruction, *id.*

[34] *See supra,* n. 29 at p. 28.

Delivery vehicle	No. operational	Year deployed[a]	Range (kilometers)[b]	*Warheads x yield (kilotons)*	Warheads
Land-based aircraft				A.	
Mirage 2000N/ASMPA	20	1988/2009	2,750	1 TNA x variable	20
Rafale F3/ASMPA	20	2008/2010	2,000	1 TNA x variable	20
Carrier-based aircraft					
Rafale MF3/ASMPA	10	2010/2011	2,000	1 TNA x variable	10
SLBMs[c]					
M45	32	1997	5,000+	4-6 TN75 x 100[d]	160
M51.1	16	2010	6,000+	4-6 TN75 x 100[e]	80
M51.2	n.a.	2015	6,000+	4-6 TNO x 100	n.a.
Total	**98**				**290**[f]

[a] *For aircraft, the first number is for the aircraft, the second is for when the ASMPA became operational with that aircraft.*

[b] *For aircraft the range of the aircraft is listed. The maximum range of the ASMPA is 500 kilometers.*

[c] *Three sets of missiles are deployed on three of four SSBNs in the operational cycle.*

[d] *Compared with its predecessor, the M4, the M45 carries "higher-performance TN75 nuclear warheads (stealthier RV and penetrationaids)".*

[e] *The M51, which first became operational on the Terrible in late-2010, has "significantly greater range and payload capacity, as well as greater accuracy"5 than the M45 and can potentially carry more than six warheads. Under normal circumstances, however, the M51probably carries the same number of warheads as the M45 to maximize range. Payloads of individual missiles may vary significantly depending on mission.*

[f] *In addition to the operational stockpile, a small number of additional warheads are thought to be undergoing maintenance or awaiting dismantlement. The TN81 warhead was retired with the ASMP missile in 2010. Moreover, new TNO warheads for the M51.2 are either in production or stored for deployment from 2015.*

29. The French nuclear warheads equate to approximately half the peak number of French nuclear warheads following the Cold War, and they are approximately equal to the 1984 number of French nuclear warheads.[35]

[35] *Id.* at p. 27.

3. Nuclear Policy, Doctrine and Expenditure

30. According to an April 2013 White Paper by the French Defense Ministry: "Nuclear deterrence aims to protect us from any aggression against our vital interests emanating from a State, wherever it may come from and whatever form it may take".[36] Employment of nuclear arms, the White Paper states, would only be conceivable in extreme circumstances of legitimate defense.[37]

31. The French government reports that its annual budget for its nuclear arsenal is approximately U.S. $ 4.6 billion.[38] A non-governmental report places the figure at $ 6 billion.[39]

4. Current Plans for Modernization and Qualitative Improvements of the French Nuclear Arsenal

32. France is undergoing a broad spectrum modernization program for its nuclear arsenal, which includes submarines, aircraft, missiles, warheads, and production facilities. This broad spectrum program is designed to ensure the country can maintain its full nuclear capabilities at least into the 2030s.[40]

33. France is reported specifically to be currently modernizing, either in the fielded stage or in the planning stage, the following components of its nuclear arsenal:[41]

---

[36] "The main thrust of the White Paper: Twelve key points and new orientations", *Ministère de la Défense*, 2013, p. 4, summarizing "Livre Blanc: Défense et Sécurité Nationale", *Ministère de la Défense*, 29 April 2013, p. 75, *available at* file:///C:/Documents%20and%20Settings/palewis/My%20Documents/Downloads/LB-fiche%2012%20pts-UK.pdf.

[37] *Id.*

[38] National Assembly, Defense Committee, AVIS, PRÉSENTÉ AU NOM DE LA COMMISSION DE LA DÉFENSE NATIONALE ET DES FORCES ARMÉES, SUR LE PROJET DE loi de finances pour 2012 (n° 3775), TOME VII, DÉFENSE ÉQUIPEMENT DES FORCES – DISSUASION, PAR M. FRANÇOIS CORNUT-GENTILLE, 25 October 2011, *available at* http://www.assemblee-nationale.fr/13/pdf/budget/plf2012/a3809-tVII.pdf.

[39] Bruce G. Blair and Matthew A. Brown, Nuclear Weapons Cost Study, Global Zero Technical Report, June 2011, p. 1 (annual expenditure is US$6 billion), *available at* http://www.globalzero.org/files/gz_nuclear_weapons_cost_study.pdf.

[40] Kearns. I, "Beyond the United Kingdom: Trends in the Other Nuclear Armed States", British American Security Information Council (BASIC), November 2011, *available at* http://www.basicint.org/sites/default/files/commission-briefing1.pdf.

[41] Hans M. Kristensen, Federation of American Scientists, Nuclear Weapons and Arms Control: Modernizing Nuclear Arsenals, Presentation to Short Course on Nuclear Weapons Issues in the 21st Century, Elliott School of International Affairs, George Washington University, Washington, D.C., 3 November 2013, *available at* http://www.fas.org/programs/ssp/nukes/publications1/Brief2013_GWU-APS.pdf.

Bombers:

- Mirage 2000NK3—fielded
- Rafale K3—fielded
- Rafale MK3—fielded
- ALCM (ASMPA/TNA)—fielded

SSBN/SLBM:

- M51.1 SLBM (TN75)—fielded
- M51.2 SLBM (TNO)—planning
- M51.3 SLBM (TNO)—planning

Infrastructure:

- Megajoule at CESTA—planning
- Airix/Epure hydrodynamic test center at Valduc—planning
- (partly Joint French-UK warhead surveillance testing center)

D. France and Nuclear Disarmament

1. History and General Policy Regarding Negotiation of Nuclear Disarmament

34. French officials indicate that France will *reject* calls for nuclear reductions at least in the near term:[42]

> [T]he French government has strongly opposed ideas for additional reductions in its nuclear forces—neither unilaterally nor as part of a potential NATO decision to reduce its nuclear forces in Europe. The condition in the NATO Lisbon Summit declaration that the Defence and Deterrence Posture Review would only examine the contribution of nuclear forces assigned to NATO apparently was included in the text at the insistence of the French government.[43]

35. On 3 December 2012 the UN General Assembly decided to establish an Open-

[42] *See supra,* n. 29 at pp. 27, 32.

[43] *Id.* at p. 32. The condition "This only applies to nuclear weapons assigned to NATO" appears at the end of paragraph 30 in the document. *See* Lisbon Summit Declaration, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Lisbon, NATO Press Release (2010) 155, November 20, 2010, *available at* http://www.nato.int/cps/en/natolive/official_texts_68828.htm. For background on France's nuclear policy, see: Bruno Tertrais, "The Last to Disarm? The Future of France's Nuclear Weapons", *Nonproliferation Review* Vol. 14.2, 2007, pp. 251–73, James Martin Center for Nonproliferation Studies, 2007, http://cns.miis.edu/npr/pdfs/142tertrais.pdf.

Ended Working Group to develop proposals to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons.[44] The resolution was adopted by 147 votes to 4 with 31 abstentions. France voted against the resolution along with the U.S., Russia, and the UK.[45]

36. In a statement made jointly with the UK and the U.S. in the UN General Assembly First Committee on 6 November 2012, France declared that it was "unable to support this resolution, the establishment of the OEWG and *any outcome it may produce*" (emphasis added).[46]

2. Opposition to Negotiation of a Nuclear Weapons Convention

37. France has not participated in negotiations regarding a Nuclear Weapons Convention and opposes doing so.

38. In October, 2011, during the General Assembly's First Committee, France opposed a call for a Nuclear Weapons Convention, stating that other governments were calling "for an international convention to ban nuclear weapons", which, according to France, was not "retained at the [NPT] Review Conference or in debates at any other UN body".[47]

39. France has always voted against the UN General Assembly's Resolution on "Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons". The Resolution, adopted every year since 1996,[48] underlines the ICJ's unanimous conclusion that there is an obligation to pursue negotiations leading to nuclear disarmament and calls on States to immediately fulfil that obligation by commencing multilateral negotiations leading to the early conclusion of a Nuclear Weapons Convention.

40. In 1997, at the request of Costa Rica, the UN Secretary-General circulated to all

---

[44] UNGA Resolution A/RES/67/56, "Taking forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons" (147-4-31).

[45] UN Doc A/67/PV.48, pp 20-21; Beatrice Fihn, "Disarmament Machinery", First Committee Monitor, Reaching Critical Will, 12 November 2012, www.reachingcriticalwill.org.

[46] *See* http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com12/eov/L46_France-UK-US.pdf.

[47] *Id.*, *citing* Statement by France to the UN General Assembly's First Committee, New York, 5 October 2011.

[48] Most recently on 5 December 2013 (A/RES/68/42).

UN Member States a Model Nuclear Weapons Convention.[49] Costa Rica submitted the Model Convention as "an effective and helpful instrument in the deliberative process for the implementation of" the annual resolution on follow-up to the ICJ Advisory Opinion.[50] In 2008, at the request of Costa Rica and Malaysia, the Secretary-General circulated an updated version of the Model Convention.[51] The Secretary-General later described the Model Convention as "a good point of departure" for negotiation of a Nuclear Weapons Convention.[52]

41. The Model Convention applies the approach taken by the Chemical Weapons Convention. The Model Convention provides general obligations regarding the non-use and non-possession of nuclear weapons and their verified dismantlement; sets out phases of elimination; provides for multiple means of reporting, monitoring and verification, from declarations of states to satellite observation; prohibits production of fissile material for nuclear weapons; requires national implementation measures; provides for prosecution of individuals accused of committing crimes proscribed by the convention; establishes an implementing agency; and establishes mechanisms for dispute resolution and compliance inducement and enforcement. The Model also builds upon existing nuclear non-proliferation and disarmament regimes and verification and compliance arrangements, including the NPT, International Atomic Energy Agency safeguards, the International Monitoring System for the CTBT, regional nuclear weapon-free zones, UN Security Council Resolution 1540, the International Convention for the Suppression of Acts of Nuclear Terrorism, and bilateral agreements between Russia and the United States.

42. Despite the annual UN General Assembly resolution discussed above, however, there have been no inter-governmental negotiations or deliberations in any official forum leading toward adoption of a Nuclear Weapons Convention, except in the above-mentioned Open-Ended Working Group in which France and the other NPT nuclear weapon States refused to participate.

43. In February 2008, the UN High Representative for Disarmament Affairs, Sergio Duarte, condemned the great powers' "refusal to negotiate or discuss even the outlines of a nuclear-weapons convention" as "contrary to the cause of disarmament".[53]

---

[49] *See* Letter dated 31 October 1997 from the Charge d'affaires a.i. of the Permanent Mission of Costa Rica to the United Nations Addressed to the Secretary-General, U.N. Doc. A/C.1/52/7 (17 Nov. 1997).

[50] *Id.*

[51] Letter dated 17 December 2007 from the Permanent Representatives of Costa Rica and Malaysia to the United Nations Addressed to the Secretary-General, U.N. Doc. A/62/650 (Jan. 18, 2008).

[52] Press Release, Secretary-General Ban Ki-moon, The United Nations and Security in a Nuclear-Weapon-Free World, U.N. Doc. SG/SM/11881 (24 October 2008), *available at* http://www.un.org/News/Press/docs/2008/sgsm11881.doc.html.

[53] 'Nuclear Disarmament and the NPT: The Responsibility of the Nuclear-Weapon States', by Sergio Duarte, High Representative for Disarmament Affairs, United Nations, Global Summit for a Nuclear

44. The first-ever UN General Assembly High-Level Meeting on Nuclear Disarmament was held on 26 September 2013, pursuant to a 2012 resolution which was opposed by France.[54] At that meeting the UK representative delivered a joint statement on behalf of the UK, France and the U.S. in which they welcome "the increased energy and enthusiasm around the nuclear disarmament debate" but "regret that this energy is being directed toward initiatives such as this High-Level Meeting, the humanitarian consequences campaign, the Open-Ended Working Group and the push for a Nuclear Weapons Convention".[55]

45. France subsequently voted against a new UN General Assembly resolution following up the High-Level Meeting.[56] The resolution calls for "the urgent commencement of negotiations, in the Conference on Disarmament, for the early conclusion of a comprehensive convention" to prohibit and eliminate nuclear weapons.

Weapon-Free World: Laying the Practical, Technical, and Political Groundwork, Campaign for Nuclear Disarmament and Acronym Institute for Disarmament Diplomacy, London, 16 February 2008, http://www.un.org/disarmament/HomePage/HR/docs/2008/2008Feb16_London.pdf.

[54] A/RES/67/39, 3 December 2012.

[55] *Available at* http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/HLM/26Sep_UKUSFrance.pdf.

[56] A/RES/68/32, 5 December 2013.

III. THE LAW

A. Article VI of the NPT

46. Article VI provides:

> Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

47. The drafting history of the NPT demonstrates that the treaty constitutes a "strategic bargain": the non-nuclear-weapon States agreed not to acquire nuclear weapons and the NPT nuclear-weapon States agreed to negotiate their elimination.[57] This has been confirmed by NPT Review Conferences. In particular, the 2010 Review Conference noted that the overwhelming majority of States entered into their legally binding commitments not to acquire nuclear weapons "in the context, inter alia, of the corresponding legally binding commitments by the nuclear weapon States to nuclear disarmament in accordance with the Treaty".[58]

48. Article VI is "the single most important provision of the treaty ... from the standpoint of long-term success or failure of its goal of proliferation prevention".[59]

49. In its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the Court declared that Article VI involves "an obligation to achieve a precise result – nuclear disarmament in all its aspects – by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith".[60] The Court went on to conclude, *unanimously,* that "[t]here exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control".[61] This "recognizes that the provisions of Article VI...go beyond mere obligations of conduct - to pursue nuclear disarmament negotiations in good faith - and actually involve an

---

[57] Thomas Graham, Correspondence, The Origin and Interpretation of Article VI, 15 Nonproliferation Review 7, 9 (2008), *available at* http://cns.miis.edu/npr/pdfs/151_correspondence.pdf.

[58] 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Volume I, "Review of the operation of the Treaty", p. 2, para. 2, http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50 (VOL.I).

[59] E. Firmage, 'The Treaty on the Non-Proliferation of Nuclear Weapons', 63 American Journal of International Law (1969) 711, 732.

[60] *Supra,* n. 3, para. 99.

[61] *Id.* para. 105, point 2 F.

obligation of result, i.e., to conclude those negotiations".[62]

50. The Court observed that "fulfilling the obligation expressed in Article VI ... remains without any doubt an objective of vital importance to the whole of the international community today".[63] The Court has long emphasized the importance of obligations *erga omnes*, owed to the international community as a whole.[64] Its conclusion in the Advisory Opinion was tantamount to declaring that the obligation in Article VI is an obligation *erga omnes*.[65] Every State has a legal interest in its timely performance, therefore,[66] and a corresponding legal obligation to help bring it about.[67]

B. Customary International Law

51. The obligations enshrined in Article VI of the NPT are not merely treaty obligations; they also exist separately under customary international law.[68]

52. In its Advisory Opinion, after noting that the twofold obligation in Article VI to pursue and to conclude negotiations *formally* concerns the (now 190[69]) States Parties to the NPT, the Court added that "any realistic search for general and complete disarmament, especially

---

[62] M. Marin Bosch, "The Non-Proliferation Treaty and its Future", in L. Boisson de Chazournes and P. Sands, eds, International Law, the International Court of Justice and Nuclear Weapons, 1999, 375.

[63] *Supra*, n. 3, para. 103.

[64] *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3, para. 33.

[65] *See* President Bedjaoui's Declaration in *Legality of Threat or Use of Nuclear Weapons, supra*, n. 3 at pp. 273-274: "As the Court has acknowledged, the obligation to negotiate in good faith for nuclear disarmament concerns the 182 or so States parties to the Non-Proliferation Treaty. I think one can go beyond that conclusion and assert that there is in fact a twofold *general obligation*, opposable *erga omnes*, to negotiate in good faith and to achieve the desired result".

[66] *See supra*, n. 64.

[67] *Cf. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, paras. 154-159.

[68] *In Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 392, at para. 94, the ICJ held that the fact that principles of customary international law are enshrined in multilateral conventions does not mean that they cease to exist and to apply as principles of customary law.

[69] There are 190 States Parties including the DPRK. Although the DPRK announced its withdrawal from the NPT on 10 January 2003, States Parties continue to express divergent views regarding its status under the Treaty. *See* UN Office for Disarmament Affairs, Treaty on the Non-Proliferation of Nuclear Weapons, Status of the Treaty, http://disarmament.un.org/treaties/t/npt.

nuclear disarmament, necessitates the cooperation of all States".[70]

53. In point 2F of the *dispositif*, moreover, not confining its remarks to the States Parties to the NPT, the Court *unanimously* declared: "There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control".[71]

54. The Court's declaration is an expression of customary international law as it stands today. *All* States are under that obligation, therefore. This is consistent with the view expressed by President Bedjaoui in his Declaration: "Indeed, it is not unreasonable to think that, considering the at least formal unanimity in this field, this twofold obligation to negotiate in good faith and achieve the desired result has now, 50 years on, acquired a *customary character*".[72]

55. As the Court itself noted, the UN General Assembly has been deeply engaged in working for universal disarmament of weapons of mass destruction since its very first resolution in 1946.[73] The UN Security Council also has repeatedly called for the implementation of Article VI by all States,[74] not only Parties to the NPT. In Resolution 1887 of 24 September 2009, after calling upon States Parties to the NPT to implement Article VI, the Council called on "all other States to join in this endeavour".[75] The Council has also described the proliferation of weapons of mass destruction as a threat to international peace and security.[76]

56. Regarding the obligation of cessation of the nuclear arms race at an early date set forth in Article VI, it stands on its own as a customary international law obligation based on the very widespread and representative participation of States in the NPT and is inherent in the customary international law obligation of nuclear disarmament.

57. The General Assembly has declared the necessity of cessation of the nuclear arms race. In the Final Document of its first Special Session on Disarmament, held in 1978, the General Assembly stated that it is "imperative ... to halt and reverse the nuclear arms race until

---

[70] *Supra*, n. 3, p. 226, para. 100.

[71] *Id.*, para. 105.

[72] President Bedjaoui's Declaration in *Legality of Threat or Use of Nuclear Weapons, supra*, n. 3, p. 274, para. 23. President Bedjaoui was referring to the 50 years that had then elapsed since the adoption of the UN General Assembly's first resolution in 1946 and the normative language repeatedly reiterated in its resolutions on nuclear weapons and in other instruments since then.

[73] A/RES/1(I) of 24 January 1946, cited by the Court in para. 101 of the Advisory Opinion.

[74] *E.g.*, Resolution 984 of 11 April 1995, cited by the Court in para. 103 of the Advisory Opinion, and Resolution 1887 of 24 September 2009.

[75] Resolution 1887 of 24 September 2009, operative para. 5.

[76] *E.g.*, Resolution 1887, 24 September 2009.

the total elimination of nuclear weapons and their delivery systems has been achieved".[77]

C. Good Faith

58. That good faith constitutes a "fundamental principle" of international law is beyond dispute.[78] Not only is it a general principle of law for the purposes of Article 38(1)(c) of the Statute of the International Court of Justice[79] and a cardinal principle of the Law of Treaties,[80] it also encapsulates the essence of the Rule of Law in international society[81] and is one of the Principles of the United Nations.

59. Article 2, paragraph 2 of the UN Charter provides: "All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter". The Declaration on Principles of International Law 1970 makes it clear that this duty applies not only to obligations arising under the Charter but also to those arising "under the generally recognized principles and rules of international law" and "under international agreements valid under the generally recognized principles and rules of international law".[82]

60. In the *Nuclear Tests* cases, the ICJ declared: "One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international cooperation, in

---

[77] Final Document of the Tenth Special Session of the General Assembly, adopted by A/RES/S-10/2, 30 June 1978, without a vote, para. 20; *see also, e.g.*, paras. 47, 50, http://www.un.org/disarmament/HomePage/SSOD/ssod4-documents.shtml. The 1978 Special Session established UN disarmament machinery in its current form, with the Conference on Disarmament devoted to negotiations, the Disarmament Commission devoted to deliberation, and the First Committee of the General Assembly devoted to agenda-setting. The Special Session thus was a quasi-constitutional assembly with respect to disarmament.

[78] *See* Robert Kolb, *La bonne foi en droit international public: Contribution à l'étude des principes généraux de droit*, pp. 112-113 (2011).

[79] *Cf, The Free Zones of Upper Savoy and the District of Gex, Second Phase (1930) PCIJ*, Series A, No.24, p.12; *See* J. Crawford, *Brownlie's Principles of Public International Law*, Oxford, 8th edition, 2012, pp.36-37.

[80] Articles 26 and 31(1) of the Vienna Convention on the Law of Treaties 1969.

[81] V. Lowe, *International Law*, Oxford, 2007, p.116.

[82] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, U.N.G.A. Res. 2625 (XXV), 24 October 1970.

particular in an age when this co-operation in many fields is becoming increasingly essential".[83]

61. In the Final Document of the first Special Session on Disarmament, the General Assembly called upon all States to meet requirements of good faith, declaring:

> In order to create favourable conditions for success in the disarmament process, all States should strictly abide by the provisions of the Charter of the United Nations, *refrain from actions which might adversely affect efforts in the field of disarmament, and display a constructive approach to negotiations and the political will to reach agreements.*[84]

62. As set forth above, Article VI of the NPT and customary international law require both conduct *and* result: States must not only negotiate in good faith with serious efforts to achieve the elimination of nuclear weapons, but must also actually *achieve* that result.[85]

63. The Court has stated that the "principle of good faith obliges the Parties to apply [a treaty] in a reasonable way and in such a manner that its purpose can be realized".[86] Conduct that prevents the fulfilment of a treaty's object and purpose is proscribed.[87] Further, conduct that calls into question a State's commitment to the achievement of agreed objectives undermines the trust necessary for successful cooperation towards their achievement. All of this applies equally to the obligation to fulfil customary international law obligations in good faith.[88]

---

[83] *Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974,* p. 253, at p.268, para. 46; *Nuclear Tests (New Zealand v. France), Judgment, Id.*, p. 457, at p. 473, para. 49.

[84] *Supra*, n. 77, para. 41 (emphasis added).

[85] *See supra*, para. 49.

[86] *Case Concerning the Gabcíkovo-Nagymaros Project (Hungary v. Slovakia), I.C.J. Reports 1997*, p. 7, para. 142.

[87] *Report of the International Law Commission Covering its 16th Session, 727th Meeting*, 20 May 1964: Pursuant to the VCLT Article 26 obligation that every treaty in force must be performed by the parties in good faith, the duty of the parties is "not only to observe the letter of the law but also to abstain from acts which would inevitably affect their ability to perform …"; Antonio Cassese, *The Israel-PLO Agreement and Self-Determination*, 4 EUR. J. INT'L L. 567 (1993), *available at* http://www.ejil.org/journal/Vol4/No4/ (when there is an obligation of good faith negotiation, "both Parties are not allowed to (1) advance excuses for not engaging into or pursuing negotiations or (2) to accomplish acts which would defeat the object and purpose of the future treaty"); Judge Mohammed Bedjaoui, "Good Faith, International Law, and Elimination of Nuclear Weapons", Keynote Address, 1 May 2008, http://www.lcnp.org/disarmament/2008May01eventBedjaoui.pdf, pp. 24–29 (in the NPT context, good faith proscribes "every initiative the effect of which would be to render impossible the conclusion of the contemplated disarmament treaty").

[88] *See supra,* para. 59.

IV. OBLIGATIONS BREACHED BY FRANCE

64. Part II of this Application has outlined the facts that are relevant for an assessment of the Respondent's non-compliance with its international obligations with respect to nuclear disarmament and the cessation of the nuclear arms race. Part III has outlined the legal basis for this case. The conduct of the Respondent will now be analyzed very briefly in light of the relevant law.

A. Breach of Article VI of the NPT

65. Two of the obligations entailed by Article VI are relevant for the present case: the obligation with regard to nuclear disarmament and the obligation with regard to the cessation of the nuclear arms race at an early date.

Nuclear disarmament

66. As set forth above, the Court has provided an authoritative analysis of the nuclear disarmament element of the obligations laid down by Article VI. It has held that "the obligation involved here is an obligation to achieve a precise result - nuclear disarmament in all its aspects - by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith".[89] In the *dispositif* of its Advisory Opinion the Court concluded *unanimously*: "There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control".[90]

67. The Respondent opposes UN General Assembly resolutions calling for negotiations to begin. [91]

68. The Respondent also refused to support the establishment of the Open-Ended Working Group.[92]

69. As set forth herein, including in Part II of this Application, France clearly has not actively pursued "negotiations leading to nuclear disarmament in all its aspects under strict and effective international control". On the contrary, it has opposed the efforts of the great majority of non-nuclear-weapon States to initiate such negotiations. Accordingly, the Respondent has breached and continues to breach its nuclear disarmament obligations under Article VI of the

---

[89] *Supra*, n. 3, para. 99.

[90] *Id.*, para. 105, point 2F.

[91] *Supra*, para. 39.

[92] *Supra*, para. 35.

NPT.

Cessation of the nuclear arms race at an early date

70. With regard to the cessation of the nuclear arms race at an early date, the Respondent's conduct is similarly negative and obstructive.

71. Its conduct, set forth in Part II of this Application, in (i) continuing engagement in material efforts to qualitatively improve its nuclear weapons systems; (ii) continuing efforts to maintain and extend those systems indefinitely; and (iii) opposing negotiations on comprehensive nuclear disarmament or other measures in multilateral forums, including the Open-Ended Working Group and the UN General Assembly, is clear evidence of the Respondent's ongoing breach of its Article VI obligation regarding the cessation of the nuclear arms race at an early date.[93]

72. Despite having been a party to the NPT for 21 years, therefore, the Respondent has breached and continues to breach its obligation under Article VI regarding the cessation of the nuclear arms race at an early date.

B. Breach of Customary International Law

73. For the reasons set out above, the obligations enshrined in Article VI of the NPT are not merely treaty obligations; they also exist separately under customary international law.

74. On the same grounds as those relied on in the preceding Section of this Application, the Respondent has breached and continues to breach its obligations under customary international law with regard to nuclear disarmament and the cessation of the nuclear arms race at an early date.

C. Breach of the Obligation to Perform Its Obligations in Good Faith

75. In the previous two Sections, the Applicant has submitted that the Respondent has breached and continues to breach its obligations under both the NPT and customary international law regarding nuclear disarmament and cessation of the nuclear arms race at an early date. The Respondent is also failing to act in good faith as far as its performance of those obligations is concerned.

76. As set forth in Part II of this Application, the Respondent has been actively

[93] *See supra*, Parts II.C.4 and II.D.

upgrading, modernizing and improving its nuclear arsenal. This constitutes qualitative vertical nuclear proliferation that clearly conflicts with the Respondent's fundamental commitment to nuclear disarmament and cessation of the nuclear arms race at an early date. It also encourages other States possessing nuclear weapons to follow suit and may induce non-nuclear-weapon States to reconsider their non-nuclear posture.

77. The Respondent has also repeatedly declared its intention to rely on its nuclear arsenal for the foreseeable future.[94]

78. In short, by not actively pursuing negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and instead engaging in conduct that directly conflicts with those binding commitments, the Respondent has breached and continues to breach its legal duty to perform its obligations under the NPT and customary international law in good faith.

[94] *Supra*, n. 36.

V. JURISDICTION OF THE COURT

79. The Applicant and the Respondent are parties to the Statute of the Court by virtue of their status as Members of the United Nations. Whereas the Applicant accepted the compulsory jurisdiction of the Court through the Declaration of 15 March 2013 (deposited on 24 April 2013), the Respondent has not made any declaration under Article 36, paragraph 2, of the Statute of the Court. Accordingly, pursuant to Article 36, paragraph 1, of the Statute of the Court and Article 38, paragraph 5, of the Rules of Court, the Applicant seeks to found the Court's jurisdiction on the consent of the Respondent, which the Applicant assumes will be given for the purposes of this case.

80. Ever since this Court declared in its Advisory Opinion of 8 July 1996 that "[t]here exists an *obligation* to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control" (emphasis added), the Respondent has refused to initiate or to participate in such negotiations. It has refused to do so even though a great majority of UN Member States have time and again in the General Assembly and elsewhere called upon all States to fulfil the obligation stipulated by the Court.

81. Given the enormity of the issue at stake, and "[c]onsidering the devastation that would be visited upon all mankind by a nuclear war and *the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples*" (NPT preamble, emphasis added), the Respondent may be expected to come forward and explain to this Court, the World Court, why it continues to breach this essential obligation.

82. Therefore, the Applicant respectfully requests and urges the Respondent to consent to the jurisdiction of the Court for the purposes of this case.

VI. FINAL OBSERVATIONS

83. Pursuant to Article 31 of the Statute of the Court and Article 35, paragraph 1 of its Rules, the Applicant will exercise the power conferred by Article 31 of the Statute and choose a person to sit as judge ad hoc and will so inform the Court in due course.

84. The Applicant reserves the right to modify and extend the terms of this Application, the grounds invoked and the Remedies requested.

REMEDIES

On the basis of the foregoing statement of facts and law, the Republic of the Marshall Islands requests the Court

to adjudge and declare

a) that France has violated and continues to violate its international obligations under the NPT, more specifically under Article VI of the Treaty, by failing to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control;

b) that France has violated and continues to violate its international obligations under the NPT, more specifically under Article VI of the Treaty, by taking actions to qualitatively improve its nuclear weapons arsenal and to maintain it for the indefinite future, and by failing to pursue negotiations that would end nuclear arms racing through comprehensive nuclear disarmament or other measures;

c) that France has violated and continues to violate its international obligations under customary international law, by failing to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control;

d) that France has violated and continues to violate its international obligations under customary international law, by taking actions to qualitatively improve its nuclear weapons systems and to maintain them for the indefinite future, and by failing to pursue negotiations that would end nuclear arms racing through comprehensive nuclear disarmament or other measures;

e) that France has failed and continues to fail to perform in good faith its obligations under the NPT and under customary international law by modernizing, updating and upgrading its nuclear weapons capacity and maintaining its declared nuclear weapons policy for an unlimited period of time, while at the same time failing to pursue negotiations as set out in the four preceding counts; and

f) that France has failed and continues to fail to perform in good faith its obligations under the NPT and customary international law by effectively preventing the great majority of non-nuclear-weapon States from fulfilling their part of the obligations under Article VI of the Treaty and under customary international law with respect to nuclear disarmament and cessation of the nuclear arms race at an early date

In addition, the Republic of the Marshall Islands requests the Court

to order

France to take all steps necessary to comply with its obligations under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons and under customary international law within one year of the Judgment, including the pursuit, by initiation if necessary, of negotiations in good faith aimed at the conclusion of a convention on nuclear disarmament in all its aspects under strict and effective international control.

DATED this 24th of April 2014

Tony A. deBrum
Co-Agent of the
Republic of the Marshall Islands
and Minister of Foreign Affairs of the
Republic of the Marshall Islands

Phon van den Biesen
Co-Agent of the
Republic of the Marshall Islands