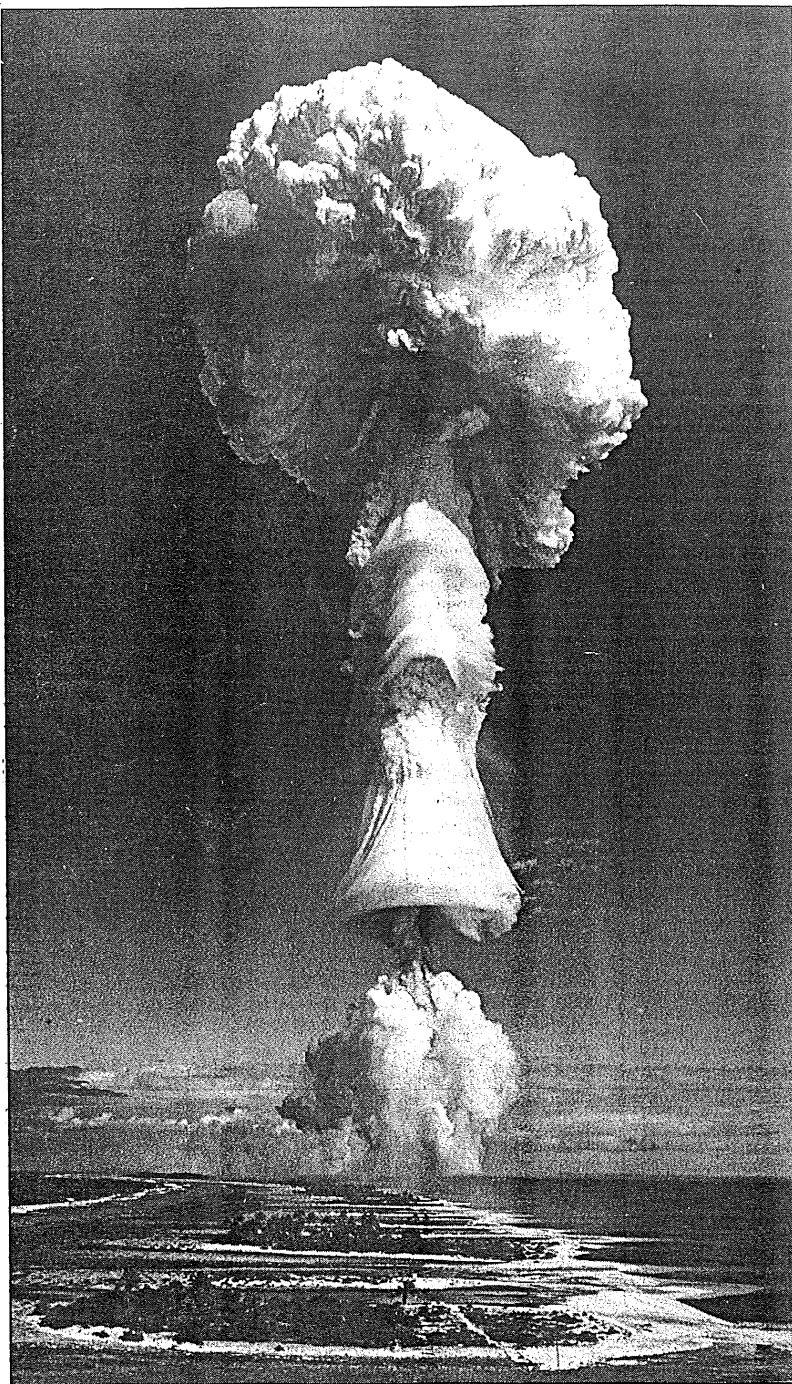


□ NUCLEAR TESTING



SKY HIGH - The kind of nuclear blast the latest international legal scrap is all about.

Courting a nuclear fight

□ Undeterred.

New Zealand is among 25 countries challenging the concept of nuclear deterrence at The Hague this week.

By HANK SCHOUTEN

NEW ZEALAND'S recent ill-fated World Court bid to force France to stop its nuclear testing programme was a dry run for another legal scrap over nuclear weapons starting this week.

On the face of it New Zealand is one of a group of nations challenging the whole concept of nuclear deterrence - the foundation of superpower defence strategy since atomic weapons were first deployed in 1945.

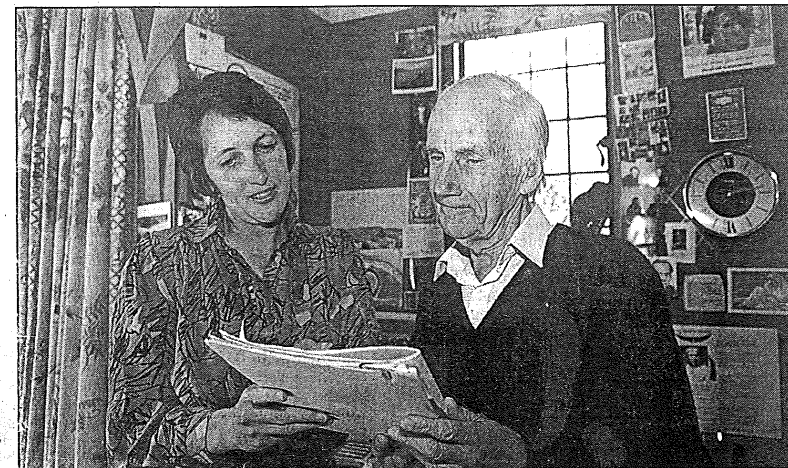
But it is a far more limited action than that. The World Court, a body with no power to enforce its rulings and whose jurisdiction is not accepted by nations including France and the United States, is merely being asked to give an advisory opinion on whether it is legal to use or threaten to use nuclear weapons.

The court has a record of side-stepping controversial issues, but if it does conclude that the use or threatened use is illegal this will be a moral victory for the disarmament movement.

It will be another small step in the long, slow and so far less than successful battle to rid the world of nuclear weapons, an indication of how international law might evolve on this issue.

But it will do little to threaten the nuclear bomb's status as a symbol of power and authority - the ultimate defence or projection of national belligerence and the badge of office for each of the five powers who make up the permanent membership of the United Nations Security Council.

The International Court of Justice in The Hague begins 13 days of public hearings on the issue today.



ON THE TRAIL - Kate Dewes and retired magistrate Harold Evans, who began the campaign to ask the World Court to rule on the legality of nuclear weapons.

Picture: CHRISTCHURCH STAR

Twenty-five countries - ranging from the world's most powerful to the smallest states - have indicated they will be making submissions. Each has been given up to 90 minutes to put their arguments in daily three-hour public sessions running until November 15.

New Zealand is part of a strong Pacific representation to the court and is being joined by Australia, the Philippines, and the tiny island states of the Marshall Islands, Western Samoa, Nauru and the Solomons.

Adding emotional weight will be a Japanese delegation including the mayors of Hiroshima and Nagasaki, and representatives of the hibakusha - survivors of the two bombs which were dropped on Japan at the end of the Second World War.

Carrying the message for New Zealand will be Attorney-General Paul East, making his second appearance before the court this year, and Foreign Affairs legal adviser Alan Bracegirdle.

Also travelling to The Hague to watch proceedings closely will be Kate Dewes of Christchurch and Pauline Tangiora representing the small group of New Zealanders for whom this hearing is the culmination of a nine-year crusade.

“It will do little to threaten the nuclear bomb's status as a symbol of power and authority.”

Dewes, who has travelled the world on a shoestring to push the cause, says it was started by retired Christchurch magistrate Harold Evans. He in turn was inspired by a visiting professor of international law at Princeton University, Richard Falk, who visited Christchurch in 1986.

Evans initially wrote to then Prime Minister David Lange and then Australian Prime Minister Bob Hawke. First responses were discouraging but the campaign, backed by lawyers and doctors groups, never let up.

Wellington doctor, the late Erich Gellinger, played a significant role in getting the issue on the agenda at the World Health Organisation Assembly.

And representatives of International Physicians for the Prevention of Nuclear War lobbied hard to persuade an ambivalent New Zealand Govern-

ment to break ranks with most other Western countries when it voted for the General Assembly to refer the issue to the World Court.

Dewes said that the nuclear powers put a lot of pressure on members of the non-aligned movement and small States, threatening aid and trade, but the Indonesian-sponsored motion was nevertheless carried 78-43 with 36 abstentions.

At the time Foreign Minister Don McKinnon expressed his reservations.

“The problem with the World Court Project is that even a favourable advisory opinion of the court would be unlikely to influence the nuclear weapons States to eliminate their weapons and would not bind them,” McKinnon said.

His comment echoed remarks by US Ambassador in Wellington Josiah Beeman who told the Institute of International Affairs last December that the court could not bind nuclear powers who would perceive it as an intrusion on their sovereign right to make decisions on how they defended themselves.

Mr Beeman also asked what would happen if the court ruled nuclear weapons were legal.

“Where would you be then? Would New Zealand be prepared to be in violation of a

EXPECTED LINEUPS

Countries wanting the use or threatened use of nuclear weapons declared illegal:

Colombia, Costa Rica, Egypt, Germany, Guyana, India, Indonesia, Iran, Italy, Japan, Malaysia, Marshall Islands, Mexico, New Zealand, Philippines, Qatar, Western Samoa, San Marino, Solomon Islands.

Countries opposing the court declaring an opinion: Germany, Italy and Australia.

Countries opposing an opinion which could impinge on their nuclear based defences:

The Russian Federation, France, Britain, United States of America.

decision of the International Court of Justice by keeping tactical nuclear weapons out of your country when the World Court has declared they are legal?

It was a curious argument - on the one hand he said the US would not brook any intrusion on its sovereignty but somehow a World Court ruling the other way would allow an intrusion on New Zealand sovereignty.

The nuclear powers, with the exception of China which is not making submissions, are expected to argue that the court should not attempt to make a ruling, that it does not have the jurisdiction. This is a line supported by Australia, Germany and Italy.

Back-up arguments from the nuclear powers are likely to include the claim that indefinite extension of the Non-proliferation Treaty, which New Zealand supported earlier this year, sanctions their possession of nuclear weapons. The court is not, however, being asked to consider possession. Its advisory opinion is narrowly confined to their use or threatened use.

Counter arguments are expected to include the point that international treaties already precludes the deployment of nuclear weapons in certain situations.