

**ICJ HEARS ORAL SUBMISSIONS IN MARSHALL ISLANDS' NUCLEAR  
WEAPONS CASES**

*Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and  
to Nuclear Disarmament (Marshall Islands v. India)*

*Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and  
to Nuclear Disarmament (Marshall Islands v. Pakistan)*

*Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and  
to Nuclear Disarmament (Marshall Islands v. United Kingdom)*

**A. Introduction**

**B. Background**

**C. Summary of Marshall Islands' Applications**

**D. Memorials of RMI**

Memorial regarding India

Memorial regarding Pakistan

Memorial regarding United Kingdom

Oral hearings

**E. India**

Counter-memorial

Oral hearing

**F. Pakistan**

Counter memorial

Oral hearing

**G. United Kingdom**

Preliminary objections

Oral hearing

**A. Introduction**

On 7-11, 14 and 16 March 2016, the International Court of Justice (ICJ) heard arguments on jurisdiction and admissibility in the cases brought by the Marshall Islands against India, Pakistan and the United Kingdom.

This is the first time the ICJ has been asked to address issues relating to nuclear weapons

since its 1996 advisory opinion, in which it unanimously concluded 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.

This short paper identifies the background to the case and the application by the Marshall Islands, and summarises the positions taken by each of the parties.

## **B. Background**

The proceedings arise out of nuclear testing conducted on the Marshall Islands between 1946 and 1958, the Marshall Islands, then a trust territory of the United States, sustained significant damage and radiological contamination from 67 US atmospheric nuclear weapons tests. The US government exiled hundreds of Marshallese people so the Bikini and Enewetak atolls could be used to host ever more powerful nuclear weapons explosions.

The 15-megatonne test on 1 March, 1954 was part of the intense cold war nuclear arms race and 1,000 times more powerful than the atomic bomb dropped on Hiroshima.

When US government scientists declared Bikini safe for resettlement some residents were allowed to return in the early 1970s. But they were removed again in 1978 after ingesting high levels of radiation from eating local foods grown on the former test site.

In 1986, the US Congress approved the Compact of Free Association, which prohibited Marshall Islanders from seeking future legal redress in U.S. courts and dismissing all current court cases in exchange for a \$150 million compensation trust fund. The Marshall Islands nuclear claims tribunal had awarded more than US\$2bn in personal injury and land damage claims arising from the nuclear tests, but stopped paying after the US\$150m compensation fund was exhausted.

On April 24, 2014, the Republic of the Marshall Islands ("RMI") filed applications in the International Court of Justice against the nine nuclear-armed states, claiming they have violated their nuclear disarmament obligations under the Non-Proliferation Treaty (NPT) and customary international law (as Pakistan, amongst others, was not covered by the NPT). The respondent states are the United States, United Kingdom, France, Russia, China, India, Pakistan, Israel, and North Korea. The RMI also filed a companion case against the United States in U.S. federal court (the US motion to dismiss based on non-justiciability was granted).

The ICJ only admitted three cases brought against Britain, India and Pakistan because they already recognised the ICJ's authority.

## **C. Summary of Marshall Islands' Applications**

The applications against India, Pakistan and the UK are somewhat similar.

Breached obligations: A breach of customary international law and the obligation to perform its obligation in good faith is alleged against all three. In addition, RMI also alleges that the

UK has breached Article VI of the Non Proliferation Treaty.

Remedy sought: RMI seeks:

- a declaration from the Court:
- (in the case of the UK) that the UK has violated and continues to violate the NPT, particularly Article VI;
- that all three states violated and continue to violate their international obligations under customary international law by failing to pursue nuclear disarmament/cessation of the nuclear arms race;
- that all three states failed and continue to fail to perform in good faith its obligations under customary international law by building up, improving and maintaining its nuclear forces, and by effectively preventing the majority of non-nuclear-weapons states from fulfilling their part of obligations under customary international law and the NPT;
- an order from the Court that all three states take all steps necessary to comply with its obligations under customary international law (and, in the case of the UK, under the NPT) 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.

#### **D. Memorials of RMI**

RMI submitted its memorials in each case on the following dates:

- India: 16 December 2014;
- Pakistan: 12 January 2015;
- United Kingdom: 16 March 2015.

##### Memorial regarding India

RMI's memorial in respect of India was brief (22 pages, excluding annexes), and addressed:

- General observations;
- The existence of a dispute; and
- Interpretation of declarations accepting the jurisdiction of the Court.

##### Memorial regarding Pakistan

RMI's memorial regarding Pakistan, running to 29 pages excluding annexes, focused exclusively on the questions of the jurisdiction of the Court and admissibility of the application, and predominantly addressed (point by point) Pakistan's note verbale to the Court (dated 9 July 2014):

- Point I: Political question/domestic jurisdiction/locus standi

- Point II: Locus standi redux/existence of a “dispute”/no treaty or convention in force/multilateral treaty reservation;
- Point III: non-NPT party agreement;
- Point IV: “non-discrimination” argument;
- Point V: “purported technicality” claim;
- Point VI: general reference to earlier arguments;
- Point VII: Pakistan is complying with its obligations;
- Point VIII: Reservation of rights.

### Memorial regarding United Kingdom

The memorial addressing the case against the UK is the most extensive of the three, and addresses the following:

- Part 1: Introduction;
- Part 2: Facts;
- Part 3: Jurisdiction and admissibility (including jurisdiction, the existence of a “dispute” and locus standi);
- Part 4: Historical development of the obligations relating to nuclear disarmament/cessation of the nuclear arms race in the UN and under the NPT;
- Part 5: Article VI of the NPT;
- Part 6: Existence of an obligation under customary international law to negotiate in good faith for nuclear disarmament;
- Part 7: UK breaches of obligations concerning negotiations relating to cessation of the nuclear arms race and nuclear disarmament.

### Oral hearings

RMI appeared on all days of the hearings scheduled between 7-16 March.

## **E. India**

### Counter-memorial

India filed its counter-memorial on 16 September 2015. In summary, the arguments set out in the counter memorial were that the ICJ had no jurisdiction over the dispute on the following grounds:

- There is no dispute between the parties (India supports nuclear disarmament, there is an absence of prior bilateral negotiations between RMI and India, and RMI’s claim is “artificial”).
- The remedies sought by RMI cannot be granted in the absence of other states.
- The alleged dispute falls outside the scope of India’s option declaration due to the identified reservations (including those excluding disputes concerning the interpretation or application of the NPT; those relating to hostilities/armed conflicts/individual/collective actions taken in self-defence; temporal limitation in reservation 11).
- The judgement would serve no legitimate purpose.

## Oral hearing

Oral hearings were held before the ICJ on 7, 10, 14 and 16 March 2016.

At the end of the hearings, the Agents of the Parties presented the following submissions to the Court:

### For the Republic of the Marshall Islands:

“The Marshall Islands respectfully requests the Court:

(a) to reject the objections to its jurisdiction of the Marshall Islands’ claims, as submitted by the Republic of India in its Counter-Memorial of 16 September 2015;

(b) to adjudge and declare that the Court has jurisdiction over the claims of the Marshall Islands submitted in its Application of 24 April 2014.”

### For the Republic of India:

“The Republic of India respectfully urges the Court to adjudge and declare that:

(a) it lacks jurisdiction over the claims brought against India by the Marshall Islands in its Application dated 24 April 2014;

(b) the claims brought against India by the Marshall Islands are inadmissible.”

## **F. Pakistan**

### Counter memorial

Pakistan filed its counter-memorial on 1 December 2015, which, in summary, set out its position as follows:

- RMI’s case against Pakistan was brought in bad faith.
- RMI’s claims against Pakistan are manifestly without legal merit or substance.
- RMI’s memorial does not conform to the Rules of Court and the ICJ Practice Directions.
- RMI has the burden of proving that the ICJ has jurisdiction and that the application is admissible, and has failed to discharge that burden.
- RMI’s claims did not come within the scope of the parties’ consent to jurisdiction, and in particular, Pakistan did not expressly consent to the ICJ’s jurisdiction in regard to this matter; and jurisdiction was excluded by virtue of RMI’s reservations, Pakistan’s domestic jurisdiction reservation, and Pakistan’s multilateral treaty reservation.
- The case is inadmissible on the basis that no dispute between RMI and Pakistan existed at the time the dispute was submitted to the ICJ, RMI has no jus standi, and the application is an impermissible attempt to obtain an advisory opinion on the legality of nuclear weapons.
- The application is inadmissible as indispensable parties are not before the ICJ.
- Judicial process is inherently incapable of resolving questions of nuclear disarmament involving multiple States.

- Allowing RMI’s application to proceed would “compromise the sound administration of justice and judicial propriety and integrity”.

### Oral hearing

An oral hearing was held before the ICJ on 8 March 2016, at which RMI presented its submissions.

Pakistan was not represented at this hearing.

At the outset of the oral submissions, Judge Ronny Abraham noted that, by letter dated 2 March 2016 and received in the Registry the same day, His Excellency, Mr. Moazzam Ahmad Khan (Co-Agent of the Islamic Republic of Pakistan), stated that:

- Pakistan “had the honor to present to the Court a detailed counter-memorial in support of its position, namely that the Court has no jurisdiction to entertain this application of the Marshall Islands and that the application lodged by them is inadmissible”; and
- Pakistan, having nothing to add to the statements and conclusions made in his counter memorial, believed that participation in the oral proceedings would not provide any useful new element.

Accordingly, at the conclusion of the hearing on 9 March 2016, the ICJ announced that the oral submissions phase was closed, no further submissions would be taken, and a decision on jurisdiction and admissibility would be announced in due course.

## **G. United Kingdom**

### Preliminary objections

The UK did not file a counter memorial, but instead filed a document outlining its “preliminary objections”, to which RMI responded.

The UK identified five grounds of objection to ICJ's jurisdiction, as follows:

- There is no justiciable dispute between UK and RMI.
- Temporal limitation in RMI’s optional clause declaration deprives ICJ of jurisdiction.
- RMI accepted jurisdiction only for purposes of the dispute so the ICJ lacks jurisdiction due to UK optional clause.
- Application engages essential interests of States not party to proceedings so ICJ lacks jurisdiction here.
- Any judgment of ICJ would be incapable of effective application so court should decline to exercise jurisdiction/case inadmissible.

On 15 October 2015, RMI filed its Statement of Observations in response to the United Kingdom’s Preliminary Objections (15 June 2015).

## Oral hearing

Oral hearings on the preliminary objections were held before the ICJ on 9, 11, 14 and 16 March 2016.

At the end of the hearings, the Agents of the Parties presented the following submissions to the Court:

### For the United Kingdom:

“The United Kingdom requests the Court to adjudge and declare that:

- it lacks jurisdiction over the claim brought against the United Kingdom by the Marshall Islands  
and/or
- the claim brought against the United Kingdom by the Marshall Islands is inadmissible.”

### For the Republic of the Marshall Islands:

“The Marshall Islands respectfully requests the Court:

(a) to reject the preliminary objections to its jurisdiction and to the admissibility of the Marshall Islands’ claims, as submitted by the United Kingdom of Great Britain and Northern Ireland in its Preliminary Objections of 15 June 2015;

(b) to adjudge and declare that the Court has jurisdiction over the claims of the Marshall Islands submitted in its Application of 24 April 2014; and

(c) to adjudge and declare that the Marshall Islands’ claims are admissible.”

## **Documents**

Documents relating to each of the cases can be found on the ICJ website at the following links:

- **[RMI v India](#)**
- **[RMI v Pakistan](#)**
- **[RMI v United Kingdom](#)**

22nd March 2016