

International Court of Justice (ICJ)

Marshall Islands vs Nine Nuclear States (China, DPR Korea, France, India, Israel, Pakistan, Russia Federation, United Kingdom, United States of America)



Forum	International Court of Justice (ICJ)
Issue:	Marshall Islands vs Nine Nuclear States (China, DPR Korea, France, India, Israel, Pakistan, Russia Federation, United Kingdom, United States of America)
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Introduction

On April 2014, The Republic of Marshall Islands filed an application against nine states (China, Democratic People's Republic of Korea, France, India, Israel, Pakistan, Russian Federation, United Kingdom of Great Britain and Northern Ireland and the United States of America) accusing the states of not conforming to the cessation of nuclear arms usage. The case had been opened, unprecedentedly, after the chain of islands had been the testing site for more than 60 nuclear tests between 1946 and 1958.

Of the nine alleged states, only 3 had recognized the compulsory jurisdiction of ICJ in accordance with Article 36, paragraph 2 and those 3 states were India, the United Kingdom and Pakistan. Following Article 38, paragraph 5, of the Rules of the Court they filed against the 6 other states but no action was taken to the proceedings as the filed states did not consent. While the United Kingdom is a part of the Treaty on Non-Proliferation of Nuclear Weapons (NPT) India and Pakistan were not, so the United Kingdom was sued for not conforming to the Article VI of the NPT which stated that 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" and the other states, as they were not a part of the NPT, charged with not abiding by customary international law. As the case progressed, the question of admissibility in the court was raised and the opposing parties argued about the court's jurisdiction.

Definition of Key Terms

Nuclear weapon



A bomb or missile that uses nuclear energy to create an explosion and results in severe destruction. Nuclear weapons include hydrogen bombs or atomic bombs.

Nuclear arsenal

A large collection, or storage of nuclear weapons held and owned by a country, group, or person.

Nuclear warhead

An explosive head of a missile or torpedo. This explosive uses nuclear energy.

Nuclear non-proliferation treaty (NPT)

This treaty came into force in 1970. It was a treaty between both non-nuclear-weapon states and nuclear-weapon states. The non-nuclear-weapon states agreed not to obtain nuclear weapons, and the nuclear weapons states agreed to disarm under Article VI of this treaty (*See Appendix for Article VI of this treaty*).

Collective security

This is when states prevent or attempt to prevent wars from happening to achieve peace. This system of security tries to prevent the aggressor from their actions. Many nuclear weapon states like the US or the Russian Federation have a lack of trust for collective security thus, want to keep their nuclear weapons, and not disarm.

Burden of Proof

This is the obligation that a side in the court must provide enough reliable and sufficient evidence to justify their claim.

Jurisdiction

This is the power the court has to make legal decisions. In ICJ, the court decides the disputes of a legal nature that States submits, these decisions follow international law.

Judgment



The final decision made by the court. Once the judges have looked through all evidence relating to this case and examined the rights and obligations, the applicants and respondents will be told the final decision.

Public hearing

This occurs in court when the government, organizations, stakeholders, and advocates communicate their viewpoint on the case to influence the final decision made by the judges of the court.

Customary International Law

Along with the principles of law and treaties, customary international law refers to the practices states follow from a sense of legal obligation and this custom is considered by the ICJ, jurists, the United Nations and member states.

General Overview

US Nuclear Testing on the Marshall Islands:

Between 1946 and 1958, the US conducted 67 nuclear tests in the Republic of the Marshall Islands, including the islands called, Bikini Atoll and Enewetak. 23 tests were done on Bikini Atoll, and 44 were done on Enewetak. The Marshall Islands consist of 29 ring-shaped islands with coral surrounding the island. These islands are located in the north of the equator between Hawaii and Australia. One of these nuclear tests involved testing the “Bravo shot”, a 15-megaton device. During this period, the Marshall Islands had a population of fewer than 700,000 people. This population suffered hugely due to the effect of radiation from the nuclear testing, and the sea and land also become poisoned. Below is a description of a few of the nuclear testing that the US conducted on the Marshall Islands.

One of the nuclear testing done by the US was called Operation Crossroads. This operation was designed to investigate the effect of nuclear weapons on naval warships. On July 1, 1946, the testing was done at Bikini Atoll. This test was called the Shot Able test. After this testing, it was established by the Bulletin of the Atomic Scientists that these weapons were extremely powerful. These weapons could kill soldiers on ships that were a mile or 1.6km away. The US then performed this test on July 25 however, the operation had to end on August 19, 1946 due to the impact it had on the radiation of the soldiers.



An earlier nuclear test was Castle Bravo Test which was the largest nuclear explosion the US has conducted. It was conducted on March 1, 1945, at Bikini Atoll, and was part of Operation Castle, which involved multiple thermonuclear tests. The test involved the testing of the hydrogen bomb, called Bravo. It was 1,000 times more powerful than 'Little Boy', the nuclear bomb used in the bombing of Hiroshima. This testing caused radioactive debris to go into the atmosphere and to neighboring islands. The strength of this bomb contributed to the release of the radioactive debris into the atmosphere however, the weather conditions also played a contributing factor. Radioactive material was later found in regions of Japan, India, Australia, Europe, and the United States.

The Overall Case

The Republic of the Marshall Islands accused nine nuclear weapon states (China, DPR Korea, France, India, Israel, Pakistan, Russia Federation, United Kingdom, and the United States of America) as they failed to end the nuclear arms race and failed to begin nuclear disarmament. This is due to the damage nuclear testing has had on the health of their population and the negative impact it has had on the environment. This was discussed at a public hearing in March 2016. The Marshall Islands accuse the nuclear-weapon states of a "flagrant denial of human justice." The Marshall Islands also said in reference to the nuclear-weapon states, "it has a particular awareness of the dire consequences of nuclear weapons." The states, the United States of America, the United Kingdom, the Russian Federation, China, and France are the five "established" nuclear states and are recognized in the 1968 nuclear non-proliferation treaty (NPT) that was formed in 1968. The Marshall Islands are also suing India, Pakistan, and DPR Korea, as they have nuclear arsenals however, they are not part of NPT. These Islands are also suing Israel, which is an undeclared nuclear-weapon state. However, observers confirm that Israel is the only nuclear weapon nation in the Middle East. Even though the size of the states' arsenals has decreased after the Cold War, there are still 17,000 warheads according to the Marshall Islands' legal case notes. 16,000 of these warheads belong to the Russian Federation and the US. This amount of warheads is enough to destroy all life on planet Earth. Britain has 225 warheads and aims to improve its nuclear weapon system, and modernize its weapons rather than disarming.

In April 2014, the Republic of the Marshall Islands instituted proceedings against these nine states due to the failure to end the nuclear arms race and nuclear disarmament and failed to follow Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Out of the nine states, India, Pakistan, and the United Kingdom, have been recognized as the compulsory jurisdiction of the



International Court of Justice (ICJ), and only these cases against these three states were dealt with in the ICJ. The rest of the states do not accept the jurisdiction of the ICJ. The Marshall Islands claim that the United Kingdom has failed to achieve the Art. VI of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). This states that the parties are responsible to agree on effective measures to end the nuclear arms race and accomplish nuclear disarmament. India and Pakistan were not part of the NPT however, had similar obligations due to customary international law.

On October 5, 2016, the principal judicial organ of the United Nations (UN), the ICJ, made a judgment. The three states, India, Pakistan, and the United Kingdom believed that the diplomats of the Marshall Islands had insufficiently decided the verdict before going into court. In the United Kingdom v. Marshall Islands case, the judges voted eight to eight. As it was a tie-breaker, the president of the court decided to be in favor of the United Kingdom more. In the cases of India and Pakistan, it was nine to seven votes in their favor. Both of these three nations won this case, as there was no clear evidence that the Marshall Islands had a fight with any of these three nuclear weapon states, or pursued negotiations for this issue of nuclear weapons.

Major Parties Involved

Marshall Islands

The Marshall Islands, officially called the Republic of the Marshall Islands, have been used as a site for nuclear testing by the US between 1946 and 1958. The US conducted various tests on these islands, especially Bikini Atoll and Enewetak. The testing done by the US had a negative impact on the population, and the environment in the Marshall Islands. The Castle Bravo Test especially had a devastating impact on the Marshall Islands. The population suffered from health complications, such as vomiting, fatigue, and itchiness. The radiation from these nuclear tests also caused the citizens to have a higher likelihood of getting cancer, either thyroid cancer or leukaemia. The testing also affected the ecosystems. A lot of the testing was done in the water thus, coral reefs got destroyed, and damaged habitats living in these reefs. However, this coral has regrown over the years and is now flourished and developed into a biodiverse ecosystem. Due to the negative impact, nuclear testing has had on the population and the environment of the Marshall Islands, they have accused nine nuclear weapon states as they have failed to end the nuclear arms race and failed to begin nuclear disarmament. The negative impact of nuclear testing in the Marshall Islands was discussed in the public hearing of this case in March 2016.



United States of America (USA)

The United States of America is one of the countries that owns the most nuclear weapons in the world, alongside Russia. At the start of 2022, the US Defense Department had 3,708 nuclear warheads in the stockpile. The majority of these warheads are stored for uploading onto missiles and aircrafts if needed, and are not deployed. Approximately 1,744 warheads are deployed at the beginning of 2022. 1,344 strategic warheads are deployed on ballistic missiles, and the other 300 are deployed on strategic bomber bases in the US. In addition, there is also 100 tactical bombs deployed in air bases located in Europe. There are approximately 1,964 stored in case there is a surprise attack, or geopolitical or technical occurrence. Furthermore, between 1946 to 1958, the US tested nuclear weapons in the Marshall Islands, which caused the population and environment to suffer. The Marshall Islands want the nine nuclear states, including the USA, to disarm their nuclear weapons and end the nuclear arms race, due to the effect of nuclear testing on this group of islands. However, the US has failed to do this. This is because there is a lack of trust in collective security, and they are unwilling to disarm due to the prestige the US gets from owning these nuclear weapons, and the effectiveness of nuclear weapons to defend a country.

United Kingdom (UK)

The United Kingdom was the only party in the dispute that recognized the court's jurisdiction (Article 36, paragraph 2) and was also a part of the NPT. The state raised preliminary objections to the case and argued that there is a lack of evidence that the dispute between the United Kingdom and the Marshall Islands existed in the first place. Similar arguments were raised by both India and Pakistan.

India

Although India recognized the court's jurisdiction, the state is not a part of the NPT as a signatory and although the case opened by the Marshall Islands did not reach the merits of the case, the case sparked debate on nuclear disarmament. Just like the United Kingdom, India argued that the case was leukaemiaible as there was a lack of evidence to show a prior dispute between the states in question.

Pakistan



Pakistan has also recognized the jurisdiction of the court but similar to India, they have not signed the NPT. This raised attention on the international level as both states have growing nuclear arsenals and even if they are not charged by the case in question, it is probable that these two states engage in nuclear weapon exchange.

Timeline of Key Events

Date	Description of event
March 1, 1945	Nuclear testing began called the Castle Bravo test at Bikini Atoll, was part of Operation Castle.
August 6, 1945 - August 9 1945	Atomic bombing of Hiroshima and Nagasaki by the US.
July 1, 1946	Another nuclear testing conducted by the US at Bikini Atoll began called Operation Crossroads. This testing was called the Shot Able test.
July 25, 1946	The US began performing this test, the Shot Able test on this day.
August 19, 1946	Operation Crossroads ended, due to the impact radiation had on the soldiers.
July 1, 1968	The United Kingdom, the Unites, the Soviet Union, and 190 other states signed the Nuclear Non-Proliferation Treaty.
April 24, 2014	The Republic of the Marshall Islands instituted proceedings against the nine states involved in this case due to the failure to end the nuclear arms race and nuclear disarmament. They failed to follow Article VI of the Nuclear Non-Proliferation Treaty.
March 2016	Public hearings were conducted regarding this case.
October 5, 2016	The ICJ made a judgment about this case, regarding the nuclear-weapon states: the United Kingdom, India, and Pakistan. The final verdict was made.

UN involvement, Relevant Resolutions, Treaties and Events

- Treaty on the Non-Proliferation of Nuclear Weapons (NPT), 1968
- Advisory opinion on the Legality of the Threat or Use of Nuclear Weapons, 1996
- Statute of the International Court of Justice, 26 June 1945



- 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons and its Preparatory Committee, 2 December 2011 (A/66/412)
- 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons and its Preparatory Committee, 6 December 2006 (A/61/394)
- General and complete disarmament, 10 January 2002 (A/56/536)

Previous Attempts to solve the Issue

Attempts by the UN to end the nuclear arms race and for nuclear weapon states to disarm have been extensive; however, the outcome of some of these attempts has been successful, but others have not been. The outcome of the Treaty of the Non-Proliferation of Nuclear Weapons, caused the Marshall Islands vs Nine Nuclear States case to arise.

Nuclear-weapon-free zones

Nuclear weapon-free zones (NWFZ) have been a successful solution to reduce the usage of nuclear weapons and allow for nuclear disarmament to happen in some parts of the world, like the Southern hemisphere. NWFZ is a solution that focuses on implementing nuclear-weapon-free zones in different countries to strengthen global nuclear disarmament, and aim to achieve peace and security. Creating nuclear-weapon-free zones will help and prepare the international community for a non-nuclear weapon world. In the General Assembly resolution 3472 (XXX) B, a nuclear-weapon-free zone is defined as “any zone recognized as such by the General Assembly of the United Nations, which any group of States, in the free exercises of their sovereignty, has established by virtue of a treaty of convention whereby:

- . The statue of total absence of nuclear weapons to which the zone shall be subject, including the procedure for the delimitation of the zone, is defined;
- a. An international system of verification and control is established to guarantee compliance with the obligations deriving from that statue.”

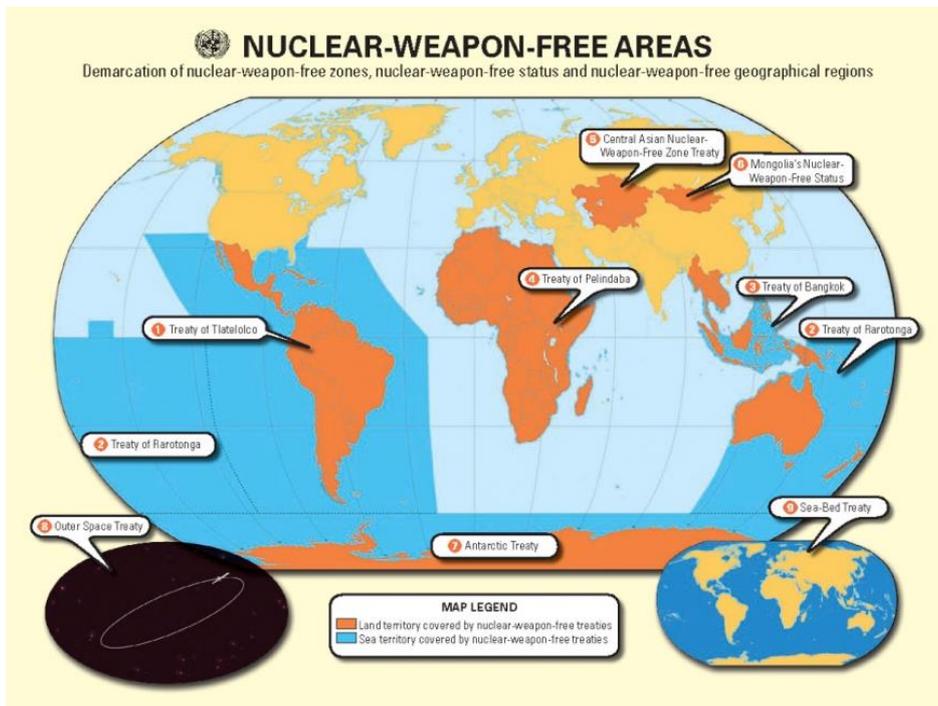
There are currently five NWFZs which are mostly in the Southern hemisphere and in Central Asia, as well as Mongolia and Antarctica. State parties that are NWFZs also must create legally binding agreements which will decrease the risk of nuclear weapon states from using their nuclear weapons



against NWFZs. Even though the majority of the Southern hemisphere and Central Asia is a nuclear-free-weapon zone, the rest of the world possesses nuclear weapons. The nine nuclear states have a total of 13,000 nuclear warheads. This figure is solely based on published information thus, there could be more. Many countries like the US do not wish to be a nuclear-free country due to two main simple reasons: they are used as a supreme defense weapon for the nation, and discourage enemies from attacking the nation.

Treaty of Non-

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Proliferation of Nuclear Weapons (NPT):

The case, the Marshall Islands vs the Nine Nuclear States, is centered around that India, Pakistan, and the United Kingdom failed to follow this treaty. This treaty was signed in 1968 by nuclear and non-nuclear powers to prevent the spread of nuclear weapons and to fulfill nuclear disarmament. The aim was also to encourage cooperation to use nuclear energy in a peaceful way. It was signed by 190 parties, including five nuclear-weapon states (the United Kingdom, the United States of America, Russia, France, and China). Even though this treaty did not stop the spread of nuclear weapons during the Cold War, and in the case of the Marshall Islands, it did set a precedent for international cooperation between nuclear and non-nuclear states to prevent the spread of these weapons. This treaty was formed due to the issues nuclear weapons raised during the Cold War. During the Cold War, the only countries that had nuclear weapons were the United States, Britain, and the Soviet Union. Both the US and the Soviet Union had a huge amount of nuclear weapon supplies, and an attack with nuclear weapons would result in destruction for both countries. Thus,



there was an incentive from both powers to avoid a nuclear war. However, if developing countries or other nations that neighbored the Cold War superpowers, had access to nuclear weapons, an attack could have been more likely. This is why nuclear technology was not given to these nations, and one of the reasons why the treaty was signed.

The NPT treaty was not effective when it was first imposed and is still ineffective in the present day. Firstly, the five nuclear states which are part of this treaty are also members of the United Nations Security Council. In this council, they are called the P5. This reduces the effectiveness of the NPT. In addition, after the signing of this treaty, in 1970, India, Pakistan, Israel, and North Korea gained nuclear weapons, which does not achieve the aims this treaty wanted to fulfill. Furthermore, this treaty is arbitrary and discriminatory. Many developing states like India see this treaty as a conspiracy for the nuclear states to keep their nuclear weapons. Overall, achieving nuclear disarmament is very hard to achieve for many reasons. It is hard to achieve as there is a lack of trust in collective security, and nuclear states are unwilling to disarm due to the prestige these countries have from owning nuclear weapons, and the effectiveness of nuclear weapons are to defend a country.

Possible Solutions

Attempts to resolve this dispute between the states depends on the cases generated by the advocates and the questions asked by the judges during the deliberations and judges questioning rounds. Please note that you should not be limited by the ideas shared below.

For Advocates

If you are the **Applicant Party**, it might be wise to consider the counter arguments such as the court's jurisdiction over the case or lack of evidence showing a prior dispute between the states in question. Referring to incidents caused by the states in question for their misuse of nuclear arms in different areas or referring to past attempts to resolve the issue but the lack of action by the Respondent Party in those areas could be an argument. For the six states that don't recognize the court's jurisdiction, argue on the basis of custom international law. A recommendation would be to prepare a witness on International Law who can support your claims. Consider calling in representatives from other countries that don't believe that the accused 9 states have obliged to their commitment in the cessation of nuclear arms.



If you are the **Respondent Party**, a good way to prepare a counter claim would be to show that the incidents that the Republic of Marshall Islands is suing happened long ago and an unprecedented filing of this case is questionable. You might work your way around this argument claiming that there is no relevant evidence that shows disputes between the states about this issue. Also, note that showing evidences or gathering witnesses to support your claim that you have not breached the NPT would be in your best interest.

For Judges

A significant amount of the case depends on the discussions of the judges. Since the actual case in the ICJ was based on the discussion, if this case was under the court's jurisdiction or not, you should determine whether you will consider states that have not recognized the court's jurisdiction under Article 36, paragraph 2.

Furthermore, you should discuss if you will be taking customary international law as a valid argument to consider states that have not signed the NPT like India and Pakistan. You should also note that the verdict will be determined only by the judgements requested by each party. If you do not believe that the applicants have not reached the burden of proof, that means that their judgements requested cannot be fulfilled.

During the deliberations, examine the evidence and witnesses by credibility, authenticity and relevance. If you believe that an evidence is not as credible or authentic or relevant, feel free to dismiss it or give low weight during the verdict. Always ask questions to advocates if you feel like they have not been able to explain their arguments or if you have any questions. Questions to test the authenticity of the witnesses like asking their alma mater or birth date is recommended; however, do not be too dependent on them.

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