RGSSMUN V

# ICJ

## The Marshall Islands v. Nuclear States

# Letter from the Chair

Greetings, members of the Court! My name is Luca Rampersad, and it is my distinct pleasure to preside over the International Court of Justice Specialized Agency at RGSSMUN V! A little about me: I was President of RGSSMUN from 2021-22, and am now studying Political Science and International Relations as a member of Trinity College at the University of Toronto, St. George. I specialize in International Law, and I am a Junior Attorney on Varsity Blues Mock Trial, so this committee is near and dear to me! Otherwise, I'm involved with the Munk School's G7 and G20 Research Groups, the Canadian Local Conference of Youth, and I previously edited for *The Attaché Journal of International Relations*. I am also the Editor in Chief of the BRICS Research Group. I competed on the high school MUN circuit for four years and this is my sixth year in and around MUN.

*Republic of the Marshall Islands v. Pakistan,* which is before our Court, never reached deliberations on its merits in real life. The justices dismissed the case by a razor-thin margin during incidental proceedings. However, our increasingly polarized and fragmentized age of international politics has done very little to subside the question of nuclear arms. An authoritative decision by the ICJ on whether or not states have met their customary legal nuclear disarmament obligations would shape the future of international efforts, one way or the other.

I trust that these preparatory materials are useful. Since this is a very different type of MUN experience, fundamentally based on answering contentious questions in conclusive ways, I have structured this guide as a series of questions about the ICJ and the case itself. Hopefully, this is easier to digest. And in my capacity as Chair of the Court (a position I *definitely* did not make up) I will happily provide further advisory opinions (elaborate further via email) upon receipt of an Application Instituting Proceedings (if you email me a question) or *sua sponte* (if I think of anything else).

This committee is certainly a shared vision. I would like to extend my appreciation to my staff, the RGSSMUN Secretariat, and especially Secretary-General Aaira Kamal and Ms. Morris for your support throughout this process. Special shout-out to Under-Secretary-General of Committees Aryan Rajagopal for co-authoring this guide and supporting myself and my team throughout this process. Delegates: your position papers are due _____ at 11:59 P.M. Please direct any further questions to _____; I'd happily answer them!

Good luck and best regards,

Luca Rampersad
Chair of the ICJ | RGSSMUN V

# Acronyms and Definitions

***ICJ:*** International Court of Justice

***RMI*****:** Republic of the Marshall Islands

***NPT:*** Treaty on the Non-Proliferation of Nuclear Weapons

***Erga omnes:*** When a party (or in this case, state) has an obligation to the international community to do (or not do) something.

***Erga omnes partes:*** When a party (or in this case, state) has an obligation to do (or not do) something because of an agreement forged with one or more other parties (in this case, through treaties and other legal agreements).

***Locus standi:*** When the party seeking justice must prove that they have proper justification (standing) to bring forward a case to the court.

***Opinio juris:*** When an action is carried out in perceived service of a legal obligation.

***Actori incumbit (onus) probatio; Reus in excipiendo fit actor:*** When someone levels an accusation they need to back it up with evidence, and when a defendant levels a defence they need to back it up with evidence.

# About the ICJ and Committee Mechanics

## What is the ICJ? (History, Jurisdiction, Structure)

The International Court of Justice (ICJ) is a United Nations (UN) body tasked with mediating disputes between states. Its predecessor, the Permanent Court of International Justice, was formed by the League of Nations and delivered several decisions on international cases. After the horrors of World War II, the ICJ was created by the UN as a means of preventing future conflicts through arbitration by a neutral third party (Encyclopaedia Britannica). All member states of the United Nations are parties to the statute of the ICJ, meaning they are all subject to judgment as per the 1945 San Francisco Conference. The court is comprised of 15 judges who are elected to nine-year terms by the UN General Assembly and the Security Council. The only restriction placed on the court's makeup is that no more than two judges can come from the same state, which is done to ensure parity and worldwide representation. The 15 judges of the ICJ elect a president and vice president to serve three-year terms, with the court itself sitting at The Hague in the Netherlands.

The jurisdiction of the ICJ is mutually defining, with states being required to consent to the court's jurisdiction. The ICJ otherwise acts much like a typical court would, with proceedings consisting of written and oral statements along with witness testimonies (Encyclopaedia Britannica). Cases can conclude with one of three outcomes: the two states in dispute come to a compromise during proceedings, one of the two parties withdraws from the case or the court delivers a verdict. Decisions are made based on international law and considered to be binding. Although the court has no power to enforce its decisions (in that it does not have a standing army

or enforcement force at its disposal), it can appeal to the powers of the Security Council for enforcement purposes (International Court of Justice) and it enjoys a prestigious reputation. The ICJ's involvement in historical events and modern international relations has made it a crucial influence around the world.

## How does this Committee work?

**The Committee Staff wish to emphasize that this will *not* proceed similarly to a typical Model UN committee.** Delegates will *not* be assigned a UN member to represent. **This committee will bear more resemblance to a truncated version of an actual ICJ case,** with certain Model UN formalities.

Depending on their assigned position, delegates will serve as Justices of the Court (10), or Members of Counsel for either the Republic of the Marshall Islands (5) or Pakistan (5). Each group will deliberate and produce "resolutions" in the forms of either written arguments or judgements, and present these "resolutions" to the body at large. Justices will have the opportunity to ask questions of the Counsels based on their arguments, and in the spirit of Model UN the court also invites respectful debate between the Counsels. Justices alone take the final vote as to which "resolution" is "adopted" by the Court.

The Committee Staff would like to recognize the student organizers of Central Peel Secondary School MUN VIII's International Court of Justice, as the schedule they developed for their simulation greatly inspired this committee's structure.

## What does the custom schedule for this Committee (tentatively) look like?

Here is how the weekend will (hopefully) shape up. ***Please note the Detailed Schedule to be provided to all participants for further clarification.***

**SESSION I**

**10:15 - 10:20: Intros and Setup; Staff Presentation (committee info, logistics, schedule etc.)**

**10:40 - 11:00: Pre-Trial Committee Deliberations**

**10:55 - 11:30: Private Deliberations I (Judges work on Advisory Opinion, Counsels Develop Formal Arguments)**

**11:30 - 11:55: Presentation of Advisory Opinion and Committee Deliberations on Jurisdiction**

**–– 5-Minute Break —**

**12:00 - 12:30: Private Deliberations II (Preliminary Opinion on Jurisdiction, Counsels Continue Developing Formal Arguments)**

**— Lunch —**

**SESSION II**

**1:30 - 2:30: Presentation of Arguments, Justice Q&A and Closing Statements on Jurisdiction**

**2:30 - 2:45: Private Deliberations III (Justices Develop Majority Opinion on Jurisdiction, Counsels Work on Merits)**

**— Break —-**

**3:00 - 3:30: Private Deliberations III cont'd**

**3:30 - 4:00: Justices Render Verdict on Jurisdiction, Dissenting Justices Present (if necessary), Committee Deliberations on Merits**

**— End of Day 1 —**

**SESSION IV:**

**10:00 - 10:30: Private Deliberations IV (Justices Develop Preliminary Opinion on Merits,**

**10:30 - 11:30: Presentation of Arguments, Justice Q&A and Closing Statements on Jurisdiction**

**— Break —**

**SESSION V:**

**11:45 - 12:15: Justices Render Verdict on Merits, Dissenting Judges Present (if necessary)**

**Remaining time: Secret Crisis!**

**— Lunch —**

**SESSION VI:**

**FUNMUN!**

# Case Summary

## *What is this case?*

These proceedings will simulate both incidental proceedings and argumentation on the merits of *Marshall Islands v. Pakistan*. The Republic of the Marshall Islands (hereafter, the Applicant or RMI) filed an Application Instituting Proceedings against the nine nuclear-armed countries on 14 April 2014 (International Court of Justice). Of the nine states named in RMI's application, only three (The UK, India and Pakistan, hereafter the Respondents) respect the International Court of Justice's jurisdiction in settling disputes between states, so these proceedings shall consider the cases of these three respondents. In practice for this simulation, however, **Counsels for the Respondents should consider themselves to be representing the Islamic Republic of Pakistan.**

This case, as mentioned above, will proceed over two distinct stages of argumentation: incidental proceedings, and proceedings on the merits of the case. Incidental proceedings are most helpful to think of as similar to pre-trial motions, or "trials before the trial" in a sense. This is where litigants (that is, Counsels for the Applicant and the Respondent) debate any number of questions that might put limiting conditions on the Court, necessitate Court orders, or force the Court to dismiss the case entirely. Meanwhile, arguments on the merits will discuss the validity of the accusations themselves.

Incidental proceedings are guaranteed to happen in this simulation, as the Agents for the Respondent will argue that the court does not have jurisdiction over the case (i.e., the Court does not have the authority to give an opinion on the case).

**Regardless of whether or not the court finds that they have jurisdiction, we will move on to the Merits as if the court does have jurisdiction** for the purpose of this simulation. The Merits section will invite argumentation surrounding the key question of this case - did the Respondent violate customary international law, as established by Article VI of the Non-Proliferation Treaty?

### *What is some of the relevant historical context surrounding this case?*

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was first forged in 1968 at the height of the Cold War. The treaty was created to deter current nuclear powers from assisting other states in producing or acquiring nuclear weapons The NPT came into effect in March 1970 with major signatories including the United States, the United Kingdom and the Soviet Union taking part alongside 59 other states (Encyclopaedia Britannica). Only three nuclear-armed states have yet to ratify the treaty (including Pakistan), along with North Korea, which withdrew from the agreement after initially signing it. The treaty, although recognized by a majority of the international community, has been scrutinized as being unequal in its demands. The NPT demands that all non-nuclear states be prevented from acquiring nuclear weapons while allowing current nuclear powers to maintain their arsenals (Encyclopaedia Britannica). Nonetheless, the treaty was ratified by a majority of the nuclear states who, in return, agreed to aid other states in the development of nuclear energy programs while working towards disarmament.

Although the non-proliferation of nuclear weapons has been regarded as a global norm that must be accepted on an international scale, there have been exceptions. The absence of India and Pakistan, the accused party in this case, to the NPT has dragged down the merit and legitimacy of the agreement (Encyclopaedia Britannica). Pakistan continues to possess a large nuclear arsenal amounting to 170 total warheads, a number which is unlikely to change so long as the country remains a non-signatory to the NPT (Arms Control Association). The country has also made efforts towards the advancement of its nuclear capabilities, with ambitions to pursue

new ballistic and sea-based weaponry. The country has reiterated that the issue of nuclear non-proliferation must be adopted universally while being "non-discriminatory" and "verifiable" for all states (Nuclear Threat Initiative). Pakistan also decided to boycott negotiations on the Nuclear Ban Treaty in 2017, along with its renewed refusal to sign the Comprehensive Nuclear-Test-Ban Treaty (CTBT) which prevents all testing of nuclear weaponry. Although both of these decisions have been seen as controversial, the country has also signed and ratified several treaties with India to prevent the nuclear escalation of conflicts while maintaining a first-use policy with all nuclear states.

The Republic of the Marshall Islands has experienced the full extent of residual damage caused by nuclear weapons testing. The RMI has been extensively influenced by the United States since the onset of the Cold War due to its strategic position in the West Pacific. The US has retained "exclusive military rights to all land and waters" in the modern day, a practice which dates back to the mid-1940s (Adams). After the conclusion of the Second World War, several island nations were claimed by the United States with permission from the United Nations. The RMI was chosen as a testing ground for America's newest nuclear weapons since it was a "remote spot" with no potential implications for the continental United States (Adams). Despite population centres existing a mere 150 miles from these sites, the US military conducted 67 nuclear tests in the RMI from 1946 to 1958 (Adams). The results of this decision were devastating, with the Marshallese people suffering from short- and long-term radiation exposure along with continued probing by American researchers. The largest American nuclear weapon ever developed was dropped on the RMI, nicknamed Castle Bravo, leading to generational consequences due to exposure and the immediate outcome of the test. It is equally important to note that, since the RMI became independent in 1979, over $2 billion in reparations has been "left unpaid" for the damages caused by nuclear testing (Adams).

## *What is the Applicant (RMI) alleging?*

RMI alleges that two facts are true by a preponderance of the evidence.

First, RMI alleges that the ICJ has jurisdiction over *Republic of the Marshall Islands v. Pakistan* on the basis of international customary law. Since Pakistan is not a party to the Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, or NPT, hereafter), RMI

posits that Pakistan is bound to customs of international law that, if violated, open it up to legal scrutiny.

Second, RMI alleges that the Respondent has acted in contravention of customary international law, as described in Article VI of the NPT. Particularly, Pakistan stands accused of having breached customary international law by not "pursu(ing) negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control." (United Nations Office of Disarmament Affairs)

### *What is the standard for, and who holds the burden of, proof in this case?*

The "burden of proof" is the responsibility placed upon one of the parties to prove an affirmative case to the court. Meanwhile, the "standard of proof" is the *extent to which* whoever has the "burden" needs to prove their case (Desyllas).

The burden of proof in any ICJ case is not, in theory, restricted to either side. The ICJ honours the principle of *actori incumbit (onus) probatio,* which dictates that any party putting forward a claim before the court has the burden to substantiate it as a fact via offerings of proof (Valencia-Ospina, 2). Commonly, this principle is followed by *reus in excipiendo fit actor*, which essentially means that the defendant against an accusation assumes the burden of proof in substantiating their rebuttal (Oxford Reference).

While the ICJ can be vague in describing the standard of proof it applies, it is most analogous to the convention in most civil proceedings: "by a preponderance of the evidence." (Valencia-Ospina, 2) To establish something "by a preponderance of the evidence" means the proof given for a certain fact outweighs the counter-evidence against that same fact.

In summary, the burden of proof is upon either side (RMI or Pakistan) to substantiate their claims by a preponderance of the evidence (more convincingly than the other side). This also means that this Court does not assume Pakistan innocent until proven guilty, nor the inverse.

*Are there any matters of jurisprudence the Court must consider before incidental proceedings begin?*

**Yes, one question must be considered:** Does RMI have to prove that its own state interests are materially harmed by Pakistan's alleged contravention of customary international law to have standing in this case?

Where two parties are both members of a binding multilateral agreement, the court has ruled that any member of that agreement enjoys *locus standi*, or proper standing; that is, the right to be a plaintiff or an Applicant (Cambridge Dictionary) to enforce it at the ICJ. This is because, in breaking that treaty, the Respondent is damaging the Applicant's interests in a material way. They both signed the binding agreement, it is law for the Applicant, and thus the Applicant has the right to enforce it among other signatories under international law. In the 2012 case *Belgium v. Senegal*, the Court ruled that Belgium has *locus standi* to enforce the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment against Senegal, on the basis that they both signed the agreement and thus have a collective interest in its fulfillment (Tanaka, 21). This principle is known as *erga omnes partes* obligations, where states have an obligation to other states based on the provisions of multilateral treaties they sign (Harvard International Law Journal). However, **the court has never before given *locus standi* to non-injured states (states not directly impacted by the Respondent's actions, i.e. states not part of the same relevant treaty) pursuing a case based on *erga omnes* (universal) obligations of states established in customary law** (Tanaka, 20).

**Before any proceedings begin, it is the duty of the Court to clear up this confusion.** This means that the Justices of the Court must decide if it's necessary for RMI to establish that they are particularly hurt by Pakistan's alleged violation of obligations to the *entire international community*, if they want to institute proceedings.

On one hand, an *erga omnes* obligation under customary law can be construed as, essentially, an agreement between each individual state and the rest of the international community at large. Recall that the ruling in *Belgium v. Senegal* comes from the idea that Belgium has an *interest* in Senegal fulfilling its obligations. So, one might argue that it is similarly sufficient that RMI, simply by being a member of the international community, has an

*interest* in obligations that states have *to the international community* instead of treaties with only particular states.

On the other hand, some argue that there are practical concerns with the Court allowing any state to institute proceedings based on another state's infringement of *erga omnes* obligations. Yoshifumi Tanaka, a professor of law at the University of Copenhagen, argues that the "consensual basis of the jurisdiction of adjudicatory bodies" such as the ICJ presents an obstacle to the Court's ability to actually enforce these obligations (Tanaka, 30). Recall that the Applicant and Respondent states need to recognize the ICJ's ability to adjudicate interstate disputes for the ICJ to preside over their case. The argument follows that any state, without proving some injury to their interests beyond being a member of the international community, can institute proceedings on that basis, prospective Respondent states may feel that non-injured state applications are random or politically motivated. They could, by that logic, be less willing to recognize the ICJ's ability to adjudicate.

These are just two of the many arguments and counter-arguments for the presented question. **If the court finds that the answer to the question is "no", RMI must establish that their interests are directly compromised by Pakistan's alleged infringement of customary international law.**

## *What are the important issues of fact for determining whether or not the ICJ has jurisdiction in this matter?*

The Respondent, in this case Pakistan, **has not ratified the NPT.** This means that Pakistan has not officially agreed to the Non-Proliferation Treaty, and in a literal sense, countries cannot be found guilty of infringing upon a treaty they did not sign. However, **binding treaties and international agreements make up a small proportion of international law.** Section 38 of the Statute of the International Court of Justice allows the court to consider not only "international conventions, whether general or particular, establishing rule expressly recognized by the contesting states," (International Court of Justice) but also:

1. "International custom, as evidence of a general practice accepted as law";
2. "The general principles of law recognized by civilized nations"; and

3. "... (J)udicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination for rules of law." (ICJ)

This means that **customs** established between states in the interest of lawful conduct, not just that which is laid out in the text of treaties, conventions or other such agreements between two states, are fair game in terms of outlining the obligations of a state under international law. This concept is called **customary international law,** and **RMI contends that Pakistan breached customary international law.**

RMI asserts that Pakistan's customary international law obligations can be extrapolated from the ICJ's own opinions; Pakistan disagrees. In 1996, the ICJ issued an **Advisory Opinion on the Threat or Use of Nuclear Weapons**, which states that the state parties to the NPT have a "twofold obligation to pursue and to conclude negotiations" (ICJ, 41) that institute "effective measures… under strict and effective international control," (43) the aim of which is "nuclear disarmament in all its aspects." (42) It is the opinion of the Court that this obligation "formally concerns the 182 States parties to the Treaty on the Non-Proliferation of Nuclear Weapons," (42) **which does not include Pakistan.** However, the opinion also employs universalist language that RMI argues evinces an **international custom of support** for this "twofold obligation." Of particular note is President Mohammed Bedjaoui's opinion that "one can assert" the twofold obligation extends beyond the Advisory Opinion extends *erga omnes* (to everyone) in the international community, not just to NPT members (Bedjaoui, 51). It is also important to note that, **at time of writing, no ICJ precedent exists for this obligation being treated as customary law.** Necessarily, therefore, the Court must decide whether or not to establish this precedent.

Thus, an essential question of jurisdiction is as follows: Does the obligation to pursue and conclude nuclear disarmament negotiations extend beyond the NPT to constitute a shared responsibility of all states (nuclear and non-nuclear, NPT party state or not), thus becoming customary international law under Article 36 of the ICJ Statute?

To determine whether a practice is a part of customary international law, the Court employs a **legal test.** The test for whether or not a given practice or principle is part of customary international law consists of two questions.

- Is it a “general practice”; that is, a practice that states generally honour?
- Is it something states do because they believe the practice is in service of international law (does it have the element of *opinio juris*)? (Cornell Legal Information Institute)

Another important question is whether or not RMI enjoys ***locus standi*****,** or the right to stand before the court, on the matter of Pakistan’s disarmament. The Applicant needs to demonstrate that it has a dispute with another Respondent over a matter of ***erga omnes*** or ***erga omnes partes*** international law, and the Applicant may or may not need to demonstrate that this dispute is founded upon a challenge to the interests of the Applicant.

The law is clear when two states are members of the same treaty, and one state applies against another to uphold the treaty provisions **(*erga omnes partes*)**. However, the court has only sparsely interacted with the question of standing in cases like *Marshall Islands v. Pakistan*, which deals with questions of obligations owed to the entire international community **(*erga omnes*)**. **The court will come to a decision on this matter before incidental proceedings begin.**

**Depending on the court’s ruling on that matter,** RMI may or may not need to establish that Pakistan’s alleged infringement of its *erge omnes* obligations materially impacts RMI’s interests. Pakistan alleges in its Note Verbale that “Pakistan’s nuclear program does not have any direct bearing” on the RMI’s interests (Counsel for the Republic of the Marshall Islands, 5). However, the RMI contends that its history of negative experiences with nuclear weapons testing *(see Historical Context)* and the particular damage it would face from atmospheric changes stemming from a prospective nuclear weapons exchange provide it vested interest in Pakistan’s nuclear activities (6-7).

Another crucial question is whether or not RMI has a dispute with Pakistan in the first place. For an ICJ case to be accepted, there must be an established dispute between two states, defined as “a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons.” (ICJ, 18) RMI contends that they have communicated a dispute; Pakistan contends that no dispute exists.

RMI argues that they communicated a dispute to Pakistan, among other states, by making “unequivocal statements” at various international conferences (Counsel for RMI, 19). At the UN

High Level Meeting on Nuclear Disarmament on 26 September 2013, the RMI Foreign Affairs Minister called on nuclear states to move towards disarmament; a couple of months later, they explicitly stated that they believed nuclear states were not meeting their obligations under customary law by not negotiating disarmament (18-19). By making these statements, at conferences that Pakistani government representatives attended, RMI contends that they made a dispute – further, a legal dispute – known to Pakistan, regarding differing views as to whether or not Pakistan was violating international legal obligations.

Pakistan, however, asserts that RMI did not communicate any dispute with them, because RMI did not provide "any formal or informal communication… until it filed its application." (Pakistan Ministry of Foreign Affairs) Pakistan asserts that because of this lack of bilateral communication, RMI did not make their dispute known to Pakistan in advance of this case being filed.

Thus, another essential question of legal jurisdiction is as follows: **Does RMI have proper standing *(locus standi)* to institute proceedings against Pakistan based on an *erga omnes* obligation that impacts the RMI's interests, AND does RMI have a legitimate dispute with Pakistan?**

## *What are the important issues of fact for determining whether or not Pakistan has violated customary international law?*

Since the real-life *Marshall Islands v. Pakistan* case did not reach the Merits stage, the Merits questions to be raised in this case are inferred from past jurisprudence, on the nuclear question and beyond.

By virtue of the case moving to the Merits stage on the basis of customary international law, as argued by RMI, Pakistan is considered by the Court as having held a "twofold obligation to pursue and to conclude negotiations" on the matter of nuclear disarmament, as an *erga omnes* duty. The ICJ's 1996 Advisory Opinion elucidates this obligation (which was *erga omnes partes* among NPT parties at the time) as follows:

> "The legal import of that obligation goes beyond that of a mere obligation of conduct; 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." (ICJ, 42)

Breaking this down, Pakistan can be considered to have an obligation:

- To pursue negotiations that aim to achieve a precise result (nuclear disarmament in all its aspects); and
- To pursue said negotiations in good faith.

As indicated by the Advisory Opinion passage, the question here is of Pakistan's *course of conduct.* **Pakistan's course of conduct must represent, on the preponderance of the evidence, a commitment to the two obligations above.** This distinction is important, because a state's course of conduct **includes both acts and omissions.** The International Law Commission of the United Nations, in their 2001 report on the "Responsibility of States for Internationally Wrongful Acts," which was endorsed by the General Assembly in Resolution 56/83, notes:

> "There is an internationally wrongful act of a State when *conduct consisting of an action or omission:* (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State." (emphasis added) (International Law Commission of the United Nations, 1)

**So, for Pakistan to be found as having adhered to international obligations, Pakistan's acts and omissions must represent a commitment to pursue and conclude nuclear disarmament negotiations in good faith.**

Pakistan's official policy is pro-elimination of nuclear weapons (with conditions); in 2020, Ambassador Muhammad Aamir Khan affirmed Pakistan's commitment "to the goal of a nuclear weapon-free world." (The Express Tribune) However, the Court must consider how Pakistan's rhetoric lines up with its actual actions and omissions.

On the international level, Pakistan is party to the Partial Nuclear Test Ban Treaty (NTBT) of 1963, which bans all nuclear testing in the atmosphere and underwater (Atomic Heritage Foundation). Pakistan also participates regularly in disarmament-related international fora. RMI noted in its Memorial that Pakistani representatives attended both the UN High Level Meeting on Nuclear Disarmament and the Second Conference on the Humanitarian Impact of

Nuclear Weapons (Pakistan has, in fact, attended all three). (Nuclear Threat Initiative) Further, Pakistan consistently sends delegates to the annual United Nations Disarmament Commission meetings (Nuclear Threat Initiative). Pakistan also participates in the Conference on Disarmament, a consensus-based international forum tasked with negotiating new limitations on, notably, fissile materials (Nuclear Threat Initiative). Domestically, Pakistan has held a unilateral moratorium on nuclear testing since 1998, and sought in August 2016 negotiations with India on a bilateral testing moratorium (Nuclear Threat Initiative).

As previously mentioned, Pakistan has not signed the NPT to this point, and Pakistan actively refuses to ratify it. It refuses to sign the Comprehensive Nuclear Test Ban Treaty, which expands upon the PTBT in banning all nuclear testing and implementing oversight agencies (Nuclear Threat Initiative). Pakistan also boycotted negotiations in the General Assembly that eventually led to the binding 2017 Treaty on the Prohibition of Nuclear Weapons, which bans all development of nuclear weapons and "constitutes an important contribution towards… the irreversible, verifiable and transparent elimination of nuclear weapons." (United Nations General Assembly, 2).

Pakistan's nuclear doctrine, and nuclear strategy broadly, is consistently defined in response to its perceptions of the neighbouring Republic of India's nuclear strategy. Pakistani nuclear doctrine is particularly motivated by a perception that India would be willing to use nuclear weapons against it, without provocation (Kristensen, Korda and Johns). Pakistan's concern over India's nuclear stockpiles also impacts either its willingness or ability to engage in disarmament-related commitments. For instance, Pakistan advocates that a binding Fissile Materials Treaty negotiated at the Disarmament Conference includes provision for the mandated reduction of *existing* fissile material stockpiles, a sentiment influenced by India's large weapons-usable inventory (Nuclear Threat Initiative). Pakistan continues to expand its nuclear arsenal; the government does not publish much information about its inventory, but the Bulletin of Atomic Scientists estimated in 2023 that Pakistan has around 170 warheads at the moment, and will have around 200 by the late 2020s if current trends hold (Kristensen, Kora and Johns).

These are an assortment of the actions Pakistan has taken which may be, in a vacuum, considered adherences to or derogations from their customary law obligations. However, the

Court is encouraged to evaluate each action and omission, both apparently conducive and apparently inconducive to their customary law obligations, within its relevant context.

## Questions At Bar

At the conclusion of this trial, all of these questions will have been definitively answered by the Court.

### *Pre-trial Jurisprudence (Judges alone)*

1. **Does RMI have to prove that its own state interests are materially harmed by Pakistan's alleged contravention of customary international law to have standing in this case, or can states raise cases to the ICJ based solely on perceived infringements of *erga omnes* obligations?**

### *Jurisdiction (Counsels craft arguments, judges consider)*

1. **Does the obligation to pursue and conclude nuclear disarmament negotiations extend beyond the NPT to constitute a shared responsibility of all states (nuclear and non-nuclear, NPT party state or not), thus becoming customary international law under Article 36 of the ICJ Statute?**
    a. TEST: Has the preponderance of the evidence established that an obligation to negotiate nuclear disarmament is:
        i. A "general practice"; that is, a practice that states generally honour?
        ii. Something states do because they believe the practice is in service of international law (does it have the element of *opinio juris*)?
    b. Are there any practical reasons why states should, or should not, be obligated to work towards disarmament if they haven't signed the NPT?
2. **Does RMI have proper standing *(locus standi)* to institute proceedings against Pakistan?**
    a. TEST: Has the preponderance of the evidence:

i. Sufficiently established that they have a dispute with Pakistan over the matter at bar? Meaning, they:
    1. Demonstrated "a disagreement on a point of law or fact, a conflict of legal views or of interests between two (states)"? And;
ii. Sufficiently established that Pakistan has an *erga omnes* obligation to nuclear disarmament that has a direct bearing on RMI's interests? *(Note that RMI's onus in terms of validating injury to its interests is impacted heavily by the jurisprudential decision developed by the Justices before proceedings)*

## *Merits (Counsels craft arguments, judges consider)*

1. **Does Pakistan's course of conduct align with its customary law obligation to pursue and conclude disarmament, in all its forms?**
    a. TEST: Has the preponderance of the evidence demonstrated that Pakistan has:
        i. Pursued negotiations that aim to achieve a precise result (nuclear disarmament in all its aspects); and
        ii. Pursued said negotiations *in good faith,* in consideration of Pakistan's relevant actions and omissions?
            1. Does Pakistan's geopolitical context sufficiently excuse any apparent derogations from good faith disarmament activity?

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