

## 25th Annual Session of the **Seoul Model United Nations**

<b>Forum:</b>	International Court of Justice (ICJ)
<b>Question of:</b>	Obligation concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Republic of Marshall Islands v. United Kingdom)
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### Introduction

On 24, April 2014, the Republic of the Marshall Islands filed complaints against nine member nations: China, North Korea, France, India, Israel, Pakistan, the Russian Federation, the United Kingdoms, and the United States of America. The prominent issue that the Marshall Islands alluded to within this application was these respective nations were not fulfilling their obligations that were made during the cessation of the nuclear arms race beforehand.<sup>1</sup>

The history of nuclear weapons dates way back to the periods between the Second World War in 1939 and the Cold War in 1947 between the United States of America and the Soviet Union. Due to the creation of the first nuclear bomb from the USA, the competition to create the most powerful and efficient nuclear weapon was held. As a result, the USA and the Soviet Union went through several testings that would later cause the lawsuit from the Marshall Islands. Some of the major testings from the USA at the point in time was Operation Crossroads, testing on Enewetak, and Castle Bravo on Bikini Atoll. All of these testing sites were mostly near the Marshall Islands which caused a lot of detrimental effects towards the small-populated island. In addition to the USA and Soviet Union, three other large nations, the United Kingdom, the People's Republic of China, and France started developing their own nuclear weapons through different testing sites as well.<sup>2</sup>

The Marshall Islands, a nation of islands and atolls in the Pacific Ocean, had endured a total of 67 nuclear tests just from the USA, still suffering from the consequences of radioactivity. As a result, the Marshall Islands filed a suit stating that the nuclear power nations were not obliging under the 1968 Nuclear Non-proliferation Treaty(NPT) and customary international laws. One of their primary reasons was to promote nuclear disarmament because of the previous sufferings that the people within the island

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<sup>1</sup> "Latest Developments | Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom) | International Court of Justice." *Icj-Cij.org*, 2014, [www.icj-cij.org/en/case/160](http://www.icj-cij.org/en/case/160). Accessed 12 Sept. 2022.

<sup>2</sup> Wikipedia Contributors. "Nuclear Arms Race." *Wikipedia*, Wikimedia Foundation, 30 Aug. 2022, [en.wikipedia.org/wiki/Nuclear\\_arms\\_race](https://en.wikipedia.org/wiki/Nuclear_arms_race). Accessed 12 Sept. 2022.

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had faced. Many of the residents in Marshall Islands suffered from radioactive contamination, disease, and habitual destruction.<sup>3</sup>

When the Court initially received these Applications, it could only hold three Applications accountable on the same matter — India, Pakistan, and the United Kingdom — due to the compulsory jurisdiction of the Court pursuant to Article 3, paragraph 2, of its Statute. However, the other six that were also claimed to allegedly violate the cessation and disarmament of nuclear arms could not be held towards the Jurisdiction of the Court. In accordance with Article 38, paragraph 5, of the Rules of Court, without the members' consent for the proceedings, the Court did not have the jurisdiction. As a result, these other six member nations were not included in the General List, and no action was taken without their consent.<sup>4</sup>

As the case proceeded along with India, Pakistan and the United Kingdoms, the Marshall Islands alleged more specifically that the United Kingdoms had not been obliging to Article VI of NPT, which was a treaty that UK and Marshall Islands was a part of. According to that Article, it states, “each party 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.”<sup>5</sup>

On the other hand, the Marshall Islands did not have a specific document that Pakistan and India had violated because they were not parties to the NPT. The Application contended that there must have been certain obligations enshrined in the matter of customary international law that Pakistan and India may have gone against. As a result, the Court decided that these allegations were inadmissible. Through these ends, the Court officially proceeded with the case regarding obligation concerning negotiations relating to cessation of the Nuclear Arms Race and to Nuclear Disarmament between the United Kingdoms and the Marshall Islands.<sup>6</sup>

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<sup>3</sup> “Latest Developments | Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom) | International Court of Justice.” *Icj-Cij.org*, 2014, [www.icj-cij.org/en/case/160](http://www.icj-cij.org/en/case/160). Accessed 12 Sept. 2022.

<sup>4</sup> “Latest Developments | Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom) | International Court of Justice.” *Icj-Cij.org*, 2014, [www.icj-cij.org/en/case/160](http://www.icj-cij.org/en/case/160). Accessed 12 Sept. 2022.

<sup>5</sup> “Latest Developments | Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom) | International Court of Justice.” *Icj-Cij.org*, 2014, [www.icj-cij.org/en/case/160](http://www.icj-cij.org/en/case/160). Accessed 12 Sept. 2022.

<sup>6</sup> “Latest Developments | Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom) | International Court of Justice.” *Icj-Cij.org*, 2014, [www.icj-cij.org/en/case/160](http://www.icj-cij.org/en/case/160). Accessed 12 Sept. 2022.

## Definition of Key Terms

### **International Court of Justice (ICJ)**

The United Nations recognizes the International Court of Justice as the principal judicial organ. It was founded in June 1945 by the Charter of the UN and began operations in April 1946. The court is located at the Peace Palace in The Hague, Netherlands. Its role is to settle, in accordance with international laws, legal disputes submitted by Nations. The court is composed of 15 judges who are elected for terms of office for nine years by the UN General Assembly and Security Council. The courts proceed in English and French.

### **Nuclear Arms Race**

Nuclear arms race is a term that describes when two or more countries are competing against one another to increase the size and quality of their military arsenal to gain military and political power over the other. The Cold War is a great example of the Nuclear Arms Race where the United States and the Soviet Union raced against each other to produce the most dangerous nuclear weaponry in the world.

### **Preliminary Objection**

The objective of a preliminary objection is not only to avoid a decision concluded from the International Court of Justice, but even to evade any discussion upon the merit of the case. Objections such as these receive “preliminary” character in order to show that “the Court is required to rule on [them] before the debate on the merits begin.” In many ICJ cases, the preliminary objections are a commonplace because most of the nations want to avoid such allegations due to their time-consuming process and public image.

### **Jurisdiction of the Court**

Jurisdiction, in the International Court of Justice, describes the authority of the Court to hear and determine the merit of the filed case. This authority is given to the Court constitutionally. This means that the respondent party in any case can argue against whether the Court has jurisdiction over the case. These

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arguments usually include the treaties they were allegedly violating or rules of court within the Statute of Court. As a result, without jurisdiction of the court, no case can be debated upon.<sup>7</sup>

### **Nuclear Disarmament**

Nuclear Disarmament is the act of reducing or eliminating nuclear weapons. It holds a contrasting definition to the term “Nuclear Arms Race.” Where the Nuclear Arms Race is to have the most power by having a nuclear arsenal, nuclear disarmament is to eliminate nuclear weapons. The term denuclearization is also used to describe the process of nuclear disarmament.

### **Compulsory Jurisdiction**

Compulsory jurisdiction means that any international legal dispute involving those States will need to be submitted to the Court. However, this does not mean that the compulsory jurisdiction is completely enforced. It is based on the consent of the parties. States have the option to accept or not accept the jurisdiction from the Court through some conditions.

### **Justiciable Disputes**

Justiciable disputes describe a case that is suitable for courts to hear from the two parties and decide on the merits of the case. On the contrary, if the case is not justiciable, the court will and must dismiss the case at hand. Before every court hearing, the Court determines whether the case is justiciable.

## **Timeline of Key Events**

### **World War 2: September 1, 1945 - September 2, 1945**

The history of the nuclear arms race dates way back to WW2 in 1939 and the Cold War in 1947. The very first nuclear weapon that was invented was by the United States of America during the Second World War

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<sup>7</sup> “Jurisdiction | Definition, Examples, & Facts | Britannica.” *Encyclopædia Britannica*, 2022, [www.britannica.com/topic/jurisdiction](http://www.britannica.com/topic/jurisdiction). Accessed 12 Sept. 2022.

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to use against Japan. In August 1945, on President Truman's orders, two atomic bombs were dropped on Hiroshima and Nagasaki, which resulted in the surrender of the Empire of Japan.<sup>8</sup>

### **Founding of United Nations and UN Atomic Energy Commission: 1945**

Shortly after WW2 had ended, the United Nations was founded. In January 1946, the United Nations discussed the future of nuclear weapons and thus created the United Nations Atomic Energy Commission with a purpose to eliminate all nuclear weapons. The United States quickly presented their solution of having an international authority that controls all dangerous atomic activities. On the other hand, the Soviet Union disagreed with this proposal, being fully supportive of universal nuclear disarmament. In the end, the UN rejected both of these proposals.<sup>9</sup>

### **Operation Crossroads: 1946**

Due to the United States' early start in developing nuclear weaponry, it had a monopoly in specific knowledge of and raw materials for these weapons. As a result, the United States conducted most of its post-war nuclear tests in Bikini Atoll— Operation Crossroads. The USA tested a pair of nuclear weapons at Bikini Atoll in 1946. One of the reasons they performed such experiments was due to a scientist who wanted to learn the extent of the effects of nuclear explosions on German and Japanese ships. Meanwhile, the Soviet government was also working on building its own atomic weapons in order to compete against the underlying threat from the USA's nuclear weaponry. The first Soviet bomb was detonated on August 29, 1949 which was considered a copied version of the "Fat Man" — a bomb dropped on Japan by USA. The USA believed that the Soviet Union were at many disadvantages due to their late start; however, the Soviet Union progressed their development in such a short manner.<sup>10</sup>

### **Testing on Enewetak - November 1, 1952**

As the USA started to worry more about the Soviet Union's fast development, both governments spent more money to increase the number and quality of their nuclear weaponry. As a result, they quickly

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<sup>8</sup> "Ending the Arms Race with a START (U.S. National Park Service)." *Nps.gov*, 2020, [www.nps.gov/articles/endingthearmsrace-start.htm#:~:text=Origins%20of%20the%20Arms%20Race,det onated%20its%20own%20nuclear%20device](http://www.nps.gov/articles/endingthearmsrace-start.htm#:~:text=Origins%20of%20the%20Arms%20Race,det onated%20its%20own%20nuclear%20device). Accessed 12 Sept. 2022.

<sup>9</sup> History.com Editors. "Arms Race." *HISTORY, HISTORY*, 2 Dec. 2019, [www.history.com/topics/cold-war/arms-race](http://www.history.com/topics/cold-war/arms-race). Accessed 12 Sept. 2022.

<sup>10</sup> Wikipedia Contributors. "Operation Crossroads." *Wikipedia*, Wikimedia Foundation, 7 Sept. 2022, [en.wikipedia.org/wiki/Operation\\_Crossroads](https://en.wikipedia.org/wiki/Operation_Crossroads). Accessed 12 Sept. 2022.

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started development of a more dangerous weapon called the “thermonuclear weapon,” which holds a larger explosive area. On November 1, 1952, the US tested their first hydrogen bomb. The explosion created a 100 mile wide and 25 mile high cloud, killing life in surrounding islands. The Soviet Union also followed through by testing their own set of thermonuclear arsenal in August 1953, making a deployable size from an airplane.<sup>11</sup>

### **Conducting Castle Bravo on Bikini Atoll - March 1, 1954**

On March 1, 1954, the US conducted another nuclear testing called the “Castle Bravo,” which tested another set of hydrogen bombs on Bikini Atoll near Marshall Islands. The issue within this testing was that the scientists had underestimated the size of the explosion, and the radiation was exposed to the residents of Marshall Islands. Most of them were evacuated, but some unfortunate residents were poisoned — one person was killed.<sup>12</sup>

## **Position of Key Member Nations and Other Bodies + Burden of Proof**

### **Marshall Islands**

As the applicant party, Marshall Islands argues that the United Kingdom has allegedly violated the obligations concerning negotiations relating to cessation of the Nuclear Arms Race and to Nuclear Disarmament. Considering that the Marshall Islands and the United Kingdom are both part of the Nuclear Non-proliferation Treaty, Marshall Islands believes that the United Kingdom’s previous nuclear testings and actions have been against Article VI of the Nuclear Non-proliferation Treaty as well as many other customary international laws. They believe that even after more than four decades after signing and ratifying the NPT, the United Kingdom still continues to modernize its nuclear arsenal. Moreover, the Marshall Islands believes that the United Kingdom is not pursuant in good faith negotiations to cease the nuclear arms race at an early date through nuclear disarmament, but rather taking actions to improve its nuclear weapons system. Furthermore, the Marshall Islands argue that the United Kingdom has not fulfilled their obligations to pursue in good faith negotiations leading to nuclear disarmament under “strict

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<sup>11</sup> Wikipedia Contributors. “Enewetak Atoll.” *Wikipedia*, Wikimedia Foundation, 2 Sept. 2022, en.wikipedia.org/wiki/Enewetak\_Atoll. Accessed 12 Sept. 2022.

<sup>12</sup> Wikipedia Contributors. “Castle Bravo.” *Wikipedia*, Wikimedia Foundation, 14 Aug. 2022, en.wikipedia.org/wiki/Castle\_Bravo. Accessed 12 Sept. 2022.

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and effective international control” and rather has opposed the efforts of the greater majority of States who initiate such negotiations. These obligations mentioned are not only limited to the NPT, but also the customary international laws.<sup>13</sup>

### **United Kingdom of Great Britain and Northern Ireland**

The United Kingdom of Great Britain and Northern Ireland is the respondent party. The United Kingdom believes that the is not guilty of violating obligation concerning negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament.

These are their following reasons:

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1. There is no justiciable dispute between the Marshall Islands and the United Kingdom
2. The Marshall Islands claim is excluded in consequence of the Optional Clause Declaration of the Parties
  - 2.1. The Parties’ Optional Clause Declarations
  - 2.2. The Court lacks jurisdiction in consequences of the *ratione temporis* exclusion in the Marshall Islands’ Optional Clause Declaration
  - 2.3. The Court lacks jurisdiction as the Marshall Islands’ acceptance of the Court’s compulsory jurisdiction was only for the purposes of the present dispute
3. The Marshall Islands’ claim is excluded in consequence of the absence from the proceedings of States whose essential interests are engaged by the claim
4. The Marshall Islands’ claim falls outside the judicial function of the Court and the Court should therefore decline to exercise jurisdiction over the claim<sup>14</sup>

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### **Burden of Proof**

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<sup>13</sup> *INTERNATIONAL COURT of JUSTICE APPLICATION INSTITUTING PROCEEDINGS Filed in the Registry of the Court OBLIGATIONS CONCERNING NEGOTIATIONS RELATING to CESSATION of the NUCLEAR ARMS RACE and to NUCLEAR DISARMAMENT OBLIGATIONS RELATIVES À DES NÉGOCIATIONS CONCERNANT LA CESSATION de LA COURSE AUX ARMES NUCLÉAIRES et LE DÉSARMEMENT NUCLÉAIRE (ÎLES MARSHALL C. ROYAUME-UNI)*. 2014.

<sup>14</sup> *INTERNATIONAL COURT of JUSTICE APPLICATION INSTITUTING PROCEEDINGS Filed in the Registry of the Court OBLIGATIONS CONCERNING NEGOTIATIONS RELATING to CESSATION of the NUCLEAR ARMS RACE and to NUCLEAR DISARMAMENT OBLIGATIONS RELATIVES À DES NÉGOCIATIONS CONCERNANT LA CESSATION de LA COURSE AUX ARMES NUCLÉAIRES et LE DÉSARMEMENT NUCLÉAIRE (ÎLES MARSHALL C. ROYAUME-UNI)*. 2014.

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In this case, the burden of proof lies on the Applicant party to prove their case by a preponderance of evidence. Advocates of the Marshall Islands have the responsibility to prove that:

- 1) The United Kingdom is not pursuant in good faith negotiations to cease the nuclear arms race at an early date through nuclear disarmament, but rather taking actions to improve its nuclear weapons system.
- 2) The United Kingdom's previous nuclear testings and actions have been against Article VI of the Nuclear Non-proliferation Treaty as well as many other customary international laws
- 3) The United Kingdom has not fulfilled their obligations to pursue in good faith negotiations leading to nuclear disarmament under "strict and effective international control" and rather has opposed the efforts of the greater majority of States who initiate such negotiations. These obligations mentioned are not only limited to the NPT, but also the customary international laws.
- 4) The Court does hold jurisdiction over the case.

All aspects must be proven in order for a judge to vote for the Applicant party.

On the other hand, the Responding Party does not have the burden of proving anything. If both parties are to stay silent during the court hearing, the Responding party would likely receive all of the votes from the judges. Likewise, the Responding party needs to only prepare responses for arguments that may be brought up by the advocates of the Applicant Party and prevent them from proving their burdens of proof.

### **Key Documents**

#### **Treaty on Non-proliferation on Nuclear Weapons — Article VI**

The NPT is an international treaty joined by different nations whose objective is to prevent the development and usage of nuclear weapons, technology, and promote cooperation in the peaceful usage of nuclear energy. The treaty attempts to further the goal of nuclear disarmament.

Article VI describes " 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



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disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”<sup>15</sup>

### **United Nations Charter**

The United Nations Charter (UN Charter) is the founding document that provides the United Nations structure, established by the United Nations Conference on International Organization. They serve as a set of tools for international law to organize the “major principles of international relations, from sovereign equality of States to the prohibition of the use of force.” According to chapter XIV: The International Court of Justice, article 94 states “If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measure to be taken to give effect to the judgment.”

### **Statute of Court**

The Statute of the International Court of Justice is an integral part of the United Nations Charter, which is stated in Chapter XIV of the United Nations Charter. The Statute of Court is divided into 5 chapters, consisting of 70 articles. Chapter 1 proceeds with organization of the Court (Article 2-33), chapter 2 proceeds with competence of the Court (Articles 34-38). Chapter 3 includes procedures of the Court (Articles 39 - 64). Chapter 4 includes advisory opinions (articles 65-68). Lastly, Chapter 5 includes Amendments (Articles 69-70).<sup>16</sup>

### **Vienna Conventions**

Vienna Convention on the Law of Treaties is an international agreement governing treaties amongst nations that were drafted by the International Law Commission of the United Nations: adopted on May 23, 1969. The Vienna Convention on the Law of Treaties (VCLT) is an international agreement which regulates treaties between “states.” It establishes comprehensive rules, procedures, and guidelines for how

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<sup>15</sup> Wikipedia Contributors. “Treaty on the Non-Proliferation of Nuclear Weapons.” *Wikipedia*, Wikimedia Foundation, 1 Sept. 2022, [en.wikipedia.org/wiki/Treaty\\_on\\_the\\_Non-Proliferation\\_of\\_Nuclear\\_Weapons#:~:text=Five%20states%20are%20recognized%20by,members%20of%20the%20United%20Nations](https://en.wikipedia.org/wiki/Treaty_on_the_Non-Proliferation_of_Nuclear_Weapons#:~:text=Five%20states%20are%20recognized%20by,members%20of%20the%20United%20Nations). Accessed 12 Sept. 2022.

<sup>16</sup> Wikipedia Contributors. “Statute of the International Court of Justice.” *Wikipedia*, Wikimedia Foundation, 24 Dec. 2021, [en.wikipedia.org/wiki/Statute\\_of\\_the\\_International\\_Court\\_of\\_Justice](https://en.wikipedia.org/wiki/Statute_of_the_International_Court_of_Justice). Accessed 12 Sept. 2022.

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treaties are defined, used, amended, interpreted, and operated. An international treaty is a written agreement between international law subjects. VLCT is also considered the codification of customary international law. The VLCT is regarded as one of the most important instruments to guide in dispute over treaty interpretation.<sup>17</sup>

### **Customary International law**

Customary International Law is one component of international law. It refers to international obligations arising from established international practices such as the cessation of nuclear arms and nuclear disarmament, rather than obligations from written conventions and treaties. Under Chapter 2, article 38 of the Statute of the International Court of Justice, the ICJ's customary international law will include international customs and general practices of nations. Customary international laws also result from a general and consistent practice from different states that follow because of a sense of legal obligation.<sup>18</sup>

### **Good Faith**

The good faith is a general presumption that the parties will follow within the contract. It acts as a norm that is obvious to the people. For instance, it should not destroy the right of the other nations or parties to receive the benefits of the contract. Under several circumstances, the good faith within the cessation of Nuclear Arms would stop developing nuclear weapons. It acts as a written contract.<sup>19</sup>

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<sup>17</sup> Wikipedia Contributors. "Vienna Convention on the Law of Treaties." *Wikipedia*, Wikimedia Foundation, 17 May 2022, [en.wikipedia.org/wiki/Vienna\\_Convention\\_on\\_the\\_Law\\_of\\_Treaties#:~:text=The%20Vienna%20Convention%20on%20the,%2C%20interpreted%2C%20and%20generally%20operated](https://en.wikipedia.org/wiki/Vienna_Convention_on_the_Law_of_Treaties#:~:text=The%20Vienna%20Convention%20on%20the,%2C%20interpreted%2C%20and%20generally%20operated). Accessed 12 Sept. 2022.

<sup>18</sup> "Customary International Law." *LII / Legal Information Institute*, 2022, [www.law.cornell.edu/wex/customary\\_international\\_law#:~:text=Overview,formal%20written%20conventions%20and%20treaties](http://www.law.cornell.edu/wex/customary_international_law#:~:text=Overview,formal%20written%20conventions%20and%20treaties). Accessed 12 Sept. 2022.

<sup>19</sup> Wikipedia Contributors. "Good Faith (Law)." *Wikipedia*, Wikimedia Foundation, 6 Sept. 2022, [en.wikipedia.org/wiki/Good\\_faith\\_\(law\)](https://en.wikipedia.org/wiki/Good_faith_(law)). Accessed 12 Sept. 2022.

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