Corrigé
Corrected

CR 2016/8

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2016

Public sitting

held on Wednesday 16 March 2016, at 10 a.m., at the Peace Palace,

President Abraham presiding,

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

Jurisdiction

VERBATIM RECORD

ANNÉE 2016

Audience publique

tenue le mercredi 16 mars 2016, à 10 heures, au Palais de la Paix,

sous la présidence de M. Abraham, président,

***en l'affaire des* Obligations relatives à des négociations concernant la cessation de la course aux armes nucléaires et le désarmement nucléaire (Iles Marshall c. Inde)**

Compétence

COMPTE RENDU

Present:	President	Abraham
	Vice-President	Yusuf
	Judges	Owada
		Tomka
		Bennouna
		Cançado Trindade
		Greenwood
		Xue
		Donoghue
		Gaja
		Sebutinde
		Bhandari
		Robinson
		Crawford
		Gevorgian
	Judge *ad hoc*	Bedjaoui
	Registrar	Couvreur

Présents : M. Abraham, président
M. Yusuf, vice-président
MM. Owada
Tomka
Bennouna
Cançado Trindade
Greenwood
Mmes Xue
Donoghue
M. Gaja
Mme Sebutinde
MM. Bhandari
Robinson
Crawford
Gevorgian, juges
M. Bedjaoui, juge *ad hoc*

M. Couvreur, greffier

The Government of the Republic of the Marshall Islands is represented by:

H.E. Mr. Tony deBrum,

Mr. Phon van den Biesen, Attorney at Law, van den Biesen Kloostra Advocaten, Amsterdam,

as Co-Agents;

Ms Deborah Barker-Manase, Chargé d'affaires a.i. and Deputy Permanent Representative of the Republic of the Marshall Islands to the United Nations, New York,

as Member of the Delegation;

Ms Laurie B. Ashton, Attorney, Seattle, United States of America,

Mr. Nicholas Grief, Professor of Law, University of Kent, member of the English Bar, United Kingdom,

Mr. Luigi Condorelli, Professor of International Law, University of Florence, Italy, Honorary Professor of International Law, University of Geneva,

Mr. Paolo Palchetti, Professor of International Law, University of Macerata, Italy,

Mr. John Burroughs, New York, United States of America,

Ms Christine Chinkin, Emerita Professor of International Law, London School of Economics, member of the English Bar, United Kingdom,

Mr. Roger S. Clark, Board of Governors Professor, Rutgers Law School, New Jersey, United States of America,

as Counsel and Advocates;

Mr. David Krieger, Santa Barbara, United States of America,

Mr. Peter Weiss, New York, United States of America,

Mr. Lynn Sarko, Attorney, Seattle, United States of America,

as Counsel;

Ms Amanda Richter, member of the English Bar,

Ms Sophie Elizabeth Bones, LL.B., LL.M., United Kingdom,

Mr. J. Dylan van ***Houcke***, LL.B., LL.M., Ph.D. Candidate, Birkbeck, University of London, United Kingdom,

Mr. Loris Marotti, Ph.D. Candidate, University of Macerata, Italy,

Mr. Lucas Lima, Ph.D. Candidate, University of Macerata, Italy,

Mr. Rob van Riet, London, United Kingdom,

Ms Alison E. Chase, Attorney, Santa Barbara, United States of America,

as Assistants;

Mr. Nick Ritchie, Lecturer in International Security, University of York, United Kingdom,

as Technical Adviser.

Le Gouvernement de la République des Iles Marshall est représenté par :

S. Exc. M. Tony deBrum,

M. Phon van den Biesen, avocat, van den Biesen Kloostra Advocaten, Amsterdam,

comme coagents ;

Mme Deborah Barker-Manase, chargé d'affaires a.i. et représentant permanent adjoint de la République des Iles Marshall auprès de l'Organisation des Nations Unies à New York,

comme membre de la délégation ;

Mme Laurie B. Ashton, avocat, Seattle, Etats-Unis d'Amérique,

M. Nicholas Grief, professeur de droit à l'Université du Kent, membre du barreau d'Angleterre, Royaume-Uni,

M. Luigi Condorelli, professeur de droit international à l'Université de Florence, Italie, professeur honoraire de droit international à l'Université de Genève,

M. Paolo Palchetti, professeur de droit international à l'Université de Macerata, Italie,

M. John Burroughs, New York, Etats-Unis d'Amérique,

Mme Christine Chinkin, professeur émérite de droit international à la London School of Economics, membre du barreau d'Angleterre, Royaume-Uni,

M. Roger S. Clark, *Board of Governors Professor* à la faculté de droit de l'Université Rutgers, New Jersey, Etats-Unis d'Amérique,

comme conseils et avocats ;

M. David Krieger, Santa Barbara, Etats-Unis d'Amérique,

M. Peter Weiss, New York, Etats-Unis d'Amérique,

M. Lynn Sarko, avocat, Seattle, Etats-Unis d'Amérique,

comme conseils ;

Mme Amanda Richter, membre du barreau d'Angleterre,

Mme Sophie Elizabeth Bones, LL.B., LL.M, Royaume-Uni,

M. J. Dylan van Houcke, LL.B., LL.M, doctorant au Birkbeck College, Université de Londres, Royaume-Uni,

M. Loris Marotti, doctorant à l'Université de Macerata, Italie,

M. Lucas Lima, doctorant à l'Université de Macerata, Italie,

M. Rob van Riet, Londres, Royaume-Uni,

Mme Alison E. Chase, avocat, Santa Barbara, Etats-Unis d'Amérique,

comme assistants ;

M. Nick Ritchie, chargé de cours en sécurité internationale à l'Université d'York, Royaume-Uni,

comme conseiller technique.

The Government of the Republic of India is represented by:

Ms Neeru Chadha, Former Additional Secretary and Legal Adviser, Ministry of External Affairs,

as Agent;

Mr. Amandeep Gill, Joint Secretary, Disarmament and International Security Affairs, Ministry of External Affairs,

as Co-Agent;

Mr. Harish Salve, Senior Advocate, Supreme Court of India, Barrister, Blackstone Chambers, London,

Mr. Alain Pellet, Emeritus Professor, University Paris Ouest, Nanterre-La Défense, Former Chairperson, International Law Commission, member of the Institut de droit international,

as Counsel and Advocates;

H.E. Mr. J. S. Mukul, Ambassador of the Republic of India to the Kingdom of the Netherlands,

Mr. Vishnu Dutt Sharma, Director and Head (Legal and Treaties), Ministry of External Affairs,

Ms Kajal Bhat, First Secretary (Legal), Embassy of the Republic of India,

as Advisers;

Ms Chetna Nayantara Rai,

Mr. Benjamin Samson,

as Junior Counsel.

Le Gouvernement de la République de l'Inde est représenté par :

Mme Neeru Chadha, ancien *Additional Secretary* et conseiller juridique, ministère des affaires étrangères,

comme agent ;

M. Amandeep Gill, *Joint Secretary*, service des affaires de désarmement et de la sécurité internationale, ministère des affaires étrangères,

comme coagent ;

M. Harish Salve, avocat principal à la Cour suprême de l'Inde ; avocat, Blackstone Chambers, Londres,

M. Alain Pellet, professeur émérite à l'Université Paris Ouest, Nanterre-La Défense ; ancien président de la Commission du droit international ; membre de l'Institut de droit international,

comme conseils et avocats ;

S. Exc. M. J. S. Mukul, ambassadeur de la République de l'Inde auprès du Royaume des Pays-Bas,

M. Vishnu Dutt Sharma, directeur du service juridique et des traités, ministère des affaires étrangères,

Mme Kajal Bhat, Premier secrétaire (affaires juridiques), ambassade de la République de l'Inde (Pays-Bas),

comme conseillers ;

Mme Chetna Nayantara Rai,

M. Benjamin Samson,

comme conseils auxiliaires.

Le PRESIDENT : Veuillez vous asseoir. L'audience est ouverte. La Cour se réunit aujourd'hui pour entendre le second tour de plaidoiries de l'Inde en l'affaire des *Obligations relatives à des négociations concernant la cessation de la course aux armes nucléaires et le désarmement nucléaire (Iles Marshall c. Inde)*.

Je donne la parole à M. Gill, coagent de la République de l'Inde.

Mr. GILL:

NO ARMS RACE, NO GAP BETWEEN WORDS AND DEEDS, NO DISPUTE

1. Mr. President, Members of the Court, in the next 20 minutes or so I will answer some of the points made by the RMI in its second round of pleadings. Mr. Harish Salve will then take the floor for about 30 minutes on the continued absence of a precise formulation of the dispute by the RMI and on the arguments made during the second round of the RMI's pleadings on India's 1974 reservations. He will be followed by Professor Alain Pellet, who will speak roughly for 30 minutes on the absence of a dispute, the presence of third parties and the applicability of the *Monetary Gold* principle. Finally, Dr. Neeru Chadha, India's Agent, will conclude the pleadings and place India's submissions before the Court.

2. At the outset, Mr. President, I wish to state that we have joined this process in humility, and without defensiveness, out of respect for international law and this august institution, the principal judicial organ of the United Nations. Knowing that this case has no legs to stand on and should not have been brought before the Court, we are here because nuclear disarmament matters and because India has always been and wishes to continue to be an active participant in the international discourse on nuclear disarmament and non-proliferation. We respect the right of every nation, big or small, of governments as well as civil society, which is overwhelmingly engaged on the other side of the aisle, to take an interest in this matter of global import.

3. However, as India has shown through its written Counter-Memorial and the first round of pleadings on 10 March, there is no real dispute between India and the Marshall Islands, the matter in question cannot be adjudicated bilaterally and even if the case were to move ahead no real purpose would be served by any judgment on merits given the absence of other indispensable parties. Further, the RMI has made no attempt before springing its applications on the respondents

to engage with India or indeed with other States on their alleged failure to pursue in good faith negotiations leading to nuclear disarmament. Finally, India's reservations bar the exercise of jurisdiction by the Court in this case.

4. Let me make some additional points of context and substance in the light of the RMI's second round of pleadings in full awareness that this is not the stage for arguments on merits.

5. The Co-Agent for the RMI, Mr. Phon van den Biesen, began his observations on 14 March by pointing out that while the RMI was making its first round of pleadings, India, almost as a singularity, was occupied with the test launch of *a* missile. To put it mildly this is a gross exaggeration. India's focus is on socio-economic development; that is our overriding priority. Only a small and reasonable fraction of our national effort — less than 2.5 per cent of India's GDP — is devoted to national self-defence, a right available to every nation on this earth and recognized in the United Nations Charter and undisputed in customary international law. Unless of course, our friends across the aisle feel that this right is not available to India or is somehow restricted compared to others for the one sixth of humanity that lives in India.

6. A little later in the pleadings that same day, my good friend, John Burroughs, said: "the subject-matter of the dispute concerns the obligation to pursue in good faith and conclude negotiations on nuclear disarmament in all its aspects, *not* the legality of possession, 'deterrence', and use or threatened use of nuclear weapons"[1].

7. The latter is precisely what Mr. van den Biesen said with a dramatic flourish just minutes before Professor Burroughs took the floor. This brings out a fatal contradiction in the stand of the RMI. By talking about a missile test conducted by India, when there is no legal régime prohibiting the possession and testing of missiles, and when India is acting in full accordance with its international obligations, our friends across the aisle give the game away. A submarine launched capability is part and parcel of India's credible minimum nuclear deterrent. A survivable response capability is in fact integral to India's responsible and restrained posture of no-first use of nuclear weapons and non-use against non-nuclear weapon States. India is not the only country testing indigenous defence systems. Testing of defence systems before their deployment is a routine

[1]CR 2016/6, p. 22, para. 12 (Burroughs); emphasis added.

activity and is carried out around the world. Nor is India the first country in the world to deploy submarines or submarine-launched missiles.

8. The question that Mr. van den Biesen's arguments raise is the following: is the RMI disputing India's failure to negotiate nuclear disarmament or is it disputing India's right to possess and maintain a nuclear deterrent and its components pending global nuclear disarmament?

9. This critical question cannot also be finessed by talking in vague terms about quantitative and qualitative improvement of nuclear weapons. That India is fuelling an arms race, Mr. President, is a figment of our friends' imagination. India's doctrine expressly rules out such an approach; it is not India that has conducted thousands of nuclear tests or piled up tens of thousands of nuclear weapons. India's approach is minimal, rational and dictated by our own minimum irreducible national security requirements. It conforms to India's professed policies. A telling example of India's rejection of arms races is India's consistent willingness since 1993 to join the negotiations in the Conference on Disarmament on a treaty to ban the production of fissile material for nuclear weapons. Deeds speak louder than words, Mr. President. If India wanted to reinvent the Cold War arms race, why would it have taken steps to join these negotiations on the basis of the agreed mandate in 1993, 1995, 1998, 2009 and most recently in 2015?

10. Mr. President, just as the RMI's attempt to find a dispute on negotiations on nuclear disarmament falls flat when confronted with the irrefutable evidence of India's positions in United Nations forums on disarmament, this attempt to reframe the issue in terms of an alleged arms race must also fall.

11. The distinguished Co-Agent of the Marshall Islands then went on to say that NPT acknowledges the temporary possession of nuclear weapons by the nuclear weapon States and gives no legitimacy, no permission to them to possess them forever. What I had actually said on 10 March was that as a non-party to the NPT, India is "under no obligation not to possess nuclear weapons". That this is a red herring, confusion at best or a feint at worst to tempt the Court into merits is clear once again from what my friend, John Burroughs, said that day on behalf of the RMI, namely, that this case is not about possession of nuclear weapons. I would like to ask our friends across the aisle: please make up your mind about what case you are running. Is this the

case that the distinguished Co-Agent is running about India's possession of nuclear weapons, or is it the one Professor Burroughs is arguing about India's failure to negotiate nuclear disarmament?

12. Even if, *arguendo*, the case is really about negotiations — and the distinguished Co-Agent of the RMI returned to this theme in the concluding part of his statement when he questioned India's assertion that negotiations should be held at the designated international forums — let us ask what if any is the standard RMI setting for us to examine whether there has been a failure to pursue in good faith negotiations leading to nuclear disarmament. Here again we find confusion and obfuscation. The RMI said on Friday last, in response to the UK, that the UK should end its systematic opposition to such negotiations and instead systematically support their commencement in relevant forums, including the General Assembly, the Conference on Disarmament (CD), etc.[2]. This is precisely what India is already doing, Mr. President. In fact our contention is that it is the RMI that has not been consistent in its support for the call by the United Nations General Assembly for negotiations leading to nuclear disarmament, a call that India co-sponsors. Mr. Tony deBrum tried to explain it away by citing the RMI's resource constraints as well as lingering constraints on its independent action. However, Mr. President, he glossed over the difference between abstention and absence; the RMI's representatives have been present in the room and have pressed the button at United Nations forums on these resolutions — the wrong button in our view till 2014 — in exercise of their sovereign right.

13. Further, if the Co-Agent for the RMI does not agree with the rest of the international community about the importance of the negotiating forums, why do his colleagues then base their standards for compliance on actions in those forums? Where else does he want to bring about these negotiations and how? How does he propose to ensure the presence of all concerned States? There is no clarity, only confusion. No clear answers, Mr. President, despite four attempts.

14. I repeat, Mr. President, there is no dispute with the RMI on the substance of nuclear disarmament. Our voting record makes it clear, as does our active participation in United Nations forums engaged on nuclear disarmament. Nor is there a gap, as wide as the sea, as the learned Professor Condorelli put it, between our words and our deeds: we follow up what we say in these

[2]CR 2016/5, p. 47, para. 8 (Grief).

forums with concrete proposals and concrete support for negotiations in the CD. Deeds match words. There is not a drop in between. Unless of course, again, our friends have set arbitrarily the standard for us of unilateral disarmament, which they claim is not what they are pursuing vis-à-vis India, at this stage at least. That would be akin to asking Indians to unilaterally give up their legitimate requirements for energy, however meagre and essential they might be, regardless of the stance of other nations, regardless of the state of play in relevant multilateral forums, because of climate change concerns.

15. I turn now to what counsel for the RMI, Ms Ashton, said. She accused India, Mr. President, of misrepresenting its Peaceful Nuclear Explosion (PNE) of May 1974. Nothing could be farther from the truth. PNEs were a legitimate activity at that time; a number of countries had PNE programmes, the US Plowshare Programme being an example, and even the NPT contained an article, Article V, stating a positive commitment on the part of the nuclear States to make the benefits of PNEs available to non-nuclear States. I invite our friends across the aisle to look closely at what we said on 10 March: "India demonstrated a capability in May 1974 but exercised unparalleled restraint in testing for 24 years even as testing continued around the globe and proliferation deepened India's national security concerns." There is a difference between demonstration of a capability and weaponization and deployment. In fact this difference and the time that elapsed in between underlines India's restraint and commitment to nuclear disarmament in spite of the continued arms race post-NPT and the continued undermining of our national security through proliferation.

16. There is another mischaracterization that I wish to address. Co-Agent for the RMI, Mr. van den Biesen, misquotes India by saying that we are wrong in thinking that nuclear disarmament negotiations would exclusively be an issue for the nine States possessing nuclear weapons. I invite our friends from across the aisle to refer to paragraph 4 of my statement of 10 March and mull the difference between "primary responsibility" and "active participation" on the one hand and disarmament being a responsibility of all nations on the other. I also invite them to look at the last paragraph of my statement:

> "global nuclear disarmament by its very nature cannot be litigated between two States or among a handful of States; it is a goal that has to be supported by all States; it has

> to be negotiated in the presence of and with the active participation of all the relevant States, in particular States whose interests are specially affected".

17. Mr. President, there is no exclusive responsibility of a club that is implied. In fact India has been opposed to this bifocal vision from the start. India's position is that all States must work together for global, non-discriminatory and verifiable nuclear disarmament. We need a step-by-step process underwritten by a universal commitment — of all States — and an agreed global and non-discriminatory multilateral framework — again of all States. We also need a meaningful dialogue among all States possessing nuclear weapons to build trust and confidence and to reduce the salience of nuclear weapons in international affairs and security doctrines; this is simply a practical acknowledgement of the need to bridge some of the difficulties and differences that exist today, it is not about usurping the global framework.

18. Finally, Mr. President, allow me to address some of the political points raised by Co-Agent, Mr. Tony deBrum. He defended the RMI's good intentions in accepting the Court's compulsory jurisdiction and raising this dispute with India. He tried to argue that India's voting record and performance at United Nations forums is not material to the dispute, which he asserted at the same time is about negotiations leading to nuclear disarmament, and spoke instead of some unspecified "actions" that call into question India's "words". I have shown that there is no gap between words and action, therefore, if this is not a political point, what else is it?

19. Mr. deBrum then went on to call India a "nuclear giant", when perhaps 98 per cent of the nuclear weapons that exist in the world today are not Indian. He went on to dismiss our consistent and long-standing sympathy for the suffering that the people of Marshall Islands had to go through and said instead that India's nuclear arsenal threatens the world — threatens the world, Mr. President — when India is committed to a credible minimum deterrent, no-first use and non-use against non-nuclear weapon States such as the RMI. What else could be more political, more contrived and more artificial than this allegation of a threat to the world? Mr. President, the RMI's suffering, for which we have always had the fullest respect since 1954, and its supposed vulnerability should not be exploited to create an artificial dispute for political purposes in abuse of the ICJ's rules and jurisdiction. As the RMI put it, all are equal before the law. Big or small, we all owe each other good faith and mutual respect.

20. I thank you for your patience. May I request you now to give the floor to Mr. Harish Salve?

Le PRESIDENT : Merci. Je donne maintenant la parole à M. Salve.

Mr. SALVE: Honourable President and Members of the Court, I am again grateful for this opportunity, Sir, for addressing this Court on behalf of my country. In keeping with the discipline of this Court, I shall limit my submissions today to dealing with the points that have been made in the oral submissions.

AN ARTIFICIAL CASE

1. The Marshall Islands' clarion call to the nuclear-weapon States was in February 2014 at Nayarit in Mexico. It said: "we urgently renew our call to all States possessing nuclear weapons to intensify efforts to address their responsibilities in moving towards an effective and secure disarmament". It lamented that "it has been more than 45 years since the conclusion of the treaty on non-proliferation of nuclear weapons" and that "multilateral negotiations on achieving and sustaining a world free of nuclear weapons are long overdue" and also that "immediate commencement and conclusion of such negotiations is required by legal obligation of nuclear disarmament resting upon each and every State . . .".

2. The Marshall Islands, who rightly reminded the world of the pain it suffered on account of testing of nuclear weapons, expressed its dismay that despite the nuclear non-proliferation treaty, negotiations to arrive at a multilateral convention for disarmament had not got off the ground.

3. And yet, Professor Chinkin argues that the Marshall Islands' position is that "a parallel rule of customary international law has developed through a *dynamic process*"[3]. Mr. President and Members of the Court, characterizing inaction of States as a dynamic process is symbolic of the artificial nature of this entire case.

4. Mr. van den Biesen began his submissions with a flourish. Citing newspaper reports that India had tested a ballistic missile with nuclear capability and a nuclear submarine, he raised the

[3]CR 2016/6, p. 31, para. 10.

pitch by suggesting that India was almost guilty of contempt of court. A contempt of court takes place when a party disrespects the court.

5. Mr. van den Biesen pursues the fiction that the dispute is based solely upon India's alleged failure to negotiate in good faith, a treaty for nuclear disarmament, but then he does not explain how such a purported dispute pending in a court and facing a jurisdictional challenge, gives rise to a suggestion of contempt of court.

6. India strongly refutes any suggestion that it is guilty of any indiscretion. India has always openly maintained that it would take measures to secure itself — making it clear that it steadfastly adheres to its policy of a credible minimum deterrent and no first use. India's actions are consistent with its stated position.

7. In my submissions earlier, I had characterized the conduct of the Marshall Islands as tainted by duplicity.

8. Mr. van den Biesen, while protesting my criticism of the Marshall Islands' conduct, told us four things with clarity.

(a) Firstly, he said that the Marshall Islands has no intention to give up the case it sought to make out in the Application — and he did so without offering any explanation for the language used in paragraph 47 of the Memorial.

(b) The second thing he told us was that India continues — in his words in "this proliferation of its nuclear capabilities"[4]. He characterized this as evidence of lack of good faith. *He added that it was also true that the Marshall Islands contends that India's quantitative build-up and qualitative improvement of its nuclear arsenal is not compatible with its obligations under customary international law.*

(c) The third thing he said was that the Marshall Islands does not claim that India is under an obligation of unilateral disarmament[5].

(d) The fourth thing he told us was, what is set out in paragraph 105, under 2 (F) of the Court's Advisory Opinion is central to the Marshall Islands' case.

---

[4]CR 2016/6, p. 9, para. 4.

[5]*Ibid.*, p. 10, para. 7.

9. Mr. Burroughs, who followed, argued that even if, *arguendo*, a dispute over India's possession of nuclear arsenals might be considered to fall within the ambit of reservation 4, as we say it does, the Court's jurisdiction would still not be excluded because, in his words, "the subject-matter of the dispute concerns the obligation to pursue in good faith and conclude negotiations on nuclear disarmament in all its aspects, not the legality of possession, deterrence, and use or threatened use of nuclear weapons"[6].

10. He hastened to add, that the Marshall Islands was *not abandoning any claim* made in the Application. He did not explain how those claims, kept in reserve for the merits hearing, would pass the jurisdictional muster.

11. The Marshall Islands seeks a declaration from this Court that India has violated and continues to violate its international obligations under customary international law by taking actions to quantitatively build up its nuclear forces, to qualitatively improve them, and to maintain them for an indefinite future. It seeks an order compelling India to take steps to comply with its obligations under customary international law with respect to cessation of the nuclear arms race at an early date *"and nuclear disarmament within one year of the Judgment"*[7]. The place of negotiations — in their scheme of things, is secondary, for the order it seeks is that India take steps for disarmament "including the pursuit, *by initiation if necessary*, of negotiations in good faith aimed at the conclusion of a convention on nuclear disarmament . . .". And yet, Mr. van den Biesen tells this Court that the Marshall Islands does not seek unilateral disarmament.

12. Mr. Burroughs' submissions candidly acknowledge two things:

(a) The Marshall Islands attempts to run this case in two parts. The formulation at the jurisdictional challenge stages, as in paragraph 47 of the Memorial, is to allow the Marshall Islands develop possible — even if weak — answers to some of the challenges on the reservations. The real case was kept back to be argued if the jurisdictional bridge was crossed.

(b) The Marshall Islands will pursue the remedies in the Application if they get past the jurisdictional challenge. But for the present the Court should not ask how! This is for the

---

[6]CR 2016/6, p. 22, para. 12.

[7]Application of the Marshall Islands (AMI), 24 Apr. 2014, p. 26.

reason that the exposure of the real disputes that would arise from the remedies sought and the claims made would be fatal to the maintainability of the Application.

13. Remedies under Article 36, Mr. President and Members of the Court, have to be pursued in good faith and one of the first elements of good faith is candour in pleadings. The conduct of the Marshall Islands in conducting these proceedings falls far short of this standard — it was rightly, I submit, even if harshly, criticized by me as an abuse of process.

14. The *Bolivia* v. *Chile* Judgment provides cold comfort to the Marshall Islands — on the contrary it provides a strong study in contrast.

(a) In *Bolivia* v. *Chile*, Bolivia sought a declaration that "Chile must perform the said obligation in good faith, promptly, formally, within a reasonable time and effectively, to grant Bolivia a fully sovereign access to the Pacific Ocean"[8].

(b) Bolivia while responding to the challenge to jurisdiction, however, made it clear that "the result of those negotiations and the specific modalities of sovereign access are not matters for the Court but, rather, are matters for future agreement to be negotiated by the Parties in good faith"[9].

(c) Accepting this position, the Court held, in paragraph 32, that the distinct dispute presented by the Application was only whether Chile had an obligation to negotiate such sovereign access to the sea, and if it did have such an obligation whether it was in breach thereof.

15. The reason is that Bolivia does not resort to the dual strategy of limiting its dispute to defend jurisdiction while reserving the right to seek remedies and orders far beyond the formulation of the dispute.

16. Professor Alain Pellet and I have both dealt, and will both deal, with the arguments on all the bases, in the alternative, as is necessary. Mr. van den Biesen possibly misunderstood this as a softening of India's case.

17. Mr. van den Biesen's submits, as also Mr. Burroughs acknowledges, that the Application pivots around paragraph 105 of the Advisory Opinion and the formulation in paragraph 2 (F) of the

---

[8] *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile)*, Judgment of 24 September 2015, para. 11.

[9] *Ibid.*, para. 30.

dispositif. To identify the contours of the case and to flush out some of the fallacies in their submissions, it would be necessary to explore, albeit briefly, some of the observations of the Court in the Advisory Opinion.

18. I do no more than quoting some of the observations:

(a) In paragraph 17, dealing with the impact of its opinion on disarmament negotiations, this Court observed that "no matter what might be its conclusions in any opinion it might give, they would have relevance for the continuing debate on the matter in the General Assembly and would present an additional element in the negotiations on the matter".

(b) In paragraph 33, this Court noticed that "existing international law relating to the protection and safeguarding of the environment does not specifically prohibit the use of nuclear weapons . . .".

(c) Noticing the various treaties dealing with the acquisition, manufacture, possession, etc., of nuclear weapons this Court said that these treaties "certainly point to an increasing concern in the international community with these weapons; the Court concludes from this that these treaties could therefore be seen as foreshadowing a future general prohibition of the use of such weapons, but they do not constitute such a prohibition by themselves"[10].

(d) On the issue of deterrence, this Court noticed that members of the international community are profoundly divided on the matter of whether non-recourse to nuclear weapons over the past 50 years constitutes the expression of an *opinio juris*. Under these circumstances the Court did *not* "consider itself able to find that there is such an *opinio juris*"[11].

(e) Paragraphs 70 to 72 find that the General Assembly resolutions "still fall short of establishing the existence of an *opinio juris*"[12] and that the emergence of a customary rule specifically prohibiting the use of nuclear weapons was "hampered by the continuing tensions between the nascent *opinio juris* on the one hand, and the still strong adherence to the practice of deterrence on the other"[13].

---

[10] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 253, para. 62.

[11] *Ibid.*, p. 254, para. 67.

[12] *Ibid.*, p. 255, para. 71.

[13] *Ibid.*, p. 255, para. 73.

(f) In paragraph 96 the Court said "the Court cannot lose sight of the fundamental right of every State to survival, and thus its right to resort to self-defence, in accordance with Article 51 of the Charter, when its survival is at stake. Nor can it ignore the practice referred to as 'policy of deterrence', to which an appreciable section of the international community adhered for many years."

(g) Paragraph 97 followed this by saying, "[a]ccordingly, in view of the present state of international law viewed as a whole, as examined above by the Court, and of the elements of fact at its disposal, the Court is led to observe that it cannot reach a definitive conclusion as to the legality or illegality of the use of nuclear weapons by a State in an extreme circumstance of self-defence, in which its very survival would be at stake".

(h) The Court then recognized that it was necessary to "put an end to this state of affairs: the long-promised complete nuclear disarmament appears to be the most appropriate means of achieving that result"[14]. The Court appreciated the full importance of the recognition by Article VI of an obligation to negotiate in good faith a nuclear disarmament treaty. This obligation was described as follows "the obligation involved here is an obligation to achieve a precise result — nuclear disarmament in all its aspects — by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith"[15].

(i) Having spelt out the obligation the Court hastened to add, "[t]his twofold obligation to pursue and to conclude negotiations formally concerns the 182 States parties to the Treaty on the Non-Proliferation of Nuclear Weapons, or, in other words, the vast majority of the international community"[16].

19. Three indisputable conclusions follow from these observations — there is no need to await a hearing on merits to identify these clear conclusions.

(a) Firstly, nothing in the observations suggests a theory of legal obligations necessary to sustain the remedies sought in the Applications — which squarely impinge upon India's nuclear programme.

---

[14] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 263, para. 98.

[15] *Ibid.*, p. 264, para. 99.

[16] *Ibid.*, p. 264, para. 100.

(b) Secondly, the Court recognized that an appreciable section of the international community pursued the principle of deterrence, and that the right of a State to defend itself when its survival was at stake, was also a right guaranteed by customary international law as well as Article 51.

(c) Thirdly, the obligation, which the Court found in Article VI of the NPT, was enforceable against all the States which were parties to the NPT — but which included a wide majority of the international community as 182 States had signed the NPT. The use of the word "formally" is really dispositive of this issue — the suggestion to the contrary by Professor Chinkin is plainly wrong — surely this Court was not suggesting that the Treaty would be enforceable other than formally, on non-parties.

20. Even assuming *arguendo* that the Marshall Islands is entitled to contend at this jurisdictional hearing, that the Court proceed to examine the dispute as being centred around Article VI of the NPT, the Application would on that basis not only be foredoomed to failure, but would fail to disclose with a modicum of cogency a real dispute between the Parties, and fail as well for the want of the presence of other States.

21. But, Mr. President, Members of the Court, I submit, this is a wrong basis to defend jurisdictional challenges. The reservations cannot be bypassed by placing the real disputes under an opaque veil. I had, in my opening oral submissions, read to you extracts from the declarations and the order sought by the Marshall Islands — I invite the Court to read them again and examine whether Mr. van den Biesen, Mr. Burroughs, and Professor Chinkin have explained any principles on which these remedies can be sustained.

FAILURE TO NEGOTIATE PRIOR TO FILING THE APPLICATION

22. Professor Condorelli, with his considerable forensic skill, seeks to get past my submissions on the need for prior negotiations by suggesting that India was now in a dispute with the Court. He needed this extreme submission to divert attention from what he possibly considered an unanswerable point.

23. The need for prior negotiations has two dimensions — a dimension as a condition precedent to establish the jurisdiction of the Court, and the second dimension a facet of whether or not a real dispute has arisen between the States.

24. If I may remind the Court of what I said in my opening submissions — I said a good indicia of whether there is a real dispute between two States is to examine whether there was any attempt at settlement of such dispute. I call this the second dimension of the prior negotiation point.

25. The problem which Professor Condorelli faced is the inherent contradiction in the Marshall Islands' position. If multilateral treaties are the only way to resolve the problem of nuclear disarmament — as suggested by India — then the Application would fail on that ground. To overcome this, the Marshall Islands contends, that to progress the initiative of nuclear disarmament, an attempt should be made even on a bilateral basis to reach a consensus and to arrive at a treaty which could then form the basis of a global consensus. This suggestion leads to the question whether consistent with this position, the Marshall Islands ever attempted to start this process. Going further down this route, if the Marshall Islands has failed to call upon other countries to discuss disarmament, has any dispute really arisen? Professor Condorelli probably found that the only solution to this conundrum was to mischaracterize the argument.

NO IDENTIFICATION OF INDIA'S FAILURE TO COMPLY WITH ITS ALLEGED OBLIGATIONS

26. Professor Palchetti argued that a State may breach its obligation to negotiate in different ways. In his words:

> "It may reject any invitation to start a negotiation on nuclear disarmament. It may vote against any proposal aimed at setting up a process within the context of an international organization. It may undertake conduct which hinders, rather than supports, the objective to achieve a negotiation."[17]

27. The Application fails to identify which of these lapses could be alleged against India — and rightly so, because there are none.

28. The Co-Agent for the Marshall Islands concluded the proceedings by making it clear amongst other things that: "The RMI has not alleged that India's United Nations voting record is a

[17] CR 2016/6, p. 36, para. 10.

violation of its obligations."[18] This, Sir, is yet another instance of the degree of artificiality with which this case is being run in this Court.

RESERVATIONS — PRINCIPLES OF INTERPRETATION

29. Coming to the reservations and limiting myself to responses to oral submissions I have the following to say. Mr. Burroughs sought to resuscitate the argument that a declaration under Article 36 (2), by its very nature, contains limitations as to the reservations it would carry with it — an approach, I submit, that has been rejected by this Court. In the *Fisheries Jurisdiction* case, the *Anglo-Iranian* case and the *Aegean Sea* case this Court looked not *merely* at the language, but even upon the surrounding circumstances to interpret a reservation.

30. India relies on the text of its reservations. Mr. Burroughs was unable to point out a single instance of a judgment reading down the plain language of a reservation on the principle that it would violate the *good faith* requirement underlying a declaration under Article 36.

Reservation 4

31. India's reservation excludes from the jurisdiction of the Court, any dispute arising out of any step or steps which it may take in relation to situations in which "India is, has been or may in future be involved." India's nuclear-weapons programme is declared to be a response to its perceived threat, together with its no first-use policy, and India claims that this is covered by the plain language of the reservation.

32. Mr. Burroughs obviously had no answer to this formulation, on the plain words of the reservation — and thus his untenable suggestion to limit these plain words by applying principles that may apply to interpretation of municipal statutes and that too in different circumstances.

33. His criticism, that India has not furnished any material to support its interpretation of its reservation is equally unmeritorious, as India relies on the plain language of the declaration. India's past declaration that was construed by this Court in the *Trial of Pakistani Prisoners of War* case and the El Salvador declaration cannot be the contextual basis to read down the present reservation.

---

[18]CR 2016/6, p. 37, para. 4.

Reservation 5

34. India claims that the declaration under Article 36 was *de facto* meant exclusively for this case, and that the suggestion that the declaration was motivated to enable the Marshall Islands to initiate proceedings pertaining to climate change — is simply untrue as no such proceedings have seen the light of day.

35. India maintains its position that such conduct is an attempt to bypass reservation 5. This is not answered by citing judgments on the construction of such reservations.

Reservation 7

36. Counsel for the Marshall Islands suggested that since the dispute does not seek the application of the NPT to India, it does not stand excluded by this reservation. Mr. President, Members of the Court, the reservation applies to the *interpretation and application* of a multilateral treaty.

37. In my opening submission, I gave an analysis of why *interpretation* of Article VI of the NPT would be indispensable in any judgment on the Application.

38. This submission has not been answered. Professor Chinkin has asserted that

(a) firstly, the Marshall Islands does not seek an application of the Treaty to India, and

(b) Article VI is not what is central to the case, but that a parallel rule of customary international law has developed through the dynamic process.

39. India's submissions and the Marshall Islands' response — are like two ships passing by each other in the dark. India pointed out that *interpretation and application* of the NPT necessary for deciding this case, would be affected by the reservation — to which submissions there is no reply.

40. As to her second submission, I have pointed out in my opening remarks that it cannot be taken seriously. To accept the submission and to believe that there is a possibility that the Marshall Islands, despite the case it runs before you, would be able to prove this "dynamic process" — which finds no mention even in the Memorial, requires a leap of faith.

Reservation 11

41. The suggestion that customary international law rights came into being in 1996 when this Court delivered its Advisory Opinion is misconceived. This Court does not create rules of customary international law — it recognizes them.

42. Reservation 11 excludes any dispute the foundation or the origin of which existed prior to the date of the declaration — even if the immediate cause which has led to the dispute may be after the declaration.

43. There was an attempt, Mr. President and Members of the Court, at obfuscating India's argument by suggesting that India relies upon the origin *of the cause* of the dispute — instead of accepting that it argued that the causes *and* origins of the dispute, in fact the foundation of the dispute existed prior to the date of the declaration. Such obfuscation, Sir, is of little assistance to this Court.

44. I had identified the veiled disputes that have been raised in my opening submissions on the first round, when I read to you the declarations and the remedies sought. They all pertain to India's nuclear-weapons programme which has been, as per the allegations in the Application, a continuous process over the years. India refused to join the Nuclear Non-Proliferation Treaty in 1968 and it is India's case that India's nuclear-weapons status goes back at least to that point of time. It is in that assertion of India's stated position while declining the invitation to sign the NPT, lie the origins and the foundations of the dispute. All of them pre-date the declaration.

45. The disputes in the declarations and remedies sought in the Application would even be affected on the principle of reciprocity — for they are not actions subsequent to 1991 but they are actions prior to 1991, and even on the plain language of the Marshall Islands' reservation would stand excluded.

CONCLUSION

46. A reading of the closing observations of the Marshall Islands' Co-Agent makes it clear that its real objection is to India's nuclear-weapons programme and it seeks remedies that would impinge on that programme, but that it seeks to camouflage its real case so as to get past challenges to jurisdiction on the basis of reservation. Besides it camouflages it because it is unable to find a legal peg upon which it can hang its real case.

47. I submit that the Court will find that all the objections which I had taken in my opening stand established and for those reasons India submits that this Application should be dismissed. Thank you, Mr. President and Members of the Court, for this opportunity. I now request you to give the floor to Professor Pellet.

Le PRESIDENT : Merci. La parole est à M. le professeur Alain Pellet.

M. PELLET : Merci, Monsieur le président.

ABSENCE DE DIFFÉREND, PRINCIPE DE L'*OR MONÉTAIRE* ET ABSENCE DE SUITES PRATIQUES D'UN ARRÊT SUR LE FOND

1. Monsieur le président, Mesdames et Messieurs les juges, dans une récente plaidoirie, le professeur Remiro Brotóns, dans le langage fleuri dont il use avec brio, compatissait avec vous pour les plaidoiries répétitives que vous deviez subir. Sans pouvoir imiter son inimitable accent, je le cite : «une personne normale, peu importe combien elle adore le cinéma, ne regarde pas le même film deux fois [en] une semaine à moins que celui-ci soit absolument exceptionnel... Il serait arrogant de notre part de croire que vous attendez avec impatience une nouvelle séance du film...»[19] Et d'autant plus qu'en l'espèce ce serait plutôt la quatrième fois que vous visionnez le même film... Pas tout à fait le même d'ailleurs plutôt, comme cette femme qui hantait le «Rêve familier» de Verlaine, «ni tout à fait [le] même, ni tout à fait [un] autre»[20].

2. Malgré des inflexions dans les positions de nos contradicteurs, nous n'avons pas modifié la distribution ; M[e] Salve vous a présenté notre argumentation en ce qui concerne d'une part les incertitudes relatives à l'objet de la requête et, d'autre part les exceptions de l'Inde fondées sur les réserves incluses dans sa déclaration facultative ; pour ma part, comme la semaine dernière, il m'échoit de montrer qu'il n'existe, décidément, aucun litige — couvert par la requête s'entend — entre l'Inde et les Iles Marshall, que vous ne sauriez répondre aux demandes de celles-ci dans le cadre bilatéral dans lequel elles vous ont saisis et que, dans ce cadre, un arrêt sur le fond n'aurait strictement aucun effet pratique.

---

[19] CR 2015/27, p. 18-19, par. 1 (Brotóns).

[20] Paul Verlaine, «Mon rêve familier», *Poèmes saturniens* (Melancholia), Lemerre, 1866.

I. Absence de différend entre les Parties

3. Monsieur le président, comme notre coagent et M[e] Salve l'ont montré, nos contradicteurs plaident deux affaires bien différentes ; parfois simultanément car il est arrivé qu'un même plaideur en traite à quelques minutes d'intervalle dans une même plaidoirie[21]. L'une de ces affaires est fort large et a été résumée ainsi par le professeur Palchetti : «The subject-matter is exclusively India's responsibility for its unlawful conduct in respect to nuclear disarmament»[22] — elle reflète au surplus les demandes formulées par les Iles Mashall à la fin de ***leur*** requête. Selon l'autre affaire, nettement plus restreinte, la présente instance ne concerne nullement cet aspect des choses et est exclusivement limitée à la poursuite de bonne foi de négociations en vue du désarmement nucléaire[23].

4. Dans cette hypothèse, Monsieur le président, — l'hypothèse restreinte — alors, oui, nous maintenons qu'il n'y a pas de différend entre les Parties : l'Inde, comme les Iles Marshall, est profondément soucieuse que des négociations mènent, aussi rapidement que possible, à un désarmement nucléaire total et contrôlé. Or, j'ai l'impression que les Iles Marshall contestent à l'Inde le droit d'être sincèrement attachée à un tel projet. Contrairement à l'autre Partie, l'Inde a pourtant constamment et vigoureusement soutenu les appels à de telles négociations. Deux brèves séries de remarques à ce sujet, Monsieur le président, si vous le voulez bien.

5. En premier lieu, je relève que nos contradicteurs ont été remarquablement discrets en ce qui concerne l'attitude pour le moins réservée des Iles Marshall quant aux suites à donner à l'avis de 1996 dont ils font maintenant si grand cas. Tout au plus, M. deBrum a-t-il avancé une explication dont je me permets de dire qu'elle est un peu facile — mais je n'y reviens pas, M. Gill en a parlé. Je rappelle seulement que, contrairement à ce qu'a laissé entendre le coagent marshallais, d'une manière générale, son pays n'a pas été absent lors des votes en question ; il s'est abstenu ou a même voté contre[24] avant sa conversion tardive mais bienvenue à la cause qu'il

---

[21] Voir, par exemple, CR 2016/6, p. 36, par. 10 et p. 37, par. 13 (Palchetti) et p. 27, par. 27 et p. 28, par. 31 (Ashton).

[22] CR 2016/6, p. 36, par. 10 (Palchetti) ; voir aussi p. 27, par. 27 (Ashton).

[23] Voir, par exemple, CR 2016/1, p. 37, par. 20 (Condorelli), p. 49, par. 15 (Burroughs) et CR 2016/6, p. 20, par. 8 (Burroughs), p. 28, par. 31 (Ashton), p. 30, par. 5 (Chinkin) et p. 37, par. 13 (Palchetti).

[24] Voir doc. A/58/PV.71, p. 13.

défend aujourd'hui. Mais ce revirement n'est intervenu qu'en 2013[25], année durant laquelle les Iles Marshall ont également formulé leur déclaration facultative d'acceptation de la juridiction obligatoire de la Cour. La coïncidence n'est assurément pas fortuite. Maintenant, les deux Etats sont sur la même ligne.

6. C'est en tout cas, ce que nous disons — et nous le redisons avec force. Malheureusement, nos contradicteurs nous dénient le droit de le dire et, même s'ils y mettent un peu plus de forme, ils accusent clairement l'Inde de mentir. Comme le dit joliment le professeur Condorelli et, là encore, avec un accent que je ne saurais imiter : «Tra il dire e il fare c'é in mezzo il mare» — ce qui donne sans doute en français, même si cela sonne moins bien, quelque chose comme : «il y a un monde entre dire et faire». Et ceci me conduit à une seconde série de remarques.

7. Monsieur le président, les Iles Marshall revendiquent pour elles-mêmes, avec vigueur, le droit à l'égalité souveraine[26]. Elles ont raison. L'une des conséquences qui découlent de ce principe est le respect mutuel que se doivent les Etats et, en particulier, selon la célèbre formule du *Lac Lanoux*, le «principe général de droit bien établi selon lequel la mauvaise foi ne se présume pas»[27]. Or, c'est bien à un constat de mauvaise foi qu'aboutit le procès d'intention que nos contradicteurs font à l'Inde[28]. A ce stade, Monsieur le président, je reprendrai à mon compte le dicton Condorelli en l'infléchissant à peine : «Tra il dire e il provare c'é in mezzo il mare» — il ne suffit pas d'affirmer, il faut démontrer.

8. Et cela, nos amis de l'autre côté de la barre s'en montrent bien incapables. D'abord, sans doute, parce qu'en réalité nous sommes dans le domaine du «dire». Il ne s'agit en effet pas de procéder au désarmement — les Iles Marshall sont catégoriques : «the dispute in this case is whether India is in violation of its customary legal obligation to negotiate in good faith nuclear disarmament»[29]. Indeed, Mr President, Members of the Court «[a]ctions speak louder than words»[30]. Mais les Iles Marshall ne se placent pas sur le terrain du désarmement — qui est, qui

---

[25] Voir doc. A/68/PV.60, p. 19.

[26] CR 2016/1, p. 15, par. 3 (deBrum) et CR 2016/6, p. 39, par. 7 (deBrum).

[27] *Affaire du lac Lanoux (Espagne/France)*, sentence du 16 novembre 1957, Nations Unies, *Recueil des sentences arbitrales (RSA)*, vol. XII, p. 305.

[28] Voir CR 2016/6, p. 9, par. 4 (van den Biesen). Voir aussi CR 2016/1, p. 19, par. 15 (deBrum).

[29] CR 2016/1, p. 28, par. 31 (Ashton).

[30] CR 2016/6, p. 38, par. 4 (deBrum).

devrait, qui devra, être du domaine du faire. Elles vous demandent d'ordonner à la République de l'Inde de prendre l'initiative d'une négociation — d'ailleurs, on ne sait pas très bien avec qui. Dès lors, que peut-on exiger d'autre de l'Inde, si ce n'est de peser de tout son poids pour qu'une telle négociation ait lieu ?

9. En réalité, ce que le Iles Marshall reprochent à l'Inde c'est de ne pas, je dirais, «devancer l'appel» et de ne pas procéder à un désarmement unilatéral. Une telle demande ne saurait être accueillie :

1. il n'existe aucune règle de droit international coutumier qui l'imposerait, les Iles Marshall ne le prétendent d'ailleurs pas[31] ; le paragraphe B du dispositif de l'avis consultatif de 1996 est tout à fait clair : «Ni le droit international coutumier ni le droit international conventionnel ne comportent d'interdiction complète et universelle de la menace ou de l'emploi des armes nucléaires en tant que telles.»[32] ;
2. par son comportement, l'Inde ne prive nullement les négociations qu'elle appelle de ses vœux de leur objet et de leur but — si je peux faire allusion, par analogie, à l'article 18 de la convention de Vienne sur le droit des traités : au terme de ces négociations, toutes les armes nucléaires de l'Inde, anciennes ou récentes, quelle que soit leur nature, seraient évidemment détruites ; et
3. de toute manière, croix de bois, croix de fer, nos contradicteurs nous assurent — la main sur le cœur — que tel n'est pas l'objet de leur requête ; elle porte seulement sur l'obligation de promouvoir des négociations de bonne foi, en vue d'atteindre ce but.

10. Comme notre coagent l'a rappelé tout à l'heure, l'Inde s'y est complètement employée depuis qu'elle est entrée dans l'ère nucléaire. Je me permets d'ailleurs de faire remarquer que les Iles Marshall ne sont pas très regardantes à cet égard : visiblement, nos amis ont eu beau fouiller, ils n'ont rien trouvé de mieux pour tenter d'établir qu'elles s'étaient acquittées pour leur part de la même obligation — qui leur incombe tout autant (*erga onmes* oblige...) — ils n'ont pas trouvé

---

[31] Voir notamment CR 2016/6, p. 9-10, par. 7 (van den Biesen).

[32] *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996 (I)*, p. 266, par. 105 2) B).

mieux, disais-je, que la déclaration faite par le sénateur marshallais Jeban Riklon en février dernier lors de la conférence de Nayarit.

[Projection – Invitations à négocier ?]

11. Vous devez, Mesdames et Messieurs les juges, connaître presque par cœur le petit extrait du discours prononcé par le représentant des Iles Marshall à cette occasion, tant nos contradicteurs placent d'espoir en lui et le citent à satiété[33]. Je ne vais donc pas le relire mais il s'affiche sur les écrans[34].

12. Eh bien, si ce discours constitue une invitation à négocier, alors l'Inde s'en est acquittée, et bien au-delà. Jugez-en, Mesdames et Messieurs de la Cour :

> «We propose that negotiations must commence in the first stage itself for a new Treaty to replace the NPT, which expires in 1995. This new Treaty should give legal effect to the binding commitment of nuclear weapon States to eliminate all nuclear weapons by the year 2010 and of all the non-nuclear weapon States to not cross the nuclear weapons threshold.»[35]

This dates back 1988.

> «We believe that all countries who support multilateral negotiations on nuclear disarmament should pursue this objective in the Conference on Disarmament which brings together all the relevant countries … We urge all concerned to make efforts for the adoption of a Programme of Work in the CD that gives due priority to negotiations on nuclear disarmament.»[36]

This declaration was made in 2013. The last one was made in June last year in the name of the members States of the Group of 21 in the Conference on Disarmament.

> «[T]he Group of 21 calls for the urgent commencement of negotiations on nuclear disarmament in the CD, in particular on a comprehensive convention on nuclear weapons to prohibit their possession, development, production, acquisition,

---

[33] Voir MIM, p. 19, par. 16 ; CR 2016/1, p. 18, par. 4 (deBrum), p. 36-37, par. 19-20 et p. 38, par. 22 (Condorelli) et CR 2016/6, p. 15, par. 6 (Condorelli).

[34] Déclaration des Iles Marshall, seconde conférence sur l'impact humanitaire des armes nucléaires, Nayarit, Mexique, 13-14 février 2014 (http:/www.reachingcriticalwill.org/images/documents/Disarmament-fora/nayarit-2014/statements/MarshallIslands.pdf).

[35] Plan d'action pour un monde exempt d'armes nucléaires, soumis le 9 juin 1988 à la troisième session extraordinaire de l'Assemblée générale des Nations Unies sur le désarmement, p. 6 (CMI, annexe 4).

[36] Déclaration de l'ambassadeur Sujata Mehta, représentant permanent de l'Inde à la conférence du désarmement, devant le groupe de travail à composition non limitée chargé de «Faire avancer les négociations multilatérales sur le désarmement nucléaire», Genève, 15 mai 2003 (http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/OEWG/statements/15May_India.pdf).

> testing, stockpiling, transfer, use or threat of use and to provide for their destruction.»[37]

Ces trois citations sont extraites de déclarations officielles faites par des responsables indiens de haut niveau. Elles témoignent de l'engagement sans aucune ambiguïté de l'Inde en faveur de négociations menant à un désarmement nucléaire complet. Et l'on voit très mal ce que les Iles Marshall peuvent bien reprocher à l'Inde en ce qui concerne l'objet du différend tel qu'elles le définissent maintenant.

13. Dans ces conditions, un minimum de pourparlers aurait semblé s'imposer afin que l'Inde prenne conscience qu'elle avait un différend bilatéral avec les Iles Marshall. Je souhaite lever toute ambiguïté à cet égard, Monsieur le président. Je sais bien que l'épuisement des négociations préalables sur le différend ne constitue pas une condition à la saisine de la Cour en l'absence de dispositions expresses. Mais, ici encore, mon contradicteur et ami tente, adroitement mais en vain, de contourner l'obstacle :

— En premier lieu, le professeur Condorelli s'accroche désespérément au précédent constitué par l'arrêt rendu dans l'affaire *Cameroun c. Nigéria* auquel il fait dire bien plus que ce qui y figure[38]. La Cour n'y affirme nullement l'inutilité ou l'absence de nécessité de négociations préalablement à sa saisine ; ce qu'elle dit, et c'est très différent, c'est qu'il n'existe pas «de règle générale selon laquelle *l'épuisement des négociations diplomatiques* serait un préalable à la saisine de la Cour»[39] lorsqu'elle est «saisie sur la base de déclarations faites en vertu de l'article 36 du Statut»[40]. Mais dans notre espèce, l'Inde aurait été bien en peine d'épuiser des négociations diplomatiques qui n'ont jamais commencé. J'ajoute que le principe de bon sens selon lequel il convient qu'un différend soit au moins «nettement défini au moyen de pourparlers diplomatiques»[41] n'a pas été évoqué dans le seul arrêt n° 2 de la Cour permanente ;

---

[37] Déclaration sur le «Suivi de la réunion de haut niveau de l'Assemblée générale sur le désarmement nucléaire de 2013» prononcée le 30 juin 2015 au nom du groupe des 21 par M. Venkatesh Varma, représentant permanent de l'Inde à la conférence du désarmement, à la séance plénière de la conférence du désarmement, par. 15 (CMI, annexe 12).

[38] CR 2016/6, p. 15-16, par. 8 (Condorelli).

[39] *Frontière terrestre et maritime entre le Cameroun et le Nigéria (Cameroun c. Nigéria), exceptions préliminaires, arrêt, C.I.J. Recueil 1998*, p. 303, par. 56 (les italiques sont de nous).

[40] *Ibid.*, p. 322, par. 109.

[41] *Concessions Mavrommatis en Palestine, arrêt n° 2, 1924, C.P.J.I. série A n° 2*, p. 15.

il l'a été aussi par cette Cour, par exemple dans l'affaire du *Droit de passage sur territoire indien*[42].

— En second lieu et de toute manière, notre problème n'est pas de savoir si des négociations préalables ont eu lieu pour régler le différend — d'évidence, il n'y en a pas eu. Il ne consiste même pas à s'interroger sur l'existence de pourparlers pour le définir — d'évidence, il n'y en a pas eu. Il est de savoir si les Iles Marshall ont porté l'existence même de ce prétendu différend à la connaissance de l'Inde — d'évidence, tel n'a pas été le cas. Or, Monsieur le président, ceci est une exigence de pur bon sens. Comme l'a souligné la CPJI

> «Il paraît bien désirable qu'un Etat ne procède pas à une démarche aussi sérieuse que l'assignation d'un autre Etat devant la Cour, sans avoir auparavant, dans une mesure raisonnable, tâché d'établir clairement qu'il s'agit d'une différence de vues qui ne peut être dissipée autrement.»[43]

14. Je remarque d'ailleurs que le professeur Condorelli, conscient sans doute de l'incongruité de sa proposition selon laquelle la «déclaration de Nayarit» constituerait la notification de l'existence d'un différend[44], n'hésite pas à proclamer maintenant que «rien n'exclut que la notification par l'Etat lésé se fasse, non pas préalablement à la saisine de la Cour, mais justement au moyen d'une telle saisine»[45]. Monsieur le président, il est tout simplement inconcevable qu'un Etat puisse, si je puis dire, «s'offrir» une tribune publique pour exposer ses positions politiques générales en attrayant, un peu à l'aveuglette, un ou plusieurs Etats devant votre haute juridiction. C'est, très clairement, ce que font les Iles Marshall en prétendant avoir des différends bilatéraux quasiment identiques avec neuf Etats détenteurs de l'arme nucléaire — qui ont pourtant des positions fort différentes au sujet des griefs qui leur sont faits[46]. Néanmoins, tous ces différends auraient été cristallisés et auraient, du même coup, été définis par la déclaration des Iles Marshall à Nayarit, deux mois avant la saisine de la Cour…

---

[42] *Droit de passage sur territoire indien (Portugal c. Inde), exceptions préliminaires, arrêt, C.I.J. Recueil 1957*, p. 148-149.

[43] *Interprétation des arrêts n^os^ 7 et 8 (usine de Chorzów), arrêt n^o^ 11, 1927, C.P.J.I. série A n^o^* 13, p. 10-11.

[44] CR 2016/1, p. 36-37, par. 19-20 et CR 2016/6, p. 15, par. 6 (Condorelli).

[45] *Ibid.*, p. 18, par. 14 (Condorelli).

[46] *Ibid.*, p. 11, par. 12 (van den Biesen).

II. Absence des parties indispensables

15. Cela souligne également, Monsieur le président, le caractère totalement artificiel de la requête marshallaise et explique pourquoi nos contradicteurs ont tant de mal à expliquer la relation existant entre l'affaire prétendument bilatérale qu'ils vous ont soumise et la dimension nécessairement collective des négociations qui en sont l'enjeu — cette dimension nous renvoie au principe de l'*Or monétaire*.

16. *Nauru* d'abord. Le professeur Palchetti m'a reproché de préférer les opinions dissidentes à celle de la majorité[47] — c'est de bonne guerre, même s'il arrive que les juges dissidents aient raison. Mais, en l'occurrence, mon contradicteur a dû reconnaître que je m'étais accommodé du raisonnement de la Cour[48], et c'est en effet le cas : pour se prononcer sur la responsabilité du défendeur, la Cour devrait nécessairement se demander si l'absence de négociations que les Iles Marshall reprochent à l'Inde est de son fait, du fait de l'Inde, ou est la conséquence de la mauvaise volonté ou de l'inertie des autres Etats possédant l'arme nucléaire. Nous sommes dans la configuration *Or monétaire* ou *Timor Oriental*.

17. Maintenant, Monsieur le président, le caractère *erga omnes* de l'obligation de négocier : je crois que le professeur Palchetti a raison de penser que le simple fait qu'il s'agisse d'une obligation *erga omnes* ne suffirait pas pour entraîner l'application du principe de l'*Or monétaire*[49]. C'est une autre particularité de cette obligation qui l'appelle : il s'agit d'une obligation dont on ne peut s'acquitter tout seul. Les Iles Marshall ont beau proclamer n'avoir jamais demandé à la Cour d'exercer sa juridiction à l'égard d'Etats qui ne sont pas présents[50], elle devrait nécessairement le faire si, par impossible, elle reconnaissait sa compétence. Lorsqu'un pays demande avec insistance à ce que des négociations se tiennent et que les participants potentiels se récusent, est-il légitime de présumer que ce pays n'est pas de bonne foi ?

18. L'Etat requérant tente d'échapper à la conséquence inéluctable d'une réponse négative à cette question en vous suggérant de déclarer que, sinon cette exception précisément, du moins les exceptions soulevées par l'Inde dans leur ensemble, n'ont pas un caractère exclusivement

---

[47] CR 2016/6, p. 34, par. 3 et p. 34-35, par. 6-5 (Palchetti).

[48] *Ibid.*, par. 6 ; voir CR 2016/4, p. 43-45, par. 16-19 (Pellet).

[49] CR 2016/6, p. 35, par. 6-7 (Palchetti).

[50] *Ibid.*, par. 6.

préliminaire[51]. Donner suite à cette suggestion, ce serait admettre qu'un Etat peut déposer une requête contre n'importe quel autre Etat en restant dans le flou en ce qui concerne l'objet exact de ses demandes et la portée précise de la règle qu'il invoque et, néanmoins, bénéficier, je dirais, de ce porte-voix formidable que constituent en général les audiences de la Cour, tout en obligeant l'autre partie, qui n'en peut mais, à se défendre contre des accusations dont l'examen, même superficiel *in limine litis,* établit le caractère infondé, artificiel, pour ne pas dire totalement abusif. Accepter de renvoyer l'affaire au fond, ce serait faire fi de l'exigence, maintenant fermement ancrée dans votre jurisprudence et saluée par de nombreux tribunaux arbitraux, selon laquelle «à l'effet d'établir, même *prima facie,* si un différend ... existe [entre les Parties], la Cour ne peut se borner à constater que l'une des parties soutient» que tel est le cas «alors que l'autre le nie ; et que, au cas particulier, elle doit rechercher si ... le différend est de ceux dont la Cour pourrait avoir compétence pour connaître...»[52].

19. Depuis lors, comme l'a relevé un tribunal CIRDI en 2011 :

> «117. It has become common-place … for [investment] tribunals to invoke a so-called «prima facie standard» as applicable to jurisdictional challenges, and to support their analysis by reference to the decisions of other international tribunals, including the International Court of Justice…
>
> 118. … In this way, a tribunal whose jurisdiction is contested strikes the balance between avoiding pre-judging the merits, on the one hand, and objectively determining the question of jurisdiction on the other.»[53]

---

[51] CR 2016/6, p. 23, par. 14 (Burroughs) et p. 33, par. 16 (Chinkin).

[52] *Licéité de l'emploi de la force (Yougoslavie c. Belgique), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (I)*, p. 137, par. 38, se référant à l'affaire des *Plates-formes pétrolières (République islamique d'Iran c. Etats-Unis d'Amérique), exception préliminaire, arrêt, C.I.J. Recueil 1996 (II)*, p. 810, par. 16 ; voir aussi, *Plates-formes pétrolières (République islamique d'Iran c. Etats-Unis d'Amérique), exception préliminaire, arrêt, C.I.J. Recueil 1996 (II)*, opinion individuelle de la juge Higgins, p. 856-858, par. 34-38 et en matière de mesures conservatoires : *Usines de pâte à papier sur le fleuve Uruguay (Argentine c. Uruguay), mesures conservatoires, ordonnance du 13 juillet 2006, C.I.J. Recueil 2006*, opinion individuelle du juge Abraham, p. 138-141, par. 5-10 ; *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal), mesures conservatoires, ordonnance du 28 mai 2009, C.I.J. Recueil 2009*, p. 151, par. 57 ; *Certaines activités menées par le Nicaragua dans la région frontalière (Costa Rica c. Nicaragua), mesures conservatoires, ordonnance du 8 mars 2011, C.I.J. Recueil 2011 (I)*, p. 18, par. 53 et dans la même affaire, *ordonnance du 22 novembre 2013, C.I.J. Recueil 2013*, p. 360, par. 24 ou *Demande en interprétation de l'arrêt du 15 juin 1962 en l'affaire du* Temple de Préah Vihéar (Cambodge c. Thaïlande) *(Cambodge c. Thaïlande), mesures conservatoires, ordonnance du 18 juillet 2011, C.I.J. Recueil 2011 (II)*, p. 545, par. 33.

[53] Décision sur l'annulation, 1er mars 2011, *Duke Energy International Peru Investments n° 1, Ltd. c. Pérou*, affaire CIRDI n° ARB/03/28, par. 117-118. ***Voir aussi, par ex.: Décision sur la compétence, 1er décembre 2008, Chevron Corporation (USA) et Texaco Petroleum Company (USA) c. Equateur, aff. CPA n° 34877, par. 109-110 citant Décision sur les exceptions préliminaires, Pan American Energy v. Argentina Pan American Energy LLC et BP Argentina Exploration Company c. République argentine, affaire CIRDI n° ARB/03/13, 27 juillet 2006, par. 50.***

20. Je n'ignore pas, Mesdames et Messieurs les juges, que vous avez peu d'appétence pour la jurisprudence CIRDI... Mais si j'ai eu l'audace de m'y référer, c'est parce que, en l'espèce, votre propre jurisprudence a été une source d'inspiration pour de nombreux autres organes judiciaires et arbitraux et est à l'origine, me semble-t-il, d'un principe général de procédure maintenant bien établi. Les affirmations des Iles Marshall quant à l'existence d'un différend entre elles et l'Inde ne passent assurément pas le test *prima facie*.

21. Et puis, décidément, Monsieur le président, quoi que puissent dire nos contradicteurs, ils vous appellent à rendre un arrêt sans objet et sans effet. Sans objet, puisque l'Inde s'acquitte déjà complètement et de bonne foi de l'obligation à laquelle ils vous demandent de la déclarer soumise. Sans effet, parce que, corseté par le principe de *res judicata*, votre arrêt liera l'Inde, en lui intimant l'ordre de respecter une obligation dont elle s'acquitte déjà pleinement, et les Iles Marshall qui, apparemment, se sont enfin avisées de la nécessité de négociations en vue du désarmement nucléaire.

22. Enfin — ou presque, quelques mots sur les conclusions des Iles Marshall. Je ne reviens pas sur le fait qu'elles ont été implicitement mais abondamment restreintes à l'occasion de ces exceptions préliminaires — M^e^ Salve a développé notre thèse à suffisance sur ce point. Laissez-moi redire seulement, Monsieur le président, que la Partie marshallaise ne pourrait de bonne foi réitérer les demandes *b)*, *c)* et *d)* — nous avons mis ces demandes dans votre dossier sous l'onglet n^o^ 2 — : elles sont clairement en dehors du cadre de la présente instance telle que, notamment l'un des coagents des Iles Marshall l'a défini. Puisque, me citant, M. Van den Biesen a dit que l'Inde «[was] fully aware of the precise subject-matter of this case and there is — after all — no confusion possible on India's part regarding what this case is about»[54]. Si les Iles Marshall devaient revenir sur cette concession bienvenue — s'il devait y avoir une autre phase, ce qu'à la Cour ne plaise… — ce revirement constituerait sans doute ce que l'on appelle un *estoppel* dans les pays de *common law*. En tout cas, ce serait contraire à la plus élémentaire bonne foi.

[54] Note 10 dans l'original : «CR 2016/4, p. 44, par. 18».

23. Monsieur le président, une fois n'est pas coutume, je vais laisser le mot de la fin à mon contradicteur et néanmoins ami, Phon van den Biesen : «The reason for them [he was targeting the regular disarmament fora] not being effective is basically that the NPT nuclear-weapon States have blocked negotiations on disarmament.»[55] India is not an NPT State. Then what ?

24. Je vous remercie très vivement, Mesdames et Messieurs de la Cour, pour votre, toujours bienveillante, attention. Et je vous prie, Monsieur le président, de bien vouloir donner la parole à Mme Neeru Chada qui, elle, aura le dernier mot au nom de la République de l'Inde. Merci beaucoup.

Le PRESIDENT : Merci. Je donne la parole à Mme Chada, agent de la République de l'Inde.

Ms. CHADHA: Thank you, Mr. President.

CONCLUDING REMARKS AND SUBMISSION

1. Mr. President, distinguished Members of the Court, I will present some brief concluding remarks and India's submission. India has been steadfast in its commitment to universal, non-discriminatory, verifiable nuclear disarmament. We fully accept that States have an obligation to negotiate in good faith with a view to achieving global nuclear disarmament but we do not accept that they are under any unilateral obligation to disarm.

2. India's position on nuclear disarmament has been very clear and unequivocal. It has always argued that for any discussions on nuclear disarmament to be meaningful, it is indispensable that they be inclusive with the participation of all nuclear-weapon States.

3. The Marshall Islands (RMI) however endeavours to put this obligation to pursue negotiations on each individual State. It argues that there is no such thing as "joint nuclear enterprise". We do not know what this expression means. However, if it means that the presence of all nuclear-weapon States is a must for negotiations for nuclear disarmament then, yes, Mr. President, it has to be a joint nuclear enterprise. Contrary to what Mr. van den Biesen has stated, India is not arguing that "these negotiations would exclusively be an issue for the nine

[55] CR 2016/6, p. 11, par. 11 (van den Biesen).

States that currently possess nuclear weapons". India has always said that participation of all States is necessary, but participation of all nuclear-weapon States is crucial as they are the essential parties without whom there cannot be any complete nuclear disarmament.

4. Mr. President, when India says the RMI has raised an artificial dispute it does not speak on the subject-matter of the dispute but questions its legal basis as a bilateral dispute brought before this Court. We question the mischaracterization of the dispute as a bilateral dispute when by its very intrinsic nature, it involves the conduct of all States especially nuclear-weapon States. As a matter of principle, our objection based on the absence of indispensable parties is a crucial one.

5. The RMI is attempting to impose a legal obligation on India based on an imaginary principle of parallel customary law distinct from Article VI of the NPT. The RMI provides no source for this principle. India considers that any provision in a treaty to which India has been persistently objecting cannot be a source of customary international law opposable to it as such.

6. India has never recognized that Article VI of the NPT is a customary international law obligation for it. It is not inconsistent for India to argue simultaneously that it is a persistent objector and then point to its record of support for the very obligation at question in the Court's 1996 Opinion. It is true that India supports United Nations General Assembly resolutions on follow-up to the Advisory Opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*. As a co-sponsor of this resolution, India demonstrates its commitment to the objective of pursuing good-faith negotiations. It is also consistent with its long-held position of support for global nuclear disarmament.

7. The RMI attempts to infer a lot from the Court's Advisory Opinion. However, it overlooks three essential considerations:

— first, it totally neglects *dispositif* 2 (B) in which the Court formally declared: "[t]here is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such";

— second, it overlooks paragraph 100 that provides that the obligation to negotiate formally rests on the 182 States parties to the NPT.

— third, the RMI forgets *dispositif* 2 (E), which is the core of the Advisory Opinion that was sought from the Court, that the Court explicitly refused to make law.

8. India does not need to reiterate that international lawmaking is the preserve of States. They can do so by concluding treaties or creating customary law — the decisive element for the creation of law ultimately being the consent of States "to be bound as a matter of law".

9. Therefore India is once again constrained to say that the RMI brings an artificial dispute against India. In reality there is no dispute between the Parties as both are committed to pursuing negotiations in good faith leading to global nuclear disarmament. India strongly endorses negotiations between all States including those possessing nuclear weapons to build trust and confidence to promote global nuclear disarmament. However, the relief sought by the RMI in the absence of other States serves absolutely no purpose. Also, Mr. President, at this stage I will refer to several reservations to India's optional declaration ***under*** Article 36 (2), which bar the Court's jurisdiction. India therefore submits that the Court should refuse to entertain the claims submitted by the RMI.

10. Before I make India's formal submission, Mr. President, with your permission, I would like to convey our thanks to all those who have helped in these proceedings. First, I wish to thank the Registrar, Mr. Philippe Couvreur, and the members of the Registry for their co-operation and professionalism and for working efficiently to ensure the smooth running of these proceedings. I especially thank the interpreters, who have certainly not had an easy time, keeping pace with us. I also thank all those who have worked long hours to produce promptly the verbatim records of the public sessions.

11. We thank our friends from the Marshall Islands for their co-operation in the course of the proceedings. I would also take this opportunity to thank our counsel and the other members of the delegation who have spent long hours preparing for these proceedings. In the end, Mr. President, I would also like to thank the Court for giving us a patient hearing. I will now confirm India's final submissions.

SUBMISSIONS

12. Mr. President, for the reasons given by India in its written pleadings and at these oral hearings:

"The Republic of India respectfully urges the Court to adjudge and declare that:

(a) it lacks jurisdiction over the claims brought against India by the Marshall Islands in its Application dated 24 April 2014;

(b) the claims brought against India by the Marshall Islands are inadmissible."

Thank you, Mr. President.

Le PRESIDENT : Merci, Madame. La Cour prend acte des conclusions finales dont vous venez de donner lecture au nom de la République de l'Inde, comme elle l'a fait lundi pour les conclusions finales présentées par les Iles Marshall.

Un membre de la Cour souhaite poser une question aux Parties. Je lui donne la parole. Monsieur le juge Cançado Trindade.

Judge CANÇADO TRINDADE: Merci, Monsieur le président.

I have questions to put to both contending Parties, the Marshall Islands and India. My questions are the following:

In the course of the written submissions and oral arguments, the two contending Parties, the Marshall Islands and India, both referred to U.N. General Assembly resolutions on nuclear disarmament. Parallel to the resolutions on the matter which go back to the early 70's (First Disarmament Decade), there have been two more recent series of General Assembly resolutions, namely: those condemning nuclear weapons, extending from 1982 to date, and those adopted as a follow-up to the 1996 I.C.J. Advisory Opinion on *Nuclear Weapons*, extending so far from 1997 to 2015. In relation to this last series of General Assembly resolutions, — referred to by the contending Parties, — I would like to ask both the Marshall Islands and India whether, in their understanding, such General Assembly resolutions are constitutive of an expression of *opinio juris*, and, if so, what in their view is their relevance to the formation of a customary international law obligation to pursue negotiations leading to nuclear disarmament, and what is their incidence upon the question of the existence of a dispute between the Parties?

Thank you, Mr. President.

Le PRESIDENT : Merci. Le texte de la question sera communiqué aux Parties sous forme écrite dès que possible. Les Parties sont invitées à fournir leurs réponses par écrit. Ces réponses devront être communiquées le mercredi 23 mars, à 18 heures au plus tard. Des observations écrites sur les réponses de l'autre Partie pourront être présentées le 30 mars, à 18 heures au plus tard.

Cela nous amène à la fin des audiences consacrées aux plaidoiries des Parties sur la question de la compétence de la Cour en l'affaire des *Obligations relatives à des négociations concernant la cessation de la course aux armes nucléaires et le désarmement nucléaire (Iles Marshall c. Inde)*. Je tiens à remercier les agents, conseils et avocats des deux Parties pour l'assistance qu'ils ont apportée à la Cour par leurs exposés oraux. Je demande aux agents de rester à la disposition de la Cour pour toutes informations ou renseignements dont la Cour pourrait avoir besoin.

Sous cette réserve, je déclare close la procédure orale sur la question de la compétence de la Cour en la présente affaire. La Cour se retirera à présent pour délibérer. Les Parties seront informées en temps utile par le greffier de la date à laquelle la Cour rendra son arrêt en séance publique.

Je vous remercie. L'audience est levée.

L'audience est levée à 11 h 35.

_____