5 OCTOBER 2016

JUDGMENT

OBLIGATIONS CONCERNING NEGOTIATIONS RELATING TO CESSATION OF THE NUCLEAR ARMS RACE AND TO NUCLEAR DISARMAMANT

(MARSHALL ISLANDS *v.* UNITED KINGDOM)

PRELIMINARY OBJECTIONS

OBLIGATIONS RELATIVES À DES NÉGOCIATIONS CONCERNANT LA CESSATION DE LA COURSE AUX ARMES NUCLÉAIRES ET LE DÉSARMEMENT NUCLÉAIRE

(ÎLES MARSHALL c. ROYAUME-UNI)

EXCEPTIONS PRÉLIMINAIRES

5 OCTOBRE 2016

ARRÊT

TABLE OF CONTENTS

INTERNATIONAL COURT OF JUSTICE

YEAR 2016

2016
5 October
General List
No. 160

5 October 2016

OBLIGATIONS CONCERNING NEGOTIATIONS RELATING TO CESSATION OF THE NUCLEAR ARMS RACE AND TO NUCLEAR DISARMAMENT

(MARSHALL ISLANDS *v.* UNITED KINGDOM)

PRELIMINARY OBJECTIONS

Historical background — Disarmament activities of the United Nations — Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968 — Court's 8 July 1996 Advisory Opinion on nuclear weapons.

Proceedings brought before the Court.

*

Preliminary objection based on absence of a dispute.

Meaning of "dispute" in case law of the Court — Parties must "hold clearly opposite views" — Existence of a dispute is a matter of substance, not form or procedure — Prior negotiations not required where Court seised on basis of declarations under Article 36 (2) of Statute unless one of these declarations so provides — Formal diplomatic protest not required — Notice of intention to file claim not required — Existence of dispute is matter for objective determination by the Court — Court may take into account statements or documents exchanged in bilateral or multilateral settings — Conduct of parties may also be relevant — Evidence must

demonstrate that respondent was aware, or could not have been unaware, that its views were "positively opposed" by applicant — Existence of dispute to be determined in principle as of date application is submitted — Limited relevance of subsequent conduct.

Contention that dispute exists based on statements made in multilateral fora — Statement made at United Nations High-level Meeting on Nuclear Disarmament on 26 September 2013 — Statement made at conference in Nayarit, Mexico, on 13 February 2014 — Neither statement sufficient to establish existence of dispute — None of the other statements relied on by the Marshall Islands supports existence of dispute.

Contention that the very filing of Application and position of Parties in proceedings show existence of dispute — Case law relied on by Marshall Islands does not support this contention — Application and statements made during judicial proceedings cannot create dispute that does not already exist.

Contention that dispute exists based on the Parties' voting records on nuclear disarmament in multilateral fora — Considerable care required before inferring existence of dispute from votes cast before political organs — Votes on resolutions containing number of propositions provide no basis for postulating existence of dispute.

Contention that dispute exists based on United Kingdom's conduct — Applicant's statements did not offer any particulars regarding United Kingdom's conduct — Cannot be said that United Kingdom was aware, or could not have been unaware, that the Marshall Islands was making an allegation that the United Kingdom was in breach of its obligations — Conduct of United Kingdom cannot show opposition of views.

Preliminary objection of United Kingdom upheld — Not necessary for the Court to deal with other preliminary objections — Case cannot proceed to the merits phase.

JUDGMENT

Present: *President* ABRAHAM; *Vice-President* YUSUF; *Judges* OWADA, TOMKA, BENNOUNA, CANÇADO TRINDADE, GREENWOOD, XUE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, ROBINSON, CRAWFORD, GEVORGIAN; *Judge* ad hoc BEDJAOUI; *Registrar* COUVREUR.

In the case regarding obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament,

between

the Republic of the Marshall Islands,

represented by

H.E. Mr. Tony A. deBrum, Minister for Foreign Affairs of the Republic of the Marshall Islands,

Mr. Phon van den Biesen, Attorney at Law, van den Biesen Kloostra Advocaten, Amsterdam,

as Co-Agents;

Ms Deborah Barker-Manase, Chargé d'affaires a.i. and Deputy Permanent Representative of the Republic of the Marshall Islands to the United Nations, New York,

as Member of the Delegation;

Ms Laurie B. Ashton, Attorney, Seattle,

Mr. Nicholas Grief, Professor of Law, University of Kent, member of the English Bar,

Mr. Luigi Condorelli, Professor of International Law, University of Florence, Honorary Professor of International Law, University of Geneva,

Mr. Paolo Palchetti, Professor of International Law, University of Macerata,

Mr. John Burroughs, New York,

Ms Christine Chinkin, Emerita Professor of International Law, London School of Economics, member of the English Bar,

Mr. Roger S. Clark, Board of Governors Professor, Rutgers Law School, New Jersey,

as Counsel and Advocates;

Mr. David Krieger, Santa Barbara,

Mr. Peter Weiss, New York,

Mr. Lynn Sarko, Attorney, Seattle,

as Counsel;

Ms Amanda Richter, member of the English Bar,

Ms Sophie Elizabeth Bones, LL.B., LL.M.,

Mr. J. Dylan van Houcke, LL.B., LL.M., Ph.D. Candidate, Birkbeck, University of London,

Mr. Loris Marotti, Ph.D. Candidate, University of Macerata,

Mr. Lucas Lima, Ph.D. Candidate, University of Macerata,

Mr. Rob van Riet, London,

Ms Alison E. Chase, Attorney, Santa Barbara,

as Assistants;

Mr. Nick Ritchie, Lecturer in International Security, University of York,

as Technical Adviser,

and

the United Kingdom of Great Britain and Northern Ireland,

represented by

H.E. Sir Geoffrey Adams, K.C.M.G., Ambassador of the United Kingdom of Great Britain and Northern Ireland to the Kingdom of the Netherlands;

Mr. Iain Macleod, Legal Adviser to the Foreign and Commonwealth Office,

as Agent;

Ms Catherine Adams, Legal Director at the Foreign and Commonwealth Office,

as Deputy Agent (until 29 September 2016);

Mr. Douglas Wilson, Legal Director at the Foreign and Commonwealth Office,

as Deputy Agent (from 29 September 2016);

Mr. Shehzad Charania, Legal Adviser at the Embassy of the United Kingdom of Great Britain and Northern Ireland in the Kingdom of the Netherlands,

as Deputy Agent (until 15 August 2016);

Mr. Philip Dixon, Legal Adviser at the Embassy of the United Kingdom of Great Britain and Northern Ireland in the Kingdom of the Netherlands,

as Deputy Agent (from 15 August 2016);

Mr. Christopher Stephen, Assistant Legal Adviser, Foreign and Commonwealth Office,

as Adviser;

Sir Daniel Bethlehem, Q.C., member of the English Bar,

Mr. Guglielmo Verdirame, Professor of International Law, King's College London, member of the English Bar,

Ms Jessica Wells, member of the English Bar,

as Counsel and Advocates,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 24 April 2014, the Government of the Republic of the Marshall Islands (hereinafter the "Marshall Islands" or the "Applicant") filed in the Registry of the Court an Application instituting proceedings against the United Kingdom of Great Britain and Northern Ireland (hereinafter the "United Kingdom" or the "Respondent"), in which it claimed that the Respondent has breached treaty and customary obligations in the following manner:

> "15. The United Kingdom 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 United Kingdom 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."

In its Application, the Marshall Islands seeks to found the jurisdiction of the Court on the declarations made, pursuant to Article 36, paragraph 2, of the Statute of the Court, by the United Kingdom on 5 July 2004 (deposited with the Secretary-General of the United Nations also on 5 July 2004) and by the Marshall Islands on 15 March 2013 (deposited with the Secretary-General on 24 April 2013).

2. In accordance with Article 40, paragraph 2, of the Statute, the Registrar immediately communicated the Application to the Government of the United Kingdom; and, under paragraph 3 of that Article, he notified all other States entitled to appear before the Court of the Application.

3. On the instructions of the Court, pursuant to Article 43 of the Rules of Court, the Registrar addressed to States parties to the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter the "NPT") the notifications provided for in Article 63, paragraph 1, of the Statute of the Court. In accordance with the provisions of Article 69, paragraph 3, of the Rules of Court, the Registrar moreover addressed to the Secretary-General of the United Nations the notification provided for in Article 34, paragraph 3, of the Statute of the Court.

4. Since the Court included upon the Bench no judge of the nationality of the Marshall Islands, the latter proceeded to exercise the right conferred upon it by Article 31, paragraph 2, of the Statute to choose a judge *ad hoc* to sit in the case: it chose Mr. Mohammed Bedjaoui.

5. By an Order of 16 June 2014, the Court fixed 16 March 2015 as the time-limit for the filing of the Memorial of the Marshall Islands and 16 December 2015 for the filing of the Counter-Memorial of the United Kingdom. The Marshall Islands filed its Memorial within the time-limit so prescribed.

6. On 15 June 2015, within the time-limit set by Article 79, paragraph 1, of the Rules of Court, the United Kingdom raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Consequently, by an Order of 19 June 2015, the President of the Court, noting that, by virtue of Article 79, paragraph 5, of the Rules of Court, the proceedings on the merits were suspended, and taking account of Practice Direction V, fixed 15 October 2015 as the time-limit for the presentation by the Marshall Islands of a written statement of its observations and submissions on the preliminary objections raised by the United Kingdom. The Marshall Islands filed such a statement within the time-limit so prescribed, and the case became ready for hearing in respect of the preliminary objections.

7. By a letter dated 26 November 2015, the Government of the Republic of India, referring to Article 53, paragraph 1, of the Rules of Court, asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties in accordance with that same provision, the President of the Court decided to grant this request. By letters dated 10 December 2015, the Registrar duly communicated that decision to the Government of India and to the Parties.

8. Pursuant to Article 53, paragraph 2, of the Rules of Court, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings.

9. Public hearings on the preliminary objections raised by the United Kingdom were held from Wednesday 9 to Wednesday 16 March 2016, at which the Court heard the oral arguments and replies of:

For the United Kingdom:	Mr. Iain Macleod, Sir Daniel Bethlehem, Mr. Guglielmo Verdirame, Ms Jessica Wells.
For the Marshall Islands:	H.E. Mr. Tony deBrum, Mr. Phon van den Biesen, Mr. Luigi Condorelli, Ms Laurie B. Ashton, Ms Christine Chinkin, Mr. Paolo Palchetti, Mr. Nicholas Grief.

10. At the hearings, Members of the Court put questions to the Parties, to which replies were given orally and in writing, within the time-limit fixed by the President in accordance with Article 61, paragraph 4, of the Rules of Court. Each of the Parties submitted comments on the written replies provided by the other, pursuant to Article 72 of the Rules of Court.

*

11. In the Application, the following claims were made by the Marshall Islands:

"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."

12. In the written proceedings on the merits, the following submissions were presented on behalf of the Government of the Marshall Islands in its Memorial:

"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 the nuclear arms race 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 the nuclear arms race 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."

13. In the preliminary objections, the following submissions were presented on behalf of the Government of the United Kingdom:

"For the reasons set out in this pleading, the United Kingdom requests the Court to adjudge and declare that the claim brought by the Marshall Islands is inadmissible and/or that the Court lacks jurisdiction to address the claim."

In the written statement of its observations and submissions on the preliminary objections, the following submissions were presented on behalf of the Government of the Marshall Islands:

"In consideration of the foregoing, the Republic of the Marshall Islands requests the Court:

— to reject and dismiss the Preliminary Objections of the United Kingdom; and

— to adjudge and declare:

(i) that the Court has jurisdiction in respect of the claims presented by the Marshall Islands; and

(ii) that the Marshall Islands' claims are admissible."

14. In the oral proceedings on the preliminary objections, the following submissions were presented by the Parties:

On behalf of the Government of the United Kingdom,

at the hearing of 14 March 2016:

"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."

On behalf of the Government of the Marshall Islands,

at the hearing of 16 March 2016:

"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."

*

* *

I. INTRODUCTION

A. Historical background

15. Since the creation of the United Nations, and in line with its Purposes under Article 1 of the Charter, the issue of disarmament has been central to the Organization's concerns. In this regard, the Charter gives three separate bodies a role in international disarmament efforts: the General Assembly (Article 11, paragraph 1), the Security Council (Article 26) and the Military Staff Committee (Article 47, paragraph 1). The General Assembly has been active in the field of international disarmament generally and nuclear disarmament in particular. With respect to international disarmament generally, the General Assembly created the first United Nations Disarmament Commission under the Security Council in 1952 (resolution 502 (VI) of 11 January 1952). In 1978, it held a Special Session on disarmament, at which it established the current United Nations disarmament mechanisms consisting of: the First Committee of the General Assembly, the mandate of which was redefined to deal exclusively with questions of disarmament and related international security questions; a new Disarmament Commission as a subsidiary organ of the General Assembly, composed of all Member States of the United Nations (replacing the United Nations Disarmament Commission created in 1952); and a Committee on Disarmament devoted to negotiations (resolution S-10/2 of 30 June 1978, paras. 117, 118 and 120). The latter was redesignated the Conference on Disarmament with effect from 1984 (General Assembly resolution 37/99 K, Part II, of 13 December 1982; Report of the Committee on Disarmament to the United Nations General Assembly, 1 September 1983, doc. CD/421, para. 21) and now consists of 65 members.

With respect to nuclear disarmament efforts in particular, it may be recalled that, in its very first resolution, unanimously adopted on 24 January 1946, the General Assembly established a Commission to deal with "the problems raised by the discovery of atomic energy" (resolution 1 (I) of 24 January 1946; this Commission was dissolved in 1952 when the first United Nations Disarmament Commission, mentioned above, was established). As early as 1954, the General Assembly also called for a convention on nuclear disarmament (resolution 808 (IX) A of 4 November 1954) and has repeated this call in many subsequent resolutions. In addition, the mechanisms set out above, created by the General Assembly in view of general international disarmament efforts, have also dealt specifically with questions of nuclear disarmament.

16. By resolution 21 of 2 April 1947, the United Nations Security Council placed a group of Pacific Islands, including those making up the present-day Marshall Islands, under the trusteeship system established by the United Nations Charter, and designated the United States of America as the Administering Authority. From 1946 to 1958, while under this trusteeship, the Marshall Islands was the location of repeated nuclear weapons testing. By resolution 683 of 22 December 1990, the Security Council terminated the Trusteeship Agreement concerning the Marshall Islands. By General Assembly resolution 46/3 of 17 September 1991, the Marshall Islands was admitted to membership in the United Nations.

17. The Respondent is one of the founding Members of the United Nations and a permanent member of the Security Council. The United Kingdom first detonated an atomic device in the Monte Bello Islands off north-western Australia on 3 October 1952 and possesses nuclear weapons.

18. Following extensive negotiations in the 1960s, in which both nuclear-weapon States and non-nuclear-weapon States participated, the NPT was opened for signature on 1 July 1968. It entered into force on 5 March 1970 and was extended indefinitely in 1995. Review conferences have been held every five years since its entry into force, pursuant to Article VIII, paragraph 3, of the NPT. One hundred and ninety-one States have become parties to the NPT; on 10 January 2003, the Democratic People's Republic of Korea announced its withdrawal. The Marshall Islands acceded to the NPT on 30 January 1995. The United Kingdom is a party to the NPT and is one of three Depositary Governments for the Treaty under Article IX; it signed the Treaty on 1 July 1968 and deposited instruments of ratification on 27 November 1968 in London and Washington and on 29 November 1968 in Moscow.

19. The NPT seeks to limit the proliferation of nuclear weapons and provides certain rights and obligations for parties designated as "nuclear-weapon State Part[ies]" and "non-nuclear-weapon State Part[ies]" (including, *inter alia*, the right of all States to develop and use nuclear energy for peaceful purposes, the obligation of nuclear-weapon States parties not to transfer nuclear weapons to any recipient, and the obligation of non-nuclear-weapon States parties not to receive such a transfer). The Preamble to the NPT also declares the intention of the parties "to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament". In this connection, Article VI of the NPT 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."

For the purposes of the NPT, a "nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967" (Article IX.3). There are five nuclear-weapon States under the NPT: China, France, the Russian Federation, the United Kingdom and the United States of America. In addition, certain other States possess, or are believed to possess nuclear weapons.

20. By resolution 49/75 K of 15 December 1994, the General Assembly requested the International Court of Justice to give an advisory opinion on whether the threat or use of nuclear weapons is permitted in any circumstance under international law. In the reasoning of its Advisory Opinion of 8 July 1996, the Court appreciated "the full importance of the recognition by Article VI of the [NPT] of an obligation to negotiate in good faith a nuclear disarmament" (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 263, para. 99). It added that this obligation went "beyond . . . a mere obligation of conduct" and was 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" (*ibid.*, p. 264, para. 99). The Court stated that "[t]his twofold obligation to pursue and to conclude negotiations formally concerns [all] States parties to the [NPT], or, in other words, the vast majority of the international community", adding that "any realistic search for general and complete disarmament, especially nuclear disarmament, necessitates the co-operation of all States" (*ibid.*, para. 100). In

the conclusions of the Advisory Opinion, the Court unanimously declared 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" (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 267, para. 105 (2) F).

21. In its resolution 51/45 M of 10 December 1996, the General Assembly "[u]nderline[d] the unanimous conclusion of the Court 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" and

> "[c]all[ed] upon all States to fulfil that obligation immediately by commencing multilateral negotiations in 1997 leading to an early conclusion of a nuclear-weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination".

The General Assembly has passed a similar resolution on the follow-up to the Court's Advisory Opinion every year since then. It has also passed numerous other resolutions encouraging nuclear disarmament.

B. Proceedings brought before the Court

22. On 24 April 2014, the Marshall Islands filed, in addition to the present Application (see paragraph 1 above), separate applications against the eight other States which, according to the Marshall Islands, possess nuclear weapons (China, the Democratic People's Republic of Korea, France, India, Israel, Pakistan, the Russian Federation and the United States of America), also alleging a failure to fulfil obligations concerning negotiations relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament. The cases against India, Pakistan and the United Kingdom were entered in the Court's General List, as the Applicant had invoked these States' declarations recognizing the compulsory jurisdiction of the Court (pursuant to Article 36, paragraph 2, of the Statute of the Court) as a basis for jurisdiction. In the applications against China, the Democratic People's Republic of Korea, France, Israel, the Russian Federation and the United States of America, the Marshall Islands invited these States to accept the jurisdiction of the Court, as contemplated in Article 38, paragraph 5, of the Rules of Court, for the purposes of the case. None of these States has done so. Accordingly, these applications were not entered in the Court's General List.

23. The United Kingdom has raised five preliminary objections to the jurisdiction of the Court or the admissibility of the Application. According to the first preliminary objection, the Marshall Islands has failed to show that there was, at the time of the filing of the Application, a justiciable dispute between the Parties with respect to an alleged failure to pursue negotiations in good faith towards the cessation of the nuclear arms race at an early date and nuclear disarmament. In its second and third preliminary objections, the United Kingdom argues that the Court's jurisdiction is precluded by reservations in the Parties' declarations under Article 36, paragraph 2, of the Statute. The fourth preliminary objection is based on the absence from the proceedings of third parties, in particular the other States possessing nuclear weapons, whose essential interests are said to be engaged in the proceedings. According to the fifth preliminary objection, the Court should decline to exercise its jurisdiction because a judgment on the merits in the present case would have no practical consequence.

24. In its written observations and its final submissions presented during the oral proceedings, the Marshall Islands requested the Court to reject the preliminary objections of the United Kingdom in their entirety, and accordingly to find that it has jurisdiction and that the Application is admissible (see paragraphs 13 and 14 above).

25. The Court will first consider the preliminary objection based on the absence of a dispute.

*

* *

II. FIRST PRELIMINARY OBJECTION: ABSENCE OF A DISPUTE

26. In its first preliminary objection, the United Kingdom argues that, on the date of the filing of the Marshall Islands' Application, there was no "justiciable dispute" between the Marshall Islands and the United Kingdom. Consequently, it considers that the Court lacks jurisdiction to address all of the Marshall Islands' claims and/or that those claims are inadmissible.

27. The United Kingdom contends that there is a principle of customary international law which requires that a State intending to invoke the responsibility of another State must give notice of its claim to that State, such notice being a condition of the existence of a dispute. It asserts that this principle is reflected in Article 43 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (hereinafter "ILC Articles on State Responsibility") and provisions to that effect can be found in various compulsory dispute settlement arrangements under international law. The United Kingdom argues that prior notification of claims was also held by the Court to be a precondition to the existence of a dispute in both the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)* and the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*.

28. The United Kingdom asserts that these requirements have not been satisfied in the present case. With regard to the two statements particularly relied upon by the Marshall Islands, the United Kingdom maintains that neither the content of these statements nor the circumstances in which they were made provide any evidence that a dispute existed between the Parties at the date on which the Application was filed. The first statement was made on 26 September 2013 at the High-level Meeting of the General Assembly on Nuclear Disarmament, when the Minister for Foreign Affairs of the Marshall Islands "urge[d] all nuclear weapons states to intensify efforts to address their responsibilities in moving towards an effective and secure disarmament". The Respondent observes that the statement did not specifically mention the United Kingdom, and argues that it could not in any way be viewed as invoking the latter's responsibility under

international law for any breach of the NPT or of customary international law. The second statement, also of a general nature, was made on 13 February 2014, just over two months before the filing of the Application before the Court, at the Second Conference on the Humanitarian Impact of Nuclear Weapons held in Nayarit, Mexico, and reads as follows:

> "[T]he Marshall Islands is convinced that multilateral negotiations on achieving and sustaining a world free of nuclear weapons are long overdue. Indeed we believe that States possessing nuclear arsenals are failing to fulfil their legal obligations in this regard. Immediate commencement and conclusion of such negotiations is required by legal obligation of nuclear disarmament resting upon each and every State under Article VI of the Non-Proliferation Treaty and customary international law."

The United Kingdom observes that it was not present at this conference, and contends that the Marshall Islands took no steps to bring this statement to its attention. The United Kingdom adds that the Marshall Islands has had other opportunities to notify it of the alleged dispute but did not do so.

29. The Respondent argues that, at the date of the filing of the Application, the Marshall Islands had not taken the most basic steps to notify the United Kingdom of its claim, or any aspect of the alleged dispute or even disagreement between them. Furthermore, the United Kingdom contends that it is not enough that there is a public record of views that are not the same; there needs to be an exchange between the parties to a dispute. Accordingly, it argues, there was no conflict of legal positions between the Marshall Islands and the United Kingdom, and thus no "justiciable dispute". The United Kingdom adds that the filing of an application cannot amount both to notice and the crystallization of an incipient dispute. Similarly, post-application conduct cannot on its own establish the existence of a "justiciable dispute" between the parties at the time of the seisin of the Court; it may only be used to define the scope or subject-matter of the dispute.

*

30. The Marshall Islands contends that the first preliminary objection of the United Kingdom should be rejected.

31. The Marshall Islands asserts that there is no general principle imposing on a State that intends to institute proceedings the obligation to notify the other State of this intention or of its claims prior to seising the adjudicatory body. It argues that Article 43 of the ILC Articles on State Responsibility is irrelevant as that provision does not relate to the institution of proceedings before an international court or tribunal. In support of that argument, the Marshall Islands refers to the ILC's Commentary to Article 44, which indicates that the ILC Articles on State Responsibility "are not concerned with questions of the jurisdiction of international courts and tribunals, or in general with the conditions for the admissibility of cases". It further submits that the United Kingdom's attempt to infer a principle of general application from specific provisions in various international instruments is untenable and does not find any support in the case law of international courts and tribunals.

32. The Marshall Islands adds that the Court has consistently denied the existence of a general requirement of prior notice of the intention to institute proceedings, and that the *Belgium* v. *Senegal* and *Georgia* v. *Russian Federation* cases do not support the United Kingdom's allegation of such a prior notification requirement. The Marshall Islands also avers that the Court has never recognized the existence of a general requirement of prior notification of claims, and that a perusal of its case law reveals that it has always avoided setting overly rigid parameters to determine the existence of a dispute, in particular allowing for the possibility that a dispute can "crystallize" as a consequence of the claim made by a State against the consistent course of conduct of another State (e.g., *Certain Property (Liechtenstein* v. *Germany), Preliminary Objections, Judgment, I.C.J. Reports 2005*, p. 19, para. 25; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 317, para. 93; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, pp. 614-615, para. 29).

33. In the Marshall Islands' view, the existence of a dispute is evidenced by the opposing attitudes of the Parties with respect to the question of the United Kingdom's compliance with Article VI of the NPT and the corresponding customary law obligations. First, the Marshall Islands avers that it clearly communicated its claim to all States possessing nuclear weapons — including the United Kingdom — through its 13 February 2014 statement at the Nayarit conference (see paragraph 28 above). According to the Marshall Islands, the United Kingdom must have been aware of this statement — even if it did not attend the relevant meeting — because all statements and records therefrom were publicly available and easily accessible, including on the Internet. Subsidiarily, the Marshall Islands contends that even if one were to accept the test of prior notice of the claim suggested by the United Kingdom (which the Applicant interprets as requiring that the Respondent "be aware of the claim of the other Party so as to be given the opportunity to respond to such claim"), this statement would fulfil that requirement.

34. The Marshall Islands further argues that it also gave notice of its claim by means of its Application.

35. For the Marshall Islands, the opposition of the United Kingdom to this claim is evidenced by the Respondent's own conduct. It adds that the statements made by the United Kingdom in the Preliminary Objections and during the hearings show that it continues to oppose the merits of the claim. Moreover, the Marshall Islands refers to the Parties' respective voting records in multilateral fora as demonstrating the opposition of views between them. Finally, according to the Marshall Islands, such opposition results from the fact that the United Kingdom has engaged, and continues to engage, in a course of conduct alleged to be in breach of international law, as well as from statements of the Government of the United Kingdom in parliamentary debates in 2006 and 2010, stating that the renewal of its nuclear deterrent was consistent with its obligations under the NPT.

* *

36. Under Article 38 of the Statute, the function of the Court is to decide in accordance with international law disputes that States submit to it. Under Article 36, paragraph 2, of the Statute, the Court has jurisdiction in all "legal disputes" that may arise between States parties to the Statute having made a declaration in accordance with that provision. The existence of a dispute between the Parties is thus a condition of the Court's jurisdiction.

37. According to the established case law of the Court, a dispute is "a disagreement on a point of law or fact, a conflict of legal views or of interests" between parties (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11). In order for a dispute to exist, "[i]t must be shown that the claim of one party is positively opposed by the other" (*South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328). The two sides must "'hold clearly opposite views concerning the question of the performance or non-performance of certain' international obligations" (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections*, Judgment of 17 March 2016, para. 50, citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74).

38. The Court's determination of the existence of a dispute is a matter of substance, and not a question of form or procedure (cf. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 84, para. 30; *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów) (Germany* v. *Poland), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 10-11). Prior negotiations are not required where the Court has been seised on the basis of declarations made pursuant to Article 36, paragraph 2, of its Statute, unless one of the relevant declarations so provides (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 322, para. 109). Moreover, "although a formal diplomatic protest may be an important step to bring a claim of one party to the attention of the other, such a formal protest is not a necessary condition" for the existence of a dispute (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections*, Judgment of 17 March 2016, para. 72). Similarly, notice of an intention to file a case is not required as a condition for the seisin of the Court (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 297, para. 39).

39. Whether a dispute exists is a matter for objective determination by the Court which must turn on an examination of the facts (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections*, Judgment of 17 March 2016, para. 50). For that purpose, the Court takes into account in particular any statements or documents exchanged between the parties (*Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, pp. 443-445, paras. 50-55), as well as any

exchanges made in multilateral settings (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 94, para. 51, p. 95, para. 53). In so doing, it pays special attention to "the author of the statement or document, their intended or actual addressee, and their content" (*ibid.*, p. 100, para. 63).

40. The conduct of the parties may also be relevant, especially when there have been no diplomatic exchanges (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections*, Judgment of 17 March 2016, paras. 71 and 73). As the Court has affirmed,

> "a disagreement on a point of law or fact, a conflict of legal views or interests, or the positive opposition of the claim of one party by the other need not necessarily be stated *expressis verbis* . . . [T]he position or the attitude of a party can be established by inference, whatever the professed view of that party." (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 315, para. 89.)

In particular, the Court has previously held that "the existence of a dispute may be inferred from the failure of a State to respond to a claim in circumstances where a response is called for" (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 84, para. 30, citing *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 315, para. 89).

41. The evidence must show that the parties "hold clearly opposite views" with respect to the issue brought before the Court (see paragraph 37 above). As reflected in previous decisions of the Court in which the existence of a dispute was under consideration, a dispute exists when it is demonstrated, on the basis of the evidence, that the respondent was aware, or could not have been unaware, that its views were "positively opposed" by the applicant (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections*, Judgment of 17 March 2016, para. 73; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 99, para. 61, pp. 109-110, para. 87, p. 117, para. 104).

42. In principle, the date for determining the existence of a dispute is the date on which the application is submitted to the Court (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections*, Judgment of 17 March 2016, para. 52; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 85, para. 30). Indeed, when it is stated in Article 38, paragraph 1, of the Court's Statute that the Court's function is "to decide in accordance with international law such disputes as are submitted to it", this relates to disputes existing at the time of their submission.

43. Conduct subsequent to the application (or the application itself) may be relevant for various purposes, in particular to confirm the existence of a dispute (*East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 100, para. 22 and p. 104, para. 32), to clarify its subject-matter (*Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Preliminary Objection, Judgment, I.C.J. Reports 2015 (II)*, p. 602, para. 26) or to determine whether the dispute has disappeared as of the time when the Court makes its decision (*Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, pp. 270-271, para. 55; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 476, para. 58).

However, neither the application nor the parties' subsequent conduct and statements made during the judicial proceedings can enable the Court to find that the condition of the existence of a dispute has been fulfilled in the same proceedings (*Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, pp. 444-445, paras. 53-55). If the Court had jurisdiction with regard to disputes resulting from exchanges in the proceedings before it, a respondent would be deprived of the opportunity to react before the institution of proceedings to the claim made against its own conduct. Furthermore, the rule that the dispute must in principle exist prior to the filing of the application would be subverted.

* *

44. The Court notes that the Marshall Islands, by virtue of the suffering which its people endured as a result of it being used as a site for extensive nuclear testing programs, has special reasons for concern about nuclear disarmament (see paragraph 16 above). But that fact does not remove the need to establish that the conditions for the Court's jurisdiction are met. While it is a legal matter for the Court to determine whether it has jurisdiction, it remains for the Applicant to demonstrate the facts underlying its case that a dispute exists (*Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 75, para. 16).

45. As noted above at paragraphs 27-29, the United Kingdom relies on the fact that the Marshall Islands did not commence negotiations or give notice to it of the claim that is the subject of the Application to support its contention that there is no dispute between the Parties. The United Kingdom lays particular emphasis on Article 43 of the ILC Articles on State Responsibility, which requires an injured State to "give notice of its claim" to the allegedly responsible State. Article 48, paragraph 3, applies that requirement *mutatis mutandis* to a State other than an injured State which invokes responsibility. However, the Court notes that the ILC's commentary specifies that the Articles "are not concerned with questions of the jurisdiction of international courts and tribunals, or in general with the conditions for the admissibility of cases brought before such courts or tribunals" (see ILC Commentary on the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission, United Nations, doc. A/56/10, 2001, paragraph 1 of the Commentary on Article 44, pp. 120-121). Moreover, the

Court has rejected the view that notice or prior negotiations are required where it has been seised on the basis of declarations made pursuant to Article 36, paragraph 2, of the Statute, unless one of those declarations so provides. The Court's jurisprudence treats the question of the existence of a dispute as a jurisdictional one that turns on whether there is, in substance, a dispute, not on what form that dispute takes or whether the respondent has been notified (see paragraph 38 above).

46. The Marshall Islands seeks to demonstrate that it had a dispute with the United Kingdom in essentially four ways. First, it refers to its own statements, as formulated in multilateral fora. Secondly, it argues that the very filing of the Application, as well as the positions expressed by the Parties in the current proceedings, show the existence of a dispute between the Parties. Thirdly, it relies on the United Kingdom's voting records on nuclear disarmament in multilateral fora. Fourthly, it relies on the United Kingdom's conduct both before and after the filing of the Application.

47. The Marshall Islands accepts that no bilateral diplomatic exchanges have taken place on these issues. This is despite the fact that a number of bilateral exchanges, including visits by senior United Kingdom personnel to the Marshall Islands, took place in the period prior to the filing of the Application at which such issues could have been raised.

48. The Marshall Islands refers to a number of statements made in multilateral fora before the date of the filing of its Application which, in its view, suffice to establish the existence of a dispute. As the Court has already explained, the opposition of the Parties' views could also be demonstrated by exchanges made in multilateral settings (see paragraph 39 above). In such a setting, however, the Court must give particular attention, *inter alia*, to the content of a party's statement and to the identity of the intended addressees, in order to determine whether that statement, together with any reaction thereto, show that the parties before it held "clearly opposite views" (see paragraphs 37 and 39 above). The question in this case is therefore whether the statements invoked by the Marshall Islands are sufficient to demonstrate the existence of such opposition.

49. The Marshall Islands relies on the statement made at the High-level Meeting of the General Assembly on Nuclear Disarmament, on 26 September 2013 by its Minister for Foreign Affairs, "urg[ing] all nuclear weapons states to intensify efforts to address their responsibilities in moving towards an effective and secure disarmament". However, this statement is formulated in hortatory terms and cannot be understood as an allegation that the United Kingdom (or any other nuclear power) was in breach of any of its legal obligations. It does not mention the obligation to negotiate, nor does it say that the nuclear-weapon States are failing to meet their obligations in this regard. It suggests that they are making "efforts" to address their responsibilities, and calls for an intensification of those efforts, rather than deploring a failure to act. Moreover, a statement can give rise to a dispute only if it refers to the subject-matter of a claim "with sufficient clarity to

enable the State against which [that] claim is made to identify that there is, or may be, a dispute with regard to that subject-matter" (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I),* p. 85, para. 30). While the Court reached that conclusion in the context of a compromissory clause, the same reasoning applies to a dispute over any obligation regardless of the underlying jurisdictional basis alleged, since the Court made clear that it was dealing with the requirements of a dispute in general (*ibid*., p. 84, para. 29). The 2013 statement relied upon by the Marshall Islands does not meet these requirements.

50. The statement made by the Marshall Islands at the Nayarit conference on 13 February 2014 (see paragraph 28 above) goes further than the 2013 statement, in that it contains a sentence asserting that "States possessing nuclear arsenals are failing to fulfil their legal obligations" under Article VI of the NPT and customary international law. However, the United Kingdom was not present at the Nayarit conference. Further, the subject of the conference was not specifically the question of negotiations with a view to nuclear disarmament, but the broader question of the humanitarian impact of nuclear weapons, and while this statement contains a general criticism of the conduct of all nuclear-weapon States, it does not specify the conduct of the United Kingdom that gave rise to the alleged breach. Such a specification would have been particularly necessary if, as the Marshall Islands contends, the Nayarit statement was aimed at invoking the international responsibility of the Respondent on the grounds of a course of conduct which had remained unchanged for many years. Given its very general content and the context in which it was made, that statement did not call for a specific reaction by the United Kingdom. Accordingly, no opposition of views can be inferred from the absence of any such reaction. The Nayarit statement is insufficient to bring into existence, between the Marshall Islands and the United Kingdom, a specific dispute as to the scope of Article VI of the NPT and the asserted corresponding customary international law obligation, or as to the United Kingdom's compliance with such obligations.

51. None of the other more general statements relied on by the Marshall Islands in this case supports the existence of a dispute, since none articulates an alleged breach by the United Kingdom of the obligation enshrined in Article VI of the NPT or the corresponding customary international law obligation invoked by the Marshall Islands.

52. In all the circumstances, on the basis of those statements — whether taken individually or together — it cannot be said that the United Kingdom was aware, or could not have been unaware, that the Marshall Islands was making an allegation that the United Kingdom was in breach of its obligations.

53. Secondly, the Marshall Islands argues that the very filing of the Application could suffice to establish the existence of a dispute: "nothing excludes the possibility of conceiving the seisin of the Court as an appropriate and perfectly legitimate mode by which the injured State 'notifies its claim' to the State whose international responsibility is invoked". It also points to other statements made in the course of the proceedings by both Parties as evidence of their opposition of views.

54. The Marshall Islands relies on three cases in support of its contention that the statements made by the Parties during the proceedings may serve to evidence the existence of a dispute (see paragraph 32 above). However, these cases do not support this contention. In the case concerning *Certain Property*, the existence of a dispute was clearly referenced by bilateral exchanges between the parties prior to the date of the application (*Certain Property (Liechtenstein* v. *Germany), Preliminary Objections, Judgment, I.C.J. Reports 2005*, p. 19, para. 25). The reference to subsequent materials in the *Cameroon* v. *Nigeria* case related to the scope of the dispute, not to its existence (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 317, para. 93). Moreover, while it is true that the Court did not explicitly reference any evidence before the filing of the application demonstrating the existence of a dispute in its Judgment in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia)*, in the particular context of that case, which involved an ongoing armed conflict, the prior conduct of the parties was sufficient to establish the existence of a dispute (*Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 614, paras. 27-29). Instead, the issues the Court focused on were not the date when the dispute arose but the proper subject-matter of that dispute, whether it fell within the scope of the relevant compromissory clause, and whether it "persist[ed]" at the date of the Court's decision. As stated above, although statements made or claims advanced in or even subsequently to the Application may be relevant for various purposes — notably in clarifying the scope of the dispute submitted — they cannot create a dispute *de novo*, one that does not already exist (see paragraph 43 above).

55. Thirdly, the Marshall Islands refers to the Parties' voting records in multilateral fora on nuclear disarmament (see paragraph 35 above). For example, in response to a question from a Member of the Court, it referred to General Assembly resolution 68/32 of 5 December 2013, entitled "Follow-up to the 2013 High-level Meeting of the General Assembly on Nuclear Disarmament". Paragraph 2 of that resolution called for "urgent compliance with the legal obligations and the fulfilment of the commitments undertaken on nuclear disarmament". In paragraph 4, the General Assembly called for "the urgent commencement of negotiations in the Conference on Disarmament for the early conclusion of a comprehensive convention on nuclear weapons". The resolution was passed by 137 votes to 28 with 20 abstentions. The Marshall Islands voted in favour of the resolution; the United Kingdom voted against.

56. In the Court's view, considerable care is required before inferring from votes cast on resolutions before political organs such as the General Assembly conclusions as to the existence or not of a legal dispute on some issue covered by a resolution. The wording of a resolution, and votes or patterns of voting on resolutions of the same subject-matter, may constitute relevant evidence of the existence of a legal dispute in some circumstances, particularly where statements were made by way of explanation of vote. However, some resolutions contain a large number of different propositions; a State's vote on such resolutions cannot by itself be taken as indicative of the position of that State on each and every proposition within that resolution, let alone of the existence of a legal dispute between that State and another State regarding one of those propositions.

57. Fourthly, the Marshall Islands invokes the United Kingdom's conduct in declining to co-operate with certain diplomatic initiatives, in failing to initiate any disarmament negotiations, and in replacing and modernizing its nuclear weapons, together with statements that its conduct is consistent with its treaty obligations. According to the Marshall Islands, this conduct and assertion of legality, juxtaposed with statements of the Marshall Islands containing a complaint aimed precisely at that conduct and the legal position of the United Kingdom, demonstrate the existence of a dispute as to the scope of and compliance with its obligations under Article VI of the NPT and a corresponding customary international law obligation.

The Court recalls that the question whether there is a dispute in a particular contentious case turns on the evidence of opposition of views (see paragraphs 37, 39 and 40 above). In this regard, conduct of a respondent can contribute to a finding by the Court that the views of the parties are in opposition (see paragraph 40 above). However, as the Court has previously concluded (see paragraphs 49-52 above), in the present case none of the statements that were made in a multilateral context by the Marshall Islands offered any particulars regarding the United Kingdom's conduct. On the basis of such statements, it cannot be said that the United Kingdom was aware, or could not have been unaware, that the Marshall Islands was making an allegation that the United Kingdom was in breach of its obligations. In this context, the conduct of the United Kingdom does not provide a basis for finding a dispute between the two States before the Court.

* *

58. The Court therefore concludes that the first preliminary objection made by the United Kingdom must be upheld. It follows that the Court does not have jurisdiction under Article 36, paragraph 2, of its Statute. Consequently, it is not necessary for the Court to deal with the other objections raised by the United Kingdom.

*

* *

59. For these reasons,

THE COURT,

(1) By eight votes to eight, by the President's casting vote,

Upholds the first preliminary objection to jurisdiction raised by the United Kingdom of Great Britain and Northern Ireland, based on the absence of a dispute between the Parties;

IN FAVOUR: *President* Abraham; *Judges* Owada, Greenwood, Xue, Donoghue, Gaja, Bhandari, Gevorgian;

AGAINST: *Vice-President* Yusuf; *Judges* Tomka, Bennouna, Cançado Trindade, Sebutinde, Robinson, Crawford; *Judge* ad hoc Bedjaoui;

(2) By nine votes to seven,

Finds that it cannot proceed to the merits of the case.

IN FAVOUR: *President* Abraham; *Judges* Owada, Tomka, Greenwood, Xue, Donoghue, Gaja, Bhandari, Gevorgian;

AGAINST: *Vice-President* Yusuf; *Judges* Bennouna, Cançado Trindade, Sebutinde, Robinson, Crawford; *Judge* ad hoc Bedjaoui.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this fifth day of October, two thousand and sixteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of the Marshall Islands and the Government of the United Kingdom of Great Britain and Northern Ireland, respectively.

(Signed) Ronny ABRAHAM,
President.

(Signed) Philippe COUVREUR,
Registrar.

President ABRAHAM appends a declaration to the Judgment of the Court; Vice-President YUSUF appends a dissenting opinion to the Judgment of the Court; Judges OWADA and TOMKA append separate opinions to the Judgment of the Court; Judges BENNOUNA and CANÇADO TRINDADE append dissenting opinions to the Judgment of the Court; Judges XUE, DONOGHUE and GAJA append declarations to the Judgment of the Court; Judges SEBUTINDE and BHANDARI append separate opinions to the Judgment of the Court; Judges ROBINSON and CRAWFORD append dissenting opinions to the Judgment of the Court; Judge *ad hoc* BEDJAOUI appends a dissenting opinion to the Judgment of the Court.

(Initialled) R. A.

(Initialled) Ph. C.