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30 March 2016

H.E. Mr Philippe Couvreur
Registrar
International Court of Justice
Peace Palace
2517 KJ The Hague

Your Excellency,

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

I have the honour to refer to your letter of 23 March 2016, whereby you transmitted a copy of the answer of the Republic of the Marshall Islands to the questions addressed by Judge Cançado Trindade to both Parties at the end of the public sitting held on 16 March 2016 at 3pm.

I further have the honour to enclose the written response of the Government of the United Kingdom of Great Britain and Northern Ireland to the Marshall Islands Answer to the Question from Judge Cançado Trindade within the requested deadline.

Accept, Sir, the assurance of my highest consideration.

Shehzad Charania
Deputy Agent of the United Kingdom of Great Britain and Northern Ireland before the International Court of Justice
The Hague

cc: Mr. Iain Macleod
Agent of the United Kingdom of Great Britain and Northern Ireland before the International Court of Justice

cc: Ms. Catherine Adams
Deputy Agent of the United Kingdom of Great Britain and Northern Ireland before the International Court of Justice

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS CONCERNING NEGOTIATIONS RELATING TO CESSATION OF THE NUCLEAR ARMS RACE AND TO NUCLEAR DISARMAMENT (MARSHALL ISLANDS v. UNITED KINGDOM)

United Kingdom Response to the Marshall Islands Answer to the Question from Judge Cançado Trindade

1. At paragraph 9 of its Answer to Judge Trindade's Question, the Marshall Islands asserts that:
 - a. The United Kingdom has consistently voted against three series of UN General Assembly resolutions relating to the obligation recognised in the Advisory Opinion and/or the commencement of multilateral negotiations for nuclear disarmament;¹
 - b. By voting against these resolutions, the United Kingdom has confirmed that it ignores the *Threat or Use of Nuclear Weapons* advisory opinion and "gives a different interpretation" to the prescriptions of Article VI of the NPT and the corresponding rule of customary international law;
 - c. The Marshall Islands has voted in favour of these resolutions; and
 - d. The diverging voting patterns of the two States are a clear indication of their opposing views.
2. In the palpable absence of any other evidence to show an exchange or negotiation *between the contenders*, the Marshall Islands now asserts that diverging voting patterns of the Marshall Islands and the United Kingdom is sufficient to crystallise a dispute between the Parties in relation to the requirements of Article VI. This contention is manifestly unsustainable, both in fact and in law.
3. On the facts, the Marshall Islands voting record on the resolutions on which it now seeks to rely is at best highly ambiguous:
 - a. In relation to the resolution on the Follow-Up to the Advisory Opinion, the Marshall Islands voted in favour of the resolution from 1997 to 2000, against in 2003, in favour of the resolution in 2004, and abstained from voting in 2005 to 2012;
 - b. In relation to the resolution on Nuclear Disarmament, the Marshall Islands voted against the resolution in 2003, in favour of the resolution in 2004, voted against the resolution from 2005 to 2007, and abstained from voting in 2008 to 2012.

¹ The resolutions on (i) Follow-Up to the Advisory Opinion; (ii) Nuclear Disarmament; and (iii) Follow-Up to the 2013 High-Level Meeting.

4. The fact that the United Kingdom voted against these resolutions cannot in any way be interpreted as an indication that the United Kingdom has a different interpretation of the requirements of Article VI of the NPT. As stated in the United Kingdom's response to Judge Greenwood's Question, these resolutions are detailed and cover a number of issues in both their preambular and operative paragraphs. The fact that the United Kingdom was not able to support the resolutions in the form that they were adopted is not an indication of the United Kingdom's views on the interpretation or application of Article VI of the NPT. It is an indication of the United Kingdom's views on the package of statements and provisions addressed in the resolution taken as a whole.
5. On the law, as the United Kingdom noted in its oral submissions, the Court's case law in *Georgia v. Russia* and *Belgium v. Senegal* makes it clear that, for a dispute to crystallise, there must have been a juxtaposition of views between the parties in their engagement *inter se*. This requirement is reflected also in the most recent judgment of the Court on 17 March 2016 in the case *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* where, at paragraph 73 of the judgment, the Court made it clear that what had caused the dispute to crystallise was that "Colombia was aware" that its legislative enactment and conduct "were positively opposed by Nicaragua", and that, given the public statements of the parties, "Colombia could not have misunderstood the position of Nicaragua over such differences".
6. Ambiguous voting patterns for complex, non-binding resolutions negotiated and adopted in multilateral settings can in no way serve to crystallise a dispute between the Marshall Islands and the United Kingdom. Even now, the United Kingdom finds it impossible to discern the detail of the Marshall Islands views from their voting record for the resolutions on which they now seek to rely.