
Special Newsletter July 2014

Berlin, 10.07.2014

Introduction

Dear friends and colleagues,

With this special newsletter IALANA and INES would like to provide you with an overview of the “Marshall Islands Case”, designed to legally support the wide range of activities for the abolition of nuclear weapons.

The Republic of the Marshall Islands, a country so cruelly affected by the nuclear tests, had the courage to bring the nuclear powers before court. Memories of the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons in 1996 were brought back once again.

But it is precisely now that diverse activities of the international peace movement are needed to support the lawsuit, to increase the pressure on governments and to finally make them take serious steps towards abolition. The Nuclear Weapons Convention is on the agenda; its support by various governments is getting wider.

With the information included in this newsletter we want to argumentatively strengthen the activities for a world without nuclear weapons and hope that it will reach a wider audience.

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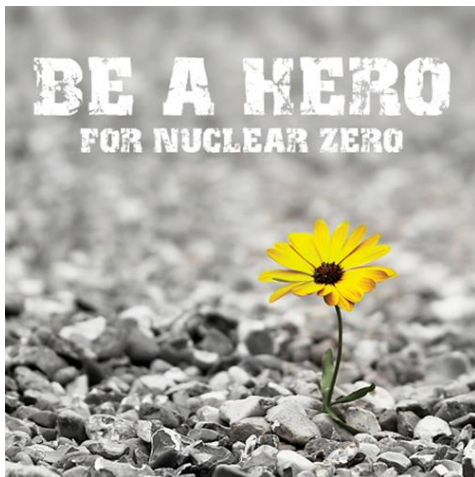


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“Our people have suffered the catastrophic and irreparable damage of these weapons, and we vow to fight so that no one else on earth will ever again experience these atrocities.”

Tony de Brum, Marshall Islands foreign minister

Overview about the Marshall Islands Case

By John Burroughs

On April 24, 2014, the Republic of the Marshall Islands (RMI) filed applications in the International Court of Justice against the nine nuclear-armed states, claiming they have violated their nuclear disarmament obligations under the Non-Proliferation Treaty (NPT) and customary international law. The respondent states are the United States, United Kingdom, France, Russia, China, India, Pakistan, Israel, and North Korea. The RMI also filed a companion case against the United States in U.S. federal court in San Francisco.

“Our people have suffered the catastrophic and irreparable damage of these weapons, and we vow to fight so that no one else on earth will ever again experience these atrocities,” said Marshall Islands Foreign Minister Tony de Brum when the cases were filed. “The continued existence of nuclear weapons and the terrible risk they pose to the world threaten us all.”

This is the first time the International Court of Justice (ICJ) has been asked to address issues relating to nuclear weapons since its 1996 advisory opinion, in which it unanimously concluded that there "exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control." The cases serve to bring the legal obligations relating to nuclear disarmament back to the center of debate and action, where they belong, and to ensure that the ICJ's 1996 opinion is not allowed to lie dormant and be ignored.

The International Association of Lawyers Against Nuclear Arms (IALANA) was deeply involved in the 1996 case, and we are now well represented on the International Legal Team for the Marshall Islands in the current ICJ cases.

The ICJ filings are contentious cases, in which the Court gives a binding judgment. While a judgment is formally binding only on the parties to the case, nonetheless the Court's interpretation and application of the law will be authoritative with respect to other states as well.

Three of the nine states possessing nuclear arsenals, the UK, India, and Pakistan, have accepted the compulsory jurisdiction of the Court when the opposing state has done so, as the Marshall Islands has. The cases are proceeding as to those states, and developments can be followed on the ICJ website, www.icj-cij.org.

As to the other six states, RMI is calling on them to accept the jurisdiction of the Court in these cases and to explain to the Court their positions regarding the nuclear disarmament obligations. However, China has already notified the Court that it declines to accept the Court's jurisdiction in this matter.

The claims in the ICJ cases are for:

- 1) breach of the obligation to pursue in good faith negotiations leading to nuclear disarmament, by refusing to commence multilateral negotiations to that end and/or by implementing policies contrary to the objective of nuclear disarmament;
- 2) breach of the obligation to pursue negotiations in good faith on cessation of the nuclear arms race at an early date, by engaging in modernization of nuclear forces and in some cases (Pakistan, India) by quantitative build-up as well;
- 3) breach of the obligation to perform the above obligations *in good faith*, by planning for retention of nuclear forces for decades into the future;

- 4) failure to perform obligations relating to nuclear disarmament and cessation of the nuclear arms race in good faith by effectively preventing the great majority of non-nuclear weapon states from fulfilling their part of those obligations.

For the NPT nuclear-weapon states, the U.S., UK, France, Russia, and China, the claims are made under both the NPT and customary international law.

For the four states possessing nuclear arsenals outside the NPT, India, Pakistan, Israel, and North Korea, the claims are made under customary international law only. The customary obligations are based on widespread and representative participation of states in the NPT and the long history of United Nations resolutions on nuclear disarmament, and reflect as well the general incompatibility of use of nuclear weapons with international law.

The relief requested is a declaratory judgment of breach of obligations relating to nuclear disarmament and an order to take, within one year of the judgment, all steps necessary to comply with those obligations, including the pursuit, by initiation if necessary, of negotiations in good faith aimed at the conclusion of a convention on nuclear disarmament in all its aspects under strict and effective international control.

The ICJ has set briefing schedules in the UK and India cases. In the UK case, the RMI is to file the opening memorial by March 16, 2015, and the UK is to file its counter-memorial by December 16, 2015. In addition, the UK can file prelimi-

nary objections any time up to three months after the RMI memorial is filed. In the India case, India sent a letter to the ICJ claiming that the Court has no jurisdiction. It has not appointed an agent and did not participate in the scheduling conference set for the RMI and India. The Court ordered that, given these circumstances, an RMI memorial on jurisdiction is to be filed by December 16, 2014, and a counter-memorial by India by June 16, 2015. In the Pakistan case, a scheduling conference has been reset for July 9.

The International Legal Team is headed by the two Co-Agents of RMI: Tony de Brum, RMI Foreign Minister, and Phon van den Biesen, an Amsterdam-based lawyer and longtime IALANA member. Other core members of the team are Laurie Ashton, Keller Rohrback, USA; Nicholas Grief, Doughty Street Chambers, London, and Professor of Law, University of Kent; Christine Chinkin, Professor of International Law, London School of Economic and Political Science; John Burroughs, Executive Director, Lawyers Committee on Nuclear Policy, the UN Office of IALANA; David Krieger, President, Nuclear Age Peace Foundation, California; and Peter Weiss, Co-President, IALANA. In the case filed in U.S. court, the RMI is represented by the law firm Keller Rohrback.

For the filings in the ICJ, background information, and media coverage, see www.nuclearzero.org, where you can sign a petition supporting the Marshall Islands' cases, and www.lcnp.org/RMI.

The Nuclear Zero Lawsuits: Taking Nuclear Weapons To Court

By David Krieger

Nuclear weapons remain the most urgent threat confronting humanity. So long as they exist, there is the very real chance they will be used by accident, miscalculation or design. These weapons threaten everyone and everything we love and treasure. They are fearsome destructive devices that kill indiscriminately and cause unnecessary suffering. No man, woman or child is safe from the fury of these weapons, now or in the future. Nor is any country safe from them, no matter how powerful or how much it threatens nuclear retaliation.

Given the extreme dangers of nuclear weapons, we might ask: why isn't more being done to eliminate them? There has been talk and promises, but little action by the nine nuclear-armed nations – United States, Russia, United Kingdom, France, China, Israel, India, Pakistan and North Korea. All nine countries are modernizing their nuclear arsenals.

One small Pacific nation, the Republic of the Marshall Islands, has decided to take legal action against the nine nuclear-armed countries, which are threatening our common future. As Tony de Brum, Foreign Minister of the Marshall Islands, points out, “The continued existence of nuclear weapons and the terrible risk they pose to the world threatens us all.”

To understand the nature of the legal actions taken by the Marshall Islands, it is necessary to go back in time. Forty-six years ago, the Nuclear Non-Proliferation Treaty (NPT) was opened for signatures; two years later it entered into force. The treaty seeks to stop the further spread of nuclear weapons, but it does more. It also

obligates its parties to level the playing field by negotiating in good faith for an end to the nuclear arms race and for nuclear disarmament. This treaty currently has 190 countries signed on, including five nuclear weapon states and 185 non-nuclear weapon states.

The Marshall Islands is taking its case to the International Court of Justice in The Hague and, in addition, filing against the U.S. separately in U.S. Federal District Court in San Francisco. The lawsuits argue that the nuclear disarmament obligations apply to all nine nuclear-armed states as a matter of customary international law. The courts are being asked in these Nuclear Zero Lawsuits to provide declaratory and injunctive relief, by declaring that the nuclear weapon states are in breach of their obligations under international law and ordering them to begin negotiating in good faith to achieve a cessation of the nuclear arms race and a world with zero nuclear weapons.

The Marshall Islands has shown courage and boldness by taking action in filing these lawsuits. It is a country that knows firsthand the consequences of nuclear detonations. Between 1946 and 1958, the U.S. conducted 67 nuclear weapon tests in the Marshall Islands. These tests had an equivalent explosive force greater than 1.5 Hiroshima bombs being detonated daily for 12 years. The Marshall Islanders paid a heavy price in terms of their health and well-being for these destructive tests.

Now this small island nation is standing up against nine of the most powerful countries on the planet. It is “David” against the nuclear nine “Goliaths.” Its field of nonviolent battle is the courtroom.

The Marshall Islands is, in effect, challenging the nuclear weapon countries to be honorable and fulfill their obligations not only to the rest of the countries that signed the Nuclear Non-Proliferation Treaty, but to all humanity.

The Republic of the Marshall Islands is offering us a way to live on a planet that is not threatened by nuclear catastrophe due to human fallibility or malevolence. This courageous small island country deserves our strong and unwavering support.

David Krieger is President of the Nuclear Age Peace Foundation (www.wagingpeace.org), and a consultant to the Republic of the Marshall Islands.

Marshall Islands Statement to 2014 NPT PrepCom

by Tony de Brum

Republic of the Marshall Islands

Hon. Mr. Tony de Brum

Minister of Foreign Affairs, Republic of the Marshall Islands

Statement at the General Debate of the

3rd Meeting of the Preparatory Committee for the

2015 Nuclear Non-Proliferation Treaty Review Conference

United Nations, New York 28 April 2014



Mr. Chairman, Excellencies, Colleagues, Distinguished Ambassadors, Ladies & Gentlemen,

I have the honor to speak on behalf of the Marshall Islands.

The Marshall Islands wishes to thank Mexico for holding the recent Second Conference on the Humanitarian Impact of Nuclear Weapons, and the Marshall Islands is also proud to have joined 124 other nations in the Joint Statement on the Humanitarian Consequences of Nuclear Weapons, delivered by New Zealand before the UN General Assembly's First Committee last October.

Mr. Chairman,

The Marshallese people have one of the most important stories to tell regarding the need to avert the use of nuclear weapons, and one which should spur far greater efforts for nuclear disarmament.

I must remind this meeting that it was ultimately under the status and administration of the United Nations, as a UN Trust Territory, that the Marshall Islands was used as a nuclear testing ground. Indeed, the only instance I am ever aware of in which the UN specifically authorized testing and use of nuclear weapons is under UN Trusteeship Resolution 1082, adopted in 1954, and UN Trustee Resolution 1493 adopted in 1956. We experienced 67 nuclear tests between 1946 and 1958 – at a scale of 1.6 Hiroshima shots every day for twelve years. This is not only a historical issue but one whose consequences remain with us today as a burden which no nation, and which no people, should ever have to carry. It was the experience in the Marshall Islands of nuclear testing which ultimately served to shock the world into pursuing not only non-proliferation but ultimate disarmament.

I have not come here today with any intent to air out bilateral issues with the former UN administering power, the United States, which conducted these tests. The facts speak for themselves, they have been recognized by the leaders of the Pacific Islands Forum, and most importantly by the 2012 report of the UN Special Rapporteur. It will be rightly in Geneva at the UN Human Rights Council, including through its Universal Periodic Review, where human rights issues will be raised in full.

Rather, I have come here today to ask if it must be the Marshall Islands that again reminds the United Nations, and particularly its member states, of the risks and consequences of nuclear weapons?

Ministers and Disarmament Ambassadors and experts have gathered here from around the world with the serious responsibility to achieve ultimate disarmament under the NPT – but I must ask how many people in this room, here today, have personally witnessed nuclear detonations?

I, for one, have – I am a nuclear witness and my memories from Likiep atoll in the northern Marshalls are strong. I lived there as a young boy for the entire 12 years of the nuclear testing program, and when I was 9 years old, I remember vividly the white flash of the Bravo detonation on Bikini atoll, 6 decades ago in 1954, and one thousand times more powerful than Hiroshima – and an event that truly shocked the international community into action.

The UN Trusteeship resolutions and documents on the nuclear tests in the Marshall Islands are fading as the yellowing pages crumble in your fingers – some of them are missing altogether – but our Marshallese memories and experience have not faded. It is as though the world has lost true focus of this nuclear threat as if it is treated in passing as a casual risk, and not a dire and grave threat. I challenge the other NPT member states to prove wrong my skepticism.

Mr. Chairman,

Like so many other nations, the Republic of the Marshall Islands also believes that the awareness of the catastrophic consequences of nuclear weapons must underpin all approaches and efforts towards nuclear disarmament. It is in the interest of the very survival of humanity that nuclear weapons are never used again, under any circumstances – and the truly universal way to accomplish this is through the total elimination of such weapons, including through fulfilling the objectives of the NPT and achieving its universality. It should be our collective goal as the United Nations, and as Parties to the NPT, to not only stop the spread of nuclear weapons, but also to pursue the peace and security of a world without them.

The Marshall Islands urges all NPT members to achieve the treaty's obligations – this is not an issue of bloc politics, it is an issue of collective security. If the treaty's goal from over 45 years ago is no less relevant today, than it seems this relevance is not fully matched by political will and adequate progress. We have seen almost five decades of an endless cycle of promises and further promises.

The 2010 NPT Action Plan – adopted by consensus – is an important benchmark against which everyone is measuring progress in implementing the NPT through specific and often time-bound actions. But this Action Plan is also likely to reveal serious and grave shortcomings in implementation – it should be beyond any question that legal obligations remain unfulfilled, that under the NPT's defining purpose, and after decades of diplomacy, we are all still so far from the end conclusion.

Disarmament is only possible with political will – we urge all nuclear weapons states to intensify efforts to address their responsibilities in moving towards an effective and secure disarmament. The Marshall Islands affirms important bilateral progress amongst nuclear powers – but further underscores that this still falls short of the NPT’s collective and universal purpose. International law – and legal obligations – are not hollow and empty words on a page, but instead the most serious form of duty and commitment between nations, and to our collective international purpose.

It is for this reason why I have participated as a co-agent in recent filings at the International Court of Justice and elsewhere against the world’s major nuclear powers. Those that make binding obligations within international treaties, and those who are bound by customary international law, must and will be held accountable for the pursuit of those commitments and obligations.

Further, while the Marshall Islands recognizes the valid right of all States Parties to use nuclear energy for peaceful purposes under relevant NPT articles, this is an obligation that only exists with the highest standards of safety and security. The Marshall Islands underscores that these rights exist not only in any false cover or inarguable abuse. Moreover, the NPT itself is not a light switch to be turned on and off at convenience – States must be held to full accountability for violations of the Treaty or in abusing withdrawal provisions – a matter of concern for every nation, and the wider global community that defines us all.

The Marshall Islands is not the only nation in the Pacific, nor the world, to be touched by the devastation of nuclear weapons testing. The support of the Republic of the Marshall Islands for a nuclear-free Pacific has long been clouded by other agreements, and we are encouraged that the United States has provided a new perspective on the Rarotonga Treaty’s protocols. We express again our aspirations to join with our Pacific neighbors in supporting a Pacific free of nuclear weapons in a manner consistent with international security.

Thank you, and kōmmol tata.

Further Links:

Court Documents:

<http://www.nuclearzero.org/in-the-courts>

<http://www.wagingpeace.org/nuclearzero/>

Media Coverage:

<http://www.nuclearzero.org/newsmedia>

Civil Society Presentations, 2014 NPT PrepCom, 29 April 2014

Mr. Phon van den Biesen, Vice-President, International Association of Lawyers Against Nuclear Arms, Co-Agent of the Republic of the Marshall Islands

Introduction

It is a great honor for me to address this distinguished meeting. I am an attorney in Amsterdam and Vice-President of the International Association of Lawyers Against Nuclear Arms.

Last Thursday, in my capacity as Co-Agent of the Republic of the Marshall Islands (RMI), I submitted nine Applications to the International Court of Justice against each of the nine states possessing nuclear weapons.¹ The legal team advised the RMI that this was an entirely responsible thing to do given the state of the law today.

In litigation breach of contract is one of the common grounds to sue. This is not different in international litigation. If any one State is not getting what it is entitled to, based on a contract, a treaty or norms of customary international law, in spite of the clarity of the language in which the obligations are stated, there comes a day that such a State will stop requesting politely and will bring the State that is not delivering to Court. Since July 1996, some three quarters of the UN General Assembly have, indeed and over and over again, been asking politely for a beginning of negotiations leading to leading to an early conclusion of a convention prohibiting and eliminating nuclear weapons.² However, most of the nuclear armed States wouldn't have it and ignored the polite request. And so these cases are now in Court.

Jurisdiction of the Court

Three of the nuclear-armed States have accepted the general compulsory jurisdiction of the Court

(UK, India and Pakistan). The other six have not done so and are, therefore, in accordance with the rules regulating the World Court, invited to accept the Court's jurisdiction in the cases brought by the RMI. These six states maintain they are committed to the international rule of law and the at least eventual elimination of nuclear weapons. They should come before the Court and explain their positions, and give the Court a wider opportunity to resolve the deep divide of opinion concerning compliance with obligations of nuclear disarmament.

The 1996 Advisory Opinion

In its Advisory Opinion of July 1996 the World Court provided an extensive answer to the question posed by the General Assembly with respect to the legality or illegality of the use and threat of use of nuclear weapons. Besides that and in the context of the question posed by the UNGA, the Court provided additional analysis:

“98. (...)In the long run, international law, and with it the stability of the international order which it is intended to govern, are bound to suffer from the continuing difference of views with regard to the legal status of weapons as deadly as nuclear weapons. It is consequently important 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.” (para. 98. of the Advisory Opinion)

1. Three of the cases are on the Court's General List: Proceedings instituted by the Republic of the Marshall Islands against the United Kingdom of Great Britain and Northern Ireland on 24 April 2014; Proceedings instituted by the Republic of the Marshall Islands against the Islamic Republic of Pakistan on 24 April 2014; Proceedings instituted by the Republic of the Marshall Islands against the Republic of India on 24 April 2014. <http://www.icj-cij.org/docket/index.php?p1=3&p2=3>

2. Most recently, A/RES/68/42, adopted 5 December 2013

From that starting point the Court went ahead and stated that it “appreciates the full importance of the recognition by Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons of an obligation to negotiate in good faith a nuclear disarmament.” (para. 99 of the Advisory Opinion) And then the Court went on to – unanimously –conclude:

“F. There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.” (para. 105(2)F, concluding section of the Advisory Opinion)

Contents of the applications

In each of the nine Applications – which serve as a mere introduction to the proceedings – the RMI provides the relevant facts with respect to the nuclear arsenals as well as the nuclear policy of the Respondent State and sets out the main points of our legal position.³ Among other things we argue that upgrading and modernizing a State’s nuclear arsenal is not particularly providing evidence of respect for the legal obligation to bring the nuclear arms race to an early cessation, but rather it demonstrates that the Respondent State is not performing its legal obligations in good faith. The RMI also argues that the continued refusal of most of the nuclear-armed States to permit the commencement of negotiations on complete nuclear disarmament or even to participate in an Open-Ended Working Group aimed at facilitating such negotiations is evidence of their breaching the central obligation “to pursue and bring to a conclusion”.

So, the Court provided this additional analysis; the existing obligation is formulated in no uncertain terms.

What RMI asks from the Court

The RMI requests the Court to adjudge and declare that the Respondent is, in performing its obligations, not acting in good faith, and also to adjudge and declare that the Respondent breaches its obligation to pursue and conclude negotiations leading to nuclear disarmament. Obligations that flow from Article VI of the NPT and also from the requirements developed under customary international law. Also, in each of these cases the RMI requests the Court to Order the Respondent to pursue, by initiation if necessary, negotiations leading to nuclear disarmament.

David and Goliath

The steps taken by the RMI have been characterized through the David and Goliath metaphor. That picture, certainly, is useful especially when one is aware that in the fight between these two men David prevailed. But we should not forget that in Court cases the respective actual powers of the two parties to “the fight” are not a relevant factor. All parties are equal before the law; all parties are equal before the World Court. Each State is entitled to demand that promises made are kept.

All State Parties to the NPT are under the obligation to pursue these negotiations. A situation in which less than two hands full of States are frustrating the expectations, yes, the rights of the great majority of States is not sustainable and needs to be put to an end, not by the law of force, but rather by the force of law.

3. UK: <http://www.icj-cij.org/docket/files/160/18296.pdf>; Pakistan: <http://www.icj-cij.org/docket/files/159/18294.pdf>; India: <http://www.icj-cij.org/docket/files/158/18292.pdf>. Applications filed against the other six nuclear-armed states are available at www.nuclearzero.org.

The Emotional and Psychological Trauma to Our People Can't Be Measured In Real Terms

The Republic of the Marshall Islands in the northern Pacific Ocean is not only a breathtakingly beautiful island state, but has recently moved into the public eye by starting a bold initiative that is widely interpreted as a "David against Goliath" undertaking.

The Marshall islands were subjected to dozens of nuclear tests, carried out by the U.S. after 1945. According to the Associated Press, the island group filed suit in late April against each of the nine nuclear-armed powers in the International Court of Justice in The Hague, Netherlands. It also filed a federal lawsuit against the United States in San Francisco.

The Marshall Islands claims that instead of negotiating disarmament, the nine countries are modernizing their nuclear arsenals, spending \$1 trillion on those arsenals over the next ten years.

"I personally see it as kind of David and Goliath, except that there are no slingshots involved," David Krieger, president of the California-based *Nuclear Age Peace Foundation*, told AP. The Foundation is acting as a consultant in the case and is hoping that other countries will join the legal effort, Krieger points out.

Russia, Britain, France, China, Israel, India, Pakistan and North Korea are included in the indictment. The last four are not parties to the 1968 Nuclear Nonproliferation Treaty (NPT), but appear to be, according to the lawsuits, bound by its provisions under "customary international law." The NPT, considered the cornerstone of nuclear disarmament efforts, requires negotiations among countries in "good faith" on disarmament, AP reports.

None of the countries had been informed in advance of the lawsuits. The case found broad recognition within the international press.

The Foreign Minister of the Marshall Islands, Tony de Brum, explains in an interview the impact the nuclear tests had and still have for his citizens and what he hopes this lawsuit can achieve for the island state and the world community.



Picture: Nuclear Age Peace Foundation

You grew up on the island of Likiep during the 12-year period when the United States tested 67 atomic and thermonuclear weapons in the atmosphere and under water in the Marshall Islands (1946-1958). What are your memories on the impact these tests had for the island of Likiep and its inhabitants? Environmentally, politically and psychologically?

My memories of the tests are a mixture of awe, of fear, and of youthful wonder. We were young, and military representatives were like gods to our communities and so our reactions to the tests as they took place were confused and terrifying. We had no clue as to what was happening to us and to our homelands. Our elders, including my grandfather, tried to stop the tests in petitions and communications to the UN but were not successful. I personally witnessed the injuries to some of our countrymen from Rongelap and to this day cannot recall in words my sense of helplessness and anxiety without severe emotional stress. But for as long as I can remember, the

explosions and the bizarre effects that lit up our skies are still a source of pain and anger. How could human beings do this to other humans?

While in later life many attempts have been made, both in good and bad faith, to reconstruct the impact of the testing on our people, only the physical and environmental effects can be discussed with some confidence. The emotional and psychological trauma to our people, both young and old, cannot be measured in real terms. The pain is real and the uncertainty is overwhelming. As a young lady said to me when showing me pictures of her dead deformed infant child, "God did not create my baby. He cannot be so cruel."

The Republic of the Marshall Islands recently filed an extraordinary lawsuit at the International Court of Justice in The Hague, suing all nine nuclear weapons possessors for failing to eliminate their nuclear arsenals. But only three of the nine nuclear states named by the lawsuit generally accept the rulings of the International Court of Justice. What do you hope for the outcome of this case?

My country has exhausted all means within our limited power to bring attention and closure to our outstanding nuclear issues with our former Administrative Authority, the United States. Mechanisms jointly established for dealing with outstanding claims for physical injury and property damage have fallen way short of satisfying even the basic findings of the Nuclear Claims Tribunal formed under treaty agreements. This is due mostly to the withholding of critical information necessary for us to make informed decisions regarding our nuclear past and our uncertain future. To this day the United States still refuses to release information we have identified and requested under established processes. All the while we have to cope with displaced communities, skyrocketing medical costs, dangerously radioactive environments, and deprivation of use of traditional lands.

The United States tells us they have satisfied their obligation under the Free Association Compact, a Treaty, and that they will not entertain any claims or requests for meaningful assistance in this issue. In fact, the US Supreme Court refused to hear the cases of the People of Bikini and the People of Enewetak seeking damages for their destroyed homelands. After seeing what mere testing of these terrible weapons of mass destruction can do to human beings it makes sense for the Marshallese People to implore the nuclear weapons state to begin the hard task of disarmament. All we ask is that this terrible threat be removed from our world. It is the best we can do as collateral damage in the race for nuclear superiority. Our sacrifice will be for naught if the nuclear countries do not stand up and take notice of the evil that nuclear weapons present to our earth.

Do you think that this case can help to create enough international momentum for the Non-Proliferation-Treaty (NPT) to be treated -- due to its near universal adherence -- as part of customary international law by which all states must abide, regardless of whether or not they actually signed the treaty?

We believe that it is sensible and logical for the world community to consider this matter as one of customary international law. To do otherwise is to gamble with the future of the world.

What effects would that have on the discourse of nuclear disarmament worldwide?

It should stimulate intelligent discourse and wise solutions. For what would it gain the world for instance, to be protected from climate change, only to suffer massive destruction from nuclear weapons? All our efforts to be sane about the future must be connected to survival and peace. The right hand cannot be out seeking climate peace while the left is busy waging nuclear war.

Looking at the status quo of this discourse, how do you evaluate the outcome of the recent

NPT PrepCom at United Nations' headquarters in New York City which closed without adopting the Chair's draft recommendations to the Review Conference?

The outcome of the recent NPT PrepCom appeared to be more "business as usual," with the nuclear-armed parties to the treaty essentially evading their Article VI obligations or claiming they were fulfilling them in a step by step manner, while at the same time continuing to modernize their nuclear arsenals and relying upon them in their military strategies. It is clear that the nuclear-armed states are not pursuing negotiations in good faith to end the nuclear arms race and to achieve complete nuclear disarmament, as they are obligated to do under Article VI of the treaty.

You have also been advocating on the issue of climate change, a grave concern that affects not only the Pacific Islands, but has obvious global consequences. Are there linkages between nuclear disarmament and climate

change? Considering that both issues climate change, as well as nuclear disarmament are political matters of tremendous significance, which one, in your opinion, has the capacity of being addressed faster by the international community?

I hit upon this somewhat in question four but clearly one cannot isolate climate change from the other most pressing issue of world security today. They go hand in hand, and must be dealt with in a coordinated and universally accepted pathway. As a country that has seen the ravages of war, suffers the lingering effects of nuclear tests, and facing the onset of a rising sea, we see all these to be threats of equal force against world peace and human life. But finger pointing and challenges of who goes first must now stop and sane and intelligent human beings must confront this insanity with firm confidence and clear peaceful intentions.

U.S.-Dependent Pacific Island Defies Nuke Powers

By Thalif Deen



A Patriot interceptor missile is launched from Omelek Island Oct. 25, 2012 during a U.S. Missile Defense Agency integrated flight test. Credit: U.S. Navy

UNITED NATIONS, Apr 25 2014 (IPS) - The tiny Pacific nation state of Marshall Islands – which depends heavily on the United States for its economic survival, uses the U.S. dollar as its currency and predictably votes with Washington on all controversial political issues at the United Nations – is challenging the world's nuclear powers before the International Court of Justice (ICJ) in The Hague.

The lawsuit, filed Thursday, is being described as a potential battle between a puny David and a mighty Goliath: a country with a population of a little over 68,000 people defying the world's nine nuclear powers with over 3.5 billion people.

"The United States should defend the case and widen the opportunity for the Court to resolve the wide divide of opinion regarding the state of compliance with the disarmament obligations." -- John Burroughs

John Burroughs, executive director of the Lawyers Committee on Nuclear Policy and the U.N. Office of the International Association of Lawyers Against Nuclear Arms (IALANA), told IPS the Marshall Islands and its legal team strongly encourage other states to support the case, by making statements, and by filing their own parallel cases if they qualify, or by intervening in the case.

Burroughs, who is a member of that team, said the ICJ, in its 1996 advisory opinion, held unanimously that there exists an obligation to pursue in good faith and bring to a conclusion negotiations on nuclear disarmament in all its aspects under strict and effective international control.

And these cases brought by the Marshall Islands nearly 18 years after the ICJ advisory opinion "will put to the test the claims of the nine states possessing nuclear arsenals that they are in compliance with international law regarding nuclear disarmament and cessation of the nuclear arms race at an early date."

"The United States should defend the case and widen the opportunity for the Court to resolve the wide divide of opinion regarding the state of compliance with the disarmament obligations." -- John Burroughs

The nine nuclear states include the five permanent members (P5) of the U.N. Security Council, namely the United States, the UK, France, China and Russia, plus India, Pakistan, Israel and North Korea.

Burroughs said three of the respondent states – the UK, India, and Pakistan – have accepted the compulsory jurisdiction of the Court, as has the Marshall Islands.

For the other six states, he said, the Marshall Islands is calling on them to accept the Court's jurisdiction in these particular cases.

"This is a normal procedure but the six states could choose not to do so," said Burroughs.

Between 1946 and 1958, the United States conducted 67 nuclear weapons tests, triggering health and environmental problems which still plague the island nation.

Tony de Brum, the foreign minister of Marshall Islands, was quoted as saying, "Our people have suffered the catastrophic and irreparable damage of these weapons, and we vow to fight so that no one else on earth will ever again experience these atrocities."

The continued existence of nuclear weapons and the terrible risk they pose to the world threaten us all, he added.

The suit also says the five original nuclear weapon states (P5) are continuously breaching their legal obligations under the Nuclear Non-Proliferation Treaty (NPT).

Article VI of the NPT requires states to pursue negotiations in good faith on cessation of the nuclear arms race at an early date and nuclear disarmament.

India, Pakistan, Israel and North Korea are not parties to the treaty.

But the lawsuit contends that all nine nuclear-armed nations are still violating customary international law.

Far from dismantling their weapons, the nuclear weapons states are accused of planning to spend over one trillion dollars on modernising their arsenals in the next decade.

David Krieger, president of the Nuclear Age Peace Foundation, which is strongly supportive of the law suit, said, “The Marshall Islands is saying enough is enough.”

He said it is taking a bold and courageous stand on behalf of all humanity, “and we at the foundation are proud to stand by their side.”

In a statement released Thursday, Archbishop Desmond Tutu of South Africa said, “The failure of these nuclear-armed countries to uphold important commitments and respect the law makes the world a more dangerous place.

“We must ask why these leaders continue to break their promises and put their citizens and the world at risk of horrific devastation. This is one of the most fundamental moral and legal questions of our time,” he added.

Burroughs told IPS the United States maintains that it is committed both to the international rule of law and to the eventual achievement of a world free of nuclear weapons.

“The United States should defend the case and widen the opportunity for the Court to resolve the wide divide of opinion regarding the state of compliance with the disarmament obligations,” he added.

The other five states which have not accepted the compulsory jurisdiction of the Court are being asked to do likewise.

As to the case against the UK, a key issue is whether the UK has breached the nuclear disarmament obligation by opposing General Assembly efforts to launch multilateral negotiations on the global elimination of nuclear weapons, said Burroughs.

For India and Pakistan, because they are not parties to the NPT, the case will resolve the question of whether the obligations of nuclear disarmament are customary in nature, binding on all states.

He said it will also address whether the actions of India and Pakistan in building up, improving and diversifying their nuclear arsenals are contrary to the obligation of cessation of the nuclear arms race and the fundamental legal principle of good faith.

An Open Letter to President Loeak of the Marshall Islands

by Kate Hudson

Dear Mr President,

I am writing on behalf of the Campaign for Nuclear Disarmament to express our great appreciation for your decision to institute legal proceedings against the nine nuclear weapons states. We sincerely welcome your decision to take them to the International Court of Justice for their failure to comply with Article VI of the nuclear Non-Proliferation Treaty: to ‘pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control’.

We feel a debt of gratitude to you, in particular, for instituting proceedings against our own country, the United Kingdom, the governments of which we have challenged since our foundation in 1958. Your principled and courageous stand will assist our current struggle to prevent the replacement of the Trident nuclear weapons system. It will expose the hypocrisy of our government as it claims to support the goals of the NPT yet plans to spend vast sums on building new nuclear weapons; it will reveal the obstructionism of our government as it boycotts and derails sincere initiatives towards global abolition; and it will lay bare our government’s contempt for the fundamental NPT bargain – that non-proliferation and disarmament are inseparable.

As well as the undoubted legal weight of your case, we believe that the case you have put to the International Court of Justice also carries extraordinary moral weight. We are well aware of the terrible suffering and damage inflicted on your people. We recall with horror that between 1946 and 1958, the US tested 67 nuclear weapons in the Marshall Islands, earning your country the description ‘by far the most contaminated place in the world’, from the US Atomic Energy Agency.

Together with our support for your legal proceedings and our recognition of the intense suffering from which this was born, I would like to say that we also feel a strong and long lasting bond with the people of the Marshall Islands. Our movement, the Campaign for Nuclear Disarmament, was founded in large part as a response to the H-bomb testing of the 1950s, so much of which was carried out in your islands. In our early years we campaigned strenuously for the abolition of nuclear weapons testing until the achievement of the Partial Test Ban Treaty in 1963.

The test on Bikini Atoll, in your country, in March 1954, with its terrible radiation impact on the people of Rongelap, moved countless people around the world to action. The tragic consequences for the Lucky Dragon, caught in the impact, stirred a whole generation of activists to oppose nuclear weapons. The experience of your country and your people is at the very heart of our movement.

We pledge our support to you and wish you every success in this most crucial of struggles.

In peace, Kate Hudson

General Secretary
Campaign for Nuclear Disarmament



New Zealand Labour supports Marshall Islands nuclear lawsuit

28 April 2014

New Zealand's Labour Party says there is no reason the government should not support the Marshall Islands lawsuit against the nine countries with nuclear weapons. The Marshall Islands government is suing the United States and the eight other nuclear-armed countries for failing their obligations to disarm. It is filing the lawsuits in the International Court of Justice and the US Federal District Court. The Labour Party's disarmament spokesperson, Maryan Street, says she will be asking the foreign minister to support the suits.

"Here is a fundamental and critical issue that our government can take some leadership on. Anybody who stands up for a case in front of the International Court of Justice should not find diplomatic barriers in their way, because it is justice."

United States and Russia Respond to Nuclear Zero Lawsuits



by Rick Wayman

The “Nuclear Nine” – U.S., Russia, UK, France, China, Israel, India, Pakistan and North Korea – were sued five days ago by the Republic of the Marshall Islands for breach of Article VI of the Non-Proliferation Treaty (NPT) and related provisions of customary international law. Very little has been said thus far by representatives of the offending nations. Below is a summary of the statements of Russia, the U.S. and Israel along with some commentary.

Russia

“As a result ... Russia has reduced its strategic (long-range) nuclear potential by more than 80 percent and its non-strategic nuclear weapons by three-quarters from their peak numbers.”

An eighty percent reduction of a huge number is still a huge number. Russia continues to possess up to 8,500 nuclear weapons. Given what is now widely known about the humanitarian impact of nuclear weapons, it is inexcusable for any nation to act as if it is ok to maintain an arsenal of any size. Perhaps Russia does not realize this because it actively chose to boycott the conferences on the humanitarian impacts of nuclear weapons organized by Norway in 2013 and Mexico in 2014. Their continued boycotting of multilateral initiatives for nuclear disarmament clearly demonstrates Russia’s lack of good faith efforts to fulfill Article VI of the NPT.

Laurie Ashton, counsel to the Marshall Islands on these lawsuits, said, “A country that agrees to reduce antiquated nuclear stockpiles while spending hundreds of billions to make other categories of nuclear weapons more lethal is clearly still arms racing. In a November 23, 2011 speech, the then Russian President, Dmitry Medvedev, stated that Russia’s ‘new strategic ballistic missiles commissioned by the Strategic Missile Forces and the Navy will be equipped with advanced missile defense penetration systems and new highly-effective warheads.’ The people of the world know when they are being played, and can see right through any argument that responsibility for stalled nuclear disarmament rests elsewhere.”

“We are convinced that filing baseless suits does not foster a favorable conditions [sic] for further steps by the international community in the area of arms control and the non-proliferation of weapons of mass destruction.”

Of course the Russian Foreign Ministry is not going to welcome a lawsuit for breach of an important international treaty. But calling these lawsuits “baseless” is disingenuous and outrageous. Regardless of one’s position on what the outcome of the lawsuits should be, it is quite clear that the Marshall Islands has a valid complaint that deserves to be heard in the courts.

I’m unsure what Russia might consider “favorable conditions” or “further steps,” but I can guess based on the tone of this statement and their decades of inaction on nuclear disarmament. “Favorable conditions” are conditions in which the non-nuclear weapon states continue to be silent and accept the continued existence of thousands of nuclear weapons by a small group of countries. “Further steps” are pretending that the Conference on Disarmament will ever accomplish anything after a nearly two decade deadlock, modernizing its nuclear arsenal while making token reductions in total numbers of weapons, and sidestepping questions about why good faith negotiations for nuclear disarmament are not on the agenda.

“For past 45 years, the international community has made no serious efforts [to fulfill the treaty’s obligation that signatories seek a pact on] complete disarmament under strict and effective international control.”

This is an obvious attempt to re-direct the blame to the non-descript and unaccountable “international community.” The lawsuit clearly spells out the allegations against Russia. It has not negotiated in good faith for an end to the nuclear arms race at an early date – the NPT has been in force for over 44 years and Russia continues, along with other nuclear-armed nations, to modernize its nuclear arsenal. Russia has not negotiated in good faith for nuclear disarmament. These are violations not only of Article VI of the NPT, but also of customary international law as defined in 1996 by the International Court of Justice.

Phon van den Biesen, co-agent of the Republic of the Marshall Islands in the cases before the International Court of Justice, replied effectively to Russia’s position yesterday when a member of Russia’s delegation to the NPT brought up the point about complete disarmament. Phon said, perhaps only half-jokingly, “You’re talking about the next lawsuit.”

“The Russian Federation is open to interaction with its NPT partners with the aim of seeking the most effective paths to realization of the Treaty.”

Russia boycotted last year’s Open-Ended Working Group to develop proposals to take forward multilateral nuclear disarmament initiatives. As mentioned earlier, they have also actively worked against the humanitarian initiative led by Norway, Mexico and Austria.

United States

“The U.S. is dedicated to achieving the peace and security of a world without nuclear weapons, consistent with our obligations under the Treaty on the Non-Proliferation of Nuclear Weapons.”

When I dedicate myself to achieving something, I aim to do it within my lifetime, and preferably much sooner than that. This statement from the U.S. Department of State might be the first time the Obama administration has written the words “peace and security of a world without nuclear weapons” without immediately following it with some version of “not in my lifetime.”

If I am dedicated to losing weight, I am not going to remodel my kitchen and install a new deep fryer and replace the essential components of my soda machine. If the U.S. is indeed dedicated to a world without nuclear weapons, why is it modernizing its nuclear arsenal and planning which nuclear weapons will be deployed in the 22nd century?

“We have a proven track record of pursuing a consistent, step-by-step approach to nuclear disarmament – the most recent example being the New START Treaty.”

The New START Treaty was signed four years ago. The treaty made modest cuts to the number of deployed strategic nuclear weapons, but was only ratified by the U.S. at a steep cost – an agreement to modernize nuclear weapons and build new nuclear weapon facilities. The New START Treaty has proven at best to be a step forward in arms control, but certainly not in nuclear disarmament.

It is painfully obvious that the step-by-step approach so loved by the P5 is little more than a delaying tactic to placate those who are either not paying attention or satisfied with the daily threats to humanity posed by nuclear weapons. At this rate, complete nuclear disarmament will not be achieved in this lifetime or, as former U.S. Secretary of State Hillary Clinton believes, “in successive lifetimes.”

Israel

Paul Hirschson, a spokesman for the Israeli Foreign Ministry, said he was unaware of the lawsuit, however “it doesn’t sound relevant because we are not members of the nuclear nonproliferation treaty.”

“It sounds like it doesn’t have any legal legs,” he said about the lawsuit, adding that he was not a legal expert.

I’m not a legal expert either, but just a cursory reading of the application against Israel submitted by the Marshall Islands shows that the lawsuit relates to customary international law. Israel may think it is fine to continue to pretend that they do not possess nuclear weapons, but by filing this lawsuit, the Marshall Islands is calling on Israel to come clean and do the right thing – to negotiate along with all other nuclear-armed states for the elimination of all nuclear weapons.

“The new legal challenge to nuclear-armed nations from the Marshall Islands is hugely inspiring. The Nuclear Zero campaign is another definitive step in the direction of nuclear abolition.”

**Kathleen Sullivan, Program Director,
Hibakusha Stories**

“Together with our support for your legal proceedings and our recognition of the intense suffering from which this was born, I would like to say that we also feel a strong and long lasting bond with the people of the Marshall Islands. The experience of your country and your people is at the very heart of our movement.”

**Kate Hudson, General Secretary, Campaign
for Nuclear Disarmament**



U.S. Conference of Mayors Adopts Bold New Resolution Calling for Constructive Good Faith U.S. Participation in International Nuclear Disarmament Forums; Commends Marshall Islands for bringing lawsuits against U.S. and 8 other Nuclear-Armed States

For immediate release: June 24, 2014

Contact: Jackie Cabasso, Mayors for Peace North American Coordinator (510) 306-0119

The U.S. Conference of Mayors (USCM), the non-partisan association of America's big cities, on June 23, 2014 unanimously adopted a sweeping new resolution *Calling for Constructive Good Faith U.S. Participation in International Nuclear Disarmament Forums* at its 82nd annual meeting in Dallas, Texas. According to USCM President Kevin Johnson, Mayor of Sacramento, California, "These resolutions, once adopted, become official USCM policy."

Recalling that "August 6 and 9, 2015 will mark the 70th anniversaries of the U.S. atomic bombings of Hiroshima and Nagasaki, which killed more than 210,000 people by the end of 1945," the resolution notes that "the people of the Republic of the Marshall Islands (RMI) continue to suffer from the health and environmental impacts of 67 above-ground nuclear weapons test explosions conducted by the U.S. in their islands between 1946 and 1958, the equivalent of 1.6 Hiroshima-sized bombs detonated daily for 12 years."

On April 24, 2014, the RMI filed "landmark" cases in the International Court of Justice against the U.S. and the eight other nuclear-armed nations, claiming that they have failed to comply with their obligations under the Nuclear Nonproliferation Treaty (NPT) and customary international law to pursue negotiations for the global elimination of nuclear weapons, and filed a companion case in U.S. Federal District Court. In its resolution, the USCM "commends the Republic of the Marshall Islands for calling to the world's attention the failure of the nine nuclear-armed states to comply with their international obligations to pursue negotiations for the worldwide elimination of nuclear weapons, and calls on the U.S. to respond constructively and in good faith to the lawsuits brought by the RMI."

Over the past three years there has been a new round of nuclear disarmament initiatives by governments not possessing nuclear weapons, both within and outside the United Nations. Yet the U.S. has been notably "missing in action" at best, and dismissive or obstructive at worst. The USCM resolution documents the dismal U.S. record and calls on the administration to participate constructively in deliberations and negotiations regarding the creation of a multilateral process to achieve a nuclear weapons free world in forums including the Third Conference on the Humanitarian Impact of Nuclear Weapons to be held in Vienna, Austria in December 2014, the UN Conference on Disarmament, and the May 2015 NPT Review Conference.

The USCM also “calls on the President and Congress to reduce nuclear weapons spending to the minimum necessary to assure the safety and security of the existing weapons as they await disablement and dismantlement, and to redirect those funds to meet the urgent needs of cities.”

Recalling the U.S. commitment under the 1970 Nuclear Nonproliferation Treaty (NPT) to pursue negotiations in good faith on the elimination of nuclear weapons, the resolution notes that “forty-four years after the NPT entered into force, an estimated 16,400 nuclear weapons, most held by the U.S. and Russia, pose an intolerable threat to humanity, and there are no disarmament negotiations on the horizon” and that “the U.S. and the eight other nuclear weapon possessing states are investing an estimated \$100 billion annually to maintain and modernize their nuclear arsenals while actively planning to deploy nuclear weapons for the foreseeable future.”

The resolution states that “according to the General Accounting Office, the U.S. will spend more than \$700 billion over the next 30 years to maintain and modernize nuclear weapons systems,” and that “this money is desperately needed to address basic human needs such as housing, food security, education, healthcare, public safety, education and environmental protection.”

Reflecting current international tensions, the resolution warns that “the U.S.- Russian conflict over the Ukraine may lead to a new era of confrontation between nuclear-armed powers, and nuclear tensions in the Middle East, Southeast Asia and on the Korean peninsula remind us that the potential for nuclear war is ever present.” The resolution “urges President Obama to engage in intensive diplomatic efforts to reverse the deteriorating U.S. relationship with Russia.”

Expressing its “deep concern” about the U.S. failure to engage in recent intergovernmental and United Nations nuclear disarmament initiatives, the USCM “calls on the U.S. to participate constructively and in good faith in the Third Conference on the Humanitarian Impact of Nuclear Weapons to be hosted by Austria in Vienna, December 8 – 9, 2014” and “in urgent commencement of negotiations in the Conference on Disarmament for the early conclusion of a comprehensive convention on nuclear weapons,” and “to press the other nuclear weapon states to do likewise.”

The USCM “calls on the U.S. to demonstrate a good faith commitment to its disarmament obligation under Article VI of the NPT by commencing a process to negotiate the global elimination of nuclear weapons within a timebound framework, under strict and effective international control, at the May 2015 NPT Review Conference, and to press the other nuclear weapon states to do likewise.”

The USCM also “calls on its membership to Proclaim September 26 in their cities as the International Day for the Total Elimination of Nuclear Weapons and to support activities to enhance public awareness and education about the threat posed to humanity by nuclear weapons and the necessity for their total elimination.”

The resolution notes that Mayors for Peace, with over 6,000 members in 158 countries, representing one seventh of the world’s population, continues to advocate for the immediate commencement of negotiations to eliminate nuclear weapons by 2020, and that “Mayors for Peace, with members in the U.S. and Russia; India and Pakistan, and Israel, Palestine and Iran can be a real force for peace.” The USCM “expresses its continuing support for and cooperation with Mayors for Peace,” and “encourages all U.S. mayors for join Mayors for Peace.”

The resolution was sponsored by Mayor Donald Plusquellic of Akron, Ohio, past President of the USCM and a Vice-President of Mayors for Peace, and 26 co-sponsoring mayors from cities in Virginia, North Carolina, Iowa, Pennsylvania, Oregon, Florida, Massachusetts, Arkansas, Wisconsin, Illinois, Maine, California, Minnesota, and New Mexico.

Mayors for Peace is an international association, founded in 1982 by the Mayors of Hiroshima and Nagasaki. The United States Conference of Mayors is the national non-partisan association of cities with populations over 30,000.

Full text of the resolution, with the complete list of co-sponsors:

<http://wslfweb.org/docs/MSPUSCMsponsorsfinal.pdf>

More information about Mayors for Peace: www.mayorsforpeace.org and www.2020visioncampaign.org

More information about the U.S. Conference of Mayors: www.usmayors.org

US warns Marshalls over missile test

5 June 2014, Radio New Zealand

The United States Army has warned Marshall Islands residents about a missile test from Kwajalein Atoll later this month.

The army says an interceptor missile is scheduled to be launched from Meck Island in Kwajalein on June the 23rd and it is warning people to stay away from certain areas northeast of Kwajalein.

The Reagan Test Site at Kwajalein is one of the U.S. military's primary missile defense test sites.

The Army says the populated atolls of Utrik, Ailuk, and Likiep and the island of Mejit are in what it describes as an Ocean Caution Area.

About 1,600 people live in the area and the army has urged people not to travel between the atolls from June the 23rd to June the 25th as back up tests are scheduled.

The army says the risk to people on the atolls is small but it has urged them to avoid being on two uninhabited islands on the southeastern end of Likiep Atoll during the test period.

It has also warned planes and ships to keep clear.

The army has also warned anyone observing mission debris to stay at least 45 metres away and report it.