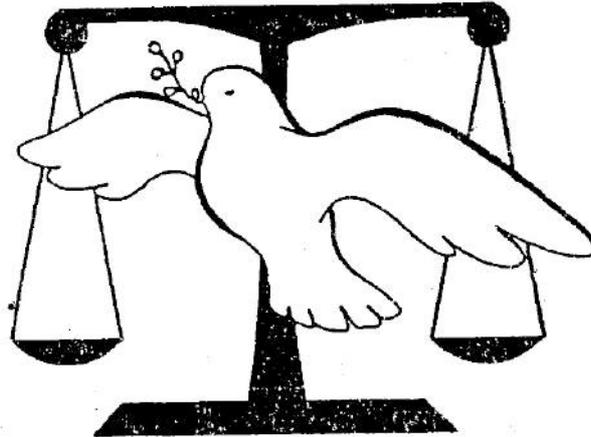


# **THE WORLD COURT PROJECT**



## **THE EVOLUTION AND IMPACT OF AN EFFECTIVE CITIZENS' MOVEMENT**

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# **THE WORLD COURT PROJECT**

## **THE EVOLUTION AND IMPACT OF AN EFFECTIVE CITIZENS' MOVEMENT**

A Thesis Submitted for the Degree of Doctor of Philosophy from  
the University of New England

by

**CATHERINE F. DEWES**

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CHRISTCHURCH, AOTEAROA/NEW ZEALAND

OCTOBER 1998

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For my daughters

Jessie, Annie, and Lucy Boanas

That their generation and successors may  
know a world free from the threat of nuclear annihilation

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## PREFACE

*This thesis of yours is truly a magnum opus. It brings together an enormous amount of material which might otherwise not see the light of day. ...this story must be put on record. It is important for all sorts of reasons not the least of which is that it shows how a few thinkers and citizens can start a popular movement which, with support from the appropriate professions, can build into a global movement even the most powerful countries in the world cannot ignore. This is an enormously important observation.*

George Salmond [1]

This study began in 1994, and was initially the dissertation component for an M.A. (Hons). As it developed, it became clear that a much greater commitment of time and research was needed to do justice to the historic importance of the international citizens' initiative I had chosen to document. During 1993-94 the World Court Project (WCP) helped to persuade the UN to request the International Court of Justice for an advisory opinion on the legal status of nuclear weapons. At the end of 1995 the thesis was upgraded to PhD level, which offered scope to delve more deeply into the archives of individuals and organisations behind the WCP; to interview some of the personalities who had helped it succeed; and to place the stories in the wider historical context of both Aotearoa/New Zealand's (A/NZ) foreign and defence policies and international nuclear disarmament issues. [2]

As one of the people who had been intimately involved in the evolution of the WCP, there were several reasons why I felt compelled to record accurately and draw out the lessons learned from, a supreme example of a successful anti-nuclear initiative which impacted significantly on international disarmament issues. Because it came primarily from A/NZ, it was important to have someone document the history who knew many of the personalities and who had some understanding of New Zealand's foreign policy and the nature

- 
1. Letter from George Salmond to Dewes, 1 June 1997.
  2. The names Aotearoa (Maori) and New Zealand (European) will be used interchangeably. Both are official names.

of its peace movement. There was also a sense of urgency to record the stories of some of the older key participants while they were alive.

I was in a unique position to write this history as a long-time member of the Aotearoa and international peace movements, one of the WCP pioneers and a member of the WCP International Steering Committee (ISC); an Executive member and more recently a Vice-President of the International Peace Bureau (IPB). For the past 19 years I have worked closely with the main architect of the WCP and had unrivalled access to many of the primary documents. My experience as a member of the Public Advisory Committee on Disarmament and Arms Control (PACDAC) from 1987-90, an adviser to the A/NZ Government delegation to the Third UN Special Session on Disarmament (UNSSOD III) in 1988, and as Co-Chair of the Labour Party Policy Committee on Defence and Foreign Affairs from 1988-90, has given me direct access to decision makers, government and the UN.

It was from my base as a peace activist and educator that I realised the importance of sharing empowering stories with ordinary people struggling to have their voices heard in the democratic process. Through intimate involvement in the A/NZ Peace Squadron actions against nuclear warships, local neighbourhood peace groups, the women's peace movement and the campaigns for nuclear free zones, I learned the importance of translating direct action into dialogue and policy-making with decision makers. As a government adviser I began to understand how decisions were made on disarmament issues, both nationally and within the UN. These experiences expanded my horizons in terms of understanding how grassroots actions can have real impact on government, and ultimately on UN decision making processes. Most citizen groups tend to underestimate their power, and under-utilise the mechanisms available to participate fully in democratic decision making.

New Zealanders are unusually fortunate to live so far from the 'belly of the nuclear beast', and in a small enough population to create an almost optimum democratic process. They tend to take their past successes for granted, downplay their roles in creating change, and by default let others tell their

stories. This has been the case in relation to the history of the nuclear free policy, and has at times resulted in distortion and even misinformation. Because so few key people were involved in the early development and later direction of the WCP, and it did have a tangible international outcome, it is perhaps easier to document. However, few academics have written in-depth accounts of recent nuclear disarmament initiatives by the A/NZ or international peace movements, let alone governments, and most tend to consider them separately, rarely discussing how they work together.

As both a participant and observer, I cannot claim to write a dispassionate, totally objective, analytical treatise on the WCP's history and its implications. Inevitably the personal experiences, opinions and insights gained from being so intimately involved in the process of 'making it happen' are fundamental to the thesis and lead me to emphasise certain aspects. I have tried to minimise this bias by copious documentation in footnotes, and by checking out both the details and any interpretation with some of those intimately involved.

When this study began the WCP had only partly succeeded, through having a resolution adopted by the 1993 World Health Assembly. As the thesis writing neared completion, publications appeared which documented the legal impact of the ICJ Advisory Opinion; peace activists who had taken nonviolent direct action against nuclear facilities were using it in their defence in courts in NATO states; and it was invoked in UN resolutions and mentioned by governments in capitals and at the UN. It is tempting to include these more recent successes: but they must be left for others to document in the future.

This study therefore only covers a sample of earlier initiatives taken by citizen groups and governments which used the law to confront all aspects of nuclear weapons. It chronologically surveys some of these precursor activities which set the scene for the development of the WCP, before focusing on the project during the decade of 1986-96.

Throughout the writing of it, I have felt a deep sense of responsibility to all those individuals, groups and states involved, to reflect the history as honestly as possible while maintaining scholarly standards. Their opinions and source

materials have been central to my research. My hope is that this study will guide and inspire those seeking to exercise their democratic right by working closely with governments to ensure that 'we, the peoples' can play an increasingly influential part within the United Nations.

## ACKNOWLEDGEMENTS

It is my privilege and pleasure to acknowledge the help I received from many people in different parts of the world in the production of this thesis.

My first thanks go to those who gave financial assistance for the research. St Albert's College at the University of New England, Australia awarded me their Peace Studies Scholarship for 1995 to help cover travel and accommodation costs for attending a residential school. The John Holdsworth Education Trust provided a small grant to help with the cost of fees during 1995; and the Public Advisory Committee on Disarmament and Arms Control, which administers the Peace and Disarmament Education Trust, awarded me a two-year PhD Scholarship from 1997-98. This assistance was vital in allowing me to continue studying while teaching Peace Studies part-time at the University of Canterbury, and coordinating the South Island office of the A/NZ Foundation for Peace Studies from home.

I am extremely grateful to my two supervisors: Dr Geoff Harris of the University of New England, Armidale and Dr John Henderson of the University of Canterbury, Christchurch. Dr Harris encouraged me to begin an M.A. (Hons) at the University of New England in 1994. In 1995 Dr Henderson kindly agreed to be my second supervisor. Later that year, after discussions with them and others, I was persuaded to apply for an upgrade to a Doctorate of Philosophy.

Despite heavy workloads and overseas commitments, they both gave generously of their time and wisdom. They gently guided me through the maze of thesis writing and encouraged me to believe in my own ability, offering invaluable suggestions on content, style and source material. As importantly, they affirmed my desire to document this history in an unconventional manner, respecting my sense of responsibility to those who entrusted their stories to me to reflect them with integrity. My debt to them is immeasurable.

This record of the World Court Project could not have been written without the vital insights, analyses and reminiscences shared by 46 of the key participants that I was able to interview. Sadly, Erich Geiringer, Edward St John and Sir Guy Powles died during the early part of my research, and there were others like Swedish doctor Johan Thor whom I was unable to interview personally. I owe an immense debt of gratitude to all the people, named and un-named, referred to in the text who shared their stories, emotions, knowledge and experience and who gave access to both private and public documents.

Particular thanks go to my friend Harold Evans for entrusting me to help catalogue and copy some of his voluminous archives, which provided the most comprehensive sources for the early part of the history. Without him there would not have been a World Court Project. His persistence, vision, tenacity and belief in the rightness of the cause instilled in me a desire to join with him and others to help his dream become a reality. It has been a great privilege to work closely with him since 1979. He has been my mentor, and a source of inspiration through many lonely days when it seemed that the initiative would never succeed.

Alyn Ware deserves similar praise. He was always available to give encouragement, wise words and enlightenment, especially during the tough and lonely times. He taught me new ways of working and inspired me with his great stamina and perseverance, creative thinking and gentle sense of humour. He maintained close relationships with my three daughters, carefully explaining to them the historical importance of the WCP and the need for their mother to pursue the research and writing, even if that meant more time away from home.

I am particularly grateful to all those who provided critical commentary on my rendition of their roles in the WCP, such as Colin Archer, Michael Christ, Robert Green, Ann Marie Janson, Rebecca Johnson, Bruce Kent, Caitriona Lawlor, Peggy Mason, Ron McCoy, Keith Mothersson, Raj Mutalik, George Salmond, Willemijn Straeter, Pauline Tangiora, Maj Britt Theorin, Jo Vallentine, Alyn Ware and Peter Weiss. I have tried to do

justice to them, and indeed to all those involved in making the WCP a success. Inevitably there will be errors and gaps in the historical record, and I take full and sole responsibility for them.

My women friends sustained me at many levels. They read the drafts, gave encouragement and supportively awaited the next installment so they could offer helpful comments. They provided cakes, gave massages, and cared for my daughters and our dog to release me to travel overseas. Thank you Joy Carol, Moana Cole, Lois Dalton, Margaret Lovell-Smith, Jenny Macintyre, Jane Severn, Bev Shalders, Diana Shand, Mia Tay and Melanie Thomson.

Special thanks are due to Robert Hunt for ensuring that my computer system was reliable, and for persevering with teaching me how to use electronic mail. His guidance and encouragement have been vital.

I pay tribute to my extended family and especially my long-suffering daughters, Jessie, Annie and Lucy Boanas, who have always shared their mother and their home with the peace movement. They are my primary motivation for working towards a nuclear free world, and they continue to inspire me to pursue this dream. Their unconditional love and belief in the importance of this work have sustained me, giving me courage in the face of seemingly impossible odds.

My parents, Harry and Peg Dewes, have given moral support and encouragement. My partner Rob Green has acted as incisive critic and eagle-eyed proof reader, offering constructive suggestions and structural amendments. His commitment to similar ideals and ways of achieving them provides a strong base for our ongoing work. His shared experience in the history and development of the WCP since 1992 gives him a degree of authority to authenticate my perceptions of the more recent history. We have co-written papers on this topic which have been published during the period of the thesis writing. Both he and Alyn Ware, in the course of their travels, interviewed people on my behalf and meticulously checked my interpretation of events for any distortion of the facts. Without their strong

support and guidance throughout the writing process I would not have been able to present this dissertation with confidence.

## LIST OF ABBREVIATIONS

AGM	Annual General Meetings
A/NZ	Aotearoa/New Zealand
ANZUS	Australia, New Zealand and US (Security Alliance)
ASL	Association of Soviet Lawyers
BMA	British Medical Association
CD	Conference on Disarmament
CHOGM	Commonwealth Heads of Government Meeting
CND	Campaign for Nuclear Disarmament
CTBT	Comprehensive (Nuclear) Test Ban Treaty
DPC	Declaration of Public Conscience
EC	European Community
ECOSOC	Economic and Social Council (UN)
EU	European Union
IADL	International Association of Democratic Lawyers
IALANA	International Association of Lawyers Against Nuclear Arms
ICJ	International Court of Justice (known as the World Court)
ICRC	International Committee of the Red Cross
IFMSA	International Federation of Medical Students Associations
INLAP	Institute for Law and Peace
INLAW	International Law Against War
IPB	International Peace Bureau
IPPNW	International Physicians for the Prevention of Nuclear War

IRA	Irish Republican Army
ISC	International Steering Committee (for the WCP)
ISMUN	Youth Section of UN Associations
LCNP	Lawyers' Committee on Nuclear Policy
LND	Lawyers for Nuclear Disarmament
LNWT	London Nuclear Warfare Tribunal
LSR	Lawyers for Social Responsibility
MEDACT	Medical Action for Global Security
MP	Member of Parliament
MPPNW	Malaysian Physicians for the Prevention of Nuclear War
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organisation
NCND	Neither Confirm Nor Deny
NDP	Nuclear Disarmament Party
NFZ	Nuclear-Free Zone
NFIP	Nuclear Free and Independent Pacific
NGO	Non Governmental Organisation
NPT	(Nuclear) Non Proliferation Treaty
NSA	Negative Security Assurance
NWLA	Nuclear Weapons Legal Action
NWS	Nuclear Weapon States
ORG	Oxford Research Group
P3	Permanent Three on UN Security Council : US, UK and France
P5	Permanent Five: as above plus Russia and China
PACDAC	Public Advisory Committee on Disarmament & Arms Control

PGA	Parliamentarians for Global Action
PHA	Public Health Association
PSR	Physicians for Social Responsibility
PTBT	Partial Test Ban Treaty
SDP	Social Democratic Party
SHNFZ	Southern Hemisphere Nuclear Free Zone
SPNFZ	South Pacific Nuclear Free Zone
UNA	United Nations Association
UNESCO	UN Educational, Scientific, and Cultural Organisation
UNICEF	United Nations Children’s Fund
UNSSOD	United Nations Special Session on Disarmament
WAND	Women’s Action for Nuclear Disarmament
WAWF	World Association of World Federalists
WCP/ WCRP	World Court Project / World Court Reference Project
WEOG	Western European and Other Group
WFPHA	World Federation of Public Health Associations
WHO/WHA	World Health Organisation/ Assembly
WHOPAX	WHO Expert Committee on Nuclear War
WILPF	Women’s International League for Peace and Freedom
WPC	World Peace Council
WPP	Women Parliamentarians for Peace

## LIST OF CHARACTERS

**Archer, Colin.** Secretary-General IPB; member of WCP ISC.

**Bolger, Jim.** A/NZ Prime Minister 1990-98.

**Boyle, Francis.** Board of Directors of LCNP; member of IALANA and close friend of Seán MacBride.

**Briant, Robin.** President of IPPNW (NZ) and member of PACDAC.

**Caldicott, Helen.** Australian Physician who revived PSR in the US in the late seventies; founded Women's Action for Nuclear Disarmament.

**Caygill, David.** A/NZ's former Minister of Justice and senior member of Labour Party.

**Chavez- Peron, Dr.** WHO Executive Board and member of Mexican delegation to 1993 WHA.

**Christ, Michael.** IPPNW's Programme Director and member of WCP ISC.

**Clark, Helen.** A/NZ's former Minister of Health; Chair of Foreign Affairs and Defence Committee (1984-87); Leader of the Labour Party; PGA Executive member.

**Dalziel, Lianne.** A/NZ's former Minister of Health and member of Labour Party.

**Dzaivro, Godfrey.** Senior diplomat in Zimbabwe's UN Mission with the key role in ensuring NAM support for the UNGA resolution in 1993-4.

**East, Paul.** A/NZ Attorney General who presented Oral Submission to ICJ in 1995.

**Epstein, William.** Canadian who advised the UN on disarmament issues for 30 years; member of LCNP and IALANA.

**Evans, Gareth.** Australian Minister of Foreign Affairs and later Attorney-General who presented Australia's Oral Submission to the ICJ in 1995.

**Evans, Harold.** Retired District Court Magistrate from A/NZ who was the primary initiator of the WCP and member of IALANA.

**Farebrother, George.** Secretary of WCP (UK) who coordinated the international collection of Declarations of Public Conscience.

**Geiringer, Erich.** A/NZ physician, primary initiator of WHO resolution, member of IPPNW (NZ).

**Graham, Douglas.** A/NZ Minister of Disarmament and Minister of Justice (1990-96).

**Graham, Kennedy.** Former A/NZ diplomat and Secretary-General Parliamentarians for Global Action.

**Green, Robert.** Former UK Naval Commander; Chair WCP UK 1992-99; ISC member.

**Gustafsson, Stig.** Member of Swedish Parliament; Swedish Lawyers Against Nuclear Arms, IALANA and PGA Executive.

**Ismail, Razali.** Former President of the UNGA, Malaysian Ambassador to the UN (New York) during UNGA 1993-4.

**Jaipal, Rikhi.** India's UN Ambassador, Assistant UN Secretary-General, IPB Vice President, member of India's delegation to UNSSOD III (1988).

**Janson, Ann Marie.** Swedish physician, head of IPPNW delegations to WHA in 1992-3 and member of IPPNW Council.

**Kelly, Petra.** (1947-92) Founding member of the German Greens; elected to Parliament in 1982; organised the Nuremberg Tribunal in 1983.

**Kuti, Ransome.** Nigeria's Minister of Health during 1992-3 WHA.

**Laidlaw, Chris.** A/NZ's Labour Party Disarmament spokesperson 1993-96.

**Lange, David.** A/NZ's Prime Minister from 1984-89 during the adoption of the Nuclear -Free, Disarmament and Arms Control Act; Attorney General 1989-90 and MP (1990-96).

**Lineham, Brett.** Former Head of Disarmament Division, A/NZ Ministry of Foreign Affairs.

**Lini, Hilda.** Founding member of the Nuclear Free and Pacific Movement; first woman parliamentarian in Vanuatu (1987); Minister of Health and WHO Vice President (1991); awarded Seán MacBride Peace Prize (1993).

**MacBride, Seán.** (1904-1988) international lawyer and politician, member of the Irish Republican Army, Secretary-General to the International Commission of Jurists (1963-71), founder of Amnesty International, Chairman of the International Peace Bureau (1974-1988), Nobel Laureate (1974) Irish Minister for External Affairs (1948-51), UN Commissioner for Namibia and Assistant UN Secretary General.

**MacDermot, Niall.** Irish lawyer and politician; successor to MacBride as Secretary-General of International Commission of Jurists. One of the contributors to Harold Evans' first Open Letter to governments in 1987.

**Marin-Bosch, Miguel.** Mexico's UN Ambassador in Geneva with a reputation for strong leadership on nuclear disarmament issues.

**Marshall, Russell.** Former A/NZ Minister of Disarmament and Foreign Affairs (1987-90).

**Mason, Peggy.** Canada's Ambassador for Disarmament who chaired the Barton group in the UNGA 1993-4; lawyer.

**McCoy, Ronald.** Co-President of IPPNW; Chair MPPNW; former President of the Malaysian Medical Assn; member of the Canberra Commission (1995-96).

**McKinnon, Don.** A/NZ's Foreign Minister 1990-98.

**Mendlovitz, Saul.** Leading member of IALANA and LCNP, member WCP ISC.

**Mothersson, Keith.** UK peace researcher, instigator of DPC collection, founding member of INLAP.

**Myrdal, Alva.** Sweden's Disarmament Ambassador, Nobel Laureate and Vice President of IPB.

**Nakajima, Dr.** Japanese Director General of the WHO during the 1992-3.

**Palmer, Geoffrey.** A/NZ Prime Minister (July 1989-October 1990); Minister of Justice, *Ad hoc* Judge at the ICJ during the 1995 ICJ case against France.

**Pauling, Linus.** US Scientist and Nobel Laureate who coordinated efforts by scientists and some Nobel Laureates to stop nuclear testing in 1958.

**Phiri, Dr.** Zambia's Health Minister and Vice President of IPPNW and leader of Zambia's 1993 WHA delegation.

**Piel, Mr.** WHO's senior Legal Counsel.

**Prior, Ian.** Founding member of IPPNW (NZ) and coordinator of Wellington WCP group.

**St John, Edward (Ted).** Australian coordinator for Lawyers for Nuclear Disarmament; member of IALANA; International Commission of Jurists; one of the 'six eminent jurists' in the first Evans Open Letter on the WCP.

**Salmond, George.** A/NZ's Director General of Health from 1986-91, WHO's Technical Adviser in Manila and Geneva from 1976-86, member of IPPNW's WHO lobbying teams 1992-3.

**Schweitzer, Albert.** Physician and Nobel Laureate who broadcast a Declaration of Conscience in 1957 highlighting the effects of nuclear testing.

**Shamuyarira, Nathan.** Zimbabwe's Foreign Minister who chaired the Non-Aligned Movement during the 1989 Hague NAM Foreign Ministers'

conference when the NAM issued 'The Hague Declaration on Peace and the Rule of Law in International Affairs'. First Foreign Minister to promote the WCP.

**Straeter, Willemijn.** IALANA's Coordinator of the International Secretariat at its office in The Hague from 1991-96; member of the WCP ISC.

**Sukharev, Alexander.** Head of the Association of Soviet Lawyers; the Minister of Justice of the Russian Republic of the USSR and Executive member of IALANA.

**Tangiara, Pauline.** Maori Kuia from Rongomaiwahine Tribe; Patron A/NZ Foundation for Peace Studies; member of the Earth Council, the World Council for Indigenous Peoples, the UNGA lobbying delegation 1993.

**Tapa, Dr S.** Tonga's Minister of Health during 1992-3 and former WHO Executive Board member.

**Theorin, Maj Britt.** Swedish MP for over 25 years and Disarmament Ambassador. President of IPB, Parliamentarians for Global Action and Women Parliamentarians for Peace. Chair of 1989-90 UN Study on Nuclear Weapons and member of the Canberra Commission.

**Thor, Johan.** Swedish physician working with the IPPNW Central Office in Boston who was a member of the 1993 WHA delegation.

**Valesco-Suarez, Manuel.** President of IPPNW Mexico with close contact with Mexican President.

**Vallentine, Jo.** World's first Senator for Nuclear Disarmament in Australia (1984); then became a Green Senator.

**van den Biesen, Phon.** IALANA's International Secretary (1990 -1996); a leading advocate in the case by the Foundation to Forbid Cruise Missiles against the Dutch government; member of the WCP ISC.

**van Lierop, Robert.** Former Vanuatu Ambassador to the UN during 1993 UNGA.

**Ware, Alyn.** Kindergarten teacher from A/NZ who became LCNP's Executive Director and coordinated the WCP lobbying at the UN from 1992-96; WCP ISC member.

**Weiss, Peter.** New York lawyer, Co-President of IALANA and LCNP, member of the WCP ISC. He coordinated the writing of the Draft Memorials for submissions by governments to the ICJ cases.

**Wilde, Fran.** A/NZ Minister of Disarmament and PGA Executive member (1987-90).

## **ABSTRACT**

This thesis analyses how, over ten years from 1986-96, a worldwide network of peace activists, doctors and lawyers evolved the World Court Project (WCP), an unprecedented citizens' initiative which helped to persuade the UN to request the International Court of Justice (ICJ) for an advisory opinion on the legal status of nuclear weapons. After the largest participation by governments in a case, the ICJ confirmed that the threat or use of nuclear weapons would generally be illegal.

Chronicling the pioneering roles played by New Zealanders, the thesis also surveys earlier efforts by both citizen groups and governments to use the law to oppose nuclear weapons. It assesses why the advisory opinion route was not used sooner; and it highlights the contributions by women. In so doing, feminist research principles are blended with traditional methodologies: and primary sources include interviews with 46 key players. Aotearoa/New Zealand is used as a case study to record in detail the WCP's gestation from 1986-92, set against the history of government policies on nuclear weapons, including the 1973 ICJ case against French tests and the 1987 nuclear free legislation. It then examines how the international anti-nuclear movement was mobilised.

The approaches to the World Health Assembly and UN General Assembly are fully documented, followed by the campaign to encourage governments to make submissions to the ICJ. The thesis describes the successful struggle to convince New Zealand's reluctant and fairly conservative government to move from a negative stance to arguing strongly for illegality.

The thesis assesses the immediate impact of the WCP and explains why the project succeeded. It examines the roles of certain individuals and small states, and how the public conscience and the law were harnessed to help democratise the Court. Finally, it offers lessons learned which could be applied in other campaigns.

# CHAPTER 1

## INTRODUCTION



Source: *Bulletin of the Atomic Sciences*, June 1993, p. 49.

# CHAPTER I

## INTRODUCTION

*This opinion represents the first decision of this Court, and indeed of any international tribunal, that clearly formulates limitations on nuclear weapons in terms of the United Nations Charter. It is the first decision which expressly addresses the contradiction between nuclear weapons and the laws of armed conflict and international humanitarian law. It is the first such decision which expresses the view that the use of nuclear weapons is hemmed in and limited by a variety of treaty obligations.*  
Judge Weeramantry [1]

On 8 July 1996, the International Court of Justice (ICJ) at The Hague - also known as the World Court - delivered an Advisory Opinion on two questions before it from the World Health Assembly (WHA) and the United Nations General Assembly (UNGA), on the legal status of the threat or use of nuclear weapons. After eight months of intense deliberation, the ICJ decided *inter alia* that ‘... a threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law’.

The case was the culmination of a decade of intense efforts by citizen groups to convince governments to request ICJ advisory opinions on nuclear weapons through the UN. In the early 1990s these attempts became known as the World Court Project (WCP). They built on earlier endeavours by governments and non-governmental organisations (NGOs) to use international law, both within states and the UN, to help eliminate nuclear weapons. Leadership came from members of the Aotearoa/New Zealand (A/NZ) peace movement, who in the early 1970s helped convince their government to take a contentious case to the ICJ on the legality of nuclear testing, and in the 1980s to enact domestic nuclear free legislation. The WCP

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<sup>1</sup>. Judge Christopher Weeramantry’s Dissenting Opinion to the ICJ Opinion on the Advisory Opinion on the Legality of Nuclear Weapons, 8 July 1996, published in Ann Fagan Ginger, ed., *Nuclear Weapons are Illegal: The Historic Opinion of the World Court and How it will be Enforced*, The Apex Press, New York, 1998, p. 238.

succeeded in building a wide coalition of support within both the NGO and government communities. In the process it helped democratise the ICJ and the UN: it was the first case where the ICJ accepted 'citizen evidence' and allowed witnesses to testify during the Oral Proceedings.

Citizens and governments developed close working relationships, and used their different strengths to withstand the inevitable pressures exerted by the nuclear weapon states (NWS) and their allies. The process empowered anti-nuclear states to pursue far-reaching initiatives for nuclear disarmament and thereby to reflect global public opinion. The WCP outcome therefore has significant implications for both the peace movement and the international disarmament community.

Although there are some publications on aspects of the WCP history and legal analysis of the ICJ Opinion, there is no definitive history of this historic campaign. [2] There are brief accounts of how citizens have used the law at the state level to prevent deployment of nuclear weapons or create nuclear free zones (NFZs), but they are sporadic and disjointed. There has been no attempt so far to put a global perspective on these initiatives, nor to analyse how they underpinned the WCP.

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<sup>2</sup> Major publications include: Kate Dewes and Commander Robert Green (Retired), 'The World Court Project: How a Citizen Network can Influence the United Nations', *Pacifica Review*, vol.7, no.2. 1995, pp. 17-37; John Burroughs, *The (Il)legality of Threat or Use of Nuclear Weapons: A Guide to the Historic Opinion of the International Court of Justice*, Lit Verlag, Munster, 1997; Roger S. Clark and Madeleine Sann, *The Case Against the Bomb: Marshall Islands, Samoa, and Solomon Islands before the International Court of Justice in Advisory Proceedings on the Legality of the Threat or Use of Nuclear Weapons*, Bookmasters, New Jersey, 1996; Peter Weiss, ed., 'Symposium: Nuclear Weapons, the World Court, and Global Security', *Transnational Law and Contemporary Problems: Journal of the University of Iowa College of Law*, vol.7, no.2, 1997; Ved P. Nanda and David Krieger, *Nuclear Weapons and the World Court*, Transnational, New York, 1998. See especially, Chapter 5 'Nongovernmental Organisations (NGOs) and the World Court Project', pp. 69-86; Ginger (1998) op.cit; Robert Green, *Implications of the Advisory Opinion by the International Court of Justice on the Legal Status of Nuclear Weapons*, Pottle Press, London, 1996; Douglas Roche, *The Ultimate Evil*, James Lorimer and Co, Toronto, 1997; Kai Bird and Lawrence Lifschultz, eds., *Hiroshima's Shadow*, The Pamphleteer's Press, Stony Creek, US, 1998.

Cursory histories have been published about the Aotearoa peace movement post-1975, but none exist which comprehensively document the role of New Zealanders in the WCP from 1986-1996. Some partial accounts which contain inaccuracies, in part because of lack of access to the relevant documentation needed to verify claims and counter-claims, have already been promulgated. [3] In particular, articles have been published which fail to acknowledge how earlier initiatives (Chapters 2-4) created the climate for a successful campaign.

The thesis aims to:

- i. document some previous attempts by citizens and governments to link international law with nuclear weapons.
- ii. record the history of how an unprecedented coalition of international citizen groups, working together for the WCP, convinced the majority of UNGA and WHA member governments to ask the ICJ to clarify the legal status of the threat or use of nuclear weapons.
- iii. explore the ways in which the WCP influenced the process of government decision making, both nationally and within the UN, using Aotearoa/ New Zealand as a case study.
- iv. analyse the dynamics behind the success of the WCP movement by exploring the characteristics of some of the key personalities involved, various citizen groups and the strategies and processes they adopted.
- v. analyse the immediate impact of the WCP on nuclear disarmament and peace movements.

In attempting to achieve these aims, the following questions will be addressed:

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<sup>3</sup> Examples include: 'Doctor campaigns to the end', *Evening Post*, 31 August 1995; Austin Mitchell, 'Shock Doc', *The Guardian*, 15 September 1995; Saul Mendlovitz and Peter Weiss, 'Judging the Illegality of Nuclear Weapons: Arms Control Moves to the World Court', *Arms Control Today*, February 1996.

1. What initiatives by individuals, groups and governments prepared the ground for the WCP?
2. Why had the peace movement or governments not tried the advisory opinion route before?
3. What were the main factors which contributed to the success of the WCP?
4. Why did members of the A/NZ peace movement play such crucial roles?
5. What role did small states play?
6. What role did women play?
7. Why was the New Zealand government reluctant to pursue the initiative?
8. How did the WCP impact on international nuclear disarmament?
9. What impact did the WCP have on peace movements?
10. What were some of the lessons learned?

This thesis is unusual because it merges several research methodologies. Traditional analytical, developmental and historical research and case studies have been approached using feminist principles of participatory research. Contemporary feminist research is multi-method and usually includes observation, participation, archival analysis and interviewing. [4] It recognises the accumulation of social knowledge through direct participation in, and experience of, the social realities being explored. Many feminists use the strategy of 'starting from one's own experience' because it defines the research questions, leads to useful sources of data, and gains the trust of others involved. [5] This process may draw criticism from those who judge it

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<sup>4</sup> Shulamit Reinharz, *Feminist Methods in Social Research*, Oxford University Press, New York, 1992, p. 46.

<sup>5</sup> Ibid, p. 259.

as subjective and biased. From the outset I acknowledge this potential weakness, but counter it with the advantage of having been a full participant in many of the meetings which were critical to the success of the WCP. Many of my conclusions are drawn from these first-hand observations; and it was my personal relationships with key individuals which facilitated frank responses to questions posed in interviews. Without that confidence, few diplomats or politicians would have shared their vital perspectives so freely.

Throughout the study I attempt to write in the third person and to downplay my role in the process. This can be gleaned from the footnotes and by the number of documents drawn from my personal correspondence and conversations. Not all claims can be substantiated with a reference because conversations were not always documented; but others who participated in meetings have checked the thesis for accuracy. Most WCP International Steering Committee (ISC) members have reviewed the material which relates to their organisations, and the lobbying at the WHA and UNGA.

Primary source documents include the personal papers from four New Zealanders (Harold Evans, Erich Geiringer, George Salmond and the author); Seán MacBride's papers in Dublin and at the IPB in Geneva; and the minutes, newsletters, and correspondence from the WCP ISC. Invaluable material has come from the WCP files of the three co-sponsoring organisations: the IPB, International Physicians for the Prevention of Nuclear War (IPPNW) and the International Association of Lawyers Against Nuclear Arms (IALANA). Interviews were conducted with 46 of the key participants including most members of the ISC, parliamentarians, diplomats, officials, women, academics, lawyers, doctors and indigenous peoples.

The thesis is primarily an historical document and not theoretical. It does not seek to prove any theories of social movements or test any hypotheses. Due to the lack of material available on the recent strategies adopted by the international peace movement, conclusions have been drawn from the experiences of the predominantly European peace movement, and the author. Inevitably, material is drawn mostly from Western sources due to the writer's lack of fluency in other languages and the cost and difficulty of travelling to

interview people in other regions. Only a few non-Westerners played key roles and many do not have access to electronic mail. Interviews were conducted with diplomats from other countries. However, email has facilitated communication between leading participants in Canada, the Netherlands, Sweden, Switzerland, the United Kingdom (UK) and the United States (US). At times interviews were carried out by other members of the WCP ISC on my behalf.

The thesis details the development of the WCP from 1986-1996. It also provides earlier examples of how some citizen groups and individuals tried to bring nuclear weapons under the rule of international law from 1945-1986, highlighting the role of Seán MacBride. Where related to the legal issue, it discusses the growth of the international peace movement, especially the women's peace movement, during the 1980s. It describes how the Cold War 'bloc' system within the UN prevented any real progress on nuclear disarmament despite many attempts by the non-nuclear majority of member states. It documents how, during the 1980s, the peace movement began to monitor UN voting patterns and call for more radical initiatives.

Aotearoa/New Zealand (A/NZ) is chosen as a case study because of its role as the base for what became the WCP; its traditional links with the Western bloc; its strong anti-nuclear policies; its earlier ICJ case; the impact of public opinion on government decision-making; and its role as a small state. Three New Zealanders, an Australian and an Irishman are profiled because of their pioneering roles in the WCP and the accessibility to primary source material. The WCP's development is located within the wider context of A/NZ's foreign policy.

Details are given of how the citizen movement helped to persuade governments to adopt resolutions at the WHA and UNGA; and how voting patterns changed in response to pressure by the NWS in the decision making of their allies and the Non-Aligned Movement (NAM). The NAM's role in the UNGA is analysed in relation to this interference, their resultant defiance and ongoing leadership in nuclear disarmament following the ICJ cases.

The thesis does not attempt to provide any detail, or legal analysis, of the ICJ Advisory Opinion; the medical, health and environmental effects of nuclear weapons; or the history of the ICJ which have all been addressed elsewhere. It only briefly discusses how national and international peace movements are organised, and does not provide a comprehensive history of any initiative except the WCP. There is some discussion as to how the international peace movement initially responded to the Opinion, but the thesis does not go into any detail beyond the 1996 UNGA.

Many questions are not studied in depth, and there are areas where research could be furthered by others. In particular, there is a need to document how the citizen movement has used the Opinion to hold governments accountable; how governments have used it to underpin further initiatives within the international disarmament community; recent UN nuclear disarmament voting patterns; and the contributions made by individuals such as MacBride, Harold Evans, Geiringer, Hilda Lini, Edward St John, Maj Britt Theorin, Jo Vallentine and Alyn Ware, to peace and nuclear disarmament. Further research is needed into how transnational movements, such as the peace and anti-nuclear movements, have developed since access to global communication technology such as electronic mail has become so widespread.

The thesis is divided into three parts. Part I, covering the period from 1945-1990, outlines what the major international citizen groups did to try to rein in nuclear weapons by using international law. It includes coverage of Seán MacBride's leadership in establishing the 1977 Additional Protocols to the 1949 Geneva Conventions and his calls for nuclear weapons to be included; the mobilisation of the women's peace movement (profiling four women involved in the WCP); the activities of groups in West Germany, Canada and the Netherlands, UK and US, many of which became strong supporters of the WCP; and a brief outline of nuclear disarmament initiatives by governments.

Part II documents the gestation of the WCP within A/NZ, and discusses why it succeeded. It traces the development of anti-nuclear policies, and the background to the earlier ICJ case on nuclear testing. It describes how New

Zealanders activated existing peace networks to support the WCP, and how they lobbied diplomats and politicians within the UN.

Part III covers the period from 1992-1996 following the WCP's international launch. It details the attempts to have resolutions adopted within the WHA and the UNGA from 1992-1994. It outlines the development of international support among movements and governments, highlighting the relationship between public opinion and government in A/NZ; and it offers analysis on the ICJ submissions and the Oral Proceedings, with close examination of Australia's role. Finally, Part IV draws together conclusions from the thesis and offers some thoughts on the lessons learned from the WCP experiences.

I am heavily indebted to a large number of researchers and activists. The following writers influenced my analysis of how citizen groups can effectively use international law in the international disarmament debate: Francis Boyle, George Delf, Richard Falk, Seán MacBride, Keith Mothersson, Keith Suter and Angie Zelter. Lawyers such as ICJ judges Nagendra Singh and Christopher Weeramantry; Harold Evans and Edward St John; prominent members of the Lawyers Committee on Nuclear Policy (LCNP) such as John Burroughs, Falk, Saul Mendlovitz, Lee Meyrowitz, Peter Weiss, Burns Weston and others, documented the legal arguments which underpinned the ICJ cases. Insights have been gained from those with extensive UN experience on nuclear disarmament issues such as: William Epstein, Kennedy Graham, Rikhi Jaipal, Seán MacBride and Alva Myrdal.

Understanding of the European peace movements is derived from writers such as April Carter, Mary Kaldor, Richard Taylor, Lawrence Wittner and Nigel Young. Women such as Helen Caldicott, Scilla Elworthy, Rebecca Johnson, Lynne Jones, Petra Kelly, Jill Liddington, Sasha Roseneil, Jo Vallentine and Marilyn Waring shared perspectives from within the women's peace movement, provided feminist analysis on peace and disarmament, and documentation of women-only direct actions. Histories of the Aotearoa peace movement and analyses of New Zealand's foreign policies were gleaned from the writings of Erich Geiringer, Elsie Locke, Kevin Clements, Eleanor Hodges and David Lange. Others who offer specialist knowledge of the period from

1970-1996 include Roderic Alley, Harold Evans, Kennedy Graham, John Henderson, Stephen Hoadley, Kenneth Keith, Richard Kennaway, Stephen Levine, Malcolm McKinnon, Stuart McMillan, Nigel Roberts, Paul Spoonley, Pauline Tangiora, Alyn Ware, Marilyn Waring, Robert White and Margaret Wilson.

It is gratifying to see the number of publications which the WCP has already stimulated, and especially Ann Fagan Ginger's book which has made the ICJ's full Advisory Opinion accessible to the general public. It includes a chapter on the WCP's history by the author and Robert Green. There have been other major publications, speeches and interviews for media/books in the US, Canada, Japan and Aotearoa as a result of the research associated with this thesis, and more are pending. [6]

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<sup>6</sup> The research has been used by David Krieger, John Burroughs and Douglas Roche in the above listed publications. Other major publications besides the Ginger and *Pacifica Review* chapters include: Kate Dewes, 'From Poppies to Sunflowers: Building Alliances for Nuclear Abolition' in Susan Wareham, ed., *Visions and Actions for Peace*, Medical Association for Prevention of War (Australia), 1997, pp. 9-15; Kate Dewes, 'Civil Society and Officials Teamed up in the World Court Project', *Peace Magazine*, Toronto, July/August 1998, pp.13-17; Katie Boanas-Dewes, 'Participatory Democracy in Peace and Security Decision Making', *Interdisciplinary Peace Research*, no.2., October-November 1993, pp. 80-108; Rob Green and Kate Dewes, 'The World Court Project: How a Citizen Network can influence the United Nations', *Social Alternatives*, vol.15, no.3, July 1996, pp. 35-37; Kate Dewes and Rob Green, 'Citizens Action to Implement the ICJ Opinion', *Disarmament Times*, Special Edition, vol. XIX, no.4, September 1996, p.2; Kate Dewes and Robert Green, 'Nuclear Weapons on Trial: An Assessment of the World Court Cases on the Legal Status of the Threat or Use of Nuclear Weapons', Website: <http://pgsc.polar.on.ca/pages/wcdewes3.html>, 23 May 1997. Kate Dewes, 'The World Court Project: Civil Society and Governments as Partners in Nuclear Disarmament', in *Politics, Policy and Practice: Essays in Honour of Bill Willmott*, Geoff Fougere and Rosemary du Plessis, eds., Sociology Department, University of Canterbury, 1998. Interviews given to *NHK Television* and *Asahi Shimbun* newspaper have been used for a book published by NHK in 1997 on the World Court Project, a TV documentary (1996) and part of substantive articles on 26 February 1997 in *Asahi Shimbun*. A chapter is to be published in an IPB book entitled 'Peace is Possible', due in May 1999. Another will be included in an IPPNW book *War or Health* to be published in Finland during 1999. Major international speaking engagements during 1998 included: International Symposium and Lectures, 'Our Role in Eliminating Nuclear Weapons', Hiroshima, 4 August 1998 and in

As governments, the military, lawyers, the wider peace movement and others become aware of this information, I hope that it will empower them to use international law and the United Nations more effectively. To ensure that the next millennium is not haunted by the threat of nuclear annihilation, it is essential that greater efforts are made to develop closer partnerships on the road to securing a comprehensive and verifiable Nuclear Weapons Convention. The WCP provided a model and an authoritative international legal underpinning for this goal.

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Nagasaki, 7 August 1998; Seminar on 'Practical Steps for Canadian Policy Development on Nuclear Weapons Issues', Canadian Centre for Foreign Policy Development, Ottawa, 27 March 1998.

# **Part I**

## **World Court Project**

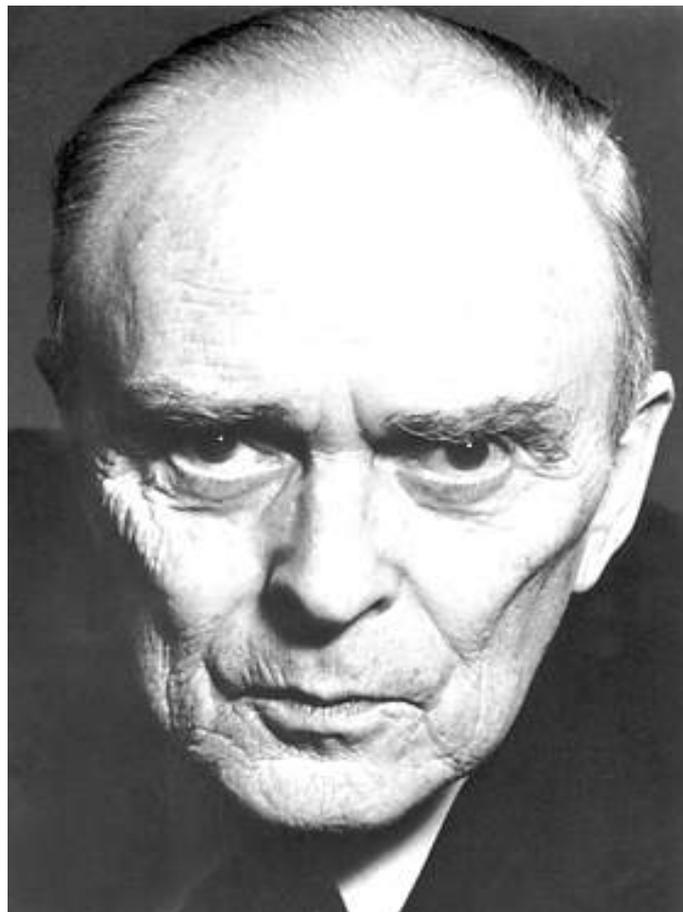
### **Origins: 1945-1990**

*We must remould the relationships of all men, of all nations in such a way that these men do not wish, or dare, to fall upon each other for the sake of vulgar, outdated ambition or for passionate differences in ideologies, and that international bodies by supreme authority may give peace on earth and justice among men.*

Winston Churchill, August 1945

**CHAPTER 2**

**INTERNATIONAL INFLUENCES FROM  
CITIZEN GROUPS: 1945-1981**



**Seán MacBride**

## CHAPTER 2

### INTERNATIONAL INFLUENCES FROM CITIZEN GROUPS AND INDIVIDUALS: 1945-1981

*What we require is a Magna Carta for the nuclear age that is the outcome of struggle by social forces throughout the world to oppose policies of official criminality. Falk [1]*

*The time has come to found a movement of political action that will impose international law standards on the nuclear powers and bring the people of the world some hope of peace and justice. Falk [2]*

#### 2.1 Introduction

Despite growing international public concern at the use of nuclear weapons against Japan in August 1945 by the US, nuclear weapon development proceeded unabated. Although governments and community leaders called for their abolition, political will was lacking and the problem seemed insurmountable. This chapter details some of the early initiatives taken by citizen groups and leading individuals who advocated using domestic and international law to abolish nuclear weapons, and reflects on their strategies and lack of success. Special mention is made of Seán MacBride's campaigns to update the laws of armed conflict, to promote 'the dictates of the public conscience', and to educate the public about nuclear weapons and international law. The strategies adopted and hurdles encountered set the scene for the WCP.

It was at Nuremberg during 1945-46 that the standards of international law governing individual and collective conduct were first applied, to judge those who had participated in war crimes under Hitler. Here the victorious Allies

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1. Richard Falk's address 'Forty Years after Nuremberg' to an international conference of 2000 lawyers at Nuremberg, *Ground Zero*, Spring 1986, pp. 2-3.

2. Falk's statement to the Nuremberg Tribunal against first-strike weapons, Nuremberg, 20 February 1983.

enforced the laws of war with a vengeance, ensuring that they themselves were never brought to trial while the Nazis were forever convicted, and specifically that the legality of the use of nuclear weapons against Japan was never questioned internationally.

The Nuremberg judgment found that preparation for aggressive war was itself criminal, thereby creating a mechanism of accountability for decision makers supporting policies which prepare to initiate nuclear war. International law expert Richard Falk contends that if a German nuclear weapon had been used against the Allies, then the perpetrators would have been punished at Nuremberg and nuclear weapons criminalised in 1945, making any subsequent reliance on them a war crime. [3]

The Nuremberg Principles were unanimously adopted by the December 1946 UNGA, and in 1950 they became legally binding.[4] Nuremberg's relevance to the nuclear age is that there was political and judicial intervention in the military policies and their implementation by a state and its agents. During the trial, US Judge Biddle reiterated the Tribunal's Charter:

The official position of defendants, whether Heads of State, or responsible officials in government departments, shall not be considered as freeing them from responsibility. ...the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual State. He who violates the laws of war cannot obtain immunity while acting in pursuance of the

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<sup>3.</sup> *Ground Zero*, op.cit., p. 3.

<sup>4.</sup> Ironically they were agreed on 8 August 1945 by the US, USSR, UK and France in UNGA Resolution 95, UN Doc. A/64/Add.1. See John Burroughs, *Nuclear Obligations: Nuremberg Law, Nuclear Weapons, and Protest*, Western States Legal Foundation, California, 1991, pp. 39-46. In 1950 the International Law Commission, acting pursuant to the UNGA resolution adopted a set of principles including the definitions of the Nuremberg Charter which made the Nuremberg Principles legally binding. See *Report of the International Law Commission*, 2nd Session, 5 UN GAOR Supp. no.12, 11, UN Doc. A/1316,1950, reprinted in *2 Y.B. International Law Commission*, vol. 374, UN Doc. A/CN.4/SERA/1950/Add.1.

authority of the State if the State in authorising action moves outside its competence under International Law. [5]

However, the US, UK, Soviet Union (USSR) and France, which accepted, and appeared willing to enforce the Nuremberg judgment deliberately blocked attempts to bring nuclear weapons specifically under international law. The question of banning them was implicit in the UNGA's first resolution [6], which was tabled by the four permanent members of the newly-formed Security Council. This led to the US Baruch Plan in December 1946 which failed because of Cold War realities. [7]

In 1949 at the Diplomatic Conference which approved the four Geneva Conventions concerned with the protection of the victims of war, the USSR tabled a proposal to outlaw nuclear weapons; but again Cold War pressures froze it out. [8] Nevertheless, from 1961 the overwhelming majority of states voted regularly in the UNGA that the use of nuclear weapons is a crime against humanity, and called for an international convention outlawing the use and possession of nuclear weapons. [9] Citizen groups and individuals also called for laws to prohibit nuclear weapons.

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<sup>5.</sup> *United States et al. v. Goering et al., Judgment of the International Military Tribunal*, 6 F.R.D. 69, 110, 1946; George Delf, *Humanising Hell: the law v. nuclear weapons*, Hamish Hamilton, London, 1985, pp. 88-89.

<sup>6.</sup> On 24 January 1946, the UNGA unanimously adopted Resolution 1 (i) to establish an International Atomic Energy Commission. This included a clause 'for the elimination from national armaments of atomic weapons and of all other weapons of mass destruction.'

<sup>7.</sup> Elliott Meyrowitz, *Prohibition of Nuclear Weapons: The Relevance of International Law*, Transnational, New York, 1990, Chapter IV, pp. 87-196.

<sup>8.</sup> Yves Sandoz, Christophe Swinarski, Bruno Zimmermann, eds., (International Committee of the Red Cross), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Martinus Nijhoff, Geneva, 1987, para.1839, p. 589.

<sup>9.</sup> As evidenced by the votes on UNGA resolutions 1653 (XVI) of 1961, 33/71B of 1978, 34/83G of 1979, 35/52D of 1980, 36/92I of 1981, 245/59B of 1990, 46/37D of 1991, and 47/53C of 1992. The latter was adopted by 125 votes for, 21 against, with 22 abstentions and 16 not voting. See Richard Falk, Lee Meyrowitz and Jack Sanderson, 'Nuclear Weapons and International Law', *World Order Studies Program, Occasional Paper*, no.10, Princeton University, October 1981, pp. 58-80.

## 2.2 International Committee of the Red Cross

On 5 September 1945, the International Committee of the Red Cross (ICRC) alerted their affiliates to the grave problems posed by this new weapon of mass destruction. During the Second World War, the ICRC had repeatedly urged all belligerents to restrict attacks to those against military objectives and to spare civilians. The realisation that combatants were far better protected by law than civilians who were suffering more casualties, led the ICRC to draft the 1949 Geneva Conventions. It urged the signatory states 'to take, as a logical complement to the said Conventions - and to the Geneva Gas Protocol of 1925 - all steps to reach an agreement on the prohibition of atomic weapons...'. [10]

It was largely through the influence of law expert Jean Pictet that the *Martens Clause* was included in these Conventions. (This clause was later invoked by the WCP during 1992-96 when millions of 'Declarations of Public Conscience' were collected and presented to the ICJ - see 10.2) It was named after Professor Frederick de Martens, after he included it in the preamble of the Hague Convention II (1899) and Convention IV (1907). It states:

Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity and the dictates of the public conscience. [11]

The ICRC's next attempt was an ill-fated initiative at their 1957 Conference. Their *Draft Rules for the limitation of the dangers incurred by the civilian population in time of war* stated:

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<sup>10</sup>. *ICRC Appeal to the High Contracting Parties Signatory to the Geneva Conventions for the Protection of the Victims of War: Atomic Weapons and Non-Directed Missiles*, Geneva, April 5, 1950.

<sup>11</sup>. The Hague Regulations of 1899 and 1907, the Hague Convention (IX) of 1907, quoted in the Dissenting Opinion of Judge Christopher Weeramantry, reprinted in Ginger (1998), op.cit., p. 294.

Without prejudice to the present or future prohibition of certain specific weapons, the use is prohibited of weapons whose harmful effects - resulting in particular from the dissemination of incendiary, chemical, bacteriological, *radioactive* or other agents - could spread to an unforeseen degree or escape, either in space or in time from the control of those who employ them, thus endangering the civilian population. [12] *[emphasis added]*

Just before the conference folded in acrimony over a dispute between China and Taiwan, the plenary requested the ICRC to transmit the 'Draft Rules' to governments for their consideration. [13] The ICRC raised them again in Vienna in 1965, and adopted a resolution with a specific clause declaring that 'the general principles of law of war apply to nuclear and similar weapons...', [14] but failed to mention the ICRC Draft Rules - which effectively killed the project.

The conference resolution did not indicate how the ICRC should proceed. In addition, the US had announced a massive military build-up in Vietnam where the ICRC became heavily involved. The impetus for updating the law of armed conflict therefore passed from the ICRC to the International Commission of Jurists, and Seán MacBride in particular. In his book detailing this process, Keith Suter argued that although the ICRC has exceptional influence for an NGO, 'it maintains that authority by avoiding rash actions'. [15] The ICRC itself acknowledged that the Draft Rules were rejected 'precisely because they directly addressed the question of nuclear weapons. As a result ... the ICRC decided to avoid this problem altogether when it drafted the Additional Protocols by consensus in 1977'. [16]

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<sup>12.</sup> Keith Suter, *An International Law of Guerrilla Warfare: The Global Politics of Law-Making*, Frances Pinter, London, 1984. p. 94.

<sup>13.</sup> *Ibid.*, p.93.

<sup>14.</sup> ICRC, *XXth International Conference of the Red Cross: Vienna 1965*, Geneva, 1965, p. 36 quoted in Suter (1984), *op.cit.*, p.97.

<sup>15.</sup> Suter (1984), *op.cit.*, p. 100.

<sup>16.</sup> Yves Sandoz, Director for International Law and Policy at the ICRC, 'Advisory Opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons', *International Review of the Red Cross*, January-February 1997, no. 316, p.7.

For 19 years following the signing of the 1949 Geneva Conventions, the UN and the International Law Commission steadfastly refused to debate these issues. [17] However, during the 1968 International Year of Human Rights, the UN hosted a conference in Teheran, with 84 countries and 57 NGOs participating. It was here that Seán MacBride, as Secretary-General to the International Commission of Jurists, founder of Amnesty International and Chairman of the International Peace Bureau (IPB), used his initiative, persistence and skill to facilitate the adoption of a resolution (Appendix I) which finally incorporated the ICRC Draft Rules.[18] He intended that it would update the entire law of armed conflict, including the use of nuclear weapons. Because of the international climate and strong resistance from the nuclear weapon states (NWS), this was politically impossible. However, it did request the UN Secretary-General:

...To draw attention of all states members of the UN system to the existing rules of international law on the subject and urge them, pending the adoption of new rules of international law relating to armed conflicts, to ensure that in all armed conflicts the inhabitants and belligerents are protected in accordance with 'the principles of the law of nations derived from the usages established among civilized peoples, from the laws of humanity and from the dictates of the public conscience.. [19]

It called on all states to sign the 1899 and 1907 Hague Conventions, the 1925 Geneva Protocol and 1949 Geneva Conventions, and reiterated the importance of the 'dictates of public conscience'.

The resolution forced international humanitarian law back on to the UN agenda and resulted in an UNGA resolution (Appendix I). MacBride, having revived the Draft Rules, used them as the basis of his Teheran resolution which subsequently became the 1977 Additional Protocols to the 1949 Geneva Protocols. The US, UK, Canada and France lodged 'declarations of understanding', excluding nuclear weapons from Protocol I which applied to

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<sup>17.</sup> Suter (1984), op.cit., p. 39.

<sup>18.</sup> Ibid., pp. 30-31. See also Alva Myrdal, *The Game of Disarmament*, Pantheon Books, New York, 1976, pp. 226-267.

<sup>19.</sup> Suter (1984), op.cit., p. 31.

international conflicts, [20] thereby sustaining the anomalous legal position of nuclear weapons.

How did one man wield such influence as a mere 'NGO observer' at a UN Conference? What personality traits and experiences gave him access to decision makers and the ability to use the UN system so effectively?

### **2.3 Seán MacBride**

When Jean Seaghan (Seán) MacBride was born in 1904 to Maude Gonne and Major John MacBride, newspapers in Ireland, France, the US and UK announced the arrival of the 'latest Irish rebel'. As the offspring of heroes, he was hailed as the saviour, and future President of Ireland. [21] Gonne was described as Ireland's 'Joan of Arc' during her 60-year campaign for republicanism. An ardent feminist, she was greatly admired throughout Europe, including by W.B. Yeats who dedicated many of his poems and plays to her. John MacBride led the Irish Brigade against the British in the Boer War, and became a national hero when he was executed following the 1916 Easter Rising in Dublin.

According to C.S. Andrews, Seán '...was brought up in situations where he only met the important people in the independence movement. He behaved from boyhood as if he was one of them. He was accepted as such by everyone he met.' [22] He was educated in France where his mother was in exile and under constant British surveillance. In 1919 they returned to Ireland where Seán joined the Irish Volunteers aged 14. He was arrested at 16, and the following year became the Staff Captain to Foreign Minister Michael Collins, acting as courier to Prime Minister de Valera during the independence treaty negotiations with the British. He spent the next 20 years organising the Irish Republican Army (IRA), in and out of prison, and 'on the run' from the British. During the late 1920s he attended anti-

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<sup>20</sup>. Sandoz (1987), ICRC Commentary, op.cit., para. 1845.

<sup>21</sup>. Anna MacBride White and A. Norman Jeffares eds., *The Gonne-Yeats Letters 1883-1938*, Random Century Group, Dublin, 1992, pp. 179-180. Anthony J. Jordan, *Seán MacBride*, Blackwater Press, Dublin, 1993, p.9.

<sup>22</sup>. C.S. Andrews, *Man of No Property*, Mercier, 1982, p. 35 quoted in, Jordan (1993), op.cit., p.41.

imperialist congresses in Europe where he met future Prime Ministers, including India's Nehru with whom he developed a life-long friendship.[23] As a result, many provisions of the 1937 Irish Constitution were included in the Indian Constitution. MacBride believed that it was the 1916 Rising and the liberation movement which followed that ultimately led to the demolition of the colonial system throughout the world. Throughout Asia and Africa, Ireland became the symbol of colonial liberation.[24] MacBride and his parents were revered in many 'Third World' countries for their leadership and, consequently, he held great sway with their leaders in his later campaigns on human rights and to outlaw nuclear and other weapons of mass destruction.

He studied law while working part-time as de Valera's international secretary and as a journalist under an assumed name in Dublin, London and Paris. In 1936 he became IRA Chief of Staff : but a year later ended his association, because he opposed the proposed bombing campaign in England and felt that the Irish Constitution provided a political way forward. Nevertheless, he subsequently defended IRA members free of charge. He was admitted to the Irish Bar, where he quickly became the most successful trial lawyer in Dublin and a Senior Counsel. In 1946 he formed the radical Republican Party (*Clann na Poblachta*) and in 1948 unseated de Valera. [25]

As Minister for External Affairs from 1948-51, he signed the Geneva Conventions for the Protection of War Victims (1949); the European Convention on Human Rights (1950); led Ireland out of the Commonwealth; and resisted US pressure to join the North Atlantic Treaty Organisation (NATO). He defended the right of small states to neutrality and promoted the pacific settlement of international disputes.[26] From 1948-51 he was a Vice President of the Organization for European Economic Cooperation; and in 1951 he presided over the Council of Foreign Ministers of the Council of

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<sup>23</sup>. Interview by Dewes with Caitriona Lawlor (MacBride's personal secretary 1976-1988), Dublin, 14 March 1998.

<sup>24</sup>. Seán MacBride, *A Message to the Irish People*, Mercier Press, Dublin, 1985, p.39.

<sup>25</sup>. Jordan (1993), op.cit., pp. 86- 97.

<sup>26</sup>. MacBride (1985), op.cit., p. 41.

Europe, of which he had been a founding member. He lost his parliamentary seat in 1957, resumed his legal practice and took many high profile cases, including the first case of the Supreme Court to the European Commission of Human Rights. [27]

In 1961 MacBride co-founded Amnesty International and chaired its executive for 13 years. During that time it established 3,000 groups in 40 countries.[28] In 1963 he became a Vice President of the International Confederation for Disarmament and Peace - a loosely structured body that coordinated, publicized and encouraged the activities of its 40 independent NGOs from 18 countries. [29] From 1963-71 he was Secretary General to the International Commission of Jurists, an NGO with consultative status with the UN. In 1968 he became IPB's Executive Chairman and its President in 1974. Over the same period he chaired the Special Committee of International NGOs on Human Rights.

From these prestigious positions, he was uniquely placed to assert the universality of the rule of law and of human rights, irrespective of political ideology. Based in Geneva and fluent in French, he had easy access to diplomats and legal advisers to governments. Over the years he developed close personal relationships with key decision makers in many countries. He was highly skilled in the political process both nationally and internationally, and had the confidence of a wide range of influential NGOs. He was articulate, well versed in the law, not intimidated by big power politics, and keen to promote initiatives taken by coalitions of smaller states. [30]

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<sup>27</sup>. Jordan (1993), op.cit., pp.157-159.

<sup>28</sup>. Ibid., p.161.

<sup>29</sup>. Lawrence Wittner, *Resisting the Bomb*, Stanford University Press, California, 1997, pp. 302-306.

<sup>30</sup>. Details of MacBride's history have been drawn from: Suter op.cit., pp. 24-25; MacBride (1985), op.cit.; Margery Brady, *The Love Story of Yeats and Maude Gonne*, Mercier Press, Dublin, 1990; Anthony Jordan, *Major John MacBride 1865-1916*, Westport Historical Society, Westport, 1991; Bruce Kent, *Undiscovered Ends: An Autobiography*, Harper Collins, London, 1992, p. 152; Mary Holland. 'IRA chief and world statesman', *The Press*, 30 January 1988; Alexander Cockburn, 'Ashes and Diamonds', *In These Times*, 3-9 February 1988; William Blair, 'Seán MacBride of Ireland is Dead at 83', *The*

He was also an astute strategist. He decided not to issue his 1968 draft resolution in Teheran as an NGO document to 'avoid some of the odium or oblivion to which such documents were assigned'. [31] He persuaded the Indian government to propose the resolution, and lobbied other delegations and UN officials until it was adopted. As an NGO observer he was free to discuss the resolution with officials in the UN Delegates' Lounge and at receptions. The leaders of the co-sponsoring delegations from India, Czechoslovakia, Jamaica, Uganda and the United Arab Republic were all old personal friends. He believed that this group was '...nearly ideal and probably the only political and geographical combination that could have secured a quasi-unanimous support for the resolution'. [32] Prior to the conference, he sought NGO endorsements to convince governments of the widespread support. [33] Although the prevailing acrimonious Cold War atmosphere in Teheran precluded specific mention of nuclear weapons in the resolution, MacBride saw it as an important first step.

MacBride asked the five Teheran co-sponsors to present the resolution to the UN later that year. He was convinced that their persistent and coordinated action, backed by world public opinion, would succeed. He did not underestimate the resistance which would come from many sources. He urged them to maintain close contact at a high level in New York, and warned against changing the resolution in case some of the 67 supportive governments used this as an excuse to oppose it. He urged them to build up public opinion through the media, and committed himself to mobilise NGOs to gain their governments' support. For much of 1968 MacBride was at the centre of a network of frenetic correspondence, coordinating the sponsoring governments and trying to gain the support of the UN Secretary General and the UN Director of the Human Rights Division.

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*New York Times Obituaries*, 16 January 1988; 'Worldwide tributes paid to Seán MacBride', *The Irish Times*, 16 January 1988, pp. 1 and 5; 'MacBride's long and complex career in law and politics', *The Irish Times*, pp. 4-5. Tiernan MacBride (Director), *Seán MacBride Remembers*, Film shown by Radio Telfis Eirann during May 1988.

<sup>31.</sup> Suter (1984), op.cit., p.28.

<sup>32.</sup> Suter (1984), op.cit., pp.28-35.

<sup>33.</sup> *Ibid.*, p. 27.

The resolution succeeded because it entered the UN system, not through the most obvious channels (the Law Commission, the UN Legal Division or the UNGA's Legal Committee), but through the Secretariat's Human Rights Division. It thereby evaded the hostility of the governmental legal experts and the UN lawyers had persuaded the UN in 1949 not to codify the law of armed conflict. [34] It was approached from the humanitarian perspective and ably introduced by India. MacBride had prepared delegates by circulating a draft. Surprisingly, it was adopted unanimously with no debate nor explanations of vote in the UNGA Plenary. [35]

Over the next few years, MacBride continued to build support from citizens and governments to push for real progress on implementing the resolution. He worked closely with Alva Myrdal, Sweden's Disarmament Ambassador, who had been at the Teheran Conference. [36] However, by 1970 MacBride had run out of steam, and pressure from his other commitments prevented him devoting more time to the issue. In 1971 he was no longer resident in Geneva at the Commission. In 1973 he became Vice Chairman of the Congress of World Peace Forces in Moscow and Vice-President of the World Federation of United Nations Associations. The same year, the UNGA unanimously appointed him as UN Commissioner for Namibia and an Assistant UN Secretary General. He presided over an Inquiry into Racist and Apartheid Regimes in South Africa; and his fearless denunciation of Anglo-American politics proved to the Third World and Socialist states that here was a Western citizen willing to challenge powerful bastions 'armed only with moral force and principles'. [37] He travelled extensively speaking with leaders until he had the overwhelming majority of UN members supporting Namibian independence. He used many speaking engagements to promote outlawing nuclear weapons.

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<sup>34</sup>. Ibid., p. 37.

<sup>35</sup>. Ibid., pp. 52-55.

<sup>36</sup>. Myrdal, op.cit.

<sup>37</sup>. Proinsias Mac Aonghusa, 'MacBride: Ireland's One International Statesman', *Hibernia*, 16 September 1977.

Meanwhile, in 1974, 25 years after the Geneva Conventions were adopted, a UN Diplomatic Conference for the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts was held in Geneva to discuss two draft Additional Protocols. Unfortunately, few of the delegates had expertise in the area, and most 'Third World' experts were attending another UN meeting on the Law of the Sea. There were few international law scholars researching the area; and the conservatism of lawyers meant they usually opted for decisions which required the least change in the status quo. [38] The NGOs circulated a memorandum as an official document which gave it very important status. It was signed by 49 NGOs and formally introduced by Niall MacDermot - MacBride's successor in the International Commission of Jurists - and it became a source of information for 'Third World' delegates. The conference ended in sterile confrontation between the Western and Third World blocs. According to Suter, one factor in its failure was the absence of experienced NGOs and their lack of political leverage especially on Western governments. All delegations knew that public opinion was dormant on the subject, and there was no media interest to promote it. Although 35 NGOs gained observer status, they did not run either an NGO Forum or a conference newspaper to challenge the basic framework within which the diplomats were working. [39] Suter felt that, if MacBride had been able to maintain his own high level of engagement in the subject and involve a larger NGO campaign to move the issue on to government agendas, there might have been sufficient political pressure for the complete revision of the laws of armed conflict.[40] As with the 1949 Diplomatic Conference, there was very little mention of the conference in the mass media, therefore the public and politicians were ignorant of its outcome. Undeterred, MacBride prepared a campaign, especially among NGOs which aimed to get greater publicity for the law of armed conflict. He continued to travel widely addressing peace and other

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38. Suter op.cit., pp.180-181.

39. Ibid., pp.135 and 179.

40. Ibid., pp. 184-185.

citizen groups and urged them to prioritise the task of having the UN adopt a Convention outlawing nuclear weapons. [41]

In 1974, he was awarded the Nobel Peace Prize 'in recognition of his many years of effort to build up peace and human rights all over the world'. [42] In his acceptance speech he asked :

Why outlaw a "dum-dum" bullet and not an atomic bomb? Yet, for some unexplained reason, there has been a refusal to include nuclear weapons among the weapons to be specifically outlawed in the revised texts of the Geneva Conventions. If any meaningful credibility is to be given to humanitarian law or to the ban on nuclear weapons, the first concrete measure which should be taken is to **OUTLAW THE USE OF NUCLEAR WEAPONS**. A simple Convention, or article in a Convention outlawing the **USE** of nuclear weapons would be a first simple step. Why not begin simply by outlawing the **USE, MANUFACTURE, SALE, TRANSFER** and **STOCKPILING** of nuclear weapons or components thereof? (*his emphasis*)

Calling for peace as the 'desperate imperative of humanity', he outlined his visionary plan which included 'an extended compulsory jurisdiction for the International Court of Justice and a wider jurisdiction to pronounced advisory opinions'. He lambasted the 'gobbledegook verbiage', 'meaningless language' and 'everlasting procrastination' of the UN which 'disenchants people'. He reiterated the call, supported by 40 NGOs at IPB's 1974 International Conference on Disarmament, for the UNGA to convene a World Disarmament Conference.[43] 'The time has come', he said, for "**WE THE PEOPLE..**" [*his emphasis*] ...to assert ourselves and to demand the outlawing of all nuclear weapons...'. Recognising the right of 'ordinary

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<sup>41</sup>. Ibid., pp. 132-133; Examples include speeches to: The International Conference on the Outlawing of Biological, Chemical and Nuclear Weapons', Stockholm, 26-27 August 1971; The World Federation of UNAs, 'International Symposium on Campaign for the Abolition of Nuclear Weapons and the Banning of Chemical and Biological Weapons, Dresden, March 1972; and the World Peace Council Presidential Committee meeting entitled 'Tasks for the Peace Movement', Helsinki, 28-31 January, 1972.

<sup>42</sup>. See MacBride's speeches listed above.

<sup>43</sup>. In 1975 IPB sponsored the 'Bradford Proposals' - over one million copies in 10 languages were distributed worldwide. By 1977 it was translated into 12 languages with 2 million copies printed. See Seán MacBride, 'Is Nuclear Survival Possible?', Address on the occasion of the award of an Honorary Degree, University of Bradford, United Kingdom, 4 May 1977.

people' to have a say in their own survival, he claimed that 'the non-governmental sector is just as qualified as the "experts" of those who have a vested interest in armament and war.' He called for women to be given a 'real decisive role' in all negotiations and conferences. He acknowledged that 'women have a much better understanding of the imperatives of peace and are much less easily "taken in" by the specious arguments of experts or diplomats'. [44]

In his concluding remarks, he noted that higher educational standards and the mass media meant that public opinion could influence events more than ever before. Voluntary organisations were essential as

...they are the only bodies that will have the necessary independence and initiative to restore some faith and idealism in our world. If disarmament can be achieved it will be due to the untiring selfless work of the non-governmental sector. [45]

In 1977 he became President of the UNESCO International Commission for the Study of Communication Problems. At home he was described as an international statesman who was 'without question the best known and most distinguished living Irishman'. [46] He received five honorary doctorates, the American Medal of Justice and the Lenin International Prize for Peace. In 1982 he chaired another commission to examine reported violations of international law by Israel during its invasion of Lebanon.

He used his Nobel Prize money to further his goals of total nuclear disarmament, and in 1978 the UN convened the first Special Session on Disarmament (UNSSOD I) as a direct result of IPB's promotion of a World Disarmament Conference (Appendix I). Prior to UNSSOD I he urged Ireland to 'play an important role' by 'working independently of all power blocks' and called for a six-point policy programme for World Disarmament. This included the adoption of an 'International Convention outlawing the use of all

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<sup>44</sup>. Seán MacBride, *The Imperatives of Survival*, Nobel Foundation, Oslo, December 1974, pp. 209, 211, 213, 214-215, 218-219, 221.

<sup>45</sup>. Ibid., pp. 221-222.

<sup>46</sup>. Aonghusa (1977); Editorial, 'His Infamous Career', *The Times*, London, 16-18 January 1988.

forms of nuclear or radiation weapons and making the use of such weapons a crime against humanity punishable under international law'. [47]

In 1980 the UK agreed to site 160 US nuclear warheads, with up to 25 in Northern Ireland.[48] MacBride exposed this, and highlighted Ireland's pro-NATO voting on nuclear disarmament issues. Criticising its conspicuous lack of UN initiatives, he again urged Ireland to take the lead, with other small neutral states, by promoting a nuclear weapons convention, which he was convinced would attract an overwhelming majority. He promoted the leadership role of small states which maintained their independence, had no axe to grind, and based their policies on fundamental principles. He felt that Ireland was in a unique position because it was viewed as the 'mother country' by 25 million in the US, and millions throughout Latin America, Canada, A/NZ, Australia and elsewhere. In India, Pakistan and Bangladesh, it was regarded as a country imbued by an idealism based on freedom, justice and democracy. With no military ambition, unaligned to any of the major powers, and a strong proponent of the UN Charter and disarmament, its voice was respected by the international community.[49]

MacBride remained fearlessly critical of the relative silence and lethargy amongst his legal colleagues, and continued to travel extensively (eg 16 countries in 1982) urging governments and citizens to take urgent action to abolish nuclear weapons. He was indefatigable, working right up until his death in January 1988. An *Irish Times* editorial described his remarkable transformation and leadership as follows:

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<sup>47.</sup> 'MacBride call for N. disarmament', *Irish Independent*, 19 November 1977, Irish League to oppose arms build-up', *Irish Press*, 19 November 1977; 'Disarmament the only hope, MacBride tells UN', *The Irish Times*, 13 June 1978; Editorial, 'Survival', *The Irish Times*, 13 June 1978; 'Disarm or Die', unsourced newspaper article, undated, but likely to be February or March 1978.

<sup>48.</sup> MacBride (1985), op.cit., p.51. The Cruise Missiles planned for Northern Ireland were never deployed.

<sup>49.</sup> Seán MacBride, 'The Role of Smaller Nations in the Present Day World', Lion's Club Luncheon, Dublin, April 1980; 'Ireland, Independence and the World', Trinity College Historical Society, October 1980; 'The Freedom of the Press', London, July 1981. Statement to the Irish Committee to Promote 1975 Helsinki Agreements, Ireland, February 1980.

The young gunman came to be the most fervent convert to peace. His commitment to the rule of law and to the protection of human rights was absolute. And his conviction grew that it was only by making the possession of nuclear weapons illegal in international law, that mankind could be saved from destroying itself. His conversion from unconstitutional to constitutional methods in his vision of Ireland's future was matched by a recognition that the evolution of all civilised society had to be similarly grounded. The lawyer blended with idealist and in turn these were reinforced with qualities of stealthy political pragmatism. The end result - Seán MacBride - in his heyday - was a most formidable force. [50]

## 2.4 Legal Views

*Laws should be read by all and be known to all. Put them in shape, inform them with light and philosophy, and give them into every man's hand. Laws are made to guard the rights of the people, not to feed the lawyers.* Francis Bacon, 1585 [51]

*Laws, which are severed from the grounds of nature, manners and policy, are like wall flowers, which, though they grow high upon the crests of states, yet they have no deep roots.* Bacon [52]

The nuclear juggernaut has suppressed Bacon's humane vision and most efforts to clarify the legal status of these weapons. The official secrecy protecting government defence policies has ensured that neither the legal fraternity nor politicians have access to the information necessary to 'inform them with light', let alone philosophy.

When Nobel Laureate and famous physician Albert Schweitzer was asked in 1958 to sign an appeal with the Pope to the World Court to outlaw nuclear tests, he castigated lawyers for their 'silence' on nuclear weapons. He accused them of being 'unreliable allies' who should have been the 'ones to

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<sup>50.</sup> *The Irish Times* editorial, 16 January 1988 quoted in Jordan (1993), op.cit., p. 188.

<sup>51.</sup> Alfred Dodd, *Francis Bacon's Personal Life-story*, Rider and Company, London, 1986, p. 170.

<sup>52.</sup> Bacon quoted in C. D. Bowen, *Francis Bacon*, Boston, 1963, requoted in Delf, op. cit., p.59.

use and raise the argument (at the World Court) that atomic weapons contradict the law of humanity: but they were silent and have failed'. He accused them of shying away from 'questions that were unsympathetic to governments'. [53] Later, MacBride acknowledged that a tiny percentage of the legal profession in Western countries decided not to be 'elective mutes' and dared to expose the illegality of nuclear weapons. Their writings are recognised as an important source of international law [54] and have underpinned some recent activities of the international peace movement - especially those within, or allied to NWS. [55]

In 1947, J.M Spaight, the distinguished British legal scholar, first established the argument that the use of nuclear weapons would be contrary to the laws of humanity and the dictates of the public conscience in *Air Power and War Rights*. [56] Similar conclusions were reached in the late 1950s by Nagendra Singh (later ICJ President) and Schwarzenberger. [57] Following the Tokyo International Military Tribunal, the Indian judge issued a lengthy dissenting opinion asserting that the Hiroshima and Nagasaki bombings were war crimes. [58]

This provoked some international debate amongst other well respected authorities in international law such as Hersch Lauterpacht and four other scholars arguing that their use was legal under existing international law.

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<sup>53.</sup> Homer Jack (ed), *Albert Schweitzer on Nuclear War and Peace*, Brethren Press, Illinois, 1988, p. 182. Norman Cousins, *Albert Schweitzer's Mission: Healing and Peace*, Norton, New York, 1985, pp.213- 214.

<sup>54.</sup> Meyrowitz, op.cit., p. xvi.

<sup>55.</sup> R.Manson, *The Pax Legalis Papers: Nuclear Conspiracy and the Law*, Jon Carpenter, Oxford, 1995, p. xiii.

<sup>56.</sup> J.M. Spaight, *Air Power and War Rights*, 1947, referred to in Elliott Meyrowitz, *The Relevance of International Law*, Transnational Publishers, Inc, New York 1990, p.43 and in R. Jaipal, *Nuclear Arms and the Human Race: to die or Not to Die*, Allied Publishers, New Delhi, 1986, p.221.

<sup>57.</sup> G. Shwarzenberger, *The Legality of Nuclear Weapons*, London,1958; Nagendra Singh, *Nuclear Weapons and International Law*, Stevens and Sons Ltd, New York, 1959.

<sup>58.</sup> Adam Roberts, 'The Relevance of Laws of War in the Nuclear Age', in *Nuclear Weapons, the Peace Movement and the Law*, John Dewar, Abdul Paliwala, Sol Picciotto and Mattias Ruete, eds.,MacMillan Press, Hampshire, 1986, p. 36.

[59] In the early 1960s, William O'Brien supported the legality of 'small, clean' nuclear weapons emitting low radioactivity against military targets. This was later challenged by Henri Meyrowitz, who argued that all nuclear weapons were illegal. [60] In 1975 Mary Kaufman, a member of the US Nuremberg prosecuting team, argued the 'fundamental illegality' of the Trident nuclear system citing international law outlined in numerous agreements and treaties. She advised the public to 'take issues to the courts even though you're not likely to win', stressing the importance of the 'mobilization of opinions'. [61]

Within Japan, some lawyers have long maintained that the threat and use of nuclear weapons violate international law, and constitute crimes against humanity. [62] The first attempt to condemn the 1945 atomic bombings was directed by the Japanese government to the US State Department on 11 August 1945:

It is an elementary principle of international public law that in time of war the belligerents do not have unlimited right in the choice of attack and that they cannot resort to projectile arms or any other means capable of causing the enemy needless suffering... The bombs in question, used by the Americans, by their cruelty and by their terrorizing effects, surpass by far gas or any other arms, *the use of which is prohibited [my emphasis]....* [63]

Kenji Urata argues that the Japanese Constitution outlaws war, but that successive Japanese governments have colluded with the US to undermine the three Non-Nuclear Principles, which ban the production, possession and

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<sup>59.</sup> For a comprehensive discussion of the opinions of legal scholars see Meyrowitz, *op.cit.*, Chapter 3, pp 41- 86.

<sup>60.</sup> *Ibid.*, pp. 58-59.

<sup>61.</sup> Gregg Thompson 'Nuremberg prosecutor says Arms mongers "Nazis"', *The Ubysey*, 27 November 1975.

<sup>62.</sup> Kenji Urata, 'The Relevance of the World Court Project - with respect to Japan's Experience', Report for World Court Project Seminar, Netherlands, November 1995, p.1.

<sup>63.</sup> Mitsuo Okamoto, 'Towards the Delegitimization of Nuclear Weapons', *Hiroshima Shudo University Research Review*, vol.8,1992, p.54; K.Urata, 'The Japanese Constitution and Nuclear Weapons: A Discussion on the Relationship Between the Constitution and International Law', Draft paper presented to International Association of Constitutional Law Fourth World Congress, Tokyo, 25-28 September, 1995, pp.1-3.

introduction of nuclear weapons into Japan. [64] Japanese lawyers and citizens' organisations demanded that these be enacted into law and in 1979, 17 law professors presented a draft bill 'to ban the manufacture, possession, maintenance, introduction, etc of nuclear weapons' based on the spirit of the Constitution. [65]

According to Masenori Ikeda, the first time the idea of asking the ICJ to judge nuclear weapons appeared was in the statement of the 1958 Fourth World Ban-the-Bomb Conference of jurists in Japan. [66] Three years earlier, five Japanese citizens had instituted the Shimoda case against their government. They sought to recover damages for injuries relating to the Hiroshima and Nagasaki bombings, and alleged that the use of atomic weapons violated both conventional and customary international law. In 1963, the Tokyo District Court held that the bombing of these cities was indiscriminate and not justified by 'military necessity'; the cities were not 'military targets'; and the atomic bombs caused even more suffering than those weapons (dum-dum bullets and poison gas) already outlawed for producing unnecessary suffering. Therefore the US had violated international law. [67]

The significance of this case, according to Meyrowitz, was the Court's discussion of the applicability of the laws of war to nuclear weapons and its contribution to the ongoing debate on their legal status. Although he claims this was 'the only case that has questioned the legality of nuclear weapons', there was another in Britain known as *Chandler versus the Director of Public Prosecutions*. In 1962, the 'Committee of 100' demonstrated at a US Air Force base. Six of the organisers were charged under the Official Secrets Act with conspiring to incite others to violate the law 'for a purpose prejudicial

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<sup>64.</sup> Kenji Urata, 'Aspects of the Right to Live in Peace', *Law in East and West*, ed. Institute of Comparative Law, Waseda University Press, Tokyo, 1988, p. 495.

<sup>65.</sup> *Ibid.*, p. 496.

<sup>66.</sup> Masanori Ikeda, 'Outlawing nuclear weapons: World Court movement wins important victories', *The Japan Times*, 31 October 1995.

<sup>67.</sup> Meyrowitz, *op.cit.*, pp. 60-62. See also, Falk, Meyrowitz, etc., *op.cit.*, pp. 53- 57 and Shimoda Case decision reprinted in the *Japanese Annual of International Law*, 1964, pp. 212-252.

to the safety or interests of the State'. The judge ruled that no evidence would be admitted which related to the ultimate purpose of the defendants, and refused to allow expert witnesses to discuss the legality of the possession or use of nuclear weapons. Despite this, some of the defendants were able to use international law by citing the Nuremberg Principles. [68]

## **2.5 The Military**

Because they implement their government's nuclear policies and are constrained by security clearances, very few individual high-ranking members of the military from NWS spoke out. However, after witnessing the 1946 US atomic tests on Bikini Atoll, the Commander of Operations Vice Admiral William Blandy said: 'I sincerely trust that a plan which is at the same time practical and acceptable to all nations can be devised to outlaw it'. [69]

In 1979 the UK's first Chief of Defence Staff, Lord Louis Mountbatten, caused consternation when he argued that wars cannot be fought with nuclear weapons, and called for the banning of tactical nuclear weapons. [70]

## **2.6 International Peace Bureau (IPB)**

The IPB was founded in 1892, largely through the influence of Baroness Bertha von Suttner, to 'serve the cause of peace by the promotion of international cooperation and non-violent solution of international problems' and 'to serve the independent peace movements of the world'. It was active in promoting the 1899 Hague Peace Conference which adopted the Convention for the Pacific Settlement of International Disputes and the

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<sup>68.</sup> Richard Taylor, *Against the Bomb: The British Peace Movement 1958-1965*, Clarendon Press, Oxford, 1988, pp. 232 - 247.

<sup>69.</sup> Robert Stone, (editor/director), *Radio Bikini*, Crossroads Film Projects Ltd, 1987.

<sup>70.</sup> Lord Louis Mountbatten, 'On Nuclear War'. Speech given to Swedish International Peace Research Institute at Strasbourg on 11 May 1979. Another strong British military critic of nuclear weapons was Commander Stephen King-Hall. See Boulton,op.cit., pp. 27-35.

Convention for the Respect of the Laws and Customs of War on Land. In 1910 the IPB received the Nobel Peace Prize for 'serving as a channel of communication between governments and the peace movements'. The groups which formed IPB in 1892 were described thus:

The internationally coordinated movement, composed of independent, often fractious members, directed its arguments to the public at large as well as to those in power. A small army of indefatigable workers - men and women- traveled [sic] lecture circuits, published catalogued libraries of books and brochures, raised money from governments and private donors, confronted politicians, challenged military budgets, criticised history curricula, combated chauvinist and establishment media, lobbied diplomats, questioned candidates for office, telegraphed congress resolutions to foreign ministries, and held congresses nearly every year from 1889 to 1914 to thrash out common positions. [71]

After World War I, the IPB worked with the Society of Friends (Quakers) to support the League of Nations initiative to ban gas warfare, and for the General Treaty for the Renunciation of War of 1928. [72]

At its 1981 General Assembly under MacBride's leadership, the IPB agreed to organise a series of in-depth studies and meetings about the illegality of nuclear weapons. MacBride aimed to 'trace the growth of the legal concept that wars are not prohibited under international law' and 'produce an authoritative Declaration as to the morality and legality of nuclear weapons'. The IPB sought active support of religious and legal organisations involved in the development of international law. [73] During the early 1980s the IPB co-sponsored conferences of specialists in law, morality and medicine in many parts of the world. [74] A major IPB symposium on nuclear deterrence in Britain coincided with the publication of a UN study on nuclear

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<sup>71.</sup> Sandi Cooper, *Patriotic Pacifism: Waging War on War in Europe 1815-1914*, Oxford University Press, New York, 1991, pp.60-61.

<sup>72.</sup> Keith Mothersson, *From Hiroshima to the Hague: a guide to the World Court Project*, IPB, Geneva, 1992, p.22; Geoffrey Darnton,(ed), *The Bomb and the Law: London Nuclear Warfare Tribunal, evidence, commentary and judgment*, Swedish Lawyers Against Nuclear Arms, Stockholm, 1989. p.xiii.

<sup>73.</sup> IPB Report of Seminar and General Conference, Helsinki, 4-6 September 1981, pp. 23-25.

<sup>74.</sup> Darnton, op.cit., p. xvii.

weapons.[75] By this time the IPB had 35 international, national and regional affiliated groups representing more than 30 million people.

In 1980 a few international lawyers began writing about nuclearism and international law. [76] The revived debate led in 1982 to the formation of the New York Lawyers' Committee on Nuclear Policy (LCNP) and the Lawyers for Nuclear Disarmament (LND) in the UK. In 1982 MacBride, on behalf of the IPB and LCNP, presented the UNSSOD II with proposals adopted by a jointly sponsored International Symposium. [77]

## 2.7 World Peace Council

The World Peace Council (WPC) convened its first congress in 1949, with representatives from 72 countries. The following year they launched the Stockholm Peace Appeal which collected 650 million signatures worldwide, including over a million from Britain and 20,000 from A/NZ. It read:

We demand the absolute banning of the atomic weapon, arm of terror and mass extermination of populations. We demand the establishment of strict international control to ensure the implementation of this banning measure. We consider that any government which would be the first to use the atomic weapon against any country whatsoever would be committing a crime against humanity and should be dealt with as a war criminal.

Critics were quick to point out that the language reflected official USSR statements, and most signatures came from Communist countries where people were officially urged to sign. However, the Appeal expressed a widespread demand for nuclear abolition which could not easily be ignored by political leaders. [78]

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<sup>75.</sup> *Comprehensive Study on Nuclear Weapons*, reprinted in *Nuclear Weapons. Report of the Secretary-General*, Cambridge, Massachusetts, Autumn Press, 1981. See also the updated study: *Report of the Secretary General A/45/373*, 18 September 1990, UN publication.

<sup>76.</sup> Richard Falk, E. Meyrowitz, and J. Sanderson, 'Nuclear Weapons and International Law', *Indian Journal of International Law*, 1980, p. 541.

<sup>77.</sup> Darnton, op.cit., p. xvii; Rainer Santi, *Illegality of Nuclear Weapons*, Draft Brochure, 28 August 1989.

<sup>78.</sup> Elsie Locke, *Peace People: A History of Peace Activities in New Zealand*, Hazard Press, Christchurch, 1992, p. 135.

## 2.8 Scientists and Physicians

Prior to the early 1950s, few scientists or physicians had spoken out strongly against nuclear weapons, [79] and the general public remained largely unaware of the ongoing health and environmental effects of nuclear testing, partly because of deceptive campaigns to reassure the public about their safety. As doctors and scientists began disseminating information about the health effects of the US nuclear test at Bikini Atoll, worldwide protests grew rapidly. Strontium-90 was detected in children's teeth in the US, and in women's breast milk in the South Pacific. The Pugwash Conferences on Science and World Affairs were founded in 1955 to try to 'put the nuclear genie back into the bottle'. [80] The Russell-Einstein Manifesto stated that the 'abolition of thermonuclear weapons ... would lessen the fear of a sudden attack...'. [81] Scientists appealed against nuclear weapons and in 1957, 18 leading physicists in West Germany urged their government to renounce all nuclear weapons, and refused to take part in the production, testing or use of nuclear weapons.[82]

In conjunction with this initiative, Albert Schweitzer, in an attempt 'to awaken the attention of humanity', delivered a substantive Declaration of Conscience from Oslo, highlighting the effects of nuclear testing and calling for its cessation. It was broadcast from 150 transmitters and heard by millions throughout the world. It was then reprinted widely in the press. [83] Within a year he broadcast another three appeals which were soon widely published in the booklet *Peace or Atomic War*. In 1958 he headed the list of 16 influential people who published an 'open letter to "the men at Geneva" who

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<sup>79.</sup> See Lawrence S. Wittner, *One World or None: A History of the World Nuclear Disarmament Movement Through 1953*, Stanford University Press, California, 1993, pp. 157-160.

<sup>80.</sup> IPPNW, *Abolition 2000: Handbook for a World Without Nuclear Weapons*, Boston, 1995.

<sup>81.</sup> Linus Pauling, *No More War!*, Dodd, Mead & Co, New York, 1958, pp. 243-251.

<sup>82.</sup> *Ibid.*, p.180.

<sup>83.</sup> Jack (1988) *op. cit.*, pp. 57-67, 96-97; Cousins (1985), *op.cit.*, pp. 173-175.

were negotiating a nuclear test-ban agreement'. [84] He also wrote to many of his influential friends, including the famous cellist Pablo Casals [85], urging them to join the struggle for nuclear abolition:

The argument that these weapons are contrary to international law contains everything that we can reproach them with. It has the advantage of being a legal argument. If the battle is fought along these lines, it will achieve the desired results. No government can deny that these weapons violate international law...and international law cannot be swept aside! [86]

In 1958, another Nobel Laureate Linus Pauling, who was inspired by Schweitzer's leadership, presented the UN Secretary General with a petition from 9,235 scientists from 44 countries calling for an end to testing:

We believe that international problems should be solved not by war, but by the application of man's power to reason - through arbitration, negotiation, international agreements, international law...' [87]

Between 1958-61 several conferences of scientists and academics were held, and in 1961 another UN appeal was signed by about 200,000 people from 45 countries. These beginnings led to the establishment of groups such as the Campaign for Nuclear Disarmament (CND) in the UK and the

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<sup>84.</sup> Jack (1988), op.cit., p.17. The signatories included Eleanor Roosevelt and Bertrand Russell.

<sup>85.</sup> Pablo Casals was devastated by the atom-bombing of Hiroshima and Nagasaki and in 1946 he cancelled plans for tours and recordings in protest. Schweitzer's three radio appeals from Oslo entitled 'Peace or Atomic War?' impressed Casals greatly. In 1957 when he was invited to play in the UN General Assembly Hall on the 13th anniversary of the UN, he planned to deliver a strong message opposing nuclear weapons to the UN representatives. However the UN only allowed delegates to speak, so he prerecorded his message in English, French, Spanish and Italian. He received 5,000 letters and telegrams in direct response to his UN appearance. For details see H. L. Kirk, *Pablo Casals: A Biography*, Hutchinson, London 1974, pp. 432-433, 466-511.

<sup>86.</sup> Letter from Schweitzer to Casals in Hans Walter Bahr, ed., *Albert Schweitzer, Letters 1905-1965*, Macmillan, New York, 1992, pp.279-280. Also Pauling, op.cit., pp. 255-267, Appendix 3, for the full text of Schweitzer's Declaration of Conscience, 24th April 1957. See Boulton, op.cit., for edited talks by Schweitzer 'Peace or Atomic War', pp. 13-19.

<sup>87.</sup> Pauling, op.cit., p. 184.

National Committee for a Sane Nuclear Policy in the US. [88] In 1958, Pauling led an international group of plaintiffs in a US federal suit requesting an injunction to restrain above-ground nuclear tests in the South Pacific. It was based on constitutional and international law grounds, but was dismissed 'with prejudice'. Undeterred, Pauling returned to court in 1962 accompanied by 224 leading citizens from 27 countries. They charged that the US defendants, together with their Soviet and British counterparts, had caused the plaintiffs 'to be damaged genetically, somatically and psychologically'. Again the District Court dismissed the case. [89]

With the dubious victory of the Partial Test Ban Treaty (PTBT) in 1963, public debate on nuclear issues in scientific, medical and legal circles subsided, especially in Europe. However, in 1962 a group of Boston doctors, who had founded Physicians for Social Responsibility (PSR) a year earlier, had described the potential medical effects of a nuclear attack on that city. They concluded that 'physicians ... must also explore a new area of preventative medicine, the prevention of thermonuclear war'. [90]

One physician who responded to this challenge was Australian mother of three, Helen Caldicott. Inspired by Bertrand Russell's autobiography and infuriated by France's continued atmospheric testing in the South Pacific, she began educating about the dangers of radiation, the nuclear fuel cycle and nuclear weapon proliferation. Her public education programme from 1971-76 helped mobilise thousands throughout Australia and interest media.[91] She took her passionate and articulate message to the uranium miners, mothers, politicians, trade unionists, dock workers and other health professionals. In 1975 she spoke to doctors throughout the US, and later toured many countries mobilising thousands to take immediate action to help

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<sup>88.</sup> Jack (1988), *op.cit.*, p. 13.

<sup>89.</sup> Peter Weiss, 'Nuclear War in the Courts', in Dewar, *op.cit.*, pp.185 -186.

<sup>90.</sup> IPPNW, V.W. Sidel, H.J. Geiger, and B Lown, 'The Physician's Role in the Post-Attack Period', *New England Journal of Medicine*, 266: 1962, pp. 1137-1145.

<sup>91.</sup> Helen Caldicott, *Nuclear Madness: What you can do*, Jacaranda Press, Queensland,1978, pp. 20-21.

stop the nuclear madness.[92] She believed that it was ‘the people who should hold the balance of power in a democracy’ and that citizens must ensure that their elected representatives reflected popular opinion.

After settling in the US in 1977 Caldicott revived the dormant PSR in Boston. By 1980 there were 10,000 members with 75 chapters, with 40 in formation. Other professional groups began to emulate the PSR model. Women’s groups mushroomed throughout the US, and in 1980 Caldicott founded Women's Action for Nuclear Disarmament (WAND), which became an effective lobbying body. [93] In 1982 they played a key role in placing a nuclear freeze resolution before the US Congress. She had frequent television interviews and her film *The Last Epidemic* was shown throughout the US. According to Caldicott, newspaper polls in 1983 showed that 80% of the US public believed that nuclear war would not remain limited, be won or survived [94]. Caldicott's high-profile campaign can be partially credited with this revolution in public thinking. She met with President Reagan and leading politicians in the Soviet Union.

By 1982 PSR had a membership of 30,000 with 153 chapters in 48 states. Throughout the early 1980s similar medical organisations appeared all over the world, often as a consequence of a Caldicott visit. [95] In 1980, the earlier PSR joined their Soviet counterparts and formed the International Physicians for the Prevention of Nuclear War (IPPNW). Its first conference was held in 1981 in Virginia (US) with 78 physicians from 13 countries. A year later there were 160 physicians from 31 countries. [96]

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<sup>92.</sup> Ibid., pp. 109-110.

<sup>93.</sup> Helen Caldicott, *If you Love this Planet*, W. W. Norton & Co, New York, 1992.

<sup>94.</sup> Helen Caldicott, *A Passionate Life*, Random House, Australia, 1996, p. 278.

<sup>95.</sup> Ibid, pp. 226,227,248, 278.

<sup>96.</sup> Ibid., p. 296.

## 2.9 Women's International League for Peace & Freedom (WILPF)

*We can best help you prevent war, not by repeating your words and repeating your methods, but by finding new words and creating new methods.* Virginia Woolf [97]

WILPF was established in 1915 as a vehicle for women to implement their hopes for a peaceful world. It advocated fundamental changes in economic and social conditions and relations. One of its primary aims became:

... the total and universal disarmament, the abolition of violence and other means of coercion for the settlement of all conflicts, the substitution in every case of some form of peaceful settlement, and the strengthening of the UN and its family of Specialized Agencies, for the prevention of war, a sustainable environment, the institution of international law, and for the political, social, and economic cooperation of all peoples. [98]

Most WILPF founders believed that women's full participation in public life would bring an end to all wars:

Women will soon have political power. Woman suffrage and permanent peace will go together. When the women of a country are eagerly asking for the vote and a country is of a mind to grant the vote to its women, it is a sign that the country is ripe for permanent peace. Yes, the women will do it. They don't feel as men do about war. Men think of the economic results; women think of the grief and pain, and the damage to the race. If we can bring women to feel that internationalism is higher than nationalism, then they won't stand by governments, they'll stand by humanity. [99]

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<sup>97.</sup> Petra Kelly, *Fighting for Hope*, Hogarth Press, London, 1984, p. 35.

<sup>98.</sup> Catherine Foster, *Women for All Seasons: The Story of the Women's International League for Peace and Freedom*, University of Georgia Press, Georgia, 1989, preface. See also Mary Florence, Catherine Marshall, C K Ogden, *Militarism versus Feminism: Writings on Women and War*, (eds: Margaret Kamaster and Jo Vellacott), Virago, London, 1987.

<sup>99.</sup> Foster, op.cit., p.17; Josephine Eglin, 'Women and peace: from the Suffragists to the Greenham women' in Richard Taylor and Nigel Young eds., *Campaigns for Peace: British peace movements in the twentieth century*, Manchester University Press, 1987, pp. 221-259; Jo Vellacott, " 'Transnationalism' in the Early Women's International League for Peace and Freedom", in Harvey L. Dyck, (ed), *The Pacifist Impulse in Historical Perspective*, University of Toronto Press, 1996, pp. 362-383; Keith Robbins, *The Abolition of War: The 'Peace Movement' in Britain, 1914-1919*, University

For many years, WILPF was effectively the only international women's peace organisation. In 1969 British WILPF held a large International Conference on Chemical and Biological Warfare in London and the Australian and Swedish sections also focused on this issue. In 1980 Scandinavian women launched a petition to stop the arms race. Within a few months, over half a million signatures were presented to the UN Secretary General. [100]

## 2.10 Conclusions

By the early 1980s, the face of the peace movement had changed significantly. Until then tactics adopted included passing resolutions, writing academic papers, speaking at conferences and some major nonviolent civil disobedience in the 1960s by the UK 'Committee of 100', CND marches and rallies. Although individual leaders (predominantly male and European) had spoken out within professional groups, there were few international actions (apart from MacBride's initiatives) during the previous 35 years which channelled the aspirations of the ordinary people for nuclear abolition into any achievable international campaign.

The professionals who had dared to speak up had little influence, because their protests were usually directed only at the particular aspects pertaining to their specialities e.g. meteorologists against climatic war, environmentalists against environmental destruction, doctors against medical effects, lawyers promoting international law. Rarely were conclusions drawn from bringing this knowledge together; and media coverage was sparse. Myrdal criticised groups like Pugwash for producing generalised statements which were marred by the political desire not to

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of Wales Press, Cardiff, 1976, pp.96, 99, 204, 212; Martin Ceadel, *Pacifism in Britain 1914-1945: The Defining of a Faith*, Clarendon Press, Oxford, 1980; Jill Liddington, *The Long Road to Greenham:Feminism and Anti-Militarism in Britain since 1820*, Virago, London, 1989. See also Sandi Cooper, *Patriotic Pacifism: Waging War on War in Europe 1815-1914*, Oxford University Press, 1991 for a detailed account of the tension between women adhering to national positions on the one hand and those advocating universalist peace principles on the other.

<sup>100</sup>. Foster (1989), op.cit. pp. 60-61, 78.

favour either side, and were too respectful towards partial and ineffective disarmament agreements. Peace research centres tended to concentrate on problems of 'strategic' importance, primarily at the nation-state level. Some admitted they would risk losing government funding if they criticised the arms race. [101]

For two decades (1960-80) the movement assumed that a Comprehensive Test Ban Treaty (CTBT) was imminent and diverted attention to other urgent issues such as the Vietnam War (which also included opposition to the use of nuclear weapons in this war) and threats to the environment. A few groups attempted to use the law to challenge nuclearism within their own states, but court cases were frequently dismissed, which in turn disempowered activists.

MacBride was a rare 'activist' lawyer consistently promoting the illegality of nuclear weapons and using the UN system to challenge it head-on. His initiative was the precursor to the WCP, and IPB's educational work helped alert the international peace movement and wider public to using international law in the struggle against nuclearism. As an elder statesman based in Geneva, he used his unique contacts with governments and citizen groups, his legal expertise and knowledge of UN process to initiate ambitious projects. Backed by many prestigious citizen groups such as the ICRC, IPB and the International Commission of Jurists, he immediately brought the weight of public opinion behind him. He knew the importance of the role of neutral and non-aligned states within the UN community, and became the catalyst to draw together coalitions which were unlikely to form by themselves. His wide circle of influential friends facilitated access to decision makers, which was extremely rare for most citizen groups and individuals. Considering the constraints of the Cold War and his extremely heavy professional commitments, his achievements were amazing.

Few governments had access to international law experts able to advise them on updating the laws of armed conflict to include nuclear weapons. At the height of the Cold War, any serious attempts to secure a comprehensive

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<sup>101.</sup> Myrdal, op.cit., p.320.

Nuclear Weapons Convention (NWC) were thwarted by the NWS and their allies. Although there was coordination and leadership amongst the Latin American states involved in establishing the world's first nuclear weapon free zone in a populated area, and within the South Pacific in opposing nuclear tests, there was not yet a strong coalition of 'middle' and 'small' states working across regional and 'bloc' boundaries to challenge the nuclear weapon states and their allies. Public opinion had also not developed to a stage where it would force governments to act.

IPB, WILPF and the World Peace Council were some of the few active international peace organisations. However, there was little cooperation between them, and they were still primarily Eurocentric. The IPB and WPC hierarchies were overwhelmingly male and did not easily mobilise grassroots support. All were focused on wider peace issues, and their energies were thus dissipated. In addition, communication was difficult before the advent of the fax, photocopier, computer and email. However, by the early 1980s international coalitions of doctors and lawyers were developing into effective networks which had access to decision makers in capitals, and funding. South Pacific peace groups generated strong links and ensured that their concerns were reflected in the international peace agenda.

As the 1980s dawned, women were taking a higher profile internationally, which in turn affected strategies adopted and ways of working. Inspired by role-models like Helen Caldicott they researched the facts about the nuclear arms race and argued passionately with decision makers within both the movement and governments. They demanded a share of the power, addressed conferences, took non-violent direct action, and even established their own political parties. They translated the often inaccessible data on nuclear weapons into 'layperson's' language, and established grassroots organisations based on education and local action. During the next decade they had a profound influence on the development of the international movement in the common struggle to expose further the criminality of nuclearism and establish a Magna Carta for the nuclear age.

## CHAPTER 3

### THE 1980s: WOMEN MOBILISE



Jan. 1, 1983. Dancing on the silos where cruise missiles are to be stored

## CHAPTER 3

### THE 1980s: WOMEN MOBILISE

*If you insist upon fighting to protect me, or 'our' country, let it be understood, soberly and rationally between us, that you are fighting to gratify a sex instinct which I cannot share; to procure benefits which I have not shared and probably will not share; but not to gratify my instincts, or to protect either myself or my country. For, the outsider will say, in fact, as a woman, I have no country. As a woman I want no country. As a woman, my country is the whole world. Virginia Woolf [1]*

#### 3.1 Introduction

Not until the early 1980s was there a resurgence in the European peace movement. In Britain, Campaign for Nuclear Disarmament's (CND) membership jumped from 3,000 to 50,000 within two years and in June 1982, nearly a million people marched in New York during the second UN Special Session on Disarmament (UNSSOD II). Demonstrations, at times numbering over a quarter of a million, filled the capitals (and other cities) in Belgium, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Spain and the UK. This was precipitated by public anxiety over the provocative deployment of Pershing II, Cruise and SS20 missiles in Europe which appeared to invite first strikes in periods of acute crisis. Citizens in non-nuclear weapon states, including junior alliance partners, questioned their sovereign rights. This anxiety took several forms including important normative dimensions, such as moral and legal objections to nuclear weapons. [2]

Falk felt that previous public inertia was related to the seeming futility of mounting a legal case against nuclear weapons because of the prevailing

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<sup>1.</sup> V. Woolf, *The Three Guineas*, London, 1983, p.135.

<sup>2.</sup> Richard Falk. 'Towards a Legal Regime for Nuclear Weapons', *McGill Law Journal*, vol. 28, 1983, pp. 320-32. 'Normative' encompasses legal, moral, cultural and biological standards.

realities and track record of geopolitics. Lawyers reasoned that, without political pressure from the grassroots, any efforts to pursue this would fail. International lawyers were meant to uphold official policies, and 'it was more desirable to maintain a discreet silence on the subject as long as this was politically possible'. [3]

While British peace activists were often charged with breaches of the peace, obstruction and other minor offences resulting in small fines and short prison sentences, the real aim of their protest was dismissed by the judges. In the US, similar cases were dropped because they would set undesirable precedents if the accused were acquitted. [4]

Meanwhile, throughout the South Pacific the peace movement gained strength. From 1946-58, the US tested 66 atomic and hydrogen bombs on Enewetak and Bikini Atolls in the Marshall Islands, and other countries continued to test in the region. In the early 1970s nonviolent direct actions against tests increased, and groups lobbied their governments to take France to the ICJ for a declaratory judgment that causing nuclear pollution to other countries was unlawful. During the mid-seventies, the Nuclear Free Pacific network of hundreds of NGOs collectively responded to the Pacific Ocean being used for nuclear and missile tests; to dump nuclear waste; the transit of nuclear weapons; and nuclear bases. Their Peoples' Charter outlined unconditional demands for a truly nuclear free region.[5]

Women took a leading role within the region. In 1954, Marshallese women expressed their desire 'to join any world organisation to outlaw the use of the atomic bomb in possible future warfare'. [6] Later the Marshallese and other small Pacific Island states made significant contributions to evidence

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<sup>3.</sup> Ibid., p. 532.

<sup>4.</sup> Geoffrey Darnton (ed), *The Bomb and the Law: London Nuclear Warfare Tribunal: Evidence, Commentary and Judgment*, Swedish Lawyers Against Nuclear Arms, Stockholm, 1989, p. 5-7.

<sup>5.</sup> *Report of the NFIP Conference 1987*, Manila, Philippines, November 5-15, 1987, pp.7-8.

<sup>6.</sup> *Radio Bikini*, Crossroads Film Projects Ltd, 1987; Giff Johnson, *Collision Course at Kwajalein: Marshall Islanders in the Shadow of the Bomb*, Pacific Concerns Resource Centre, Hawaii, 1984.

presented to the ICJ. In the matrilineal society of Belau, the women elders promoted and gained the world's first nuclear free constitution in 1979. Ratified by 92% of the people, it banned port visits by nuclear-armed and powered ships. [7] In 1982, over 100,000 Australians marched in six main centres and a poll found that 72% of Australians believed that the use of nuclear weapons could not be justified under any circumstances.[8] So, by 1980, nuclear weapons and the law were on the South Pacific regional agenda.

This chapter highlights the role of women in the international movement during the 1980s, using case studies of four high profile politicians and the Greenham women's peace camp. It describes how Greenham women filled the British courts arguing that nuclear weapons were illegal under international law, and took President Reagan to the US Supreme Court.

### **3.2 Actions Inspired by Women**

The growth of the women's, environmental and nonviolence movements of the 1960s and 1970s impacted strongly on the tactics and strategies adopted by peace groups. [9] Emerging feminist analysis called for a radical transformationist approach, and viewed nuclearism as the ultimate extension of the Machiavellian, 'realist' pursuit of state interests under all circumstances. Few world leaders served the interest of the planet by pursuing policies which recognised the inter-relatedness of all life, and

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7. Zohl dé Ishtar, *Daughters of the Pacific*, Spinifex, Sydney, 1994, p.45.

8. Herald Survey poll, 'Most Australians against use of nuclear weapons', *Sydney Morning Herald*, 21 June 1982, p. 2.

9. For further information on nonviolent strategies for peace, see: Adam Roberts (ed), *The Strategy of Civilian Defence: Nonviolent Resistance to Aggression*, Faber and Faber Ltd., London, 1967; Gene Sharp, *The Politics of Nonviolent Action, Part one: Power and Struggle; Part II The Methods of Nonviolent Action; Part III The Dynamics of Nonviolent Action*, Porter and Sargent, Boston, 1973; *National Security through Civilian-Based Defence*, Association for Transarmament Studies, Nebraska, 1970; Allan Cumming, *How Nonviolence Works*, Nonviolent Action Network in Aotearoa, Dunedin, 1985; April Carter, *Nonviolent Action: a selected bibliography*, Housemans, London, 1970; *Direct Action and Liberal Democracy*, Routledge & Kegan Paul Ltd, London, 1973; Peter Tatchell, *Democratic Defence: a Non-Nuclear Alternative*, GMP, London, 1985; Richard B. Gregg, *The Power of Nonviolence*, Schocken, New York, 1966.

common threats to humanity such as nuclearism, population growth, gross under-development and environmental abuse. Radical transformationists believed that society must be transformed 'from below' in order to create an international 'civil society' based on a common law and cooperative politics. They argued that confrontation and militarism must be replaced by cooperation and demilitarisation. Control of the decision making structures by secrecy and withholding information must be replaced by open democratic debate and accountability. [10]

The women's peace movement espoused this philosophy, which later became known as 'common security'. They networked beyond the nation state, finding strength in their mutual vulnerability as they linked with women globally and demanded the enforcement of domestic and international law for the protection of all. Dreaming the impossible in order to obtain the possible, they worked through the four stages of their actions: 'mourning, rage, empowerment and defiance'. [11] Their infectious energy flowed through to other peace groups worldwide, empowering citizens to use the law to influence decision makers.

With heightened anxiety about the urgency of the issue and proximity of the weapons to their homes, women in various countries organised civil disobedience actions, often resulting in mass arrests, court cases and extensive media coverage. Advances in technology improved international communication, facilitating the sharing of strategies, thereby enabling groups to form coalitions for joint actions.

As women took leadership roles in the peace movement, they ensured that feminist principles of cooperation rather than competition; participation rather than exclusive hierarchies; consensus decision making and information-sharing, became part of the group process. Many were impatient with the lack of progress resulting from traditional forms of protest. Petitions, marches, conferences, letters and stalls seemed ineffective. Survival of their families and the planet was at stake, and it was time for women to take

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<sup>10</sup>. Oxford Research Group, 'The Missing Defence Debate', Current Decisions Report, no. 6, September 1991, pp. 9-12.

<sup>11</sup>. Ynestra King, 'All is Connectedness: Scenes from the Women's Pentagon Action', in Jones, op. cit., pp. 40-63.

collective direct action. They had been the secretaries and tea-makers for too long. Many were prepared to risk jobs, relationships and personal security to highlight the illegality, immorality and absurdity of the nuclear policies. Women chose various roles in the growing movement, such as pursuing political careers, taking direct action at missile sites, engaging in face-to-face dialogue with decision makers and/or running local peace groups within their communities.

### **3.3 Oxford Research Group (ORG)**

In 1982, the Oxford Research Group's founder Scilla Elworthy, frustrated by the lack of dialogue between demonstrators and decision makers, researched how nuclear weapon decisions were made. She had marched with a million others during UNSSOD II, and observed how nothing changed within the UN. Decision makers were not accountable to the people outside. [12] She became 'obsessed by a desire to find out what made the men tick' (only six out of the 650 people with nuclear decision making power were women). She discovered that they were isolated from discussions with anybody except those who agreed with them, and they used a special impersonal vocabulary to prevent emotion creeping into their work. [13]

She encouraged the peace movement to use the emotional and intellectual sides of the brain. Her idea was that citizens should 'engage' personally in dialogue with decision makers from a background of real knowledge, rather than wave banners or shout violent opposition. She established a pilot programme with ten groups to test this concept of dialogue. This grew to 70 groups writing to both British and Chinese decision makers, with similar engagement in dialogue with the US and USSR.

Elworthy identified three areas of success. First, the process increased the confidence and knowledge base of the ORG participants, who were at times more erudite than their chosen contact. This had a powerful impact, undermining the assumption that nuclear issues were too complicated for

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<sup>12.</sup> Scilla McLean (Elworthy), ed., *How Nuclear Weapons Decisions are Made*, MacMillan Press, Hampshire, 1986, p. xiii.

<sup>13.</sup> Rachel Pugh, 'Towards world peace', *Oxford Times*, 5 January 1990.

the ordinary citizen, and should therefore be kept secret. Second, it exposed the lack of accountability of civil servants to Parliament. Because of the short tenure of Ministers of Defence and Foreign Affairs, decisions about complex weapon systems - which can take up to 15 years to develop - are usually made by long-serving officials and not the ministers. Third, the correspondence and subsequent face-to-face dialogue often helped to change their minds, which in turn affected the whole system of decision making. [14]

This principle of trying to reach the conscience and humanity of everyone in authority was fundamental to the Greenham women's philosophy. It was also at the root of the Pentagon Women's Action (1980-81) and the Women's International League for Peace and Freedom (WILPF) and Belgian women's mass event at Brussels NATO headquarters on International Women's Day in 1983. More than 10,000 women from all over Europe, plus 125 North Americans presented their demands for nuclear disarmament to NATO military leaders, and to the ambassadors of the five nuclear weapon states (NWS).[15]

While these particular actions did not specifically link international law with nuclear weapons, the strategies of highly visible direct action outside key organisations such as the Pentagon and NATO, dialogue with decision makers, and women-only actions spread throughout the international peace movement during the following decade. Some of the women involved in these activities became strong WCP supporters, and used their influence to sway their predominantly male allies within the decision making system.

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<sup>14.</sup> IPPNW, *Abolition 2000: Handbook for a World Without Nuclear Weapons*, Boston, 1995, pp. xiv-xvi. See also, Scilla Elworthy, 'Balancing the need for secrecy with the need for accountability', *RUSI Journal*, February, 1998, pp. 5-8; *Power and Sex: a book about Women*, Element, Dorset, 1996.

<sup>15.</sup> Foster, *op.cit.*, pp. 82-92.

### **3.4 Four Politicians: Theorin, Kelly, Vallentine, Lini.**

High-profile politicians like Swedish Disarmament Ambassador Maj Britt Theorin, German Green Petra Kelly, Australian Nuclear Disarmament Senator Jo Vallentine, and Vanuatu's only woman parliamentarian Hilda Lini provided excellent role models for women in local peace groups. They had deep roots in peace movements committed to nonviolent direct action and a nuclear free world. Determined to share their well-researched knowledge with ordinary people in a way which was accessible and empowering, they believed that it was up to the people to make democracy work for them by educating their elected representatives and demanding accountability from them.

Kelly and Vallentine were pioneers of political parties such as the Greens and the Nuclear Disarmament Party (NDP) which expressed people's exasperation at the inability of the established parties to act on the urgent issues confronting the survival of the planet. They built on the earlier model of the 1915 US Women's Peace Party. [16] Kelly felt that a movement operating exclusively outside parliament was unable to implement demands for a new analysis of security. She encouraged women to stand as Members of Parliament (MPs), convinced that gender equity in decision making would force changes in defence and foreign policy priorities. [17]

Other women taking leadership roles on security issues at this time included Gro Harlem Brundtland (Norway), Indira Gandhi (India), Marilyn Waring and Helen Clark (A/NZ). These women worked within more traditional political parties and had a significant influence on their governments. During the early 1990s Theorin, Vallentine and Lini became important participants in the WCP, and Kelly gave support until her untimely death in 1992. From 1993-96 Clark and other A/NZ women MPs strongly promoted the WCP.

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<sup>16.</sup> The Manifesto of the Woman's Peace Party was published in Appendix 1, Anne Wiltshire, *Most Dangerous Women: Feminist Peace Campaigners of the Great War*, Pandora, London, 1985, pp. 218 - 222.

<sup>17.</sup> Petra Kelly, *Fighting for Hope*, Chatto and Windus, London, 1984, pp. 17-18.

Figure 1: Leading women figures in the anti-nuclear movement.



Jo Vallentine



Hilda Lini



Dr Helen Caldicott



Maj Britt Theorin



Petra Kelly

(i) **Maj Britt Theorin** was a Swedish MP for over 25 years, and in 1995 she was the highest polling parliamentarian. She is a mother, grandmother and peace activist. Recently she has been the President of IPB, Women Parliamentarians for Peace (WPP) and Parliamentarians for Global Action (PGA); and chaired both the 1989-90 UN Study on Nuclear Weapons and the UN Gender and Agenda for Peace Committee. In 1995 she was the only woman on the prestigious Canberra Commission on the Elimination of Nuclear Weapons. She is currently a Member of the European Parliament and coordinator for the largest party on security issues.

As Sweden's Disarmament Ambassador from 1982-91, in charge of her government's nuclear disarmament policies, Theorin promoted a Nordic NFZ and a CTBT while trying to maintain Sweden's nuclear free policies. She described how it was the ordinary people - mostly women - who in the 1950s prevented Sweden from becoming a nuclear power:

In Sweden it is very unusual for members of the Social Democratic Party (SDP) to openly differ from the official opinion. But nuclear weapons were the exception. The women in the party said: "No, we are not going to have nuclear weapons!" Many of the women, mothers and grandmothers have told me of how the men looked suspiciously at them...in those days many people believed we needed nuclear weapons to fight those "bloody enemies". The women won the fight and the SDP said no to nuclear weapons, and suddenly the other parties followed too.

If they had not put up a fight, she is convinced that Sweden would be nuclear-armed today. She promoted the Great Peace Journey organised by Sweden's WILPF, when Foreign Ministries were asked whether they would agree to various disarmament measures if all the other nations did the same, and most said they would. [18] Scandinavian women met Russian mothers and grandmothers, and cried together as they supported each other's disarmament efforts. Like Elworthy, Theorin believes it is

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<sup>18</sup> Alexander Fry. 'Work for Peace', *The Listener* (NZ), 23 February 1985, pp. 15-16; Chris Mosey, 'Sweden's own nuclear weaponry', *The Press* (Christchurch), February 1985.

...this emotion, this engagement, which will propel the peace movement to success. You have to use both parts of the brain. Knowledge can paralyse you, make you passive. If you dare to look at things in another way, then you can find a way out. [19]

The enlightened attitude towards NGOs of her predecessors, Ambassadors Alva Myrdal (Nobel Laureate and IPB Vice President) [20] and Inga Thorsson (WILPF), encouraged Swedish women to take a greater role in decision making. They ensured that the peace movement received a proportion of the country's defence budget e.g. in 1985 groups received 25 million kroner (NZ \$6 million). Theorin believes this financial strength, and the long tradition and broad base of the movement, sustained the research work, publicity and protests which kept ordinary people informed. [21]

In 1982, MacBride encouraged her to pursue his ideas of outlawing nuclear weapons, making reference to the 'dictates of the public conscience'. Their efforts to convince the Swedish Foreign Ministry and its legal advisers proved unsuccessful. The bureaucracy was adamant that nuclear disarmament could only be achieved by political negotiation and not through the judiciary. However, she persuaded Prime Minister Palme to refer to the idea in the UN in 1985. [22] She believed that if they could not be outlawed

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19. Ibid.

20. In 1982 Alva Myrdal was awarded the Nobel Peace Prize, following publication of *The Game of Disarmament: How the US and Russia Run the Arms Race* in 1976. She was cited for her 'commitment to the service of disarmament'.

21. Fry, op. cit., p. 15.

22. From Palme's speech to the 40th Anniversary Session of the UN General Assembly: 'Any use of nuclear weapons would be deeply reprehensible. One can speak of an international norm which is gradually gaining acceptance. The time has come to consider whether mankind should not begin to study, in earnest, how this utter moral reprobation could be translated into binding international agreements. We should consider the possibility to prohibit in international law the use of nuclear weapons, as part of a process leading to general and complete disarmament.'; Ove E Bring, 'Are Nuclear Weapons and their Use Illegal?', paper to IALANA meeting in Stockholm, 9 April 1988.

23. Prime Minister Carlsson's speech to UNSSOD III: 'It is worth noting that there are already unilateral declarations by the Soviet Union and China renouncing the first use of nuclear weapons. If all nuclear-weapon States were to make similar statements it would, in practice, amount to a prohibition on the use of nuclear arms by them. Commitments not to be the first to use nuclear weapons should then be followed by an international agreement on a

immediately, the first priority would be for a declaration of no-first-use, then non-use, until finally a situation was reached of an 'unwritten law' that nuclear weapons are not allowed. Prime Minister Carlsson expressed this view during UNSSOD III in 1988. [23]

From 1985-88 Theorin pursued the question of illegality of nuclear weapons and called for a binding law against them. But during the Cold War she opted for the political process, grudgingly accepting that the time was not right to go to the ICJ. Many advised her that 'it would not have a chance; the Court would not give an opinion; and if it did it would probably argue that nuclear weapons were legal'. [24] In 1989, when New Zealand's Disarmament Minister Fran Wilde asked Theorin informally to consider Sweden and A/NZ co-sponsoring an UNGA resolution requesting an advisory opinion from the ICJ, she declined, citing Cold War realities and bureaucratic intransigence.[25] During the early 1990s she was strongly supported in parliament by lawyer Stig Gustafsson. They both wrote articles promoting the WCP in the PGA Newsletter. Later, Theorin played a crucial role as a link between the WCP lobbying team and the diplomats during the 1993 UNGA.

**(ii) Petra Kelly** studied World Politics and International Relations in the US during the late 1960s, when she also worked voluntarily for Senators Robert Kennedy and Hubert Humphrey. Later she studied European citizen movements and worked as a European Economic Council intern,[26] and became very active in the European women's, environmental, peace and anti-nuclear movements. She joined the West German Social Democratic Party, but resigned in 1979 in protest against their policies on nuclear weapons, health and women. She was a founding member of the Greens, and their leading candidate in the European elections when they won 3.2% of the vote. In March 1983 she was one of the 27 Greens elected. That year

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total prohibition of the use of nuclear weapons ... such a treaty must be supported by concrete measures in all fields, including both nuclear and conventional weapons.' New York, 1 June 1988, UN doc. A/S-15/PV.2, p. 37.

<sup>24</sup>. Interview by Dewes with Maj Britt Theorin, 24 April 1995.

<sup>25</sup>. Discussions with Theorin, Wilde and Dewes at the time.

<sup>26</sup>. Kelly, op.cit., pp. 118-121.

she received the Alternative Nobel Prize [27], and the US Peace Woman of the Year Award.

Totally committed to pacifism and nonviolence, she was strongly influenced by Jesus Christ, Mahatma Gandhi, Martin Luther King and Cesar Chavez. She promoted civilian-based nonviolent action and advocated 'civil disobedience - open infringement of the law on grounds of conscience'. [28] The Greens were committed to nuclear abolition and adopted the motto: 'Be gentle and subversive'. Inspired by Thoreau's wisdom that 'dissent without civil disobedience is consent', Kelly believed that while Western democracies used the law to protect the bombs and not the people, it was up to the people to expose the illegality of nuclearism.

She gained inspiration from close contact with a radical US group which included the Catholic priests Philip and Daniel Berrigan. In the early 1980s they broke through a security area of a nuclear weapon factory, hammered the warhead cone and poured blood on drawings, plans and other items. They were charged and given long sentences. [29] Despite this outcome, international lawyers were encouraged because the court accepted that 'fear of nuclear war might constitute an "immediate danger" giving reasonable grounds to a defendant to break the law, adding : "No peril is greater, no peril approaches the peril of nuclear war." ' [30] Philip Berrigan claimed:

We are moving in the direction of mass suicide and total annihilation, all in the name of legality. But governments are continually breaking the law at national and international level. These governments behave in an illegal and uncontrolled manner. Without the cloak of legality, they could not carry out this atomic insanity. And for that reason, we must call our actions nonviolent civil disobedience, though they are in reality civil obedience.[31]

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27. The Alternative Nobel Peace Prize is also known as the International Right Livelihood Award.

28. Kelly, *op.cit.*, p. 32.

29. *Ibid.*, p. 29.

30. Peter Weiss, 'Nuclear War in the Courts', in Dewar, *op.cit.*, p. 188; Richard Vogler, 'Anti-Nuclear Defences: Aspects of Legality and the Peace Movement in England' in Dewar, *op.cit.*, p. 131.

31. Kelly, *op.cit.*, p. 42.

In 1981 the West German Green Party, at Kelly's instigation, lodged criminal charges against the Chancellor for 'betrayal of peace, and for preparing a war of aggression', and in February 1983 they organised a Tribunal against First-Strike and Mass Destructive Weapons at Nuremberg. The Tribunal not only indicted the Federal Government, but all nuclear governments plus all states secretly acquiring nuclear weapons through the civilian nuclear fuel cycle, arguing that the threat to use these weapons infringed international law. [32]

Kelly co-presented a 23-point appeal which encouraged all countries and cities to organise similar tribunals. [33] It was here that Falk assessed the legal status of nuclear weapons. With a rare combination of knowledge, feeling and urgent conviction, he spelled out the need to hold governments accountable to the Nuremberg Principles, and suggested a possible course of action:

It would be entirely appropriate, legally and technically for a single neutral State, or a group of neutral States, to initiate an action at the International Court of Justice at The Hague, asking for the suspension of all reliance on nuclear weapons in any context. It would be an extremely constructive act to give the ICJ the chance to distinguish itself as a growing institution by upholding and developing international law.[34]

Kelly maintained her strong commitment to linking the law and nuclearism, and spoke globally on these issues throughout the decade. She was behind many of the mass rallies and direct actions around European nuclear bases. She frequently visited East Germany linking closely with NGOs trying to help break down the Iron Curtain. During her short life she touched millions with her passion and rhetoric.

**(iii) Jo Vallentine** is a Quaker, mother, peace activist and teacher. In 1984 she became the world's first Senator for Nuclear Disarmament in the Australian Senate. She was committed to the 300 year old Quaker Peace

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<sup>32.</sup> Ibid., pp. 42-43.

<sup>33.</sup> Ibid., pp. 73-76; *The Ribbon: A Celebration of Life*, Lark Books Staff and Marianne Philbin, North Carolina, 1985.

<sup>34.</sup> Delf, op.cit., pp. 54-55.

Testimony, with a firm belief in the strength of nonviolence, the need for reconciliation of opposing forces, and the overwhelming power of love as a source of spiritual energy.[35] On entering parliament she forced debates on nuclear issues, and in 1985 the Labor Parliamentarians for a Nuclear Free Australia group formed. The conservative Coalition responded by publishing a statement on 'Peace Through Security'. By December 1984, more than half a million Australians had nuclear disarmament at the top of their political agenda; and in 1987 another NDP Senator joined Vallentine. Together they promoted the closing of the biggest uranium mine in the southern hemisphere; an enquiry into Pine Gap (an intelligence base which assists US nuclear targeting); and banning visits by nuclear-powered and armed warships. They worked with supportive Democrat and Labor MPs to place anti-nuclear bills before Parliament. In 1986, the government had set up an inquiry into the safety procedures for nuclear warships; and in 1987 the Labor government established a Peace and Disarmament Bureau headed by Richard Butler (who later convened the Canberra Commission).

Like Theorin, Vallentine was a member of parliamentary committees on Defence and Foreign Affairs. She used the procedure known as 'Matter of Public Importance' to instigate debate on Pine Gap, and tried to amend the Governor General's speech with reference to the immorality of the ANZUS alliance. In 1987 she was arrested at a large protest at Pine Gap and during the 1988 Bicentennial celebrations, she chained herself to a visiting British nuclear-armed warship. Prince Andrew was on board, so Vallentine deliberately quoted excerpts from the speech of his famous great-uncle Lord Mountbatten on a placard which she carried:

As a military man who has given half a century of active service, I say in all sincerity that the nuclear arms race has no military purpose. Wars cannot be fought with nuclear weapons. Their existence only adds to our perils because of the illusions

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<sup>35</sup>. Jo Vallentine, 'Activating Politics for Peace' in Sandra Sewell, Anthony Kelly & Leonie Daws, eds., *Professions in the Nuclear Age*, Boolarong Publications, Brisbane, 1988, pp. 24-33.

which they have generated. The world now stands at the brink of the final abyss. [36]

In both cases, she used the media to promote civil disobedience, 'based on the Nuremberg Principles which oblige an individual to act against an unjust or immoral domestic law in order to uphold international law for the good of humanity'. [37]

Women arrested during a five day, women-only peace action at Pine Gap in 1983 had used similar arguments in their defence. Over 800 women, many dressed in suffragette colours and holding aloft a mass of banners and flags, marched towards the gates. The ensuing media coverage helped unveil the secrecy surrounding the base and mobilise others (Figure 1).[38] Later, Vallentine and two women Democrats used parliamentary questions to clarify the government's position on the WCP. In June 1991, Vallentine promoted the WCP in the PGA Newsletter, and encouraged the Australian branch to unanimously support it. She also ensured it was debated by the National Consultative Committee on Peace and Disarmament.

**(iv) Hilda Lini** comes from a line of chiefs. She is a mother, politician, and peace activist from a small group of South Pacific islands called Vanuatu, which led the region on issues of nuclearism and independence during the 1970s. Following the transition to independence from the UK and France in 1979-80, the economically vulnerable government, led by Hilda's older brother Walter, championed the liberation struggles in Kanaky, Tahiti, East Timor and West Papua. During the 1980s Vanuatu was the only South Pacific state to join the Non-Aligned Movement (NAM). In 1982 it banned two visiting warships from its territorial waters after the US refused to confirm or deny the presence of nuclear weapons. The following year an anti-

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<sup>36.</sup> Mountbatten, op.cit. See also, Wendy Caccetta, 'A rest for the Duke and arrest for the Senator', *The Canberra Times*, October 1998.

<sup>37.</sup> Jo Vallentine and Peter D Jones, *Quakers in Politics: Pragmatism or Principle?* The Twenty-sixth James Backhouse Lecture, Religious Society of Friends, Australia, 1990, pp. 2-48.

<sup>38.</sup> Georgina Abrahams, 'Pine Gap-Espionage on a Massive Scale', *Women on Peace*, Women Acting for Disarmament, Auckland, May 1983, pp. 15-17.

nuclear parliamentary resolution was passed banning all nuclear-armed ship visits.

At the opening of the 1983 triennial Nuclear Free Pacific Conference in Vanuatu, Prime Minister Lini reflected Pacific-wide sentiment by saying:

It is a matter of life and death that our Pacific Ocean be declared a nuclear-free zone. Testing of any kind must be outlawed, as must the dumping of nuclear waste, the firing of nuclear devices, and the passage of submarines and overflying aircraft carrying them. On this crucial issue there can be no compromise or retreat. If we continue to deny ourselves any decision on this, our children of tomorrow will condemn us, and it will be a condemnation we have deserved. [39]

When the South Pacific Nuclear Free Zone Treaty (SPNFZ) was finally adopted in 1985, Vanuatu refused to sign it because it was too weak, and gave similar reasons for not signing the Non-Proliferation Treaty (NPT).

While Walter trained as an Anglican priest in A/NZ, Hilda studied journalism and became deeply involved with the independence struggle at home. As editor of the movement's newspaper in 1976, she coordinated the women and youth sections of the movement, travelling widely around the Pacific islands. In 1982 she worked as coordinator of the Women's Programme for the South Pacific Commission, composed of 27 governments - 22 from the South Pacific plus Australia, A/NZ, UK, France and the US. From this base she established the Pacific Women's Resource Bureau. During her travels she shared her government's anti-nuclear policies with officials, and served on the executive of many NGOs, including the Nuclear Free and Independent Pacific (NFIP) movement. [40]

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<sup>39.</sup> David Robie, *Blood on their Banner: Nationalist Struggles in the South Pacific*, Pluto Press, London, 1989, pp. 66-80; Walter Lini. *Beyond Pandemonium: From the New Hebrides to Vanuatu*, University of the South Pacific, Suva, 1980, p.13; Chris Plant, ed.; *New Hebrides: The Road to Independence*, Fiji Times and Herald Ltd., Suva, 1977.

<sup>40.</sup> Sigrid Shayer and Kaye Stearman, 'A Woman of independence - the life and times of Hilda Lini, MP (Vanuatu)', *Women for a Nuclear Free and Independent Pacific Newsletter*, Winter 1993, pp. 3-4.

She became Vanuatu's first woman MP in 1987; and by 1991 she was Minister of Health and a WHO Vice President. She attended the 1993 World Health Assembly (WHA) and UNGA, where she played a pivotal role in convincing her Pacific and NAM colleagues to co-sponsor resolutions requesting ICJ advisory opinions on the legality of nuclear weapons (see Chapters 9 and 11). IPB awarded her the 1993 MacBride Peace Prize for her outstanding efforts.

Although there were many women politicians who contributed to the development of foreign and defence policies in the 1980s, these four deserve special mention. They highlighted nuclearism within their parliaments and regions, and later played important roles in the WCP. They maintained their accountability to the peace movement, seeking guidance on important issues of policy development. Travelling extensively, they spoke passionately with politicians and activists about the urgency of opposing the nuclear arms race. They reinforced their rhetoric with research and international law. Their friendships with other politicians were instrumental during the following decade when governments and citizen groups needed convincing about the WCP.

### **3.5 Women-Only Actions**

Women inspired by the growing mass movement began to establish autonomous women's groups. 'Women for Peace' sprang up in Holland in 1979: within a year the membership grew from 400 to 5,000. Similar groups developed in Aotearoa, Australia, Denmark, Japan, Sweden, Switzerland, the UK and US. Women opposed their taxes being spent on nuclear weapons and demanded that governments resource education, health, childcare, and teaching people to solve conflicts non-violently.

Working with WILPF, Dutch Women for Peace collected 53,000 letters internationally protesting about the nuclear arms race, which they presented to their Defence Minister and gained good media coverage. Following a visit by Caldicott, they helped organise a 400,000 strong march in Amsterdam; and on International Women's Day for Disarmament in 1982, they involved

40 other towns and established a peace camp at a NATO airbase. This, like other smaller women's peace camps in Aotearoa, Australia, Italy and 20 different UK military installations, was inspired by the Greenham Common Women's camp. [41]

### ***Greenham Common Women's Peace Camp***

The law doth punish man or woman  
Who steals the goose from off the common  
But lets the greater felon loose  
Who steals the common from the goose  
(18th Century, Anon)

On 27 August 1981, 40 women, some children and four men left Cardiff, South Wales on a 125-mile 'Women For Life on Earth March' to Greenham Common to protest against NATO's decision to base 96 American ground-launched cruise missiles there in December 1983. On arrival ten days later, they asked for a televised debate on the issue. When this was refused, they set up a women's peace camp as a direct protest and to attract media attention. [42] Over the next 12 years, the Greenham women received worldwide media coverage, filled the local courts and prisons with thousands of women, took President Reagan to court, and eventually succeeded in having the missiles returned to the US.

The women's catch-cry was 'revolutionary non-violence' rather than 'passive resistance'. Mass actions included 'Embrace the Base' - where over 36,000 women surrounded and blocked the base - and smaller actions in which sections of the perimeter and inner fences were cut or taken down. At times women climbed over or through the fences to occupy temporarily the silos, hangars and runway. The actions were daring, imaginative, humorous but determined. Not all were held at Greenham. For example, on International Women's Day for Disarmament in 1983, thousands of women participated in

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<sup>41</sup>. Frouke Smid, 'Organising at the Grassroots: Women for Peace, Netherlands' in Lynne Jones (ed), *Keeping the Peace*, The Women's Press, London, 1983, pp. 18-21.

<sup>42</sup>. Lynne Jones, 'On Common Ground: The Women's Peace Camp at Greenham Common', in Jones, op.cit., pp. 79- 97.

more than 600 actions throughout the UK, including vigils, marches, die-ins, leafleting and street theatre. [43]

Veteran Greenham woman Rebecca Johnson outlined their philosophy:

Recognising that the decision to deploy Cruise missiles is military and political and that women committed to nonviolence could not physically prevent their arrival, we combine direct actions intended to embarrass and inconvenience the authorities with demonstrations to convince ordinary people and decision-makers that nuclear weapons are immoral and illegal as well as impractical. [44]

They believed that everyone must take 'personal responsibility for what they do and should not hide behind their uniforms, professions or formal positions of authority'. Police officers, judges, lawyers, magistrates and juries were challenged to reflect on their role in maintaining an illegal system. The women refused to be intimidated by complicated legal jargon and court rituals, and made an early decision to use only women lawyers. In their defence they quoted the Nuremberg Principles, the Hague and Geneva Conventions and the Genocide Act, arguing that the government was breaking the law. They highlighted the absurdity of not enforcing international laws while every nation prohibits murder and acts of brutality.

While the courts refused to recognise the wider political purpose of what the women were doing, they did not charge them under the Official Secrets Act; and sometimes expert witnesses were allowed to give evidence. When legal aid was later denied, women conducted their own defence, adopting techniques which helped them express themselves, such as singing,

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<sup>43</sup>. 'Greenham Women Against Cruise Missiles', Centre for Constitutional Rights, Legal Education Pamphlet, New York, 1984, pp. 5-7; See also Sasha Roseneil, *Disarming Patriarchy: Feminism and Political Action at Greenham*, Open University Press, Suffolk, 1995, Chapters 5 and 6, pp. 71-117; Jill Liddington, *The Long Road to Greenham: Feminism and Anti-Militarism in Britain since 1820*,

<sup>44</sup>. Rebecca Johnson, 'Alice Through the Fence: Greenham Women and the Law', in John Dewar, et al, (eds), *Nuclear Weapons, the Peace Movement and the Law*, MacMillan, Hampshire, 1986, pp. 158-159.

shouting and talking through interruptions, without being intimidated. [45] The early court cases won widespread publicity for the argument that nuclear weapons are illegal. However, frequently the women were thwarted in their efforts to have the legal arguments heard, and they were treated as criminals.

In August 1983 the Greenham Women Against Cruise Missiles decided to take affirmative action by framing the questions and identifying those who should be on trial. Within two months they prepared the case, filing an injunction against President Reagan and his Joint Chiefs of Staff in the US District Court in New York. Nearly 200 European and North American peace, church and women's groups submitted supportive 'amicus' briefs and provided funding. To mark the opening of the case, thousands of groups gathered for a 24-hour protest outside all 102 US bases in the UK. By November there were '... declarations of thirty expert witnesses covering every conceivable aspect of Cruise from its manufacture to the consequences of its use'. [46] MacBride prepared a 100-page brief on international law with Burns Weston from the Lawyers' Committee on Nuclear Policy (LCNP). Other experts documented medical, religious, strategic, scientific and psychological concerns. Women from the US Centre for Constitutional Rights, LCNP and the UK Lawyer for Nuclear Disarmament (LND) argued on behalf of the plaintiffs that:

The use of deployment of nuclear weapons violates the international laws of war and the Universal Declaration's rights to life; the deployment of cruise missiles is a tort against the English plaintiffs in violation of international law and is actionable in US courts under the alien tort claims act; and the deployment of

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<sup>45</sup>. Ibid., p.176: 'Some women talk through the interruptions in persistent, level voices. Others walk out of the witness-box and refuse to say another word unless permitted to speak freely, the whole truth. Others abandon the legal language and break into song. Others shout out that the magistrates must listen before sitting in judgment and accuse them of hiding behind legalistic screens to evade their responsibilities to their human conscience'. See also Roseneil, (1995), op.cit., pp.108-110.

<sup>46</sup>. Jane Hickman, 'Greenham Women Against Cruise Missiles and others v. Ronald Reagan and others' in Dewar, op.cit., p. 204.

cruise missiles deprives the women from Greenham Common their interests in life and liberty without due process of law. [47]

The US government argued that the court did not have jurisdiction on this political question, and should not interfere in matters of defence policy because the Constitution gave the President responsibility for foreign relations. So, because nuclear war had not happened yet, the President had not yet violated the Constitution.

In July 1984, the judge ruled against the jurisdiction argument, confirming that it was a 'perfectly proper matter to be brought before the court'. He indicated that the courts are incapable of deciding cases like this because 'the fact finding that would be necessary for a substantive decision is unmanageable and beyond the competence and expertise of the judiciary'. However, none of the evidence prepared by the expert witnesses was heard. The government feared an avalanche of similar lawsuits internationally if they allowed the case to proceed. [48]

The women's British lawyer, Jane Hickman, saw the verdict as a victory for both the Greenham women and the wider peace movement, as it left open the possibility that there can be circumstances in which the court would look at such questions. [48] She claimed it was the first time a comprehensive scientific, medical, environmental, moral and legal attack on Cruise missiles had been put together. It received a great amount of media interest both in the US and UK, and set a precedent for future cases. Through their high media profile, Greenham women raised public awareness about the importance of international law and its relationship to nuclear weapons, and highlighted the ambivalence with which the Western nuclear weapon states (NWS) treat these laws. By taking Reagan to court, they showed how even

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<sup>47.</sup> Letter from Devra Nusbaum, Executive Director of LCNP, to Barbara Dworky, 21 October 1983.

<sup>48.</sup> Statement by Greenham Women Against Cruise Missiles, 'Trial Court Issues Decision in Federal Lawsuit', September 1984; Susan Jaffe, 'US government fears Greenham leads the way', *New Statesman*, 25 November 1983; Sarah Benton, 'Who is the greater felon?', *New Statesman*, 18 March, 1983; See also, Cole Moreton, 'Carry on Camping', *Independent on Sunday*, 28 July 1996, pp. 10-13.

<sup>49.</sup> Hickman, *op.cit.*, p. 213.

a small group of individuals can bring law to the attention of ordinary people.[50]

### 3.6 Conclusions

The 1980s saw a groundswell of peacemaking activities by women from all walks of life. Some within the political sphere used their power to challenge decision making processes; others sought creative dialogue with those in power; while thousands of women used their collective power in joint nonviolent actions outside male bastions implementing nuclear strategies such as military bases, the Pentagon and NATO headquarters. The German Tribunal led by Kelly became a model for other European and North American groups to emulate.

One prominent decision maker who responded positively to the more prominent role of women in the nuclear free movement was A/NZ's Prime Minister David Lange. He noted that:

...the hectoring, demanding rhetoric of earlier protest movements, the calculated affronts to political figures, the dialectical wording of resolutions from meetings, all gave way to expressions of concern and affection. The shouting of strident slogans was replaced by the presentation of gifts of flowers. Politicians were to be greeted or embraced and not to be railed at. The nuclear free movement became what it should be, a movement of people who by their genuine commitment to gentleness and nonviolence conveyed in the way in which they conducted themselves a glimpse of what a peaceful world might be like. [51]

The Greenham legal case was a milestone for the British peace movement as it struggled to find a way to force the government to clarify the legal status of nuclear weapons. By coordinating the contributions of many professional peace groups in various countries, working with lawyers to prepare comprehensive legal arguments for presentation in court and educating the grassroots about international law, the women laid the ground work for strategies adopted later by the WCP.

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<sup>50</sup>. Hickman, op.cit., in Dewar op.cit., p.218.

<sup>51</sup>. David Lange, *Nuclear Free - the New Zealand Way*, Penguin, Australia, 1990, pp. 21-22.

## CHAPTER 4

### THE 1980s: OTHER DOMESTIC INITIATIVES



Demonstration against mass destruction : Snowballers at a Nuclear Base. — Wiltshire Times

## CHAPTER 4

### THE 1980s: OTHER DOMESTIC INITIATIVES

#### 4.1 Introduction

In the early 1980s a plethora of citizen organisations, especially strong in the UK, began to focus on nuclear weapons and international law. Although the UK Lawyers for Nuclear Disarmament (LND) helped inspire groups of non-lawyers such as Campaign for Nuclear Disarmament (CND), the International Law Against War (INLAW), the Institute of Law and Peace (INLAP) and Pax Legalis to use international law, it did not survive long. MacBride was an early influence on all these groups, and initiated further projects with a final goal of obtaining a request for an International Court of Justice (ICJ) advisory opinion through the UN.

A variety of groups in the Netherlands, West Germany, Canada and the US challenged their government's policies in the courts. Inspired by the Greenham Women and the Nuremberg (1983) and London (1985) Tribunals, they worked collectively with lawyers taking creative actions which included the development of legally binding Nuclear Free Zones (NFZs) in cities, ports and states. Over 100 citizen-initiated Tribunals were held in Japan; and several states banned visits by nuclear warships through legislation or their constitutions (see 5.4 and 5.5). This chapter highlights some of these initiatives to illustrate how by the end of the decade the ground was fertile for pursuing the World Court Project (WCP) internationally. It is deliberately selective and only briefly outlines some of the more prominent groups which used the law to challenge nuclearism, in order to introduce some individuals and groups which later played important roles in the WCP.

## 4.2 United Kingdom

### ***Campaign for Nuclear Disarmament (CND)***

A leading figure in CND UK for many years was Monsignor Bruce Kent. Later he became IPB President and an active member of WCP UK. He credits MacBride as the 'major influence on CND and the peace movement in general in raising the legal profile'. When Kent, as Chair of CND, addressed a rally outside the gates of the Royal Naval Submarine Base at Faslane, Scotland in June 1979 he reminded the sailors that they too were bound by the Hague Conventions. He challenged them to 'make your voice heard' and to 'refuse to take any part in the operation of weapons of indiscriminate destruction'. [1] In 1982 CND formed a legal working group which promoted debate within CND's newsletter, *Sanity*. [2] Later in 1984, as CND's General-Secretary, Kent urged soldiers on duty at Greenham Common to refuse orders related to cruise missiles citing the Nuremberg Principles, British Manual of Military Law, Hague Conventions and Lord Mountbatten. [3]

### ***International Law Against War (INLAW)***

In 1983 CND asked George Delf, a former IPB Secretary-General and head of INLAW, to draft a press statement for their Annual General Meeting. It stated briefly that all forms of mass destruction are illegal; current nuclear policies were a gross violation of the law; and it charged the government with conspiracy to commit war crimes. CND had agreed to publish his War Crime leaflets 'warning British and American military personnel of their

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1. Speech by Monsignor Bruce Kent: Chairman of the CND at Faslane Naval Base, 2 June 1979, 3 pp.

2. John Millner, 'Nuclear Weapons are illegal say lawyers', *Sanity*, December 1982, p.33.

3. Paul Brown, 'Kent urges armed forces to defy orders over cruise missiles', *The Guardian*, 14 May 1984, and Letters to the Editor by Delf and Mike Garnier, *The Guardian*, 16 May 1984. See also John Minnion and Philip Bolsover, *The CND Story*, Allison and Busby Ltd, London 1983, pp.141-143 and Bruce Kent, *Undiscovered Ends: An Autobiography*, HarperCollins, London, 1992, pp. 189-191.

responsibility to avoid war crimes and obey the law', [4] but after legal advice indicated its distribution would constitute an offence, decided not to proceed. So, Delf printed the leaflets himself and distributed them to groups throughout Britain. Disillusioned by the lack of commitment and analysis and action from Lawyers for Nuclear Disarmament (LND), he established International Law Against War (INLAW). This small network promoted a worldwide citizens' prosecution of the main agents of nuclear crime. The first case in 1985 indicted three British leaders, including Thatcher, with specific violations of international and national law. This was used as a blueprint for future cases. While most of these applications were rejected out of hand without giving reasons, they exposed the illegality of nuclearism in the legal and public domain. [5]

In 1986, the University of Warwick Law School and West Midlands CND published papers given in a series of public lectures and at a Conference on the Legality of Nuclear Weapons held during 1983-84. In the book the Co-Chair of the Lawyers Committee on Nuclear Policy (LCNP) Co-Chair Peter Weiss recommended obtaining an ICJ advisory opinion to:

...clarify the applicability of the laws of war and the Nuremberg Principles to the manufacture, testing, deployment and use of nuclear weapons; the legal significance of various UN resolutions declaring nuclear war a crime against humanity; the rights of neutral states to be safe from the consequences of a conflict between nuclear belligerents; and any number of other nuclear-related international law issues..... any state (e.g. Vanuatu, New Zealand, Sweden or any state party to the Treaty of Tlatelolco) could bring an appropriate case against one, or all, of the nuclear powers. [6]

### ***London Nuclear Warfare Tribunal (LNWT) and MacBride Appeal***

In September 1984, IPB hosted a Geneva seminar to prepare a Nuclear Warfare Tribunal in London. MacBride envisaged that it would prepare a base document for a World Conference of Lawyers for later that year.

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<sup>4.</sup> George Delf, *Humanising Hell!: The Law V Nuclear Weapons*, Hamish Hamilton, London, 1985, pp. 8-9.

<sup>5.</sup> Minnion and Bolsover, *op.cit.*, pp. 351-356.

<sup>6.</sup> Weiss, *op.cit.*, in John Dewar, et al (eds), *Nuclear Weapons, the Peace Movement and the Law*, MacMillan, Hampshire, 1986, p.195.

During 1983-4 he had promoted the idea of holding an international conference in Canada which he planned to follow with 'an attempt to secure a resolution from the UNGA, requesting the ICJ for an advisory opinion'. [7]

Emulating the Nuremberg Tribunal, the Lawyers for Nuclear Disarmament (LND), the British Green Party, other citizen groups and trade unions to organise the London Tribunal in January 1985. Presided over by MacBride, it comprised Falk and two Nobel laureates Dorothy Hodgkin and Maurice Wilkins. Amongst the Tribunal's recommendations were :

...the initiation of an effort to obtain an Advisory Opinion of the ICJ on the status of nuclear weapons, strategic doctrines, and war plans; a massive, global educational program on the subject-matter of nuclear war and on the relevance of international law and the Nuremberg Principles to its avoidance; a massive, global effort to persuade lawyers, jurists and their professional associations to pledge their commitment to the implementation of international law and the Nuremberg Principles even in relation to their own government and its leaders.[8]

Following the Tribunal, MacBride tried to implement some of the recommendations. In mid-1986, he met with Alexander Sukharev, (head of the Association of Soviet Lawyers (ASL) and the Minister of Justice of the Russian Republic of the USSR) in Moscow where he gained his signature for a petition under IPB auspices entitled 'Appeal of Lawyers Against Nuclear War' (Appendix I). It declared that the use of a nuclear weapon would constitute a violation of international law and human rights, and a crime against humanity. MacBride admitted 'it could have been improved ... but it was the furthest upon which I could get agreement ... it is difficult to get a good rousing document when you want to reach a consensus'. He planned the following:

...When we have completed the signature process we should present the signed declarations to the General Assembly of the United Nations and notify the International Court of Justice that

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<sup>7</sup> Minutes of Annual Meeting of LCNP, 11 January 1984, New York, p.2; See also Frank Field, Report of the Seminar 'The Illegality of Weapons of Societal Destruction', 14-15 September 1984, IPB, Geneva, 4 pp.

<sup>8</sup> Geoffrey Darnton (ed), *The Bomb and the Law : London Nuclear Warfare Tribunal*, Alva and Gunnar Myrdal Foundation, Sweden, 1989, pp. D-3 and 7-6.

we have done so, and that in our view this affirmed the consensus necessary to secure a declaration that nuclear weapons and other weapons of 'societal destruction are illegal under international law, and that their use would constitute a crime against humanity'. It is my hope that the General Assembly would then request an Advisory Opinion from the International Court. [9]

He aimed to collect 30-40,000 signatures from lawyers internationally by asking lawyers' groups and IPB affiliates to promote it. Originally he hoped the International Commission of Jurists, International Association of Democratic Lawyers (IADL), Association of Catholic Lawyers and LCNP would carry out the operation and share the burden. By mid-1987 10,000 copies had been printed in English and 5,000 in French; and it was also distributed in Spanish, German, Italian and some Eastern European languages. IPB mailed 4,500 copies to Australia, Canada, France, A/NZ and Switzerland. The IADL was well organised, and by early 1988, nearly 9,000 signatures arrived from Mongolia (2,000), Bulgaria (2,640), Czechoslovakia (1,100), Poland (1,450), Bangladesh (570), Latin America (228) and others. Ironically, few signatures came in from the West: US (116), Austria (98) Germany (90) and France (60). [10]

At the end of 1987, MacBride asked Francis Boyle (LCNP Board of Directors) to organise a UN press conference with the UN Secretary General, Sukharev, former US Attorney-General Ramsey Clark and himself in order to announce the project. A tentative date was set for February but, with MacBride's death in January 1988, it was cancelled. IPB continued to act as a repository for the signatures, and the Appeal and the advisory opinion idea languished due to lack of support from the newly emerging international body of lawyers (see 6.7). MacBride's success in securing the signatures of 50 international judges and other lawyers, including 10 members of the International Commission of Jurists and two ICJ judges (including the President during the 1995-96 hearings), helped secure further

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<sup>9.</sup> Letter from MacBride to Edward St John, 25 July 1987.

<sup>10.</sup> 'Situation Report about the Signature Collection', IPB, 22 January 1988.

support, and by 1992 it had signatures from 11,000 lawyers from 56 countries.

Just before his death, MacBride encouraged the IPB to try to enlist Costa Rica, Hungary, Mexico, Senegal and Sweden in the final approach to the UN to request the advisory opinion. [11] According to Boyle, MacBride assumed that with Sukharev's endorsement he had the *de facto* support of the Soviet government and therefore the other Socialist countries: 'with his name alone, he could get the Third World countries behind it, using the IPB to organise them ... and he could get the UN Secretary-General and therefore the UN behind it'. [12] MacBride was described as 'a founder and guiding light for the creation of the International Association of Lawyers Against Nuclear Arms (IALANA)', but it did not hold its first International Congress until the end of 1989 [13] and the 'evidence, commentary and judgment' of the London Nuclear Warfare Tribunal (LNWT) was not published until then either. So, with his death the energy and drive behind the LNWT recommendations, the MacBride Appeal and the related advisory opinion initiative dissipated.

### ***Pax Legalis***

Inspired by the LNWT, Delf's book *Humanising Hell: The Law V Nuclear Weapons*, and the publications of LND, a group of four non-lawyers in North Wales, founded Pax Legalis in 1984. They put together a 'well-researched case supported by extensive documentary evidence and by legal authority'. They believed that the laws of war were made for the benefit of people, not governments. In June 1987, they presented the Attorney-General with a dossier, asking for a private prosecution of Prime Minister Thatcher for conspiracy to incite murder and genocide, and for grave breaches of the Geneva Conventions. In over ten years the case was never heard on its merits. A range of excuses given by the judges, magistrates and the Crown

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<sup>11</sup>. Ibid.; Rainer Santi, IPB Briefing Paper on MacBride Appeal for UNSSOD III, May 1988.

<sup>12</sup>. Emails from Francis Boyle to Dewes, 16-17 November 1997.

<sup>13</sup>. Francis Boyle, 'In Honour of Seán MacBride (1904-1988)', *LCNP Newsletter*, Fall 1988, p. 4.

Office included: 'it is not the Court's role to test the legality of Government policy'; 'it is an attack on government policy and Courts have no competence in the matter'. [14] In 1991, their legal researcher Robert Manson began to 'lay informations' before a magistrates' court against every Secretary of State for Defence since Polaris was deployed in 1969. [15]

### ***Institute of Law and Peace (INLAP)***

During 1987 another group of non-lawyers, including Keith Mothersson, formed INLAP. They had attended the LNWT and heard Professor Pentz's plea for 'Massive Interventions of Democracy' to call to account governments' illegal nuclear strategies.[16] Frustrated by CND's wide diversity of urgent issues, problems associated with running an organisation of over 100,000 members, and lack of direct focus on the legal campaign, they decided to produce research material to educate and empower people on the relevance and application of the law to peace campaigning. [17] Many of them were also members of Pax Legalis and INLAW. Later that year Christine Soane, Angie Zelter and others began a Register of Supporters of the Law directed to MPs and the Scottish Lord Advocate. It culminated in 1989 with over 500 signatures in Scotland and 750 in England. [18]

### ***Snowball***

In 1983, Falk outlined six considerations which must underpin a 'beneficial international law regime for nuclear weapons'. The final principle was:

...a definite mandate directed towards citizens to take whatever steps are available to them to achieve a law-oriented foreign policy for their own country, including, as both conscience and good

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14. Letter from Fred Starkey to Robert Green, March 1999.

15. Robert Manson, *The Pax Legalis Papers: Nuclear Conspiracy and the Law*, John Carpenter, Oxford, 1995, pp. xx-xxii. After being rebuffed several times, they sought leave to apply for Judicial Review in the High Court. However, at the hearing in May 1995 the case was dismissed on grounds that it was speculative, and an abuse of the criminal jurisdiction of the Court.

16. Darnton, *op.cit.*, p. 5-5.

17. INLAP Annual Report, 1988-89, and Keith Mothersson, 'Campaign for Civilian Immunity', 1985, 4pp.

18. Correspondence from Christine Soane to Dewes, 10 February 1996.

sense dictate, nonviolent acts of civil disobedience, and efforts to persuade members of all branches of government to overcome the gap that separates the normative consensus of the public as to the illegality of the use of nuclear weapons from prevailing official policies. [19]

A campaign which put this into practice and which grew out of Greenham and INLAP, was 'Snowball Civil Disobedience'. Established by Zelter in 1984, it began with three people at Sculthorpe US Air Force base. Each participant cut a single link of fencing around their local military or nuclear establishment, gave themselves up to police and handed them a pre-written statement explaining their actions. They then wrote three letters to friends or public figures with 'reasonable and possible' requests to the government such as asking them to support a CTBT, encourage a 'nuclear freeze', and take some unilateral step such as cancelling Trident.

By 1987, 2,796 people had taken part in actions at 43 different locations with 2,419 arrests, most of which ended up in the courts. Hundreds of Snowballers refused to pay fines, went to prison, conducted their own defence citing international law and common law, and were interviewed frequently by the media. Community leaders, professionals, churchgoers, former military men and others chose this action as a way of overcoming what Caldicott termed 'psychic numbing'. The aim was to have two 'snowballing' effects: a snowball of letters to public figures, and of more and more people prepared to cut one strand of wire around their local base. [20] The action provided a flexible, de-centralised, self-disciplined and nonviolent way for people to express their individual decisions.

This campaign further developed into the 'Enforce the Law' campaign, using 'Declarations of Responsibility' which were distributed to civilians and military alike. These specialist campaigns, coupled with the wider actions at

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<sup>19</sup>. Sol Picciotto, 'Nuclear Weapons, State Power and Legitimacy in International Law', in Dewar etc, op.cit., pp. 18-19.

<sup>20</sup>. Angie Zelter, *Snowball: The Story of a Nonviolent Civil-Disobedience Campaign in Britain*, Gandhi-in-Action, New Delhi, 1991, pp. 1-3. A. Zelter. 'Snowballing in Britain', *Peacelink*, New Zealand, September 1987, p. 22.

Greenham and within some CND groups, illustrated a paradigm shift in the British peace movement, reframing nonviolent action as 'law enforcing' rather than 'law breaking'. [21] Later Keith Mothersson, an active member of all the above groups, adapted this idea into Declarations of Public Conscience (DPCs). Eventually millions of these were presented as evidence of citizen concern to the ICJ.

### 4.3 Other Countries

#### *Japan*

In the early 1980s, citizen groups in many Western countries adopted the NFZ idea both locally and nationally and Belau, Vanuatu, the Solomon Islands and Aotearoa/New Zealand (A/NZ) became nuclear free states. In the UK, LND and other NGOs established an International Nuclear Free Zone (NFZ) Register in Manchester. [22] However, the idea of nuclear free cities and ports had originated in Japan with the declaration of a 'Non nuclear armament zone' in Handa City in June 1958. Over the next few years similar declarations were made in Kamakura, the Minato District of Tokyo, and Mishima, Tatsuno and Akashi cities. In 1975, Kobe City Council declared the harbour a NFZ and demanded a written declaration by the commander of any warship entering the area that no nuclear weapons were on board. [23]

In 1985 there were over 1,600 local body NFZs in 17 countries. By 1992 this had grown to over 4,495 in 25 countries, [24] and by 1997 included 68% of all Japanese councils.[25] In general, they did not have legislative force, although in Germany they were considered to be close to legislative

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<sup>21</sup>. Manson, op.cit., p. xvi.

<sup>22</sup>. Abdul Paliwala, 'Peace Protest, State and Law', in Dewar, op.cit., pp. 143-145.

<sup>23</sup>. Makoto Kondo, 'New Zealand Nuclear-Free Law and Kobe Harbour System', Lecture document, Kobe, 3 August 1994.

<sup>24</sup>. Nuclear-Free America list of 'Nuclear-Free Zones in the World', May 1992.

<sup>25</sup>. Noboru Yasuga, 'Movement for Nuclear-Free Local Government in Japan', March 1997.

enactments. Some British local authorities refused to co-operate with central government civil defence plans, using their powers over transportation to try to prevent movement of nuclear weapons through their zone. [26]

The success of the international NFZ movement cannot be judged only in legal terms. Throughout the world it politicised and democratised local decision making structures and broadened public debate. In Germany and the UK it was a factor in contributing to the change in public opinion which forced the eventual withdrawal of Cruise missiles from Europe.

### ***West Germany***

In West Germany, activities organised by a single political party or NGO were being rejected in favour of a coalition of groups operating at a local level. Slogans adopted included 'participatory peace politics' and 'democratisation of defence policies'; and two actions illustrate this emerging 'participatory democracy'. The first was to declare nuclear free city councils in 1982; and the second used the Federal Constitutional Court to review the legality of stationing of US nuclear missiles in Germany in 1984. [27]

The NFZ campaign was inspired by similar actions by local authorities elsewhere. Their aim was to achieve a nuclear free Europe on a practical level by linking a multitude of small zones. This was seen as more successful than using centralised political parties and parliaments. Some councils moved resolutions which demanded specific actions from the local administration, such as refusing to co-operate with measures which served to support the production, transport, stationing and storage of nuclear,

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<sup>26.</sup> Offczors and Ruete, 'Law and Peace in West Germany', in Dewar, op.cit., pp. 222- 224; Working Paper Number One, 'Nuclear Free Zones', Lawyers for Nuclear Disarmament, London, undated, 40 pp.

<sup>27.</sup> Offczors and Ruete, op.cit., in Dewar etc, op.cit., pp. 219 - 230. See also David Pitt and Gordon Thompson, *Nuclear-Free Zones*, Croom Helm, New York, 1987; Kennedy Graham, 'Nuclear Weapon-Free Zones', PhD Dissertation, University of Victoria, Wellington, 1983; Jan Prawitz, 'The Concept of NWFZ with comments on Three Recent Proposals', Paper presented to 45th Pugwash Conference, Hiroshima, 23-29 July 1995, pp. 1-60.

biological or chemical weapons. When councils refused to allow the NFZ question on the agenda, activists sought recourse to the administrative court.

The impetus for the review came from 140 lawyers who had formed 'Judges and Prosecutors for Peace' in 1981. They placed advertisements, signed by about 500 judges and prosecutors, in newspapers declaring NATO's nuclear weapons immoral and illegal. Judge Ulf Panzer outlined their activities:

We formulated a resolution which we submitted to every Member of Parliament. We held a march right through the downtown area of our capital - an old-fashioned demonstration with bands, banners, scrolls, chanting peace slogans, singing peace songs. And we read our declaration to the open-mouthed citizens of Bonn who couldn't really believe we were genuine judges and prosecutors who dared to hold a demonstration.  
[28]

Working with the Greens and others they used the German Constitution in various court cases to argue the illegality of stationing the missiles. In one judgment, the court held that:

Pershing II missiles were not a first-strike but a first-use weapon; that a first-use of nuclear weapons would always be illegal under public international law, and that the stationing of such weapons was a threat to use force. [29]

### ***Netherlands***

In the Netherlands there was also broad-based opposition to the proposed deployment of 48 US cruise missiles and some military conscripts objected to all involvement with nuclear weapons. Many have appealed to international law, the NPT and UN resolutions in military court cases. In December 1983, the Foundation to Forbid Cruise Missiles issued a writ of summons against the government for its decision to allow the stationing of these missiles in violation of international law. Over 20,000 individuals and groups answered a newspaper appeal signing as co-claimants. These included the municipality of Woensdrecht, trade unions, political parties and

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<sup>28.</sup> Interview with Ulf Panzer in *Ground Zero*, September-November, 1985.

<sup>29.</sup> Offczors and Ruete, op.cit., in Dewar, op.cit., p. 227.

peace, medical and environmental NGOs. The lawyers made extensive use of Greenham cases and other actions. Although the District Court of The Hague declared itself unable to judge the case, the groups kept appealing. In 1989 the Supreme Court declared that deployment and use of nuclear weapons would not violate existing rules of international law. A leading advocate for the case, Phon van den Biesen, became IALANA's international secretary in 1990. [30] Following the 1984 case, a Belgian-Dutch Peace Tribunal, modelled on the earlier citizen Tribunals, was held. It examined the legal arguments which were barred from discussion in the Dutch court.[31]

### **Canada**

As early as 1978, Canadian Ken McAllister had developed a strategy of 'taking governments and civil and military leaders to the World Court... in a class action to prevent nuclear genocide and other crimes against humanity'. In 1980 he asked Canada's Attorney-General to commence charges against top officials in NATO for 'criminal actions endangering the peace of the world and for conspiracy...' claiming 'gross criminality under the Nuremberg Principles'.[32]

In 1987, the Canadian World Federalists became the coordinating plaintiff of a lawsuit on nuclear weapons, based on international law, which was filed in the Ottawa federal court. This was followed by the 'Nuclear Weapons Legal Action' in which the World Federalists used section 53 of the Supreme Court Act to ask 'whether the first-use of nuclear weapons is contrary to the law of nations as part of the law of Canada'. They were supported by the Assembly of First Nations, Voice of Women for Peace, Lawyers for Social

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<sup>30.</sup> Phon van den Biesen and Peter Ingelse, *Legal Proceedings on the Deployment of Cruise Missiles in the Netherlands: Writ of Summons*, Ars Aequi Libri Publishers, Nijmegen, 1986, pp.1-2, 103-104.

<sup>31.</sup> Theo de Roos, 'Nuclear Missiles in the Netherlands', in Dewar, op.cit., pp. 231-240.

<sup>32.</sup> Letter from Kenneth McAllister of the Committee for Judicial Action to Prevent War to Canadian Attorney General Jean Chretien, 8 June 1980; Ben Metcalfe. 'It's Time to Take Our Law Into Our Own Hands', *Vancouver Free Press*, March 28-April 3 1980, p. 3; K. McAllister, 'Judicial Action Agenda, Document 1', April 11 1980; R. Falk, 'What's Happening to Our Country?', *Promoting Enduring Peace Inc*, 1980.

Responsibility, National Union of Provincial Government Employees, Veterans Against Nuclear Arms and the United Church of Canada. There were 21 volunteer lawyers researching the case, and over 200 endorsing organisations and 21 municipal governments. In 1990 the Justice Minister rejected it, arguing that the federal court should be free to set its own agenda. [33]

In 1985, Canada's Supreme Court ruled in the *Operation Dismantle* case - an effort to obtain an injunction against US testing of Cruise missiles in Canada - that government decisions in external affairs and defence must conform to the new 1982 Constitution and the Charter of Rights and Freedoms. Although it ignored the specific injunction, like the Greenham case it opened the door for further cases. [34]

Undeterred by the outcome, Lawyers for Social Responsibility (LSR) in Vancouver organised a conference in 1986. It explored taking legal action to restrain the Canadian government from cooperating with America's nuclear weapons policy through allowing nuclear-armed ship visits and providing uranium, personnel and facilities. Six months later, Canadian lawyers held the first International Conference on Nuclear Weapons and the Law in Ottawa from 15-18 June 1987. It brought together about 150 'legal scholars and leaders of the bar from all of the world's legal systems to discuss, debate and deliberate the role of the law in preventing nuclear war' and included participants from 'both sides of the Iron Curtain'. One of the aims was to 'form a world network of lawyers and their professional associations

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<sup>33</sup>. Letter from Fergus Watt, Executive Director, World Federalists of Canada on behalf of Nuclear Weapons Legal Action to supporters, June 1991. Duncan Graham, Report on 'Illegality of Nuclear Weapons', *Purple Dawn Newsletter*, November 1986.

<sup>34</sup>. Maxwell Cohen and Margaret Gouin, eds., *Lawyers and the Nuclear Debate*, University of Ottawa Press, Canada, 1988, pp. 4,10,147. Letter from Andrea Cartier to Harold Evans, December 1988; Ross Smyth, 'Challenging the Legality of Nuclear Weapons and Strengthening International law', Address to World Federalists, Montreal, June 1986; Letter from Peter Brown (NWLA) to Harold Evans, 13 April 1989.

to march in step with the scientists and others'. [35] It was a precursor to one held in New York two months later where a committee to establish an international body was finally appointed. Meanwhile, Canadians began declaring NFZs, and by 1992 over 65% of the population lived in 180 nuclear free communities.

### ***United States***

NFZs also flourished within the US from 1982 onwards. By 1992, 188 councils had made similar declarations covering 17 million citizens. [36] Weiss claims that more US citizens were charged for actions taken to highlight the illegality and immorality of nuclear war preparations than those charged for similar moral acts during the Vietnam War. The charges included tax resistance, sabotage of nuclear weapons, 'disorderly conduct' at nuclear research and weapons installations, and impeding the progress of trains carrying nuclear missiles.[37]

Bringing a lawsuit in a US state or federal court seemed futile, as it would not rule on the merits of a case considering the legality of nuclear weapons. Attempts to present arguments by international lawyers were blocked by judges because 'no US court had ruled that possession of nuclear weapons was illegal'. [38] Recourse to the ICJ is not available to citizens - only states. However, under the Constitution of the fledgling NGO Federation of the Earth, a Provisional District World Court could be established which was empowered to hear such matters. A lawsuit was filed in 1982 in such a court in Los Angeles on behalf of 'all persons on Earth', against 28 'nuclear' nations including the superpowers, nuclear host nations and nuclear-capable

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<sup>35.</sup> Letter from Judge Maxwell Cohen to Harold Evans, 9 July 1987; Article by Alrick Huebener in *The National*, Ottawa, 1987; Joey Thompson, 'Meeting to discuss how law might prevent nuclear war', *The National*, Vancouver, December 1986.

<sup>36.</sup> Weiss, op.cit., in Dewar, op.cit., p. 191.

<sup>37.</sup> Ibid., pp.188-189; For details of some of these actions see Jackie Cabasso and Susan Moon, eds., *Risking Peace: Why We Sat In the Road*, Berkeley, Open Books, 1985; John Burroughs, *Nuclear Obligations: Nuremberg Law, Nuclear Weapons, and Protest*, Western States Legal Foundation, California, 1991 (PhD thesis).

<sup>38.</sup> James Munves, 'Beyond the Law', *The Nation*, 4 December 1982, p.580.

nations. During the lawsuit one of the presiding judges, Francis Boyle, declared:

Under article 38 (1) (d) of the Statute of the International Court of Justice, this Opinion constitutes a 'subsidiary means for the determination of rules of law'. It could therefore be relied upon by some future international war crimes tribunal. [39]

In 1987 he published a guidebook for lawyers which outlined the legal theory of civil resistance in foreign policy settings. [40]

The Lawyers' Committee on Nuclear Policy (LCNP) had formed in 1981 at the same time as the Lawyers Alliance for Nuclear Arms Control (LANAC). Soon after, LANAC's San Francisco branch filed an action on behalf of a US Senator to enforce the Anti Ballistic Missile Treaty, and another to ensure that 'our President does not use nuclear weapons first without a declaration of war by our Congress'. They pursued 'bringing an action before the ICJ on environmental and treaty grounds to have the manufacture, testing and use of nuclear weapons declared illegal'. This built on the 1973 ICJ case on nuclear testing led by A/NZ and Australia against France. [41]

According to LCNP's Co-Chair Peter Weiss:

LCNP challenged the received dogma of the policymakers through various kinds of intellectual guises such as articles, speeches, conferences and gave support to nonviolent activists who 'put their bodies on the line'. Members talked about an advisory opinion in the early days, but ...it was like the 'Holy Grail' in the first 10-12 years of the Committee's existence...because of the Cold War,... and until an international organisation of lawyers was formed.[42]

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<sup>39.</sup> F.Boyle, A. Rubin,B. Weston, S. MacBride, R. Falk, D.Hodgkin, M. Wilkins, P. Weiss, *More Than 50,000 Nuclear Weapons: Analyses of the Illegality of Nuclear Weapons Under International Law*, Alatheia Press, Massachusetts, 1991, p. x-ii.

<sup>40.</sup> Francis Boyle, *Defending Civil Resistance under International Law*, Transnational, New York, 1987, p. xix.

<sup>41.</sup> Letter from Thomas Robertson (LANAC) to Ian Prior and Owen Wilkes, 11 March 1987.

<sup>42.</sup> Interview by Dewes with Weiss, New York, 24 March 1998. See also, Newsletters of the LCNP from 1981-1998 held at LCNP office, New York.

In August 1987, LCNP and the ASL co-sponsored a three-day international conference in New York. It was attended by 180 lawyers, legal scholars, judges and political leaders from 18 nations. Some of the speakers became prominent players in the WCP : Phon van den Biesen, Miguel Marin-Bosch, John Burroughs, Jerome Elkind, William Epstein, Richard Falk, Robert van Lierop, MacBride, Saul Mendlovitz, Sukharev, Edward St John, Theorin, Christopher Weeramantry and Weiss. The participants decided to form an international body like their professional counterparts such as religious leaders, physicians, educators and retired military. Fourteen people from 11 countries attended the first executive meeting of the International Association of Lawyers Against Nuclear Arms (IALANA) in Sweden in April 1988 and agreed a plan of action based on some of the LNWT's recommendations. [43]

#### **4.4 Conclusions**

Throughout the early 1980s, efforts by citizens to create a 'Magna Carta for the nuclear age' ranged from nonviolent acts of civil disobedience to taking governments to their Supreme Courts to challenge the legality of official policies. Sparked by international events such as NATO's decision to deploy Cruise missiles in Europe, Reagan's election as US President, and the shift in military strategy from 'mutual assured destruction' to 'winning a limited

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<sup>43.</sup> The Executive agreed to:

1. Mobilize lawyers, teachers of law, and judges throughout the world to join in the struggle against nuclear weapons, both as citizens and on the basis of their professional capacity;
2. Sponsor educational activities, including research projects and publications regarding legal aspects of the nuclear weapons debate, for professional groups, political leaders and the public at large;
3. Promote the nonviolent resolution of disputes between nations and the development of institutions designed to support the rule of law;
4. Call attention to violations of international law that endanger world peace and especially those likely to lead to nuclear war;
5. Organise exchanges among lawyers and legal scholars to increase international understanding and knowledge with respect to nuclear weapons and the law;
6. Support arms control treaties, other international agreements and nuclear-free-zone regimes that contribute to the elimination of nuclear weapons.

nuclear war', ordinary people were strongly motivated to take whatever actions they could.

Realising they could not succeed by continuing to work in small isolated citizen groups, they formed coalitions across the whole spectrum of the newly emerging movement. Groups formed along professional and sectorial lines and covered most members of society. These enabled people to reach their peers and to mobilise the particular skills of a profession or interest group. So while doctors focused on education concerning the medical consequences of nuclear war, lawyers worked with peace activists to declare NFZs, litigation against governments, drafting nuclear free constitutions and laws and educating people about nuclearism and international law. The prospect of Cruise missiles on their soil gave European groups a tangible target and a sense of urgency. Mass grassroots mobilisations and peace camps at missile sites forced politicians to take the issues seriously. Three UN Special Sessions on Disarmament (1978, 1982 and 1988) gave NGOs a focus and a forum to address their concerns at the highest level. They also provided peace activists with opportunities to network and exchange ideas.

By the end of the 1980s an international lawyers' organisation was established with key objectives for the next decade, including asking the ICJ for an advisory opinion. They had risen to Falk's challenge to 'study the means whereby the power of the modern nation-state may be restrained by the rule of law' and were becoming a formidable force. Using their 'unique blend of analytical and negotiation skills' and their high status in society, they acted as an 'independent resource of insight and inquiry and analysis' on the major issue of the time - nuclear weapons. [44]

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<sup>44</sup>. Keith Suter, 'Lawyers and the arms race: where to now?' *Legal Service Bulletin*, August 1986, pp. 154-158. Quoted from Richard Falk, 'Strategic Deterrence and Nuclear War', *Proceedings of the American Society of International Law*, Washington D C, 1982, p. 23. See also Keith McDonald, 'Peace Protester in a three-piece suit', *The West Australian*, 27 August, 1986, p. VI, Weekend 6.

By working with other predominantly middle-class, professional groups, and often backed by church groups, lawyers gained access to decision makers usually denied to ordinary citizens. Women demanded representation on foreign affairs committees, inclusion on government delegations to disarmament meetings, and representation at international peace gatherings. As the missiles were withdrawn from Europe in response to the mass public actions, and the South Pacific joined Latin America as a NFZ, the movement moved from the streets to the corridors of power to dialogue with decision makers.

Skills learned while lobbying and educating politicians about the dangers of nuclear war were translated into actions internationally. NGO coalitions which had used the law to defend their actions at nuclear bases and challenged their government's nuclear policies, sought out similar groups in other countries. The success of A/NZ's anti-nuclear legislation empowered others. In 1989 the UN announced a Decade of International Law and the Cold War ended. The time was finally ripe to initiate the ICJ action.

Leading Western lawyers sympathetic to the ICJ idea were on the Executive of the International Commission of Jurists. Increasing numbers of lawyers were promoting the issue internationally, and offered their services for the common good of society. As those in 'professional' groups became more 'activists', peace campaigners began developing 'professional' lobbying skills. As these individuals and groups joined forces, they became a potent force in the struggle to mobilise politicians and diplomats internationally to support the WCP.

A decade earlier, when MacBride had tried to update the laws of war, he had failed due to lack of a strong international base of citizen groups which could lobby their governments, especially Western ones. As the new decade dawned, that base was secure and the political climate opportune. What was needed was a coalition of groups willing to devote their resources and

energy to this cause for up to five years and to coordinate the existing support into an international network.

# CHAPTER 5

## GOVERNMENTS RESPOND



**Prime Minister Norman Kirk** farewelling the RNZN frigate Otago as it sets out for Mururoa, June 1973. *Courtesy New Zealand Herald.*

## CHAPTER 5

### GOVERNMENTS RESPOND

*If one were to look back over the last 25 years of negotiations with cold-blooded objectivity and a total absence of self-delusion, there has not been a single worthwhile treaty on real disarmament. Jaipal*  
[1]

#### 5.1 Introduction

Within the newly-formed UN in 1946, both the US and the Soviet Union (USSR) produced proposals aimed at banning nuclear weapons. The US Baruch Plan was rejected by the USSR because, whilst effectively allowing the US to maintain its nuclear monopoly, it would have placed control of nuclear know-how and materials in the hands of an international authority dominated by Western interests. [2] During the 1949 Geneva Convention conference, the Soviets presented what was effectively a draft Nuclear Weapons Convention, but after hard US lobbying they were outvoted. Suspicion, fear and power politics prevailed and future attempts seemed futile. In December 1946 the UK Prime Minister Attlee had claimed that 'it was the Government's intention to seek to prohibit the use of the atom bomb'. [3] Yet it was the US, UK and French governments which blocked any inclusion of nuclear weapons in the Geneva Conventions.

This chapter outlines how, from 1945 until the early 1980s, there were numerous attempts by the Non-Aligned Movement (NAM), and several neutral, states to break through the gaming manoeuvres characteristic of disarmament negotiations. They tabled many resolutions and proposals, and used their majority to pass resolutions declaring the use of nuclear

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<sup>1.</sup> Rikhi Jaipal, *Nuclear Arms and the Human Race: To die or Not to Die*, Allied Publishers, New Delhi, 1986, p.201.

<sup>2.</sup> For a detailed outline of these initiatives see Elliott Meyrovitz, *Prohibition of Nuclear Weapons: The Relevance of International Law*, Chapter IV entitled 'The Baruch Plan: A Proposal for Atomic Disarmament', pp. 87- 196.

<sup>3.</sup> 'Atom Bomb Dropped after Jap Peace Plea', *The News Chronicle*, 5 December 1946.

weapons a 'crime against humanity' and calling for their prohibition. Two distinguished leaders in this process were Alva Myrdal (Swedish Disarmament Ambassador) and Rikhi Jaipal (India's UN Ambassador, Assistant UN Secretary-General, and later an IPB Vice-President). They documented how the UN General Assembly (UNGA) is limited to making recommendations on disarmament matters which have no restraining effect on the arms race. [4] The superpowers rejected those which they claimed were 'unrealistic or impractical'. The reality was that the superpowers, despite their outwardly fierce disagreements, secretly colluded because neither of them wished to be restrained by effective disarmament measures. Real nuclear disarmament therefore was replaced by attempts to manage the risks of nuclearism under the term 'arms control', thereby making the world 'safer for nuclearism'.

## 5.2 Treaties and Resolutions: 1945 -1980

The historic 1961 UNGA resolution declared that 'the use of nuclear and thermo-nuclear weapons is contrary to the spirit, letter and aims of the UN, and, as such, is a direct violation of the Charter of the UN'. It spelt out how their use would cause indiscriminate suffering, which is contrary to the rules of international law, and any state which uses these weapons is therefore 'committing a crime against mankind and civilization'. Similar resolutions were passed by an overwhelming majority in 1972, 1978-81, and 1983. From 1958-85 the UNGA adopted 35 resolutions demanding the ending of nuclear weapons tests.[5] Few countries promoted the ICJ, but in 1956 India sponsored an unsuccessful resolution in the UN Trusteeship Council requesting an advisory opinion on the legality of atmospheric nuclear testing. [6]

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<sup>4.</sup> Alva Myrdal, *The Game of Disarmament: How the US and Russia Run the Arms Race*, Pantheon Books, New York, 1976. See also Gunnar Fredriksson, Lars G. Lindskog, Bo Pellnas, Scune Persoon and Peter Wallenstein, *Sweden at the UN*, Svenska Institutet, Stockholm, 1996, pp. 35-43.

<sup>5.</sup> Jaipal (1986), *op.cit.*, p.204.

<sup>6.</sup> Draft Resolution T/L 498 (15 June 1956) in Stephen Kos, 'Interim relief in the International Court: New Zealand and the Nuclear Test cases', *Victoria University Wellington Law Review*, no. 14,1984, p. 359.

Jaipal believed that, from its inception, the UN desperately wanted to outlaw these weapons, but was powerless to do so. Its only recourse was to adopt resolutions prohibiting their use, recommend that the NWS declare they will not be the first to use them, and call on the Conference on Disarmament (CD) to devise political and legal measures to prevent nuclear war. UN studies were prepared by experts nominated by governments. According to Jaipal, the differing views were 'doctored and diluted by the overcautious gentlemen of the UN Secretariat' in order to reach a weak and meaningless consensus, which in turn undermined their credibility and utility.[7]

From 1962, the Mexican and Swedish UN Ambassadors acquired a formidable reputation for criticising the US and USSR for obstructing any real negotiations within the CD. Several treaties were adopted over this period which prohibit nuclear weapons in Antarctica (1959), Latin America (1967), Outer Space (1967), and the Sea-bed beyond the limit of national territorial seas (1973). The 1963 Partial Test Ban Treaty (PTBT) outlawed the testing of nuclear weapons in outer space, under water, and within the earth's atmosphere. Others were designed to reduce the risk of outbreak of nuclear war, such as the Hot Line Agreements (1963), the Accidents Measures Agreement (1972) and the Prevention of Nuclear War Agreement (1972).

These were all partial measures which allowed the nuclear powers to proliferate unabated. The PTBT permitted testing underground while the Threshold Test Ban Treaties of 1974 and 1976 limited underground tests to yields not exceeding 150 Kilotons. The Outer Space Treaty bans nuclear weapons but not other weapon systems, and has been exploited to develop new defensive weapons. Many satellites are in orbit which are potential military targets because they are vital for nuclear targeting on earth. The Latin American Nuclear Free Zone Treaty allows transit of nuclear weapons through territorial waters, and the assurances given by nuclear weapon states (NWS) are subject to certain conditions. [8] The Sea-bed Treaty bans

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7. Jaipal, *op.cit.*, p. 206.

8. *Ibid.*, p. 187.

the emplacement of nuclear weapons on the sea-bed, but places no restriction on warships. The 1968 Non Proliferation Treaty (NPT), while outlawing the possession of nuclear weapons for signatory non-NWS, has not prevented proliferation by the five NWS, despite their commitment to Article VI. This binds them 'to pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament'.

The extreme frustration of the non-nuclear states is encapsulated in this statement by the Brazilian Ambassador:

What does it offer besides discrimination for most and privilege for a few? If possession of nuclear weapons is the legitimate right of a few, it must necessarily be the legitimate right of all. If nuclear weapons are not legitimate, they can only be banned and eliminated.[9]

Ambassador Myrdal promoted outlawing nuclear and other 'cruel' weapons. Like MacBride, she argued for an updating of humanitarian law questioning why chemical and biological weapons were outlawed but not nuclear weapons.[10] She called for pressure from the public to force governments to divulge the true facts about the lack of real disarmament. Advocating societal verification of treaties and governments' commitment to them, she called for all states to be open and accountable on these critical issues. In her experience she found that the military, political and legal fraternities had proven not to be the best guardians of humanitarian principles, and that they should be supervised by groups of civilians in as many countries as possible. If officialdom was not prepared to establish such a group, then citizens should create one themselves. She suggested that any new weapon acquisition or production should be screened in light of international law, and all field manuals and military textbooks should be open to public scrutiny. [11]

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9. Ibid., p. 249.

10. Myrdal, op.cit., pp. 226-267.

11. Ibid., pp. 265-66, 302-304.

Jaipal believed that procedural wrangles within the UN concealed fundamental differences over the legality of nuclear weapons. The NWS argue that nuclear war has been prevented by mutual deterrence, and claim their nuclear policies are legal in the absence of any express prohibition of nuclear weapons in any international treaty. They ignore the opinions of the majority of non-nuclear states expressed in numerous UN resolutions and Treaties, which form a consensus that there is already a prohibition on the use of nuclear weapons.[12] Jaipal called for a 'world-wide social movement to restore sanity, legality and morality to the ideologues, technologists, scientists, strategists and political leaders, who have become prisoners of their own invention'. [13]

The IPB under MacBride, with Myrdal and leaders from the Non-Aligned Movement (NAM) leaders, campaigned throughout the 1970s for a UN Special Session on Disarmament (UNSSOD), succeeding in 1978. Its Final Document asserted that 'the most effective guarantee against the danger of nuclear war and the use of nuclear weapons is nuclear disarmament and the complete elimination of nuclear weapons'. [14] UNSSOD I constituted a watershed in the activities of NGOs and resulted in the World Disarmament Campaign which promoted public education about disarmament throughout the world. [15]

### **5.3 The 1980s: A Decade of New Thinking**

At the opening of the 1982 UNSSOD II, the UN Secretary-General mentioned the growing, increasingly organised and assertive public movement making special reference to:

...millions of people in all walks of life - scientists, physicians, and other experts...who have voiced a growing fear and anxiety about the present disastrous course. This new expression of popular concern and resolve is an encouraging phenomenon. In

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12. Jaipal, op.cit., p. 218.

13. Ibid., p. 224.

14. Homer A. Jack, *Disarm - or Die: The Second UN Special Session on Disarmament*, World Conference on Religion and Peace, New York, 1983, p. 75.

15. Jaipal, op.cit., p. 258.

a divided and distracted world we witness an upsurge of feelings over an issue that transcends all political differences and is related to common survival. [16]

Many governments acknowledged the growing popular movement and 17 Heads of State shared new insights and proposals. India's Foreign Minister said:

The first and most urgent step in the efforts to root out the menace of nuclear weapons is to agree immediately upon the total prohibition of their use. While there is the Geneva Protocol of 1925 prohibiting the use of both chemical and biological weapons, and there are ongoing negotiations to prohibit, inter alia, the use of radiological weapons, it is strange that the banning of the use of nuclear weapons has not been seriously considered so far.... [17]

He then called for a nuclear freeze, combined with a cut-off in the production of fissionable material for weapon purposes. Mexico and Sweden co-sponsored a nuclear freeze resolution which was later adopted at the 1982 UNGA. Japan reaffirmed its Peace Constitution, spelling out the commitment to the three non-nuclear principles; and the USSR and China offered no-first-use assurances to the other NWS. China also offered unconditional negative security assurances (NSAs) to all non-nuclear states.

An Indian and Mexican draft resolution requested the Secretary-General to:

...appoint a representative group of public persons of great eminence, consisting of statesmen, scientists, physicians, jurists, religious leaders, philosophers, and other suitable qualified persons, for the purpose of advising on special measures and procedures - practical, political and legal - designed for the collective control, management, and resolution of critical or confrontational situations which could escalate to nuclear war, in addition to those already provided for in the Charter of the UN. [18]

It was barely considered, but was included in the Final Document. Another Indian resolution included a draft convention on the prohibition of the use of nuclear weapons, which was later adopted at the 1982 UNGA. [19]

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16. Jack, op.cit. pp. 35-6.

17. Ibid., p. 41.

18. Ibid., p. 86-87

19. Ibid., pp. 87-9.

Although there was failure to agree on a Final Document at UNSSOD II, it did advance various disarmament initiatives which included a CTBT, NSAs, and a Chemical Weapons Convention.

Heads of State also took independent action. In 1980, Swedish Prime Minister Olaf Palme established the Independent Commission on Disarmament and Security Issues which promoted the concept of 'common security'. It stated:

There can be no hope of victory in a nuclear war, the two sides would be united in suffering and destruction. They can only survive together. They must achieve security not against the adversary but together with him. International security must rest on a commitment to joint survival rather than on a threat of mutual destruction. [20]

Its 1989 report concluded that 'a doctrine of common security must replace the present expedient of deterrence through armaments,' [21] and called for the strengthening of international institutions such as the ICJ and for states 'to support the emergence of the rule of law'. [22] An earlier UN study on nuclear weapons had also stated:

If nuclear disarmament is to become a reality, the commitment to mutual deterrence through a balance of terror must be discarded. The concept of the maintenance of world peace, stability and balance through the process of deterrence is perhaps the most dangerous collective fallacy that exists. [23]

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<sup>20.</sup> Harry Hollins, Averill Powers, Mark Sommer, *The Conquest of War: Alternative Strategies for Global Security*, Westview Press, San Francisco, 1989, p. 72; See also Kennedy Graham, *National Security Concepts of States: New Zealand*, UNIDIR, Taylor and Francis, New York, 1989, p. 157; Kennedy Graham, 'Common security - a link to the global age', *NZIR*, June/July 1986, pp. 12 -16; Kennedy Graham, 'New Zealand's Non-Nuclear Policy: Towards Global Security', *Alternatives*, vol. XII, 1987, pp.228-242. *A World at Peace: Common Security in the Twenty-first Century*, The Palme Commission on Disarmament and Security Issues, Stockholm, 1989; Shridath S Ramphal, 'Development and the rule of law', *NZIR*, Sept/Oct 1981, vol. VI, no. 5, pp. 2-6.

<sup>21.</sup> Palme Report, op.cit., pp. 6-7.

<sup>22.</sup> Ibid., pp. 8-10.

<sup>23.</sup> *General and Complete Disarmament: Comprehensive Study on Nuclear Weapons* (UN DOC: A/35/392), New York, UN, 1980, p. 157 quoted in Keith

In May 1984, the leaders of Argentina, Greece, India, Mexico, Sweden and Tanzania issued the Delhi Declaration, under the auspices of the 'Six Nation Initiative' of Parliamentarians for Global Action (PGA). It aimed to revive negotiations on a CTBT and stated :

All people have an overriding interest in *common* security and the avoidance of war which threatens human survival. ...The support and encouragement of an informed public will greatly strengthen governmental action to reverse the nuclear arms race.  
[24]

In 1983, Norway's woman Prime Minister Gro Harlem Brundtland chaired a UN World Commission on Environment and Development. Its report was published in 1987 and was the third compelling call for political action, following the Brandt Commission's Programme for Survival and Palme's Common Security report. They all highlighted the interconnectedness between security, development and the environment. These examples illustrate how world leaders responded to public pressure to use the international political system to present credible proposals for action against threats to world security. [25]

Gorbachev challenged the NWS to put these ideas into action; and in 1985 he announced a moratorium on nuclear tests in an effort to break the stalemate on nuclear disarmament. In 1986 he offered three separate proposals for the abolition of nuclear weapons by 1999. When Reagan refused to consider abandoning his Strategic Defence Initiative, negotiations between the US and USSR were halted. Undeterred, Gorbachev joined India's Prime Minister in issuing the 1988 'Delhi Declaration for a Nuclear-Weapon Free and Non-Violent World', outlining a 10-point plan for complete nuclear disarmament.

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Suter, Allan McKnight, *The Forgotten Treaties: a Practical Plan for World Disarmament*, The Law Council of Australia, 1983, p. 5.

<sup>24.</sup> Jaipal, *op.cit.*, p. 249 and 264; Boyle, *op.cit.*, p. 64.

<sup>25.</sup> Graham (1989), *op.cit.*, pp. 156-157; *The Report of the World Commission on Environment and Development, Our Common Future*, Oxford, 1987, pp. xix-xv, 19-23.

While none of these proposals resulted in specific action, they influenced global leaders' attitudes towards nuclear weapons. Earlier bilateral negotiations between the superpowers prepared the way for treaties to eliminate certain classes of nuclear weapons under the Intermediate Range Nuclear Forces Treaty (1987), First Strategic Arms Reduction Treaty (START I, 1991-2) and START II (1993).

With the failure of UNSSOD II, the anti-nuclear movement reviewed their strategies. Were their methods of educating, political action, lobbying, demonstrating, and committing civil disobedience inadequate? What other revolutionary measures could be taken to precipitate real action? [26]

Gradually more serious consideration was given to using national and international law. During UNSSOD III in 1988 Sweden's Prime Minister Carlsson reinforced that Six Nation Initiative's Stockholm Declaration which stressed that :

...all states have the responsibility to uphold the rule of law in international relations. Those who possess nuclear weapons have a crucial role. One important step would be to prohibit the use of nuclear weapons. And I believe that the time has come to explore the possibility of such a step... Now that we approach the end of the 20th century, states and political leaders should be civilised enough to accept the rule of law in international relations.

The following year, NAM Foreign Ministers called for a UN Decade of International Law to work towards universal acceptance of the compulsory jurisdiction of the ICJ. The West refused to accept this goal, but the UNGA adopted a watered-down proposal and the UN Decade was declared. Ironically, during the 1991 Gulf War US President Bush called for a New World Order based on the law:

Today a new world is struggling to be born. A world quite apart from the one we have known. A world where the rule of law supplants

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<sup>26.</sup> Jack, op.cit., p. 13.

the rule of the jungle...America and the world must support the rule of law.[27]

#### 5.4 Unilateral Actions by States

Meanwhile, frustrated by the ongoing lack of commitment by the NWS to elimination, individual states took unilateral actions to ban them from their sovereign territory. As early as 1963 Denmark enacted a law which prohibited nuclear weapons on its territory and visits by nuclear-armed ships.[28] Later, similar policies were adopted by Sweden, Norway and Finland. However, both Denmark and Norway, as NATO members, maintained the option of receiving nuclear weapons in times of crisis or war. [29] Japan's non-nuclear principles should also preclude visits by nuclear-armed warships. China and India, do not allow nuclear weapons from other NWS to visit their ports. Neutral states Austria, Ireland and Switzerland ban overflights by nuclear-armed aircraft. The first national NFZs were declared by Mexico (1962) and Sri Lanka (1964).

Up to 23 states adopted policies which prohibit port calls by nuclear-armed warships. However, under the policy of neither confirm nor deny (NCND) of the US, UK and France, only a few maintained the integrity of their policies throughout the 1980s (but not necessarily the 1990s). Amongst these are A/NZ (1984), Belau (1979), Iceland (1985), Iran, Solomon Islands (1984) and Vanuatu (1982). [30] Kobe is the only Japanese port which stringently observes a non-nuclear policy. The rest of the 23 countries (including Egypt, Malta, Nigeria, the Philippines, Seychelles and Spain) expect their policies to

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<sup>27.</sup> Address before a Joint Session of Congress on the Persian Gulf Crisis and the Federal Budget Deficit, 11 Sept 1990, 26 WEEKLY COMP.PRES.DOC.1358, 1359, 17 Sept 1990.

<sup>28.</sup> Derek Wilson, *Neither Confirm Nor Deny*, Pacific Institute of Resource Management, Wellington, 1991, p. 23.

<sup>29.</sup> Ramesh Thakur, 'Nuclear ship visits: the Nordic practice', *NZIR*, May/June 1987, vol. XII, no 3, pp. 16-21.

<sup>30.</sup> Michael Hamel-Green, *The South Pacific Nuclear Free Zone Treaty: A Critical Assessment*, Peace Research Centre, Canberra, 1990, pp. 82-104; R.E. White, 'Do We Want the Ships Back?', University of Auckland, May 1987, p. 8; Wilson (1991), op.cit., p. 21.

be respected by the NWS and trust them to comply. [31] A/NZ passed legislation in 1987 which puts the onus on the Prime Minister to decide if a warship is nuclear-armed, thereby challenging NCND head-on. However, A/NZ accepts NCND in relation to visiting aircraft. Substantial evidence suggests that the US in particular does not honour the nuclear free policies of most of the above-named states. According to a senior US official, NCND is :

...aimed at the publics in allied countries, and at governments prepared to let the US store nuclear weapons on their soil, or to have ships with nuclear weapons call at their ports; provided that their people do not find out. [32]

The US Navy recorded that, in 1984 and 1985 alone, nuclear-armed ship visit days to Denmark, Egypt, Finland, India, Japan, Norway and Sweden totalled 5833, with 5557 for Japan. [33] A/NZ's policy exposed this hypocrisy in relation to ship visits.

Thus, it has been at the periphery rather than the strategic centre of nuclearism that the Cold War really began to melt. Small South Pacific states such as A/NZ, Belau, the Solomons and Vanuatu enshrined their nuclear free status in law or by Constitution in order to maintain the integrity of their policies. Encouraged by the example of the Latin American NFZ (Tlatelolco) Treaty, they worked together to establish a similar zone in the South Pacific.

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<sup>31</sup>. R.E. White, *Nuclear Ship Visits: Policies and Data for 55 Countries*, Tarkwode Press, Dunedin, A/NZ, 1989; R. E. White, *The Neither Confirm Nor Deny Policy: Oppressive, Obstructive, and Obsolete*, Working Paper no. 1, Centre for Peace Studies, University of Auckland, 1990; Peter Wills, 'The New Zealand Nuclear Free Zone', Submission to the Defence Review, 1986.

<sup>32</sup>. Former Assistant Secretary of Defence, Morton Halperin stated this before the Senate Foreign Relations Committee during hearings on Nuclear Weapons and Foreign Policy, 93rd Congress, 2nd session 1974, quoted in Derek Wilson, *Neither Confirm Nor Deny*, PIRM, Wellington, 1988, pp.1-2.

<sup>33</sup>. Wilson (1991), op.cit., pp. 35-36; William Arkin, *The Nuclear Arms Race at Sea*, Neptune Papers No 1, 1987; Peter Hayes, Lyuba Zarsky, Walden Bello, *American Lake: Nuclear Peril in the Pacific*, Penguin, 1986, pp. 76, 85, 98; Hamel-Green, op.cit., p. 7.

## 5.5 Nuclear Free Zones (NFZs)

It was in Europe that the idea of regional nuclear (weapon) free zones first took hold. In 1957, Poland proposed a zone covering Poland, Czechoslovakia and the two Germanys. It was the first NFZ proposal to define the essential features as entailing:

... the absence of all nuclear weapons and delivery systems, adequate multilateral inspection and verification systems, a commitment by nuclear weapon states not to use nuclear weapons against zone and territory and implementation through a treaty or other legally binding instrument. [34]

Not surprisingly it was rejected by West Germany, the US and UK because they argued that it would undermine NATO's nuclear posture. It did however influence subsequent proposals in the Balkans (1959), Asia and Pacific (1957 and 1958), Africa (1960), Latin America (1962), the Mediterranean (1963) and the Nordic region (1963). [35]

The Antarctic became the first demilitarised zone in 1959 with nuclear explosions and the disposal of radioactive waste prohibited. [36] The first NFZ in a populated region was the Tlatelolco Treaty of 1967. Costa Rica had raised the idea in 1958 and in 1960 Mexico linked an Irish suggestion of 'disarmed areas of law' with the Latin American region. In 1961 Brazil submitted a draft UNGA resolution; and in 1963 Mexico, with support from four other states, succeeded in getting it adopted. [37] Three decades later Costa Rica, Mexico and other Latin American states played pivotal roles in the WCP.

In 1962, the Australian Labor Party leader proposed that the Antarctic NFZ be extended to cover the Southern Hemisphere. CND in Australasia petitioned their governments for 'No Bombs South of the Line', which

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<sup>34</sup>. K.G.M. Graham, 'Nuclear Weapon-Free Zones', PhD Dissertation, Wellington, 1983, p. 71 and Hamel-Green, *op.cit.*, pp. 8-9.

<sup>35</sup>. Graham (1983), *op.cit.*, pp. 236-238; M. Hamel-Green, 'The UN Role in Facilitating Regional Denuclearization and Arms Control', Paper presented in Melbourne, 2-6 July 1995, pp. 3-6.

<sup>36</sup>. Graham (1983), *op.cit.*, p. 71 and p. 165.

<sup>37</sup>. *Ibid.*, pp. 165-172.

culminated in over 200,000 and 80,000 signatures in Australia and A/NZ respectively. Prime Minister Holyoake affirmed A/NZ's commitment to a South Pacific NFZ but took no action. It was promoted again at the UNGA in the early 1970s by the future Labour Prime Minister Norman Kirk. [38]

In 1975 the UN sponsored a study on NFZs, and at UNSSOD I the idea was affirmed as an 'important disarmament measure'. In 1985, the South Pacific Nuclear Free Zone (SPNFZ) became the second zone in a populated region. It did not, however, prohibit transit by nuclear-armed warships and aircraft; uranium mining; nuclear command, control and communication facilities; or joint exercises with nuclear-armed forces. Watered down by the Australians, it was a far cry from the comprehensive zone promoted during the previous decade by the Nuclear Free Pacific movement and a few determined anti-nuclear island states such as Vanuatu, Solomons and Papua New Guinea. Years later these states, like their Latin American predecessors, were at the forefront of the WCP.

It took another decade before calls for similar zones in Africa (1996) and South East Asia (1995) came to fruition because the NWS and their allies successfully blocked earlier proposals. Their fears were summed up by Admiral Hayes, US Commander of Pacific Fleet, when he justified the US refusal to sign the SPNFZ Protocols in 1988:

If we endorse one zone, then how about endorsing the next one and the next one, and so forth until you have no room remaining to do the things that are necessary to maintain your deterrent posture? If it ever got to that, then we're in trouble. [39]

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<sup>38</sup>. Elsie Locke, *Peace People: A History of Peace Activities in New Zealand*, Hazard Press, Christchurch, 1992, pp. 180-182; K. Graham (1989), *op.cit.*, p.21. Note the A/NZ Labour Party spells their name differently from the Australian Labor Party.

<sup>39</sup>. Lesley Stevens, (Film Director), *Niuklia Fri Pasifik*, New Zealand, 1989, Producers: Alister Barry and Philip Shingler.

## 5.6 Conclusions

While NGOs tried valiantly to persuade politicians to take strong nuclear disarmament initiatives within the UN and nationally, little of real significance was achieved, besides NFZs and the NPT, until the late 1980s with the end of the Cold War. Certain diplomats and political leaders, primarily from the neutral and non-aligned states, persevered within the system; but their efforts remained frustrated by the Cold War mentality and the NWS veto. Myrdal credits the strength of the few UN disarmers to the cohesion of the NAM, whose numbers surged during the 1970s as newly independent nations joined. The NAM worked closely with some of the neutrals and at times they were joined by Western-allied states like Australia and A/NZ. However, their role was largely 'as intermediaries trying to knit together whatever minimal agreement seems possible'. The result was either total failure or some incomplete and ineffective treaties under the label of disarmament. [40]

Countries which succeeded in unilateral and regional actions through Nuclear Free Zone (NFZ) declarations still succumbed to pressure from the nuclear weapon states (NWS) to allow most of their nuclear weapon activities to continue. As long as 'neither confirm nor deny' (NCND) remained, few states could give categorical assurances to the public that no nuclear weapons would be brought into their countries. A/NZ's nuclear free legislation was probably the most stringent in its ban on nuclear weapons. The policy was monitored by a group of citizens appointed by the government to hold them accountable to the law. It fulfilled the function of societal verification mooted by both Jaipal and Myrdal.

In direct response to the massive public outcry and UNSSOD I and II, some states took independent action. Political leaders worked together on strategies to reduce threats to global security, publishing reports and prioritising plans of action. Parliamentarians for Global Action (PGA) worked closely with the Non-Aligned Movement (NAM) states to pursue many of

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<sup>40</sup>. Myrdal, *op.cit.*, pp. 326-327.

these initiatives. The result was a more pro-active parliamentary lobby, both at international fora and in national legislatures.

Inevitably, tensions developed between politicians trying to reflect the public opinion, and the bureaucracy which was relatively immune to the changing whims of the political wing. In A/NZ, the high level of public support for the nuclear free policy sustained politicians trying to withstand pressure from the traditional Western allies and a conservative bureaucracy. With the rapid expansion of the international peace movement and the growing opposition to nuclear weapons, Western non-nuclear governments in particular were forced to take notice and reflect public opinion at home and in the UN. With the easing of Cold War enmities in the early 1990s, countries like A/NZ would play a key role in forcing policy changes by their allies and supporting more radical initiatives such as the WCP.

## **Part II**

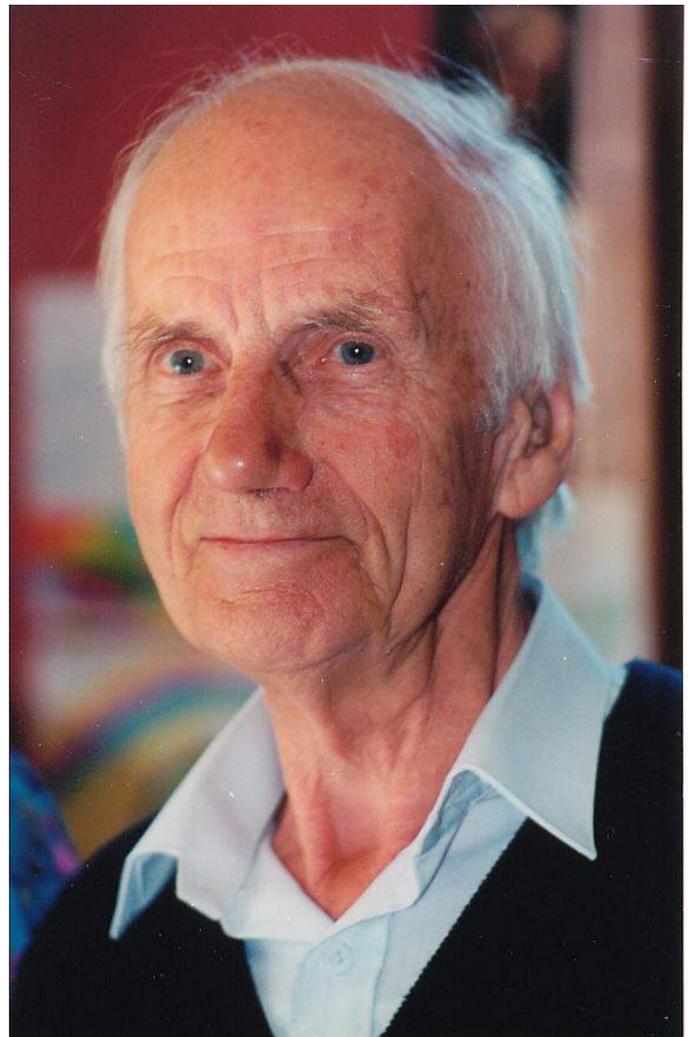
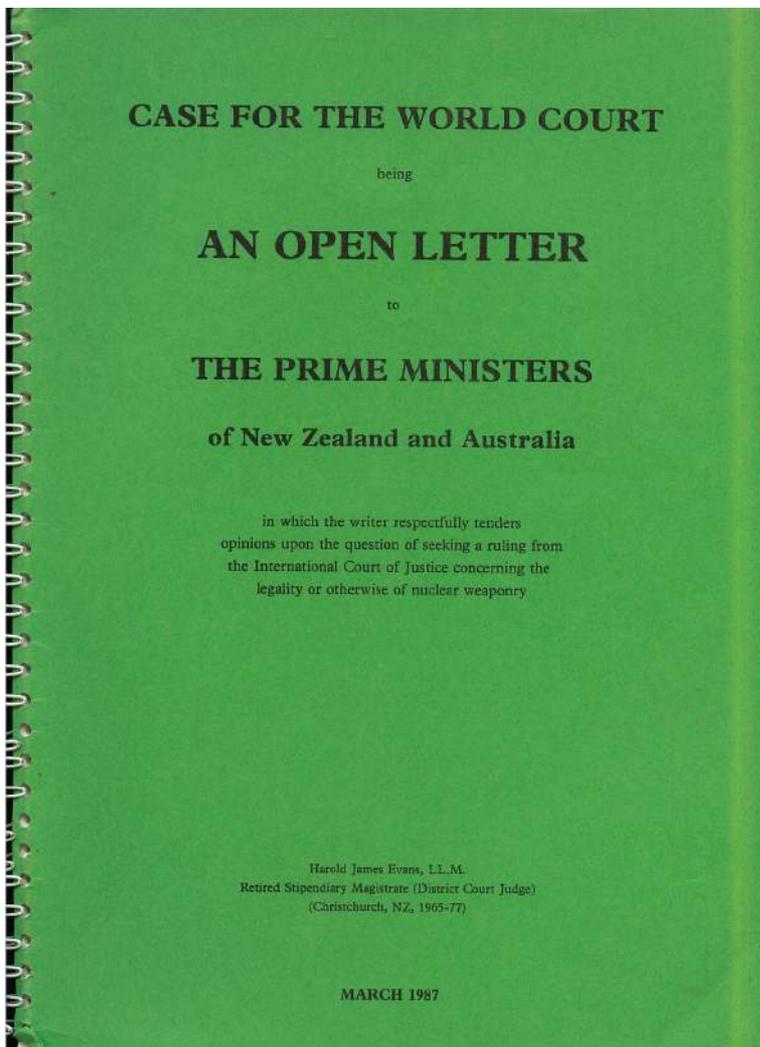
# **World Court Project Gestation: 1986-1992**

*Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it's the only thing that ever has.*

Margaret Mead

**CHAPTER 6**

**CITIZENS MOBILISE IN  
AOTEAROA/NEW ZEALAND:  
1986-1990**



**Harold Evans**

## **CHAPTER 6**

### **CITIZENS MOBILISE IN AOTEAROA/NEW ZEALAND: 1986-1990**

#### **6.1 Introduction**

Aotearoa/New Zealand (A/NZ) is the subject of special attention because it became the base for the development of the international World Court Project (WCP) movement. Eventually in 1994, A/NZ became the only Western-allied state to support the UN WCP resolution. This was a direct result of extremely strong anti-nuclear public opinion, and the untiring efforts of a few individuals who devoted much of their time to this initiative for nearly a decade.

Prior to 1980, the A/NZ peace movement was preoccupied with nuclear testing, the Vietnam War and promoting a Southern Hemisphere Nuclear Free Zone (SHNFZ). During the early 1970s there was a period of nonviolent direct action at Moruroa, supported at government level by the dispatch of a frigate to the French testing zone; and an associated contentious case against France in the ICJ by A/NZ and Australia. These actions attracted international media coverage, as did the Peace Squadron confrontations with visiting US and UK warships (1976-84). There was also a strong education campaign about the health and environmental effects of nuclear war and nuclear power generation.

By 1980 a loose coalition of peace groups had begun to coordinate a national nuclear free zone (NFZ) campaign; screen powerful anti-nuclear films; research disarmament initiatives; monitor UN voting patterns; and organise visits by high-profile speakers such as Helen Caldicott, Petra Kelly, Maj Britt Theorin, Richard Falk and Bruce Kent. In 1983, as one of several similar initiatives a NFZ bill was introduced into parliament; and in 1984 the new Labour government pledged to ban visits by nuclear-armed and powered

warships. This precipitated a crisis within the ANZUS Alliance and the Ministry of Foreign Affairs.

In their first years in office, Labour helped broker the South Pacific Nuclear Free Zone (SPNFZ), drafted the nuclear free legislation and held a public Defence Review. It was an exciting time for the peace movement. Local NFZs proliferated throughout the country, and hopes were high that Prime Minister David Lange would export the policy globally. Never before had the peace movement had access to so many sympathetic politicians, nor participated so fully in the decision making process. A wide range of people sent in submissions outlining other initiatives which the government could pursue to promote the anti-nuclear policy. The ground was highly fertile for the germination of the WCP.

This chapter describes how a former A/NZ magistrate worked closely with an Australian jurist and the Australasian peace movements to promote and sustain what became known as the WCP. It documents their attempts from 1986-90 to convince both the international peace movement and their governments to support the campaign.

## **6.2 Harold Evans**

Harold Evans is recognised internationally as the primary initiator of the WCP (Figure 4). He, like Seán MacBride, had the 'principled audacity' to pursue a cause which had ramifications far beyond his homeland. What were the factors which underpinned his commitment to a nuclear free world and his faith in international law? What gave him the courage to withstand the ostracism by his former Foreign Affairs and legal colleagues? What were the methods he adopted which eventually helped convince politicians, diplomats, lawyers, doctors and international peace activists to join his campaign?

Harold Evans was born into a conservative Wellington family in 1916. His father was a devout Anglican who became Chancellor of the Wellington Diocese, and A/NZ's Solicitor-General from 1945-57. Young Evans boarded at Christ's College in Christchurch and 'sort of slipped into' a legal career,

despite his desire to become a musician. [1] He studied law at Victoria University and became interested in international law after studying the Hague Conventions. After completing his degree, he worked in a law firm before serving with the Royal NZ Air Force in the UK from 1941-45.

There is no history of political activism or outspokenness within the family. Even at university, Evans shied away from more radical groups such as the Student Christian Movement. It was not until he was in a British military convalescent home following a flying accident that he read the works of leading authors such as Karl Mannheim, Erich Fromm, E. H. Carr, and Commander Stephen King-Hall. Later, religious writers such as Dietrich Bonhoeffer, William Temple and Schweitzer also profoundly affected his thinking.

On his return to A/NZ, he worked in the Ministry of Foreign Affairs before being seconded as Secretary to Prime Minister Peter Fraser. One of his most formative experiences was as Associate to Justice Northcroft, the A/NZ Judge on the International Military Tribunal for the Far East in Tokyo. This trial of the major Japanese war criminals lasted from 1946-48. [2] Later he took up private law practice and from 1965-77 he was a Stipendiary Magistrate in Christchurch. He retired early due to his deteriorating hearing; and from 1979-96 he took a strong interest in defence and foreign policy issues, devoting most of the last decade to the WCP.

During the Tokyo Tribunal, Evans and his colleagues often discussed why the victors were trying the vanquished as they had done at Nuremberg. Why not appoint judges from neutral states? Had that been the case, when the Japanese legal team questioned the atomic bombing of Hiroshima and Nagasaki, they might have been allowed to argue its illegality. Under the circumstances, it was not surprising that this was disallowed. Although this

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1. Interview by Dewes with Harold Evans, April 1996.

2. See 'Index to the Records of the International Military Tribunal for the Far East, 3 May 1946-4 November 1948', compiled by K.M. Wells from the personal papers of Justice E.H. Northcroft, University of Canterbury Library, Christchurch, 1983.

Tribunal was equivalent in stature to the Nuremberg Trials and contained twice the evidence, written material on it is comparatively small. Evans found the Trials revealing:

... They loosened me up, and opened my eyes to all the expediencies that go on - things done by nations apart from principle.  
[3]

During this time, Evans married the daughter of the wartime German Naval Attaché (an Admiral) in Tokyo, which led to his dismissal from Foreign Affairs on his return to A/NZ. [4] In 1949, he wrote to a newspaper challenging the UK Chief of Naval Staff who had contended that 'international law is now virtually erased from the Statute Book because of its non-observance by our enemies'. Evans suggested that the opposite was true, citing the UK's role as a victorious ally at both the Nuremberg and Tokyo Trials in enforcing and upholding international law. [5]

In 1958 he wrote to Prime Minister Nash calling for A/NZ to support an immediate and unilateral suspension of nuclear testing, [6] and questioned A/NZ support for the British during the Suez crisis. [7] Just prior to his appointment as a Magistrate, he wrote about the independence and

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<sup>3.</sup> Interview by Dewes with Harold Evans, April 1996; Arnold Brackman, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials*, William Morrow and Company, New York, 1987.

<sup>4.</sup> Edward St John, 'Judgment at Hiroshima: The people of the Earth versus the President of the United States', (Unpublished book draft- later published in Japan in 1995), 1992, pp. 136 -137. (See bibliography for list of places where the draft can be obtained).

<sup>5.</sup> Letter to the Editor, *Evening Post* (Wellington) by Harold Evans, 14 September 1949.

<sup>6.</sup> Telegram to Prime Minister Nash, 28 April 1958 and reply from Nash on 13 May 1958, (Personal correspondence of H. Evans).

<sup>7.</sup> Letter from Alistair McIntosh (Secretary of External Affairs, 1943-66) to Harold Evans (30 January 1957) reprinted in *Open Letter to Ministry of Foreign Affairs*, December 1980, p.12. 'I am sure the British have never committed a more stupid action in the whole of their national history. I felt, and still feel, bewildered and sick over the whole thing. Our justification for the Government's line is simply that one stands by one's friends, especially when they are in a hole, and more especially, perhaps, one stands by them out of loyalty when one knows they are wrong.' See also, Harold Evans, 'Not yet unconcerned outsiders', *Church and Community National Council of Churches in New Zealand*, vol. 29, no. 5, July 1972, pp. 4-5.

impartiality of judges. [8] Later he challenged the Establishment on local issues and won. These early successes possibly encouraged later attempts to question the status quo. [9]

As a Magistrate in Christchurch, Evans was known for his sometimes liberal and controversial opinions. His idiosyncrasies - such as installing a piano in his chambers where he practised - were noted by his colleagues. He prided himself on his independence, and tried to deliver fair judgements in terms of the law and his own conscience, even if it resulted in raising the ire of his more conservative peers. In 1967 he dismissed a case against a homosexual couple, because he considered the charges anachronistic (the Supreme Court objected and his opinion was reversed). Undeterred, he challenged the attempted suppression of the name of a Magistrate's son charged with driving with a high blood alcohol level. Evans' colleagues were dismayed by his decision to deliver a long critical statement in court to the awaiting media. The Legal Association, the Canterbury District Law Society and the Solicitor-General all disapproved of a Magistrate entering into public discussion on an associate's sentence. Evans thought that silence would be a greater travesty of his judicial oath than going public. [10]

Shortly before his retirement, Evans angered the conservative government by criticising the appointment of a former Prime Minister as Governor-General and publishing a statement during the Queen's visit to Christchurch. Evans declared:

If no other person in an Establishment post was going to say a bloody thing...I wanted to say something from the judicial position. [11]

The Prime Minister responded publicly:

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<sup>8.</sup> Harold Evans, 'The Independence of the Judges', *The New Zealand Law Journal*, 20 February 1962, pp. 65-66.

<sup>9.</sup> Garry Arthur, 'Harold Evans, SM., turned his back on the Establishment', *Christchurch Press*, 20 June 1980; See also, Harold Evans, 'New Zealand's role ahead - victim or venturer?', *NZIR*, vol. X, no. 2, March/April 1985.

<sup>10.</sup> Penny Deans, 'Unlikely crusader takes up his pen', *Christchurch Star*, 11 April 1981.

<sup>11.</sup> *Ibid.*

...when magistrates were appointed they were people knowledgeable in the law who, the Government thought, had wisdom and discretion 'but occasionally the Government makes an error'. [12]

Evans later documented the controversy in his first Open Letter which he sent to all MPs. [13]

### 6.3 Open Letters

The Open Letter, earlier adopted by Schweitzer, became the vehicle for Evans to challenge a variety of establishment figures on a range of issues. It provided the media with a professionally presented document, including extensive appendices and references. Some read like magisterial opinions, infused with both legal and official language:

It had to be done properly. It was no good waving my arms about. I had to express the case that I wanted to and make the points in a sober and convincing sort of way. My father passed on the desire to write good English, with clarity: believing in the case, but expressing it in a rational and reasonable way so it doesn't necessarily antagonise the person who is reading it. [14]

Over the next 20 years he published over 25 Open Letters or Memoranda at his own expense. They ranged in length from 4-170 pages and were mostly prepared without secretarial support; and they frequently attracted media attention. He also bought newspaper advertising space to publicise important information such as Lord Mountbatten's 1979 speech, the Nuremberg Principles, and details of the ICJ initiative to coincide with the A/NZ Law Conference on Nuremberg Day in 1987. [15]

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<sup>12.</sup> Prime Minister Muldoon reported in *The Press*, 8 March 1977, in Harold Evans, 'Case against Robert Muldoon and his National Party Government', Pegasus Press, Christchurch, November 1978, p.12.

<sup>13.</sup> Harold Evans, 'Case for Change', Open Letter to all MPs, Pegasus Press, Christchurch, May 1979, 14 pp.

<sup>14.</sup> Evans Interview (1996).

<sup>15.</sup> 'The Threat from Nuclear Arms - Lord Mountbatten's warning', *Christchurch Press*, June 1980; 'Law Report: Nuremberg Day', *Christchurch Press*, 1 October 1987.

The Open Letters covered a range of topics including visits by nuclear ships, the Queen's and churches' roles in opposing nuclearism, the Falklands War, the South African Rugby Tour of A/NZ and the nuclear free legislation. [16] On two occasions Evans mentioned his local support group, the Christchurch Peace Collective, which he joined in 1979. Its activities included nuclear free zone declarations, protests against nuclear warship visits, peace education in schools, publications, public meetings on US bases and ANZUS, letters to newspapers, and lobbying politicians. Some Open Letters grew out of the activities within this group.

In mid-1979 he also joined the more 'respectable' Auckland-based Foundation for Peace Studies (Peace Foundation). An independent, non-partisan, non-profit charitable trust with no political affiliations, it attracted the support of 'establishment' patrons and sponsored visits by leading disarmament experts.

Media coverage of Evans' causes was predominantly sympathetic. However, some journalists raised questions as to his motivation. Was he trading on his status as a retired magistrate in order to get more attention than other ordinary citizens? Was it not somewhat presumptuous to rap leaders over the knuckles for their perceived failings?

His departure from the accepted behaviour of magistrates meant that Evans did feel the 'cold air of disapproval at times', acknowledging that some people thought he was a 'nutter'. This did not deter him from speaking out candidly about issues. He felt a duty to express his views if he thought they were right. [17] However, only a few lawyers were linked publicly with any of his endeavours. Some local lawyers would have preferred him to speak as an individual, not as a 'retired magistrate'. His choice of attire - a windbreaker and small haversack, instead of the 'lawyer's suit and briefcase' - also offended. 'He didn't embody the nuances, the etiquette, the unwritten

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<sup>16.</sup> A list of the Open Letters is included in 'Sources Consulted'.

<sup>17.</sup> Arthur, op.cit., and Deans op.cit.; Ken Coates, 'Queen told how to do her job in open letter', *Christchurch Press*, 19 October 1983.

characteristics of the profession'. Some found the Open Letter technique distasteful - 'a shotgun approach to anyone and everyone' was not how lawyers worked. 'The soundness of his causes might have been obscured by his personality'. [18] Within the peace movement, however, he was held in high regard for fearlessly challenging the status quo. He endeared himself to local activists because of his honesty, forthrightness, detailed research on peace issues and devotion to the cause.

#### **6.4 Richard Falk's Visit**

In June 1986, Falk gave the Peace Foundation's Annual Peace Lecture. It was hoped that his visit would help stimulate the fledgling A/NZ Lawyers for Nuclear Disarmament (LND). Until then lawyers, apart from a few politicians such as David Lange, had been rather quiet on nuclear issues. LND formed in Auckland in October 1984, focusing primarily on securing the nuclear free legislation. Other professional groups of doctors, teachers, architects, scientists and clergy had formed in 1983 after an extremely successful tour by Drs Helen and Bill Caldicott, and worked closely with other peace groups. Following Falk's tour, LND's membership rose to 125, but once the legislation passed in 1987, the group disbanded, leaving only a few to give minimal support to Evans. [19]

Evans dates the WCP's beginnings to the Falk visit:

He made a strong impression in Christchurch (mainly among non-legal people) and in Auckland, where he met and expounded his views to a small group of lawyers (NZ LND). His particular suggestion at that time was for proceedings by NZ in the International Court of Justice for the purpose of clarifying its obligations (if any) under the ANZUS Alliance of 1951. [20] The Government did not take up the suggestion, but Professor Falk's ideas alerted some of us to the possibility of having the World Court render an advisory opinion on the larger question of nuclear weapon (il)legality. [21] (Figure 2)

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<sup>18</sup>. Interviews with some Christchurch lawyers who prefer to remain anonymous.

<sup>19</sup>. Philip Recordon, 'New Zealand Lawyers for Nuclear Disarmament', *Canterbury Law Review*, vol. 3, no. 1, 1986, p. 168-169.

<sup>20</sup>. Garry Arthur, " 'Take nuclear policy to World Court', U.S. expert advises", *Christchurch Press*, 25 June 1986.

<sup>21</sup>. Harold Evans, 'The World Court Project on Nuclear Weapons and International Law', *NZLJ*, July 1993.



In 1985, the Peace Foundation's lecturer Charlotte Waterlow had summarised and promoted the London Nuclear Warfare Tribunal's (LNWT) findings, [22] and Wellington doctor Erich Geiringer referred to Falk's advisory opinion idea in his anti-nuclear primer, *Malice in Blunderland*. [23] However, it was not until Falk personally shared his experiences and analysis, that A/NZ peace activists became enthusiastic about using international law to further the anti-nuclear policy. Groups were already actively linking with international bodies such as the Women's International League for Peace and Freedom (WILPF), the International Peace Bureau (IPB) and the International Physicians for the Prevention of Nuclear War (IPPNW); and women were in regular contact with the Greenham Women and others.

Falk also encouraged the peace movement to study the ingredients of previous social movements which, at their outset, had seemed impractical and unlikely to succeed. These included the campaigns against slavery, royalism, colonialism and infanticide. He suggested building on the 'embryonic' structures which were already in place for global reform, such as IPPNW and IPB. He added:

Another important source to tap is the women's movement with its creative contribution of feminine consciousness. This includes positive images of authority, order and power that do not rest on a hierarchy of violence and patriarchal systems that we have become accustomed to. Similarly we can draw on perspectives on society offered by indigenous peoples of diverse cultures.

Falk articulated some reasons why A/NZ had stepped out on the nuclear issue citing:

...the tradition of fierce independence and individualism - the Kiwi spirit. And its geographical position gives NZ the detachment and perspective that enable a more objective appreciation. Once you cross the line you set in motion a lot of other forces that keep you moving.

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<sup>22</sup>. C.M. Waterlow, and D.M.A. Leggett, *The War Games that Superpowers Play : An Examination of the Motives and Misperceptions which Sustain the Nuclear Arms Race*, London Centre for International Peacebuilding, 1985, pp.31-33.

<sup>23</sup>. Erich Geiringer, *Malice in Blunderland: An Anti-Nuclear Primer*, Benton Ross, Auckland, 1985, p. 78.

There is exhilaration in exercising your independence. It builds up a momentum of its own that raises other important questions. ...The first step does not take you far, but the capacity to move yourself is an enormous potential source of energy and freedom. It also forces the superpower to examine its own place in the world. It starts reflection and dialogue... it is a healthy thing for the United States ... [24]

With these observations he encapsulated the sense of empowerment within the local peace movement. A year before, the country had been outraged by the sinking of the Greenpeace ship *Rainbow Warrior* in Auckland by French agents. 1986 was the UN International Year of Peace and the country was actively anticipating the nuclear free legislation. A Defence Review was underway, and the government intended appointing a Disarmament Minister and a Public Advisory Committee on Disarmament and Arms Control (PACDAC). Anti-nuclear politicians, keen to placate the burgeoning peace movement, were open to new initiatives.

Falk impressed New Zealanders with his mixture of knowledge and feeling. Like Caldicott before him, he became the catalyst for expanding the horizons of citizens keen to exploit their new-found independence. Falk's brief biographical notes include the following statements:

I have become convinced that two attitudes toward life have special value for me - perseverance despite the odds and receptivity to new ways of thinking, feeling, acting. Of course, discipline and some belief in the importance of what one is doing can also be helpful, as well as sufficient self-confidence to risk failure, and what's worse, seem foolish. All of this implies an essentially religious view of human experience. [25]

These sentiments could apply equally to Evans, who found a kindred spirit in Falk. Evans was so impressed by his three Christchurch presentations that he attended his Auckland lecture and LND's AGM. Inspired by Falk's idea of taking the US to the ICJ, he took immediate action. He felt this initiative provided 'an opportunity of getting the World Court to pronounce upon the legality or otherwise at international law of the use and/or threat of the use of

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<sup>24.</sup> *Christchurch Press*, 20 June 1986.

<sup>25.</sup> Biographical notes of Richard Falk reprinted by Harold Evans in 'Open Letter to the Prime Ministers of NZ and Australia, Case for the World Court', 19-20 March 1987, Appendix 8.

nuclear weapons'. [26] He outlined the proposal to the Minister of Defence Frank O'Flynn, who believed that the anti-nuclear policy was 'not a breach of either the letter or the spirit of the ANZUS Treaty'. [27] Evans then met Attorney-General Geoffrey Palmer who was 'firmly dismissive of the whole idea', indicating that the government had already considered and rejected it. [28]

Unbeknown to Evans, Falk had also inspired Rupert Glover, a Christchurch international law lecturer, who wrote to Lange promoting Falk's ANZUS proposal and suggested recourse to the advisory opinion.[29] Lange responded:

However, in the final analysis, we do not see this disagreement with the United States as a legal matter and there is no evidence at the present time that the US is taking a specifically legal view of the matter either. If this were to change, we might of course want to review the situation. [30]

As a lawyer, Lange showed real interest and expressed surprise at the lack of serious academic work on this idea. Palmer, also a lawyer, was less forthcoming. There was little point in 'exacerbating the political relationship with the US by pursuing a legal action simply to prove a theoretical point'. He cited the cost, commitment of scarce human resources, and the US withdrawal of acceptance of compulsory jurisdiction of the ICJ as further reasons for not taking the step. [31] When Evans and Glover discovered their mutual paths a few months later, Evans began working for an advisory opinion. [32]

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<sup>26.</sup> Letter from Evans to Sir Guy Powles, 11 September 1986.

<sup>27.</sup> Letter from Evans to Frank O'Flynn, 31 August 1986, p. 2; O'Flynn's Parliamentary Statement on 7 August 1986; *Christchurch Star*, 28 August 1986.

<sup>28.</sup> Letter from Evans to Powles, 11 September 1986.

<sup>29.</sup> Rupert Glover, 'Is a Nuclear-Free ANZUS Possible?' *CLR*, vol. 2, 1985, pp. 328-342.

<sup>30.</sup> Letter from David Lange to Glover, 16 September 1986.

<sup>31.</sup> Letter from Geoffrey Palmer to Evans, 7 October 1986.

<sup>32.</sup> Speech by David Bowman, senior journalist with *Sydney Morning Herald* to Media Seminar, Canberra, October 1990; Memo from Evans to supporters, 29 September 1986, 3 pp. Rupert Glover, 'Jurisprudence of Nuclear Weapons' in Colin Burrows, ed. *The Nuclear Predicament: Problems and Solutions*, "Peacewriters", University of Canterbury, Christchurch, July 1987.

Although MacBride, Falk, Weiss, and the London Tribunal had recommended the advisory opinion route, it was not until late 1986 that there was a concerted effort to secure a group of countries to run with it. MacBride had planned to use his Lawyers' Appeal to build up support before approaching the UNGA and had held unsuccessful discussions with Sweden. Weiss had pointed to Sweden, Vanuatu and A/NZ as likely contenders, while Falk singled out neutral states. In 1987 MacBride suggested Mexico, Senegal, Costa Rica, Sweden and Hungary. Vanuatu's economy was too vulnerable and there were no resources to support a campaign. New Zealand in concert with Australia, were the most likely states: they were economically stable and members of the Western alliance. They had previously challenged the legality of France's nuclear testing at the ICJ, and both had strong anti-nuclear movements to bolster the governments.

So the seeds sown by Falk germinated within Christchurch. His legal challenge to ANZUS, which included clarification of the (il)legality of nuclear weapons, shrivelled and died within the harsh climate of the NZ- US relationship. However, the advisory opinion approach, took root and grew vigorously. In October 1986 Evans met Professor Christopher Weeramantry (former Sri Lankan Supreme Court Judge and later ICJ Vice-President) at Australia's Monash University. Weeramantry gave him copies of his writings which made a comprehensive case for illegality of use, threat, possession and manufacture of nuclear weapons. [33] Bolstered by these, Evans then met another eminent jurist, Edward (Ted) St John in Sydney, who became his staunchest supporter within the legal fraternity.

## **6.5 Edward St John**

Like Evans, St John had a conservative upbringing (Figure 4). The son of an Anglican priest, he was immersed in evangelical traditionalism, growing up with a strong sense of conviction. He felt a moral obligation to take action,

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<sup>33</sup>. C. G. Weeramantry, 'Nuclear Weaponry and Scientific Responsibility', *Indian Law Institute Journal*, vol. 27, no. 3, July-September, 1985; C. G. Weeramantry, *The Law in Crisis*, Capemoss, London, 1975.

and did so often with a biblical fervour, selflessly pursuing the truth. He served with the Australian Imperial Force during the war, started his own law practice in 1945, and became a Queen's Counsel in 1956. He was Acting Judge of the Supreme Court of New South Wales for a brief period, but declined permanent appointment. He chaired the Council of Civil Liberties and was a member of the Malta Constitutional Commission. President of the Australian International Commission of Jurists (1961-73), he served on the International Council when MacBride was Secretary-General. In 1960 he established an Australian anti-apartheid South Africa Defence and Aid Fund, which created bitter enemies within the conservative Liberal Party. Nevertheless, at 50 he became a Liberal MP in a safe seat, despite a vicious campaign by apartheid supporters.

During three years in Parliament 'he assumed the role of a Socratic gadfly, constantly stinging the Liberal government into action on issues that it would much sooner have left alone'. [34] These included: opposing higher salaries for MPs, his government's policies on Papua New Guinea and Rhodesia; and criticising the purchase of the US F-111 fighter bomber. He was labelled a maverick and trouble-maker by his peers, who also complained of his 'odour of sanctity' and his self-righteousness. The Defence Minister pronounced that '..he is too independent and too pure of heart'. [35] He was not re-elected, and spent time in business before returning to the Bar.

After hearing Falk speak in Sydney in 1986, he wrote a book which explored the development and proliferation of nuclear weapons and the relevant principles and evolution of international law. [36] It was infused with Biblical quotations and drew heavily on the writings of Falk, Jaipal, Myrdal and Delf. He distributed Delf's book to key WCP promoters describing it as follows:

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<sup>34.</sup> Mungo MacCallum, 'Maverick Liberal caused a storm', *The Australian*, 1 November 1994; Tony Stephens, 'They came to honour Edward St John: a pilgrim of the power of one', *Sydney Morning Herald*, 4 November 1994; 'A crusader who put his party second', *SMH*, 26 October 1994. Obituary notes of Justice Michael Kirby and Stella Cornelius.

<sup>35.</sup> MacCallum, op.cit.

<sup>36.</sup> St John, op.cit.

Emotional as it is, it is replete with a multitude of references, a cogent argument in support of his thesis, and his condemnation of the hypocrisy, apathy, pusillanimity and equivocation on the part of lawyers and others which has concealed or failed to proclaim the manifest criminality of nuclear war and nuclear weapons. [37]

Evans and St John also expressed extreme frustration at the lack of enthusiasm by lawyers in the nuclear debate. Like its A/NZ counterpart, the Australian Lawyers for Nuclear Disarmament (LND) was a late starter, forming in 1984. It disbanded in 1990 despite intensive efforts by St John to maintain it. He became a patron of Institute for Law and Peace (INLAP), attended the 1987 LCNP Conference, and supported the development of the International Association of Lawyers Against Nuclear Arms (IALANA).

His colourful personality was described in various obituaries as follows:

Edward St John was a restless spirit. He attracted calumny and praise in equal measure. At various times he was dubbed a McCarthyist, a communist, a neo-Nazi, a pornographer and a puritanical wowser. Even he could not make all of these epithets true. Yet, he was a man of intriguing contradictions ... [38]

Ted St John preached the need for reform in society: he saw public apathy as the root cause of parliament's weakness, exacerbated by the mass media's penchant to pursue a comfortable life. Austere, quietly spoken, driven by a moral fervour, he was unfailingly polite and held firmly to due process. [39]

Evans found another soul-mate in St John. They had similar personalities and convictions. Both loved music and had a commitment to Christianity. Their belief in the paramountcy of the law underpinned many of their actions. Tenacious in their desire to see a successful conclusion to their efforts, they made a formidable pair within IALANA and the WCP. Neither lived in fear of how others perceived them: they exuded the 'rightness' of their cause. Using their extensive contacts, they strove hard to convince others. Evans asked

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<sup>37</sup>. Evans, (1987) op.cit., p. 5, Appendix 1.

<sup>38</sup>. Justice Michael D Kirby, 'Edward St John QC - Valiant for Truth', Obituary notes, 27 October 1994, p.1.

<sup>39</sup>. David Bowman, draft obituary on St John submitted to *Daily Telegraph* (London), November 1994, p. 4.

local peace activists to help disseminate the opinions of the six eminent jurists in his first WCP Open Letter:

... they needed your help: indeed without your help, ... their views will remain nicely filed away somewhere. [40]

## 6.6 Approaches to Governments

*Is it possible that this initiative\* will lead to the start of yet another even more vital miracle and someone, somewhere will take that first step along the long stony road which will lead us to an effective form of nuclear arms limitation, including the banning of Tactical Nuclear Weapons? Lord Mountbatten [41]*

(\* Middle East Peace Initiative 1979)

Perhaps it is not surprising that the WCP 'miracle' germinated within the A/NZ peace movement. As Falk had warned, 'without political pressure from the grassroots, any effort to pursue a legal case against nuclear weapons would fail' and international lawyers would 'maintain a discreet silence on the subject as long as this was politically possible'. [42]

The movement had used the law to ban nuclear weapons from A/NZ: so there was considerable public support for pursuing legal avenues aimed at a global ban. The South Pacific and Australian peace movements were also quite strong, and they expected their governments would seriously explore this option. With a strong peace movement; an anti-nuclear policy firmly in place; an active, responsive democracy; a small population and easy access to politicians, A/NZ was well-placed to take a leadership role with Australia and thereby consolidate their tradition of support for the ICJ.

Until 1986, legal challenges to nuclearism had been attempted within sovereign states using domestic and state courts. The ICJ's only nuclear case had been in 1973 on the legality of nuclear testing. Evans therefore sought initial support from NZ's former Minister of Justice, Martyn Finlay who

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<sup>40</sup>. Letter from Evans to Christchurch Peace Collective members, 17 March 1987.

<sup>41</sup>. Mountbatten, *op.cit.*

<sup>42</sup>. Richard Falk, 'Towards a Legal Regime for Nuclear Weapons', *McGill Law Journal*, Montreal, vol. 28, 1983, p. 532.

had presented the ICJ case; and from Sir Guy Powles (A/NZ's first Chief Ombudsman and President of the NZ International Commission of Jurists). [43] Both gave almost immediate endorsement. He then asked Weeramantry, Falk and St John to contribute to an Open Letter to the Australasian Prime Ministers. [44]

In 1986, Evans sought permission to reproduce an article by Niall MacDermot, Secretary-General of the International Commission of Jurists. MacDermot replied suggesting that the ICJ should be asked to pronounce separately on: first-use; use; manufacture; deployment and possession, because first-use would gain more support from the judges and was the strongest case. He advised governments to seek the support of many 'third world' states, before launching the matter formally, rather than Australia and A/NZ co-sponsoring alone. [45] Former Australian Labor Prime Minister Gough Whitlam declined a request to write a contribution, but promised to ask all South Pacific Forum member states to accept the ICJ's compulsory jurisdiction. Falk's contribution sought to 'emphasize recourse to the ICJ rather than the potential criminal liability of leaders in nuclear weapon states'. [46] He encouraged the A/NZ-Australia role because 'countries that are in an alliance relationship with the US cannot be dismissed as hostile'.

With the second reading of the A/NZ Nuclear Free Bill due in 1987, the time was propitious for attracting public and government attention.[47] Internationally, there was renewed interest in the nuclear issue. The US had tested again and, along with France and the UK, had refused to sign the SPNFZ protocols.

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<sup>43.</sup> Hank Schouten, 'Idealist and servant of the public', *Evening Post* (Wellington), 26 October 1994; 'Inspirational New Zealander', Editorial, *Dominion* (Wellington), 27 October, 1994; 'Sir Guy Powles a fighter for justice and liberty', *Dominion*, 27 October 1994.

<sup>44.</sup> Evans, (1987), op.cit.

<sup>45.</sup> Letter from Niall MacDermot to Evans, 5 February 1987.

<sup>46.</sup> Letter from Falk to Evans, 9 February 1988.

<sup>47.</sup> Letter from Harold Evans to Richard Falk, 28 January 1987.

In March, Evans presented his 100-page Open Letter to Lange in Wellington and Australian Prime Minister Hawke in Canberra. He distributed copies to Senators Janine Haines, Jo Vallentine and Gareth Evans, and Disarmament Ambassador Richard Butler, who later played significant roles in the WCP. That week an A/NZ newspaper reported Lange's initial response: the government had chosen to concentrate on what could be done 'at home and in the neighbourhood' such as the SPNFZ and the anti-nuclear law. [48]

The Evans letter requested the governments to use Article 96 of the UN Charter to request an advisory opinion from the ICJ on the question of the legality or otherwise of nuclear weaponry. Arguments outlined by the six 'distinguished international law jurists' covered the rules based on the Hague Conventions (1899,1907), the Geneva Gas Protocol (1925), the UN Charter (1945), the Nuremberg Principles (1945), the Genocide Treaty (1949) and the Geneva Conventions (1949). [49] They argued that on the basis of these rules/principles, the UNGA has repeatedly condemned the use of nuclear weapons as an 'international crime', 'a violation of the UN Charter' and 'a crime against humanity'. The Shimoda and subsequent legal cases against nuclear weapons also demonstrated an emerging global consensus that

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<sup>48.</sup> Murray McLaughlin, 'Jurists urge test on nuke legality', *Dominion Sunday Times*, NZ, March 22 1987.

<sup>49.</sup> These are summarised as:

1. It is prohibited to use weapons or tactics that cause unnecessary or aggravated devastation or suffering.
2. It is prohibited to use weapons or tactics that cause indiscriminate harm as between combatants and non-combatants, military and civilian personnel.
3. It is prohibited to use weapons or tactics which violate the neutral jurisdiction of non-participating states.
4. It is prohibited to use asphyxiating, poisonous or other gas, and all analogous liquids, materials and devices, including bacteriological methods of warfare.
5. It is prohibited to use weapons or tactics that cause widespread, long-term and severe damage to the natural environment.
6. It is prohibited to effect reprisals that are disproportionate to their antecedent provocation or to legitimate military objectives, or disrespectful of persons, institutions, or resources otherwise protected by the laws of war.

nuclear weapons violate 'the laws of humanity and the dictates of the public conscience'. [50]

Hawke's response, though not wholly negative or dismissive, was unsupportive and espoused Australia's view that:

... a stable deterrent relationship between the US and the Soviet Union is the best means currently available of avoiding nuclear war and of providing the necessary confidence to engage in negotiations to reduce, and eventually eliminate, the nuclear arsenals. [51]

Lange, on the other hand, was more encouraging, indicating that he would study the papers in detail and reflect on what the initiative might achieve; but his first priority was to secure the nuclear free legislation. Subsequently, in reply to a Parliamentary Question, on the day the law was enacted, Lange said:

... in so far as the (proposal) is a positive one that looks at testing a critical issue in a quasi-judicial atmosphere, it is one that the Ministry and I are seriously considering. [52]

By June, Lange had become more sceptical - it was election time and he was unlikely to make a decision to proceed until he was firmly ensconced as Prime Minister for another term. He explained:

Before undertaking action through the ICJ, New Zealand would need to be satisfied as to the real effectiveness and purpose of this approach. Hitherto, we have tied our approach to practical and achievable measures. This is what ensures credibility of our policies. Specifically, New Zealand's policy is to support measures designed to encourage mutual, balanced and verifiable reductions in nuclear weapons, and to prevent their use. But there is no point in charging ahead with proposals which amount to no more than empty declarations because they press for the unachievable. ...on disarmament questions NZ works closely with the like-minded countries, notably Australia, in the United Nations. Their views will also be critical to the feasibility of an exercise such as that suggested by Mr Evans. [53]

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50. IALANA, 'Nuclear Arms and the Law', The Hague, August 1990, pp. 13-15; David Birman, (ed) & LCNP, 'Statement on the Illegality of Nuclear Warfare', New York, 1990, pp. 16-17.

51. Letter from Hawke to Evans, 1 June, 1987.

52. Parliamentary Question from Jim Anderton to Lange, 4 June 1987.

53. Letter from Lange to Rev. David Taylor, 22 June 1987.

Following the presentations to both governments, Weeramantry and Falk suggested that Evans send the letter to other UNGA states. Daunted at first by the size and cost of the task, he finally decided to approach the 71 countries with embassies in Wellington and Canberra. In May he invited them to join with other 'like-minded' in promoting the initiative.

By September, Evans had received only 22 replies. Most just acknowledged that the letter had been forwarded to their governments, but a few sent comprehensive responses. Positive but uncommitted responses came from Argentina, Chile, Cyprus, India, Iran, Mexico, Poland, Sweden and Zambia. The Soviet Ambassador requested a meeting with Evans at his Christchurch home to discuss Gorbachev's proposals for using the ICJ. On 11 September, Evans sent a further Open Letter to the 71 missions, which included the responses from Hawke and Lange. This time, nearly 40 countries acknowledged receipt, including the five NWS.

By October 1987, it was clear that the A/NZ government had no intention of acting during the UNGA, but indicated it would consult closely with any state that showed interest. [54] In the meantime St John, Weeramantry and Falk attended the New York Lawyers' Conference. Weeramantry publicly 'promoted Harold's idea which was quite well received and fitted in well with Seán MacBride's endeavour to obtain signatures for the Appeal ...'. [55] St John met with Robert Van Lierop, Vanuatu's UN Ambassador, who was 'very keen' about the proposal. He offered to recommend it to Vanuatu's Prime Minister Walter Lini, and suggested that St John should meet officials and the Foreign Minister when he visited Australasia, noting that he supported the idea. However, nothing transpired partly due to financial constraints, and political considerations on the part of Vanuatu. [56]

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<sup>54.</sup> Letter from Geoffrey Palmer to St John, 4 October 1987.

<sup>55.</sup> Diary notes from Ted St John, 17 September 1987.

<sup>56.</sup> *Ibid.*; Correspondence between St John and van Lierop from October 1987 to February 1988.

So by the end of 1987, nearly half of the 73 countries approached had not bothered to reply, none had shown enthusiasm for promoting the idea amongst other states, and Australia was unsupportive. With Lange's re-election, A/NZ still seemed the only country likely to pursue it.

Evans devoted the next few years to building up public opinion and received considerable media coverage in Australasia.<sup>[57]</sup> In November 1987, he addressed A/NZ's Foreign Affairs Committee (chaired by Helen Clark), who indicated they would unanimously recommend the initiative to the government. St John persisted with the Australians, despite Judge Kirby's warning that 'for reasons of foolish pride, Australia might not follow a New Zealand initiative'.<sup>[58]</sup> Between 1987-90, the only real attempts to convince other governments were in 1990 when Disarmament Minister Fran Wilde consulted informally with Theorin, and when Evans and Dewes attempted to interest India, Ireland, Denmark and Canada in discussing the proposal with A/NZ.

Weeramantry had viewed A/NZ's early responses as 'a significant step forward'. He felt that many countries would await steps taken by others, and 'with a little bit of urging some other countries can be made sufficiently interested in this'. At the beginning of 1988 he promoted the Evans proposal when he met UN Ambassadors in New York to lobby for his own resolution on nuclear weaponry and scientific responsibility.<sup>[59]</sup>

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<sup>57.</sup> Harold Evans, 'Time to test a critical issue', *Dominion*, 9 May 1988; Murray McLaughlin, 'Humanity v the Bomb', *The Listener* (NZ), 12 September 1987, pp. 32- 34; Ian Mathews, 'Bowling to the Bomb', *Canberra Times*, 30 July 1989, (Magazine); Letter to Editor from Evans, 'Outlawing nukes', *The Dominion*, 24 March 1988.

<sup>58.</sup> Letter from Justice Kirby to Evans, 9 December 1987.

<sup>59.</sup> Letter from Weeramantry to Evans, 25 June 1987.

## 6.7 Approaches to Citizen Groups

### *Lawyers*

As already discussed, few A/NZ lawyers supported Evans. Many maintained their distance because the project was viewed as 'a crazy scheme being promoted by a local eccentric who happened to be a magistrate. It was unlikely to succeed and therefore didn't really merit too much consideration'. They felt Evans was on a 'major ego trip', and although Glover was initially active, he did not stay involved:

There was energetic, eccentric Harold in the middle with octopus tentacles going out in lots of directions with lots of little circles at the end; and within each little circle where something had been put, there was no communication around circles on the circumference. There was only communication through the middle, and that communication only occurred when the middle permitted it. [60]

In late 1987, Evans wrote two Open Letters to the A/NZ International Commission of Jurists, and included MacBride's Appeal and an article by an eminent A/NZ lawyer Kenneth Keith. [61] The Commission gave it strong endorsement and urged the government actively to support it. Signalling the government's quandary, the Foreign Minister waited eight months before replying. In the meantime, Evans approached the Australian branch of the International Commission of Jurists and in July 1988 they were joined by the Society of Labour Lawyers in asking their government to join A/NZ in this endeavour.

Evans discovered that a five-day conference for 2,000 lawyers in Christchurch began on Nuremberg Day, 1 October 1987. Seizing the opportunity to educate and mobilise A/NZ lawyers, he placed a full-page advertisement in the local paper. It summarised the Nuremberg Principles, asked participants to sign the MacBride Appeal and detailed the WCP initiative. Readers were asked to send coupons to the Foreign Minister, indicating their support. According to the Ministry only five were returned, and

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<sup>60.</sup> Interview by Dewes with Glover, 7 May 1996.

<sup>61.</sup> Kenneth Keith, 'Nuclear Weapons and the Law: a Legal Viewpoint', *Law Talk*, 16 September 1987.

none were from lawyers. Evans continued to search for supportive A/NZ lawyers over the next few years; but it took until October 1990 before the Public Issues Committee of the Christchurch branch of the Law Society gave public endorsement.

At the international level, it was also difficult to convince Western lawyers that this idea could succeed. MacBride did not mention the advisory opinion in his Appeal, probably because of lack of support. According to Francis Boyle (LCNP Director and Consultant), there was 'little enthusiasm', and later 'outright opposition' from some leading LCNP members to both the Appeal and its subsequent objective of an advisory opinion, which were seen as 'Seán's ideas'. [62] LCNP wanted to establish an international organisation of lawyers along the lines of the Nobel Peace Prize winning IPPNW which was led by US and Soviet doctors. Prior to the August 1987 New York Lawyers' Conference, LCNP asked Boyle to travel to the USSR to lecture on 'Nuclear Weapons and International Law' and to discuss with the Association of Soviet Lawyers (ASL) how to build an international body. Like MacBride, the Soviets were reluctant to have an organisation dominated by lawyers from the superpowers: 'MacBride had convinced them that Third World lawyers should run it' as most of the support for the Appeal had already come from there, not the West. The Association of Soviet Lawyers and LCNP asked Boyle to draft a substantive communique for the conference which included the advisory opinion proposal. [63]

However, according to Boyle, within LCNP there was a 'grave reluctance to criticise US nuclear weapons policies to any extreme' because 'they always wanted to retain their "credibility" with the establishment'. Things came to a head at the conference with MacBride, Sukharev and Boyle on one side and the LCNP hierarchy on the other: 'LCNP reluctantly, and only at Sukharev's insistence' approved the Appeal, and the Boyle draft communique was not

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<sup>62.</sup> Email from Francis Boyle to Dewes, 15 September 1998.

<sup>63.</sup> Email correspondence between Boyle and Dewes, 16-18 September 1998; Francis A. Boyle, *The Future of International Law and American Foreign Policy*, Transnational, Dobbs Ferry, New York, 1991, pp. 355 - 368.

considered. [64] The eventual 'New York Anti-Nuclear Declaration' acknowledged the 'earlier momentous contribution made by the IPB, which has obtained the signatures of thousands of leading international figures on its International Appeal, originated and inspired by Seán MacBride', but did not include any mention of the advisory opinion.[65] MacBride, Sukharev, Falk and Gustafsson were among the six appointed to the preparatory committee to organise what became IALANA. Ironically, MacBride was given a standing ovation for his dinner speech where he outlined his proposal and received considerable support.[66] Weeramantry also promoted the Evans initiative during the conference, and for the first time, both ideas came together. The LCNP Newsletter following the Conference described the MacBride Appeal, and highlighted how 'lawyers are starting to cooperate internationally...' with 'Harold Evans ... leading a multinational campaign to have the UNGA request an advisory opinion'. [67]

It is surprising that Falk, Weeramantry and Weiss were not listed among MacBride's '50 eminent lawyers' promoting the Appeal as all of them had previously advocated the advisory opinion route. However Sir Guy Powles, who had served on the International Commission of Jurists with MacBride, was among them. He was also one of Evans' 'six wise men', along with Weeramantry and Falk. Despite this, Evans did not hear of MacBride, the IPB or the Appeal until MacBride wrote to St John and Evans in July 1987, after receiving a copy of the Open Letter via Bruce Kent.[68] MacBride congratulated them and asked them to support the Appeal. Evans, much to his regret, never replied. [69] Ironically these two men, who had pursued slightly different versions of the same goal from mid-1986 on opposite sides of the planet, did not seek closer cooperation for their initiatives. MacBride's

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<sup>64.</sup> Email from Boyle to Dewes, 16 September 1998.

<sup>65.</sup> 'The New York Anti-Nuclear Declaration', *LCNP Newsletter*, vol.3,no.1, Winter 1987/1988, p.9.

<sup>66.</sup> John Burroughs, 'Lawyers Tackle Nukes at NYC Conference', *Bay Area Lawyer Guild Newspaper*, Nov/Dec 1987.

<sup>67.</sup> *LCNP Newsletter*, vol.3, no.1, Winter 1987/88, pp. 3 and 7.

<sup>68.</sup> Letter from MacBride to Ted St John, 25 July 1987; Letter from MacBride to Evans, 13 July 1987.

<sup>69.</sup> Conversation between Evans and Dewes, 22 September 1998.

health was failing, he had retired from IPB and did not have funding. With his death less than five months later, and the legacy of the dispute with LCNP, Evans was left relatively isolated as the primary proponent.

St John gave sterling support from Australia, and in mid-1987 sent the Open Letters to INLAW and various US groups. Not surprisingly, he received a lukewarm response from LCNP. Following the 1988 visit by Dewes to New York where she met LCNP's Executive Officer and others, LCNP offered to 'serve as coordinator between Harold Evans, New Zealand activists, the IPB, IPPNW and other organisations and individuals'. However, nothing transpired, and the New Zealanders were left to coordinate most of the international support until 1992.

Reasons given by LCNP for this inaction included: too many other projects; understaffing ('no assistant, no intern, no volunteers'); underfunding ('it would entail major fundraising'); no researcher to study the feasibility of obtaining the Opinion; and difficult times in the US peace movement. [70] So although Weiss has since claimed that 'seeking the World Court's advisory opinion was an integral part of the LCNP from its inception', it was not considered ripe for action until after the Cold War had ended and IALANA was established.[71] It never became a priority for LCNP during the 1980s and no other individuals or group except MacBride, Evans, St John and IPB were sufficiently convinced by its merits to commit their personal time and resources to it. In fact, MacBride had used most of his Nobel Prize money to fund the MacBride Appeal and to educate the public about the illegality of nuclear weapons.[72]

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<sup>70.</sup> Letter from LCNP Executive Director Alex Miller to Jerome Elkind, 13 July 1988; Letter from LCNP Executive Director David Birman to Jerome Elkind, 11 September 1989, Paper by Birman to LCNP Executive Committee, 17 March 1989, p. 2.

<sup>71.</sup> Ved P. Nanda and David Krieger, *Nuclear Weapons and the World Court*, Transnational, New York, 1998, Chapter 5. Communication to David Krieger from Peter Weiss, 3 December 1997.

<sup>72.</sup> Letter from MacBride to Dr Armand Hammer, 2 June 1987.

By contrast, Evans convinced key A/NZ activists and groups that it would succeed if enough support was mobilised behind it. Over many years a few people worked voluntarily nearly full-time from their homes. They frequently used their own savings to cover travel, communication and publication costs. Unlike their counterparts in the US and Sweden, the A/NZ peace movement was not funded by foundations or government and relied heavily on the generosity of individual supporters.

### ***Physicians***

The visits by the Caldicotts in 1983 and 1984 had boosted the profile and membership of IPPNW (NZ). From the outset, Evans prioritised four A/NZ organisations which he hoped would help convince the government to act: IPPNW, LND, United Nations Association (UNA) and the NZ International Commission of Jurists. He saw IPPNW as an integral part of the strategy: 'The world's medical people are professionally and traditionally right alongside the world's legal people, and ought to be in a matter of this magnitude'. [73] He hoped these groups would help exert pressure on the government. By the end of 1987, LND, UNA, the International Commission of Jurists and the Peace Foundation had officially endorsed the project.

Early in 1988 IPPNW(NZ)'s new President, Robin Briant, asked Evans to speak at the March AGM, where a motion was adopted requesting that the government urgently propose a UNGA request for an ICJ advisory opinion.[74] In June 1988, delegates from 55 countries attending the IPPNW Congress in Montreal passed the following A/NZ-sponsored resolution:

That IPPNW affiliates work with their Governments and United Nations Representatives, to move in the UN General Assembly a request for the International Court of Justice to provide an advisory opinion on the illegality of nuclear weapons in International Law.

The resolution was directed specifically to individual affiliates to work in their own way to promote the initiative. Briant warned Evans that the IPPNW

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<sup>73</sup>. Letter from Evans to Ian Prior, Philip Recordon and Laurie Salas, 2 October 1987.

<sup>74</sup>. Letter from Robin Briant to Evans, 8 February 1988, and Briant to Lange, 29 March 1988.

Council had no great enthusiasm to take up the issue at that stage, due to lack of resources and pressure of other projects. She therefore took the responsibility for promoting it, and prepared a brief statement for all affiliates.

The Malaysian affiliate, led by Ron McCoy, was particularly interested in it. [75] He later became an adviser to the Malaysian government when it took a leading role in the WCP, and in 1995 he was elected Vice President of the IPPNW Asia-Pacific Region and appointed by the Australian government to the Canberra Commission on the Elimination of Nuclear Weapons. IPPNW (Italy) reported to Evans that in 1984 they had held a symposium on the illegality of nuclear weapons: of special interest had been 'the articles of the Italian Constitution which make American military bases and the deployment of mass destruction and first strike weapons illegal'. [76]

Although IPPNW was the first major international organisation to endorse the project, the onus was on individual affiliates to pursue it in whatever way they saw fit. Not surprisingly, few chose to act independently. In fact IPPNW, like IALANA and LCNP, did very little on this until early 1991 after others had built up the international, NGO and government support. Initially, few IPPNW International Council members thought it would succeed. [77]

### **6.8 Public Advisory Committee on Disarmament and Arms Control (PACDAC) and the Third UN Special Session on Disarmament**

The PACDAC was appointed in December 1987, under Section 16 of the *NZ Nuclear Free Zone, Disarmament, and Arms Control Act (1987)*. The Committee's function was to advise the Prime Minister and Minister of Foreign Affairs on the implementation of the Act, and on 'any disarmament and arms control matters it thinks fit'. The initial eight appointees included the former Minister of Defence Frank O'Flynn, Robin Briant, Dame Laurie Salas

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<sup>75.</sup> Letters from Briant to Evans, 13 June, 8 August and 8 September 1988.

<sup>76.</sup> Letters from Dr Maurizio Nazari, AIMPGN, to Evans, 9 February and 20 March 1989.

<sup>77.</sup> Interview by Dewes with Mary-Wynne Ashford, Ottawa, 27 April, 1998; Interview by Dewes with Ron McCoy, New York, 20 April 1998.

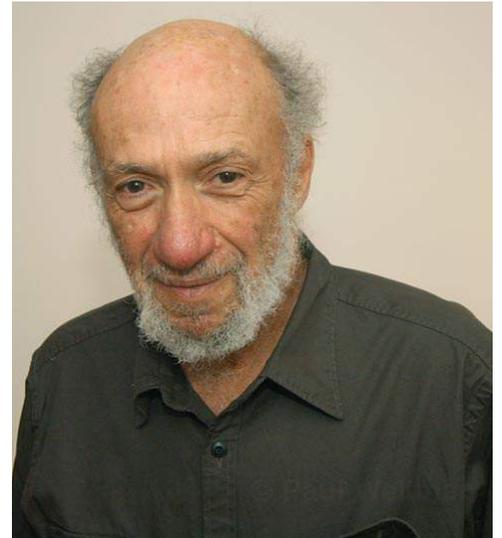
Figure 3: Some key international personalities mentioned in the text.



Rikhi Jaipal



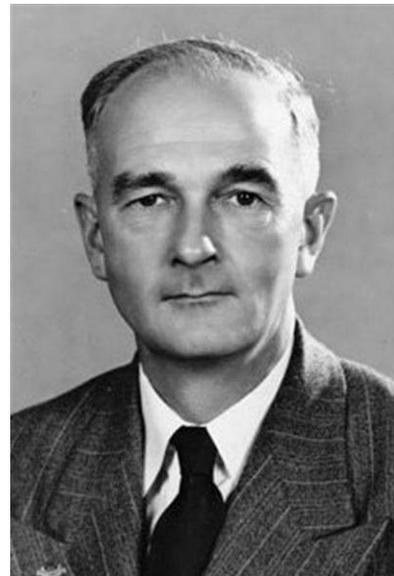
Alva Myrdal



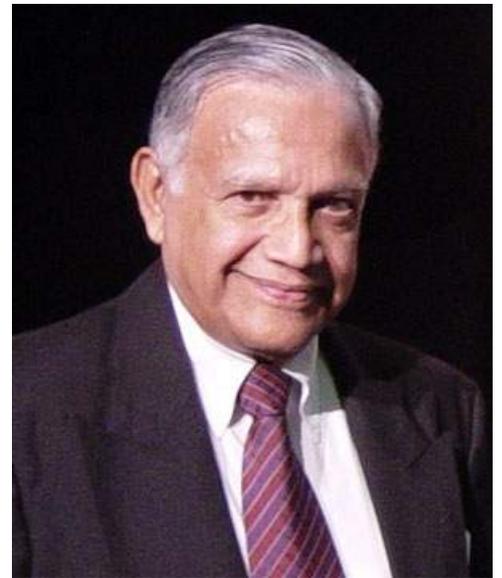
Richard Falk



Ron McCoy IPPNW Malaysia



Sir Guy Powles



C. G. Weeramantry



Mexican Ambassador  
Miguel Marin Bosch

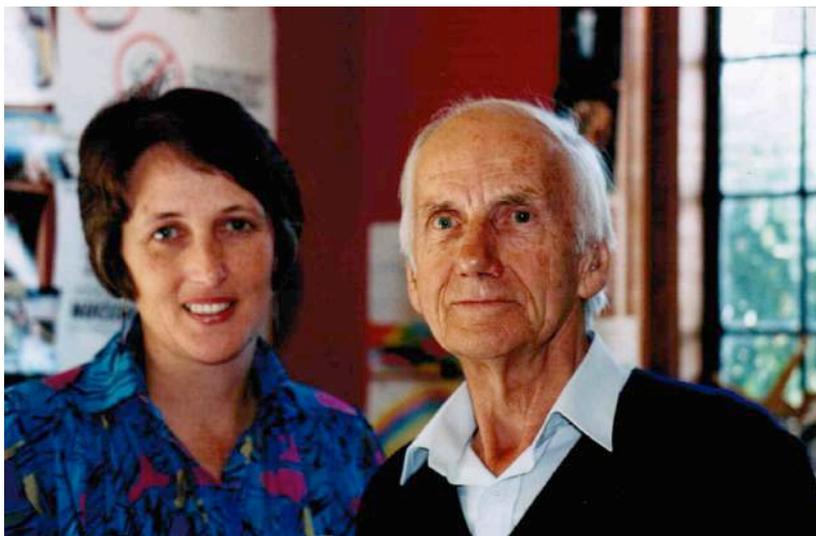


Senator Gareth Evans



Dr Martyn Finlay

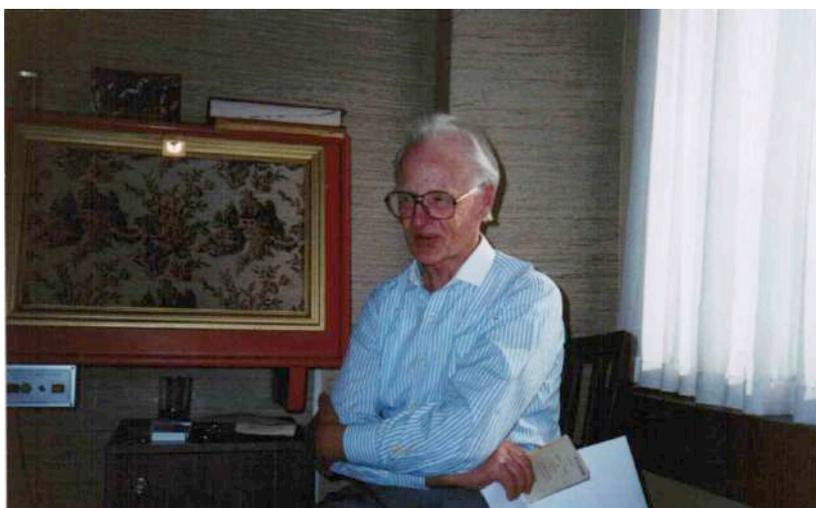
**Figure 4: Some key personalities and the PACDAC Committee**



Kate Dewes and Harold Evans



Public Advisory Committee on Disarmament and Arms Control 1987-1990  
Neil Cherry, Kate Dewes, Laurie Salas, Rod Alley, Fran Wilde, Robin  
Briant and Frank O'Flynn (Absent: Manuka Henare, Mary Woodward)



Edward St John

(UNA) and three Peace Foundation office holders (including the author) (Figure 4). When the Evans proposal was discussed at PACDAC's first two meetings in early 1988, most members were already very supportive.[78] Foreign Minister Russell Marshall agreed informally to float the idea among delegations at the forthcoming UNSSOD III, where Dewes represented PACDAC as an adviser on the government delegation. She was asked to 'sound out' NGOs and diplomats about the WCP and report back to the committee. This was fortuitous, providing a unique opportunity to gain access to diplomats and leaders of the peace movement.

However, even before the UNSSOD began, Marshall's correspondence with Evans revealed strong misgivings about the project. While tempering his remarks with the rider that he personally found the idea attractive in principle, he articulated his concerns about the outcome: even if the ICJ were to opine illegality, it would be ignored by the NWS, which would undermine the ICJ's authority. Traditionally, A/NZ did not support declaratory initiatives which were unlikely to make a practical contribution to disarmament. [79] During PACDAC meetings, Ministry officials also raised concern over the allegedly inordinate costs involved in taking the case. Similar reservations were expressed by Australia's Foreign Minister.

At the UN, Dewes spoke informally with the Swedish and Indian delegations, which included Theorin and Jaipal. She also briefed representatives from IPB, LCNP, IPPNW and US, Canadian, Japanese, Mexican and Nordic NGOs. The IPB was promoting MacBride's Appeal, but was not actively seeking government sponsorship of a UN resolution. An important meeting was held with Rikhi Jaipal and the Director of the A/NZ Foreign Ministry's Disarmament Division, Brett Lineham. Jaipal confirmed that Indira Gandhi had explored the idea in 1981 and that the former ICJ President Nagendra Singh, the Chief Justice of the Indian Supreme Court, and the Indian Society

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<sup>78</sup>. PACDAC members were: Frank O'Flynn, Salas, Briant, Neil Cherry, Manuka Henare and Mary Woodward, Roderic Alley and Dewes (Peace Foundation officers).

<sup>79</sup>. Letters from Marshall to Evans 17 May 1988 and NZ International Commission of Jurists, 5 August 1988.

for International Law were supportive. Indian academics believed there was a strong case for illegality. Several ICJ judges had indicated that the wording of the question was very important, and the time was ripe for the matter to come before the Court. [80] Theorin wanted the idea researched more fully by her Ministry, and agreed to discuss it during a visit to A/NZ later that year.

Dewes highlighted the proposal in her NGO speech to the UN Committee of the Whole [81], and it was mentioned in the Minister's UN speech. [82] It was also advocated at the parallel NGO International Peace Conference. Copies of a substantial *Canberra Times* article outlining Marshall's intention to 'float' the idea at UNSSOD III, and support from the Australasian International Commission of Jurists, were widely distributed amongst NGOs and some diplomats. This brought some pressure to bear on both Foreign Ministers, whose photos were also in the article. [83]

Evans was encouraged by Irish Prime Minister Haughey's strong speech, and wrote to him enclosing MacBride's 1987 letter and recent media coverage. He suggested that Haughey discuss the proposal with Lange and Hawke during his forthcoming visit to Australasia. He also wrote to the

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<sup>80.</sup> Report of UN meetings to PACDAC by the author, 21 July 1988.

<sup>81.</sup> The Committee of the Whole was for all UNSSOD III delegates and NGOs.

<sup>82.</sup> Marshall's speech to the UN included the following:

'Most New Zealanders focus on nuclear weapons and their elimination as the major task of the international community. There is great concern in my country about the morality of nuclear weaponry. Some would like to see the legality of nuclear weapons tested in international law.' (June 1988)

The author's UNSSOD III speech included the following:

'We strongly urge all nations and peace groups to support a move by jurists in NZ and in other countries to have the ICJ give an advisory opinion on whether or not nuclear arms are legal. The symbolic power of such a ruling would be immense, perhaps even more so than the spreading of nuclear weapon free zones'.

<sup>83.</sup> Ian Warden, 'NZ struggles to illegalise nuclear arms', *Canberra Times*, 8 June 1988.

Canadian High Commission with a similar proposal when their Deputy Prime Minister visited A/NZ. Evans offered to draft a UN resolution in consultation with the LCNP for possible submission to the 1988 UNGA; but most of his letters and faxes to LCNP went unanswered. This surprised him, as he was unaware of the LCNP's earlier reluctance to support MacBride's initiative.

Evans persisted with Foreign Minister Marshall and Prime Minister Lange, urging specific action. Marshall side-stepped the decision, opting for more time for PACDAC to consider the proposal. He signalled his ambivalence by offering Harold Evans, Sir Guy Powles and Edward St John an afternoon meeting with PACDAC and Ministry officials in late November - too late for any UNGA action. This compromise demonstrated the Minister's commitment to ongoing consultation, but partially appeased PACDAC.

Prior to this meeting, a *Canberra Times* editorial had castigated the Australian government for its inconsistency in supporting a ban on chemical weapons while refusing to take up this issue. The *Auckland Star* ran a full-page feature documenting public support for the case. [84] Australian Senators Haines and Vallentine persisted with parliamentary questions, forcing Senator Evans to confirm sympathy for the cause, and to reiterate the government's decision not to support it.

In November 1988, PACDAC witnessed an historic struggle between the democratic wishes of the people and the *realpolitik* of the bureaucracy. Powerful presentations were delivered by Powles, St John and Evans. These were countered by the Ministry's legal advisers Kenneth Keith, Chris Beeby and Colin Keating. [1] They outlined their earlier concerns, which were reported in the PACDAC minutes as:

...the West has placed a heavy reliance on nuclear weapons and the first use of nuclear weapons because of what it perceived as a

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<sup>84</sup>. 'Opinion of World Court has value', *Canberra Times*, 10 October 1988; Phil Twyford, 'One-man mass movement: Former jurist on the warpath', *Auckland Star*, 4 October 1988.

<sup>85</sup>. Both Keith and Beeby had been members of the NZ government delegation to the ICJ in 1973.

conventional Soviet advantage. The West would view the initiative as aimed directly at their strategic posture. The United States and its NATO allies would not respond favourably to an opinion condemning the first use policy as criminal. It would be a severe reaction. .... (The Ministry) was sure that the Australians would be lobbying to stop the New Zealanders taking the initiative, and ...the proposal would be opposed by a large number of Western countries and would be met with a great deal of anxiety by them.. NZ's participation would be viewed most suspiciously. [86]

Other reasons for their reluctance included: a possible negative decision by the Court which would jeopardise its reputation; costs of up to US \$1million coupled with ongoing Ministry budget cuts; the lack of impact of advisory opinions; the Court might side-step the case as they had done over South West Africa in 1966 and in the 1973 nuclear testing case; the presence of five ICJ judges from the nuclear weapon states; and the effect of a negative decision on existing disarmament negotiations. Despite these reservations, PACDAC passed another unanimous resolution which read:

Bearing in mind resource constraints the Committee recommends the implementation of the proposal by Mr Harold Evans and eminent jurists that New Zealand officially in 1989 propose in the UN General Assembly that the ICJ adjudicate on the legality or otherwise of nuclear weapons.

The Minister agreed to present a paper to Cabinet in February 1989 recommending that the government support the initiative. [87] However, in March 1989, Fran Wilde succeeded Marshall as Disarmament Minister. She informed PACDAC that the government was unable to pursue the proposal, but that she 'wanted to keep it on the table' by appointing Lineham to the UN Comprehensive Study on Nuclear Weapons chaired by Theorin. However, its 1990 report carried only a two-page discussion of the legality question, due to the 'consensus' decision making demanded by the team's pro-nuclear members. [88] Despite Wilde's announcement, PACDAC passed another

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<sup>86.</sup> PACDAC Minutes, November 1988. Copies released to Peace Movement Aotearoa under the Official Information Act.

<sup>87.</sup> Notes taken by St John during PACDAC meeting, 28 November 1988.

<sup>88.</sup> Interviews with Theorin, May 1994 and Lineham, 4 August 1995. United Nations, *Comprehensive Study on Nuclear Weapons: Report of the Secretary General, A/45/33*, New York, 18 September 1990, pp. 130-131. See also 1980 UN study, *Comprehensive Study on Nuclear Weapons*, UN Publication (E.

forthright resolution urging the 'continuing support of the Government in furthering attempts to assess the matter of the legality of nuclear weapons by seeking the opinion and support of other governments through whatever means are available'. Throughout 1990, PACDAC actively pursued the proposal and ensured input into the UN Study from international lawyers. Dewes provided Committee members, Ministers and their officials with books and articles by international lawyers outlining the arguments.

Evans persisted, refusing to accept Wilde's authority to make the final decision. In April 1989, he wrote another Open Letter to Lange demanding a response from the highest level. He further alienated Ministers by publishing Palmer's letter containing confidential reports of 'soundings' made by officials with ICJ judges, and diplomats from some neutral and non-aligned states. Lange responded by referring Evans back to Wilde's recommendation. Palmer's curt and dismissive reply reflected the government's exasperation. They hoped he would accept that the time was not right, and direct his energies at other governments.

Right up to the October 1990 election, Wilde promoted the initiative with a few other politicians internationally, and explored the possibility of co-sponsorship with Sweden during the 1990 UNGA. [89] With the resounding defeat of the Labour government in late 1990, and replacement of seven PACDAC members in 1991, the opportunity for A/NZ leadership seemed doomed. A glimmer of hope emerged when Weeramantry was elected as an ICJ Judge in late 1990. He received an absolute majority in both the UNGA and the UN Security Council, in spite of his publications on the illegality issue and being an IALANA Vice-President.

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81.1.11), para. 519: 'The concept of the maintenance of world peace, stability and balance through the process of deterrence is perhaps the most dangerous collective fallacy that exists.'

<sup>89</sup>. For a summary of events from 1986-1989, see Harold Evans, 'An attempt to bring before the International Court of Justice the question "Are nuclear weapons legal or illegal"', in Gordon Rodley, ed., *Beyond Deterrence*, Centre for Peace and Conflict Studies, University of Sydney, 1989, pp. 241- 247.

## **6.8 Conclusions**

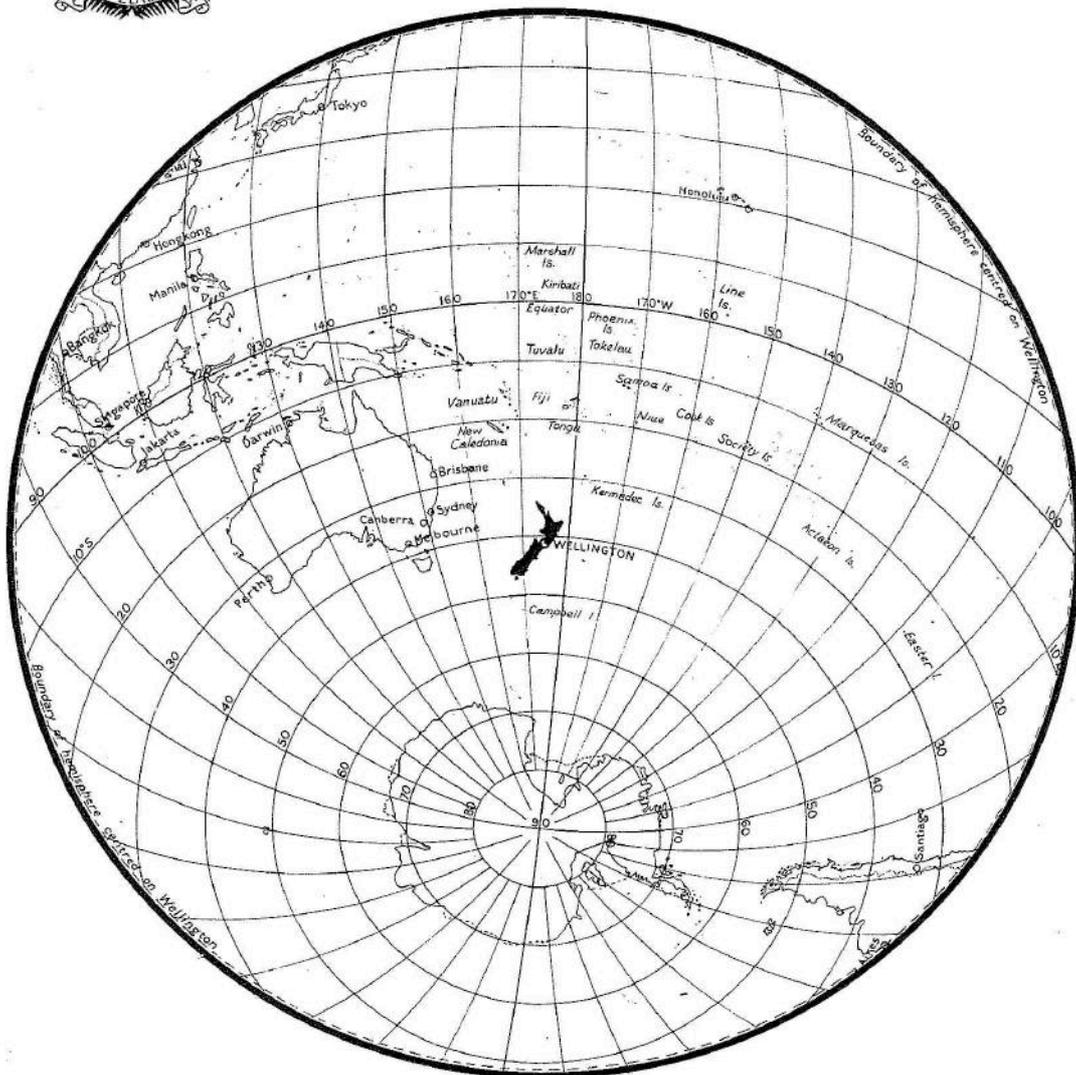
MacBride's Appeal attracted support from a wide range of international lawyers and raised awareness about its ultimate aim of obtaining an advisory opinion. Although it was not given priority by LCNP, it made a major contribution towards the eventual mobilisation of international lawyers.

Falk's 1986 A/NZ visit was fortuitous. He was the link between LCNP, MacBride and the Australasian anti-nuclear movement. He had a unique grasp of the issues of nuclearism and international law, combined with an analysis of how peace movements work. He aroused the 'activist lawyer' in both Evans and St John who, with their unique contacts in the Australasian legal and political fraternity, were best placed to take leadership roles in a legal initiative. He called for a new way of thinking, feeling and acting, thereby enthusing others about working together to use international law in the struggle for a nuclear free world.

He recognised the power of the 'Kiwi spirit' with its 'fierce independence and individualism', and acknowledged A/NZ's unique role as a firmly anti-nuclear state allied to a nuclear superpower. The strength of the peace movement provided Evans and his supporters with a solid base from which to lay the foundations for the project. Evans and St John combined legal expertise with persistence, outspokenness and passion for their cause. Together with other activists from well-respected NGOs, links were forged between influential international groups such as IPB, IPPNW, INLAP, LCNP, IALANA, CND (UK) and PGA. With the decision by A/NZ not to sponsor a WCP resolution at the 1990 UNGA, it was left to these committed individuals and groups to convince key international NGOs to commit resources and expertise to ensuring that the momentum built up over the past four years was not lost.

# CHAPTER 7

## AOTEAROA/NEW ZEALAND'S POLICIES: 1945-1990



## CHAPTER 7

### AOTEAROA/NEW ZEALAND'S POLICIES: 1945-1990

*What we want to do is publicise what is happening in this remote part of the world so as to stimulate world opinion still further and attract wider support for the rights of small nations.* Norman Kirk [1]

#### 7.1 Introduction

In order to understand why the Aotearoa/New Zealand Labour government of 1984-90 was reluctant to pursue the WCP, it is vital to put its nuclear free policy into historical perspective. This chapter gives a brief overview of some of the major influences in the development of a more independent foreign policy during the 1950s and 1970s led by two Labour Prime Ministers, Walter Nash and Norman Kirk. It highlights the moral leadership role of a small state and A/NZ's advocacy of the ICJ. It documents the WCP precursor - the 1973 contentious case on the legality of French nuclear testing - outlining how changing governments responded to strong public opposition to nuclear testing by allies in the South Pacific. It also provides detailed interviews and analysis from the Labour politicians and government officials involved in the decision making process during the late 1980s when they decided not to lead the WCP.

The signing of the Declaration of Independence of 1835 by some Maori leaders was the first statement to other sovereign states that Maori intended to be recognised as a separate nation state. This was confirmed with the signing of the Treaty of Waitangi five years later by two separate nations. [2] At the time there were approximately 55,000 Maori and 3,500 Pakeha (Europeans). The British claimed power over all the inhabitants and instituted the Westminster system of government, thereby undermining the Treaty

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1. 'No reply yet to appeal to French', *The Press*, 25 June 1973, p.1.

2. Robert Mahuta and Manuka Henare, 'The basis for a Maaori Foreign Policy', Chapter 5 in John Henderson and Richard Kennaway (eds), *Beyond New Zealand II: Foreign Policy into the 1990s*, Longman Paul, 1991, pp. 56-63.

commitments. It is often overlooked that for at least nine-tenths of Aotearoa's history, there was a system of Maori sovereignty. [3] The British colonisers sent A/NZ troops to the Boer War and later lost a fifth of its 103,000 troops in World War I. The close relationship between Australians and New Zealanders was cemented at Gallipoli.

Between 1920 and 1950, A/NZ relied on the British system of collective security and dependence on a 'great' power. Prime Minister Michael Savage summarised these sentiments in 1939:

Behind the sure shield of Britain we have enjoyed and cherished freedom and self-government. Both with gratitude for the past, and with confidence in the future, we range ourselves without fear beside Britain. Where she goes, we go. Where she stands, we stand. We are only a small and young nation, but we are one and all a band of brothers, and we march forward with a union of hearts and wills to a common destiny. [4]

## **7.2 Tacit Support for Nuclear Weapons: 1945-1972**

For most of the period 1945-72, A/NZ was an unquestioning supporter of Western security concepts based on adversarial alliance systems such as NATO, the South East Asian Treaty Organisation and ANZUS. The threatened use of nuclear weapons was implicit in these alliances, as a 'necessary but legitimate weapon for the defence of Western values.' [5] Viewed by the USSR as the 'piccolo of the Western orchestra', A/NZ dutifully voted within the UN in support of the UK, US and France, rarely raising an independent voice.

The earliest instance was A/NZ's opposition to granting the Security Council the power of veto in 1945 led by Prime Minister Peter Fraser. [6] As a

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<sup>3</sup> Kennedy Graham, *National Security Concepts of States: New Zealand*, Taylor and Francis, New York, 1989, p. 10.

<sup>4</sup> Ibid., p. 17.

<sup>5</sup> Ibid., p. 20.

<sup>6</sup> Michael Ashby, 'Fraser's Foreign Policy', in Margaret Clark, ed., *Peter Fraser: Master Politician*, Dunmore Press, Palmerston North, 1998, pp. 169-190; Statement by Prime Minister Peter Fraser at the Plenary Session of the UN Conference, 3 May 1945, printed in Ministry of Foreign Affairs, *New*

vociferous supporter of the League of Nations and a strong participant in the formation of the UN, it also advocated 'that all the powers joining the United Nations would agree to submit any quarrels to the International Court of Justice' and be bound by its decisions. [7] A/NZ frequently called on the UNGA to 'avail itself of the advisory function of the ICJ' to help resolve contentious matters, such as the treatment of Indians in South Africa and the question of Palestine:

If we referred the question to the International Court of Justice we should have the benefit of trained minds. They could sift the chaff from the oats, lay bare the fundamental issues, state the arguments for and against and perhaps establish a set of guiding principles that would help us in making up our own minds. [8]

With the signing in 1951 of the ANZUS Treaty, A/NZ consolidated its close relationship with Western states, and accepted the dubious 'protection' of the nuclear umbrella. Throughout the 1950s, A/NZ supported Western nuclear testing in the South Pacific and nuclear deterrence. Its UN voting pattern reflected the belief that nuclear arms control was an arcane matter best left to its nuclear allies. [9]

In 1956, when the Marshallese petitioned the UN Trusteeship Council, A/NZ voted against an Indian-sponsored resolution calling for an ICJ advisory opinion on the legality of atmospheric testing. [10] Shortly before its first nuclear tests on Christmas Island in 1957, the UK withdrew its acceptance of

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*Zealand Foreign Policy Statements and Documents, 1943-1957*, Government Printer, Wellington, 1972.

<sup>7</sup>: Ministry of Foreign Affairs, op.cit., pp.104-105; statement by Peter Fraser to the House of Representatives, 24 July 1945.

<sup>8</sup>: Ibid., p.194: Statements by Sir C. Berendsen in UN First Committee, 11 May 1949; ibid., pp. 104-5, Peter Fraser to the House of Representatives, 24 July 1945; ibid., pp. 303-8, L.K. Munro in UN Ad Hoc Political Committee 12 November 1952; ibid., p.302, T.C. Webb at UNGA, 6 October 1952. See also Webb at UNGA, 18 September 1953, pp. 321- 323 and T.L.Macdonald at UNGA, 22 November 1956, pp. 460-461.

<sup>9</sup>: See David McIntyre, *Background to the ANZUS Pact: Policy-Making, Strategy and Diplomacy, 1945-1955*, MacMillan/University of Canterbury Press, New York and Christchurch, 1995. See also Statement by Prime Minister Sid Holland on nuclear tests, in Ministry of Foreign Affairs, op. cit., pp. 465-9.

<sup>10</sup>: J. Stephen Kos, 'Interim relief in the International Court: New Zealand and the Nuclear Test cases', *VUWLR*, no. 14, 1984, pp. 357- 387.

the compulsory jurisdiction of the ICJ to preclude the possibility that the Court might issue an injunction barring them. [11] A/NZ accepted the British assurance that the tests were perfectly safe and supplied transport, observation and monitoring facilities. Prime Minister Holland supported the UK because its aim was 'the security of the Commonwealth and the free world, and our safety lies in that security'. [12]

However, in response to growing opposition led by Quakers and supported by the National Council of Women, Maori Women's Welfare League, Federation of Labour, National Council of Churches and others, Holland claimed A/NZ would support a complete test ban when others did the same. Later that year the new Labour Prime Minister Walter Nash, although elected promising to 'oppose all further tests of nuclear weapons', dispatched a frigate to assist in monitoring atmospheric conditions in conformity with an earlier commitment. A/NZ supported the UK in a 1958 UN resolution linking any permanent cessation of testing to reducing all armed stockpiles, conventional and nuclear.

Then in 1959, in response to rising public concern, A/NZ voted to condemn nuclear testing while the UK, US and France voted against, and Australia abstained.[13] This significant shift illustrated Nash's personal commitment to nuclear disarmament and a more independent foreign policy. As a pacifist in the early 1920s, he had helped organise 'No More War' demonstrations and International Peace Days.[14] Later as Prime Minister he travelled widely and met Soviet and West German leaders calling for the 1958 de facto moratorium on nuclear testing to be formalised into a permanent ban.

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<sup>11</sup>. Lawrence Wittner, *Resisting the Bomb: A History of the World Nuclear Disarmament Movement, 1954-1970*, vol. II, Stanford University Press, California, 1997, pp. 162-163.

<sup>12</sup>. Nigel Roberts, *New Zealand and Nuclear Testing in the Pacific*, NZIR, Wellington, 1972, pp. 5-6.

<sup>13</sup>. *Ibid.*, pp. 6-7; Kos, *op. cit.*, p. 360.

<sup>14</sup>. Elsie Locke, *Peace People*, Hazard Press, Christchurch, 1992, pp. 74-78 and 158-163.

In 1960, conservative Prime Minister Holyoake expressed 'profound dismay' at the resumption of US and Soviet nuclear testing. He had earlier stated that A/NZ '... did not contemplate the acquisition of nuclear weapons nor would she become a storage base for them...'. [15] However, his government voted against the 1961 UN resolution declaring the use of nuclear weapons contrary to the laws of humanity.

In 1963, CND (NZ) presented the biggest petition (80,238) since the women's franchise, calling for a Southern Hemisphere NFZ. In an attempt to appease both Western allies and domestic critics, the government reiterated that its security depended on 'the deterrent effect arising from the possession of nuclear weapons by our allies'[16] and affirmed a commitment to a South Pacific zone, but did nothing to further it.[17] Ministry officials confided to a US official that they opposed a NFZ, but for 'internal political reasons' had 'avoided [a] public stand [on] this issue', it had become 'politically and emotionally sensitive' .. and that 'pressure of public opinion and press opinion would probably force the government to protest any confirmed French decision to test... this is an election year'. In response, Holyoake offered to deliver CND's 'Open Letter' signed by 406 organisations to the French President. [18]

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<sup>15</sup>. *External Affairs Review*, Ministry of Foreign Affairs, Wellington, October 1957; and *EAR*, September 1957, p. 15; 'In 1957 the Deputy Prime Minister of a National government, Keith Holyoake, declared that New Zealand would neither acquire nor become a storage base for nuclear weapons. In 1963 Prime Minister Holyoake's government took the formal decision never to permit the storage, testing, or manufacture of nuclear weapons on New Zealand soil': Ramesh Thakur, 'Creation of the Nuclear-Free New Zealand Myth: Brinkmanship Without a Brink', *Asian Survey*, vol. XXIX, no. 10, October 1989, pp. 930-931; *New Zealand External Affairs Review*, vol.14, June 1964, p.6.

<sup>16</sup>. Locke, op. cit., p. 180.

<sup>17</sup>. 'If it will help.... I will use my authority and the authority of the National Government to declare the South Pacific a nuclear-free zone.' Prime Minister Keith Holyoake, *NZ Parliamentary Debates (Hansard)*, 339, 1964, p.1244; Lawrence Wittner, *Resisting the Bomb*, Stanford University Press, 1997, p. 209.

<sup>18</sup>. Wittner (1997), op.cit., p. 348-9 and Footnote 45, p. 557; Niels Mathiesen 'Report from New Zealand Campaign for Nuclear Disarmament... August 21-

### 7.3 Using the International Court of Justice: 1973-74

France carried out 25 atmospheric tests from 1966-1972. An outraged A/NZ public, increasingly aware of the health and environmental effects and in solidarity with smaller Pacific Island states, formed coalitions across society and explored several visionary initiatives with the government. In 1964 a CND member proposed 'a well-planned protest against the test, including sailboats, rafts, or even small aircraft placed in the testing area by private organisations and manned by crews from several countries...'. Although dismissed at the time as unrealistic, it sowed the seeds for later government and citizen actions. [19]

In 1970, Auckland CND petitioned the government, 'either alone or with other protesting nations, to take action in the General Assembly of the United Nations and the South Pacific Commission on the question of the infringement of human rights and international law by France...'. During presentations to Parliament that year, international law lecturer Dr D.R. Mummery, advised:

The Government is also free, in concert with other Governments to request the United Nations General Assembly to obtain an advisory opinion on the legality of the French action from the International Court of Justice.

He suggested Australia, Japan and Latin American nations bordering the Pacific as potential co-sponsors. The Ministry of Foreign Affairs advised against it, warning that 'to attempt to promote action in the UN or any other international tribunal would achieve nothing and could work against New Zealand's broader interests'. [20]

Persistent calls for international action did result in a more aggressive stance. In August 1971, A/NZ signed the first South Pacific Forum communique, which unanimously opposed the tests and urged France to

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22 1965', Folder 356, WRI Records, Amsterdam, and Locke (1992), op.cit., p. 180, in Wittner, op.cit., p. 348.

<sup>19</sup>. Locke (1992), op.cit. pp. 286-289.

<sup>20</sup>. 'Legal move urged against France', *The Press*, 8 October 1970, p. 2.

abide by its obligations under international law. In June 1972, the Australasian Prime Ministers made a joint statement to the Conference on Disarmament. A month later, A/NZ and Peru co-sponsored a resolution against radiation and contamination from the tests at the Stockholm UN Conference on the Human Environment, and in August, A/NZ introduced a similar resolution at the UN Seabed Committee meeting. [21]

International concern was reflected by the fact that nuclear testing had been the subject of five international treaties and 19 UNGA resolutions. Atmospheric tests were condemned as unlawful by the Asian-African Legal Consultative Committee; and protests were voiced by the Andean Pact countries, the South Pacific Commission, the International Labour Organisation, Socialist International, South-East Asian leaders and the World Health Assembly. In June 1972, the ANZUS Council called for adherence to the PTBT. Many governments protested, and Peru broke off diplomatic relations with France. [22]

Creative protest action at home ensured that nuclear testing became an election issue. The Ministry of Foreign Affairs acknowledged that the intense activity by individuals and groups was 'supported by the churches, by local bodies and community organisations, by trade unions, by student and other youth organisations, and by virtually every other grouping of public opinion in a vigilant democratic society'. [23] Auckland CND launched another petition which amassed 81,475 signatures, and Peace Media organised an

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<sup>21</sup>. Kos, *op.cit.*, p. 362-3.

<sup>22</sup>. Jerome Elkind, 'The Nuclear Test cases in Retrospect', *NZIR*, vol. VIII, no. 3, May/June 1983, pp. 12-14. See also, Kevin Clements, *Back from the Brink: The Creation of a Nuclear-Free New Zealand*, Allen and Unwin, Wellington, 1988, footnote 91, p. 213; Jozef Goldblat, *French Nuclear Tests in the Atmosphere: The Question of Legality*, SIPRI, Stockholm, 1974, p.17; K.J. Keith, 'The nuclear tests cases after ten years', *VUWLR*, vol.14,1984, pp. 345-355; K. Keith, 'French Nuclear Testing in the Pacific: International Court of Justice Nuclear Tests Case: New Zealand v France', Ministry of Foreign Affairs, Wellington, July 1973, 8 pp; Thomas Bodie, *Politics and the Emergence of an Activist International Court of Justice*, Praeger, London, 1995, pp. 74-76; *ICJ Pleadings, Nuclear Tests Case*, vol. II, 74, cited in Kos, *op.cit.*, p. 362.

<sup>23</sup>. Locke, *op. cit.*, p. 298.

international Peace Fleet to sail to the test site during 1972. When the French navy rammed one of the boats, the resultant worldwide publicity and growing international opposition helped embolden the Labour Party to make resolute anti-nuclear election promises. [24] In a fiery Parliamentary debate, Opposition Leader Norman Kirk received a spontaneous ovation after delivering this challenge:

If we were the Government we would not send a yacht. The country has four expensive frigates. Let them run up the New Zealand flag...Let us take a frigate up there, and let us say to Members of Parliament on both sides of the house, ' If you want to stand up and be counted, now is your chance!' As Government... we will create a situation in which the whole country can unite behind the Government, instead of being forced to act to make the Government do the job it was elected to do. [25]

Prior to the 1972 general election, the Foreign Ministry considered using either the advisory opinion or contentious case route at the ICJ. 'Soundings' in the UNGA revealed minimal support for an Advisory Opinion and there were fears that France could use its Security Council veto to prevent such an approach.[26] The Foreign Ministry advised:

...even if the majority were obtained, the Court might decline to render the opinion on the basis of the *Eastern Carelia* doctrine that advisory proceedings are not to be abused as a back-door means of obtaining a decision in a reservation-barred contentious case. And even if the Court gave a favourable opinion, that would not bind France to any course of action. [27]

Although the Court was likely to declare testing to be unlawful, the Ministry had genuine concerns that a negative opinion would 'adversely affect the way in which the law is ... clearly developing' and 'weaken New Zealand's general political case against France'. They recommended using the UN

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<sup>24</sup>. Ibid., pp. 286-296; Kevin Clements, *Back from the Brink: The Creation of a Nuclear-Free New Zealand*, Allen and Unwin, Wellington, 1988, pp. 49-87; Elsa Caron, ed., *Fri Alert*, Caveman Press, Dunedin, 1974.

<sup>25</sup>. Margaret Hayward, *Diary of the Kirk Years*, A H & A W Reed Ltd, Wellington, 1981, pp. 51-52.

<sup>26</sup>. Ministry of Foreign Affairs Briefing Paper to the Minister of Foreign Affairs, 'French Testing: The Legal Issue', Wellington, 5 July 1972, 7 pp. (Released under the Official Information Act); Judge Nagendra Singh, *The Role and Record of the International Court of Justice*, Martinus Nijhoff Publishers, London, 1989, pp.86-87.

<sup>27</sup>. Kos, op.cit., p. 363.

Committee on the Seabed to 'explore the legal issue and if possible express to the General Assembly the view that it should take further appropriate action on it', such as a request for an advisory opinion.[28]

Tasmania, South and Western Australia also researched the legal question and concluded that the ICJ would have jurisdiction in a contentious case. The Australasian governments were informed, but did not act until both new Labour governments were installed. In January 1973 Australia told France that 'the tests would be unlawful', and warned that if France did not stop testing it would 'institute proceedings in the ICJ to restrain the conducting of future tests in the Pacific...'. Kirk also announced that A/NZ was seriously considering joining Australia, but saw the ICJ as only one avenue of protest. He hoped to host conferences for the Pacific region, and for Commonwealth Foreign Ministers, to press for accession by all states to the PTBT, and to promote a CTBT and the SPNFZ.[29]

France confirmed its policy was dictated by the overwhelming requirement of national security, stating that the tests would continue. A/NZ's legal team advised that the case would probably succeed on jurisdiction, but admissibility and merits were more difficult. [30] In May 1973 A/NZ joined the initiative with Australia, on behalf of the Cook Islands, Tokelau and Nuie. It demonstrated 'our belief in the integrity of treaties and our belief in the rule of law'. [31] A/NZ requested an environmental impact assessment and a declaration that:

The conduct by the French Government of nuclear tests in the South Pacific region that give rise to radioactive fallout constitutes a violation of New Zealand's rights under international law, and that these rights will be violated by any further such tests.

Australia sought a similar declaration and an injunction to stop further tests. On 22 June 1973, the Court ruled in favour (8-6) and asked Australia and A/NZ to make written and oral arguments. The ICJ ordered France to refrain

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<sup>28</sup>. Ministry Briefing Papers, 1972, pp. 5-7.

<sup>29</sup>. Kos, *op.cit.*, pp. 364-365.

<sup>30</sup>. *Ibid.*, pp. 365-366.

<sup>31</sup>. *Ibid.*, p. 367.

from further testing while the case was before it. Kirk immediately announced that a frigate, with a Cabinet Minister on board, would sail to the test site to mobilise world opinion to help persuade France to comply with the ICJ's order. [32]

Kirk sent cables to leaders of 100 countries seeking acknowledgement of the ICJ decision. [33] He reiterated the importance of the rule of law, especially in relation to security threats to small states. Within a week, he farewelled the *HMNZS Otago* on the official protest voyage saying:

We are a small nation but we will not abjectly surrender to injustice. We have worked against the development of nuclear weapons. We have opposed their testing anywhere and everywhere. .... No self-respecting nation with right on its side can meekly acquiesce to the intransigence of others. ... Today the *Otago* leaves on an honourable mission. She leaves not in anger but as a silent accusing witness with the power to bring alive the conscience of the world. [34]

The same week, over 5,000 Tahitians rallied in Papeete. Buses flew red and white independence flags and banners read 'Enough of Criminal Tests in our Paradise!'. [35] Pacific Island peoples and governments strongly supported the ICJ cases. Fiji had also applied to join the proceedings but its request was not considered.

A/NZ's strong case was presented by Attorney-General, Martyn Finlay. France, having refused to appear, defied the ICJ's order and, following another series of tests in 1974, announced it would test underground in future. When the final judgment came in December 1974, after an 18-month delay, the ICJ did not rule on jurisdiction and admissibility but adopted a quite distinct issue without notifying the parties. It decided that, as France had unilaterally undertaken to end atmospheric testing, it did not have to make a

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<sup>32</sup>. Hayward , op.cit., p.143.

<sup>33</sup>. For detailed responses see Goldblat, op.cit.,p. 4-5; Kos, op.cit., p. 387.

<sup>34</sup>. Clements (1988), op.cit., p. 80.

<sup>35</sup>. *The Press*, 'Tahitian Protest', 25 June 1973, p. 1.

decision. According to Kenneth Keith, the ICJ's President feared the case would fail on its merits and was looking for a way to avoid that result. [36]

This raises the question of judicial impartiality and the Court's composition. Former ICJ President, Nagendra Singh, pointed out that '...although there is no entitlement to membership on the part of any country, the ICJ has always included judges of the nationality of the permanent members of the Security Council, with the sole exception of China'. [37]

It would have been futile for A/NZ to challenge France's violation of the ICJ order in the Security Council because of its veto. A/NZ chose instead to use the frigate protest to garner international attention and support. Although the legal case did not achieve due process, Kirk's moralistic rhetoric was formalised through these initiatives. The population of less than three million united behind the government's courageous stand against nuclearism. Sadly the ICJ chose to circumvent A/NZ's request for it to sift the 'oats from the chaff' and set guiding principles.

#### **7.4 Emerging Nuclear Allergy: 1972-1984**

The heady days of the Kirk Labour government were short-lived. Kirk died suddenly in August 1973, before the ICJ's verdict. However, with his oratory, passion and courage he set a precedent for similar bold actions by Lange in the 1980s. Aware that 'New Zealand is too small to frighten anyone, but politically it is big enough to be able to give a constructive lead...', Kirk had persisted with implementing a more independent foreign policy.[38] Alongside the anti-nuclear initiatives, he had withdrawn troops from Vietnam; established diplomatic relations with the Democratic Republic of Vietnam and China; increased economic aid to the Third World; and stopped sporting

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<sup>36</sup>. Kenneth Keith, 'The International Court of Justice and nuclear weapons', *NZIR*, January/February 1996, pp. 20-23.

<sup>37</sup>. Arthur Eyffinger, *The International Court of Justice*, Kluwer Law International, The Hague, 1996, p. 175; Singh (1989), *op.cit.*, pp. 348-351.

<sup>38</sup>. Locke, *op. cit.*, p. 307; George Laking, 'Forty years on: four decades of foreign policy', *NZIR*, vol.VI, no.1, Jan/Feb 1981, pp. 11-13 ; John Dunmore, *Norman Kirk: A Portrait*, New Zealand Books, Palmerston North, 1972, pp.99-100.

contacts with South Africa. Kirk's successor Wallace Rowling promoted the SPNFZ in the UN, but lacked Kirk's *mana* (prestige/authority); and Labour lost the 1975 election.

With National's re-election under Robert Muldoon's conservative leadership, A/NZ's foreign policy reverted to a more subservient, pro-ANZUS position. One of Muldoon's first acts was to mothball the SPNFZ initiative, signalling to the international community that A/NZ's anti-nuclearism was certainly not bipartisan.

During the late 1970s, public anger at Muldoon's defiant promotion of visits by US and UK nuclear warships spilled over into waterborne protests by the Peace Squadron, attracting international media interest. People took to the streets demanding a ban on such visits, and in 1980 began declaring homes, schools and local councils nuclear free zones.

The peace movement was unusual in international terms. In the early 1980s it developed into a network of many small neighbourhood peace groups not bound by political ideology, or a 'party line', which could take whatever creative action was appropriate for their particular style, but which met both locally and nationally to share strategies and information. Their running costs were minimal as there were few paid staff: most activists worked from home within their local community and took responsibility for lobbying their local politicians. This resulted in widespread public participation, and created a form of accountability in nearly every electorate to which all political parties became extremely sensitive.

In 1978, 51.5% of the population supported visits by US nuclear-powered ships with 39.2% agreeing to the use of US nuclear weapons in A/NZ's

Figure 5: New Zealand politicians cited in the text.



Peter Fraser



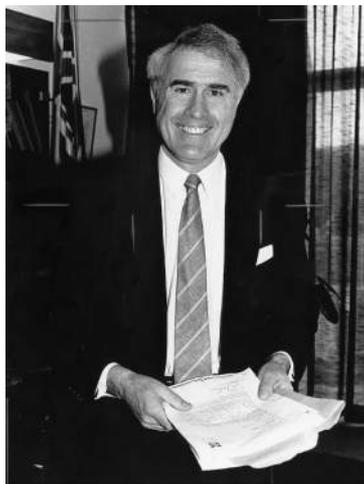
Keith Holyoake



Walter Nash



Russell Marshall



Geoffrey Palmer



Fran Wilde



Helen Clark



Don McKinnon



Jim Bolger



Philip Burdon



Doug Graham

defence. [39] By 1983, 46% approved visits of nuclear-armed warships while 40% opposed. [40] But prior to the election in late 1984, a clear majority of 58% opposed the visits with 30% in support [41]. Over 66% of the population lived in locally declared NFZs. In all these polls there was a clear gender and age difference, with women and youth strongly opposed to the visits. Three of the four main political parties adopted strong anti-nuclear policies in response to this shift in public opinion.[42] International developments such as the breakdown of the Geneva Disarmament talks and US moves to initiate the Strategic Defence Initiative or 'Star Wars' helped strengthen this anti-nuclear sentiment.

### 7.5 "The Kiwi Cure" : 1984-1990s

In 1984 the Labour Party pledged to pass nuclear free legislation, promote a SPNFZ and renegotiate the ANZUS agreement to accommodate this. The policy was seen as a test of democratic process and of A/NZ's sovereignty. [43] The policy found favour nationwide, and Labour's landslide victory can be partially attributed to anti-nuclear voters. At the same time, with the

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<sup>39</sup>. Stephen Levine & Paul Spoonley, *Waging Peace: A study of public and parliamentary attitudes towards peace and security issues*, New Zealand Foundation for Peace Studies, Auckland, 1979, 84pp; Lawrence Jones, 'Cracks in the Consensus: Shifting attitudes to New Zealand Defence', in Roderic Alley, (1984) op.cit. pp. 35-50; John Henderson, Keith Jackson, Richard Kennaway, *Beyond New Zealand: the Foreign Policy of a Small State*, Methuen, Auckland, 1980, sections I (pp. 2-9), II (pp.20-27), III (pp.38-67), V (pp. 106-116),VII (pp. 212-215, 242- 259).

<sup>40</sup>. *Evening Post* (Wellington), 24 August 1983, p.33, in Jones,op.cit., p. 49.

<sup>41</sup>. *NZ Herald*, "N-armed warships 'strongly opposed'", *The Press*, 6 October 1984, front page.

<sup>42</sup>. See Robert E. White, 'Nuclear Free New Zealand 1984-New Zealand Becomes Nuclear Free', Working Paper No 7, Centre for Peace Studies, Auckland University, pp 1-20; Robert E. White, ed., 'A Celebration- 10 Years of Nuclear Free Legislation', Occasional Paper no. 6, Centre for Peace Studies, University of Auckland.

<sup>43</sup>. Margaret Wilson, *Labour in Government 1984-1987*, Allen and Unwin,Wellington,1989, pp. 55-67; P. Landais-Stamp, and P. Rogers, *Rocking the Boat: New Zealand, the United States and the Nuclear-free Zone Controversy in the 1980s*, Berg, Oxford, 1989 p. 64, footnote 11; David Lange, 'Trade and Foreign Policy: A Labour Perspective', *NZIR*, Sept/Oct 1984, vol. IX, no. 5, pp. 2-4. Earlier history covering the debate in the Labour Party in 1983 is covered in Vernon Wright, *David Lange Prime Minister*, Unwin Paperbacks, Wellington, 1984, pp. 131- 133.

resurgence of Maori nationalism, the population was undergoing an identity crisis. Was Aotearoa a small South Pacific state, tied to the region by geography and shared ancestry, or was it still clinging to the apron strings of Mother England? [44] Was it time to assert some independence from Western Allies, including Australia, and to stand beside other vulnerable island states which also saw their security threatened by nuclearism? Economically more secure, was it again A/NZ's role to take the nuclear issue to the world stage? The people looked to their new, young Prime Minister David Lange to promote the anti-nuclear policy globally. He was a charismatic, witty orator who spoke with strong moral force. As a lawyer he also understood the importance of underpinning a potentially fragile policy with the law. [45] Moreover he had earned peace movement respect when he defended activists and Labour politicians in the domestic courts following Peace Squadron actions.

Inevitably the policy, and politicians, came under intense pressure from both the Western camp and Foreign Affairs and Defence officials, many of whom still clung to the doctrine of nuclear deterrence. According to Lange, who was also Foreign Minister (1984-87), Cabinet never debated this, although there was unanimous support for the nuclear free policy. [46] Unrestrained, he expounded on the myths of deterrence to the international media via his

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<sup>44</sup>. Malcolm McKinnon, *Independence and Foreign Policy: New Zealand in the World since 1935*, Auckland University Press, 1993, p. 273. See also, Simon Dalby, 'The "Kiwi disease": geopolitical discourse in Aotearoa/New Zealand and the South Pacific', *Political Geography*, vol. 12, no.5, September 1993, pp. 437- 456; John Henderson, 'New Zealand and the Pacific: The Politics of the Pacific-Problems and Prospects', Paper given to New Zealand Studies Seminar, Tufts University, Massachusetts, 30 March 1990; Kevin Clements, 'New Zealand Defence Policy: Challenges for the Future', Paper presented to the Institute of Policy Studies, Victoria University, 9 December, 1986; Kevin Clements, 'Break Nuclear Ties - Promote Functional Co-operation to Maintain the Integrity of New Zealand's Anti Nuclear Policy', Paper for University of Canterbury Seminar, November 1991; Steve Hoadley, 'New Zealand's Foreign Policy 1976-1995: consolidation and elaboration', *NZIR*, vol. XX, no. 6, Nov/Dec 1995, pp. 4-6.

<sup>45</sup>. David Lange, 'Facing critical choices', *NZIR*, vol. XII, no. 4, July/August 1987, p. 3.

<sup>46</sup>. Lange, *op.cit.*, p. 74.

celebrated 1987 Oxford Union debate, the UNGA and the CD. [47] Before departing for Oxford he is reported to have said:

This will change everything - there'll be no going back. We'll cut ourselves adrift economically, militarily, culturally - the umbilical cord to our past has been severed. New Zealand will never be the same again... we were hedgehog New Zealand, curling ourselves up into a frightened little ball and praying the outside world wouldn't run over us. Tomorrow we stand up in the full glare of the international spotlight and say: "This is who we are, this is what we believe, and damn the consequences!" [48]

He graphically depicted A/NZ's geographical isolation (p.140) in speeches in the US:

Most of the area inside that circle is water. The only two large landmasses are Antarctica, which is mostly covered in ice, and Australia, much of which is desert ... in short we are a long way from just about anywhere. [49]

He argued that the policy was not pacifist nor isolationist. Affirming the people's right to democratic process, he asked:

If a country like New Zealand cannot say no to nuclear weapons, what country could ever say no to nuclear weapons? If a country like New Zealand cannot be secure in the absence of a nuclear deterrent, what country can ever be safe without it? [50]

He cleverly linked A/NZ and the US as 'Western, democratic and liberal in outlook' pointing out:

We believe in the same basic freedoms; the principle of the individual, the equality of all before the law, freedom of conscience,

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<sup>47</sup>. For a comprehensive study of Lange's critical statements of nuclear deterrence, see Graham (1989), *op.cit.*; Kennedy Graham, 'New Zealand's Non-Nuclear Policy: Towards Global Security', *Alternatives*, vol. XII, 1987, pp. 217-242; Kennedy Graham, 'Lowering the Nuclear Sword: New Zealand, morality and nuclear deterrence', *NZIR*, March/April 1989, pp. 20-25; K. Graham, 'After deterrence - what?', *NZIR*, vol. XI, no. 3, May-June 1986, pp. 5-9; Michael Pugh, 'Nuclear deterrence theory: the spectre at the feast', *NZIR*, vol. XII, no 3, May/June 1987, pp. 10 - 13.

<sup>48</sup>. Chris Bailey, (Director) and Tim Sanders (Producer), *Fallout*, South Pacific Pictures, screened on TVNZ, 25 July 1994.

<sup>49</sup>. David Lange, 'New Zealand Foreign Policy: The Nuclear issue and great power-small state relations', Speech to Yale University, 24 April 1989, p. 5.

<sup>50</sup>. David Lange, 'Small States and Big Issues', Nuclear Age Peace Foundation, California, 30 April 1988, p. 5.

the right of all people to take part in the running of government and its institutions.[51]

Despite demotion from US ally to friend, curtailment of military cooperation under ANZUS and diplomatic ostracism from the Western group, Lange's government held firm. [52] Ironically, the 1985 French bombing of the *Rainbow Warrior* and the 1986 Chernobyl nuclear power plant explosion, helped strengthen its resolve. The government was bolstered by the 1986 Defence Committee of Enquiry public opinion polls which revealed that 92% opposed nuclear weapons in A/NZ and 69% opposed warship visits; 92% wanted A/NZ to promote nuclear disarmament through the UN, while 88% supported the promotion of NFZs. [53]

New Zealanders witnessed with pride a new phase in the struggle for an independent foreign policy. By the 1987 election, five of the six most significant political parties had adopted the nuclear free policies.[54] With the passing of the Nuclear Free Act in June 1987, Aotearoa/New Zealand came of age. Although treated with barely-concealed fury by most of her allies, she won admiration and respect from many non-aligned states for being the first Western-allied state to legislate against nuclear weapons and thereby renounce nuclear deterrence.

As described earlier, the Act included provision for a Public Advisory Committee on Disarmament and Arms Control (PACDAC). From 1987-90 they advised government on the formulation of a consistent policy by

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<sup>51</sup>. Prime Minister David Lange, 26 February 1985, Ministerial Speeches, no. 4, 14 March 1985, p.25.

<sup>52</sup>. Henderson, etc. (1991), op.cit., p. 214 : 'The influence of David Lange was most evident in his determination to keep nuclear weapons out of New Zealand'. '... it was Lange who determined that NZ would stand firm in the face of strong pressure to change from the US, Australia and the UK'.

<sup>53</sup>. *Defence and Security : What New Zealanders Want: Report of the Defence Committee of Enquiry*, Government Printer, Wellington, 1986; *Annex to the Report of the Defence Committee of Enquiry: Public Opinion Poll on Defence and Security: What New Zealanders Want*, National Research Bureau, Government Printer, Wellington, 1986.

<sup>54</sup>. Sylvia Breen, 'Make your vote count for Peace', *Peacelink*, July 1987, pp. 15, 18.

scrutinising UN voting, reviewing membership of military alliances and agreements, and activities within US bases. For example, whereas A/NZ used to vote with the US on 70% of the UN disarmament resolutions, by 1988/89 this was only 27%.<sup>[55]</sup> However, on the major issues relating to nuclear deterrence, A/NZ continued to oppose resolutions calling for the total non-use and first-use of nuclear weapons, negative security assurances (NSAs) and a Convention on the Prohibition of Use of Nuclear Weapons. The Ministry's Explanations of Vote revealed an ongoing preoccupation with nuclear deterrence. <sup>[56]</sup>

Foreign Minister Russell Marshall confirmed at least three instances where Ministry officials included positive references to nuclear deterrence in international Ministerial speeches in order to undermine Lange's position. <sup>[57]</sup> This continued throughout the early 1990s, and explained some of the obstacles preventing later support for the WCP resolution.

By 1990, political expediency forced the National Opposition to adopt Labour's anti-nuclear policy. Their Defence spokesperson, Don McKinnon, resigned in protest at this policy shift. <sup>[58]</sup> Later, as Foreign Minister (1990-98), he was at the forefront of moves to appease the US administration by attempting to change the Act to allow visits by nuclear-powered warships. This failed, and by the mid-1990s anti-nuclearism was firmly entrenched within the A/NZ psyche. During resumed French testing in the Pacific in 1995, Prime Minister Jim Bolger criticised nuclear deterrence on French television, called for the elimination of nuclear weapons and even promoted the WCP internationally.

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<sup>55</sup>. Owen Wilkes, 'How Bad, or How Good, is our Voting in the UN? Does NZ have a "Two-faced Nuclear Stance"?', *Peacelink*, July 1990, pp. 11-14.

<sup>56</sup>. K.Boanas-Dewes, 'Participatory Democracy in Peace and Security Decision Making: the Aotearoa/New Zealand Experience', *Interdisciplinary Peace Research*, vol. 5, no. 2, 1993.

<sup>57</sup>. Interview by Dewes with Russell Marshall, 19 July 1994.

<sup>58</sup>. See Robert E. White, 'Nuclear Free New Zealand: 1987- from Policy to Legislation', Working Paper no.8, Centre for Peace Studies, University of Auckland, 1998, chapter 4, pp. 47- 56.

## 7.6 Labour Government's Response to the WCP: 1986-1990

During the period 1984-90, Labour pursued a forthright, independent, anti-nuclear policy. Like Nash and Kirk before him, Lange had the *mana* for international leadership. Why did A/NZ decide not to adopt the WCP once the legislation was passed? What were the constraints on the individual decision makers? Was there sufficient public support? Was the timing right? This section covers the insights of several key politicians and officials into the way decisions were made during 1987-90.

The government eventually adopted official advice against pursuing the WCP. During his first term Lange had alienated some key officials and A/NZ's three closest allies, the US, UK and Australia. Officials were deeply divided over nuclear deterrence, some of them risking promotion if they supported Lange's critique of the *sine qua non* of the Western security policy. In March 1988, newly appointed Foreign Minister Russell Marshall deeply regretted allowing a positive reference to nuclear deterrence to appear in his address to the CD:

I was trying to be all things to all people. Was I tired? Was I fed up with politics? Was I thinking I could get away with it because people at home will be too busy to see it? ... then it was reported in the *Dominion*.. and David (Lange) abused me through the media. [59]

With hindsight, Marshall describes this as his worst political mistake. In his book Lange described the Western diplomatic community's jubilation as he publicly forced Marshall to withdraw what was perceived to be a fundamental alteration in the nuclear free policy. [60] He acknowledged the pressure he endured and with remarkable frankness, called for public and Labour Party support for his anti-nuclear stand:

I can tell you that when we took office in 1984 it was taken for granted by the government's advisers that we would change the anti-nuclear policy. They had no doubt about it. They just assumed that when we were confronted with what they called the realities of global

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<sup>59</sup>. Ibid.

<sup>60</sup>. Lange (1990), op.cit., pp. 183-197. See also *Dominion* editorial 'Mr Marshall's message' and 'Lange reaffirms antinuke line', 15 March 1988; and 'Deterrence idea firmly rejected', *Dominion*, 17 March 1988.

power politics we would back off. When after several months it started to sink in that we were serious, they started to get heavy. They told me our trade in Europe depended on our surrender to the doctrines of nuclear preparedness. It is not easy to be told all the time by people who are advisers to the government that what you are doing is wrong and dangerous. It is possible to doubt. It is possible to feel alone.

There are times when there is a conflict between the policy of the party and the reality of government. We allow for the practicalities of government. We make choices. We make trade-offs. We sometimes reach our goals by a route which is circuitous. [61]

Lange later admitted that the decision making over the WCP was 'unscientific', that he had sometimes done it badly and it was not a high priority for him. He acknowledged PACDAC's scrutiny of A/NZ's inconsistent UN voting, but felt that his speech to the Conference on Disarmament, the US television interviews and the Oxford Union Debate had much more 'intensity, advocacy and significance' than any UN vote. [62]

However, certain astute officials found a way to convince him not to support the WCP. He was an 'easy target' because they knew he was critical of the ICJ and played on this:

I felt quite keenly that we had got the thing back to front, and until you had a forum which was non-withdrawable from and a forum which had the power to adjudicate on an issue, that we were going to be led up the garden path. I still gave my support for the World Court Project, but I would prefer that the first project was a *World Court* project and the second was a nuclear issue. I think the major issue is getting a forum which has a properly enforceable outcome.

I felt that a defeat on the issue of whether the ICJ accepted the case would actually do more good for the World Court than to carry on ... not good for the nuclear issue, but in terms of the way things do develop. If the Court refused jurisdiction ... then that will have been worth the effort because there will be a number of nations which will be appalled - small nations will assume the Court is not prepared to do anything which could get any of its members into major strife with major powers. That will lead again to a revisiting of what it means to be a member of the international community. [63]

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<sup>61</sup>. David Lange, Speech notes for his Address to the Annual Conference of the Labour Party, Dunedin, 3 September 1988.

<sup>62</sup>. Interview by Dewes with Lange, Christchurch, 27 September 1994.

<sup>63</sup>. Ibid.

Deputy Prime Minister Geoffrey Palmer also strongly advocated compulsory jurisdiction of the ICJ and advocated A/NZ's fervent belief in the rule of law. [64] Overall, Lange felt that A/NZ had taken the maximum number of limited arms control measures and, in terms of political reality, the time was not right. There was not sufficient support from other countries, and A/NZ had alienated most of its traditional friends. If he had been Prime Minister in the post-Cold War period, he would have taken the risks and run with it. On the other hand, Marshall admitted:

I was never honestly grabbed with any enthusiasm for the Project - it never was a high priority for me. I had no real conviction that the effort was worthwhile. Even with a best case scenario of a victorious judgment, I am not at all sure that it will really mean anything at the end of the day. [65]

These men had different attitudes towards the bureaucracy. Lange tended to treat most Ministerial advisers with scepticism and disdain - they kept each other at arm's length. Marshall was more congenial, enjoyed their camaraderie and sought their acceptance. When Lange later became Minister of Education, he chose Marshall as his successor because he had a strong interest in foreign affairs and disarmament, a history of accepting official advice which could help heal the wounds between officialdom and government, [66] and was keen to build up trade links with A/NZ's friends and allies.

Lange had a formidable intellect and enjoyed the cut and thrust of political debate. He was well-versed in the law, and in nuclear and defence issues. Marshall deferred to the 'sharpest intellects' within the Ministry:

My inclination was always to accept their judgment. I was better at emotional responses rather than intellectual responses ... so, you can have a gut feeling that you'd really like to do this, these are nice people and it's a good thing to do. But, my mind is not quick enough in combatting the Keating/ Beeby (officials) sharpness concentrating full tack on all of this. I was also troubled about the fact that having taken part unwillingly in a decision to reduce their

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<sup>64</sup>. Address by Geoffrey Palmer to the University of Virginia, 3 November 1988, quoted in Singh (1989), op. cit., pp. 254 -255.

<sup>65</sup>. Letter from Marshall to Dewes, 22 July 1994 and interview with Marshall, 19 July 1994.

<sup>66</sup>. Lange (1990), op.cit., p. 183.

resources, I was asking them to put more resources into something which clearly at the kindest was peripheral to them, and at the most honest was fundamental to undermining what they were on about. [67]

Marshall was unfazed by what the ICJ judgment might be. He was acutely aware of the resources needed to get A/NZ onto the Security Council and knew what a similar campaign would entail. He felt isolated without solid support from Sweden, Ireland, Canada and Australia. A/NZ could not realistically do this alone and, as only an observer to the Non-Aligned Movement (NAM), would not necessarily command their support. He was loath to ask Foreign Affairs to pursue an issue likely to alienate them further from traditional allies. A/NZ needed their backing to win the 'Western and Others' seat on the Security Council. The officials 'wanted A/NZ to be seen as a responsible citizen of the world, being friendly, reasonable, cooperative and reliable' and the WCP would exacerbate already strained relationships.[68]

This attitude was confirmed by the Disarmament Division's Director Brett Lineham. He was already sidelined within the Ministry for his outspoken support of a more independent anti-nuclear policy. Career-wise it was disastrous not to give at least tacit support for nuclear deterrence:

I was interested in a longer-term career. I was also interested in trying to make the nuclear weapon policy viable in the long term by countervailing policies elsewhere. Therefore, I pushed very hard on nuclear weapons, but at the same time I tried to support sensible action on other things eg. chemical and conventional weapons, and the UN Study. There were some who argued very well that nuclear deterrence had worked and that our partner nations agree with this policy very strongly, so we had to take this into account. The UN Study became a compromise position - a policy balance. [69]

Lineham always had misgivings about the WCP - it would not produce the sort of outcome the proponents wished for and could be counterproductive. He therefore accepted the advice of senior officials. A/NZ's legislation was already quite a profound statement:

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<sup>67</sup>. Marshall interview, 1994.

<sup>68</sup>. Ibid.

<sup>69</sup>. Interview by Dewes with Lineham, 4 August 1995.

We had heightened the world's view on nuclear weapons immensely - for a small nation in the South Pacific it was incredible what we had done. Life had become much more complicated in relation to other countries, and if something is not necessary to get involved in - why do it? It's a numbers game.... you've got to take into account the possibility of moving people's feelings of affection for the government internally and at the same time being concerned about the impacts from overseas or wherever, on your government. If you can move things without compromising some other important policies, then by all means, do it. The importance of public opinion in political terms is huge, and building support with politicians is absolutely fundamental. [70]

Both Lineham and Fran Wilde considered Evans to be a 'totally inappropriate figurehead' for the WCP. Lineham articulated an official's view:

Here was Evans, pushing hard, getting a lot of publicity, acting completely undiplomatically, confrontational, blaming and abusing the government... he would not accept 'No' for an answer, he would not be deterred, he would not compromise - he looked like a one-man band. The government's response was therefore to find whatever excuse it could to distance itself from the proposal.

Lineham thought 'the work done behind the scenes' by other New Zealanders was far more effective in the long-term. He saw the WCP as a long-term goal which would not be pushed through in a few years. A decade later, with strong national and international support, and different leaders negotiating with politicians on behalf of the 'mavericks', success was more likely. Lineham's position was clear:

All the grandstanding by certain individuals will interest people, there may be a sudden rush of enthusiasm for the grandstander's position, but without enough 'smaller' people working assiduously away to change things you couldn't have done it. [71]

Fran Wilde was Associate Foreign Affairs and Disarmament Minister and a longtime anti-nuclear supporter who worked closely with the peace movement. However, like Dame Ann Hercus (former Labour Cabinet Minister and UN Ambassador) and Russell Marshall, she was subject to movement criticism for succumbing to official pressure on certain UN disarmament votes and the WCP. As a junior Minister out of Cabinet, she

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<sup>70</sup>. Ibid.

<sup>71</sup>. Interviews with Lineham, and Wilde (17 March 1995).

felt constrained and unable to be very pro-active. [72] Her instinct on the WCP was to 'go for it' but:

...both Lange and Palmer were absolutely opposed and leaning very heavily on all the rest of us. I probably did a reasonable amount out of Cabinet, but it was much better when I moved into Cabinet: but by then it was too late and the government was nearing the end of its term.

The intellectual argument which finally persuaded her against it was:

If you get a finding against you then you're in real trouble because nukes would be seen as legal and it puts your case back. But if I were still active in the peace movement I would be pushing it, even though I acknowledge that was a valid argument.

She believed that 'simply the process of going for it changes public and political opinion and the bandwagon effect is actually very powerful'. The debate was perceived to be about 'whose side we are on, who our friends are and who we are voting for in the UN'. She was tempted to speak out publicly, but was tempered by her commitment to collegiality and the lack of encouragement from Lange and Marshall:

I wasn't going to risk being sacked on that issue when I knew I wasn't going to get it anyway. As a general principle, you don't push to the wire something you think you're going to lose, but on the other hand you do know that if something is a major political mobilisation and is going to change opinion, and may change the outcome ... in this case you have gone through a really valuable process - whether or not you win, it's still really valuable ... I think it is miraculous! (27)

## **7.7 Conclusions**

A/NZ's anti-nuclear stance was deeply rooted in its public concern over Western nuclear testing in the Pacific. Citizen groups, through vigorous campaigning, ensured that it became an election issue in the early 1970s. Ideas flowed from ordinary citizens into the decision making process and bolstered the Australasian Labour governments in their efforts to mount a legal challenge against France at the ICJ. They gained the support of other South Pacific states, and set an example of how small states can use international law especially when their security is threatened. Aotearoa/ New Zealand demonstrated that it was 'politically big enough to give a

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<sup>72</sup>. Wilde interview.

constructive lead' at the ICJ and in other international fora. Kirk combined the qualities of a strong leader committed to an independent foreign policy with a belief in the responsibility of politicians to reflect strong public opinion by translating that into effective action. He led the transition from traditional dependence on Western military ideology to South Pacific-oriented identity and independent action.

The return of a National government in 1975 signalled reversion to the historical norm of subservience to the Western nuclear powers going back to the Boer War. However, once again public pressure forced the nuclear issue back to the top of the election agenda in 1984. In the ensuing struggle to enact the nuclear free legislation A/NZ emerged with a new sense of identity and pride as an independent small state. Again the policy change was led by a strong personality who believed in the 'rights of people to take part in running government', and who espoused the virtues of democratic process. Lange gained strength from overwhelming public support for the policy, and guided the country through the minefield of the inevitable Western backlash. Although his government did not 'go the extra mile' by leading on the WCP during the Cold War, he and other Labour politicians like Wilde were sympathetic, but realistic.

By the time Wilde was in Cabinet, Lange had resigned as Prime Minister, the election was due during the UNGA, and Palmer was Prime Minister. He was not prepared to risk the WCP or any other high profile anti-nuclear issue unless he was sure of winning. Polls indicated that Labour would lose the election and, having alienated the peace movement with the decision to purchase two ANZAC frigates, they were unlikely to win back grassroots support through the WCP. Officials resisted another ICJ case which needed a herculean effort to marshal international support. The government hierarchy had no enthusiasm for it, and the legal experts, smarting from the 1973 ICJ experience, were genuinely concerned it could be counterproductive. The 1973 case questioned only the legality of French testing and had gained regional support from states already alienated by the testing. The WCP case challenged nuclear deterrence head on, thereby

clashing directly with NZ's closest allies. It would have been reckless in terms of foreign affairs *realpolitik*, and would most certainly have failed without strong NAM support and sympathetic 'middle' states such as Ireland and Sweden.

The constraints on small states taking international initiatives are well summarised here:

A small state is more vulnerable to pressure, more likely to give way under stress, more limited in respect of the political options open to it, and subject to a tighter connection between domestic and external affairs. In other words, the smaller the human and material resources of a state, the greater are the difficulties it must surmount if it is to maintain any valid political options at all, and in consequence, the smaller the state the less viable it is as a genuinely independent member of the international community. [73]

Taking these factors into account, the risks taken by both A/NZ Labour governments in the 1970s and 1980s far outweighed potential benefits in terms of relationships with traditional allies and economic prosperity. Nevertheless, both governments adopted these radical stands because of the tighter connection between domestic and external affairs in an active democracy, and the luxury of geographic isolation and relative economic security. In the 1980s, the nuclear free policy became the litmus test of the differing strategic interests between the large industrialised Western nations and the smaller, isolated Pacific Island states. A/NZ, as the first Western-allied state to introduce a totally non-nuclear policy, began to use 'the tyranny of distance' to its advantage. [74]

The resultant sense of independence in international relations helped strengthen the resolve of the WCP activists tasked with building further national and international support. They were also bolstered by strong public opinion and the nuclear free legislation. They needed to convince the

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<sup>73</sup>. D.Vital, *The Inequality of States*, Oxford, Clarendon Press, 1967, p. 3 quoted in Richard Kennaway, *New Zealand Foreign Policy 1951-1971*, Hicks Smith and Sons Ltd, Wellington, 1972, p.154.

<sup>74</sup>. John Henderson, 'The foreign policy of a small state', *NZIR*, vol.V, no.2, pp. 10-12; John Henderson, 'Turning the tyranny of distance to advantage', *NZIR*, March/April 1995, vol. XX, no. 2, pp. 22-25.

majority of non-nuclear states to work together to counter inflexible bloc divisions within the UN. Lange recognised that ‘the small and vulnerable have more in common with each other than with the big powers’. In his 1985 address to the 40th Commemorative Session of the UN, Lange echoed Peter Fraser and Norman Kirk and intimated what the WCP needed to achieve:

It requires both political will and political courage to set aside the calls of geography and ideology. But a broad coalition in this organisation of small countries crossing regional and other group lines not only makes sense, it is also the more persuasive in helping resolve conflicts. [75]

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<sup>75</sup>. David Lange, Information Bulletin no. 14, November 1985, p. 3.

# CHAPTER 8

## INTERNATIONAL MOBILISATION : 1988-1992

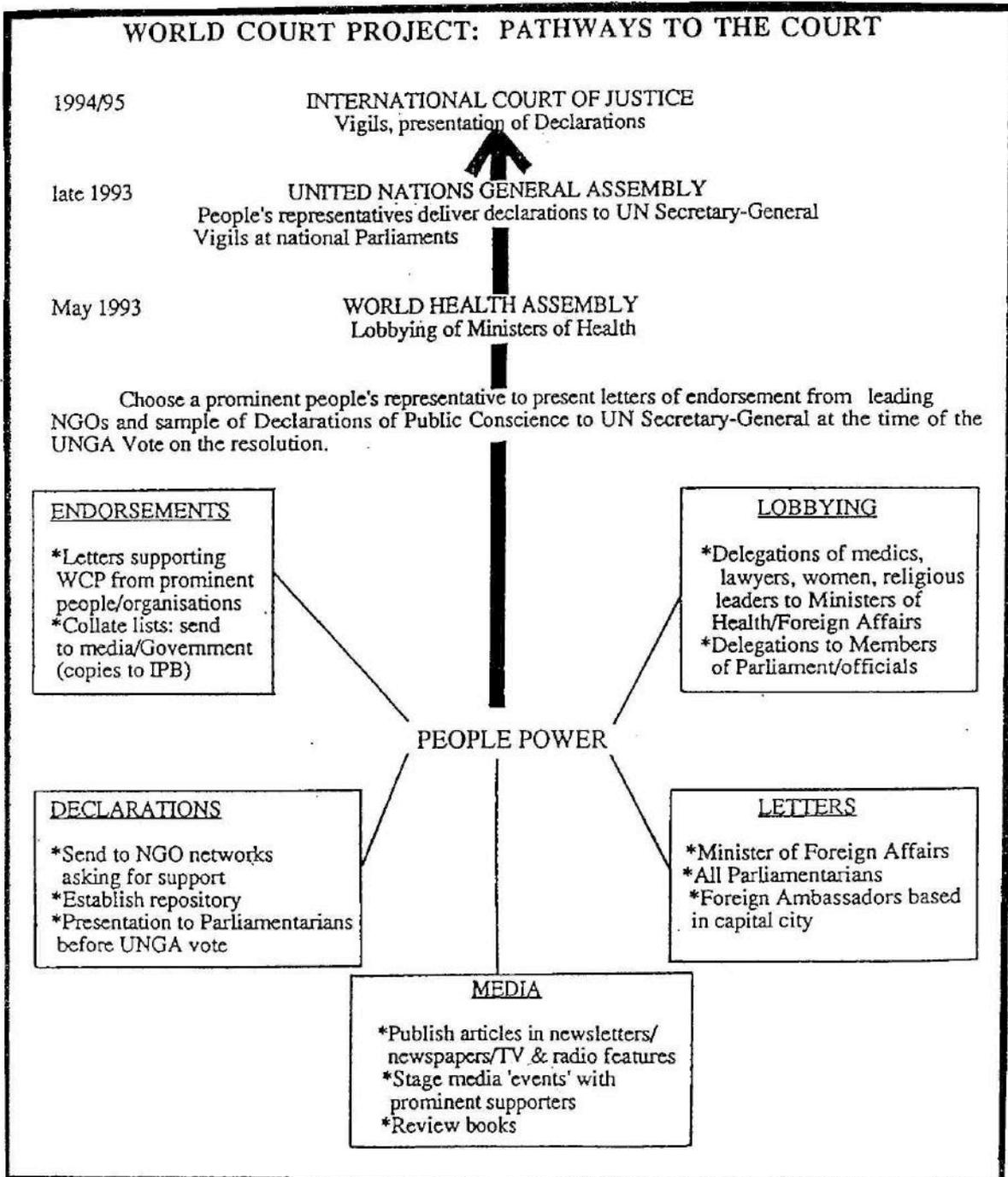


Figure 6

Graphic by author.

## CHAPTER 8

### INTERNATIONAL MOBILISATION : 1988-1992

*... it should be emphasised that the project has been anything but a one-man affair. In fact, it represents the long haul on the part of many people here and abroad. Indeed, in the widest sense, I believe it can be called a direct product of the nuclear-free movement and of "people" at large. Individuals and groups, mainly from grassroots level, strove mightily for the New Zealand nuclear-free legislation of 1987, and have never relaxed in their determination to preserve it. Harold Evans [1]*

#### 8.1 Introduction

As the 1980s drew to a close, there were various factors which influenced the WCP's development. Stirred by the Evans initiative, influential lawyers and doctors promoted the idea within their international organisations, tentatively exploring ways of working together. British activists began to focus on it, and other New Zealanders helped internationalise the campaign.

International law gained prominence with Gorbachev's announcement of the Soviet Union's acceptance of the compulsory jurisdiction of the ICJ on human rights issues, and the adoption of the UN Decade of International Law (1990-99). NGOs such as PGA and the World Association of World Federalists (WAWF) explored how to establish an International Criminal Court, and the end of the Cold War was imminent.

#### 8.2 Citizen Groups

##### ***World Association of World Federalists (WAWF)***

For four decades the New York-based WAWF worked to strengthen the rule of international law. In 1989, they played a pivotal role in building support for

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<sup>1.</sup> Letter from Harold Evans to Editor, *The Press*, 11 January 1995.

the UN Decade of International Law Resolution (Appendix I). The idea had originated within the Non-Aligned Movement (NAM) and, at an unprecedented meeting of their Foreign Ministers in June 1989, they issued 'The Hague Declaration on Peace and the Rule of Law in International Affairs'. It proposed a UN Decade to work toward 'appropriate international instruments' for the strengthening of international law and the ICJ, including universal acceptance of its compulsory jurisdiction. It was opposed by many Western countries and, in order to achieve consensus, the NAM dropped the reference to compulsory jurisdiction and a conference at the end of the decade. Eventually it was co-sponsored by the Security Council Permanent Five (P5) and adopted without a vote.

The World Association of World Federalists (WAWF) was surprised by NAM's leadership, because until then it had tended to regard international law and the ICJ as the creation of the big powers, with less than a quarter of its membership accepting its jurisdiction. By promoting this resolution, NAM signalled its recognition that the law could also benefit and help protect less powerful states. Significantly, Zimbabwe's Foreign Minister Nathan Shamuyarira chaired the NAM. Later he played a key role in the WCP. During the 1989 Hague NAM Foreign Ministers' conference, he encouraged the WAWF to organise a parallel NGO forum attended by more than 40 NGOs. WAWF issued an action alert to hundreds of NGOs urging them to send letters of support. Despite less than a month's notice, more than 80 letters were delivered to individual NAM Ministers on their arrival. When the final vote was taken, over 130 NGO endorsements had been received. From the outset, WAWF's Decade of International Law coordinator Bill Pace established an excellent rapport with the Zimbabwe UN officials who greatly welcomed NGO involvement, and cooperated by providing information, materials and access to the NAM meeting. [2] This was repeated during 1992-94 when the WCP began UN lobbying.

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<sup>2</sup>. 'Special Report on the UN Decade of International Law', *WAWF Newsletter*, December 1989, 4 pp.

The NAM initiative caused consternation for the US and USSR, which feared their nuclear weapon status might be challenged in the ICJ. At their 1989 Summit, their Foreign Ministers developed proposals for 'mutually agreed conditions' on how the ICJ should be used which included:

....excluding from the jurisdiction of the Court certain categories of issues that are widely recognised to be highly sensitive to states and inappropriate for resolution by judicial action in the absence of the express consent of the states involved. [3]

Gorbachev's 1988 decision to accept ICJ compulsory jurisdiction over certain issues had made it conceivable that the US could challenge the USSR's illegal occupation of Lithuania.[4] The US had withdrawn its acceptance of compulsory jurisdiction after an ICJ case relating to US mining of Nicaraguan harbours was defeated in 1986. So, while the superpowers co-sponsored the 'Decade' resolution, they still wanted to control the ICJ's agenda.

### ***British Connections***

When A/NZ indicated early in 1989 that it would not lead a WCP UN resolution, Evans focused on building international NGO support. Both he and St John were determined to gain endorsement from the International Association of Lawyers Against Nuclear Arms (IALANA) when they attended its Inaugural Congress at the Hague in October 1989. Enroute, Evans briefed his Australian contacts, including the media and politicians. British activists had invited Evans to address a workshop at the September IPB Annual Conference, and the Steering Committee meeting of the Institute of Law and Peace (INLAP). Their 'Embassies Project' involved presenting embassies in London with questionnaires 'concerning their views on UK nuclear policy in light of international law perspectives'. After meeting Evans they endorsed his project which they amalgamated with theirs and named it the 'World Court Reference Project'. They funded some expenses for their secretary Keith

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<sup>3.</sup> Rainer Santi and John Spangler, eds., *Geneva Disarmament Monitor*, 3 November 1989, p. 8.

<sup>4.</sup> Daniel Moynihan, 'Take Lithuania to the World Court', *Guardian Weekly*, 29 April 1990, p. 19; Bernard Weinraub, 'Reagan decides to reject authority of World Court', Washington, reprinted from *New York Times*, in *The Australian*, 8 October 1985, and Paul Lewis 'US Asking Soviets to let World Court Settle Some Disputes', *NYT*, 6 October 1988.

Mothersson to promote it over the next three years, and sent four delegates to the IALANA Congress. [5]

By September the project had been endorsed by Scottish CND, German Judges for Peace, Just Defence UK, Saferworld and LCNP. The IPB Workshop proposed an IPB/INLAP co-sponsored brochure on nuclear weapons and international law and a pamphlet on the Nuremberg Principles. IPB endorsed the Evans proposal, appointed him as a Consultant and their representative at IALANA's Congress. [6] In 1990 former INLAP Chair, Colin Archer, became IPB Secretary-General and began re-drafting the brochure. During 1990, Mothersson circulated a comprehensive briefing paper to international legal and peace organisations. It included research on the WHO's competence to request an advisory opinion, and proposed possible questions for the ICJ which Mothersson explored with IPPNW and IALANA. He provided a comprehensive list of organisations to approach for support, which included: political parties, governments, UN agencies, lawyers, academics, NFZ local authorities, human rights bodies, women, businesses, churches and 'groups representing those specially protected under laws of war such as the elderly, children, people with a disability, emergency service workers and veteran organisations' (Figure 7). [7]

Mothersson and Archer sought support from diplomats and groups such as WILPF, World Council of Churches and the World Federation of UNAs during the 1990 Non Proliferation Treaty (NPT) Review Conference. Mothersson also advocated a global collection of Declarations of Public Conscience (DPCs) signed by prominent citizens and organisations for presentation to the ICJ. Later it evolved into shorter declarations signed by both ordinary and prominent citizens (Appendix III). This built on MacBride's belief that 'the Martens Clause established the illegality of nuclear weapons', which he had

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5. INLAP Annual Report, 1988-89, pp. 1-2.

6. 'New Opportunities, New Strategies: Peace in an Interdependent World', IPB Conference Report, 1-2 September 1989.

7. Keith Mothersson, 'Article 96 Briefing Paper: World Court Reference Project. Nuclear Preparations - Are They Lawful?', INLAP pamphlet, July 1990, p. 11.

Figure 7: Diagram outlining groups to be contacted for WCP, Keith Mothersson, 1991.



promoted since the 1960s. Boyle then argued this in-depth at the 1985 London Nuclear Warfare Tribunal (LNWT).[8] In late 1991, WCP(UK) began to coordinate the collection of DPCs worldwide, and presented them to the ICJ in 1994 as quasi-legal 'citizen evidence'.

Evans also gained CND (UK) support. At its next AGM it made a commitment to build very broad alliances with other organisations in support of the World Court Reference Project (WCRP), to affiliate to INLAP and to commemorate Nuremberg Day. [9] He also addressed a Scottish peace group, was interviewed by BBC radio, and met Nuclear Free Zone (NFZ) local authority representatives to explore 'legal questions posed by their resistance to nuclear "civil defence" obligations imposed on them by central government'. [10]

Throughout 1990, INLAP promoted the WCP at conferences of Christian CND, Pugwash, the World Disarmament Campaign, and IPPNW's World Congress where IPPNW agreed to urge their national affiliates to promote it. [11] In April, INLAP also co-hosted a major conference with the Bradford University School of Peace Studies as a follow-up to the LNWT. It was addressed by scientists, defence analysts and lawyers, including Nicholas Grief, who later authored the IALANA WCP Legal Memorandum. [12]

### ***International Association of Lawyers Against Nuclear Arms***

IALANA's first Executive meeting in April 1988 (attended by Falk and Weeramantry) had recommended that, pending endorsement from IALANA's

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<sup>8.</sup> Email from Boyle to Dewes, 16 September 1998.

<sup>9.</sup> *INLAP Outlook*, no. 4, January 1990; *INLAP Times*, vol.1, no.1, Autumn 1995, p. 5.

<sup>10.</sup> *INLAP Outlook*, no.3, October 1989, p.2; Letter from Harold Evans to Ian Bowman, 20 September 1989; Notes by Christine Soane on WCP, 1995.

<sup>11.</sup> Notes of the Coventry IPPNW Workshop on 'Using the Law' taken by Dr Pat Craig, MEDACT UK, an affiliate of IPPNW, 1990.

<sup>12.</sup> *INLAP Outlook*, 1989-90; Letter from Robert Manson to INLAP Supporters, March 1990. See also, Nicholas Grief, 'The legality of nuclear weapons', in Istvan Pogany, ed., Avebury, *Nuclear Weapons and International Law*, Avebury, Hampshire, 1987, pp. 22-51.

first Congress in 1989, support be given to the Evans initiative. [13] In an attempt to implement this, and to forge a closer relationship with physicians, Weeramantry had invited Australian doctors to attend the Congress. He acknowledged IALANA's failure to find a government to sponsor a UN resolution, and proposed to IPPNW:

We would greatly welcome the support of your very influential association, both in Australia and overseas, in interesting statesmen in the various member countries of the UN to earn credit for their countries and at the same time serve the cause of humanity by raising this issue with their governments. [14]

In November 1988, the idea had also appeared in proposals adopted at a New Delhi conference where Prime Minister Rajiv Gandhi called for nuclear weapons to be outlawed. [15]

When Evans joined the 200 IALANA delegates from 30 countries at the Hague in September 1989, there was growing citizen support for his project and he had high expectations for its eventual success. He had not dismissed A/NZ as a future co-sponsor of a UN resolution. Disarmament Minister Wilde had 'certainly not rejected the idea out of hand', promising to 'raise the issue with politicians from elsewhere and try to explore the level of political support'. [16] In May 1989, Evans had demanded Lange's personal reply, criticising the government for conveying their position via a press statement by a junior Minister (Wilde). He had outlined the growing international support, including IALANA's Congress agenda, and had hoped Lange would reconsider. [17] He also alerted Lange to Geoffrey Palmer's statement that:

...the (NZ) conviction that the use of force in international relations should be outlawed and that disputes should be resolved through

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13. Minutes of first IALANA meeting, 9 April 1988.

14. Letter from Professor Weeramantry to Tilman Ruff, 4 April 1989.

15. Joint Statement issued at the Conference 'Towards a Nuclear Weapon-Free and Non-Violent World' held in New Delhi, 14-16 November 1988. Speech by Prime Minister Rajiv Gandhi to this conference, 14 November 1988.

16. 'Nuclear Issue on Hold', *Christchurch Star*, 4 April 1989.

17. Harold Evans, 'Open Letter making final submissions to the Prime Minister of New Zealand, David Lange', 16 May 1989, 90 pp.

international institutions, and particularly through the use of legal mechanisms. [18]

Palmer had also publicly supported the Soviet's call for compulsory ICJ jurisdiction and when he became Prime Minister in July 1989, Evans had reminded him of his earlier assertion:

I am a strong supporter of the International Court. There is no one in New Zealand who is a stronger advocate for the ICJ than I and I very much doubt that there is anyone in Government in any other country who has advocated the role of the Court as strongly as I have over the past five years. None would be happier than I if the Court could play a significant role in reducing or eliminating the scourge of nuclear weapons. [19]

The Soviet lawyers endorsed a draft IALANA Congress resolution by Evans, but the other Vice Presidents did not respond. Much to his delight, former Indian Chief Justice Bhagwati promoted the WCP in his opening address, and the Congress unanimously adopted a strengthened version of his original draft in its communique called the 'Hague Declaration' (Appendix II). [20] It affirmed that the threat or use of nuclear weapons is a war crime, a crime against humanity and a gross violation of other norms of international customary and treaty law. It envisaged as an urgent task the total outlawing of nuclear weapons, including their research, manufacture and possession. Referring to the Martens clause, it welcomed the Decade of International Law, called on lawyers to sensitize 'the public conscience' and appealed 'to the Government of all States Members of the UN to take immediate steps towards obtaining a resolution by the UN Assembly under article 96 of the UN Charter, requesting the ICJ to render an advisory opinion on the illegality of the use of nuclear weapons'. [21] The Congress then appointed Falk, Mendlovitz, Evans and St John as the 'World Court Working Group' to coordinate future action.

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18. Memorandum to PACDAC from Harold Evans, 22 March 1989.

19. Letter from Deputy Prime Minister Palmer to Evans, 11 April 1989.

20. Letter from Evans to Phon van den Biesen, 22 August 1989.

21. The Hague Declaration, IALANA, 24 September 1989, 3 pp.

Over the next two years, although Evans provided IALANA with reports of his activities, he received little encouragement from them. IALANA's November 1990 Berlin International Colloquium agenda did not mention the project. Astonished at the omission, Evans considered attending to ensure implementation of the Hague Declaration, but family illness and financial considerations prevented him. He sent copies of his latest Open Letter, an updated report and a draft UN resolution for delegates. He hoped thereby to 'awaken and activate "the sleeping giant of the peace movement" (international law) ... in the cause of World Court guidance on the massive and continuing threat of nuclear weaponry'. [22]

Mothersson also sent papers which included a proposal that IALANA collect a million DPCs. He warned against premature action at the ICJ before there was a groundswell of public opinion with sufficient countries backing it. Later, he reflected the exasperation felt by key activists at the inaction of the three major international NGOs IALANA, IPB and IPPNW:

...with a few noticeable exceptions, most members of IALANA have yet to move beyond the phase of passing general resolutions and hoping that by the next Congress somebody, somewhere, will have cracked the problem of getting some heroic country to table an Article 96 resolution. Possibly in the belief that 'it is up to the diplomats' most members of IALANA have done little work on this key objective. Of course, the same would be said of most activists in IPB and IPPNW - again with honourable exceptions. Unless I am mistaken, there is still hardly any concrete discussion of how to organise our efforts, such debate as there is has mostly been confined to the scope of the reference. [23]

It was not until early 1992 that there was any coordinated action. In the meantime, INLAP continued to dialogue with the UK government and educate the public about nuclear weapon criminality. In 1992, St John wrote a response, on INLAP's behalf, to the Solicitor-General challenging the UK policy as criminal and illegal. [24] Mothersson, Evans and Dewes continued

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<sup>22</sup>. Harold Evans, 'A Report to the International Colloquium of IALANA, Berlin, 2-4 November 1990', 15 October 1990.

<sup>23</sup>. Keith Mothersson, 'World Court Reference Project - Discussion Paper', April 1991, 4 pp.

<sup>24</sup>. Edward St John, 'The Criminality of Nuclear Weapons', October 1989. Letter from St John to Zelter, 16 October 1989.

to write strategy papers and collect endorsements from international organisations.

With hindsight, key IALANA members identified a number of factors which underpinned the reluctance to pursue the project. Mendlovitz described how LCNP was originally:

...writing about nuclearism and international law, and within the organisation there was a 'huge controversy' as to whether they should stay only with nuclear weapons as our object... the initial impetus was to write enough so we could convince our colleagues in the legal profession.

When IALANA began, they did not have energy directly focused on the WCP idea and although 'Falk cast the bread upon the waters ... the ball was not carried by him'. Later 'there were people in LCNP and IALANA who did not want to go along with the insertion of 'threat' ... even amongst the Steering Committee'. [25] Willemijn Straeter, IALANA's Coordinator of the International Secretariat at its office in The Hague from 1991-96, felt that during the pioneering period the Hague Declaration was too ambitious. There was a lack of assets, money, active members and only a part-time staff member. Most of the energy went on establishing the organisation's structure, and there was little inclination to put any effort into a grand project which might not succeed. [26] Doubts were also expressed within IALANA's hierarchy about the damage to the ICJ if it failed.

According to Falk, IALANA's early reluctance came from a certain scepticism about 'this unknown magistrate writing letters to us around the world ... he didn't have an international reputation or following. I was the only person who knew him ... and there was a feeling that the gleam in his eyes was too bright'. He felt that IALANA wanted to generate its own perspectives and had difficulty evaluating the proposal. It was a formidable task, and there was no easy way to get it through the UNGA. He credits Evans as the creator of the

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<sup>25</sup>. Mendlovitz interview, op.cit.

<sup>26</sup>. Letter from Willemijn Straeter to Dewes, 4 May 1996.

project and acknowledges that without his stimulation nothing might have happened. [27]

In October 1990, Colin Archer explained to Evans why IPB had done so little since the 1989 conference. Like IALANA it lacked staff and funds, and other projects were given priority. Archer was personally very supportive, seeing it as the 'most fitting fulfilment of the work of Seán MacBride, and for that reason alone I am keen that IPB should play its part'. He was encouraged by the positive responses from diplomats and NGOs at the NPT Review Conference: '...it convinced us that there certainly is at least a potential international support network for the initiative of some considerable size'. [28] This growing optimism bolstered the WCP's main proponents through a rather lonely period.

Meanwhile the only other international legal support came from Canadian groups pursuing the Nuclear Weapons Legal Action (NWLA) (see 4.3). They were working with the Department of Justice on: a decision by the government to refer a question on the legality of first-use directly to the Supreme Court; government financial assistance for private litigation by the NWLA; and/or a government effort to seek a reference by the UNGA to the ICJ on the legality of first use. During 1989 they focused on the first of these but were also committed to the WCP. [29]

### ***Links with the Commonwealth***

Ron McCoy used Evans' papers 'to make a strong representation to the Malaysian government' and invited him to address a Malaysian IPPNW (MPPNW) conference which coincided with the Commonwealth Heads of Government Meeting (CHOGM) in Kuala Lumpur from 18-24 October 1989. Both Harold Evans and Robin Briant attended on their return, respectively from the Hague and IPPNW's World Congress. Following a well-attended meeting of Malaysian lawyers on the WCP they issued a joint appeal with the

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27. Falk interview, op.cit.

28. Letter from Colin Archer to Evans, 2 October 1990.

29. Letter from Peter Brown to Evans, 13 April 1989.

doctors to Heads of Government attending the CHOGM. It included the Hague Declaration, and urged them to take immediate action to implement the advisory opinion idea. MPPNW also sponsored a large newspaper advertisement highlighting the Appeal. [30]

Just prior to the CHOGM, Evans sent the IALANA Hague Declaration to the leaders of Jamaica, Trinidad, Guyana, Sri Lanka, Malaysia and Vanuatu. He encouraged them to 'urge fellow Commonwealth Members at the Meeting to heed, support and act upon the appeal'. [31] He received no acknowledgements, but some of these governments later strongly supported the WCP.

On his return home, Evans briefed the media, PACDAC and the peace movement on his recent successes and asked A/NZ politicians to reconsider their earlier decision. As Attorney-General, Lange had more freedom to express his personal support. In June 1990 he visited Evans at home where Evans briefed him on his latest approaches to 3,000 delegates at the Commonwealth Law Conference in Auckland, and a special meeting of 250 Judges and Law Ministers. [32]

Weeramantry again promoted the WCP at the Conference in his keynote address. [33] He challenged the profession to 'abandon its ivory tower attitude and its insularity', outlined the work of IPPNW and IALANA, castigated his colleagues for not promoting international law enough, and called on them to educate the general public:

...we ought to be going into schools...into public halls of our countries...talking to adult education centres ... on some of these

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<sup>30.</sup> Letters from Evans to Ian Mathews, 20 September and 22 October 1989. See also Ian Mathews, 'Taking the Bomb to Court', *The Catholic*, 13 August 1989, pp. 10-11.

<sup>31.</sup> Letter from Evans to Prime Ministers of Jamaica, Trinidad, Guyana, Sri Lanka, Malaysia and Vanuatu, 28 November 1996.

<sup>32.</sup> Harold Evans, 'The Challenge of The Hague', *The Netherlands*, 24 September 1989, 'An Appeal to Lawyers of the Commonwealth', Auckland, 16-20 April 1990.

<sup>33.</sup> Letter from Evans to Jeremy Pope, 2 April 1990.

matters. We have a duty ... to instruct the public. We've got to be universalist lawyers, not narrow parochial lawyers. [34]

Despite this directive, and the receipt of Evans' professionally presented documents, there was still no response.

### ***Parliamentarians***

While individual A/NZ parliamentarians supported the WCP, their efforts to convince the government were often stymied by official intransigence, and fear of losing without a groundswell of support from other Western countries. Over the years Wilde, Lange, Marshall and Palmer sought support from their international colleagues. Feedback was predominantly negative, and although individual politicians such as the Swedes, Maj Britt Theorin and Stig Gustafsson, and Australian Jo Vallentine were personally supportive, they were unable to convince their governments to co-sponsor with A/NZ.

Members of Parliamentarians for Global Action (PGA) were the primary supporters. In late 1991 their membership totalled 648 MPs in 62 national legislatures, plus the European Parliament. During the 1980s and early 1990s PGA's Secretary-Generals were New Zealanders: Nick Dunlop and Kennedy Graham. Dewes briefed Dunlop during UNSSOD III when she and Graham were members of the A/NZ delegation. Graham was also supportive, but reluctant to promote it openly within the organisation when he became Secretary-General in 1989. PGA's Executive was fairly conservative, and when he tried to convince them to adopt the WCP, they declined citing 'limited resources', an overloaded programme of action and its promotion by other organisations. However Graham published articles by Vallentine and Gustafsson in PGA's newsletter and sought contributions from Falk and St John. [35] This stirred some debate, and Wilde and Australian John

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<sup>34</sup>. Christopher Weeramantry, 'The Profession into the 21st Century', paper presented to the 9th Commonwealth Law Conference, Auckland, 1990; Weeramantry (1975), op.cit.

<sup>35</sup>. Letter from K.Graham to J. Vallentine, 23 April 1991; Letter from K. Graham to Dewes, 28 June 1991; Jo Vallentine, 'Nuclear Weapons: The Legal Case for Prohibition', *Global Action*, June 1991, p. 7; Stig Gustafsson,

Langmore joined them in seeking PGA's endorsement, but to no avail. Graham persisted and met IALANA members (including Weeramantry) to explore it further. In 1991 he publicly expounded its virtues:

...the odium which a widely accepted declaration of illegality would entail, would be likely to quarantine the nuclear cancer, making it clear that nuclear weapons were extraneous to the Charter and collective security, and strengthening the political impetus toward nuclear disarmament. [36]

Although PGA declined formal endorsement, individual members asked Parliamentary questions and lobbied their governments. In 1993 the A/NZ and Australian affiliates, comprising both conservative and liberal members, unanimously endorsed the project. Later their lobbying helped pressure both governments to argue positively in the ICJ.

### **8.3 United Nations 1991**

In June 1990, Evans asked Palmer to appoint Lange to deliver A/NZ's UNGA speech so he could sound out support amongst other delegations. When this was declined, Dewes sought guidance from former Indian UN Ambassador and Assistant UN Secretary-General Rikhi Jaipal. His assessment of the positions of the ICJ judges was: '...the majority were opposed to the use of nuclear weapons' and, following the end of the Cold War even those with a loyalty to NATO would 'have to rethink and take a non-partisan position'. He detailed how Russia and China had voted with 124 countries in favour of the non-use of nuclear weapons while only 17 Western powers voted against. He outlined the NAM's position:

Curiously enough, this vast majority is not enthusiastic about a reference to the ICJ, because they feel their stand is perfectly in conformity with general principles of international law, and if the others have doubt, it is they who should refer to the ICJ for an advisory opinion. Any reference to the ICJ should specifically draw attention to

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'Nuclear Weapons and International Law', *Global Action*, March 1991, pp. 5,10.

<sup>36</sup> Kennedy Graham, 'Global Restructuring: Arms Control and Disarmament', paper presented to the 'Restructuring for Peace Conference', Hawaii, 2-5 June 1991.

the various resolutions of the GA, as representing the views of the majority of States and the majority of mankind. [37]

His encouragement spurred further guidance from UN diplomats in New York and Geneva.

### ***New York***

Another New Zealander who had a dramatic effect on the WCP was Alyn Ware - a young kindergarten teacher, peace educator and activist (see 11.2). In 1988 he had toured the US familiarising himself with the peace movement, sharing campaign strategies and working as a researcher with the World Federalists (WAWF) in New York. He monitored UN voting patterns on disarmament and lobbied the A/NZ government. For three months before and during the 1991 Gulf War, he was the Gulf Peace Team's New York representative, meeting UN diplomats to explore nonviolent solutions.

He took copies of the WCP papers to New York in 1991, based himself at the WAWF office, and arranged meetings with PGA and LCNP. Graham suggested sympathetic UN missions to approach and within ten days, Ware arranged meetings with diplomats from Austria, Colombia, Costa Rica, Mexico, Solomon Islands and Sweden. Fortuitously, his first meeting was with Costa Rican Rodolfo Pisa, whose doctoral thesis was on ICJ advisory opinions. He immediately suggested amendments to the Evans draft UN resolution, and sent it to his government to consider co-sponsorship with others. Colombia, Mexico and the Solomon Islands also expressed interest. Sweden and Austria were more cautious, wanting an indication that an ICJ opinion would be positive and strong.

Mendlovitz confirmed that LCNP had been dissuaded earlier on by the Indians from venturing further with the WCP idea. However, a veteran UN disarmament expert, William Epstein, was convinced that there were sufficient votes, but warned that it would take a lot of work. Ware continued

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<sup>37</sup>. Letters from Dewes to Jaipal, 2 September and 14 October 1990, and Jaipal to Dewes, 13 September 1990.

working with interested UN Missions on his return home. With hindsight, Ware's success was the catalyst that empowered some international organisations to prioritise the project. Filled with hope and excitement that there were a few interested governments, the original protagonists redoubled their efforts. Weeramantry's ICJ appointment and the end of the Cold War were also fortuitous. However, the momentum needed to be sustained by building support at grassroots and amongst governments.

Evans and St John renewed their efforts to convince IALANA to put resources into the WCP. Briant asked Erich Geiringer of IPPNW (NZ) to draft another resolution for IPPNW's 1991 Congress in Sweden. Dewes corresponded with diplomats and politicians overseas, and sought the formal endorsement of many significant international organisations such as Greenpeace, World Disarmament Campaign, World Peace Council, PGA, WILPF and Nuclear Free and Independent Pacific (NFIP). She renewed contact with Hilda Lini and explored the possibility of Vanuatu becoming a co-sponsor.

Ware's success spurred action amongst A/NZ's Opposition parliamentarians. Deputy Leader of the Labour Party, Helen Clark, contacted Swedish colleagues during the Inter-Parliamentary Union Conference, and Fran Wilde promoted it within PGA. Sonja Davies alerted her extensive network of Eastern European groups, while Lange approached sympathetic world leaders. Vallentine asked St John to address the Australian PGA branch, and Lini gathered support within the South Pacific.

Jaipal advised introducing a UN resolution in 1992 or 1993, and suggested approaching 'the Philippines, Japan, Malaysia, Bangladesh, Iran, Egypt, Nigeria, Tanzania, Zimbabwe, Austria, Finland and Sweden'. These countries might be convinced to sponsor because of the pressure of world public opinion, as expressed by many important NGOs:

The NGOs might therefore present to all UN members a carefully drafted memorandum on the illegality of the use of nuclear arms requesting them to seek the advisory opinion of the ICJ, since the nuclear weapon States hold the contrary view. The draft resolution

should have the NGO memo attached to it and seek the ICJ's opinion on: 'Is the use of nuclear weapons allowed by international law?' [38]

### **Geneva**

With the election of a conservative government in A/NZ in October 1990, WCP advocates turned their energies to convincing other governments. They arranged personal meetings with decision makers because it was more effective than written communication. Emulating Ware, and using Jaipal's guidance, Dewes visited diplomats and citizen groups in Geneva in June 1991. Letters of introduction from Lange and Wilde facilitated high-level meetings. Based at the IPB office, she sought meetings with 30 Missions and succeeded with seven: India, Indonesia, Mexico, Nigeria, Pakistan, Sri Lanka and Zimbabwe. Archer clinched IPB's support by co-signing the letters to Missions, referring to MacBride's work and attending some of the meetings.

As in New York, the response was very encouraging, and diplomats outlined strategies for the movement's success. Support for the initiative was unanimous because it was seen as non-discriminatory (unlike the NPT); supportive of the UN Decade of International Law; complemented nuclear free zone (NFZ) efforts within Africa, the Middle East and Asia; and would help secure India's resolution on a Convention on the Prohibition of Use of Nuclear Weapons. They advised that at least 50 states, including some neutral ones, would be needed as co-sponsors to withstand the severe pressure from the nuclear weapon states (NWS). [39] They were all NAM leaders, and their guidance and support were critical in securing NAM's endorsement and eventual success in the UN.

Buoyed by the unanimity of these responses, Archer explored the IPB's future role. 1992 was IPB's Centenary, the illegality pamphlet was still unfinished and the MacBride Lawyers' Appeal had languished on the sidelines. He boldly proposed an international WCP launch with IALANA,

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<sup>38</sup>. Letter from Jaipal to Dewes, 18 May 1991.

<sup>39</sup>. Report of meetings with Missions by Dewes and Archer, July 1991; Letters to Ambassadors from Dewes and Archer, 25 June 1991.

IPPNW and others in Geneva in May 1992 in conjunction with the Centenary and a handover of MacBride's Appeal to the UN.

#### **8.4 Other Groups**

Following the Geneva meetings, Dewes planned future strategies with Mothersson in Scotland in July 1991. They agreed to amend the project's name to the World Court Project. Dewes addressed meetings in Bradford, and in London met with CND, Quakers, World Disarmament Campaign, World Peace Council, INLAP, Greenpeace International, WILPF and the National Peace Council. She also briefed Lord Hugh Jenkins (House of Lords) and other sympathetic Labour politicians. Mothersson and Dewes spoke with a gathering of INLAP, CND, MEDACT (Medical Action), IPB and WILPF members. In October this group became the WCP(UK) group and elected retired Royal Navy Commander Robert Green as Chair. Soon after, its Secretary George Farebrother launched the international campaign for the collection of 'Declarations of Public Conscience' (DPCs).

WCP(UK) coordinated the activities with other interested British groups. Mothersson consolidated existing support and implemented his plan for activating a wider international network. His strategy was adopted where there was already WCP interest such as A/NZ, Canada, and Australia. He envisaged groups empowered by everyone everywhere helping to 'push the snowball, rather than a distinct entity such as WCP(UK) doing the work for everyone else'. [40]

#### **8.5 WCP Co-Sponsors**

While this strategy mobilised groups at a national level, there was an urgent need for an international coordinating committee. Archer approached IPPNW and IALANA as likely co-sponsors, and Dewes sounded out WILPF and the World Peace Council (WPC). WILPF had endorsed the WCP after A/NZ President and Maori elder Pauline Tangiora presented a resolution to their

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<sup>40</sup>. Keith Mothersson, 'WCP- UK Group Inaugural Meeting: Perspective on Strategy' paper, 30 September 1991, 12 pp.

Congress in July. WPC, led by another New Zealander Ray Stewart, promoted the WCP through their newsletter and contributed to Mothersson's ongoing networking costs. Stewart spoke to high-level politicians and organisations especially in Eastern countries. [41] WILPF did not become a co-sponsor, but participated at the WCP launch.

In the meantime, Briant and Geiringer presented their WCP resolution to the 1991 IPPNW Congress. Pursuant to the 1988 resolution, it asked IPPNW's International Council to take 'urgent steps to join with other appropriate organisations to challenge the legality of nuclear weapons', to support the WCP and 'to encourage and aid affiliates of IPPNW to enlist public and official support in their own countries for this most important move'. [42] Briant distributed WCP packs to several delegations. Gustafsson called for closer cooperation between IPPNW and IALANA and promised to activate IALANA and PGA. Theorin confirmed that Sweden would not initiate action, because of fears that it could be counterproductive. [43]

Briant joined Dewes in London to lobby the World Disarmament Campaign, and later worked closely with Geiringer exploring IPPNW's future role.[44] Geiringer began compiling a comprehensive data base of supporters with others and wrote position papers on the scope of the UN question. By the end of 1991 he had researched the Mothersson/Jaipal suggestions of using the World Health Organisation (WHO), Economic and Social Council (ECOSOC) and other bodies to request an advisory opinion. His strategy

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<sup>41.</sup> World Peace Council Press Release, 15 May 1992; *Peace Courier*, Helsinki, December 1991.

<sup>42.</sup> IPPNW Tenth Congress, Sweden, 27-30 June 1991, Resolutions: 'Nuclear Arms to be Declared Illegal' and 'Control Agency to Implement Ban on Nuclear Arms', IPPNW (NZ) discussion paper, 'IPPNW in the Nineties'.

<sup>43.</sup> Fax from Briant to Dewes, 2 July, 1991. Stig Gustafsson, 'Nuclear Weapons and International Law', paper presented at IPPNW World Congress, Sweden, 27-30 June 1991; Ove Bring, 'Are Nuclear Weapons and their Use Illegal?', paper presented to IALANA's International Seminar, Sweden, 9 April 1988.

<sup>44.</sup> Letter from Geiringer to Archer, September 1991.

papers were distributed among the growing international core group for discussion and action. [45] They were:

....an effort by the NZ Branch of IPPNW to slot itself into this process and make a contribution to a reliably functioning exchange of information and opinion among all groups working towards an approach to the ICJ. The first task is to rationalise and unify this network to prevent the growth of a Tower of Babel. [46]

Throughout 1991, IPPNW(NZ) tried to convince IPPNW Central Office in Boston (US) to allocate resources to the WCP and to help find governments to take the case to the WHO in May 1992. Ware explored the idea with the NZ branch of the United Nations Children's Fund (UNICEF) and gained their endorsement. It was referred to UNICEF's New York Headquarters which indicated sympathy and confirmed there were sufficient arguments in the Convention of the Rights of the Child to condemn nuclear weapons. But it could not indefinitely stretch its time and energy and diversify its focus. Ware continued to pursue this option, lobbying UNICEF's Executive in New York in June 1992. [47]

By the end of 1991, other significant international organisations had endorsed the WCP including the Global Anti-Nuclear Alliance, ISMUN (Youth section of UNA), Nuclear Free and Independent Pacific, Greenpeace and the International Nuclear Free Zone Movement. Most NGOs visited in the UK in 1991 endorsed, along with the Canadian World Federalists, and the NZ and Australian branches of the International Commission of Jurists. The DPCs were translated into 40 different languages and sent out worldwide.

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<sup>45.</sup> Letter from Jaipal to Geiringer, 27 September 1991; K. Mothersson, 12 page brochure on WCRP 1990. Report of the International Committee of Experts in Medical Sciences and Public Health presented to WHO Assembly in May 1983 in E.Geiringer, working paper no. M1 3 'Courting the Question'; Erich Geiringer, 'Washington coming to the Party?', IPPNW (NZ) Position Paper no.1, August 1991; 'Nuclear Disarmament or Tactical Withdrawal?', 'Don't be Vague when you ask for Hague', Position Paper no. 2, 1991; 'Death of a Salesman', IPPNW (NZ) Position Paper, Dec. 1991.

<sup>46.</sup> Geiringer, (1991, paper 2), p .3.

<sup>47.</sup> Alyn Ware, 'UNICEF and the Illegality of Nuclear Weapons', April 1992; Letter from Pamela Glading, NZ UNICEF to Ware, 21 April 1992. Letter from Glading to UNICEF Executive Board members, 6 May 1992.

Gorbachev, Tutu, Caldicott, Lange and others signed a growing list of prominent individual supporters (Appendix III).

Despite IPB's proposal for an international WCP launch in May 1992, there was still no agreement amongst the key international organisations as to how the network would be organised; who would lobby the UN member states; the scope of the resolution; and which UN agency to approach.

Spurred on by their NZ, Malaysian and German affiliates, IPPNW International began to take action early in 1992. IALANA was also encouraged by the growing international support to act on its 1989 resolution. Its October 1991 Assembly in Moscow, cancelled at the last minute due to the political unrest and subsequent dissolution of the USSR, was rescheduled in Amsterdam in January 1992. Key activists organised for a WCP strategy day following the conference. Archer met LCNP/IALANA and PGA contacts in New York, and Mothersson began drafting an IPB handbook on the WCP. He and Archer joined 39 delegates from 16 countries as INLAP and IPB observers, but no IPPNW representative attended. The IALANA Executive decided to concentrate on specific projects rather than organising a large international congress each year, and gave the WCP priority, agreeing to co-sponsor a public launch with IPB in May 1992.

Fourteen people attended the WCP strategy meeting. IALANA believed that Mothersson's 'handbook', while suitable for motivating the grassroots, was not appropriate for diplomats, governments and journalists and asked UK lawyer Nicholas Grief to write a brief, more academic version for these audiences. Final decisions about whether to pursue other UN organs besides the UNGA were left until the May meeting. After protracted debate, a clear majority voted to make 'threat' and 'use' the core of the UNGA question. This was strongly promoted by Saul Mendlovitz, but opposed by Geiringer who argued for 'use' only for the WHO question. Mendlovitz reported that the Chilean and Zimbabwe missions were willing to give some support for New York lobbying. He agreed to find some young volunteers, and that LCNP would investigate support within the UN committees on disarmament and

international law. Evans and Mendlovitz agreed to explore funding to get Ware, or an American, to start UN lobbying within the next four months. [48]

Following the meeting, Archer took primary responsibility for organising the Geneva launch. The Secretary General of the Conference on Disarmament (CD) agreed to receive the MacBride Appeal. The UN Archives Department offered to mount a historical exhibition of IPB's work for display outside the UN Library and published brochures and posters advertising it. [49] Zimbabwe's Foreign Minister Shamuyarira agreed to open the event, and efforts were made to ensure geographical and gender representation amongst the speakers. IALANA's membership was predominantly male and European, so it was vital to secure women speakers, preferably from non-European countries.

Concerted efforts were made by IPB, IALANA and the NZ and German IPPNW affiliates to convince IPPNW International to co-sponsor, and in early February they agreed. Although there was still no consensus about which route should be pursued, IPPNW asked Swedish doctor Ann Marie Janson, IPPNW's WHO liaison officer since the mid-eighties, to research the WHO option. [50]

By March, there was still no funding for a UN lobbyist, so Ware offered to work voluntarily for four months. Mendlovitz needed convincing, and told Ware that LCNP was not intending to approach Missions unless they were sure they would be congenial to the project. He suggested Ware should concentrate on building up support amongst citizens. Undeterred, Ware reiterated his willingness to focus on strengthening the international citizen network while lobbying both the UNGA and UNICEF, and asked only for a

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<sup>48</sup>. Notes on IALANA's special meeting on the ICJ Project, Amsterdam, 19 January 1992, IALANA Newsletter no.1, April 1992.

<sup>49</sup>. Letter from Archer to Straeter, Weiss, Mendlovitz, Kent, Mothersson, Boanas(Dewes) and Fine (IPPNW), 11 February 1992, 4 pp.

<sup>50</sup>. Letter from Christ to Geiringer, 13 February 1992.

computer and some office space. [51] Ironically, Geiringer advised against Ware because he was too 'counter-culture', but Mendlovitz warmed to this trait and accepted his offer. [52] The New Zealanders then raised funds for their young lobbyist.

Back in A/NZ Geiringer, Ware and Dewes explored the UNICEF and WHO options further. They proposed parallel WCP launches in other countries, and began compiling a list of A/NZ prominent endorsers. By May 1992 they had 90 names including judges, nine Mayors, Anglican and Catholic Bishops, Maori elders, two former Prime Ministers, a former Governor-General and other community leaders (Appendix II).

Although Evans had been forced during 1990 to withdraw as the primary advocate due to failing eyesight and hearing, he remained active and vigilant. He and St John were adamant that the route to the ICJ should be settled before the launch. In the event, the decision was taken out of their hands when, in March, the Colombian Health Minister agreed to sponsor a resolution at the 1992 WHA.

## **8.6 WCP International Launch**

As over 100 delegates from 32 countries gathered in Geneva in May 1992 for the WCP launch, delegations from 14 countries were presenting their first resolution at the World Health Assembly (WHA) (see Chapter 9). There was an air of anticipation as this parallel meeting reached its climax during the first day of the conference. A representative for the Zimbabwe Foreign Minister opened it by giving his strong support. Other speakers included Archer, Bhagwati, Boanas (Dewes), Briant, Elworthy, Falk, Gustafsson, Mendlovitz, Weiss, and *hibakusha* (Japanese atomic bomb victims). They covered a wide range of topics including the illegality of nuclear weapons; the dangers of low-level radiation; working with governments; and the mobilisation of civil society. The IALANA Legal Memorandum and the IPB

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<sup>51.</sup> Fax from Mendlovitz to Alyn Ware, 20 April 1992 and Ware to Mendlovitz, 23 April 1992.

<sup>52.</sup> Mendlovitz interview (1996), op.cit.

handbook for activists were launched,[53] and parallel gatherings were held in Finland and India.

A campaign plan was agreed, organisational structure established, and an International Steering Committee (ISC) appointed comprising Archer (IPB), Christ (IPPNW), Straeter (IALANA), Mendlovitz (LCNP), Green (UK), Dewes and Ware. It was agreed that it was a priority to encourage the NAM to submit a resolution including both 'use' and 'threat of use' to the 1993 UNGA, in parallel with a second approach to the WHA on the use of nuclear weapons, in view of the health and environmental effects. The first WHA attempt in 1992 failed, due to lack of preparation time and support (see 9.4). The IPB agreed to coordinate the citizen mobilisation, IALANA focused on preparing the legal arguments and lobbying at the UN, while IPPNW mobilised support for the 1993 WHA initiative. [54] All affiliated groups pledged to help with fundraising and building support within their countries/regions.

While in Geneva, Ware and Dewes followed up with some of the Missions they had visited in 1991 including India, Indonesia, Ireland, Pakistan and Peru. They were strongly encouraged by the Irish diplomat to seek support directly from the Irish government in Dublin. Ware worked from IPB's office for a few weeks, helping to produce a WCP brochure with a sample DPC and a list of prominent endorsing individuals and groups.

## **8.7 Conclusions**

With the death of MacBride, it was left to Evans and others to pursue the WCP. IPPNW was the first international NGO to pass a resolution in support followed by UK NGOs. Evans' visit to Europe in late 1989 was crucial in

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<sup>53.</sup> Keith Mothersson, *From Hiroshima to the Hague: A guide to the World Court Project*, IPB, Geneva, 1992, 188 pp; Nicholas Grief, *The World Court Project on Nuclear Weapons and International Law: Legal Memorandum*, Aletheia Press, 1992.

<sup>54.</sup> *World Court Project International Launch*, CCV Print and IPB, November 1992, pp.1-2; Report by Dewes to WILPF Aotearoa, May 1992; IALANA report of WCP Planning Meeting, Geneva, May 1992.

enlisting the support of IPB and IALANA. While IALANA was preoccupied with its own establishment, Mothersson crafted a strategy for mobilising an international network of citizen groups using the DPCs. IPB enabled him to promulgate this globally through his WCP guide *From Hiroshima to the Hague* and brochures to international affiliates.

Meanwhile, other governments and groups were raising awareness about the legal aspects of nuclearism. These included the WAWF/NAM's championing of the UN Decade of International law, the Canadian domestic legal challenge and A/NZ's nuclear free legislation. The Malaysian IPPNW affiliate effectively used the 1989 CHOGM to raise the issue with over 50 Prime Ministers. The A/NZ activists sustained pressure on their government and helped raise the issue globally through parliamentarians.

1991 saw the first serious, coordinated face-to-face lobbying of UN Missions in New York and Geneva, which immediately bore fruit. Dewes' visit to UK led to the formation of the first formal national WCP network in a key Western NWS. This helped generate momentum for an international launch, with recruitment of the three leading co-sponsoring NGOs in an unprecedented coalition. The Geneva launch provided the vehicle for coordination of the disparate threads in the growing movement. The IPB Centenary highlighted MacBride's pioneering role, and gave a focus for the co-sponsoring NGOs to use their different strengths in a collective coordinated action. In his closing conference remarks, Peter Weiss reflected the sense of empowerment and unity:

The IPB has been lighting a candle in the darkness for 100 years. Now the lawyers, the doctors and the candle-makers are on their way together to the Hague. [55]

The core elements of a successful campaign were there: research, education, mobilising public opinion, use of the media and political action. The tools were being developed to facilitate the process - books, brochures, DPCs, lists of endorsers, draft resolution and electronic mail. The strategy

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<sup>55</sup>. Robert Green, Report on WCP International Seminar and Launch, Geneva, 14-15 May 1992, p. 5.

was clear; and a growing number of people felt positive enough about its likely outcome to devote their time and resources to make it happen. For the first time for many years, the international peace movement had a common campaign where many strands of the movement could play an active role. The little actions taken by 'We, the peoples' at local and national levels began to focus on the various parts of the UN : the WHO, UNGA and the ICJ.

There was a sense of urgency that, with the end of the Cold War and the growing interest in the idea amongst various countries, the momentum must not be lost. The WCP was of limited duration, it had a clearly defined goal and, with concerted, coordinated activity it had a real chance of success. The three co-sponsoring organisations had specific, achievable tasks; and the multitude of supporting groups could initiate whatever actions they deemed appropriate, such as gathering signatures and lobbying governments within their region. There was a growing sense that, by working closely together, everyone could 'mobilise a snowball big enough to extinguish the nuclear fireball forever'. [56]

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<sup>56.</sup> Katie Boanas-Dewes, 'Mobilising Civil Society', in IPB Report of WCP Launch, November 1992.

**PART III**

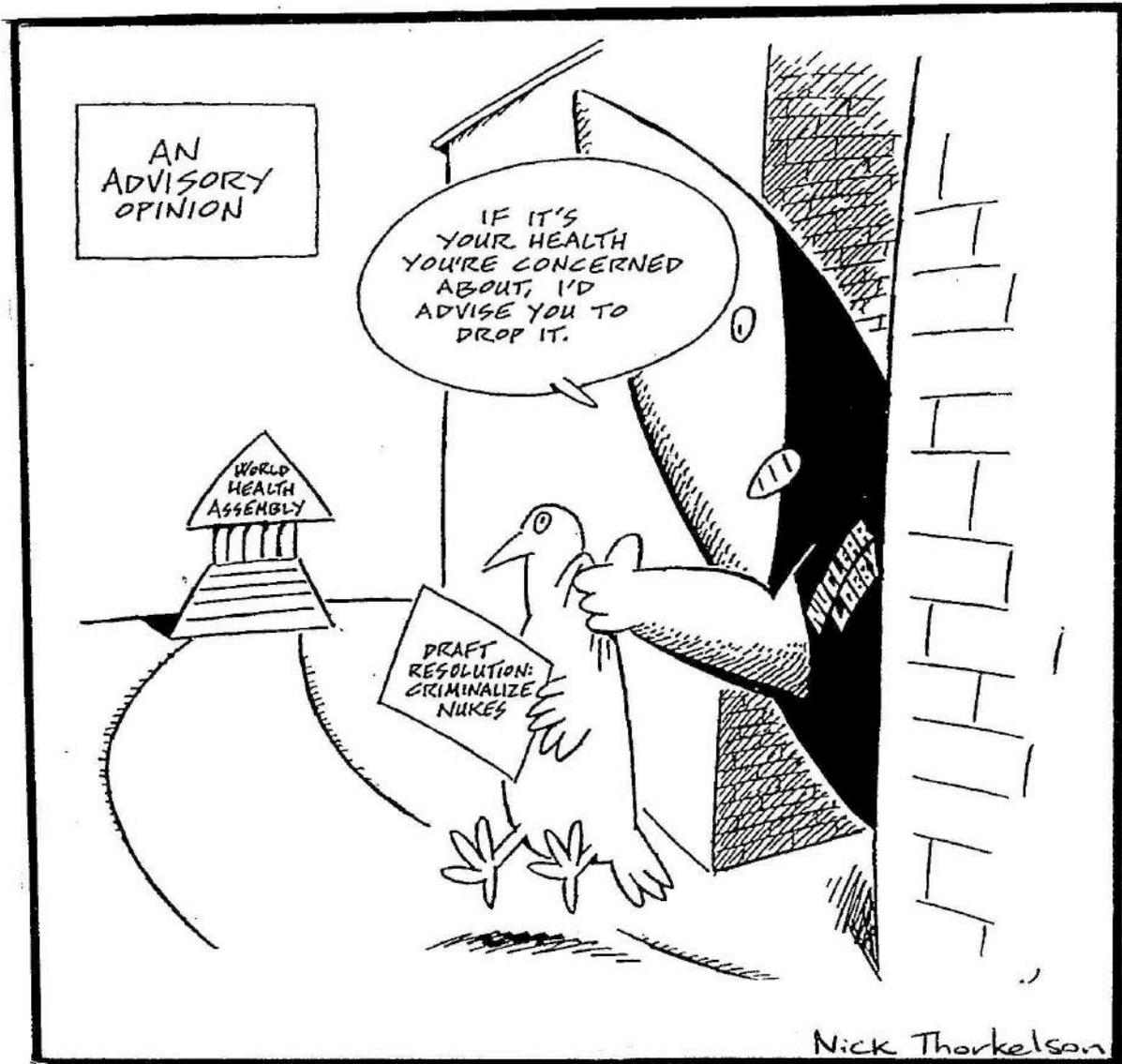
**WORLD COURT PROJECT  
PROGRESS IN THE UN  
1992-1996**

*With all my heart, I believe that the world's present system of sovereign nations can only lead to barbarism, war and inhumanity, and that only world law can assure progress towards a civilised peaceful community.*

Albert Einstein

## CHAPTER 9

# APPROACHES TO THE WORLD HEALTH ORGANISATION



## CHAPTER 9

### APPROACHES TO THE WORLD HEALTH ORGANISATION

*The path which led to the water hole was narrow with a steep rock face on either side and one day the elephant sat down in the middle and would not budge. He faced the on-coming traffic of cattle, dogs, horses and hyenas with disdainful equanimity. A roar, a blast of the trumpet or a nudge with the tusks and they backed off smartly.*

*Then the **Woolly-Haired Ox (WHO)** remembered something. He went to the mouse hole and called: 'Little mouse, little mouse (\***ICJ**), could you please tell the elephant to get out of the road?' - 'Moi?' asked the little mouse, 'He'll never listen to little me'. However, as soon as Jumbo saw mousie he let out a yell and trotted off in haste. (\* 'Little mouse'= Itsy-bitsy **Curly-tailed Jay-mouse= ICJ**) Geiringer [1]*

#### 9.1 Introduction

The World Health Organisation (WHO) formed in 1948 after three physicians from Brazil, China and Norway met in 1945 to discuss how they could promote and maintain peace. During the 1960s it passed various disarmament resolutions about the effects of radiation, especially in relation to nuclear testing, and called for states to accede to the 1925 Geneva Protocol against gas and germ warfare. In 1970 the WHO called upon 'all medical associations and all medical workers to consider it their moral and professional duty to give every possible assistance to the international movement directed towards the complete prohibition of chemical and bacteriological means of waging war'. [2]

Its first real foray into the nuclear issue came just before the 1973 ICJ nuclear test case, when Australia attracted 20 co-sponsors for a resolution

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1. Erich Geiringer, 'The Elephant and the Mouse', 1992, 4 pp.

2. Erich Geiringer, 'WHA Resolutions on Arms Control and Cognate Matters before 1992', WCP/NZ Working Paper, February 1993, 4 pp.

banning atmospheric testing. This was then used as supporting evidence during the ICJ hearings.[3]

In 1981 the WHO, in response to a resolution on the issue, appointed an Expert Committee on Nuclear War (WHOPAX) which was chaired by Swedish Nobel Laureate Professor Bergstrom, to write a report. [4] It was presented to the 1983 World Health Assembly (WHA) (the annual meeting of members of the WHO), and another resolution was adopted which declared that ‘...nuclear weapons constitute the greatest immediate threat to the health and welfare of mankind’ and ‘prevention is the only answer to the risk of nuclear war’. [5]

Immediately following the establishment of IPPNW in 1981, their Co-President Bernard Lown met WHO’s Director-General and other officials to explore how the two organisations could work together. At first the WHO was reluctant, but agreed in 1985 to grant IPPNW official NGO status, and in 1986 Swedish doctor Ann Marie Janson was appointed as IPPNW’s WHO Liaison Officer.

In 1992, IPPNW began to pursue an ICJ advisory opinion case via the WHO, working assiduously for 14 months to convince WHO members to support it. They succeeded in May 1993, despite intense opposition from Western nuclear weapon states. This chapter profiles three key individuals behind the initiative and the strategies they adopted, and the co-sponsoring countries. It analyses the voting patterns at both Assemblies, and explains why the campaign succeeded.

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<sup>3.</sup> Sir William Refshauge, Speech notes to IPPNW Regional Conference, Canberra, 24 April 1997.

<sup>4.</sup> See World Health Organisation, ‘Effects of Nuclear War on Health and Health Services: Report of the International Committee of Experts in Medical Sciences and Public Health to implement Resolution 34.38’, Provisional agenda item 31, A36.12, 24 March 1983, 25 pp.

<sup>5.</sup> WHA Resolution 36.28, 1983. Interview by Dewes with Ann Marie Janson, Melbourne, December 1998.

## 9.2 Erich Geiringer

Erich Geiringer was the primary instigator and one of the key strategists behind this particular initiative. He built on the groundwork of MacBride, Evans and others, and worked closely with Ann Marie Janson from Sweden to convince IPPNW Central Office to spearhead the campaign. This section covers his background, personality traits and relationship with IPPNW. It documents his role in helping to weave together the often disconnected strands of the peace movement, health professionals, politicians, diplomats and WHO officials. It analyses how this initiative prepared the ground for, and strengthened, the UNGA resolution.

Born into a poor Jewish family in Vienna in 1917, Geiringer watched his war-wounded father suffer a premature death. Surrounded by socialist intellectual discussions held in his father's cafe, he developed a penchant for political activism often directed at the conservative establishment. In 1938 when his medical studies were interrupted by the Nazis, he fled to England, working as a laboratory assistant and science teacher. When war broke out he was interned for six months.

On his release he studied medicine in Edinburgh, where he won a scholarship. He then worked as a research registrar in Glasgow, went to Boston as a Fulbright Scholar and then London as a Registrar. He published widely on medical and sociomedical studies, and in 1959 was appointed senior research fellow at A/NZ's only Medical School in Dunedin. He launched into politics on a range of issues including: underfunding of hospital doctors and medical research; lack of another medical school; merits of marijuana; measles vaccinations; and antiquated abortion laws. The establishment was affronted by his 'antics' and his distinctive bearded appearance:

He wore the blackest of black capes on his shoulders, his eyes protruded like great, watchful eggs, his long nose threatened and from its sides sardonic drag lines swept down his cheeks. [6]

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<sup>6</sup> Tony Reid, 'Naivety and an arrogance of intellect', *New Zealand Times*, 22 September 1986, p. 9.

After five years his post was abolished and he was refused membership of the British Medical Association's (BMA) NZ branch. Undaunted, he moved into private practice in Wellington where he married Dr Carol Shand, the daughter of the Minister of Labour. They infuriated the BMA by founding the NZ Medical Association and publishing a rival journal. In its heyday it had 800 of the 4,000 doctors as members.

Various journalists described him as:

... a man of boundless energy and boundless wit, a walking encyclopaedia, rambunctious, equipped with a highly-refined ability to prune issues to fundamentals, he was utterly without small talk, never at a loss for a reply.. unshakeably unselfconscious and unembarrassable; one of the most exasperating, dogmatic, rude, unmannerly, boisterous, entertaining, kind, endearing and dumbfoundingly wise men ever to walk the earth; ferociously intelligent,formidably erudite...he had the ability to position an argument with the precision of an acupuncturist's needle, then drive it home exactly, like a meat axe cleaving bone. [7]

He described himself as intellectually arrogant; not a showman nor respectable; not urbane; radical rather than liberal. He felt he had to be outspoken or rude to say what had to be said; and he revelled in the reaction.

He went to the root of a problem and sought fundamental solutions:

I'm not often wrong in analysing sociological issues. I am trained for that task - I've been doing it almost from the moment I started to think. It's an addiction to go on and on throwing these ideas around. Experience and constant practice means I am usually spot on. I get this Judaeo-Christian feeling that it is also my duty to communicate the thoughts. [8]

IPPNW(NZ) was formed in 1982 and both Geiringer and Shand joined soon after. Geiringer strongly advocated building the membership to a quarter of all doctors, so government would take notice. The eventual elimination of

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<sup>7.</sup> Selections drawn from the following articles: Reid (1986); Fritz Spiegl, 'Dr Erich Geiringer', *Independent* (London), 8 September 1995; Peter Kitchin, 'Doctor campaigns to the end', *Evening Post* (Wellington), 31 August 1995; Bevan Burgess, 'Larger-than-life physician', *Sunday Times* (Wellington), 3 September 1995; Austin Mitchell, 'Shock Doc', *Guardian* (London), 15 September 1995.

<sup>8.</sup> Reid (1986), op.cit.

nuclear weapons was his paramount goal. [9] In 1983, he tackled the Ministry of Foreign Affairs on their negative votes on nuclear weapon issues during the 1981 and 1983 WHAs. He demanded an explanation of vote on the resolution's operative paragraph that the WHA :

... in cooperation with other UN agencies, continue the work of collecting, analysing and regularly publishing accounts of activities and further studies on the effects of nuclear war on health and health services.. [10]

The Ministry explained that the WHO should not devote time and resources to a political issue that is properly the responsibility of other UN bodies. A decade later similar reasons were given when the government abstained on the WHA advisory opinion resolution.

During 1984, Geiringer helped draft a Nuclear Arms Act for consideration by the Labour government. [11] In 1985 he launched *Malice in Blunderland*, an anti-nuclear primer for activists, in which he colourfully exposed the myths of nuclear deterrence, critiqued A/NZ's UN voting, promoted the anti-nuclear law, analysed the anti-nuclear movement and offered strategies for its future success. Drawing on Falk's 1984 reference to the advisory opinion, Geiringer suggested that 'the proper proceeding would be for the UN jointly or separately to approach the ICJ for a ruling on the legality of the use of nukes'. [12]

He implored the movement to use the law:

The law is the mantle of authority. Take it away and all that remains is stark prejudice and naked power - ridiculous, disgusting, perhaps frightening but not imposing. Without the pretence of legality,

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<sup>9</sup>. Interview by Dewes with Ian Prior, Dunedin, 20 August 1995.

<sup>10</sup>. Resolution WHA 36.28, 'The Role of Physicians and other health workers in the preservation and promotion of peace as the most significant factor for the attainment of health for all', 16 May 1983. Letter to Claudia Geiringer from Secretary of Foreign Affairs, 8 December 1983; letter from Ministry to Mrs A. Moran, 20 February 1984; letter from C.D. Beeby, 29 February 1984.

<sup>11</sup>. Nuclear Arms Act: a Draft Bill 1984, prepared by IPPNW (NZ), 1984.

<sup>12</sup>. Erich Geiringer, *Malice in Blunderland*, Benton Ross, Auckland, 1985, p. 78. Richard Falk, 'Neutrality, International Law and the Nuclear Arms Race', Paper presented at Trinity College, Dublin, Ireland, 1984; Allan McKnight & Keith Suter, *The Forgotten Treaties*, Law Council of Australia, 1983.

authority feels vulnerable, deprived of its trump card, made equal to anyone who cares to challenge it, unable to command loyalty. [13]

If nothing else, a sustained campaign to outlaw nuclear activities would arouse righteous indignation, too often eliminated from the rational arguments of the anti-nuclear movement. We need it. It is the natural antidote to fear. [14]

Aware of the importance of developing a strong public and political force to enable the formation of viable anti-nuclear alliances between states, he called for closer international alliances within the movement. He suggested interchanges of people and information, and popular support for initiatives in other countries. [15] In a rousing finale, he exhorted activists to work together:

We are peaceful and uncompromising. We are an international political movement involved in a power struggle against the two most powerful regimes in history. We regard the governments of Russia and America and their military machines as the enemies of mankind. We know that to save mankind we, that is our ideas, must take over these governments. Nor are we the enemies of the Russian or American people. We are the Russian and American people. Until further notice, the anti-nuclear movement is the only legitimate representative of mankind. [16]

### 9.3 IPPNW

By the mid 1980s, IPPNW(NZ) had attained its membership target and was a strong political force. Robin Briant and Ian Prior were the leading WCP advocates and, although they gained IPPNW's endorsement for the Evans' initiative in 1988, they felt that neither the International Executive nor the US Co-President really supported it. Affiliates were left to sound out their governments and educate members. So it was not surprising that, besides advocating A/NZ leadership within PACDAC (Briant was a member), IPPNW(NZ) did little to further the idea until after Ware's New York success when Geiringer 'got the bit between his teeth and began preparing papers

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13. Geiringer (1985), *op.cit.* p. 71.

14. *Ibid.*, p. 85.

15. *Ibid.*, pp. 56-57.

16. *Ibid.*, pp. 152-153.

and resolutions' for IPPNW's 1991 Congress in Sweden. The A/NZ delegation argued strongly that the proposal needed funding and serious support from the international office. [17] Geiringer 'banged the table', and with characteristic expletives shocked the hierarchy into action.[18] Despite unanimous endorsement, it took another eight months of Geiringer's tirades before IPPNW joined IALANA and IPB as co-sponsors.

On his return from Sweden, Geiringer asked Evans if IPPNW could join in a common enterprise and what their contribution might be.[19] With research assistance and financial support from IPPNW(NZ), he compiled a data base of supporters, researched the scope of the resolutions, the ICJ and relevant UN agencies. Both Mothersson and Jaipal had recommended using the WHO with reference to its 1983 Report of the International Committee of Experts in Medical Sciences and Public Health on Nuclear War. [20] Under Article 76 of the WHO's Constitution and Article 92 of the UN Charter, the WHO is entitled to request an ICJ advisory opinion on any issue falling within the WHO's competence. [21] In fact, the WHA requested an advisory opinion on the interpretation of the 1951 Agreement between the WHO and Egypt in 1980. [22]

At the end of 1991, Geiringer distributed two papers amongst the growing WCP network arguing the advantages of using a specialised UN agency such as the WHO, and confining the question to 'use'. He feared that once the resolution was out of NGO hands and 'thrown to the wolves', either the wrong question might go to the ICJ or there might be 'so many questions that the main determination ends up as a gnawed bone under the table of a

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17. Interview by Dewes with Robin Briant, Auckland, November 1994.

18. Interviews with Briant (1994) and Geiringer (1995).

19. Letter from Geiringer to Evans, 23 July 1991.

20. Letter from Jaipal to Geiringer, 27 September 1991. Keith Mothersson, 'Competence of WHO to initiate reference to World Court to test the legality (or otherwise) of nuclear weapons', April 1991, 2pp.

21. Based on WHO Legal Counsel's (Dr Piel) statement to WHA, 12 May 1993.

22. See International Court of Justice, *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, 20 December 1980, General List No.65.

lawyer's banquet'. He warned that behind-the-scenes negotiations could take months, and by then 'a number of missions would have changed their personnel, their mind, or their masters and the whole process would start all over again'. The UNGA attempt would need a well-coordinated international effort with efficient information flow, properly funded and staffed New York offices, and professionally presented legal arguments - otherwise it would be like 'holding a bag of fleas together' and could fail.

He favoured using UN specialised agencies because there were smaller numbers of countries/people to convince; they were less easily moved by extraneous political considerations, and allowed greater influence by relevant NGOs. After toying with parallel approaches via the UN Secretary-General, ECOSOC and the International Law Commission, he concluded that IPPNW would find lobbying the WHO infinitely easier than the UNGA. He encouraged pursuit of both approaches simultaneously until one appeared more likely to bear fruit.[23]

Most of the key protagonists agreed: so Geiringer tried to convince IPPNW to aim for the 1992 WHA. He reiterated IPPNW's earlier commitment to fund the necessary costs, and encouraged affiliates to organise appropriate campaigns. Debate continued over the scope of the question. Mothersson, Archer, Evans and St John preferred 'use', while Mendlovitz and Weiss wanted 'threat' included - at least for the UNGA question. The World Disarmament Campaign (UK) wanted only 'testing', then 'first-use', and planned to employ a 'high-powered' lawyer to begin lobbying in New York. There were fears that their priorities could dominate, thereby undermining the efforts of the other international organisations. [24] At the January 1992 Amsterdam meeting, IALANA and IPB agreed to combine 'use and threat' for the UNGA question.

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<sup>23.</sup> Erich Geiringer, 'Don't be Vague When You Ask for Hague', Position Paper no.2, 1991; 'Courting the Question', Position Paper, 1991.

<sup>24.</sup> Letter from Mothersson to Geiringer, 10 October 1991.

In early February, IPPNW International was still reluctant to attempt an early approach to the WHO. Geiringer had alienated most of the Board of Directors during exchanges at their Executive Committee meeting and so he began to woo Michael Christ (IPPNW's young Programme Director) and Ann Marie Janson. [25] Her WHO experience and her IPPNW credentials combined with her relationships with WHO delegates and officials would be a vital asset.

Geiringer argued that although a 1992 attempt was unlikely to succeed it would preserve momentum; provide valuable insights into attitudes of delegations and tactics of the opposition; and help generate publicity throughout the world and within the UN agencies. He worked closely with Christ, Janson and A/NZ's former Director-General of Health George Salmond exploring support within the Mexican, Swedish, Pacific Island and Australian WHA delegations. Stressing the urgency of the task, Geiringer noted that six weeks' notice was required for proposals to create supplementary agenda items. The A/NZ group drafted sample resolutions with plausible questions linked to the WHO constitution. He pressed the IPPNW Central Office for an immediate response. Within days IPPNW, after conferring with IALANA's New York members, agreed to become a WCP co-sponsor. On 13 February Christ confirmed the decision, but advised there was no decision on which UN organ to pursue. [26]

Within a week, Geiringer reported on initial affiliate responses and set guidelines for future communication. Indications of active support had come from California, Canada, Germany, Hawaii, Malaysia and the UK. The Central Office alerted its International Council members and included a WCP update in their newsletter. While they kept affiliates informed, Geiringer compiled a dossier on the WHO, and produced a contingency paper on strategies and a detailed study of the history of previous ICJ referrals for

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<sup>25.</sup> Interview by Dewes with Janson, December 1998, Melbourne.

<sup>26.</sup> Letter from Geiringer to Michael Christ and Ralph Fine, 6 February 1992; Letter from Willemijn Straeter to Geiringer, 10 February 1992; Letter from Michael Christ to Geiringer, 13 February 1992.

advisory opinions. IPPNW (NZ) offered to act as the 'clearing house' for questions and material about the campaign. Central Office staff became IPPNW's WCP directors, with the A/NZ affiliate as coordinators. [27]

Geiringer assured IPB that the diversity of routes might act as an insurance. In early March, IPPNW (NZ) alerted affiliates to an attempted resolution during the May 1992 WHA. Geiringer asked members to attend the WCP launch, research the attitudes of their government's WHA delegates and appoint a liaison person. [28]

Why was IPPNW so reluctant to pursue the 1988 resolution? What was the relationship like between Geiringer and IPPNW International? Michael Christ cites the perennial problem of too many resolutions presented to IPPNW Congresses. Central Office had limited time and resources to research how this particular idea could be implemented. Following the 1991 Congress, they began exploring with Geiringer how the resolution could be implemented. They maintained an understandable scepticism about the practicalities and risks of committing IPPNW to such a massive effort and, like IALANA, needed assurance of its success before proceeding (e.g. the draft six-month budget for travel and communications - excluding salaries - for the 1993 WHA resolution was nearly US\$35,000). [29]

The WCP's Geneva launch was the stimulus for IPPNW's involvement. Once IALANA and IPB had made a commitment, they also wanted to co-sponsor and Christ was appointed to the WCP International Steering Committee (ISC). He returned from Geneva energised, inspired and keen to see it succeed in both the WHA and UNGA. Christ credits Geiringer with providing the intellectual basis for IPPNW to honour its 1991 resolution. They

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<sup>27.</sup> Letter from Geiringer to Christ, 25 February 1992; Letter from Geiringer to WCP network, 12 March 1992.

<sup>28.</sup> Letter from Geiringer to Archer, 25 February 1992; Letter from IPPNW (NZ) to IPPNW affiliates, 12 March 1992.

<sup>29.</sup> Michael Christ, IPPNW report to WCP Steering Committee, (Draft Budget), 30 November-1 December 1992, Bristol, UK.

developed a very close working relationship, which was vital to the WCP's success:

We needed his intelligence and natural connection to the roots of the whole project and he certainly needed us as the international organisation in order to mobilise affiliates and resources. He would constantly feed us new ideas, new tactics and new strategies'. [30]

Although the relationship was not always easy, IPPNW's obituary to Geiringer in 1995 reflects the high esteem in which he was held. Described as: 'forthright to a fault, he was never one to "whisper in the presence of wrong"':

With his characteristic irony and wry smile he would often explain how his generation, which witnessed the horror of August 6 1945, was gradually dying off. With his perception, he helped instil a sense of urgency about the challenge facing us. Those of us who were fortunate enough to work with Dr Geiringer were impressed with his clarity of thought, analytical abilities, strategic mind, and complete devotion to the cause of a nuclear free world. An incorrigible and aggressive spirit, IPPNW holds the greatest respect for his valuable contributions to our work. [31]

## **9.4 World Health Assembly 1992**

### ***Preparation***

IPPNW's first priority was to find a government to lead the co-sponsorship of the resolution. Fortuitously, a senior member of the Colombian affiliate and a former Health Minister visited the Central Office in March 1992. He immediately phoned his Health Minister asking for action. On 21 March, the Minister faxed the WHO stating Colombia's intention to 'include in the agenda, for discussion purpose and as a supplementary item, that the use of nuclear weapons be declared illegal under international law'. However, the communiqué made no mention of the ICJ or an advisory opinion. A copy was also sent to WHO Director-General Nakajima. In his address to IPPNW's

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<sup>30</sup>. Interview by Dewes with Michael Christ, New York, May 1995.

<sup>31</sup>. 'IPPNW mourns the sad loss of one of its foremost physicians: Dr Erich Geiringer of Wellington, New Zealand', IPPNW, 29 August 1995.

1991 Congress, he had pledged his 'continuing support for the work of IPPNW and its goal of eliminating the dangers of nuclear war'. [32]

From 28 March-10 April 1992, the US and Russian IPPNW Co-Presidents led a high-level delegation to the four former Soviet republics that possessed nuclear weapons: Russia, Belarus, Ukraine and Kazakhstan. Their primary purpose was to meet political leaders (including Yeltsin) to urge their commitment to the near-abolition of nuclear weapons by the year 2000, a halt to nuclear testing, an end to all new nuclear weapons programmes, and support for the WCP. Belarus agreed to co-sponsor with Colombia. [33]

Frantic lobbying by active affiliates continued, with initial success in Malaysia. By the end of March, the Prime Minister (a personal friend and physician) had given Ron McCoy (Malaysian affiliate of IPPNW) a verbal assurance that Malaysia's delegation would support the WCP. McCoy briefed them and met the WHO's local representative. The Health Minister confirmed that Cabinet had agreed to Malaysia's support, and that the Foreign Ministry was considering it. McCoy encouraged him to garner support during the Commonwealth Health Ministers' meeting in Geneva prior to the WHA. [34]

With less than six weeks to go, there were no responses from other prioritised countries: Austria, Cook Islands, Czechoslovakia, Hungary, Mexico, Nepal, the Solomons, Sweden and Tonga. Geiringer left for Europe to rally support in the UK, and ensured it was on the European affiliate's agenda. The IPPNW appointed a WHO lobbying team which was led by Janson and included Salmond and Geiringer. Robin Briant and Michael Christ were attending the WCP launch and worked closely with the others who met in Geneva a week beforehand to prepare the ground.

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<sup>32.</sup> WHO Press Release, 'WHO Director-General supports the IPPNW', 2 July 1991.

<sup>33.</sup> 'Nuclear Weapons in the Commonwealth of Independent States', IPPNW Report, 24 April 1992, 44 pp.

<sup>34.</sup> Letter from Ron McCoy to Geiringer, 31 March 1992; Letter from McCoy to Minister of Health, 14 April 1992. Interview by Dewes with McCoy, Christchurch, 8 January 1997.

### ***Ann Marie Janson and George Salmond***

Ann Marie Janson is the Associate Professor in the Department of Neuroscience at the Karolinska Institute in Stockholm. As a medical student she was very active on peace issues from 1979-83 and was the President of the International Federation of Medical Students Associations (IFMSA) from 1983-4. Her knowledge of the WHO came from her experience as a member of the IFMSA Board - the only student organisation with official relations with WHO. She was appointed IPPNW's WHO Liaison Officer in 1986 and later became a member of their Scientific Committee and the Council.

From 1985-87 she was also a member of the Swedish Committee of the International Year of Peace and the Foreign Ministry's Committee on Information Studies and Research on Peace and Disarmament from 1988-90. She attended Pugwash meetings from 1982 onwards and was a member of the Swedish Steering Group from 1984-95. So, her credentials as leader of the WCP lobby team were impeccable. Not only did she have a wealth of experience of WHO processes but she also had key contacts within her own government and ministry and insights into how decision making happens at national level.

George Salmond was A/NZ's Director General of Health from 1986-91, having been Deputy Director from 1983-85, and the WHO's Technical Adviser in Manila and Geneva from 1976-86. He had attended seven WHAs as a member or leader of the A/NZ delegations. In 1991 he left the Health Department and was asked by IPPNW(NZ) to join the lobbying team. He hesitated, sensing that some of his old and valued friends and colleagues would be uneasy about his advocacy, but felt a duty to proceed: 'WHO's voice must be heard among those seeking a solution to what is perhaps our greatest global health problem'. [35]

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<sup>35</sup>. George Salmond's Curriculum Vitae; Interview by Dewes with George Salmond, Wellington, 3 August 1995, Draft intervention by Salmond for the debate on the draft WHA resolution, May 1992.

During the remaining weeks before the WHA, the expertise of these two people was vital. In 1990 Salmond had led A/NZ's delegation which successfully passed a WHA resolution on smoking. He stressed the need for a professionally presented two page summary of the case to distribute to all delegates. He warned that if the WHO Secretariat and its legal advisers were not 'on board' they would 'de-rail' it: so they briefed them on what would be necessary in terms of resources and action if the resolution passed. [36]

When the team arrived in Geneva, there were a few surprises. [37] Organised opposition to the resolution had started weeks before, led by the US. Some in the WHO Secretariat were already opposed after being alerted by a Malaysian government inquiry. The biggest shock however, came when the Secretariat denied ever receiving Colombia's request for the additional agenda item. Resisting paranoia, Geiringer thought this might be due to misunderstandings or manoeuvres within the Colombian establishment and/or the WHO protocol apparatus. Salmond assumed the Secretariat had instructions to discourage the resolution - they knew about it, but officially disclaimed any knowledge. With hindsight this failure proved opportune. The 1992 request would have been referred to the General Committee and blocked by the US, sinking without trace.

### ***Presenting the Resolution***

The team immediately had to secure another co-sponsoring nation and formulate a resolution acceptable to them. A keen young Colombian diplomat, Renato Salazar, began working on a draft with Salmond's sympathetic contacts in the WHO's Legal Division. Two days' notice was required for the presentation of resolutions to allow time for printing, translation and subsequent consideration by Committee A and the Plenary. The resolution was duly registered and attached to Agenda Item 20.1 dealing with the Report of the WHO Commission on Health and Environment. Its presentation was then delayed until the General Committee could debate the

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<sup>36.</sup> Letter from Salmond to Geiringer, 24 March 1993.

<sup>37.</sup> This section draws heavily on the unpublished reports by Drs Salmond and Geiringer to IPPNW following the WHA, 4-14 May 1992.

most appropriate agenda item under which to consider it. The resolution requested the Director-General :

(1) to refer to the Executive Board to study the matter and formulate a request for an advisory opinion from the International Court of Justice on the status in international law of the use of nuclear weapons in view of their serious effects on health and environment;

(2) to report back to the 46th Health Assembly. [38]

The team urgently needed other countries besides Belarus to co-sponsor. Malaysia was the next obvious candidate, but Salmond had been alerted to the counter-lobby on his visit to the Philippines. In early April, he met the WHO Regional Director for the Western Pacific Region, Dr Han, who confided that WHO's Director-General had asked him to talk to the Malaysians and 'put an end to the nonsense'. When Salmond met Han again on 29 April, Han indicated that the initiative would not go ahead.

On arrival in Geneva, Salmond phoned Malaysia's Health Minister who confirmed they would not be initiating any action now or in the foreseeable future. Malaysia's Director-General of Health explained that the Foreign Ministry had received a discouraging response from WHO, and were uncomfortable about Colombia being the only other country known to be supporting the resolution. A 'heated' meeting with the Cabinet and Prime Minister ensued and the project was dropped. [39]

Salmond then approached his longtime friend and colleague Dr Tapa, Tonga's Health Minister. He was the natural leader of the smaller South Pacific countries, and was held in very high regard as a former Chair of WHO's Executive Board. To Salmond's surprise and delight Tonga became a co-sponsor. Tonga had a history of avoiding involvement in controversial issues, including criticism of nuclear testing, and Tapa was 'usually pretty pragmatic, very careful and fairly conservative'. Reflecting the region's

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<sup>38</sup>. Draft WHO resolution, 'Health and Environmental Effects of Nuclear Weapons', A45/A Conference Paper no. 2, Agenda Item 20.1, 9 May 1992.

<sup>39</sup>. Interview by Dewes with Salmond, 3 August 1995.

strong anti-nuclear sentiment, he promoted it 'with spirit', encouraging other small states to go along with him; but none joined as co-sponsors. [40]

Zimbabwe's Health Minister was a strong supporter, but could not always be relied on to turn up. Nigeria was equally unreliable: 'They would sweep in one day giving assurances of support and then disappear'. The Health Minister, Ransome Kuti, had a close friendship with Salmond, and he gave his support at some personal cost. Nigeria agreed to co-sponsor, but failed to appear at the final session when someone was desperately needed to speak. This was a great disappointment as he was a real orator and recent Chair of WHO's Executive. [41] Most other African states were supportive, but their primary concerns were the health effects of the economic recession: increasing poverty, malnutrition, deteriorating health infrastructures, AIDS and the resurgence of diseases such as cholera, tuberculosis and malaria. Smaller African states were very dependent on Western aid and therefore anxious not to offend. Zambia is a prime example of the pressure which could be brought to bear on these states. Although its delegation had originally promised support, it eventually voted with the US, UK, France and Italy to defer consideration of the resolution.[42] With Togo, it became the 'fig-leaf of South votes for the nuclear lobby whose move would otherwise have been revealed as a naked Western Power play'. [43] Despite the pressure, six African states co-sponsored: Kenya, Namibia, Nigeria, Senegal, Swaziland and Zimbabwe. Interestingly, China, Russia, Mozambique, Ethiopia and Cuba were amongst the 15 abstentions.

Central American states were very supportive and, despite US disapproval five became co-sponsors (Costa Rica, El Salvador, Honduras, Nicaragua, and Panama). Panama's permanent representative to the WHA, Dr Osvaldo Valasquez, was the leader of IPPNW's Panamanian affiliate and was closely involved in disarmament activities in Geneva. IPPNW tried hard to secure

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40. Ibid.

41. Ibid.

42. Report by Salmond to IPPNW, May 1992.

43. E. Geiringer, Notes on WHA/IPPNW/WCP Action 4-14 May 1992, p. 5.

Mexico as a co-sponsor because of its very credible history in nuclear disarmament. IPPNW's Mexican affiliate President Dr Manuel Valesco-Suarez had direct contact with the President, but Mexico did not become a co-sponsor, although it did initially sign the draft resolution indicating support. Rumours were rife that Costa Rica had promised the US it would withdraw its signature. Argentina and Brazil responded favourably to IPPNW lobbying, eventually abstaining on the General Committee vote. Colombia was the lone South American co-sponsor.

Credit must go to Janson for her creative lobbying techniques with the Latin American countries and her understanding of the power of personal relationships and peer pressure. When she learned that the Central American Health Ministers were going on a bus trip, she ensured a seat on the bus and, as a fluent Spanish speaker, obtained five signatures 'on the spot'. [44]

The former Soviet states were known to be generally sympathetic, but were also politically disadvantaged as a result of the economic and social disorder in the region. Apart from Belarus, which was left isolated, they too did not want to alienate Western aid donors. China indicated support by joining Russia in abstaining in the General Committee vote. Following very little lobbying among Arab states Iran, Qatar and Saudi Arabia were the sole supporters of the resolution within the General Committee.

After intense lobbying primarily by IPPNW, 14 countries co-sponsored the resolution. According to Salmond:

Senior officials in the American delegation lobbied very hard against the draft resolution. Individually they approached each of the co-sponsors and pressed them to withdraw their support. We can only speculate what standover tactics may have been used.

The US argued that the resolution was a thinly-disguised political initiative to end all nuclear testing and had nothing to do with health. An influential Secretariat official suggested it was entirely driven by IPPNW without any

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<sup>44</sup>. Interview with Janson, op.cit.

significant country support, and was an effort by a self-interested NGO to rekindle interest in a dying cause. Nevertheless, others within the WHO privately gave encouragement by providing very useful guidance.

At the time, there was open dissatisfaction about Nakajima's leadership. The WHO was becoming less technically competent and more political, with the Western bloc dominating the agenda. It was retrenching, not filling vacancies and trimming all programmes. Very few projects were adequately resourced; the influence of traditional health professionals was on the wane; staff felt discouraged and disillusioned; and morale was low. Many worried about their future careers, but wanted to see WHO stand up for the world health community by supporting this issue.[1] Salmond felt that if enough states could be mustered to vote for the resolution in the future, the Secretariat would back it.

The resolution came up for debate within the 25-member General Committee, but none of the co-sponsors were members: so Tonga and Colombia were invited to attend and spoke in support. Arguing that the matter was beyond the technical competence of the WHO and that other UN organs were specifically charged to deal with such issues, the US and its allies had a free rein. WHO's senior Legal Counsel Dr Piel presented three options:

1. To add the item to the agenda of either Committee A or B;
2. To refer the item to the Executive Board;
3. To reject the item as not being within the competence of the WHA.

The third option was put to the vote with 6 in favour, 3 against and 16 abstentions (6:3:16). When this was put to the Plenary, there was insufficient support to force and win a vote. Nigeria's Health Minister was absent, and Tapa was not keen to oppose the General Committee with insufficient backing. Colombia requested an explanation as to why the resolution was rejected, in light of three earlier occasions when the WHA had accepted that nuclear weapon issues were within its competence. This later became a crucial document in preparing an independent legal analysis.

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<sup>45</sup>. Report by Salmond to IPPNW, May 1992.

### ***Lessons Learned***

The only realistic option for IPPNW and the co-sponsors was dignified acceptance of the defeat and reflection on lessons learned. Few delegates were well-informed on nuclear issues, and assumed that the nuclear threat had receded post-Cold War. Most NAM states were preoccupied with more immediate threats to their survival, and it was difficult to spark their interest. There was also deep cynicism about the effect an ICJ opinion might have on further disarmament negotiations. The IPPNW team agreed that if the resolution had been voted on, even without a lot more preparation, it probably would have been adopted due to earlier overwhelming majorities on this issue.

The large number of abstentions in the General Committee was an indication of sympathy for the issue. A much larger number of co-sponsors plus support from the Scandinavian and Australasian countries, Canada and Ireland were vital if a further attempt was to succeed. Strong public support would be crucial in order to bolster the anti-nuclear governments; and doctors and lawyers in particular would need to lobby their 'friends in high places' with convincing arguments. Any new resolution was due on the provisional WHA agenda by January 1993. The lobbying team left Geneva satisfied that it had 'tested the waters'. Within days, they had rallied 14 co-sponsors with indications of support from many others. Many WHO colleagues of Janson and Salmond had expressed sympathy and support. Together they made a formidable team, able to utilise their extensive contacts and expertise most effectively.

On reflection, Geiringer's early analysis had been correct. IPPNW had identified the pitfalls in relation to the procedural roadblocks. They had some indication of the resistance from the West and the WHO, and were bolstered by the numbers indicating support. Janson was initially reluctant to pursue another attempt in 1993 unless it could be carefully planned and executed

**Figure 8: WHO Lobbying Team and WCP International Steering Committee**



Drs George Salmond, Ann Marie Janson, and Eric Geiringer outside WHO during 1993 WHA.



WCP International Steering Committee in IPB Office.  
Alyn Ware, Kate Dewes, Colin Archer, Willemijn Straeter, Michael Christ,  
Rob Green (with photo of Seán MacBride).  
Tracy Moavero (on left) worked with IPB.

and the whole of the IPPNW federation involved.[46] The general consensus was that momentum should be maintained in concert with IALANA and IPB, who were preparing for the UNGA. With hindsight it was fortuitous that the resolution failed. If successful, it would have given the Western-dominated Executive Council the power to study the issue and 'formulate a request for an advisory opinion'. Inevitably this would have either been watered down or thrown out.

## **9.5 World Health Assembly 1993**

### ***Preparation***

As the WCP launch drew to a close, delegates received news of IPPNW's partial success at the 1992 WHA. Buoyed by this and the sense of empowerment gained by sharing with 150 others working for similar goals, they carried home boxes of the IPB Guidebook and IALANA's Legal Memorandum. The International Steering Committee agreed to prepare two slightly different resolutions for the 1993 WHA and UNGA. They believed that if the illegality of nuclear weapons could be established it could have a decisive impact on the 1995 Non Proliferation Treaty Review and Extension Conference and help secure a Comprehensive Test Ban Treaty (CTBT).

Delegates briefed their local and regional peace groups, alerting them to the urgent tasks ahead: collection of Declarations of Public Conscience (DPCs); prominent endorsers' lists; letter writing campaigns; meetings with decision makers; and creative use of the media. The co-sponsoring bodies sent out newsletters and details of local contacts to their affiliates to facilitate cross-fertilisation between groups. In 1992, IPB had 150 member organisations in 34 countries; IPPNW had over 200,000 members in 76 countries; and IALANA had 30 affiliates. LCNP led the UNGA effort, and IPPNW directed the WHA approach. IPB's primary role was to stimulate activist groups to

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<sup>46</sup>. Interview with Janson, op.cit.

lobby parliamentarians and mobilise public opinion, and to lobby the Geneva Missions.

With less than a year until the next WHA, IPPNW prepared an action plan:

- Pass WCP resolutions at regional IPPNW and WHA conferences and get endorsement from other health professional bodies
- Build up country delegations especially in the Middle East, Asia, South America and the South Pacific
- Obtain a legal rebuttal to WHO's legal advisor's WHA position
- Prepare an updated and amended resolution to go out before the 46th WHA which had been agreed to by a number of cosponsors
- Organise a delegation to attend the WHO Executive Board meeting in January 1993 to ensure the resolution is placed on the agenda
- Secure sufficient funding to support the NZ and US offices.[47]

Central Office agreed to explore its high level contacts to persuade key countries to co-sponsor a resolution; coordinate communications between and with affiliate campaigns and lobbying efforts; supply affiliates with background resource material; and maintain communication with the UN/New York lobby and the ISC. Affiliates were asked to educate their public about the WCP; canvass their Health Minister, national WHA delegates and Foreign Affairs Officials to co-sponsor a resolution, or at least vote for it; and to report regularly to the Central Office. Meanwhile the NZ branch was delegated tasks such as faxing and mailing affiliates. [48]

At an IPPNW Executive meeting in late 1992 Janson was given the authority as leader of the 1993 WHA delegation to make important strategy decisions. Unlike Geiringer, she had a good relationship with the US Co-President Bernard Lown and ensured that the IPPNW leadership made the WCP a priority when travelling in different countries and attending regional meetings. For example Lown spoke directly to the Minister of Health from Zambia (who was an IPPNW member and was a member of the 1993 WHA delegation

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<sup>47.</sup> Draft IPPNW Program, Description for funding applications, August 1992.

<sup>48.</sup> Ibid., IPPNW NZ Branch, Wellington Core Group Minutes, 23 July 1992.

committed to overturning Zambia's negative vote in 1992) and other African Health Ministers. The October 1992 European regional consultation unanimously approved a WCP resolution. The Austrian, Belgian and Norwegian affiliates reported modestly positive government responses. Visits to the Danish and Swedish governments were assessed as possibly counterproductive and there were fears that there could be a 'leakage of information' to 'the other side'. This led to a policy where IPPNW only lobbied committed supporters.[49]

Geiringer attended this meeting, and while he was in the UK he met with the growing WCP movement and also his friend and well-known Labour MP Austin Mitchell. He became a strong WCP ally asking probing questions, drafted by Geiringer, in the British Parliament at critical stages of the campaign. In Amsterdam, Geiringer and members of the IALANA Executive agreed on future strategies. He then conferred with LCNP staff in New York, who indicated sufficient support for an UNGA resolution, and updated IPPNW's Central Office on the latest strategies. [50]

An urgent task was to refute the opinion by WHO's legal adviser, Mr Piel, as to why the General Committee recommended no vote on the 1992 resolution. Piel had acknowledged that 'it is not for the Legal Counsel or the Secretariat to decide such a question for the Health Assembly, which has ultimate authority to determine its own competence'.

He had correctly conceded that the UN Charter, the Statute of the ICJ and WHO Constitution empower it to request advisory opinions; and that 'the health effects of nuclear radiation fall within the competence of the WHO'. However, he had advised against voting on the Draft Resolution on the grounds that the question did not readily fit the functions of WHO. He advised that it was 'too complicated, risks serious embarrassment and overlap with

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<sup>49.</sup> Interview with Janson, op.cit. Report on IPPNW Symposium, Vienna 1992 by Dr Pat Craig of MEDACT(UK); Letter from Craig to IPPNW European Affiliates, 21 October 1992.

<sup>50.</sup> Geiringer's notes of meetings with WCP groups, 17 October 1992.

the UN System' to decide upon its fate in 1992. IALANA's Burns Weston concluded this was both excessively cautious and 'indefensible'. He knew of no previous cases where the ICJ had rejected a request for an advisory opinion on the grounds that 'it poses a matter too complicated for the Court's determination'. Burns also pointed out that Piel had urged the WHA not to decide on the matter 'this year' and to consider not adding the resolution to the agenda 'at this time'. This indicated that the door was left open to the 1993 WHA, and Burns encouraged IPPNW to study the WHO Constitution to determine whether Piel's other concerns were correct. [51]

As the year progressed, citizen groups endeavoured to establish WCP networks. Launches were held in A/NZ, India and Malaysia. Canadian doctors mailed WCP packs to various NGOs, and organised a speaking tour by Robert Green on his return from speaking in A/NZ and Japan. His visits attracted media coverage and gave the local campaigns a focus. Dewes sent the Legal Memorandum to all South Pacific Prime Ministers, asking them to co-sponsor the WHA resolution.[52]

Salmond asked his contacts in the Australian, US and Canadian branches of the Public Health Association (PHA) to dialogue with their governments, endorse the WCP and jointly seek a resolution of support from the World Federation of PHAs (WFPHA). In November 1992, IPPNW's US affiliate helped guide a resolution through the US PHA. The Australian Executive Director and WFPHA President, Margaret Conley, was very supportive and ensured it was on their May agenda. The Federation is composed of national PHAs from nearly 50 countries and is the only NGO officially linked to the WHO. The day before the WHA began, the WFPHA unanimously adopted a

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<sup>51</sup>. Letter from Burns Weston to Phon van den Biesen, 27 November 1992; E. Geiringer's working paper, 'Piel's Appeal: Expedience v. Duty', February 1993, 6pp; Samantha Williams, Draft paper on WHO outcome, untitled, 1993, 14 pp.

<sup>52</sup>. Letter from P. T. Timeon (Secretary to Kiribati Cabinet) to Dewes, 23 April 1993. Letter from Viesturs Altmants to author, 13 April 1993.

strong resolution endorsing the WCP, co-sponsored by the Australia, NZ and US PHAs. [53]

### ***WHO Executive Board Meeting***

A key part of IPPNW's strategy was to make preliminary soundings with the WHO secretariat and sympathetic missions in Geneva. Janson knew from past experience that when delegates had problems during the Assembly they did not always contact their home countries for advice because of time constraints. They tended to rely on the local mission which frequently had disarmament expertise needed for the Conference on Disarmament.[54]

The WHO Executive Board met in January 1993. IPPNW asked 30 Health Ministries to request an agenda item before the November deadline. Just prior to the Executive meeting Janson and fellow Swede Dr Johan Thor (who was working in the IPPNW Central Office as a staff member) met with 23 WHO Secretariat and Regional Office staff to ascertain where the support and the roadblocks lay.

The WHO Director-General, who was Japanese, confided that he was personally supportive of the resolution - he had no doubt that first-use was illegal but was not sure about wider aspects such as the stockpiling of plutonium (an activity which his government was engaged in). He had attended IPPNW meetings in Stockholm and Mexico and was kept informed about the progress of the resolution through Janson's briefing of Bergstrom, who was close to Nakajima. [55] The IPPNW team discovered that a WHO

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<sup>53.</sup> Letter from Margaret Conley to Gerry Dafoe (CPHA), 9 December 1992; Letter from M. Conley to Diane Kuntz, Executive Secretary, WFPHA, 9 December 1992; Letter from Jane Hall, President APHA to Paul Keating, December 1992; Letter from M. Conley to George Salmond, 9 December 1992; Statement delivered to WHA 46 by Diane Kuntz on behalf of WFPHA, 14 May 1993.

<sup>54.</sup> Interview with Janson, op.cit.

<sup>55.</sup> Ibid. During a WHA reception, Janson told Nakajima that '...this resolution could be a very important contribution from the WHO, and who knows, if this comes through, you might one day get the Nobel Peace Prize!'. Nakajima's

Management meeting was planned for Geneva in April 1993 to discuss the WHA resolution; that Nicaragua, Panama and Vanuatu had requested the resolution's inclusion on the agenda; and that Kenya's similar request sent in November 1992, had not arrived. IPPNW discussed how they to improve cooperation on a wide range of common issues with WHO, and distributed documents on the WCP and the medical effects of plutonium, nuclear testing and war to sympathetic officials. [56]

Janson and Thor then met officials from 20 Geneva Missions including nine of the 1992 co-sponsors. IPPNW had prioritised the original 14 co-sponsors, the three countries which voted in favour of the resolution, and the 16 countries which abstained on the vote to reject the resolution. The co-sponsors indicated support with Colombia agreeing to coordinate the Latin American Missions during March/April. They were keen to enlist Argentina, Brazil, Chile, Mexico and Venezuela as co-sponsors. Bolivia, Bulgaria, Mexico, Mongolia and Qatar also showed support. China indicated that its Health Ministry would join IPPNW and participate in their 1993 World Congress in Mexico. Mexican Ambassador Marin-Bosch and Dr Chavez-Peon (WHO Executive Board member) confirmed that Mexico would be a main co-sponsor. The Russians indicated that the resolution would not succeed because the General Committee was dominated by the European Community and the US. They advised that it needed to be more directly related to health, 'account for a balance of forces', and 'not interfere with legal aspects'. The Swedes stressed avoiding duplication of UN work, while the Danes warned against political issues which would provoke a schism within the WHO. Janson reported that the resolution was on Committee B's

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sympathy for the resolution was reinforced when Janson overheard the French delegate 'screaming' down the UN phone to his colleagues that.. the Director-General even refuses to go against it - we can do nothing, and it is going to win!

<sup>56.</sup> IPPNW and IEER, *Radioactive Heaven and Earth: The Health and Environmental Effects of Nuclear Weapons Testing in, on and above the Earth*, Apex Press, New York, 1991; IPPNW and IEER, *Plutonium: Deadly Gold of the Nuclear Age*, International Physicians Press, Cambridge, 1992.

agenda for 12 May, and warned her colleagues that a second vote could be taken in the Plenary the next day. [57]

When the Executive Board met, Ecuador and Mexico joined Nicaragua, Panama and Vanuatu in requesting the agenda item. Of the 25 members of the Executive Board two were IPPNW members (Mongolia and Bulgaria), Senegal and Swaziland were 1992 co-sponsors and Qatar had voted for the 1992 agenda item. Mongolia and Bulgaria argued that the issue of nuclear weapons had not been dealt with by the WHA since 1987 and asked for this 'item' to be added. They deliberately refrained from drawing attention to the earlier resolution because it was already on the agenda which then enabled the co-sponsors to strengthen and update it. [58]

In March the WHO Director of Planning, Coordination and Cooperation wrote to the WHO's Expert Committee on Nuclear War (WHOPAX) and misled them by stating that the resolution was not discussed in 1992 because the WHA had decided that it was not within WHO's mandate and competence. The Committee claimed that the Executive Board had decided that the WHO was not competent to approach the ICJ and should instead conduct further studies on human health effects and health-related environmental impacts of nuclear weapons. In a calculated manoeuvre, the WHOPAX members were asked to approve a draft study prepared by the Director-General's office to 'ensure that the discussion would be kept within the Organisation's mandate'. [59]

The intelligence gleaned from these Geneva meetings helped IPPNW identify priorities for action. Ensuring sympathetic governments were nominated for the General Committee was a top priority. A co-sponsor was entitled to

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<sup>57.</sup> A.M. Janson and Johan Thor; 'Report from the 91st Session of the WHO Executive Board', January 1993', 24 pp.

<sup>58.</sup> Interview with Janson, op.cit.

<sup>59.</sup> Erich Geiringer, 'The World Court Project: Nuclear Weapons on Trial', in Ron McCoy, ed., *A Prescription for Global Health and Security*, Proceedings of IPPNW's Fourth Asia-Pacific Regional Conference, 4-7 August 1994, June 1996, pp. 22-29.

request a written record of the 1992 General Committee meeting and a draft list of nominees for the new committee. IPPNW urgently explored possible ways the resolution could be amended, delayed or referred out of existence, and distributed it to sympathetic delegates.

The IPPNW team encouraged meetings of supporters preceding the WHA where they could 'review support, bring everybody up to speed, collect intelligence on other delegations, assess our lobbying and speaking strength, share what we know about the opposition, review what support we have on the General Committee and decide whether or not to go for Committee A and a lift up the agenda'. Regular meetings with key supporters were coordinated in order to strategise. Set pieces were prepared for the strongest speakers and a series of short, simply written papers arguing the bones of the case were given to interested, but not well-informed, delegates. A comprehensive pack on WHO 'competence' and other issues was disseminated to all key supporters. [60]

IPPNW prepared another briefing pack for affiliates outlining the WCP's aims, giving details of WHA resolutions on arms control and other nuclear matters, voting on the 1992 resolution and draft media releases. Geiringer outlined the arguments for and against the resolution; the moves likely to be undertaken by opponents; and the necessary counter-moves to prevent a repetition of 1992; the WHO's competence; why WHO should use the ICJ; and the state of nuclear disarmament negotiations. [61]

In February, IPPNW reported that Mexico would be the leading co-sponsor. Although there had been active lobbying by doctors in 16 countries there had

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<sup>60</sup>. Letter from G.Salmond to E.Geiringer and A.M.Janson, 10 March 1993; Erich Geiringer, WCP/NZ Memorandum 'Preparation for WHA/46', February 1993.

<sup>61</sup>. IPPNW Affiliate Action Kit for the 46th World Health Assembly, April 1993; Erich Geiringer, 'Health and Environmental Effects of Nuclear Weapons', (WHA/45, 20.1; WHA/46,32), 16 pp., April 1993.

only been media coverage in A/NZ and Japan. [62] In April, Malaysian newspapers highlighted a WCP public meeting, but the government was unmoved. McCoy confirmed that there had been 'pressure from the US, who are opposing the East Asia Economic Caucus, sponsored by Malaysia, which our Prime Minister is very keen to establish'. He was sure it was 'another one of those international trade-offs'. [63]

Prior to the May Assembly, there was intense internal politicking and factional in-fighting caused by the controversial re-election of the Director-General, and investigations into alleged financial misdeeds within the WHO. The US and European Community led the opposition to Nakajima's re-election, citing mismanagement. During his term Japan had become the second biggest donor to the WHO. In January, *Time* magazine documented allegations that the Japanese government had pressured developing nations and officials with offers of aid, bribes and threats of loss of trade if they did not support Nakajima's re-election. Nakajima was re-elected for a second term after a secret ballot of the Executive Board. His supporters were almost entirely Latin American and African. [64] The leadership issue split the Assembly into a North and West/ South and East divide which damaged the organisation but ultimately worked to IPPNW's advantage.

### ***Resolution and Voting***

Janson was given the task of coordinating the drafting of the preamble to the draft resolution (Appendix III) which included a review of the well-known hazards associated with nuclear weapons, concluding that the only sensible course of action was elimination. [65] It recalled five WHA resolutions on the effects of nuclear war on health, WHO's contribution towards sustainable

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<sup>62.</sup> Report by Michael Christ to WCP International Steering Committee, 5-6 February, Brussels, 1993.

<sup>63.</sup> Letter from McCoy to Dewes, 27 April 1993; *New Straits Times*, 26 April 1993; *Star*, 24 and 26 April 1993.

<sup>64.</sup> Phyllida Brown and Tara Patel, 'Head of WHO returns despite Western Opposition', *New Scientist*, 30 January 1993, p.6; Margot Hornblower, 'Who leads WHO?', *Time*, 18 January, 1993, p. 17.

<sup>65.</sup> George Salmond, 'World Court Project: Notes for a talk to the Public Health Association Annual Conference', Wellington, 19 May 1993, p. 3.

development, and the environmental consequences of the use of nuclear weapons. Reaffirming that the WHO's Constitution defined its role in decision making on international health work, it recalled that primary prevention was the only appropriate means to deal with the health and environmental effects of nuclear weapons. This latter emphasis was added to the earlier draft after Mexico, the key co-sponsor, demanded stronger references to health and the WHO Constitution right at the last minute. The IPPNW team was then forced to consult with the other 21 co-sponsors to gain their support for the changes. They visited the delegates at their hotels late into the evening and succeeded in gaining full agreement. Janson was also able to get independent confirmation from IPPNW's Dr Valasco-Svaras that the President approved of the changes, thereby pre-empting any stalling tactics by diplomats who were under individual pressure 'on the ground'. [66]

The resolution's operative paragraphs stated that the 46th WHA:

1. DECIDES, in accordance with Article 96(2) of the Charter of the United Nations, Article 76 of the Constitution of the WHO and Article X of the Agreement between the UN and the WHO approved by the UN General Assembly on 15 November 1947 in its resolution 124 (II), to request the International Court of Justice to give an advisory opinion on the following question:

*In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?*

2. REQUESTS the Director-General to transmit this resolution to the ICJ, accompanied by all documents likely to throw light upon the question, in accordance with article 65 of the Statute of the Court. [67]

The resolution was the last item on Committee B's agenda, and therefore risked being lost because many sympathetic Ministers and delegates needed to leave before the final Plenary vote. Therefore a well-coordinated team of sponsors and speakers was needed right up until the end.

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<sup>66.</sup> Interview with Janson, op.cit.

<sup>67.</sup> Agenda Item 33, A46/B/Conf.Paper, no. 4, 8 May 1993.

Eventually 22 states co-sponsored, including seven of the 1992 sponsors but none of the original five Central American states. An indication of the pressure which was likely to have been applied to these states was that Ecuador, Nicaragua and Panama, having requested the agenda item in January 1993, did not co-sponsor or offer help during the WHA. Of the new co-sponsors five were small Pacific Islands, seven were African, four from the former USSR and one from South East Asia (Thailand). Cuba and Mexico joined Colombia and Bolivia as the only Latin American countries. Ironically Zambia, having voted with the West against the 1992 resolution, took the lead with Mexico, Tonga and Vanuatu, with Colombia giving strong support.

The 1993 WHA IPPNW lobbying team was again led by Janson, with Salmond, Johan Thor, and Michael Christ. Salmond also represented A/NZ at the WFPHA Conference. [68] On 10 May, Zambia's Health Minister Dr Phiri and IPPNW Vice President took a leading role, as a direct result of Lown's visit to Africa. He ensured that there were seven African co-sponsors and chaired the regular coordinating meetings with co-sponsors and IPPNW. These gatherings were used by IPPNW to distribute information packs and draft interventions for countries to speak to. The leading co-sponsors represented strong groupings from three different geographical regions thereby making it difficult for the opposition to 'pick them off' individually or as a region.

The co-sponsors agreed to lobby other sympathetic delegations, put their names on the speaker's list, and participate in a drafting group if attempts were made to amend the text. A timetable for speakers and votes was prepared. The co-sponsors were warned that the West might use a secret ballot which would be voted on immediately, needing only a majority to pass. IPPNW's packs, printed in a variety of languages, included previous relevant

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<sup>68</sup>. According to Janson, Geiringer was not invited to be on the 1993 delegation because of his counterproductive lobbying tactics in 1992 which at times had intimidated delegates. He had also alienated many in IPPNW Central Office by sending out documents which were not endorsed by them. Janson interview, op.cit.

WHA resolutions; articles from the WHO Constitution and UN Charter; the ICJ Statute; and analysis of the Director-General's Report on nuclear weapons. [69]

There were indications of strong antagonism from Western states, led by the US, UK and France (the UN Security Council Permanent Three - 'P3'). Well-informed sources feared that the US and other major contributors to the WHO would reduce funding for certain projects, and possibly the WHO's general budget, if the resolution was adopted. The P3's main argument was the WHO's lack of competence to ask the question. The co-sponsors sought a meeting with the Chair of Committee B and the Secretariat. A tally of possible 'No' voters was prepared, and 'middle' Western countries were singled out for discussion about the consequences of a negative vote. Countries expected to waver under pressure were prioritised, with co-sponsors encouraging their regional neighbours to vote together. IPPNW set up an information desk next to the inquiry office.

During 1992-93 the A/NZ, Australian, Canadian, Irish, Japanese, Swedish and Norwegian governments had been lobbied intensively by WCP groups, and members of the International Steering Committee had met key decision makers in various capitals. Delegations from the three co-sponsoring NGOs met their Health and Foreign Affairs Ministers; and in some countries there was a barrage of parliamentary questions and even snap debates on the issue, which in turn attracted media attention.

Ministerial responses indicated a 'common Western line' that the WHO was not the correct forum for the debate. A/NZ's Foreign Minister categorically announced that the UN General Assembly (UNGA) was the *only* appropriate forum (this backfired when the UNGA resolution was introduced later that year). For the UNGA resolution to succeed, it was vital to gain abstentions rather than 'No' votes from these 'middle' states during the WHA. The successful WFPHA resolution put further pressure on the Australasian

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<sup>69</sup>. Notes by Salmond of Co-sponsor's Meeting, 10 May 1993. IPPNW Information Pack for Agenda Item 33, 8 May 1993, 24pp.

delegations. The A/NZ delegation was instructed not to speak with Salmond, while an Australian delegate was sent to warn him that the 'little countries supporting this resolution would suffer in aid allocations - not from Australia, but certainly from the US'. [70]

Discussions began on 11 May after the Chair from Barbados introduced the Director-General's report and the draft resolution. The WHO's Legal Counsel summarised the report in some detail, before referring to UNGA resolution 33/71B (1978) which declared that 'the use of nuclear weapons (would) be a violation of the Charter of the UN and a crime against humanity' and that the use of nuclear weapons was contrary to the rules of international law and the laws of humanity. This, he felt, was a clear response which might make it unnecessary to refer the item to the ICJ. He asked whether it was the role of the UNGA or the WHA to decide whether an advisory opinion on the 'illegality' issue was needed. He then argued that further disarmament negotiations were urgently needed, culminating in a truly international nuclear convention which extended beyond the mandate of the WHO. [71]

Zambia's Dr Phiri led the debate and pre-empted the West by invoking Rule 78 calling for a secret ballot. Mexico then argued that the issue was clearly within WHO's mandate, and supported the secret ballot 'in order to allow for the decision making freedom required in a matter of such importance'. Tonga's Dr Tapa confirmed that their sponsorship was 'motivated solely by health-related not political concerns' and, like Mexico, they wanted to protect future generations from nuclear weapons. This was followed by a strong intervention by Hilda Lini. She observed that all the nuclear activities summarised in the Director-General's report were carried out in her region, and conveyed Pacific Islanders' deep aversion to nuclearism. Women who became pregnant in areas affected by nuclear explosions still gave birth to deformed babies. Vanuatu had been declared nuclear free in 1983 and was

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<sup>70</sup>. Notes taken by Dr Salmond during various meetings at WHA.

<sup>71</sup>. Committee B, Provisional Summary Record of the Eighth Meeting of the 46th WHA; Speech by Dr Piel, 11 May 1993.

the only South Pacific member of the Non-Aligned Movement, which had recently re-confirmed its vision of a nuclear weapon-free world.

Ironically these two tiny island states were followed by the US, arguing that the resolution was excessively narrow and technical; did not request the WHA to continue studies on the issue; and asked the WHA to abandon its own right to come to a conclusion by requesting an ICJ opinion. The US proposed that under Rule 65 the resolution be determined not within the competence of the WHO. Denmark, on behalf of the European Community, and along with Austria, supported the US motion.

The Barbados delegate reiterated the desire of the Caribbean Community to become a zone of peace and a NFZ. She referred to the devastating effect on small islands of any spillage from plutonium-laden ships passing through the region. Colombia, Namibia, Senegal, Swaziland and Zimbabwe spoke in support. Janson then outlined IPPNW's work over the past decade, and called on the WHO to adopt the resolution as 'the only opportunity which the world health community would have to seek a solution to its greatest health problem'. [72]

The WHA Chair also played a critical role in the success of the resolution. He took great care to explain the very complicated voting procedures to delegates and at one point he even said 'If you vote "yes" for this, you vote on the side of the US'. [73] When he opened discussion on the US motion the following morning, Mexico immediately requested a secret ballot. This passed with a show of hands by 43 votes to 36 with 5 abstentions (43:36:5). Only 100 of the 163 WHA members voted during the secret ballot on the US motion (38:62:3). In the afternoon, Dr Piel reiterated the legal conditions under which the WHO and UNGA could consider the issue. He also suggested that if the resolution was adopted 'perhaps condemning the use of nuclear weapons, perhaps declaring that you consider it in violation of the

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<sup>72.</sup> All quotes taken from Committee B, Provisional Summary, A46/B/SR/8, pp. 8-12.

<sup>73.</sup> Interview with Janson, op.cit.

WHO Constitution', then the Director-General could be asked to transmit the resolution to the UN Secretary-General 'with a view to its consideration and possible referral' by the UN to the ICJ.

The Assistant Director-General then raised the inordinate costs which 'were likely to amount to at least a six-figure sum in US dollars' if the case went ahead, and reminded delegates that there was no provision for it in the projected WHA budget. [74] The Director-General, sensitive to the recent audit of WHA expenses, underlined the importance of the financial and legal issues raised by his colleagues. These comments were welcomed by the US delegation which did not oppose the adoption of an 'appropriate' resolution and immediately proposed a new operative paragraph:

1. CONGRATULATES the Director-General for the excellent report on the health and environmental effects of nuclear weapons, and
2. REQUESTS the Director-General to continue to monitor and report on the health and environmental effects of nuclear weapons.

He hoped these amendments, which were promoted by both Australia and A/NZ, would be accepted without a vote.

Alerted to the cost question, IPPNW immediately telephoned the ICJ Registrar at the Hague who confirmed that WHO's only costs would be in preparing the referral. Hilda Lini immediately countered the Secretariat's misleading information by reporting this, adding that a number of NGOs had already offered to contribute to the costs. Mexico then clarified the resolution's objective, which was not to determine the legality of nuclear weapons, but merely to obtain an advisory opinion. Libya, Papua New Guinea, Tonga, Uganda and Zambia all opposed the US amendment, urging that the resolution be put to a vote. Senegal asked the Committee to reach a consensus to avoid a vote, while Finland spoke briefly in support of the US. Just before the vote, Janson announced that IPPNW would assist WHO by raising extra-budgetary funds if needed. Then, by a show of hands the US

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<sup>74.</sup> Ibid.

Figure 9: Chronology of WHA voting on ICJ Resolution, 1993, IPPNW.

CHRONOLOGY OF VOTING

WEDNESDAY, 12 MAY 1993 - COMMITTEE B

- 1) The U.S. motioned to remove the resolution from the agenda under Rule 65 of the Rules of Procedure as a matter beyond the competence of WHO.
- 2) A motion was made by Zambia and seconded by others to vote on the U.S. proposal by secret ballot vote. The secret ballot motion was approved by 43 for, 36 against, with 5 abstentions.
- 3) The motion proposed by the U.S. under Rule 65 (see 1 above) was rejected by secret ballot vote with 38 for, 62 against, with 3 abstentions. Therefore, the WHA decided it was a matter within their competence.
- 4) The U.S. proposed an amendment to the draft resolution to take out the operative paragraphs about requesting an advisory opinion from the World Court. The proposed U.S. amendment was rejected by 33 for, 60 against, with 5 abstentions.
- 5) The U.S. proposed that the final decision on the draft resolution be taken in accordance with Rule 73 of the Rules of Procedure; to have a two-thirds majority vote. The motion by the U.S. was rejected by 31 for, 64 against, with two abstentions.
- 6) The draft resolution was put to a final decision and approved by secret ballot vote with 73 for, 31 against, with 6 abstentions.

FRIDAY, 14 MAY 1993 - WHA FINAL PLENARY

All decisions taken in WHA Committees A and B are ratified at the final plenary, but are rarely contested. Nevertheless, the United States was determined to defeat the resolution and called for the final plenary to overrule the decision of Committee B.

- 1) The U.S. motioned to put the resolution to a vote. Second by the U.K., France and others.
- 2) Mexico motioned that — if the Assembly was forced to vote again — to have the vote taken by secret ballot. Seconded by Zambia, Colombia and others. The motion to have a secret ballot was approved by 75 for, 33 against, with 5 abstentions.
- 3) The draft resolution that was approved by more than 2/3 of delegations in Committee B was again put to a vote. Despite last-minute pressure from the West on delegates, the resolution was approved with 73 for, 40 against, with 10 abstentions.

amendment was defeated by 60:33:5. The US immediately proposed a decision by a two-thirds majority on the grounds that it was an important question. This was also rejected by 64:31:2. Finally the draft resolution was put to the vote, again by secret ballot. Of the 164 WHA members, 54 did not vote, but it was adopted 73:31:6. Delegates from Australia, A/NZ and Sweden immediately justified their abstentions on the grounds that it was a political issue which should be dealt with elsewhere. [75] However, A/NZ had been instructed to vote for the earlier US amendment. These abstentions reflected the difficult position these governments were in. Australia and A/NZ were allied to the US and UK, and Sweden was vying for membership of the European Union. However, this was complicated by the strong presence of their NGOs and their leadership within the WFPHA and IPPNW.

Euphoria reigned amongst the co-sponsors and the IPPNW team, who felt the large majority ensured the resolution's security in the final Plenary. However, Janson again warned that because of its contentious nature, it could be re-opened for discussion and a vote in the Plenary as had happened during the 40th WHA. Late that evening she went to the WHO library to get copies of that resolution and prepared a paper for delegates in case this scenario arose. [76] For 24 hours the team rallied their supporters, including more late-night visits to their hotels, because many were under intense pressure. Australia sponsored a luncheon for South Pacific delegates timed to coincide with the Plenary vote. Lini realised it was a decoy, and rallied her neighbours and fellow NAM members to vote for the resolution.

Normally, the reports of Committees A and B are approved without further debate by the Plenary. On this occasion, when the Chair asked for the ICJ

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<sup>75</sup>. Provisional Verbatim Record of the Thirteenth Plenary Meeting of the 46th WHA, 14 May 1993, A46/VR/13. Note that a 'no vote' is different from an abstention. Those who chose not to vote included those who were genuinely absent, those who were deliberately absent (probably due to pressure), and those who did not want to cast an abstention. The latter usually indicates that the country cannot give support, due to political considerations, or minor disagreements with the text.

<sup>76</sup>. See, 40th WHA, 12th Plenary Meeting, 15 May 1987, WHA40/1987/REC/2.

resolution to be adopted, the US delegate demanded that the Plenary overrule Committee B's decision. He cited the competence question, and revived the already firmly rebutted red herring of the 'heavy and expensive' burden it would place on the WHO. The UK spoke strongly in support, arguing that this should be debated in the UNGA and the CD.

Colombia, Mexico, Tonga, Vanuatu and Zambia responded by pointing out that the Executive Board had included the issue on the agenda, Committee B had decided that the Assembly had the competence to refer the question, and the vote had been adopted 'overwhelmingly' by a majority of more than two to one. If the US motion was to be voted on, then it should be in secret.

Lini's intervention for Vanuatu moved many delegates with its passion and strength. According to a few sources, it even changed the heart and mind of the woman US Surgeon-General, but not her vote. [77] Lini spoke graphically about the health effects of nuclear testing in the Pacific, and the 'jelly-fish babies' which are born that breathe but do not have a face, legs or arms. She quoted from the UK House of Commons debate where the government had stated that there was no treaty outlawing nuclear weapons and therefore there was no need for an advisory opinion. She reminded delegates that atmospheric nuclear tests had only stopped after A/NZ and Australia had taken France to the ICJ. Speaking as the Minister of Health, Water and Population Activities of a NAM member, a WHO Vice-President, and an indigenous woman and mother affected by past nuclear activities, her authority was unquestioned. Everything fell silent when she spoke. Christ described her speech as the defining moment when:

....the whole psychological tide turned in our favour and there was a palpable energy and feeling that we were going to win after that point. She stepped out of the traditional governmental role and spoke from her heart. She was not speaking just for herself, you could feel many people speaking through her - she had that power of conviction.

France and Russia supported the US motion, and the Legal Counsel and Deputy Director-General repeated their earlier arguments. However, the

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<sup>77.</sup> M.Christ, H.Lini, G. Salmond: interviews with author.

Director-General did not oppose the resolution, and pledged his commitment to peace and the elimination of nuclear weapons. With regard to the budgetary constraints, he confirmed that he would not allow expenditures from within existing appropriations and would have to rely on receipt of sufficient additional voluntary contributions to implement the resolution.

Again the President allowed a show of hands on whether the final vote should be secret and passed by 75:33:5. The final vote, taken in secret, was 73: 40: 10 with 41 not voting. Ten more states decided to cast a vote in the final secret ballot which could have offered a safe haven for states such as Australia and A/NZ which joined the Netherlands and Canada in giving explanations of votes. Although they did not reveal how they voted, it is most likely that they abstained with Ireland and Sweden.

An analysis of the voting patterns in both Committee B and the Plenary shows how the secret ballot greatly improved the chances of the resolution's early success. In the first show of hands in Committee B, 43 states voted for a secret ballot, winning by only 9 votes. Of those present, 19 did not vote. A few minutes later, with 103 voting in secret, the US amendment was rejected by a majority of 24. Once it was clear that the first hurdle had been cleared and a sufficient number of countries had shown their hands, the next two open votes stayed fairly constant with two to one in favour of the resolution. When the final vote was taken in secret the majority had climbed to 42 with only 31 against, which was the lowest tally scored by the opposition.

When it came to the Plenary, it was clear that both sides had succeeded in convincing others to vote. The first 'open' vote was on the question of a secret ballot and the number of supporters rose from 43 in Committee B to 75 showing an increase of 32 votes. The final majority in favour was 33, the 'No' votes increased to 40 and the abstentions nearly doubled. Those who were absent included five of the co-sponsors and at least three other supporters, including Ukraine. It is impossible to ascertain what the final vote would have been if each country had been left to make their own decision

unfettered by big power politics, but the secret ballot at least allowed flexibility for some states.

Salmond attributed the resolution's successful passage to a variety of factors. Firstly, the anti-nuclear support within the General Committee was strong, and sufficient countries spoke out, despite intimidation. Secondly, the US delegation leader was disliked and nicknamed 'Mr No' because of his role in rejecting other agenda items. The US and its allies had bullied many small countries, including most of the co-sponsors. For example, Thailand was pressured to withdraw sponsorship but refused, deciding instead to be 'absent' during the final vote. Four other co-sponsors (Cuba, Republic of Moldova, Kazakhstan and Kiribati) also did not vote, which resulted in nearly a quarter of the co-sponsors opting out. This pressure in turn was counterproductive, as it strengthened the resolve of other states. Thirdly, the NWS and their allies were not well organised, having assumed that the resolution would easily be blocked. They did not get amendments together in time. This reflected a division within the Western bloc which probably came from the Australasians, Irish and Swedes, who were forced to reflect strong domestic public opinion. [78]

### ***Role of Citizen Groups***

From the foregoing account it becomes clear that, without the prominent involvement of prestigious and well organised citizen groups, a case would never have been brought to the ICJ. No country would have had the courage or incentive to incur the wrath of the NWS. There were only a few states where public opinion was strong enough to bolster sympathetic politicians and Ministry officials. But even those, like A/NZ and Sweden, were not prepared to go it alone, risking alienation from their 'friends', and the NAM was not cohesive enough to withstand the pressure. The leadership therefore came primarily from individual doctors who were IPPNW members and sometimes also Ministers of Health.

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<sup>78</sup>. G. Salmond, 'Notes and Thoughts on WHA 46', Geneva, 30 April - 15 May 1993, 35 pp.

IPPNW had a long and respected history of working with the WHA and Health Ministries in many countries. Janson was an astute strategist who was also very well organised and knew the WHO processes intimately and along with Salmond they knew many delegates as friends and colleagues. They developed good relationships with many officials, typists and even ushers who often helped them by sharing vital information or handing pieces of paper to delegates on their behalf. IPPNW produced very readable and well-documented papers and ensured that key delegates understood the arguments, giving them strong support during their presentations to committee meetings. Citizen groups were free to lobby delegates without being accused of being part of the traditional UN power plays. Delegates understood that these protagonists were motivated by a desire to preserve the health and well-being of humanity. The fact that most of the IPPNW team were fellow health professionals added to their credibility.

However, being an NGO rather than a government delegate carried personal costs for Salmond. With advocacy on a scale such as this, it meant the loss of some friends:

The New Zealand delegates were not allowed to talk to me. When I saw members coming... I'd see them duck into toilets or dive down alleys because they didn't want to see me.

The flip side of this was the support received from unexpected sources, such as a Chinese WHO Director of Development Issues who had worked with Salmond for over 20 years. He 'sneaked' him into cocktail parties and receptions as part of his delegation. Once inside, he introduced him to key delegates. When Salmond was unable to attach himself to others, he would 'gate-crash' pretending he was a late addition to the delegation. Many still treated him as a A/NZ delegate which certainly helped, although he always clarified his status as an NGO representative. It was through his professional relationship with the doctors on the Thai delegation that he secured their co-sponsorship. They were extremely disappointed when their government

instructed them not to support the resolution, and they remained personally supportive throughout. [79]

Individuals were also under pressure from the pro-nuclear lobby. Both Christ and Salmond confirmed that they were under surveillance at their hotel. Janson had mail opened during 1992 and was removed by the conservative government from the Foreign Affairs committee following the 1993 debate. Christ complained that the card phones outside their hotel mysteriously stopped working during the last days of the 1993 WHA. They had been the main source of IPPNW's contact with the ICJ, Central Office and key doctors in wavering states. However it was Thor's special phone card which could be used on internal WHO phones which gave the team immediate external access. Lini was also threatened and ostracised by Western delegates infuriated by her strong advocacy; and a few months later, she was sacked as Minister of Health. The letter of termination mentioned no misconduct or reason, but Lini attributes her dismissal to her WCP role. [80]

During the 1994 WHA, the Ugandans told the IPPNW delegation that they did not want to be seen talking with them because most of the people who worked closely with them in 1993 had been dismissed. The outspoken Zambian delegate Dr Phiri was also dismissed. [81] Although there is no evidence to support it, Salmond queried whether pressure had also been brought to bear on the international media covering the WHA. Despite the controversial nature of the resolution there was a total silence from them, and no interest in the IPPNW press releases.

Although IPPNW carried the greatest share of the workload associated with the WHA initiative, the other co-sponsors played vital roles. IALANA's Legal Memorandum and critique of the Piel opinion were important tools for the IPPNW team. Despite Geiringer's fear that interference by lawyers in the

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<sup>79.</sup> Salmond interview, op.cit.

<sup>80.</sup> Lini, Salmond, Janson and Christ interviews; Letter from Lini to Dewes, 27 August 1993.

<sup>81.</sup> Interview by Dewes with Michael Christ and Ron McCoy, New York, 23 March 1998.

WHA process might jeopardise its success, some IALANA members liaised with Foreign Ministers and helped convince them that the case could succeed - whereas some IPPNW members felt uncomfortable about approaching Foreign Ministers. Geiringer had been concerned that legal arguments should not overshadow the health debate within the WHA. He argued strongly that IALANA lawyers should not participate, even peripherally, in Geneva viewing their presence as 'superfluous' and potentially 'destructive'. [82] However, it was the parallel lobbying in New York by LCNP in particular which helped strengthen the position of the co-sponsoring and supportive governments. Advice from a range of IALANA experts regarding the resolution's final wording was crucial at the last minute. IPB members also lobbied diplomats in Geneva, and Foreign and Health Ministries in key countries.

For IPPNW, the WCP energised affiliates like no previous campaign. Members saw it as:

...a shining light that held the federation together through difficult times, because it was clear what the objective was and there was a time frame. It was a Project where a whole range of affiliates could participate in a whole lot of different ways, ranging from writing a letter to their Minister of Health to a full-blown campaign of public education with the media, collection of DPCs, and direct face-to-face meetings with decision makers. [83]

Whatever the final outcome at the ICJ, the process of getting there had been extremely valuable for all the citizen groups involved. Partnerships developed which were later consolidated in future projects.

## **9.6 From the WHA to the ICJ**

Resolution WHA46.40 instructed the WHO Director-General to transmit the advisory opinion request to the ICJ in accordance with Article 65 of the ICJ Statute. The official notification should have been sent to the ICJ within days of the resolution's adoption. Three months later this had not been done,

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<sup>82.</sup> Erich Geiringer, 'The Role of Lawyers in the WHA Initiative', WCP/NZ working paper, January 1993.

<sup>83.</sup> Christ interview, op.cit.

despite the precedent of a five-day transmission time with the 1980 advisory opinion request. The longest delay prior to this was eight weeks. On 24 June 1993, Piel wrote to IPPNW indicating that the WHO Secretariat had decided to delay the formal filing of a request for one year on the grounds that that would be 'the earliest filing date' for the ICJ and 'that the rate of further action is dependent on receipt of additional voluntary contributions'. Both excuses were spurious, because the ICJ decides how and when a request would be actioned, and there are no special costs associated with a request for an opinion. Any documents required for the notification were already available to the Secretariat. IPPNW and some of the co-sponsoring states wrote to Nakajima raising these concerns, and sent copies to the UN Secretary General and the ICJ Registrar.[84]

Finally, Nakajima sent the notification to the ICJ on 27 August. Within a week the ICJ sent an official acknowledgement, fixing 10 June 1994 as the time limit within which written statements relating to the question could be submitted to it by the WHO and its member states. Later this was extended to 20 September 1994, with a further limit of 20 June 1995 for states to make written comments on the submissions of other states. This was well past the date of the NPT Review and Extension Conference (17 April -12 May 1995) where the nuclear weapon states hoped to argue for indefinite extension, unfettered by any legal opinion from the ICJ.

IPPNW alerted President Clinton to the outcome, outlining US opposition to the WHO resolution and concern about disturbing reports they had received that:

....the US State Department has set aside \$800,000 to challenge the submission of the question to the ICJ by the WHO Director-General, and that the withholding of US funds for certain WHO projects, and perhaps for WHO's general budget, is under consideration. Rumours are also circulating that, at the WHO Executive Board meeting next January, an effort will be mounted by

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<sup>84</sup>. Erich Geiringer, 'What is Dr Nakajima up to?', September 1993, 2pp; Letter from Geiringer to M.Christ, 1 August 1993.

the US to have the WHO withdraw its request for an advisory opinion.  
[85]

Uncertainty about the future of the ICJ case remained throughout the following year as pressure was applied to states preparing submissions. Geiringer remained vigilant, always one step ahead of the opposition, warning IPPNW of possible countermoves and preparing strategies for action. IPPNW explored the chances of presenting a submission as an 'international organisation ....likely to be able to furnish information on the question'. Roger Clark, an A/NZ Professor of Law at Rutgers University, discovered a precedent in 1950 when the International League for the Rights of Man was permitted to file a document but not speak. He advised IPPNW to prepare both written and oral submissions, and worked with IALANA to prepare model submissions which IPPNW and states could use as a basis for their presentations. [86]

## 9.7 Conclusions

The WCP provided IPPNW with a way of raising the consciousness of not just the WHO but the world about the legality of nuclear weapons. Christ acknowledges the vital role of all three co-sponsoring NGOs and the wider peace movement in the process:

We created a new political forum, a new political opportunity which didn't exist before until citizen's groups decided that this was going to happen and we created it out of nothing. It was an idea... it is WE... it is not just lawyers, the doctors or the Peace Bureau...it is no one group.... it has been like a thousand points of light. [87]

Erich Geiringer and Ann Marie Janson were fine examples of the contribution key personalities can make with the requisite motivation, experience, financial backing from a prestigious international organisation, and access to decision makers and the media - in sum, the MacBride model. Working with

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<sup>85.</sup> Letter from Barry Levy (IPPNW) to President Clinton, 22 October 1993.

<sup>86.</sup> Letter from Professor Clark to Michael Christ, 19 July 1993; Letter from First Secretary of the ICJ to Clark, 18 November 1980; Letter from Clark to ICJ 30 October 1980; Roger Clark, 'The International League for Human Rights and South West Africa, 1947-1957: The Human Rights NGO as catalyst in the International Legal Process', *Human Rights Quarterly*, John Hopkins University Press, 1981, pp.101-135.

<sup>87.</sup> Christ interview, op.cit.

others, they effectively masterminded the strategies to obtain a WHA request for an ICJ advisory opinion. Geiringer's flamboyant writing and strategic thinking proved decisive in generating support for what became an unprecedented lobbying campaign by IPPNW. This, combined with the WHO experience and lobbying skills of Janson and Salmond in particular, and the high-level contacts and personal friendships with Health Ministers and officials, made a potent mixture. IPPNW's credibility as a Nobel Peace Laureate, with a history of authoritative publications, gave diplomats confidence that their briefings would be reliable, unbiased and thorough. IPPNW members and individuals such as Hilda Lini, Dr Tapa and others in sympathetic delegations were able to use IPPNW's research directly in their presentations and to attract co-sponsors within their regions.

With hindsight it is clear that the failure of the 1992 attempt was fortuitous. The resolution's 1992 wording would have allowed the pro-nuclear lobby to derail it and neither the international movement, nor the leading anti-nuclear states were ready to carry it through to the ICJ. By May 1993, the WHA resolution had laid a solid foundation for the forthcoming UNGA resolution. Its success paved the way for the NAM to consider co-sponsorship, well aware that it would need the backing of at least 111 states to withstand even greater pressure than that exerted at the WHA. On the other hand, the threats, bribes and other tactics of the pro-nuclear lobby had only served to reinforce the NAM's resolve. The indication of a split in the Western ranks also served to encourage the NAM's leading proponents.

Lessons learned at the two WHAs were also extremely valuable for the preparation for the UNGA. As 1993 drew to a close, nearly a million DPCs had been collected and the WCP had begun to gain prominence in Japan, Australia and other Western states. Citizen groups fed on the success, empowered to challenge governments to put in a submission on the WHA question and vote in favour of the UNGA resolution. Unlike many other peace movement objectives, these were achievable goals within a set time frame, and a growing number of groups in the international movement began to make it a priority.

# CHAPTER 10

## BUILDING PUBLIC AND GOVERNMENT SUPPORT: 1992-1994



*Photo by Martin Dunkerton*

**CHAPTER 10**  
**BUILDING PUBLIC AND GOVERNMENT**  
**SUPPORT: 1992-1994**

*I am convinced that the legal crusade against nuclearism has reached a crucial stage. We have an opening in these years after the Cold War that will not last ... never have we needed more this joint effort of IALANA, IPB and IPPNW, which by itself may prefigure the sort of new coalitions of the 1990s dedicated in various ways to the growth of global democracy. As always, denuclearization and demilitarisation will depend on the intensity and effectiveness of popular struggle. Falk [1]*

### **10.1 Introduction**

Following the successful international launch and the 1992 World Health Assembly (WHA) attempt, the anti-nuclear movement made the World Court Project (WCP) a priority and focused on strengthening global public support. The primary tools adopted were the collection of Declarations of Public Conscience (DPC); endorsements from citizen groups and prominent individuals; and publicising it in the media and group newsletters. Staging media events, often involving eminent supporters, helped educate the public and decision makers. While a few individuals lobbied diplomats in New York and Geneva, others corresponded with and met their local MPs and officials. ISC members met Foreign Ministers and officials in the capitals of key countries, held public meetings and spoke with the media.

Public education programmes proved effective in a few of the 'middle' Western nations where nuclear disarmament already had a reasonably high profile: A/NZ, Australia, Canada, Ireland and Japan. This chapter takes as a case study the growing support in A/NZ over a decade, and how the government and officials shifted from opposition in 1992 to support during

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<sup>1.</sup> Richard Falk, 'Nightmare weapons in a New World Order: Why We Need a Judicial Ban on Nuclearism', Keynote address to International launch of WCP, Geneva, 14 May 1992, p. 1-2.

1994. It ends with the struggle to convince them and others to make submissions to the ICJ on the WHA question.

## 10.2 Public Participation

For nearly a decade, Keith Mothersson had written extensively about how citizens could use existing international law to hold their governments accountable. During the 1980s he was closely involved with INLAP and the *Snowball* campaign, and was arrested in 1983 during an action linking the law and nuclear weapons. This experience convinced him that anti-nuclear campaigns would never succeed 'until we bring the criminality perspective to bear on these devices'. [2] He provided activists with legal arguments to use in their defence.

In late 1991, he wrote the International Peace Bureau (IPB) Guidebook for WCP campaigners, which outlined existing international law in relation to nuclearism; how to approach the International Court of Justice (ICJ); the role of lawyers; and how citizen organisations could influence public opinion. [3]

He saw the WCP serving an 'educative, focusing and mobilising function, whereby the entire civil society of the global community finds its voice and its dignity over against the pretensions of those who would treat us as global hostages'. [4] He advocated cooperation with politicians, diplomats and governments of many nations; international civil servants servicing UN agencies and committees; and international groups such as the Non- Aligned Movement (NAM) and Nuclear Free Local Authorities. The development of an efficient, well coordinated network of citizen groups was fundamental to the success of the campaign:

Every group - every society, club, union, guild, municipality, party, institute, small business, co-operative, kinship network, ethnic group,

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<sup>2</sup> Keith Mothersson, 'No Prerogative to Poison: an anti-nuclear study companion on Law and Peace and non-combatant rights', 1985, 34pp. See also leaflets by Mothersson: 'These are our laws. Let them Prevail!', 'No Dispensing Power! No Prerogative to Poison!', 'Law as Civilian Defence'.

<sup>3</sup> Keith Mothersson, *From Hiroshima to the Hague*, IPB, Geneva, 1992.

<sup>4</sup> Keith Mothersson, 'Perspective on Strategy, A 12 page paper outlining strategies for World Court Project UK Inaugural Meeting', 30 September 1991.

artistic project, band, team, religious community, round-table, fraternity, sisterhood ... each can be seen as one node of a global 'ecological' system. Together they comprise world civil society, a truly vast web of social relations ... [5]

The book described how through education, declarations, lobbying and outreach, groups could activate their members in a global movement. Although it was only published in English, Mothersson was well aware of previous peace movement tendencies towards middle class Eurocentricism, and male dominance. He challenged:

Who will reach out, and how, to... women of Ghana? Rotary Clubs of Ecuador? Aboriginal people of the Pacific? children of Bulgaria? veterans of Vietnam? human rights activists in India? building workers of Madagascar? municipalities in the Ukraine? environmentalists of Algeria? nurses of Canada? mothers of China? Mexican lawyers? Muslims of Indonesia? footballers of Brazil? ....

He advocated using brochures to outline briefly the WCP, and include a sample DPC documenting global support from groups and individuals. These could then be modified, translated and easily reproduced in each country, and include their own prominent supporters. The collection of individual signatures would also attract donations to help support the campaign. [6]

### ***Declarations of Public Conscience (DPCs)***

Although the collection of DPCs was only one facet of the global campaign, it became the most effective tool for empowering and educating grassroots individuals. Originally Mothersson's idea, it was later developed extensively by WCP(UK). He envisaged them as 'socio-ethical declarations with legal significance made by groups and ordinary people before the world', to which he anticipated the ICJ (and government legal advisers) would pay attention. Because the ICJ is only empowered to deal with states and other intergovernmental organisations, the DPCs could only be presented as an adjunct to various states' written statements.

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<sup>5.</sup> Mothersson (1992), op.cit., p. 135.

<sup>6.</sup> Ibid., Chapter 7; K. Mothersson, 'Memorandum to International Steering Group and to WCP-UK on de Martens Declarations and Approach to Networking Outwards', June 1992.

Mothersson drafted a detailed DPC which he presented to the July 1991 London meeting. Inspired by the idea of individuals making moral statements of conscience to the ICJ, George Farebrother initiated a pilot scheme with his local peace group and launched it in October. They hand-delivered copies of a more succinct declaration to a small group of Eastbourne householders asking them to study them. If 10% signed they planned to produce a 'posh version'. [7] Farebrother briefed the inaugural meeting of WCP (UK) that month, was appointed Secretary and asked to develop the DPC project.

Like Mothersson, Farebrother became aware of outlawing nuclear weapons through *Snowball* and had appeared in court after 'laying informations' against Mrs Thatcher (see 4.2). Farebrother saw the DPCs as a vehicle for activating groups. As a rather deferential character, he 'enjoyed the sense of power attained when sitting behind a table with posters outlining the project'. The DPCs had an air of authority and facilitated education of others in a non-confrontational way. He was excited by the level of community support and wanted the idea to be extrapolated globally.

He began working on this full time from home, building up supporters, refining the DPC and collecting donations.[8] Within a few months overseas groups began using the British model. For the next five years Farebrother coordinated the international collection of DPCs which were printed in 40 languages. On World Disarmament Day in October 1993, over 100,000 were presented to the UN in New York in support of the draft UN General Assembly (UNGA) resolution. In a ceremony which provided the focal point for international groups, boxes of DPCs from various countries were presented by various prominent citizens. Similar ceremonies were held in several other countries.

One of the most effective DPC collectors was Lilian Emsley, who single-handedly amassed over 75,000 signed DPCs in three years at her local stall in Croydon, UK. She reported that they gave people a sense of hope that groups of ordinary, determined individuals could change things. They were

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7. Letter from Farebrother to Mothersson, 23 September 1991.

8. Interview by Dewes with Farebrother, New York, April 1995.

excited by going over the heads of government direct to international law using letters, faxes and meetings with decision makers rather than resorting to marches and rallies. The WCP was presented as:

... a very serious, well-informed, competent international grouping in which they could put their trust. Everybody wants to sign and nothing will deter them; not arthritic or rheumatic hands and fingers, nor blindness, nor illiteracy, nor being in a wheelchair, not those walking supported by sticks, nor those bent over with age. And the youngsters are so keen! A few people tell me they have never before signed anything in the street, but, they say, this is really important. [9]

Emsley's personal approach touched people - they felt they had an important role to play in signing a DPC which would go to the ICJ. Approaching people individually established an immediate intimacy, facilitated dialogue and helped educate people about the UN and the ICJ. The brochures and DPCs gave people an opportunity to participate in a global action which was new, and different from signing a petition. Each DPC was personalised, and people could choose to become an active member of a group or make a donation. The WCP had an achievable goal and decision makers took the DPCs into account during their deliberations. Brochures with tear-off DPCs were easily included in mailings by a wide range of groups. In the UK in particular it became a very successful fundraising exercise and gave local groups, which had often gone stale on old campaigns, a renewed sense of purpose and inspiration.

### ***Endorsing Groups and Prominent Individuals***

Jaipal stressed the need for supportive letters from important NGOs to accompany any request to the ICJ. In 1991, Mothersson and Dewes gained endorsement from some very influential international NGOs (see chapter 8). National NGO support came initially from the UK and A/NZ, and a few groups from Canada, Germany and the US.

The May 1992 international launch gave groups an incentive to achieve results. The New Zealanders successfully campaigned to get prominent endorsers to lobby the government. Maori elder Pauline Tangiora wrote to

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<sup>9</sup>. Letter from Lilian Emsley to Robert Green, 17 September 1995.

the Maori Queen and other elders. Dewes and Ware approached mayors, academics, former PACDAC members, bishops and media personalities, while Evans wrote to legal associates. At the launch, the delegates were encouraged by their success and enthusiastically adopted the A/NZ model. Initial prominent endorsers included Vallentine, Caldicott, Joseph Rotblat (Pugwash), and a former Chief Justice of India.

Reports of the launch were published in NGO newsletters; but the mainstream media barely touched it, with no media coverage of parallel launches in Helsinki, India and the UK House of Commons. In A/NZ there was considerable interest from sympathetic journalists during the first WHA attempt, and Briant and Dewes were interviewed in-depth on national radio from Geneva. Securing publicity for the campaign was a major agenda item at the first meeting of the ISC. The IPB took responsibility for distributing most of the WCP material worldwide. They sent packs, which included sample brochures and DPCs, to over 100 groups asking them to disseminate them within their regions. In Geneva, the New Zealanders distributed copies of their peace movement's magazine *Peacelink*, which highlighted the WCP and provided analysis on A/NZ's UN disarmament votes (Figure 10). A graph showing which countries consistently voted for all disarmament resolutions (predominantly the NAM), those which voted in favour of about half (including A/NZ, Ireland, Sweden and Australia) and the tiny minority which consistently vote against (US, UK, and France) became a very useful tool for activists.[10] Later that year, Ware and Mendlovitz published a major article in the *UN Disarmament Times*, read widely by diplomats and international NGOs. [11]

Visits by ISC members to various countries helped raise the WCP profile and often attracted media coverage. For example, WCP (UK) Chair Robert Green toured A/NZ, Australia, Canada and Japan during 1992, where he addressed public meetings and encouraged groups to establish WCP branches. His

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<sup>10</sup>. Owen Wilkes, 'Guess who voted for disarmament and who didn't', *Peacelink*, Issue 103, May 1992, pp. 28-29. Owen Wilkes, 'Disarmament, the UN and NZ', *Peacelink*, Issue 102, April 1992.

<sup>11</sup>. Saul Mendlovitz and Alyn Ware, 'World Court Project on Nuclear Weapons', *Disarmament Times*, 24 November 1992, p.3.

recent nuclear weapon experience intrigued journalists, giving them a personal angle on which to base the more complex subject of nuclearism and international law. His military status gave him easier access to decision makers, especially within Commonwealth countries. Dewes met with NGOs, politicians, officials and journalists in Australia and Ireland, and addressed local WCP group launches around the UK with Green.

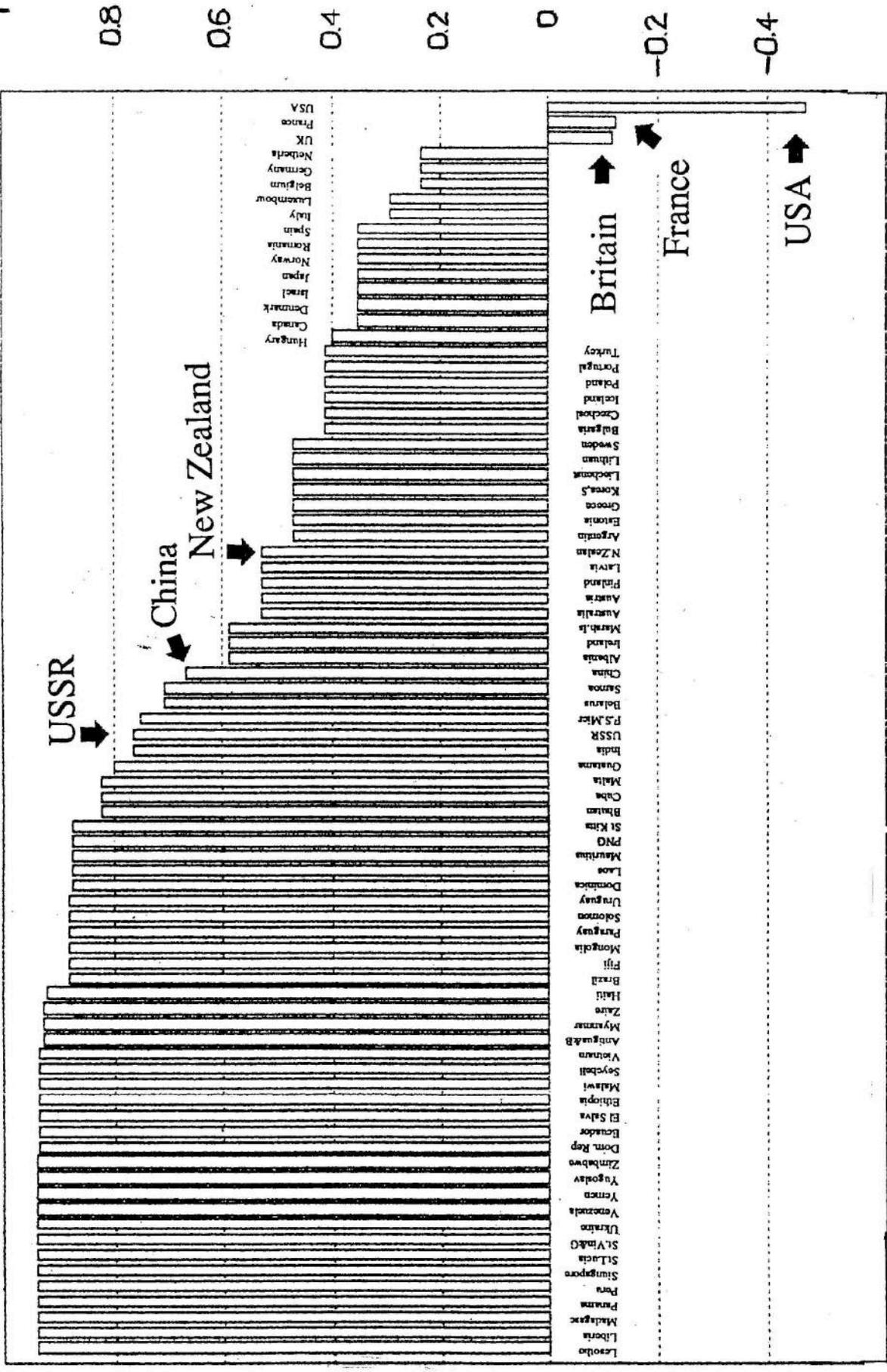
Ware, accompanied by Spanish speaker and LCNP media officer Gabriela Fried, visited Costa Rica, Mexico and Nicaragua where they held 28 meetings with officials and citizen groups in 10 days. He then toured California and other states meeting groups and distributing WCP material. As a direct result of these meetings, Earth Action sent out a WCP Action Alert to 750 NGOs in 101 countries. Ware also visited Japan and met with lawyers, doctors and the organisers of the 'Appeal from Hiroshima and Nagasaki For a Total Ban and Elimination of Nuclear Weapons'. Part of the Appeal states: 'The use of nuclear weapons will destroy the whole human race and civilisation. It is therefore illegal, immoral and a crime against the human community' (Appendix II). Begun in 1984, the Appeal numbered 42,888,670 signatures by 31 July 1993 and 56 million by 1997 - 47% of the Japanese population signed it, and it included signatures from over 160 countries. [12] The organisers agreed to present a sample at the October 1993 UN DPC handover ceremony, and sent 30 delegates.

By then over 480 groups from 86 countries had endorsed the WCP (Appendix II). The list included 30 international organisations, with the bulk of national and local endorsers coming from Western states: A/NZ (90), Australia (64), United States (44), Netherlands (43), Canada (29), Norway (20) and UK (15). A/NZ and Australia respectively gathered 20% and 14% of the total group support. The *modus operandi* of the Australasian peace groups was different from many of those in the US. Considering the small populations of both states, their achievement was remarkable and reflected how, particularly in A/NZ, the movement had built up strong coalitions during

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<sup>12</sup> Letter from Hiroshi Taka to Ware, 12 September 1993. See also Yasuga Noboru, 'Movement for a Nuclear-Free Local Government in Japan', Speech to IPPNW Regional Conference, Canberra, April 1997.





Source: Owen Wilkes, 'Guess who voted for disarmament and who didn't,' *Peacelink*, no. 102, May 1992, pp. 29-30.

past campaigns. It reinforced that public opinion was strongly in favour of the illegality of nuclear weapons and nuclear abolition.

A/NZ's peace movement had developed a non-hierarchical, participatory network during the early 1980s, whereas US groups tended to work more as individual cells. Ware discovered that LCNP, for example, was a more learned organisation, writing and publishing articles. It was established as an educational, charitable NGO with a set context in which to work. According to Ware:

US groups tended to focus on bits of the nuclear issue such as the Freeze, Strategic Defence Initiative and nuclear testing. Networking is something which hasn't been done until now to the same degree as it has in the Pacific movement. There is not a lot of outreach, they might cooperate when a big thing comes up, but most of the time they are just doing their own thing. Money comes from Foundations, and in order to get money they have to emphasise their uniqueness and it actually detracts from working together a lot. [13]

When Ware returned to New York in June 1992, he worked as an unpaid volunteer for LCNP for six months. He visited New York groups to encourage their endorsement and sent brochures to groups he had met in 1989 and 1991. Gradually the list of US endorsing groups grew, and by June 1994, their tally had doubled to 88; the UK's had grown from 15 to 40, Germany's from five to 36, Canada's from 29 to 60, and France's from three to 14. Internationals totalled 41, with over 500 organisations from 88 countries.

The outreach that Mothersson had envisioned began to materialise. There was a Green Earth Organisation from Ghana; Physicians from Ecuador; the Nuclear Free and Independent Pacific Movement (including Aborigines); groups from Madagascar; a women's Collective from India; Waterside Workers from Australia; nurses from Canada; grandmothers from Norway; Mexican lawyers; Muslims from Indonesia; and doctors, but no footballers from Brazil (see 10.2).

As the list of groups grew, more prominent individuals signed up including Countess Pamela Mountbatten, the Dalai Lama, Rigaberto Menchu and other

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<sup>13</sup>. Ware interview, 1996.

Nobel Laureates. Amongst the prominent politicians were Gorbachev, a former President of the USSR, the Australian Minister of Consumer Affairs and Zimbabwe's Foreign Minister. By October 1993 the list included musicians, film-makers, a former President of the World Council of Churches, Members of the European Parliament, General Secretaries of large unions, a Russian Princess, a former Secretary General of the International Commission of Jurists, 50 British MPs, 18 Bishops and two Archbishops. There was significant support from the wider churches, including the Anglican Consultative Council and Primates of the Anglican Communion; the Anglican Church in A/NZ and Polynesia; the Anglican, United Churches and Union of Spiritual Communities of Christ of Canada; the Dutch Reformed Church and the Inter-Churches Peace Council; the Church of Scotland; the British United Reformed Church; and Quaker Peace and Service International. At the 1993 Parliament of the World's Religions held in Chicago and attended by 6,000 delegates, a resolution was presented supporting the WCP and a Nuclear Weapons Convention. [14]

Support from indigenous peoples came through the Canadian Dene Nation; Ka Lahui Hawai'i; the Kauai Guardians (US); the NFIP; and Maori in Aotearoa. Ware, who has a Maori daughter, had a long history of working biculturally. He ensured that Native Americans welcomed delegates to the 1993 DPC handover ceremony at the UN. A Mohawk woman elder of the Wolf Clan, Chief Raymond Yowell of the Western Shoshone National Council, Hilda Lini and Pauline Tangiora spoke and shared traditional prayers and songs. Other speakers included Theorin, Weiss, Marin-Bosch and Dewes. Presentations were made by representatives from Africa, Aotearoa, Australia, Canada, Europe, India, Ireland, Japan, Latin America, Native American nations, Russia, South East Asia, the UK and US. A coalition of Japanese groups presented the Hiroshima and Nagasaki Appeal. The meeting room opposite the UN was adorned with banners, rainbows, quilts and other symbols from around the world. Large posters carried the updated list of groups and prominent endorsers. The UN Disarmament representative

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<sup>14</sup>. 'Our Voice: Proposals from the Parliament of the People', World Conference on Religion and Peace, no.9, 28 August- 5 September 1993.

was impressed by the degree of international citizen support and promised to convey this to the Secretary-General. A media briefing was held but attracted little response.

While many NGOs awaited news of whether the NAM would introduce the UNGA resolution (Appendix III), Dewes, Green, Lini, St John and Tangiora joined Ware as the UN lobbying team. Weiss and Mendlovitz offered legal advice, Theorin was a member of the Swedish delegation, and US and Canadian NGO volunteers helped staff the LCNP office. This group symbolised the ingredients Falk had earlier outlined for a successful structure. It drew on the strengths of professional groups, women and indigenous peoples, and made a powerful combination.

The international public education campaign was extremely successful in a very short time. Mainly as a result of the 1993 WHA, government delegates attending the 1993 UNGA were well aware of the growing international campaign. This in turn helped buttress them as they experienced increasing pressure from some of the NWS. Groups continued to collect DPCs to present to the ICJ during 1994 in support of the WHA question.

### **10.3 Case Study of Aotearoa/New Zealand:1992-1994**

*There is no humanity in the logic which holds that my country must be obliged to play host to nuclear weapons because others in the West are playing host to nuclear weapons. That is the logic which refuses to admit that there is any alternative to nuclear weapons, when plainly there is. It is self-defeating logic, just as the weapons themselves are self-defeating; to compel an ally to accept nuclear weapons against the wishes of that ally is to take the moral position of totalitarianism, which allows for no self-determination. Lange [15]*

As global public support strengthened, parliamentarians became increasingly aware of the need for a government response. The views of a wide range of respectable community leaders, city councils, church groups and professional organisations could not easily be dismissed as 'rabble rousing activists'. Government Ministers, especially in Western allied states, were confronted by highly articulate professionals demanding answers to awkward

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<sup>15</sup>. Speech by David Lange to Oxford Union Debate, March 1985.

questions on the legality of nuclear deterrence. Parliamentary colleagues requisitioned answers as to prospective voting in the UNGA and arguments presented in ICJ submissions on the WHA resolution. In A/NZ's case it seemed schizophrenic to outlaw nuclear weapons at a state level and not argue their illegality internationally. Democracies where parliamentary majorities were slim, such as A/NZ, Australia, Canada, Ireland and Sweden were particularly vulnerable to strong public opinion. Elections were due in Canada and A/NZ during the 1993 UNGA session, and opposition parties in both countries responded to growing pressure from their constituents to support the WCP.

This case study documents how public opinion affected both Labour and National governments in A/NZ, particularly the latter during 1992-94. Over a decade both parties had changed their policies to reflect growing public opinion, thereby ultimately influencing international decision making. Of all the Western states, A/NZ perhaps provides the best example of how participatory democracy can work when committed individuals and groups work collectively at the grassroots while maintaining close dialogue with decision makers. This section explores why A/NZ broke ranks with its traditional allies by indicating support for the ICJ resolution at the 1993 UNGA, voting for it at the 1994 UNGA, and arguing forcefully for the illegality of nuclear weapons at the ICJ in 1995.

Many factors contributed to the reluctance of both Labour and National governments to support the WCP until 1993. During the Cold War, A/NZ would not have succeeded in rallying support from sympathetic Western governments, nor could it be guaranteed support from NAM countries which usually supported UN anti-nuclear initiatives. A/NZ had for too long voted with the West or abstained on some anti-nuclear resolutions. Thus, leading NAM members did not believe that an A/NZ-led initiative would really challenge the Western NWS; nor did they trust A/NZ officials to argue consistently a strong anti-nuclear line when under pressure. Without Lange at the helm during 1989-90, Labour lacked the personal and political will to commit funds and personnel to an initiative. Officials were also unwilling to

alienate their Western colleagues further. The WCP was then perceived as a 'one man band' which did not command sufficient national or international backing from citizens and governments.

At the peace movement level, past experience with both the nuclear free legislation and the South Pacific Nuclear Free Zone indicated that consequential achievements in the area of nuclear disarmament often took a decade or more to come to fruition. A sufficient number of committed activists who had already persevered in these earlier campaigns knew instinctively that the present challenge was far greater, and would require a mammoth effort at home and abroad. Coalitions which had developed during the nuclear free struggle formed a strong base which helped bolster the key advocates promoting the cause overseas.

As early as 1986, opinion polls showed 92% support for the government promoting nuclear disarmament within the UN; 88% supported the promotion of NFZs; and 80% backed the nuclear free legislation. Another poll in late 1994 revealed that 85% wanted the government to put 'most effort' into promoting either, or both, conventional or nuclear disarmament; and 76% favoured the government backing the WCP; and over 77% of all MPs also supported it (see Figure 11). [16] With domestic public opinion firmly behind anti-nuclear initiatives such as the WCP, A/NZ activists focused on international outreach.

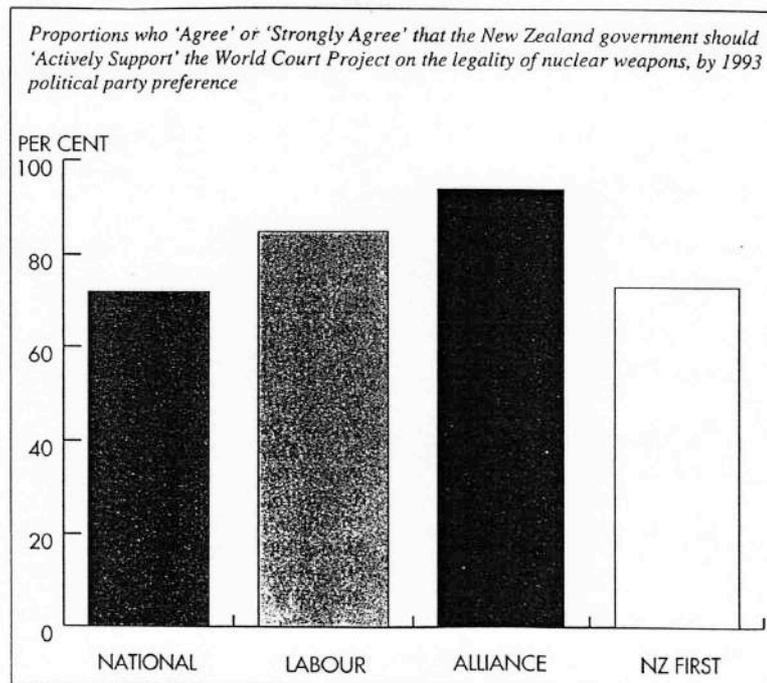
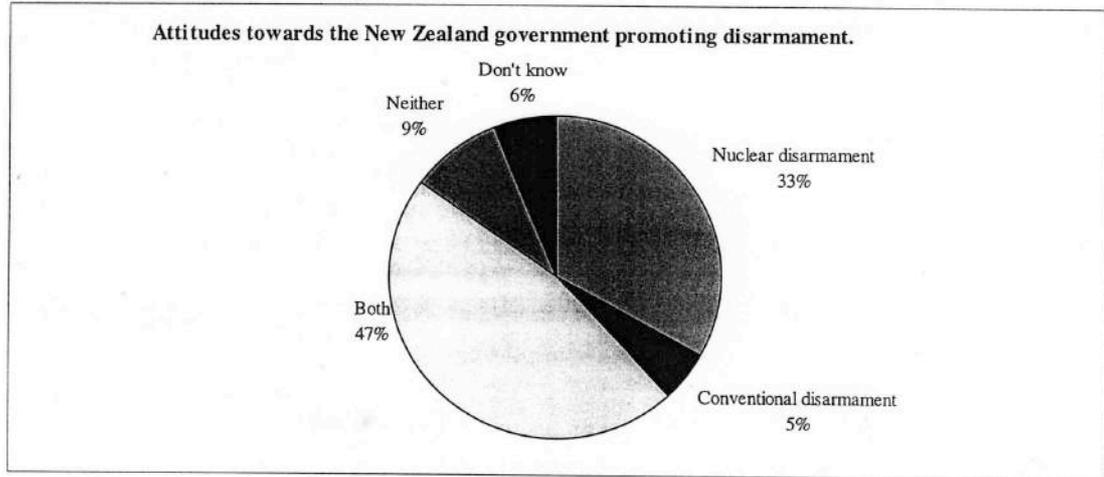
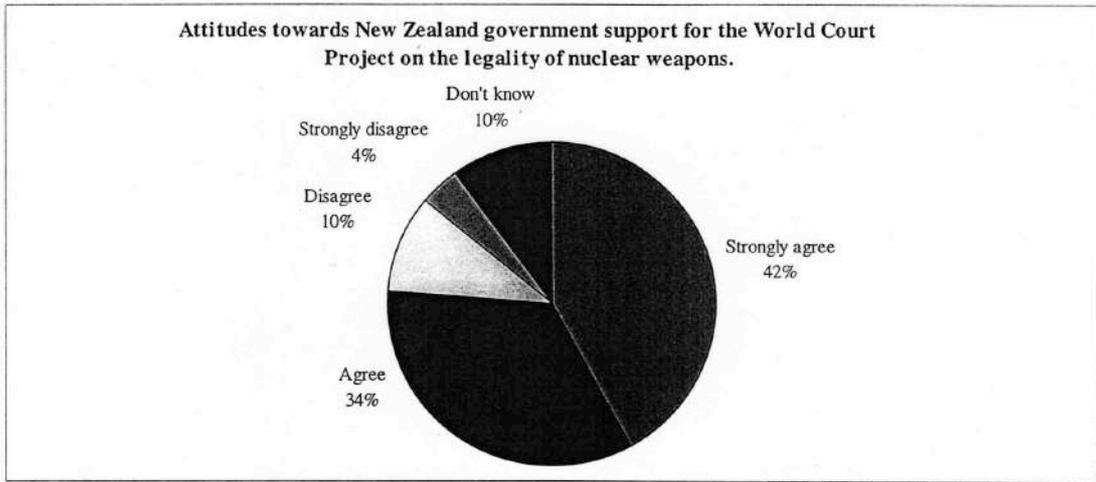
The catalyst for Green's 1992 A/NZ tour had been the establishment of a Special Committee on Nuclear Propulsion.[17] This was an attempt by the government to be seen as trying to resolve the anti-nuclear dilemma which had become one of the key impediments to normal US relations. Prior to the election, National's Foreign Minister McKinnon and Prime Minister Bolger promoted 'the principal objective ... to be seen as a nation reasserting its

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<sup>16.</sup> See *Public Opinion Poll and the Defence and Security: What New Zealanders Want, Report of the Defence Committee of Enquiry*, July 1986; S. Levine, P Spoonley and P Aimer, *Waging Peace Towards 2000*, Aotearoa/NZ Foundation for Peace Studies, Auckland, 1995, pp. 89-92 and 143-155.

<sup>17.</sup> Press Release from Prime Minister Bolger, 23 December 1991.

**Figure 11: NZ attitudes towards WCP and disarmament.**



Stephen Levine, Paul Spoonley and Peter Aimer, *Waging Peace Towards 2000*, Foundation for Peace Studies Aotearoa/New Zealand, Auckland, 1995, pp. 145, 90, 146.

*bona fides* in the Western alliance’, to revive the ANZUS alliance and restore full defence cooperation with Great Britain’. [18] In 1987, Bolger said:

We intend to amend the legislation to remove those sections which were included to prevent New Zealand’s defence co-operation with our allies, while making it clear that New Zealand did not want nuclear weapons in its ports.[19]

In 1991, McKinnon reasserted his intention to remove ‘the constraints we have imposed on ourselves by the anti-nuclear legislation’. [20] The attempt to change it in 1992 followed the US and UK decisions to withdraw nuclear weapons from surface ships, thereby facilitating a resumption of ship visits if the legislative clause banning nuclear propulsion were removed. Early in 1992, veteran peace researcher Owen Wilkes shocked the peace movement by promoting the ‘impeccable’ safety record of US nuclear-propelled ships. The government promoted this *volte face* vigorously, sparking controversy during 1991-93. A leaked US intelligence telex said the government’s decision to form a committee was ‘part of a continuing effort by Bolger to weaken or skirt anti-nuclear laws that have strained US-New Zealand relations’. [21] Canada’s Disarmament Ambassador Peggy Mason visited A/NZ to promote her government’s permissive nuclear ship policy. She touted Canada’s strict environmental monitoring regime for the visits, which had shown no radioactive contamination despite more than 100 port calls a year. She also reiterated the importance of accepting the nuclear deterrent as part of membership of a nuclear alliance. These media reports were sometimes linked with NZ’s Security Council bid, sparking fears that selling

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<sup>18.</sup> Don McKinnon, ‘National’s foreign policy: rejoining the Western camp’, *NZIR*, March/April 1991, vol. XVI, no. 2, pp. 2- 8, and Jim Bolger, ‘Restoring Credibility’, *NZIR*, July/August 1987, vol. XII, no. 4, pp. 6-10.

<sup>19.</sup> Bolger, *op.cit.*, p. 10.

<sup>20.</sup> *Evening Post*, 23 February 1991, reported in a letter from Mike Moore, Leader of the Opposition, 3 May 1991.

<sup>21.</sup> ‘PM shaping N-opinion-US leak’, *The Press*, 4 November 1991; ‘Nuclear report helps link’, *The Press*, 10 February 1992; Simon Upton, ‘The antinuke kiwi is a dead duck’, *The Dominion*, 14 October 1991; *Peacelink*, Issue 104, February 1993, pp. 2-7.

out the anti-nuclear policy could be the price of gaining Western support for the privilege. [22]

The peace movement urgently needed an authoritative figure who could counter the safety claims, challenge nuclear deterrence and promote the WCP. Green's credentials were impeccable. He also had damning evidence of British nuclear-powered submarines being banned from foreign port visits because of reactor cooling pipe cracks. [23] Peace groups organised meetings which attracted large audiences and extensive media coverage. He met with influential politicians, and members of the Nuclear Inquiry. In Auckland he joined Lange to launch the WCP officially, and addressed the IPPNW AGM.

Following Green's visit, a strong network of WCP groups based in Auckland, Wellington and Christchurch worked assiduously to build support. Part-time paid workers and volunteers in the main centres ensured that the campaign was well-coordinated and that smaller towns were included. Auckland took responsibility for national coordination; Wellington for lobbying MPs and Missions and preparing draft ICJ submissions for the government; and Christchurch worked primarily on international coordination and lobbying governments. Each node networked groups in their region encouraging them to design their own DPCs, hold local ceremonies and meet MPs. Politicians in marginal electorates and on Foreign Affairs and Defence Parliamentary Committees were prioritised. Letters were sent to city councils, tertiary student associations and church organisations, and displays put in community libraries and shopping centres. The Prime Minister was sent

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<sup>22.</sup> Mike Munro, 'Spirit of deterrence in Canadian nuke policy'; Simon Kilroy, 'Vying for a setting at the top table', *The Dominion*, 20 February, 1992.

<sup>23.</sup> Ken Coates, 'Officer's aunt murdered by nuclear barons?', *The Press*, 30 September 1992. See also, 'Cracking Under Pressure: the Response to Defects in British Nuclear Submarines', Scottish CND, June 1992, 29 pp.; David Leigh (Presenter), *Polaris in Deep Water*, Thames TV documentary, September 1991. Transcript of interviews with Reg Farmer, Chair UK Warship Safety Committee, September 1991; John Large, 'Reactor System Defects in Royal Navy Powered Submarines', 4 December 1990. Tom Wilkie, 'Defects hit nuclear fleet: Polaris faults put effective British deterrent at risk', *The Independent*, 11 May 1991.

thousands of postcards calling for A/NZ to vote for the UNGA resolution and make a strong ICJ submission (Figure 12). Prominent endorsers were asked to write to key government ministers, secure signatures from their friends and colleagues, and send donations.

Events such as International Women's Peace and Disarmament Day, Hiroshima and Nagasaki Days and an international 'Peace, Power and Politics Conference' were used to attract media interest. On the 11th Anniversary of Wellington's Nuclear Free Declaration, Mayor Fran Wilde and other Councillors publicly signed DPCs and received considerable media coverage. In Hiroshima Week, Wellington groups organised a WCP play at a street festival, a Dedication Service in the Cathedral, and a UNA sponsored public meeting addressed by Lange, Kenneth Keith, Salmond and Kathryn Asare (Asare had run extensive interviews with Geiringer, Dewes and Ware on National Radio). The UNA sent cards outlining the WCP history to their international branches seeking endorsement. A feature article including a clip-out DPC was published in the Presbyterian newspaper sent to 55,000 churchgoers.

In Rangiora, a small town near Christchurch, local pensioner Colin Ayers hung a huge WCP banner across the main street, asked local people to sign DPCs, and funded a DPC clip-out in the local paper. The first day netted 235 signatures, with 1500 by the end of the week. The local National MP held a marginal seat, and eagerly signed a DPC when a delegation presented them before waiting media. [24] Celebrity signing events were held throughout the country on Hiroshima Day, and by early October 1993 there were 358 prominent endorsers including Mayors, Councillors, Church leaders, politicians, Judges, media personalities and academics (Appendix II).

A ceremony at Parliament House was planned for 28 September in order to put maximum pressure on the government, and to allow time to transport 24,000 DPCs to the UN. The Wellington ceremony was hosted by Labour's Disarmament spokesperson Chris Laidlaw, and Maori elders welcomed the

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<sup>24.</sup> Letter from Colin Ayers to Dewes, 13 September 1993, Glen Inwood, 'Signatures in demand', *North Canterbury News*, 13 September 1993.

participants. The Rangiora banner hung on the stairs near a large pair of scales depicting a nuclear weapon balanced by DPCs. Representatives from a wide range of groups presented Disarmament Minister Doug Graham with 24 boxes each containing 1,000 DPCs.

The Minister's response was extremely encouraging. In a speech reminiscent of Kirk's call for A/NZ to 'bring alive the conscience of the world' and Lange's international promotion of the issue, he described the 'impressive' number of declarations as an 'expression of democracy at its best'. He paid particular tribute to Evans and added:

...I don't think there would be anybody in New Zealand who does not think and worry about nuclear weapons. I suppose there aren't very many people throughout the world who aren't worried about it, although I suppose there are some countries where matters are so difficult that international causes rather pass them by. When that occurs I think it is even more important that countries such as ours take up the challenge and are heard. Now it is a fact of life that times change and attitudes change and there's a time sometimes to make a move and a time to pause. It seems to me the time to make a move has certainly arrived ...and the cause is so great that we should never turn down any initiative which is sensible, which is rational and constructive.

He indicated that there would be little doubt that A/NZ would support the UNGA resolution if it went to a vote. [25] He agreed to send the DPCs to the UN, where his brother was to help present them to the UN.

This public statement was the first official indication of government support. Minister of Trade Phillip Burdon had earlier paid tribute to Evans and others during a DPC ceremony in Christchurch, and reflected on the role of substantive movements for change:

Whether it be the women's movement ... the elimination of racism...indeed the environmental concerns that are now rightly a part of the conservative deliberations of world leaders. It has not happened simply because someone in Parliament has raised it. It has happened

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<sup>25</sup>. Speech by Hon Doug Graham at Wellington Declaration Ceremony, 28 September 1993.

specifically and indeed exclusively because groups such as yours have moved to act as a catalyst to marshal public opinion.[26]

That said, politicians were crucial in helping change the government's position. Prior to the 1993 UNGA, both the Labour and Alliance Parties announced they would co-sponsor the ICJ resolution if they became government. Labour's election manifesto stated that they would 'actively promote and work for a judgement by the ICJ on the legality of nuclear weapons ... and vote for UN resolutions which are critical of nuclear deterrence and which attempt to outlaw nuclear weapons'. Both Helen Clark and Chris Laidlaw asked Parliamentary Questions on the government's voting intentions and its WHA abstention. Two National politicians signed as supporters and lobbied their colleagues. In May the Attorney-General Paul East hoped 'NZ would vote in favour' of the resolution; and in late July even Foreign Minister McKinnon admitted it was 'quite likely' the government would support it and might co-sponsor. [27]

It is illuminating to trace how the government's arguments changed in response to growing public support prior to the election. This section draws on letters from Ministers to citizens, press statements, answers to Parliamentary Questions and Ministry briefing papers obtained under the Official Information Act. The latter revealed instructions to the 1992 WHA delegation not to give an explanation of vote, and to oppose the resolution 'provided most western countries do likewise and that we are in company with either or both Canada and Australia'. Following the resolution's failure on procedural grounds, the Ministry stated that 'this result sets a useful precedent, should the issue arise again in similar fora'. [28]

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<sup>26.</sup> Speech by Hon Phillip Burdon at Christchurch Declaration Ceremony, 24 September 1993.

<sup>27.</sup> Letter from Anderton to Dewes, 5 May 1993, Alliance Press Release, 18 June 1993; 'Labour Directions: Towards a Foreign Policy for the Nineties', Wellington, 12 November 1992; Press release from Chris Laidlaw, 28 September 1993; Letter from Chris Fletcher to Dewes, 14 April 1993; Letter from Paul East to Sarah (Dewes) Bruce, 31 May 1993; Marion Hancock's interview with Don McKinnon, 17 July 1993.

<sup>28.</sup> Briefing papers from P.W. Adams for the Secretary of External Relations and Trade to the Minister of External Affairs and Trade, 12 and 14 May 1992.

However by 1993, the situation had changed. Support within A/NZ and the WHA had grown substantially and the government reviewed its position. Excuses given by Ministers still echoed similar arguments appearing in Australia, Canada, the UK and even Ireland. They included:

- a preference for negotiation rather than declaratory judgements;
- it was a political and security matter rather than a legal argument and should be dealt with in the UNGA and not clog up the WHA agenda;
- it might jeopardise efforts to permanently extend the NPT and negotiate the CTBT;
- little international political will would be generated by an ICJ opinion;
- NZ strongly supports other moves which are likely to be effective in controlling and eventually eliminating nuclear weapons. [29]

The 1993 WHA delegation was instructed to vote in favour of the US amendment (to scuttle the resolution), and to 'co-sponsor, but only in company of like-mindeds like Australia, Canada, Sweden and preferably some non-WEOG'. (WEOG: Western European and Others Group) If the amendment were defeated they were to abstain.[30] So, effectively A/NZ was part of the strong Western opposition, while presenting a public face that the other considerations were paramount. The Minister even admitted that it was 'no secret that we would have been glad for the resolution not to have been proceeded within the Assembly'. He explained to IPPNW(NZ) that it would cost the WHA up to US\$200,000 to take the question to the ICJ, despite this being exposed as misinformation during the Assembly. [31]

Following the dramatic success of the WHA resolution, Ministry officials asked the Disarmament Minister: 'Do we maintain our existing reservations, which are partly legal, partly procedural and partly practical, or do we give

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<sup>29.</sup> Ibid.

<sup>30.</sup> 'Instructions on Voting to the NZ delegations for 46th WHA Agenda item 33'; NZ Explanation of Vote, Item 33; Letters from McKinnon to Dewes, 22 April 1993 and 19 May 1993; Letter from McKinnon to Evans, 14 May 1993.

<sup>31.</sup> Letter from McKinnon to Dewes, 20 September 1993; letters from McKinnon to Dr Helen Kingston, 21 July 1993, and Joan Macdonald, 16 August 1993.

more weight to the positive, essentially symbolic and presentational aspects of the concept even if it is unlikely to be effective?' In an interesting admission of the power of public opinion, they advised that:

...the WCP will not go away, momentum is gathering behind the Project with support coming from an increasing number of countries and from NGOs; domestic public opinion ... is continuing to grow and it is now inevitable that a resolution will come before this year's UNGA. This resolution is virtually certain to succeed. Pressure will mount on the government immediately prior to the election to support this resolution and even to co-sponsor it, rather than to abstain on it.[32]

They added that 'a contrary judgment could be counterproductive to the goal of eliminating nuclear weapons' and even 'if the judgment favoured the proponents' the opinion would not commit governments. This rejection would undermine the ICJ by setting back the parallel but more promising, path of negotiation. However, for the first time the Ministry outlined some positive arguments:

- if the ICJ finds the use or threat of use of nuclear weapons to be illegal, it will further de-legitimise them in the eyes of international public opinion;
- even if nuclear weapon state governments initially take no notice, ultimately they will be obliged to do so;
- it would be consistent with NZ's long advocacy of a CTBT, which would also serve to de-legitimise nuclear weapons, and our support for their eventual elimination;
- as a matter of principle we should not stand in the way of legitimate recourse to the courts;
- support would accord with the preferences of many New Zealanders.

The Ministry advised the government that it would be advantageous to support the resolution earlier rather than later. This could anger the Western states which might 'lead them to block our efforts to become a member of the Conference on Disarmament, where the CTBT is likely to be negotiated'. They recommended future public statements should indicate that 'although

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<sup>32</sup>. Submission from Graham Fortune, Acting Secretary of Foreign Affairs and Trade to the Minister of Disarmament and Arms Control, 29 July 1993.

there is room for legitimate doubt about the tactical wisdom of the approach, if a reasonable and workable resolution comes forward the Government will be inclined to support it'. [33]

By this time the WCP had become an election issue. In early April, Labour led in the polls with 48% and National at 30%. Two months later Labour had a 28% lead with 52% of the vote. [34] National had already undermined the anti-nuclear policy by attempting to change the law in relation to nuclear propulsion. A February opinion poll had confirmed that nearly 60% believed that nuclear-powered ships were unsafe, and although 56% supported the resumption of traditional defence ties, two thirds of them said any revival of ANZUS should be conditional on the US accepting NZ's anti-nuclear law. [35] In August, Prime Minister Bolger mollified public opinion and reaffirmed National's support for the nuclear free policy.

Following the election on 6 November, there was a week when it was not clear which party had won. This was during a critical phase at UNGA when the resolution's future was in jeopardy. Dewes, on her return from the UN, publicly called on the four main parties to consider co-sponsorship with some non-aligned states in order to save it. Labour and Alliance political parties were already committed to co-sponsoring and requested consultation with National. In the event the National government held power by a slim majority, and the opportunity was lost. On 17 November, Graham confirmed the government's intention to vote for the resolution if it went ahead.[36] Foreign Minister McKinnon still opposed the initiative. It gradually became clear that the perceived change in government policy was for political expediency and did not indicate a real shift. He felt that the last-minute withdrawal of the

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<sup>33.</sup> Ibid.

<sup>34.</sup> Oliver Riddell, 'Labour stays well ahead in poll', *The Press*, 8 April 1993; Oliver Riddell, 'Labour crushes Govt with 28% lead in poll', *The Press*, 9 June 1993.

<sup>35.</sup> *National Business Review* poll, 26 February 1993, quoted in Jane Kelsey, *Rolling Back the State*, Bridget Williams Books, Wellington, 1993, p 316.

<sup>36.</sup> Phone conversation between Doug Graham and Dewes, 17 November 1993, and subsequent public announcement.

resolution by the NAM two days later (see Chapter 11) was sensible as it had 'provoked considerable division among delegations'. [37]

#### 10.4 WHA Submission and the UNGA Resolution

As will be described in Chapter 11, the UNGA resolution was introduced but not voted on in 1993. During 1994, states prepared submissions to the ICJ on the WHA question, and prepared to re-introduce the resolution during the UNGA. As a result of A/NZ's indication of support, politicians and the public were subject to pressure from Western allies to refrain from supporting the WCP. High-level US and UK military and diplomatic visitors urged A/NZ to support the indefinite extension of the NPT in 1995, and some openly criticised the WCP (Figure 13). [38] The National leadership vacillated between Western collegiality and its own democratic principles. A group of eight National politicians (led by members of Parliamentarians for Global Action) joined their Labour and Alliance colleagues in attempts to convince the government to make a submission, and vote independently in the UN. [39]

In February 1994, WCP supporters sent congratulatory letters to key Ministers acknowledging their mooted support for the resolution. They also sent briefing papers on the ICJ's invitation for submissions on the WHA question by 10 June 1994. They called for the establishment of a non-partisan working group involving representatives from the major parties and

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<sup>37</sup>. Letter from McKinnon to Dewes, 26 November 1993.

<sup>38</sup>. See David Moss, British High Commissioner, 'The ties that still link UK and NZ', *The Press*, 6 February 1993; For summaries of these events see Bernard Orsman, 'US remains unhappy with N-policy', *NZ Herald*, 1 February 1995, p.1; Ramesh Thakur, 'New Zealand Comes In from the Cold', *Pacific Research*, February 1995, p.18, Dave Wilson, 'Washington invitation awaited', *The Press*, 18 November 1994; Simon Kilroy, 'Ambassador gives nuclear assurance', *Dominion*, 15 December 1994; 'PM denies nuclear trade-off for US invitation', *The Press*, 6 January 1995.

<sup>39</sup>. 'National MPs Welcome World Court Submission as a Step in the Right Direction', Joint Media Release by Chris Fletcher, Pauline Gardiner, Michael Laws, Joy McLauchlan, Brian Neeson, Katherine O'Regan, Tony Ryall, Nick Smith, 9 June 1994.

Figure 12: Postcard sent to Prime Minister Bolger re WCP. Graphic designed by Robert Green.

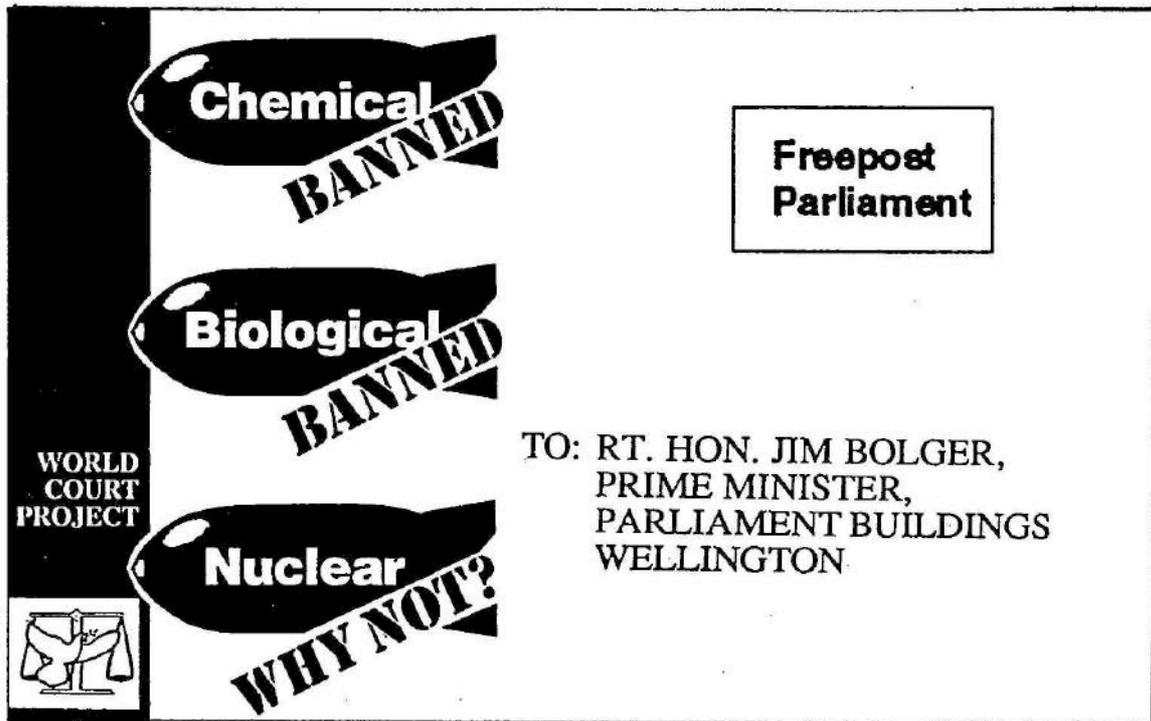


Figure 13: Garrick Tremain, *Christchurch Press*, 13 June 1994, showing NZ's Prime Minister and Minister of Foreign Affairs 'muzzling' the peace movement.



the three WCP co-sponsors. The Ministry's abrupt and evasive response noted the ICJ Communique was 'strictly speaking a notice of time limit' and it was 'incorrect to characterise it as an invitation'. [40]

Following National's 1993 election victory, the Ministry pursued policies aimed at securing a thaw in ANZUS: therefore an ICJ submission which challenged the legality of the West's fundamental security policies was antithetical to this. WCP supporters alerted their parliamentary allies to explore all avenues to force the government to reflect the strong public support. The Opposition Spokesperson on Health, Lianne Dalziel, was MP for Christchurch Central and personally very supportive. She convened a PGA meeting, and discussed strategies with Lange and others. A WCP delegation met with McKinnon to present him with IALANA's and IPPNW's draft submissions and argue their case. He reassured them that a decision was imminent.

A February 1994 Ministerial briefing paper advised consultations 'with a range of countries on the basis that the Government is at present disposed not to make a submission to the ICJ, but reserves its decision until it can be made in light of the known attitudes of others whose judgement we value'. Ministry officials were concerned that Western countries would oppose an A/NZ submission arguing that in previous advisory opinions 'only a small number of concerned governments have responded'. They also warned that there would be considerable legal costs including engaging international legal counsel. However, there was pressure to put in a submission because it 'would be responsive to the considerable degree of public support..., would be consistent with the Government's willingness to support a UNGA resolution and would avoid domestic criticism'. [41]

In March, three months before the ICJ submission was due, Dalziel forced two debates in the few weeks before Parliament went into a seven week recess. She moved an amendment to the motion for the Address-in-Reply

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<sup>40.</sup> Letter from McKinnon to NZFPS, 17 February 1994, and PACDAC minutes, 21 February 1994.

<sup>41.</sup> Ministerial briefing papers from G.C.Fortune, 15 February 1994, 4pp; 5 May 1994 and 2 June 1994, released under the OIA.

the day before the Foreign Affairs and Defence Select Committee heard submissions on a WCP petition from Nelson. The amendment called on the Government to 'make a forthright and comprehensive submission to the ICJ ...' and was debated the day after the Select Committee hearing. This was addressed by the Nelson petitioner, WCP representatives and the Ministry on 23 March.

The Ministry repeated previous negative arguments in an effort to retract their pre-election support. They reported on the 'initial skirmishing stages in discussion with 20 other governments: only four will submit opinions to the WHA, 10 were undecided (likely not to) and six will not make submissions'. These included all the NATO countries, three Western non-NATO, all five nuclear weapon states, Australia and Japan. Claims were again made that international legal help was necessary, and that the Ministry lacked time, money and resources to prepare a highly technical paper. Lange challenged the 'same old Ministry advice in that vein' adding that 'it's time to get some competent and up-to-date legal advice'.<sup>[42]</sup> The Ministry denied any knowledge of submissions being prepared by Sweden, Ireland and Mexico, contradicting the information provided by Dewes. She immediately faxed contacts in these countries who confirmed her information. The Ministry's paper was faxed to Ware in New York, where he refuted their arguments and provided Opposition politicians with up-to-date analysis and indications of support from other governments. These independent documents were vital in order to counter Ministry misinformation during Parliamentary debates.

The Chair of the Select Committee, Joy McLauchlan, was sympathetic to the WCP. As pressure grew within her Committee to take action, she joined seven other National MPs in publicly calling on the government to make a submission. They called for a specific debate solely 'to determine Parliament's viewpoint on this critical international matter'. The Prime

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<sup>42.</sup> Transcript of tape of Select Committee Meeting, 23 March 1994 by Graham Tyree; Ministry's Submission to the Foreign Affairs and Select Committee regarding the Petition 1991/3254 of Graham Tyree, 16 March 1994.

Minister and Chief Whip assured them that a debate would follow the Foreign Affairs Select Committee's Report the next week.

In a feisty debate on the amendment on 24 March, Lange challenged the government to 'ditch' their 'informal system of knee capping' and allow the maverick MPs to follow their consciences and vote in favour. In a passionate plea, he begged the government to stop 'smelling the armpits' of other states, and make an independent judgement and submission. With the prospect of another parliamentary debate, the government reined in the dissident MPs, winning by two votes (42 to 40). [43]

Lange led the second debate initiated by Dalziel, recounting Labour's previous reluctance to pursue the WCP. He acknowledged that times had changed, and cited the WCP as a test of the nation's sovereignty:

It is an issue of principle, not an issue of popularity. It is an issue of survival, not an issue of cocktail-socialising with the diplomatic representatives of a whole bunch of countries that could not care less.

He reminded them of the ICJ's milestone judgment on French nuclear testing in 1973-4, and challenged Doug Graham to lead his party through a process of thinking about change. The previous week, Graham had delivered a remarkably liberal speech saying 'New Zealand would be better off equipping itself to work with multinational defence forces in the UN than trying to revive the ANZUS alliance'. He suggested that 'the world had moved on to such an extent that alliances of one sort or the other do more harm than good'. [44] This caused severe ructions, with Defence Minister Cooper fearing this could be a 'signal to Australia, our American friends and other partners in the five-power defence arrangement that we were not serious about defence'. McKinnon was obviously displeased. [45] However, a few days later Graham defended government inertia on the submission, and in contrast to his earlier

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<sup>43.</sup> Hansard, Address-in-Reply, 24 March 1994, pp. 766-770.

<sup>44.</sup> 'NZ better off in UN than ANZUS-Graham', *The Dominion*, 22 March, 1994; Speech by Hon Doug Graham to Paraparaumu Rotary Club, 21 March 1994, 7 pp.

<sup>45.</sup> Mike Munro, 'Ministers at odds over NZ's future defence role', *The Dominion*, 23 March 1994; 'Cool reaction to ANZUS plan', *Evening Post*, 22 March 1994.

public support, echoed the Ministry's fears that there was very little international support for the WCP, and A/NZ might be the only non-nuclear state to submit. He confirmed that of the countries contacted, four would make a submission challenging the jurisdiction; 13 would not submit and three were undecided. The NAM 'backed off when it came to the crunch and even Zimbabwe ... was seen running out the door'. Lange retorted that they were probably carrying a large cheque from the US. Of the now 12 openly-supportive National MPs, only three spoke out. They were joined by the leaders of the Alliance, Labour and NZ First parties. Dalziel again pushed for a vote, but the motion lapsed due to a time limit technicality. [46]

Following the debate, Dewes alerted Doug Graham to a resolution by the Swedish Foreign Affairs Committee which bound the government to put in a submission. In the December 1993 PGA newsletter, Theorin described how Swedish MPs were working across party lines to prepare an ICJ submission. PGA (NZ) wrote immediately to the Ministers of Foreign Affairs and Disarmament formally requesting that A/NZ make a submission: 'We do not believe there are any circumstances where the use of nuclear weapons could be considered legal, having regard to the corpus of international law'. Ironically the letter was drafted by Doug Graham's brother (Secretary-General of PGA) who had also sought support from the Australian branch. Both groups eventually gave unanimous support and lobbied their Ministers. The Australian government's response, and news of the Swedish initiative, were then published in PGA's newsletter. [47]

With Parliament in recess, it was almost impossible for politicians to take any further action. However, David Caygill, (former Labour Minister of Justice), assisted by Geoffrey Palmer, drafted a bill entitled *Legality of Nuclear Weapons* which, if adopted, would have ensured a written submission to the

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<sup>46.</sup> Hansard, Petitions: G.K.Tyree, 29 March 1994, pp. 815- 829.

<sup>47.</sup> Maj Britt Theorin, 'Can Use of Nuclear Weapons ever be Legal?', *Global Action*, December 1993, p 8; Letter to Editor of *Global Action* from Garrie Gibson, PGA Australia Chair, March 1994, P 14; Dianne Yates and Nick Smith, 'Are Nuclear Weapons Illegal? - Views from PGA-New Zealand and PGA-Australia', *Global Action*, June 1994, pp. 5-6 and p.12. Letter from Dianne Yates to Dewes, 5 May 1994.

ICJ by A/NZ. It argued the WHO's competence, outlining the legal merits of the case. Meanwhile WCP supporters maintained a barrage of letters to Ministers, wrote to newspapers, met National MPs and sent out WCP Bulletins to politicians and others. Evans wrote further Open Letters, and the Wellington group placed a large advertisement in a community paper which named supportive National MPs and asked people to fax Ministers.

Within a fortnight of the parliamentary debate, the visit of Admiral Larson, US Commander-in-Chief of the Pacific Command, attracted intense media attention. It was the first significant contact with the US military in nearly a decade and was aimed at re-establishing top-level military and political contact, and upgrading the relationship from 'friend to ally'. Ironically while Clinton praised Belarus for making 'the right choice by ridding itself of nuclear arms' Larson reiterated his country's disapproval of the anti-nuclear legislation and the WCP, strongly recommending NZ's support for unconditional extension of the NPT. [48] The public was being prepared for Bolger to meet President Clinton at the D-Day commemorations in Britain and France in June ( Figure 13). Newspapers carried editorials warning that 'domestic political pressure to jeopardise other productive relationships should be resisted', and that 'the WCP could seriously undermine the renewal of the NPT and the possibility of the acceptance of a CTBT...'. [49] Bolger assured Australia of A/NZ's commitment to defence after blunt

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<sup>48</sup>. 'US praises nuclear-free State', *The Press*, 17 January 1994; Interview with Ian Fraser, *TVNZ*, 14 April 1994, Brendon Burns, 'US thaw comes with nuke-stance caution', *The Press*, 15 April 1994; Admiral Charles Larson, 'Pursuing the Pacific Paradox, The United States-New Zealand Military Relationship: Past, Present and Future', Speech to NZ Institute of International Affairs, 12 April 1994. In August the Assistant Secretary of State Ambassador Winston Lord restated US policy that 'as long as New Zealand retained its 1985 legislation preventing the entry to its ports or nuclear-powered ships, or those which could have nuclear weapons aboard, "we cannot envisage a full return to our alliance relationship" '.

<sup>49</sup>. 'On Speaking Terms', Editorial, *The Press*, 22 February 1994, 'Risky Business', Editorial, *The Press*, 10 May 1994; 'Important invitation', *The Press* editorial, 12 January 1995; Michael Rentoul, 'Prime Minister to visit White House in March', *The Press*, 1 February 1995; 'Back to the White House', *The Press*, editorial, 2 February 1995; David Lange, 'We can't agree, so let's do little', *The Press*, 17 January 1995.

warnings from their Ministers that A/NZ was not pulling its weight, causing a 'significant irritant' in the Trans-Tasman relationship. [50]

On the eve of the ICJ submission deadline, Bolger indicated that a British warship would visit within a year, symbolising a breakthrough in the 'impasse that had existed between New Zealand and former allies since the anti-nuclear legislation'.<sup>[51]</sup> A/NZ's Western allegiance was severely tested by the WCP, and an ICJ submission arguing illegality could sound the death knell of any future ANZUS relationship. Previously sympathetic Ministers like Graham were muzzled. He even began to argue that the government had a moral obligation to avoid taking the question to the ICJ and stated in Hiroshima at a UN Conference on Disarmament Issues that 'World War Three may have been prevented by nuclear deterrence'. [52]

As with the Labour government, the National Party experienced personality differences between key Ministers who saw themselves as future Prime Ministers. While McKinnon was viewed as an apologist for US foreign policy and in particular nuclear alliances, Graham held more independent and liberal views. McKinnon sought to reactivate ANZUS, even if it meant changing the nuclear free legislation, whereas Graham argued for post-alliance status and common security.<sup>[53]</sup> Graham was more receptive to

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<sup>50.</sup> 'Australia pushes NZ on defence commitment', *The Press*, 12 February, 1994.

<sup>51.</sup> 'Royal Navy to visit NZ soon-Bolger', *The Press*, 6 June 1994.

<sup>52.</sup> Letter from Doug Graham to Dame Laurie Salas, 13 April 1994, Speech by Graham to UN Conference on Disarmament Issues, Hiroshima, 24-27 May 1994.

<sup>53.</sup> Oliver Riddell, 'NZ 'legislated away deep trust' with US', *The Press*, 16 September 1991; 'PM signals review of N-ship ban', *The Press*, 1 October 1991; Gordon Campbell, 'Like the Bomb, Dammit', *The Listener*, 8 July 1991, pp. 10-15; David Lange, 'When posturing gets in the way of principles', *The Dominion*, 17 June 1991. Richard Long, "'Warhorse' McKinnon opens up second front", *The Dominion*, 1 May 1991; John Goulter, 'National, McKinnon wriggle on anti-nuclear policy hook', *The Evening Post*, 4 May 1991; Don McKinnon, 'New Zealand's Role in Collective Security', Address to Royal Institute of International Affairs, Chatham House, London, 25 April 1991; Brendon Burns, 'National walks out on ANZUS: McKinnon leads attack', *The Press*, 9 March 1990; Brendon Burns, 'McKinnon and PM at odds over ship visits', *The Press*, 5 March 1991; Paul Gorman, 'McKinnon calls for 'open' foreign policy', *Otago Daily Times*, 9 August 1991.

public opinion and as both Minister of Disarmament, and Justice, had a statutory responsibility to uphold the law. As external pressure was exerted on the government, seniority of Ministers held sway and Graham was touted as a credible messenger.

It was difficult to ascertain where Prime Minister Jim Bolger's sympathies lay. During the early 1990s the media portrayed fundamental differences between him and McKinnon on ANZUS and nuclearism. A pragmatist, Bolger was fully aware of the public's aversion to anything nuclear.[54] In response to Parliamentary Questions a fortnight before the June closing date for ICJ submissions, he expressed fears of a negative opinion which could give comfort to Iraq and North Korea, and was disdainful of Ukraine's submission. He indicated that 'no other country that we would seek guidance from' was putting in a submission, and the government had still not formed a final view. [55]

Despite media reports and updates indicating that Sweden, Ireland, Ukraine and at least 15 other states were submitting to the ICJ, the government relied on Ministry advice which eventually proved misleading and inaccurate. In answer to Clark's parliamentary questions, McKinnon announced that only two states had submitted, scornfully naming Rwanda and North Korea. This undermined his earlier statements that the ICJ 'does not release details of who has made a submission' and that 'submissions are confidential to the Court unless the Court eventually decides otherwise'.

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<sup>54.</sup> For outlines of their views on foreign policy see: Don McKinnon, 'Foreign policy-making -50 years on', *NZIR*, July/August 1993, vol. XVIII, no. 4, pp. 7 - 12 and Jim Bolger, 'Setting a clear vision: a foreign policy for the CNN age', *NZIR*, September/October 1994, vol. XIX, no. 5, pp. 20-22. See also, Malcolm Templeton, ed., *New Zealand as an International Citizen: Fifty Years of United Nations Membership*, NZ Ministry of Foreign Affairs and Trade, Wellington, 1995, especially chapters III, V and XI; pp. 90-91, p. 167.

<sup>55.</sup> Parliamentary Questions re Nuclear Weapons - International Court of Justice, 25 May 1994. Dewes wrote confidentially to McKinnon, Graham, Fletcher and Burdon attaching copies of the Swedish, Irish, Ukrainian submissions and copies of private correspondence from the Mexican Mission, 3-5 and 8-9 June 1994.

Just prior to a press conference, the day before the ICJ's deadline, McKinnon played 'cat and mouse' with Parliament, refusing to admit that A/NZ had made a submission and not divulging its contents. [56] He then announced that A/NZ had adopted a 'wait and see' position, misleadingly stating that 'most nations that are making submissions are asking the Court not to make a judgement on this', and that he did not know of any sovereign state that had asked the ICJ to use its discretion to adjudicate on the issue. However, A/NZ's two-page submission was to stay confidential. If the ICJ chose to take up the case, A/NZ reserved the right to make more extensive submissions at a later date. The ICJ, he said, was likely to say that nuclear weapons were legal if used in self defence. He explained how both he and Graham had met Ambassadors from India, Indonesia, Malaysia and Mexico in Geneva and New York who felt that this 'didn't appear to be going anywhere' and 'it wasn't going to be productive'. [57]

In fact, 27 states submitted by the due date, with India, Malaysia and Mexico arguing strongly for illegality, and a few months later Indonesia led the NAM's re-introduction of the UNGA resolution. Four South Pacific states gave strong statements for illegality (Nauru, Papua New Guinea, the Solomons and Samoa), and both Sweden and Ireland welcomed the case. Besides four NWS, only Finland, Germany and the Netherlands argued against the case being heard, which was only a quarter of all submissions.

At first, Japan indicated that it would argue that the use of nuclear weapons was 'not always legal from the standpoint of international law', but after a public outcry modified their statement to: 'The use of nuclear weapons is clearly contrary to the spirit of humanity that gives international law its philosophical foundation'. [58] Within a few days India published its submission as an official UN document, and Ireland, Sweden and Australia

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<sup>56.</sup> Hansard, Questions for Oral Answer, 7 June 1994, pp. 1433-4, 8 June 1994, p. 1511, 9 June 1994, p. 1590.

<sup>57.</sup> Transcript of Press Conference with Don McKinnon, 9 June 1994, 6 pp. Transcript of interview between Kim Hill and Don McKinnon, Radio NZ, 10 June 1994.

<sup>58.</sup> Kevin Rafferty, 'Japan agonises over N Korean sanctions', *The Guardian*, 6 June 1994; Japan's submission to the ICJ October 1995.

distributed their submissions to interested citizen groups. While the ICJ was bound to keep the submissions confidential, each state could decide whether to make theirs public.

Why had A/NZ prevaricated until the last minute and then refused to release its position? On the eve of the deadline, Trade Minister Burdon disclosed that it was his understanding that Australia was to put in a submission, but had pulled out at the last minute. A/NZ did not want to go it alone or be seen as the leader of the pack, preferring to wait to see what other countries were doing first. [59] Strong pressure from Western allies prevailed and A/NZ, without an imminent election demanding accountability, opted for international collegiality. Biased Ministerial advice skewed decision making, thereby undermining the opinions of South Pacific and Asian neighbours and disarmament supporters such as Ireland and Sweden. Without strong public and parliamentary advocacy, it is highly unlikely that A/NZ would have put in a submission or eventually voted for the UNGA resolution.

Following the announcement of the submission, Helen Clark slammed the government's position as 'spineless' and 'wishy-washy'. The eight National MPs supportive of the WCP were muted in their criticism, describing it as an 'adequate interim solution which they can live with' and a step in the right direction. Once the ICJ had settled procedural matters they hoped A/NZ would make an anti-nuclear submission.[60]

In later correspondence, Graham substantiated his concerns about the NPT and CTBT, reiterating that he did not want those negotiations derailed in any way. The ICJ was considering the question of 'use' and not 'possession' which he said was already reflected in various treaties such as the NPT. He argued that if the Court upheld that 'use' was legal in self-defence it might

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<sup>59</sup>. Notes of phone conversation between Philip Burdon and Dewes, 7 June 1994.

<sup>60</sup>. Media release by Chris Fletcher, Pauline Gardiner, Michael Laws, Joy McLauchlan, Brian Neeson, Katherine O'Regan, Tony Ryall and Nick Smith: 'National MPs welcome World Court Submission as a step in the right direction', 9 June 1994. Media release by Rt Hon Helen Clark, 'National deprives New Zealand public of a role in important World Court case', 9 June 1994.

take the pressure off the NWS during the negotiations. With these considerations in mind, he felt that A/NZ's position was 'eminently sensible' and a full submission at this stage was neither necessary nor desirable. [61]

On 10 June, the ICJ announced an extension of the date for submissions to 20 September 1994, with a cut-off date of 20 June 1995 for comment on other states' submissions. It could be construed that some pressure was applied to the ICJ to ensure that any opinion would not be released before the indefinite extension of the NPT was secured in May 1995. This theory was later substantiated by other states who had been warned by pro-nuclear states that both the NPT and CTBT could be affected by the ICJ's opinion. Prime Minister Bolger repeated the spurious Western line:

At present nuclear weapons are legal only for five countries. They are, under the NPT illegal for all other signatories. An opinion saying they were legal in certain circumstances would very seriously undermine the NPT by suggesting that they could after all be regarded as legal for any one of the 150 other signatories to the Treaty. This is certainly not something I would welcome. [62]

With another three months' grace, WCP supporters stepped up the pressure to convince the government and other states in the region to put in substantial submissions. The government's primary excuse was based on whether the ICJ would proceed with the case. Ware alerted Graham to the fact that only A/NZ, Australia and Germany had confined themselves to the question of admissibility, whereas most other states argued on the substantive issues and that it was most unlikely that the ICJ would first decide on admissibility and then issue a further invitation for submissions. The usual practice in advisory opinions was for the ICJ to consider both jurisdictional and substantive issues together. Graham concurred, but thought that the decision on 'whether or not to take the case would be made earlier in the proceedings rather than later'. [63] In August, Caygill redrafted his Bill and placed it in the ballot. Nothing eventuated, and the government remained intransigent, refusing to make another submission. Campaigners

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<sup>61.</sup> Letter from D. Graham to Carla Heslop, 1 July 1994.

<sup>62.</sup> Letter from Bolger to Arthur Quinn, 29 August 1994.

<sup>63.</sup> Letter from Ware to D. Graham, 25 July 1994 and from D. Graham to Ware, 22 August 1994; Fax from Ware to D. Graham, 11 October 1994.

tried to use the Official Information Act, the Ombudsman and parliamentary questions to prise copies of the submission from the government, but to no avail. McKinnon refused to release it, so finally an exasperated Labour MP tabled in Parliament a copy obtained from overseas. It contained no surprises and the government's charade was finally exposed.

By 20 September, total submissions numbered 35 and now included Australia, Papua New Guinea, the Philippines and Kazakhstan. Of these, nine argued that the case was inadmissible with seven saying that the ICJ should use its discretion and reject the case; only five argued that 'use' was legal *per se*, and of those only France and the US gave detailed rebuttals; of the 23 arguing that 'use' was illegal, six gave detailed briefs. [64]

In August 1994, Dewes sent Graham the NAM Ministers' communique outlining their intention to 're-table and put to the vote' the 1993 UNGA resolution reminding him of his earlier statement that A/NZ 'would have supported a resolution if it had come to a vote..'. He responded that any draft resolution 'would be studied in the light of the circumstances at the time, while wishing to be as positive as possible'. [65] Lange sparked debate during the Foreign Affairs Estimates, while Clark constantly asked written and oral questions. By mid-October McKinnon still denied seeing any 'hard evidence' that the NAM intended to present the same resolution, refusing to make a decision until he had seen a draft. This was in spite of A/NZ representation at the New York NAM Ministers' meeting on 5 October, where Indonesia confirmed their decision. Clark provided evidence from Ware right up until a week before the UNGA.

Irish sources indicated their government would probably abstain due to intense pressure from the UK, where the Foreign Ministry had admitted that it would be 'urging governments not to support the resolution'. Theorin

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<sup>64</sup>. Chart outlining statements submitted to ICJ on WHO case in 'World Court Project Report #6', LCNP, Spring 1995, p.4.

<sup>65</sup>. Letter from Dewes to D.Graham, 13 July and 10 August 1994 and D.Graham to Dewes, 29 August and 15 September 1994. Letter from Dewes to Ombudsman, 23 August 1994 and from Ombudsman to Dewes, 26 August 1994.

confirmed that the Swedish Foreign Minister had said Sweden would vote in support, although they eventually abstained. Following further representations to Ministers, Parliamentary debates and questions, McKinnon, on the eve of the vote, expressed doubts but confirmed the government's intention to vote in favour, 'providing it continues to be supported by the NAM'. [66]

## **10.5 Conclusions**

This period saw the fruition of ten years' meticulous preparation by Mothersson on how to mobilise and demonstrate public support on the legality issue. His innovative approach was exemplified by the DPC concept, which was adapted by WCP (UK)'s Secretary George Farebrother for practical use and creatively developed as an educative and fundraising tool whilst providing evidence of public support.

The international WCP launch created an important springboard for gathering endorsements and building the WCP network. Momentum was sustained by the DPC presentation to the UN during the introduction of the UNGA resolution, and by the groundbreaking initiative to deliver them to the ICJ in support of government submissions on the WHA question.

The sustained intensity of the parliamentary and citizen campaign in A/NZ, which finally forced the pro-Western alliance government to make a non-committal ICJ submission on the WHA question, demonstrated how radical the issue was, even in a state with nuclear free legislation. Central to this was the decision by Sweden, Ireland and Ukraine to make submissions (following lobbying by WCP delegations).

Reasons for New Zealand's continued reluctance became apparent as the 1994 UNGA vote approached. The visit by a British warship would break an 11-year impasse in the NZ-UK relationship. NZ Defence Forces awaited confirmation of a visit by their Chief of Defence to Washington on an 'ANZUS freeze-breaking mission' - the first such visit in over a decade. The new US

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<sup>66</sup>. Parliamentary Question by Helen Clark to Doug Graham, 10 November 1994 and Ministerial Briefing paper 8 November 1994 ( Released under OIA).

Ambassador Beeman began organising Bolger's visit to the White House, and openly criticised the WCP two days before the UNGA vote. He asked what would happen if the ICJ ruled they were legal:

Where would you be then? Would New Zealand be prepared to be in violation of a 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? [67]

The drive to reactivate ANZUS came from Foreign Minister McKinnon, backed by some senior Ministry officials. Inevitably this issue clouded decision making over the ICJ case, and caused tension between senior Ministers who were personally more supportive of the case. Younger colleagues, acutely aware of the strength of support for the anti-nuclear policy among women and young voters, were prepared to challenge Cabinet and Ministry decisions publicly. By reviewing the nuclear free policy with regard to nuclear-powered ships, and promoting the extension of the NPT, the government indicated their commitment to Western collegiality. However, anti-nuclearism was so deeply imbedded in the public psyche that the government could not risk political suicide by overturning the legislation or appearing pro-nuclear on this issue.

Eventually, A/NZ withstood international peer pressure, voting for the 1994 resolution as the only Western-allied state. This dramatic move put A/NZ firmly alongside her small Pacific Island neighbours and out on a limb from her closest ally Australia. It was a credit to the persistence of individual MPs, activists and groups of concerned citizens who remained resolute in their endeavours to force the government to represent the views of the people. At a national level, the A/NZ struggle prefigured the sorts of coalitions Falk had called for in the development of a global democracy, and epitomised a popular struggle which was both intense and effective.

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<sup>67</sup>. 'Envoy urges trust on arms', *The Press*, 15 December 1994; Dave Wilson, 'Washington invitation awaited', *The Press*, 18 November 1994; Hank Schouten, 'Envoy sees threat to anti-nuke law', and Brent Edwards, 'US ship visits still over horizon', *Evening Post*, 15 December 1994.

# CHAPTER 11

## THE UNGA RESOLUTION: 1993 AND 1994



Source: Klarc, NZ Herald, 10 July 1996

## CHAPTER 11

### THE UNGA RESOLUTION: 1993 and 1994

*Of course there were strong attempts to coerce and intimidate countries not to go with this 'riff-raff' ... there was a huge amount of pressure ... the French pressured the Africans ... the US, UK and France visited the Malaysian capital and you can be sure they visited others. They must have talked many times over to the Indonesians. That we squeaked through was a wonderful achievement! Malaysian UN Ambassador Razali Ismail [1]*

#### 11.1 Introduction

The most crucial phase of the WCP's precarious journey to the ICJ was the successful adoption of a resolution at the 1994 UNGA. Two herculean efforts were required finally to succeed on what veteran UN expert Bill Epstein termed 'the most exciting night at the UN in thirty years'. Described by various journalists and academics as the most historic, contentious and significant UN disarmament resolution ever adopted, this was borne out by lengths to which the nuclear weapon states (NWS) and their allies were prepared to go to prevent it coming to a vote in 1993. It also provided an opportunity for outstanding leadership by members of the Non-Aligned Movement (NAM) to guide it through the labyrinth of UN bureaucratic hurdles and to use their anti-nuclear majority to secure its adoption.

This chapter draws extensively on the personal experiences of those who lobbied diplomats and governments during this time, and documents responses from those at the forefront of the struggle within the diplomatic community in New York. It highlights the role of another New Zealander, Alyn Ware, who, like Evans and Geiringer, played a decisive role in this phase of the WCP. It also provides some analysis of how countries

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<sup>1</sup>. Interview by Dewes with Ambassador Razali Ismail, New York, 22 March 1998.

responded to pressure from their allies and peers, and to strong public opinion.

## 11.2 Alyn Ware

*It has been a great privilege and fascinating experience to work with Alyn Ware through the final weeks of nearly two years' relentless, lonely lobbying in an often hostile and alien environment for a young Aotearoa peace activist. His ability to slip into his \$5 suit and tie, take the subway uptown from his cramped office, and gain the confidence of hard-bitten diplomats in the delegates' lounge in the UN, was wonderful to witness. Robert Green [2]*

From mid-1992 until late 1995, Ware was responsible for the lobbying in New York and the coordination of submissions to the ICJ. After the 1992 WCP launch, he was the unpaid volunteer for six months for the Lawyers' Committee on Nuclear Policy (LCNP), eking out an existence with help from sympathetic peace people. At first he sought support within the US NGO community and made initial 'soundings' with Missions. By October 1992 he had been appointed LCNP WCP Director and by January 1993 had become LCNP's salaried Executive Director. How did this young, humble kindergarten teacher from A/NZ achieve this position? What were the skills that he brought to this challenging task; and how did he gain the trust and respect of the majority of the UN diplomats?

Ware's mother describes her son as a high achiever in sport, drama, academic pursuits and music. From an early age he had a strong sense of justice, challenging his teachers when unfair treatment was meted out to fellow students. He came from a problem-solving family where his parents encouraged the children to find 'win-win' solutions through dialogue and participation. Ware trained as a kindergarten teacher where he put his drama, music and conflict resolution skills into practice. His mother remembers that while at kindergarten he had painted only vivid rainbows. Later he carried the image of the rainbow all over the world and taught about the work of the Greenpeace flagship *Rainbow Warrior*, where his sister was a crew member.

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<sup>2</sup> R. Green, 'Report to WCP ISC', December 1993.

For over a decade he lived at subsistence level, promoting peace principles wherever he went. Funding for peace work in A/NZ was scarce but he had a strong belief, based on Gandhian principles, that if work needed to be done, support would materialise. During this time he further developed his skills, lobbied A/NZ decision makers and made his first attempts at UN international diplomacy.

In the early 1980s he founded a University Peace Group, the Hamilton Nuclear Free Zone Committee, Youth Peace Network and the Mobile Peace Van Society. From 1984-88 and again from 1991-92, he visited many schools, community groups and kindergartens nationwide in the Peace Van, sharing peace education resources and teaching peace in the classroom. His positive visions and peaceful teaching techniques empowered the children, who warmed to his enthusiasm and zest for life.

He participated in government consultations aimed at establishing peace education in schools. In 1986 he was given a UN International Year of Peace Award and a Winston Churchill Memorial Trust Scholarship. He co-organised a Peace Walk for a Nuclear Free New Zealand in 1987, produced Planet Earth posters and an environment-peace book *A Planet in Every Classroom* in 1989, and became a member of the Working Group for Peace Movement Aotearoa.

As mentioned earlier he travelled to the US and USSR (see 8.3), and in mid-1988 he joined the 'Soviet American Peace Walk' from Odessa on the Black Sea to the capital of Ukraine, and then travelled to Moscow arriving as the Soviets tested in Kazakhstan. The group then marched around the Kremlin with banners and flags including Ware's rainbow banner which read: 'To Russia from Nuclear Free New Zealand'. [3] He went back to the US under the banner of 'Nuclear Free Kiwis Abroad', networking with peace organisations and joining anti-nuclear protests. Eventually he fulfilled the dream he had had since he was 14, to attend a UN session, where he heard

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<sup>3</sup>. 'News and Views from USA and USSR', Alyn Ware and Annie Doherty, 1989, 16 pp.

David Lange address the UNGA calling for a CTBT. [4] He worked for a few months as a researcher for the World Association of World Federalists in New York 'monitoring of proposals to strengthen the UN, especially in the areas of international law, disarmament, common security and peacemaking'. Two key UN initiatives which he researched were the draft convention to ban chemical weapons and the establishment of an International Criminal Court. He also promoted the proposal to declare the nineties a UN Decade of International Law.[5] Dewes also sent him the Evans' illegality proposals and asked him to 'sow some seeds with diplomats and others'. [6]

In the early 1990s he organised a War Toys Amnesty and helped establish the 'Cool Schools' Peer Mediation Programme. In 1990-91 he was the UN Gulf Peace Team Representative, meeting New York diplomats to explore nonviolent solutions. He believed that '... the principles of conflict resolution are the same at the international level as they are at the domestic level' and could be applied in the Gulf conflict. [7]

Like St John, Mothersson and others, one of the catalysts for Ware's commitment to international law was Delf's *Humanising Hell*. After reading it he organised a Waikato University Seminar on 'Nuclearism and International Law'. In 1991, after further briefing from Dewes he distributed WCP material to diplomats and NGOs in New York. As already discussed LCNP was still not pursuing the idea (see 8.2). Buoyed by initial interest from six UN Missions, Ware returned home and joined the growing campaign (see 8.3).

Ware discovered fundamental differences between US and A/NZ anti-nuclear groups (see 10.2). Because the A/NZ movement had experienced major successes as a result of working closely with decision makers and building strong public support using the law, the WCP seemed an achievable goal. By contrast, US groups worked on elements of the nuclear problem,

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4. Letter from Ware to Dewes, 24 May 1988 .

5. Ware and Doherty (1989), *op.cit.*

6. Letter from Dewes to Alyn Ware, 6 November 1988.

7. 'NZ classroom skills at UN', *NZ Herald*, 14 January 1991; Interview with Marlene Ware, Christchurch, June 1997.

and US policies in particular, and engaged in little networking. They preferred to secure funding before launching projects. A 'Kiwi' characteristic is:

...if something is broken then you go and try and fix it yourselves ... you don't wait until you have the money to call in an expert, or to fund the campaign. Because peace is in everybody's interest, everyone should have a voice. [8]

The health and environmental problems caused by Pacific nuclear testing gave Ware a personal and passionate basis for his anti-nuclear work. Nuclear weapons were not merely a possible threat to humankind's existence should they be used in war; the testing and production of them were already causing casualties. He made links between nuclearism, colonialism and the abuse of the lands and cultures of indigenous peoples. This later helped build empathy and trust with diplomats from developing countries. Fostering these relationships by trying to see the issue from their point of view was fundamental to Ware's working style. The diplomats admired his role in upholding A/NZ's nuclear free status despite threats to military and economic relationships. Ware believed that '...the way we operate is very important ... it is not just the getting rid of nuclear weapons, but how we are going to build up the world that we want. Our relationships with peoples, whoever they are, are part of that'.

Ware identifies the following key influences in developing his 'people skills': nonviolence training workshops, 'Heart Politics' seminars, peace movement and feminist analysis, and Maori spirituality. He followed the teachings and principles of the Maori pacifist Te Whiti, Gandhi, Jesus Christ, Martin Luther King, Greenpeace and Amnesty International, embracing the following philosophical themes:

- the people you are trying to work with are not the enemy : the 'enemy' is a particular way of thinking;

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<sup>8</sup>. Interview by Dewes with Ware, Christchurch, 9 January 1996.

- you are trying to change hearts and minds, not build walls by confrontation, but by seeing where people are coming from and where you can move them forward;
- facts and figures are important, but the 'heart' must also be through personal stories and experiences;
- the need to develop non-hierarchical, consensus decision making, the politics of inclusion rather than exclusion, and participatory democracy;
- building coalitions, thinking globally and acting locally;
- a Maori saying: *'Ka Patai koutou ki au, he aha te mea nui o te Ao? Ka ki atu ahau ki a koutou, he tangata, he tangata, he tangata.*

You ask me what is the greatest thing in the world? I answer you all, it is people, it is people, it is people.' [9]

He was sustained by the knowledge that many New Zealanders and Pacific Islanders supported his work. He felt privileged to do this work on their behalf, and was bolstered by the 'rightness' of the cause. 'I have dreams and visualisations about what I should be doing ... it is not me alone ... a lot of energy is with me and I'm more a tool than a prime mover ... and that gives me confidence.' [10] Seasoned activists expressed surprise that over the years Ware did not compromise his personal beliefs in the highly bureaucratic, hierarchical, sterile UN environment. While he donned a suit, the necessary UN 'uniform', he kept his ponytail, pulled out his guitar and sang at functions, and brought his 'heart and spirit to the centre of the debate'. [11] Veteran Mexican diplomat Marin-Bosch affectionately describes him as:

...a pain in the arse in a good way ... he doesn't take no for an answer ... persistent ... never gives up ... the rightness of the cause ... you know that he's decent ... it's the goody-goody-ness ... and, to be effective you have to be informed. [12]

The Samoan UN Ambassador, and former Attorney General, was surprised by Ware's cheap suit and ponytail. He wanted to 'dress him up so he can

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9. Ibid.

10. Ibid.

11. Interview by Dewes with David Kreiger, New York, April 1995.

12. Interview by Dewes with Miguel Marin-Bosch, New York, May 1995.

carry the weight of the serious argument', but sensed that '... he's saying .. "no, it's not my dress that matters, it's what is in my heart and what I say to you that matters" ...'. [13]

The Malaysian Ambassador, and UNGA President, praised Ware's style:

... he allowed the diplomats to take initiatives here and there, but at the same time backed this up by giving the right papers, making the right points quite smoothly - not in an obtrusive fashion - understanding that the highly opinionated government servants did not want to be upstaged by anybody else. He understands the ecosystem he's been working in and has been very successful. He's been very persistent. I remember many times when I thought there would be a serious problem - we'd come to a brick wall. Alyn would come back and try another way of looking at it and eventually moved the process along. [14]

Mendlovitz was impressed by Ware's capacity to 'see the positive aspect of whatever view was being expressed and try to state it in its best form even when he disagreed with it'. He was struck by his ability to understand the complexities of international law : 'He is not a lawyer and he has to learn what we are saying - first he puts it in his own language, then he learns the law and by the time he goes to a Mission, he has got it!' Like Weiss, he conceded that Ware's role in New York was crucial - 'without him, I don't think anything would have happened'. [15] He became the bridge between the UN, A/NZ and the rest of the world community on the WCP.

Maori elder Pauline Tangiora acknowledged Ware's humility, sincerity, tolerance, determination and ability to express complicated arguments in simple terms. His foundation was solid - he was in touch with his heart and soul. Maori believe the *wairua* (spirit) must be right for anything to be successful and various tribal elders had given Ware, and the WCP, their blessing. [16]

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<sup>13</sup>. Interview by Dewes with Ambassador Neroni Slade, New York, 23 March 1998.

<sup>14</sup>. Ismail interview, (1998).

<sup>15</sup>. Mendlovitz interview, (1996).

<sup>16</sup>. Interview by Dewes with Pauline Tangiora, Christchurch, 5 April 1995.

Ware's style differed from Evans, St John and Geiringer in a number of ways. They worked more as individuals using their professional contacts, had financial security, and were highly educated in their specialised fields. Ware was over two generations younger, worked collectively with people from all walks of life, and achieved a multitude of tasks with no secretarial support and meagre funding. He sought guidance from a wide range of people, always consulting carefully before acting. Thus he built up confidence amongst the international peace community, who grew to respect him deeply and value his analysis and intuition.

### **11.3 Lobbying New York Diplomats and Governments**

Ware's second UN WCP lobbying experience was strengthened by Grief's Legal Memorandum, the growing international support and the three distinguished co-sponsoring organisations. The campaign now had respectability and momentum behind it. Initially, Ware reconnected with his 1991 contacts and the New York counterparts of the Geneva Missions visited by Dewes and Archer, to update them, seek the current level of interest, discuss outreach to other Missions, and ensure continuity between Geneva and New York. Priority was given to the WHA co-sponsors, leading members of the NAM, and those which voted consistently for the Indian UN resolution calling for a Convention on the Prohibition of Use of Nuclear Weapons.

The first meeting of the LCNP WCP Working Group in June 1992 decided to finalise wording for an UNGA resolution during 1993; seek a large number and cross-section of co-sponsors; and then lobby them to support the resolution. Sympathetic contacts in Missions and citizen groups were identified and approached. The first lobbying team consisted of Epstein, Mendlovitz, Ware and Weiss. Ware also advocated the inclusion of 'a woman, preferably non-white and a non-northerner'.<sup>[17]</sup>

His discussion papers for Mission meetings included an update on WCP support; the possible effects of a successful advisory opinion; the case for

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<sup>17.</sup> Minutes of WCP LCNP group, 16 and 25 June 1992.

illegality; and answers to concerns from some states reluctant to support the idea. Initial responses from Missions were as follows: Belarus, Brazil, Chile, Colombia, Costa Rica, India, Mexico, Pakistan, Uruguay and Vanuatu were all very supportive. Argentina was not interested; Namibia and Peru were interested but their priorities were on other issues; Egypt expressed concern about pressure from opposing countries; while Saudi Arabia, Iceland, Russia and China were sympathetic but could not state their country's positions. The Filipinos encouraged Ware to secure support from Zimbabwe and Nigeria to ensure a strong African vote, and from Indonesia to attract the Asians.[18]

Zimbabwe's Foreign Minister Shamuyarira was an early WCP supporter. His country had a 'deeply cherished principle of universal participation' and a commitment to the 'full observance of international law' as substantiated by their leadership of the UN Decade of International Law (see 8.2). [19] It was also leading negotiations for an African NFZ treaty, and was concerned that NAM was abandoning its trailblazing with regard to nuclear disarmament. Zimbabwe had chaired the Security Council during 1990-91 when it had been outraged by US manipulation of the Council to gain UN support for its actions in the Gulf War.

Shamuyarira, a past colleague of Mendlovitz, was convinced by the merits of the WCP and personally began to drive the NAM campaign. [20] In late September 1992, he hosted a meeting of Ambassadors and diplomats from 17 states with the three WCP NGO co-sponsors, where he announced his intention to ask the NAM to support the resolution at their Foreign Ministers' Meeting the following week. The Chilean representative indicated that his Ambassador (an IALANA member) would publicly support the WCP in his UNGA address. Others were keen to secure NAM endorsement to help withstand pressure from other states, and encouraged the NGOs to keep

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<sup>18</sup>. Alyn Ware papers: 'Mission Contacts Summary', August 1992; 'Visiting Government Representatives: Discussion Points', August 1992; 'Report on meeting with Philippines Mission', September 1992.

<sup>19</sup>. Keynote address by Nathan Shamuyarira to WCP Launch, WCP Proceedings, IPB, Geneva, November 1992 pp. 4-6.

<sup>20</sup>. Interview by Alyn Ware with Godfrey Dzvairo, Rome, 1 July 1998.

building up support, especially among indigenous groups and developing nations. [21] By this stage, Ware had sent WCP updates to over 400 individuals, and 400 NGOs in the US, many of which were international organisations with UN status.

The NAM Foreign Ministers expressed considerable interest in the idea, with the majority taking the Legal Memorandum and an LCNP paper outlining the possible outcomes and impacts of an ICJ decision.[22] The Indonesian Chair announced that it would be discussed further at a subsequent meeting. After only five months of lobbying, 22 states were strongly considering co-sponsorship, and it was likely the resolution would be adopted if put to the vote. Meetings with some of the more reluctant states such as Austria, Belgium, Ireland, Japan, Spain and Sweden uncovered where blocks lay.

Zimbabwe acknowledged that, while the NAM could lose, the risk was still worth taking. Its strongest advocate was Godfrey Dzaivro, senior diplomat in the Zimbabwe Mission who had been given responsibility by his Minister to spearhead the initiative. He had a long interest in nuclear disarmament, and was prepared to risk his career to ensure the resolution was adopted. He was keen for Zimbabwe to announce its intention to sponsor the resolution during the upcoming UN Disarmament Commission, and encouraged ongoing meetings with NGOs and diplomats including some of the very hesitant Europeans. [23]

During the 1992 UNGA, A/NZ, Australia and Canada affirmed the UN Secretary-General's call for compulsory jurisdiction of the ICJ, encouraging other states to do the same, and supported his advocacy of greater use of

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<sup>21.</sup> Alyn Ware, 'Report of Meeting with UN Missions', 24 September 1992; Statement by Chile's Ambassador Juan Somavia to First Committee of UNGA, 13 October 1992, p.4.

<sup>22.</sup> William Epstein, Alyn Ware, Peter Weiss, 'World Court Project: How might the Court rule? What effect will that have?', LCNP, New York, September 1993, 14pp.

<sup>23.</sup> Notes of Ware's meeting with Dzaivro, 16 December 1992.

ICJ advisory opinions. [24] At the same time, NGOs in the more liberal Western states lobbied parliamentarians encouraging them to work together to support an UNGA resolution. By May 1993, and before the successful outcome of the WHA resolution, the tally of likely co-sponsors had reached 38, with a further 9 indicating abstention with possible movement to a 'yes' vote. There was still no clear position from Russia or China; and Belgium, Denmark, Estonia, Hungary, Ireland, Norway and Sweden expressed opposition, but indicated that abstention might be possible.

The surprising success of the WHA resolution bolstered the waverers and strengthened support within the NAM; and the ICJ called for submissions a month before the UNGA resolution was introduced in October 1993. Inevitably, with this success came intense pressure on the leading proponents and sympathetic members of the Western group. Most of the Latin American support dropped off during the WHA, and their leaders and citizen groups needed reassurance that the initiative would succeed if the majority of states stood together. Mexico was finding it hard to withstand the threat to their trade with the US, and encouraged Ware to travel to key states in Latin America to convince Ministry officials in the capitals and build national support. Mexico was also under pressure because it was not supporting the indefinite extension of the NPT in 1995. So in July 1993, Ware (see 10.2), accompanied by Latin American colleague Gabriel Fried, visited Costa Rica, Mexico and Nicaragua meeting Ministers, advisers, ambassadors, politicians, delegates to WHA, and representatives from PGA, IPPNW, IALANA, Democratic Lawyers' Associations and peace groups. [25] Spanish versions of the Legal Memorandum and DPCs were liberally distributed, and twelve influential organisations endorsed.

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<sup>24.</sup> Statement by Canada's representative, Mr Strauss on behalf of Australia and A/NZ to UNGA 1992, Doc A/C.6/47/SR.36; Boutros Boutros-Ghali, *An Agenda for Peace*, UN Department of Public Information, July 1992 pp. 22-23; Alyn Ware, Delegation Tally paper, 14 May 1993.

<sup>25.</sup> Notes of Ware's meeting with Mexican UN Ambassador, 3 March 1993; Ware's summary report of meetings held during the tour of Mexico, Costa Rica and Nicaragua, July 5-15 1993, 8 pp.

Vanuatu's Ambassador Robert van Lierop also played a significant role in the resolution's introduction in the UNGA. He was a lawyer and a friend of Hilda Lini. Vanuatu's new coalition government was pro-French and most reluctant to support the resolution. Van Lierop was determined to raise the WCP at a meeting of the South Pacific Forum UN delegations, but needed pressure to be applied to the Ministers and their advisers at home. He suggested that Ware attend the South Pacific Forum in August to lobby them personally.

In the meantime, other ISC members held meetings with Ambassadors and Ministers worldwide. Green visited the Ukraine and Belarus Missions in London, and the Australians, Irish and Canadians in their capitals; while Dewes met diplomats from the Philippines, Thai, Indonesian, Fijian and Western Samoan Missions in Wellington, Irish Ministers in Dublin and Christchurch, and a Pakistani Prime Ministerial adviser in Christchurch. IPB Vice-President Fredrik Heffermehl lobbied the Norwegians and travelled to Iceland for meetings; Phon van den Biesen met the Dutch in Amsterdam; Ware and others met Belgian officials during an ISC meeting in Brussels; and Theorin lobbied her Swedish colleagues and distributed 40 Legal Memorandums to the World Women Parliamentarians for Peace gathering in Spain. IPPNW, IPB and IALANA affiliates met with their governments. During the May 1993 ISC meeting in New York, Green and Dewes held follow-up meetings with A/NZ, Australian and Irish Missions updating officials on the current views of key decision makers in the capitals, media coverage and growing public support.

With elections pending in A/NZ and Canada, there was considerable Canadian interest in the A/NZ situation, especially from their Disarmament Ambassador, Peggy Mason. She noted the growing support amongst Canadian Opposition parties and the public following Green's intensive speaking tour, keenly aware that their elections were due in October with the likelihood of a new Prime Minister. She indicated possible abstention. [26]

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<sup>26</sup>. Notes of meeting between Mendlovitz, Ware and Mason, New York, 3 June 1993.

Australia's Ambassador Richard Butler was personally very supportive, indicating that his government might shift if other 'middle' Western states also moved. With majority support throughout the Southern Hemisphere and increasing public pressure at home and the region, his government would be forced to respond more positively. Ware's trip to the South Pacific Forum in Nauru in August therefore was timely.

While the New York lobbying was extremely effective, final decisions are made in capitals: so personal meetings with Foreign Ministers and their advisers were vital. Ware noted that, although New York diplomats may appear interested or supportive, they will act according to their perceived greater interests, which are often influenced by the NWS which wield considerable economic and political power. Thus, early indications of support did not necessarily materialise. 'In some cases it was the politicians at home who spoke somewhat favourably for domestic consumption, but then did not follow up in the backrooms of the UN or even in the vote'. [27]

Most South Pacific States are not NAM members. Some are members of the WHO but not the UN. Many are signatories to the SPNFZ, and five were WHA co-sponsors, so their support was worth pursuing. The leaders of 15 nations and their advisers gathered for the Forum on one small island. Despite busy schedules and other priorities, Ware managed eight meetings which resulted in six states indicating likely co-sponsorship and another (which was 85% aid-dependent) supportive. As few meetings were pre-arranged, Ware used his 'Kiwi flair' to exploit opportunities. For example, while in a bus he recognised a key official walking from a meeting: so he jumped off and talked with him while he walked to the next meeting; and he briefed another official in a taxi during a brief ride to his hotel. [28]

Overall, South Pacific states played a disproportionate role supporting this initiative, considering their size and economic vulnerability. There were inevitable repercussions following the WHA success. Although Lini was

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<sup>27</sup>. Interview with Ware, Christchurch, August 1997.

<sup>28</sup>. Ware's report from Nauru detailing lobbying at the South Pacific Forum, 4-11 August 1993, 10pp.

sacked as Minister of Health and Vanuatu felt the pinch economically, she was undeterred. She was awarded the IPB MacBride Peace Prize and in October addressed a successful WCP Rally in London before joining the WCP lobbying team in New York. Earlier, the NFIP network sent out an Action Alert highlighting Lini's role and urged groups to lobby their governments.

Just prior to the UNGA, NGOs worldwide strongly lobbied their politicians. PGA sent briefing papers to over 600 parliamentarians, and Sonja Davies urged her World Women Parliamentarians for Peace colleagues to ask parliamentary questions. NGOs, especially in the middle Western states, kept close contact by fax and phone (few had e-mail), sharing media coverage, letters from politicians, answers to parliamentary questions and reports of conversations with Ministers and their advisers. These were instrumental in bolstering decision makers who were sympathetic, but bound by Western collegiality constraints to abstain or vote against. When NAM announced their co-sponsorship, it became more likely that a group of Western disarmament 'liberals' might vote in favour. A/NZ's early positive indication of support, reported in the media, encouraged Australia, Canada, Ireland, Japan, Sweden and even Italy.

During 1992-93, St John wrote extensively to Foreign Minister Evans and met his advisers. Following a successful WCP launch throughout Australia in March 1993 and the WHA outcome, NGOs visited MPs and collected DPCs and prominent endorsements. Vallentine and St John met Senator Evans in July 1993: he promised to review the situation and request a report from UN Ambassador Butler. He gave the traditional Western excuses for blocking the initiative, adding that the ICJ was about to consider a case by Nauru against the UK and Australia regarding compensation for phosphate removal. It was proving extremely expensive and embarrassing for the Australian government, and he was loath to risk the ICJ being ignored by the

NWS if it did advise illegality.[29] However, he was aware of the growing international, and especially regional, support for the WCP.

In Italy, IALANA Council member and parliamentarian Dr Joachim Lau initiated a resolution in the Foreign Affairs Committee which, if adopted, would bind the government to vote for the resolution. He used newspaper articles from A/NZ, Australia and Malaysia to convince Italian papers to publish an article. [30] Canadian groups maintained the pressure on all political parties, and by July 1993 had secured a public statement of support from both Lloyd Axworthy, External Affairs Spokesperson of the Liberal Party, and his counterpart Svend Robinson in the New Democratic Party. Former PGA Chair and senior political figure Warren Allmand became a prominent endorser. Just prior to the UNGA, future Prime Minister Jean Chretien replied to Canadian lawyers confirming that if the Liberal Party became government they would 'undertake a comprehensive review of all aspects of defence policy, not the least of which is the issue of nuclear deterrence'. He affirmed the WCP as an initiative 'which we certainly endorse in principle'. [31]

Ireland was a leader on nuclear disarmament issues, having pioneered the NPT and consistently called for the elimination of nuclear weapons. With a proud history of neutrality, independence and a nuclear free status, it was a likely partner with A/NZ. However, by 1993 other political considerations were paramount. Its international agenda was dominated by a public debate on the Maastrich Treaty and European Union (EU) membership which would compromise Irish neutrality on military issues. Foreign Minister Dick Spring was due to meet with US Secretary of State Warren Christopher to explore a

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<sup>29.</sup> Draft letter from St John to Evans, June 1992; Jim McClelland, 'Ted St John drops a new bombshell' *Sydney Morning Herald*, 24 March 1993; WCP Lobbying Report by Jo Vallentine, 22 July 1993.

<sup>30.</sup> Letter from Dr Joachim Lau to IALANA, 1 September 1993; 'Mai piu guerre con armi atomiche?', *Giovedì*, 5 Agosto 1993, p.17.

<sup>31.</sup> Dr Bill Singleton, Executive Director CPPNW, Report on Parliament Hill and Government Visits, May 27 1993; CPPNW WCP Report, no. 4, 23 August 1993; Letter from Chretien to Beverly DeLong, 1 September 1993; Letter from Lloyd Axworthy, to Henrietta Langan, CPPNW, 10 June 1993.

solution to the Northern Ireland security crisis. Ireland, like A/NZ, expressed fears that the WCP could jeopardise the extension of the NPT. During 1992-93 both Green and Dewes met Irish Ministers and officials, updating them regularly on the positions of other governments. The Irish anti-nuclear movement collected over 10,000 DPCs and secured significant media coverage.

Fortuitously, Dewes met Brian Lenihan, the Chair of the Foreign Affairs Select Committee and a former Deputy Prime Minister, while visiting other parliamentarians. He asked why she was in Dublin, and immediately showed great interest in the WCP both as a lawyer and former acquaintance of MacBride. After a briefing by Irish CND and Dewes he prioritised the issue on the Committee's agenda that week. Within a few days, *The Irish Times* ran a front-page story entitled 'Move to outlaw use of nuclear weapons supported'. Representatives of Dublin CND, Earthwatch and Pax Christi convinced the Committee to recommend government support for the resolution. Lenihan promised that a Committee delegation would pursue it in New York during the UNGA. Ministry officials indicated that Ireland would not be the first European country to vote in favour, but would find it easier if A/NZ, Australia and Canada were supportive too. [32] Spring also indicated his personal support when he met Dewes in Christchurch during the centennial celebrations of women's suffrage opened by Irish President Mary Robinson. Harold Evans had met her in Dublin in 1992 where she too, informally, had shown considerable interest and sympathy.

Sweden was ruled by a four-party coalition Cabinet where the Conservative Party, representing only 20% of the vote, held the positions of Prime Minister and Foreign Minister. According to Theorin, this was like 'using the goat to watch over the sack of grain'. She expressed concern publicly that Sweden had moved into the shadows after being a leading nation in the field of

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<sup>32</sup>. C. Boland, 'Move to outlaw use of nuclear weapons supported', *The Irish Times*, 21 October 1993; Address by Minister for Foreign Affairs, Gerard Collins to Fourth Review Conference of NPT, 21 August 1990; Irish CND Newsletter, August 1993. Notes of Meeting with Department of Foreign Affairs and Dewes/Dublin CND, 18 October 1993.

peace and disarmament. It was no secret that Ministry officials had long opposed the WCP; and the Conservative Party 'never supported any limitations on nuclear weapons in earlier days, and they do not do so today. They do not want a prohibition, only a regulation of their use - they accept their use'. [33] Sweden, like A/NZ, Australia, Canada and Ireland had opposed the WHA resolution and was unlikely to support it in the UNGA without strong public pressure. Also, Sweden wanted to join the European Union (EU) and did not wish to alienate NATO EU members.

The Liberal Democrats had ruled Japan for 38 years, and supported the US-Japan Mutual Security Treaty as protection against the Soviets during the Cold War. Post Cold War, most regional governments saw it as the mechanism for a US presence and supported its continuation. In the latter part of 1993, the Liberal Democrats and the Socialists formed a coalition government, but with the former in ascendancy. During the next year, four Prime Ministers held power with Murayama as the second Socialist to lead the country in July 1994. Surprisingly, he endorsed the US-Japan Treaty despite a long tradition of Socialist opposition to the 'nuclear umbrella'. [34] Strong anti-nuclear groups lobbied hard during 1993 to force the government to reflect public antipathy towards nuclear weapons by supporting the resolution - but political and military considerations remained paramount. Prime Minister Hata, in reply to a parliamentary question on the ICJ advisory opinion asking whether the 'use of nuclear weapons is a violation of international law', said:

Considering the reality that world peace and security is ultimately kept by the deterrence of military force including nuclear weapons, it is necessary to be prudent on resolutions banning the use of nuclear

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<sup>33</sup>. Translation of article 'The Cabinet is being forced to Act!' submitted to *Aftonbladet* by Maj Britt Theorin, 2 June 1994; See Swedish Ministry position: 'The Swedes will not support the taking of a case to the ICJ', (no author), 27 April 1988.

<sup>34</sup>. Editorial 'Japan and its military', *The Press*, 8 August 1994; Stuart McMillan, 'How the end of the Cold War has altered Japan's foreign policy', *The Press*, 22 December 1994; S.McMillan, 'Japan seeks defence role while staying constitutionally pacifist', *The Press*, 6 February 1995.

weapons, and that so far we have abstained on this kind of resolution.  
[35]

As the UNGA approached, polls indicated that the incumbent Canadian government would lose and it would be a very close result in A/NZ. Ireland watched closely to see if others would reveal their position, while Australia and Sweden stayed silent. The result of Lau's Italian initiative was expected during the UNGA; but Japan was most unlikely to bow to public pressure and threaten the US relationship.

#### **11.4 Role of the Non-Aligned Movement**

From June 1992 onwards Ware worked closely with Zimbabwe's diplomats in New York drafting the UNGA resolution. Following Shamuyarira's Ambassadorial Roundtable, he opened the WCP US launch in New York in May 1993. On 27 August 1993, Zimbabwe sought NAM co-sponsorship for the draft resolution. Mexico, Nigeria, Pakistan, Sierra Leone and Tanzania spoke in favour. The resolution was referred to a Working Group to give countries the opportunity to discuss it and offer amendments before presentation to the full NAM in mid-September. LCNP was asked to provide legal assistance at various stages.

The NAM does not vote, but passes resolutions by consensus which, once adopted, members are expected to support and vote for. Indonesia, as Chair, was required to introduce it to the First Committee on behalf of the 110 members and other co-sponsors. During the First Committee meetings, the NAM planned closed Roundtables and informal discussions where other interested countries could make proposals. [36] In mid-September the NAM Working Group discussed the resolution, and there was no dissent. By mid-October, opposition had appeared; and as the UNGA began, it was apparent that intense efforts were being made to break NAM consensus and scuttle the resolution.

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<sup>35</sup>. Parliamentary Question to Prime Minister Hata, 22 November 1993.

<sup>36</sup>. Notes by Ware of meeting with G.Dzvairo, Zimbabwe Mission, 31 August 1993.

The draft UNGA resolution still held basically to Evans' original version which asked the ICJ 'to render an advisory opinion on the legality or otherwise of the use or threat of the use of nuclear weapons or methods of warfare'. Costa Rica had wanted to include specific reference to possession, testing, manufacture and deployment, but a consensus developed that 'threat or use' would succeed more easily than a more encompassing one. In consultation with LCNP advisers, the NAM Working Group slightly amended Zimbabwe's draft. The preambular paragraphs noted the UN Charter's obligation for states to refrain from the threat or use of force against any State; recalled earlier UN resolutions which declared the use of nuclear weapons a violation of the UN Charter and a crime against humanity; welcomed the Chemical and Biological Weapon Conventions; noted insufficient progress towards the complete elimination of nuclear weapons; recalled the UN Decade of International Law; noted the provisions of the UN Charter empowering the UNGA to request an advisory opinion on any legal question; recalled the UN Secretary-General's recommendation to use advisory opinions; and welcomed the 1993 WHA resolution. The operative paragraph read:

Decides pursuant to Article 96, paragraph 1, of the Charter, to request the International Court of Justice urgently to render its advisory opinion on the following question: *Is the threat or use of nuclear weapons in any circumstance permitted under international law?*<sup>[37]</sup> (Appendix III)

As Cold War enmities faded, the climate became more conducive to real nuclear disarmament. In July 1993, Clinton had announced a 15-month extension to a moratorium on nuclear testing, which also curtailed further UK testing at Nevada; and Russia confirmed it would also extend its moratorium. Clinton's initiative was in direct response to fears that the NPT would unravel following North Korea's sudden threat to withdraw in March. A number of NAM states were vociferous in their expressions of anger and frustration at

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<sup>37</sup>. UN General Assembly Resolution, 'Request for an advisory opinion from the International Court of Justice on the legality of the threat or use of nuclear weapons', A/C.1/48/L.25.

the lack of progress towards total nuclear disarmament to which all NWS are committed under Article VI of the NPT. Securing a CTBT was thought to be a sufficient appeasement for many states and could help save the NPT. North Korea's threatened defection confirmed that without a Convention banning nuclear weapons, the NPT could not prevent states developing nuclear weapons; and the UN had no legal grounds to take actions against such states. Therefore the idea of having the legal arm of the UN declare nuclear weapons illegal was increasingly attractive to many states, which had become frustrated by the NPT's discriminatory nature and the UN's inability to bind the NWS to total nuclear disarmament. [38]

All UNGA disarmament resolutions are either adopted by consensus or majority vote. If a resolution is unlikely to attract a majority, the co-sponsors either refrain from introducing it, withdraw it or defer it to a subsequent session of the First Committee. Most UNGA resolutions are declaratory and have little real effect on the policies and practices of NWS. For many years most disarmament resolutions had been adopted by consensus, and there was general antipathy towards introducing new, controversial resolutions.

In 1993 the First Committee had six new resolutions on the agenda, with the ICJ one being the most divisive and effective because it would require action which could impact strongly on the NWS. Powerful countries had in the past applied intense pressure to prevent countries from introducing effective resolutions. [39] The NWS had been on the back foot following their defeat at the WHA, and had therefore stepped up pressure on key NAM governments and diplomats months in advance of the UNGA. Seasoned

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<sup>38.</sup> Peter Beaumont, 'Clinton puts Britain in atom chaos', *The Observer*, 4 July 1993; Douglas Jehl, 'Clinton asks nuclear powers to join test ban', *New York Times International Sunday*, 4 July 1993. Alyn Ware, 'World Court Ruling Could Halt Proliferation', LCNP, 2 page briefing paper, March 1993.

<sup>39.</sup> Alyn Ware, 'Report on the Progress of General Assembly Resolution L25', to WCP Inner Network, 7 December 1993.

disarmament experts described the resolution as the most contentious the UNGA had ever encountered, and warned of a severe backlash.[40]

### 11.5 UN General Assembly 1993

*The NAM, since its establishment 35 years ago, has always called for a nuclear free world and continues to wage a war against the supremacy of nuclear weapons. However, as was evident during the vote on the UNGA Resolution, NAM members are not immune to the pressure of nuclear weapon states who launched intensive lobbying at the capitals and the Missions in New York. Ambassador Ismail [41]*

This section is based on the experiences of the WCP lobbying team consisting of Dewes, Green, Lini, Tangiora, St John and Ware. It traces the precarious journey of Draft Resolution L25 through the UNGA from 26 October- 19 November 1993, highlighting NAM's decision making processes, providing insights from senior diplomats. Some assertions cannot be substantiated officially because the sources feared for their jobs. However, their comments were documented immediately by the author, and for the purposes of this discourse are considered to be reliable information.

On arrival in New York, the WCP team heard genuine concerns that the NAM would not withstand the pressure and remain a cohesive group. Zimbabwe experienced such severe pressure that diplomats were forced to avoid public contact with NGOs prior to the NAM Coordinating Meeting on 26 October. Shamuyarira reported *demarches* (diplomatic representations) to Harare from five delegations, including Australia, all applying strong pressure. The British government had even phoned the President personally

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<sup>40</sup>. Mark Shapiro, 'Mutiny on the Nuclear Bounty', *The Nation*, 27 December 1993, pp. 799-800, 'Ban the Bomb?', *The Nation*, January 9/16 1995; Kevin Sanders, 'The World Court and the Bomb: Report from the Hague', *War and Peace Digest*, vol.3, no.5. September 1994; K.Sanders, 'UN Calls on World Court to Ban the Bomb', *War and Peace Digest*, vol.3, no. 6, January 1995.

<sup>41</sup>. Razali Ismail, 'The UN and Nuclear Disarmament: Perspectives of Non-Nuclear Weapon States', Keynote address to XII World Congress of the IPPNW, Massachusetts, 26 July 1996, 12pp.

Figure 14: Photos of Ware, Tangiora and Gorbachev.



Alyn Ware outside the Hague, 1995



Mikhail Gorbachev (prominent endoser of WCP) and Pauline Tangiora

asking him to withdraw the resolution. [42] Shamuyarira phoned Mendlovitz suggesting deferment until 1994 in order to build up support amongst other Foreign Ministers. Vanuatu's Ambassador van Lierop discussed with Papua New Guinea (the other South Pacific NAM state) about leading a breakaway group of co-sponsors, but he lacked his government's backing and Lini's Ministerial clout. He hosted a luncheon for Ambassadors from the Asia-South Pacific region to honour Lini's MacBride Peace award, promote the resolution and boost confidence amongst diplomats. It was held on the eve of the NAM meeting and just before the UN handover of DPCs.

Van Lierop was highly respected and valued for his legal expertise on many issues. He realised his advocacy for the resolution would probably cost him his position; but like Lini and others he was prepared to sacrifice his personal security for such an important matter of principle. About 30 Missions sent representatives including Australia's Ambassador Butler and John McKinnon, the brother of A/NZ's Foreign Minister. Lini invited some of the WCP lobbying team, providing an opportunity for them to discuss the resolution discreetly. Both Lini and Tangiora were respected as traditional Chiefs by the South Pacific states; while Weiss, Theorin and Dewes already knew some of the Ambassadors, which facilitated frank discussion.

That evening van Lierop reported on a function at the German Mission where the ICJ President, Sir Robert Jennings told diplomats that the WCP would damage the reputation of the ICJ and asked them not to support it. Van Lierop feared the NAM would crumble, and warned the team to prepare for defeat. Lini, Tangiora and Dewes wept silently at the news. The following day they stood outside the NAM meeting room greeting supporters and waited for the result. Lini joined them, determined to 'eyeball' her colleagues. Later she confided that some diplomats were moved by the women who were there representing their peoples and in effect became their conscience. Knowing the women were standing outside gave them the courage to try again, and they succeeded. After hours of deliberation, the NAM agreed by consensus to introduce the resolution. The Indonesian Ambassador wrote to

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<sup>42.</sup> Dzvairo interview,(1998), op.cit.

all members stating that it 'will be submitted to the First Committee as NAM's draft resolution on 28 October 1993' - the deadline for all resolutions.  
[43]

It did not arrive. Indonesia withheld it, and called for another NAM consultation, citing earlier poor attendance and opposition from within and outside NAM. Unusually, the UN extended the resolution deadline for a week. Zimbabwe announced they would not introduce the resolution if NAM faltered. In the meantime, the lobbying team met discreetly with diplomats in the UN Delegates' Lounge or at Missions, trying desperately to sustain supporters. Meetings were held with the Australasian Missions to encourage them to join a breakaway group of co-sponsors if the NAM collapsed. Butler was personally very supportive: during the night, he had phoned Foreign Minister Evans trying to convince him to support it on procedural grounds. He had argued that it was only a question being asked and not an indication whether a country thinks nuclear weapons are legal or not. He was quietly confident of Evans' support. He indicated that they were under intense pressure to 'show their cards', as the UK and US were assuming loyalty from Western states on this resolution.

The A/NZ Ambassador, although not personally opposed to the resolution, was less forthcoming. He indicated that there was no nation prepared to bear the costs to relationships, and that A/NZ would not be the first one to break out of the Western group. He contended that there was strong support within the South Pacific community, saying that 'no Pacific countries had expressed interest in the WCP to NZ'. However, South Pacific Ambassadors had given the lobbying team strong indications of support. This exposed a lack of trust felt by some Island states towards A/NZ. In fact, Lini confirmed that A/NZ had made representations to leaders in Vanuatu's capital Vila to stop them supporting it.[44] Ireland indicated that they might

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<sup>43.</sup> Letter from Ambassador Wisnumurti to all NAM members, 27 October 1993.

<sup>44.</sup> Notes taken by Dewes, Green and St John during meetings in New York with Ambassador Butler (22 October 1993), Ambassador Keating

vote in support, but not co-sponsor. The Italian Foreign Affairs Commission unanimously approved the motion binding the government to vote in support. Joachim Lau immediately met with the Italian Mission in order to hold them accountable. [45] The WCP team distributed the Italian communique, the *Irish Times* article, letters from the Canadian Opposition Parties, and evidence of A/NZ government support to many delegates. Theorin confirmed that her government would abstain if the resolution went to a vote.

A US Armed Services Committee member spoke with the US Mission which confirmed that 'the US had been opposing the resolution for a long time and had been working with the Indonesian Foreign Minister Ali Alatas to have it stopped'. They felt they were losing and complained about the NGOs: 'These doctors who think this is a public health issue and these lawyers who want it to go to the ICJ - the very nerve of these people!' They were furious at the 'Minister of Health from Vanuatu who pushed it through the WHA'. Alatas had assured them that 'it would not be voted on this year, ... but it is always open to the random idiot factor'. [46] Indonesia was under pressure from the US because of its human rights record in East Timor and there were threats to withhold the sale of F16 aircraft and nuclear power plants if it did not 'kill' the resolution.[47] In turn, Indonesia pressured the Philippines and Malaysia. Filipino groups reported that Prime Minister Ramos (pro-US former Defence Minister) was meeting Clinton to discuss aid and military matters. The Philippines 'owed' Indonesia for its support during their anti-nuclear transition and removal of US bases, and for earlier financial help. Also, at this critical stage one of the strongest proponents, Mexico's Ambassador Marin-Bosch, was sent to Washington to negotiate the North American Free Trade Agreement. The Francophone-leaning Vanuatu government was suffering intolerable pressure. Van Lierop was ordered to be silent during NAM discussions, and was sent to the Netherlands for other

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(26 October 1993); phone conversation with Hilda Lini, 21 November 1993.

<sup>45.</sup> Letter from Fabio Marcelli to Joachim Lau, 28 Oct 1993.

<sup>46.</sup> Notes of phone conversation between unnamed member of House Armed Services Committee and Adviser to the US Mission and member of WCP lobbying team, New York, 5 November 1993.

<sup>47.</sup> Dzvairo interview, op.cit.

meetings. His secretary was also silenced; and Lini was trailed by a French agent while in New York.

Intimidation was evident even amongst citizen groups, who experienced interference with their work. The first box of 350 Legal Memorandums were 'lost' in transit from LCNP to IALANA's Hague office. Some ISC members had mail opened, and one home was broken into but nothing was taken. Mail sent from LCNP to all Missions inviting Ambassadors to attend the UN handover of DPCs did not arrived. During the weekend prior to the event, activists faxed invitations to every Mission and followed this up with another phone call. Less than 20% of these faxes arrived. When members of the lobbying team phoned the LCNP office there was a recorded message saying that the line was temporarily out of order, but Ware was there and the phones were working.

Supporting citizen groups began to fax Missions encouraging them to put the resolution to the vote. Nicholas Grief, the Legal Memorandum's author, faxed Indonesia's Ambassador:

Please introduce the resolution today, and resist any coercion by the nuclear weapon states. Such coercion is unlawful under International Law: "No state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind." (General Assembly Declaration on Principles of International law, 1970.) [48]

When the NAM Coordinating Bureau met on 2 November, French-dominated Benin, backed by Belize, Morocco, and Sierra Leone, opposed the resolution. Chile, Ecuador, Egypt, Guyana, Malaysia, Nigeria and Papua New Guinea countered by strongly supporting it. The NAM decided to introduce it, but to reserve their decision on whether to push for a vote. As the extended deadline for resolutions approached, NAM members reported mounting pressure in New York and their capitals. Butler confirmed that Australia was likely to vote in favour. The US had recently threatened to

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<sup>48</sup>. Letter from Nicholas Grief to Ambassador Wisnumurti, 4 November 1993.

expose Australia's Aboriginal human rights record if they did not support a continued boycott of Cuba. This angered Butler, who sensed that US pressure was becoming counter-productive.

An hour before the cut-off time, Indonesia presented the resolution to the First Committee and the NAM continued consultations over whether to vote or defer. Ware and others immediately prepared a paper for delegates arguing in favour of putting the resolution to the vote. An A/NZ official confirmed that most NATO states would abstain or oppose if put to the vote. [49] A/NZ was also wavering. Confidential Ministerial briefing papers on 18 November revealed the Ministry's recommendation 'that the resolution ... no longer qualifies as meriting New Zealand support. Instead we should support ways of finding more breathing space to enable the resolution's proponents to attract more balanced support'. It argued that A/NZ should move to an abstention which would 'support tactical moves to avoid the resolution going to a vote in its present form and with its current backing'. One of the stalling tactics promoted was to refer the resolution to the Sixth (Legal) Committee for a report. [50]

On 10 November, NAM debated strategy in two three-hour sessions. In a last minute attempt to appease the West, Indonesia proposed 'no action'. This would 'take into account' the First Committee decision to 'adopt by consensus the resolutions on CTBT and the prohibition of the production of fissile material, and also of the desire of delegations to ensure the best international atmosphere for the negotiations on these two issues which will contribute greatly to the non-proliferation of nuclear weapons'. [51] It was not accepted, but neither was another proposal for action: so a deadlock ensued. The pressure intensified, and most countries began to move towards the fence. Theorin confirmed that Austria, Denmark and Greece

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<sup>49.</sup> Sources include reports written by Dewes, Green and Ware and their notes taken during the UNGA in New York.

<sup>50.</sup> Briefing paper from G.C. Fortune (Acting Secretary of Foreign Affairs and Trade), to Ministers of Foreign Affairs and Disarmament, 18 November 1993, released under OIA.

<sup>51.</sup> Proposed Statement read by the Indonesian Ambassador to the NAM meeting on 10 November 1993.

would join Sweden and Norway in abstaining. Peggy Mason, who chaired the Western Consultative Group, reported that the USA, UK and France (Permanent Three or 'P3') were threatening to stall the CTBT and the fissionable material ban, 'until the illegality issue is decided'. She affirmed Canada's proposed abstention and described France's approach as 'hysterical'. [52]

On 17 November the NAM held an all-day meeting. Chile, Colombia and Cuba, in an attempt to break the deadlock, offered to co-sponsor the resolution with Zimbabwe and about nine others, and invited other countries to join them. Ghana, with support from Benin, Indonesia, Morocco and Senegal, opposed this because for that to happen, NAM would have to withdraw the resolution completely first, to allow the other countries to introduce it - but the resolution introduction deadline had already passed. Indonesia informed the First Committee that the NAM consultations were still in progress, and deferred a final decision on the resolution until 19 November, the last day of action on disarmament items. The day before, Chile, pressured by the UK, withdrew as a co-sponsor. Zimbabwe argued that despite a lack of total consensus, they should still go ahead. Others used the lack of consensus to argue for 'no vote'. Some indicated they would ask for a vote even if the NAM did not. Others responded that although they would vote in favour, they opposed forcing a vote as it would split the NAM which was already very divided. Supportive countries feared they could lose it altogether, and reluctantly agreed to take no action.

When the First Committee convened on 19 November, Indonesia's Ambassador Wisnumurti delivered the NAM position stating that 'in the spirit of cooperation and compromise' they would 'not press the resolution for a final action by the Committee at this time'. This concession was 'in order to preserve the momentum and progress generated' by other nuclear disarmament initiatives. He reiterated that the UN had 'pronounced itself in no uncertain terms that the use of nuclear weapons would be a violation of the Charter and a crime against humanity', and castigated the NWS for

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<sup>52.</sup> Interview by Dewes with Mason, Ottawa, 25 March 1998.

**Figure 15: Chronology of 1993 UNGA ICJ Resolution.**

### **Chronology of Draft UN Resolution L 25 : 1993**

**28 September 1992:** Zimbabwe presents resolution to NAM Ministerial Meeting at UN. Indonesia (Chair) refers it to NAM Working Group at UN.

**27 August 1993:** Zimbabwe formally requests NAM to introduce resolution at UNGA. Working Group to examine feasibility and procedures and report back. No opposition within NAM until mid-October.

**25 October:** Ambassadorial lunch for Hilda Lini in honour of her MacBride Peace Prize helps build support within Asia/South Pacific countries.

**26 October:** NAM agrees to introduce resolution; Working Group finalises text.

**27 October:** Indonesia informs NAM it will submit by deadline on 28 October. NGO coalition presents UN with over 100,000 DPCs, the MacBride Appeal and sample of the Hiroshima/Nagasaki Appeal.

**28 October:** Indonesia withholds resolution, calls for another NAM meeting to reconsider. UN extends deadline for submitting resolutions to 4 November.

**2 November:** Closed meeting of NAM; Benin and Morocco oppose. Decide to introduce resolution but leave open whether to vote on it, or defer.

**3 November:** Heavy pressure in leading NAM capitals by US, UK, France.

**4 November:** Indonesia tables resolution advocating 'no action'. Still no consensus.

**8 November:** Resolution published by UN with number A/C.1/48/L.25.

**10 November:** NAM closed meeting all day; still no consensus.

**11 November:** Intimidation rife, most nations 'on fence', Italy bound by Parliament to vote for resolution; Austria, Canada, Denmark, Greece, Ireland and Sweden indicate abstentions; A/ NZ and Australia might vote for.

**16 November:** Indonesia argues for deferral in NAM meeting; still no consensus.

**17 November:** NAM meets all day; investigates independent team of co-sponsors led by Zimbabwe, Colombia and Chile. Only 5 NAM members block this initiative.

**18 November:** NAM split deepens, risk of losing vote too great; agree 'no action'.

**19 November:** Indonesia confirms NAM decision 'not to press for final action... at this time', but reserves the right to re-introduce at a later date.

‘steadfastly refusing to provide assurances that they will not use or threaten to use nuclear weapons against the non-nuclear nations’. The NAM, he said, ‘reserved their rights to raise this issue at any time they deem it as necessary and appropriate’. [53]

Although badly bruised by the experience, NAM members were furious with the level of intimidation and pressure applied, and this reinforced their determination to keep up the momentum. Many were swayed by the argument that the CTBT and fissile ban resolutions could be a casualty of the resolution’s success. Indonesia had chaired the PTBT Amendment Conference in 1991, and the NAM as a whole was keen to see a CTBT secured. By letting the dust settle and starting CTBT negotiations, they could consider another attempt in 1994.

In the weeks following, some senior diplomats went public about the intimidation by NATO’s P3. Marin-Bosch’s colourful description was: ‘The nuclear powers are scared shitless. Their turn is up. And they are holding on to the only toys that have been the guarantee of their legitimacy’. [54] Theorin wrote of her observations as a UN delegate in the PGA Newsletter: ‘This unacceptable coercion of the non-nuclear states shows that they are determined to retain their freedom to threaten the use of nuclear weapons’. [55] Butler commented that you cannot expect the P3 to ‘fill up with great warmth if something that is a critical part of their defence is suddenly declared illegal’. [56]

Following her retirement as Chair of the Barton Group, Peggy Mason candidly described how the P3 tried desperately to hold this Western consultative group (consisting of the 16 NATO members, Australia, A/NZ, Japan and Ireland), in line. She had hoped, post-Cold War, that they could move away from the ‘bloc’ mentality and work more cooperatively with other

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<sup>53.</sup> Statement by Indonesian Ambassador Wisnumurti on behalf of the NAM on draft resolution A/C.1/48/L25 before the First Committee of the 48th Session of the General Assembly, 19 November 1993.

<sup>54.</sup> Shapiro, op.cit.

<sup>55.</sup> Maj Britt Theorin, ‘Can Use of Nuclear Weapons ever be legal?’, *Global Action*, December 1993.

<sup>56.</sup> Shapiro, op.cit., p. 800.

states. Instead, 'the Western P3 in particular argued the line about solidarity ... it was absolutely essential that the bad guys, the malefactors, not be given any comfort by thinking that they could drive a wedge between us'. When different arguments were expressed 'it was judged in terms of whether or not you were holding the line or weakening it'. The group works by voting, so countries could not hide - they had to stand up and be counted.

Another important factor was the European Union (EU) 'political coordination', where 12 of the 20 member group were already coordinating policies and effectively silencing the 'moderates'. In the past Germany would have spoken out, but was wary because of its closer relationship with France. 'On each issue there was this EU position which was really the French/British position, and all the rest of them, one after the other, would line up and repeat this statement'. This left only a 'tiny little group which could respond to them: Ireland, A/NZ, Australia and Canada, all by themselves'. With Canada in the Chair, it was difficult to speak freely in their support, and Ireland was an EU member.

She described how 'psychological intimidation tactics' were used against any non-Ambassador who spoke up. They were effectively ignored, put down or accused of 'not toeing the line, undermining the cause of nuclear non proliferation, implying they were sliding into the Iranian camp'. [57] Not surprisingly, in this acrimonious atmosphere few Ambassadors attended meetings.

Although Canada voted differently from the US over 50% of the time, 'there was a kind of rule: we wouldn't be by ourselves, we normally had at least one NATO country such as Norway, Netherlands or Germany with us because we were in an alliance relationship, relying on a nuclear deterrent... and normally in addition to Australia, NZ and Ireland'. Many of Mason's superiors in Ottawa were schooled in Cold War groupings and still used the judgement that 'moderate Europeans should be with them', without taking

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<sup>57</sup>. At the time the Iranians had put a 'killer' amendment into a consensus resolution on the Chemical Weapons Convention and they were seen as the most radical NAM state.

into account the new EU realities. Mason felt the Barton Group was 'in denial, convincing themselves that nothing would happen... and then it did!' It was clear from the start that the P3 were going to be 'totally hysterical' about it and NATO states were going to vote against: 'That was the position and they all repeated it'.

When the Australians led in the First Committee on the CTBT resolution, the French threatened to block consensus, linking it to the illegality resolution. In Canada, the supportive letters from the Prime Minister and Foreign Minister caused 'terrible angst in the Foreign Ministry' and the US. 'There were *demarches* going fast and furious, not just in NAM countries but in Barton Group countries, including Canada'. Within the group, the P3 demanded a 'go-round' to declare positions, in an effort to isolate Ireland and A/NZ. When a UN vote looked likely, Indonesia was given a 'diplomatic lunch' to find a way to keep the resolution alive but not vote on it. Canada, normally assumed to be one of the most 'credible' countries, was asked to move a vote of deferral in the First Committee if NAM did not accept 'no action'. At first Mason's Ministry gave permission, then phoned 'sweating' saying they were reviewing their position. The UK and France told Mason: 'In light of discussions in Ottawa, Canada should not move the motion ... we shouldn't have waffling ... we need a strong NATO country like the Netherlands'. So, the Barton Group was saved by NAM's decision. Mason described the P3 'hanging on by their fingernails to this absurd nuclear deterrent which the NAM doesn't take seriously at all ... it is absolutely silly'. [58]

So, although it looked as though the resolution was doomed, it was an amazing feat to have reached the First Committee. Every UN state was forced to review their policies and take a position on it. The P3's reaction highlighted how extremely significant it was. The NAM's resolve was strengthened to file ICJ submissions on the WHA question, and to try again in the 1994 UNGA. In spite of unprecedented coercion aimed at the

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<sup>58</sup>. Interview by Robert Green with Peggy Mason, Melbourne, July 1995. Note that Mason's attitudes to nuclear deterrence had shifted from her position in 1992 when she visited A/NZ and expounded its virtues publicly.

vulnerable NAM and South Pacific states, 96% of the 110 NAM states and at least another ten non-NAM states including A/NZ and Ireland, sustained their positions. Overriding considerations, such as the future of the NAM, the CTBT and other disarmament initiatives, swayed the already beleaguered diplomatic community to await a more conducive environment.

The second WHA attempt in 1993 had a much greater chance of success than the first UNGA initiative, because it surprised an unprepared nuclear cartel; it was confined to the issues of 'use' and health and not the law and defence policies; Health Ministers were not as constrained as Foreign Ministries by their officials and wider 'political considerations'; the WHA agreed to a vote on a secret ballot; and IPPNW had some very close working relationships with Ministers in capitals. The NAM governments were more easily swayed by arguments linking the UNGA resolution with other disarmament negotiations, and there was inadequate public pressure in most NAM states to persuade governments to withstand the well-funded and organised campaign by the P3 against the UNGA resolution.

Conversely, the UNGA question went to the heart of nuclear deterrence. It was the correct forum to raise the issue, so it could not be challenged on procedural grounds. While the WHA success undoubtedly strengthened support in the UNGA, it was also used as an excuse to let the UNGA resolution lapse because the ICJ was already considering it. The UNGA resolution would never have survived without the numbers commanded by the NAM and courageous leadership by a few diplomats and politicians. The fact that members of ANZUS and NATO indicated breaking ranks with the P3 by abstaining or voting in favour, was a testament to the strength of WCP support within those countries.

Inevitably there were casualties. In December, van Lierop was dismissed as Vanuatu's UN Ambassador, which prevented him from chairing the forthcoming UN Global Conference on the Sustainable Development of Small Island States in Barbados. French pressure was suspected, as his

replacement was both Francophile and French-speaking.[59] During a subsequent visit to the US, Lini discovered that the US had closed down its embassy in the Solomon Islands and withdrawn a significant amount of aid to South Pacific states. A sympathetic member of the Congressional Research Service indicated that there was only interest in Vanuatu while her brother was Prime Minister, 'to try to get him out'. The excuse given for the cuts was lack of money: but when elections loomed a year later, she reported that the Americans were offering \$1 million scholarships to study at their East/West Centre while cutting projects on child health and clean water. French, US and Australian 'aid' money poured in to ensure the more conservative government remained in power. Later Lini reported how during the run-up to the 1995 NPT extension conference, US President Clinton offered the Marshall Islands compensation for US nuclear testing if they supported indefinite extension: 'They were not just twisting arms - they were breaking legs!' [60] High level bribery and corruption was later exposed as endemic in Papua New Guinea, making it extremely vulnerable to pressure from the P3. The former Governor of the Bank of PNG described the rampant corruption as 'systemic because it has invaded the whole process of policy making and decision making'. [61]

Both Tangiora and Lini remarked on the responsiveness of some Ambassadors, and especially van Lierop, to the presence of women on the lobbying delegation. Lini felt it was vital to have a mix of gender among delegates because of the different way women approach issues:

Sometimes in a very difficult situation, just the fact that a woman is there makes a difference. Certain men become more sympathetic to the cause because a woman is bringing the issue up and relating it to the family and the community level ... they are emotional and down to earth in their reasoning and arguments. [62]

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<sup>59.</sup> Ian Williams, 'van Lierop dismissed', *Pacific Islands Monthly*, January 1994, p. 33. There were other factors involved as well as his role in the VWCP.

<sup>60.</sup> Lini interview (1995).

<sup>61.</sup> David Robie, 'Corruption claims mar anniversary', *The Press*, p. 26, 3 July 1995.

<sup>62.</sup> Lini interview (1995).

Tangiara described how Lini pricked many consciences when she spoke during the luncheon: 'All those guys were sitting there in their suits fighting within themselves for honesty. It is a good excuse to hide behind a government position, but deep down there were many, many people for a long time after trying to rack their consciences and atone for what they did.'

[63] The presence of strong South Pacific women sustained Ware as he juggled the myriad roles of leading lobbyist, information gatherer and disseminator, office coordinator, writer of background papers and press releases, and organiser of the UN DPC Handover Ceremony. Ware valued the complementary roles of the various members of the WCP team, especially the two indigenous matriarchs who commanded the trust and respect of the NAM diplomats. They provided a different authority from the legal and ex-military members.

With the decision to defer, there was some soul-searching - particularly in New York - as to whether alternative, more assertive lobbying strategies may have worked. Some critics in LCNP felt the team had not done adequate 'vote counts' before the resolution was introduced; or that it should have been introduced by individual countries instead of the NAM so that it would not be vulnerable to NAM consensus requirements. Ware countered in his lobbying analysis paper that 'vote counting' methods which may work in US Congressional lobbying are inappropriate in the UN context - particularly as WCP lobbyists were often trying to influence governments of which they were not citizens. Ware also argued that it appeared necessary to have the NAM introduce the resolution because no single country had either the desire to introduce it themselves - or the capability to withstand the counteractions of the P3. In addition, without NAM's endorsement, even if such a government had been found, it would have been difficult to muster sufficient votes. [64]

Citizen groups working closely with the leading delegations kept a discreet distance to prevent the resolution being perceived as NGO rather than

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<sup>63.</sup> Tangiara interview (1995).

<sup>64.</sup> Ware interview (1997).

government sponsored. There was a fine line between productive and counterproductive lobbying; and with issues as sensitive as this, it was paramount that the team respected these boundaries and behaved accordingly. By the time the resolution was introduced it was too late to influence dynamics within the NAM or to prevent NWS from pressurising capitals.

When evaluating the fate of Resolution L25, Weiss and Mendlovitz acknowledged that they should have worked full time lobbying, but it was not practical for them. Weiss thought that 'ideally it needed a team of 60-80 lobbyists starting earlier, plus a staff of 15-20 to keep countries under pressure, plus a public relations team'.<sup>[65]</sup> However all three co-sponsors were in financial difficulties. IPB was effectively bankrupt; IPPNW had a half million dollar deficit; and IALANA was struggling. WCP UK and Aotearoa scraped by, working voluntarily and wholly dependent on individual donations. The ISC relied totally on Ware's ongoing work in New York, gifts of legal expertise for the submission drafts, and interested groups and individuals lobbying governments in capitals.

The high level of public support behind the resolution was reflected in the thousands of DPCs from a wide range of countries. This encouraged the leading NAM countries when they met to decide to make another UNGA approach in 1994. Meanwhile, media coverage of the resolution was scant. As with the WHA case, the A/NZ media responded to the high level of public interest, but there was little response from the European media, so the WCP network was left to spread the news via newsletters and the internet.<sup>[66]</sup>

### **11.6 UN General Assembly 1994**

When Ware met Evans, Green and Dewes in A/NZ in January 1994, they were despondent about whether NAM would risk another attempt. Unless a

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<sup>65.</sup> WCP International Steering Committee Meeting Minutes, 11-12 February 1994.

<sup>66.</sup> See Christopher Bellamy, 'Big Five nuclear powers braced for move to ban bomb', *Independent*, 4 January, 1994; Kevin Sanders, 'Nuclear Powers Seek to Block World Court N-Bomb Ban', *War and Peace Digest*, vol. 3, no.3 Jan 1994.

significant number of ICJ submissions on the WHA question could be amassed and international citizen support increased, it was most unlikely they would take the risk. The WCP ISC prioritised these two strategies prior to the 10 June deadline for submissions. At the February ISC meeting in Amsterdam, Christ reported from the WHO Executive Board meeting a few weeks earlier that support for the WHA initiative was 'holding up well' with no evidence of any direct challenge to it. IPPNW affiliates maintained pressure on governments to put in submissions, while IALANA prepared draft legal arguments. A Hague DPC handover to the ICJ Registrar was planned for 10 June. Citizen groups continued collecting DPCs, and sympathetic governments were asked to refer to them in their submissions.

During the next ISC meeting which coincided with the WHA in Geneva, the IPPNW team confirmed there had been no challenge to the 1993 resolution and that delegates were under 'enormous pressure' not to make ICJ submissions. The IPPNW team provided at least 50 delegations with material for inclusion in submissions, and - finding widespread ignorance of ICJ procedures - even offered to help transmit them to the ICJ.[67]

Following soundings by Ware and Mendlovitz, Shamuyarira outlined a plan for the 1994 UNGA. Mexico was still keen to form an independent group of co-sponsors if the NAM faltered. The NAM Foreign Ministers' conference was held in Cairo in early June. Many countries, including the Francophones, Egypt and Latin American states, had received *demarches* and there was tremendous pressure not to introduce the resolution. After a protracted debate, including concerns expressed that Zimbabwe was acting as the mouthpiece of NGOs, the Ministers decided to re-introduce it and put it to a vote. [68]

A week later, 27 countries had put in ICJ submissions; and following requests from some governments for more time, on 22 June the ICJ extended the time limit until 20 September. On 10 June in the Peace Palace at The Hague, an ISC delegation presented the ICJ Registrar with over

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<sup>67.</sup> Minutes of ISC Meeting, Geneva, 13-14 May 1994.

<sup>68.</sup> Dzvairo interview, op.cit.

175,000 DPCs; the MacBride Lawyers' Appeal; a sample of the Hiroshima and Nagasaki Appeal; and other material surveying 50 years of popular opposition to the nuclear arms race, as 'citizen evidence' in support of the WHA question. By 20 September, 35 countries had submitted, making it the largest case ever brought before the Court. Of these, 23 argued for illegality (Nauru and the Solomon Islands each submitted over 100 pages); and three threshold states (India, Iran and North Korea) and two former *de facto* NWS (Ukraine and Kazakhstan) argued that any use of nuclear weapons would be illegal. One EU member (Ireland) and one EU candidate (Sweden) supported the case. Japan argued that 'the use of nuclear weapons is clearly contrary to the spirit of humanity that gives international law its philosophical foundation'. [69]

Shortly before the NAM Foreign Ministers' New York consultation a few weeks later, Ware distributed a briefing paper to diplomats outlining why UNGA Resolution L25 should proceed and informing them of the NAM's decision to re-introduce it. He summarised its history, pointing out that 'the high hopes expressed at the 48th UNGA for the conclusion of a CTBT and a prohibition of fissile materials have not been fulfilled'. He argued that it would be sensible to have both the WHA and UNGA questions decided by the Court concurrently, and that the prospect of an advisory opinion could strengthen efforts to implement Article VI of the NPT. [70]

The NAM Foreign Ministers, greatly encouraged by the level of international support and the WHA submissions, reaffirmed their earlier decision. Once this was made public, WCP (UK) and LCNP organised a fax campaign to Missions in New York and Foreign Ministers in capitals to encourage them to stand firm, and to remind them that millions of people around the world were

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<sup>69</sup>. 'Nuke policy statement draws fire', *Asahi Evening News*, 4 June 1994; 'Tokyo alters stance on nuclear weapons', *Japan Times*, 9 June 1994; Japan's Oral Statement to the ICJ, CR 95/2 (The Hague 1995), p. 18.

<sup>70</sup>. Alyn Ware, 'Why proceed with the request at the 49th General Assembly', September 1994, 2pp.

watching them. [71] Meanwhile, Ware supported the NAM's lead by lobbying discreetly on behalf of the ISC, alone in New York. He monitored the First Committee, and disseminated information indicating how countries had voted on earlier disarmament resolutions, pointing out which ones might be swayed either way. On 9 November, Indonesia re-introduced the 1993 resolution unchanged, renumbered L36, to the First Committee on behalf of 111 NAM members (which now included South Africa, a former *de facto* nuclear state).

The First Committee's agenda included a range of contentious resolutions, including one with proposals for the step-by-step reduction of the nuclear threat and the ultimate elimination of nuclear weapons. India proposed a resolution calling for negotiations on a Nuclear Weapons Convention. Japan sponsored a weaker resolution to counter this, calling instead for 'Nuclear disarmament with a view to the ultimate elimination of nuclear weapons'. At the last minute, India withheld its resolution and Japan introduced its one, couched in terms of the NPT and therefore less objectionable to the NWS. Eventually this was revised to exclude any reference to Article VI or specific disarmament steps and was adopted by 140 votes with no votes against and 8 abstentions (140:0:8). The resolution proposing the Convention on the Prohibition of the Use of Nuclear Weapons was adopted by 98: 23: 31.

The step-by-step resolution sponsored by nine NAM countries (Brazil, Colombia, Egypt, India, Indonesia, Malaysia, Mexico, Nigeria and Zimbabwe) outlined a five to ten year agenda to implement the plan. It included a proposal for 'effective legally binding measures to deter the use or threat of use of nuclear weapons'. It had been drafted by PGA a few months earlier and brought together many of the leading proponents behind the ICJ resolution. The step-by-step resolution was far more controversial and was adopted by only 91: 24: 30.

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<sup>71</sup>. Action Alert from WCP UK, 12 October 1994, LCNP Press Release: 'Non-Aligned Movement Calls for World Court Opinion on Nuclear Weapons', 11 October 1994.

Not surprisingly the draft ICJ Resolution L36 again caused the most commotion. When it was debated in the First Committee, a larger group of NAM dissenters - including Benin, Cote d'Ivoire, Malta, Morocco and Senegal - stated that they would 'disassociate' themselves from the NAM position. Just prior to the vote on 17 November, Senegal (one of the 1992 WHA co-sponsors) proposed that it be postponed 'in order to enable delegations to continue consultations'. According to Marin-Bosch this was really aimed at 'giving some NWS extra time for applying bilateral pressure'. [72] The US opposed L36 on the grounds that 'it would be inappropriate to ask the Court for an advisory opinion on such an abstract, hypothetical and political issue'. The UK saw it as 'a deliberate attempt to exert political pressure over the Court to prejudice its response', it would 'only serve to confuse and complicate' other disarmament negotiations and 'risks serving the interests of those who wish to distract attention from the destabilising accumulation of conventional arms and from clandestine programmes aimed at acquiring weapons of mass destruction...'. Russia argued that nuclear weapons are not a weapon of war, but a means of deterring war, and are thus a tool for peace. France's response was the most extreme:

The very fact of asking for an advisory opinion on the legality of a particular category of arms amounts to questioning the inalienable right of any State or group of States to remain sovereign, as long as they comply with international law, in the choice of their means of defence. Such an approach is a blatant violation of the UN Charter. It goes against law. It goes against reason. .... if some people think they can deny sovereign States their right to defend themselves by any means recognised by applicable international instruments, or if they think a tribunal should be established to prosecute the recognised nuclear powers, these people should think twice. One day, they could also be faced with a situation where the legitimacy of the means they use to ensure their security would be challenged. ....Let us not ruin this collective effort by obsolete methods, which indeed might serve the purposes entertained by a few, but which are certainly contrary to the interests of the overwhelming majority. [73]

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<sup>72</sup>. Miguel Marin-Bosch, 'The NPT Non-Proliferation/Nuclear Disarmament "Bargain" on the eve of the Extension Conference', Longer version of a paper delivered in Dublin to the Royal Irish Academy on 2 December 1994, 23pp.

<sup>73</sup>. Statements by the US, UK and France to the UNGA First Committee, 18 November 1994.

The next day Senegal announced that it could not support the resolution and Morocco moved that 'no action be taken'. Only two delegations were allowed to speak in favour of the motion (Germany and Hungary) and two against (Indonesia and Colombia). Germany pointed out that 'not only Germany, but also the European Union as a whole, regret having failed to convince co-sponsors of the resolution to withdraw this proposal...'. The motion was rejected by 67:45:15 (57 did not vote/ were absent), reflecting how few of the NAM members were prepared to show their cards at this stage. A/NZ abstained along with the neutrals Austria, Ireland and Sweden.

The First Committee adopted Resolution L36 by 77: 33: 21 (53 no vote/absent). Those voting against included 17 Western states, 12 East European, Israel, South Korea, Benin and Senegal. Abstentions included Argentina, Cameroon, the Marshall Islands and Niger; six Eastern Europeans (including Ukraine and Belarus); and nine Western states: Australia, Austria, Canada, Ireland, Japan, Liechtenstein, Norway, San Marino and Sweden. Although in 1993 some of these states and Italy had indicated that they would vote for the resolution, the only Western-allied state to break ranks was A/NZ. China did not vote, creating a split among the NWS. Reflecting French influence, 24 of the 46 African states did not vote, only four of the eight small Pacific Islands voted in favour and Vanuatu and the Federated States of Micronesia did not vote. On the other hand, only two of the 22 Latin American states and nine East Europeans did not vote; and in South East Asia only Cambodia and Laos were absent. Interestingly 15 of the 53 states not voting were in arrears with their UN dues and therefore could not vote unless the UNGA was 'satisfied that the failure to pay is due to conditions beyond the control of the Member'. [74] This could

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<sup>74.</sup> See UN document, 'Scale of Assessments for the Apportionment of the expenses of the United Nations', A/49/400, 20 September 1994 and A/49/838, 26 January 1995. Fifteen of the countries which did not vote in the First Committee on resolution L.36 were listed as in arrears between 20 September and 26 January 1995: Burkina Faso, Central Africa Republic, Chad, Comoros, Dominican Republic, Equatorial Guinea, Gambia, Granada (January list), Guinea-Bissau, Liberia, Mauritania, Sao Tome and Principe, Somalia, Vanuatu (Jan.) and Yugoslavia. For details of UN votes in relation to funding arrears see UN Charter, Articles 17-19.

have been a factor why Vanuatu, after taking such a leading role, did not vote. Also, some of the smaller states could not afford to run UN Missions and monitor every vote.

Four weeks of intense lobbying by NGOs, and counter- pressure by the P3, preceded the final Plenary vote in December. Normally resolutions adopted in the First Committee are rubber-stamped by the Plenary. However, in this case, it was clear that the P3 would make unusually strenuous efforts to block its adoption by the Plenary. Indeed, a UK delegate informed Ware, after the First Committee vote, that the P3 still had a few weeks to 'kill it'.

In the Plenary session on 15 December the other disarmament resolutions passed through relatively unscathed. Not so L36, which was initially challenged outright when France moved a motion that 'no action be taken'. The Moroccan delegate, infuriated by the severity of the intimidation, fled the Plenary 'having led the charge in the First Committee, leaving France to do their own dirty work' (Morocco did not vote in either session). [75] Again, Germany and Hungary (a NATO candidate) spoke in favour, and Malaysia and Indonesia against. When this motion was narrowly defeated 68:58:26 (only 32 non-votes/absent), France again took the floor to propose an oral amendment to the operative paragraph in an attempt to delete the word 'urgently'. This was serious, because without it the case could have been delayed, perhaps for years. Indonesia noted that it was too late for amendments, and moved that no action be taken on the motion. Malaysia recalled that the First Committee had already adopted the draft, that the Plenary had already rejected a 'no action' proposal, and urged that 'no further devices be allowed to prevent the adoption of this draft resolution'. This time France's motion was lost by only five votes by 61:56:30 (37 non-votes). Sweden's role in this was possibly decisive. In its explanation of vote in the First Committee, it had argued that it did not support the UNGA resolution because it could delay the WHA case. Ware faxed this to Theorin

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Guatemala, Burkina Faso and Comoros were on both these lists but voted in both sessions. In June 1994, the UNGA agreed that the arrears of South Africa were beyond their control and allowed them to vote.

<sup>75</sup> Interview with Marin-Bosch, New York, May 1995.

in Sweden. According to this explanation, Sweden would be hypocritical if it now supported removal of 'urgently'. Theorin used this to ensure Sweden's opposition to the motion. However, A/NZ abstained with Ireland and Austria.

After four hours of intense wrangling, the vote was finally taken. Resolution L 36 was adopted by 78:43: 38 with only 25 non-votes (Appendix III). It was the only resolution where the abstentions and negative votes changed significantly between the First Committee and the Plenary. Ten more states voted against and the abstentions increased by 17. An analysis of the countries which did not vote in the First Committee but did in the Plenary shows fairly equal pressure, with 10 moving to 'yes' (including South Africa and Burkina Faso - whose UN dues were in arrears) and nine to 'no' (including Comoros - also in arrears).[76] Both the Marshall Islands and San Marino moved from abstention to 'yes', while six states moved from 'yes' to 'no' (Cape Verde, Kuwait, Madagascar, Mauritius, Mongolia and Panama). As with the WHA vote, Latin American states were vulnerable, but this time there were fewer casualties: only Chile, Argentina and Panama. The 'middle' Western states maintained their earlier abstentions. (For further analysis see Appendix III).

WCP supporters were extremely relieved that the US did not repeat its earlier ploy during the 1993 WHA where it had moved an amendment to have the resolution judged 'important' which required a two-thirds majority to secure adoption. Factors mitigating against included *inter alia* that the P3 did not wish to give it that prominence and feared it might fail. If it had succeeded the final vote would not have reached the majority required.

Diplomats reported how the NGO fax campaign had bolstered their resolve to resist the pressure. In one case, a distressed South Pacific Ambassador confided to Ware that P3 pressure in his capital had resulted in him not receiving any final instructions which meant he could not vote. Fortuitously,

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<sup>76</sup>. South Africa was in transition to black rule. Dzvairo convinced his First Committee colleague to support the vote and some other African states eventually changed too.

Ware had a copy of a reply from the Ambassador's Prime Minister to a WCP (UK) campaigner's fax which stated:

My government and other members of the South Pacific Forum will continue to stand firm on our strong wish for a nuclear-free Pacific. Accordingly, my Government's support for the initiative... will stand.

On seeing this, the Ambassador decided this constituted a valid instruction and voted for the resolution. [77] This example highlights how, at a personal level, many diplomats wanted to see the resolution succeed, but were torn between official instructions from their capitals, their loyalty to the NAM and the issue. It also illustrates how a good letter from one individual WCP supporter saved a 'yes' vote. There were probably other examples where diplomats chose to be absent rather than fulfil instructions with which they did not agree.

### **11.7 Conclusions**

While some key members of LCNP had until 1992 viewed the advisory opinion as 'the Holy Grail, somewhere up in the sky', unlikely to succeed during the Cold War,[78] the outstanding efforts of their Executive Director, and others, helped make the dream a reality. This remarkable young man pursued the seemingly impossible through quiet perseverance and unshakeable faith in the cause. Despite minimal funding and a small ISC, the WCP captured the imagination of the international movement, the public and diplomatic community alike. Many partnerships were forged between citizen groups and governments, which continued to bear fruit as states prepared to present their written and oral arguments at the Hague during 1995.

After eight long and often lonely years, Harold Evans celebrated one of the pinnacles of his vision when the UNGA adopted this resolution. Sadly two of the writers in his original Open Letter, St John and Powles, did not live to witness it, both dying on 24 October (UN Day), during the UNGA. The

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<sup>77.</sup> Letter from Prime Minister of Papua New Guinea to Mrs Dinwiddie, 3 November 1994; Ware interview (1996).

<sup>78.</sup> Interview by Dewes with Peter Weiss, New York, 24 March, 1998.

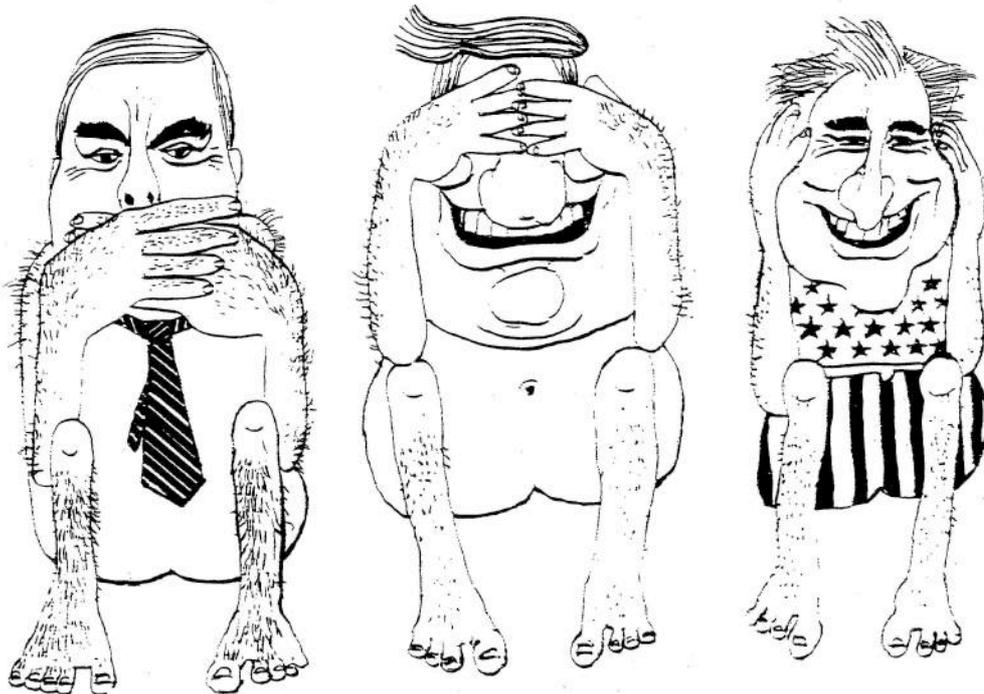
leading role played by various New Zealanders, and the high level of public support for the initiative, were reflected in the government's 'yes' vote. The abstentions by Australia, Canada, Ireland, Norway and Sweden were the direct result of well-organised citizen campaigns aimed at key decision makers and actions by key politicians and diplomats. Those governments which usually succumbed to P3 pressure sensed a sea change in the nuclear debate and wanted to be 'seen on the side of the angels'. NAM states, infuriated by the bullying, threats and bribes of the P3 during 1993-94, had realised that a second attempt would only succeed if the Foreign Ministers agreed to stand firm as a group. The hysterical reaction during 1993 convinced them of the resolution's importance. Empowered by the ICJ WHA submissions and evidence of growing public support, they collectively withstood the pressure, ensuring that the UN nuclear disarmament agenda had been fundamentally challenged against the wishes of the P3. It was one of the few UN resolutions which required an urgent response from the ICJ and sought participation from all member states.

Nuclear deterrence would now be on trial in the highest court in the world, and the NWS found themselves on the defensive. Former Soviet states joined ANZUS and EU members in arguing for illegality and the NATO consensus buckled. Coupled with the success of the step-by-step resolution demanding a time frame for complete nuclear disarmament, the NWS now feared another show down at the NPT five months later. Real progress towards the elimination of nuclear weapons might be needed if an indefinite extension were to be adopted. With the inclusion of 'urgently' in the resolution, the ICJ was likely to move swiftly to call for submissions in order to hear both cases simultaneously during 1995.

# CHAPTER 12

## GOING TO COURT: 1994-1996

"And what does the Government intend to tell the International Court about the use of nuclear weapons?"



**QUESTION-TIME AT THE BEE-HIVE**

*Bob Brockie*

## CHAPTER 12

### GOING TO COURT: 1994-1996

*Such moments erupt with unexpected power. The pro-nuclear consensus is more fragile than it seems - and the WCP is testing it. We need to create the climate to give the Court the moral courage to confirm illegality. Falk [1]*

*Five countries cannot arrogate to themselves forever the exclusive privilege of having their fingers on the nuclear trigger...If the laws of humanity and the dictates of the public conscience demand the prohibition of such weapons, the five nuclear weapon states, however powerful, cannot stand against them. Ismail [2]*

#### 12.1 Introduction

The UN's fiftieth anniversary coincided with the middle of the UN Decade of International Law. 1995 was also the fiftieth anniversary of the atomic bombings of Hiroshima and Nagasaki. Ironically, it became a watershed in the nuclear disarmament debate. The NPT was acrimoniously reviewed but indefinitely extended; the International Court of Justice (ICJ) received written and oral submissions on the legality of the threat or use of nuclear weapons; France and China broke their moratoria on nuclear testing, which caused A/NZ to reopen its 1973 ICJ case against France, and Australia to establish the Canberra Commission on the Elimination of Nuclear Weapons. Non-Aligned states, exasperated by the NPT outcome, and emboldened by the World Court Project (WCP) and the international furore over renewed French testing, introduced a new UN resolution calling for 'the elimination of nuclear weapons within a time-bound framework'.

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<sup>1.</sup> Richard Falk, 'Speech to World Court Project Seminar', New York, 19 April 1995.

<sup>2.</sup> Ambassador Razali Ismail, Malaysia's Oral Presentation to the ICJ, 7 November 1995.

Following the successful 1994 UN General Assembly (UNGA) resolution, WCP campaigners continued closely monitoring governments and provided them with legal briefs. The Oral Proceedings on both the World Health Assembly (WHA) and the UNGA questions were held in the ICJ in November 1995. This provided a public forum for states to challenge national activities which they believed were 'illegitimate' in terms of the planetary interest i.e. 'those which grossly pollute a neighbouring state, degrade the global commons or engage in an act that would devastate the planet'. [3] The International Steering Committee (ISC) used the occasion formally to present further citizen evidence, give moral support to those arguing for illegality, and remind the judges that 'the peoples' were watching them. Forty-five governments and the WHO eventually participated.

## **12.2 Submissions to the Court**

### ***World Health Assembly Question***

Following an inordinate delay of nearly four months after the successful 1993 WHA resolution, the ICJ had announced 10 June 1994 as the deadline for written statements to be submitted to it. Despite the receipt of 27 submissions, this was extended to 20 September 1994. Those who had submitted could file comments on submissions by other countries until 20 June 1995. Eventually 35 states and the WHO made submissions and nine made comments.[4]

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<sup>3</sup> Kennedy Graham, 'The Planetary Interest', Global Security Paper, no.7, Cambridge, UK, May 1995, pp. 6-7.

<sup>4</sup> Written statements were filed by: Australia, Azerbaijan, Colombia, Costa Rica, Democratic People's Republic of Korea, Finland, France, Germany, India, Ireland, Islamic Republic of Iran, Italy, Japan, Kazakhstan, Lithuania, Malaysia, Mexico, Nauru, Netherlands, New Zealand, Norway, Papua New Guinea, Philippines, Republic of Moldova, Russian Federation, Rwanda, Samoa, Saudi Arabia, Solomon Islands, Sri Lanka, Sweden, Uganda, Ukraine, United Kingdom, United States of America. Written statements were submitted by: Costa Rica, France, India, Malaysia, Nauru, Russian Federation, Solomon Islands, United Kingdom and United States of America. See also ICJ, General List No. 93, 8 July 1996, 'Legality of the Use by a State of Nuclear Weapons in Armed Conflict, p.3.

Throughout this period IPPNW remained vigilant, determined to save the resolution from being withdrawn during the 1994 WHA, and to encourage a WHO submission.[5] When the WHA had requested an advisory opinion in 1980, the WHO had not made a submission. During the January Executive Board meeting, Swedish doctors Johan Thor and Hege Raastad met with various WHO Executive members and officials, plus diplomats from seven Missions. [6] They discovered that the financial forecast for preparing a WHO submission, originally mooted at US \$200,000, was 'merely a deception' to scare IPPNW and the resolution's proponents. After receiving legal advice, IPPNW withdrew its promise of US\$30,000 given in 1993 because it 'could be misconstrued as exercising improper influence on WHO's submission'. The WHO legal counsel indicated that it would just present the facts and review the law, thereby remaining neutral: the costs would therefore be minimal. [7]

Few Board members knew about the ICJ's invitation for submissions, nor how to prepare and present one. The IPPNW team recommended that a legal brief be drafted outlining why the WHA was entitled to ask the question and citing existing international law. The ICJ had turned down IPPNW's request to make a submission, so they helped prepare 'Legal Memorials' for governments. [8] Four LCNP lawyers drafted a model memorial in consultation with other IALANA affiliates, IPPNW and the WCP ISC. It was disseminated to sympathetic governments in mid-May 1994, just before the deadline.[9] Canadian Lawyers for Social Responsibility (LSR) also prepared

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<sup>5</sup>. 'Nuclear attack on WHA 46/40 imminent', *IPPNW (NZ) Newsletter*, no.38, February 1994.

<sup>6</sup>. Full report by Drs Johan Thor and Hege Raastad to IPPNW on WHO Executive Meetings, 9 February 1994.

<sup>7</sup>. See IPPNW Briefing Paper Regarding the Offer of IPPNW to Assist WHO in Raising Extra-Budgetary Funds to Implement Resolution WHA 46.40: 'Health and Environmental Effects of Nuclear Weapons', (no date); Summary Progress Report by Drs Johan Thor and Hege Raastad on WHO Executive Board Meeting, 21 January 1994, pp.1- 4 and Erich Geiringer, Memorandum: IPPNW Financial Assistance to WHO, 7 March 1994, 4pp.

<sup>8</sup>. Letter from Registrar of the ICJ to Barry Levy (IPPNW), 28 March 1994.

<sup>9</sup>. Draft Memorial in support of the Application by the WHO for an Advisory Opinion by the ICJ on the legality of the use of nuclear weapons under

comprehensive material on genocide, war crimes and human rights for consideration by LCNP. As only a small excerpt was included, they distributed it independently to 25 UN Ambassadors. Another memorial was prepared by German members of IALANA and IPPNW. [10]

Prior to the 1994 WHA, there were no firm indications which governments were submitting. IPPNW sent a strong delegation to lobby supportive governments to prepare submissions. This resulted in confirmation that Mexico would submit in time, and indications of serious interest from about 15-20 states. Governments were encouraged at least to submit a short statement welcoming the clarification of the issue, and thereby reserve the right to participate in the Oral Proceedings even if they did not submit a lengthy written statement. [11]

With less than a month to go to the June deadline, there was intense activity throughout the WCP network. Surprisingly and unbeknown to the WCP, North Korea had submitted first on 26 January arguing that the use of nuclear weapons was illegal. On 16 May, the Ukrainian Embassy in London sent WCP (UK) its government's submission, which had resulted from their lobbying effort. When Christ announced this on the IPPNW email conference:

...there was all kinds of excitement...a few days later there was another one and another one - you could FEEL the excitement - it was palpable...it was challenging affiliates to go to their governments...last minute stuff ... like a domino effect. [12]

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international law, including the WHO Constitution, prepared by Peter Weiss, Burns Weston, Richard Falk and Saul Mendlovitz, May 1994.

<sup>10.</sup> LSR members Chris Jones, Chris Gora and Chris Harland drafted the section on genocide, David Matas drafted the war crimes section while Don Conrad and Bev DeLong drafted the human rights section. Michael Bothe, *Nuclear Weapons and the International Court of Justice: The admissibility of the request of the WHO*, IALANA, Marburg, 1994.

<sup>11.</sup> IPPNW, WHA.47-Preliminary Report, May 1994.

<sup>12.</sup> Interview by Dewes with Christ, New York, May 1995.

Kazakhstan responded, and IALANA offered to draft a submission and represent them at the ICJ. [13] Lithuania submitted on 31 May, and then India was followed by Mexico, Nauru, and the Solomon Islands with substantial briefs arguing strongly for illegality.[14] Sweden and Ireland welcomed the case while A/NZ prevaricated asking, like Australia, to submit more fully if the cases proceeded. Of the nuclear weapon states (NWS), China took no part, while Russia and the US, UK and France (the P3) made full submissions opposing the case, supported by the Netherlands, Germany and Finland. In early May, Zimbabwe's new Foreign Minister had asked for IALANA's Memorial so they could submit it before 10 June. [15] However, having led the NAM at the UNGA, Zimbabwe failed to submit any written statements on either question before the deadlines.

Nauru already had a case against Australia before the ICJ for compensation for phosphate mining. [16] It appointed Auckland academic and IALANA member Jerome Elkind as Counsel after he offered to represent Pacific Island states *pro bono*. Elkind included IALANA's Memorial and the brief by IPPNW (Germany) in Nauru's submission which, along with the Solomons' submission, were by far the biggest and most comprehensive. Samoa's was brief, and Papua New Guinea was the only South Pacific co-sponsor of the 1993 WHA resolution to submit. Again this reflects the pressure which was applied after the WHA vote, and the lack of resources to mount a legal case and maintain UN Missions.

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<sup>13</sup>. Letters from Christ to WHO Liaison Officer in Kazakhstan, 23 and 27 May 1994; letter from Phon van den Biesen to Dr Karagulova, 3 and 6 June 1994.

<sup>14</sup>. India published its written submission as a UN document on 20 June 1994, A/49/181; Excerpts of Solomon Islands' submission reprinted in Roger Clark and Madeleine Sann, eds., *The Case Against the Bomb: Marshall Islands, Samoa, and Solomon Islands before the International Court of Justice in Advisory Proceedings on the Legality of the Threat or Use of Nuclear Weapons*, Rutgers University of Law, New Jersey, 1996, pp. 37-62, (For full text see [www-camlaw.rutgers.edu/publications/crimlawforum/](http://www-camlaw.rutgers.edu/publications/crimlawforum/)).

<sup>15</sup>. Letter from N. Shamuyarira to Saul Mendlovitz, 5 May 1994.

<sup>16</sup>. Later Britain and New Zealand also paid compensation.

As late as 8 September, Malaysia's Foreign Ministry asked McCoy to help draft a submission. [17] Australia submitted extensively that the question was beyond WHO's mandate, the case was inadmissible and the ICJ should therefore decline to give an opinion. Japan modified its position in response to outraged public opinion, but still stayed on the fence. Not surprisingly, Australia's line echoed that of the four NWS, the latter adding that there was no specific prohibition against the use of nuclear weapons. While agreeing that the principles of international law applied to nuclear weapons, whether a particular use is legal or not depended on the specific circumstances.[18]

In summary, only nine states argued the case was inadmissible, with five of these arguing that 'use' was not illegal *per se*. Of those, only the P3 submitted detailed arguments whereas six of the 23 arguing 'use' was illegal submitted comprehensive briefs. The last-minute rush indicated that many states waited to see what others did before revealing their positions. Smaller states - especially Pacific Islands - risked the wrath of the more powerful states by presenting some of the most strident and cogently argued submissions. Having revealed their position, other less economically vulnerable states like Malaysia then assumed leadership from Zimbabwe.

### ***UN General Assembly Question***

The success of the WHA resolution, coupled with the largest response ever to an ICJ request for submissions, helped encourage the NAM states which had earlier decided to re-introduce the UNGA resolution in November 1994. Inclusion of the word 'urgently' secured immediate action - a vital victory by only five votes. Unlike the WHA request, the UNGA one was transmitted to the ICJ within four days of the final vote. On 1 February 1995, the ICJ set the following dates: 20 June 1995 for written statements, 20 September for

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17. Letter from Ron McCoy to Harold Evans, 9 September 1994.

18. See World Court Project Report, #6, LCNP, Spring 1995, pp. 3-4; IPPNW Summary of WHO submissions, 28 November 1994.

written comments, and Oral Proceedings on both cases from 30 October to 15 November. [19]

Following further requests from governments, Ware sought out law graduate Merav Datan, to work voluntarily coordinating the research on an IALANA model memorial on the UNGA question and model responses to arguments submitted for both the WHO and UNGA resolutions. These drew heavily on LSR's earlier drafts and Grief's work [20] and were widely distributed to sympathetic governments.

By 20 June 1995, nine states had made written comments on the WHA submissions. The four NWS were openly pro-nuclear, while Nauru and the Solomons again submitted the most comprehensive anti-nuclear rebuttals, along with India, Malaysia and Costa Rica.

At the same time, the Court received 28 submissions on the UNGA question including eight from new states (Bosnia, Burundi, Ecuador, Egypt, Lesotho, Marshall Islands, Qatar and San Marino). Submissions by tiny states like San Marino and the Marshall Islands, and other vulnerable ones such as Bosnia and Lesotho, reflected close relationships between decision makers and WCP members. Again the Solomon Islands presented the biggest brief, which had been prepared in great secrecy independently of IALANA and other NGOs. Both the Marshalls and Nauru included statements by Marshallese victim Lijon Eknilang about the intergenerational effects of US nuclear testing.[21] This time A/NZ forthrightly reflected public opinion and changed attitudes within government towards the likely success of the case by arguing strongly that nuclear weapons were illegal in all circumstances. Certain key Ministers were becoming increasingly frustrated by the lack of effort by the NWS to make substantial cuts in their nuclear stockpiles in response to the indefinite extension of the Non Proliferation Treaty (NPT)

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<sup>19.</sup> ICJ Communique, no. 95/32, 27 September 1995. 20 June 1995 was also the deadline for written comments on submissions on the WHA question.

<sup>20.</sup> *IALANA Newsletter*, No 10, July 1995, p.3.

<sup>21.</sup> *Pacific Women Speak*, GreenLine, Oxford 1987, pp. 15-17.

and there was still minimal movement on the Comprehensive Test Ban Treaty (CTBT). Australia remained silent, despite the fact that over a quarter of the 19 supportive submissions came from the South Pacific.

More than half the non-nuclear NATO governments remained mute (Belgium, Canada, Denmark, Greece, Iceland, Luxembourg, Portugal, Spain and Turkey), reflecting public disquiet about NATO's nuclear doctrine. Norway, like Australia and Japan, kept its options open. Ireland and Sweden, torn between growing public pressure and the European Union (EU) 'party line', broke ranks and filed independent arguments.

Three 'threshold' states (India, Iran and North Korea) argued strongly for illegality. With China's lack of participation, the other NWS became increasingly isolated. The only supportive states were Finland and NATO members Germany, Italy and the Netherlands. Repeating the WHA inadmissibility argument caused difficulties, because some had previously argued that the UNGA was the correct forum. Openly arguing that threat or use might be legal in some circumstances could encourage proliferation, and exposed governments to parliamentary and public criticism, and electoral vulnerability. For example in May 1995, 93% of the German population demanded the rapid worldwide elimination of all nuclear weapons.[22] During the 1993 UNGA an Italian Parliamentary Committee had bound the government to support the resolution, while Finland and the Netherlands had histories of strong anti-nuclear sentiment amongst their public. However none of these countries had strong peace movements which were active on the WCP at the time leaving their governments free to side with the NWS.

However, the story was very different in Japan where their WCP groups grew considerably throughout 1994-5. They amassed some 3 million DPCs and formed a coalition to lobby the government to put in a submission on the UNGA question. Just prior to the deadline, a WCP delegation, including the powerful Japanese Federation of Cooperatives, visited the Prime Minister's

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<sup>22</sup>. 'Votum gegen Kernwaffen', *Deutschland Im Trend*, 13/14 Mai 1995, p.7.

Residence. They presented a model submission which had also been sent to all Missions in Tokyo. Eventually Japan put in a brief submission reiterating its WHA statement that 'the use of nuclear weapons is clearly contrary to the spirit of humanity that gives international law its philosophical foundation', confirmed its commitment to the 'three non-nuclear principles', and promoted the ultimate elimination of nuclear weapons. It did not mention the Shimoda case (see section 2.4), and sidestepped the merits of the case and further legal issues, reflecting the dilemma posed by its close security relationship with the US.[23]

Only three states went on to present written comments on the UNGA submission: Egypt, Nauru and the Solomons. Nauru later withdrew them, and also from the Oral Proceedings, because the counsel had allegedly not properly consulted with the government before submitting.[24] Prior to this the counsel had asked the Mayors of Hiroshima and Nagasaki, plus Hilda Lini and Lijon Eknilang, to appear as witnesses. Both Mayors had continually asked their government for permission to testify. Finally on 20 September it agreed, making Nauru's request superfluous.[25] However, this undoubtedly helped force Japan to 'own' them, thereby preventing the dangers and embarrassment of the Mayors testifying for a more strident anti-nuclear government.

With Nauru unable to include the Pacific women, WCP (NZ) approached other Pacific governments, including A/NZ. Almost at the last minute the Marshall Islands included Eknilang in its delegation. Ironically, her women elders had called for nuclear weapons to be outlawed in 1954. This was extremely courageous for vulnerable islands almost totally dependent on Western aid and intimately linked to the US through a Compact. In addition, the Solomon Islands asked Joseph Rotblat, who had just received the 1995

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<sup>23</sup>. Report from Japanese Lawyers International Solidarity Association, 'Japanese Government Urged to Submit a Statement', 8 June 1995; Written Statement of the Government of Japan to ICJ, June 1995.

<sup>24</sup>. Letter from J.Elkind to Dewes, 7 February, 1996; Interview by Dewes with Ambassador Neroni Slade, 23 March 1998.

<sup>25</sup>. Letter from Manabu Masada to Jerome Elkind, 27 September 1995.

Nobel Peace Prize, to present a statement, in the first ICJ case which allowed ordinary citizens to testify.

### 12.3 Aotearoa/New Zealand Reopens 1973 Nuclear Test Case

In May 1995, the NPT had been indefinitely extended following intense lobbying by the P3 and their allies. Part of the compromise was an agreement by the 'Permanent Five' (P5) to complete negotiations on a CTBT no later than 1996. Pending its entry into force, the NWS agreed to 'exercise utmost restraint'. Also, in line with their commitment to Article VI of the NPT, they would pursue 'systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons..'

Within two days of the NPT's extension, China had resumed testing, and France had announced a series of eight nuclear tests. Subsequent to the 1973 ICJ case, France had carried out 130 underground tests and in 1992, with China, had signed the NPT and announced a moratorium. France had justified the tests by claiming that, as a P5 member and a NWS recognised by the NPT, she had 'special responsibilities, and particularly the right to maintain her deterrent at a credible level..'. [26] The UK had also cited the NPT as the legal justification for continued possession. [27] This had reinforced NAM concerns that the response of the NWS to the UNGA resolution revealed 'their true intentions regarding the permanence of nuclear weapons' under an extended NPT. [28] Ironically, the chief US NPT negotiator stated:

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<sup>26.</sup> Letter from Bernard Chappedelaine, for the Ambassador of France to the UK to George Farebrother, 16 June 1995.

<sup>27.</sup> Letter from David Davis, Foreign and Commonwealth Office to Austin Mitchell, 11 December 1995.

<sup>28.</sup> See 'Marin-Bosch v. The Nuclear Five', *War and Peace Digest*, vol. 3, no.6, March-April 1995, p. 4; William Epstein, 'Stand and Be Counted: Give More to Get More', *The Bulletin of the Atomic Scientists*, Nov/Dec 1994, pp. 15-18; Alyn Ware, Moira Crouch, 'The Illegality of Nuclear Weapons and the Treaty on the Non-Proliferation of Nuclear Weapons', LCNP, 20 August 1993, 20pp; David B. Ottaway and Steve Coll, 'A Hard Sell for Treaty Renewal', *The Washington Post*, 14 April 1995; Marin-Bosch, (1994) op.cit.; 'Issues for the

While the NPT reflects the reality that five nuclear-weapon states existed in 1968, it does not legitimize the permanent possession of nuclear weapons.[29]

As in the early 1970s, South Pacific populations were outraged and took every possible action to influence world opinion. Again citizen groups created the climate to allow politicians to act. In July 1995, Greenpeace sent *Rainbow Warrior II* and other boats to France's test site to try to stop the tests. The screams of Stephanie Mills (Greenpeace's disarmament spokeswoman) reverberating around the globe as French commandos stormed the control room, became a 'wake-up' call to the world. Moreover, this happened on the tenth anniversary of the French bombing of *Rainbow Warrior I* in Auckland.

This ignited the core of the A/NZ anti-nuclear psyche. The whole country erupted in strong and creative protests, demanding immediate and radical political action from the government. Within days a fairly reluctant Prime Minister Bolger, heading a minority government, agreed to send a naval vessel with various politicians aboard, to Moruroa to accompany an A/NZ peace flotilla. In addition, he recalled A/NZ's Ambassador from France and announced a freeze on all military contact, including arms purchases. For a government whose anti-nuclear credentials were dubious, these actions were decisive, and reflected the new proportional representation voting system which had just been agreed by referendum. [30]

Following a unanimous parliamentary resolution condemning the tests, Bolger established multi-party talks with other political leaders and, despite

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NPT Conference', NGO Committee on Disarmament, February 1995, 4 pp., '170 countries vote to extend nuclear treaty', *Guardian*, 12 May 1995.

<sup>29.</sup> Statement by Thomas Graham to NPT Preparatory Committee Meeting, Geneva, 1994, published in *Acronym*, no. 4, p.28.

<sup>30.</sup> The minority National government (conservative) elected under a 'first-past-the post- system was acutely aware that in the new era of proportional representation (due at the next election in 1996) they would have to start to put 'consensus politics' into practice by consulting closely with the leading opposition parties on contentious issues such as nuclear testing.

strong misgivings from the Foreign Ministry, announced that the government was considering reopening the 1973 ICJ case. He indicated that Britain's Prime Minister John Major would be under pressure at the forthcoming Commonwealth Heads of Government Meeting (CHOGM) in Auckland. Major had refused to criticise France, having earlier eyed Moruroa as a shared test site.<sup>[31]</sup> Emulating Kirk, Bolger sent letters to over 100 world leaders; and politicians from various parties presented A/NZ's concerns to the European Union (EU) and the Inter Parliamentary Union. <sup>[32]</sup>The government raised the issue in every conceivable forum, including the Fourth World Conference on Women in Beijing. Bolger himself publicly criticised nuclear deterrence, called for nuclear abolition and a Nuclear Weapons Convention.

Australian Prime Minister Paul Keating's initial response was 'about as effective as whacking France with a cockerel-feather duster'. <sup>[33]</sup> He was scathing about A/NZ's attempt to reopen the ICJ case, calling it 'cosmetic'. However, following Bastille Day (14 July) marches of 20-30,000 in Sydney, 3,000 in Perth and elsewhere, accompanied by radical actions by trade unions, both he and Foreign Minister Gareth Evans reviewed their positions. Evans had borne a great deal of hostility from the public following his initial statement that 'things could have been worse', indicating that the tests were underground, finite in number and linked to a commitment by France to sign the CTBT once concluded. When polls showed 95% opposed the tests and 61% viewed the government's protests as too weak <sup>[34]</sup> Evans changed his

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<sup>31.</sup> Graham Barrett, 'UK eyes nuclear testing in Pacific', *Melbourne Age*, 5 July 1993.

<sup>32.</sup> The Minister of Health and Minister of Women's Affairs, Jenny Shipley, announced the reopening of the 1973 ICJ case when she addressed the Plenary of the Fourth World Conference on Women at Beijing in September 1995. The NZ and South Pacific delegations ensured that nuclear testing was mentioned in the final language on nuclear disarmament. See Ministry of Women's Affairs, *Beijing and Beyond: The Report of the New Zealand Delegation to the United Nations' Fourth World Conference on Women*, Wellington, 1996, pp. 30-31, 59-61.

<sup>33.</sup> Godfrey Wiseman, 'Learning to love to hate the nuclear bomb', *The Canberra Times*, 4 November 1995.

<sup>34.</sup> Kate Dewes, 'Update from Aotearoa re French Tests', 7 July 1995.

position and on Nagasaki Day announced support for A/NZ's ICJ case. Keating then declared that Australia would make 'an oral submission condemning the tests at a separate hearing before the Court into the legality of nuclear weapons'.<sup>[35]</sup> Elections were due in March 1996, and Labor desperately needed the youth and green votes.

Although Bolger and Keating had met briefly to promote a united front, trans-Tasman rivalry abounded as each country vied for leadership on the anti-nuclear testing issue. <sup>[36]</sup> Australia excluded A/NZ from a South Pacific delegation to France, and declined to send a naval vessel to Moruroa. However, they agreed to coordinate their efforts at the South Pacific Forum in August, where Japan joined the 16 nations in drafting a UN resolution. They also explored linking all existing or potential NFZs to create a Southern Hemisphere NFZ. <sup>[37]</sup> France later responded by offering aid to disgruntled Pacific states, reducing the tests to six, and joining the US and UK in signing the protocols to the SPMNFZ Treaty.

The ICJ had held in its 1974 Judgment that 'if the basis of the Judgment were to be affected', A/NZ could return to the ICJ and request an 'examination of the situation'. The 1995 case therefore requested that the ICJ re-examine the situation based on justifiable concerns regarding the environmental risks of ongoing French tests. A/NZ also appealed for an interim injunction to stop the tests. On 21 August, A/NZ supported by Australia, the Marshall Islands, the Federated States of Micronesia, Samoa and the Solomon Islands, filed the requests. France replied that the Court had no jurisdiction; but oral hearings were held in September which it attended. On 22 September, the ICJ rejected the requests by 12 votes to three on technical grounds, noting that the 1974 Judgment dealt exclusively

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<sup>35.</sup> *The Press*, 9 August 1995.

<sup>36.</sup> Jane Clifton, 'PMs show united front on N-tests', *Sunday Star Times*, 23 July 1995.

<sup>37.</sup> 'French may cut back on tests', *Herald*, 7 August 1995; 'N-test protest to world court', *Herald*, 7 August 1995; See 'Chronology of Opposition to a Resumption of Nuclear Testing', Greenpeace, 1995, 20pp; 'France and nuclear testing: More tests at Moruroa', Background Briefing Paper, Nuclear Free and Independent Pacific Campaign, Melbourne, 1995, 12pp.

with atmospheric testing. Judges Weeramantry and Koroma joined A/NZ's *ad hoc* judge, Geoffrey Palmer, in issuing dissenting opinions. [38]

Although the A/NZ government knew it was unlikely to succeed, it took the risk to appease domestic *angst* and give the issue international prominence. It succeeded in strengthening the resolve of South Pacific states, and provided a preliminary run at the ICJ. Two months later the Marshall Islands, Samoa and the Solomons again worked closely together, this time coordinating their oral presentations. The nuclear test furore exposed Australia's almost total isolation within the Southern Hemisphere on the WCP. The Oral Proceedings on the WHA and UNGA questions, therefore, provided Australia with an opportunity to wrest leadership from its close neighbours and claim the moral high ground.

#### **12.4 Commonwealth Heads of Government Meeting (CHOGM)**

Another parallel high profile international event was the CHOGM in Auckland. Held from 10-13 November 1995, it was opened by the British Queen and attended by 51 governments linked closely to Britain through the Commonwealth of Nations. The UK risked total isolation within the Commonwealth on nuclear issues. Keating was so infuriated by Major's endorsement of French testing as 'a responsible act', that he threatened to

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<sup>38</sup> *New Zealand at the International Court of Justice: French Nuclear Testing in the Pacific: Nuclear Tests Case, New Zealand v. France (1995)*, Ministry of Foreign Affairs and Trade, Wellington, 1996, 352 pp; Simon Reeves, 'The Palmer Approach - a commentary on the dissenting decision of Sir Geoffrey [sic] Palmer', *Lawtalk* 446, 6 November 1995, pp. 11-12. See also, 'Govt weighs N-test legal action', *The Press*, 18 July 1995; 'Foolish gesture', *The Press*, 9 August 1995; 'A loss at the World Court', *The Press*, 24 September 1995; 'World Court case against France unlikely to make much headway', *The Press*, 17 August 1995; 'World Court refuses to reopen French test case', *The Herald*, 23 September 1995; 'French environmental duties noted', *The Herald*, 25 September 1995.

'smack (him) with a ruler'. A/NZ and Malaysia indicated they would take a firm stand against nuclear proliferation and tests. [39]

During 1993-95, Green had held regular meetings with the Commonwealth Secretariat in London, exploring ways to raise the WCP and other nuclear issues at CHOGM. When he was in Malaysia in August 1995, he discussed drafting an anti-nuclear resolution for CHOGM with the Ministry, and the media featured his WCP work. [40] He then worked closely with the Malaysian Foreign Ministry, McCoy, Greenpeace and Helen Clark to draft a strong statement for Bolger to present to CHOGM for inclusion on its communique. [41]

After days of rancorous debate, the communique condemned continued testing and called for the elimination of nuclear weapons but did not mention the WCP. Furious at the 'incorrect, intellectually inconsistent and unbalanced' wording, the beleaguered UK Prime Minister defiantly reaffirmed Britain's commitment to nuclear deterrence and retreated home. [42] Future Prime Minister Tony Blair called for uniting the Commonwealth 'in urging France to stop its nuclear tests', and the Duke of Edinburgh

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<sup>39.</sup> 'Keating pledges rebuke of Major's nuclear stand', *The Press*, 4 November 1995, 'KL to propose anti-nuclear stand at CHOGM' and 'Malaysia wants nuke issue on CHOGM agenda', *New Sunday Times*, 29 August 1995.

<sup>40.</sup> 'From Warrior to Peace-maker', *New Sunday Times*, Sunday Style, 10 September 1995, pp. 2-3.

<sup>41.</sup> Draft CHOGM communique prepared by Helen Clark, Greenpeace, Green and Dewes, 17 August 1995; Letters from Green to H.Clark, 19 and 27 July 1995; Letters from Ron McCoy to Dewes, 22 and 31 August 1995.

<sup>42.</sup> John Armstrong, 'Fragile compromise over nuclear testing', *NZ Herald*, 11 November 1995; 'Major firm on nuclear deterrence', *Otago Daily Times*, 10 November 1995; 'Major blasts nuclear statement', *Press*, 11 November 1995; 'Talks fail to isolate nuclear issue from Communique', *NZ Herald*, 10 November 1995; Ted Reynolds, 'Out of four days of meetings comes ...', *NZ Herald*, 14 November 1995, p. 7; *New Zealand and the Commonwealth*, Ministry of Foreign Affairs and Trade, Information Bulletin no.55, June 1995.

supported environmental monitoring of Moruroa Atoll. [43] IPPNW(NZ) distributed documents about nuclear abolition to all delegates. [44]

### 12.5 Citizens Gather at The Hague

The priority for most WCP groups during 1995 was to ensure the maximum number of submissions and to amass DPCs for their final ICJ presentation. Middle Western states such as Canada, Ireland, Japan, Norway and Sweden were singled out for lobbying by the ISC, and Green spoke extensively in Australia.[45] The ISC explored ways of securing 'ordinary citizens', indigenous peoples and *hibakusha* as witnesses and lobbied for a younger woman judge (of 67 ICJ judges, none had been women, only two were under 50, and the average age was 67). In July, Rosalyn Higgins (UK), in her late fifties, became the first woman judge. [46]

During the 1992 WCP launch, Dewes had envisioned:

...over a million DPCs, vigils outside the Court, vigils outside our own Parliaments, boat loads of DPCs sent to the Netherlands, so that by 1995 we can see an advisory opinion from the ICJ stating that the use and threat of use of nuclear weapons is indeed illegal. ...if we can convince countries like the 'threshold nuclear states' to take a lead, we will have a chance of rallying support from most non-aligned states. The support of countries

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<sup>43.</sup> Tony Blair, 'Britain must cast its eyes beyond Europe', *The Herald*, 11 November 1995; 'Duke jumps into N-test row', *The Press*, 4 November 1995.

<sup>44.</sup> 'Towards a Nuclear Weapon Free World', IPPNW NZ, Wellington, November 1995.

<sup>45.</sup> Green did three speaking tours of Australia in 1995, gaining significant media coverage chiding the government for not making a submission and meeting with politicians, trade unionists, doctors, Aboriginal elders, and academics. Rob Green, 'Australia Report', December 1995; Rob Green, Annual WCP Report, 1995. See also, Norman Aisbett, 'N-weapons question poses big challenge', *The West Australian*, 27 May 1995.

<sup>46.</sup> Alyn Ware, Election of Judges to the ICJ, Memo to IALANA affiliates, May 1993; Letter from Willemijn Straeter, IALANA, to UN Secretary General, 2 August 1993, Letter from UN Under Secretary General to van den Biesen, 26 August 1993, Letter from Dewes to International Federation of Women Lawyers, 22 June 1993, Letter from Dewes to Maj Britt Theorin, 3 July 1993, Letter from Judge Silvia Cartwright to Dewes, 29 June 1993; ICJ Communique no.95/15, 22 June 1995, ICJ Communique, no. 95/20, 13 July 1995.

like Sweden, Ireland and Aotearoa will be critical in withstanding the inevitable pressure of the nuclear weapon states.[47]

Within three years the dream had become reality. 'Threshold' states India and Iran had helped promote the UNGA resolution within the NAM and made anti-nuclear submissions, along with A/NZ, Ireland and Sweden.

As the 'wise elders of the human tribe' gathered to render a 'uniquely spiritual judgment to save humanity from annihilation' [48] in what became the 'trial of the century', groups of Quakers, Buddhists and others held vigils throughout the Oral Proceedings. There were some DPC ceremonies in capitals, and vigils outside parliaments. Over a hundred WCP representatives based themselves in IALANA's cramped offices opposite the Peace Palace. They came to present the citizen evidence, support those delivering their government's anti-nuclear oral statements, alert the media, monitor the statements, and disseminate daily reports to interested citizens via electronic mail and fax. IALANA and ISC members worked assiduously to analyse statements; help some government delegations refine theirs; draft answers to the judges' questions; lobby Missions; and give media interviews. Others coordinated citizen activities such as the DPC presentation, vigils, press conferences, a photo exhibition from Nagasaki, a WCP Seminar and an Abolition 2000 strategy meeting.[49]

IALANA's close relationship with ICJ officials facilitated communication so that these activities proceeded smoothly. Convincing the ICJ to accept 3.3 million DPCs, and temporarily house them there, was a major achievement and a logistical headache. The ICJ was scheduled to accept the DPCs on 27

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<sup>47.</sup> Katie Boanas-Dewes, 'Mobilising Civil Society' in *World Court Project: International Launch*, IPB, Geneva May 1992, pp. 51-56.

<sup>48.</sup> Ambassador Razali Ismail presented Malaysia's Oral Submission to the ICJ, 7 November 1995.

<sup>49.</sup> During the 1995 NPT Review and Extension Conference in New York representatives of many international NGOs met to establish the Abolition 2000 movement. This group created a statement which was initially supported by over 300 NGOs representing millions of people around the world. Its central aim is to have in place by the new millennium a Nuclear Weapons Convention committing the nuclear weapon States to get rid of their nuclear arsenals within a fixed timetable.

October, the Friday before the start of the Oral Proceedings. However, on 24 October - the 50th anniversary of the UN's founding - the Venezuelan Judge Mawdsley died. This reduced the number of judges to 14, complicating the decision making process. Five judges were from the NWS, with Italy, Germany and Japan also represented. In a split vote, the Algerian President would have the casting vote. Meanwhile, the DPC ceremony was postponed because the Judge's body was lying in state.

On hearing the news, Maori elder Pauline Tangiora sought permission for a citizens' delegation to pay their respects. Breaking with protocol, which usually only allowed diplomats this privilege, the Registrar accepted. On entering the Peace Palace, Tangiora explained the significance of the death: 'In Maori tradition, we believe that if something historic is about to happen, a Chief passes on'. The women led the international group into the magnificent room where the 14 judges stood in line to receive mourners. A truly memorable moment occurred when the 'people's representatives' shook hands with each judge and looked into their eyes. Tangiora then stood before the coffin and she farewelled the judge's spirit in Maori. The spiritual energy was palpable. There was an awareness of humanity's vulnerability, and the formidable responsibility of those tasked with probably the most important question ever requested by the UN.

The following week, the ICJ's Deputy Registrar and Secretary also broke protocol by meeting the WCP delegation in the Judges' Deliberating Room, and by accepting the citizen evidence. Responding to the global interest in the case, and the scope and size of the material presented, they agreed to make it available to the judges. Dewes presented a large laminated DPC signed by Harold Evans and briefly outlined A/NZ's role in the WCP. Elmsley explained how she had personally collected 35,000 of the 100,000 UK total to date (she doubled this in the following six months). Green outlined the DPCs' history and presented documents including a tally of the DPCs from

various countries ( Appendix II). [50] The Japanese Consumers' Cooperative Union handed over half of their 2.8 million DPCs (the rest were being shipped from Japan). They presented material from Hiroshima and Nagasaki, signatures from Mayors of 212 Japanese Nuclear Free Municipalities and 122 'prominent people'. The indigenous representatives from Aotearoa, Australia and Peru were granted a separate meeting, where they presented the Beijing Declaration of Indigenous Women and the Declaration of Salzburg from the World Uranium Hearings.[51] They raised concerns about genocide being committed on indigenous peoples due to the health effects of the production and testing of nuclear weapons, most of which was on indigenous lands. [52]

At the close of the Proceedings, the ICJ President commended the role of the citizen groups, and some states referred to the DPCs and the level of international support behind the initiative.

## **12.6 ICJ Oral Proceedings**

The 1995 UNGA coincided with the Oral Proceedings where states presented submissions on both the WHA and UNGA questions before the Court. An UNGA resolution condemning French and Chinese testing caused ructions; the Hiroshima and Nagasaki Appeal, with 51 million signatures calling for nuclear abolition, was presented to the UNGA President; the CHOGM was about to begin; and France carried out its third test. The NWS became increasingly pilloried as anti-nuclear sentiment raged worldwide. The climate could not have been more conducive for threatening the fragile pro-nuclear consensus. Falk was right: '..such moments erupt with unexpected power'. Anabel Dwyer, an IALANA lawyer, described how for two-and-a-half weeks, the Peace Palace 'sustained a transfixing confluence

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<sup>50</sup>. Christine Soane and Peter Norris, *Going to Court Not War*, Tweeddale Peace Group, Scotland, 1995.

<sup>51</sup>. Sibylle Nahr, Uwe Peters, eds., *Poison Fire, Sacred Earth*, The World Uranium Hearing, Munich, 1992.

<sup>52</sup>. Letter from Pauline Tangiora to ICJ Registrar, 4 November 1995. World Court Project Report, LCNP, Winter 1995, p.4.

of enormous courage, chilling lies, terrifying knowledge of the effects of radiation, and profound and absurd expositions of the law'. [53]

Although 25 countries were initially listed to make statements, Nauru and India withdrew. [54] Zimbabwe, having made a late request to present an Oral submission, was not on the list. Following a last-minute meeting between World Federalist President Bill Pace, Alyn Ware and Prime Minister Mugabe at the NAM Summit in Colombia, Zimbabwe decided to participate and exploit its position as final speaker alphabetically, to rebut the NWS. [55]

The WHO opened the Proceedings by claiming its 'neutrality', and submitted documents on the effects of ionizing radiation and nuclear war, and the legality of the use of nuclear weapons. It noted the role of IPPNW and the WFPHA in bringing this 'question without precedent' before the ICJ.

### **Australia**

As the first state to address the Court, Australia consolidated its anti-nuclear testing rhetoric and reflected growing public support for the WCP. In a remarkable policy turn-around, Keating marked the UN's 50th anniversary in Canberra the week before by calling for 'the creation of a world totally free of nuclear weapons'. He pre-empted Australia's oral statement by announcing the establishment of an international group of 'knowledgeable and

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<sup>53.</sup> Anabel Dwyer, 'When Nuclear Weapons Go Before the International Court of Justice', *Benchmark*, Michigan, vol. XVIII, no.1, 1996, pp 8-12.

<sup>54.</sup> Nauru withdrew because of earlier concerns about their counsel. India did not appear citing its two previous submissions sufficiently covered their arguments. See letter from Phon van den Biesen to Peter Weiss, 10 October 1995.

<sup>55.</sup> Interview with Alyn Ware, Christchurch 9 January 1996. Ware had gone with Bill Pace from the World Federalist Movement to lobby governments during the Colombian NAM Summit. In 1989 Zimbabwe had invited Pace to the NAM summit to promote the Decade of International Law as an 'independent lobbyist'. Ware suggested that Pace ask Mugabe outright if he wanted Zimbabwe to present an oral submission. As Shamuyarira was no longer Foreign Minister and the current Minister was not supportive of the WCP, 'we had to go directly to the President'. 'Once we had the OK from Mugabe, I had to go back with his verbal OK to the New York people asking them to prepare a submission'. (Ware interview with Dewes).

imaginative individuals from around the world to produce a report for the next UNGA and the Conference on Disarmament' outlining how this could be achieved. (This later became known as the Canberra Commission). Hailing Australia's leading role in the Chemical Weapons Convention and other disarmament initiatives, Keating urged that the same energy be put into achieving a nuclear free world. [56]

As citizen delegates gathered inside the Peace Palace, excited speculation raged as to how Australia would reconcile its WHA submission with calls for nuclear abolition. How could it support nuclear deterrence by maintaining an active role in ANZUS, continue to host US bases and nuclear warship visits, export uranium, and retain any credibility with the overwhelming majority of anti-nuclear states?[57]

Keating had consulted with Australia's allies before his announcement. [58] Australia wanted Security Council membership, and needed support from the NAM. It was no secret that Foreign Minister Evans was seeking nomination as the next UN Secretary-General, and as a lawyer hankered after appearing before the ICJ. He had recently advocated the feasibility of a nuclear weapon free world. [59] On his way to the ICJ, he lobbied for the

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<sup>56.</sup> Speech by Prime Minister P.J. Keating, 'The 50th Anniversary of the United Nations, Australia and a World Without Nuclear Weapons', Canberra, 24 October 1995, 7pp; Keith Suter, 'PM's nuclear policy could bomb', *The Melbourne Age*, 26 October 1995; 'PM's push to remove nuke threat', *The Canberra Times*, 25 October 1995.

<sup>57.</sup> 'US-Australia defence ties strengthened after joint talks', *The Press*, 21 May 1995.

<sup>58.</sup> 'Evans N-attack at ICJ cynical, says Downer', *The Australian*, 1 November 1995.

<sup>59.</sup> Gareth J. Evans, *Cooperating for Peace: The Global Agenda for the 1990s and Beyond*, Allen and Unwin, St Leonards, NSW, 1993. Joseph Rotblat, Jack Steinberger and Bhalchandra Udgaonkar, eds. *A Nuclear-Weapon-Free World: Desirable? Feasible?*, Westview Press, Boulder, 1993; Wiseman, op.cit. See interview by Evans on ABC Radio, Australia, 25 October 1995. See also, Gareth Evans, Bruce Grant, *Australia's Foreign Relations in the World of the 1990s*, Melbourne University Press, 1991; Gareth Evans, 'Australia's Commitment to Global Multilateralism and its Implications for the Asia Pacific Region', Keynote address to a Conference at La Trobe University, Melbourne, 2-6 July 1995; Gareth Evans, 'International Law and

UNGA's anti-testing resolution in New York and at the NAM Summit in Colombia.

In a decidedly equivocal opening presentation aimed at appeasing both factions, Australia's Solicitor-General asked the ICJ to 'decline to give either of the advisory opinions'. Fearing an opinion which might impede the disarmament process, he cited examples of how the ICJ might decide that some uses might be legal. Foreign Minister Evans then took over and delighted WCP supporters by condemning not only any threat or use of nuclear weapons as illegal, but their acquisition, development, testing and possession. Calling nuclear weapons incompatible with current international humanitarian law, he said, 'It cannot be consistent with humanity to permit the existence of a weapon which threatens the very survival of humanity'. He urged the ICJ to declare that the NWS have a legal obligation under the NPT to abolish nuclear weapons within a reasonable timeframe. He then advanced the schizophrenic claim that during progress towards a nuclear weapon free world, the 'principle of stable deterrence' be maintained 'for the sole purpose of ensuring that nuclear weapons are never used by others' but that 'such deterrence can only be a temporary necessity'. [60]

Later he denied that this position signalled a changed relationship with the US. Australia's Opposition spokesman immediately responded that:

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Australia's Interests', Address to the Australian Branch of the International Law Association, Sydney, 30 March 1989.

<sup>60</sup>. See Australia's Oral Statement to the ICJ, 30 October 1995 and World Court Project Press Release 2, 30 October 1995; 'The shadow of the mushroom cloud', *The Age*, 1 November 1995; Michael Bachelard and Ross Peake, 'Australia ups ante on nuclear weapons', *The Canberra Times*, 31 October 1995; Peter Ellingsen, 'Ban the bomb:Evans', *The Age*, 31 October 1995; Geoffrey Barker, 'What Australia will tell the World Court', *The Australian Financial Review*, 30 October 1995, Susan Wareham, 'Nuclear Weapons on Trial for the first time in their history', *Canberra Times*, 30 October 1995; Tony Parkinson, 'Evans cites Beijing, Paris on N-arms', *The Australian*, 31 October 1995; Greg Aynsley, 'Keating wobbles on nuclear tightrope', *The Herald*, 28 October 1995; Gareth Evans, 'The ICJ and nuclear arms', *Canberra Times*, 7 February 1995.

...if Senator Evans' arguments were to be taken seriously the government would logically ban ship visits by American and British warships, would terminate military exercises with those countries and, above all, would tear up the ANZUS Alliance. [61]

Whatever his motivation, his performance was in marked contrast to his response to Evans and St John a decade earlier. At times their arguments echoed through his presentation. At others, the pragmatist politician urged caution. Nonetheless, within weeks Australia's anti-nuclear policy had moved forward, but there was no certainty that it reflected a solid consensus of national support as in A/NZ. The ICJ presentation, coupled with the establishment of the Canberra Commission on the Elimination of Nuclear Weapons gave the government increased credibility with the electorate's vehement anti-nuclear sentiment, and international prestige as a seemingly leading proponent of nuclear abolition.

### ***Non-Aligned Movement Representatives***

Originally 11 NAM members planned to speak, but India withdrew and Zimbabwe was a late admission. Then, on the third day, following France's presentation, Guyana and Colombia (one of the largest recipients of US aid) suddenly pulled out. Colombia was chairing the NAM, and had regularly attended Malaysia's coordinating meetings at the ICJ. The next day, the President declared a state of emergency after the former Colombian presidential candidate and outspoken critic of the government was assassinated. Guyana's excuse was that it was assuming the UNGA Presidency. [62]

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<sup>61.</sup> Alexander Downer, Shadow Minister for Foreign Affairs, 'Senator Evans and the International Court of Justice', Media Release, 31 October 1995; Alexander Downer, 'Evans not serious on N-ban', *The Age*, 8 November 1995, A. Downer, 'Evans not serious about a nuclear ban', *The Age*, 2 November 1995; Geoffrey Barker, 'Downer hits out at Labor nuclear stand', *Australian Financial Review*, 1 November 1995; Ian McPhedraon, 'N-weapons stance 'risk' to ANZUS', *The Canberra Times*, 1 November 1995.

<sup>62.</sup> Interview by Dewes with Razali Ismail, New York, 23 March 1998, 'Veteran political leader gunned down', *The Herald*, 4 November 1995.

Egypt began by reminding the ICJ that it was required to respond to both requests unless there were compelling constitutional reasons for not doing so. It also argued strongly in favour of the illegality of nuclear weapons. Angered by France's arrogant presentation, Mexico warned it might withdraw from the NPT should the NWS not fulfil their obligations for total nuclear disarmament. It argued that 'to postpone giving a legal opinion on the threat or use of nuclear weapons until an actual case occurs is like substituting medicine with an autopsy'. Earlier, Indonesia argued that nuclear deterrence was illegal.

Australia's Hague Ambassador thought Iran made the most compelling and comprehensive argument for the illegality of nuclear weapons.[63] Iran viewed a positive ICJ decision as 'an instrument of preventive diplomacy, a particular *[sic]* suitable means for the Court to defuse tension and ward off conflict by determination of law'. Qatar, the Philippines and Costa Rica also argued for illegality. Costa Rica submitted a letter from the International Committee of the Red Cross stating that nuclear weapons are weapons of mass destruction and their use would be incompatible with the Geneva Protocols, which the ICRC had been instrumental in finalising.[64]

Malaysia's Ambassador Ismail reminded the ICJ of the NAM's crucial role in submitting the UNGA question, and made a powerful case on behalf of its 113 members. He highlighted the role of civil society and fearlessly exposed the ongoing power politics:

The Non-Aligned Movement is representative of the peoples of the world to whom this issue before the Court is of the most urgent and critical interest. We are home to a huge majority of humanity with a multiplicity of problems. Our countries are custodians of natural resources and biodiversity crucial to the

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<sup>63.</sup> Discussion between Australia's Ambassador Michael Tate, Dewes and Green, 9 November 1995.

<sup>64.</sup> See 'World Court Hearings: Summaries of statements made to the ICJ', LCNP, December 1995, p.8; See Cornelio Sommaruga, President of ICRC, 'Nuclear Weapons and International Humanitarian Law', *Le Monde*, 28 July 1995; Letter from Yves Sondoiz (Executive Board member of ICRC) to President Bedjaoui, 19 September 1995.

continued survival of people and the planet, threatened now by the destructiveness of nuclear weapons.

At this moment in The Hague, itself, the Court should be aware of the large number of members of civil society that have gathered here from many parts of the globe in the expectation that the Court will declare that the threat and use of nuclear weapons is illegal. Even in the countries outside the NAM, amongst governments that did not support the UN General Assembly resolution, there is increasing public support for this position.

....I am mindful that the General Assembly resolution did not enjoy complete support..... but how can it be otherwise in the real world when five nuclear weapon States, who are themselves the five permanent members of the Security Council, have the ability and leverage to apply enormous influence on the hapless States? The negative votes and abstentions are an indication of the extremely heavy lobbying of the nuclear weapon States. The pressure continues even at this moment and this pressure cannot be underestimated.

...the political role of the Security Council is clearly dominated by a powerful group of countries, the nuclear powers, and...there is little hope of placing the issue of nuclear weapons before such a Council for an objective and fair consideration. Our recourse to the Court now, with the full support of civil society, is tantamount to a last appeal for justice. [65]

Much of Zimbabwe's submission was finalised with vital assistance by Ware and some IALANA lawyers and the night before, and revised during lunch following the UK and US presentations. It was a powerful rebuttal of the NWS' arguments and a grand finale to the Oral Proceedings.[66]

### ***South Pacific Islands, Japan and San Marino***

The Marshall Islands, Samoa and the Solomons made a joint presentation (Figure 16). They had hoped for four and half hours, but were given the customary one and a half hours allotted to each state. The large delegation included legal experts from Australia, Belgium, France, A/NZ, UK and the US. All three states argued for both cases to proceed, and offered

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<sup>65.</sup> Ambassador Razali Ismail, Oral Statement by Malaysia before the ICJ, 7 November 1995.

<sup>66.</sup> Jonathan Wutawunashe, Zimbabwe's Oral Presentation to the ICJ, 15 November 1995.

**Figure 16: Photos of ICJ Judges and South Pacific Legal Team.**



ICJ President Bedjaoui announces Court's decision 8 July 1996



Legal team from the Marshall Islands, Solomon Islands and Samoa.  
Includes Neroni Slade (far left) and Lijon Eknilang (white)

Figure 17: Photos of DPC display and NZ legal team meeting WCP supporters.



Keith Mothersson, Rob Green, Fredrik Heffermehl and Peter Weiss outside the ICJ with 52 boxes of DPCs.



NZ's Attorney General Paul East shakes hands with Ware and Dewes outside the ICJ just before presenting the oral submission.

substantive documentation in support of illegality. Samoa praised the citizen groups in bringing the issue to the ICJ. Citing the UK's written submission which asserted that the requests 'are the result of a sustained campaign by NGOs', Samoa responded, 'My government is not at all offended by the involvement of NGOs in this matter. The UN Charter... takes NGOs seriously'. [67]

The most moving testimony came from Lijon Eknilang, dressed in white with a wreath of flowers in her hair. Often overcome by emotion, she shared how the experiences of the Marshallese were relevant to the questions,

...because unnecessary injuries, indiscriminate impacts, and adverse collateral environmental effects of the radioactive fall-out resulting from the atmospheric tests which have so gravely affected the Marshall Islands would be repeated for other people and their lands in the event of any military use of nuclear weapons.

Like Lini at the WHA, she spoke graphically of the health and environmental effects of the tests, including the intergenerational effects:

My own health has suffered very much as a result of radiation poisoning. I cannot have children. I have had miscarriages on seven occasions. One child I miscarried was severely deformed; it had only one eye. I have lumps in my breasts, as well as kidney and stomach problems ... my eyesight is blurred and everything looks foggy to me.

Women have experienced many reproductive cancers and abnormal births. ... they give birth ... to things we could only describe as 'octopuses', 'apples', 'turtles' ... and 'monster babies' with two heads. The most common birth defects have been 'jellyfish' babies. These babies are born with no bones in their bodies and with transparent skin. We can see their brains and hearts beating. Many women die from abnormal pregnancies and those who survive give birth to what looks like strands of purple grapes. [68]

Ambassador Slade described how, '... in her simple Sunday best, she held the Court spellbound ... she wasn't fazed by these 14 old characters ... it

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<sup>67.</sup> Clark and Sann, op.cit, p.247.

<sup>68.</sup> Ibid., pp. 239 -243.

was amazing’.[69] Her personal experiences provided balance to the abstract legal expositions.

When New Zealand’s legal team arrived at the ICJ they shook hands with Ware, Dewes and others who were holding a huge rainbow banner, ‘Nuclear Free New Zealand/Aotearoa’, outside the gates (Figure 17). Inside, Attorney-General Paul East began by acknowledging New Zealanders who had helped bring the question to the ICJ, ‘some of whom are here today’. Sadly, Evans could not attend, and Geiringer had died in August. In stark contrast to Australia, East told the Court that it was:

...bound to exercise its jurisdiction to reach a decision on the substantive issue put to it. The answer to the question... should be no; the threat or use of nuclear weapons should no longer be permitted under international law. [70]

It was a proud day for those who had struggled for nearly a decade to convince their elected representatives to advocate this position with confidence. Although at times the relationship between officials and NGOs had been acrimonious, here, at last, was a real sense of partnership.

The Japanese NGOs did not feel the same. Prior to the hearings, the government had tried to prevent the Mayors of Hiroshima and Nagasaki from declaring that all uses of nuclear weapons were illegal. On the morning of their presentation many *hibakusha*, wearing garlands of paper cranes and flanked by a huge painting of a weeping Black Madonna and child, held a vigil at the gates. Following a brief reiteration of the government’s written statement, the Mayors were asked to give their statements ‘independent of the government’. Hiroshima’s Mayor said: ‘History is written by the victors. Thus the heinous massacre that was Hiroshima has been handed down to us as a perfectly justified act of war’. The powerful presentations of photos and personal stories of *hibakusha* moved many to tears. The Mayors invited the judges and the leaders of the nuclear states to visit their cities. Nagasaki’s Mayor concluded with the hope that

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<sup>69.</sup> Slade interview (1998), op.cit.

<sup>70.</sup> International Court of Justice, Verbatim Record, CR 95/28, 9 November 1995, p 19.

... this Court will decide impartially about the inhumanity of nuclear weapons and their illegality...This indeed will contribute more than anything else to the repose of the souls of the 214,000 people who perished in the atomic wastelands of Nagasaki and Hiroshima 50 years ago. [71]

The only Western European country to oppose nuclear weapons on this occasion was the ancient Republic of San Marino, which credits its 400 years of peace to forsaking all weapons. It rejected NATO's policy of nuclear deterrence, arguing that it is 'contrary to international law and morally unacceptable'. [72]

### ***Nuclear Weapon States and their Allies***

In stark contrast to its tiny neighbour, Italy - together with the P3 - asked the ICJ not to give an opinion. It went further than the P3 by arguing that nuclear deterrence was permitted by the UN Charter, which gave the UN the right to threaten and use nuclear weapons. This position totally contradicted a Parliamentary resolution which stated that 'nuclear weapons, as weapons of mass destruction, are prohibited under Italian and international law'. [73] Germany argued that NATO's nuclear weapons provide '... the ultimate deterrence against a threat whose consequences would lead to a national catastrophe were it to materialize'. [74]

Russia dismissed arguments against nuclear weapons as 'political and emotional' and, like the P3, argued that international law does not contain a general ban on nuclear weapons *per se*. France indulged in a show of frivolous semantic quibbling over the framing of the two questions, made no reference to weapons of mass destruction, ignored the entire body of international law codified in the Hague and Geneva Conventions, and

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<sup>71.</sup> Statements by Takashi Hiraoka, Mayor of Hiroshima and Iccho Itoh, Mayor of Nagasaki to the ICJ, 7 November 1995.

<sup>72.</sup> Mrs Federica Bigi, San Marino's Oral Presentation to the ICJ, 13 November 1995.

<sup>73.</sup> Resolution on nuclear weapons by the Senate of the Italian Republic, 13 July 1995, passed by a two thirds majority.

<sup>74.</sup> Hartmut Hillgenberg, Germany's Oral Presentation to the ICJ, 30 October 1995.

emphasised that nuclear weapons are not fundamentally different from other types of weapons.

The UK and US clung tenaciously to their position that it is legal to use nuclear weapons under certain circumstances. The US claimed that 'nuclear deterrence has saved many millions of lives from the scourge of war during the past 50 years. In this special sense, nuclear weapons have been "used" defensively, every day for over half a century - to preserve the peace.' The UK declared: ' It is nonsense to suggest that states which have relied on nuclear weapons for fifty years have implicitly agreed to a ban on them'. [75]

As the judges began their deliberations, citizen groups worldwide hoped they would remember Malaysia's concluding plea:

In the present time of darkness and deep crisis when the world is under the nuclear sword of Damocles, the nations of the world seek the wisdom and shelter of its sages, that is, you the wise Judges of the World Court in this Great Hall of Justice in this great Peace Palace. We await your answers to the questions posed, and have the fullest confidence that, despite scepticism by many eminent commentators of international law, this Court will positively respond to the collective cry for help from the world community.

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<sup>75</sup>. The quotes are from individual government statements to the Oral Hearings at the ICJ, 30 October - 15 November 1995. For further reading and quotes see: Kevin Sanders, 'Nuclear Weapons on Trial: The People Vs. the Bomb', *World Citizen News*, December 1995/January 1996, pp. 18- 25; John Burroughs and Jacqueline Cabasso, 'Nukes on Trial', *The Bulletin of Atomic Scientists*, March/April, 1996, pp. 41- 45; Mary Riseley and Karin Salzman, 'Nuclear Weapons on Trial', *Santa Fe Reporter*, November 20 - December 5, 1995, pp.15-19; David Morgan, 'A Report on A Visit to the World Court, The Hague, Netherlands', 3 December 1995; Kate Dewes, 'Nuclear Weapons on Trial', Foundation for Peace Studies, Background paper no.11/23, December 1995; WCP ISC Press Releases, 24 October - 15 November 1995; John Pilger, 'A Principled Audacity', *New Statesman and Society*, 17 November 1995, Kevin Sanders, 'UN calls on World Court to Ban the Bomb', *War and Peace Digest*, vol.3, no.6, January 1995.

## 12.7 Conclusions

The ICJ Oral Proceedings were the climax for the international citizen coalition promoting the WCP. They provided a focus for all strands to work together, using their various strengths to ensure independent legal advice was shared with governments and that 'we, the peoples' found a voice within the often sterile and austere proceedings. The ICJ's officials allowed a surprising degree of participation by citizen groups and the NGO network worked hard at their task of educating the global public about the ICJ's role. Media interest was also enhanced by the strong public support for the case.

Outraged international public opinion over French testing in the South Pacific undoubtedly emboldened Australasia and the small Pacific states to re-open the 1973 ICJ case and join together to challenge the NWS at the ICJ and CHOGM. At the 1995 UNGA they succeeded in attracting 40 co-sponsors for a resolution condemning renewed nuclear tests. Australia's Ambassador Butler even went public exposing how 'the French went out in the last week in a massive programme of twisting arms, threatening and cajoling States to either abstain from or vote against this resolution'. One delegate from a Francophone nation spoke of 'the worst pressure he had suffered in his public life'. [76]

As two of the most tumultuous years in nuclear disarmament history drew to a close, the two superpowers plus the UK and France, supported by two Western allies, found themselves for the first time having to justify the legality of their nuclear arsenals in court. Some 16 states opposed them, including another two Western allies (Australia and ANZ), arguing for illegality and calling for total abolition. States infuriated by heavy-handed bullying by some NWS, and betrayed by the extension of the NPT and renewed nuclear testing, banded together to confront them head-on in the ICJ. Within the NAM the leadership baton passed from Costa Rica, Zimbabwe, Vanuatu, and Indonesia to Mexico, Colombia and finally Malaysia. Economically less vulnerable, backed by strong public support and

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<sup>76</sup>. 'UN under French N-Vote pressures', *NZ Herald*, 18 November 1995.

with a Prime Minister personally driving the issue, Malaysia led the final phase without fear of economic or military reprisals. [77] At the same time, the revitalised NAM introduced a UN resolution calling for 'the elimination of nuclear weapons within a time-bound framework', which passed by 106 for (including China), 39 against and 17 abstaining (including Russia). [78]

Australia's Foreign Minister denied that his pronouncement on the illegality of nuclear weapons affected the Australia-US relationship. However the High Court of Australia granted a Melbourne barrister the 'right to bring legal proceedings against the Commonwealth to force the Federal Government to declare nuclear weapons illegal' under Australian municipal law, including the Constitution. [79] It also helped empower the Australian citizen movement to challenge their government's ongoing support for nuclearism.

Trans-Tasman rivalry between electorate-conscious governments helped move along the wider anti-nuclear agenda with initiatives such as a SHNFZ and the Canberra Commission. Although A/NZ and Australian UN disarmament votes usually converged, [80] the nuclear free legislation and strong public support forced the conservative A/NZ government to align far more closely with the NAM. This in turn helped Ireland, Sweden and Australia to follow suit and split the normally compliant Western bloc.

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<sup>77.</sup> Razali interview, op.cit.

<sup>78.</sup> 'G.A. calls for Elimination of Nuclear Weapons in Fixed Period; Non-Aligned Countries Resurgent', *Disarmament Times*, 19 December 1995, pp. 1 and 4.

<sup>79.</sup> Rachel Gibson, 'High Court allows anti-nuke challenge', *The Age*, 29 November 1995; 'Writ tests Keating stance on N-weapons', *The Press*, 1 December 1995; Writ, Lindon v Kerr & Ors, VG 111 of 1995. Lindon argued that under the Australian Constitution and legislation such as the *Australia Act 1986*, 'the people had reserved to themselves certain powers. These included the power to institute or defend legal proceedings in order to protect the lives of Australians against imminent threat and to vindicate the public interest in human rights'. Secondly, 'Australian domestic law embodied the principles of international law, reflected in such sources as the *Convention on the Prevention and punishment of the Crime of Genocide*,' which was approved by Australia in the Genocide Convention Act of 1949. Ibid, pp. 7-8.

<sup>80.</sup> Adrian Wills, 'New Zealand in the United Nations General Assembly: A Comparative Survey of Alignment', Working Paper no.3, Centre for Peace Studies, University of Auckland, April 1994, pp. 22-24.

For all three co-sponsoring NGOs, the WCP galvanised individual members and affiliates to use their newly-developed relationships with decision makers in a wide range of countries to maximise support and the number of submissions. With the conclusion of the Oral Proceedings, few tasks remained for the WCP network as they anticipated the final decision during 1996.

# **PART IV**

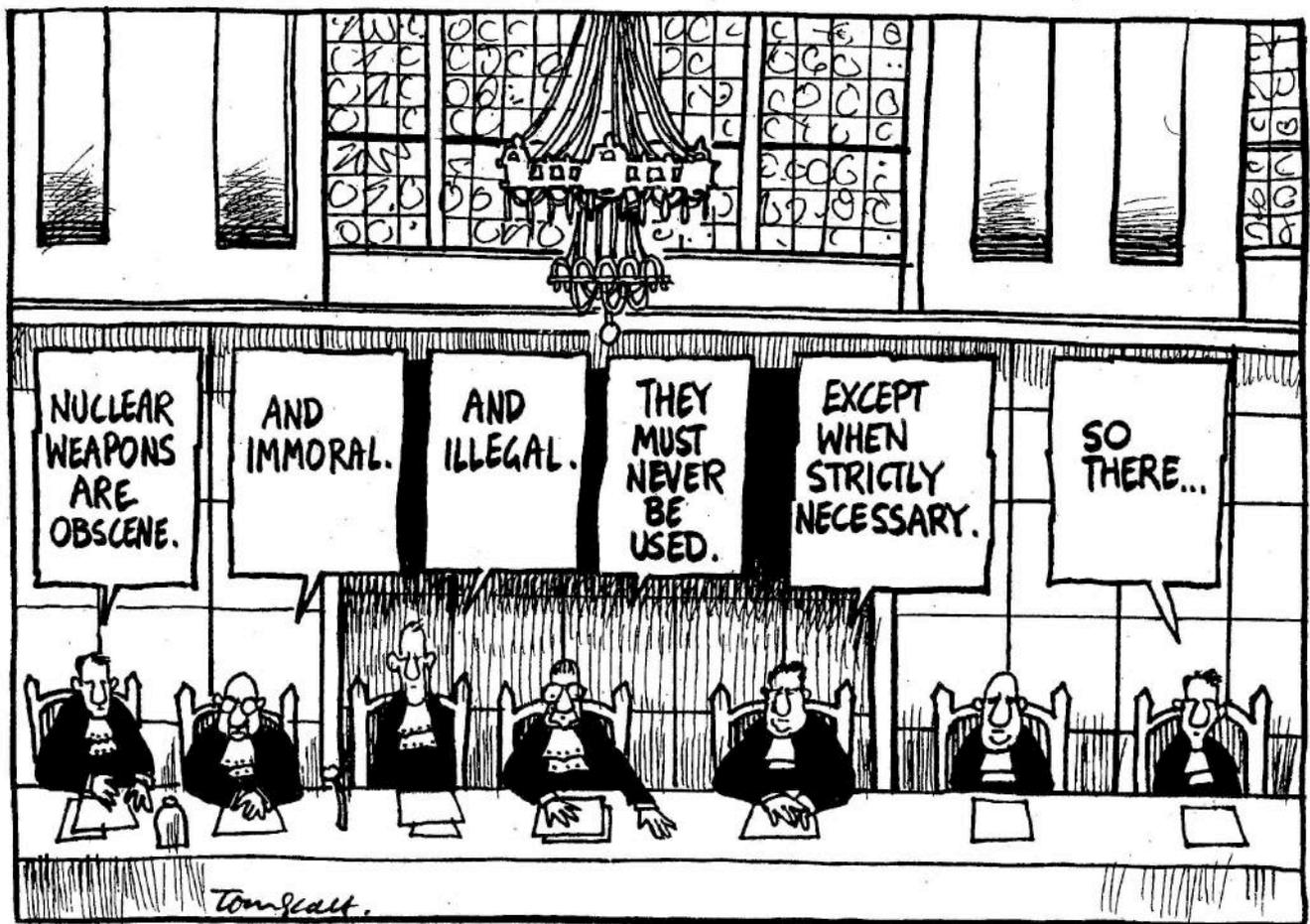
## **CONCLUSIONS**

*The power of ideals is incalculable. We see no power in a drop of water. But let it get into a crack in the rock and be turned to ice, and it splits the rock.*

*Albert Schweitzer*

# CHAPTER 13

## THE IMPACT OF THE WORLD COURT PROJECT



Source: Tom Scott, *Otago Daily Times*, 10 July 1996

## CHAPTER 13

### THE IMPACT OF THE WORLD COURT PROJECT

*The Court lived up to its historic challenge by responsibly addressing the momentous question posed by the General Assembly about the legal status of a threat or use of nuclear weapons. ...As with other normative projects, such as the abolition of slavery and the repudiation of apartheid, perseverance, struggle and historical circumstance will shape the future with respect to nuclear weaponry, but this process has been pushed forward in a mainly beneficial direction by this milestone decision of the World Court. Falk [1]*

*The forces ranged against the view of illegality are truly colossal. However collisions with the colossal have not deterred the law on its upward course towards the concept of the rule of law. It has not flinched from the task of imposing constraints upon physical power when legal principle so demands. It has been by a determined stand against forces that seemed colossal or irresistible that the rule of law has been won. Once the Court determines what the law is, and ploughs its furrow in that direction, it cannot pause to look over its shoulder at the immense global forces ranged on either side of the debate. Weeramantry [2]*

#### 13.1 Responses to the Court's Decision

On 8 July 1996, almost a decade after Falk and Weeramantry had argued in support of an ICJ advisory opinion in the Evans Open Letter, the 14 ICJ Judges (including Weeramantry) delivered their historic decision on the World Health Assembly and UN General Assembly requests. Despite the inclusion of the word 'urgently' in the UNGA resolution, it took over three years and 18 months respectively for the ICJ to give its verdict on both cases. In May 1996, rumours were rife that the judges were under pressure

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<sup>1.</sup> Richard Falk, 'Nuclear Weapons, International Law and the World Court: a Historic Encounter', *The American Journal of International Law*, vol.91, no.1, January 1997.

<sup>2.</sup> Ginger (1998), op.cit., p 246.

to drop or delay the case because of threats by NATO nuclear weapon states (NWS) to stall CTBT negotiations which were at a critical phase. [3]

The ICJ decided by 11 votes to 3 that it was unable to give the Advisory Opinion requested by the WHA because it 'does not relate to a question which arises "within the scope of [the] activities" of that organisation' (Appendix III). This was the first time the ICJ had refused to answer a question from a UN agency. [4] On the UNGA question it gave a 34-page main Opinion followed by over 200 pages of individual statements and Dissenting Opinions by each Judge. In the crucial subparagraph of the *Dispositif*, (Appendix III) the ICJ decided that:

...a threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.

It added a very controversial caveat:

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.

However, in the final paragraph the Judges unanimously agreed:

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<sup>3</sup> In the CD, negotiations were deadlocked over the CTBT and there were rumours that the NWS were using the imminent ICJ Opinion as a pretext for non-cooperation. At a conference in Edinburgh the former ICJ President Sir Robert Jennings warned that budget cuts had forced the Court's typing pool to be closed; translation services were curtailed; and the Information Officer retired abruptly without replacement. Jennings appealed for the Court to be 'protected at this decisive moment for this precious creation'. At the time the UN faced collapse because many states had not paid their full dues (US\$2.3 billion owing) - including the US with \$1.6 billion outstanding. See Action Alert from International Office of Peace Action, New York, email message on abolition-caucus, 14 May 1996; Hank Schouten, 'UN crisis blamed for nuke judgment delay', *The Evening Post*, 22 May 1996; Andrew Gilligan, 'Court to deliver nuclear judgment', *The Age*, 8 July 1996.

<sup>4</sup> International Court of Justice Communique, 'Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request for Advisory Opinion by the World Health Organisation)', no.96/22, 8 July 1996; See also World Court Project, *Implications of the Advisory Opinion by the International Court of Justice on the Legal Status of Nuclear Weapons*, Pottle Press, London, 1996. Clark and Sann (1996), op.cit., pp. 295-304.

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. [5]

The Opinion received a mixed reaction from governments, academics, lawyers, the military, anti-nuclear campaigners and the media. While some Western NWS cited clauses which they claimed justified their continuing reliance on nuclear deterrence, others warned it could still jeopardise the CTBT. [6] However, in most anti-nuclear countries it was heralded as a landmark decision, which would impact strongly on nuclear disarmament.

The Australasian responses merit special consideration as the first countries approached by Harold Evans. In contrast to their earlier opposition and cynicism, they were extremely positive. Former Australian Foreign Minister Gareth Evans criticised the ICJ for not making 'a clear-cut decision ... that the use and threat of nuclear weapons in all circumstances was illegal', but still claimed it would 'drive Australia's push to eliminate the world's nuclear arsenal' and 'help very much the role of the Canberra Commission'. Evans' successor Alexander Downer said Australia would use the Opinion to 'garner support for an enforceable worldwide ban on nuclear armaments'. [7]

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<sup>5</sup> ICJ Communique, 'Legality of the Threat or Use of Nuclear Weapons (Request for Advisory Opinion by the General Assembly of the United Nations)', no. 96/23, 8 July 1996.

<sup>6</sup> Christopher Lockwood, 'Nuclear Arms are Illegal, Court Rules', *Daily Telegraph*, 9 July 1996 reported a spokesman for the British Foreign Office saying 'British and Nato military doctrine remain intact. No changes are envisaged'; David Fairhall and Richard Norton-Taylor, 'International Court fudges nuclear arms ruling', *The Guardian*, 9 July 1996 reported that Captain David Humphrey, Chief Naval Judge Advocate, in a private legal opinion said: 'If the Court were to deliver an adverse opinion it would be ignored by the nuclear powers, and the servants of the states concerned - including SSBN commanding officers - would not be acting illegally in obeying the orders and carrying out the policies of the state of which they were citizens'; Christopher Bellamy, 'D-day for nuclear arms powers', *The Independent*, 8 July 1996; Reuters, 'Judgment upholds our stand, say French', *NZ Herald*, 10 July 1996, p.7; Christopher Bellamy, 'World closer to banning the bomb', *The Independent*, 9 July 1996; Gordon Cramb, 'Use or threat of nuclear arms 'unlawful'', *Financial Times*, 9 July 1996.

<sup>7</sup> Cameron Stewart, 'Downer urges worldwide N-bomb ban', *The Australian*, 10 July 1997; Alan Attwood, 'Nuclear Arms Ruling helps to make world safer, says Evans', *The Age* (Melbourne), 10 July 1996; 'Australian win in fight to

A/NZ's Prime Minister Jim Bolger joined Opposition leaders in welcoming the outcome, saying 'it has vindicated the anti-nuclear crusade'; 'it's a tremendous victory, it's a great watershed decision'; and 'the tide has turned against nuclear weapons'. [8] Almost immediately he announced A/NZ would lobby for a Fissile Material Cut-Off Treaty and help establish a Southern Hemisphere Nuclear Free Zone (NFZ). Disarmament Minister Doug Graham even asked if international law could now also 'ban the innocent passage of warships and submarines through international waters'. [9]

On the whole the Opinion was favourably received by academics and lawyers, and some US military legal advisers seriously analysed it. [10]

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ban bomb', *The West Australian*, 10 July 1996; Andrew Gilligan, 'Court rules on N-bombs today', *Sydney Morning Herald*, 8 July 1996.

<sup>8.</sup> See Michael Rentoul, 'PM hails World Court decision: "Tide turns" against N-weapons', *The Press*, 10 July 1996; Reuters, 'Nukes Called "The Ultimate Evil"', *Asahi Evening News*, 9 July 1996, front page; Simon Kilroy, 'Bolger welcomes nuclear ruling', *The Dominion*, 10 July 1996; Simon Kilroy, 'World Court split on nuclear arms use', *The Dominion*, front page, 9 July 1996; Editorial, 'World Court gives partial 'no' to nukes', *The Australian*, 10 July 1996.

<sup>9.</sup> Hank Schouten, 'Nuke-free zone expansion eyed', *The Evening Post*, 31 July 1996; 'NZ seeks no-nukes zone', *Evening Post*, 27 July 1996; Sarah Boyd and Brent Edwards, 'Nuke Ruling Studied for Disarmament', *Evening Post*, 9 July 1996; Editorial, 'Court winds back the Doomsday clock', *Evening Post*, 12 July 1996;

<sup>10.</sup> Critical comment included: Sam Blay and Ryszard Piotrowicz, 'All but nuked by the counter-strike', *The Australian*, 11 July 1996; Ron Smith, 'Nuclear ruling leaves us much as we were', *NZ Herald*, 22 August 1996; Jeremy J. Stone, 'Less than meets the eye', and Kathleen Bailey, 'So What?', *Bulletin of the Atomic Scientists*, September/October 1996, pp. 43-45 and 46-47. Predominantly positive comment included: John Burroughs, 'World Court Verdict: kill nuclear weapons', *Point, South Carolina's Independent Newsmonthly*, vol.7, no.81, August 1996; Keith Suter, 'Remarkable nuclear campaign succeeds', *Canberra Times*, 11 July 1996; Bernard Lane, 'World Court speeds N-ban: lawyer', *The Australian*, 11 July 1996; 'Len Lindon's Legal Challenge', *Anti-Bases Campaign Bulletin*, Australia, May 1996; Stuart McMillan, 'World Court on nuclear weapons', *The Press*, 13 July 1996; Scott Davidson, 'World Court opinion falls short of declaring nuclear arms illegal', *The Press*, 15 July 1996, p.11; Robert Green, 'Judgement and the Bomb', *The Tablet*, 20 July 1996, p. 946; Andrew Mack, 'Disarming Logic a test for nuclear powers', *The Australian*, 10 July 1996; Andrew Mack, 'Delegitimising Nuclear Weapons: the World Court Decision', *Pacific Research*, August 1996, pp. 3-4; Mike Moore, 'World Court says mostly no to nuclear weapons', Peter Weiss, 'And now, abolition', Michael Krepon, 'The Counter-revolution', *Bulletin*

Although some anti-nuclear activists criticised its shortcomings, most hailed it as a milestone. Others vowed to accelerate nonviolent civil 'obedience' campaigns and use the Opinion in their defence. [11]

Harold Evans felt a 'mixture of immense relief, a sense of achievement, satisfaction, exhaustion and surprise', and the Opinion was 'marvellous ... better than expected' and 'a great step forward'. He expressed regret that three of his 'six wise men' (MacDermot, Powles and St John) had died, along with two other leading figures, MacBride and Geiringer.[12] Ware described the outcome as having 'monumental significance' while Mothersson viewed the 'compromise necessarily involved' thus:

By presiding over a degree of fudge and reticence/indecision, Bedjaoui may have secured the best vote possible in the

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*of the Atomic Scientists*, September/October 1996, pp. 39-43, pp. 45-46. Analysis by US legal advisers included: Lt. Col. Michael N. Schmitt, USAF., 'The International Court of Justice and the Use of Nuclear Weapons', *Naval War College Review*, Newport, New York, Spring 1998, vol.L1, no.2, pp. 103-116; Col. Charles J. Dunlap, Jr., USAF, 'Taming Shiva: Applying International Law to Nuclear Operations', *The Air Force Law Review*, 1997, pp. 157-171.

<sup>11.</sup> The Japanese peace movement was particularly vocal in its criticism of the Opinion - see Fumihiko Yoshida, 'Nuclear warfare risk remains', *Asahi Evening News*, 9 July 1996; 'A shock wave of disappointment', *AEN*, 9 July 1996; 'ICJ's position on N-weapons draws mixed reactions', *Mainichi Daily*, 11 July 1996; Kenji Urata, ICJ Opinion: Potential and Problems, *Disarmament Times*, vol.XIX, no.4, September 1996. For more positive coverage see: Alyn Ware, 'Clarification of nuclear law highly significant', *NZ Herald*, 4 September 1996; Lynne Robertson, 'Scots activists hail ruling as victory', *Glasgow Herald*, 9 July 1996, Jonathan C. Randal, 'World Court: Nuclear Arms Mostly Illegal', *The Washington Post*, 9 July 1996; 'World Court calls on nuclear states to disarm', *Morning Star*, 9 July 1996; David Williams, 'Nuclear decision 'a leap forward'', *Christchurch Star*, 10 July 1996; Pat Haward, 'A Triumph for Peace', *Morning Star*, 12 July 1996; Keith Locke, 'What NZ can do to rid world of nuclear arms', *NZ Herald*, 25 July 1996; 'World Court Verdict: Nuclear Weapons Illegal', *The Guardian: Socialist Party of Australia*, no. 821, 10 July 1996; Katrina Brookland and NZPA, 'Anti-nuclear campaigners elated', *The Nelson Mail*, 9 July 1996; Pip Hinman, 'More action needed after nuclear weapons decision', *Green Left Weekly*, Australia, 17 July 1996; 'Following up on the Nukes Verdict', *CND News*, Wellington, October 1996; Michael Christ and Brett Feldman, 'Nuclear Weapons Challenged Globally: Citizens Gain New Leverage for Abolition', *IPPNW Vital Signs*, vol. 10, Issue 1, pp. 5, 10-11.

<sup>12.</sup> Yvonne Martin, 'Nuke fighter bows out with victory', *Sunday Star Times*, 14 July 1996; Veronika Meduna, 'Towards a nuclear-free future', *The Press*, 13 July 1996.

Figure 18: Collage of media headlines on ICJ Opinion.

Outlawing nuclear weapons  
World Court movement wins important victories

Nuclear Weapons on Trial  
Ban the Bomb?

UN supports anti-nuclear court case

World Court pressed to ban the Big Five's bombs

The bomb must join the outlaws

World Court Weighs Legality of Atomic War

Nuclear Powers Seek to Block World Court N-Bomb Ban

Legal Opinion on Nuclear Weapons

World Court To Ban The Bomb?

NZ to ask court for nuclear illegality ruling

Nuclear campaigner's faith on court ruling

Legality of nuclear weapons faces challenge

Weapons have kept the peace for 50 years, World Court hearing is told

World Court opens nuclear case

Nuclear campaigner's faith on court ruling

World Court To Ban The Bomb?

Can Use of Nuclear Weapons Ever Be Legal?

World Court Could Outlaw Nuclear Threat

Can Use of Nuclear Weapons Ever Be Legal?

World Court calls on nuclear states to disarm

L'ONU a adopté hier le Traité d'interdiction complète des essais nucléaires, malgré l'opposition de l'Inde.

**Nuclear states put names to test ban treaty**

World Court: Nukes Must Go!

Klart nei til atomvåpen  
Haag-domstolen stiller krav til atommakterne

PM will hear plan to disarm N-powers

Group of 21 countries submit programme for elimination of nuclear

International Court of Justice Advisory Opinion on the Threat or Use of Nuclear Weapons  
Unofficial Preliminary Draft Resolution to the 51st General Assembly  
September 26, 1996

Atomvåpenforbud en seier  
"neuter Schlag ins Gesicht der Atompolitiker"  
Canberra-Kommission erteilt atomarer Abschreckung eine A!

DE BOM IN DE BAN

**8 July 1996 — Historic Day!**  
International Court of Justice says "NO" to Nuclear weapons.  
Great Cause for Celebration in the Peace & Disarmament Movements World-Wide!



circumstances, to allow the backward (but powerful) elements in world opinion time to get used to complete illegality. [13]

Media interest in Australasia outstripped the rest of the world and reflected public support, strong government presentations to the ICJ and the WCP's good contacts. Most A/NZ commentators acknowledged that the WCP and the government had been vindicated by the decision (Figure 17). [14] There was significant coverage in Japan, the UK, Ireland and Norway but, as with the UN resolutions, there was little interest throughout North America and the rest of Europe. Some international correspondents only waited to hear the outcome of the WHA request before filing distorted reports. [15]

The Opinion was the culmination of years of intense work by a few key citizens and groups working closely with governments. What this thesis has sought to achieve is an assessment of the role of citizen groups in facilitating the process and the impact on UN bodies. This final chapter draws conclusions on the role of NGOs and the WCP's broader impact in terms of nuclear disarmament and the peace movement. It does not discuss the legal ramifications of the ICJ Advisory Opinion because it lies outside the scope of the study and is well covered by others.[16] This next section offers some answers to the ten questions posed in the introductory chapter. In one

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<sup>13</sup>. 'Judgement Day', *Inlap Times*, vol.2, no.2, Summer 1996, p.3.

<sup>14</sup>. Audrey Young, 'World Court vindicates retired NZ magistrate', *NZ Herald*, 10 July 1996; Mike Fletcher, 'City battlers are vindicated', *Christchurch Star* editorial, 13 July 1996; 'The World Court decision', *The Press* Editorial, 11 July 1996; 'Moves to keep the bomb away', *Sunday Star Times* editorial, 14 July 1996; 'Anti-nuclear pressure up', *NZ Herald* editorial, 10 July 1996; Jennifer Scott, 'Knife-edge vote to end threat of Armageddon', *NZ Herald*, 10 July 1996, p. 7; Reuters, 'World Court long on rhetoric, short on substantive decisions', *Dominion*, 10 July 1996.

<sup>15</sup>. Examples include: Michael Binyon, 'Hague court declines to give nuclear ruling', *The Times*, 9 July 1996; The Associated Press, 'World Court Rules Nuclear Arms Aren't Illegal in Themselves', *International Herald Tribune*, 9 July 1996; Reuters, 'Court partly rules against use of nuclear weapons', *The Press*, 9 July 1998.

<sup>16</sup>. Ryszard Piotrowicz, 'The World Court Judges nuclear weapons unjudgeable', *The Australian Law Journal*, vol. 70, pp. 959-962; L.H. Horace Perera, 'Legality of the Threat or Use of Nuclear Weapons: The Advisory Opinion of the International Court of Justice', January 1997. See footnotes 3 and 7 in Chapter 1.

instance a couple of questions are dealt with together because they are closely interrelated.

### **13.2 Preparing the Ground**

- 1. What initiatives by individuals, groups and governments prepared the ground for the WCP?*
- 2. Why had the peace movement or governments not tried the advisory opinion route before?*

Between 1945 and 1986, only a few initiatives used international law to challenge nuclearism, and even less had any real impact on nuclear disarmament or the peace movement. The most outstanding individual was Seán MacBride, whose efforts were unsurpassed to update the law of armed conflict and to educate lawyers and the public about nuclear weapons and international law using seminars, the London Nuclear Warfare Tribunal and his Lawyers' Appeal. The Greenham Women's high-profile nonviolent direct actions, and subsequent court cases citing international law; the Nuremberg Tribunal; and Petra Kelly's leadership within the German Greens, helped the resurgence of the international anti-nuclear movement in the 1980s. The most significant initiative from governments was the 1973 ICJ contentious case on the legality of French atmospheric nuclear testing.

While groups in Australia, Canada, Germany, Japan, the Netherlands, UK, US and elsewhere used international law in the courts; tribunals; nuclear free zone campaigns; and published articles promoting it, these hardly impacted on UN nuclear disarmament negotiations and rarely filtered through to decision makers. They were primarily domestic challenges, and recourse to the ICJ was rarely mentioned. Some exceptions were the call by an A/NZ lawyer to use the advisory opinion in what became the 1973 ICJ case; the Japanese Shimoda case; and MacBride's and Jaipal's attempts to convince Sweden and India, respectively, to run with the advisory opinion during the early eighties (see 7.3; 2.4; 3.4; 6.8).

These early initiatives were also primarily within countries with nuclear weapon-based security policies where the peace movement was preoccupied with focusing on the immediate threats to their environment (e.g. deployment of nuclear weapons, bases, ship visits and nuclear testing). Only MacBride had the unrivalled advantages of being from a neutral state, versed in international law, having the prestige of former high office, independent funding of a Nobel Prize, and direct access to decision makers.

Between 1945 and 1975, the Western peace and anti-nuclear movement relied heavily on distinguished individuals such as Schweitzer, Russell, Pauling, MacBride and others to attract publicity and speak for them. Although Pugwash developed an elite international network of scientists, their views were tempered such that even NWS governments viewed them as 'very respectable'.<sup>[17]</sup> Doctors did not form their international body until 1980, and lawyers not until 1988. WILPF and the World Peace Council (WPC) were active, but there was little cooperation between them; and at times the International Peace Bureau (IPB) was moribund. WILPF and IPB attracted primarily West European membership, whereas WPC was closely aligned to Communist countries, externally discredited and internally divided. Also, there was really no effective international network or coordination of activities. <sup>[18]</sup> There was little effort to build support within Non-Aligned Movement (NAM) countries; or to liaise with Japanese and Australasian groups. Publications by academics, lawyers and scientists were frequently inaccessible and unintelligible to ordinary citizens, and religious bodies were relatively inactive and ineffective. <sup>[19]</sup>

During this time, NATO states understandably regarded the movement with suspicion and hostility, whereas the NAM welcomed and even encouraged

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<sup>17.</sup> Lawrence Wittner, *Resisting the Bomb: A History of the World Nuclear Disarmament Movement, 1954-1970* Stanford University Press, California, 1997, p.33, p.293. The largest Pugwash conference held in London in 1962 drew 175 participants from 36 countries.

<sup>18.</sup> Ibid., pp. 307-317; Rainer Santi, *100 Years of Peace Making: A history of the International Peace Bureau and other international peace movement organisations and networks*, IPB, Geneva, 1991; pp. 34-35, 43.

<sup>19.</sup> Wittner (1997), op.cit., p.297.

it. Some prominent anti-nuclear NGOs were accorded observer status during NAM's first Conference in 1961, [20] and Prime Ministers such as India's Nehru worked closely with other independence leaders like MacBride. Therefore, initiatives to outlaw nuclear weapons were likely to come from stronger NAM countries in conjunction with neutrals such as Ireland and Sweden.

Based in Geneva, with exceptional experience in diplomacy, MacBride was uniquely placed to implement such initiatives. His former positions gave him easy access to influential diplomats, politicians and lawyers in Europe and the NAM; and his executive roles in many peace and human rights groups gave him strong backing from NGOs.[21]. He combined the passionate activist with the savvy politician, and despite extremely heavy work commitments, he maintained close links with the movement.

However, MacBride's calls to outlaw nuclear weapons via the Draft Rules, 1977 Geneva Protocols, a Convention and finally an advisory opinion were severely hampered by many factors. These included the Cold War realities within the UN and the peace movement; lack of an international NGO campaign focused on these initiatives; and reluctance by lawyers to question state policies. There was also serious ignorance among politicians, diplomats, lawyers and the general public about nuclear weapons, international law, and the ICJ. The NAM was highly cynical towards the ICJ and preoccupied with other priorities; and most Western-allied states refused to directly challenge the fundamental security policies of their allies.

For many of the same reasons, during the late 1960s nuclear disarmament dropped off NAM's agenda. Successful negotiations over the PTBT (1963),

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<sup>20</sup>. Ibid., pp. 335-337.

<sup>21</sup>. Ibid., pp. 302-306. He was appointed as Vice President of the International Confederation for Disarmament and Peace in 1963. ICDP was a loosely structured body formed in 1963 to 'coordinate, publicize and otherwise encourage the activities of member groups'. In 1964 it had 31 affiliated groups from 15 countries. It was not joined by the US Women Strike for Peace and was debilitated by the lingering tensions between the direct actionist, pacifist and non-pacifist groups that comprised it. By 1967 it had grown to include 56 non-aligned peace groups in 18 countries with three affiliates in two NAM countries (India and Nigeria).

Treaty of Tlatelolco (1967) and the NPT (1968), coupled with the Vietnam War, changed the peace movement's priorities. Many groups faded due to disempowerment, loss of momentum, lack of leadership and funding. [22] Following the failure specifically to include nuclear weapons in the Geneva Protocols, and lack of any real movement within the UN to negotiate non-discriminatory and comprehensive nuclear disarmament treaties, MacBride briefly withdrew due to other commitments and exhaustion. However, he continued speaking internationally about the need to outlaw nuclear weapons, and built up support for a UN Special Session on Disarmament (UNSSOD). He still lacked significant backing from lawyers, and few diplomats were promoting nuclear abolition strongly within the UN (see 5.2). Between 1974 and 1982, he helped rebuild the international peace movement via IPB, establish an international group of lawyers and educate the public about using international law. He understood that, without interest from the mass media and a popular movement, future initiatives would most likely fail.

Few governments took initiatives during the 1970s because public concern dissipated. However, Canada, Japan and Sweden had earlier foresworn the possibility of becoming nuclear states, and South Pacific states took France to the ICJ. Few politicians met with peace movement leaders; and although some NGO representatives attended UN disarmament meetings such as the Diplomatic Conferences, there was an absence of well-organised and experienced NGOs with political leverage especially on 'middle' Western governments (see 2.3).

The first UNSSOD in 1978 was a turning point for the UN and NGOs. It helped revive the flagging movement, which was re-emerging with growing leadership by women. Many had been alienated by the male-dominated, predominantly Eurocentric movement and explored new strategies, including direct dialogue with decision makers and using international law to challenge parliamentary colleagues (see 3.4) and governments (see 3.5). They transcended the earlier East/West, North/South boundaries by making

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<sup>22.</sup> Ibid., p.441-442.

strong connections with women throughout the world, which changed the face of the future movement. Governments responded to heightened public anxiety over the stationing of cruise missiles in Europe and the rampant nuclear arms race by forming coalitions such as the Six Nation Initiative, and establishing expert studies on common security and nuclearism. Although they did not achieve any breakthroughs, they provided precursors for post-Cold War initiatives.

As other courageous lawyers now joined MacBride in his efforts to educate the public about the ICJ and nuclear weapons, non-lawyers like the Greenham Women, Delf, Mothersson and Zelter translated the ideas into usable grassroots actions with Snowball, INLAP, INLAW and others. The re-invigorated anti-nuclear movement formed coalitions with groups of professionals to organise citizen tribunals, promote NFZs and attempt dialogue with decision makers. Following the mass rallies of the early 1980s, conditions became more favourable for an ICJ initiative.

### **13.3 Reasons for Success**

#### *3. Why did members of the Aotearoa/New Zealand peace movement play such critical roles?*

In 1982, Falk warned the anti-nuclear movement not to be too complacent about its growing support:

The entrenched forces that stand behind nuclearism are powerful, wily, and, if necessary, ruthless. Popular movements are notoriously easy to coopt, divert, infiltrate, bore, and outlast. For the anti-nuclear movement to succeed, it desperately needs 'a politics'...which also include(s) an alternative idea of security ... it will not succeed unless it combines a negation of nuclearism with the persuasive creation of new ways to protect the independence and territorial integrity of the states that make up world society.  
[23]

Attempts by governments and citizens to create independence and protect territorial integrity were reflected in NFZ initiatives such as the Treaty of

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<sup>23</sup>. Robert Jay Lifton and Richard Falk, *Indefensible Weapons: The Political and Psychological Case Against Nuclearism*, Basic Books, New York, 1982, p.133.

Tlatelolco, SPNFZ, and policies adopted by Belau, Vanuatu, the Solomon Islands and A/NZ. A/NZ's nuclear free legislation, compared with the policies of Japan, Denmark and others, was the most far-reaching. This recourse to the law had a powerful impact on the New Zealand psyche and underpinned future initiatives by the movement and government. The 1973 case put A/NZ's long tradition of promotion of the ICJ into practice, attracted international media attention, and helped educate the public about it.

Over the years A/NZ government policies changed markedly, from endorsement of Western nuclear testing and nuclear deterrence to direct challenges to the security policies of its allies via UN resolutions, the 1973 ICJ case and the banning of their nuclear warships from A/NZ ports. The 1984-90 Labour government encouraged unprecedented access to decision makers through the Public Advisory Committee on Disarmament and Arms Control (PACDAC); inclusion of citizen advisers on UN government delegations; and Party Policy Committees. These accountability mechanisms facilitated close examination of policies, including UN voting patterns, and of decision making processes within the bureaucracy and the UN. A symbiotic relationship developed where ideas flowed both ways and respect grew for the complementary roles. This in turn helped build trust and confidence.

Lange capitalised on Kirk's strident anti-nuclearism, epitomised in the high-profile warship protest against French testing and his more independent foreign policies. During the early eighties the movement grew rapidly, empowered by the courageous actions of the Greenham Women, deeply stirred by Caldicott's passion and sense of urgency, and mobilised by the massive European anti-nuclear marches. The *Rainbow Warrior* bombing in Auckland Harbour by French government agents in 1985 consolidated the movement's resolve which in turn encouraged politicians to take strong actions.

In 1986, Falk sensed the exhilaration over the nuclear free policy, which provided an 'enormous potential source of energy and freedom'. Other factors which helped create a fertile environment for the WCP were: an

active working democracy of just over 3 million citizens, with relatively easy access to a parliament of less than 100 politicians; political leaders of a party promoting anti-nuclearism as their primary election plank; consistently overwhelming public support for the policy and nuclear disarmament generally; a proud tradition of leadership on social and nuclear issues; the 'Kiwi' spirit of individualism and independence; A/NZ's geographical isolation; strong participation by women in the movement; and demotion from 'ally' to 'friend' within the ANZUS alliance, which forced politicians to develop alternatives to traditional 'Western bloc' thinking based on nuclear deterrence.

During the early 1980s, the A/NZ peace movement evolved into a non-hierarchical network of over 300 autonomous groups. It encouraged loose coalitions across a wide range of society, including indigenous peoples; gained the support of prominent individuals; lobbied politicians; drafted policies for political party manifestos (including the nuclear free legislation); convinced most local authorities to make nuclear free declarations; and provided decision makers with cogent arguments in support of the law, backed by large numbers of signatures on petitions.

It was this non-hierarchical, participatory model, and an extension of these strategies which the WCP eventually adopted internationally. Evans, Geiringer, Ware and Dewes operated on a variety of levels: locally, through grassroots participation; nationally, through lobbying and policy-making positions; and internationally, through UN experience and as members of citizen networks. Their skills and backgrounds proved complementary and included networking; lobbying; using the media; working with different cultures; drafting resolutions, parliamentary questions and briefing papers; and having access to leading lawyers from the 1973 ICJ case for advice. They were committed, persistent, articulate, well-organised, had a sense of the rightness of their cause, and believed strongly in the power of the law. They came from a strongly supportive movement with no foundation or government funding, which paradoxically gave them maximum freedom to speak out strongly. Donations from local supporters helped enable important

initiatives to be pursued. They practised the self-reliant Kiwi trait of 'just fixing it'. Once the legislation was enacted, they were keen to challenge directly the fundamental problem: the lack of accountability by the NWS to the UN and international law.

They activated the international co-sponsors, provided continuity to the project, and ensured that South Pacific states took a leading role. Ware's decision to work in New York was fortuitous. His contribution to lobbying and international networking was outstanding, and much of the WCP's success can be attributed to him. Furthermore, it is unlikely that either UN resolution would have been pursued without the vision, persistence, tenacity and skills of Evans and Geiringer.

#### 4. *What were the main factors which contributed to the success of the WCP?*

In sum, the WCP adopted many strategies and processes which the A/NZ peace movement had built on in the eighties. The international project which eventuated, epitomised what Falk terms 'globalisation-from-below'. This 'incorporates some of the following values embodied in "normative democracy" which takes into account the emergence of global village realities: consent of affected peoples; rule of law in all arenas of decision; human rights; effective modes of participation; accountability; ...transparency; and non-violence as a principle of public order'. [24]

Incorporating these principles, the New Zealanders built on the groundwork laid by many others and worked very closely with the innovative UK groups to develop early WCP strategies. In global terms no other national grouping was motivated enough, or free from other priorities to precipitate the WCP. The Irish and Swedish movements were possibilities but Sweden was moving towards EU membership and, following the deaths of MacBride and Palme, both lacked the political leadership. Ireland's relationship with the UK

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<sup>24</sup>. Richard Falk, 'Global Civil Society: Perspectives, Initiatives, Movements', *Oxford Development Studies*, vol. 26, no.1, 1998, pp. 99-110; Richard Falk, 'Nuclear Weapons Opinions and Global Jurisprudence', *Transnational Law & Contemporary Problems*, vol.7, no.2, Fall 1997, pp. 334-352.

and US was further complicated by the Northern Ireland situation, and its proximity to the UK.

With the end of the Cold War, the international climate was more conducive to radical legal initiatives such as the WCP. The NAM's experience of securing the UN Decade of International Law underpinned its later WCP leadership. This was reinforced by regional and national NFZs, and world public opinion became generally supportive of nuclear abolition.

The WCP adopted strategies such as the collection of Declarations of Public Conscience (DPCs), and endorsements from a wide range of international, high profile citizen groups and individuals who had credibility with decision makers. These NGOs then involved their affiliates by building support within their states and regions. Prominent endorsers added respectability and raised the WCP's profile, which encouraged the growing membership to prioritise it within their own organisations.

The three prestigious co-sponsoring organisations, IPB, IPPNW and IALANA, proved a potent combination of complementary skills and influential contacts. From 1993-5 tasks were divided fairly equitably between them; the doctors organised the WHA cases; the lawyers focused on UNGA lobbying, writing papers and legal briefs for diplomats; and the wider peace movement (predominantly IPB members) lobbied governments in capitals and mobilised public opinion. This allowed for autonomy and flexibility in terms of decision making, with no group taking control. The International Steering Committee (ISC) predominantly comprised younger representatives experienced in the more non-hierarchical, participatory decision making model. Three members worked near the key UN bodies in Geneva, New York and the Hague, which facilitated closer relationships with diplomats; the coordination of the UN and ICJ handovers of DPCs; and the international launch and support for the Oral Proceedings. The UK and A/NZ members prioritised the collection of DPCs and endorsements, especially in Australia, Canada and Ireland where they also lobbied politicians and received significant media coverage.

The DPC campaign was novel, educative and a way of making international law relevant to ordinary citizens. Emulating MacBride's earlier strategies, the DPCs were easily modified and reproduced in large numbers and a variety of languages. Each country took responsibility for their collection and subsequent presentation to the UN. It helped attract media attention and convince politicians of public support, especially in 'middle' Western states. In some of these this was translated into positive votes and submissions.

Both the role of NGOs, and the importance of the DPCs and the Martens clause, were highlighted in some government submissions to the ICJ, and some judges' Dissenting Opinions.[25] The main Opinion recognised the 'continued existence and applicability' of the Martens clause. It also vindicated the ICRC and MacBride by acknowledging that although 'the Conferences of 1949 and 1974-1977 left nuclear weapons aside ... it cannot be concluded from this that the established principles and rules of humanitarian law applicable in armed conflict did not apply to nuclear weapons'. [26]

For the first time, the ICJ accepted 'citizen evidence' in the form of endorsements from over 700 NGOs and hundreds of prominent citizens; nearly 4 million DPCs; the MacBride and Hiroshima and Nagasaki Appeals; and oral testimonies from victims. This significant democratisation of the ICJ resulted from close relationships between NGOs, governments and ICJ officials. Although some Western governments castigated the NGOs for initiating a 'politically driven campaign', the ICJ welcomed the resultant publicity and dissemination of the Opinion through publications and electronic mail. The ICJ President expressed 'homage to all those who had written moving letters and sent messages of support', apologising that 'at

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<sup>25</sup>. Rupert Ticehurst, 'The Martens Clause and the Laws of Armed Conflict', *International Red Cross Review*, no. 317, March/April 1997, pp. 125-134. Judges Weeramantry and Shahabuddeen discussed it in detail in their Dissenting Opinions. Ginger (1998), op.cit., pp.293-326;137, 145-152.

<sup>26</sup>. Ginger, op.cit., pp. 66 -67.

least for now, the Court cannot give any prerogatives to individuals or NGOs', only states. [27]

Before this, and in parallel, had come the approach to governments via the Evans Open Letters, lobbying during UNSSOD III, and visits to Missions in New York and Geneva which provided invaluable guidance on strategy. Access to diplomats was facilitated by contacts in Parliamentarians for Global Action (PGA) and a letter of introduction from Lange. Throughout the process, friendships and acquaintances with Prime Ministers, Foreign and Health Ministers, parliamentarians and diplomats were paramount in gaining leadership from states. This was particularly evident during the WHA lobbying, and with Zimbabwe's influence in the NAM. Other examples where this was achieved included A/NZ, Australia, Egypt, Ireland, Malaysia, Mexico, Samoa, San Marino, Sweden and Vanuatu. However, it was Ware in particular who built trust and confidence among many in the diplomatic community, so that they absorbed the WCP literature, and convinced their governments of the merits of the case. Governments then drew upon the Legal Memorandums and model IALANA texts for their submissions.

Another strategy was to focus on lobbying Ministers and their advisers face-to-face in capitals, or at regional gatherings such as the South Pacific Forum. The lack of response to the Evans Open Letters illustrated how the written word alone does not move decision makers. Unless that is coupled with evidence of public opinion, ongoing education, dialogue and personal contact, it is unlikely to succeed. Decision makers needed constant reassurance that the project could succeed, and evidence of support within their region or 'bloc'. The NGOs' role was to liaise between governments and build this support without the advocacy coming directly from individual leaders or states. This helped protect them from being 'singled out' by the Western NWS for special attention. Inevitably NAM leaders were subject to this, but were shielded by the large membership.

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<sup>27.</sup> Interview between Mr Ishibashi from Asahi Shimbun, Japan and President Bedjaoui during July 1996.

Buoyed by growing support from significant NGOs and governments, diplomats and even Ministers were prepared to risk their jobs and reputations. The physical presence of NGOs in the WHA, UN and ICJ, accompanied by thousands and later millions of DPCs, sustained them during critical periods when pressure intensified from the Western NWS and their allies.

It is highly unlikely that the UNGA resolution would have succeeded without the WHA request being before the ICJ and the backing of the majority of the NAM. It was this alternative route via the WHA, using Health Ministries rather than the more conservative Foreign Ministries, and the link with humanitarian issues that saved it from oblivion within the UN. MacBride's earlier UN resolution had also been adopted because it went through the Human Rights committee, rather than the more conservative Legal Committee (see 2.3).

Other key factors in its success were the development of a truly global network backing an initiative with an achievable goal within set time frames, linked to UN meetings such as the WHA and UNGA; the cooperation between governments and WCP members in preparing the legal, medical and political arguments for both Assemblies and the written and oral submissions to the ICJ; countering NATO-led propaganda with well-researched and authoritative documents; the recent successes such as the Chemical Weapons Convention and progress towards a CTBT, coupled with global outrage at resumed nuclear testing by France and China following the indefinite extension of the NPT; politicians using parliamentary questions, binding resolutions or debates to put pressure on their governments; media coverage especially in 'middle' states; and regional solidarity among leading NAM and South Pacific states.

The WCP was a fine example of how a few individuals, supported by strong citizen groups, can work in partnership with decision makers to move public, legal and political opinion to overcome the debilitating power politics of the UN system.

## 13.4 The Role of Small States

### 5. *What role did small states play?*

For small states to risk the ire of the Western NWS and their allies, according to Lange, they require not only political will and courage but a 'broad coalition ... of small countries crossing regional and other group lines'. [28] They also need the backing of strong public opinion. What were the international, regional and domestic factors which caused most small, economically vulnerable South Pacific; and NAM states such as Colombia, Costa Rica, Mexico, Zimbabwe, Vanuatu and others to lead so strongly at different stages during the WCP?

The WHA resolutions were co-sponsored and led by small states from regions which had already secured regional NFZs, such as Latin America and the South Pacific. They were experienced in promoting initiatives together in coalitions, and had shown leadership on nuclear issues in the past. Costa Rica's early interest was linked to its Peace Constitution, coupled with personal advocacy by a diplomat with specialist knowledge in advisory opinions. The Health Ministers from Colombia, Mexico, Nigeria, Tonga, Vanuatu and Zambia - some of whom were also IPPNW members - led on this issue. The Latin Americans and Pacific Islanders were well-versed in the health and environmental effects of nuclear testing and lived in close proximity to US, UK and French nuclear test sites. Hilda Lini's passion and rhetoric, combined with her leadership as a WHO Vice President, helped sway weaker states. The mechanism which facilitated the 1993 resolution's early progress was the secret ballot. This allowed sympathetic but vulnerable states to give support. The degree of pressure was exposed when five intimidated co-sponsors did not even vote in the 'open' final vote (see 9.5). South Pacific states in particular viewed the ICJ as an important vehicle to help rid their region of nuclearism, and were empowered by the 1973 ICJ case.

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<sup>28</sup>. David Lange, Information Bulletin No.14, November 1985, p.3. See last page of Chapter 7 for full quote in text of thesis.

Following the 1993 WHA success, Zimbabwe, Mexico and Vanuatu strongly promoted the WCP in the UNGA. Again this was led by diplomats and Ministers who were personally extremely committed to the issue, which later resulted in some of them losing their jobs. They worked very closely with the NGO community, especially the 1993 UNGA lobbying team. Even when the NAM indicated it might not co-sponsor, individual members plus the Solomon Islands offered to 'go it alone'.

When A/NZ responded to public opinion and announced support for the resolution, this helped Sweden, Ireland and other 'middle' states to shift despite intense pressure from NATO members. None of these states had strong political leaders prepared to risk Western retribution by joining with the NAM to secure the resolution. They were also bound by Western collegiality to help stall the case until the NPT was permanently extended in 1995. However, it was the crude bullying by the P3 which eventually proved counterproductive. The infuriated NAM consequently used their UN majority to push the resolution through. Inevitably there were NAM casualties but two Western states, San Marino and A/NZ, voted in support as did the Marshall Islands despite its dependence on the US (see 11.6).

Following the UNGA success, it was the Pacific Islands which led again, with the largest ICJ written submissions from Nauru and the Solomons. Samoa, the Solomon and Marshall Islands gave a joint oral statement, combining mutual support with a more substantial and focused presentation. They were among the founding members of the Alliance of Small Island States, which total almost 20% of the UN membership, and which works constructively to strengthen international law. [29]

On the whole, the most vulnerable states shouldered the biggest burden throughout. They tended to be led by strong personalities, backed by public opinion and able to attract regional coalitions. Some, more isolated within their regions, like Ireland and Sweden, made fairly 'safe' submissions. A/NZ's strong presentations reflected overwhelming public, and Southern

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<sup>29</sup>. Samoa's Oral Presentation reported in Clark and Sann (1996), *op.cit.*, p. 199.

Hemisphere government, support which, when coupled with renewed French testing, eventually forced Australia to join them.

### **13.5 The Role of Women**

#### *6. What role did women play?*

Women have always played an important role in peace movements; but it was not until the 1970s and 1980s that their particular strengths gained global prominence. They have traditionally led on issues relating to the protection of health, environment and future generations. However, unless they had financial support few could participate fully in international initiatives like the WCP. Many grassroots women were inspired by Caldicott, Kelly, Lini, Theorin and Vallentine who were all highly skilled in creating dialogue with decision makers. They combined emotion with intellect, and encouraged participatory democracy both within government and the movement. Like many Greenham Women they espoused the principle of trying to reach the conscience and humanity of those in authority. Lini, Theorin and Vallentine helped mobilise their parliamentary colleagues and diplomats to support the WCP while continuing to build support within their regional peace movements.

The 1980s women's movement promoted radical transformation from below, based on law and cooperative politics. Their strategies of taking women-only direct actions outside key organisations such as NATO headquarters, the Pentagon and nuclear bases empowered ordinary women to pursue dialogue within bureaucracies, parliaments and the UN. The Greenham Common legal case against Reagan was the citizens' precedent for the WCP and brought together legal, political, medical, scientific, moral and women's perspectives in a powerful presentation which attracted significant media coverage.

The WCP ISC sought gender equity in the composition of lobbying delegations, prominent endorsers and conference presenters. They also ensured inclusion of indigenous women who had an affinity with many NAM representatives. Some diplomats commented on the power of women to

speak truth strongly on behalf of humanity and future generations, transcending the nation state. Women politicians played important roles in A/NZ, Australia and Sweden in particular; and women in IPB and IALANA lobbied the UN Secretary General to appoint the first woman ICJ judge in 1995.

### **13.6 Aotearoa/New Zealand Government Reluctance**

#### *7. Why was the Aotearoa/New Zealand government reluctant to pursue the initiative?*

Before 1984, the policy making process was relatively devoid of direct input from the public, although the National Consultative Committee on Disarmament established by the government in 1977 met extensively with Ministry officials in preparation for the 1978 UN Special Session on Disarmament. However, during the 1984-90 Labour administrations, politicians needed a close relationship with representatives of the mass movement in order to justify and sustain the policy, in the face of conservative reactions within the bureaucracy. It is no secret that many within the Foreign Affairs Ministry strongly opposed Lange's strident anti-nuclearism and its resultant damage to traditional Western relationships. The 1973 ICJ case only confronted France over nuclear testing in the region, whereas the nuclear free policy undermined the West's fundamental security policy, and the WCP challenged the heart of it. Therefore it is not surprising that both Labour and National governments received very cautious, and initially negative, advice from the Ministry between 1986 and 1996.

Already under intense pressure from allies, officials were extremely reluctant to pursue a course which could fail, thereby damaging A/NZ's credible disarmament record and the ICJ's reputation; further alienate Australia and other allies which in turn could affect real progress on nuclear disarmament; and threaten A/NZ's bid for Security Council membership. These very real concerns were obfuscated by NATO-led propaganda regarding cost and competence issues, purported lack of support from other states, and the UN Study on Nuclear Weapons. Lange, although sympathetic, was already

under siege for his international advocacy and as a lawyer was sceptical about the ICJ's effectiveness. He and certain officials felt that A/NZ had done enough on the nuclear issue. His deputy, Geoffrey Palmer was a conservative lawyer, and Foreign Minister Marshall was susceptible to Ministry pressure. So, during the Cold War, the government and bureaucracy were understandably reluctant to promote the WCP without Western support and evidence of considerable government and public backing.

As the Cold War ended, a conservative government was elected with a Foreign Minister committed to restoring Western defence relationships. Officials advised against challenging NATO's nuclear deterrence policy. However, public support for the WCP grew rapidly; and following the successful WHA resolution, NAM co-sponsorship and A/NZ support for the 1994 UNGA resolution, the Ministry began preparing a substantive submission. They welcomed public input into its content, in order to 'head off public criticism that the Government had kept its intentions secret'. [30]

Allan Bracegirdle, who presented part of A/NZ's ICJ oral submission, later admitted that the Ministry's earlier concerns 'became less compelling'. The disarmament process had improved dramatically; the international security environment had radically changed; there was 'renewed concern over stability and proliferation in light of the recent disintegration of states'; NWS came to 'see these weapons as more problematic ... and less "usable".' The government felt obliged to support the WCP because New Zealanders were

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<sup>30</sup>. N. D. Walter for Secretary of Foreign Affairs and Trade briefing to Ministers of Foreign Affairs and Disarmament, 'World Court Project: New Zealand Submission', 5 May, 1995; M.J. Powles, MFAT, Letter to Minister of Disarmament, 'World Court Project: Cabinet Paper on the Legal Position', 11 April 1995; M. J. Powles, Briefing Paper to Ministers of Foreign Affairs and Disarmament, 'International Court of Justice: Legality of Use of Nuclear Weapons', 9 March 1995.

'prime movers behind the WCP' and there had been a 'long-standing and continued opposition of many New Zealanders to nuclear weapons'. [31]

### 13.7 Impact on Nuclear Disarmament

#### 8. *How did the WCP impact on international nuclear disarmament?*

Leading NAM states, infuriated by the behaviour of the NWS during the 1993-94 UNGA resolution followed immediately by the NPT extension process, seized upon the ICJ Opinion to initiate action and debate. As the ICJ case proceeded, NATO, ANZUS and former Warsaw Pact allies increasingly distanced themselves from the NWS, and few were prepared to act as stooges for them in ploys to undermine the UN system of accountability. The Opinion increased the confidence of states determined to promote more far-reaching resolutions and initiatives to achieve nuclear disarmament.

For example, the day after the ICJ delivered its decision, the Philippines President Ramos called for NPT members to convene immediately to 'negotiate a comprehensive Nuclear Weapons Convention pursuant to their obligation and responsibility under Article VI...'. [32] Within a month, ANZ and South Africa signed a Memorandum of Cooperation on Disarmament and Arms Control, noted the ICJ's unanimous call for nuclear elimination, and affirmed their support for a Southern Hemisphere Nuclear Free Zone (SHNFZ) which would combine the older SPNFZ and Latin American NFZ with recently created South-East Asian and African counterparts under an umbrella treaty. During the 1996 UNGA they were among 69 co-sponsors of a SHNFZ resolution supported by all states in the region, but opposed by NATO and their 'aspiring' allies. [33] In September 1996 US Senators

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<sup>31</sup>. Allan Bracegirdle, 'The ICJ Advisory Opinion on Nuclear Issues: Substantive Issues', Notes for Presentation to ANZ Society of International Law Seminar, Canberra, May 1996.

<sup>32</sup>. Statement by President Ramos, 'The ICJ Ruling that the use or threat of use of nuclear weapons is contrary to international law', Manila, 9 July 1996.

<sup>33</sup>. 'Memorandum of Cooperation on Disarmament and Arms Control', signed by President Mandela and Prime Minister Bolger, 8 August 1996. See *The United Nations Disarmament Yearbook*, vol.21, 1996, pp. 59-61, 256-257,

drafted a letter to Clinton asking him to comply with the ICJ Opinion by initiating a review of nuclear policy to consider how current policy might conflict with US obligations to adhere to international humanitarian law; and to initiate negotiations for the elimination of nuclear weapons. [34] In November, the Canadian government announced the first review by a NATO country of its nuclear weapons policy in light of the ICJ Opinion. [35]

Malaysia, having coordinated the NAM's ICJ oral presentations, took the strongest lead in the 1996 UNGA by introducing a resolution on behalf of 45 co-sponsors on the ICJ Opinion. Adopted by 115 votes to 22 with 32 abstentions (115:22:32), it called for negotiations 'leading to the conclusion of a Nuclear Weapons Convention' (NWC). A paragraph which welcomed the ICJ's unanimous conclusion regarding the obligation to 'bring to a conclusion negotiations leading to nuclear disarmament...' was voted on separately, and adopted by 139:7:20. Two other UN resolutions also mentioned the ICJ Opinion and supported calls for a Convention: [36] the Convention on the Prohibition of Use of Nuclear Weapons (114:31:27); and another calling on the CD to establish ... an *ad hoc* committee on nuclear disarmament ... to achieve the elimination of nuclear weapons within a time-bound framework through a nuclear weapons convention (110:39:20). It also urged the CD to act on a NAM 'Group of 28' 'Programme of Action for the Elimination of Nuclear Weapons', and the CTBT resolution was overwhelmingly adopted by 158:3:5. [37] Meanwhile, an international team

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335-6; John Armstrong, 'Hemisphere may be made nuclear-free', *NZ Herald*, 26 July 1996.

<sup>34.</sup> Draft Congressional Sign-on letter sponsored by Representative Schumer to President Clinton, 7 September 1996, email communication. See also, 'Congressman Schumer discusses nuclear weapons', *The Wave, Rockaway Beach*, New York, 7 September 1996.

<sup>35.</sup> Jeff Sallot, 'Canada reviewing nuclear-weapons policy', *The Globe and Mail*, 8 November 1996.

<sup>36.</sup> For details of the resolutions and voting patterns see, *UN Yearbook*, op.cit., pp. 62-64, 274-5, 343-344; *Bombs Away*, LCNP Newsletter, Spring 1997, p.1.

<sup>37.</sup> *UN Yearbook*, op.cit., pp. 311-326, 47-56, 264-265, 246-248. See also Jim Wurst, 'Comprehensive Test Ban Overwhelmingly Adopted', and 'G-21 Program of Action to 2020', *Disarmament Times*, vol. XIX, no.5, 20

of lawyers, scientists and disarmament experts drafted a Model Nuclear Weapons Convention which was circulated by Costa Rica as a UN document during the 1997 UNGA. [38]

The Canberra Commission's 120-page report, written by 17 eminent scientists, military leaders, diplomats and politicians, was published in August 1996 and formally presented to the UNGA and CD. Described as 'a circuit-breaker in the international debate' on nuclear disarmament, it recommended against a time frame for nuclear elimination, but did call for some far-reaching practical steps and negotiations required for its achievement. It also noted 'with satisfaction' the Opinion's final paragraph that a legal obligation existed to conclude nuclear disarmament negotiations. [39]

Other related positive developments can be partially attributed to the WCP case. The renewed interest and faith in the ICJ resulted in more cases being heard. ICJ President Bedjaoui admitted that there were times during the 1960s and 1970s when the ICJ had no cases, and only rendered 'one judgment every three years'. However, from mid 1995-96 there were five

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September 1996, pp. 1-4. Peter Weiss, 'ICJ and CTBT: A Significant Relationship', *Disarmament Times*, vol.XIX, no.4, September 1996, p.3.

<sup>38.</sup> Model Nuclear Weapons Convention, UN document A/C.1/52/7, 1997. See Robert Green, *Fast Track to Zero Nuclear Weapons*, Middle Powers Initiative, Massachusetts, 1998, p.20.

<sup>39.</sup> Michael Gordon, 'Downer backs N-ban Strategy', *The Age*, 13 August 1996; Andrew Mack, 'Nuclear Weapons: A Powerful Case for Getting Rid of Them', *International Herald Tribune*, 19 August 1996; Grahame Armstrong, 'Nations urged to sign N-agreement', *West Australian*, 15 August 1996; David Jenkins, 'Downer praises report seeking N-weapon ban', *The Sydney Morning Herald*, 15 August 1996; Michael Dwyer, 'End nuclear alert, says Canberra commission', *Freemantle Recorder*, 15 August 1996; Mike Steketee, 'Risk of nuclear attack on rise, experts warn', *The Australian*, 15 August 1996; Padraic P. McGuinness, 'Anti-nuclear gimmick may gain credibility', *The Age*, 23 January 1996; Duncan Campbell, 'Utopian gesture will not disarm the warheads', *The Australian*, 22 January 1996; Andrew Mack, 'One mistake is one too many in nuclear realm', *Canberra Times*, 17 August 1996; Ian McPhedran, 'Possibility of nuclear terrorism:experts', *Canberra Times*, 15 August 1996; Field Marshal Lord Carver, 'We don't need nuclear bombs', *Independent*, 16 September 1996. *Report of the Canberra Commission on the Elimination of Nuclear Weapons*, Commonwealth of Australia, August 1996, pp. 27-28.

cases. The increased focus on the ICJ helped educate the wider peace movement that only 47 states accepted the ICJ's jurisdiction, with the UK as the only permanent member on the UN Security Council to do so. It also highlighted the lack of women judges and the 'semi-permanent' status of the P5. [40] The Malaysian UNGA resolution promoted the Opinion's unanimous final paragraph, which in turn pleased the ICJ judges 'from the bottom of our hearts'. They hoped their final paragraph in the Opinion would push the international community to negotiate for complete nuclear disarmament. It is open to speculation whether the ICJ went beyond its brief with the inclusion of this paragraph as a response to heightened public awareness of the case. However, international public interest could have also persuaded all 14 judges to append 'a rainbow of opinions' [41]. It is not surprising in light of Weeramantry's personal involvement in the case since 1986 and his past membership of IALANA's Executive that Weeramantry's was the largest, most far-reaching and comprehensive dissenting opinion.

There is no doubt that especially during 1992-1995, the WCP helped democratise three key UN organs: the ICJ, WHA and UNGA. It was unequalled in terms of effective peace movement coalitions working in close partnerships with a wide range of governments within the UN. (The dramatically successful anti-personnel landmines campaign deliberately sidestepped deadlocked UN institutions.) [42]

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<sup>40</sup>. Geoffrey Palmer said 'there's no doubt .. that this Court needs a shake-up. In the 1980's it only gave 10 judgments and five advisory opinions. In the 1970's six judgments and three advisory opinions and in the 1960's nine judgements.' Interview between Kim Hill and Sir Geoffrey Palmer on Radio NZ, 28 May 1996 (Transcript from Newstel News). See also, Vivek Chaudhary, 'Justice sans frontieres', *Guardian*, 12 October 1993.

<sup>41</sup>. Interview with Mr Ishibashi and ICJ President Bedjaoui from *Asahi Shimbun*, July-August 1996, pp. 2-3.

<sup>42</sup>. The Landmines campaign was closely linked with some of the Canadians doctors' organisations affiliated to IPPNW. Many of the same groups had been working on the WCP as well. There was no formal link between the two campaigns, but many of the WCP techniques were also employed in the Landmines Campaign.

## 13.8 Impact on Peace Movements

### 9. *What impact did the WCP have on peace movements?*

The ICJ case, coupled with renewed Chinese and French testing, heightened public awareness about the recalcitrant behaviour of the NWS despite the end of the Cold War, and the urgent need for nuclear abolition. In March and September 1997, opinion polls in the US and UK respectively found that 87% wanted their governments to negotiate a nuclear weapons convention (NWC). In February 1998, 92% of Canadians wanted their government to lead negotiations for a NWC; in June, 87% of Germans supported the NWS achieving nuclear abolition as quickly as possible; in July, 92% of Norwegians wanted their government to work actively for nuclear abolition; [43] and in September, 72% of Belgians wanted their government to lead negotiations for a NWC (Figure 19). [44]

These results empowered peace movements within these leading NATO countries to strongly petition their governments to review their policies in light of the Opinion. The Norwegian poll reinforced the governing Labour Party's earlier demand for 'a treaty on timebound elimination of nuclear weapons'. The Norwegian Vice-President of IPB who was also a member of IALANA wrote to 186 Foreign Ministers informing them of the Opinion, with appropriate requests to NWS to change policies, allies to re-evaluate them and the rest to insist on compliance with the Opinion. [45] Activists began 'inspections' of nuclear bases and used the Opinion in their defence. For example, in September 1996, a Belgian judge accepted the ICJ Opinion as evidence and adjourned the proceedings. In Scotland protesters, including six wearing judges' robes and wigs, stopped a convoy carrying Trident

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<sup>43.</sup> Green (1998), op.cit., p.45. Polls were commissioned by leading NGOs such as IPPNW and carried out by reputable research organisations.

<sup>44.</sup> 'Belgium needs to initiate negotiations for a treaty banning nuclear weapons', Press release by 'For Mother Earth', email, 21 September 1998.

<sup>45.</sup> Email correspondence from Norwegian Fredrik Heffermehl to Dewes, 13 November 1996, 28 February 1997; Professor Staale Eskeland, 'Nuclear Weapons found illegal under international law', *Norwegian Law Journal*, 8 October 1996. Letters from Fredrik Heffermehl (IPB Vice President) and Maj Britt Theorin (President) to all Foreign Ministers, 22 November 1996.

nuclear warheads and claimed it was illegal; the 13 arrested were acquitted after citing the Opinion. In Germany another seven who broke into a nuclear base were acquitted after the judge agreed that deployment of nuclear weapons in Europe violated the ICJ Opinion. [46] A Wisconsin Court also acquitted two protesters charged with sabotage against a US Navy communications system. Francis Boyle, believed these decisions were 'likely to set a precedent for cases involving anti-nuclear civil disobedience'. [47]

However, the empowered movement was not limited to activists and outspoken lawyers. They were joined by top retired military chiefs, scientists, politicians and civilian leaders. In September 1996, the Pugwash Council welcomed the ICJ's unanimous final paragraph; and in December 1996, 60 retired admirals and generals from 17 countries called for nuclear abolition and immediate steps similar to those in the Canberra Commission's Report. The most influential member of both groups was retired USAF General Lee Butler, who was Commander in Chief of US Strategic Command in charge of all US nuclear planning between 1992 and 1994. In March 1997, the European Parliament welcomed the ICJ Opinion and called on its member states to start negotiations for a NWC. In February 1998, 120 civilian leaders, such as Jimmy Carter, Lord Callaghan, Helmut Schmidt and Pierre Trudeau, also called for nuclear abolition. [48]

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<sup>46.</sup> Alan Wilkie, 'International Court Opinion Begins to Bite', December 1996, 2pp.

<sup>47.</sup> Mary Thompson, 'Wisconsin Protest Case May Signal Redefinition of Sabotage', *The Christian Science Monitor*, 20 September 1996.

<sup>48.</sup> Green (1998), op. cit., pp. 48-9; *Bombs Away* (1997), op.cit., p. 3., George Farebrother, 'Information Package for a Citizens' Forum on Nuclear Weapons Elimination', WCP UK and Abolition 2000 UK, 1998, pp.2-3; 'Pugwash Council Statement on a Nuclear Weapon Free World', *Disarmament Times*, 20 September 1996, p. 4; Reuters, 'N-warriors say ditch warheads: Call for deep cuts now', *NZ Herald*, 6 December 1996; Pat Baskett, 'Lebed joins call to scrap N-weapons', *NZ Herald*, 10 December 1996; David Fairhall, 'Generals call for an end to nuclear weapons', *Guardian*, 6 December 1996; Editorial, 'The new nuclear orthodoxy: Who are we to resist the arguments of so many generals?', *Guardian*, 6 December 1996; R. Jeffrey Smith, 'Retired Nuclear Warrior Sounds Alarm on Weapons', *The Washington Post*, 4 December 1996.

Figure 19: Summary of opinion polls in six NATO states.

**SUMMARY OF OPINION POLLS ON NUCLEAR WEAPONS  
IN SIX NATO MEMBER STATES: 1997-98**

**US** (27-30 March 1997)

The US has signed global treaties to prohibit and eliminate chemical and biological weapons. Should the US help to negotiate a global treaty to prohibit and eliminate nuclear weapons? **YES 87%**

**UK** (5-10 September 1997)

Do you think it will be best for the security of your community if Britain does or does not have nuclear weapons? **DOES NOT HAVE 59%**; **DOES HAVE 36%**

Britain has signed global treaties to prohibit and eliminate chemical and biological weapons. Should Britain help to negotiate a global treaty to prohibit and eliminate nuclear weapons? **YES 87%**

**CANADA**

(February 1998)

Should Canada support the negotiation of an international treaty to outlaw nuclear weapons? **YES 93%**

Should Canada lead such negotiations, as it did with landmines? **YES 92%**

(4-14 June 1998)

Is it acceptable or unacceptable for certain countries such as India and Pakistan to have nuclear weapons? **UNACCEPTABLE 91%**

Is it acceptable or unacceptable for the five original nuclear powers to have nuclear weapons? **UNACCEPTABLE 77%**

**GERMANY** (2 June 1998)

Should the nuclear weapon states, in order to create a nuclear weapon-free world, start getting rid of their own nuclear weapons as quickly as possible? **YES 87%**

Do you agree that nuclear weapons are basically contrary to international law and should neither be produced nor stockpiled? **YES 93%**

**NORWAY** (July 1998)

Do you want your government to work actively for a ban on nuclear weapons? **YES 92%**

**BELGIUM** (September 1998)

Should Belgium take the lead to negotiate a global treaty banning nuclear weapons? **YES 72%**

As the WCP approached its climax, Abolition 2000 emerged from the 1995 NPT conference of NGOs and held its first international strategy meeting in the Hague during the ICJ Oral Proceedings. This global network aims to have in place by the new millennium a NWC committing the NWS to abolish their nuclear arsenals within a fixed timetable. It has grown to over 1,100 endorsing groups with national networks in some countries. [49] It uses electronic mail to maintain communication between many NGOs and interested individuals, and has become a powerful medium for groups to launch joint actions, disseminate information and what officials and politicians are saying on behalf of their populations within the UN and other fora. The movement has become more sophisticated as a result, ensuring that competent analysts and researchers monitor UN proceedings and post reports frequently on email. These are then distributed around networks in various countries and regions. Ideas for action spread quickly: for example, fax and email campaigns were effective during the 1998 series of nuclear weapons tests conducted by India and Pakistan. WCP supporters ensured that politicians and anti-nuclear activists had copies of India's ICJ submissions arguing that all uses of nuclear weapons were illegal.

In Canada, the NGOs working on the WCP formed the Canadian Network to Abolish Nuclear Weapons which instigated a series of Roundtable discussions in cities across Canada to review and implement the ICJ Opinion. This model was then adopted in the UK. The six tons of DPCs were taken from the ICJ on a 'triumphal tour' of cities in the Netherlands, Belgium and France. 'Declaration mountains were built outside NATO Headquarters in Brussels and the Belgian Foreign Ministry' and after a seven city tour in the UK were finally stored in the new peace museum in Bradford. [50]

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<sup>49.</sup> Green (1998), op. cit., p. 21.

<sup>50.</sup> George Farebrother, 'Bringing the Hague Back Home', WCP (UK) Newsletter February 1997, pp 1-2; 'Julia Hinde, 'Petition mountain for new peace museum', *Bradford Telegraph and Argus*, 10 July 1996.

### 13.9 Lessons Learned

*What were some of the lessons learned?*

The World Court Project activated existing groups via autonomous movement networks which were both decentralised and spontaneous in their actions. According to Sidney Tarrow in *Power in movement: Social movements, collective action and politics*, heterogeneity and interdependence are greater spurs to collective action than homogeneity and discipline. Power in movement grows when ordinary people 'with common purposes and solidarity' are 'in sustained interaction with elites, authorities and opponents'. [51] Certainly within Aotearoa/New Zealand and Australia the WCP eventually created political opportunities for elites which became divided and new alignments occurred. At times opportunistic politicians seized these openings to 'proclaim themselves tribunes of the people'. [52] The leading peace campaigners from A/NZ also drew strength from their experiences of a working democracy, a tradition of successful citizen campaigns behind them, easy access to the decision making process and a working model of a decentralised peace movement. This model has since become an effective process for members of the wider peace movement as they struggle to convince governments to implement the ICJ Opinion.

The Opinion has become the authoritative legal underpinning for all future initiatives to secure nuclear weapon abolition. It is a useful tool for reminding political and military decision makers of their responsibility under the Nuremberg Principles to uphold the law; [53] activists involved in 'citizen inspections' of nuclear bases; NGOs trying to convince their countries to adopt nuclear free legislation similar to that of Aotearoa/New Zealand; states pursuing the legal implications of the transit of nuclear-armed warships through NFZs, and aircraft overflights and warship visits under 'neither

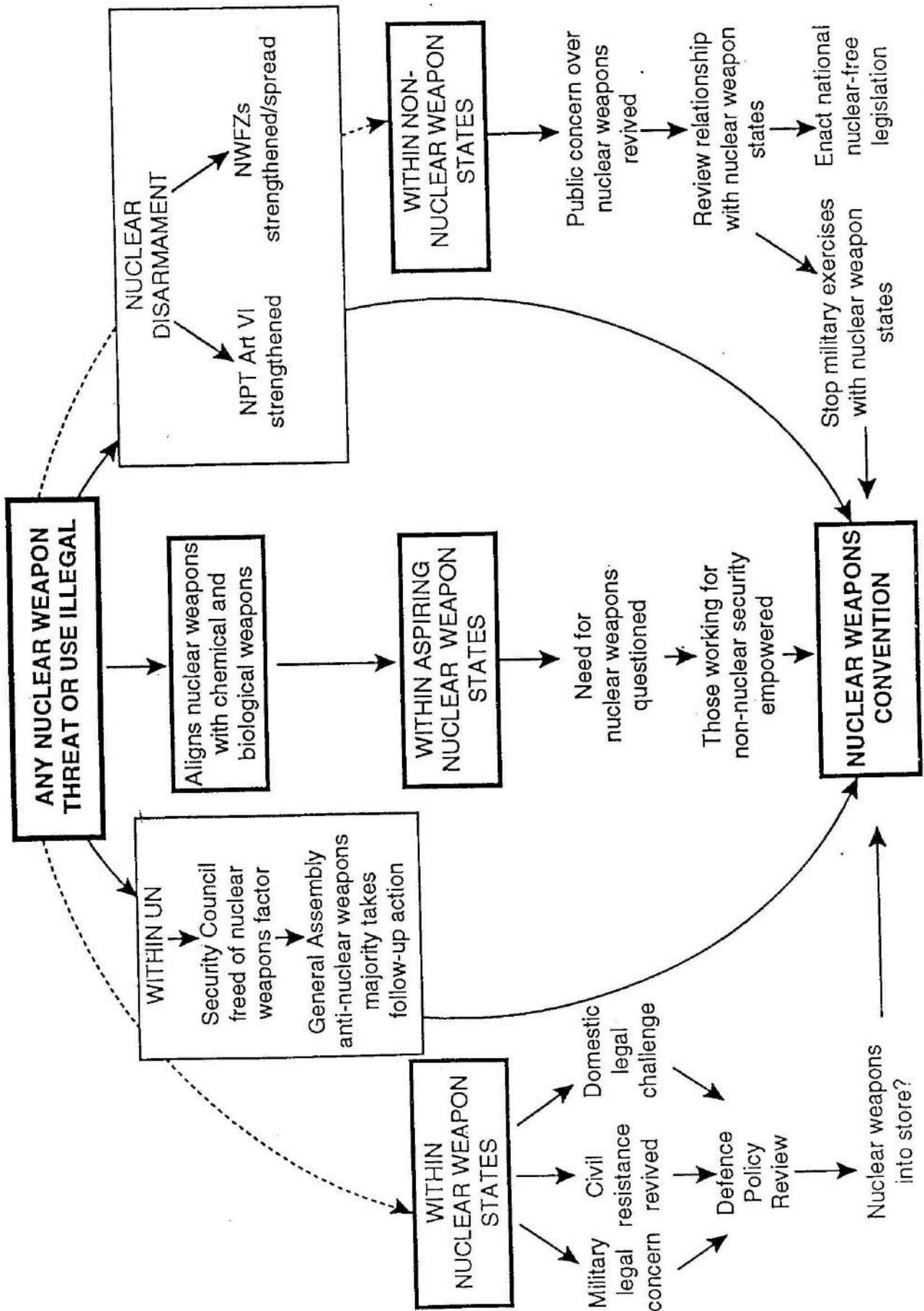
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<sup>51.</sup> Sidney Tarrow, *Power in Movement: Social movements, collective action and politics*, Cambridge University Press, Cambridge, 1994, pp. 3-4, 150.

<sup>52.</sup> Ibid., p. 98.

<sup>53.</sup> Robert Green, 'Trident and Nuremberg: An Open Letter to the Prime Minister, First Sea Lord and all others involved in planning and executing deployment of Britain's Trident Submarine Force', Christchurch, 1 October 1997.

Figure 20: ICJ Opinion implications flow diagram.



Robert Green and Kate Dewes, graphic from World Court Project, *Implications of the Advisory Opinion by the International Court of Justice on the Legal Status of Nuclear Weapons*, Pottle Press, London, 1996.

confirm nor deny' policy; and NATO/ANZUS members wishing to redefine nuclear strategies within the alliance, and for NPT signatories to hold the NWS to their commitment to elimination under Article VI (Figure 20).

It helped strengthen the 'New Agenda Coalition' - of 'middle power' states, independent of the Cold War blocs, of which Ireland, Mexico, New Zealand and Sweden had played significant roles in the WCP - to issue a joint statement in June 1998 which proposed a practical, realistic plan for achieving a fast track to zero nuclear weapons. [54]

On becoming aware of the WCP, the international legal community was empowered to speak out; for example, an organisation of law students representing 21,000 students from 184 European Universities in eight European countries issued a joint statement in support of the ICJ case [55]; legal academics published the Opinion for their university courses; and politicians and legal advisers to governments spoke publicly about it. [56] This awareness, amongst young lawyers in particular, will have a long-term effect on how the ICJ, and nuclearism as a whole, are perceived. This in turn will influence the future democratisation of the ICJ, for example, the need to end the unwritten practice of almost always having judges from each of the P5; and for more representation by women.

The main lessons for the peace movement which can be drawn from the WCP experience are listed below. It is important to foster good relationships with government and UN officials, politicians, military and the media through regular meetings, briefings and mailings. Meetings with Ministers and advisers need to be in capitals, the UN and where leaders are gathered, e.g. CHOGM, NAM and South Pacific Forum. It is vital to present them with succinct, well-researched briefing papers to be read in conjunction with a more comprehensive book or report in the language of the recipient.

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<sup>54.</sup> Green (1998) op.cit., pp. 49-51. The Coalition is led by Ireland and Sweden with Brazil, Egypt, Mexico, New Zealand, Slovenia and South Africa.

<sup>55.</sup> Statement by the European Law Students' Association, 24 June 1996. This association has 21,000 members in 184 European Universities.

<sup>56.</sup> See Ginger (1998), Ved Nanda and David Krieger (1998) etc., in Sources Consulted. Allan Bracegirdle ( NZ Ministry) and others addressed public meetings about the ICJ process.

Politicians from all parties should be requested to ask parliamentary questions and to obtain documents such as ministerial briefing papers, which may not be accessible under an Official Information Act. Movement representatives need to be at the UN meetings to monitor voting and explanations, report back immediately and speak with media and opposition politicians so that there is direct accountability. International delegations to meet officials, politicians and others should represent different regions of the world, youth and gender. It is also important to include indigenous peoples and *hibakusha* in international events.

Campaigns aimed at influencing the UN or governments need to have evidence of widespread public support, especially from prestigious NGOs, prominent people, and involvement by the grassroots movement. At the end of a campaign any evaluations of the implications and official UN documents need to be shared widely with the community and decision makers in digestible form so that they have impact and cannot be ignored.

Governments and other institutions should be encouraged to build closer partnerships with NGOs whom they can trust and who can offer them independent research, ideas and legal briefings for their consideration. These partnerships can be nurtured through processes such as public advisory committees, and NGO representation on government delegations which help create 'societal verification and accountability'. NGOs are then free to be the public advocates for ideas, and to build up support even amongst other governments and their advisers. Indeed, in recent years, NGOs have emerged as prime movers on a broad range of global issues, framing agendas, mobilizing constituencies toward targeted results, and monitoring compliance as a sort of new world police force. [57]

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<sup>57</sup>. Peter Spiro, 'New Global Communities: Nongovernmental Organizations in International Decision-Making Institutions', *The Washington Quarterly*, vol.18, Winter 1995, pp. 45-46, in James N. Rosenau, 'Powerful Tendencies, Enduring Tensions, and Glaring Contradictions: The Challenge of Studying the United Nations in a Turbulent Era', Paper presented to a UN Conference, Melbourne, 2-6 July 1995.

### 13.10 Concluding Thoughts

Although some governments which pride themselves as democracies were highly critical of the 'sustained campaign by a group of NGOs' during the WCP, other governments were not at all offended and in fact welcomed their involvement. Samoa's representative reminded the ICJ of the Preamble to the UN Charter which begins, 'We the Peoples of the United Nations determined to save succeeding generations from the scourge of war...' and continued:

One might consider the reference to the 'peoples' as no more than a pious phrase, a conceit perhaps, were it not for Article 71 of the Charter, which gives an institutionalised standing to those NGOs which have consultative status. The Charter takes NGOs seriously. Indeed Article 66 of the Statute of this Court empowers the Court to avail itself in advisory proceedings of information furnished by NGOs. The United Nations and the WHO are strengthened by the efforts of NGOs, inconvenient and demanding as those bodies may sometimes be. [58]

As one of the privileged participants in this odyssey to the heart of the United Nations and back again to my local community, the most important lesson I have learned is the power of each individual to contribute something towards creating a more peaceful and just planet for everyone. It was Helen Caldicott who challenged me, the day after the birth of my third child in 1983, to dialogue directly with decision makers about taking urgent action to create a safer world for all children. She shared a similar message throughout A/NZ at a critical moment in its anti-nuclear history:

By exerting electoral pressure, an aroused citizenry can still move its government to the side of morality and common sense. In fact, the momentum for movement in this direction can only originate in the heart and mind of the individual citizen. [59]

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<sup>58.</sup> Oral Presentations by the UK and then by Samoa's UN Ambassador Neroni Slade to the ICJ, in Clark and Sann (1996), *op.cit.*, p. 204.

<sup>59.</sup> Dr Helen Caldicott quoted in *Seeds of Peace: A Catalogue of Quotations*, compiled by Jeanne Larson and Madge Micheels-Cyrus, New Society, Philadelphia, 1987.

The following sentiments by Robert F. Kennedy encapsulate the amazing contributions to the creation and implementation of the World Court Project by those trail-blazers who did not live to see its outcome: Seán MacBride, Petra Kelly, Ted St John, Guy Powles, Erich Geiringer, and Niall MacDermot; and by those who keep the flame alive: Harold Evans, Richard Falk, Hilda Lini, Keith Mothersson, Maj Britt Theorin, Jo Vallentine, Alyn Ware, Christopher Weeramantry and countless other beacons of energy....

Each time a person stands for an ideal, or acts to improve the lot of others, or strikes out against injustice, he or she sends forth a tiny ripple of hope. And crossing each other from a million different centers of energy and daring, those ripples build a current that can sweep down the mightiest walls of oppression and resistance. Few are willing to brave the disapproval of their fellows, the censure of their colleagues, the wrath of their society. Moral courage is a rarer commodity than bravery in battle or great intelligence. Yet it is the one essential vital quality for those who seek to change a world that yields most painfully to change. [60]

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<sup>60</sup>. Ibid., p. 213.

## CHRONOLOGY

### 1945

- August 6 US nuclear strike on Hiroshima
- August 8 Nuremberg Charter agreed by the US, USSR and UK
- August 9 US nuclear strike on Nagasaki
- September 5 ICRC alerts national affiliates to grave problems posed by the use of nuclear weapons

### 1946

- January 24 First UN General Assembly adopts Resolution 1 including clause "for the elimination from national armaments of atomic weapons..."
- February Harold Evans arrives in Tokyo as Associate to NZ Judge at International Military Tribunal
- April 18 International Court of Justice established as judicial organ of the UN
- June 14 US Baruch Plan presented to UN Atomic Energy Commission
- June 19 Soviet draft Nuclear Weapons Convention presented to UN Atomic Energy Commission as an alternative
- October 1 Nuremberg International Military Tribunal Judgment
- December 4 UK Prime Minister Attlee states: "It is the Government's intention to prohibit the use of the atom bomb"
- December 30 UN Atomic Energy Commission supports Baruch Plan: Soviets veto it

### 1949

- August 12 Geneva Conventions for the Protection of War Victims signed

### 1956

India sponsors an unsuccessful UN Trusteeship Council resolution requesting an ICJ Advisory Opinion on the legality of atmospheric nuclear testing

### 1957

ICRC Conference agenda includes 'Draft Rules' which state: "The general principles of the law of war apply to nuclear and similar weapons"

### 1958

- Fourth Japan World Ban-the-Bomb Conference of Jurists calls for the ICJ to judge nuclear weapons
- June World's first nuclear free zone declared in Handa City, Japan

### 1959

Nuclear weapons prohibited in Antarctica

### 1961

UN Resolution adopted which declared that "the use of nuclear and thermo-nuclear weapons is contrary to the

spirit, letter and aims of the UN, and, as such, is a direct violation of the Charter of the UN"

- 1962** "No Bombs South of the Line" Petition by CND in NZ and Australia
- 1963** Partial Test Ban Treaty signed  
Denmark first NATO state to prohibit nuclear weapons on its territory in peacetime  
December 7 Shimoda case in Tokyo District Court rules Hiroshima and Nagasaki strikes illegal
- 1967** Nuclear weapons prohibited in Outer Space  
Latin America Nuclear Free Zone established (Tlatelolco Treaty)
- 1968** Nuclear Non-Proliferation Treaty signed  
At UN Conference in Tehran, Seán MacBride masterminds adoption of ICRC Draft Rules without mention of nuclear weapons
- 1972** Biological Weapons Convention signed
- 1973** New Zealand and Australia challenge legality of French atmospheric tests in ICJ  
Nuclear weapons prohibited on the sea-bed outside territorial waters
- 1977** Additional Protocols to the Geneva Conventions signed: but NWS and some allies lodge Statements of Understanding that Protocol I does not apply to nuclear weapons
- 1978** First UN Special Session on Disarmament (UNSSOD I)
- 1979**  
May 11 Admiral of the Fleet Lord Louis Mountbatten calls for tactical nuclear weapons to be banned  
Belau declared nuclear-free in its Constitution
- 1981** US Lawyers' Committee on Nuclear Policy founded
- 1982** Vanuatu adopts nuclear-free policy
- 1983**  
February Petra Kelly and German Green Party hold Tribunal against First Strike and Mass Destructive Weapons in Nuremberg  
Vanuatu world's first state to enact nuclear-free legislation

June	Second Special Session on Disarmament (UNSSOD II)
<b>1984</b>	
March	Solomon Islands declared nuclear-free
<b>1985</b>	
January 2-6	London Nuclear Warfare Tribunal
August 6	South Pacific Nuclear Free Zone established (Rarotonga Treaty)
<b>1986</b>	
June 15-July 3	Richard Falk speaking tour in New Zealand Seán MacBride launches Lawyers' Appeal Against Nuclear War
<b>1987</b>	
March	Harold Evans publishes first WCP Open Letter
June 10	Aotearoa/New Zealand enacts nuclear-free legislation
June 15-18	First International Conference on Nuclear Weapons and the Law held in Ottawa
August 29-31	LCNP and Association of Soviet Lawyers hold
International	Conference in New York: founded International Association of Lawyers Against Nuclear Arms
<b>1988</b>	
May-June	Third UN Special Session on Disarmament (UNSSOD III) IPPNW World Congress in Montreal endorses WCP
<b>1989</b>	
September	Start of UN Decade of International Law IALANA World Congress and IPB Annual Conference endorse WCP
<b>1991</b>	
March	Ware visits UN Missions in New York
June	Dewes visits Geneva Missions and UK
October 12	WCP(UK) established
November 2	Pilot scheme on collecting DPCs launched in Eastbourne
UK	
<b>1992</b>	
January	IALANA and IPB agree to co-sponsor WCP
February	IPPNW agrees to join as third co-sponsor
May 14-16	International WCP Launch, Palais des Nations, Geneva
	First approach to World Health Assembly
September 28	Zimbabwe presents draft UNGA resolution to NAM
<b>1993</b>	
January	WHO Executive Board accept WCP resolution on 1993 WHA agenda

May 14	WCP resolution adopted at WHA
August 27	Zimbabwe requests NAM to introduce UNGA resolution
September 3	ICJ acknowledges receipt of WHA question
October 26	NAM agrees to introduce UNGA resolution
October 27	Presentation of DPCs to UN, New York
November 4	WCP resolution introduced at UNGA
November 19	NAM defer action on resolution

**1994**

June 3	NAM decides to put resolution to vote in 1994 UNGA
June 10	Initial deadline for written submissions to ICJ on WHA question; DPCs presented to Registrar
September 20	Extended deadline for submissions on WHA question
November 9	NAM re-introduce UNGA resolution
November 18	First Committee vote on WCP resolution
December 15	UNGA Plenary adopts WCP resolution
December 19	ICJ acknowledges receipt of UNGA question

**1995**

May 11	Non-Proliferation Treaty indefinitely extended
May 13	China resumes nuclear tests
June 13	France resumes nuclear tests
June 20	ICJ deadline for written comments on WHA question submissions, and for written submissions on UNGA question
September 20	ICJ deadline for written comments on UNGA question submissions
October 24	Australian Prime Minister announces Canberra Commission
Oct 30-Nov 15	ICJ Oral Proceedings on both questions

**1996**

July 8	ICJ announces its decision on both questions
August 14	Australia publishes Canberra Commission report
September 10	Comprehensive Test Ban Treaty signed

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# APPENDIX I: PRECURSORS TO THE WCP

- ii -

(b) The need for additional humanitarian international conventions or for possible revision of existing Conventions to ensure the better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare.

2. Requests the Secretary-General, after consultation with the International Committee of the Red Cross, to draw the attention of all States Members of the United Nations system to the existing rules of international law on the subject and urge them, pending the adoption of new rules of international law relating to armed conflicts, to ensure that in all armed conflicts the inhabitants and belligerents are protected in accordance with "the principles of the law of nations derived from the usages established among civilized peoples, from the laws of humanity and from the dictates of the public conscience."

3. Calls on all States which have not yet done so to become parties to the Hague Conventions of 1864 and 1907, the Geneva Protocol of 1925, and the Geneva Conventions of 1949.

\* \* \* \* \*  
RESOLUTION 2044 (XXIII)

adopted by

The General Assembly of the United Nations  
on 18th December 1968 at its 23rd regular session

The General Assembly,

Recognising the necessity of applying basic humanitarian principles in all armed conflicts,

Taking note of Resolution XXIII on human rights in armed conflicts, adopted on 12 May 1968 by the International Conference on Human Rights, held at Teheran, Affirming that the provisions of that resolution need to be effectively implemented as soon as possible,

1. Affirms resolution XXVIII of the twentieth International Conference of the Red Cross held at Vienna in 1965, which laid down, inter alia, the following principles of observance by all governmental and other authorities responsible for action in armed conflicts:

- (a) That the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;
- (b) That it is prohibited to launch attacks against the civilian population as such;
- (c) That distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible;

2. Invites the Secretary-General, in consultation with the International Committee of the Red Cross and other appropriate international organizations, to study:

- (a) Steps which could be taken to secure the better application of existing humanitarian international conventions and rules in all armed conflicts;
- (b) The need for additional humanitarian international conventions or for other appropriate legal instruments to ensure the better protection of civilians, S.2674

## The Protection of Human Rights in Armed Conflicts

### RESOLUTION

adopted by

The United Nations International Conference on Human Rights,  
(Teheran, 22 April - 13 May 1968)

### The International Conference on Human Rights

Considering that peace is the underlying condition for the full observance of human rights and war is their negation,  
Believing that the purpose of the United Nations Organization is to prevent all conflicts and to institute an effective system for the peaceful settlement of disputes,

Observing that nevertheless armed conflicts continue to plague humanity,  
Considering, also, that the widespread violence and brutality of our times, including massacres, summary executions, tortures, inhuman treatment of prisoners, killing of civilians in armed conflicts and the use of chemical and biological means of warfare, including napalm bombing, erode human rights and engender counter-brutality,

Convinced that even during the periods of armed conflict, humanitarian principles must prevail,

Noting that the provisions of the Hague Conventions of 1864 and 1907 were intended to be only a first step in the provision of a code prohibiting or limiting the use of certain methods of warfare and that they were adopted at a time when the present means and methods of warfare did not exist.

Considering that the provisions of the Geneva Protocol of 1925 prohibiting the use of "asphyxiating, poisonous or other gases and of all analogous liquids, materials, and devices" have not been universally accepted or applied and may need a revision in the light of modern development,

Considering, further that the Red Cross Geneva Conventions of 1949 are not sufficiently broad in scope to cover all armed conflicts,

Noting that States parties to the Red Cross Geneva Conventions sometimes fail to appreciate their responsibility to take steps to ensure the respect of these humanitarian rules in all circumstances by other States, even if they are not themselves directly involved in an armed conflict,

Noting also that minority racist or colonial regimes which refuse to comply with the decisions of the United Nations and the principles of the Universal Declaration of Human Rights frequently resort to executions and inhuman treatment of those who struggle against such regimes and considering that such persons should be protected against inhuman or brutal treatment and also that such persons if detained should be treated as prisoners of war or political prisoners under international law,

- 1. Requests the General Assembly to invite the Secretary-General to study (a) Steps which could be taken to secure the better application of existing humanitarian international conventions and rules in all armed conflicts, and S.2674

prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare;

3. Requests the Secretary-General to take all other necessary steps to give effect to the provisions of the present resolution and to report to the General Assembly at its twenty-fourth session on the steps taken by him;

4. Further requests Member States to extend all possible assistance to the Secretary-General in the preparation of the study requested in paragraph 2 above;

5. Calls upon all States which have not yet done so to become parties to the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949.

S.2674

## Action by Non-Governmental Organizations

1. We invite all non-governmental organizations, institutes and university departments concerned with peace studies to give urgent consideration to the proposals set out in this document.
2. All non-governmental organizations, institutes and university departments are asked to use their best endeavours to create a world-wide awareness of the vital importance of ensuring that the voice of the ordinary people of the world is heard at the World Disarmament Conference and that public consideration is given to the issues to be dealt with by the conference.
3. As an interim measure pending the holding of the World Disarmament Conference, the non-governmental sector, at national and international levels, should call on governments:
  - a. To cease all testing of nuclear devices.
  - b. To cease all development work and proliferation of nuclear, chemical and biological weapons (including nerve gases) for whatever purpose, including so-called counter-insurgency weapons.
  - c. To recognise and respect the rights of conscientious objectors.
  - d. To refrain from military, naval or other direct or indirect co-operation with racialist and colonialist regimes.
4. This conference called by the International Peace Bureau requests the Special NGO Committee on Disarmament in Geneva to convene, on some date not later than six

### *This report is directed to:*

- The United Nations Organization
- All States in the World
- The U.N. Disarmament Committee and Agencies
- Intergovernmental Organizations
- Non-governmental Organizations and Disarmament Committees
- The Continuing Council of the World Peace Congress 1973
- Other interested bodies

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## International Peace Bureau

Founded in Rome 1892. Awarded Nobel Peace Prize 1910.

### RECOMMENDATIONS

prepared by an  
International Conference

held at the University of Bradford, England  
29th August — 1st September, 1974

## Call for a

# WORLD DISARMAMENT CONFERENCE

*WE, THE PEOPLES OF THE UNITED NATIONS, DETERMINED*

*to save succeeding generations from the scourge of war . . .  
and to . . . live together in peace . . .*

*and to ensure . . . that armed force shall not be used, save in the common  
interest . . .*

*HAVE RESOLVED TO COMBINE OUR EFFORTS  
TO ACCOMPLISH THESE AIMS.*

In accord with the objectives of the Charter as expressed in these quotations, we, from voluntary organizations of different nations assembled in this conference, call for a positive decision to hold a World Disarmament Conference.

Furthermore, in view of the continuing increase in armaments, the "extremely harmful effects on world peace and security"<sup>(1)</sup> of the arms race, and the detrimental impact of ever growing armaments expenditure on the social and economic welfare of humanity, we urgently request that the date of the World Disarmament Conference be fixed and announced without further delay.

1. Checko Report on the Arms Race, U.N., publication October 1971.

*On the following pages:* Proposed Conference Agenda  
Non-governmental Participation  
Action by Non-governmental Organizations

## Proposed Conference Agenda

## Non-Governmental Participation

- I. The achievement of general and complete disarmament as the prime objective of the United Nations and its specialised agencies and of all states in the world.
- II. The identification of vested interests, whether political, professional or financial, which oppose general and complete disarmament, and the determination of means to overcome or negate their power and influence.

### III. Nuclear Weapons

- a. The outlawing of the use of nuclear weapons in all circumstances.
- b. The application of automatic sanctions against any government or authority that threatens the use of or makes first use of nuclear weapons.
- c. The proscription of the manufacture, sale, storage and dissemination of nuclear warheads and their means of delivery.
- d. Provision for the dismantling of existing nuclear warheads and their means of delivery.

### IV. International Security

- a. The control and licensing of all sales and transfers of arms and ammunition.
- b. The dissolution of all military alliances.
- c. The independent declaration by individual states that they will not use nuclear weapons under any circumstances, will not be the first to attack with any weapons, and will reduce or stabilise particular forms of armaments and military personnel.
- d. Effective and automatic machinery for the settlement of disputes and extended compulsory jurisdiction for the International Court of Justice.

### V. Human Survival

Consideration of the political, economic, moral, historical and social imperatives for the survival of humanity, the maintenance of peace, the eradication of disease, hunger and poverty, and the more equitable distribution of food and other resources in the world.

### VI. Educational Aspects

- a. The revision of educational material which tends to glorify or encourage wars.
- b. The establishment of departments of Peace and Disarmament Studies in universities throughout the world.
- c. The mobilisation of world public opinion by all available means in favour of general and complete disarmament.
- d. The observance of a universal World Disarmament Day.

United Nations organs and conferences are predominantly composed of delegates representing governments. If the usual practice were followed the World Disarmament Conference would consist only of such governmental representatives. Therefore as governments tend to wish to maintain their military status and most government policies on disarmament are dictated or strongly influenced by national military establishments and by military alliances, it is vitally important that the non-governmental sectors be invited to participate directly in the conference and also in its preparation and organization.

It is essential if the conference is to succeed that effect be given to the spirit of the Charter so that "WE THE PEOPLES" can be heard. In the absence of direct democratic representation at the United Nations this must be done through non-governmental organizations which are concerned with general and complete disarmament. Otherwise the World Disarmament Conference will represent in the main the official, military and industrial establishments that have a vested interest in maintaining and increasing armaments. It is these that have failed so far to achieve disarmament. It is they who have been responsible for the increased military establishments and the arms race.

In order to ensure that the public and those organizations that are opposed to war and favour general and complete disarmament are given an opportunity to put their case at the World Disarmament Conference, the following steps should be taken.

1. Provision should be made for the participation of not less than 30 representatives of non-governmental organizations with full rights of participation (except voting rights) at all the preparatory stages of the conference and at the conference itself. They should include representatives, to be selected by the non-governmental sector, of International non-governmental organizations and institutions which specialise in disarmament
2. Adequate funds should be provided by governments through the United Nations and by the United Nations itself to enable the non-governmental sector to undertake the preparation and distribution of documentation for submission to the United Nations, to governments, non-governmental organizations and the conference itself and to ensure the proper and adequate representation of the non-governmental sector at the conference.

Religious groups

Trade unions

3. All non-governmental organizations in consultative status with ECOSOC should be given the normal observer status granted to such observers at United Nations conferences, as at the United Nations Conference on the Environment and the World Population Conference.
4. All relevant documentation and studies relating to the World Disarmament Conference should be circulated by the United Nations to and from all non-governmental organizations and institutions directly concerned with the promotion of general and complete disarmament.

# INTERNATIONAL PEACE BUREAU

FOUNDED IN ROME 1892    AWARDED NOBEL PEACE PRIZE 1910

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## APPEAL by Lawyers Against Nuclear War

*The International Peace Bureau based in Geneva, which is a federation of peace organisations, has decided to launch an Appeal to lawyers throughout the world to condemn nuclear weapons and wars as illegal. The Appeal hereunder signed by over 50 eminent lawyers is now being circulated for signature to lawyers in every country.*

***The collected signatures will be presented to the United Nations.***

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### THE UNDERSIGNED

Considering that the intensification, both qualitative and quantitative, of the arms race, and particularly of the nuclear arms race, **endangers the very survival of humanity,**

Considering that while the world today faces **problems of hunger** and economic crisis, enormous material, financial and intellectual **resources are wasted on the arms race** and in preparing for nuclear war,

Considering that according to national and international medical and scientific opinion, there are no means of limiting the disastrous consequences of a nuclear war;<sup>1</sup> the use of even a limited amount of the nuclear arsenal would provoke an unprecedented ecological catastrophe which **mankind would not survive,**

Considering an increasingly complicated technology, and given the fact that any decision to use nuclear weapons would be made instantaneously, there is a **risk of a nuclear war breaking out accidentally** through human miscalculation or technological mishap,

Considering that **international law does not permit states an unlimited choice in the methods of waging war;** it prohibits in particular means of warfare which are intended to cause unnecessary suffering, those which could severely damage the environment, those which are incapable of distinguishing between military and non-military objectives or between military forces and civilian populations; it also prohibits the use of poisonous or asphyxiating or bacteriological materials, and provides that the territory of neutral states is inviolable,<sup>2</sup>

Considering that the Martens Clause which, since 1899 has figured in numerous treaties and international agreements, provides that in situations not covered by such treaties or agreements, "the populations and belligerents remain under the protection and empire of the **principles of international law,** as they result from the usages established among civilised nations, from the laws of humanity and from the dictates of the public conscience",

Convinced, as is the General Assembly of the United Nations, that **"to avoid the threat of a world war — a nuclear war — is the most pressing and urgent task of our times"**,<sup>3</sup>

**CONVINCED THAT LAWYERS CANNOT REMAIN SILENT** and have a responsibility

to make known, to develop and to defend the rules of international law, and thus contribute to the maintenance of peace, to international security, and to the establishment of an international order which reflects the aspirations of humanity,

Deeply convinced that the moment has come in the history of mankind when there is no alternative for the survival of civilisation than the acceptance and application of the rule of law in international relations,

Declare that the use, for whatever reason, of a nuclear weapon would constitute

- a) a violation of international law
- b) a violation of human rights, and
- c) a crime against humanity<sup>1</sup>

#### DEMAND THE PROHIBITION OF NUCLEAR WEAPONS AS A FIRST STEP TOWARDS THE ULTIMATE GOAL OF GENERAL AND COMPLETE DISARMAMENT

**Sean MacBride, S.C.**  
(Nobel Peace Prize; Lenin Peace Prize)

**Dr. Bruno Kreisky**  
(Former Prime Minister of Austria)

**Alexandre Soukarev**  
(Minister of Justice of the Russian Federation;  
President, Association of Soviet Lawyers)

**Ramsey Clark**  
(Former Attorney-General, U.S.A.)

**Robert Krieps**  
(Minister of Justice, Luxembourg)

**Prof. Francois Rigaux**  
(Professor at the Catholic University of Louvain;  
Member of the Council of State, Belgium)

**Niall MacDermot, O.B.E., Q.C.**  
(Secretary General, International Commission of Jurists)

**Joe Nordman**  
(President, International Association of Democratic Lawyers)

**T. O. Elias**  
(Judge at the International Court of Justice, The Hague)

**Lennart Geijer**  
(Former Minister of Justice, Sweden)

**Dr. Georges Fischer**  
(Honorary Director of Research at the National Centre for Scientific Research, France)

**Lord Fenner Brockway, L.L.D.**  
(Member of the House of Lords)

**Ahmed El Khawaga**  
(Chairman, Union of Arab Lawyers; President of the Bar of Egypt)

**Praefallahandra Natvarial Bwaghati**  
(Chief Justice of India)

**Dr. Gerhard O. W. Mueller**  
(Chief (Ret.), United Nations Crime Prevention and Criminal Justice Branch)

**Alejandra Serrano Caldera**  
(Chief Justice of Nicaragua)

**Louis Edmond Pettiti**  
(Former President of the French Bar; President of the Institute for Human Rights Education; President of the International Federation of Catholic Lawyers)

**Lord Wedderburn of Charlton**  
(Cassell Professor of Commercial Law, University of London at the London School of Economics)

**Dr. Hans R. Kilecatsky**  
(Chairman, Department of Public Law, University of Innsbruck; Former Minister of Justice, Austria)

**Mohammed Bedjaoui**  
(Former Minister, Former Ambassador of Algeria; Judge at the International Court of Justice, The Hague)

**Farouk Abu Eissa**  
(Secretary General, Union of Arab Lawyers; Former Minister of Foreign Affairs, Sudan)

#### References:

1. Resolution 36/75 of the General Assembly of the United Nations.
2. See in particular the Declaration of St. Petersburg of 1868, the Hague Convention of 1907, the Geneva Protocol of 1925, the Judgment of the International Tribunal at Nuremberg and Tokyo of 1946 and Resolution 95(1)-1946 of the General Assembly, the Geneva Conventions of 1949 and the Additional Protocols of 1977.
3. Resolution 36/81 B-1981 and 40/151 E-1985.
4. General Assembly of the United Nations Resolutions 1653 (XVI)-1961, 2936 (XXVII)-1972, 33/71 B-1978, 34/83 G-1979, 35/152 D-1980, 36/921-1981, 38/75-1983, 40/151 P-1985.

**S. Amos Wako**  
(Hon. Secretary General, Inter-African Union of Lawyers; Executive Committee Member, International Commission of Jurists)

**Jean Ziegler**  
(Co-President, International Committee of Scholars in the Humanities for Disarmament, Development and Peace; Vice-President, Socialist International)

**Joaquin Ruiz-Gimenez**  
(Ombudsman of Spain; Professor of Law; Former President, Commission for Justice and Peace, Spain)

**Sir Guy Powles**  
(Former Ombudsman, New Zealand)

**Lennart Aspegren**  
(Judge; Under-Secretary for Legal Affairs, Sweden)

**Alexander Yankov**  
(Professor of International Law, Sofia)

**Haim Cohn**  
(Judge, Israel)

**Dr. Hector Negri**  
(Minister of the Supreme Court of Buenos Aires; Dean of the Law Faculty)

**Bertrand Favreau**  
(Former President of the French Bar)

**Dr. Elliott L. Meyrowitz**  
(Jurist, U.S.A.)

**Dr. Nils Jareborg**  
(Professor of Criminal Law, Dean of the Faculty of Law, Uppsala)

**Alfredo Eicheberry**  
(Professor of Criminal Law, University of Chile)

**Paul O'Dwyer**  
(Attorney at Law, U.S.A., President, Brehon Law Society)

**Peter Ingelse**  
(Barrister, Ban the Cruise Missiles Foundation case, Netherlands)

**Hans Goran Franck**  
(Parliamentarian and Lawyer)

**Monique Chemillier-Jendreau**  
(Professor of International Law at the University of Paris)

**Leonard Boudin**  
(Civil Rights Attorney, U.S.A.)

**Leo Matarasso**  
(Avocat a la Cour, France)

**Guillermo Figallo**  
(Attorney, Peru)

**Patrick McEntee, S.C., Q.C.**  
(Former Chairman of the Bar of Ireland)

**Bo Martinsson**  
(Director General, National Prison and Probation Administration, Sweden)

**A. H. J. van den Biesen**  
(Barrister, Ban the Cruise Missiles Foundation case, Netherlands)

**Professor Francis A. Boyle**  
(Professor of International Law, University of Illinois in Champaign)

**Jean Salmon**  
(Director, Centre of International Law at the Free University of Bruxelles)

**Dr. Ikbal Al Fallouji**  
(Jurist, Switzerland)

**Frank Durkan**  
(Attorney at Law, U.S.A.)

**Edward Rees**  
(Lawyers for Nuclear Disarmament)

**Professor Raul F. Cardenas**  
(Jurist, Mexico)

**Paulette Pierson Mathy**  
(Secretary General, International Commission of Enquiry into the Crimes of the Racist and Apartheid Regime of Southern Africa; Professor of Law at the Free University of Bruxelles)

**Lord Anthony Gifford, Q.C.**  
(Member of the House of Lords)

**Nuri Albala**  
(Avocat a la Cour, France)

**Elizabeth S. Landis**  
(Attorney, U.S.A.)

**Antoine Comte**  
(Avocat a la Cour, France)

**Owen Davies**  
(Lawyers for Nuclear Disarmament, London)

**A. H. Schotman**  
(Lawyer, Ban the Cruise Missiles Foundation case, Netherlands)

**Augusto Conte MacDonell**  
(Abogado, Buenos Aires)

Lawyers and jurists are invited to join this international appeal of Lawyers Against Nuclear War by attaching their signatures, address and description overleaf and returning the appeal to:

International Peace Bureau  
41 Rue de Zurich  
Geneva, Switzerland

## United Nations Decade of International Law

### UN Resolution 44/23

17 November 1989

The General Assembly,

Recognizing that one of the purposes of the United Nations is to maintain international peace and security, and to that end to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

Recalling the Declaration on Principles of International Law concerning friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 99/ and the Manila Declaration on the Peaceful Settlement of International Disputes, 100/

Recognizing the role of the United Nations in promoting greater acceptance of and respect for the principles of international law and in encouraging the progressive development of international law and its codification,

Convinced of the need to strengthen the rule of law in international relations,

Stressing the need to promote the teaching, study, dissemination and wider appreciation of international law,

Noting that, in the remaining decade of the twentieth century, important anniversaries will be celebrated that are related to the adoption of international legal documents, such as the centenary of the first International Peace Conference, held at the Hague in 1899, which adopted the Convention for the Pacific Settlement of International Disputes 101/ and created the Permanent Court of Arbitration, the fiftieth anniversary of the signing of the Charter of the United Nations and the twenty-fifth anniversary of the adoption of the Declaration on Principles of International Law concerning friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

1. Declares the period 1990-1999 as the United Nations Decade of International Law;
2. Considers that the main purposes of the Decade should be, inter-alia
  - (a) To promote acceptance of and respect for the principles of international law;
  - (b) To promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice;
  - (c) To encourage the progressive development of international law and its codification;
  - (d) To encourage the teaching, study, dissemination and wider appreciation of international law;
3. Requests the Secretary-General to seek the views of Member States and appropriate international bodies, as well as of non-governmental organizations working in the field, on the programme for the Decade and on appropriate action to be taken during the Decade, including the possibility of holding a third international peace conference or other suitable international conference at the end of the Decade, and to submit a report thereon to the Assembly at its forty-fifth session;
4. Decides to consider this question at its forty-fifth session in a working group of the Sixth Committee with a view to preparing generally acceptable recommendations for the Decade;
5. Also decides to include in the provisional agenda of its forty-fifth session the item entitled "United Nations Decade of International Law".

99/ Resolution 2625 (XXV), annex.

100/ Resolution 37/10, annex.

101/ See Carnegie Endowment for International Peace, The Hague Conventions and Declarations of 1899 and 1907 (New York, Oxford University Press, 1915).

## APPENDIX II: CITIZEN EVIDENCE



### THE HAGUE DECLARATION

#### INTERNATIONAL ASSOCIATION OF LAWYERS AGAINST NUCLEAR ARMS

SEPTEMBER 24, 1989

The International Association of Lawyers Against Nuclear Arms (IALANA), meeting at its First World Congress at The Hague, September 22-24, 1989.

concerned about the continuation of the nuclear arms race and the maintenance of military strategies based on the use of omnicidal weapons;

calling attention to United Nations General Assembly resolution 39/11 of November 12, 1984 on the Right of Peoples to Peace;

rejecting strongly any argument that the use or the threat of use of nuclear weapons is permitted because they are nowhere expressly prohibited as such;

convinced that such a suggestion conflicts directly with the Martens clause first mentioned in the The Hague Convention of 1899 with Respect to the Laws and Customs of War on Land and subsequently restated in other universally binding instruments of international law, which clause states that

"in cases not included in the Regulations .... populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience";

affirming that the use or threat of use of nuclear weapons is a war crime and a crime against humanity, as well as a gross violation of other norms of international customary and treaty law and

envisioning as an urgent task the total outlawing of nuclear weapons, including their research, manufacture and possession;

stressing the primacy of international law and convinced that the peoples and nations of the world must for their survival submit themselves to the rule of law in international affairs;

welcoming the Hague Declaration of the Ministers of Foreign Affairs of the Movement of Non-Aligned Countries Meeting to Discuss the Issues of Peace and the Rule of Law in International Affairs in June 1989, approved by the Non-Aligned summit in Belgrade in September, 1989, which calls on the United Nations General Assembly to declare a Decade of Peace and International Law in order to realize the hope for a peaceful world with justice for all:

Urges legal and other Non-Governmental Organizations throughout the world to support the above mentioned initiative of the non-aligned states;

invites lawyers throughout the world to sensitize "the public conscience" to the incompatibility of nuclear weapons with international law and to utilize their respective legal processes to build up a body of law dealing with various aspects of the problem;

calls upon all Governments to conduct their international relations and their military planning in accordance with the mandates of the United Nations Charter, especially Article 2 (4), and the laws of war and other relevant principles and rules of international laws, including those relating to the rights of neutral

states, the right to life, peace and development, genocide, the environment, self-determination, non-intervention, and other human and peoples' rights;

More specifically, IALANA

appeals to the Governments of all States Members of the United Nations to take immediate steps towards obtaining a resolution by the United Nations Assembly under Article 96 of the United Nations Charter, requesting the International Court of Justice to render an advisory opinion on the illegality of the use of nuclear weapons;

dedicates itself to the enunciation and promotion of the rights to life and to peace as the most fundamental of all human rights, in accordance with the United Nations Charter, Article 3 and 28 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Civil and Political Rights and General Comments 6 (16) and 14 (23) of the Human Rights Committee of the UN.;

pledges to undertake a major effort to bring about a re-examination of the myth of nuclear deterrence as keeper of the peace;

supports the world-wide movement toward the establishment of nuclear-free zones and the right of the people at all levels, municipal, national and regional, to establish such zones;

offers to work with IPPNW for a Comprehensive Test Ban;

believes that disarmament negotiations must not only deal with existing weapons, but must focus on stopping the development and introduction of new arms technologies relating to all weapons of mass-destruction;

considers that, quite apart from the legal, moral, strategic and political aspects of nuclear weapons, the harmful consequences of their production are incompatible with the people's right to health and to a clean environment;

expresses its deep concern with the continuing sufferings of the Hibakusha and its sympathy with the "Appeal from Hiroshima and Nagasaki for a Total Ban and Elimination of Nuclear Weapons", and

calls on Governments to seize the present historic opportunity to reverse the arms race and utilize the resources thus made available for the task of achieving sustainable development and economic justice for all people and all nations, and especially to solve the problem of Third World debt in a just manner.

**Note:**

The foregoing Declaration was unanimously adopted by and resulted from the inaugural World Congress (22-24 September 1989) of the International Association of Lawyers Against Nuclear Arms (Ialana).

This organisation was founded in Stockholm in 1988, and its principal officers, from many different countries and jurisdictions, are respected and experienced international jurists. Nearly 200 lawyers attended the Congress from nearly 30 countries, including the nuclear and non-nuclear countries and both superpowers, and represented all the major legal systems of the world.

The abbreviation IPPNW is International Physicians for the Prevention of Nuclear War.

(アピールの英文は以下のとおりです)

## Appeal from Hiroshima and Nagasaki For a Total Ban and Elimination of Nuclear Weapons

*Forty years have passed since the atomic bombing of Hiroshima and Nagasaki, and the end of the Second World War.*

*In spite of the intense desire of the A-bomb survivors of Hiroshima and Nagasaki and the people of all the world that such tragedies must never be repeated, nuclear weapons over one million times more destructive than the Hiroshima and Nagasaki bombs are now stockpiled, the result of the on-going nuclear arms race.*

*The use of nuclear weapons will destroy the whole human race and civilization. It is therefore illegal, immoral and a crime against the human community.*

*Humans must not coexist with nuclear arms.*

*With effective activities for the prevention of nuclear war now developing throughout the world, the elimination of nuclear weapons, as a common international task, has become most urgent and crucial for the very survival of the whole of humanity.*

*Along with the survivors and on behalf of those who died and cannot now speak for themselves we appeal from Hiroshima and Nagasaki:*

*There must never be another Hiroshima anywhere on earth.*

*There must never be another Nagasaki anywhere on earth.*

*Now is the time to call for the complete prohibition and elimination of nuclear weapons. Let us work together urgently to achieve a total ban on the use, testing, research, development, production, deployment and stockpiling of nuclear weapons.*

*February 6 and 9, 1985*

*Hiroshima and Nagasaki*

*This "Appeal" was signed by all representatives who participated in the "Consultative meeting for the proposal and promotion of the signature campaign for a total ban and elimination of nuclear weapons", and addressed by the "Liaison Committee for the Promotion of the Signature Campaign" to all peoples of the world.*

# World Court Project



An initiative to seek an advisory opinion from the International Court of Justice confirming that the use or threat to use nuclear weapons is illegal.

In May, 1983 the World Health Organization adopted a resolution asking the International Court of Justice (otherwise known as the World Court) to give an advisory opinion on whether the use of nuclear weapons is illegal.

The World Court Project is gathering declarations against nuclear weapons to present to the World Court when it begins to consider the case in June 1994.

The World Court's consideration of the these declarations would enact the DeMartens Clause of the Geneva and Hague Conventions (international treaties) which states that when a new weapon or method of warfare system is developed the legality of their use should be determined by the principle of customary international law, the Laws of Humanity, and the *dictates of public conscience*. You can help prohibit nuclear weapons by signing the declaration below.

**DECLARATION OF PUBLIC CONSCIENCE**

*I affirm my desire and right to live in a world free from the threat of nuclear destruction. Any use or threat to use nuclear weapons, as well as any unspeakable human tragedy, would violate international law and human rights and is contrary to the dictates of public conscience.*

Signature \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

Please send  more declarations for others to sign. I enclose a donation of:  
 \$1 \_\_\_\_\_ \$5 \_\_\_\_\_ \$10 \_\_\_\_\_ \$20 \_\_\_\_\_ \$50 \_\_\_\_\_ \$100 \_\_\_\_\_ OTHER \_\_\_\_\_  
 (Please make your checks payable to the Lawyers' Committee on Nuclear Policy)

Send completed declarations, requests for additional information, and donations to:  
 LCNP

666 Broadway, #625  
 New York, NY 10012  
 (212) 674 7790 fax (212) 674 6199

**Over for list of endorsing organizations**  
 Co-founding organizations:  
 International Peace Bureau, International Association of Lawyers Against Nuclear Arms,  
 and International Physicians for the Prevention of Nuclear War

# World Court Project



An initiative to seek an advisory opinion from the International Court of Justice, confirming that the use or threat to use nuclear weapons is illegal.

103 Anna Paulownastraat, 1 block from the Peace Palace, The Hague  
 telephone: +31 70 3603479 fax: +31 70 3622470  
 John Burroughs and Pamela McDell, Coordinators

Mr. Jean-Jacques Arnaldez  
 Deputy-Registrar  
 International Court of Justice  
 Peace Palace  
 The Hague  
 The Netherlands

1 November 1995

*Jean-Mu Amaldez*

Thank you very much indeed for receiving our citizens' delegation yesterday morning. A list follows of the Declarations of Public Conscience presented to the Court. The figures in brackets include Declarations already presented.

United Kingdom	50,000	(100,000)
Australia	16,500	(19,216)
USA	7,316	(22,000)
Canada	5,000	(37,000)
Italy	6,605	(5,405)
Germany	4,288	(26,208)
Hungary	4,000	(4,000)
New Zealand	3,000	(32,000)
France	2,546	(17,000)
Spain	2,000	(2,000)
Ukraine	2,000	(2,000)
Slovakia	157	(157)
Japan	(1,556,346)*	
Netherlands	(12,000)	
Norway	(5,000)	
Tanzania, Zimbabwe, Kenya, Uganda	(1,500)	
Malaysia, India	(500)	
Costa Rica, Ecuador, Colombia, Argentina	(300)	

Total: approx 103,324 (1,855,832)

\* A further shipment of 1,422,738 is on its way, expected to arrive in November, bringing the grand total to 3,278,570

We presented one large laminated Declaration separately. This is a copy of one signed by Harold Evans, retired magistrate from Christchurch New Zealand and "father" of the World Court Project. Also, we enclose a sample of a Declaration by a child from the Ukraine. We would be most grateful if these two in particular could be shown to the judges.

*Yours sincerely,*

*Robert Green*  
 (Robert Green) *Kate Dewes*  
 (Kate Dewes)

Members of the World Court Project International Steering Committee

Co-founding organizations:  
 International Peace Bureau, International Association of Lawyers Against Nuclear Arms,  
 and International Physicians for the Prevention of Nuclear War



World Court Project  
Endorsing Organizations  
(Oct. 26, 1993)



**International**

Anglican Consultative Council and Primates of the Anglican Communion  
Anglican Church in Aotearoa/New Zealand and Polynesia  
Asian Institute for Rural Development  
Campaign for a More Democratic UN  
EarthAction  
Friends of the Earth International  
Greenpeace International  
International Association of Democratic Lawyers  
International Association of Lawyers Against Nuclear Arms  
International Association of Educators for World Peace  
International Fellowship of Reconciliation  
International Institute for Humanitarian Law  
International Peace Bureau  
International Philosophers for the Prevention of Nuclear Omnicide  
International Philosophers for Global Responsibility  
International Progress Organisation  
International Physicians for the Prevention of Nuclear War  
International Youth and Student Movement for the UN  
Medical Mission Sisters  
Nuclear Free and Independent Pacific Movement  
Nuclear Free Zone Local Authorities  
Pacific Concerns Resource Centre  
Quaker Peace and Service  
Radio for Peace International  
Women's Environment and Development Organisation  
Womens International League for Peace and Freedom  
World Peace Council  
World Order Models Project  
World Federalist Movement  
World Federation of Public Health Associations

**Afghanistan**

Association of Physicians and Medical Workers for Peace

**Aotearoa/New Zealand**

Accident and Medical Centre-Hamilton  
Anglican Diocese of Waikato  
Anglican Social Justice Committee  
Anti-Bases Coalition  
Aotearoa/New Zealand Foundation for Peace Studies  
Architects Against Nuclear Arms  
Association of Anglican Women (Winton Branch)  
Auckland City Council  
Auckland Diocesan Mothers Union  
Auckland Regional Council  
Bay of Plenty Regional Council  
Campaign for Nuclear Disarmament, Auckland  
Campaign for Nuclear Disarmament, Wellington  
Campaign for Nuclear Disarmament, Whangarei  
Canterbury Workers Educational Association  
Catholic Commission for Justice, Peace and Development  
Centre for Peace Studies, University of Auckland  
Christians for Peace  
Council of Jewish Women - Wellington  
Environment and Peace Information Centre (Epicentre) Christchurch  
Environmental Law Centre, Auckland  
Federation of Workers Education Associations in Aotearoa/NZ  
Friends of the Earth (New Zealand)  
Future 21- "Taking the World"  
Golden Bay Community Health Committee  
Greenpeace New Zealand  
IALANA-NZ Chapter International Association of Lawyers Against Nuclear Arms  
International Physicians for the Prevention of Nuclear War (NZ)  
Justice and Peace Committee, East Coast Bays Auckland  
Kapiti Coast District Council  
Kapiti Migraine Support Group  
Labour Party  
Lawyers for Nuclear Disarmament  
Leafgreen-Christchurch  
Little Sisters of the Assumption, Aotearoa/NZ  
Lower Hutt City Council  
Manukau Healthy City

1

Maori Womens' Welfare League  
Matamata Piako District Council  
Methodist Women's Fellowship  
National Consultative Committee on Disarmament  
National Council of Women  
National Council of Women, Dergaville  
National Council of Women, Tokoroa  
New Zealand Council of Trade Unions  
North Shore City Council  
North Shore Peace Group  
New Plymouth District Council  
NZ Federation of University Women-North Shore Branch  
NZ Nuclear Free Peacemaking Association  
New Zealand Branch International Commission of Jurists  
New Zealand Council of Civil Liberties  
New Zealand Russian and Sovereign States Association  
Operation Peace Through Unity  
Otago Regional Council  
Pacific Institute of Resource Management  
Pakeha Treaty Action  
Peace Action Tauranga (PACT)  
Peace Movement Aotearoa  
Porirua City Council  
Public Health Association of New Zealand  
Rainbow Valley Community  
Rangitikei District Council  
Religious Society of Friends (Quakers)  
Riverside Community  
Rotorua District Council  
Ruawai Co-operating Parish  
Selwyn District Council  
St Andrews-on-the-Terrace, Wellington  
St Peters Anglican Church Vestry  
Student Christian Movement-Otago  
Takapuna Grammar School  
Taura Here i te Rongomau  
(Peace Network of the Conference of Churches in Aotearoa)  
Taupo Peace Group  
Tasman District Council  
Tui Land Trust and Community  
Thames/Coromandel District Council  
UNICEF Committee  
United Nations Association, New Zealand  
United Nations Association, Canterbury  
United Nations Association, Waikato Branch  
Waiheke Island Peace Group

Waitakere Women for Peace  
Wanganui District Council  
Wellsford Anglican Parish  
West Auckland Peace Group  
West Lake Girls High School  
Women's Electoral Lobby NZ  
WILPF-Women's International League for Peace and Freedom, Aotearoa  
Young Women's Christian Association of New Zealand

**Argentina**

Movimiento Argentino de Medicos y Profesionales de la Salud para la Prevencion de la Guerra Nuclear (Argentine Physicians and Health Professionals for the Prevention of Nuclear War)

**Australia**

Australian Branch, International Commission of Jurists  
Australian Campaign Against the Arms Trade  
Australian Coalition for Disarmament and Peace  
Australian Conservation Foundation  
Australian Democrats, Townsville  
Australian Education Union  
Australian Nuclear Free Zone Secretariat  
Australian Peace Committee,  
Australian Peace Committees: Queensland, South Australia  
Australian Quakers  
Automotive Metals an Engineering Workers Union Australia  
Automotive, Metals and Engineering Workers Union, NSW  
Brighton Peace and Environment Group, Sth Australia  
Buddhist Peace Fellowship, Perth Chapter  
Busselton Peace & Environment Group Inc  
Central Coast Peace Forum  
Campaign for Cooperation and Disarmament (Vic)  
Communities Against Radio-Active Dumps (CARD) Qld  
Construction, Forestry, Mining & Energy Union (Qld)  
Hornsby & District Peace Group  
International Women's Development Agency  
Environmental Youth Alliance  
Lawyers for Nuclear Disarmament  
Left Connection, SA  
Liverpool City Council  
Magill Camous Student Association  
Manly Warringah Peace Movement  
Medical Association for Prevention of War/Australia  
"M.T. Flinders", MVA Peace Ship  
Newcastle City Council  
North Queensland Conservation Council

Nuclear Free Zone Secretariat  
 PACIFIC Peace Group, Townsville  
 Peel Preservation Group, WA  
 People for Nuclear Disarmament, Balmain  
 People for Nuclear Disarmament, Bayside  
 People for Nuclear Disarmament, Diamond Valley  
 People for Nuclear Disarmament, Mudgee  
 People for Nuclear Disarmament, NSW  
 People for Nuclear Disarmament, Queensland  
 People for Nuclear Disarmament, WA  
 Physicians for the Prevention of War, WA  
 Port Adelaide City Council  
 Port Augusta Environment Group  
 Quakers Service Australia (NSW)  
 Religious Society of Friends (Quakers, Qld)  
 Sisters of Mercy, Parth  
 Social Responsibility Group, Catholic Parish of St Johns Wood, Qld  
 Southern Highlands Peace Movement  
 South Sydney City Council  
 Students Association of the University of Adelaide  
 Sydney Peace Squadron  
 Tasmanian Peace Network  
 Town of Bassendean, WA  
 Townsville Greens  
 Union of Australian Women Manly Warringah & Pittwater Group  
 United Nations Youth Association, SA  
 United Trades & Labour Council, SA  
 Uniting Church Board of Social Responsibility, NSW  
 Western Australian Greens  
 Waterside Workers Sydney Retired Members Assoc  
 Wilderness Society/Environment Centre, Armidale  
 Women's International League for Peace and Freedom, (SA)

#### Austria

Osterreichische Arzte gegen den Atomkrieg  
 (Austrian Physicians Against Nuclear War)

#### Bangladesh

Peace for All  
 Bangladesh Hindu Bouddha Christian Oikya Parishad  
 (Bangladesh Hindu, Buddhist and Christian Unity Council)  
 Bangladesh Medical Association  
 Bangladesh Association of Lawyers Against Nuclear Arms

#### Belarus

Belaran Physicians for the Prevention of Nuclear War

Voice of Women  
 West Islanders for Nuclear Disarmament  
 World Federalists of Canada

#### Chile

Sociedad Chilena de Medicos para la Prevencion de la Guerra Nuclear  
 (Chilean Physicians' Society for the Prevention of Nuclear War)

#### Colombia

Medicos Colombianos para la Prevencion de la Guerra Nuclear  
 (Colombian Physicians for the Prevention of Nuclear War)

#### Costa Rica

Fundacion Arias para la Paz y el Progreso Humano  
 (Arias Foundation for Peace and Human Rights)  
 Fundacion para el Desarme y la Promocion de la Paz  
 (Foundation for Disarmament and the Promotion of Peace)  
 Grupo San Jose Sociedad Religiosa de los Amigos  
 Medicos Costarricenses para la Prevencion de la Guerra Nuclear  
 (Costa Rican Physicians for the Prevention of Nuclear War)

#### Cuba

Comite Medico Cubano para la Prevencion de la Guerra Nuclear  
 (Cuban Medical Committee for the Prevention of Nuclear War)

#### Cyprus

Cyprus Peace Council  
 Environmental Committee of Limassol  
 Federation of Environmental and Ecological Organisations of Cyprus  
 Nature Friends' Assn of Limassol

#### The Czech Republic

Ceska Spolecnost Lekarů Za Odvraceni Jaderne Valky  
 (Czech Society of Physicians for the Prevention of Nuclear War)

#### Denmark

Danske Laeger Mod Kernevaben (DLMK)  
 (Danish Physicians against Nuclear Weapons)  
 Dansk Retspolitisk Forening (Danish Lawyers)

#### Ecuador

Asociacion Ecuatoriana de Medicos por la Paz y Contra la Guerra Nuclear  
 (Ecuadorian Association of Physicians for Peace and Against Nuclear War)

#### Egypt

Egyptian Physicians for the Prevention of Nuclear Hazards

#### Belgium

Association des Etudiants pour la Prevention de la Guerre Nucleaire  
 Association Medicale pour la Prevention de la Guerre Nucleaire  
 (Medical Association for the Prevention of Nuclear War)  
 Centre Gandhi au service de l'Homme et de la Vie  
 Juristen tegen Kernwapens  
 Medische Vereniging voor de Preventie van een Atoomoorlog  
 (Medical Organization for the Prevention of Nuclear War)

#### Bolivia

Medicos Bolivianos por la Paz Mundial contra la Guerra Nuclear  
 (Bolivian Physicians for Peace and Prevention of Nuclear War)

#### Brazil

Sociedade Brasileira de Medicos Para A Prevencao de Guerra Nuclear  
 (Brazilian Society of Physicians for the Prevention of Nuclear War)

#### Bulgaria

National Committee of Physicians for the Prevention of Nuclear War

#### Canada

Alberta Teachers' Association  
 Arbour Recycled Products, Ottawa  
 Brantford City Council  
 Burlington Association for Nuclear Disarmament  
 Canadian Brotherhood of Railway, Transport and General Workers  
 Canadian Federation of University Women  
 Canadian Peace Alliance  
 Canadian Physicians for the Prevention of Nuclear War  
 Canadian Seniors Network  
 Canadian Teacher's Federation  
 Flanborough Peace Group  
 Kitchener City Council  
 Lawyers for Social Responsibility  
 Lethbridge Nuclear Disarmament Coalition  
 National Pensioners and Senior Citizens Federation  
 Ontario Secondary School Teachers' Federation  
 Peace and Justice Committee - Anglican Diocese of Calgary  
 Project Ploughshares  
 Science for Peace  
 Toronto City Council  
 Union of Spiritual Communities of Christ  
 United Church of Canada  
 Vancouver City Council  
 Veterans Against Nuclear Arms  
 Veterans for Peace  
 Victoria City Council

#### El Salvador

Medicos Salvadoreanos para la Responsabilidad Social  
 (Salvadoran Physicians for Social Responsibility)

#### Estonia

Estonian Physicians for the Prevention of Nuclear War

#### Fiji

International Physicians for the Prevention of Nuclear War-Fiji Branch

#### Finland

Finnish Lawyers for Peace and Survival  
 Laakarit Ydinsotaa Vastaaan-Lakare mot Karnvapenkrig  
 (Finnish Physicians for the Prevention of Nuclear War)  
 LYV-Suomen Laakariliitto (Finnish Medical Association)  
 LYV-Suomen Hammaslaakariliitto (Finnish Dental Association)  
 LYV-Suomen Elainlaakariliitto (Finnish Veterinarian Association)

#### France

Juristes contre l'Arme Nucleaire  
 Association des Medecins Francais pour la Prevention de la Guerre Nucleaire  
 Appel des Cent

#### Georgian Republic

Georgian Physicians for the Prevention of Nuclear War

#### Germany

Deutsche Sektion der IPPNW/Arzte in Sozialer Verantwortung  
 (German Section of IPPNW/Physicians for Social Responsibility)  
 DFG-VK  
 Lawyers Against Nuclear Arms  
 Vereohnungsbund  
 Vorarlberger Rechtsanwalte gegen Atomgefahr

#### Ghana

Ghanaian Physicians for the Prevention of Nuclear War  
 Green Earth Organization

#### Greece

Greek Medical Association for the Protection of the Environment  
 and against Nuclear and Biochemical Threat

#### Guatemala

Asociacion Guatemalteca de Medicos y Cientificos para la Prevencion de la Guerra  
 (Association of Guatemalan Physicians and Scientists for Prevention of Nuclear War)

**Honduras**  
Medicos Hondurenos para la Prevencion de la Guerra Nuclear  
(Honduran Physicians for the Prevention of Nuclear War)

**Hungary**  
Magyar Orvosmozgalom a Nuklearis Haboru Megelozeseert  
(Hungarian Physicians for the Prevention of Nuclear War)

**Iceland**  
Samtok Islenskra Laekna gegn Kjarnorkuva  
(Association of Icelandic Physicians for the Prevention of Nuclear War)

**India**  
Anuvrat Global Organization (Anuvibha)  
Green Watchers Nature Club  
Indian Campaign for Nuclear Disarmament  
Indian Association  
National Association of Indian Doctors for Prevention of Nuclear War  
Indian Lawyers Against Nuclear Arms  
People's Commission on Environment and Development India  
Tamilnadu United Nations Association

**Indonesia**  
Himpunan Polemologi Medis Indonesia  
(Indonesian Society for Medical Polemology)

**Iraq**  
Iraqi Physicians for the Prevention of Nuclear War

**Ireland**  
CND  
Irish Medical Campaign for the Prevention of Nuclear War

**Israel**  
Igud Israeli Shel Refim le Meniat Milchamah Garinit

**Italy**  
Centro di Iniziativa Giuridica contra la Guerra  
Associazione Italiana Medicina per la Prevenzione de la Guerra Nuclear  
Lega Internazionale per i Diritti e la Liberazione dei Popoli

**Jamaica**  
Professionals for Social Responsibility

**Japan**  
Japanese Physicians for the Prevention of Nuclear War  
Gensukin; Japan Congress Against A and H Bombs  
Gensuikyo; The Japan Council against Atomic and Hydrogen Bombs  
The Kantoh Association of Lawyers for the Elimination of Nuclear Weapons

**Jordan**  
Jordan Physicians for the Prevention of Nuclear War

**Kazakhstan**  
Kazakh Association of IPPNW

**Kenya**  
Kenya Association of Physicians and Health Workers for Social Responsibility

**Kuwait**  
The Kuwait Physicians for the Prevention of Nuclear War

**Latvia**  
Latvia Branch, IPPNW

**Lithuania**  
Lithuanian Physicians for Social Responsibility

**Luxembourg**  
Resistance Medicale Aux Armes Nucleaires  
(Medical Campaign Against Nuclear Arms)

**Madagascar**  
Fikambanan'ny Dokofera Eto Madagasikara Ho Amin'ny  
Fisorohana Ny Ady Nikleera

**Malaysia**  
Malaysian Physicians for the Prevention of Nuclear War

**Mauritius**  
Mauritius Physicians and Social Group against Nuclear War

**Mexico**  
Medicos Mexicanos para la Prevencion de la Guerra Nuclear  
Servicio Paz y Justicia  
Asociacion Mexicana para las Naciones Unidas

**Mongolia**  
Mongolian Committee of Physicians for the Prevention of Nuclear War

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**Nepal**  
Physicians for Social Responsibility, Nepal

**Netherlands**  
Algemene Doopsgezinde Societeit (Mennonites Society)  
Basisbeweging Nederland (Movement of Basic Christian Communities)  
Beweging Weigering Defensiebelasting (War Tax Resisters)  
Christelijke Vredesconferentie, Nederland (Christian Peace Conference Netherlands)  
Commissie Oorlog en Vrede Remonstrante Broederschap  
(Commission War and Peace of Remonstrant Brotherhood)  
Dwars, Groen-Linkse Jongeren Organisatie (Green-Left Youth Organisation)  
Economen voor de Vrede (Economists for Peace)  
Franciskaanse Vredeswacht (Franciscan Peace Guard)  
Friends of the European Peace Pilgrimage  
Greenpeace Netherlands  
Groen Links (Green Left Political Party)  
Haags Vredesplatform (The Hague Peace Platform)  
Interkerkelijk Vredesberaad (Inter-Churches Peace Council)  
Johannes Wier-Stichting (Foundation for Health Care and Human Rights)  
Jonge Socialisten in de Partij van de Arbeid (Young Socialists in Labour Party)  
Kerk en Vrede (Church and Peace)  
Katholieke Vrouwengilde Nederland (Catholic Women's Guild Netherlands)  
Koninklijke Nederlandse Maatschappij voor Geneeskunde  
(Dutch National Health Association)  
Liga voor de Rechten van de Mens (Human Rights League)  
Nederlands Hervormde Kerk (Dutch Reformed Church)  
Nederlandse Kernstop Coalitie (Dutch Test Ban Coalition)  
Nederlandse Vereniging voor Medische Polomologie (Dutch IPPNW Affiliate)  
Nederlandse Vereniging voor de Verenigde Naties  
(United Nations Association in the Netherlands)  
Nieuwe Unie '91 (Organisation of Health Care Professionals)  
Pax Christi, Netherlands  
PBI-Netherlands (Peace Brigades International, Netherlands)  
Psychologen voor de Vrede (Psychologists for Peace)  
Quaker Vredescommissie (Peace Committee of Quakers)  
Raad van Kerken in Nederland (Council of Churches in the Netherlands)  
Steunpunt Vredesgroepen Noord Holland (Peace Groups North Holland)  
Studiecentrum Vredesvraagstukken Katholieke Universiteit Nijmegen  
(Study Center of Peace Problems at the Catholic University in Nijmegen)  
Stichting Tribunaal voor de Vrede (Foundation Peace Tribunal)  
Stichting Verbiedt de Kruisraketten (Ban the Cruise Missiles)  
Stichting voor Actieve Geweldloosheid (Foundation for Active Non-Violence)  
't Kan Anders; Werkgemeenschap voor Pacifisme, Ecologie en Socialisme  
(Working Community for Pacifism, Ecology, and Socialism)  
Vereniging Juristen voor de Vrede (Lawyers Association for Peace, Netherlands)

**Vereniging van Anti-Fascistische Oud Verzetsstrijders Nederland**  
(Association of Anti-Fascists War Resisters in the Netherlands)  
Vredescommissie Technische Universiteit  
(Peace Committee Technical University of Eindhoven)  
Vrouwen voor Vrede (Women for Peace)  
Wereld Federalisten Beweging Nederland (World Federalists, Netherlands)  
Women's International League for Peace and Freedom, Netherlands  
Nederlandse Vereniging van Vrouwelijke Artsen  
(Dutch Association of Female Physicians)  
YWCA Netherlands (Young Women's Christian Association)

**Nicaragua**  
Asociacion de Juristas Democraticos de Nicaragua (Democratic Lawyers' Association)  
Asociacion Nicaraguense de las Naciones Unidas  
(United Nations Association of Nicaragua)  
Asociacion Soya de Nicaragua (Soynica)  
FUNDECI-Fundacion Nicaraguense pro Desarrollo Comunitario  
Integral (Foundation for Community Development)  
Casa de los Amigos (Friends' Society)  
Movimiento Ambientalista Nicaraguense (Environmental Co-alition of Nicaragua)  
Sociedad Nicaraguense de Medicos por la Paz y la Defensa de la Vida  
Servicio Paz y Justicia-Nicaragua (SERPAJ)

**Nigeria**  
Society of Nigerian Doctors for the Welfare of Mankind

**Norway**  
Besternodrene pa Stortings plass (Grandmothers for Peace)  
Folereising mot krig (War Resister's International)  
Human-Etisk Forbund (Norwegian Humanist Association)  
Informasjonsarbeidere for fred (Information for Peace)  
Internasjonal dugnad  
Internasjonal Kvinneliga for Fred og Fihet Ikff (WILPF Norway)  
Kampanjen mot verneplikt (KMV)  
Kristent fredslag (Christian Peace Society)  
Kunstnere for fred (Norsk avd. PAND)  
Laerere for fred (Teachers for Peace)  
Norges Fredsraad (National Peace Council)  
Norges Fredsiag (Norwegian Peace Society)  
Nei Til Atomvapen (Norwegian CND)  
Norsk kvinneforbund (Norwegian Association of Women)  
Norsk Medlemsgruppe IALANA  
Norske Leger mot Atomkrig (Physicians Against Nuclear War)  
Norwegian Teachers Against Nuclear War  
Oslo Arbeiderparti (Labour Party, Oslo branch)  
Paykologer for fred (Psychologists for Peace)  
Vitenskap ogansvari atomalderen (Scientists for responsibility in the nuclear age)

**Panama**  
Asociacion de Medicos Panamenos para la Prevention de la Guerra Nuclear y la Proteccion del Ambiente

**Pakistan**  
Pakistan Lawyers Against Nuclear Arms  
Pakistan Physicians for the Prevention of Nuclear War

**Palestine**  
Palestinian Physicians for the Prevention of Nuclear War  
Palestinian Lawyers Union (based in Egypt)

**Philippines**  
Lawyers for Peace and Development  
Philippine Physicians for the Prevention of Nuclear War

**Poland**  
Independent Student Association, Warsaw University of Technology  
Sekcja Polskiego Towarzystwa Lekarskiego

**Portugal**  
Associacao dos Medicos Portugeses para a Prevencao da Guerra

**Republic of Korea**  
Korean Physicians for the Prevention of Nuclear War

**Romania**  
Medici Romani Pentru Prevenirea Razboiului Nuclear

**Russia**  
Gorbachev Foundation  
Russian Physicians for the Prevention of Nuclear War  
Russian Association of Lawyers Against Nuclear Weapons

**Sierra Leone**  
Port Loko UNA

**Spain**  
Asociacion Espanola de Medicos para la Prevencion de la Guerra Nuclear

**Sri Lanka**  
Committee of Humanitarians

**Sudan**  
Sudanese Physicians for the Prevention of Nuclear Hazards

**Sweden**  
Arkitekter for nedrustning och hallbar utveckling (Architects for Disarmament)  
Artister for Fred (Artists for Peace)  
Ingenjorer mot karnvapen (Engineers Against Nuclear Arms)  
Meteorologer mot karnvapen (Meteorologists Against Nuclear Arms)  
Psykologer mot karnvapen (Psychologists Against Nuclear Arms)  
Svenska jurister mot karnvapen (Swedish Lawyers Against Nuclear Arms)  
Svenska sjukskoterskor och assistenter mot karnvapen (Swedish Nurses Against Nuclear Arms)  
Svenska lakare mot karnvapen (Swedish Physicians Against Nuclear Weapons)

**Switzerland**  
Arzte fur Soziale Verantwortung Schweiz  
Demokratische Juristinnen und Juristen der Schweiz

**Syria**  
Syrian Physicians for the Prevention of Nuclear War

**Tanzania**  
National Peace Council  
The Tanzanian Medical Organization for Peace and Health

**Thailand**  
Coalition for Peace and Development

**Trinidad and Tobago**  
Society Against Nuclear Indiscretion

**Turkey**  
Nukleer Savasin Onlenmesi Icin Hekimler Dernegi (Turkish Health Professionals for Peace and Environment Against Nuclear War)

**Uganda**  
Ugandan Association of Medical Workers for Health and Environmental Concerns

**United Kingdom**  
Campaign for Nuclear Disarmament  
Church of Scotland  
Engineers for Social Responsibility  
Haldane Society  
Institute for Law and Peace  
Just Defence  
Labour Action for Peace  
Medical Action for Global Security  
Pax Christi

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Pax Legalis  
Professions for World Development and Disarmament  
Scientists for Global Responsibility  
United Nations Association  
World Disarmament Campaign  
World Conference on Religion and Peace

**United States**  
Alliance for Justice  
Alliance of Atomic Veterans  
American Peace Test  
American Public Health Association  
Alaskans for Peace  
Center for Development of International Law  
Children's Campaign for Nuclear Disarmament (New Haven, CT)  
Church Council of Greater Seattle  
Coalition for Nuclear Disarmament  
Friends of the Earth USA  
Global Peace Farmers Affinity Group  
Gray Panthers, San Francisco  
Gray Panthers of Prince Georges County  
Greenpeace USA  
Harrisburg-Hiroshima-Nagasaki Committee  
INFACT Campaign  
Lawyers' Alliance for World Security (MA)  
Lawyers' Committee on Nuclear Policy  
Maryland United for Peace and Justice  
Mid South Peace and Justice Center  
Nevada Desert Experience  
New York University Environmental Law Society  
Nuclear Free America  
100th Monkey Project to End Nuclear Testing  
Pax Christi  
Palo Alto Monthly Meeting Religious Society of Friends  
Peace Action (formerly Sane/Freeze)  
Peninsula Peace Education Center  
Physicians for Social Responsibility  
Professionals Network for Social Responsibility  
Seeds for Peace  
Seattle Women Act for Peace  
Seattle Chapter of the National Lawyers Guild  
Seattle Chapter of the United Nations Association of the USA  
Sisters of Mercy of the Americas  
The Church Council of Greater Seattle  
The Nuclear Resister  
The Pacific Northwest Conference of the United Methodist Church

University Meeting of the Society of Friends, Seattle  
Veterans for Peace  
War and Peace Foundation  
War and Peace Project  
Western States Legal Foundation  
Women Strike for Peace

**Venezuela**  
Asociacion de Medicos Venezolanos para la Prevencion de la Guerra Nuclear

**Vietnam**  
Association des Juristes de la Republique Socialiste du Vietnam.

**Zambia**  
Zambian Health Workers for Social Responsibility

**Zimbabwe**  
Organisation for Peace and Disarmament in Southern Africa  
Zimbabwe Health Workers for the Prevention of Nuclear War  
Zimbabwe Synod of the United Congregational Church of Southern Africa

# Prominent Endorsers of World Court Project Aotearoa/New Zealand

November 1993

## Individuals

Dame Dorothy Winstone, Member Emerita, NZ Federation of University Women  
 Dame Laurie Salas, Peace Plenipotentiary  
 Dame Malvina Major, Opera Diva  
 Dame Miraka Szassy, Maori Leader  
 Dame Whina Cooper, Maori Leader  
 Lady Jocelyn Hay, Civic Leader  
 Lady Harris Wizer, National proponent for Women's rights  
 Sir Geoffrey Palmer, Law Faculty, Victoria University previous Prime Minister  
 Sir Arthur Williams, Businessman and Philanthropist  
 Sir David Hay, Founding Director of the National Heart Foundation of New Zealand  
 Sir Guy Powles, former member International Commission of Jurists (NZ)  
 Sir Hamish Hay, Chairman of the Museum of NZ Bond  
 Sir Jack Harris Bt, Retired Businessman  
 Prof. Sir John Scott, Prof of Medicine, Middlemore Hospital Auckland  
 Sir Paul Reeves, former Archbishop of New Zealand and Governor General  
 Sir Roy McKenzie, Businessman and Philanthropist  
 Sir Wallace Rowling, Previous Prime Minister  
 Fred Turnovsky ONZ, OBE, Businessman & Philanthropist  
 Henry Lang ONZCBE, Previous Secretary of Treasury  
 Hugh Fletcher, Businessman  
 J.K. Shallcross, CBE, Educator  
 W.R. Renwick, Former Director-General of Education  
 Gordon Hogg, Businessman/Founding Chief Executive - Data Bank  
 Dr Robin Bryant, Chairperson of the Medical Council of NZ  
 Ian Fraser OBE, Television Broadcaster  
 Hon Hugh Topleton, former Cabinet Minister  
 Rae Julian, formerly Human Rights Commissioner  
 Carolyn Bull, Human Rights Commissioner, Christchurch  
 The Rt Rev Dr J. S. Sumnerville ONZ, Former Chancellor of Otago University  
 Douglas Litham ONZ, Composer

## Leading Lawyers

Rt Hon Sir Theodorus McCarthy, Past President Court of Appeal  
 Dr G.P. Barton QC  
 Dr Maryn Finlay QC  
 Harold Evans, retired judge  
 Peter Salmond QC  
 Peter Williams QC  
 Frank O'Flynn QC, former Minister of Defence  
 Simon Reeves, LL.M.  
 Gerald Tuohy QC  
 Rupert Glover, LL.B (Hons) MA (Hons)

## Church Leaders

Archbishop Brian Davis, Archbishop of NZ and Polynesia  
 Cardinal Thomas Williams, Archbishop of Wellington  
 Rev. Dr Dame Phyllis Gubbard, Former Moderator Methodist Church Aotearoa/NZ  
 The Rt Rev. John Evans, Moderator of the Presbyterian Church of Aotearoa/NZ

Rev. Helen Wallis, The Moderator - Presbytery of Christchurch, Presbyterian Church of Aotearoa/NZ  
 The Rt Rev. B.C. Gilbert, Anglican Bishop of Auckland  
 The Rt Rev. David Coles, Anglican Bishop of Christchurch  
 The Rt Rev. Derek L. Eaton, Anglican Bishop of Nelson  
 The Rt Rev. Dr Penny Jamieson, Anglican Bishop of Dunedin  
 The Rt Rev. Murray John Mills, Anglican Bishop of Waikato  
 The Very Rev. John Murray, past moderator Presbyterian Church of Aotearoa/NZ  
 The Rt Rev. Roger Heft, Anglican Bishop of Waikato  
 The Rt Rev. Dr Thomas J. Brown, Assistant Bishop, Diocese of Wellington  
 The Rt Rev. Geoffrey Wilson, Anglican Bishop Auckland  
 The Ven. Murray Spackman, Archdeacon & Bishop's Commissary in the Hauraki  
 Rev. Richard Anderson, Social Responsibility Commissioner, Anglican Church NZ  
 The Rt Rev. Dr Alan Brash, former Dep. Sec. of World Council of Churches  
 David Bonta, Assistant Minister St Paul's Trinity Pacific  
 G. Armstrong, Vicar of St. Georges Church, Seaton, Wellington  
 Jocelyn Armstrong, Exec. Sec. of Conference of Churches Aotearoa/NZ  
 Michael Earle, Director, Anglican Social Services, Christchurch  
 Rev. Lapana Paleoluhi, Presbyterian Minister St Paul's Trinity Pacific  
 Phyllis M. Short., The Religious Society of Friends  
 Alan Gilderdale, Elder of Religious Society of Friends (Quakers)

## Members of Parliament

Bruce Gregory (Northern Maori)  
 Chris Laidlaw (Wellington Central)  
 Christine Fletcher (Eden)  
 Clive Mathewson (Dunedin West)  
 David Cuyll (St. Albans)  
 David Lange (Mangere)  
 Geoff Baybrook (Ngere)  
 George Hoekias (Manurewa)  
 Gilbert Myles (Rosedell)  
 Graham Kelly (Porirua)  
 Grant Thomas (Hamilton West)  
 Hamish McInyre (Manawatu)  
 Helen Clark (Mt. Albert)  
 Jack Elder (West Auckland)  
 Jim Anderson (Sydenham)  
 Jim Gerard (Rangiora)  
 John Blincoe (Nelson)  
 Joy McLaughlan (Western Hutt)  
 Judith Tizard (Punamure)  
 Koro Wheeler (Western Maori)  
 Larry Suterland (Avon)  
 Lianne Daleisi (Christchurch)  
 Liz Tennet (Inland Bay)  
 Margaret Austin (Tairāhuru)  
 Michael Cullen (St. Kilda)  
 Michael Moore (Christchurch North)  
 Nick Smith (Tasman)  
 Paul Swan (Eastern Hutt)  
 Pete Hodgson (Dunedin North)  
 Peter Dunne (Oharu)  
 Peter Tapsell (Eastern Maori)

Robert Anderson (Kaiaua)  
 Ross Robertson (Papatoetoe)  
 Jonathan Hunt (New Lynn)  
 Sonja Davies (Poncaerow)  
 Steve Maharey (Palmerston North)

## Civic Leaders and Councilors

Fran Wilde, Mayor of Wellington  
 Vicki Buck, Mayor of Christchurch  
 Bill Woods, Mayor of Lower Hutt  
 Glen Evans, Mayor of Selwyn District Council  
 Brett Ambler, Mayor of Kapiti Coast District Council  
 Claire Stewart, JP, Mayor of New Plymouth  
 David G. Bradford, Mayor of Queenstown  
 John Burke, Mayor of Porirua  
 Kerry Marshall, Mayor of Tasman District Council  
 Paul Tiegher, Mayor of Palmerston North  
 Paul Titchener, Mayor of North Shore City  
 Philip Woolston, Mayor of Nelson  
 Alan Dick, Mayor of Napier  
 Stan Semenovoff, Mayor of Whangarei  
 Philip Warren, JP, Chairman - Auckland Regional Council  
 Alex Clark, Christchurch City Councilor  
 Alison Clark, Deputy Mayor of North Shore City  
 Andy Foster, Wellington City Councilor  
 Ann Hanley, ex-Mayor of North Shore City  
 Ann Hurford, ex-Mayor of Selwyn District Council  
 Barbara Warren, Community Board Councilor, Christchurch  
 Bryan East, North Shore City Councilor  
 Charles Manning, Christchurch City Councilor  
 Trevor Inch, Waitakere District Councilor  
 David Close, Christchurch City Councilor  
 Diana Shan, Canterbury Regional Councilor  
 Diane Hale, North Shore City Councilor  
 Don Borrie, Porirua City Councilor  
 Dr Neil Cherry, Canterbury Regional Councilor  
 Gary Moore, Christchurch City Councilor  
 Genevieve Beeroff, North Shore City Councilor  
 George Thev GSM, Regional Councilor of Rodney (ex Navy)  
 Ivet Frank, ex-Mayor of Kapiti Coast District Council  
 J. Frank Cody, QSO, JP, former Mayor of Masterton  
 Wyn Headley, North Shore City Councilor  
 Wyn Headley, Auckland Regional Councilor  
 Jenny Thomas, North Shore City Councilor  
 Judy Waters, Canterbury Regional Councilor  
 Linda Constable, Christchurch City Councilor  
 Maire Leadbeater, Auckland Regional Councilor  
 Margaret Shields, former MP  
 Nick Cherry, Canterbury Regional Councilor  
 Paul Thompson, North Shore City Councilor  
 Peter Malone, ex-Mayor of Nelson  
 Peter Parusint, Wellington City Councilor  
 Robert Shaw, Porirua City Councilor  
 Ruth Gollob, Wellington City Councilor  
 Ruth Norman, Auckland Regional Councilor  
 Richard Wallis, Mayor of Dunedin  
 Sir James Belich, ex-Mayor of Wellington  
 Ted Melton, Community Development Officer, North Shore  
 Terahiti S. Arthur, Porirua City Councilor  
 Tim Leitch, North Shore City Councilor

## Leaders of National Organisations

Alison Roxburgh, National President, National Council of Women  
 Ken Douglas, President, Combined Trades Union  
 Nat Dunning, Chairman, NZ Council of Civil Liberties  
 Alistair Scott, Chairman, NZ Medical Association  
 Barbara Disley, Director of the Mental Health Foundation  
 Carrick E. Lewis, National President, United Nations Assoc.  
 Graham Curtis, President, NZ Public Service Association  
 George Pomer, Director, Pacific Inst. of Resource Management  
 Pauline Tangborn, President, Women's Int. League for Peace & Freedom.

Jim Melchior, National Chairperson, International Physicians for the Prevention of Nuclear War, NZ  
 Nicky Hager, Peace Movement Aotearoa  
 Gerald O'Brien, National President, Peace Council of Aotearoa/NZ

Pat Kelley, Union Secretary  
 Lorraine Isaacs, National President, NZ Fed. of University Women  
 Maryn Street, President of NZ Labour Party  
 Ruth Dyson, ex-President of the NZ Labour Party  
 Carol Conic, Northern Regional President, United Nations Assoc.  
 Georgina Kirby, past President, Maori Women's Welfare League  
 Larry Ross, Sec. NZ Nuclear Free Peacekeeping Assoc.  
 Maggie Eyre, Founding Director of The Performing Arts School  
 Matt. Robison, International Affairs Spokesperson for the Alliance Party  
 Con Coffey, Wellington President, United Nations Assoc.

## Artists, Writers, Broadcasters & Television Personalities

Barry Brickell, potter, conservationist  
 Betty Gilderdale, author  
 Claire Jennings, artist  
 John Drawbridge, artist  
 Gaylene Preston, film producer and writer  
 Tanya Ashken, artist  
 Clive Conland, National Radio presenter  
 Dennis Trussell, writer and poet  
 Douglas Litham, composer  
 David Young, Journalist and Ecologist  
 Elsie Locke, writer/historian  
 Arden Jennings, writer  
 George Andrews, television producer  
 Gill Hanley, photographer  
 Hone Tuwhare, poet  
 Janet Paul, artist and writer  
 Jason Omu, television personality  
 Kate Harcourt, actor and broad caster  
 Jenny Anderson, Radio Pacific presenter  
 Jenny McLeod, musician and composer  
 Kathryn Asens, radio presenter.  
 Ken Russel, television cameraman  
 Ann Muniz, artist  
 Lauris Edmond, poet  
 Fraser Bruce, musician  
 Liddy Holloway, writer/actress.  
 Marie Szarmay, sculptor  
 Mary Jane O'Keilly, choreographer  
 Maurice Sheehoh, writer  
 Michael King, historian/writer  
 Anthony Haas, journalist  
 Murray Ball, cartoonist  
 Nigel Brown, artist  
 Pat Booth, journalist  
 Penelope Barr, television personality  
 Peter Calder, journalist  
 Hamish Keith, art consultant  
 Ruina Te Wata, performer  
 Pauline Ferguson, Poet  
 Steve Parr, television presenter  
 Tainui Stephens, executive producer, TVNZ  
 Tony Simpson, writer and historian  
 Trish Gribben, writer

## Academics

**Auckland University**  
 Dr Ngahua Te Awe Kotutu, Dept. of Art History  
 Prof. Brian Davis, Senior Lecturer in Chemistry  
 Prof. Robert White, Director, Centre for Peace Studies  
 Tetsuo Takagaki, Japanese Lecturer

## Endorsers from various disciplines

- Auckland School of Medicine**  
 Prof. Derek North, Emeritus Dean and Prof. of Medicine  
 Prof. David Cole, Dean Emeritus, Treasurer, IPPNW, N.Z.  
 Prof. B.C. Baguley, Director of Cancer Research Laboratory  
 Prof. Robert Baguley, Dept. of Community Health  
 Prof. J.D. Streeter, Prof. of Physiology  
 Dr. Bryan Hardie, Dept. of Community Health  
 Dr. Ruth Bonita, Dept. of Community Health
- Auckland Law School**  
 Dr. Jerome Ekland, Lecturer in International Law  
 Klaus Rosenthal  
 Prudence Taylor
- Others (Auckland)**  
 Dr. John Hinchey, AIT  
 Trevor Dobbins, College of Education
- Canterbury University**  
 Andrew Alison, Barrister & Senior Lecturer in Law  
 Dr. James Stuart, University Chaplain  
 Dr. Kevin Clements, Senior Lecturer in Sociology  
 Dr. Patricia Berwick, Lecturer  
 J. A. Black, Lecturer in Law  
 J. S. Davidson, Senior Lecturer in International Law  
 Michelle Slater, Senior Lecturer in Law  
 N.J. Peet, Senior Lecturer, School of Engineering  
 Peter Low, Senior Lecturer in French  
 Prof. W. E. Willmott, Sociology Dept.  
 Rosemary Du Plessis, Senior Lecturer in Sociology  
 Rosemary Parkin, Lecturer in Education
- Christchurch School of Medicine**  
 Dr. Alan Clarke, Dean  
 Dr. Cheryl Brunton, Senior Lecturer in Community Health  
 Prof. D.W. Beeson, Prof. of Medicine and Senior Health Administrator
- University of Otago**  
 Prof. A.R. Hornbowl, Prof. of Community Health  
 Prof. A.R. Hornbowl, Prof. of Community Health  
 Luluolin University  
 Rev. Maurice Gray, Director of the Centre for Maori Studies & Research
- University of Otago**  
 David B. Menkes, Senior Lecturer and Consultant Psychiatrist  
 Sarah E. Romans, Professor and Chairperson  
 Otago School of Medicine  
 E.R. Nye, Physician and co-Chairman of IPPNW  
 Jeffrey A. Peat, Senior Lecturer in Cardiothoracic Surgery  
 Prof. Alistair V. Campbell, Director of Biomedical Ethics  
**Wellington School of Medicine**  
 Prof. G.W. Mellish, Professor of Psychological Medicine  
 Dr. Ian Prior, Epidemiologist, Dept. of Community Health  
 Dr. Ian St George, Associate Dean of Postgraduate Affairs  
 Robert D. Bovic, Lecturer in Health Economics  
 Lady Keith, HoD, Dept. of Community Health  
 Prof. Eric Pomare, Dean and Professor of Medicine  
 Prof. Laurence Malcolm, Professor of Community Health
- Victoria University**  
 Dr. Ray Goldstein, Senior Lecturer, Politics Dept  
 Dr. Rod Alley, Senior Lecturer, Politics Dept  
 Dr. James Collinge, Associate Dean (students)  
 The Rev. Dr. James Veitch, Religious Studies Department  
 Prof. Peter Munz, Prof. Emeritus of History  
 Prof. Brian Philpott, Professor Emeritus of Economics  
 Catherine Wallace, Lecturer in Economics, Co-President of ECO  
 Margaret Nelson, Senior Lecturer, Music Department  
 Ross Harris, Composer, Music Department  
 Allan Thomas, Chairperson of Music Department
- Waikato University**  
 Charmaine Pomroy, Principal & Dean, School of Education  
 Dr. Wayne Robinson, Senior Lecturer, Politics Dept  
 Prof. Ian Pool, Director of Population Studies  
 Marilyn Waring, ex-MP, Lecturer
- North Shore Peace Group**  
 NZ Federation of University Women Inc (North Shore Branch)  
 NZ Nuclear Free Proliferation Association  
 Operation Peace Through Unity  
 Otago Regional Council  
 Pacific Concerns Resource Centre  
 Pacific Institute of Resource Management  
 Pakia Treaty Action  
 Peace Action Tauranga (PACT)  
 Peace Network of the Conference of Churches in Aotearoa/New Zealand/Taura Here i te Rongomau  
 Porirua City Council  
 Public Health Association of NZ  
 Rangitikei District Council  
 Religious Society of Friends (Quakers)  
 Riversdale Community  
 Rotorua District Council  
 Ruawari Co-operating Parish  
 Selwyn District Council  
 St Andrews-on-the-Terrace, Wellington  
 St Peter's Anglican Church, Vestry  
 Student Christian Movement - Otago  
 Taura Here i te Rongomau  
 Takapuna Grammar School  
 Turgo Peace Group  
 Thames/Coastal District Council  
 The Anglican Church in Aotearoa, New Zealand and Polynesia  
 The Conference of the NZ/Russia & Sovereign States Association Inc.  
 The Environmental Law Centre Inc., Auckland  
 The New Zealand Council of Civil Liberties  
 The Religious Society of Friends  
 The Staff of the Accident & Medical Centre - Hamilton  
 Tui Land Trust & Community  
 UNICEF Committee  
 United Nations Association (Canterbury Branch)  
 United Nations Association (NZ)  
 United Nations Association (Waikato Branch)  
 Waikato Island Peace Group  
 Waikato Women for Peace  
 Wanganui District Council  
 Wellford Anglican Parish  
 West Auckland Peace Group  
 West Lake Girls High School  
 Women's Electoral Lobby (NZ)  
 Women's International League for Peace & Freedom, Aotearoa (WILPF)  
 Young Women's Christian Association of New Zealand (YWCA)
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 NZ Federation of University Women Inc (North Shore Branch)  
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 West Auckland Peace Group  
 West Lake Girls High School  
 Women's Electoral Lobby (NZ)  
 Women's International League for Peace & Freedom, Aotearoa (WILPF)  
 Young Women's Christian Association of New Zealand (YWCA)
- Amuth Lorenz, Winemaker, Merlen Winas, Blenheim**  
 Mr Peter Harcourt, Pear Harcourt and Associates Ltd  
 Norma E Evans, President of National Council of Women (Dannevirke Branch)  
 Dr Tim Ewer, Physician, Mapua Health Clinic  
 Pat Morrison, National Vice-Pres. United Nations Assn.  
 Dr George Salmon, Institute of Policy Studies, former Director General of Health  
 Dr Erich Geuringer, Wellington, International Co-ordinator for IPPNW World Court Project  
 Dr Malcolm Watson, Consultant Physician, Lower Hutt  
 Robin Halliday, United Nations Assn, Wellington  
 Dr Archie Kerr, Chairperson, Hutt Hospital Staff, Paediatrician  
 Russell Tregunning, Ophthalmic Surgeon, Wellington  
 Selina E. Burgess, QSM  
 Shona Harrington, Chairperson, NZ Education Foundation  
 Dr Carol Shand, General Practitioner, Wellington  
 Dr Lyndie Kerr, A&E Department, Hutt Hospital  
 Suzanne Couper, YWCA, Auckland  
 Virginia Fitch, Principal, Kirkwood Intermediate  
 Yvonne Matheson, GND, Auckland
- Organisations/Groups**  
 Accident and Medical Centre, Hamilton  
 Anglican Diocese, Waikato - via Transformation Sector Council  
 Anglican Social Justice Committee - Bay of Plenty  
 Anti-Bases Campaign - Christchurch  
 Aotearoa/NZ Foundation for Peace Studies  
 Architects Against Nuclear Arms  
 Association of Anglican Women (Winton Branch)  
 Auckland City Council  
 Auckland Diocesan Mothers Union  
 Auckland Regional Council  
 Bay of Plenty Regional Council  
 Canterbury Workers Educational Association Inc.  
 Catholic Commission for Justice, Peace, and Development  
 Centre for Peace Studies, University of Auckland  
 GND Wellington  
 GND Whangarei  
 Council of Jewish Women (Wellington Branch)  
 Environment and Peace Information Centre (Epicentre) - Christchurch  
 Federation of Workers Education Associations (WEAs) in Aotearoa/New Zealand  
 Friends of the Earth (New Zealand)  
 Future 21 - "Talking on the World"  
 Golden Bay Community Health Committee  
 Greenpeace New Zealand  
 IALANA (NZ) - New Zealand Chapter of International Association of Lawyers Against Nuclear Arms  
 International Physicians for the Prevention of Nuclear War (IPPNW)  
 Justice & Peace Committee - East Coast Bays Auckland  
 Leadgreen - Christchurch  
 Little Sisters of the Assumption, Aotearoa/New Zealand  
 Manakau Healthy City  
 Maori Women's Welfare League  
 Matamata Piako District Council  
 Methodist Women's Fellowship  
 National Consultative Committee on Disarmament  
 National Council of Women  
 National Council of Women (Dargaville Branch)  
 National Council of Women (Tokoroa Branch)  
 New Plymouth District Council  
 NZ Council Trade Unions  
 NZ Russia and Sovereign (AN/ Wn. Chch)
- Beary Holt, OBE**  
 Precious McKenzie, sports personality  
 D.M. Madgin, Tutor, Impact Personnel College  
 Alison North, Senior Biology Educator, Auckland  
 David Leadbeter, Obstetrician & Gynaecologist, Nelson  
 Derek J. Wilson, Architect for Peace, Wellington  
 Robert Fandl, Architect, Wellington  
 Dr B.P. Meehan, Consultant Physician, Timaru  
 Dr Lindsay Haas, Head of Neurology, Wellington Hospital  
 Dr Margaret Lewis, Head of Pediatrics, Wellington Hospital  
 Geoffrey Samuels, Psychologist, Nelson  
 Dr Lynn Samuels, General Practitioner, Nelson  
 Dr Andrew Divent, General Practitioner, Nelson  
 Harvey Morgan, Surgeon, Nelson  
 Dr Brian Soobie, Consultant Physician, Wellington Hospital  
 Dr Malcolm H. Watson, Consultant Physician, Lower Hutt  
 Dr D.G. Campbell, Consultant Physician  
 Dr F.M. Davis, Consultant Anaesthetist, Christchurch  
 Dr G.S. Lovelidge, General Practitioner, Nelson  
 Dr Graeme G. Breckon, General Practitioner, Auckland  
 Dr Anna Breckon, General Practitioner, Auckland  
 Dawnie Montague-Maley, Manager Care Widing, Youth Hostel  
 Dr Harvey White, Ophthalmologist, Greenlane Hospital  
 Dr Helen Kingston, Golden Bay Medical Centre  
 Dr J.W. Jerran, General Practitioner, Nelson  
 Dr Anne Evans, General Practitioner, Papanarumu  
 Dr Bernard Cannonock, General Practitioner, Papanarumu  
 Dr Jan Breward  
 Dr John French, Cardiologist, Greenlane Hospital  
 Gerald Coates, Engineers for Social Responsibility  
 Dr John M. Neutze, Chairman, Dept. of Cardiology, Green Lane Hospital  
 Dr Karen Smith, Department of Surgery, Green Lane Hospital  
 Dr Margaret Neave, Paediatrician, Wellington  
 Dr Mark Bevin, Prospect House Medical Centre, Dunedin  
 Dr Peter M. McLean, Urologist, Nelson  
 Dr E.J. Meekey, Paediatrician, Nelson/Marlborough Health Services  
 Selena Doolan, Physiotherapist  
 C. Frances Anderson, Psychologist  
 Mark McKinstry, Software Engineer  
 Dr R.J. Wilson, General Practitioner, Pukekohe  
 Dr Rosemary Joynt, General Practitioner, Dunedin  
 Dr Trevor Agnew, Cardiologist, Auckland  
 Dr Viola Palmer, IPPNW, Tauranga  
 Dr Dixon, Nelson Health Centre  
 Dr Tisdale, Nelson Health Centre  
 Dr Nicholas Wilson, Public Health Specialist  
 E.R. Hibes, WILPF  
 Frances Hood, Federation of University Women (North Shore Branch)  
 Helen Tennant, Prov. President of Women's Division, Federated Farmers  
 Helen Woodhouse, Takapuna Librarian  
 Ivan Demson, past President Canterbury United Nations Assn.  
 J.V. Birt, retired businessman  
 Jean Putzaran, Educator  
 Nansha Templeton, Educator  
 Joan MacDonald, Secretary of WILPF  
 John Head, past President, United Nations Assn, Wellington  
 Kitu Nelson, Waheke Peace Group  
 M. & P. Harphun, WEA  
 Marilyn Glover, President of Disabled Persons Assembly (North Shore)  
 Mick Frain, Manager of Mana Tangata/Strength to the People, Greenpeace-Aotearoa  
 Myriale Thompson, Waheke Peace Group  
 Michael Hirschfeld, Chairman, Mico Wakefield Ltd  
 Michael Gibson, Chartered Accountant and Local Politician

*Note: This list is still being developed with approaches being made to key people and organisations in various areas in New Zealand society.*

## NEW ZEALAND CONTACTS

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 NZ Foundation for Peace Studies  
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 World Court Project  
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 Riccarton  
 Christchurch  
 Rt Rev John Murray  
 World Court Project (Wellington)  
 PO Box 5203  
 Wellington

WORLD COURT PROJECT

AN INTERNATIONAL SELECTION OF PROMINENT INDIVIDUAL SUPPORTERS: as of 24 October 1993

John Alderson - ex-Chief Constable of Devon & Cornwall, UK  
 Warren Alimand - former chair, Parliamentarians for Global Action, Canada  
 Luis Echeverria Alvarez - former President of Mexico  
 Jim Anderton - leader of New Labour Party, Aotearoa/NZ  
 Dr A. T. Ariyaratne - Niwano Peace Prize 1992, India  
 Edith Ballantyne - President, Women's International League for Peace & Freedom, Switzerland  
 Edel Havin Beukes - President, WILPF section, Norway  
 Justice P N Bhagwati - Former Chief Justice of India  
 Theo van Boven - Professor of International Law, Netherlands  
 Robin Briant - Chair of Medical Council of Aotearoa/NZ  
 Helen Caldwell - Environmentalist, Australia  
 Ken Cameron - General Secretary, Fire Brigades Union, UK  
 Rodrigo Carazo - former President of Costa Rica  
 Christabel Chamarette - Senator, Australia  
 Stella Cornelius - AO, OBE, UNA, Australia  
 His Holiness the Dalai Lama - Nobel Peace Prize 1989  
 Bengt Danielsson - author/ethnographer, Sweden/Tahiti  
 Brian Davis - Archbishop of Aotearoa/NZ and Polynesia  
 Fr. Miguel D Escoto - former Chancellor of Nicaragua  
 Ken Douglas - President of Council of Trade Unions, Aotearoa/NZ  
 Ruth Dyson - President of the Labour Party, Aotearoa/NZ  
 Harold Evans - retired judge, Aotearoa/NZ  
 Richard Falk - Professor of International Law, USA  
 Leonard Faulkner - R.C. Archbishop of Adelaide, Australia  
 George Fernandes - Member of Parliament, India  
 Solange Fernex - President of Peace & Disarmament Intergroup, European Parliament  
 Princess Helena Gagarin-Mountaïan - President, Anglo-Russian Children's Appeal, UK  
 S.L. Gandhi - Secretary, Anuvrat Global Organisation, India  
 Peter Garrett - musician, USA  
 Prof Lloyd Geering - Prof Emeritus, Victoria Univ, Aotearoa/NZ  
 Mikhail Gorbachev - Nobel laureate 1990, former President USSR  
 Robert Green - former Commander, Royal Navy, UK  
 Gerd Greune - Secretary-General, Initiative for Peace (IFIAS), Germany  
 Stig Gustavsson - Co-President, International Lawyers Against Nuclear Arms, Sweden  
 Dan Heap - MP, Canada  
 Fredrik Heffermehl - President, Peace Council of Norway  
 Thor Heyerdahl - explorer/archeologist, Norway  
 Lynn Hunter - MP, Shadow critic on environmental affairs, New Democratic Party, Canada  
 Bruce Kent - Vice-President, Campaign for Nuclear Disarmament, UK  
 Georgina Kirby - past President, Maori Women's Welfare League, Aotearoa/NZ  
 John Langmore - Senator, Australia  
 David Lange - ex-Prime Minister of New Zealand  
 Bernard Lowin - President, International Physicians for the Prevention of Nuclear War, USA  
 Mairéad Maguire - Nobel Peace Prize 1976, N.Ireland  
 Michael Mansfield - prominent barrister, UK  
 Dee Margrett - Senator-elect, Australia  
 Niall McDermott - former Secretary-General of the International Commission of Jurists  
 Jeanette McHugh - Minister of Consumer Affairs, Australia  
 Countess Pamela Mountbatten - UK  
 Robert Muller - former UN Under Secretary-General, Costa Rica  
 Frank O'Flynn - former Minister of Defence, Aotearoa/NZ  
 Antonio Stempel Paris - Director-General of OPANAL (Intergovernmental Organization for the Prohibition of Nuclear Weapons in Latin America and the Caribbean)  
 Linus Carl Pauling - Nobel Peace Prize 1962, USA  
 John Pilger - journalist, UK  
 Ven. Dr Havanapola Ratanasara - President, American Buddhist Council, USA

Sir Paul Reeves - Anglican Church Representative at the UN  
 Douglas Roche - former Ambassador for Disarmament, Canada  
 Anita Roddick - founder of the Body Shop, UK  
 Joseph Rotblat - founder of Pugwash scientists movement, UK  
 Svend Robinson - MP, Shadow critic on external affairs, New Democratic Party, Canada  
 Dame Laurie Salas - President of UN Association, Aotearoa/NZ  
 George Salmon - former Director-General of Health, Aotearoa/NZ  
 Lopeti Sentitui - President, Nuclear-Free and Independent Pacific Movement  
 Nathan Shyamurra - Foreign Minister of Zimbabwe  
 Edward St John - QC, Australia  
 Alexandra Sukharev - Co-President, International Lawyers Against Nuclear Arms, Russia  
 Ann Symonds - parliamentarian, Australia  
 Pauline Tangiora - President, WILPF section, Aotearoa/NZ  
 Maj-Britt Theorin - President of International Peace Bureau, Sweden  
 Prof. Jan Timbergen - Nobel Prize for Economics, Netherlands  
 Archbishop Desmond Tutu - Nobel Peace Prize 1984, South Africa  
 Jo Vallentine - former Green Senator, W. Australia  
 Peter Weiss - Co-President, International Lawyers Against Nuclear Arms, USA  
 José Federico Westerkamp - professor of physics, Argentina  
 Ian White - MEP, UK  
 Fran Wilde, former Minister for Disarmament, Aotearoa/NZ  
 Betty Williams - 1976 Nobel Peace Prize, N.Ireland/USA  
 John Williams - musician, UK  
 Thomas Williams - Cardinal, Aotearoa/NZ  
 Lois Wilson - former President, World Council of Churches, Canada

PLUS in addition to those listed:

(from Aotearoa/NZ) 18 Dames/Sirs, 39 parliamentarians, 20 mayors, 22 bishops or other religious leaders, 34 local councillors, 4 Queen's Counsels, 41 academics, 37 cultural and media figures, 30 NGO leaders, physicians.

(from Australia) 5 senators and 14 MPs/MLCs.

(from Netherlands) about 150 other well-known figures: professors, artists, journalists, church and trade union leaders.

(from UK) 73 parliamentarians, 18 bishops, 5 trade union leaders, 15 eminent academics, and 25 prominent cultural figures.

Please send all corrections and additions to this list (especially from non-Anglo-Saxon countries) to IPB at 41 rue de Zurich, 1201 Geneva, Switzerland. Tel: +41-22-731-6429, fax: 738-9419. New editions will be published periodically.

The central database for organizational endorsements is kept at the Lawyers Committee for Nuclear Policy, 666 Broadway, New York NY 10012, USA. Tel: +1-212-674-7790, fax: 674-6199. Please keep them up to date with all new organizational supporters.

Date for presentation of endorsements and Declarations of Public Conscience to the World Court: June 10<sup>th</sup> 1994. Details from IPB, IALANA or IPPNW.



## FORTY-SIXTH WORLD HEALTH ASSEMBLY

Agenda item 33

### HEALTH AND ENVIRONMENT EFFECTS OF NUCLEAR WEAPONS

Draft resolution proposed by the delegations of Bahrain, Belarus, Bolivia, Colombia, Comoros, Cook Islands, Cuba, Kazakhstan, Kenya, Kiribati, Lithuania, Mexico, Namibia, Papua New Guinea, Republic of Moldova, Swaziland, Thailand, Tonga, Uganda, Vanuatu, Zambia and Zimbabwe

The Forty-sixth World Health Assembly,

Bearing in mind the principles laid down in the WHO Constitution,

Noting the report of the Director-General on health and environmental effects of nuclear weapons;<sup>1</sup>

Recalling resolutions WHA34.38, WHA36.28 and WHA40.24 on the effects of nuclear war on health and health services;

Recognizing that it has been established that no health service in the world can alleviate in any significant way a situation resulting from the use of even one single nuclear weapon;<sup>2</sup>

Recalling resolutions WHA42.26 on WHO's contribution to the international efforts towards sustainable development and WHA45.31 which draws attention to the effects on health of environmental degradation and recognizing the short- and long-term environmental consequences of the use of nuclear weapons that would affect human health for generations;

Recalling that primary prevention is the only appropriate means to deal with the health and environmental effects of the use of nuclear weapons;<sup>3</sup>

Noting the concern of the world health community about the continued threat to health and the environment from nuclear weapons;

Mindful of the role of WHO as defined in its Constitution to act as the directing and coordinating authority on international health work (Article 2(a)); to propose conventions, agreements and regulations (Article 2(k)); to report on administrative and social techniques affecting public health from preventive and curative points of view (Article 2(p)); and to take all necessary action to attain the objectives of the Organization (Article 2(v));

Realizing that primary prevention of the health hazards of nuclear weapons requires clarity about the status in international law of their use, and that over the last 48 years marked differences of opinion have been expressed by Member States about the lawfulness of the use of nuclear weapons;

<sup>1</sup> Document A46/30.

<sup>2</sup> See *Effects of nuclear war on health and health services* (Second Edition) Geneva, WHO, 1987.

1. DECIDES, in accordance with Article 96(2) of the Charter of the United Nations, Article 76 of the Constitution of the World Health Organization and Article X of the Agreement between the United Nations and the World Health Organization approved by the General Assembly of the United Nations on 15 November 1947 in its resolution 124(II), to request the International Court of Justice to give an advisory opinion on the following question:

In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?

2. REQUESTS the Director-General to transmit this resolution to the International Court of Justice, accompanied by all documents likely to throw light upon the question, in accordance with article 65 of the Statute of the Court.



# INTERNATIONAL COURT OF JUSTICE

Peace Palace, 2517 KJ The Hague. Tel.(070-302 23 23).Cables: Intercourt, The Hague.

Telefax (070-364 99 28). Telex 32323.

- 2 -

The request for an advisory opinion submitted by the WHO thus does not relate to a question which arises "within the scope of [the] activities" of that Organization.

## Communiqué

unofficial  
for immediate release

No. 96/22  
8 July 1996

Legality of the Use by a State of Nuclear Weapons in Armed Conflict  
(Request for Advisory Opinion by the World Health Organization)

### Advisory Opinion

The Hague, 8 July 1996. The International Court of Justice found today, by eleven votes to three, that it was not able to give the advisory opinion requested by the World Health Organization on the question of the Legality of the Use by a State of Nuclear Weapons in Armed Conflict.

The Court considered that there are three conditions which must be satisfied in order to found the jurisdiction of the Court when a request for an advisory opinion is submitted to it by a specialized agency: the agency requesting the opinion must be duly authorized, under the Charter, to request opinions from the Court; the opinion requested must be on a legal question; and this question must be one arising within the scope of the activities of the requesting agency.

The first two conditions had been met. With regard to the third, however, the Court found that although according to its Constitution the World Health Organization is authorized to deal with the effects on health of the use of nuclear weapons, or of any other hazardous activity, and to take preventive measures aimed at protecting the health of populations in the event of such weapons being used or such activities engaged in, the question put to the Court in the present case relates not to the effects of the use of nuclear weapons on health, but to the legality of the use of such weapons in view of their health and environmental effects. And the Court pointed out that whatever those effects might be, the competence of the WHO to deal with them is not dependent on the legality of the acts that caused them. The Court further pointed out that international organizations do not, unlike States, possess a general competence, but are governed by the "principle of speciality", that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them. Besides, the World Health Organization is an international organization of a particular kind -- a "specialized agency" forming part of a system based in the Charter of the United Nations, which is designed to organize international co-operation in a coherent fashion by bringing the United Nations, invested with powers of general scope, into relationship with various autonomous and complementary organizations, invested with sectorial powers. The Court therefore concluded that the responsibilities of the WHO are necessarily restricted to the sphere of public "health", and cannot encroach on the responsibilities of other parts of the United Nations system. And that there is no doubt that questions concerning the use of force, the regulation of armaments and disarmament are within the competence of the United Nations and lie outside that of the specialized agencies.

The Court was composed as follows: President Bedjaoui, Vice-President Schwebel, Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjiva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins; Registrar Valencia-Ospina.

Judges Ranjeva and Ferrari Bravo appended declarations to the Advisory Opinion of the Court; Judge Oda appended a separate opinion; Judges Shahabuddeen, Weeramantry and Koroma appended dissenting opinions.

(A brief summary of the declarations and of the opinions may be found in the Annex to this Press Communiqué.)

The printed text of the Advisory Opinion and the declarations and opinions appended to it will become available in due course (orders and enquiries should be addressed to the Distribution and Sales Section, Office of the United Nations, 1211 Geneva 10; The Sales Section, United Nations, New York, N.Y. 10017; or any appropriately specialized bookshop).

A summary of the Advisory Opinion is given below. It has been prepared by the Registry for the use of the Press and in no way involves the responsibility of the Court. It cannot be quoted against the text of the Advisory Opinion, of which it does not constitute an interpretation.

The final paragraph reads as follows:

"32. For these reasons,

THE COURT,

By eleven votes to three,

Finds that it is not able to give the advisory opinion which was requested of it under World Health Assembly resolution WHA46.40 dated 14 May 1993.

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Ranjiva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins.

AGAINST: Judges Shahabuddeen, Weeramantry, Koroma."



General Assembly

DISTR.  
LIMITED

A/C.1/49/L.36  
3 November 1994

ORIGINAL: ENGLISH

Forty-ninth session  
FIRST COMMITTEE  
Agenda item 62

GENERAL AND COMPLETE DISARMAMENT

Indonesia: draft resolution

Request for an advisory opinion from the International Court of Justice on the legality of the threat or use of nuclear weapons

The General Assembly,

conscious that the continuing existence and development of nuclear weapons pose serious risks to humanity,

mindful that States have an obligation under the Charter of the United Nations to refrain from the threat or use of force against the territorial integrity or political independence of any State,

Recalling its resolutions 1653 (XVI) of 24 November 1961, 33/71 B of 14 December 1978, 34/83 G of 11 December 1979, 35/152 D of 12 December 1980, 36/92 I of 9 December 1981, 45/59 B of 4 December 1990 and 46/37 D of 6 December 1991, in which it declared that the use of nuclear weapons would be a violation of the Charter of the United Nations and a crime against humanity,

Welcoming the progress made on the prohibition and elimination of weapons of mass destruction, including the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction,

\* On behalf of the States Members of the United Nations that are members of the Movement of Non-Aligned Countries.

Convinced that the complete elimination of nuclear weapons is the only guarantee against the threat of nuclear war,

Noting the concerns expressed in the Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, that insufficient progress had been made towards the complete elimination of nuclear weapons at the earliest possible time,

Recalling that the General Assembly, convinced of the need to strengthen the rule of law in international relations, has declared the period 1990-1999 the United Nations Decade of International Law, 3/

Noting that Article 96, paragraph 1, of the Charter of the United Nations empowers the General Assembly to request the International Court of Justice to give an advisory opinion on any legal question,

Recalling the recommendation of the Secretary-General, made in his report entitled "An Agenda for Peace", 2/ that United Nations organs that are authorized to take advantage of the advisory competence of the International Court of Justice turn to the Court more frequently for such opinions,

Welcoming resolution 46/40 of 14 May 1993 of the Assembly of the World Health Organization, in which the organization requests the International Court of Justice to give an advisory opinion on whether the use of nuclear weapons by a State in war or other armed conflict would be a breach of its obligations under international law, including the Constitution of the World Health Organization,

Decides, pursuant to Article 96, paragraph 1, of the Charter, to request the International Court of Justice urgently to render its advisory opinion on the following question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?"

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- 1/ Resolution 44/23.
- 2/ A/47/277-S/24111.

SER. NO: 66

ITEM: 62

SYMBOL: A/49/699

DRAFT RESOLUTION K

GENERAL ASSEMBLY

FORTY-NINTH

PLENARY MEETING: 90

RECORDED VOTE

ADOPTED

DATE: 15 DEC 94

TIME: 6:31 PM

VOTE: 31

RESOLUTION 49/75K

YES: 78

NO: 43

ABSTAIN: 38

SUBJECT: ADVISORY OPINION FROM ICJ

Y AFGHANISTAN	N DJIBOUTI	LIBERIA	Y SAINT LUCIA
N ALBANIA	A DOMINICA	Y LIBYAN AJ	Y ST VINCENT-GREN
Y ALGERIA	DOMINICAN REP	A LIECHTENSTEIN	Y SAMOA
N ANDORRA	Y ECUADOR	A LITHUANIA	Y SAN MARINO
ANGOLA	Y EGYPT	N LUXEMBOURG	S TOME PRINCIPE
A ANTIGUA-BARBUDA	Y EL SALVADOR	MADAGASCAR	Y SAUDI ARABIA
N ARGENTINA	EQUAT GUINEA	MALAWI	N SENEGAL
A ARMENIA	A ERITREA	Y MALAYSIA	SEYCHELLES
A AUSTRALIA	N ESTONIA	A MALDIVES	Y SIERRA LEONE
A AUSTRIA	Y ETHIOPIA	Y MALI	Y SINGAPORE
A AZERBAIJAN	Y FIJI	N MALTA	N SLOVAKIA
Y BAHAMAS	N FINLAND	Y MARSHALL ISLANDS	N SLOVENIA
A BAHRAIN	N FRANCE	N MAURITANIA	Y SOLOMON ISLANDS
Y BANGLADESH	N GABON	MAURITIUS	SOMALIA
Y BARBADOS	Y GAMBIA	Y MEXICO	Y SOUTH AFRICA
A BELARUS	N GEORGIA	A MICRONESIA (FS)	N SPAIN
N BELGIUM	N GERMANY	N MONACO	Y SRI LANKA
A BELIZE	A GHANA	MONGOLIA	Y SUDAN
N BENIN	N GREECE	MOROCCO	Y SURINAME
Y BHUTAN	Y GRENADA	Y MOZAMBIQUE	A SWAZILAND
Y BOLIVIA	Y GUATEMALA	Y MYANMAR	A SWEDEN
BOSNIA/HERZEG	A GUINEA	Y NAMIBIA	Y SYRIAN AR
Y BOTSWANA	GUINEA-BISSAU	Y NEPAL	N TAJIKISTAN
Y BRAZIL	Y GUYANA	N NETHERLANDS	Y THAILAND
Y BRUNEI DAR-SALAM	Y HAITI	Y NEW ZEALAND	N TFYR MACEDONIA
N BULGARIA	Y HONDURAS	Y NICARAGUA	A TOGO
Y BURKINA FASO	N HUNGARY	A NIGER	A TRINIDAD-TOBAGO
Y BURUNDI	N ICELAND	Y NIGERIA	A TUNISIA
N CAMBODIA	Y INDIA	A NORWAY	N TURKEY
A CAMEROON	Y INDONESIA	Y OMAN	A TURKMENISTAN
A CANADA	Y IRAN (ISL R)	Y PAKISTAN	Y UGANDA
CAPE VERDE	Y IRAQ	PALAU	A UKRAINE
A CENTRAL AFR REP	A IRELAND	PANAMA	UA EMIRATES
CHAD	N ISRAEL	Y PAPUA N GUINEA	N UNITED KINGDOM
A CHILE	N ITALY	Y PARAGUAY	Y UR TANZANIA
CHINA	A JAMAICA	Y PERU	N UNITED STATES
Y COLOMBIA	A JAPAN	Y PHILIPPINES	Y URUGUAY
N COMOROS	Y JORDAN	N POLAND	A UZBEKISTAN
Y CONGO	A KAZAKHSTAN	N PORTUGAL	A VANUATU
Y COSTA RICA	Y KENYA	QATAR	Y VENEZUELA
N COTE D'IVOIRE	KUWAIT	N REP OF KOREA	Y VIET NAM
A CROATIA	A KYRGYZSTAN	A REP OF MOLDOVA	Y YEMEN
Y CUBA	LAO PDR	N ROMANIA	YUGOSLAVIA
Y CYPRUS	N LATVIA	N RUSSIAN FED	ZAIRE
N CZECH REPUBLIC	Y LEBANON	RWANDA	Y ZAMBIA
Y DPR OF KOREA	Y LESOTHO	Y ST KITTS-NEVIS	Y ZIMBABWE
N DENMARK			



# INTERNATIONAL COURT OF JUSTICE

Peace Palace, 2517 KJ The Hague. Tel.(070-302 23 23).Cables: Intercourt, The Hague.

Telefax (070-364 99 28). Telex 32323.

## Communiqué

unofficial  
for immediate release

No. 96/23  
8 July 1996

### Legality of the Threat of Use of Nuclear Weapons (Request for Advisory Opinion by the General Assembly of the United Nations)

#### Advisory Opinion

The Hague, 8 July 1996. The International Court of Justice today handed down its Advisory Opinion on the request made by the General Assembly of the United Nations in the above case. The final paragraph of the Opinion reads as follows:

"For these reasons,

#### THE COURT

(1) By thirteen votes to one,

Decides to comply with the request for an advisory opinion;

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: Judge Oda.

(2) Replies in the following manner to the question put by the General Assembly:

A. Unanimously,

There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons;

B. By eleven votes to three,

There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such;

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: Judges Shahabuddeen, Weeramantry, Koroma.

C. Unanimously,

A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful;

D. Unanimously,

A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons;

E. By seven votes to seven,

It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake;

IN FAVOUR: President Bedjaoui; Judges Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo;

AGAINST: Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Koroma, Higgins.

F. Unanimously,

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 Court was composed as follows: President Bedjaoui, Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins; Registrar Valencia Ospina

President Bedjaoui, Judges Herczegh, Shi, Vereshchetin and Ferrari Bravo appended declarations to the Advisory Opinion of the Court; Judges Guillaume, Ranjeva and Fleischhauer appended separate opinions; Vice-President Schwebel, Judges Oda Shahabuddeen, Weeramantry, Koroma and Higgins appended dissenting opinions.

(A brief summary of the declarations and of the opinions may be found in the Annex to this Press Communiqué.)

The printed text of the Advisory Opinion and of the declarations and opinions appended to it will become available in due course (orders and enquiries should be addressed to the Distribution and Sales Section, Office of the United Nations, 1211 Geneva 10; the Sales Section, United Nations, New York, N.Y. 10017, or any appropriate specialized bookshop).

A summary of the Advisory Opinion is given below. It has been prepared by the Registry for the use of the Press and in no way involves the responsibility of the Court. It cannot be quoted against the text of the Advisory Opinion, of which it does not constitute an interpretation.

**L36: FINAL ASSESSMENT OF VOTES** by Rob Green

The details below show what a magnificent lobbying achievement it was. China did not vote! Very embarrassing for the other nuclear states.

In Africa, UK/French whipping-in was not as successful as expected (9 to our 5), while our major prize was S Africa.

We built a strong West Indian caucus adding five ex-UK states, for the loss of only Trinidad.

In the Pacific we more than held the line, gaining the Marshall Is.

In Latin America, from an almost clean sweep on 18 November we lost Argentina, Chile and Panama; and in the India area Mauritius and the Maldives.

In Europe/Asia we lost Albania, Cambodia, Monaco, Mongolia and Tajikistan (but gained San Marino!); and in the Middle East lost Kuwait.

First Committee	Change	Plenary	
Yes	+1	78	(NB: with S Africa,
No	+10	43	UNGA has 184 voting
Abstain	+17	38	states; NAM has 109)
No Vote	-28	25	

**Grouping Vote Changes (Total Gains/Losses)**

No Vote to Yes (+10) Barbados, Burkina Faso, Congo, Gambia, Grenada, St Kitts, St Lucia, St Vincent, S Africa, Uganda

No Vote to No (-9) Albania, Cambodia, Comoros, Cote d'Ivoire, Djibouti, Gabon, Mauritania, Monaco, Tajikistan

Abstain to Yes (+2) Marshall Is, San Marino

Abstain to No (-1) Argentina

Yes to Abstain (-5) Chile, Guinea, Maldives, Swaziland, Trinidad

Yes to No Vote (-6) Cape Verde, Kuwait, Madagascar, Mauritius, Mongolia, Panama

**No Action on L36**

First Committee	Change	Plenary	No Action on "Urgently"
No	+1	68	56
Yes	+13	58	61
Abstain	+11	26	30
No Vote	-25	32	37

**PARTICIPATION BY GOVERNMENTS IN WORLD COURT CASES ON THE LEGAL STATUS OF THE THREAT OR USE OF NUCLEAR WEAPONS**

**WHO QUESTION SUBMISSIONS (35)**

**Strong Support (22)**

Azerbaijan	Mexico	Samoa
Colombia	Moldova	Saudi Arabia
Costa Rica	Nauru	Solomon Islands
India	North Korea	Sri Lanka
Iran	Papua New Guinea	Sweden
Kazakhstan	Philippines	Uganda
Lithuania	Rwanda	Ukraine
Malaysia		

**Weak Support (1)**

Ireland

**On Fence (3)**

Aotearoa/New Zealand

Japan

Norway

**Case Inadmissible (4)**

Australia

Finland

Germany

Italy

**Inadmissible / Use Might Be Legal In Some Circumstances (5)**

France

Netherlands

Russia

UK

USA

WRITTEN COMMENTS ON OTHER WHO SUBMISSIONS (9)

Supportive (5)

Costa Rica  
India  
Malaysia  
Nauru  
Solomon Islands

Pro-Nuclear (4)

France  
Russia  
UK  
USA

UNGA QUESTION SUBMISSIONS (28)

Supportive (19)

Bosnia\*  
Burundi\*  
Ecuador\*  
Egypt\*  
India  
Ireland  
Iran  
Lesotho\*  
Malaysia  
Marshall Is\*  
Mexico  
Nauru  
New Zealand  
North Korea  
Qatar\*  
Samoa  
San Marino\*  
Solomon Islands  
Sweden

\*Did not make WHO question submission (8)

On Fence (1)

Japan

Inadmissible / Threat Or Use Might Be Legal In Some Circumstances (8)

Finland  
France  
Germany  
Italy  
Netherlands  
Russia  
UK  
US

WRITTEN COMMENTS ON OTHER UNGA SUBMISSIONS (3)

Supportive (3)

Egypt  
Nauru\*  
Solomon Islands

\*Later withdrawn

ORAL STATEMENTS (22)

Supportive (16\*)

Australia  
Costa Rica  
Egypt  
Indonesia  
Iran  
Japan  
Malaysia  
Marshall Islands  
Mexico  
New Zealand  
Philippines  
Qatar  
Samoa  
San Marino  
Solomon Islands  
Zimbabwe

\*Colombia, Guyana, India and Nauru applied to make statements, but later withdrew

Pro-Nuclear (6)

France  
Germany  
Italy  
Russia  
UK  
USA

## **SOURCES CONSULTED**

### **I. UNPUBLISHED WORKS**

1. Collections
  - (i) Personal papers
  - (ii) Citizen Groups
  - (iii) Interviews
2. Dissertations
3. Papers, press releases, reports
4. Speeches, statements

### **II. PUBLISHED WORKS**

1. Books
2. Articles:
  - (i) Journals, Periodicals
  - (ii) Newsletters, magazines, booklets, pamphlets
3. Open Letters and Papers (Harold Evans)
4. Newspaper Articles cited: New Zealand, Australia, UK, others
5. Reports and Proceedings
6. Government Publications
7. United Nations Official Documents
8. Electronic Documents
9. Websites
10. Videotapes, Films, Television

## **I. UNPUBLISHED**

### **1. Collections**

#### ***(i) Personal papers relating to anti-nuclear work and the WCP***

Dewes, Kate. Personal papers from 1974-1998. These include over 40 box files containing correspondence, newsletters, minutes, newspaper clippings, UN and ICJ documents, interviews, parliamentary questions, speeches, academic papers and press releases. There is also a library of related books stored at her home in Christchurch, New Zealand.

Evans, Harold. Personal papers from 1953-1997. Material similar to the Dewes collection is housed in the MacMillan Brown Library, University of Canterbury, Christchurch, New Zealand.

Geiringer, Erich. Personal papers from 1950-1995. Housed in the Alexander Turnbull Library, Wellington, New Zealand.

Green, Robert. Personal papers on WCP (UK) from 1991-1998 held at his homes in Twyford, Berkshire, United Kingdom and Christchurch, NZ.

MacBride, Seán. Personal papers from 1960-1989. Stored with his former secretary Caitriona Lawlor, Dublin, Ireland and at IPB Office in Geneva.

Salmond, George. Personal papers on the World Health Assembly and IPPNW from 1990-1994. Stored at his home in Wellington, NZ.

St John, Edward. Personal papers from 1984-1995 now stored at the New South Wales State Library in Sydney, Australia.

#### ***(ii) Citizen groups: files and archives***

Aotearoa/New Zealand Foundation for Peace Studies archive at their central office in Auckland, New Zealand. Copies of most of this material are held with the author in Christchurch.

International Association of Lawyers Against Nuclear Arms archive at their office in The Hague, Netherlands.

International Peace Bureau archive at their office in Geneva, Switzerland.

Lawyers' Committee on Nuclear Policy archive at their New York office.

World Court Project Wellington, stored in Wellington, NZ.

#### ***(iii) Interviews***

- Archer, Colin. Secretary-General of the International Peace Bureau, Geneva, member of the WCP International Steering Committee, former executive member of INLAP; New York, 22 April 1995.
- Ashford, Mary-Wynne. Vice President IPPNW; Ottawa, 27 April 1998.
- Boyle, Francis A. Former LCNP Board of Directors member, currently Professor of Law at the University of Illinois College of Law. Email interviews on 17 November 1997, 16-19 September 1998.
- Briant, Robin. Former President of IPPNW/NZ and PACDAC member (1987-1990); Auckland, 26 November 1994.
- Christ, Michael. Member of WCP ISC, member of WHO lobbying team (1992-3) and recently appointed Executive Director IPPNW International, Boston, US; New York, 25 April 1995.
- Craig, Pat and Kevin. Members of Medical Action (MEDACT/UK), members of WCP UK; New York, 25 April 1995.
- Davies, Sonja. Former NZ MP, member of Women Parliamentarians for Peace, and leading peace movement activist; Christchurch, 24 October 1994.
- Dzvairo, Godfrey. Counsellor, Zimbabwe UN Mission during UNGA 1993; Interviewed by Alyn Ware on behalf of the author, Rome, 1 July 1998.
- Elkind, Jerome. Senior Lecturer in Law, Auckland University, Member of IALANA Council, Counsel for Nauru for ICJ cases; Auckland 25 November 1994.
- Evans, Harold. Retired stipendiary magistrate and leading figure in the WCP, (1986-1996); Christchurch, 21 April and 7 May 1996.
- Falk, Richard. Professor of International Law, Princeton University, US: Interviewed by Robert Green on behalf of the author, London, July 1996.
- Farebrother, George. Secretary of WCP UK 1991-1998; New York, 20 April 1995.
- Geiringer, Erich. IPPNW/NZ, leading proponent of WHA cases; New York, 21 April 1995.
- Glover, Rupert. Former lecturer in International law at University of Canterbury; Christchurch, 7 May 1996.
- Graham, Douglas. Former NZ Minister of Disarmament, Minister of Justice (1990-1993); Wellington, 3 September 1996.
- Green, Robert. Chair of WCP UK (1991-1998), member of WCP ISC, WCP lobbying team at UNGA 1993; Christchurch, January 1996.
- Hall, Xanthe. IPPNW/Germany Secretariat; New York, 20 April 1995.

- Ismail, Razali. Former President of the UNGA, Malaysian Ambassador to the UN (New York) during UNGA 1993-4; New York, 23 March 1998.
- Krieger, David. President, Nuclear Age Peace Foundation, California, US; New York, 20 April 1995.
- Janson, Ann Marie. IPPNW' WHO Liaison Officer, Leader of WCP delegations to WHA in 1992-3, Swedish doctor; Melbourne, 8 Dec 1998.
- Johnson, Rebecca. ACRONYM Institute Director and former Greenham Common woman; Christchurch, October 1997.
- Lange, David. Former Prime Minister of New Zealand (1984-1989); Christchurch, 27 September 1994.
- Lawlor, Caitriona. Former secretary to Seán MacBride, Dublin, Ireland; Dublin, March 1998.
- Lineham, Brett. Former Head of Disarmament Division, NZ Ministry of Foreign Affairs; Wellington, 4 August 1995.
- Lini, Hilda. Former Minister of Health in Vanuatu and WHO Regional Vice President, member of WHA and UNGA WCP lobbying delegations May and October 1993; New York, 22 April 1995.
- Marin-Bosch, Miguel. Former Mexican Ambassador to the UN in Geneva and New York, Chair of the Committee of the Conference on Disarmament negotiating the CTBT; New York, 25 April 1995.
- Marshall, Russell. Former NZ Minister of Disarmament and Foreign Affairs (1987-1990); Christchurch, 19 July 1994.
- Mason, Peggy. Former Chair of Western Consultative Group within the United Nations (Barton Group), Canada's Ambassador for Disarmament (1989-1994); interviewed by Green on author's behalf, Melbourne, 6 July 1995 and by Dewes, Ottawa, 26 March 1998.
- McCoy, Ronald. Co-President of IPPNW, Chair MPPNW, former President of the Malaysian Medical Association, member of Canberra Commission (1995-96); Christchurch, 8 January 1997.
- Mendlovitz, Saul. Professor of Peace and World Order Studies at Rutgers University School of Law, leading member of IALANA and LCNP, member WCP ISC; Brisbane, Australia, 11 July 1996.
- Mothersson, Keith. Secretary of INLAP, member WCP UK and Pax Legalis; The Hague, 6 November 1995.
- Mutalik, Raj. Former Director IPPNW International office, Boston, US; New York, 25 April 1995.
- Prior, Ian. Leading member of IPPNW/ NZ, WCP NZ and Abolition 2000 NZ; Dunedin, 20 August 1995.

- Salmond, George. Former NZ Director General of Health and member of IPPNW lobbying team at 1993 WHA; Wellington, 3 August 1995.
- Slade, Neroni. Samoa's Ambassador to the UN (New York); New York, 23 March 1998.
- Straeter, Willemijn. Coordinator, IALANA International Secretariat 1990-1996, member of WCP ISC, The Hague, Netherlands; interview conducted on email, 4 May 1996.
- Tangiora, Pauline. Maori Kuia from Rongomaiwahine Tribe, Patron NZ Foundation for Peace Studies, member of the Earth Council, the World Council for Indigenous Peoples, the UNGA lobbying delegation 1993; Christchurch 5 April 1995.
- Theorin, Maj Britt. Member of the European Parliament (1995- ), Swedish parliamentarian (1971-1995), former Ambassador for Disarmament (1982-1991), currently President of IPB, President of International Parliamentarians for Global Action and convenor of Women Parliamentarians for Peace, Chair of UN Experts' Groups on Nuclear Weapons (1989-1990), Military and the Environment ( 1990-1991), Women and the Agenda for Peace (1994); New York, 24 April 1995.
- Vallentine, Jo. Former Nuclear Disarmament Senator, Perth, Australia; Perth, 1 June 1995.
- Van Lierop, Robert. Former Vanuatu Ambassador to the UN during 1993 UNGA; New York, 26 April 1995.
- Ware, Alyn. Peace activist from Aotearoa, member WCP ISC, Executive Director LCNP, New York; Christchurch, NZ, 9 January 1996.
- Weiss, Peter. Co-founder and Chair of LCNP, Co-Chair of IALANA, member of WCP ISC; New York, 27 April 1995 and 25 March 1998.
- Wilde, Fran. NZ Minister of Disarmament and Executive member of PGA (1987-1990); Wellington, 17 March 1995.
- Christchurch lawyers (who wish to remain anonymous), 5 and 10 May 1996.
- All interviews were tape recorded and transcripts made of the recordings. The interviews are stored at the author's home in Christchurch, Aotearoa.

## **2. Dissertations**

- Graham, Kennedy G.M. 'Nuclear Weapon-Free Zones', Ph.D diss., University of Victoria, Wellington, 1983.
- Hodges, Eleanor. 'David and Goliath in the Ocean of Peace: Case Studies of "Nuclearism", "Nuclear Allergy" and "The Kiwi Disease"'. Ph.D diss., University of California, San Diego, 1990.

Hutching, Megan. 'Turn Back This Tide of Barbarism: New Zealand women who were opposed to war', 1896-1919, M.A thesis, University of Auckland, February 1990.

### **3. Papers, Press Releases, Reports**

Alley, Roderic. 'Assessing the United Nations/Regional Dynamic: The South Pacific Case', Paper delivered to 'The UN: Between Sovereignty and Global Governance?' Conference Melbourne, 2-6 July 1996.

Bolger, Jim and Nelson Mandela. 'Memorandum of Cooperation on Disarmament and Arms Control', 8 August 1996.

Boyle, Francis. 'The Criminality of Nuclear Deterrence, College of Law', University of Illinois at Urbana-Champaign, 17 October 1996.

Bring, Ove. 'Are Nuclear Weapons and their Use Illegal?', Paper presented to IALANA's International Seminar, Sweden, 9 April 1988.

Clark, Helen. 'The Development and Context of New Zealand's Non-Nuclear Initiative', Paper presented to the International Conference on Peace and Security in Oceania of the UN University, Auckland, 3-6 April 1986.

\_\_\_\_\_. 'Disarmament and Development: Linked Phenomena?', Address to Annual Meeting, Volunteer Service Abroad, 26 July 1986.

\_\_\_\_\_. 'National deprives New Zealand Public of a Role in Important World Court Case', Press release, Wellington, 9 June 1994.

Epstein, William. 'How to Deal with the Deadlock on Nuclear Disarmament', Paper delivered to the Tenth Regional Disarmament Meeting in the Asia-Pacific Region, Kathmandu, 22-24 February, 1998.

Evans, Harold. 'A Report to the International Colloquium of IALANA', Berlin, 1990.

Falk, Richard. 'Neutrality, International Law and the Nuclear Arms Race', Paper presented at Trinity College, Dublin, Ireland, 1984.

Field, Frank. 'The Illegality of Weapons of Societal Destruction', Report on IPB Seminar, Geneva, 14-15 September 1984.

Fletcher, Chris, Pauline Gardiner, Michael Laws, Joy McLauchlan, Brian Neeson, Katherine O'Regan, Tony Ryall, Nick Smith. 'National MPs welcome World Court Submission as a step in the right direction', Press release, Wellington, 9 June 1994.

Geiringer, Erich. Working Papers written during 1991-1993: 'Courting the Question', 'Washington coming to the Party', 'Nuclear Disarmament or Tactical Withdrawal?', 'Don't be Vague when you ask for Hague', 'Death of a Salesman', 'The Elephant and the Mouse', 'Preparation for WHA/46', 'Health and Environmental Effects of Nuclear Weapons', 'What is Dr Nakajima up to?'.

- Graham, Kennedy. 'Global Restructuring: Arms Control and Disarmament', Paper presented to the 'Restructuring for Peace Conference', Hawaii, 2-5 June 1991.
- Green, Robert. 'Report on WCP International Seminar and Launch', Geneva, 14-15 May 1992.
- \_\_\_\_\_. 'Trident and Nuremberg: An Open Letter to the Prime Minister, First Sea Lord and all others involved in planning and executing deployment of Britain's Trident Submarine Force', Christchurch, 1 October 1997.
- Gustaffson, Stig. 'Nuclear Weapons and International Law', Paper presented at IPPNW World Congress, Sweden, June 1991.
- Hamel-Green, Michael. 'The UN Role in Facilitating Regional Denuclearization and Arms Control', Paper delivered to 'The United Nations: Between Sovereignty and Global Governance?', Melbourne, 2-6 July, 1995.
- Hodges, E. and G. Fry. 'Selected Countries' Policies on Visits by Nuclear-armed, Nuclear-powered and Nuclear-capable Warships'. Draft paper, Strategic Defence Studies Centre, Australian National University, Canberra, 1987.
- IPPNW/NZ Branch. 'IPPNW in the Nineties', discussion paper, Wellington, 1991.
- Janson, Ann Marie and Johan Thor. 'Report from the 91st Session of the WHO Executive Board', January 1993.
- Johnson, Rebecca. 'Prospects for Negotiations on Nuclear Disarmament', Paper given to the Shanghai Conference, Fudan University, 8-10 September 1997.
- Keating, Paul. 'The 50th Anniversary of the United Nations, Australia and a World Without Nuclear Weapons', Canberra, 24 October 1995.
- Large, John. 'Reactor System Defects in Royal Navy Powered Submarines', Large and Associates Ltd., London, 4 December 1990.
- \_\_\_\_\_. 'Radioactive Arisings from Nuclear Submarines: Briefing Note', Large and Associates Ltd., London, 22 August 1990.
- Marin-Bosch, Miguel. 'The NPT Non-Proliferation /Nuclear Disarmament 'Bargain' on the eve of the Extension Conference'. Longer version of a paper delivered in Dublin to the Royal Irish Academy on 2 December 1994.
- Mason, Peggy. 'Notes for a Presentation on "The Legality of Nuclear Weapons: Canada and NATO, the Way Forward" to the Standing Committee on Foreign Affairs and International Trade in relation to its

- Study of Canada's Policy on Nuclear Non-Proliferation, Arms Control and Disarmament', Ottawa, 10 February, 1998.
- McKinnon Don. Transcript of interview with Kim Hill, Radio New Zealand, 10 June 1994; Transcript of Press Conference with Don McKinnon, 10 June 1994.
- Morgan, David. 'A Report on a Visit to the World Court, The Hague, Netherlands'; Vancouver, 3 December 1995.
- Mothersson, Keith. 'No Prerogative to Poison: an anti-nuclear study companion on Law and Peace and non-combatant rights', UK, 1985.
- \_\_\_\_\_. 'World Court Reference Project - Discussion Paper', April 1991.
- \_\_\_\_\_. 'WCP-UK Group Inaugural Meeting: Perspective on Strategy Paper', 30 September 1991.
- \_\_\_\_\_. 'Memorandum to International Steering Committee and to WCP-UK on de Martens Declarations and Approach to Networking Outwards', June 1992.
- Noboru, Yasuga. 'Movement for Nuclear-Free Local Government in Japan', Japan, March 1997.
- Nuclear Age Peace Foundation. 'Abolish Nuclear Weapons: A Call to Action', a collection of papers, Santa Barbara, 20 December 1994.
- Perera, L.H.Horace. 'Legality of the Threat or Use of Nuclear Weapons', January 1997.
- Palmer, Geoffrey. Transcript of Interview between Kim Hill ( Radio New Zealand) and Geoffrey Palmer, Newstel, 28 May 1996
- Rosenau, James. 'Powerful Tendencies, Enduring Tensions, and Glaring Contradictions: The Challenge of Studying the United Nations in a Turbulent Era', Paper delivered to ' The UN: Between Sovereignty and Global Governance', Melbourne, 2-6 July 1995.
- Salmond, George. 'Notes and Thoughts on WHA 46', Geneva, 30 April - 15 May 1993.
- Santi, Rainer. 'IPB Briefing Paper on MacBride Appeal for UNSSOD III', May 1988.
- St. John, Edward. 'The Criminality of Nuclear Weapons', October 1989.
- The NGO's Committee on the NPT Review. 'Keeping Disarmament on Track: a paper for comment'; Wellington, October 1994.
- Tremewan, C., 'Foreign Policy, the Treaty of Waitangi and Australia's New Militarism', Address to Labour Party Regional Conference, Timaru, April 16 1989.

Urata, Kenji. 'The Japanese Constitution and Nuclear Weapons: A Discussion on the Relationship Between the Constitution and International Law', Paper presented to International Association of Constitutional Law Fourth World Congress, Tokyo, September 25-28, 1995.

\_\_\_\_\_. 'The Relevance of the World Court Project - with respect to Japan's Experience', Report to the World Court Project Seminar, Netherlands, November 1998.

Ware, Alyn. 'UNICEF and the illegality of nuclear weapons', April 1992.

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