

# World Court Project Report

Winter 1995

LAWYERS' COMMITTEE ON NUCLEAR POLICY

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## Nuclear Weapons in Court A Dream becomes Reality

The Lawyers' Committee on Nuclear Policy began in 1981 with the aim of using law to promote nuclear disarmament, and with a dream of taking nuclear weapons to the International Court of Justice, the world's supreme judicial body. Now, 14 years later, that dream has become a reality, and we have witnessed the groundbreaking World Court case on the legality of the threat or use of nuclear weapons.

The hearings of the World Court case held in the Peace Palace in the Hague from 30 October - 15 November, were the fruition of many years of legal research and anti-nuclear education at grass roots and diplomatic level by LCNP and its parent organization the International Association of Lawyers Against Nuclear Arms (IALANA).

This special edition of the World Court Project summarizes those phenomenal hearings.

## Court Hearings

*By Peter Weiss, Chair, Lawyers' Committee on Nuclear Policy*

On October 30, the heavy iron doors of the Peace Palace in the Hague, a neo-medieval building which looks like a Disneyland outtake, opened to our "trial of the century", a showdown over the legality of nuclear weapons and the nuclear States' elite policies of nuclear deterrence.

Twenty two countries appeared in the International Court of Justice to argue for or against nuclear weapons in cases brought by the World Health Organization (WHO) and the United Nations General Assembly (UNGA). An additional twenty three countries had sent written submissions, making this the biggest case ever to be heard in the seventy five year history of the Court.

Each day, two or three countries used all or part of their allotted hour and a half to present their cases to the fourteen judges; one from each of the five permanent members of the Security Council - US, UK, France, China and Russia - which also, not so coincidentally, happen to be the only five "official" nuclear weapon states - plus one judge each from Germany, Italy, Hungary, Japan, Guyana, Madagascar, Algeria, Sri Lanka and Sierra Leone. ( The normal complement of the Court is fifteen, but the Venezuelan judge died the week before the case began).

The president of the Court, Mohammed Bedjaoui of Algeria, conducted the proceedings, in which countries appeared in alphabetical order, with exquisite courtesy and decorum.

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*World Court Project supporters outside the Court prior to the presentation by Aotearoa-New Zealand.*

### Court Hearings (continued from page 1)

Things started off in a somewhat confusing manner. On the first day Australia's Attorney-General, having asked the Court, prior to the announcement of the French nuclear tests in the South Pacific, to refrain from rendering an opinion, stuck to that position. But he was followed by Gareth Evans, Australia's foreign minister, who in a riproaring post-French test speech, urged the Court, should it decide to address the merits of the question, to declare that not only threat and use, but deployment, testing and possession of nuclear weapons were prohibited under international law and that his country would take the initiative in ridding the world of nukes.

Thereafter matters followed along four main themes. The pro-nuke countries, including Germany and Italy, with China conspicuously absent, argued that WHO was not competent to ask such a question, that the Court should decline to answer the UNGA question also since an answer would interfere with current disarmament negotiations, that the legality or otherwise of nuclear weapons depended upon the circumstances in which they were used, and that nuclear weapons had kept the peace for the past 50 years and must be allowed to continue to do so.

The case of the anti-nuclear countries - Australia, Egypt, Indonesia, Mexico, Iran, Malaysia, Aotearoa-New Zealand, the Philippines, Qatar, Samoa, San Marino, Solomon Islands, Marshall Islands, Costa Rica and Zimbabwe - was;

i) Since WHO had done pioneering work on the health effects of nuclear war and concluded that no health services would be able to cope with a nuclear attack, it was competent to request an advisory opinion as a matter of preventive health,

ii) An opinion from the Court would not hinder disarmament negotiations, but would on the contrary, accelerate them,

iii) Because of the horrendous, uniquely destructive and uncontrollable nature of nuclear weapons, there was no circumstance in which they could be used without violating the universally accepted principles that weapons must not indiscriminately kill civilians, be inhumane, violate neutral territory or shock the conscience of humanity,

### Judge Higgins on Impartiality

In a letter to the World Court Project Scotland, World Court Judge Rosalyn Higgins (UK) remarked that *"I believe the judges take the Oath of Impartiality very seriously. To my knowledge, governments do not at all try to influence the judges in cases before the Court in which their national interests are deemed to be at stake. All governments would regard this as crude and improper. Indeed, it is when a case from one's own country is before the Court that the judges are most sensitive to demonstrate their independence."*

However, Judge Higgins also noted that *"Of course each of us is influenced to an extent by personal experience and the culture from which we come."*

iv) There was no way to prove that deterrence had worked or not worked but, in any case, deterrence was an extremely unstable system and the "peace" to which the nuclear powers referred to had produced 150 wars and 25 million casualties in the last half century.



*Qatar delegation to the Court: Najeeb ibn Mohammed Al-Nauimi, Minister of Justice, and Sami Abushaikha, Legal Counsel.*

In the course of the presentations some notable comments: The UK wanted the Court to know that this was not a "real" case, but one engineered by the World Court Project (to which both Samoa and Malaysia replied that, while they were independent nations and made their own decisions, they valued the role citizens' organizations and civil society had played in bringing this case to court.)

The US urged the Court to disregard "phantom norms of international law" (to which Zimbabwe replied by asking the Court to apply real norms of international law to nuclear weapons in order to avoid a world peopled only by phantoms).

France claimed that the case was purely political (to which just about every anti-nuke country replied that the questions put to the Court were clearly about the legality of nuclear weapons, and that every case brought to the Court has had political implications.)

France also claimed that the only role of WHO in relation to a nuclear war was "downstream" catering for the victims (to which Mexico replied that waiting until after a nuclear attack was like "replacing medicine with an autopsy.")

One of the most preposterous claims was that advanced by both the UK and the US that modern technology makes possible the precise targetting of nuclear weapons, so that indiscriminate effects on civilians need not occur. Solomon Islands and Costa Rica submitted letters to the Court from Joseph Rotblat and the International Committee of Red Cross refuting this claim.

The most dramatic moments of the hearing came with the testimony of the mayors of Hiroshima and Nagasaki, speaking out as part of, but not for, the Japanese delegation, and of Lijon Eknilang, a Marshall Islander exposed to the after effects of the US tests in the Pacific.

*(Continued on page 3)*

### Court Hearings (continued from page 2)

In line with the court's normal procedure, the judges did not interrupt any of the speakers, but some asked questions after the presentations were made. The prize for the most helpful query belongs to Judge Ranjeva of Madagascar, who asked the UK the basis for its assertion that an opinion from the court would be harmful to progress toward nuclear disarmament. The most convoluted and also the most disarming question came from Judge Schwebel of the US, the Vice President of the Court. It reads as follows:

*"If, as counsel for the Solomon Islands argued just now, an aggressor will not count on its potential victim not responding unlawfully, does that argument suggest that law-abiding states will do well to possess a capacity to deter or respond to aggression, especially aggression by threat or use of weapons of mass destruction, by possession of nuclear weapons, at any rate, until the achievement of general and complete disarmament under effective international control?"*

Each day brought new surprises. For example:

Frederica Bigi, speaking for San Marino, acquitted herself beautifully on behalf of the only European state to argue orally for the illegality of nuclear weapons (Sweden and Ireland did well in their written briefs).

Sergio Gonzales Galvez, Mexico's Deputy Foreign Minister, questioned the practice of reserving one-third of the Court's complement for judges from the five permanent Security Council members, and announced that, if the nuclear states did not meet their obligations under the Non Proliferation Treaty to nuclear disarmament, Mexico might withdraw from it.

Razali Ismail, Malaysia's UN Ambassador, described the continuing division of the world into nuclear haves and have-nots as a new form of colonialism.

Guyana and Colombia withdrew their requests to appear amid speculation that their decisions were not unrelated to pressure from one or more of the nuclear states.

Zimbabwe, one of the original sponsors of the UN resolution, came in at the last minute thereby depriving the UK and US of the opportunity to end the proceedings on a pro-nuclear note.

The Court is expected to announce its decision by April. The judges, although nominated by their home countries, are required to vote independently. They obviously face a difficult choice: Either offend the five permanent Security Council members, or offend the great majority of the world's people and UN member states. Whichever way the opinions go, and it's a safe bet that there will be more than one opinion, they are bound to advance the cause of Abolition 2000, the campaign, organized by a coalition of more than 70 organizations from around the world, to work for a nuclear weapons free world by the end of this century.

On the last day of the hearing, somebody said to one of the judges entering the Peace Palace, *"I bet you're glad it's going to be over this afternoon."* *"Not at all,"* he replied, *"this has been very interesting for us."* For all members of civil society as well.

## Nuclear case on TV

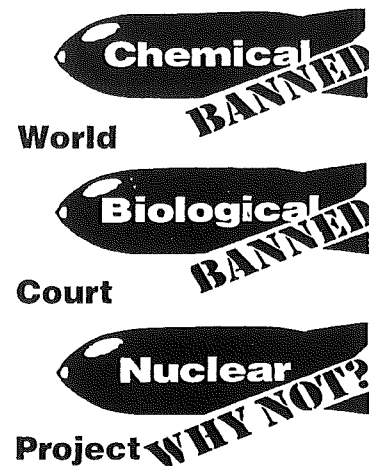
Court TV, a nationwide cable channel, broadcast 15 hours of the oral hearings, plus three additional programs on the World Court case on nuclear weapons from December 12-19.

Anabel Dwyer, John Burroughs, Alyn Ware and Saul Mendlovitz from the Lawyers' Committee on Nuclear Policy (LCNP) were guest commentators for the broadcast.

Peter Weiss and Alyn Ware were live guests on *"Prime Time Justice"* to discuss the implications of the case. On December 13, Alyn Ware, Saul Mendlovitz and Peter Weiss had a live debate on Court TV's *"In Context"*, with the US delegates to the Court; John McNeil, Senior Deputy General Counsel for the Department of Defense, and Michael Matheson, Principal Deputy Legal Adviser for the Department of State.

Court TV plans to broadcast the rendering of the decision which is expected in the new year. Please commend Court TV for broadcasting the hearings. Ph 212 973 2824.

### What If the Court Condemns Nuclear Weapons?



Will the upcoming decision from the Court make a difference, and if so how? These questions prompted the publication of *"Chemical Banned, Biological Banned. Nuclear What If? Implications of Advisory Opinions by the International Court of Justice on the Legal Status of Nuclear Weapons."*

It discusses the implications for militaries, governments and civil societies of different possible outcomes from the Court.

The booklet argues that even if the nuclear governments reject a confirmation of illegality from the Court, military personell could use the decision to refuse to participate in any activities with nuclear weapons because their own military regulations state that they have a legal duty to refuse to carry out an order which is prohibited under international law. The booklet also argues that even a negative decision from the Court would assist the process of nuclear disarmament.

To order your copy see page 8 of *Courting Peace*

## *Diary of Citizens' Activities in the Hague*

A unique feature of the World Court case on nuclear weapons is that it is the first World Court case to have a significant input from citizens and citizens' organizations. While we could not participate directly in the proceedings, we assisted governments with their presentations and also organized a range of other activities at the Hague designed to support the case against nuclear weapons.

The following diary is only of citizen involvement at the Hague. For a full account of citizen activity for the entire project, see *"The World Court Project: How a Citizen Network Can Influence the United Nations."*

(See page [ ] to order)

### **Respects for Judge Aguilar**

*Friday Oct 27:* World Court Project supporters visit the Peace Palace to pay respects to Judge Andres Aguilar, who died two days earlier. We meet all the judges in the process. Pauline Tangiora, an indigenous elder from Aotearoa-New Zealand, gives a traditional lament to the deceased.

### **Vigil**

*Monday October 30:* First day of the hearings. Local supporters establish a vigil outside the Court to continue every day of the hearings. It is a respectful vigil to support the Court in considering the case, and to remind the Judges to take this case very seriously. The judges drive or walk past the vigil every day as they enter and leave the Court.

### **Declarations**

*Wednesday November 1:* World Court Project meets with the deputy registrar of the Court to present one and a half million declarations in support of the case and against nuclear weapons. Another million declarations are on their way to the Court. Together with declarations presented in June, the Court will have received 3 million declarations. A number of States refer to the declarations of public conscience in their presentations.

### **Women Strike for Peace**

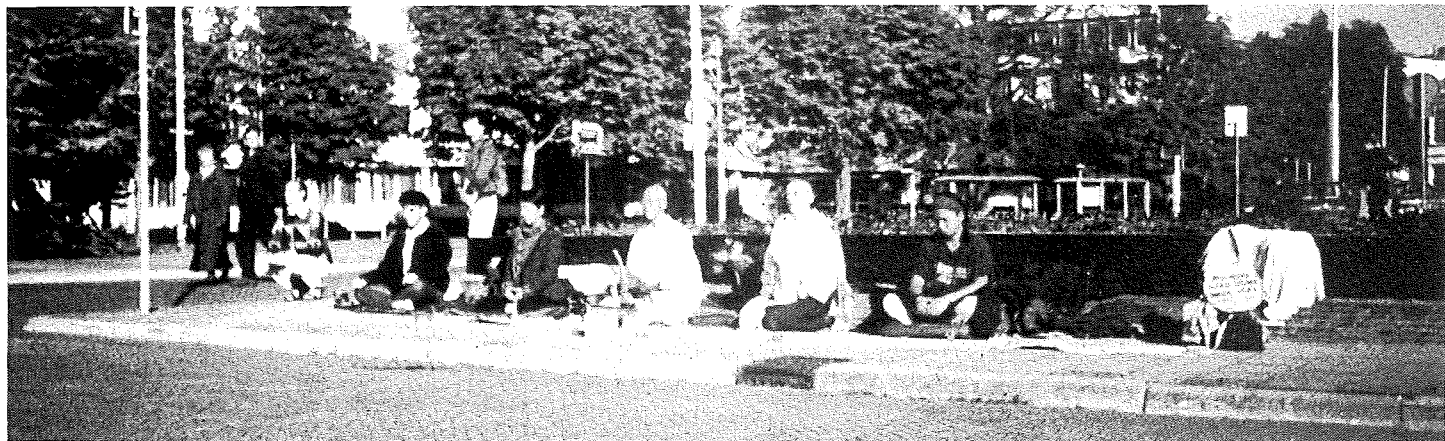
*Wednesday November 1:* 24th anniversary of the founding of Women Strike for Peace, one of the key organizations in securing a ban on atmospheric nuclear testing. Founders of Women Strike for Peace hold a commemoration seminar.

### **Indigenous Peoples' Presentation**



*Pauline Tangiora, Joan Wingfield and Elias Carreno outside the Peace Palace.*

*Friday November 3:* Elias Carreno (Peru), Joan Wingfield (Australia) and Pauline Tangiora (Aotearoa-New Zealand), meet with Eduardo Valencia-Ospina, the Registrar of the Court to present documents and views from indigenous peoples. Joan presents the Declaration of Salzburg (from the World Uranium Hearings). Pauline presents the Beijing Declaration of Indigenous Women from the UN Fourth World Conference on Women. They speak of the genocide being committed on indigenous peoples due to the health effects of the production and testing of nuclear weapons, most of which is done on indigenous land.



*Vigil outside the Peace Palace*

## World Court Project Seminar

*Saturday November 4:* 200 people attend an exciting and informative day long seminar on the World Court Project in the Hague. Malaysian Ambassador to the UN, Ismail Razali, opens the seminar by emphasising the importance of citizen's groups and governments working together to achieve a nuclear free world. Lawyers, doctors and activists from around the world speak about progress on the project, and implications of the forthcoming decision by the judges.



*Razali Ismail, Malaysian UN Ambassador, addressing the seminar*

## Abolition Campaign Meeting

*Sunday November 5:* 100 people from citizens' groups from around the world discuss strategy for achieving the elimination of nuclear weapons, emphasizing the importance of using the World Court case to place pressure on nuclear governments to eliminate their nuclear arsenals.

## Nagasaki Exhibition

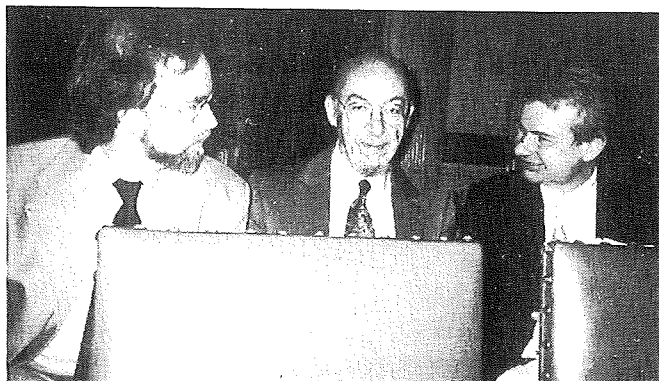
*Monday November 6:* An exhibition of photographs from Nagasaki opens at a library in the Hague. Some of these same photos are introduced into Court and shown to the judges by the Mayor of Nagasaki the following day. The photographs will continue to be displayed in various locations in the Hague until the judges reach their decision.

## Press Conferences

Press conferences are held on *October 30*, the beginning of the oral hearings, and on *November 15*, the end of the hearings. Peter Weiss, Co-President of the International Association of Lawyers Against Nuclear Arms (IALANA) and Phon van den Biesen, Secretary of IALANA, give legal analyses of the hearings. Claudia Peterson ("downwinder" from the Nevada test site) and Joan Wingfield (member of the Kokotha Nation from Maralinga, the British test site in Australia) testify about the health effects of nuclear weapons testing and production.

## Legal input

Throughout the three weeks, our legal team consisting of Peter Weiss, John Burroughs, Anabel Dwyer, Alyn Ware and Phon van den Biesen are busy providing assistance to the pro-illegality states with facts and legal arguments.



*John Burroughs, Peter Weiss and Phon van den Biesen in Court*

## Commendations

*Wednesday 15 November:* The President of the Court in his closing remarks, commends the non governmental organizations involved. In their speeches earlier in the week, Malaysia and Samoa thanked civil society for its role in bringing the case to Court.

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## Australian writ could affect US bases.

Melbourne barrister Len Lindon won the right last week to issue a writ against the Australian government seeking a declaration that nuclear weapons are illegal under Australian municipal law including the constitution.

Mr Lindon based his action on the statement to the International Court of Justice by the Foreign Minister, Senator Gareth Evans that the use, threat of use, testing, production, acquisition and deployment of nuclear weapons are illegal under international law.

This position contrasts with the Australian military manual, which says that there is no consensus on the legality of nuclear weapons, and also the practice of Australia, which provides military assistance to the US. US military bases in Australia, including Pine Gap and Watsonia, are believed to be involved in US Command, Control, Communications and Intelligence for nuclear weapons.

The Opposition foreign affairs spokesperson, Alexander Downer said "*The impact of Mr Lindon's case is that if he wins the government will be compelled to sever its assistance to the United States in matters involving nuclear weapons.*"

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## Highlights from the Court

LCNP has produced a 20 page report of highlights from the oral hearings. Below are some excerpts. To order your copy see order form on page 8 of *Courting Peace*.

### **Nagasaki Mayor**

Nagasaki Mayor Mr Iccho Ito urged the Court to declare nuclear weapons illegal saying that this *"...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."* He also showed the Court several photos of the Nagasaki bomb damage taken by Yosuke Yamahata, including one of a carbonised corpse of a boy. *"What crime did these children commit?"* he asked the judges. *"Did they take up guns and point them at the enemy?"*

### **Aotearoa-New Zealand: Nuclear weapons violate intergenerational equity**

Aotearoa-New Zealand, a wayward ally of the US, made strong arguments against the use, threat and testing of nuclear weapons. Attorney-General Paul East quoted World Court Judge Weeramantry, in the recently dismissed nuclear tests case, as saying that the intergenerational damage caused by nuclear weapons testing would violate *"intergenerational equity - an important and rapidly developing principle of contemporary international law."* In support of this argument Paul East also quoted US President James Madison, who in 1792 said *"Each generation should bear the burden of its own wars, instead of carrying them on at the expense of other generations."*

### **Marshall Islands: Nuclear weapons create deformed babies**

In moving testimony to the Court, Lijon Eknilang, Member of the Rongelap Atoll Council, described the deformed babies that she and other women had given birth to following exposure to radiation from US nuclear testing on Bikini, 200 miles away from her atoll. *"Babies are born with no bones in their bodies, transparent skin, hearts and lungs showing. The babies usually live for a day or two before they stop breathing. Many women die from abnormal pregnancies... I have miscarried on seven occasions. On one of those occasions, I miscarried after 4 months. The child I miscarried was severely deformed; It had only one eye...My purpose for travelling such a great distance to appear before the Court today is to plead with you to do whatever you can not to allow the suffering that we Marshallese have experienced to be repeated in any other community in the world."*

### **Solomon Islands: Rotblat on team**

Solomon Islands Minister for Police and National Security, Victor Ngele, introduced a statement from Josef Rotblat,

winner of this year's Nobel Peace Prize, and a member of the Solomon Islands delegation to the Court. Rotblat, who fell sick at the last moment and could not appear in Court, wrote *"I have read the written pleadings prepared by the UK and the US. Their view of the legality of the use of nuclear weapons is premised on three assumptions: a) that they would not necessarily cause unnecessary suffering; b) that they would not necessarily have indiscriminate effects on civilians; c) that they would not necessarily have effects on territories of third States. It is my professional opinion - set out above and in the WHO reports referred to - that on any reasonable set of assumptions their argument is unsustainable on all three points. Even in the hypothetical case that at some time in the future nuclear weapons are developed that have a negligible effect on the civilian population, any use of such a weapon is likely to start a nuclear conflict in which other weapons are used that have all the effects described above."*

### **UK: Nuclear weapons prevent enslavement.**

The UK argued that recourse to the use of nuclear weapons may be necessary in the self defence of a country, and in particular to prevent *"...subjection to conquest which may be of the most brutal and enslaving character"*. Sir Nicholas Lyell, Attorney General argued that it may therefore be necessary to inflict a high level of *"collateral civilian casualties."*

Sir Nicholas, currently under investigation in the "Scott Inquiry" because of his involvement in possibly illegal arms sales to Iraq, argued that the nuclear States have never accepted that the prohibitions against using poison in warfare apply to nuclear weapons, therefore they don't apply.

### **US: Right to use nuclear weapons**

The US argued that existing treaties, UN resolutions and declarations assume that there is no general prohibition against nuclear weapons use, and even preserve a right of such use. Mr Michael Matheson, Principal Deputy Legal Adviser of the US Department of State said that *"This conclusion is further confirmed by Security Council resolution 984, which expressed approval for security assurances given in the context of the Non-Proliferation Treaty that expressly preserve the right to use nuclear weapons..."*

Mr Matheson also said that international human rights law and environmental law, which some states claim to render the use of nuclear weapons illegal, was not intended and does not apply to nuclear weapons.

John McNeil, Senior Deputy General Counsel of the US Department of Defence argued that the use of nuclear weapons may not affect civilian populations because *"Modern nuclear weapon delivery systems are indeed capable of precisely engaging discrete military objectives."*

# NUCLEAR TESTS CASES

## *New Zealand v France*

On 21 August 1995 Aotearoa-New Zealand lodged proceedings in the International Court of Justice against France challenging the resumption of nuclear testing in Te Ao Maohi ("French" Polynesia). France no longer accepts the jurisdiction of the ICJ for contentious cases. However Aotearoa-New Zealand was in a unique position of having lodged a case against France in 1973 when France did accept ICJ jurisdiction.

Following a decision by France in 1974 to discontinue atmospheric testing, prompted by the action against them in Court, the Court decided that the case no longer had any object and discontinued the proceedings. However, the Court added that examination of this decision was allowed for if the basis of the 1974 judgement were to be affected (paragraph 63).

Aotearoa-New Zealand, in applying for an examination of the 1974 decision, argued that there was increasing evidence of threats to the environment from underground testing. Aotearoa-New Zealand further argued that France was required to conduct an independent environmental impact report before resuming testing and requested the Court to grant interim measures calling on France to refrain from any further nuclear testing until the full case was completed.

Australia, Samoa, Solomon Islands, the Marshall Islands and the Federated States of Micronesia applied to intervene as affected parties in the case.

On 22 September the ICJ decided (12-3) that the request by Aotearoa-New Zealand *"does not fall within the provisions of the said paragraph 63 and must consequently be dismissed."* This determination was based on the argument that the initial application in 1973 was with regards to atmospheric testing and did not cover underground testing. According to the majority opinion, only if France resumed atmospheric testing could the Court reconsider the case.

The request for interim measures was thus also dismissed as were the applications by other South Pacific States to intervene.

Dissenting opinions were given by Judges Weeramantry (Sri Lanka), Koroma (Sierra Leone) and Palmer (ad hoc, Aotearoa-New Zealand). Judge Weeramantry's opinion, twice the length of the majority opinion, argued that Aotearoa-New Zealand's initial application was not limited to atmospheric tests, in that it asked the Court to adjudge and declare *"That the conduct by the French Government of nuclear test in the South Pacific region that give rise to radioactive fallout constitutes a violation of New Zealand's rights under international law."*

Aotearoa-New Zealand Prime Minister Jim Bolger said he felt

disappointment that the Court did not find the courage to oppose French nuclear tests, but he was not surprised. The government had always been aware that trying to re-examine the 1974 Case was utilizing a *"narrow point of law"*, and that the Court might turn down the case. Even so, it was important to go ahead with requesting the case be re-examined to indicate South Pacific opposition to the French testing.

Mr Bolger added that this case *"is but the precursor to the big case that's coming up which really goes to the heart of the question - and that is the legality of the use or the threatened use of nuclear weapons, and that's where the big issues are going to be debated and hopefully resolved."*

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## *British Tests Challenged in European Commission*

The European Commission of Human Rights in Strasbourg recently agreed that there is a prima facie case for admissibility on three cases brought against the UK government on behalf of victims of the UK nuclear tests in Christmas Island during the 1950s.

Thousands of armed forces servicemen from the UK and Aotearoa-New Zealand were dispatched to Christmas Island during the nuclear tests, ostensibly so that the government could research the effects of the tests on servicemen. Many of them have contracted cancer and other radiation induced health problems as a result of the nuclear tests.

Ian Anderson, a Scottish lawyer practising in New York, brought the case to the Commission on behalf of the British Nuclear Tests Veterans' Association, after exhausting legal channels in the UK. The cases are brought on behalf of two veterans, and one child of a veteran.

The case brought on behalf of the child of the serviceman will be the first case ever on intergenerational genetic damage caused by nuclear testing.

The UK government has refused to admit that its test program caused any harm to veterans, despite agreeing in 1993 to pay Australia 20 million pounds compensation for injuries to Australians from the nuclear tests in Australia. The 1993 agreement specifically excludes British victims from applying for compensation.

A trial date will be set for 1996.

## Press Coverage

The World Court hearings were covered by some papers in the US and overseas including the International Herald Tribune, New York Times, Japan Times, New Zealand Herald, Australian, Sydney Morning Herald, UK Financial Times, Canberra Times, New Statesman and Society, and the Santa Fe Reporter.

Included on this page is an article from the New York Times and headlines from other papers.

Additional articles are included in the "Highlights of the World Court Oral Hearings"

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**Outlawing nuclear weapons**  
World Court movement wins important victories.  
Nuclear Weapons on Trial  
Ban the Bomb?  
Nuclear weapons on trial for the first time in their history  
The bomb must join the outlaws  
World Court Weighs Legality of Atomic War  
Legal Opinion on Nuclear Weapons  
Nuclear Powers Seek to Block World Court N-Bomb Ban  
World Court pressed to ban the Big Five's bombs  
UN supports anti-nuclear court case  
When Nuclear Weapons Are Summoned Into Court  
THE PRESS At the World Court  
Third nuclear blast aids court challenge  
Customary Law Is Anti-Nuclear  
The case for making nuclear arms illegal  
NZ wants nukes illegal  
World Court opens nuclear case  
L'ARME NUCLEAIRE  
N-weapon illegal, World Court told  
N-question for court  
France pleads with World Court  
Next on the World Court's Docket: Are Nuclear Arms Legal?  
Weapons have kept the peace for 50 years, World Court hearing is told  
NZ to ask court for nuclear illegality ruling  
World Court To Ban The Bomb?  
Nuclear campaigner's faith on court ruling  
Legality of nuclear weapons faces challenge  
Can Use of Nuclear Weapons Ever Be Legal?  
What Australia will tell the World Court

## World Court Weighs Legality of Atomic War

By STEPHEN KINZER

THE HAGUE, Nov. 15 — The International Court of Justice has completed three weeks of hearings on a question that some view as purely theoretical and others say could determine the future of humanity: Are there any circumstances under which the use of nuclear weapons is legal?

Several governments presented powerful arguments citing the devastating effects of nuclear weapons and saying that they must be considered illegal under existing environmental and human rights treaties even though they have not been explicitly banned.

Countries that have nuclear weapons asserted that the court has no power to outlaw the weapons. They said they need them to prevent what a British advocate called "conquest which may be of the most brutal and enslaving character."

The World Court, an arm of the United Nations, has been asked to rule on the question by the United Nations General Assembly and the World Health Organization, a United Nations agency.

The case is unusual not only because of the sweeping questions it

addresses, but also because it has been brought as a result of a campaign not by governments, but by private citizens.

Nearly a decade ago, a group of lawyers opposed to nuclear arms devised the idea of organizing governments that opposed nuclear weapons into a coalition at the General Assembly and the W.H.O. Aided by scientists and protest groups around the world, they persuaded majorities in both bodies to request a World Court opinion.

A decision that nuclear weapons are illegal would not be binding, but it could be the basis for action by the General Assembly and the W.H.O.

"It's a win-win situation," said Peter Weiss, a New York lawyer who is among the campaign organizers. "If the court says nuclear weapons are not illegal, there will be a tremendous push from nonnuclear states for a convention banning them. If the court says the weapons are illegal, many states will ignore the ruling, which would lead to perhaps an even greater effort to force the adoption of a convention."

Pacific nations, including several that are near sites where nuclear testing has been carried out for decades, presented some of the strong-

est antinuclear arguments.

James Crawford, a British law professor who spoke for Samoa, asserted that nuclear weapons are illegal under existing international law because of "their indiscriminate character; their effects across time and space — transboundary and transgenerational; the poisonous effects they produce, analogous to that of poisonous gases, contrary to laws of war; the superfluous injury and unnecessary suffering they cause; and the fact that they render death inevitable not merely for individuals but for substantial populations."

An American advocate, John H. McNeill, a senior Pentagon lawyer, challenged the view that any use of nuclear weapons would inevitably lead to a holocaust. He described that view as "based on myth, not fact."

Use of nuclear weapons, Mr. McNeill said, "may be lawful or not depending on the extent to which it is prompted by the conduct of an aggressor and the nature of that conduct."

The British Attorney General, Sir Nicholas Lyell, urged the court to recognize "the somber but vital role played by nuclear weapons in support of international security over the last 50 years."

NY Times Monday Nov 20. page A-6