APPLICATION

INSTITUTING PROCEEDINGS

AGAINST

THE UNITED KINGDOM

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 9

A. The Five Nuclear Weapon States Parties to the NPT 9

B. The Nine States Possessing Nuclear Weapons 9

C. The UK and the Nuclear Arms Race 11

1. Early Nuclear History 11

2. The UK's Current Nuclear Arsenal 12

3. Nuclear Policy, Doctrine and Expenditure 15

4. Current Plans for Modernization and Qualitative Improvements of the UK's Nuclear Arsenal 18

D. The UK and Nuclear Disarmament 23

1. History and General Policy Regarding Negotiation of Nuclear Disarmament 23

2. Opposition to Negotiation of a Nuclear Weapons Convention 25

III. THE LAW 29

A. Article VI of the NPT 29

B. Customary International Law 30

C. Good Faith 32

IV. OBLIGATIONS BREACHED BY THE UK 35

A. Breach of Article VI of the NPT 35

B. Breach of Customary International Law 36

C. Breach of the Obligation to Perform its Obligations in Good Faith 36

V. JURISDICTION OF THE COURT 38

VI. FINAL OBSERVATIONS 38

REMEDIES 39

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 the non-nuclear-weapon States have agreed not to acquire nuclear weapons and the NPT nuclear-weapon States have 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

---

[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.

upon all mankind by a nuclear war'.[7] We shall also continue to face the possibility, even the 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]

---

[7] NPT preamble, 2nd recital.

[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 October 1996, vol. 575, col. 134. .

[9] Joseph Rotblat, "Science and Nuclear Weapons: Where Do We Go From Here?" The Blackaby Papers, No. 5, December 2004, p. 7. In February 2007, Mohamed ElBaradei, then Director General of the IAEA, said that Britain cannot "modernise its Trident submarines and then tell everyone else that nuclear weapons are not needed in the future". *See* David Blair, 'UN nuclear watchdog: Trident is hypocritical', *Daily Telegraph*, 20 February 2007.

[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 in *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,

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 weapons 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 constitutes a flagrant denial of human justice.[16]

7. Inspired and guided by these principles and values, this is an Application instituting proceedings against the United Kingdom ("UK"), an NPT nuclear-weapon State. The underlying claims, described in more detail herein, are that the UK 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", "RMI" or "Applicant). The Applicant is a non-nuclear-weapon State Party to the NPT. The Marshall Islands acceded to the Treaty on 30 January 1995 and has continued to be a Party to it since that time.

---

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.

[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(1), 24 January 1946.

[16] *Cf.* Judge Cançado Trindade's remarks in Section XIII 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".

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 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 total nuclear disarmament pursuant to Article VI and customary international law remains at best a distant prospect. This Application

---

[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.

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

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

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

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

seeks to ensure that the legal obligations undertaken 44 years ago by the UK 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 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.

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".[23]

14. More than four decades after signing and ratifying the NPT, the UK maintains and continuously modernizes its nuclear arsenal.

15. The UK 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 system and to maintain it for the indefinite future.

16. Similarly, the UK 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 States to initiate such negotiations.

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

---

[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.

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

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 the UK has breached.

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.[24] 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. 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, the UK negotiated with other countries, including the U.S. and the Soviet Union, both possessors of nuclear weapons, and States not possessing nuclear weapons, to reach agreement on what became 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".[25]

21. The Treaty was opened for signature on 1 July 1968, and entered into force on 5 March 1970. The UK signed the NPT on 1 July 1968 in London, Moscow and Washington and ratified it on 27 November 1968 in London and Washington and on 29 November 1968 in Moscow. The UK is one of the Treaty's three Depositary Governments.[26]

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 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:

---

[24] On 1 July 1945, Prime Minister Winston Churchill gave the UK's approval for atomic bombs to be dropped on Japan. *See* Peter Hennessy, *Cabinets and the Bomb* (The British Academy, 2007), p. 8.

[25] 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".

[26] The others are the Russian Federation and the U.S. *See* http://disarmament.un.org/treaties/t/npt.

[27] Regarding the DPRK, *see infra*, n. 126.

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.

---

[28] *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.

C. The UK and the Nuclear Arms Race

1. Early Nuclear History[29]

24. On 3 October 1952, the first British atomic device was detonated in the Monte Bello Islands off north-western Australia. On 7 November 1953, the UK's first operational atomic bomb, the Blue Danube, arrived at RAF Wittering from AWE Aldermaston.[30]

25. On 26 July 1954 the Cabinet agreed to the manufacture of a much more powerful British hydrogen bomb and on 15 May 1957 the UK tested a thermonuclear device at Christmas Island in the Pacific.[31]

26. On 4 August 1958, the U.S. and UK governments concluded the Agreement for Co-operation on the Uses of Atomic Energy for Mutual Defence Purposes (the "Mutual Defence Agreement" or "MDA").[32]

27. On 3 January 1963, the Cabinet authorized the purchase of Polaris C3 submarine-launched ballistic missiles and re-entry vehicles from the U.S. Government. On January 25, 1965, the decision was taken to build four Resolution-class submarines to carry the Polaris missiles, partly to ensure that one boat would always be on station when the Royal Navy assumed the main nuclear weapons system role in the late 1960s. HMS Resolution, the first of the four Polaris missile-carrying submarines, was commissioned on 30 October 1967[33] and on June 14, 1969, Polaris submarines formally took over the primary strategic nuclear weapons deployment role from the RAF's 'V' bomber force.[34]

28. The development of the Super Antelope (later known as Chevaline) re-entry body for the UK's Polaris warheads was approved on 30 October 1973. This was because the UK

---

[29] *See* Hennessy, *supra*, n. 24, pp. 7-20.

[30] 58 Blue Danube bombs were produced. They were in service with the RAF until 1961.

[31] The device yielded 300 kilotons, 30% of the megaton target. On 8 November 1957 Britain's first megaton hydrogen bomb exploded off Christmas Island, yielding 1.8 megatons. *See* Hennessy, *supra*, n. 24, p. 10.

[32] Treaty Series No.41 (1958) Cmnd 537. *See* Hennessy, *id.*, p. 11. The MDA has been renewed from time to time, most recently in 2004.

[33] The other three Polaris submarines were HMS Repulse, HMS Renown and HMS Revenge.

[34] *See* Hennessy, *supra*, n. 24, p. 14. The four nuclear-powered submarines were each equipped with 16 Polaris missiles, with three 200-kiloton warheads on each missile. Polaris was modernized with the Chevaline upgrade to have a number of dummy or decoy warheads on each missile as well, but each missile could only be used against one target.

could no longer be certain that a sufficient number of Polaris warheads would penetrate Soviet ABM defences to cause the damage required to exert a credible deterrent effect. In November 1982 the Ministry of Defence announced that Chevaline-equipped missiles were operational at sea.[35]

29. In July 1980, the UK government announced the decision to buy the U.S. Trident C4 missile system as a replacement for the Polaris system, which was due to reach the end of its service life in the early 1990s. In March 1982, however, the order was changed to the Trident II D5, a new missile announced by the U.S. in October 1981. This ensured missile commonality between the U.S. Navy and the Royal Navy. The UK defence establishment wanted to ensure that any future UK nuclear system remained in step with U.S. nuclear hardware and weapon programmes after the difficult experience with the indigenous Chevaline upgrade. Former Permanent Under Secretary at the Ministry of Defence, Sir Michael Quinlan, stated in 2004 that "Purely in weight of strike potential the United Kingdom could have been content with less than Trident could offer, even in the C4 version originally chosen (let alone D5 version to which the United Kingdom switched in early 1982, when it had become clear that the United States was committed to proceed with its acquisition and deployment). The original choice and the switch were driven in large measure by the long-term financial and logistic benefits of commonality with the United States".[36]

2. The UK's Current Nuclear Arsenal[37]

30. The UK's nuclear weapons system is based upon the submarine-launched Trident D5 missile. It is the UK's third-generation strategic nuclear weapon system. Trident was procured during the final decade of the Cold War and was brought into service to replace Polaris over a six-year period beginning in December 1994.[38] It is now the UK's only nuclear weapons system, the UK having retired its air-launched WE177 free-fall nuclear bombs and repatriated

---

[35] *Id.*

[36] Michael Quinlan, "The British Experience", in Henry Sokolski (ed.), *Getting MAD: mutual assured destruction, its origins and practice* (Strategic Studies Institute, Army War College: Carlisle, PA, November 2004), p. 271.

[37] *See* House of Commons Defence Committee, 'The Future of the UK's Nuclear Deterrent: the White Paper' (HC 225-1), Vol. 1, ch. 2.

[38] HMS Vanguard, the first Trident missile-carrying submarine, was commissioned on 14 August 1993 and sailed on the first Trident operational patrol in December 1994. HMS Repulse returned to Faslane on 13 May 1996 at the end of the final Polaris operational patrol, marking the end of Polaris' 27 years of continuous patrols. *See* Hennessy, *supra*, n. 24, p. 18.

forward-deployed US tactical nuclear weapons operated by UK forces under dual-key arrangements in the 1990s.[39]

31. The Trident nuclear weapons system has three technical components:[40]

a) The Vanguard-class nuclear-powered ballistic submarines (SSBN), of which the UK has four: HMS Vanguard, HMS Victorious, HMS Vigilant and HMS Vengeance, designed and built in the UK by Vickers Shipbuilding and Engineering Ltd (VSEL), now BAE Systems, in Barrow-in-Furness, Cumbria. Refit and maintenance are carried out by Devonport Management Limited in Devonport, Plymouth, UK.

b) The Trident D5 submarine-launched intercontinental ballistic missile (ICBM), manufactured in the US by Lockheed Martin. Under the Polaris Sales Agreement as modified for Trident,[41] the UK has title to 58 missiles.[42] Aside from those currently deployed, the missiles are held in a communal pool at the US Strategic Weapons facility at King's Bay, Georgia, US. Each submarine is capable of carrying up to 16 Trident D5 missiles.

c) The components for the nuclear warheads, including qualitative improvements to them, are made in the UK at the Atomic Weapons Establishment (AWE) Aldermaston, Berkshire, and assembled at nearby AWE Burghfield. There is extensive collaboration between the UK and the US on the production of the UK's warheads under the Mutual Defence Agreement, "which provides for extensive cooperation on nuclear warhead and reactor technologies, in particular the exchange of classified information concerning nuclear weapons to improve 'design, development and fabrication' capability and the transfer of nuclear warhead-related

---

[39] *See supra*, n. 37, Vol.1, para. 8.

[40] *Id.*, paras. 9-10.

[41] The Polaris Sales Agreement was signed in Washington DC on 6 April 1963. On 30 September 1980 an exchange of diplomatic notes incorporated the Trident sale into the Polaris Sales Agreement.

[42] House of Commons Defence Committee, Session 2005-06, Eighth Report, para. 21.

materials".[43] As a result, some components of the UK warheads are manufactured, and undergo qualitative improvements, in the U.S.[44]

32. The submarine fleet is supported by an extensive onshore infrastructure. The Vanguard submarines are based at HM Naval Base Clyde, Faslane, Scotland. Nuclear warheads are fitted to the D5 missiles at the Royal Naval Armaments Depot Coulport (part of HM Naval Base Clyde). The warheads are transported by road from AWE Burghfield to Coulport, where they are placed in underground bunkers in the Trident Area. When required they are taken to the Explosive Handling Jetty where they are fitted onto the missiles on the Trident submarines.

33. The Strategic Defence Review, published on 8 July 1998,[45] affirmed the Government's commitment to maintaining a nuclear weapons system but made a number of changes to it. The warhead stockpile was to be cut from the ceiling of up to 300 warheads maintained by the previous government to fewer than 200 operationally available warheads. The patrol cycle of the Trident submarines was also relaxed with normally only one submarine on patrol at any one time. As with pre-Chevaline Polaris,[46] each submarine would now carry a maximum of 48 warheads, rather than the ceiling of up to 96. The Trident submarine's alert status was also to be reduced. Missiles had not been targeted for some years but, in addition, submarines would normally now be at several days' rather than 15 minutes' notice to fire.[47] A requirement for an additional seven Trident missile bodies was cancelled, leaving a new total of 58.

34. The Strategic Defence and Security Review, published on 19 October 2010,[48] reaffirmed the UK's commitment to a submarine-launched nuclear weapons system on

---

[43] N. Ritchie, "A Nuclear Weapons-Free World? Britain, Trident and the Challenges Ahead", Palgrave Macmillan 2012, p. 92. Ritchie goes on to state that "Britain remains highly dependent on the US for nuclear weapon systems, technology, and support": *id.*, p. 95.

[44] John Ainslie, "United Kingdom", 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), pp. 68-71, http://www.reachingcriticalwill.org/images/documents/Publications/modernization/assuring-destruction-forever.pdf.

[45] Strategic Defence Review 1998 (Cm 3999), *available at* http://webarchive.nationalarchives.gov.uk/20121026065214/www.mod.uk/NR/rdonlyres/65F3D7AC-4340-4119-93A2-20825848E50E/0/sdr1998_complete.pdf.

[46] *See supra*, para. 27.

[47] Strategic Defence Review, *supra*, n. 45, para. 68.

[48] Securing Britain in an Age of Uncertainty: The Strategic Defence and Security Review, October 2010 (Cm 7948), *available at* http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_191634.pdf.

continuous alert based on the Trident missile delivery system, and announced that: the number of warheads on board each deployed submarine would be reduced from 48 to 40; the requirement for operationally available warheads would be reduced from fewer than 160 to no more than 120; the number of operational missiles on the Vanguard class submarines would be reduced to no more than 8; and the UK's overall nuclear weapons stockpile would be reduced from not more than 225 to no more than 180 by the mid-2020s.[49]

3. Nuclear Policy, Doctrine and Expenditure

35. The Royal Navy has maintained unbroken nuclear weapon patrols since 1968. The 1998 Strategic Defence Review stated that the UK would continue to maintain these continuous-at-sea nuclear armed patrols. This means that one of the four Vanguard-class submarines is on patrol at any given time.[50]

36. Trident is the UK's most advanced nuclear weapon system to date. With a range of between 6,500 kilometres and 12,000 kilometres, depending on payload, Trident's greater speed, accuracy and multiple independently targetable warheads distinguish it from, and enable it to reach more targets than, its predecessor, Polaris Chevaline.

37. As the Defence Select Committee noted in 1994:

> Trident's accuracy and sophistication in other respects does - and was always intended to - represent a significant enhancement of the UK's nuclear capability. We have invested a great deal of money to make it possible to attack more targets with greater effectiveness using nominally equivalent explosive power.[51]

38. Trident was originally designed as a strategic nuclear system with respect to threats posed by the Soviet Union. In 1993, however, following the end of the Cold War, the then Secretary of State for Defence announced that in future Trident's role would be to deter "potential aggressors" from threatening UK "vital interests". In order to do this, Trident was assigned an additional "sub-strategic" role:[52]

> The ability to undertake a massive strike with strategic systems is not enough to ensure deterrence. An aggressor might, in certain circumstances, gamble on a lack

---

[49] *Id.*, para. 3.11.

[50] Strategic Defence Review, *supra*, n. 45, para. 66.

[51] HC 297 of Session 1993-94, p. xiv.

[52] Hansard, HC Deb, 18 October 1993, col. 34. The UK's sub-strategic capability was at that time provided by the soon to be retired WE177 bomb carried on Tornado aircraft.

> of will ultimately to resort to such dire action. It is therefore important for the credibility of our deterrent that the United Kingdom also possesses the capability to undertake a more limited nuclear strike in order to induce a political decision to halt aggression by delivering an unmistakable message of our willingness to defend our vital interests to the utmost.[53]

39. As part of the agreement under which the UK procured Polaris and subsequently Trident missiles from the US, UK Trident forces are assigned to NATO to be used for the defence of the Alliance "except where the UK government may decide that supreme national interests are at stake".[54] The UK is therefore committed to NATO's nuclear policy, which since the mid-1960s has been based on a doctrine of "flexible response".[55] One of the key elements of NATO's nuclear doctrine is that the Alliance refuses to rule out the first use of NATO nuclear weapons, thereby allowing its nuclear planners to prepare for that option.[56]

40. Similarly, the UK has always refused to rule out the first use of its nuclear weapons, especially in cases where biological or chemical weapons may have been used. For example, shortly after the 1997 general election, the then Minister of State Dr John Reid stated:

> The role of deterrence…must not be overlooked. Even if a potential aggressor has developed missiles with the range to strike at the United Kingdom, and nuclear, biological or chemical warheads to be delivered by those means, he would have to consider – he would do well to consider – the possible consequences of such an attack…It seems unlikely that a dictator who was willing to strike another country with weapons of mass destruction would be so trusting as to feel entirely sure that that country would not respond with the power at its disposal.[57]

---

[53] Malcolm Rifkind, 'UK Defence Strategy; A Continuing Role for Nuclear Weapons', 16 November 1993, Centre for Defence Studies, King's College London; *see* also the Strategic Defence Review 1998, para. 63: "The credibility of deterrence also depends on retaining an option for a limited strike that would not automatically lead to a full scale nuclear exchange. Unlike Polaris and Chevaline, Trident must also be capable of performing this 'sub-strategic' role".

[54] The British Strategic Nuclear Force: Text of Letters exchanged between the Prime Minister and the President of the United States and between the Secretary of State for Defence and the US Secretary of Defense. The letters are reproduced in 'Polaris Sales Agreement between the United States and the United Kingdom' signed in Washington on 6 April 1963.

[55] "The Alliance's Strategic Concept", NATO Press Release NAC-S(99)65, 24 April 1999.

[56] In 2006 the then Defence Secretary, Des Browne, stated: "A policy of no first use of nuclear weapons would be incompatible with our and NATO's doctrine of deterrence", Hansard, HC, 22 May 2006, col. 1331W.

[57] Hansard, HC Deb, 4 December 1997, cols. 576-577.

41. Following the terrorist attacks on the U.S. in September 2001, a new chapter of the Strategic Defence Review extended the role of nuclear weapons further to include allegedly deterring terrorist organisations:

> The UK's nuclear weapons have a continuing use as a means of deterring major strategic military threats, and they have a continuing role in guaranteeing the ultimate security of the UK. But we also want it to be clear, particularly to the leaders of states of concern and terrorist organisations, that all our forces play a part in deterrence, and that we have a broad range of responses available.[58]

42. The implication is that the UK is willing, if deemed to be necessary, to use its nuclear weapons against States of concern and terrorist organisations.[59]

43. The 2010 Strategic Defence and Security Review states that the UK "would only consider using nuclear weapons in extreme circumstances of self-defence, including the defence of our NATO allies", adding: "we remain deliberately ambiguous about precisely when, how and at what scale we would contemplate their use".[60]

44. The Strategic Defence and Security Review reaffirms in modified form existing assurances to non-nuclear-weapon States Parties to the NPT. It states "that the UK will not use or threaten to use nuclear weapons against non-nuclear weapon states parties to the NPT" but notes that "this assurance would not apply to any state in material breach of those non-proliferation obligations". It also notes that "while there is currently no direct threat to the UK or its vital interests from states developing capabilities in other weapons of mass destruction, for example chemical and biological, we reserve the right to review this assurance if the future threat, development and proliferation of these weapons make it necessary".[61]

45. The UK has continued to maintain and modernize its nuclear forces with annual expenditure on capital and running costs at around 5 to 6 per cent of the UK defence budget.[62]

---

[58] Strategic Defence Review, New Chapter, 18 July 2002, Vol.1, para. 21, *available at* http://indianstrategicknowledgeonline.com/web/sdr_a_new_chapter_cm5566_vol1.pdf.

[59] The 2006 White Paper on *The Future of the United Kingdom's Nuclear Deterrent* stated, at 3-11: "We know that international terrorists are trying to acquire radiological weapons. In future, there are risks that they may try to acquire nuclear weapons. While our nuclear deterrent is not designed to deter non-state actors, it should influence the decision-making of any state that might consider transferring nuclear weapons or nuclear technology to terrorists".

[60] Strategic Defence and Security Review, *supra*, n. 48, para. 3.5.

[61] *Id.*, 3.7.

[62] House of Commons Defence Committee, *The Future of the UK's Nuclear Deterrent: the White Paper*, Ninth Report of Session 2006-07, paras. 149, 152; *see* also Hansard, HL, 7 June 2010, col. WA28; HC,

This does not include costs for recapitalising the Trident system estimated to be £25 billion at outturn prices.[63]

4. Current Plans for Modernization and Qualitative Improvements of the UK's Nuclear Arsenal

46. In December 2006 the UK Government published a White Paper which formally opened the process to replace the UK's Trident nuclear weapons system.[64] The White Paper was endorsed by the House of Commons on 14 March 2007 when the following motion was carried by 409 votes to 161:

> That this House supports the Government's decisions, as set out in the White Paper The Future of the United Kingdom's Nuclear Deterrent (Cm 6994), to take the steps necessary to maintain the UK's minimum strategic nuclear deterrent beyond the life of the existing system and to take further steps towards meeting the UK's disarmament responsibilities under Article VI of the Non-Proliferation Treaty.[65]

47. According to British Pugwash, the effect of that vote and its present and future consequences are as follows:

> Parliament voted to authorize the initial 'Concept' phase of the Trident replacement system. The next major milestone, known as the 'Initial Gate' decision, was to move to the 'Assessment' phase, involving further detailed refinement of a set of design options to enable selection of a preferred solution. The government announced the Initial Gate decision on May 18, 2011. The next big decision to move to the 'Demonstration and Manufacture' phase is the Main Gate' decision, now scheduled for 2016 (delayed from 2014 in October 2010). That is supposed to be the key decision-point when the finalized submarine design is adopted; contracts

---

20 December 2012, col. 908W. In 2010-11 the defence resource budget was c £28bn: Public Expenditure Statistical Analysis 2011, Departmental Budgets, HM Treasury, table 1.3a, *available at* http://www.hm-treasury.gov.uk/d/pesa_2011_chapter1.pdf. A recent analysis by Scientists for Global Responsibility has revealed that the UK Government spent an average of £327 million per year on nuclear weapons research and development over the three years from 2008 to 2011. *See UK nuclear weapons R&D spending: Addendum AA1 to Offensive Insecurity*, February 2014, *available at* http://www.sgr.org.uk/publications/uk-nuclear-weapons-rd-spending.

[63] Ministry of Defence (2011) *Initial Gate Parliamentary Report* (London: Ministry of Defence), p. 10.

[64] Ministry of Defence and Foreign and Commonwealth Office, *The Future of the United Kingdom's Nuclear Deterrent*, Cm 6994.

[65] Hansard, HC Deb, 14 March 2007, cols. 298-407.

to build the new boats are then tendered, and billions more pounds will be irrevocably committed to construction of a new generation of nuclear weapons.[66]

48. The Strategic Defence and Security Review 2010 states:

> Under the 1958 UK-US Agreement for Cooperation on the Uses of Atomic Energy for Mutual Defence Purposes (the 'Mutual Defence Agreement') we have agreed on the future of the Trident D5 delivery system and determined that a replacement warhead is not required until at least the late 2030s. Decisions on replacing the warhead will not therefore be required in this Parliament. This will defer £500 million of spending from the next 10 years.[67]

49. Under the UK-US Mutual Defence Agreement, a new "arming, fusing and firing system" developed by the US is to be used in current UK warheads.[68] The system would improve the nuclear warhead's effectiveness against hardened targets. The Trident II D5 missile can carry two types of re-entry vehicle that house each nuclear warhead: the Mark 4 for the U.S. W76 warhead and the Mark 5 for the more modern and higher yield W88 warhead. The UK purchased the Mark 4 RV and designed a warhead to meet Mk4 RV specifications in terms of weight, size, shape, centre of gravity, and centre of inertia. The U.S. is modernizing its W76 warheads and Mk4 re-entry vehicles, including launcher, navigation, fire control, guidance, and re-entry systems.[69] The modernized W76-1 and Mk4A RV have improved the accuracy of the warheads.[70] These improvements have cascaded through to the UK's Trident warhead and re-entry vehicle.[71] The UK government has acknowledged procurement of the Mk4A RV.[72]

---

[66] Briefings on Nuclear Security, 'Trident: The Initial Gate Decision', *available at* http://www.britishpugwash.org/documents/Briefing%203%20-%20Initial%20Gate.pdf.

[67] Supra, n. 48, para. 3.12.

[68] Richard Norton-Taylor, "Trident more effective with US arming device, tests suggest," The Guardian, 6 April 2011, *available at* http://www.theguardian.com/uk/2011/apr/06/trident-us-arming-system-test; *see also* Hans M. Kristensen and Robert S. Norris, "British Nuclear Forces," Bulletin of the Atomic Scientists, September/October 2011 vol. 67 no. 5 89-97, *available at* http://bos.sagepub.com/content/67/5/89.full#ref-24.

[69] Ainslie, *supra*, n. 44, at pp. 71-72.

[70] *Id.*, at p. 72; Hans Kristensen, 'Administration Increases Submarine Nuclear Warhead Production Plan', FAS Blog, Federation of American Scientists, 30 August 2007, *available at* http://www.fas.org/blog/ssp/2007/08/us_tripples_submarine_warhead.php.

[71] Ainslie, *id.; see also* Hans Kristensen, 'British Submarines, to Receive Upgraded US Nuclear Warhead', FAS Strategic Security Blog, 1 April 2011, *available at* http://www.fas.org/blog/ssp/2011/04/britishw76-1.php.

Preliminary work on a successor warhead is also underway under the Nuclear Warhead Capability Sustainment Programme at AWE Aldermaston.[73] The replacement submarine will be quieter and stealthier.[74] All of these efforts confirm that the UK continues to be actively engaged in qualitative improvements to its nuclear weapons system.

50. On 2 November 2010, the UK and France concluded a bilateral Treaty for Defence and Security Cooperation.[75] Article 1 of the Treaty provides, *inter alia*:

> The Parties, building on the existing strong links between their respective defense and security communities and armed forces, undertake to build a long-term mutually beneficial partnership in defense and security with the aims of:
>
> ...
>
> 4. ensuring the viability and safety of their national deterrents, consistent with the Treaty on the Non-Proliferation of Nuclear Weapons.[76]

51. On 18 May 2011, when informing Parliament that the Government had approved the 'Initial Gate' for the nuclear weapons system successor programme, the Secretary of State for Defence explained:

> We have now agreed the broad outline design of the submarine, made some of the design choices—including the propulsion system and the common US-UK missile compartment—and the programme of work we need to start building the first submarine after 2016. We have also agreed the amount of material and parts we will need to buy in advance of the main investment decision... Between now and main gate we expect to spend about 15% of the total value of the programme.[77]

---

[72] Ainslie, *id.*, pp. 68-69; Hansard, HC, 8 December 2009, col. 214W.

[73] Ainslie, *id.*, pp. 70-71; Hansard, HC Deb, 28 November 2012, col. 353W.

[74] Ainslie, *id.*, at pp. 72-73.

[75] France No. 01 (2010), *available at* http://www.ukdf.org.uk/assets/downloads/UKFranceDefenceCooperationTreaty.pdf#search="defence and security cooperation".

[76] The UK and France also signed a Treaty on Joint Radiographic/Hydrodynamics Facilities to build joint nuclear warhead diagnostic and development facilities at the Valduc site of the Commissariat à l'Energie Atomique et aux Energies Alternatives – Direction des Applications Militaires (CEA-DAM) and at AWE Aldermaston. *See* http://www.ukdf.org.uk/assets/downloads/UKFranceNuclearTreaty.pdf.

[77] Hansard, HC Deb, 18 May 2011, col. 352.

52. Although the Secretary of State for Defence denied that the Government was "locked into any particular strategy before main gate in 2016" and stated that he would "assist the Liberal Democrats in making the case for alternatives",[78] he declared:

> I am absolutely clear that a minimum nuclear deterrent based on the Trident missile delivery system and continuous-at-sea deterrence is right for the United Kingdom and that it should be maintained, and that remains Government policy.[79]

53. On the same day, the Prime Minister told Parliament: "the Government's policy is absolutely clear: we are committed to retaining an independent nuclear deterrent based on Trident".[80]

54. On 30 April 2012, at the First Preparatory Committee for the Ninth Review Conference of the NPT, the Head of the UK Delegation stated:

> As long as large arsenals of nuclear weapons remain and the risk of nuclear proliferation continues, the UK's judgment is that only a credible nuclear capability can provide the necessary ultimate guarantee to our national security. The UK Government is therefore committed to maintaining a minimum national nuclear deterrent, and to proceeding with the renewal of Trident and the submarine replacement programme.[81]

55. On 5 March 2013, in a Statement on Nuclear Disarmament, the UK's Permanent Representative to the Conference on Disarmament declared:

> In 2007, the United Kingdom Parliament debated, and approved by a clear majority, the decision to continue with the programme to renew the UK's

---

[78] In order to satisfy Liberal Democrat concerns, the government's Coalition Agreement negotiated after the 2010 general election stated that "we will maintain Britain's nuclear deterrent, and have agreed that the renewal of Trident should be scrutinized to ensure value for money. Liberal Democrats will continue to make the case for alternatives". In May 2011 agreement was reached that the government would conduct a formal 18-month assessment of "credible alternatives" to a like-for-like replacement led by the Cabinet Office.

[79] *Supra*, n. 77, col. 352.

[80] *Id.*, col. 338; *see also* the Prime Minister's statement at a press conference on 2 November 2010 after the UK-France summit at which the Treaty for Defence and Security Cooperation was concluded: "while we will always retain an independent nuclear deterrent, it is right that we look for efficiencies in the infrastructure required to develop and sustain our separate deterrents...", *available at* http://www.number10.gov.uk/news/uk-france-summit-press-conference/.

[81] *Available at* http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom12/statements/30April_UK.pdf.

> nuclear deterrent. The Government set out in the 2010 Strategic Defence and Security Review that the UK would maintain a continuous submarine-based deterrent and begin the work of replacing its existing submarines which are due to leave service in the 2020s. This remains the UK Government's policy.[82]

56. On 5 June 2013, in response to a question in Parliament, the Prime Minister stated: "I am strongly committed to the renewal of our deterrent on a like-for-like basis. I think that is right for Britain".[83]

57. The Trident Alternatives Review[84] was published on 16 July 2013.[85] It had been tasked to answer three questions:

a. Are there credible alternatives to a submarine-based deterrent?

b. Are there credible submarine-based alternatives to the current proposal, *e.g.* Astute with cruise missiles?

c. Are there alternative nuclear postures, i.e. non-continuous-at-sea deterrence ("CASD"), which could maintain credibility?

58. The Trident Alternatives Review concluded: "None of these alternative systems and postures offers the same degree of resilience as the current posture of Continuous at Sea Deterrence, nor could they guarantee a prompt response in all circumstances".[86]

---

[82] *Available at* http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/cd/2013/Statements/5March_UK.pdf.

[83] Hansard, HC Deb, 5 June 2013, col. 1518.

[84] *See supra*, n. 78.

[85] *Available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212745/20130716_Trident_Alternatives_Study.pdf. For a commentary on the review, *see* http://www.basicint.org/sites/default/files/ingramcommentary-tar-jul2013.pdf.

[86] Trident Alternatives Review, *supra*, n. 85, Executive Summary, para 32. The Review also concluded that "transitioning to any of the realistic alternative systems is now more expensive than a 3 or 4-boat Successor SSBN fleet": *id.*, para. 34.

D. The UK and Nuclear Disarmament

1. History and General Policy Regarding Negotiation of Nuclear Disarmament

59. As set forth in more detail below, the UK has refused to enter the Trident system (or its predecessors) into nuclear disarmament negotiations despite requests to do so.

60. During the 1970s and 1980s, the UK repeatedly refused to enter its nuclear weapon systems into the disarmament negotiations of that time. During the SALT I and SALT II talks in the 1970s, the UK's refusal to allow Polaris to be considered caused problems during negotiations. The Soviet Union repeatedly called for the ballistic missile submarines of US allies in NATO to be taken into consideration and argued that if "US allies in NATO should increase the number of their modern submarines… the Soviet Union will have the right to a corresponding increase in the number of its submarines".[87]

61. When the UK government first announced its decision to procure the Trident I C4 nuclear weapon system in 1980, it argued that Trident was compatible with the UK's arms control obligations on the grounds that it was: "fully consistent with the terms of the SALT II Treaty"; that "the scale of our new capability will in no way disturb existing and prospective East/West relativities"; and that "Britain's strategic SLBM force lies outside the category of those United States and Soviet long-range, land-based theatre nuclear forces about whose limitation the United States… invited the Soviet Union to negotiate".[88]

62. Similarly, when the UK announced that it was changing to procure the Trident II D5 system in 1982, it argued that the deployed Polaris system and planned Trident system were not relevant to the INF and START negotiations. The government argued that its strategic nuclear weapon systems were not relevant because these negotiations were "bilateral", aimed at achieving a "level of strategic parity" between the U.S. and the Soviet Union. The UK argued that the "British strategic force will account for no more than a very small fraction of the total size of the strategic nuclear forces maintained by the United States and the Soviet Union".[89]

63. During the 1980s, the end of the Cold War resulted in massive cuts to Soviet/Russian military capabilities, in particular reductions in nuclear weapons. However, the UK Government would not allow the UK's nuclear weapons to be included in the negotiations

---

[87] "Interim Agreement between the United States of America and the Union of Soviet Socialist Republics on Certain Measures with respect to the Limitation of Strategic Offensive Arms", Unilateral Statement by Minister Semenov, 17 May 1972.

[88] "The Future United Kingdom Strategic Nuclear Deterrent Force", Defence Open Government Document 80/23, Ministry of Defence, July 1980.

[89] "The United Kingdom Trident Programme", Defence Open Government Document 82/1, Ministry of Defence, Cmnd 8517, March 1982.

on reductions. In 1987, the INF Treaty was signed by Presidents Reagan and Gorbachev. The Soviet Union had tried to involve UK nuclear weapons in the INF negotiations, but the UK, backed by its NATO allies, opposed this. Prime Minister Margaret Thatcher's response to INF was that she believed that nuclear arms cuts in Europe had gone far enough: "I will never give up Britain's independent nuclear deterrent", she told the media.[90]

64. According to the Defence Select Committee, as US and Soviet nuclear reductions gathered pace, Mrs. Thatcher "sought and received assurances from the United States that the supply of Trident missiles to the UK will in no way be affected by any future arms control agreement".[91]

65. The Strategic Defence Review 1998 stated: "The Government wishes to see a safer world in which there is no place for nuclear weapons. Progress on arms control is therefore an important objective of foreign and defence policy".[92] However, the UK Government continued to make negotiations on nuclear disarmament a long-term aspiration rather than an immediate policy objective. The Strategic Defence Review continued: "while large nuclear arsenals and risks of proliferation remain, our minimum deterrent remains a necessary element of our security".[93] It essentially ruled out any further reductions in UK nuclear weapons until further reductions had been made by the US and Russia.

66. This has remained the UK Government's position. In his speech to the 2004 NPT PrepCom, the UK Ambassador stated:

> We have consistently stated that when we are satisfied that sufficient progress has been made – for example, in further deep cuts in their nuclear forces by the US and Russia – to allow us to include the UK's nuclear weapons in any multilateral negotiations, without endangering our security interests, we will do so.[94]

67. On 17 March 2009, after observing that between them the US and Russia retained around 95% of the nuclear weapons in the world and that the START Treaty, "the mainstay of their bilateral arms control effort", would expire later that year, the then Prime Minister, Gordon

---

[90] Nicholas Ashford and Alexander Chancellor, "Arms reduction accord threatens UK deterrent", *The Independent*, 22 September 1987.

[91] "Progress of the Trident Programme", 422 of 1987-88, HMSO, 11 May 1988.

[92] *Supra*, n. 45, para. 60.

[93] *Id.*

[94] Statement by Ambassador David Broucher, NPT Preparatory Committee 2004, Cluster I, 3 May 2004.

Brown stated: "For our part - as soon as it becomes useful for our arsenal to be included in a broader negotiation, Britain stands ready to participate and to act".[95]

68. On 6 July 2010, the then Secretary of State for Defence, Dr Liam Fox, reiterated the previous government's position that "as soon as it becomes useful for the UK to include its nuclear stockpiles in broader disarmament negotiations, we stand ready to participate and to act".[96]

69. On 3 January 2012, the UN General Assembly decided to establish an Open-Ended Working Group (OEWG) to develop proposals to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons.[97] However, the UK voted against the resolution[98] and did not attend any of the Working Group's meetings.[99]

70. In a statement made jointly with France and the U.S. in the UN General Assembly First Committee on 6 November 2012, the UK declared that it was "unable to support this resolution, the establishment of the OEWG and *any outcome it may produce*" (emphasis added).[100]

2. Opposition to Negotiation of a Nuclear Weapons Convention

71. Similarly, the UK 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, [101] 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

---

[95] 10 Downing Street, Press Notice, Speech on Nuclear Energy and Proliferation, 17 March 2009, *available at* http://image.guardian.co.uk/sys-files/Politics/documents/2009/03/17/PMSPEECH170309.pdf?guni=Article:manual-trailblock package:Position3.

[96] Hansard, HC Deb, 6 July 2010, col. 159W. *See also* the Statement by Ambassador John Duncan to the 2010 Non-Proliferation Treaty Review Conference, *available at* http://www.un.org/en/conf/npt/2010/statements/pdf/uk_en.pdf.

97 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).

[98] Along with France, the Russian Federation and the US: UN Doc A/67/PV.48, pp. 20-21.

[99] Hansard, HL Deb, 15 July 2013, col. WA93.

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

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

obligation by commencing multilateral negotiations leading to the early conclusion of a Nuclear Weapons Convention.

72. In 1997, at the request of Costa Rica, the UN Secretary-General circulated to all UN Member States a Model Nuclear Weapons Convention.[102] 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.[103] In 2008, at the request of Costa Rica and Malaysia, the Secretary-General circulated an updated version of the Model Convention.[104]The Secretary-General later described the Model Convention as "a good point of departure" for negotiation of a Nuclear Weapons Convention.[105]

73. 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 nuclear force reduction agreements between Russia and the United States.

74. 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 the UK and the other NPT nuclear weapon States refused to participate.

---

[102] *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 November 1997).

[103] *Id.*

[104] 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 (18 January 2008).

[105] 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.htm.

75. 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".[106]

76. The UK Government officially expresses opposition to a Nuclear Weapons Convention. A 2009 policy paper provided that while a Nuclear Weapons Convention will "likely be necessary to establish the final ban on nuclear weapons", it is "premature and potentially counter-productive" to prioritise such a Convention "when the many other conditions necessary to enable a ban have yet to be put in place".[107]

77. In June 2010, Lord Howell of Guildford (Minister of State, Foreign and Commonwealth Office) stated: "The idea of a nuclear weapons convention is a fine one, but... [a] whole series of things need to be done before one comes to the happy situation where the nuclear world is disarmed and a convention could then get full support".[108]

78. In August 2011, the Prime Minister stated that he disagreed "that negotiations now on a nuclear weapons convention should be the immediate means of getting us to a world free of nuclear weapons".[109] While he acknowledged that a Nuclear Weapons Convention "could ultimately form the legal underpinning for this end point", he considered that the prospects of reaching agreement on a Convention "are remote at the moment".[110]

79. The first-ever UN General Assembly High-Level Meeting on Nuclear Disarmament was held on September 26, 2013, pursuant to a 2012 resolution which was opposed by the UK.[111] At that meeting the UK representative delivered a 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

---

[106] *Nuclear Disarmament and the NPT: The Responsibility of the Nuclear-Weapon States*, at "Global Summit for a Nuclear Weapon-Free World: Laying the Practical, Technical, and Political Groundwork", Campaign for Nuclear Disarmament and Acronym Institute for Disarmament Diplomacy, London, 16 February 2008, *available at* http://www.un.org/disarmament/HomePage/HR/docs/2008/2008Feb16_London.pdf.

[107] Foreign and Commonwealth Office, *Lifting the Nuclear Shadow*, 2009, p. 34.

[108] Hansard, HL Deb, 9 June 2010, col. 641: answer to a question by Baroness Williams of Crosby (Liberal Democrat), who had pointed out that "the great bulk of non-nuclear powers decided to press for a nuclear weapons convention to abolish nuclear weapons completely by 2025".

[109] Letter from the Prime Minister to Jeremy Corbyn MP, 15 August 2011.

[110] *Id.*

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

as this High-Level Meeting, the humanitarian consequences campaign, the Open-Ended Working Group and the push for a Nuclear Weapons Convention".[112]

80. The UK subsequently voted against a new UN General Assembly resolution following up the High-Level Meeting.[113] 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.

---

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

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

III. THE LAW

A. Article VI of the NPT

81. 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.

82. 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.[114] 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".[115]

83. 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".[116]

84. 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".[117] 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".[118] This "recognizes that the provisions of Article VI…go beyond mere obligations of conduct - to

---

[114] 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.

[115] 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Vol. I, "Review of the operation of the Treaty," p. 2, para. 2, *available at* http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50 (VOL.I).

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

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

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

pursue nuclear disarmament negotiations in good faith - and actually involve an obligation of result, i.e., to conclude those negotiations".[119]

85. 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".[120] The Court has long emphasized the importance of obligations *erga omnes*, owed to the international community as a whole.[121] Its conclusion in the Advisory Opinion was tantamount to declaring that the obligation in Article VI is an obligation *erga omnes*.[122] Every State has a legal interest in its timely performance, therefore,[123] and a corresponding legal obligation to help bring it about.[124]

B. Customary International Law

86. The obligations enshrined in Article VI of the NPT are not merely treaty obligations; they also exist separately under customary international law.[125]

87. In its Advisory Opinion, after noting that the twofold obligation in Article VI to pursue and to conclude negotiations *formally* concerns the (now 190[126]) States Parties to the

---

[119] 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.

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

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

[122] *See* President Bedjaoui's Declaration in the *Nuclear Weapons Case*, *supra*, n. 3, at pp. 273-274, para. 23: "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".

[123] *See supra*, n. 121, para. 33.

[124] *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.

[125] 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.

[126] 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, *available at* http://disarmament.un.org/treaties/t/npt.

NPT, the Court added that "any realistic search for general and complete disarmament, especially nuclear disarmament, necessitates the cooperation of all States".[127]

88. 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".[128]

89. 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*".[129]

90. 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.[130] The UN Security Council also has repeatedly called for the implementation of Article VI by all States,[131] 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".[132] The Council has also described the proliferation of weapons of mass destruction as a threat to international peace and security.[133]

91. 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.

---

[127] *Supra*, n. 3, para. 100.

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

[129] *Supra*, n. 3, at p. 274, Declaration of President Bedjaoui, 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.

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

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

[132] Operative para. 5.

[133] *E.g.*, Resolution 1887, 2009.

92. The UN 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".[134]

C. Good Faith

93. That good faith constitutes a "fundamental principle" of international law is beyond dispute.[135] 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[136] and a cardinal principle of the Law of Treaties,[137] it also encapsulates the essence of the Rule of Law in international society[138] and is one of the Principles of the United Nations.

94. 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".[139]

---

[134] 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. *See* 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.

[135] *See* Robert Kolb, *La bonne foi en droit international public: Contribution à l'étude des principes généraux du droit*, pp. 112-13 (2001).

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

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

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

[139] 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.

95. 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 particular in an age when this co-operation in many fields is becoming increasingly essential".[140]

96. 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.*[141]

97. As set forth above, Article VI of the NPT 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.[142]

98. 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".[143] Conduct that prevents the fulfilment of a treaty's object and purpose is proscribed.[144] Further, conduct that calls into question a State's commitment to the achievement of agreed objectives undermines the

---

[140] *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.

[141] *Supra*, n. 134, para. 41. Emphasis added.

[142] *See supra*, para. 84.

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

[144] *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"); *see also* Judge Mohammed Bedjaoui, "Good Faith, International Law, and Elimination of Nuclear Weapons," Keynote Address, 1 May 2008, *available at* 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").

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.[145]

[145] *See supra*, para. 94.

IV. OBLIGATIONS BREACHED BY THE UK

99. 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

100. 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

101. 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".[146] 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".[147]

102. The Respondent has stated that "it is premature and potentially counter-productive" to prioritise a Nuclear Weapons Convention[148] and opposes UN General Assembly resolutions calling for negotiations to begin.[149]

103. The Respondent also refused to support the establishment of the Open-Ended Working Group and even declared preemptively that it would not support "any outcome it may produce".[150]

---

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

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

[148] *See supra*, para. 76.

[149] *See supra*, para. 78.

[150] *See supra*, para. 70.

104. As set forth herein, including in Part II of this Application, the UK 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 States to initiate such negotiations. Accordingly, the Respondent has breached and continues to breach its nuclear disarmament obligations under Article VI of the NPT.

Cessation of the nuclear arms race at an early date

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

106. Its conduct, set forth in Part II of this Application, in (i) continuing engagement in material efforts to qualitatively improve its nuclear weapons system; (ii) continuing efforts to maintain and extend that system 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 UK's ongoing breach of its Article VI obligation regarding the cessation of the nuclear arms race at an early date.[151]

107. Despite having been a party to the NPT for 44 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

108. 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.

109. 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

110. 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

---

[151] *See supra*, Part II.C.4 and II.D.

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.

111. As set forth in Part II of this Application, the Respondent has been actively upgrading, modernizing and improving its nuclear arsenal. This constitutes qualitative vertical nuclear proliferation which 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.

112. The Respondent has also repeatedly declared its intention to rely on its nuclear arsenal for decades to come.[152]

113. 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 legally 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.

---

[152] The May 2011 Initial Gate report states that the submarines will be operational "until the 2060s". *See The United Kingdom's Future Deterrent: The Submarine Initial Gate Parliamentary Report*, May 2011, para 3.1; cited by Ainslie, *supra*, n. 44, at p. 75.

V. JURISDICTION OF THE COURT

114. 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 Applicant dated 15 March 2013 (and deposited 24 April 2013) and the Declaration of the United Kingdom dated 5 July 2004, each Declaration without pertinent reservation.

VI. FINAL OBSERVATIONS

115. 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.

116. 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 the United Kingdom 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 the United Kingdom 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 system 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 the United Kingdom 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 the United Kingdom has violated and continues to violate its international obligations under customary international law, by taking actions to qualitatively improve its nuclear weapons system 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;

e) that the United Kingdom 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 the United Kingdom has failed and continues to fail to perform in good faith its obligations under the NPT and under customary international law by effectively preventing the great majority of non-nuclear-weapon States Parties to the Treaty 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

the United Kingdom 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 Island