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## Lawyers Committee



on Nuclear Policy

**eNews, April 2016**

*It was an exciting 10 days in early March at hearings before the International Court of Justice in the Marshall Islands' Nuclear Zero cases. The Marshall Islands made a strong showing. For more, see this eNews.*

*Also included is commentary on the Nuclear Security Summit hosted by President Obama on April 1. Short version: It should have been a Nuclear **Abolition** Summit.*

*Best wishes for an enjoyable Spring.*

*John Burroughs  
Executive Director*

*PS - your donations are always welcome, needed, and tax-deductible.*



## *Dramatic Hearings at the International Court of Justice*

From March 7 to 16, seven days of dramatic, intensely argued hearings were held in The Hague before the International Court of Justice (ICJ) on preliminary issues in the nuclear disarmament cases brought by the Republic of the Marshall Islands (RMI) against India, Pakistan, and the United Kingdom. The Marshall Islands' legal team, led by former RMI foreign minister Tony deBrum and Amsterdam lawyer and longtime IALANA member Phon van den Biesen, performed brilliantly.

On the first day of the hearings, Tony deBrum

riveted the courtroom with his explanation of why his small Pacific nation chose to resort to the Court. As a nine-year old child out fishing with his grandfather in March 1954, he saw the entire sky turn "blood red" as a result of the 15-megaton Bravo nuclear test explosion 200 miles away. Marshallese suffered dislocation and damage to their health and environment as a result of the 67 nuclear tests conducted by the United States from 1946 to 1958.



Tony deBrum. Image: UN Webcast.

He said: " While these experiences give us a unique perspective that we never requested, they are not the basis of this dispute. But they do explain why a country of our size and limited resources would risk bringing a case such as this regarding an enormous, nuclear-armed State such as India."



Phon van den Biesen. Image: UN Webcast.

On March 11, Phon van den Biesen told the Court that in law school he was taught *de minimis non curat praetor* - a court does not concern itself with trifles. The United Kingdom, he went on, was trying to introduce the opposite concept, *de maximus non curat praetor*. He commented that "such a concept does not exist and would be entirely incompatible with a world society that is based on the rule of law." He added that the ICJ is capable of

deciding cases that fall in the category *maximus*, having dealt with issues of genocide, violations of humanitarian law, use of force, and self-determination.

The Marshall Islands filed applications in the International Court of Justice against the nine nuclear-armed states in April 2014, claiming they are in violation of obligations under Article VI of the Nuclear Non-Proliferation Treaty and/or customary international law to pursue in good faith negotiations on cessation of the nuclear arms race at an early date and the elimination of nuclear weapons. The RMI asked the Court to declare that each state is failing to comply with its obligations and to order that it come into compliance within one year.

The initiative builds upon the ICJ's 1996 Advisory Opinion. Referring to Article VI and to the long history of UN General Assembly resolutions on nuclear disarmament, the Court unanimously concluded: "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." The Marshall Islands contends that this obligation applies universally, binding those few states outside the NPT, India, Israel, North Korea, and Pakistan.

Three of the nuclear-armed states, India, Pakistan, and the United Kingdom, have accepted the jurisdiction of the ICJ as to disputes involving states, including the Marshall Islands, which have done likewise. Those cases have proceeded. The other six states (China, France, Israel, North Korea, Russia, United States) refused the Marshall Islands' request, under a normal procedure, that they accept the Court's jurisdiction in this matter.



International Court of Justice, March 7 hearing, India case.  
UN Photo/ICJ-CIJ/Frank van Beek.

The recent hearings concerned the preliminary objections of India, Pakistan, and the United Kingdom to the Court deciding the cases on the merits. Pakistan withdrew from participation in the oral pleadings at the last minute, saying it had nothing to add to its written submission. Accordingly, the only hearing in that case, on March 8, was devoted to RMI's response to Pakistan's written arguments.

The United Kingdom claimed that it has a strong record of support for nuclear disarmament; consequently, it argued, there is no dispute for the Court to adjudicate.

The RMI replied that actions speak louder than words, citing the UK's consistent record of voting against resolutions in the General Assembly calling for commencement of multilateral negotiations on elimination of nuclear arms and its plans to replace its Trident nuclear weapons system.

India made a similar argument, referring to its decades-long history of calling for nuclear disarmament and its restraint in developing and deploying nuclear weapons. In reply, the RMI pointed to India's current programs for expansion, improvement and diversification of its nuclear arsenal. In a dramatic moment, on March 14 Phon van den Biesen cited press reports that India had conducted a test of a submarine-launched ballistic missile on the first day of the hearings, and that India is poised to deploy a submarine carrying such missiles.

The UK and India also each argued that no bilateral dispute existed with the RMI prior to the filing of the cases; that the cases cannot proceed without other states possessing nuclear arms being before the Court; that the relief requested would be ineffective; and that various exceptions to their declarations accepting the jurisdiction of the Court apply, including India's exclusion of disputes involving a multilateral treaty, here the NPT.

The RMI's lawyers made strong counterarguments, with ample reference to precedent of the Court. They emphasized that India and the UK each can be judged as to its own conduct, regardless of the positions and actions of other nuclear-armed states. With regard to the NPT, on March 14 Professor Christine Chinkin explained that the RMI seeks the application of a customary international law obligation arising out of a dynamic process involving not only NPT Article VI but also developments including General Assembly and Security Council resolutions and the Court's Advisory Opinion itself.

The Court is expected to issue its rulings on preliminary issues in three to six months. If the Court rules for the Marshall Islands, the cases will proceed to the merits; if the Court rules against the Marshall Islands in any case, that case will be over.

In addition to Tony deBrum, Phon van den Biesen, and Christine Chinkin, members of the legal team who argued before the Court were Professor Roger Clark, member of the LCNP Consultative Council, LCNP Executive Director John Burroughs, Professor Luigi Condorelli, Professor Paolo Palchetti, Laurie Ashton of Keller Rohrback, and Professor Nicholas Grief.

For more about the hearings, see:

- [Pressenza wrap-up story](#) by Jackie Cabasso, Western States Legal Foundation and LCNP Consultative Council
- [daily summaries](#) by Rick Wayman, Nuclear Age Peace Foundation, for Pressenza
- [AP, Reuters, AFP, Guardian, NY Times, and other media coverage](#)
- [ICJ video](#) of the hearings and a [BBC video story](#)
- oral and written proceedings at the ICJ case pages for [India](#), [Pakistan](#), and the [United Kingdom](#)

For more about the initiative, see:

- [Q&A](#) by Jackie Cabasso

- [www.lcnp.org/RMI](http://www.lcnp.org/RMI)
- [www.nuclearzero.org](http://www.nuclearzero.org)

## *Strange Spectacle: Nuclear Security Summit 2016*



Y-12 Complex, Oak Ridge National Laboratory.  
Photo: Michael Patrick, News Sentinel.

At the invitation of President Obama, on April 1 more than 50 leaders of countries, including all countries possessing nuclear arsenals except Russia and North Korea, gathered in Washington for the fourth Nuclear Security Summit. The focus was on securing civilian highly enriched uranium (HEU) and other modest and voluntary steps aimed at preventing terrorists from acquiring materials usable in nuclear and radiological weapons.

It was a strange spectacle indeed to see so much

political capital invested in limited measures which do not address:

- the estimated 15,000-plus nuclear weapons in the possession of states which say they are prepared to use them; there are no safe hands, state or non-state, for these horrific devices
- the large stocks of HEU and plutonium in military programs
- the large stocks of reactor-grade but weapons-usable plutonium
- ongoing production of HEU and plutonium and construction of new reprocessing plants to yield plutonium

The contrast is stark with the global negotiations on prevention of climate change that culminated in the Paris Agreement last December. While that agreement is only a start, at least its negotiators acknowledged and sought to address the reality of climate change in its entirety.

Also remarkable and deplorable is that the United States and the other nuclear-armed states are so far boycotting the 2016 United Nations Open-ended Working Group on Taking Forward Multilateral Negotiations on Nuclear Disarmament.

The world would have been far safer if this had been the fourth Nuclear **Abolition** Summit.

The above is excerpted from an April 4 [commentary](#) by John Burroughs for Inter Press Service.

Also recommended is this piece by our longtime colleague Ralph Hutchison of the Oak Ridge Environmental Peace Alliance, [Catastrophic Consequences: Reflecting on the Nuclear Security Summit](#). He notes: "Here, in Oak Ridge, the government is planning a new bomb plant, called the Uranium Processing Facility, at the same complex we used to enrich the uranium fuel for the Little Boy bomb that destroyed Hiroshima. It's even still called by its Manhattan Project code name, Y-12. You can look it up. This new bomb plant, the UPF, will be the flagship of the new of the new, 'modernized' nuclear weapons complex - did you tell everyone at the Nuclear Security Summit you were investing billions in bomb plants to expand our nation's nuclear weapon production capacity, Mr. President?"

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