APPLICATION

INSTITUTING PROCEEDINGS

AGAINST

THE REPUBLIC OF INDIA

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. India and the Nuclear Arms Race 9

1. Early Nuclear History 9

2. India's Current Nuclear Arsenal 10

3. Nuclear Policy, Doctrine, and Expenditure 11

4. Current Plans for Expansion, Improvement, and Diversification of India's Nuclear Arsenal 12

D. India and Nuclear Disarmament 14

III. THE LAW 17

A. Article VI of the NPT: An Obligation *Erga Omnes* 17

B. Customary International Law 18

C. Good Faith 20

IV. OBLIGATIONS BREACHED BY INDIA 22

A. Breach of Customary International Law 22

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

V. JURISDICTION OF THE COURT 24

VI. FINAL OBSERVATIONS 24

REMEDIES 25

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. In its Advisory Opinion of 8 July 1996 on the *Legality of the Threat or Use of Nuclear Weapons*,[1] this 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".[2] 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".[3] Largely based on its analysis of Article VI of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons[4] (hereafter "the Treaty" or "the NPT"), the Court *unanimously* concluded: "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".[5]

2. This Application is not an attempt to re-open the question of the legality of nuclear weapons. Rather, the focus of this Application is the failure to fulfil the obligations of customary international law with respect to cessation of the nuclear arms race at an early date and nuclear disarmament enshrined in Article VI of the NPT and declared by the Court.

3. 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".[6] We shall also continue to face the possibility, even the likelihood, of nuclear weapons being used by accident, miscalculation or design,[7] and of their proliferation. As Nobel Peace Laureate Sir Joseph Rotblat pointed out: "If some nations –

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

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

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

[4] 729 UNTS 161.

[5] *Supra*, n. 1, para. 105, point 2F.

[6] NPT preamble, 2nd recital.

[7] 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 October 1996, vol. 575, cols. 134.

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".[8]

4. 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".[9] A coherent legal system cannot countenance its own destruction or that of the community whose activities it seeks to regulate.[10] 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.

5. 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"[11] and "elementary considerations of humanity"[12] which help to shape an emerging "law of humanity",[13] the international law for humankind of which the nuclear disarmament obligation is a key element. Yet it is now 68 years since the very

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

[9] *Supra*, n. 1, para. 98.

[10] 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 in *Legality of the Threat or Use of Nuclear Weapons*, *supra*, n. 1, 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".

[11] 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".

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

[13] *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.

first United Nations General Assembly Resolution sought to put in motion the elimination from national arsenals of nuclear and other weapons of mass destruction,[14] 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.[15]

6. Inspired and guided by these principles and values, this is an Application instituting proceedings against the Republic of India ("India"), a State possessing nuclear weapons not party to the NPT. The underlying claims, described in more detail herein, are that India is: (i) in continuing breach of its obligations under customary international law, 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; and (ii) in continuing breach of its obligation to perform its international legal obligations in good faith.

7. The Applicant herein is the Republic of the Marshall Islands (the "Marshall Islands" or "RMI"). The Applicant is a non-nuclear-weapon State ("NNWS") Party to the NPT. The Marshall Islands acceded to the Treaty as a Party on 30 January 1995, and has continued to be a Party to it since that time.

8. 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."). [16] During those 12 years, 67 nuclear weapons of varying explosive power were detonated in the Marshall Islands, at varying distances from human population.[17] 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.[18] The Special Rapporteur concludes that "the harm suffered by the Marshallese people has resulted

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

[15] *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".

[16] 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.

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

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

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".[19]

9. 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]".[20] 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 total nuclear disarmament pursuant to Article VI and customary international law remains at best a distant prospect. This Application seeks to ensure that India fulfils in good faith and in a timely manner all its legal obligations in relation to cessation of the nuclear arms race and to nuclear disarmament.

10. 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.[21] 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.[22]

11. As previously stated, the Court concluded its Advisory Opinion of 8 July 1996 by

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

[20] *Supra*, n. 1, para. 95.

[21] 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.

[22] *Supra*, n. 4.

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".[23]

12. More than four decades after the NPT entered into force, India has not joined the Treaty as a non-nuclear-weapon State, and instead has tested nuclear weapons and acquired a nuclear arsenal which it is maintaining, improving, diversifying, and expanding.

13. India has not fulfilled its obligation under customary international law to pursue in good faith negotiations to cease the nuclear arms race at an early date, and instead is taking actions to improve and expand its nuclear forces and to maintain them for the indefinite future.

14. Similarly, India has not fulfilled its obligation under customary international law to pursue in good faith negotiations leading to nuclear disarmament in all its aspects under strict and effective international control, in particular by engaging a course of conduct, the quantitative build-up and qualitative improvement of its nuclear forces, contrary to the objective of nuclear disarmament.

15. 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 that India has breached.

[23] *Supra*, n. 1, para. 105, point 2F.

II. FACTS

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

16. 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 August 29, 1949. 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.

17. 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".[24]

18. The Treaty was opened for signature on 1 July 1968, and entered into force on 5 March 1970.

B. The Nine States Possessing Nuclear Weapons

19. 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").[25]

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

[24] 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".

[25] *See infra*, n. 81.

World nuclear forces, January 2013[26]

(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. India and the Nuclear Arms Race

1. Early Nuclear History

21. Indian Prime Minister Lal Bahadur Shastri authorized limited movement toward a nuclear weapons program following the nuclear explosive test conducted by China in 1964.[27]

[26] *See* 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.

[27] *See* Rajesh M. Basrur, "Indian Perspectives on the Global Elimination of Nuclear Weapons", in Barry M. Blechman and Alexander K. Bollfrass, eds., National Perspectives on Nuclear Disarmament (Washington: Henry L. Stimson Center, 2010), pp. 60-61.

India conducted its first test in 1974 when it exploded a plutonium fission device[28] in what it described as a "peaceful nuclear explosion experiment".[29] At the time of that test the Atomic Energy Commission of India stated that "India had no intention of producing nuclear weapons".[30] By 1986-1988, India is believed to have had nuclear bombs deliverable by aircraft.[31]

22. In 1998, India conducted five nuclear weapon test explosions, of various types, including thermonuclear.[32] India has conducted no further tests.

2. India's Current Nuclear Arsenal

23. As of 2013, India was estimated to have 90-110 nuclear warheads.[33] The operational delivery systems reportedly are two intermediate range aircraft, the Mirage 2000 H and Jaguar IS/IB, and two short or intermediate range land based ballistic missiles, Prithvi I and Agni I.[34] It is reported that India's warheads are not deployed, but are instead in central storage.[35]

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[28] *See* Timothy McDonnell, "Nuclear Pursuits: Non-P-5 nuclear-armed states, 2013", Bulletin of the Atomic Scientists, Nuclear Notebook (69(1), 2013) (hereafter "McDonnell"), pp. 64, 67, http://bos.sagepub.com/cgi/reprint/69/1/62.

[29] Report of the Conference of the Committee on Disarmament, twenty-ninth session (A/9627), New York, 1975, p. 8, https://disarmament-library.un.org/UNODA/Library.nsf/6dc03c1297fa943485257775005b138c/6d913cb85a9acfdd85257833006db095/$FILE/A-9627.pdf.

[30] *Id.*

[31] McDonnell, *supra*, n. 28.

[32] M.V. Ramana, "India", 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) (hereafter "Ramana"), p. 34, http://www.reachingcriticalwill.org/images/documents/Publications/modernization/assuring-destruction-forever.pdf; McDonnell, *supra*, n.28, at pp. 65, 67.

[33] *See* Shannon N. Kile, Phillip Schell and Hans M. Kristensen, World Nuclear Forces, Chapter VI., Indian nuclear forces (2013), http://www.sipri.org/yearbook/2013/06; *see also infra* n. 34.

[34] *See* Hans M. Kristensen and Robert S. Norris, Bulletin of the Atomic Scientists, *India nuclear forces,* 2012 (hereafter "Kristensen and Norris"), p. 100, http://bos.sagepub.com/content/68/4/96.full.pdf+html; Ramana, *supra*, n. 32, pp. 35-36. The Mirage 2000H aircraft has a range of 1,800 km; the Jaguar IS/IB, 1,600. The Prithvi I missile has a range of 150 km; the Agni I 700 plus. These analysts note that other aircraft and missiles, *e.g.* Agni II with a range of 2,000 km, may be capable of delivering nuclear warheads.

[35] FAS, Status of World Nuclear Forces 2013, https://www.fas.org/programs/ssp/nukes/nuclearweapons/nukestatus.html.

3. Nuclear Policy, Doctrine, and Expenditure

24. India has stated: "Nuclear weapons are an integral part of our national security and will remain so, pending the global elimination of all nuclear weapons on a universal, non-discriminatory basis".[36]

25. According to a 2003 statement of the government of India concerning a cabinet committee review of nuclear doctrine, "nuclear weapons will only be used in retaliation against a nuclear attack on Indian territory or on Indian forces anywhere", and such "retaliation to a first strike will be massive and designed to inflict unacceptable damage".[37] The statement also says: "However, in the event of a major attack against India, or Indian forces anywhere, by biological or chemical weapons, India will retain the option of retaliating with nuclear weapons".[38]

26. Regarding the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT), India is one of the 44 Annex II countries that must ratify the treaty for it to enter into force.[39] India has not signed or ratified the CTBT, and has given no clear signals that it intends to do so.[40] When the CTBT was adopted in September 1996, India objected strongly that the treaty is "unequal" and perpetuates the "existing global insecurity born of world divided unequally into nuclear haves and have-nots".[41] However, should the U.S. and China ratify the CTBT, prospects would

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[36] Conference on Disarmament, CD/PV.1139, Final record of the one thousand one hundred and thirty-ninth plenary meeting on 29 May 2009, p. 8, https://disarmament-library.un.org/UNODA/Library.nsf/a61ff5819c4381ee85256bc70068fa14/fc4bbebce96dc99c85257678005353ed/$FILE/CD-PV1139.pdf.

[37] "The Cabinet Committee on Security Reviews operationalization of India's Nuclear Doctrine", Indian Government Statement, New Delhi, 4 January 2003, http://www.acronym.org.uk/docs/0301/doc06.htm.

[38] *Id.* The committee reportedly adopted a 1996 draft report on nuclear doctrine by the National Security Advisory Board, *available at* http://www.fas.org/nuke/guide/india/doctrine/990817-indnucld.htm. However, the reservation of an option for a nuclear response to a biological or chemical attack is not explicitly stated in the draft report. The report had retained flexibility in that and other respects by stating that "the fundamental purpose", and therefore perhaps not the only purpose, "of Indian nuclear weapons is to deter the use and threat of use of nuclear weapons by any State or entity against India and its forces".

[39] Per Article XIV.

[40] *See* Eloise Watson, The CTBT: Obstacles to Entry into Force (New York: Reaching Critical Will of the Women's International League for Peace and Freedom, September 2012), pp. 11-13, http://www.reachingcriticalwill.org/images/documents/Publications/ctbt-obstacles.pdf; Liviu Horovitz and Robert Golan-Vilella, "Comprehensive Nuclear-Test-Ban Treaty: How the Dominoes Might Fall After U.S. Ratification", 17 *Nonproliferation Review* (No. 2, July 2010), pp. 246-248.

[41] Statement in explanation of vote by Ms. Arundhate Ghose, Ambassador/Permanent Representative of India to the UN offices at Geneva, on item 65: CTBT at the 50th Session of the UN General Assembly at New York on 10 September, 1996, http://www.fas.org/news/india/1996/ctbt_UN_september_10_96.htm.

greatly improve for India to join the treaty, as the Indian Prime Minister acknowledged in 2009.[42]

27. Regarding a Fissile Materials Cut-off Treaty, "[w]ithout prejudice to the priority we attach to nuclear disarmament", India accepts a Conference on Disarmament program of negotiations on a Fissile Materials Cut-off Treaty and discussions short of negotiations on nuclear disarmament, assurances of non-use of nuclear weapons against non-nuclear-weapon States, and prevention of an arms race in outer space.[43]

28. India does not release information on its nuclear weapons spending, and it is difficult to reliably estimate such spending.[44] One non-governmental estimate is that India's nuclear weapons spending in 2010 was U.S. $4.1 billion, and that in 2011, the spending increased to U.S. $4.9 billion.[45]

4. Current Plans for Expansion, Improvement, and Diversification of India's Nuclear Arsenal

29. India's development of its nuclear arsenal has focused on increasing the diversity, range, and sophistication of its nuclear delivery vehicles, including land and sea based missiles, aircraft, and submarines.[46]

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[42] Minutes of Joint Press Conference by Prime Minister Yukio Hatoyama of Japan and Prime Minister Manmohan Singh of India Following the Japan-India Summit Meeting, 29 December 2009: "Prime Minister Singh indicated that should the US and China sign the CTBT, a new situation would in fact emerge, and that he considered it necessary to work globally towards the early entry into force of the Treaty"; *see also* The CTBT: Obstacles to Entry into Force, *supra*, n. 40, at p. 15.

[43] *See infra, n. 64*; Statement by India at the CD Plenary on 4 February 2014, http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2014/Statements/part1/4Feb_India.pdf; Statement by the Mr. DB Venkatesh Varma, Permanent Representative of India to the Conference on Disarmament at the CD Plenary, 3 March 2014, http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2014/Statements/part1/3March_India.pdf.

[44] M.V. Ramana, "India", in Ray Acheson, ed., Still assuring destruction forever (Reaching Critical Will – a project of the Women's International League for Peace and Freedom, 2013) (hereafter, "Ramana, Still assuring destruction forever"), p. 10, http://www.reachingcriticalwill.org/images/documents/Publications/modernization/still-assuring-destruction-forever.pdf.

[45] Bruce G. Blair et al., Global Zero Technical Report; Nuclear Weapons Costs Study, June 2011, http://www.globalzero.org/files/gz_nuclear_weapons_cost_study.pdf.

[46] Ramana, Still assuring destruction forever, *supra*, n. 44.

30. India is developing at least five land and sea based missiles, as summarized in this chart prepared by Hans Kristensen and Robert Norris, whose analyses for the Bulletin of Atomic Scientists are widely cited:

Indian nuclear forces, 2012[47]

Type/designation	Range (km)	Payload (kg)	Comment
Aircraft:			
Mirage 2000 H/Vajra	1,800	6,300	GwaliorAir Force Station
Jaguar IS/IB/Shamsher	1,600	4,775	Ambala Air Force Station
Land based missiles:			
Prithvi I	150	1,000	Nuclear version entered service after 1998 with the army's 333rd and 355th Missile Groups.
Agni I	700+	1,000	Deployed with the army's new 334 Missile Group in 2004
Agni II	2,000+	1,000	Under development.
Agni II+	2,000+	1,000	Under development.
Agni III	3,000+	1,500	Under development.
Sea based missiles:			
Dhanush	350	500	Under development.
Sagarika/K-15	300-700	300-700	Under development.

In addition to the missiles under development listed above, India is believed to be planning an intercontinental ballistic missile (ICBM), the Agni VI, and a ground-launched cruise missile.[48]

31. In April 2012, India conducted a test-launch of a land based ballistic missile, the Agni V, with a range reportedly greater than 5,000 km, enabling coverage of any target in China.[49]

[47] Kristensen and Norris, *supra*, n. 34, p. 100.

[48] *See* 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, slide 15, http://www.fas.org/programs/ssp/nukes/publications1/Brief2013_GWU-APS.pdf.

[49] Kristensen and Norris, *supra*, n. 34, p. 96; Ajai Shukla, "India launches 5,000-km range Agni-5 missile successfully", Business Standard, 24 April 2012, http://www.business-standard.com/article/economy-policy/ajai-shukla-perfect-launch-for-5-000-km-range-missile-112041900152_1.html.

32. In January 2013, India conducted its first publicly announced test of a ballistic missile suitable for launch from a submarine.[50] India has had a nuclear-powered submarine for deployment of missiles under development for more than three decades.[51] It aims to have a sea based nuclear force in the near future, if it is not already operational, in addition to its land and air based forces.[52]

33. Regarding air-based Indian nuclear forces, it is reported that in 2012 discussions between India and France began for the purchase by India from France of 126 nuclear-capable Rafale jets, with a tentative delivery date of 2016-2017.[53]

34. India uses plutonium for the explosive core of nuclear warheads,[54] and continues to add to its stockpile of weapons-grade plutonium.[55] India currently has one operating plutonium production reactor, and is building another.[56] India is also building a fast-breeder reactor that once operational will significantly increase its capacity to produce weapons-grade plutonium.[57] India also has a large stockpile of reactor-grade plutonium that could be used for weapons if India so chooses.[58]

D. India and Nuclear Disarmament

35. India has not joined the NPT as an NNWS, the only option open to it under the terms of the Treaty.[59] India further maintains that commitments and calls made in conferences of NPT States Parties do not apply to it, in particular rejecting calls made by NPT States Parties, as

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[50] Y. Mallikarjun and T. S. Subramanian, "India successfully test-fires underwater missile", 27 January 2013, http://www.thehindu.com/news/national/india-successfully-testfires-underwater-missile/article4350553.ece. The missile tested was the Sagarika/K-15 with a range of 700 km.

[51] Ramana, *supra*, n. 32, p. 36. At least two other nuclear-powered submarines are being developed. *Id.*; *see also* "India successfully test-fires underwater missile", *supra*, n. 50.

[52] Ramana, Still assuring destruction forever, *supra*, n. 44, p. 10.

[53] *See, e.g.,* "France Sells Nuclear-Capable Aircraft to India", *Global Security Newswire*, 7 February 2012, www.nti.org/gsn; Kristensen and Norris, *supra*, n. 46, p. 97; Tamir Eshel, "Rafale Deliveries Could Begin in 2016-2017", *Defense Update*, 18 June 2013, http://defense-update.com.

[54] Ramana, *supra*, n. 32, p. 36.

[55] *See* estimates of the International Panel on Fissile Materials cited in Ramana, Still assuring destruction forever, *supra*, n. 44, p. 10, and Ramana, *supra*, n. 32, p. 36.

[56] Ramana, *supra*, n. 32, pp. 36, 37. The second reactor will be part of a new complex, and is planned to be operational by 2018. *Id.* at p. 37.

[57] Kristensen and Norris, *supra*, n. 34, p. 97; Ramana, *supra*, n. 32, p. 37.

[58] Ramana, *supra*, n. 32, pp. 36.

[59] India does not qualify as a "nuclear-weapon State" under Article IX.3 of the Treaty.

well as the General Assembly and the Security Council, for it to join the NPT as an NNWS.[60] However, India has consistently voted for the General Assembly resolution welcoming the Court's conclusion regarding the disarmament obligation.[61] India states that it has never contributed to the spread of sensitive technologies.[62] It adds that it is updating regulations relating to export controls and taking measures to strengthen nuclear security in accord with international efforts to prevent the acquisition of nuclear weapons by non-state actors and additional States.[63]

36. India supports the commencement of negotiations on complete nuclear disarmament in the Conference on Disarmament.[64] It also votes for UN General Assembly resolutions calling for negotiation of a Nuclear Weapons Convention, including "Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons",[65] and a resolution newly offered in 2013 following up on the High-Level Meeting on Nuclear Disarmament.[66] The latter 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.[67] India abstained on the 2012 resolution establishing an Open-Ended Working Group to take forward proposals for multilateral nuclear disarmament negotiations,[68] but subsequently participated in the Working Group.

37. The first-ever UN General Assembly High-Level Meeting on Nuclear Disarmament, referenced in the preceding paragraph, was held on 26September 2013, pursuant

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[60] *E.g.*, "India EOV: L. 43 United action towards the total elimination of nuclear weapons [A/RES/68/51]", 4 November 2013, http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com13/eov/L43_India.pdf.

[61] Most recently adopted as A/RES/68/42, 5 December 2013.

[62] *E.g.*, Statement of Indian Prime Minister Manmohan Singh at Seoul Nuclear Security Summit, 27 March 2012, http://www.mea.gov.in/Speeches-Statements.htm?dtl/19078/: "India has never been a source of proliferation of sensitive technologies and we are determined to further strengthen our export control systems to keep them on par with the highest international standards".

[63] Nuclear Security Summit National Progress Report, 27 March 2012, http://www.mea.gov.in/bilateral-documents.htm?dtl/19074/.

[64] Statement by H.E. Mr. Salman Khurshid, Minister of External Affairs of India, at the High Level Meeting of the General Assembly on Nuclear Disarmament, 68th United Nations General Assembly in New York, 26 September 2013, http://www.un.org/en/ga/68/meetings/nucleardisarmament/pdf/IN_en.pdf.

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

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

[67] *Id.*

[68] A/RES/67/56, 3 December 2012; UN Doc A/67/PV.48, pp. 20-21.

to a 2012 resolution which was supported by India.[69] At that meeting, Salman Khurshid, Minister of External Affairs of India, placed India's support for nuclear disarmament in the context of the 1988 Rajiv Gandhi "Action Plan for a nuclear weapon free and non-violent world order".[70] He stated that India has a "posture of no-first use", maintained that India "refuse[s] to participate in an arms race, including a nuclear arms race", and noted that India's "proposal for a Convention banning the use of nuclear weapons remains on the table".[71]

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

[70] Statement by H.E. Mr. Salman Khurshid, *supra*, n. 64.

[71] *Id.*

III. THE LAW

A. Article VI of the NPT: An Obligation *Erga Omnes*

38. 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.

39. 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".[72] 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 control".[73] 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 obligation of result, *i.e.*, to conclude those negotiations".[74]

40. 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".[75] The Court has long emphasized the importance of obligations *erga omnes*, owed to the international community as a whole.[76] Its conclusion in the Advisory Opinion was tantamount to declaring that the obligation in Article VI is an obligation *erga omnes*.[77] Every State has a legal interest in its timely performance, therefore,[78] and a corresponding legal

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[72] *Supra*, n. 1, para. 99.

[73] *Supra*, n. 1, para. 105, point 2 F.

[74] 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, p. 375.

[75] *Supra*, n. 1, para. 103.

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

[77] *See* President Bedjaoui's Declaration in *Legality of Threat or Use of Nuclear Weapons, supra*, n. 1 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".

[78] *Barcelona Traction, Light and Power Company, Limited, supra,* n. 76.

obligation to help bring it about.[79]

B. Customary International Law

41. The obligations enshrined in Article VI of the NPT are not merely treaty obligations; they also exist separately under customary international law.[80]

42. In its Advisory Opinion, after noting that the twofold obligation in Article VI to pursue and to conclude negotiations *formally* concerns the (now 190[81]) States Parties to the NPT, the Court added that "any realistic search for general and complete disarmament, especially nuclear disarmament, necessitates the cooperation of all States".[82]

43. 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".[83]

44. 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*".[84]

45. In voting over many years since 1996 for the General Assembly resolution on

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[79] *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.

[80] 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 I.C.J. 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.

[81] 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.

[82] *Supra*, n. 1, para. 100.

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

[84] President Bedjaoui's Declaration in *Legality of Threat or Use of Nuclear Weapons, supra*, n. 1, 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.

follow-up to the Court's opinion, India appears to have accepted the universality of that obligation. In operative paragraph one of the resolution, the General Assembly: "*Underlines once again* the unanimous conclusion of the International Court of Justice that 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".[85]

46. 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.[86] The UN Security Council also has repeatedly called for the implementation of Article VI by all States,[87] 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".[88] The Council has also described the proliferation of weapons of mass destruction as a threat to international peace and security.[89]

47. 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.

48. 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 the total elimination of nuclear weapons and their delivery systems has been achieved".[90]

49. Shortly after India and Pakistan conducted nuclear explosive tests in 1998, in Resolution 1172 the Security Council demanded that the two countries refrain from further tests,

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[85] A/RES/68/42, 5 December 2013. During some of the years since the resolution was first put forward in 1997, a separate vote was held on the first operative paragraph. India voted "yes" on those occasions. Regarding the vote on that paragraph in A/61/83, 6 December 2006, *see* UN Department of Public Information, GA/10547, http://www.un.org/News/Press/docs/2006/ga10547.doc.htm.

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

[87] *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.

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

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

[90] 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.

called on all States to refrain from tests in accordance with the provisions of the Comprehensive Nuclear-Test-Ban Treaty, and called on India and Pakistan "immediately to stop their nuclear weapon development programmes, to refrain from weaponization or from the deployment of nuclear weapons, to cease development of ballistic missiles capable of delivering nuclear weapons and any further production of fissile material for nuclear weapons".[91]

C. Good Faith

50. That good faith constitutes a "fundamental principle" of international law is beyond dispute.[92] 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[93] and a cardinal principle of the Law of Treaties,[94] it also encapsulates the essence of the Rule of Law in international society[95] and is one of the Principles of the United Nations.

51. 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".[96]

52. In the *Nuclear Tests* cases, the I.C.J. 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

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[91] 6 June 1998, operative paras. 2, 7.

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

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

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

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

[96] 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".[97]

53. 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.*[98]

54. As set forth above, the customary international law obligation of nuclear disarmament requires 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.[99]

55. 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".[100] Conduct that prevents the fulfilment of a treaty's object and purpose is proscribed.[101] 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.[102]

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

[98] *Supra*, n. 90, para. 41 (emphasis added).

[99] *Supra*, para. 39.

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

[101] 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").

[102] *See supra*, para. 51.

IV. OBLIGATIONS BREACHED BY INDIA

56. 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 Customary International Law

Nuclear disarmament

57. As set forth above, the Court has provided an authoritative analysis of the obligation of nuclear disarmament. With respect to Article VI of the NPT, 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".[103] 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".[104]

58. Although India expressly supports the commencement of nuclear disarmament negotiations and participated in the Open-Ended Working Group,[105] it has breached this obligation of customary international law by engaging in a course of conduct, the quantitative build-up and qualitative improvement of its nuclear forces, contrary to the objective of nuclear disarmament.[106]

Cessation of the nuclear arms race at an early date

59. The customary international law obligation of cessation of the nuclear arms race at an early date is rooted in Article VI of the NPT and resolutions of the General Assembly and the Security Council and is inherent in the obligation of nuclear disarmament enunciated by the Court. The Respondent is failing to comply with this obligation; on the contrary, it is engaged in all-out nuclear arms racing.

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[103] *Supra*, n. 1, para. 99.

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

[105] *See supra*, Part II.D.

[106] *See supra*, Part II.

60. Its conduct, set forth in Part II of this Application, in quantitatively building up its nuclear forces, qualitatively improving and diversifying them, and planning and preparing to maintain them for the indefinite future, is clear evidence of India's ongoing breach of the obligation regarding the cessation of the nuclear arms race at an early date.

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

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

62. As set forth in Part II of this Application, the Respondent is engaged in the quantitative build-up, diversification, and qualitative improvement of its nuclear arsenal. This constitutes vertical nuclear proliferation that clearly conflicts with the Respondent's obligations of 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.

63. The Respondent's plans and policies also manifest an intention to rely on its nuclear arsenal for decades to come.

64. In short, by engaging in conduct that directly conflicts with the obligations of nuclear disarmament and cessation of the nuclear arms race at an early date, the Respondent has breached and continues to breach its legal duty to perform its obligations under customary international law in good faith.

V. JURISDICTION OF THE COURT

65. In accordance with the provisions of Article 36, paragraph 2, of the Statute, jurisdiction exists by virtue of the operation of the Declaration of the Marshall Islands dated 15 March 2013 (and deposited 24 April 2013) and the Declaration of the Republic of India dated 15 September 1974 (and deposited 18 September 1974), each Declaration without pertinent reservation.

VI. FINAL OBSERVATIONS

66. 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.

67. 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 India 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, in particular by engaging a course of conduct, the quantitative buildup and qualitative improvement of its nuclear forces, contrary to the objective of nuclear disarmament;

b) that India has violated and continues to violate its international obligations under customary international law with respect to cessation of the nuclear arms race at an early date, by taking actions to quantitatively build up its nuclear forces, to qualitatively improve them, and to maintain them for the indefinite future;

c) that India has failed and continues to fail to perform in good faith its obligations under customary international law by taking actions to quantitatively build up its nuclear forces, to qualitatively improve them, and to maintain them for the indefinite future; and

d) that India has failed and continues to fail to perform in good faith its obligations under customary international law by effectively preventing the great majority of non-nuclear-weapon States from fulfilling their part of the obligations under customary international law and Article VI of the NPT 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

India to take all steps necessary to comply with its obligations under customary international law with respect to cessation of the nuclear arms race at an early date and nuclear disarmament 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