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To the Registrar of the
International Court of Justice
H.E. Mr. Philippe Couvreur, Registrar
Peace Palace
2517 KJ Den Haag

also by fax: 070-3649928
3 pages

Amsterdam, 30 March 2016

Filenumber : D20130018

Re : **Comments on the written replies to the questions of Judge Cancado Trindade, resp. Judge Greenwood submitted by UK, RMI v. United Kingdom**

Excellency,

I have the honor to herewith send you the comments of the Marshall Islands on the United Kingdom's written replies to both the questions put by, respectively Judge Cancado Trindade and Judge Greenwood at the Court's sitting of 16 march 2016 at 10 am.

Accept, Sir, the assurances of my highest esteem.

Phon van den Biesen,
Co-Agent of the Republic of the Marshall Islands
before the International Court of Justice

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS CONCERNING NEGOTIATIONS RELATING TO CESSATION OF THE NUCLEAR ARMS RACE AND TO NUCLEAR DISARMAMENT

(Marshall Islands v. United Kingdom) (Preliminary Objections)

Comments of the Marshall Islands

to the replies submitted on 30 March 2016 by the United Kingdom to the questions of Judge Cançado Trindade and of Judge Greenwood

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Comments on the UK's Reply to Judge Cançado Trindade

1. The Marshall Islands notes that the United Kingdom takes the position that it has not "found the need to conduct any such assessment of the resolutions of the General Assembly adopted as a follow-up to the 1996 advisory opinion of the Court". As its reply to the question shows, the Marshall Islands considers that pre- and post-Advisory Opinion resolutions are germane to, respectively, the development and the subsequent confirmation of the rule of customary international law which is central to the Marshall Islands' position.

2. Contrary to what the United Kingdom seems to imply, the Marshall Islands recalls that the dispute which, in the contention of the Marshall Islands, exists between the Marshall Islands and the United Kingdom, concerns compliance with both NPT Article VI and a customary law obligation. The reply of the United Kingdom, by what it does not address, indicates opposing views between the Marshall Islands and the United Kingdom concerning the existence and content of the above-mentioned rule of customary international law which was authoritatively recognized for the first time in the Court's 1996 Advisory Opinion.

Comments on the UK's Reply to Judge Greenwood

1. Judge Greenwood asks whether the documents in question "bear upon the existence of a dispute". The Marshall Islands contends that they do bear upon, indeed evidence, the existence of a dispute. That was the thrust of RMI's answer to Judge Bennouna's question given during the oral proceedings on 16 March 2016. Together with UK statements and positions, the documents show

opposing views pre-dating the filing of the Application regarding the interpretation and application of NPT Article VI and of the parallel rule of customary international law.

2. The United Kingdom contends that the voting on the cited UNGA resolutions cannot reflect a dispute, stating that a State's decision regarding its vote on a resolution "is based on a variety of political and legal factors". However, in this case the United Kingdom's *systematic* opposition to such resolutions, coupled with consistent statements of the United Kingdom, stands in opposition to the Marshall Islands' support for the resolutions and its consistent statements.

3. Moreover, legal reasoning seldom proceeds on the basis of a single factor. The United Kingdom seems to assume that the documents in question[1] – on which in several instances it puts a different interpretation from that of the Marshall Islands – represent the whole of the Marshall Islands' case for the existence of a dispute. However, as an examination of the Marshall Island's written and oral pleadings reveals[2], this is not the case. Be that as it may, the documents demonstrate a pattern of conduct by the Marshall Islands, which renders it difficult to consider that the United Kingdom was caught by surprise by the Application and which supports the proposition that there is a dispute between the Parties.

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[1] The United Kingdom characterizes as "new" the General Assembly resolutions invoked by the Marshall Islands in its reply to Judge Bennouna's question. On the contrary, the Marshall Islands had cited the resolutions in its written pleadings, as documented in CR 2016/9, pp. 9-10, footnotes 4, 5, and 6 (van den Biesen). Regarding A/RES/68/32, see also Memorial of the Marshall Islands (MMI), paras. 91, 210. In its answer to Judge Bennouna's question, the United Kingdom referred to several documents not cited in its Preliminary Objections. See CR2016/7, pp. 14-16.

[2] See, e.g., CR 2016/9, pp. 13-14, paras. 11, 12 (van den Biesen); CR 2016/9, pp. 16-17, 20-22, paras. 2-6, 12-15 (Condorelli); CR 2016/5, pp. 24-26, paras. 14-16 (Condorelli); Written Statement of Observations of the Marshall Islands re Preliminary Objections Raised by the United Kingdom, paras. 32, 38, 39, 125-127 and fn. 155; MMI, paras. 76-77, 90-91, 101-102.