

# VAN DEN BIESEN KLOOSTRA ADVOCATEN

To the Registrar of the  
International Court of Justice  
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3 pages

Amsterdam, 30 March 2016

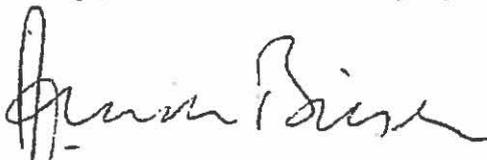
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Re : **Comments on the written reply to the question put by Judge Cancado Trindade submitted by India, RMI v. India**

Excellency,

I have the honor to herewith send you the comments of the Marshall Islands on India's written reply to the question put by Judge Cancado Trindade at the Court's sitting of 16 March 2016 at 10 am.

Accept, Sir, the assurances of my highest esteem.



Phron van den Biesen,  
Co-Agent of the Republic of the Marshall Islands  
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. India) (Jurisdiction)**

**Comments of the Marshall Islands**

**to the reply submitted on 30 March 2016 by India to the questions of**

**Judge Cançado Trindade**

1. India's response to Judge Cançado Trindade's question confirms a point made by the Marshall Islands in paragraph 9 of its reply to this question, namely that "India has not squarely accepted the obligation as set forth by the International Court of Justice as one of customary international law," as to which issue "therefore, there is a dispute between the Parties." Indeed, in its response India does not appear to accept any form of a customary international law obligation relating to negotiations on nuclear disarmament.
2. India's response is mainly devoted to contending that UNGA resolutions, even those welcoming the Advisory Opinion of 8 July 1996, do not demonstrate sufficient *opinio juris* to support the existence of the rule of customary law for which the Marshall Islands is advocating. The Marshall Islands does not accept this as the correct approach to analysis of the question of the relevance of UNGA resolutions.
3. The Marshall Islands contends, as stated in the first paragraph of the reply, that a customary obligation to pursue in good faith and conclude negotiations on nuclear disarmament was recognized by the Court in its 1996 Advisory Opinion. Regarding UNGA resolutions, the Marshall Islands stated at paragraph 7: "With regard to the attitude of States towards the resolutions adopted after 1996, particularly those which clearly affirm the existence of a general obligation to pursue in good faith negotiations leading to nuclear disarmament, this attitude constitutes an expression of *opinio juris* which supports and confirms the Court's recognition in its 1996 Advisory Opinion that this obligation is imposed by a rule having a customary status." The Marshall Islands would add here that the voting records cited by India do not provide evidence of States rejecting the Court's recognition of a customary obligation.
4. Further discussion of UNGA resolutions and other factors relating to the existence and nature of the obligation of customary international law, including NPT Article VI and the Advisory Opinion, is a task for the merits stage of these proceedings. India's response

does, indeed and undeniably so, demonstrate that India and the Marshall Islands have opposing views as to the existence and content of such an obligation. The written and oral pleadings have also amply demonstrated opposing views on another, related facet of the dispute, namely whether India's conduct is in breach of the obligation.