



INTERNATIONAL COURT OF JUSTICE

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Press Release

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

The Court upholds the objection to jurisdiction raised by India, based on the absence of a dispute between the Parties, and finds that it cannot proceed to the merits of the case

THE HAGUE, 5 October 2016. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Judgment on the objections raised by India to the jurisdiction of the Court and the admissibility of the Application in the case regarding Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India).

In its Judgment, which is final and without appeal, the Court

(1) Upholds, by nine votes to seven, the objection to jurisdiction raised by India, based on the absence of a dispute between the Parties;

(2) Finds, by ten votes to six, that it cannot proceed to the merits of the case.

The Court's reasoning

The Court recalls that the Marshall Islands filed an Application against India alleging a failure to fulfil obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament. India raised several objections to the jurisdiction of the Court and the admissibility of the Application, and the Marshall Islands requested the Court to reject these objections. The Court first considers India's objection based on the alleged absence of a dispute between the Parties at the time of the filing of the Application.

The Court observes that the existence of a dispute between the Parties is a condition of the Court's jurisdiction. It recalls that, in order for a dispute to exist, the two sides must hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations. It states that a dispute exists when the evidence demonstrates that the respondent was aware, or could not have been unaware, that its views were positively opposed by the applicant. It notes that the existence of a dispute is to be determined in principle as of the date the application is submitted.

The Court turns to the Marshall Islands' assertion that its statements in multilateral fora show that there was a dispute between it and India. It observes that the Marshall Islands refers to two such statements: a 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", and a statement made by its representative at Nayarit, Mexico, on 13 February 2014, in the context of the Second Conference on the Humanitarian Impact of Nuclear Weapons, which 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 Court finds that the first statement is formulated in hortatory terms and cannot be understood as an allegation that India was in breach of any of its legal obligations. As to the second statement, the Court notes that it was made at a conference dealing not with the question of negotiations with a view to nuclear disarmament, but with the broader question of the humanitarian impact of nuclear weapons. Moreover, the statement is a general criticism of the conduct of all nuclear-weapon States and does not specify the conduct of India allegedly in breach of its obligations. The Court holds that, given its very general content and the context in which it was made, that statement did not call for a specific reaction by India, so no opposition of views can be inferred from the absence of any such reaction. The Court concludes that, on the basis of those two statements — whether taken individually or together — it cannot be said that India was aware, or could not have been unaware, that the Marshall Islands was making an allegation that India was in breach of its obligations. These statements were thus insufficient to bring into existence a legal dispute between the Parties.

The Court then considers the Marshall Islands' argument that the filing of the Application and the Parties' positions during the proceedings show the existence of a dispute. The Court states that 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.

Finally, the Court turns to the Marshall Islands' argument that a dispute between the Parties can be inferred from India's conduct. The Court recalls that neither of the Marshall Islands' statements made in multilateral fora offered any particulars regarding India's conduct. In this context, the Court concludes that India's conduct cannot show an opposition of views and does not provide a basis for finding a dispute between the two States.

The Court therefore concludes that India's objection to jurisdiction based on the absence of a dispute between the Parties must be upheld. It further concludes that, lacking jurisdiction under Article 36, paragraph 2, of its Statute, it cannot proceed to the merits of the case. Given this conclusion, the Court finds no need to consider the other objections raised by India.

Composition of the Court

The Court was composed as follows: 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.

President ABRAHAM and Vice-President YUSUF append declarations 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.

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A summary of the Judgment appears in the document “Summary No. 2016/3”. This press release, the summary of the Judgment and its full text can be found on the Court’s website (www.icj-cij.org), under the heading “Cases”.

Note: The Court’s press releases do not constitute official documents.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality,

established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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