

## Note on the Marshall Islands Case

On 25 April 2014, the Marshall Islands filed an application against nine States before the International Court of Justice, accusing them of not fulfilling their obligations with respect to 1) the cessation of the nuclear arms race at an early date, and 2) nuclear disarmament.<sup>1</sup> Of these nine States, only the U.K., India and Pakistan have recognized the compulsory jurisdiction of the Court, although they have done so with considerable reservations.<sup>2</sup> In its Application, the Marshall Islands invokes the obligation enshrined in Article VI of the Non-Proliferation of Nuclear Weapons Treaty [NPT] which provides that: “[e]ach 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.” Despite the clear language of this provision there is an obvious obstacle to the Marshall Islands’ argument: India and, arguably, Pakistan are not parties to the NPT. For that reason the Marshall Islands argues extensively that the obligations enshrined in Article VI of the NPT exist also separately under customary international law.<sup>3</sup>

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<sup>1</sup> Those nine states are China, the Democratic People’s Republic of Korea, France, India, Israel, Pakistan, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America. See <http://www.icj-cij.org/presscom/files/0/18300.pdf>.

<sup>2</sup> See <http://www.icj-cij.org/jurisdiction/?p1=5&p2=1&p3=3>.

<sup>3</sup> See Application instituting proceedings against the Islamic Republic of Pakistan, 24 April 2014, pp. 16-18, available at <http://www.icj-cij.org/docket/files/159/18294.pdf>. The customary international law argument is identical in the Application against India and Pakistan. As far as the Application against the UK is concerned, that also is almost identical, with the exception that the Application does not refer to the UK’s voting before the GA (or to the UK’s vote in favor of SC resolution 1887 of 24 September 2009), or to SC 1172 that was addressed to India and Pakistan.