

December 2016

## **Statement of the International Association of Lawyers Against Nuclear Arms (IALANA) on the Dismissal of the Marshall Islands' Nuclear Disarmament Cases by the International Court of Justice (ICJ)**

IALANA deeply regrets that the International Court of Justice, in the Marshall Islands' three nuclear disarmament cases, failed to demonstrate that it is, truly, the World Court.

On 5 October 2016, by narrow margins, the ICJ ruled in each of the Marshall Islands' cases, respectively against India, Pakistan, and the United Kingdom, that it lacked jurisdiction because no legal dispute existed when applications initiating the cases were filed in April 2014. The Court was certainly not unanimous in this finding: In the UK case, the judges were divided eight to eight, with the vote of the Court's president breaking the tie; in the India and Pakistan cases, the vote was nine to seven.

As the dissenting judges observed, the ruling ignores the fact that the Marshall Islands' claims were rooted in longstanding opposing views regarding nuclear weapons of the majority of the world's states, on the one side, and the states possessing nuclear arsenals, on the other. In particular, the clash of views is manifest with respect to the question of whether the latter states are complying with the Court's unanimous conclusion in its 1996 Advisory Opinion that there exists an obligation to pursue in good faith and conclude negotiations leading to nuclear disarmament in all its aspects. As the dissenting judges further observed, the Court gave insufficient weight to the Marshall Islands' articulation of claims in multilateral forums prior to bringing the cases and to the – clearly – opposing positions taken by the Marshall Islands and the respondent states in the proceedings after the cases began.

IALANA devoutly hopes that in the future the International Court of Justice will fulfill its responsibility, as the principal judicial organ of the United Nations, to bring international law to bear on fundamental issues of peace and security, issues that in the case of nuclear weapons affect the fate of the earth. The Court convincingly met that responsibility in its 1996 Advisory Opinion with its finding regarding the existence of the obligation to pursue and conclude nuclear disarmament negotiations. IALANA, therefore, welcomes the recitation of that finding in the judgments in the Marshall Islands' cases. IALANA urges the UN General Assembly to request the Court to render a follow-up advisory opinion on nuclear weapons, this time to elaborate on the obligation to pursue and conclude nuclear disarmament negotiations and to assess whether states, in particular states possessing nuclear arsenals, are meeting that obligation.

The nuclear-armed states pretend that they are pursuing negotiations leading (someday) to nuclear disarmament. However, the six states which do not currently accept the compulsory jurisdiction of the ICJ, China, France, Israel, North Korea, Russia, and the United States, ignored or, in the case of China, declined the Marshall Islands' request, submitted under a normal ICJ procedure, to come before the Court voluntarily to defend their record on nuclear disarmament. The three states which do accept compulsory jurisdiction, India, Pakistan, and the United Kingdom, vigorously denied on various grounds, mostly formal ones, that the Court should adjudicate the merits of the Marshall Islands' claims. Thus all states possessing nuclear arsenals refused to defend their positions regarding the obligation to negotiate nuclear disarmament on the merits. This posture demonstrates an obvious lack of commitment to the implementation and development of international law.

IALANA salutes the courage and determination, rooted in tragic experience, and the good faith as well, of the Marshall Islands and its then foreign minister Tony deBrum in bringing the cases. Simply doing so raised to world attention the failure of the nuclear powers to fulfill the obligation to negotiate and reach the global elimination of nuclear weapons. The Marshall Islands' pleadings are also a rich resource for the development of political and legal arguments for disarmament.

IALANA likewise commends the hard work of the Marshall Islands' pro bono international legal team. IALANA is proud that much of what has been accomplished in the development of international law as to nuclear disarmament is the fruit of IALANA's relentless work on the relevant legal questions. The presence of three members of IALANA on the legal team was living proof of that commitment.