



Universitat d'Alacant
Universidad de Alicante

Facultat de Dret
Facultad de Derecho

FACULTAD DE DERECHO
GRADO EN DERECHO
TRABAJO FIN DE GRADO
CURSO ACADÉMICO 2018-2019

TÍTULO:

Analysis of the case "Obligations concerning negotiations relating to the cessation of the Nuclear Arms Race and to Nuclear Disarmament" (*Marshall Islands v. Pakistan, India and United Kingdom*)

AUTOR:

María Valentina Yane Gauffin

TUTOR ACADÉMICO:

Millán Requena Casanova

« Hope is not enough to change the world, to bring peace, to end starvation and poverty, to provide a decent education for all children, or to prevent nuclear holocaust. Yet it is a critical starting point for building a better and brighter future. All of us are challenged to connect hope to action until we have created a might river that will carve a new path to the future».

David Krieger.

ABSTRACT: The cessation of the nuclear arms race and nuclear disarmament are vitally important objectives for the international community as a whole, and the Republic of the Marshall Islands is particularly sensitive to the catastrophic consequences that nuclear weapons can have on the humankind because they have experienced them at first hand in the past. We all want a future free of nuclear weapons for our generation and the subsequent ones, with the Nuclear Non-Proliferation Treaty it seems that it is not enough. This has been demonstrated with Marshall Islands case in the International Court of Justice. What does the future hold? Is the Treaty on the Prohibition of Nuclear Weapons the solution?

RESUMEN: El cese de la carrera armamentística nuclear y el desarme nuclear son objetivos de vital importancia para la comunidad internacional en su conjunto, y la Republica de las Islas Marshall es particularmente sensible a las atroces consecuencias que pueden tener las armas nucleares en la humanidad porque las experimentó de primera mano en el pasado. Todos queremos un futuro libre de armas nucleares para nuestra generación y las siguientes, con el Tratado de No Proliferación Nuclear parece que no es suficiente, teniendo en cuenta el caso de las Islas Marshall en la Corte Internacional de Justicia. ¿Qué nos depara el futuro? ¿Es el Tratado de Prohibición de las Armas Nucleares la solución?

KEYWORDS: International Court of Justice (ICJ) – Nuclear Non-Proliferation Treaty (NPT)– Statute of the Court (SICJ)– Republic of Marshall Islands (RMI) – The Treaty on the Prohibition of Nuclear Weapons (TPNW)

PALABRAS CLAVE: Corte Internacional de Justicia (CIJ) – Tratado de No Proliferación Nuclear (NPT)– Estatuto de la Corte Internacional de Justicia (ECIJ)– República de las Islas Marshall (RMI) – Tratado de Prohibición de las Armas Nucleares (TPNW)

LIST OF ABBREVIATIONS

GA = General Assembly of the United Nations

ICJ = International Court of Justice

IHL = International Humanitarian Law

ILHR = International Law and Human Rights

NAC = New Agenda Coalition

NPT = Nuclear Non-Proliferation Treaty

NWS = Nuclear Weapon States

PCIJ = Permanent Court of International Justice

RMI = Republic of Marshall Islands

SICJ = Statute of the International Court of Justice

TPNW = Treaty on the Prohibition of Nuclear Weapons

UN = United Nations:

USA = United States of America

UK = United Kingdom

INDEX

I. THE AIM OF THE PROJECT.....	5
II. METHODOLOGY.....	5
III. DEVELOPMENT.....	5
1. Introduction.....	5
2. The Marshall Islands case.....	8
2.1 Overview of the case.....	8
2.2 Proceedings before the ICJ.....	10
2.2.1 Competence and jurisdiction of the ICJ.....	10
2.2.2 The ICJ and the existence of a dispute between States.....	11
2.3 “Obligations concerning negotiations relating to the cessation of the Nuclear Arms Race and to Nuclear Disarmament”.....	14
2.3.1 Marshall Islands v. Pakistan.....	16
2.3.1.1 Claims.....	16
2.3.1.2 Judgments.....	16
2.3.2 Marshall Islands v. India.....	18
2.3.2.1 Claims.....	18
2.3.2.2 Judgments.....	19
2.3.3 Marshall Islands v. United Kingdom.....	20
2.3.3.1 Claims.....	20
2.3.3.2 Judgments.....	21
IV. CONCLUSION	22
V. BIBLIOGRAPHY	25

I. THE AIM OF THE PROJECT

The aim of the project is to make an analysis of the Marshall Islands case. This analysis is intended to reflect on whether a somewhat more flexible approach should be adopted in terms of formalities when dealing with such a sensitive issue as the cessation of nuclear weapons. Has any attempt been made to favor the nuclear States in issuing a ruling contrary to their interests? What does the future hold for us regarding the regulation of nuclear weapons in the global legal framework?

II. METHODOLOGY

In order to achieve the aim of the project, the methodology of it will be the following. Firstly, a brief introduction about the case will be provided in a historical framework. Subsequently, a brief explanation about the International Court of Justice and its competence. Then, a general view of the case that occupies us in itself, to understand why of nine States only three of them accepted jurisdiction, why the case never reached to the merits, and other issues of interest. In order to obtain a better understanding of the case, we will analyze the dissenting opinions and declarations of the judges. Lastly, a conclusion that summarizes everything and proposes a solution within the legal framework to this case will be presented, which could be that the Treaty of Prohibition of Nuclear Weapons enters into force.

III. DEVELOPMENT

1. Introduction

The cessation of the nuclear arms race and nuclear disarmament are vitally important objectives for the international community as a whole. The Republic of the Marshall Islands (hereinafter “RMI” or “Marshall Islands”) is particularly sensitive to the outrageous effects that nuclear weapons can have on the humankind because they have experienced them at first hand in the past.

To understand what has led a small country in Oceania to sue the nine nuclear powers of the world in the International Court of Justice¹(hereinafter “ICJ” or “The Court”) and in addition to sue the United States of America, separately, in the US Federal District Court of San Francisco², it has to be borne in mind its historical context.

In the First World War Japan seized the Marshall Islands. On January 31, 1944, during World War II, US troops landed on the Kwajalein atoll and conquered the islands from the Japanese. In 1947, the United States, as an occupying power, reached an agreement with the UN Security Council to administer Micronesia, including the Marshall Islands, as a Trust Territory of the Pacific Islands³. From 1946 to 1958 there were 67 nuclear tests on several atolls. The nuclear tests took place mostly in the Bikini atoll and the Eniwetok atoll. In 1954 the United States carried out a detonation 1,000 times more powerful than that of the atomic bomb dropped on Hiroshima in 1945.⁴⁵

In 1968 the Nuclear Non-Proliferation Treaty (hereinafter "NPT") was opened for signatures; in 1970 it entered into force. The treaty seeks to stop the further spread of nuclear weapons and it also obligates its parties to the playing field by negotiating in good faith for an end to the nuclear arms race and for nuclear disarmament. This treaty currently has 190 countries signed on, including five nuclear weapon states and 185 non nuclear weapon states.⁶ These five states have the condition of nuclear weapon states (hereinafter “NWS”) based on the fact that they were the only states that had carried out nuclear detonations by 1967. They are the five permanent members of the Security Council of the United Nations: Russia, US, UK, France and China.⁷

¹ Obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament” (Marsh. Is. v. UK), Judgment (Oct. 5, 2016) (Marsh. Is. v. Pak.), Judgment (Oct. 5, 2016),

² The Republic of the Marshall Islands v. The United States of America et al, No. 4:2014cv01885 - Document 54 (N.D. Cal. 2015)

³THOMAS, R. M., & POSTLETHWAITE, T. N. (Eds.). (2016). *Schooling in the Pacific Islands: Colonies in transition*. Elsevier.

⁴ Operation Castle (2006, May 17), *The Nuclear Weapon Archives*. Retrieved July 5, 2019, from www.nuclearweaponarchive.org

⁵ NIEDENTHAL, J. (1997, July). "A History of the people of Bikini following nuclear weapons testing in the Marshall Islands: With recollections and views of elders of Bikini Atoll". *Health Physics*, Volume 73, Number 1. Retrieved from [https://bikiniatoll.com/Health Physics paper JMN.pdf](https://bikiniatoll.com/Health%20Physics%20paper%20JMN.pdf)

⁶ FIRMAGE, E. (1969). The Treaty on the Non-Proliferation of Nuclear Weapons. *American Journal of International Law*, 63(4), 711-746. doi:10.2307/2199482

⁷ Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 UST 483, 729 UNTS 161 [hereinafter Non-Proliferation Treaty]

India, Pakistan, Israel, South Sudan and North Korea are outside the Treaty; the first three have never ratified it, while North Korea resigned in 2003.

When it comes to India, in 2007, its External Affairs Minister, Pranab Mukherjee, said in a visit to Tokyo that basically what the NPT does in fact creates a club of "nuclear-rich" countries and a large group of "nuclear-poor" countries by prohibiting the legal possession of nuclear weapons to those countries that had not tested them before 1967, but that the Treaty does not explain on what ethical foundations this distinction is valid.⁸

In the case of Israel, the government does not affirm or deny the possession of nuclear weapons but to accede to the signature and ratification of the treaty, this should allow the entry of observers and regulators of the United Nations.

However, the existence of the NPT has not prevented nations from continuing to develop their nuclear arsenals, with the danger that this poses for all humankind and the Earth. According to the Marshall Islands, which is based on 2013 data from the University of Oxford, Russia has a reserve of 8,500 nuclear warheads, the United States 7,700, the United Kingdom 225 and France 300.

For all the reasons aforementioned, Marshall Islands is firmly committed to the fight for the cessation of the global nuclear arms race and nuclear disarmament. As David Krieger, President of the Nuclear Age Peace Foundation, describes it in his article "*The Nuclear Zero Lawsuits: Taking Nuclear Weapons to Court*", it is "David" against the nuclear nine "Goliaths." Its field of nonviolent battle is the courtroom.⁹

Despite the fact that the ICJ declined jurisdiction and the case never arrived to the merits, the fact that RMI put in the focus this issue, which had been ignored from the advisory opinion of the ICJ from 1996¹⁰, has paved the way for the creation of the Treaty on the Prohibition of Nuclear Weapons, which is going to be analysed below and presented as an effective measure to implement the Article VI of the NPT, which was the main aim of RMI with these Applications. Marshall Islands has set a precedent in the fight against nuclear disarmament, showing great courage to be such a small nation and confront nine of

⁸ "India seeks Japan's support, calls NPT 'flawed'". Whereincity.com. 24 March 2007. Archived from the original on 12 January 2012. Retrieved 26 June 2019.

⁹ KRIEGER, D. , "The Nuclear Zero Lawsuits: Taking Nuclear Weapons to Court" May 9, 2014

¹⁰ Legality of the Use by a State of Nuclear Weapons in Armed Conflict, 1996 ICJ Rep. 66 (Advisory Opinion of July 8)

the most powerful countries in the world. It has to be highlighted that the nuclear disarmament and the cessation of the nuclear race is an issue of general concern for all the world and not just a few States.

2. The Marshall Islands case

2.1 Overview of the case

The Republic of Marshall Islands filed nine applications against the nuclear potencies in April 2014, claiming that they were breaching their obligation to negotiate in good faith the cessation of the nuclear arms race and nuclear disarmament. Six of these nine applications (USA, Israel, France, China, Israel and Russia) did not enter in the Court's General List because they did not consent to the Court's jurisdiction for the purposes of the case.¹¹ When it comes to the three remaining cases, India, Pakistan and UK, they recognised the jurisdiction of the Court pursuant to Article 36(2) of the Statute of the Court (hereinafter "SICJ")¹²

The Marshall Islands claimed that these states were breaching their obligation to negotiate a complete nuclear disarmament arising either under Treaty Law or Customary International Law depending on whether the country had ratified the NPT or not. These three cases were pretty similar, but the one of the United Kingdom contained certain differences with the other two that will be commented below.

The Court declined jurisdiction on the basis that at the time the application was submitted, there was no dispute between the parties. This was the first time that the ICJ declined jurisdiction for this reason. Hence, the merits of the case were never reached.

While the position of the Marshall Islands is widely known in the international scenario, whether by its statements at the Nayarit conference: "... we believe that States

¹¹ Obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament" (Marsh. Is. v. UK), Judgment (Oct. 5, 2016) (Marsh. Is. v. Pak.), Judgment (Oct. 5, 2016), (Marsh. Is. v. India), Judgment (Oct. 5, 2016)

¹² ICJ Statute Article 36(2) prescribes conditions for exercising the jurisdiction of the Court in all legal disputes concerning: "(a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; and (d) the nature or extent of the reparation to be made for the breach of an international obligation."

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”¹³ whether by its statements at the Vienna conference¹⁴, among others, it is true that RMI never specifically invoked responsibility of any of the Respondent States (Pakistan, India, United Kingdom). That is, never asked for a concrete answer to any of them invoking their responsibility based on International Law. This was the basis that used the International Court of Justice to decline jurisdiction, that the dispute had not started at the time of the submission of the Application by the RMI.

These sentences have been met with criticism from the doctrine, which largely supports the position of the Marshall Islands. The fact that two new requirements had been created for determining the existence or absence of dispute between the Parties is something that has been much commented. It was the first time that jurisdiction had been declined in the ICJ on the basis of the non-existence of a dispute between the Parties. The role of the ICJ in the peaceful settlement of disputes and in the guarantee of compliance with International Law was questioned. It has also been argued that the Court's decision sought to protect the defendants (who were originally nuclear States) of a possible ruling against their interests.

There is a common agreement, however, that even if the Court had satisfied the criterion of the existence of a dispute, the Applicant would still have had to overcome the other preliminary objections raised by the Respondents. In short, these criticisms can be summarized in the identification of a growing formalism of the Court. Formalism understood by certain authors not only as the prioritization of the form (here the procedural requirements) on the merits (the resolution of the concrete controversy) but also as a triumph of the legal technique instead of the realization of material justice. This prevented

¹³ Conference on the Humanitarian Impacts of Nuclear Weapons, held in Nayarit, Mexico, 13-14 February 2014.

¹⁴ Conference on the Humanitarian Impact of Nuclear Weapons, held in Vienna, Austria , 8-9 December 2014.

the Court from exercising its competence in an issue that it had previously defined as "of vital importance for the whole international community"¹⁵

2.2 Proceedings before the ICJ

2.2.1 Competence and jurisdiction of the ICJ

The International Court of Justice is a supranational court located in The Hague (The Netherlands). It is the main judicial organ of the United Nations. The subjects that can be part of its jurisdiction are the States, not individuals. It basically fulfils two functions: contentious function and advisory function. The first aims to resolve international disputes presented by the States. The second is about giving advisory opinions on legal issues referred to it by the UN. The opinions and sentences of the ICJ have such relevance that they serve as a source of International Law.¹⁶

One of the points that I would like to highlight about the jurisdiction of the ICJ is that States are not obliged to submit their legal disputes for trial. That is, it is optional for the States to decide whether they want to be judged by the ICJ or not. At the San Francisco Conference¹⁷, the issue of whether the ICJ jurisdiction should be mandatory rather than facultative and that UN members should be committed to be forced to agree to be judged by the Court was addressed. This proposal was rejected because in International Courts the subjects are sovereign states, which should not be forced to be tried by a Supranational Court against their will. Therefore, the Court cannot adjudicate a case unless both parties have accepted.

The consent to be submitted to the jurisdiction of the Court can be manifested in three ways: a) by a bilateral agreement that the parties create specifically to state that they agree to submit a dispute to the Court, b) by Treaty Law it is, some clauses contained in

¹⁵ Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion of July 8, 1996), 35 ILM 809 & 1343 (1996) [hereinafter Opinion for UNGA]; and Legality of the Use by a State of Nuclear Weapons in Armed Conflict, 1996 ICJ Rep. 66 (Advisory Opinion of July 8) [hereinafter Opinion for WHO].

¹⁶ United Nations, Statute of the International Court of Justice, 18 April 1946, available at: <https://www.refworld.org/docid/3deb4b9c0.html> [accessed 23 June 2019]

¹⁷ San Francisco Conference, formally United Nations Conference on International Organization, international meeting (April 25–June 26, 1945)

treaties and conventions that state that the disputes that may arise will be submitted to the ICJ c) There can be voluntary recognition in advance of the compulsory jurisdiction of the court in specified types of disputes. Article 36 of the Statute of the ICJ states that all parties to the statute "may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation.

Taking this into account and applying it to the sentences that are the subject of this work, this is the reason why only India, UK and Pakistan have accepted to be judged by the International Court of Justice in this case. They have done so through option (c) There can be voluntary recognition in advance of the compulsory jurisdiction of the court in specified types of disputes.

2.2.2 The ICJ and the existence of a dispute between States

The determination of the existence of a dispute between the States is a crucial aspect according to which the ICJ decides whether it can exercise its contentious jurisdiction. As above-mentioned, the Court declined jurisdiction on the three cases on the basis of the absence of a dispute between the Parties. An analysis of the concept of "dispute" according to the ICJ will be provided, in order to achieve a better understanding of this situation.

The article 38 of the SICJ states that "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply...". It can be inferred from this statement that the existence of an "international dispute" is a requirement that affects to the main core of its juridical function.¹⁸

The PCIJ itself, given the vagueness of the concept, in its 1923 judgment¹⁹ defined "international controversy" as "[a] dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons". It is for the Court to determine the existence of a dispute objectively.²⁰, which is a matter "of substance, not of form"²¹

¹⁸ United Nations, Statute of the International Court of Justice, 18 April 1946, Article. 38 (1)(d)

¹⁹ Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J. Series A, No. 2, p. 11

²⁰ Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Advisory Opinion, I.C.J. Reports 1950, p. 74

²¹ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, I.C.J. Reports 2011 (I), para. 30).

The definition remained imprecise to certain questions as those relating to time (before or after the demand) and form (if a formal notification was necessary, perhaps followed by negotiations), as they were left open. In the past, this definition had the advantage of its openness and flexibility.

It has to be borne in mind that this definition did not seek to determine the content of the competence of the Court, but rather articulate a general definition that could have customary value, and that as such was applicable to all types of jurisdictional clauses present in International Treaties. After this judgment of 1923, both the PCIJ and the ICJ (the latter to a greater extent) have been shaping the notion.²²

The matter of the existence or absence of a dispute between the Parties had already been addressed by the ICJ in controversial cases such as "*The South West Africa*"²³ and "*The Nuclear Test*".²⁴ However, the fundamental difference of them with the case of the Marshall Islands is that for the first time the Court declined jurisdiction on the basis of the absence of a dispute between the parties. This case marked a before and after in terms of the jurisdiction of the ICJ, since from Marshall Islands case two new requirements were introduced in order to determine whether if a dispute exists or not.

In these three cases, the Court did not follow the traditional definition of "dispute". ICJ confirmed that the 'determination of the existence of a dispute is a matter of substance', and that 'a formal diplomatic protest' is not a necessary condition for the existence of a dispute. Nevertheless, added two new pre requirements that from that moment on must be taken into account to decide whether there exists a dispute between the states parties or not. The requirements are: **a) that the respondent be 'aware' of the existence of the dispute and b) that the dispute must exist at the time of the submission of the application.** Based on these requirements, it is unnecessarily difficult to demonstrate that there is a dispute between the two States if there has not been a previous diplomatic exchange between the parties prior to submission of the claim.

²² GARRIDO MUÑOZ, A. (2018). Los requisitos procesales en serio: la existencia de una "controversia internacional" en la jurisprudencia de la Corte Internacional de Justicia. *Revista Española De Derecho Internacional*, 70(1), 127-154. Retrieved from <http://www.jstor.org/stable/26296675>

²³ ICJ Reports, 1962, p. 319. 8 R. B. Ballinger, 'The International Court of Justice and the South West Africa Cases: Judgment of 21st December, 1962'

²⁴ Nuclear Tests (Australia v. France), Judgment of December 20, 1974, [1974] ICJ 253, see also *infra* p. 668; Nuclear Tests (New Zealand v. France), Judgment of December 20, 1974, [1974] ICJ 457

Even though RMI position regarding nuclear disarmament and cessation of the nuclear race was widely known in the international spectrum, they did not have specific bilateral diplomatic exchanges with nuclear states in that regard before seizing the Court. Accordingly, the ICJ held that in accordance with the new requirement of "awareness" there was no dispute, since the existence of a dispute could only be established if the respondent "was aware, or could not have been unaware of the applicants' claims. The absence of such a dispute was the essential reason that led the Court to say it had no jurisdiction.

The second requirement introduced by the Court, "that the dispute must exist at the time of the submission of the application" is confusing. In a contradictory paragraph, the Court recalled settled case law²⁵ and added: 'the rule that the dispute must in principle exist prior to the filing of the application would be subverted'. The use of the term "in principle" suggests that it is not an absolute precondition for the Court's jurisdiction that a full-fledged dispute exist at the date of the application. Such a dispute may be in the process of taking shape or at an incipient stage at the time the application is submitted, but may clearly manifest itself during the proceedings before the Court. It has occasionally founded the existence of a dispute on opposing statements of parties made during written and oral pleadings.²⁶ This 'in principle' is important because it includes the possibility that the dispute might crystallise *after* the introduction of proceedings.

However, in this case, the Court did not follow the line of the aforementioned case law, and despite the Statute makes no mention whatsoever of the critical date at which the existence of the dispute must be determined, and does not exclude that the precise contours of the dispute were determined during the proceedings before the Court. The ICJ ruled that Article 38 SICJ 'relates to disputes existing at the time of their submission'. No further explanation and no clue on the reasons for adopting this particular interpretation of Article 38 (1) were added.

In Marshall Islands case, the introduction of these new requirements was clearly an instrument to decline jurisdiction. During the proceedings, the existence of a dispute

²⁵ Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment of 17 March 2016, Para. 52)

²⁶ Obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament" (Marsh. Is. v. UK), Judgment (Oct. 5, 2016) , Dissenting opinion of Vice President Yusuf

between the parties was more than evident. Most part of the Judges shared this opinion. The point of discussion was about whether if there was a dispute prior the submission of the application or not.

Even though the previous case law of the ICJ supported a flexible approach in this matter, the fact that according to the new requirements the existence of the dispute shall exist on the date of the submission of the application, lead to the declination of the Court to take into account the subsequent conduct of the parties.

From the creation of these two new requirements, the fact of proving the existence of a dispute between the parties will be very difficult for those countries that have not had bilateral diplomatic exchange prior to the Application. And as a consequence of this, the Court will have to decline jurisdiction in many cases because the jurisdiction will be based on the subjective notion of awareness.

Such a position of the Court finds no support in its previous case law. Nor is it understood why a State cannot be taken "by surprise" (in relation to the new requirement of "awareness") when it has been the State itself that has accepted this possibility when submitting to the jurisdiction of the Court, which is facultative. It should be emphasized that all the contentious proceedings of the Court have all kinds of procedural guarantees, as any other Court.²⁷

2.3 “Obligations concerning negotiations relating to the cessation of the Nuclear Arms Race and to Nuclear Disarmament”

The Marshall Islands filed a lawsuit in April 2014 against the nine nuclear powers of the world accusing them of not stopping their arms races in that area.²⁸ The claims were different depending on whether they were addressed to the five Nuclear Weapon States of the NPT (above-mentioned) or to the other four that, despite not having that status, are known to have nuclear arsenals. For the last ones, which are India, Pakistan, Israel and North Korea the allegations are based on customary law. The customary obligations were

²⁷ BONAFÉ, B.I (2017). Establishing the existence of a dispute before the International Court of Justice: Drawbacks and implications. *Questions of International Law*,

²⁸ Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marsh. Is. v. U.K.; Marsh. Is. v. Pak; Marsh. Is. v. India), (Oct. 5, 2016);

based on widespread and representative participation of states in the NPT and the long history of United Nations resolutions on nuclear disarmament, and reflect as well the general incompatibility of use of nuclear weapons with international law.

The Marshall Islands contends more specifically that the states who have ratified NPT are in breach of the Article VI of the NPT. According to this Article, 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”. So, RMI is claiming that the NWS are in breach of this article. Hence, in accordance with the exposed above, the claims in these cases are for:

- Breach of the obligation to pursue in good faith negotiations leading to nuclear disarmament, by refusing to commence multilateral negotiations to that end and/or by implementing policies contrary to the objective of nuclear disarmament;

- Breach of the obligation to pursue negotiations in good faith on cessation of the nuclear arms race at an early date, by engaging in modernization of nuclear forces and in some cases (Pakistan, India) by quantitative build-up as well;

- Breach of the obligation to perform the above obligations in good faith, by planning for retention of nuclear forces for decades into the future;

- Failure to perform obligations relating to nuclear disarmament and cessation of the nuclear arms race in good faith by effectively preventing the great majority of non-nuclear weapon states from fulfilling their part of those obligations.²⁹

Even though RMI filed lawsuit against these nine States, just three of them recognized the jurisdiction of the ICJ. United Kingdom, Pakistan and India recognized the jurisdiction of the ICJ based on the article 36 paragraph 2 of the SICJ. The proceedings started but did not reach to the merits of the case, because the Court declared that there was not a dispute between the parts.

These three cases were the first time that the Court deny jurisdiction on the basis of the absence of a dispute between the parties. It should be noted that the outcome of these three sentences is that the ICJ established two new requirements for the determination of

²⁹ BURROUGHS, J. (2014). Overview about the Marshall Islands Case. *The Lawyers Committee on Nuclear Policy INC*. Retrieved from: lcnp.org

the existence of a dispute: that the respondent be ‘aware’ of the existence of the dispute and that the dispute must exist at the time of the submission of the application.

In order to achieve a better understanding of the case, each one of the three sentences will be analysed.

2.3.1 Marshall Islands v. Pakistan

2.3.1.1 Claims

Pakistan did not ratify the NPT, unlike the Marshall Islands. Hence, the claim of Marshall Islands is made on the basis that certain obligations laid down in the Treaty apply to all States as a matter of customary international law. It applies to the aforementioned article VI of the NPT. Pakistan, however, indicated that the Court lacked jurisdiction in this case and it proceeded to resolve these issues before deciding whether to enter to judge issues of merit.³⁰ Thus, on 5 October 2016, the Court found that Pakistan’s objection to jurisdiction based on the absence of a dispute between the Parties must be upheld, lacking jurisdiction under Article 36, paragraph 2, of its Statute, it cannot proceed to the merits of the case. Given this conclusion, the Court found no need to consider the other objections raised by Pakistan.³¹

2.3.1.3 Judgements

The Court, by nine votes to seven, upheld the objection to jurisdiction raised by Pakistan, based on the absence of a dispute between the Parties. Also, by ten votes to six, found that it cannot proceed to the merits of the case.

When it comes to the declaration of Judge Xue, she votes in concordance with the majority of the Court. She believes that the requirements are not actually met to be considered the existence of a dispute between the parties. Even though the position of the

³⁰ PADDEU, F. (2017). Multilateral disputes in bilateral settings: International Practice lags behind theory. *The Cambridge Law Journal*, 76(1), 1-4. doi:10.1017/S0008197317000083

³¹ Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan), Preliminary Objections, Judgment, I.C.J. Reports 2016

Marshall Islands is widely known in the international scenario (Nayarit and Vienna conferenced aforementioned)³² RMI never offered any particulars to Pakistan, either in words or by conduct, never specifically invoked responsibility which could have made Pakistan aware that the Marshall Islands held a legal claim against it for breach of its international obligation to negotiate on nuclear disarmament. Therefore, in her view the Court has no jurisdiction to deal with the case on this basis. Besides being in concordance with the Court, she argues that it may be arguable that the non-existence of a dispute between the Parties at the time of the filing of the Application could by itself constitute a solid ground for the Court to reject the case when in the past the Court had adopted a flexible approach when it comes to flexibility in handling procedural defects, in accordance to the settled case law.³³

When it comes to the dissenting opinion of the Judge Cançado Trindade, it is completely different from that of the majority of judges of the Court. His position is based on the following points: First, he disagrees with the majority of the Court regarding the issue of the non-existence of a dispute between the parties. In his opinion, that such new requirement (awareness) “is not consistent with the PCIJ’s and the ICJ’s jurisprudence constante on the determination of the existence of a dispute”

In addition, Judge Cançado Trindade, also supports his position based on the great relevance of the topic. Specifically, he states that the nuclear weapons are in breach of international law, of IHL and the ILHR, of the U.N.Charter, and of jus cogens, for the devastating effects and sufferings they can inflict upon humankind as a whole.³⁴

Specifically, his statement is based on the fact that a world free of nuclear weapons

³² Conference on the Humanitarian Impacts of Nuclear Weapons, held in Nayarit, Mexico, 13-14 February 2014 and Conference on the Humanitarian Impact of Nuclear Weapons, held in Vienna, Austria, 8-9 December 2014.

³³ Obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament” (Marshall Islands v. Pakistan), Judgment (Oct. 5, 2016), Declaration of Judge Xue Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008, p.438, para.81; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, pp.428-429, para.83; Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963, p.28; Certain German Interests in Polish Upper Silesia, Jurisdiction, Judgment No.6, 1925, P.C.I.J., Series A, No.6, p.14

³⁴ CANÇADO TRINDADE, A. (2012): “*Jus cogens*: the determination and the gradual expansion of its material content in contemporary international case-law”, Retrieved from <http://www.oas.org/dil/esp/3%20-%20cancado.LR.CV.3-30.pdf>

is necessary to ensure the survival of the humankind. Therefore, International Law cannot remain merely alien to values, general principles of Law and ethical considerations. “The production of nuclear weapons is an illustration of the divorce between ethical considerations and scientific and technological progress. Otherwise, weapons which can destroy millions of innocent civilians, and the whole of humankind, would not have been conceived”.³⁵

2.3.2 Marshall Islands v. India

2.3.2.1 Claims

The case of India is practically analogous to the case of Pakistan, since none of them ratified the NPT. While United Kingdom ratified the NPT, Pakistan and India did not, and this is the main difference of these similar cases. Thus, the claims of RMI against India are based on Customary Law and not on Treaty Law. Basically, Marshall Islands claim that certain obligations that are laid down in the Treaty apply to the States as a matter of customary international law. It contends in particular that this applies to the aforementioned article VI of the NPT.

As indicated above, India claimed that the Court did not have jurisdiction in this case (due to the absence of a dispute between the parties). Therefore, before proceeding to the merits, ICJ stated in an Order of 16 June 2014, that it was necessary to resolve this question first of all. On 5 October 2016, the Court found that India’s objection to jurisdiction based on the absence of a dispute between the Parties must be upheld, that with no jurisdiction under Article 36 SCIJ paragraph 2, it cannot proceed to the merits of the case. Given this conclusion, the Court found no need to consider the other objections raised by India.³⁶

³⁵ Obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament” (Marshall Islands v. Pakistan), Judgment (Oct. 5, 2016), Dissenting opinion of Judge Cançado Trindade

³⁶ Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands . v. India.), Judgment (Oct. 5, 2016),

2.3.2.3 Judgements

The opinion of President Abraham is that there was no dispute between the parties and that the Court was acting in accordance with its recent Case Law (in particular the Judgment of 1 April 2011 in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), the Judgment of 20 July 2012 in the case concerning Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) and the Judgment of 17 March 2016 in the case concerning Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia). It is apparent from these Judgments, he explains, that, in order to determine whether the condition relating to the existence of a dispute has been met, the date to be referred to is the date of the institution of the proceedings, and that the Court can only find that it has jurisdiction to entertain a case where each party was — or must have been — aware on that date that the views of the other party were opposed to its own.

President Abraham declared that although he expressed his reservations when the Court established that jurisprudence, this is what it is, it cannot be changed and he is bound to it. Hence, he voted according to this settled Case Law.³⁷

When it comes to the dissenting opinion of Judge Robinson, understands that the Court has adopted an exaggerated formality and has not demonstrated the same flexibility that in other cases in this judgment. The mission of the ICJ is to maintain international peace and justice through the judicial function and in this case it has not shown special sensitivity, despite being a very sensitive issue and that concern all the world and not just a few States. “If the jurisprudencia constante of the ICJ is analysed, it is stated that a dispute arises where, examined objectively, there are “clearly opposite views concerning the question of the performance or non-performance of a State’s obligations.”³⁸

Regarding the new "awareness" requirement, there is not a single case of the jurisprudence of the Court that stipulates that in order to determine the existence of a

³⁷ Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India.), Judgment (Oct. 5, 2016), Declaration of President Abraham

³⁸ Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 74

dispute between the parties, it is necessary finding of the respondent's awareness of the applicant's positive opposition to its views.³⁹

2.3.3 Marshall Islands v. United Kingdom

2.3.3.1 Claims

The case of *Marshall Islands v. United Kingdom*, despite being very similar to the previous ones, *RMI v. Pakistan* and *RMI v. India*, presents a bit of difference to them. The main reasons are the following (to explain them we will use as a basis the statements of the Dissenting opinion of Vice President Yusuf).

On the one hand, both countries have ratified the NPT, therefore the claims of Marshall Islands are based on Treaty Law and not just on Customary Law. Basically, the claims are focused on the interpretation and application of this Treaty. Specifically, the aforementioned Article VI.

On the other hand, there was existence of the beginning of a dispute, evidenced by the opposed positions of the Parties on negotiations on nuclear disarmament. In other words, there had been, indeed, diplomatic exchange between UK and RMI prior to the submission of the Application.

The Marshall Islands, to support their claim that there was indeed beginning of dispute prior to the submission of the Application, used the statement made in Nayarit conference,⁴⁰ which is positively opposed by the conduct of the United Kingdom. In particular, it refers to the opposition of the United Kingdom to all the attempts made in the context of resolutions adopted by the United Nations General Assembly to call for the immediate commencement of negotiations with a view to the conclusion of a convention on nuclear disarmament,⁴¹ to convene a working group to prepare the ground for such a convention, or to ensure concrete follow-up to the Advisory Opinion of the Court which

³⁹ *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Judgment (Oct. 5, 2016), Dissenting opinion of Judge Robinson

⁴⁰ Conference on the Humanitarian Impacts of Nuclear Weapons, held in Nayarit, Mexico, 13-14 February 2014

⁴¹ General Assembly resolution 59/77, *Nuclear disarmament*, (3 December 2004)

underscored the existence of an obligation to pursue negotiations on nuclear disarmament⁴². RMI accuses the UK, among other things, of opposing resolutions of the General Assembly of UN, having a “negative and obstructive conduct in relation to the cessation of the nuclear arms race” and that has also repeated in statements its intention to maintain its nuclear arsenal in the coming decades. These statements taken together with the United Kingdom have taken precedence over the submission of the Application by the RMI. United Kingdom stated that being not present in the meeting of Nayarit (even though being present at Vienna conference) there was not the requirement of “awareness” and thus, there was not the beginning of a dispute. I would like to highlight that while India and Pakistan attended Nayarit and Vienna meetings, UK and United States participated only in the Vienna conference. France, China, Russia, North Korea and Israel did not participate in any of the conferences.⁴³

Anyway, what is clear is that as the proceedings before the Court have gone by, the parties continued to maintain clear opposing positions with respect to the subject matter of the application. That is to say, the existence of an international dispute between RMI and the UK was more than evident, but not for the ICJ.

On 5 October 2016, the Court found that the United Kingdom’s first preliminary objection must be upheld, lacking jurisdiction under Article 36, paragraph 2, of its Statute, it cannot proceed to the merits of the case. Given this conclusion, the Court found no need to consider the other preliminary objections raised by the United Kingdom.⁴⁴

2.3.3.3 Judgements

The Court, by eight votes to eight upheld the objection raised by the UK: the absence of a dispute between the Parties. Hence, in accordance with the article 36.2 of the Statute of the ICJ, jurisdiction cannot be done. By nine votes to seven, finds that it cannot

⁴² Legality of the Use by a State of Nuclear Weapons in Armed Conflict, 1996 ICJ Rep. 66 (Advisory Opinion of July 8)

⁴³ HERRERA ALMELA, M.F (2018). The Treaty on the Prohibition of Nuclear Weapons: Is it really necessary, Instituto Español de Estudios Estratégicos

⁴⁴ Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Judgment, I.C.J. Reports 2016, p. 833

proceed to the merits of the case.

Regarding the declaration of the Judge Gaja, he agreed with the majority of the Court that there was no dispute between the Parties on the date when the Application was filed. Nevertheless, provided that is a well established fact that disputes arised since that date, it would have been correct that the Court examine other objections made by United Kingdom. Probably these objections will be claims litigated when Marshall Islands file new applications.⁴⁵

According to the dissenting opinion of the Judge Bennouna, in the three cases presented by the Marshall Islands, the Court has opted for excessive formalism. Acting this way, the Court is being in “exercise of pure formalism compared to the realism and flexibility expressed in its previous and consistent jurisprudence”.⁴⁶

IV. CONCLUSION

The ICJ unanimously concluded in its advisory opinion in 1996 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"⁴⁷. In accordance to this declaration, the General Assembly urged the NWS to suspend nuclear weapon tests in all environments and emphasized that they have a special responsibility when it comes to fulfil this goal of achieving nuclear disarmament. Also, stated that the use of nuclear weapons is a “violation of the Charter of the UN” and a “crime against humanity”, “that the use of nuclear weapons should be prohibited, pending nuclear disarmament”⁴⁸

In my view, taking into account the aforementioned declarations which strongly condemn the use of nuclear weapons and advocate for the cessation of the arms race and

⁴⁵ Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Declaration of Judge Gaja

⁴⁶ Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Dissenting opinion of Judge Bennouna

⁴⁷ Legality of die Use by a State of Nuclear Weapons in Armed Conflict, 1996 ICJ Rep. 66 (Advisory Opinion of July 8)

⁴⁸ General Assembly resolutions 33/71B and 35/152D, Non-use of nuclear weapons and prevention of nuclear war, (14 December 1978) (12 December 1980)

nuclear disarmament, it is contradictory that the ICJ, the highest judicial body of UN, had declined jurisdiction in these three cases based on requirements that did not previously exist in Case Law.

As has been stated before, this case was the first time that the ICJ had been asked to address issues related to nuclear weapons since its 1996 advisory opinion. Therefore, this case was the perfect opportunity to put in focus a topic of so much relevance as nuclear disarmament is, since it had not been given the relevance it had and still having in the international spectrum. As already demonstrated in the past (Hiroshima, Nagasaki, Marshall Islands ...) these weapons are very dangerous, their use can have atrocious consequences and even, in an extreme case, lead to the extinction of humankind. As Judge Cançado Trindade stated, nuclear weapons concerns us all states and not just a few who have had the misfortune to suffer its consequences in the past.⁴⁹

Regarding the new requirements introduced by the ICJ to determine the existence of a dispute between the parties, in my view, they have been just an instrument to decline jurisdiction. With this growing formalism of the Court, which has been appreciated by the majority of judges (both those who have opined in agreement with the majority of the Court and those that voted in a dissenting manner), the form has been prioritized (here the procedural requirements) on the merits (the resolution of the concrete controversy). In other words, the legal technique to the realization of material justice has been prioritized.

In addition, this case is the first time the ICJ declines jurisdiction on the basis of the lack of dispute between the Parties. Having left without judging a topic of such relevance, the role of the Court in the peaceful settlement of disputes and in the guarantee of compliance with International Law has been questioned. It has also come to question the bias of this and the Court's decision sought to protect the defendants (who were originally nuclear States) of a possible ruling against their interests.

As a final conclusion, after having analysed the three sentences, having reflected on the dissenting opinions, declarations of the judges and having studied about the global nuclear arms race, I must say that it seems to me that the ICJ should have adopted a more

⁴⁹ CANÇADO TRINDADE, A. (2012): "*Jus cogens*: the determination and the gradual expansion of its material content in contemporary international case-law", Retrieved from <http://www.oas.org/dil/esp/3%20-%20cancado.LR.CV.3-30.pdf>

flexible approach so that the case could have reached to the merits. Focusing on the future of nuclear weapons within the legal scope, it seems pertinent to mention the Nuclear Prohibition Treaty, which I believe would be an effective measure to implement Article VI of the NPT and to "fill the legal gap" in the existing international regime governing nuclear weapons.⁵⁰

The Treaty on the Prohibition of Nuclear Weapons (TPNW), or the Nuclear Weapon Ban Treaty, was born in 2014, when a group of NNWS known as the New Agenda Coalition (NAC) presented the idea of a nuclear-weapon ban treaty to the states who had ratified the NPT.⁵¹ This treaty recognizes compliance with existing law: the UN charter, international humanitarian law, international human rights law, the very first UN resolution adopted on 24 January 1946, the NPT, the Comprehensive Nuclear-Test-Ban Treaty and its verification regime, as well as nuclear-weapon-free zones.

The three main types of mass destruction weapons are: nuclear weapons, biological weapons and chemical weapons. It is incredible to think that only biological weapons and chemical weapons are totally prohibited by conventions but that, at the moment, there is no legally binding international agreement to prohibit nuclear weapons in an overarching scale, so the aim of the TPNW is to ban nuclear weapons in an universal way, so as to achieve their total elimination. In order to enter into force, the treaty has to be ratified by 50 countries. At the moment, it has only been signed by 70 and ratified by 23.

Lastly, to conclude the project, I would like to point out that no humanitarian organization in the world is prepared to help if a nuclear attack occurs. Even though we lived in a very developed world, at the technological level, no State or organization could face the catastrophic consequences of a nuclear bomb. There is no point in continuing to develop something that could lead to our extinction (nuclear weapons). I believe we still have a lot to do in this matter in order to achieve a regulation of absolute prohibition of nuclear weapons on an overarching scale. There is no room for nuclear weapons in the world that we want for ourselves and future generations.

⁵⁰ SHAKER, M. I. (1976). *The treaty on the non-proliferation of nuclear weapons: A study based on the five principles of UN General Assembly resolution 2028 (XX)*. Genève: Avenir S.A.

⁵¹ UNITED NATIONS GENERAL ASSEMBLY, 2017, Treaty on the Prohibition of Nuclear Weapons. New York: United Nations.

V. BIBLIOGRAPHY

CASE LAW

International Court of Justice:

Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (*Nicaragua v. Colombia*), Preliminary Objections, Judgment, I.C.J. Reports 2016

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v. Serbia*), Preliminary Objections, Judgment, I.C.J. Reports 2008

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v. Russian Federation*), Judgment; I.C.J.

Certain German Interests in Polish Upper Silesia (*Germany v. Poland*), Judgment No.6, 1925, P.C.I.J

Mavrommatis Palestine Concessions, Judgment (1924); P.C.I.J.

Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984

Northern Cameroons (*Cameroon v. United Kingdom*), Judgment, I.C.J. Reports 1963

Nuclear Tests (*Australia v. France*), Judgment (Dec. 20, 1974); I.C.J

Nuclear Tests (*New Zealand v. France*), Judgment (Dec. 20, 1974); I.C.J.

Obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament (*Republic of Marshall Islands v. India*), Judgment (Oct. 5, 2016); I.C.J.

Obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament” (*Republic of Marshall Islands Is. v. Pakistan.*), Judgment (Oct. 5, 2016); I.C.J.

Obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament” (*Republic of Marshall Islands. v. United Kingdom*), Judgment (Oct. 5, 2016); I.C.J.

South West Africa (*Ethiopia v. South Africa*), Judgment (Dec. 21, 1962); I.C.J.

United States of America Federal Court:

The Republic of the Marshall Islands v. The United States of America et al, No.4:2014cv01885 - Document 54 (N.D. Cal. 2015)

LEGISLATION AND GENERAL ASSEMBLY RESOLUTIONS

United Nations, Statute of the International Court of Justice, 18 April 1946

United Nations, Treaty on the Prohibition of Nuclear Weapons, 7 July 2017

United Nations, Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, *Treaty Series: Treaties and International Agreements Registered or Filed and Recorded with the Secretariat of the United Nations* 729, no. 10485 (1974): 161-299, <https://treaties.un.org/doc/Publication/UNTS/Volume%20729/v729.pdf>.

General Assembly resolutions 33/71B and 35/152D, *Non-use of nuclear weapons and prevention of nuclear war*, (14 December 1978) (12 December 1980)

General Assembly resolution 59/77, *Nuclear disarmament*, (3 December 2004)

ADVISORY OPINIONS OF THE INTERNATIONAL COURT OF JUSTICE

Advisory Opinion Concerning the Interpretation of Peace Treaties with Bulgaria, Hungary and Romania; First Phase. Publisher, *International Court of Justice (ICJ)*. Publication Date, 30 March 1950. Type of Decision, *I.C.J. Reports 1950*, p. 65.

Advisory Opinion Concerning the Legality of the Threat or Use of Nuclear Weapons, International Court of Justice (ICJ). Publication Date, 8 July, 1996. Type of Decision, I.C.J Opinion for UNGA

Advisory Opinion Concerning the Legality of die Use by a State of Nuclear Weapons in Armed Conflict, International Court of Justice (ICJ), Publication Date, 8 July 1996. Type of Decision, I.C.J Opinion for WHO

DOCTRINE AND LITERATURE

BONAFÉ, B.I. (2017). Establishing the existence of a dispute before the International Court of Justice: Drawbacks and implications. *Questions of International Law*

BURROUGHS, J. (2014). Overview about the Marshall Islands Case. *The Lawyers Committee on Nuclear Policy INC*. Retrieved from: lcnp.org

CANÇADO TRINDADE, A.A. (2012). *Jus cogens: the determination and the gradual expansion of its material content in contemporary international case-law*". Retrieved from <http://www.oas.org/dil/esp/3%20-%20cancado.LR.CV.3-30.pdf>

FIRMAGE, E. (1969). The Treaty on the Non-Proliferation of Nuclear Weapons. *American Journal of International Law*, 63(4), 711-746. doi:10.2307/2199482

GARRIDO MUÑOZ, A. (2018). Los requisitos procesales en serio: la existencia de una “controversia internacional” en la jurisprudencia de la Corte Internacional de Justicia. *Revista Española De Derecho Internacional*, 70(1), 127-154. Retrieved from <http://www.jstor.org/stable/26296675>

HERRERA ALMELA, M.F (2018). The Treaty on the Prohibition of Nuclear Weapons: Is it really necessary, *Instituto Español de Estudios Estratégicos*

KRIEGER, D. (May 9 2014) “The Nuclear Zero Lawsuits: Taking Nuclear Weapons to Court”, *Truthout*, accessed June 20, 2019. Retrieved from <http://truthout.org/opinion/item/23599-the-nuclear-zero-lawsuits-taking-nuclear-weapons-to-court>.

NIEDENTHAL, J. (1997, July). "A History of the people of Bikini following nuclear weapons testing in the Marshall Islands: With recollections and views of elders of Bikini Atoll". *Health Physics*, Volume 73, Number 1. Retrieved from <https://bikiniatoll.com/Health Physics paper JMN.pdf>

PADDEU, F. (2017). Multilateral disputes in bilateral settings: International Practice lags behind theory. *The Cambridge Law Journal*, 76(1), 1-4. doi:10.1017/S0008197317000083

SHAKER, M. I. (1976). The treaty on the non-proliferation of nuclear weapons: A study based on the five principles of UN General Assembly resolution 2028 (XX). Genève: Avenir S.A.

THOMAS, R. M., & POSTLETWAITHE, T. N. (Eds.). (2016). *Schooling in the Pacific Islands: Colonies in transition*. Elsevier.

Final Degree Project
Law Degree

Author: María Valentina Yane Gauffin
Academic Supervisor: Millán Requena

N.A (24 March 2007). "India seeks Japan's support, calls NPT 'flawed'". Whereincity.com. Archived from the original on 12 January 2012. Retrieved 26 June 2019.

N.A (17 May 2006). Operation Castle, *The Nuclear Weapon Archives*. Retrieved July 5, 2019, from www.nuclearweaponarchive.org