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Nuclear Weapons Experts File Amicus Brief to Support Marshall Islands Lawsuit to Require Nuclear Disarmament Negotiations Under U.S. NonProliferation Treaty Commitments

Washington, DC and Santa Fe, NM – Four nuclear weapons experts have filed an amicus (“friend of the court”) brief in support of a lawsuit filed by the Republic of the Marshall Islands to compel the United States to meet its requirements under the Nuclear NonProliferation Treaty (NPT). The basic bargain of the NPT is that non-weapons states agreed to never acquire nuclear weapons, in exchange for which nuclear weapons states promised to enter into good faith disarmament negotiations. Ratification of the treaty by the Senate in 1970 made its provisions the law of the land under the U.S. Constitution.

The experts filing the brief are: Hans Kristensen, Director of the Nuclear Information Project at the Federation of American Scientists; Dr. James Doyle, a nuclear nonproliferation expert fired by the Los Alamos national lab after publishing a study arguing for nuclear weapons abolition; Robert Alvarez, a former Senior Policy Advisor to the Secretary of Energy, now at the Institute for Policy Studies; and Jay Coghlan, director of Nuclear Watch New Mexico.

Hans Kristensen explained, “The United States, as one of the five original nuclear weapons states under the NPT, has a clear legal obligation to pursue negotiations toward nuclear disarmament. Yet despite progress on reducing overall nuclear arsenals, forty-five years later there are and have been no negotiations on their elimination. Instead, all nuclear weapon powers are pursuing broad and expensive modernization programs to retain and improve nuclear weapons indefinitely.”

The Marshall Islands’ lawsuit, which was filed in federal court in San Francisco, asserts that the U.S. has failed to fulfill its treaty duties. The case was initially dismissed in February 2015 by a federal judge after the U.S. government argued in part that enforcement of the NPT’s requirement for nuclear disarmament negotiations was not in the public interest. This is now being appealed. As the Marshall Islands’ original complaint notes, “While cessation of the nuclear arms race and nuclear disarmament are vitally important objectives to the entire international community, the Marshall Islands has a particular awareness of the dire consequences of nuclear weapons.” While still a U.S. protectorate after World War II, the American nuclear weapons complex used the Marshall Islands for more than a hundred atmospheric nuclear weapons tests that included newly developed H-bombs, and the displaced Marshallese have suffered severe health and contamination effects to this day. However, the Marshall

Islands' lawsuit is not asking for compensation, but instead seeks to hold the nuclear weapons powers accountable to the NPT's requirement for good faith nuclear disarmament negotiations.

Andrea St. Julian, an attorney based in San Diego who specializes in federal appellate proceedings, filed the 94-page amicus brief. She observed, "The level of expertise and understanding the amici bring to this appeal is remarkable. Their arguments show how profoundly mistaken the district court was in its misapplication of the law. If the Court of Appeals takes adequate note of the briefing, it will have no alternative but to reverse the dismissal of the Marshall Islands' suit. If not, we expect the Marshall Islands to take its case to the U.S. Supreme Court, and we will strongly support it there."

Dr. James Doyle commented, "It's not possible to eliminate the knowledge to build nuclear weapons, but it's possible to make them illegal and remove them from all military arsenals, as existing treaties on chemical and biological weapons have already substantially done. The Marshall Islands' case is an important step on the path to the elimination of nuclear weapons and deserves a ruling by the U.S. Supreme Court."

Robert Alvarez added, "The Republic of the Marshall Islands has exposed the abuse of the good faith and trust of the non-weapons states that signed the NonProliferation Treaty on the understanding that the nuclear weapons states would begin disarmament negotiations. By seeking a binding legal requirement to actually begin negotiations, the Marshall Islands is simply trying to get the United States to honor the promises and commitments it made to the world 45 years ago."

Jay Coghlan noted that the recently concluded 2015 NPT Review Conference ended in failure, in large part because nuclear weapons nations are modernizing their arsenals. He observed, "The U.S. government is getting ready to spend a trillion dollars on new production facilities for nuclear weapons and new bombers, missiles and submarines to deliver them. Because of that, we are keen to help the Marshall Islands hold the U.S. and other nuclear weapons powers accountable to their end of the NPT bargain, which is to enter into disarmament negotiations."

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The amicus brief is available at <http://nukewatch.org/importantdocs/resources/Dkt-38-Amicus-Brief.pdf>

Bios of the four amici are available in the amicus brief, beginning page 1.

Complete 9th circuit court proceedings in the Republic of Marshall Islands' lawsuit are available at <https://www.wagingpeace.org/nuclearzero/>